



MEDREG INS WG

Regulatory Benchmarking Assessment

DRAFT UPDATE REPORT
11- 2013

INTRODUCTION

The MEDREG AdHoc Group on Institutional issues was instructed following the last MEDREG GA meeting in Lisbon (15 November 2012) to update the regulatory benchmarking already carried out in 2007/2008. **The aim is to get an overview of changes that occurred since the last report and to evaluate to which extent the recommendations have been followed and shared by the members.**

The same questionnaire has been maintained for this update. It is structured around eight (08) chapters, covering various organizational and functional aspects of regulation:

1. Legal status
2. Independence
3. Competencies
4. Internal organization
5. Procedures for core regulation
6. International activities
7. Enforcement
8. Accountability

On the basis of the available answers, **this report draws the state of play of the principles changes that occurred for each chapter and will be completed in a second step by the comparison with the recommendations report issued in 2008.**

Comparing to the first benchmarking study which has been based on data provided by 18 countries members, this update concerns only the fifteen (15) following members.

Regulatory authority	Country	Areas addressed
CREG	Algeria	Electricity, Gas distribution
ERE	Albania	Electricity,
DERK	Bosnia and Herzegovina	Electricity
HERA	Croatia	Electricity, Oil, Gas, Heat
EGYPTERA	Egypt	Electricity
CRE	France	Electricity and Gas
RAE	Greece	Electricity, Oil, Gas
PUA	Israel	Electricity
AEEG	Italy	Electricity and Gas and water
ERC	Jordan	Electricity
MRA	Malta	All Energies, Water and Minerals
ERSE	Portugal	Electricity, Oil, Gas
AGEN-RS	Slovenia	Electricity and Gas
CNE	Spain	Electricity, Oil, Gas.
EMRA	Turkey	Electricity, Oil, Gas, LPG

Three regulators that have answered the questionnaire in 2008 have not respond to it in 2012 while one new member is added to the list of respondents (Slovenia).

To reach the main objective of this update and to obtain significant assessment of the changes, it is necessary to have at least the same number of contributions.

1. EXECUTIVE SUMMARY AND MAIN CONCLUSIONS

Analyzing the new answers to the regulatory benchmarking questionnaire with its 187 items shows **some essential changes** for each of the eight (08) chapters, regarding functional and organizational aspects.

Indeed, some NRAs which were given a number of powers in 2008 lost apparently some of them currently. On the other hand, it has been noticed that other NRAs have acquired some new competencies.

The analysis outlined that an important number of changes concerned especially five NRAS without having generally a considerable impact on the report's results.

2. BENCHMARKING STUDY ANALYSIS

2.1. Legal status

Even if some changes have occurred for three regulatory authorities , all the fifteen (15) National Regulators (NRAs) mentioned in this study confirmed that they have been set up on a specific legal basis, either through primary or secondary legislation or both.

Concerning the composition of the regulatory authorities, the situation observed during the first benchmarking remains the same for all the respondents except one. In fact, the majority (08) of energy regulators is relatively or totally independent from their government's administration while the others (07) remain a governmental body including one more NRA.

Another change has been raised regarding to the areas addressed by the NRA's. Actually, four (04) members out of the fifteen (15) respondents have seen their field of intervention modified, including a new area for three of them and reducing it for another.

2.2. Level of independence

2.2.1. Legal and financial independence

A separate legal status and an established budget process appear as permanent principles for all NRA's respondents (15). Except one NRA, they all have their own entire separate budget and 11 out of 15, including one more NRA are partially or totally founded by the energy sector.

As in 2008, the government has still a say in the preparation of the budget for the large majority of the respondents (10 out of 15). The governmental approval is not formally required any more in five (05) cases compared to the previous benchmarking results. Among the countries where the regulatory authority must seek approval for the budget, two (02) respondents gave new declarations regarding the provision of the requested budget amount. In deed, while one of the members who was used to receive the requested amount did not receive it any more, another one gained now this ability.

More than half of the regulatory authorities (9 out of 15) including three more NRAs don't receive funds in the beginning of the year. Actually, the amount is generally split over the year (quarterly).

The power of the regulatory authority to set sector participant fees to meet budgetary needs was given in 2008 to 11 out of 17 authorities versus 5 out of 15 in 2012. It is interesting to notice that three NRAs no longer hold that kind of power; in two of the countries those fees are now directly fixed by law.

More generally, the trend has changed in a good way relating to the constraints encountered by the regulators from the central budget, as just 7 out of 15 instead of 8 out of 17 in 2008, are subject now to such constraints. A noticeable change has occurred in three regulators, two of them are not any longer experiencing this kind of constraints while one is now encountering those constraints.

Finally, an annual audit is still performed in a large majority of NRAs (14), conducted by a governmental body (10) and which scope and terms are defined by law (11).

2.2.2. Functional independence, appointment and mandate of the members

In general, the government does not have the authority to approve or reject NRAs decisions. Only a short minority of NRAs (3) have their decisions to be approved or rejected by the government, who can sometimes also modify the decision (2). This situation is almost the same as the one prevailing during the first benchmarking with changes observed for three countries as regards the governmental supervision of NRAs decision making process. Two regulators that were not under this supervision are now subject to it while the other one gained its independence concerning this supervision.

Besides, except one NRA, the appeal mechanism of NRAs decisions remains available before administrative courts (7), civil courts (6), or any other body (Supreme Court, Ministry). Decisions generally become effective when an appeal is still pending (11), which is not just limited, in the majority of cases to errors of fact or procedure. For two of the respondents, appeal suspends the decisions' effect which was not the case in 2008.

As regard to the bodies in charge of the appointment of the regulators in chief and members of national regulators, the executive (President, Prime minister, Council of Ministers, Ministers) is still the authority mainly responsible of their appointment. However, the Parliament is directly involved in the designation process in five of the NRAs that replied to the questionnaire.

In almost all the countries (12), members of NRAs can explicitly be removed by the appointing authority. More generally, removal is possible on a case by case basis and the decision must be justified (removal for reasons of health, misconduct...). The specific causes of removal have been defined by law in 12 countries. In practice, three NRA's have experienced removal of the Chairman/Chairmen of the regulator.

In 2012 the reappointment is possible for eleven (11) national regulators and is in most of the cases legally unlimited (05 out of 13). For the rest (06 out of 13) the maximum number of consecutive terms is limited to 2 terms. One NRA has changed from a limited term to an unlimited one. In practice, twelve (12) NRAs have ever renewed one or several members of the board.

Almost all the NRAs (12 out of 15) have set up their own code of ethics (four more NRAs than in 2008), usually applying for both regulators and staff members of the regulator (10).

Beside existing legal provisions, these "codes of conduct" or "internal rules" include the following obligations:

- Incompatibilities with other professional activities / charges when in office (12). One NRA has not any more this obligation while another one adopted it.
- Prohibited ownerships in energy companies (12). Compared to 2008, two NRAs do not have this provision in their code of conduct anymore.
- Time period to be respected when leaving the NRA before employment in the energy sector (10). Two NRAs have abandoned this principle.
- Time period to be respected before ownerships acquisition (8). Two more NRA has adopted this rule.

- Other restrictions (11). This number includes three NRAs that haven't in 2008 any other restrictions.

The main elements to be taken into consideration as regards the appointment process of NRAs members remain the same and are related to appropriate technical skills (10) as well as a valuable academic background (12). This number (12) doesn't include three NRA where this type of background is not required anymore.

In addition, NRAs still benefit from a substantial degree of autonomy in terms of human resource, having the power to select and hire their own staff (9, this number doesn't include two NRA which has not this power anymore) upon specific criteria (15 including one more NRA), among which possible entrance exams (5 out of 15, including one more NRA while another one NRA don't required anymore this condition).

2.3. Competencies

The full access to the information of the regulated entities remains a largely shared characteristic among NRAs considered in this study, considering financial (13) as well as technical (14) information. Concerning the access to financial information the new answers point out that two NRAs has now just a partial access to this kind of information, on the opposite; another one has now full access to this information. As regards the access to the technical information, one NRA doesn't have it anymore.

The same trend is observed as regards to security of supply that is directly dealt with by a majority of NRAs, beginning with broad supply and demand monitoring (11) as well as regarding future demand and long-term capacity (11), notwithstanding annual investigations on security of supply that are performed by governments (11).

In one of the respondent's countries, the government doesn't conduct any longer security of supply investigations while in another one it does, as a new fact.

It also involves a generalized "quality of network" monitoring, with a possible participation in recovery measures (8) and/or the organisation of tendering procedures (6).

Compared to 2008, three countries do not participate anymore in the organisation of tendering procedures and one of them doesn't participate no longer in recovery measures.

Regarding NRAs that have set up a timetable for full opening of their energy market in 2008, most of them have not yet reached this objective. **Nevertheless, one NRA reported full opening of its national energy market.** It has to be noted that one regulator who had in the past a role in setting the timetable of market opening, does not have it anymore.

2.3.1. Tariff setting

Two third of the regulators who answered the questionnaire have the power to set tariffs with three more authority that has acquired recently this responsibility. Actually, 11 regulators out of 15 have full decision power in this respect but have encountered problems of any kind during the tariff setting process.

All the respondents (15 NRAs) are responsible for fixing network tariffs or for approving methodology used to calculate these tariffs, two of those regulators had not this responsibility in 2008. The same regulators except one are also in charge of elaborating methodologies used to calculate balancing and ancillary services.

Almost all the regulators (13 out of 15) carry out a detailed evaluation of the tariffs and provide a reasoned justification for their decisions in this respect.

The different and often combined methodologies used for the detailed evaluation of the tariffs by the majority of the regulators remain the same as the ones given in the 2008 report, as follow:

- Rate of return
- Operating costs
- Rate of depreciation
- Other: costs related to public service obligations, fuel and assets baskets regulation, price of consumer goods and annual productivity rates.

The same conclusions as the ones drawn in 2008 are still valid, with slight changes, as regards to the :

- Ability to set connection fees. Except two NRAs, all national regulators have a role with respect to this ability.
- Power to impose proportionate and non discriminatory conditions of access to the networks (13) with two more regulators that gained this power compared to 2008.
- Power to ensure that charges applied by network operators are transparent and cost reflective (13). One more country benefit now from this power.
- Power to require performance based components within tariff methodologies (12). Two other regulators are now endowing with this power.

For this update, another regulator joined the list of the regulators that benefit from additional responsibilities, such as the possibility to penalize a non-performing undertaking via a reduced rate of return (8) while another one is not in charge any more of such responsibility.

Concerning the specific needs of vulnerable customers, the NRAs (8) with other governmental bodies in thirteen (13) countries, continue to address these issues. Four (04) other countries that were not concerned by the needs of vulnerable populations are now in charge of issues related to this topic.

2.3.2. Licenses

As in the first benchmarking report, the ability to issue (11) and modify (10) licences seems to be acquired for the majority of the national regulators. Otherwise some changes occurred apparently as regard to the power of NRAs to issue secondary legislation in the area of licensing and the determination of the terms of conditions of licenses (7). In fact, two regulators changed their answers to this question; one of them has gained this power while the other lost it.

The same trend as the one observed in 2008 is valid related to the responsibility of national regulators to review and monitor licenses which is given to a large number of them (10) and compliance of the actors with licenses dispositions except for one regulator that does not have this responsibility anymore .Also for the possibility to impose a fine on licensees for infraction (10). Considering the new answers, three regulators have seen their competencies reduced regarding the reporting of infractions concerning the violations of terms and conditions of licenses to another public authority, while one regulator has gained these competencies.

Moreover, the update shows that the two national regulators that had not a dispute settlement authority among market participants in 2008, have now set up this kind of body.

2.3.3. Networks rules and standards

The number of shared powers and competencies of the national regulators as regards the elaboration and enforcement of rules and standards outlined in 2008 remains in general the same. Some changes has occurred for almost five (05) NRAs affecting the ranking done in the first report from the highest to the lowest occurrence as bellow:

- Management of quality of service standards (14). Two more regulators play now a role in respect with this field, while another one lost it.
- Congestion management (14) and power to require that transmission and distribution participants correct any congestion difficulty (12). One regulator has joined the majority with regards to this ability.
- Issuance of secondary legislation, including market rules, grid codes and other such technical rules (13). Two regulators are not playing anymore such role.
- Identification of metering rules and charges (12). One regulator has not any more a role in this area.
- Power to sanction in case of violation of quality of service standards (11) with three noticeable changes related to a regulator that is now in charge of such kind of power and two others that are not any more in charge of it.
- Power to require that transmission and distribution participants correct any congestion difficulty (12). Two regulators have newly acquired this power.
- Setting or approving rules regarding the management and allocation of the interconnection capacity (9). Two more regulators are now endowing with this power.

Considering connection management mechanisms, except one regulator, all the responding NRAs still have the power to monitor the time taken by sector participants to make connections and repairs (13). Almost the same national regulators, can also intervene if the time taken is considered too lengthy (11) with one more regulator that has acquired this power and another one that can not intervene any more. The power to impose sanctions exists within 9 regulators with a change for four (04) of them, obtaining this power for one and loosing it for the three (03) others.

As regards the audited account of the revenues collected through connection management mechanisms, the results do not differ greatly from those recorded in 2008 with one more NRA.

As in 2008, almost all national regulators declare having a role with respect to utility unbundling (11) with two (02) of the regulators that doesn't have it any longer. This responsibility may cover various definitions in practice.

More than two third of the responding NRAs (9) have the duty to establish rules regarding the allocation of costs resulting from the unbundling process. Compared to 2008, two more regulators have now this duty but another one doesn't have it any more.

Indeed, the structure of the energy sector remains heterogeneous throughout Mediterranean countries. Looking at the successive answers received to the questionnaire, NRAs appear rather divided in this matter:

- 7 out of 15 NRAs establish guidelines on how separate accounts should be drawn up for unbundled entities. The new answers reveal that one more regulator is now establishing such guidelines and another two NRAs have lost this competence.
- 8 out of 15 of NRAs have the duty to set up guidelines for compliance review and reporting of the unbundling process including three more regulators that have now this duty.

Moreover, almost the same national regulators (10) continue to have the power to request changes in accounting practices when they consider that an undertaking is not sufficiently unbundled. Compared to 2008, two more regulators are now endowed with this power while two others have lost it.

The contrasted picture given in the first benchmarking report regarding namely investment planning, third-party access to the networks and operational rules and standards changed in a certain way:

- Almost all the respondents, but one, have a role with respect to investment planning and cost recovery
- Just one regulator does not approve operational and planning standards including schemes for the calculation of total transfer capacity. The reason for this change compared to 2008, is that six (06) regulators acquired this competence.

But

- Eight (08) NRAs do not have the power to grant exemptions to the normal rules of third-party access for new investment including two more regulators that have obtained it. Besides, another regulator has lost this power.

2.3.4. Cooperation with other public authorities

Compared to 2008, a majority of national regulators (12 out of 15, including one more regulator) has the responsibility for compiling information on market dominance, predatory and anti-competitive behaviour. Also, NRAs work in most cases in close cooperation with the antitrust / competition authority (14).

2.3.5. Environmental dimension

As regards the impact of the energy sector on the environment (e.g. renewable, carbon-dioxide emissions trading), two more regulators are now responsible for related issues, though another two NRAs have lost this kind of responsibility.

2.4. Internal Organization

The portrait of the “typical” Mediterranean regulator drawn in 2008, doesn’t really change in a significant way for the most of the considered criteria.

**The Identikit of the “Mediterranean regulator”
would have the following characteristics**

- The year of the establishment of the regulatory authority is still 2000 (from 1995 to 2008);
- its board is composed of 6 members instead of 5 in 2008 (from 3 to 10);
- with an administrative staff of around 106 against 80 people in 2008 (from 18 to 467);
- salaries of regulators are still not decided by the board and comparable to those commonly observed in the energy sector ;
- salaries of administrative are in general decided by the board, and are also comparable to those commonly observed in the energy sector;
- the annual budget of the national regulator amounts increases by 68% (from 8.2 million Euros in 2008 to 14.2 million Euros in 2012); among which 45% versus 41% in 2008 are devoted to salaries, which is considered as globally appropriate;
- regulators and staff benefit unanimously from sufficient technical resources;
- the IT system appears to be rather satisfactory with a significant increase recorded by some regulators;
- the NR has its own website in the local language as well as in English , which is frequently updated;
- Finally, all relevant information needed could be found on the website in the local language and is also partially available in English for the international users.

2.4. Procedures for core regulation

The sole regulator who did not allow in 2008, direct and/or indirect public participation during the issuance of its regulations, is now offering this possibility in principle without any occurrence in practice.

Besides, while two more regulators have now a specific mechanism by which they seek and receive continuous input from sector participants through formal as well as informal ways (letters, e-mails, web portal), one regulator has lost this ability.

In all cases, decisions are still taken by board members following structured voting procedures (majority/unanimity, quorum, etc.). Two more regulators have introduced a procedure to avoid deadlock in the decision-making process by giving the President / Chairman a deciding vote.

Furthermore, the possibility for any interested party to bring before the NRA a complaint against a transmission or distribution system operator is maintained for all the regulators who answers the questionnaire (15), on issues related to non-discrimination, effective competition, efficient functioning of the market, transmission and distribution tariffs and provision of balancing services. Compared to 2008, this competency is now shared in general with another public authority (12 including four more regulators).

Almost half of the regulators conduct public hearings on complaints. As regards the protection of confidential information, specific rules are setting up by all NRAs. It is interesting to notice that one more regulator is conducting now such hearings, though another one does not do it anymore.

2.5. International activities

Compared to the previous report, except two NRAs, almost all regulators (13) have the legal and financial ability to become members of international institutions without generally a necessary governmental approval (12). The governmental approval is not required any more for one regulator while it became an obligation for another one.

All respondents currently participate in the decision making process of international institutions.

2.6. Enforcement

The power to sanction sector participants is now shared by all the NRAs (15) including two more regulators. Two thirds of the NRAs send a public letter to the chief executive of the undertaking to inform him about the decision taken. This includes one more NRA and excludes another two regulators.

Also, regulators have still various tools to fulfil their duties :

- Through the publication of comparative performance reports (13); with one NRA that is not using this tool any more.
- By recommending or imposing fines for failure to comply with licenses requirement and secondary legislation (12). Compared to 2008, one more NRA uses now this type of tools, while another one lost it.
- by revoking, suspending or modifying licenses (11).
- By another enforcement mechanism (11). Two more NRA has now such tool.

In practice, the sanctioning powers are used in seven (09) countries including one more NRA.

2.7. Accountability

Regarding accountability, some changes occurred compared to 2008 with respect to the following subject :

- issue an annual activity report (15) received by a higher body (14);
- Cooperate regularly with other public bodies (13); one more regulator has now this kind of cooperation and one NRA doesn't have anymore.
- have their decisions officially published (including on their website) (15). This number includes two more NRAs;

- Motivate their decisions upon reasoned conclusions (14); this number includes three more NRAs while another one is not motivating its decisions anymore.
- Have the ability to appear before parliamentary committees (9). One regulator has no longer this ability while two others have it now.

Finally, 13 out of 15 national regulators declare having a communication strategy including two more regulators. Besides, it is worth noticing that two other NRAs do not have it anymore.