

# **Towards a Framework to Assess the Informal Independence of Regulatory Agencies**

## **Early Investigations**

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### **Abstract**

Following the development of recent empirical research, we now know a bit more regarding the diffusion of independent regulatory agencies (IRAs) in Western Europe. However, new questions are being raised, especially regarding what happens after the delegation of regulatory competencies, since we still lack information on the “real” functioning of regulatory agencies. Firstly, investigation on this topic requires a framework that allows us to assess the informal independence of agencies. This paper suggests that this kind of independence can be assessed by paying attention to two dimensions: (1) the degree of self-determination of the agencies’ preferences and (2) the degree to which those preferences are translated into regulatory acts. In order to measure the first dimension, two aspects will be examined: the informal independence of IRAs from elected officials, and their factual relationship with regulatees. This paper presents a discussion regarding which indicators will deal with this question. The second dimension concerns the decision-making process, and involves a more original and complex method of assessment. The basic idea is to use information regarding participation in the most significant legislative processes in a given time-period to obtain a structure of interaction which will reveal the relative weight of actors.

In order to achieve this goal, we have adopted a tool developed by Serdült and Hirschi (Serdült et Hirschi 2004) for policy network comparison that generates clear and comparable data about the decision-making process. Such a model produces results, which are in line with classic social network analysis applications. This way, we should be able for example to highlight the degree of centrality of IRAs in the production of rules, and the density of ties among the relevant actors. Furthermore, this paper illustrates the aforementioned approach with the example of the Swiss Federal Banking Commission. Evidence from this case shows that (1) actors others than the political decision makers - namely the regulatees – are also relevant, therefore enquiries on the functioning of IRAs need a relational profile, and (2) formal arrangements do not entirely shape the informal independence.

## **Introduction**

Nowadays, the evaluation of the performances of IRAs represents a challenging matter, firstly because of questions related to the legitimacy of the regulatory arrangements. In fact, these Non Majoritarian Regulators (Coen et Thatcher 2005) are irremediably afflicted by a deficiency of democratic legitimacy. Nevertheless, according to an analogous argument developed by Scharpf (Scharpf 2000), is argued that this gap could be temporarily and partially filled thanks to a sort of legitimacy by outputs, in other words, since the regulation achieved by an IRA is considered to produce “better” results. However, before beginning research on regulatory outputs, we have to further study the functioning of IRAs, and therefore the concept of independence itself.

In this context, we contend that independence, as the most significant characteristic of these agencies (Gilardi 2004b), represents one of the main variables explaining the functioning and the results of the regulation performed by an IRA. Nowadays, a few empirical studies have been executed about the formal independence (Gilardi 2004b; Gilardi 2005). Yet, following our basic idea, whereas formal arrangements are still important, they only partially portray the independence of an agency (Thatcher 2002). In fact, we consider that a merely formal approach (Simon 1957) is misleading in at least two crucial features : the discretion allowed by the institutional framework (Friedberg 1997; March et Simon 1958); and the effects of the relationships - less formalized - with other actors than the decision-makers, namely the regulatees, that possibly will affect the behaviour of IRAs (Stern 1997; Thatcher 2002; Wilks et Bartle 2002). Therefore, we should reasonably suppose that the “real” independence of an

agency might be different from the formal one. It follows that, in order to take into account these issues that could affect the action on an IRA, we need to portray the “real” independence of the agency, too. As a matter of fact, one question must be answered: What is “real” (sometimes called *de facto*) independence?

**The Informal Independence of IRAs as a two-dimensional concept**

In his seminal paper, Majone (Majone 1997) identified IRAs as “(...) high specialised organisations enjoying considerable autonomy in decision making”. According to Verhoest and his colleagues (Verhoest et al. 2004), we have to include in this definition another dimension, the exemption of constraints throughout the use of those competencies.

In this paper we understand this notion of “real” independence in a rather simple manner, namely the autonomy of an agency to shape the regulation executed on a target sector. On the contrary, we have a diminution of independence if the action of an IRA is biased by other actors. To underline the existing complementarities in regards to the formal dimension, we will use the term of *informal independence*.

We now have to make this notion operational. To develop a useful concept, we propose an analytical distinction between the “autonomy of wish” and the “autonomy of power”, in other words between two theoretical component of informal independence: the self-determination of preferences and the integration of these preferences in the regulation process. Taking this distinction seriously means, first of all, (1) establishing what determines the preferences of an agency. Then, (2) we should discuss how the regulatory activity - this is, the production of regulatory acts - does incorporate these preferences (see table 1).

**Table 1 : heuristic scheme of the informal independence of an IRA**

	Informal independence		
	<i>Input</i>		<i>Throughput</i>
<b>Theoretical Components</b>	1) Self-determination of preferences		2) Traslation of preferences into the activity of regulation
<b>Empirically Observable Dimensions</b>	(1.1) Relation between the IRA and the political decision makers	(1.2) Relation between the IRA and the regulatees	(2.1) Influence on the legislative process defining the regulatory competencies

## 1. *The Self-Determination of Preferences*

Being informally independent means at first that the preferences of the agency under investigation are self-determined. In other words, agencies are fully independent if their actions follow the official goals, coupled together with organizational dynamic. In fact, the Public Choice School (Buchanan et al. 2004) has shown quite clearly that every bureaucracy has a propensity to develop an internal logic, which is inseparable from its proper mandate<sup>1</sup>.

On the other hand, we have a reduction of independence if the agency's preferences are hetero-determined, i.e. influenced by others - external - actors. This is the case if the preferences of an agency do *à priori* integrate the fundamental interests of another individual or corporate actor.

Incidentally, since we conceptualize an IRA as an intermediary agency (Braun 1993), the relevant external actors are the political decision-makers and the regulatees (that is to say, the representatives of the regulation's target sector).

Therefore, we have to open the black box in order to measure how much the preferences of an IRA are biased by the influence of these actors<sup>2</sup>. To do so, we focus on four aspects that characterise (every empirically observable dimension of) the first theoretical component of informal independence; namely the relation between the IRA and the political decision makers, and the relation between the IRA and the regulatees. These facets are: (1) autonomy of employees, (2) of resources, (3) of board members, (4) and the vulnerability of the board (see table 2).

## 2. *The Translation of Preferences Into The Activity of Regulation*

We argue that the second component of the informal independence of an agency is the capability to translate its preferences into the regulatory activity, e.g. in *ad hoc* regulatory texts (like directives, resolutions etc.) and then in single decisions (like sanctions etc.). Conversely, we have a reduction of autonomy if external actors, once the agency's preferences established, can manipulate however crucially the production of regulatory acts,

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<sup>1</sup> The distinction between these two aspects represents a puzzle that we chose not to deal with now, admitting with Friedberg (Friedberg 1997) that they compose an unbreakable totality. For further discussions on this topic, see the work of sociologists of organization (Crozier et Friedberg 1981; March et Simon 1958).

<sup>2</sup> For a discussion of the problem related to a lack of independence from the political decision makers, see for example (Alesina et Summers 1993; Cukierman et al. 1992; Kydland et Prescott 1977; Moe 1984). A discussion regarding nuisances related to a scarce autonomy from the regulatees is developed in the capture theory (Stigler 1971).

in order to override the will of the relatable IRA. Incidentally, for a similar argument, see the economists of regulation discussing the capture problem (Martimort 1999; Pelzman et al. 1989; Stigler 1971). In other words, we now consider the agency as a black box and we shall then try to see if others actors can exogenously sway the regulatory process.

To do this, our aspiration would have been to directly measure the agency's independence during the pure activity of regulation, that is, through the procedures of controlling and sanctioning carried out on the target sector. Nevertheless, it seems that there is no empirical feasibility (admitting that the study of every output is impracticable, which is the significance of an analysis supported by only few decision?) nor theoretical basis (how do we establish what is influencing a specific decision, or, even more notably, a non-decision?) regarding this approach. Concerning the latter point, we may add three arguments. First, an agency's pronouncement is only the last step in the regulatory process, and at this time we are not able to catch the previous influences on it. Second, even if other actors could influence single decisions of an agency, their informal pressures remain here elusive, because, from an ex-post point of view, every single decision appears to be accountable to the sole agency<sup>3</sup>. Third, an output analysis is not very useful: in fact, in this case, does a decision of non-sanctioning demonstrate the respect of the regulation, or the capture of the agency by the regulatees? To sum up: the focus on single decisions is not a convincing idea because such a method is not empirically realistic and because at this point it is not easy to find evidence of the influence of other actors.

The solution I suggest to this problems remains, for the time being, rather coarse, but I believe it to be robust enough. We shall proceed in an indirect manner. We do indeed claim that the best way to assess the independence of the regulation performed by an agency - after having established its preferences - is to see how much the preferences of that agency are integrated in the regulatory acts determining its competencies.

To do so, it is necessary to study the degree of influence of every pertinent actor on the legislative processes defining or redefining the competencies of the agency, in order to establish how much the new laws do integrate the agency's point of view<sup>4</sup>.

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<sup>3</sup> In other words, it is unfeasible to highlight the informal pressures concerning a single decision exerted by the political decision makers or by the regulatees, because no suitable trace of it exists. Incidentally, we must bear in mind that this kind of influence is already set - in general manner - in some indicators that we use for the measurement of the self-determination of preferences.

<sup>4</sup> I suppose that another (alternative or complementary) possibility to catch this sort of independence exists (even if it is clear that the study of autonomy concerning single decisions remains unfeasible): the option to focus directly on the inner political cycle of agency, related to the internal production of regulatory texts, as ordinances, rules, settlements or regulations. I am currently exploring this path too.

This unusual solution deserves an explanation. My argument is twofold. First, if an agency can really shape a new piece of legislation, this means that the former is already very influential and integrated in the regulatory process of the sector (others actors less so). Second, if an agency can affect the legislation, it will be even more powerful, and independent, because this IRA can itself mould the law texts defining the regulatory competencies.

## **Methods**

### *1. A Qualitative Inquiry about the degree of self-determination of the preferences of agencies*

The aim of this section is to locate some empirical indicators allowing us to investigate the nature of relationships between an IRA and the political decision makers, and between an IRA and the regulatees, going beyond the formal linkages. The analysis of these relations is crucial to find out to which extent external actors are able to influence the preferences of an agency.

For this purpose, I was inspired by previous research about informal aspects of independence, especially from literature on central banks, origin of IRAs, public policy, courts of justice, capture theory, corporate governance.

In this way, it ought to be possible to establish several indicators for every empirically observable dimension of independence, namely the sorts of relationship between an IRA and the political decision makers, and between the agency and the regulatees (see table 2).

To begin with, I split the first dimension into four facets qualifying the character of the relationship between the IRA and the political decision makers. The first facet concerns indicators of low employees' autonomy: the need for expertise, that is, the collaboration with experts coming from the public administration (Papadopoulos 1995); the frequency of revolving door (Thatcher 2002); the affinity of the education courses. The second facet, about autonomy of resources, allows us to underline the reduction of autonomy in case of effective control over budget decision and the effective control over internal organization (Thatcher 2002). The third facet involves the autonomy of the members of the board, and precisely the weight of partisan membership on nominations. We consider that the magnitude of this indicator, which indicates a poor independence, is moderated by the balance of power and the heterogeneity of members (Breton et Frascini 2003). The fourth facet has to do with the

**Table 2: Indicators of self-determination of preferences**

	<b>Dimensions</b>	<b>Facets</b>	<b>Indicators of (low) informal independence</b>
<b>Self-determination of preferences</b>	<b>(1) Relation IRA- Political Decision Makers</b>	1. Employees' autonomy	1. Collaboration between experts 2. Frequency of revolving door 3. Affinity of the education courses
		2. Autonomy of resources	4. Effective control over budget decisions 5. Effective control over internal organisation
		3. Autonomy of the members of the board	6. Weight of partisan membership on board members nominations (moderated by the balance of powers and the heterogeneity)
		4. Vulnerability of the board	7. Political vulnerability of IRA chief 8. Frequency of earlier departures of board members
	<b>(2) Relation IRA- Regulatees</b>	1. Employees' autonomy	9. Collaboration between experts 10. Frequency of revolving door 11. Affinity of the education courses
		2. Autonomy of resources	12. Effective control over budget decisions 13. Effective control over internal organisation
		3. Autonomy of the members of the board	14. Personal proximity of interests
		4. Vulnerability of the board	(15. Episodes of corruption) (16. Acts of intimidation)

vulnerability of the board, in other words the political exposure of the head of the IRA (Bade et Parkin 1982; Cukierman et al. 1992; Grilli et al. 1991) - measured by the correlation between the substitution rate and the political changes -, and the frequency of early departures of board members (Thatcher 2002), both indicating scarce autonomy.

Next, pertaining to the relationship between the IRA and the regulatees, we are able to identify another four facets. The indicators used for studying the first relation are, after some simple necessary adjustments, once again useful in regards to the first two facets. The third facet relates to the personal proximity of interests, that is, business connections, family ties, or the shared defence of a particular cause (IOSCO 2002; OCDE 2004). The last facet, concerning episodes of corruption and acts of intimidation, is considered here non pertinent and hence not discussed<sup>5</sup>.

From this point on, indicators in the empirical analysis will be qualitatively aggregated in order to assign to every facet a value in accord to its autonomy ranging from very low to very

<sup>5</sup> Because of a lack of data and the scarce empirical relevance of these indicators.

high: (1) ---, (2) --, (3) -, (4) +-, (5) +, (6) ++, (7) +++. We shall then associate to every dimension (concerning the self-determination of preferences) a value that represents the simple arithmetical mean of his facets. It is then possible to also calculate, in the same way, the final score (of the first component) of the informal independence, but I think that this measure will be too rough and will cause the loss of too much information. It is therefore preferable to picture the self-determination of preferences of an agency as a two-dimensional space with two axes: the relationship with the political decision makers and the one with the regulatees.

## *2. A Network Process Analysis of Legislation*

In order to continue discovering what shapes the regulation of the target sector, we have decided to study the production framework of regulatory acts. As proposed by Genoud (Genoud 2002), we adopt the social network analysis (SNA) method. However, our way of applying it is quite original; we shall focus on the extent to which the various actors affect the most relevant laws prepared during the investigated period, through the study of their participation in the decision making process.

The aim of this approach is to provide both clarity and comparability within the results of the legislative analysis, which is rather uneasy when coping with political process data. However, it is obvious that we must deal with quite a strong assumption: that participation means influence<sup>6</sup>. But we will momentarily accept this drawback before suggesting a refinement of theoretical foundations of our assumption.

We shall then use a basic exploitation of the striking method developed by Serdült and his colleagues (Serdült et Hirschi 2004; Serdült et al. 2004), allowing to transform process information into structure data<sup>7</sup>.

Following this method, the first step is the creation on an actor-process-event scheme (APES). Information from case studies can be transformed into an APES, where actors interact through event participation and procedural links (see below for an illustration). Concretely, the APES is a two-dimensional graph, which links the participating actors with the chronological sequences of the political process under investigation. In the actor axis, we focus on participating corporate actors (Coleman 1973). In the process axis, we need to select the

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<sup>6</sup> For example we can improve the refinement of this method by distinguishing between actors that are actively participating from only passively involved ones.

<sup>7</sup> See the empirical section for an illustration.



crucial events that make up one or more stages of a policy cycle (Howlett et Ramesh 2003). The definition of this events depends either on the parameters of the political system and on the peculiar characteristic of the process under investigation. Afterwards, we could distinguish if an actor participates or not in an event, and see if it does so together with others. Furthermore, we can follow the course of the policy process and notice the procedural linkages between the actors in charge with the object.

The second step is the transformation of the APES into a policy network. The APES gives us information allowing us to create two data matrix: the first containing data about event participation (two mode actor-event matrix), the second containing data about the procedural links (one mode actor-actor matrix). The first matrix is built by filling the cells with the value of a one (1), if an actor participated in an event, or with a zero (0), in case an actor did not participate. We then have to transform this matrix in an actor-actor one, with the adequate procedure in UCINET (Borgatti et al. 2002), to obtain the symmetric relations between all pairs of actors.

The second matrix is simply created by filling the cells with the sum of all process links, where a single process links has a value of one (1).

Finally, following the suggestions of the authors (Serdült et Hirschi 2004; Serdült et al. 2004), the multiplication - element by element - of the two matrix is supposed to represent the policy network derived by procedural data<sup>8</sup>.

We now have a matrix which provides parsimonious, clear and - last but not least - comparable data that we can analyze using the classical Social Network Analysis tools. In other words, as mentioned by Serdült, Hirschi and Vögeli (2004), we are able to compare the policy processes according to some network properties, such as measurements of density and centrality. For example, we can calculate and then compare the centrality of the main actors, by dividing the range of values into five or seven ordinal categories, from very low to very high. Furthermore, we notice that these sorts of data are also congruent with recent comparative methods such as QCA and fuzzy sets (Ragin 2000).

### *3. Data Sources and Research Techniques*

There are two appropriate sources of information: written documentation and information given by relevant actors themselves, based on interviews or survey inquiries.

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<sup>8</sup> For further details, see Serdült & al. (2004)

According to our “light” praxis - necessary for a quite large comparative research - the main useful source of information to build the first component is survey inquiry (with the exception of data that are definitively more clearly found in primary written sources). Then, in order to focus on a specific point, we can continue with a modest amount of interviews.

Regarding the second component, one of the most important categories of evidence, according to Serdült and al., comes from analysis of written documentation about specific events (such as protocols, negotiations reports, etc.), from governmental and non-governmental sources. These data are then completed for minor details with some interviews with the representatives of participating actors.

### **The example of The Swiss Federal Banking Commission In The 90s**

This section consists, above all, of an illustration of our approach. However, the selected case is not entirely random. First, the Swiss Federal Banking Commission (SFBC) enjoyed a huge enlargement of his regulatory competencies in the 1990s, in line with the broad developments underlined by the partisans of the regulatory State approach. Second, the respectable age of this agency ensures ex-ante comparability, whereas the reform project in discussion nowadays - proposing a tough reinforcement of independence - will open others interesting research questions for the future.

#### *The First component of independence*

In this section we shall try to asses how much the federal administration (and the central government), on one hand, and the regulatees - via their most representative employer association, namely the Swiss Bankers Association (SBA) - on the other hand, are capable of swaying the preferences of the Swiss Federal Banking Commission.

We start with (1) the study of the relationship with the political decision makers.

The first facet is about employees’ autonomy, which is *quite low*. Evidence shows, in fact, that the collaboration of experts is intense: a process of constant cooperation regarding the preparation and the interpretation of the legislation, coupled with several regular all-purpose meetings.<sup>9</sup> Revolving doors exist because of exchanges or stages; it is otherwise not very

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<sup>9</sup>Survey addressed to the SFBC, 30 March 2005; Survey addressed to the administration, 12 April 2005.

frequent<sup>10</sup>. However, the education training paths of the two staff are similar, showing high percentages of lawyers and economists<sup>11</sup>.

The next facet concerns resource autonomy. Budget decisions are partly regarded as administrative competencies, but the spending remains under IRA control. Moreover, the SFBC enjoys large discretion in organisational choices<sup>12</sup>. We however note that in the period under investigation, the SFBC was continuously asking for more resources and for more independence, on the one hand blaming a lack of resources, on the other hand asking for a increase in remuneration<sup>13</sup>. We consider therefore that resources autonomy is here *medium*.

The autonomy of the board members, the third facet, is uneasy to assess, because we have to deal directly with actors perceptions. Some actors said that partisanship has no effect<sup>14</sup>, other that it does, but a mild one<sup>15</sup>. All in all, we finally realized that the board is quite heterogeneous, and there is a real balance of power, so that the autonomy seems to be *quite high*<sup>16</sup>. Incidentally, all interviews confirm that the SFBC is regarded as isolated from the direct influence on political parties.

The last facet (board vulnerability) is clearly weak, thus ensuring a *high* autonomy. In fact we observe a great stability of the head position over time, replaced only due to age limits<sup>17</sup>. Furthermore, even if we notice a few earlier departures of members, these cases are almost all regarded as voluntary transfers to the private sector because of better financial conditions<sup>18</sup>.

We now move on to (2) - the relationship with the representatives of regulatees<sup>19</sup>.

First, we consider that employees' level of autonomy is *low*; the collaboration of experts is indeed both very common and recurrent<sup>20</sup>, and the SBA used to assume a quasi-legislator function<sup>21</sup> too, due in particular to its workgroups which set up the regulatory outlines. In fact, the SFBC and the SBA share many regulatory competencies. Furthermore, the revolving door

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<sup>10</sup> Survey addressed to the SFBC, 30 March 2005.

<sup>11</sup> See Roth (Roth 1994) and EBK Jahresbericht - Rapport de gestion CFB 1998.

<sup>12</sup> Survey addressed to the SFBC, 30 March 2005.

<sup>13</sup> EBK Jahresbericht - Rapport de gestion CFB 1992 ; *ibid.* 1993 ; *ibid.* 1996 ; *ibid.* 1997 ; *ibid.* 1998 ; *ibid.* 1999.

<sup>14</sup> Survey addressed to the SFBC, 30 March 2005.

<sup>15</sup> Interview with a civil servant, 16 April 2005.

<sup>16</sup> Survey addressed to the SFBC, 30 March 2005.

<sup>17</sup> See the SFBC flow charts, from 1992 to 1999, into the annual reports cited before.

<sup>18</sup> EBK Jahresbericht - Rapport de gestion CFB 1998.

<sup>19</sup> Notice that we have chosen not to use indicators for intimidation and corruption, since we consider they are non relevant phenomena for this case (Hafner 2003).

<sup>20</sup> Survey addressed to the SBA, 11 April 2005; EBK Jahresbericht - Rapport de gestion CFB 1992.

<sup>21</sup> Interview with a SBA executive, 24 May 2004.

is frequent in both directions<sup>22</sup>, especially since the 1990<sup>23</sup>. Finally, the education training follows similar curricula, in a similar way to before<sup>24</sup>.

The second facet's degree of autonomy, involving autonomy of resources, is *quite high/high*. For instance, the SFBC collects taxes from banks and other institutions, contributions which are fixed beforehand by the law, according to the costs engendered the preceding year<sup>25</sup>. Therefore, the regulatees have neither direct influence on budget nor organisational decisions<sup>26</sup>.

We finish with the question of the autonomy of the board members<sup>27</sup>. Members, with the exception of the president, are not hired full-time. They normally have a professional activity as professors, lawyers, entrepreneurs, or are - less frequently - former bankers. A consistent quota of these persons used to sit in one or more company board, in accordance with the restrictions prescribed by the Banks Act. On the other hand, secretary executives have quite often worked in the private sector. We conclude that the autonomy is here *medium/quite low*.

To sum up, we find four facets for the first relation and three for the second one to which we attribute a value of autonomy, regarding the indicators in a qualitative manner. We can now calculate the mean value for every relationship describing the first component of independence. In conclusion, in regards to the self-determination of preferences, the SFBC has a medium/quite high independence level from political decision makers; and a quite low/medium independence level from the regulatees (see table 3).

**Table 3: Results about the self-determination of preferences of the SFBC**

Self-determination of the preferences of the SFBC				
Dimension	Facet	Autonomy	Mean by dimension	(Mean)
Independence from the political decision makers	1	-	+/-/+	(+-)
	2	+/-		
	3	+		
	4	++		
Independence from the regulatees	1	--	- / +-	
	2	+ / ++		
	3	- / +-		

<sup>22</sup> Survey addressed to the SFBC, 30 March 2005.

<sup>23</sup> EBK Jahresbericht - Rapport de gestion CFB 1998 ; ibid. 1999.

<sup>24</sup> Rapport d'activité 2000/2001, Swissbanking.

<sup>25</sup> See Müller (Müller 1997).

<sup>26</sup> Survey addressed to the SFBC, 30 March 2005.

<sup>27</sup> I have collected some biographical data from institutional sources about the pertinent actors.

### *The second component of independence*

Having established the degree of independence concerning the determination of preferences, we shall now discuss the actors' capability of inserting these preferences into regulatory acts. We first choose the acts characterising the regulation framework in the selected time period and observe that in the course of the 1990s, the attributions to the SFBC were remarkably widened, mainly because of three new federal laws: the federal Law on Stock Exchange of 1995 (LSE); the federal Law on Investment Funds of 1994 (LIF); the Federal Law on Money Laundering of 1997 (LML).

Second, we decide to focus on domestic actors liable to have an impact on the legislation process, on the basis of both theoretical literature and existing documentation about the specific cases. For the full list, see the APES.

The third step is the partition of the whole political process into a series of crucial events, according to the policy cycle theory (Howlett et Ramesh 2003). Such a procedure implies taking into account the political system structure and of specific features of the political process under investigation. Then, we adopt a somewhat inductive line of attack. The basic idea is to start with a classical sequential approach (Jones 1977; Lasswell 1956), from impulsion to implementation attributions. These general findings are then put into practice thanks to a classical Swiss decision making process scheme (Kriesi 1995; Sciarini 2002). Finally, our reading of the story is improved by a more agency-focused literature (Müller 1997). In conclusion, the event sequence is the following: (1) impulsion; (2) preliminary investigation; (3) first draft; (4) consultations; (5) draft finalization; (6) decision of Government - the Federal Council; (7) National Council committee; (8) Council of States committee; (9) referendum option; (10) implementation competencies.

We are able now to display the results (the matrix and the complete data calculations are situated in the appendix). The APES concerning the LSE presents quite a pluralist participation: almost all the relevant actors are immediately included in the process (see especially event 2 in the corresponding APES, table 4). The LIF's development is very linear (table 5), probably because it was only a total revision of an existing law, instead of the true creation a new act. The APES about the LML illustrates a more contrasted path. In this case, three drafts were needed before finding the agreement allowing to go on (events 3, 3b, 3c in the table 6), maybe for the reason that there was no integration of the regulatees in the early

stages of process (see events 2 and 3 in the corresponding APES). However, we can already distinguish a recurrent structure, common throughout all the schemes where the interactions are stronger, namely a central node composed by the Administration (notably the Federal Department of Finances), the Swiss National Bank, the Federal Swiss Banking Commission and the Swiss Bankers Association, to which we must add the most concerned actors for every subject discussed (for example, the stock exchange associations in the case of the LSE).

**Table 4 : A-P-E-S about the LSE**

Actors/Time	1988	1989	1990	1992		1993		1994	1995
Events	1)	2)	3)	4)	5)	6)	8)	7)	10)
Federal Council	▲				▲	▲	●	●	
Fed. Dept. of Finance	▲	▲	▲	▲	●	▲	●	●	
Fed. Dept. of Justice & Police			●	●			●		
Others Dept.				●			●		
Council of States Committee							▲		
National Council Committee	●							▲	
Cantons				●			●		
Swiss National Bank		●	●	●			●		●
Swiss Federal Banking Commission			●	●			●	●	▲
Others IRAs				●			●		
Political Parties				●			●		
Swiss Bankers Association		●	●	●			●		
Others Banking Associations				●			●		
Insurance Company Associations				●			●		
Stock Exchanges Association		●	●	●			●		●
Intermediary & Investors Associations				●			●		
Vorort / Economiesuisse				●			●		
Banks and Others Corporations		●		●			●		
Stock Exchange				●			●		●
Accountants Chamber				●					
PTT and other Investors									
Professionals Associations									
Audit & Rating Companies									
Academic experts		●	●						

**Symbols :** ▲ Actor in charge ; ● Participation ; ..... Process ; ●—● Interaction  
**Events :** (1) Impulsion; (2) preliminary investigation; (3) first draft; (4) consultations; (5) draft finalization; (6) decision of government, (7) National council committee; (8) member states council committee; (9) referendum option; (10) implementation competencies

**Sources :** Message concernant une loi fédérale sur les bourses et le commerce des valeurs mobilières du 23 février 1993, Feuille Fédérale (93.025), 1 (17): 1269-1360 ; Verfügung ueber die Einsetzung der Studiengruppe ueber das Boersenwesen, Eidg. Finanzdepartement, Bern, 10 August 1988 ; Protokolle der Expertengruppe für die Ausarbeitung eines Bundesgesetzes über den Effektenhandel, Eidg. Finanzdepartement, Bern, 1990; Bundesgesetz über die Börsen und den Effektenhandel. Bericht über die Vernehmlassungsergebnisse, Eidg. Finanzdepartement, Bern, 22 Januar 1992; Bulletins officiels de l'Assemblée fédérale (...); Bundesgesetz über die Börsen und den Effektenhandel, Protokolle der Sitzung, Nationalrat, Kommission für Wirtschaft und Abgaben (...); Bundesgesetz über die Börsen und den Effektenhandel, Protokolle der Sitzung, Ständerat, Kommission für Wirtschaft und Abgaben (...); LBVM du 24 mars 1995.

**Table 5 : A-P-E-S about the LIF**

Actors/Time	1986	1989	1991	1992			1993	1994	1994
Events	1)	2)	3)	4)	5)	6)	7)	8)	10)
Federal Council					▲	▲			
Fed. Dept. of Finance		▲	▲	▲	●		●	●	
Fed. Dept. of Justice & Police				●					
Others Dept.				●					
Council of States Committee								▲	
National Council Committee							▲		
Cantons				●					
Swiss National Bank				●					
Swiss Federal Banking Commission	▲		●	●			●	●	▲
Others IRAs				●					
Political Parties		●		●					
Swiss Bankers Association	●		●	●					
Others Banking Associations				●					
Insurance Company Associations				●					
Stock Exchanges Association				●					
Intermediary & Investors Associations				●			●		
Vorort / Economiesuisse				●					
Banks and Others Corporations			●	●					
Stock Exchange				●					
Accountants Chamber				●					
PTT and other Investors							●		
Professionals Associations									
Audit & Rating Companies									●
Academic experts			●	●					

**Symbols :** ▲ Actor in charge ; ● Participation ; ..... Process ; ●—● Interaction

**Events :** (1) Impulsion; (2) preliminary investigation; (3) first draft; (4) consultations; (5) draft finalization; (6) decision of government, (7) National council committee; (8) member states council committee; (9) referendum option; (10) implementation competencies

**Sources :** Message concernant la révision de la loi fédérale sur les fonds de placement du 14 décembre 1992, Feuille Fédérale (92.082), 1 (7): 189-292; L'avenir de la place financière suisse, rapport du groupe de travail place financière suisse des partis représentés au Conseil fédéral, 20 décembre 1989 ; Loi sur les fonds de placement, Commentaire de l'avant-projet de la Commission d'experts, décembre 1991 ; Bundesgesetz über die Anlagefonds, Bericht über die Vernehmlassungsergebnisse, Juli 1992 ; Bulletins officiels de l'Assemblée

fédérale (...); Anlagefondsgesetz, Protokolle des Sitzung, Nationalrat, Kommission für Rechtsfragen (...); Loi sur les fonds de placement, PV des séances, Conseil des Etats, Commission des affaires juridiques (...); LFP du 18 mars 1994.

**Table 6 : A-P-E-S about the LML**

Actors / Time	1988	1992	1993	1994	1995				1995	1996	1997	1997
Events	1)	2)	3)	4)	6)	3b)	3c)	5b)	6b)	7)	8)	10)
Federal Council	▲				▲			▲	▲	●	●	
Fed. Dept. of Finance	▲	▲	▲	▲		▲	▲	●		●	●	●
Fed. Dept. of Just. & P.		●	●	▲		▲	▲			●	●	●
Others Dept.			●	▲		▲	▲			●	●	●
Council of States Comm.	●			▲		▲	▲			▲	▲	
National Council Comm.	●			▲		▲	▲			▲	▲	
Cantons				●		●	●			●	●	●
Swiss National Bank			●	●		●	●			●	●	●
Swiss Federal Banki C.			●	▲		▲	▲			●	●	●
Others IRAs												
Political Parties				●		●	●					●
Swiss Bankers Associat.				●		●	●					●
Others Banking Associat.				●		●	●					
Insurance Company Ass.				●		●	●					
Stock Exchanges Ass.				●		●	●					
Intermediary & Inv. Ass.				●		●	●					
Vorort / Economiesuisse				●		●	●					
Banks and Others Corp.				●		●	●					
Stock Exchange				●		●	●					
Accountants Chamber				●		●	●					
PTT and other Investors				●		●	●					
Professionals Associat.						●	●					
Audit & Rating Comp.						●	●					
Academic experts						●	●					

**Symbols :** ▲ Actor in charge ; ● Participation ; ..... Process ; ●—● Interaction

**Events :** (1) Impulsion; (2) preliminary investigation; (3) first draft; (4) consultations; (5) draft finalization; (6) decision of government, (7) National council committee; (8) member states council committee; (9) referendum option; (10) implementation competencies

**Sources :** Message relatif à la loi fédérale concernant la lutte contre le blanchissage d'argent dans le secteur financier du 17 juin 1996, Feuille Fédérale (96.055), 3 (37): 1057-1136 ; Loi fédérale relative à la lutte contre le blanchissage d'argent, explications de l'avant-projet du groupe de travail interdépartemental, janvier 1994 ; Bundesgesetz zur Bekämpfung der Geldwascherei im Finanzsektor, Bericht über die Vernehmlassungsergebnisse, Eidg. Finanzdepartement, Januar 1995; Bulletins officiels de l'Assemblée fédérale (...); Geldwäschereigesetz, Protokolle der Sitzung, Nationalrat, Kommission für Rechtsfragen (...); Geldwäschereigesetz, Protokolle der Sitzung, Ständerat, Kommission für Rechtsfragen (...); LBA du 10 octobre 1997.



The application of the Social Networks Analysis allows us to go further still (see the graphs in the appendix too). For example, we can calculate the local centrality, that is, the popularity of participating actors. On the basis of our results, we can classify every actor from the least to the most central, assigning an ordinal value (see table 7). We subsequently observe that the administration, via the Federal Department of Finance - not really surprisingly, because of its procedural relevance - is the most (locally) central actor. Then comes the SBA, and the SFBC is only third, with a fairly poor score in the LML. If we then aggregate the values presented in the table 7, we find that the overall level of SFBC's influence concerning the production of regulatory acts is quite high/high, but minor than other relevant actors'. In fact, if we consider only the three central actors, the relative influence of the SFBC - and hence the second component of his informal independence - is precisely low/quite low compared with the political decision makers and quite low/medium compared with the regulatees. These finding are in general not very surprising, because it is normal that an IRA cannot be completely independent on the topic of the legislative process. Nevertheless, it is important to observe from which actors an agency is more or less autonomous, and how deep the IRA is integrated in the political process. However, only a comparative approach will allow us to build up some more interesting research questions.

**Table 7: Synthesis of the centrality's degrees of main actors**

	<b>LSE</b>	<b>LIF</b>	<b>LML</b>	<b>Mean</b>
<b>Federal Council</b>	-	-	+-/+	-/+-
<b>Administration (FDF)</b>	+++	+++	+++	+++
<b>Parliament</b>	--	-	-	--/-
<b>Cantons</b>	+-	+-	+-	+-
<b>Swiss Federal Banking Commission</b>	++	+++ / ++	+-	+ / ++
<b>Swiss National Bank</b>	+	+-	++ / +++	+
<b>Swiss Bankers Association</b>	++ / +++	++	++	++
<b>Vorort/Economiesuisse</b>	+-	- / +-	- / +-	- / +-

## Conclusions

In this paper, we argue that there is a need for research about the “real” independence of IRAs, because this kind of independence represents a key variable for the study of both the functioning and the performances of these agencies. We conceive informal independence as a two-dimensional concept, combining the degree of self-determination of agency’s preferences with the extent of actors’ capability to influence the regulatory acts. The test of the first component implies a qualitative inquiry based on indicators about *de facto* autonomy, in order to see if the political decision makers or the regulatees are - beforehand - capable of swaying the agency’s preferences. The study of the second component consists of the use of the social network analysis tools to examine the regulatory acts concerning the (re)definition of the regulation standards. In this way, according to Serdült (Serdült et Hirschi 2004; Serdült et al. 2004), we can distinguish which actors are the most influents in the legislative processes. At the end of the day, we consider that this indirect method of investigation has to be improved by the inclusion of the inner policy cycle of the IRA (that is, the production of regulatory texts related to the implementation of the legislation), in order to catch the actors’ influence on the very internal activity of regulation executed by the agency (see footnote 5).

However, the application of the current approach to the case of the Swiss Federal Banking Commission in the ‘90s reveals some interesting features. To sum up, concerning the first component (e.g. the level of self-determination of agency’s preferences), the informal independence of the SFBC is: medium/quite high from political decision makers; and quite low/medium from the regulatees. For the second component, namely the influence on regulatory acts, the informal independence of the agency seems to be quite low, particularly *vis-à-vis* the political decision makers (but mostly for procedural reasons).

Therefore, we remark that the regulatees, through the SBA, are slightly more influent than the political decision makers on the determination of preferences of the SFBC. Conversely, we observe that the administration - for institutional reasons - is more influent than the regulatees in the legislative process with reference to the regulation of the financial sector<sup>28</sup>.

A discussion of these results can only be partial and probably spurious, in absence of any real comparative dimension. However, what is possible for us to say for instance? Empirical evidence allows us to show the significance of the concept of informal independence, in

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<sup>28</sup> Note that the question of the aggregation of values of independence across actors and across dimension is still open.

addition to a formal perspective. First, we notice that actors other than the political decision makers - namely the regulatees - are relevant. Then, enquiries on the functioning of IRAs need a similar relational framework; this involves thinking informal independence as a point in a two-dimensional space (at least). Second, we observed a significant discrepancy between the agency's degrees of centrality across the three acts analyzed, all other things being equals. This probably confirms that formal arrangements do not entirely shape the informal independence of the IRA under investigation.

## Appendix

### 1) Centrality

Centrality of every actor								
	LSE		LIF		LML		Mean	
	<i>Value</i>	<i>Ranking</i>	<i>Value</i>	<i>Ranking</i>	<i>Value</i>	<i>Ranking</i>	<i>Value</i>	<i>Ranking</i>
Federal Council	7.000	18	1.500	19	10.000	7	6.167	14.7
Fed. Dept. of Finance	19.500	1	16.000	1	24.000	1	19.833	1.0
Fed. Dept. of Justice & Police	11.000	10	7.500	15	4.000	17	7.500	14.0
Others Dept.	8.000	11	7.500	13	2.000	20	5.833	14.7
Council of States Committee	5.500	20	1.000	20	3.000	19	3.167	19.7
National Council Committee	1.000	21	2.500	17	3.500	18	2.333	18.7
Cantons	12.500	7	7.500	9	9.500	8	9.833	8.0
Swiss National Bank	14.500	6	7.500	10	15.000	2	12.333	6.0
Swiss Federal Banking Commission	16.500	4	15.000	2	9.500	9	13.667	5.1
Others IRAs	8.000	12	7.500	11	0.000	23	5.167	15.3
Political Parties	8.000	13	8.000	7	0.000	22	5.333	14.0
Swiss Bankers Association	18.000	3	10.000	3	14.500	3	14.167	3.0
Others Banking Associations	8.000	14	7.500	8	5.500	13	7.000	11.7
Insurance Company Associations	8.000	15	0.000	22	13.000	5	7.000	14.0
Stock Exchanges Association	19.000	2	7.500	16	5.500	15	10.667	11.0
Intermediary & Investors Associations	8.000	16	9.500	4	5.500	11	7.667	10.3
Vorort / Economiesuisse	12.500	9	7.500	12	5.500	14	8.500	11.7
Banks and Others Corporations	15.000	5	9.500	5	5.500	12	10.000	7.3
Stock Exchange	12.500	8	0.000	21	0.000	21	4.167	16.7
Accountants Chamber	8.000	17	7.500	14	13.000	6	9.500	12.3
PTT and other Investors	0.000	24	2.000	18	13.000	4	5.000	15.3
Professionals Associations	0.000	22	0.000	23	7.500	10	2.500	18.7
Audit & Rating Companies	0.000	23	0.000	24	0.000	24	0.000	23.7
Academic experts	5.500	19	9.500	6	4.000	16	6.333	13.7

## 2) Matrix

### *LSE*

#### a) Event Participation, actor-actor

```
0 2 0 0 1 1 1 0 1 0 0 1 0 0 1 0 1 1 1 0 0 0 0 0
2 0 2 1 1 0 2 3 3 1 1 4 1 1 4 1 2 3 2 1 0 0 0 2
0 2 0 1 0 0 1 2 2 1 1 2 1 1 2 1 1 1 1 1 0 0 0 1
0 1 1 0 0 0 1 1 1 1 1 1 1 1 1 1 1 1 1 1 0 0 0 0
1 1 0 0 0 0 1 0 1 0 0 1 0 0 1 0 1 1 1 1 0 0 0 0
1 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
1 2 1 1 1 0 0 1 2 1 1 2 1 1 2 1 2 2 2 1 0 0 0 0
0 3 2 1 0 0 1 0 3 1 1 3 1 1 4 1 1 2 1 1 0 0 0 2
1 3 2 1 1 0 2 3 0 1 1 3 1 1 4 1 2 2 2 1 0 0 0 1
0 1 1 1 0 0 1 1 1 0 1 1 1 1 1 1 1 1 1 1 0 0 0 0
0 1 1 1 0 0 1 1 1 1 0 1 1 1 1 1 1 1 1 1 0 0 0 0
1 4 2 1 1 0 2 3 3 1 1 0 1 1 4 1 2 3 2 1 0 0 0 2
0 1 1 1 0 0 1 1 1 1 1 1 1 0 1 1 1 1 1 1 0 0 0 0
0 1 1 1 0 0 1 1 1 1 1 1 1 0 1 1 1 1 1 1 0 0 0 0
1 4 2 1 1 0 2 4 4 1 1 4 1 1 0 1 2 3 2 1 0 0 0 2
0 1 1 1 0 0 1 1 1 1 1 1 1 1 1 0 1 1 1 1 0 0 0 0
1 2 1 1 1 0 2 1 2 1 1 2 1 1 2 1 0 2 2 1 0 0 0 0
1 3 1 1 1 0 2 2 2 1 1 3 1 1 3 1 2 0 2 1 0 0 0 1
1 2 1 1 1 0 2 1 2 1 1 2 1 1 2 1 2 2 0 1 0 0 0 0
0 1 1 1 0 0 1 1 1 1 1 1 1 1 1 1 1 1 1 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 2 1 0 0 0 0 2 1 0 0 2 0 0 2 0 0 1 0 0 0 0 0 0
```

#### b) Procedural Links, actor-actor

```
0 1 0 0 0 1 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
1 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 1 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
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0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
```

### *LIF*

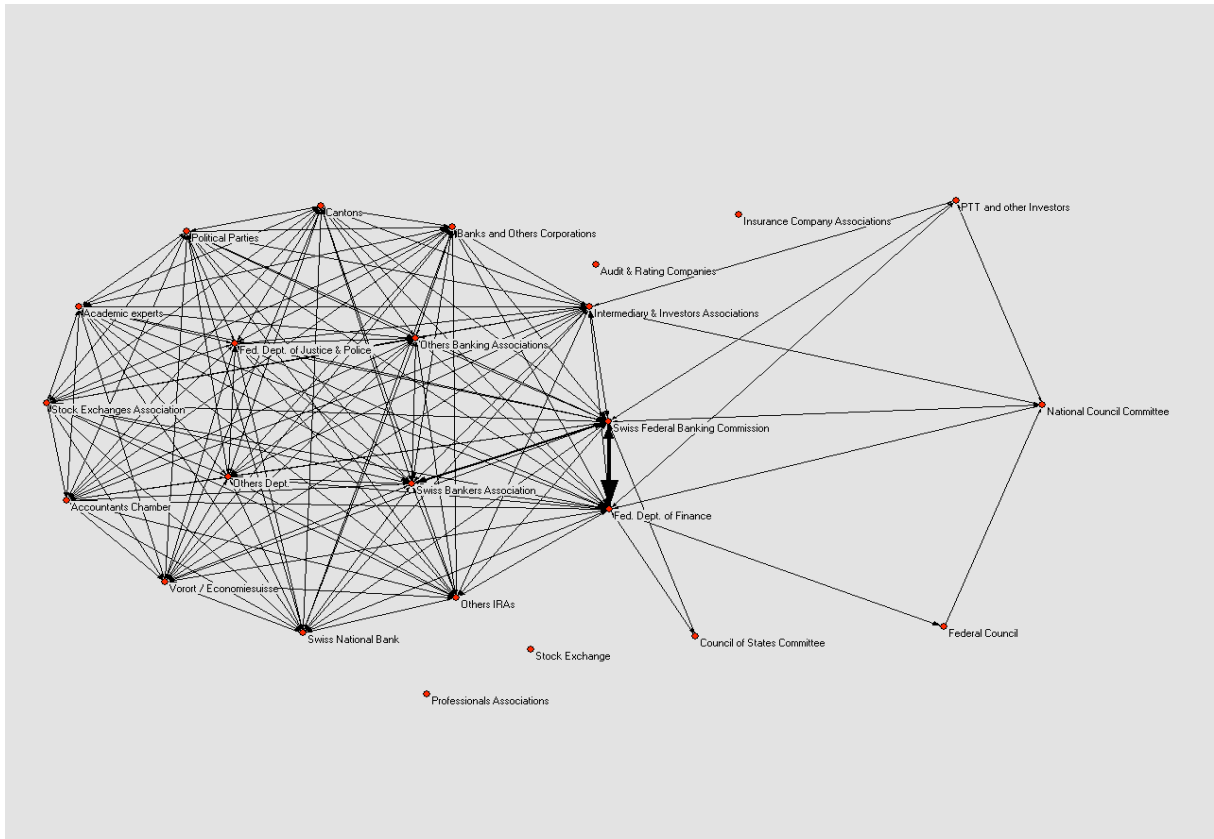
#### a) Event Participation, actor-actor

```
0 1 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
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0 1 0 1 0 0 1 1 1 1 1 1 1 0 1 1 1 1 0 1 0 0 0 1
0 1 1 0 0 0 1 1 1 1 1 1 1 0 1 1 1 1 0 1 0 0 0 1
0 1 0 0 0 0 0 1 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0 1 0 0 0 0 0 0 1 0 0 0 0 0 0 0 1 0 0 0 0 1 0 0
0 1 1 1 0 0 0 1 1 1 1 1 1 0 1 1 1 1 0 1 0 0 0 1
0 1 1 1 0 0 1 0 1 1 1 1 1 0 1 1 1 1 0 1 0 0 0 1
0 4 1 1 1 1 1 1 0 1 1 3 1 0 1 2 1 2 0 1 1 0 0 2
```

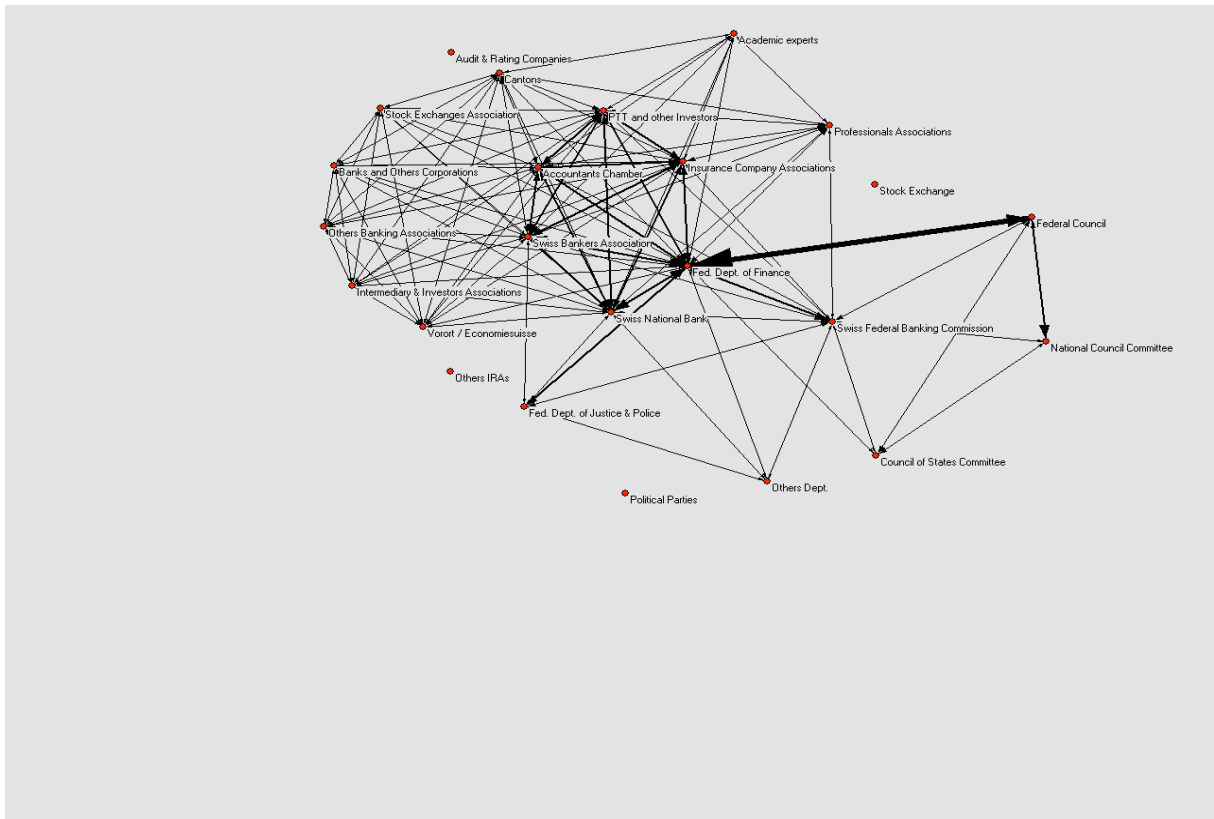




LIF



LML



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