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Realignment of Public Authority Entities in Montenegro, International Benchmarking Seminar

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The Slovene Agency System

Danilovgrad, 9-11 Oct 2013

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Agenda

- Public sector / administration **system in Slovenia** (SLO)
- **Executive & regulatory agencies in SLO:** regulatory framework on public adm (PA) & agencies (PAG) and PAG's development and their recent organization in SLO
- **Principal-agent relationships** – in SLO law and practice: autonomy & independence, professionalism & efficiency?
- Impact and parallels in EU & SLO - **lessons to be learned**

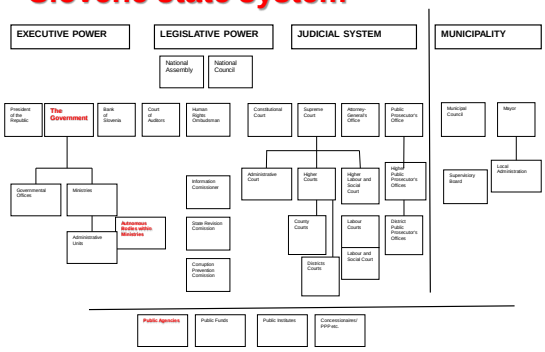
Polit.-adm. & regulatory framework → ← Practice

SLO as a state / major transitions

- **Democratic republic**
- **Parliamentary system**
- **Separation of powers**
- Social state governed by law
- Unitary state
- Membership: UN, CoE, EU (Eurozone& Schengen), OECD, OSCE, NATO
- Prevailing (adm) culture/s: ***Rechsstaat* & neo-liberalis**

- Independence
- **New constitutional order**
- Democratization
- Accession to **EU**
- Marketisation
- Increasing external & internal demand for **quality, efficiency, openness, accountability** …

Slovene state system



SLO – key figures (2013)

- Independent, in EU: 1991, 2004 (1996-)
- Area/population (2013): 20,273 km2, 2,059 mio (147th)

- Democracy Index (2012): 27th/200
- Rule of law, reg. quality…: high& decreasing

- GDP per capita (2012): 28,700 USD (54th)
- GDP growth (2012/13): -2.5/-2.4%
- Export (2012): 20% Germany (I, A, CRO…)
- Domestic consumption (2012/13): -6.5/-4.1%
- Labour force (2013) em.: 788,700; unem.: 120,600 (13.3%)
- Aver. earning/growth (2013): 1,524/998 EUR gros/net/ -2.5%
- Public sector/PA: 160,000/45,000 civil servants (app. 18%)

PA reforms in SLO 1991-2013 →

- Independence, new constitutional order, democratization
- Accession to EU
- Marketisation, increasing external & internal demand for quality, efficiency, openness, accountability …

Period-s	Reform orientation
1991-1996	Founding new state
1997-2003	Europeanization
2000-2004	New organic legislation, TQM …
2004-2008-2013	Strategies on priorities and rationalization within EU

NPM & Good Governance as reform/agencification incentives

Private sector (entrepreneurial concept/methods)

- Democratization
- Effectiveness, efficiency

⇓

Public sector (public interest, legality …)

conflict?

Steering

Rowing

NPM=Hybrid of Management and Classical Core of Values in PS

7

New legislation in 2000-2003 etc.

- **State Administration Act (ZDU)**
- Inspection and Supervision Act (ZIN)
- Novelties in Local Self-gov. Act
- **Public Agencies Act (ZJA)**
- Public Funds Act (ZJS)
- Public Institutes Act (ZZ)
- Civil Service Act (ZJU)
- Law on Wages in Public Sector (ZSPJS)
- Public Finances Act (ZJF)
- General Administrative Procedure Act (ZUP)
- Law on E-business and E-signature (ZEPEP)
- Freedom of Information Access Act (ZDIJZ) …

Direct PA

Indirect PA

PS

PA

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Civil service&unified PS pays

160,000

- **State administration**: 35.000
- Local administration: 4.500
- **Holders of PA authority**: 5.500
- Other state bodies: 5.000

45.000

- **Public institutions**:
  - ChildCare&Education: 57.000
  - Health care: 32.000
  - Social care: 11.000
  - Culture: 6.000
  - Research: 5.000

111.000

Salary grade	Base salary (ind)	Salary grade	Base salary (ind)
1	440.38	34	1,686.68
2	458.00	35	1,678.84
3	476.31	36	1,737.79
4	495.37	37	1,887.29
5	515.18	38	1,879.59
6	535.80	39	1,954.78
7	557.21	40	2,032.98
8	579.51	41	2,114.29
9	602.70	42	2,198.84
10	626.81	43	2,286.81
11	651.88	44	2,378.28
12	677.95	45	2,473.41
13	705.06	46	2,572.34
14	733.27	47	2,675.25
15	762.60	48	2,782.25
16	793.10	49	2,893.54
17	824.84	50	3,009.28
18	857.83	51	3,129.66
19	892.13	52	3,254.84
20	927.82	53	3,385.03
21	964.94	54	3,520.44
22	1,003.54	55	3,661.25
23	1,043.68	56	3,887.69
24	1,085.43	57	3,968.02
25	1,128.83	58	4,118.61
26	1,173.99	59	4,283.14
27	1,220.94	60	4,454.47
28	1,269.78	61	4,632.64
29	1,320.58	62	4,817.96
30	1,373.40	63	5,010.67
31	1,428.34	64	5,211.10
32	1,485.46	65	5,419.54
33	1,544.88		

SLO PA structure (2013)

Direct Administration

- **State Administration:**
  - 11 ministries (+Minister/s Portfolio) & 10 governm.officies
  - **34 autonomus bodies** within ministries (ex. ag.?)
  - 58 local administrative units (8?)
- **Local self-government**: 212 municipalities

Indirect Administration

- **16 state public agencies** (+ regional …)
- Public **institutes, funds** …
- Independent **bodies** by constitution/law

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Types of agencies in SLO by status

1. Agencies as body **within** ministries (executive, next step)

   Internal privatization

2. **Public agencies** (regulatory & executive, legal person)

   External privatization

3. Other independent bodies

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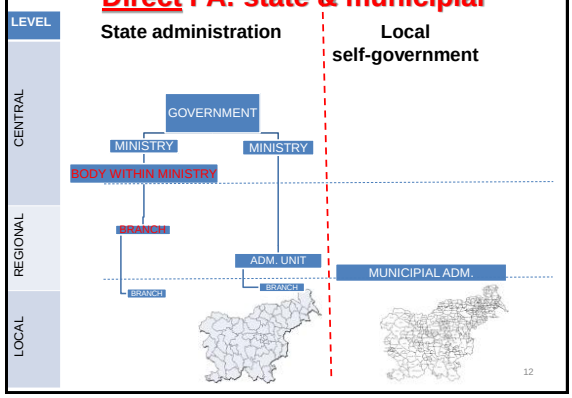
Direct PA: state & municipial



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Agencies=bodies within ministries

All "executive agencies?

- **Internal part of the ministry** with relative/semi **autonomy** (professional, personnel, finantial)
- **Types** (just by name!): inspectorate, *agency*, administration, office – possible territorial deconcentration
- Regulated by State Adm Act (ZDU) / gov. decree
- **Tasks:** executive (individual) authorities & services
- **Reasons** to establish by law (ZDU):
  - More efficient & expedient performance, with users' fees
  - Permanent/direct political supervision not necessary /inappropriate ...

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Ministries and their semi-autonom. bodies in 2013 (0-6 per M)

All 34 "executive agencies"?

Ministrstvo za finance
1. Carinska uprava RS
2. Davčna uprava RS
3. Urad RS za preprečevanje pranja denarja
4. Urad RS za nadzor prirejanja iger na srečo
5. Uprava za javna plačila
6. Urad za nadzor proračuna

Ministrstvo za notranje zadeve
1. Policija
2. Inšpektorat za notranje zadeve
3. Inšpektorat za javni sektor

Ministrstvo za zunanje zadeve

Ministrstvo za pravosodje
1. Uprava za izvrševanje kazenskih sankcij

Ministrstvo za obrambo
1. Generalštab Slovenske vojske
2. Uprava RS za zaščito in reševanje
3. Inšpektorat RS za obrambo
4. Inšpektorat RS za varstvo pred naravnimi in drugimi nesrečami

Ministrstvo za gospodarski razvoj in tehnologijo
1. Urad RS za varstvo konkurence
2. Tržni inšpektorat RS
3. Urad RS za intelektualno lastnino
4. Urad RS za meroslovje

Ministrstvo za kmetijstvo in okolje
1. Agencija RS za kmetijske trge in razvoj podeželja
2. Agencija RS za okolje
3. Uprava RS za jedrsko varnost
4. Uprava za varno hrano, veterinarstvo in varstvo rastlin

Ministrstvo za izobraževanje, znanost in šport
1. Inšpektorat RS za šolstvo in šport
2. Urad za mladino

Ministrstvo za infrastrukturo in prostor
1. Uprava RS za pomorstvo
2. Direkcija RS za ceste
3. Geodetska uprava Republike Slovenije
4. Inšpektorat RS za promet, energetiko in prostor

Ministrstvo za zdravje
1. Urad RS za kemikalije
2. Uprava RS za varstvo pred sevanji
3. Zdravstveni inšpektorat RS

Ministrstvo za kulturo
1. Inšpektorat RS za kulturo in medije
2. Arhiv RS

Ministrstvo za delo, družino, socialne zadeve in enake možnosti
1. Inšpektorat za delo

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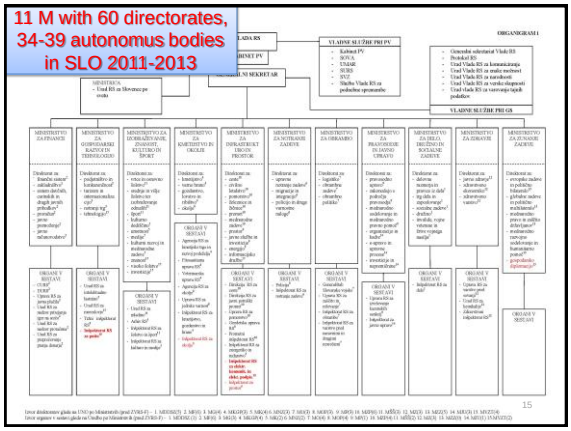
11 M with 60 directorates, 34-39 autonomus bodies in SLO 2011-2013



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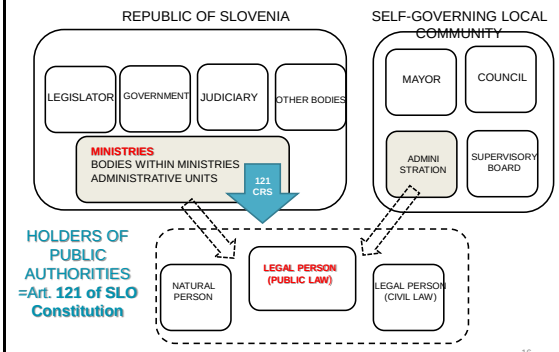
Indirect PA: holders of pub. authorities



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Public agencies (PAG)

EU!!!

- **Delegation of PA from M**: Art. **121** of Constitution
- **1st PAG in SLO in 1994** (Securities Market Agency)
- **Organic law 2002** (PAG Act, ZJA&ZDU) & specific law
- **Tasks:** no exception by law (de facto not foreign affairs ...)
  - Regulatory & executive & supervison & development
  - Authorities & services
- **Reasons** to establish by law (ZJA & ZDU):
  - More efficient and expedient performance, possible cofunding by users
  - Permanent/direct political supervision unnecessary/inappropriate
  - Self-regulation

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1. PAG Act (2002) stipulating

- Basics: **public law**, establishment criteria …
- **Est.** steps: spec.law(&gov. decree), head nomination, entry into register (by court)
- PAG's bodies: **Director** & **Council** (3-9)

Founder (gov/M)

Users (1/3-1/2)

Open comp.

- **Tasks**: PAG as **general acts** issuer=regulatory, ind.decisions, develop&profess, supervisory
- Relation towards **users:** publicity

M → PAG

- **Programme, reporting, supervision**
- **Assets, financing**: budget & selling & other resources

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2. Specific laws stipulating

- **Individual PAG** establishment, status and its mission
- **Special provisions according to PAG Act** on tasks, special bodies (beside council& director some: commission, supervisory board …), conditions and nomination for Director and Council members, their dismissal etc. (clear!? = case of NAKVIS ...)
- **Special adm procedure and adm dispute provisions!!!** (rather often constitutional disputes on equal protection of parties: right to be heard, preclusions, appeal ...)

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Case: Energy Agency

- Issues **general acts** relating to:
  - methodology for calculating the network charge
  - methodology for the preparation of tariff systems
- Gives **consent/aproval** to:
  - rules for allocating the capacities of interconnection lines
  - tariff system regarding electricity for tariff customers
- Issues **concrete individual acts** on:
  - the issuing and revoking of licences
  - appeals against decisions on connection approval
- **Oversees:**
  - the independence of system operators
  - the time needed for connecting to a network

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Agencification process

- Comparatively: **from agencification to deagencification** (UK, NL, Sweden …) due to lack of coordination and democratic control & accountability
- Often process of agencification in SLO and broader: **from agency within M to PAG:**
  1. Cases from SLO practice: Medicines, Competition Prevention, traffic areas …
  2. Intended in SLO: Food Safety, Chemicals …
  3. And: vice versa case/s: Public Procurement

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Agencification in SLO in No.

Period	No. of new PAGs	Sum
1994-2000	1	1
2000–**2004**	7	8
2005–2008	3	11
2009–2012	7	18
2013-2014	**-2,3 …**	**16, 15 …**

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Independent state bodies as 3rd type of agencies?

- **Constitution**: Ombudsman, Bank of SLO, Court of Audit
- **Laws**:
  - Slovene Intelligence and Security Agency= gov. office
  - Information Commissioner (v. data protection agency =A, Cro) or Anti-corruption Commission= non-gov. state body
  - Capital Assets Management Agency of the R SLO= non-gov., parliamentary state body, 2011-13…
  - Etc.

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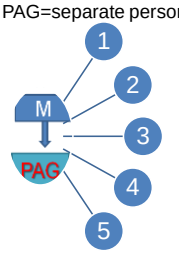
Principal-agent relations in SLO theory and law (PAG Act)

- **Independence** = external
- **Autonomy** = internal: agency vis a vis parent ministry
  1. Organization/status: PAG=separate personality under public law
  2. Legal
  3. Professional/mgt
  4. Finantial/Budgetary
  5. Personal/Personnel



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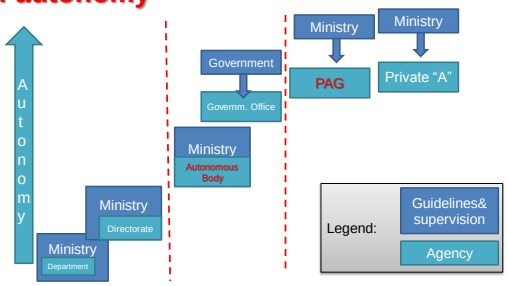
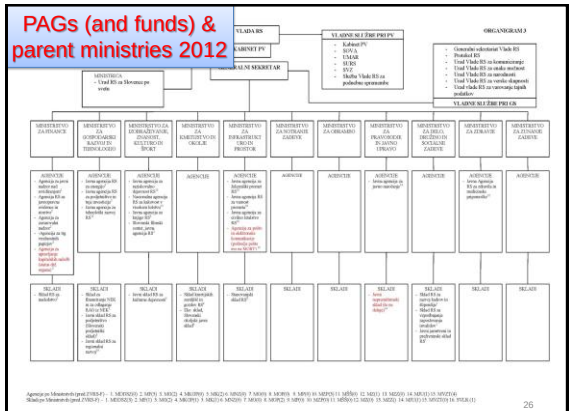
Agencification forms in SLO as a factor of autonomy



Organizational form in a function of aimed role in PA system & entity's taks!?

PAGs (and funds) & parent ministries 2012



Unclear & inconsistent status of some agencies

- Compare:
  - Market Security, Competition Protection PAGs v. Intellectual Property, Money Laundering Prevention offices
  - Book PAG v. Environment agency within ministry?
- Slovenian Quality Assurance Agency for Higher Education:
  - National="PAG"? *Numerus clausus* of public law entities!
  - Compare NAKVIS v. RR Agency (=public)
- Public Procurement as:
  - Gov. office, public agency (for 9 months) or directorate in ministry (MPA) or internal part of ministry (MF) …
- SPIRIT: develop. PAGs & national tourist organization+1 year?
- Pensions&Invalidity & Health Insurance Institutes= PAGs?

Case: agencies in/under MF

Directorates:	"Agencies" within MF:
1. Financial system 2. Treasury 3. Public income (tax, customs) 4. Budget 5. Public property 6. Public accounting Direct PA	1. Customs Office 2. Tax Office 3. Administration for public payments 4. Office for supervision over gambling 5. Office for budget supervision 6. Office for money laundering prevention
PAGs:	**Funds:**
1. Public Supervision Revisons Agency 2. Public Legal Records and Related Services Agency 3. Insurance Supervision Agency 4. Market Security Agency Indirect PA	• Fund of RS for succession

Agencies in M Direct PA v. PAG Indirect PA

	Agencies in M (OVSM)		Public agencies (JA)
Established by	Governmental acts	≠	Specific law by Parliament
Organic law criteria	Efficiency & depolitization	=?	Efficiency & depolitization
Tasks Comparative type	Executive 1	≠?	Regulatory, executive … 2 & recently more 1
No. 2011-14 (13)	34-39 (34)	=?	15-19 (16)
No. of em. 2013	All M=31,967/Civil=14,859 In M's ag.s=7,205 (Army 7,477, Police 8,439, Prison 865)	=?	All app. 1,000 (3 PAGs not in gov. Plan=180)
	Big differences: 3-2,500		Differences: 3-250

50%M 6%SA

Agencies in M Direct PA v. PAG Indirect PA

	Agencies in M (OVSM)		Public agencies (JA)
Supervison	Direct ministry	≠	Parent / field ministry/ies
Legal personality	No	≠?	Yes
Financial autonomy Resources	Yes, direct budgetary user Budget, rarely fees	≠?	Yes, indirect budget user Budget & fees
Head nomination Civil service	Government/open competition Yes, all (head+officials+staff)	≠	Agency Council Except director partial CSA
Legality review	Adm. appeal within ministry, judicial review	≠	Rarely M aproval for general acts & usually no adm.appeal, judicial ind. acts review
Continuity	In principle yes	≠?	"Classical regulatory" yes, other very often changes

PAGs for definite period?

Performance issues in practice?

Ministries:

- Lack of coordination in the sector/policy making/evaluation
- Limited expertise and formal approaches in parent ministries
- Rather no performance targets set and followed
- Politicization (nominations etc.) despite formal requirements (and often disputes)

Performance contracts?

PAGs:

- Programmes & reports to M rather pro forma
- Transparency: rather pro forma towards users &public/media
- No political accountability

GG as: integrity, responsiveness, transparency …???

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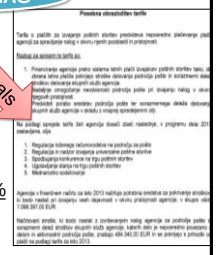
Financing PAGs

PostEComAG

Tariff's goals

- **Start-up resources:** founder
- **Budget:** indirect user, via Ministry
- **Fees:** public tariff, often M's consent
- Share of **budget v. own** resources:
  - Very different, fees=0-80%
  - Some M's auton.bodies fees=50%



Budgetary resources acc. to programmes instead of org.status?

BookAG

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	PAGs/parent ministries	From	Status	Legal review	Personnel	Finances	Autonomy assessment (A=max)
1	Security Market (ATVP)/MF	A 1994	A	A	C	A	A(4A, 1C)
2	Insurance Supervision (AZN)/MF	A 2000	A	A	B	A	A(4A, 1B)
3	Energy (AGEN)/MEcon	A 2001	A	B	C	B	B(2A, 2B, 1C)
4	PostE-Com (APEK)/MEcon	A 2001	A	B	C	C	B(2A, 1B, 2C)
5	PublicLegal Records (AJPES)/MF	A 2002	B	A	C	C	B(2A, 1 B, 2 C)
6	ResearchD (ARRS)/MHEduScien	A 2003	B	A	A	C	B(3A, 1B, 1C)
7	RailwayTrans (AŽP)/MInfrasSpac	A 2003	B	C	A	B	B(2A, 2B, 1C)
8	EntrepTurism /MEcon (TIA+JAPTI+STO=SPIRIT)	B 2004/5/12	B	C	B/C	C	B/C(3B, 2C)
9	Medicals (JAZMP)/MHealth	B 2006	B	C	C	B	B(3B, 2C)
10	Book (JAK)/MCulture & MScien	B 2008	B	C	C	C	C(2B, 3C)
11	PublicSupervRevisions (ANR)/MF	C 2009	A	B	C	C	C(1A, 1B, 3C)
12	HighEduQ (NAKVIS)/MHEduSc	C 2009	B/C	C	A	C	C(1A, 0,5B, 3,5C)
13	TrafficSecurity(AVP)/MInfrasSpac	C 2010	B	D	C	C	C(1B, 3C, 1D)
14	CivilAviation (CAA)/MInfrasSpace	C 2010	B	C	C	C	C(1B, 4C)
15	FilmCentre (SFC)MCulture	C 2011	B	C	C	C	C(1B, 4C)
16	CompetProtection (AVK)/MEcon	D 2012	A	A	A	C	B (3A, 1B, 1D)
	Average	B-	A-	B-	C+	C-	B/C

Research 2012-13

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Autonomy of PAGs: OECD v. SLO

Reasons	Organizational characteristics'	OECD – governance, environment	OECD – mgtm+prof. autonomy	SLO PAG Act/ implementation (gap)
1. Efficiency	a. Specialization, user orientation	requested	possible	requested/ moderate
	b. Managerial methods, management by results	requested	possible	requested/ low
	c. Loosened adm. and financial rules	possible	possible/ requested	requested/ moderate only
2. Professionalism	a. Independence	recommended	requested/no	requested/ differ., possible
	b. Continuity	possible	requested/ possible	possible/ often
	c. Participation of civil society	possible	requested/ possible	possible/ low
	d. Participation of users, partnerships	possible	requested/ possible	requested/ moderate

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Lessons 1: political/system's stability/coherence & impacts

1. Taking into account **transitional status of state**:
   - Post-communist state wwithdrawal: definite period PAGs?
   - Politicization, immaturity of strategic intent, low trust …
2. **Small state** issues:informal liaisons, capture, specialization?
3. **EU impact?** In SLO significant in regulatory PAGs, rather as an "excuse" for other reorganizations
4. **Financial crisis impact?** In SLO in principle (political discourse) significant, in practice rather low and indirect

- **Evaluation / impact analysis** takes several years! (re/design the system/agencies annually???)

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Lessons 2: legal framework

- **Role of system approach & organic law/s** (*lex generalis*):
  - As a guiding scheme in ind. areas & antifragmentization
  - By system approach overcoming lack of dem. legitimacy
- **However, in parallel following:**
  - Inclusion of all agencies' types under common PA legislation (finances, civil service, freedom of information, adm procedures, jud. review …) &
  - **Recognizing differences**: esp. regulatory v. executive

- Agency's **status in a function of its tasks**, not vice versa
- **Note** "Name's Myth"!?

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Lessons 3: reasoning agencies

- **Official legal** and **other** v. **hidden** reasons (less strict pay/labor system, corporativism!?)
- **Efficiency**: raising quality, decreasing costs, transferral of (co) funding by direct users; increasing PA access + user-orientation
- **Depolitization**: esp. in regulating (EU driven) markets
- **Role of indirect adm in times of crisis**:
  - Scope of PS and public expenditure burden: search for non budgetary sources, decreasing PS, easier user orientation, PPP, adm. barriers removal
  - Expertise based policies in public interest
- **PAGs v. executive agencies within (direct) PA**: in principle subsidiary form: if PA sufficient=**PAGs as an exception!**

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Lessons 4: opportunities (or needs?) & risks of agencification

- **Plus:** depolitization, steering from rowing and professionalism with stability in regulatory markets, reforming in compliance with EU requirements, disburdening state budget, user orientation, special regulation according to specific area needs, dispersing authority …
- **Minus:** lack of coordination and control in public policy, lack of transparency and accountability in PA system and ind. agencies, guild protection, (too) narrow circle of users, industry impact, conflict of interests and corruption, non-constitutional exceptions, implementation gap …

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Concluding recommendations

- PA/PAGs reform is not a project, but **constant policy → political-adm will** should be **consistent in basic strategy** despite the government of the day priorities/orientation
- **Regulatory framework** with its coherency is **a key** factor, **yet insufficient** for clarity of relations & progress in GG
- Do not neglect **relation to customers and NGO**
- Status/organization/autonomy of **agency (type) should correlate its mission and tasks**
- Importance of **financial autonomy & accountability** for professional one and depoliticization

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Thank you!

Discussion?

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