

bPaweł Stepka

## Formal Independence of European Electronic Media Market Regulators

Keywords: independent regulatory authority, broadcasting media, the European Union, the Council of Europe.

Abstract:

The electronic media regulatory authorities are a vital element of European countries' media sphere. Although their shape and scope of competence may significantly differ from country to country, the postulate on guaranteeing their independence from politics as well as the media they regulate is a universal one. The fact that these structures remain independent was frequently emphasized by European international organizations such as the European Union and the Council of Europe.

This article discusses the phenomenon of European electronic media market regulators' formal independence in its three aspects: political independence, independence of media subjects and organizational autonomy. Based on empirical data analysis distinguished were also those legal instruments fundamental in character to the preservation of formal independence of market regulators.

In most democratic countries the electronic media market is regulated by regulatory bodies. This is an interesting phenomenon due to its geographic scope and diversity. It should be noted that apart from European countries, the US<sup>1</sup> and Canada<sup>2</sup>, there are regulatory bodies in Argentina<sup>3</sup>, Australia<sup>4</sup>, Brazil<sup>5</sup> and New Zealand<sup>6</sup>.

Despite great differences in structure and competences between the market regulators, they are all characterized by autonomy. In case of European countries of interest here, the accomplishments of the Council of Europe and the EU should be particularly noted. Here mentioned should also be the European Committee's communiqué on rules and direction of common audiovisual policy in the digital era (COM (1999) 657 final)<sup>7</sup> and a draft of a new directive to replace the "Transfrontier Television Directive"<sup>8</sup>. The draft was proposed on December 13, 2005 by the European Committee (art. 23b) calling on Member States to ensure independence of regulatory bodies, objectivity and transparency of activity<sup>9</sup>. This is dictated by the premise of media policy to be based on the idea of support<sup>10</sup> where member states decide on their own policy regarding legal ramifications.

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<sup>1</sup> See Federal Communications Commission.

<sup>2</sup> See Canadian Radio-television and Telecommunications Commission.

<sup>3</sup> See Comité Federal de Radiodifusión.

<sup>4</sup> See Australia Broadcasting Authority.

<sup>5</sup> See Agência Nacional de Telecomunicações.

<sup>6</sup> See Broadcasting Standards Authority.

<sup>7</sup> See Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions Principles and guidelines for the Community's audiovisual policy in the digital age. COM(1999)657 final, 14.12.1999.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51999DC0657:EN:NOT>

<sup>8</sup> According to Council of Europe's decision the Project name is *Audiovisual Media Services Directive (AVMS)*. See [http://ec.europa.eu/comm/avpolicy/reg/tvwf/modernisation/proposal\\_2005/index\\_en.htm](http://ec.europa.eu/comm/avpolicy/reg/tvwf/modernisation/proposal_2005/index_en.htm)

<sup>9</sup> See Proposal for a Directive of the European Parliament and of the Council Amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities COM(2005) 646 final.

[http://ec.europa.eu/comm/avpolicy/docs/reg/modernisation/proposal\\_2005/com2005-646-final-en.pdf](http://ec.europa.eu/comm/avpolicy/docs/reg/modernisation/proposal_2005/com2005-646-final-en.pdf)

<sup>10</sup> The rule of support is defined by TWE art. which states "Community support encompasses activities which cannot be accomplished by Member States, due to their scope or results, and the better solution is to carry them out on the Community level".

See Treaty creating the European Community, consolidated text (including Niece Treaty changes), D U UE C 235, December 24, 2002.

The Council of Europe accomplishments in his area are more detailed, of which an example is Recommendation nr 23 (2000) approved by the Council of Ministers on regulatory bodies autonomy in the media sector, with an clarifying memorandum<sup>11</sup>. Although the document is not legally binding, it can be treated as a compilation of standards to be followed by independent regulatory bodies in the electronic media sector. It should be noted that the issue of autonomy was treated here with explicit detail and complexity.

The European organizations' activity in this area proves how imperative this issue is. This article will discuss the concept of independent regulatory bodies on the electronic media market and characterize the legal instruments used by various European countries. Based on empirical data analysis distinguished will also be those legal instruments fundamental in character to the preservation of formal independence of market regulators.

## Independent Market Regulator Concept

Before we study independent electronic media regulators, let us take a look at regulators in other industries such as the telecommunications, energy, finance or competition. Such regulatory bodies were initially characteristic of the US but the changes taking place in Europe in the 1980s and 1990s quickly brought the need to delegate power to different types of regulatory bodies<sup>12</sup>.

Despite the differences in the various industries, independent regulators are known as *non-majoritarian institutions* or NMIs as people managing them are not directly elected by voters or politicians<sup>13</sup>. In result, they are, on the one hand, separated from the world of politics but, on the other, are not entirely democratic which means distance between them and society. These institutions were created to economically and infrastructurally protect key sectors from political as well as private interests and pressures<sup>14</sup>.

These are two predominant reasons for the creation of regulatory authorities but there are also others. F. Gilardi pointed out nine key motives, including their expert and more elastic character, their stability and predictability being outside of direct political pressure, transparency and openness of functioning as well as lower costs of regulation creation<sup>15</sup>.

Concluding, such authorities are generally created in key but also sensitive sectors of the economy in order to prevent *market failure* on the one hand and *government failure* on the other<sup>16</sup>. There is the necessity of being independent of private as well as political interests so that long term government interests can be reached. This is how independent regulatory bodies fit into the concept of a *regulatory state*, as named by Giandomenico Majone, a famous political scientist<sup>17</sup>.

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<http://www1.ukie.gov.pl/WWW/dok.nsf/0/16076599767A8A61C1256E83004B4BED?Open&RestrictToCategory>

<sup>11</sup> See Recommendation No. R (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector and its Explanatory Memorandum.

[http://www.coe.int/t/e/human\\_rights/media/4\\_documentary\\_resources/CM/Rec\(2000\)023&ExpMem\\_en.asp#ToPOfPage](http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Rec(2000)023&ExpMem_en.asp#ToPOfPage)

<sup>12</sup> See M. Tatcher, The third force? Independent regulatory agencies and elected politicians in Europe, Working paper 13, January 2005, p. 2.

<sup>13</sup> See F. Gilardi, Evaluating Independent Regulators, (in:) OECD, Working Party on Regulatory Management and Reform. Designing Independent and Accountable Regulatory Authorities for High Quality Regulation. Proceedings of an Expert Meeting in London, United Kingdom. 10-11 January 2005, p. 101.

<sup>14</sup> See P. Jacobzone, Independent Regulatory Authorities in OECD countries: an overview, (in:) OECD, Working Party on Regulatory Management and Reform. Designing Independent and Accountable Regulatory Authorities for High Quality Regulation. Proceedings of an Expert Meeting in London, United Kingdom. 10-11 January 2005, p. 72.

<sup>15</sup> See F. Gilardi, Evaluating..., p. 101-102.

<sup>16</sup> See A.Larsen, L.H.Pedersen, E.M.Sørensen, Independent Regulatory Authorities in Europe – Credibility and Delegation, p.3.

<sup>17</sup> See M.in. G. Majone, "The Regulatory State and its Legitimacy Problems", (in:) West European Politics, 1999, nr 22(1), p. 1-24; G. Majone, "From the Positive to the Regulatory State – Causes and

### **Specific independence requirements for regulatory bodies in the media sector**

There are general requirements for regulatory authorities in the media sector focusing on strengthening their independence. According to the official interpretation of art.10 by the European Convention of Human Rights the media are to follow the freedom of speech regulation if they are to be free, independent and pluralist. This is a necessary factor for the existence of a democratic country. Therefore, media regulators are to oversee the creation and maintaining of free and independent media<sup>18</sup>. This would not be possible if their functioning was under the influence of political forces or certain market subjects. That is why the Ministers Committee of Council of Europe in its recommendations states:

*“a) the creation of independent regulatory authorities in the electronic media sector by Member States, if not done so already,  
b) use of regulation enabling regulatory bodies to carry out their mission domestically in an effective, independent and transparent way according to the guidelines included in the supplement,  
c) public administration, experts and public opinion are to become familiar with the guidelines in order to effectively respect the independence of electronic media regulators regarding any of their activities<sup>19”</sup>*

### **Real vs. Formal Independence**

There are, of course, differences between formal and real (practical) independence of regulatory bodies<sup>20</sup>. The first is based on legal regulation and instruments which guarantee a proper level of independence. Real independence is what actually happens in the real world, to what extent their activities are independent and decisions made objectively. Real independence is correlated to the level of legal backing but to a large extent is dependent on the political and legal culture of a given country. Often times the position of regulatory bodies is dependent on customs and traditions of that country. This is often the deciding factor which determines the authorities' actual independence. However, all the more so it is the legal norms which are the deciding factor on the level of autonomy. We should also keep in mind that the legal norms are established based on the level of political and legal culture.

It is the regulators' formal independence which this article will focus on as actual is rather difficult to measure. There are several ways of measuring regulators' formal independence such as ie. the correlation between changing the management (one or more people<sup>21</sup>) and political party changes (as a result of parliamentary elections)<sup>22</sup>. Taking into consideration the various differences in the functioning of political systems in different countries, it would be simpler to perform an analysis of regulators' independence from a formal aspect.

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Consequences from Changes in the Modes of Governance”, Journal of Public Policy, 1997, nr 17(2), p. 139-67.

<sup>18</sup> See E. Machet, Plenary session. The influence of Politics on Broadcasting, 15th EPRA Meeting, Brussels, 16-17 May 2002, p.1.

<sup>19</sup> See Recommendation No. R (2000) 23..., p.1 (own translation).

<sup>20</sup> See M.in. See P. Jacobzone, Designing Independent and Accountable Regulatory Authorities A Comparative Overview across OECD Countries, (in:) OECD, Working Party on Regulatory Management and Reform. Designing Independent and Accountable Regulatory Authorities for High Quality Regulation. Proceedings of an Expert Meeting in London, United Kingdom. 10-11 January 2005, p. 34.

<sup>21</sup> In most cases regulatory body work is coordinated by a board on average consisting of 3 (Dutch Commissariaat voor de Media) to 13 members (Czech Rada pro rozhlasové a televizní vysílání). In Germany, the Land regulatory bodies can consist of up to several dozen members. The exceptions are the Finnish FICORA and Swedish RTVV with only a director general. See EPRA, [www.epra.org](http://www.epra.org)

<sup>22</sup> See P. Jacobzone, Independent Regulatory..., p.96.

### Three Dimensions of Media Market Regulators

Research outlines two basic aspects of independence – from political and private interests. As mentioned above, regulators cannot be controlled neither by politicians nor by subjects which are under its regulation. Only then will the bodies be able to carry out their long term policy not influenced by others' interests. The third aspect, known as organizational autonomy, is directly tied to the above two. An organization possesses organizational autonomy when it has access to resources based on which their activity is dependent<sup>23</sup>. This means financial, personnel, and technical resources. Lack of such structures (own financing or administrative department) prevents independent activity and carrying out of assigned tasks. This aspect of independence was outlined by the European Committee in Memo/ 05/475 from December 13, 2005 which states, "Independent regulatory authorities (...) must have at their disposal an executive body independent of any other institutions"<sup>24</sup>.

Among the three dimensions of independence, political autonomy is of particular importance. There are several factors which determine it. The greatest threats are regarding the procedure of nominating executive board members (managing director) of the regulatory body, their independence, financial and regulatory autonomy as well as constitutional guarantees regarding political independence. Mentioned here should be Recommendation nr 23 (2000) and the Independence Index for IRAs outlined by F. Gilardi<sup>25</sup>.

The key issue regarding political independence is the transparent procedure of nominating members of regulatory bodies which would minimise politicians' influence of the appointment. According to the recommendation, regardless whether the regulatory authority is social in character (members representing various social groups) or expert (including various experts from the industry), the choice of representatives should be democratic and transparent. In both cases it is imperative that the make up of representatives is pluralist in character and not dominated by one political or worldview perspective<sup>26</sup>. There are legal instruments guaranteeing independence in this aspect. One is maximum transparency in this process. The requirements which the candidates must meet need to be clearly defined, the interviews carried out with them must be made public as well as the final reports and results with justifications.

While the above specifications are detailed and clear, there is also the key issue of who should decide who to nominate. In order to minimise political influences, organizations other than political should take part in this process. They can either propose their own candidates or the legal system can make political institutions consult their candidates with such organizations, as is the case in Great Britain where candidates nominated by ministers, according to the Nolan procedure, are monitored by the Office of the Commissioner for Public Appointments or OCPA. Thanks to the Independent Assessors institution, this independent of the government body can also be an advisor in the process<sup>27</sup>. Normally regulatory board members are nominated by political institutions (ie. the parliament, ministers or the president) which also make the final decisions. In this case it is imperative that several political institutions take part in the process so that it is more impartial. This is how it is done in France regarding the CSA, in Bulgaria with CEM, in Latvia with LRRTK and in Poland with KRRiT.

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<sup>23</sup> See A.Larsen, L.H.Pedersen, E.M.Sørensen, Independent Regulatory Authorities in Europe – Credibility and Delegation, p. 11.

<sup>24</sup> See European Commission, The Commission Proposal for a Modernisation of the Television without Frontiers Directive: Frequently Asked Questions, MEMO/05/475, Brussels, 13 December 2005, p. 10.

<sup>25</sup> See F. Gilardi, Policy Credibility and Delegation to Independent Regulatory Agencies: A Comparative Empirical Analysis, "Journal of European Public Policy", 9 (6), 2002, p. 873-893.

<sup>26</sup> See Recommendation No. R (2000) 23..., p.6.

<sup>27</sup> See Office of the Commissioner for Public Appointments, The Commissioner For Public Appointments Code Of Practice For Ministerial Appointments To Public Bodies, August 2005.

It is also imperative to delineate who can be nominated in order for the bodies to remain independent. Usually the domestic law states that if one is a member of a regulatory body he cannot hold other positions, such as be a member of parliament, a minister, a president, a prosecutor, a judge or a councillor. In some countries these people may not even belong to any political parties, ie. in Greece, Lithuania or Great Britain. If it is a multi member regulatory body, the head is chosen by its members and not any political institutions (in the Czech Republic, Bulgaria, Lithuania and Poland).

A careful procedure of nominations and selection is, however, not enough to guarantee political independence. Necessary here is also legal backing to ensure autonomy. In this context the length of their term in office is of importance and it should be longer than those of politicians nominating so that there are no corresponding changes. This is the case in the Czech Republic, Malta, Romania, Sweden and Great Britain. Another solution is rotation of members in order to minimise the influence of political changes on the bodies and in order to ensure continuity of their activities (ie. in Bulgaria, Greece, Latvia and Poland). Another practise to minimise political pressure is one time only term in office (in the Czech Republic, Bulgaria, Holland, Poland, Sweden and Great Britain). Moreover, it is illegal to dismiss members except in specifically delineated cases (ie. if one is holding more than one position) so that there are no changes of the broad corresponding to political ones<sup>28</sup>.

Regulatory bodies independence also means that their members are not to take any instructions from ie. political parties. This is illegal in European Union countries, just like it is illegal to change a decision made by a regulatory body, either by the legislative or the executive body.

The last sphere of possible political influence is financing. It should be noted that generally the budgets of regulatory bodies are financed by the State Treasury (the Czech Republic, Greece, Latvia, Malta, Poland). Determining its size by the Ministry can be a form of pressure on the regulator. A solution to this problem could be use of alternative financing sources such as private or a mix of the two in order to maximise independence from the state budget and politicians in charge (ie. British OFCOM, Italian AGCOM).

As mentioned above, among the threats to regulatory bodies' independence are also pressures from private interests. In this context there are three potential threats: financing, conflict of interests among members and conflict of interest in the administrative sector.

Regarding financing, it is the same case as mentioned above, the regulatory body should aim not to be dependent on those which it regulates. Therefore, it should not be financed solely by the state or by private companies. Conflict of interest among regulatory body members and private individuals is another threat to independence. To prevent this, it is illegal for members of regulatory boards to be employed in private companies in the media sector (in the Czech Republic, Great Britain, Lithuania, Latvia and Poland). In other countries it is prohibited to be employed anywhere else, no matter in what sector (in Bulgaria and Greece). Another solution is complete transparency regarding employment elsewhere. This is the case in Ireland where BCI members can be employed in the media sector but they are obliged to disclose any and all of their interests and connection with a given company, as regulated by law regarding public office holders<sup>29</sup>. Before any meeting, they have a responsibility to inform of any possible conflict of interest in which case they will be removed from discussion on that particular issue.

There are also resolutions which do not allow the acceptance of presents from representatives of media firms to ensure impartiality as is in Bulgaria, Greece, Holland, Sweden and Great Britain. Another interesting solution is regulation which does not allow members to be employed in the media sector immediately after serving their term in the regulatory body (*post-employment rules*). For example, in order to prevent a conflict of interests in the work of government officials (art. 9.4 and 10.7), Latvia's NRTP members may

<sup>28</sup> See Recommendation No. R (2000) 23..., p.7.

<sup>29</sup> See Ethics in Public Office Act, 1995; the Standards in Public Office Act, 2001.

not hold key positions in the public media for three years after membership, and for two years in the commercial media. Such regulation is also present in France, Greece, Poland, Hungary, Italy and Great Britain. This way minimised is the possibility of members making decisions in order to have gains from them later. In some countries there is also regulation regarding relatives of regulatory body members in order to prevent the family connections factor (in Bulgaria, Greece, Sweden and Poland).

The last area is regulators' independence from market subjects in the area between employees and the regulated industry. There could be a conflict of interests in this sphere as well. In many countries there are legal statutes, regulation regarding civil service or other internal regulation (in the Czech Republic, Holland, Sweden, Great Britain) regarding members being part of executive boards in media companies or receiving presents from subjects under regulation.

Organization autonomy of regulators means financial independence of its members, administrative competences and overall financial body independence. Remuneration (in the form of salary or irregular wages) from the budget of the regulatory authority as well as the possibility of returning to a position earlier held, in case of not being able to combine the two posts, are an important safety net in ensuring organizational autonomy. This way conditions are created which enable members to be strongly tied to the regulatory body. However, it is administrative competences which result in effective activity that are most imperative. Most of all, the regulatory body needs to have its own administrative apparatus, not shared with any other organizations. In many cases (ie. the Czech Republic, France, Great Britain) the administrative board members have a status of civil workers or similar. At the same time, many countries allow independent employment, wage and promotion policies. In most cases, regulatory bodies can create their own internal regulation (ie. statutes, rules, ethical codes) and strategically plan their activities. They can also represent their countries internationally. To ensure financial stability regulatory bodies establish legal statutes which give them stable sources of financing, ie. through indexing inputs from the budget and determining long term inflows to guarantee fluidity (in Holland, Sweden, Great Britain). Another solution is division of finances according to the regulatory body (in Holland, Sweden, Great Britain).

Concluding, regulatory body independence can be illustrated on the example of a triangle, with a base of organizational autonomy and arms – independence from political and market subject influences. Organizational autonomy is most imperative and it largely determines autonomy in the other two aspects. There are also tangent points joining the different aspects of independence, such as financing sources or nominations of members, which are common to more than one aspect. This just shows how complex this issue is.

Another matter which requires discussion is the scope of regulators' authority. This varies greatly among the different EU members. On the one hand, we have regulators with large organizational structures and wide scope of authority on the media, telecommunications and competition markets, as is the case with the British OFCOM. On the other, we have bodies with limited range of influences, ie. the Czech RRTV<sup>30</sup>. It is the different countries' political authorities which determine the scope of regulators' activities<sup>31</sup>.

Because the regulatory bodies possess various authorities, there is particular concern for their independence. Because they can make influential decisions, they are of particular interest to politicians and private subjects under their regulation. All this can result in various forms of pressure on the regulators. The less the scope of authority, it seems, the less need to

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<sup>30</sup> Szczegółowe porównanie kompetencji poszczególnych ciał regulacyjnych m.in. w Media Division, Directorate General of Human Rights, Council of Europe, An overview of the rules governing broadcasting regulatory authorities in Europe, September 2003, DH-MM(2003)007 lub na stronie internetowej European Platform of Regulatory Authorities (EPRA) – [www.epra.org](http://www.epra.org).

<sup>31</sup> Ten aspekt niezależności jest określany mianem “niezależności w procesie decyzyjnym” (*Independence in Decision –Making*) See A.Larsen, L.H.Pedersen, E.M.Sørensen, Independent Regulatory Authorities in Europe – Credibility and Delegation, p. 10-11

worry about unfair influences from the outside. The key issues, as far as various influences, regards regulators' authority over the public media (nominating directors) and concession policies which are of most interest to politicians and private individuals.

### **Empirical Research - In search of a model**

In May and June of 2006 there was a survey conducted among the European regulators of media markets part of the *European Platform of Regulatory Authorities (EPRA)*<sup>32</sup>. The goal was to collect data on their formal independence in the three aspects discussed above – independence from political and private subjects and organizational autonomy. The focus was on the legal instruments existing in order to ensure autonomy in the three areas. Respondents were to outline those instruments protecting them.

The results obtained from 12 respondents<sup>33</sup> did not allow us to carry out a quality analysis which would measure a level of formal independence or regulatory bodies. Most important here was the evaluation of legal instruments and their effectiveness in ensuring independence and there were noticeable differences between them. However, quantifying analysis could not have been performed as it was difficult to compare some regulations. For example, in some countries regulatory board members may not take instructions from anyone on what to do, which is an imperative element of maintaining independence, while in others, a rotation character of board members can hardly be treated as fundamental.

The goal of this analysis was not to compare the different regulatory bodies in terms of independence. Too many factors would have to be taken into consideration for the study to be deemed relevant. There are also too significant structural differences between the bodies for the research to be objective.

The main goal of this analysis was to pick out the most popular forms of legal instruments used in the various countries. Based on this it is possible to single out those mechanisms which are most fundamental from the regulators' point of view. These are those which are present in all the countries surveyed.

Regarding **political independence** there are 16 possible legal regulations. On the average there were eight in every country ensuring political autonomy. The British OFCOM, in terms of number of regulations (12), is the best protected while in Cyprus and Ireland there are five and six correspondingly. The survey shows that only five of the researched countries have constitutional guarantees protecting regulatory bodies.

Regarding the choice of candidates, the law which prohibits a combination of functions in regulatory body and in government (parliamentary, as a judge, prosecutor or councillor) is of particular importance. There are 10 countries that have it (with the exception of Cyprus and Sweden). According to the survey, there are four legal instruments which protect members' independence. The first one prohibits the dismissal of members, except in specific cases (ie. combination with government post). All researched countries have this regulation. However, there are only four which have a rotation system for their board members (ie. Bulgaria and Greece). Half of the respondents declared that their regulatory authorities' budgets are financed, in whole or in part, by outside the government funds. Regarding regulators obtaining instructions from political forces, this is prohibited in almost

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<sup>32</sup> European Platform of Regulatory Authorities (EPRA) to założona w maju 1995 roku organizacja zrzeszająca obecnie 49 ciał regulacyjnych z 41 państw europejskich z siedzibą w Strasburgu. Stanowi ona otwarte forum dyskusyjne dla regulatorów działających w obszarze mediów elektronicznych. Zarówno Rada Europy jak i Komisja Europejską zgodnie ze statutem EPRA posiadają status obserwatora przy tej organizacji. Spotkania członków EPRA odbywają się dwa razy do roku w jednym z państw członkowskich. See [www.epra.org](http://www.epra.org)

<sup>33</sup> W praktyce otrzymano 13 odpowiedzi, jednak ze względu na specyfikę systemu niemieckiego (tj. istnienie 16 różnych regionalnych regulatorów rynku mediów elektronicznych) zrezygnowano z uwzględnienia danych dotyczących tego państwa. W badaniu zostały uwzględnione odpowiedzi następujących państw: Bułgarii, Cypru, Czech, Grecji, Holandii, Irlandii, Litwy, Łotwy, Malty, Polski, Szwecji oraz Wielkiej Brytanii.

all the countries, with the exception of Cyprus. The last legal regulation of importance, concerning the ban on changing regulatory bodies' decisions by political institutions, is practised in all the countries surveyed.

In terms of **independence from media market subjects** the survey points out eight legal regulations in this sphere. Among the surveyed countries only Greece possesses all of the eight mechanisms, with Bulgaria is in second place. On the other side of the spectrum there is Lithuania (only 3), and Malta and Cyprus (with 4). Among the eight regulations there are three which are of particular importance. First, eleven of the respondents are financed by public funds (from the budget) which means that they are not solely dependent on one source of financing which could possibly then influence it. The only exception is Lithuania, financed solely by media market subjects (ie. percentage from advertising profits, concession fees and other payments by broadcasters)<sup>34</sup>. In all of the countries, except two (Cyprus, Ireland) it is prohibited to be a member of a regulatory board and be employed in the media sector. In most countries (including the above exceptions) it is required to disclose such employment or any other connections with the sector under regulation. If it is suspected that there may be a conflict of interest, that person does not take part in the decision making process. Only in Latvia there is no such responsibility but it is prohibited to be employed elsewhere in the industry which rules out such a possibility. Only in Bulgaria and Greece there is a complete ban to be employed anywhere else.

Regarding regulatory bodies **organizational autonomy**, the survey points out eleven possible legal instruments. The researched countries on average use about nine mechanisms. We can, therefore, talk about a high level of protection in this area which is important as this is considered the key sphere in autonomy. The British OFCOM is the best protected as it uses all eleven mechanisms. Cyprus, Ireland, Lithuania and Sweden are high on the list with ten protective measures. On the other side of the spectrum there is the Czech Republic (5) and Malta (7).

Among the mentioned solution there are four considered fundamental as they are practised in all of the countries. First is that board members are paid their salaries from the regulatory bodies' budgets. Second is the possession of their own administrative apparatus, not shared with any other organization. Third is the ability to create their own structures (creation of regulation and statutes) and fourth - to decide on their long term goals for activity. In most, but not, of the countries the personnel of regulatory bodies have a status of civil servants or similar (except in Bulgaria). This is imperative, as we know civil service employees are subject to sharp regulation but also enjoy many privileges to ensure long term activity and be resistant to political influences.

Going back to our triangle metaphor, we can say that the symbolic triangle has a wide base and it is not an isosceles triangle. Among the 11 possible legal instruments guaranteeing independence, the respondents on average used about nine of them (or 81%). Four were used by all the countries and can be treated as fundamental. It can, therefore, be said that in order for a regulatory body to be independent it needs to have available the four key protective mechanisms. These can be considered the absolute basics in order to preserve autonomy.

Regarding the other two aspects of independence, from political and market forces influences, more differences between the countries could be observed. In case of political independence there are twice as many potential protective legal instruments than in case of independence from media subjects. This shows that there are a lot more complexities regarding connections with the political world. The issue of nominating members is particularly crucial with half of the measures in this area. A wide range of instruments shows that there is relatively high elasticity in guaranteeing regulatory body autonomy. However,

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<sup>34</sup> See EPRA, List of Members, Lithuania.

<http://www.epra.org/comasystem/readit.pl/ProfileLT.pdf?wfa=1153989235&daten=bl0eG9ofdLx8VQXmrNdV1ub0GfChDeJUrIeGkWjQkijwzEapnUOfF1102593246>



there are only two out of sixteen used by all the surveyed countries and only those can be considered fundamental. These are – prohibition to dismiss members for political reasons and prohibition of changing decisions made by regulators by political institutions. Another imperative protection should be that which prohibits members from obtaining binding instructions from politicians, but not all surveyed countries have this legal regulation.

In case of independence from market subjects there are eight possible protective legal measures. On the average five of these were used by surveyed countries but none can be considered fundamental. It seems that the countries are overall less protective in this area than regarding independence from political factors. We can therefore infer that there is greater acceptance of closer relations between the regulator and the media market than with the political world. This situation can have its sources in the specificity of the media market where political intervention can be considered as non-democratic.

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In conclusion, it should be noted that all of the researched European countries have taken measures guaranteeing freedoms of regulatory bodies in the media sector. There are, however, considerable differences between the different countries in the number of regulations effective. Empirical research done shows that in this area there are solutions which are universal in character without which, it can be said, there would be no regulatory autonomy. The countries have chosen different types of protective legal measures which shows that there is considerable elasticity in this area but there are also those measures which are crucial and are considered fundamental.

According to the data gathered, there is least regulation in the area of formal independence from market subjects' influence. In this area there is the least number of measures available and none which is considered fundamental. This does not mean, of course, that the countries are ignorant in this area. On the other hand, it is difficult to make out where the borderline is separating the two subjects. It seems that countries are leaning toward compromises in this area more so than regarding political influences.

It should be noted that the data analysed were taken from only 24% of EPRA members which should be taken into consideration when making any conclusive statements. However, this research can be used as a starting point to further analysis on regulatory bodies' independence in the media sector. It should also be noted that this article does not discuss the actual autonomy of these bodies but focuses on the formal aspects.