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**HYDRO POWER AND ENERGY
PLANNING PROJECT (HPEP)**

REPORT ON REGULATORY INDEPENDENCE

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(HPEP)

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1.0 INTRODUCTION

This report outlines the importance of regulatory independence. Regulation provides a modern and efficient interface between the public interest, the interests of consumers, the interests of those providing regulated services under monopolistic conditions. Independence is subject to different interpretations. Some use it interchangeably with autonomy; others perceive greater or lesser differences in meaning between the terms.¹

Independence of regulators is important because such regulators can limit political interference in business decisions which minimizes regulatory risks. This regulatory role is particularly important given the nature of regulation in the energy sector. The industries in the energy sector are essential for the overall economic development of the country and require a predictable and credible regulatory regime.² The regulatory independence is discussed both from Georgian and international perspective in this report.

2.0 REGULATORY INDEPENDENCE IN GEORGIA

The Georgian energy regulator is an independent authority. Its status and functions are defined by the Law of Georgia on Electricity and Natural Gas and Law of Georgia on Independent National Regulatory Authorities.³

The Law of Georgia on National Regulatory Authorities (hereinafter “Law on Regulatory Authorities”) establishes the independence of the regulatory authorities operating in Georgia from political pressure of any kind, from improper influence and illegal interference of state authorities or other persons, as well as from any acts as may infringe on their independence; the authority to effect perfect regulation of any specific field; the responsibility to ensure the transparency and reliability of decision-making process; the main principles of the creation, activities and organization of independent regulatory authorities.⁴

2.1 GNERC Defined

The Law on Regulatory Authorities defines GNERC as a legal entity of public law with special legal capacity, created by the State. It does not have a state controlling Authority, is independent from the state bodies and operates within the limits of the authority as defined pursuant to this and other applicable laws.⁵

¹ Warrick Smith, Public Policy for the Private Sector, Utility Regulators – The Independence Debate, October 1997, p. 3.

² Energy Regulators Regional Association, Legal Regulation Working Group, Issue Paper, Regulatory Independence, Prepared by KEMA International B.V. November 2008 (hereinafter the “ERRA Issue Paper”), p.1.

³ ERRA Issue Paper , p.48.

⁴ Law of Georgia on Independent National Regulatory Authorities (hereinafter the “Law on Regulatory Authorities”), Article 1(2).

⁵ Law on Regulatory Authorities, Article 3(c).

2.2 Independence of GNERC

GNERC and the Commissioners shall be independent within the scope of their activities and shall comply only with the Georgian Legislation. Only GNERC shall have the right to exercise the full authority in respect to the matters which are delegated to it under the applicable law. Any attempt of any person to exercise the jurisdiction over the sphere of authority of an Independent regulatory Authority shall be illegal, and the results thereof shall have no legal force.⁶

2.3 Financial Independence

The expenses of GNERC shall be financed by the annual Regulatory Fees, payable by regulated entities, and other income provided for by the Georgian Legislation. It is impermissible for GNERC to form charity organization or similar non-entrepreneurial (non-commercial) legal entity and finance it.⁷ The Parliament of Georgia is authorized to conduct audit of the compliance of GNERC with the approved Budget. This issue will be discussed in section 2.10 of this report.

2.4 Authority to Adopt Normative Acts

GNERC shall be authorized within its competence to adopt obligatory rules of conduct of legal nature (normative acts). A normative act of GNERC shall be a resolution.⁸

2.5 Authority with Respect to Licenses and Permits

GNERC shall have full authority, within its competence to grant licenses, to suspend them, to extend their terms, to modify or to revoke them. It shall be inadmissible to interfere in the authority of GNERC in respect to its licensing authority and to exercise control over such authority.⁹

2.6 Authority with Respect to Tariffs

GNERC shall have full authority, within its competence to establish and regulate tariffs as provided for by the Law. It shall be inadmissible to interfere in the authority of an independent regulatory Authority in respect to tariffs and to exercise control over such authority.¹⁰

2.7 Authority to Settle Disputes

GNERC shall be authorized to settle the disputes related to the matters assigned to its competence between licensees, or between licensees consumers. The decisions of GNERC concerning the disputes may be appealed in the Court pursuant to the special procedures.¹¹

⁶ Law on Regulatory Authorities, Article 6.

⁷ Law on Regulatory Authorities, Article 7.

⁸ Law on Regulatory Authorities, Article 9.

⁹ Law on Regulatory Authorities, Article 10.

¹⁰ Law on Regulatory Authorities, Article 11.

¹¹ Law on Regulatory Authorities, Article 12;

2.8 Protection of Consumers Interests

One of the main functions of GNERC is to provide consumers with public information, to review and solve their petitions and complaints. Petitions and complaints shall be received every business day.

Petitions and complaints from consumers shall be examined by means of public hearing, except the cases established by the legislation and the cases when the solution of matters in dispute does not require the conduct of organized proceedings. GNERC must invite the parties concerned at least 7 days prior to the conduct of the public hearing. The notification concerning the invitation may be published by any means, where there must be indicated the matter to be discussed, the date of the conduct of hearing, its venue and time.¹²

2.9 Publicity

The sessions of GNERC shall be open to public, except for the cases provided for by the applicable law. The decisions of GNERC shall be published pursuant to the established procedure.

GNERC must keep the minutes of its sessions and other relevant documentation for the period of at least 7 years. The Commissioners and interested persons may have unrestricted access to all records and other documentation available at GNERC. All decisions, records and other documentation of GNERC shall be available for public discussions. The procedure for the maintenance of confidentiality of the information kept by GNERC shall be determined by GNERC concerned in conformity with the Georgian Legislation.¹³

2.10 Reporting

GNERC shall prepare annual reports on its activities and conduct financial audit of its expenses and accounting in conformity with international accounting standards. The Georgian Parliament shall be authorized to take decision concerning the conduct of the audit of the compliance of GNERC with the approved Budget. According to the Law of Georgia on Electricity and Natural Gas (hereinafter the “Electricity and Natural Gas Law”), GNERC itself approves its budget annually.¹⁴ The audit of GNERC shall be conducted by independent auditors selected by a tender commission, whose composition shall be approved by the Parliament on presentation of the Sector Economy and Economic Policy Committee thereof. The remuneration of the auditor selected for the inspection of financial activities shall in any event be borne by GNERC. GNERC shall make public the report on its financial activities and the results of the financial audit.¹⁵

3.0 REGULATORY INDEPENDENCE FROM INTERNATIONAL PERSPECTIVE

3.1 Political Independence

One important dimension of regulatory independence is political independence. Political independence means that the regulatory authority is free from interference

¹² Law on Regulatory Authorities, Article 13.

¹³ Law on Regulatory Authorities, Article 16.

¹⁴ Electricity and Natural Gas Law, Article 19.

¹⁵ Law on Regulatory Authorities, Article 17.

of a government ministry or department and the regulator has control over its internal administration as well as protection from removal from office for political reasons. In order to assess political independence it is essential to understand the regulator's role in relation to ministries and political executives as well as other stakeholders. Separating regulators from ministries, giving them more autonomy and responsibility for regulatory tasks, and holding them accountable for their performance should improve efficiency and better regulation.¹⁶

3.2 Legal Independence

The independence of a regulator may be formally established in legislation and usually refers to the objectives, functions, duties and powers that a regulator possesses, as well as, rules on appointment, decision-making structure and dispute resolution. Therefore, a key feature of independent decision making is a robust legal framework governing regulated activities and their associated objectives, principles and values, including the legal basis for adequate and stable financing of regulated activities and a constitution governing appointment and conduct of business.¹⁷

The appointment of regulators (or commissioners) remains largely a government responsibility and questions such as term of office, reappointment, removal from office and restrictions on personal interests are usually included in specific legislation, regulator's statutes, contracts or decrees, etc. In many countries there is a fixed term of appointment and reappointment of regulators. Even more important than the fixed term of appointment is stagger terms so that they do not coincide with the election cycle. As a general rule mandates are irrevocable but removal from office may occur in special circumstances (e.g. personal incapacity, proven corruption). In general, regulatory independence is more effective if the removal from office requires the approval of the legislature.¹⁸

In Georgia the GNERC consists of five members. The President of Georgia submits the candidatures of the GNERC members to the Parliament of Georgia and the latter elects them with the majority vote. The candidatures of GNERC members are agreed with the Government of Georgia. The term of office of GNERC members is six years. A GNERC member may be re-appointed for another six-year term. In case of a pre-term termination of a GNERC member's duties, the Parliament of Georgia shall elect a new member to serve for the remainder of the unexpired term.¹⁹

The existence of a legal independence is an important dimension of regulatory independence contributing to enhanced credibility and effectiveness of the regulatory process. Indeed, the legislative framework is essential, as this provides the basis for the regulatory activities.²⁰

¹⁶ ERRA Issue Paper, p. 13.

¹⁷ ERRA Issue Paper, p. 1.

¹⁸ ERRA Issue Paper, p.31.

¹⁹ Electricity and Natural Gas Law, Article 6.

²⁰ ERRA Issue Paper, p.20.

3.3 Sociological Independence

Regulatory independence also depends on the acceptance of the regulator's authority and its credibility in the eyes of the public, industry, and stakeholders. As perceptions regarding fairness and transparency of the regulatory process influence public acceptability of the regulatory system, the key is to communicate with various stakeholder groups. This leads to the necessity to design and implement a structured public relations strategy where appropriate.²¹

3.4 Financial Independence

A very important indicator of the regulator's independence is the source of its budget e.g. licensing fees, state budget, etc. A regulator's effectiveness is determined largely by the adequacy of its resources, both human and financial. Insufficient financial resources may compromise the ability of the regulator to carry out its tasks, while too many resources may result in a lack of focus in regulator activities. In general, competitive level of salaries, other social, and/or educational benefits, and good working environment are essential to attract, develop and retain highly qualified staff. This will enable the regulator to be competitive with the other companies in the energy industry. Financial independence should be looked at from a two-dimensional perspective: the funding of the regulatory authority and its financial autonomy. The main problem occurs when the regulator's budget is allocated and approved by institutions that may seek to use the budget to influence regulatory decisions.²²

3.5 General Introduction to Regulatory Independence

This part of the report introduces the background and establishment of regulatory authorities. It summarizes the roles and tasks and highlights the development and evolution of regulatory authority. It also describes the importance of regulatory independence and the essential factors that are required to ensure an effective, transparent and non-discriminatory regulatory system.

3.6 Background and the Role of the Regulator

Most regulatory authorities in the energy industry were established as a result of reform (e.g. restructuring, privatization, liberalization of the electricity and gas market) and legislation. The main purpose of establishing regulatory authorities was to regulate the monopolistic areas of electricity and gas activities and to promote competition in generation and supply activities. One of the main arguments in favor of regulation is the role of regulators in correcting market failures (e.g. natural monopolies, externalities). The existence of market failures such as the presence of natural monopolies in transmission and distribution networks requires the existence of an independent party - i.e. a regulatory authority – ensuring that all competitors have access to networks and resources are spent in an efficient way to provide quality of supply at reasonable prices to consumers.²³

²¹ ERRA Issue Paper, pp.2,6.

²² ERRA Issue Paper, p. 30.

²³ ERRA Issue Paper, p. 6.

3.7 Independent Regulatory Authority: An Institutional Model for Regulation

Creating and sustaining an effective regulatory system depends on effective regulatory governance. Regulatory governance is concerned with the institutional environment and the processes of regulatory decision-making. The following governance elements that are required to ensure an effective regulatory system are established:

- Regulatory commitment;
- Clarity of roles and functions between the regulator and policy makers;
- Regulatory autonomy;
- The organizational structure and resources of the regulator;
- Issues such as transparency, participation, accountability, predictability, proportionality and non-discrimination. Different combinations and degrees of such elements result in different regulatory models such as:
- Direct regulation by government;
- Regulation by independent regulatory authorities.²⁴

3.8 Importance of Regulatory Independence

Independent regulators can limit political interference in business decisions and minimize regulatory risks. This regulatory role is particularly important given the technical nature of regulation in the energy sector. The natural gas and electricity sectors are characterized by long term large capital intensive investments that require a stable regulatory regime. In other words, short term political events and political cycles should not interfere with the regulatory framework, which should remain consistent and stable over time. Separating regulators from ministries, giving them more autonomy and responsibility for regulatory tasks, and holding them accountable for their performance should improve efficiency and produce better regulation.²⁵

3.9 Concept and Dimensions of Regulatory Independence

Regulatory independence is a relative concept which involves a number of players and is far from being linear. The independent regulation depends on how much independence is effective and sustainable on a sliding scale. Effective independence requires that the regulatory authority is free from many of the political and administrative pressures of central government. In parallel, as regulation affects many players in the market and in the society, a balance between the interests of producers, consumers and other parties is of fundamental importance.²⁶

4.0 POLITICAL INDEPENDENCE

One important dimension of regulatory independence is political independence. Political independence means that the regulatory authority is free from interference of a government ministry or department and the regulator has control over its internal administration as well as protection from removal from office for political reasons. However, there is also the risk that other groups (e.g. industry, consumers and interest groups) will exert influence or pressure on the regulator. Thus, in order to

²⁴ ERRA Issue Paper, p. 7.

²⁵ ERRA Issue Paper, pp.7,8.

²⁶ ERRA Issue Paper, pp.10,11.

assess political independence, it is essential to understand the regulator's role in relation to ministries and political executives as well as other stakeholders.²⁷

4.1 Independence from Government

It is important to establish autonomous regulatory authorities and define their relationship to ministries and political executives. Independent regulatory authorities have been established in several countries. These entities are autonomous bodies with specific powers. Regulatory authorities vary in their scope of authority and responsibilities.²⁸ If regulators are given "formal" independence through legislation, the government can influence regulators in various ways, e.g., by dismissing/replacing senior regulatory officials, cutting regulatory budgets, or overruling decisions. For example, in the case of sensitive issues such as tariff setting even when legislation empowers regulators to set tariffs, government will exert pressure on regulators to not increase prices. In addition, "informal" pressure from political authorities may also place a strain on the regulatory authority. This may happen, for example, where the regulator takes direction from political authorities in order to get reappointed. In summary, there is a large gap between "literal independence" and "effective independence".²⁹

Having behind the door meetings, non-public correspondence, or any other non-public communications between the Government and the energy regulator creates an impression of no independence. Any direct or indirect communications should be done publicly.

4.2 Independence from Stakeholders

The regulatory authority shall balance interests of the different stakeholder groups. The regulator's relationship with the regulated industry is crucial to the effectiveness of the regulatory process and it depends primarily on the regulator's institutional design. In particular, three main critical issues shall be mentioned here:

- Information asymmetry;
- Public and private ownership; and,
- Conflict of interests.³⁰

Information asymmetry is particularly relevant when there are few market players. Normally, these players come into possession of information not made available to the regulator such as information on technological advances in the industry and on the nature of their own activities, e.g., cost data. In these circumstances the regulator's decisions may be based on erroneous or misleading information at the expense of the principles of competition and consumer welfare. However, even when there are many players in the market they may organize themselves into lobbying groups to enhance their power in relation to the regulator.³¹

²⁷ ERRA Issue Paper, p. 13.

²⁸ ERRA Issue Paper, p.13.

²⁹ ERRA Issue Paper, pp. 15-16.

³⁰ ERRA Issue Paper, p.16.

³¹ ERRA Issue Paper, p.17.

5.0 LEGAL INDEPENDENCE

The existence of legal independence is an important dimension of regulatory independence contributing to enhanced credibility and effectiveness of the regulatory process. Indeed, the legislative framework is essential, as this provides the basis for the regulatory activities. In general, on an EU level most countries have an Energy Law, Electricity Act and Natural Gas Act that establishes, among other things, regulatory independence. The legislation may state the objectives, functions, duties and powers that a regulator possesses, e.g., to issue licenses, set prices, impose quality standards, and monitor market performance. In addition, legal independence includes legal provisions on appointment, decision-making structure and dispute resolution.³²

5.1 Appointment of Regulators

Many instruments can be used to protect independence of the regulators. The appointment of regulators (or commissioners) remains largely a government responsibility and questions such as term of office, reappointment, removal from office and restrictions on personal interests are usually included in specific legislation, regulator's statutes, contracts or decrees, etc.³³

5.2 Appeals of Regulatory Decisions

The particular mechanisms and procedures for appealing regulatory rules and decisions might be defined in legislation and they vary widely from country to country. It is possible to distinguish different types of appeals as follows:

- To the regulatory authority: stakeholders ask the regulator to reconsider a decision;
- To an administrative tribunal: checks whether the law was followed by regulator;
- To a court system: consider whether the regulator was substantially correct or not;
- To a licensing authority (in case of countries that regulate by license): the operating license is revised;
- To a legislative body or president: the idea is to change the law under which the regulator operates.³⁴

6.0 SOCIOLOGICAL INDEPENDENCE

Besides political and legal independence, another important dimension of independence is the sociological one. The extent to which the regulator is perceived in the society to be independent of political control and separate from government institutions is a key factor in the legitimacy and acceptance of its authority. In this context, independence means that the regulator has sufficient credibility and is able to influence the industry, consumers and other government institutions. On the contrary, if the regulator lacks legitimacy and accountability then there is potential for constant appeals, lack of support from government, and consequently ineffective

³² ERRA Issue Paper, p. 20.

³³ ERRA Issue Paper, p. 25.

regulation. The prestige (perception) of a regulator in the society can be enhanced through an effective public relations strategy. Public relations involve popularizing successes, media appearances and reputation management in order to create and maintain a positive public image. Essentially, it is a management function that focuses on two way communication and fostering of mutually beneficial relationships between a regulator and its stakeholders.³⁵

7.0 FINANCIAL INDEPENDENCE

A very important indicator of the regulator's independence is the source of its budget e.g. licensing fees, state budget, etc. Financial independence should be looked at from a two-dimensional perspective: the funding of the regulatory authority and its financial autonomy. The main problem occurs when the regulator's budget is allocated and approved by institutions that may seek to use the budget to influence regulatory decisions. The impact and adequacy of the source of funding on independence is of fundamental importance. Insufficient resources may compromise the ability of the regulator to carry out its tasks, while too many resources may result in a lack of focus in regulator activities.

Additional considerations include the level of expertise and human resources available to the regulator. There may also be significant differences between the regulatory budgets in different countries including cost of external services and staff employed. These variations may reflect different regulatory philosophies; existence of alternatives to regulation; size of the energy market; use of external consultants; cost of living and salary rates and how salaries of regulatory staff compare with those in the other sectors. In summary, a regulator's effectiveness is determined largely by the adequacy of its resources, both human and financial.³⁶

8.0 INDEPENDENCE IN PRACTICE

Some predominant features of the independence of regulatory bodies were identified by ERRA.

The main findings are as follows:

- In most ERRA countries, there is a fixed term appointment of regulators and staff that usually varies between 4 and 6 years.
- As a general rule the Government cannot overrule or revoke decisions of the regulator.
- In almost all the countries considered the regulator is allowed to solve disputes or conflicts between industry and customers and the most common type of disputes relates to the application of tariffs, connection to networks and customer's complaints;
- Disputes between regulator and industry are normally solved through appeal to the court;
- The independence of the regulator is formally stated in legislation or statute in all the countries and they are required to report to another body (e.g. Parliament, President, Ministry);

³⁵ ERRA Issue Paper, p.27.

³⁶ ERRA Issue Paper, p. 30.

- Concerning the way the regulator is perceived in the society the answers are equally distributed among the list of statements. However, it is worth noting that some regulators recognize the need to improve its legitimacy and accountability. In most of the countries there is no clear public relations strategy although provision of information (especially on the regulator's website) seems to be common practice;
 - The licensing fees and state budget are the main sources of funding among the regulators;
 - In the ERRA countries issues such as staff recruitment, salary and promotion are often a responsibility of one entity, which may be the chairperson of the commission, commissioners, executive director, etc;
 - In addition, there is usually a certain procedure to involve the government institutions and the regulated industry in the regulatory decisions through public hearings and consultation process.
 - The degree of control by the regulators over its funds varies;
 - Many regulatory authorities (in particular the old ones) in the South East Europe region share some regulatory responsibilities with other authorities;
- Still there is a gap between high levels of functional autonomy under the law and functional autonomy in practice;

Most regulatory authorities have the power to issue tariff secondary legislation;

- Most regulatory authorities have powers to fix and approve network tariffs and ancillary services and may issue licenses for transmission, distribution supply and generation but fewer may authorize new capacity; and,
- All regulatory authorities allow some form of public participation via for example public hearings but this does not mean that the public participates.³⁷

9.0 CONFLICT OF INTEREST

There is a risk that the regulator's independence is compromised by the regulator's private interest in the sector, directly or indirectly, e.g., when the regulator or a person close to the regulator holds stock in a regulated entity in the industry. Regulated parties may also try to "capture" the regulators, e.g., by bribing them or by promising them well-paid jobs in the future, to influence their decisions in favour of themselves. It is important that the board of the regulatory authority is free of conflicts of interest and where such conflicts arise they should be publicly disclosed as well as the consequences of such conflicts of interest. For example, in the context of part-time employees/commissioners who are pursuing other activities in addition to regulation, procedures for the management and control of potential conflicts of interest are necessary. Normally teaching at universities are common non-regulatory activities allowed in other countries.

In Georgia, the rules declaring restriction of Commission members' activities, incompatibility of office and economic interest shall be determined under the Law of Georgia on the Conflict of Interests and Corruption in Public Service. The Commission staff employee shall not have any direct or indirect ownership or economic interest in respect of any licensee, importer, exporter, supplier or market

³⁷ ERRA Issue Paper, pp.69,70.

operator or hold the position in their enterprises. A staff employee may be the customer of any licensee, importer, exporter or supplier; however, no licensee, importer, exporter or supplier shall have the right to offer and the staff employee free or discounted services from any one of them.³⁸ There are no restrictions, however, related to family members or close associates of the regulatory employees or commissioners.

10.0 KEY FINDINGS FROM BEST PRACTICES

On the basis of international experience regarding regulatory instruments and procedures, a number of points were summarized by Energy Regulators Regional Association that have been identified with best practice around the world. Below, you'll find a number of points that should be present for each dimension of regulatory independence in line with the structure of the Issue Paper on Regulatory Independence prepared by the ERRA Legal Working Group.

10.1 Political Independence

- Staggered terms not coinciding with election cycles;
- Exception from the minister's discretionary powers;
- Restrictions on the number of employees with previous experience in the power industry may be relevant to avoid regulatory capture. On the other hand these restrictions may have negative effects in terms of gaining useful professional knowledge and experience;
- Regulatory staff should only be removed for relevant cause such as criminal behavior and violation of code of ethics;
- Government interests may be addressed in public hearings.³⁹

10.2 Legal Independence

- Laws on regulation shall clearly define circumstances under which an employee or commissioner may be removed;
- The regulator shall have full authority over tariff setting;
- The regulator shall have full authority to issue licenses on the long term;
- The regulator should have authority to monitor competitive energy market;
- The regulator should cooperate with the antimonopoly authorities; The regulator should also have authority to establish quality of service standards;
- A code of ethics governing staff behavior should be developed and implemented in order to provide clear basis for action against improper behavior;
- The logic, data sources and legal basis for decisions should be consistent across market participants and over time⁴⁰

10.3 Sociological Independence

- A reputation for predictable decisions facilitates planning by suppliers and customers, and reduces risk as perceived by the investment community;

³⁸ Electricity and Natural Gas Law, Article 17.

³⁹ ERRA Issue Paper, p. 70.

⁴⁰ ERRA Issue Paper, p. 71.

- The regulator should develop and implement a clear and effective public relations strategy;

10.4 Financial independence

- When possible a licensing fee or / and special regulatory charge shall be preferred as a source of funding;
- The regulator should have full authority to establish (but also held accountable for) a budget that allows to employ and contract out experts /services;
- The regulator should have full authority over the recruitment process;
- The recruitment process should be meritocratic and impartial;
- Salary shall be competitive with the private sector and regulated companies;
- An effective human resources program is necessary including on-going training, professional development, access to international practices with adequate budgetary support.⁴¹

10.5 Transparency and Accountability

- A government or parliamentary budget review would strengthen accountability but may create additional administrative burden and delays if not properly managed;
- Procedures for public hearings, meetings and workshops as well as a public record of submissions and public access to written decisions are necessary;
- An annual report of activities including a financial audit should be required;
- Appeal of tariff and license decisions should only be to the courts whereas issues of market power may be appealed to the anti-monopoly organization;
- Separate regulatory accounting will increase the transparency of regulatory reporting and tariff setting;
- The regulator should have in place sound organizational and management practices.⁴²

11.0 CONCLUSION

Based upon the observations from above, we can conclude:

- Rules of conduct are needed relating to communications of the Commissioners and the regulator's staff to other entities and individuals outside of the regulator, especially related to communications with the Government.
- Rules are needed for the removal of Commissioners and staff members.
- The national energy legislation must be clear on the roles of responsibilities of the energy regulator.
- An active role by the regulatory authority in market design and particularly in developing and issuing the associated rules and codes would advance market reforms. An integral part of this process is the development and implementation of third party access rules and concrete accounting, functional and legal unbundling guidelines issued by the regulatory authority and the expedition of unbundled, non-discriminatory tariffs where not yet in effect.

⁴¹ ERRA Issue Paper, p. 71.

⁴² ERRA Issue Paper, p.71,72.

- Attention should be given to the organization, access and management by regulatory authorities of the information they need to monitor the market;
- Regulatory authorities should have powers to determine confidentiality rules for data and should issue rules that maximize their effective access to all data and limit public access to data only when reasonably needed.
- Stability and continuity and the development of regulatory authorities as institutions could be promoted through appropriate staff pay, training, and creation and implementation of institutional processes.
- The regulatory authorities require powers to modify rules and practices that result in discriminatory conditions. Creative mechanisms should be explored to allow the regulatory authority to influence behavior of undertakings and licensees, including license suspensions, self-executing quality of service standards and performance-based rates.
- An approach could be encouraged that focuses on general, high-level accountability, as opposed to a daily and/or non-transparent involvement in the activities of the regulatory authority.
- Closer coordination among regulatory authorities in the region could expedite the development of markets in jurisdictions reflecting relatively slower progress in market development.⁴³

⁴³ Council of European Energy Regulators, Regulatory Benchmarking Report for South East Europe, November 23, 2005, p. 12.

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