

Indicators for Independence of Regulatory Authorities: definition, practice and verification

EVE SALOMON

Council of Europe Expert



Indicators for independence

- Indicators identified from conference in Tirana, March 2014
- Further explanation and proposed key indicators
- Practice and verification



1. Status and powers

Existence and implementation of the legal framework which clearly and unequivocally defines the position, competences, rights and duties of a regulatory body. Particular attention should be devoted to:

- Possibility of autonomous decision making concerning the implementation of the competences prescribed by law (adopting by-laws, pronouncing sanctions in the case of any violation of standards...)
- Clear rules, criteria and conditions for proposing, appointing and releasing from duty council members and the executive director of an independent regulatory body
- Rules for preventing conflict of interest concerning different sources of political and economic influence



This should include:

- ❑ Remit and powers (including enforcement powers) should be set out in legislation or Constitution
- ❑ High level public policy objectives should be set out in the law, starting with the protection of freedom of expression
- ❑ Legal protection against interference by political or industry agents
- ❑ Only the court should have power to overturn the regulator's decisions
- ❑ Means of appointment and dismissal of council members should be set out in legislation. The council should have the right to appoint the executive director.
- ❑ Rules on conflicts of interest should be comprehensive and set out in the law.

Appointment of Members

- No 'right' way, but the greater the involvement of government (or Parliament) in the process, the more additional legal safeguards required:
 - Restrictions on eligibility for appointment, e.g. no serving (or former) politicians, clear competency criteria in line with a job description, and comprehensive rules on conflicts of interest (to include close relatives)
 - Open nomination process involving civil society
 - Limited terms of appointment (not linked to election cycle), and renewal
 - Staggered appointments of members
 - Members appointed in individual, not representational capacity
 - Restrictions on employment in the industry following appointment



Termination of Appointment

- Set out in legislation

- Dismissal only if:
 - Conflict of interest
 - Physical or mental incapacity
 - Persistent non-attendance
 - Bankruptcy
 - Conviction of serious criminal offence



Practice and verification

- ❑ Check legal instruments
- ❑ Have there been any examples of interference with regulatory decisions by political or industry interests?
- ❑ Have all appointments followed the published procedure?
- ❑ Research and questionnaires: do the public believe the regulatory authority acts independently? Are there rumours of corruption?



2. Financial autonomy

Existence and implementation of the legal framework stipulating sustainable and stable sources of financing of a regulatory body, enabling it to plan, manage and dispose of funds in an efficient, transparent and responsible manner, in order to mobilise and keep human and technical resources required for successful implementation of its competences and tasks;



This should include:

- Funding mechanisms and budget process set out in legislation
- Transparent budgeting process
 - Ideally, the budget should be set by the regulatory authority (and approved by Parliament). At the least, it should be set with the involvement of the regulatory authority.
- Sources of funding
 - Fees levied from the industry in accordance with transparent criteria
 - State budget (as secondary source)



Practice and verification

- Does the regulatory authority have adequate resources (including staff) to fulfil its functions?
- Does the regulatory authority review annually its business plan and seek to cut costs wherever possible? Does it have a ‘value for money’ ethos?

3. Autonomy of decision-makers

Existence and implementation of clear-cut rules and good practice, meaning that a regulatory body is able to adopt its decisions autonomously, and to make its decisions and their rationales available to the public (e.g. legal or statutory provisions on the obligation to publish general and individual acts in the purview of the regulatory body), and to organise public consultations before adopting by-laws important for regulating the rights and duties of those extending AVM services, so as to enable all stakeholders to give their opinions and suggestions.



This should include:

- ❑ Inability of State to interfere with decisions or order the Council to act.
- ❑ Accountability (discussed below)



4. Knowledge/ skills

Existence and implementation of clear-cut rules, rights and duties related to the possibility of planning, hiring and developing human resources important for efficient and successful execution of competences in the purview of an independent regulatory body.



This should include:

- ❑ Competency requirements for chair and board members (e.g. knowledge, experience, qualifications) set out in the law, and tailored for each recruitment exercise
- ❑ Competency requirements for senior staff
- ❑ Power to engage consultants and seek external expertise
- ❑ Obligation to co-operate with other national and international regulators



Practice and verification

- Do Council members and staff actually have the competencies required by law?
- Are there complaints from other regulatory authorities about non-co-operation?



5. Transparency and accountability

Existence and implementation of clear-cut rules, rights and duties relating to adopting and publishing financial and operational plans and reports of independent regulatory bodies.



This should include:

- ❑ Working methods which include regular, open public consultations
- ❑ Presentation of annual report and accounts to Parliament and open publication on website
- ❑ Attendance before Parliament, or Parliamentary Committee
- ❑ Publication of decisions, with full reasons
- ❑ Publication of meeting minutes (subject to confidentiality provisions)
- ❑ External financial audit



Practice and verification

- ❑ Are the accounts and annual report published in a timely manner?
- ❑ Does the regulatory authority have a good working relationship with government?
- ❑ Are all decisions, with reasoning, published?
- ❑ Are minutes published?
- ❑ Does the regulatory authority pass its financial audit?



In conclusion...

- “Measurement is the first step that leads to control and eventually to improvement. If you can’t measure something, you can’t understand it. If you can’t understand it, you can’t control it. If you can’t control it, you can’t improve it.”

H. James Harrington