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Measuring independence: Approaches, limitations, and a new ranking tool

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Abstract

It is the starting point of this chapter that there is no accepted methodology to measure the formal and de facto independence of independent regulatory authorities, even if some progress has been made in this field, and that empirical research on the subject, consequently, is scarce and very fragmented. To the extent that they exist at all, studies tend to concentrate on measuring formal independence, since specific legal provisions can be identified and assessed much more easily than the de facto expression of independence. This chapter will introduce the different approaches to measuring formal and de facto independence that have been proposed and critically reflect their potential and limitations, especially for comparative research. Two aspects specific to the audiovisual media sector are particularly relevant in this respect:

1. the objective of regulation in the media sector to guarantee media freedoms and
2. the specific and sometimes sensitive relationship between the media sector and the public authorities (i.e. the media as 'fourth state power').

Subsequently, this chapter introduces a ranking tool which has been developed specifically to measure the risk of influence by external players, rather than one to measure the level of independence of the regulators themselves. This enables a more objective method for ranking the indicators. The ranking approach follows the overall distinction between formal and de facto indicators. The methodology will be described and the use of the ranking tool will be illustrated.

Keywords

independent regulatory authorities

independence

formal independence

de facto independence

composite index

ranking tool

Introduction

Measuring complex social systems via composite indices is at full-cycle. These efforts are characterized by the desire to devise a methodology that combines the virtues of qualitative and quantitative research. The UN Human Development Index (HDI) provides a harmonized statistical approach to measure countries' human and economic development. A point of reference in the field of media is the IREX Media Sustainability Index (MSI) which offers a methodology "to assess the development of media systems over time and across countries" (IREX 2013). Both HDI and MSI have excelled in their field and became commonly accepted as useful tools although they have nevertheless been criticized for some of their underlying assumptions and weightings (e.g. CIMA 2010). Another example of a composite index in the media sector at the EU level is the Media Pluralism Monitor, which offers a holistic methodology to assess a country's performance at various dimensions that contribute to a pluralistic media environment (KU Leuven – ICRI, et al. 2009).

In the light of the popularity of such indices, it should not come as a surprise that the INDIREG study on which this chapter is based (Hans Bredow Institute for Media Research, et al. 2011) was tasked with identifying key characteristics for a functioning "independent regulatory body" as referred to in the Audiovisual Media Services (AVMS) Directive and, where possible, formulating criteria with which these characteristics could be measured. This task poses the dilemma of measuring a quality, i.e. the independence of a supervisory authority, and when doing so involves a multi-layered analytical approach. The first of these layers, which concerns how regulatory independence relates to the wider governance system and how it conditions the functioning of regulatory supervision, is tackled in Chapter 1 by Wolfgang Schulz and Chapter 5 by Stephan Dreyer. The second layer, which involves the question of what the meaningful dimensions and indicators are that would best describe regulatory independence in relation to its functions, is introduced in Chapter 5 by Stephan Dreyer. This chapter introduces the third layer involved in measuring regulatory independence and will describe the so-called Ranking Tool, which was one of the central outcomes of the work in the INDIREG research to operationalize the measuring approach.¹

It is the point of departure of this chapter that there is no accepted methodology to measure the formal and de facto independence of independent regulatory authorities (IRAs), even if some progress has been made in this field, and that empirical research on the subject, consequently, is scarce and very fragmented. To the extent that they exist at all, studies tend to concentrate on measuring formal independence, since specific legal provisions can be identified and assessed much more easily than the de facto expression of independence. In the following, this chapter reviews the different approaches to measuring formal and de facto independence that have been proposed, and critically reflect their potential and limitations, especially for comparative research. Two aspects specific to the audiovisual media sector are particularly relevant in this respect:

1. the objective of regulation in the media sector to guarantee media freedoms; and

2. the specific and at times sensitive relationship between the media sector and elected as well as non-elected politicians (i.e. the media as ‘fourth state power’).

The INDIREG Ranking Tool integrates existing approaches, but inverts their logic by measuring the risk of influence by external players (rather than measuring the level of independence of the regulators). This risk-centred logic enables a more objective method for ranking the indicators and weighting them according to their significance. The ranking approach follows the overall distinction between indicators for formal and de facto independence that are allocated on five dimensions: (1) status and powers, (2) financial autonomy, (3) autonomy of decision makers; (4) knowledge and (5) accountability and transparency. It is one of the achievements that the Ranking Tool’s method goes beyond the state-of-the-art in proposing a coherent set of indicators to measure de facto independence, which complements and corresponds with the measurement of formal independence. The methodology will be described and the use of the Ranking Tool will be illustrated.

This chapter is structured as follows: The first section provides an overview of the literature which has attempted to measure certain aspects of regulatory independence, in various sectors and for different purposes. The second section describes the INDIREG study’s approach to measuring formal and de facto independence, and introduces the Ranking Tool, its methodology and how it can be applied, followed by the conclusions. The entire INDIREG Ranking Tool is published in the Annex to this chapter.

Measuring regulatory independence

For some time already, significant research has been devoted to measuring the quality of regulatory independence in different sectors and in relation to different purposes. For about a decade, this type of research has been primarily occupied with the independence of regulators of central banks and network industries, but recently independent regulators in other sectors have moved into focus too (Hans Bredow Institute for Media Research, et al. 2011). This is not coincidental, given that supervision by IRAs has become the standard governance mechanism in regulated sectors – a tendency which is amplified in Europe by EU harmonization legislation and other Europeanization processes (see Chapter 2 in this book by Irion and Radu). After all, IRAs are one of the central lynchpins of the regulatory state (Majone 1997). As Hanretty and Koop (2012) put it:

for independence to lead to better policy outcomes, a complex causal chain needs to operate, leading from statutory provisions granting independence to behavioral patterns demonstrating independence, to policy decisions, and, ultimately, to policy outcomes.

Research to date has yielded many notable achievements, but no generally accepted methodology to measure the formal and de facto independence and efficient functioning of IRAs. Aside from matters of prescriptive legislation, it is particularly challenging to identify and collect relevant data about the different aspects of independence. This section revisits the

research community's efforts to measure regulatory independence regardless of the sector of regulation concerned. Empirical approaches are selected and presented in relation to which of the major strands they belong to:

- measuring formal independence
- measuring actual or de facto independence
- measuring efficient functioning

It is important to note that methodologies presented rarely follow this division but rather tend to combine indicators from various strands. Moreover, the different concepts of independence (or autonomy for that matter) which contemporary research relies on are already bound to significantly influence the research outcomes (Verhoest, et al. 2004). Empirical research has also not stopped short at measuring independence for its own sake and instead, more often than not, seeks to investigate a direct relation or correlation with sectoral policy outcomes or the economic performance of a specific sector.

Measuring formal independence

The bulk of available research concentrates on the measurement of formal or de jure independence of different regulatory agencies. As explained in Chapter 5 in this book by Dreyer, due to their tangible nature, formal criteria are primary assets when assessing regulatory independence. Concrete legal provisions can be identified and measured much more easily than any other form (actual or de facto) of independence. However, early research on the independence of central banks already points to the inconclusive results of focusing solely on the formal aspects (Cukierman, Webb, and Neyapti 1992).

Originating from methodologies developed to assess central banks, formal independence is coded with indicators that are clustered around dimensions and weighted according to their presumed influence (Cukierman, Webb and Neyapti 1992; Gilardi 2001). Cukierman, Webb and Neyapti (1992) use sixteen different legal variables, which are then combined with one additional indicator for actual independence, i.e. turnover of directors/presidents of the central bank. The authors weight each variable and use weighted averages as indicators (Cukierman, Webb and Neyapti 1992) in addition to survey of monetary policy experts to appraise the level of independence of the institution.

Subsequent empirical studies adapted this methodology for the assessment of regulatory independence in deregulated network industries, more specifically in telecommunications (Gutierrez 2003; Edwards and Waverman 2006; Gual and Trillas 2004; 2006; Montoya and Trillas 2007) and energy (Pedersen and Sørensen 2004; Larsen, et al. 2006). The following survey omits research in which the formal independence of a regulator was but one variable among a number of regulatory aspects being reviewed in relation to the performance of the sector after deregulation (e.g. Bortolotti, et al. 2002; Fink, Mattoo and Rathindran 2002).

Edwards and Waverman (2006), Gual and Trillas (2004; 2006) and Gutierrez (2003) build multi-component indices concerning regulatory agencies in the telecommunications sector after liberalization, and correlate with regulatory policy and market performance. With some variation in the detail, the indicators they use concern relevant sector-specific powers, financial independence, appointment and dismissal rules, highest decision-making body, and turnover of decision-makers (for an overview see Montoya and Trillas 2007).

Some authors follow a more generalized approach, by developing universal independence indices (Gilardi 2001; Hanretty, Larouche and Reindl 2012; Olivera, et al. 2005). Although there are many uncontested formal independence requirements, some authors recognize that there is no general blueprint for what makes an independent regulator. For instance, Hanretty, Larouche and Reindl (2012) notice that their index cannot adequately capture the unique governance structure of certain regulators surveyed. This is the reason why a standardized composite index would benefit from a research approach that allows for a context-sensitive interpretation of the results.

Gilardi's (2001; 2002; 2005; 2008) extensive research emphasizes the link between the credibility of a regulator and its formal independence. He draws on the model of Cukierman, Webb and Neyapti (1992) to construct an extensive index capable of appraising various dimensions of formal independence:

- status of the head of the agency
- status of the management board
- relationship with the government and legislative
- financial and organizational autonomy

Each indicator is appraised on a scale of zero to one which is then aggregated for each dimension. However, Gilardi (2005 58) recognizes the difficulty of drawing conclusions from this measurement about the degree of credibility. In his words: "Like beauty, credibility is in the eyes of the beholder." (Gilardi 2008 134)

Whether sector-specific or universal, the different indices proposed have in common that they ascribe value to the factors that would ensure, on the one hand, organizational autonomy (formal status, regulatory powers, financial resources) and, on the other hand, the independence of its highest decision-making body and senior executive management (rules regarding appointment, dismissal and reelection, term of office, rules to prevent conflict of interest, et cetera.). The role of transparency of regulatory processes has been sporadically recognized as well (Gutierrez 2003; Pedersen and Sørensen 2004). Authors generally concede that formal independence alone does not equal the absence of political interference (Cukierman, Webb and Neyapti 1992; Gilardi 2005; 2008; Pedersen and Sørensen 2004).

Although there is no generally accepted standard in terms of methodology, the state-of-the-art of measuring formal independence is by now fairly established. Most recent research slightly modifies composite indices to fit its purpose, and there is some fundamental debate about the

validity and weighting of certain indicators (e.g. the length of tenure of members of the highest decision-making organ), but newer works are actually more inclined to applying them. It is interesting to observe that research in sectors characterized by the presence of strong stakeholder-interests also stresses the need for formal safeguards to preserve regulatory independence from stakeholders (Pedersen and Sørensen 2004; Larsen, et al. 2006).

Measuring de facto independence

When investigating regulatory independence the most straight-forward research question concerns the level of de facto (or actual, for that matter) independence of the regulatory body. While there is an abundance of literature which is suspicious of de facto independence, research is often not substantiated by empirical evidence. The literature review reveals that it is particularly challenging to find meaningful ways to interrogate regulatory independence in practice. Such research is not only hampered by a lack of computable data about IRAs but also a lack of objective and verifiable information in a domain that is predominantly characterized by informal means of influence.

The assessment of de facto independence relies to a large extent on qualitative social science research methods. For instance, Cukierman, Webb and Neyapti (1992) incorporated an expert survey into their research design, whereas Pedersen and Sørensen (2004) conducted semi-structured interviews and Maggetti (2007) suggests using media content analysis to assess a regulator's reputation. In the literature, the reputation (Maggetti 2007) or credibility (Gilardi 2002) of the regulatory body is considered a function of its de facto independence, which is arguably hard to measure objectively. Outside the formative influence of systemic parallelism, Cukierman, Webb and Neyapti (1992) and Jakubowicz (see Preface in this book) emphasize the influence of the personalities of the members of the highest decision-making body. This would point towards a potentially fruitful contribution of anthropological and sociological methodologies in examining how individual characteristics of decision-makers of independent regulators play a role in supporting and defending the independence of their organizations.

Empirical research often proceeds via suitable proxies as indicators of de facto independence, but input data and assumptions vary widely. Only very few indicators are commonly accepted in relation to the use of formal controls by elected politicians; for example the politicization of appointments, the years a regulatory body is in operation, the extent to which the IRA's decisions have been reversed and the turnover of the members of the highest decision-making organ (Cukierman, Webb and Neyapti 1992; Gilardi 2008; Gual and Trillas 2004; 2006; Gutierrez 2003; Hanretty and Koop 2012; Thatcher 2005). Considering the turnover of a regulator's presidents and directors is based on the assumption that a greater turnover indicates a lower level of independence. In addition, Hanretty and Koop (2012) operationalize political vulnerability, i.e. changes of members of the regulator's highest decision-making organ within the first six months of a change in government. This can be a regular event, when terms are designed to coincide with election cycles, or irregular through early resignation, dismissal or

the change of constituting legislation which affects the composition of the highest decision-making body.

Maggetti (2006: 4 ff.) observed that formal independence alone cannot explain the variations in de facto independence. He developed a framework of two distinct dimensions of de facto independence, i.e. one concerning the relationship with the political decision-makers and one concerning the relationship with the regulatees.² The indicators explore, respectively, individual career paths (e.g. frequency of 'revolving door' appointments, partisan membership and political vulnerability) and tenets of institutional autonomy (e.g. power to determine budget and internal organization). Maggetti (2006: 15) uses fuzzy-set analyses that show some statistically significant correlations. According to his findings agencies show high de facto independence when

- they have been recently established and correspond to very high standards of formal independence, such as in the telecommunications sector
- they are mature agencies which have been going through a process of autonomization, such as banking and financial supervisory authorities.

The three following conditions appear to correlate with de facto independence: (1) An institutional context where many veto players exist,³ (2) the age of the regulator, (3) in conjunction with high formal independence (Gilardi 2008: 135; Maggetti 2006: 4 ff.; Gilardi and Maggetti 2011). Thatcher (2005) points to the legislator's power to reform the constituting legislation of a regulatory authority, which may result in fewer or more powers and independence. It is important to recognize that it may not even be necessary to resort to this *ultima ratio* but that the mere possibility of such legislative changes may already discipline an independent regulator. Thatcher (2005: 364 ff.) argues that when the exercise of formal controls is a ready option, IRAs could be prompted to comply with political preferences voluntarily (see also Tsebelis 2002; Gilardi and Maggetti 2011). There are a few other factors cited in the literature, although not proven empirically; for example, the participation in networks of agencies at the European level has been described as conducive to de facto independence (Gilardi and Maggetti 2011).

The literature review reveals that de facto independence has at least three general defining features:

1. the implementation of normative rules from the realm of formal independence
2. the delegation of relevant powers as well as organizational autonomy
3. the absence of undue external influence on the regulator, in particular on the members of its highest decision making organ.

First, reviewing the implementation of legislative rules into practice should be a comparatively straightforward exercise, but research nevertheless often stops short at the normative level when appraising the regulator's constituting legislation. Going beyond that level, however, might find – to name just one example – that a regulator's independent status may be conferred by statute, but in practice appointments are politicized (Hanretty and Koop 2012).

Second, following principal-agent theory, the type and degree of powers that are delegated to regulators matter as these powers strengthen the independence of the agency from elected politicians. It is plausible to find agencies that are formally independent, but with so little power, resulting in a practically non-existing regulatory role (Gilardi 2005a; 2005b; see also Gual and Trillas 2004; 2006). This feature also ascribes key elements of an IRA's organizational autonomy, such as budget authority and the power to determine internal organization. Arguably, an IRA which cannot command its own resources is de facto less independent.

The third and last feature, i.e. the absence of undue external influence, is probably the most difficult to come to terms with empirically. The use of formal controls by elected politicians can be both formally legitimate and an interference with the regulator's independence. Nonetheless, a few objective indicators are available (e.g. the regulatory body's years of operation, politicization of appointments and political vulnerability, as well as frequency of revolving door appointments), which are best triangulated with qualitative research to be interpreted adequately.

Measuring efficient functioning

Most empirical research is interested in the performance of a given regulated market and whether this correlates with certain regulatory arrangements, among which the type of regulatory governance is one variable (see for a conceptual critique Hanretty, Larouche, and Reindl 2012). This approach has also been inverted, in research which evaluated independent regulators according to their impact on the performance of the markets they regulate. Doing so is very reasonable in the context of economic regulation, which is designed to produce economic efficiencies. It may be less appropriate to assess regulators' performance against market indicators in fields of general public interest regulation, such as non-discrimination, audiovisual media and data protection, among others. Other authors take into consideration the capacity of regulators to strike a balance between conflicting policy objectives and interests, the quality of their regulatory output and their respect for accountability standards (Gilardi 2005b: 58; Hanretty, Larouche and Reindl 2012; Nicolaïdes 2006: 33). In this approach, however, the availability of appropriate and/ or objective data is likely an issue.

There is great variation with regards to the methodologies proposed and deployed. Without testing his assumptions empirically, Nicolaïdes (2005) recommends carrying out "ex post impact assessments of the effects of regulation on the economy and consumers" as well as process-tracking regarding the outcomes of regulators' decisions, especially "how quickly individual decisions translate into action and what their specific effect may be". Gilardi (2005a) meanwhile recommends assessing the performance of IRAs by looking at their output using econometric analyses. For the more complicated situations in which regulators have to balance conflicting goals, he maps out an econometric analysis that would be capable of exploring the interaction between the two conflicting goals in relation to regulatory independence. In this situation independent regulators would outperform traditional bureaucracies if they are better in dealing with such trade-offs.

Hanretty, Larouche and Reindl (2012) empirically study the links between formal independence, accountability and quality across multiple sectors in five different countries. For measuring the effective functioning of IRAs the authors rely on peer review of the regulators' perceived quality by other regulators, regulatees and academics, and statistically account for various biases. When exploring the empirical links between formal independence, accountability and perceived quality, they find all three positively related to each other. The study concludes that "[a] sustainable and fruitful trade-off between independence and accountability is possible" without detriment to the regulator's perceived quality (Hanretty, Larouche, and Reindl 2012). Likewise, Gilardi (2005a; 2005b) argues that independent regulators have to observe procedural legitimacy which underpins accountability.

To sum up the research into the effective functioning of IRAs, there is a strong tendency towards equating the effective functioning of the regulator with the performance of the regulated sector. This perspective may however not be borne out by reality, since a given sector can thrive or suffer economically due to various other influences. In any case, this concept falls short by definition when regulators have to balance conflicting goals that cannot be described in economic performance indicators alone. Most research does not answer conclusively what effective functioning means, but aside from economic performance there is a strong inclination to read it as referring to the quality of regulation. What characterizes regulatory quality can also be disputed, but it certainly involves looking at the efficiency and impact of the regulators' decision-making as well as other principles of good regulation that have 'general currency' (see Baldwin, Cave and Lodge 2012: 6). Here, in particular, the adherence to public accountability standards is considered important, understood broadly as measures that hold a regulator accountable towards its constituency (as opposed to political accountability⁴).

Conclusion on methodologies of measuring regulatory independence

A summary review of the state-of-the-art measuring of independence and effective functioning of IRAs reveals a multitude of possible approaches and methodologies. Both independence and effective functioning are complex notions which are best approached as multi-dimensional concepts. This is the reason why most research commonly proceeds with composite indices grouped along various dimensions. However, in the theory there is no common understanding what the defining elements of a regulators' independence are, despite some recent convergence concerning the operationalization of formal independence. Often the underlying notion of what is to be measured differs and most methodologies cannot be transplanted outside of their specific context and research question (Verhulst, et al. 2004). Aside from the methodological challenges there are practical challenges that are not easy to overcome, notably with regards to the lack of objective and empirical data concerning indicators of de facto independence and effective functioning.

Empirical approaches to measure formal independence are most advanced (e.g. Gilardi 2008; Hanretty, Larouche and Reindl 2012). However, in order to obtain a full assessment of

regulatory independence, aside from criteria on formal independence, the level of de facto independence and efficient functioning (or regulatory quality, for that matter) also need to be taken into account. For one, criteria for de facto independence cannot be fully separated from formal independence criteria, as they are – to a certain degree – in a complementary relationship with each other, at least where they concern the degree to which the real situation complies with the legal provisions. However, de facto independence is not limited to such compliance, but requires, in addition, the delegation of relevant powers, organizational autonomy, as well as the absence of external constraints or influence. With respect to measuring de facto independence, it must be noted that, despite a number of fruitful contributions, this research still lacks a comprehensive concept and methodology that could be used as an initial framework. The methodological and empirical basis for measuring regulatory quality or efficient functioning of the regulators has evolved significantly over the recent years as well, but a number of aspects only sometimes overlap, and are sometimes different from those involved in measuring independence, as shown above.

As almost all available empirical studies and approaches concern other sectors, rather than the media sector, both assumptions and methodologies need to be evaluated and transposed with a certain caution. Although the banking and financial, telecommunications and energy sectors more or less share the same institution of independent regulators, they are different from the media regulators in their goals and means.⁵ Organizational customs, for instance, vary between sectors, e.g. IRAs in utility sectors are often headed by a single decision-maker, e.g. a president or director, whereas collective decision-making organs, such as a board or a council, prevail in the media regulatory bodies (Hans Bredow Institute for Media Research, et al. 2011: 221). Caution is required both when relying on a standardized approach for comparative research across different sectors and, equally, when relying on a standardized approach for a single sector but across different countries, because national configurations of IRAs differ and any assessment should be highly contextualized (Hanretty, Larouche and Reindl 2012).

Moreover, two aspects that are specific to the media sector deserve particular attention when devising any approach to the measurement of IRAs' independence and effective functioning:

1. the double objectives of legislation and regulation in the media sector, which not only aims at guaranteeing fair competition on the market, but also at the protection of fundamental rights, notably freedom of expression and media freedoms
2. the specific and at times sensitive relationship between the media sector and elected as well as non-elected politicians (i.e. the media as 'the fourth estate').

As a consequence of the former aspect, transparency, accountability and impartiality are central virtues for any media regulatory body vis-à-vis its constituencies. What follows from the latter, however, is a constant tension between especially the mass media and the political sphere. For this reason, it appears that the institutional design and legal endowment of the media regulatory body holds equal political salience as with IRAs in the economically more potent utility sectors. In other words, certain modes of appointment politicization and political

vulnerability of IRAs in the audiovisual media sector are not alone the signature of democratic legitimization of media regulatory bodies.

Ranking Tool for the self-assessment of IRAs' independence and efficient functioning

This section introduces the so-called Ranking Tool as one of the central outcomes of the INDIREG research (Hans Bredow Institute for Media Research, et al. 2011), whereas a copy of the entire Ranking Tool from the INDIREG study can be found in the Annex to this Chapter.⁶ It is grounded in the understanding that regulatory independence should be measured separately for formal and de facto independence, while preserving the complimentary relationship between both sides. Another novelty is that the Ranking Tool integrates existing approaches but inverts their logic, measuring the risk of influence by external players rather than the level of independence of the regulators.⁷ The output of the ranking tool is a graphical visualization that separately charts formal and de facto independence.

The Ranking Tool's methodology

In a nutshell, this Ranking Tool is a new composite index that operationalizes the measuring of IRAs' independence for the audiovisual media sector. However, its scope of application is potentially wider, since there are only a few indicators that are truly media-specific. The approach follows the overall distinction between formal and de facto independence, which are separated but need to be interpreted as a whole. For each division, i.e. formal and de facto independence, relevant indicators are allocated on five dimensions:⁸

1. status and powers
2. financial autonomy
3. autonomy of decision-makers
4. knowledge
5. transparency and accountability.⁹

The organization of indicators in different dimensions is also an advantage in the interpretation stage of using the Ranking Tool.

When devising a workable set of indicators, only those indicators are included in the Ranking Tool that would give a clearer, and probably more objective, result in terms of influence. Since the Ranking Tool has been conceived to measure the risk of influence by external actors, for each dimension, only indicators that were associated with the power to protect the regulator against potential influence (especially from politics and industry) were used. Therefore, each indicator can be either perceived as a safeguard against undue interference ('autonomizers') or, conversely, as a negative factor that increases the risk of undue interference ('dependencers') (see Chapter 5 in this book by Dreyer). If an indicator's role is ambiguous in that it could be interpreted as being a route for influence, while at the same time being a source of autonomy, it was not included as an indicator.

The justification for each indicator invokes relevant European standards and/or research. The indicators on formal independence were formulated on the basis of EU legislation and jurisprudence of the European Court of Justice, which address IRAs in the broadcasting sector but also in other sectors (see Chapter 4 in this book by Stevens). Recommendation (2000)23 of the Council of Europe on the independence and functions of regulatory authorities for the broadcasting sector was one of the prime sources used for this exercise (see Chapter 3 in this book by Valcke, Voorhoof and Lievens). The weighting and ranking with regard to potential risks of influence is based on the assumptions derived from the key characteristics and the analysis conducted during the INDIREG research, and builds exclusively on that.

The indicators which determine de facto independence are far less established in the available research, whereas legal texts do not address the actual situation either. Corresponding with the theory, the indicators pertaining to de facto independence consist of different tiers: on the one hand, they correlate compliance indicators and, on the other hand, they measure further perceivable effects or phenomena that might indicate influence being exerted or a de facto increased risk of influence. Where indicators were designed as the de facto counterparts of formal indicators, they measure the extent to which formal requirements are implemented and powers and competences granted by law are exercised in practice. Other indicators of de facto independence enquire into the politicization of appointments and incidents that signify political vulnerability, which are recognized in the empirical literature on IRAs. Therefore, describing the de facto situation is not seen merely in terms of the implementation of formal requirements, but as a way to draw attention to further potential avenues and attempts to influence the independent regulatory body.

Table 1: INDIREG indicators to assess formal and de facto independence before weighting.

Formal independence	Dimension	De facto independence*
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<ol style="list-style-type: none"> 1. Legal structure 2. Legal recognition of independence 3. Type of regulatory powers 4. Legal definition of powers 5. Supervision powers 6. Information collection powers 7. Formal right of being instructed (except courts) 8. Formal right of being overturned (except court) 9. Type of enforcement powers 10. Organizational autonomy (internal organization and human resources) 	Status and powers	<ol style="list-style-type: none"> 1. Legislative modifications that reduced mandate and powers 2. Modifications of the governing law to influence a particular case/conflict 3. Actual use of the formally granted powers 4. Supervision and monitoring of implementation 5. Instructions by a body other than a court in individual cases/decisions or in relation to its policy-implementing powers 6. Decisions of the regulatory body having been overturned by a body other than a court/administrative tribunal 7. Adequate use of enforcement powers in cases of a material breach 8. Adequate enforcement in case of a continued breach 9. Even-handed/comparable measures concerning all regulatees 10. Effective autonomy regarding internal organization and human resources 11. Sufficient number of staff to fulfil tasks and duties
<ol style="list-style-type: none"> 11. Determination of budget 12. Legal clarity regarding budget-setting and approval procedure 13. Sources of income 14. Legal clarity concerning sources of funding 	Financial autonomy	<ol style="list-style-type: none"> 12. Sufficient budget to carry out tasks and duties 13. Budget stability over time 14. Sufficient autonomy regarding internal budget allocation 15. Any pressure to compensate a lack of stable funding from the state or from the market

<ul style="list-style-type: none"> 15. Nature of the highest decision-making organ 16. Decision-making rights about nominations and appointments 17. Term of office of the chairman/board members 18. Concurrence of term of office and election cycle 19. Staggered appointments 20. Renewals of board members'/chairman's terms of office 21. Rules on incompatibility at the stage of nomination/appointment 22. Extension of incompatibility rules to relatives 23. Requirement to act in an independent capacity 24. Rules preventing conflicts of interest of chairman/board members during term of office 25. Cooling-off period after term of office 26. Rules on the dismissal of the chairman and/or individual board members 27. Rules on the possibility of dismissing the entire board 	Autonomy of decision-makers	<ul style="list-style-type: none"> 16. Any reflection of political majorities or political power structures in the composition of the highest decision-making organ 17. Cases where the appointer failed to appoint the nominated candidate 18. Resignations before the end of term of office due to political pressures 19. Dismissal of board member/s for non-objective grounds 20. Dismissal of entire board or replacement otherwise before the end of term
<ul style="list-style-type: none"> 28. Legal requirements specifying professional expertise for chairman/board members 29. Legal requirements specifying professional expertise for senior staff 30. Legal requirements for qualifications for chairman/board members 31. Legal requirements for qualifications for senior staff 32. Legal option to seek external advice 33. Legal mandate to cooperate with other national or foreign regulators 	Knowledge	<ul style="list-style-type: none"> 21. Adequacy of qualifications and professional expertise of board members/chairman 22. Adequacy of qualifications and professional expertise of senior staff 23. Seeking of external advice when necessary 24. Cooperation with other national/foreign regulators

34. Legal obligation to publish decisions 35. Legal obligation to justify decisions 36. Legal requirement to organize consultations 37. Nature of the consultations (open or closed) 38. Legal reporting obligations 39. Legal mechanism of ex-post control by a democratically elected body 40. Right of appeal against decisions 41. Accepted grounds for appeal 42. Legal requirement on external audit of the financial situation	Accountability and transparency	25. Proactive publication of decisions together with motivations 26. Publication outlet 27. Organization of consultations 28. Nature of consultations organized (open or closed) 29. Publication of responses to consultation 30. Explanation to which extent responses are taken into account 31. Publication of periodical activity reports 32. Assessment or control by a democratically elected body 33. Incidents of the activity report (or other forms of approval) being refused 34. Decisions of the regulatory body having been overturned by a court/administrative tribunal in a significant number of cases 35. Periodic external financial auditing 36. Revelation of serious financial malpractices during any audit
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*Where a retroactive assessment is required, the last five years are to be considered.

Indicators are framed as questions with either a binary answer option or a drop-down menu of answer options, which render the Ranking Tool easy to apply (see example in box below). Every possible answer to an indicator has been ranked on a scale between 0 and 1 with “0” signifying the likelihood of a risk of the exertion of influence and “1” representing a strong safeguard against potential influences. Where there are non-binary answers for an indicator, the scale has been adjusted to represent and rank all different possibilities in a graduated way. Where there are different answer options they have been informed by the literature review, a comparative analysis of media regulatory bodies in 43 different countries, and a stakeholder survey (Hans Bredow Institute for Media Research, et al. 2011).

Box 1: Example of survey question (Formal Indicator 26).

<p>How can the chairman/individual board members be dismissed?</p> <ul style="list-style-type: none"> • Dismissal not possible • Dismissal possible only for objective grounds listed in the law (no discretion) • Objective grounds listed in law, but margin of discretion. Power of dismissal given to the regulator/the judiciary • Objective grounds listed in the law, but margin for discretion. Power of dismissal not given to the regulator/the judiciary • Dismissal possible but grounds not listed in the law, or no rules on dismissal
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Since not all indicators have the same relevance, the Ranking Tool incorporates a weighted approach. It means that all indicators within one dimension were weighted on the basis of their

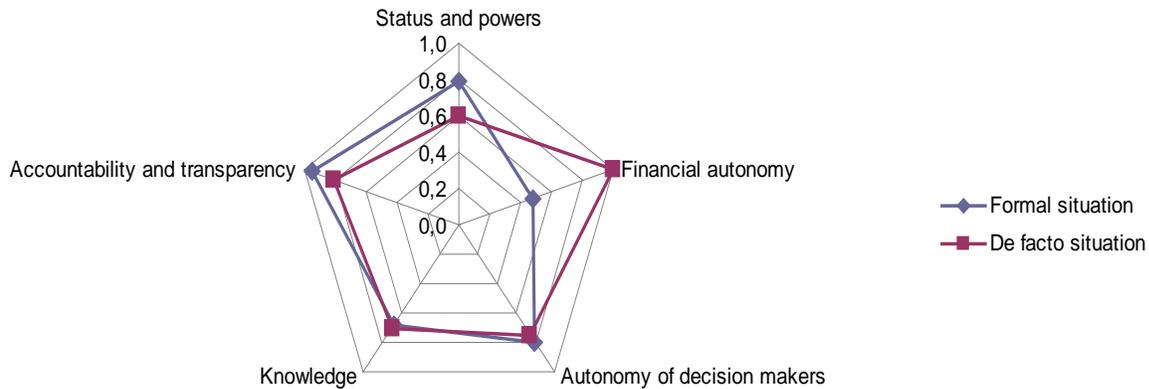
likeliness to be routes for potential influence. The relative weight of individual indicators is determined by their weighting factor, which can be low, medium or high. The weighting is achieved by multiplying the points of an indicator with its weighting factor. It is not possible to change the weighting associated with each of the indicators. Within every dimension the total sum of all achievable points add up to 100. The INDIREG study provides explanations on the ranking of answer options and the weighting associated with each indicator (Hans Bredow Institute for Media Research, et al. 2011: 370). The entire Ranking Tool is published in the Annex to this chapter.

This approach is consistent except for three caveats: First, for the fifth dimension, transparency and accountability, a different logic was adopted, because the more a regulatory authority adheres to transparency and accountability mechanisms, the better the situation. As a rule, best practices would achieve higher points as compared to arrangements that increase the risk of exerting undue influence on the regulatory body. Second, because certain indicators correlate with answers given to other indicators, they are not applicable in all cases. This is taken into account by offering the additional option “not applicable”. Where this answer is chosen, the points attributed to the indicator will not be taken into account within the dimension, leading to a reduction of the overall achievable points within that dimension. Third and finally, due to the varying number of indicators within each dimension, the fewer indicators there are in a dimension, the more significant their relative weight. For example, the de facto dimension of financial autonomy is composed of only two indicators, whereas the formal dimension includes four differently weighted indicators, therefore allowing a more granular approach to assessing the risk of influence.

After applying the Ranking Tool, the results are calculated according to the methodology and translated into a graphical representation (see figure below). The five dimensions define the axes of a spider web chart, and the graphical visualization charts formal and de facto independence separately, and overlays them. The results for each dimension derive from the calculation of the total points awarded as a proportion of the total of possible points. If all possible points have been awarded, the result is a full extension of the ‘spider web’. Correspondingly, if no points are awarded, the ‘spider web’ collapses for the relevant dimension at the centre of the web.

As with other composite indices there will be scope for contestation. The weighted approach is internally consistent, but the relative weighting reflects the judgment of the INDIREG study team. The reasons for the decision on the point values and on the respective weightings of the indicators have been made fully transparent in the INDIREG study, both for the formal and de facto set of indicators (Hans Bredow Institute for Media Research, et al. 2011).

Figure 1: Example of the applied Ranking Tool.



Application and interpretation of the Ranking Tool

The Ranking Tool has been published as a self-assessment instrument that offers interested parties a structured method to appraise the situation of a media regulatory body with a view to the risk potential for the influence of external players. With the necessary information on the governing law, institutional design and operational activities of the IRA in hand, interested parties can apply the Ranking Tool by answering the survey and selecting the most appropriate answer for each question. While the use of the Ranking Tool is intuitive, its accurate implementation nonetheless requires substantial background knowledge of law and practice as well as a knowledgeable interpretation of local arrangements. Indicators that interrogate the compliance with formal requirements or the impartiality of the IRA's decision-making inevitably invite a certain degree of subjectivity. This is the reason why the results concerning a specific media regulatory body can vary when different interested parties apply the Ranking Tool individually. In order to account for subjective bias, it is recommended to form an expert panel that combines various interests and perspectives and jointly applies the Ranking Tool.

The following restrictions condition a successful self-assessment with the Ranking Tool. It is only possible to use the tool to assess the risk potentials for a single regulatory body. In countries where there are several regulatory bodies active in the audiovisual media sector, such as in the federal states Germany and Belgium (see Chapter 9 in this book by Docquir, Gusy and Müller), the assessment has to be repeated for each authority. The Ranking Toll has been designed with an independent regulatory authority in mind and cannot be transposed to assess self-regulatory bodies, such as self-governing public service media or industry bodies. Finally, the tool represents the current situation, based on the answers given by the evaluator, and should not be used to predict future trends. In order to analyse a trend, however, it would be possible to repeat the self-assessment in intervals.

The graphical representation provides added value by presenting the results in a very intuitive way: it helps to focus the interpretation on dimensions that are underperforming and spot significant divergences between formal and de facto independence which would require

contextual interpretation. The so-called spider web chart should be interpreted taking into account that, within the spheres of status and powers, financial autonomy, autonomy of decision-makers and knowledge, the further outwards the position of the point along the relevant axis, the more the regulator can resist external influence. As explained above, regarding the dimension of accountability and transparency mechanisms, the assumption is different in the sense that accountability and transparency are legally foreseen routes for influence, and therefore tools to counterbalance the powers and autonomy given to regulators. The reading is therefore different for this dimension, in the sense that ‘the fuller the web’, the more effective transparency and accountability mechanisms are in place.

It is important to note that the Ranking Tool does not deliver a ready ‘verdict’ but that it highlights potential attention points that would require interpretation against the local context. It would be impossible to develop a standardized method that is flexible enough to account for highly customized local governance structures. What the tool can reveal are discrepancies between the status quo and best practice characteristics for independent media regulatory bodies, and between formal and de facto independence of these bodies. Only an informed interpretation of such attention points will reveal whether the risk potential can be refuted by taking into account contextual information (see the section on piloting the Ranking Tool below). The contextual interpretation of the results may, for example, refute concerns over potential undue influence on the media regulatory authority because there are local characteristics that counterbalance the potential risks identified by this standardized method. Moreover, the Ranking Tool might also pinpoint potential risks which, depending on the national context, a contextual interpretation may prove unlikely to actually materialize.

Piloting the Ranking Tool

In order to validate the methodological approach and the relevance of the Ranking Tool, the INDIREG study conducted an in-depth analysis of eight countries. The cases were selected with a view to obtain a representative sample of approaches and configurations of regulatory bodies, as well as different regulatory practices and national context factors (see table below). It must be stressed that the case studies were mainly motivated by the need to pilot the methodology of the Ranking Tool and not to obtain the results of the measurement of the respective regulators. It was also an attempt to discover possible relationships between formal and de facto independence as well as the influence of the socio-political context on IRAs’ operations. This is also the reason why the following description summarizes the findings without going into detail about the in-depth country reports (for details please refer to Hans Bredow Institute for Media Research, et al. 2011: 277 ff.).

Table 2: Countries selected for the application of the INDIREG methodology (see Hans Bredow Institute for Media Research, et al. 2011: 278).

Name of the country	Regulatory body/bodies
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EU Member States	Estonia	Ministry of Culture of the Republic of Estonia
	Hungary	<ul style="list-style-type: none"> • National Radio and Television Board (ORTT) • Hungarian National Communications Authority (NMHH)
	Italy	AGCOM
	Netherlands	Commissariaat voor de Media (CvdM)
	Slovenia	<ul style="list-style-type: none"> • APEK • Broadcasting Council • Ministry of Culture • Inspectorate for Culture and Media – Media Inspector
	United Kingdom	Office for Communication (Ofcom)
Candidate country	Former Yugoslav Republic of Macedonia	Broadcasting Council
Potential candidate Country	Bosnia and Herzegovina	National Communications Authority (CRA)

The in-depth case studies started with the application of the prototype of the Ranking Tool by the INDIREG team and the assigned country correspondent, a role fulfilled by a local expert who contributed to the study by compiling a country report and tabulating information on the IRA's situation. The results of the Ranking Tool were then jointly interpreted, and those areas where the application had notable results were marked as attention points that merited further contextual interpretation. For each country, three to four additional experts were identified and the attention points were discussed with them in semi-standardized phone interviews. Finally, the expert interviews were analysed with regards to the indications of the Ranking Tool, as well as with a view to the validity and practicability of the Ranking Tool.

Box 2: Example of the context-sensitive interpretation of an attention point.

After applying the Ranking Tool to UK's Office of Communications (Ofcom), which has regulatory competences in the field of audiovisual media services, a number of attention points concerning Ofcom's formal independence emerged. As an example, on the dimension of the autonomy of decision-makers, the board members of Ofcom are appointed by the Secretary of State for Culture, Media and Sport. The Ranking Tool's logic considers that an appointment by the government holds a higher risk of appointment politicization. However, a context-sensitive interpretation of this attention point reveals that such appointments are governed by the "Nolan principles" which provide additional safeguards against political instrumentalization of public appointments in the UK, and the experts agreed that there is effectively no concern about the autonomy of decision-makers.¹⁰

The regulatory structure for the media sector differs significantly from country to country – a fact vividly underlined by the INDIREG research's inability to identify common structures (Hans Bredow Institute for Media Research, et al. 2011: 245). It further appears that the relationship between formal and de facto independence rarely overlaps completely, and that in most cases the formal framework outperforms the de facto situation with respect to regulatory independence. However, there were also cases in which it was observed that the media regulatory body is acting more independently than the legal framework for its operation would suggest. Whereas the first situation provokes concerns over undue interference on an independent media regulatory body, the second situation does not raise similar concerns from the point of view of regulatory independence. However, it should not be forgotten that it is not always necessary to apply formal controls, because where they exist the independent regulator may anticipate them and adjust its actions accordingly.

The in-depth analysis of the country case studies supports the assumption from theory-based analysis that the de facto independence of a regulator depends on many external factors, which vary considerably from country to country and which are – at least partly – not measurable structurally. In line with the findings of comparative media systems research, the pilot confirmed that socio-political factors and local cultural influence both formal and de facto independence of national media regulatory bodies. Actions within an organization and between organizations are to a high degree structured not only by formal law and its implementation but by social norms that reflect the social fabric of society (see also Chapter 7 in this book by Klimkievicz and Chapter 8 by Psychogiopoulou, Casarosa and Kandyla). Assessing the de facto independence of a regulatory body may reflect the influence of such external factors to some extent, but may not be capable of internalizing them fully. As is generally the case with "soft" factors, empirical validation is notoriously difficult. Thus, in order to avoid producing statistical artefacts, the Ranking Tool must be applied and interpreted in the light of the country-specific circumstances.

Conclusion

Aside from being a sector of economic activity, the audiovisual media sector never ceased to display all characteristics of political salience. Media regulatory bodies have a double function, which consists of the supervision of economic regulations while ensuring the impartial governance of the sector. In other words, IRAs function as a buffer by moving audiovisual media out from the sphere of direct influence by elected politicians or other vested interests. With only four exceptions, the European audiovisual media sector is governed by independent regulatory bodies, which underlines the importance of understanding the indispensable tenets of independence and how to assess its quality. It is a precondition for recognizing potential spheres of influence and discovering shortcomings with respect to independence or discrepancies between the formal framework and the actual practice.

A review of the empirical and theoretical literature reveals that, in spite of significant progress being made, there is no generally accepted methodology to measure formal and de facto independence of such bodies. Yet, in part a common understanding has evolved of the multiple factors that have a positive or negative influence on IRAs, on which the INDIREG study could build when devising the Ranking Tool. This tool advances methodology development in several respects:

- it reverses the logic of previous approaches, by measuring the risk of influence by external players rather than the level of independence of the regulators
- it neatly separates the methodologies to assess formal independence and de facto independence, while preserving the complementary relationship between these dimensions in the assessment
- it proposes a coherent set of indicators, and with regards to assessing de facto independence the method goes beyond the state-of-the-art
- within a given indicator, alternative answer options (accounting for the variety of formal structures and de facto actions) are ranked and indicators are weighted with a view to their relative potential to create avenues for exerting influence on the regulator
- results of the applied Ranking Tool are represented graphically, offering a very intuitive way to identify possible attention points which should be the focus of contextual interpretation.

It was the objective of the INDIREG study to develop a scientifically validated methodology to assess the independence of media regulatory bodies that can be used as a self-assessment tool. Provided that evaluators are acquainted with a handful of recommendations on how to use the Ranking Tool, its application is relatively straightforward and user-friendly. The online version of the tool is fully automated and evaluators can proceed step by step and export the results (see note 5). However, the approach nonetheless recognizes that the regulatory structure in the audiovisual media sector differs significantly from country to country, which limits the possibilities for standardized assessment methods. It is important to account for this variety across countries, which is why the Ranking Tool delivers only attention points that require

further contextual interpretation to if they are to yield firmer evidence on a regulator's independence.

While the Ranking Tool offers a coherent methodology to measure various aspects of regulatory independence, it could be contested what can be inferred from this approach. As has been aptly reported and captured by numerous case studies, similar institutional arrangements for audiovisual media supervision and governance play out differently in different national contexts (Hallin and Mancini 2004; Hans Bredow Institute for Media Research, et al. 2011; Larsen, et al. 2005: 3). Moreover, what Jakubowicz refers to as "systemic parallelism," "whereby media systems are shaped by the socio-political and cultural features of the countries in which they operate" (see the Preface of this book) actually undermines any understanding based on a linear relationship between institutional design and regulatory outcomes. Yet, if measured separately, the level of formal and de facto independence (or dependence for that matter) can reveal attention points that in turn can be examined more closely to understand the possible nature of an issue. For example, large discrepancies between formal and de facto independence that are not only an issue of implementation failure may signify systemic parallelism.

After two years the INDIREG study's impact is now unfolding. A survey among media regulatory bodies in Europe in March 2013 that was facilitated by the European Platform of Regulatory Authorities (EPRA) revealed that the study is well known among regulators, with the Ranking Tool being the most prominent output. All sixteen regulators which responded to the survey were acquainted with the Ranking Tool, 12 of them had applied it to themselves, and in almost half of these cases this was followed by informal discussions at an external or at least internal level (Dreyer 2013). What is remarkable is that several regulatory authorities invoked the study's results as an argumentative shield against possible future intrusions into their independence (Dreyer 2013). However, none of the respondents was aware of instances where external parties applied the tool to a regulatory body (Dreyer 2013). Quoting the INDIREG study, European policy makers and experts have called for better safeguards of regulatory independence in the AVMS Directive; but in order for such safeguards to be really effective de facto independence has to receive adequate attention. The Ranking Tool can be a foundation of such an effort to regularly monitor the formal and de facto independence of media regulatory bodies.

Endnotes

¹ The INDIREG Ranking Tool is a product of collective research to which the whole INDIREG study team has contributed; however, we would like to acknowledge significant contributions from Jannes Beeskow, Regine Sprenger, Stephan Dreyer, as well as Nathalie Vereecke.

² Maggetti's findings also suggest that, with regard to young regulatory agencies, high de facto independence from regulatees can also be a consequence of low de facto independence from politicians (Maggetti 2006: 15). It follows that an agency that acts as an intermediary between politicians and industry cannot serve both masters (Gilardi and Maggetti 2012).

³ Building on Tsebelis' influential concept, veto players are individual or collective actors who have to agree for the legislative status quo to change. The more veto players a political system has, the higher policy stability is; the fewer veto players, the higher the likelihood for policy change.

⁴ Note that democratic accountability of independent regulatory authorities already features under formal and de facto independence above.

⁵ Not to mention the significantly smaller impact on the overall economic sector-performance.

⁶ The INDIREG Ranking Tool is also accessible as an online application here:

http://www.indireg.eu/?page_id=329

⁷ This risk-centered logic, which is founded on the reasoning in Chapter 1 in this book by Wolfgang Schulz and Chapter 4 by Stephan Dreyer, enables a more objective method for ranking the indicators and weighting them according their significance.

⁸ Dreyer in Chapter 5 of this book explains the theoretical basis for these five dimensions, which are derived from the role of a given IRA in the overall governance system and the different spheres of potential influence.

⁹ Gilardi (2008) introduced a similar approach to assessing the level of formal independence of regulators (in the competition, electricity, environment, financial markets, food safety, pharmaceuticals and telecoms sectors). He proposed a ranking of between 0 and 1 to measure the independence of regulators according to five dimensions (Status of the agency head, status of the members of the management board, relationship with government and parliament, financial and organizational autonomy, and regulatory competences).

¹⁰ The Nolan Principles are a list of recommendations on public appointment, set out in the report by Lord Nolan of 1995 to which the government adheres. These principles are intended to ensure that public appointments are based on merits and fairly governed. See <http://www.archive.official-documents.co.uk/document/parlment/nolan/nolan.htm>.

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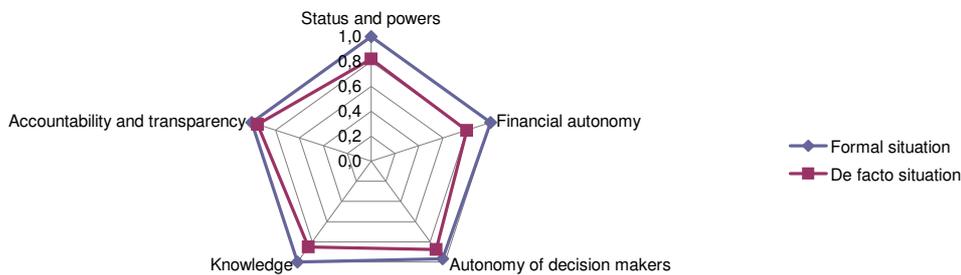
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Annex: INDIREG Ranking Tool

	(Country)
	(Body)
	(Evaluator)
	(Date)



	Formal situation	De facto situation
Status and powers	1,000	0,820
Financial autonomy	1,000	0,800
Autonomy of decision makers	0,970	0,880
Knowledge	1,000	0,850
Accountability and transparency	1,000	0,950

Formal situation

Status and powers

points (out of): 100 100

What is the legal structure of the regulatory body? <ul style="list-style-type: none"> <input checked="" type="radio"/> A separate legal entity/autonomous body <input type="radio"/> Not a separate legal entity/autonomous body but existence of sufficient safeguards (Chinese walls) <input type="radio"/> Not a separate legal entity/autonomous body and no Chinese walls 	1	12	12
How is independence of the regulatory body guaranteed? <ul style="list-style-type: none"> <input checked="" type="radio"/> In the constitution / high court decision <input type="radio"/> In an act of Parliament <input type="radio"/> In a secondary act <input type="radio"/> It is not recognised 	1	9	9
What type of regulatory powers does the regulatory body have? <ul style="list-style-type: none"> <input checked="" type="radio"/> Policy implementing powers and third party decision making powers <input type="radio"/> Third party decision making powers only <input type="radio"/> Consultative powers only / No third party decision making powers 	1	9	9
Are these regulatory powers sufficiently defined in the law? <ul style="list-style-type: none"> <input checked="" type="radio"/> Yes <input type="radio"/> No 	1	3	3
Does the regulatory body have supervision powers? <ul style="list-style-type: none"> <input checked="" type="radio"/> Yes <input type="radio"/> No 	1	13	13

Does the regulatory body have information collection powers towards regulatees (eg. regarding quotas)?	1	6	6
<input checked="" type="radio"/> Yes	6		
<input type="radio"/> No	0		
Can the regulatory body be instructed (other than by a court) in individual cases/decisions or in relation to its policy implementing powers (notwithstanding possible democratic control mechanisms such as by parliament)?	1	13	13
<input checked="" type="radio"/> No	13		
<input type="radio"/> Yes, by the parliament	4		
<input type="radio"/> Yes, by the government/minister in limited cases	3		
<input type="radio"/> Yes, by the government/minister in many cases	0		
Can the regulatory body's decisions be overturned (other than by a court/administrative tribunal)?	1	13	13
<input checked="" type="radio"/> No	13		
<input type="radio"/> Yes, by the parliament	4		
<input type="radio"/> Yes, by the government/minister in limited cases	3		
<input type="radio"/> Yes, by the government/minister in many cases	0		
What type of enforcement powers does the regulatory body have?	1	13	13
<input checked="" type="radio"/> Availability of a range of proportional enforcement powers (warnings, deterrent fines, suspension/revocation of licence)	13		
<input type="radio"/> Not all range of enforcement powers available, but power to impose deterrent fines	10		
<input type="radio"/> No power to impose deterrent fines	0		
Does the regulatory body have sufficient legal power to decide on internal organisation and human resources?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		

Financial autonomy

points (out of): 100 100

How is the budget of the regulatory body determined?	1	40	40
<input checked="" type="radio"/> By the regulatory body only	40		
<input type="radio"/> By the parliament with involvement of regulatory body	29		
<input type="radio"/> By the government/minister with involvement of regulatory body	26		
<input type="radio"/> No involvement of regulatory body	0		
Does the law clearly specify the budget setting and approval procedure?	1	17	17
<input checked="" type="radio"/> Yes	17		
<input type="radio"/> No	0		
What are the sources of income of the regulatory body?	1	30	30
<input checked="" type="radio"/> Fees levied from industry - own funds, spectrum fees	30		
<input type="radio"/> Mixed fees (industry and government funding)	20		
<input type="radio"/> Government funding only	0		
Does the law clearly specify the source of funding?	1	13	13
<input checked="" type="radio"/> Yes	13		
<input type="radio"/> No	0		

Autonomy of decision makers

points (out of): 97 100

<p>What is the nature of the highest decision making organ of the regulatory body? _____</p> <p><input checked="" type="radio"/> A board</p> <p><input type="radio"/> An individual</p>	<p>1</p> <p>10</p> <p>0</p>	<p>10</p> <p>10</p> <p>0</p>	<p>10</p> <p>10</p> <p>0</p>
<p>Who has a decisive say in nomination/appointment of the regulatory body's highest decision making organ? _____</p> <p><input checked="" type="radio"/> Mix between parliament / government / civil society / professional associations</p> <p><input type="radio"/> Ruling and opposition parties involved</p> <p><input type="radio"/> Parliament and government</p> <p><input type="radio"/> Parliament and prime minister/president</p> <p><input type="radio"/> Parliament and political parties</p> <p><input type="radio"/> Parliament only</p> <p><input type="radio"/> Government only</p> <p><input type="radio"/> President/prime minister/minister only</p> <p><input type="radio"/> Not applicable/other procedures</p>	<p>1</p> <p>13</p> <p>12</p> <p>11</p> <p>9</p> <p>8</p> <p>7</p> <p>3</p> <p>0</p> <p>0</p>	<p>13</p> <p>12</p> <p>11</p> <p>9</p> <p>8</p> <p>7</p> <p>3</p> <p>0</p> <p>0</p>	<p>13</p> <p>13</p> <p>12</p> <p>11</p> <p>9</p> <p>8</p> <p>7</p> <p>3</p> <p>0</p> <p>0</p>
<p>What is the term of office of the chairman/board members? _____</p> <p><input checked="" type="radio"/> A fixed term of office of a certain duration (above the election cycle)</p> <p><input type="radio"/> A fixed term of office (lower or equal to the election cycle)</p> <p><input type="radio"/> Not specified</p>	<p>1</p> <p>7</p> <p>3</p> <p>0</p>	<p>7</p> <p>7</p> <p>3</p> <p>0</p>	<p>7</p> <p>7</p> <p>3</p> <p>0</p>
<p>Does the term of office coincide with the election cycle? _____</p> <p><input checked="" type="radio"/> No</p> <p><input type="radio"/> Yes/not specified</p>	<p>1</p> <p>10</p> <p>0</p>	<p>10</p> <p>10</p> <p>0</p>	<p>10</p> <p>10</p> <p>0</p>
<p>Does the law foresee that board members are appointed at different points in time (staggered appointment)? _____</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="radio"/> No</p> <p><input type="radio"/> Not applicable (no board members)</p>	<p>1</p> <p>7</p> <p>0</p> <p>0</p>	<p>7</p> <p>7</p> <p>0</p> <p>0</p>	<p>7</p> <p>7</p> <p>0</p> <p>0</p>
<p>What is the situation regarding renewals of board members/chairman? _____</p> <p><input checked="" type="radio"/> Renewal not possible / limited to one or two instances</p> <p><input type="radio"/> Allowed in more than two instances / not specified</p> <p><input type="radio"/> Not applicable (no fixed term)</p>	<p>1</p> <p>7</p> <p>0</p> <p>0</p>	<p>7</p> <p>7</p> <p>0</p> <p>0</p>	<p>7</p> <p>7</p> <p>0</p> <p>0</p>
<p>Are there rules on incompatibility at the nomination/appointment stage of the members of the board/the chairman so that the highest decision making organ ...</p> <p><input checked="" type="radio"/> cannot be composed of members of government/parliament/industry</p> <p><input type="radio"/> can be composed of one or two of the following groups: government/parliament/industry</p> <p><input type="radio"/> can be composed of members of government/parliament/industry</p>	<p>1</p> <p>10</p> <p>3</p> <p>0</p>	<p>10</p> <p>10</p> <p>3</p> <p>0</p>	<p>10</p> <p>10</p> <p>3</p> <p>0</p>
<p>Incompatibility rules extended to relatives? _____</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="radio"/> No</p> <p><input type="radio"/> Not applicable (no incompatibility rules)</p>	<p>1</p> <p>1</p> <p>0</p> <p>0</p>	<p>1</p> <p>1</p> <p>0</p> <p>0</p>	<p>1</p> <p>1</p> <p>0</p> <p>0</p>
<p>Requirement to act in an independent capacity? _____</p> <p><input type="radio"/> Yes</p> <p><input checked="" type="radio"/> No</p>	<p>2</p> <p>3</p> <p>0</p>	<p>0</p> <p>3</p> <p>0</p>	<p>3</p> <p>3</p> <p>0</p>

Are there rules preventing conflicts of interest of chairman/board members during their term of office?	1	3	3
<input checked="" type="radio"/> Yes	3		
<input type="radio"/> No	0		
Is there a period during which former board members are limited to work for the regulatees (so-called cooling-off period)?	1	3	3
<input checked="" type="radio"/> Yes	3		
<input type="radio"/> No	0		
How can the chairman / individual board members be dismissed?	1	13	13
<input checked="" type="radio"/> Dismissal not possible	13		
<input type="radio"/> Dismissal possible only for objective grounds listed in the law (no discretion)	13		
<input type="radio"/> Objective grounds listed in the law, but margin of discretion. Power of dismissal given to the regulator / the judiciary.	9		
<input type="radio"/> Objective grounds listed in the law, but margin of discretion. Power of dismissal not given to the regulator / the judiciary.	7		
<input type="radio"/> Dismissal possible, but grounds not listed in the law, or no rules on dismissal	0		
Dismissal of entire board	1	13	13
<input checked="" type="radio"/> Not possible to dismiss entire board	13		
<input type="radio"/> Entire board can be dismissed	0		
<input type="radio"/> Not applicable (no board)	0		

Knowledge

points (out of): 100 100

Are requirements for professional expertise (i.e. knowledge/experience) specified in the law? For board members/chairman?	1	19	19
<input checked="" type="radio"/> Yes	19		
<input type="radio"/> No	0		
Are requirements for professional expertise specified in the law? For senior staff?	1	19	19
<input checked="" type="radio"/> Yes	19		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no senior staff)	0		
Are requirements for qualifications (eg. education, diploma requirements) specified in the law? For board members/chairman?	1	19	19
<input checked="" type="radio"/> Yes	19		
<input type="radio"/> No	0		
Are requirements for qualifications specified in the law? For senior staff?	1	19	19
<input checked="" type="radio"/> Yes	19		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no senior staff)	0		
Does the law foresee that the regulatory body can seek external advice?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		
Is the regulatory body legally obliged to cooperate with other national or foreign regulators and does it have the required mandate to do so?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		

Accountability and transparency

points (out of): 100 100

Does the law specify that the regulatory body's decisions need to be published?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		
Does the law specify that the regulatory body's decisions need to be motivated?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		
Is the regulatory body required by law to organise consultations?	1	8	8
<input checked="" type="radio"/> Yes, in all cases (which have a direct or indirect impact on more than one stakeholder)	8		
<input type="radio"/> Yes, but only in cases specified by law	4		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable	0		
Is the regulatory body required to organise these consultations as open or closed consultations?	1	8	8
<input checked="" type="radio"/> Open consultations	8		
<input type="radio"/> Closed consultations	4		
<input type="radio"/> No consultations required	0		
Is the regulatory body subject to a reporting obligation and is it specified in law?	1	12	12
<input checked="" type="radio"/> Yes, the reporting obligation is specified in law and is addressed to the public at large (including public bodies)	12		
<input type="radio"/> Yes, the reporting obligation is specified in law and is limited to public bodies only (e.g. Parliament and/or government)	9		
<input type="radio"/> No	0		
Does the law specify a mechanism of ex-post control by a democratically elected body (e.g. approval of annual report by the parliament or a political/public debate with participation of the body)?	1	16	16
<input checked="" type="radio"/> Yes	16		
<input type="radio"/> No	0		
Is an appeal procedure against the decisions of the regulatory body foreseen in the law?	1	12	12
<input checked="" type="radio"/> Yes, in all circumstances and before an external court/administrative tribunal	12		
<input type="radio"/> Yes, in all circumstances, but only before an independent body (with no further appeal before a court/admin tribunal)	9		
<input type="radio"/> Yes, but in some circumstances only and before an external court/administrative tribunal	6		
<input type="radio"/> Yes, but in some circumstances only, and only before an independent body (with no further appeal before a court/admin trib)	4		
<input type="radio"/> No	0		
What are the accepted grounds for appeal?	1	8	8
<input checked="" type="radio"/> Errors of fact and errors of law (ie. the merits)	8		
<input type="radio"/> Errors in law only	5		
<input type="radio"/> Errors in fact only	3		
<input type="radio"/> Not applicable (no appeal procedure exists)	0		
Is external auditing of the financial situation foreseen in the law?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		

De facto situation

Status and powers

points (out of): 82 100

<p>Has the act on the status of the regulatory body been modified in a way that has reduced its tasks and powers?</p> <p><input type="radio"/> No</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="radio"/> Not applicable (not set up as separate body)</p>	<p>2</p> <p>9</p> <p>0</p> <p>0</p>	<p>0</p> <p>9</p> <p>0</p> <p>0</p>	<p>9</p> <p>9</p> <p>0</p> <p>0</p>
<p>Has the governing law of the regulatory body been modified to influence a particular case/conflict?</p> <p><input checked="" type="radio"/> No</p> <p><input type="radio"/> Yes</p>	<p>1</p> <p>9</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p>
<p>Have the formally granted powers (policy implementing powers and third party decision making powers, excluding sanctions) been used?</p> <p><input checked="" type="radio"/> Yes, for all types of powers and in all instances</p> <p><input type="radio"/> Yes, but not for all types of powers or in all instances</p> <p><input type="radio"/> No</p>	<p>1</p> <p>10</p> <p>5</p> <p>0</p>	<p>10</p> <p>0</p> <p>0</p> <p>0</p>	<p>10</p> <p>0</p> <p>0</p> <p>0</p>
<p>How does the regulatory body supervise whether the rules are correctly applied by the regulatees?</p> <p><input checked="" type="radio"/> Through monitoring according to a set strategy and/or methodology</p> <p><input type="radio"/> Through adhoc monitoring/monitoring after complaints, with concrete procedures to follow complaints</p> <p><input type="radio"/> Through adhoc monitoring/monitoring after complaints, without concrete procedures to follow complaints</p>	<p>1</p> <p>9</p> <p>5</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p> <p>0</p>
<p>Has the regulatory body received instructions by a body other than a court in individual cases/decisions or in relation to its policy implementing powers in the last 5 years?</p> <p><input checked="" type="radio"/> No</p> <p><input type="radio"/> Yes</p>	<p>1</p> <p>9</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p>
<p>Have the decisions of the regulatory body been overturned by a body other than a court/administrative tribunal in the last 5 years?</p> <p><input checked="" type="radio"/> No</p> <p><input type="radio"/> Yes</p>	<p>1</p> <p>9</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p>
<p>Has the regulatory body taken adequate measures in case of material breach by an AVMS/TVwF provider?</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="radio"/> No</p> <p><input type="radio"/> Not applicable (no material breach has occurred)</p>	<p>1</p> <p>9</p> <p>0</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p> <p>0</p>
<p>Has the regulatory body taken adequate sanctions in case of continued breach by an AVMS/TVwF provider?</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="radio"/> No</p> <p><input type="radio"/> Not applicable (no continued breach has occurred)</p>	<p>1</p> <p>9</p> <p>0</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p> <p>0</p>
<p>In case of several breaches by different AVMS/TVwF providers: Have even-handed/comparable measures been taken against all providers?</p> <p><input type="radio"/> Yes</p> <p><input checked="" type="radio"/> No</p> <p><input type="radio"/> Not applicable (no breaches by different providers has occurred)</p>	<p>2</p> <p>9</p> <p>0</p> <p>0</p>	<p>0</p> <p>9</p> <p>0</p> <p>0</p>	<p>9</p> <p>0</p> <p>0</p> <p>0</p>

Does the regulatory body effectively decide on internal organisation and human resources? —	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
Does the regulatory body have a sufficient number of staff to fulfill its tasks and duties? —	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		

Financial autonomy

points (out of): 80 100

Is the regulatory body's budget sufficient to carry out its tasks and duties? —	1	40	40
<input checked="" type="radio"/> Yes	40		
<input type="radio"/> No	0		
Is the regulatory body's budget sufficiently stable over time? —	2	0	20
<input type="radio"/> Yes	20		
<input checked="" type="radio"/> No	0		
Does the regulatory body have sufficient autonomy to decide for which tasks it spends its budget? —	1	20	20
<input checked="" type="radio"/> Yes	20		
<input type="radio"/> No	0		
Is the regulatory body under pressure to compensate a lack of stable funding from the state or from the market, by imposing fines or requesting ad-hoc financial contributions from the state? —	1	20	20
<input checked="" type="radio"/> No	20		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable	0		

Autonomy of decision makers

points (out of): 88 100

Composition of the highest decision making organ (board or council) of the regulatory body

Are political majorities or political power structures reflected in the composition of the highest decision making organ? —	1	19	19
<input checked="" type="radio"/> No	19		
<input type="radio"/> Yes	0		
<input type="radio"/> Impossible to say	0		
Have there been cases where the appointer failed to appoint the nominated candidate? —	2	0	12
<input type="radio"/> No	12		
<input checked="" type="radio"/> Yes	0		
<input type="radio"/> Not applicable (no nomination stage/no obligation to appoint nominees)	0		
Have board members/chairman resigned before their term of office due to political conflicts? —	1	19	19
<input checked="" type="radio"/> No	19		
<input type="radio"/> Yes	0		
Have one or more board members been dismissed for non-objective grounds in the past 5 years? —	1	25	25
<input checked="" type="radio"/> No	25		
<input type="radio"/> Yes	0		

Has the entire board been dismissed or otherwise replaced before the end of term in the last 5 years?	1	25	25
<input checked="" type="radio"/> No	25		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable (not possible)	0		

Knowledge

points (out of): 85 100

Do board members/chairman have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?	2	15	30
<input type="radio"/> Yes, all	30		
<input checked="" type="radio"/> Yes, a majority	15		
<input type="radio"/> No	0		

Does senior staff have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?	1	30	30
<input checked="" type="radio"/> Yes, all	30		
<input type="radio"/> Yes, a majority	15		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no senior staff)	0		

Does the regulatory body seek external advice when needed?	1	20	20
<input checked="" type="radio"/> Yes	20		
<input type="radio"/> No	0		

Does the regulatory body cooperate with other national/foreign regulators in charge of audio-visual media regulation?	1	20	20
<input checked="" type="radio"/> Yes	20		
<input type="radio"/> No	0		

Accountability and transparency

points (out of): 95 100

Does the regulatory body publish its decisions (together with motivations)?	2	5	10
<input type="radio"/> Yes, all decisions (and motivations) are published	10		
<input checked="" type="radio"/> Yes, but only some decisions are published	5		
<input type="radio"/> No	0		

Where are the decisions published?	1	6	6
<input checked="" type="radio"/> On the website (and eventually other official channels)	6		
<input type="radio"/> In the official journal or other official channels (but not on the website)	0		
<input type="radio"/> Not applicable (decisions are not published)	0		

Does the regulatory body organise consultations?	1	8	8
<input checked="" type="radio"/> Yes, in all cases (which have a direct or indirect impact on more than one stakeholder)	8		
<input type="radio"/> Yes, but only in cases specified by law	4		
<input type="radio"/> No	0		

Does the regulatory body organise these consultations as open or closed consultations?	1	7	7
<input checked="" type="radio"/> Open consultations	7		
<input type="radio"/> Closed consultations	4		
<input type="radio"/> No consultations	0		

Does the regulatory body publish responses to consultation?	1	6	6
<input checked="" type="radio"/> Yes	6		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no consultations are organised)	0		
Does the regulatory body explain the extent to which responses are taken into account in final decisions?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no consultations are organised)	0		
Does the regulatory body publish periodical reports on its activities?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
Has the regulatory body been assessed / controlled by a democratically elected body in the last five years?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
Have there been cases where the report (or other form of approval by a democratically elected body) has been refused in the last 5 years?	1	9	9
<input checked="" type="radio"/> No	9		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable (no requirement to have a report approved by an external body)	0		
Have the decisions of the regulatory body been overturned by a court/administrative tribunal in a significant number of cases?	1	9	9
<input checked="" type="radio"/> No	9		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable (not possible)	0		
Is the regulatory body subject to periodic external financial auditing?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
Has auditing revealed serious financial malpractices?	1	9	9
<input checked="" type="radio"/> No	9		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable (not subject to periodic external auditing)	0		