

Assessing de facto independence of NRAs and the accountability puzzle

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NRA's Independence



A regulator is independent if it has within the governance structure a position that ensures that the regulator **performs the decision-making process** meeting the normative requirements for which the independence of the regulator is called for. (INDIREG study)

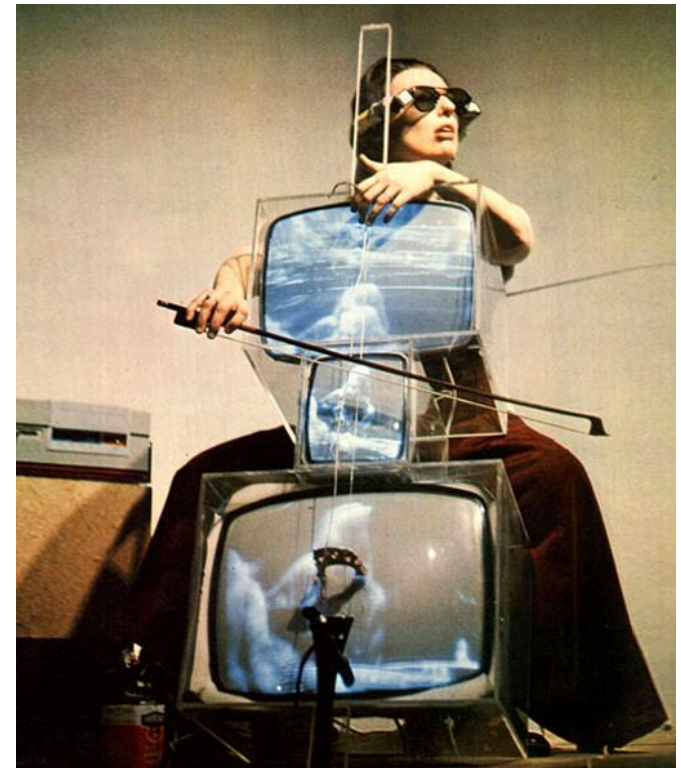
For independence to lead to better policy outcomes, a complex causal chain needs to operate, leading from statutory provisions granting independence to **behavioral patterns** demonstrating independence, to **policy decisions**, and, ultimately, to policy outcomes.

(Hanretty and Koop 2012)

De facto independence

INDIREG

- Formal independence alone cannot explain the variation of de facto independence
- Defining features:
 - the **implementation** of normative rules on formal independence
 - the delegation of **relevant powers** as well as **organizational autonomy**
 - the **absence of undue external influence** on the regulator
- To some extent it's an acquired property that needs time to build



How to measure de facto independence



- Qualitative social science research methods
 - Expert surveys and interviews
 - Peer review (other regulators/ regulatees/ academics)
 - Ex post impact assessments
 - Econometric analysis of goal conflicts
 - Media content analysis (proxy)

- Problems
 - How to come to terms with **informal means** of influence?
 - What are objective benchmarks of **regulatory capture**?
 - How to account for **voluntary compliance** with political preferences?

How to measure de facto independence

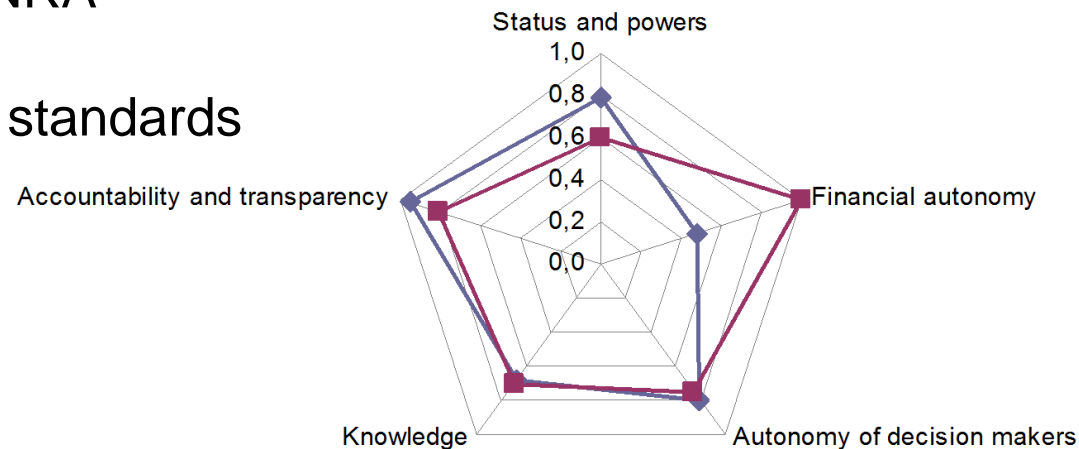


■ Indicators of de facto independence

- Turnover of members of the decision making body
- Post-electoral vulnerabilities
- Appointment politicization
- Revolving door appointments
- Age of the regulator
- Substantial delegated powers
- Reversed decision of the NRA
- Impact on the market
- Respect for accountability standards

■ Composite index

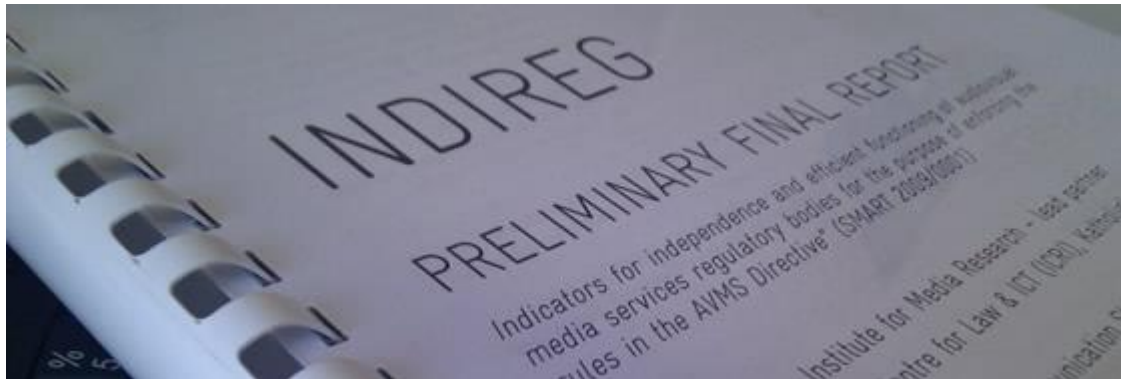
- INDIREG Ranking Tool



How to measure de facto independence

INDIREG

- Mixed method approach:
 - Combining indicators with interpretative analyses that is informed by empirical research (qualitative)



The Accountability Puzzle



- Absolute independence bears the risk that the regulator strays from its mandate, acts unpredictable or becomes grossly inefficient
- Accountability and transparency mechanisms serve as safeguards here
- Empirical links between formal independence, accountability and perceived quality: All three positively related to each other

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)

The Accountability Puzzle



- INDIREG multi-stakeholder survey (=93)
- Significant correlations between transparency/ accountability and impartial regulation
 - **Transparency** of the regulatory body (-/+)
 - **Accessibility** of decisions of the regulatory body (+)
 - Announcement and conduct of **public consultation** in an inclusive fashion (+)
 - Awareness among the stakeholders of **strong compliance** (+/-)

The Accountability Puzzle



- INDIREG indicators

- 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

The Accountability Puzzle

INDIREG

Like beauty; accountability is in the eyes of the beholder

- Self-assessment only partially suitable
- But self-optimization of accountability practices
 - Best practices of public consultations, pro-active transparency, inclusiveness ...
 - End-to-end good governance practices (policy cycle)

