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regulation in practice

the de facto independence of regulatory agencies

Martino Maggetti

First published by the ECPR Press in 2012

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Typeset by ECPR Press
Printed and bound by Lightning Source

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Paperback ISBN: 978-1-907301-28-5

www.ecprnet.eu/ecprpress

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chapter three | explaining de facto independence (part i)

Summary

The delegation of public authority and regulatory competencies from governments, ministries and public administrations to formally independent regulatory agencies (IRAs) entails a pressing question regarding the effectiveness of their independence. This chapter examines the relation between formal independence, as prescribed in the constitutions of agencies, and de facto independence, as exerted in practice in their day-to-day regulatory routine. To this end, it conceptualises and assesses the de facto independence of IRAs, and discusses organisational, institutional, and political factors for explaining its possible divergence from formal independence. The complex relations between these two conditions are examined with a cross-national, cross-sectoral comparison of sixteen Western European IRAs, using fuzzy-set analysis. The results show that formal independence is neither a necessary nor a sufficient condition for explaining variations in the de facto independence of IRAs. Other factors, such as the life cycle of agencies, veto players, and networks of agencies, have a decisive impact.

Towards the study of de facto independence

The tasks of political decision makers are being profoundly reshaped in Western countries. Governments and bureaucracies are increasingly delegating regulatory competencies to formally independent regulatory agencies (IRAs), which now represent the main institutional feature of the 'new global order of regulatory capitalism' (Levi-Faur 2005a; Levi-Faur and Jordana 2005). The shift of power in favour of these bodies is quantitatively impressive and qualitatively relevant. They have proliferated across countries and sectors, becoming the taken-for-granted, preformatted answer to a wide range of regulatory problems (Gilardi 2005b). IRAs are officially designed to improve the credibility and efficiency of policy making by insulating it from the short-term pressures of the political cycle, while also providing specialised, supposedly neutral technical expertise to policy makers. In this sense, the phenomenon of delegation to IRAs is conceptualised by new public management (NPM) tenants as a technocratic procedure for managing 'complex' political systems through depoliticisation and the use of technical knowledge. However, a number of fundamental questions about the consequences of delegation to IRAs are still unanswered, first and foremost concerning the *ef-*

fectiveness of their independence.[1] To be precise, we still lack clear, comparative, systematic evidence concerning the factual independence of IRAs.

Are IRAs truly independent? In theory, delegation to factually independent regulators is the precondition for reliable, high-quality regulation. Therefore, the transfer to IRAs of ‘political property rights’ – regulatory competencies and regulatory powers – is required, according to a ‘fiduciary mode of delegation’ (Majone 2001c). In fact, delegation to an ‘agent’ who simply executes the orders of the ‘principal’ cannot enhance decision-making credibility. At the same time, the ‘trustor’ can transfer its powers to the ‘trustee’ but not its democratic legitimacy, locating the process of delegation to IRAs outside the chain of democratic delegation (Strom *et al.* 2003). As a consequence, regulatory governance by IRAs involves a ‘net loss of legitimacy’ for the political system (Majone 2005). In this context, the question of the effective implementation of this mode of delegation is particularly relevant and should constitute the first step of an inquiry into the practices of regulatory governance, before any investigation of the consequences of delegation. Any prospective lack of IRAs’ factual independence from elected politicians is likely to be contested by those being regulated, especially in the case of outcomes perceived as adverse by the stakeholders, reducing the social sustainability of regulatory governance. It is also possible that some political actors will challenge the extant regulatory order because its ‘democratic deficit’ would be perceived as unjustified. Conversely, in the case of unanticipated higher independence and lower accountability, uncontrolled agencies may develop their own strategies and reroute the mandated goals of delegation, overruling the will of elected politicians, reframing the definition of ‘public interest’ according to their organisational logic, and risking being captured by the regulated industries (Braun 2002).

Endorsing these analytical and normative concerns, this chapter explores the conceptual and empirical relations between formal independence, as prescribed in the constitutions of agencies, and de facto independence, as exerted in practice, and examines whether, to what extent, and under which conditions the two types of independence may diverge from each other. The structure of the chapter is as follows. First, I propose a way to conceptualise the distinction between formal and de facto independence. Then, I present a theoretical discussion of factors that may influence agencies’ de facto independence, and I develop hypotheses about variations in de facto independence, illustrating why it can be expected to differ from formal independence. Next, I discuss data and methods before testing my theoretical expectations on sixteen Western European regulators using a fuzzy-set analysis technique. Results and conclusions follow. The main insight is that formal independence is neither a necessary nor a sufficient condition for explaining the de facto independence of agencies, and the divergence from statutory prescriptions reflects a significant range of organisational and institutional conditions.

1 The criterion of effectiveness assesses the extent to which a process (here, the delegation of competencies to IRAs profiting from formal independence) actually delivers its intended result (i.e. the implementation of a regulatory order that is factually independent from the elected politicians and from those being regulated) (Blühdorn 2006).

Conceptualising the de facto independence of IRAs

There are several definitions of organisational 'autonomy' (Verhoest *et al.* 2004), but not many concern the more precise notion of 'independence', and very few specifically treat the problem of its effectiveness. It is worth noting that a certain degree of vertical and/or horizontal organisational separation and bureaucratic discretion is a characteristic of all branches of government and civil service, that is, ministerial departments, executive agencies, expert committees, advisory boards, extra-parliamentary commissions, street-level services, and so forth. In fact, the study of bureaucratic autonomy is an old concern for political scientists, especially for US students of bureaucracy and the Congress. The autonomy of executive agencies from elected officials has been depicted by rational choice institutionalists as a strategic game, which includes decisions over the initial delegation of authority, the range of choices of policy alternatives, and the opportunities for oversight and control (Calvert *et al.* 1989). Typically, bureaucratic autonomy can emerge from dynamic systems in which imperfectly informed participants – the agency board, its staff, the legislature, the executive, the courts, and the stakeholders – adapt to one another's decisions over time, accommodating thus a heterogeneous array of results (Moe 1985). In addition, the importance of agencies' autonomy was emphasised when investigating the balance of power between the parliament and the bureaucracies, indicating that politicians concede less policy discretion when the level of conflict increases or their legislative capacity grows (Huber and Shipan 2002).

On the other hand, following a historical-organisational perspective, executive agencies' autonomy can be conceived as a social relation shaped by reputational factors (Carpenter 2001b). Accordingly, public sector organisations gain supplementary autonomy when they are able to develop politics of legitimacy, which are socially rooted, politically forged, and grounded in agencies' capacity, involving networking and coalition building. In this context, autonomous bureaucracies are expected to be able to materially reorient and command public policies designed by elected authorities (Carpenter 2002a). However, in both cases, the conceptual foundations of effective autonomy remained quite implicit. At a later stage, European scholars of public administration and public management adopted several typologies to systematise the multiple definitions of organisational autonomy, proposing different conceptualisations, operationalisations, and measurements (Verhoest *et al.* 2004). In their extensive review, Verhoest and colleagues drew inspiration from previous research to pinpoint six basic alternative and complementary conceptions of autonomy (Verhoest *et al.* 2004).

Managerial autonomy occurs when agencies possess important decision-making competencies concerning the choice and use of their financial, human, and organisational resources. *Policy autonomy* relates to the extent to which agencies can make decisions about the procedures to reach external goals, policy implementation instruments, target groups and, at the higher level of autonomy, the social aims of regulation. *Structural autonomy* indicates how far the agency is separated from hierarchical governmental pressures, for which relevant factors are the appointment procedure, accountability requirements, and the direct political influence of government on board members. *Financial autonomy* derives from the agencies' funding procedure, namely distinguishing between government sources and internal sources, and between fixed or variable revenues. *Legal autonomy* is conceived as the degree to which statutory prescriptions can prevent the government from changing agencies' decisions or reallocating agencies competencies. Finally, *interventional autonomy*, according to the authors cited above, refers to the extent to which the agency is bounded or not by accountability requirements, performance evaluation, impact assessment, and audit duties with respect to regulatory outcomes and to (the lack of) restrictions concerning possible sanctions and external interventions. Three further, partially overlapping, distinctions should be added: first, internal autonomy referring to the organisational structure should be distinguished from external autonomy towards its environment (Bouckaert and Verhoest 1999). Second, organisational and managerial autonomy could be combined into a single notion, while the latter could be defined separately from financial autonomy (Pollitt *et al.* 2004). Finally, Lægreid and colleagues conceived strategic autonomy as the possibility for agencies to formulate their own goals and objectives, while operational autonomy represents the room for manoeuvring when determining the use of policy instruments and resources (Lægreid *et al.* 2006b). However, once again, as Pollitt and Bouckaert maintained in their very widely cited textbook, the effects and implications of the formal structures for guaranteeing autonomy are still poorly understood (Pollitt and Bouckaert 2004).

To begin with, the recurrent problem when using these kinds of typologies is 'conceptual stretching' (Sartori 1970): The approaches for defining organisational autonomy become more and more multidimensional and sparse, while, at the same time, they tend to adopt a too narrow focus, leading to a mislaying of analytical leverage and inconvenience associated with inappropriate comparative logic (Sartori 1991). The study of organisational autonomy is producing quite inconclusive evidence (Verhoest *et al.* 2004; Verhoest 2005). Instead, I propose to use the term 'independence' in a more specific way, in order to define those bodies that, possessing the highest level of institutional and organisational disaggregation, also hold a formal status granting separateness from elected politicians, i.e. independent regulatory agencies (IRAs). The scientific study of this specific type of public sector organisation is vital because they enjoy a considerable deal of public authority when developing, adopting and implementing crucial regulatory competencies without possessing democratic responsiveness. Formally independent agencies with regulatory functions correspond to the 'fourth type' of public sector organisation identified by Verschuere and colleagues (Verschuere *et al.* 2006), that is:

> Externally autonomous public organisations with their own budget, defined as legal entities by public law, and with a governing board.

The concept of organisational independence as such was originally adopted to characterise the institutional status of central banks (Rogoff 1985). In its most encompassing version, the measure of central bank independence comprises two elements (Alesina and Summers 1993): political independence, defined as the ability to select policy objectives without influence from the government, and economic independence, that is, the ability to use instruments of monetary policy without restrictions. The various existing indices of central banks' independence are usually based on statutory prescriptions, such as the procedure of appointment of the members of the board, the approval requirements for monetary policy decisions, the prior definition of monetary objectives in the central bank statute, and the budgetary control mechanisms (Bade and Parkin 1982; Grilli *et al.* 1991; Cukierman *et al.* 1992; Alesina and Summers 1993). The seminal work of Gilardi drew inspiration from this approach to assess the formal independence of IRAs, with reference to a series of prescriptions, enshrined in the constitutions of agencies, which are intended to guarantee independence from elected politicians (Gilardi 2002a, 2005a, 2008). Formal independence is the key factor to be considered when investigating the decision of delegating power to IRAs because it corresponds to the intentions of the decision makers about the need for providing time consistency and knowledge-based advice to regulatory policies. Here, an extension of this approach is proposed, by the means of the concept of de facto independence, to appraise the regulatory action of IRAs after delegation. Indeed, factual independence cannot be taken for granted but depends on both mechanisms for granting independence and the use of those mechanisms (Moe 1985).

To this end, Yesilkagit and Van Thiel proposed a relational conception of 'actual autonomy', suggesting that agencies shall develop ties with all actors in the politico-administrative system and with societal actors at large: pressure groups, interest groups, consultants, public opinion, clients, target groups, the media, and so forth (Yesilkagit and Van Thiel 2008). The authors developed thus a measure of autonomy based on the level of financial and policy autonomy of the investigated public sector organisations. This innovative and ambitious approach presents three main shortcomings that make it difficult to apply as such to the present book for the study of IRAs' functioning. First, it presents a wide-ranging, horizontal view of autonomy, *vis-à-vis* a large number of institutional, political, and societal actors, instead of focusing on the hierarchical relationship between agencies and elected politicians and its mirror image with those being regulated. Here I argue instead that, while all relationships can be relevant for studying the reconfiguration of power in the political system, nonetheless, only those with politicians and regulatees are crucial for measuring the effective independence of regulators in the execution of their regulatory competencies. The latter relationships display indeed qualitative differences in comparison to informal ties that agencies may develop with other actors, as IRAs, politicians and regulatees, 'the three forces in regulation' (Thatcher 2005a), that might have contradictory interests in the practice of regulatory governance. Second, their approach focuses on all types of bureaucratic agencies, without pinpointing the specific features of IRAs, so that, given the need for very detailed contextual evidence, it entails feasibility problems for extensive, systematic, comparative cross-national and cross-sectoral studies.

Another attractive and original approach consists of interviewing agencies' managers about the degree of autonomy they perceive themselves to have (Lægreid *et al.* 2006a; Lægreid *et al.* 2008). It is argued that even if this measure might not accurately reflect the actual level of autonomy, managers' perceptions matter, as they guide agencies' regulatory action and have important symbolic functions. This perspective is indeed very useful for the sociology of administration and for the examination of the legitimising effects of independence. As regards its application in the present book, however, the major problem is that what is measured might not really correspond to the managers' opinions concerning their autonomy, but rather to their perceptions about the degree of autonomy that has to be considered appropriate, given the institutional context. The interviewed managers may behave strategically, constructing their answers so as to try to gain external and internal legitimacy. In addition, and above all, this approach is not suitable for fully capturing the more structural, sometimes even unconscious, or at least rationally bounded features of factual independence, which also have an impact on the political role of agencies and on their regulatory performance. For instance, no external pressure is perceived if agencies' preferences are 'organically' in line with those of the politicians or the regulatees, e.g. when the representatives of one of the two groups of external actors are 'naturally' populating agencies' boards. Nonetheless, it would be hard to qualify these agencies as truly autonomous. In addition, agencies' managers may perceive themselves as very autonomous, in the sense of not being subject to any explicit external pressures, but actually they may not dispose from the capacity of implementing their own decisions. Instead, to paraphrase a famous dictum, it seems more judicious to consider that 'only those remain *independent* who use their *independence*'. Hence, I propose to conceive the de facto independence characterising IRAs in a more abstract, general, and comprehensive way, starting from a very simple proposition:

> *De facto independence* characterises the effective independence of agencies as they manage day-to-day regulatory actions.

To move towards a definition, one can conceptualise de facto independence drawing from Majone's seminal paper (Majone 1997a), in which he identified IRAs as 'highly specialized organisations enjoying considerable autonomy in decision-making.' Autonomy means, above all, to be able to translate (1) one's own preferences (2) into (authoritative) actions, without external constraints (Nordlinger 1981).[2] Therefore, I suggest that the de facto independence of formally independent regulatory agencies can be seen as a synthesis of two necessary components:

2. Please note that I adopt Nordlinger's (1981) abstract definition of autonomy, leaving aside his conception of independence that refers to his typology of states' self-rule and strength. Rather, following Majone (2001), I use the term 'independence' in the sense of separateness, developing the concept of de facto independence as a way to assess the independence of the agencies' day-to-day regulatory action and operationalising it through the two components derived from the abstract definition of autonomy.

Table 3.1: Case selection

Sector	Country	Label	Official names of the investigated IRAs
Banking and Financial sector	Belgium	belbk	*Commission Bancaire, Financière et des Assurances*
	Germany	gerbk	*Bundesanstalt für Finanzdienstleistungaufsicht*
	Finland	finbk	*Rahoitustarkastus*
	Netherlands	netbk	*Autoriteit Financiële Markten*
	Sweden	swebk	*Finansinspektionen*
	Switzerland	swibk	*Eidgenössische Bankenkommission*
Competition	Netherlands	netco	*Nederlandse Mededingingsautoriteit*
	Norway	norco	*Konkurransetilsynet*
	Sweden	sweco	*Konkurrensverhet*
	Switzerland	swico	*Wettbewerbskommission*
	United Kingdom	ukico	*Competition Commission*
Telecommunications	Austria	austc	*Rundfunk und Telekom Regulierungs*
	Italy	itatc	*Autorità per le Garanzie nelle Comunicazioni*
	Netherlands	nettc	*Onafhankelijke Post en Telecommunicatie Autoritei*
	Norway	nortc	*Post- Og Teletilsynet*
	Sweden	swetc	*Sweden Post & Telestyrelsen*

criterion for including a case in the dataset is the comparability within the agencies' organisational models: the presence of a structurally disaggregated formally autonomous public organisation with a chairperson or director, a governing board or similar body and its own secretariat. The other crucial criterion is the focus on the most institutionalised agencies, those that benefit from the greatest powers and the broadest array of regulatory competencies, concerning rule making, decision making, adjudication and sanctioning. Concretely, I started from Gilardi's

(Gilardi 2002b, 2008) dataset on the formal independence of agencies focusing on three sectors: a long-standing privatised sector (banking and finance), a former public sector (telecommunications), and general regulation (competition). I sent a detailed questionnaire to all selected agencies' chairpersons; I refined data with written and electronic documentation and interpreted it with the help of electronic and telephone interviews with the agency personnel.[8]

The operationalisation of the causal conditions

The next step is the operationalisation of explanatory variables, that is, causal conditions using QCA terminology. The formal independence of agencies ('hformalind') is measured with Gilardi's index (Gilardi 2002b, 2005a, c, 2008).[9] In order to keep the richness and significance of this causal condition almost intact, the data were coded on a 6-point ordinal scale with the value '0' for cases scarcely independent and '1' for the highly independent cases.[10] In this regard, a brief digression about the coding procedure is required, as regards 'calibration' and the standard qualitative coding. In fact, the procedure of calibration has been developed for the precise adjustment of interval-scale measures in fuzzy-sets (Ragin 2008a), extending the standard procedure, based on the qualitative appraisal of set membership (Ragin 2000). I applied the new procedure to Gilardi's index of formal independence, using the 'indirect method' described by Ragin, in order to calibrate the interval scales for the fuzzy-set analysis, along a standard 6-point scale. Two possible qualitative 'benchmark codings' are tested: the one being very conservative (i) and the other using more relaxed parameters (ii). Data were coded as presented in Table 3.2. At the end of the day, however, the decision about the definition of the benchmark values as required by the procedure of calibration came out to be difficult. The consequences of this choice are not intuitively straightforward, and they appear quite arbitrary, while at the same time results seem excessively determined by the technical procedure.[11] For instance, according to my substantive knowledge about the cases under investigation, the first coding (i) underestimates the relative independence of some cases, such as the Belgian *Commission Bancaire, Financière et des Assurances*, and the German *Bundesanstalt für Finanzdienstleistungaufsicht*. Conversely, using the second

8. The response rate was very high (80 per cent), with, however, the notable exception of the British Financial Services Authority (for the details, see the appendix).

9. This index summarises many different statutory features, such as the formal status of the agency head, the formal status of the members of the board, the formal relationship with government and parliament, the statutory financial and organisational autonomy, and the constitutional extent of regulatory competencies (Gilardi 2002b).

10. For information about the construction of a fuzzy set-scale, see Ragin *et al*. (2006).

11. Anyhow, it is worth noting that in the present research study, the results of the fuzzy set QCA change only modestly for de facto independence from political decision makers, no matter what scale is adopted.

coding (ii), the independence of other cases is comparatively overrated, for instance the *Sweden Post & Telestyrelsen*. In conclusion, I decided to continue with the standard qualitative procedure, by defining six clusters of agencies. This procedure is more transparent and it captures better the distinction between relevant and irrelevant variations of formal independence, so as to avoid the degreeism fallacy (Sartori 1991; Radaelli 2000c).[12] Figure 3.2 presents a graphical illustration of the coding procedure. Raw values for continuous variables are ordered with the 'threshold setter' function of the Tosmana package (Cronqvist 2007).

Then, the measurement related to the age of agencies (oldage), with reference to agencies' life cycle, was constructed by simply subtracting the year of the creation of the agency from the year of the data collection (i.e. 2006). Sources are agencies' Web sites and official archive documents. Seven clusters are identified, ranging from recently established regulators (less than 5 years old) to elderly IRAs (more than 50 years). Please note that one category remains empty (0.87), as no agency was created 30-40 years before data collection. The number of veto players (manyveto) was determined by using the Tsebelis dataset on number and distance (Tsebelis 2002), using a 3-point scale: few veto players (less than 2), some veto players (from 2.1 to 3.9), and several veto players (more than 4). Concerning the degree of coordination of the political economy, I adopted the index created by Hall and Gingerich (Hall and Gingerich 2004). This index extends the quite rough distinction between LMEs and CMEs by devising and combining several indicators for the central concepts of the variety of capitalism approach, so as to measure the overall logic of coordination – the crucial dimension – in the key spheres of the political economy: shareholder power, dispersion of corporate governance control, size of stock market, level of wage coordination, labour turnover, and degree of wage coordination. Here, the degree of coordination of the national economies (coordeco) is appreciated on a 6-point scale that also relies upon substantive knowledge of each case (Hall and Soskice 2001; Hall and Gingerich 2004).

The operationalisation of the mode of regulation that was applied before the establishment or reform of the investigated agencies led to a distinction between general regulation, regulators of long-standing privatised sectors, and agencies regulating former public sector monopolies. I used '1' to code prior public ownership of the regulated industries (sectorpubl); otherwise, I used '0' (Conway and Nicoletti 2006). Then, the variable 'network' was coded '0' when the agency did not participate in European networks, '0.4' in the case of partial membership (e.g. as observer), '0.6' in the case of participation with one, and '0.8' in the case of inclusion in two official networks. The organisational strength of those being regulated (orgreg) was roughly approximated by a distinction between sectoral ('1') and general ('0') regulators. Finally, the operationalisation of de facto independence

12. According to Sartori, 'degreeism' occurs when, instead of recognising qualitative differences among observations, the researcher insists on differences of degree. This conceptual mistake is nicely illustrated by the famous 'cat-dog' example: if we cannot conceptualise the difference between a cat and a dog, we see various degrees of cat-dogs.

Table 3.2: Calibration versus qualitative coding procedure

Case	**Gilardi's index**	**Qualitative benchmark coding**		**Predicted coding**		**Degree of membership**		**Degree of membership as qualitatively coded**
		i)	*ii)*	*i)*	*ii)*	*i)*	*ii)*	
belbk	0.47	-0.5	0.5	-0.95214	-0.06049	0.278454654	0.484882109	0.4
gerbk	0.34	-5.0	-2.0	-4.84960	-1.49826	0.007770654	0.182685182	0.0
finbk	0.48	-0.5	0.5	-0.68547	0.07272	0.335041551	0.518171993	0.4
netbk	0.53	0.5	0.5	0.57691	0.79444	0.640356088	0.688783889	0.6
swebk	0.54	0.5	0.5	0.81518	0.95043	0.693212231	0.721201646	0.6
swibk	0.48	-0.5	0.5	-0.68547	0.07272	0.335041551	0.518171993	0.4
netco	0.46	-0.5	0.5	-1.22355	-0.19018	0.227312320	0.452597786	0.4
norco	0.39	-5.0	-2.0	-3.25592	-1.00540	0.037114742	0.267881043	0.0
sweco	0.41	-2.0	-0.5	-2.65158	-0.78826	0.065891694	0.312542403	0.2
swico	0.45	-0.5	0.5	-1.49969	-0.31641	0.182471764	0.421550907	0.4
ukico	0.66	2.0	2.0	3.30532	3.16039	0.964610868	0.959316170	0.8
austc	0.71	5.0	5.0	4.14173	4.28456	0.984353379	0.986407616	1.0
itatc	0.71	5.0	5.0	4.14173	4.28456	0.984353379	0.986407616	1.0
nettc	0.62	2.0	2.0	2.55100	2.35078	0.927640667	0.912996206	0.8
nortc	0.52	0.5	0.5	0.33390	0.64243	0.582708003	0.655302559	0.6
swetc	0.64	2.0	2.0	2.93763	2.74597	0.949675581	0.939685347	0.8

Table 3.3: Causal conditions

Sector	Country	Case acronym	Formal independence		Old age		Veto players†		Coordination of the economy		Former public sector		Networks		Org. force of regulatees	
			data	scale	data	scale	data	scale	data	scale	data	scale	data	scale	data	scale
Banking and Financial sector	Bel	belbk	0.47	0.4	72	1	4.47	1	0.74	0.6	Priv	0	2	0.8	Spec	1
	Ger	gerbk	0.34	0	4	0.17	2.23	0.66	0.95	1	Priv	0	2	0.8	Spec	1
	Fin	finbk	0.48	0.4	13	0.5	4.39	1	0.72	0.6	Priv	0	2	0.8	Spec	1
	Net	netbk	0.53	0.6	4	0.17	2.58	0.66	0.66	0.4	Priv	0	1‡	0.4	Spec	1
	Swe	swebk	0.54	0.6	15	0.5	1.82	0.33	0.69	0.4	Priv	0	2	0.8	Spec	1
	Swi	swibk	0.48	0.4	72	1	4	1	0.51	0.2	Priv	0	0	0	Spec	1
Competition	Net	netco	0.46	0.4	9	0.33	2.58	0.66	0.66	0.4	Gen	0	1	0.6	Gen	0
	Nor	norco	0.39	0	12	0.5	1.28	0.33	0.76	0.6	Gen	0	0	0	Gen	0
	Swe	sweco	0.41	0.2	15	0.5	1.82	0.33	0.69	0.4	Gen	0	1	0.6	Gen	0
	Swi	swico	0.45	0.4	11	0.5	4	1	0.51	0.2	Gen	0	0	0	Gen	0
	Uki	ukico	0.66	0.8	8	0.33	1	0.33	0.07	0	Gen	0	1	0.6	Gen	0
Telecommunications	Aus	austc	0.71	1	9	0.33	2	0.33	1	1	Ex-p	1	2	0.8	Spec	1
	Ita	itatc	0.71	1	9	0.33	4.94	1	0.87	0.8	Ex-p	1	2	0.8	Spec	1
	Net	nettc	0.62	0.8	9	0.33	2.58	0.66	0.66	0.4	Ex-p	1	1§	0.4	Spec	1
	Nor	nortc	0.52	0.6	20	0.67	1.28	0.33	0.76	0.6	Ex-p	1	0	0	Spec	1
	Swe	swetc	0.64	0.8	14	0.5	1.82	0.33	0.69	0.4	Ex-p	1	1§	0.4	Spec	1

† Average years 1990–2000 ‡ Only securities § Only telecommunications

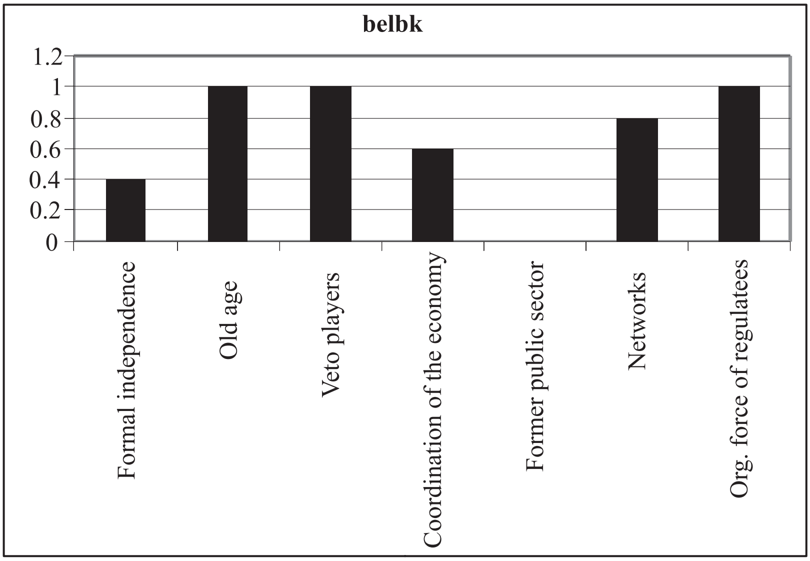

Figure 3.1a

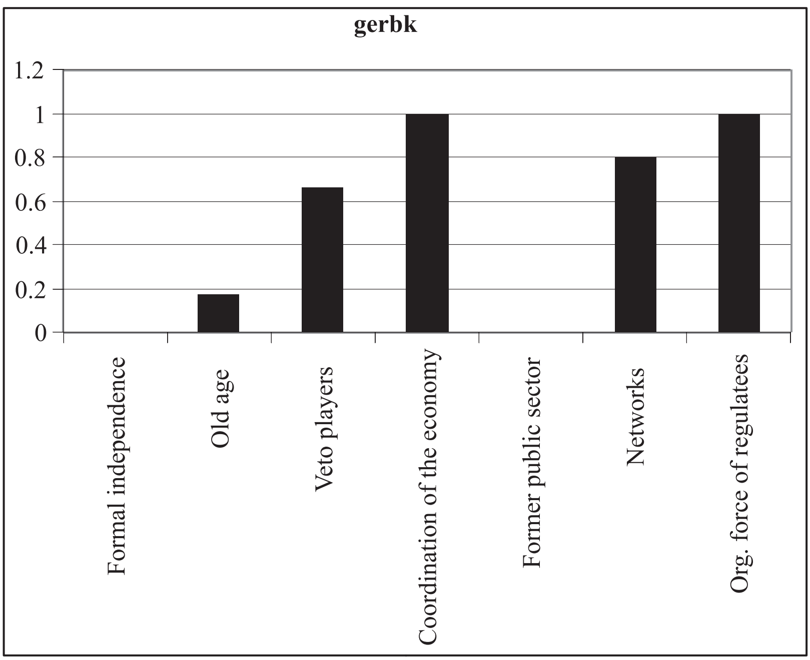

Figure 3.1b

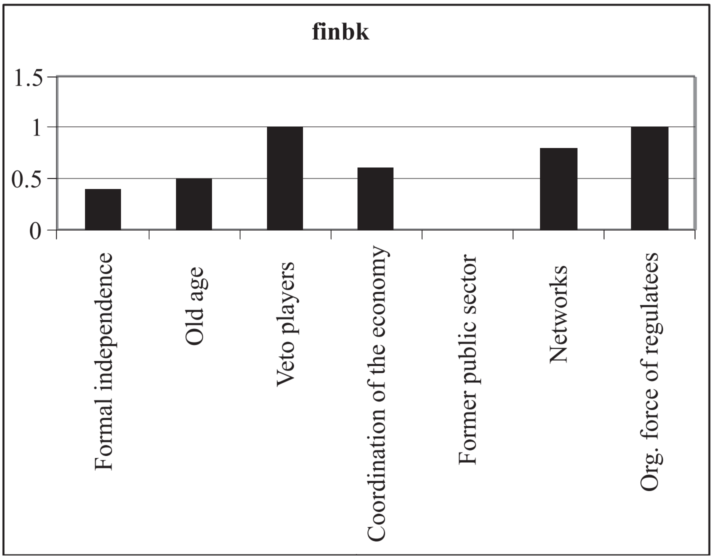

Figure 3.1c

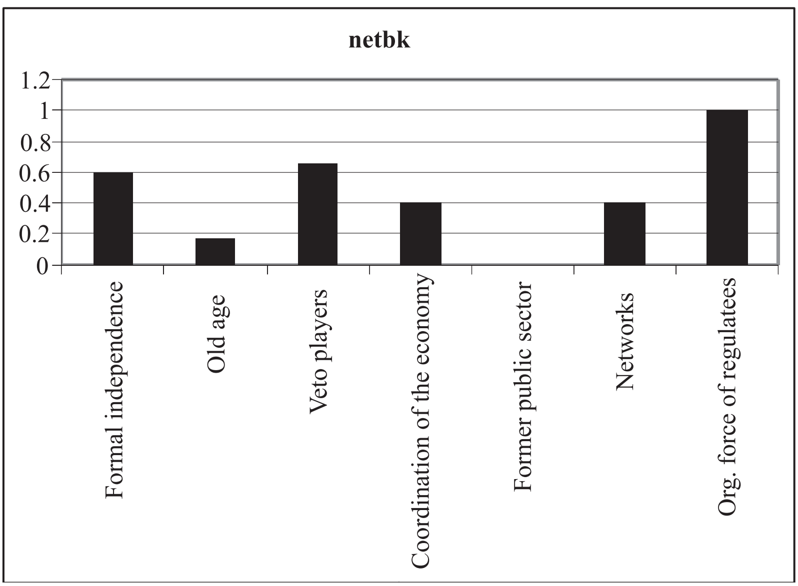

Figure 3.1d

Table 3.4: Operationalising the de facto independence of IRAs from the political decision makers

(1) Relationship IRA – Political decision-makers	*Indicators of self-determination of IRA preferences*	• Frequency of revolving door	– Proportion of the current employees of the agency's secretariat that have previously worked in the public administration – Proportion of the former employees of the agency's secretariat that will work in the public administration
		• Frequency of ad hoc contacts	– Participation of the employees of the agency's secretariat in internships related to the public administration – Frequency of the requests for support of agencies' expertise to the public administration – Frequency of meetings between the agency and the public administration
		• Influence on budget	– Influence of the government on the budget of the agency – Influence of the parliament on the budget of the agency – Influence of the public administration on the budget of the agency
		• Influence on organisational setting	– Influence of the government on the internal organisation of the agency – Influence of the parliament on the internal organisation of the agency – Influence of the public administration on the internal organisation of the agency
		• Weight of partisan membership on board members' nominations	– Role of political parties when deciding who should become a member of the agency's management board – Homogeneity of the representatives of the political parties in the board – Distribution of powers among board members
		• Political vulnerability	– Earlier departures of members of the management board before the end of its mandate – Replacements of the management board's director (or chair of the agency)
	Autonomy of the activity of reg.	• Active participation in the IRA's rule-making process	– External influence on the main regulations issued by the agency to which the supervised institutions should conform 1) Inspiration of the basic principles of the main regulations that the supervised institutions should satisfy 2) Working out the draft of the regulations 3) Consultations during the draft preparation of the regulations 4) Decision and adoption of the regulations 5) Monitoring the respect of the regulations by the supervised institutions 6) Sanctions in case of non-respect of regulations by the supervised institutions

Table 3.5: Operationalising the de facto independence of IRAs from the regulatees

(2) Relationship IRA - Regulatees	*Indicators of self-determination of IRA preferences*	• Frequency of revolving door	– Proportion of the current employees of the agency's secretariat that have previously worked in the private sector – Proportion of the former employees of the agency's secretariat that will work in the private sector
		• Frequency of ad hoc contacts	– Participation of the employees of the agency's secretariat in internships related to the private sector – Frequency of the requests for support of agencies' expertise to the private sector – Frequency of meetings between the agency and the private sector
		• Budget dimension	– Influence of the private sector on the budget of the agency – Adequacy of the budgetary resources of the agency in relation with the private sector
		• Organisational dimension	– Influence of the private sector on the organisation of the agency – Adequacy of the human resources of the agency in relation with the private sector

		• Proximity of the former or current professional activity of board members	– Full-time or part-time position of the agency's board director/chairperson
			  – Current occupation of the director
			  – Former occupation of the director
			– Full-time or part-time position of the agency's board members
			  – Current occupations of the board members
			  – Former occupations of the board members
			  – Conflicts of interest

		• Personal relations	– Informal ties
	Autonomy of the activity of reg	• Active participation in the IRA's rule-making process	– External influence on the main regulations issued by the agency to which the supervised institutions should conform 1) Inspiration of the basic principles of the main regulations that the supervised institutions should satisfy 2) Working out the draft of the regulations 3) Consultations during the draft preparation of the regulations 4) Decision and adoption of the regulations 5) Monitoring the respect of the regulations by the supervised institutions 6) Sanctions in case of non-respect of regulations by the supervised institutions

The empirical analysis

The assessment of the de facto independence of IRAs

The results of the survey inquiry concerning the outcome conditions (i.e. the 'dependent variables') are presented below, with the corresponding degree of de facto independence: Table 3.6, concerning the relationship with the elected politicians, and Table 3.7, concerning the relationship with the regulatees (see the appendix of the chapter for the details of the questionnaire). After case names and data labels, the third column of the tables presents the aggregated results concerning the indicators of the self-determination of preferences, and, respectively, the autonomy of the activity of regulation (on 7-point scales); the fourth column specifies the level of de facto independence derived from these measures; and the fifth column displays the corresponding coding for the fuzzy-set analysis. Figure 3.3 offers a synthetic view of agencies' de facto independence from the politicians and from the regulatees. This information, which is used for the fuzzy set analysis, has been collected with detailed questionnaires sent to the chairpersons of the investigated agencies, received between June 2006 and March 2007. It has been completed and refined with other data: semi-directive interviews with agencies' board members between August 2005 and June 2006; and written and electronic documentation, namely annual agency reports and agencies' Web sites, as briefly summarised in the following mini-case studies (sections 3.6.1.1 and 3.6.1.2), so as to produce a 'thicker' description of each case, to verify the validity of previous information and improve the interpretation of results.[14]

Figure 3.3 presents the description of the two outcomes. It is apparent that factual independence varies greatly across agencies, especially when considered in front of elected politicians. Furthermore, the relation between factual independence from politicians and from regulatees seems quite intricate: the two outcomes do not co-vary in any visible manner nor do they configure any straightforward trade-off. Therefore, one can plausibly assume that they are determined by different sets of explanatory conditions. Before the analysis, the following mini-case studies summarise the empirical assessment of the de facto independence of IRAs from politicians, and, subsequently, their de facto independence from the regulated industries, as reported in Tables 3.6 and 3.7, according to the two dimensions

14. This procedure guarantees higher robustness. For instance, in the case of the swico, the information about the proportion of the 'revolving door' has been checked and confirmed with interviews and written documentation. As an illustration, I quote three excerpts: 'Le secrétariat de la Comco aura perdu (…) 25 per cent de son personnel scientifique par rapport à fin 2004' (Rapport annuel Comco 2005); 'Es kamen laufend frische Kräfte, direkt von der Uni, mit viel Dynamik. Die blieben zwei bis drei Jahre' (Tages Anzeiger, 3 January 2007); 'C'est difficile de retenir de personnes qui se voient offrir une situation plus intéressante dans le privé (…)' (Interview) (this item generated an indicator that varies from '2' in the case of the belbk to '6' in the case of the netbk).

outlined above, (i) the self-determination of preferences and (ii) the autonomy of the activity of regulation.

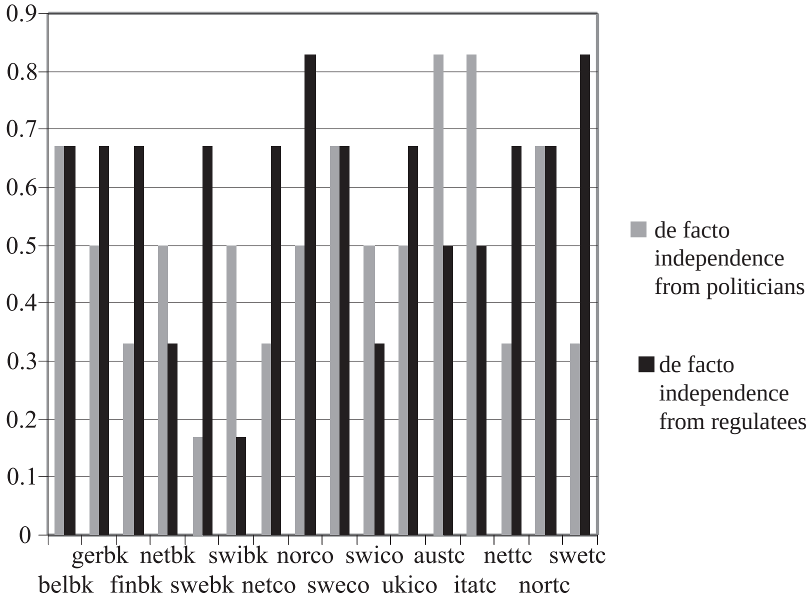

Figure 3.3: Synthetic view of agencies' de facto independence

Table 3.6: Coding the de facto independence of IRAs from the politicians

Case	Data (1): defindpdm	Scale:	Total:	Coded as:
belbk	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	4 6	5	0.67
gerbk	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	5 4	4	0.5
finbk	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	4 3	3	0.33
netbk	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	4 4	4	0.5
swebk	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	1 4	2	0.17
swibk	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	4 4	4	0.5
netco	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	1 6	3	0.33
norco	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	5 3	4	0.5
sweco	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	4 7	5	0.67
swico	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	3 6	4	0.5
ukico	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	4 5	4	0.5
austc	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	7 5	6	0.83
itatc	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	6 6	6	0.83
nettc	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	4 3	3	0.33
nortc	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	5 5	5	0.67
swetc	(i) Self-determination of preferences (ii) Autonomy of the activity of regulation	1 6	3	0.33