

**SNF-SESSA Conference:  
Harmonising Effective Regulation**

Independent Regulatory Authorities in Europe

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# Outline

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- **Problems of regulatory independence**
- **Who are the European regulators?**
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- **What do they regulate?**
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# **The concept of independent regulators**

- **“The regulatory authority should be a distinct administrative institution from the executive branch, and independent or interdependent from the executive branch in its procedures and decision-making process.” (World Forum on Energy Regulation, 2003).**

# **The concept of independent regulators**

**We consider three dimensions of independence:**

- 1. An arm's-length relationship with the government, which will also include features of organisational autonomy such as earmarked funding and the exception from restrictive civil service salary rules**
- 2. An arm's-length relationship with the stakeholders**
- 3. Independent regulatory authorities must hold exclusive decision-making powers**

# European legislation 1

- **In the European Directive from 1996 charting the course of the liberalisation of European electricity markets very little was said about the regulator:**
  - **Member States shall designate a competent authority, which must be independent of the parties, to settle disputes relating to the contracts and negotiations in question. In particular, this authority must settle disputes concerning contracts, negotiations and refusal of access or refusal to purchase**

## **European legislation 2**

- **The 2003 directive is much more explicit on regulatory authorities and their duties**
- **It has been followed by the formal establishment of a European Regulators Group for Electricity and Gas to work in close cooperation with the European Commission (CEER)**

## **European legislation 3**

- **According to the new market directive the regulatory authorities must monitor transmission and distribution companies, regulate network access and balancing services, settle disputes and monitor abuses of market power [1]**
- **There are no provisions on the choice of the concrete organisational form**  
[1] Article 23, paragraph 2, 4, 5, and 8

## **Why independent regulators 1?**

- **Market failure (strictly an argument for regulation not for a specific type of regulator)**
- **Government failure (can limit political interference in business decisions in an industry with extended public ownership)**
- **Enhanced expertise and flexibility (compared to courts and executive departments)**

## **Why independent regulators 2?**

- **The incentives of self-interested politicians:**
  - **Blame shifting for unpopular decisions**
  - **They get rid of technically complicated and boring tasks without much appeal to the public**
  - **Implementation of EU policies rarely provides an opportunity to produce clear benefits for voters**
  - **Gives an opportunity to demonstrate credible commitment**

## **Problems of regulatory independence 1**

- **They should be particularly vulnerable to regulatory capture because of low turnover in staff means and tendency to over-identify with the regulated industry**
- **They have also been criticized for being unaccountable**

## **Problems of regulatory independence 2**

- **They lack the solid kind of democratic legitimacy that comes from being elected by and accountable to an electorate**

## **Who are the European regulators?**

- **Some of the regulators are “sections” of a government ministry or agency (the Netherlands and most Nordic countries)**
- **Most are independent agencies headed by a commission or a director (all other countries)**
- **Commissioners and board members are often recruited from outside the civil service**

## How independent are they?

- We regard regulators with *a long tenure, who are appointed by the legislature, who cannot be dismissed for policy reasons and who are not allowed to hold offices in government* as more independent

## **How independent are they?**

- **Most regulators are appointed by the government or by one or two ministers for a period of 4-7 years, they can not be dismissed for policy reasons and they are not allowed to hold offices in government**
- **We consider regulators financed by the state budget (France and Norway) as less independent than regulators financed by a fee levied on the regulated firms (all the others)**

## **How independent are they?**

- **Most countries apply restrictions on the former and future affiliation of the commissioners and agency heads with the electricity industry**
- **Most regulators are fully competent with respect to the approval or determination of network tariffs and network access conditions and the terms of delivery issued by the network companies (exceptions are France, Spain, Greece and Luxemburg with only advisory role)**

## **What do they regulate?**

- **There are few regulatory authorities indicating few objectives and many authorities indicating many objectives**

## What do they regulate?

	<i>No. of countries with the objective</i>
<b>Competition</b>	<b>14</b>
<b>Market transparency</b>	<b>13</b>
<b>Consumer protection</b>	<b>13</b>
<b>Economic efficiency in supply</b>	<b>11</b>
<b>Environmentally friendly supply</b>	<b>8</b>
<b>Security of supply</b>	<b>7</b>
<b>Socially responsible prices policies</b>	<b>6</b>

## **What do they regulate?**

- **Denmark, Ireland and the UK all indicate “environmental friendly electricity supply” as part of their objectives**
- **However, the content is very different**
- **As a supplement we attempted a classification of the regulators according to regulatory practice**

<p><i>Scope/ Regulatory practice</i></p>	<p><i>Narrow scope focused on monopoly regulation</i></p>	<p><i>Broad scope including monopoly regulation, competition regulation, consumer complaints, wider energy policies</i></p>
<p><i>‘Hands-on regulation’: regulators decide network and supply tariffs</i></p>		<p>Belgium, France, Ireland, Italy, Spain, Portugal</p>
<p><i>‘Light regulation’: monitoring and ex post intervention</i></p>	<p>Finland, Germany</p>	
<p><i>Ex ante incentive regulation</i></p>	<p>Denmark, Norway, Sweden</p>	<p>UK</p>

## **What do they regulate?**

- **A number of countries (Ireland, the UK, France, Portugal, Italy and Greece) have a long history of state-owned monopolies**
- **To make liberalisation credible in these countries calls for a regulator with a broad mandate**

## **What do they regulate?**

- **The Nordic countries, Germany and the Netherlands have a different background with a much more decentralized industry structure, less state-ownership and a tradition of self-regulation**
- **The approach to electricity market regulation in these countries has indeed been much less ambitious building on existing institutions that gradually are modified to cope with the new situation**

## **Regulation and market outcome**

- **Is there a connection between the choice of regulatory structure and the market outcome in the European countries?**
- **There is not**
- **According to the annual report by the European Commission countries with similar approaches have liberalised with very different outcomes regarding competitiveness of their markets**

		<i>Customer switching: Large Customers</i>
<i>a. No major issues</i>	SE, FI, DK, NO, UK	>50%
<i>b. Unbundling\Regulation</i>	LU, AT, DE	Range 10% (LU)- 35% (DE)
<i>c. Market Structure or Lack of Integration</i>	FR, BE, GR, IE, ES, NL, IT	Range 0% (GR)- 35% (NL)
<i>d. Long-term Power Purchase Agreements\Regulated end user prices</i>	PT	

## **Conclusion**

- **Large differences with respect to formal independence as well as to regulatory practice**
- **The scope of competencies and independence in decision-making differs a lot**
- **Liberalisation has moved with widely different speed and so has the achievement in terms of market opening**
- **There is no correlation with the choice of regulatory approach**