



UiO • **Faculty of Law**
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Independent Administrative Authorities in Norway

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‘Norwegian Model of Political Accountability’

Other national models

Context of huge variations:

UK banking regulation (independence) and monetary policy (non)

German banking regulation (non) and monetary policy (independence)

What is seen to demand independence and political accountability

Pressing problems:

Theoretical justifications for granting (or not granting) a specific authority independence?

Coherence between the justification for independence and all the various tasks delegated to independent agencies?

Accountability

Judicial review and liability for damages caused

Central bank independence

State borrowing: limits to autocracy in 18th century

Post WWII constitutions: Germany

Great inflation of the 1970s

"Rules Rather than Discretion: The inconsistency of optimal planning" (1977)

Norwegian reception, text by central bank governor Svein Gjedrem, [Central bank https://www.norges-bank.no/aktuelt/nyheter-og-hendelser/Artikler-og-kronikker/art-2005-02-04html/](https://www.norges-bank.no/aktuelt/nyheter-og-hendelser/Artikler-og-kronikker/art-2005-02-04html/)

WTO and EU

- WTO: state aid, competition and utilities
- EU: add central banking, market regulation and supervision
- Regulators at an EU level, ‘euro-system’ with national authorities, independence beyond

Political/democratic legitimacy issues

- Political accountability issues
- Separation of powers
- ‘Competition for power’: not always. Rational allocation of work, void responsibility/blame.

Judicial review

- Political accountability issues
- Separation of powers
- ‘The feasibility of restricting the delegated powers to the technical implementation of policy decided by elected officials’
- Independence as ground for intensive review
- Justification for independence: ‘exercise technical expertise’, grounds for restraint
- ICJs case law on review of ECB’s banking supervision

‘Norwegian Model of Political Accountability’

Utvalget til å utrede spørsmål vedrørende
Stortingets kontroll med forvaltningen
(Ingvaldsenutvalget). Dok. 7 (1972/73).

Domestic challenges by state ownership

Covid in the Scandinavian countries

Low intensity judicial review

- Few remedies
- The EEA system without effective sanctions and remedies for non-compliance

Literature on Norwegian model

Andenas, 'Independent Administrative Authorities in Comparative Law: Scandinavian Models', Andenas, Caranta Fairgrieve, *Independent Administrative Authorities*, London p 242-272 (2004).

Jon Christian Fløysvik Nordrum, *Bedre regulering? Årsak-virkningsanalyser i norsk reguleringsprosess* (2019)

IMF, OECD, World Bank

- OECD
 - Regulatory Policy Outlook
 - Government at a Glance
 - Regulatory Indicators Survey
 - Country Reports
- World Bank
 - Doing Business
- IMF
 - Country Report (2022)
- EU/EEA

Jon Christian Fløysvik Nordrum, *Bedre regulering? Årsak- virkningsanalyser i norsk reguleringsprosess (2019)*

- Knowledge-based decision making, cost-benefit analysis, impact assessments, enhanced enforcement and analysis of compliance and US models
- Conflict with the Norwegian consensus oriented model of governance

Andenas, 'Independent Administrative Authorities in Comparative Law: Scandinavian Models', Andenas, Caranta Fairgrieve, *Independent Administrative Authorities*, London p 242-272 (2004).

- Administrative law competences of superior bodies
- Administrative appeals bodies, Stock Exchange Appeals Committee.

Andenas, 'Independent Administrative Authorities in Comparative Law: Scandinavian Models', Andenas, Caranta Fairgrieve, *Independent Administrative Authorities*, London p 242-272 (2004).

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Statistics Act 2019, Section 18.

Professional independence and management of Statistics Norway (1) Statistics Norway shall be professionally independent in the performance of its tasks pursuant to this Act. (2) Statistics Norway shall be led by a director general who is appointed by the King in Council, on a six-year contract, with the possibility of reappointment for a second period of up to six years.

Act relating to Norges Bank and the Monetary System, Section 1-4.

Independence of the central bank

(1) The King in Council may adopt resolutions on the objectives of Norges Bank, cf. Section 1-2 and Section 1-3. The Bank shall be invited to offer its opinion prior to the adoption of any such resolution. The Storting shall be notified of such resolutions.

(2) Norges Bank shall not be instructed in the performance of its activities under the Act, cf. Section 1-3, except in extraordinary circumstances. Any resolution instructing the Bank shall be adopted by the King in Council. The Bank shall be given the opportunity to express its opinion prior to the adoption of any such resolution. The Storting shall be notified of such resolutions as soon as possible.

Financial markets supervision appeals bodies

- Stock Exchange Appeals Committee:
Verdipapirhandellovutvalget, NOU 2021:1, abolish,
new body, after no comparison, take away sanctions.
- No reference to IMF, OECD and other international
work
- 5.6.3.”Et tilgrensende spørsmål er om departementet
bør ha adgang til å velge og overta en sak som
ellers skulle behandles i nemnd, for eksempel fordi
saken er av stor samfunnsmessig eller prinsipiell
betydning.”

Tort liability of banking regulators

See No. 78 - The liability of the ECB and the NCAs within the Single Supervisory Mechanism

https://www.bancaditalia.it/pubblicazioni/quader-ni-giuridici/2015-0078/QRG-78.pdf?language_id=1