

## Presentation of the Preliminary Final Report

Public Workshop, Jan 31st 2011

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**HANS-BREDOW-INSTITUT**

for Media Research at the University of Hamburg



## Welcome to Public Workshop of the INDIREG study

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Opening of the meeting by **Mr. Jean-Eric de Cockborne**,  
Head of Unit, Audiovisual and Media Policies –  
DG Information Society and Media

## II. Framework and status quo

1. **Keynote: Independence and regulatory agencies in Europe**
2. **Methodology and Theoretical Framework: Developing a working definition of independence**
3. **Status quo: Analysis of institutional, regulatory and legal frameworks of AVMS regulators in 43 countries**
4. ***De facto* independence: Analysis of practical implementation and effectiveness**
5. **Discussion of sec. II**

- Lunch Break -

## **III. Key characteristics of independent regulatory bodies**

- 1. Independence and the AVMS Directive: Sector-specific requirements of independence and efficient functioning**
- 2. Putting it all together: Essential characteristics and best practice characteristics**
- 3. Discussion of sec. III**

## **IV. Presentation of a ranking tool for the self-assessment of independence and effective functioning**

- 1. Presentation of the ranking tool: Possibilities, usage and limitations**
- 2. Discussion of sec. IV and final discussion**

# **Methodology and Theoretical Framework: Developing a working definition of independence**

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# Course of the project

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- **Duration: 12months - Feb 2010 until Feb 2011**
- **November 2010: Preliminary Final Report**
- **January 2011: Public Workshop**
- **10th Feb 2011: Deadline for comments**
- **March 2011: Delivery of Final Report**

# Course of the project 2

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- **WP1: Theoretical framework**  
(Literature study; elaboration of concepts of independence and effective functioning; Identification and Development of indicators for measuring independence and effective functioning)
- **WP 2: Analysis of institutional, regulatory and legal frameworks of media regulators**  
(Questionnaires for Country Correspondents and regulatory bodies; descriptive analysis; comparative analysis; development of a formal ranking tool)
- **WP 3: Analysis of practical implementation and effectiveness of institutional, regulatory and legal conditions concerning independent regulatory bodies**  
(Survey for Stakeholders; empirical results; in-depth studies; development of a de facto ranking tool)
- **WP 4: Identification of key characteristics of a functioning independent regulatory body**  
(Identification of essential characteristics, identification of best practice)

# Theoretical Background

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- **Independence is a relative term, the definition depends on the purpose of independence within the given context.**
- **Different studies operate with variations of theoretical frameworks and in consequence with different indicators to measure independence.**
- **Starting point: Independence is an arm's length relationship with market players, political actors and consumers. This equal balance from all involved parties has to be secured by various safeguards.  
(Thomas Lamanauskas)**

# Interrelation between Independence and Efficient Functioning

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- The study focuses on efficient functioning with specific regard to the fulfilment of the regulatory tasks of a regulator rather than efficiency in the sense of general administrative performance (e.g. resources spent in achieving the desired effects) that other studies focus on.
- Independence does not ensure efficient functioning regulators per se, but it is a pre-condition without which efficient functioning otherwise cannot be achieved.

# Accountability and Transparency Mechanisms

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- **Absolute independence bears the risk that the regulator strays from its mandate, acts unpredictable and even engages in corrupt practices, or becomes grossly inefficient.**
- **Accountability and transparency mechanisms serve as safeguards here.**
- **As they are both willingly implemented and have effects on both independence and efficient functioning the study is taking criteria of those types into account, too (as far as they constitute mechanisms that are simultaneously relevant for the used notion of independent regulatory bodies).**

# Working Definition of Independence

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“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.”

**Under this concept, efficient functioning of the regulator is what independence is to secure.**

# Mapping Governance Structures

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## “Dependencers”

- Power
- Money
- Knowledge

## “Autonomizers”

- Institutional status, powers and procedures
- Financial resources
- Organisational structures (e.g. human resources)

Autonomy & Transparency Mechanisms

# Formal and de facto Indicators

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- **An indicator is a feature that has an impact on independence and/or effective functioning. We further distinguish between formal indicators and de facto indicators.**
- **Formal indicators: A formal indicator is an indicator that refers to legal provisions, i.e. to what is laid down in law.**
- **De facto indicators: De facto indicators are all indicators that apply to the real life situation (in contrast to formal indicators referring to the legal framework); alternatives:**
  - Lack of compliance
  - Informal means of influencing or safeguarding the regulator's autonomy

# Categories of Indicators

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- **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 and salaries, 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)

# **Status quo: Analysis of institutional, regulatory and legal frameworks of AVMS regulators in 43 countries**

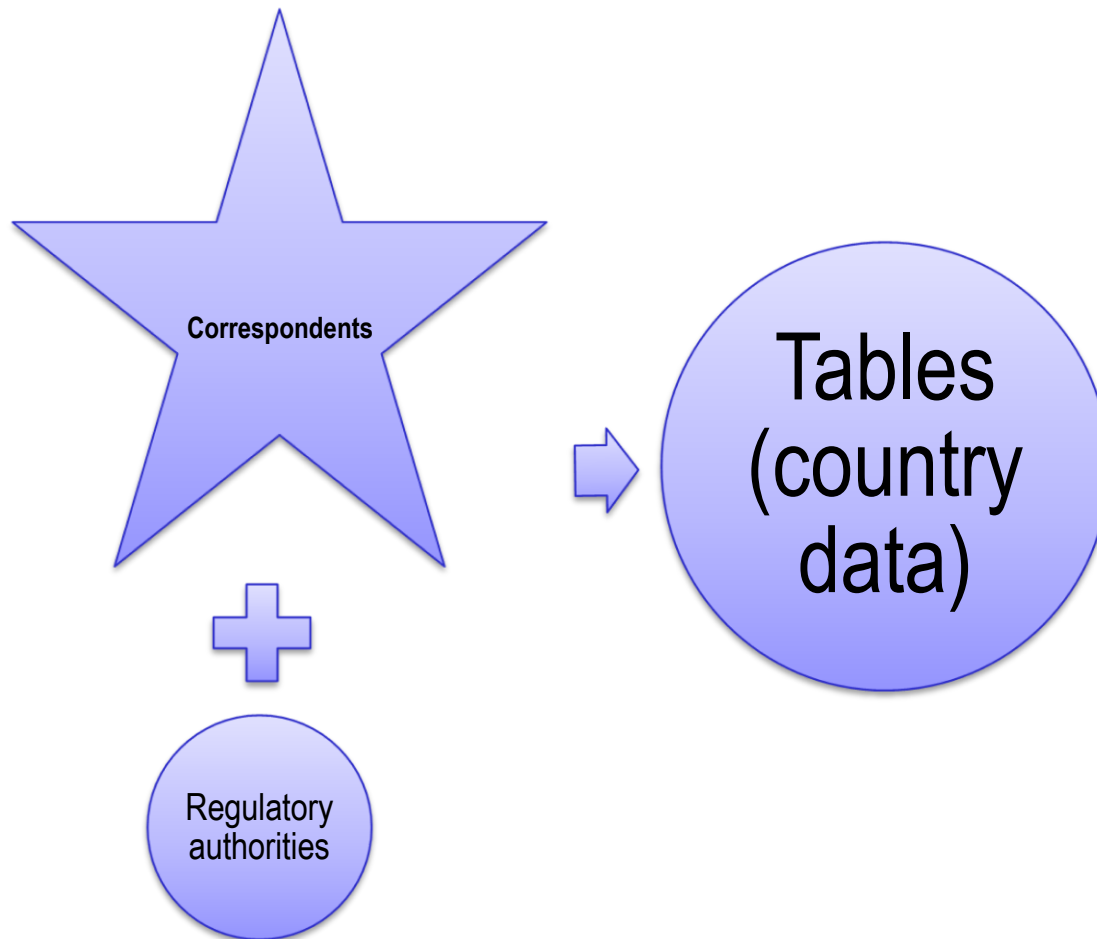
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Methodology

Main trends

# Methodology

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# Methodology - Tables

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- **41 tables/country**

## Areas:

- **General information**
  - Identification of regulatory authorities, laws, number of supervised services, areas covered, budget and staffing
- **Institutional framework governing regulatory bodies**
  - Governing legislation, legal status, independence as a value
- **Powers of the regulatory bodies**
  - Regulatory powers, supervision and monitoring powers, powers of sanction
  - Overturn and instructions

# Methodology - tables

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- **Internal organization and staffing**

- Board composition, appointment process, term of office & renewal, professional expertise, protection against conflicts of interest and dismissals

- **Financial resources**

- Sources of income and annual budget

- **Checks and balances**

- Accountability, reporting
- Auditing
- Appeal

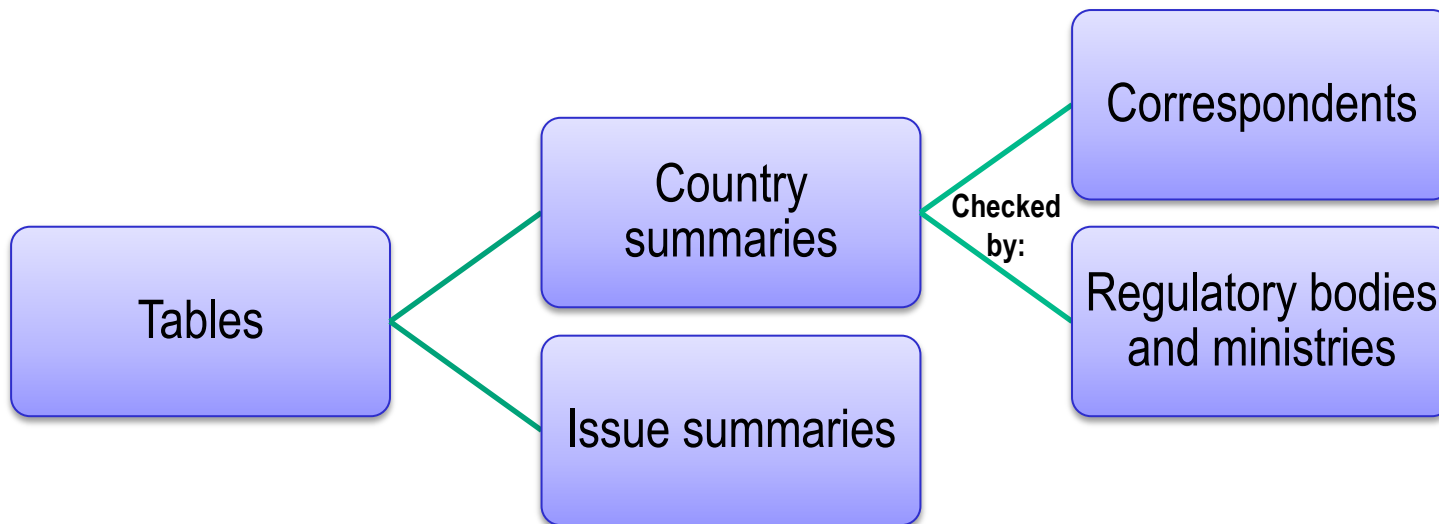
# Methodology - tables

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- **Procedural legitimacy**
  - External advice
  - Consultations
  - Publications of decisions
- **Cooperation with other regulatory bodies and international cooperation**
- **Cut off: May 2010**
- **Important changes included in country summaries and issue summaries**

# Methodology : country summaries and issue summaries



# Main trends

## Separate bodies - Independence as a value

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- **Overwhelming majority (35/39) of European countries have separate regulatory bodies, which are not under direct authority of the ministry**
- **Independence recognized as value (implicitly or explicitly) in all countries with separate regulatory authorities. In a few countries, independence is explicitly recognised in a higher source than an ordinary legislation, such as the constitution**
- **Strong contrast with the situation in the 4 selected third countries**

# Main trends

## Identification of regulatory bodies

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- **In some European countries, more than one regulatory authority involved in the supervision of application of AVMS rules (right of reply, hate speech, advertising, protection of minors)**
- **In a few European countries, there are regional media authorities**
- **In a large majority of European countries (31/39) , supervision of the application of AVMS rules is done by the same authority in relation to commercial and PSB televisions**
- **In all the member states that have transposed the AVMS directive, same authorities are in charge of on-demand media services**

# Main trends

## Areas covered

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- **In a vast majority of member states (23/27), regulatory bodies are not convergent, and only cover media related questions**
- **In the 4 third countries, the trend is more towards convergent regulatory bodies**

# Main trends

## Powers

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- **Regulatory bodies do not usually have general policy setting powers**
- **Where they do, the power only exists in limited areas**
- **Regulatory bodies have general policy implementing powers**
- **Regulatory bodies can impose decisions on market players**

# Main trends

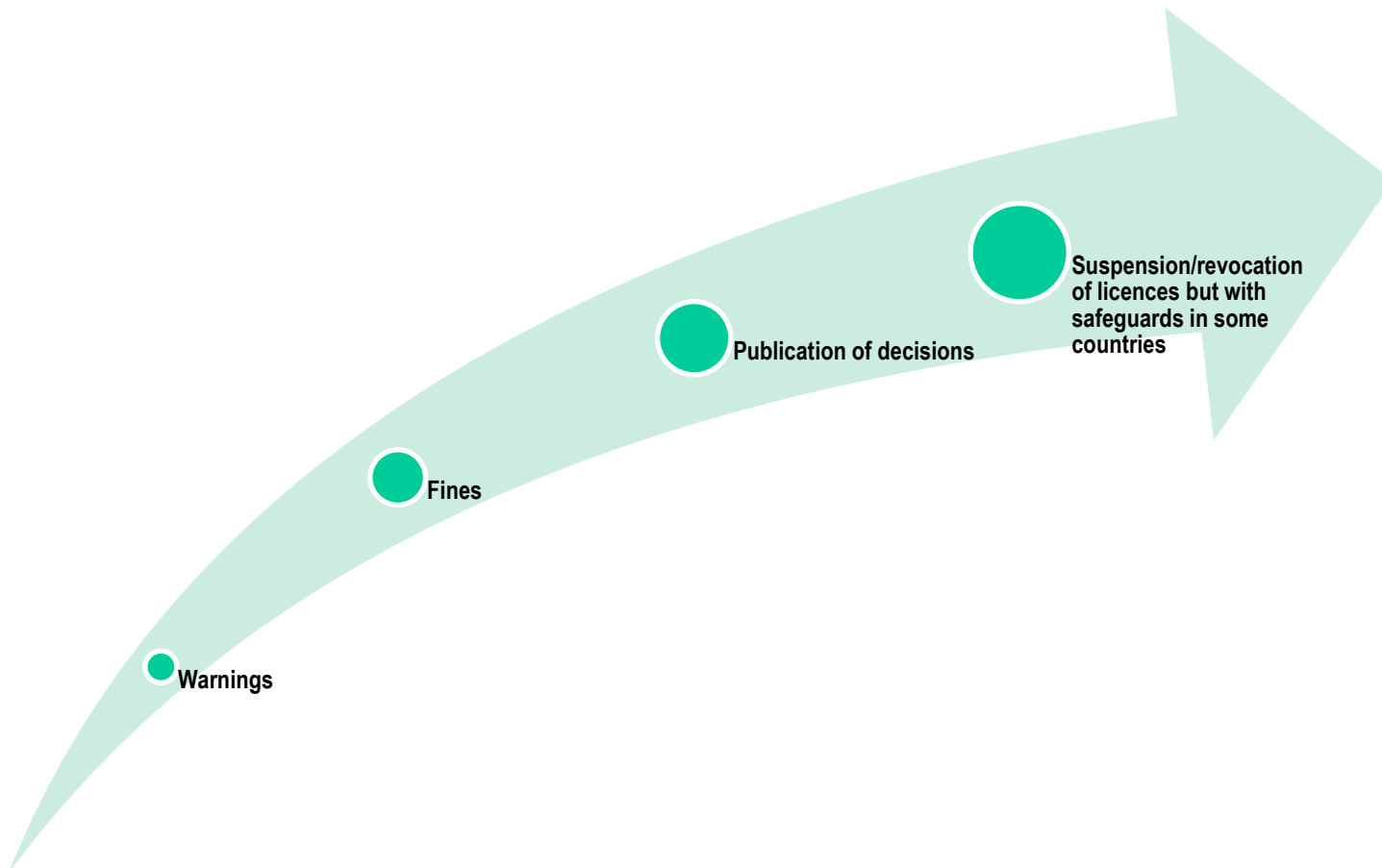
## Supervision and monitoring

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- **In almost all member states, regulatory bodies supervise media service providers according to a set strategy/methodology**
- **Most countries have information collection powers**

# Main trends Sanctions



# Main trends

## Highest decision making organ

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- **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

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- **Term of office between 2 and 7 years, not coinciding with election cycle**
- **Renewals mostly possible but limited to one or two instances**
- **Only a few countries have specific requirements on professional qualifications and expertise**
- **Large majority of countries have rules to guard against conflicts of interest at appointment stage and during the term of office but not after the term of office**
- **Large majority of countries have specific rules to limit the possibility to dismiss members of the highest decision making organ**

# Main trends

## Source of funding

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

# Main trends

## Overall budget

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- **2 groups of countries:**
  - budget not foreseen in law (most common model)
  - budget foreseen in law
  
- **Very large differences on budget**

# Main trends

## Instructions/overturn

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- **In nearly half of the countries, regulatory bodies can be instructed by other authorities than a court**
- **In a very few cases, instances (other than courts) can overturn the decisions of the regulatory bodies**

# Main trends

## Checks and balances

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- **In most cases, regulatory bodies are formally accountable towards the parliament**
  - In the third countries, regulators are under wider scrutiny as they are also accountable to the government as a whole
- **In most cases, there are rules to ensure external performance auditing (usually this takes place annually)**

# Main trends

## Checks and balances

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- **In most cases, the decisions of the authority can be appealed before court but in some cases, internal appeal procedures need to be followed**
- **In clear majority of countries the decisions stand pending the appeal**

# Main trends

## Transparency mechanisms

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- **Consultation practices vary widely**
- **But regulatory bodies generally obliged to publish proposed decisions and secondary regulation for public consultation before adoption**
- **Average number:1-2/year**
- **In 17 member states, authorities are obliged to publish decisions and motivations**
- **In most countries, no obligation to publish impact assessments**

# **Analysis of practical implementation and effectiveness of institutional, regulatory and legal conditions regarding regulatory bodies**

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Stakeholder survey

In-depth country analysis

# Stakeholder Survey

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- **Aim: to receive a multi-perspective assessment on de facto independence from stakeholders**
  - Ambiguous significance for independence
  - Assessed differently from different perspectives/ highly subjective
- **Approach: Stakeholder survey to determine**
  - (a) the significance of the identified de facto indicators and
  - (b) their influence regarding impartiality.

# Stakeholder Survey

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- **Methodology:**

- Identification of de facto criteria for the stakeholder survey regarding practical implementation and effective functioning
- Stakeholder survey questions were developed for each of the introduced categories:

1. Status and Powers

2. Autonomy of Decisions Makers

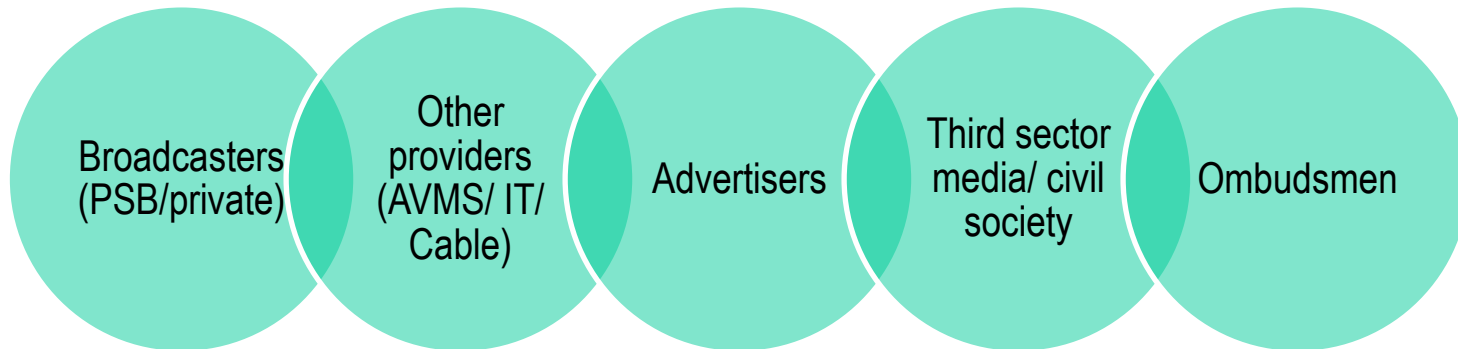
3. Financial Autonomy

4. Knowledge

5. Transparency & Accountability mechanisms

# Stakeholder Survey

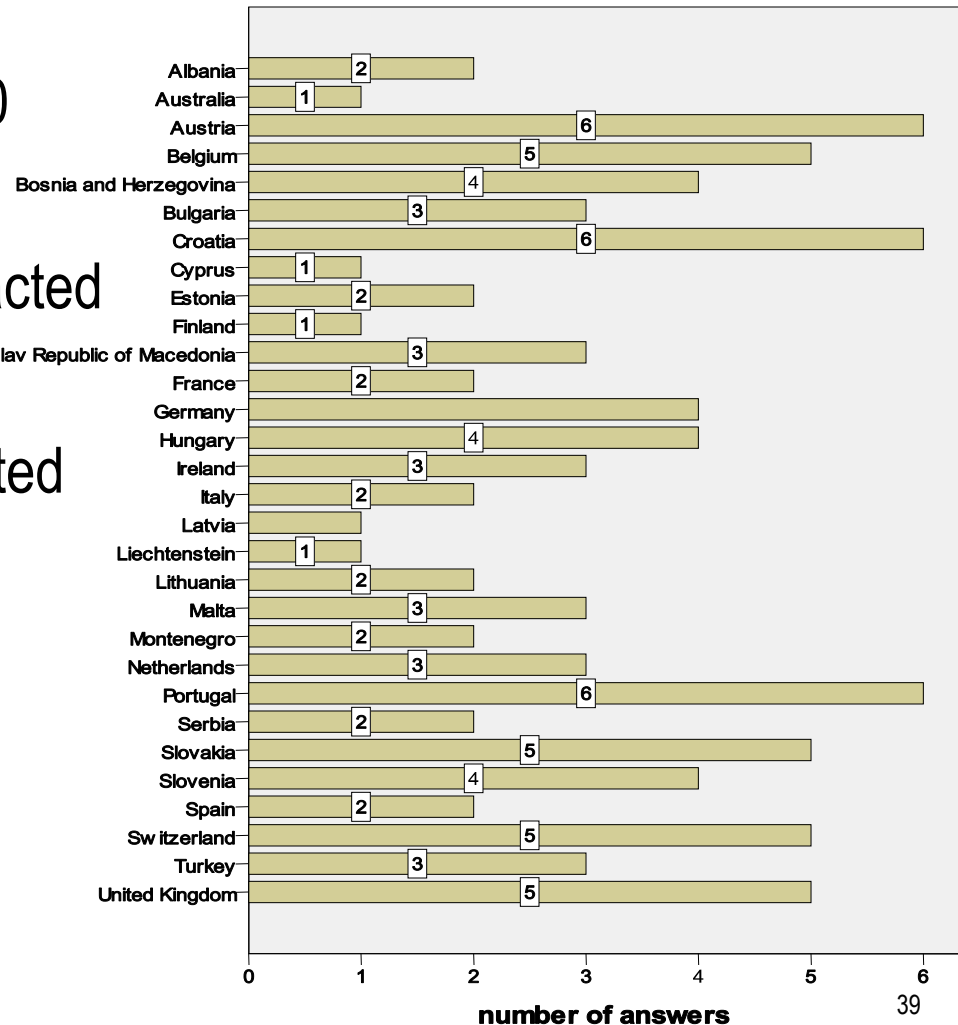
- **Relevant stakeholders in all 43 countries have been identified by the country correspondent**



- **Stakeholders have been asked to complete online questionnaire**
- **Closed online survey, access via individual token to prevent misuse by uninvited participants as well as multiple voting**

# Stakeholder Survey

- The online survey was open for contributions from 20 July until 10 September 2010
- 979 stakeholders had been contacted
- 20.65% logged on to the online questionnaire and 9,51% completed the questionnaire.
- 93 answers from stakeholders representing 30 countries and 38 authorities



# Stakeholder Survey

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- **Limitations of the stakeholder survey outcomes**
  - Number of answers per regulatory body (between 1 – 6)
  - Ratio of stakeholders per regulatory body
- **Implications on methodology**
  - Data not representative to carry out a distinct approach with regard to stakeholder perspectives on certain issues and concerning certain regulatory bodies
  - Different approach chosen: Survey data was used as one single set and was analysed to detect correlations between different indicators within different set-ups.

# Stakeholder Survey

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- **Significant correlations with impartial regulation**

**For example:**

- **The regulator is perceived to not deliver impartial regulation in cases of**
    - .... changes in law remove the head of the regulatory body*
    - .... early resignation of the head of the regulatory body*
- **Thus, via correlations we could verify the significance and influence of certain indicators regarding the delivery of impartial regulation**

# Stakeholder Survey



- **Significant correlations with impartial regulation (Hypotheses)**

- Changes in law that remove the head of the regulatory body (-)
- Early resignation of the head of the regulatory body (-)
- Enforcement of legal provisions with significant stringency (+)
- Transparency of the regulatory body (-/+)
- Accessibility of decisions of the regulatory body (+)
- Adequacy of the qualification and expertise of the staff (+/-)
- Working for the regulator as an attractive career step (+)
- Decisions were perceived as being made by the highest decision making organ (+/-)
- Announcement and conduct of public consultation in an inclusive fashion (+)
- Awareness among the stakeholders of strong compliance (+/-)

# In-depth country analysis

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- **Aim: to test the outcome and assumptions derived earlier; to validate and improve interim results**
  - **Not measuring** the level of **independence** and efficient functioning of the regulatory bodies
  - Explore possible relationships between formal and de facto independence
  - Identify significance of broader national contexts and cultures
- **Eight in-depth country reports**
  - Representativeness, different regulatory practices and the national pathways/chronological developments (Estonia, Hungary, Italy, Netherlands, Slovenia, UK, Macedonia, Bosnia & Herzegovina)

# In-depth country analysis: Methodology

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- **Application of draft ranking tool and key characteristics**
- **Drafting of hypotheses by study team and country correspondent regarding special outcomes for formal/ *de facto* independence, positive or negative**
- **Identification of 3-4 experts by country correspondents (media experts with publications in the AVMS field, preferably academic background)**
- **Semi-standardised phone interviews with experts about the hypotheses**
- **Analysis of the validity and practicability of the interim ranking tool and key characteristics**

# In-depth country analysis: Outcome

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- **Adaptation and refinement of self-assessment tools**
- **De facto independence of a regulator depends on many external factors which vary considerably from country to country**
- **Assessing de facto independence of a regulatory body may reflect the influence of such external factors but may not be capable of internalizing them fully**
- **Thus, the ranking tool and the essential and best practice characteristics have to be applied and interpreted in the light of the country-specific circumstances; strong argument for self-assessment**

## Discussion of sec. II

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**Lunch Break (13.00 to 14.30)**

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# **Independence and the AVMS Directive: Sector-specific requirements of independence and efficient functioning**

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# Sector-specific Requirements of Independence and Efficient Functioning

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- **Objectives:**

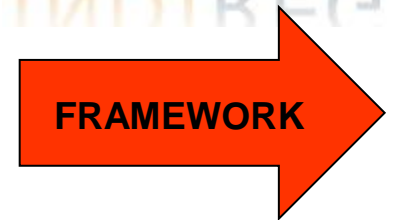
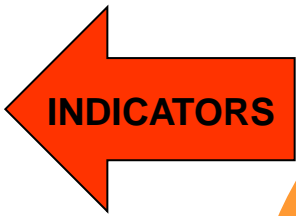
1. Develop legal framework for AVMS independence, by analysing existing, legally binding requirements in relation to independence and efficient functioning
2. *Developing indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in AVMS*

- **Criteria for sectors covered:**

- Sectors closely related to study objective
- Sectors with similar policy objectives (e.g. competition, human rights, ...)

# Sector-specific Requirements of Independence and Efficient Functioning

INDIREG



**CoE - BC**

**EU  
AVMS**

**EU  
e-communications**

**EU  
PSB & state aid**

***EU  
data protection  
rail transport  
energy***

CAVEAT:

- General EU law
- ECHR

# Art. 30 AVMS

## (Cooperation between Regulatory Bodies of the Member States)



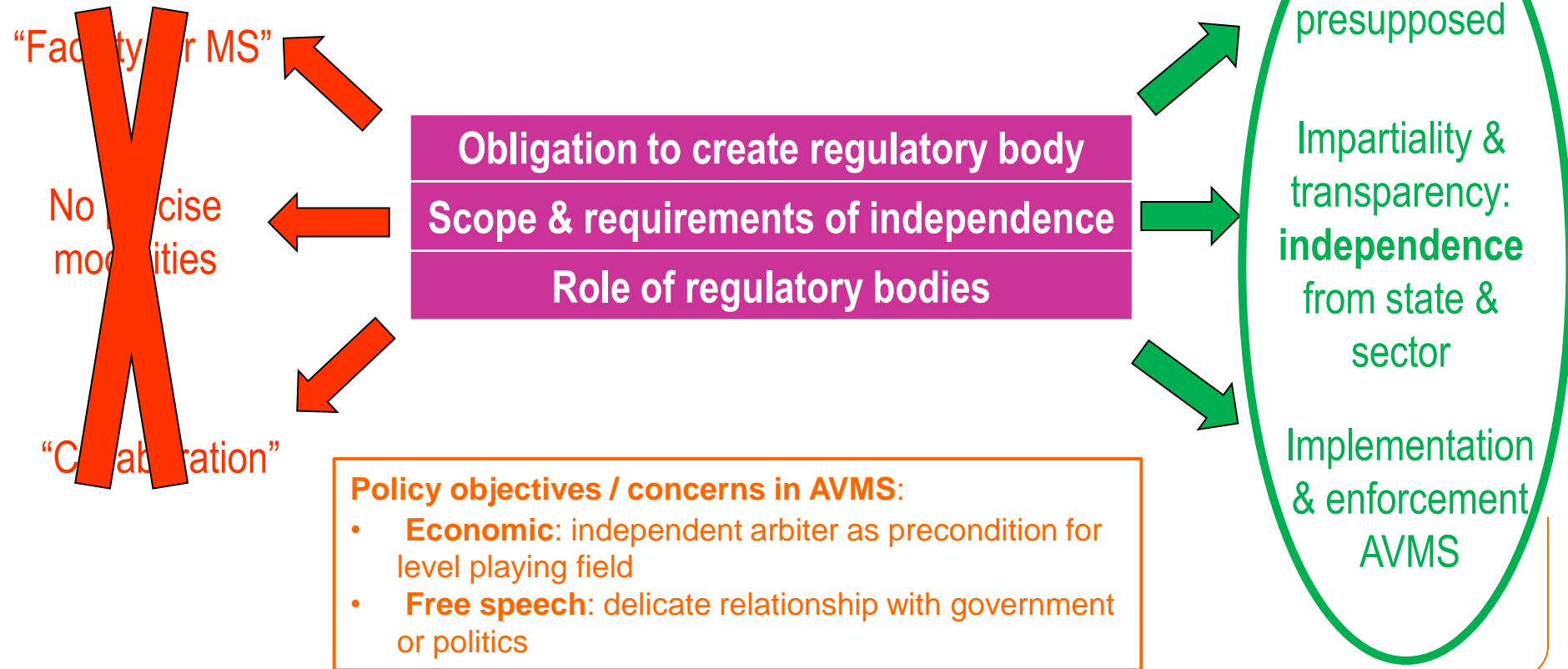
*“Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of the provisions of this Directive, in particular Articles 2, 3 and 4 hereof, in particular through their competent independent regulatory bodies.”*

*(94) In accordance with the duties imposed on Member States by the Treaty on the Functioning of the European Union, they are responsible for the effective implementation of this Directive. They are free to choose the appropriate instruments according to their legal traditions and established structures, and, in particular, the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently. More specifically, the instruments chosen by Member States should contribute to the promotion of media pluralism.*

*(95) Close cooperation between competent regulatory bodies of the Member States and the Commission is necessary to ensure the correct application of this Directive. Similarly close cooperation between Member States and between their regulatory bodies is particularly important with regard to the impact which broadcasters established in one Member State might have on another Member State. Where licensing procedures are provided for in national law and if more than one Member State is concerned, it is desirable that contacts between the respective bodies take place before such licences are granted. This cooperation should cover all fields coordinated by this Directive.*

# AVMS Requirements of Independence and Efficient Functioning

- Adoption process – compromise
- Relevant “dimensions”:



# AVMS Requirements of Independence and Efficient Functioning



- Academic literature:
  - *“Regulatory bodies, where they exist, have to be independent from state interference as well as from the industry”*
  - Possible instruments: legal framework, appointment, resources, transparency,...
- Possible interpretations of art. 30 AVMS:
  1. If an independent regulatory body exists, Member States have to choose among possible options the independent regulatory body to fulfill the task mentioned in art. 30. If there is no such body or the body in place does not meet specific requirements of independence, Member States are obliged to create it.
  2. The notion of independence is only declaratory and has no meaning as regards the obligations the member states have to fulfill.
  3. **Member States have to choose among possible options the independent regulatory body to fulfill the task mentioned in art. 30 if there is such a body, but if there is no body or the body in place does not meet specific requirements of independence, there is no obligation to create it.**

# Council of Europe: broadcasting



- Recommendation (2000)23 on the independence and functions of regulatory authorities for the broadcasting sector
    - General legislative framework
    - Appointment, composition and functioning
    - Financial independence
    - Powers and competence
    - Accountability
  - Declaration 2008 on the independence and functions of regulatory authorities for the broadcasting sector
    - “Culture of independence”
    - Transparency, accountability, clear separation of powers and due respect for legal framework
  - *Recommendation (96)10 on the Guarantee of the Independence of PBS*
- Applied by ECHR in:  
Manole and others v Moldova!

# E-communications



- Functional definition of NRA: alternative approach?
- Institutional framework of e-communications NRAs as *best practice*?
  1. Independence:
    - Separation of regulatory and ownership concerns since early liberalisation
    - Art. 3 framework dir. (2002): 1° legally distinct and functionally independent; 2° “structural separation”
    - Better regulation dir. (2009)
      - NRAs obliged to exercise their powers impartially, transparently and in a timely manner
      - Adequate financial and human resources
      - Position of head of NRA reinforced (cf. arbitrary dismissal)
      - Prohibition to seek or take any instruction in relation to exercise of their tasks... *notwithstanding supervision in accordance with national constitutional law*
    - Important cases
      - C-82/07: Comisión del Mercado de las Telecomunicaciones v Administración del Estado
      - C-424/07: European Commission v Germany (“regulatory holidays”)
      - C-389/08: Base and others (universal service)

# E-communications

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## 2. Broader institutional framework

- Transparency (art. 3 FD)
- Regulatory objectives and principles (art. 8 FD)
- Consultation and collaboration procedures (art. 6 & 7 FD)
- Appeal (art. 4 FD)
- European harmonisation: BEREC

# Public Service Broadcasting and State Aid

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- Art. 106 TFEU
- Commission Communication 2009: “effective supervision”:
  - “53. [...] It is therefore desirable that an appropriate authority or appointed body monitors its application in a transparent and effective manner. The need for such an appropriate authority or body in charge of supervision is apparent in the case of quality standards imposed on the entrusted operator. [...]”
  - 54. In line with the Amsterdam Protocol, it is within the competence of the Member State to choose the mechanism to ensure effective supervision of the fulfilment of the public service obligations, therefore enabling the Commission to carry out its tasks under Article 86(2).
  - Such supervision would only seem effective if carried out by a body effectively **independent from the management** of the public service broadcaster, which has the **powers and the necessary capacity and resources** to carry out supervision regularly, and which leads to the imposition of **appropriate remedies** insofar it is necessary to ensure respect of the public service obligations.”

# Other sectors

- Data Protection:
  - *Art. 28: “Each Member State shall provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to this Directive.  
These authorities shall act with **complete independence** in exercising the functions entrusted to them”*
  - *Court of Justice C-518/07 Commission v Germany*
- *Energy*
- *Rail Transport*

# Article 10 ECHR: freedom of speech

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• **Balancing the passive and active role of States:** impartiality: neither economic or political groups nor state can have a dominant position over audiovisual media

- K.U. vs. Finland (art. 8): active obligation of state
- Manole vs. Moldova: application of Recommendation (2000)23
- *Tüzel v. Turkey*
- *Glas Nadezhda EOOD and Elenkov v. Bulgaria:*
- Art. 10 juncto other articles (e.g. art. 6 (fair trial) & art. 13 (effective remedy))

## Article 288 TFEU para. 3

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- MSs obliged to choose the forms and methods which are effective to achieve the directive's aims; but:
  - refers to the normative structure of how to transpose the directives' aims into national law, rather than to organisational arrangements of implementation and supervision
  - importance of national constitutional law
- Art. 288 para. 3 TFEU in itself as legal basis for IRA: Only when this organisational model would be considered necessary in order to achieve the objectives of that directive
- Or: **“Effective supervision of the provisions of national law transposing the AVMS directive” is not met if the regulatory framework put in place is structurally not capable of implementing the aims of the directive in an impartial manner”**

# Sector-specific Requirements of Independence and Efficient Functioning

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## General observation:

Independence of regulators as complex, even contradictory, concept (Majone): importance of sector specific approach



Common objectives of independence: impartiality & transparency of *decisions*

# Art. 30 AVMS: Requirements of Independence and Efficient Functioning

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1. Presupposes existence of independent regulatory bodies; does not contain a formal obligation for the Member States to create an independent regulatory body if one does not already exist
2. In this respect, “independence” specifically in art. 30 is rather a principle and underlying assumption than a legal instruction to the Member-States
3. Economic (market regulation) concerns and protection of human rights require independence from state interference and market players (cf. theoretical research)
4. Explicitly requires the Member States to have their independent regulatory bodies play a role in collaborating with each other and with the European Commission

# Indirect Requirements of Independence and Efficient Functioning

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5. **CoE – broadcasting:** many relevant criteria for independence
6. **E-communications:**
  - Growing importance of independence (cf. directives 2009, CoJ)
  - Broader institutional framework (appeal, consultation, collaboration, BEREC, ...)
7. **Public service broadcasting supervision**
8. **Other sectors: Data Protection:** “complete independence”
9. **Freedom of speech** (art. 10 ECHR)
10. **Obligation to implement directives** (art. 288 TFEU)

# Sector-specific Requirements of Independence and Efficient Functioning of AVMS regulatory bodies

- Basic requirement of independence could find a broader legal basis in article 10 ECHR and article 288 para. 3 TFEU, especially when read in connection with art. 30 and the objectives of AVMS Directive
- Furthermore, article 30 AVMS, interpreted in the light of recital 94, highlights the long-term policy objective of creating incentives for Member States to establish independent regulatory bodies to make use of the advantages of those types of regulators, as described in the theoretical part of the study.
- Member States obliged to put in place a regulatory framework that is structurally capable of implementing the aims of the directive in an impartial manner: effective against influences from government or other political actors, as well as from the media sector. To ensure this, a minimum requirement of independence (“essential characteristics”) is needed.

**SHORT: CLEAR TREND TOWARDS MORE INDEPENDENCE AND MORE POWERS FOR REGULATORY AUTHORITIES**



# **Putting it all together: Essential characteristics and best practice characteristics**

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# Basis for identification of key characteristics

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- **Literature analysis (WP 1)**
- **Analysis of institutional, regulatory and legal frameworks (Country Tables and Country Reports, WP 2)**
- **Analysis of practical implementation and effectiveness (Stakeholder Survey, In-Depth-Analysis, WP 3)**
- **AVMS-specific requirements of independence and efficient functioning**

# Status and Powers

## Essential characteristics

- Overruling/instructing by anyone else other than a court only in limited, exceptional and case-specific decisions
- Delegation of power by law, especially giving monitoring and enforcement powers to the regulators own disposal
- Decision powers that bind regulatees (as against recommendations)
- Adequate sanction powers

## Best practices

- No overruling/instructing by anyone else other than a court (except general instructions laid down in statutory rules)
- Monitoring according to a set strategy/methodology or efficient complaints handling procedures
- Separate legal entity/functional separation
- Power to implement broader policies
- Differentiated enforcing instruments; „sanctioning policy“
- Legal links and cooperation duties in frameworks with more than one regulator
- Explicit acknowledgement of independence

# Financial Autonomy



## Essential characteristics

- Sufficient financial resources
- (Government only is deciding on budget without any safeguards; case-by-case examination)

## Best practices

- Objective and transparent budget allocation procedure
- Regulatory body has significant part in budget setting procedure
- Autonomy in internally allocating the set budget
- Mixed funding

# Autonomy of Decision Makers



## Essential characteristics

- Structure of nomination and appointment procedures to prevent structural bias; respective tenures to prevent cementation of powers
- Rules against conflict of interests
- Dismissals only on limited reasons stated in law
- In case of individual instead of board: not being a representative bound to the interests of any other person or body

## Best practices

- Board preferable to individual
- Open nomination and appointment procedure without prevailing influence
- 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

# Knowledge



## Essential characteristics

- Sufficient human resources with adequate expertise, especially regarding
  - expertise of the board and
  - expertise gained from external advice

## Best practices

- Adequately qualified staff
- Professionals from all relevant sectors
- Board should have the opportunity to gain outside advice, with possibilities to rely on its own sources of information

# Accountability & Transparency Mechanisms



## Essential characteristics

- Minimum of transparency regarding the decision making (e.g. provide decisions incl. reasoning, publication of annual report)
- Possibility of judicial review

## Best practices

- Broader accountability measures
- Networking with all relevant actors and for interacting with the public
- Open consultations, conducted in an inclusive and transparent manner
- Reporting obligations to the public at large

# General Outlook

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- **Possible next steps for regulators**
- **Possible next steps for stakeholders**
- **Possible next steps for scientific consortial partners**

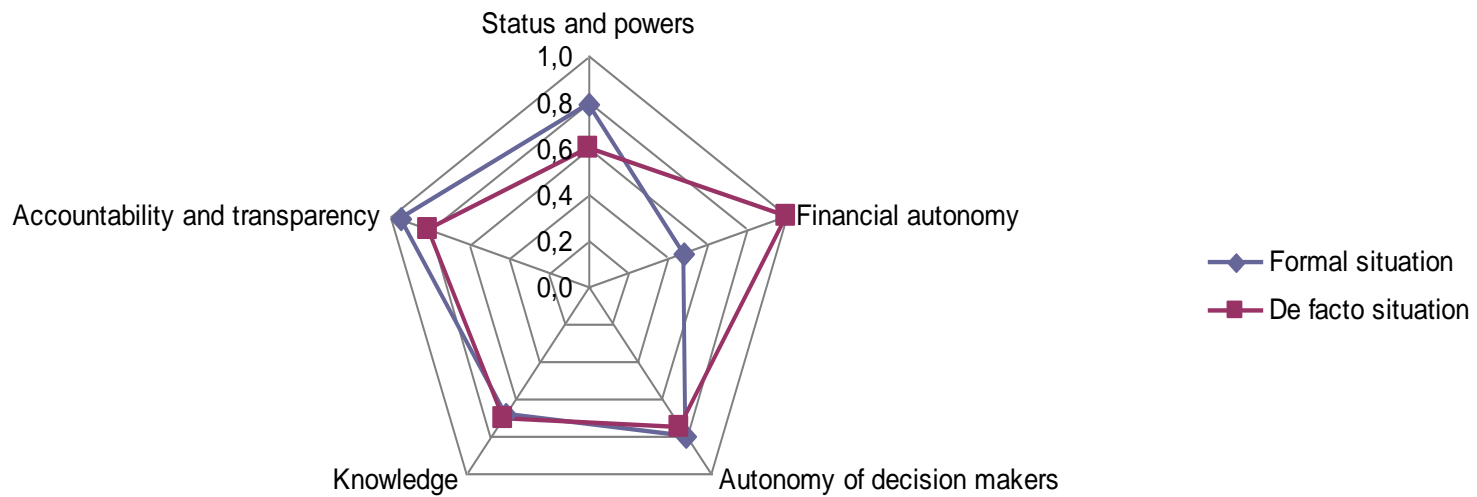
## Discussion of sec. III

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# **Presentation of the ranking tool: Possibilities, usage and limitations**

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# Ranking tool



## Ranking tool

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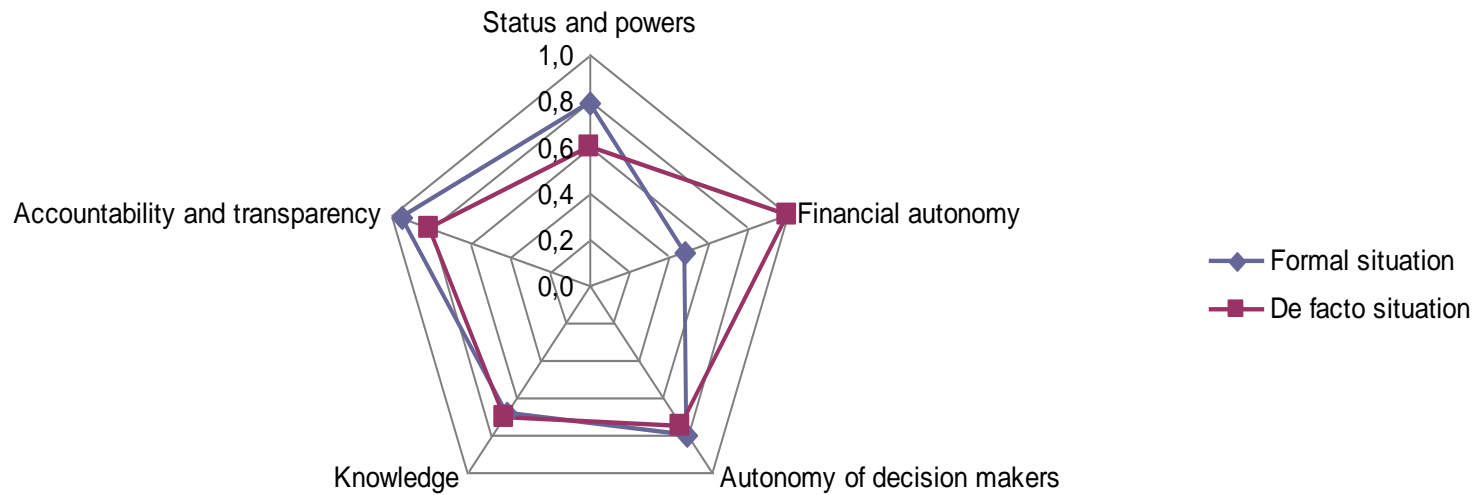


Online version available on

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

# Ranking tool

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



# Ranking tool Methodology

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- **Each dimension is measured against a set of indicators**
- **We only include those indicators, where a clear result can be generated in terms of potential influence**
- **We have not included indicators which are too subjective**
- **Each indicator receives a weighting (low, medium, high)**
- **Points are assigned to each indicator, which takes into account the weighting and the number of indicators in each of the dimensions**

# Ranking tool

## Methodology and limitations

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- 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!!!!**

## Discussion of sec. IV and final discussion

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