

The Concept of Regulatory Independence under European Union Law: A Systematic Review

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Abstract

Introduction

Independent regulatory authorities (IRAs) constitute a phenomenon directly related to European Union law. IRAs are defined as bodies tasked with the protection of competition and consumers on various markets, such as energy, telecommunication, audiovisual media or railway. They are considered one of the types of independent administrative bodies, which are described as non-majoritarian, specialised public authorities, separated from other institutions, that are neither directly elected by the people, nor directly managed by elected officials (Thatcher & Stone Sweet 2002).

In 2020, legislative changes were introduced in Poland, which resulted in shortening the term of the IRA responsible for the electronic communications market. This situation has been noted with concern by representatives of the European Commission. Doubts have arisen as to whether this action does not infringe on the principle of IRA's independence. This is just one of many similar controversies that have affected this type of institution in Central and Eastern Europe in recent years. These cases demonstrate the importance of properly understanding IRAs' status and defining precisely what kinds of institutional, organizational, and legal standards comprise the idea of their independence. This has so far only been of interest to public administration scholars in relation to selected standards (see e.g. Gilardi 2005; Hanretty & Coop 2012).

Research goal

The author aims to examine the literature and case law of the CJEU in terms of the specific standards of independence of IRAs formulated therein. He will be guided in this regard by the overarching question of what it means to be an independent regulator. In particular, he will be interested in how the status of IRAs differs from other independent administrative bodies, including other agencies and, consequently, what makes IRAs unique in this respect. An integral part of the study will be the search for limitations on the independence of IRAs.

Research methods

A systematic review will be the main research method used by the author. He will analyse over 300 publications concerning the formal and actual independence of IRAs, focusing on its competence, organizational, managerial, functional and financial standards. He will take into account not only academic publications published in peer-reviewed journals but also so-called 'grey literature' that cannot be ignored due to its contribution to the conceptualization of IRAs' independence. This applies in particular to reports by the European Commission, European networks of regulators, international organizations and think tanks. In addition, the author will carry out the legal analysis of the provisions of EU directives regulating independence of IRAs responsible for specific sectors, as well as the judgments of the CJEU on this subject.

Importance of the study

This study is an introduction to the author's work on developing a methodology for measuring formal and actual independence, which he intends to apply to Polish IRAs. The systematic review and its conclusions will be an important starting point in this regard.

Literature

Thatcher, M., & Stone Sweet, A. (2002). Theory and practice of delegation to non-majoritarian institutions. *West European Politics*, 25(1), 1-22.

Gilardi, F. (2005). The formal independence of regulators: a comparison of 17 countries and 7 sectors. *Swiss Political Science Review*, 11(4), 139-167.

Hanretty, C., & Koop, C. (2012). Measuring the formal independence of regulatory agencies. *Journal of European Public Policy*, 19(2), 198-216.