

# VIII EUROSAI Congress

## Theme II

### The audit of the Independent Regulatory Agencies by SAIs

#### *Discussion Paper*

## REGULATORS AND THEIR ROLE IN REGULATED SECTORS

1. As governments divest themselves of businesses providing goods and services for their peoples, independent regulators grow in importance as institutions which can control monopolistic or dominant sectors and those important for national economic security. The input provided by SAIs points out to the significance of regulators not only to the regulated sectors, but also to the national economy as a whole. SAIs' answers confirm that regulators exist in all the countries.
2. Three primary groups have been identified across regulated sectors: general competition, financial and infrastructure.
  - a. General competition – regulation of competition, consumer protection, and general trade.
  - b. Financial – central banks, financial supervision authorities, securities market authorities, insurance supervision authorities, stock exchange commissions, pension fund supervisory authorities.
  - c. Infrastructure:
    - i. Energy: (gas, electricity, heating, water, oil, other fuels regulators, power plant regulators, mining and petrol pumping regulators, energy industries regulators, energy and water regulators, nuclear security regulators).
    - ii. Transport (infrastructure and services) (train, bus, ferry service regulators, railway, airport, port and road infrastructure regulators)
    - iii. Communications (post, electronic communication, telecom regulators).

Regulators for general-competition sectors were established in 12 countries, for financial sectors – in 20 countries, for energy sectors – in 19 countries, for transport sectors – in 11 countries, for communications sectors – in 15 countries.
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3. The number of the regulated sectors is not equivalent to the 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 others 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).
4. The GDP generated by the regulated sectors underscores their importance for the whole economy. At this point, some indication of the GDP involved in several sectors in different countries can be instructive (e.g. finance: €39 billion (the Netherlands, 2008), €3,429 million EUR (Hungary, 2008), energy: €51,914 million (Hungary, 2008), €59bn (United Kingdom) telecommunication: €59bn (United Kingdom) and post: €13.4bn (United Kingdom)).
5. The nature of the regulatory bodies has been described by the SAIs as follows:

- a. Independent (non-governmental) regulatory bodies (agencies, authorities, autonomous legal entities, separate, autonomous public bodies), central banks.
  - b. Bodies within the government/federal government (authorities operating under a minister but not hierarchical – decision-making independency), administrative authorities within government, non-ministerial government departments, bodies operating under the authority of the ministry, independent authorities within government.
6. The answers provided by SAIs have confirmed that there is no single and common definition of an independent regulator. Furthermore, with reference to the definitions relevant to regulation, some countries provided definitions of regulators as drafted in legislation, others countries mentioned terms such as: price regulation, market access regulation, regulation of use of system charges. Some countries stated that there is no overall legal definition relevant to the field of regulation, but the tasks and mandates for each regulatory body are separately laid down in the legislation under which they are established (e.g. the Netherlands, Bulgaria).

Belgium defined these 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, targeted – only in cases where action is needed.

7. Likewise, the sources of the law establishing and defining regulators' activities are also diverse: 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), Acts 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).
8. All SAIs have identified the crucial principle of regulator's independence: a clear and precise definition of the regulator's scope of tasks, mandates and responsibilities. For all types of regulators, this principle has taken centre-stage. Second to it is the structural and functional separation of the regulator from the ministry responsible for the sector's policy (on the third place for transport sector). Another feature crucial to regulators' independence refers to the Head of Office and includes clearly specified terms of office for the Head and senior managers and the allowable grounds and due process for seeking an earlier rotation, detailed and transparent criteria and professional requirements established for the appointment of the Head of the regulatory body and senior managers. It is telling that a vast majority of countries (17) have emphasized the importance of the 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) for the financial sector, where salaries in regulated entities are traditionally high.
9. Objectives for the most significant regulatory bodies may be set by law (at the time of establishing the regulatory body or subsequently/periodically) made by Parliament, Government or Ministers. Objectives may be also set out by appointed managers of the regulatory body or others. In some cases, long-term objectives are set by legislation and short-term objectives are set by the board of directors (Iceland, Poland).

United Kingdom: All the regulators are set up through Parliamentary Acts and their main duties and functions are determined by these Acts. Within that statutory framework they – through their Boards, commissioners or governing authorities – set their own short-term and long-term objectives in consultation with the industries

they regulate and other stakeholders.

10. The answers concerning the most important objectives of regulatory bodies provide a clear indication of the importance of regulatory objectives according to the type of regulator and the sector it regulates. One common feature is that consumer protection and protection of consumers' interests always take a prominent place. For general competition sector these goals are ranked second (9 countries indicate this goal as important), and for the financial sector – also second. For infrastructural regulators, the protection of customers and their interests was the all-important goal. It was ranked first for the energy sector (16 countries consider it to be important), as well as for the transportation sector (infrastructure and services). It was ranked second for the communications sector (12 countries). For the energy sector the second rank was attached to ensuring availability of contracted/required services (14) and ensuring the quality of services (13).
11. Meanwhile, for financial regulators, the priority was to ensure financial stability of market entities (16 countries), consumer protection and protection of consumer interests (15 countries). Unlike in other sectors, competition protection (6) and competition development (6) are not high on the agenda of regulation of the financial sector. Hence follows the SAIs' view that, for the financial sector to operate properly, it is more important to ensure the stability of market entities (i.e. regulatory activity *per se*) than to ensure and develop competition in the sector.
12. The responsibilities of regulatory bodies are related to the listed regulation objectives.

The most important regulatory mandate for the general-competition sector was imposing sanctions and, related, collecting and analysing market data, as well as the right to demand information from regulated companies.

Supervising and examining the financial situation of the regulated entities, and, related, collecting and analysing market data and imposing sanctions was the most important mandate of financial-sector regulators.

For infrastructure regulators (energy, transport and communication sectors) important responsibilities are focused on customers and their interests. For this purpose, they collect and analyse market data and have the right to demand information from regulated companies, which leads to the publishing of information for consumers. Verification (or regulation) of the quality of services provided to customers was also an important responsibility for energy and transport sectors. Only few countries listed price controls as an important responsibility. This can be due to the fact that the functioning price mechanisms shift the focus of regulator's activity towards building consumer awareness and providing quality goods and services. Nevertheless, price control remains within the sphere of SAIs' interest. (chapter 3, para. 5)

In most of the countries, regulators publish annual (or periodic) reports on the condition of the regulated market.

13. Accountability, appeals and audit framework for the regulatory bodies

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

This means that regulator's activities, irrespective of their extent of independence, as freely available to citizens and subject to the oversight by the legislature or executive authorities.

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

Usually, decisions of regulators can be challenged. Regulated parties can appeal to the Court or Supreme Court. In some countries an administrative appeal takes place first, followed by an appeal to a court.

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

In Poland the decision of the president of the energy regulator (URE) can be appealed against to the District Court in Warsaw. In 2009, the URE President issued a total of 5,494 administrative decisions, of which 189 were appealed against to the Court. Looking back at the past few years, it should be noted that the percentage of appeals against the decisions issued has stayed at a stable level.

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

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

14. All consumers and entrepreneurs benefit from the activity of various kinds of regulators. Some of the countries mentioned that socially vulnerable customers benefit from the work of regulators (e.g. Croatia, Iceland, Romania, Hungary).

Some countries stated that other participant of the market were the beneficiaries. For financial regulators, these included banks, non-banking financial institutions (Romania), pension scheme members (United Kingdom), the consumers of financial services (e.g. Belgium), the customers of regulated financial institutions (e.g. Poland), the financial markets' participants (e.g. Malta), the financial institutions, company shareholders.

15. Despite the significance of regulators to the economy and consumers, only some SAIs have described how regulatory bodies identify and measure their impacts. Most often, regulators publish activity reports and statistics. Sometimes they make reference to market shifts or trends (e.g. the Netherlands).

In the Netherlands, all regulators are obliged by law to evaluate or have evaluated their performance every four years.

In Cyprus, the financial regulator (CySEC) conducts market research.

16. Despite that, there are examples of regulators' effectiveness where a regulatory body claimed or was credited with a real impact in its sector.

Financial sector regulators:

- Reduction of refinancing rate. Providing the banking sector with extra liquidity during the financial crisis. Currency interventions. Establishing the limit of the interest rate. (Russia, Central bank).
- Signing-off projects involving recapitalization of three major commercial banks. Issuing guidelines to financial organisations on how to recalculate FX-linked loans, thus providing stability to the market. Participation in legislative efforts to draft a law bringing changes concerning financial enterprises. Participation in legislative efforts to draft a law bringing changes

concerning the insurance market. Introduction of stricter fit and proper qualification requirements (Iceland).

- Stability of supervised markets. Due to tight regulation of the banking sector in Cyprus, the economic and financial crisis did not affect the banking sector very much (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 to dealing with abuses in the financial sector, which was a social and political expectation as well (Hungary).

Energy sector regulators:

- Consumer protection by introducing inspection 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 2007-2010 due to the efforts of DERA (Denmark).
- The regulatory office issues its opinions on consumer prices of energy (gas, water) annually and its opinions are discussed in an interview, reports available to public, as well as in the Office's bulletin, on its website, and in the Collection of Laws of the Slovak Republic (Slovakia).
- A key priority of the 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 opinions of all other stakeholders of the market. CERA arranged several meetings with the TSO for clarifications on various issues of its recommendations and on 23 December 2008 it decided to adopt TSO's recommendation of the Electricity Market Rules as formulated for a three-year period (Cyprus).

Transport regulators:

- Preparation for achieving equal conditions in the railway services market. The Agency commenced its 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 the observance of travel costs and imposes measures to remedy the shortcomings found (Slovakia).

Communications regulator:

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

## THE IMPACT OF THE ECONOMIC AND FINANCIAL CRISIS ON ECONOMIC REGULATORS

- 1** The majority of comments in the country papers related to the impact of the economic and financial crisis on financial regulation, rather than other types of regulation. A common response to the crisis has been to introduce changes to the responsibilities of the financial regulators: examples include **Cyprus**, where the supervisory and regulatory powers of the Cyprus Security and Exchange Commission have been enhanced; **Germany**, where the Federal Financial Supervisory Authority has taken on additional tasks in the supervision of banks; and **Iceland**, where the financial supervisor has been given increased powers and funding. In **Denmark**, the Financial Supervisory Authority has formulated a new strategy and a more proactive approach, in light of the crisis. The main areas of the strategy are: wider powers and new regulation; strengthened supervision of banks; more risk-based supervision; strengthened international supervision; and an attractive and dynamic workplace.
- 2** Many countries have responded to the crisis by more structural changes in the way that financial services are regulated. The close links between financial services and the wider economy are evident from the fact that many countries' central banks have been given wider remits and greater independence. Some examples are shown in the box below.

### Greater powers for central banks

Belgium: prudential regulation will be transferred from the Banking, Finance and Insurance Commission to the Belgian Central Bank

Croatia: strengthened independence of the Croatian National Bank from July 2008

Israel: greater influence of the Bank of Israel on the financial market

Portugal: new legal framework granting Banco de Portugal power to establish rules of conduct for credit institutions and financial companies

Slovak Republic: duties of the Office for the Financial Market transferred to the National Bank of Slovakia

UK: new Prudential Regulation Authority to be set up as a subsidiary of the Bank of England, and Financial Policy Committee created within the Bank of England, from 2012

- 3** In contrast to the examples above, two countries have reduced the power of their central banks: in the **Netherlands**, the Dutch Central Bank's rule-setting mandate has been transferred to the Minister of Finance; and supervision of banks in **Poland** has transferred from the Central Bank to the Financial Supervision Authority. It should be noted that both countries indicated that these changes were not related to the financial crisis. It is interesting, however, that they seem to be going against the trend displayed by other European counterparts.
- 4** Some countries have taken steps to maintain a firmer grip on financial stability: in **Denmark**, a state-owned Financial Stability Company was established in October 2008; and the primary responsibility of the **UK's** proposed Financial Policy Committee will be to maintain financial stability.
- 5** The other main theme to come through was that regulators in general (not just in the financial sector), in common with other public sector organisations, are having to adapt to reduced budgets and staffing numbers. (**Bulgaria, Croatia, Cyprus, Malta, Slovak Republic, UK**).
- 6** Several countries mentioned that the economic crisis has resulted in greater public debate about the role of regulators, and in increased scrutiny. In **Denmark**, "The economic and financial crises have strengthened the

Parliament's, the Government's and the public's focus on the economic regulators"; in **Iceland**, "There have been discussions on how to strengthen regulation of the financial sector"; and in **Israel**, "One of the impacts ... was a renewed public debate around a more efficient regulation system".

**7** **Hungary** has reported some developments in relation to its legislative process. It has established a Fiscal Council to support the legislative work of the National Assembly. Its remit covers the preparation of macro-economic forecasts, baseline projections and methodological recommendations, and it contributes to the preparation of estimates concerning the budgetary impacts of draft bills. The Council's three members are nominated by the President of the Republic, the President of the State Audit Office and the President of the National Bank, and elected by the National Assembly. There is also now a requirement for draft bills to be accompanied by a budgetary impact assessment, in respect of at least four fiscal years from the effective date of the proposed legislation.

**8** The **Czech Republic** reported that the economic crisis has had no significant impact on its economic regulators.

## **Consumer protection**

**9** In some countries, a key response to the economic and financial crisis has been to place greater emphasis on consumer protection, especially in financial markets. Developments include the planned establishment of a Consumer Protection and Markets Authority in the **UK**. This, along with the other changes relating to the central bank, described in the box above, will replace the current Financial Services Authority in 2012. It is not entirely clear, however, whether these changes are a direct result of the financial and economic crisis, rather than the policy preferences of a new government. In **Hungary**, from January 2010, existing legislative Acts relating to financial services have been amended, to considerably strengthen their consumer protection provisions. At the same time, a Code of Ethics was established, on the fairness of financial organisations towards consumers. The Hungarian Financial Supervisory Authority also has a growing role in consumer protection.

**10** One aspect of consumer protection is financial capability – that is, the skills and knowledge that allow an individual to make informed and effective decisions through their understanding of finances. Financial regulatory agencies have responsibility for improving consumers' financial capability in fewer than half (7 out of 17) of the countries whose SAIs responded to the questionnaire (**Belgium, Croatia, Cyprus, Hungary, Israel, Portugal** and the **UK**).

**11** The most common ways in which regulators aim to develop financial capability are by providing educational literature for consumers and by raising awareness of financial issues, for example through consumer websites. Two countries provided more detail about their financial capability programmes, which is summarised in the box below. Both programmes include an element of personalised advice for consumers, as well as working with partner organisations such as schools and colleges.

## Summary of financial capability programmes in Hungary and the UK

### Hungary

The Hungarian Financial Supervisory Authority has an objective to promote informed decision-making of consumers, based on adequate information, and to develop a financial culture.

Accordingly the HFSA:

- exercises its function to raise attention and disseminate knowledge, prepares information brochures, operates websites of consumer protection;
- provides personalised information in case of managing individual cases by its client service and complaint handling activity;
- supports comprehensive programmes promoting the financial consciousness of citizens by its revenues from fines; and
- implements projects aiming at the dissemination of financial knowledge in cooperation with authorities, ministries, educational institutions, civil and other organisations of consumer protection, which wish to act in order to develop financial culture.

### United Kingdom

The Financial Services Authority was given a public awareness objective on its creation in 2001. The main elements of the FSA's financial capability strategy have been:

- A national money guidance service providing people with access to free personalised information and guidance on a range of money matters such as budgeting, saving and borrowing, mortgages, insurance, pensions and planning for retirement, and tax and benefits.
- A schools education programme; an education initiative in further education colleges; and student money advisors in universities.
- Training and support materials for intermediaries (such as youth workers) who provide services to young people who are not in education, employment or training.
- A 'Parent's Guide to Money' distributed to new parents, and 'Making the most of your money' guide distributed through employers and trusted intermediaries in workplaces.

In April 2010 the FSA set up the Consumer Financial Education Body (CFEB), which now leads the National Strategy for Financial Capability



## AUDIT OF THE REGULATORS

1. All SAIs who have responded to the questionnaire confirmed that they have a mandate to audit regulators. The extent and type of audit are established in the legislation governing SAIs' activity as well as in the legislation applying to regulators. All SAIs have a mandate to conduct financial audits of regulators, and some restrictions are imposed on performance audits in the countries where the central bank has regulatory functions, like in Russia. Denmark's and Croatian SAI is not allowed to audit the central bank at all, and in Hungary and Bulgaria only the financial management can be audited. Since financial regulators (including central banks) have grown in importance during the financial crisis, the lack or limitation of SAIs' mandates to audit them may create a risk that their activities are left outside the realm of government supervision.

Some SAIs emphasize that annual financial audit is their duty. Such regulations apply e.g. in Iceland, Norway, the UK, Belgium and Poland.

2. Financial audits are the most frequent types of audits of regulators. As pointed out above, some SAIs are required by law to conduct annual financial audits. Nevertheless, even in countries with no such requirement, financial audits of regulators are frequently conducted. In 2008-2010 SAIs audited more than 60 regulators, which means that financial audits were conducted at 56% of all regulators listed in the questionnaire. It is also worthwhile to note that in 55 regulators (in 12 countries) financial audits were conducted in every year of that period.
3. Performance Audits.<sup>1</sup> More than a half of SAIs (16 out of 23) conducted such audits of regulators. In 2008-2010, SAIs conducted a total of 50 audits. Some SAIs conduct audits that include both compliance and performance aspects. (e.g. Poland, Spain). The vast majority of audits dealt with infrastructure regulators, including regulators of postal services (e.g. Belgium, Malta, the UK) energy (e.g. Poland, the UK, Norway, Malta, the Netherlands, Israel, Bulgaria, Hungary, Germany, Spain), and telecommunications services (the UK, Belgium, Poland, Bulgaria). SAIs also paid much attention to auditing the regulators of competition and consumer protection. Audits of such authorities were conducted in, e.g., Belgium, the UK, the Netherlands, Israel.
4. Audits of financial regulators were less frequent. This may be due to a limited mandate to audit central banks which have regulatory functions in some countries. Financial regulators were audited in Russia, Cyprus, the UK, Poland, Switzerland, the Netherlands, Denmark, Germany. SAIs which audited how infrastructure regulators have fulfilled their regulatory objectives focused on the functions relevant to the appropriate operation of the market and consumer protection.
5. A total of 14 (more than a half) SAIs declare that they intend to conduct audits of regulatory authorities other than financial audits in the near future. Like in previous years, these audits focus on the protection of consumer interests with regard to pricing, supply of regulated goods or services and ensuring competition.

- The NAO (UK) plans to conduct in a variety of regulatory authorities a study on Consumer Protection.
- The Norwegian SAI will audit the Food Safety Authority with regard to sustainable aquaculture.
- The Israeli SAI has planned to audit infrastructure regulators, e.g. the Road Safety Authority due to information about malfunction and the Water Authority concerning the Building of Desalination Plants. The audit topic was chosen because of the lack of water and inadequate performance.
- Israel's SAI also intends to audit the Capital Market Supervisor under the topic "The pension arrangements and replacement of the external auditor". The reason why the topic was chosen was non-compliance with law and regulations.
- Regular comprehensive audit of budgetary chapters (which contains other regularity and performance audit elements as well), will be conducted by the Hungarian SAI, which will also carry out an audit on the control system of employment and labour safety.

<sup>1</sup> This review addresses these performance audits of regulators which apply to their regulatory activity

- The Swiss SAI will audit three regulators (finance, medical services, and electricity market).
- In one case (Belgium) the audit of the Competition Authority is a follow-up audit “Towards an efficient control of restrictive competition practices”, conducted due to poor performance assessed during the first audit. This shows that the audits address current national problems in the regulated sectors or are part of audit strategies.

6. The examples of planned audits indicated above show that SAIs attach great importance to the auditing of regulators, which involve both financial and performance audits. However, many countries conduct financial audits only, while others indicate (e.g. the Czech and Hungarian SAIs) that they conduct audits of regulators, but these are not specifically related to regulatory activities.

7. Almost a quarter of the responsibilities selected for auditing and mentioned by SAIs are related to the auditing of financial regulators. These audits examined the supervision exercised over the regulated banking and capital markets. The SAIs' interest stems from the role financial regulators play in the market in crisis times, the materiality of topics, as well as political interest and identified risks.

- Cyprus: The audit of regulators focuses on financial issues i.e. following the budget, audit of the financial decisions taken and ensuring that funds are used in an economic, efficient and effective manner and according to the budget.
- **The Netherlands:** Supervision of market manipulation in the trading of stocks, due to allegations of market manipulation).
- **The Dutch Central Bank** Supervising and examining the financial situation of the regulated entities.
- Israel: Periodic Report on financial crisis and compliance with rules
- Germany: Issuing recommendations and orders.
- **Denmark:** Supervising and examining the financial situation of the regulated entities

8. Audits of general-competition regulators focused on the operation of markets and the measures taken by regulators to evaluate their efforts to ensure competition in different sectors. Audited was the validity of imposing sanctions on the entities covered by regulation, merger approvals, supervision of cartels.

- Belgium: Inquiries into practices inconsistent with the competition rules: “Towards an efficient control of restrictive competition practices”.
- The Netherlands: supervision of cartels.
- Poland: Audit of adequate collection and analysis of market data, and merger approvals.
- Spain: Audit of the activity of National Commission on Competition.

9. Consumer protection was the main responsibility audited in infrastructural regulators. Price controls were addressed by the SAIs of Israel, the UK, Denmark, and the Netherlands. The Maltese SAI audited the quality of postal services provided to consumers. Interest in consumer affairs is also evident in the audits of energy regulators, which addressed the development of renewable energy (Cyprus, Malta) and “Electricity emergency preparedness in the Nordic countries” (Denmark)

- Imposing sanctions and income generated from fees imposed on regulated companies were audited in the Cyprus Radio – Television Authority.

- UK: removing price controls in 3 regulators.
- Poland: Collecting and analysing market data, right to demand information from regulated companies, publishing an annual (or periodic) report on the condition of the regulated markets (3 regulators)
- Malta: **Malta Communications Authority (MCA)**: Regulatory action taken by the regulator to monitor obligations and the quality of service of the universal service provider in the postal sector. The NAO wished to explore the extent to which MCA is effectively monitoring and ensuring adherence to the established standards and targets for the universal postal service as this has been a prominent point for public debate.
- **Bulgaria: State Energy and Water Regulatory Commission** Capping and approving prices, and monitoring of their application, issuing licenses, control of the qualifications of persons in charge of regulatory work/activities, imposing sanctions and publishing information..
- **Council for Electronic Media** Control over the programmes that have received permission for broadcasting; imposing sanctions, publishing information.

10. All SAIs which have responded to the question collected their audit evidence through the examination of financial reports. Three or four methods were most frequently used. Only four SAIs used all methods highlighted above (the UK, Romania, Norway, Malta), which is hardly a surprise, given that the most frequent type of audits of regulators are financial audits.

11. In general, SAIs did not complain about significant problems with access to information. However, they pointed out that difficulties with access to documents lengthened their audits in time. Israel's SAI mentions two reasons why information access was problematic: transition of documentation from paper to electronic media and the financial crisis and compliance with the rules in the audit of the Capital Markets Supervisor. Also Poland's SAI encountered problems in auditing the Financial Supervision Authority, related to the access to documents containing information concerning bank secrets. The Netherlands' SAI highlighted the dealing with sensitive market information, which requires some provisions in the execution and reporting phase of the audit. Problems with access to the information held by regulated entities may pose a risk of mistakes in the assessment of reliability and effectiveness of regulators' activities.

12. Due to specialized issues audited in regulatory authorities, SAIs contracted out the audits or used the services of external experts. In the Hungarian SAO, external auditors and experts were employed to audit the final accounts of regulators because of the lack of capacity. The Bulgarian NAO audited the efficiency of the regulatory work of the State Energy and Water Regulatory Commission in the field of heat supply and combined production of electric and heat energy. The need for special knowledge with regard to the specifics of the audit objective led to the use of expert help for some of the checks carried out. Experts were for instance used in the performance audit of the Council for Electronic Media conducted by the Maltese SAI, which notes that otherwise it would take a long time for the audit team to build up the necessary expertise and know-how and to familiarise themselves with specific legal issues. UK NAO contracted out joint reviews with the Better Regulation Executive at the request of the Chancellor of the Exchequer. The reviews, aimed at risk-based regulation and reducing the burden of regulation on businesses, were based on Individual reports on a number of sectoral regulators. The Netherlands SAI stressed the complexity of the audited field: how to judge the functioning of highly specialized organizations?

- The Norwegian SAI noted that “The main challenge is to measure the authorities’ goal achievement, as the control systems are the responsibility of the economic entities”. Likewise, the Netherlands SAI has

noticed the tendency of SAIs to stress the importance of organizational checks and balances. SAIs do not know how effective this is.

- Both the Norwegian and Netherlands SAIs pointed to problems with assessing the outcomes of regulators' activities and limited mandate, which makes it difficult to audit the functioning of the regulators in specific cases, involving private companies.
- The Belgian SAI addressed the issue of the collision of mandates. In the case of administrative tribunals charged with regulation (as Competition Council): drawing the line between aspects that can be included in the audit of the Court of Audit versus aspects that pertain to the judicial function of the administrative tribunal-regulator and cannot be audited by the Court of Audit
- UK NAO listed a number of challenges in measuring the performance of regulators, including
  - determining indicators of outcomes reflecting their statutory or other duties;
  - recognising the fact that outcomes are usually influenced by other factors as well as the regulator's actions; and
  - determining thresholds for “good” performance, given this problem of attribution.

This makes it difficult to assess the value for money that regulators are providing when undertaking performance audits

13. This review of SAIs' input has shown that the results of their audits are widely published. All SAIs who have responded to this question provide the parliament and/or the relevant parliamentary committee with a report on audit results. This means that members of parliaments should be well aware of the problems and irregularities found in regulators' work. Parliaments also have a sufficient awareness of conclusions and recommendations reported by SAIs, also concerning the quality of law. Eleven SAIs provide their reports to the public, including on their websites. This means that consumers, who also benefit from regulators' activities, can acquaint themselves directly with the results of audit conducted in regulators.

14. A half of the countries (12) pointed out impact from SAI audits. Increase of competitiveness and improvements of consumer protection, (including price stabilisation) were mentioned very often (e.g. Belgium, Denmark, Czech Republic, Germany, Israel, Netherlands and UK).

- Priorities are set to improve the impact of the cases handled by the authorities (Belgium)
- (UK) An NAO report in May 2003 highlighted the disparity between the falling wholesale price of electricity and the broadly static retail price, and demonstrated that consumers could save money by switching suppliers. As a result of the report, between 29,000 and 50,000 people switched supplier, saving an estimated total of £4 million. NAO also had an impact in broader areas such as:
  - i. improving the way government departments (some of which are regulators) calculate their reductions in the administrative burdens placed on businesses
  - ii. improving the way in which impact assessments are undertaken, through a more proportionate approach and more effective scrutiny
  - iii. improving the way the Office of Fair Trading (they main consumer protection body in the UK) operates – following our recommendations it had focussed its resources on where it will have the most impact in improving the effectiveness of competition, become more proactive, and raised its profile by taking strong enforcement action against cases of anti-competitive behaviour.
- Organization of seminars in order to inform taxpayers about the need to respect the deadlines for submission of insured persons statements. (Moldova)
- Improvement in: detecting cartels; quality assurance; measurements of effects (Netherlands)
- Service provided by the regulated companies as a result of action taken by the regulators in response to investigations carried out by the SAI: Bank Supervisor; Capital Market Supervisor; Antitrust Authority; Civil Aviation Authority (Israel)

Improvements in internal organization of regulators and legal base were also important recommendations.

- Providing recommendations to improve legal base (Russia)
- More compliant and efficient human resources management (Belgium)
- After the audit carried out in 2009, NIK recommended the improvement of cooperation between KNF, National Bank of Poland and Minister of Finance. (Poland)
- Contribution to focus on important risk areas. (Norway)
- EK - NCA raised questions regarding the relation between regulatory goals and other policy goals. This might have influenced the juridical courts decision in an appeal dealing with the independency of EK-regulatory decisions (Netherlands)
- Improved procurement organization (Germany)
- Federal Network Agency: Improved internal Control systems (Germany)

## *The impact of the economic and financial crisis on SAI's roles in relation to regulatory agencies*

### Resources

**12** The financial and economic crisis has had an impact on the resources of ten of the SAIs that responded to the questionnaire. The largest impact was on the budget, with six SAIs experiencing either a budget freeze or cut. For example, the **Belgian** Audit Office experienced a reduction in the federal state budget appropriation in 2010 from €45.4 million against a requested amount of €46.1 million. The amount appropriated in 2009 was €45.7 million. The other SAIs took steps to increase efficiency gains, such as the **Romanian** audit office which rationalised operating costs with a focus on procurement and capital expenditure.

### Capacity and capability

**13** Many SAIs have dedicated resources to increasing their intellectual capital regarding the financial crisis, whilst others have had to take on more staff to undertake special assignments. These have been set out in the table below.

Changes to SAIs' capacity and capability	
Germany	Trained staff to perform a specialist audits (e.g. the Federal Agency for Financial Market Stabilisation).
Netherlands	Increased capacity to assess financial supervision.
UK	There was an increase in the range and scale of assets and liabilities that require audit. HM Treasury moved from simple financial statements to ones that include financial guarantees, complex derivatives. The SAI's capability had to be increased to audit the new and unique financial instruments arising from the financial stability interventions.
Slovak Republic	The range and methodology of performance audit of expenditure influenced by the economical crisis has increased.
Belgium	There has been an increase in the number of special assignments and audits.
Romania	The number of executive staff increased while the personnel wages were diminished, to respond to the legislation involving anti-crisis measures.
Israel	Resources dedicated to learning.

### Mandate change

**14** A few SAIs, **Germany**, **Bulgaria** and the **UK** have experienced a change of mandate as a result of the crisis. A new Bulgarian National Audit Office Act is expected to be adopted and it foresees an overall structural change of the SAI. The UK has a reduced legal mandate, as the new UK Government has created the Office for Budgetary Responsibility (OBR) to enhance confidence in government finances, which will now examine the Government's budget assumptions. Conversely the UK National Audit Office has also gained access to the Financial Services Authority (FSA). The German SAI also has access to a greater number of organisations than previously, and has greater access powers to existing clients.

## Audit approach

**15** There are six audit institutions that have amended their audit approach to respond to the crisis. There has been an increased focus on planning and risk assessments in **Denmark, Belgium and Iceland**. The **Slovak Republic**'s Supreme Audit Office has expanded the range and methodology of its performance audit.

**16** In **Poland**, the NIK has developed a whole new strategy in the light of the crisis. This is set out below.

The strategy adopted by NIK for operating in an environment of global financial and economic crisis is built on four premises:

- NIK should adjust its plan of actions to the new situation and control the effectiveness of crisis-containment efforts of the government and other state offices, including the integrity of applying the new anti-crisis instruments.
- NIK should refrain from steps which could deepen the mood of uncertainty and discourage risk-taking. When auditing the state budget execution, NIK analyse the “anti-crisis effectiveness” of the whole of government’s fiscal policy, and not only the effectiveness of newly-created anti-crisis instruments.
- NIK should control the effectiveness of use of public resources and the government’s measures improving this effectiveness, but these questions should not be linked to the financial crisis.
- NIK intends to continue extending the scope and perfecting the methodology for controlling the efficiency and effectiveness with which public tasks are performed.

## Information held by SAIs that might inform government exit strategies following the crisis

**17** Most SAIs did not hold any specific information on the financial and economic crisis, other than information they would gather in the normal course of audit. The SAIs of **Portugal** and the **UK** did have specific information as set out below.

Portugal	In 2009 the SAI undertook an audit of the “Follow-up Action of the Implementation in Portugal of the Plan for the European Union Financial Recovery”, which included the Central Bank of Portugal.
UK	The NAO has examined a wide range of privatisations over many years and produced guidelines (published by INTOSAI) for auditors to use when conducting performance audits of such transactions. These guidelines are being updated and will be shared with public officials responsible for unwinding support given to UK banks through, for example, sales of shares.

## Opportunities

**18** The financial crisis also created a number of opportunities for seven SAIs, ranging from collaboration with other institutions at national level, to developing knowledge and capability in the area. The **Danish Rigsrevisionen**, has found it easier to recruit very qualified auditors now than it was before the crisis, and the employees also stay for a longer period.