INS WG
COMPARISON BETWEEN
RECOMMENDATIONS REPORT 2008
&
UPDATED REGULATORY
BENCHMARKING REPORT 2012
November 2013
INTRODUCTION

The MEDREG WG on Institutional issues presented during the last MEDREG GA meeting in Alexandria (5 June 2013) the first update of the regulatory benchmarking report already carried out in 2007/2008. This update has been based on data provided by 15 countries members and showed some essential changes especially for five regulators.

The final report concerning the recommendations on the minimum requirements considered as necessary to ensure independence of regulatory authorities approved in 2008, is organised around some essential principles that have been identified as best practices already shared by a significant number of regulators and some recommendations issued from the diverging points between them. These recommendations should be disseminated among regulators to grant them independence and strength.

The aim of this document is to complete the updated report by the comparison of the observed changes with the set of recommendations that have been identified in 2008 to evaluate in which extend the regulatory authorities have followed and shared these recommendations.

The present comparison concerns each of the seven (07) following chapters, covering the various organizational and functional aspects of regulation:

1. Legal status
2. Independence
3. Competencies
4. Procedures for core regulation
5. Transparency
6. Enforcement
7. Accountability
1. RESULTS AND MAIN CONCLUSIONS OF THE COMPARISON

In general, the main changes that occurred in 2012 followed the best practices and recommendations identified in 2008 for every chapter, as follow:

1.1 Legal status

One single Regulatory Authority should be in charge of the regulation of at least both electricity and gas sectors in each country. This recommendation has been followed by three (03) "regulators that have seen their field of intervention modified, including new areas.

We can observe from the figures that renewals have been integrated within the regulated fields and that the proportion of the regulators that are in charge of only one sector (electricity) has declined, compared to 2008.
1.2 Independence

Even though there is not one single model for NRA’s, minimum requirement for independence include organisational, financial and managerial independence, targeted towards having an independent discretion in every aspect of their decision-making process.

1.2.1 Appointment and mandate of members of the Board

Four NRAs have set up their own code of ethics, usually applying to both board and staff members of the regulator. This code includes obligations concerning:

- Incompatibilities with other professional activities or charges when in office;
- Ownership restrictions with regards to interested parties in energy companies;

It appears from the graphs below that the positive changes are located in the South West, South East and Other South East of the region(1).

(1): Geographical distribution used by OME
### 1.2.2 Functional independence

One more regulator adopted the best practice as regards the independence of decision making process and acquired the ability to issue its decisions in the field of its competencies, without governmental supervision.

### 1.2.3 Legal and financial independence

Five regulators benefit from autonomous budget that does not require any formal governmental approval. Two of them are not any longer encountering constraints from the Central budget.

The figures show that the changes concerning the constraints from the central budget occurred mainly for the regulators from the north non Europe side of the region.
1.3 Competencies

1.3.1 Tariff setting

Two more NRAs are responsible for fixing or approving tariff setting methodologies used to calculate or establish the terms and conditions for:

- Connection and access to national networks, including transmission and distribution tariffs that allow the necessary investments in the networks to ensure their viability;
- The provision of balancing services.

The recommendation concerning the power to impose proportionate and non-discriminatory conditions for access to the networks has been adopted by two more regulators.

Moreover some NRAs have adopted the recommendations concerning the power to:
- Ensure that charges applied by network operators are transparent and cost reflective (one more regulator);
- Require performance based components within tariff methodologies (two other regulators).
1.3.2 Networks rules and standards

As regards to the elaboration and enforcement of rules and standards, more NRA’s have a role regarding:

- Setting or approval of rules regarding the management and allocation of the interconnection capacity. (Two more regulators)
- Correction of congestion difficulties. (Two more regulators)
- Management of quality of services standards. (Two more regulators)
1.3.3 Market monitoring

One more regulator has the responsibility for compiling information on market dominance predatory and anti-competitive behaviour.

1.3.4 Consumer protection

Power to address the needs of vulnerable consumers is now of concern of four more regulators. However, one regulator lost this power.

As regards the geographical distribution (figure below), the analysis showed that the changes concerned the North Non Europe and the Other South East side of the region.
1.3.5 Utility unbundling

In the framework of the monitoring of the effective legal separation and accounts unbundling between competitive and monopolistic activities, some NRA’s have gained competencies concerning the duty to:

- Establish rules regarding the allocation of costs resulting from the unbundling process. (Two more regulators)
- Set up guidelines for compliance review and reporting of the unbundling process, in order to assess the level of independence of the network operator. (Three more regulators)

With respect to the geographical division, the North non Europe and the south East regions are the most affected by this changes.

1.3.6 Environmental dimension

Two more regulators are competent for impact of the energy sector on the environment.

1.4 Procedures for core regulation

1.4.1 Decision making

Two more regulators have introduced a procedure to avoid deadlock in the decision-making process by giving the President / Chairman a deciding vote.
1.4.2 Settlement of disputes mechanism

Two more national regulators have established a dispute settlement authority among market participants to deal with network access issues, including third party access and cross-border disputes. These changes affected the regulators of the North Europe and Other South East side of the region.

1.5 Transparency

The best practice related to public consultations conducted by NRAs during the issuance of their decisions has been adopted by one more regulator and is now shared by the entire respondents to the benchmarking questionnaire.

Two more regulators have now a specific mechanism by which they seek and receive continuous input from energy stakeholders through formal as well as informal ways. The regulators concerned by the changes are located in the South West and Other South East part of the Mediterranean.
1.6 Enforcement

All the NRAs, including two more regulators than in 2008, have now the power to sanction sector participants by using the different means and tools such as:

- Publication of comparative performance reports;
- Recommendations or imposition of fines for failure to comply (licenses, secondary legislation…);
- Revocation, suspension or modification of licenses;
- Revision of access tariffs to the transmission and distribution networks.

1.7 Accountability

Some NRA’s have implemented the following elements as recommended in the 2008 report:

- Publication of their decisions (two more regulators);
- Motivation of their decisions upon reasoned conclusions (three more regulators);
- Ability to appear before parliamentary committees (two more regulators).
As mentioned in the beginning of the document, these are the best practices and recommendations that have been shared and followed by some National regulatory authorities.

The comparison also reveals that other best practices already implemented by some NRA’s have known a significant decline while some of them continued to be shared among the regulators.

**Best practices no more implemented:**

- Power to set sector participants fees to meet budgetary needs (Three regulators)
- Responsibility to review and monitor licenses and the compliance of the actors with licenses dispositions. (One regulator)
- Reporting of infractions concerning the violations of terms and conditions of licenses to another public authority. (Three regulators)
- Power to impose sanctions for failure to comply with the quality of services standards (Two regulators)
- Full access to financial and technical information (Two regulators)

**Still shared best practices:**

- Appointment and mandate of members of the Board (Appointed for a fixed term that is non-renewable or renewable only once, non-dismissable)
- Complete independence from the interests of the energy industry as well as of State interests.
- Full autonomy in terms of human resource, having the power to select hires and remunerate their own staff upon specific criteria.
- Responsibility to issue and modify licenses and / or to determine the terms and conditions of licenses.
- Working in close cooperation with the antitrust competition authority.
- Availability of appeal mechanism of NRAs decisions before national Civil and / or Administrative Courts.
- Issuing an annual activity report received by government and Parliament;

**Conclusion**
What we can conclude from this comparison is that even if there are some drawbacks for some regulators concerning a number of recommendations, there is a progressive implementation of the main recommendations by an interesting number of them. The questionnaire structure (Yes or No question) doesn’t allow getting the exact reasons for the changes, but we can assume that they are due to a modification of the legislation that govern the energy market, which could be motivated by a change in social as well as political context in the affected countries.

N.B: The geographical distribution of the Mediterranean countries used in this report is inspired from an OME document concerning the Mediterranean energy perspective presented in November 2011. This distribution is as follow:

**North Europe**: Cyprus, France, Greece, Italy, Malta, Portugal, Slovenia and Spain.

**North Non Europe**: Albania, Bosnia H, Croatia, and Serbia.

**South West**: Algeria, Egypt, Libya, Morocco and Tunisia.

**South East**: Turkey.

**Other South East**: Israel, Jordan, Lebanon, Palestine and Syria.

Even if Croatia is now an EU member since the first July 2013, it is considered in this report as a non EU country, because the data used concerned 2012.