

# “REGULATORY BODIES – SUCCESSFUL BENEFIT?”\*

The extent to which regulatory bodies in the Republic of Macedonia comply with law-stipulated goals for which they are established, especially in terms of their independence, organizational and functional position and efficiency, is the central matter elaborated in the analysis titled “Regulatory Bodies – Successful Benefit?”.

For the purpose of reconsidering actual state-of-affairs related to regulatory bodies within the legal system of the Republic of Macedonia, the analysis uses as indicators nine regulatory bodies, those being:

- AUDIT PROMOTION AND SUPERVISION COUNCIL OF THE REPUBLIC OF MACEDONIA,
- AGENCY FOR SUPERVISION OF FULLY FUNDED PENSION INSURANCE,
- AGENCY FOR ELECTRONIC COMMUNICATIONS,
- CIVIL AVIATION AGENCY,
- INSURANCE SUPERVISION AGENCY,
- POSTAL AGENCY,
- AGENCY FOR AUDIO AND AUDIOVISUAL MEDIA SERVICES,
- ENERGY REGULATORY COMMISSION and
- SECURITIES AND EXCHANGE COMMISSION OF THE REPUBLIC OF MACEDONIA.

Historically, at the European Union level, creation of regulatory bodies was pursued for the purpose of performing **control matters** in “sensitive” areas such as telecommunications, energy and the media. In addition to performance of control matters, regulatory bodies are also responsible for preventing abuse of **monopoly position** by companies, promoting **social and fair distribution of goods and services**, and ensuring **safety and environmental standards** in regulated economy sectors.

Starting from these commitments, the Republic of Macedonia also established **various types of regulatory authorities** in the form of agencies, commissions and councils, with different statutory and legal concept and variable degrees of executive powers in implementing public competences they have been entrusted with. In the Macedonian public, operation of these bodies was accompanied by numerous obscurities, especially in regard to benefits they create for citizens and the business community.

\* This text represents a summary of the key findings and recommendations of the analysis. Full version of the analysis is available [here](#)

## REGULATORY BODIES SHOULD BE A CONSTITUTIONAL CATEGORY IN MORE PREDICTABLE LEGAL AND REGULATORY ENVIRONMENT AND LEGISLATION

In order to assess **benefits** from operation of domestic regulatory bodies, it is necessary to analyse them in terms of regulations that govern their operation, structural position, independence, status of their governing bodies, relations with the Government and the Parliament, financial and organization autonomy, competences, impact and transparency, organizational approach, as well as legal position and effectiveness.

Regulatory bodies **are not stipulated** as separate category **in the Constitution of the Republic of Macedonia**. More specifically, they are **established and regulated by laws**, which emphasize and stipulate their independence and autonomy. Among all bodies only the Audit Promotion and Supervision Council of the Republic Macedonia has been established by means of **decision taken by the Government**. Unlike other regulatory bodies that are established by means of law, the position of this body raises doubts about its independence.

**REGULATORY BODIES NEED TO BE DEFINED IN THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA AS SEPARATE CATEGORY OF AUTHORITIES THAT PERFORM REGULATORY, I.E. CONTROL FUNCTIONS IN INDIVIDUAL ECONOMY SECTORS.**

As regards the legislation governing establishment and operation of regulatory bodies, as part of its annual reports in the last years, the European Commission has indicated that **frequent changes to the law have resulted in legal insecurity**, thereby reiterating the importance of more predictable legal and regulatory environment.

## REGULATORY BODIES HAVE DIFFERENT GOVERNING STRUCTURES AND APPOINTMENT METHODS FOR MEMBERS THEREOF

Although they are part of the existing system of state authorities, regulatory bodies **do not represent state administration bodies**. In the Republic of Macedonia, regulatory bodies have different structure of governing bodies.

<b>STRUCTURE OF GOVERNING BODIES</b>	Individual body (director) and one collective body (commission, council or board)	Collective governing body (council)	The regulator itself is collective body
<b>REGULATORY BODIES</b>	Four regulatory bodies: Agency for Electronic Communications, Civil Aviation Agency, Postal Agency and Agency for Audio and Audiovisual Media Services.	Two regulatory bodies: Insurance Supervision Agency and Agency for Supervision of Fully Funded Pension Insurance.	Three regulatory bodies: Energy Regulatory Commission, Audit Promotion and Supervision Council of the Republic of Macedonia and Securities and Exchange Commission.
<b>COMMENT</b>	The governing structure must be comprised of two bodies, one of which is individual (director) and the other is collective (commission, council or board).	These regulatory bodies have only one collective governing body.	These regulatory bodies are established as collective body themselves.



Appointment of the director could influence regulatory body's independence.

Various methods of appointments were observed in regulatory bodies included in the analysis:

<b>METHOD OF GOVERNING STRUCTURE APPOINTMENT</b>	Director is appointed by means of open call	Members of the collective governing body are proposed by the parliamentary committee on elections and appointments	Members are appointed by the Parliament on the proposal from the Government or they are appointed by the Government
<b>REGULATORY BODIES</b>	Four regulatory bodies: Agency for Electronic Communications, Civil Aviation Agency, Postal Agency and Agency for Audio and Audiovisual Media Services.	Three regulatory bodies: Agency for Electronic Communications, Civil Aviation Agency and Postal Agency.	Four regulatory bodies: Insurance Supervision Agency, Agency for Supervision of Fully Funded Pension Insurance, Energy Regulatory Commission and Securities and Exchange Commission.  Members of the Audit Promotion and Supervision Council of the Republic of Macedonia are appointed by the Government.
<b>COMMENT</b>	The director is appointed by the collective governing body (commission, council or board). This method of appointment has positive effect in terms of enhanced independence of the regulator.	Absence of transparent process on appointment of members by the Parliament.	Present danger from political influence in the appointment process and non-independent performance of public competences.

COPY-PASTED DEFINITION OF NORMS SHOULD BE AVOIDED IN RELATION TO INTERNAL ORGANIZATION OF REGULATORY BODIES, AS WELL AS IN RELATION TO TERMS AND CONDITIONS FOR APPOINTMENT OF THEIR RESPECTIVE GOVERNING STRUCTURES, IN ORDER TO GIVE PRIMACY TO PROFESSIONALITY, EFFICIENCY AND EFFECTIVENESS IN ORGANIZATION OF THESE BODIES, IN COMPLIANCE WITH RULES AND GUIDELINES PROVIDED FOR IN THE EU ACQUIS. FAIRNESS AND TRANSPARENCY IN APPOINTMENT OF REGULATORY BODIES' GOVERNING AND MANAGEMENT STRUCTURES SHOULD BE STRENGTHENED IN NORMATIVE TERMS, FOR THE PURPOSE OF FULL PROFESSIONALIZATION AND ELIMINATION OF POLITICAL INFLUENCES FROM LEGISLATIVE AND EXECUTIVE BRANCHES OF GOVERNMENT. IN THAT REGARD, LEGAL PREDISPOSITIONS NEED TO BE DEVELOPED TO GIVE PRIMACY TO REGULATORY BODIES IN TERMS OF REGULATING RELATIONS IN GIVEN ECONOMY SECTORS, MINIMIZING PERMANENT EFFORTS ON THE PART OF THE EXECUTIVE GOVERNMENT TO IMPOSE ITSELF IN REGULATION OF "LEVEL PLAYING FIELD" IN SAID ECONOMY SECTORS.

## PROFESSIONALISM OF REGULATORY BODIES DEPENDS ON THEIR GOVERNING STRUCTURES' TERM OF OFFICE

Moreover, exact legal solutions are needed for cases in which directors **can be dismissed**, as that would exclude the possibility for these directors to be dismissed at any time, without any explanation from the regulatory body's founder (Government or Parliament).

An important aspect that affects professionalism of regulatory bodies is the **term of office** for their directors, as well as the number of times they can have their term of office renewed, including the term of office for members of the collective governing body, in particular

because material laws only stipulate "possibility for re-appointment".

With this approach, independence of said regulatory bodies could be brought under question at any time, having in mind that members of collective governing bodies would be in position of accommodating requests and needs of political factors in the Parliament and the Government, but also of companies with significant role in the economy sector, for the purpose of **maintaining** their "guaranteed" office (i.e. re-appointment).

## ANNUAL REPORTS AS INDICATOR OF REGULATORY BODIES' INDEPENDENCE



It is recommended for regulatory bodies' relations with the Government and/or the Parliament to be reduced to the level of **information provision**, for the purpose of

familiarizing said branches of government with their activities and state-of-play in regulated economy sectors.

<b>SUBMISSION OF ANNUAL REPORTS</b>	Annual report is submitted to the Parliament of the Republic of Macedonia for reconsideration	Annual report is submitted to the Parliament of the Republic of Macedonia for adoption	Annual report is submitted to the Government of the Republic of Macedonia for adoption
<b>REGULATORY BODIES</b>	Three regulatory bodies: Postal Agency, Agency for Electronic Communications and Agency for Audio and Audiovisual Media Services.	Five regulatory bodies: Insurance Supervision Agency, Agency for Supervision of Fully Funded Pension Insurance, Civil Aviation Agency, Energy Regulatory Commission and Securities and Exchange Commission.	One regulatory body: Audit Promotion and Supervision Council of the Republic of Macedonia.
<b>COMMENT</b>	Ensures higher level of independence of the regulatory body.	Reduced independence of the regulatory bodies.	Regulatory bodies are subdued and depend on the executive government.

## FINANCIAL AND ORGANIZATIONAL AUTONOMY – FACTOR OF REGULATORY BODIES' INDEPENDENCE

**Financial and organizational autonomy**, as defined in the relevant material laws, is important for independence of the regulatory bodies. *In the case of almost all regulatory bodies*, their operation is sustained from **external** revenue sources, i.e. they are financed by means of collecting revenue on the basis of various catchment fees and levies from companies working in the regulated economy sector. These legal solutions should guarantee their independence and place them outside the budget system.

In the case of certain regulatory bodies there is evident **influence from the executive government**. Single regulatory body financed by the **Budget of the Republic of Macedonia**, despite the fact that it generates own revenue, is the *Audit Promotion and Supervision Council*.

In the case of *Securities and Exchange Commission* and *Agency for Electronic Communications*, this influence is prominent in terms of **mechanisms for approval of their respective catchment fees and levies**, but also in the manner of utilization of surplus funds generated by these bodies. In its 2016 Country Report for the Republic of Macedonia, the European Commission made the following remarks in regard to AEC's operation:

**“THE AUDIT ALSO SUGGESTED THAT THE REGULATOR USES 45% OF ITS SURPLUS FUNDS FOR PURPOSES OTHER THAN DEVELOPING ELECTRONIC COMMUNICATIONS, WHICH WOULD BE CONTRARY TO ITS MANDATE. CONCERNS REMAIN ABOUT ITS ABILITY TO ACT INDEPENDENTLY AND ITS LEGAL POWERS TO DONATE SHOULD BE REMOVED”.**

As regards budget control, many regulatory bodies use **audit instruments** in their operation, whereby their audited financial reports are, as a rule, submitted for adoption at the Parliament.

**CLEAR LEGAL NORMS ARE NEEDED FOR ESTABLISHMENT OF REGULATORY BODIES, IN TERMS OF ARRANGEMENTS RELATED TO THEIR ORGANIZATION AND FINANCIAL AUTONOMY AND INDEPENDENCE, AIMED AT REDUCING FREQUENT IMPROVISATION IN PROCESSES ON ESTABLISHMENT OF THESE BODIES BY VARIOUS ACTORS FROM THE LEGISLATIVE AND EXECUTIVE BRANCHES OF GOVERNMENT.**

**MOREOVER, INFLUENCE FROM THE EXECUTIVE BRANCH OF GOVERNMENT SHOULD BE FULLY ELIMINATED IN TERMS OF FINANCING OF REGULATORY BODIES. AT THE SAME TIME, RELATIONS WITH THE LEGISLATIVE AND EXECUTIVE BRANCHES OF GOVERNMENT NEED TO BE REDUCED TO MINIMUM, IN ORDER TO ALLOW REGULATORY BODIES TO PERFORM THEIR COMPETENCES IN AUTONOMOUS AND INDEPENDENT MANNER, IN THE TRUE MEANING OF THESE WORDS, WHEREBY THEY WOULD ONLY BE OBLIGED TO INFORM THESE BRANCHES OF GOVERNMENT ABOUT THEIR ACTIVITIES AND STATE-OF-PLAY IN REGULATED ECONOMY SECTORS.**

## IMPACT AND TRANSPARENCY



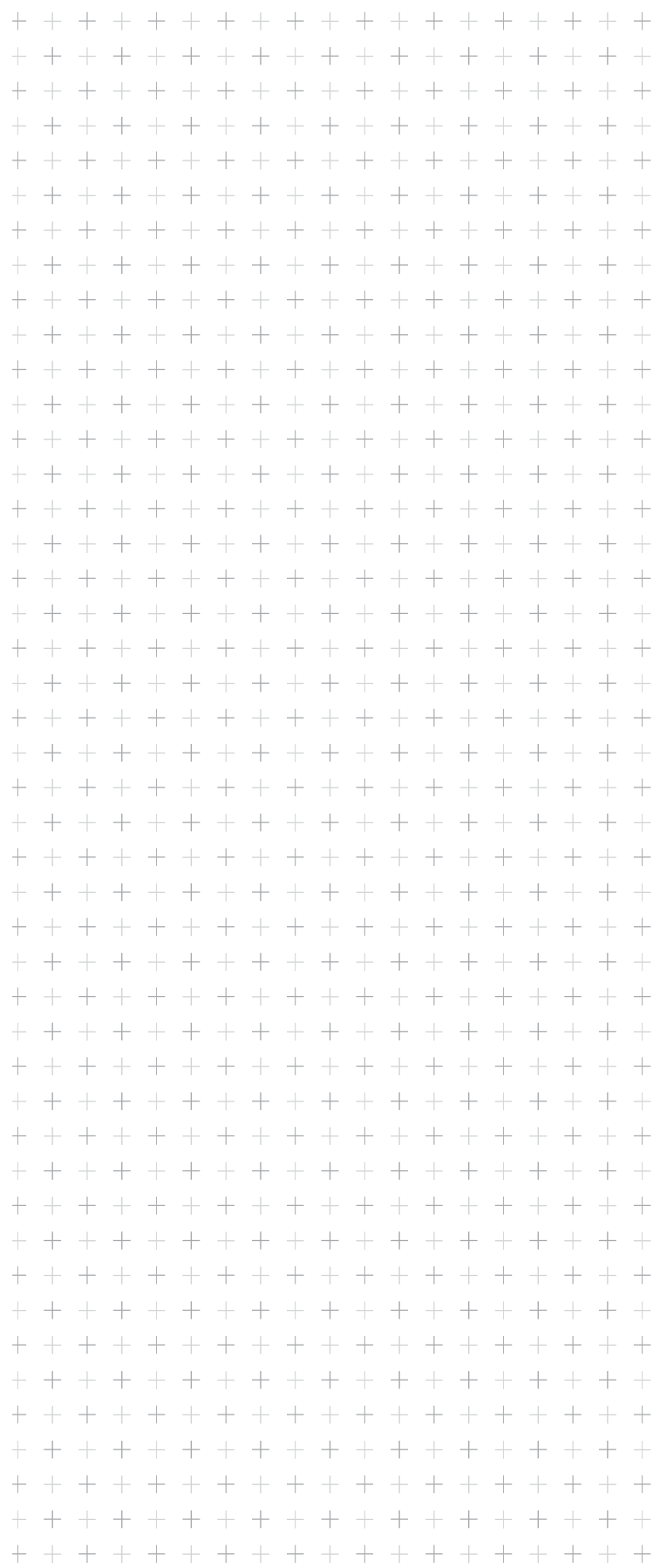
As regards **impact and transparency** of regulatory bodies, there is only **formal** compliance with law-stipulated obligations on ensuring publicity and transparency of their operation. More serious approach is needed on the part of regulatory bodies towards this obligation, especially in regard to **animation and activation** of all interested parties and the public aimed at more successful promotion of state-of-affairs in given economy sectors.

Almost all regulatory bodies are presented with various **submissions, complaints or disputes**, but on the basis of their annual operation reports it could be concluded that these submissions are treated **“only” for statistical purposes**, without engaging in more thorough observation or analysis of their justifiability. Hence, regulatory bodies **must engage in mandatory assessment** of submissions, complaints or disputes motioned by citizens, for the purpose of increasing the quality of services.

<b>METHOD OF SUBMISSION</b>	Regulated by means of own by law	Unified form for submissions	No stipulated and standardized templates for submissions
<b>REGULATORY BODIES</b>	Two regulatory bodies: Agency for Supervision of Fully Funded Pension Insurance and Insurance Supervision Agency.	One regulatory body: Agency for Audio and Audiovisual Media Services.	Eight regulatory bodies: Audit Promotion and Supervision Council of the Republic of Macedonia, Agency for Supervision of Fully Funded Pension Insurance, Agency for Electronic Communications, Civil Aviation Agency, Insurance Supervision Agency, Postal Agency, Energy Regulatory Commission and Securities and Exchange Commission.
<b>COMMENT</b>	When dealing with submissions, other regulatory bodies apply bylaws adopted in compliance with the Law on Acting upon Submissions and Motions.	Available in electronic format on the regulatory body's website.	Need for introduction of unified templates for open, understandable and easy communication with citizens.

**REGULATORY BODIES NEED TO BE ALLOWED TO PURSUE INDEPENDENT HUMAN RESOURCE AND STAFF POLICY, ON THE BASIS OF PREVIOUSLY ESTABLISHED POLICIES IN THE MATERIAL LAWS.**

**MOREOVER, THEY NEED TO ADOPT AND USE TRANSPARENT INTERNAL PROCEDURE WITH PRE-DEFINED ORDER OF ACTIVITIES TAKEN BY STAFF MEMBERS UPON SUBMISSION, COMPLAINTS OR DISPUTES, INTRODUCE UNIFIED TEMPLATES FOR OPEN, USER-FRIENDLY AND EASY COMMUNICATION WITH CITIZENS AND FULL ACCEPTANCE OF ELECTRONIC COMMUNICATIONS WITH CITIZENS IN TERMS OF SUBMISSIONS, COMPLAINTS OR DISPUTES AND RESPONSES THERETO. CONSEQUENTLY, GOOD PRACTICE RECOMMENDED IN THIS REGARD IS ADOPTION OF STRATEGY ON PUBLIC RELATIONS.**





## REGULATORY BODIES HAVE TAKEN BOTH PREVENTIVE AND REPRESSIVE MEASURES

In the period 2011-2015, covered by the analysis “Regulatory Bodies – Successful Benefit?”, different regulatory bodies have been presented with **variable number of submissions, complaints or disputes** (from one to another extreme), depending on tailored market conditions in the given economy sector, i.e. “interestingness” of the regulatory body in question.

*Agency for Audio and Audiovisual Media Services, Insurance Supervision Agency and Energy Regulatory Commission* are characterized by amplitude of fluctuations in terms of the number of submissions, complaints or disputes they have been presented with in this five-year reporting period, with the average annual inflow of **172, i.e. 87 submissions**.

*Agency for Supervision of Fully Funded Pension Insurance and Postal Agency* are characterized by average (usual) inflow of submissions, complaints or disputes, in the range of **24, i.e. 19**, depending on established relations in the economy sector. *Securities and Exchange Commission of the Republic of Macedonia and Agency for Electronic Communications* were addressed with **symbolic number** of submissions or have not been presented with any submissions in certain years.

In the analysed period 2011-2015, it was noted that **some regulatory bodies** (*Agency for Supervision of Fully Funded Pension Insurance, Energy Regulatory Commission and Postal Agency*), with small deviations, **have resolved submissions, complaints or disputes in favour of citizens**.

The scope of measures taken by regulatory bodies upon submissions, complaints or disputes falls within the range of both **preventive and repressive measures**. Large part of regulatory bodies (*Agency for Audio and Audiovisual Media Services, Agency for Supervision of Fully Funded Pension Insurance and Energy Regulatory Commission*) **have not initiated any inspection, i.e. misdemeanour procedures** upon submissions, complaints or disputes made by citizens, while one regulatory body (*Securities and Exchange Commission of the Republic of Macedonia*) **does not keep precise records** on the number of submissions for which inspection and/or misdemeanour procedures have been initiated, and the other two bodies (*Insurance Supervision Agency and Postal Agency*), **in**

**cases of indications have, by rule, initiated inspection or misdemeanour procedure**, in compliance with competences stipulated in their relevant material law.

As regards average duration of procedures led upon submissions, complaints or disputes made by citizens, it could be established that almost all regulatory bodies (*Energy Regulatory Commission, Securities and Exchange Commission of the Republic of Macedonia, Agency for Supervision of Fully Funded Pension Insurance and Insurance Supervision Agency*) enlisted only the deadline stipulated in the Law on Acting upon Submissions and Motions (**15 days**), while three regulatory bodies (*Agency for Electronic Communications, Postal Agency and Agency for Audio and Audiovisual Media Services*) enlisted the average duration of their respective procedures, in the range from **10 to 35 days**, depending on the complexity of the matter covered by submissions, complaints or disputes.

**THE ROLE OF STAKEHOLDERS AND THE PUBLIC SHOULD BE STRENGTHENED IN REGARD TO PERFORMANCE OF REGULATORY BODIES IN THE RELEVANT ECONOMY SECTORS, WITH THE ULTIMATE GOAL OF HAVING THE REGULATORY BODIES ACT AS PROTECTORS OF CITIZENS (CONSUMERS), IN THE TRUE MEANING OF THE WORD, AGAINST VARIOUS INTEREST GROUPS THAT EMERGE AND OPERATE IN SAID SECTORS.**