



Independence of Regulators

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- 👉 *De iure* - what are legal independence requirements?
- 👉 *De facto* - where do we stand in the Energy Community?
- 👉 **Discussion:** from letter to spirit - what makes a regulator really independent?

Why regulatory independence?



- Original focus
 - De-couple from interests of the regulated industry
- Focus shift to (also) independence from other public bodies
 - Ref. 3rd package

De iure – legal independence requirements



- 1. Independence from public and private bodies**
- 2. Independent decision making**
- 3. Finally binding decisions**
 - Subject only to judicial review
 - Therefore to be duly justified
- 4. Financial independence**
- 5. Organisational independence** (work program, statutes)
- 6. Independent management**
 - fix term á max 7 years, renewable once
 - Rotation scheme
- 7. Competences**



The jurisdiction of the Energy Community Contracting Parties (CPs) Albania, Bosnia and Herzegovina, FYR of Macedonia, Kosovo, Montenegro and Serbia as well as the neighboring EU Member States (MSs) Austria, Croatia, Greece and Romania was analyzed

De facto in the Energy Community

- Independence

In all countries the independence is stipulated by the law.

- Independence from public and private entities

Derogations: ME, GR, SRB



- **Single regulatory authority**

Requirement from Directives to establish a single regulatory authority at the national level is fulfilled in all the analysed jurisdictions except in Bosnia and Herzegovina

- **Independent and binding decision making**

In all countries regulator's decisions are binding

Reporting / derogations of MNE

- **Transparency of NRA decision making**

The requirements of the transparency of decision making, juridical review and publication of information



Appointment, dismissal and operation of the top management

Derogations in the appointment procedure - MK

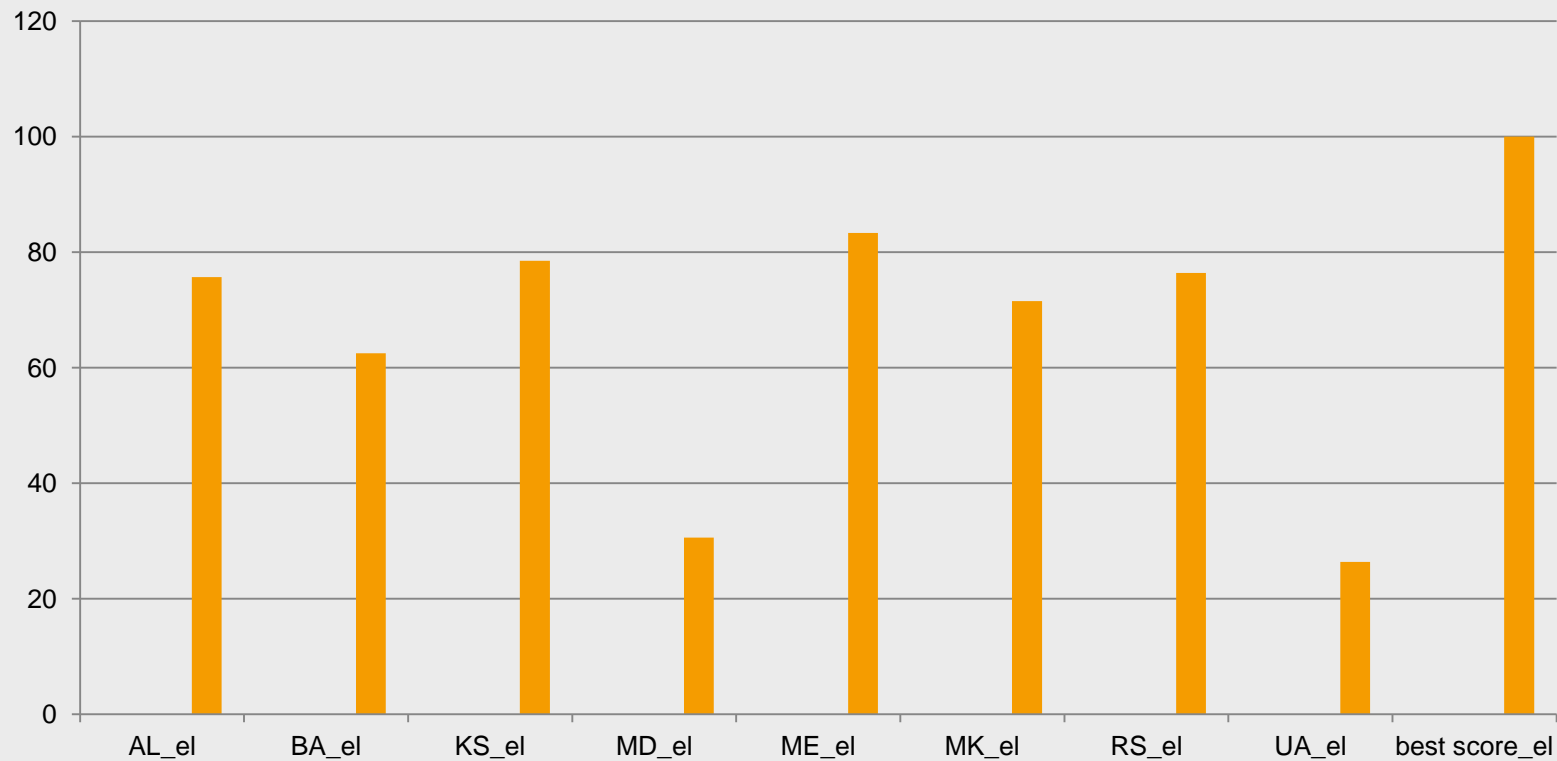
All countries have a stipulated fix terms of office

Derogations in the dismissal procedure – BA, MK, ME

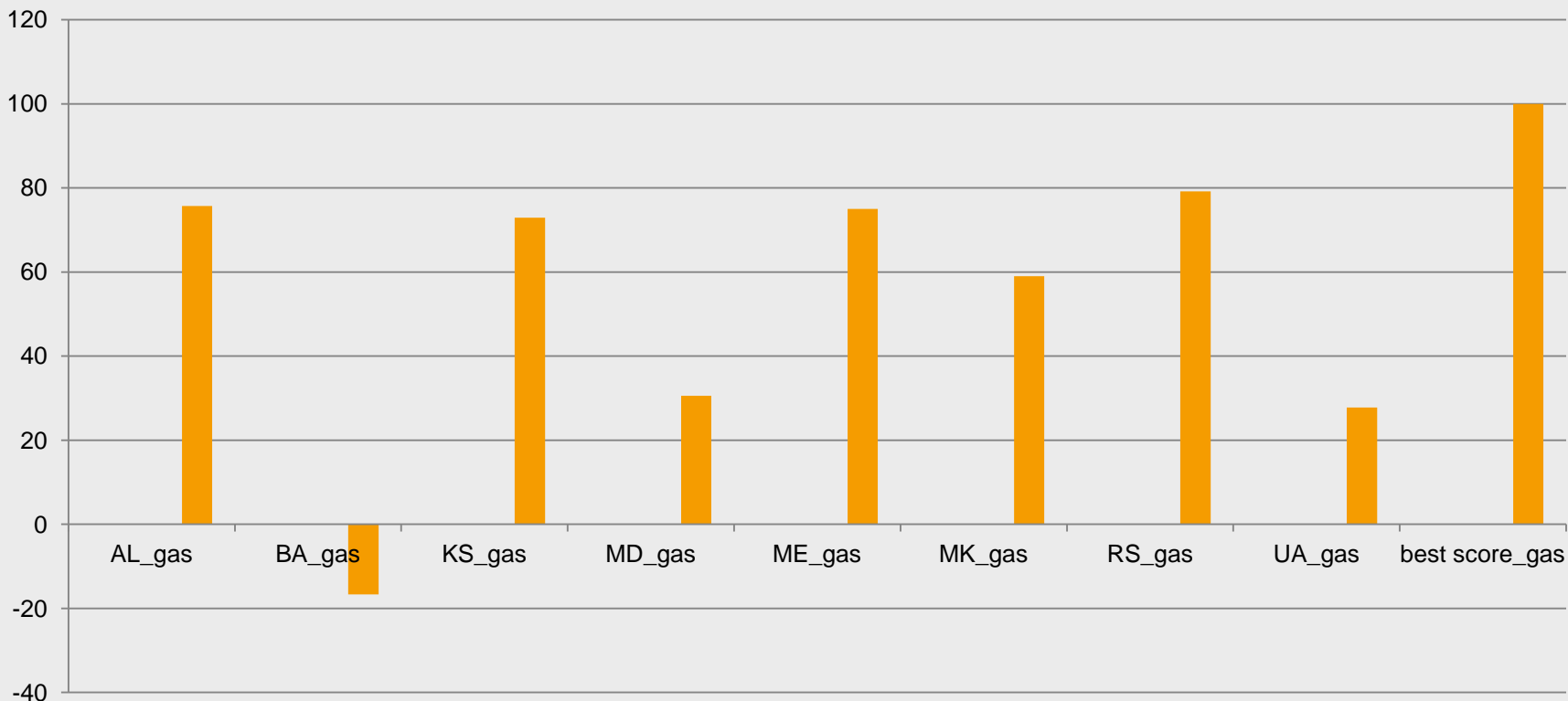
Financial independence

Salaries limitation – SR, GR, ME

De facto – where do we stand in the EnC?_el



De facto – where do we stand in the EnC?_{gas}



Key challenges



- Financial independence _{SRB | MD}
- Autonomy on organisation _{SRB | MNT}
- Open cases BiH, MD, UA
- Recent ECS reviews: AERS, ANRE

Discussion: from letter to spirit

? Your / MedReg experience?

? What do you think of the picture in the EU?

? What makes a regulator really independent?

- Would you consider civil servant status of NRA staff an advantage or disadvantage? Why? Cases: (+) BiH, AL, MNTG
- Would you consider it a restriction to NRA independence in case another public authority sets the rules for the NRA's public procurement?
- Do you think that a NRA should take position in case a national market participant fails to comply with national legal requirements? If so, why and how?
- What makes a really independent NRA in your view? Is it about persons?

The background is a satellite-style image of the Earth at night, showing city lights. Overlaid on this are numerous glowing blue lines that represent energy transmission or a network, curving across the globe.

Thank you
for your attention!

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Legal independence requirements – in detail

Legal set up and impartiality	NRA established as single regulatory authority with nation wide competences in gas + electricity
	NRA is established by law, i.e. not by decision of another public institution
	Functional independence from public and private interest is stipulated by law
	Management and staff are prohibited to hold political positions or have interest in regulated companies
	Violation of the prohibition to hold political positions or have interest in regulated companies exist (dismissal or other)
	Decision taking is by law defined as autonomous and independent
	Decisions are immediately legally binding
	Decisions are required to be duly substantiated and justified to allow for juridical review
Appointment of top management	Selection criteria are defined by law
	Legal selection criteria are limited to education, experience, neutrality
	Vacancies are announced publically
	Selection process is defined by law and includes a selection committee
	Top management terms are limited to a fix term of 5-7 years
	Top management terms are renewable only once
	Rotation scheme in the sense of the 3rd package
Operation	Management has autonomy on internal organisation (work program, statutes) including staff appointment and salaries
Financial independence	NRA has a separate annual budget
	NRA has autonomy in using its annual budget
Dismissal	Dismissal reasons are limited to cases of criminal offence or non-compliance with independence
Competences	NRA is equipped with all 3rd package competences

Minimum regulatory competences



1. Setting tariffs for network use
2. Defining rules for network access and connection
3. Defining rules for allocation of network capacity
4. Defining rules for treatment network capacities in case of congestion
5. Defining rules for system balancing
6. Check TSO compliance with unbundling requirements („certifications“)
7. Penalties
8. Right of data access & investigations
9. Decide upon and impose measures to promote effective competition and ensure functioning
10. Setting quality of supply standards
11. Dispute settlement
12. Consumer protection

Incl. right to require change