

⑥ The governance of regulators: independence and impartiality of decision-making



KEY INSIGHTS

- Given the existence of increasingly complex and dynamic regulatory environments, the governance of regulators sets out core GRP areas that support effective regulatory outcomes. High quality governance underpins innovation and investment and ensures that safety and security standards are met, sending a clear signal that the economy is a predictable and reliable place to do business.
- Independence guarantees how regulators arrive at and administer decisions free from undue political or supplier influence. It can be ensured structurally (through institutional separation) or functionally (conflict-of-interest policies, reasoned actions, and review of decisions). Impartiality requires even-handed, requirements-based administration and fit-for-purpose procedures.
- GATS VI:1 addresses the conduct of administration (reasonable, objective, impartial) while the Reference Paper on Basic Telecommunications requires structural separation and impartial decision-making of regulators in a given sector. The SDR Disciplines extend this concept across sectoral authorization systems: decisions should be reached and administered independently from suppliers, and procedures should be impartial, adequate, and non-obstructive. They also include a WTO first provision on non-discrimination between men and women in authorization measures.
- Recent PTAs increasingly mirror the SDR Disciplines by requiring the independent arrival at and administration of decisions and the impartiality, transparency and adequacy of authorization procedures (often with telecom reference paper-style references to legal separation from suppliers), creating an external coherence benchmark for domestic frameworks across services sectors.
- Many jurisdictions have moved towards independent regulators, pairing autonomy with accountability through appointment and tenure rules, predictable funding, transparency, consultation, explanation of reasons, and independent review. Where full structural separation is not feasible or where powers are delegated to professional bodies, robust functional safeguards are essential.

Key features

Quality laws and regulations depend on regulators that can apply them in an effective and efficient manner, free from potential undue influence.

Regulators are the public interface between regulatory frameworks and citizens and businesses.¹ They are tasked with implementing and enforcing regulatory frameworks – to keep markets functioning and to pursue a variety of social, economic and environmental policy objectives.

For this reason, the governance arrangements of regulators – their legal basis, functions and accountability mechanisms – are critical to their ability to discharge their mandate in an effective and transparent manner and ensure their legitimacy in the eyes of the public.

The governance of regulators highlights several GRP-related aspects which can serve to promote public trust and reduce discretionary and unpredictable decision-making-driven risk, thereby enhancing the quality of regulatory outcome. *The 2012 OECD Recommendation of the Council on Regulatory Policy and Governance* suggests that OECD Member countries:

Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.²

Two main aspects of governance for regulators can be distinguished³: (i) external governance (how the regulator interacts with its external environment) – the functions, relationships and distribution of powers between regulatory bodies and regulated entities; and (ii) internal governance (how the regulator is structured and operates internally) – the regulator's organizational design, conduct, responsibilities, accountability and oversight mechanism.⁴ Evidence shows that more consistent and predictable regulatory decision-making can foster investment.⁵ Fair treatment can encourage innovation by reducing uncertainty and risks associated with new products or technologies. Furthermore, it is essential to guarantee that safety and efficacy standards of regulated products or activities are met, and that any potential exceptions are based on objective and justifiable criteria (such as differences in the nature of the products or activities being regulated).

In support of this aim, the OECD organizes governance guidance in relation to seven areas: clear definition of roles; preventing undue influence and maintaining trust; decision-making and governing body structure; accountability and transparency; engagement; funding; and performance evaluation (see Box 1).

A well-governed regulator aligns their policy design, their operational delivery, and their review and learning functions so that each stage informs and strengthens the overall regulatory cycle.⁶ Policies are designed with implementation in mind; operations generate data on timeliness, quality and outcomes; and periodic review that uses evidence to adjust rules, guidance and processes. As the OECD frames it, policy-making is a whole-of-government activity which relies on the support of various institutions with a view to driving coherence, improvement and predictability for citizens and businesses.⁷

An initial GRP principle for the governance of regulators relates to the definition of roles and transparency: a quality regulator has a defined purpose, an established structure and set of functions, decision-making methods, as well as coordination mechanisms with other authorities to avoid duplication, gaps or conflicting actions. With this in mind, the regulatory powers should be clearly and transparently specified in the establishing legislation and be appropriate and sufficient to achieving the objectives.⁸ In addition, governments should compile and maintain a public record of all existing regulators and the functions they are entrusted with.⁹ The extent to which regulators prescribe specific activities depends on the specificity of each case; principle-based legislation, which leaves regulators with more discretion in selecting the appropriate tools to pursue their functions, is likely to be the most appropriate in complex or rapidly changing fields.¹⁰

Additionally, a regulator should not be assigned conflicting competing functions or objectives; a framework, at least, should be provided to guide the regulator in assigning priorities and making trade-offs between assigned functions, while at the same time protecting the interests of the public.¹¹ Clarity also applies with respect to the requirements and procedures of the appointment of regulators' staff, as well as behavioural codes, and policies regarding conflicts of interest. Transparency also extends to regulators' rules and processes. Key instruments, including compliance and enforcement policies, inspection protocols and sanctioning criteria should

Box 1: The OECD best practice principles for regulatory policy: the governance of regulators

The OECD has developed seven principles of good governance:

- **A clear definition of roles is essential for a regulator to fulfil their function effectively:** a sound regulator has clear objectives, with defined and structured functions and established mechanisms to coordinate with other relevant regulatory bodies to achieve the desired regulatory outcomes.
- **Preventing undue influence and maintaining trust:** it is critical that regulatory functions and decisions are undertaken with integrity and independence to maintain public confidence in the regulatory system. This is even more important for encouraging trade and investment and fostering an enabling environment for inclusive economic growth and development.
- **Defining the governing body and decision-making structure:** regulators require governance arrangements to ensure their effective functioning, preserve regulatory integrity and support the pursuit of the established regulatory objectives.
- **Accountability and transparency:** the expectations for each regulator should be clearly outlined and published by the appropriate oversight body. Key operational policies and other guidance material, including with respect to compliance and enforcement, should be publicly available, together with information about available review mechanisms.
- **Engagement:** a quality regulator establishes mechanisms for stakeholder engagement with a view to collecting the knowledge and experience of the regulated sector, as well as the businesses and citizens affected by regulatory action.
- **Funding:** funding should be adequate and predictable to enable the regulator to operate efficiently and effectively to fulfil the established objectives. Funding processes should be transparent, efficient and as simple as possible.
- **Performance evaluation:** regular independent (external) evaluation is key to fostering awareness of the impacts of regulatory actions and decisions. This helps ensure accountability and to drive continuous improvements within the regulatory system.

Source: OECD, 2012.

be published in plain language, together with available guidance to facilitate understanding. Lastly, to prevent or reduce potential overlap and regulatory burden, regulators should be required to coordinate across levels with a view to supporting each other in the pursuit of their common objectives.¹²

To sustain progressive learning, a regulator should engage with regulated entities and the wider public in ways that are regular, meaningful, and fit-for-purpose, while guarding against undue industry or political influence that skews decisions away from the public interest.¹³ To strengthen accountability and public confidence, the regulator should set measurable performance indicators (e.g. timeliness, reversal/error rates, compliance outcomes and stakeholder satisfaction), provide regular reports on them and commission independent evaluations at appropriate intervals. To ensure that engagement reflects the full range of affected interests, the regulator needs to give attention to providing accessible formats and multiple channels for engagement as well as targeted outreach where participation barriers exist.

In addition, regulators should report periodically on the performance of GRP tools. This should cover inter alia (i) how consultations were conducted and what changed as a result of the input received; (ii) the use of RIA in the development of measures and review of existing ones, as well as (iii) information on timeliness of acknowledgements and decisions, backlog levels, review outcomes, and compliance trends. Taken together, these practices create a transparent feedback loop between operations and periodic review and support continuous improvement.

Accountability concerns regulators' oversight structure. Reporting lines should be explicit (e.g. parliament, minister, board). Regulators should issue reasoned, reviewable decisions, setting out the criteria and evidence applied, so that oversight bodies and affected parties can understand, scrutinize, and, where appropriate, appeal them. Review mechanisms of both individual decisions and, where relevant, the regulator's instruments, should be transparently accessible, together with information about timelines for review and available remedies.¹⁴

The regulator's budget is also relevant to GRP. Funding should be appropriate to enable the regulator to effectively and efficiently pursue the established objectives and to reduce risks that may undermine its independence and impartiality.¹⁵ The regulator's budget should be clear, understandable, accessible and, above all, transparent.¹⁶ Some forms of regulatory decisions require the imposition of fees and charges, notably for issuing authorizations or licences or other types of approvals. For regulators funded through fees, the cost-recovery scheme should not be at risk of setting unnecessary or inefficient administrative burdens; similarly, compliance costs on regulated entities should be able to be justified through a cost-benefit analysis.¹⁷ The relevant ministry may consider developing a proposed fee schedule (or a calculation method) in consultation with the regulator, regulated entities and other relevant stakeholders – with a view to ensuring fairness and maintaining the trust of the regulated entities.¹⁸

Finally, another aspect of GRP is how to guarantee a regulator's freedom to reach and administer decisions without undue influence from (i) the government and (ii) the interests of the regulated. Independence from the government is not an end in itself. Rather, it is a tool to protect technical and requirement-based decision-making where political incentives may conflict with the regulator's mandate. This is important when short-term political pressure could distort long-term objectives (e.g. safety, service quality, financial soundness, network investment), or decisions have significant distributional effects (e.g. prices, access to services, market entry). Similarly, where the government is itself an operator in the market, lack of independent regulators raises competitiveness and neutrality concerns. To this end, at the EU level, for example, national energy regulators must be independent of government and market participants to ensure competitive neutrality in access, tariffs and unbundling. Comparable separation principles appear in many jurisdictions in the telecoms sector.

In addition, it is key to ensure that regulators' decisions are taken and administered free from influence where regulatory powers are delegated to non-governmental bodies that may also be composed of service suppliers (including, for example, bar councils/law societies, medical councils, engineers' or architects' associations). In these situations, independence is generally ensured through functional measures such as conflict-of-interest and recusal policies, separation of

investigative, prosecutorial and adjudicative functions, and external review. In sum, the actual or perceived risks of undue influence determines which institutional arrangement is most appropriate for the regulator's activities and objectives.¹⁹

GATS, SDR Disciplines and other relevant trade agreements

While certain WTO agreements require particular institutional functions (such as SPS and TBT enquiry points, and independent tribunals for review under GATT Article X:3(b)), the WTO does not mandate the organizational design of regulators.²⁰ Rather, the WTO focus is on how laws and regulations are applied – with a view to promoting decision-making that is transparent and free from undue influence (especially from domestic producers or higher political pressure). In other words, WTO rules aim to build a good governance “infrastructure” in which regulators operate and provide checks on their actions, but they stop short of dictating how internal structure should function (for example, rules on appointments, funding systems, board structure, and so forth).

GATS Article VI:1 requires that, in sectors where WTO members have undertaken specific commitments, measures of general application affecting trade in services “are administered in a reasonable, objective and impartial manner”. This provision sets a due-process baseline for how regulators apply rules in practice. These terms have been elaborated upon in WTO dispute settlement in the context of GATT Article X:3(a). “Reasonable” has been interpreted to mean “in accordance with reason”, “not irrational or absurd”, “proportionate”, “sensible”, and “within the limits of reason, not greatly less or more than might be thought likely or appropriate”.²¹ In essence, it signals an administration that is coherent and proportionate to the regulatory aim – not arbitrary, irrational, or excessive. In practice, this points to measures being applied with sensible justification, consistency, and without burdens that are clearly out of balance with the stated objective. “Objective” refers to fact-based, criteria-driven administration rather than personal preferences or *ad hoc* judgement.

Decisions should, therefore, rest on verifiable requirements and evidence, be applied consistently across similar cases, and recorded appropriately so

they can be explained and reviewed. The meaning of “impartial” has been discussed in the context of Article X:3(a) of the GATT. It requires even-handed application, i.e., simply put, no favouritism or prejudice in how rules are administered. Similar cases must be treated alike, and authorities must avoid conflicts of interest and improper influence in day-to-day administration.²²

Notably, Article VI:1 does not prescribe an institutional model for regulators. Rather, it governs how administration is carried out. Many of the GRPs identified in this Handbook make “reasonable, objective and impartial” administration concrete, for example, through published criteria and forms, time limits for decision, status tracking, written reasons and access to review mechanisms.

The requirement of impartiality and independence is further elaborated in the Reference Paper on Basic Telecommunications Services.²³ Paragraph 5 on “Independent regulators” provides that “the regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants”. This links independence to two distinct requirements. First, the regulator must be structurally distinct from service suppliers and not answerable to them. This means the regulator’s authority does not derive from or answer to those regulated. Their organizational and institutional reporting lines are to be independent of any operator of telecommunication services (i.e. the regulator is not housed within, overseen by, or financially or politically dependent on a supplier). Secondly, procedures must treat all market participants even-handedly and be applied consistently.

The SDR Disciplines extend the concept of independence beyond the telecommunications sector and provide that:

If a Member adopts or maintains measures relating to the authorization for the supply of a service, the Member shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of the service for which authorization is required.²⁴

In the context of independent review of customs-related actions under GATT Article X:3, WTO dispute settlement has defined the term “independent” as “not subject to the control or influence of another;

not associated with another (often larger) entity”.²⁵ Accordingly, regulators must be provided with the necessary freedom in institutional and practical terms from interference by other agencies.²⁶ It should be noted, however, that SDR Disciplines, which demand independence from suppliers rather than from governmental agencies, clarify in a footnote that the independence of regulators “does not mandate a particular administrative structure”, rather, “it refers to the decision-making process and administering of decisions”.²⁷ This approach has likely been adopted because the SDR disciplines apply across different levels of government and all service sectors, including those where structural separation between regulators and service suppliers may be difficult to achieve.

In practice, governments may consider a combination of safeguards to be put in place to protect and insulate the decision-making process, such as (i) non direction clauses that prohibit instructions in individual cases; (ii) publication of eligibility criteria and evaluation checklists that guide and bind the handling of cases; and (iii) random case allocation combined with conflict-of-interest declarations and recusal rules. Operational GRPs discussed in this Handbook, such as the publication of information, processing of applications and review of decisions, support functional independence.

The SDR Disciplines further add to the GATS Article VI:1 obligation to administer measures of general application in an impartial manner. They provide that if a WTO member adopts or maintains measures relating to the authorization for the supply of a service, the WTO member shall ensure that the procedures are “impartial and that the procedures are adequate for applicants to demonstrate whether they meet the requirements”.²⁸ The SDR Disciplines also require that WTO members ensure that “the procedures do not in themselves unjustifiably prevent the fulfilment of requirements”.²⁹

Read together with the requirement on objective and transparent authorization criteria, the SDR Disciplines seek to ensure that procedures must genuinely enable applicants to demonstrate compliance with those stated requirements.³⁰ They also set out a design constraint: even if criteria are lawful and transparent, the procedures themselves must not unjustifiably prevent their fulfilment, namely, they should avoid features that add friction without a legitimate purpose (for example, opaque documentary demands, arbitrary scheduling slots, or duplicative filings). Overall, the SDR Disciplines

aim to ensure that authorization must follow neutral, criteria-based, and reviewable procedures that work in practice and are not structured so that they obstruct qualified applicants (e.g. by opaque evidence demands, arbitrary scheduling, or excessive formalities).

Moreover, for the first time in WTO history, the SDR Disciplines require that authorization measures do not discriminate between men and women.³¹ This obligation aims to embed gender neutrality into what applicants must show and how their authorization requests are assessed. It may be seen as a concrete representation of the requirement to ensure that authorization measures are based on objective and transparent criteria (such as, according to GATS Article VI, the competence and the ability to supply a service). The provision seeks to ensure that gender-based exclusions or quotas; gender-specific eligibility conditions (e.g. marital status); documentation requests only for women (e.g. pregnancy tests, proof of childcare) or only for men (e.g. military status); different experience/education thresholds by gender; or dress standards that impose unequal burdens without a legitimate aim, do not apply. It would also prohibit systematic differential treatment during authorization procedures (including regarding authorization fees, application time frames, submission of applications, or response time for enquiries), with a view to ensuring the fairness and uniformity of treatment of all applicants.

The footnote to this obligation specifies two categories of differential treatment that do not constitute discrimination: (i) measures that are reasonable and objective and pursue a legitimate purpose (and are proportionate to that purpose), and (ii) temporary special measures aimed at accelerating *de facto* equality between men and women. In practical terms, compliant design will ordinarily focus on removing procedural impediments and improving access to the authorization system, rather than altering the substantive threshold of competence. Lowering qualification standards by gender might also be seen as incompatible with other elements of the SDR Disciplines – particularly the objectivity of criteria and the requirement to ensure that procedures are adequate for applicants to demonstrate whether they meet the same requirements. Temporary special measures should be transparent, time-limited, and ideally subject to periodic review, so that they can be phased out once the underlying participation gap has been addressed.

PTA practice

Requirements on regulatory governance similar to those contained in the SDR Disciplines have progressively found entry in PTAs. Several PTAs merely replicate the GATS obligation to administer measures affecting services trade in a reasonable, objective and impartial manner. It is, for example, the case of the 2018 CPTPP,³² the 2021 ATISA³³ and the 2022 RCEP.³⁴

In the area of authorization procedures for services, some recent agreements also expand obligations in line with those of the SDR Disciplines. This is the case, for instance, of the 2020 Peru-Australia FTA and the 2024 ASEAN Services Facilitation Framework (although not binding) which set out that where authorizations are required, regulators' decisions are to be reached and administered in an independent manner and that procedures are to be impartial towards all applicants.³⁵ The 2020 USMCA contains the same obligation, but also adds that decision-making procedures should not in themselves prevent the fulfilment of requirements.³⁶

Similarly, a number of recent EU Agreements (including the 2019 EU-Japan EPA,³⁷ 2020 EU-Viet Nam FTA,³⁸ 2021 EU-Armenia CEPA³⁹) establish, alongside the impartiality of procedures, that competent authorities should reach their decisions in an independent manner and not be accountable to any person supplying the services or carrying out the economic activities for which the licence or authorization is required.⁴⁰

The 2014 Switzerland-China FTA provides, instead, in the Annex dedicated to trade in services, that “in sectors where specific commitments are undertaken, relevant regulatory authorities of each Party shall be separate from, and not accountable to, any service suppliers they regulate”.⁴¹ Hence, along the lines of the Reference Paper on Basic Telecommunications, the concept of structural separation between regulators and regulated entities is extended across sectors, with the only exceptions of postal, courier and railway transportation services.⁴² While applying across sectors, the 2011 Hong Kong, China-New Zealand CEPA stipulates that licensing procedures are to be impartial with respect to all applicants and that “the competent authority should be operationally independent of and not accountable to any supplier of the services for which the licence is required”.⁴³

Implementation at the domestic level

At the domestic level, there has been a clear, decades-long shift towards independent regulators across jurisdictions and sectors. Comparative datasets show the model diffused globally from the 1980s onward, moving from a handful of cases to widespread adoption.⁴⁴ They originally appeared where governments sought credible commitment and insulation from short-term political or supplier pressures, especially as markets were liberalized and network industries opened to competition and where new investment was needed, with an independent body helping make reforms acceptable to the public. As the OECD puts it, while some arrangements were conceived as interim steps pending competition, regulators have remained present in multiple markets, with a political rationale that is twofold: protecting consumers and attracting investment on efficient terms; and helping mitigate political risk perceived by private investors.⁴⁵

The WTO-World Bank STPD shows that, on average, almost 77 per cent of the economies analysed legally guarantee the independence of regulators from services suppliers. The highest levels of implementation can be observed in financial services (commercial banking, 97.8 per cent; insurance services, 94.9 per cent) and telecommunication services (mobile telecommunication services 92.6 per cent) – indicating the relevance of this GRP in these sectors. However, where a regulator exists, only 47.8 per cent of the economies covered have regulators independent (i.e. structurally separate) from the sector ministry.

One example is Austria where the Financial Market Authority (FMA) was established as an independent legal entity by the 2001 Financial Market Authority Act.⁴⁶ The Act expressly provides that the FMA “shall not be bound by any instructions in the performance of its duties”, thereby establishing operational independence from the federal government in supervising the banking, insurance, securities and pension sectors.⁴⁷ The Federal Minister of Finance retains oversight focused on lawfulness and remit but cannot direct or influence supervisory decisions in individual cases.⁴⁸ The FMA’s governance framework is built around a dual-board structure.⁴⁹ An executive board is responsible for managing the overall operation and affairs of the FMA and is required to perform its duties “in a legal, expedient, economic, and efficient manner” under its Rules of Procedure.⁵⁰ It is required to prepare a

Compliance Code, which sets out detailed rules for handling sensitive and compliance-relevant situations, including restrictions on financial transactions with supervised entities, the use of non-public information, as well as procedures for reporting conflicts of interest and maintaining impartiality.⁵¹

A supervisory board oversees the organization and management of the FMA and approves key instruments such as the Rules of Procedure and Compliance Code of the executive board, as well as the FMA’s financial statements and annual reports.⁵² The Compliance Code sets rules for conflicts-of-interest, use of non-public information, dealings with supervised entities, and recusal. Appointments to both boards – through established procedures – are for fixed five-year terms with limited removal grounds.

The FMA operates a self-financing model with separate accounting groups (banking, insurance, securities, pensions).⁵³ The FMA’s supervisory costs are primarily recovered from supervised entities through periodic payments, with income from authorization fees – collected for specific licensing or approval procedures – which are also credited to the respective accounting groups to offset their overall costs.⁵⁴ The federal government contributes a fixed annual amount.⁵⁵ The executive board of the FMA draws up annual financial plans, including investment and staff planning, subject to supervisory board approval.⁵⁶ The Authority’s financial statements are audited by an independent external auditor and are publicly disclosed on the FMA’s website.⁵⁷

As to procedural and decision-making autonomy, the FMA is empowered to enforce the administrative decisions it issues, with the exception of administrative penal decisions.⁵⁸ Appeals against administrative decisions of the FMA are heard by the Federal Administrative Court, rather than by the Federal Ministry of Finance.⁵⁹ The FMA’s annual report summarizes selected proceedings, illustrating the use of independent review in practice.⁶⁰ Furthermore, the Act requires that the FMA conduct public consultations on draft regulations, circulars, guidelines and minimum standards, together with relevant explanatory documentation.⁶¹ Overall, the combination of statutory functions, transparent rule-making and consultations, and independent judicial review signals predictability to market participants while maintaining accountability. Potential residual risks are mitigated by fixed term appointments, the dual-board structure, external audit,

and the public nature of consultation outputs and reasoned decisions.

In keeping with common international practice, and the regulation of the accounting profession being assigned to an independent body, Hong Kong, China established the Accounting and Financial Reporting Council (AFRC) under the Financial Reporting Council (Amendment) Ordinance 2021.⁶² The AFRC is a full-fledged independent regulator with comprehensive oversight of the accounting profession.⁶³ This 2021 reform transformed the former Financial Reporting Council, created in 2006 primarily as an investigative body without disciplinary powers, into an authority with expanded regulatory remit.⁶⁴ The 2021 reform consolidated under the AFRC key regulatory powers, including the issuance of practising certificates to certified public accountants (CPAs); registration of CPA firms, corporate practices and local Public Interest Entity auditors; and the inspection, investigation and discipline of CPAs and practice units.⁶⁵ As stipulated by law, the AFRC is composed of a chairperson, a chief executive officer, and at least seven other non-practitioner members appointed by the Chief Executive of Hong Kong, China.⁶⁶ Public officers are expressly excluded from membership to guard against perceived interests or conflicts and to reinforce functional independence from government and supplier interests; furthermore, each appointment by the Chief Executive must be published in the *Gazette*.⁶⁷ Members of the AFRC must disclose interests and conflicts, recuse where relevant, and maintain a register of such disclosures available for public inspection.⁶⁸

The regulator's funding model has also evolved to strengthen its financial independence. Under the 2021 reform, the AFRC has expanded its revenue base by collecting fees for issuing practising certificates to CPAs and the registration of practice units since 1 October 2023.⁶⁹ While the government provided seed capital to support the transition and cover short-term funding needs, the AFRC indicated that it would work with the government to explore ways to achieve the “user-pays” principle in the long run and to ensure adequate consultation with members and industry before implementing any concrete plans.⁷⁰

To ensure transparency and accountability in the exercise of its regulatory functions, the AFRC operates under a multi-layered oversight framework. Decisions of the AFRC are subject to review by the Public Interest Entities Auditors Review Tribunal and further

appeal to the Court of Appeal. The AFRC's annual reports on activities and audited financial statements are tabled before the Legislative Council for scrutiny. In addition, the Process Review Panel for the AFRC, established by the Chief Executive as an independent non-statutory body, reviews the AFRC's cases and internal procedures to ensure that its actions are consistent with established policies and guidelines.⁷¹ The AFRC also publishes step-by-step guidelines for the authorization processes,⁷² reports,⁷³ as well as stakeholder consultation and studies on its website.⁷⁴

In the UK, the Office of Communications (Ofcom) was established as an independent statutory regulator under the Office of Communications Act 2002 to oversee communications services. The Act created Ofcom as an institution distinct from the government, explicitly stipulating that it “shall not be treated for any purposes as a body exercising functions on behalf of the Crown”, and that its members and employees are not to be regarded as servants of the Crown.⁷⁵ This institutional separation provides the legal foundation for Ofcom's independence from ministerial departments and regulated entities, while ensuring accountability through transparent governance and reporting mechanisms.

Ofcom's governance structure seeks to strike a balance between independence, expertise and public oversight. The regulator comprises a chairman, executive members, and other non-executive members, with the chairman and non-executive members appointed by the Secretary of State. Before and throughout a member's appointment, the Secretary of State must be satisfied that the chairman and each non-executive member has no financial or other interest which may prejudice them in carrying out their functions,⁷⁶ and members are required to disclose any potential conflict of interest.⁷⁷ The chairman and non-executive members are appointed for fixed terms, and the grounds for removal – such as misbehaviour, bankruptcy, or incapacity – are defined by statute, with any removal decision requiring publication and a written statement of reasons.⁷⁸ These provisions collectively embed safeguards against political or commercial influence in the appointment and tenure of Ofcom's members.

Financial arrangements under the Office of Communications Act further strengthen Ofcom's autonomy while maintaining public accountability. The regulator is required to conduct its affairs so that its revenues from statutory charges and fees are sufficient to meet the costs of carrying out its functions, thereby

operating largely on a self-financing basis.⁷⁹ Any surplus revenue is managed under the direction of the Secretary of State.⁸⁰ This funding model thus ensures financial sustainability while preventing dependence on annual budgetary appropriations that could compromise regulatory impartiality.

Transparency and accountability are reinforced through extensive statutory reporting obligations. Ofcom must submit annual reports, which are audited annually and made publicly available.⁸¹ Moreover, the Act requires Ofcom, in managing its affairs, to align with generally accepted principles of good corporate governance.⁸²

In conclusion, independence and impartiality are complementary anchors of regulatory governance; independence protects arrival at and administering of decisions from undue political or supplier influence, while impartiality requires even-handed, requirement-based administration and fair design of procedures. The GATS speaks to the administration of measures (reasonable, objective, impartial), while the subsequently developed Reference Paper on

Basic Telecommunications adds the structural separation and impartial decision-making of regulators. The SDR Disciplines extend this across services sectors by requiring, (i) decisions to be reached and administered independently from suppliers and, (ii) impartial, adequate, and non-obstructive authorization procedures; it also contains a first-time WTO obligation on non-discrimination between men and women. Recent PTAs increasingly codify similar commitments – requiring independent arrival at and administration of decisions, and impartial, adequate authorization procedures with a view to creating an external coherence benchmark for domestic frameworks. Domestically, jurisdictions have converged towards independent regulators, with practical safeguards that blend structural and functional tools. The WTO-World Bank STPD shows broad legal guarantees of independence from suppliers, though independence from ministries remains uneven. Evidence illustrates that independence is not an end in itself and can be tailored to the sector's risk profile and balanced with transparency, engagement and effective oversight.

ENDNOTES

- 1 OECD (2014), p. 9.
- 2 OECD (2012), Principle 7.
- 3 OECD (2014), p. 19.
- 4 OECD (2014), p. 19.
- 5 OECD (2014), p. 51.
- 6 OECD (2014), p. 26.
- 7 OECD (2012).
- 8 OECD (2014), p. 30.
- 9 OECD (2012), Principle 7.
- 10 OECD (2014), p. 31.
- 11 OECD (2014), p. 30.
- 12 OECD (2014), p. 30. For more information, please see subsection 2.13 on “Domestic Inter-agency Coordination”.
- 13 For more information, please see subsection 2.7 on “Stakeholder Engagement”.
- 14 For more information, please see subsection 2.10 on “Review of Administrative Decisions”.
- 15 OECD (2014), p. 98.
- 16 OECD (2014), p. 98.
- 17 OECD (2016), p. 30.
- 18 OECD (2014), p. 100.
- 19 OECD (2014), p. 50.
- 20 For independence in the context of review of administrative decisions, see subsection 2.10 on “Review of administrative decisions”. Note also that the Agreement on Government Procurement obliges its parties to maintain an independent and impartial domestic review body for bid challenges (Article XVIII:4).
- 21 WTO (2012b), para. 7.850.
- 22 WTO (2012a), para. 7.694.
- 23 The Reference Paper on Basic Telecommunications Services was adopted on 24 April 1996 and establishes a set of pro-competition principles that over 100 WTO members have incorporated as additional commitments under GATS Article XVIII in their schedules of specific commitments, making these regulatory principles binding for their basic telecom markets. See https://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm.
- 24 SDR Disciplines (WTO, 2021), para. 12.
- 25 WTO (2006), para. 7.520.
- 26 WTO (2006), para. 7.520.
- 27 SDR Disciplines (WTO, 2021), fn 11 to para. 12.
- 28 SDR Disciplines (WTO, 2021), para. 22(b).
- 29 SDR Disciplines (WTO, 2021), para. 22(c).
- 30 SDR Disciplines (WTO, 2021), paras. 22(a) and (b).
- 31 SDR Disciplines (WTO, 2021), para. 22(d).
- 32 CPTPP (2018), Article 10.8.1.
- 33 ATISA (2021), Article 16.1.
- 34 RCEP (2022), Article 8.15.1.
- 35 Peru-Australia FTA (2020), Article 9.8.4; ASEAN Services Facilitation Framework (2024), para. 5.
- 36 USMCA (2020), Article 15.8.2. The USMCA, like the SDR Disciplines, also requires that authorization requirements and procedures are based on criteria that are objective and transparent.
- 37 EU-Japan EPA (2019), Article 8.31.
- 38 EU-Viet Nam FTA (2020), Article 8.20.
- 39 EU-Armenia CEPA (2021), Article 160.
- 40 EU-Viet Nam FTA (2020), Article 8.20.
- 41 Switzerland-China FTA (2014), Annex VI, Article II.
- 42 Switzerland-China FTA (2014), Annex VI, Article II.
- 43 Hong Kong, China-New Zealand CEPA (2011), Annex III to Chapter 13.
- 44 Jordana, Levi-Faur and Fernández i Marin (2011).
- 45 OECD (2016).
- 46 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 1.
- 47 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 1.
- 48 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 16.
- 49 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 4.
- 50 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Articles 6(1) and 6(2).

- 51 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 6(4); FMA, Compliance Code of the Austrian Financial Market Authority (FMA), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=3283&nonce=41c6006630d661ab>.
- 52 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 10.
- 53 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Articles 19(1)-(3).
- 54 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Articles 19(4) and 19(10).
- 55 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 19(4).
- 56 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 17.
- 57 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 18.
- 58 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 22(1).
- 59 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Article 22(2).
- 60 FMA (2023).
- 61 Government of Austria, *Financial Market Authority Act* (as amended), <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e4abc3aa1f1baa14>, Articles 22(3) and 22(3a). See FMA consultation portal at <https://www.fma.gv.at/en/category/news-en/information-en/>.
- 62 Hong Kong, China, *Accounting and Financial Reporting Council Ordinance*, Cap. 588, Hong Kong e-Legislation, <https://www.elegislation.gov.hk/hk/cap588>.
- 63 Hong Kong, China, *Accounting and Financial Reporting Council Ordinance*, Cap. 588, Hong Kong e-Legislation, available at <https://www.elegislation.gov.hk/hk/cap588>.
- 64 Hong Kong, China, Legislative Council, *Background Brief on the Work of the Accounting and Financial Reporting Council*, LC Paper No. CB(1)117/2025(06), Ref: CB1/PL/FA, Panel on Financial Affairs Meeting, 3 February 2025, <https://www.legco.gov.hk/yr2025/english/panels/fa/papers/fa20250203cb1-117-6-e.pdf>.
- 65 Hong Kong, China, Legislative Council, *Background Brief on the Work of the Accounting and Financial Reporting Council*, LC Paper No. CB(1)117/2025(06), Ref: CB1/PL/FA, Panel on Financial Affairs Meeting, 3 February 2025, <https://www.legco.gov.hk/yr2025/english/panels/fa/papers/fa20250203cb1-117-6-e.pdf>.
- 66 Hong Kong, China, *Accounting and Financial Reporting Council Ordinance*, Cap. 588, Hong Kong e-Legislation, available at <https://www.elegislation.gov.hk/hk/cap588>, Section 7. As of January 2025, the Board of the AFRC consists of a chairman, a chief executive officer and 15 other non-executive directors (Hong Kong, China, Legislative Council, *Background Brief on the Work of the Accounting and Financial Reporting Council*, LC Paper No. CB(1)117/2025(06), Ref: CB1/PL/FA, Panel on Financial Affairs Meeting, 3 February 2025, <https://www.legco.gov.hk/yr2025/english/panels/fa/papers/fa20250203cb1-117-6-e.pdf>).
- 67 Hong Kong, China, *Accounting and Financial Reporting Council Ordinance*, Cap. 588, Hong Kong e-Legislation, available at <https://www.elegislation.gov.hk/hk/cap588>, Section 7.
- 68 Hong Kong, China, *Accounting and Financial Reporting Council Ordinance*, Cap. 588, Hong Kong e-Legislation, available at <https://www.elegislation.gov.hk/hk/cap588>, Section 53.
- 69 Hong Kong, China, Legislative Council, *Background Brief on the Work of the Accounting and Financial Reporting Council*, LC Paper No. CB(1)117/2025(06), Ref: CB1/PL/FA, Panel on Financial Affairs Meeting, 3 February 2025, <https://www.legco.gov.hk/yr2025/english/panels/fa/papers/fa20250203cb1-117-6-e.pdf>.
- 70 Hong Kong, China, Legislative Council, *Background Brief on the Work of the Accounting and Financial Reporting Council*, LC Paper No. CB(1)117/2025(06), Ref: CB1/PL/FA, Panel on Financial Affairs Meeting, 3 February 2025, <https://www.legco.gov.hk/yr2025/english/panels/fa/papers/fa20250203cb1-117-6-e.pdf>.
- 71 Hong Kong, China, Financial Services and the Treasury Bureau, "Process Review Panel for the Accounting and Financial Reporting Council", <https://www.fstb.gov.hk/fsb/en/business/prp/afrcprp.html>.
- 72 See, for example, AFRC, "Registration", <https://www.afrc.org.hk/en-hk/publications/guidelines/registration/>.
- 73 See, for example, AFRC, "Annual Reports", <https://www.afrc.org.hk/en-hk/publications/annual-reports/>.
- 74 See AFRC, "Consultation and Studies", <https://www.afrc.org.hk/en-hk/publications/consultation-and-studies/consultation-and-studies/>.
- 75 Government of the UK, *Office of Communications Act 2002* (as amended), <https://www.legislation.gov.uk/ukpga/2002/11/contents>, Sections 1(1) and 1(9).
- 76 Government of the UK, *Office of Communications Act 2002* (as amended), <https://www.legislation.gov.uk/ukpga/2002/11/contents>, Schedule, para. 1.
- 77 Government of the UK, *Office of Communications Act 2002* (as amended), <https://www.legislation.gov.uk/ukpga/2002/11/contents>, Schedule, para. 17.

78 Government of the UK, *Office of Communications Act 2002* (as amended), <https://www.legislation.gov.uk/ukpga/2002/11/contents>, Schedule, para. 2.

79 Government of the UK, *Office of Communications Act 2002* (as amended), <https://www.legislation.gov.uk/ukpga/2002/11/contents>, Schedule, para. 8(1).

80 Government of the UK, *Office of Communications Act 2002* (as amended), <https://www.legislation.gov.uk/ukpga/2002/11/contents>, Schedule, para. 8(2).

81 Government of the UK, *Office of Communications Act 2002* (as amended), <https://www.legislation.gov.uk/ukpga/2002/11/contents>, Schedule, paras. 11, 12, 22 and 23.

82 Government of the UK, *Office of Communications Act 2002* (as amended), <https://www.legislation.gov.uk/ukpga/2002/11/contents>, Section 3.



REFERENCES

Government of Austria, Financial Market Authority (FMA) (2023), *2023 Annual Report of the Financial Market Authority*, Vienna: FMA, <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=6715&nonce=89932dc8f1bbd3b7>.

Jordana, J., Levi-Faur, D. and Fernández i Marín, X. (2011), "The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion", *Comparative Political Studies*, 44(10), 1343-1369, <https://doi.org/10.1177/0010414011407466>.

Organisation for Economic Co-operation and Development (OECD) (2012), *Recommendation of the Council on Regulatory Policy and Governance*, Paris: OECD Publishing, <https://doi.org/10.1787/9789264209022-en>.

Organisation for Economic Co-operation and Development (OECD) (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, Paris: OECD Publishing, <https://doi.org/10.1787/9789264209015-en>.

Organisation for Economic Co-operation and Development (OECD) (2016), *Being an Independent Regulator*, The Governance of Regulators, Paris: OECD Publishing, <https://doi.org/10.1787/9789264255401-en>.

World Trade Organization (WTO) (2006), Panel Report, *European Communities – Selected Customs Matters*, official document WT/DS315/R, adopted 11 December 2006, as modified by Appellate Body Report, official document WT/DS315/AB/R.

World Trade Organization (WTO) (2012a), Panel Reports, *China – Measures Related to the Exportation of Various Raw Materials*, official documents WT/DS394/R / WT/DS395/R / WT/DS398/R / and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports, official documents WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R.

World Trade Organization (WTO) (2012b), Panel Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, official documents WT/DS384/R / WT/DS386/R, adopted 23 July 2012, as modified by Appellate Body Reports, official documents WT/DS384/AB/R / WT/DS386/AB/R.

World Trade Organization (WTO) (2021), Joint Initiative on Services Domestic Regulation, *Reference Paper on Services Domestic Regulation* (SDR Reference Paper), official document INF/SDR/2, 26 November 2021.