



The National Energy Regulatory Authority of Ukraine

Governance and Independence

An Energy Community Secretariat Review

March 2018



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1. Introduction

1.1. Objective

The present report provides an in-depth review of the National Commission for the State Regulation of Energy and Utilities of Ukraine (NEURC; hereinafter ‘the Commission’ or ‘the regulator’)¹ as regards its compliance with the obligations stemming from the Energy Community *acquis communautaire* (‘acquis’). The analysis of the legislative framework investigates on the organisational structure, competences and duties of the Commission. Beyond that, NEURC’s practical independence, professionalism and expertise are analysed. Both aspects form the basis for concluding on *de iure* and *de facto* compliance with the acquis.

The present review is performed by the Energy Community Secretariat (hereinafter ‘the Secretariat’) following a request by NEURC.² The analysis comes at a time when the regulator has been subject to a number of organisational turbulences and critical questioning of its decisions on the one hand and has to complete extensive new duties for development of secondary acts for electricity and gas market reforms on the other. Recognising that a certain level of disagreement between the regulator and the regulated industry may be considered typical for the regulation business, the present assessment aims at identifying to which extent the recent exposure of NEURC to criticism is a result of unpopular but justified market reforms introduced by the regulator, or is indeed justified given the quality of the decision making process.

In this context, the present report analyses selected decisions of NEURC for the time being with a view to identify the level of real term independence granted to the regulator in issuing decisions but does not assess their content. The Secretariat will perform further content related assessment of NEURC’s Decisions introducing incentive based regulation, capacity based gas distribution tariffs, grid connection fees, the so-called “Rotterdam+” formula or others. Furthermore the Secretariat will publish in the upcoming period reports on secondary legislation issued by NEURC in the areas of electricity and gas.

1.2. The concept of regulatory independence

Independence of national regulatory authorities (NRAs or ‘regulators’) is essential for successful energy market liberalization and sector reforms. An independent NRA must be isolated not only

¹www.nerc.gov.ua.

from influence of the regulated industry but also from political influence. This is in particular crucial for countries where the energy sector suffers from excessive governmental intervention – be it by means of ownership or legal frameworks discouraging new entrants. The intention to promote public interests in the energy sectors and/or to ensure energy affordability, may, at times, result in attempts to influence regulators and, for instance, their decisions related to energy pricing.³ For energy market liberalization to be successful, however, a neutral institution able to take autonomous decisions and balance the interests of all market participants based on sector specific expertise, and not political paradigm, is paramount.⁴

The *acquis* requires safeguarding the independence of NRAs and to vest in them sufficient powers to effectively regulate the gas and electricity sectors. However, experience suggests that any legislative standard is only as good as its implementation as well as the effectiveness of the sanctions for failure to comply. Independence granted to NRAs is not a goal in itself but is to serve that implementation. At the same time, it is even more fragile in countries with limited tradition of independent public institutions.

That said, even the best legal framework cannot guarantee the strength of an institution where commitment to actively participate in the design a market and promote a truly competitive framework is missing. The Secretariat understands independence as a concept going beyond refusal of instructions but including the readiness to pro-actively demand and enforce compliance, even if involving politically sensitive aspects and at the risk of becoming unpopular.⁵

1.3. Methodology

In terms of formal compliance, the present assessment follows the requirements of the *acquis*, the Secretariat's Policy Guidelines on independence of national regulatory authorities⁶ and the European Commission's interpretative note on national regulatory authorities.⁷ An overview of independence indicators and compliance with them by NEURC is provided in Annex I of this

² Letter no 7554/13/7-17 of 11.07.2017. The audit was confirmed by the Secretariat by letter of 19.07.2017 (ref UA-MIN/jko/14/19-07-2017).

³ For the very reason in Ukraine, as in other Contracting Parties, the NRA has e.g. been entrusted with regulating energy prices.

⁴ Cf ECRB, Independence of National Regulators in the Energy Community (June 2015) including further references.

⁵ Cf Secretariat, assessment of the national regulatory authority of Moldova (2016), chapter 1.3; Secretariat, assessment of the national regulatory authority of Serbia (2016), chapter 2.3; Secretariat, assessment of the national regulatory authority of Montenegro (2017), chapter 2.3.2; Secretariat, Annual Implementation Report (2016), chapter 9.3.b.

⁶ PG 02/2015 of 28 January 2015.

report. Beyond the legal requirements stipulated by the *acquis*, the Secretariat in its assessment of the legislation regarding NEURC's governance relied on the OECD "Best Practice Principles for Regulatory Policy – The Governance of Regulators".⁸ The main seven principles identified by OECD are: role clarity, preventing undue influence and maintaining trust, decision making and governing body structure for independent regulators, accountability and transparency, engagement, funding and performance valuation.

For assessment of factual implementation of the legal requirements and performance of NEURC, the sources analysed for the present report cover national legislation and regulation, national and international media reports and reports of international organisations, as well as publications of think tanks and the civil society.⁹ Besides, information has been collected from state authorities and stakeholders via responses to questionnaires prepared by the Secretariat or oral interviews that took place in Kyiv in the second half of 2017.¹⁰ In all cases, unless specifically stated differently, positions presented in this report represent views of the majority of respondents and recurring topics.

Where the present report includes criticism reported by interviewed stakeholders, the Secretariat invites NEURC to react to the alleged shortcomings, to the extent cases can be set right.

1.4. Relevant Energy Community law

The legal framework defining regulatory independence and the minimum set of competences that must be granted to NRAs consists of Articles 35-38 of Electricity Directive 2009/72/EC (hereinafter 'the Electricity Directive') and Articles 39-42 of Gas Directive 2009/73/EC (hereinafter 'the Gas Directive').¹¹ Those provisions have been included in the Energy Community *acquis* by Ministerial Council Decision 2011/02/MC-EnC of 5 October 2011 with a transposition deadline of 1 January

⁷ Commission Staff Working Paper on Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning rules for the internal market in natural gas on the regulatory authorities, dated 22 January 2010.

⁸ Available at: <http://www.oecd.org/gov/regulatory-policy/the-governance-of-regulators-9789264209015-en.htm>.

⁹ The Secretariat is aware of the potential conflict of interest of national broadcast media having in mind their share of 17.6% in electricity wide consumption (source: NEURC) as well as of the fact that also positions of think tanks may be influenced by specific interests.

¹⁰ During the assessment, the Secretariat made 74 requests in total. 37 answers were received either in written form or through the oral interviews. More specifically this involved: NEURC management and employees, including former employees, international organisations, think tanks and civil society, academia, regulated companies and state authorities. A list of the interviewed institutions is available in the Annex.

¹¹ For the purpose of this report referring to the versions adopted and adapted by Decision 2011/02/MC-EnC of the Energy Community Ministerial Council.

2015. Ukraine is legally bound by the *acquis* based on Article 11 of the Energy Community Treaty upon its accession to the Energy Community in February 2011.

2. About NEURC

2.1. History

The regulation of the energy sector in Ukraine started in December 1994 when the National Electricity Regulatory Commission of Ukraine (NERC) was established by means of a Presidential Decree as independent extra-departmental permanent state body. At this time, it was only the third European energy regulator after the British regulator OFFER (1989)¹² and the Hungarian regulator HEO (September 1994)¹³. In 1997 NERC's powers were extended to the oil and gas sector.

During its history, the regulator underwent several rounds of re-structuring and change of legal status: in 2000 NERC was re-organised into a central executive body with special status, controlled and accountable to the President of Ukraine (hereinafter 'the President') and in 2011 into a state collegiate body that performed state regulation of public utilities, was subordinated to the President accountable to the *Verkhovna Rada* of Ukraine (hereinafter 'the *Verkhovna Rada*'). After its dissolution in 2014, the National Energy and Utility Regulatory Commission (NEURC) was re-created by presidential Decree defined as an independent collective public authority, however still subordinated to the President and accountable to Parliament.¹⁴ The Commission was established pursuant to the Laws of Ukraine "On the Natural Monopolies",¹⁵ "On Electricity"¹⁶ and "On the State Regulation in Public Utilities".¹⁷ The Commission was created to combine the previously separate National Commission for State Regulation of Public Utilities and National Commission for State Regulation of Energy and Utilities.

Since the adoption of the new law "On the National Commission for the State Regulation of Energy and Utilities" (hereinafter 'the Law on NEURC') in 2016,¹⁸ the regulator is established based on legislation only. This puts at end the previous model that seriously conflicted with the requirement of independence. It subordinated the regulator to the President and established as well as

¹² Today Office OFGEM: www.ofgem.gov.uk.

¹³ Today Hungarian Energy and Public Utility Regulatory Authority (MEKH): www.mekh.hu.

¹⁴ Decree of the President of Ukraine No 694/2014 of 27 August 2014. <http://zakon3.rada.gov.ua/laws/show/694/2014>.

¹⁵ Law on Natural Monopolies, No1682-III of 20 April 2000.

¹⁶ Law on Electricity No 575/97; declared invalid except some provisions as of 11.06.2017 pursuant to the issuance of a new Law on Electricity Market No 2019 of 13 April 2017.

¹⁷ Law on the State Regulation in Public Utilities, No 2479- VI of 09 July 2010.

¹⁸ Law no 1540 of 22.09.2016 entering into force on 16.11.2016.

liquidated by presidential Decree. The President made use of the possibility to liquidate the body twice as a tool for dismissing the regulator's management which proved the fragility of the pillars of independence.¹⁹

2.2. Current legal framework

NEURC's activities are governed by the Law on NEURC that defines the legal status of the regulator, its objectives, functions, powers and procedures. The adoption of the law was the result of a lengthy and intensive discussion process between the Secretariat, The World Bank and the competent institutions of Ukraine, including the President's cabinet, members of the *Verkhovna Rada* and the regulator.²⁰ In the course of negotiations the Secretariat was able to defend far-reaching improvements related to the organisational and financial independence of NEURC²¹ despite strong opposition from certain political forces. Intensive interventions by the Secretariat and World Bank were particularly needed to safeguard the establishment of the regulator as independent institution that is not subordinated to any other public body, final and binding decision making rights, the introduction of a selection committee for Commissioners and budgetary independence of the regulator that is de-coupled from intervention of other public bodies.²²

Competences of NEURC are also defined in the sectoral laws on electricity²³ and gas.²⁴ The Regulation that defines the internal organizational process of NEURC was adopted by Decision of the Commission of 6 December 2016 (hereinafter 'the NEURC Regulation').²⁵

The operation of NEURC is also impacted by a number of other legislative acts of Ukraine that are further referred to in the following chapters.

¹⁹ E.g. Decrees of the President of Ukraine No 692/2014 and No. 693/2014 eliminating the previous commissions NCCRK and NERC. Cf as well: Secretariat, Annual Implementation Report 2016, chapter 10.3.a; edition 2015, chapter 11.3.a.

²⁰ In the period between February 2014 and the adoption of the Law on NEURC the Secretariat provided various reviews of the law proposal (e.g. review of 2.12.2014, 20.2.2015, 10.3.2015, 11.3.2015; letter of 29.12.2014 (DIV/O/jko/136/29-12-2014), letter of 13.1.2015 (UA-MIN/O/jko/01/13-01-2015), letter of 8.5.2015 and 15.3.2016 (DIV/O/jko/107/15-03-2016). The Director of the Secretariat also negotiated in person with the political leadership of Ukraine (see e.g. <https://www.energy-community.org/news/Energy-Community-News/2015/09/18.html> and <https://www.energy-community.org/news/Energy-Community-News/2015/05/20.html>).

²¹ A detailed description of the shortcomings of earlier legislation on legal, functional and financial independence of the regulator is available from the Secretariat's Annual Implementation Report 2015, chapter 11.3.a.

²² On the, despite improvements, still existing shortcomings on real term financial independence see chapter 4.2.

²³ The Law on Electricity Market No 2019 of 13 April 2017.

²⁴ The Law on the Natural Gas Market No 329 of 01 November 2016.

²⁵ The Decision of NEURC no 2133 of 06.12.2016.

3. Governance of NEURC

3.1. General

According to Article 1 of the Law on NEURC, NEURC is established as the single regulatory authority of Ukraine with country-wide regulatory competences in the energy [and public utilities] sectors which is in compliance with Article 39(1) of Gas Directive 2009/73/EC and Article 35(1) of Electricity Directive 2009/72/EC. Similar requirements do not exist for other sector competences of NEURC.

3.2. Management

3.2.1. Appointment of Commissioners

3.2.1.1. Applicable rules

NEURC's management structure is defined in Article 8 of the Law on NEURC according to which the Commission consists of seven members, including the Chairperson.

Members of the NEURC shall be appointed based on the results of an open competition for this position. The competition is conducted by a competition commission which consists of five persons appointed by the President (two), the *Verkhovna Rada* (two) and the Cabinet of Ministers. Article 8 of the Law also defines criteria for selection of the members of the competition commission. The competition commission submits the candidates who have earned the highest ranking and undergone the screening procedure stipulated in the Law on NEURC for consideration by the President,²⁶ proposing two candidates for each vacant position of a Commissioner. The President appoints the members of the Commission (Board) of NEURC out of the candidates selected for a term of six years.

The introduction of a competition commission as well as an open competition based on legally defined selection criteria is certainly a significant improvement compared to the previous direct appointment by the President only. Still, best practise would have recommended requiring higher independence safeguards for the members of the competition commission. Article 8 of the Law on NEURC introduces rather generous limits: members of the competition commission must have "higher education, impeccable business reputation, high professional and moral qualities and

public image” and may neither be member of management bodies of energy undertakings or member of a political party. Increasing trust of the public in true independence of the selected Board members would have called for (also) involving academia, competition authorities, (inter-) national energy experts, think tanks or independent head-hunters in the selection process.²⁷ The Commission of NEURC is subject to a rotation scheme and one and the same person cannot be a member of the regulator for more than two terms. This is in line with the *acquis*: Article 35(5) litera (b) of Directive 2009/72/EC and Article 39(5) litera (b) of Directive 2009/73/EC require the term in office to be renewable only once.

As regards the appointment procedure, the competition commission shall announce an invitation to an open competition by posting it on the official website of the President and the *Verkhovna Rada* and publishes it in national printed media. The Law on NEURC introduces a number of qualification requirements for Commissioners: a member has to be a citizen of Ukraine, must have completed higher education of technical, legal or economic nature, at least three years of experience in the energy or public utilities sectors and at least two years of experience holding senior positions. Also, candidates may not have been members of a political party, a member of the governing bodies of a political party or have had contractual relations with a political party for at least three months during a one-year-period before applying for an open competition.²⁸

3.2.1.2. *Implementation in praxis*

The current Chairman of NEURC was appointed by Decree of the President without a transparent and competitive selection process.²⁹ Likewise, Commissioners were appointed by simple Decrees of the President according to the rules applicable in 2014.³⁰ The survey showed that most of the interviewed stakeholders see the direct dependence of some members of the Commission from the President critical. Even if in line with the Law on Natural Monopolies in force at the time, the sole fact that the Commission was appointed by the President only created mistrust to the current members of NEURC.

²⁶ Representatives of the Secretariat, the European Commission and international Organisations can be involved as observers (Article 8(3) Law on NEURC).

²⁷ Article 31 of the Energy Law of Montenegro e.g. foresees one representative of the Montenegrin Academy for Science and Arts and two members of the University of Montenegro (one of which a member of the Faculty of Electrical Engineering) as members of the selection committee for the national energy regulator’s Board members. Similarly, Article 40 of the Serbian Energy Law requires involvement of reputed energy experts in the selection process. In Austria, a head-hunting company is executing the selection of Board members.

²⁸ Article 7(2) of the Law on NEURC.

²⁹ Decree no. 715/2014 of 10 September 2014: <http://zakon3.rada.gov.ua/laws/show/715/2014>.

The appointment of the current Chairman met criticism related to his lack of energy sector related experience. It has to be noted, however, that almost all persons interviewed for the purpose of the present report conceded Mr *Vovk* a steep learning curve in developing profound knowledge on the energy sector and its regulation since his appointment.

With the new Law on NEURC a rotation scheme was established,³¹ following which the term of two Commissioners expired on 29 May 2017, the term of two others on 26 November 2017. On this day, NEURC lost its decision making quorum.³²

The process foregoing this deadlock as well as the measures undertaken to overcome it, were by no means a proof of effective application of the Law on NEURC nor of a serious commitment to implement it. Despite the foreseeable risk of a lack of decision making quorum as of 26 November 2017, and international warnings,³³ the competition commission was not formed in time to replace the Commissioners whose term had in May 2017 and those whose terms expired in November 2017. The competition commission was in place only as of 17 November 2017.³⁴ The finally established competition commission is prevalingly composed of persons who previously held positions in entities operating in the energy and public utilities sectors, also including top-management level.³⁵ The member appointed by the Cabinet of Ministers is still employed with a branch undertaking of *Ukrenergo*. A more diligent selection of the members of the competition commission, including academia and other (inter-) national energy experts, would have contributed to increasing trust in the commission's work.

The vacancy announcement for the open Commissioner positions has been launched with an application deadline of 12 February 2018.³⁶

³⁰ Decrees no 695/2014; no 969/2014, no 386/2015 appointed Mr *Andrii Gerus*, Mr *Volodymyr Yevdokimov*, Mrs *Yulia Kovaliv*, Mr *Ruslan Mashliakivskyi*, Mr *Valerii Tarasiuk* and Mr *Andrii Tkachenko* as Commissioners.

³¹ Approved by the President of Ukraine by Decree no 78/2017 on 03.03.2017 in accordance with Section VI of the Law on NEURC.

³² Article 14(5) Law on NEURC.

³³ Among which a joint letter by the Secretariat, USAID, EBRD, The World Bank and the European Union Delegation to Ukraine of 21.06.2017 (ref ARES(2017)3095189-20/06/2017); a letter by the Secretariat to President Poroshenko dated 16.02.2017 (ref. UA-MIN/O/jko/03/16-02-2017) and a letter by the Vice-President of the European Commission, Maroš Šefčovič dates 13.03.2017 (ref ARES(2017)1550480). A high level discussion, including representatives of international institutions as well as the Verkhovna Rada and the Chairman of NEURC, on the risk of NEURC losing its decision making quorum took place on 28.09.2017 at the Verkhovna Rada.

³⁴ Composed of: Mrs *Svitlana Golikova*, Mr *Vasil Yastrubinskyi* (both appointed by the *Verkhovna Rada* on 05.10.2017), Mr *Mykola Nitsak* (appointed by the Cabinet of Ministers on 05.10.2017; cf <https://www.kmu.gov.ua/ua/npas/250360362>), Mr *Semen Potashnik* and Mr *Vasil Kotko* (both appointed by the President on 17.10.2017; cf <http://www.president.gov.ua/documents/3712017-23014>). Mr *Kotko* was selected chairman of the committee by the other members at the first meeting of the committee of 24.11.2017 in line with Article 8 of the Law on NEURC.

³⁵ Namely, Mr *Kotko* and Mr *Potashnik*; CVs are available to the Secretariat.

³⁶ List of applicants available to the Secretariat and published.

To address the still pending lack of a decision making quorum, the *Verkhovna Rada* on 7 December 2017 adopted an amendment to Article 14 of the Law on NEURC according to which in such event the President shall directly appoint Commissioners in the number equal to the amount of vacant positions. They shall remain in office until the moment of appointment of members of the regulator selected following the results of an open competitive selection, however, not more than for three months.³⁷ Two Commissioners have been appointed accordingly in December 2017. This established a quorum for decision-making until appointment of new Commissioners.³⁸ Their terms will expire on 23 March 2018, after which date NEURC will, again, lose its decision-making quorum if their successors will not be successfully appointment in the one-month period from the deadline for applications. In total, 150 decisions on secondary acts need to be adopted before this due date.³⁹

The amendment to Article 14 of the Law on NEURC of December 2017 provided a temporary solution – however, for a home-made problem stemming from the lack of effective implementation of the Law on NEURC. The reversals to the previous procedure where Commissioners were appointed at the full discretion of the President is a setback, even if timely limited. The need for such makeover is only a proof for the lack of commitment of the public institutions to comply with procedures defined by law in the first place.

3.2.2. Dismissal of Commissioners

3.2.2.1. Applicable rules

According to Article 8(6) of the Law on NEURC, the position as a member of NEURC ceases either by resignation or by dismissal. The reasons for the early termination by the decision of the President are listed exhaustively and limited to the following cases.

- the member is appointed or elected to another position with his or her consent;
- the member is recognized by a court as legally incompetent of having limited legal capacity, recognized missing, or declared dead;
- a court guilty verdict comes into force against such member;

³⁷ Law 7342-1.

³⁸ Order no 429/2017 (Mrs *Morozova*; cf <http://www.president.gov.ua/documents/4282017-23326>) and Order 428/2017 (Mr *Tarantun*; cf <http://www.president.gov.ua/documents/4292017-23330>).

³⁹ The attempt to approve all related decisions before expiry of the decision making quorum in November 2017 failed following a declared sick leave of one Commissioner.

- a court's decision making such member liable for a corruption offence or a corruption-related offence come into force;
- the member stops to be a citizen of Ukraine terminated or such member moves outside Ukraine for permanent residence;
- the member submits application for voluntary dismissal;
- the member submits a statement of resignation due to a fundamental disagreement with the decision;
- the member does not meet the requirements of Article 7 (2) of the Law on NEURC;
- in case of death.

The dismissal reasons are in line with Article 35(5) litera (b) of Directive 2009/72/EC and Article 39(5) litera (b) of Directive 2009/73/EC which require the members of the Commission to be dismissed only in cases of non-compliance with respect to the independence or impartiality of NEURC or misconduct under national law.

3.2.2.2. Implementation in praxis

The Secretariat has not been informed about any cases of dismissal of the members of the Commission due to reasons other than those established by the Law on NEURC.

3.2.3. Cool-off period

Article 8(7) item 2 of the Law on NEURC contains a so-called "cool-off period" according to which, two years after having left his/her position, a Commissioner of NEURC cannot hold any position in business entity operating in the energy and/or public utilities sectors.

The "cool-off" period has been a recurrent theme in the discussions of the Secretariat with various stakeholders. While the Secretariat understands the concern that a cooling-off period might limit interest of highly-qualified people from the industry in applying for a position in NEURC, cool-off period requirements are necessary to ensure independence of management and, also, are highest international standard to avoid incompatibility in various sectors. However, the two years "cool-off period" established by Article 8(7) of the Law on NEURC should be reduced to the same one year period applicable to other civil servants. This is both recommended for reasons of equal treatment as well as to adjust to the comparably short leave benefits period of six month.⁴⁰

⁴⁰ Article 8(8) of the Law on NEURC.

3.3. The Chairperson

The duties of the Chairperson of the Commission are described in Article 9 of the Law on NEURC. The chairperson has the following duties:

- heads the regulator and directs its activities;
- allocates duties among the regulator's members in accordance with the regulator's rules or procedure;
- submits the regulator's draft budget for the upcoming year to the Committee on State Budget of the *Verkhovna Rada* for approval;
- represents the regulator in front of public authorities, local self-government authorities, enterprises, institutions and organisations regardless of their form of ownership, citizens, non-governmental organization, as well as international institutions and organizations;
- presents the annual report on the regulator's activities as well as on the application of funds at the plenary session of the *Verkhovna Rada*;
- participates in meetings of the Cabinet of Ministers in an advisory role;
- chairs the regulator's meetings and sign resolutions and orders on behalf of the regulator; and
- appoints the regulator's member authorised to discharge the Chairperson's duties in his or her absence.

According to Article 9 of the Law on NEURC, the Chairperson is elected by the members of the Commission by secret voting. Since 2014 NEURC is headed by Mr. *Dmytro Vovk*. His appointment is based on a Decree of the President, not an election among Commissioners.⁴¹

3.4. Secretariat's assessment

The legal framework regarding NEURC's governance in terms of appointment and dismissal of Commissioners as well as safeguards for regulatory independence is aligned with the requirements of the *acquis* on paper.

The introduction of a neutral competition commission for the appointment of Commissioners was a major achievement which addressed the problem of unfettered political influence in that process, namely the appointment of the Commissioners at the sole condition of the President. Still, best practise would have recommended requiring higher independence safeguards for the members of

the competition commission (also) involving academia, competition authorities, (inter-)national energy experts, think tanks or independent head-hunters in the selection process.

The level of implementation and the lack willingness of the responsible institutions of Ukraine to respect and effectively apply the rule of law remains a serious concern though. The delay of the appointment of the competition commission by the public authorities in charge amounts to outright disrespect of the law by public authorities of Ukraine. The late and inadequate actions taken to overcome the lack of a decision-making quorum of NEURC in 2017/18 is an alarming proof for the political readiness to prevent the effective independence of the regulator, despite the improvements made on paper. Depriving a regulator from the possibility to take decisions in the sphere of its competences by not filling vacant positions in time, is at odds with the obligation of Ukraine to have an effectively operational regulator in place equipped with all powers required by the Energy Community acquis. This development calls into question the achievements made by the adoption of the Law on NEURC. In this context, the lack of commitment of the President of Ukraine to stick to the rules is of specific concern.⁴²

3.5. Staff

3.5.1. Appointment of staff

3.5.1.1. Applicable rules

The Law on NEURC does not include provisions on staff appointment or recruitment; the selection procedure of employees is carried out in accordance with the Law of Ukraine “On Civil Service” and the Labour Code of Ukraine.⁴³

Employees of the regulator’s central office and regional bodies have the status of civil servants. Vacancies are announced publicly and the recruitment process is done through the competition procedure which is defined in the Procedure for Conducting the Competition for the Employment of Civil Service Positions, approved by Resolution no. 246 of the Cabinet of Ministers of Ukraine of 25 March 2016. A public announcement of the vacancies is made on NEURC’s website, in accordance with the legislation, and also on the website of the National Agency on Civil Service.

⁴¹ Decree no. 715/2014 of 10 September 2014: <http://zakon3.rada.gov.ua/laws/show/715/2014>.

⁴² It has to be noted that appointment of all three bodies in charge of appointing competition commission members ran too late to appoint new Commissioners in time (appointment by the *Verkhovna Rada* 05.10.2017; by the government 11.10.2017 and by the President on 17.10.2017).

⁴³ Law of Ukraine on Civil Service no 1798 of 10 December 2015.

3.5.1.2. *Implementation in praxis*

Interviewed staff members of NEURC confirmed that their appointment procedure was executed according to the Law on Civil Service and via a competitive procedure.

In accordance with the current staff schedule there are 600 staff units in NEURC. As of 1 September 2017, the number of actual employees adds up to 516 persons, including 417 persons working in the central office and 99 persons working in regional branch offices. The central office is structured into departments that consist of division that are, again, divided into units. Besides, there are 22 regional branch offices, established in the regions and the city of Kyiv. They do not have the status of a legal entity. Their activities mainly focus on auditing of licensees and dispute settlement.

According to the overall perception of interviewed persons, the regulator has a sufficient level of employees to perform its functions. Interviewed persons also conceded that the inability to attract sufficiently qualified staff is a consequence of (until now) low salary levels.⁴⁴ Given NEURC's interaction with international partners, to attract and keep a sufficient number of English speaking staff members should be a priority for NEURC.

⁴⁴ On salaries see further chapter 3.5.3.

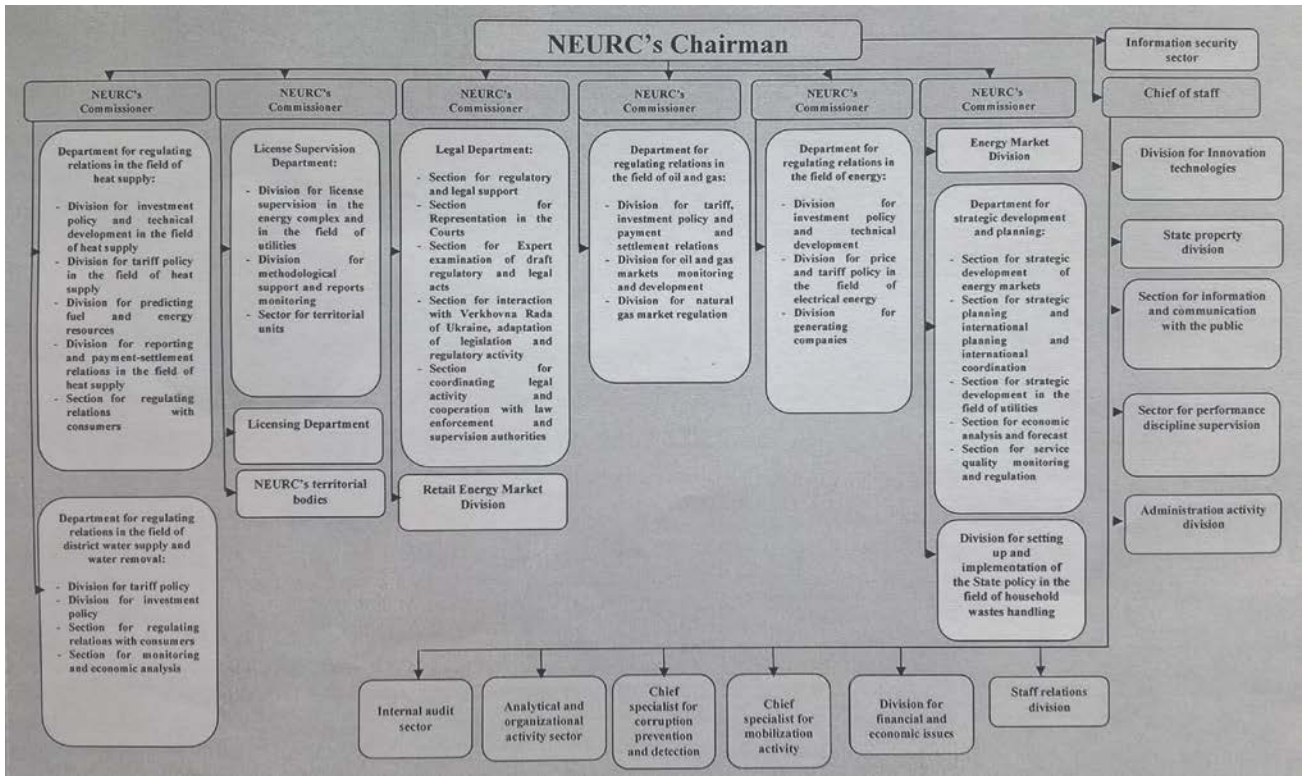


Figure 1: organisational chart of NEURC

3.5.2. Dismissal of staff

3.5.2.1. Applicable rules

The rules for dismissal of employees of NEURC are similar to those applicable to employees of other state institutions. The dismissal takes place in accordance with the Law on Civil Service, the Labour Code, the Law on NEURC and other current laws of Ukraine. Article 83 of the Law on Civil Service establishes an exhaustive list of the reasons for dismissal of the civil servant, namely: loss of the right to civil service, expiry of the term of appointment, on its own initiative, recognition as missing person and death.

3.5.2.2. Implementation in praxis

The Secretariat has not been made aware of cases in which a dismissal was executed due to other reasons than those prescribed by law. However, several interviewed persons reported cases in which staff members, who promoted independence and a change of existing regulatory

approaches, were allegedly put under pressure to leave their position on their own initiative. The Secretariat is not in the position to verify or prove related statements wrong.

3.5.3. Salaries

3.5.3.1. *Applicable rules*

The conditions pertaining to remuneration, leave and social protection of the staff of the regulator's central office and regional bodies are determined by the Law on Civil Service – however, reflecting the more favourable salary conditions introduced by Article 12 of the Law on NEURC compared to standard civil servant salary levels. Namely, the salaries of the management and staff of the regulator are fixed according to the amount of the minimum salary determined by the Law on the State Budget of Ukraine as follows: Chairperson – 50 minimum salaries; Commissioners – 40 minimum salaries; head, deputy head of an independent organisational unit of the regulator's central or regional office, other employees of the regulator's central or regional office — 10 to 25 minimum salaries. In essence, this means that management and employees are granted salaries above the level applicable to other civil servants.⁴⁵ Bonuses can be granted to the Chairperson and Commissioners based on a decision of the Board. The total annual amount of annual bonuses shall not exceed 50% of the yearly basic salary fund for the respective position.

3.5.3.2. *Implementation in praxis*

Only as of 1 January 2018 the staff of NEURC is paid in accordance with the salary levels defined by Article 12 of the Law on NEURC. Before this date, salaries were still aligned with standard salaries of other civil servants although the Law on NEURC was in force already for more than one year. This was due to a (still) pending adjustment of the Budget Code to enable the regulator to autonomously collect budget contributions from regulated companies as prescribed in Article 11 of the Law on NEURC. More specifically, a special fund of the State budget had to be created to which regulated companies are supposed to submit these regulatory charges. Without this legal amendment NEURC was not able to define budget contributions up to a level that allows for increased salary payments in line with Article 12 of the Law on NEURC. With the adoption of the

⁴⁵ This model is also applied in Bosnia and Herzegovina. It provides a certain balance between attractive salaries and the security of a civil servant status. During the reform of the Law on NEURC, it was important for employees of NEURC to keep their civil servant status. This, of course, comes at the cost of salary levels that are comparable to those of the regulated industry. NRA staff has the status of civil servants in the majority of Energy Community Contracting Parties (cf

Law on State Budget of Ukraine for 2018 on 7 December 2017 this shortcoming was overcome at least for the year 2018. For the upcoming years, certainty on salary levels would be better guaranteed by a permanent adjustment of the Budget Code instead of reflection in the annual Law on State Budget only.

Staff members report that the average staff salary level before January 2018 was, in fact, six times lower than it should have been according to the Law on NEURC and were also far below the salary levels paid in the regulated industry. A comparison between the civil servant salary payments according to the Law on Civil Servants and the salary levels according to the Law on NEURC is available in Annex III. It was also reported that the daily fee for missions was rarely paid. In general, all interviewed staff members of NEURC expressed their dissatisfaction with the level of the salaries before January 2018, in particular considering the specificity and intensity of their work.

In the view of most of the interviewed persons, the low salaries directly affected the level of qualification of the staff of NEURC and, consequently, the quality of the work's performance. Due to the low wages, highly qualified energy experts were resigning from NEURC and now it was hardly possible to attract new experienced staff.

According to Article 12(5) of the Law on NEURC, Commissioners are entitled to receive bonuses taking into account their personal contribution to the overall performance of the regulator. The annual bonuses may not exceed 50% of the amount of the yearly basic salary fund for a respective position. Bonuses are paid on quarterly basis and need approval by the Commission in a public hearing. Rules on bonuses have been defined by Decree no 737 of NEURC of 1 June 2017. So far, no bonuses have been paid, but a first payment may be issued for performances in quarter one of 2018. The Secretariat urges NEURC to keep a maximum of transparency in this respect, as bonuses in public service need to be well justified.

3.5.4. Professional development of staff

3.5.4.1. *Applicable rules*

In accordance with the Law on Civil Service, civil servants can expand their professional competence through continuous professional training. The professional development of civil servants requested is ensured by the National Civil Service Agency of Ukraine and the National

ECRB, Independence of National Regulators in the Energy Community (June 2015)) but also in a number of EU Member

Academy of Public Administration under the President in accordance with regulations of the Cabinet of Ministers.

According to the NEURC Regulation, the organization of personnel work in NEURC is carried out by the office on personnel in accordance with the regulator's annual plan that defines the selection measures, training, re-training and skills. The annual assessment of the performance of civil servants is conducted according to the NEURC Regulation.⁴⁶ The annual assessment evaluates the quality of performance of public official's objectives and results are used for decision on bonuses, career planning and training needs.⁴⁷

3.5.4.2. Implementation in praxis

In 2016, professional development courses were attended by 157 employees of NEURC, out of which 138 employees were trained in various fields of studies; 19 persons were trained within the framework of international technical assistance projects. Since the beginning of 2017 professional development activities were provided to 95 employees by the following bodies: the Institute for Professional Development of Managers of the National Academy of Public Administration under the President of Ukraine – 64 persons;⁴⁸ four persons attended training sessions organized by the National Anti-Corruption Agency; the Institute of Law and Postgraduate Studies of the Ministry of Justice of Ukraine – two persons; the Institute of Civil Defence Public Administration – one person; professional development at the expense of international technical assistance and other forms of international cooperation – 24 persons. 15 employees studied at higher education institutions, including six employees that are students of the National Academy of Public Administration under the President. Interviewed staff members also confirmed that trainings and professional development of employees in the field of general legislation are carried out on a regular basis.

Besides, NEURC – within its financial limits – increasingly invests in training of staff: in 2017 representatives of NEURC took part in international seminars carried out within the framework of a twinning project on the electricity market reform, in seminars of NARUC⁴⁹/USAID, a seminar carried out within the framework of the Energy Regulators Eastern Partnership Platform that was

States (e.g. France, Germany, Greece, Italy, Netherlands, Poland, Romania, UK).

⁴⁶ Article 5.6 defines the procedure of evaluating results of performance of civil servants.

⁴⁷ Article 5.8 of the NEURC Regulation.

⁴⁸ Among others on the following topics: on the following topics: efficient communication, holding presentations, development of presentations, financing for managers: accounting, analysis, budget.

⁴⁹ National Association of Regulatory Utility Commissioners (NARUC) is a non-profit organization dedicated to representing the State Public Service Commission who regulate the utilities that provide essential services such as energy, telecommunications, power, water, and transportation; www.naruc.org.

organized by the Council of European Energy Regulators (CEER)⁵⁰ as well as various workshops organized by the Energy Community Secretariat. The overview below shows additional courses attended by NEURC staff, focussing on English, financing and presentation skills.

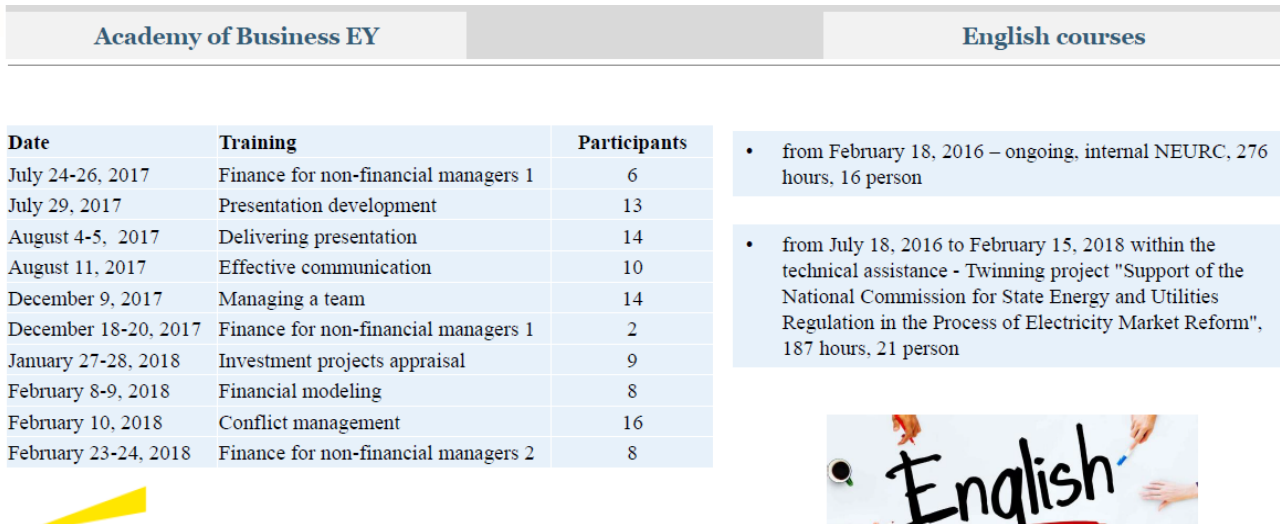


Figure 2: Training courses

3.6. Secretariat’s assessment

Until the increase of salary levels in January 2018, staff salaries did not correspond to those of the regulated industry and were not attractive enough for highly-qualified experts. This entailed a brain-drain to the regulated sector. Equally, the salaries in NEURC did not ensure independent performance by the staff and management of their duties and did not stimulate proper work performance. This was critical with regard to Article 12(1) of the Law on NEURC and Article 35 (5) litera (a) of Directive 2009/72/EC and Article 39(5) litera (a) of Directive 2009/73/EC that requires Contracting Parties to equip the NRA with adequate human and financial resources allowing the NRA to carry out its duties and exercise its powers in an efficient and effective manner.

It remains to be seen whether NEURC manages to take advantage of newly introduced increase of salary levels. As a general rule certainty on salary levels would be better guaranteed for the upcoming years by a permanent adjustment of the Budget Code instead of reflection in the annual Law on State Budget only.

⁵⁰ www.ceer.org.

Also, the reported need for more knowledge building should be reflected in the budget of NEURC. The Secretariat also notes that NEURC's staff training needs differ from those of other civil servants and may require more dedicated knowledge building on specific topics of regulatory character, including EU experience. Trainings by the National Civil Service Agency of Ukraine and the National Academy of Public Administration should be amended by tailor made knowledge building instruments.

4. Independence

4.1. Functional independence

4.1.1. Applicable rules

Article 5 of the Law on NEURC establishes the independence of NEURC as an institution: it must be independent from any other public authority, other governmental agency, local – self-government authorities, business activities, as well as political parties, non-governmental organizations, trade unions and etc., as required by the acquis.⁵¹

Functional independence also requires that the NRA should not be liquidated by a decision of any public entity.⁵² The Law on NEURC in this respect overcame a long-lasting severe infringement of regulatory independence, i.e. the liquidation and re-establishment of the institution by Decree of the President. The President made use of the possibility to liquidate the body in the past twice, as a tool for dismissing the regulator's management which proved the fragility of the pillars of independence.

Functional independence must further grant the management the right to autonomously decide on the regulator's internal organisation.⁵³ All duties and powers must stem from law and not result from the decision of any other public body.

More specifically, the following aspects represent central aspects of regulatory independence:

- NRA staff and management shall act independently. This means that NRA staff and management shall not seek or take direct instructions from any public or private entity.⁵⁴ This implies the prohibition for anyone to *give* such instructions.⁵⁵

⁵¹ Cf Article 35 (4) lit a of Directive 2009/72/EC and Article 39 (4) lit a of Directive 2009/73/EC.

⁵² Secretariat, Policy Guideline 02/2015 on the independence of national regulatory authorities, chapter 2.1.

⁵³ Secretariat, Policy Guideline 02/2015 on the independence of national regulatory authorities, chapter 2.1.

- Sanctions for Commissioners in case they are violating the prohibition to hold political positions or have interest in regulated companies;
- Autonomous decision making.⁵⁶

A violation of the prohibition to hold political positions or have private interest in regulated companies by the member of the NEURC is a reason for early dismissal by order of the President, as envisaged by Article 8(6) of the Law on NEURC. The Law on NEURC does not prohibit staff to be members of a political party. However, this is prohibited by Article 10 of the Law on Civil Service.

According to Article 14(7) of the Law on NEURC, the decisions of NEURC are immediately binding except for decisions that have regulatory affect. Those become binding only after publication in the Official Gazette, the *Uryadoviy Kourier*. Immediately legal binding means that decisions are not subject to review or consent of any other public body, except potential juridical review.

Articles 5, 7, 8, 10 and 12 of the Law on NEURC provide the basis for the independence of the NEURC's staff and management. Accordingly, the members of NEURC must act in an independent manner, may not hold any other remunerated positions or own shares in energy companies and utilities.

Article 5 of the Law on NEURC prohibits public authorities, their officials as well as the private entities to intervene or have an influence on the performance of the obligations by NEURC's officials. Besides, the Law on NEURC required the regulator to adopt rules of conduct that includes, *inter alia*, the requirements for a minimum number of NEURC representatives when conducting meetings with representatives of entities operating in the energy and public utilities sectors and/or their controlling/controlled entities regarding activities of such entities.⁵⁷

⁵⁴ An "instruction" would in this context typically mean any action that tries to influence regulatory decision making by using pressure of any kind on NRA's staff or management.

⁵⁵ Cf Article 35(4) lit b of Directive 2009/72/EC; Article 39(4) lit b of Directive 2009/73/EC.

⁵⁶This does not only exclude any ex ante interference but also requires that decisions of the NRA are immediately binding and directly applicable without the need for any formal or other approval or consent of another public authority or any other third parties. NRA decision cannot be subject to review, suspension or veto by the government, the Ministry or a committee (or similar body) related to any of them (cf Article 35(5) lit a of Directive 2009/72/EC, Article 39(5) lit a of Directive 2009/73/EC and Secretariat, Policy Guideline 02/2015 on the independence of national regulatory authorities, chapter 2.1.). This precludes neither judicial review nor parliamentary supervision nor appeal mechanisms before independent bodies (cf Directive 2009/72/EC recital 34; Directive 2009/73/EC recital 30 as well as Article 37(16-17) of Directive 2009/72/EC and Article 41(16-17) of Directive 2009/73/EC).

⁵⁷ Namely, at least three members of the relevant management / staff level; cf point 12 of the code of conduct (Decree no 765 of NEURC approved on 08.06.2017).

To this end, NEURC's legal set up *prima facie* complies with the requirements of the acquis.⁵⁸

4.1.2. Implementation in praxis

The prevailing view of interviewed persons is that the NEURC board is not acting independently. Many stakeholders stated that, as long as Commissioners are appointed by the President as the case for the existing members, there can be no independent regulator in Ukraine.

According to the information provided to the Secretariat, attempts to influence NEURC's board have had concrete results, as the following reported examples demonstrate:

- On 28 March 2017, NEURC adopted decisions on setting tariffs for natural gas transportation services at entry points and exit points of the *Ukrtransgas*⁵⁹ system and a new tariff methodology for natural gas distribution services.⁶⁰ The decisions led to a minor increase of the overall network charges for delivery of gas to end-consumer. This provoked strong opposition, including by politics.⁶¹ On 3 April 2017, the Prime Minister of Ukraine, Mr *Volodymyr Groysman*, requested the Chairman of NEURC to suspend the decisions. In the night of 4 April 2017 the news reported that also the President, Mr *Petro Poroshenko*, addressed NEURC and requested to suspend this decision for customer protection reasons.⁶² On 4 April 2017 in the morning NEURC withdrew its decision on distribution tariffs.
- On 31 January 2016, NEURC adopted Decision No 148 approving the value of non-standard connection of the electrical installations to the grid for the year 2017 that envisaged an increase of grid connection fees.⁶³ It caused considerable negative resonance in the expert and business community and manifestations of representatives of the Radical Party (Mr. *Lyashko*) took place in front of NEURC's premises.⁶⁴ The regulator, however, justified the calculation methodology by the need to provide cost-coverage for connections. A decision of NEURC comes into force only the next date after the publication of it by the *Uryadoviy*

⁵⁸ Dixie Group has performed once an analysis on implementation by different parties: https://issuu.com/uaenergy/docs/analytics_a5_web/1?ff=true&e=5010048/53749076.

⁵⁹ <http://www.nerc.gov.ua/?id=24355>.

⁶⁰ <http://www.nerc.gov.ua/?news=5879>.

⁶¹ <https://tsn.ua/groshi/groysman-vistupiv-za-skasuvannya-abonplati-za-gaz-906430.html>; <https://tsn.ua/groshi/abonplata-na-gaz-zbagatit-oligarhiv-na-7-milyardiv-griven-ekspert-906212.html>; <https://www.youtube.com/watch?v=jTPdnhPh6z8>.

⁶² <http://korrespondent.net/ukraine/politics/3835520-poroshenko-trebuje-otmenyt-abonplatu-za-haz>.

⁶³ <http://zakon3.rada.gov.ua/laws/show/v0148874-17>.

⁶⁴ <https://www.ukrinform.ua/rubric-polytics/2208821-lasko-priihav-na-gazovij-miting-pid-nkre.html>.

Kourier.⁶⁵ The decision was never published by the *Uriadovy Kurier*. On 29 August 2017, NEURC adopted Decision No.1055 cancelling Decision No.148.⁶⁶

- Another example of political and social pressure on NEURC is Decision No. 972 of 27 July 2017⁶⁷ introducing a regulated asset base (RAB) regulation that, again, caused considerable opposition.⁶⁸ In the view of interviewed persons, lack of reasonable argumentation and sufficient explanation of the new tariffs was the main reason for this. The Secretariat was repeatedly told that the decision was effected by the interests of some particular business groups that own distribution companies (“Oblenergosp”). The Prime Minister noted several times that the Commission did not provide any consultations with the Parliament before adopting its decision. In fact, however, the draft Decision was published for a one-month public consultation in line with the NEURC Regulation during which no comments were received. Beyond that, the implicit request to consult decisions of the regulator with the Parliament (or any other public or private body) before adoption is be a clear contradiction to the requirement of independent decision making.⁶⁹ So far, the *Uriadovy Kourier* did not publish the decision that, consequently, did not enter into force.⁷⁰ The Secretariat did not assess its content yet but is planning to do this in the upcoming period.
- On 1 August 2017, NEURC adopted Decision No. 991 approving the “Methodology for the Formation, Calculation and Setting of Tariffs for Electric and/or Thermal Energy Produced on Heat Power Plants, Thermal Power Plants and Cogeneration Installations”, which includes the so-called “Rotterdam+ formula”.⁷¹ According to the new method, the cost of coal in the production of coal-and-thermal generation is calculated by the formula <average cost of coal in the port of Rotterdam for the last twelve months plus the cost of its delivery to Ukraine>. The

⁶⁵ Article 14(7) of the Law on NEURC.

⁶⁶ Decision No 148 was assessed by the Secretariat as well and was indeed problematic. The methodology was without reasonable explanation based on historic costs of the network, instead of current or marginal cost of new connections. Secondly, the methodology foresaw recovery of network cost development from connection fees instead of financing from the network operator’s regulated equity or loan; this contradicts a core principle of regulation according to which network operators are responsible for network development and, in turn, must be granted cost recovery via regulated tariffs, including an appropriate return on investment. Further, the methodology envisaged payment of costs related to (re-) construction of facilities for common use of electricity generating enterprises and enterprises of other industries, which must be considered an undue socialisation of costs. Also, the foreseen transfer of costs incurred by the to-be-connected customer to the network company as well as the coefficients for the calculation of connections fees raised the Secretariat’s concerns.

⁶⁷ Decision No. 972 amending Decision of 23.07.2013 No. 1009; <http://www.nerc.gov.ua/?id=26692>.

⁶⁸ http://www.kmu.gov.ua/control/uk/publish/article?art_id=250169989&cat_id=244274130.

http://www.kmu.gov.ua/control/uk/publish/article?art_id=250184465&cat_id=244274130.

http://www.kmu.gov.ua/control/uk/publish/article?art_id=250215307&cat_id=244276429.

⁶⁹ Article 6(3) of the Law on NEURC, Article 36(5) lit (a) of Directive 2009/72/EC and Article 40(5) lit (a) of Directive 2009/73/EC.

⁷⁰ <https://www.epravda.com.ua/news/2017/09/29/629619/>.

decision was highly criticized by the public authorities and energy experts stating that the adopted formula was in favour of the interests of the biggest heat and thermal power plants.⁷² The National Anti-Corruption Bureau of Ukraine (NABU) commenced an investigation of possible official misconduct by the NEURC officials while the decision was adopted.⁷³ On 17th of August 2017 the representatives of NABU entered the premises of NEURC and took documents related to the Rotterdam+ formula from the building of NEURC.⁷⁴ The investigation is still ongoing. Besides, the Anti-Monopoly Committee of Ukraine (AMCU) is conducting a survey on whether the Rotterdam+ formula in practice may create advantages for one group of business and disadvantages to others. Investigations have been performed with this regard yet.

Also, the fact that the head of unit responsible in *Energorynok*⁷⁵ for coordination with NEURC has a working place at the premises of NEURC may negatively influence independence of the regulator and, in any case, does not contribute to increasing trust in the independence of NEURC. Another case affecting the Commission's independence concerns the publication of the decisions of NEURC by the *Uriadovy Kurier*. NEURC informed the Secretariat by letter of 14 March 2017 about the existing problem of non-publication of decisions of the Commission by the *Uriadovy Kurier*. Evidently, the *Uriadovy Kurier* constitutes an administrative tool to block decisions of the regulator which heavily threatens its independence and is not in line with the organizational dimension of NRA independence. In 2017, NEURC submitted 219 decisions for publication to the *Uriadovy Kurier*. Out of them, only 177 decisions were published. In 76% of the latter, the maximum period of 15 days for publication was exceeded. Another 42 decisions (20%) are still waiting for publication, including 20 decisions with a publication delay of 74 to 123 days.⁷⁶ A lot of interviewed persons considered *Uriadovy Kurier* an administrative tool of the Cabinet of Ministers to block the decisions of NEURC.

⁷¹ <http://www.nerc.gov.ua/?id=26859>.

⁷² See e.g. Business Censor, Why Rotterdam+ formula is just a fiction, 21.02.2017; Ukraine Business, DTEK power rates may grow 18% in 2018 if NERC has a quorum, 22.11.2017.

⁷³ <https://economics.unian.ua/energetics/2086796-nabu-provoditi-obshuki-v-budinku-nkrekp.html>.

⁷⁴ <https://www.epravda.com.ua/news/2017/08/24/628364/>.

⁷⁵ One of the main energy stakeholders in Ukraine.

⁷⁶ Letter of NEURC dated 28.11.2017. See also the overview presented in Annex IV.

4.1.3. Secretariat's assessment

The above-mentioned cases must be seen as clear political interventions into the independence of the Commission and its autonomous decision-making. It seems that the members of the Commission are under the pressure of certain political and business groups which actually influence the outcome of the decisions. However, interviewed stakeholders have repeatedly stated that NEURC would most probably not have been under such political and social pressure if it would provide better public argumentation for its decisions. What is more worrying is that most of the interviewed persons consider that some decisions of the Commission were adopted in the interests of particular business groups. The vast majority even expressed satisfaction that some decisions were not adopted at the end.

The Secretariat also considers that the delay and selectivity of publishing decisions of NEURC by the *Uriadovy Kurier* and the sole discretion of the gazette, which is established by the Cabinet of Ministers, to publish or not a decision of NEURC heavily threatens the independence of NEURC. According to Energy Community law, the regulator's decision cannot be subject to review, suspension or veto by the government, a Ministry or a committee related to any of them. Decisions of the regulator can only be subject to judicial review, parliamentary supervision or appeal mechanisms.⁷⁷ Therefore, the non-publication of the decision of the regulator by the *Uriadovy Kourier* violates Article 35 (5) litera (a) of Directive 2009/72/EC and Article 39 (5) litera (a) of Directive 2009/73/EC. A possible solution could be to de-couple the entry into force of decisions of NEURC from publication by the *Uriadovy Kourier* and replace it by publication on the regulator's website. This would require a change of the Law on NEURC.

4.2. Financial independence

4.2.1. Applicable rules

Article 11 of the Law on NEURC contains the budgetary provisions applicable to the regulator. It grants NEURC financial independence, at least formally. The financing of the regulator is performed by a special fund of the State budget which is financed from regulatory charges

⁷⁷ Section 2, chapter 2.1 Commission Staff Working Paper on Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning rules for the internal market in natural gas on the regulatory authorities, dated 22 January 2010.

collected by the NRA based on autonomous calculation of its budgetary needs. This solution was adopted following the Secretariat's proposal.

4.2.2. Implementation in praxis

NEURC prepares the NRA budget and proposes it to the Committee on State Budget of the *Verkhovna Rada* (hereinafter 'the Committee'). The Committee either approves the proposed budget or proposes changes to it. The approval of NEURC's budget by a Committee of the government does not sufficiently meet the requirement of budgetary autonomy and financial predictability as required by 35 (5) Directive 2009/72/EC and Article 39 (5) Directive 2009/73/EC.⁷⁸ Namely, Article 11 of the Law on NEURC foresees the possibilities of the Committee to propose changes to NEURC's budget without clear limits or criteria for giving such comments. This already led to delays in practice: on 24 of May 2017, NEURC submitted its draft budget for 2018 to the Committee.⁷⁹ In the approval process the Committee argued that the salary of the Chairman of NEURC as proposed in the draft budget cannot be accepted, as his salary may not exceed the salary of the President of Ukraine.⁸⁰ This contradicts the Law on NEURC, according to which NEURC should have the discretion to establish, considering the amount of its overall budget, the salaries which it considers necessary to ensure sufficient for an independent and adequate performance NEURC's officials.⁸¹

On the occasion of the approval procedure of NEURC's budget for the year 2017, the Committee also noted that, in practice, Article 11 and Article 13 of the Law on NEURC cannot be implemented without change of the Law on State Budget:⁸² namely, the latter does not foresee a special fund of the State budget to which regulatory charges can be paid by undertakings operating in the energy or public utilities sector of Ukraine. NEURC's budget is solely formed from related regulatory

⁷⁸ See as well: PG 02/2015, page 3.

⁷⁹ NEURC letter of 24.5.2017 no 5629/23.2/7-17. Beforehand NEURC adopted on 6.4.2017 resolution no. 491 on the approval of a procedure for calculating and setting the contribution rates for regulation, on 28.4.2017 resolution no. 617 on the approval of the planned contribution rates for regulation and resolution no. 618 on labour payment at NEURC. The draft cost estimate was published on the regulator's website on 28.4.2017 and publically debated on 18.5.2017. On 1.6.2017 NEURC adopted resolution no. 737 on the approval of the provision's on bonus payment to NEURC's Commissioners and Chairman. The draft budget was presented to the subcommittee for State budget expenditures and the subcommittee for budget expenditures concerning the fuel and energy sectors on 19.6.2017 and 22.6.2017.

⁸⁰ On 12.7.2017 the budget committee of the Verkhovna Rada requested an amendment to the draft budget decreasing the salary level which has been incorporated by NEURC and submitted by NEURC's letter of 25.7.2017 no 8128/23.2/7-17.

⁸¹ Within the limits of Article 12 of the Law on NEURC.

⁸² Letter of the Committee on the State Budget to the Ministry of Finance no 04-13/10-1527 of 13.07.2017. http://www.nerc.gov.ua/data/filearch/richnyi_koshtorys/2018/Lyst_Komitet-biudzheth_13.07.2017.pdf.

charges according to Article 11 of the Law on NEURC.⁸³ On 7 December 2017, the Law on State Budget of Ukraine for 2018 was adopted accordingly.

However, it is still necessary to make amendments to the Code on the State Budget of Ukraine before NEURC can fully deploy the financial autonomy granted by the Law on NEURC. Namely, the reflection of the special fund of the State budget in the Law on State Budget to which regulatory charges can be paid only provides a solution for 2018. To be financially independent, the regulator needs certainty on its annual financial resources. Financial certainty for the regulator would be better guaranteed by a permanent adjustment of the Budget Code instead of reflection in the annual Law on State Budget only.

The vast majority of interviewed stakeholders stated that NEURC does not have enough financial resources to efficiently perform its functions. Several stakeholders believe that the lack of the finances directly impacts the quality of the human resources in NEURC. The, until January 2018, low level of salaries did not allow attracting sufficiently experienced experts which would, however, be needed to efficiently regulate the energy markets. Also the lack of adequate technical equipment at the premises of the regulator has been considered hampering the efficiency of the work of NEURC.

4.2.3. Secretariat's assessment

Even though guaranteed on paper, NEURC's financial independence is not ensured in practice. The discretion of the Committee on State Budget of the *Verkhovna Rada* to approve the budget in practice went beyond a formal approval and resulted in a budget reduction. This limits the financial autonomy of the regulator and also infringes the right of NEURC's management to autonomously set salaries as provided by the Law on NEURC. Also, the fact that the Committee on State Budget of the *Verkhovna Rada* did not respect the deadlines for review resulted in lack of financial predictability. Having in mind that the regulator's budget according to the Law on NEURC is not financed from State budget but solely from charges collected from the regulated undertakings, the Secretariat does not see reasonable arguments for requiring budget approval by any public body of Ukraine.⁸⁴ In the light of the negative effects on financial autonomy of NEURC stemming from the existing budget approval procedure, the requirement for approval by the Committee on State

⁸³ Article 13 of the Law on NEURC defines the procedures for calculation of regulatory charges by the regulator.

Budget of the *Verkhovna Rada* should be abolished. Also, financial certainty for the regulator would be better guaranteed by a permanent adjustment of the Budget Code instead of reflection in the annual Law on State Budget only.

5. Competences

Ukraine transposed the Third Package in its laws on electricity and natural gas. The gas and electricity laws grant NEURC all competences foreseen under the Third Package.

In addition Article 2 of the Law on NEURC lists NEURC's competences: 1) in the energy sector: activities related to production, transmission, distribution and supply of electricity; activities related to transportation, distribution, storage, LNG installation services and supply of natural gas; activities related to transportation of oil, oil products and other substances via pipelines; 2) in the public utilities sector: activities related to heat energy production at heat generating facilities, including facilities for combined heat energy and electricity production, transportation thereof by main and local (distribution) heat networks, heat energy supply in volumes exceeding the level established by the licence terms; activities related to centralised water supply and drainage in volumes exceeding the level established by the licence terms; activities related to processing and burial of household waste in volumes exceeding the level established by the licence terms.

The description of competences stipulated by Article 2 and Article 17 of the Law on NEURC provides an overall summary of duties typically attributed to a NRA as required by the Third Package. This rather general listing alone would not be sufficient to meet the detailed list of responsibilities foreseen under the Gas and Electricity Directives. This, however, is not critical having in mind that the gas and electricity sector laws include more detailed competence rules.

Under the Law on NEURC, the regulator may also impose penalties such as fines, previous warning, and termination or annulment of a license. A fine may be imposed on a business entity up to 10% of its annual income in the following cases, but not limited to: the violations of the unbundling requirements in gas and electricity sector; violations of licensing conditions; non-disclosure of information or provision of wrong information to the regulator. NEURC's penalty rights

⁸⁴ The Secretariat has constantly criticized similar approval requirements also in other Contracting Parties and pinpointed to the inherent risk of infringement of regulatory financial autonomy. Namely, the tool of budget approval can – and has been – used as instrument to influence the regulator. See as well PG 02/2015.

are in line with the Third Package and the regulator shows commitment and ambition to make use of its enforcement powers.⁸⁵

In addition, the Law on NEURC provides for the imposition of fines in case of non-payment of the regulation fee in an amount of 5% of the unpaid sum; an increase of this percentage would be recommendable from the perspective of enforcement efficiency.⁸⁶

6. Transparency and accountability

According to Article 35 (4) Directive 2009/72/EC and Article 39 (4) Directive 2009/73/EC, transparency at least requires the NRA to: adopt and publish their rules of procedure including the decision-making procedures; publish information on their organisation and structure; and consult stakeholders before taking important decisions.⁸⁷

At the same time according to Article 37(16) and (17) of the Electricity Directive and Article 41(16) and (17) of the Gas Directive decisions must be made available to the public while preserving the confidentiality of commercially sensitive information and must be fully reasoned and justified to allow judicial review.

A specific provision requiring decisions to be reasoned is missing in the Law on NEURC. With this exception, the Law on NEURC formally complies with the above requirements of the acquis. Article 24 of the Law on NEURC ensures the transparency of work performance and of the decision-making process of the regulator. Besides, the NEURC Regulation lays down the decision-making procedures in detail. Under these rules, the regulator has to ensure that the meetings of the Commission are being held as public discussions and are transmitted via video.⁸⁸ All information regarding the list of questions to be discussed and information regarding the time and place of the discussions are published on the web site of NEURC not later than three days before the meeting.⁸⁹

⁸⁵ E.g. in March 2018 NEURC submitted a warning letter to Energorynok announcing that the regulator will consider the company's lack of compliance with the deadlines stipulated by the Electricity Market Law on the implementation of IT systems (as a pre-condition for successful unbundling) as an violation of the licensing requirements that will trigger penalties.

⁸⁶ Article 13(5) of the Law on NEURC.

⁸⁷ Commission Staff Working Paper on the regulatory authorities (22.1.2010.), chapter 5.

⁸⁸ Item 6 of the NEURC Regulation. Such approach has been introduced already in September 2015, i.e. before the adoption of the Law on NEURC.

⁸⁹ NEURC's website has been voted second best among public bodies in Ukraine in 2017 confirming user-friendliness of the public presentation.

The Secretariat is not aware of cases where the required procedures were not properly followed by the Commission.

For draft decisions on setting prices (tariffs) or the approval/endorsement of investment programmes/development plans, treatment of stakeholder feedback during public consultation and a cost estimate are presented for discussion. The discussions are carried out in accordance with the procedure stipulated by Regulation of NEURC no. 866 of 30 December 2017. The procedures for the preparation of a decision of regulatory nature are defined under Article 15 the Law on NEURC.

According to the NEURC Regulation, the regulator has to publish an annual report together with the report on its budget performance until 1 April of the year after the reporting period and has to present the reports to the *Verkhovna Rada*.⁹⁰ Draft decisions including explanatory documents, adopted decisions and the results of the market monitoring are made available on the website of the regulator.

NEURC conducts an open discussion on its draft budget and submits the draft to the Committee on State Budget not later than 1st July each year.⁹¹

A number of stakeholders interviewed by the Secretariat (with the exception of NEURC management and staff), including former NEURC staff, complained about the lack of engagement of some members of the Commission other than the Chairman in the decision-making process of the Commission. In the view of interviewed stakeholders, this threatens the transparency of the decision-making process of the Commission, and gives a feeling to the stakeholders and consumers that the Commission may actually not be a collegial body.

Most of the interviewed persons expressed the view that constant monitoring of the activities of the regulator by the international authorities and in particular the Energy Community, is needed to ensure and support the Commission's independence and to avoid controversy on NEURC's decisions. The Secretariat has no reason to doubt that NEURC Commissioners are professional and engaged and, for its part, enjoys productive relations with NEURC. However, there is an obvious need to also address the stakeholders' perceptions.

⁹⁰ Point 2.7 of the NEURC Regulation. Cf first report for 2016: <http://www.nerc.gov.ua/?id=24476>. Presentation of the 2016 report in Parliament, April 2017: <https://www.slideshare.net/NKREKP/ss-74973802>.

⁹¹ Point 2.8 of the NEURC Regulation.

Almost all interviewed persons conceded that the regulator has become much more transparent following the adoption of the Law on NEURC and even before,⁹² and no complaints were received as regards non-disclosure of information by the Commission. Open hearings on draft decisions are held regularly and the agendas as well as relevant material are provided three days ahead of the hearings. Minutes of the meetings are made available and the discussions are both video-recorded and web-streamed.⁹³ The regulator's website ranked second best among governmental bodies of Ukraine in 2016 and 2017 and second best data access example according to a 2017 monitoring report of the European Council and UNDP.⁹⁴ Key features newly introduced in 2017 include online connection fee calculators for electricity and gas grids,⁹⁵ a search tool of incoming correspondence,⁹⁶ information brochures⁹⁷ and a subscription possibility to NEURC news.

However, complaints were received regarding the efficiency and independence of the public-hearing process. The general perception seems to be that the public-hearing process is merely a formality and decision are already adopted before the public hearings take place. While it is important to conduct hearings with an open mind, the Secretariat notes that it is equally important that the impact of arguments brought forward in public hearings can be traced.

Interviewed persons complained that in most of the cases reasonable arguments of participants in public hearings are not taken into account by the Commission and that, therefore, a sufficient dialogue between the Commission and stakeholders is missed. Also, a majority of the interviewed persons criticized that too many decisions are discussed and adopted in the course of one public hearing at the same time. The Secretariat invites NEURC to balance the efficiency of its decision making with the need to allocate sufficient time for the more important items on its agenda.

⁹² The regulator launched public hearings in test before it was obligator for water utilities, i.e. in January 2017 (cf <http://www.nerc.gov.ua/index.php?news=5693>) according to Resolution no 866 (cf <http://www.nerc.gov.ua/?news=6405>).

⁹³ Available on YouTube; followed by 104.000 viewers.

⁹⁴ See <http://www.nerc.gov.ua/?news=6546> and <https://www.naruc.org/international/news/ukrainian-regulator-s-website-honored-for-transparency-consumer-friendliness/>. The monitoring was conducted with the support of UNDP in Ukraine and the Council of Europe project "Strengthening media freedom and the creation of public broadcasting in Ukraine" according to the methodology of assessment for access to public information, public authorities, which in 2016 was developed by public experts together with representatives of the Secretariat of the Parliament Commissioner for human rights.

⁹⁵ http://www.nerc.gov.ua/?calc_all=ok.

⁹⁶ <http://www.nerc.gov.ua/?letters=ok>.

⁹⁷ <http://www.nerc.gov.ua/?id=26426>.

However, the Secretariat received several complaints stating that more qualitative justification and argumentation should be provided by the members of the Commission on comments received on draft decisions.⁹⁸

6.1.1. Secretariat's assessment

In the Secretariat's view, NEURC generally follows high transparency standards and the regulator's publication practise was even ahead of related legal requirements. It is encouraging that all interviewed persons conceded that the regulator became much more transparent following the adoption of the Law on NEURC. This development actually already started before adoption of the Law on NEURC. However, improvement related to the execution of public hearings and traceability of consultation input is recommendable.

7. Conclusions and Recommendations

The present review proves significant room for improvement both as regards the commitment of public institutions of Ukraine to respect the independence of NEURC as enshrined in national legislation, but also as regards the independent performance by the regulator. The assessment shows that the recent exposure of NEURC to criticism is both a result of the lack of public administration of Ukraine that should increase efforts to respect and enable real term independence of NEURC. At the same time the regulator should increase efforts to build trust in its institution and decisions.

While the legal framework for operation of NEURC has been aligned with the *acquis* in 2016 by adoption of the Law on NEURC, practical implementation does not live up to this. This includes the failure to adjust national legislation in order to bring into effect the financial independence of NEURC as stipulated by the Law on NEURC. The systematic block of regulatory decisions by

⁹⁸ Contrary to this, the Secretariat found several cases of well established argumentation on several decisions published on the website of NEURC, cf e.g.: http://www.nerc.gov.ua/data/filearch/Materialy_zasidan/2017/govten/12.10.2017/p18_12-10-2017.pdf and http://www.nerc.gov.ua/data/filearch/Materialy_zasidan/2017/gruden/28.12.2017/p23_28-12-17.pdf (Energoatom); http://www.nerc.gov.ua/data/filearch/Materialy_zasidan/2017/gruden/28.12.2017/p30_28-12-17.pdf (wholesale electricity 2018 price approval); http://www.nerc.gov.ua/data/filearch/Materialy_zasidan/2018/sichen/24.01.2018/p6_24-01-18.pdf (electricity distribution tariffs 2018).

pending publication in the *Uriadovy Kurier*, a medium controlled by the Cabinet of Ministers, is a serious problem.

What is also worrying is that the responsible authorities of Ukraine failed to ensure the necessary decision making of the regulator by not appointing a competition committee for selection of vacant Board member positions in time to avoid lack of a decision making quorum, which amounts to an infringement of NEURC's independent operation.

In the Secretariat's view, urgent measures need to be taken in order to strengthen NEURC's independence. The topics listed below must not necessarily be considered exhaustive, but a *minimum* set of improvements to the organisation of the Commission and its performance with a view to ensure compliance with the *acquis* and transform the regulator into a truly independent and effectively performing authority.

7.1. Legal

The Law on NEURC should be adjusted by the following changes:

- Alternate Board members should be appointed together with regular Board members by application of the same selection rules as in place for Commissioners. This measure would ensure continuity of the regulator's decision making quorum in case of illness or absence of Commissioners. The events in November 2017 that blocked the adoption of 150 decisions of the regulator prove the need for such amendment.
- The requirement for approval of the regulator's budget by the Budget Committee of the *Verkhovna Rada* should be abolished; it represents an undue limitation of the regulator's financial independence that proved to be an instrument for depriving NEURC from certainty of its financial resources for 2018 for more than six months in late 2017.
- Decisions of NEURC should become effective with their publication on the regulator's website. *Uriadovy Kurier's* practise of delaying publications is a breach of Energy Community law. Thus, the requirement for prior publication in the *Uriadovy Kurier* should be abolished; it has turned into a systematic obstacle for the entry into force of regulatory decisions.
- NEURC should fully reason and justify its decisions and provide transparency on the treatment of consultation feedback from stakeholders.
- The requirement for NEURC to discuss all complaints in a public hearing before decision making is excessive as it unduly conflicts with the human resource available to the regulator.

- The cool-off period for Board members should be reduced to one year.

Finally, the Code on the State Budget needs to be amended in order to ensure the financial independence of NEURC and reflect the changes incorporated to the Law on the Budget of Ukraine for 2018.

Concrete proposals for related legislative changes are provided as an attachment to this report.⁹⁹

7.2. Factual

The limited trust of market participants in the decision-making and independence of NEURC is alarming. A certain level of criticism by the regulated industry against regulatory decisions must be considered normal and even healthy, in particular in a period of significant changes of the national energy market and dominant market players, as is the case for Ukraine. Also, the level of pressure on and from politicians is typically a function of social tensions to which politicians have to respond in one or another way. In a country such as Ukraine that is struggling with significant social and economic welfare challenges, social tension is an even more determining factor. Also, the regulator finds itself in a position between the strong but not necessarily aligned interests of households, industry customers and the regulated sector.

However, whilst political and social pressure on a sector providing services of strategic interest for citizens can most likely never be fully excluded, the question is, how the regulator responds to such pressure. The present survey shows that, indeed, in a number of cases NEURC was not able to resist the forces it was exposed to.

What is further worrying is that a considerable number of NEURC's decisions arouse suspicion of having been taken in favour of individual market participants, were not sufficiently justified from economic point of view or were taken under political influence. Such concerns were not only brought forward by national market participants but also by international observers. The political leadership of Ukraine failed to counteract this argument by not respecting the appointment provisions of the Law on NEURC.

Moreover, the interviews performed for the purpose of the present audit revealed significant interest and readiness of political forces to intervene into the regulator's independence. The most outstanding example is the lack of timely appointment of new Board members which deprived

⁹⁹ Including a number of additional minor improvements.

NEURC of its decision quorum for more than two months. The attempt to correct the shortcoming by an amendment to the Law on NEURC in December 2017 that allowed temporary appointment of vacant Commissioner positions by the President of Ukraine was not able to prove effective application of the Law on NEURC.

In terms of NEURC's operation, interviews suggested the need to increase the staff's qualification, including knowledge in the area of consumer-protection and of English. NEURC in the past was not able to attract sufficiently qualified staff to execute its responsibilities in a meaningful way due to levels of staff remuneration which did not correspond to those of the regulated industry and were not sufficiently attractive to retain qualified personnel. As of January 2018 NEURC's staff salaries are finally in line with the Law on NEURC; the regulator should intensify its efforts to invest in human resources.

Trust in the decision making should be also improved by increase of the involvement of all members of the Commission in public debates. A dialog with end-consumer by means of organization of informational platforms, conferences and seminars to provide general information on NEURC as an institution and its functions, including the explanations of the further decisions to be taken and their impact on end-consumers, would contribute to improving the public perception of NEURC and understanding for regulatory decisions.

Annex I – Legal compliance overview¹⁰⁰

Requirement	Energy Community acquis	Law on NEURC	Assessment
Institution is established by law		Law on NEURC	compliant
Vacancies for Board members are announced publically	[*] ¹⁰¹	Article 8(2)	compliant
Selection process and criteria for Board members is defined by law and includes a selection committee		Articles 7 and 8(3)	compliant
Single national regulator with nation-wide competences in gas and electricity	Article 35(1) Directive 2009/72/EC, Article 39(1) Directive 2009/73/EC	Article 1	compliant
Regional regulators	Article 35(2), (3)	-	Not applicable
Legal and functional independence from public and private interest is stipulated by law	Article 35(4) lit (a), Directive 2009/72/EC, Article 39(4) lit (a) Directive 2009/73/EC	Articles 1(1) and 5	compliant
Management and staff to act independently and not take/seek for instructions	Article 35(4) lit (b) Directive 2009/72/EC, Article 39(4) lit (b) Directive 2009/73/EC	Article 5(2)	compliant
Management is prohibited to hold shares in regulated companies or be member of a political parties		Article 7 (management) Staff: Article 10 Law on Civil Service	compliant
Sanctions in case of violation of the prohibition to hold shares in regulated companies or be member of a political parties	[*]	Article 8(6) indent 8	compliant

¹⁰⁰ Legal compliance does not necessarily have to equal to practical implementation. On the later see the text of the report.

¹⁰¹ These requirements are not stemming from the acquis directly but are elements of best practise (cf Secretariat's Policy Guidelines on independence of national regulatory authorities, PG 02/2015 of 28 January 2015).

Requirement	Energy Community acquis	Law on NEURC	Assessment
Autonomous and independent decision making	Article 35(5) lit (a) Directive 2009/72/EC, Article 39(5) lit (a) Directive 2009/73/EC	Articles 5(3) and 14(6)	<u>Revision needed</u> ¹⁰²
Decisions are immediately legal binding	Article 37(4) lit (a) Directive 2009/72/EC, Article 41(4) lit (a) Directive 2009/73/EC	Article 14(7)	Decisions of regulatory nature only after publication in the <i>Uriadovy Kurier</i> - <u>revision needed</u>
Decisions are subject to judicial review	Article 37(16) lit (a) Directive 2009/72/EC, Article 41(16) lit (a) Directive 2009/73/EC	Articles 5(3)	compliant
Decisions are to be duly substantiated and justified to allow for judicial review			Missing - <u>revision needed</u>
Term of Commissioners is limited to 5-7 years			
Commissioners' terms are renewable only once	Article 35(5) lit (b) Directive 2009/72/EC, Article 39(5) lit (b) Directive 2009/73/EC	Articles 8(5)	compliant
A rotation scheme is in place			
Dismissal reasons for Commissioners are limited to cases of criminal offence or non-compliance with independence	Article 35(5) lit (b) Directive 2009/72/EC, Article 39(5) lit (b) Directive 2009/73/EC	Article 8(6)	compliant
Separate budget and autonomy to use	Article 35(5) lit (a) Directive 2009/72/EC, Article 39(5) lit (a) Directive 2009/73/EC	Articles 5(3) and 11	compliant
Adequate human resources		Article 5(4)	compliant
Management has autonomy on internal organisation (work program, statutes)	Article 35(4) lit (a) Directive 2009/72/EC, Article 39(4) lit (a) Directive 2009/73/EC	Article 4	

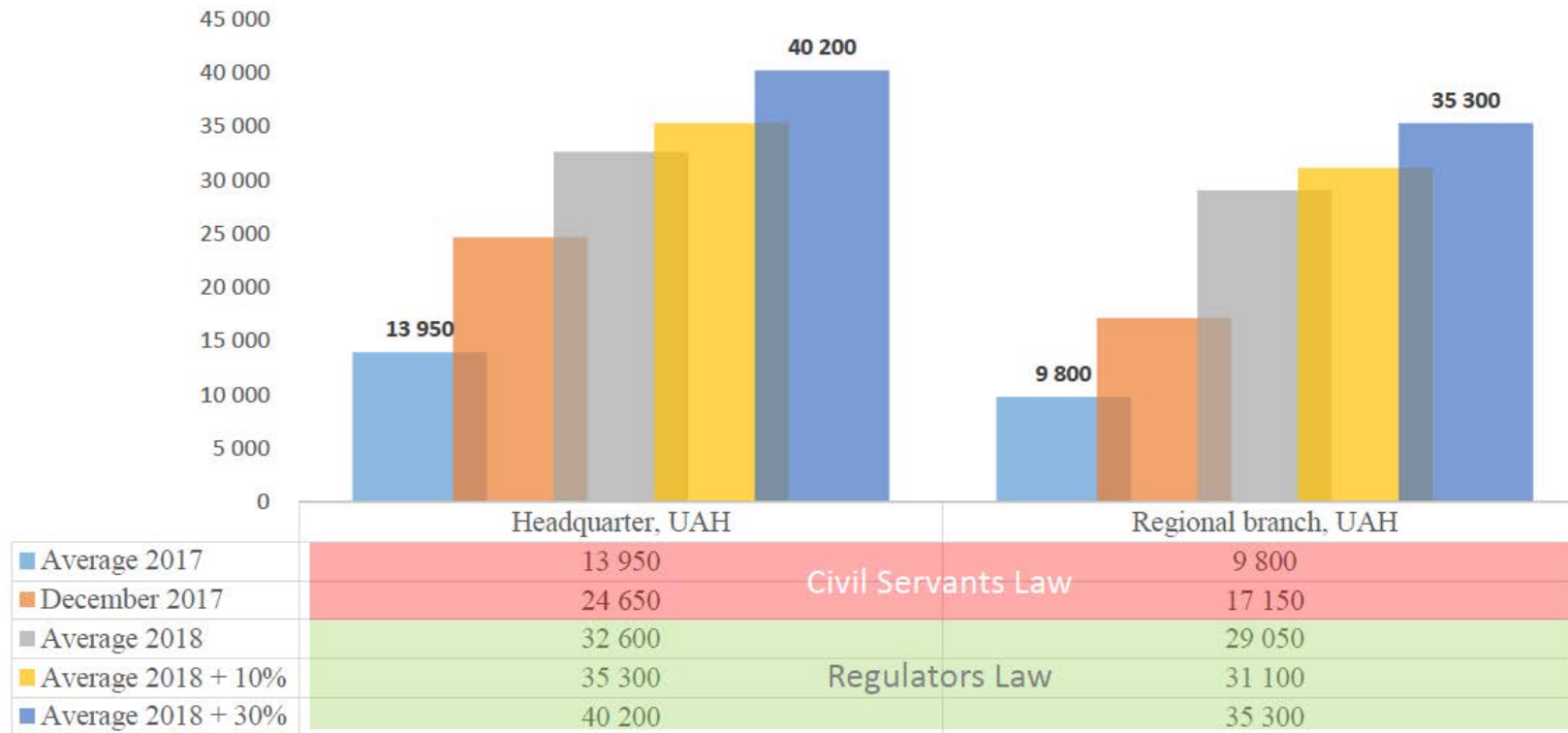
¹⁰² Relevant revision proposals are available as attachment to this report.

Requirement	Energy Community acquis	Law on NEURC	Assessment
Budget is financed from levies		Article 13	compliant
Budget does not require approval by another public body [*]		Article 11	Approval by Budget Committee of Verkhovna Rada needed - <u>revision needed</u>
Certainty on financial resource			
NRA provides an annual activity report	Article 37(1) lit (e) Directive 2009/72/EC, Article 41(1) lit (e) Directive 2009/73/EC	Article 6(1)	compliant
Decisions are published	Article 35(4) lit (a) Directive 2009/72/EC, Article 39(4) lit (a) Directive 2009/73/EC	Article 14(8)	compliant
Board meetings are in general open [*]		Article 14(2)	compliant

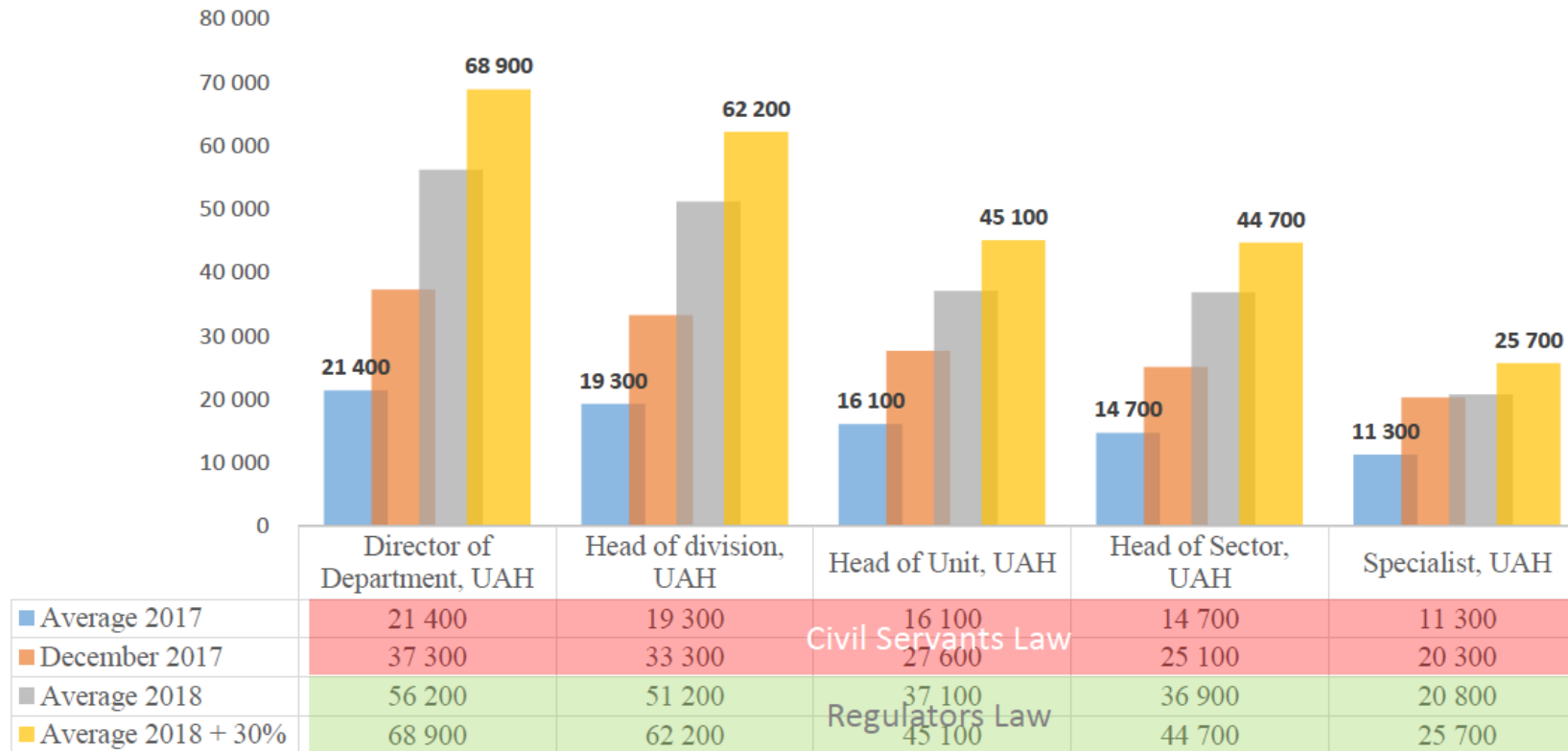
Annex II: List of interviewed institutions

- NEURC management, staff and previous staff
- Energorynok
- Strategic Council of the Kyiv Institute on Energy Research
- Ministry of Energy and Coal Industry
- Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety of the Verkhovna Rada
- All-Ukrainian Energy Assembly
- Agency Investments Management LLC
- Ukrenergo
- Energoatom
- Volynoblenergo
- PAT Kharkivska TEC 5
- Donbassenergo
- Naftogaz
- Ukrtransgaz
- Ukrigasvydobuvannya
- ERU Trading
- DTEK
- Bioenergy Association of Ukraine
- DIXI Group
- Deloitte
- American Chamber of Commerce in Ukraine
- EBRD
- EU Delegation in Ukraine
- Electricity twinning project

Annex III: salary levels



Source: NEURC



Source: NEURC

Annex IV: *Uriadovy Kurier* publication practise

NEURC decision no	Date of approval	Data of submission to <i>Uriadovy Kurier</i>	Letter from NEURC to publish	Date of publication	Days of non-publication/to publication
1406	27.12.2017	28.12.2017	13323/13.1/7-17		83
1419	27.12.2017	05.01.2018	132/17.2/7-18		83
1420	27.12.2017	05.01.2018	132/17.2/7-18		83
1421	27.12.2017	05.01.2018	132/17.2/7-18		83
1422	27.12.2017	05.01.2018	132/17.2/7-18		83
1466	27.12.2017	11.01.2018	211/21.2/7-18		83
1467	27.12.2017	11.01.2018	211/21.2/7-18		83
1468	27.12.2017	11.01.2018	211/21.2/7-18		83
1469	27.12.2017	11.01.2018	251/21.2/7-18		83
1470	27.12.2017	11.01.2018	211/21.2/7-18		83
1471	27.12.2017	11.01.2018	211/21.2/7-18		83
1472	27.12.2017	29.12.2017	13355/21.2/7-17		83
1473	27.12.2017	05.01.2018	130/19/7-18		83
1474	27.12.2017	12.01.2018	213/19/7-18		83
1618	29.12.2017	05.01.2018	13355/21.2/7-17		81
1	09.01.2018	09.01.2018	171/28.1/7-18	06.03.2018	56
8	09.01.2018	09.01.2018	180/21.3/7-18		70
12	09.01.2018	09.01.2018	176/17.1.3/7-18	17.02.2018	39
17	09.01.2018	19.01.2018	548/16/2/1/7-18		70
61-75	24.01.2018	25.01.2018	723/17.2.1/7-18	26.01.2018	3
76	24.01.2018	25.01.2018	723/17.2.1/7-18	30.01.2018	6
77-84	24.01.2018	25.01.2018	723/17.2.1/7-18	26.01.2018	3
85	24.01.2018	25.01.2018	723/17.2.1/7-18	30.01.2018	6
86	24.01.2018	25.01.2018	723/17.2.1/7-18	26.01.2018	3
87	24.01.2018	25.01.2018	723/17.2.1/7-18	30.01.2018	6
88-90	24.01.2018	25.01.2018	723/17.2.1/7-18	26.01.2018	3
91	24.01.2018	25.01.2018	723/17.2.1/7-18	30.01.2018	6
92-93	24.01.2018	25.01.2018	723/17.2.1/7-18	26.01.2018	3
104	25.01.2018	29.01.2018	784/18/7-17		54
105	25.01.2018	29.01.2018	784/18/7-17		54
106	25.01.2018	29.01.2018	784/18/7-17		54
185	15.02.2018	19.02.2018	1550/18.1.3/7-18		33
186	15.02.2018	19.02.2018	1550/18.1.3/7-18		33
187	15.02.2018	19.02.2018	1550/18.1.3/7-18		33

NEURC decision no	Date of approval	Data of submission to <i>Uriadovy Kurier</i>	Letter from NEURC to publish	Date of publication	Days of non-publication/to publication
188	15.02.2018	19.02.2018	1550/18.1.3/7-18		33
195	15.02.2018	21.02.2018	1610/19/7-18	15.03.2018	28
196	15.02.2018	21.02.2018	1610/19/7-18	15.03.2018	28
208	20.02.2018	21.02.2018	1642/17.2.1/7-18	24.02.2018	4
238	27.02.2018	05.03.2018	2209/18.1.3/7-18		21
239	27.02.2018	05.03.2018	2209/18.1.3/7-18		21
240	02.03.2018	02.03.2018	2209/18.1.3/7-18		18
264	02.03.2018	05.03.2018	2111/28.2/7-18		18
269	02.03.2018	05.03.2018	2212/18.1.3/7-18		18
270	02.03.2018	05.03.2018	2212/18.1.3/7-18		18
271	02.03.2018	05.03.2018	2212/18.1.3/7-18		18
274	02.03.2018	13.03.2018	2440/17/4/7-18		18
283	06.03.2018	13.03.2018	2452/18/1/3/7-18		14
284	06.03.2018	13.03.2018	2452/18/1/3/7-18		14
285	06.03.2018	13.03.2018	2452/18/1/3/7-18		14
296	06.03.2018	14.03.2018	2525/19/7-18	20.03.2018	14
297	06.03.2018	14.03.2018	2525/19/7-18	20.03.2018	14

Source: NEURC