



**CEER Regulatory Benchmarking (RBM)
Work Stream
Monitoring NRAs' Independence**

Dr. Nadia Horstmann, RBM Chair

Background

- **RBM Questionnaire** uploaded by March 2020
 - ▶ Included:
 - Previous CEER questions from 2016
 - Questions used for the OECD Indicators of Product Market Regulation (PMR) updated 2020 (previously sent and answered by NRAs)
 - Questions used for EC Independence Assessment
- **29 NRAs** participated (*including 5 non-EU CEER observers*)
 - ▶ CEER Members: E-Control, CREG, HERA, CERA, ECA, EV, CRE, BNetzA, RAE, MEKH, CRU, PUC, VERT, ILR, REWS, ACM, NVE-RME, ERSE, ANRE, ERSO, AGEN, CNMC, Ei, Ofgem.
 - ▶ CEER Observers: SERC (*Bosnia & Herzegovina*), GNERC (*Georgia*), ERO (*Kosovo*), ERC (*North Macedonia*), AERS (*Serbia*).
- **Focus:**
 - ▶ New developments since 2016
 - ▶ New competences/tasks following CEP implementation



Background

- **CEER Preceding (internal) Publications**
 - ▶ Report on Safeguarding the independence of regulators - December 2016
 - ▶ NRAs' organisational setup - November 2018
 - ▶ Update on General Metrics of NRAs - June 2019
- **OECD Relevant Publications**
 - ▶ Creating a Culture of Independence – Practical Guidance against Undue Influence, The Governance of Regulators (2017)
 - ▶ Being an Independent Regulator, The Governance of NRAs (2016)
 - ▶ The Governance of Regulators, OECD Best Practice Principles
- **European Commission**
 - ▶ Assessing the independence and effectiveness of national regulatory authorities in the field of energy





Main findings

- NRAs' duties and powers to regulate **other sectors** than electricity and gas **increased** significantly.
 - ▶ Some NRAs regulate up to 9 sectors (e.g. Railway) or other energy related topics (e.g. Grid Expansion).
 - ▶ Some NRAs merged with other national entities/bodies (e.g. competition authorities).
 - ▶ NRAs got more power mainly in information gathering, sanctions and cooperation.
 - ▶ Some NRAs regulate new activities e.g. access to gas storage, environmental issues or activities linked to the introduction of “strategic reserve” or “capacity remuneration mechanism”; energy efficiency.
 - ▶ **This could be a challenge in terms of resources allocation.**
- 2/3 of the EU NRAs have **sufficient** financial and personnel **resources** to fulfil their tasks.
 - ▶ **BUT ACER news tasks are impacting on NRAs resources**
- NRAs have a clear status of “independent bodies” with **tasks** and **duties defined in their legislation**.
 - ▶ NRAs independence is explicitly stated in law in most countries
 - ▶ Some legislations contain a legal definition of the NRA's independence.
 - ▶ *NRAs' **decisions** are mostly **directly applicable** and do not need any confirmation by any other body or political instance.*
- Governmental interferences in regulatory decision-making limited and relate to **long-term strategies** or **work programmes of NRAs** but do not affect the regulators' core and daily business.





Main findings

- NRAs experienced a constant growth in their **staff** in the last 3 years
 - ▶ EU-NRAs are mainly staffed with **civil servants**.
 - ▶ Staff **recruitment** in all NRAs (except of one) is based on a publicly advertised tendering process; candidates are selected by a NRAs staff only panel.
 - ▶ More than half of the NRAs are **not subject** to any form of **personnel restrictions**.
 - ▶ Only **few NRAs** require a **cooling off period** for their **permanent staff** pursuing professional activities in the regulated sector.
 - ▶ When it comes to the permanent staff, more than half of the NRAs are not subject to any form of personnel restrictions whereas the remaining respondents have to consider limitations.
- **Budget** of most NRAs increased in the last 3 years
 - ▶ 24 NRAs receive financial resources from market participants via **fees** and other **contributions**.
 - ▶ Other NRAs' budgets are either granted as **state budgets** or represent a **mixed budget** including both state funding as well as resources from market participants.
 - ▶ The non-EU NRAs' budgets = financial resources received by market participants.
 - ▶ For most of NRAs, the tasks of **financial accounting and reporting** is entrusted to the NRA with no or limited scope of intervention from governmental/ministerial bodies.





Main findings

- The **regulation of prices** on monopolistic activities is being performed by all NRAs independently
- NRAs are accountable to 3 different addressees: the legislator (the NRAs have to report to their national parliamentary institutions on their activities); stakeholders and the public.
- The survey results also reveal the **importance of monitoring tasks** since most of the responding NRAs indicated complying with reporting activities towards parliamentary/congressional committees. In only six cases, there are no such tasks attributed to the NRAs. NRAs also have to comply with the legal requirement to answer requests from or attend hearings organized by committees of the parliament/congress.
- NRAs are equipped with powers to issue **sanctions and penalties** in regulatory matters
 - ▶ NRAs can take action in form of **financial or criminal sanctions and penalties**,
 - ▶ **Mediation** is also an area of independent competence for the vast majority of NRAs, making them to the responsible bodies for **resolving disputes** between market actors and regulated entities



Highlights and Next Steps

Highlights

- NRAs business a success story = increase of the sectors to be regulated by NRAS (from 4-9 sectors)
- Legal framework on their set up and competences has been clarified
- Increase in competences (ACER) BUT no parallel increase in budget
- Most of the NRAs have the necessary tasks and duties; Increase in Monitoring activities!
- No intervention of governments in their daily business (Framework)
- Most of the NRAs have the competence to take binding decisions and enforcement powers; Mediation is a new field of competence
- NRAs Budget more and more through fees from stakeholders not only state budget





**CEER Regulatory Benchmarking (RBM)
Work Stream
Dynamic Regulation State of Play**

Dr. Nadia Horstmann, RBM Chair

Dynamic Regulation

Deliver what?

Provide a **state of play** among CEER NRAs in terms of “**if**” and “**how**” NRAs deal with DR in a transversal perspective through a two-stage process:

- **Internal survey based on a questionnaire** showing the current state of play in terms of available DR provisions and tools amongst **19 NRAs**
- **Case studies from 10 NRAs** on sandboxes/pilots
- **An overview on DR experiences** in other sectors (e.g. telecommunication, mobility)

Why ?

- Learn from each other experience
- Avoid replicating pilot projects
- **Accelerate decisions** on whether regulation/legislation needs to be adapted and if yes how.

How?

- Questionnaire for CEER and OECD (PMR)
- Review and assessment of all relevant CEER papers
- Review and assessment publications of other organizations (OECD/COM).



Dynamic Regulation

What are we talking about?

- **CEER considers that regulation must be stable, but not static, and coherent with the fast-changing environment and market evolutions that digitalisation and decarbonisation bring about, whilst continuing to protect the European energy consumers 'interests effectively.**
- Need for **adaptive regulation** = NRAs need to evolve to implement CEP (ESI; Hydrogen and Methane Strategies)
- **Which tools:**
 - ▶ **Regulatory sandbox** approach: Not a single definition of regulatory sandbox BUT it is mostly seen as limited trials, approved by a public authority upon request of the innovators, to test in field new products, services and business models in a real-world environment, with the possibility to get a temporary waiver (exemptions or derogations) from the usual regulation.
 - ▶ **Pilot projects** are put in place to trial on a local basis new and modern solutions (advanced measurement in the heating sector, self-consumption, electric vehicles, storage, flexibility, RES, etc.) or to contribute, more broadly, to the better functioning of the electricity wholesale market and the system operation.
 - ▶ **Pilot regulation:** new and experimental regulatory frameworks put in place for a limited time frame

Conclusions 1/2

- In most of MS **the existing national legal and regulatory frameworks already allow** for the development of innovation and/or incentive regulation
- DR possible through **tariff regulation, exemptions and flexibility**
- Most of NRAs assess existing tools of DR in other sectors to be transposed in the energy sector
- NRAs have **already implemented tools for DR or to implement after the transposition of the CEP**
- **Trends driving DR are:**
 - ▶ RES generation,
 - ▶ Smart technologies,
 - ▶ Flexibility services,
 - ▶ Tariff regulation, and
 - ▶ Other trends e.g. Digitalisation, Sector coupling, new uses for gas network and deployment of electric vehicles.
- **Barriers** to promote innovation and evolution for market players are:
 - ▶ the lack of incentives,
 - ▶ the inadequate legal and regulatory framework,
 - ▶ the lack of resources (budget and/or human resources),
 - ▶ the EU unbundling rules that prevent taking advantage of the know-how of the TSOs,
 - ▶ the current market design e.g. the restricted relationships between consumers and the energy system.
- No significant barriers to innovation from a cost perspective. Incentives for innovation are put in place and “innovation related costs” are being mostly accepted by NRAs.
- Governments and/or NRAs define in **strategic plans or orientation frameworks** the goals to be achieved in terms of innovation and incentive regulation
- **Consumer interests** are being taken into consideration through consultations and transparent discussions.
- Stakeholders with whom NRAs mainly exchange are:
 - ▶ primarily the regulated entities (19 NRAs do liaise with network operators),
 - ▶ market players and with the government and local representatives,
 - ▶ academics, consumer representatives or other authorities e.g. economic regulatory authorities.
 - ▶ Some NRAs indicated their cooperation with other professional associations or stakeholder (e.g. Think Smartgrids in France).

Conclusion 2/2

A large majority of NRAs allow for experimental regulatory tool to test and anticipate future evolutions such as regulatory sandbox or pilot projects. Some NRAs already have regulatory sandbox regimes, pilot projects or pilot regulation in place, some others are in the process of setting these up.

For countries which do not implement regulatory sandboxes the following four tools of DR tools are commonly used to implement the projects:

- “Classic regulation tools” such as incentive regulation and interconnection issues.
- Smart technologies, including smart meters and smart grids.
- Participation/consultation of market participants in the process (e.g. revising the market code for E-Control).
- Pilot projects

The **main sectors where DR Tools have been implemented** are the tariff structure, the price or Revenue controls, and smart metering. Other tools in place are:

- Sandboxes regulation put in place (CRE, Ofgem);
- Regulatory Sandbox system focusing on the Clean Energy Package (CRU);
- Amendments to laws enabling regulatory sandbox and possibility for additional incentives for innovative projects that will be decided by the regulator (VERT);
- Work initiated on a regulatory sandbox approach (Ei);
- Smart islands and energy storage issues to be considered for a DR approach (RAE);
- Flexibility services issues to be considered for a DR approach (ARERA and Ei);
- **NRAs setup exchange of information on cross-sectoral issues** (telecoms, transport, postal services, water) which may include topics such as prices and tariffs setting, innovative uses of energy, transport data, electricity mobility
- Pilot projects are put in place to promote new and modern solutions (advanced measurement in the heating sector, self-consumption, electric vehicles, storage, flexibility, RES, etc.)
- Practices and tools to test and anticipate future market evolutions may include:
 - The adoption of resolutions or the approval of the TCM to develop and launch pilot projects and regulatory sandboxes ;
 - The setting up of innovative funds, subsidies and financial support to finance pilot projects or pure research activities ;
 - The granting of premium or extra WACC for the development of interconnections deemed innovative or of exceptional importance for the country ;
 - The test application of a certain tariff, for a limited group of electricity users

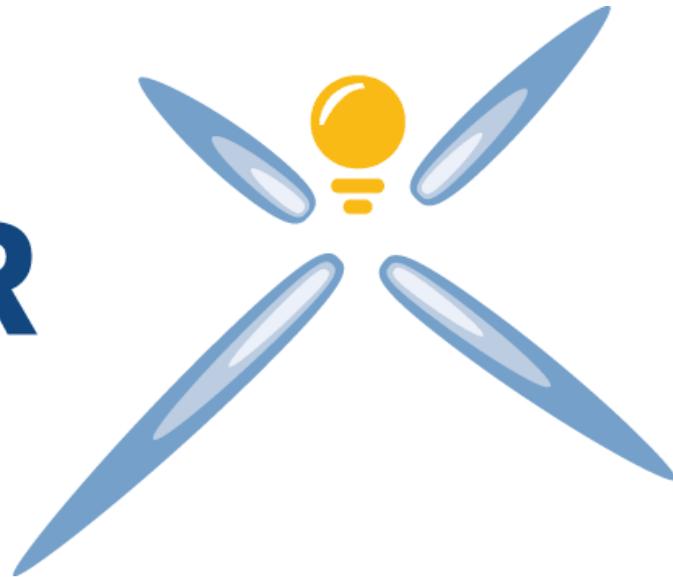
10 NRAs provided case studies of DR projects, among which 4 have already implemented regulatory sandboxes.



Thank you for your attention!

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