



UvA-DARE (Digital Academic Repository)

Delegation to Independent Regulatory Authorities in the Media Sector: A Paradigm Shift through the Lens of Regulatory Theory

Irion, K.; Radu, R.

Publication date

2014

Document Version

Submitted manuscript

Published in

The Independence of the Media and Its Regulatory Agencies: Shedding new light on formal and actual independence against the national context

[Link to publication](#)

Citation for published version (APA):

Irion, K., & Radu, R. (2014). Delegation to Independent Regulatory Authorities in the Media Sector: A Paradigm Shift through the Lens of Regulatory Theory. In W. Schultz, P. Valcke, & K. Irion (Eds.), *The Independence of the Media and Its Regulatory Agencies: Shedding new light on formal and actual independence against the national context* (pp. 15-54). (ECREA Book Series). Intellect. <http://www.intellectbooks.co.uk/books/view-Book,id=4987/>

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

UvA-DARE is a service provided by the library of the University of Amsterdam (<https://dare.uva.nl>)

NB: This is a pre-publication version of the Chapter that is published in: *The Independence of the Media and Its Regulatory Agencies. Shedding New Light on Formal and Actual Independence Against the National Context*, W. Schulz, P. Valcke & K. Irion (eds.), Bristol UK/ Chicago USA: Intellect 2013, p. 15-54.

**Delegation to independent regulatory authorities in the media sector:
A paradigm shift through the lens of regulatory theory**

Kristina Irion, *Central European University*, and Roxana Radu, *Graduate Institute of International and Development Studies*

Abstract

Today, it seems that independent regulatory authorities have almost become a natural institutional form for regulatory governance. This trend has economic and political roots, and numerous normative arguments for creating independent regulatory authorities have been put forward in the international economic, social science and legal literature, which this chapter will explore briefly. In the case of audiovisual media regulatory authorities the normative arguments for setting up independent regulators are more complex than just economic regulation. In the case of media there is a perceived need to prevent politicians and executive branches of government from exercising control over regulatory authorities because those would otherwise be highly susceptible to partisan interference. In this area, independence, as an institutional value of the regulator that should ensure the impartial and fair handling of its competences, has been a widely accepted media regulatory paradigm since the 1980s. This chapter will link regulatory theory and delegation to independent agencies with the inception of independent media regulatory authorities in Europe and introduce the various waves of development which have made this the leading institutional choice for audiovisual media governance.

Keywords:

independent regulatory agencies
media
regulation
supervision
independence
delegation
liberalization
convergence
new governance modes
Europe

Introduction

From a European perspective, the existence of independent regulatory authorities (IRAs) in the television and now audiovisual media sector appears to be common sense. Salomon (2008: 17) asserts that it is accepted as best practice throughout the world to put an independent regulatory system in charge of licensing and overseeing the broadcasting sector. This general expectation can be found in a recent World Bank study by Buckley, Duerm, Mendel, and Siocgru (2008: 160), who notice that '[t]he regulation of broadcasting should be the responsibility of an independent regulatory body established on a statutory basis with powers and duties set out explicitly in law'. The independence of audiovisual media regulators is enshrined in the relevant regional standards of the Council of Europe, which adopted a specific recommendation on this issue (Rec (2000)23) that was reinforced with a declaration (Council of Europe 2008a). At a programmatic level both documents, however non-binding, treat the matter of independence for media regulators as the only option to organize media supervision, for which there is no viable democratic alternative. They are discussed in more detail in Chapter 3 in this book by Valcke, Voorhoof and Lievens.

European Union (EU) law also carries statements on independent regulatory bodies overseeing the audiovisual media sector, which are further analysed in Chapter 4 in this book by Stevens.¹ The independence of functionally specialized independent media regulators is recognized as a value – either implicitly or explicitly – in an overwhelming majority of European countries (35 out of 39)² in which IRAs currently exist. In a few states, independence is explicitly recognized in a legal source higher than ordinary legislation, such as the constitution (Hans Bredow Institute, et al. 2011: 214).

This single conception of an independent media supervisor is best understood against the background of a democratic country's responsibility to observe and give full effect to the fundamental right to freedom of expression, from which media liberties are derived. Its dilemma is therefore how to license broadcasting and introduce content regulation, but avoid the risk of stifling freedom of expression? How can countries ensure media pluralism and content diversity in a way that prevents political agendas from being imposed? Finally, how should countries enable public service television and new media without dominating it? IRAs offer an institutional solution to this dilemma because they move the regulatory function out of the purview of the administrative hierarchy in support of the presumption of non-interference by the state. In public service broadcast media, internal oversight represents another means of organizing independence from the state; some countries have opted for the latter in addition to their IRAs for the commercial sector (Hans Bredow Institute, et al. 2011, see also Chapter 9 in this book by Docquir, Gusy and Müller).

This chapter explores the delegation of responsibilities to IRAs in the media sector through the lens of regulatory theory and the wider phenomenon of IRAs as a mode of governance. This kind of delegation of functions originated in the financial sector, with the financial regulators and the national central banks being granted a greater degree of independence from central administration. The IRA model has become a feature of utility liberalization and peaked in the 1990s in the run up to the full liberalization of the telecommunications sector, which was imposed by EU legislation. For different rationales, IRAs have also become the first institutional choice for overseeing and enforcing the right to privacy and data protection regulation and, more recently, for expanding competences in the area of non-discrimination and equal opportunities in Europe.

In spite of the distinctiveness of the media sector, this comparative approach is grounded in recent advancements in the general theory on delegation to IRAs, which may offer a better understanding and propose new explanations for the overall phenomenon, and in particular for the proliferation of IRAs in the audiovisual media sector. We assume that such developments do not happen in isolation, but are to some degree influenced by the prevailing governance paradigm which emanates across sectoral boundaries and areas of public interest regulation. This interrogation is looking at the rationales and theories that offer an explanation for the proliferation of IRAs in Europe against the background of the literature on the regulatory state and prevalent modes of governance in the European context. It is important to note that IRAs are often introduced in a given context because of the advantage associated with this institutional form of governance, regardless of whether the local context and conditions facilitate the crucial independence needed to produce the desired regulatory outcomes.

Ultimately, this chapter relates its findings back to the various stages that can be observed in the evolution of IRAs in the broadcasting and audiovisual media sector, and answers questions regarding the viability and sustainability of a concept that is, from the very outset, a relative one (Machet 2007: 2). It also attempts to uncover trends that contribute to explaining the recent backlashes and strains on the IRA principles, which can be observed in a fair number of European countries. In today's radically altered technological, cultural and geopolitical world, the independence debate is as topical as ever, because the formal independence of institutions continues to be contested by politicians, governments and other powerful interests groups. This chapter draws to a substantial degree from the INDIREG study on *Indicators for Independence and Efficient Functioning of Audiovisual Media Services Regulatory Bodies for the Purpose of Enforcing the Rules in the AVMS Directive* (Hans Bredow Institute, et al. 2011). However, the integration of regulatory theory and of the literature on delegation to IRAs in the audiovisual media field has been taken further in this chapter and enriched by additional analysis.

The chapter is structured as follows. The first part scrutinizes the rationales behind instituting independent sectoral regulators and the challenges emphasized by each of the theoretical approaches under investigation. The subsequent sections put into perspective broadcasting and audiovisual media regulation in Europe and the creation and functioning of IRAs, comparatively incorporating empirical evidence from their historical evolution. Accounting for the broader regulatory trends and the political conditions in which they emerged, we identify five main regulatory shifts that have occurred in the European context, from the 1950s to the present. These shifts have involved the paradigms of public service, competitive de-regulation, media transition, convergence, and marginalization, as well as several relevant phases within each of these. The final part of the chapter draws conclusions and points to potential future research directions.

Delegation to independent agencies in regulatory theory

Despite its relatively short history, the phenomenon of IRAs performing a wide range of different state functions has proliferated throughout Europe. This type of economic and social regulation by means of agencies operates outside the hierarchical control or oversight by the central administration (Majone 1994: 83). Thatcher (2002: 125) defines an IRA as 'a body with its own powers and responsibilities given under public law, which is organizationally separate from ministries and is neither directly elected nor managed by elected officials'.

IRAs play a crucial role not only in a number of utility or network-based sectors (e.g. rail, water, energy, electronic communications etc.), but also in other economic (e.g. competition, banking and financing) and non-economic areas (e.g. the protection of fundamental rights such as privacy, freedom of expression and non-discrimination) where independence from the state is a virtue and IRAs are put in place to further the public interest. By now, IRAs are considered an established alternative to centralized bureaucracy and in certain sectors they are almost ‘the natural institutional choice for regulatory governance’ (Hans Bredow Institute, et al. 2011: 12).

This particular institutional development is characteristic of the ‘rise of the regulatory state in Europe’ (Majone 1994: 76) which has attracted much scholarly attention. Majone’s theory of the regulatory state is part of the wider paradigm shift from the positive and interventionist state to a new form of public management.³ New public management refers to a range of state reforms aimed at modernising the public sector towards a better management of public resources that emphasizes outcomes and efficiency (Hood 1991: 3). It entails the disaggregation of traditional bureaucratic organizations and the introduction of private sector styles of management, performance measurement and output controls. In many ways, the growth of indirect ‘third party’ government through IRAs is based on these principles inasmuch as it is a strategy that is leading the transition to the regulatory state (Gilardi 2008: 21). The literature discusses this phenomenon interchangeably in terms of as IRAs, non-majoritarian institutions (Thatcher and Stone Sweet 2002: 2), and – mainly in the UK context – ‘quangos’, which stands for quasi-autonomous non-governmental organizations. It has regularly been argued that independent regulatory bodies which operate ‘at arm’s length from central government’ (Majone 1997: 152) are a central feature of modern regulatory governance. According to this approach, the state can no longer credibly exercise all functions and tasks itself, but needs to delegate them to specialized agencies and control these agencies through regulation.

A significant amount of research has been dedicated to the rationales for setting-up IRAs and explaining their widespread diffusion in the European context. This trend has economic and political roots, and corresponds to the increasingly refined questions of conflicts of interest between the public and the private sector, as well as between different private interests. Nicolaïdes (2005) underlines two basic aspects with regard to governance: first, regulatory competences should be delegated to an independent body primarily for effectiveness considerations; and second, it is important for the regulatory authority to be independent due to a need for consistency. For Majone (1994: 84; 1997: 152), the main reasons are credible long-term commitment and expertise, resulting into better regulation (see also Gilardi 2008; Thatcher and Stone Sweet 2002).

At an abstract level, the literature proposes several different rationales for independent regulators in Europe. Besides the protection of fundamental rights, the most influential explanations fall under the principal-agent framework derived from rational choice theory. Much of the dynamic of ‘agencification’ in Europe, however, can be captured with the sociological institutionalists’ theory on institutional isomorphism and Europeanization. This literature is shortly revisited below as a first step before exploring its relevance to IRAs in the broadcasting and now audiovisual media sector.

Safeguarding fundamental rights

According to a normative argument that is invoked in the area of protecting fundamental rights and corresponding public interest regulation, an independent body functions as an

institutional safeguard vis-à-vis the state in order to keep oversight and enforcement at arm's length from politicians (Council of Europe 2000 and 2008a; for France see Thatcher 2002: 133). Media, data protection, and to a lesser extent non-discrimination and equal opportunities are areas susceptible to partisan interference from politicians and executive branches of government. In these areas, independence is an institutional value of the regulator that should ensure impartial and fair handling of its competences. The paradigmatic example is the media sector, where many countries put IRAs in charge of commercial broadcasting and maintain a system of independent oversight for public service broadcasting.

There are however effects which have certainly amplified the proliferation of IRAs in Europe which are discussed in the section on European integration and Europeanization below. It suffices to observe that relevant international standard-setting, institutional mimetism and Europeanization did play a role in reinforcing the creation of IRAs, which are modelled after regionally accepted best practices. The EU data protection directive 94/46/EC and the Council of Europe Recommendation (Rec (2000)23) on independent media authorities are supra-national benchmarks for IRAs in these respective areas, despite the fact that the latter is non-binding.

Principal-agent approach

The delegation of competences to agencies brings benefits, but also entails costs for the government. This dilemma is referred to as the principal-agent problem (Pollack 2002: 202; Majone and Stone Sweet 2002: 3f). Initially designed to explain the delegation of legislative authority within the US Congress committees, this schema has also been used to analyse the delegation of executive functions to federal agencies. It describes the framework where the principal confers on the agent the power to regulate a specific area, based on the assumption that any public authority is moved primarily by a cost-benefit calculation: an authority will therefore regulate a given field on its own as long as the benefits outweigh the costs (Magnetite 2005: 5). Accordingly, the challenge is to find the particular governance structure that maximizes the net benefits to the principal(s), subject to various constraints.

From the point of view of self-interested politicians, different kinds of functional pressure can provide increased incentives to create IRAs and delegate decision-making competences to them. Among the reasons why an authority may believe that it has an interest in delegating one of its functions to an agent, four stand out as highly influential and they are by no means mutually exclusive:

- Delegation can help to reduce the problem of credible commitment and political uncertainty;
- A non-governmental agent can also provide policy expertise needed by governments at low cost, and reduce their workload;
- The efficiency of decision-making can be enhanced, particularly in fields characterized by a high level of technicality; and
- It is also used for blame-shifting for unpopular decisions (Magnetite 2005: 5; Pollack 1997; Thatcher and Stone Sweet 2002: 3f.).

Apart from the more obvious blame-shifting, these hypotheses are explained in more detail below.

Credible political commitment and overcoming political uncertainty

The main reason for granting independence to agencies may be their role in limiting 'government failure' by making a credible political commitment. Independent regulators

were often introduced to replace public ownership together with sector-specific regulation. The bigger the country's investment in the respective industry sectors, the stronger the government's need is to separate regulatory agencies from its short-term political goals. An independent regulatory body can serve as a guarantor to companies that their investment in infrastructure (which involves substantial sunk costs) would be honoured in the future and that short-term political interest cannot interfere with their long-term operational interest. IRAs are a vehicle that can decrease the 'time inconsistency' problem, where policies change over time and, thus, it can increase the long-term credibility and predictability of regulation (Gilardi 2008: 30f.). A working IRA model is able to limit political influence on business decisions, thereby making the risk of regulation more predictable. It has often been argued that such bodies have the benefit of not being necessarily tied to election cycles and can thus work on specific issues continuously, and ideally develop long-term solutions (Majone 1994: 84).

Political uncertainty is a normative argument which resonates somewhat with the earlier hypothesis on credible political commitment. In effect, delegation to IRAs can serve as a common solution to both. To Gilardi (2008: 49), the main difference is that political commitment is an act of self-binding (that can outlast a government), while political uncertainty is an attempt to bind subsequent governments. Gilardi argues that 'by insulating policy-making from politics, current [governments] lose some control when they are in office, but this will ensure that their choices will last longer' (2008: 48f.). Placing regulation into the hands of an independent regulatory body could allow regulations to outlive the current government's time in office and prevent future governments from revoking the policies of the current one. However, this theory is limited in that it does not adequately capture legislative reforms of subsequent governments with the aim of leaving their distinct footprint on the institutional design of a given authority.

Expertise and better regulation

This hypothesis emphasizes the quality and effectiveness of regulatory intervention where specialized IRAs are better placed to focus on regulation without being distracted or misled by political calculation. Regulation has become much more technical and complex, often in the presence of high levels of information asymmetries vis-à-vis the regulated entities, which require specialist knowledge and scientific expertise that can be better concentrated in an IRA (Thatcher 2002: 132). Flexibility, expertise and the 'continuity of concerns' in the IRA model set it apart from the traditional bureaucratic arrangement (Landis 1938/1996: 23). IRAs have – in many cases – the combined competences of rule-making and rule-application in a particular field, which distinguishes them from an executive branch of the government or the courts. Agencies can, furthermore, overcome information asymmetries in technical areas of governance and enhance the efficiency of rule-making. For Gilardi (2005a: 102) the flexible organizational structure of independent regulators – as opposed to central bureaucracy – can create attractive work conditions for experts.

In general, the broader the delegation is (i.e. the more independence given to the agency), the greater the reduction in decision-making costs and the increase in expertise and policy credibility. To be able to fulfil its regulatory tasks, the agent must be granted a certain amount of discretionary power, which might at the same time cause a divergence between the interests of the principal and the agent and affect the ability of regulators to act in their own interest (referred to as 'agency loss'). Such agency costs may be reduced by strict procedural requirements, transparency and public participation in agency decision-making, and reliance

on judicial review. The institutional design of an agency matters and principal-agent theory analyses how the governance structure and formal control mechanisms can constrain an agency's ability to pursue of its own preferences (Pollack 2002: 201). Ultimately, retaining and using formal controls by elected officials is bound to have an impact on the independence of agencies in various ways.

European integration and Europeanization

The theory of 'institutional isomorphism' suggests that if an apparently successful model of a regulator exists, it is likely to be copied (Thatcher 2002: 136). One of the drivers for institutional isomorphism or 'mimetism' (ibid., 133) is the experience with an independent regulatory body in a specific domain, which can then be copied in other areas of regulation, or can become international policy learning. Europeanization can be perceived as a subset of institutional isomorphism or can be acknowledged as a self-standing normative explanation of the proliferation of independent regulatory agencies in this region. Gilardi (2005b: 89f.) explains the diffusion of independent regulatory agencies across Europe as both a top-down process of Europeanization and a horizontal emulation between European countries.

The EU has significantly catalysed the inception of independent regulatory authorities in its member states and beyond. Though it may at first appear surprising that the delegation of competences to the EU is connected to an increase of regulation at national level, this is easily explained by the necessity of building new regulatory agencies and of adjusting existing authorities in order to implement the EU legislation. In practice, the creation and/or strengthening of IRAs was often imposed on member states by the EU regulatory framework for a specific sector, where liberalization and harmonization measures explicitly require the establishment of such bodies (Thatcher 2002: 133f.). This is the case for utilities' sectors, such as electronic communications, energy, railways, post et cetera, but also, under EU harmonized regulation, regarding data protection and non-discrimination issues (see Chapter 4 in this book by Stevens for more details). Successive new member states and candidate countries have created IRAs in preparation for EU accession and the implementation of the *acquis communautaire*.

The changing role of independent regulatory agencies

In the early 2000s, the IRA model reached the peak of its popularity in Europe and there are now signs of a decline or hollowing-out. As regulatory practice evolves in response to globalization and the increasing complexity of public policy, new tensions around the IRA model surface in a growing scholarly debate about new approaches to governance in the twenty-first century – aptly labelled 'new modes of governance' (Héritier and Lehmkuhl 2011).⁴ New governance entails a range of novel approaches to policy-making across all aspects of public policy, i.e. processes, institutions and instruments. It is characterized by an increasing reliance on soft means of regulation, such as self- and co-regulation, the exchange of good practices, industry standards and peer pressure. Another trend is the rise of networked governance, which involves the collaboration of a variety of policy stakeholders. According to Rhodes (2000: 61), the key features of governance networks include diplomacy, reciprocity and interdependence.

For this discussion two ongoing developments are pertinent: first, the changing role of government in prescribing governance mechanisms for achieving public goals, which has become less direct and provided more space for multi-stakeholder participation, involving

NGOs, industry professionals and market actors in the process of regulatory development, enforcement and implementation. Second, the replacing of fixed and static regulatory commands with mandates that allow for evolution and dynamism in the face of technological and normative developments. In the light of these developments, IRAs face new demands with respect to their role in the governance system in which flexibility and expertise, networking and collaboration are emphasized over top-down intervention. In response to such pressures, IRAs are increasingly acting as brokers between the various interests, with the aim to pursue an amorphous public interest. To fulfil this role, they conduct research and collect evidence, which is infused into the public discourse among the stakeholders concerned by forging coalitions and steering networks towards finding appropriate solutions.

Emerging modes of governance reshape the IRA model fundamentally. On the one hand, they bring about a diversification of competences that include soft governance mechanisms, such as standard-setting and benchmarking for co- or self-regulation, alongside the more traditional responsibilities delegated to sectoral authorities. With the menu of regulatory tools greatly diversified, the assessment of the most effective instrument is no longer straightforward. Currently, IRAs need to engage in extensive research to acquire the highly specialized knowledge required. However, cooperative means are more and more frequently used, including consultation and deliberation processes with other relevant actors within a specific policy domain. In the case of environmental regulation, Jordan, Wurzel and Zito (2005: 492) note that, for new policy instruments, '*co-existence* appears to be the most dominant, although there is some incipient *fusion* and *competition*' (original emphasis), thus allowing for the emergence of a multitude of hybrid types.

On the other hand, the delegation of powers no longer only takes place from the national government to the independent regulator, but also to the EU level, thus altering the practices of IRAs. In effect, we are facing the creation of multiple expert fora for exchanging specialized information and sharing best practices, as well as the fast institutionalization of regulatory networks at the European/EU level, set in place for fostering regulatory harmonization and uniformity of policy implementation across Europe. Such bodies, known as European regulatory networks (ERNs), provide expertise and reduce the cost of gathering information in a transnational environment, while promoting international regulatory learning. For example, in telecommunications, the European Regulators Group (ERG) was founded in 2002 under EC law and replaced in 2009 with the Body of European Regulators for Electronic Communications (BEREC), which has enhanced competences for harmonization and is composed of the heads of the national IRAs of member states (Regulation (EC) No 1211/2009). This represented the first instance of formal engagement by the European Commission with the implementation of EU directives at the national level (Coen and Thatcher 2008: 58). ERNs are now common for sectors such as banking, securities, data protection, electricity and gas, et cetera.

The supranational networks of regulators appear as 'functional and informal means of establishing best practice and procedures for sector regulation' (Coen and Thatcher 2006: 7), while epitomizing a double delegation of power and functions: from national governments to domestic IRAs and to the EU, at the supranational level. In line with the principal-agent theory, the IRAs thus become the common agent of both the national government and the European Commission, which might bring about agency loss concerns. Nevertheless, the delegators retain a degree of control over the ERNs not only in allocating resources, but also in designing the distribution of responsibilities, in particular by minimizing the rights of initiative.

Section conclusions

In this section, various hypotheses and normative arguments have been presented to explain the shift towards delegating powers to IRAs. Three important caveats must be made. First, delegation to IRAs is primarily discussed in relation to the privatization and re-regulation of utilities, which is of little relevance to other areas of regulation. Thatcher (2002: 133f.) observes that these pressures on elected officials to delegate authorities ‘were particularly strong in the regulation of markets, especially after privatisation, liberalisation and EU legislation’, but weaker in other fields where regulatory bodies were established. This has become evident at the level of formal independence and powers, where regulatory bodies in other fields tend to underperform compared to IRAs in network and utility markets. Second, these are alternating hypotheses for the emergence of the IRAs as a governance mode. Hence, the pressures to delegate to IRAs stemming from functional advantages (rational-choice mode), on the one hand, and from institutional mimetism and Europeanization, on the other hand, are not interrelated (Thatcher 2002). Nevertheless, policy diffusion has the potential to create a positive feedback loop. It was even suggested that IRAs have been created because this is the prevalent mode for institutional governance and because it is happening elsewhere.

Third, the reasons for creating independent regulatory authorities can differ depending on which country is the focus of research. Legal, economic, political and cultural factors also influence the shaping of regulators, resulting in varying institutional designs and even organizations, which, though similar at the formal level, can nevertheless vary widely at the level of implementation and efficient functioning. Some of the arguments presented in this section, such as the hypotheses on credible commitment and political uncertainty, have been developed against the background of countries that have been through an organic development in which independent regulators became the preferred mode of governance in certain areas in public policy. This may not adequately capture exogenous effects stemming, for example, from Europeanization, where countries implemented independent regulators in line with, and as a consequence of, EU legislation. Where exogenous factors have prompted the establishment of independent regulatory authorities, there is a risk that these bodies remain essentially anomalous and not embedded in the administration system, since administrative and procedural reforms do not automatically accompany the spread of the IRAs (Hans Bredow Institute, et al. 2011: 15).

Paradigm shifts and independent media regulatory authorities in Europe

National media systems take different forms in accordance not only with alternative underlying logics and technological developments, but also with political traditions and legacies binding the decision-makers and relevant stakeholders. After scrutinizing the normative considerations, we now turn to investigating the interactions between historical developments, political trends, and the transformation of governance in media regulation in specific European contexts. Drawing on the theory of media policy paradigm shifts developed by van Cuilenburg and McQuail (2003), we expand the scope of inquiry to reflect on the development phases of media-specialized IRAs and their subsequent impact on the audiovisual landscape in Europe. Analysing the conditions under which structural shifts occur, we emphasize the extent to which broadcasting and audiovisual media regulation is subject to general regulatory trends (public service, delegation to independent authorities, network governance), developments in the market (the advent of private broadcasters in the

beginning of the 1980s and the current convergence of television broadcasting and other forms of audiovisual media services and means of transmission), as well as structural political transformations (the fall of communism, post-conflict reconstruction, re-politicization and neo-authoritarian tendencies).

Nowadays, any communications and media policy is aimed at ‘securing the free and equal access’ (Van Cuilenburg and McQuail 2003: 205) to broadcasting media markets and to the means of transmission, while protecting a range of content standards in order to serve the needs of society. Different forms of state intervention⁵ – legitimized in the name of the public interest – have dominated the history of media systems. The establishment of supervisory authorities originally coincided with the acknowledgement that media structures should no longer act as the operational arm of politics. Additionally, once the spectrum scarcity justification for government regulation lost credibility with the emergence of satellite and cable distribution platforms in the 1980s, liberalization of market access and delegation of powers were seen as an alternate means to regulate the nascent commercial television landscape. At that time, independent regulators were established across Europe in order to oversee the numerous commercial broadcasters; however, in most of these cases, their competences would also extend to public service broadcasting.

The rationales for IRAs in the broadcasting sector are thus bifurcated: independent supervision was established in the public interest and in response to liberalization. These two paradigms constitute the building blocks for an array of new regulatory arrangements that would combine elements of both, and would also increase the variation in IRA practices across Europe throughout the 1990s and 2000s. According to our extrapolation of Van Cuilenburg and McQuail’s theory, later creations of IRAs are more likely to have followed the trend under Europeanization and institutional isomorphism theories. The latest media regulatory shift which post-dates the theory of Van Cuilenburg and McQuail (2003) is the wider trend to governance and new modes of governance that has been characterized as a hollowing-out of traditional regulation and regulatory institutions. Thus, our reference to the marginalization paradigm must be read as a wider distribution of regulatory functions to stakeholders and governance networks at national and European levels.

Table 1 below summarizes our interpretation of the evolution of media regulation going back to the early days of radio and television. The five distinctive shifts we identify and their specific phases are analysed in the subsequent sections.

Table 1: Overview of paradigm shifts in broadcasting and audiovisual media regulation in Europe, their necessary conditions and their implications.

| Paradigm shift (time period) | Necessary conditions and determinant factors | Implications for the regulator and its independence |
|--|---|--|
| Public service paradigm (1950s – late 1970s) | In Western Europe: <ul style="list-style-type: none"> - scarcity of spectrum (for radio and television) - social equity and equal access considerations (universal service) - nature of programming fostering national identity | State television, acting as the operational arm of the government, or exceptionally public service broadcasting organization under internal oversight |
| Competitive de-regulation paradigm (1980s – mid 1990s) | In Western Europe: <ul style="list-style-type: none"> - market liberalization due to the expansion of cable and satellite television, resulting in a diversification of content (except where protectionism prevailed for longer) - internationalization of broadcast media markets (the advent of satellites) | Establishment of independent regulatory agencies to oversee the new and numerous commercial broadcasters and in many instances also the public service broadcaster |

| Paradigm shift (time period) | Necessary conditions and determinant factors | Implications for the regulator and its independence |
|---|--|--|
| | <ul style="list-style-type: none"> - minimal state ideology in commercial broadcasting (based primarily on economic rationales) - transformation of state television into independent public service broadcasters | |
| Media transition paradigm | Post-communist media (1989 – mid 2000s) <ul style="list-style-type: none"> In Central and Eastern Europe: - large-scale transition process towards a liberal democratic model (political, economic and social change) - legacy of communism in the approach to audiovisual media markets - pressure from the international community to reform the media - transformation of the state-controlled broadcaster into a public service broadcaster | Establishment of regulatory agencies which: <ul style="list-style-type: none"> - retained a high degree of political control, or - were shaped as independent bodies, after the available Western models |
| | Post-conflict intervention (1995 – mid 2000s) <ul style="list-style-type: none"> In countries of Ex-Yugoslavia: - sharp ethnic divisions - post-conflict general reconstruction - attempts by ethnic groups to take control over broadcasting for nationalist propaganda purposes - International intervention and institution building | Establishment of independent media regulatory authorities to provide safeguards against a monopoly of the media by partisan groups |
| | Re-politicization and neo-authoritarian tendencies (early 2000s – present) <ul style="list-style-type: none"> In new EU member states: - politically-motivated reforms that affect the broadcasting sector - neo-authoritarian tendencies | Remodelling the IRAs' practices through highly politicized procedures, while maintaining the appearance of independence |
| | Convergence paradigm (late 1990s – present) <ul style="list-style-type: none"> In Europe: - fast-changing globalized environment - technological developments, converging trend of audiovisual platforms - horizontal regulation of all audiovisual media services (AVMS) | Establishment of some converged independent authorities for electronic media and communications. Different models of supervision introduced by on-demand audiovisual media services. |
| Marginalization paradigm (late 1990s - present) <ul style="list-style-type: none"> In the EU: - co- and self-regulation gaining more ground - network governance and the use of soft governance tools - Internet regulation - globalization/ internationalization | Expanding the responsibilities of existent IRAs to perform co-regulatory functions or establishing new IRAs for this purpose. IRAs to enhance deliberative capacity as public-facing institutions. The spread and institutionalization of regulatory networks at the EU level. | |

Source: Adapted from Hans Bredow Institute, et al. (2011: 87f).

Back in 2003, van Cuilenberg and McQuail observed that a new communications policy paradigm was taking shape, representing a third major shift since the first attempts at regulating communication systems. According to them, in the early phase of emerging communications industry policy, regulation had revolved around the promotion of national interest, the separation of regimes for different technologies and the strategic development of the communications industry. The three spheres which policy distinguished between were: print media, common carriers (telephony and telegraph) and broadcasting. Whereas the first sector remained minimally regulated for many decades, the other two came under the control of governments as soon as they appeared.

In Europe, radio became a mass medium in the 1920s, developing technologically from the postal, telephone and telegraph (PTT) services, which were owned by the state. Whereas in

the United States the radio industry was from the start a private sector activity, soon after the expansion of airwaves across Europe, the governments took control over them by invoking the need to foster the public interest (Van Cuilenburg and McQuail 2003: 188). The crucial importance of radio during the First World War created both the incentive and the justification for imposing an exclusive state monopoly in countries such as Germany, Sweden and France. Switzerland followed a different model, by having small public corporations running the radio stations in large cities to serve different communities. In other countries, such as Belgium, Denmark and Norway, radio transmission began as a commercial enterprise but was later transformed into a state-operated enterprise.

In the period leading up to the Second World War, the German and British regulatory developments were the two models that largely influenced the history of European media thereafter. In Germany, broadcasting was perceived as a function of public administration, and an exclusive state monopoly over the radio was imposed from the start. During the Weimar Republic (1918-1933), all the transmission facilities belonged to the *Reichspost*, which became part of the centralized Imperial Broadcasting Company in 1925. In sharp contrast, in Britain, the liberal state tradition initially allowed for a representation of private interests. The British Broadcasting Company Ltd. – established in 1922 by the British General Post Office as a commercial venture – had the primary task of allocating frequencies and distributing licenses and the resulting revenues. By 1927, the British Broadcasting Company turned into a non-commercial entity, the British Broadcasting Corporation (BBC). Later on, some of the features of the BBC model were replicated in the evolution of the German media system regulation (OSI 2005: 34), supporting the idea of transnational policy learning.

The need for expanding regulation to wireless and, subsequently, television, was subordinated to three different rationales: technical, economic and political (Humphreys 1996). Apart from the state intervening in allocating spectrum (Elstein 2005: 68-72), socio-political motivations prevailed in the interwar period (Van Cuilenburg and McQuail 2003: 191), at a time in which “mass democracy”, state reconstruction and nation-building took precedence. The use of broadcast media for political purposes reached a peak during World War II, when most European governments directly conducted their propaganda by taking control over the channels of communication.

The public service paradigm – internal oversight

After the Second World War, the importance of separating broadcast content from political interests was acknowledged as a safeguard against the instrumentalization of mass media, and this also implied that broadcasting organizations should be structurally independent from the state. At the same time, there was pressure to ensure the democratic accountability of broadcasters. Eventually, this led to the gradual establishment of public service broadcasters (PSBs); nonetheless, they inherited the state operation of radio and television. In contrast with the independence enjoyed by the printed press, television broadcasting received a different regulatory treatment, resulting in less freedom to decide on the content provided or to manage a diversity of standpoints. This was primarily justified by the idea that this new medium exerted opinion-forming powers over ‘captive audiences’, in the context of the limited choice of broadcasters that was available due to the prevailing spectrum scarcity, a consequence of the technical limitations of the time.

PSBs reproduced, to a large extent, the characteristics of both the political system and the particular historical context in which they emerged (Jakubowicz 2008). Autonomy was

derived, in the beginning, from the PSB statute. The BBC, established through a Royal Charter and not by an act of Parliament, from the outset had a considerable amount of independence from interference by political actors and protected this by a 10-year renewable statute. Starting in 1927, the BBC services were monitored by a Board of Governors, nominated by the government; today, this is the function of the BBC Trust.⁶

Diverging from the BBC model, the internal control of the German public service broadcasting system was ensured by granting appointment and dismissal rights to representatives of the plural interests in society, the so-called ‘socially significant groups’ or organized interests (such as political parties, federal, state and local government representatives, churches, trade unions and employers associations, professional associations of journalists, et cetera). Germany was also among the pioneers of decentralized public broadcasting (Humphreys 1996: 132). In accordance with the federal construction of the country and with the 1949 Basic Law, the regulation of broadcasting services fell under the jurisdiction of the 16 constituent states (*Länder*). By 1956, nine regional public broadcasting corporations⁷ had been established, governed by independent broadcasting councils (*Rundfunkräte*).

Decentralization of broadcasting took place at the end of 1950s in many other European countries as well, following different underlying logics. In states such as Norway and Belgium, this happened in order to cater for the linguistic and cultural needs of the countries’ constituent groups. In these cases, the broadcasting system remained ‘purely public’ (Brants and Suine 1992: 104) until liberalization in the 1980s. In France, the governmental control of broadcasting continued even after the establishment of regulatory agencies (Coppens and Saeys 2006: 272). In most Western European countries the activities of commercial broadcasters remained, to a large extent, confined to the public service paradigm.

The competitive de-regulation paradigm

Cable and satellite technologies became widespread in the 1980s and this eliminated the technical constraint of scarcity of frequencies, and allowed a gradually higher number of commercial broadcasters to operate. The reasons for which many Western European states reconsidered their degree of intervention in media markets at that time were primarily economic: minimal state ideology, inward investment and revenues from advertising (see Table 1). In the late 1970s, this paradigmatic change occurred primarily due to ‘the ambitions of media corporations and governments alike to benefit from the economic opportunities offered by communication technologies’ (Van Cuilenburg and McQuail 2003: 197). In the Cold War context, the implications of the move towards deregulation were twofold: on the one hand, it further reduced political control; and on the other hand, it imposed few or no public service obligations on private broadcasters (OSI 2005: 45), whose number increased continuously after liberalization.⁸

Yet, in order to maintain a strong role for the PSB, many Western European governments pursued a different strategy, one of public investment or protectionism (Van Cuilenburg and McQuail 2003: 195). This manifested itself in a late liberalization and was applied in Greece, Spain and France – where the practice was also known as *dirigisme* (Venturelli 1998: 189). In contrast, broadcasting in small countries such as Andorra and Monaco, which could be received in the larger neighbouring countries, remained purely commercial (Humphreys 1996: 125). Likewise, Luxembourg developed from the start a commercial broadcasting market, whose regulation was entrusted to a for-profit monopoly, the *Compagnie Luxembourgoise de Télédiffusion* (CLT), with a limited public service remit.

These different patterns of deregulation also affected the type of relations that existed between the PSBs and national governments in Europe (Dragomir 2008: 24-25). On the one hand, the proportionality model was employed in countries such as Germany, Austria and the Netherlands to retain the influence of political parties and civil society groups in the governance of the public broadcaster). On the other hand, the insulated PSB model – requiring the juxtaposition of intermediary non-political bodies – dominated in the Scandinavian countries, as well as in the UK and Ireland.

Establishing independent regulatory authorities for the broadcasting sector

The late 1980s witnessed the rise of the pan-European Eutelsat and Astra satellites, as well as the expansion of commercial satellite television platforms in Europe. As a reaction to these fundamental changes occurring in a short time span, and to the pressure from commercial entities, further deregulation was envisioned. At the same time, several safeguards were set in place to limit political interference in the work and functioning of public and commercial broadcasters through the establishment of national independent regulatory agencies. These safeguards included conferring the legal status of autonomous corporations to PSBs; regulation by special internal boards (e.g. the BBC Board of Governors and German broadcasting councils), special external bodies (e.g. the IBA in the UK) or a combination of internal and external supervision (as in Sweden); and a degree of financial autonomy of PSBs⁹. In the light of such developments in several of the larger European states, the introduction of independent regulators also took precedence in other parts of the continent, where governments were compelled to create new regulatory authorities to oversee the broadcasting sector and to move away from political control. The shift from interventionist to de-regulatory policies, primarily influenced by the minimal state ideology and market liberalization, gave rise to a great variation in regulatory patterns across Europe.

In the UK, the 1954 Television Act introduced the Independent Television Authority (ITA), a public corporation with the mandate to create the first independent television broadcaster (Scannell 1990: 18). The Independent Broadcasting Authority (IBA), evolving from the ITA, was founded in 1972 to oversee the allocation of frequencies for fifteen regional independent television (ITV) companies¹⁰ and a large number of independent local radio stations. In 1984, the United Kingdom established an independent regulatory agency for telecommunications, Oftel. The successor of the IBA and Oftel were two of the five bodies that merged into the Office of Communications (Ofcom) in 2003.

In Germany in the 1980s, commercial broadcasting was regulated by the individual states (*Länder*) within the parameters set by the German Constitutional Court. This resulted in a new layer of media authorities overseeing non-public service broadcasting. Inspired by the practice of PSB's internal oversight, membership in these bodies would be assigned according to the principle of interest diversity (ensuring all main parties would have a voice) and fair representation of 'socially significant groups'. For pieces of legislation that would require national frameworks, a system of inter-state treaties based on collective agreements was established. In 1990, following the re-unification with East Germany, the same rules were used as model for the audiovisual media system in the former communist part of the country.

In France, the state monopoly over broadcasting was only lifted in 1982, with the introduction of the Law on Audiovisual Communication (OSI2005: 645). The same act established the first independent regulatory agency for broadcasting in the country, the High

Authority for Audiovisual Communications (*Haute autorité de la communication audiovisuelle*), which started supervising the appointments for PSBs, licensing radio and television programs and oversee certain aspects of programming. The privatization of the cable sector in France was implemented during the first period of ‘cohabitation’ under President Mitterand (1986-1988), and made the French media market ‘one of the most marketised’ (Humphreys 1996: 165) in Europe by the early 1990s. The 1988 Law on Freedom of Communication created the legal framework for the operation of a dual private-public system; at the same time, the Higher Audiovisual Council (*Conseil Supérieur de l’Audiovisuel*) was given extensive powers, including the power to suspend the transmission of broadcasters in case of non-compliance with the existent regulation.

In Italy, the first restructuring of the national broadcaster, RAI, occurred in 1975. The media market was characterized by strong regulation for public service broadcasters and ‘wild deregulation’ (Humphreys 1996: 179) for commercial broadcasters, relying heavily on entertainment and advertising. The 1975 reform transferred the control of public television from the executive branch to the political parties represented in Parliament. Consequently, the Italian public broadcasting system remained highly politicized; the largest political parties came to dominate different channels of RAI under a system known as *Lottizzazione*. This context resulted in a specific institutional arrangement: a parliamentary commission known as ‘the Guarantor’. With the passage of the 1990 Broadcasting Act, the authority to decide on a wide range of issues (such as ownership structures or compliance with viewers’ interests) was entrusted to a single individual, usually a magistrate.

Satellite broadcasting and the re-broadcasting via cable networks of satellite television programmes created new pressures on closed national media systems. Transborder television, as it was then called, intensified regulatory competition between countries in the European region. In 1989, the European Convention on Transfrontier Television (Council of Europe CETS No. 132), as well as the Television without Frontiers Directive, instituted the country of origin principle and minimum harmonization of television services in the sector. Thus, the transnational dynamics in the European television landscape could be interpreted as creating a sector specific functional pressure to maintain and strengthen independent supervisory bodies at a national level as a strategy to attract the establishment of television companies. Some smaller countries in Western Europe, most notably Luxembourg and Andorra, succeeded as television companies’ headquarters heavyweights (Humphreys 1996: 178). Progressing internationalization made standard-setting and regulation at the supra-national level recurrent features over the next two decades.

Media transition paradigm

At a time when media market internationalization and liberalization flourished in Western Europe, the Eastern part of the continent was marked by fundamentally different media systems, with a tightly-controlled state broadcaster in each country and limited or no access to a plurality of views. With the 1989 regime change, the countries of Central and Eastern Europe (CEE) embarked on a democratization process that was characterized by multiple simultaneous transitions that were still marked by the communist legacy. Consequently, the challenge of restructuring the media after 1989 revolved primarily around minimizing the interference of the state – but not per se of politics – in the functioning of the newly transformed PSB and of the IRAs in the broader context of democratic institution-building. Against the background of the former regime, there was a strong desire in many CEE

countries to structure the audiovisual media and their supervision according to the highest European standards and best practices.

The involvement of foreign donors and the Europeanization process have been the main drivers in turning the independence of broadcast media regulation into a widely acknowledged value. The international community also shaped media reforms in the post-conflict environments in ex-Yugoslavia, where the creation and strengthening of IRAs was encouraged as a means of reducing partisan monopolies over the audiovisual media landscape. More recently, some of the new EU member states have witnessed a series of politically motivated reforms that challenge the independence of the media regulatory bodies, while preserving the appearance of democratic change implementation.

Post-communist media paradigm

In spite of a slight liberalization brought about by Gorbachev's *glasnost* reforms in the Soviet Union in the 1980s, the PSBs in CEE remained largely under a state monopoly. After the 1989 revolutions in the region, media freedom 'was not granted to the sector by governments via negotiations, but grew independently within most countries once it became clear that there were no longer any communist barriers to prevent free speech' (Mungiu-Pippidi 2003: 32). To a large extent, both liberalization and media plurality pressures came by virtue of acquiring membership to the Council of Europe and, later on, candidate status for EU membership (OSI 2005: 43). Although the EU lacks the competence to determine the structure of media supervision in the member states, which should effectively preclude EU harmonization and integration as an explanation, the EU has nevertheless promoted IRAs in the audiovisual media sector during the EU accession process.

In the early days after the regime change, when the public broadcaster was still controlled by the government, reluctance to liberalize the media market produced different patterns of developments in CEE countries. In addition to the Czech Republic and Slovakia, two Baltic countries were pioneers of the dual private-public system in the early 1990s: Lithuania and Estonia. The monopolistic position of the state ended in Albania and Bulgaria in the mid-1990s, in Latvia in 1996 and in Hungary in 1997 (OSI 2005: 35-36). In Poland and Romania, the licensing of commercial broadcasters took place between 1993 and 1997 (see also Chapter 7 in this book by Klimkiewicz). In Lithuania, until 2000, no regulation applied to the commercial sector, whereas the public broadcasting sector was heavily regulated.

The new audiovisual landscape of the CEE countries was shaped by two contradictory objectives: retaining political control and following Western models (Petković 2004). The first objective was closely linked to the communist legacy. In Poland, for example, the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji* – KRRiT) that was instituted by the 1992 Broadcasting Law, although considered to be the first democratic body of the country (OSI 2005: 1089), was defined by statute as a 'state institution'.¹¹ The allocation of broadcast licenses was not delegated to IRAs in countries such as Estonia, where it remained with the Ministry of Culture, or the Former Yugoslav Republic of Macedonia, where it was run until 2005 by the government in cooperation with the Broadcasting Council (Dragomir 2008: 7). Traditionally, the CEE media markets also relied on state financing for broadcasting regulatory bodies. While most of the broadcasting and public service media laws in the region were passed by 1994, the independence of regulatory agencies remained hampered by heavily politicized appointment procedures (Petković 2004), such as those governing the appointment of the members of the Radio and Television

Broadcasting Council in the Czech Republic or those which required IRA members in Poland to have no political past (OSI 2005: 1092). In Romania, Lithuania, the Former Yugoslav Republic of Macedonia and Croatia, regulatory agencies were granted independent status from the beginning, yet political interference in the functioning of the body was not entirely absent.

The second objective reflected the influence of Western European models and practices (OSI 2005: 34-38) and entailed a degree of institutional mimetism and international policy learning. Post-communist countries tried to follow the European media standards by imitation or adaptation (Petković 2004: 10). For example, the 1993 Albanian press law was drafted after the law of one of the German states (*Länder*), but was considered too restrictive and was replaced in 1997. In the Lithuanian case, two separate regulators were established for public and commercial broadcasting¹² and, in line with the German model of involving ‘socially significant groups’, nine out of the thirteen members of the Radio and Television Commission of Lithuania – which regulated commercial broadcasters – were appointed by professional organizations (OSI 2005: 45). Following the French example, IRAs appoint the governing bodies of the public broadcasters in Bulgaria,¹³ Estonia, Latvia and Poland.

For many years, the regulation of the audiovisual sector remained subordinated to the ideologies of the political elites driving the transformation. The shift came through the infusion of values promoted by the international organizations and the multitude of foreign donors operating in the region, which fuelled a strong respect for and adherence to the rule of law, considered to be the necessary condition for the ‘emergence of a genuine legal culture of standards related to freedom of expression and freedom of the media’ (Kaminski 2003: 64). Additionally, the international actors provided support for the establishment of professional organizations, trade unions, and training organizations. The impact of Europeanization manifested itself in the attempts of the candidate countries to comply with accepted European standards and best practices and harmonize their national legislation accordingly, in particular with regard to the transformation of the public broadcaster from a state-controlled to a public service oriented entity (Jakubowicz and Sükösd 2008: 16).

By 2007, ten of the countries in the region had become full members of the EU. Similar to the prevailing governance approach after liberalization and re-regulation in the utilities sectors, independent regulation was introduced after the transformation from state broadcasting to public service broadcasting and the de-regulation phase. Across all sectors, part of the dynamic that transformed regulatory governance, in particular in the countries of Central and Eastern Europe, is attributed to European integration and Europeanization. Nonetheless, the transformations in post-communist broadcast regulation occurred within a limited time frame and thus their systematization was more prone to political influence, especially in cases in which the democratic institutions supposed to counterbalance such politicization were themselves undergoing reform.

Media intervention in post-conflict states

The restructuring of broadcasting following the end of the wars in former Yugoslavia in 1995 (Bosnia-Herzegovina, hereafter BiH) and 1999 (Kosovo) represented a new instance of media intervention by the international community, with the aim of preventing national monopolies or ethnic domination. A historical precedent for this kind of intervention was set by the Allied Occupation Forces’ efforts to influence the media system in Germany and Japan after the Second World War (Price and Thompson 2002: 4). In the Western Balkans, the intervention

was intended to limit the effects of politically-fuelled nationalist propaganda. As illustrated in Table 1, the need for establishing IRAs was subsumed to the broader objective of limiting partisan interference in a post-conflict environment. It was, in the words of Karłowicz (2003: 116), ‘an entirely new experiment in the field of media’.

Once the Dayton Peace Accords put an end to the war in November 1995, the involvement of the Office of the High Representative (OHR), the Organization for Security and Co-operation in Europe (OSCE) and numerous NGOs represented a real test in reshaping and reforming the media space as part of the democratic institution-building process. BiH represented a special case, as the media were divided along ethnic lines in three distinct spheres: Bosniak, Serb and Croat. Thus, the process of disentangling the media from nationalist propaganda and the struggle to create an enabling environment were further complicated, as Chapter 11 in this book by Jusic explains in more detail. In BiH, an Independent Media Commission (IMC), was introduced in 1998 as a temporary body for print media and broadcasting, as well as for establishing codes for the press and for the Internet, and was expected to transfer its authority to a local body as soon as possible.

The establishment of a country-wide public service broadcaster in BiH, as well as a public broadcaster for the Federation entity, was decreed by the international community’s High Representative in 1999 and again in 2000. Due to political resistance, however, it was not until 2002 that the old state broadcasting system was formally replaced by the Public Broadcasting Service of Bosnia and Herzegovina (PBSBiH), later renamed Radio and Television of Bosnia-Herzegovina (BHRT), as well as public broadcasters in both entities - the Radio-Television of the Federation of Bosnia & Herzegovina (RTFBiH) and the Radio-Television of Republika Srpska (RTRS), respectively (OSI 2005: 294-296). In 2001, the IMC and the telecommunications regulator were merged into a new converged regulatory body, the Communications Regulatory Agency (CRA) – the first of its kind in the region.

The case of Kosovo is not entirely different. During the Milosevic regime, the Albanian-speaking media were banned in Kosovo (Karłowicz 2003), while the media system was appropriated by the state, which controlled all information channels (Thompson and de Luce 2002). Just as the 1995 Dayton Peace Accords in the Bosnian case, the Rambouillet Accords ending the Kosovo conflict did not include any specifications for media reform, except for guaranteeing freedom of expression. As part of the UN Interim Mission in Kosovo (UNMIK), the OSCE was mandated to develop ‘civil society, non-governmental organizations, political parties, and local media’ (Mertus and Thompson 2002: 260). In spite of the peace proceedings, ethnic tensions continued to be fuelled by the partisan media in Kosovo. In response, the Temporary Media Commissioner (TMC) was created in June 2000 as a provisional entity mandated up to 2004. From the outset, the TMC was given extensive powers, ranging from establishing codes of ethics – which became prerequisites for granting broadcast licenses - to the imposition of substantial fines for promoting hate speech. To balance these powers, an independent three-judge Media Appeals Board was put in place. A public broadcaster, Radio-Television Kosovo (RTK), and two commercial televisions with a public service orientation (KTV and TV 21) were funded primarily by international donors. As of 2003, a public financing system based on licence fees has been established for RTK. The Bosnian model inspired the OSCE to establish an Independent Media Commission in Kosovo in 2005.

The paradigmatic change of introducing independent regulators in post-war environments at a time of general power transition poses both conceptual and practical concerns for media

freedoms safeguarding approaches and delegation models. BiH and Kosovo represent special cases in which influence was exerted by international donors on audiovisual policy at critical moments of post-conflict reconstruction. This was done at the expense of having local stakeholders significantly involved or getting real needs articulated in a bottom-up process (Price and Thompson 2002). Several pieces of regulation which constituted rather advanced achievements on paper in fact remained inefficient in practice and not adapted to local specificities. *De facto*, in both cases, media reform was delayed because the peace accords included almost no specific provisions on this subject,¹⁴ thus considerably underestimating the role played by the media in the reconciliation process.

Re-politicization and neo-authoritarian tendencies

The politicization of media supervision has always been a challenge, given its potential to erode the IRA model from inside. The delicate relationship between politics and the media remains a constant source of temptation to exert influence on the IRA. In the Berlusconi era, the Italian media system achieved notoriety because of the dominance of the prime minister's company, RTI/ Mediaset, in commercial broadcasting in combination with his influence over the Italian public service broadcaster RAI. In this context, moreover, the Italian regulator AGCOM was affected by appointments of its president and commissioners that were considered highly politicized. There are currently several countries, notably in the CEE region, where governments engage more or less bluntly in the reverse modelling of IRAs away from international best practice enshrined in the recommendation of the Council of Europe (Rec (2000)23). The early 2000s have marked a paradigm shift because re-politicization has gained ground. The resulting marginalization of IRAs is just the visible result of the mismatch between independent media supervision as an ideal and the regular operation of such bodies.

The politicians who have the primacy to define the formal institutional framework can at any time pass or amend laws to model their preferred version of an IRA (Hans Bredow Institute, et al. 2011: 34). Changes to the IRA's constituting laws are therefore a potent vehicle to re-align regulators with a country's political majorities at any given time. In order to avoid the appearance that these changes are exclusively politically motivated, a reform need is established, and this offers a ready narrative to pursue the IRA's reorganization. Quite often, the context for a reform of the media regulation is set by the EU itself with the passing of a Directive that requires transformation into national law as it was the case with the 2007 Audiovisual Media Services Directive (2007/65/EC) (in its consolidated version Directive 2010/13/EU, European Parliament and the Council 2010). Examining the record of changes to the original statute can reveal whether these were related to changes in a country's political majorities and if the independence of the respective IRA has deteriorated as a consequence of it. There are many examples of the proximity between a change of government and a change in media supervision, for instance by effectively replacing the board members or the chairman of an IRA's highest decision-making organs. One such case occurred in Poland after the 2005 elections, as the restructuring of KRRiT can be linked to political motivations much more than to an objective reason.

What is remarkable in this regard is the new tendency of negative, yet accepted practices in media regulation to diffuse in Europe. For instance in 2011, the Hungarian government made an effort to defend their highly controversial media reforms by referring to specific similar legislations in other European countries. If such negative policy learning had an empirical

basis beyond Hungary, it would significantly alter our understanding of institutional isomorphism in Europe. This theory holds that countries copy apparently successful models of regulators elsewhere (Thatcher 2001: 3). If, however, in a political value system an IRA is considered successful if it complies with minimum requirements of formal independence, while allowing enough leverage for political influence, this model may have export value for governments attempting to regain influence over the media sector. Attempts to enshrine in EU legislation firm requirements for independence of regulatory bodies in the audiovisual media sector have so far been unsuccessful. The rules in the relevant instrument, the Audiovisual Media Services Directive (hereafter: AVMS Directive), are intentionally limited to internal market aspects of media services, leaving the responsibility for designing regulatory supervision in the audiovisual media sector to the member states. The effect of the reference in the AVMS Directive on independent supervisory bodies is limited (Hans Bredow Institute, et al. 2011: 316f.). The details of this complex legal arrangement are explained in Chapter 4 in this book by Stevens. Currently, EU member states retain a wide discretion as to how they want to model the institutional design of their IRAs, which leaves potential for engineering the dimension of independence by introducing weaker formal frameworks at the national level, especially in the absence of a strong system of checks and balances.

Politicization is taken to a higher level when a country displays the characteristics of a neo-authoritarian media system. This is the case once the freedom of the media is significantly jeopardized, yet still backed by the government's attempt to uphold the appearance of commitment to democratic values (Coyne and Leeson 2009: 129). Russia under Putin has been identified as the prototype of such a system, but other countries have also embarked on strategies which blur the line between free and controlled media by combining political influences through media ownership, regulation, supervision and litigation. The 2010 media law reforms in Hungary and the Former Yugoslav Republic of Macedonia are believed to be inspired by neo-authoritarian media politics, although both have already been corrected to some extent by subsequent developments.

Convergence paradigm

Technological convergence continues to blur boundaries between the formerly distinct information technology, media and telecommunications sectors, and this is largely attributable to digitalization. The broad conditions that have facilitated this shift since the late 1990s were: the introduction of mixed broadcasting systems in the post-communist countries; new technological advancements, including digital delivery infrastructures; and the advent of non-linear audiovisual services and hybrid services that are situated somewhere in between individual communications and electronic media (Buckley, Duerm, Mendel, and Siocgru 2008: 36). Convergence manifests itself at the level of content (audiovisual media services), transmission (digitalization) and terminal equipment (devices). Its emergence coincided with the advent of the Internet and the challenges of regulation in the online space. In Europe, convergence has affected the organization of regulatory supervision in two distinct ways. On the one hand, the trend to create converged regulators has made some inroads in Europe, even if it is by no means the predominant model and the prevailing model remains one of IRAs specialized in television and radio regulation. On the other hand, regulatory competences in the field of television in Europe are quite routinely expanded to certain television-like formats distributed over the Internet.

Converged independent media regulatory authorities

The idea of a single regulator dates back long before the convergence phenomenon, to the creation of the Federal Communications Commission (FCC) in the United States in 1934. Yet, the first two converged national regulatory bodies to appear in Western Europe have completely different histories: AGCOM, the Italian regulator, was created directly as a converged authority in 1997, whereas Ofcom in the United Kingdom was the result of merging five different regulators in 2003.¹⁵ Technological convergence certainly spurred the emergence of converged regulators in Europe, as it offered a compelling argument for the need for regulatory reform, which politicians would readily invoke as a trigger for significantly improving effectiveness.

The main rationale of the converged regulatory model is avoiding the duplication of functions and costs of regulation. Because of the interdependency of content and distribution, converged regulators are a structural means to forestall the passing of inconsistent cross-sectoral decisions (Council of Europe 2008b:10). Along with this, the reorganization of regulatory tasks and simplification of procedures can stand out as important advantages. The primary challenge to converged regulation on the other hand, is the adaptation from a sector-based perspective to a technologically neutral approach (McGougan 1999). Notably, the different sectors within the converged agency might have divergent agendas (Council of Europe 2008b: 10), which might delay the adoption of policies by making the negotiation process longer. The creation of a single point of contact for information is believed to facilitate communication with both the industry and the public. At the same time, it can raise concerns revolving around the loss of transparency and a decreased level of accessibility to the consumer (Lunt and Livingstone 2012: 3).

Converged regulators with competences for broadcasting or audiovisual media operate to date in seven European countries. In addition to Italy and the United Kingdom, there is the CRA in Bosnia-Herzegovina, the Federal Office of Communications in Switzerland, FICORA in Finland, APEK in Slovenia and, as the most recent addition, the National Media and Infocommunications Authority (NMHH) in Hungary (Hans Bredow Institute, et al. 2011: 211f.). What they have in common is that the different sectoral competences are combined under the roof of a formally independent regulatory authority. Beyond that, they are distinctly different regulators, which necessarily reflect the institutional history and administrative culture of their countries. The fact that national specificities tend to be replicated in both converged and non-converged models could be the main reason why there is no empirical evidence that would support the superiority of the converged regulator over the more traditional IRA specialized in television and radio regulation, in particular with regard to the issue of political interference (Manchet 2007: 7).

In specific contexts, the creation of a converged regulator has likely been used as a pretext for abolishing an unwanted one. Establishing a converged regulator necessarily involves a reorganization of existing regulatory structures, in the course of which members of the decision-making organs are ousted. The European Commission raised concerns over institutional independence in the case of the attempts to establish new converged regulatory structures in Slovakia in 2004, the Former Yugoslav Republic of Macedonia in 2007 and Romania in 2008.¹⁶ In other CEE countries, such re-structuring efforts have succeeded or are under way, which could significantly alter the arm's length relationship between governments and IRAs. In 2010, Hungary created the NMHH by merging the former regulators overseeing

broadcast media and telecommunications. Its constituting law grants broad and unprecedented powers to the newly converged regulatory agency. The agency's independence is affirmed in its statute, but may not be reflected in practice. Specific provisions, such as the appointment procedures, terms in office and entrusted responsibilities of the NMHH's officials, have a strong impact on the independence of the converged regulator, especially in the light of the legacy of prior similar uses resulting in political favouritism (CMCS 2012, p. ix f.; Jakubowicz 2010; OSCE 2010).

The new notion of audiovisual media services

Convergence is behind the notion of audiovisual media services, i.e. a combination of *linear* television formats and new, *non-linear*, on-demand audiovisual services. It entered the stage of the EU's media policy with the 2007 AVMS Directive (2007/65/EC) which member states had to transpose into their laws by 2009 (European Parliament and the Council 2010). The Directive introduced three tiers of regulation of audiovisual media services and the basic tier includes new on-demand audiovisual services. Consequently, different models of supervision have appeared, with most EU member states opting to expand the competences of their existing regulators that oversee commercial broadcasting to non-linear services (Hans Bredow Institute, et al. 2011: 211). In a large majority of European countries (31 out of 39 countries surveyed), the supervision of the implementation of AVMS rules is left to the IRA that already oversees commercial broadcasting, and in some countries also PSB (Hans Bredow Institute, et al. 2011: 501).

So far, the regulation of on-demand audiovisual media services has been delegated to an independent co-regulator only in the UK. The British Authority for Television On Demand (ATVOD) was entrusted with specialized functions and powers by Ofcom in 2010.¹⁷ ATVOD works in partnership with the industry, with the aim of protecting the users' interests in accordance with the law. To that purpose, the ATVOD established a dialogue platform, called the ATVOD Industry Forum. In general, it appears that the new EU member states – but also the countries of Southern Europe – have little experience with co-regulation as an alternative to regulatory supervision, outside the area of traditional press, and tend to use it much less (see the country reports in SEENPM 2009).¹⁸ When it comes to implementing EU regulation, these countries are also path-dependent insofar as competences for new regulation are vested in the existing IRAs.

The marginalization paradigm – new modes of governance

New modes of governance have non-discriminatingly entered the sphere of media supervision and any interrogation must take into account the larger transformation in governance and in the 21st century media. IRA structures continue to evolve as a result of their new roles and functions, gradually increasing tensions around the concept of agency independence. In particular in the North-Western European countries, certain aspects of media regulation are now dealt with in a more discursive fashion and self- and co-regulatory schemes flourish in certain contexts.

Self- and co-regulation and onward delegation

In the UK, where this trend has advanced considerably, Lunt and Livingstone characterize agencies like Ofcom, the converged regulator with responsibilities for the media, as 'public-facing institutions in the public sphere' (2012: 4), intended to enable governance in the era of

globalization. Ofcom's role extends beyond economic and media regulation to 'fostering partnerships and networks of connection among stakeholders' (Lunt and Livingstone 2012: 6). In addition to this new policy steering function, transnational media and communications demand coordination across borders and at all levels among a diverse range of stakeholders (ibid). In view of the new role of IRAs in the media sector, the traditional means of intervention decline in favour of a more orchestrated and concerted governance approach, which almost render IRAs a public interest broker.

The AVMS Directive (European Parliament and the Council 2010) encourages self- and co-regulation in line with the European inter-institutional commitment to 'better regulation' (European Parliament, the Council and the Commission 2003). It recognizes the role which effective self- and co-regulation can play in achieving the objectives of the regulation and encourages member states to use co-regulation and self-regulation where appropriate and on a voluntary basis (Audiovisual Media Directive, Recital 44 and Article 4 par. 7). Such endeavours are indicative of efforts to pre-empt legislation, which subscribe to the logic of new governance modes. Following this, the UK introduced an independent co-regulator, the ATVOD.

Austria's and Germany's governance approach in the field of media advances 'regulated self-regulation', understood as 'self-regulation that fits in with a legal framework or has a basis laid down in law' (Schulz and Held 2001: 3). In this way, the expertise of the industry actors is built into the new governance modes. Such a *modus operandi* rests on two fundamental principles: first, that there is a statutory framework in place allowing for the proper functioning of self-regulation; second, that the conduct of the regulating body influences the process of self-regulation through direct intervention in the process (introducing legal safeguards, creating a supervisory body, etc.) or indirect control (definition of responsibilities, procedures and membership rules for the relevant bodies etc.). According to Héritier and Eckert (2008), industry self-regulation is more likely to appear when positive incentives are provided, or when the threat of legislation is present. Importantly, regulated self-regulation – as distinct from 'pure self-regulation' where there is no state involvement – can be complemented by other forms of regulation, such as the traditional 'command-and-control' intercession, industry codes or industry standards (Schulz and Held 2001, HBI/EMR 2006).

European regulatory networks in the media sector

Turning now to the role of ERNs in the media landscape, two entities with overlapping membership exist at European level. For broadcasting, the European Platform of Regulatory Authorities (EPRA) functions as a discussion forum for regulators in the broadcasting sector, while the independent regulators have established the Independent Regulators Group (IRG). However, in both cases the national level retains all regulatory competences, which is the reason to disregard the independence of both cooperation bodies. The INDIREG study (Hans Bredow Institute, et al. 2011: 60), however, stresses the positive effect of cooperation in European (or international) networks on the independence of national IRAs, due to best practice exchange, policy-learning and enhancement of the agency's overall self-promotional value.

The emerging paradigm of marginalization complements the changes stemming from the need to consider forms of media oversight beyond national borders, while including a wide array of stakeholders. Within this framework, co- and self-regulation operate alongside

network governance arrangements, in which delegation procedures become strongly intertwined. To a large extent, these reflect alternative means of exerting governmental influence over the functioning of the media sector, in most cases by reducing the role played by the IRAs in new regulation domains, be it by creating the institutional design for encouraging voluntary regulation by the industry or by indirectly pressuring the suppliers to apply specific standards of content regulation (for example, on the Internet).

Adding to the complexity of contemporary media policy, regulatory shifts continue to follow a non-uniform path, with multiple paradigms co-existing and different ones prevailing at different moments in time, in an era of globalization and multi-layered interdependence. Double delegation instances accompany national struggles to maintain domestic competences for regulation. An exemplary case of this is the advent of ERNs, created by national governments, IRAs and the European Commission for the purpose of mitigating the effects of the uneven development of sectoral regulators in EU member states. Entrusting more powers to regulatory networks creates the conditions for the role of the national IRAs to be curtailed in what we identified as the marginalization paradigm.

Conclusion

This chapter scrutinized the normative considerations for, and the empirical development of, media specialized IRAs in the European context. Starting from the early days of radio and television, the direct control of the government over the channels of information was recognized as problematic. With the introduction of PSB, the need to separate broadcasters from the state and to ensure their accountability was addressed by instituting internal oversight as a mechanism to safeguard independence, yet the governing bodies often remained subordinate to political purposes. When the market continued to expand as the number of satellites increased, the need for regulating the new and numerous commercial broadcasters made it more urgent to establish IRAs, which, in turn, responded to the regulation efficiency agenda under the new public management ideology in Western Europe. Delegating decision-making competences to IRAs served, primarily, the purposes of institutionalizing credible political commitment beyond electoral terms and pooling expertise for better regulation. These developments also permeated media transition environments, from post-communist transformation to post-war reconstruction in the 1990s.

Arguably, it was primarily functional pressures, in particular in relation to commercial broadcasting, that motivated elected officials to establish the first IRAs in some Western European countries, but there may have also been a symbolic intention in the delegation of supervision over audiovisual media, as the guarantee of independence became more widely accepted. The change from direct interventionism to delegation, which occurred throughout the 1980s and 1990s in Western Europe, was replicated in CEE in a much shorter time span, which made the newly established IRAs much more vulnerable to political pressures. The lack of experience with the tradition of entrusting responsibilities to expert independent bodies pre-empts the choice of institutional governance and continues to be visible in the path-dependent way of vesting attributions for new regulation in the existing institutions, which can be better described as IRAs that were reverse engineered according to political preferences. In addition, national practices around the functioning of the IRAs differed considerably, sometimes allowing the establishment of regulatory bodies whose independence is questionable, in particular in contexts in which re-politicization has emerged as a strong tendency.

IRAs have further evolved or adapted in response to the convergence of audiovisual media services as well as the increasing reliance, starting in North-Western European countries, on new governance instruments. The impetus for regulatory reform in the member states is sometimes set by the necessity to transpose EU directives into domestic law. However, the relevant EU instrument for the broadcasting sector does not prescribe any organizational primate for IRAs, although it does contain a mentioning of the competent independent supervisory authorities. To date, IRAs have primarily expanded their responsibilities to include harmonized AVMS legislation, while in some cases member states have adopted the converged regulator's model. Where countries responded by establishing converged structures one should expect that the converged body combines some of the institutional characteristics of traditional IRAs, but what if convergence is used by politicians as a pretext to create legislative disruption for an existing IRA? How can one tell apart the necessity for organizational reform from political interference with an IRA in the field of media? Recently, the role of IRAs is challenged by new modes of governance that no longer require the implementation of the traditional top-down regulatory approach and instead place increased emphasis on self- and co-regulatory regimes, which affects IRAs role and conception as a regulator.

Our politico-historical investigation into the delegation to IRAs in the audiovisual media sector in Europe through the lens of regulatory theory allows us to identify a number of parallels. With some modifications that take into account the specific evolution of the media sector, the observed commonalities with the trajectories followed by IRAs in other sectors lead us to conclude that the general theories on regulation and delegation hold strong in the former broadcasting and now audiovisual media sector as well. The media sector's own dynamic development can explain some variations in the pattern of delegation which are necessarily specific to the supervision of audiovisual media. Posing a challenge to the notion of IRAs, however, is the frequent recurrence of political influence over national media regulators that renders the prevailing media governance model a symbolic rather than functionally driven delegation, with all the consequences this entails regarding the lack of political commitment.

In addition, in the European context, the operation of IRAs remains strongly influenced by national institutional developments that are marked by the legacy of the country's traditional government culture, which cannot be shrugged off in spite of all the modernizations in law and in the sector supervised. During the 1990s, liberalization and media transformation in the CEE region moved the European countries closer in terms of the functional solutions delegated to IRAs and best practices adhered to. More recent developments, however, point to new major differences: while IRAs in some Western European countries reinvent themselves with new modes of governance, other regions grapple with the very essence of independence.

Future research should investigate the possible need to accept that politicized appointments are a recurring feature in this area and is not limited to any specific region of Europe. The US theory on delegation handles such issues much more openly and does not assume it could be entirely avoided. With our contemporary understanding of media governance, we should consider whether to relinquish the attribute of 'independence' and instead re-focus on governance mechanisms which encourage adherence to transparency, deliberation, participation and accountability in the operations of any media supervisory body. Research in this direction would actually support the quest for EU-level safeguards against undue

interference with IRAs in the audiovisual media sector, similar to those known in the area of national central banks and recently in electronic communications.¹⁹ However, in the aftermath of the discussion around the adoption of the AVMS Directives, member states are likely not prepared to turn such safeguards into a credible commitment that would constrain the ability of national governments to temper with media supervision.

Acknowledgements:

We would like to acknowledge the contribution of the entire INDIREG research team as listed in the acknowledgement section of Hans Bredow Institute et al. (2011).

Endnotes

- ¹ Article 30 of the Audiovisual Media Services Directive, which is the short name for Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1). This Directive repealed 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 (OJ L 332, 18.12.2007, p. 27–45), as amended by Directive 97/36/EC of 30 June 1997 and by Directive 2007/65/EC of 11 December 2007.
- ² The following European countries were included in the INDIREG study by Hans Bredow Institute, et al. (2011): the 27 EU member states, candidate countries to the European Union (Croatia, Former Yugoslav Republic of Macedonia, Turkey), potential candidate countries to the European Union (Albania, Bosnia and Herzegovina, Montenegro, Serbia, Kosovo), and EFTA countries (Iceland, Liechtenstein, Norway, Switzerland).
- ³ Majone (1997: 140) identifies three sets of strategies leading from the positive to the regulatory state: privatization, Europeanization and the growth of indirect ‘third party’ government.
- ⁴ According to the wide definition of Héritier and Lehmkuhl (2011: 126) these are ‘modes of public policy-making which include private actors and/or public policy-making by public actors occurring outside legislative arenas, and which focus on delimited sectoral or functional areas’. The creation of IRAs is in itself considered a new mode of governance; however, here the focus is more on outsourcing policy-making and policing to self- and co-regulatory schemes.
- ⁵ Hallin and Mancini (2004) identify the following forms of state intervention: libel; privacy; defamation; right-of-reply laws; hate speech laws; professional secrecy laws for journalists; laws on access to information; laws regulating media concentration, ownership and competition; laws regulating political communication (especially during electoral periods); broadcast licensing laws; and laws regulating broadcast content. They conclude that ‘the most important form of state intervention is surely public service broadcasting’ (2004: 43).
- ⁶ According to section 7(1a) of the BBC charter, the Governors should set and monitor a set of ‘clear objectives and promises for the Corporation’s services, programmes and other activities and monitor how far the Corporation has attained such objectives and met its pledges to its audiences’.
- ⁷ The nine regional broadcasting entities jointly act, to this day, in the Association of Public Broadcasting Corporations in Germany (*Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten Deutschlands – ARD*).
- ⁸ Liberalization is understood here as a process through which exclusive rights to provide television broadcasting services have been lifted in order to allow market access by private and commercial television stations.
- ⁹ In most cases, however, this autonomous funding of PSBs was based on user licence fees that were still determined by the government.
- ¹⁰ The ITVs were established as regional monopolies and comprised 14 regions plus London, which had two companies. In London, one company would broadcast during weekdays and the other one during weekends.
- ¹¹ The KRRiT remains accountable to the Chamber of Deputies (Sejm), Senate and Presidency, which are also the appointing institutions.
- ¹² The Council of Lithuanian Radio and Television and the Radio and Television Commission of Lithuania.
- ¹³ In Bulgaria, the Communications Regulation Committee (CRC) operates alongside the Council for Electronic Media, but the appointment procedure for this body remains divided between the Parliament and the President of the Republic.
- ¹⁴ Except for Annexe 3, art. 1 and Annexe 7, art. 1.3b of the Dayton Peace Accords (full text available at <http://www.nato.int/ifor/gfa/gfa-home.htm>).
- ¹⁵ Namely, the five previous regulatory bodies were: The Radiocommunications Agency (RA), The Office of Telecommunications (Oftel), The Independent Television Commission (ITC), The Broadcasting Standards Commission and The Radio Authority (RA).
- ¹⁶ Per prime ministerial emergency ordinance the Romanian government has dissolved the National Regulatory Authority for Communications and Information Technology (ANRCTI), replacing it with the National Authority for Communications (ANC) (Global Insight 2008).
- ¹⁷ The designation act legally prescribes that ‘ATVOD is sufficiently independent of providers of on-demand programme services’ (Section 5, par. IV of the Designation pursuant to section 368B of the Communications Act 2003 of functions to the Association for Television On-Demand in relation to the regulation of on-demand programme services, <http://www.atvod.co.uk/uploads/files/designation1803101.pdf>).
- ¹⁸ In the new sphere of Internet content, which is not part of the regulatory system applying to television and audiovisual media, many European countries are experimenting with self-regulation and industry standards.
- ¹⁹ Article 3 of the Framework Directive (2002/21/EC) amended by Regulation 544/2009 and Directive 2009/140/EC provides: ‘Member states shall ensure that the head of a national regulatory agency (NRA), or where applicable, members of the collegiate body fulfilling that function within a NRA... may be dismissed only if they no longer fulfil the conditions required for the performance of their duties’.

References

- Brants, Kees and Siune, Karen (1992), 'Public broadcasting in a state of flux', in Karen Suine and W. Truetzschler (eds.), *Dynamics of Media Politics: Broadcast and Electronic Media in Western Europe*, London: Sage.
- Buckley, Steve, Duerm, Kreszentia, Mendel, Toby and Siocgru, Sean O. (2008), *Broadcasting, Voice and Accountability. A Public Interest Approach to Policy, Law, and Regulation*, Washington, D.C: The World Bank Group.
- Center for Media and Communication Studies (CMCS) (2012), *Hungarian Media Laws in Europe: An Assessment of the Consistency of Hungary's Media Laws with European Practices and Norms*, Budapest: Central European University, https://cmcs.ceu.hu/sites/default/files/field_attachment/news/node-27293/Hungarian_Media_Laws_in_Europe_0.pdf. Accessed 20 February 2012.
- Coen, David and Thatcher, Mark (2006), 'After delegation: the evolution of European networks of regulatory agencies', in *The First Conference of the ECPR Standing Group on Regulatory Governance: Frontiers of Regulation. Assessing Scholarly Debates and Policy Challenges*, Bath, United Kingdom, 8-10 September, ECPR Standing Group on Regulatory Governance.
- Coen, David and Thatcher, Mark (2008), 'Network governance and multi-level delegation: European networks of regulatory agencies', *Journal of Public Policy*, 28: 1, pp. 49-71.
- Coppens, Tomas and Saeys, Frieda (2006), 'Enforcing performance: new approaches to govern public service broadcasting', *Media, Culture and Society*, 28: 2, pp. 261-284.
- Council of Europe (2000), *Recommendation (Rec (2000)23) of the Committee of Ministers to the Member States on the independence and functions of regulatory authorities for the broadcasting sector*.
- Council of Europe (2008a), *Declaration of the Committee of Ministers of 26 March 2008 on the independence and functions of regulatory authorities for the broadcasting sector*.
- Council of Europe (2008b), *Converging media – convergent regulators? The future of broadcasting regulatory authorities in South-Eastern Europe*, Strasbourg: Directorate General of Human Rights and Legal Affairs.
- Coyne, Christopher J. and Leeson, Peter T. (2009), *Media, Development and Institutional Change*, Northampton, MA: Edward Elger Publishing.
- Dragomir, Marius (2008), 'The structure and functions of the broadcasting industry as a public forum', in The CommGAP Program, World Bank and the Joan Shorenstein Center on the Press, Politics and Public Policy, Harvard Kennedy School of Government, *Harvard-World Bank Workshop on The Role of News Media in the Governance Reform Agenda*, Cambridge, MA, United States, 29-31 May, <http://www.hks.harvard.edu/fs/pnorris/Conference/Conference%20papers/Dragomir%20Broadcasting%20Industry.pdf>. Accessed 23 October 2010.
- Elstein, David (2005), 'Public service broadcasting in the digital age', *Economic Affairs*, 25: 4, pp. 68-72.
- European Parliament, the Council and the Commission of the European Union (2003), Inter-institutional Agreement on better law-making 2003/C 321/01 of 16 December 2003, *Official Journal of the European Union* of 31.12.2003.
- European Parliament and the Council of the European Union (2002), Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), *Official Journal of the European Union* of 24.04.2002 L 108/33.
- European Parliament and the Council of the European Union (2007), Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 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, *Official Journal of the European Union* of 18.12.2007 L 332/27.
- European Parliament and the Council of the European Union (2009a), Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, *Official Journal of the European Union* of 29.06.2009 L 167/12.
- European Parliament and the Council of the European Union (2009b), Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorization of electronic communications networks and services, *Official Journal of the European Union* of 18.12.2009 L 337/27.
- European Parliament and the Council of the European Union (2010), Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), *Official Journal of the European Union* of 15.4.2010 L 95/1.
- Gilardi, Fabrizio (2005a), 'Evaluating independent regulators', in OECD Working Party on Regulatory Management and Reform, *OECD: Designing Independent and Accountable Regulatory Authorities for High Quality Regulation. Proceedings of an Expert Meeting in London, United Kingdom, 10-11 January 2005*, OECD, pp. 101-125.
- Gilardi, Fabrizio (2005b), 'The Institutional Foundations of Regulatory Capitalism: The Diffusion of Independent Regulatory Agencies in Western Europe', *The ANNALS of the American Academy of Political and Social Science*, 598: 1, pp. 84-101.
- Gilardi, Fabrizio (2008), *Delegation in the Regulatory State: Independent Regulatory Agencies in Western Europe*, Cheltenham, UK: Edward Elgar Publishing.
- Global Insight (2008), 'Romania - Europe: Romania Dissolves Telecoms Regulator, Faces EU Inquiry', Newsletter of 24 September 2008 (on file with the authors).
- Hallin, Daniel and Mancini, Paolo (2004), *Comparing Media Systems: Three Models of Media and Politics*, Cambridge: Cambridge University Press.
- Hans Bredow Institute for Media Research and the Institute of European Media Law (EMR) (2006), *Final Report: Study on Co-regulatory Measures in the Media Sector*, study conducted on behalf of the European Commission, DG Information Society and Media, http://ec.europa.eu/avpolicy/docs/library/studies/coregul/final_rep_en.pdf.
- Hans Bredow Institute for Media Research; Interdisciplinary Centre for Law & ICT (ICRI), Katholieke Universiteit Leuven; Center for Media and Communication Studies (CMCS), Central European University; Cullen International; Perspective Associates (eds., 2011). *INDIREG. Indicators for independence and efficient functioning of audio-visual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive*. Study conducted on behalf of the European Commission. Final Report. February 2011, http://ec.europa.eu/avpolicy/docs/library/studies/regulators/final_report.pdf.
- Héritier, Adrienne and Lehmkuhl, Dirk (2011), 'New Modes of Governance and Democratic Accountability', *Government and Opposition*, 46: 1, pp. 126-144.
- Héritier, Adrienne and Eckert, Sandra (2008), 'New Modes of Governance in the Shadow of Hierarchy: Self-regulation by Industry in Europe', *Journal of Public Policy*, 28: 1, pp 113-138.
- Hood, Christopher (1991), 'A Public Management for All Seasons?', *Public Administration*, 69: 1, pp. 3-19.
- Humphreys, Peter (1996), *Mass-media and Media Policy in Western Europe*, Manchester and New York: Manchester University Press.

- Jakubowicz, Karol (2008), 'Finding the right place on the map: prospects for public service broadcasting in post-communist countries', in Karol Jakubowicz and Miklós Sükösd, (eds.), *Finding the Right Place on the Map: Central and Eastern European Media Change in a Global Perspective*, Chicago: Intellect Books, pp. 101-124.
- Jakubowicz, Karol (2010), *Analysis and assessment of a package of Hungarian legislation and draft legislation on media and telecommunications*, prepared for the Office of the OSCE Representative on Freedom of the Media, http://www.osce.org/documents/rfm/2010/09/45942_en.pdf. Accessed 20 October 2010.
- Jakubowicz, Karol and Sükösd, Miklós (2008), 'Twelve concepts regarding media system evolution and democratization in post-communist societies', in Karol Jakubowicz and Miklós Sükösd (eds.), *Finding the Right Place on the Map: Central and Eastern European Media Change in a Global Perspective*, Chicago: Intellect Books, pp. 9-41.
- Jordan, Andrew, Wurzel, Rüdiger K. W. and Zito, Anthony (2005), 'The Rise of "New" Policy Instruments in Comparative Perspective: Has Governance Eclipsed Government?', *Political Studies*, 53: 3, pp. 477–496.
- Jusic, Tarik and Dzihana, Amer (2008), 'Bosnia and Herzegovina', in Sandra Basic-Hrvatina, Mark Thompson and Tarik Jusic (eds.), *Divided They Fall: Public Service Broadcasting in Multiethnic States*, Sarajevo: Mediacentar, pp. 81-119.
- Kaminski, Ireneusz (2003), 'Applying Western media law standards in East Central Europe', in Miklós Sükösd and Péter Bajomi-Lázár (eds.), *Reinventing Media. Media Policy Reform in East-Central Europe*, Budapest: Central European University, pp. 63-84.
- Karłowicz, Izabella (2003), 'The difficult birth of the fourth estate: media development and democracy assistance in the post-conflict Balkans', in Miklós Sükösd and Péter Bajomi-Lázár (eds.), *Reinventing Media. Media Policy Reform in East-Central Europe*, Budapest: Central European University, pp. 115-135.
- Landis, James M. (1938/1966), *The Administrative Process*, New Haven, CT.: Yale University Press.
- Lunt, Peter, and Livingstone, Sonia (2012), *Media regulation: Governance and the Interest of Citizens and Consumers*, London: Sage.
- Machet, Emmanuelle (2007), 'The Independence of Regulatory Authorities', Background document EPRA/2007/02, in European Platform of Regulatory Authorities (EPRA), *25th EPRA meeting*, Prague, Czech Republic, 16-19 May, http://epa3-production.s3.amazonaws.com/attachments/files/1799/original/Prague_independence_final_public.pdf?1327491949. Accessed 22 February 2012.
- Magnette, Paul (2005), 'The politics of regulation in the European Union', in D. Geradin, R. Muñoz and N. Petit (eds.), *Regulation through Agencies in the EU – A New Paradigm of European Governance*, Cheltenham and Northampton, MA: Edward Elgar Publishing.
- Majone, Giandomenico (1994), 'The rise of the regulatory state in Europe', *West European Politics*, 17: 3, pp. 77–101.
- Majone, Giandomenico (1997), 'From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance', *Journal of Public Policy*, 17, pp. 139-167.
- McGougan, Julian (1999), 'The challenge of convergence to audiovisual regulation: is the current regulatory framework approaching its sell-by date?', in Christopher Marsden and Stefaan Verhulst (eds.), *Convergence in European Digital TV Regulation*, London: Blackstone Press Limited, pp. 175-191.
- Mertus, Julie and Thompson, Mark (2002), 'The learning curve: media development in Kosovo', in Monroe Price and Mark Thompson (eds.), *Forging Peace. Intervention, Human Rights and the Management of Media Space*, Edinburgh: Edinburgh University Press, pp. 259- 286.
- Mungiu-Pippidi, Alina (2003), 'From state to public service: the failed reform of state television in Central Eastern Europe', in Miklós Sükösd and Péter Bajomi-Lázár (eds.), *Reinventing Media. Media Policy Reform in East-Central Europe*, Budapest: Central European University, pp. 31-62.

- Nicolaïdes, Phedon (2005), 'Regulation of Liberalised Markets: A New Role for the State?', in D. Geradin, R. Muñoz and N. Petit (eds.), *Regulation through Agencies in the EU – A New Paradigm of European Governance*, Cheltenham and Northampton, MA: Edward Elgar Publishing, pp. 23-42.
- OSCE (Organization for Security and Co-operation in Europe) (2010), 'OSCE media freedom representative calls on the Hungarian Government to halt media legislation package, start public consultations', 24 June, <http://www.osce.org/item/44817.html>. Accessed 17 October 2010.
- OSI (Open Society Institute) (2005), *Television across Europe: Regulation, Policy and Independence. Monitoring Reports*, Budapest: OSI.
- Petković, Brankica (2004), *Media Ownership and Its Impact on Media Independence and Pluralism*, Ljubljana: Peace Institute.
- Pollack, Mark A. (1997), 'Delegation, agency and agenda setting in the European Community', *International Organisation*, 51: 1, pp. 99-134.
- Pollack, Mark A. (2002). 'Learning from the Americanists (Again): Theory and Method in the Study of Delegation', *West European Politics*, 25: 1, pp. 200-219.
- Price, Monroe and Thompson, Mark (2002), *Forging Peace. Intervention, Human Rights and the Management of Media Space*, Edinburgh: Edinburgh University Press.
- Rhodes, Rod A.W. (2000), 'Governance and Public Administration', in John Pierre (ed.), *Debating Governance: Authority, Steering, and Democracy*, Oxford: Oxford University Press, pp. 54-90.
- Salomon, Eve (2006), *Guidelines for Broadcasting Regulation*, 2nd ed., London: CBA.
- Scannell, Paddy (1990), 'Public service broadcasting: the history of a concept', in A. Goodwin and G. Whannel (eds.), *Understanding Television*, London: Routledge, pp. 11-29.
- SEENPM (South-East European Network for the Professionalization of the Media) (2009), *The Impact of Regulating On-demand/Non-linear services by the EU Audiovisual Media Services (AVMS) Directive on Freedom of Speech in Post-Communist Democracies of Central and South Eastern Europe*, http://www.mminstitute.org/files/SEENPM_AVMS_report.pdf.
- Schulz, Wolfgang, and Held, Thorsten (2001), *Regulated Self-Regulation as a Form of Modern Government*, Interim Report for a study commissioned by the German Federal Commissioner for Cultural and Media Affairs, Hans Bredow Institute for Media Research, <http://www.humanrights.coe.int/media/documents/interim-report-self-regulation.pdf>. Accessed 10 January 2012.
- Thatcher, Mark (2001), 'Delegation to Independent Regulatory Authorities in Western Europe', in European Consortium for Political Research (ECPR), *29th ECPR Joint Sessions of Workshops*, Grenoble, France, 6-11 April.
- Thatcher, Mark (2002), 'Delegation to Independent Regulatory Agencies: Pressures, Functions and Contextual Mediation', *West European Politics*, 25: 1, pp. 125-147.
- Thatcher, Mark and Stone Sweet, Alec (2002), 'Theory and practice of delegation to non-majoritarian institutions', *West European Politics*, 25: 1, pp. 1-22.
- Thompson, Mark and De Luce, Dan (2002), 'Escalating to Success? The Media Intervention in Bosnia and Herzegovina', in Monroe Price and Mark Thompson (eds.), *Forging Peace. Intervention, Human Rights and the Management of Media Space*, Edinburgh: Edinburgh University Press, pp. 200-235.
- Van Cuilenburg, Jan and McQuail, Denis (2003), 'Media policy paradigm shifts. Towards a new communications policy paradigm', *European Journal of Communication*, 18: 2, pp. 181- 207.
- Venturelli, Shalini (1998), *Liberalizing the European Media. Politics, Regulation, and the Public Sphere*, Oxford: Clarendon Press.