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National Energy Regulators: A Comparative Assessment

Romania, Georgia, Ukraine and Moldova

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This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Union.

The project benefits from the support through the EaP CSF Re-granting Scheme. Within its Re-granting Scheme, the Eastern Partnership Civil Society Forum (EaP CSF) supports projects of the EaP CSF members with a regional dimension that contribute to achieving the mission and objectives of the Forum.

The donors of the Re-granting Scheme are the European Union and National Endowment for Democracy.

The overall amount for the 2017 call for proposals is 290.000 EUR. Grants are available for CSOs from the Eastern Partnership and EU countries.

Key areas of support are democracy and human rights, economic integration, environment and energy, contacts between people, social and labour policies.

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Introduction

The following report analyzes the capacity (governance and performance) of energy (gas and electricity) regulators in Moldova, Georgia and Ukraine and "benchmarks" them to the Romanian energy regulator. Energy regulators in countries that follow EU's Energy Directives of the Third Energy Package – EU members, as well as members of the Energy Community and countries which have signed Association Agreements with the EU – must in general follow a "blueprint" to meet their role as gas and electricity regulators as per the Directives. Thus, all regulators must be independent, accountable to the public and the regulated industry, transparent, and should issue predictable regulations. Regulations must ensure reasonable tariffs for the management of natural monopolies (networks), as well as play a decisive role in developing competitive markets for generation/production and supply – including market codes, non-discriminatory access to networks, ex ante regulation of competition, market analysis, collaboration with competition authorities to limit anti-competitive behavior, liberalization of both wholesale and retail markets. To meet these complex roles and standards, and guided by the spirit of the Third Energy Package, gas and electricity regulators in different countries are converging towards similar institutional structures. They are independent agencies, separated from the Government's direct interests (as a shareholder in energy state owned companies or as a defender of "low regulated prices"), with similar oversight procedures, structure of management and boards, institutional subordination, budget autonomy, reporting and accountability mechanisms to stakeholders, as well as practices and sectorial coverage or extent of functions.

The report contains a comparative and benchmarking summary and the national reports for Moldova, Ukraine and Georgia done by the partners in the project. The report on Romania is an updater of previous assessments in 2010-2014 and focuses only on the changes in the meanwhile. The benchmarking with Romania, as a EU member country, has two roles: to indicate to what extent Moldovan, Ukrainian and Georgian regulators are at standards of an EU country; and to examine whether EU member countries themselves really meet EU directives as well.

The report is structured thus: a comparative summary assessment of Moldova, Ukraine, Georgia benchmarked to Romanian regulator; detailed analysis by country; and the full methodology is presented as an annex.

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Summary results: a comparative assessment of energy regulators in Romania, Moldova, Ukraine, Georgia

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The results of the assessment and cross-country comparison are illustrated in Table 1. Considering the disparities across countries in terms of market development in general and in the functions, powers and responsibilities of the regulator in each country, the national scores have been adjusted in the comparative assessment to ensure effective comparability. The adjustments were made based on the assessments of the Energy Community for the implementation of the acquis in each of the contracting parties[1] in the study and comparative reports done by IEA[2].

1. Romania: the energy market is the most developed from all countries, with fully liberalized electricity and gas wholesale and retail markets at end-2017. Electricity generation (hydro, nuclear, coal-fired and gas-fired) remains mostly state-owned, with small competition from the private sector on renewables (wind, solar, small hydro, biomass) and several gas-fired capacities. Competition is however ensured by the obligation of all generators to sell competitively and transparently on the power exchange, and by the fact that state-owned generation is split among several companies which partly compete and cannot cross-subsidize each other. There are two gas producers with roughly equal market shares (45% each), several small gas producers, and the balance is imported from Gazprom. Both electricity and gas retail markets are very competitive, with 60-100 suppliers. Supply switch has increased in the past 2 years for households, though it is still modest. Transport and distribution networks are unbundled and the non-discriminatory third party access is ensured.

Though Romania is an EU member, the actual transposition and implementation of EU's Third Package (in particular deregulation of electricity and gas markets and strengthening of the regulator) has been a difficult, sinuous process and depended critically on external pressures. The governance of the energy regulator ANRE, in particular its independence, stability of management and capacity, improved with the adoption of the new law in 2012 transposing the Third Energy Package and its implementation. However, this took place only under external conditionality: Romania had a Stand-By Agreement with IMF, endorsed by EU and the World Bank, and all three international partners supported a series of sectorial reforms through coordinated conditionality and infringement procedures. Particular emphasis was put by all three donors on the reform of electricity and gas sectors and on the elimination of several large contracts between state owned energy companies and favored players. ANRE had been a quite independent, professional regulator in 1999-2005 and experienced a sharp deterioration in 2005-2009 as there was less external pressure for reform. Though the appointments in 2012 had been political as well, since 2012, ANRE became indeed a more independent regulator mostly because the leadership remained stable regardless of subsequent changes of political majorities. ANRE pushed forward politically difficult reforms such as the liberalization of the gas and electricity markets, mostly against the stance of the Parliament and Government, who opposed liberalization strongly. Both Parliament and Government were in their turn reacting to pressures from large energy consumers (a fertilizer holding – gas and traders, aluminum and steel producers – electricity) who benefitted indirectly from the regulated prices and could not fare well in a fully competitive gas and electricity market. The gas and electricity markets were in the end liberalized by 2014-2017 for both industrial and residential consumers, through a

[1] https://www.energy-community.org
[2] https://www.iea.org/publications/freepublications/publication/IDR_EasternEuropeCaucasus_2015.pdf

combination of factors: stronger regulator, fair energy prices in the competitive markets, a sound energy law and the prosecution and conviction in criminal courts of several veto players against reforms who had benefitted preferential contracts with state owned companies, referenced to previously regulated prices.

In 2017, however, the Parliament increased pressures on the regulator through an ad hoc investigation committee on energy prices in the market, blaming ANRE in the process for its alleged incapacity to avoid two price spikes in January and August in the electricity market. The investigation took place just before the due date for the selection of 4 members (out of 7) of ANRE's regulatory board, when the mandates of previous members expired. The investigation facilitated in the end the politicization of the new appointments, instead of a competitive procedure as required by the law. In fact, one of the newly appointed members had even participated in the investigation committee of the Parliament. Given the circumstances of the appointments, the new leadership of ANRE started to follow the lead of the Parliament in decisions concerning the gas market, which means a potentially serious deterioration of the regulator's independence compared to previous years. Also, the practice of setting up an ad hoc investigation committee in Parliament is a very serious threat to the independence of the regulator, as a mechanism to put pressure on the leadership whenever the regulator does not follow the political instructions. The investigation committee went beyond their initial mandate, limited in both scope and time. For example, it investigated ANRE's activity from the previous years, even though ANRE had already reported to Parliament yearly through its annual reports, and the same MPs now investigating ANRE had expressed no objection during the review of the annual activity of ANRE. The politicization of the energy regulator followed a broader, consistent trend in 2017 to politicize critical institutions to gain both control and provide sinecures for party affiliates: both the major regulators (Court of Accounts, communications, competition, financial services etc.) and state-owned companies faced the same issue. In the latter case, the existing legislation on corporate governance of state owned enterprises has simply not been applied in 2017 and new boards were appointed temporarily on political criteria instead of a competitive process. In addition, mandates for the temporary members of the boards were usually four months, too short for any substantial decision, such as investments. As many SOEs are in the energy sector, the move affected in general the energy sector governance and competitive behavior of major market players.

One consistent problem over the years and affecting the predictability of the regulation in the energy sector is the fact that ANRE does not comply with its overly ambitious regulatory plan set for two years in advance, which causes constant revisions for delays in adopting the regulations; at the same time, on certain matters it tends to propose ad hoc regulations. For example, the Energy Law requires a smart metering roll-out by 2020. ANRE has failed to prepare the roll-out plan as required by the law because it could not prepare a proper regulatory impact assessment, for lack of data and capacity. Without proper impact analysis, ANRE proposed in 2017 a series of draft orders for the implementation of the roll-out, but these had to be withdrawn as they were contested by stakeholders because they were not supported by a proper impact assessment. Such "stop-and-go" regulatory style causes unpredictability on the regulated industry.

2. Georgia: the energy sector in Georgia is not yet compliant with the EU's Third Package, which should be implemented by end-2018, and currently does not have a competitive energy market, neither for gas, nor for electricity. In recent years, Georgia reformed its electricity sector from a state-owned monopoly to a system that is mostly privatized and independent, reducing network electricity losses and blackouts, and it diversified gas imports away from Russia, though challenges remain. It still needs to create competitive, liquid markets, solving the financial issues in the sector, abandoning regulated prices and introducing market-based pricing, and finalizing the unbundling.

Georgia operates a single buyer model for electricity (the market operator purchases all electricity in long term PPAs, which affect the potential for future opening of the market). On gas, there are long term contracts with gas importers which, coupled with the absence of storage capacity, impede the development of a liquid market. GNERC regulates tariffs for electricity generation, transmission, distribution, import, consumption, generation of firm capacity, as well as tariffs for services provided by the market operator and the dispatch licensee; on gas, it regulates tariffs for consumption and services of transportation and distribution.

For the regulator, the major concern is that it is very limited in its functions. The Ministry of Energy substitutes the functions of GNERC on what are a modern regulator's most important responsibilities. The Ministry thus approves the electricity market rules, electricity (capacity) balance, the 10-year electricity Transmission Network Development Plan etc., though the monitoring of all these remains GNERC's responsibility. This problem has been solved in the other countries, Ukraine most recently, with the new law in 2017. Georgia's single buyer market model requires long term PPAs between generators (including newly built plants) and the market operator. The retail market is regulated. Considering all these constraints, the energy regulator GNERC is however a reasonably independent, transparent, and rather accountable authority. GNERC is much more inclusive in its effective consultations with the stakeholders on its regulations than any of the other regulators in the analysis.

Of concern is the appointment of the board, which is not transparent nor competitive; however, at least the last members were not visibly political appointees, which cannot be said about the other countries, including Romania as an EU member. The appointment procedure is not compliant with EU's Directives as the commissioners' mandates can be renewed more than once. There have been instances where prices and tariffs approved by GNERC were influenced by statements of the ruling political party; however, GNERC was not as ready to comply with the "hints" from the politicians as Moldova's ANRE, for example. The monitoring capacity of GNERC has improved in 2017, as GNERC has developed market monitoring rules under a Twinning project, while licensing and penalties for breaches of the regulation have also improved through strengthening of the rules. One key recommendation that would fully strengthen GNERC's independence and capacity as a regulator is to invest GNERC with full regulatory capacity, eliminating the Ministry of Energy's regulatory role, and ensure competitive selection on professional criteria for the commissioners.

3. Ukraine: from a broader perspective, Ukraine's energy market is also quite remote from EU's energy sector model in terms of maturity, liquidity, openness and competition. For electricity, where there are various state-owned and private generators, Ukraine applies the single buyer model, a practice that forecloses competition and practically eliminates customer choice (exercise of eligibility) in the retail market; the system also has historically resulted in huge arrears, as tariffs paid by the single buyer have not been full cost recovery. Generation prices are fully regulated and there are cross-subsidies from hydro and nuclear to renewable, gas-fired power plants and captive consumers. The transmission operator is not yet effectively unbundled, neither for gas, nor for electricity. A new market model for electricity, introduced in the new energy law, should be implemented by mid-2019, abolishing the single buyer and introducing bilateral trading, market-based balancing, day-ahead and intraday markets. For gas, the sources are domestic (of which the Naftogaz produces the bulk – about 75%, and there are several smaller producers) and imports from Slovakia. The restructuring of Naftogaz – including unbundling, partial privatization, financial clean-up – is stalling. Currently gas prices are regulated, but the new gas law envisages full market opening and phase out of price regulation. Domestic gas production is restricted to the domestic demand,

which is an implicit ban on exports and limits the participation of new wholesale and independent suppliers to the domestic market. Third party access for gas is only partially implemented.

Compared to Georgia, the current, recently-adopted legislation governing Ukraine's energy regulator NEURC removed the requirement for other governmental bodies to approve NEURC's decisions. One main concern has been the mid-term replacement of board members (disguised as "resignations"), a frequent practice in recent years. The governance of the regulator has improved starting from end-2016, as a new law transposed the provisions of the Third Energy Package concerning the independence, functions and powers of gas and electricity regulators. The new Law effectively enhances the independence of the regulator from political or regulated industry interests, though its budget, financed through regulatory fees, will continue to require Parliamentary approval. The quality of NEURC's reporting has also improved in the past two years. In terms of transparency, NEURC is currently required to publish all its relevant decisions, a considerable improvement taking into account that before the new law the regulator was rather secretive on sensitive issues concerning the functioning of the wholesale market and the gas sector regulations; similar improvements can be observed in the case of Moldova's ANRE recently. Also, NEURC is required by the new law to ensure effective consultation with stakeholders on major decisions, and it has indeed adopted a procedure for public discussions on draft decisions.

On the regulator's capacity to increase tariffs and prices despite political pressures, NEURC was independent enough to increase tariffs in 2015 on electricity, gas and others, despite opposition from both politicians and the public, but, judging from the subsequent developments, one cannot say for sure whether this was a case of a strong regulator opposing political pressures or, on the contrary, a regulator with weak capacity proposing unjustified tariff increases. There have been however cases in which major regulatory decisions (such as introduction of incentive-based regulation for distribution) have been postponed because of political opposition to higher end-user prices, including from the prime minister.

4. Moldova: unlike (and better than) Georgia or Ukraine, Moldova does not feature the single buyer model for electricity, as the wholesale market consists of bilateral contracts between producers and suppliers. This is not necessarily a more visionary policy, but an external reality: Moldova imports virtually all its energy and cannot regulate its prices. About 80% of the electricity is imported (from Transnistria or Ukraine) and a more competitive tender process has been implemented in the past two years, though there are still challenges. On the retail market, there are two universal suppliers at regulated prices and the state-owned Energocom supplying at non-regulated prices. Moldova imports currently all its gas from Gazprom, with perspectives to import also from Romania if the existing interconnector Iasi-Ungheni, now allowing only modest imports, is extended in the next years both on Romanian and Moldovan territory. Moldova has huge arrears to Gazprom (almost the country's GDP) for gas, mostly caused by consumption in Transnistria, of which some 70% is for electricity generation consumed in Moldova's right bank. The gas transmission is not unbundled. Some improvements on the electricity market design have taken place in 2016 and 2017, through the new laws on energy and regulator and through the new competitive procedures for electricity imports, following strong pressures from the EU (DG Energy) and the Energy Community Secretariat; however, the tender process is still far from competitive. Electricity interconnection with Romania is also envisaged, though the project is only in initial phases.

As the primary legislation concerning ANRE has been amended as recently as October 2017, the actual implementation of the new provisions could be examined only in the future. There are good signs, though, as ANRE had approved its own budget for 2018 and proposed to hire several new

specialists; and proper implementation of the new law could improve ANRE's scores in the future. ANRE was financed from extra-budgetary sources, but the budget was approved by Parliament, with delays, until the adoption of the new law in October 2017. It thus reached a similar level of budgetary independence of the Georgian regulator, which is financed through fees from the regulated industry without requiring Parliamentary approval. Budget independence is a critical prerequisite for the agency's independence and, for EU member states, this is a clear case for infringement (Romania faced this possibility in 2009, when it took away the regulatory fees as a financing source for the regulator and put the regulator under the budget of the General Secretariat of the Government). A major issue in the past has been the forced removal of the leadership, in one case, a dismissal of the director being brought to the Constitutional Court and highly contested by the international partners. This breach of independence is the most blatant of all countries, Ukraine (and Romania before 2012) preferring to window-dress the forced removal on political criteria as self-willed "resignations". The last appointment of the general director in 2017, though closely monitored by an EU expert, was also contested and the appointment was still done on political criteria – not unlike in Romania, however.

Unlike the other three countries, the leadership of Moldova's ANRE does not consist of an independent board of commissioners / members, but of directors inside the agency. This poses some governance challenges, e.g., all board members are also subordinated hierarchically to the general director – who has a say, for example, on their salary. An independent board of commissioners or regulators would provide also a broader vision and a better oversight for the internal workings of the regulator.

In the past, there have been instances where a political party nominated the same persons for ANRE's leadership and management of state owned companies from the regulated industry. The new energy Law adopted in 2017 provides a clear competitive procedure for selection of the directors for fixed terms of 6 years, requirements for candidates, conditions for dismissal of directors, introduction of cooling- off time. Unfortunately, four of the five directors, which had been politically appointed, have mandates still valid until mid-2019 (two of them) and January 2020 (the remaining two). Political pressures on ANRE have been consistent, in particular on the setting of tariffs and regulated prices, though some improvement can be seen in 2016 and 2017, following closer monitoring of external partners, such as the Energy Community Secretariat and the IMF. In terms of accountability to stakeholders and consultation with outsiders, the agency did not set up a previously planned "expert" / consultative council in 2017, though it has issued a decision on how it should operate and this council is provided in the new energy Law. Also, there have been several instances of tariffs approved behind closed doors, highlighted by the national expert.

Indeed, there have been legal improvements concerning the requirements for transparency, e.g. types of decisions to be put to public consultations, through the law is still not consistently applied; in this respect, ANRE seems to lag behind more transparent regulators such as GNERC and NEURC.

In terms of quality of regulations, in certain situations ANRE could not implement fully its multi-year regulatory tariff regulation (e.g., for gas), though this is mainly due to gas price formulas in contract with Gazprom linking imported gas price to unpredictable international gas market prices.

As a general conclusion, all the countries are gradually converging towards the prescriptions of the Third Energy Package, though at different paces. They tend to be more independent, more accountable and more transparent, while the quality of the regulation improves: for example, all regulators issue network tariff regulations on regulatory periods, which provides consistency and predictability. These may not be consistently applied: for example, temporary non-recognition of

exchange rate adjustments in Moldova or temporary incapacity to recalculate annual tariffs between 2009-2011 in Romania (officially blamed was the international economic crisis affecting RO). However, as commonplace as they may sound today, regulatory periods are good practice and a major improvement in recent years for all countries. Such improvements in both governance and quality of regulations, as incomplete as they may be in practice, would not have been possible without the convergence within EU's rules. Ukraine and Georgia still regulate energy prices on wholesale and retail markets and cross-subsidize between producers and consumers, have suboptimal market designs, the energy sectors in all three countries is crippled by arrears; however, Romania's energy sector has been in a rather similar situation just a few years ago.

The success of the reforms still depends critically on external pressures, in particular from EU's institutions (DG Energy, Energy Community Secretariat) to develop a single energy market and, indirectly, from IMF, through the conditionality to "commercialize" the energy sector, eliminating non-competitive, state aid practices and cleaning up the energy sector of crippling arrears. The strongest opponents to creating strong regulators are the local incumbents, e.g. gas and electricity monopolies, state owned companies avoiding market competition and the cancellation of state aid, as well as their partners benefitting preferential contracts, concluded non-competitively and non-transparently. Setting up strong regulators within the full implementation of the Third Energy Package is a powerful instrument to improve the governance of the whole energy sector by increasing transparency, introducing "at arm's length" relationships between major energy sector players, and allowing new entrants in the market. For example, in the case of Romania, gas market liberalization and price transparency has been strongly opposed by a large gas consumer until 2013, who exercised pressures on the Government and Parliament to amend the energy legislation against the energy regulator's attempt to speed up the liberalization of the market[3].

As can be seen in Romania, reforms concerning the energy regulator are not irreversible even in EU member states, though EU members can be "disciplined" through infringements whenever they deviate from EU Directives. In other words, the success of the reforms depends on the emergence of a critical mass of reform-driven actors within the country to support the external conditionality. The general policy environment and the structure of the energy sector is essential for the capacity and well-functioning of energy regulators. For example, where the gas and electricity sectors are dominated by powerful monopolies (in particular, Moldova), the implementation of the Third Energy Package is made difficult by vested stakeholders oppose the opening of markets to new entrants. A case in point is the difficulty in setting up all the institutional prerequisites for the interconnection with Romania on gas, which would threaten the existing monopoly on the gas supply[4]. The political will to allow independence of the regulators is also critical: in all countries, there are pressures for politicization or curbing the independence of the leadership of energy regulators. Where politicians approve of the integration of the energy market in EU's internal market and actively seek interconnections with EU member states as alternatives to existing monopolies, e.g. Ukraine, there is more willingness to strengthen the energy regulator. Where there is no such sense of urgency, e.g. in Romania, even though a member state, reforms can be easily reversed.

[3] See chapter on Romania in Energy, Russian Influence and Democratic Backsliding in Central and Eastern Europe, http://expertforum.ro/en/files/2017/05/Final-countries-report-coperta.pdf

[4] A detailed analysis: http://expertforum.ro/en/files/2016/05/final-report-moldova-gas-interconnection.pdf

Comparative scorecard of Georgia, Ukraine and Moldova's energy regulators in a broader framework and benchmarking with the Romanian regulator

	Romania		Georgia		Ukraine		Moldova	
	2016	2017	2016	2017	2016	2017	2016	2017
GOVERNANCE								
Independence								
Budget and subordination								
Changes in management								
Informal political pressures								
Relation with the regulated sector								
Accountability								
Reporting and confirmation/verification of management								
Accountability to consumers, industry, public								
Financial and audit								
Ethics and implementation of rules								
Transparency								
Publishing decisions								
Effective consultation								
Responses on FOIA requests								
Predictability								
Consistency and motivation of regulations								
Adapting to environment								
SUBSTANCE								
Tariffs and prices								
Economically efficient								
Periodic reassessments								
Monitoring markets, granting licenses								
Capacity to penalize breaches of regulation								
Transparent criteria to grant / withdraw licenses								
Consumer protection, management of complaints								

- Unsatisfactory
- Moderately satisfactory
- Good
- Good practice
- N/A or no data

Note: there are differences between the scores in the comparative table and the national reports. National reports are written assessing the national energy regulator in the specific conditions of the country and what can be achieved to improve the compliance with the Third Energy Package, while the

comparative assessment needs to take into account the differences across the countries concerning broader issues in the energy sector: the specific market model and design; the relative powers and responsibilities of the regulators; and their performance in a regional perspective. It must be noted, however, that both the Ukrainian and Georgian energy sectors have undertaken impressive reforms in their gas and electricity sectors in recent years, diversifying supplies away from the Soviet-era infrastructure and monopolies, limiting blackouts, enhancing energy security and improving energy efficiency. Georgia should fully transpose the Third Energy Package by end-2018, while the Energy law in Ukraine has provisions that would be fully implemented only by July 2019, including the change of market models and deregulation. Also, Moldova approved in 2016-2017 new legislation on energy and the energy regulator, which has already improved the country's scores compared to 2015, and whose implementation must be verified again in 2018. Depending on these developments, the scores for all three countries could be significantly improved.

1. Adjusted scores for Romania reflect the relative powers of the Romanian energy regulator and its capacity to undertake a modern role in fully liberalized markets, compared to the other countries in the study.
2. Adjusted scores for Georgia take into account the fact that the most important regulatory functions are with the Ministry of Energy, instead of the regulator. For comparison with the other countries, the regulatory capacity to develop gas and electricity market rules should be considered as well. The fact that these key regulatory functions belong to the Executive and that the regulator only monitors the implementation de facto limits the independence of regulation, the accountability to stakeholders, and limits the regulator's capacity to play a real role.
3. The appointments of the leadership of Georgia's energy regulator are not fully compliant with good practices, as the process is not transparent, the vacancies are not announced and the mandates can be renewed more than once (a violation of the Third Energy Package). The budget for Ukraine's energy regulator still requires Parliamentary approval, which could limit its independence, this practice has been abandoned in Georgia and Moldova. In addition, the fact that the Government delays the publishing of regulations in the official gazette slows down the regulation process and limits the capacity of the regulator to enforce its regulations. In several cases, regulators followed the political lead in approving tariffs or regulated prices.
4. Ukraine and Georgia use currently a single buyer model for electricity markets. This is a suboptimal design, as it restricts the possibility of electricity producers to conclude freely contracts with suppliers and of suppliers to purchase from generators. It also allows for the accumulation of arrears if regulated prices are not full cost recovery. By contrast, Moldova follows a market design with unrestricted competition between generators and suppliers in the wholesale market and between suppliers in the retail market.
5. Ukraine and Georgia have fully regulated prices for wholesale and retail energy markets, whereas Moldova procures (relatively) competitively electricity from imports. Tariffs for networks in Georgia and Ukraine are cost plus, which stimulates inefficiencies. Regulated energy prices in Georgia are based on marginal price regulation. At the same time, Moldova uses price caps for network tariffs, closer to international good practices, and does not regulate generation prices (except for the cogeneration), though this is because its energy is imported and prices cannot be regulated for imported supplies. Regulated prices in Georgia and Ukraine allow for cross-subsidization, unlike in Moldova, while allowing for the accumulation of arrears.

ROMANIA

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The assessment on Romania is an update to the previous 2010-2014 evaluations of the Romanian energy regulator ANRE[5]. 2012 represented a turning point for the energy regulator ANRE, with the adoption of a new law transposing the Third Energy Package and the consistent monitoring of international partners (mostly IMF and EC) for the actual implementation of energy sector reforms in 2011-2013. Between 2014-2017, EC's monitoring and good performance in the criminal justice sector supported indirectly the reforms in energy, e.g. by eliminating from the market several large vested players (energy traders and large consumers) who opposed market liberalization and a strong regulator.

While the period by 2016-2017 was one in which ANRE improved its credibility and consolidated its independence, at the end of 2017 there have been political pressures on the regulator, culminating in new non-competitive appointments and even direct threats that some of the critical functions of the regulator (market monitoring, monitoring of distribution companies) would be moved from ANRE to the Ministry of Energy. The effects of the latest appointments in ANRE's board in terms of regulatory independence and professionalism would become visible in 2018. It must be noted that ANRE has not been alone in this situation and that the politicization trend in Romania has been much broader in 2017. There were attempts to politicize in 2017 many independent regulators through appointments and/or legislative changes (Court of Accounts, financial services, communications, even the Competition Council). Similar developments took place in state owned companies, where the Government did not organize competitive selections of managers as required by the law for those whose mandates came to term. On the contrary, there are legal initiatives in Parliament to eliminate from the existing legislation the requirement for such competitive selections in boards of state owned companies.

In 2016-2017, ANRE faced a new challenge: the liberalization of electricity and gas markets, including for households, offloaded from ANRE the task of regulating energy prices, but enhanced the need to ensure consumer protection and inform consumer choice. ANRE met only partially this new task, as it provided instruments such as price comparators, but could not inform effectively the consumers about potential contractual "traps", consumer rights in a competitive market etc. The regulator adapts to changes in the environment, but with some difficulties, in particular, in very new areas of regulation, such as: prosumers, smart metering roll-out, new market instruments for electricity and gas, or the recently acquired task of regulation of district heating.

The few recommendations for improvement suggested at this point are also summarized in the table below.

[5] Detailed reports and short policy briefs are available at: http://expertforum.ro/en/energy-watchdogs-what-to-do-in-your-country/

Assessment Table - Scorecard

	Romania		In charge	Recommendations
	2016	2017		
GOVERNANCE				
Independence				
Budget and subordination			Parliament	Abandon "investigation committee" practice
Changes in management			Parliament	Competitive, transparent selection only based on law
Informal political pressures			Parliament	Abandon "investigation committee" practice
Relation with the regulated sector			ANRE	Develop needed competencies in house
Accountability				
Reporting and confirmation/verification of management			Parliament/ANRE	Abandon "investigations" on previous yearly reports
Accountability to consumers, industry, public			ANRE	Transparency on data (e.g., market monitoring)
Financial and audit			ANRE/Court of Accounts	Court of Accounts to focus only on ANRE's finances
Ethics and implementation of rules			ANRE	Transparency on ethics committee activity
Transparency				
Publishing decisions			ANRE	No data on district heating
Effective consultation			ANRE	No regulation without proper impact assessment
Responses on FOIA requests			ANRE	Provide comprehensive response
Predictability				
Consistency and motivation of regulations			ANRE	Abandon "ad hoc" regulation without proper impact assess
Adapting to environment			ANRE	Forward-looking regulations for new energy developments
SUBSTANCE				
Tariffs and prices				
Economically efficient			ANRE	No data on district heating
Periodic reassessments			ANRE	District heating, cogeneration bonus not reassessed
Monitoring markets, granting licenses				
Capacity to penalize breaches of regulation			ANRE	Monitor effect of penalties in behavior of regulated industry
Transparent criteria to grant / withdraw licenses			ANRE	N/A
Consumer protection, management of complaints			ANRE	Consumer information - contractual terms

- Unsatisfactory
- Moderately satisfactory
- Good
- Good practice
- N/A or no data

GOVERNANCE

Independence

Budget and subordination

According to Law 160/2012, ANRE is financed through fees from the regulated industry. The regulator has full control over the allocation and use of its budgets, and its accounts can be checked by the Court of Accounts. ANRE is not subordinated to any other public institution such as Government or Parliament, though the Parliament can control the functioning of the regulator through investigations, questioning in Parliament and discussion on ANRE's annual reports. ANRE is however reluctant to use budgets to contract out critical matters such as consultancy in areas where it lacks expertise, for fear of investigations of the Court of Accounts. Salaries are rather high and the regulator has been excluded from the Unitary Pay Law, along other regulators.

Changes in management

Since 2012, there have been no mid-term replacements of the members of the Regulatory Board, a substantial improvement compared to previous years when "voluntary resignations" were the norm at the changes in political structure of the Parliament. However, two of the positions in the regulatory board remained vacant in 2015-2016 and the Parliament could not organize a proper procedure to select competitively the new members. The procedures initiated were cancelled following contestations from the media about the non-transparency of the process[6]. In 2017, the mandates of two more members (out of 7) expired. As the law does not allow for the extension of existing mandates without the competitive procedure, by October 2017 ANRE would have remained without a quorum for regulatory board decisions, with only 3 out of 7 positions filled. Instead of organizing a competitive selection procedure, as required by the law, the Parliament initiated in summer an investigation through a special committee. The investigation committee had the mandate to analyze the activity of ANRE, based on the pretext of two price spikes in January and July 2017. The investigation went beyond the original scope (e.g., it analyzed also ANRE's activity before 2017, though the Parliament had reviewed with no objections ANRE's annual reports) and became in fact a pressure mechanism to politicize the selection of the new members. The newly appointed members do not have the professional background to work efficiently and independently as regulatory board members.

Informal political pressures

The Parliament's investigation on ANRE's activity can be considered an instrument to put pressure on the regulator before the appointment of the new leadership. The main point of contention during the investigation, apart from the official explanation of examining the price spikes on the electricity exchange in January and August, was the liberalization of the gas market[7], which ANRE had supported actively against opposition from the Parliament. During 2017, the Minister of Energy also made statements against the regulator, arguing that certain functions of the regulator should be taken over by the Ministry, in particular the monitoring of the energy market and the investments made by distribution companies[8]. ANRE reacted promptly by stating that the political control over the regulator would trigger an infringement procedure from the European Commission. Before the appointments at end-October, ANRE proved actively its independence by reacting promptly against

[6] http://evz.ro/lupta-in-parlament-pentru-pozitii-cheie-in-autoritatea-care-ne-decide-facturile-la-energie.html?&page=2

[7] https://www.profit.ro/povesti-cu-profit/energie/comisia-de-ancheta-anre-solicita-parlamentului-prelungirea-termenului-de-depunere-a-raportului-cu-30-de-zile-17382652

[8] http://cursdeguvernare.ro/conflict-intre-ministrul-energiei-si-anre-guvernul-acuzat-de-manipularea-pietei-prin-preluarea-unor-atributii-ale-autoritatii-de-reglementare.html

any interference from Government and Parliament; it remains to be seen whether the new leadership would remain as independent as before.

Relation with the regulated sector

In recent years, ANRE sought actively to reduce tariffs for distribution, both gas and electricity, by checking in detail the justified costs of the regulated companies[9]. It has also pushed the liberalization of the gas and electricity markets, including by actively promoting the rights of consumers to switch suppliers. This generated some tensions with the regulated suppliers, who would have rather retained a guaranteed, safe share of the household market, at regulated prices. They lobbied strongly in Parliament for the delay of the liberalization, arguing that prices for households would increase significantly, by some 30-35%. ANRE reacted publicly and in Parliament, arguing that liberalization of the gas market would cause only minimal price increases (5-6%), whereas the increases of 30-35% would take place only if ANRE approved tariff adjustments of 40% requested by the same distributors who opposed liberalization[10].

One particular concern on ANRE's relation with the regulated sector is the dramatic reduction of competencies in ANRE during 2005-2011. In those years, ANRE lost its standing as an independent, credible regulator, lost its budgetary independence and, following a reduction in salaries of 60-70%, many qualified professionals sought employment in the private sector, at the regulated companies. We highlighted in the second assessment in 2011 that ANRE was not capable to adjust tariffs[11] - because it simply did not have specialists to take the responsibility of regulation in this matter. Under these circumstances, the major risk was that staff in ANRE would still rely informally on professional advice from former colleagues, now working in the regulated industry. This practice became evident during an investigation of the anticorruption prosecutors' office DNA that discovered informal talks on regulations concerning one company between a former director of ANRE working in the company and ANRE's vice-president[12]. The courts decided in the end that this case was not criminal, but the matter put in the spotlight ethics principles that should govern a regulator. In response, ANRE prepared a code of ethics, though this has not proven very effective in practice.

Accountability

Reporting

ANRE publishes annual reports that are reviewed by Parliament, but without any possibility to replace the management through a mechanism of dismissal by rejection of the annual activity report. Under Romanian circumstances, this is actually positive, considering that in other institutions, where the leadership could be changed mid-term by the rejection of the annual report, the mechanism has been abused to politicize the institution, and not to hold it accountable[13]. In response to the Parliamentary pressures in 2017, ANRE published an oversized report, containing much more information than usual about its activities, but also about results of internal evaluations

[9] E.g., http://www.economica.net/tarifele-de-distributie-a-energiei-electrice-vor-scadea-din-nou-unde-va-scadea-cel-mai-mult-factura-la-curent_129558.html
[10] http://www.contributors.ro/economie/de-ce-nu-trebuie-amanata-liberalizarea-pie%C8%9Bei-de-gaze/
[11] http://expertforum.ro/en/files/2012/11/ANRE_Rpt2_EN.pdf
[12] https://www.revista22.ro/cazul-anre--enel-procurorii-nu-pot-face-totul-43665.html
[13] A case in point is the Romanian public television. The Parliament discusses annual reports only whenever it wishes to change the management politically – e.g., in September 2013, the Parliament reviewed both the 2011 and 2012 annual reports, approved the 2011 report, rejected the 2012 report and changed the management. http://stirileprotv.ro/stiri/politic/plenul-parlamentului-dezbate-raportul-de-activitate-al-televiziunii-publice-stelian-tanase-se-asteapta-sa-fie-demis.html

of regulations adopted in the previous years. The lower score for this item in 2017 reflects the poor performance of the Parliament in holding the regulator "accountable" not as a form of interfering with its independence, but as a real mechanism of improving the responsibility of ANRE.

Accountability to stakeholders

In recent years, ANRE has become more open to organize actual debates with stakeholders and invite feedback on critical regulations, partly because it perceived the public, media and NGOs as a potential ally in some reforms heavily contested by the incumbent players, such as traders, large industrial consumers, distributors, regulated suppliers, state owned companies. ANRE generally reports more clearly and efficiently on its activities than in the past (with the notable exception of district heating, a new function it has acquired in 2017). ANRE also has a Consultative Council composed of representatives from the key stakeholders (consumers, producers, local administrations etc.). This body is used better than before 2011, when the council was simply not convening and it was not consulted on regulations on a consistent, systematic basis.

Financial and audit

Data on financial accounts is published in ANRE's annual report and is more comprehensive than in the past, when the regulator was simply presenting the approved budget and budgetary execution. The financial report provides information detailed enough for a proper evaluation of the regulator. However, the financial statements are still not audited by an external auditor. ANRE asked another control public institution to audit some of its internal processes (internal audit, IT, procurement, EU funds management). One encouraging aspect is the reconstruction of the internal audit department, which had been simply dismantled before 2011.

One issue that could affect the regulator's independence is that the Court of Accounts sometimes goes beyond its competence and capacity (to check the financial accounts of the regulator) and starts investigating highly technical matters that are under ANRE's responsibility and competence. For example, the Court of Accounts issued a report arguing that distributors have not made investments and end-user tariffs have been unduly increased; the report was publicly contested by ANRE[14]. This was just one case of many. While this incident is not necessarily an indication of political or other form of intentional pressures, such institutional excesses can affect the regulator's independence.

Ethics

As a response to the corruption investigation in 2014 involving a vice-president and a former director in ANRE now working in the regulated industry, the regulator prepared and published a code of ethics. This took place rather in a rush, as a reaction to the public scandal. The code prescribes acceptable behavior from ANRE's staff, but is rather general. Effective internalization of ethics values requires discussion and training with the staff, as well as discussions with other institutions (e.g., with the integrity agency). Considering that many former ANRE staff and former colleagues of ANRE's current employees now work in the regulated industry, ethical issues will continue to arise. Some changes, e.g. in what should be deemed acceptable in the relations with the regulated industry, would have to be gradual and well thought through. However, the fact that there is such a code is in itself a good starting point, as a guideline for staff to deal with difficult situations.

The law on ANRE in 2012 introduced explicit incompatibilities and conflicts of interest, e.g., the interdiction of leadership to own shares in the regulated industry (which had been an issue in the

[14] http://economie.hotnews.ro/stiri-energie-20948517-anre-despre-raportul-dur-curtii-conturi-privind-piata-energiei-auditul-nu-prezinta-concluzii-actualizate-obiective-redus-drastic-tarifele-distributie.htm

past). There is little evidence that there have been cases of effective sanctions for breach of ethics inside the regulator.

Transparency

Publishing decisions

All decisions and orders of the regulator are published on electricity, gas, energy efficiency. Each new draft order is also published for stakeholder and public inputs on the website before approval and implementation. However, since the beginning of 2017, ANRE has taken over the regulation of district heating from the local utilities regulator ANRSC. There is little evidence on ANRE's website that it really meets this new role, as no orders nor decisions on this sector have been published during 2017.

Effective consultation

In recent years, ANRE's openness to stakeholders and active request for inputs in a transparent manner have improved. However, there are still cases in which the regulator acts rather ad hoc, reacting to various pressures from different stakeholders, but does not have enough data, or inputs, or capacity to issue a regulation and is rather pushed into making a decision. One case in point was the regulation for the roll-out of smart metering in electricity by 2020, for which ANRE should have issued an order in 2017 (based on self-imposed deadlines and on a deadline in the primary law). The roll-out is actively pushed for by some stakeholders and opposed by others. To meet its internal deadlines, and possibly at the demand of some stakeholders, ANRE proposed a draft Order for the roll-out without an impact assessment (for lack of data), then withdrew it following complaints from other stakeholders. The question of the roll-out remains suspended to this day. Particularly in areas where ANRE has little data or prior expertise, it is more vulnerable to various influences from stakeholders and has limited capacity to challenge.

Another matter of concern is the delay with which ANRE publishes market monitoring or items such as evaluations of the effects of its previous regulations. For example, data on the gas market is published with one-year delay (e.g. in October 2017 for October 2016), though the reporting is minimal. From discussions with ANRE, part of the problem is the difficulty with which ANRE itself manages to collect data from the regulated sector, although it is empowered by legislation to have unrestricted access to all information it requests from the regulated industry.

Responses on FOIA requests

ANRE's capacity to respond properly to FOIA requests is good and has improved since the beginning of the assessment in 2010. However, the regulator is very wary of providing additional information from what is already published on the website (e.g., on our request about the status of implementation of the smart metering pilot projects ANRE referred us to the reports and data already published on the website and did not offer the additional details).

Predictability

Consistency and motivation of regulations

Certain major regulations (network tariffs in regulatory periods, market development and liberalization etc.) have become more predictable in recent years. There are however cases of ad hoc attempts at regulating certain issues, such as the example of the smart metering roll-out mentioned above. In particular, ANRE encounters difficulties in regulating new areas in which there is little prior experience and/or where the primary legislation is also quite inconsistent (smart metering; prosumers; tenders for electricity for suppliers of last resort etc.). Ad hoc regulation is also caused by the fact that ANRE has been required by law to issue in record time an excessive amount of regulations compared to its capacity to properly collect and analyze data, evaluate policy options

and have consistent consultations with all stakeholders involved – e.g., for the implementation of the Third Energy Package, which was transposed very late – in 2012 – in primary legislation. The fact that ANRE cannot issue all the planned regulations can be observed by comparing successive regulatory plans, in which delays can be identified (e.g., preparation of the third regulatory period in 2012, gas network codes etc.).

Adapting to environment

See above: ANRE seeks to adapt to new developments in the environment, though it is constrained by gaps in the primary legislation and by the overload of regulations needed to catch up with the proper implementation of the Third Energy Package.

SUBSTANCE

Tariffs and prices

Economically efficient

Before the liberalization of the energy markets, in 2012-2017, regulated prices have been full cost recovery and instances of deferred revenues in the distribution tariffs or unrecognized costs of gas supply, which formed a substantial part of our previous assessments, did not occur again. Since the deregulation of the electricity and gas market for both industry and households in 2017, ANRE focuses on its core regulatory matter concerning tariffs: setting network tariffs at levels that are cost-recovery, but economically efficient. Indeed, ANRE's capacity to recognize only justifiable costs has been improved (e.g., ANRE encouraged distributors to purchase equipment by tenders to minimize costs while maintaining quality). Tariffs for networks (transport, distribution of electricity and gas) are based on best practice standards. There are some improvements that could be done in future regulatory periods to optimize network development (e.g., shifts between categories in the price basket cap for electricity distribution to prioritize investments in the low voltage network for reduction of losses), but most of these issues are comparable to challenges faced by other modern regulators.

Periodic reassessments

While tariffs for networks are periodically reassessed, as explained above, two other items under ANRE's responsibility fail to meet this requirement: the cogeneration bonus scheme, which should have been updated or renewed by 2015-2016, and the tariffs for district heating, which have been taken over from the local utilities regulator ANRSC and for which there is little evidence that ANRE has the capacity to perform proper assessments.

Monitoring

Capacity to penalize breaches

ANRE issues sanctions for certain breaches of regulation which range from fines to withdrawal of licenses or authorizations, in extreme cases. The value of penalties increased significantly in 2014 and 2015 compared to previous years. Most penalties were related to attempts to block supply switching; abusive practices in invoicing of electricity and gas; irregularities in trading on the power exchange; performance indicators for distribution etc. Unfortunately, ANRE does not monitor distinctly the effect of such penalties, whether they dissuade the behavior of the ones in breach or not. ANRE's capacity to penalize breaches could be put to stress in the following period, after the full liberalization of the energy market, where incumbent suppliers might use anti-competitive practices to foreclose the markets.

Granting and withdrawing licenses

ANRE's procedures for granting and withdrawing the licenses are quite transparent and non-discriminatory. The fact that such decisions could be contested in courts contributes to the fairness of the process of granting or withdrawing a license.

Petitions and consumer protection

The regulator's response to complaints from consumers has improved in recent years. However, this activity will become more challenging once the electricity and gas market have become fully liberalized since 2017. To facilitate the consumers' access to information, ANRE posted on its website price comparators for electricity and gas which allows consumers to find better offers from different energy suppliers. ANRE could do more to facilitate the understanding of household consumers of contractual conditions or contract "traps" in the competitive market, particularly as incumbent suppliers benefit from the poor information of small consumers.

GEORGIA

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Executive Summary

Since its establishment in 1997, the Georgian Energy and Water Supply regulatory Commission (GNERC) has significantly improved its reputation as an independent regulator not controlled by any state institution. The Commission is independent in its activities and is subject to the Legislation of Georgia. GNERC is the only regulator responsible for energy and water supply sector and is fully funded from regulatory fees.

While commissioners do not have visible relations with political parties or past political experience there are some improvements needed in the process of appointing commissioners, considering the fact that today the candidate selection is non-transparent and requirements are not well described.

A critical issue concerning GNERC consists of legislative drawbacks that are not in line with the EU directives and impede GNERC to implement its functions. For example, in 2006 the market structure in Georgia has substantially changed and an important part of sector regulatory functions have been transferred to the Ministry of Energy. These functions include the approval of electricity market rules, approval of electricity (capacity) balance, and approval of 10 year electricity Transmission Network Development Plan etc. Implementation of these plans are responsibility of GNERC, so the commission is monitoring the plans it did not approve.

GNERC is in better condition in regard with accountability and transparency issues. It regularly publishes annual reports on its activities, financial reports and reports about the freedom of information. The Commission held public hearing sessions and most of the decisions are made with public participation and stakeholder involvement. In addition to public hearings, the website also provides the users with the information on how to register as an electricity or gas consumer, what are the tariffs, how to increase supply capacity, etc. There are on-line forms available for customers to comment these issues. Tariff components by each regulated enterprise are also transparent.

The Commission is implementing the monitoring of adopted regulations and has permanent consultation with stakeholders to assess the impact of the regulation. If the commission sees that the regulation is overburdening or has some other problems, it makes amendments to the regulation.

As mentioned above, the commission sets tariffs annually, individually for each utility which are in force for a 1-year period. In 2015 a new methodology was developed under the Twinning program funded by EU in cooperation with Austrian Energy regulator E-Control. GNERC starts to calculate electricity tariffs once in 3 years. This creates better conditions for consumers as tariffs will be more predictable. Natural gas sector is more complicated, but some improvements have been made in this respect as well. To ensure compliance with the requirements foreseen by the primary and secondary legislation, GNERC has the right to carry out inspections of regulated undertakings. According to the Administrative Offences Code, amount of the penalty in case of non-compliance with the licensing terms and conditions determined by GNERC is not often adequate and needs to be changed.

In 2016 the commission resolved 4085 disputes. The number of disputes has increased compared to previous years. This means that on the one hand, awareness of the public has been raised and they know how to address the issues, but on the other hand, this also indicates the problems in the sector. According to GNERC, the work on improvement of Electricity Supply and Consumption Rules is carried out, which is intended to notably decrease the number of disputes.

Assessment Table - Scorecard

Georgia - Georgian National Energy and Water Supply Regulatory Commission (GNERC)	2016	2017	In charge	Improvement measures
GOVERNANCE				
Independence			Parliament	Transfer the following functions to the GNERC from the Ministry of Energy: Approving the power and gas market rules; Approving the 10 year power network and gas transmission infrastructure development plans;
Budget and subordination			GNERC	
Changes in management			President, Government and Parliament	Clear and fair selection procedures, competences and criteria
Informal political pressures			Parliament	Repeal the legislative amendment initiated by the Ministry of Energy
Relation with the regulated sector			GNERC	
Accountability				
Reporting and confirmation/verification of management			GNERC	
Accountability to consumers, industry, public			Parliament	
Financial and audit			GNERC	
Ethics and implementation of rules			GNERC	The regulator has to elaborate its own code of ethics, which must be applied in practice. GNERC should strengthen its effort in monitoring and reporting the fulfillment of the requirements under the Law on National Regulatory Authority (article 15)
Transparency				
Publishing decisions			GNERC	
Effective consultation			GNERC	
Responses on FOIA requests			GNERC	
Predictability				
Consistency and motivation of regulations			GNERC	
Adapting to environment			GNERC	
SUBSTANCE				
Tariffs and prices				Reapl the Decree #69 of the Minister on Deregulation and Partial Deregulation of Natural Gas Supply Activity, and tariffs for all household consumers shall be set by GNERC.
Economically efficient			GNERC	Gas tariff methodology needs improvement
Periodic reassessments			GNERC	
Monitoring markets, granting licenses				
Capacity to penalize breaches of regulation			GNERC	
Transparent criteria to grant / withdraw licenses			GNERC	Effective and fair penalties
Consumer protection, management of complaints			GNERC/Energy Ombudsman	

- Unsatisfactory
- Moderately satisfactory
- Good
- Good practice
- N/A or no data

GOVERNANCE

Independence

The Georgian National Energy and Water Supply Regulatory Commission (GNERC) was established as an independent regulator under the law „on Electricity" adopted by the Parliament of Georgia, on June 27, 1997. The first members of the Commission were assigned by the Decree of the President of Georgia on August 8, 1997. The Commission has been regulating the electricity sector since 1997 and the gas sector since 1999 based on the law on Electricity and Natural Gas. The status of GNERC as an independent regulatory authority is also guaranteed by the law on Independent National Regulatory Authorities, which was passed by the parliament in 2002.

Budget and subordination

Today GNERC's authority applies to the companies in the electricity, natural gas, and water supply sectors. The authority itself is defined by the Law on Electricity and Natural Gas, and the Law on Independent National Regulatory Authorities. According to these legal acts, the Commission is a Legal Entity of Public Law with special capacity, which is not controlled by any state institution. The Commission is independent in its activities and is subject to the Legislation of Georgia. The main source of funding of the Commission is a regulatory fee, which is associated with the public and independent exercise of regulatory functions in the sectors under its jurisdiction, according to the legislation of Georgia. The Commission can also be funded from the state budget and can receive grants. However, no state funding has been recorded in any form of the state budget.

The Commission is completely separated legally from other regulatory bodies (Georgian National Communications Commission and Competition Agency) and does not cover their activities. However, there are some legislative drawbacks that are not in line with the EU directives and impede GNERC to implement its functions. For example, in 2006 the market structure in Georgia has substantially changed and important part of sector regulatory functions have been transferred to the Ministry of Energy (approval of electricity market rules, right of deregulations, approval of electricity (capacity) balance etc). In 2013, the Transmission System Operator and the Ministry of Energy were identified as responsible bodies for developing and approving the electricity Transmission Network Development Plan, while, market monitoring and monitoring of the ten year plan are being implemented by the GNERC.

Changes in management

According to the commission charter and the law on electricity and natural gas, the commission consists of 5 members. The candidates are nominated by the president agreed with the government and presented to the parliament which approves them for a 6-year term. The commission has a chairman and an executive director (not a member of the commission).

After assigning the authority for water regulation, the number of commissioners was increased to 5 instead of 3. However, over several years, the commission was understaffed and the seats of two additional commissioners remained vacant. Earlier in 2015, the Government has rejected the president's nominees twice. The commission with 2 acting members is not authorized to make decisions, on 6 October 2015 the mandate of one of the three members of the commission expired, and the new commissioner was not appointed until 27 October 2015, GNERC was unable to adopt any decision for over 20 days.

The reasons and consequences of the commission being represented by 3 members are unclear. Either the commissioners were overloaded, or they could not implement the regulatory functions in all sectors fully. To clarify this would require additional analysis.

The selection criteria for potential commissioners are limited to the mandatory requirements listed in the Law on Electricity and Natural Gas, according to which a candidate must be a citizen of Georgia with higher education and sufficient qualification and experience to carry out the tasks foreseen by the law. The requirements are broad and not elaborated any further. In addition, there is no legal requirement to publicly announce the vacancy for the position of a commissioner, and no such announcement is made in praxis. There is no legal requirement for transparency in the selection. A commissioner may be re-elected for another six-year term. The number of re-elections is not limited, which is not in line with the acquis. Furthermore, the law ensures that the end dates of the commissioners' term continue to be different by requiring that if a position of a commissioner becomes vacant prior to expiration of the term, a new commissioner should be elected for the remainder of the term.[15]

Today the commissioners do not have visible relations with political parties or past political experience which is a significant step forward considering the fact, that in previous period, the commissioners have been appointed due to their political loyalty and affiliation.

Informal political pressures

As mentioned above, GNERC is independent in its decisions and apparently does not get instructions from the Government or the Ministry of Energy, but GNERC shares certain competences of national regulatory authorities foreseen by the acquis with the Ministry of Energy. The ministry is responsible for the approval of electricity and natural gas balances. Furthermore, the Law on Electricity and Natural Gas confers the right to approve market rules to the Ministry of Energy both in the electricity and natural gas sectors. The market rules are the main document regulating wholesale markets and various issues related to their functioning, including congestion management, balancing and capacity allocation for cross-border transmission lines[16].

During the pre-election period in 2012, the main opposition party (Georgian Dream) promised to cut down the electricity and gas tariffs in half. After winning in elections the party said that halving the tariffs was unrealistic[17], but in January 2013, the GNERC reduced the tariff by 0.035 GEL for the residential customers consuming less than 300 kWh/month, and by 0.027 GEL for those consuming more than 300 kWh/month based on the Memoranda of Understanding (MoU) between the Government of Georgia and energy companies[18], for legal entities, the tariff has remained the same[19].

Relation with the regulated sector

According to the law on Independent National Regulatory Authorities, the commissioners and members of their family, as well as staff members of the regulator shall not have any direct or indirect economic interest in the license holder, or to hold any position in a licensed company, also

[15] Energy governance in Georgia – Report of Compliance with the Energy Community Aquis, Energy Community Secretariat, July 2017
[16] Energy governance in Georgia – Report of Compliance with the Energy Community Aquis, Energy Community Secretariat, July 2017
[17] https://goo.gl/6XxZ26
[18] http://gnerc.org/uploads/dad2013/dadgenileba_3.pdf
[19] http://factcheck.ge/article/irakli-gharibashvili-3-tslis-tsin-tariphis-shemtsirebith-daizoga-chveni-mosakhleobis-daakhloebith-150-mln-laramde-thankha-es-aris-is-thankha-rasats-mosakhleoba-zedmetad-ikhdida-tslebis-ganmavlobashi/

commissioner and the staff member does not have the right to receive a gift from a person or organization, on which the powers of the national regulatory authority extends, or to benefit from the same person's or organization's preferential or free services, except in cases where the service is publicly available (Article 15).

Recommendations

- Energy regulator should be equipped with all necessary regulatory authority recommended by the EU energy legislation. Therefore, it is recommended to change the existing legislative base and transmit the following functions to the GNERC from the Ministry of Energy:
    - Approving the power and gas market rules;
    - Approving the 10-year power network and gas transmission infrastructure development plans;
- Repeal the legislative amendment initiated by the Ministry of Energy according to which, after the expiry of the term, the Commissioner's authority will continue until a new member is elected. This violates the principle of rotation.
- To avoid possible disagreements among president, government and the parliament on the selection of the commissioners there should be clear and detailed selection procedures, competences and criteria.

Accountability

Reporting and confirmation/verification of management

The law of Georgia on Electricity and Natural Gas defines the accountability requirements of the commission, according to which the Commission shall prepare the annual activity report and present it to the President of Georgia, the Georgian Parliament and the Ministry of Energy. The report must be accessible to the general public until April 1st. (article 21). The Commission shall also prepare and publish an annual financial report reflecting amounts of the regulatory fee received and the Commission's expenses during the year, as well as the loans taken during the year and other funds used by the Commission. The Commission ensures the promulgation of its financial report (Art. 20).

The GNERC regularly publishes annual reports according to the law. The content of the annual report is improving gradually, for example, 2016 report provides the detailed description of electricity and gas markets as well as vast information on ongoing and planned activities in the regulated sectors. The report also contains the information on dispute settlements, international relations, publicity of information, budget expenses etc.

The Commission provides consumers with detailed instructions on network access, capacity increase, payment of accrued fees and other rules on electricity and gas sector.

Accountability to consumers, industry, public

The GNERC shall be fully compliant with the freedom of information requested by Article 49 of Chapter III of the General Administrative Code of Georgia. The Commission is obliged to issue the requested information immediately or within 10 days.

Communication with the public was one of the main priorities of the Commission during 2016. The aim of the Commission is to inform timely all interested individuals, organizations and media outlets on important ongoing issues, it concerns the various activities implemented by the Commission as well as the protection of consumer rights in electricity and natural gas sectors.

Financial and audit

According to the article 5 of the Charter of GNERC, the main source of the Commission's Budget is the regulatory fee paid by regulated entities. The Commission can also be funded from the state budget and can receive grants.

The regulatory fee shall be transferred to the bank account of the Commission. The Commission exclusively manages funds in the bank account. Unused funds will be transferred to the account of the following year, with a corresponding reduction of the regulatory fee for that year. If necessary, the Commission may take loans. The repayment of principal and interest is made from the regulatory fees.

As mentioned above, according to the law of Georgia on Electricity and Natural Gas, The Commission shall also prepare and publish a financial report of the past year reflecting the amounts of regulatory fee placed on the Commission's account and the Commission's expenses from this account during the year, as well as the loans taken during the year and other funds used by the Commission. The control over the fiscal activities of the Commission shall be exercised by the competent authorities in accordance with the Georgian legislation in force, including by an independent auditor selected based on open tender by the Commission.

The commission does not publish the financial report as a separate document, but in the annual report a special chapter is dedicated to the budget and its performance parameters. This chapter has been improved in comparison with previous reports and includes information on revenues by sectors (annually and quarterly) and expenses by different parameters, including: Purchase of goods, services, insurance, membership fees, salaries, business trip, etc. The report also shows the dynamics of expenditures over the previous years and explains the reasons for the incompatibility of the existing budget with the planned budget.

In 2014 GNERC started publishing independent auditor's reports. During the last 3 years, audit has been carried out by the same audit company, according to which, the financial statements fairly reflect the financial situation of the GNERC. The audit company is being selected based on the tender. Information on procurement and tenders is available on the website of the Commission. The tender is announced electronically.

Ethics and implementation of rules

The existence and public availability of the Code of Ethics is important for the credibility of the Commission. It is necessary that the Commission members and staff receive guidance on predefined instructions when it comes to the decisions, potential conflict of interests etc. It is important that the regulator describes and analyzes these issues in a very detailed and transparent manner.

In the case of GNERC, the ethical norms are defined in the Law on National Regulatory Authority (article 15) which indicates the information about the inappropriate behavior of the commission members and staff (Membership of political organizations, holding shares in regulated companies, receiving gifts from license holders etc.)

On April 8, 2003, the Georgian National Energy Regulatory Commission approved the "Rules of Professional and Ethical Behavior of Commission members and employees", which further clarifies the issues related to the behavior of commission members and employees.

In 2015 Transparency International (TI) Georgia was studying whether GNERC has a department responsible for investigating conflict of interest of its employees, TI requested the information on violation of norms of ethics determined by article 15 of the law in 2010-2015.

The commission responded, that the law does not require it to set up a department responsible for investigating conflict of interests among its employees. The commission reported that in 2010-2015 there were no cases or attempts of improper influence or illegal interference, and no violation of ethic norms. Therefore, during the same period, none of the decisions made by the GNERC have been overturned due to the improper influence or illegal interference.

Despite this response from the commission, several non-governmental organizations have raised questions about conflict of interests within GNERC.[20]

There was no change in this regard in the Commission. The Commission does not have the Code of Ethics and is guided by the requirements set by the law, but there is no Committee or a separate group that will monitor the fulfillment of these requirements.

Recommendations

- The regulator must elaborate its own code of ethics, which must be applied in practice (e.g., avoidance of conflicts of interest, rules of conduct in sensitive situations etc.);
- It is recommended GNERC to strengthen its effort in monitoring and reporting the fulfillment of the requirements under the Law on National Regulatory Authority (article 15);

Transparency

Publishing of Decisions

In terms of transparency of GNERC, the rule of publication of decisions and the public hearings is respected. On the website of the Commission there are separate sections for public hearings and public information, which provide detailed information about the decisions made or about planned activities. Once a week (on Thursday) The Commission holds Public Hearing sessions. The agenda is published on the www.gnerc.org 7 days before the hearing. The Commission's sessions are open to the public and any interested person may attend.

In addition to public hearings, the website also provides the users with the information on how to register as an electricity or gas consumer, what are the tariffs, how to increase supply capacity, etc. The corresponding forms are available for the customers to submit statements on these issues. The tariff components by each regulated enterprise are also transparent.

Effective consultation

According to the Article 12 of the law of Georgia on Electricity and Natural Gas, all resolutions and decisions, orders, records, and other documents of the Commission shall be accessible for public examination. However, until specific decisions are made, the Commission is actively consulting with both license holders and other contracting parties, as well as other stakeholders. According to the Article 16 of the same law, Rules for meeting of the Commissioners and staff employees with stakeholders shall be established by the Commission. Pursuant to these rules, a Commissioner shall notify in writing and in advance the stakeholders of such consultations and provide them with an opportunity to take part in the consultations.

At present, the involvement of stakeholders and consultations in the decision-making process is an accepted practice, the commission discusses the issues publicly as well as with smaller groups of

[20] http://www.transparency.ge/en/post/report/implementing-georgia-s-anti-corruption-laws-practice-remains-problem

experts and stakeholders. There is a special timeframe for interested parties to comment on draft regulations created by the commission and the final decisions are also published online.

Decisions may be appealed to the court but, considering the engagement and consultations in the decision-making process, such practice is quite rare.

Responses to FOIA requests

Every year GNERC publishes a report on issuing public information, the report describes what kind of information was requested from the commission and whether the requirements were fully satisfied or not. Most requested information is fully satisfied, several requests are satisfied partly and in this case the reasons are explained. There are only a few cases when the Commission refused to give the information and in this case the reasons were explained.

In 2013 the Institute for Development of Freedom of Information (IDFI) was requesting an information from GNERC on Employees' payment and bonuses. The Commission did not issue this information arguing that GNERC is an independent body, not financed from the state budget and thus is not obliged to provide an information on Employee salaries and that this information is confidential. IDFI appealed this decision to the court but the court did not satisfy the complaint, explaining, that according to Georgian legislation, GNERC employees (except for the members of the Commission and the Public Defender of Consumers' Interests) are not public servants who are obliged to present their income and asset declarations. The inquiry would possibly result in disclosure of their financial data, which is not rightful without the consent of these persons. IDFI on the other hand was arguing that this information should have been public, and it would not disclose the personal information.[21]

The situation has improved since 2013. In 2015 IDFI gave a Special Award to the Commission for ensuring availability of public information. In the IFDI report concerning the status of freedom of information in Georgia in 2010-2015 years, it was noted that GNERC made the best progress in regard of information availability indicators.

Predictability

Consistency and motivation of regulations

It is crucial that regulations are precisely defined, which will make the regulator's activity predictable. For the full implementation of the Commission's work, it is also necessary to review the tariffs regularly and make changes if necessary.

The legal basis for the commission in calculating electricity tariffs for regulated utilities operation in the electricity sector is “Tariff Setting Methodology for Electricity Distribution, Pass Through and Consumption Tariffs” and “Tariff Setting Methodology for Electricity Generation, Dispatch and Market Operator Service” approved under the resolution #14 of the Commission of July 30, 2014 “On Electricity Tariff Setting”. According to these regulations, the Commission sets tariffs annually for a particular enterprise. This also refers to gas tariffs.

However, if required, the Commission reviews the tariffs in the course of the year, for example, in 2015, one of the distributor's companies requested the Commission to revise the tariff in the middle of the year due to a significant change in the national currency exchange rate, The Commission did not wait until the end of the year and started the revision process. Such a flexible system allows to adapt to a changing environment.

[21] https://idfi.ge/ge/news-86

Adapting to the environment

The Commission is implementing the monitoring of adopted regulations and has permanent consultation with stakeholders to assess the impact of the regulation. If the commission sees that the regulation is overburdening or has some other problems, it makes amendments to the regulation.

In 2014, the EU funded Twinning project "Strengthening capacities of the Georgian National Energy and Water Supply Regulatory Commission (GNERC) in updating incentive based electricity tariff methodology" significantly increased the knowledge and skills of GNERC management and its staff in the electricity sector regulation with specific reference to incentive based electricity tariffs, benchmarking, data monitoring and management and quality of service regulation in line with the EU Energy Acquis and best practices. The project was implemented by E-Control, the Austrian energy regulatory authority.

In 2016 GNERC introduced the amendments related to micro generation power plants (net metering) to the primary and secondary legislation to support the development of renewable energy sources, enabling retail consumer to generate electricity for own consumption and deliver excess electricity on a bus bar and get the relevant fee in return.

Relations with international organizations

In 2017 GNERC became a member of Energy Regulators Regional Association (ERRA). ERRA is a voluntary organization comprising of independent energy regulatory bodies primarily from Europe, Asia, Africa, Middle East and the United States of America. The Association's main objective is to increase exchange of information and experience among its members and to expand access to energy regulatory experience around the world.[22]

The international organizations play a key role in the improvement of quality of regulation. The USAID and the NARUC significantly contribute to the process of carrying out the Commission's functions. The cooperation with International Water Association (IWA) and the Network of European Service Regulators (WAREG) is also of special importance for GNERC.

SUBSTANCE

Tariffs and prices

Economically efficient

The basis for calculation of tariffs is the Law of Georgia on Electricity and Natural Gas and the Tariff Calculation Methodologies approved by the Commission.

Electricity

The commission sets tariff for 2 distribution, 8 generation (including 4 thermal power plants) 2 transmission and 1 dispatch licensees. The tariff setting based on the new methodology is in accordance with the international practice of incentive regulation principles, which stimulates the increase of the efficiency of the utilities. The main principals for tariffs calculation are as follows:

- protect consumers from the monopolistic prices;

[22] http://gnerc.org/ge/siakhleebi/11428/11428

- stimulate utility to increase its efficiency via optimization of its costs with the requirement not to decrease quality of service standards and technical conditions of the utility;
- support the increase of the utility's' returns by means of increased operational and management efficiency;
- support the stable and reliable functioning of the utility;
- ensure that tariffs are transparent, stable and fair for the utility;
- reflect the state policy with regard to discount tariffs, provided that none of the consumer categories shall receive a discount tariff subsidized by licensee, importer, market operator or any other category;
- reflect different costs between the different consumer categories;
- Cover costs of the utility with funds received from each consumer category in proportion to costs incurred for servicing this consumer category[23].

As mentioned above, the commission sets tariffs annually, individually for each utility and is in force for a 1-year period. In 2015 a new methodology was developed under the Twinning program funded by EU in cooperation with Austrian Energy regulator E-Control.

A three-step electricity tariff scheme is in force in Georgia to promote energy efficiency and to protect vulnerable consumers. The rates depend on how much electricity is consumed by customers per month. The consumers who use more electricity will pay the electricity bill with high tariff. The first-step tariff applies to households which consume less than 101 kWh electricity per month, the second-step tariff to customers who consume between 101 and 301 kWh electricity and the third-step tariff to customers who consume more than 301 kWh of electricity per month.

Natural gas

The transportation and distribution of natural gas represent natural monopolies and this network activity is subject to tariff regulation by the commission. GNERC sets natural gas supply, pass through and consumption tariffs for residential customers connected to gas supplies before 1 August, 2008. Natural gas supply tariff for the rest of residential customers is deregulated according to the Decree #69 of the Minister on Deregulation and Partial Deregulation of Natural Gas Supply Activity. As of 2015, 78,2% of the total amount of gas supplied to household customers were supplied under the tariff set by GNERC, whereas the rest represented the deregulated segment. The decree #69 represents another barrier for GNERC to implement its function effectively. Natural gas supply tariffs for non-household customers are deregulated and are 50-55% higher than regulated residential tariffs. According to the statement of the deputy minister of energy, the "deregulation order" is on the abolition stage, there are some formal procedures to accomplish, after which the Decree #69 of the Minister of Energy on Deregulation and Partial Deregulation of Natural Gas Supply Activity will no longer be in force. [24]

According to the Tariff Setting Methodology for Natural Gas, the tariff setting is in accordance with the "Cost Plus" regulation principle which allows the stable functioning of the utility, recovery of reasonable costs and a fair profit, though unlike incentive-based regulations it could stimulate inefficiencies. Compared to electricity tariff methodology, there is no incentive-based tariff methodology in the gas sector, however the commission is working on this issue and gas tariffs will also be incentive based.

[23] GNERC Resolution N14 on approving Electricity Tariff Calculation Methodologies

[24] http://www.bm.ge/ka/article/bunebrivi-gazis-axali-tarifebi-deregulirebul-abonentebzec-gavrceldeba/13273

This Methodology and the tariffs set on its bases

- Protect consumers from the monopolistic prices;
- support the stable and reliable functioning of the company;
- ensure that tariffs are transparent, stable and fair for the companies;
- reflect different service costs between the customer categories;
- Cover costs of the company with funds received from each customer category in proportion to costs incurred for servicing this customer category.

In 2017, for the first time GNERC calculated the tariff based on new methodology for gas transportation, distribution and supply for regulated segment.

Periodic reassessments

The commission sets tariffs annually, individually for each utility and is in force for a 1-year period but in case of necessity the commission may review the tariffs by the end of the year on the basis of the Licensee's application. GNERC plans to review electricity tariffs once in a three year.

Recommendations

- Decree #69 of the Minister on Deregulation and Partial Deregulation of Natural Gas Supply Activity shall be abolished and tariffs for all household consumers shall be set by GNERC.

Market Monitoring and Licensing

Capacity to penalize breaches of regulation

The market monitoring is one of the most important functions of the regulator, since it gives opportunity to the commission to supervise market participants and determines how market development is in line with existing rules and regulations. Market Monitoring helps to find out existing gaps and thus creates prerequisites to start working on their improvements.

The Commission is authorized to carry out electricity and natural gas and market monitoring, which includes studying of wholesale and retail prices, commercial relationships, analyzing suppliers' behavior etc.

In 2016 the Electronic Monitoring System of Commercial Quality of Service was developed and implemented in the Commission through which the reporting is carried out on the fulfillment of the services provided by the "Commercial Quality Rules for Services".

Georgia made progress on the index which refers to making it easier to get electricity and succeeded to move up by 26 positions, from the 65th to the 39th place, according to the report of the World Bank "Doing Business 2017". Georgia improved the reliability of electricity supply by introducing penalties for the utility for having worse scores on the annual system average interruption duration index (SAIDI) and system average interruption frequency index (SAIFI) than the previous year. Georgia also mandated the notification of customers by the utility of planned electricity outages.

Within the framework of the Twinning Project entitled Strengthening Capacities of the GNERC in Regulatory Cost Audit and Market Monitoring, funded by the European Union, GNERC is working on developing market monitoring rules, which will bring some improvement in this direction.

Transparent criteria to grant / withdraw licenses

According to the Georgian Law on Electricity and Natural Gas, the Commission shall be authorized to grant licenses and regulate activities of licensees, importers, exporters, ESCO and suppliers within the

electricity and natural gas sectors of Georgia. (Article 4) the main functions of the commission with this regard is to a) establish rules and conditions for electricity generation, transmission, dispatch and distribution, natural gas transportation and distribution as well as for water supply, issuance of licenses, modification and revocation of licenses in compliance with the Law of Georgia on Licenses and permits, this law and licensing rules.

GNERC has issued 25 licenses in the power sector. There are 28 license holders in the Georgian natural gas sector, including 1 transportation and 27 distribution license-holder. It should be noted that in the distribution sector 3 large license holders distributed 90% of total volume.

To ensure compliance with the requirements of the primary and secondary legislation, GNERC has the right to carry out inspections of regulated undertakings. According to the Administrative Offences Code, in case of non-compliance with the licensing terms and conditions determined by GNERC, a penalty in the amount of GEL 5.000 may be imposed. Following the requirements foreseen by the Law on Licenses and Permits, Resolution No. 23 of GNERC approving the Rules on Control of Activities and Licensing in Electricity, Gas and Water Supply Sectors provides that if the breach is not remedied within the time indicated by GNERC, the penalty may be tripled. Furthermore, GNERC may revoke a license if infringement is not remedied after the fine has been tripled twice, or if it is clear that imposing a fine will not have any effect on implementation of the licensee's obligations. Where revoking a license would result in more damage than good, GNERC may decide to allow the licensee to continue its activities and set additional requirements. Such requirements are not precisely defined by legislation, but can be defined based on the specific circumstances of the very case. In praxis, this tool is rarely used. If the licensee nevertheless fails to fulfil its obligations, GNERC may decide to implement the obligations itself or through a third party, at the expense of the licensee. Where such arrangement is impossible, the court may appoint a special manager at the request of GNERC.[25]

Consumer protection, management of complaints

According to the Georgian Law on Electricity and Natural Gas (article 4(5)), one of the main responsibilities of the Commission is the settlement of disputes between licensees, small power plants, importers, exporters, suppliers and consumers, and the commercial system operator within its competence.

The Commission is independent in its decision-making process. It resolves disputes impartially and in full compliance with legal requirements. Despite the fact that the Public Defender's office of Customers' Interests is functioning independently from the Commission's apparatus, the protection of customers' interests is still one of most important functions of the Commission.

In 2016 the commission resolved 4085 disputes. The number of disputes has increased compared to previous years. This means that on the one hand, awareness of the public has raised and they know how to address the issues, but on the other hand, this also indicates the problems in the sector. According to GNERC, the work on improvement of Electricity Supply and Consumption Rules is carried out, which is intended to notably decrease the number of disputes.

Recommendations

- In order to be more effective and fear, the amount of the penalty for license-holders for non-compliance with the licensing terms and conditions should be specific for each case considering the damage caused by non-compliance.

[25] EC report3

UKRAINE

Oleksandr Rohozin, Dixi Group Ukraine

Summary

Since its creation in 1994, the scope of powers of the National Energy and Public Utilities Regulatory Commission (NEURC) has been constantly expanded. The National Energy and Public Utilities Regulatory Commission (the "NEURC" or the "Commission"), the currently operating functional successor to the National Electricity Regulatory Commission (NERC), now performs regulation in electricity, oil and gas, heat supply, centralized water supply and water drainage, and domestic waste disposal in accordance with Ukrainian laws, including the Law of Ukraine "On the National Energy and Public Utilities Regulatory Commission" (the "Law")[26], effective since 26 July 2016.

The NEURC is independent in the exercise of its powers from any other governmental authority, local self-government authorities, business entities, political parties, public associations, or trade unions. The Commission's members, officers and their close relatives may not be members of the governing bodies of business entities operating in the fields of energy and public utilities ("business entities") or own directly or indirectly any corporate rights therein and are also subject to the restrictions and requirements set by anti-corruption laws. Thus, in particular, NEURC's members and officers declare their property, income and expenses.

The Law envisages the Commission's financial independence which is expected to take effect starting from 2018. The NEURC will be financed with regulation charges to be paid by business entities to the special fund of the State Budget and to be used solely for the Commission's needs. In accordance with the Law, control over the targeted use of funds by the Commission will be exercised on common terms applicable to other State Budget funds administrators.

The appointment procedure and the requirements set for the NEURC's members largely meet the requirements of the EU Third Energy Package. However, there exists a threat to the rotation of the Commission's members as envisaged by the Law, because members of the tender commission for selection of candidates for the NEURC's members have not yet been appointed either by the President, or the Verkhovna Rada, or the Government. It is advisable that the Law should be amended to prevent the blocking of this process. The Law may also require alignment with the Constitution of Ukraine (or introduction of amendments thereto) in this context.

The NEURC's statutory functions and powers in electricity and natural gas markets are in line with requirements of the EU Third Energy Package. Part of the relevant secondary legislation is currently being developed, in particular in accordance with the phased implementation of a new market model as envisaged by the Law of Ukraine "On the Electricity Market"[27].

Pursuant to the Law, the NEURC has approved its Rules of Professional Ethics[28]. However, it is advisable that a special procedure should be established for reporting on compliance with these Rules.

The NEURC's Head annually presents annual and financial reports to the Verkhovna Rada of Ukraine, but no feedback procedure is currently envisaged in the context of such reporting. The laws could be amended to increase the NEURC's accountability to the Verkhovna Rada and the contents of the report should be expanded and its preliminary discussion with the public should be implemented.

[26] http://zakon3.rada.gov.ua/laws/show/1540-19
[27] http://zakon3.rada.gov.ua/laws/show/2019-19
[28] http://www.nerc.gov.ua/index.php?id=25868

The transparency of the NEURC's work is high. The Commission's official website[29] posts in advance the agenda of its meetings, all its draft decisions with their substantiation, its plans and reports on inspections of business entities, the minutes of its meetings, its adopted decisions (including the structure of the set tariffs of natural monopolies), its annual report, etc. The website also contains information for consumers. The Commission's meetings are broadcast online, with an archive of their video recordings available.

Practically all of the Commission's decisions are adopted at its meetings held in the form of open hearings, while its draft regulatory decisions and, following the adoption of the Law, its draft decisions concerning tariffs (prices) and investment programmes are subject to preliminary public discussion. The adoption by the Commission of the Procedure for Public Discussion of the NEURC's Draft Decisions[30] on 30 June 2017 has created the necessary conditions for ensuring an effective process of consultations, but the Commission should take steps to engage all interested parties, first of all consumers, and improve its interaction with them.

The political and social reaction of society to some of the NEURC's decisions shows that at least these particular decisions are not sufficiently substantiated. In particular, the substantiation of regulatory decisions and their impact analysis should be improved and a mechanism should be implemented to track the effectiveness of the Commission's decisions. In order to improve the predictability of the Commission's work, it is advisable that a three-year strategic plan for the development of regulation should be prepared.

The NEURC monitors markets on the basis of periodical reports and other information submitted by business entities. At present, the scope of such monitoring should be substantially widened in accordance with the laws reflecting requirements of the EU Third Energy Package. In order to enhance the effectiveness of regulation, an IT system needs to be developed and implemented to collect, retain and process regulation-related information.

Tariffs are set by the NEURC according to its approved procedures (methodologies), usually annually, and may be revised in certain circumstances, including at the Commission's initiative. "Cost plus" remains the principal tariff regulation method. However, RAB regulation is used for the gas transmission operator. The Commission has also approved a RAB regulatory framework for electricity distribution and transmission operators.

The NEURC issues licenses to business entities operating in the fields of energy and public utilities and exercises control over their licensed operations. The Commission may impose fines and use other measures of influence (impose administrative penalties on business entities' officers, withdraw funds from tariffs, revoke licences, etc.). It is advisable to amend the laws governing peculiarities of the licensing of natural monopolies in the fields of energy and public utilities.

At present, the NEURC considers appeals from citizens and provides information upon requests in accordance with the general legislation. The Law envisages a separate procedure for reviewing consumers' complaints and settling disputes between business entities, which procedure is currently being developed. There is the need to speed up the adoption of the Law of Ukraine "On the Energy Ombudsman", the adoption of which is envisaged by the Law and which will, among other things, substantially enhance the protection of small-scale consumers (first of all, households).

[29] http://www.nerc.gov.ua/
[30] http://www.nerc.gov.ua/index.php?id=26157

The analysis of the NEURC's work in 2016 and the first six months of 2017 shows that the adoption of the Law of Ukraine "On the National Energy and Public Utilities Regulatory Commission" has generally positively affected the Commission's activities, in particular in terms of their transparency and openness. At the same time, however, there remain many aspects of the NEURC's work that need to be improved, such as, first of all, its reporting procedures, better quality and substantiation of its decisions, protection of consumers.

Assessment Table Scorecard

Ukraine, National Energy and Public Utilities Regulatory Commission (NEURC)	2016	2017*	Responsible parties	Urgent Measures (2017)	Mid-term Measures (2018 - till the objective achievement)
INSTITUTIONAL PRINCIPLES					
Independence					
Budget and accountability			Verkhovna Rada		To draft and introduce amendments to the Constitution and laws of Ukraine to define the status of the NEURC and the powers of governmental authorities to appoint the NEURC's members
Changes in the composition			President, Verkhovna Rada, Cabinet of Ministers	To secure rotation of the NEURC's members as envisaged by the Law by appointing members of the tender commission for selection of candidates for the Commission's members	To amend the Law to prevent blocking of the work of the tender commission for selection of candidates for the NEURC's members
Informal political pressure			Verkhovna Rada, Cabinet of Ministers		
Relations with the regulated sector			NEURC		
Accountability					
Reports and approvals/inspections			Verkhovna Rada, NEURC	NEURC – to improve its annual report (to expand its contents) and implement its preliminary discussion with the public	To draft and adopt amendments to the Law of Ukraine "On the NEURC" to increase the Commission's accountability to the Verkhovna Rada of Ukraine
Accountability to consumers, the sector, the public			NEURC	NEURC – to make information on the results of its monitoring of markets available on its website	
Financial aspects and audit			Verkhovna Rada, Cabinet of Ministers		
Implementation of the Rules of Ethics			NEURC		NEURC – to develop a Procedure for reporting on compliance with its Rules of Ethics
Transparency					
Publication of decisions			NEURC	Cabinet of Ministers of Ukraine – to ensure timely publication of the NEURC's decisions in the *Uriadovyi Kurier* newspaper	
Effectiveness of consultations			NEURC	NEURC – to improve the completeness and the quality of the substantiation and impact analysis of its decisions, to implement the engagement of representatives of political parties, trade unions and other civil society institutions in the discussion of decisions affecting the population	

Responses to requests for information			NEURC	NEURC – to expand the list of information subject to publication in the form of open data	
Predictability					
Consistent and well-substantiated regulation			NEURC		NEURC – to develop a strategic plan for regulation development (for a term of 3 years)
Adaptation to changes in the environment			NEURC		
FUNCTIONING					
Tariffs and prices					
Economic efficiency			NEURC		NEURC – to speed up its efforts aimed at implementing RAB regulation for natural monopolies with substantiated regulation parameters and benchmarking
Periodicity of revisions			NEURC	NEURC – to implement substantial monitoring of the effectiveness of its adopted decisions	
Market monitoring and licensing					NEURC – to implement an IT system for the collection, retention and processing of regulation-related information
Power to impose fines for law violations			NEURC		NEURC – to develop and approve inspection methodologies for separate complicated issues that are subject to control
Transparency of the criteria for obtaining/revoking licences			Verkhovna Rada, NEURC		To draft and adopt amendments to the Law of Ukraine “On the NEURC” to define the peculiarities of the licensing in energy and public utilities markets
Protection of consumers, handling of complaints			Verkhovna Rada, NEURC		To adopt the Law of Ukraine “On the Energy Ombudsman”

	Unsatisfactory
	Moderately satisfactory
	Good
	Good practice
	N/A or no data

* the first six months

GOVERNANCE

Independence

Ukraine established its energy regulatory authority, the National Electricity Regulatory Commission (NERC), in 1994, one of the first in Europe. Since then, the Commission has changed its name three times and has been set up anew two times. The Commission's initial scope of regulation covered only the electricity industry, in 1998 it was expanded to cover also the oil and gas complex, in 2005 – certain issues relating to the regulation of tariffs for heat energy, in 2014 – heat supply, centralised water supply and water drainage, and in 2016 – domestic waste disposal.

The currently operating National Energy and Public Utilities Regulatory Commission (the "NEURC" or the "Commission") was set up by a decree of the President of Ukraine on 27 August 2014[31] to replace the two liquidated commissions, the National Energy Regulatory Commission and the National Public Utilities Regulatory Commission.

Until 2016, the Commission operated under regulations approved by the President. The Commission has had its independent status since its establishment in 1994, first as an independent non-departmental permanent authority and then as a central executive authority with a special status, a collective governmental body.

26 November 2016 became the effective date of the Law of Ukraine "On the National Energy and Public Utilities Regulatory Commission" (the "Law"), which defined the Commission's legal status, objectives, functions, powers, and the procedure for exercising the same. In accordance with the Law, the NEURC performs state regulation in the fields of energy and public utilities through legal regulation, licensing, tariff and pricing policy formation and implementation, state control and other measures of influence, other means provided by laws.

Some of the Commission's functions and powers associated with the regulation of electricity markets, natural gas markets, etc. are defined by the laws of Ukraine, in particular by the Laws of Ukraine "On Natural Monopolies", "On the Electricity Market", and "On the Natural Gas Market".

The Law has taken into account the requirements for the regulatory authority's independence in line with the respective provisions of the EU Third Energy Package and, in particular, has cancelled the requirement for approval of the NEURC's decisions by other governmental authorities (except where such approval is required by economic competition protection laws) and their registration with the Ministry of Justice of Ukraine.

Budget and accountability

In accordance with the Law, the NEURC is a public-law legal entity and a permanent independent collective governmental body operating on a standalone basis independently from any other governmental authority, local self-government authorities, business entities, political parties, public associations, or trade unions.

Governmental authorities and local self-government authorities, business entities, political parties, public associations and trade unions are prohibited from interfering in the state regulation process, and in accordance with the law, any illegal influence on the NEURC's work leads to administrative and criminal liability.

[31] http://zakon3.rada.gov.ua/laws/show/694/2014

In accordance with the Law, the NEURC interacts with the Cabinet of Ministers of Ukraine and central executive authorities in the context of development and implementation of Ukraine's economic and social development programmes, special-purpose state programmes, the Government's regulatory acts and with the Antimonopoly Committee of Ukraine and financial control authorities in the course of monitoring and investigations in the energy and public utilities markets.

In accordance with the Law, the NEURC must be financed with regulation charges paid to the special fund of the State Budget of Ukraine by business entities. Regulation charges may not be withdrawn and may be used only to finance the Commission's operations. In 2017, however, the Commission is financed according to the old scheme, from the general fund of the State Budget.

Changes in the composition

Except for the period of 2006 to 2010 when the Commission's members and heads were appointed by the Cabinet of Ministers of Ukraine, they were appointed by decrees of the President of Ukraine. The number of the Commission's members changed from three in 1995 to five in 1998 and then to seven in 2011. At present, in accordance with the Law, the NEURC must be composed of seven members, with the Commission's Head to be elected every two years by the Commission's members by secret vote.

The Law provides for a competitive procedure for selecting candidates for the NEURC's members. The tender commission must be composed of two members nominated by the President, two members nominated by the Verkhovna Rada (upon submission from dedicated committees) and one person nominated by the Cabinet of Ministers of Ukraine (upon submission from the Energy and Coal Industry Minister) and is deemed competent to operate upon approval of at least four of its members. The competition must be open, the process must be transparent. The requirements for candidates and the time frames for the review of bids are set by the Law. The President may appoint the Commission's members from the list prepared by the tender commission from among the highest ranking candidates (two candidates per position).

The Law provides for the rotation of the NEURC's members, including the initial rotation of all of the Commission's members within 18 months after the effective date of the Law[32]. On 21 May two members of the NEURC were dismissed, with the next two members to be dismissed before 26 November. However, as of 1 September 2017, no members of the tender commission for selection of new members of the NEURC had been elected yet, and this can make it impossible for the Commission to exercise its powers starting from 26 November.

The Law provides that the NEURC's members may be elected for two terms and contains an exhaustive list of the circumstances when their powers may be earlier terminated. The same provisions existed before the adoption of the Law in the Law of Ukraine "On Natural Monopolies" and the regulations on the Commissions. In fact, however, throughout the entire history of the Commissions, only two members of the Commission worked at least one full term (six years). This was mainly explained by the change of power in the country, but even in the NEURC's current composition its five members were changed in 2014-2015 for reasons unknown to society (upon their voluntary resignations).

In accordance with the Law of Ukraine "On Public Service", the NEURC's officers, who have the status of public servants, are appointed on a competitive basis. The current salary level in the Commission is non-competitive, and this results in a high staff turnover rate affecting, among other things, the

[32] http://zakon3.rada.gov.ua/laws/show/78/2017

quality of drafted decisions. The Law provides for a substantial rise in the salaries of the Commission's members and officers, which is expected to take effect from 2018.

Informal political pressure

Even before the adoption of the Law, the Commission, just like its predecessors, was de jure independent in its decision-making. The Law has considerably increased its independence and liability for its breach. In particular, now a member of the Commission may not be a member of a political party, be a member of the governing bodies of a political party or have any contractual relations with any political party during a period of at least three months before application for participation in an open tender competition for appointment to a position in the Commission.

As regards making tariffs economically justified, in 2015 the NEURC took steps to considerably raise prices and tariffs for the population, in particular tariffs for electricity, gas, heat and water. These steps were sharply criticised by both politicians and society, with doubts cast on the legitimacy of the Commission itself. At the end of 2016, the parliamentary faction of the political party Batkivshchyna applied to the Constitutional Court of Ukraine seeking recognition of some provisions of the Law as unconstitutional. By its ruling of 4 April 2017,[33] the Constitutional Court refused to institute constitutional proceedings because the application failed to meet relevant statutory requirements. On 21 December 2016, the Constitutional Court also instituted proceedings[34] in a case based on an application by the Supreme Court of Ukraine seeking recognition as unconstitutional of some statutory provisions concerning the NEURC, in particular provisions of the Laws of Ukraine "On Natural Monopolies", "On the Electric Power Industry", "On State Regulation in the Field of Public Utilities", "On Drinking Water and Drinking Water Supply", Decrees of the President of Ukraine No. 694 "On the National Energy and Public Utilities Regulatory Commission" dated 27 August 2014 and No. 715 "On Approval of the Regulations on the National Energy and Public Utilities Regulatory Commission" dated 10 September 2014. A considerable number of experts find that the arguments concerning the unconstitutionality of the procedure for electing and appointing the NEURC's members are well-reasoned.

The media have reported on the participation of certain politicians in demonstrations near the NEURC's building, in particular concerning plans to change the methodology for calculating tariffs for gas distribution services, but some experts think that this is explained not so much by the possible political pressure, but by the quality of the Commission's respective decisions.

Relations with the regulated sector

In accordance with the Law, the NEURC's members and officers, as well as their affiliated persons, may not be members of the governing bodies of business entities or own directly or indirectly business entities or corporate rights therein. The NEURC's members and officers may not act as attorneys of third parties in the context of the Commission's affairs or use it or the NEURC's other officials and property for party or personal interests, and they are also subject to the restrictions and requirements set by the Law of Ukraine "On Prevention of Corruption" (concerning the prohibition to use their official powers for the purpose of obtaining illegal benefits for themselves or other persons, receiving gifts, etc.).

The Law provides that during two years after termination of his or her powers, a member of the NEURC may not have any employment or other contractual relations with any business entity. The same

[33] http://zakon3.rada.gov.ua/laws/show/v004u710-17
[34] http://zakon3.rada.gov.ua/laws/show/v082u710-16

restriction for the period of one year applies to the Commission's officers in accordance with the Law of Ukraine "On Prevention of Corruption".

Recommendations

- The President, the Parliament and the Cabinet of Ministers of Ukraine should ensure rotation of the NEURC's members in accordance with the Law by appointing members of the tender commission for selection of candidates for the NEURC's members and ensuring its proper work;
- Amendments should be drafted and introduced to the Law in order to prevent blocking of the work of the tender commission for selection of candidates for the NEURC's members; and
- Amendments should be drafted and introduced to legislation to define the status of the NEURC and the powers of governmental authorities to appoint the Commission's members.

Accountability

Reports and approvals/inspections

The Law provides that annually before 1 April, the NEURC's Head must submit and present at a sitting of the Verkhovna Rada of Ukraine an annual report on the Commission's activity and a report on the use of funds. In accordance with the Law, the Commission's annual report, the draft and approved versions of its budget and its report on compliance with such budget must be published on the Commission's website. The report is approved by the NEURC at open hearings, but without public consultations. It is advisable that the Law should also set forth the procedure for assessment of the Commission's annual report and work by the Verkhovna Rada of Ukraine.

Since 2015, the NEURC's annual report has considerably improved from the point of view of its clearness, but it has lost some important information, such as actual data on the number and cost of connections to networks, data on the consideration by the Commission of requests for information and appeals from citizens, etc.

Accountability to consumers, the sector, the public

The NEURC provides access to information and provides information upon requests in accordance with the Law of Ukraine "On Access to Public Information". In accordance with the law, response to a request must be provided not later than five business days after the day of receipt of such request (up to 20 business days where a large amount of information is to be provided, upon prior notice to the requesting party). In 2016, the Commission processed 821 such requests.

Appeals (proposals, applications and complaints) from citizens are considered by the Commission in accordance with the Law of Ukraine "On Citizens' Appeals" (up to 15 calendar days, up to one month and up to 45 calendar days, depending on the complexity of the issue).

In accordance with the Law, the NEURC informs the public about its plans and the results of its work and holds public consultations and public hearings on important issues. Pursuant to the Law, the NEURC also has the Public Council as a permanent consulting and advisory body created in order to engage citizens in the implementation of state policy on regulation of activity in the fields of energy and public utilities.

Financial aspects and audit

The Law provides that the only source of the NEURC's financing is regulation charges paid by business entities to the special fund of the State Budget. The rates of regulation charges are annually approved by the Commission on the basis of the estimated amounts of required financing and are quarterly revised on the basis of the respective approved methodology.

The Commission independently plans its budget to be approved by the Parliamentary Budgetary Committee (the budget must be submitted by 1 June, and the Committee's decision must be adopted by 1 July). The draft budget adjusted according to the respective reservations is then submitted to the Ministry of Finance for its incorporation in the State Budget. After the State Budget comes into effect, the budget is approved by the Commission.

The NEURC's draft budget, the Budgetary Committee's decision, the approved budget and the report on compliance therewith must be made public within the time frames stipulated by the Law. As of today, information about the NEURC's budget for 2018 has been published on the Commission's website pursuant to the Law for the first time[35].

The Law sets forth the general procedure for controlling the proper use of funds by the Commission, just like for any other State Budget funds administrators (The State Treasury Service, the State Audit Service, the Audit Chamber of Ukraine).

Implementation of the Rules of Ethics

Pursuant to the Law, the NEURC has approved its Rules of Professional Ethics, which apply to the Commission's members and officers and which contain, among other things, requirements for meetings of the NEURC's members with representatives of the regulated entities, the obligation to notify the NEURC's members and officers of any conflicts of interests arising in the course of performance of their official duties, etc.

In accordance with the Law of Ukraine "On Prevention of Corruption", the Commission's members and officers annually file declarations of their property, income, expenses and financial liabilities. Declarations of the Commission's Head and members are published on its website.

Recommendations

- Amendments to the Law should be drafted and adopted in order to enhance the Commission's accountability to the Verkhovna Rada of Ukraine,
- The NEURC should take measures to improve its annual report (to expand its contents) and introduce its preliminary discussion with the public,
- The NEURC should develop a Procedure for reporting on compliance with its Rules of Ethics

Transparency

Publication of decisions

Before the Law was adopted, some of the NEURC's decisions concerning certain issues relating to the operation of the Wholesale Electricity Market and the gas market had been adopted at closed hearings. At present, pursuant to the Law, all of the NEURC's decisions (other than those containing

[35] http://www.nerc.gov.ua/?id=26487

secret information) must be adopted at its meetings held in the form of open hearings. The procedure for holding meeting is set forth in the Commission's Rules of Procedure[36] published on the Commission's website. Anyone, including media representatives, may take part in open hearings. The NEURC's meetings are broadcast online. Pursuant to the Law, access to the archive of the recordings of meetings is available during one year on the Commission's website.

All of the NEURC's decisions (except for parts of decisions that contain secret information) are published on the Commission's official website within five business days after their adoption. Decisions on the approval of tariffs of natural monopolies are published together with their structure.

Decisions having features of regulatory acts and decisions concerning the setting of tariffs for the products (services) of natural monopolies and prices (tariffs) for the population enter into effect on the next day after the date of their publication (within 15 days after their adoption) in the official gazette *Uriadovyi Kurier*, unless the decision itself provides for a later effective date, but not earlier than the date of official publication of the decision. De facto, the 15-day period set for publication of the Commission's decisions in *Uriadovyi Kurier* is often breached, and this considerably slows down the regulation process.

In accordance with the Law, the NEURC also publishes on its website the following information:

- The agenda of the Commission's meetings with all draft decisions together with their substantiation, received reservations and proposals (not later than three business days before the date of the meeting),
- The minutes of the Commission's meetings (within five business days after the meeting),
- The annual plans of inspections of business entities (five days before the beginning of the respective year),
- reports on inspection of business entities together with relevant explanations and substantiation (prior to their consideration at the meeting), etc.

As regards the scope of information whose publication is required by the Law, results of the quarterly monitoring of energy and public utilities markets are currently missing on the Commission's website (in particular, due to the absence of an approved procedure for such monitoring).

The NEURC's website contains information for consumers broken down by the areas of regulation (electricity, natural gas, heat, cold water supply, domestic wastes), information for the public, news, etc. The website is well-developed, and based on the results of 2016, the NEURC came second for the openness of its website among other Ukrainian central executive authorities in the ranking prepared by the Regional Press Development Institute.

Effectiveness of consultations

Before the adoption of the Law, in accordance with the general Law of Ukraine "On Basic Principles Governing State Policy on Business Regulation", the NEURC's draft regulatory acts had to be published (not later than one month prior to their adoption) for the purposes of receiving and reviewing reservations and proposals from individuals and legal entities, their associations, and also had to be approved by the State Regulatory Service of Ukraine. No mandatory discussion of the submitted reservations and proposals was required by the law, and the Commission usually held no such discussion. Occasionally, the Commission even adopted decisions without regard to the reservations

[36] http://www.nerc.gov.ua/?id=17211

and proposals from interested parties in the absence of any valid arguments, and this drew fair criticism from business entities and the public.

The Law has cancelled the requirement of approval of the NEURC's decisions by other governmental authorities, but stipulates measures aimed at enhancing the transparency of the Commission's decision-making process, and in particular:

- sets forth a special procedure for drafting decisions having features of regulatory acts, which procedure provides, in particular, for publication of the submitted reservations and proposals and for their obligatory consideration with the participation of the persons who have submitted such reservations and proposals, and
- envisages public discussion of the NEURC's draft decisions on matters relating to the setting of prices (tariffs), approval of investment programmes (at the location where business entities provide their services), and other matters (if necessary).

On 30 June 2017, the NEURC approved the Procedure for Holding Public Discussion of the NEURC's Draft Decisions, which complies with the requirements of the Law and creates necessary conditions for a truly effective process of consultations with the interested parties. From the standpoint of business entities in the context of matters related to the setting of prices (tariffs) and approval of investment programmes, the new procedure is even overloaded (contains unnecessary stages of discussion).

Regardless of the existing discussion procedures, draft decisions, which affect the population and which result in a rise in end tariffs (prices), encounter a lack of understanding and rejection by society. Among other things, this can be explained by the non-participation of representatives of such consumers in the consideration of draft decisions and, accordingly, the impossibility of a constructive dialogue in search for a balanced decision.

In accordance with the Law, the NEURC's decisions may be appealed in court. The filing of appeals against decisions does not suspend their effect.

Responses to requests for information

The NEURC's Annual Report for 2016[37] does not contain any information on the provision of information in response to requests or the handling of appeals from citizens. The Commission's website posts monthly reports on requests, but they contain only summarized information about the structure of such requests broken down by the requesting parties, the Commission's divisions responsible for response and the type of response. There are no details of the requested information, and furthermore, the reports show that more than half of the requests (sometimes 80%) result in the provision of the requesting parties with explanations of the law rather than the requested information. Therefore, there is no understanding of the quality of the Commission's work associated with its handling of requests for information and citizens' appeals.

The NEURC's website lists the sets of data subject to publication in the form of open data, but this list is rather limited.

[37] http://www.nerc.gov.ua/data/filearch/Catalog3/Richnyi_zvit_NKREKP_2016.pdf

Predictability

Consistent and well-substantiated regulation

The NEURC's decisions concerning the setting of tariffs (prices) and approval of investment programmes are adopted in accordance with the approved and previously published procedures (methodologies). According to these procedures, tariffs for business entities are usually revised and investment programmes are usually approved on an annual basis. The procedures provide for the possibility of revision of tariffs (adjustment of investment programmes) in certain circumstances, including at the Commission's initiative.

Decisions concerning the operation of the Wholesale Electricity Market (determination and adjustment of the budget of the wholesale electricity supplier (the market operator), the funds allocation algorithm, approval of tariffs for manufacturers operating with the use of price bids, etc.) are usually adopted on a monthly basis.

At present, the Law provides that all of the Commission's draft decisions must be published together with their substantiation and additional materials (the minutes of public hearings, etc.). In accordance with the Law, draft decisions having features of regulatory acts must also include their impact analysis, however both the substantiation and the impact analysis are mostly formal documents which do not provide the sufficient understanding of the reasons and the consequences of the adoption of such regulatory acts.

The NEURC's Annual Report contains the section "Key Priority Objectives for Next Year", which discloses plans to develop new (improve the existing) regulatory documents.

Adaptation to changes

Before 2017, in accordance with provisions of the Law of Ukraine "On Basic Principles Governing State Policy on Business Regulation", the NEURC tracked the effectiveness of its regulatory acts on a planned basis, even though such tracking was substantially formal. According to the available information, after the Law was adopted, this tracking was discontinued.

The NEURC is now working to improve its regulatory framework in line with the laws and its internal plans.

In accordance with the Law, any persons have the right to submit proposals to the Commission concerning the need to prepare (or revise) the Commission's draft decisions, and the NEURC must provide information about the results of their consideration within 30 days after the date of receipt of such proposals. However, there is a lack of such feedback experience as yet.

Over the past few years, the NEURC's decisions have become the subject of a great many claims, including those filed by business entities. As reported by the media, the Commission has lost a considerable number of such cases. Pursuant to the issued judgments, the Commission has adopted respective decisions.

The NEURC has access to up-to-date regulatory experience. In particular, the Commission cooperates with the US National Association of Regulatory Utility Commissioners (NARUC) and the Energy Community Secretariat in matters related to the reform of energy markets and takes part in the work of the Energy Regulators Regional Association (ERRA), etc. The Commission is also a beneficiary of international technical assistance projects (Project TWINNING "Support the National Commission for State Energy and Public Utilities Regulation in the process of electricity market reform", which is implemented together with the Slovak Regulatory Office for Network Industries (RONI), EU

Project "Assistance to Ukraine in the process of implementation of energy sector reform in line with Ukraine's international commitments", Project "District Heating Regulatory Reform Support Program" (SIDA-World Bank), the USAID Municipal Energy Reform Project), etc. Such cooperation is now mainly focused on the electricity market reform (following the entry into effect by the Law of Ukraine "On the Electricity Market" on 11 June 2017).

Recommendations

- The Cabinet of Ministers of Ukraine should ensure timely publication of the NEURC's regulatory acts in the *Uriadovyi Kurier* newspaper (or amend the Law to extend the list of authorized official periodicals for publication purposes),
- The NEURC should improve its decision-making process, in particular by:
    - improving the completeness and the quality of the substantiation and impact analysis of its decisions,
    - implementing substantial monitoring of the effectiveness of its adopted decisions having features of regulatory acts, and
    - engaging representatives of political parties, trade unions and other civil society institutions in the discussion of decisions affecting the population,
- The NEURC should make efforts to make its website consistent with requirements of the Law, in particular those concerning the provision of access to quarterly information about the results of monitoring of energy and public utilities markets,
- The NEURC should expand the list of information subject to publication in the form of open data,
- The NEURC should develop a strategic plan for regulation development (for three years), which must improve the predictability of its actions and the perception of its decisions by business entities and society.

REGULATORY PRACTICE

Tariffs and prices

Economic efficiency

The Commission set tariffs in accordance with the Laws of Ukraine "On Natural Monopolies", "On the Electric Power Industry", "On the Electricity Market", "On the Natural Gas Market", "On Alternative Energy Sources", and the procedures (methodologies) approved by the NEURC.

Electricity

The NEURC sets tariffs for 40 electricity distribution and 37 electricity supply (at a regulated tariff) companies, 1 electricity transmission company, 5 HPP energy generating companies, 1 NPP energy generating company, 1 HEP (PSPP) energy generating company, 316 other producers, including producers from RES (as of January 1, 2017).

Tariffs for business entities are set according to the Cost Plus methodology (except for HPP generating companies for which tariffs are approved on the basis of calculations according to the Wholesale Market Rules, producers from RES for which tariff levels are prescribed by law, and non-regulated tariff suppliers operating on an arm's length basis). In general, the current procedures (methods) meet the requirements for ensuring financial stability of business entities and protection of consumers from monopoly prices, however they do not contain any incentives for improving operational efficiency, attracting investments, etc.

In 2013, pursuant to the Law of Ukraine "On Natural Monopolies", a regulatory framework was created for incentive based regulation for electricity distribution (energy supply) companies, which, in particular, provides for inclusion of the return on regulatory asset base in the tariffs, as well as incetivizing to improve the quality of services, reduce operating costs and electricity losses in networks. The NEURC has been planning to implement this methodology from 2015, however such implementation was postponed each time. In July 2017, the similar methodology was adopted by the Commission for an electricity transmission company, however plans with respect to its implementation times are unknown.

The new market mechanisms to be implemented according to the Law of Ukraine "On the Electricity Market" provide for transition to the market principles of determining prices for energy generating companies from July 1, 2019 (except for producers from RES and CHPP for which special mechanisms are foreseen until 2030 and 2024 respectively). The Commission is empowered to approve all basic documents for the new market, in particular market regulations, "day ahead" market and diurnal market rules, commercial metering code and network codes.

The retail market currently features cross subsidization of consumers (primarily population) by other consumer categories, although the subsidization level has significantly decreased over the last years. From 2015, the NEURC has increased electricity tariffs for population more than 3.7 times (in five stages, including two in 2016 and one in 2017). Pursuant to the Law of Ukraine "On the Electricity Market", the NEURC has to ensure complete absence of cross subsidization between different consumer categories by July 1, 2019.

NEURC's decisions that cause rise in consumer tariffs draw severe criticism from the society. At least for the last year, some NEURC's decisions have been criticized not only by some experts and opposition politicians, but also by representatives of the parliamentary majority and even members of the Cabinet of Ministers of Ukraine. For instance, according to mass media, at the Government session of August 9, the Ukrainian prime minister qualified the NEURC's decision on implementing incentive based regulation for electricity distribution companies as biased and unfair[38].

At the beginning of 2017, the NEURC's decision encountered acute reaction, related to the rates for connection to electricity networks, set according to the new methodology approved by the Commission. Following active discussions, the Commission's decision was adjusted and the provisions of the Law of Ukraine "On the Electricity Market" as to the connection were significantly amended in terms of the definition of the basic principles for calculating the connection fee.

Natural gas

Pursuant to the Law of Ukraine "On the Natural Gas Market"[39], from October 1, 2015, the NEURC establishes tariffs only for natural monopolies - for natural gas distribution for 48 gas distribution companies and for gas transportation and storage for 1 gas transportation company. To determine tariffs for transportation services, the incentive based regulation methodology and the "entry/exit" tariff system are used, while for other tariffs - the Cost Plus methodology. Transition to incentive based regulation is foreseen for gas distribution companies, but there is no relevant regulatory framework approved by the Commission.

[38] https://www.epravda.com.ua/rus/news/2017/08/9/627906/
[39] http://zakon3.rada.gov.ua/laws/show/329-19

The Commission has also approved other regulatory documents as provided by the Law "On the Natural Gas Market" in particular the Code of Gas Distribution Networks and the Code of Gas Transportation Networks.

Even in such constricted, as compared with the electricity industry, field of powers, some even generally progressive decisions of the NEURC are not taken seriously by the society. For instance, in 2017, such decisions included changes to the tariff calculation methodology for natural gas distribution services based on the connected capacity. Under pressure from politicians and public, in April the relevant NEURC's decision was canceled, and even the Commission's draft decision updated with the consideration of comments and proposals was actively resisted in June, so that the decision has not been adopted yet.

Periodicity of revisions

Pursuant to the procedures (techniques) approved by the NEURC, tariffs for business entities are revised on an annual basis. The procedures provide for the possibility of tariff revision in specified cases, including on the Commission's initiative.

Incentive based regulation involves long-term nature of regulation (first regulatory period - 3 years, then - 5 years). Nevertheless, the methodology provides for annual formula refinement and adjustment of tariffs taking into account the planned and actual inflation level, etc.

Recommendations

- The NEURC should speed up its efforts on the implementation of modern regulation methods (in particular, incentive based regulation for natural monopolies with the justified regulation parameters and benchmarking), on the improvement of the process of connection to electrical networks (in particular, reducing the connection "depth"), development of the regulatory framework for the new electricity market.

Market monitoring and licensing

All business entities should submit reporting to the NEURC on a systematic basis (monthly, quarterly, annual) in the prescribed form, as well as any other information required by the Commission to perform its functions. it is advisable to create an automated regulation database (databases), because the currently available information (in hard copy and electronic form) limits the possibility of its use.

Fines should be imposed following the results of inspections carried out by the NEURC pursuant to the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Area of Business Activities", taking into account the specifics as prescribed by the Law. According to the latter, licensees are reviewed by the NEURC according to the approved Licensing Activity Control Procedure by conducting on-site scheduled (not more frequently than once a year) and off-schedule inspections, as well as remote off-schedule inspections. Annual inspection plan is posted on the Commission's website before the beginning of each year.

Power to impose fines for law violations

The Law and the field-specific laws determine the NEURC's powers as to imposing fines on business entities, in particular for violation of licensing conditions and laws, failure to provide or provision of inadequate or unreliable information, etc. The size of the fines is restrictive (up to UAH 1,700,000 in the electricity market, up to UAH 850,000 in the natural gas market). The NEURC may also impose a fine up to 10% of the income (proceeds) on a respective vertically integrated entity or network

operator (gas transportation system operator), if it fails to comply with the requirements for separation of activity types (according to the provisions of the Third Energy Package).

Fines should be imposed following the results of inspections carried out by the NEURC pursuant to the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Area of Business Activities", taking into account the specifics as prescribed by the Law. According to the latter, licensees are reviewed by the NEURC according to the approved Licensing Activity Control Procedure by conducting on-site scheduled (not more frequently than once a year) and off-schedule inspections, as well as remote off-schedule inspections. Annual inspection plan is posted on the Commission's website before the beginning of each year.

Actual control over the Commission with respect to specific complicated issues (substantiation of calculated subsidies, connection fee rates, etc.) is not currently possible due to the absence of the respective inspection methodology.

The licensing control procedure is currently reviewed by the NEURC in order to bring it into correspondence with the requirements of the Law.

190 scheduled and 25 off-schedule inspections were conducted by the Commission in 2016, with the total amount of imposed fines of nearly UAH 10 million. The Commission also decides on the withdrawal of amounts of unused cash funds or those used out of accordance with the approved structure from the tariffs of business entities (in 2016 - UAH 1,174 million, including UAH 940 million in the electricity sector).

Transparency of the criteria for obtaining/revoking licenses

The NEURC carries out licensing of business entities in the energy and public utilities sector pursuant to the Law of Ukraine "On Licensing Activity Types" which determines the list of activity types that are subject to licensing, requirements for licensing conditions, list of information to be submitted when applying for a license, grounds for taking decisions on the refusal to issue a license, grounds for canceling licenses, etc. The license fee is equal to the size of one minimum wages in effect as of the day of issuing the license, and is not a barrier for entry of new market participants.

Pursuant to the Law, licensing conditions shall be approved by the NEURC taking into consideration the peculiarities prescribed by laws. Unfortunately, at the moment, the applicable legislation is in short of licensing peculiarities in the energy and public utilities markets, in particular with regard to the revocation of licenses for natural monopolies.

As of January 1, 2017, the NEURC had 402 licensees in the electricity sector, 95 - in the oil and gas complex, 703 - in the area of heat supply, 144 - in the area of centralized water supply. In 2016, the Commission issued 223 licenses (including 69 - in the electricity sector, 1 - in the oil and gas complex), revoked 82 licenses (including 31 - in the electricity sector).

Protection of consumers, handling of complaints

Pursuant to the Law, the NEURC shall consider consumers' complaints for violation of their rights and interests by business entities, as well as resolve any disputes arising between business entities in the areas of energy and public utilities, according to the procedure approved by the Commission.

The draft Procedure for Settlement of Disputes between Business Entities has already been developed and published by the Commission to obtain comments and proposals from the stakeholders, while the Procedure for Handling Consumer Complaints is currently at the development stage.

At the moment, citizens' appeals to the NEURC are mostly complaints. The Commission handled 6,007 such complaints for 2016.

The Law provides for filing by the Cabinet of Ministers of Ukraine to the Verkhovna Rada, by July 1, 2017, a draft Law of Ukraine "On the Energy Ombudsman" which has to enhance significantly protection of consumers (first of all, household consumers), as well as to relieve the Commission from work with complaints, find out problem issues in the legislation for the purpose of further improvement, and reduce the "temperature" in the society.

As of September 1, the draft has not been submitted yet to the Parliament by the Government, however a members' of parliament draft law[40] on the same subject has been registered.

Recommendations

- The Law of Ukraine “On the Energy Ombudsman” should be adopted,
- Amendments should be drafted and adopted to the Law to define the peculiarities of the licensing in energy and public utilities markets,
- The NEURC should develop and approve respective methodologies for separate complicated issues that are subject to inspection,
- The NEURC should implement an IT system for the automatic collection, retention and processing of regulation-related information.

[40] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62448

MOLDOVA

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Executive summary

This report provides an evaluation of the governance of ANRE and the evolution of the regulatory process during the period 2015-2017. The assessment has been prepared on the basis of correspondence with ANRE, participation at the public debates, information from ANRE's annual reports and other publicly available information about the Agency's activity, including the relation with the regulated sector, consumers, central public authorities, as well as the effect on the decisions adopted by the Agency.

1. Context

The National Energy Regulatory Agency (ANRE) was founded in 1997. Until October 2017 the Agency operated under the Law on Energy no. 1525 of 1998, the Parliament's Decision no. 238 of 26.10.2012, as well as the special legislation for the regulated sectors. In October 2017 the new Law on Energy entered into force. The Agency is headed by a Board of Directors consisting of 5 members, one of whom is appointed as Director General. The members of the Board of Directors are appointed by Parliament for a term of 6 years.

Starting with 2010 Moldova became a member of the EU Energy Community. In 2010-2013, ANRE's administration had a high degree of independence from political influence, although there were pressures, including an attempt to assassinate a member of the Board of Directors[41]. In 2013, the Director-General, Mr Victor Parlicov[42], was illegally dismissed and all the members of the Management Board were subsequently replaced. The approval of tariffs was not influenced by the political agenda, and the Agency carried out controls at TSO "Moldelectrica" and the subsidiaries of JSC "Moldovagaz". The said operators have been found to have unjustified expenses amounting to 400 million lei (~ 25m EUR). Based on the decisions issued by ANRE, these expenses were excluded from the respective tariffs.

Starting with 2014, the political influence has dramatically affected ANRE's activity. Two reasons for political interference in regulatory activity can be highlighted, namely:

- The temptation of the political class to hide frauds and financial interests in the energy sector;
- Politicians' desire to keep tariffs at a low level to prevent consumer dissatisfaction. Since the governance is unable to create conditions for economic development, so that people can earn decent revenues, social conflicts arise due to higher tariffs.

The Republic of Moldova imports about 80% of the energy resources and the tariffs are set in the national currency, which has sharply depreciated over the 2014-2015 period due to bank fraud. It has caused a substantial reduction in real incomes for the population and has triggered massive protests. The operators have accumulated substantial financial deviations, being forced to operate at the old tariffs approved in 2011 (gas) and 2012 (energy). ANRE failed to react to the depreciation of the national currency through price increases at end-users, despite the fact that 100% of gas and 80% of electricity were imported using USD prices. After the parliamentary elections (2014) and local elections (2015), ANRE made a sharp increase in tariffs in July 2015, causing the population to become even more dissatisfied. The country's poor governance, multiple acts of high-level corruption, coupled

[41] http://www.timpul.md/articol/cine-l-a-vrut-mort-pe-nicolae-raileanu-33267.html
[42] Reappointed by the Constitutional Court's decision, then repeatedly dismissed in 2014

with population impoverishment, have generated mass protests involving tens of thousands of people.

With the appointment of the Filip Government in January 2016, ANRE's independence was eroded even more. The Prime Minister announced publicly about the necessity to reduce the tariffs for energy and gas and ANRE approved the reductions within a few days, basically following the instructions of the Prime Minister. A dangerous precedent was created on January 26, 2016, when ANRE approved gas tariffs in a closed session, contrary to the provisions of the Law on Decisional Transparency[43]. Later, at the request of the Moldovan authorities, the Energy Community Secretariat (ECS) carried out a comprehensive analysis of ANRE's activity, highlighting a whole series of non-conformities[44]. The outlined facts also served as basis for the current assessment report on the Agency's activity for the period 2015-2017.

2. The responsibilities of ANRE and the regulated sectors

At present ANRE is empowered to regulate 6 sectors, and namely: natural gas, electricity, renewable energy, heating, petroleum products, water supply and sewage. The concept of tariff methodologies sets a regulatory period of 5 years.

The most important attributions of the Agency relate to: licensing, regulatory acts and tariff approvals, including investment plans, control of the operators' activity, consumer rights protection, publishing statistics on regulated sectors. The carried out monitoring highlights the need to improve the Agency's work on all aspects. A more detailed analysis is presented in the following sections.

An acute problem is the protection of consumer rights. Although the Regulation on the Quality of Transmission and Distribution of Electricity is in force, the consumers do not request or receive compensation for the operators' violation of quality parameters or the number of disconnections. The new version of the Regulation was approved on November 11, 2016. It provides the mechanism of automatic compensation, but the state operators (RED Nord and RED Nord-Vest) have to invest in automatic control systems that will determine the number and duration of disconnections.

Below is presented the assessment table of ANRE's activity during 2015-2017 years, which includes several compartments. Under the table are described the main facts that were used to assess the ANRE's activity on each compartment.

[43] http://www.trm.md/en/economic/tarifele-la-gaze-au-fost-aprobate-intr-un-mod-netransparent-exper-ti/
[44] https://www.energy-community.org/news/Energy-Community-News/2016/09/08.html

Assessment Table - Scorecard

	2015	2016	2017	Improvement measures
GUVERNANCE				
Independence				
Budget and subordination				
Changes in management				Parliament to appoint ANRE directors on a transparent and impartial basis
Political pressures				Parliament to appoint independent and professional persons to ANRE board
Relation with the regulated sector				ANRE directors to avoid inappropriate relations, remuneration or other benefits from regulated companies
Accountability				**ANRE to set performance indicators, conduct performance and financial audit**
Reporting and confirmation/verification of management				Parliament to replace ANRE executives in a transparent way, based on performance criteria
Accountability to consumers, industry, public				ANRE to provide truthful information and to hold periodic meetings with stakeholders, international organizations and operators
Financial and audit				ANRE to conduct and publish the audit of financial reports
Ethics and implementation of rules				ANRE to approve the Code of Ethics
Transparency				**ANRE to provide the relevant information in due time**
Publishing draft decisions				ANRE to comply with the Law on Decisional Transparency and to publish the relevant information on the decisions to be taken
Effective consultation				ANRE to provide comprehensive information and respond consistently to stakeholders' requests / recommendations
Responses on FOIA requests				ANRE to provide clear and comprehensive information on FOIA requests
Predictability				**Correlation of decisions with market evolution**
Consistency and motivation of regulations				Amendments in line with regulatory periods; the creation of ANRE Advisory Board
Adapting to environment				Regular consultations with the interested public for the assessment of the regulatory impact
SUBSTANCE				
Tariffs and prices				
Economic efficiency				ANRE to determine the real costs of the operators and to follow the legal framework when setting the tariffs
Periodic reassessments				Periodic review of tariffs in line with cost changes
Monitoring markets, granting licenses				
Capacity to penalize breaches of regulation				Monitoring the quality of services, informing consumers and applying penalties
Transparent criteria to grant / withdraw licenses				Block access of intermediaries to the market; monitoring operators to comply with the attributions provided by law
Consumer protection, management of complaints				Improve the enforcement of legal provisions, inform consumers about their rights / obligations, prompt reactions to complaints

- Unsatisfactory
- Moderately satisfactory
- Good
- Good practice
- N/A or no data

GOVERNANCE

Independence

The organization and attributions of ANRE were set up in the Law on Energy no. 1525 from 1998, which was in force until October 2017. The law also provided for the procedures for approving the budget, appointing and dismissing the directors of the ANRE Board of Directors, some competencies being provided for in the sectoral laws. The Regulation on organization and functioning of ANRE was approved by the Parliament Decision no. 238 of 26.10.2012. In October 2017 the new Law on Energy came into force[45].

Budget and subordination

According to art. 4[(3)] of the previous Law on Energy, the ANRE budget was approved by the Parliament within the limits of up to 0.15% of the cost of the energy products (natural gas, electricity, imported petroleum products and liquefied gases). At the same time, the Law did not provide for a deadline, during which Parliament approves the ANRE budget, and this gap was used as a political leverage to influence the activity of the Agency. Thus the ANRE budget for 2015 was approved by Parliament only in November[46], while the Agency was facing financial difficulties in making current payments, beyond the failure to participate in regional cooperation projects. ANRE's revenues are, however, all outside the state budget, as regulated contributions of regulated companies and fees for licensing.

The level of remuneration of ANRE directors has become a widely debated issue in the press. On the background of the poverty of the population, the high wages and unsatisfactory performance of ANRE executives have awakened people's dissatisfaction. Although high wages are meant to stimulate the independence of directors, we find that the goal has not been reached.

Strengthening the budgetary independence of ANRE is one of the obligations assumed by the Republic of Moldova under the Memorandum signed with the IMF in 2016[47]. At the same time, on 6 December 2016, the Ministry of Economy, ANRE and the Energy Community Secretariat approved an action plan to strengthen ANRE's independence in the context of the approval of the new Energy Law[48]. The new law draft stipulates that the Agency's budget will be approved by the Board of Directors by November 25 of each year. ANRE will only inform the Parliament about the approval of the budget within 10 working days. At the same time ANRE's Board of Directors will select an internationally recognized audit company on a competitive basis, which will check the financial reports. The new law also stipulates that the effectiveness of the expenditure will be further verified by the Court of Accounts, which will present a report to the Parliament. The amount of regulatory payments was increased from 0.15% to 0.3% of the sales revenues of regulated companies.

Changes in management

The appointment of the directors of ANRE's Board of Directors is done by the Parliament, but the previous Energy Law did not provide clear criteria for the selection of candidates. The requirements for the candidates included the citizenship of RM, higher education in technical, economic or legal field, and experience of at least 3 years in administrative positions. The lack of rules for the selection

[45] The new Energy Law no. 174 from 21.09.2017

[46] Parliamentary Decision no. 189 from 05.11.2015

[47] https://www.imf.org/external/np/loi/2016/mda/102416.pdf

[48] http://anre.md/ro/content/secretariatul-comunit%C4%83%C8%9Bii-energetice-va-oferi-suport-%C3%AEn-implementarea-unui-plan-de

of candidates to ANRE Board of Directors has created prerequisites for the appointment of persons who do not have the necessary qualification, but they are loyal to the interests of the political class.

At the end of December 2016, the parliamentary commission "Economy, Budget and Finance" (CEB) launched the public contest for the filling of the position of director of ANRE [49], which became vacant in July 2014 after the controversial dismissal[50] of Mr. V. Parlicov, the former Director General. The contest Regulation provided for a grid of evaluation criteria of the candidates and the set up of a special selection committee. On January 13, 2017, we submitted a position memo to CEB, together with a group of NGOs and independent experts, highlighting a series of non-compliances, namely:

- the audition of the candidates and the session of evaluation and selection are held in a closed format, fact that affects the transparency of the selection process and rises concerns about the quality and impartiality of the competition;
- the evaluation criteria for candidates, listed in Annex to the Regulation, is not relevant for the regulatory activity (the grid was actually taken from the contest for the position of governor of the National Bank of Moldova). Accordingly, 30 out of 100 points included in the evaluation grid refer to irrelevant criteria for ANRE (Macroeconomic experience and knowledge), or abstract criteria (such as communication skills). We proposed another evaluation grid.

The parliamentary committee ignored the recommendations of civil society and the contest was conducted with multiple violations. The members of the selection committee were not qualified to assess the knowledge of the candidates. Some committee members completed the evaluation sheets without being present at the interviews of the candidates. We have repeatedly informed the contest organizers about these violations, as well as the international institutions that monitor the energy policies. At the end the selection committee announced that the winner is Mr. Tudor Copaci, a former member of the Democratic Party, who left the party just a few days before the contest.

At the evaluation of the candidates also participated at least one representative of the Party of Socialists (PSRM), declared as opposition party. Mr. Vladimir Golovatiuc, Socialist MP, was the secretary of the selection committee. Although the Socialists criticized the activity of ANRE during public debates and press conferences, they even held several protest in front of the Agency, surprisingly Mr. Golovatiuc had no objection to the non-transparent way of running the contest for the selection of the ANRE Director.

The competition procedure for the selection of candidates is stipulated in the new Energy Law and derives from the commitments assumed by the authorities of R.M. through the memorandum with the IMF and the action plan agreed with the ECS. Regretfully, the parliamentary commission did not ensure the transparency and impartiality of the competition, which further erodes the independence and credibility of ANRE.

Political pressures

The interference with the regulatory activity and the political pressures on ANRE's leadership were extremely visible during 2015 and early 2016. On 21 April 2015 the President of Parliament, Andrian Candu, threatened the ANRE executives that he would personally "take them to the Prosecutor's Office" if he would find irregularities in increasing the tariffs for energy and gas[51]. On 3 September

[49] http://www.parlament.md/Actualitate/Concursuripublice/tabid/248/ContentId/2792/Page/0/language/ro-RO/Default.aspx

[50] V. Parlicov was dismissed by the Parliament's Decision no. 169 from 21.07.2014. The circumstances of his dismissal are also described in the ECS report from September 2016, idem 1.

[51] http://agora.md/stiri/7965/candu-o-sa-merg-la-procuratura-daca-vor-fi-nereguli-la-stabilirea-tarifelor

2015 ANRE suspended the decisions of July 2015 on the increase in energy and gas tariffs, referring to the decision of the Supreme Security Council, which recommended the freeze of tariff increases. This was only a few days before the mass protest on September 6, 2015.

Following the appointment of the Government of Filip in January 2016, ANRE's decisions on tariff adjustments were preceded on several occasions by the Prime Minister's statements, who publicly announced the size of the cut in energy and gas tariffs. The magnitude of political pressures narrowed slightly in the second half of 2016, after the initiation of negotiations to sign the memorandum with the IMF. The agreed governing measures concern the strengthening of ANRE's independence, transparency of tariff approvals, adjustment of energy tariffs, and the recovery of financial deviations for energy companies through the revision of electricity tariffs[52].

Relation with the regulated sector

According to the Energy Law, the members of ANRE Board of Directors are not entitled to hold shares in the regulated entities, to perform paid activities or to obtain other advantages, to favor the employment of themselves or their close persons in the enterprises regulated by ANRE. At the same time, the previous Energy Law stipulated that, within 2 years from the dismissal, the ANRE Director is not entitled to be employed in the regulated enterprises. The new Energy Law establishes that the ban on employment in the regulated businesses will be reduced to 1 year in order to set conditions similar to those of employees in other public administration institutions.

On the other hand, at the beginning of 2017 there was one instance when former and current members of the Democratic Party were nominated simultaneously in administrative positions at ANRE and at a regulated enterprise. The director general of ANRE was appointed Tudor Copaci, a former DPM member (he left the political party just before being appointed), and the chairman of the Board of Directors of JSC "Moldovagaz" was appointed the DPM member Vasile Botnari. Given that the average purchase price of natural gas decreased in the second half of 2017 by 23% compared to the average price for the year 2016, ANRE did not reduce the tariffs and neither did JSC "Moldovagaz" submit a request in this respect. An issue is the fact that currently the initiative of amending regulated prices seems to take place at the request of regulated companies, and no company would voluntarily see its tariffs reduced. This matter would be resolved when new tariff methodologies will be approved. The current methodology for calculating the tariffs for natural gas provides for the possibility to adjust the tariffs if the deviations exceed 5% of the forecasted annual expenses[53]. Analyzing the past ANRE practices, we can anticipate that the tariff cuts will take place before the parliamentary elections scheduled for the end of 2018.

Recommendations

- In the ANRE evaluation report, ECS mentions that at least two members of ANRE's Board of Directors do not have the necessary experience and knowledge concerning the energy policies and the functioning of the market[54]. The parliamentary committee must assess whether the respective members are incompatible with their position;
- If it is confirmed that these directors are incompatible with the provisions of the Energy Law, the respective directors are to be replaced on the basis of a public contest;

[52] See p. 32 of the Memorandum on Economic and Financial Policies, idem 3.

[53] P. 61 of the Methodology for the calculation, approval and application of tariffs for natural gas, ANRE Decision no. 678 from 22.08.2014

[54] Page 12 of ECS assessment Report, idem 1.

- The Parliamentary Committee to review the criteria set out in the candidates' evaluation grid and to take into account the recommendations received from civil society;
- Upon the formation of the special selection committee for the nomination of the ANRE directors, the Parliamentary Commission shall designate qualified persons, taking into account the complexity of the energy field, which requires specific knowledge.

Accountability

Reporting and confirmation/verification of management

According to the provisions of art. 32-34 of the Regulation of ANRE functioning and organization[55], annually until the end of the first quarter the Agency publishes the activity report, financial report and report on transparency in the process of drafting and approving the Council decisions. The reports are published on the Agency's website. The previous Energy Law provided that the activity report had to be submitted to the Parliament by the Director General of ANRE[56]. The Agency also publishes quarterly reports on the monitoring of regulated markets. The financial reports for 2015 and 2016 are presented in a very schematic form within the annual reports.

In the new edition of the Energy Law (Article 12 paragraphs 6 and 7) it is stipulated that ANRE will approve and publish annually the activity program, with the establishment of the performance indicators. Annually by 30 June, the Agency will report to the Parliament on activity and performance indicators as well as on the results of monitoring the activity of energy market participants. However the Energy Law does not provide clear criteria according to which the performance indicators will be established. Nor is provided a mechanism for accountability of ANRE directors for failing to fulfill the approved performance indicators, though such an accountability mechanism could be abused, as explained below.

Accountability to consumers, industry, public

The Agency has the attribution of collaborating with the civil society representatives and organizations that promote consumers' interests. The collaboration refers to both granting the access to information and the examination of proposals during public debates when are approved the regulatory acts, tariffs, or other decisions affecting the regulatory markets.

The Agency provides information at the request of consumers or interested persons. However, most of the interviewed consumers say that the formulations are hard to be understood for the uninitiated persons. The relationship between ANRE and consumers is also hampered by the fact that the majority of consumers are not aware of their rights and obligations, they cannot exactly formulate the object of the request, while the Agency does not make an effort to carry out an information campaign. Public consultations are mostly a formal element, as the Agency many times ignores the participants' recommendations and objections. This concerns both simple consumers and civil society experts or operators' representatives. As a result, ANRE's image and credibility are seriously affected.

Financial and audit

The previous Energy Law did not require ANRE to audit the financial activity. To address this issue, the new draft Energy Law provides that the Agency's financial activity will be audited annually by an internationally recognized audit company selected by ANRE on a competitive basis[57]. The financial

[55] Parliament Decision no. 238 from 26.10.2012

[56] Art. 4(2) par. (10) of the Energy Law no. 1525 from 19.02.1998

[57] Art. 11 par. (7) of the new edition of the Energy Law

report and the audit report will be submitted to the Parliament for information and will be published on the ANRE website.

Also in the new Energy Law it is stipulated that the legality of the ANRE's expenditures will be annually checked by the Court of Accounts and its report will be submitted to Parliament.

Ethics and implementation of rules

So far, there were no legal provisions that obliged ANRE to have a Code of Ethics. There are provisions prohibiting ANRE directors from holding shares in regulated companies, or getting any remuneration or other benefits from them. Problems of incompatibility with the function held or any conflict of interest are grounds for the dismissal of the director. In addition, the new Energy Law provides that ANRE will approve the Code of Ethics, to be published it on the website.

At the same time ECS states in the ANRE evaluation report that a part of the qualified staff left the institution in 2013. The missions of the international institutions in Moldova warned the Secretariat about the lack of qualified staff. The "inconvenient" employees were either transferred to other departments or their work contracts were not prolonged. These facts indicate the existence of pressure on ANRE employees.

Recommendations

- The Parliament should include in the Energy Law the criteria by which ANRE sets the performance indicators;
- ANRE to develop and approve performance indicators in public hearings;
- The Parliament to provide in the Energy Law a mechanism for accountability of ANRE executives for failing to fulfill the performance indicators. It is very important to make sure however that such accountability mechanism does not affect the independence of the regulator, e.g., by using the process of approving the annual report as a pretext for mid-term replacement of leadership. Any accountability mechanism should be proportionate and transparent.
- ANRE to regularly organize consumer information campaigns and to conduct regular (semiannual) consultations with the interested public on the activities carried out.

Transparency

Publishing of decisions

When approving decisions ANRE must comply with the public consultation procedure. It provides for the publication of relevant information on the decision to be taken, the appointment of the person responsible for receiving the recommendations and also providing a deadline of 14 working days for the public concerned to submit recommendations before the draft decision is finalized. Subsequently, ANRE should draw up a synthesis table with the received recommendations, mentioning the accepted and rejected recommendations, indicating the reason for rejection[58].

First of all, it should be noted that the previous legal provisions did not clearly regulate which decisions were to be subject to public consultations[59]. For example, approval of fixed costs for the regulated companies is generally done without public consultations. As some regulations might entail

[58] Chapter 2 of the Law on Transparency in Decision Making Process no. 239 from 13.11.2008

[59] Art. 14 par. (2) of the Electricity Law no. 124 from 23.12.2009

confidential data about regulated companies, the Consultative Council of Experts (designated in Law, but not yet effective in ANRE) should be consulted on such issues, its members having signed confidentiality agreements. When adjusting the tariffs, ANRE usually conducts public consultations, but does not comply with legal procedures:

- insufficient information is published on the Agency's website (missing the breakdown of the expenditure components according to the methodology, indicating the unit of measurement, the quantity, the cost per unit and the total amount), which makes it impossible to formulate reasoned proposals regarding the decisions to be adopted;
- the information is placed in two different compartments ("Public consultations" and "Projects subject to approval") and for many projects there is no indication of the period of public consultations;
- information about the person responsible for receiving the recommendations is missing;
- for the majority of draft decisions ANRE does not publish the synthesis table of recommendations.

Since 2016, the situation has slightly improved following the negotiations with the IMF and ECS. One of the prerequisites of the Memorandum with the IMF was to adjust the heating tariff to the real costs of JSC "Termoelectrica". The central authorities also took the responsibility to publish the detailed forecasts of the expenditures included in tariffs[60]. ANRE published in September 2016 the extensive information on the cost structure of JSC "Termoelectrica". Although the company operates in cogeneration mode and maintains the same cost allocation structure, ANRE has decided to adjust only the heating tariff, maintaining the same electricity tariff[61].

Effective consultation

ANRE's failure to comply with the public consultation procedures when approving decisions has a negative impact on the image and credibility of the Agency. The public consultations are mostly a formal procedure and the stakeholders are deprived of the right to contribute to the decision-making process.

In April 2016, the members of Center ASPE contested the ANRE Decision no. 19 of 26.01.2016 to reduce the gas tariffs in a closed meeting, because it was approved contrary to the legal provisions on decisional transparency. Decisions may be approved without the public consultation procedures only in exceptional cases (force majeure)[62]. ANRE decreased the gas tariffs just a few days after the appointed new Prime Minister, Pavel Filip, publicly announced about the need to reduce gas tariffs. In the reference submitted to the court, ANRE mentioned that it was imposed by the Parliament to approve the gas tariffs in emergency regime, within 15 days from the amendment of the Law on natural gas[63]. The deadline set by Parliament is contrary to the principle of decision-making independence of the Regulatory Agency. The court rejected our complaints.

The new edition of the Law on Natural Gas (No 108 of 27.05.2016) introduced more precise provisions. Article 9 of the Law provides that the approval of regulatory acts, basic costs and tariffs is to be carried out in accordance with public consultation procedures.

[60] P. 32 of Annex 1 of the Memorandum of Understanding with the IMF, idem 3

[61] Position Paper on the adjustment of heating tariffs, Victor Parlicov, February 2017, link: http://viitorul.org/files/library/5458294_md_sample_paper_2.pdf

[62] Art. 14 par. (2) of the Law on natural gas no. 123 from 23.12.2009

[63] Law no. 204 from 20.11.2015, amending the Art. 4 of the Law on Natural Gas no. 123 from 23.12.2009

Another issue regarding the organization of public consultations is the space where public meetings take place at ANRE. The consultation room is small and cannot accommodate at the same time the representatives of ANRE, regulated companies, consumers and the interested public, the representatives of the press[64]. In some cases, the Agency rents spaces for the efficient organization of the public consultations.

Responses to FOIA requests

The right of consumers to obtain information is regulated by the Law on Petitioning no. 190 of 19.07.1994 and the Law on access to information no. 982 of 11.05.2000. The laws contain different provisions on the deadline for submission of the reply, between 15 and 30 working days from the date of request.

Throughout the entire monitored period, ANRE provided consistent answers to all of our requests and has complied with the legal terms of 30 days.

Recommendations

- ANRE to publish detailed information on the structure of the costs included in the tariffs, to comply with the legal procedures of public consultations;
- When examining decisions with a major impact on consumers, ANRE to conduct the public consultations in a more spacious room.

Predictability

Consistency and motivation of regulations

When setting tariffs for regulated services, ANRE has to comply with the approved methodologies. For electricity and natural gas, the regulatory period set by the Agency is 5 years. The Gas Pricing Methodology provides for the revision of tariffs at the beginning of each year, based on requests from the operators. Tariffs may be revised during the year at the request of the operators if there is a minimum deviation of 5% between the actual costs borne by the operators and the costs set in tariffs (3% for natural gas supply service).

Although the regulatory acts provide for the possibility of adjusting the tariffs, they did not provide until recently for a time limit for the examination of requests for tariff revisions. This allowed the Agency to adjust the tariffs not on the basis of economic realities, but on the political agenda of the central authorities. On this subject we will refer in the chapter "tariffs and prices".

ANRE also has a regulatory program for the period 2016-2018, which provides for the acts to be approved [65]. When amending the regulatory acts, ANRE does not always take into account the principle of continuity and predictability. In February 2017, ANRE changed the methodology for calculating the tariff for electricity distribution and reduced the level of profitability for electricity distribution operators[66], although the regulatory period expires only in March 2018. The modification of the methodology was specified in the new version of the Law on Electricity, approved in May 2016, but the Law provides for a period of 2 years for the modification of the methodologies. Also, changing the principle of determining energy losses is actually a step back from the point of view of the

[64] http://media.realitatea.md/image/201503/700x394/media_142719868557060700.png
[65] http://anre.md/ro/content/plan-de-activitate
[66] ANRE Decision no. 57 from 23.02.2017

regulatory approach: the incentive regulation was changed to "cost plus" regulation, thus demotivating the operators to make investments for the reduction of energy losses.

The changes made by ANRE have reduced the revenues to be received by the distribution operators. Shortly after these changes, ANRE approved new distribution tariffs and included the financial deviations[67], accumulated by the operators during 2012-2015. However, on the one hand, ANRE included in the tariff the recovery of the financial deviations, and on the other hand it reduced the operators' revenues so that the increase in the tariffs would be a more modest one.

In the short term ANRE's decision to reduce the profitability contributes to a reduction of tariffs and benefits the consumers, but in the medium and long term it creates uncertainties about the predictability of regulatory policies. Uncertainty generates an increase in market and country risk, which will also affect the growth of WACC and tariffs.

Adapting to the environment

ANRE currently receives technical assistance under the EU4 Energy Program, funded by the European Commission. The project is implemented by ECS and provides for the development of the new Electricity Market Rules. ANRE and ECS signed a Memorandum of Understanding on 6 July 2017, according to which the Secretariat will provide technical and legal assistance in order to amend the secondary legislation in line with the requirements of the 3rd Energy Package.

Previously, on 6 December 2016 ANRE, Ministry of Economy and ECS agreed on an Action Plan to strengthen ANRE's independence. The Action Plan[68] foresees that the Agency will hold regular meetings with stakeholders and regulated companies to assess the regulatory impact of approved decisions. During 2017, the Agency did not hold any meetings in this respect.

According to the provisions of the new Energy Law, ANRE is entitled to set up an Expert Council on the basis of a regulation approved by ANRE. In our view, given the dramatic decrease of public confidence in the Agency, it is appropriate to set up a council of experts at ANRE, the objectives of which are to offer impartial expertise to the decisions approved by ANRE, to restore the credibility of the institution and to prevent various speculations. However, the draft regulation proposed by the Agency does not respond to these objectives for several reasons:

- The members of the Council of Experts are appointed and withdrawn by ANRE's decision. There is a risk that members who share different opinions with ANRE's official position may be replaced;
- It is not specified which documents approved by ANRE should be consulted with the members of the Council of Experts. It is also unclear what information may be requested by the Council of Experts.

On 22 December 2016, we submitted a position paper to the Agency highlighting the shortcomings and recommended to postpone the approval of the proposed regulation, but the proposal was rejected. Until now, the Expert Council has not been set up.

[67] ANRE Decisions no. 108 and 110 from 17.03.2017

[68] http://anre.md/files/Action%20Plan.pdf

SUBSTANCE

Tariffs and prices

Economic efficiency

In this chapter, we analyzed ANRE's policies on setting tariffs and adjusting them according to the evolution of actual costs incurred by operators. The legal basis for setting the tariffs are the methodologies approved by ANRE decisions, valid for a period of 5 years.

Electricity

More than 80% of the Republic of Moldova's electricity consumption is covered through imports. Respectively, the energy tariff is exposed to currency exchange rate risk because the costs are fixed in national currency, while the procurement of energy from abroad is made in US dollars. As it was mentioned earlier, between May 2012 and July 2015 ANRE did not adjust the tariffs due to political reasons. During that time, the national currency depreciated by over 50% against the US dollar, mainly due to bank fraud at the end of 2014. Operators accrued financial deviations in the amount of USD 110.9 million (about 1.6% of the country's GDP), they have incurred debts to electricity suppliers and the risk of blackouts was significant.

In July 2015, ANRE increased the tariffs by 37%, but did not recognize the value of financial deviations. Only after Supplier RED Union Fenosa and DSO Gas Natural Fenosa initiated the arbitration procedures, the parties managed to solve the problem amicably with ECS support, and the Agency has approved the recovery of the financial deviation within 4 years period. The tariff policy promoted by the Agency dissatisfies both consumers and operators. This happens for several reasons:

- ANRE does not comply with the provisions of its own regulatory acts and does not adjust the tariffs annually, according to the existing methodology;
- Consumers, most of whom have modest incomes, have a very negative opinion on ANRE because they do not sanction abuses committed by the operators. The problem is amplified by the fact that the approval of tariffs is non-transparent, without publishing full information concerning the cost structure.

As a result, the operators are dissatisfied with the fact that the tariffs set by ANRE do not fully cover the costs, while the consumers are disappointed that ANRE protects the operators and sets tariffs that include unjustified costs. Social tension has lowered after ANRE reduced the electricity tariffs in March 2016 by 10%, due to the decrease in the energy purchasing price, from $68/MWh in 2015 to $45-50/MWh.

The Agency has the task of verifying how the licensees comply by with the principle of maximum efficiency at minimum costs in the procurement of goods, works and services. It should be noted that during the last 15 years ANRE did not publicly disclose the results of the activity controls to the electricity distribution operators. No public decision of ANRE is available in this respect. At the same time, in March 2016 Parliament instituted a moratorium on state controls for a period of 3 months[69].

[69] Law no. 18 from 04.03.2016

The report on the control of the activity of TSO „Moldelectrica" was examined in public hearing in April 2013[70]. In August 2016 ANRE published the decision concerning the results of the control of "Termoelectrica" power plant, but the Control Report was not publicly examined[71].

Natural gas

Moldova is 99.9% dependent on Russian gas company Gazprom, which is a major shareholder in JSC "Moldovagaz". It has the monopoly on gas transport and distribution throughout the country.

The gas tariffs were also frozen in a similar manner as with the electricity tariffs, but the impact was less sensitive due to a 10.5% decrease in gas import price in 2015. ANRE did not adjust the tariffs for natural gas between September 2011 and July 2015, while JSC "Moldovagaz" and its subdivisions accrued financial deviations. ANRE has not yet recognized the value of the financial deviations in the natural gas sector. At the same time, the natural gas sector has always been the target of the corrupt interests of the political clans who were in the government. Below are just a few episodes that have become known to the public:

- In 2012, ANRE issued 4 decisions regarding the thematic controls carried out at the subdivisions of JSC "Moldovagaz", resulting in unjustified expenses amounting to more than $20 million. At the next revision of tariffs in 2015, ANRE excluded these costs from the tariff;
- The Parliament amended the Natural Gas Law in July 2014, according to which the transportation costs of natural gas for transit purposes were excluded from the regulation. As a result, all the costs related to the transportation of transit gas were put on domestic consumers, and the transportation tariff increased 16 times. This amendment, nicknamed the "Furdui amendment" after the name of one of the authors, was canceled by the Parliament only in November 2015[72].
- During the last 15 years JSC "Moldovagaz" has not been subjected to any controls by the state bodies, therefore the extent of frauds can be much higher.

In January 2016, as mentioned previously, ANRE revised the gas tariffs in closed session, without public consultations, contrary to the provisions on decisional transparency. Although in the first semester of 2017 the import price of natural gas decreased by 23%[73], the operator did not request from ANRE the reduction of tariffs. Taking into account that ANRE remains under the political influence of the Democratic Party, the most likely scenario is that the decrease in gas tariffs will take place on the eve of the 2018 parliamentary elections.

Periodic reassessments

To address the issue of delaying the tariff adjustments, Parliament approved in May 2016 the new Electricity and Gas Laws. A time limit of 180 days was set for the revision of tariffs from the date when the applications are submitted by the operators. The methodologies for electricity and gas tariffs provide that operators may request a change in the tariff if the deviation between the actual costs and the costs included in the tariff exceeds 5% (for the natural gas supply service – 3%).

Also, the respective laws contain clear provisions according to which the approval of basic costs and tariffs has to comply with the procedures of public consultation.

[70] http://anre.md/ro/content/anre%3A-moldelectrica-a-admis-%C3%AEn-perioada-2008-2011-cheltuieli-nejustificate-de-circa-156-de-milioane-de-lei

[71] http://anre.md/files/acte/Hotarare%20TERMOELECTRICA%20dispozitiv_0.pdf

[72] Law no. 204 from 20.11.2015, idem 23

[73] ANRE Report on the monitoring of the natural gas market, 1st semester of 2017

Recommendations to ANRE

- to carry out periodic controls on the operators' activity, to examine publicly the control reports and to approve the tariffs based on justified costs for the regulated companies;
- to publish detailed information on the costs included in the tariffs and to follow the public consultation steps;
- to adjust the tariffs periodically, depending on the actual cost of the operators;
- to hold periodic meetings with civil society, regulated companies and representatives of international institutions with expertise in energy field.

Market monitoring and Licensing

Capacity to penalize breaches of regulation

The Agency has sufficient legal instruments to sanction regulated companies for non-compliance or violation of quality of service. The Agency has the right to carry out controls of the regulated companies and to request any accounting documents and other relevant information, including data that represents commercial secret. ANRE also has the right to request information from central government authorities, tax authorities and the customs service. The new Energy Law stipulates that annually by 31 December ANRE will publish on its webpage the schedule of planned controls.

If the regulated companies commit infringements, ANRE has the right to issue prescriptions and apply sanctions for non-compliance by licensees. The size of the sanctions varies between 1% and 10% of the company's turnover, depending on the gravity of the infringements[74]. ANRE also has the right to reduce the electricity tariffs by up to 5% in case if the operators do not comply with the electricity quality indicators, or exceed the annual SAIDI limit.

If we look at the SAIDI indicator for each company, it falls within the limits set by the Regulation on the quality of electricity transmission and distribution services, but in some districts the quality of the power supply is unsatisfactory. Another problem is that the state-owned electricity distribution operators "RED-Nord" and "RED Nord-Vest" do not have an automated system to record the number and duration of blackouts. For this reason, the continuity indicators of energy supplies are subjectively reflected in the reports. Thus, the introduction of the mechanism of automatic compensations paid to consumers will only affect the private operator "RED Union Fenosa" and will discourage the state-owned operators to invest in automatic systems to record the continuity of the energy supplies.

During 2015-2017, ANRE did not apply financial sanctions to regulated companies. This is partly due to changes in the legal framework. In July 2016, the new Laws on Electricity and Natural Gas came into force.

Transparent criteria to grant / withdraw licenses

Laws on electricity and natural gas stipulate quite vague conditions for licensing, which could be misinterpreted. An ambiguous provision is related to the applicant's financial situation. In the case of a startup business, it must present a bank statement, but there are no clear requirements on the minimum amount of capital required. Therefore, the purpose of the requested document is not clearly defined in the law. Under these circumstances there is a risk of abusive interpretations of these

[74] Art. 95 from the Law on Electricity no. 107/2016 and art. 113 from the Law on Natural Gas no. 108/2016

requirements and of unjustified disqualification of applicants. The deadline for examining the applications for licenses is 15 calendar days.

The Agency may suspend or withdraw the license if the operator has presented false information in the documents, has not remediated the breaches found by ANRE or did not make the regulatory payments in the established terms.

The legislation does not regulate the responsibilities of ANRE when the applicant or license holder has a complex structure of shareholders, especially from offshore jurisdictions. It is also not stipulated that ANRE has the right to refuse to grant the license (or to withdraw it) if the Agency does not know the beneficial owner of the regulated company. This may threaten the energy security of the country. Between December 2014 and March 2017, about 80% of the country's energy consumption was covered by the intermediary company "Energokapital", with founders registered in offshore jurisdictions[75]. In the event of blackouts, ANRE would have been unable to identify and sanction the founders, but nevertheless issued the license and extended it for 2 years. On the other hand, financial and banking legislation provides procedures for acceptance and monitoring of the client. The bank is obliged to refuse to initiate the relationship with the client if no information is provided on actual beneficiaries, especially if the client has a complex structure of shareholders registered in offshore jurisdictions[76].

Consumer protection, management of complaints

During 2016 year ANRE registered 1137 complaints from consumers[77], or 51% less than in 2015. Depending on the subject of the requests, they have the following structure:

- 52% of the complaints were addressed by electricity consumers;
- 21% of the complaints came from water consumers;
- 13% - from gas consumers;
- 9% - from heating consumers;
- 5% - from consumers of petroleum products.

The most common problems encountered by energy and gas consumers refer to consumption billing, connection to distribution networks, and disconnections from sources of energy and gas supply. Issues related to measuring equipment and breach of contract conditions have also been reported. The compensations paid in 2016 to energy consumers as a result of damage to electrical equipment amounted to 1.1 million lei.

The most difficult situation is in the electricity sector. The most frequent problems raised by energy consumers relate to the quality of the services provided and cuts in the supply of electricity. According to the Regulation on the quality of electricity transmission and distribution services that was in force until 23.12.2016[78], the consumers could require compensations from operators for exceeding the admissible network voltage deviations, the number and duration of blackouts. ANRE report for 2016 indicates that operators have not paid any compensation in this respect. Two main reasons can be highlighted why consumers are not compensated:

- Consumers are unaware of their rights provided by the Regulation and do not require the payment of compensations from operators;

[75] https://sergiutofilat.wordpress.com/2016/08/03/schema-energokapital-explicata-pe-intelesul-tuturor/
[76] National Bank's Decision no. 172 from 04.08.2011 (Anti-Money Laundering Regulation)
[77] ANRE Activity Report for 2016, page 62
[78] ANRE Decision no. 406 from 25.02.2011

- The procedure for requesting compensations is difficult: the consumers must indicate the number and duration of blackouts, however this information must be initially requested from ANRE or from the operators.

In the new version of the Regulation[79] the provisions on granting compensations have been amended, but the amendments will come into force on January 1, 2019. Until then, the state-owned operators (RED Nord and RED Nord-Vest) are to install automatic blackout evidence systems. According to the new procedures, the compensations will be paid without the need of a written request from the consumers. Operators will therefore be required to record all violations of service quality indicators for all users of the system. The information will be transmitted monthly to electricity suppliers and they will calculate individual compensation and include them in the monthly bill for electricity.

Recommendations to ANRE

- to inform consumers about their rights and obligations.
- to monitor the activity of the regulated companies and to apply sanctions for violation of the quality of services and other consumer rights;
- to react promptly to consumer complaints and to promote more actively the decisions to sanction the regulated companies.

CONCLUSIONS

For the reliable functioning of the energy sector, it is important to strengthen the independence of the regulator. The current government has not fully realized this fact and continues to exert some political control over ANRE. Although the amended legislation strengthened the financial independence of the Agency, the parliamentary majority continues to appoint loyal persons in the ANRE administration.

During the monitored period, we find that the Agency continues to have a number of pending issues, the most important of which are:

- Ignoring the public consultation procedures when approving tariffs and regulation acts;
- Modification of the methodologies prior to the expiration of the regulated 5-year period, without analyzing and considering the impact on the regulated sectors;
- The Agency does not adequately control the economic activity of the operators, the way of keeping the accounting records, especially the correctness and the efficiency of the use of financial means allocated annually through tariffs;
- Although the Agency made commitments to external partners to hold regular meetings with the general public, these commitments are not being respected. No such public meetings were organized during 2017;
- Most consumers are unaware of their rights and obligations under ANRE regulations. It is recommended to the Agency to conduct periodical public events to inform the consumers. This will help to prevent abuses committed by the operators;
- The quality of service provided by operators needs to be improved. Besides the existing tools for penalizing operators or paying compensations to consumers for non-compliance with the quality parameters, the Agency must implement policies to stimulate the operators to improve the quality of services.

[79] ANRE Decision no. 282 from 11.11.2016

Annex: Methodology

An effective regulator is one that supports good performance of the energy sector, considering however the broader sector environment. We analyzed two critical dimensions: governance - the institutional and legal framework based on which the regulator makes decisions-, and "substance" or performance of the regulator - the quality of actual regulations. Governance is easier to assess and benchmark, as there are clear guidelines, by EU as well as others, such as the World Bank[80]; in addition, poor governance almost always leads to poor performance. For example, political appointments instead of merit-based selection may lead to low professional competencies; direct influence by Government, such as by controlling the budget, could pressure the regulator to delay market development and liberalization for fear of higher energy prices, which are politically sensitive. The focus of the assessment is thus 80% on governance and 20% on substance of the regulations. In each country, experts selected one particular area of regulation, e.g. tariffs, in which the capacity of the regulator was put to test in the year of analysis in the respective country. The assessment is done for the years 2016 and 2017, to capture the larger trends. In Moldova, 2015 was also analyzed to highlight recent changes.

The regulator is only a player in the sector and its capacity could be impaired by external factors. These may include: high market concentration of state-owned companies; poor governance of state companies which do not follow market rules (e.g., they receive state aid that distorts competition); overloading of the energy regulator with non-essential or even conflicting functions (such as energy efficiency projects, or regulation of water, gasoline, or pressuring the energy regulator to ensure social protection via tariff subsidies etc.); Government or Parliament interference with the market structure (such as nationalizations or concentration of SOEs). These limitations were factored in the assessment for each country to ensure comparability. To collect data and information, experts used both desktop research (laws, regulations, media investigations), as well as interviews with key stakeholders and specialists.

For the assessment, we used a common grid of indicators and coordinated the research to ensure comparability across countries. Indicators are mostly qualitative, adapted from World Bank and Inogate handbooks and used successfully for 4 consecutive assessments of the Romanian energy regulator in 2010-2014[81]. The indicators are presented as a Scorecard table and assess the relative performance of energy regulators; the "target" value (or color dark green in the Scorecard) is explained below and is replicates the methodology used for Romania in 2010-2014. Each partner presented in national tables the recommendations for improvements in the governance and quality of regulations, with responsible authorities (regulator, Parliament, Government etc.).

For the comparative assessment, scores given by the national experts were adjusted to capture the differences in general regulatory environment in energy in each country, powers and responsibilities of energy regulators, market models and designs, complexity of the energy markets.

[80] See for example http://rru.worldbank.org/Documents/Toolkits/infra_regulation/FullToolkit.pdf or http://www.inogate.org/inogate_programme/inogate_resource_center/trainingmaterials/Training_Handbook_engl.pdf

[81] http://expertforum.ro/en/energy-watchdogs-what-to-do-in-your-country/

A. Regulatory governance: legal framework and practical implementation.

Independence target:

- the regulator has a distinct legal mandate, fully implemented, it is free from undue pressures from the Government, Parliament, regulated industry
- it is not subordinated (formally or informally) to one single person in the Executive or to the ministry owning energy companies, and the subordination and accountability of regulator must be clearly defined
- it can fully decide on secondary regulation on market rules and tariff setting for regulated components without external pressures, formal or informal; same for licensing and monitoring of market
- full budgetary independence (own revenue sources); Court of Accounts controls only budget use, not regulations
- possibility for legal appeal to regulator's decisions (limits regulators' discretion)
- Executive leadership must be fixed-term, technical staff to be selected on competitive terms, appointments and removals of staff on objective criteria – competence, interest etc.
- Regulatory Board and Consultative Council appointed by clear rules ensuring independence
- High level of professional skills; adequate structure and resources

Accountability target:

- periodic (annual) reports of activity, to be discussed in Parliament, publicly available
- clear legal rules, enforced in practice, to respond to requests and inquiries from the general public and stakeholders in energy
- adaptation to judicial decisions, if judicial courts overrule decisions systematically
- responsibilities clearly defined among various regulatory bodies (energy, competition etc.). Clear, structured and formalized relationships among these to avoid regulatory gaps but also breach of independence.
- the regulator must give proper account for budgets and have external audits
- regulator must be accountable for performance (preferably audited externally), according to clear performance indicators
- the regulator must have an ethics code, which must be applied in practice
- the regulator and staff must exercise their powers only within approved rules and good practices
- the processes by which the regulator makes decisions must be clear and consistent in time
- capacity to enforce rules and decisions and effective supervision of investment programs, service quality standards etc.

Transparency target:

- all decisions publicly disclosed with justification, including items discussed in Consultative Council and Regulatory Committee
- non-discriminatory application of rules
- proper consultation of stakeholders on decisions
- published reports on activity and performance, and on the energy market
- Regulator answers promptly and adequately on requests for information on FOIA

Predictability target:

- regulatory decisions are consistent in time; periodic revisions of tariffs
- regulatory decisions are properly explained and justified

- consistency with previous practices

B. Regulatory substance: Country experts examined the performance of energy regulators in one key area which put to the test the regulator's capacities in the analyzed period. All experts considered tariffs and market monitoring as critical.

Tariff design target:

- Tariffs are economically efficient (lowest cost recovery levels allowing for development)
- Tariffs must stimulate economic efficiency and quality standards levels
- Prices and tariffs must be non-discriminatory (no favoritism) and with no cross-subsidies
- Structures to remain stable and predictable, published in due time, consulted with regulated industry and policy makers
- Limit regulatory intervention to minimum, not to overburden the industry ("proportionality" principle)
- Tariffs consistent with clear strategic goals
- periodic reassessments of costs / regulatory review

Monitoring & licensing target:

- Regulator receives systematic data from the energy market and information on request from regulated companies
- Regulator enforces its rules, decisions, orders on the market players (e.g. penalties, revocation of licenses etc.)
- Regulator criteria for licensing and authorizations is transparent, nondiscriminatory,
- allows quality of supply, does not overburden companies
- Third party access to networks, including cross – border interconnectors, is
- non-discriminatory
- Revocation of licenses and authorizations is based on clear, objective criteria
- (e.g. poor quality, interruptions, financial bankruptcy), without undue
- interferences from political level / pressures from regulated sector
- Formalized rules to handle consumer complaints and observe them adequately
- Regulator monitors quality of service standards
- Regulator issues / monitors clear rules for investment programs and
- connection obligations of the network companies (regulated TPA)
- Horizontal coordination – regulator coordinates in a formalized, structured
- manner with other regulators
- Regulations respect property rights, do not restrict investments / access on
- the market to a company, do not unduly affect one company