

Training Day – Opening Module

The independence and accountability of regulators: best practices and challenges

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The importance of regulatory independence

Regulatory independence and therefore the need to have independent regulatory authorities is particularly important when:

- ➔ Regulatory action should be *seen and perceived* as independent (from politicians, government and regulated companies) to maintain *public confidence in the impartiality and objectivity* of regulatory decisions
- ➔ *Private investments* are needed to modernise the power sector and a stable regulatory framework is needed to give *confidence to investors*
- ➔ *State-owned and private entities* compete under the same regulatory framework and a *level-playing field* is essential
- ➔ Regulatory decisions can *significantly impact particular interests* and therefore there is the need to secure the impartiality of the regulator

De-jure and *de-facto* regulatory independence

- Regulatory independence should not only be *provided and protected in legislation*
- It should also characterise *regulatory action in practice*
- It should become the *prevailing culture* in the sector
- It should be *accepted as a positive value* by all sector stakeholders

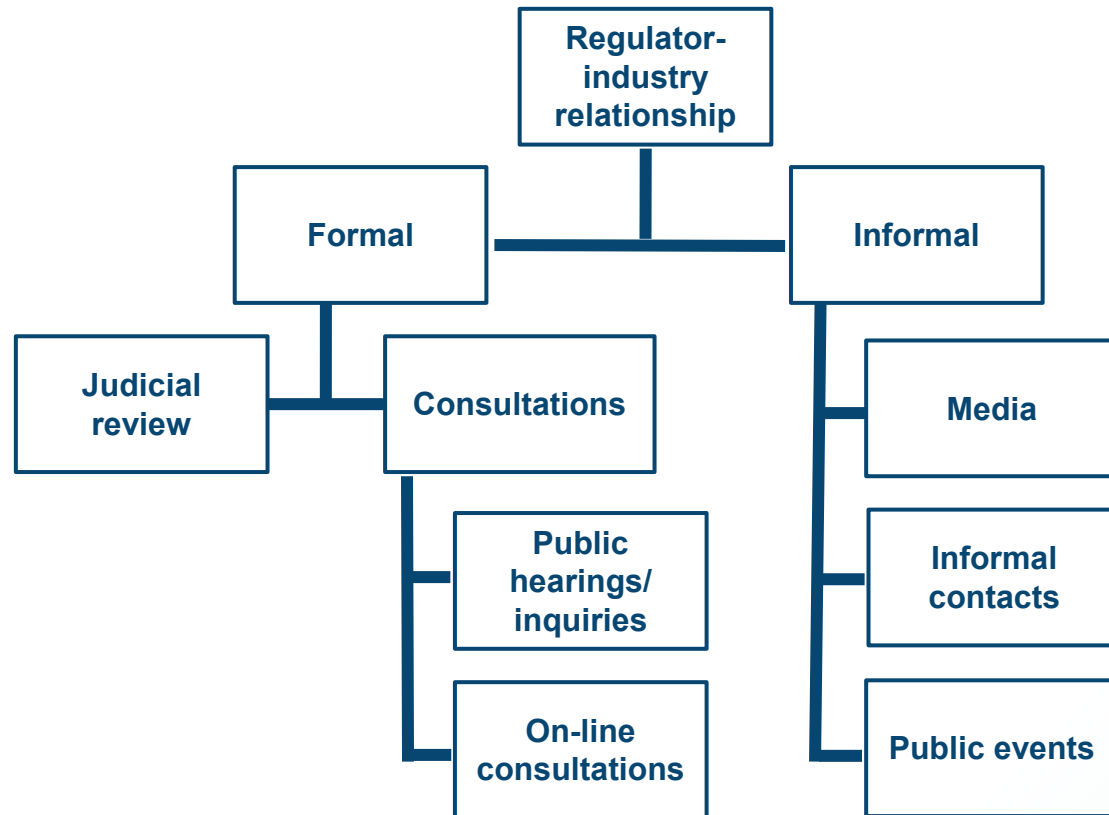
World Bank *de-jure* and *de-facto* GERI Regulatory Independence sub-index for selected countries

WB GERI Regulatory Independence sub-index	De-jure	De-facto
Cambodia	59%	15%
Philippines	49%	72%
Romania	54%	72%
Sri Lanka	76%	72%
Tajikistan	28%	69%
Uruguay	61%	60%
Vietnam	48%	54%

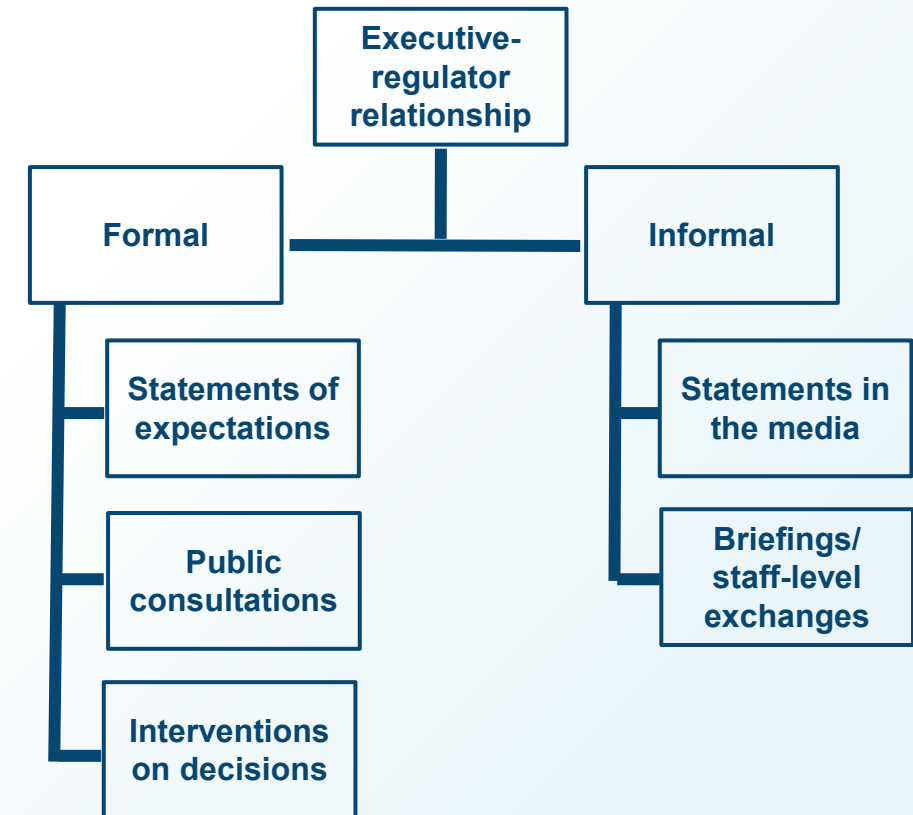
Source: ESMAP, World Bank Group, African Development Bank, Global Electricity Regulatory Index 2022, December 2022, Table 4.2

Regulatory independence from industry and government

Typology of interactions between industry and regulators



Typology of interactions between government and regulators



Regulatory independence and regulatory practice

- **Regulatory independence** is **necessary** for good regulatory practice
- But is it **sufficient** to guarantee good regulatory practice? **Likely not!**
- Good regulatory practice also requires, *inter alia*:
 - **Competence and expertise** of the regulator's staff
 - **Transparency and reasoning** of decisions
 - **Predictability** of regulatory action
 - **Participation of stakeholders** in the decision-making process
 - **Open access** to information
- Other **fundamental pillars** of a good regulatory framework
 - **Accountability** of the regulator
 - **Accessible judicial review** of regulatory decisions

The legitimacy of the regulators

Does the independence of regulators threaten their legitimacy?

- ***Technocracy*** in place of ***democracy***?
 - ***Legitimacy*** does not depend on ***popular election*** only
- ***Legitimacy*** of an independent institution is based on:
 - ***Legal basis***, precisely defined mandate
 - ***Transparent appointment procedures***, ensuring competence, ethical standards
 - ***Incompatibilities***, to avoid conflicts of interest
 - ***Transparent decision-making*** process, predictable procedures
 - ***Consultation*** of interested parties
 - ***Accountability*** to Parliament (better than to the Executive)
 - ***Stable financial resources or support***
 - ***Judicial review*** of decisions

The requirements for regulatory independence and accountability

Clear legal mandate and formal independence

Transparency and accountability

Independence in decision-making

Appointment, term of office and removal

Financial and resource independence

Clear legislative mandate and formal independence

- Legislation should:
 - ***clearly define*** the role and competences of the regulator
 - explicitly state that ***regulators act with structural and functional autonomy, are fully independent and shall not seek, nor execute, any instruction*** from public and private interests
 - determine the way in which the ***government*** defines the ***general policy framework*** to which the regulator should refer, ***without this affecting its independence***
- ***Drawing the line*** between the definition of the general policy framework and the government's interference in regulatory matters is sometime **challenging**

Transparency and accountability

- **Accountability**
 - **Accountability to the legislature** much better than to the executive
 - **Relevant information on the regulator's activities** made publicly available
- **Transparency** on stakeholder engagement
- **Judicial review** of regulator's decisions
- **Ethic code**
 - Code of conduct
 - Conflict-of-interest rules
- **Safeguards vis-à-vis lobbying activities**

Independence in decision making

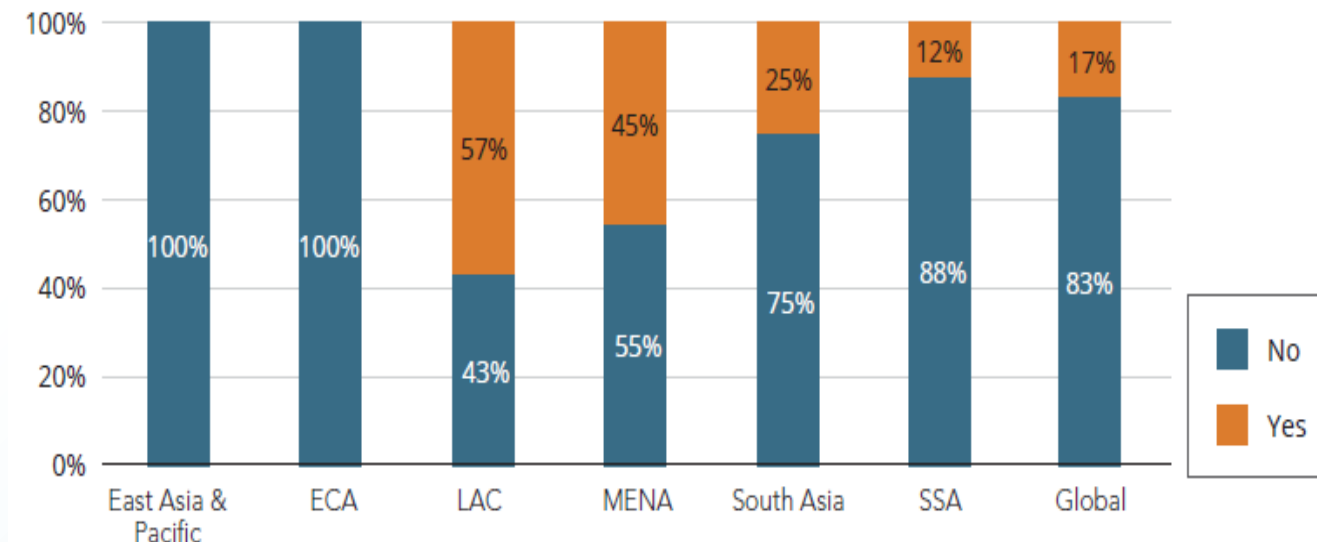
- ***Autonomous decision-making***

- ***Decisions*** taken ***freely and autonomously***, without ***interference*** or the need to ***seek authorisation*** from any external entity
- ***Reasoning*** required for any decision

- ***Conflicts of interest***

- ***Prohibition or limitation of paid or unpaid outside activities***
- ***Post-term employment restrictions***

Provisions in the law that allow a government entity to overturn a regulatory decision



Source: ESMAP, World Bank Group, African Development Bank, Global Electricity Regulatory Index 2022, December 2022

Rules on appointment, term of office and removal

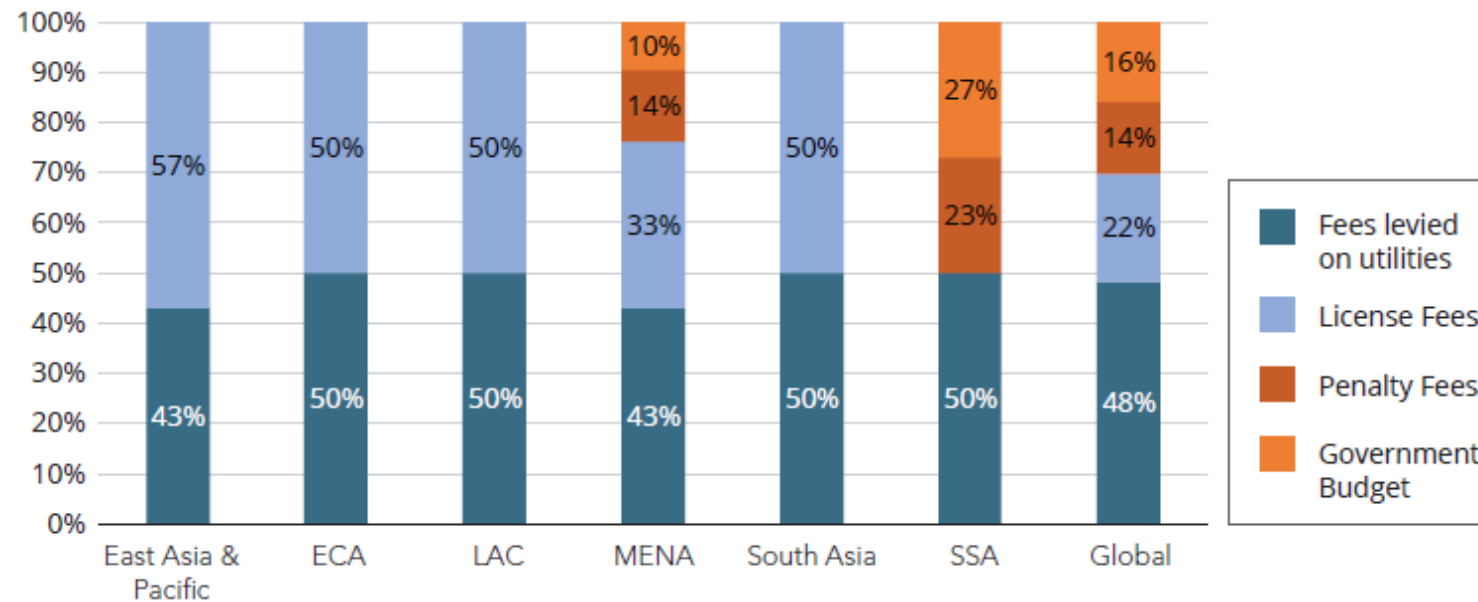
- **Appointment** procedure
 - Appointment **by the legislator** or **by the head of state** with the involvement of the legislator
 - Appointment based on **clear criteria and procedure**, with **defined legal, economic and/or technical competences**
- **Term of office**
 - **Fixed term (four to seven years** a good practice)
 - **A longer term without the possibility of renewal** better than a renewable shorter term
- **Dismissal, possible only in case of**
 - **the conditions for eligibility to the post no longer being fulfilled or**
 - **misconduct** (or gross negligence) under national law

Financial and resource independence (1)

- ***Separate and autonomous*** budget
- Sufficient ***funding***
- ***Source*** of funding
- ***Identification of needs***
- Transparency in the budget decision
- Clearly-defined and consistent ***process for budget appropriation***
- ***Appropriate and accountable autonomy*** in financial management
- Autonomy in deciding on ***which resources*** to spend the budget
- Autonomy in ***setting salary levels*** to attract/retain the needed expertise
- Resources for ***new duties***
- Expenditure ***control and auditing***

Financial and resource independence (2)

Sources of funding for regulatory agencies



Source: ESMAP, World Bank Group, African Development Bank, Global Electricity Regulatory Index 2022, December 2022



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