

# Research impact: making a difference

## Fostering the independence of regulatory agencies

LSE research reinforced the need for independent regulation of 'network' industries and helped to define and assess its practical achievement

### What was the problem?

Agencies that regulate the performance of public utilities and services play a critical role in making, interpreting and implementing the rules that govern markets. For markets to operate in the public interest, such agencies must act independently of elected politicians and regulated firms, but how can that independence be tested and assured?

The European single market and the extension of 'fair and effective' competition across the European Union (EU) also depend on the behaviour of national and European regulatory agencies. Truly independent regulation reduces the scope for politicians to intervene in regulatory decisions in order to favour certain companies (such as 'national champion' firms) or discriminate against others (such as overseas suppliers).

### What did we do?

Since 2000 LSE Professor in Comparative and International Politics Mark Thatcher has conducted research into the independence of regulatory agencies, especially in network industries such as energy, communications, transport and parts of financial services. His research has compared policy and practice across different countries of the European Union (EU), principally Britain, France, Germany and Italy, and between national and EU levels.

Thatcher's research has distinguished between formal or legal independence and what he calls 'behavioural' independence, or how this manifests itself in practice. Behavioural independence critically affects the extent to which regulators are able to act independently of elected politicians and thus remain free of political interference, and equally, whether they are able to resist 'capture' by the regulated firms in order to protect consumers and pursue wider policy goals.

His research established that national regulatory agencies enjoy considerable powers over how they regulate vital markets. At the European level, by contrast, regulation has gradually become more centralised. Initially this occurred through formalising networks of national regulatory agencies, and more recently through the creation of new, independent European regulatory agencies for industries such as banking, stock exchanges, energy and aviation.

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Major research funding for Thatcher's work came from the Economic and Social Research Council for a study of cross-national learning and institutional reform in European telecommunications (2000-4), and from the European Commission for a study of regulatory agencies and network governance, co-led with David Coen of University College London.

Thatcher's book summarising this research, titled *Internationalisation and economic institutions: comparing national experiences* (Oxford University Press, 2007), was winner of the 2008 Charles Levine Prize as the best book in Comparative Policy and Administration, awarded by the International Political Science Association's Research Committee on the Structure of Governance and the international journal *Governance*.

## What happened?

Thatcher's research led directly to the development of a practical ranking tool to assess and compare the independence of regulatory agencies. The tool was launched in the INDIREG Study for the European Commission on regulatory agencies in the audiovisual sector, which drew explicitly on Thatcher's work. (INDIREG stood for "Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive".) Thatcher served on the study's advisory panel and was a major speaker at a stakeholder meeting in January 2011, which included Commission officials, lobbyists, think tanks and industry representatives.

The ranking tool was a nine-page set of criteria that could be applied to any regulated agency, looking at extent of expertise, autonomy, status, powers and financial resources. It assessed both the formal and 'behavioural' independence of regulatory agencies, allowing policymakers and others to monitor and compare agencies and to identify factors that affected independence.

The study and tool were used to assess the independence of audiovisual agencies in 43 countries, in order to assist in enforcing the rules contained in the European Union's Audiovisual Media Services (AVMS) Directive. The Commission subsequently issued a consultation paper on reforming the Directive to strengthen the independence of audiovisual regulatory agencies.

The ranking tool was subsequently taken up by the European Platform of Regulatory Authorities (EPRA) in monitoring the independence of regulatory agencies in the same sector. Nearly three-quarters of national regulatory agencies responding to an EPRA survey had applied the tool to their own independence. Other policymakers also used the tool's findings, among them the Audiovisual Agency in Hesse, Germany, and the Constitutional Committee of the Colombian Lower House.

Thatcher also informed policy debates on how to foster the independence of regulatory agencies. In 2007 he presented his analysis of cross-border regulation of network industries to members of the European Commission, including its then President José Manuel Barroso and Competition

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Commissioner Neelie Kroes. He drew on his research to argue that the current system was cluttered, and identified forces for gradually centralising regulation by independent EU agencies. He also presented research in June 2008 on the design of European regulation at a workshop in Brussels for practitioners, the European Commission and regulators.

In the UK Thatcher gave evidence on the independence of regulatory agencies to the House of Commons Transport Committee and the House of Lords Select Committee on Europe. He demonstrated that although agencies played a vital role in implementing EU regulation, there was no European model for their structure or independence. By designing weak regulatory regimes, member states could effectively prevent access to their markets.

As a member of the National Audit Office's (NAO) expert panel on regulation, Thatcher advised the NAO on its investigations and reports, encouraging it to consider regulators as independent decision-makers and to examine the economic and political factors that influence how they deploy their discretion. In 2012 the House of Commons Transport Committee followed his advice in recommending that the NAO should scrutinise the UK Civil Aviation Authority.

Thatcher's voice was one among several in the debates that informed discussions by senior policymakers. It was nonetheless noteworthy that debates about EU reform produced European regulatory agencies for several network industries similar to those recommended by Thatcher's research. In the UK, too, the government accepted the creation of more independent EU regulatory agencies in 2009-10 in line with Thatcher's recommendations, as well as an extension of the competencies of the European Aviation Safety Agency in 2008.

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