



THE INDEPENDENCE OF ECONOMIC REGULATORS

Filippo Cavassini
Policy Analyst
Regulatory Policy Division
Public Governance and Territorial Development Directorate

RPI Annual Westminster Conference
London, 23 April 2015



Overview

- OECD Background
- Defining independence
- Assessing independence
- Conclusions & next steps



OECD BACKGROUND



2012 Recommendation on Regulatory Policy and Governance



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

<http://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm>



2014 Best Practice Principles on the Governance of Regulators

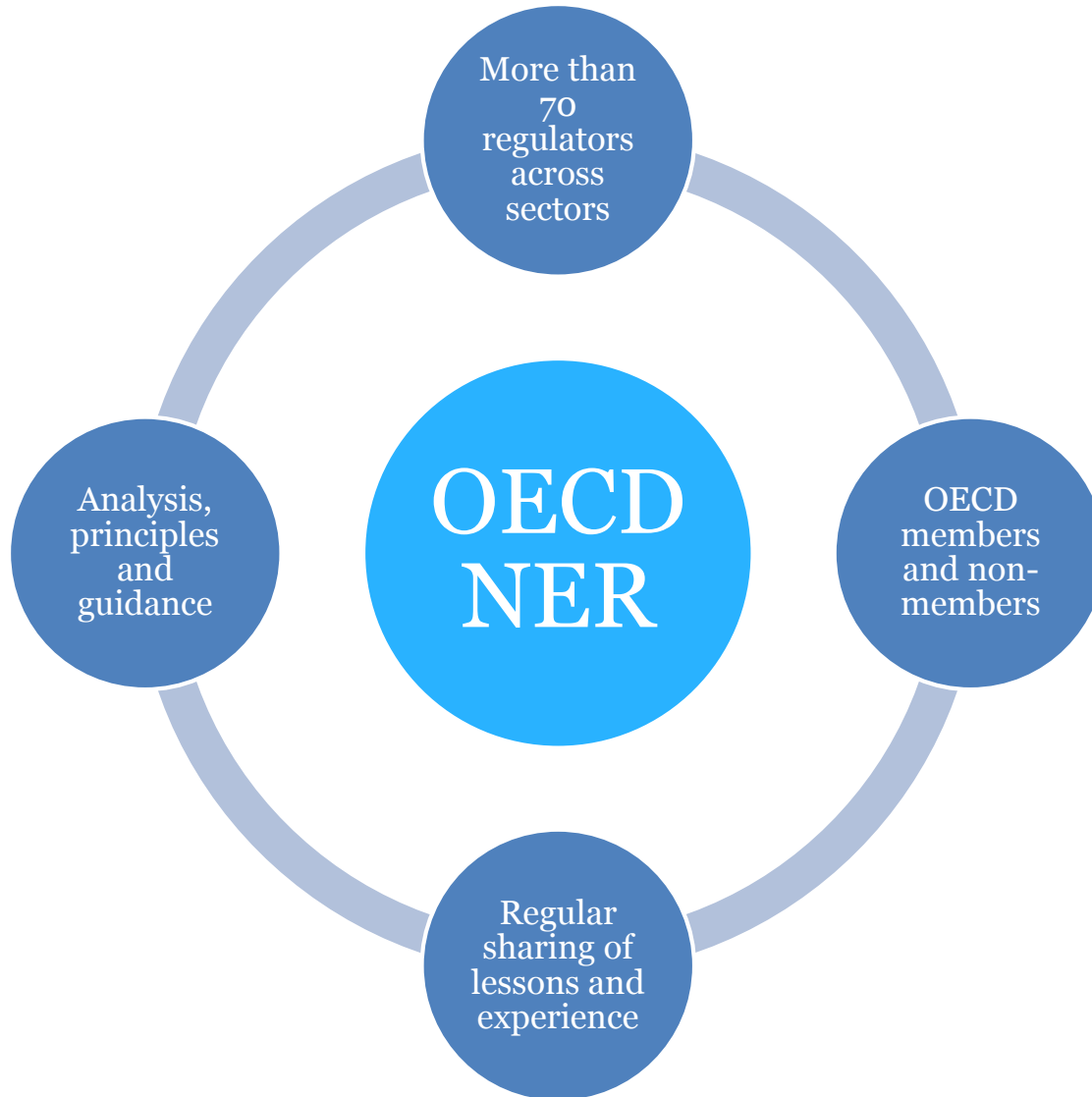


1. **Role clarity**
2. **Preventing undue influence and maintaining trust**
3. **Decision making and governing body structure**
4. **Accountability and transparency**
5. **Engagement**
6. **Funding**
7. **Performance evaluation**

<http://www.oecd.org/gov/regulatory-policy/governance-of-regulators.htm>



The Network of Economic Regulators





DEFINING INDEPENDENCE



What's an economic regulator?

Institution/body authorised by law

Regulatory power over sector/market

Setting prices/improving operation of the market

Ensuring access to service and reasonable rate of return



What's independence?

“Arm’s length” → shield against directions on decisions by executive govt (UK 2003)

Legal and functional separation from private and public operators (EU 2002)

Institutional set-up → special provisions for the dismissal of head/board (EU 2009)



Why independence?





Formal vs. practical independence

| Some formal features (<i>de jure</i>) | Some practical features (<i>de facto</i>) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">• Legal status of the regulator• Formal relationship with ministers, ministries and other government bodies and institutions• Terms of appointment for board members and termination provisions• Pre-employment and post-separation provisions• Funding | <ul style="list-style-type: none">• Administrative and institutional culture• Working relationship with government• Leadership• Daily interactions with regulated industry• Setting and managing the regulator's budget |



ASSESSING INDEPENDENCE



Product Market Regulation (PMR)



> A to Z

Search oecd.org



OECD Home

About

Countries ▾

Topics ▾

> Français

[OECD Home](#) > [Economy](#) > [Productivity and long term growth](#) > Indicators of Product Market Regulation Homepage

- > Economic outlook, analysis and forecasts
- > Economic surveys and country surveillance
- > Monetary and financial issues
- > Public finance and fiscal policy
- > **Productivity and long term growth**
- > Regulatory reform and competition policy
- > Labour markets, human capital and inequality
- > Economic policies to foster green growth

Indicators of Product Market Regulation Homepage

[Access Indicators](#) | [Sources and Background](#)

A competitive product market environment that allows new firms to challenge incumbents, efficient firms to grow, and inefficient ones to exit, can help boost economic growth and living standards. Two main policy ingredients are necessary for a growth-enhancing competition environment. First, product market regulation should be set in a way that does not hamper competition and, second, an effective antitrust framework needs to be in place that safeguards a level playing field among firms. The OECD has developed indicators in both of these policy areas which are presented on this webpage.

Compare your country More topics English ▾

Product Market Regulation

Overview

Are market rules fostering competition?

Markets are regulated for many good reasons - to reassure consumers and investors, safeguard people's health and protect the environment. But regulation can come with a cost. Business may face excessive compliance burdens; entrepreneurs may be discouraged; monopolies may be rewarded.

Getting the balance right is essential to ensure the benefits of regulation don't outweigh the costs. It's also essential to encouraging healthy competition, which can lower prices, widen consumer choice and encourage innovative start-ups - the key to job creation. For that to happen, regulations must, first, encourage competition in product markets, such as power supply and retail distribution, and, second, discourage anticompetitive behaviours, such as monopolies.

This data tool from the OECD lets you investigate the extent to which national rules encourage competition.

[start tour >](#)





PMR: regulatory management of sector regulators (2013)

Independence

Insulation of the regulator from influence by the government and the regulated sectors

Accountability

Reporting, transparency and performance information provisions for the regulator vis-à-vis government, the regulated industry and the general public

Scope of action

Range of activities that the regulator performs



PMR independence indicator

Instruction

- Instruction from the government on long-term strategy, work programme, individual cases, appeals
- Which body can overturn the decisions of the regulator
- Independence stated in law

Staff

- Staff recruitment
- Appointment , term of office and dismissal of agency head/board
- Pre- and post-appointment employment of the agency head/board
- Positions in government/industry while in office

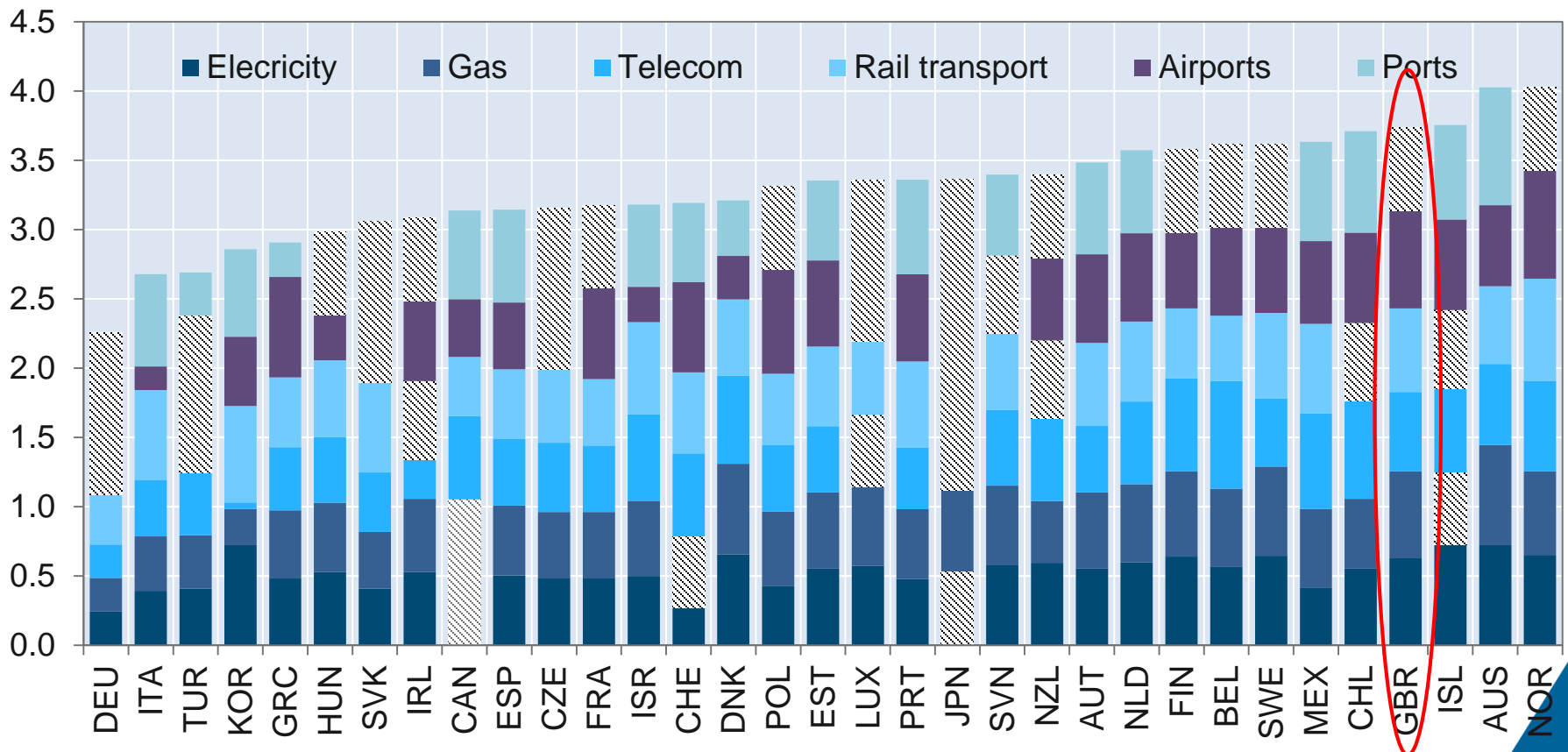
Budget

- Source of funding (dominant or multiple)



PMR: independence of economic regulators

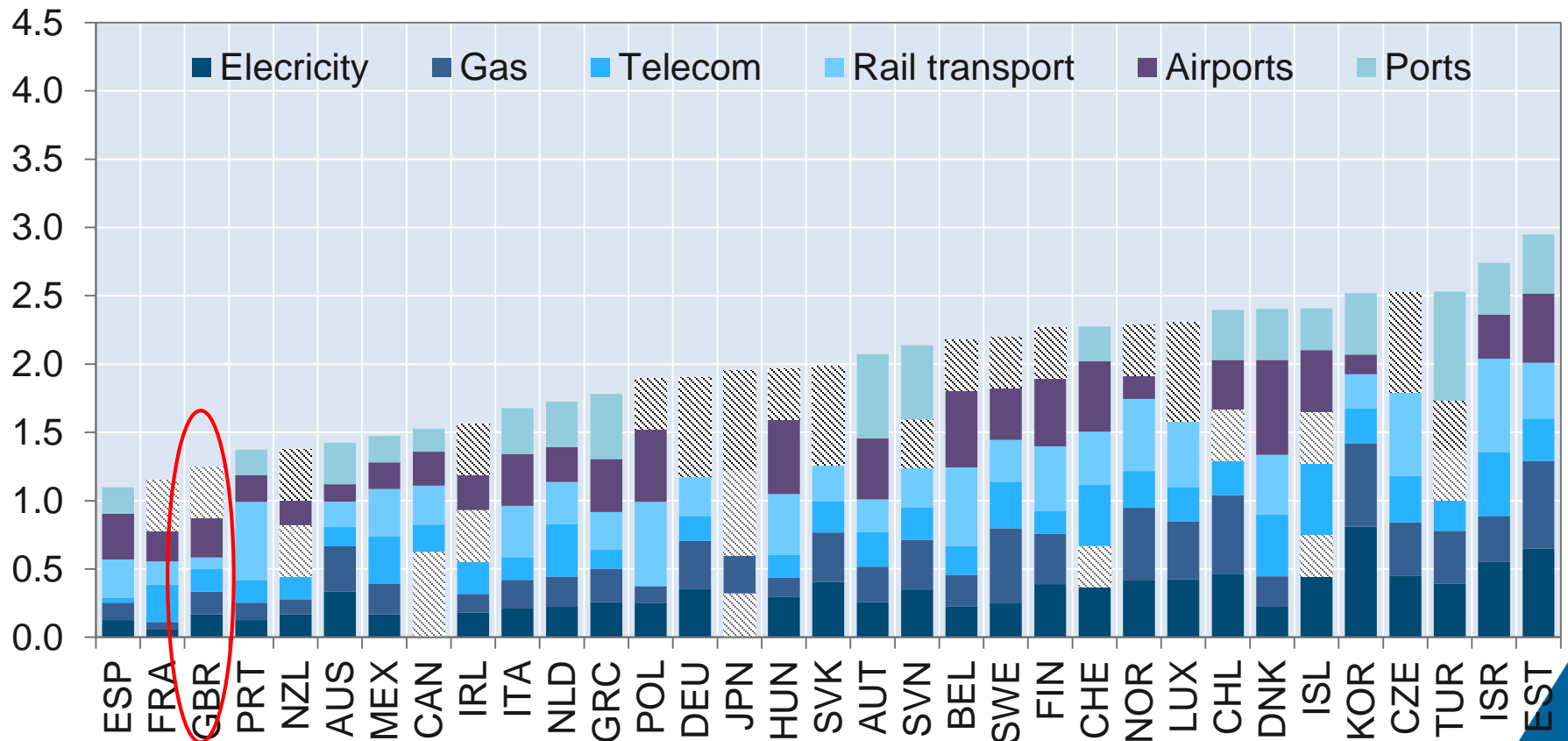
Index scale 0 to 6 from most to least independent





PMR: accountability of economic regulators

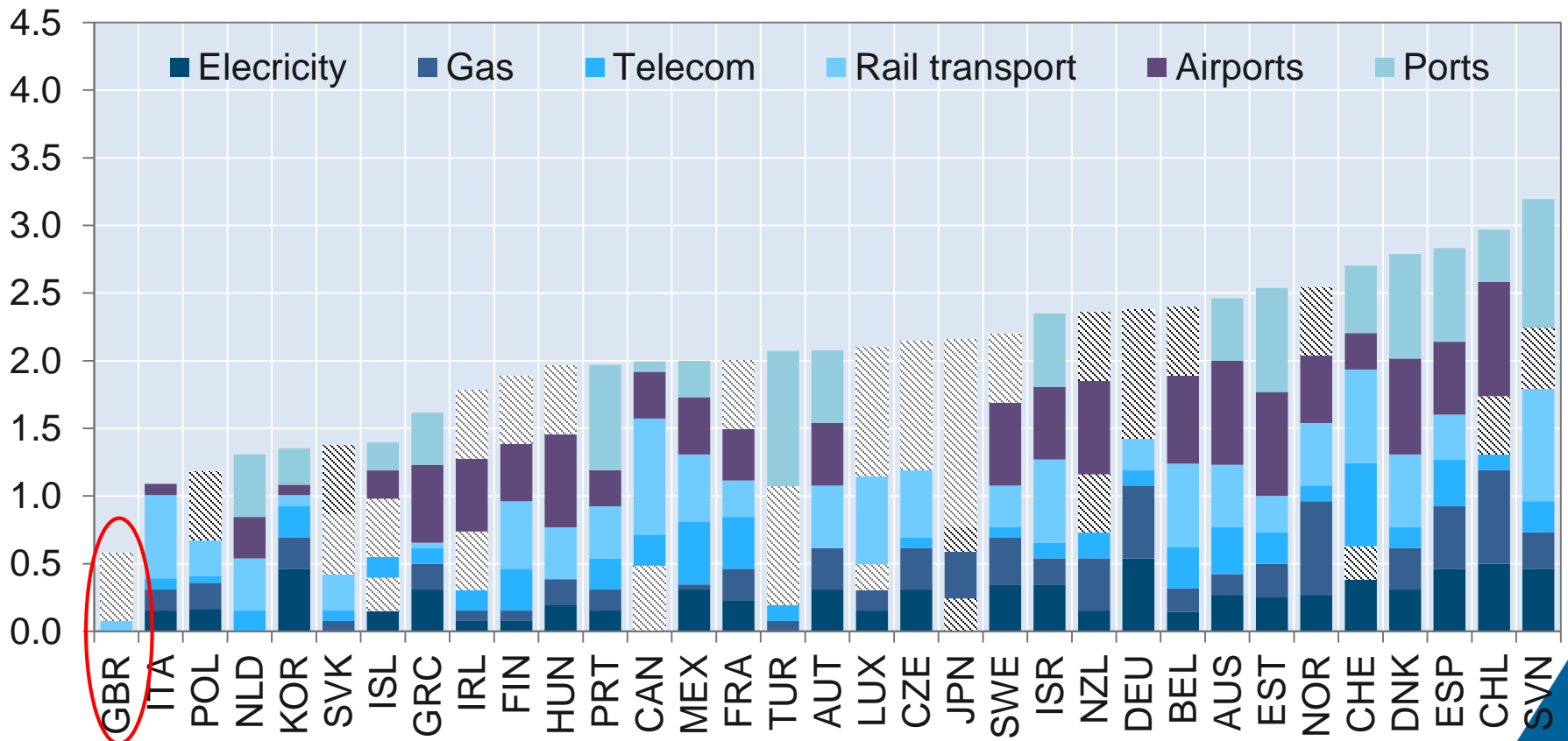
Index scale 0 to 6 from most to least accountable





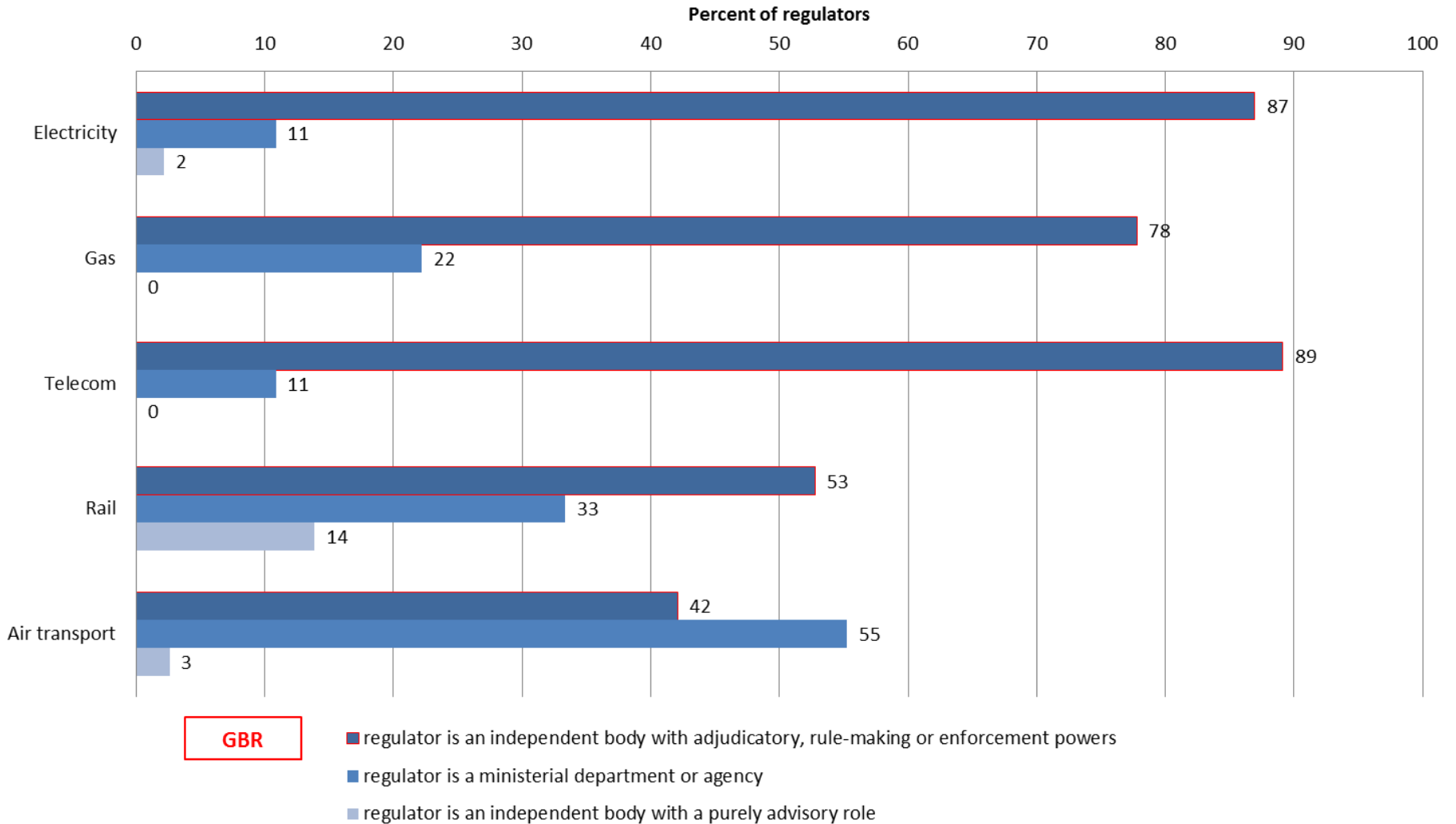
PMR: scope of action of economic regulators

Index scale 0 to 6 from most to least scope of action



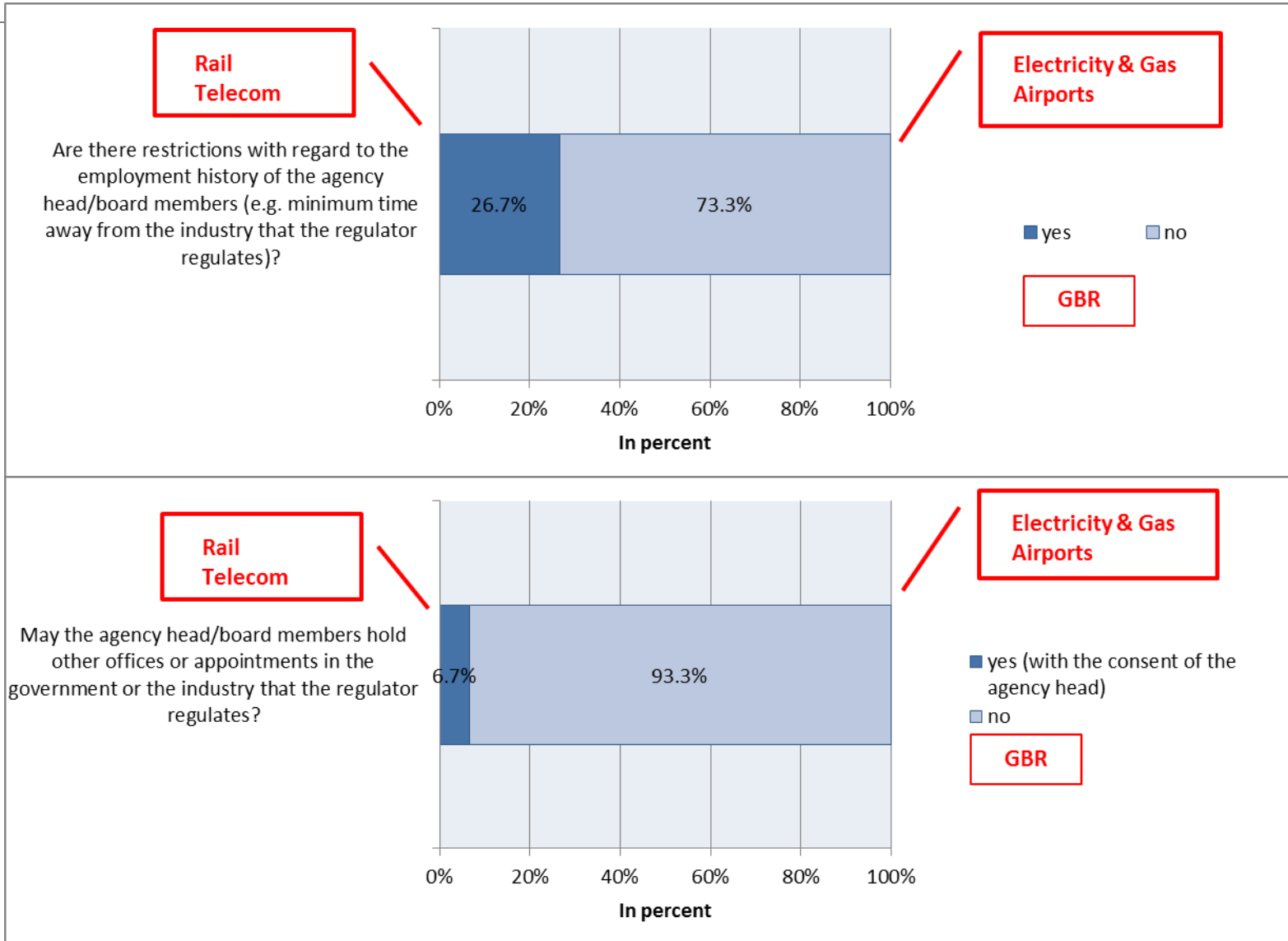


Status of regulators



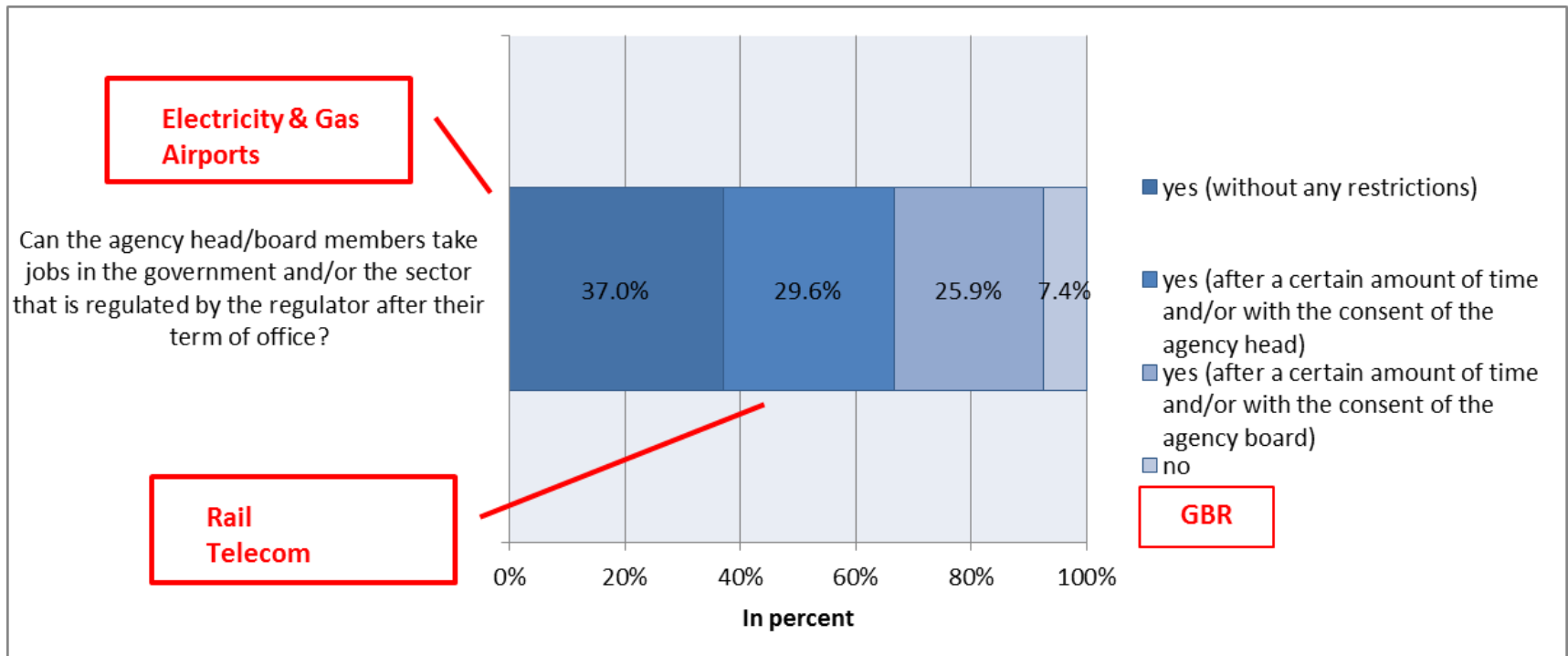


Heads/Boards employment (I)



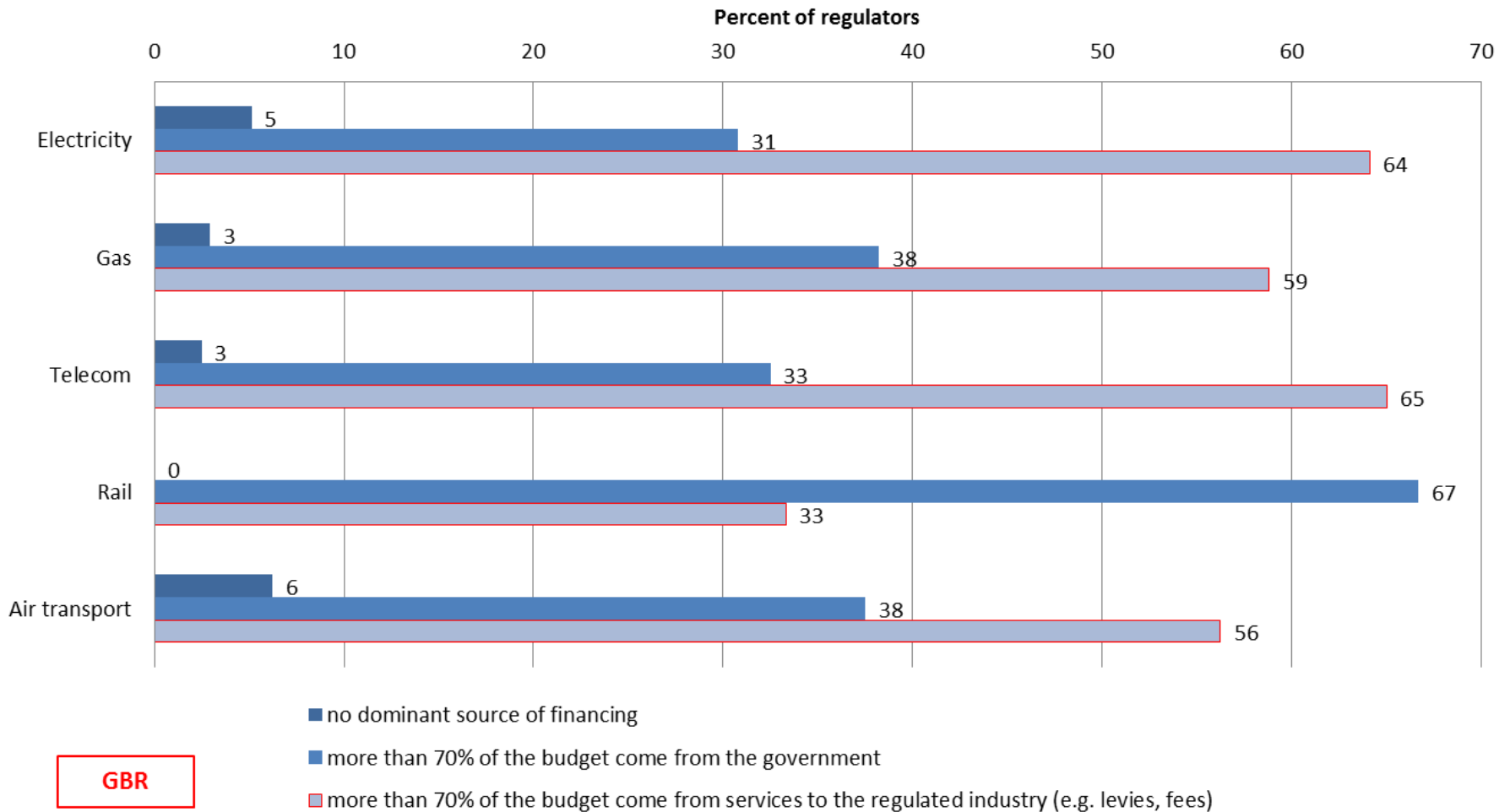


Heads/Boards employment (II)



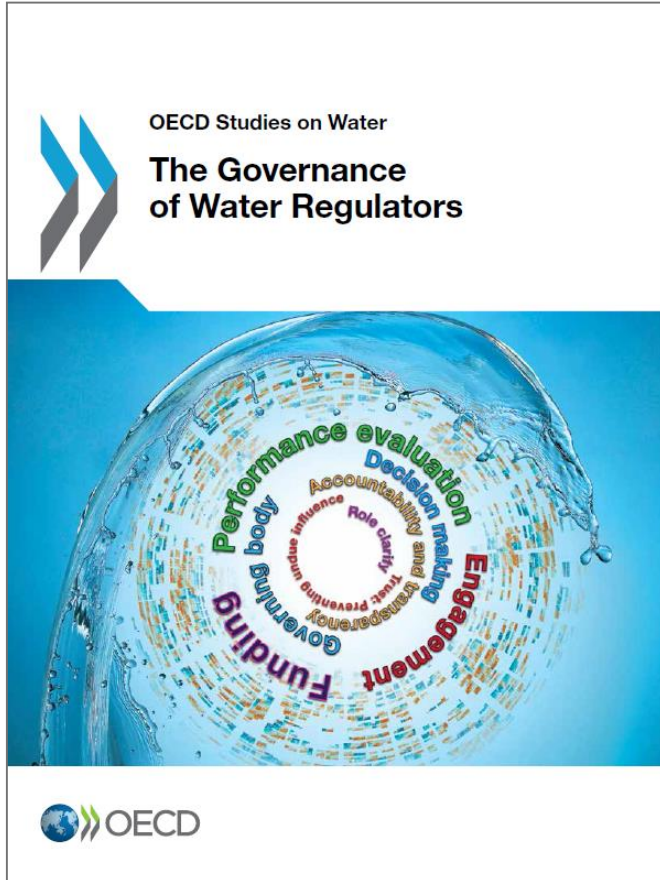


Budget





The Governance of Water Regulators



Documenting the features of a sample of 34 water regulators

Based on a detailed survey drawing on the Governance of Regulators Principles

Developed in close co-operation with the water regulators of the Network of Economic Regulators

Launched at the World Water Forum on 13 April 2015 in Korea



Water regulator survey

1. Institutional setting

a) Legislative framework

b) Independence

c) Co-ordination with other relevant parts of government

2. Mandates and roles

a) Objectives, perimeter / activities and functions

b) Powers of the regulator

3. Internal organisation

a) Governance models

b) Personnel

c) Financial resources

d) Decision making process

4. Accountability mechanisms

5. Tools and mechanisms to ensure regulatory quality

a) Consultation with operators and consumers

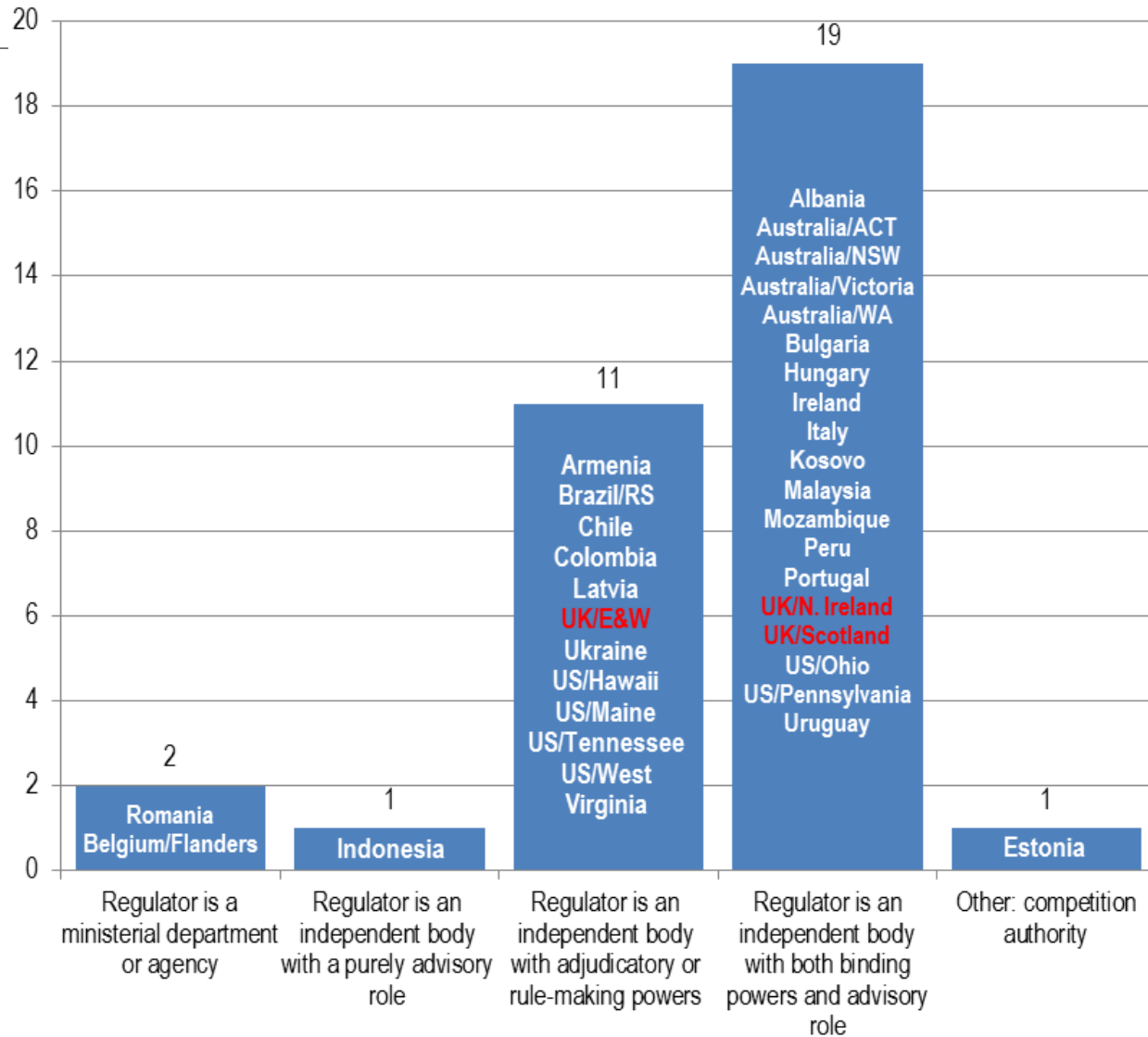
b) Dispute resolution

c) Impact analysis of regulatory decision

d) Measurement and reduction of administrative burdens

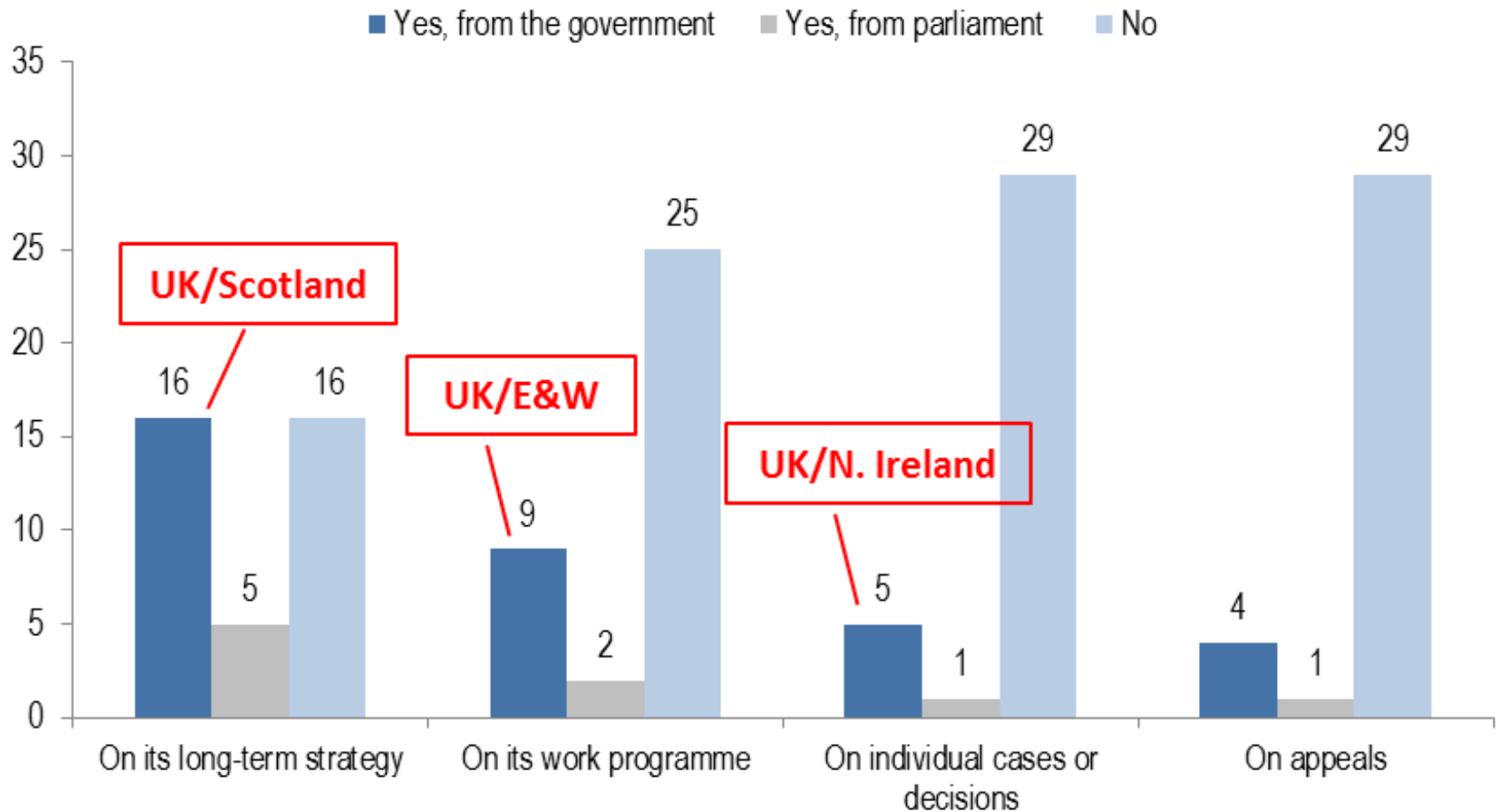


Status of regulators



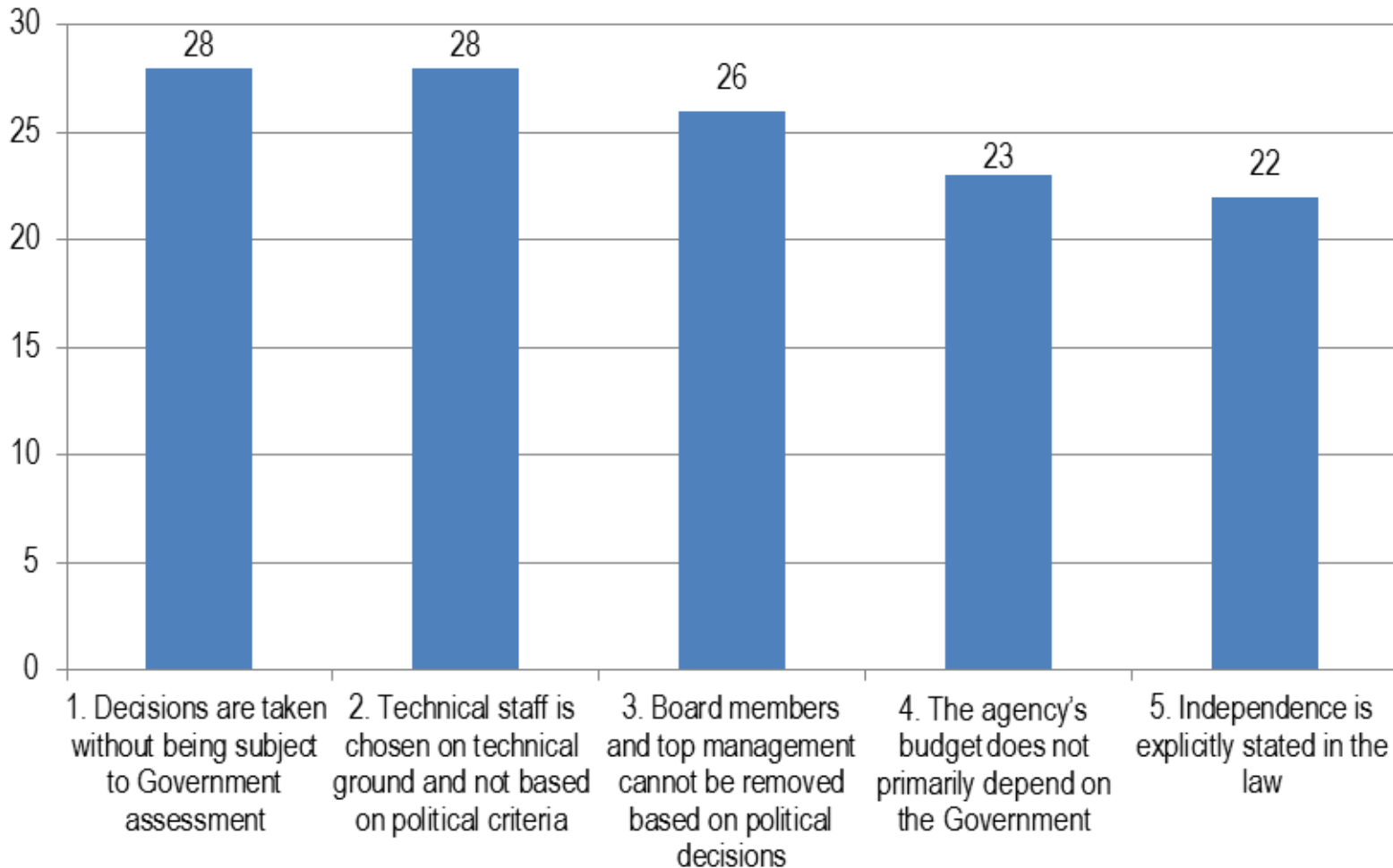


Instructions from government



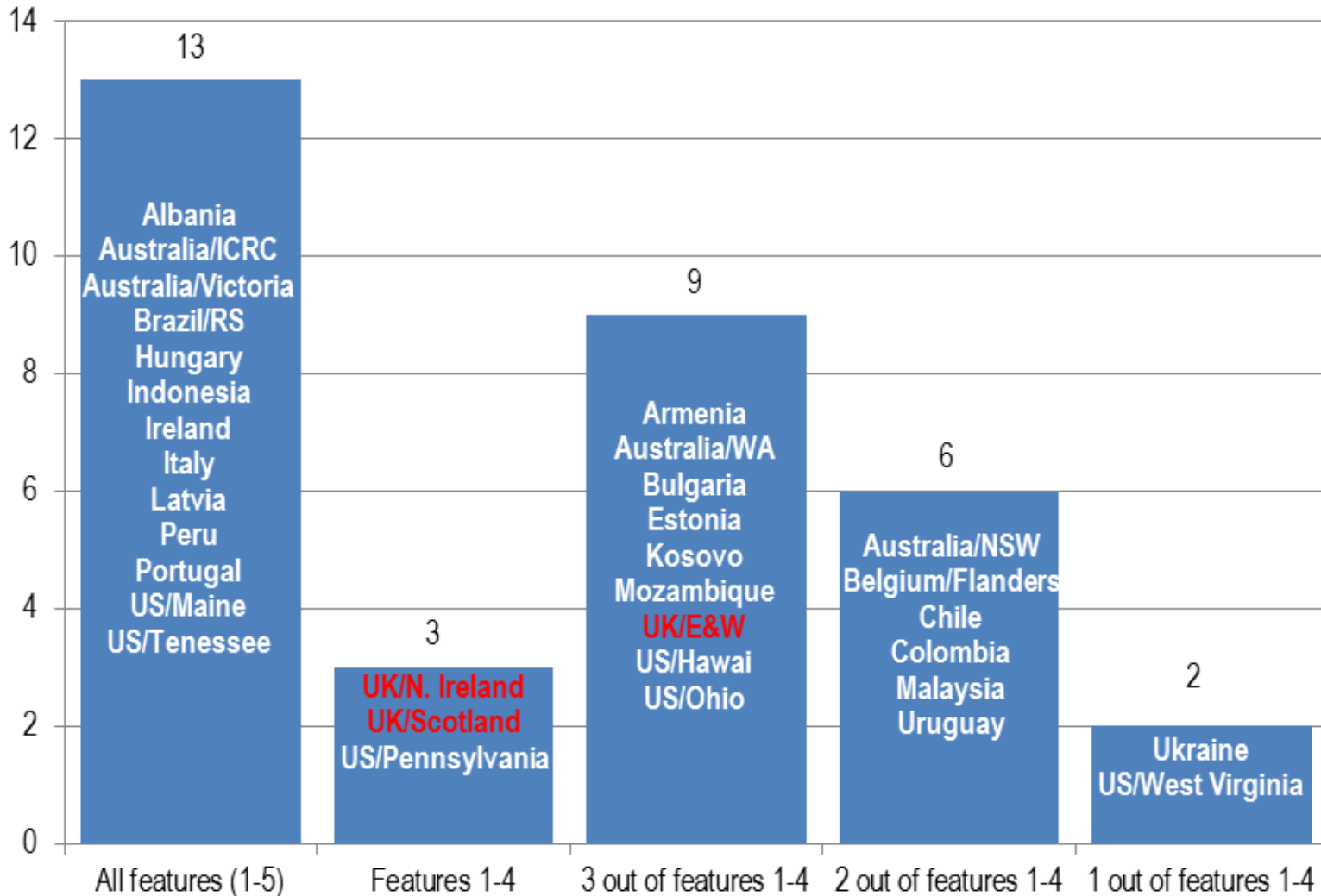


Independence from political influence: features





Independence from political influence: regulators





Public policies and investment in network industries

2007 OECD Survey on Infrastructure and Investment

Effects of regulation on investment through pricing (sector and firm-levels)

Considering also independence of regulators (legal status, own budget, decisions)



Key findings

Data suggest that independence of sector regulators can help establish a stable and credible framework for investment

Policy mix: incentive price regulation has + impact on I when accompanied by independent regulator

Context: positive effect of independent regulator on certain sectors (e.g. telecom) but not on others



CONCLUSIONS & NEXT STEPS



Conclusions

- Some good understanding of the theory and formal requirements of independence
- BUT few unknowns
 - How does independence work in practice?
 - Examples of the impact of independence (or lack of) on specific sectors?
 - What interactions with other governance features (e.g. accountability, clarity of the role of the regulator, performance evaluation)?



Next steps

- Deepening understanding
 - 15 April NER roundtable
 - Questionnaire with practical questions (comments before being finalised and circulated among NER members)
 - Practical examples of “being independent”
- Improving measurement of independence
- Better understanding of other governance features
 - Series of case studies on transparency, accountability and inter-institutional co-ordination
 - Reviews of the performance assessment framework of economic regulators



THANK YOU!