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Monitoring NRAs' Independence

A CEER report

Regulatory Benchmarking Work Stream

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INFORMATION PAGE

Abstract

This document (C20-RB-23-04) presents a CEER report on the organisational framework within which Europe's national energy regulators (NRAs) operate. It shines a light on NRAs' tasks and powers, resources, independence, accountability and transparency. Within this, it looks both at rules that are imposed on regulators (e.g. by law) and at the arrangements and organisational decisions NRAs have taken themselves.

Target audience

European Commission, energy suppliers, traders, gas consumers, electricity consumers, , gas industry, electricity industry, consumer representative groups, network operators, Member States, academics and other interested parties, IGOs.

Keywords

National Regulatory Authorities (NRAs), Independence, Governance, OECD, European Commission, energy regulation

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Related documents

CEER Documents

- State of Play on NRAs' investigatory and sanctioning powers, 9 October 2017, Ref. C17-LTF-51-03a
<https://www.ceer.eu/1304>
- Report on Safeguarding the independence of regulators – Insights from Europe's energy regulators on powers, resources, independence, accountability and transparency, CEER, 13 December 2016. Ref. C16-RBM-06-03
<https://www.ceer.eu/1305>

External Documents

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EXECUTIVE SUMMARY

Background

In June 2019, the European Commission published the study “Assessing the independence and effectiveness of national regulatory authorities in the field of energy”. The general objective of the study was to assess the de jure and de facto independence of the National Regulatory Authorities (NRAs) in the field of energy and their effectiveness in performing key tasks on the basis of the Directive 2009/72/EC¹ and Directive 2009/73/EC².

The following 12 EU Member States participated in that study: Austria, Bulgaria, Croatia, Czech Republic, France, Germany, Greece, Hungary, Lithuania, Romania, Slovakia and Spain. The study focused on three broad issues: the independence of NRAs from political and market actors; the adequacy of human and financial resources; and the independence and effectiveness of the NRA in conducting its core tasks.

In the light of that publication, CEER decided to conduct an internal survey on this subject matter in order to present key findings on NRA independence from a regulatory point of view.

Therefore, the present CEER report outlines key findings and facts on NRA independence. The report relies on the responses provided by 29 NRAs (24 NRAs³ that are CEER Members and 5 CEER Observer non-EU NRAs⁴) to a dedicated survey which contained CEER's own questions, as well as questions used for the OECD Indicators of Product Market Regulation⁵ for the first half of 2020. This report provides a status review on NRA independence four years after the first CEER report⁶, taking into consideration that national legislators have already adapted NRA competences, tasks and duties by implementing the Clean Energy for All Europeans package.

Brief summary of the conclusions

Over the last five years and following the changes of the legal framework, NRAs' duties and powers to regulate sectors other than electricity and gas have increased significantly. Some NRAs are regulating up to nine sectors, whereas others have been merged with other national entities/bodies e.g. competition authorities. Most of the NRAs were given new competences primarily through the implementation of the 3rd Energy Package but also outside any energy regulatory framework. They were tasked either to regulate other sectors (e.g. railways, fuels) or related topics (e.g. energy grid expansion). NRAs obtained more power mainly in information gathering, sanctions and cooperation. Some NRAs regulate new activities e.g. access to gas storage, environmental issues or activities linked to the introduction of “strategic reserve” or

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0072&from=en>.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0073&from=EN>.

³ E-Control (Austria), CREG (Belgium), HERA (Croatia), CERA (Cyprus), ECA (Estonia), EV (Finland), CRE (France), BNetzA (Germany), RAE (Greece), MEKH (Hungary), CRU (Ireland), PUC (Latvia), VERT (Lithuania), ILR (Luxembourg), REWS (Malta), ACM (The Netherlands), NVE-RME (Norway), ERSE (Portugal), ANRE (Romania), URSO (Slovakia), AGEN (Slovenia), CNMC (Spain), Ei (Sweden) and Ofgem (Great Britain). Please note that for the purposes of this report, Great Britain's regulator Ofgem is included as an EU NRA. Although the UK exited the EU on 31 January 2019, during the time period covered by this report, the UK was still subject to EU rules during the Transition Period which ended 31 December 2020 as specified in the Withdrawal Agreement.

⁴ SERC (Bosnia and Herzegovina), GNERC (Georgia), ERO (Kosovo), ERC (North Macedonia), AERS (Serbia)

⁵ <https://www.oecd.org/economy/reform/indicators-of-product-market-regulation/>

⁶ Report on Safeguarding the independence of regulators – Insights from Europe's energy regulators on powers, resources, independence, accountability and transparency, CEER, December 2016, Ref. C16-RBM-06-03.

“capacity remuneration mechanism”. This could be a challenge in terms of their resource allocation.

Most of the EU NRAs indicated having sufficient financial and personnel resources at their disposal to fulfil their tasks. However, 1/3 of the NRAs highlighted a lack of resources (funding) which in their view is not consistent with NRA independence principles.

NRAs indicate that they have a clear status of “independent bodies” with tasks and duties precisely defined in their legislation. NRA independence is explicitly stated in law in most countries and the national legislation of some NRAs' countries contains a legal definition of the NRA's independence. Consequently, NRA decisions are directly applicable and do not need any confirmation by any other body or political instance. Governmental interference in regulatory decision-making is very limited and mainly relates to NRA long-term strategies or work programmes but does not affect the regulators' core daily business.

In regard to NRAs' staffing policies, NRAs are mainly staffed with civil servants, whereas for non-EU NRAs the legal status of civil servants seems to be the least-preferred employment option. In almost all cases, NRAs have experienced a constant growth in their staff numbers throughout the last three years, while the share of staff members dedicated to energy regulation either remained the same or increased alongside the overall staff numbers. When it comes to the staff recruitment procedures, all NRAs, except for one, confirmed that it is based on a publicly advertised tendering process where candidates are examined by an NRA staff-only selection panel. When it comes to the permanent staff, more than half of the NRAs are not subject to any form of personnel restrictions, whereas the remaining respondents have to consider limitations in this regard.

For most NRAs, there are no significant restrictions such as a cooling off period in place for permanent staff members who pursue employment in the sector regulated by the NRA. Only a few NRAs require a cooling off period for their permanent staff pursuing professional activities in the regulated sector. For most NRAs, once in office, heads and board members are not allowed to simultaneously hold other offices or appointments in the government and/or the regulated industry. Regarding NRAs led by a board, in most cases the appointment of board members is staggered. For almost all NRAs, a limited and defined set of criteria is applicable for the dismissal from office of NRAs' head and board members. Most of the NRAs stated that NRA heads and board members are allowed to accept positions in the government related to the regulated sector without any restrictions after their term of office. In some cases, the leaving parties either have to comply with rules regarding conflict of interest or with a cooling off period. In regard to a subsequent position of NRAs' heads and board members in the sector regulated by the regulator, the majority of NRAs confirmed that the leaving parties have to comply with a cooling off period.

In terms of budget, most NRAs experienced a positive development of their respective total budgets throughout the last three years, although sometimes it only reflects the inflation rate. Most of them receive their financial resources from market participants via fees and other contributions. The remaining NRA budgets are either granted as part of state budgets or represent a combination of state funding as well as resources from market participants. The non-EU NRA budgets rely on financial resources received by market participants.

The 24 NRAs being financed in total or partially through fees stated that, in most cases, they set the level of the fees themselves. In a few cases, however, the fee level paid by the market participants is set by another body upon an NRA proposal. In only two cases is it a governmental/ministerial body which determines the level of fees without any NRA involvement. When it comes to the allocation of expenditure, the vast majority of NRAs provided that – within the framework of financial management – it is their own prerogative to allocate their respective expenditures. The few cases where the matter is subject to a governmental/ministerial decision or is shared can, therefore, be considered as an exception. For the vast majority of NRAs, the tasks of financial accounting and reporting are entrusted to the NRA with no or limited scope of intervention from other governmental/ministerial bodies. The remaining responses show that financial accounting and reporting is either a shared responsibility of the NRA with another governmental/ministerial body or lies solely in the competence of the government.

The accountability of NRAs is also an important topic to ensure their independence. NRAs are accountable to three different addressees: the legislator (the NRAs have to report to their national parliamentary institutions on their activities); stakeholders and the public. The survey results also reveal the importance of monitoring tasks since most of the responding NRAs indicated complying with reporting activities towards parliamentary/congressional committees. In only six cases, there are no such tasks attributed to the NRAs. NRAs also have to comply with the legal requirement to answer requests from or attend hearings organised by committees of the parliament/congress.

To ensure transparency, NRAs publish their draft decisions and collect feedback from stakeholders when taking decisions. This procedure is either foreseen in law or is a voluntary commitment. In the vast majority of cases, all the collected performance information by NRAs is publicly available. In the same context, there are now legal requirements in place to ensure the transparency of NRA activities. While all NRAs are legally required to disclose all their respective decisions, resolutions and agreements as well as to carry out public consultations on relevant activities, only half of them have been tasked with publishing a forward-looking action plan.

NRAs indicated being equipped with the legal power to request and set a deadline for the provision of information from regulated entities through a compulsory process. Furthermore, almost all NRAs have sanctioning powers for imposing penalties for non-compliance. Only two exceptions from this general rule can be identified. With regard to the appeal procedure of NRA decisions, for the vast majority of NRAs their decisions can only be overturned by courts. Nevertheless, there are also a few cases where bodies other than a court are able to do so.

The regulation of prices on monopolistic activities is performed independently by all NRAs. Alongside their competence to request information from regulated entities, almost all NRAs further have the power to conduct research as an input for price setting via collecting data on costs for the regulated industry and via benchmarking. As another key aspect of their regulatory work, most NRAs also provide binding guidance, review and/or approve contract terms between regulated entities and/or market actors independently.

Furthermore, NRAs are also equipped with powers to issue sanctions and penalties in regulatory matters. NRAs can take action in the form of financial or criminal sanctions and penalties, whenever there is a non-compliance with their own decisions or with other professional obligations under the relevant law. Mediation is also an area of independent competence for the vast majority of NRAs, making them the responsible bodies for resolving disputes between market actors and regulated entities, with the power to take final decisions in such situations.

1 Introduction

This CEER report focuses on energy regulators' powers, resources, accountability and independence based on the current EU legislation, in particular the requirements contained in the Clean Energy Package⁷.

The first step in the evaluation of NRA independence is to define indicators that serve as a basis for suitable comparability. The first two chapters provide a general overview of the current status of NRAs. The third chapter is dedicated to issues related to the decision-making process, decision-enforcement and NRA resources. The fourth and fifth chapters of the report address the issue of resources in relation to staffing numbers and budget. In chapter six, the report discusses the accountability and transparency of NRAs, where accountability has a stronger focus on the legal requirements and transparency refers to the degree and way in which regulators make information available. NRA duties and powers are presented in chapter seven, emphasising the core business field of NRAs for which their independence is essential. The final chapter of the report derives conclusions from the results presented throughout the report. These are meant to improve the situation of NRAs in terms of their duties, powers and resources.

⁷ Clean Energy for All Europeans package (https://ec.europa.eu/energy/topics/energy-strategy/clean-energy-all-europeans_en).

2 NRA setup

On the basis of the total number of respondents, basically, all NRAs regulate at least both the electricity and gas sectors⁸. These two sectors represent the lowest common denominator, providing a solid basis for comparability among the NRAs. However, most NRAs (20) are regulating more than energy. As can be seen below, the two most common sectors within the area of competence of respondents beyond electricity and gas are district heating (12) and water (10). The least common regulated sectors among respondents are competition (4) and waste (2).

Under the category "others", there is a wide range of responsibilities entrusted to NRAs, ranging from the regulation of an airport and transportation to energy efficiency, and grid expansion to oil and liquid fuels.

According to the findings of a prior CEER report on NRAs' organisational setup which was based on a questionnaire, new developments with regard to regulated sectors have since taken place. In five cases, NRAs have experienced an increase of competence:

- In Estonia, ECA is responsible for resolving disputes on airport charges and complaints of airport users.
- In Latvia, PUC is competent for deposit packaging management.
- In Portugal, ERSE has responsibility for petroleum derived fuels, liquefied petroleum gas, biofuels and electro mobility.
- In Luxembourg, ILR is in charge of the supervision of airport charges, ensuring the management and the coordination of radio frequencies and since 2019 is the national competent authority for Network and Information Systems' Security.

	Electricity	Gas	District heating	Telecoms	Water	Sewage	Postal	Railway	Waste	Competition	Other	Comparison 2018	TOTAL
EU NRAs													
Austria (E-Control)	x	x											2
Belgium (CREG)	x	x											2
Croatia (HERA)	x	x	x										3
Cyprus (CERA)	x	x											2
Estonia (ECA)	x	x	x		x	x	x	x		x	ECA resolves disputes on airport charges and complaints of airport users.	+ 1	9

⁸ The non-EU NRA of **Bosnia and Herzegovina** is not responsible for regulating the gas sector.

Finland (EV)	x	x								EV also acts as national emissions trading authority and is responsible for support schemes for RES and for authority activities for energy efficiency.		4
France (CRE)	x	x										2
Germany (BNetzA)	x	x		x			x	x		Grid expansion		6
Greece (RAE)	x	x								RAE has also monitoring responsibilities over the oil sector and is competent for the energy efficiency of the TSOs' and DSOs' networks.		3
Hungary (MEKH)	x	x	x		x	x			x			6
Ireland (CRU)	x	x			x	x						4
Latvia (PUC)	x	x	x	x	x	x	x		x	Deposit packaging management.	+ 1	9
Lithuania (VERT)	x	x	x		x	x			x ⁹			6
Luxembourg (ILR)	x	x		x				x	x	Radio electric frequencies; airport charges; Network and Information Systems' Security.	+ 1	8
Malta (REWS)	x	x			x					Petroleum sector		4
Netherlands (ACM)	x	x	x	x	x			x	x			8
Norway (NVE-RME)	x	x										2
Portugal (ERSE)	x	x								Petroleum derived fuels, liquefied petroleum gas, biofuels and Electro mobility.	+ 1	6
Romania (ANRE)	x	x	x									3
Slovakia (URSO)	x	x	x		x	x						5
Slovenia (AGEN)	x	x	x						x	Competition on REMIT		5
Spain (CNMC)	x	x		x				x	x	Airport tariffs; audio-visual; petroleum industry ¹⁰		8

⁹ VERT has the competence for the regulation of the part of transport sector (adjust maximum level of tariffs for passenger transportation over local trains) and has a function to adjust the maximum level of tariffs for vehicle transport within inland water across the Curonian Lagoon (Klaipėda national seaport area). Since July 2019, VERT is performing the following technical functions alongside economic market regulation: maintenance of energy facilities and installations; control of energy workers' certification; testing of energy efficiency; and issuing certificates of energy equipment operation activities. In addition, VERT oversees and licenses the participants in wholesale and retail market of petroleum products; it issues the permissions or licenses to the companies operating in this sector, following the assessment of the financial, technological and managerial capacity of them.

¹⁰ As for petroleum industry CNMC's task is limited to supervision and not regulation.

3 Independence

The independence of NRAs needs to permeate all areas of regulatory activity. Three overarching categories in analysing NRA independence have been particularly highlighted:

- Decision-making;
- Enforcement tools; and
- Resources.

3.1 Independence in decision-making

All NRA respondents indicated having the status of independent bodies with clear objectives and functions precisely defined in legislation. All NRAs¹¹ confirmed that their independence is explicitly stated in law, in some cases within a legal definition of independence. NRA decisions are directly applicable and do not need any confirmation by another body. Although regulators remain independent from any form of governmental interference in the areas of their designated regulatory functions (e.g. regulatory decision-making and appeals), some NRAs can receive governmental guidance in regard to their long-term strategy and work programme¹².

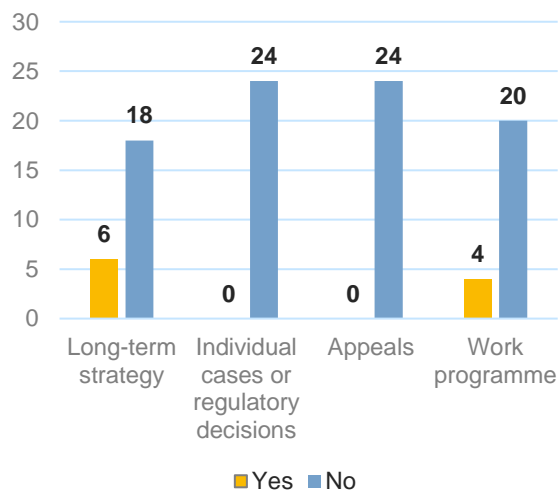


Figure 2: EU NRAs receiving governmental guidance

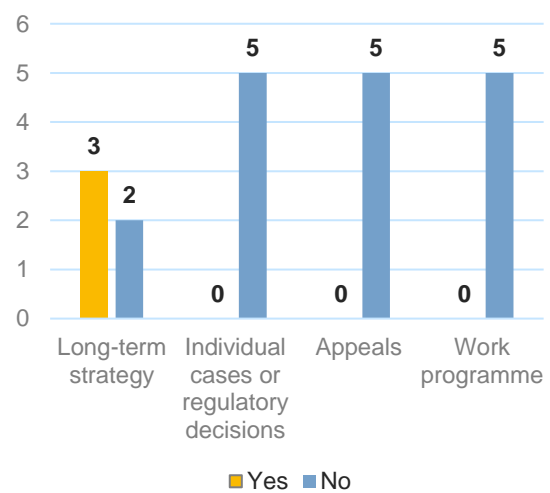


Figure 1: Non-EU NRAs receiving governmental guidance

In addition to their own decision-making competences, all NRAs have the power to make recommendations or to issue opinions on draft legislation and/or policy documents proposed by the executive bodies either within a formal or an informal process¹³.

In regard to the procedure for appeals of NRA decisions, for the vast majority of NRAs (23) their decisions can only be overturned by courts. Nevertheless, there are also a few cases

¹¹ In **Malta**, the definition of independence of the NRA is not explicit in the national legislation but in a decree referring to the independence provisions of the EU Directives 2009/72/EC and 2009/73/EC.

¹² This is the case in Bosnia and Herzegovina, Finland, Georgia, Germany, Lithuania, Luxembourg, Malta, North Macedonia and the Great Britain.

¹³ In **Germany**, such NRAs contributions are not explicitly foreseen by law.

where bodies other than a court are able to do so¹⁴. In **Great Britain**, for example, Ofgem's decisions can be appealed to two bodies: (i) the courts through a judicial review process¹⁵ (the challenge will mainly be a procedural challenge) and (ii) the Competition and Markets Authority for a limited number of cases defined in legislation, for challenges focusing more on the substance of the decision at stake. Both instances are respectful of the right of defence. In **Lithuania**, the Competition Authority has the right to investigate and give the instruction to amend or repeal the decision of the VERT, as well to impose the financial sanctions.

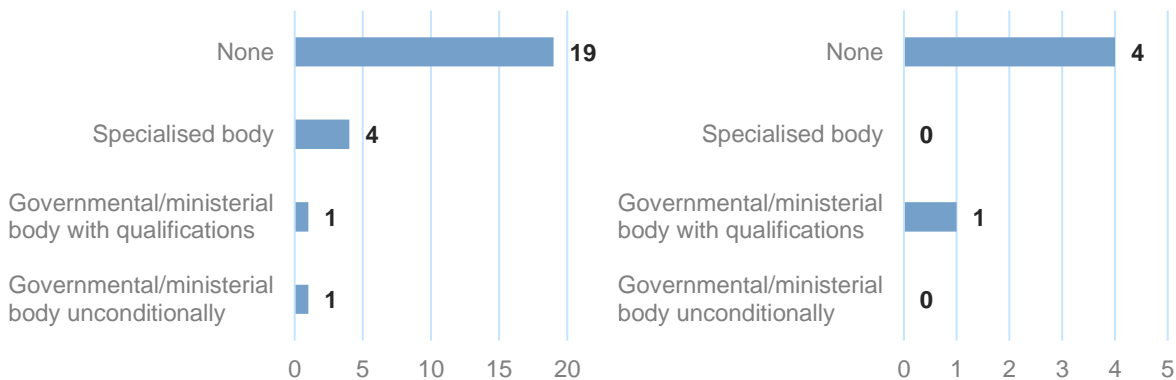


Figure 4: Bodies other than a court that can overturn EU NRAs' decisions

Figure 3: Bodies other than a court that can overturn non-EU NRAs' decisions

In most cases, the Administrative Courts are competent for appeals against NRA decisions. However, in some countries this competence is given to specialised courts (the jurisdiction of court is determined either nationally or regionally). In **Portugal**, until 2011, all the decisions taken by ERSE were challengeable before the Administrative Court. With the creation of a specialised Court for competition, regulatory and supervisory matters¹⁶, the jurisdiction to review decisions issued by the NRA has been transferred to said Court. In **Germany**, appeals against BNetzA decisions in the energy sector can be filed within one month at the Higher Regional Court (OLG) in Düsseldorf as competition matters. In **Spain**, the decisions taken by CNMC are subject to appeal before National High Court.

Moreover, in a number of countries, there are new provisions in place that either improve the competence, the organisation or the independence of the NRAs since 2016.

In **Belgium**, CREG's tasks have been enlarged, inter alia, with the adaptation of the Gas and Electricity Act to the 3rd Energy Package and the modification of the support mechanism for offshore electricity. Also, the collaboration between the CREG and the Belgian Competition Authority, the modification of the legal framework regarding the strategic reserve, the introduction of a legal framework for a capacity remuneration mechanism, and the control over the energy intermediaries, have been enhanced. In terms of organisation, CREG has taken various measures to further improve internal operation, including safeguarding its independence and transparency.

¹⁴ This is the case in Ireland, Lithuania, North Macedonia, Norway, Sweden and Great Britain.

¹⁵ The High Court for England and Wales; the Court of Sessions for Scotland.

¹⁶ Law n° 46/2011 of 24 June 2011.

In **France**, CRE gained new competences in information gathering, sanctions and cooperation in 2016¹⁷. On the one hand, CRE is responsible for monitoring wholesale markets and conducting investigations into suspected market abuses. On the other hand, CoRDIS (the dispute settlement body) can impose penalties for breaches of the REMIT regulation. In 2018, CRE also gained new competences in the area of capacity requirements allowing CRE to issue a formal opinion on the capacity mechanism rules proposed by the TSO. Since 2018, CRE regulates access to gas storage, has put an end to hydrocarbon research and exploitation and laid down various provisions relating to energy and the environment¹⁸.

In **Hungary**, MEKH has experienced significant improvements in 2020 – safeguarding the staff-related independence¹⁹. Not only is the regulator vested with full authority to set the number of employees (based on tasks and budget), the legal basis of employment also has been determined to be contracts instead of appointment, allowing the regulator to have full independence in setting the core employment terms in those contracts, e.g. salary and other allowances, part of the annual leave and working hours. Moreover, a cooling-off period might be introduced for permanent staff.

In **Slovenia**, AGEN has been given new tasks in the field of supervision regarding flat rate operating costs and unfair business practices.

In **Latvia**, PUC has been subject to various amendments granting new competences and enhancing its independence. The NRA's organisational independence is reinforced by the mechanism of an appropriate rotation of members of the Board of Regulators and by the establishment of an Advisory Board in order to provide public consultations on the strategy of its functioning. PUC has also been given the competence to:

- Determine quality requirements for the provision of public services;
- Impose economic or legal obligations or incentives on public service providers;
- Approve the total costs necessary for the provision of a public service or the total revenue allowed by a public service provider;
- Amend the draft tariffs of a public service provider; and
- Determine the requirements for the organisation and organisation of the accounting of costs, value of fixed assets and investments to the public service provider.

In **Spain**, CNMC has been provided with new functions such as approval of the tariffs methodology, specific values of tolls, remuneration parameters for transmission and distribution and annual remuneration for these activities. The regulator can also define the terms and conditions of third-party access to facilities and balancing services in both the electricity and natural gas sector²⁰. Moreover, the regulator increased its competence in regulating henceforth the railway sector²¹.

In **Lithuania**, the National Energy Regulatory Council has been reorganised by way of merger and joined to the National Commission for Energy Control and Prices (economic regulator) which began its activities from 1 July 2019. It has taken over the economic and technical regulation and market supervision and control functions of energy market in the Republic of Lithuania.

¹⁷ Under Article L. 131-2 of the Energy Code, CRE enforces Articles 3, 4, 5, 8, 9 and 15 of the REMIT Regulation.

¹⁸ In application of law no. 2017-1839 of 30 December 2017.

¹⁹ Based on the Act 107 of 2019 on public administrative bodies with special legal status, in force since 1 May 2020.

²⁰ Royal Decree-law 1/2019.

²¹ Royal Decree-law 23/2018.

It can be concluded that through the recent changes of the legal framework, NRAs were given either new competences in their core business (energy regulation: capacity remuneration mechanisms, storage, consumer affairs, etc.) or new competences in other regulated sectors (railway, grid expansion etc.). The extension of competences is welcome as long as the independence requirements are safeguarded – considering that those might be different for other sectors or activities, and as long as sufficient resources are made available for the NRAs.

3.2 Independence in decision enforcement

Article 57(5)(a)(b) of the Electricity Directive²² and Article 41(4) of the Gas Directive²³ provide that Member States shall ensure that NRAs are granted the powers enabling them to carry out their duties in an efficient and expeditious manner.

For this purpose, NRAs shall have the power to carry out investigations into the functioning of the electricity and natural gas markets and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the markets. By this NRAs comply with their duties, which is a guarantee of independence, because the scope of enforcement powers given to a regulator dictates whether it can act independently or whether it needs to go to courts or other entities to enforce compliance with the rules.

All NRAs declared that they have the power to supervise and carry out investigations and/or inspections. The common enforcement tools amongst NRAs are:

- The request of information/data;
- Access to any relevant documents (e.g. telephone traffic records);
- The organisation of hearings;
- The imposition of administrative penalties²⁴ (e.g. fines)²⁵;
- The revocation of licenses or certifications; and
- The initiation of legal proceedings at a court.

Some NRAs also have the right to independently impose temporary prohibitions of professional activities against the infringing parties, or freeze their assets. In other cases, the NRAs can request courts to do so. In two cases, the legal provisions in place delegate the fulfilment of tasks which, under the EU law, should be fulfilled by the NRA, to other institutions. In **Belgium** there is a limitation of CREG's competence in relation to the technical regulations for electricity/code of conduct for gas where the conditions for connection and access to the network have been established by royal decree. In **Serbia**, the transmission network rules are fulfilled by another institution than AERS.

3.3 Independence in resources

Sufficient funding, an adequate number of employees and the possibility to initiate legal proceedings are essential elements for safeguarding regulators' independence.

²² Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019L0944>.

²³ Directive 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0073&from=EN#d1e3064-94-1>.

²⁴ Except for HERA and E-Control

²⁵ For example, in **Germany**, the amount of the penalty payments can vary and is at least €1,000 and at most €10 million.

While most of the EU NRAs indicated that they have sufficient financial and personnel resources at their disposal, some respondents (11)²⁶ stated the opposite. This lack of funding is inconsistent with the purpose of NRAs' independence. All respondent non-EU NRAs confirmed that they have sufficient funds in order to act independently.

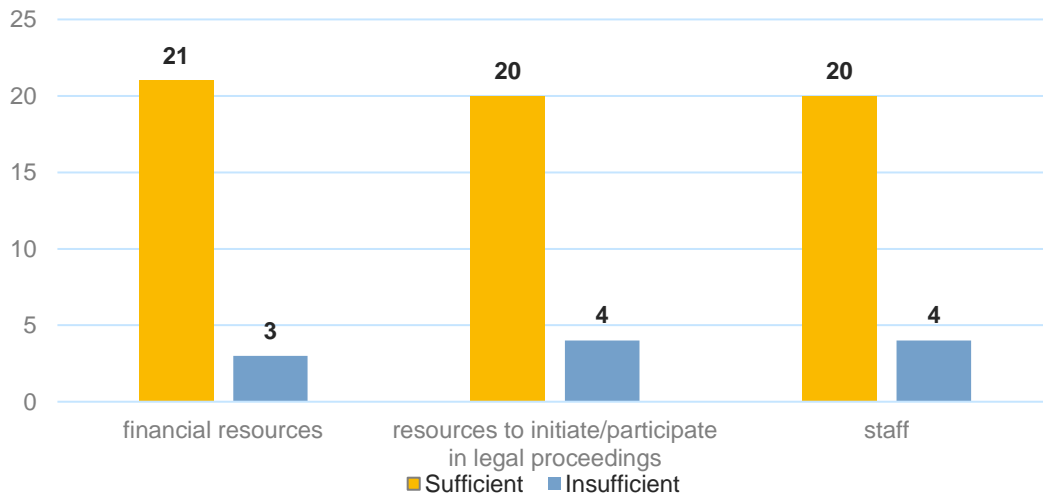


Figure 5: Number of EU NRAs having sufficient/insufficient resources

In **Lithuania**, whose NRA stated having insufficient resources in terms of staff, the recruitment of a new staff member for the NRA could take up to 3-4 months, due to the newly applicable centralised selection procedures for civil staff (see more in section 4.1.1 "Recruitment restrictions" below).

²⁶ **Belgium, Slovakia** and **Spain** stated having insufficient financial funds. **Belgium, Slovakia, Slovenia** and **Spain** stated having insufficient resources to initiate/participate in legal proceedings. **Belgium, Greece, Lithuania** and **Slovakia** stated having insufficient resources in terms of staff. In Belgium, this situation is due to the fact that the tasks attributed to CREG have been expanded over time.

4 NRAs' staffing

The NRAs' independence manifests itself not only via sufficient human resources per se but also in how the staff are recruited, their legal status and what competences the staff members are assigned. In this regard, the differentiation of permanent staff and head/board members is necessary in order to conduct an in-depth evaluation of regulatory independence. The appointment of civil servants appears to be the predominant form of employment within EU NRAs (13)²⁷, whereas the legal status of civil servants seems to be the least preferred method of employment among non-EU NRAs.

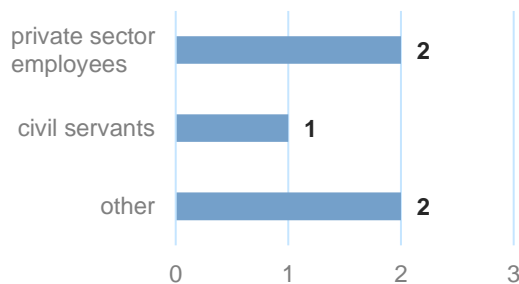


Figure 6: Legal status of the non-EU NRAs' staff

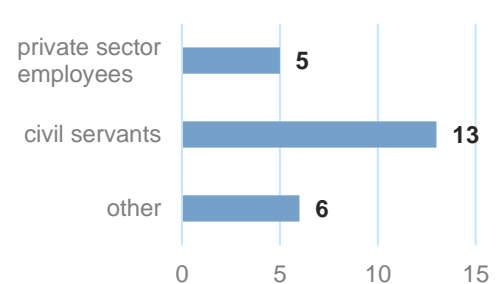


Figure 7: Legal status of the EU NRAs' staff

The following figures not only display the total staffing numbers of each NRA but also illustrate the development of the total staff and the staff dedicated to energy regulation. As demonstrated below, in almost all cases, NRAs experienced a constant growth in their staff numbers throughout the last three years, while the share of staff members dedicated to energy regulation either remained the same or increased alongside with the staff numbers accordingly.

	2017 NRA staff in total	2017 NRA staff dedicated to energy regulation	2018 NRA staff in total	2018 NRA staff dedicated to energy regulation	2019 NRA staff in total	2019 NRA staff dedicated to energy regulation
EU NRAs						
Austria (E-Control)	120	100%	117	100%	114	100%
Belgium (CREG)	71	100%	69	100%	69	100%
Croatia (HERA)	76	100%	78	100%	80	100%
Cyprus (CERA)	n.a.	n.a.	17	100%	16	100%
Estonia (ECA)	45	26.7%	42	30.2%	41	45%
Finland (AV)	n.a.	n.a.	85	45.7%	82	47%
France (CRE)	150	100%	148	100%	155	100%

²⁷ Estonia, Finland, Germany, Hungary, Ireland, Lithuania, Luxembourg, the Netherlands, Norway, Slovakia, Slovenia, Sweden and Great Britain.

Germany (BNetzA)	2977	11.56%	2621	14.04%	2913	12.63%
Greece (RAE)	95	94,5%	119	94,1%	110	100%
Hungary (MEKH)	341	33%	325	33%	336	n.a.
Ireland (CRU)	n.a.	77%	105	n.a.	106.6	61%
Latvia (PUC)	111	33%	120	27%	122	30%
Lithuania (VERT)	97	38%	103	37%	180	24%
Luxembourg (ILR)	56	14%	56	14%	65	12%
Malta (REWS)	45	9%	40,25	7.09%	47	5.45%
Netherlands (ACM)	n.a.	n.a.	560	16%	550	19.09%
Norway (NVE-RME)	61	100%	61	100%	61	100%
Portugal (ERSE)	73	100%	86	100%	92	100%
Romania (ANRE)	n.a.	n.a.	316	100%	319	100%
Slovakia (URSO)	n.a.	n.a.	n.a.	n.a.	119	70%
Slovenia (AGEN)	n.a.	n.a.	63	80%	62	100%
Spain (CNMC)	489	36.39%	n.a.	n.a.	515	29.35%
Sweden (Ei)	110	100%	130	100%	130	100%
Great Britain (Ofgem)	n.a.	n.a.	724	66.54%	851	n.a.
Non-EU NRAs						
Bosnia & Herzegovina (SERC)	n.a.	n.a.	19	100%	19	100%
Georgia (GNERC)	127	63%	n.a.	n.a.	136	80%
Kosovo (ERO)	n.a.	n.a.	n.a.	n.a.	33	48.48%
North Macedonia (ERC)	n.a.	n.a.	23	86.96%	30	76%
Serbia (AERS)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Table 2: Total staff of NRAs and the staff dedicated to energy regulation

4.1 Permanent Staff

Under this section, relevant aspects regarding the permanent staff of NRAs are examined; particularly when it comes to their recruitment, post-employment, as well as their secondary professional activities during employment with the NRA.

4.1.1 Recruitment restrictions

In the context of the procedure of staff recruitment, all NRAs, except VERT confirmed that it is based on a publicly advertised tendering process where candidates are examined by an NRA staff-only selection panel. When it comes to the permanent staff, more than half of the NRAs (15) are not subject to any form of personnel restrictions whereas the remaining respondents (12)²⁸ do have to consider limitations in this regard.

In **Lithuania**, for example, the Law on Civil Service that entered into force on 1 January 2019 foresees fully centralised staff selection procedures for all public state institutions, including VERT, that are organised by governmental body Civil Service Department under the Ministry of the Interior of the Republic of Lithuania. Thus, the ability of the regulator in any of the sectors (energy, water, telecoms) to select ordinary staff with specific skills is compromised as the process is led by this governmental body, including the advertising issue, selection of the candidates and convening the selection panel (where the regulator has very limited participation, i.e. 1 selection panel member out of 3). In addition, VERT also receives guidance on job descriptions from the governmental body, e.g. guidance to waive a requirement on work experience (as an option) in economics and law in the job description, thus narrowing the potential number of suitable expert candidates.²⁹ Another restriction experienced by VERT stems from the provisions of the Law on Civil service stating that at least two eligible candidates must be present for there to be the necessary competition for management positions. In the case where only one candidate has applied to take part in the competition and brings the necessary competences and skills, the competition is not organised and that candidate cannot be hired due to the said restrictions being imposed. In general, the overall process to hire one staff member for VERT takes on average up to four months.

4.1.2 Post-employment restrictions ('cooling-off' period)

Not only is the recruitment of staff relevant for NRAs' independence, but also the period after termination of employment. Whenever former permanent staff members pursue positions in the government related to the sector regulated by the NRA, most commonly, there are no restrictions in place (15). In the remaining cases (8)³⁰, the former NRA employees have to comply with rules to avoid conflicts of interest and only in some exceptional cases they are not allowed to take such jobs (5)³¹.

For most NRAs, there are also no significant restrictions for permanent staff members, who pursue employment in the sector regulated by the NRA. However, a few NRAs (5)³² require a cooling off period for their permanent staff pursuing professional activities in the regulated sector.

²⁸ Cyprus, Estonia, Finland, France, Ireland, Lithuania, the Netherlands, North Macedonia, Portugal, Romania, Slovakia and Spain.

²⁹ Although this might sound counterintuitive, what occurs is that when requirements are waived, there are increased numbers of applicants who actually do not have the proper expertise for the position and specific experts may be less likely to apply.

³⁰ Bosnia and Herzegovina, Finland, Greece, Ireland, Portugal, Slovakia, Serbia and Great Britain.

³¹ Cyprus, North Macedonia, Norway, Romania and Slovenia.

³² **Estonia, Hungary, Lithuania and Norway.** In **Portugal**, a two-year cooling off period applies to heads of department (in addition to Board members).

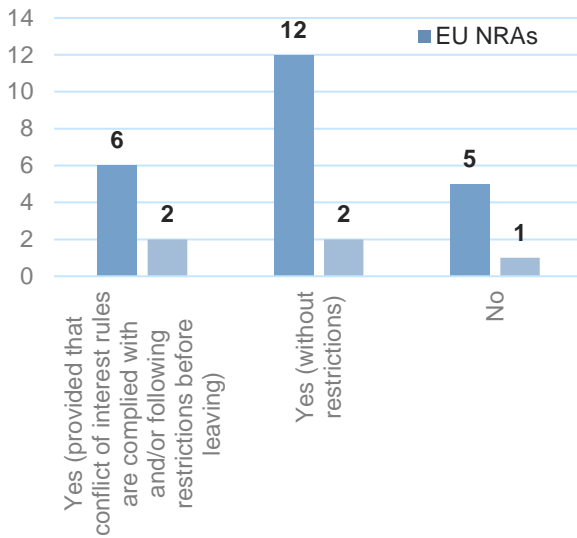


Figure 9: Conditions under which permanent staff members can accept jobs in the government related to the sector that is regulated by the NRA

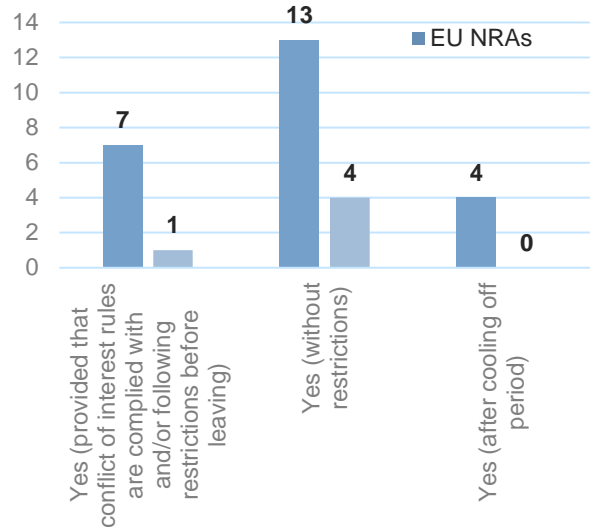


Figure 8: Conditions under which permanent staff members can accept jobs in the sector that is regulated by the NRA

4.1.3 Secondary professional activities

Seconding personnel implies an organisational link between the regulator and governmental bodies which can undermine the informational integrity of the regulator and therefore its independence. On the other hand, NRA experts can help understand the parameters and details of the decisions taken by NRAs and increase the understanding of NRA constraints.

More than half of the EU NRAs (14) explained that permanent staff are allowed to be seconded to government bodies for time limits, while the remaining respondents (9)³³ clearly indicated that this option is not possible (notably the non-EU NRAs unanimously indicated that this is not possible).

Where secondment is possible, it is often based on an ex-ante approval process by the NRA Board and appointment rules are laid down to ensure the understanding of the commitment³⁴. Furthermore, the vast majority of the respondents (22)³⁵ also underlined that the NRA staff can accept secondary activities related to the energy sector. The conditions under which such ancillary activities are allowed differ amongst the NRAs; in most cases this is subject to approval on a case-by-case basis.

For the purpose of endorsing and maintaining the independence of regulators, such ancillary activities of permanent staff members linked to the regulated sectors need to be settled in law in order to avoid the risk of undue influence or conflicts of interest. A clear framework for the secondment rules within the NRAs is necessary to safeguard NRA independence.

³³ Croatia, France, Hungary, Latvia, Lithuania, Luxembourg, Romania, Slovenia and Spain.

³⁴ Belgium.

³⁵ E.g. Austria, Belgium, Bosnia and Herzegovina, Luxembourg, North Macedonia, Slovenia and Sweden.

4.2 Head / Board members

This section is dedicated to the evaluation of the legal framework for the recruitment of NRA head/board members, their dismissal and the corresponding post-employment restrictions.

4.2.1 Recruitment conditions

More than half of the responding NRAs (15) stated that there are no restrictions regarding the employment of the NRAs' head(s)/board members. Restrictions that are in place within the remaining NRAs vary in form, but in all cases they are set by law.

Where such restrictions are applicable, the designated NRA head(s)/board members must be a person of the highest moral character, with a good reputation, a higher education and extensive professional experience and knowledge³⁶. With regard to the selection process of NRA head(s)/board members, the responses reveal a mixed picture:

- The selection is based on a governmental/ministerial nomination with or without an independent selection panel (24 cases); and
- The selection is based on a publicly advertised tendering, while the final decision is subject to an independent selection panel (4 cases)³⁷.

Most of the EU NRAs (12) underlined that the final appointment of their head(s)/board members lies within the legal authority of one governmental/ministerial body. As for the non-EU NRAs, the final nomination decision is taken by the parliament/congress or a corresponding committee. In a few cases (4), however, the final appointment is structured differently as follow:

Luxembourg	Belgium	Slovakia	Lithuania
The selection process is differentiated: While the selection of NRA Board members is made by a Grand Ducal nomination based on proposals from the Government; the selection of the NRA's head is based on a Grand Ducal nomination supported by a public job advertisement and the opinion of the Board members. It is in the legal authority of the Grand Duke to appoint at the end of the day.	The final appointment is done by royal decree after deliberation of the Council of Ministers.	The Head of the NRA is appointed by the government; the Board members get appointed by the NRA President.	The Chair and four Board members of the NRA are appointed by the Parliament of the Republic of Lithuania upon the nomination of the President of the Republic of Lithuania.

³⁶ Cyprus, Lithuania and Romania.

³⁷ Estonia, Latvia, Romania and Slovenia.

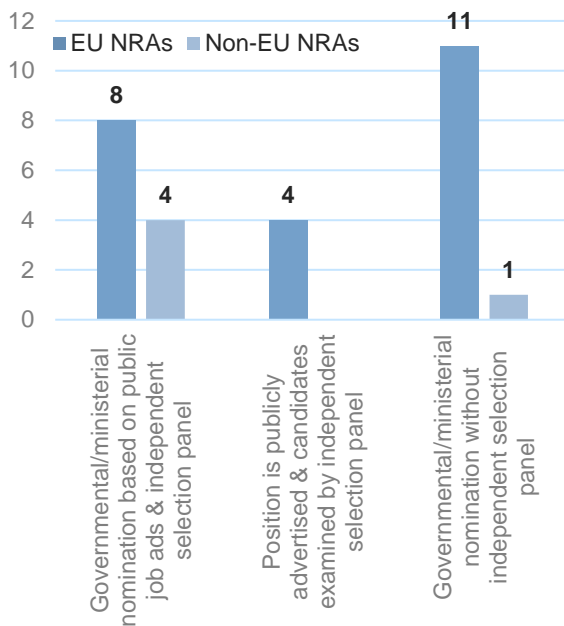


Figure 10: Selection process of agency head/board members within NRAs

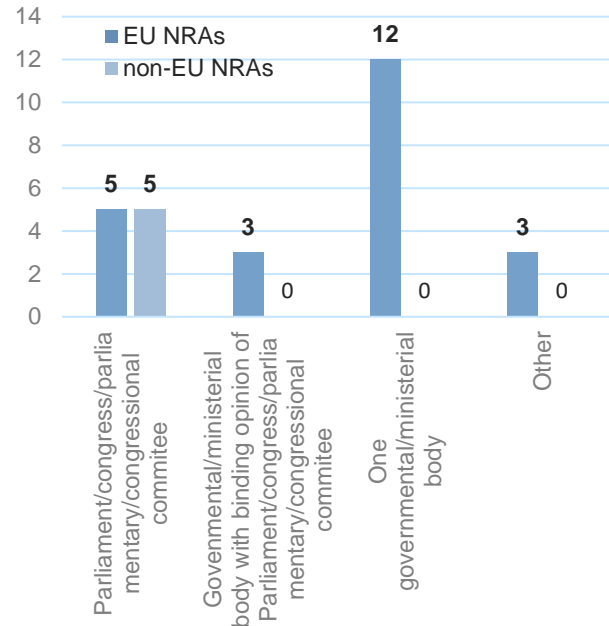


Figure 11: Final appointment of the agency head/board members within NRAs

The vast majority of all responding NRAs (21) confirmed that NRA heads or board members have to fulfil a legally defined skillset in order to be given such a position³⁸.

In this context, three categories of requirements can be distinguished:

- (i) adequate personal and professional qualifications, i.e. high moral standards, good reputation;
- (ii) higher education in form of a university degree (in the field of law, economics or technology);
- (iii) adequate professional work experience³⁹.

For most NRAs, once in office, heads/board members are not allowed to simultaneously hold other offices or appointments in the government/the regulated industry. In **Great Britain**, simultaneous activities are possible under some restrictions settled in the UK Government's Code of Conduct for Board Members of Public Bodies⁴⁰. As for EU NRAs being led by a board, in most cases (16)⁴¹ appointments of board members are staggered. This is also the case in all respondent non-EU NRAs.

³⁸ This is not the case in Belgium, Germany, Luxembourg, Malta, Slovenia, Sweden and Great Britain.

³⁹ For example, in **Croatia** candidates for the positions of NRA head/board members are required to have at least 10 years of work experience in energy sector.

⁴⁰ In the Code of Conduct such rules are foreseen: If an employee wishes to take up additional employment or appointments during his/her term of office, he/she must inform the Chair and/or the relevant parent department in advance, and allow them the opportunity to comment. Care should be taken if the employee accept additional public appointments to ensure that the employee is not being paid twice from the public purse for the same time". <https://www.gov.uk/government/publications/code-of-conduct-for-board-members-of-public-bodies>

⁴¹ This is not the case in Austria, Belgium, Estonia, Finland, Luxembourg, Sweden.

4.2.2 Dismissal of the NRAs' head/board members

The periods of time at the beginning and end of NRA heads'/board members' tenure often receive particular attention. In order to ensure that there is no conflict of interest, cooling off periods (i.e. a period of time that needs to pass after an NRA head leaves the regulator and before they can take up activity in the energy sector) are sometimes introduced in the NRAs' legal frameworks. The dismissal of NRA head/board members within EU NRAs is most commonly (16)⁴² based on governmental decisions whereas the dismissal within non-EU NRAs is only effective with a parliamentary/congressional decision.

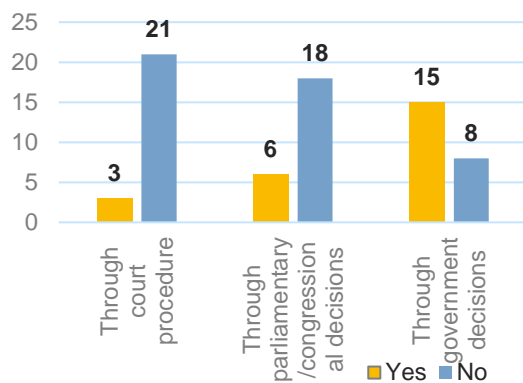


Figure 13: Bodies deciding on the dismissal of agency head/board members within EU NRAs

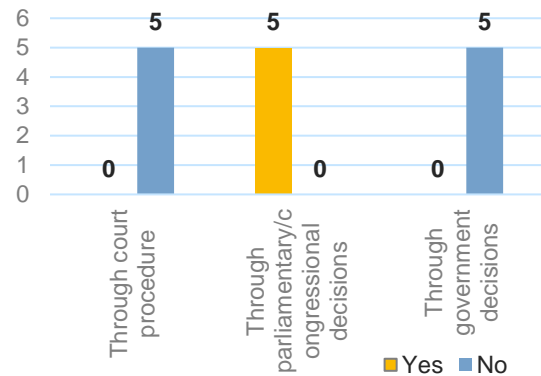


Figure 12: Bodies deciding on the dismissal of agency head/board members within non-EU NRAs

For almost all NRAs (27), a limited and defined set of criteria is applicable for the dismissal from office of NRAs' head/board members⁴³.

4.2.3 Post-employment restrictions

The intent and purpose of the tighter restrictions regarding the regulated sectors is to safeguard the independence of the regulator. The cooling off period is necessary to minimise the risk of disclosure of sensitive internal data/information to market participants/stakeholders since the high-level positions of NRA heads and/or board members have contact with competitively and commercially sensitive information.

Most of the NRAs (14) stated that NRA head(s)/board members are allowed to accept **positions in the government related to the regulated sector** without any restrictions after their term in office. In some cases, the leaving parties either have to comply with rules regarding conflict rules of interest (8)⁴⁴ or with a cooling off period (6)⁴⁵. There is only one case where a post hoc professional activity in government positions is ruled out categorically⁴⁶.

⁴² In **Finland, Greece** and **Spain** the dismissal of the NRAs' head/board members is based on a court procedure. In **Croatia, Ireland, Latvia, Lithuania, Romania** and **Slovenia** the dismissal is based on parliamentary/congressional decisions. In **Belgium**, the dismissal of the NRA's head/board members is done through a decision of the Council of Ministers, following a proposal made by the Minister of Energy.

⁴³ In **Slovakia** and **Sweden**, such a limited and defined set of criteria is not available.

⁴⁴ Bosnia and Herzegovina, Finland, Greece, Ireland, North Macedonia, Portugal, Slovakia, and Slovenia.

⁴⁵ Belgium, Cyprus, Latvia, Norway, Serbia and Great Britain.

⁴⁶ France.

In regard to a subsequent position of NRA head(s)/board members **in the sector regulated by the regulator**, the majority of NRAs (16) confirmed that the leaving parties have to comply with a cooling off period. Nevertheless, there are some cases (5)⁴⁷ where head(s)/board members can accept positions in regulated sectors without restrictions or having to comply with rules to avoid conflicts of interest (8)⁴⁸. NRA head/board members are generally subject to stricter conditions when pursuing a position within the regulated sector after their term in office. Their subsequent activity within a governmental framework, however, is often allowed without any restrictions.

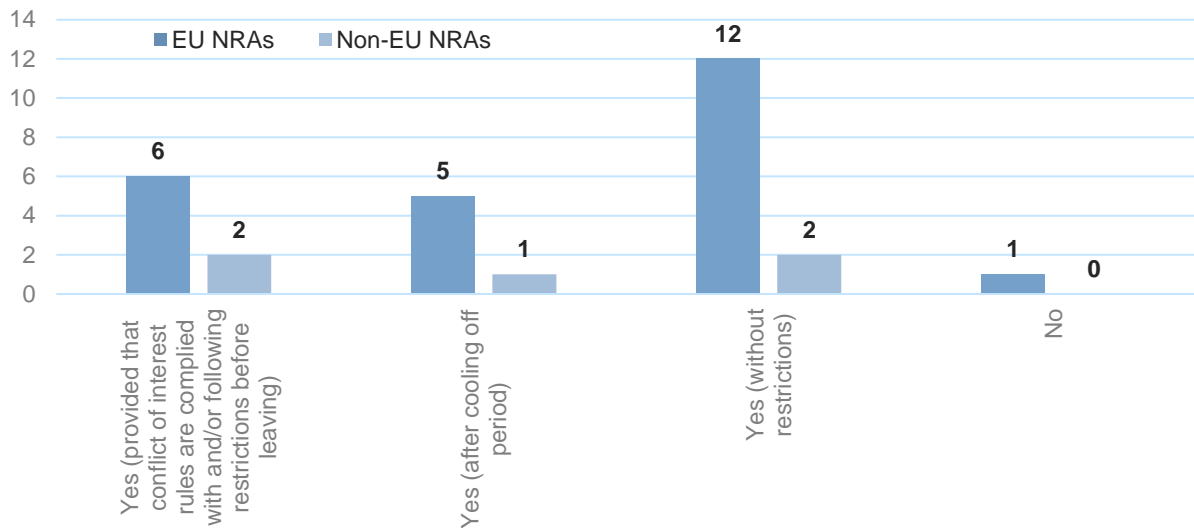


Figure 14: Conditions under which agency head/board members are allowed to accept jobs in the government related to the sector that is regulated by the regulator after their term of office

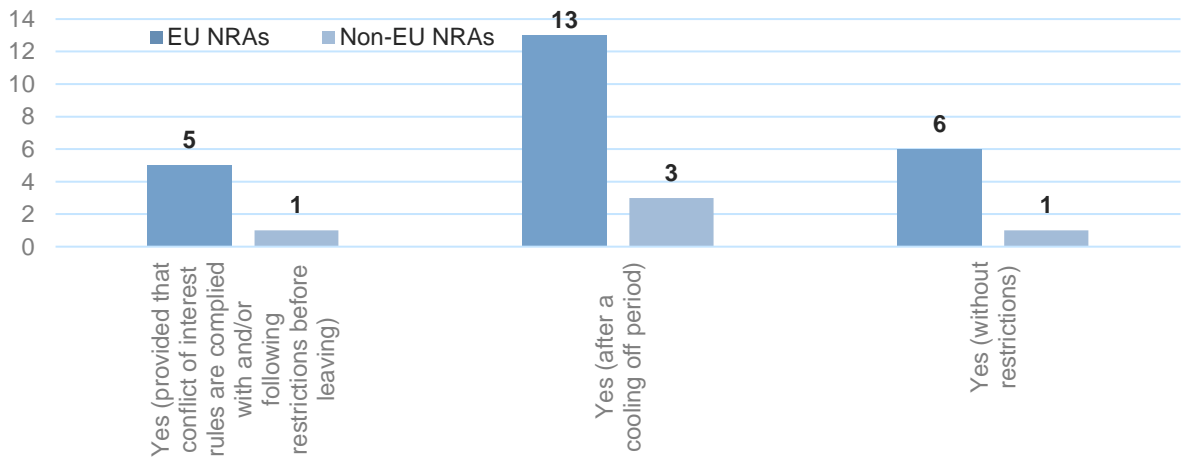


Figure 15: Conditions under which agency head/board members are allowed to accept jobs in the sector that is regulated by the regulator after their term of office

The cooling-off period is an important tool to ensure the independence of NRAs from market participants of the regulated sectors as well as from undue governmental influence.

⁴⁷ Finland, Ireland, the Netherlands, North Macedonia and Slovenia.

⁴⁸ Austria, Croatia, Georgia, Germany, Luxembourg, Malta, Romania and Sweden.

Where a cooling-off period is in place, the question of compensation is handled differently amongst the respective NRAs. Most commonly, there are no provisions foreseeing financial support/compensation for NRA head(s)/board members, whereas in other cases they are entitled to the salary they received as head/board members up to one year after resignation⁴⁹.

Other concepts for financial support mechanisms are also applied:

In **Lithuania**, the Chair or a member of the Board who ceases to hold office upon expiry of their term of office (as well due to health reasons) receives a severance grant equal to two months average salary.

In **North Macedonia**, the President and member of the Council whose term in office has been terminated is entitled to salary compensation for a period of three months as of the date of the term in office termination, in an amount equal to the salary for the month preceding the month of employment termination. The right to compensation is exercised upon personal request and ceases to be valid prior to expiry of a three-month period if the President or member of the Council becomes employed or exercises the right to retirement.

In **Portugal**, upon expiry of their term of office, members of the Board of Directors (and heads of department) are prevented, for a period of two years, from establishing any employment relationship, service agreement or any contractual relationship, either direct or indirect, for the provision of an activity for the benefit of stakeholders of sectors regulated by ERSE, with bodies with whom the latter have a control or group relationship or with bodies with whom the latter also have a control or group relationship. The members of the Board of Directors are entitled to compensation amounting to a half of their monthly salary at the date of expiry of the term of office, as long as they are not employed or retired, during the two-year cooling off period.

In **Spain**, for a period of two years following their vacation from office, the President, the Vice-President and Board members of the NRA may not engage in any private professional activities whatsoever related to regulated sectors and the activities of the National Markets and Competition Commission. Pursuant to that restriction, the President, the Vice-President and the Board members, upon vacating office due to resignation or expiry of their term in office or permanent incapacity for the exercise of their functions, are entitled to receive, as from the month after their vacation of office and for a term equal to that during which they held office, be subject to a maximum limit of two years monthly economic compensation equal to a twelfth of eighty percent of the total remuneration allocated to the office in question in the budget in force during the indicated term.

For almost all NRAs⁵⁰, the term in office of NRA heads/board members is set at five years or more. This is either renewable for a period compliant with the EU legal framework (5-7 years), or non-renewable.

⁴⁹ Belgium, Bosnia and Herzegovina, Croatia and Hungary.

⁵⁰ In **Kosovo**, the term of office is set at five years or more and is renewable without restrictions. In Luxembourg, the term of office of the NRA's board members is set at five years, renewable once. Whereas the term of office of the NRA head (and of the members of the NRA's top management) is set for seven years and renewable without restrictions. In **Romania**, the term of office is less than 5 years.

5 Budget

Financial autonomy is one of the most important indicators to measure the level of independence of NRAs. It ensures the ability to perform regulatory tasks effectively and adequately. Accordingly, the EU energy Directives state that Member States must ensure that the NRA “has all the necessary human and financial resources it needs to carry out its duties” as well as a “separate annual budget allocations and autonomy in the implementation of the allocated budget”⁵¹. The process of ensuring NRA budgetary independence must find the right balance between protecting the NRA from undue influence and its operational budgetary behaviour.

Thus, not only are the sources of financing relevant, but also the preparation, approval and allocation of the budget.

5.1 Sources of budget

While in almost all cases (27)⁵² the source of financial budget is stated within the NRAs' national legal framework, the responses with regard to the composition of the budget vary amongst the respective NRAs.

Most of the EU NRAs (12) receive their financial resources from market participants via fees and other contributions. The remaining NRA budgets are either granted as state budgets (5)⁵³ or represent a mixed budget including both state funding as well as resources from market participants (7)⁵⁴. The non-EU NRA budgets, however, rely solely on financial resources received by market participants. Although different funding models may have different benefits, depending on the circumstances of the respective NRAs, the diversification of the financial resources of NRA budgets appears to be an effective tool contributing to independence from governmental influence.

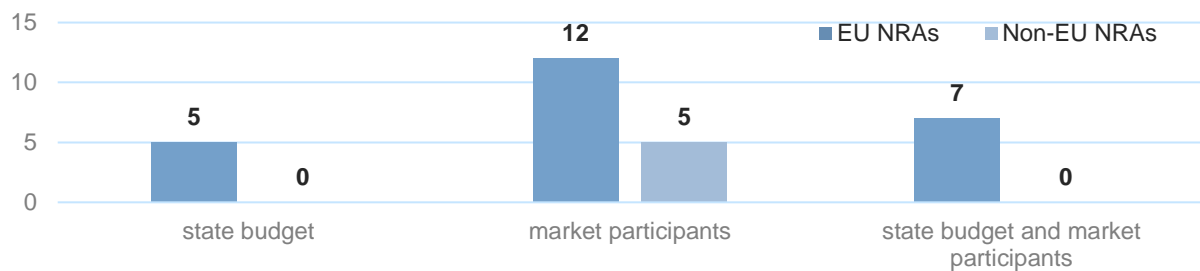


Figure 16: Sources of NRA budgets

The 24 NRAs being financed in total or partially through fees stated that, in most cases, they set the level of those fees themselves (15). In a few cases, however, the fee level paid by the market participants is set by another body upon an NRA proposal (8)⁵⁵. In one case, the level of fees is determined by a governmental/ministerial body without any NRA involvement⁵⁶.

⁵¹Article 57(5)(b)(c) of the Directive (EU) 2019/944 and Article 39(5)(a) of the Directive 2009/73/EC.

⁵²In **Finland** and **Slovakia** this is not the case.

⁵³Estonia, France, Germany, Norway and Slovakia.

⁵⁴Finland, Lithuania, Luxembourg, Malta, the Netherlands, Spain and Sweden.

⁵⁵Bosnia and Herzegovina, Croatia, Finland, Greece, Latvia, Lithuania, Slovenia and Spain.

⁵⁶Sweden.

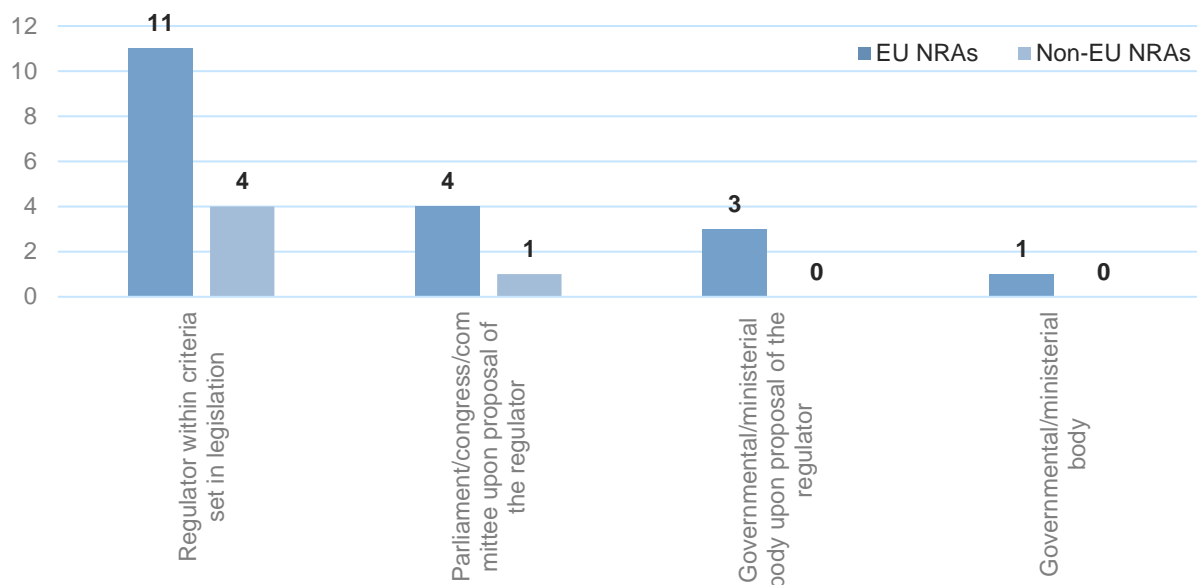


Figure 17: Bodies setting the level of the fees paid by the regulated sector

The allocated budget of NRAs and the share dedicated to energy regulation vary among NRAs. In order to increase the element of comparison, this report includes data from 2017 and 2018 that was provided by the participating NRAs in the 2018 CEER report on NRAs' organisational structure. Most NRAs experienced a positive development of their respective total budget throughout the last 3 years, although sometimes it only reflects the inflation rate⁵⁷.

	2017 Budget (total across all sectors and duties, in EUR)	2017 Budget dedicated to energy regulation	2018 Budget (total across all sectors and duties, in EUR)	2018 Budget dedicated to energy regulation	2019 Budget (total across all sectors and duties, in EUR)	2019 Budget dedicated to energy regulation
EU NRAs						
Austria (E-Control)	20,720,000	98.5%	20,300,000	98%	20,300,000	97.5%
Belgium (CREG)	14,952,254	100%	14,952,254	100%	15,075,561	100%
Croatia (HERA)	3,000,000	100%	3,370,000	100%	3,979,652	100%
Cyprus (CERA)	n.a.	n.a.	2,824,410	100%	2,968,436	100%
Estonia (ECA)	1,869,476	31.3%	1,972,291	32%	1,955,791	45%
Finland (AV)	n.a.	n.a.	11,780,452	39.7%	12,613,206	38%
France (CRE)	20,900,000	100%	20,833,697	100%	20,900,000	100%
Germany (BNetzA)	208,429,000	18%	200,652,000	19.9%	239,302,000	19.9%

⁵⁷ E.g. in **Belgium**.

Greece (RAE)	7,182,300	94.5%	9,849,988	94.1%	11,852,988	100%
Hungary (MEKH)	17,187,500	n.a.	23,148,148	100%	26,364,000	n.a.
Ireland (CRU)	n.a.	n.a.	18,000,000	77%	16,100,000	83%
Latvia (PUC)	5,192,400	n.a.	5,402,910	n.a.	5,408,302	n.a.
Lithuania (VERT)	3,513,423	43%	3,769,081	37%	6,724,983	49%
Luxembourg (ILR)	13,109,815	14%	13,612,488	14%	14,720,102	16%
Malta (REWS)	2,900,000	5%	3,070,237	8.18%	2,140,650	6.55%
Netherlands (ACM)	n.a.	n.a.	64,535,000	16%	73,000,000	n.a.
Norway (NVE-RME)	5,500,000	100%	6,460,674	100%	6,000,000	100%
Portugal (ERSE)	10,241,290	100%	9,290,998	100%	12,336,025	100%
Romania (ANRE)	16148,346	n.a.	18,025,154	97.5%	22,247,866	100%
Slovakia (URSO)	n.a.	n.a.	n.a.	n.a.	3,000,000	4.4%
Slovenia (AGEN)	n.a.	n.a.	2,431,846	100%	3,453,081	100%
Spain (CNMC)	n.a.	n.a.	n.a.	n.a.	59,986,700	33.36
Sweden (Ei)	10,000,000	100%	12,000,000	100%	13,000,000	100%
Great Britain (Ofgem)	n.a.	n.a.	100,000,000	16.85%	112,200,000	n.a.
Non-EU NRAs						
Bosnia & Herzegovina (SERC)	n.a.	n.a.	1,116,661,50	100%	n.a.	99.97%
Georgia (GNERC)	n.a.	n.a.	n.a.	n.a.	1,121,263	100%
Kosovo (ERO)	n.a.	n.a.	n.a.	n.a.	n.a.	60%
North Macedonia (ERC)	n.a.	n.a.	1,338,658	n.a.	n.a.	n.a.
Serbia (AERS)	n.a.	n.a.	n.a.	n.a.	n.a.	70%

Table 3: Evolution of NRA budgets 2017-2019

5.2 Preparation, approval and allocation of budget

Budget appropriations are set annually for the prevailing number of NRAs (25)⁵⁸. With regard to budget preparations, most NRAs (23)⁵⁹ pointed out that they provide information to the legislator or the relevant budget authority on the costs and resources needed to fulfil their mandate prior to the next budget cycle.

When it comes to the allocation of expenditure, the vast majority of NRAs (22) reported that – within the framework of financial management – it is their own prerogative to allocate their respective expenditures. The few cases where the matter is subject to a governmental/ministerial decision (4)⁶⁰ or is shared (2)⁶¹ can, therefore, be considered as exceptions. Restrictions on the NRA's budget through other mechanisms such as ex-post cuts or overall restrictions set by law are not in place in most cases (22). Exceptions from this rule are made either when the NRA's financial administration reports a profit or in the context of a crisis situation⁶².

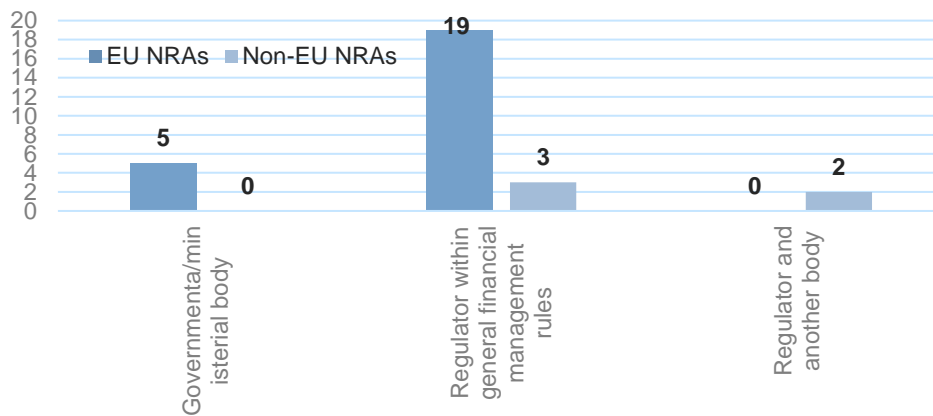


Figure 18: Bodies deciding on the NRA's allocation of expenditures

5.3 Staff salaries

The determination of salaries of NRA staff members is linked to the form of employment. Where staff members are employed as civil servants, their remuneration is either determined by law⁶³ or follows the same structure and levels as the salaries in the public sector/government in general⁶⁴. Some NRAs (12)⁶⁵ calculate the salaries of their staff independently without any kind of interference from external bodies.

⁵⁸ In **Austria**, the budget appropriation is valid for two years. In **Croatia**, HERA adopts a financial plan for a coming year together with a projection for two following years, which is sent to the competent Ministry. The Ministry elaborates a consolidated financial plan for the energy sector that forms part of the state budget approved by the Parliament. Therefore, the Parliament indirectly approves HERA's budget, but neither the Parliament nor the Ministry has a power to change it. In **Ireland**, the budget appropriation is a three-year-period as aligned to Strategic Plan (current term 2019 to 2021) with Annual Budgets approved to issue relevant Levy Orders.

⁵⁹ Not in Belgium, Bosnia and Herzegovina, Georgia, Luxembourg, Romania and Serbia.

⁶⁰ Cyprus, France, the Netherlands and Romania.

⁶¹ Kosovo and North Macedonia.

⁶² Greece and Slovakia.

⁶³ Bosnia and Herzegovina, Germany, Latvia, Lithuania, Luxembourg, the Netherlands, Slovakia and Slovenia.

⁶⁴ Cyprus, Greece and Malta.

⁶⁵ Austria, Belgium, Croatia, Estonia, France, Kosovo, Hungary, Norway, Portugal, Romania, Serbia and Sweden.

In the following cases the NRAs' decisions are either subject to an ex-ante approval or an ex-post review:

In **Finland**, for instance, the Head of the NRA makes a decision for each staff member based on the framework rules signed by the NRA and employee unions. Before signing the framework rules, the NRA has to obtain approval from the State Employer Office that the framework is in line with general framework rules applied throughout state agencies.

In **Spain**, salaries must be authorised by a commission composed by members of three ministries (Economy, Finance and Civil Service).

In **Great Britain**, remuneration of all employees is set out in their contracts and is subject to annual review in line with awards agreed by Cabinet Office (the department of the Government of the United Kingdom responsible for supporting the Prime Minister and Cabinet of the United Kingdom) and, for senior civil servants, as recommended by the Senior Salaries Review Body. The People and Remuneration Committee, which comprises non-executive members of the Authority who are appointed by ordinary resolution of the Authority, review and approve the annual pay award and level of any bonus for Senior Leadership Team employees. It also considers other matters involving the pay and performance of senior Ofgem staff. Performance pay and bonus awards are made within the parameters set by the Cabinet Office, and the Senior Salaries Review Body for Senior Civil Service pay. Each Senior Leadership Team employee is eligible to participate in a bonus scheme that is in line with Cabinet Office guidelines. The bonus is based on the individual's performance. Bonus payments are nonconsolidated and non-pensionable.

In **North Macedonia**, ERC plans its total expenditures in its financial plan including salaries which needs to be approved by National Assembly.

5.4 Financial accounting and reporting

For the prevailing number of NRAs (26), the tasks of financial accounting and reporting are entrusted to the NRA with no or limited scope of intervention from other governmental/ministerial bodies. The remaining responses show that financial accounting and reporting is either a shared responsibility of the NRA with another governmental/ministerial body (2)⁶⁶ or lies solely in the competence of the government (1)⁶⁷.

As regards the public procurement of NRAs, the vast majority of NRAs (22) are responsible for public procurement themselves with no or limited interventions from other governmental/ministerial bodies. A few NRAs (4)⁶⁸ have to cooperate on this matter with another governmental/ministerial body. For one NRA, the task of public procurement lies with the exclusive responsibility of the government⁶⁹.

⁶⁶ Estonia and Spain.

⁶⁷ The Netherlands.

⁶⁸ Estonia, Germany, the Netherlands and Spain.

⁶⁹ Slovakia.

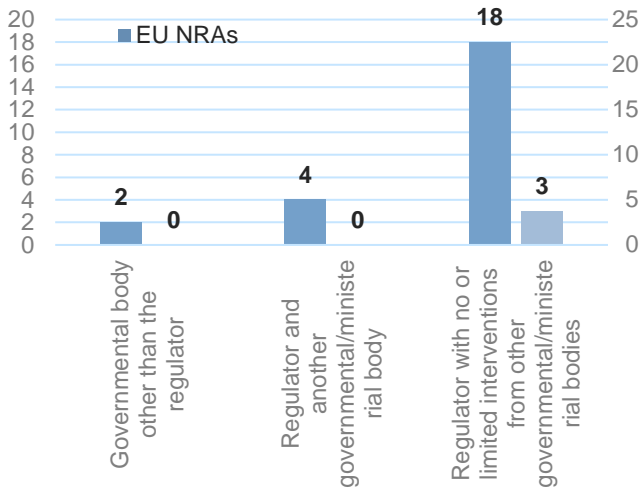


Figure 20: Bodies responsible for public procurement of NRA

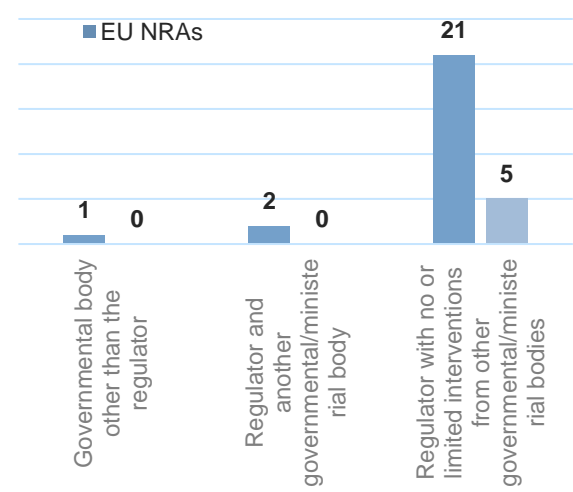


Figure 19: Bodies responsible for financial accounting and reporting of the NRA

6 Accountability

Accountability and transparency are complementary elements of independence which makes the balance between both very important. Measures related to accountability and transparency contribute to not only compliance but also effective performance by the NRA as they allow for an external assessment of their regulatory activities. In general, NRAs are accountable to three different addressees:

- i) The legislator – NRAs report to national parliaments on their activities;
- ii) The stakeholders – they have the right to easily access information, the right to be heard and the right to appeal against NRA decisions which impact them; and
- iii) The public – consumers have the right to monitor the regulator's performance⁷⁰.

6.1 Accountability to the legislator

Most NRAs (20) are directly accountable to the parliament/congress, the remaining NRAs (7)⁷¹ are directly accountable to the government or representatives from the regulated industry. A legal definition of accountability is foreseen in the national legislation of 13 respondents.

Almost all NRAs (26) are obliged to provide evidence and data in order to motivate their regulatory decisions. However, in a few cases (3)⁷², the extent of this obligation is limited and does not cover all areas of regulatory decisions.

On the other hand, most NRAs (25) are not obliged to submit to other bodies their proposals for new regulations that they are empowered to issue. Consequently, there are only a few exceptions where NRAs have to comply with such an approval process with the government (3)⁷³ or the parliament/congress (1)⁷⁴. Most NRAs (14)⁷⁵ publish a draft annual work programme in advance, however they do not necessarily include the planned consultations.

The survey results also reveal the importance of monitoring tasks since most of the responding NRAs (23) indicated complying with reporting activities towards parliamentary/congressional committees. In only six cases, there are no such tasks attributed to the NRAs⁷⁶. Most NRAs (21) have to comply with the legal requirement to answer requests from or attend hearings organised by committees of the parliament/congress⁷⁷.

⁷⁰ OECD (2014), The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209015-en>.

⁷¹ Cyprus, Estonia, Finland, Malta, the Netherlands, Sweden and Great Britain.

⁷² Austria, Luxembourg and Sweden.

⁷³ Belgium, Malta and Spain.

⁷⁴ Cyprus.

⁷⁵ Belgium, Croatia, Estonia, Georgia, Hungary, Ireland, Latvia, North Macedonia, Portugal, Romania, Slovenia, Spain, Sweden and the Great Britain.

⁷⁶ In **Estonia, Finland, Luxembourg, the Netherlands, Norway** and **Sweden**, there are no reporting activities in place.

⁷⁷ This is not the case in Georgia, Germany, Luxembourg, the Netherlands, Norway, Slovakia, Slovenia and Sweden.

6.2 Accountability to the stakeholders

In general, NRAs⁷⁸ collect feedback from stakeholders when taking decisions and publish these draft decisions. This procedure is either foreseen in law (17) or is a voluntary commitment (10). This outcome underlines not only the importance of transparency and cooperation between the NRAs and stakeholders but also the implementation of this overarching principle in practice. The same applies for those circumstances in which NRAs receive comments from stakeholders. Whenever this is the case, all NRAs⁷⁹ provide feedback on the given input and hence support their mutual cooperation and understanding of the subject matter.

According to the principle of cooperation, most NRAs (22) are obliged to consult stakeholders. Some NRAs (7)⁸⁰, however, indicated having exemptions applicable either for specific types of decisions or under certain circumstances. In **Austria**, for instance, the Board of directors of the NRA is not obliged to organise consultations, inter alia, when taking decisions imposing administrative fines or simple editorial corrections/improvements of no substance. Exemptions are also foreseen in cases of urgency and in regard to national security issues⁸¹.

6.3 Accountability to the consumers

In order to fulfil their reporting activities, NRAs operate on the basis of a two-track approach. On the one hand, NRAs are competent to 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. In cases, where such procedures are not yet in place, the respective NRAs plan to install an information procurement scheme.

The non-EU NRAs of **Bosnia and Herzegovina** (SERC) and **Kosovo** (ERO), for instance, plan to collect information/data on their internal organisational/corporate governance performance as well as on the quality of their regulatory processes. In **Cyprus**, the NRA also foresees introducing an internal procedure for collecting information/data on the quality of its regulatory processes. In **Slovenia**, AGEN plans to collect performance information on the quality of its regulatory processes.

⁷⁸ Except of two cases: In **Bosnia and Herzegovina** and **Hungary**, the NRAs do not publish their respective draft decisions nor collect feedback on this matter from stakeholders.

⁷⁹ Exception: Bosnia and Herzegovina and Hungary.

⁸⁰ Austria, Belgium, Bosnia and Herzegovina, Estonia, Greece, Serbia and Sweden.

⁸¹ Austria, Greece and Romania.

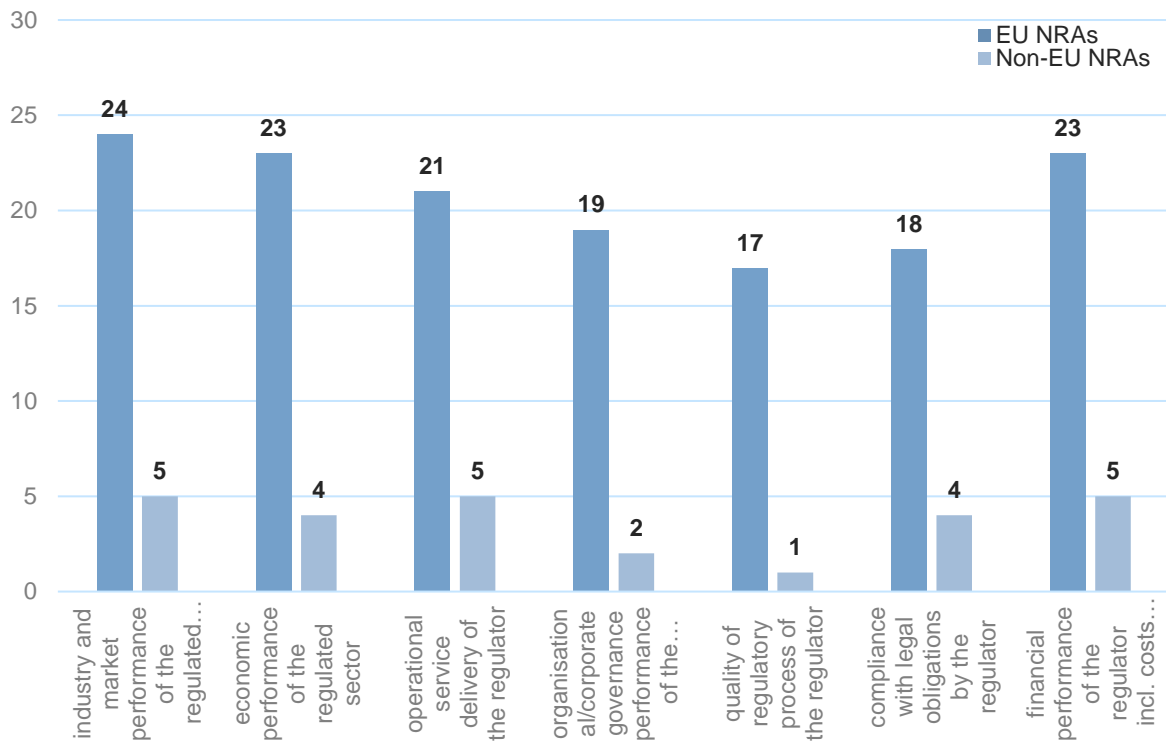


Figure 21: Performance information collected by regulators

For the sake of accountability and transparency, the collected performance information is publicly available in the vast majority of cases. Moreover, there are additional legal requirements in place to ensure the transparency of NRAs' activities. While all NRAs⁸² are legally required to disclose all their respective decisions, resolutions and agreements, as well as to carry out public consultations on relevant activities⁸³, only half of them have been tasked with publishing a forward-looking action plan⁸⁴.

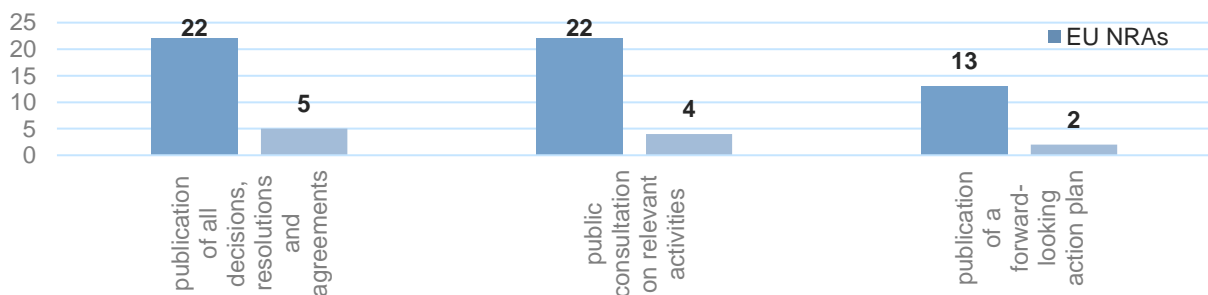


Figure 22: Legislative requirements to enhance the transparency of the regulator's activities

⁸² Not the case in **Slovenia** and **Sweden**.

⁸³ Not the case in Bosnia and Herzegovina, Malta and Sweden.

⁸⁴ Belgium, Croatia, Estonia, Georgia, Germany, Ireland, Latvia, Lithuania, the Netherlands, North Macedonia, Norway, Portugal, Slovenia, Spain and Great Britain.

7 NRAs' duties and powers

NRAs need to be independent when it comes to their core regulatory activities including investigatory work, licensing, price regulation, review/approval of contracts, issuing industry/consumer standards, issuing guidance and/or codes of conduct, mediation and sanctioning/penalties. All responding NRAs indicated being equipped with the legal power to request and set a deadline for the provision of information from regulated entities through a compulsory process. Furthermore, almost all NRAs have sanctioning powers for imposing penalties for non-compliance. Only two exceptions to this general rule can be identified:

- In **Austria**, even though the NRA is competent to request information from regulated entities, it does not have sanctioning powers to impose penalties in cases of non-compliance. E-Control (application) and Cartel Court (penalty) work together in cases relating to the unbundling regime. For all other administrative offenses, E-Control (application) cooperates with the competent regional authority that is responsible for issuing penalties.
- In **Croatia**, HERA is competent to request information from regulated entities, but it does not have sanctioning powers to impose penalties in cases of non-compliance. In that case, HERA can submit a motion to indict before the competent court for initiating misdemeanour proceedings.

Most of the responding NRAs (24) also have the power to issue and revoke licenses independently. In the other cases (5), such a competence is either not foreseen or is shared with other agencies/bodies⁸⁵.

The regulation of prices on monopolistic activities is performed independently by all NRAs⁸⁶. Alongside their competence to request information from regulated entities, almost all NRAs⁸⁷ also have the power to conduct research as an input for price setting via collecting data on costs for the regulated industry and via benchmarking⁸⁸.

As another key aspect of their regulatory work, most NRAs (20) also provide binding guidance, review and/or approve contract terms between regulated entities and/or market actors independently. In **Great Britain**, this task is sometimes shared with other agencies/bodies; for example, in relation to industry codes and agreements. For the other NRAs such a competence is not foreseen⁸⁹.

⁸⁵ While in **Belgium, France, Portugal** and **Spain** such a competence is not foreseen, in the **Netherlands** a shared competence is in place.

⁸⁶ E.g.: In **France**, CRE sets the methodology and levels of transmission and distribution tariffs. It also sets the methodology for the provision of balancing and ancillary services, approves the conditions for access to cross border infrastructures and is involved in setting connection fees. The NRA has the power to require TSOs and DSOs to modify terms and conditions, tariffs, rules, mechanisms and methodologies so as to ensure they are cost reflective and applied in a non-discriminatory manner. Performance-based components can be included in the tariff methodology. In **Germany**, there is no direct price regulation, but an incentive regulation of network tariffs in form of a revenue cap regulation, which directly influences the prices.

⁸⁷ Except ILR

⁸⁸ Such research is performed independently by almost all respective NRAs, except France, where it is a shared competence of the NRA with other agencies/bodies.

⁸⁹ In **Estonia, Georgia, Latvia, Malta, the Netherlands** and **Spain**, there is no such competence in place.

When it comes to the question of issuing industry standards, most NRAs do not have such a competence⁹⁰. Among those who have it, nine NRAs⁹¹ issue industry standards independently and seven NRAs⁹² share this task with other bodies/agencies.

In **Malta**, for instance, the Minister responsible for energy and water services may, after consulting the NRA, issue regulations regarding any of the regulator's functions or for the better carrying out of any of the provisions of the NRA Act. Such regulations may, in particular, provide for minimum standards to be adopted in, and any other matter related to the conservation, acquisition, supply, sale, storage, generation, distribution, transmission, export, treatment, re-use or disposal and any other practices, operations and activities, regulated by or under REWS Act.

With regard to consumer-related topics, on the other hand, more than half of the responding NRAs (16) expressed having the competence to issue standards independently. In the remaining cases, there is either no competence at all (9)⁹³ or it is shared with other agencies/bodies (4)⁹⁴.

In **Ireland**, for example, the obligations on electricity and gas suppliers⁹⁵ and the minimum service requirements that suppliers must adhere to in their dealings with energy customers are set out in the Electricity and Gas Suppliers' Handbook. The minimum requirements are set out in a number of Codes of Practice (CoPs) contained within the Handbook. These CoPs cover all key areas of customer-supplier interaction, including: billing, disconnections, marketing and advertising, prepayment meters, complaint handling, and customer sign up, for both domestic and non-domestic customers, including vulnerable customers. These rules are in place to ensure that customers enjoy a high standard of protection in their dealings with licensed suppliers and are in line with the CRU's legislative duties. Electricity and gas suppliers are required to comply with these obligations when preparing their individual terms and conditions of supply, Codes of Practice and Customer Charters and conducting their electricity and gas supply business. The obligations outlined in this document are not exhaustive but rather describe the minimum level of service that electricity and gas suppliers are required to adhere to in their dealings with energy customers.

The provided input reveals not only a varying competence framework of NRAs regarding industry and consumer standards, but also an uneven area of regulatory authority even within consumer-related issues.

⁹⁰ In **France**, this responsibility lies with the Ministry, the NRA, however, can consult on these issues. In **Germany**, the responsibility lies with the energy associations.

⁹¹ Croatia, Greece, Ireland, Latvia, Lithuania, the Netherlands, Norway, Romania and Serbia.

⁹² Austria, Cyprus, Georgia, Kosovo, Luxembourg, Malta and Great Britain.

⁹³ Bosnia and Herzegovina, Estonia, Finland, France, Latvia, Luxembourg, Malta, Portugal and Slovenia.

⁹⁴ Belgium, Cyprus, Georgia and Spain.

⁹⁵ <https://www.cru.ie/wp-content/uploads/2019/11/CRU19138-Electricity-and-Gas-Suppliers-Handbook-2019-.pdf>

Regulatory authorities should be granted the power to ensure high standards of universal and public service obligations in accordance with market opening, to ensure the protection of vulnerable customers, and to the full effectiveness of consumer protection measures. The limited competences of NRAs in the field of consumers is suboptimal in terms of independence of regulators because consumers are those to whom NRAs are accountable.

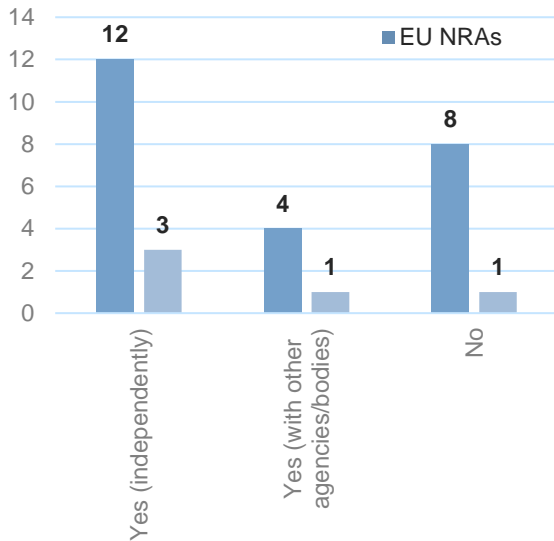


Figure 24: Regulators issuing consumer standards

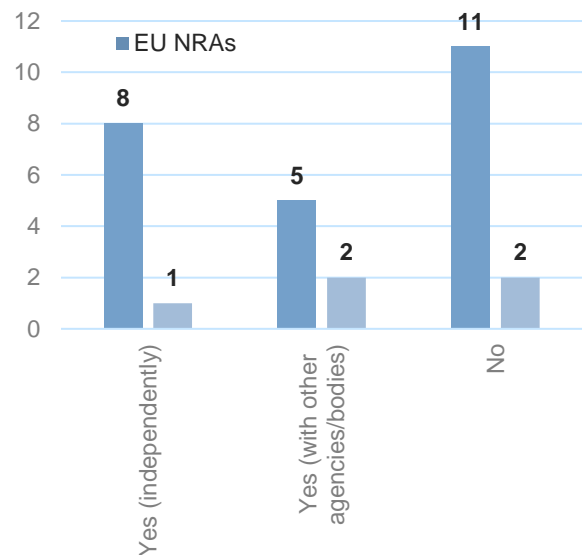


Figure 23: Regulators issuing industry standards

Although most NRAs are not primarily responsible for issuing industry standards, but rather given a broader competence framework regarding consumer standards, in both areas, they are in charge of enforcing compliance with both types of standards as well as with regulatory commitments through legal punitive powers for non-compliance. The vast majority of NRAs (20) can enforce compliance with industry and consumer standards independently, in some cases (6)⁹⁶ this task may be fulfilled in cooperation with other agencies/bodies and in a few exceptional instances (3)⁹⁷ NRAs are not given such a competence at all. Where NRAs share the competence of enforcing compliance with industry and consumer standards with others, they most commonly cooperate with the competent courts⁹⁸.

⁹⁶ Austria, Croatia, France, Georgia, Kosovo and Great Britain.

⁹⁷ Bosnia and Herzegovina, Estonia and Finland.

⁹⁸ For example, in **Austria**, the NRA can pass issues on to the competent court for sanctioning actions. In **Croatia**, the NRA conducts supervision but only a court can impose fines for non-compliance cases

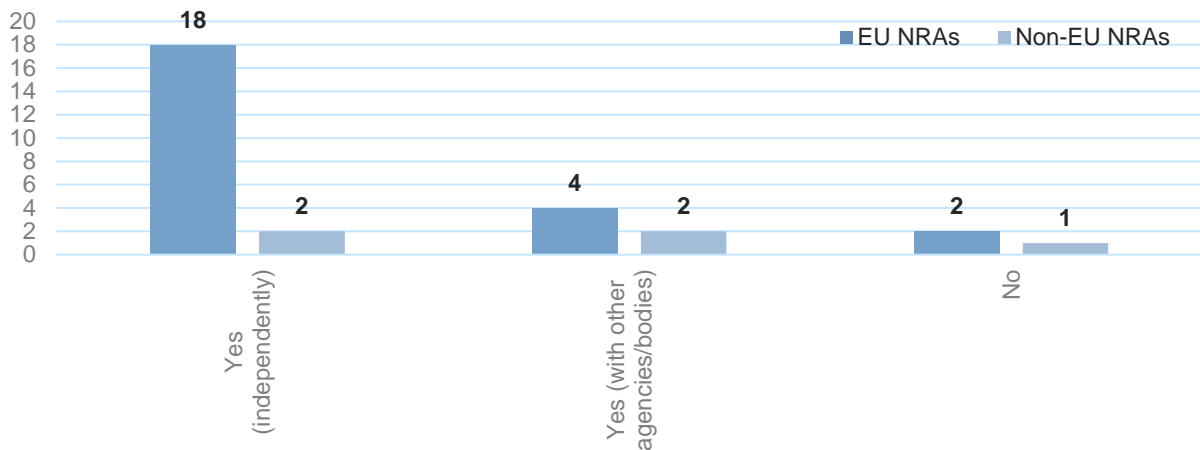


Figure 25: Regulators enforcing compliance with industry and consumer standards

As for the competence of issuing guidelines and/or codes of conduct, there are only a few exceptional cases where NRAs cannot act independently⁹⁹.

Mediation is also an area of independent competence for the vast majority of NRAs (21)¹⁰⁰, making them to the responsible bodies for resolving disputes between market actors and regulated entities with the power to take final decisions in such situations.

Thus, NRAs not only act as enforcement bodies conducting investigations and imposing sanctions for non-compliance, but they also become more and more active as arbitration bodies for resolving complaints, disputes or disagreements. Accordingly, NRAs hold and perform two important complementary functions.

⁹⁹ In Bosnia and Herzegovina, Finland and Slovenia the respective regulators are not equipped with such a competence at all. In Georgia, the NRA shares this task with other agencies/bodies. In North Macedonia, the NRA approves Market and Network Codes, but also TSOs' Compliance Programs.

¹⁰⁰ This is not the case in **Belgium, Bosnia and Herzegovina, Germany, Hungary, Slovenia** and **Sweden**. In **North Macedonia**, this task is shared: The NRA may provide help to entities in dispute, and may provide help to parties in dispute when they intend to refer their dispute to the authorised mediator or court. In **Luxembourg**, the NRA has a role of mediator (no decision power) between household customers and regulated entities, i.e. energy suppliers and system operators. Additionally, the NRA is competent for resolving disputes (including binding decisions) in case of disputes with regard to access to the grid, connection to the grid, metering, balancing, dispatch, universal service obligations, public service obligations.

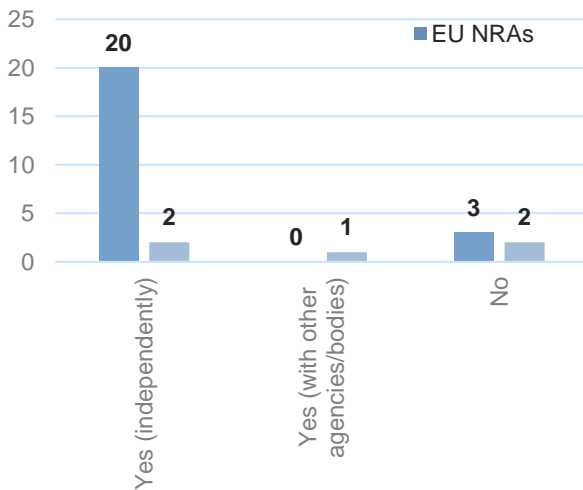


Figure 27: Regulators issuing guidelines and/or codes of conduct

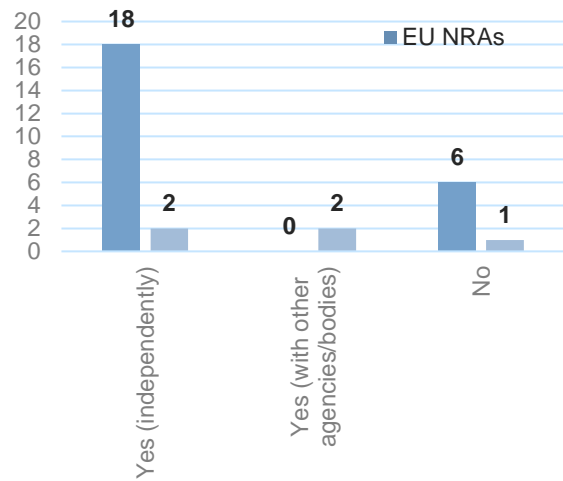


Figure 26: Regulators mediating disputes between market participants and regulated entities

Finally, NRAs are also equipped with powers to issue sanctions and penalties in regulatory matters: most NRAs (24)¹⁰¹ can take action in the form of financial or criminal sanctions and penalties whenever there is non-compliance with their own decisions or with other professional obligations under the relevant law. The most common form of sanctioning is the imposition of administrative fines.

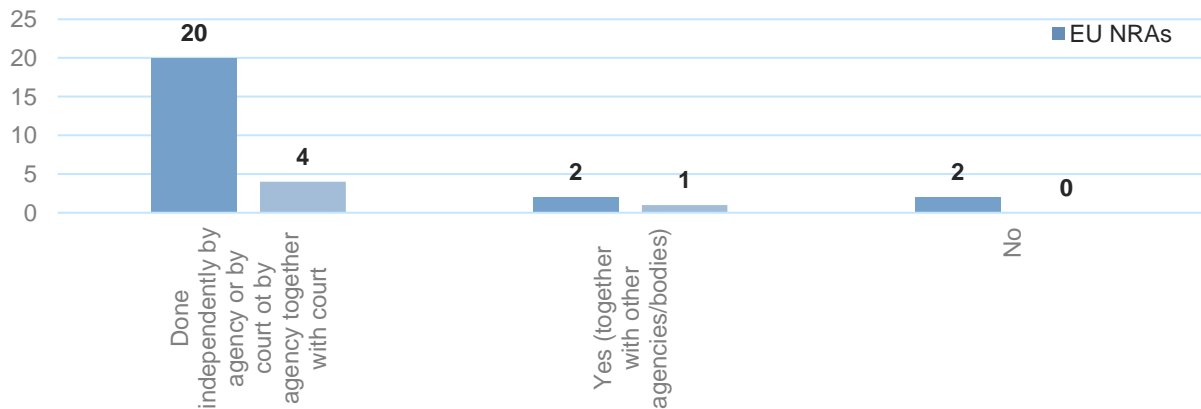


Figure 28: Regulators issuing sanctions and penalties

¹⁰¹ This is not the case in **Austria** and **Croatia**. In **Georgia**, **Portugal** and **Great Britain**, this task may be shared with other agencies/bodies.

8 Conclusions

NRAs indicate having a clear status of “independent bodies” with **tasks and duties** precisely defined in legislation. In most countries, NRA independence is explicitly stated in law and in some countries, national legislation contains a legal definition of the NRA's independence.

Over the last five years and following the changes of the legal framework, NRA duties and powers to regulate other sectors beyond energy and gas have increased significantly. Some NRAs are regulating up to **nine sectors**, whereas others have been merged with other national entities/bodies (e.g. competition authority). This can be a challenge in terms of resource allocation. In fact, NRAs were given new competences primarily through the implementation of the 3rd Energy Package but also through dedicated sectoral regulatory framework and were empowered to regulate either other sectors (railway, post, competition, fuels) or related topics (energy grid expansion, capacity remuneration mechanisms, storage etc.).

The NRA decision-making process is very important in evaluating NRAs' independence. Decisions of all participating NRAs are directly applicable and do not need any confirmation by any other body or political instance. Governmental interference in regulatory decision-making is very limited and mainly relates to NRA long-term strategies or work programmes, but does not affect the regulators' core and daily business. All NRAs reported having the power to supervise and carry out investigations and/or inspections and have as a common basis the following enforcement tools:

- The request of information/data, the access to any relevant documents (e.g. telephone traffic records), the organisation of hearings;
- The imposition of administrative penalties (e.g. fines); and
- The revocation of licenses or certifications¹⁰², and the initiation of legal proceedings at a court.

Most of the EU NRAs indicated having sufficient **financial and personnel resources** at their disposal to fulfil their tasks. But 1/3 NRAs highlighted a lack of resources (funding) which in their view is not consistent with NRA independence principles. EU NRAs are mainly staffed with civil servants, whereas for the non-EU NRAs the legal status of civil servants seems to be the least-preferred way of employment. In almost all cases, NRAs experienced a constant growth in their staff numbers throughout the last 3 years, while the share of staff members dedicated to energy regulation either remains the same or increased alongside the general staff numbers.

When it comes to permanent staff, more than half of the NRAs are not subject to any form of personnel restrictions, whereas the remaining respondents have to consider limitations in this regard. **Personnel restrictions** might include the direct intervention of the governmental body in the staff selection process (e.g. in selection panel, in issuing guidance on the job description), a requirement on the minimum number of candidates and long staff selection procedures, among others.

¹⁰² Except for CREG.

For most NRAs, there are no significant restrictions – **no cooling off period** in place – for permanent staff members who pursue employment in the sector regulated by the NRA. Only a few NRAs require a cooling off period for their permanent staff pursuing professional activities in the regulated sector. Once in office, **Heads and Board members** are not allowed to hold other offices or appointments in the government/the regulated industry simultaneously. For almost all NRAs, appointments of board members are staggered and a limited and defined set of criteria is applicable for their dismissal. NRAs confirmed that the leaving heads or board members have to comply with a cooling off period. Only within seven NRAs head(s)/board members can accept positions in regulated sectors without restrictions or have to comply with rules avoiding conflicts of interest. NRAs head(s)/board members are generally subject to stricter conditions than the permanent staff members when pursuing a position within the regulated sector after their term of office.

Most of the EU NRAs receive their **financial resources** from market participants via fees and other contributions; the remaining NRA budgets are either granted as part of the state budgets or represent a mixed budget including both state funding as well as resources from market participants. The non-EU NRA budgets merely rely on financial resources received by market participants. The 24 NRAs being financed in total or partially through fees stated that, in most cases, they set the level of those fees themselves. In few cases, however, the fee level paid by the market participants is set by another body upon the NRA's proposal. In only two cases it is a governmental/ministerial body who determines the level of fees without any NRA involvement.

The budget appropriations are set annually for most of the NRAs on the basis of the information provided to the legislator or the relevant budget authority on the costs and resources needed.

- When it comes to the allocation of expenditures, the vast majority of NRAs provided that – within the framework of the financial management – it is their own prerogative to allocate their respective expenditures. The few cases where the matter is subject to a governmental/ministerial decision or is shared can, therefore, be considered as an exception.
- For the majority of NRAs, the tasks of financial accounting and reporting are entrusted to the NRA with no or limited scope of intervention from other governmental/ministerial bodies. The remaining responses show that financial accounting and reporting are either a shared responsibility of the NRA with another governmental/ministerial body or lies solely in the competence of the government.

NRAs are **accountable to three different addressees**: the legislator (the NRAs have to report to their national parliamentary institutions on their activities or to comply with the legal requirement to answer requests from or attend hearings organised by committees of the parliament/congress); stakeholders; and the public. Accountability to the legislator, the stakeholders and the consumers is enshrined in law for all NRAs. There are everywhere legal requirements in place to ensure the transparency of NRAs' activities. While all NRAs are legally required to disclose all their respective decisions, resolutions and agreements as well as to carry out public consultations on relevant activities, only half of them have been given the task of publishing a forward-looking action plan.

NRAs are well-equipped with the **legal power** to request and set a deadline for the provision of information from regulated entities by compulsory process. Almost all NRAs further have **sanctioning powers** for imposing penalties for non-compliance. NRAs can take action in form of financial or criminal sanctions and penalties, whenever there is a non-compliance with their own decisions or with other professional obligations under the relevant law. Only **two exceptions** to this general rule can be identified where the **enforcement** is carried out by external bodies. Most of the responding NRAs also have the power to independently issue and revoke licenses. In the other cases such a competence is either not foreseen or is shared with other agencies/bodies. NRAs are also equipped with powers to issue sanctions and penalties in regulatory matters. NRAs can take action in form of financial or criminal sanctions and penalties, whenever there is an instance of non-compliance with their own decisions or with other professional obligations under the relevant law. The most common form of sanctioning is the imposition of administrative fines. In regard to the appeal procedure of NRA decisions, for the vast majority of NRAs their **decisions can only be overturned by courts**. Nevertheless, there are also a few cases where bodies other than a court are able to do so.

- The regulation of prices on monopolistic activities is performed independently by all NRAs. Alongside their competence to request information from regulated entities, almost all NRAs also have the power to conduct research as an input for price setting via collecting data on costs for the regulated industry and via benchmarking. As another key aspect of their regulatory work, most NRAs also provide binding guidance, review and/or approve contract terms between regulated entities and/or market actors independently.
- **Mediation** is also an area of independent competence for the vast majority of NRAs, making them the responsible bodies for resolving disputes between market actors and regulated entities with the power to take final decisions in such situations.

The input provided reveals not only a varying competence framework of NRAs regarding industry and consumer standards, but also an uneven area of regulatory authority even within consumer-related issues.

Regulatory authorities should be granted the power to contribute to ensuring high standards of universal and public service obligations in accordance with market opening, the protection of vulnerable customers, and the full effectiveness of consumer protection measures. Therefore, the limited competences of NRAs in the field of consumer is suboptimal in terms of independence of regulators because consumers are those to whom NRAs are accountable.

Annex 1 – List of abbreviations

Term	Definition
ACM	De Autoriteit Consument & Markt (Dutch NRA)
AERS	Energy Agency of the Republic of Serbia
AGEN	Agencija za energijo (Slovenian NRA)
EV	Energiavirasto (Finnish NRA)
BNetzA	Die Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (German NRA)
CEER	Council of European Energy Regulators
CEP	Clean Energy for all Europeans package
CERA	Cyprus Energy Regulatory Authority
CNMC	Comisión Nacional de los Mercados y la Competencia (Spanish NRA)
CoRDis	Community Research and Development Information Service
CRE	Commission de régulation de l'énergie (French NRA)
CREG	Commission de Régulation de l'Électricité et du Gaz (Belgian NRA)
CRU	Commission for Regulation of Utilities (Irish NRA)
DSO	Distribution System Operator
ECA	Estonian Competition Authority
E-Control	Energie-Control Austria (Austrian NRA)
Ei	Energimarknadsinspektionen (Swedish NRA)
e.g.	Exempli gratia (for example)
ERC	Energy and Water Services Regulatory Commission of the Republic of North Macedonia
ERO	Energy Regulatory Office (Kosovan NRA)
ERSE	Entidade Reguladora dos Serviços Energéticos (Portuguese NRA)
EU	European Union
GEMA	Gas and Electricity Markets Authority
GNERC	Georgian National Energy and Water Supply Regulatory Commission
HERA	Hrvatska Energetska Regulatorna Agencija (Croatian NRA)
i.a.	Inter alia
IGO	Intergovernmental Organisation

Term	Definition
ILR	l'Institut Luxembourgeois de Régulation (Luxembourgian NRA)
MEKH	Magyar Energetikai és Közmű-szabályozási Hivatal (Hungarian NRA)
MS	Member States
NVE-RME	Reguleringsmyndigheten for energi (Norwegian NRA)
NRAs	National Regulatory Authorities
OECD	Organisation for Economic Co-operation and Development
Ofgem	Office of Gas and Electricity Markets (British NRA)
PUC	Public Utilities Commission (Latvian NRA)
RAE	Ρυθμιστική Αρχή Ενέργειας / Regulatory Authority for Energy (Greek NRA)
REWS	Regulator for Energy and Water Services (Maltese NRA)
SERC	State Electricity Regulatory Commission (Bosnian-Herzegovenian NRA)
TSO	Transmission System Operator
URSO	Úrad pre reguláciu sieťových odvetví (Slovakian NRA)
VERT	Valstybinė Energetikos Reguliavimo Taryba (Lithuanian NRA)

Annex 2 – About CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national energy regulators. CEER's members and observers comprise 39 national energy regulatory authorities (NRAs) from across Europe.

CEER is legally established as a not-for-profit association under Belgian law, with a small Secretariat based in Brussels to assist the organisation.

CEER supports its NRA members/observers in their responsibilities, sharing experience and developing regulatory capacity and best practices. It does so by facilitating expert working group meetings, hosting workshops and events, supporting the development and publication of regulatory papers, and through an in-house Training Academy. Through CEER, European NRAs cooperate and develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

In terms of policy, CEER actively promotes an investment friendly, harmonised regulatory environment and the consistent application of existing EU legislation. A key objective of CEER is to facilitate the creation of a single, competitive, efficient and sustainable Internal Energy Market in Europe that works in the consumer interest.

Specifically, CEER deals with a range of energy regulatory issues including wholesale and retail markets; consumer issues; distribution networks; smart grids; flexibility; sustainability; and international cooperation.

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More information is available at www.ceer.eu.