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**« L'institutionnalisation de l'Europe »**

**Sous la direction de  
Renaud Dehousse et Yves Surel**

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**Regulation in Europe :  
Independent Regulatory Agencies**

**Mark Thatcher**

Department of Government  
London school of Economics  
m.thatcher@lse.ac.uk

Since the 1980s, the regulation of markets in Europe has been transformed. The most noticeable changes have been the privatisation of state industries, new rules ending monopolies and regulating competition, an increased role for the EU and the creation of specialised regulatory agencies.

Strong claims have been put forward that these changes are part of the replacement of the 'positive state' of redistribution and macro-economic stabilisation by 'a regulatory state' at both EC and national levels (McGowan and Wallace 1996, Majone 1994, 1996, 1997). (There are several varieties of 'regulatory state' arguments, but here we are concerned with those relating to the European experience of regulating markets- for a review, see Moran 2002). It is argued that in the face of European integration, international forces and the perceived failure of public ownership and Keynesianism, governments in Europe followed new strategies comprising privatisation, liberalisation, re-regulation, expansion of EC regulatory activities and greater use of indirect government. These strategies have led to a new mode of governance, with changes in state functions, political arenas, institutions, actors and policy styles (Majone 1997).

A key element of claims of the rise of a 'regulatory state' in Europe has been the spread of independent regulatory agencies ('IRAs') (Majone 1997). The most common are agencies regulating competition- general competition authorities, utility regulators and financial regulators. It is argued that IRAs can enjoy 'autonomy' and 'independence' from elected politicians (Majone 1997: 152-5). Whereas in the 'positive state', government and its generalist bureaucracies were often the prisoners of a corporatist culture and the interests of producers, IRAs can focus on specific regulatory objectives such as enforcing competition law or protecting the economic or health interests of consumers (Majone 1997: 157). IRAs can obtain procedural legitimacy through more transparent and pluralistic policy making and greater accountability than offered by state ownership and regulation by government (cf. Majone 1999).

Thus far, cross-national comparative analysis has focussed on the formal institutional design of IRAs, and in particular, 'delegation'- the powers delegated by elected officials to IRAs and the controls over IRAs (Thatcher 2002, Giraudi and Righettini 2001, Gilardi this issue, Majone 1996, Coen and Thatcher 2000, Doern and Wilks 1996, Perez 1996, Cassese and Franchini 1996, Horn 1995). However, whilst important, formal institutional arrangements do not determine the behaviour of IRAs nor their relationships with other actors. Powers and controls can be used in many diverse ways. Institutional frameworks are incomplete, allowing discretion to decision makers. The issue here is how the new institutional framework after delegation of powers to IRAs operates in practice and its effects on 'regulatory politics'.

Three aspects of IRAs after delegation that arise from claims about the 'regulatory state' in Europe are examined. First, the article looks at the independence of IRAs from elected politicians. Second, it looks at relationships between IRAs and regulatees, testing arguments that IRAs have escaped from the clutches of corporate interests. Third it analyses the decision-making processes of IRAs, thereby considering whether delegation to IRAs has resulted in more transparent, pluralist and accountable policy making. Each of the three aspects is analysed in the light of a wider literature that is particularly apposite (principal-agent analyses of control, 'capture theory' and procedural legitimacy).

The empirical analysis covers national IRAs in four major countries- Britain, France, Germany and Italy (the EC presents its own specific issues- cf. Pollack 1997, Tallberg 2002). The discussion is focused on regulators of market competition (both general competition authorities and sectoral regulators). Although IRAs are seen as an essential element of the growth of the 'regulatory state' in Europe, their behaviour and specific consequences in Europe remain under analysed, especially across countries. Moreover, there are limited data available, especially in comparative form over several years. Thus the present article must be exploratory. It offers a broad overview, using quantitative indicators in order to put forward general arguments.

The article begins by setting out the spread of IRAs regulating competition in the domains selected for investigation here. Thereafter, analytical frameworks for studying the three selected aspects of the behaviour and operation of IRAs are discussed. The article then discusses the three aspects of IRAs in practice, before drawing wider conclusions.

## **I The spread of IRAs in Western Europe**

Until the late twentieth century, IRAs were rare in Europe.<sup>1</sup> However, they have increasingly emerged in Europe. Although general competition authorities were established in Britain and Germany after the Second World War (Wilks and Bartle 2002), most IRAs were created in the 1980s and 1990s, especially for the utilities (Thatcher 2002; Gilardi, this volume). IRAs have been given important powers- for instance, to approve or block mergers, to prevent unfair competitive practices, to issue and enforce licences.

Empirical analyses of IRAs immediately face the problem that definitions of IRAs vary across countries, depending largely on legal doctrines. To allow cross-national comparison, an IRA is defined using its formal institutional status rather than nationally-specific labels. An IRA is a body with its own powers and responsibilities given under public law, that is organisationally separated from ministries and is neither directly elected nor managed by elected officials; the definition thus excludes those bodies that lie within ministries and/or are largely consultative. Table 1 offers an overview of market IRAs in selected domains that will be examined in this article, together with the date of their creation.

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<sup>1</sup> Britain had Commissions and agencies, but parliament and government often kept effective control - cf. Baldwin and McCrudden 1987, ch.2.

