

## WHAT KIND OF AGENCIFICATION IN CROATIA? TRENDS AND FUTURE DIRECTIONS\*

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### Abstract

The paper presents the current state of the process of agencification in Croatia, pointing out both the process and the institutional design. The agency model in Croatia consists of several types of more or less autonomous administrative organizations, situated at different distances from the central government. The most evident pressures for agencification come from decentralization, managerial responses and Europeanization. The reversal of the process in recent years has mostly happened because of the need for rationalization of the public administration system, which is also under pressure because of the economic crisis. The key problems of the agency model are over politicization on the one hand, and insufficient and inadequate control on the other. The adequate legal framework for agencies would enhance institutionalization of the agency model, ensuring effectiveness and legal certainty and maintaining a sufficient level of independence.

**Keywords:** Croatia, national agencies, autonomy and control of agencies, agencification and de-agencification, agencification process.

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## 1. Introduction

Over the last three decades the formation of agencies (agencification) has been emphasized as one of the most significant developments in public administrations worldwide, driven by the new public management administrative reforms and the regulatory state agenda, and strengthened through the activities and support of international organizations, such as OECD or the European Union (Pollitt and Bouckaert, 2004; Christensen and Lægreid, 2006). Agencies are defined as organizations that perform public tasks at arm's length from the central government, based on specialization and expertise (Pollitt and Bouckaert, 2004). Their important feature is a fragile relationship between sufficient autonomy with regard to their daily business (management, organization, financing and personnel) and decision making, on one hand, and specific *ex ante* and *ex post* control mechanisms which replace the hierarchical political oversight typical for central government on the other.

In spite of the global trend of agency creation and, consequently, the transformation of the classical hierarchical and monolithic state administration, the translation of the concept into different institutional contexts has led to a different definition of agency, types of internal design and variety in agency relationship with its environment (politics, users, market) (Pollitt and Bouckaert, 2004). In transitional countries, agencification coincides with the parallel processes of institution building, administrative reform and Europeanization of public administration. The speed and multiplicity of changes, the variety of environmental and internal pressures for reform and the need to achieve a position in the competitive environment may have led those countries to introduce new institutional forms or procedures, often without substantive transformation of values, priorities, or ways of doing things (Goetz, 2005).

The article focuses on the agencification phenomenon in Croatia analyzing both the process and the structural dimension. The aim is to describe the incentives and phases of agencification, together with the characteristics of agencies. The main thesis is that the introduction and development of the agency model in Croatia is defined by the existing institutional setting and the incomplete idea of agency. As shown previously by Pollitt and Bouckaert (2004), administrative reform and the introduction of new institutional forms depends on the concept transferred, the administrative tradition and the implementation process. In Croatia, the idea of separate administrative organizations was not completely new but this fact also hindered the recognition of the agency as a completely new institutional form with its different subtypes and special features which seek for new types of control mechanisms and autonomy arrangements, which are different from those traditionally used. Additionally, the public administration reform was slow, suffering from resistance of the administrators themselves, with no clear goals and mostly driven by pressures from the European Union (EU). In that kind of environment, the agency model was simply transferred and used as an instrument for fulfilling the formal requirements of the EU membership, or as a means for solving the systemic problems of administration, such as low salaries, low professionalism and high degree of politicization.

The development of the Croatian political and administrative system from the beginning of the 1990s can roughly be divided into two eras, with the year 2000 as a breaking point or critical juncture. The first phase, 1990-1999, was marked by a transition to democracy and the introduction of a free market economy, together with the process of independent state building, including the 1991-1995 war period. The unfavorable economic and social circumstances of war period (economic downturn, unemployment, refugees, war veterans and other social problems) together with the strong semi-presidential political regime with authoritarian features, led to retarded political development, reinforcing the negative side-effects of transition, such as corruption, extreme politicization and social inequalities. The second phase began in 2000 when a broad left-wing coalition came into power, changed the Constitution and introduced the parliamentary system, initiating the processes of democratization, decentralization and EU accession. Still, the political and administrative tradition based on the strong state and the collectivist culture is heavily influencing political and administrative development. Some of the indicators are: slow administrative reform, unfinished process of decentralization, weak institutions and underdeveloped civil society. Within this political context, public administration went through the phases of establishment (1990-1993), consolidation (1993-2001) and Europeanization (after 2001), with prospects for modernization only after 2008 (details in Koprić, 2009).

The article analyzes the current state of the process of agencification in Croatia, starting with a brief identification of the trends in the development of the Croatian political and administrative system in recent decades. In part two, the current landscape of agencies is analyzed focusing particularly on semi-autonomous organizations and legally independent (statutory) bodies, which are usually considered to be the ideal type of agencies. In the third part of the paper, the process of agencification as institutionalization of the agency model is mapped, identifying key incentives for trends leading towards the creation or abolition of agencies. In the fourth part, the basic elements of institutional design are analyzed, in terms of autonomy and control, with special emphasis on legal control. Finally, the fifth part elaborates on the main problems of the agency model in Croatia, and the possibilities for improvement in the future.

## **2. The agency as a type of public sector organization in Croatia: a semi-structured mess?**

As in many other countries, agencies and other types of more or less autonomous organizations have been extensively created in Croatia as a response to the pressures for efficiency and effectiveness or, in other words, for stronger expertise and less politics. In the Croatian case, the EU accession process has had a decisive influence on the agencification process. Consequently, during the last two decades agencies have been created in every functional area, for different reasons, and without a strong legal framework or a strategic document which would introduce them as a particular institutional type. Hence, the agencification picture is diverse, not always clear and, in some cases, gets out of the general framework, accommodating for different needs and interests.

Until now, the only systematic research on agencies in Croatia was conducted in 2009 when the first attempt to frame the picture of agencification in Croatia was made (Musa, 2009). Legal analysis of regulations and documents and the questionnaires sent to agencies have served as sources of information on different types of public sector organizations and the agency's features. Similar to classifications developed for other European countries (see Greve *et al.*, 1999; Pollitt and Talbot, 2004; van Thiel and CRIPO team, 2009), Croatian public sector organizations are dispersed among different categories, including semi-autonomous organizational units within hierarchical governmental systems, autonomous organizations and public institutions<sup>1</sup>, voluntary sector organizations, private law organizations (companies), and the outsourcing of public tasks to private firms. Applying van Thiel & CRIPO Team (2009) categorization, the research has revealed the existence of more than 20 agencies from category 1 (semi-autonomous agencies), 75 agencies from category 2, a significant number of voluntary sector organizations (22 chambers, 13 associations, 6 foundations)<sup>2</sup> and about 60 state-owned companies (category 3)<sup>3</sup>. Here we will briefly discuss type 1 and type 2 organizations, usually referred to as agencies<sup>4</sup>.

### **2.1. The special case of semi-autonomous organizations**

Category 1 agencies are semi-autonomous organizations without legal personality. These include specialized organizations and organizational units within the Government and state administration, performing public tasks at the central level. They have a certain level of decision-making autonomy, are staffed by professionals (experts), and

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- 1 The legal type of public institution is regulated by the Law on Institutions (1993). The Law determines, but in a very general manner, the functions and the structure of the organization, as well as the control mechanisms. They are primarily designed as organizational models for the provision of non-economic services of general interest, such as health, education, sports or culture services (in comparison to public enterprises which provide economic services of general interest). This institutional form is used both for the implementation of public policies (e.g. Agency for Regional Development, Croatian Institute for Public Health), as well as for the provision of public services (schools, universities, health facilities, national television). They exhibit features of so-called more autonomous bodies (MABs) (Pollitt, 2004).
  - 2 Voluntary sector organizations are based on membership (chambers and associations) or assets (foundations or trusts), and are regulated by special laws, often performing delegated public tasks, such as licensing or pricing.
  - 3 Companies as persons of private law include 20 public enterprises owned by the state, in the field of traffic, natural resources and finances. In addition, more than 40 other companies, often in partial public ownership, perform some kind of public authority.
  - 4 Collegiate bodies, such as councils, boards or committees which are founded by the parliament or by the government for expert support in policy formulation or evaluation, are excluded from the analysis. They lack organizational basis and are often served by the respective ministry. The trend of transforming regulatory councils or boards into regulatory agencies is noticed (e.g. for media, civil aviation, telecommunications), as a special case of *quango drift* (Greve *et al.*, 1999).

are organized as structurally distinctive units. Not having legal personality, they are subjected to the legal framework of (central) state administration with regard to their internal organization, personnel (recruitment, salaries) and financial management. It follows that the autonomy of their heads to manage the organization and pay their staff is almost non-existent, since general rules on internal organization and the salaries for civil servants apply. Moreover, they face strong political control, since their CEOs are politically appointed and their position depends completely on the will of the incumbent. They lack collegiate bodies or other types of control or intermediary between the organizations and their political master, which are found in other (legally independent) agencies. Among them, three groups can be distinguished:

*a. Government services and offices.* Only two organizations have the status of Government service without legal personality (information and technical support), with 12 offices engaged in policy-making and monitoring in different areas, such as offices for gender equality, social partnership, civil society, prevention of drug abuse or human rights.

*b. Internal organizational units of ministries with special autonomy* include several special administrative organizations, such as the Tax Administration and the Customs within the Ministry of Finance, the Police within the Ministry of Interior, or the Directorate for Prison System within the Ministry of Justice. Hence, a sort of semi-agencification might be observed in the core ministries. These units have special positions within the ministries (interior, finance, and justice), but their importance for the state has negative impact on the degree of autonomy. Their structural distinctiveness and special position within the respective ministry is mirrored in the special legal framework of these units, and the special positions of their CEOs. They are perceived as ‘ministries within ministries’, based on their function and number of employees, for example the case of the Tax Administration and Customs, which together employ more than 7,500 civil servants, while the rest of the Ministry of Finance has slightly more than 500 civil servants. Additionally, and in contrast to the separation of policy and administrative functions, this group of agencies also performs policy tasks, formulating policy proposals, monitoring and evaluating policies. Consequently, there is no need to develop a special policy unit as long as the semi-autonomous organization stays within the ministry.

*c. Central state administration bodies* (excluding ministries) consist of eight administrative organizations and two central state offices. The former are bodies with significant specialization regarding the work method and function, which has been traditional in the state domain (e.g. State Statistical Bureau, State Geodetic Administration, State Weather Institute). The latter were introduced in 2003 mainly for the performance of new functions with horizontal implications and coordinating role (State Office for e-Croatia, State Office for Strategy and Coordination of EU Funds). Their heads are appointed by the Government. These bodies have experienced frequent changes, in terms of their number (ranging from five to fourteen), mergers and splitting-up, and changes in legal status. In 2010, with a total number of 4,000 civil servants, they made up for almost 9% of the central state administration.

In sum, the agencies from category 1 (the semi-autonomous organizations) are not perceived as agencies by experts or the general public, especially because of a high degree of integration into the state administration system leading to the restricted autonomy, as well as because of their political leadership. Still, in functional terms and in terms of organizational distinctiveness, they behave like agencies, with some special traits – politically appointed individual executive and a combination of policy and implementation work.

## **2.2. The agencies with legal personality: the ‘regular’ type**

The legally independent type of agencies (category 2) exerts most of the characteristics identified in agencies (Pollitt and Talbot, 2004). Out of 75 researched agencies in 2009, 63% of them were established by law enacted by the parliament, while others were established by the Government. With regard to their legal status, three quarters of agencies have been established in the form of public institutions, and one quarter simply as ‘legal persons’ (or ‘legal persons with public authority’), a sort of a general category used by the legislator in order to avoid the application of a stricter legal framework for public institutions (especially with regard to personnel and ministerial control)<sup>5</sup>. The fact that a higher percentage of agencies is established by a law enacted by the parliament, and that a quarter of agencies escape government regulation with regard to internal organization and personnel might indicate that the Government may not freely decide on life and death of agencies, as well as their internal design and resources. Hence, the autonomy, at least formally, is granted to a certain extent.

With regard to policy areas, agencies in the economic policy area significantly outweigh agencies in non-economic services, with 60% dealing with economic affairs (finance, economic, rural or regional development, agriculture, traffic and communications, environment, construction), and the rest in the area of non-economic or social services (health, science and education, culture).

Agencies’ functions include regulation of the specific sector, monitoring the execution of public policies, or executing a specific policy program. Their tasks consist of issuing regulations or general rules, establishing standards, monitoring implementation, collecting data, issuing administrative acts (including licensing, certificates etc.), supervision and sanctioning, or executing and financing programs. Consequently, with regard to the type of task, it is possible to distinguish between two main types of agencies – regulatory agencies and executive agencies, as well as a third type – expert agencies for policy support<sup>6</sup>.

*a. Regulatory agencies* are established by law (parliament) in the form of ‘legal person with public authority’, whose task is to regulate a specific sector. There are

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5 Only one half of all agencies are named ‘agency’, while the other half encompasses institutes, funds, centers, registers, offices or bureaus, indicating the type of their primary task.

6 Koprić (2009a) in a similar vein distinguishes regulatory agencies, quality and standardization agencies, development agencies and executive agencies.

12 regulators, including the Croatian Competition Agency, the Croatian Postal and Telecommunications Agency, the Croatian Agency for Financial Markets Supervision or the Agency for Medications and Medical Products. They perform all the elements of regulation (making general rules, issuing individual decisions, supervision of market, sanctioning), but they cooperate with the respective ministry in order to develop authoritative rules (Christiansen and Læg Reid, 2006; Gilardi, 2004). Regulators' specific functional features are mirrored in their organizational traits; they are headed by a collegiate body, comprised of professionals appointed by the Parliament or by the Government on the basis of a public announcement, and they are almost entirely exempted from the legal framework applicable to other agencies. As a consequence, their autonomy regarding internal organization, personnel and financing is higher than in other agencies. Their legal, financial or political control is weaker – their decisions can be challenged only before the court, and the (formal) political control consists, apart from *ex ante* appointments, in annual reporting to the Parliament, which is generally considered to be more a formal than a real threat to the agency's autonomy. The main control mechanism might be found in the expertise of personnel and their professional ethics, and the objective effectiveness in regulating the respective market. Consequently, they are indeed formally independent in performing their tasks.

*b. Executive agencies* encompass a broad group of agencies in both economic and non-economic sectors, with different tasks, ranging from individual decision-making, licensing, certifying, public registers, financing programs or projects, operational activities, and service provision. There are 41 executive agencies (55%), such as the Agency for Public-Private Partnership or the Agency for Regional Development. They exercise a lower level of autonomy and are subjected to higher control, in order to ensure policy implementation<sup>7</sup>. Several subtypes of executive agencies might be identified, such as supervisory agencies, which are created in order to ensure the enforcement of policies by issuing licenses (or certificates) to service providers and supervising them; administering agencies dealing with rights and duties of users on a routine basis without rule-making; and developmental agencies, established for fostering the development of a certain policy area, by financing programs or projects and by supervising policy implementation.

*c. Expert agencies* (policy support agencies) focus on policy preparation and monitoring, mostly in the social sphere (health, environment protection, education), such as the Croatian Public Health Institute and the Croatian Food Agency. Their primary tasks relate to proposing policy measures and planning, standard formulation, producing scientific or expert analyses for the development of a specific policy area or activity, information gathering and dissemination etc. Some of them are created as monitoring centers, information centers or coordinating units for other agencies.

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7 For example, their employees are often (but not in all cases) public servants, which affects their salaries. The respective ministry often has the power to overrule their individual decisions.

They are often given public authority to make decisions in individual cases, keep official registers and similar. They are created in the form of a public institution, which makes them relatively autonomous, but also exempts them from firm political control, which is perceived to be compensated by professionalism.

The importance of agencies in the state apparatus has steadily grown during the last two decades, due to the intensified process of agencification. The increase in number was followed by the growth of employment in public agencies. In the mid 2010 there were approximately 12,360 employees in 67 category 2 agencies (184 employees on average), which is about 20 per cent of the whole state administration. However, these numbers are not evenly distributed. There are three large ministries (Interior, Defense and Finance), but most ministries are much smaller. To illustrate the importance of agencies, we can also compare the relative size in terms of work positions in ministries and agencies in their field. For example, in 2010, the Ministry of Science, Education and Sports employed 300 civil servants, while ten agencies in the same policy area employed 466 public servants. The Ministry of Rural Development, Water Management and Forestry employed 707 civil servants, while five agencies in the same policy area had almost 1,000 employees. Instead of big ministries surrounded by satellite agencies, in most policy sectors in Croatia we find relatively small ministries and a number of medium sized agencies (cf. Bouckaert and Peters, 2004). In financial terms, agencies received €5 billion from the state budget in 2009 (which was in total €17 billion), out of which slightly less than €200 million were spent on salaries.

### **3. There and back again: the rise of agencies and their sudden fall**

#### ***3.1. The antecedents of modern agencies***

The idea of creating organizations with a certain degree of autonomy from the government has a relatively long tradition in Croatia. Some agencies emerged in the 19<sup>th</sup> century or in the first half of the 20<sup>th</sup> century, such as the Chamber of Commerce (1857), the Hydrographical Institute (1860) or the Employment Service (1906). The legal type of relatively autonomous administrative organization was frequently employed during socialist Yugoslavia (1945-1990). In that period, there were two main drivers for granting autonomy to public administrative organizations. One was state inclusion in and control of economic activities and the other was the idea of self-management that spread throughout both the economic sphere and state organization<sup>8</sup>.

Until the 1950s, the state was the sole owner of the companies, exerting high influence on the management of companies. After 1950, the idea of self-management and subsequent ideas of decentralization, social ownership, connecting interested parties, participation and collective decision-making induced innovations in the public sector, with two of them innovations being particularly important. Self-management

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8 As Yugoslavia was a federation, state authorities were divided between the Federation and the six republics. The Federation underwent gradual development from a more centralized to a more decentralized state, with dissolution as the final result.



was formally introduced in 1950. During the 1950s, councils (*savjeti*) had a very similar role and composition as their institutional successors, the self-management interest communities (*samoupravne interesne zajednice*). These ‘communities’ were public organizations for the protection of citizens’ interests with regard to public services (education, health, science, welfare, utilities, telecommunications, social housing, water and power supply, roads and traffic, transportation etc.). They were the forums in which the representatives of the three parties – users, public organizations and employees – decided on a broad range of issues connected to the management and operation of such public services. Councils and self-management interest communities were public organizations with substantive real autonomy (Ivanišević *et al.*, 1979).

A second novelty, especially after the administrative reform of 1971, was the introduction of various forms of administrative organizations with some degree of autonomy within the narrower state apparatus. The reasons for their establishment were specific work methods (inspections, ‘administrative institutions’), necessary autonomy and efficacy (administrations), coordination (commissions), collective decision-making (committees) or special emphasis on professional expertise (institutes). For example, between 1974 and 1990 there was a proliferation of ‘committees’ as a collegiate form of leadership, composed of the representatives of interested organizations appointed by the Federal Executive Council. In 1982, there were 6 committees at the federal level and 14 committees in Croatia. Another prominent form of relatively autonomous public organizations was the institute, with nine institutes at the federal level and six institutes in Croatia in 1982 (Pusić *et al.*, 1988, pp. 211-261). Many of these institutions have been restructured into organizations that are listed as category 2 agencies (see above).

### **3.2. The steps in the process of agencification**

During 1990s, agencies were introduced into the administrative apparatus of the independent state, alongside changes in the political, economic and social systems. Different legal forms and types of agencies existed during that time, some of which were inherited from previous times (e.g. institutes for retirement insurance or health insurance, a public health institute), while others were created as a response to the needs of the changed economic and political environment. For example, in the early 1990s three autonomous regulatory type bodies were created for the supervision of the financial market (and later merged into one large regulatory agency), and several executive type agencies for economic and regional development were set up. Moreover, the new regulatory needs in the public service were institutionally embodied in boards and collegiate bodies, for example for the regulation of competition, telecommunications and postal services. Finally, beside modest use of type 2 agencies, the form of the semi-autonomous organization was frequently applied for accomplishing specialized tasks of the state.

After 2001, agencies emerged as a suitable solution for the performance of new tasks, often imposed by EU membership, and as an exit strategy for facing the problems

of a rigid administrative system. The data presented in Table 1 show that out of 75 category 2 agencies existing in 2009<sup>9</sup>, only 22 were created in the 1990s, while the majority (53 or 71%) were created (or established as agencies) in the period 2001-2009. In other words, while in the period 1992-1999 there were on average 2.75 agencies established per year, in the previous decade the average annual number of agencies amounted to 5.88 agencies (not counting the year 2000), which makes the intensity of agencification twice as high. The highest rate can be found in the period 2003-2009 with 6.28 agencies per year (44 agencies in total) and 2005-2009 with 6.4 agencies per year (32 in total).

Finally, a sudden shift occurred in the process of agencification in 2010, when only two new agencies were established and 15 agencies were abolished, leading to a decrease of 20%. In sum, the number of agencies changed in a year – from 75 agencies in mid-2009 to 63 agencies in 2011.

**Table 1:** The number of agencies created per year in the period 1992-2010

Year	Number of agencies established	Total	Year	Number of agencies established	Total
1992	1	1	2002	5	31
1993	3	4	2003	7	38
1994	2	6	2004	5	43
1995	2	8	2005	5	48
1996	2	10	2006	6	54
1997	6	16	2007	8	63
1998	3	19	2008	9	71
1999	3	22	2009	4	75
2000	0	22	2010	2	77 (-15)
2001	4	26	2011	1	63

### ***3.3. Explaining the trends of agencification and de-agencification***

The trends of intense agencification in 2001-2009 and de-agencification in 2010 might be explained by the presence of new political and administrative values, represented by four processes: first, democratization and decentralization (since 2000), second, the plea for effectiveness resembling to the new public management agenda (since 2003), Europeanization (since 2001, intensified in 2005) and rationalization of the public sector (since the end of 2009).

As early as in 2000, the change of the social and political climate towards developed democracy principles, as well as the turn from centralism towards the concept of decentralization, gave room to agencification. The idea that the state apparatus does not have to be governed by the exertion of intense and immediate political control

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9 The number of agencies created per year is determined by the analysis of legal acts. Possible predecessors of agencies, such as boards, commissions etc., are not included, as well as inactive agencies, agencies in the area of national security and agencies which are not clear type 2 agencies.

gave impetus to stronger decentralization, not only by strengthening local and regional self-government, but also by creating decentralized bodies at the central level. Hence, during the left-wing coalition rule in 2001-2003, sixteen new agencies were created.

Next, the ideas of public administration quality in the sense of efficiency and effectiveness and the citizen-centered approach inspired the reform agenda of the center-right government elected in 2003 and 2007. On the one hand, the rigidity of the system and the need for effectiveness and efficiency posed pressures for new public management structures (agencies) and processes (e-government, administrative simplification, and professionalization). On the other hand, European pressures caused the change in legal frameworks making the system, to some extent, more flexible and modern, and adapted to European standards. Still, despite its popularity, especially with the 2003-2007 Government, the new public management had no programmatic value and strategic framework which would be effectively implemented. The shift towards NPM ideas resulted in various initiatives and legal changes, such as the administrative simplification project – administrative guillotine (2004), the Civil Service Law (2003-2005), introduction of the concept of e-government (2005), and later, modernization of the administrative procedure (2008). Agencies were established as a means of enhancing the effectiveness and efficiency by exempting new organizations from the legal framework of the general state administration and insulating them from direct political pressure, allowing managers to manage.

The strongest normative underpinning for agency creation came from the EU accession process as the creation of autonomous agencies was a formal obligation in the EU-Croatia Stabilization and Association Agreement (signed in 2001), to which the political and administrative elites adhered almost religiously, and continued to do so after 2005 when the negotiations for membership started. As shown in Table 2, more than two thirds of all category 2 agencies (53 agencies or 70%) were created in the 2001-2009 period, with 32 (43%) agencies established since 2005. Moreover, an analysis of 2003-2009 measures which had to be undertaken in order to fulfill the accession requirements, as defined by the Government Program<sup>10</sup>, shows that more than one half of the agencies are a matter of preparatory activities for the EU accession (52 agencies or 56%). Out of this number, 26 agencies (35%) had to be created in order to satisfy the accession criteria, while 16 agencies (22%) are mentioned in the context of strengthening their administrative capacities, broadening the scope of their activities or changing their internal structure. In sum, two thirds of the agencies were established under the influence of EU accession<sup>11</sup>.

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10 The National Program for the Accession of the Republic of Croatia to the European Union (NPEU) is a strategic and operational plan for the accession of Croatia, adopted annually by the Government, since 2003. The document contains the measures taken as well as those planned for the following year, according to the functional area (negotiation chapter) and to the bodies involved.

11 However, the 'Europe made me do it' excuse is often used even when there is no formal EU pressure for institutional change. This driver should therefore be interpreted with caution.

**Table 2:** Agencies by the time of creation

Time frame	F	%	F	%	Agencies by time of formation
1990-2000	9	12	22	29,33	Inherited agencies (before 1990)
	13	17,33			Transition period agencies (1991-1999)
2000-2009	21	28	53	70,06	Europeanization I agencies (SAA 2000-2004)
	32	42,66			Europeanization II agencies (negotiations 2005-2009)
Total	75	100	75	100	Total

The economic crisis that erupted in 2009 marked a new era in the agencification process leading to a reversal of the trend. The economic downturn and the general social and political crisis expressed through public dissatisfaction with governance at all levels and a chaotic public sector forced the Government to rationalize and reorganize the public sector. A decrease of public spending was determined as a key indicator of success, which is also a very useful means of pleasing the angry voters. The Economic Recovery Program of the Croatian Government adopted in June 2010 set the following goals as the priorities for rationalization of the public sector: the creation of a register of public employees; the decrease of the number of public employees by 5%; and the review of agencies, including the formulation of the criteria for agency creation and control, and redefining the functional scope for the existing bodies by concentrating similar tasks in one agency or ministry (by merging and augmentation).

In July 2010, the Government adopted the Proposal for Reorganization of Agencies, Institutes, Funds and Other Legal Persons with Public Authority, which accentuated an urgent need to abolish (by merger, incorporation or termination) fourteen agencies from different policy sectors, using three basic criteria: the size of an agency measured in the number of employees, their expenditures, the possible functional overlapping or similarities with other organizations<sup>12</sup>. The EU-induced obligation to create agencies for certain tasks or to enhance the administrative capacity of the existing agencies was set as a negative criterion for the abolition. An immediate consequence of the proposal and subsequent law amendments during the next two months was a 20% decrease in the number of agencies. Still, further downsizing remained the target for the government in terms of the announced legislative changes related to the rationalization and modernization of state administration, and so did the proposal's reluctance to tackle the agencies founded on the basis of obligations towards the EU, which are usually taken for granted.

<sup>12</sup> Those 14 agencies had 962 employees and their annual expenses went beyond €2 mil, with 20 per cent spent for 'intellectual services'. This surprising evidence indicates that the agencies which were supposed to serve as specialized expert organizations frequently had to hire outside experts in order to accomplish their tasks.

#### 4. Matching autonomy with effective control

The agency model rests upon the idea of balancing autonomy and control, leaving the agencies sufficient independence to perform their tasks, and simultaneously holding them accountable for their actions. There are different conceptualizations of autonomy and control (Verhoest *et al.*, 2010). In general, the autonomous functioning of an administrative organization relates to the relative freedom with regard to its internal management (organization, staffing, financing), as well as its independence in decision-making and, often, policy involvement. It is often balanced by different control mechanisms of legal, financial, as well as political and democratic type. In this section the main features of autonomy and control in Croatian category 2 agencies are sketched, with the emphasis on the legal frameworks of particular mechanisms<sup>13</sup>.

With regard to autonomy, Croatian agencies have significant managerial autonomy, since they can decide on their internal organization, personnel and financing, escaping the general legal framework which applies to the state and public administration. Hence, agencies are not only free to decide on their internal organization, but also only public establishments (if not excluded by law) employ public servants, while other agencies mostly employ regular workers. This means that the recruitment and salaries of the civil servants are determined by law, while other employees fall under the application of the General Labor Law. Thus, the personnel policy in some agencies is closer to human resources management of the private sector, with freedom of the CEOs to determine the salaries, and often without public announcement of the vacancies. Additionally, when it comes to financial autonomy, most agencies are funded from the state budget. Still, some generate a significant amount of revenues by their own activity (by charging fees) or in some cases are completely self-funded, as for example the Croatian Energy Regulatory Agency. Moreover, four agencies are financed from special taxes or fees (the so-called non-budgetary funds), like the Croatian Waters. Although the agencies decide on the spending of their budgetary revenues, agencies funded from the state budget have a lower degree of autonomy and higher control, especially when it comes to the application of the internal financial control mechanism, which has been obligatory for all public budget users since 2006. Still, as most agencies receive funds from the state budget, the budgetary accounting and spending regime applies.

When it comes to decision making in individual cases (policy autonomy), most agencies have the authority to decide on the rights and obligations, to license or give certificates, or make authoritative decisions in other ways. Still, general rule making and standard setting is a prerogative of regulatory agencies only, as they

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13 There is no relevant data on informal autonomy and control. Several interviews conducted in different agencies in 2009 showed that some agencies were left on their own, with no interference of the ministry (for example the agency distributing funds for audio-visual arts; or the agency administering EU funds), while others closely cooperated not only with the ministry but also with local governments, which left them open to informal influence.

enjoy significantly higher autonomy than other types of agencies. Executive agencies usually do not engage in policy making, although they have a say in formulating policy proposals in their area of expertise (in the form of opinion, expert support, or analysis). Moreover, policy support agencies are primarily engaged in policy development (giving input in policy formulation, including monitoring and evaluation), but a formal decision remains the prerogative of the respective ministry.

The agency model of administrative organization assumes that the need for autonomous functioning is counterbalanced with sufficient and effective control mechanisms. The pillars of agency control in Croatia are based on the following mechanisms. First, legal control is exercised via hierarchical supervision by the ministries and/or judicial control. The success of the control mechanisms is related to the general shortcomings in the administrative appeal mechanism and the administrative justice system, which is often slow and ineffective. Additionally, control is often in the hands of administrators and judges with no special technical knowledge in the respective area. Second, as a political means of control, agencies have to report annually to their founder. However, there are no predefined sanctions for misbehavior, such as overspending, omission to accomplish the delegated tasks or for any other unacceptable behavior. Third, participation as a form of political democratic control is prescribed formally in some agencies via participative governance boards, which may leave the agency vulnerable to the pressure (capture) of special interests, instead of citizens' control. Fourth, transparency is based on the (ineffective) law regulating public information, but without special provisions with regard to agencies. Public access is ensured through the Internet sites of the agencies. Fifth, financial control is exercised via regular budgetary mechanisms and auditing, and the internal financial control system (for the agencies financed from the state budget), or external auditing (for the agencies with their own revenues); the sanctioning mechanism includes both criminal prosecution and political accountability to the principal.

The analysis indicates a general lack of control over agencies, especially with regard to the *ex post* control. This relates to the absence of performance control in the public sector in general or other types of *ex post* control, such as contracts between ministries and agencies. *Ex ante* mechanisms of control are still predominant, meaning that control is based on the legal framework for the particular agency, the procedural requirements and the professional governance structure or political appointments. At the same time, the *ex post* mechanisms are weaker, restricted mainly to reporting to the principal (in the form of annual reports) and judicial control of (individual) decisions, with both mechanisms having questionable effects. The reliance on *ex ante* controls is especially problematic in the case of regulatory agencies, in the area of telecommunications, financial markets, data protection or competition protection, where other types of control, beside professionalism<sup>14</sup>, are weaker in comparison to the executive agencies.

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14 Political independence based on expert leadership instead of political appointments is a feature only in a minority of agencies. Professional boards are found in regulatory agencies; their members are appointed by the founder (Parliament and/or Government) based

For example, the only legal control is the control of the Administrative Court, which is a lengthy procedure with uncertain result, harming legitimate expectations of the market players. Additionally, in other agencies of the executive type that possess legal entity high autonomy levels are not counterbalanced with the requirements of strong professionalism when it comes to governing structures or employment. Hence, their control is based mainly on political and hierarchical control via the respective ministries. The result is that in regulatory agencies wide autonomy rests mainly upon the faith in professional standards, while in the executive agencies autonomy is restricted by political control. There are only modest and sporadic attempts to make particular agencies accountable for their results, mainly in financial terms.

There is a widespread perception of insufficient or inadequate control of agencies, which creates a negative public opinion, as it has been expressed by the media and civil society. The agencies have become an infected term in the public discourse associated with uncontrolled spending, inactivity and secrecy. Together with 576 local and regional self-government units and large public enterprises (some having 12,000 employees), agencies are blamed for being a generator of the economic (and social) crisis and a source of general dissatisfaction with the political elites and their policies. Interestingly, only certain regulatory agencies are taken as examples of good governance, with the media headlines applauding their professionalism as well as their resistance to the Government pressures, and praising them for keeping things in order in the privatized public sectors. The public attitude towards the agencies also points to a general lack of transparency in public administration. Although the 2003 Law on the Access to Public Information was recently amended in line with the Constitutional Amendments of 2010, there is a possibility that the new Law will not increase transparency as long as public administration as a whole does not incorporate the idea of transparency and openness as its guiding principles. Until then, citizens seeking information will be perceived by administrators as annoying and malicious.

### **5. Legislation as a first step in the institutionalization of the agency model in Croatia: learning from experience**

The main problem of the agencies in Croatia relates to the absence of an adequate legal framework which would promote the agency model as a new type of institutional form in the administrative, legal and political system (early warnings in Koprić, 2003, p. 479). The sketching of autonomy and control in the present analysis has shown

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on their expertise, and they cannot be dismissed, except in cases prescribed by law. Their independence is ensured by the incompatibility clause, which forbids them to exercise any other type of public authority or to engage in the activities which are related to the agency's tasks. In executive agencies too, the individual CEO is usually appointed by the founder or by the management board (comprised of politically appointed members), based on expert knowledge and following a procedure of public announcement. Still, the fact that professionalism is a prerequisite prescribed by law does not guarantee that the appointment of the executive director will be free from political influences.

variability, insufficient legal certainty but also the problem of possible political influences, all related to the inadequate counterbalancing of autonomy with effective control mechanisms. In sum, agencies are not perceived as new organizational forms that require special regulation of their structure and functions, in order to achieve the goals of the agency model. The main evidence is the choice of their legal status by the legislator, who has applied two exit strategies. The (inadequate) legal framework for public institutions (*ustanove*) (the so-called MABs, see Pollitt, 2004) is applied on one group of the agencies, which in practice means that the same autonomy and control arrangements apply for the Agency for Civil Aviation and for a local school. There is no special framework for the other group – they are simply called ‘legal persons’, and their legal framework is left to the legislator to enact each time when an agency is established, which in practice means that the ‘legal person’ is open for ad hoc design (and possible politicization). The absence of an adequate regulatory framework is even more dangerous in case of regulatory agencies. Regulatory agencies have great formal autonomy, while their control is mostly based on *ex ante* control mechanisms for preventing external influences (governance board appointments, conflict of interest clause). However, no clear legal requirements for *ex post* control, except annual reporting, are included in the legal acts establishing regulatory agencies. In sum, the control mechanisms focused on quality and performance are missing for all types of agencies.

Negative implications of careless introduction of the agency model, without recognizing it as a new institution, in the country that suffers from all the illnesses related to transition countries, can serve to the other countries as an example of possible threats they should be aware of. A semi-agency model is a more accurate description of the concept, meaning the split of the agency model into two subtypes: one representing regulatory agencies with great autonomy but insufficient formal control; and the other representing executive agencies with lower level autonomy and strong political control (in certain cases, even political misuse). The explanation can be found in the legal, administrative and political environment. The transitional phase of political and administrative development in Croatia strongly determines the agency model, with strong politicization, undeveloped control, and inefficiencies in the legal frameworks related to the establishment and design of agencies.

However, there are opportunities for improvement in the institutionalization of the agency model in Croatia. These improvements need to be made by the adequate legal framework in order to achieve optimal levels of autonomy and control. The existing legal arrangements of state administration have to be adjusted to the new model of administrative organization, and not the other way around. The present situation, when the agency model is simply inserted into the existing political and administrative surroundings proved to be ineffective, and the principals (Parliament and often Government, but also the public) seem not to have any effective mechanisms to hold the agencies accountable. The phrase ‘regulating the regulators’, with extension to all types of agencies, should be taken seriously.



First, a legal framework for the establishment, design, and abolition of agencies should be developed in the form of a systemic law enacted by the Parliament. This legal framework should be a part of the policy of agencification reflecting the state's vision of the public sector and a public administration, based on expert advice. The policy and legal framework for agencies should introduce the agency as a particular model of public administration organization, acknowledging its distinctiveness in relation to the state administration and their special balance of autonomy and control. In formal terms, this also implies the inclusion of special provisions on agencies in the Croatian Constitution. This step would have a constituting effect for the new institutional form in the Croatian legalistic administrative culture (*Quod non est in actis, non est in mundo*). This would also be a first step for ensuring the accomplishment of the new tasks of the regulatory and efficient state in the European and global environment. Based on the Constitutional provision, the legal framework should pay special attention to the precise legislation of various forms of agencies and their functioning. Otherwise, there looms a wide space for politicization, capture and corruption, non-transparent functioning, and misuse of agencies. Needless to say all these features have negative impact on the agencies' efficiency, expertise, and result-orientation. Agencies are a useful public management tool if their potentials and advantages are exploited and their deficiencies and weak sides are kept under control.

Second, in order to ensure professionalism and prevent politicization and nepotism, regulation of the status of employees should determine their status as a sub-type of public servants, including their rights and obligations. There is a constitutional provision granting equal access to public service employment to every citizen, with special regulation for the employees of state bodies and public services that exercise public authority. However, most agencies employ their staff without publicly announcing vacancies. Their number and salaries are not made public either. A provision regarding the public servants' status for all employees should enhance the transparency of employment, raise the professional expertise and ensure control. Additionally, the salaries should be related to employees' expertise and responsibilities, allowing a certain degree of flexibility in order to meet the needs of agencies. In addition to their legal status, special legislation ensuring the quality of staff as well as adherence to ethical standards is necessary. Ethical standards can prevent all sorts of unethical behavior and conflicts of interest, lower the degree of capture, reduce and prevent corruption etc. Special attention should be given to the incompatibility clauses as well as the formal requirements for appointing the members of agencies' governance structures. For now, only a few regulatory agencies have such formal rules. The general mechanism of the conflict of interest should be made more effective, with adequate sanctioning of those breaching the regulations.

Third, extensive capacity building and depoliticisation of the independent regulatory agencies is necessary in order to achieve their independence. The provisions related to the appointments of governance boards and CEOs should be clear in order to ensure independence. They should have efficient mechanisms of executing decisions.

Having in mind the European policy towards the services of general economic interest, such agencies have and will continue to have an important role in ensuring competitiveness, development and consumer protection on the respective markets (telecommunications, water, gas and power supply etc.).

Fourth, *ex post* control mechanisms should be put in place, ensuring effectiveness and accountability of agencies. The first claim relates to an adequate mechanism of legal control, in order to ensure efficiency, speediness and quality of decisions. It relates to legal control of the decisions made by the respective ministries, and also, if not more importantly, by the administrative courts. The ongoing reform of the administrative justice system has failed to acknowledge the special character of the decisions made by regulatory agencies, and the legislator may have to change the newly enacted law in order to find a better solution for the legal control of their decisions (see also Popović and Maričić, 2011). The powers of the court to review their decisions should correspond to the agencies' level of autonomy and expertise. The decisions of regulatory agencies in individual cases should be reviewed only with regard to the procedural requirements, having in mind that due to their expertise, the regulators should have the final say in the matter in their field. Nevertheless, individual decisions of executive agencies might be subjected to the appellate procedure in the respective ministry, with the court exercising the final check of legality of their decisions. The second *ex post* control mechanism, based on clear financial management rules, relates to a more thorough financial control, including the State Audit Office, external audit and internal financial control. For that purpose, the legal framework of agencies should precisely prescribe their obligations. Third, political control via annual reports can be strengthened by the inclusion of performance contracts which could give the principal clear criteria for measuring the success of an agency. The legal framework should regulate the contractual obligations of agencies in the form of concrete targets that should be met. Performance contracts and similar instruments indicating the desirable level of agencies' functioning, their effects and outputs, should be introduced and made obligatory in order to achieve the purpose for which the agency was created. This also requires special skills and knowledge on the side of the 'parent ministries', as well as an effective sanctioning system for underachievers. Finally, the democratic control should be ensured via general regulations granting public access to documents and public information and the rules enhancing transparency, especially when it comes to financing and decision-making processes (such as reports on particular issues related to the agency – spending, employees, activities, results achieved). Moreover, legal requirements regarding the participation in governance structures and in the consultation processes would prevent technocratic closeness and the culture of secrecy, which often characterizes the agencies and which might harm their reliability and respectfulness.

Finally, the proliferation of agencies creates pressures towards better coordination both in the public administration system as a whole and within particular policy sectors. At this point, lack of coordination is a hot issue in the Croatian public administration.

It requires a strategic approach, where coordinating structures and instruments in the system are established and introduced through a legislative procedure. The central government is weak and lacks effective means for ensuring policy coherence and achieving the goals of the political system. This is visible in the frequent changes of policy goals and laws, as well as in the execution of administrative tasks.

If the above recommendations were followed, the institutionalization of the agency model would result in greater effectiveness and control of agencies, and would ensure better functioning of the whole administrative system.

## **6. Conclusions**

To sum up, the normative idea behind the process of agencification in Croatia during the 2000s can be found in the new public management ideas of effectiveness and efficiency through specialization and expertise. Also, to a lesser extent, it originates in the concepts of decentralization and depoliticisation with a very strong influence from the EU, which was perceived not only as a driving force of but also as an excuse for agency creation. The examples are regulatory agencies in the energy sector, telecom or traffic, whose establishment and/or design is a part of the *acquis*, and also a number of executive agencies for ensuring the performance of tasks related to European issues (e.g. the Central Agency for EU funds) or adherence to European sectoral legislation (in agriculture, work conditions etc.). The 20 per cent decrease in the number of agencies in 2010 might be only the beginning of the rationalization process. Presumably, there will be no significant growth in the number of agencies in the coming years, but a sharp decrease is also not very likely. The EU factor is one of the reasons; the agencies related to the accession requirements are 'untouchable', although the pressure to create agencies ceased at the end of the accession negotiations. Internal resistance and political negotiations are additional factors that diminish the likelihood of intensive de-agencification.

Since the idea of autonomy of agencies was advocated as a leading force behind intensive agencification, the corresponding concept of control was not sufficiently taken into account. As Beblavý (2002) stated, the agencies in transitional countries, which were granted significant autonomy, 'often become players in their own right that can resist changes they dislike'. Still, the severity of the crisis forced the Government to increase the effectiveness and efficiency of the public sector. The 2009 economic crisis resulted in re-examination of the chaotic situation and the problem of control, especially in terms of financial management and effectiveness. The creation of a general legal framework for agencies was announced as a form of *ex ante* control. The *ex post* control is still based on the administrative court review, which is currently under reform, and on annual reports to the founder. Moreover, performance management and quality measurement indicators have not been extensively introduced. This is a consequence of the failure to acknowledge agencies as a distinctive phenomenon in the Croatian public sector until 2010, by both the politicians and the civil servants. It is reasonable to expect that in the years to come the issues of effective control

over agencies as well as the problem of coordination will be placed high on the agenda of the Croatian public administration, along with the rationalization of the public sector. For that matter, the adequate legal framework could be an instrument of institutionalization of the agency model, based on the appropriate regulation of autonomy and control arrangements. Still, the agencies do not exist in a vacuum; they are a part of a broader political and administrative system and the success of the agency model rests upon other factors: the capabilities of ministries to design and monitor policies and coordinate them effectively; the overall transparency of both political and administrative behavior; and a high degree of professionalism in the public sector in general. There are some good examples of the functioning of agencies, but they are not attributable to the good legal design of the agency model, but to the leadership and environment particularities.

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