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COMPARING REGULATORY AGENCIES.
REPORT ON THE RESULTS OF A WORLDWIDE SURVEY

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LOYOLA DE PALACIO PROGRAMME ON ENERGY POLICY

***Comparing regulatory agencies:
Report on the results of a worldwide survey***

CHRIS HANRETTY AND CHRISTEL KOOP

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Abstract

Although regulatory agencies have been created all over the world in the past decade, their design may vary considerably. In this report, we offer more insight into the variation in design by presenting the findings of a worldwide survey among regulators in seven policy areas: competition, energy, environmental, financial market, food safety, pharmaceutical and telecommunication policy. On the basis of the answers of 175 regulatory agencies from 88 countries, we conclude that although their design shows huge variation, a picture of the modal regulator can be drawn. The modal regulator is managed by a head and board members who serve for a fixed and renewable term of five years, who can be dismissed for reasons unrelated to their decisions, who cannot hold other offices in the public administration, and who need to be formally independent. The regulator is typically obliged to submit to politicians an annual report, whilst politicians can give the regulator policy instructions, can start an inquiry into the regulator's operations, and can control the budget. Finally, the regulator is formally independent, has exclusive competence, decides on its own internal organisation and personnel policy, and makes policy decisions which cannot be reversed by another body than a court.

Keywords

Administrative law, structure of government, public administration, independent regulatory agencies

1. Introduction

In March this year, we sent an e-mail to about 500 regulatory agencies all over the world to ask them to participate in a survey dealing with their governance patterns. The organisations which we approached were operating in seven policy areas; namely competition, energy, environmental, financial market, food safety, pharmaceutical and telecommunication policy. Their contact details we had derived from the membership lists of international networks of regulatory agencies.¹

The survey we sent to the regulatory agencies addressed questions on a variety of aspects of the design of these agencies. In addition to some general questions on the size of the organisation, and the year of establishment, we asked about the provisions for the appointment of the chief executive and the board members, about the obligations of the agencies towards governments and parliaments, and about provisions for the decision-making process, for the internal organisation, and for the finances of the agency. The survey has mainly been build upon a previous survey on regulatory agencies, which was created by Fabrizio Gilardi and carried out in a European setting almost a decade ago.²

Members of 175 regulatory agencies from 88 countries have completed the survey. We would like to thank all the individuals who took the time to fill in the survey for their respective organisations. Their answers to the survey questions – and the additional information on the design of the organisations which many of the respondents sent us – have greatly improved our understanding of regulatory agencies, their activities, and their environment. In this report, we present the findings of the survey on the different items which were incorporated in it. Although the findings of the survey cannot just be generalised to the whole population of regulatory agencies, we believe that, given the rather high response rate of about 35 percent, and the precision with which most surveys were filled in, we are able to draw a quite accurate picture of what regulatory agency around the world look like in terms of design.

The report proceeds as follows. In the next section, we present general information on the agencies which participated in order to give an impression of the kind of agencies we describe in this report. The third section deals with the provisions related to the appointment and the position of the chief executive of the agency. In the fourth section similar provisions for members of the board of the agency are discussed. The fifth section elaborates upon the relationship between regulatory agencies and governments and parliaments, followed by a section on the provisions for the decision-making process, the internal organisation, and the finances of the regulatory agencies. We conclude the report with a section in which we describe what can be regarded as the "modal regulator" – that is, the regulatory agency which would emerge if the most common features were combined.

Before turning to the survey findings, we would like to express our gratitude to a number of people who supported the project. We would like to thank Professors Adrienne Héritier and Jean-Michel Glachant at the European University Institute for their endorsement of the survey. Furthermore, the survey has greatly benefited from the feedback of the researchers at the Florence School of Regulation, particularly Yannick Perez, and the comments of our colleagues at the Department of Political and Social Sciences of the European University Institute, notably Alexander Trechsel, Till

¹ For competition, the International Competition Network; for energy, the International Energy Regulation Network; for the environment, the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL); for financial markets, the International Organization of Securities Commissions; for food safety, the Global forum of food safety regulators; for pharmaceuticals, the International Conference of Drug Regulatory Authorities; and for telecommunications, the International Telecommunication Union.

² Fabrizio Gilardi. "Policy Credibility and Delegation to Independent Regulatory Agencies: A Comparative Empirical Analysis." *Journal of European Public Policy* 2002, 9 (6): 873-93.

Weber, Sergi Pardos, Joost Berkhout, Mads Dagnis, Carolien van Ham, Costanza Hermanin, Kaat Smets, Michaël Tatham, and Elias Dinas. Thank you all for your input!

2. General information on the regulators

In this section, we will provide some general information on the regulatory agencies which have participated in the survey. As mentioned before, we sent the survey to regulators operating in seven areas: competition, energy, environmental, financial market, food safety, pharmaceutical, and telecommunication policy. Table 2.1 indicates that out of the 175 regulatory agencies which have responded to our request, the group of competition authorities is most populous: these authorities represent almost one third of the responding agencies. Next in line are the financial market regulators, which constitute slightly more than 18 percent of the respondents, followed by the energy and telecommunication regulators, which both represent slightly less than 18 percent. The pharmaceutical regulators, subsequently, constitute some seven percent of the organisations. And finally, both the food safety and environmental regulators make up of four percent of the sample.

Table 2.1: Participating regulatory agencies: type

Type of regulator	Number	Percentage
Competition authority	54	30.9
Financial market regulator	32	18.3
Energy regulator	31	17.7
Telecom regulator	31	17.7
Pharmaceuticals regulator	13	7.4
Food safety regulator	7	4.0
Environmental regulator	7	4.0
Total	175	100

Table 2.2, on the next page, presents the list of countries and political units in which the regulatory agencies operate. The agencies have their seats in 88 different countries and political units from all continents. For most of the units, we have only one participating agency. However, some are present in the sample with more organisations, notably Ireland with no less than six regulators, and Brazil, Denmark, Hungary, and Latvia with five regulators.

Table 2.2: Participating regulatory agencies: country or political unit

Country	Number	Country	Number
Albania	1	Latvia	5
Algeria	1	Lithuania	3
Armenia	1	Luxembourg	4
Australia	2	Macedonia	2
Austria	1	Madagascar	1
Azerbaijan	1	Malawi	1
Barbados	1	Mali	1
Belgium	3	Malta	2
Bhutan	1	Mauritania	1
Bosnia and Herzegovina	1	Mexico	2
Brazil	5	Moldova	1
Canada	1	Mongolia	4
Chile	1	Montenegro	1
Colombia	2	Nepal	1
Costa Rica	1	Netherlands	3
Cyprus	3	New Zealand	2
Czech Republic	2	Nicaragua	1
Denmark	5	Norway	3
Dominican Republic	1	Pakistan	1
Ecuador	1	Panama	2
Egypt	1	Peru	2
El Salvador	1	Poland	1
Estonia	4	Portugal	2
Finland	3	Qatar	1
France	4	Romania	3
Gambia	1	Russia	1
Germany	3	San Tomé and Príncipe	1
Ghana	1	Saudi Arabia	1
Gibraltar	1	Serbia	3
Greece	1	Slovak Republic	4
Greenland	1	Slovenia	3
Grenada	1	South Africa	2
Honduras	1	Spain	3
Hungary	5	St. Lucia	1
Iceland	2	Suriname	1
Ireland	6	Sweden	3
Israel	2	Switzerland	2
Italy	2	Taiwan	2
Jamaica	1	Trinidad and Tobago	1
Japan	1	Turkey	1
Jersey	2	Uganda	1
Jordan	2	United Kingdom	2
Kenya	4	United States of America	3
Kiribati	1	Uzbekistan	1
Korea (Republic of)	1	Zambia	2
		Total number	175

The average number of full-time equivalent (FTE) staff which work for the agencies is 266 (based on the answers to this question of 160 out of the 175 organisations), but the variation is extremely high. That is, the organisation with least full-time equivalent staff only has one FTE position, whilst the organisation with most staff has 3240 FTE employees.

Furthermore, the participating agencies are very young organisations. As demonstrated in Table 2.3, many of them are established fairly recently. Some 38 percent of the agencies have been established in the past nine years, and almost half of the organisations were established in the 1990s (47 percent). Besides, five percent of the agencies have been set up in the 1980s, and the percentages are still lower for the period before the 1980s.

Table 2.3: Participating regulatory agencies: establishment per decennium

	Frequency	Percentage
Before 1940	1	0.6 %
In the 1940s	3	1.8 %
In the 1950s	3	1.8 %
In the 1960s	5	3.1 %
In the 1970s	4	2.5 %
In the 1980s	8	4.9 %
In the 1990s	77	47.2 %
After 2000	62	38.0 %
Total number of answers	163	100%
No answer to this question	12	

3. The chief executive

The executive heads are often the main actors responsible for the decisions of the regulatory agency. We therefore addressed in the survey a number of questions on the procedure leading to the appointment of this official, and the provisions of the appointment. How is the chief executive appointed and nominated, and for what term does he or she serve? And what are the provisions for dismissal, for independence, and for holding other offices?

The first questions relate to the nature of the term of executive head. In Table 3.1, the answers to the question of whether the agency head serves for a fixed term are shown. The vast majority of the heads of regulatory agencies (65 percent) serve for a fixed term which is always the same term. About one fifth of the heads do not serve for a fixed term (21 percent), whilst the remaining heads (14 percent) serve for a fixed term which is determined by the appointing body.

Table 3.1: Does the head of the agency serve for a fixed term?

	Frequency	Percentage
Yes, and the term length is always the same	111	65.3 %
Yes, but the appointing body can choose the term length	24	14.1 %
No, there is no fixed term	35	20.6 %
Total number of answers	170	100 %
No answer to this question	5	

Table 3.2: If there is a fixed term, how long is it?

	Frequency	Percentage
Less than two years	2	1.6 %
Two years	2	1.6 %
Three years	10	7.9 %
Four years	19	15.1 %
Five years	57	45.2 %
Six years	22	17.5 %
Seven years	11	8.7 %
Eight years	1	0.8 %
Nine years	1	0.8 %
Ten years	1	0.8 %
Total number of answers	126	100%
No fixed term, or not always the same	44	
No answer to this question	5	

In Table 3.2, the term length is indicated for the heads which serve for a fixed term.³ Most of the agency heads with a fixed term serve for a term of five years (45 percent). Besides being the modal term length, 5.0 years is also the mean term length of the agency heads (not indicated in the table). Also fairly common are the term lengths close to five years: six years (18 percent), four years (15 percent), seven years (9 percent), and three years (8 percent). Rare though are term lengths shorter than three years, or longer than seven years.

Table 3.3 shows that agency heads can usually be appointed for a new term as well. In the majority of the cases, the appointment is renewable more than once (53 percent), and in about a third of the cases, this is a once-only possibility. In 14 percent of the cases, the appointment cannot be renewed at all.

Table 3.3: Is the appointment of the agency head renewable?

	Frequency	Percentage
No	22	13.6 %
Yes, once	55	34.0 %
Yes, more than once	85	52.5 %
Total number of answers	162	100 %
No answer to this question	13	

³ Whereas some of the agencies with a head who serves for a term determined by the appointing body indicated that this question is not applicable for them, some others answered this question by indicating what the current term length is. As a consequence, the number of answers on the term length (126) is higher than the number of agencies in which the head always serves for the same term (111).

Table 3.4: Who appoints the head of the agency?

	Frequency	Percentage
The head of the state	30	17.9 %
One or two ministers	42	25.0 %
The government	39	23.2 %
The parliament	20	11.9 %
The government and parliament combined	8	4.8 %
The members of the board of the agency	19	11.3 %
Another non-elected body	10	6.0 %
Total number of answers	168	100 %
No answer to this question	7	

Next we asked a number of questions on who appoints and nominates the agency head. Table 3.4 indicates that most of the agency heads are appointed by one or two ministers (25 percent), followed by the government as a whole (23 percent), and the head of the state (18 percent). Quite some heads are also appointed by the parliament (12 percent), and by the members of the agency board (11 percent). Less common are appointments by other non-elected bodies, such as ministries or specific public service appointment committees (6 percent), and appointments by the government and parliament combined (5 percent).

For most of the regulatory agencies, appointments are preceded by nominations of one or more candidates, which are normally issued by bodies other than the appointing ones. Table 3.5 indicates that candidates are usually nominated by a political body. Nominations are most often issued by a minister (34 percent). Other common political nominators are the government as a whole (18 percent), a combination of government and parliament (6 percent), and the head of the state (5 percent). Less common are nominations by the parliament only (3 percent), and by a minister in combination with a non-elected body (3 percent). Non-political bodies are also often involved as nominators, and they are involved more often as the nominators than as appointing bodies. In about 15 percent of the cases, the board of the agency is the nominator, whilst another 16 percent have as nominators such bodies as ministerial departments, courts, specifically designated recruitment services, and other regulatory agencies.

Table 3.5: Who nominates the head of the agency?

	Frequency	Percentage
The head of the state	6	5.0 %
One or two ministers	41	33.9 %
The government	22	18.2 %
The parliament	4	3.3 %
The government and parliament combined	7	5.8 %
A minister or president in combination with a non-elected body	4	3.3 %
The members of the board of the agency	18	14.9 %
Another non-elected body	19	15.7 %
Total number of answers	121	100 %
There are no nominations	46	
No answer to this question	6	

The provisions on the bindingness of the nominations differ considerably across agencies. Table 3.6 shows that for almost 40 percent of the agencies which have nominations, such nominations are non-binding, and can hence be ignored by the appointing body. In these instances, and in the instances in which there are no nominees whatsoever, the appointing body is the decisive body during the appointment procedure. In about a quarter of the cases, nominations cannot be ignored by the appointing body, and the nominator consequently has considerable influence on the appointments. Finally, in many cases, no specific provisions for the bindingness of nominations are included in the legislation or statutes which govern the agency (36 percent).

Table 3.6: Can the nomination be ignored by the appointer?

	Frequency	Percentage
Yes	40	39.2 %
No	25	24.5 %
No specific provisions	37	36.3 %
Total number of answers	102	100 %
There are no nominations	46	
No answer to this question	27	

Related to the appointment question is the question of whether the chief executive can be dismissed (see Table 3.7). The most common provision here is the permission of dismissal of the head, but only for reasons not related to policy decisions made by the agency (52 percent). Hence the head can be dismissed in the case of malfeasance or misuse of powers, but not for reasons of incompatibility of agency decisions with political preferences. Somewhat less common are provisions which enable the dismissal of the agency head for a variety of reasons including, in principle, reasons related to the policy decisions of the agency. Furthermore, some agencies do not have any dismissal provisions (13 percent), whilst some others do not at all allow the dismissal of the chief executive.

Table 3.7: Can the head of the agency be dismissed?

	Frequency	Percentage
S/he cannot be dismissed	9	5.4 %
S/he can be dismissed, but only for reasons unrelated to policy	87	52.4 %
S/he can be dismissed for all kind of reasons	49	29.5 %
No specific provisions for dismissal	21	12.7 %
Total number of answers	166	100 %
No answer to this question	9	

Finally, we addressed some questions related to the degree to which chief executives are required to discharge their task independently. We first of all asked whether he or she can hold other offices in addition to the office of chief executive of the agency. In Table 3.8, it is shown that the vast majority of the heads are not allowed to hold other offices in the public administration (70 percent). Furthermore, of the heads who are allowed to hold other offices, most need to get the permission of the executive branch in order to do so (10 percent), and some do not need such permission (6 percent). In another 15 percent of the cases, the legislation or statutes of the agency do not include any provisions related to holding other offices. For the appointment of most of the agency heads, independence is also a formal requirement. As presented in Table 3.9, almost two thirds of the heads are required to be independent, whilst the remaining one thirds are not subject to such an obligation.

Table 3.8: Can the head of the agency hold other offices in the public administration?

	Frequency	Percentage
No	116	69.5 %
Yes, but only with the permission of the executive branch	16	9.6 %
Yes	10	6.0 %
No specific provisions for other offices	25	15.0 %
Total number of answers	167	100 %
No answer to this question	8	

Table 3.9: Is independence a formal requirement for the appointment?

	Frequency	Percentage
Yes	105	64.4 %
No	58	35.6 %
Total number of answers	163	100 %
No answer to this question	12	

4. The members of the board

The chief executive is usually not the only one responsible for the conduct of the regulatory agency: he or she is assisted by the (other) board members. While the head and board members are sometimes collectively responsible for the agency's decisions, they are otherwise each responsible for specified aspects of the agency's activities. In both cases though, board members hold key positions in the agency. Therefore we included in the survey the same battery of questions which dealt with the provision for the agency heads. In this section, we will discuss the answers to the questions on the appointment procedure of the board members, and the provisions attached to their position. Overall, it should be noted, the provisions for the board members closely resemble those for the chief executives.

Table 4.1: Does the agency have a board?

	Frequency	Percentage
Yes	134	78.4 %
No	37	21.6 %
Total number of answers	171	100 %
No answer to this question	4	

Table 4.1, first of all, shows the answers to the question of whether an agency has a board. Almost 80 percent of the agencies which sent us a completed survey have such a board. The remaining ones, a little less than 22 percent, have a single executive who manages the organisation.

Table 4.2: Do the board members serve for a fixed term?

	Frequency	Percentage
Yes, and the term length is always the same	107	79.9 %
Yes, but the appointing body can choose the term length	17	12.7 %
No, there is no fixed term	10	7.5 %
Total number of answers	134	100 %
There is no board	37	
No answer to this question	4	

Like in the case of agency heads, the majority of the board members – some 80 percent – serve for a fixed term which is always the same (see Table 4.2). The remaining 20 percent of the board members either serve for a fixed term which is determined by the appointing body (13 percent), or do not at all serve for a fixed term (8 percent).

As demonstrated in Table 4.3, the term lengths for the board member are centred around five years (33 percent) and four years (22 percent).⁴ The mean term length of the board members (not presented in the table) is 4.6 years, and hence also lies in between these two categories. The term lengths around these two numbers – that is, terms of three years (18 percent) and six years (14 percent) – are also common. However, terms shorter than three years, or longer than six years, can hardly be found.

Table 4.3: If there is a fixed term, how long is it?

	Frequency	Percentage
Less than two years	1	0.9 %
Two years	4	3.5 %
Three years	21	18.3 %
Four years	25	21.7 %
Five years	38	33.0 %
Six years	16	13.9 %
Seven years	8	7.0 %
Nine years	1	0.9 %
Ten years	1	0.9 %
Total number of answers	115	100%
No fixed term, or not always the same	15	
There is no board	37	
No answer to this question	8	

After serving for their term, most of the board members can be appointed for a new term. In Table 4.4, it is demonstrated that a little less than 40 percent of the members can be appointed once more, whilst a majority can be reappointed more than once. In only 7 percent of the cases, board members are not allowed to serve for more than one term.

⁴ Also here, some of the agencies with board members serving for terms determined by the appointing body indicated that this question is not applicable for them, whilst some others answered this question by indicating what the current term length is. As a consequence, the number of answers on the term length (115) is higher than the number of agencies in which the board members always serves for the same term (107).

Table 4.4: Is the appointment of the board members renewable?

	Frequency	Percentage
No	9	6.8 %
Yes, once	52	39.4 %
Yes, more than once	71	53.8 %
Total number of answers	132	100 %
There is no board	37	
No answer to this question	6	

As shown in Table 4.5, the members of the board are appointed by a wide range of actors. The government is the most common appointing body (28 percent), followed by one or two ministers (25 percent), the parliament (16 percent), the head of the state (14 percent), and parliament and government combines (8 percent). Appointments by non-elected bodies, such as the head of the agency or specifically designated officials at the ministry, are much less habitual.

Table 4.5: Who appoints the board members of the agency?

	Frequency	Percentage
The head of the state	18	13.7 %
One or two ministers	33	25.2 %
The government	37	28.2 %
The parliament	21	16.0 %
The government and parliament combined	10	7.6 %
A combination of elected and unelected bodies	3	2.3 %
The head of the agency	6	4.6 %
Another non-elected body	3	2.3 %
Total number of answers	131	100 %
There is no board	37	
No answer to this question	7	

The appointment of board members is usually preceded by nominations of one or more candidates. As Table 4.6 demonstrates, the nature of the nominators varies considerably. The nominators are frequently elected bodies: one or two ministers (28 percent), the government as a whole (23 percent), or the government and parliament combined (10 percent). Nevertheless, non-elected bodies are also very often the nominators, although they are hardly ever the appointing bodies. In about 10 percent of the cases, the other board members nominate candidate colleagues. Moreover, in about 17 percent of the cases, other non-elected bodies are the nominators. The bodies to which this category mainly refers are regulated industries which have been granted the task to nominate.

Table 4.6: Who nominates the board members of the agency?

	Frequency	Percentage
The head of the state	2	2.0 %
One or two ministers	29	28.4 %
The government	24	23.5 %
The parliament	4	3.9 %
The government and parliament combined	10	9.8 %
A combination of elected and unelected bodies	6	5.9 %
The head or members of the board of the agency	10	9.8 %
Another non-elected body	17	16.7 %
Total number of answers	102	100 %
There are no nominations	31	
There is no board	37	
No answer to this question	5	

Nevertheless, important though nominations may be, they can quite often be ignored by the appointing body (see Table 4.7). In the case that candidates are nominated for the position of board members, such nominations can be ignored in almost 40 percent of the cases. In those cases, and in the cases in which there are no nominations at all, the appointing body is the decisive body in determining who will take a seat in the board. Furthermore, in 38 percent of the cases, there are no provision on the bindingness of the nominations. Finally, almost a quarter of the nominations are binding for the appointing body. Here the balance of power in the appointment process is much more in favour of the nominator.

Table 4.7: Can the nomination be ignored by the appointer?

	Frequency	Percentage
Yes	36	38.7 %
No	22	23.7 %
No specific provisions	35	37.6 %
Total number of answers	93	100 %
There are no nominations	31	
There is no board	37	
No answer to this question	14	

Table 4.8: Can the board members of the agency be dismissed?

	Frequency	Percentage
S/he cannot be dismissed	9	6.8 %
S/he can be dismissed, but only for reasons unrelated to policy	67	50.4 %
S/he can be dismissed for all kind of reasons	33	24.8 %
No specific provisions for dismissal	24	18.0 %
Total number of answers	133	100 %
There is no board	37	
No answer to this question	5	

In Table 4.8, the dismissal provisions for board members are summarised. Only few instances of board members who cannot be dismissed at all can be found (7 percent). Furthermore, of the provisions which enable dismissal, the one allowing for dismissal only for reasons unrelated to policy is most common (50 percent). In about a quarter of the cases, board members can be dismissal for all kinds of reasons, including reasons related to the policy decisions of the agency. Finally, many agencies do not have any provisions for the dismissal of board members.

Table 4.9: Can the board members hold other offices in the public administration?

	Frequency	Percentage
No	58	44.3 %
Yes, but only with the permission of the executive branch	8	6.1 %
Yes	56	42.7 %
No specific provisions for other offices	9	6.9 %
Total number of answers	131	100 %
There is no board	37	
No answer to this question	7	

Finally, we addressed, also for the board members, some questions related to the degree to which the board members are required to perform their task independently. In contrast to chief executives, board members are quite often allowed to hold other offices in the public administration (see Table 4.9). And while some 6 percent of the board members need to get permission from the executive branch to do so, 43 percent can hold other offices without needing to get permission. Nevertheless, although the percentage is much lower than for the chief executives, many board members are not allowed to hold other offices in the public administration. Also potentially important for the independent functioning of the board members are statutory provisions which provide for the independence of these officials. As Table 4.10 shows, for a vast majority of the positions of board members, independence is indeed a formal requirement (60 percent).

Table 4.10: Is independence a formal requirement for the appointment?

	Frequency	Percentage
Yes	78	60.0 %
No	52	40.0 %
Total number of answers	130	100 %
There is no board	37	
No answer to this question	8	

5. The relationship with government and parliament

Regulatory agencies have typically been granted their policy competence by governments and parliament. As these political bodies are often to some extent responsible for activities in the policy area in question, they will still have some interest in the activities of regulatory agencies. To learn more about the relation between regulatory agencies and governments and parliaments, we introduced in the survey a number of questions on this topic. We addressed both questions on the obligations of the agencies towards governments and parliaments, and on the powers of the political bodies vis-à-vis regulatory agencies.

Table 5.1: What are the agency's obligations towards the government?

	Frequency	Percentage
No formal obligations	44	26.5 %
Submission of an annual report, for information only	76	45.8 %
Submission of a report more than once a year, for information only	4	2.4 %
Submission of an annual report, approval needed	24	14.5 %
Submission of a report more than once a year, approval needed	12	7.2 %
The agency has to report on request	6	3.6 %
Total number of answers	166	100 %
No answer to this question	9	

Table 5.2: What are the agency's obligations towards the parliament?

	Frequency	Percentage
No formal obligations	51	30.9 %
Submission of an annual report, for information only	73	44.2 %
Submission of a report more than once a year, for information only	1	0.6 %
Submission of an annual report, approval needed	26	15.8 %
Submission of a report more than once a year, approval needed	6	3.6 %
The agency has to report on request	8	4.8 %
Total number of answers	165	100 %
No answer to this question	10	

In Tables 5.1 and 5.2, the reporting requirements of regulatory agencies are presented. In general, the distribution of answers over the different categories is quite similar for obligations towards the government and the parliament. The most common requirement, both towards the government (46 percent) and the parliament (44 percent), is the requirement to submit an annual activity report for the information of the political body. Furthermore, agencies often have no obligations at all towards political bodies, and this absence of requirements is more common vis-à-vis the parliament (31 percent) than vis-à-vis the government (27 percent). Still frequently, regulators have to submit an annual report which needs to be approved by the political body in question: 15 percent of the regulators have such an obligation towards the government, whilst 16 percent have this obligation towards their parliament. Uncommon though are obligations to submit a report more than once a year. This obligation is nevertheless somewhat less exceptional for reports which need to be approved than for reports which have to be submitted for information only. Finally, some agencies are obliged to report on request to government and/or parliament (about 4 percent in both cases).

Subsequently, we asked whether governments and parliaments can give the agency general policy instructions; that is, policy instructions which refer to general rules rather than the application of these

rules in particular cases. As Tables 5.3 and 5.4 indicate, provisions which allow for such general policy instructions are much more common for governments (41 percent) than for parliament (25 percent). At the same time, such general policy instructions are quite often not a possibility for governments (41 percent) or for parliaments (46 percent). Besides, provisions for policy instructions do frequently not enter in the design of agencies at all (in 18 percent of the cases for government instructions; in 29 percent of the cases for parliamentary instructions).

Table 5.3: Can the government give the agency general policy instructions?

	Frequency	Percentage
Yes	67	40.6 %
No	68	41.2 %
No specific provisions	30	18.2 %
Total number of answers	165	100 %
No answer to this question	10	

Table 5.4: Can the parliament give the agency general policy instructions?

	Frequency	Percentage
Yes	47	24.5 %
No	75	46.0 %
No specific provisions	48	29.4 %
Total number of answers	163	100 %
No answer to this question	12	

We were also interested in the question whether governments and parliament can start inquiries into the operations of the agency. As Tables 5.5 and 5.6 demonstrate, such provisions are quite common, though somewhat more common for governments (45 percent) than for parliaments (38 percent). Nevertheless, in a majority of the cases, inquiries into the operations of the agencies are not explicitly allowed for. That is, inquiries are either not a possibility at all (28 percent for governments; 30 percent for parliaments), or are not the subject matter of any provision in the legislation or statutes which govern the agency (27 percent for governments; 32 percent for parliaments).

Table 5.5: Can the government start an inquiry into the agency's operations?

	Frequency	Percentage
Yes	75	45.2 %
No	46	27.7 %
No specific provisions	45	27.1 %
Total number of answers	166	100 %
No answer to this question	9	

Table 5.6: Can the parliament start an inquiry into the agency's operations?

	Frequency	Percentage
Yes	61	37.7 %
No	49	30.2 %
No specific provisions	52	32.1 %
Total number of answers	162	100 %
No answer to this question	13	

6. Decision-making, internal organisation, and finances

The final section of the survey dealt with the decision-making process, the internal organisation, and the finances of the agencies. First, we asked the general question of whether the independence of the agency is formally stated in the legislation or statutes which govern the agency. Table 6.1 shows that for the vast majority of the agencies which answered this question (81 percent), the independence is indeed formally stated.

Table 6.1: Is the independence formally stated in legislation or in statute?

	Frequency	Percentage
Yes	135	81.3 %
No	31	18.7 %
Total number of answers	166	100 %
No answer to this question	9	

Table 6.2: Is there a body other than a court which can overturn decisions?

	Frequency	Percentage
No, none	105	64.8 %
Yes, another specialised body	12	7.4 %
Yes, the government, with qualifications	37	22.8 %
Yes, the government, without qualifications	7	4.3 %
Yes, the legislature, without qualifications	1	0.6 %
Total number of answers	162	100 %
No answer to this question	13	

Being interested in provisions which may put constraints on decision-making autonomy of the agencies, we addressed the question of whether there is a body other than a court which can reverse or overturn the decisions of the agency (see Table 6.2). For the vast majority of the agencies (65 percent), there is no body other than a court which can do so. In the case that there is a body which can do so, this is usually the government, which can overturn decisions with qualifications (23 percent). In such instances, the government is allowed to, for instance, block or reverse agency decisions which conflict with the national interest. Far less common are provisions which allow for other specialised bodies to reverse agency decisions (7 percent), for unqualified overturn of decisions by the government (4 percent), or for parliament to block decisions (less than 1 percent).

Furthermore, we addressed a question on the competence of the agency. The question deals not so much with the reach of its competence, but with the exclusiveness of the competence. As Table 6.3 indicates, a vast majority of the agencies which responded to this question have exclusive competence in their regulatory policy area (61 percent). The remainder of the organisations share their competences with another body. Some share their competences with another independent authority (18 percent), others with the government (14 percent), or with the parliament (6 percent). In rare instances, the agency only has some consultative competence.

Table 6.3: Does the agency have exclusive or shared competences?

	Frequency	Percentage
Exclusive competences	99	60.7 %
It shares competences with another independent authority	29	17.8 %
It shares competences with the parliament	10	6.1 %
It shares competences with the government	22	13.5 %
It only has some consultative competence	3	1.8 %
Total number of answers	163	100 %
No answer to this question	12	

Next we asked about the internal organisation of the agency. In an answer to the question which body decides upon the internal organisation of the agency, almost 70 percent of the agencies noted that they decide on these matters themselves (see Table 6.4). For the remainder of the agencies, these decisions are partly made by the government and partly by the agency itself (29 percent). Only in rare instances are decisions on the internal organisations exclusively made by the government.

Table 6.4: Which body decides upon the agency's internal organisation?

	Frequency	Percentage
The agency alone	111	68.1 %
Both the agency and the government	48	29.4 %
The government alone	4	2.5 %
Total number of answers	163	100 %
No answer to this question	12	

A similar question dealt with the personnel policy of the agency; that is, the hiring, firing, and allocation of the staff of the agency (see Table 6.5). Again, in a vast majority of the cases, agencies indicate to be in charge of such matter themselves (76 percent). If this is not the case, personnel policy is usually decided upon partly by the agency and partly by the government (23 percent). Only rarely is the government solely in charge of the personnel policy of the agency (2 percent).

Table 6.5: Which body is in charge of the agency's personnel policy?

	Frequency	Percentage
The agency alone	124	75.6 %
Both the agency and the government	37	22.6 %
The government alone	3	1.8 %
Total number of answers	164	100 %
No answer to this question	11	

Finally, we asked about the finances of the agency. First, we addressed the question of what the source is of the budget of the agency (see Table 6.6). Here the picture is quite diverse: the answers are neatly distributed among the various answer categories. First of all, slightly more than one third of the agencies are funded out of fees which are levied upon the regulated industry. Second, somewhat less than one third have as their source of income a combination of fees levied upon the industry and government grants. And finally, somewhat more than one third see their budget come from government grants only.

Table 6.6: What is the source of the agency's funding?

	Frequency	Percentage
Fees levied on the regulated industry	58	35.4 %
Fees levied on the industry and government grants	47	28.7 %
Government grants only	59	36.0 %
Total number of answers	164	100 %
No answer to this question	11	

Table 6.7: How is the agency's budget controlled?

	Frequency	Percentage
By the agency only	31	18.9 %
By the accounting office or court	32	19.5 %
By another non-elected body	3	1.8 %
By both the government and the agency	61	37.2 %
By the government only	16	9.8 %
By the parliament only	5	3.0 %
By government and parliament	4	2.4 %
By government and/or parliament and accounting office	12	7.3 %
Total number of answers	164	100 %
No answer to this question	11	

Second, we were interested in the control of the budget of regulatory agencies. As Table 6.7 shows, a wide variety of actors are involved in the control of the budget. In a majority of the cases, a political body is somehow involved as a controller. The arrangement which is most common is the one where the budget is controlled by a combination of government and agency (37 percent). Furthermore, sometimes the government is the sole controlling body (10 percent), sometimes parliament has this task (3 percent), and in another small number of cases the government and parliament share the controlling task (2 percent). Sometimes also, governments and parliaments share the task of controlling the budget with some accounting office (7 percent). More usual though is the provision where such accounting offices are the sole controllers (20 percent). Finally, in another 19 percent of the cases, the agency itself is the sole body responsible for the control of its budget.

7. The modal regulatory agency

As the previous sections indicated, the design of the regulatory agencies that participated in the survey varies considerably. Nevertheless, it is possible to draw a picture of the modal regulator. In the final section of the report, we therefore opted to present the features of the modal regulator (see schedule below). The picture that emerges here is one of an autonomously operating organisation, which has

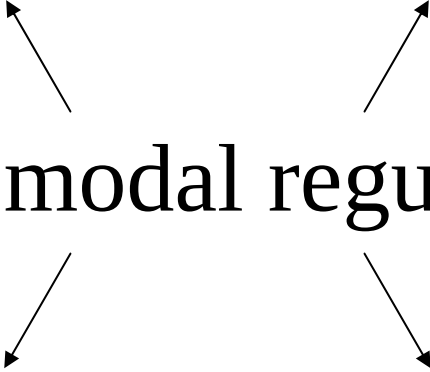
nevertheless fairly strong links to government as a consequence of political appointments and nominations, reporting obligations towards politicians, and the possibility of political instructions and inquiries.

Provisions for the executive head

- Fixed term of office of five years
- Appointment renewable more than once
- Non-binding nomination and appointment by ministers
- Dismissal possible for reasons unrelated to policy
- Other offices in the public administration not allowed
- Independence is a formal requirement for the appointment

Provisions for the board members

- Fixed term of office of five years
- Appointment renewable more than once
- Non-binding nomination by ministers, appointment by the government
- Dismissal possible for reasons unrelated to policy
- Other offices in the public administration not allowed
- Independence is a formal requirement for the appointment



The modal regulator

Relationship with political bodies

- Obligation to submit annual report for information
- Political bodies can give general policy instructions
- Political bodies can start an inquiry into the agency's operations

Decision-making, management, finances

- Independence formally stated
- Decisions cannot be reversed
- Decides itself on internal organisation and personnel policy
- Exclusive competences
- Budget either from industry fees or government grants
- Budget controlled by agency and government

8. Afterword

In this report, we have presented the findings of a survey which we carried out on the design and governance of regulatory agencies worldwide. Members of 175 different agencies from all over the world have participated in the survey, and have generously offered more insight into the design of their respective organisations. Based on their answers, we have been able to present a picture of both the communalities and the differences in the design of regulatory agencies.

The findings of the survey have not only been used in order to write this report, but have also formed the empirical basis for an academic paper which has been presented recently at two international political science conferences.⁵ The data will also be used in additional academic papers on which we are still working.

If you have any questions about this report, the data, or our research project, please contact either Chris Hanretty (chris.hanretty@eui.eu) or Christel Koop (christina.koop@eui.eu).

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⁵ Chris Hanretty and Christel Koop. "Measuring Regulator's Statutory Independence." APSA 2009 Toronto Meeting Paper. Available at SSRN: <http://ssrn.com/abstract=1449103>; Chris Hanretty and Christel Koop. "Measuring Regulators' Statutory Political Independence". Paper presented at the 5th ECPR General Conference 2009, Potsdam, Germany.