



Audio-Visual Media: What Regulation For a New Landscape? 2. Institutions

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*Introduction by
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INDIREG

mediadem



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THE
INDEPENDENCE
OF THE
MEDIA
AND ITS
REGULATORY
AGENCIES

SHEDDING NEW LIGHT ON FORMAL AND ACTUAL INDEPENDENCE
AGAINST THE NATIONAL CONTEXT

“Rise of the regulatory state in Europe” (M. Thatcher, 1994)

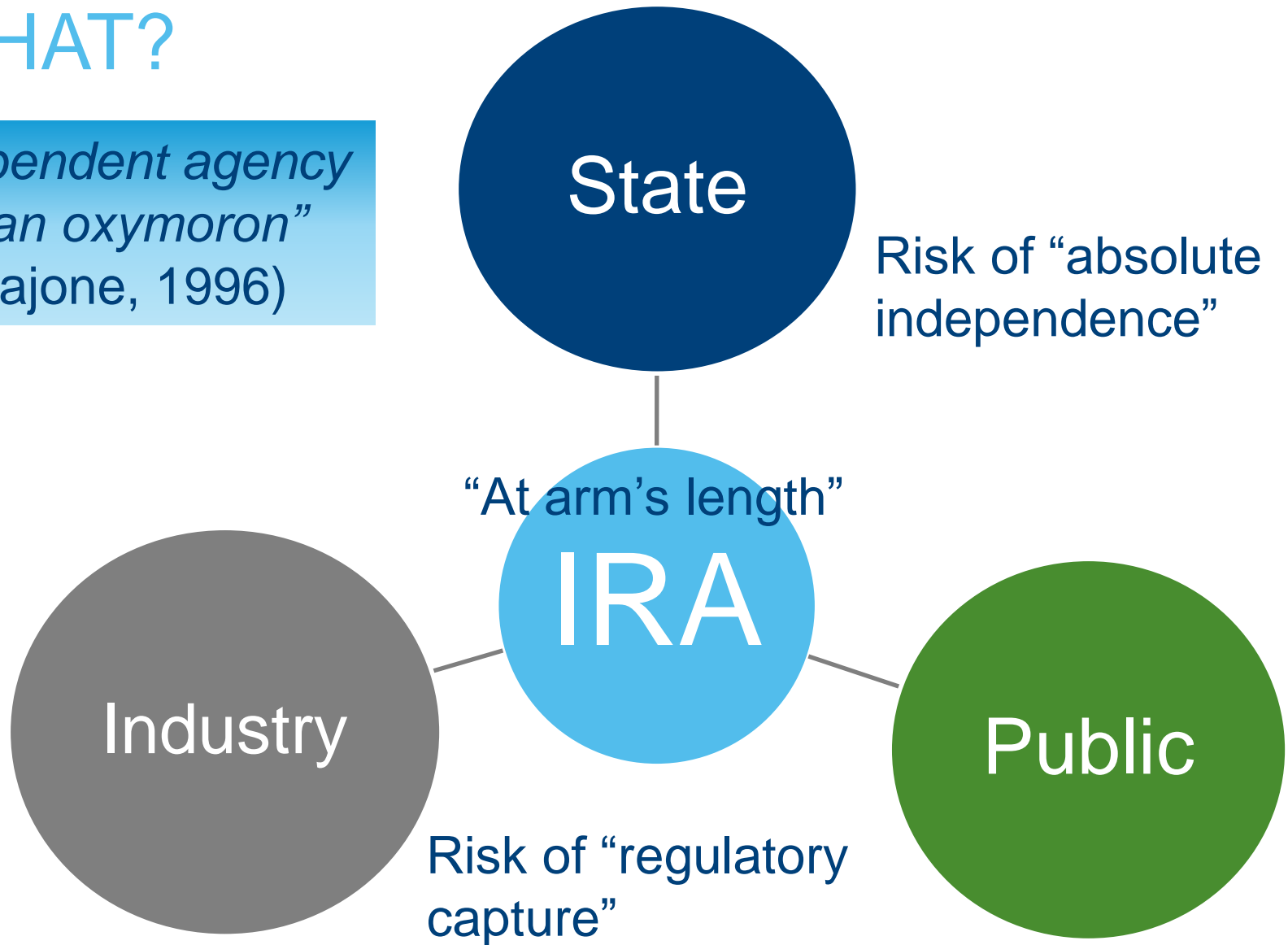
- Shift from positive (or welfare) state to regulatory state
 - Privatisation
 - Europeanisation of policy making
 - Indirect ‘third party’ government; emergence of “independent regulatory authorities”
 - Data protection
 - Energy
 - Rail
 - Telecommunications
 - Banking
 - ...
 - And media!

“WHY?” Rationale for IRA?

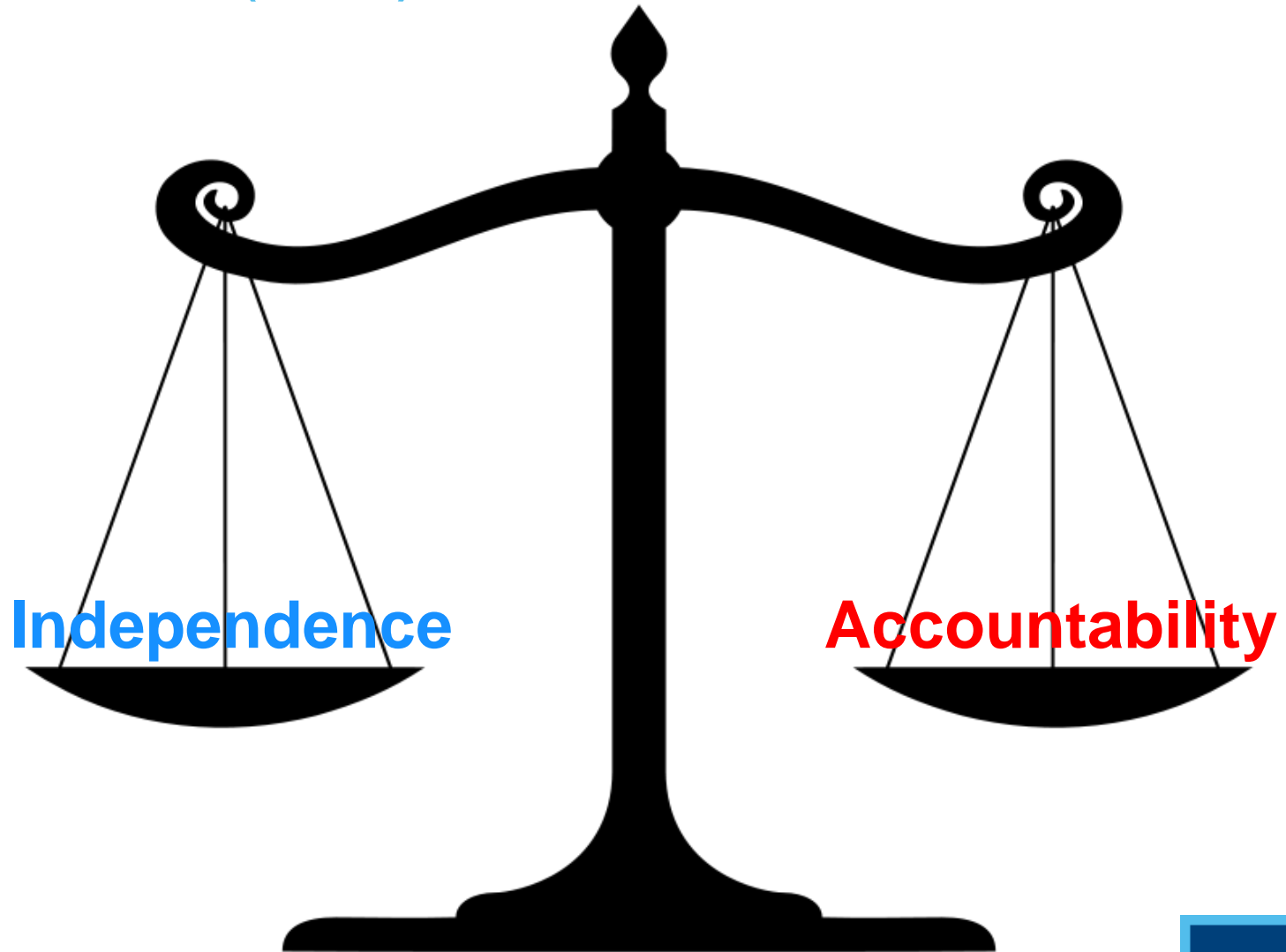
- Assumption: IRA will lead to better and more effective regulation.
- Working definition INDIREG study: *“A regulator is independent if it has within the governance structure a position that ensures that the regulator performs the decision-making process meeting the normative requirements for which the independence of the regulator is called for.”*
 - Media policy objectives:
 - Market regulation
 - Guarantee of human rights

WHAT?

Independent agency
is “an oxymoron”
(Majone, 1996)



WHAT? (ctd.)



HOW? Legal v. *de facto* requirements

- Importance of the distinction (“culture of independence”)
- Elements of formal independence (INDIREG classification):
 - Status and regulatory powers
 - Financial autonomy
 - Autonomy of decision makers (nomination, appointment, tenure, protection against dismissal)
 - Knowledge
 - Accountability and transparency

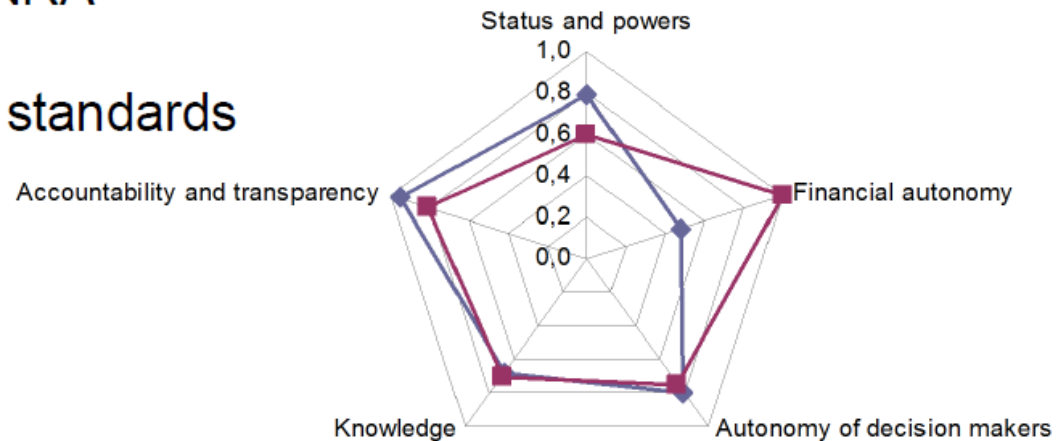
HOW? Legal v. *de facto* requirements (ctd.)

■ 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



WHO?

- Role for EU?
- Currently: Art. 30 AVMS Directive (+ recital 94)

Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4, ***in particular through their competent independent regulatory bodies.***

- To be read in conjunction with:
 - Art. 10 ECHR
 - Art. 288, para.3 TFEU
 - Council of Europe Recommendation 2000(23) and Declaration 26 March 2008

Thank you for your attention!

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<http://www.law.kuleuven.be/icri/> – <http://www.iminds.be>

EU INDIREG Study available from:

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

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<http://www.law.kuleuven.be/icri/masterict/>

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