

Réponses au questionnaire sur la régulation économique
Responses to the questionnaire on economic regulation

Bulgarie

Cour administrative suprême

Bulgaria

Supreme administrative Court

QUESTIONNAIRE ON ECONOMIC SECTORAL REGULATION IN EUROPEAN UNION COUNTRIES

I.

Scope and purpose of economic sectoral regulation

1.

Economic sectoral regulation mainly focuses on sectors submitted to European Union' secondary legislation (transport, energy, postal activities, electronic communication, audiovisual media). Are other sectors subject to such regulation in your country?

In the Republic of Bulgaria are regulated these sectoral policies

- Energy
- Transport
- Environment
- Public health
- Agriculture, Fisheries and Aquaculture, protection of biodiversity
- Telecommunications
- Social policy
- Economic, social and territorial cohesion
- Consumer protection
- Competition
- Concessions Procurement
- Taxes, duties, levies
- Infrastructure projects of the state and municipalities
- Postal Sector Policy
- Electronics and Electrical Engineering, Mechanical Engineering and Information Technology

2.

Is the whole set of European Union' secondary legislation for economic sectoral regulation transposed into national law and/or practically implemented?

Bulgarian legislation is harmonized with European Union legislation.

3.

Is economic sectoral regulation only aimed at introducing competition in sectors where there is State monopoly? If not, what are its other purposes (implementing an internal market, defining universal service obligations, consumer protection, etc.)?

Administrative regulation of economic activity is the introduction of rules and administrative requirements that regulate the business of operators by developing, adoption and implementation of regulations by following the statutory procedure. Better regulation is a comprehensive strategy to improve the regulatory conditions in Europe - comprising a range of initiatives to consolidate, systematize and simplify existing legislation and improvement of the new legislation by better assessment the presumed economic, social effect and impact on the sector. The laws and the regulations are necessary to ensure a fair and competitive market, the effective protection of public health, the environment and the welfare of citizens. One of the main tasks is to improve regulations to ensure protection of the public interest in a way that supports, rather than hinders the development of economic activity. Objectives are:

- a fair and competitive market conditions - Bulgarian business expects the state to ensure and guarantee equal conditions for economic activity and stimulate competition.
- prosperity and security of citizens - Bulgarian citizens expect better quality of regulations and less bureaucracy.
- ensure the protection of the public interest in a way that supports, rather than hinders the development of economic activity
- reducing the annual expenditure for regulation
- promotion of company productivity
- Investment Promotion
- encourage of business competitiveness in national, European and global level - The removal of unnecessary administrative burdens is more important than ever in today's difficult economic times, when businesses have fewer resources and need to invest to remain competitive .
- In the profile of the Global Competitiveness Index of Bulgaria is a special focus on the most problematic factors for doing business in the country. First is inefficient government bureaucracy followed by corruption.
- encourage e-government and e-services, universal service

4.

Is economic sectoral regulation an ex ante control, aimed at defining obligations for companies in the regulated sectors a priori, or an ex post control, aimed at upholding competition provisions in case of infringement ?

Bulgarian legislation concerning the economic sector regulations contains three types of regime - authorization, registration and licensing. Significant achievement is the exhaustive list of business activities for which may be established licensing regime. The idea of the legislature, is - for some of these business activity be to establish a registration regime and so the number of licensing regimes progressively to be reduced. This will mean a narrowing of the discretionary power of administration characteristic of the licensing system in terms of its exercise binding jurisdiction inherent in the registration regime. This is a desirable development of legislation because in the discretionary power initially there is a risk the freedom of administration that the law allows in certain frames to degenerate into administrative arbitrariness. In binding administration that risk is much lower, the individuals have much greater features for protection, including the in the courts.

Administrative control is of two types - ex ante control and post control. The regulatory and control are interrelated and interdependent, because the administrative control makes the regulatory requirements governing business in administrative regulation. Application of rules established by administrative regulation can only be ensured through effective administrative control. Based on a review of the Bulgarian legislation - from about 360 laws and codes in 128 of them shall be established activities related to the regulations, 17 of them introduce European legislation and 33 of them - national requirements, and the remaining 78 contained both national and transposed EU requirements. The analysis of the 33 laws shows the establishment of administrative regulation beyond the scope of the law - the introduction of regulations which implementation does not lead to an increased risk for the sovereign rights of the state, rights and freedoms of citizens and legal entities, environmental protection, national security and public order . Regulation and control in the area of economic regulation is assigned to a specialized authorities empowered for it by law. Economic sector regulation implements both a preliminary control over the sector, as well as post control. There is a positive tendency in simplifying regulations, a tendency of deregulation and so on. But

progress is still insufficient. Application of the principles and requirements for free business and competition is still weak and insufficient. The initiatives taken have no permanent character and therefore they difficult lead to a stable result. During the last years in Bulgaria the necessity of introducing an approach to better regulation is rising and is the basis for achieving a fair and competitive market conditions, improvement of the welfare and security of citizens, the protection of the public interest in a way that supports the development of economic activity. The annual cost of regulation in Bulgaria is still a significant proportion of GDP product, the elimination of unnecessary administrative burdens is more important than ever as businesses have fewer resources and need to invest to remain competitive. Policy on better regulation in the national context has been introduced in a number of strategic documents and prioritized according to the National Reform Programme (2008-2010.) Action Plan to achieve the national target of reducing the administrative burden by 20 per cent to end of 2012, the Program for better Regulation (2010 to 2013)., strategy for the Investment Promotion (2005 - 2010), National Strategy for Promotion of Small and Medium Enterprises (2007 to 2013). etc. At the level of legislation, the basic law governing the policy of better regulation is the Law of Administrative Regulation and Administrative Control on Economic Activity, adopted in 2003, he was muffle 18 amendments to date. General requirements for better regulation are specified in the Administrative Code, in the State Fees Act, The Local Authorities and Local Administration Act, secondary legislation, Ordinance on Administrative Services. basic principles of better regulation are,

- Free business activity
- Protection of Competition
- justifying the need for appropriate regulation
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- Proportionality of restrictions
- Publicity, transparency of the administration
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- Publicity, transparency of the administration
- Establishment of a regulation based only on statutory
- Implied consent
- Speed and procedural economy

These principles should limit administrative arbitrariness and work for the benefit of businesses and citizens by providing them with administrative conditions for doing business. The overall aim of the Act of the Limitation of the Administrative Regulation and Administrative Control on Economic Activity is promoting the economic activity by reducing administrative regulation and audit by the state authorities to publicly justified limits

5.

Has the implementation of an economic sectoral regulation prompted the emergence of competition in the relevant sectors? Did new entrants manage to fit in regulated markets? If not, why?

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6.

Has the implementation of an economic sectoral regulation directly or indirectly lead to the total or partial privatisation of publicly owned companies?

We can not point out data from which to infer the existence of a direct or indirect relationship between the regulation of the economic sector and the full or partial privatization of publicly owned companies in the sector.

7.

Which economic sectors would you like to address more specifically in terms of regulation?

We would wanted to turn the particular attention to the economic sector regulation in telecommunications. In November 2007, immediately after the accession of Bulgaria to the European Union in accordance with Article 260 TFEU, the European Commission started an infringement procedure against Bulgaria for violations due to the lack of independence and effectiveness of the Bulgarian telecoms regulator. Commission sends formal notification to the Bulgarian government concerning information on missing funds and the difficulties that

the regulator has in making decisions because of the long-delayed election of the Chair of the Authority. Some of the main tasks of the regulator, such as conducting market analyzes not been carried out. Therefore taking of certain regulatory decisions has been delayed or late. The European Commission found that one of the members of the Governing Board in the same time is a member of another authority with some regulatory functions - State Agency for Information Technologies and Communications. This raises a conflict of interest and can threaten the independence of the national regulator. The European Commission estimates that the independence telecommunication regulators is a key element in ensuring the effective implementation of EU rules in the field of telecommunications. Existing minimum rules in EU law on the independence of national regulators should be respected. As a result of sent notification by the European Commission to Bulgaria concerning three violations the government took measures to eliminate violations. In June 2008 the procedure was terminated. By entering into force of the new Law Electronic Communications in May 2007, the regulator becomes a huge center of power in one of the largest sectors of the economy. By the formal adoption of EU regulations in the telecommunications sector (the so-called. Framework 2002) The Commission for regulation of the communications received some key competencies - definition of operators with significant market power on the basis of not very clear methodology and regulation ex-ante. That means that Commission will be able to set prices to the final consumer prices for interconnection conditions for access to the networks of these operators in all markets of telecommunications services. Aims of these measures that in practice exist in all EU countries, are increasing competition, providing services for the consumer and ultimately the formation of a single European telecoms market. Whether the increasing in discretionary functions of state regulators in the sector and creating a practical entry-exit barriers on the market are compatible with these aims is the subject of extensive discussion within the EU itself.

II.

Organisation of economic sectoral regulation

8.

Is economic sectoral regulation implemented by one or several independent authorities? If so, on what grounds was this choice made and how is this independence guaranteed?

A non-exhaustive list of key regulators in the economic sector:

- Commission for regulation of the communications. Commission for regulation of the communications implements the state sector policy in the field of telecommunications and postal services. It is a specialized independent state body charged with regulating and control the electronic communications. In conditions of equality and transparency, according to Bulgarian legislation, the Commission seeks to promote competition in telecommunications markets in the country. The national regulator is responsible for increased investment in the sector, the development of new technologies in the field of communications and consumer protection in Bulgaria.

- State Energy and Water Regulatory Commission. Some of its functions are :

- Issuance , amendment, supplement , suspend, terminate sevice revoke licenses for the production of electricity and / or heat for transmission of electricity , heat or natural gas for distribution of electricity or natural gas storage natural gas electricity trading , organizing electricity market , public supply of electricity or natural gas public supply of electricity or natural gas for transit of natural gas for performing energy activities provided for in this Act ;

- adopt and publish guidelines for tank operations;

- accept the general conditions of contracts in the energy sector;
 - review in the cases provided for in the EA;
 - price regulation of heat and electricity and natural gas;
 - Defining rules for trade in electricity and natural gas and the technical rules of the networks proposed by energy companies, and controls compliance
 - Approve and monitor the implementation of the methodology for determining the price of balancing energy ;
 - Defining rules for access to the electricity and gas network , respectively to the electricity and gas distribution network ;
 - hold a competition to build a new power for electricity production and distribution of natural gas to separate territories specified in the inventory of the territories for distribution of natural gas;
 - Prepare and monitor compliance with the terms and conditions for supply of electricity , heat and natural gas, including the quality of services;
 - consider requests from energy companies to offset stranded costs and decide on the amount of stranded costs justified, and how to compensate for them;
- State Agency for Metrology and Technical Surveillance.
- Council for Electronic Media
- The Nuclear Regulatory Commission

-Commission for Protection of Competition - Commission is an independent state authority that is empowered to apply the Law on Protection of Competition, Law on Public Procurement and Concessions Act . It establishes a violation of free competition in accordance with and / or art. 101 and Art. 102 of the Treaty on the Functioning of the European Union , carried out sector analysis and advocacy competition . Commission is the national competition authority which cooperates with the European Commission and other national competition authorities of the Member States of the European Union under Regulation (EC) № 1/2003 and Regulation (EC) № 139/2004.

- State Commission on Commodity Exchanges and Wholesale Markets is a central executive body of state power, established the Council of Ministers to regulate and control the establishment and operation of organized commodity markets in the country - the commodity exchanges and commodity markets.

Sectoral economic regulation is granted to special bodies - committees. The general framework of regulatory bodies such as state commissions is contained in the the Administration Act. Under the Administration Act the committees are central bodies of executive power with special competence. They are collegial bodies and are included in the system of executive power. The Chairman and members of the committee are elected by the Council of Ministers and they are appointed by order of the Prime Minister. Committees are entrusted with a mandate. Any regulatory authority as an indication and specificity and specific competence is indicated in the special law.

Every sector of the economy is governed by an independent authority. There is no provision competence to one regulatory authority for more than one sector. Competences of the regulators are clearly distinguished by the special laws. Violation of the rules outlining the competencies of these bodies, invalidate their acts.

9.

Are these authorities independent of the regulated economic sectors? If so, how is this independence guaranteed?

The Administration Act and the special laws proclaim the independence of the regulatory authorities. The independence in the work of the organs is guaranteed by special legal measures relating to the status of members of the committee as civil servants. They can not occupy other state position, they can exercise their business, they can not be members of the management or supervisory bodies of companies with profit, they can not exercise their profession, except as teachers and professors, they can be leaders of the elections of political party or coalition. Regulatory bodies are entrusted with a mandate. The releasing of the members of the committee before the expiration of the mandate is allowed only in the limited by the law cases such as resignation, in case of incompatibility or conflict of interest. The amount of remuneration committee members indicated in the law and does not depend on other bodies of executive power.

10.

Do these authorities have a regulatory power? If so, is it a general regulatory power for the sectors concerned or a narrower regulatory power limited to certain specific aspects of regulation?

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11.

Do these authorities take part in drafting the relevant legislation for regulated sectors, through notice procedures for instance?

Regulatory bodies are part of the executive power in Bulgaria. They do not have an independent right of legislative initiative. Legislative initiative is the Council of Ministers. With regard to secondary legislation - regulators do not have a general power to adopt bylaws. Some of the special laws , however, empowered some of the regulatory authorities to adopt regulations . Such power there as the National Health Insurance Fund in the matter of fixing prices of medicines for the insured in cases where these drugs are fully paid by the State in determining the lists of drugs and the amount of the discount in the price of medicines. With regard to secondary legislation - regulators do not have a general power to adopt bylaws. Some of the special laws , however, empowered some of the regulatory authorities to adopt regulations . For example, there is such a power as the National Health Insurance Fund in the matter of fixing prices of drugs in cases where these drugs are fully paid by the State in determining the lists of drugs and the amount of the discount in the price of medicines.

12.

Do these authorities have a sanctioning power toward companies of the regulated sectors? If so, what kind of sanctions can they adopt and under which procedure? Do these procedures guarantee compliance with provisions of article 6§1 of the CPHRFF?

All regulatory authorities have the authority to impose sanctions. They can impose administrative sanctions for violations under special laws. The list of specific violations constitute a separate part of any particular special law. The main competence of infringements of the provisions of specific laws to impose fines whose size is determined by the law. Special laws have defined the amount of fines for a repeated infringement. Special laws contain no special procedural rules for administrative liability of offenders. In Bulgarian legislation there is a special procedure law- The Administrative Offenses and Penalties Act. This is a procedural law, which contains a detailed procedure for the formation and conduct of an administrative proceedings for sanctioning. It determines the competence of punishing body and rights to participation and protection rights of individuals in each stage of these proceedings. this law as a procedural law is applicable in any form of punishing competence. Therefore, it has the character of a general law on administrative offenses and penalties. Rules concerning administrative offenses and penalties contained in special laws have a special character and exclude the application of the general law. The Administrative Offenses and Penalties Act determines the rights of persons who are parties in these proceedings. Persons have a right to object, right indication and presentation of evidence. After the imposition of the administrative sanction the decision is subject to judicial review. Judicial proceedings are two instances. Subject to appeal are all acts imposing an administrative sanction, regardless of the type and amount of the fine. There are no matching competencies regulatory authorities Therefore there is no possibility of more than one regulatory authority to operate in the same area or sector. Every sector of the economy is governed by a separate regulatory authority. Competence of bodies are separated and there is no cases the same authority to carry regulation in several sectors. Special laws may allow in some cases certain powers to be implemented jointly by the two regulators. This does not have the primary role in regulation of the sector and are mainly related to the control or supervision of the sector. For example, under the Electronic Communications Act the sector regulator is the Commission for Communication Regulation. This law provides that only the surveillance of marketed electronic communication devices to be carried out jointly by the Commission for Communications Regulation and the State Agency for Metrology and Technical Surveillance. Also, this law empowers the regulator when exercise control over the observance of the law interacts with other state bodies. These legal provisions , however, do not limit the exclusive jurisdiction of the sectoral regulator of telecommunications. In exercising its power sector regulators have a duty to interact and consult with the European Commission, the Body of European Regulators in the field and national regulators chlanki countries of the European Union.

13.

Is every economic sector regulated by a specific authority, or are there some authorities exercising their powers in several sectors?

Each sectoral regulator carries out cooperation and coordination with the Commission on Protection of Competition. The purpose of this is to achieve the objectives of the sectoral policy. Rules of coordination and cooperation shall be decided by the relevant sector regulator and the Commission for Protection of Competition and published on the website of each of

the Commission's website. Interaction has the following forms: consultation, exchange of information, giving opinions, joint working groups.

14.

How are economic sectoral regulatory authorities' competences articulated with those, when appropriate, of a transverse authority in charge of assessing compliance to competition law?

III.

Judicial review of economic sectoral regulatory authorities' decisions

15.

Are all economic sectoral regulatory authorities' decisions subject to judicial review? If not, which decisions are not subject to such checks and why?

All acts, including acts imposing fines, are subject to judicial review of the legality. No decisions for regulators that are excluded from judicial review.

16.

Which system of jurisdiction is competent to verify these decisions? When relevant, is the same system of jurisdiction competent to control the decisions of the authority in charge of assessing compliance to competition law?

Decisions of sectoral regulators are subject to appeal before the Supreme Administrative Court as the first instance court. As a first instance court on appeals against decisions of the regulative authority, the Supreme Administrative Court held a hearing in chambers of three judges. It applies the rules of first instance proceedings contained in Administrative Code. The court held a public hearing with the participation of the parties in which hear the parties, collect and take evidence and hear argument from the parties. The Court delivered its judgment within one month. Administrative justice in Bulgaria is two instance. Therefore decision of the Supreme Administrative Court justice as a first instance court is subject to a cassation appeal to the five-member panel of the Supreme Administrative Court. In its five-member panel, the Supreme Administrative Court is a cassation instance and its decision is final. Supreme Court is the first judicial instance and cassation appeals against acts of all regulators, including against the Commission for Protection of Competition, when it ruled on the Law on Protection of Competition. As the number of cases before the Supreme Administrative Court as first and cassation instance has grown significantly in recent years, the Supreme Administrative Court supports a legislative amendment related to the change of jurisdiction of cases of regulators. We support the idea of establishment of a central administrative court. It will be the first judicial instance on appeals against the decisions of regulatory bodies and other collective bodies of the central administrative authority, but also as a cassation instance of some proceedings under the jurisdiction of the administrative courts. The Supreme Administrative Court will be only instance of cassation. Such a change would significantly reduce the number of cases brought before the Supreme Court and will overcome the possibility of cases to be heard as first and instance of cassation of the same judicial authority.

17.

Which kind of legal recourse is open against these decisions? What are the relevant legal proceedings in this matter?

As a first instance court Supreme Administrative Court applies the rules of the first instance proceedings provided for in the Administrative Code. In this case the court is acting in a panel of three judges. When it acts as a cassation instance against decisions of the three-member panel, the court acts in a panel of five judges. In both cases the court held a public oral hearing with the participation of the parties.

18.

Which control does the judge exercise on these decisions? Does he monitor the formal requirements, legal proceedings and/or reasons for these decisions? For which kind of decisions does he have limited control? In contrast, for which kind of decisions does he exercise thorough control?

The Court shall exercise control of legality. As a first instance court, the court shall examine whether the authority acting within its competence / material, territorial jurisdiction and competence level / whether the decision was adopted in legislative form. Then check whether it complied with the administrative procedure for the adoption of the act and whether the measure complies with the applicable substantive law and purpose of law. These are the Article 146 of the Administrative Code requirements that the court is obliged to check. The court at first instance court has an obligation to verify the legality of the act of all the reasons mentioned above, even in the complaint to any of the grounds is omitted. The Administrative Code contains provisions governing the powers of the court in cases where the administrative authority exercising discretion. The court shall ensure that the body does have the discretion and whether there are grounds for unlawful administrative act. Norm still raises questions about the scope of judicial review in exercising discretion. However, the court should exercise control over how exercising discretionary power, ie should carry out controls act independently in what form of jurisdiction, it was passed. This obligation arises from the fact that discretionary power is a legal activity and as such it shall be in accordance with the rules and principles of proportionality that are specifically regulated by the Administrative Procedure Code. The Court has a duty to check whether the administrative measure . This principle is a fundamental principle of European Union law and is one of the basic principles of administrative law of the EU Member States. Its application is also a requirement of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

19.

While exercising his power of judicial review, how does the judge keep himself informed (appointment of experts, specialised and contradictory investigation, resort to universities, international sources consultation, etc.)?

When it acts as a first instance court, the Supreme Administrative Court applies the rules of first instance. It collects and receives written evidence submitted by the parties. The court may appoint experts to answer questions that have no special knowledge. Admissible are written evidences, witnesses, field. As a cassation instance the court limited to ta discussion of cassation complaints and accept only evidence relating to the cassation complaints. Before the cassation instance are not allowed evidences not related to the cassation grounds. . The

Cassation Court may annul the decision t entirely or partially and statue the case substantially alone, or refer the case back to the first instance in cases of - in violation of the proceedings or, where necessary to establish facts relevant to the dispute. The decision of the cassation instnatsiya not subject to appeal.

20.

Which role does the administrative Supreme Court take toward these decisions? What are the major decisions of supreme administrative justice in economic sectoral regulation matters?

Most cases are brought complaints against the State Energy and Water Regulatory Commission, i.e. against decisions of the regulatory authority in the field of energy. For 2012. first instance cases - 327 . For 2013 they are 348 .