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Autonomy of Regulatory Authorities in Romania vs. Independence of Regulatory Authorities in France: Comparative Analysis

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Abstract:
This research conducts a comparative analysis of the concepts of "autonomous" and "independent" as they relate to national regulatory authorities, with explicit focus on Romanian and French legislation. Given the increasing importance of these authorities in the communications and energy sectors, the analysis begins by examining European legislation that requires their establishment in member states. Through a detailed examination of national legislation, specialised literature, and relevant case law - including decisions from the Court of Justice of the European Union - the study aims to clarify the distinct yet overlapping interpretations of autonomy and independence. The findings will highlight how these concepts affect the effectiveness and accountability of regulatory authorities in different national contexts. The research shows both differences and similarities in the regulatory frameworks of Romania and France, offering insights into how each country manages the complexities of regulatory independence. The analysis concludes with several proposals (lege ferenda) to improve operational collaboration among independent regulatory authorities. These recommendations will emphasise alignment with EU and OECD best practices and provide practical strategies to help countries establish or reform their regulatory bodies. By fostering an understanding of these foundational concepts, this study seeks to make a significant contribution to the discussion on regulatory governance and to support the development of stronger regulatory frameworks across Europe.

Keywords: European directives, functional independence, constitutional court decisions.

JEL: K23, K2, D73

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INTRODUCTION

At the European level, with reference to regulatory authorities, the legislator has used the concept of "independent" over time. Thus, through a series of directives, each specific to a sector of activity (energy, communications, etc.), the European legislator has established criteria that authorities must meet to align with European standards.
Given that the energy and electronic communications fields are perhaps the best known, we show the evolution of EU standards on the autonomy of national regulatory authorities:

- Directive 2002/21/EC (of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services - Framework Directive): Initial standards for regulatory authorities in the field of electronic communications;

- Directives 2003/54/EC (concerning common rules for the internal market in electricity and repealing Directive 96/92/EC) and 2003/55/EC (concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC): General obligation to establish an independent regulatory authority in the electricity and natural gas sectors;
- Directive 2009/140/EC (amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to electronic communications networks and associated infrastructure and interconnection and 2002/20/EC on the authorisation of electronic communications networks and services): Strengthening standards for regulatory authorities in the field of electronic communications;
- Directives 2009/72/EC (concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC) and 2009/73/EC (concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC): Developing comprehensive standards for regulatory authorities in the electricity and natural gas sectors;
- Directive 2018/1972 (establishing the European Electronic Communications Code): Improving standards of independence of regulatory authorities in the field of electronic communications;
- Directive 2019/944 (concerning common rules for the internal market in electricity and amending Directive 2012/27/EU): Amending the provisions on the independence of regulatory authorities in the field of electricity.
- Directive 2024/1788 (on common rules for the internal markets in gas from renewable sources, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC): Amendment of the provisions on the independence of electricity regulators.
- Although there are sector-specific differences, we nevertheless find common elements in EU standards on the independence/autonomy of national regulatory authorities. First, the general objective is to protect regulatory authorities from specific interests and, in this regard, to ensure that the proper exercise of their missions benefits from guarantees that allow them to act in complete autonomy. The main instrument for achieving this objective, as provided by EU law, is the principle of "functional independence", a recurring provision in most Directives governing the status of national regulatory authorities.

It is worth noting that the Directives refer instead to an independent status as a whole. In contrast, the autonomy of decisions is only one of the criteria that ensure this independence and is an obligation expressly imposed on the Member States.

In the literature has been highlighted that “the notion of independence represents the main idea of EU interference in national administrative structures - the need to insulate regulatory decisions from external pressures and to ensure the consistent implementation of EU legislation in all Member States” (Szescilo, 2021), the author even speaks of “the conceptualization of the EU model of independent regulatory authorities” (Szescilo, 2021).

At the Organisation for Economic Cooperation and Development (OECD), the crucial importance of regulatory authority independence was addressed, relating to the financial autonomy of the regulator, which means in principle that the regulator has sufficient resources to perform its duties, which helps reduce the risk of capture by industry, lobby groups, and government. Insufficient resources can limit the regulator's ability to make informed, independent decisions. (OECD, 2016, p. 24).

Furthermore, in the guide “Creating a Culture of Independence: Practical Guidance Against undue Influence” (2017) were precisely highlighted the key elements of this independence and how the state should position itself in relation to them, by examining several factors that must be taken into account

for a regulator, such as: (i) credible long-term commitments, (ii) stability, (iii) avoidance of potential conflicts of interest, and (iv) development of regulatory experience and capacity.

On the issue of regulatory financial independence, the OECD guidance states that: adequate funding is crucial for a regulator to fulfil its mandate and stay independent. The process of determining, allocating, and managing funding can matter more than the source of the funds. For regulators funded through fees, establishing an efficient cost-recovery system is essential to setting appropriate fees and preventing problems such as underfunding, excessive industry influence, or threats to executive independence (OECD, 2017, p. 29).

According to a 2021 OECD report on the independence of National Competent Authorities, achieving independence requires NCAs to have the necessary funding and the effective ability to use it to fulfil their missions. Their supervisory effectiveness depends on financial independence, enabling them to make decisions about staffing, training, and pay. They should also control budget approval and management to make essential investments in IT and infrastructure, which helps keep them operationally effective in a changing environment.

The Court of Justice of the European Union (CJEU) has clarified the independence requirement for national regulatory authorities (NRAs) under European Union energy law, which requires NRAs to be independent of both political and private bodies (Kaschny & Lavrijssen, 2023).

Thus, the CJEU case law (Case C-424/15) has held that, although Member States enjoy institutional autonomy in the organisation and structuring of their national regulatory authorities, this autonomy can only be exercised in full compliance with the objectives and obligations laid down in the founding directives. Thus, in the context of an institutional reform, a Member State may not assign to a multi-sectoral regulatory body the tasks incumbent on national regulatory authorities under the specific directives, unless, in exercising those tasks, that body meets the organisational and functional conditions imposed on those authorities by those directives.

In an even more recent judgment (Case C-48/23): with regard to the concept of "independence", it should be noted that it follows from the case-law of the Court (...) that this concept designates, in its usual sense, in relation to public bodies, a status which guarantees that the body in question can act in complete freedom vis-à-vis the bodies from which the independence of that body must be ensured, protected from any instructions and from any external influence. This decision-making independence implies that, in the field of the powers and regulatory powers of the national regulatory authorities, they adopt decisions autonomously, exclusively for reasons of public interest, to ensure compliance with the objectives pursued, without being subject to external instructions from other public or private bodies (Judgment no. 6, March 2025).

Beyond the EU and OECD normative and evaluative frameworks, the notion of independence was most often examined in relation to the constitutional contexts of the analysed countries. Based on this methodological principle, we began our research on Romania and France, two related countries with shared administrative and constitutional traditions. The distinction between “autonomy” and “independence” as detailed in the article strengthens the theoretical framework for the critical analysis of these institutions.

The present study aims to provide an objective analysis of the differences between the regulatory authorities in Romania and France regarding their status. The analysis of both systems will be conducted from legislative, jurisprudential, and doctrinal perspectives to highlight the aspects that bring them together and, in particular, those that distinguish them.

The approach was not at all straightforward, given the multitude of sectors in which the European legislator has imposed on member states the obligation to establish national regulatory authorities, as well as the specificity of each state, which was taken into account when choosing the areas introduced into the area of competence of a regulatory authority. This was also the reason why we chose the two areas, energy and communications, as there is a separate administrative authority for each of them, both in Romania and in France.

1. REGULATORY AUTHORITIES IN ROMANIA

It should be noted from the outset that there is no reference to regulatory authorities in Romanian legislation. From the standpoint of their status, they are defined by the founding laws as autonomous administrative authorities. However, even if it is not a normative act in force, we identify on the website of the Ministry of Labour, published in decisional transparency, a draft law to amend and supplement Government Emergency Ordinance no. 57/2019 on the Administrative Code, with subsequent amendments and supplements and some measures applicable to contractual personnel paid from public funds, in which it is mentioned that its provisions also apply to the personnel of regulatory authorities. The legislator's intention is interesting, but it remains to be seen, in a future analysis, how it is possible, from the point of view of constitutional and legal norms, for a normative act to produce legal effects with respect to specific structures which, even if in everyday language they are called regulatory authorities, are not defined at the level of Romanian legislation.

In Romania, autonomous administrative authorities were explicitly provided for in the 1991 Constitution, which established a separate system for these bodies, removing them entirely from the Government's sphere of influence and placing them under Parliament's control, while allowing them to exercise their specific functions in a spirit of independence. Currently, the Constitution of Romania, in art. 117 para. (3) provides that Autonomous Administrative Authorities may be established by organic law. Also, Title III of the Administrative Code is dedicated to autonomous administrative authorities: art. 69-72. The autonomous administrative authorities provided for in art. 51 para. (1) are authorities of the central public administration whose activity is subject to the control of Parliament, “under the conditions provided for by the laws of their establishment, organisation and functioning” and which are not in a subordinate relationship with the Government, the ministries or their specialised bodies.

The establishment and dissolution of autonomous administrative authorities are made by organic law, and "The appointment and dismissal of the management of autonomous administrative authorities are made by Parliament", under the conditions provided for by the law establishing them.

It was noted in a valuable work that "the express regulation by the Administrative Code of the definition of autonomous administrative authorities, one of the many provisions of the Code through which situations that have created problems in practice are resolved and which oblige the legislator to proceed in a unique manner regarding the legal status of these authorities. The features resulting from this definition are the following: autonomous administrative authorities are provided for in the art. 51 para. (1) of the Code; they are authorities of the central public administration; their activity is subject to the control of Parliament, under the conditions of their establishment, organisation and functioning laws and are not in subordination relations with the Government, ministries or their specialised bodies" (Vedinaș et al., 2022).

We tried to identify all the autonomous administrative authorities in Romania, other than those in the Constitution (the process being quite difficult due to a lack of correlation of legislation in the first place and perhaps even a misunderstanding of the concept of autonomous), we managed to identify a number of 10 such authorities: the National Council for the Study of Security Archives, the National Council for Combating Discrimination, the Competition Council, the National Audiovisual Council, the National Integrity Agency, the Financial Supervisory Authority, the National Supervisory Authority for the Processing of Personal Data, the National Regulatory Authority in the Field of Communications, the National Regulatory Authority in the Field of Energy, the National Office for the Prevention and Combating of Money Laundering.

In addition, we also identify these APIs in Romanian legislation (we will see that this concept exists in French jurisprudence and literature), an example in this sense being the National Press Agency AGERPRES, which, according to its organization and functioning law, "is organized and functions as an autonomous public institution, of national interest, with legal personality, editorially independent, under the control of Parliament"

It is worth mentioning that, from the analysis of Romanian legislation, the classification of autonomous authorities emerges into authorities established by the Constitution (Court of Auditors, Ombudsman etc.) and autonomous authorities established as a result of the obligation of Member States to transpose specific directives (this being the situation of national regulatory authorities), as a natural effect of accession to the European Union.
However, regardless of which category they fall under, autonomous status is a defining element of these authorities. As for the national regulatory authorities, they are part of the category of autonomous administrative authorities as a conclusion of the analysis of the constitutional provisions and the normative acts establishing them, the phrase "autonomous administrative authority, with legal personality, under parliamentary control, fully financed from its own revenues, independent in decision-making, organizationally and functionally" - ANRE, or "autonomous public authority with legal personality, under parliamentary control, fully financed from its own revenues (…) being independent in decision-making, organizationally and functionally from other public authorities" - ANCOM. As for ANRE, the legislator provides, in addition to the general elements mentioned, several guarantees of the authority's autonomy: in exercising its regulatory powers, ANRE's activity will not be subject to any restriction by any other authority (art. 1, paragraph 3, of GEO no. 33/2007). The appointment and dismissal of the members of the Regulatory Committee, as well as the president and the two vice-presidents, are made by the Parliament in a joint session of the two Chambers (art. 4 paragraph 1 of the Emergency Ordinance no. 33/2007). Even if the Parliament's appointment of management is essential to the autonomy of administrative authorities, it is evident that, in practice, we cannot speak of total independence from the political factor. The situation is similar in the case of ANCOM, where management is ensured by a president and two vice-presidents, appointed by the two Chambers of the Parliament, which reunite in a joint session, with a majority vote of the deputies and senators present. (art. 11 paragraph 1 of the Emergency Ordinance no. 22/2009).
Finally, we note a recent Decision of the Constitutional Court of Romania, which emphasised that "the autonomy of administrative authorities, established under art. 117 para. (3) of the Constitution, does not represent an absolute concept, and the organic legislator establishes the activity and functioning of these entities."

2. REGULATORY AUTHORITIES IN FRANCE

The French doctrine states with regard to these types of authorities that “in order to define independent administrative authorities, we can say that these are the commissions that have autonomous regulatory power in the area in which they are called to act” (Dieckhoff, 2011). The author further states on their essential characteristic that “they do not depend on any of the three existing powers: executive, legislative and judicial. This is an essential condition for the correct balance of the sectors in question. Their independence is double: organic, on the one hand, functional on the other” (Dieckhoff, 2011). It can be noted that, unlike the Romanian literature (but also the constituent legislator and later that of the Administrative Code), which used the notion of autonomous, with reference to these types of authorities, the French one refers to the concept of independent, which, although synonymous, seems to give greater strength to these authorities. On the other hand, it was emphasised that this independence is not unlimited and is not established by reference to the fact that these authorities have the power to allocate their own financial resources (Rouyere, 2010).
As Marie-Anne Frison-Roche mentioned in her article dedicated to the Independent Administrative Authority, the crucial point lies in the last adjective: the "independent" nature of the organism. This indicates that this entity, which is purely administrative and intended to be part of the executive hierarchy, does not obey the Government. In this context, regulators are often portrayed as free agents, raising questions about their legitimacy, as they can no longer derive authority from the Government. This independence also introduces the challenge of their accountability, the responsibility of the State for their actions, and the accountability for their exercise of power.

In an official report of the French Parliament, following an extensive analysis of these authorities, a series of characteristics was noted. First of all, the specificity of independent administrative authorities lies in their dual nature: they are both administrative and independent, a relationship with the executive power that is difficult to define, given that they are also administrative authorities. Regarding the independence of these authorities, it was emphasised that this is a state of mind which cannot be regulated (Report no.44/2006).

The French Constitutional Council noted that “an independent authority may be empowered by the legislator to adopt rules for the application of the law, but emphasized that this empowerment only concerns measures of limited scope, both in terms of their field of application and content” (Decision no. 88/1989). In another (Decision no. 84/1994), it held that "the designation of an independent administrative authority (...) to exercise such important powers in the field of communications (...) constitutes a fundamental guarantee for the exercise of a public freedom".

It is worth noting that, in the absence of constitutional recognition of independent administrative authorities, the French legislator adopted an organic law to regulate their status. Thus, on 20 January 2017, the Law on the general status of independent administrative authorities and independent public authorities was adopted.

Art. 1 provides that any independent administrative authority or independent public authority is established by law, and that the law also establishes the rules on their composition and powers, as well as the fundamental principles relating to the organisation and functioning of such authorities. We identify elements of the status of independence of the authorities whose status is regulated by the normative act: the term of office is between 3-6 years, which can be renewed only once, the mandate is not revocable, in other words, they cannot be removed from office due to political interference. Similar to Romanian regulations, the law expressly states that members of independent administrative authorities and independent public authorities shall neither receive nor seek instructions from any authority (art. 10).

It is noted that the French legislator has established two types of independent authorities, some administrative (AAI) and others public (API). The law has reduced the number of independent authorities (from approximately 40 to 24) and created, within this category, independent public authorities (APIs). The list of AAIs and APIs is set out in the annexe to the law. Independent public authorities have legal personality and there are seven independent public authorities: the French Anti-Doping Agency (AFLD); the Financial Markets Authority (AMF); the Transport Regulatory Authority (formerly the Regulatory Authority for Railway and Road Activities - ARAFER); The Regulatory Authority for Audiovisual and Digital Communications (ARCOM) which succeeded the Superior Council of Audiovisual (CSA) and the High Authority for the Dissemination of Works and the Protection of Rights on the Internet (HADOPI); the High Health Authority (HAS); the High Council of Auditors (H3C) and the National Energy Advocate. On the other hand, the law lists 17 independent administrative authorities (AAI): Airport Noise Control Authority (ACNUSA); Competition Authority; Regulatory Authority for Electronic Communications, Post and Press Distribution (ARCEP); National Gambling Authority; Nuclear Security Authority (ASN); Compensation Committee for Victims of Nuclear Tests (CIVEN); Commission for Access to Administrative Documents (CADA); Energy Regulatory Commission (CRE); National Defence Secret Commission (CSDN); National Commission for the Control of Information Techniques (CNCTR); National Commission for Information Technology and Liberties (CNIL); National Commission for Campaign Accounts and Political Financing (CNCCFP); National Commission for Public Debates (CNDP); General Controller of Private Places of Liberty (CGLPL); Defender of Rights; Superior Council for the Evaluation of Research and Higher Education (HCERES); High Authority for Transparency in Public Life (HATVP). From a regulatory perspective, the category of independent public authorities falls under that of independent administrative authorities, thereby preserving its status.

Among these, as in Romania, we selected regulatory authorities from the same fields: energy and communications. Thus, in the field of energy, the authority is the Energy Regulatory Commission (CRE), whose activities are regulated by the law of 10 February 2000.
In France, the communications sector is regulated by the Regulatory Authority for Electronic Communications, Postal Services and Press Distribution (ARCEP). The authority was created by the Law of 26 July 1996, which prepared the opening of telecommunications to competition. Subsequently, its powers were expanded: the law of 20 May 2005 added regulation of postal services, and the law of 18 October 2019 extended its powers to press distribution.
It is worth noting that the two laws exclusively regulate the activities of the two authorities and their methods of organisation, while preserving, at the same time, the general characteristics established by the law governing the status of autonomous administrative authorities.

DESIGNING THE FUTURE: ROMANIA CAN CONSIDER THE FRENCH MODEL OF AUTONOMOUS AUTHORITIES

A thorough integration of national, European, and international legislative, jurisprudential, and doctrinal sources facilitates understanding of the convergences and divergences among systems which might appear similar. This approach led to the design of the comparative analysis synthesised in Table 1, which is grounded in a consistent conceptual framework and includes a detailed examination of the legal framework governing regulatory authorities.

Table 1. Regulatory authorities in Romania and France

Criterion	Romania	France
Constitutional consecration	Provided for in the Constitution (art. 117 paragraph 3).	There is no constitutional enshrinement, but there is a 2017 framework law.
Framework law on the status	There is no general law; sectoral regulation.	The law of January 20, 2017, regulates AAI/API in a unified manner.
Terminology	Autonomous administrative authorities.	Independent administrative authorities (AAI) / independent public authorities (API).
Typology of authorities	Constitutional/autonomous by law.	AAI (without legal personality) and API (with legal personality).
Main areas analysed	ANRE (energy), ANCOM (communications).	CRE (energy), ARCEP (communications).
Method of establishment	By organic law.	By ordinary law, within the framework of the 2017 regulation.
Institutional subordination	Under parliamentary control.	Independence from the executive; limited parliamentary control.
Appointment of management	Appointment by Parliament.	Variable but depoliticised appointments; strong guarantees.
Revocation of management	Revocable – risk of political influence.	Irrevocable – essential guarantee of independence.
Term of office	Variable, established by special law.	Between 3 and 6 years, renewable only once.
Decision-making independence	Declared by law, but vulnerable in practice.	Legally protected by the absolute prohibition on receiving instructions.
Functional independence	Potentially affected by political mechanisms.	Reinforced by the mandate structure.
Organizational independence	Partial; depends on successive regulations.	Strong; authorities establish their organisation.

Financial independence	Own revenues, but indirect parliamentary control.	Strengthened financial autonomy, especially for API.
Relationship with Parliament	Strong control (appointments, dismissals, reports).	Limited control, no influence on mandates.
Institutional tradition	Relatively recent.	Historically developed and consolidated.
Influence of EU law	Major; many institutions were created through transpositions.	Important, but integrated. A mature administrative system.
Legislative stability	Variable, frequent changes.	High stability after 2017.
Guarantees against politicisation	Moderate.	Strong (irrevocability, incompatibilities).
Jurisdictional control	Constitutional Court and the courts; limited autonomy.	The State Council provides strict and consistent control.
Clarity conceptual	The notion of autonomy is uneven.	The concept of independence is clearly defined and applied.

Source: The table is the result of the research of the authors

First of all, both systems have been influenced, or instead imposed, by European Union law, which has established clear standards regarding the functional, organisational and decision-making independence of national regulatory authorities, especially in the fields of energy and electronic communications. The European directives have standardised the minimum requirements for the status of these authorities, emphasising the principle of independence from political and economic bodies and the need for safeguards to protect the decision-making process from external influence.
However, the concrete way of organising and implementing these standards differs visibly between the two states. Romania stands out for the constitutional provisions of autonomous administrative authorities, which provide a solid formal framework for their functioning but are also very general. However, the institutional dependence on Parliament in leadership appointments and the possibility of recall can create risks of politicisation, thereby limiting the authorities' real independence. Thus, the legally recognised autonomy can sometimes lose its consistency.
As for the French model, although lacking constitutional enshrinement, it has developed a robust legislative framework, consolidated by the 2017 Law, that uniformly regulates the status of independent administrative authorities and independent public authorities. The independence of members in the exercise of their mandate is guaranteed by mechanisms such as irrevocability, limited mandates, and strict incompatibility rules, which confer effective autonomy on these authorities. In addition, France has a long tradition of independent authorities that play a well-defined role in the institutional balance and the protection of public freedoms.
In terms of finance, although both states provide for self-financing mechanisms, French legislation establishes additional safeguards to prevent influence through budgetary pressures. In contrast, in Romania, parliamentary control can serve as a mechanism of indirect influence.

CONCLUSIONS

The analysis highlights the Romanian framework more than the French one, given Romania's stricter regulations, whereas France clearly outlines the status of independent authorities. Without a unified legislative framework, regulation remains fragmented. A framework law, like France's 2017 law, could standardise autonomy criteria, clarify institutional relations, set consistent mandate durations, and enhance independence.
Given Parliament's role in appointing and dismissing regulatory heads, procedures should be reviewed. Additional safeguards - such as irrevocable mandates (except in strict cases), professional standards, and dismissals only for serious misconduct - would reduce politicisation and bring Romania in line with more advanced European standards.

Doctrinal differences and the absence of a standard legislative definition generate conceptual confusion. Therefore, it is advisable to establish the terminology within a general normative act, explicitly differentiating organisational, functional, and financial autonomy, and to incorporate these concepts into the Romanian Administrative Code. This approach would enhance regulatory coherence and support future comparative analyses with other national systems, both within Europe and worldwide.

To prevent indirect influence through budgetary mechanisms, predictable financing formulas, and political interference in budget decisions, it is essential to maintain fund management autonomy. Moreover, such a measure aligns with the OECD recommendations on "Creating a Culture of Independence".

Ultimately, both models aim for the same key goal: creating regulatory authorities that can operate independently in the public interest and consistently apply European legislation. However, their levels of independence differ: France has a more unified and effective institutional system, whereas Romania, despite an adequate formal regulatory framework, continues to face issues related to politicisation, legislative instability, and conceptual clarity. Additionally, it should be noted that, while France has enacted legislation governing the status of autonomous authorities, in Romania, this is managed individually through laws on the establishment, organisation, and functioning of each authority, which makes a more detailed analysis more difficult.

These differences indicate that the development of regulatory authorities is a dynamic process, heavily influenced by administrative tradition, institutional culture, and states' capacity to implement and maintain the principle of independence.

AUTHORS CONTRIBUTIONS

The author/authors listed have made a substantial, direct and intellectual contribution to the work and have approved it for publication.

CONFLICT OF INTEREST STATEMENT

The authors declare that they have no commercial or financial relationships that could be construed as a potential conflict of interest.

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