

## INCONSISTENCIES IN THE CREATION OF REGULATORY BODIES AS IMPORTANT ECONOMIC INSTITUTIONS IN TRANSITION COUNTRIES: EXAMPLE OF SERBIA

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### **Abstract**

*Independent regulatory bodies are important economic institutes, which take on a part of classical state affairs, which generally need particular, i.e. specialized knowledge, which does not exist in state management. European countries have different experiences when it comes to bearers of public authorization, representing intermediaries between the state on one hand, and companies and citizens on the other. In those countries with a traditionally big state apparatus, there are few agencies and vice versa, where there is a large portion of state affairs decentralized, small governments, supported by a modest central state apparatus are established. In the countries of Central and Eastern Europe, along with the process of transition, there occurred the process of «agencification». Serbia is maybe the worst example, with large coalition governments, which have established almost 200 different independent institutions. The causes of independent public body boom in Serbia are to be sought in a too liberal understanding of laws regulating this area, which has created the possibility of political feudalism. Also it has created an inappropriate autonomy of institutions (inappropriate for Serbian conditions, especially when it comes to finance), with a clear debalance of quality of employees in those bodies and the system of their compensation compared to contribution given by their work. Recent political changes, «new waves» of global economic crisis and large crisis of state financing are making boom problem solving quicker, and also are putting under control the behavior of bearers of public authorization in Serbia. However, it seems that this process still lacks good and impartial methodology and argumented atmosphere for making political decisions.*

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### **1. Introduction**

Today, after more than two decades since beginning of the first transition in Eastern Europe, it is more than obvious that the establishment of good economic institutions is a key to the success of a country that is changing its economic structure. The more the following rule is applied - "the system solves problems by itself" - the more the country is in deeper problems, and that is even more emphasized by actual global economic crisis. As so many other things in transition, economic institutions, observed in the widest context could be misused as well. There is no shortage concerning these kinds of examples, in almost every country that has passed, or still is in transition. At the same time, poor institution management in the country under transition is the most common example of misuse. However, this paper author's attention is not based on an ex post approach. The main objective of this paper is to take a step back and analyze whether an institution was necessary at all, or whether its establishment can be justified by rational or other reasons.

In this regard it should be noted that perhaps the best example of illogical establishment, which led to a boom of regulatory bodies as important economic institutions, exists in Serbia. It is a country with deep economic problems, caused primarily by internal, structural irrationalities,

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which were only encouraged by the global economic crisis. On the other hand, Serbia is a country that probably holds the European record in the number of different agencies, Funds, bureaus, offices, directorates, etc. Really, it is a great researching challenge to come up with the right reasons that in one relatively poor country, with a large existing state apparatus, a whole "parallel world" of economic institutions has been established, in the form of regulatory bodies and/or authorized public authorities, in the broadest sense of the word (whatever they are named). The basic question which, considering the political orientation of Serbia, could be asked is whether the main reason for regulations of all sorts of things through the agency is to be found in the copying European standards, or is has completely different motives, much less European and more politically pragmatic.

Practically, in Serbia, with regulatory body establishment, the different inconsistencies can be identified:

a) *there isn't always a clear purpose of certain body establishment* - whether something should at all exist as an independent regulatory body, or is it a job that can be covered by an existing state agency? Or, to be even more precise, there is a formal purpose and it is done in accordance with the Law on Public Agencies (Official Gazette of the Republic of Serbia, 2205, 2007, 2008, 2009), but, really, this kind of an independent body is usually truly unnecessary,

b) *previous reason has practically produced the situation that in some cases there are more than obvious scope of operational overlaps with existing and new regulatory bodies,*

c) *legal bases for the work is different for the same state affair* - for example, with existing the Law on government administration and the Civil servant and government employee salary law (Official Gazette of the Republic of Serbia, 2006, 2007, 2010) why all agencies, bureaus, institutes, offices, etc. regarding their labor law are complied with the provisions of the Labor Law (Official Gazette of the Republic of Serbia, 2005, 2009),

d) *the procedure of election of management, board of directors and overall organization of a body is often done closed from the public eye* - it implies a very questionable quality control of the management, along with a widespread "division according to the party" of agencies, because it is known precisely, after the elections and coalitions were done, which party takes "the right" to a specific regulatory body (the classic "feudal" approach) and so on.

The previous four questions can be characterized as the pillars of the research in this paper. Of course, regarding justification of existence, scope of work, the management and other relevant issues related to the regulatory bodies as institutes of a state, a full study can be made, with many pages, with numerous attachments. This paper's research cannot be regarded as a comprehensive aspect of the regulatory bodies analysis in Serbia. The author knew all that clearly, at the very beginning of gathering information available to public regarding this subject, which were usually scarce, insufficiently aggregated (officially they are not centralized in one place) and what is most interesting, covered with certain "veil of secrecy", as if public, state regulatory bodies are not in question. So, the key problem with this research implementation was the lack of quality and comprehensive information concerning regulatory bodies in Serbia. The result is a change in the originally intended scope of the research, from field-enumeration to the secondary-conceptual.

Furthermore, it means that in this paper we are dealing with information available to the public, which are not detailed enough as to create comprehensive conclusions, but still they are quite relevant so we can very competently, having very good knowledge on economic structure and political dimensions of independent regulatory body functioning, using primarily *case study* method of analysis, give answers on 4 earlier set issues (hypothesis of the paper). Of course, *benchmarking* approach will be used in this paper, as much as available information would allow, which makes comparisons between the relevant European practice in the area of independent regulatory bodies and the situation in Serbia. Still, the analysis' central part of the purpose of existence, overlapping scope of work, the diversity of the legal basis for the work and the election and rewarding of management and employees of independent regulatory bodies will relate to the situation in the Republic of Serbia.

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## 2. European experiences in "managing" agencies

Public administration across Europe is not ideally structured anywhere. Depending on the type of the government that is head of a state (conservative vs. liberal), stronger or weaker public administration reform is implemented. The actual global economic crisis has forced every government in Europe to act more conservatively, i.e. to save in every area of public administration, which is especially characteristic for countries like Greece, Spain, Portugal and Italy, which found themselves in the largest problems.

Europe is not spared regarding an excess of state bodies, in particular the regulatory agencies, we can see that through a number of studies and papers which are made on this topic. We will single out some very good researches, like *Regulatory Agencies And The European Union* (Coleman, 2004), *Issues In The Comparison Of Regulatory Oversight Bodies* (Weiner, 2008), *The Framework For European Regulatory Agencies: A Balance Between Accountability And Autonomy* (Anders et. al., 2004). Each of these studies, from their point of view and in different periods of time, gives detailed analysis of the subject we are dealing in this paper, the only difference is the territory where these independent bodies are situated. Also, in above mentioned studies, the authors present almost the same dilemmas with which we are facing (still in progress): what is the legal basis for establishing an agency, is the purpose for certain body establishment justified, whether and how independent body's scope of work is overlapping, is the establishment of an agency always better solution than holding some operations within the regular state body, is the independence of the body really present, how to manage finance, which imposts of regulatory bodies burden the economy, etc. Considering both the content and spatial limitations, this point of the paper is not intended to comprehensively analyze the system of regulatory bodies in the countries of Europe, but to present the concept and possibly to point out some differences between countries in the European territory, so we will take a look at the most important issues related to the European practice of regulatory bodies functioning.

The starting point for the implementation of radical public administration reforms (before measures that came as a result of current global crisis) is wide acceptance of the New Public Management concept, which tried to increase the efficiency and productivity of the public sector, by separating the functions of management and execution. One of the ways to implement that is to make so called "Agencification" (Aleksić, 2012). Agencification in Europe can be treated as a process of authority delegation from the top of government, where public bodies have greater powers in terms of finance, management and regulatory authorities. At the same time, there are options where public bodies can be formal part of the executive power or to become separate legal entities. The establishment of new public bodies is possible only after a detailed analysis of purposefulness, especially from the perspective whether the establishment of a new body is not overlapping with the activities of the existing, or with some scope of activities of the classical public administration. Practically, the agencification usually means "overproduction" of public bodies as organizations that are not directly included in the government structure of a certain country, but present its extended hand and, on the other hand, operate more according to principles of the market, bearing in mind the possibility of commercialization of products and services that are being provided to the citizens (Aleksic, 2012). In general, all agencies in European countries can be classified into three major groups (Cost Cobra, website, 2012):

- *Semi-autonomous* - they do not have legal independence, but have little autonomy in management;
- *Statutory bodies* - they have legal separateness by law or other regulations, relatively self-financing and independent human resources policy;
- *Agencies with a corporate form* - an independent organizations for performing certain activities, which can even include public companies with full autonomy.

According to this, a bit rough, but correct typology of all kinds of independent bodies, the focus of our paper is primarily organizations that fall into the second and partly the third group.

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As for Europe, it is even more important for Serbia to make the right balance between the different government bodies, which can be seen from the following picture:

Picture 1: Examples of state balance between the executive government bodies and the number of independent bodies<sup>1</sup>

Size of the Government	<i>small</i>	Slovenia, Slovakia, Czech Republic	Nordic countries
	<i>large</i>	Germany, Great Britain, Netherlands	Serbia, Croatia, Romania, Bulgaria
		<i>small</i>	<i>large</i>
<i>Number of independent bodies</i>			

The previous picture clearly shows different models of government sizes and classical state bodies and the number of independent regulatory bodies. The Nordic countries have a long tradition with small governments, but a large number of state affairs is taking place through different agencies. The largest European economies such as Germany and Great Britain retained model of a large state apparatus and small number of agencies, while small European countries, like Slovenia, Slovakia and Czech Republic are aware that they cannot afford either a large state apparatus or larger number of independent bodies. The worst position in the above picture is large coalition government and huge number of agencies: Serbia (with 131 official agencies, although, we are not sure that the number is final and correct), Croatia (47), Romania (20) and Bulgaria (19), etc.

Definitely, a number of countries of Central and Eastern Europe looked up to the rapid formation of independent regulatory bodies, which is traditionally present in the Nordic countries. However, simultaneously with the process, Serbia and its neighbors seem to "forget" to reduce the classical state apparatus, i.e. number and size of ministries, directories, offices, etc. Some of the agencification characteristics in these countries understand that the discretion to charge for the services is left to agencies, but, on the other hand, there was no corresponding reduction in tax policy, so the imposts for the state and citizens were multiplied (which is classical Serbian phenomenon). Also, a significant political benefit is noticed from appointing management in agencies and higher salaries of employees in agencies (Beblavy, 2002). As the latest trend in European countries, especially in countries mostly affected by the crisis, the de-agencification occurs, i.e. consolidation and merger of public bodies, termination or their re-joining to the central government bodies.

### 3. Boom of independent public bodies in Serbia

Within this section, we'll try to answer two very important questions that have to be asked at the beginning of every study on the causes and degree of agencification in a country: a) when did boom of their establishment start, what was the legal basis and how the independent regulatory bodies can be structured in Serbia?, a) whether there is a possibility to get, in one place, the accurate information on all relevant information about the independent regulatory bodies in Serbia?

The answer to the first question in this section of the study is not easy to provide. The reasons are many, and yet can be reduced to one - a great variety of state regulations and/or specific decision at the local level of authorities in order to regulate the issue of independent regulatory bodies. Basic legal impulse for the establishment of independent agencies at the state level was given by the Law on public agencies, passed on the year 2005, as the "umbrella" law which regulates the general framework for the establishment of independent regulatory bodies at

<sup>1</sup> This picture, data on the number of agencies, i.e. independent regulatory bodies per certain countries should be taken conditionally, because the data is taken from secondary sources (actually, in this type of paper there was no place for serious primary researches). However, the structuring of countries according to the category of government sizes and number of agencies, although done on a smaller number of examples, can be indicative.

the level of the Republic of Serbia. This Law, with 59 articles regulates all essential assumptions for the independent agencies establishment, but at the same time opens up possibilities to regulate the establishment of certain agencies by special laws, so it raised the question of why such a law has been passed at all. An important point of the Law on public agencies is that "the public agency is the organization established for the developing, technical and regulatory affairs of common interest" (Official Gazette of the Republic of Serbia, 2005). The initial law allowed the creation of many other specialized laws governing the establishment of public agencies, therefore, almost every agency has its own law (for political protection). However, to make a listing of all the laws that regulate the operation of independent regulatory bodies in Serbia was impossible for the author of this paper, particularly with regard to the listing of all decisions for establishing a certain independent body at the level of local authorities in Serbia.

As we encountered problems with making a list of independent public bodies (see later in the text), it was also very difficult to structure them in Serbia. According to the European typology, as we have seen, all agencies, funds, directories, boards, commissions and other bodies belong to the group of relatively or completely autonomous, independent state bodies, they have budgetary and/or their own financing and "independent" (perhaps, the better term is alienated) management structure. During the research, we identified only two Serbian studies in which authors tried to deal with the structuring of all independent bodies: a) Proposed measures for fiscal consolidation (Fiscal Council, 2012) and b) Regulatory and supervisory bodies in the Republic of Serbia, 2008). Both studies have their shortcomings (even recognized in the study made by the Fiscal Council ) and most importantly, both studies were not made only for the purpose of analyzing the structure and operation of independent regulatory bodies, but they have significantly wider researching approach, so insufficient focus on the work of independent regulatory bodies has been given.

The second research question that should start any activity on regulatory bodies in Serbia is what is the number of these government bodies? But, it is not easy to find the answer to this simple question. To be more accurate, in order to find out the purpose of a large number of independent bodies in Serbia, the first step is to determine their exact number, head office and address, website and other available information. However, there are no such information in one place and the sources of information on what can be an independent regulatory body are very different.

Several associations of businessmen tried to make a list of independent regulatory bodies, together with certain non-governmental organizations and independent state authorities (Commissioner for Information of Public Importance and Personal Data Protection). Some ministers from the previous government of Serbia (prior to the election held in May 2012) were even assigned to deal specially with this issue, since it was recognized as a huge economic and political problem. We'll start with the relevant information which non-governmental organizations have managed to raise. For example, the issue of the number and purpose of agencies, funds, directorates, etc. was dealt by the Serbian Association of Employers, as an independent interest organization of employers, with aim to have the cheapest country. This institution listed 131 organizations that are treated as independent regulatory bodies, whether it is called the agency, fund, directorate, institute, etc. Serbian Association of Employers believe "that it is real that there are more than 131 agencies and that some of them don't even have their websites, addresses, phone numbers" (News-on-line, website, 2012). According to the same source, there are agencies with excuses to be self-financed, not from the budget, but it is still paid by the citizens of Serbia, indirectly through higher taxes, duties, fees and other para-fiscal burdens.

A non-governmental organization called Coalition for the public finances supervision, when conducting of their researches, came to the conclusion that an independent regulatory body should be created, but the appropriate number should be - 20 maximum (daily newspaper "Blic", 2012). This non-governmental organization stated that "agencies, council, funds, offices and the like are made to create positions for party members as they would get rewards for winning at the elections."

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It is obvious that the problem with too many state regulatory bodies gained in importance so much that the previous Serbian government, with assigning Minister for Human and Minority rights and Public administration was, at least "on paper", (and encouraged by the forthcoming elections) determined to "deal" with this issue. But, aside from the acknowledgment "that it's about the time to review the operations of numerous state agencies and to terminate some of them, there was an overproduction of agencies and the most of them should be terminated and much of the work that should be done in state governments had been relocated to these agencies, as well as to reduce managers' salaries in institutions established by the Government of Serbia" (News-on-line, website, 2012), but besides that, there was no other result. It is obvious that there wasn't sufficient will, as we usually say "among coalition friends" to deal with the problem of unprecedented independent regulatory body boom, which, finally, certainly in part contributed that the leading party lost the voters confidence at the elections. Of course, it was not only the one party - the "inventor" of all these agencies over the past ten years, but the rule is that the highest price for everyone else is always paid by the biggest.

Presumption of this paper is that nowhere in the Serbian government, at least not in some public document, there is no central register, publicly available where we can monitor the number of agencies and their activities. The only appropriate, pretty valid source of public information, coming from a public authority was the website of Commissioner for Information of Public Importance and Personal Data Protection (Commissioner, website, 2012). This website contains the Catalogue of public authorities, in sense of the Law on free access to information of public importance, which provides an overview of all state bodies if you need access to information of public importance.

Among others, there is a list with the names, addresses and websites (if stated) of state agencies, which may be treated as an independent regulatory body.<sup>2</sup> According to the Catalog, in Serbia, there are a total of 115 independent regulatory bodies, with 27 agencies, 14 institutes, 12 directorates, 9 funds and 53 others, a variety of independent bodies and organizations (bureau, offices, centers, councils, registers). There is another list, at the same website, regarding autonomous bodies of the Republic and independent bodies, with 20 institutions, many of which can be classified as classical agency (as we called them in our paper).

We can commend the effort that this government body officials made in the systematization of independent regulatory bodies, but we also noticed certain shortcomings concerning the structuring of certain bodies. For example, administrations and directorates are certainly part of the classical public administration, while some other organizations (the Competition Commission, the Commission for Securities, Radio-Broadcasting Agency, etc.) are classified as independent state bodies, but owing to their character they are independent regulatory bodies, agency type (only with the different name), because they are holders of public authority, that is, they can create their own taxes, implement their decision, etc.

Its only after the political elections held in May 2012, based on the willingness of almost all the parties that were involved in elections to do something about the validity of the existence and the number of independent institutions, because changes have to be made, information appeared in public - according to records of the newly formed Serbian government - there are approximately 170 various independent institutions. These institutions were been requested to provide information about their activities and the number of employees, while emphasizing that "the Government did not request it only from independent and regulatory bodies" (New magazine, website, 2012). Indeed, we can rightly ask whether the list of independent bodies is significantly

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<sup>2</sup> Commissioner's explanation is very interesting (who would have access to any information of public interest) that employees of this body came up with the data on the number of agencies by reading Official Gazettes from the year 2005 up till now and by following the laws passed in the Parliament of Serbia, making records of which law regulated the establishment of an agency or other regulatory body. This confirms that we were not the only ones to encounter problems with the research on public regulatory bodies. Again, we can justify our opinion that the information regarding independent public bodies are under a veil of secrecy.

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higher than in all the previous, independent, state attempts to make the list of these bodies on the basis of publically available information. It implicitly confirms the exploration of a daily newspaper journalist who estimated that "at present, there are approximately 200 state institutions, agencies, administrations, institutes and directorates in Serbia, that are financed by the citizens from the budget, while the most of them are considered to serve to meet political party's wishes, finding positions for party officials and are good for nothing" (News-on-line, website, 2012). In other words, we rightfully wonder who in Serbia has the genuine list of all independent regulatory bodies and other parallel state institutions that have some sort of autonomy in decision making and financing?<sup>3</sup>

Finally, we can conclude that the key criterion for creating and structuring the relevant list of public regulatory bodies should be a body with public authority, i.e. whether these authorities were transferred to it by some law, as to execute it on behalf of some level of government? Also, the very important criterion would apply to whether a regulatory body with its activities influences the macroeconomic policies of the country, increasing operating costs of the company and indirectly affects the standard of living, more or less? Thus, two important issues, public power holding and the degree of influence over economic policy of the country, the company's operations and indirectly on standard of living could be the basis for detailed analysis of the structure, i.e. independent regulatory body grouping in the Republic of Serbia. When such a study would be implemented, it can be expected that the group of independent regulatory bodies would grow much more than the number recorded in the Catalog of the Commissioner for public information. But, that's a subject that could be the topic for some other paper, ever entire researching study.

#### **4. Examples of lack of purpose for independent regulatory bodies establishment and overlapping scope of their activities in Serbia**

Since every company has its own mission, so, any independent regulatory body would have to have a clear purpose for its existence. Considering all purposes for establishing regulatory bodies and similar state bodies up to now should be the basis for the future assessment of the real need that some segment of public administration is to be relocated from classical state body and to organizationally structure within an agency.<sup>4</sup> There are three important legal prerequisites necessary to establish an agency in Serbia: a) it is established for developing, technical and regulatory affairs of general interest, when these affairs do not require a continuous and direct political supervision, b) if it is estimated that with the establishment of an agency would be more efficient way of public management, and especially c) if an agency can be financing entirely from its own resources, provided by beneficiaries.

In what way legal prerequisites of necessity for establishing agencies and other bodies are implemented in Serbia? Badly, as in any other scope of implementation, any segment of public policy. The general rule, which can be concluded on the basis of a solid understanding of quite a good number of independent bodies functioning in Serbia, is that every agency, with a general and/or special law "grabbed" a large part of rights for itself, although the level of responsibility remains very low. More precisely, we'll have to distinguish the level of general, public responsibility for the agency's performance which is very low, and the partial responsibility, which is very high, based on political interest of the group that is dominantly influencing the establishment of

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<sup>3</sup>Probably, the real listing of all these organization could be found in one of the institutions that deals with security, of course, we were not able to verify our assumptions there.

<sup>4</sup> We repeated a few times that the independent regulatory bodies usually mean agency, but it includes various funds, directories, even state-owned companies and trade associations that do not have one of above mentioned terms in their name, but a certain public authorization was passed to them by a law and they can to regulate taxes, imposts and other expenses, which indirectly affects the economic policy of the country, increasing expenses of companies and population (for ex. the company Nuclear objects of Serbia or the Serbian/Belgrade Bar Association). Therefore, up to now, when we mention a body that is at the centre of our analysis, we usually used the term agency, which is practically a synonym for bodies that are at the center of this paper analysis.

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certain agency. We can rightly say that when establishing independent public bodies, in many cases, there is an imbalance present between acquired rights and public accountability, with the balance of the rights and political and feudal accountability. Furthermore, almost every agency (with some noble exceptions) was using legal prerequisites we stated before that when performing its scope of activities the agency does not need constant and direct political control. This attitude is in many cases understood that the public political control is not necessary, which is based on the protection of public interest implemented by certain independent body, although the ministerial and feudal political control is the basis for all other aspects of the functioning of a body, from labor law aspects to employment policy and rewarding system (more on this will be mentioned in the following point of the paper).

Furthermore, it is not known whether small cost-benefit analysis had been made before establishment of any agency that would provide the economic grounds for a body to be established. Namely, according to the Public Agency Law, the establishment of a certain body is purposeful when estimated that this body would more efficiently perform certain public affair, better than it's been already performed within the frame of a classical state authority. Based on this assumption, as a precondition for the establishment of a body, a simple simulation of costs and revenues should be made, especially in the scope of work, but also taxes, as state income, before and after establishing any agency. Unfortunately, such an analysis, as far as we know, wasn't done before the establishment of an agency. At least, costs of employees could have been made, before and after the establishment of an agency. It would be normal to establish an agency by taking over employees from classical public administration that had performed that kind of activities till then or that would have been able to do that. However, on the basis of a number of familiar examples we can conclude that the establishment of an agency only increased the number of employees, that are directly or indirectly a burden of the state, companies and citizens, and that reducing of civil servants didn't occur.

Also, the examples show that with the establishment of a body significantly increased the burdens to companies that have to obtain some kind of state permit or license according to a certain law. For example, the Medicines and Medical Devices Agency of Serbia charges, a relatively high compensations from the manufacturers and importers of drugs, in the procedure of the first and every other repetition<sup>5</sup> of drug licensing in Serbia, which is in accordance with the Law on Medicines and Medical Devices. However, it is difficult to find large or small, foreign or domestic pharmaceutical company in Serbia that will commend prompt and rational functioning of the above mentioned Agency<sup>6</sup>. Furthermore, there is also an illustrative example of Serbian Chemical Agency which is responsible for acquiring the documents for registration of biocide products (powders, detergents, shampoos, cosmetics...), where the procedure will cost for 560.000 to one million dinars per product. Serbian Association of Employers made a calculation that "a company of 15 employees, for the entry of 20 products into the register, should pay approximately 10 million dinars, which equals the salary fund that would have been paid for eight months. As a clarification, we'll note that this procedure, before the Agency was established, cost between 30.000 and 50.000 dinars per product" (Danas, website, 2012).

So, many arguments leads us to the conclusion that independent regulatory bodies in Serbia didn't bring benefits in accordance with the practice of European (for example, Nordic) countries where there are a lot of similar bodies. We can say without hesitation that these institution,

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<sup>5</sup>And repeated licensing is quite common in the pharmaceutical business, it is done even if the smallest letter on the label was changed.

<sup>6</sup> We deliberately took the example of this Agency, as its detachment from reality is enormous. The Agency Director was recently boasting in public that her institution operated successfully, much better than the last year. Agency management has forgotten to point out that its "success" in business was not based on the market but on monopoly principles, because all pharmaceutical companies have to obtain license from them, they do not have any other choice. True mission of the Agency should be the efficient operation, at the lowest possible costs, which would be of benefit to all, pharmaceutical companies, the state as a financier of drugs but also to the citizens who buy the drugs.

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largely alienated from any kind of control, that they have appropriated legal rights, although they do not have the overall responsibility (verifiable usefulness of existence) and that it is difficult to find an analysis that would confirm the fact that their establishment made some aspect of public administration cheaper. Above all, the establishment of a body sometimes insults the intelligence of an average man. Pointing that out, we are referring to two types of problems: the establishment of completely unnecessary agencies and huge competences overlapping between the government bodies and agencies and/or mutually between the agencies. Examples are the following:

- *in some cases, the establishment of a body that has emerged from the "European agenda" which is being implemented in Serbia, without anyone thinking whether it is in accordance with common sense:* for example, there is no sea or naval fleet in Serbia, but the Agency for maritime navigation was established which is supposed to investigate the causes of maritime accidents; in many other similar examples, we would single out the establishment of Road and Traffic Safety Agency, which seems utterly unnecessary and exists in parallel with the already huge Ministry of Internal Affairs; when analyzing activities done by this Agency (mainly marketing and educational activities related to traffic safety) it can be concluded that this Agency does not perform any specialized activities that couldn't be carried out within the relevant Ministry, because the people from the Ministry of Internal Affairs are supposed to be the ones who know all about traffic safety.
- *there are many overlaps in the range of action of a public body and newly established agency, and between existing independent bodies;* therefore, it could happen that in the previous Government existed in parallel both the Ministry of Natural Resources and Spatial planning and Environmental Protection Agency, than the Fund for Environmental Protection, but also the Institute for Nature Conservation of Serbia; it is difficult to explain to the citizens the reasons why, in contrast to the economically much more powerful Germany where there is only one registered Agency for Energy and Nuclear Energy, in Serbia the activities from this area are performed by four agencies and one company: Energy Agency of the Republic of Serbia, Energy Efficiency Agency, Mining Agency, Serbian Radiation Protection and Nuclear Safety Agency and the company Nuclear objects of Serbia; also, from the scope of economy and finance, there are many independent bodies<sup>7</sup>, (Economics Institute, website, 2012) and their competences are, more or less, overlapping and/or supplementing, the only final rational solution would be to cover all of them by establishing one legal body: Export Credit and Insurance Agency, Fund for Insurance and Foreign Trade Finance, Serbian Investment and Export Promotion Agency; we also have in the past parallel existence of independent bodies with very simple competences: the Agency for Regional Development, Regional Development Fund and Republic Institute for Regional Development.

There are also examples of state institutions rationalizations that weren't supposed to happen, as it was the case with two institutions with original (legal) competence, such as the "drowning" of the Guarantee Fund into the Development Fund. Of course, there is no doubt that the work of certain agencies is important, like Anticorruption Agency, Agency for Restitution, Serbian Air Traffic Services Agency, etc. So, the only question is whether independent bodies have original or imagined purpose of action. More accurately, agencies should be established only for specific areas that require highly specialized knowledge, the knowledge that does not exist within the classical state bodies. Of course, when we talk about the implementation of this principle approach, based on European principles, everyone in Serbia has its own view. This "strategy", that is, the absence of objective criteria and feasibility studies that would be made before the establishment of every agency brought us to the situation that in the past seven years our country

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<sup>7</sup>Author of the article "Agencification of Serbia" found 13.

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likely holds the record in the number of established agencies, and behind their functioning we can find hidden partial economic interest, which will be discussed in the following paragraph.

#### **4. Important, but insufficiently known agencification reasons for the most people in Serbia**

Every independent body "draws" its power from the legislative and administrative-financial levers at its disposal. In particular, the most of independent bodies in Serbia, in the past seven years, didn't build its position on the quality of specialized activities for which it was established and performed, but the "public authority" of independent bodies was formed on the basis of legal and political support, but also on the basis of financial strength of an agency as an institution (in terms of imposts collected and the amount of received budget) and/or financial strength of individuals (especially directors) employed there (employment in an agency is considered to be privileged position, having in mind inappropriately high salaries).

We noted earlier that the Law on Public Agencies and/or other specialized law was the basis for establishment of any kind of regulatory institutions. At the same time this Law on Public Agencies gave unusual and for Serbian conditions almost inappropriate autonomy in the functioning of these independent bodies. For example, Article 4 of this Law provides that the public agency is independent in its work, and the Government cannot direct the work of the public agency, or synchronize it with the work of the public administration (Official Gazette of the Republic Serbia, 2005). At this point, we are not going into deeper political and sociological analysis of this "independence", because this is not our area of expertise, and this kind of analysis would require a mini study. We will specifically address the financial autonomy of an agency that is generally governed by the Article 50 of the above mentioned Law, which emphasizes that public agencies are financed from the budget of the Republic of Serbia and the funds collected from their services. In the event that there is an surplus of revenues over expenditure of the public agency, according to the Article 52 of the Law on Public Agencies, the same is to be used for the public agency development, employees rewarding or to be transferred to the budget of the Republic of Serbia. We are really not familiar to what extent the agencies transferred their revenues surplus to the budget, but according to a number of case studies we can say that the most part of these funds was used for improving work conditions (new equipment in working space) and rewarding employees in agencies (especially those on managerial positions).

Therefore, budget funds are used for the establishment and operation of an agency, but it is difficult to identify a centralized control subject for spending these funds that gave agencies unusual autonomy from the executive authorities that were supposed to control how efficiently the agency conducts a public interest.<sup>8</sup> Furthermore, there was even bigger financial strength with those independent bodies that, on the basis of some legal decisions or regulations had the discretion to impose various non-tax and para-fiscal imposts. So, all these public authority holders, if they were legally allowed, were continually increasing the number of imposts<sup>9</sup> that do not have the status of public revenues, but, as we have already pointed out, are under the control of some agency or its political tutor. An additional problem is that a large number of non-tax and para-fiscal imposts are not charged through the accounts that have been established within the Treasury under the Ministry of Finance, but through accounts in commercial banks, which is trea-

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<sup>8</sup> If the agency - that performs a public work, essentially an intermediary between citizens and the state, is expensive and inefficient, then it should be terminated and transferred these activities back to the classical state bodies. Analogous solution exists in the theory and practice of the distribution management, which emphasize that the existence of intermediary for the manufacturer and retailer is justified only if these activities are cheaper when done through the intermediary.

<sup>9</sup> According to the study " « Bridges and false bridges - a system of non-tax and para-fiscal forms in the Republic of Serbia", jointly conducted by USAID and NALED, in Serbia in the first half of 2012, there were 370 non-tax imposts, of which at least 179 were para-fiscal. Document is available at: <http://www.naled-serbia.org/documents/download/Studija%20o%20parafiskalnim%20nametima%20na%20privredu.pdf>. accessed on September 1, 2012.

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ted as their own income. This largely encouraged above mentioned bodies to continually increase the number of taxes, basic elements of this grabbing and, of course, the amount (Aleksic, 2012). According to the estimations of the Fiscal Council of the Republic of Serbia, in the first half of 2012, as much as 156 state institutions and bodies in Serbia has made their own income (including income from the sale of goods and services, non-tax revenues and para-fiscal revenues), totaling about 100 billion dinars, or 3% of GDP (Fiscal Council, 2012), which is, observed in the mass, a figure which can influence the economic policy very much.

In addition to external (budgetary and own) financial power of independent bodies in Serbia, we should also mention their internal power, which is related to labor relations and employee rewarding system. Although many, heterogeneous legislations were passed, providing the establishment of a body that will regulate certain area of public interest, for the majority of the legislation, Labor Law is the common base for labor relations. Perhaps, only the less informed people are not clear why the majority of independent bodies are under the application of the Labor Law, not the Law on Civil Servants (and parallel to it with the Law on Civil Servants and Employees Salaries). The main reason lies in the flexibility of the rewarding system for the agencies employees, which is made possible by the Labor Law compared to the very rigid Law on Civil Servants and Employees Salaries.

The implementation of the Law on Civil Servants to the labor relations in agencies would be more logical solution, because these bodies are established to do some specialized public tasks, so it would be normal that employees are rewarded according to the generally accepted state pattern. Direct application of the Labor Law on labor relations in a body is a significant competitive advantage of that institution, as according to the Law on Civil Servants and Employees Salaries, all groups of civil servants and employees are divided into clearly defined salary grades, using the coefficient values and values of the point for the basic salary calculation. In other words, it doesn't matter in which classical state administration segment a senior consultant or independent advisor is employed, that person has the same basic salary if placed in the same salary grade. In addition, this way of civil servants salary calculation is more appropriate for the country's economic strength and its ability to finance such a large public administration. On the other hand, determination of salaries under the Labor law is quite free, and depends on the economic power of that body. If we remember the most of independent bodies made considerable revenues through budget and/or independent incomes, and that was at the disposal of a smaller number of employees, so it is not difficult to conclude the relation of the salaries of agency employees and the salaries of civil servant for the same job.

Since employees in agencies and directories are not civil servants, their salaries, up to now, haven't been limited. Therefore, we have examples that a driver in a Ministry receives 25.000 dinars a month, and his colleague at the agency - 60.000 dinars, or a secretary in the Ministry has 26.000 dinars while the secretaries at the agencies have the salary form 70.000 - 80.000 dinars. Employees at the agency who classify and archive letters and documents have, for example, the same salary as the head of a Ministry - approximately 60.000 dinars! Directors' salaries in most agencies are a couple of times higher from the salary of the head of state or a prime minister. Some studies have shown that only in three independent bodies top management salaries are "thinner" than 100.000 dinars, and for more than 100 of them are reaching to half a million dinars. The highest salaries have been paid to the directors are at the Serbian Air Traffic Services Agency (467.000 dinars), Privatization Agency (285.000 dinars), Deposit Insurance Agency (283.000 dinars), and directors of the Energy Agency and the Serbian Business Registers Agency - over 200.000 dinars (Novi Magazin, website, 2012).

Thus, luck of control over the spending of received budget funds, the possibility of creation their own revenues through numerous para-fiscal imposts and almost autonomous managing of human resources policy and their salaries made this agencies as pleasant oasis for the life of the people who run them, even for those who work there. However, were these agencies completely independent or had some kind of political and feudal control? It seems that in the most cases the truth is the latter. Authorized politicians (almost all who, in some way, participated to

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the establishment of an agency in the previous period) gained a few very important points while establishing independent bodies: a) indirectly control (by appointing the director) over not a small amount of budget money, as well as over their own income that an agency earned through taxes imposed to companies and citizens, b) the possibility of hiring armies of people from their parties, who became a party members thinking that it's the Employment Service, and c) with increasing the number of agencies and their employees number, the number of secured votes for a certain politician was also increasing, that was especially important for the smaller parties in which the issue was whether the they would pass the threshold at the next elections.

In the first half of the year 2012, especially during the period immediately before the election process, most of the people realized that we must begin with "restraining" the strength, number and financial influence of numerous independent bodies in Serbia. In fact, most of the people recognized the politicians, who participated in the government at that time, as the ones responsible for the agencification. But, some politicians from the previous Government with clever pre-election maneuvers managed to get out of the responsibility for agency's boom (and they are again members of the Government), while the others, though perhaps they were less responsible for the agencification, paid the higher price, losing all the levers in power in Serbia (certainly, in part, because of this paper's subject). The final part of the paper, in a summary form, will present in what way the issue of agencification is going to be resolved with the establishment of the new Serbian Government and what are author's additional recommendations regarding the de-agencification.

### **5. Conclusion**

It's not for the first time that a well-conceived activity, such as switching one part of classic public authorities, affairs, from state administration to agencies, was poorly implemented in Serbia. The work of agencies, as a synonyms of independent public bodies in the previous seven years was not closely watched by the executive power in general, but it was under the jurisdiction of partial political interests. Independent regulatory bodies have been established for all sorts of things instead, if it was done in accordance to the law, the agencies should be established only for those cases in which their work was really necessary, i.e. when the scope of their activities is including only specialized services, which due to its complexity cannot be performed by public administration. Of course, had the specialization and expertise been meritorious for the hiring of managers and employees in the agencies, than it wouldn't have been expensive that these people in the agencies (in this case, significantly fewer number of agencies) were to be stimulated by the state with significantly higher salaries than people in the administration.

In addition, independent regulatory bodies were relentlessly, without centralized control, spending quite a large amount of state resources<sup>10</sup>, and many of them have been collecting their own income that, when viewed in the mass, could have influenced the economic policy of the country. Everything else, concerning election of management boards, management and employees of these bodies, was in a way under a veil of secrecy. The key issue, fair analysis of the justification of certain agency existence has never been done. Thus, preliminary creator of the agencification made opportunities for creating small oasis of party state, public bodies without a clear purpose of existence, mostly expensive and inefficient intermediaries between the state on the one hand, and the citizens and companies, on the other, usually with little or no public accountability, without centralized control, spending a lot of money while employing suitable people, with

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<sup>10</sup> The public has been exposed with various estimates on how much money was available from the state budget to agencies, funds, directories and other independent public bodies. As we are not sure that this information is accurate, we didn't write them in the main text. One source (<http://www.blic.rs/Vesti/Tema-Dana/298675/Nemacka-ima-sest-agencija-Srbija-136>. accessed on September 03,2012.) from the end of last year is indicating that the budget for the year 2012 planned 820 millions of Euros for the state agencies. However, our assessment is that this is not the final figure, and that direct or indirect cost of all independent bodies is much higher (including burdens imposed by agencies themselves).

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very large salaries. And so it would be going on even further but severe effects of global economic crisis started and the enormous salaries of directors and employees in agencies were becoming public knowledge. Later on, Serbian story on agencification is probably overlapping with the experiences of many countries in Central and Eastern Europe, with the paper author's estimation that Serbia is the highest-seated problem.

New Serbian Government, with dominant political forces which were not in the power in the previous period, therefore didn't affect the agencification in any way, started well the process of de-agencification of Serbia. One of the first three laws, which were the prerequisite for the new Serbian Government election was to change the Law on Government. To be more accurate, the Amendment Law to the Law on the Government, with three articles gives the Government the possibility to have the same jurisdiction over public administration and all other holders of public authority. New Government estimated well that it's necessary to pass some kind of *lex specialis* for the de-agencification process, and it was done by changing the Law on Government. At that time there was neither time or possibility to "go" through all of the laws and other regulations that had given jurisdiction to a holder of public authority, which would have been better but a much longer way. This is the way that is expected from the new Government, now with the changes of the Law on Government.

The next move of the Government should be to make a list of all relevant information on agencies and other independent regulatory bodies, i.e. holders of public authority. According to news reports, it has already been done. In late August of 2012, after the session, the Government issued a statement from which we can see that the Government is ready to terminate unnecessary burdens and state agencies, for a start, as it is estimated, thirty agencies can be terminated without problems (Blic, daily newspaper, website, 2012). The same news states that, together with the budget of the Republic of Serbia for the year 2013, they will pass The Law on taxes, which would revise price list for the agency fees that they charge to citizens and companies. Also, salaries in the public sector for the same work positions will be consistent and limited<sup>11</sup>, regardless whether someone is working in a ministry or an agency, which would be a good demotivation for those who their work in an agency "felt" only through enormous salaries.

If judging by the announcements, this Government is on the right path with the de-agencification, although it cannot be said to be systematic and complete. In any reform, following the identification of a major problem, as a rule, they do things they should and shouldn't do. That is so when, for example, some company, when in crisis, is implementing cost rationalization and many times, they reduce real costs (under the excuse, when reducing costs, that all items should be reduced). Similarly, the negative consequences of emulation in state structures can cause termination of really necessary and efficient state bodies, beside many expensive and without a purpose.

The author of this paper knows that most people expect from the new Government to change everything where the former Government made mistakes, in all areas, therefore with the agencification too. Nevertheless, in order to do it with solutions based on methodology, it is not going to be a quick solution over night. On the contrary, the Government should engage independent experts (not foreign, but domestic), who would, in impartial analysis, rate at least three dimensions in functioning of every independent state body: a) the purposefulness of agency establishment in line with European standards (only in the case of highly specialized expert activities), as well as organizational analysis for overlapping of competence of independent bodies with the public administration or independent bodies to each other, b) efficiency of a regulatory body activities, if it is treated as an intermediary between the Government, companies and citizens, to really look at all benefits and costs of a certain body existence and to assess what would happen if its competence would be brought back to public administration, and c) the expertise, i.e. the

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<sup>11</sup> For example, the highest salaries will go up to 160.000 din, which will be, if done, a significant reduction in the salaries of top managers, but also linear for all employees of the institutions with public authorities.

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people specialized for the area of an agency's operation, especially the management, in order to justify the balance between their rewarding and contribution with the work done, which is the classical approach for the people employed in private companies. As much as it seems as enormous work for a potential consultant, the reviews of independent body activities could be prepared in parallel with making the new Serbian budget for the year 2013.

Politically impartial analysis of de-agencification's opportunities, as a rule, allows high quality methodological basis for political decisions. Development of the above mentioned methodology would have a role not only in making corrections from the past, but it would, when it comes to various public bodies, make the code of conduct in very important areas: the purpose of establishing an agency, evaluation of the aim and especially the operational efficiency, public control, more transparent planning of revenues and expenses, open employment of specialized staff, etc. Consultants would cost, but much less than the wrong decision that could "prolong life" for some unnecessary agency, or could terminate the one which is really necessary. It remains to be seen whether this Government wants the unbiased analysis of the agencification's scope or, as in previous years, the continuity of decisions based only on political arguments would be followed.

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