

**REGULATORY BODIES IN ENERGY SECTOR:
ENERGY AGENCY OF REPUBLIC OF SERBIA CASE**

***REGULATORNA TELA U ENERGETSKOM SEKTORU:
PRIMER AGENCIJE ZA ENERGETIKU REPUBLIKE SRBIJE***

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Abstract: *The paper deals with introduction independence and accountability principles in practice of regulatory bodies in energy sector. The independence of the public sector institutions encompass following dimensions: a) Personal – the appointment of the management bodies, and decision-making procedures, b) Financial – independent sources of financing, and c) Political – independence in setting the objectives and implementing the necessary policy. Introduction of principles of independence and accountability of regulatory bodies reduces the significance of obstacles of change which include the self interest of individuals and groups who fear that change may challenge their existing power and monopoly behaviour.*

The paper deals with status and role of regulatory bodies and consequences of their independence and accountability to public and parliament. Authors analyse different legal status of regulatory bodies in South-eastern Europe and Serbia and conclude that it is necessary to include in national constitutions, as highest legal act of each state, specific article which will stipulate a) basic goals of regulatory bodies and b) basic principles of regulatory bodies activities. In such way differences in legal status of regulatory bodies and inadequate level of their autonomy and independence would be avoided.

Key Words: *regulation, independent regulatory authority, regulatory reform.*

Apstrakt: *Rad se bavi posledicama uvođenja principa samostalnosti i odgovornosti u rad regulatornih tela u energetsom sektoru. Samostalnost institucija u javnom sektoru obuhvata: a) personalnu samostalnost: imenovanje, razrešavanje, odlučivanje od strane uprave; b) finansijsku samostalnost: nezavisni izvori finansija i c) političku samostalnost: samostalnost u određivanju ciljeva i sprovođenju politike.*

Rad se bavi statusom i ulogom regulatornih tela i posledicama njihove samostalnosti i odgovornosti prema javnosti i parlamentu. Autori ukazuju na različiti pravni status regulatornih tela u Jugoistočnoj Evropi i Republici Srbiji i zaključuju da je neophodno da se u ustave, kao najviše pravne akte, uključe poseдне odredbe koje će se odnositi na a) osnovne ciljeve regulatornih tela i b) najvažnija načela njihovog delovanja. Na taj način izbegao bi se različiti pravni status pojedinih regulatornih tela i osnažila njihova samostalnost i autonomija.

Ključne reči: *regulacija, samostalna regulatorna tela, regulatorna reforma.*

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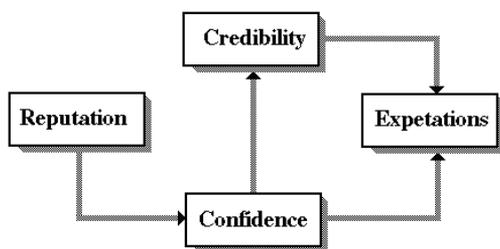
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1. Public sector management

The independence of the public sector institutions encompass following dimensions: a) *Personal* – the appointment of the management bodies, and decision-making procedures, b) *Financial* – independent sources of financing, and c) *Political* – independence in setting the objectives and implementing the necessary policy (Eijffinger 1997). A theoretical framework for this analysis has been estab-

lished in the works of Kydland and Prescott devoted to the time inconsistency of policy and the game of two players – the government and the public (citizens and the economy), where the government announces a specified policy and may choose either to remain consistent with it or abandon it, while the public may believe in this or not. Credibility of regulator is based on important relations shown at Figure 1.

Figure 1. Factors of credibility of regulatory body.



The most important duties of the regulator include:

- ❑ Implementing the authorization framework that provides opportunities for new companies and investors.
- ❑ Regulating competition (including tariffs) involving the effective enforcement of fair and equitable competitive market principles, restraining the power of dominant suppliers.
- ❑ Establishing sufficient safeguards to ensure that consumers are protected against bad business practices.
- ❑ Minimizing the burden and costs of regulation and contract enforcement (Jakšić, M. et al. 2010).

Two main hypotheses, are used as explanation of rise of regulatory practice throughout the world. The first is that governments establish independent regulators in order to increase the credibility policy. The second hypothesis is concerned with the risk that new policy will based on different

preferences will change the position of regulatory bodies. According to a survey by the management consultancy A.T. Kearney, the quality of the regulatory environment is a more important determinant of FDI in South East Europe (SEE) than other criteria commonly cited, such as macroeconomic stability, Gross Domestic Product (GDP) or cost of labour. Score for Serbia (3,5) is above average for SEE region, shown in Investment reform index 2006 - IENE - Serbia Energy Outlook [DRAFT], 26. feb. 2010).

2. Regulatory Independence in practice

K. S. Johannsen explored the status of regulatory bodies in energy sector (Johannsen 2003). The data for survey were collected through a questionnaire sent to each of the 16 members of the CEER (2000). Index of regulatory independence was essentially by on Cukierman, Webb and Neyapti's index of the independence of central banks. The index measures four key variables: A) Agency head status, B) Management board member status, C) Relationship with government and parliament, and D) Financial and organisational autonomy, each of which is composed of 4-6 sub-variables. Each sub-variable has 2-6 possible answers and each answer has been coded with a number between 0 and 1, 1 being the most independent and 0 being the +least independent. Following are the results of K. S. Johannsen (Ibid).

Table 1. Regulatory objectives of the regulatory authority (Johannsen Ibid.).

Country	Consumer protection	Economic efficiency in the supply in the supply in the supply	Competition	Market transparency	An environmentally friendly electricity supply	Socially responsible Price policies	Security of supply
Austria	X	X	X	X	X		X
Denmark.	X	X	X	X	X		
Greece	X	X	X	X	X	X	X
Ireland	X	X	X	X	X	X	X
Italy	X	X	X	X	X	X	
Luxembourg	X		X	X			
Nordhern Ireland	X	X	X		X		X
Spain	X	X	X	X			X
Countries with the objective (n=8)	8	7	8	7	6	3	5

Table 2. The Independence index (Ibid.).

Country	A. Independence from government	B. Independence from stakeholders	C. Independent decisionmaking	D. Organisational autonomy	Index	Rank
Austria	0,58	0,50	0,93	0,63	0,66	5
Denmark	0,44	0,33	0,87	0,63	0,57	8
Greece	0,78	0,33	0,92	0,75	0,69	2
Ireland	0,69	0,58	0,88	1,00	0,79	2
Italy	1,00	0,75	0,89	1,00	0,91	1
Luxembourg	0,42	0,63	0,58	0,75	0,59	6
Northern Ireland	0,44	1,00	0,88	0,63	0,74	3
Spain	0,61	0,58	0,36	0,75	0,58	7
Mean	0,62	0,59	0,79	0,77	0,69	-

3. Regulatory independence: Energy Agency of Serbia (EARS) primer

EARS is legal entity with rights, obligations and responsibilities defined in Energy Law of Republic of Serbia (EL) (Part III - articles 10-24. are defining foundation, legal status, tasks, organization, management, independant status and accountability: foundation and legal (articles 10-14), tasks (articles 15-16) and management (articles 17-24) – (<http://www.aers.org.rs>, s. 13). According to EL (article 10) EARS is "regulatory body in charge for promoting and directing energy market development based on the principles of non-discrimination and effective competition, monitoring the implementation of regulations and energy systems operation codes, adjusting the activities of energy entities in ensuring the regular supply of energy and services to consumers and their protection and equal position, as well as other activities stipulated by Energy law" (Mačić 2001).

Independance of EARS is defined in articles 12. and 13. of EL where it is stipulated that "funds for establishing and functioning of EARS are provided from licence fees, part of tariffs for access and usage of transmission system" and "Agency is independant legal entity, functionally independant from all government bodies, energy subjects and users of their goods and services, and all other legal of natural persons". Article 18. of EL defines that "President of EARS council and members of council (five persons) are elected by Assembly of Republic of Serbia, on government proposal".

Three main tasks of EARS are:

- ❑ Legislative: making rules as accounting rules, pricing rules;
- ❑ Administrative: licenses, approving prices, and

- ❑ Judicial: solving conflicts.

Four key areas of activities of EARS are following:

- ❑ Enhancing and directing the development of the energy market;
- ❑ Harmonizing the activities of energy entities in providing regular energy supply
- ❑ Monitoring the implementation of regulations and energy system operating codes;
- ❑ Providing protection and maintaining a level playing field for customers.

Advisory, supervisory, licensing and rule making power are basis of independence of EARS. In order to enhance energy market opening in the Republic in Serbia and harmonize it with EU Regulations, new Energy law will be passed for the purpose of full harmonization with the Acquis and EU directives concerning energy sector. Energy law of Republic of Serbia introduces:

A. Further market liberalisation that enables each buyer to select the energy supplier according to individual dynamics (requirements of Directives 2003/54/EC and 2003/55/EC);

B. Separation of competitive and regulated activities in the area of electricity i.e. separation of distribution and electricity distribution system management, as a regulated activity, from electricity supply i.e. trade in electricity for supply purposes, as potentially competitive activity. This will enable equal treatment of suppliers by distributors, and the qualified buyers in the distribution system are enabled to exercise their right in a non-discriminatory manner (requirements of Directive 2003/54/EC).

C. Extension of competences of the Serbian Energy Agency, which now will be empowered to define prices in energy sector, not only to give opinion to the government in (Zakon o energetici Republike Srbije 2011).

4. Regulatory benchmarking questionnaire

In 2004, an initial questionnaire was developed in conjunction with the CEER WG SEEER (Council of European Energy Regulators Working group, South East European energy Regulators); the answers of participants, supplemented by legislative reviews and interviews, formed the basis of the 2004 Report. For 2005, respondents were asked to update information from 2004 and address any developments in the past year. In July, a short supplementary questionnaire was also circulated. Information included in the 2005 Report came from updates, answers to the supplemental questionnaire, follow-up interviews, and analysis of the existing or pending legislation and practices in each country (CEER 2005).

Concerning independence, CEER report concludes that majority of regulatory authorities have clearly defined separate budgets (with the exception of two with budgets tied to the central budget and one with limited control over its subpart of the Ministry's budget). All have laws that provide for income to be derived from license fees and other regulatory activities. All but four participants require budget approval from another body, usually the Parliament or the Government. All regulatory authorities are subject to some kind of budget control, for example, via fee setting by the Government or Parliamentary power to change amounts allocated for the next budget period. These approvals and controls, exercised in a reasonable and consistent manner pursuant to provisions set by law, function as a balance and check (Kaderjak 2008).

4.1 Regulatory benchmarking questionnaire

Following questionnaire is part of project dealing with performance of energy regulators initiated by CEER (Council of European Energy Regulators), and gives outline for assessing independence and accountability of regulatory bodies in energy sector (CEER 2005).

INDEPENDENCE

A. LEGAL INDEPENDENCE

1. Is the regulatory authority a separate legal entity from the ministries of the energy sector or other government bodies?
 - a. If no: What is the relationship?

B. FINANCIAL INDEPENDENCE

1. Is the budget process or methodology established in the law or elsewhere?
2. Does the regulatory authority have its own budget, separate from the central budget?
 - a. If yes:
 - i. Where do funds for the budget of the regulatory authority come from?
 - ii. Does any governmental body (e.g., Council of Ministers, Ministries, Parliament) have any say with respect to the manner in which these funds are used?
 - iii. Must the regulatory authority seek approval for the budget?
 - iv. In practice, has the amount requested by the regulatory authority been provided to the regulatory authority?
 - b. If no:
 - i. What is the process for obtaining funds from the central budget?
 - ii. Is any requested amount provided to the regulatory authority at all times?
 - iii. Is the regulatory authority subject to constraints arising from the central budget?
3. When does the regulatory authority receive funds?
4. Does the regulatory authority have the power to set sector participant fees to meet budgetary needs?
 - a. If yes:
 - i. How are the fees set?
 - ii. Are there any (legal) constraints on how these fees are set?
 - b. If no: How are fees set?
5. Are annual audits of the budget conducted?
 - a. If yes:
 - i. Are the scope and terms of the audits described in law?
 - ii. What is the process for conducting audits?
 - iii. What is the role of governmental bodies and industry in conducting such audits?
6. Does the regulatory authority have any difficulties meeting financial costs?
 - a. If yes: Please describe.

C. FUNCTIONAL INDEPENDENCE

1. Does the Ministry for the sector or other governmental body have the authority to approve or reject regulatory decisions?
 - a. If yes:
 - i. Which governmental body has authority, and over which decisions?
 - ii. Do different bodies have different authorities?
 - iii. Has any such authority been used in practice?
If yes: Please describe.
 2. Does the Ministry for the sector or other government body have the authority to change, in any manner, regulatory decisions?
 - a. Has this authority been used in practice?
 - i. If yes: Please describe.
 3. With respect to appeals:
 - a. Is there a mechanism in place for parties to appeal a regulatory decision?
 - i. If yes: Please describe.
 - ii. To what body or bodies is a decision appealed?
 - b. Does the regulatory authority's decision remain in effect pending appeal?
 - c. What is the scope of review during the appeal? (For example, is the appeal limited to errors of fact or procedure only?)
 - d. Has any regulatory decision been appealed in practice?
 - i. If yes: Please describe.

D. PROCEDURES FOR APPOINTMENT AND REMOVAL

1. Who appoints the regulators of the regulatory authority?
 - a. Is there any difference between the appointment process for Chairman, Vice-Chairman and other regulators?
2. Other than experience requirements, what are the grounds for appointment (*e.g.*, citizenship, age, etc.)?
3. Who removes the regulators of the regulatory authority?
 - a. Is there any difference between the removal process for Chairman, Vice-Chairman and other regulators?
4. Is revocation of appointment of a regulator or removal only for cause?
 - a. If yes: Does the law clearly define grounds for cause and what are those grounds?
 - b. If no: What is the basis for removal?

E. MANDATE

1. Are the minimum terms of the regulators of the regulatory authority fixed?

2. What are the terms of the regulators and are these defined in law?
 - a. Are the terms the same for the Chairman, the Vice-Chairman or any other such leading position?
3. Are initial terms of the regulators staggered?
4. In practice, has a regulator ever been removed before his or her term has ended?
 - a. If yes: How many, and what were the grounds for removal?
5. Is the reappointment of regulators possible under the law?
 - a. If yes:
 - i. How many consecutive terms may a regulator serve?
 - ii. Is the rule the same for the Chairman, Vice-Chairman or any other such leading position?
6. In practice, has the term of one or more regulators ever been renewed?
 - a. If yes: In how many instances?

5. Position of Energy Agency of Republic of Serbia (EARS) in new Energy Law of Republic of Serbia

Next diagram illustrates the main tasks of EARS (Mačić 2001).

Article 38

The Agency has been established as the regulatory body by the Energy law ("Official Gazette of the Republic of Serbia", issue: 84/04).

The Agency shall be an autonomous legal entity functionally independent of any state body, as well as of all organizations and persons engaged in energy activities operation.

Article 39

The Agency's body is the Council of the Agency (hereinafter: the Council) that passes all decisions on issues within the authority of the Agency by majority of votes out of total number of the Council members, unless otherwise stipulated by this Law and the Statute.

The Council shall consist of a President and four members, elected from among prominent experts in energy field.

Article 40

The President and members shall be elected by the National Parliament at the Government's proposal.

Article 42

The Council President and members shall be elected for the period of five years.

The Council President and members cannot be elected more than twice consecutively.

Figure 3. Key tasks of the agency

	Issuing and revoking licences	
	Deciding upon appeals lodged by energy entities	
Approving tariff systems and determining methodologies for defining tariff elements used in the calculation of prices	Issuing consents on energy entities Acts	Determining appeals concerning the refusals or denial of open access
	Undertaking price reviews for energy activities	
	Passing Acts on licence revocation	

We draw attention to main articles of Energy Law of Republic of Serbia (draft, ver. Jan. 2011) which are important of position and role of this important regulatory body.

Article 44

Provisions of the law referring to prevention of the conflict of interest in discharge of public office shall accordingly apply to the President and the Council member.

Article 48

The Agency shall adopt a financial plan determining total revenues and expenditures of the Agency, including the contingency fund as well as the wage bill.

National Parliament shall give consent to the financial plan.

Financial plan shall be submitted to the National Parliament no later than the end of October of the current year for the next year.

All accounting of the revenues and expenditures of the Agency shall be the subject of annual audit by a certified auditor.

Article 49

The Agency shall be financed by means of fees paid for energy activities licences, a part of the access to the system tariff, as well as by means of other revenues made in performing operations within its competency in compliance to the law.

Article 50

The Agency shall ensure transparency of its operations and availability of information of public interest to all interested entities with business or other legal interest, which are not deemed confidential by the law or the Statute of the Agency.

6. Conclusion

Introduction of principles of independence and accountability of regulatory bodies reduces the

significance of obstacles of change which include the self interest of individuals and groups who fear that change may challenge their existing power and monopoly behaviour.

We conclude that it is necessary to include in national constitutions, as highest legal acts of each state, specific article which will stipulate following:

(1) basic goals of regulatory bodies such as "promoting and directing market development of regulated industry on the principles of non-discrimination and effective competition, monitoring the implementation of regulations in regulated industry, ensuring the regular supply of goods and services to consumers and their protection and equal position, as well as other activities stipulated by specific industry laws":

(2) basic principles of regulatory bodies activities such as (a) independence – personal, financial and policy and (b) accountability to parliament.

In such way differences in legal status of regulatory bodies and inadequate level of their autonomy and independence would be avoided.

References

CEER (2000), *Memorandum of Understanding for Establishment of the Council of European Energy Regulators*, Brussels, May, <http://www.ceer.eu.org/documents.htm>; CEER_ECSEE Regulatory Benchmarking Report, 08-10-2004, CEER.

CEER (2005), *Regulatory Benchmarking Report For South East Europe*, Ref: C05-ICO-01-3,8 Nov. 2005, CEER (Council of European Energy Regulators).

Cukierman, A., Webb, S. B., Neyapti, B., (1992), "Measuring the Independence of Central Banks and Its Effect on Policy Outcomes", *World Bank Economic Review*, Vol. 6, No. 3, 353-398.

Eijffinger, S. (1997), *Independent Central Banks and Economic Performance*, Edward Elgar.

"Formation and Functioning of Energy Agency of Republic of Serbia", European aid 114376/D/SV/YU.

<http://www.aers.org.rs>.

IENE (2010), *Serbia Energy Outlook [DRAFT]*, 26. feb.

Investment reform index (2006), *Progress in Policy Reform*, OECD.

Jakšić, M. et. al. (2010), "Public sector management: role of independence and accountabili-

ty", 29th International Conference On Organizational Science Development, People and Organization, Portorož, Slovenia.

Johannsen, K. S. (2003), *Regulatory Independence in Theory and Practice – a Survey of Independent Energy Regulators in Eight European Countries*, AKF Forlaget.

Kaderjak, P. (2008), *NARUC/ERRA Workshop on Public Utility Regulation In Market Economies*, April.

Mačić, Lj. (2001), *Role of EARS*, presentation, 30. may.

Zakon o energetici Republike Srbije (2011), draft version, jan.