

INDIREG

Study on indicators for independence and efficient functioning of AVMS regulatory bodies for the purpose of enforcing the rules in the AVMS Directive (SMART 2009/0001)

EPRA

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- **Status**
- **Key messages**

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- **Appointment and financial independence**
 - main trends
 - essential characteristics
 - best practices



Course of the project

- **Duration: 12 months - Feb 2010 until Feb 2011**
 - **November 2010: Preliminary Final Report**
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- **January 2011: Public Workshop**
 - **Feb 2011: Comments**
 - **March 2011: Delivery of report**



~~Still to be finally approved!~~

Has been approved but not published....

Draft final available on :

http://www.cullen-international.com/cullen/cipublic/studies/Independence_media_regulators/Indicators_independence_efficient_functioning_AV_MS_reg_bodies.htm

4 things to remember

- **Theoretical background on independent regulatory bodies**
- **Detailed legal description of the national situation (MS, candidate, potential candidate countries, Japan, US, Singapore, Australia)**
- **A set of essential characteristics and best practices**
- **A ranking tool to (self) assess the independence of regulatory bodies from the formal and de facto points of view**

An obligation to have independent regulatory bodies?

- **AVMS does not contain a strict formal obligation to create an independent regulatory body**
- **But objectives of AVMS + art 10 ECHR + Art 288 para 3 TFEU = obligation for MS to ensure impartial application of directive**
- **Impartiality = ability to resist influence from government and from media sector (= essential characteristics)**

Essential characteristics and best practices

- **Essential characteristics are requirements that enable the body to carry out its duties impartially**
- **Best practice characteristics are not strictly required but enhance the independence of bodies**

Main trends Highest decision making organ

- Mostly a board (except 6 countries)
- Composed very differently (industry, experts, civil society, government/parliament)

- Often, but not always, requirement to act independently

- Appointment process: NO TREND!
- ✓ Nomination phase or not
- ✓ 4 models (executive, parliament, mix, involvement of civil society/professional organisations)

Main trends

Highest decision making organ

- **Term of office between 2 and 7 years, not coinciding with election cycle**
- **Renewals mostly possible but limited to one or two instances**

- **In few cases only: specific requirements on professional qualifications and expertise**
- **Often: rules to guard against conflicts of interest at appointment stage and during the term of office but not after the term of office**
- **Often: specific rules to limit the possibility to dismiss members of the highest decision making organ**

Highest decision making organ

Essential characteristics	Best practices
<ul style="list-style-type: none"> ➤ Rules of nomination and appointment procedures to prevent structural bias ➤ Rules to guard against conflict of interests 	<ul style="list-style-type: none"> ➤ Board preferable to an individual ➤ Open nomination and appointment procedure without prevailing influence
<ul style="list-style-type: none"> ➤ Rules to only allow dismissals for limited grounds stated in law ➤ In case of individual instead of board: not being a representative bound to the interests of any other person or body 	<ul style="list-style-type: none"> ➤ Tenures longer than one but shorter than two election cycles; rolling appointment ➤ No dismissal of whole board at once ➤ Power of dismissal limited to the board itself or to judiciary ➤ Autonomy in internal organisation and in deciding on HR issues

Main trends Financial autonomy

- **Most common model in EU and EFTA countries: funding directly from state budget, sometimes supplemented by other sources**
- ~~In 6 member states, funding by other sources than state budget~~
- **More diverse situation in candidate, potential candidate countries, and selected third countries**

Main trends Overall budget

- **2 groups of countries:**
 - budget not foreseen in law (most common model)
 - ~~budget foreseen in law~~

 - **Very large differences on budget**
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Financial autonomy

Essential characteristics	Best practices
<ul style="list-style-type: none"> ➤ Sufficient financial resources 	<ul style="list-style-type: none"> ➤ Objective and transparent budget allocation procedure ➤ Budget should not exclusively depend on the discretion of the government ➤ Regulatory body has significant part in budget setting procedure ➤ Autonomy in internally allocating the set budget ➤ Mixed funding

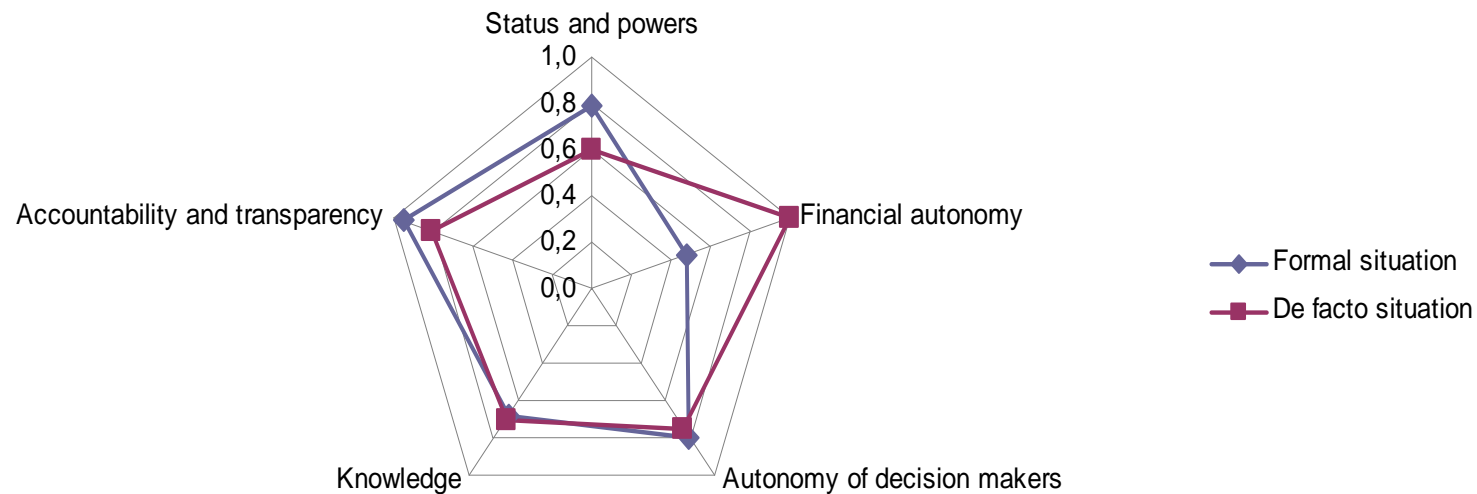


Presentation of the ranking tool: Possibilities, usage and limitations

Ranking tool



Objective: measure risk of influence by external players on regulatory bodies



Ranking tool



Online version available on

<http://www.indireg.eu/rt>

user "indireg" and password "workshop".

Five dimensions



- **Status and powers**
(Legal status, regulatory powers)
- **Financial autonomy**
- **Autonomy of decisions makers**
(Nature and composition of organ, appointment procedures, rules to prevent conflict of interest or capture, tenure, dismissal)
- **Knowledge**
(Qualification and expertise, seeking opinions from experts and stakeholders, cooperation)
- **Transparency and accountability mechanisms**
(Transparency mechanisms, consultations, formal accountability and auditing mechanisms, appeal procedures)

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Formal situation: Financial autonomy

How is the budget of the regulatory body determined?



Choose one of the following answers

- By the regulatory body only
- By the parliament with involvement of regulatory body
- By the government/minister with involvement of regulatory body
- No involvement of regulatory body

Does the law clearly specify the budget setting and approval procedure?



Choose one of the following answers

- Yes
- No

What are the sources of income of the regulatory body?



Choose one of the following answers

- Fees levied from industry - own funds, spectrum fees
- Mixed fees (industry and government funding)
- Government funding only

Does the law clearly specify the source of funding?



Choose one of the following answers

- Yes
- No

De facto situation: Financial autonomy

Is the regulatory body's budget sufficient to carry out its tasks and duties?



Choose one of the following answers

- Yes
- No

Is the regulatory body's budget sufficiently stable over time?



Choose one of the following answers

- Yes
- No

Does the regulatory body have sufficient autonomy to decide for which tasks it spends its budget?



Choose one of the following answers

- Yes
- No

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?



Choose one of the following answers

- No
- Yes
- Not applicable

Ranking tool

Methodology and limitations



- Calculations are transparent
- Justifications are given (backed by legal texts and literature)
- Has been tested in context of in depth analysis countries and has been adapted

BUT IS NOT ROCKET SCIENCE!!!!