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ANALYSIS of the legal status and functioning of public authority entities in Montenegro

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Legal and political context of Montenegro

- Independent, autonomous, internationally recognized country
- As per its state organization, Montenegro is a simple country
- As per its type of government , Montenegro is a Republic
- As per its political regime, it is a democratic country, as well as an ecological, social justice and rule of law country
- As per its power organization, i.e. the power division system (legislative executive and judicial power)

Territorial area of Montenegro

Crna Gora Montenegro	Andrijevica	Bar	Berane	Bijelo Polje	Budva	Danilovgrad	Žabljak	Kolašin	Kotor	Mojkovac
13 812	283	598	717	924	122	501	445	897	335	367

Nikšić	Plav	Plužine	Pljevlja	Podgorica	Rožaje	Tivat	Ulcinj	Herceg Novi	Cetinje	Šavnik
2 065	486	854	1 346	1 441	432	46	255	235	910	553

Number and structure of municipalities

Broj opština Number of municipalities	Broj naselja Number of settlements	Gradska naselja Urban settlements	*Broj mjesnih zajednica* Number of local communities
21	1,256	40	368

Land and coastal boundaries (Coast line)

Ukupno Total	Kopnena granica prema / Land boundary with			
	Hrvatskoj Croatia	B i H Bosnia and Herzegovina	Srbiji Serbia	Albaniji Albania
614	14	225	203	172

CRNA GORA / *MONTENEGRO*	293,5

Srednja mjesečna temperatura vazduha
AVERAGE MONTHLY AIR TEMPERATURE (º C)

	Srednja godišnja Average annual	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
Pljevlja	8,7	-2,1	-1,2	3,9	8,8	12,1	17	18,9	19,4	17,1	7,8	2,6	0,4
Bijelo Polje	-	-0,7	1	5,8	10,6	14,1	18,9	20,5	21,5	-	-	-	-
Kolašin	8,1	-1,5	-0,8	2,9	8,1	11,3	16,2	17,6	18	15,6	6,9	2,2	0,5
Nikšić	12,1	2,3	4	6,1	11,5	14,8	19,6	21,3	23,4	20,8	10,9	6,6	3,7
Podgorica	17	5,8	7,8	10,7	16,8	20,3	25,6	27,2	29,3	26,3	16,3	9,9	8
Bar	17,2	8,4	9,7	11,8	15,6	19,3	24,2	25,4	26	24,7	17	13,1	10,8
Herceg Novi	16,9	8	9,2	11,2	15,4	19,2	24,3	25,2	26,7	24,7	16,7	12,4	9,9

Population

- Montenegro has around 650,000 inhabitants

Positive law notion of public administration

Organizational: a set or a system of different authorities, organizations and other entities (public entities) which have been delegated the performance of public competences.

Functional: A set of specific activities, "specific activities" of administration, through which the administration discharge administrative duties and tasks of authoritarian (administrative) and non-authoritarian (professional) character.

The arrangement of the public administration of Montenegro

- No Law regulating the public administration system exists in Montenegro
- The state administration (ministries and other administrative authorities / organizations)
- Other public entities (local self-government, agencies, bureaus, centers, funds, specific organizations, federations, chambers, natural persons)
- Public services (institutions, business companies)

The Montenegrin public entities development stages

- The first stage (1990-1997) was characterized by transposing public entities from the legal system of the Socialist Federal Republic of Yugoslavia
- The second stage (1997-2006) in which democratic processes originated from the totalitarian regime of Slobodan Milošević and gradual taking over the competences of the Federal Republic of Yugoslavia and establishing new administrative authorities/organizations, whereas in the early 2000 establishing of the first agencies as well.
- The third stage commenced in 2006 upon regaining independence and starting the transition period when the social context marked by endeavoring to regain independence and territorial sovereignty impacted upon the creation and development of institutional foundations, with the independence representing the critical point that directed general institutional development to centralization, etatization and politicization. During this stage, a turn toward the European integrations started also along with the democratization. Strategic goals of the state were entirely different, ranging from preserving sovereignty and integrity to the dedication to the European family gathered around the EU. That period was marked by a stressed agencification in Montenegro.

Legal framework of the Public administration

- The change of regulations; the structure and functioning of public administration changes that were being made without any appropriate, i.e. out of any strategic framework; poor legal regulation of responsibilities and of a transparent acting that would require regulated records of public law entities all affected the identification and classification of both the public sector organizations and agencies in particular.
- There was neither then, nor now there is any clear legal framework for different organizations active within the public sector; there wasn't any single classification of those entities due to the absence of both any general notion of agency and any regulation that would designate such a notion, establishment, features of the model and competences of an agency.

Ambiguity of the notion of agency

- Depending on the research type, the tradition of the country that is subject to such research and theory direction, the notion of agency is defined differently by numerous authors.
- In principle, some of them consider all the public law organizations - whether independent or partly independent, which perform specific public duty ranging from regulating a market, supporting the formulating and enforcing of public policies and programs funding to services delivering - as public services.
- The notion of agency implies a variety of organizations performing public duties, including also the parts of central state administration and public business companies.
- Some authors emphasize certain specificities in terms of those of regulatory agencies or, e.g. of organizations inside the ministries , which are called "semi-autonomous".
- A large portion of duties, and particularly those falling within public management and public administration, consider agencies as solely decentralized forms of performing administrative duties.

Agency definition

- The clearest and elaborated definition of agency and of the agency's features was given by Pollitt et al.
- Agencies are organizations that are, in structural sense, separated from the state administration system (i.e. formally separated from the ministries) for the purposes of performing public duties at national level and on permanent basis.
- Usually, civil servants are employed with an agency
- Agencies are mainly funded through the National Budget
- Agencies are subject to the public law regulations

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Theoretical features of agencies

- ***In structural sense*** separated from the central hierarchy structure of the central state administration (at arm's length), which implies a specific level of autonomy from the line ministries, with such autonomy frequently expressed through the legal capacity that is not a required presumption of agencies, as well as through the legal status in general, agencies depend on particular legal order in a country, but they are held responsible to the founders through a variety of mechanisms (reporting, financial reporting, management appointing);
- ***Functions*** they perform are public duties that are, by their character, administrative and/or professional, while in terms of time they are permanent and in terms of space they are national-level ones (they bring rules of general applicability; decide in specific cases; perform controls and impose sanctions; deliver expert support to the executive or legislative power; gather pieces of information; allocate funds; and alike), while they are directed towards the specific purpose, which all gives agencies the character of specialized bodies;

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- ***Employees*** working with them are most frequently civil servants; oftentimes they are subject to a regime more flexible than that applicable to the employees with the state administration. Their basic feature is professionalisms and, commonly, a high expertise, which all gives additional legitimacy to the agency, as well as the professionalism of the management that is neither directly appointed nor nominated primarily according to the political criteria;
- ***Financial*** basis for the agency operation is mainly in the National Budget; the required funds may be supplemented through self-financing, but, eventually, the state is held responsible for their financial standing;
- ***Agencies*** are the public law organizations and they are entitled to public competences, i.e. they act authoritatively toward other subjects, through applying the administrative law regulations.

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Typology of agencies(Gill, Derek)

- The first group: *ministerial agencies*
- The second group: *the public law administrative organizations*
- The third group: organizations falling within the NECs (*not elsewhere classified*) group of agencies that do not have legal capacity.

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Ministerial agencies

- They do not have legal capacity; they are part of the state administration; controlled formally by the ministries; they usually deliver either services to citizens or support to other entities; mainly funded through the Budget; their employees are civil servants.
- Examples: executive agencies in he UK; delegations in Sweden; agencies in Holland; semi-autonomous bodies in New Zeeland; PBOs in the USA; or Direct federal Administration in Germany.

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The public law administrative organizations

- *The public law administrative organizations*, as independent organizations with legal capacity (public institutions, *public establishments*, *public law administrations*).
- They differ from each other, taking into account the governing structure (ranging from governing boards, advisory boards and reaching to individual managers); the control over them is mainly up to the governing body (governing board); employees may , but need not have specific civil servant status; in France, they are public institutions; indirect public administration in Germany; agencies in Sweden; executive non-ministerial public entities in the UK; or independent agencies in the USA;
- Among them, it is possible to differentiate three types: (1) PLAs implementing public policies, (2) PLAs oriented to public policy formulating through expertise or engagement of specific stakeholders; (3) PLAs performing independently their respective statutory competences, i.e. mainly the regulatory functions ranging from regulating public services to protecting human rights, and alike.

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Organizations without legal capacity

- They do not have legal capacity; they usually have advisory role; they are services by the ministry, including also the financial basis; they are usually of scientific or professional character.

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Agencies in Montenegro

- Montenegrin agencies were established as authorities with public competences or as public institutions of different types such as agencies, funds, centers, bureaus, registers and institutes where the employees have the civil servant status or their status is regulated under the general labor law.
- Some of them are funded fully through the National Budget, with some of them funded partly through self-financing generated from the collection on their services.
- They perform different functions in regulating the public sector, as understood in a broader sense, i.e. the functions starting from passing general rules, going through monitoring and analyzing activities as grounds and evaluations of public policies; professional duties relating to establishing the quality standards or other forms of improving the activity performed by regulated organizations, i.e. passing individual acts; and reaching to licensing; controlling or sanctioning; as well as the agencies that fund or encourage the development of the activity that are the object of a public policy and that are frequently established as foundations or funds.

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The features of agencies operative in Montenegro

- 1) they are established either pursuant to a law or the Government of Montenegro establishes them pursuant to a law;
- 2) they are with the capacity of legal person;
- 3) as a rule, they are autonomous and independent from other state authorities;
- 4) they have their respective governing bodies (boards, councils, boards of directors) ;
- 5) they have their respective managing bodies, i.e. directors;
- 6) they pass their own regulations (Statutes, rules and alike);
- 7) they fix the fee amounts to be collected on their services;
- 8)they are accountable, as a rule, to the Parliament of Montenegro and rarely to the Government of Montenegro;
- 9) they are self-funded or they are funded through the National Budget and Self-financing;
- 10) they decide on the rights and obligations of the service users;
- 11) they resolve disputes between the service users;
- 12) they perform control, including the inspection control activities; and
- 13) they perform also other, i.e. specific competences.

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Agents

- Agents represent a broader notion than that of agency is, and they comprise a variety of organizations more or less independent, i.e. they are under more or less strict control; they perform public duties and, as a rule, the state either establishes them (e.g. public institutions) or encourages their establishment (e.g. chambers, federations), i.e. the state enters with them into contracting relations for performing a public duty.
- These organizations have been encompassed by agents, in order to differentiate them from agencies and not to fall into the trap of *concept stretching* that is an issue that lead to broad and amorphous conceptualizations[1] as pointed out to in social sciences. Therefore, the first technique of finding out the notion of agency starts from the adverse designation, *ex adverso,* i.e. from excluding the organizations that do not fall under the notion of agency.
- [1] *Sartori, Giovanni (1970) The Concept of Misformation in Comparative Research. The American Political Science Review, 64:4*

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Agents, i.e. agencies within the public administration of Montenegro

- Agents can be understood in the broadest general sense as a series of independent organizations performing specific functions within the public sector – such functions ranging from delivering services and performing public authorities to encouraging the development of specific activity.
- Agencies represent a particular type of organizations in terms of which the concepts of a regulatory state, i.e. the concept of new public management promote them.
- It is required to differentiate the notion of entity as being the type of organizations of private or public character, which perform public authorities based on the law or contract, i.e. which perform specific activity of public interest by delivering services (the public service) *from agencies that are public law entities only and that are established exactly to perform specific public duties that have the regulatory character in a broader sense and that act as a long arm of the power.*

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Origination of agencies

- Separation from the state administration
- Redesigning or merging of independent agencies
- Upon new competences, i.e. duties have emerged

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Separation of agencies from the state administration

- One of the option of originating of agencies is the separation of an organizational unit from an existing authority of the state administration - which authority is most frequently a ministry, but can be also a state administrative organization or even a type of organization that is inside the executive power branch.
- In functional sense, the separation - as typical form of agencification - is usually related to strengthening organizational capacities by functional specialization; by increased number of tasks; or through adopting specific operational rules.
- The separation may, but need not, include also in qualitative manner different method of performing the same duties.
- In terms of structure and governing method, the separation comprises also the modification, i.e. prior performance of duties within the state administration system or within the executive power system - is now more or less independent, within a specific legal person, and with a higher level of autonomy. It is about the change of the loop in the agents chain (so-called *quango drift*), i.e. an alternative form in relation to the organizational integration that can be designated as agencification through separation.

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Redesigning or merging independent organizations

- The second method of originating of agencies comprises the cases where the existing independent organizations are redesigned or merged, while most frequently accompanied by additional functions, whereas the process of institutional change leads to qualitative alteration so that it is impossible to talk about the same organization in functional and/or organizational sense (e.g. merging two agencies into one).
- It can be about the change of place of a loop inside the agents chain, e.g. from public enterprise to agency, most frequently due to specificities of particular duties that are now entrusted to the new agency.

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Agencies with new duties

- The third method of agencies establishing can stand for an organizational solution to all the entirely new duties or functions that were not performed previously within a specific administrative system or they were performed in a significantly narrower manner, so that it is possible to talk about a new public duty and about a new type of organization intended for the performance of such a duty. It is the case with some agencies that are a direct result of the approximation to the EU regulations or international standards.

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Origination of agencies in Montenegro

- Agencies originated through receiving duties,
- Agencies originated through redesigning and merging as being the methods of strengthening the organizational capacity,
- Agencies originated through the separation from the state administration system

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Agencies originated through receiving duties

- The majority of such agencies originated after 2006, which implies to the EU influence.
- *Agency for Peaceful Settlement of Labor Disputes*
- *Montenegro Civil Aviation Agency*
- Agency *for Medicines and* Medical Devices *of* Montenegro - *CALIMS*
- *Agency for Protection of Competition*
- *Accreditation Body of Montenegro*
- *Institute for Standardization of Montenegro*

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Agencies originated through redesigning and merging

- Agencies originated as a method of strengthening the organizational capacity
- *Agency for Personal Data Protection and Free Access to Information*
- *Agency for Electronic Media of Montenegro*
- *Agency for Electronic Communications and Postal Services* as *the legal successor of the Broadcasting Agency*
- *Agency for Electronic Communications and Postal Services* as *the legal successor of the Agency for Telecommunications, i.e. the Agency for Telecommunications and Postal Services .*

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Agencies originated through the separation from the state administration system

- *Agencies originated through the separation from the state administration system originated from the Ministry of the Interior ,*
- *Energy Regulatory Agency of Montenegro originated from the Ministry of Economy*
- *Insurance Supervision Agency of Montenegro originated from the ministry of Finance*

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New planned agencies

- Anti corruption Agency planned under the Action Plan for the Negotiations on Chapters 23 and 24, and merging the existing anti corruptioni institutions and enlarging the competences for the corruption, organized crime, conflict of interests political parties funding areas have been planned as well.

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Montenegrin agencies by their status

- 1). Independent authority
- 2). Specific/nonprofit organizations
- 3). Business companies
- 4) independent services;
- 5. without legal status, and
- 6. the state administration authorities
- 7. Constitutional

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Agencies as independent authorities, i.e. bodies

•1. Insurance Supervision Agency of Montenegro (regulatory authority)

•2. Agency for Electronic Media of Montenegro (regulatory authority)

•3. Agency for Protection of Competition (independent authority)

•4. Agency for Personal Data Protection and Free Access to Information (supervisory authority)

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Agencies as nonprofit / specific organizations

established were:

- 1. Energy Regulatory Agency of Montenegro (nonprofit organization)
- 2. Agency for Peaceful Settlement of Labor Disputes (specific organization)

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Agencies without legal status

- 1. Agency for Medicines and Medical Devices of Montenegro – CALIMS,
- 2. Agency for Electronic Communications and Postal Services,
- 3. Montenegro Civil Aviation Agency,
- 4. Municipal agencies.

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Agencies
as authorities of the state administration

- 1. Tobacco Agency
- 2. Environmental Protection Agency

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Agencies as joint stock companies

- Central Depository Agency
- Employment Agency.

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Agency as independent service

- National Security Agency

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Agency as public institution

- The Montenegrin Investment Promotion Agency (MIPA)

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Types of agencies

FEATURES	REGULATORY	EXECUTIVE	EXPERT
TYPES OF DUTIES	Regulatory	executive, i.e. operational	Professional and analytical
Types of duties	Passing general regulations, decision-making, control, sanctioning	Decision-making, keeping registers, control, funding, operational duties	Professional activities, planning, standardization, monitoring, researching, coordination
SPECIFIC TYPES	Economic regulators, social regulators	Supervisory Decision-making Developmental Other	Professional Informing Monitoring Corporative
PREVAILING CRITERIA ESTABLISHING	Purpose/ goal	users	Type of duty
AUTONOMY	high	low	high
POLITICAL CONTROL	low	high	low
NUMBER OF AGENCIES			
	17,46%	31,74%	50,79%
EXAMPLES	Agency for Electronic Media , Agency for Medicines and Medical Devices	Commission for Public and Private Partnership and BOT Arrangements, , Minorities Fund	Bureau for Educational Services, Institute of Public Health, Institute for Montenegrin Language and Literature

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Executive agencies

- Executive agencies are considered as public entities performing primarily executive and operational duties such as decision-making; registers keeping; control; funding; operational duties; but also specific agencies performing the duties of controlling, decision-making, developmental and other ones.

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Types of executive agencies

- **Ministerial agencies** (independent authorities and administrative authorities inside the ministries)
- **Government agencies**
- Funds (health, pension and disability insurance, labor, compensation, protection and exercise of minority rights, equalization, etc.)
- Centers for Social Work
- Councils (National Council for Education, National Council for Higher Education, and for qualifications, scientific and research activity, culture, the youth, sustainable development, etc.)
- Commissions (concession, auction, state aid, allocation of funds to NGOs and from games of chance, conflict of interest, public procurement, elections, etc.)
- National Security Agency

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Executive (Administrative) Agencies

- Environmental Protection Agency
- Agency for Peaceful Settlement of Labor Disputes
- Montenegro Civil Aviation Agency
- Administrative organizations (administrations, bureaus, directorates, agencies 2,)
- Bureaus of Social and Child Protection i dječije (legal persons)
- Labor Fund, Compensation Fund, etc.

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Executive (Expert) Agencies

- Expert agencies are considered as public entities performing primarily professional duties and to scientific knowledge related duties.

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Executive (Expert) Agencies

- Agency for Peaceful Settlement of Labor Disputes
- Agency for Protection of Competition
- Employment Agency
- Central depository Agency
- Bureaus, institutes, chambers, particular funds

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Regulatory agencies

- Regulatory agency plays significant role in decision-making and designing public policies that are, within the segments of the specialization area the agency is in charge of , exceed the role of the line ministry; regulators have competences to make general binding rules; give opinions and other forms of inputs; and to participate very actively in designing the public policy.
- The relation between the activities dedicated to designing and enforcing public policies by ministries and agencies can be different and the agencies that are involved exclusively in operational and executive duties are only one type of agencies, i.e. the one encouraged by management reforms, while regulatory agencies are not restricted to performing operational duties, but they engage in designing public policies and thereby they regulate a specific area.

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Regulatory agencies operative in Montenegro

- Energy Regulatory Agency of Montenegro
- Insurance Supervision Agency of Montenegro
- Agency for Electronic Media of Montenegro
- Agency for Electronic Communications and Postal Services
- Securities Commission
- Central Bank

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Other public entities

- Other public entities imply other subjects performing public competences primarily through professional duties discharging and services delivering.

Types of other public entities

- Local Self-Government
- Public Institutions (education, health care, culture, science, research, etc.)
- Business companies (joint stock companies, limited liability companies, one-member company, etc.)
- Public Enterprises
- Sport Federations
- Non-Governmental Organizations ad Foundations
- Natural Persons

State administration and other public entities

Designation	State administration	Public entities	State administration + Public entities
Ministries	16		16
Administrations	22		22
Secretariats	2		2
Directorates	5		5
Agencies	2	15	17
Bureaus	7	7	14
Specific organizations		8	8
Funds		10	10
Centers		33	33
Institutes		14	14
Councils		22	22
Commissions		14	14
Chambers		7	7
Bodies		2	2
Offices		4	4
federations		44	44
Business companies		36	36
Public institutions		348	348
Public enterprises		11	11
Local Self-Government		22	22
Natural persons		2	2
TOTAL	54	599	653

Character of public entities

Designation	Regulatory	Executive	Other	TOTAL
Ministries	0	16	0	16
Administrations	0	22	0	22
Secretariats	0	2	0	2
Directorates	0	5	0	5
Agencies	4	12	1	17
Bureaus	0	11	3	14
Specific organizations	1	1	6	8
Funds	0	9	1	10
Centers	0	32	1	33
Institutes	0	0	14	14
Councils	0	22	0	22
Commissions	1	13	0	14
Chambers	0	0	7	7
Bodies	0	2	0	2
Offices	0	4	0	4
federations	0	0	44	44
Business companies	0	0	36	36
Public institutions	0	0	348	348
Public enterprises	0	0	11	11
Local Self-Government	0	0	22	22
Natural persons	0	0	2	2
TOTAL	6	151	496	653

Funding of public entities

Designation	Self-funded	Budget based funded	Heterogeneous sources of funds	TOTAL
REGULATORY	6	0	0	6
EXECUTIVE	8	114	29	151
OTHER	86	270	140	496
TOTAL	100	384	169	653

Funding of public entities, by their types

Designation	Self-funded	Budget based funded	Heterogeneous sources of funds	TOTAL
Ministries	0	16	0	16
Administrations	0	22	0	22
Secretariats	0	2	0	2
Directorates	0	5	0	5
Agencies	7	6	3	16
Bureaus	0	8	6	14
Specific organizations	1	1	2	4
Funds	4	1	5	10
Centers	2	15	16	33
Institutes	7	1	6	14
Councils	0	21	1	22
Commissions	1	13	0	14
Chambers	5	0	2	7
Bodies	0	1	1	2
Offices	0	4	0	4
federations	0	0	44	44
Business companies	36	0	0	36
Public institutions	15	269	69	353
Public enterprises	9	0	2	11
Local Self-Government	0	0	22	22
Natural persons	2	0	0	2
TOTAL	89	385	179	653

Thank you for your attention !

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