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**WESTMINSTER
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INDEPENDENT OVERSIGHT INSTITUTIONS AND REGULATORY AGENCIES, AND THEIR RELATIONSHIP TO PARLIAMENT

OUTLINE OF ASSESSMENT FRAMEWORK

Franklin De Vrieze
SENIOR GOVERNANCE ADVISER

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ABBREVIATIONS

ACA	Anti-Corruption Agency
AG	Auditor General
ALB	Arm's Length Body
CfPA	Commissioner for Public Appointments (UK)
ECPR	European Consortium for Political Research
FOI	Freedom of Information
INTOSAI	International Organization of Supreme Audit Institutions
IPEA	Independent Parliamentary Expenses Authority (Australia)
IPSA	Independent Parliamentary Standards Authority (UK)
MP	Member of Parliament
NAD	Romanian National Anti-Corruption Directorate
NAO	National Audit Office
NDPB	Non-Departmental Public Body
OAG	Office of the Auditor General
OECD	Organization for Economic Cooperation and Development
PAC	Public Accounts Committee
PCA	Parliamentary Commissioner for Administration
SAI	Supreme Audit Institution
UNDP	United Nations Development Programme
USKOK	Croatian Office for the Suppression of Corruption and Organized Crime
WFD	Westminster Foundation for Democracy

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I. INTRODUCTION

This paper is part a new research project by the Westminster Foundation for Democracy (WFD) focusing on independent oversight institutions and regulatory agencies and their interaction with parliament.

The governance system in many countries foresees in a role for independent oversight institutions, such as the Ombudsperson Institution, Anti-Corruption Agency or Human Rights Commission. These independent institutions perform oversight on compliance with good governance and human rights standards.

Many countries have established regulatory agencies. They are semi-autonomous agencies with delegated powers to oversee and regulate specific economic sectors. They are found in sectors with high technical specialization and network characteristics, such as energy, telecommunications, civil aviation or financial services.

Typical examples of this type of oversight institutions and regulatory agencies are as follows:

Independent oversight institutions	Regulatory Agencies
<ul style="list-style-type: none"> • Anti-Corruption Agency • Supreme Audit Institution • Ombudsperson Institution • Human Rights Commission • Electoral Commission • Information Commissioner • Security services oversight body 	<ul style="list-style-type: none"> • Energy Regulatory Agency • Telecommunications Regulatory Agency • Media Commission / Regulatory Agency • Competition Authority • Financial regulator

Box 1: Examples of independent oversight institutions and regulatory agencies

Independent oversight institutions and regulatory agencies play an important role in the governance system of many countries, and specifically in parliamentary democracies. Independent oversight institutions exercise oversight over the democratic functioning and integrity of the executive and state administration, while regulatory agencies conduct a regulatory role over a specific economic sector - though “at arm’s length”, at a certain distance from the government. To ensure a sufficient level of accountability, parliament’s interaction with these independent oversight institutions and regulatory agencies is very relevant.

The research project by the Westminster Foundation for Democracy (WFD) will examine three questions:

1. What characteristics determine the scope of the independence and accountability of Independent Oversight Institutions and Regulatory Agencies in a democratic system of governance?
2. To what extent is their consistency in the application of the mechanisms of independence and accountability by similar-type institutions across countries?
3. How can national parliaments safeguard or strengthen the independence while ensuring the accountability of these independent oversight institutions and regulatory agencies?

This paper proposes one assessment framework to analyse the institutional characteristics and functioning of independent oversight institutions and regulatory agencies and their relationship to parliament.

Although one can make the case to develop two assessment frameworks, one for independent oversight institutions and one for regulatory agencies, we decided for one framework, though allowing different options or additional indicators which are more relevant for either independent institutions or regulatory agencies. As up to 80% of the indicators discussed further in this document would be similar for independent oversight institutions or regulatory

agencies, it makes sense to keep it to one framework, thus ensuring consistency and avoiding duplication, while recognizing the specificity of some indicators for regulatory agencies due to the nature of their relationship with the regulated industry.

The assessment framework will be applied to a specific type of institution and agency across countries, informing tentative conclusions on what is a functioning balance between independence and accountability, and what is an effective interaction with parliament. The case-studies will be outlined in subsequent papers.

How to apply this assessment framework

This publication is designed to be used as a toolkit for parliamentary assistance programmes at three levels:

1. to assess the functioning of independent oversight institutions and regulatory agencies,
2. to review parliaments' relationship with the institutions and agencies,

3. to identify the opportunities for policy advise and technical support to parliament.

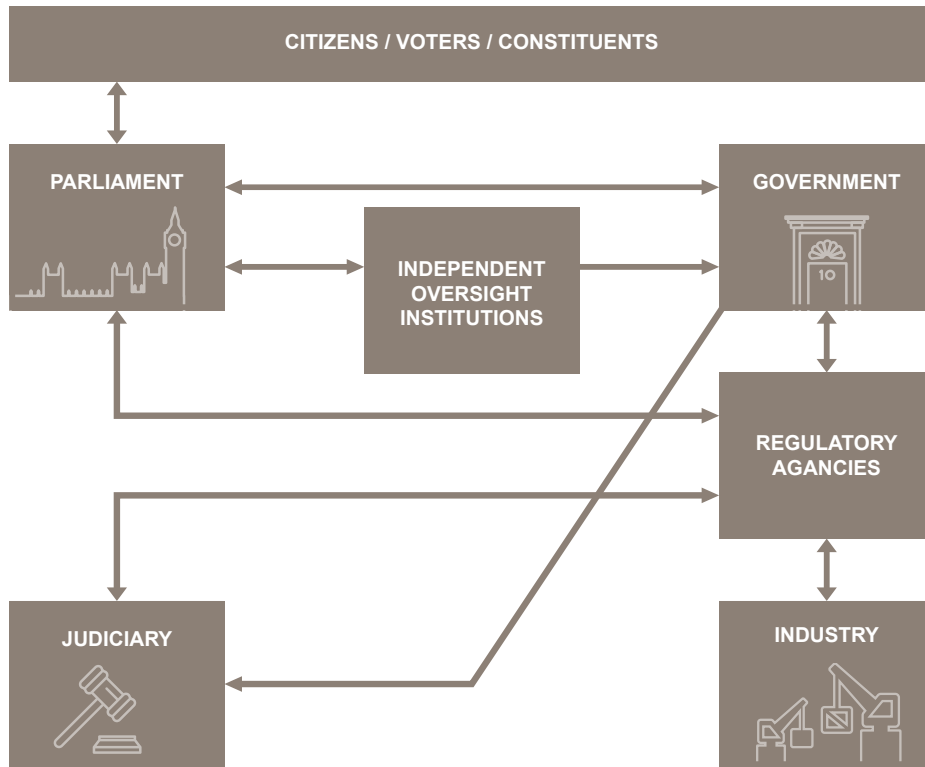
Firstly, this paper provides an assessment framework on what constitutes the independence of the institution or agency, covering 4 instruments for independence, related to 23 indicators. The assessment framework also covers 5 instruments for accountability, related to 20 indicators.

The assessment framework can be used to determine a scoring for the overall independence and accountability of the institutions, provide a range of scores for each indicator between high (score 3), medium (score 2) or low (score 1). When applying the scoring to specific institutions in-country, the assessment framework will be useful to calculate the overall baseline for the extent of independence and accountability of the institution and determine an evolving trend over years.

Secondly, this paper enables to review parliaments' relationship with the institutions and agencies. In achieving the level of independence and accountability, one can determine if parliament has a leading role, supportive role or weak/no role for each of the indicators. This will then enable to measure the strength of parliament's interaction with each of the institutions in a more objective way.



Photo 1: Regulatory agencies can monitor a variety of services for consumers, including energy. Ofgem is the United Kingdoms energy regulation agency. Photo: Geograph



Box 2: Interactions of independent oversight institutions and regulatory agencies within national governance system.

Thirdly, based upon the baseline of the institution’s independence and accountability and measuring the strength of parliament’s interaction with each of the institutions, one can identify the opportunities for parliamentary support programming, for policy advise and technical support to parliament.

For instance, on the independence indicator “clarity of mandate and strength of institutional objectives”, parliament has a leading role. If the assessment reveals that the score is medium or low, this provides an opportunity for programming and policy advise. On the independence indicator “Sufficiency of financial resources for performing its functions”, parliament has a leading role. If the scoring is at medium or low, there is an opportunity to work with parliament to fully exercise its control function to strengthen the financial resources for the institution.

One of the accountability indicators is the performance review of independent institutions. Parliament has a leading role through a dedicated parliamentary committee. If the scoring here is low, this provides an opportunity for programming and assistance.

Similarly, one of the accountability indicators is ensuring there is a mandate and activities for prevention, education and outreach in the specific

sector, for instance corruption prevention. Parliament has a leading role to ensure there is this mandate. If the scoring here is low, this provides an opportunity for programming and assistance.

The above box visualizes the relationships regarding the independent oversight institutions and regulatory agencies within a democratic governance system. In this graph, independent oversight institutions are positioned between parliament and government, because they exercise oversight over the democratic functioning and integrity of the executive and state administration and often have an obligation to report to parliament. In this graph, regulatory agencies are positioned between government and industry because they conduct a regulatory role over a specific economic sector - though “at arm’s length”, at a certain distance from the government. To ensure an enough level of accountability, parliament’s interaction with these independent oversight institutions and regulatory agencies is very relevant; hence the above chart foresees also in a connection to parliament for both type of institutions. Finally, the graph also includes a line towards the judiciary, since the enforcement of regulatory provisions often requires enforcement powers partly entrusted to regulatory agencies.

These features will be explained in further detail in this paper.

II. INDEPENDENT OVERSIGHT INSTITUTIONS

Independent oversight institutions or watchdog institutions exercise oversight of the executive and public administration in a different and more specialized way compared to how parliaments exercise oversight. As MPs conduct oversight on policies at specific times and often in a more generic way, independent oversight institutions do so continuously, by specialized staff and with an explicit mandate based in legislation.

A report by the UK Hansard Society recognised that a substantial part of government activity is carried out through so-called “arm’s length” agencies. It is recognized that parliament is unable to dedicate sufficient parliamentary time and resources to ensure accountability across the wide range of activities of government departments and many other public-sector bodies. In the UK Hansard Society’s report, Parliament is seen as presiding over and supervising “a national framework of accountability that extends beyond Westminster, comprising other independent agencies”¹.

The UK Cabinet Office reported in “Public Bodies 2015”² that the UK knows more than 450 Arm’s Length Bodies (ALBs). ALBs meet at least one of the following characteristics: (i) they perform a technical function; (ii) their activities require political impartiality; or (iii) they need to act independently to establish facts.³

The scale and role of ALBs vary hugely. ALBs range from large executive agencies, like HM Courts & Tribunals Service, to smaller

non-departmental public bodies, such as the Gambling Commission.

ALB is a commonly used term covering a wide range of public bodies in the UK, including non-ministerial departments, non-departmental public bodies (NDPBs), executive agencies and other bodies, such as public corporations.

A NDPB is a body which has a role in the processes of national government, but it is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm’s length from the government. NDPBs have different roles, including those that advise ministers and others which carry out executive or regulatory functions, and they work within a strategic framework set by ministers.

A non-ministerial department is a government department in its own right but does not have its own minister. It is, however, accountable to Parliament through its sponsoring ministers. A non-ministerial department is staffed by civil servants and usually has its own estimate and accounts.

Box 3: Public bodies in the UK

Independent oversight institutions thus contribute to and strengthen the oversight function, which Parliament is the lead-actor on. In the UK, the independent oversight institutions include the National Audit Office, the Parliamentary Ombudsman, the Information Commissioner and the Electoral Commission, amongst others. Some are recognized as “constitutional watch dogs”, independent institutions which are essential to safeguard the democratic process. It includes the NAO, Parliamentary Commissioner for Administration (the PCA or Ombudsman); the Commission for Local Administration (Local Government Ombudsmen); the Boundary Commissions; the Civil Service

¹ Hansard Society, Report of the Commission on Parliamentary Scrutiny: The Challenge for Parliament – Making Government Accountable, London: Vacher/Dod, 2001,

² Cabinet Office, Public Bodies, London, 2017, <https://www.gov.uk/guidance/public-bodies-reform>

³ National Audit Office, Departments’ oversight of arm’s-length bodies: a comparative study, London, July 2016, p. 5. <https://www.nao.org.uk/wp-content/uploads/2016/05/Departments-oversight-of-arms-length-bodies-a-comparative-study.pdf>



Photo 2: WFD is an example of a UK non-departmental public body, sponsored by the Foreign and Commonwealth Office.

Commission, and the Security Commissioner. Many have territorial counterparts in the devolved administrations.

In Australia, an Integrity Agencies Group⁴ has been established. It plays a crucial role in the encouragement, establishment, protection and maintenance of integrity systems. The group includes, amongst others, the Australian National Audit Office, Ombudsman and Integrity Commission. These agencies mostly belong to the family of the NDPBs, though stand further apart from the government than most NDPBs, due to the nature of their work in protecting institutional integrity. The independent work of integrity agencies in corruption

investigation, audit review and public-sector ethics has increasingly been commended as essential for good governance.⁵ It is easy to see how the concept of “integrity agencies”⁶ can be seen as a part of a broader group of “independent oversight institutions”, as analysed in this paper, which include other institutions like information and data protection, human rights and electoral commissioners.⁷

4 Participating agencies are: Attorney-General’s Department - Australian Criminal Intelligence Commission - Australian National Audit Office - Australian Public Service Commission - Commonwealth Director of Public Prosecutions - Commonwealth Ombudsman - Department of the Prime Minister and Cabinet - Inspector-General of Intelligence and Security - Integrity Commission - Merit Protection Commission. See: <http://www.apsc.gov.au/priorities/iag>

5 Brian W. Head, the contribution of integrity agencies to good governance, Policy Studies, Vol. 33, No. 1, January 2012, p. 7.

6 Specialised integrity agencies independent of the executive have emerged at various stages in the institutional evolution of particular countries. Generally speaking, independent Audit Offices have had a lengthy history in overseeing public finances and checking probity. Ombudsman-style bodies for the investigation of citizens’ complaints against administrative action have a long history in some countries, but independent offices became more common through the 1970s and 1980s and are now very widespread. Anti-Corruption Commissions, typically with strong and wide-ranging powers to investigate and prosecute all classes of public officials, are still few in number, having gradually emerged in the last two decades following the early lead of the Independent Commission Against Corruption in Hong Kong in 1974. See: Brian W. Head, p. 8

7 Wettenhall, Roger, Integrity Agencies: the significance of the parlia-

Independent oversight institutions thus contribute to and strengthen the oversight function, which Parliament is the lead-actor on ...

Officers of Parliament

The UK Parliament uses the term “Officer of Parliament” in relation to the Comptroller and Auditor General, the Parliamentary Commissioner for Administration (Ombudsman) and the Parliamentary Commissioner for Standards. The essential characteristics of the “Officer of Parliament” can be described as: parliamentary involvement in appointment and dismissal, a statutory committee which is responsible for budget approval and oversight, a specific select committee to which the Officer is bound to report and staffing independent of the civil service.

However, “even in Westminster, there is no single template for the bodies which are responsible to the House rather than the Government. The NAO is funded by a parliamentary vote, set and laid by the Public Accounts Commission, a statutory body, so that its budget is protected from government interference. By contrast, the Ombudsman negotiates grant in aid from the Treasury. The Electoral Commission is the responsibility of the statutory Speaker’s Committee, which sets its overall budget, on a similar model to the PAC. Reporting lines also differ. The Ombudsman reports to the House as a whole, and it is only through Standing Orders that there is any special role for this Committee [Speaker’s Committee].”⁸

Other Westminster-style parliaments have Officers of Parliament as well. In Canada, the Officers of Parliament are: Auditors General (AGs), Chief Electoral Officers, Commissioner of Lobbying, Commissioner of Official Languages, Conflict of Interest and Ethics Commissioners, Information Commissioners, Parliamentary Budget Officers, Privacy Commissioners, Public Integrity Commissioners.

New Zealand has established a small number of positions, such as the Ombudsman, the Parliamentary Commissioner for the Environment and the Controller and Auditor General, to be formally defined as “Officers of Parliament”, with a special Officers of Parliament Committee to monitor the system. This monitoring includes pre-budget approval of applications for funding, recommending appointments and developing codes of practice. There is also an agreed list of criteria for creating these offices: the system can be used only to provide a check on arbitrary use of power by the executive; an officer of parliament can only discharge functions that the parliament itself might carry out if it so wished; such an office can be created only rarely; the appropriateness of the status should be reviewed from time to time; and there should be separate legislation devoted to each position.

In Australia, the interest in the idea of “Officers of Parliament” has grown steadily over the past 30 years. It reflects both the decline in traditional notions of ministerial responsibility and the fact that the processes of government have become more widespread, complex and difficult for citizens to access. These officers now play a valuable role in assisting parliament to undertake a more active scrutiny and accountability role.

Accountability to Parliament

While independence from the executive is crucial for independent oversight institutions being able to exercise their function, at the same time, they don’t function above the law and need to be accountable as well. So, it is important to establish arrangements for checking that these institutions do perform their allotted tasks satisfactorily. This directs attention to the importance of the parliamentary role, as the

mentary relationship, 2012, Policy Studies 33:1, p. 65-78.

8 Oonagh Gay, Officers of Parliament: recent developments, House of

Commons Library, London, August 2013, 21 p. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04720>

executive government cannot hold accountable those institutions responsible for oversight over the government. To establish a workable form of accountability while safeguarding their independence from the executive, the institutions' accountability is directed towards parliament.⁹

Every decision to establish an independent oversight institution is, in some sense, a decentralization decision, for it represents a move away from the centre, from the executive core of government. Therefore, the accountability requirements will tend to prescribe a more direct reporting line to the parliament.

In several jurisdictions, special parliamentary committees are associated with the "Officers of Parliament", and sometimes appointments are made or approved by the parliament. In New Zealand, there is an overriding Officers of Parliament Committee. While there is a trend towards oversight by a 'statutory parliamentary committee', Parliament also wanted the individual officers of parliament reporting in each case to 'a specific parliamentary committee'. These 'specific', 'relevant' or 'appropriate' committees would provide 'statutory protection' for the independence of these agencies and importantly because the question 'who guards the guardians?' remains, ensure their accountability, not least by arranging for recurrent performance reviews.

There is thus a need to balance the independence and the accountability of the oversight institutions. This will constitute the ability for independent oversight institutions to function properly and exercise their mandate.

"Getting the best from Arm's Length Bodies (ALBs) means balancing assurance and control with an appropriate degree of independence consistent with an ALB's function, for example freedom to form impartial judgements and apply technical or operational expertise. This is, in itself, not an easy balance to strike. But there are other contextual pressures on departments, such as the need to reduce costs, which may encourage departments to make decisions that are based on factors other than balancing necessary independence and control. And if independence reduces too far, the benefits which ALBs are intended to bring might be restricted, and the very point of having an ALB compromised. Effective and proportionate oversight arrangements are therefore critical in enabling ALBs to deliver value for money."¹⁰

Box 4: Balancing accountability and independence of UK's ALBs

9 This paper acknowledges and expands further on the earlier research: De Vrieze, Franklin, Independent and regulatory agencies in Moldova and their interaction with parliament, published by UNDP Moldova, Chisinau, 2011, 166 p.

10 National Audit Office, Departments' oversight of arm's-length bodies: a comparative study, London, July 2016, p. 6.

III. REGULATORY AGENCIES

Focusing now on the regulatory agencies, their primary responsibility is to deliver high quality regulation of the sectors or industries which they oversee. In large parts of the world, the growth of these agencies follows the liberalization of state monopolies and the transition to market economies. The rise of regulatory agencies is accompanied by a shift in the role of the state from an interventionist state, which owns and manages these sectors and industries towards a 'regulatory state', which establishes regulatory agencies that are at 'arm's length' from the government and from the sectors and industries the agencies oversee and regulate.¹¹ Delegation of authority to regulatory agencies requires specific attention in terms of the accountability chain established in parliamentary democracies. As the authority of the regulatory agencies grows, the influence of government shrinks. Independent regulators represent a new challenge to the powers of government and parliament. They constitute a special form of institution in most OECD countries, which is neither directly elected by citizens nor managed by elected officials. Yet, they are responsible for overseeing economic sectors with clear and direct public good/interest implications. Independent regulators exist at the border between policy formulation, which remains the remit of the elected public authorities under a rule of law, and enforcement of the regulation which is delegated to them.¹²

While some critics might consider that the independence of regulators represents a threat to the democratic process, that is not necessarily the case. The success of the model of the independent Central Bank shows that the quality of democratic governance may actually be improved by removing some issues from the arena of partisan politics, just as the country's Constitution keeps certain matters

off the public agenda. In the same way, independent regulatory bodies can support, rather than threaten, the democratic process.¹³

The key benefits sought from independent regulators are to 1) enable technical specialization and know-how, 2) to enable long-term capital investments by ensuring long-term predictability, and 3) to shield markets from short-term political interventions.

The effectiveness of the regulatory agencies to achieve their task is primarily a function of the degree to which their status within the state's institutions achieve an optimal equilibrium between two competing principles: 'independence' and 'accountability'.

Independence and accountability are both vital conditions for the effectiveness of regulatory agencies, but there is a trade-off between them: too much independence from the Government exposes the agencies to capture by the industries they oversee and regulate, and too little independence exposes the agencies to political interference that runs contrary to the economic and technical fundamentals of the industries or sectors concerned. For instance, a frequent pattern of political interference in some countries is to squeeze these companies by simultaneously raising their production costs, e.g. through overstaffing or staffing with less qualified clients, whilst pressuring these companies to sell goods at a price point below cost, which undermines their long-term financial viability.

Procedural accountability

Practically, the need to find this balance between 'independence' and 'accountability' has direct

11 Adrienne Héritier and Dirk Lehmkuhl, *New Modes of Governance and Democratic Accountability*, in: *Government and Opposition*, published by Blackwell Publishing (Oxford), Vol. 46, No. 1, 2011, p. 126–144.

12 Nick Malyshev, *The Evolution of Regulatory Policy in OECD Countries*, OECD, 2006, p. 19–20., <http://www.oecd.org/dataoecd/24/10/41882845.pdf>

13 Giandomenico Majone, *Strategy and Structure: the Political Economy of Agency Independence and Accountability*, in: OECD, *Designing Independent And Accountable Regulatory Authorities For High Quality Regulation. Proceedings of an Expert Meeting in London, United Kingdom, 10-11 January 2005*, p. 126–214. <http://www.oecd.org/dataoecd/15/28/35028836.pdf>

consequences for the type of accountability, specifically for regulatory agencies, and the choice of instruments of accountability¹⁴. In search for a balance between ‘independence’ and ‘accountability’, one might opt for requirements of outcome accountability, e.g. specific output deliverables against which the performance of the agencies is measured, e.g. contribution to a percentage of growth in economic development in a specific sector. However, such performance-related demands open the door to a degree of interference that may infringe on the independence and effectiveness of the agencies. Therefore, the requirements of procedural accountability provide the best match with the requirements of the independence of the agencies.¹⁵

Procedural accountability means that the regulatory agencies must explain and justify how and through which procedures they took certain decisions. This means that the instruments of accountability must be sophisticated or balanced. The instruments for procedural accountability as outlined in the assessment framework of this paper are (1.) reporting, access to information and transparency; (2.) a proper system of appeals; (3.) performance assessment ex-post; (4.) consultations and outreach, and (5.) Cooperation with other organizations and network accountability. The choice for instruments of procedural accountability is guided by the policy documents by the OECD¹⁶ and other relevant literature.¹⁷

14 Maggetti, Martino, Karin Ingold and Frédéric Varone. Having Your Cake and Eating It Too: Can Regulatory Agencies Be Both Independent and Accountable? *Swiss Political Science Review*, 19(1): 1-25, March 2013; <https://onlinelibrary.wiley.com/doi/pdf/10.1111/spsr.12015>

15 Bovens, M. (2007). Analysing and assessing accountability: a conceptual framework. *European Law Journal*, 13(4): 447; Busuioc, M. (2009). Accountability, control and independence: the case of European agencies. *European Law Journal* 15(5): 599–615; Koop, Ch. (2011). Explaining the Accountability of Independent Agencies: The Importance of Political Salience. *Journal of Public Policy* 31(2): 209–234.

16 Stéphane Jacobzone, Independent Regulatory Authorities in OECD countries: an overview; in: OECD, *Designing Independent And Accountable Regulatory Authorities For High Quality Regulation*. Proceedings of an Expert Meeting in London, United Kingdom, 10-11 January 2005, p. 98-100.

17 Christel Koop and with Chris Hanretty, “Measuring the formal independence of regulatory agencies”, *Journal of European Public Policy* 19 (2): 198-216 (2012); Christel Koop, “Explaining the accountability of independent agencies: The importance of political salience.” *Journal of Public Policy* 31 (2): 209-234 (2011); Lodge, Martin and Stirton, Lindsay (2010) *Accountability in the regulatory state*. In: Baldwin, Robert, Cave, Martin and Lodge, Martin, (eds.) *The Oxford Handbook of Regulation*. Oxford handbooks in business and management. Oxford University Press, Oxford, UK.

In a recent article, prof. Maggetti¹⁸ calls the form of accountability best compatible with agency independence the “ex-post accountability”, which means the disclosure of information towards external actors and the verification of the extent to which agencies comply with their mandated obligations. “Examples are reporting duties, hearings by parliamentary committees, and various types of information exchange between the agency, the political trustor, peer agencies, and the stakeholders. It is worth noting that, from a conceptual point of view, the disclosure of information and compliance with agencies’ statutory obligations is unrelated to their independence. Agencies can theoretically enjoy independence and yet disclose information and comply with their official mandate, or they can be captured while being irremediably opaque, or critically deviating from their statutory prescriptions.”¹⁹

“Balancing act” between independence and accountability

Parliament is one of the primary levers to maintain accountability of the agencies towards the public interest, though depending on the political system

Independence and accountability are both vital conditions for the effectiveness of regulatory agencies.

18 Prof. Maggetti is an associate professor in political science at the University of Lausanne in Switzerland. He is a leading researcher on the role of independent, hybrid and private regulators in transnational regulatory regimes and their consequences for the policy process.

19 Maggetti, Martino, Karin Ingold and Frédéric Varone. Having Your Cake and Eating It Too: Can Regulatory Agencies Be Both Independent and Accountable? *Swiss Political Science Review*, 19(1): 1-25, March 2013, p. 4.

some of the regulators also report simultaneously to the government or president. Replacing direct political accountability based on ministerial responsibility with procedural accountability between regulators, ministries and parliament is not without challenges.

This means that, on the one hand, parliamentary oversight can be very loose, allowing the regulator too much or inappropriate discretion. This is particularly true when existing parliamentary staff is overburdened and cannot adequately support parliamentary review functions in relation to complex, technically driven regulatory missions. On the other hand, accountability requirements should not compromise the necessary operational independence of the regulators. A highly interventionist parliament may have the effect of driving the regulator towards making specific market decisions not linked to its regulatory mission.

At the same time, it is clear that regulatory agencies can never be fully independent from the political process. They will always operate under the authority of laws and governance structures that can be altered. Thus, regulators must be able to respond to the long-term political direction which will ultimately justify their continuing existence.

Against this background, the assessment framework for the functioning of independent oversight institutions and regulatory agencies, presented further in this paper, aims to identify a way that optimizes the equilibrium between independence and accountability.²⁰

Independence can be achieved through various formal and informal arrangements. Much depends on the political cost of reversing or ignoring an independent oversight institution or regulatory agency's decision. If the political cost is low, it will be tempting for politicians to limit or frame the independence. If the cost is high, one is more likely to remain committed to the independence of the oversight institutions and regulatory agencies.

Moreover, independence depends on the institutional design of the oversight institution or agency (in particular the governing structures and powers), the financial and human resources available, political independence and independence from regulated industries.

Accountability can be achieved through a proper system of checks and balances, a set of control instruments (reporting, public consultation and access to information, performance evaluation) and the possibility of judicial appeal. In addition, clearly defined objectives, transparency and public participation can enhance accountability without compromising the institution or agency's independence.

The "balancing act" between independence and accountability constitutes the ability for independent oversight institutions as well as regulatory agencies to function properly and exercise their mandate.

²⁰ Anthony Staddon, *Holding the Executive to Account? The Accountability Function of the UK Parliament*, University of Westminster, 2007, 47 p. <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.500.2890>

IV. INSTRUMENTS AND INDICATORS OF INDEPENDENCE

How can we analyse the extent to which an independent oversight institution or regulatory agency has all required features to function independently and remain accountable? Some of these characteristics are in the hands of the relevant political decision makers (government and parliament). Others are the responsibility of the senior management of the independent oversight institution or regulatory agency.

In this section of the paper, we will analyse what constitutes the independence of the institution or agency. We have designed an assessment framework covering 4 instruments for independence, related to 23 indicators. The instruments and indicators for the accountability will be discussed in the next chapter.



Photo 3: We have analysed what constitutes the independence of the institution or agency, and have designed an assessment framework covering four instruments for independence, related to twenty-three indicators.

Based upon research outlined in relevant literature and selected interviews with heads of agencies, the instruments affecting the independence of independent oversight institutions or regulatory agencies are: (1.) their institutional design and governance structure, (2.) actual autonomy in conducting its mandate, (3.) budget and financial resources, (4.) human resources policy. These instruments together put in place a comprehensive framework to understand what determines the independence *de jure* and *de facto*.

The assessment framework can be used to determine a scoring for the overall independence of the institutions, provide a range of scores for each indicator between high (score 3), medium (score 2) or low (score 1). When applying the scoring to specific institutions in-country, the assessment framework can be helpful in determining an evolving trend over years, or to make a baseline assessment for the extent of independence of the institution. A similar way of scoring can be used for the accountability indicators.

1. Institutional design and governance

The institutional design and governance of the institution determine to a large extent the independence of an independent oversight institution or regulatory agency.

1. Secure legal foundation

Establishing an institution based upon a secure legal foundation is a first indicator for independence. The institution can be based upon provisions of the country's constitution, specific national legislation, parliamentary rules of procedures or the ratification of international treaties or conventions.

The legal foundation, publicly accessible, needs to prevent that the institution can be easily abolished,

or its governance arrangements inappropriately amended. The permanence of the institution and the possibility of dissolution needs to have a secure legal foundation, so the institution can function independently.

For example, for an Anti-Corruption Agency (ACA) a high score on the legal foundation indicator would be given if the ACA is established as an independent entity, a medium score if it is established as a separate entity outside a ministry, or a low score if it is established within the policy force or within the ministry.

The institution's legal foundation depends also on the country's constitutional system. For instance, the Supreme Audit Institutions (SAIs) have a different legal foundation in a Westminster system or in the so-called Napoleonic system. [See box]

Establishing a secure legal foundation for the agency is an issue where parliament has primary responsibility.

2. Clarity in mandate and strength of institutional objectives

Clarity in mandate and institutional objectives is the second indicator for independence. As different institutions may have a very different role and responsibility, clarity in the mandate reinforces an institution's ability to exercise its role with the required independence.

The mandate, role and responsibilities can be determined by the legal document establishing the institution as well as additional government decrees, protocols or court rulings. Amongst others, there is need for clarity what is the responsibility of government departments and the responsibility of the institution. Establishing an institution with a clear mandate and strong objectives is an issue where parliament has a primary responsibility.

Assessment framework for independence of oversight institutions & regulatory agencies				Scoring			Role of parliament		
	Independence	Instruments	Indicators	High (3)	Medium (2)	Low (3)	Lead role	Control role	Weak, no role
1		Institutional design and governance	Secure legal foundation				x		
2			Clarity of mandate and strength of institutional objectives				x		
3			Merit-based and timely selection of head of institution and board members					x	
4			Parliament's role in nomination or appointment process of head of agency or board members				x		
5			Fixed term in office and possibility for renewal						x
6			Clarity on the grounds for removal from office						x
7			Collegial decision making						x
8			Staggering terms for board members						x
9		Actual autonomy in exercising its mandate	Appointment of sector specialist over politicians					x	
10			Cessation of involvement in political party activities						x
11			Degree of ministerial interference in decisions					x	
12			Pattern of turn-over at head of institution						x
13			Independence from industry: no shares in regulated industry						x
14			Limitations to "revolving door" between regulated industry and regulator						x
15			Extent of collecting and analysing gender-sensitive data when exercising mandate						x
16		Budget and financial resources	Sufficiency of financial resources for performing its functions				x		
17			Extent of autonomy to generate its own financial revenues					x	
18			Authority to prepare or adopt its own annual budget				x		
19			Security and stability of budget during past 3 years					x	
20		Human resources policies	Authority to recruit its own staff					x	
21			Authority to decide on remuneration (salary and benefits) of staff and board members					x	
22			Level of expertise of staff to conduct its responsibilities						x
23			Stability of staff and extent of staff turn-over						x

Box 5: Instruments and indicators of independence

Supreme Audit Institutions in different constitutional systems

Independent institutions such as Supreme Audit Institutions (SAIs) have a different legal foundation in different constitutional systems. There are two basic types of SAIs, the court model and the auditor general model, with a variant as audit board system.²¹

The “court-model”

- In the Napoleonic system the audit court has both judicial and administrative authority. It is independent of both the legislative and the executive and is an integral part of the judiciary.
- The court makes judgments on government compliance with laws and regulations and can also consider whether public funds are well spent.
- The court audits every government body, including ministries, departments, and agencies; commercial and industrial entities under the purview of ministries; and social security bodies.
- It can be found in the Latin countries of Europe (France, Italy, Spain, Portugal), Turkey, some East-European countries and many Latin American and francophone African countries.

The “auditor general model”

- In Westminster systems, the Office of the Auditor General (OAG) is an independent body that reports to parliament; it submits reports on the financial statements and operations of government entities.
- The OAG serves no judicial function but, when warranted, its findings may be passed to legal authorities for further action.
- While the court model tends to focus on the legality of spending, the AG model has proven innovative in developing different types of audit, such as performance audits.

- The AG model has its origins in the UK. This model is most prevalent among Commonwealth members including Australia, Canada, New Zealand, the United Kingdom, and many Caribbean, Pacific, South West Asian and Anglophone Sub-Saharan African countries.

The “audit board system”

- One variant, the audit board system is similar to the Westminster model in that an audit board is independent of the executive and helps the legislature to perform oversight.
- The system involves an audit board composed of an audit commission, as decision-making body, and a general executive bureau as the executive organ. The president of the board is the de facto AG.
- The board analyses government spending and revenue and report its findings to parliament.
- Audit boards are prevalent in Asia and can be found for example in Indonesia, Japan and South Korea, and some East-European countries.

Interaction between SAI and parliament

In the court model tradition, there is a parliamentary vote on the public financial management, granting discharge and closing the cycle of financial control in public finance systems. Refusal to grant discharge can be a serious political threat.

In the Westminster tradition, there is no parliamentary vote on the basis of audit findings. All audit reports are addressed to parliament, and the latter might also request advice or comments on specific issues under consideration.

While parliament depends on high quality audit reporting to exercise effective scrutiny, the

²¹ Staphenurst, Rick, Features and functions of supreme audit institutions, World Bank, 2001, <https://openknowledge.worldbank.org/bitstream/handle/10986/11363/multi0page.pdf?sequence=1&isAllowed=y>

AG in turn requires an effective parliament to ensure that departments take audit outcomes seriously. The power of the auditor general is to issue independent reports, but s/he cannot force government to adopt any recommendations.

Parliament is the forum in which these reports receive public attention, which creates pressure on government to respond to and address issues of concern. The mutual dependency of parliament and the audit institution is underlined where the auditor general has been made, by statute, an “officer of parliament”.

In a number of countries SAs have established parliamentary liaison offices and accompany audit related work of parliament on an ongoing basis. Such support may involve answering questions from parliamentarians and the provision of requested information.

Some public accounts committees draw on the auditor general’s office for secretariat assistance either on an ad hoc basis or through a program of regular secondments.

Box 6: Supreme Audit Institutions

As an example, for ACAs a high score on the indicator of strength of institutional objectives would be given if the ACA has a focus on investigation, education and prevention; a medium score if it has a primary focus on investigation, or a low score if it has a focus on education and prevention without investigation. [See box 7 on mandates of ACAs].²²

While some of the UK’s Arm’s Length Bodies represent an extension of the Department’s delivery, so one ought to “be thinking about a Department and its ALB as a total delivery system”²³ for many independent oversight institutions and regulatory agencies, their mandate is very distinct from governmental responsibilities. Clarity in mandate, role and responsibilities determines the ability of the institution to function independently.

²² Transparency International has identified 7 assessment dimensions for Anti-Corruption Agencies, with related indicators. See: Transparency International, Strengthening Anti-Corruption Agencies in Asia – Pacific, October 2017. https://www.transparency.org/whatwedo/publication/strengthening_anti_corruption_agencies_in_asia_pacific

²³ National Audit Office, Departments’ oversight of arm’s-length bodies: a comparative study, London, July 2016, p. 19.

3. Merit-based and timely selection of head of institution or agency or board members

Recruitment based upon clear selection criteria and a professional competency test constitute the minimum basis of any human resources policy. Yet, the selection process of heads of independent institutions or agencies is not always merit-based.

In some countries, the selection of heads of agencies, or board members, is sometimes hampered by substantial delays, which create risks for the effective governance and independence of the institutions. Public vacancies and merit-based selection of head of agency and board members, which happens in a timely manner, contribute to the independency of the institution.

4. Parliament’s role in nomination or appointment process for head of agency or board members

The nomination or confirmation process for the heads of the independent agencies is also a relevant indicator of independence. Independence will be higher when the nomination is conducted by the parliament, or by a mix interaction of the executive and the legislative. Parliament’s role can be part of the nomination process prior to appointment by the executive, or parliament may be the institution conducting the appointment.

As an example, for ACAs a high score on this indicator would be given if an independent or parliamentary committee is using objective criteria in selecting the head of the agency and the procedure is transparent; a medium score if a ministerial committee is using objective criteria without transparent procedure, or a low score if the selection is done by the Prime Minister or President without clear criteria.

In the UK, around 50 top public appointments are now subject to pre-appointment scrutiny in the House of Commons. Select committees can question the government’s preferred candidate for the heads of various ALBs or NDPBs but have no power of veto.²⁴ For other circumstances and for other institutions, in particular integrity institutions, parliament often plays the decisive role in the appointment process. Appointment of Board members of oversight

²⁴ Hazell Robert, Turan Hursit, Harmish Mehta, Peter Waller, Improving Parliamentary Scrutiny of Public Appointments, Constitution Unit, July 2017, <https://www.ucl.ac.uk/constitution-unit/news/pre-appt-scrutiny>

institution or regulatory agencies by parliament also contributes to enhanced independence. Since 2016, the UK has a Commissioner for Public Appointments (CfPA) who is responsible for ensuring that ministerial appointments are made in accordance with the Governance Code and the principles of public appointments.²⁵

5. Fixed term in office and possibility for renewal

A guaranteed / fixed term of office for the head of the institution or agency is another key element to ensure the independence of the institution or regulator. With a guaranteed term of office, and the possibility for renewal of the term in office, the head of the institution can exercise his/her role without being undermined by short term political interests.

6. Clarity on the grounds for removal from office

Another indicator of independence is the grounds removal from office. For example, independence is strengthened if the head of the institution can be removed from office only in case of verified misbehaviour (for example: convicted for corruption), and not for reasons of policy disagreement with the president or government. When the grounds for removal from office are clear and established in law, the independence of the institution against undue pressure is strengthened.

7. Collegial decision making

Many independent regulatory agencies are governed by collegial decision making, because it offers the possibility of more substantial internal expertise-based discussions prior to adopting a decision. Collegial decision making through a board, council or commission can therefore increase the legitimacy of the decisions and hence reinforce the independence of the agency. Governance structures matters as indicator for the independence of the agency.

8. Staggering terms for board members

In cases when an institution or agency is led by a board, which is the case for regulatory agencies and some oversight institutions in many countries, staggering terms for board members most often

confirm the independence of the institution or agency. Staggering terms for board members reduce the risk of sudden changes in direction of decision making due to undue influence over many new board members coming in.

Mandate and objectives of Anti-Corruption Agencies

The second item of the assessment framework addresses the issue of the clarity of mandate and institutional objectives as indicator of independence of oversight institutions and regulatory agencies.

The mandate, role and responsibilities of the institutions is often determined by the legislation establishing the institution. In debating and adopting the legislation, Parliament has a decisive role in ensuring clarity of the mandate in a way which secures the independence and the efficiency of the institutions.²⁶

When analysing the mandate and objectives of Anti-Corruption Agencies (ACAs), it is important -- first and foremost -- to recognize that establishing an ACA needs high level political support as well as the necessary political conditions under which it can operate successfully. Even if the determination to tackle corruption is strong it often diminishes as the realities of office, the vested interests in the status quo and the pressure of more immediate tasks bear on the actions of government.

The Organisation for Economic Co-operation and Development (OECD) offers a model for categorizing ACAs into three groups: 1) multi-purpose agencies with law enforcement powers; 2) law enforcement-type institutions; and 3) prevention, policy, and coordination institutions.²⁷

²⁵ <https://publicappointmentscommissioner.independent.gov.uk/>

²⁶ More analysis at Transparency International's Anti-Corruption Agency Strengthening Initiative: https://www.transparency.org/whatwedo/activity/anti_corruption_agency_strengthening_initiative

²⁷ Organisation for Economic Co-operation and Development, Specialized Anti-Corruption Institutions: Review of Models, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2008, p. 31. <https://www.oecd.org/corruption/acn/39971975.pdf>

Multi-purpose agencies are combining law enforcement powers, preventive functions and often also functions of policy advice to the government or the president. Multi-purpose agencies are considered the most effective model for countries affected by corruption that is spread and entrenched in the public administration as well as in the judiciary and law enforcement institutions. It requires establishing a new, independent multi-task agency instead of co-opting departments from existing institutions. Examples of multi-purpose agencies can be found in for instance Latvia, Lithuania and Kosovo.²⁸

ACAs as law enforcement-type institutions are specialized agencies with prosecutorial authority in specific cases. Sometimes they may be specialized units for investigation and/or prosecution of corruption cases. A first example is the Romanian National Anti-corruption Directorate (NAD), which is a structure with legal personality within the framework of the Prosecutor's Office attached to the High Court of Cassation and Justice. The NAD is led by a Chief Prosecutor whose independence is guaranteed by law. A second example is the Croatian Office for the Suppression of Corruption and Organized Crime (USKOK). It is a prosecutorial service; its procedures and regulations are similar to the ones of the other prosecutors' offices. The Ministry of Justice issues the internal rules and approves the personnel schemes of the Office. The Head of the USKOK is appointed by the Chief Public Prosecutor, after obtaining the opinion of the Minister of Justice and of the panel of national Public Prosecutors. The interaction with parliament in regard to this type of ACAs is very limited.

The third type of ACAs are the prevention, policy, and coordination institutions. This category of agencies is much diversified. One can distinguish between two sub-categories. Firstly, there are the agencies whose work focuses on defining strategic objectives, priorities and anti-corruption measures and on the coordination of the governmental action

against corruption. Examples can be found in Armenia, Serbia and Montenegro. Its main challenge is that it has no independence from the government; it is a mere advisory body with no policy making or implementation functions. Secondly, there are agencies that in addition to the general tasks of corruption prevention are also responsible for some operational activities related to monitoring the application of public service regulations. Examples can be found in Azerbaijan, Slovenia and Macedonia.

The Parliament of Azerbaijan appoints one third of the members of the Commission on Combating Corruption and receives an annual report, as do the President and the Supreme Court. In Slovenia, the Commission on Corruption Prevention is an independent agency accountable to Parliament. It assesses the effectiveness of anticorruption regulations, is responsible for the enforcement of the Code of Conduct for Public Officials and deals with control of the financial assets of Slovenian functionaries.

According to the OECD, independent, multi-task ACAs of the kind established in Latvia and Lithuania have a better chance to represent a solid anchor for meaningful anti-corruption activities and may be better able to withstand the inherent political pressure. However, the creation of any new institution has to be considered in the specific context of each country, and this "Baltic" model has not emerged as the dominant model. The main alternative models are the specialized law enforcement agencies, and the corruption prevention agencies. They tend to be more vulnerable to political pressure or to the instrumentalization of anti-corruption fight for political ends.

There is no quick solution for building a functioning anti-corruption system, even with political will. The issue of corruption touches upon all aspects of the state and addressing it has similarly to draw on many aspects of the broader state reform issues, including civil service reforms, institutional capacity development, building integrity systems and upgrading the policy capacities.

28 Dan Dionisie, Francesco Checchi, *Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: a Practitioners' Experience*, <http://www.arabacinet.org/files/activities/Pres-Session6-Checchi-30072008-e.pdf>

2. Actual autonomy in exercising its mandate

The actual autonomy from politics and industry is a second instrument determining to a large extent the independence of an independent oversight institution or regulatory agency.

9. Appointment of sector specialist over politicians

Analysing how independence is exercised in practice, a concern occurs when politicians are appointed as members of board or as head of independent institutions or regulatory agencies. Recent research indicates that throughout the last 20 years in the larger European countries, politicians are using less their appointment powers to choose party activists but are increasingly appointing sector specialists, however that is not a general pattern in many countries.²⁹ The appointment of sector specialists over politicians is an indicator of growing practical independence of the institution or agency.

10. Cessation of involvement in political party activities

If individuals with public ties to political parties are selected for leading positions in an independent oversight institution or regulatory agency, they need to cease all involvement with the political party. Cessation of involvement in political party activities by the new leadership or board members of the institution is an indicator of growing practical independence of the institution or agency. Cessation of involvement in political party activities or official party positions can be reflected in the legal framework for the institution or in its internal Code of Conduct.

11. Degree of ministerial / governmental interference in decisions

A relevant indicator of independence of an independent oversight institution or regulatory agency is the degree of ministerial / governmental interference in its decisions. Such influence or interference can happen directly from a senior

Cabinet member or indirectly through government participation or attendance at meetings of boards or commissions managing the work of the institution. In some countries, regulatory agencies mentioned interference from the government with their decisions by delaying the required registration and publication of the agencies' decisions in the Official Gazette or dedicated websites.³⁰

As an example, for ACAs a high score on this indicator would be given if government has not used the ACA as a weapon against political opponents; a medium score if there is evidence of limited use of the ACA by government as weapon against political opponents, or a low score if there is evidence of widespread uses of the ACA by government as a weapon against political opponents.

12. Degree of turn-over at head of institution

The best measure of actual independence would be to examine the outcomes of disagreements between the executive and the independent institution or regulatory agency over concrete decisions. This information is, however, difficult to collect. Therefore, an alternative possible indicator of independence is the pattern of turnover at the regulatory agency's head. The probability that the head is replaced shortly after a political change of government is, to some degree, related to actual independence.

13. Independence from industry: no shares in regulated industry

Independence from the regulated industry is also highly relevant for the performance of a regulatory agency. "Capture" by interest groups is a main concern of those who criticize strong regulators in general. To ensure that the regulator will not be easily captured by economic interests in the regulated industry, one can require that the regulator's head and board members do not hold shares or have other interests in regulated firms.

14. Limitations to "revolving door" between regulated industry and regulator

Limitations to take a job in regulated firms during several years after the end of one's term in office

²⁹ Thatcher Mark, Independent regulatory agencies and elected politicians in Europe, in: OECD, Designing Independent and Accountable Regulatory Authorities For High Quality Regulation. Proceedings of an Expert Meeting in London, United Kingdom, 10-11 January 2005, p. 207-208.

³⁰ De Vrieze, Franklin (2011), Independent and regulatory agencies in Moldova and their interaction with parliament, published by UNDP Moldova, Chisinau, 166 p.

with the regulator strengthens the independence of the regulatory agency, as it brings transparency to lobbying and reduces conflicts of interest. Such limitations are a direct response to the so-called “revolving door practice”, a practice in which officials switch jobs between regulatory institutions and the industries they regulate. In a broader sense, there can also be a revolving door practice when parliamentarians and regulatory officials become lobbyists and consultants for the industries they once regulated.³¹ An indicator for independence from the regulated industry is the actual application of the limitations to revolving door practices.

15. Extent of collecting and analysing gender-sensitive data when exercising mandate

The extent in which an institution has the possibility to exercise its mandate in line with its policy choices is an important indicator of independence. In this assessment framework we focus on the extent and institution is collecting and analysing gender-sensitive data when exercising its mandate.

As an example, for ACAs a high score on this indicator would be given if the ACA has gender-sensitive demographic information that allows it to monitor how corruption and its services affect women differently. A medium score would be given when the ACA has gender sensitive demographic information that could allow it to monitor how corruption and its services affect women differently, but it does not actively monitor these differences. A low score would be given if the ACA does not collect gender-sensitive demographic information.

³¹ The revolving door phenomenon may be seen in various industries and numerous political affiliations. While it is inevitable that workers switch between the public and private sectors, the growing influence of money in politics has placed the revolving door phenomenon into the spotlight. Between 1998 and 2017 the amount of money spent on lobbying in the United States more than doubled to \$3.36 billion. It has led to the concern that corporations and special interest groups are able to leverage their money to buy influence and access to key politicians. The revolving door also may lead to conflicts of interest, as the regulatory and legislative decisions made by politicians may directly benefit them soon after they leave office and begin their private sector career.

In the United States, there are detailed rules on how and how soon ex-government officials may be employed in the private sector. For example, former government officials who make decisions on contracts must either wait a year to take a job with a military contractor or move to a role or unit with no connection to their government work. However, this rule does not apply to policy makers; they may join corporations and company boards immediately. In France, there is a three-year waiting period after leaving public service to work in the private sector.

3. Budget and financial resources

Budgetary autonomy is also a significant instrument for independence. We have identified three indicators of independence.

16. Sufficiency of financial resources for performing its functions

The availability of financial resources to perform its tasks and functions is a key indicator for independence.

Based on the assessment framework included in the research report by Transparency International, for ACAs a high score on this indicator would be given if the available budget is more than adequate (between 80% to 100% of the budget request is approved). A medium score would be given if the budget is adequate (with 66% to 79% of the budget request approved). A low score would be given if the budget is inadequate (less than 66% of the budget request is approved) and the ACA relies on funding by CSOs and donor agencies.³²

17. Authority to prepare or adopt its own annual budget

Another practical dimension of independence is whether the independent institution or regulatory agency can prepare and adopt its own annual budget, or if it is prepared and/or adopted by government or parliament, and through which procedure. In cases where regulators have their own financial revenues, it is more likely that they can prepare and adopt their own budget, though sometimes within set guidelines by the executive (e.g. ensuring maximum cap on electricity prices for poorer households). For oversight institutions which rely on public funds, approval by a public body of the annual budget is often required.

In many Westminster-parliamentary systems, the budget of the National Audit Office or Office of the Auditor General is no longer included in the budget of the Prime Minister or any other portfolio of the executive, and has been assigned its own appropriation within the parliamentary budgetary framework and its budget estimates are included

³² Transparency International, Strengthening Anti-Corruption Agencies in Asia – Pacific, October 2017, p. 35. https://www.transparency.org/whatwedo/publication/strengthening_anti_corruption_agencies_in_asia_pacific

in the annual appropriation act for Parliament.³³ In this case, the National Audit Office or Office of the Auditor General prepares its own budget and it is formally approved by parliament without interference of the government.

18. Extent of autonomy to generate own financial revenues

The independent institution or regulator's budget can have several sources, such as state or public funds, fees and fines imposed on the regulated industry, and tariffs on consumption of regulated goods or services. If an institution or regulator has the possibility to generate its own financial revenues it has a much larger autonomy than when it receives its revenues from the state budget. Logically, the budgetary autonomy is to a large extent determined by the nature of the agency or institution. While most independent oversight institutions including integrity institutions rely on public funds and have no autonomy to generate own revenues, financial regulators and to a limited extent also telecommunication regulators are most likely to be funded by fees, reflecting the strong economic opportunities of these sectors.

19. Security and stability of budget for three years

Predictability, security and stability of the budget is an important indicator of independence of the institution. A measurement period of three years is reasonable.

As an example, for ACAs a high score on this indicator would be given if the ACA budget is guaranteed based on the previous year's allocation and has not been reduced. A medium score would be given if the budget has not been reduced during the past three years. A low score would be given if the budget has been reduced during the past three years.

4. Human resources policies

The human resources legal framework and policies are another instrument affecting the independence of the oversight institutions and regulatory agencies.³⁴

³³ Wettenhall, R., Integrity Agencies: the significance of the parliamentary relationship, 2012, Policy Studies 33:1, p. 73.

³⁴ Wettenhall, R., Integrity Agencies: the significance of the parliamentary relationship, 2012, Policy Studies 33:1, p. 69.

20. Authority to recruit its own staff

Independent oversight institutions and regulatory agencies need to be able to select and recruit staff with the appropriate qualifications in order to function appropriately and with authority. It is an important indicator of independence if the head of the institution or agency has the authority to select and appoint staff, provided they have the appropriate qualifications and professional expertise. Seconding staff from another institution, ministry or public authority, can potentially undermine the independence of the oversight institution or regulatory agency to select its own staff if the head of the institution or agency has little influence over who is seconded to the institution or agency.

21. Authority to decide on the remuneration (salary and benefits) of staff and board members

Staff in many oversight institutions and regulatory agencies are usually subject to the salary scales applicable to the civil service. However, some flexibility in implementing the remuneration schemes of the civil service might help to retain the adequate level of expertise as well as to minimize the risk of capture. Sometimes, an oversight institution or regulatory agency needs technical and specialist expertise that is more difficult to bring in through staff from the Civil Service; and the remuneration scales are often at higher level. The extent to which an independent oversight institution or regulatory agency has the authority to decide on the remuneration of staff, and board members alike, is an indicator of its independence. Within an agreed framework, parliament or government might allow flexibility in staff remuneration, or enable "top-ups" to civil service salaries by for instance international donor programmes.

22. Level of expertise of staff to conduct its responsibilities

Independence of any institution is strengthened if its staff is competent, with high levels of expertise in all key areas of competence. Independence is built when the institution is investing in training of its staff and provides many training opportunities.

23. Stability of staff and extent of staff turn-over

A low turnover and resignation rate is an indicator of stability and independence of the institution.

Guaranteeing the independence of the Ombudsperson Institution

The Ombudsperson system was established in Sweden, over 200 years ago. The institution of ombudspersons has spread to more than 125 countries since.

The International Bar Association defined the Ombudsman in 1974 as: an office provided for by the constitution or by action of the legislature or parliament and headed by an independent high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports.³⁵

The International Ombudsman Institute³⁶ has set criteria for institutional membership. These criteria describe the following characteristics of Ombudsmen: they are created by law (or constitution), protect against named acts by public authorities, are independent of public authorities especially those over which they have jurisdiction, have the power to investigate complaints and make recommendations, are accountable through public reports to appropriate authorities, and have one or more incumbents appointed by the legislative body who can be removed only for cause.

Independence is strengthened when the Ombudsman is appointed or confirmed preferably by a supermajority of all members of a legislative body or entity other than those the Ombudsman reviews. The best processes prevent political appointments. Similarly, provisions such as the following tend to increase independence: A fixed, long term of office for the Ombudsman; providing for reappointment; allowing for removal of the Ombudsman only for cause (and preferably by a supermajority of the appointing entity); a high, fixed salary; a budget sufficient to support the office's purposes established in law; spending and accounting

for funds directly to the legislative body; the Ombudsman having the sole power to appoint and remove staff; immunity for Ombudsman and staff from liability and criminal prosecution for acts performed under the law; removing Ombudsman actions from court review except to determine the Ombudsman's jurisdiction; and authorizing the Ombudsman to appeal to courts to enforce the office's powers.

Box 8: The Ombudsperson Institution

³⁵ Ombudsman Committee, International Bar Association Resolution (Vancouver: International Bar Association, 1974).

³⁶ <http://www.theioi.org/the-i-o-i>

V. INSTRUMENTS AND INDICATORS OF ACCOUNTABILITY

Accountability of independent oversight institutions and regulatory agencies means an obligation to explain, answer for, and bear the consequences of the way the institution or regulator has discharged duties, fulfilled functions and utilized its resources. The traditional notion of ministerial accountability that prevails in a democratic system is here of little help, due to the independence features of the institutions and agencies.

The alternative to the traditional ministerial accountability is mainly “procedural” and can be classified under five headings: (1.) reporting; (2.) performance review; (3.) complaints and appeals; (4.) consultations and institutional cooperation, and (5.) Ethics and transparency. We have designed an assessment framework covering these five instruments for accountability, related to twenty indicators.

The assessment framework can be used to determine a scoring for the overall accountability of the institutions, provide a range of scores for each indicator between high (score 3), medium (score 2) or low (score 1). When applying the scoring to specific institutions in-country, the assessment framework can be helpful in determining an evolving trend over years, or to make a baseline assessment for the extent of accountability of the institution, in a similar way to the scoring of the independence of the institution.

1. Reporting

The way how the reporting is organized is the first instrument of accountability, related to four indicators.

1. Requirement to submit institution’s annual report to parliament and/or government

A first indicator is whether there is a requirement for a regular annual report or semi-annual progress report

of the agency to parliament and/or government. Related to this requirement, is the question if the report is tabled in parliament, actioned upon and sanctioned if not sent. In some countries, the SAI might be required to send its annual report to the President of the country, who might delay or not forward the report to parliament. The actual tabling in parliament of the annual report is closely linked to this indicator.

2. Requirements on structure and content of annual report

A second indicator is if there are requirements on structure and content of the annual report to the government and parliament. Accountability is strengthened if the reports should not only cover finances, but also performance, and an annual work plan for the next year.

3. Clarity if annual report is for information or for approval

Depending on the nature of the agency and the relevant legal framework, the report submitted to parliament and/or government is for information only, needs to be approved. In the latter, the accountability is much higher – possibly infringing on the independence of the institution or agency.

4. Authority to submit info and reports at institution’s own initiative

Accountability is also strengthened if the oversight institution or regulator has the authority to present, at its own initiative, reports or statements to the government or to parliament.



Photo 4: Accountability of independent oversight institutions and regulatory agencies means an obligation to explain, answer for, and bear the consequences of the way the institution or regulator has discharged duties, fulfilled functions and utilized its resources. We have designed an assessment framework covering five instruments for accountability, related to twenty indicators.

Assessment framework for accountability of oversight institutions & regulatory agencies				Scoring			Role of parliament		
	Accountability	Instruments	Indicators	High (3)	Medium (2)	Low (3)	Lead role	Control role	Weak, no role
1		Reporting	Requirement to submit institution's annual report to parliament and/or gov.				x		
2			Requirements on structure and content of annual report				x		
3			Clarity if annual report is for information or for approval				x		
4			Authority to submit info and reports at institution's own initiative				x		
5		Performance review	Regular scrutiny by parliamentary committee				x		
6			Oversight by body responsible for providing financial resources					x	
7			External performance review, including consumer satisfaction survey, citizens' perceptions survey or CSOs.						x
8			Financial audit and budget forecasting						x
9			Research on risk assessment in area of responsibility						x
10		Complaints and appeals	Established procedures on internal and external complaints					x	
11			Judicial review instead of ministerial appeal (for regulators)						x
12			Functioning justice system equipped to deal with appeals against regulators' decisions						x
13		Consultations and institutional cooperation	Agreed mandate and activities for prevention, education and outreach				x		
14			Regular practice of public consultations, based on written documentation and with prior notice						x
15			Extent of engagement in international networks						x
16			Cooperation with similar-type institutions nationally						x
17		Ethics and transparency	Code of Conduct applicable to all staff and board members					x	
18			Established corporate ethics policies					x	
19			Institutional transparency via comprehensive, accessible website						x
20			Institution is subject to Freedom of Information legislation				x		

Box 9: Instruments and indicators of accountability

2. Performance review

Performance assessment is crucial for the justification of the oversight institution or regulatory agency's mission and existence and is the second instrument of accountability, related to four indicators.

5. Regular scrutiny by parliamentary committee

Accountability is strengthened if there is regular scrutiny by a dedicated parliamentary committee, which has been assigned to follow relevant developments with the institution or agency. In some cases, this can be a departmental or select Committee, in other cases it can be the business committee of the House or the parliament Bureau. The dedicated parliamentary Committee will also be responsible to receive and follow-up on the findings and recommendations of annual report, and other reports, of the institution or agency.

6. Oversight by body responsible for providing financial resources

Accountability is strengthened if oversight is conducted by the same body which is in charge for providing the resources of the agency, in particular the financial resources. This may be a parliamentary committee or ministerial department.

7. External performance review, including consumer satisfaction survey, citizens' perceptions survey and CSOs

Accountability is strengthened if there is a requirement and practice of an external performance assessment and evaluation procedure. In some countries, the performance review of regulatory agencies can be prepared by the agencies themselves through their annual reports. However, accountability is stronger if the performance review is the result from an external assessment, by external auditing agencies. For a performance review to be meaningful, it is important to have a good understanding of what specific measures are critical to good performance of the institution or agency. A consumer satisfaction survey (for regulatory agencies) or citizen's perceptions surveys (for oversight institutions) can provide useful inputs for performance assessments. Comparing the performance of similar types of oversight institutions or regulators, or to compare common functions between the institutions or

agencies (e.g. human resources departments or customer services) can be useful as well.³⁷

Accountability is strengthened if CSOs are included in the performance review. Increased involvement and sometimes pressure by civil society can contribute to enhance the performance of independent oversight institutions. For instance, a CSO campaign against corruption can create additional momentum for an Anti-Corruption Agency to become more proactive and improve its performance.

8. Financial audit and budget forecasting

Accountability is strengthened if the oversight institution or regulator is subject to a regular financial audit. The financial audit can be conducted by the National Audit Institution or Court of Account, or – depending on relevant legislation – by a private auditing company, either national or international. Accountability is strengthened if it is an international auditing company. An additional feature of accountability is an established practice of budget forecasting within the institution or agency.

As most oversight institutions are funded through public funds, it is useful to encourage a culture of financial accountability within the institution.³⁸ As some regulatory agencies are levy-funded, and their revenues are not taxpayer's money, applicable legislation can require establishing accountable, transparent bookkeeping.

9. Research on risk assessment within area of programmatic responsibility

Accountability is strengthened if the oversight institution or regulator is investing resources and conducting research on the risks and context related to its areas of responsibility (Political Economy Analysis).

As an example, for ACAs a high score on this indicator

³⁷ In the UK, Ministries conduct risk assessments of the Arm's Length Bodies under their remit. They look at intrinsic risks (dealing with human lives or large amounts of money), reputational risks and dynamic risks: do they have the capacity to manage any risks. There are triennial reviews, tailored reviews and functional reviews. See: House of Commons – Public Accounts Committee, Departments' oversight of Arm's-length bodies, Report together with formal minutes relating to the report, London, 12 October 2016, Question 42 and 47.

³⁸ In the UK, initiatives have been taken to establish cross-agency meetings of directors of finance from different Arm's-Length Bodies. See: House of Commons – Public Accounts Committee, Departments' oversight of Arm's-length bodies, Report together with formal minutes relating to the report, London, 12 October 2016, Question 61.

would be given if the ACA is making extensive use of research to develop risk assessments and sectoral corruption profiles. A medium score would be given if there is some degree of research to support its anti-corruption work and policy of prevention. A low score would be given if no independent research is carried out by the ACA.

3. Complaints and appeals

How an independent oversight institution or regulatory agency deals with complaints and appeals is the third instrument of accountability, related to four indicators.

10. Established procedures for dealing with internal and external complaints

Accountability is strengthened if there are formal complaint review procedures, for internal complaints within independent oversight institutions and regulatory agencies, as well as external complaints. All the main UK professional oversight institutions and regulatory agencies have procedures for handling complaints, including, where appropriate, investigating possible misconduct. In addition, most of the bodies have a method of appeals and independent review in certain circumstances. Most bodies provide details of their complaints procedures on their websites and provide additional information on request.³⁹

A growing number of countries are establishing a legal framework for the protection of whistle-blowers. One of the criterium is that the wrongdoing being disclosed must be in the public interest. In the UK, as a whistle-blower one is protected by law, shouldn't be treated unfairly or lose one's job because one 'blows the whistle'.⁴⁰ In April 2018, the European Commission proposed new legislation on the protection of whistle-blowers, obliging all Member States to put in place comprehensive legislation on protection of whistle-blowers.

11. System of judicial review instead of ministerial appeal (for regulators)

The possibility for judicial review of regulators' decisions guarantees ultimate accountability, but it is not without its risks. On average, judicial review is preferable to ministerial appeal. If appeals against regulatory authorities go to ministers, such a system of appeal risks undermining the independence of a regulator.

The legal consequences of appeals at court against regulators' decisions needs careful consideration. For instance, in Moldova, agencies raised the concern that courts suspend decisions of agencies in a way which undermines the effectiveness of their work because courts often take a long time before making a final judgment after the imposed suspension. These provisional court rulings often result in a court injunction or temporary annulment of the provision, a practice that de facto favors the complainant and disadvantages the defendant. In combination with lead times of up to a year for final court rulings, such an appeals procedure seriously constrains the independence that the agencies require to be effective.

12. Functioning justice system equipped to deal with appeals against regulators' decisions

Defining accountability for regulatory authorities through the normal court system may involve a different set of challenges. The time that might be required for judicial decisions under many judicial systems may represent a first practical obstacle. Another important element is whether judges have the knowledge to judge the decision on its merits, and if the appeals suspend (not) agency decisions. The judicial review process for regulatory authorities depends also on the judicial system as a whole. These systems may only be marginally adapted to accommodate the specific needs for accountability of independent regulatory authorities. A possibility chosen by some countries is to create special courts, or appeal bodies, with a mix of judicial, legal, economic and technical expertise.

³⁹ For instance, the UK government website hosts information on how to make a complaint about a service provided by the Medicines and Healthcare Products Regulatory Agency, such as types of complaints, how to file a complaint, what happens after submitting the complaint, complaints under the Freedom of Information Act 2000 and Whistle-blower referrals. <https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency/about/complaints-procedure>

⁴⁰ <https://www.gov.uk/whistleblowing>



Photo 5: WFD meets the Chairperson of the Anti-Corruption Agency in Myanmar, anti-corruption agencies are central to an integrity system.

4. Consultations and institutional cooperation

How an independent oversight institution or regulatory agency deals with consultations and institutional cooperation is the fourth instrument of accountability, related to three indicators.

13. Agreed mandate, activities and plan for prevention, education and outreach

When the institution has a specific mandate for prevention, education and outreach in its area of responsibility, this contributes to consultations and outreach; and thus, to accountability.

As an example, for ACAs a high score on this indicator would be given if the ACA has many corruption prevention initiatives (average of 3 or more per year) or a comprehensive and clear plan. A medium score would be given if some corruption prevention initiatives (average of 1 or 2 per year) are

taking place, or if the plan for outreach and education exists but not implemented fully. A low score would be given if the ACA did not initiate any corruption prevention initiatives, or there is no plan for outreach and education initiatives.

14. Regular practice of public consultations, based on written documentation and with prior notice

Public consultation is one of the key tools employed to improve transparency, efficiency and effectiveness of oversight practices and regulation drafting. Consultation improves the quality of rules and programs and improves compliance and reduces enforcement costs for both governments and citizens subject to rules. Public consultation increases the information available for government policy-making. Countries have developed five basic instruments or different forms to perform public consultation on the regulatory work: informal consultation, the circulation of regulatory proposals for public comment, public notice-and-comment, a public hearing or the use of advisory bodies. If consultation is based upon

written documents and if prior notice is given, that increases the accountability.⁴¹

15. Extent of engagement in international networks

The emergence of transnational networks of integrity agencies or regulators might additionally contribute to accountability. Several European networks of regulatory authorities have been created, such as the Committee of European Securities Regulators, the European Regulators Group, and the European Platform of Regulatory Authorities. These networks can contribute to horizontal or procedural accountability, which involves checks and balances, transparency and stricter procedural requirements by peer review. In a similar way, there is the network of Supreme Audit Institutions (INTOSAI)⁴²; and network of ACAs⁴³, etc.

Accountability is strengthened when an institution engages in a transnational network with a view to exchange information and knowledge, participate in peer review, and making national regulation mutually compatible (for regulatory agencies).

16. Cooperation with similar-type institutions nationally

Cooperation with similar-type institutions active in the same field contributes to efficiency as well as accountability. This may mean cooperation between the integrity agencies, as is taking place in Australia through the Integrity Agencies Group, which plays a crucial role in the protection and maintenance of integrity systems, which can thus be considered an accountability instrument for each individual institution within the group.

As an example, for ACAs a high score on this indicator would be given if there is a high degree of cooperation between ACAs (if there are multiple ACAs in the country) or between the ACA and other integrity agencies. A medium score would be given if there is limited cooperation between ACAs or between the ACA and other integrity agencies. A low score would be given if there is conflict or lack of cooperation between ACAs or between the ACA

41 See: <http://www.oecd.org/regulatory-policy/public-consultation-best-practice-principles-on-stakeholder-engagement.htm> and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf

42 <http://www.intosai.org/news.html>

43 <http://www.track.unodc.org/ACAAuthorities/Pages/home.aspx>

and other integrity agencies.

5. Ethics and transparency

Ethics and transparency requirements constitute the fifth accountability instrument, related to four indicators.

17. Code of Conduct applicable to all staff and board members

The accountability of an institution is strengthened if it proactively establishes an ethical framework for its staff and management. In crisis situations around individual or collective behaviour damaging the integrity of the institution, an established ethical framework enhances accountability and protects the institution from undue political interference, thus even contributing to its independence. A Code of Conduct for all staff and board members is a first step. In many organizations, the Code of Conduct is part of or annexed to the employment contract.

18. Established corporate ethics policies

A second step in an ethics framework for an oversight institution or regulatory agency is to establish corporate ethics policies against – for instance - sexual harassment, bullying, corruption, conflict of interest, discrimination and racism, and in favour of equal opportunities, transparency, privacy and data-protection.

Accountability is strengthened when such policy documents have been formally adopted, sufficient and repeated awareness raising with all staff has been conducted, and the policies are accompanied by a credible enforcement approach.

The ethical framework can be institutionalized further. For instance, in recent years scandals involving improper use of resources by parliamentarians have led to the establishment of new independent agencies to oversee parliamentary finance, such as the Independent Parliamentary Standards Authority (IPSA)⁴⁴ for the UK Westminster Parliament and the Independent Parliamentary Expenses Authority

44 <http://www.theipsa.org.uk/>

(IPEA)⁴⁵ for the Australian Parliament. Because of their unique relationship with legislative bodies, analysis on these agencies has focused on the level of independence attained by the agency from the parliamentary principle, itself the regulated actor.⁴⁶

19. Institutional transparency via comprehensive and accessible website

The availability to the public of the annual reports, performance review report, audit findings and conclusions of public consultations can be considered as an important element for transparency and efficiency in public decision making.

Accountability is strengthened if these documents are published on the web site of the independent oversight institution or regulatory agency as well as on the website of parliament. This requires the institutions to have and maintain a comprehensive and accessible website.

20. Institution is subject to Freedom of Information legislation

Accountability is strengthened if information available within the oversight institution or regulatory agency is subject to Freedom of Information (FOI) legislation. In

many countries, Freedom of Information legislation gives the public the right to obtain information from public authorities.⁴⁷ The main principle of the legislation is that it gives general right of access to recorded information held by the government and public bodies subject to the Act and requires those bodies to respond to the request within a specified number of working days. In most countries, an applicant does not need to give a reason for wanting the information. A country where such legislation is in place increases the accountability for the independent oversight institutions and regulatory agencies which are subject to the law.

In the UK, FOI legislation applies to more than 100,000 public bodies in England, Wales and Northern Ireland (Scotland has its own legislation).⁴⁸ The UK Information Commissioner is an independent authority set-up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.⁴⁹

⁴⁵ <https://www.ipea.gov.au/>

⁴⁶ Dickinson Nicholas, Accountability in the Regulation of Elite Politics: parliamentary expenses regulators in the UK and Australia, University of Exeter, Paper for ECPR Joint Sessions, Nicosia 10-14 April 2018, 27 p. <https://ecpr.eu/Filestore/PaperProposal/cab034f8-79e7-4ee8-810d-f8b02b123f1b.pdf>

⁴⁷ Following is the overview of FOI laws by country: https://en.wikipedia.org/wiki/Freedom_of_information_laws_by_country

⁴⁸ The UK Freedom of Information Act 2000 covers the whole of the UK except Scotland. The Freedom of Information (Scotland) Act 2002 covers Scotland and has more power than the UK act and covers Scottish Executive, Scottish public bodies and the Scottish Government.

⁴⁹ <https://ico.org.uk/>

VI. PARLIAMENT'S INTERACTION WITH INDEPENDENT OVERSIGHT INSTITUTIONS AND REGULATORY AGENCIES

While parliament's interaction with independent oversight institutions and regulatory agencies can occur on most of the above-mentioned instruments and indicators, three main areas can be identified: the institutions' and agencies' reports and their follow-up by parliament, appointments to the Boards or the leadership of the institutions and agencies, and the institutions' and agencies' budget and financial responsibilities.

1. A first area of interaction between the parliament and the independent institutions and regulatory agencies is reporting. In some countries, the reports of these institutions and agencies get marginal attention and few follow-ups; in other countries, there is a more systematic approach to analysing, debating and following up to its findings and recommendations. Still, these reports often include valuable information which can be of use for the oversight work of



Photo 6: WFD meeting with the Human Rights Commission of Nepal. In many countries, Human Rights Commissions are one of the critically important Independent Oversight Institutions.

the Committees or they enable a more in-depth analysis of draft legislation under review.

Depending on national legislation, some institutions might report to parliament while other institutions report to the executive or the president. Across countries, there is no consistent practice who to report to, even among similar type of institutions. Legislation establishing independent institutions and regulatory agencies establish reporting obligations, though not in a consistent way and often without specifications what should be included in the reports or how often reports should be submitted.

Because of its oversight role, parliament has the possibility to make governance and regulatory activities accessible and transparent. Obliging independent institutions and regulatory agencies to publish regular formal reports and financial statements, to write explanations of proceedings, and to respond to requests for information is the primary means of doing this.

2. A second area of interaction between the parliament and the independent institutions and regulatory agencies is related to the institutional design of the agencies and the role of parliament in the appointments of the director and members of boards of the agencies. Often, independence of the agencies will be higher when the nomination is confirmed by parliament, or by a mix interaction of the executive and the legislative, and based upon a professional competency test, rather than by an executive decision of the government only. Parliament may set the conditions for recruiting, re-appointment or removal or ensures a guaranteed term of office for the head of the agency.
3. A third area of interaction between the parliament and the independent institutions and regulatory agencies is related to the institutions' and agencies' budget and financial responsibilities. In several countries, most independent institutions and some of the regulatory agencies are required to inform the parliament of their activities once a year, and the annual report sometimes includes a financial report, and a draft budget for the next year. One practical dimension of independence of the institutions and agencies is whether they can prepare and adopt their own budget, or if it is prepared and/or adopted by the government or parliament. In some countries, parliament only adopts the

main budget lines of the agencies' budgets, leaving it up to agencies to determine the details within a set framework.

Parliaments interact with independent oversight institutions and regulatory agencies in different ways.

The UK Parliament scrutinises the regulators primarily through select committees of either House or joint committees. In terms of the scrutiny of regulators there are regular inquiries by the Public Accounts Committee (PAC); Departmental select committees of the House of Commons; Cross-cutting (thematic) committees, such as for instance the Public Administration Committee and Environmental Audit Committee.

The PAC is directly supported by the NAO, whose reports on audited accounts and value for money studies precede PAC inquiries of their own. Departmental select committees scrutinise the expenditure, administration and policy of particular Government departments and the regulatory bodies sponsored by those departments. The Trade and Industry Committee, for example, has within its remit Postcomm and the Gas and Electricity Markets Authority (GEMA).⁵⁰

In a similar way, most parliaments in other countries use committees to examine the reports of the SAI on the accounts of government departments and independent institutions. In some legislatures the same committee that is responsible for approving the budget is also tasked with considering audit reports. Closely linked to the Auditor General model of public audit is to use a dedicated Public Accounts Committee for the scrutiny of audit findings. Other parliaments involve departmentally related committees to scrutinize audit findings in their relevant area.

Germany is an example of a country that uses the first option of tasking the budget committee with the scrutiny of audit findings. In Germany, audit reports are considered in the audit subcommittee of the Budget Committee, where membership is proportionately distributed according to party representation in parliament. Each member is assigned the role of rapporteur for a specific ministry and has to scrutinize the remarks on this entity in the audit report.

⁵⁰ <https://publications.parliament.uk/pa/ld200304/ldselect/ld-const/68/6812.htm>

A more elaborate option for parliamentary audit is a dedicated audit committee. It is often a long-standing (but not universal) tradition that the chairperson of the PAC must be a member of the opposition. The PAC process has its starting point with a report from the AG.⁵¹

In some countries, committee reports must be followed by a formal response from the government. However, such reports only have practical value if the government addresses the issues they raise and implements the recommendations of the committee.⁵² Rather than a separate tracking report, some auditors include a chapter that reviews departmental action on previous recommendations in their annual audit report, for instance in Canada.

Common approaches on parliament interaction with different models of audit institutions:

- Drawing attention to discrepancies or concerns within the audit's findings.
- Assessing the efficiency and effectiveness by which the Executive has spent public money.
- Shining a spotlight to identify impropriety, fraud or corruption.
- Supporting the work of Parliament and its committees; for example, by seconding staff and by providing oral and written information.
- Ensuring parliament's credibility by being independent, impartial, expert and publicly accountable.

Parliament has a specific relationship with the "integrity agencies", which play a crucial role in the establishment and protection integrity systems such as the National Audit Office, the Ombudsperson institution, or Anti-Corruption Agency, and which

are part of the independent oversight institutions. Some parliaments have established appropriately designed oversight committees to interact with, for instance, the Anti-Corruption Agency, Human Rights Commission or Ombudsperson Institution; and thus, ensure that parliament remains central to the overall accountability regime, which these institutions are part of.⁵³

Ian Temby, first Commissioner of the Independent Commission Against Corruption (ICAC) in the Australian state of New South Wales, drew attention to parliament's "parenting role" towards the integrity agencies as they are 'bound to cause displeasure from time to time':

*"there will ... be awkwardness caused because an important function of government, whatever it may be, is disclosed as being inadequately performed. It is the need for that demonstration to occur which imposes the requirement of independence. Only a non-partisan body can be authoritative and will enjoy public confidence. Periods of disharmony between government and independent officers are, accordingly, inevitable. If they were never encountered, the only available conclusion would be that the independent officer was not doing his or her job properly. The fact of that disharmony, the inevitability of it occurring from time to time, of course brings one to Parliament. It is Parliament that creates all of these bodies and it is Parliament which must look after them."*⁵⁴

51 After receiving an audit report, hearings are the principal mechanism by which officials from departments, agencies or other relevant bodies answer to the committee. In most PACs, interrogation focuses not on the relevant minister but on the accounting officer. The accounting officer is the civil servant in a department who is accountable to the legislature for financial management, usually the administrative head of a department. A draft report on the hearing is prepared and debated in the committee. While it is not normally required that reports have to be adopted unanimously by the committee, some committees have found it useful to hold back reports until consensus has been established.

52 Germany uses a formal tracking report produced regularly by the audit institution. Such a report systematically considers or 'tracks' the extent of implementation of each recommendation made in an earlier report.

53 Bruce Stone, Accountability and the design of an anticorruption agency in a parliamentary democracy, Policy Studies, 36:2, 2015, p. 157-175,

54 Wattenhall Roger, Integrity Agencies: the significance of the parliamentary relationship, 2012, Policy Studies 33:1, p. 69-70.

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