

European trends in the governance of water services regulation

Introduction

One of the core objectives of WAREG is to promote the exchange of practices and experiences among members and find regulatory solutions that can work in other countries. Over the last few years, many multilateral and bilateral exchanges among WAREG members resulted in fruitful cooperation. In some cases, one country's regulatory model and practices were taken as examples when another country modified its regulation.

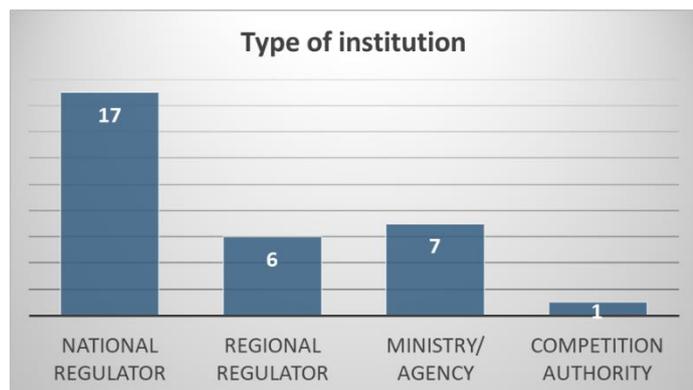
WAREG has invested in regulatory governance issues since its foundation. In 2015, WAREG published a comparative assessment of regulatory frameworks[1], and in 2019, the network designated its Governance Task Force with the task of drafting a questionnaire. The survey was circulated between the members in 2019. The preliminary results were presented at the 1st European Forum on Regulation of Water Services in Rome at the end of the year. In 2020, the replies were checked and updated by the Task Force, and a report is planned to be published in the first half of 2021.

This article is based on the replies of 21 regulatory agencies from WAREG countries[2]. The Task Force research is focused on the legal status, accountability, and powers of regulators with additional information on water governance and price setting. Since the scope of the original research is wider than the extent of this article, I am going to narrow down the examination and put the allocation of competencies into the centre of my focus.

One of the research's key advantages is that it covers a wide range of countries and regulators with different historical, cultural, political and economic backgrounds. It is also important to emphasise that the members of WAREG regulate water services on a territory of 4 million m² with more than 15 billion m³ of abstracted water, for more than 410 million inhabitants, and supervise more than 40 000 service providers.

The evolution of water regulatory agencies

According to the membership data of WAREG[3], it is possible to classify the regulators based on their institutional type. The majority (17) of the members are regulators with national jurisdiction. Simultaneously, the second most common setting is regulation by a ministry or ministerial agency (7). Among the members of WAREG, some regional regulators supervise the water and wastewater sector in autonomous regions (6) and there is one competition authority.

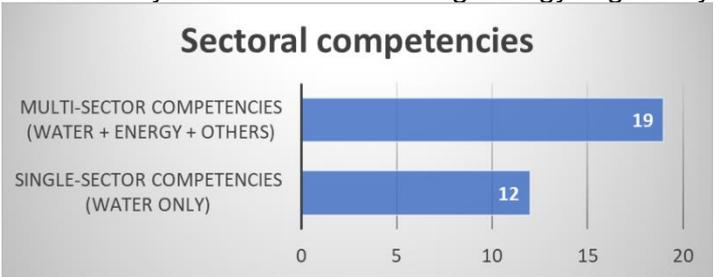
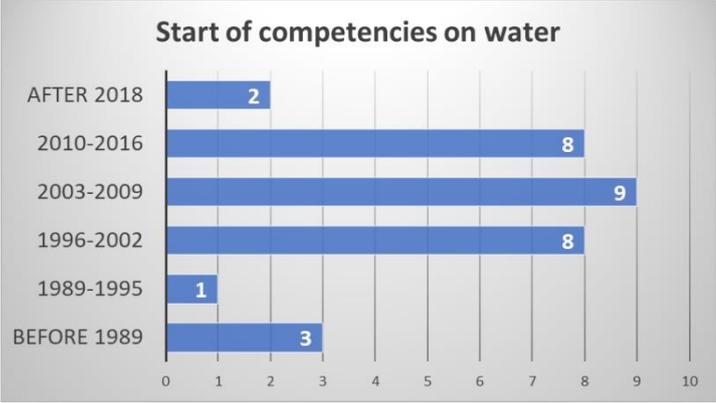


When it comes to analysing trends, it is inevitable to examine the foundation of regulatory agencies' foundation. The tendency to set up regulatory bodies accelerated in the 2000s since

19 of 31 members were found after 2003. The adoption of the Third Energy Package, which entered into force in 2009, may have boosted water regulatory agencies' formation, especially independent regulators.

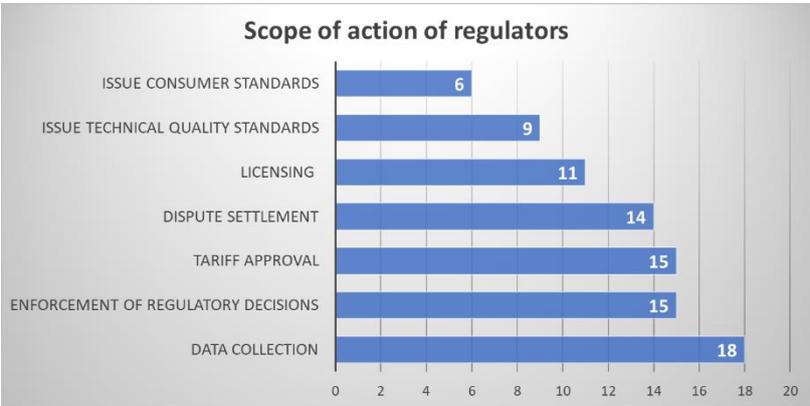
When we examine regulators' sectoral competencies, we can find a pattern in delegating water regulatory powers to already existing energy regulators. It is easy to understand this type of delegation of powers. When a country has a well-functioning energy regulatory agency, it is safer (and cost-effective) for national governments to delegate water regulatory powers to regulators that already possess the necessary expertise for a specific sector regulation. Nowadays, another trend can be seen among multi-sector and simple-sector water regulators as well.

As a new task, many of our members got solid waste regulation as a competency in the 2010s. We are researching this topic, but one reason in many countries of this type of delegation of power is that the EU has set strict rules for member countries regarding the circular economy and zero waste policy. Several countries found that to achieve the EU requirements regarding waste management, and a key element could be to set up a regulator similar to the energy and water sectors.



The scope of regulatory powers and competencies

Based on the WAREG questionnaire's replies on water governance, we can draw several conclusions regarding the scope of competencies of regulatory bodies. An economic regulator's most important power is the tariff setting, which must be built upon a thorough and reliable data collection process. According to the survey, a few of the respondents are not specifically vested with tariff setting competencies; in 6 cases, they are ministerial bodies. They only possess the power to gather and supply data to the relevant ministries, who eventually set the tariff rates. Among the 18 regulators that collect data, 15 have powers for data validation, and 13 has sanctioning powers for non-compliance. Regulatory decisions need to be based on checked and valid data. A large majority of the regulators have the powers to meet this requirement.



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The questionnaire had specific questions for tariff setting competency and it seems that the extent of this power varies between regulators. In more than half of the cases (8 from 15)

the regulator is the sole tariff setting authority without any restriction and also has sanctioning powers in the tariff setting process for non-complying companies. However, in the rest of the countries, regulators only have advisory role or they are only able to make a tariff recommendation to the relevant ministerial body, but unable to solely set tariffs.

It is also important to delegate monitoring powers and tools for the implementation of regulatory decisions for regulators. Based on our research, the majority of the regulators (15) have the right to enforce regulatory decisions and/or consumer standards, but only 9 regulators have strong monitoring power and the right to sanctioning, by imposing fines and penalties as an ultima ratio tool.

Since one of the main role of regulators is consumer protection, dispute settlement (between regulated companies and consumers) is also a core competency of regulators. Licensing however seems to be only an important and relevant power in countries where a strong independent regulator monitors the market. Besides licensing, we examined the powers of regulators in terms of how strongly they can intervene into market processes. It seems that only 9 regulators possess the strongest right to intervene into market relations and have powers to approve contracts between the regulated companies and other market actors. However, only 5 of them has strong enforcement right and 4 regulators only set guidance without any sanctioning power for non-compliance.

Technical quality standards and issuing consumer standards seems to be a competency for only a few number of regulators. While service quality standards are set by national regulatory agencies, determining technical quality standards in most countries are the duty of water management or other water authorities and we only found 6 water regulators that actually has powers setting these kinds of standards.

Preliminary conclusions and next steps

Based on the survey data, we can draw up some preliminary conclusions regarding the formation of regulators and their competencies. The vast majority of regulators has national jurisdiction and can be viewed as central regulatory agencies. Most of the water regulators are considered "young agencies" since 61% were formed after 2004. There is a shift in the last decade towards setting up independent regulators. It is also common to delegate water regulation to multi-sector regulators, and it seems that solid waste regulation follows a similar path.

We have detected that tariff setting in any soft or hard form is the most important power for an economic regulator, and it needs to be based on a reliable data collection process. We also found that sanctioning powers do not necessarily come in parallel with supervisory competencies. Less than half of the respondents have the strongest enforcement rights. Licensing is not commonly spread among regulators; it is a relevant power in most countries where a strong independent regulator monitors the market.

Based on this research, the Task Force aims to publish the respondents' country sheets on www.wareg.org in the coming weeks. A more extensive comparative assessment with several case studies will also be finished and published in the first half of the year. Another academic report is planned to be finished examining the analogy of contingency theory and regulatory evolution.

[1] <http://www.wareg.org/download.php?id=151>

[2] Albania, Belgium – Brugel, Belgium – Flanders, Bulgaria, England and Wales, Estonia, Georgia, Greece, Hungary, Ireland, Italy, Kosovo, Latvia, Lithuania, Malta, Moldova, Montenegro, Poland, Portugal, Scotland, Spain.

[3] Currently, WAREG has 25 members and 6 observers.