



The National Energy Regulatory Authority of Moldova

Compliance, Governance, Independence and Performance



An updated Energy Community Secretariat Review

Contents

1. Introduction.....	2
1.1. Background	2
1.1.1. Secretariat's audit report of September 2016.....	2
1.1.2. Action plan of November 2016.....	2
1.1.3. Recent developments	2
1.2. Scope	3
2. Implementation of the Action Plan.....	3
2.1. Appointment of the new director general.....	3
2.1.1. Secretariat's assessment.....	4
2.2. Legal reforms.....	4
2.2.1. Compliance with Energy Community law	5
2.2.2. Compliance with the Action Plan.....	5
2.2.3. Secretariat's assessment.....	7
2.3. Regulatory framework.....	8
2.3.1. Secretariat's assessment.....	8
2.4. Other concerns	8
2.4.1. Secretariat's assessment.....	9
3. Summary and conclusions	9
3.1. Legal framework	11
3.2. Internal organisation and performance.....	12

1. Introduction

1.1. Background

1.1.1. Secretariat's audit report of September 2016

On 8 September 2016 the Energy Community Secretariat (hereinafter 'the Secretariat') issued a report (hereinafter 'the 2016 Report') on the compliance, governance, independence and performance of the National Energy Regulatory Agency of the Republic of Moldova¹ (hereinafter ANRE; 'the Agency' or 'the regulator').² The audit was performed following a request by the Republic of Moldova aiming to identify gaps and shortcomings in the existing legal set up and practical operation of the Agency and with the scope to adequately address them in the legal reforms ongoing at the time.³

The Report provided an in-depth review of the regulator's compliance with the obligations stemming from the Energy Community *acquis communautaire* (hereinafter 'acquis'), including an analysis of the legislative framework covering the organisational structure, competences and duties of the Agency. Beyond that, ANRE's practical performance as well as independence, professionalism and expertise were analysed. Both aspects formed the basis for concluding on *de iure* and *de facto* compliance with the *acquis*. The assessment identified that ANRE was seriously exposed to political influences which undermined its independence and performance. The 2016 Report included a list of legal and practical recommendations which the Secretariat urged to be implemented without delay.⁴

1.1.2. Action plan of November 2016

To overcome the shortcomings identified in its 2016 Report, the Secretariat on 9 November 2016 submitted to director general of ANRE and the Minister of Economy of Moldova an action plan for strengthening the independence of ANRE (hereinafter 'the Action Plan'), including the commitment of the Secretariat to prepare amendments for reform of the Energy Law.⁵ On 6 December 2016 Mr Octavian Calnic, the then Deputy Prime Minister and Minister of Economy, signed the Action Plan.⁶

1.1.3. Recent developments

Since the agreement of the Action Plan, some important events took place in Moldova:

¹ Agenția Națională pentru Reglementare în Energetică a Republicii Moldova; www.anre.md.

² https://www.energy-community.org/dam/jcr:17635f1e-99ac-44e1-84eb-3b11ea53841c/EnCS_NERA_Moldova.pdf.

³ Letter of Prime Minister Mr Pavel Filip and President of the Parliament Mr Adrian Candu of 20 April 2016. The Secretariat confirmed the performance of the requested in-depth review by letter of 6 July 2016.

⁴ See chapter 6 of the Report and Annex I

⁵ Letter of the Secretariat dated 9.11.2016 (ref DIV/O/jko/199/09-11-2016) and email of the Secretariat's Deputy Director of 23.11.2016.

⁶ Available at: <http://www.anre.md/files/Action%20Plan.pdf>.

- On 23 December 2016, the procedure for the appointment of the Agency's director general was initiated by the Parliament's Committee for Economy, Budget and Finance,⁷ a position which had been vacant since July 2017.⁸ Mr *Tudor Copaci* took office as of 1 March 2017.
- On 21 September 2017 the Moldovan Parliament adopted a new Law on Energy (hereinafter 'the New Energy Law') in an attempt to transpose the acquis.⁹
- In July 2017 the Secretariat and ANRE agreed on a Memorandum of Understanding on cooperation concerning development of secondary legislation for which the Secretariat committed to provide technical assistance, to the extent possible.

1.2. Scope

The present report analyses the progress made in implementing the Action Plan and the recommendations of the Secretariat's Report. The present report does not analyse the compliance of elements of the New Energy Law other than those related to ANRE. The Secretariat keeps a reservation for compliance assessment of other aspects.

2. Implementation of the Action Plan

2.1. Appointment of the new director general

One of the main recommendations of the Report and a central element of the Action Plan was that the appointment of the new director general of ANRE was to be made following an open and transparent competition, based on clearly stated selection criteria. The Secretariat requested a politically independent selection committee and the assistance of representatives of an international institution. The selection process was launched on 23 December 2016. Mr *Tudor Copaci* took office as of 1 March 2017 as newly appointed director general.

While the selection procedure was still on-going, the Secretariat was approached by representatives of the civil society of Moldova which complained about the lack of open hearings and objective selection criteria, as well as an overall lack of transparency.¹⁰ Among others, the civil society complained that the Parliamentary

⁷ Announcement

<http://parlament.md/Actualitate/ConcursulDirectoralConsiliuluiideadministra%c8%9bie/tqid/246/language/ro-RO/Default.aspx> with an application period of 2.1.2017 to 20.1.2017. Twelve applications have been received, out of which ten candidates have been invited for interviews, namely: Mr Anatolie Cainareanu, Mr Adrian Cazacu, Mr Mihail Cernei, Mr Tudor Copaci, Mr Vasile Daud, Mr Alexandru Lupan, Mr Ion Matei, Mr Ruslan Surugiu, Mr Sergiu Ungureanu and Mr Iurie Ursu (ref BIZLAW Portalul Advocaturii de Afaceri din Moldova, 12 candidați pentru funcția de director în Consiliul ANRE, 23.1.2017): <http://www.bizlaw.md/2017/01/23/12-candidati-pentru-functia-de-director-in-consiliul-anre/>). One candidate withdraw the application and another did not provide all requested documents (information by the Ministry of Economy of Moldova of 3.2.2017).

⁸ The dismissal of the previous director, Mr Victor Parlicov, was made decision of the Moldovan Parliament no 169 from 21 July 2014. The Secretariat analysed the case in chapter 4.1.2 of its 2016 Report.

⁹ Law no 174/21.09.2017 on energy, published in the Official Journal of Moldova no 364-370 on 21 October 2017.

¹⁰ See as well: position paper of 13.1.2017 on the review of the competition requirement for selection for contenders for the post of director of ANRE addressed to the parliamentarian Committee for Economy, Budget and Finance.y commission for economy, signed by Mr Sergiu Tofilat, censor at Center ASPE; Mr Victor Parlicov, Energy Expert at IDIS Vitorul and former Director of ANRE; Mr Niculae Raileanu, former Director of ANRE; Mr Ruslan Surugiu, Director at the Center for Energy Efficiency; Mr Sergiu Ungureanu, energy expert at Moseff; Mr Julian Groza, Executive Director at Institute of

Committee for Economy, Budget and Finance refused to designate international observers for the selection procedure (such as representatives of the EU Delegation to Moldova, the Energy Community Secretariat or the World Bank). They also argued that the way in which the eligibility requirements and the evaluation criteria were formulated was not appropriate for the requirements of the position. A recurring complaint was the fact that hearings were not held in open sessions, allowing media access, and that no minutes were published on the Parliament's website.

On 9 March 2017 the Secretariat addressed the chairman of the Committee for Economy, Budget and Finance, Mr *Stefan Creanga*, and requested additional information on the way in which the procedure had been conducted. The Secretariat did not receive a reply to this request.

2.1.1. Secretariat's assessment

On the basis of verifiable information available to the Secretariat, the process for appointment of Mr *Tudor Copaci* must be considered as an appropriate reaction to the shortcomings identified in the Secretariat's 2016 Report and the related measures of the Action Plan. The vacancy and the selection procedure and requirements were published on the website of the Moldovan Parliament,¹¹ which represents a significant improvement compared to earlier appointments.¹² The Secretariat is not in the position to either verify or prove wrong the civil society's accusations as regards the selection process itself. Other allegations of shortcomings in the appointment procedure have not been brought to the attention of the Secretariat.

It has to be noted, however, that including academia, civil society and/or international institutions in selection process would have contributed to increasing trust of the civil society in the appointment results, which also has been an element of the Action Plan.¹³ Also, according to the information available to the Secretariat, the requirement of the Action Plan for the members of the selection committee to sign a declaration on their independence from political or private energy stakeholders has not been fulfilled.

2.2. Legal reforms

The New Energy Law is the result of a long consultation process between the Moldovan authorities and the Secretariat. Articles 8 to 20 of the New Energy Law regulate the activity of the national regulatory authority.

¹¹ European Policies and Reforms and Mr *Ion Efros*, energy expert at the Institute for Public Policy. Similar: Sergiu Tofilat (ASPE), Moldovan National Energy Regulatory Authority: assessment report for 2015-2017 (October 2017), p 6 et seq.

¹² See <http://parlament.md/Actualitate/Concursuripublice/tabcid/248/ContentId/2792/Page/0/language/ro-RO/Default.aspx>.

¹³ Cf Secretariat, 2016 Report, chapter 3.5.

¹⁴ Cf. Article 10(3) of the New Energy Law. Similar: Sergiu Tofilat (ASPE), Moldovan National Energy Regulatory Authority: assessment report for 2015-2017 (October 2017), p 8.

2.2.1. Compliance with Energy Community law

The legal framework defining regulatory independence and the minimum set of competences that must be granted to National Energy Regulatory Authorities (NRAs) consists of Articles 35-38 of Electricity Directive 2009/72/EC and Articles 39-42 of Gas Directive 2009/73/EC.¹⁴

The New Energy Law is largely compliant with the Energy Community acquis (hereinafter ‘acquis’) regarding the organisation, independence and competences of the Agency. A detailed compliance analysis is provided in Annex II.

2.2.2. Compliance with the Action Plan

Beyond the strict requirements of the acquis, the Secretariat during the consultation process with the Moldovan authorities also made a series of other recommendations to be included in the New Energy Law, targeting the introduction of best practise standards for regulatory independence and to overcome the practical shortcomings identified in the 2016 Report. A number of these elements have not been included in the New Energy Law. To the same extent, also the identical parts of the Action Plan have not been implemented:

- The Action Plan suggested selection of the director general by and among the directors of ANRE. Instead, Article 10 of the New Energy Law still foresees appointment by the Parliament.
- The Secretariat requested to be consulted before the liquidation of ANRE and the introduction of a provision ensuring that decision to liquidate ANRE should be compliant with Moldova’s commitments under the Energy Community Treaty. Such provision has not been included in the New Energy Law.¹⁵
- The Secretariat requested that the director general appoints a deputy general director to perform the general director’s tasks in case of the general director’s absence.¹⁶
- The Secretariat requested that directors of ANRE cease to be members of any political party at least one year before the day when they apply for the position. Article 10(5) litera (f) of the New Energy Law stipulates that applicants shall not be member of a political party at the time of application but does not respect the requested one-year lead time.¹⁷
- The Secretariat requested that ANRE directors should cease to hold office not only due to health reasons, but also (and especially) due to unjustified reasons of absence for more than three months in a calendar year. This provision has not been included. In turn, the Secretariat recommended that the vague and unspecified case of “incompatibility” shall be excluded from the reasons for dismissal. This provision is still included in Article 10(12) litera (e) of the New Energy Law. It opens a possibility for misuse and political intervention and has already proven to be problematic in praxis by the parliament’s suspension of the director general in 2013 and 2014 and an opaque decision by a court of appeal.¹⁸

¹⁴ Those provisions have been included in the Energy Community acquis by Ministerial Council Decision 2011/02/MC-EnC of 5.10.2011 with a transposition deadline of 1 January 2015. The Republic of Moldova is legally bound by the acquis based on Article 11 of the Energy Community Treaty upon its accession to the Energy Community in May 2010.

¹⁵ See Article 8(4) of the New Energy Law.

¹⁶ Cf Article 9 New Energy Law. However, Article 9(10) *leg cit* foresees that the general director may delegate all or part of his duties to one of the Board members during her/his absence. In the course of the preparation of the 2016 Report, ANRE’s management suggested to better replace this rule by appointment of a deputy director general.

¹⁷ According to Sergiu Tofilat (ASPE), Moldovan National Energy Regulatory Authority: assessment report for 2015-2017 (October 2017), p 7 the successfully appointed director general, Mr Tudor Copaci, has been member of the democratic party until few days of the selection process.

¹⁸ Cf chapters 4.1.2 and 6.1 of the Report.

- The current legal framework does not provide for a judiciary appeal system for decisions to dismiss a director. Only the right of a director to be heard in front of the Parliament before dismissal is provided in Article 10(13) of the New Energy Law while the Action Plan foresaw the introduction of a judicial appeal system.
- The management of ANRE is not entirely free to decide on the internal organisation of the Agency:¹⁹ according to Article 8(8) of the New Energy Law the statutes of ANRE require approval by Parliament which is an intervention in the regulator's organisational independence.²⁰ The statutes have not been revised since the 2016 Report, although a revision has been part of the Action Plan.²¹ However, the central concern raised in the 2016 Report in this context has been eliminated to a large extent: the Secretariat criticized that central elements of regulatory independence were not provided by law but only in the statutes, i.e. a parliamentary decree that can be withdrawn by the Parliament at any time.²² Two of these aspects, namely immediate legal bindingness of regulatory decisions and the requirement to publish decisions have been included in the New Energy Law. Only sanctions for the case of a violation of the prohibition to hold shares in regulated companies or be member of a political party by Board members has not been transferred into primary legislation.
- A rotation scheme for directors has been included in Article 8(9) of the New Energy Law, however, including certain limitations:²³ Article 8(9) foresees staggered duration of directors' terms in case their mandates terminate at the same time.²⁴ In turn, a rotation scheme must be considered naturally in place in case the directors' terms do *not* terminate at the same time. Still, this provision does not necessarily proof compliance with the spirit of the relevant requirement of the Third Energy Package, namely to ensure sufficient lead time between expiry of directors' terms and to guarantee continuous operation of the regulator: namely, it does not preclude that directors' terms do not terminate at the same time – in which case the staggered mandate term provision of Article 8(9) does not take affect – but, still, within a very short lead time of e.g. one month after each other.

The new Law reduced the cool-off period for employment of directors in the regulated industry from two to one year.²⁵ The appropriateness of a two year prohibition has been often questioned by various stakeholders during the preparation of the 2016 Report.²⁶

Budgetary independence, an elementary shortcoming identified in the 2016 Report,²⁷ is now safeguarded in Article 11 of the New Energy Law, covering all necessary elements of autonomous use of the budget, absence of approval requirements by another public body and certainty on financial resources.

Beyond legal adjustments the Action Plan also foresaw a number of other improvements. Out of those, the following have not been fulfilled so far:

¹⁹ Cf Article 35(4) lit (a) Directive 2009/72/EC and Article 39(4) lit (a) Directive 2009/73/EC.

²⁰ Similarly criticized by the Secretariat e.g. for the case of the regulatory authority of Montenegro: cf. Secretariat, Annual Implementation Report 2017, chapter 8.3.a.

²¹ The internal rules of the Agency are enshrined in Regulation no 238 of 26 October 2012 regarding the organisation and functioning of ANRE.

²² Chapter 4.1 of the 2016 Report.

²³ A rotation scheme is required by Article 35(5) lit (b) Directive 2009/72/EC and Article 39(5) lit (b) Directive 2009/73/EC.

²⁴ Namely: one member: six years; two members: four years; two members: two years.

²⁵ Ref Article 4²(9) of the previous Energy Law and Article 10(15) of the New Energy Law.

²⁶ Chapter 3.2.3 of the 2016 Report.

²⁷ Chapter 4.2 of the 2016 Report.

- ANRE has not provided the Secretariat with a list on the roles and responsibilities of the directors to be included in the regulators internal rules.
- The Secretariat requested the amendment of the Law on the Basic Principles on Regulating the Activity as an Entrepreneur and the Public Procurement Law so that ANRE's institutional independence is guaranteed.²⁸ This has not been done so far. However, it is to be noted that Article 32 of the New Energy Law concedes the Government a period of 12 months from the entry into force of the New Energy Law to adjust other relevant legislation.
- Parliament did not develop standard job descriptions for director and director general positions including a clear allocation of responsibilities.²⁹
- ANRE has not provided the Secretariat with an internal regulation on staff selection rules.³⁰
- ANRE has not provided the Secretariat with performance indicators. The need for their development has been recognised in the Action Plan and included in Article 12(9) and (7) of the New Energy Law, while they are still lacking clear criteria according to which the performance indicators shall be established.³¹
- A timeline for audits is now defined by Article 11(7) of the Law that foresees preparation of a financial report by the Agency by 1 March each year which is to be verified by an independent international audit company, submitted to the Parliament and published on the regulator's website. The same Article also defines which documents can be audited by the Court of Audits; that meets a concern raised in the 2016 Report according to which the lack of a clear definition of the competences of the Court of Audits over ANRE infringes the regulator's independence.³² Yet, no audit by an international audit company has taken place since the Report.
- No transparency report was prepared by ANRE to the Secretariat.

2.2.3. Secretariat's assessment

The New Energy Law implemented a number of important measures defined in the Action Plan, albeit with delay and not completely: while the Law is largely compliant with the *acquis*, a not negligible part of the measures outlined in the Action Plan remain unaccomplished.

²⁸ According to this law the Public Procurement Agency is the competent state authority in charge of monitoring, assessing and controlling of procurement procedures by contracting authorities, including – after the legislative change – ANRE. The directors of ANRE raised concerns on the fact that ANRE's procurement procedures is subject to the control of the Public Procurement Agency (cf ANRE, letter no 03/669 of 29 July 2016 to the Secretariat). The regulator's management claimed that the control of the Public Procurement Agency would undermine their independence, and the assessment of procurement procedures would be yet another instrument to put pressure on ANRE. However, to the Secretariat's knowledge, no such case of abuse from the Public Procurement Agency took place so far. In the view of the Secretariat, the mere control of how ANRE conducts its procurement procedures does not, in itself, represent an attack to its independence. Independence and transparency can and must coexist (cf chapters 4.2.1, 4.2.2 and 6.1 of the 2016 Report). However, the Action Plan envisaged elimination of the need for ANRE to register procurement contracts with the State Treasury.

²⁹ According to the Action Plan such descriptions shall be subject to review by the Secretariat.

³⁰ According to the Action Plan such descriptions shall be subject to review by the Secretariat. Article 9(9) lit (c) of the New Energy Law foresees the director general is empowered to hire staff of the Agency "based on requirement".

³¹ Similarly criticized by: Sergiu Tofilat (ASPE), Moldovan National Energy Regulatory Authority: assessment report for 2015-2017 (October 2017), p 9 *et seq.*

³² Chapters 4.1.4., 4.1.5. and 6.1 of the 2016 Report.

This, to an only very limited extent, relates to elements strictly required by the acquis but prevailingly addresses elements of the Action Plan that targeted improvement of factual independence of ANRE. The failure to meet these mutually agreed improvements is attributable equally to the public institutions of Moldova and the regulator itself. The reluctance of the Agency to deliver on elements of the Action Plan that targeted enhancement of its own independence is worrying in terms of the regulators' desirable ownership of the process to develop its autonomy.

2.3. Regulatory framework

The majority of regulatory tasks required by the Third Package were already implemented with the revised Gas and Electricity Laws in 2016.³³ The regulator developed a detailed work program for the period 2016-2018.³⁴ Good progress is made on delivery of related regulatory documents, some of which received or will still receive technical assistance by the Secretariat under the umbrella of the EU4Energy program.³⁵

In practical, terms civil society raised complaints on the lack of transparency of the consultation processes conducted on draft regulatory rules and, more specifically, the alleged lack of proper reflection of comments and explanations in case of their refusal.³⁶ In the view of the Secretariat the level of transparency provided by ANRE on its website, including a synthesis of the treatment of consultation input, does not raise concerns.

2.3.1. Secretariat's assessment

In terms of development of the regulatory framework for electricity and gas since the issuance of the 2016 Report, ANRE proofed commitment to deliver the regulatory rules required under the Gas and Electricity Laws.

The Secretariat continues receiving sporadic complaints by the regulated industry and civil society on performance and decisions of the regulator. A certain level of criticism must be considered usual, in particular in a period of significant changes of the national energy market and strong market players, as is the case for Moldova. On the other hand, civil society reports also confirm a certain reduction in the political pressure on ANRE since late 2016. The Secretariat did not perform an in depth assessment of real term independent performance of the Agency for the purpose of the present update and is thus not in the position to confirm or reject these arguments. Some decisions of ANRE however also raised specific concerns by the Secretariat.

2.4. Other concerns

The 2016 Electricity Law introduced the principle that the recognised cost of network losses³⁷ cannot be higher than the level registered in the previous year for the purpose of determining the network tariffs. According to

³³ Law on Electricity no 107 of 27.5.2016; Law on Gas no 108 of 27.5.2016.

³⁴ Available at: www.anre.md/ro/content/plan-de-activitate.

³⁵ <https://www.energy-community.org/regionalinitiatives/EU4Energy.html>.

³⁶ E.g. Sergiu Tofilat (ASPE), Moldovan National Energy Regulatory Authority: assessment report for 2015-2017 (October 2017), p 9-10.

³⁷ Total network losses as the sum of technical and commercial losses.

this new approach, the energy losses in one year can thus not be higher than the actual losses of the previous year.³⁸

Article 87(3a) of the 2016 Electricity Law provides that “[m]ethodologies on calculation, approval and implementation of regulated prices and tariffs shall also include the nature and order of calculation of [...] the expenses related to the technological consumption and the losses in the electricity distribution networks in an amount which shall not exceed similar effective amount for previous year” (emphasis added). Furthermore, according to Article 96(21) of the 2016 Electricity Law, “[ANRE], within 24 months from entering into effect of this law, shall adjust its secondary regulatory legislation to the provisions of this law and shall draft, publish and implement new secondary regulatory legislation as provided for by this law. The methodology of calculation of regulated tariffs and prices which are valid at the moment of entering into force of this law shall be reviewed and revised by [ANRE]” (emphasis added).

2.4.1. Secretariat's assessment

By these provisions, the Electricity Law effectively sets a cap for the recognition of costs linked to the procurement of electricity to cover losses for tariff purposes. Moreover, the Electricity Law also effectively orders compliance by the regulatory authority. Under Article 96(21), ANRE is under an obligation to amend the existing methodologies in order to reflect the changes in the Electricity Law.

Drafting tariff methodologies, of which setting the way in which electricity losses are calculated and costs are recognized for tariff purposes is a part, falls within the exclusive competence of regulators. The Moldovan Parliament in fact substituted itself to ANRE and set by law that each year, the losses recognised for tariff purposes in each given year should not exceed the losses incurred in the previous year by the operator. From a perspective of regulatory independence, the fact that the national legislator set in the Electricity Law rules for calculating energy losses and recognizing related costs, impedes the autonomy and independence of ANRE and falls foul of the standards set by the Third Energy Package.

3. Summary and conclusions

The cooperation established between the institutions of Moldova and the Secretariat in the course of the preparation of the New Energy Law resulted in the broad alignment of the legal framework for the operation and independence of ANRE with the acquis. A review indeed confirms broad compliance of the New Energy Law with the requirements of Energy Community law. This is a major improvement compared to the previous significant shortcomings identified in the 2016 Report.

Also the appointment of the new director general in early 2017 marks advancement in terms of transparency and neutrality of the selection process.

At the same time the cooperation established between the Agency and the Secretariat via the Memorandum of Understanding on cooperation concerning development of secondary legislation signed in July 2017

³⁸ Article 87(3a) of the 2016 Electricity Law.



demonstrated to be beneficial for development of secondary regulatory acts in line with the Energy Community acquis. The Secretariat invites ANRE to continue close collaboration. Currently, the Secretariat and ANRE cooperate very closely in the adoption of an electricity distribution tariff methodology in line with the acquis and with European best practices.

Nevertheless, a number of the elements included in the Action Plan have still not been followed-up on. The Secretariat urges the institutions of the Republic of Moldova, including the regulator, to provide and address the outstanding elements without further delay and in close consultation with the Secretariat.

Annex I – Recommendations of the 2016 audit

3.1. Legal framework

The following elements need legal revision:

Independence from other public bodies: despite Article 4⁽¹⁾⁽⁶⁾ of the Energy Law establishing the independence of ANRE, certain structural aspects governing ANRE's organisation are not defined by law but only by Decision of the Parliament (the Regulation) and thereby fall short of being guaranteed independence from another public body. The related shortcomings must be overcome by transferring elements defined by the Regulation into the Law on Energy.

Appointment of directors: open and transparent competitions need to be performed for the appointment of directors and the currently only vaguely described selection requirements need to be replaced by clear criteria and published procedures. It is furthermore vital that the persons involved in the selection process are independent. Politicians should, as much as possible, be excluded but an independent committee of experts should be appointed. An outside institution such as the Secretariat could assist in appointing them and the selection committee could be, e.g., formed of national academia representatives, senior NRA representatives from other countries and reputed international experts in the field of energy. Experience highlighted in the present report shows that the current appointment procedures are far from sufficiently guaranteeing independence of ANRE's management from politics and ensuring trust of market participants in the regulator's independent performance.

Dismissal of directors: clear conditions for removal of directors need to be formulated. In particular the vague and unspecified case of "incompatibility" is listed among the reasons for dismissal, which opens a possibility for misuse and political intervention and has already proven to be problematic in praxis by the parliament's suspension of the director general in 2013 and 2014 and an opaque decision by a court of appeal.

Directors' term in office: the possibility to renew directors' term in office must be limited to one time; the current overall limit for terms in office set at a maximum of 12 years leads to a renewable term more than once for board members which is not in line with the acquis.

Budget: the Agency needs to be granted the financial certainty it is currently lacking. Legislation must provide a clear timeline for budget approval that allows the regulator to plan and organise its activities well ahead of the next calendar year. This must also include rules on the financial resources available to ANRE in case of lacking in-time budget approval, e.g. by assuming approval after expiry of deadline or, at least, re-installing the previous year's budget limits. Experience made in 2015 of a significantly delayed budget approval has proven that financial uncertainty significantly exposed the regulator to an inability of performing its duties. The requirement for approval of ANRE's budget by the parliament is per se not problematic. However, the overall budget limit at the level of up to 0.15% of the annual cost of electricity, natural gas supplied to consumers, main petroleum products and liquefied gas imports represents an undue restriction of ANRE's financial independence which is not in line with the acquis.

Competences of other public authorities: there is an urgent need for a check and balances system regarding ANRE. Independence does not mean an "untouchable" institution which no one can control. ANRE cannot operate in a regulatory vacuum, but *what* can be audited and by *which* institution has to be very clearly

specified in legislation to exclude abuses. Experience – be it on the role of the Court of Auditors or the Public Procurement Agency – though showed that the involved authorities, including ANRE, tend to test the limits of their competences under political influence which does not prove adequately clear allocation of competence as to be expected for a country supposed to operate on the rule of law.

3.2. Internal organisation and performance

Transparency: the Transparency Decision needs to be adopted as soon as possible. ANRE should ensure that information relevant for the public hearings are published well before the hearing, so that interested stakeholders are able to analyse it. The civil society should be allowed, without exception, to participate in the public meetings. ANRE also needs to ensure responsiveness to petitions and requests for information in a timely manner, and also that its responses are not formalistic but have the required content.

Committee of experts: such a committee should be appointed as soon as possible. It should be formed of representatives of the major stakeholders and of the international institutions and should be consulted before all major ANRE Board decisions. The Secretariat though notes that the competences of such committee shall not exceed a purely advisory function as to by no means limit the independent decision making of the ANRE Board which would, otherwise, clearly represent a breach of the *acquis*. To this extent, the committee's composition of neutral experts unbundled from political and/or company interest must remain paramount.

Staff: there is a need for a head of staff position to “formalize” the relations between the directors and the staff. The head of staff should act as an intermediary and would help reduce the political pressure on the staff. A clear system of bonuses and trainings for the employees should be created, as well as clear and transparent conditions for dismissal. At the same time clear and published procedures for staff selection needs to be established and staff salaries should be continuously increased correspondingly to raise of comparable industry salaries to ensure the regulator’s ability to attract sufficiently knowledgeable staff able to adequately tackle active market design duties.

Accountability: The signals received by the Secretariat suggest that there is a general lack of trust in ANRE’s performance. The situation could be improved by the regulator publicly presenting its priorities and objectives in a public meeting at the beginning of the year as well as presenting the results at the end of the year. Also, a performance audit could be executed on a regular basis by reputed international experts. The signals received by the Secretariat suggest that there is a general lack of trust in a national institution to perform such an audit, mainly because of lack of in-depth expertise and potential political interferences. The Secretariat is therefore considering the request from the President of the Commission for Economy, Budget and Finance³⁹ to sponsor such a performance audit. Further to this, ANRE may consider to annually select a reputed international audit company to perform its financial audit.

Capacity building: ANRE’s position must be strengthened so that it regains trust from the regulated companies, international partners and tax payers. As part of the capacity building process, employees should be sent to trainings abroad, and seminars and trainings should be provided at ANRE headquarters in Moldova. A clear capacity building program is to be discussed with other international partners.

³⁹ The request was made orally on a meeting which took place on 18 July 2016.

Performance: the regulator, and in particular its management, still has to significantly improve its commitment to perform as truly independent institution in practical terms. The Secretariat's assessment notes serious shortcomings in this respect.



Annex II – Compliance Overview

Requirement	Energy Community acquis	Law 174/2017	Assessment
Institution is established by law		Law on NEURC	compliant
Vacancies for Board members are announced publically	[*] ⁴⁰	Article 8(2)	compliant
Selection process and criteria for Board members is defined by law and includes a selection committee		Article 8(2)-(5)	compliant
Single national regulator with nationwide 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 8(2) and (3)	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 8(5) and (6), Article 9(2) lit (a)	compliant
Management is prohibited to hold shares in regulated companies or be member of a political parties		Article 9(2) lit (a) , Article 10(5) lit (f)	The minimum lead time of the Action Plan of one year has not been respected
Sanctions in case of violation of the prohibition to hold shares in regulated companies or be member of a political parties	[*]	<u>Not explicitly mentioned</u> under the dismissal reasons of Article 10(12)	

⁴⁰ 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 174/2017	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 8 and (3)	compliant
Decisions are immediately legal binding	Article 37(4) lit (a) Directive 2009/72/EC, Article 41(4) lit (a) Directive 2009/73/EC	Articles 8(3), 12(2) and 13(e)	compliant
Decisions are subject to judicial review		Article 8(7) and 16(10)	compliant
Decisions are to be duly substantiated and justified to allow for judicial review	Article 37(16) lit (a) Directive 2009/72/EC, Article 41(16) lit (a) Directive 2009/73/EC	Article 16(10)	compliant
Term of Commissioners is limited to 5-7 years		Article 8(8)	compliant
Commissioners' terms are renewable only once	Article 35(5) lit (b) Directive 2009/72/EC, Article 39(5) lit (b) Directive 2009/73/EC		
A rotation scheme is in place		Article 8(9)	In principle compliant but with limitations ⁴¹
Dismissal reasons for Commissioners are limited to cases of criminal offence or incompliance with independence	Article 35(5) lit (b) Directive 2009/72/EC, Article 39(5) lit (b) Directive 2009/73/EC	The Action Plan's recommendations to include unjustified absence as dismissal reason but delete the unspecified case of "incompatibility" have not been reflected	
Separate budget and autonomy to use	Article 35(5) lit (a) Directive 2009/72/EC, Article 39(5) lit (a) Directive 2009/73/EC	11(4)	compliant
Adequate human resources		Article 11(2)	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 8(8)	No, requires approval by the Parliament
Budget is financed from levies	[*]	Article 11(3)	compliant

⁴¹ Cf chapter 2.2.



Requirement	Energy Community acquis	Law 174/2017	Assessment
Budget does not require approval by another public body		Article 19(5) and (6) – only information to Parliament	compliant
Certainty on financial resource		11(5)	compliant
NRA provides an annual activity report	Article 37(1) lit (e) Directive 2009/72/EC, Article 41(1) lit (e) Directive 2009/73/EC	Annual financial report Article 11(7)	compliant
Decisions are published	Article 35(4) lit (a) Directive 2009/72/EC, Article 39(4) lit (a) Directive 2009/73/EC	Article 16(11)	compliant
Board meetings are in general open	[*]	Article 16(1)	compliant
Objectives	Article 36 Directive 2009/72/EC, Article 40 Directive 2009/73/EC	Article 12(1)	compliant