

ASSESSING THE RESILIENCE OF THE INDEPENDENT REGULATORY AGENCY FOR BROADCASTING IN KYRGYZSTAN

By
Aleksandra Revina

Submitted to
Central European University
Department of Public Policy

In partial fulfillment of the requirements for the degree of Master of Arts in Public Policy

Supervisor: Kristina Irion

Budapest, Hungary
2012

ABSTRACT

The main objective of this research was to assess the independence of the Supervisory Board of the Public TV and Radio Corporation in Kyrgyzstan based on two levels: formal and *de facto*. The assessment of the independence of broadcast media regulation is important for Kyrgyzstan, since it have recently made first steps toward the independent regulation, such as transition from National to Public Media. The application of the methodology, adopted from the study of European Commission “Indireg” helped to see the potential risks and anomalies within each of the dimensions. Results of the ranking tool showed that independence of the Kyrgyz Supervisory Board lacks recognition in the legislative framework and is in risk of industrial interference due to the absence of the separate budget and financial dependence on the Public TV and Radio Corporation.

ACKNOWLEDGMENTS

I would like to express the deep gratitude to my supervisor Kristina Irion, professor of the Department of Public Policy for her guidance, motivation, encouragement and support throughout the research.

I wish to thank Agnes Toth, the instructor of the Academic Writing Center, for her patience and professionalism. Without her advices, the process of writing would have been much harder.

I would also like to thank Gulnura Toralieva, the head of the Journalism Department of the American University in Central Asia, media expert and professional, who provided me with essential contact information and assisted in the data gathering process.

My acknowledgement would be incomplete, if I did not thank Central European University for the opportunity to work in a comfortable environment.

Finally, I thank my family for their strong faith in me, love and support throughout the whole MA journey.

Thank you.

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INTRODUCTION

Media have always been considered as a perfect mechanism in enforcing democratic principles, such as citizen participation, accountability, transparency and independence from political interference. Media also plays an important role in our daily life, since its main mission is not only in information delivery, but also in its interpretation, which definitely assumes the level of involvement, power, and finally manipulation of this information. For these reasons, it is vitally important for the media to have effective regulatory mechanisms, as for example independent regulatory agencies.

The Independent Regulatory Agencies (IRAs) can be defined as autonomous entities with a range of powers related to regulation, policy-making, monitoring and control over the sectors they regulate. One of the objectives that IRAs pursue is independence from the interference of the political, industrial and other interests. There are also values that “assist in conferring legitimacy on the institutional structure and also protect it from being diverted by the public interests objectives” (Ogus 2001, 13). In the context of IRAs independence is usually assessed on the formal and *de facto* levels. While formal independence is usually prescribed by the law and has strong legislative support, *de facto* independence represents more real life situation, for example the work of the regulatory body in practice.

The following research aims to test independence of the regulatory body in Kyrgyzstan, based on the levels mentioned above (formal and *de facto*). As a non-European member of the Council of Europe, Kyrgyzstan tries to keep up with the European methods of media regulation and coordination. In addition, being a democratic developing state, Kyrgyzstan is more open for adoption of the new methods of regulation in comparison with other countries in Central Asian region.

Last decade turned out to be somewhat challenging for Kyrgyz media, since it has experienced a number of changes, such as transition from the National to Public Television

(IMS 2010). Starting from 2002, the reformation of the National television to the Public has been a topic of hard debates for the last decade, since the national broadcast media in Kyrgyzstan was often used by external actors to promote their own political interests. (Sarieva and Karakulova 2007, 6-11) By 2005, the discussions regarding the creation of the supervisory collegiate board of the national television and radio corporation started to become more and more popular. Several attempts, which will be discussed in details further in the research, were undertaken in order to approach to the present regulatory authority of the broadcast media.

In accordance with the decree of the interim government of April 30 2010, members to the regulatory body for the broadcast media could be also nominated by the representatives from the civil society¹. This became a great step towards the creation of the independent regulatory agency, because the previous board failed to organize the working process and appoint the chairman and director of the corporation. (IMS 2010). Today's Supervisory Board is composed of 15 members nominated by President (5 members), Parliament (5 members), and civil society (5 members), where the final decision on the appointment of the board members belongs to the Parliament (Statute art. 15, p. 2, 2010). Having witnessed all these positive changes, the following question can be raised: What have this transition led to? We can suppose that the Supervisory Board became a step towards the independent regulation.

The objective of the present research is to assess the levels of formal and de facto independence of the Supervisory Board of the Public TV and Radio Corporation, mentioned earlier in the text and to answer the following research question:

How does this independence of the Kyrgyz Supervisory Board of the Public TV and Radio Corporation rank on the factual and actual levels in the national context?

¹ In addition to the 10 members appointed by President (5) and the Parliament (5) –Statute of the Public TV and Radio Corporation.

The theoretical framework, which provides explanation of different levels of independence, along with description of the composition and structure of the IRAs, serves as a supportive background for the research structure. The methodology, applied in the research, is based on the study of European Commission “Indireg”. The result of the research – The Ranking Tool is expected to reveal the potential risks and indicate the problematic situations within the regulation of the Kyrgyz broadcast media. It is worth mentioning that Indireg ranking tool was developed for the self-assessment of the independent regulatory agencies in Europe to enforce the Audiovisual Media Services Directive, which is not a mechanism of media regulation and coordination in Kyrgyzstan.

The differentiation between formal and de facto independence is essential in the assessment of the Kyrgyz Supervisory Board’s resilience. The methodology adopted from the Indireg Study provides a general overview of the formal situation of the Supervisory Board, as long as evaluates the actual situation by pointing out at some potential risks. The self-assessment included two indicators of independence and efficient functioning, which are grouped into five major dimensions: Status and Powers, Financial Autonomy, Autonomy of the Decision Makers, Knowledge and Accountability and Transparency. The data gathering process is based on the fill in of the tables, which provide the detailed and explicit overview of the legal, institutional and regulatory framework for the broadcast media in Kyrgyzstan, with an emphasis on the activity of the Supervisory Board.

The answers, filled in the questionnaire will further be applied for online ranking tool, which can be accessible on the website of the Indireg study². The questionnaire, which consists of 45 questions, aims to provide the analysis of the regulatory, institutional and finally legal framework of Kyrgyzstan. The questionnaire was filled in with the help of

²“Indireg”, EU Commission Study: http://www.indireg.eu/?page_id=329

information from legal documents (statute, decrees), from experts (former members of the Supervisory Board and Media Ombudsman of the Public TV and Radio Corporation).

It is important to figure out the level of independence and identify the potential risks within the broadcast media sector, since Kyrgyzstan stepped into the transitional phase and still in the process of democratization. As long as so many efforts were made in order to function as an independent sector, it is vital to define the efficiency and the compliance of two levels of independence. For this reason, another value of this research is to explore the effectiveness and strengths of the legislation³ in regards of the independent regulatory agency.

The theoretical framework provided in Chapter I, helps to investigate the essence of broadcast regulation, with an emphasis on the independent regulators in this sector. It is vital for the following project to investigate the concept of independence, different types of it and their possible compliance.

Chapter II is based on the description of the broadcasting sector in Kyrgyzstan, with listing important historical background, such as transition from National to Public Television. Further, the chapter proceeds with the description of creation and further establishment of the Kyrgyz Supervisory Board. The detailed explanation of methodology is presented in Chapter III.

Having derived the insights of the theoretical framework and methodology, Chapter IV includes the analysis of the findings of the ranking tool and leads to conclusion.

³ In the case of Kyrgyzstan under legislation the Statute of the Public TV and Radio Corporation is assumed.

CHAPTER I: THEORETICAL FRAMEWORK FOR INDEPENDENT REGULATORY AGENCIES

This chapter aims to provide theoretical background for the regulation of broadcasting, preliminary by focusing on some general characteristics of good regulation. Further the chapter proceeds with explanation of independence, as a key factor for the efficient functioning of the broadcasting regulatory bodies.

1.1. Understanding Regulation and the Concept of Good Regulation

Regulation has always been considered as one of the most controversial topics in the recent decades. The regulatory process assumes the performance of the number of tasks, such as “the exercise of policy making, establishment of a regime, translation into the principles of behavior, and finally enforcement measures” (Ogus 2001, 3). Sometimes the regulatory process is also defined as a set of activities that restricts behavior and works as a preventive mechanism for various undesirable activities (Baldwin and Cave 1999, 2). It is also frequently defined as a set of activities with the enabling nature. But which characteristics define regulation as a good one? Openness, transparency, credibility and efficiency are among those general evaluations of the good regulation.

The main objective of the following chapter is to investigate the indicators of good regulation for the broadcasting sector.

1.2. Regulation of Broadcasting in regards of “Good” Broadcasting regulation.

The major principle for effective regulation of the broadcasting sector is protection from the interference of political, governmental, industrial and other commercial interests. It is a well known fact that media is able to affect and manipulate public opinion, when used by the state or other interested groups. Since broadcast media can be considered as an effective instrument in enforcing the democratic principles and serves as a “watchdog over powerful”, it is vitally important for the media to be independent from the state influence (Buckley et al. 2008, 12). As it was stated in the research of the World Bank, the objectives of the broadcast

media regulation are related with the regulation in the public interest, “encouraging and offering incentives and, when necessary, imposing obligations and constraints on each group, while evading capture by any specific interests” (Buckley et al. 2008, 8).

One of the essential characteristics for the broadcast media is to have supervisory body, which will be responsible endow the activity of the media by “promoting and developing a balanced broadcasting sector in which a plurality of broadcasters, commercial, public service, nonprofit, or community in their various incarnations, can exist alongside one another.” (Buckley et al. 2008, 157)

The list of questions developed by the Baldwin and Cave provides a plausible approach in the evaluation of the regulatory (supervisory) body (Baldwin and Cave 1999, 77):

Is there action or regime supported by legislative authority?

Any authority must have a strong legal protection, which is in fact one of the strongest supportive mechanisms from the external interference. Since independence is defined as an essence of a successful prosperity and activity of the regulatory body, it should be guaranteed by the legislation, which means for the regulatory body to be formally established as independent.

Is there an appropriate scheme of accountability?

Regulatory bodies need to follow the principles of accountable and transparent regulation. One of the key characteristics of the regulator or the regulatory body is that it should follow the principles of neutrality in regards of those whom it regulates. The good regulation is assumed as the ability to avoid the excessive influence by media owners and general broadcast licenses (Buckley et al. 2008, 161) Another important factor that should be taken into consideration is the authorization by the Parliament, which can be considered as a major determinant of the democratic authority. (Baldwin and Cave 1999, 78) The authorization by the Parliament can also define the level of accountability. However, there are

also cases, when the regulation process or regulatory body, in particular, can be proclaimed as accountable, if it is oriented to the public, consumers, affected parties and controlled by democratic institutions, but without having the abovementioned authorization (Baldwin and Cave 1999, 78-79).

Are procedures fair, accessible and open?

When the question comes to transparency of the regulatory body, it can be achieved with a help of proactively published reports about the activity of organization. The regulatory body should also conduct open consultations and seek for expertise and audit of their activity. This will make the regulatory process more open to the public participation and fair in terms of the financial audit.

Is the regulator acting with sufficient expertise?

It is exceptional for the regulatory body to have well qualified and skilled members, who will monitor the working process of the broadcast media and contribute to its development.

Is action or regime efficient?

The activity of the regulatory body can be determined as efficient, if all of the abovementioned criteria are met, and benchmarks are answered. The abovementioned questions perfectly describe the essence of regulatory authority. Efficient functioning and independence in the context of independent regulatory agencies are two interrelated terms, where independence can frequently serve as a sort of prerequisite for the regulatory body to function effectively. Therefore, it is important to understand the idea behind the independent regulation. It is worth mentioning that in the context of regulatory authorities, the concept of independence should be reviewed under the perspective of formal and de facto independence.

1.3. Independence: Differentiation between formal and de facto

The independence of the regulatory bodies can be viewed through the perspectives of independence divided into formal and de facto. Whereas the formal independence is

prescribed by the law and legislative statutes, *de facto* independence represents the real life situation.

The independence of the regulatory body is rarely protected by the constitution. Frequently, if mentioned, there is an enabling legislation, which defines the nature of the authority and lists its powers, responsibilities and information on the organizational, in some cases financial activity. The formal independence can be defined by a set of characteristics. The powers and responsibilities of the agency are granted by law, the agency is separated from the influence of ministers, and finally the elected officials cannot participate in the direct election and formal management (Thatcher 2005, 352).

Smith offered seven accountability measures for the formal independence in the states, which in fact lack independence in the regulatory process (Smith 1997, 2):

1. Providing the regulator with a distinct legal mandate, free of ministerial control;
2. Prescribing professional criteria for appointment;
3. Involving both the executive and the legislative branches in the appointment process;
4. Appointing regulators for fixed terms and protecting them from arbitrary removal;
5. Staggering terms so that they do not coincide with the election cycle, and, for a board or commission, staggering the terms of the members;
6. Exempting the agency from civil service salary rules that make it difficult to attract and retain well-qualified staff;
7. Providing the agency with a reliable source of funding, usually earmarked levies on regulated firms or consumers.

Regarding, *de facto* independence is usually defined as a practical implementation of the formal independence. It also explains the autonomy of the regulatory body in the actual life.

De facto independence points out on the relationship of the regulatory body with constitutional branches and also draws the link between regulatees and consumers of the certain sector (Schneider 2004, 254). Majone (1997) characterized *de facto* independence as “highly specialized organizations enjoying considerable autonomy in decision-making”.

The differentiation between the formal and *de facto independence* helps to identify the level of compliance of the work of regulatory body with the legislative framework.

1.4.Composition and Structure of the Independent Regulatory Authorities for Broadcasting

Independence is a broad term, therefore in the context of this project, independence will be examined under the perspective of the independence of regulators. The independence of the regulatory body should not only be guaranteed by the legislation, but also should include the clear rules for the appointment of the members and the terms of their service to the body. In addition the regulatory body should be accountable to the public and “funding arrangements”, require the operational and administrative autonomy from the state and political interference in general. (Buckley et al 2008, 161).

Regulatory bodies for the broadcasting sector aim to pursue independent functioning of the sector and with a help of independent and autonomous means of communication reflect the plurality of opinions (Indireg Final Report 2011, 27-28). The well determined and strong regulatory framework will enable the regulatory bodies to function in a fair competition, reflect the interests of the public and in general be efficient.

If before the independent regulatory agencies seemed to be perceived as notions in the regulatory process, nowadays they are perceived as ideal ways of regulation for certain sectors. These agencies enable the development of the broadcasting sector, in which the “plurality of broadcasters, commercial and public service, nonprofit or community in their various incarnations, can exist one along each other” (Buckley et al. 2008, 157). The fact that regulatory agencies are called independent does not necessarily mean that they always

function as separate entities. And here the question appears: Can the regulation be purely independent? This question, along with others is to be explored further in the paper.

The practical reality of regulatory authorities is far from the absolute autonomy (Majone in Indireg Final Report, 2011). Pure independence has slightly as theoretical nature, as it cannot be “fully autonomous, nor fully dependent from their environment” (Gilardi and Maggetti 2005, 3).

The nature of independence of the regulatory bodies varies depending on the different social, political, economical and finally constitutional systems and modes of the government (Gilardi 2008). Lamanauskas defined independence of a regulator or in this particular case of the regulatory body as “a necessity of the regulator keep an equal distance from all possible interests in order to balance them impartially and aim at achieving long-term results benefiting all stakeholders as contrary to serving short term interests of various groups” (Lamanauskas 2006). Melody stated that “independence” is frequently overestimated.

First of all, in the context of the regulatory bodies, it is evaluated by the level of interference of the external powers, such as politicians, industry.

The organizational autonomy, the independence from the political interference and finally the credibility and impartiality of the regulation serve as the main mechanisms of independence and the efficient functioning of the agency. It is worth mentioning, that regulatory bodies should be guaranteed independence (explicitly or implicitly), especially through the legal framework, which will serve as a key platform for their activity and enable the bodies to perform effectively. It is very important to determine how the legal safeguards can contribute to the independent activity of the board and its effective performance in the market. Nowadays the major legal safeguards for the independent broadcasting regulatory agencies, which enhance the level of independence, are: mandate, appointment conditions and further procedures, dismissals of members, provisions for conflicts of interest and financial

autonomy (Indireg 2011, 37-38). The presence of the mandate is one of the essential legal safeguards for the regulatory body. The abovementioned framework should be set up clearly, listing all the duties and powers of the supervisory board. The changes to these powers must be supported through amendment by the parliament of the relevant legislation (Buckley et al. 2008, 161).

It is important to mention that regulatory bodies, even if perceived as institutions independent from the state, nevertheless pursue and accomplish the objectives that were proposed by the state.

The efficiency of the independent regulatory authority or the efficient functioning discussed earlier in the following research result from the conformation with a set of powers:

- grant and to suspend or revoke broadcast licenses;
- assign those frequencies that are designated for broadcast use;
- set standards and rules within clearly defined areas of responsibility;
- hear and to adjudicate on complaints relating to broadcast content (Buckley et al. 2008, 163).

The powers granted should also define enforce the principles of openness, fairness and accessibility, by facilitating the “public participation in their affairs, including through public consultation on their policies and procedures. All decisions of regulatory bodies should be accompanied by written reasons.” (Buckley et al. 2008, 166)

Since the appointment process influence the level of independence of the regulatory agency, it should be based on the principles of transparency, openness and fairness.

The appointment process should be supported by the law and include members, with the expertise in this sphere and serve as representatives of the society in general. The clear appointment procedures, along with specified incompatibility guidelines for the members of the authority can also guarantee independence. It is worth mentioning that the appointment process cannot be dominated by the political party or any other commercial interests, which

might cause the conflict of interest. The key functions of the regulatory body should be exercised in the public interest at all times. (Buckley et al. 2008, 164) The term of the appointment process should be fixed and members should also have the priority to be protected from the dismissal during the term, unless they or other members by the majority voting cease to meet certain responsibilities, prescribed by the law.

Are procedures of nomination of the candidates and their further appointment fair and accountable enough? The eligibility of the candidates to the membership positions must be clear enough. Buckley (2008, 164-165) and his co-authors define the eligibility of the members of the regulatory body:

- The employee in the civil service or other branch of government;
- The officeholder or employee of a political party;
- The elected or appointed member of the government;
- The elected or appointed member of the legislature;
- The employee, or has financial interests, in broadcasting or communications; or has

been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime or a crime of dishonesty, unless five years has passed since the sentence was discharged.” (Buckley et al. 2008, 164-165)

Along with appointment procedures and eligibility criteria, the grounds for the dismissal must be also mentioned in the legal act.

The activity of the regulatory bodies should be performed in accordance with principles of good governance and natural justice (Buckley et al. 2008, 166). The regulatory body should be explicitly committed to the public interest and follow the principles of good regulation and “should have particular concern for the right to freedom of opinion and expression and desirability of fostering the plurality and diversity of services” (Buckley et al. 2008). One of the major principles of the independent regulation is accountability. Baldwin

and Cave consider that accountability is important, when there are disagreements on the ways of regulation. Regulatory bodies can be accountable to the following institutions and groups: Parliament, Government, Monitoring or appeal bodies, Super-agencies, The judges, Consumers (Baldwin and Cave 1999, 287)

Along with accountability principles, one of the principles of good regulation is transparency. For the regulator or the regulatory body to be transparent it should:

- publish details of the interests and affiliations of members of the regulatory body
- publish proceedings of meetings
- open licensing processes (licensing decisions and reasons for those decisions)
- engage in public consultation on the annual plan and priorities of the regulatory body;
- conduct public consultation on licensing and regulatory policies, codes and procedures.

(Buckley et al. 2008, 166)

Any decisions that regulator or the regulatory body take must also be subject to judicial review through the appropriate court. In addition, it is also important for the regulatory body to be the subject of the expert's judgment. There is an interesting statement about the claim of the expertise, on which authors stress their opinion. The essence of such a claim is "trust to my expertise" (Baldwin and Cave 1999, 80). In the particular case, one of the limitations can be the perception of this expertise and judgment by the public. The claim of expertise can be also subject to disputes, if the expert fails to explain, why this or that decision actually requires attention of the expert. The indicator of efficiency basically estimates how efficient the activity of the regulatory body is. Some critics tend to relate the efficiency of the regulatory body with the independence.

The publication of the annual report with the information on the audited financial accounts and the whole set of performed past and future activities is another requirement for the regulatory body, while talking the transparency principles that IRAs pursue.

It is important for the source of funding or sometimes the withdrawal from funding do not influence the decisions of the regulatory body. The ways and sources of funding also vary depending on the position of the body, as for example from the government or through charges applied to licenses (Buckley et al. 2008, 159-160). IRAs are frequently financed by “fees levied on the regulated industry. The budget is usually controlled internally without any say from either government or legislature”. (Gilardi 2001, 13-14).

It seems that theoretical framework highlights the major principles of independent regulation still in practice we see that state influence over the regulatory body remains to be an issue.

The active Parliament participation or the direct interference from the state can be informal and sometimes hidden from the society. It is obvious that regulation as it is never can be purely called independent, due to the presence of certain codes, normative and legislative act, laws and etc. In order to function as independent regulatory body does not necessarily mean to be independent from the governmental policy, but to be able and independent enough to implement the policy without interference of external powers. From the brief theoretical framework presented above, it is clear that the principle of good regulation in the context of this project for broadcast media is independence. In addition, the concept of independence being ranked on formal and de facto level helps to define the efficiency of the work of the regulatory body, which is based on the steps and characteristics mentioned earlier in the text.

CHAPTER II: REGULATION OF THE BROADCASTING IN KYRGYZSTAN

This chapter provides the insight into the Kyrgyz broadcast media regulation, by focusing on some important changes in the regulatory process, which led to the creation of the upper collegiate body with supervisory powers over the Kyrgyz Public TV and Radio Corporation.

2.1. Historical Background

The broadcasting sector in Central Asia is in the process of the permanent changes, since civil society provides more pressure for its activity to be more independent, transparent and free. One of the noticeable steps to the creation of independent television was the transition from National to Public TV and Radio.

The wide discussions caused the creation of the unique joint public authority of the Kyrgyz National channel – The Supervisory Board. In December 2005, the representatives from Kyrgyz National Channel (KTR) lobbied the change of one article in the draft law of the National Television and Radio Corporation, which envisaged the formation of the one third of the supervisory board from the president of Kyrgyz Republic, another third from the Parliament and finally the last part from the labor union of NTRC (National TV and Radio Corporation) ignoring the candidates from the civil society (Sarieva and Karakulova 2007, 6-11). At that time media experts noted that members of the organization cannot be the members and active participants of the supervisory board, since it causes the conflict of interests: members of the supervisory board appoint the general director, who consequently hires the representatives from the labor union.

In June 2006, the Parliament of the Kyrgyz Republic accepted the law on “National Radio and Television Corporation of the Kyrgyz Republic”, which established the basic progressive principles of public television and radio. However, the former President of the Kyrgyz Republic Kurmanbek Bakiev, placed a veto to this law in September 2006, which

finally caused serious critique and discontent in the civil society. Later on, in November 13, 2006 Kurmanbek Bakiev finally signed the decree “Of the Supervisory Board of State Radio and Television Corporation of the Kyrgyz Republic”. The major problem was again related with the 5 members from the labor union of KTR, which were presented by the Director-General of the channel. In 2008, a new law was adopted, but the role of society was not foreseen in it.

The decree of the Provisional Government about the Public TV and Radio was adopted on April 30, 2010. The following decree became a decisive step, first in transition from the National to the Public Television, second in the annulment and acknowledgement of the Law on Television and Broadcasting as illegitimate, and finally in the establishment of the statute of the Public TV and Radio Corporation, which became the major legislative framework for the board and corporation itself.

2.2. The Structure and Composition of the Supervisory Board of the Public TV and Radio Corporation of Kyrgyzstan

2.2.1. Legal Framework and Organizational Structure:

It is worth mentioning that the Law on Television and Broadcasting was declared illegitimate in terms of regulation of the activity of the Public TV and Radio Corporation in accordance with the Decree of the Provisional Government from April 30. At the moment the Statute of the Public TV and Radio Corporation, along with Constitution of the Kyrgyz Republic, serve as basics of legislative and regulatory framework for the Supervisory Board of the Corporation.

The major mission is to provide the editorial politics and serve as a bridge between civil society and the corporation, by holding the open hearings, meetings, consultations, and any events related with work evaluation. For the last decade the Kyrgyz broadcasting sector is working on the creation of a special Complaints Commission on media, which will be

responsible for the development and further improvement of work of the whole broadcasting sector. So far, the Supervisory Board has an assistant– Public TV and Radio Ombudsman, Atyr Abdrahmanova who helps the board to review the appeals and complaints of the consumers. Another important characteristic of the Supervisory Board is an advantage to appoint the Director General of the Public TV and Radio Corporation on the contest based procedure. The Supervisory Board itself defines the criteria for the selection of candidates. The Board also has a power to select the agency for the annual audit of financial and economic activity, and also the decision on the annual budget.

The meeting of the Supervisory Board takes place no less than four times in a year, moreover the report containing the data on financial and editorial activity of the Corporation should be presented to the President, Parliament and finally to the public no later than April 30. The final report is published in the mass media in accordance with the decree on the Public TV and Radio Corporation.

The Board has a reporting obligation to the Parliament, President and public in general (by publication of the annual reports in mass media). There is not article in the Statute of the Public TV and Radio Corporation, which includes the power of any entity to overturn the decision of the board. The decisions can be cancelled by the board members only by majority voting. The ability and opportunity to decide on the internal structure and be responsible for the monitoring, appointment and dismissal of the staff of the Public TV and Radio Corporation gives the more independent status to the board. Regarding the structure of the board, it is composed of 15 members, which are finally appointed by the Parliament of the Kyrgyz Republic (Jogorku Kenesh). The Supervisory Board by the majority voting appoints the chairman, who is responsible for a set of the following activities:

- Timing, venue and the agenda of the Board meeting
- Provision of the preparation before the meeting

- Management of the Board meetings
- Appointment one of the members as a chairman at the meeting in case of the personal absence
- Supervision of the implementation of the Board decisions.

The number of duties and responsibilities of the chairman does not indicate the authority of the chairman and the final collegiate decision still dominates. The preference for the creation and formulation of the Supervisory Body is provided to the Parliament of the Kyrgyz Republic, since especially this body is more or less reflect the interests of the various groups of the society. In the formation of the supervisory board the achievement of the maximum balance in the crew by including the members of the civil society, various educational and scientific institutions, the representatives from the Parliament, government and the president of Kyrgyzstan. One of the major risks in the formation of the Supervisory Board is the interference from the state and lobbying of political, as well as private interests. As the practice shows, the nomination of the members to the Supervisory Board from different set of actors (parliament, civil society and president) allows to reduce the one-sided lobbying in the work of the Supervisory Board.

The Supervisory Board actively participates in the formation of the basics of the effective broadcasting, assert the key principles of the editorial politics, appoint and dismiss the Director General, who is the main executive body of the Kyrgyz Public TV and Radio Corporation.

The general director of the Public TV and Radio Corporation asserts the budget. Perform the monitoring of the Public TV and Radio efficiency, produce the annual report, provide the interaction between the civil society and Public TV and Radio, but never is involved into the process of creation and regulation, never dictate the content of the program, never act as a censor. Every citizen has a right to criticize the work of the Public TV and Radio.

2.2.2. Appointment

Paragraph three of the Statute of Provisional government states that the Supervisory Board is appointed by the President of the Kyrgyz Republic.

In accordance with the Statute of the Public TV and Radio Corporation, the members of the members of the Supervisory Board are nominated by the parliament of the Kyrgyz Republic, Jogorku Kenesh for five years. The selection of the candidates to the supervisory body is conducted in the following way (Statute art.12, p.2):

- a) 5 members from the President of Kyrgyz Republic
- b) 5 members from the Parliament
- c) and 5 members from the civil society.

President of the Kyrgyz Republic offers the Parliament 10 candidatures, from which the parliament establishes five candidates, by preferential voting. The candidates from the civil society (the educational and scientific public unions, mass media and other organizations) are proposed in the written form to the relevant committee. The committee selects the proposed candidates by focusing on the abovementioned criteria, no less than 10, from which the Parliament establishes candidates again by preferential voting. The Parliament announces the new proposal of candidates three months before the expiration of the period of the former supervisory body. The relevant committee of the Parliament is responsible for the preparation of the candidates election, and the mass media is also included in its competency.

The proposal of the candidates and their further establishment is conducted publicly. The committee publishes the final list of candidates and holds the discussion at the open meeting. The decisive say in the appointment process of the members to the Supervisory Board belongs to the Parliament of Kyrgyz Republic. However, during the nomination process three bodies can offer their candidates: President (5 members), Parliament (5 members), civil society (5 members) (Statute art. 23, p.2). The board consists of 15 members from the abovementioned

groups. The term of office of the Supervisory Board members and chairman is fixed, but it is longer than the election cycle.

2.2.3. Dismissals:

The termination of the membership can be done in the following instances (Statute art. 12, p.4):

- At the personal request
- In case of death or disease, which does not allow to accomplish the activities of the supervisory body.
- In case of the absence at the meetings more than 3 times.

2.2.4. Incompatibilities:

The Supervisory Board can be composed of the members of the Parliament, since the democratic parties frequently offer their candidates for the consideration to the relevant committee of the Parliament.

The decree about the Public TV and Radio Corporation lists the criteria for candidates' eligibility to the Supervisory Board. Members of the Board cannot be:

- Leaders of the political parties
- Deputies of the Parliament
- Public officials or state service representatives
- Employees of the Public TV and Radio Corporation.
- Broadcasters in the sphere of television and broadcasting, who receive funding or have financial interests in the activity of corporation (Statute art.13),

The direct financial participation might lead to the conflict of interests. The employees of the Public TV and Radio Corporation can not apply for the membership in the Board, as long the Board is responsible for the appointment of the staff of the Corporation.

2.2.5. Financial Situation:

The Supervisory Board of the Public TV and Radio Corporation works on the gratis basis. The information regarding the budget and financial allocation of the Supervisory Board was obtained from the former chairman of the Supervisory Board, Elvira Sarieva. Elvira Sarieva said that the board does not have a budget, since its members do not receive any payments for the work they do. The expenses on the meetings and publications are covered by the Public TV and Radio Corporation. The statute does not mention the budget setting and approval procedures. Article 15 of the Statute lists the number of financial operations that Supervisory board is responsible for. As long as it is considered as upper body, it has enough power to check the financial reports, prepared by the Director-General⁴ and be responsible for the audit of the financial Corporation's financial activities. The Supervisory board has mixed fees. Expenses of the board members are covered by the Public TV and Radio Corporation. There is no specific budget, since the financial resources are provided to the board upon request of the members. According to Article 20 of the Statute the main source of financing of the Corporation comes from the national budget (this budgetary finance shall be protected from appropriation for other purposes), as well as income from its commercial activity, the sale of intellectual property, advertising and sponsorship. The Supervisory Board is financed by the Public TV and Radio Corporation, and which necessarily means that there is no separate budget, except the one that Public TV and Radio Corporation has in total. The financing of the Public TV and Radio Corporation is prescribed in the article of the state budget, advertisement revenues, license fee, sponsorship and etc. The fact that state finances the corporation does not explain its dependency on the state. It is worth mentioning that effective control and transparent financial management are principles in the financial question.

⁴ Article 15 of the Statute of the Public TV and Radio Corporation (p.2-5)

CHAPTER III: METHODOLOGY

This study aims to examine the independence and efficient functioning of the regulatory body of the public broadcasting in Kyrgyzstan – The Supervisory Board of the Public TV and Radio Corporation. It proposes a methodology, which includes both analytical and empirical approaches. The theoretical framework is conducted in order to deepen the understanding of the independence levels in the context of independent regulatory agencies. The differentiation between formal and *de facto* independence shows the compliance of the Supervisory Board with the country's legal framework.

3.1. *Indireg Study*

The methodology of the following project is based on the study of European Commission “Indireg”. This study is based on the thorough analysis of independent regulatory bodies for the television and broadcasting in the European countries. It aims to pursue three important objectives: the legal analysis and detailed description of the audiovisual media services regulatory bodies of countries – member states, as well as candidates to the European Union and the EFTA countries, and four European countries, the analysis of the legal base in regards of the implementation level, and finally the identification of the key characteristics, composing independent regulatory body in the light of the AVMS directive (Audiovisual Media Services). Indireg study is based on the principle that a regulator is independent if the structure of its governance ensures that its decision making processes meet the normative requirements, for which the independence of the regulator is an essential component (Indireg Report 2011, 5).

One of the steps of the following study is to rank the identified indicators, in order to assess the situation within the regulatory mechanism and existent body. Indireg study also proceeds with the distinction between formal (legal set-up) and the de-facto (actual situation) indicators, which are visualized differently and described below.

The Indireg study consists of four work packages. The first package is dedicated to the provision of theoretical framework for development of the indicators of independence and effective functioning. The results of the first work package led to the development of dimensions. The second work package includes thorough analysis of the institutional, regulatory and finally the legal framework of the regulatory bodies. The information gathered is formatted in tables, as well as presented in the text. The third working package represents the analysis of implementation and effectiveness of the institutional, regulatory and legal conditions of the regulatory bodies (Indireg, 2011). The abovementioned analysis is performed with the help of a newly created assessment model of real independence. The last work package will be focused on the identification of the essential characteristics for a regulatory body as referred to the AVMS directive and identification of the best practical characteristics. All the results are included into the preliminary final report.

The questionnaire developed by Indireg is composed of 45 questions that are grouped in separate tables. The questions in tables are grouped into nine sections: General Information (the information about the regulatory body: Supervisory Board of the Public TV and Radio Corporation, Institutional Framework (the legal status of the existent regulatory body), Powers of the Regulatory Authorities (division of powers and their supervision), International Organization and Staffing (the composition of the regulatory body), Financial resources, Checks and Balances (formal accountability and appeal procedures), Procedural Legitimacy (involvement of the external expertise), Cooperation (internal and external), and Assessment of Independence (general adequacy and overall evaluation). The tables are designed in the way that they reflect the peculiarities, which result from the institutional design of the Public Broadcasting and bodies, which perform the function of partner, co-regulator and in some cases perhaps an assistant.

The notion of independence is linked to the efficient functioning of regulatory body, which necessarily means that two major indicators, mentioned above, are closely related to each other. The questionnaire is grouped based on two major divisions of independence: formal and *de facto* independence in accordance with various groups of influence by external players.

The following distinction can result in the following dimensions (Indireg, 2011):

- Status and powers:
- Financial autonomy,
- Autonomy of decision makers,
- Knowledge,
- Transparency and accountability mechanisms.

All of the abovementioned dimensions, resulting from two divisions (formal and *de facto*) compose the same weight and the total number of 100 points. The indicators within one dimension are weighed on the basis of their likeliness, with the division of low, medium and high levels of likeliness of allowing the external influence. The possible answers are ranked on the scale between “0” and “1”, where “0” stands for likeliness or a risk of the influence enhancement and “1” illustrates the protection from potential influence and interference (Indireg Report 2011, 367-369). In order to achieve the maximum transparency of the ranking tool, the received points will be multiplied in proportion to its weighing factor in both divisions (*formal* and *de facto*), so that the overall calculation will be added to 100. It is assumed that some of the indicators will correlate with the answers that are provided in other indicators. Therefore, in some cases the option “N/A” – not applicable will be used. The answers received and points calculated in relation to the possible points, will finally result in the graphic representation.

It is also worth mentioning that questions within each of the dimensions were weighted and ranked differently, given as an example “high”, “medium” or “low” weighting. The explanation and description of the weighting to each of the questions is essential for interpretation of the Spider’s web, since it also highlights the most important aspects. As an example, we can look at one of the questions within the dimension of Status and Powers in the *de facto* situation:

Formal Indicator 1.

What is the legal structure of the regulatory body?

- A separate legal entity/autonomous body
- Not a separate legal entity/autonomous body but with the existence of sufficient safeguards (Chinese walls)
- Not a separate legal entity/autonomous body and with no Chinese walls (Indireg Report 2011, 370)

The high scoring is provided for this question, since the higher the level of recognition, the less the risk of external interference. In the cases, when regulatory authorities are not legal entities and there are no safeguards for independence, no marks are provided. It is obvious that the abovementioned question cannot be answered without preliminary analysis of the legislative acts, statutes, norm, or in simple words legislative support for the activity of the regulatory body.

The final graph will represent the “spider’s web”. Only if all the points are reached, the graph will be extended to represent the situation within two divisions.

This ranking tool applied and graph achieved finally illustrate the present situation within the regulatory body, but does not provide any future predictions. The “spider’s web”

consists of five axes, which stand for dimensions and show the potential sphere of influence. The larger the expansion on the spider's web, the higher the degree of resistance to the influence of external players. One of the important things to be considered is that spider's web requires interpretation taking into account that within the dimensions of *status and powers* and *financial autonomy*, the further the point along the relevant axis, the more the regulatory body (in our case Supervisory Board of the Public TV and Radio Corporation) is resistant to the external influence. Regarding the transparency and accountability dimensions, they will be interpreted in a different manner. In general the fuller the spider's web is, the more effectively the mechanisms of transparency and accountability are applied.

All of the dimensions mentioned above primarily can result from the assessment of the formal regulation, as long as *de facto* regulation is usually serve as a confirmation of the first. Under the *de facto* independence we usually understand the protection from political interference. Usually, while talking about *de facto* independence, we refer to the formal independence and observe whether the first one was achieved or not. One of the interesting facts about *de facto* independence and especially in regards to Kyrgyzstan is that regulators can be *de facto* independent, without being also formally independent. *De facto* independence involves the thorough analysis whether the formal indicators of independence and efficient functioning comply with reality. Therefore, all of the five dimensions in the present study are originally considered as indicators of formal independence, which are further analyzed under the prism of *de facto* independence.

The value of this study is that ranking tool, developed by the Indireg study has never been applied for the research and analysis of the broadcasting regulation in Kyrgyzstan.

As long as Kyrgyzstan is a country in transition, and moreover the member state of many leading world organizations, it can be considered as a perfect platform for the adoption of new regulatory standards. Due to the rapid and systematic changes of political regime, the

broadcasting sector in Kyrgyzstan has experienced significant changes and finally the model of its present regulation made the first step in order to be close to the model of broadcasting regulation applied in Europe. Kyrgyzstan, as a developing country, has a lot of premises for implementation of projects developed by European Commission. As long as it is considered as a non-European member of the Council of Europe, it has a potential to apply the standards of regulation, developed by European Commission. However, we should also keep in mind that the regulation process depends on the country's political and state structure. The fact the National TV and Radio Corporation has recently switched to Public has become a first step to achieve independence from governmental interference. The creation of the Supervisory Board and the final approval the members of the civil society as members of the Supervisory Board, has also become an accomplishment in the media regulation for the last decade.

3.2. Application of the Indireg methodology to Kyrgyzstan:

The analysis of the institutional, regulatory and legal frameworks of the regulatory bodies in the media sector illustrates the specific institutional and organizational set-up in Kyrgyzstan. The assessment of the Supervisory Board will help to receive the insight of the whole regulatory process of the public broadcasting. The indicators, mentioned above will help to assess the institutional, legal and finally regulatory frameworks in the abovementioned dimensions. The results of the questionnaire (tables), which will be applied, are used to create the ranking tool and finally show the independence of the Supervisory Board both on the formal and actual levels in the national context. The assessment of the Supervisory Board with the application of the ranking tool is a good opportunity to reveal the existent minuses and contradictions of the Supervisory Board with the international standards of media regulation.

It is worth mentioning that information for the questions in de facto situation was obtained from media experts, former and present board members: Gulnura Toralieva (media

expert), Elvira Sarieva (the former chairman of the Supervisory Board) and, Atyr Abdrahmanova (Public TV and Radio Ombudsman). The information received is expected to deepen the understanding of anomalies that exist in the present regulatory process.

CHAPTER IV: DATA ANALYSIS

It is important to mention that the Indireg study was developed for the self- assessment of the Independent Regulatory Agencies, which are in fact separate autonomous entities, having their own budget. In the case of Kyrgyzstan, the Supervisory Board is a part of the Public TV and Radio Corporation and theoretically it cannot be identified as an independent agency, since only some of the criteria are met in practice. In addition the Indireg Study is aimed to enforce the rules in the Audiovisual Media Services Directive, which is not applied for Kyrgyzstan, as long as it is a non-European member of the Council of Europe. Nevertheless, the ranking tool applied in the following project draws the attention to potential risks and problems within each of the dimensions. The study also helps to provide the formal and actual assessment of the Supervisory Board, its independence and efficient functioning. Kyrgyzstan is considered as a non-Europeans member of the Council of Europe and in the course of time to adopt the methods of the media regulation applied there.

4.1. Usage and Interpretation of the Ranking Tool

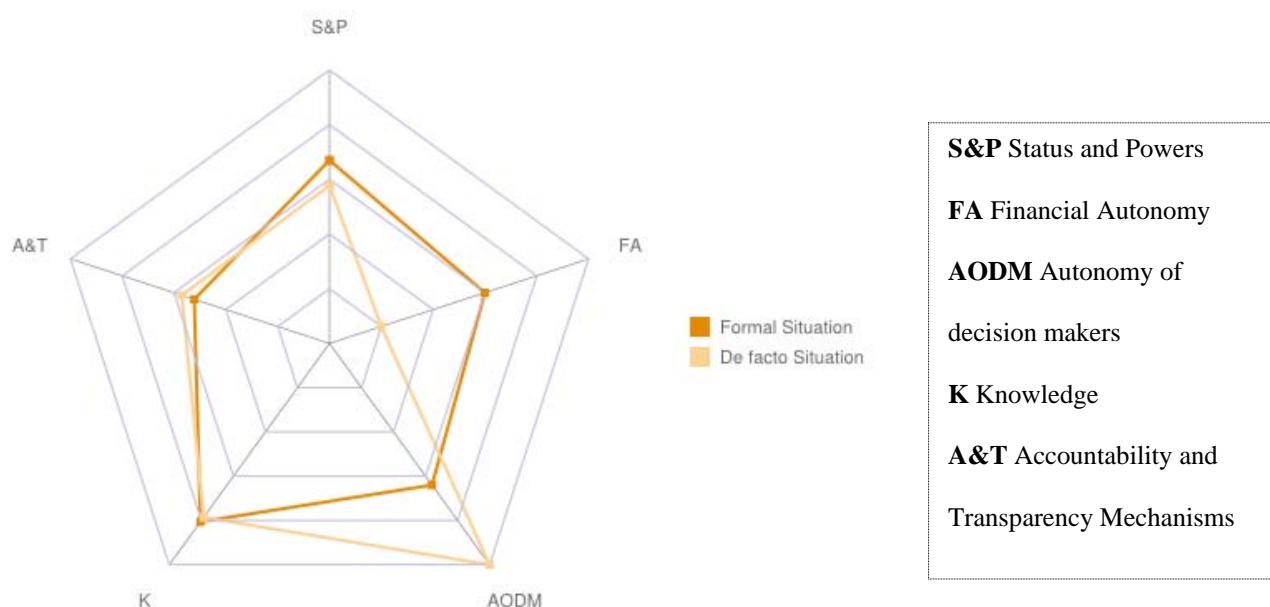
The graph serves as a detailed illustration of the independence on two levels (formal and de facto), the thorough analysis of the legal framework, reports reviewed and finally data gathered from the staff of the Supervisory Board, provides a detailed overview of the present situation. The much attention should be given to the *de facto* ranking tool, which not only illustrates the indicators of compliance with the formal one, but also shows the level of potential influence or risk to be influenced by external powers.

The graph presented below is an additional evaluation mechanism for the questionnaire explained in the methodology section. Therefore, the interpretation of the illustrated spider's web is not enough for a detailed analysis. The justifications for every indicator will be presented below. A sphere of the potential influence is illustrated on axes. In order to define the level of steadiness against the external influence, or the risk of the potential

influence, it is important to remember the interpretations relevant for each of the dimensions. For example, the largest expansion shows the highest degree of steadiness against the external influence and vice versa.

The interpretation of the abovementioned dimensions can be done in two different ways: Status and Powers, Financial Autonomy, Autonomy of decision makers and Knowledge can be interpreted, based on the principle: the further the position of the point along the relevant axis, the more the regulatory body can resist from the external influence. Regarding the transparency and accountability the assessment is performed based on the fullness of the spider's web.

Graph 1. Spider's Web: *Results for the Supervisory Board of the Public TV and Radio Corporation*⁵.



⁵ The spider's web illustrated below was created with a help of the online ranking tool at the website of Indireg study.

Table 1. Results of the Ranking Tool for the Supervisory Board of the Public TV and Radio Corporation

Dimensions	Formal situation	<i>De facto</i> situation
Status & Powers	0,67	0,58
Financial Autonomy	0,6	0,2
Autonomy of the decision makers	0,64	1
Knowledge	0,81	0,79
Accountability and Transparency	0,52	0,57

4.2. Graph Interpretation:

Since independence is not recognized in the Statute, the Kyrgyz Supervisory Board of the Public TV and Radio Corporation lacks legal support and protection from the external interference.

The graph clearly illustrates that both formal and de facto divisions of independence in the dimension of Status and Powers are noticeably far from the ideal situation. The comparatively low indicators in the formal situation can be explained by the fact that Supervisory Board of the Public TV and Radio Corporation even though autonomous still is not a separate legal entity. The Supervisory Board is positioned as an autonomous collegiate body, however not as separate legal entity, since it is funded by the Public TV and Radio Corporation and which is more important not positioned legally as a separated autonomy. Both the Supervisory Board and Corporation are parts of the same sector.

The Indireg research team give the lowest weighting to the bodies, which are first not separate, second do not have safeguards against the influence of the external actors. Since the recognition of the independence in the legislative framework, which also implies the resistance from external powers, is weighed high by the Indireg study, Supervisory Board lost the most valuable points. The Statute of the Public TV and Radio Corporation does not explicitly or implicitly define the supervisory Board as independent entity. The highest number of points is provided to the bodies that apply enforcement mechanisms, enshrined in

the law, such as warnings, deterrent fines, suspension and revocation of license (Indireg Report 2011, 376). Statute of the Public TV and Radio Corporation do not specify any enforcement powers, and information obtained from the experts confirmed the absence of the abovementioned mechanisms. The powers of the Supervisory Board, such as monitoring of complaints with a close assistance of media ombudsman are specified in the Statute, however the procedures of the abovementioned monitoring are not concrete and not clearly defined in the statute. The graph shows 58 % of the board's resistance from external influence. It is obvious that the following situation results from the absence of the strong legislative framework and recognition of the independence in the statute. According to the Indireg study, the independence can be ranked with high weighting, if more players are involved into the appointment process. In the case of Kyrgyzstan, the majority of players are involved at the nomination stage, however the final decision in the appointment of the board members is made by the Parliament.

The most vivid anomaly is revealed in the dimension of Financial Autonomy in the *de facto* situation. According to the Statute of the Public TV and Radio Corporation, the Supervisory Board conducts the annual audit of the activity of the Corporation and reviews the report of the Director-General. From the abovementioned statement it is obvious that Supervisory Board is involved into the formation, audit and approval of the budget of the Corporation. One of explanations to the 20% of resistance in the Financial Autonomy dimension against external powers is the common budget of the corporation and the supervisory board, or in other words the dependence of the board from the industry. Since the Indireg study gives the high weighting to the indicators of financial autonomy, it is clear why the percentage in the *de facto* independence in case of the Kyrgyz Supervisory Board turned out to be so low. The former chairman of the board Elvira Sarieva confirmed that the work of the board is performed on the gratis basis and expenses of the board members are covered

upon the request of the board, which leads to budget instability. Indicators of Financial Autonomy in the de facto situation of the Supervisory Board show the liability and potential risk of interference into the regulation process, since the work of the Supervisory Board and the Public TV and Radio Corporation is too close (the board does not have a separate budget and is funded by the Corporation). This creates a risk that the activity of the Supervisory Board might be captured by the interests of industry.

The results obtained in the assessment of indicators in dimension of Autonomy and Decision Makers turned out to be non meaningful, as a result of information shortage and inconsistency with the European standard of governing of media and coordination (Audiovisual Media Services Directive). The graph shows that indicator of the Autonomy of Decision Makers is ideal, however the following situation resulted due to the lack of information regarding the internal board procedures, such as appointment and dismissal procedures, for example. Decisions on the abovementioned instances are published, but not proactively, usually in the official channels, since the board does not have its own website. Publications of decisions of the Supervisory Board, such as the appointment or dismissal of the Director-general of the Corporation, were published in the news agencies. Experts interviewed (former and present board member) did not provide any information on the dismissal of the member's of the board for non-objective reasons. There is a risk that cases of dismissal of the members happened, but were not publicized in order not to raise the discontent from civil society. Therefore, no answers were provided to the questionnaire in the de facto dimension. Information obtained from news and other secondary sources fell under serious doubts and were not credible enough in order to answer the questions regarding actual situation.

As we remember from the previous chapter, the Knowledge dimension implies the level of the expertise, qualification and professionalism of the board members. Since the

results in the Knowledge dimension showed comparatively positive results, based on the information collected and which is much more important based on the results of the ranking tool, it can be assumed that board members are qualified and have expertise in the relevant sphere. However, there is still the anomaly identified in the de facto independence, which shows that only *majority* of the board members are qualified enough for the membership position. The following anomaly can be a result of board members non-obedience with general requirements, prescribed in the Statute. It can be assumed that the following situation might result from the interference of industry representatives and domination of their profit-oriented interests. The low percent of financial resistance can serve as another argument for the abovementioned statement.

In regards of Accountability and Transparency, it is obvious that the activity of the Supervisory Board is not that achievable for the public eye. The rare and not periodic publications related with the activity of the Supervisory Board in particular, and not as a part of the Public TV and Radio Corporation, cause the board to be less transparent and accountable. It is also not clear, who is the board is accountable to. The Statute does mention the board's accountability to the public at large, however brings the decisive say to the Parliament. The indicators for Transparency and Accountability showed almost the same noticeably low results in both situations: formal and de facto. The revealed 57 % in actual situation can result from the fact that decisions of the supervisory board are sometimes published, whereas the reports of the board's activity are never published. The only publications that can be found in official media sources are reports of the Public TV and radio Corporation, preliminarily reviewed by the supervisory board. The decisions of the supervisory board were not overturned or refused, since the Parliament, State and president are not eligible to influence the decisions of the board, and it is clearly specified in the statute.

Based on the results of the self-assessment, which was filled in with a help of information obtained from secondary data and experts, it can be assumed that Kyrgyz Supervisory is in the potentially risky situation in regards of interference into the activity of the board.

CONCLUSION:

The main objective of the present research was to reveal how independence of the Supervisory Board of the Public TV and Radio Corporation in Kyrgyzstan rank on formal and *de facto* levels in the national context. The results of the questionnaire showed that there are vivid anomalies within some of the dimensions, which assume the potential risks of interference into the regulatory process.

The Spider's Web, the final outcome of the research, illustrated how the formal and *de facto* independence of the Supervisory Board were ranked and which anomalies were revealed within each of the dimensions. The fact that the Supervisory Board's independence is not recognized in the Statute, which is in fact the major legislative support for the activity of both the Board and Public TV and Radio Corporation, shows that the board cannot be considered as a separate legal entity, even though *de facto* autonomous and capable to provide supervisory powers. Results within the dimension of Financial Autonomy, showed the lowest percentage on the web, which can be interpreted as a potential risk of financial dependency and possible interference of external powers into the activity of the board. The following outcome can be explained by the board's close connection and financial dependence on the Public TV and Radio Corporation. The fact that Supervisory Board does not have its separate budget and is a part of the budget of the whole corporation, creates a risk for the board's activity to be captured by the interests of the industry, which is Public TV and Radio Corporation. Financial dependence of the board does not also allow its members to follow the transparency and accountability principles, such as periodic publications of the board's activity in mass media. However, the Statute prescribes that the reports of the Public TV and Radio Corporation, preliminary reviewed by the board must be published annually. The problematic situation was also revealed with accountability of the board. On the one hand, it is said in the Statute that the Supervisory Board is oriented at public at large. However, on the

other hand, the decisive say in the appointment of the members belongs to the Parliament. There is no clear identification of the board's accountability, which also shows the lack of formal and *de facto* independence. The qualification and professionalism of the board members was ranked as satisfactory, however in-depth interviews with experts showed that only majority of the board members have enough expertise. The answers regarding the expertise of the board members, as long as other clarifications during the data gathering process were obtained from the former and present board members.

It is important to mention that dimension of the Autonomy of the Decision Makers did not show any valuable results, due to the inconsistencies in the media regulation and coordination, and which is more important due to the lack of publications and shortage of information regarding the board's internal activities, which were illustrated in the *de facto* situation.

Kyrgyzstan has already made a great step forward by first establishing the board, and second by allowing the members of civil society to participate in the nomination process. As Indireg study emphasizes the involvement of a greater number of actors into the nomination and appointment processes insulates the risk of interference of external powers. Nevertheless, one of the most valuable indicators is still missed in the Statute, which is the recognition of independence. The board cannot be called *de facto* independent, as long as its independence is not prescribed and specified *de jure*.

The following study proposes for further research, with application of the content analysis of media publications, archives and other documents related with activities of the Supervisory Board. The study also suggests conduction of in-depth interviews with the board members, especially in regards of internal procedures (dismissal and overturn of decisions). The information obtained will help to answer the questions in the dimension of the Autonomy

of Decision Makers and get a more detailed and precise picture with the factual situation of the Supervisory Board.

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ANNEX I:

Country Tables (Indireg Questionnaire)



HANS-BREDOW-INSTITUT

for Media Research at the University of Hamburg



Hans Bredow Institute for Media Research

(lead partner)

ICRI (K.U. Leuven)

CEU/CMCS (Central European University, Budapest)

Cullen International

(partners)

Perspective Associates/Tim Suter

(sub-contractor)

“Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive”

SMART N° 2009/0001/ OJ 2009/S 94-134142

Kyrgyzstan: Supervisory Board of the Public TV and Radio Corporation
Table of contents

General information **Market data**

Country	Number of linear commercial services	Number of non-linear commercial services	Number of public service channels (PSBs)
Kyrgyzstan	?	?	KTR (http://ktrk.kg/rus/index.php?do=static&page=0-nas) and ELTR

Audiovisual laws and regulatory bodies

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
Kyrgyzstan	Information requirements (art. 5 AVMS Directive)	The Law on National TV and Radio Corporation – 2008 (annulled April 30, 2010) The Statute of the Public TV and Radio Corporation - 2010	Supervisory Board of the Public TV/ Radio Corporation (Nabludatelnyi Sovet OTRK)		
	Audiovisual commercial communication, sponsorship, product placement (Art. 9 – 11 AVMS Directive)				
	Accessibility to people with a disability (Art. 7 AVMS Directive)				
	Broadcasting of major events (Art. 14 AVMS Directive)		N/a		
	Access to short news reports (Article 15 AVMS Directive)				
	Promotion of European works (Art. 13, 16, 17 AVMS Directive)				
	Hate speech (Art. 12 and 6 AVMS Directive)				
	Television advertising and teleshopping, (Art. 19 – 26 AVMS Directive)				
	Protection of minors (Art. 27 AVMS Directive)				
	Right of reply (Art. 28 AVMS Directive)				
	Communication and cooperation with other European regulation bodies and the Commission (Art. 30 AVMS Directive)				

Regulatory bodies – general information

Country	Name of regulatory body	Link to website	Date of establishment	Location
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	http://ktrk.kg/rus/index.php?do=static&page=spisok-chlenov-nablyudatel'nogo-soveta-otrk-kr No website Facebook page: http://www.facebook.com/OTRKg	14 September 2002: Creation of a first Supervisory Board of Trustees 13 November 2006: Establishment of a decree on Supervisory Board of State Radio and Television Corporation. 30 April 2010: The decree of the Interim Government of the Public TV and Radio (renewal of the Law into the Statute of the Public TV and Radio Corporation)	59, Boulevard "Molodaya Gvardiya". Bishkek, Kyrgyzstan Tel: +996 (312) 39-22-31, 39-15-65 Fax: +996 (312) 65-10-64 Email: ntrk@ktrk.kg ; atd_GTRK@rambler.ru

Sectors covered

Country	Body	Audiovisual content (radio/TV, on demand media services)	Transmission aspects of audiovisual content (e.g. spectrum)	Distribution aspects of audiovisual content (e.g. must carry, EPG, API)	Spectrum	Electronic communications (networks and services in general)	Others (e.g. energy, post)
Kyrgyzstan	Supervisory Board of Public TV and Radio Corporation	Yes	Yes	No	No	No	No

Staff and overall budget

Country	Body	Total number of staff foreseen in statutes/law	Current staff count	Annual budget (€m) foreseen in statutes/law	Current annual budget	Reference year +source
Kyrgyzstan	Supervisory Board of Public TV and Radio Corporation	15 members				Statute of the Public TV and Radio Corporation

Institutional Framework

Legislation establishing and governing the regulatory body

Country	Body	Legislation setting-up the regulatory body	Governing legislation
Kyrgyzstan	Supervisory Board of Public TV and Radio Corporation	<p>The Law about TV and Radio Corporation was annulled by the decree of Interim Government (April 30, 2010)</p> <p>Statute of the Public TV and Radio Corporation was established under the Decree of Interim Government about the Public TV and Radio Corporation (renewal of the abovementioned law with the opportunity of civil society too nominate the candidates to the board – 5 members)</p> <p>Chapter III of the Decree about the Public TV and Radio Corporation Article 12 (1,2,3 4,5), Article 13, Article 14 (1,2,3,4, 5), Article 15, Article 16 (1,2)</p>	<p>The Statute of the Public TV and Radio Corporation of the Kyrgyz Republic: http://ktrk.kg/rus/index.php?do=static&page=o-nas</p> <p>Which was established by the Decree of the Provisional Government about the Public TV and Radio</p>

Legal status

Country	Body	What form does it take?	It is a separate legal entity?	If it is not a separate legal entity, it is part of:	Specific organisational characteristics	Source
Kyrgyzstan	Supervisory Board of Public TV and Radio Corporation	<p>It represents a collegiate body, the supreme governing body for the Public TV and Radio Corporation of Kyrgyzstan.</p> <p style="text-align: center;">CEU eTD Collection</p>	No	The RB is a Supervisory Board of the Public TV and Radio Corporation. Collegiate body, which consists of 15 members that are elected for 5 years.	<ul style="list-style-type: none"> -Editorial politics - appointment and dismissal of the Director General (of the Public TV and Radio Corporation) -provision of the feedback between the Public TV and Radio Corporation and society 	<p>The Statute of the Public TV and Radio Corporation of the Kyrgyz Republic: http://ktrk.kg/rus/index.php?do=static&page=o-nas</p>

Independence as a value

Country	Body	Is independence implicitly or explicitly recognised as a value in the legal framework?		Source (highest formal legal level)
		No	Yes	
Kyrgyzstan	Supervisory Body of Public TV and Radio Corporation	v		http://ktrk.kg/rus/index.php?do=static&page=o-nas http://www.kenesh.kg/Articles/1512-Zakon_Kyrgyzskoj_Respubliki_Ob_Obshhestvennoj_teleradioveshhatelnoj_korporacii_Kyrgyzskoj_Respubliki_.aspx (The RB is considered to be independent de facto)

Powers of the regulatory bodies

Regulatory powers

Country	Body		General policy setting	General policy implementing powers	Third party decision making powers
Kyrgyzstan	Supervisory Body of Public TV and Radio Corporation	Tick boxes ✓	V	v	v
		Areas	Regulation for radio and television	????	All areas covered by Law on Television and Broadcasting
		Source	The Law on Public Television and Broadcasting, Statute	The Statute of the Public TV and Radio Corporation of the Kyrgyz Republic	The Law on Public Television and Broadcasting, Statute

Supervision and monitoring power

Country	Body	Areas	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring only after complaints	Others	Source (legislation, or practice)
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	Quotas	V	V	V	-		The Statute of the Public TV and Radio Corporation http://ktrk.kg/rus/index.php?do=static&page=0-nas
		Advertising	V	V	V	-		
		Protection of minors	V	V	V	-		

Powers of sanctions

Country	Body	Areas	Warnings/formal objections	Fine (lump sum) If so, list maximum and minimum amounts	Publication of decisions in the media	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)	Others
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	Quotas			Annually ,however not proactively			
		Advertising						
		Protection of minors						

De facto use of formally granted competences and monitoring powers

Country	Body	Policy setting	General policy implementing powers	Specific rule making	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring after complaints
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	N/a	v	v	v	v	v	With media ombudsman

De facto use of formally granted sanction powers

Country	Body	Warnings	Fine (lump sum)	Publication of decisions in television programmes/on demand services	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)
Country name	Supervisory Board of the Public TV and Radio Corporation	n/a	n/a	n/a	n/a	n/a

Complaints handling

Country	Body	Do complaints handling procedures exist?	Link to website
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	The complaint procedure is the responsibility of Media Ombudsman – Atyr Abdrahmanova, who is considered as an assistant and counsellor of the Supervisory Board.	The information was received via email from the Media Ombudsman (Public TV and Radio) (Atyr Abdrahmanova) Personal email: 076667@gmail.com

Internal Organisation and Staffing:

Highest decision-making organ – composition

	Body	Individual or Board		Legal requirements regarding composition of highest decision-making organ						Implicit representation structures?	Source
			Number of Board members	Representatives of civil society	Representatives of government	Representatives of parliament	Representatives of industry	Experts	Others (e.g. regions)		
				Yes or no Number of representatives Proportion of this group in the board	Yes or no Number of representatives Proportion of this group in the board	Yes or no Number of representatives Proportion of this group in the board	Yes or no Number of representatives Proportion of this group in the board	Yes or no Number of representatives Proportion of this group in the board		no	<p>The Statute of the Public TV and Radio Corporation</p> <p>http://ktrk.kg/rus/index.php?do=static&page=o-nas</p> <p>http://www.kenesh.kg/Articles/1512</p> <p>-</p> <p>Zakon Kyrgyzskoj Respubliki Ob Obshhestvennoj teleradioveshhatelnoj korporacii Kyrgyzskoj Respubliki .aspx</p>
Kyrgyzstan	Chairman	Board	15	5 members: one third	5 members: one third	5 members: one third	no	no	no	no	

Highest decision-making organ – competences and decision making process and transparency

Country	Body	Competences	Decision making process	Is the decision making process transparent?	Minutes and agendas published?
Kyrgyzstan	Chairman of the Supervisory Board	<ul style="list-style-type: none"> - Timing, venue and the agenda of the Board meeting - provision of the preparation before the meeting - management of the Board meetings - appointment one of the members as a chairman at the meeting in case of the personal absence - supervision of the implementation of the Board decisions 	The Board majority voting.	Yes	

Highest decision-making organ – appointment process

Country	Body		Nomination stage Yes – No	Nomination stage Specify who is involved in that stage and who has the decisive say	Appointment stage Specify who is involved in that stage and who has the decisive say	If there are two stages, can the appointer ignore the nominations?	Source
Country name	Chairman of the Public TV and Radio Corporation	Chairman	No		By the majority voting of Board members	Yes – No	http://ktrk.kg/rus/index.php?do=static&page=0-nas
		Board members	Yes	President, Parliament and civil society	Jogorku Kenesh (Parliament of the Kyrgyz Republic)		http://ktrk.kg/rus/index.php?do=static&page=0-nas

Term of office and renewal

Country	Body		Term of office	Is the term staggered not to coincide with election cycle?	Renewal possible? If so, state how many times	Source
Country name	Supervisory Board of the Public TV and Radio Corporation	Chairman of the board	5 years	no	Yes, not specified	Data obtained from Elvira Sarieva, former chairman of the Supervisory Board
		Board members	5 years	no		

Professional expertise/qualifications

Country	Body		Qualifications	Professional expertise	Source
Country name	Supervisory Board of the Public TV and Radio Corporation	Chairman of the board	- same as the members of the Supervisory Board	- candidates from the civil society (the educational and scientific public unions, mass media and other organizations)	Chapter V, Paragraph 24 of Statute of the Public TV and Radio Corporation http://ktrk.kg/rus/index.php?do=static&page=0-nas The Statute of the Public TV and Radio Corporation

		Board members	<ul style="list-style-type: none"> -the degree of high education - at least five years of working experience in the relevant field - the knowledge of the Constitution and other normative, legal and regulatory acts - strong analytical skills - the ability to formulate thought in written, as long as in the oral format - the ability to work with complaints of the civil society - the knowledge of financial documents and the ability to work with financial reports and planning documents - work with documents on grant seek and involvement - credit work and provision of reports on them 	-	
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Rules to guard against conflicts of interest – Appointment process

Country	Body		Do such rules exist?		Rules to ensure conflicts of interest with government	Rules to ensure conflicts of interest with political parties	Rules to ensure conflicts of interest with industry	Can other offices be held at the same time?	Others (e.g. obligation to participations in comp	Source
			Yes	No						
Country name		Chairman	Yes		Same as the Board Members					http://ktrk.kg/rus/index.php?do=static&page=o-nas http://www.kyrgyz-el.kg/index.php?option=com_content&task=view&id=1
		Board members			- candidates that are not on government, state or public service	- candidates that are not members of the political parties	- candidates that are not members of the Public TV and Radio Corporation and other broadcasters - candidates holding the position of authority of any kind - candidates, who work in the sphere of broadcasting and telecommunications, receiving the payments from this sphere - and finally the candidates, who have know direct or indirect financial interest			
		Senior staff			N/A	N/A	N/A			

Rules to guard against conflicts of interest – during term of office

Country	Body		Do such rules exist?		Rules to ensure conflicts of interest with government	Rules to ensure conflicts of interest with political parties	Rules to ensure conflicts of interest with industry	Source
			Yes	No				
Country name		Chairman	Yes		- candidates that are not on government, state or public service	- candidates that are not members of the political parties	- candidates that are not members of the Public TV and Radio Corporation and other broadcasters - candidates holding the position of authority of any kind - candidates holding the position of authority of any kind - candidates, who work in the sphere of broadcasting and telecommunications, receiving the payments from this sphere - and finally the candidates, who have know direct or indirect financial interest	The Statute of the Public TV and Radio Corporation
		Board members	Yes		Same as above			
		Senior staff	Yes					

Rules to guard against conflicts of interest – after term of office

Country	Body		Do such rules exist?		Do rules exist to prevent chairman/board members/senior staff from being employed by former regulatees?	Is a cooling-off period foreseen?	Others	Source
			Yes	No				
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	Chairman	+ link to rules					
		Board members						
		Senior Staff						

Rules to protect against dismissal

Country	Body		Do such rules exist?		Who can dismiss? Specify who is involved in that stage and who has the decisive say	Grounds for dismissal listed in legal instrument?	Can the whole body be dismissed or only individual members?	Source
			Yes	No				
Country		Chairman	V		2/3 majority of the Board	Non Compliance with the Decree and Constitution of the Kyrgyz Republic	Only individual members	
		Individual board members	V		2/3 majority of the Board	Non Compliance with the Decree and Constitution of the Kyrgyz Republic	Only individual members	

Dismissal before term

Country	Body	Year		Dismissal before term		Reasons	Comment
				Yes	No		
Country		2009	Chairman		v		
			Individual board members				

Financial Resources

Sources of income

Country	Body	State funding/broadcasting fees (max level)	Spectrum fees	Authorisation/licence fees paid by operators	Fines	Other fees, e.g., 'market surveillance fee' based on % of market players' revenues	Source
Kyrgyzstan	The Supervisory Board of the Public TV and Radio Corporation	Funded by the Public TV and Radio Corporation (20% from the State Budget goes to the funding of the Corporation)	n/a				

Annual budget

Country	Body	Who decides the annual budget?	Is the regulator involved in the process?	Rules on budget adjustment – who is involved in the process (e.g. parliament, government and/or industry) ?	De facto influence of third parties on budget amounts	Source
Kyrgyzstan	The Supervisory Board of the Public TV and Radio Corporation	Supervisory Board under the direction of the chairman	yes		no	http://ktrk.kg/rus/index.php?do=static&page=0-nas

Financial accountability – auditing

Country	Body	Is the regulatory body subject to periodic external auditing?					
		Yes/no	Periodicity	By national (state) audit office, etc.	Private audit firm	Other	Legal basis
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	yes	Annually, no later than April 30		V	The auditing firm is defined by the Supervisory Board	http://ktrk.kg/rus/index.php?do=static&page=0-nas

Checks and Balances

Formal accountability

Country	Body	Body accountable to		Accountability means	Legal basis
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	Parliament	Yes	Since the final decision on the appointment process belongs to the (Jogorku Kenesh	http://ktrk.kg/rus/index.php?do=static&page=0-nas
		Government as a whole	no		
		Specific ministers (e.g. Media, finance, etc.)	Yes, to the President	The annual report of the Supervisory Board is presented to the President	
		Public at large	Yes	The annual report of the Supervisory Board must be published in the mass media and presented to the Public	
		Other	Yes/no If yes, specify		

Reporting obligation

Country	Body	Report submitted to	Periodicity	Scope	Does statistical data need to be provided about own performance? Explain	Approval necessary?	Has a report been disapproved?	Link
Kyrgyzstan	Supervisory Board of The Public TV and Radio Corporation	Parliament (if more than one, cover in separate rows) To the President And To the Parliament: Jogorku Kenesh	Annually, no later than April 30		Yes, the budget for the next year	no	no	http://ktrk.kg/rus/index.php?do=static&page=0-nas

Auditing of work undertaken

Country	Body	Is body subject to periodic external auditing					
		Yes/no	Periodicity	By public authority	By private authority	Other	Legal basis
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	Yes	Annually	no	Only by the Chairman of the Supervisory Board And the auditing agency, chosen by the Chairman of the Supervisory Board.	The provision of financial, methodological, organizational activity by the Public TV and Radio Corporation	http://ktrk.kg/rus/index.php?do=static&page=onas

Power to overturn/instruct

Country	Body	Does anybody have the power to overturn decisions of the regulator?		Ministry/Minister	Government	Parliament	Other	Source
Country name		Yes	No	no	no	no		
		Does anybody have the power to give instructions to the regulatory body?						
		Yes	No	no	Yes, as the government can require annual report from the Board	The Parliament can require reports on dedicated issues		
		Are there limitations in the power to overturn (e.g. limited to legal supervision, which would exclude political supervision)?		n/a	n/a	n/a		

		Are there limitations in the power to give instructions (e.g. limited to legal instructions which exclude instructions on political grounds)?		n/a	n/a	n/a		

Number of stages in appeal procedure

Country	Body	Stage	Number of stages in appeal procedure and appeal body at each stage		Do internal procedures need to be followed before external recourse?	Who has the right to lodge an appeal?	Legal basis
Kyrgyzstan	The Supervisory Board of the Public TV and Radio Corporation	Internal				The entity concerned with the decision	Administrative Law
		External	1				
			2				
			3				

Does the regulator's decision stand pending appeal?

Country	Body	Does regulator decision stand pending appeal body decision?			
		Yes	No	Yes, unless appeal body suspends it	Other
Country name	Supervisory Board of the Public TV and Radio Corporation		V		n/a

Accepted grounds for appeal

Country	Body	Errors of fact	Errors of law (including failure to follow the due process)	Full re-examination	Other
Country name	Supervisory Board of the Public TV and Radio Corporation	V	V	V	No legal competence

Does the appeal body have power to replace the original decision with its own?

Country	Body	Appeal stage	Yes	No	Comments
Country name	Supervisory Board of the Public TV and Radio Corporation	Chairman of the Supervisory Board, In case of complaint procedures: Media Ombudsman		V	In most cases it can not. The appeals are frequently sent to the media ombudsman. Media ombudsman advises the Supervisory Board to either annul decision or reconsider it. The chairman of the Supervisory Board can replace decision, but he Board meeting should be held first.

Procedural Legitimacy

External advice regarding regulatory matters

Country	Body	Is a budget foreseen for outside advice?	If so, what is the budget/year?	Must the body respect public tender procedures?	Other requirements	Does the regulatory body de facto take external advice on a regular basis?
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	Yes/no		Yes		- Yes, Media Ombudsman always serve as a consultant and advisory body for the Supervisory Board

Public consultations

Country	Body	Which decisions require prior public consultation?	Requirements on who must be consulted? (e.g. broadcasters, consumer organisations, academics etc.)	Consultation period	Consultation responses published		Legal basis
					Full responses (if authorised by contributor)	Summaries prepared by regulator	
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	n/a	no	No formal prescription	yes	yes	Information received from the Media Expert: Gulnura Toralieva

Public consultations – figures

Country	Body	Year	Number of public consultations
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	Not proactively published	Not proactively published

Publication of regulator's decisions

Country	Body	Which decisions required by law to be published?	Obligation to motivate decisions? Legal basis?	Obligation to include/publish impact assessment? Legal basis?	
				Ex ante	Ex post
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	Reports			

Cooperation

Cooperation with other regulatory authorities

Country	Body	Describe the mechanism of cooperation with other bodies	Source and form of cooperation	Can body receive instructions from other bodies? If so, state which and explain	Comments
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	Consultant, adviser, assistant: media ombudsman	consultancy	More advices in cases of complaints	

International cooperation

Country	Body	Does it cooperate with other national regulatory bodies in EU and international fora?	Source and form of cooperation (legal basis)	Comments
Country name	Supervisory Board of the Public TV and Radio Corporation			

Assessment of independence

Adequacy of staffing – Confidential

Country	Body	Adequate	Not adequate	If not adequate, state reasons
Country name	Supervisory Board of the Public TV and Radio Corporation		V	The staff of the Supervisory Board doesn't have adequate professional expertise and qualifications.

Adequacy of funding – Confidential

Country	Body	Adequate	Not adequate	If not adequate, state reasons
Country name	Supervisory Board of the Public TV and Radio Corporation	V	n/a	n/a

Adequacy of formal powers – Confidential

Country	Body	Adequate	Not adequate	If not adequate, state reasons
Kyrgyzstan	Supervisory Board of the Public	V	n/a	n/a

Overall evaluation of level of independence – Confidential

Country	Body	Yes (completely)	If no, is lack of independence due to influence from :				
			Ministry/ Government	Parliament	Public service broadcaster	Other broadcasters	Others
Kyrgyzstan	Supervisory Board of the Public TV and Radio Corporation	no	Give examples	The final decision on the appointment of the Board's members is made by the Parliament Jogorku Kenesh	Give examples	Give examples	The Public TV and Radio Corporation finances the Supervisory Board and it is also responsible for organizational, financial ...

Country: Kyrgyzstan

Name of regulatory body: Supervisory Board of the Public TV and Radio Corporation

Name of person filling out the survey: Aleksandra Revina

Date: Sun Jun 3 16:05:14 CEST 2012

INDIREG Ranking Tool – Results for Supervisory Board of the Public TV and Radio Corporation

Interpretation guidelines and caveats

Thank you for running through the INDIREG Online Ranking Tool. The tool now is able to provide a diagram, where each axis (i.e. dimension) displays a potential sphere of influence. The largest expansion on one axis of the spider web indicates the highest degree of countermeasures against the influence of external players, or the smallest risk of being influenced by them.

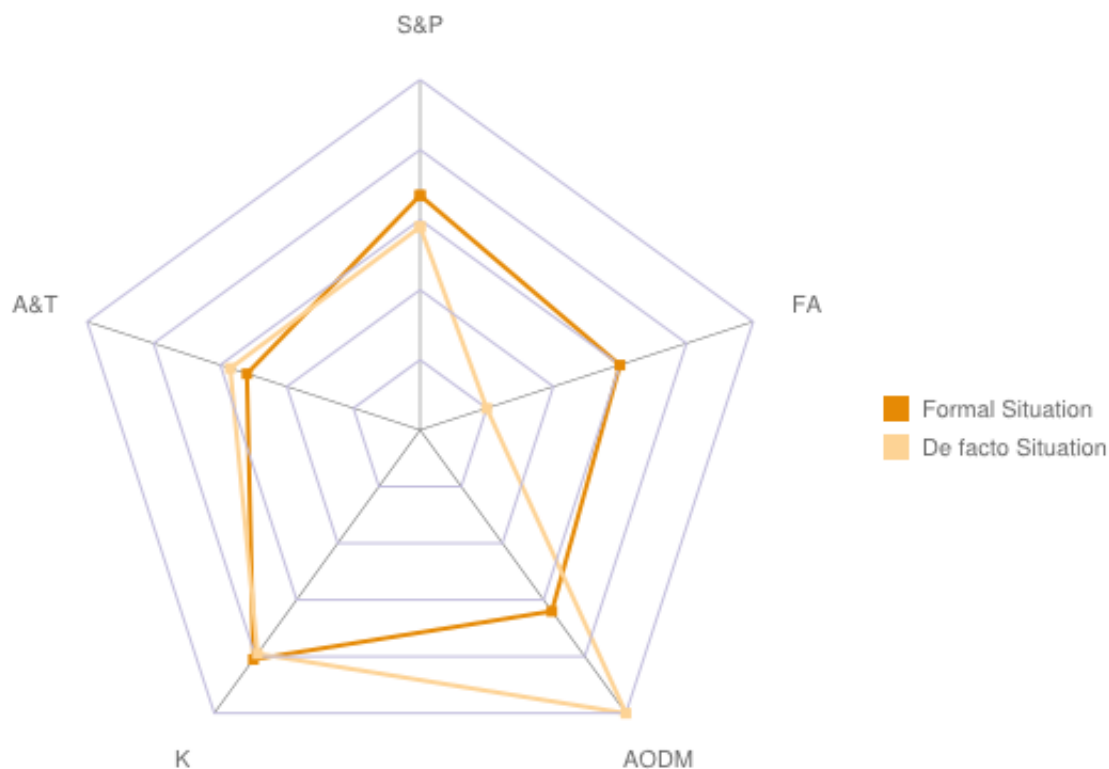
The spider's web should be interpreted taking into account that, within the spheres of status and powers, financial autonomy, autonomy of decision makers and knowledge, the further the position of the point outwards along the relevant axis, the more the regulator can resist external influence. Regarding the dimension of accountability and transparency mechanisms, the assumption is different in the sense that accountability and transparency are legally foreseen routes for influence, and therefore tools to counterbalance the powers and autonomy given to regulators. The reading is therefore different for these, in the sense that 'the fuller the web', the more effective transparency and accountability mechanisms are in place.

Following the distinction between formal and de facto indicators, the formal ranking tool contains indicators that describe the legislative set-up. The weighting and ranking with regard to potential risks of influence is based on the assumptions derived from the key characteristics and the analysis conducted earlier. The de facto ranking tool contains, on the one hand, correlating compliance indicators and, on the other, further perceivable effects or phenomena that might indicate exerted influence or a de facto increased risk of influence. Therefore, the graphical visualisation of the de facto situation should not be seen as simply mirroring the formal situation, but as draw-ing attention to potential attempts to influence the regulatory body.

It should also be emphasised that the graphical visualisation is only as useful as the answers given in relation to each indicator. Some of the indicators require a subjective judgment of the evaluator, and the results therefore reflect the personal assessment of the respondents. Furthermore, it should be stressed that due to the varying number of indicators within each dimension, the presence of a single indicator can alter the resulting graphical visualisation drastically (e.g. in the de facto dimension of financial autonomy there is only one indicator, leading to a dichotomous representation, whereas the formal dimension includes four differently weighted indicators, therefore allow several possibilities of displaying the risk of influence).

For further remarks and comments please refer to the INDIREG project team:

<http://www.indireg.eu>



S&P
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Status and Powers
Financial Autonomy
Autonomy of decision makers
Knowledge
Accountability and transparency mechanisms

Supervisory Board of the Public TV and Radio Corporation	Formal Situation	De facto situation
Status and powers	0.67	0.58
Financial Autonomy	0.6	0.2
Autonomy of decision makers	0.64	1
Knowledge	0.81	0.79
Accountability and transparency	0.52	0.57

CEU eTD Collection

Formal situation: Status and Powers

What is the legal structure of the regulatory body?

Not a separate legal entity/autonomous body and no Chinese Walls

How is the independence of the regulatory body guaranteed?

It is not recognised

What type of regulatory powers does the regulatory body have?

Policy implementing powers and third party decision making powers

Are these regulatory powers sufficiently defined in the law?

Yes

Does the regulatory body have supervision powers?

Yes

Does the regulatory body have information collection powers towards regulatees (eg. regarding quotas)?

Yes

Can the regulatory body be instructed (other than by a court) in individual cases/decisions or in relation to its policy implementing powers (notwithstanding possible democratic control mechanisms such as by parliament)?

No

Can the regulatory body's decisions be overturned (other than by a court/administrative tribunal)?

No

What type of enforcement powers does the regulatory body have?

No power to impose deterrent fines

Does the regulatory body have sufficient legal power to decide on internal organisation and human resources?

Yes

Formal situation: Financial autonomy

How is the budget of the regulatory body determined?

By the regulatory body only

Does the law clearly specify the budget setting and approval procedure?

No

What are the sources of income of the regulatory body?

Mixed fees (industry and government funding)

Does the law clearly specify the source of funding?

No

Formal situation: Autonomy of decision makers

What is the nature of the highest decision making organ of the regulatory body?

An individual

Who has a decisive say in nomination/appointment of the regulatory body's highest decision making organ?

Parliament only

What is the term of office of the chairman/board members?

A fixed term of office of a certain duration (above the election cycle)

Does the term of office coincide with the election cycle?

No

Does the law foresee that board members are appointed at different points in time (staggered appointment)?

No

What is the situation regarding renewals of board members/chairman?

Allowed in more than two instances / not specified

Are there rules on incompatibility at the nomination/appointment stage of the members of the board/the chairman so that the highest decision making organ ...

cannot be composed of members of government/parliament/industry

Incompatibility rules extended to relatives?

Yes

Requirement to act in an independent capacity?

No

Are there rules preventing conflicts of interest of chairman/board members during their term of office?

Yes

Is there a period during which former board members are limited to work for the regulatees (so-called cooling-off period)?

No

How can the chairman / individual board members be dismissed?

Dismissal possible only for objective grounds listed in the law (no discretion)

Dismissal of entire board

Not possible to dismiss entire board

Formal situation: Knowledge

Are requirements for professional expertise (i.e. knowledge/experience) specified in the law? For board members/chairman?

Yes

Are requirements for professional expertise specified in the law? For senior staff?

Not applicable (no senior staff)

Are requirements for qualifications (eg. education, diploma requirements) specified in the law? For board members/chairman?

Yes

Are requirements for qualifications specified in the law? For senior staff?

Not applicable (no senior staff)

Does the law foresee that the regulatory body can seek external advice?

Yes

Is the regulatory body legally obliged to cooperate with other national or foreign regulators and does it have the required mandate to do so?

No

Formal situation: Accountability and transparency mechanisms

Does the law specify that the regulatory body's decisions need to be published?

Yes

Does the law specify that the regulatory body's decisions need to be motivated?

No

Is the regulatory body required by law to organise consultations?

Yes, but only in cases specified by law

Is the regulatory body required to organise these consultations as open or closed consultations?

Open consultations

Is the regulatory body subject to a reporting obligation and is it specified in law?

Yes, the reporting obligation is specified in law and is addressed to the public at large (including public bodies)

Does the law specify a mechanism of ex-post control by a democratically elected body (e.g. approval of annual report by the parliament or a political/public debate with participation of the body)?

No

Is an appeal procedure against the decisions of the regulatory body foreseen in the law?

No

What are the accepted grounds for appeal?

Not applicable (no appeal procedure exists)

Is external auditing of the financial situation foreseen in the law?

Yes

De facto situation: Status and powers

Has the act on the status of the regulatory body been modified in a way that has reduced its tasks and powers?

Not applicable (not set up as separate body)

Has the governing law of the regulatory body been modified to influence a particular case/conflict?

No

Have the formally granted powers (policy implementing powers and third party decision making powers, excluding sanctions) been used?

Yes, for all types of powers and in all instances

How does the regulatory body supervise whether the rules are correctly applied by the regulatees?

Through adhoc monitoring/monitoring after complaints, without concrete procedures to follow complaints

Has the regulatory body received instructions by a body other than a court in individual cases/decisions or in relation to its policy implementing powers in the last 5 years?

No

Have the decisions of the regulatory body been overturned by a body other than a court/administrative tribunal in the last 5 years?

No

Has the regulatory body taken adequate sanctions in case of continued breach by an AVMS/TVwF provider?

Not applicable (no continued breach has occurred)

In case of several breaches by different AVMS/TVwF providers: Have even-handed/comparable measures been taken against all providers?

Not applicable (no breaches by different providers has occurred)

Does the regulatory body have a sufficient number of staff to fulfill its tasks and duties?

No

Has the regulatory body taken adequate measures in case of material breach by an AVMS/TVwF provider?

Not applicable (no material breach has occurred)

Does the regulatory body effectively decide on internal organisation and human resources?

No

De facto situation: Financial autonomy

Is the regulatory body's budget sufficient to carry out its tasks and duties?

No

Is the regulatory body's budget sufficiently stable over time?

No

Does the regulatory body have sufficient autonomy to decide for which tasks it spends its budget?

No

Is the regulatory body under pressure to compensate a lack of stable funding from the state or from the market, by imposing fines or requesting ad-hoc financial contributions from the state?

No

De facto situation: Autonomy of decision makers

Composition of the highest decision making organ (board or council only) of the regulatory body: Are political majorities or political power structures reflected in the composition of the highest decision making organ?

No

Have there been cases where the appointer failed to appoint the nominated candidate?

- No answer -

Have board members/chairman resigned before their term of office due to political conflicts?

- No answer -

Have one or more board members been dismissed for non-objective grounds in the past 5 years?

- No answer -

Has the entire board been dismissed or otherwise replaced before the end of term in the last 5 years?

- No answer -

De facto situation: Knowledge

Do board members/chairman have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?

Yes, a majority

Does senior staff have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?

Not applicable (no senior staff)

Does the regulatory body seek external advice when needed?

Yes

Does the regulatory body cooperate with other national/foreign regulators in charge of audio-visual media regulation?

Yes

De facto situation: Accountability and transparency mechanisms

Does the regulatory body publish its decisions (together with motivations)?

Yes, but only some decisions are published

Where are the decisions published?

In the official journal or other official channels (but not on the website)

Does the regulatory body organise consultations?

Yes, but only in cases specified by law

Does the regulatory body organise these consultations as open or closed consultations?

Open consultations

Does the regulatory body publish responses to consultation?

No

Does the regulatory body explain the extent to which responses are taken into account in final decisions?

No

Does the regulatory body publish periodical reports on its activities?

No

Has the regulatory body been assessed / controlled by a democratically elected body in the last five years?

Yes

Have there been cases where the report (or other form of approval by a democratically elected body) has been refused in the last 5 years?

No

Have the decisions of the regulatory body been overturned by a court/administrative tribunal in a significant number of cases?

No

Is the regulatory body subject to periodic external financial auditing?

Yes

Has auditing revealed serious financial malpractices?

No