

# The audit of independent regulatory agencies by SAI

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Regulated sectors were divided into 7 groups:

- 1) General competition
- 2) Financial
- 3) Infrastructure:
  - Energy
  - Transport (infrastructure and services)
  - Communication (post, telecoms)
- 4) Other (financial)
- 5) Other (infrastructure)

Ad. General competition (general competition, consumer protection, general trade regulators).

Ad. Financial (Central banks, financial supervision authorities, securities market authorities, insurance supervision authorities, stock exchanges commission, pension funds supervisory authorities).

Ad. Infrastructure:

Ad. Energy: (gas, electricity, heating, water, oil, other fuels regulators, electric plants regulators, mining and petrol pumping regulators, energy industries regulators, energy and water regulators, nuclear security regulators).

Ad Transport (infrastructure and services) ( train, buses, ferries services regulators, railways, airports, ports and roads infrastructure regulators).

Ad. Communications (post, electronic, telecom communication regulators).

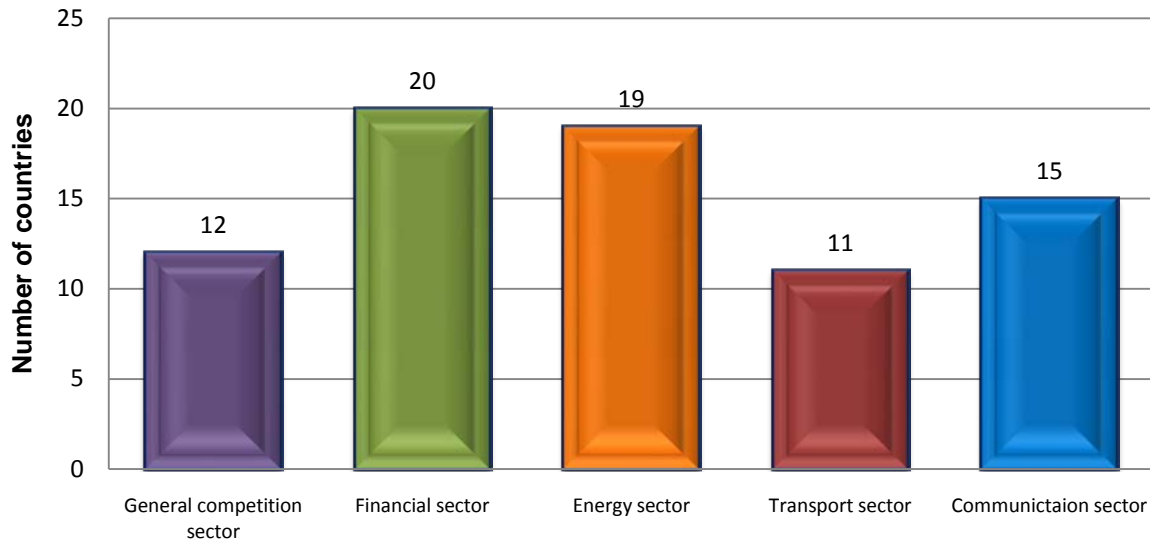
Ad. Other (financial) (health care insurance, financial services: state assets recovery, privatization and administration of state investment).

Ad. Other (infrastructure) (waters services, quality, prices regulators, tv/radio regulators, medicinal products and devices regulators, state commission on gambling, food water and animal welfare, cadastre and real estate publicity activity, industrial property protection regulators).

Regulators for general competition sectors were established in 12 countries, for financial sectors - in 20 countries, for energy sector - in 19 countries, for transport sectors - in 11 countries, for communication sectors - in 15 countries.

Number of the regulated sectors are not equivalent with number of regulators as in some cases one regulator deals with more than one sector (e.g. Germany — Federal Network Agency regulates three sectors: energy, communication, transport) whereas in other cases one sector is regulated by more than one authority, (e.g. Portugal – three regulators for transport: Institute for Civil Aviation, Institute for the Mobility and Inland Transports, Road Infrastructure Institute).

## Regulated sectors in different countries



**1. Size of the regulated sectors** vary from very small to significant value of GDP e.g. financial sector: €39 billion (Netherlands, 2008), €3,429 million EUR (Hungary, 2008), energy sector: €51,914 million (Hungary, 2008), €59bn (United Kingdom) communication sector: €59bn (United Kingdom) and post sector: €13.4bn (United Kingdom).

**2. The source of bodies' legislative come from:** Parliamentary Acts (Croatia, e.g. Croatian Competition Agency, United Kingdom), Constitution (Central Bank e.g. Croatia, Cyprus), Act of Federal Parliament (Belgian Competition Authority), Act of Federal Government (Belgium, Programme Contract), Act of Federal Ministry (Germany, Federal Network Agency, Federal Financial Supervisory Authority), Federal law (Central Bank of the Russian Federation) and Decision of Minister (Slovakia, Railway Regulatory Authority, Telecommunication Regulatory Authority of the Slovak Republic), Act of Federal Parliament and royal decree (Belgium, Regulatory Service)

### **3. The nature of the bodies' operating authority was described by SAIs as:**

- Independent (non-government) regulatory body (agencies, authorities, autonomous legal entity, separate, autonomous public body), central banks.
- Body within the government/federal government (authorities functional under the Minister but not hierarchical - decisional independency), administrative authority within Government, non-ministerial government department, bodies run under the authority of the Ministry, Independent authority within government.

### **4. Definitions**

Some countries with reference to definitions relevant to the field of regulation mentioned regulators and respective definition given in legal acts, other countries mentioned terms such as: price regulation, market access regulation, regulation of use of system charges, Legal provision, Act, Government Decree, Directive, Regulations, Regulatory Authority, Market Control, Market Surveillance, Surveillance authority, Inspection bodies.

Some countries stated that there is no overall legal definition relevant to the field of regulation but tasks and powers for each of the regulatory bodies are separately given in the legislation in which they are established (e.g. Netherlands, Bulgaria).

Example: Belgium defined terms: competition, maximum price: "competition"- "economic competition on any relevant part of Belgian market" (relevant to Competition Authority), "maximum price" - "not allow to sell above maximum price (price cap)." (relevant to energy regulator – Programme Contract).

United Kingdom defined: “good regulation”. The five principles of good regulation state that any regulation should be: transparent, accountable, proportionate, consistent, and targeted – only at cases where action is needed (Source: *Better Regulation Executive (part of the Department for Business, Innovations and Skills)*).

The given definitions are generally accepted and used.

### **5. Objectives set for the most significant regulatory bodies.**

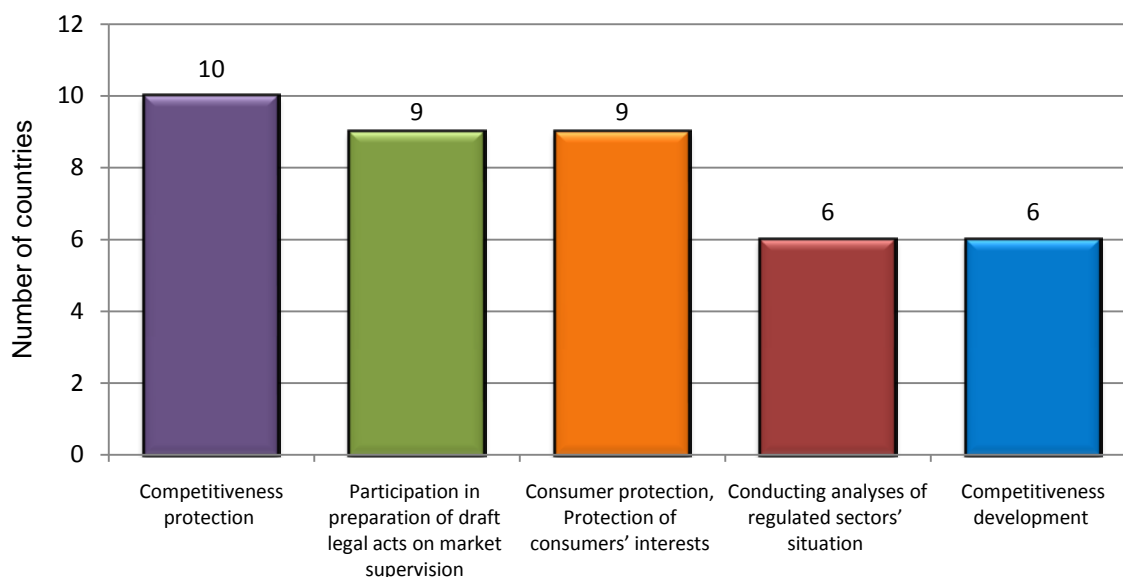
Objectives set for the most significant regulatory bodies may be set by legislation (at the time of establishing the regulatory body or subsequently/periodically), by Parliament or by Government or Ministers. Objectives are also set by the appointed managers of the regulatory body or other. In some cases long-term objectives are set by legislation and short-term objectives are set by the board of directors (Iceland, Poland).

### **6. Most important objectives of regulatory bodies (from most to less important)**

#### **1. General competition sector (12 countries):**

- Competitiveness protection (10 countries).
- Participation in preparation of draft legal acts on market supervision (9).
- Consumer protection, Protection of consumers’ interests (9).
- Conducting analyses of regulated sectors’ situation (6).
- Competitiveness development (6).
- Ensuring trade security (5).
- Ensuring market stability (3).
- Ensuring quality of services (2).
- Ensuring availability of contracted/required services (1).
- Achieving social goals (1).
- Ensuring financial stability of market entities (0).

### **Objectives of regulatory bodies - general competition sector**

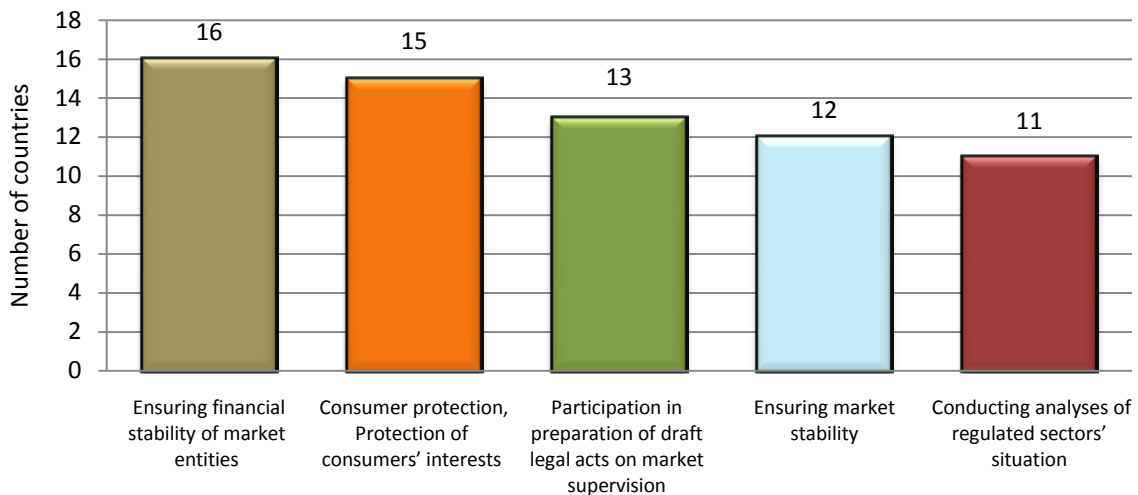


#### **2. Financial sector (20 countries)**

- Ensuring financial stability of market entities (16).
- Consumer protection, Protection of consumers’ interests (15).
- Participation in preparation of draft legal acts on market supervision (13).
- Ensuring market stability (12).
- Conducting analyses of regulated sectors’ situation (11).

- Ensuring availability of contracted/required services (8).
- Ensuring quality of services (8).
- Competitiveness protection (6).
- Competitiveness development (6).
- Ensuring trade security (5).
- Achieving social goals (3).

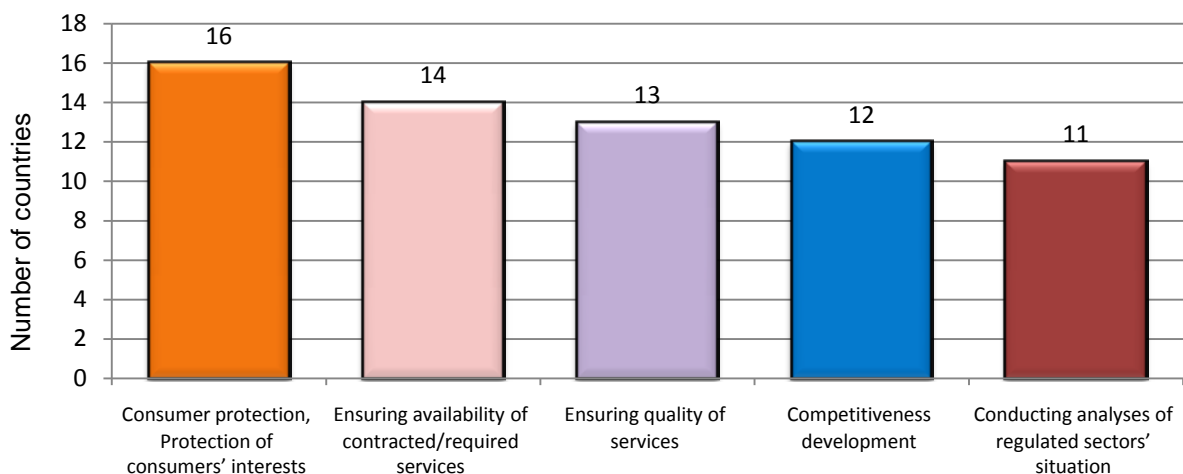
### Objectives of regulatory bodies - financial sector



### 3. Energy sector (19 countries)

- Consumer protection, Protection of consumers' interests (16).
- Ensuring availability of contracted/required services (14).
- Ensuring quality of services (13).
- Competitiveness development (12).
- Conducting analyses of regulated sectors' situation (11).
- Ensuring market stability (10).
- Participation in preparation of draft legal acts on market supervision (8).
- Achieving social goals (5).
- Ensuring trade security (5).
- Competitiveness protection (5).
- Ensuring financial stability of market entities (2).

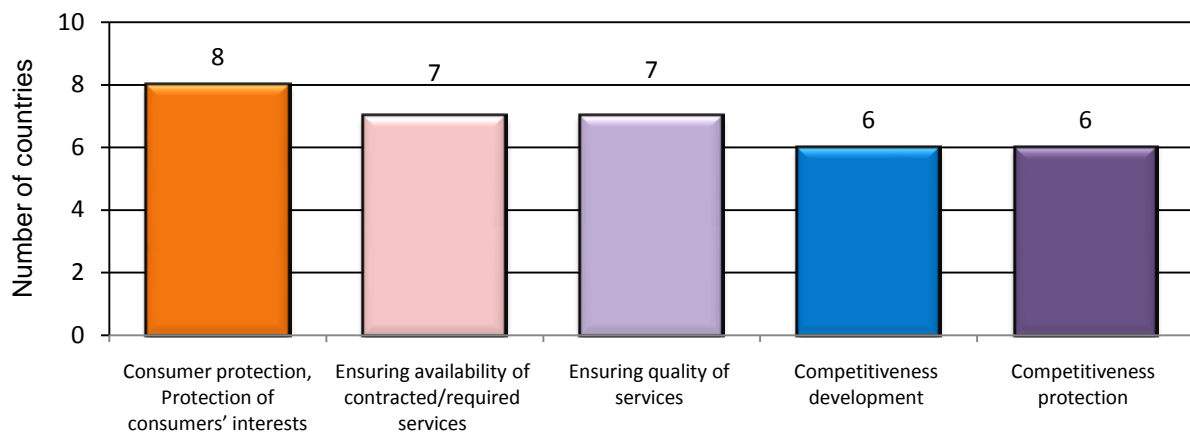
### Objectives regulatory bodies - energy sector



#### 4. Transport (infrastructure and services) sector (11 countries)

- Consumer protection, Protection of consumers' interests (8).
- Ensuring availability of contracted/required services (7).
- Ensuring quality of services (7).
- Competitiveness development (6).
- Competitiveness protection (6).
- Conducting analyses of regulated sectors' situation (5).
- Participation in preparation of draft legal acts on market supervision (4).
- Ensuring market stability (3).
- Achieving social goals (2).
- Ensuring trade security (2).
- Ensuring financial stability of market entities (2).

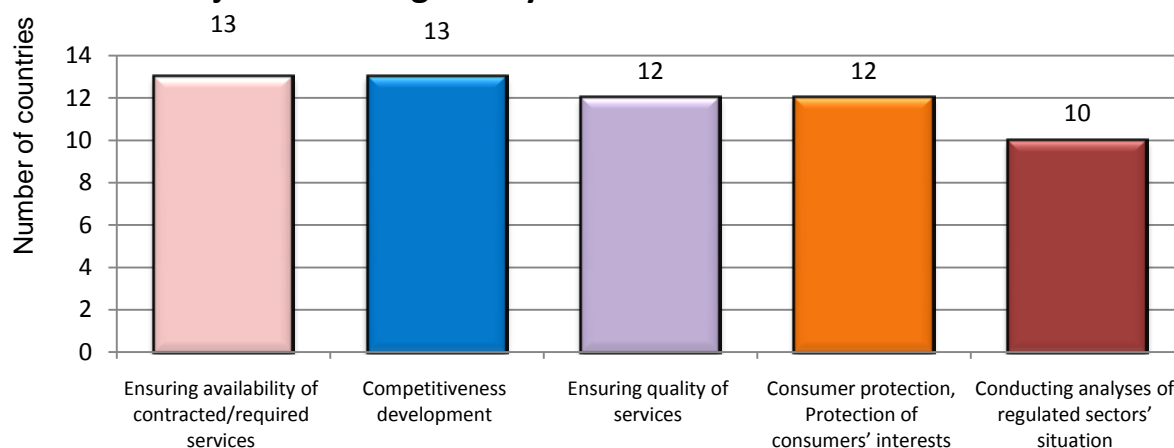
#### **Objectives of regulatory body - transport sector**



#### 5. Communication sector (post, telecoms) (15 countries)

- Ensuring availability of contracted/required services (13).
- Competitiveness development (13).
- Ensuring quality of services (12).
- Consumer protection, Protection of consumers' interests (12).
- Conducting analyses of regulated sectors' situation (10).
- Competitiveness protection (8).
- Participation in preparation of draft legal acts on market supervision (6).
- Ensuring market stability (6).
- Achieving social goals (5).
- Ensuring trade security (3).
- Ensuring financial stability of market entities (2).

## Objectives of regulatory bodies - communication sector

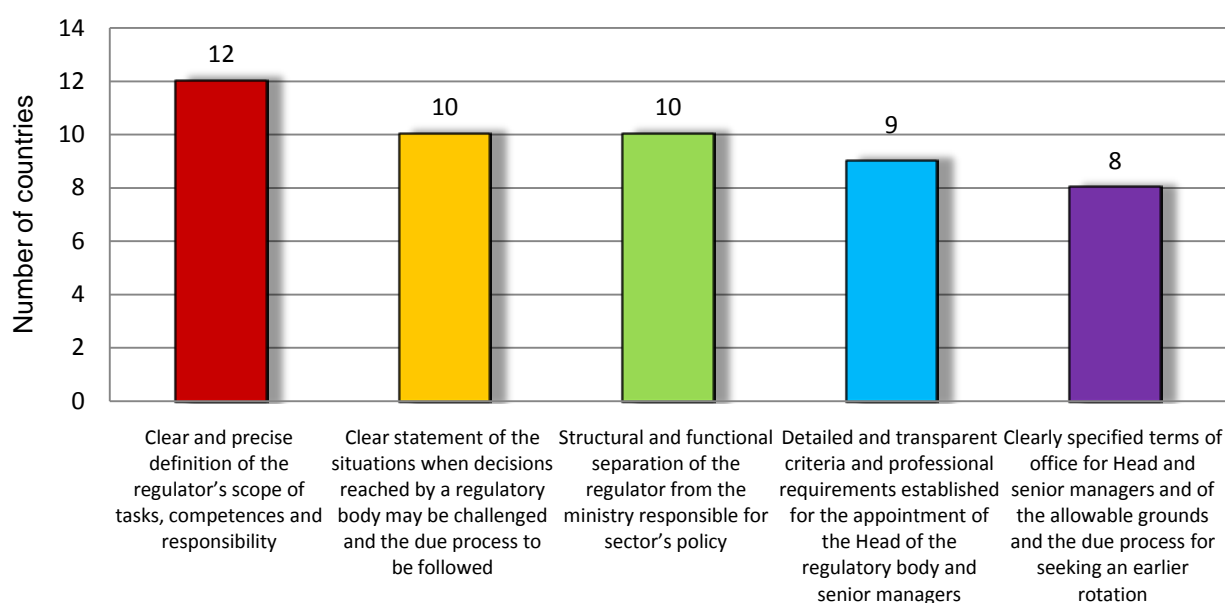


## 7. Principles/indicators of independence of regulators.

### 1. General competition sector (12 countries)

- Clear and precise definition of the regulator's scope of tasks, competences and responsibility (12).
- Clear statement of the situations when decisions reached by a regulatory body may be challenged and the due process to be followed (10).
- Structural and functional separation of the regulator from the ministry responsible for sector's policy (10).
- Detailed and transparent criteria and professional requirements established for the appointment of the Head of the regulatory body and senior managers (9).
- Clearly specified terms of office for Head and senior managers and of the allowable grounds and the due process for seeking an earlier rotation (8).

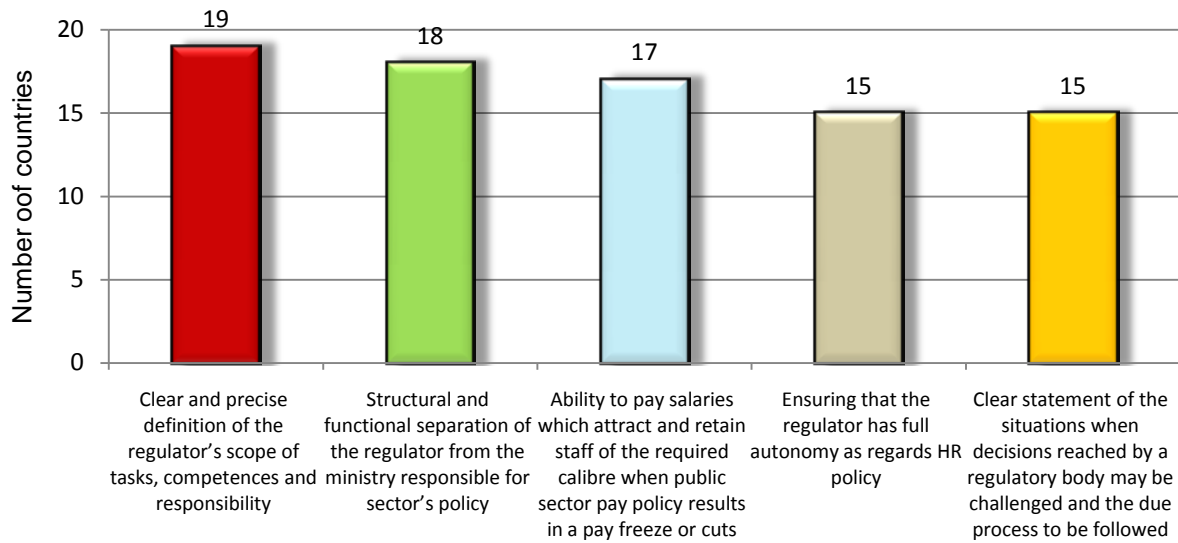
## Indicators of independence of regulators - general competition sector



**2. Financial sector (20 countries)**

- Clear and precise definition of the regulator’s scope of tasks, competences and responsibility (19).
- Structural and functional separation of the regulator from the ministry responsible for sector’s policy (18).
- Ability to pay salaries which attract and retain staff of the required calibre when public sector pay policy results in a pay freeze or cuts (17).
- Ensuring that the regulator has full autonomy as regards HR policy (15).
- Clear statement of the situations when decisions reached by a regulatory body may be challenged and the due process to be followed (15).
- Detailed and transparent criteria and professional requirements established for the appointment of the Head of the regulatory body and senior managers (14).

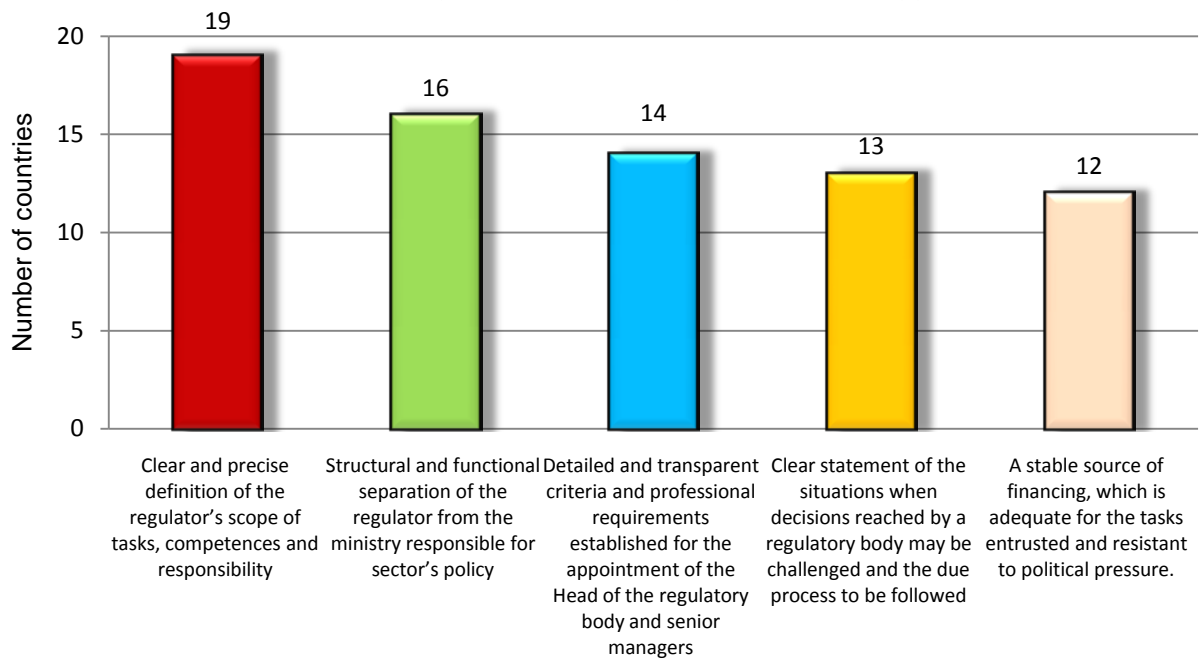
**Indicators of independence of regulators - financial sector**



**3. Energy sector (19 countries).**

- Clear and precise definition of the regulator’s scope of tasks, competences and responsibility (19).
- Structural and functional separation of the regulator from the ministry responsible for sector’s policy (16).
- Detailed and transparent criteria and professional requirements established for the appointment of the Head of the regulatory body and senior managers (14).
- Clear statement of the situations when decisions reached by a regulatory body may be challenged and the due process to be followed (13).
- A stable source of financing, which is adequate for the tasks entrusted and resistant to political pressure. (12).

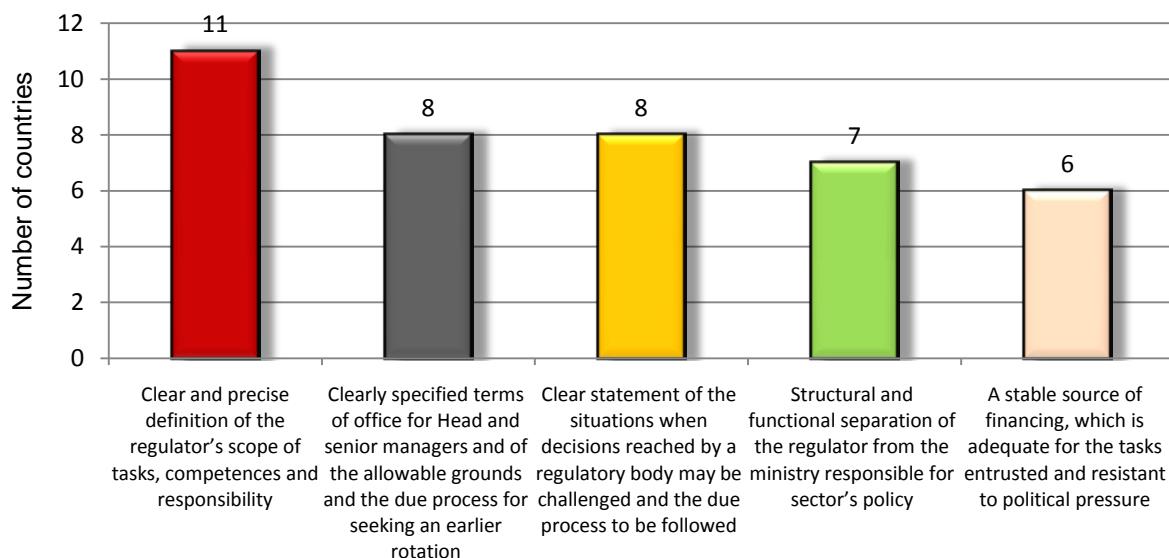
## Indicators of independence of regulators - energy sector



#### 4. Transport's (infrastructure and services) sector (11 countries).

- Clear and precise definition of the regulator's scope of tasks, competences and responsibility (11).
- Clearly specified terms of office for Head and senior managers and of the allowable grounds and the due process for seeking an earlier rotation (8).
- Clear statement of the situations when decisions reached by a regulatory body may be challenged and the due process to be followed (8).
- Structural and functional separation of the regulator from the ministry responsible for sector's policy (7).
- A stable source of financing, which is adequate for the tasks entrusted and resistant to political pressure (6).

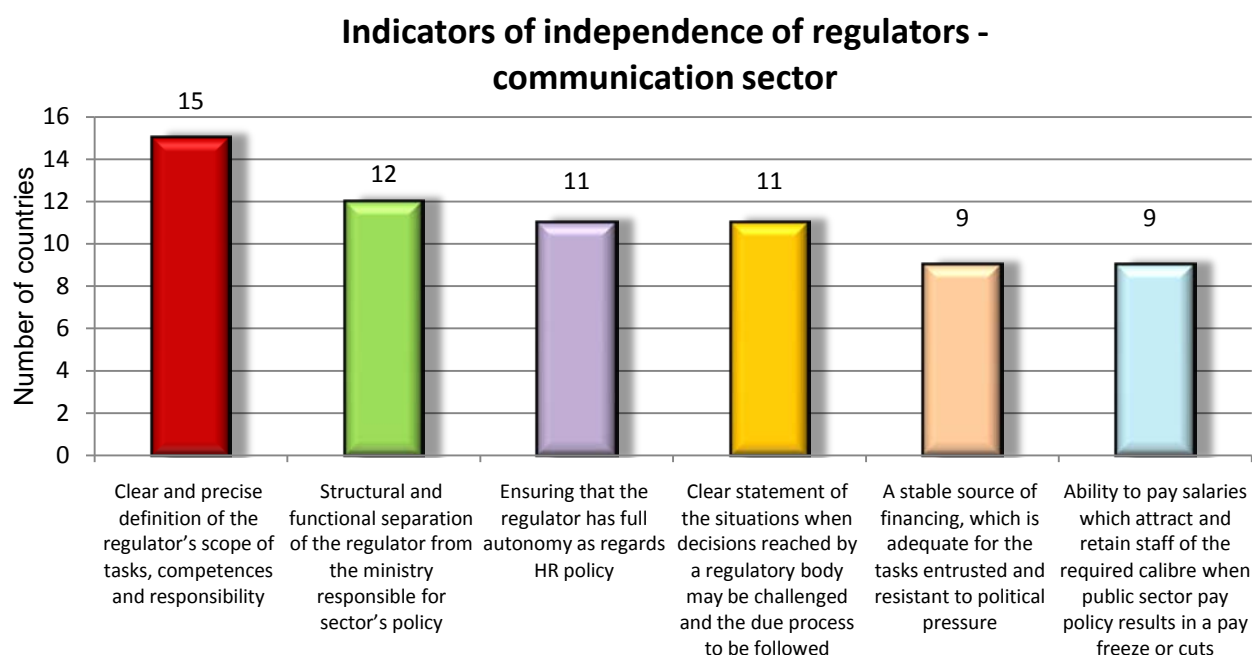
## Indicator of independence of regulators - transport sector





#### 5. Communication's (post, telecoms) sector (15).

- Clear and precise definition of the regulator's scope of tasks, competences and responsibility (15).
- Structural and functional separation of the regulator from the ministry responsible for sector's policy (12).
- Ensuring that the regulator has full autonomy as regards HR policy (11).
- Clear statement of the situations when decisions reached by a regulatory body may be challenged and the due process to be followed (11).
- A stable source of financing, which is adequate for the tasks entrusted and resistant to political pressure (9).
- Ability to pay salaries which attract and retain staff of the required calibre when public sector pay policy results in a pay freeze or cuts (9).



SAI assessment of the level of independence of regulatory bodies (from 1- strong independence to 5 independence weak or lacking):

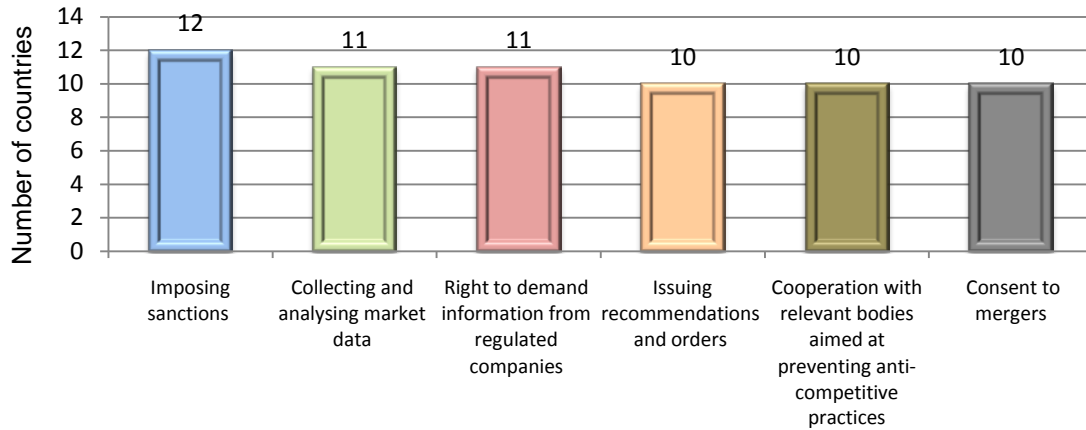
- General competition regulators: from 1 to 3.
- Financial regulators: from 1 to 5 (5-Bulgaria).
- Energy regulators: from: 1 to 4 (4-Bulgaria).
- Transport' regulators (infrastructure and services): from: 1 to 4 (4-Portugal).
- Communication's regulators (post, telecoms): from 1 to 4 (4-Bulgaria).

#### **8. Competences of regulatory bodies.**

##### 1. General competition's sectors (12 countries)

- Imposing sanctions (12).
- Collecting and analysing market data (11).
- Right to demand information from regulated companies (11).
- Issuing recommendations and orders (10).
- Cooperation with relevant bodies aimed at preventing anti-competitive practices (10).
- Consent to mergers (10).

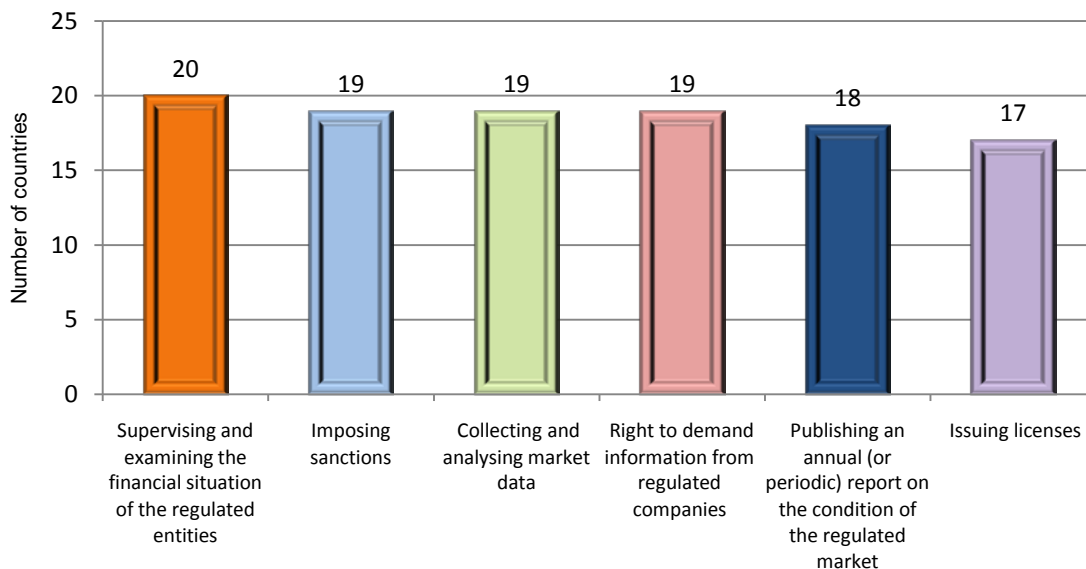
## Competence of regulatory bodies - general competition sector



### 2. Financial sectors (20 countries)

- Supervising and examining the financial situation of the regulated entities (20).
- Imposing sanctions (19).
- Collecting and analysing market data (19).
- Right to demand information from regulated companies (19).
- Publishing an annual (or periodic) report on the condition of the regulated market (18).
- Issuing licenses (17).
- Publishing information for consumers (16).
- Control of qualifications of persons undertaking regulated activities (15).

## Competence of regulatory bodies financial sector

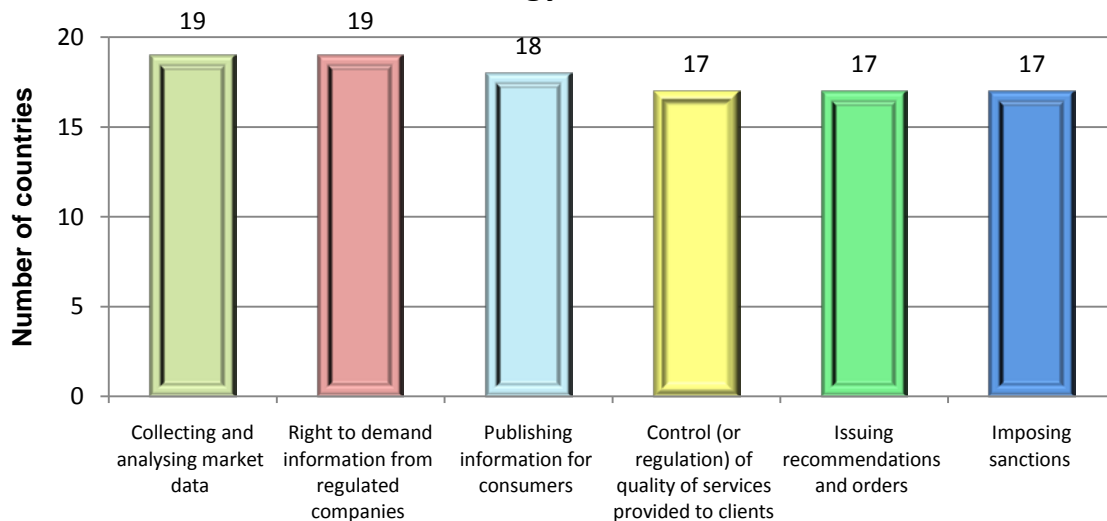


### 3. Energy sector (19 countries)

- Collecting and analysing market data (19).
- Right to demand information from regulated companies (19).
- Publishing information for consumers (18).

- Control (or regulation) of quality of services provided to clients (17).
- Issuing recommendations and orders (17).
- Imposing sanctions (17).
- Publishing an annual (or periodic) report on the condition of the regulated market (15).
- Cooperation with relevant bodies aimed at preventing anti-competitive practices (15).
- Determining prices (14).

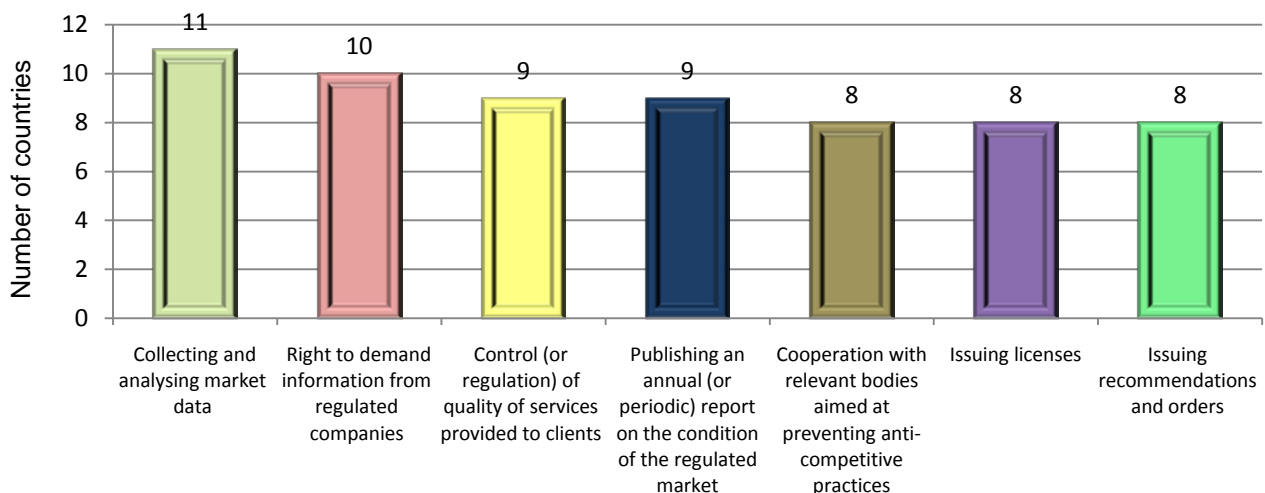
### Competences of regulatory bodies - energy sector



#### 4. Transport (infrastructure and services) sectors (11 countries)

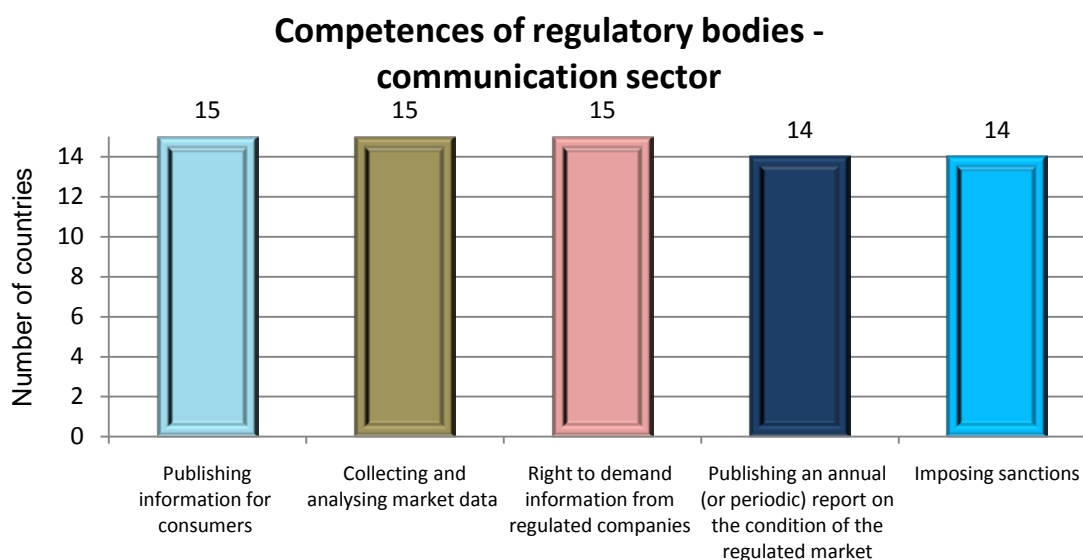
- Collecting and analysing market data (11).
- Right to demand information from regulated companies (10).
- Control (or regulation) of quality of services provided to clients (9).
- Publishing an annual (or periodic) report on the condition of the regulated market (9).
- Cooperation with relevant bodies aimed at preventing anti-competitive practices (8).
- Issuing licenses (8).
- Issuing recommendations and orders (8).

### Competences of regulatory bodies - transport sector



5. Communication sector (15 countries)

- Publishing information for consumers (15).
- Collecting and analysing market data (15).
- Right to demand information from regulated companies (15).
- Publishing an annual (or periodic) report on the condition of the regulated market (14).
- Imposing sanctions (14).
- Issuing recommendations and orders (13).
- Cooperation with relevant bodies aimed at preventing anti-competitive practices (13).
- Issuing licenses (11).



**8. Accountability, appeals and audit framework for the regulatory bodies.**

**A. Reporting**

The identified regulatory bodies reports to Minister or to President or to more than one authority e.g. to: Parliament and Government and to the general public. Often the regulators reports to Minister of Economy or Economic (general competition regulators), report to Minister of Finance or Economic Affairs (financial regulators), and also to Minister of Infrastructure and Minister of Transport and Communication.

One of the financial regulator of Cyprus (Cyprus Stock Exchange Commission - CySEC) reports to President of the Republic, to the Parliament, to the Government, to the Industry and to the Public.

Energy regulator of Belgium (Commission for the Regulation of the Electricity and Gas -CREG) reports to the federal Energy Minister (once/year) and to the European Commission (once/year).

**B. Direction**

Most frequently the regulators may be directed by respective Ministers. In some cases Ministry can have input but regulators do not have to follow (e.g. Iceland, Post and Telecom Administration). In some cases the regulators could not be directed by anyone (e.g. Denmark, The Danish Energy Regulatory Authority).

**C. Consultation**

The regulators are required to consult with regulated companies and other stakeholders, with industry, respective Ministry, competent authority of banking or of finance (financial regulators). Very often there is no such obligation

#### **D. Appeal against decisions of regulators.**

Usually decision of the regulators can be brought up for trial. Regulated parties can appeal to the Court or Supreme Court. In some country first an administrative appeal takes place, followed by an appeal to a court.

In Portugal decisions of the general competition regulator (AdC) can be appealed by regulated bodies to the Commercial Court of Lisbon and Courts of Appeal; also to the Minister of Economy in the case of mergers.

In Iceland 10-20% decision of general competition regulator are appealed. Regulated parties can appeal to the Competition Appeals Committee.

In Poland the decision of energy regulator's President (URE) can be appealed against to the District Court in Warsaw - anti-monopoly court within two weeks. In 2009 URE President issued a total of 5 494 administrative decisions, while 189 decisions were appealed against to the Competition and Consumers Protection Court. This means that 3.44% of issued decisions were appealed against. Looking at the period of the last few years it should be noted that the percentage of the appeals against the issued decisions stays at comparable level.

#### **E. Audits of regulators.**

Most often National Audit Offices have right to audit regulatory bodies as they conduct annual audit of financial accounts.

Against to popular tendency e.g. the Act on HANFA (Croatia's financial regulator) contains no provisions on audit.

#### **9. The beneficiaries of regulatory bodies' work**

All consumers and the entrepreneurs are beneficiaries of work of all kind of regulators. Some of the countries mentioned that socially sensitive clients benefits from work of regulators (e.g. Croatia, Iceland, Romania, Hungary).

Some countries stated that other participant of the market were the beneficiaries. In case of financial regulators there were banks, non-banking financial institute (Romania), pension scheme members (United Kingdom), the consumers of financial services (e.g. Belgium), the clients of the regulated financial institutions (e.g. Poland), the financial markets' participants (e.g. Malta), the financial institutions, the shareholders of the companies.

#### **10. Process for dealing with complaints from citizens.**

All kind of regulators most often issue reports and recommendation and conduct investigations and/or inspections. Most of the regulators are able to impose financial penalties on entities. Some countries mentioned hearing or tribunals as methods of dealing with complaints from citizen. Netherlands mentioned naming and shaming, Malta - revocation of licence.

#### **11. How does the regulatory body identify and measure its impacts**

Most often regulators publish activity reports and statistical data. Sometimes they make reference to market shifts or trends (e.g. Netherlands).

In Netherlands all regulators are obliged by law to (let) evaluate its performance once in a four year period. On Cyprus financial regulator (CySEC) conduct market research.

#### **12. Examples where a regulatory body claimed or was credited with a real impact in its sector**

Financial sector's regulators:

- Demand to change the president and General Director (Israel).
- Reduction of refinancing rate. Filling the banking sector with extra liquidity during the financial crisis. Currency interventions. Establishing the limit of the interest rate. (Russia, Central bank).

- Sign-off project involving recapitalization of the three major commercial banks. Issuing guidelines to financial organisations on how to recalculate FX-linked loans, thus providing stability to the market. Participation in the creation of a bill of law on changes to legislature concerning financial enterprises. Participation in the creation of a bill of law on legislature concerning the insurance market. Introduction of stricter fit and proper qualification requirements (Iceland).
- Stability of supervised markets. Due to the highly regulated banking sector in Cyprus the economic and financial crisis did not affect that much the banking sector (Cyprus, Central bank).
- Implementation of a transparency-system for net short-selling positions (Germany).
- Due to the impact of the crisis greater attention was paid make the necessary steps to deal with the abuses of the financial sector, which was a social and political expectation as well (Hungary).

#### Energy sector's regulators:

- Consumer protection by introducing control of energy suppliers, by means of consumer protection consultancy (Croatia).
- Price-limitation for electricity (Germany).
- Price reviews, maintaining protection for consumers (United Kingdom).
- In a press release from September 2009, The Danish Energy Regulatory Authority (DERA) claims that the Danish electricity consumers have saved up to € 36.0 million in the period from 2007-2010 due to the efforts of DERA. (Denmark).
- Regulatory office give its opinions to the consumption prices of energy (gas, water) annually and its opinions are a subject of interview, reports available to public as well as in the bulletin of Office and in the website of Office and in the Collection of laws of SR (Slovakia).
- A key priority of Cyprus Energy Regulatory Authority (CERA) was to ensure the preparation and approval of the Electricity Market Rules in accordance with the relevant articles of the legislation in force. CERA investigated and studied thoroughly and for a long time all relevant recommendations prepared by the Transmission System Operator (TSO), as well as collected and considered the opinion of all other stakeholders of the market. CERA arranged several meetings with the TSO for clarifications on various issues of his recommendations and on 23 December 2008 decided to adopt TSO's recommendation of the Electricity Market Rules as formulated for a three-year period (Cyprus).

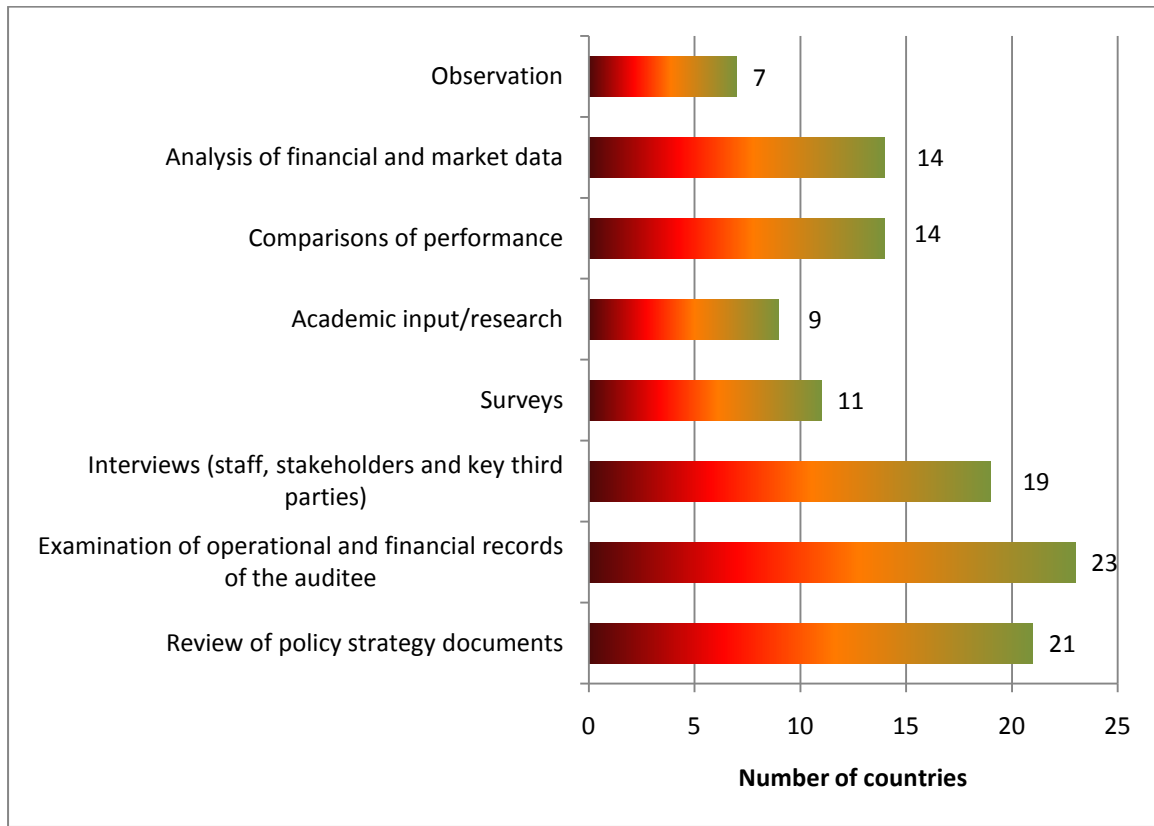
#### Transport's regulators:

- Preparation for achieving equal conditions in the railway services market. The Agency commenced work end of July 2009 (Croatia).
- Efficiency savings in the operation of the rail network (United Kingdom).
- RRA is a regulatory body for the regulation of travel costs in the railway transport, it audits observing of travel costs and imposes measures for remedy of found shortcomings (Slovakia).

#### Communication's regulator:

- Reducing prices, especially in mobile telephony; promoting competition and controlling wholesale prices, most recently in Pay-TV (United Kingdom).

### **13. Methods of gaining evidence:**



### **14. Reporting on the outcome**

