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Organisation of public administration: agency governance, autonomy and accountability

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Good governance of public agencies requires the application of a set of regulatory and managerial tools to find the right balance between autonomy of agencies and adequate oversight from portfolio ministries and other actors. This paper provides insights from EU and OECD good practices, with a detailed analysis of EU *acquis* requirements for national regulatory agencies. New empirical evidence shows that public administrations in the Western Balkans and European Neighbourhood area lack clear policies and regulations for agency governance and misinterpret the EU *acquis*. This leads to a proliferation of agencies, duplication of functions and waste of public resources, a lack of accountability to portfolio ministries and generally a governance vacuum. Implementation of government policy is blocked and democratic accountability generally undermined. Finally, recommendations for better organisation of public administration are provided, based on the empirical analysis and lessons learned from SIGMA's engagement in such reforms.

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Organisation of public administration: agency governance, autonomy and accountability

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The governance of public agencies, in all their forms, matters greatly for the overall performance of the public administration. The rules established for their creation, operation and possible termination by political actors, and enforced by centre-of-government institutions and ministries, determine the architecture and overall organisational landscape of the public administration. These rules should also specify the autonomy needed for each type of public agency to function well, and the accountability mechanisms needed to ensure that the agency is held to account for its performance and that it uses public funds effectively and efficiently for their intended purpose. Form follows function and some types of agencies, especially regulators, need an arms-length relationship with ministries to perform their duties. The actual levels of autonomy and accountability – and the overall institutional performance – depend on the application of a set of management mechanisms by portfolio ministries or other actors responsible for overseeing the work of agencies.

Public agencies exists in all countries, in rich variety, but historically the pendulum has swung from consolidated organisational structures with larger ministries towards more specialised public agencies with responsibility primarily for public service delivery. However, many European Union (EU) and OECD countries have reversed agencification trends in recent years, bringing back core public functions to the ministerial hierarchy, as the negative effects of the initial wave of "agency fever" became clear. They have also developed better regulatory and managerial tools to ensure that the increased autonomy of agencies was balanced with the necessary oversight. Reaching this equilibrium is a continual challenge.

This paper shows that the pendulum has never swung back for a large group of transition economies: those of the Western Balkans and the European Neighbourhood. In fact, in many countries and policy areas it has accelerated and created imbalances between autonomy and accountability mechanisms. These transition economies embraced agencification to unprecedented levels, but without applying the same regulatory and managerial tools that the OECD and EU countries realised were needed to prevent functional irregularities. Since the 1990s, these countries have experienced massive agencification, with a multitude of agencies created overnight to replace monolithic, heavily-centralised administrations inherited from socialist regimes. Governments did not have two or three centuries to incrementally craft and polish government-agency relations, as was the case, for example, in Scandinavian countries. International partners often promoted agencification in transition countries, without considering that this organisational model was not part of their administrative DNA.

This paper presents empirical evidence to illustrate that agencies in general have excessive levels of autonomy and operate in a governance vacuum in most of these transition economies, with little management or oversight from portfolio ministries. A specific type of agency, referred to as national regulatory agencies in the language of the EU *acquis*, has such extreme levels of autonomy that they often operate as a fourth branch of government, not accountable to anyone in practice.

Unfortunately, this is not a unique situation. Studies have previously documented the same pattern of unaccountable public agencies and the associated policy outcomes in the countries in Central Eastern Europe that would later become EU Member States. However, this empirical evidence was at the level of individual case studies. New data from SIGMA Monitoring Reports and a unique survey conducted of 236 senior managers of public agencies and their counterparts in portfolio ministries provide the first systematic documentation of this regional trend that has far-reaching implications for public governance. In short, the

proliferation of agencies combined with a governance vacuum has led to clear duplication of functions and waste of public resources, blockages for implementation of government policy and thereby also a general undermining of democratic accountability. In the worst cases, agencification is used for political spoils and the capture of institutions, retrenching patronage patterns. This paper identifies the following adverse effects of uncontrolled and unmanaged agencification in the Western Balkans and the European Neighbourhood:

- Lack of accountability to ministries, where classic executive agencies are effectively isolated from the government administration and formally subordinated to the parliament. The most extreme case is Kosovo*, with over 30 agencies reporting only to the Parliament. It not only hinders the government's capacity to oversee policy implementation, it also makes the supervision of agencies largely fictitious, as the parliament has no capacity to perform these functions properly.
- Many administrations do not have a clear policy for how central government should be organised, and what role agencies play. Ministries are often too weak, both in terms of administrative capacity and political leverage, to initiate coherent organisational reforms and ensure a consistent approach to governing agencies across the government. Different approaches to organisation can therefore be observed in different parts of the administration, as legacies persist from previous times.
- Fragmented regulatory framework for management of agencies. While most administrations have framework laws on public administration in place, these acts are usually bypassed by special laws regulating the individual agencies and creating different arrangements for them. Framework laws fail to establish comprehensive governance frameworks for agencies promoting results-oriented management.
- Misinterpretation of the EU requirements on autonomy of specific types of agencies, such as regulatory authorities. It is often understood (incorrectly) that it is a requirement to make these agencies accountable solely to the legislature.
- Lack of safeguards against proliferation of agencies. The 'new functions – new agency' logic is widespread and new agencies are created without thorough analysis of alternative options for delivery of specific functions. Subsequently, their performance is not subject to regular review or 'existential tests'.

Reforms are not always successful but are nevertheless necessary. Gatekeeping functions and careful reflection when creating new structures is essential, as merging or abolishing an agency has proven almost impossible once it is created, at times because it is a part of larger political agreements. Frequent changes of governments make long-term reform initiatives difficult to manage at a technical level, and the national administration often does not have the capability to successfully drive whole-of-government reform initiatives. The EU legislation in this domain is often misunderstood, sometimes deliberately misread. This paper therefore clarifies the requirements of EU *acquis* for each type of agency. Sequencing of reforms, technical support, broad coalition building, high-level political engagement and a good deal of perseverance are key to the success of reforms.

* This designation is without prejudice to positions on status and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

Introduction

The organisational setup of public administration matters for its performance. The Principles of Public Administration recognise the importance of this issue by stating that the overall organisation of central government should be rational, based on adequate policies and regulations and provide for appropriate internal, political, judicial, social and independent accountability (OECD, 2017[1]). Recognising the fundamental importance of effective institutions, the European Commission asked SIGMA to develop this paper to provide advice to governments in the Western Balkans and the European Neighbourhood. The paper summarises the requirements stated in EU legislation regarding organisational structures, specifically relating to levels and forms of autonomy, for key policy areas. It complements these standards with OECD standards and guidance from several legal instruments and policy papers.[1] Finally, the paper reflects on the experience of reforms in the Western Balkans and the European Neighbourhood and provides recommendations.

The organisational landscape of public administration has been transformed in recent decades, as tasks traditionally performed by ministries were delegated to public agencies, state-owned enterprises or the private sector. This general trend towards less centralised management was expected to bring considerable efficiency gains. However, it also created challenges for the effective governance of administrative structures that are more heterogeneous and complex than ever, as shown in Chapter 1. International standards have evolved, with the EU model of national regulatory authorities as the most prominent example of supranational standards, as discussed in Chapter 2. OECD and EU countries have learned many lessons for agency governance from the early waves of agencification. Chapter 3 presents this international experience and the tools that transition economies can also benefit from to strike a good balance between autonomy and accountability.

In Chapter 4, the paper combines the insights from SIGMA's past and ongoing support and evaluations in the Western Balkans and the European Neighbourhood with new evidence on how the practice of agency governance in these economies corresponds with international trends and standards established by EU law and OECD instruments. The focus is on regulatory authorities and executive agencies. EU legislation sets standards for both types of agencies, but in particular for regulators. However, these standards are often misunderstood or misapplied in the Western Balkans and the European Neighbourhood. The analysis draws on past SIGMA evaluation reports, review of the legislative framework, official administrative data as well as a unique survey of more than 273 senior managers of public agencies and senior civil servants in ministries responsible for oversight of these agencies in ten Western Balkan and European Neighbourhood governments.

Chapter 4 ends with recommendations on managing the organisational setup of central public administration. The main objective is to help governments effectively oversee and manage their agencies, while respecting their functional independence when required. The recommendations are primarily addressed to the governments of the Western Balkans and the European Neighbourhood, but may also be useful for international partners supporting reforms in these regions, in particular relevant directorates

[1] The OECD Policy Framework on Sound Public Governance (OECD, 2020[83]) weaves together the relevant OECD legal instruments and tools on public governance. https://www.oecd.org/governance/policy-framework-on-sound-public-governance/

of the European Commission. The recommendations are derived from the analysis of empirical data and combined with insights from SIGMA's involvement in supporting reforms in this area in the Western Balkans and the European Neighbourhood, providing tailored advice for at least two decades on how to restructure the government's architecture in line with internationally recognised practices and standards (particularly shaped by the EU *acquis*) to support effective delivery of public policies and services.

Geographically, all six Western Balkan countries and territories are analysed (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, the Republic of North Macedonia [hereafter "North Macedonia"] and Serbia). The paper also analyses four countries belonging to the European Neighbourhood Policy area that have most actively worked with SIGMA on reforms of their central public administration (Armenia, Georgia, Moldova and Ukraine). Collectively, the term "the Western Balkans and the European Neighbourhood" will be used in this paper to refer to the specified countries and territories.

Thematically, the paper does not cover bodies outside the executive branch of the state, such as central banks, or independent oversight bodies, such as supreme audit institutions or ombudsmen. Further, governance of state-owned enterprises or other private law based institutions established by the state (e.g. foundations) is not addressed by this paper.

This paper deliberately does not establish a typology for public agencies to avoid being prescriptive. There are many ways to organise an effective public administration. One type of public agency is, however, carefully separated from all other types of public agencies: national regulatory authorities. These regulators were often created as part of broader structural reforms, such as market liberalisation. In several sectors (energy, communications, transportation), the state monopoly was replaced with competitive markets that require professional and depoliticised regulation. Regulators frequently operate at "arm's length" from ministries to ensure sufficient functional autonomy and maintain public confidence in the objectivity and impartiality of decision-making. However, this autonomy should be matched by sufficient accountability mechanisms to demonstrate the effective execution of its responsibilities and operates within the powers attributed to it.

SIGMA would like to thank all partners who contributed to the survey conducted for the purposes of this paper, including ministries and agencies in the Western Balkans and the European Neighbourhood, as well as SIGMA national experts who conducted the data collection[2]. The authors are also grateful to the European Commission and OECD colleagues for their constructive comments on early drafts of this paper.

[2] Laura-Sofia Springare from SIGMA organised and analysed the survey data collection and analysis. National experts who acted as enumerators for the surveys and provided desk analysis of specific SIGMA sub-indicators are Nevila Como (Albania), Hovhannes Avetisyan (Armenia), Amir Cesic (Bosnia and Herzegovina), Nina Sarishvili (Georgia), Visar Rushiti (Kosovo), Roman Ladus (Moldova), Ana Đurnić and Milena Muk (Montenegro), Jasna Pajkovska and Vesna Bochvarska (North Macedonia), Vladimir Mihajlovic (Serbia) and Ivan Khilobok (Ukraine). Vitalis Nakrosis and Gergely Hideg supported the survey design and methodology.

I. From agencification to consolidation – trends in organisation of public administration

"Agency fever": international trends and their impact on transition economies

The organisation of public administration at the level of central government varies across countries based on several key parameters: single or plural executive, the position of the head of government, the shape and the role of the centre of government, the number of ministries and distribution of responsibilities, the number of public agencies and their tasks, to name just a few. The architecture of the state depends on constitutional arrangements, culture and tradition and is also the result of political bargaining, in particular where coalition governments are in place. This study focuses on a secondary level of the government's structure, namely public agencies. Public agencies differ from other types of non-ministerial bodies operating mainly under private law, such as state-owned enterprises,[3] and non-profit organisations established by the state, such as private law foundations.

In the long-standing debate on consolidation versus specialisation, the last decades of the twentieth century marked a rapid shift towards more deconcentrated structures of public administration. This trend was called "agency fever" (Pollit, 2001[2]). The agencification wave led to organisational reforms promoting vertical specialisation by transferring policy implementation functions from broad-purpose, multi-layered and complex organisms (ministries, departments) to newly-created, single-purpose and (semi-) autonomous public agencies. In practice, in OECD and EU countries ministerial units were often detached to become standalone organisations, accountable to the portfolio ("parent") ministry but enjoying greater autonomy than ministerial units. However, as shown in Chapter 4, in some administrations in the Western Balkans and the European Neighbourhood the original specialisation logic behind agencification has become distorted to the extent that it can be difficult to distinguish a ministry from an agency based on their core functions.

The rationale behind agencification was comprehensively explained in the background document for the landmark Next Steps Agencies reform in the United Kingdom (UK). The report prepared by the special Efficiency Unit at the UK's Cabinet Office in 1988 paved the way for the creation of over 130 agencies within a decade, transferring three quarters of all civil servants to them. Agencification was seen as a vehicle to improve public managers' accountability for results, their greater autonomy allowing a clearly defined and narrower scope of tasks and responsibilities. It promised to unleash the potential of managers currently stuck somewhere in the middle of the ministerial hierarchy. Further, decoupling policy formulation and implementation through agencification was expected to enhance the quality of both processes –

[3] As defined by OECD, state-owned enterprises function mainly in the legal forms of private (commercial) law, such as joint stock companies, limited liability companies and partnerships limited by shares (OECD, 2015[81]). However, there are also state-owned enterprises operating in special legal forms of public law.

enabling ministries to fully concentrate on policy making and ensuring greater focus on delivery functions by allocating them to separate, specialised bodies (i.e. agencies) (Efficiency Unit, 1988[3]). Agencification also allowed political leaders to shift the blame to agencies for any irregularities or failures in managing public services (Mortensen, 2016[4]).

The idea of separating policy formulation from policy implementation and transferring the latter to specialised organisations was not invented in the 1980s. This model has existed in Sweden or Norway since the mid-nineteenth century (Christensen and Lægreid, 2006[5]), However, the last two decades of the twentieth century led to unprecedented expansion of public agencies and emergence of new forms and types. Data for 21 mostly European countries, collected by van Thiel and CRIPO (2012), demonstrated that large-scale agencification emerged and accelerated in the 1990s. Later in this paper, the recent experiences in transition economies and their special trajectories and characteristics are examined. The Western Balkans and European Neighbourhood quickly caught up with the agencification trend, often stimulated by international partners or consultants. As shown in Chapter 4, each of these created dozens of agencies of varied legal status and different scopes of autonomy. In some cases, proliferation of agencies was accompanied with expansion of other types of non-ministerial bodies. For example, in Armenia a large number of private law foundations was established by the state (SIGMA, 2019[6]). In Moldova, several classical administrative functions (e.g., issuing passports) were entrusted to state-owned enterprises (SIGMA, 2015[7]).

Agencification increased the diversity and complexity within the government administration. A public agency is a heterogeneous concept, and it may relate to various organisational forms. This diversity is captured by numerous typologies of public agencies developed in literature (Dunleavy, 1991[8]) (OECD, 2002[9]) (Van Thiel, 2012[10]). Most of the typologies concentrate on the central attribute of the agencies – the degree of autonomy and distance from other organisations, especially the portfolio ministries. The autonomy itself, as a central feature differentiating agencies, may be discussed with regard to various dimensions: legal, policy-related, structural, interventional, managerial, and financial (Figure 1). Autonomy is not a binary concept, as the autonomy of a public agency can differ significantly along these dimensions, depending on the functions it is expected to perform.

Figure 1. Dimensions of agency autonomy

Source: Based on Verhoest, Peters, Bouckaert and Verschuere (2004).

Agencies are never completely "independent", as elected politicians are ultimately responsible for their activities (Christensen, Lie and Lægreid, 2008[11]). The original purpose of agencification was not to create a "fourth branch of government", as the agencies remain part of the executive. Ministers are elected to design and implement public policy and the agencies are an instrument for delivering these objectives. While they enjoy greater autonomy than ministerial units in all of the dimensions listed above, they operate under the governance and oversight of the government, usually performed by the ministry responsible for the policy area in which the agency operates (portfolio ministry). The main role of the portfolio ministry is holding the agency accountable for the jointly agreed results and ensuring that laws and policies are implemented as intended by the government. Accountability is executed through setting objectives and targets and monitoring and evaluation their implementation, but also through more classical instruments, such as appointing and dismissing management, influencing budget and staffing, or inspecting the legality (reviewing administrative acts) and performance of an agency's operations.

It is a continual challenge to strike an optimal balance between agency autonomy and accountability. Many EU and OECD member countries continue to make readjustments to this equilibrium. However, this study shows that the transition economies in the EU periphery face substantial challenges with essentially unaccountable public agencies. This is not a recent phenomenon. In 2001, SIGMA emphasised that agencies must not become so independent or detached from the executive as to be able to defy the

government on matters of legitimate concern (OECD, 2001[12]). This can pose serious problems for democratic accountability and for effective implementation of public policy.

Back to consolidation? The de-agencification trend

After at least three decades of agencification, the evidence base for the expected efficiency gains of agencification is still rather thin (Cingolani and Fazekas, 2020[13]) (Dan 2014). Some authors find negative effects of agencification on public sector efficiency and value for money (Overman and Van Thiel, 2016[14]), undermining the major promise of agencification. Decoupling policy making from policy implementation was often secured formally, but not in practice. Research shows that agencies are heavily involved in policy formulation, even if they were only intended to focus on implementation (Bach, Niklasson and Painter, 2012[15]) (Verschuere and Vancoppenolle, 2012[16]). Extensive agencification has also created numerous side effects, i.e. obstacles to policy co-ordination and weakening central governance, co-ordination and oversight (Moynihan, 2006[17]). The high level of autonomy of some agencies has led to questions regarding their democratic accountability and legitimacy, for example whether they are more easily captured by group interests, e.g. industries regulated by the autonomous regulatory agencies (Larsen et al., 2006[18]). As summarised by one of the authors: “the magic new public management-inspired recipe of granting organizations more managerial autonomy while controlling them for their results only seem to work under certain conditions and for certain organizational aspects, and more often this combined recipe has unintended consequences” (Verhoest, 2017[19]).

Principal-agent theory provides a framework for examining how a ministry may ensure that an agency is carrying out public policy and administering the law in case ofinformation asymmetry. Effective governance is key to minimise risks and unintended liabilities for the state (Laking, 2006[20]). Information asymmetry can in practice be compensated by informal networks. If regulatory mechanisms are ill designed or ineffective, there is a tendency to develop alternative mechanisms for political control, such as patronage and frequent restructuring (Hajnal, 2011[21]), to ensure there is strong political control (Verhoest et al., 2011[22]).

Internationally, the problems created by extensive agencification first prompted joined-up governance initiatives, aiming at enhancing cross-sectoral co-ordination and co-operation between agencies, and doing more things together, across organisational boundaries. More recently, they also inspired reforms reversing agencification trends (Thijs and Nakrosis, 2019[23]). De-agencification (organisational consolidation) emerged not only as a reaction to the negative effects of agencification, but also as an austerity measure after the 2008 global financial crisis. Governments came under fiscal and political pressure to initiate painful reforms within their own administrative apparatus. De-agencification became a viable option, delivering quick, tangible and visible results. The consolidation trend took two main forms:

- Whole-of-government (comprehensive) consolidation – centrally managed initiatives restructuring a wide array of agencies in all or a vast majority of policy areas.
- Sectoral consolidation – reorganisation of the agency landscape within a single policy area or within a specific type of government function.

Comprehensive consolidations were only implemented in some countries, for example in the UK and Ireland (Box 1), whereas sector-level consolidation occurred in wide array of countries. While differing in scope, both types of consolidation followed a similar pattern – reducing the number of agencies through: (1) merging agencies; (2) transferring agencies’ functions back to the ministries; (3) withdrawing from performing specific functions resulting in abolishment of agencies; or (4) delegating these functions to other bodies, such as local governments, the private sector or civil society organisations.

Box 1. Comprehensive consolidations of agencies in the UK and Ireland

The UK's Public Bodies Reform Programme (2010-2015) and Ireland's Agency Rationalisation Programme (2011-2013) followed a similar pattern, combining massive restructuring of agencies with setting mechanisms for regular review of the number of agencies. The UK's programme began with a review of over 900 government organisations that led to identification of over 200 bodies that no longer needed to exist as standalone organisations and over 170 bodies that could be merged with others. These targets were largely accomplished. Within five years, the total number of public bodies was reduced by over 290, thanks to the abolishment of 190 institutions and the merging of 165 others into fewer than 70. The reported cumulative reduction in administrative savings reached GBP 3 billion. The overarching logic behind the restructuring was to select the most effective and efficient option for delivery of specific government functions. It is interesting that allocating functions to non-departmental public bodies (primary type of government agency, operating in an arm's length capacity with the parent ministry) was indicated as "a last resort, when consideration of all other delivery mechanisms have been exhausted" (Cabinet Office, 2012, p. 4[24]). The catalogue of alternative delivery options included listed devolution to local government, transferring to private or voluntary sector, bringing in-house (to the parent department) or creating an executive agency (part of the government department). In addition to this one-off consolidation exercise, the mechanism of post-consolidation reviews (Triennial Reviews) was introduced. All non-departmental public bodies were required to go through a review process over a three-year cycle. The key principle of the reviews was their challenging character, i.e. they require an 'existential test' for each body in order to analyse whether there is a robust justification for retaining them as standalone organisations. The model of Triennial Reviews was recently replaced by tailored reviews that rely on slightly simplified methodology. However, the general concept of regular and challenging reviews was retained. Finally, the oversight of the existing agencies was tightened by introduction of new requirements on transparency of salaries and contracts, as well as new forms of *ex ante* external controls for specific transactions.

The Irish Agency Rationalisation Programme reduced the overall number of Government bodies by almost 200. It also introduced a principle stating that the creation of a separate agency is only justified when the performance of particular functions requires specialist skills and autonomy. Similarly to the UK, one-off consolidation was complemented with the introduction of Periodic Critical Reviews (PCRs) for all state agencies (see the box below).

Source: (Cabinet Office, 2014[25]) (Department of Public Expenditure and Reform, 2014[26]) (Department of Public Expenditure and Reform, 2016[27]) (Dommett, MacCarthaigh and Hardiman, 2016[28]) (MacCarthaigh and Hardiman, 2017[29])

Comprehensive consolidation initiatives led to a significant reduction in the number of agencies, though in the Irish case its impact was diminished by the creation of several new institutions in parallel. The public agency was no longer the default option for delivery of all government functions, but only one of the options. Sunset clauses and regular reviews of agencies were introduced to ensure that agencies continued to serve a purpose years after their establishment. The rationalisation programmes implemented in Ireland and the UK also challenged another constitutive element of the agencification agenda – the need for strict, organisational separation of policy formulation and policy implementation. The benefits of increased democratic accountability through shifting more functions under the direct leadership of elected politicians (ministers or local government authorities), were emphasised. Some whole-of-government consolidation initiatives were also undertaken in the Western Balkans and the European Neighbourhood, but the results are rather mixed (see experiences from Kosovo and Albania in Chapter 4).

Sectoral consolidations are diverse and frequent. Four main types of sectoral consolidation can be identified from recent European practice (Sześciło, 2020[30]).

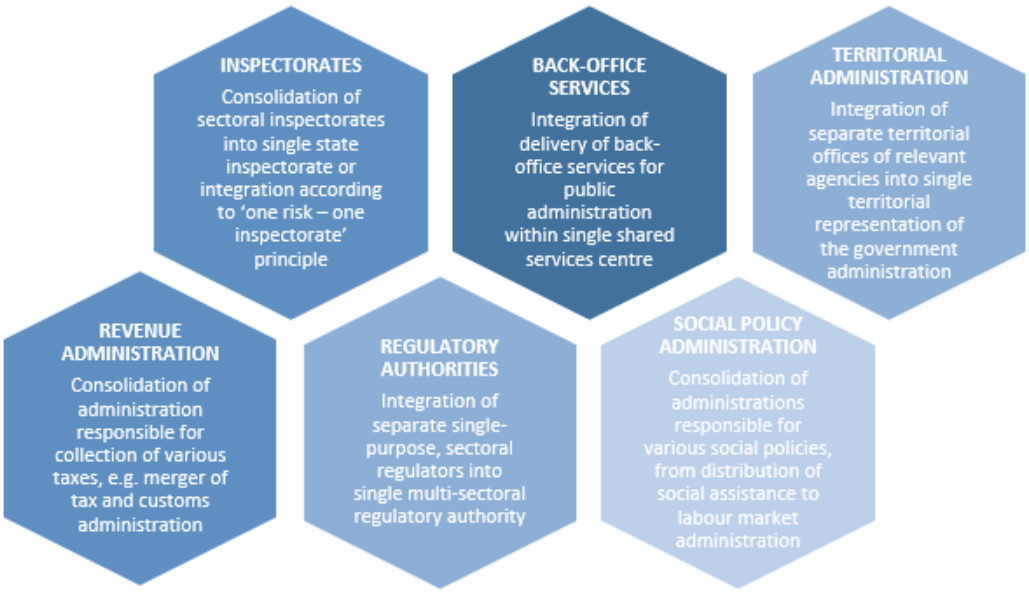
- Amalgamation of all service delivery agencies operating within one policy area, e.g. merging customs and tax administration (Denmark, Poland, UK), merging social services and labour services (Norway).
- Amalgamation of regulators, e.g. merger of financial regulators (Finland, Poland – merger of financial supervisory authority and insurance supervisory authority); merger of electronic communications and postal service regulators (Croatia, Poland, Slovakia, UK); merger of competition authority with post and telecommunications market regulator (Netherlands). One of the most prominent examples of such reforms was establishment of the Spanish 'super-regulator' - the National Authority for Markets and Competition (CNMC), set up in 2013. It replaced the National Competition Commission (competition protection authority) and separate sectoral regulators in electronic communications, the audio-visual sector, energy, railways and airports, and postal services.
- Integration of inspectorates (regulatory enforcement agencies). This may include integration of inspectorates operating within a specific risk area, following the 'one risk – one inspectorate' approach promoted by OECD (OECD, 2014[31]) e.g. by merging all bodies handling food security (Denmark, Germany, Ireland, Netherlands). The most radical approach was first applied in Croatia. In 1999, the centralised State Inspectorate took over tasks of 12 specialised inspectorates (labour and worker safety and protection, trade and market surveillance, power, mining and equipment) operating under four ministries. It is interesting to note that this approach had been already implemented in the Western Balkans. In 2012, Montenegro created the Administration for Inspection Affairs, integrating under one roof specialised inspections operating in the following areas: mining, geology, electronic communications, postal services, labour, tourism, construction, environment, public procurement, games of chance.
- Consolidation of provision of back office services for government administration under a single roof of shared support centres (Estonia, Finland, Ireland, Netherlands, Portugal, Sweden, UK). This includes, in particular, integration of provision of such services as property and fleet management, financial management (accounting, payroll administration), procurement or IT infrastructure.
- Integration of territorial branches of the government administration. In Lithuania, the proposals for rationalisation of government administration have been formulated by the so-called "Sunset Commission" since 1999, but considerable results were only delivered during the global financial crisis. Abolishment or reorganisation of territorial branches of government administration was the major factor leading to reduction of the total number of government bodies by nearly 10%, between 2008 and 2010 (Nakrošis and Martinaitis, 2011[32]). In Hungary, the integration of territorial administration under the roof of county government offices brought an even sharper reduction of the number of administrative bodies, but surprisingly, led to an increase in employment (Gellén, 2012[33]).

Sectoral consolidations typically rely on grouping similar functions into clusters in a single organisation. This approach has been popular for governments seeking efficiency gains and synergies through organisational reforms. For example, in the Dutch Compact Central Government Programme (Government of the Netherlands, 2011[34]) the cluster approach was presented as a strategy for streamlining the Government's operations, creating synergies and savings by co-ordination or consolidation of delivery of similar functions. The Government identified several distinct groups, where organisational integration could be introduced, e.g. providing income support to citizens, collecting contributions, managing publicly owned property, inspections and market supervision (regulatory functions). For example, the identification of this last group resulted in the above-mentioned merger of the competition protection authority with the regulator

of the postal and telecommunications market. With regard to the inspection group, the idea of a single state inspectorate was considered, although eventually it resulted in a significant reduction of the number of agencies. An important element of the Dutch approach is the designation of the ministry responsible for each group.

The cluster approach could serve as a general principle shaping the agency landscape. The catalogue of groups identified in the Dutch case serves as a good point of departure, but as the examples discussed above show, there are other potential paths towards the integration of agencies. Where the merging of relevant agencies is not feasible, better co-ordination and common operating standards should be ensured. The figure below presents a map of clusters that could guide the process of consolidation or greater integration of agencies. These clusters may overlap to some extent (e.g. consolidation of revenue administration might be combined with the merging of inspectorates operating in this area), but they could also serve as alternative options.

Figure 2. Observed strategies for clustering public agencies



Gatekeeping functions and regular reviews

Some OECD and EU countries have developed gatekeeping functions to avoid the proliferation of new agencies and restrictions to avoid *ad hoc* modifications to the carefully-designed, general accountability and governance frameworks. A balanced policy response to these challenges consists of two elements:

- Procedures for creation of new agencies to carefully consider the need for such institutions and possible alternative organisational setups.
- Mechanisms for regular reviews and adjustments of the existing agencies.

Mechanisms like these have been introduced in the past decade by countries that introduced large-scale reorganisations of their public administrations, such as the UK and Ireland. Creation of new agencies should not be perceived as a default option to deliver government functions. As the UK's Cabinet Office (2016) encapsulated: "New public bodies should only be created if there is a clear and pressing

requirement, a clear need for the state to provide the function or service through a public body, and no viable alternative - effectively establishing new public bodies as a last resort. This is to prevent any unnecessary increase in the number of public bodies". Any proposal for a new agency to be established should be subject to *ex ante* review (a tailored regulatory impact assessment), guided by the following questions:

- Is the function or service to be provided needed? Is it required by legal or policy obligations?
- Are similar functions performed by any existing bodies? If yes, what is the advantage of creating a new body instead of allocating functions to an existing one?
- Can the relevant function be performed more effectively and efficiently by bodies other than a public agency?

The catalogue of alternative delivery options includes local governments, the private sector and the voluntary sector, but also corporatisation of public bodies (primarily agencies), i.e. transforming them into private law enterprises with the government as sole (or major) shareholder, or delegation of some government functions to the judicial bodies. For instance, running public registers (e.g. company registers, land registers) might be entrusted to courts in order to enhance the credibility of these registers.

In principle, if a new agency is needed, the default option is to have one operating within the ministry or under its close supervision, while creation of a more autonomous type of agency requires special justification. For example, creation of the Autonomous Administrative Authorities (ZBOs) in the Netherlands is limited by law to the following cases:

- There is a need for an independent opinion based on specific expertise.
- Strict application of the rules is required in a large number of individual cases.
- Participation of civil society organisations is deemed particularly appropriate in the light of the nature of the administrative task in question (Section 3 of the 2006 Autonomous Administrative Authorities Act).

Regular reviews of the existing agencies often consist of a two-step procedure: (1) challenging the very need for continuation of the agency's activities in the current form; (2) investigating the specific measures improving effectiveness and efficiency of the agency's activities. Reviews may be conducted by the portfolio ministry or by the body responsible for public administration matters, e.g. the respective ministry of public administration or the prime minister's office. The box below presents the review scheme adopted by the Irish Government.

Box 2. Compulsory reviews of public agencies

In Ireland, all public agencies (called Non-Commercial State Bodies) are subject to Periodic Critical Review (PCR) at least every five years. The main objective of the PCR is to verify the need for the existence of each agency. Subsequently, it aims to improve accountability, efficiency and effectiveness, as well as investigate cases for rationalisation and consolidation. Performance is evaluated against the predefined objectives and targets. Finally, the governance structure of the agency and ministerial oversight are subject to review.

The following overarching principles should be considered throughout the review process: a) proportionality – it should not be excessively bureaucratic or burdensome; b) timeliness – it should be completed quickly in order not to disrupt the work of the agency; c) challenging character – it should be robust and rigorous, ensuring that all delivery options for specific government functions are analysed;

d) openness and inclusiveness – the procedure should provide all stakeholders with opportunities to contribute; e) transparency – reviews should be made publicly available.

The responsibility for the review process is partially decentralised to the level of the portfolio ministry (department) that is required to establish a working group to conduct the review. However, in addition to the representative of the ministry and the relevant agencies, this group consists of members from the Department of Public Expenditure and Reform (ministry responsible for public administration). It is concluded with a report submitted to the portfolio minister.

Source: (Department of Public Expenditure and Reform, 2016[27])

Summary - Agencification is not a panacea

Agencification has significantly changed the organisational architecture of public administration across the world. Public agencies have become the major vehicle for implementing policies and delivering services by the government. Nevertheless, the initial enthusiasm accompanying the agencification waves of the 1980s and 1990s has largely faded. Strong empirical evidence has not been provided that agencification leads to enhanced efficiency, effectiveness and quality in policy making and implementation. There are at least three major lessons that can be drawn from the agency fever of recent decades.

First, there is no 'one size fits all' model for organising the public administration. In particular, there is no formula for the optimal balance between consolidation and specialisation in administrative structures. As stated by Pollitt: "(…) distrust those who argue that X must be implemented because 'everyone else' is doing X. Actually, there are no universal solutions because there are no universal problems" (Pollitt, 2012[35]). Second, an agency is not, by default, more effective or efficient in delivering specific implementation functions than a ministerial unit, a state-owned company, or a private sector or local government entity, as was sometimes believed in the early days of the agencification era. Thus, an agency should not be perceived as a default option for government functions. It is increasingly understood that the creation of an agency should be preceded with comprehensive *ex ante* analysis of existing organisational arrangements for delivery of public functions. Third, irrespective of the organisational form selected for delivering specific functions (ministerial unit, agency or state-owned company) similar governance challenges persist. The key challenge is maximising the benefits of delegation and autonomy, while minimising the risk of irregularities or errors and ensuring the effective accountability of all bodies performing government functions. This requires a consistent governance framework for all bodies performing government functions, striking a balance between autonomy and control, freedom and accountability.

II. Supranational standards – towards the EU model of national agencies

National regulatory authorities – the flagship "EU-made" national agency

Traditionally, national administrative organisation was not subject to regulation of international and supranational[4] laws, as a cornerstone of national administrative sovereignty (Egeberg and Trondal, 2018[36]). However, with the progress of European integration, EU law began to provide more and more detailed guidelines regarding the organisational design and institutional locus of the national administrative bodies responsible for implementation of the EU legislation. This was part of a broader structural shift in EU policy promoting a "regulatory state" (Majone 1997), where newly-liberalised markets required new models of regulation by a special type of administrative body with an arm's-length relationship with ministries, broadly labelled "regulatory agencies" (Majone, 1997[37]) For the Western Balkans and the European Neighbourhood, alignment with these rules is an important component of the process of approximation of their legal systems to the EU a*cquis*. Therefore, the design of the national administrative structures cannot ignore the requirements established at the EU level.

However, EU standards have been misunderstood and misinterpreted when applied in the Western Balkans and the European Neighbourhood. In this Chapter, the aim is to clarify the requirements of EU standards on the organisational setup of agencies. These considerations will concentrate primarily on the national regulatory authorities (NRAs), as they are subject to particularly extensive regulation in the EU *acquis*. This analysis will be complemented with insights from OECD instruments and guidance on governance of regulators in general.

The principle of functional autonomy for NRAs (and some other bodies) is not a revolutionary idea. It can be traced back to when Woodrow Wilson formulated the rule that elected politicians could influence administrative decision making by shaping the legislative framework, but not through direct and often informal interference in individual proceedings or decisions. It is also a pillar of classic Weberian bureaucracy, where civil servants are bound by law, not the will of political leaders. The added value of the EU's focus on functional autonomy, compared to these classic concepts, is the explicit exclusion of the power of ministries to review the NRAs' acts and the complementing of this functional autonomy with "autonomy bonuses" in other dimensions – legal, structural, financial and managerial.

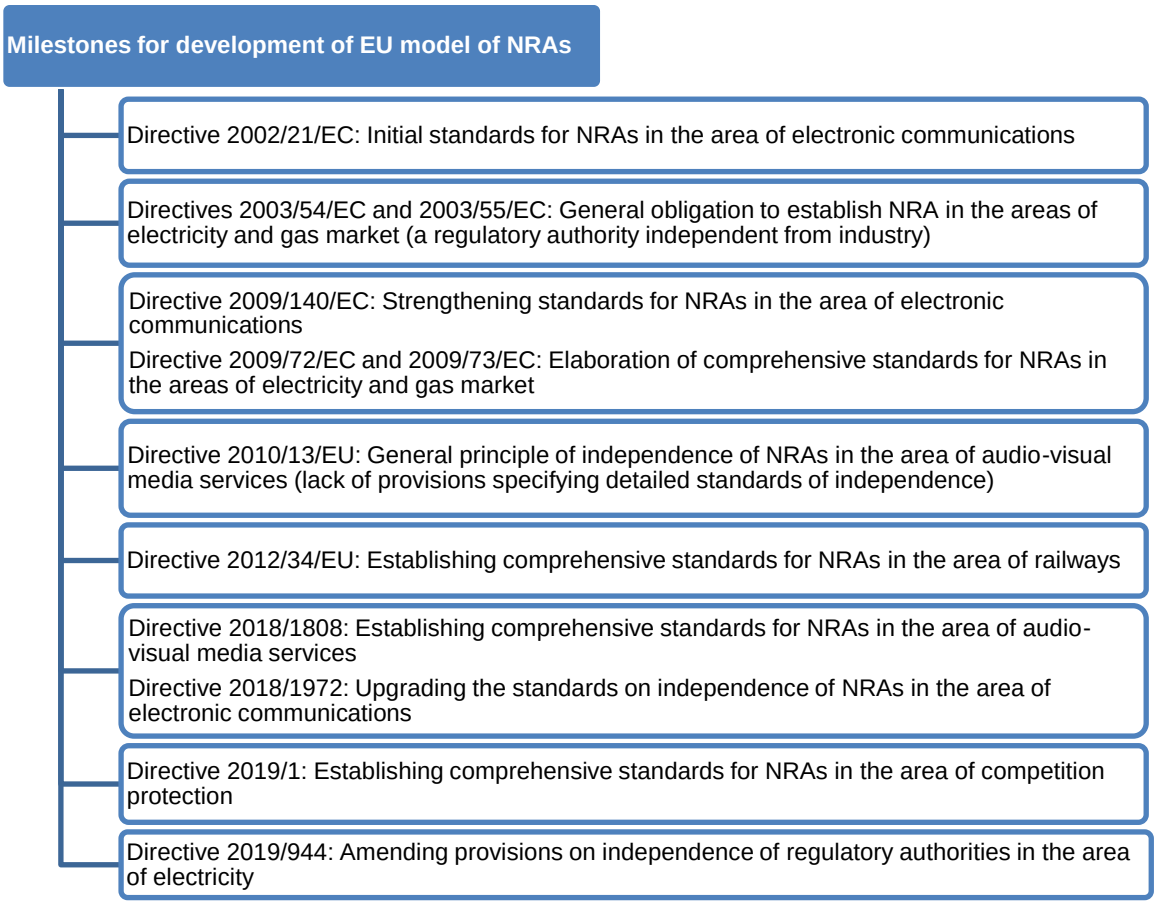
The regulation refers to the technology of governing social systems by rules (Baldwin, Cave and Lodge, 2010[38]). In this sense, most of the public authorities could be defined as regulators, either setting or implementing regulations. However, the label of regulatory authorities is usually attached to a narrower group of bodies tackling market failures in selected markets, using such powers as: licensing market actors and distributing special rights (e.g. radio frequencies); monitoring compliance of market operators with a

[4] The notion of 'supranational standards' refers to standards established by an organisation whose bodies are provided with the authority to set laws that are binding for its member countries, based on the powers transferred to this organisation by the members. The European Union is the leading exemplar of this type.

regulatory framework, including imposition of sanctions for non-compliance; counteracting distortion or restriction of competition and abuse of dominant position by operators on relevant markets; undertaking actions improving accessibility of services on regulated markets to various groups of users; fixing or approving tariffs (e.g. for transmission or distribution of energy); considering complaints of the market operators against discriminatory actions hampering access to the market or fair competition; issuing binding instructions to market actors about specific measures to be undertaken (Sześciło, 2021[39]). As such, regulatory authorities are sometimes distinguished from bodies of narrower, "policing" functions, i.e. regulatory enforcement agencies performing classic compliance control functions in the form of market inspections (OECD, 2014[31]). This includes, for example, labour, environmental or food safety inspectorates. In practice, the demarcation line between regulatory authorities and regulatory enforcement agencies is often blurred, as regulatory authorities often also perform inspection functions.

National regulatory agencies are regulators characterised by a single additional feature: their functions, powers and organisational setup are shaped to a large extent by EU law. The NRAs became part of the EU *acquis* setting general standards for autonomy, as this was deemed crucial to the success of market liberalisation reforms promoted by the EU. It is believed that autonomous regulators are crucial to ensuring a level playing field for all market players on the freshly liberalised and partially privatised markets of public utilities (energy, electronic communications or postal services). In the markets where the state-controlled providers remained present, yet lost their formal monopoly and became exposed to competition of private actors, NRAs became particularly needed to demonstrate the separation of regulatory functions from the management of public providers. Gradually, the NRAs became the national administrative structures subject to the most detailed EU regulation pertaining to their organisational setup and autonomy. No other national institutions attracted comparable attention of EU legislation. Figure 3 shows the evolution of EU standards on NRA autonomy in different policy areas. It also provides a catalogue of the NRAs covered by the EU *acquis*.

Figure 3. Expansion of EU law standards on organisation and autonomy of national regulatory authorities



Source: SIGMA analysis of EU legislation.

The development of EU standards has accelerated in recent years, with new EU standards established for the national competition authorities and improvements to the existing regulation for the electronic communications and audio-visual media regulators. However, the EU model of NRAs is relatively young, compared to developments at the national level. The emergence of independent administrative bodies in Western Europe can be traced back to the 1970s (Majone, 1997[40]) (Scott, 2014[41]). Since the late 1980s, they have become widespread across Europe (Gilardi, 2006[42]). The first few EU standards emerged only a decade later. Thus, the EU *acquis* cannot be perceived as a vehicle that introduced the concept of NRAs to Europe. It was a factor contributing to dissemination, to cementing and achieving some degree of consistency in perception of this institution across Europe. Furthermore, the formalisation of EU standards for NRAs' independence was often the culmination of a long-term process involving multiple actors and actions — lobbying efforts of networks of national regulators, policy documents and soft law acts of the European Commission and landmark rulings of the Court of Justice of the European Union (CJEU).

The content of EU standards for NRAs is not uniform. They differ particularly in terms of depth of the EU influence on the Member States' autonomy in shaping national administrative structures. A detailed description of standards for each type of NRA, based on a review of the relevant EU Directives, is provided below (Table 1).

Table 1. EU *acquis* standards of autonomy of National Regulatory Authorities

Sector and relevant acts	Standards of autonomy
Energy markets Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity; Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas	▪ Legally distinct and functionally independent from any other public or private entity ▪ Should not seek or take direct instructions from any government or other public or private entity ▪ Separate annual budget allocations provided, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out their duties ▪ The members of the agency's board appointed for fixed term of five up to seven years, renewable once ▪ Power of the government to issue general policy guidelines not related to the regulatory powers and duties
Electronic communications Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code	▪ Legally distinct from, and functionally independent of, any natural or legal person providing electronic communications networks, equipment or service ▪ Should not seek or take direct instructions from any government or other public or private entity ▪ Only independent bodies (especially courts) should have the power to overturn or suspend their decisions ▪ The members of management shall be appointed for a term of office of at least three years from among persons of recognised standing and professional experience, on the basis of merit, skills, knowledge and experience and following an open and transparent selection procedure. Member States shall ensure continuity of decision making ▪ Should have separate annual budgets and have autonomy in the implementation of the allocated budget
Railways Directive 2012/34/EU establishing a single European railway area.	▪ Independence in organisation, funding decisions, legal structure and decision making ▪ The regulator should exist as a stand-alone authority ▪ The managing body should be appointed under clear and transparent rules and in transparent, merit-based procedure by the government or other public authority which does not perform a supervisory role over providers of railway services ▪ The Member States may choose one of the following solutions relating to term of office of the heads of railway sector regulators: 1) appointment for fixed and renewable term; or 2) permanent appointment with dismissal possible solely on disciplinary ground
Audio-visual media services Directive 2010/13/EU on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (significantly revised in November 2018)	▪ They should remain legally distinct from the government and functionally independent of their respective governments and of any other public or private body ▪ They should be able to exercise their powers impartially and transparently; ▪ They should not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law ▪ Adequate financial (separate budget) and human resources and enforcement should be secured ▪ Managing bodies should be appointed in transparent and non-discriminatory procedure and the members of those bodies could be dismissed only if they no longer fulfil the conditions required for their functions

Competition protection Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market	▪ Member States should guarantee that the national competition authorities perform their duties and exercise their powers impartially and in the interests of the effective and uniform application of those provisions, subject to proportionate accountability requirements ▪ They should not seek nor take any instructions from government or any other public or private entity when carrying out their duties and exercising their powers ▪ However, the government has right to issue general policy rules that are not related to sector inquiries or specific enforcement proceedings ▪ Persons performing decision-making powers in the national competition authorities could be dismissed only if they no longer fulfil the conditions required for the performance of their duties or if they have been found guilty of serious misconduct under national law ▪ Member States shall ensure that the members of the decision-making body of national administrative competition authorities are selected, recruited or appointed according to clear and transparent procedures laid down in advance in national law ▪ National competition authorities shall enjoy independence in the spending of the allocated budget for the purpose of carrying out their duties
Postal services Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service	▪ Regulatory authority should be legally separate from and operationally independent of the postal operators, i.e. within the government, regulatory responsibilities are separated structurally from the responsibility for exercising any property rights in the incumbent postal operator (ownership unbundling)

Source: SIGMA analysis of the EU legislation

Irrespective of sector-specific differences, there are some common elements in the EU standards for NRA autonomy. First of all, the overall objective is to shield regulators from undue influence of both elected politicians and markets on decisions made within the regulatory remit established by the EU law. NRAs should be protected from derailing regulatory decisions either to pursue the short-term electoral goals of political actors or to favour market players. The main instrument to realise this objective, established in EU law, is the principle of "functional independence", recurring in most of the Directives regulating the status of the NRAs. This notion is key to understanding the scope of the autonomy of the NRAs required by the EU *acquis*. While none of the Directives contains a definition of "functional independence", the focus is on ensuring that the regulatory functions of the NRAs are performed "autonomously, without any direct possibilities of oversight by national political principals" (De Somer, 2018, p. 585[43]). In other words, "functional independence" is about the power to exert regulatory functions, established by national law in line with the EU *acquis*, with no *ex ante* or *ex post* control by elected politicians, either in the form of instructions on the content of individual regulatory decisions or reviewing (repealing or amending) them.

Various institutional measures are prescribed to create favourable conditions for this functional independence and reduce the opportunities for indirect external influence on regulatory decisions. The formulation of these additional safeguards differs across Directives, but generally they concentrate on:

- legal status
- appointment and dismissal of the NRAs' senior management

- resources.

In many cases, the standards established by the EU legislation are of a general nature and do not provide detailed guidelines on resolving particular governance issues. This requires a case-by-case approach, while analysing for example the scope of possible interference by the government in the management of the regulatory authorities. A number of problematic cases have been subject to review by the CJEU, which provided further instructions on the interpretation of the EU *acquis* guaranteeing the independence of national regulators (Box 3). The Court did not expand the scope of NRAs' autonomy beyond the standards established by the Directives but translated some of the general rules into more specific guidelines. The most important general conclusion that could be drawn from these rulings is the prioritisation of the functional independence of the NRAs, i.e. ensuring that they are capable of implementing regulatory measures stemming from EU law without undue external influence.

Box 3. CJEU case-law on independence of national regulatory authorities

The case C-424/07 Commission v. Federal Republic of Germany establishes that the national legislation cannot reduce the regulatory remit established by EU legislation for the national telecommunications regulator. Furthermore, national law cannot impose hierarchy within the catalogue of regulatory objectives established by the EU legislation as guiding principles for the national regulator. Striking a fair balance between these objectives is the responsibility of the national regulator.

In the case C-560/15 Europa Way and Persidera, the CJEU declared violation of the EU law resulting from the adoption of the law cancelling the on-going selection procedure for the allocation of radio frequencies. The Court noted that the law was an example of illegitimate interference of a political body in administrative decision-making within the regulatory remit of the NRAs. Interference should be confined to review of the regulator's decisions by the court or other independent body. The Parliament has no power to interfere, even through legislative measures, in pending administrative proceedings before the regulatory body implementing its functions established by the EU legislation.

Financial autonomy of regulators was the subject of the case C-240/15 *Autorità per le Garanzie nelle Comunicazioni*. Italian law had reduced annual appropriations and year-to-year budget increases applicable to a large group of public authorities, including the electronic communications regulatory body. In this case, the CJEU did not find this intervention in financial management of the regulator illegal, as it was not demonstrated that these budgetary restrictions undermined the regulator's capacity to perform its core functions or were designed in a manner that was discriminatory to the NRA.

Crucial issues of agency governance were considered by the CJEU in the ruling on case C-424/15 Xabier Ormaetxea Garai, Bernardo Lorenzo Almendros v. *Administración del Estado*. The Court analysed the transitional provisions of the law that consolidated the Spanish sectoral regulators into a single National Authority for Markets and Competition (see above). This law terminated the mandate of the members of the management of the amalgamated bodies, who were appointed for a fixed term. While the CJEU did not contest the amalgamation itself, it pointed out that the sole ground of restructuring the agency does not justify premature dismissal. The Court advised that, according to the relevant provisions of the EU law, members of the management of an NRA operating in the area of electronic communications may be dismissed only if they no longer fulfil the conditions required for the performance of their duties, which are laid down in advance in national law. This prerequisite was not fulfilled in the Spanish case, as the early dismissal resulted from other grounds, namely the reorganisation of the institution. The position of the CJEU does not impede reorganisation as such, but requires the Member States to ensure continuation of the mandate of the management of the body subject to restructuring. For example, they could be transferred to the management of the body emerging from the reorganisation.

Source: SIGMA review of the CJEU case law.

The last case mentioned above is particularly interesting in the context of organisational reform of agencies, as it establishes special requirements pertaining to the restructuring of NRAs. The CJEU emphasised that reorganisation should not be misused as a method for premature dismissal of members of the management of NRAs and their mandate should be "transferred" to the newly-created body. Importantly, however, the Court also confirmed that regulatory functions established by the EU law in various domains could be organised under multi-sectoral regulatory agencies. There are no obstacles to seeking efficiency gains in the regulatory sphere through the consolidation of NRAs.

In practice, this trend towards the amalgamation of regulators is already well-established across the EU. The table below presents an overview of multi-sectoral regulators in the EU, showing which of the regulatory domains governed by the EU legislation are grouped under multi-sectoral regulators. For the purpose of this review, we selected regulatory authorities covering at least three EU regulatory domains.

Table 2. Multi-sector regulators in EU member countries

	Audio-visual media services	Electronic communications	Energy	Railway	Postal services	Competition protection
Croatia		●	●	●	●	
Estonia[5]			●	●	●	●
Germany		●	●	●	●	
Lithuania		●		●	●	
Luxembourg		●	●	●	●	
Netherlands		●	●	●	●	●
Slovenia	●	●		●	●	
Spain		●	●	●	●	●

Source: SIGMA review of national legislation.
Notes: NRAs may have other sectors under their purview. For example, economic regulation of the water sector (sometimes grouped with energy regulation) and air transport regulation (sometimes grouped with railway regulation) (Casullo, Durand and Cavassini, 2019[44])

While member countries are free to adjust the rules established by the EU Directives to their national administrative tradition and legal system, in the case of energy market regulators (electricity and gas), the European Commission issued an Interpretative Note (European Commission, 2010[45]) providing additional guidelines on the institutional setup for these bodies (Table 3). It should be emphasised, however, that these guidelines are not formally binding and they do not provide the only possible interpretation of the rules established by the Directives.

[5] This relates to the Estonian Competition Authority. It should be noted that responsibility for regulation of audio-visual media services and electronic communications is merged under another multi-sectoral regulator (Consumer Protection and Technical Regulatory Authority) that is also responsible for consumer protection.

Table 3. European Commission guidelines on interpretation of independence standards for electricity and gas market national regulators

Aspect of independence	EC guidelines
Legally distinct status	The NRA must be created as a separate and distinct organisation from any Ministry or other government body. The NRA can no longer be part of a Ministry. This includes a recommendation against sharing personnel and offices with a ministry.
Functional (decision-making) autonomy	If the NRA is to draft a work programme for the coming year(s), it should be able do so autonomously, i.e. without the need for the approval or consent of public authorities or any other third parties. Decisions by the NRA cannot be subject to review, suspension or veto by the government or the ministry (judicial review available)
Financial autonomy	The NRA's budget may be part of the state budget. The NRA may neither seek nor receive any instruction on its budget spending.
Power of the government to issue general policy guidelines	The independence of the NRA does not deprive the government of the capacity to set national (energy) policy. It may be within the government's competency to determine the policy framework within which the NRA must operate, e.g. concerning security of supply, renewables or energy efficiency targets. However, general energy policy guidelines issued by the government must not encroach on the NRA's independence and autonomy.

Source: Based on European Commission 2010

The provisions of the Directives and the CJEU's jurisprudence and soft law standards define the EU standards for the autonomy of the NRAs. However, in order to effectively address misunderstandings and misinterpretations that are common in practice in the Western Balkans and the European Neighbourhood, more practical guidance is needed for designing the organisational setup of the NRAs in line with the EU requirements. The table below presents tailored guidelines, explaining what is and what is not required by the EU *acquis* in each dimension of the agencies' autonomy, as described in the first chapter (Figure 1).

Table 4. Clarifying the NRA's autonomy. What is and what is not required by EU law

Autonomy dimensions	EU law requirements for autonomy for and legitimate restrictions of NRAs
Legal autonomy - requirements	The NRA should have the status of a standalone organisation, not an internal unit of a ministry. The following attributes are essential to ensuring this status: a) capacity to act as a standalone administrative body in administrative procedure; b) authorisation to enter into contractual relations and act as a contracting authority in the public procurement system; c) separate budget from the ministry's budget; d) capacity of the senior management to execute basic managerial powers relating to organisational, financial or human resource management (HRM) matters; e) capacity of the senior management to configure internal structures of the NRA in line with the general rules established by law.
Legal autonomy - legitimate restrictions	Legally distinct status does not require the NRA to have the status of a separate legal person under private law, (it may operate within the unique legal personality of the state). Legally distinct status refers to the NRA having some attributes of legal and organisational identity that ensure that it operates as a standalone organisation. Merging regulators regulated by different Directives into single multi-sectoral regulator is fully legitimate, as long as all the required guarantees of autonomy are secured for this new body. In cases of this kind of transformation, the mandate of the management of the amalgamated bodies should not be automatically terminated, but rather "transferred" to the new body.
Policy and	The objectives and powers of the NRA should be established by the national law in line with the EU law.

interventional autonomy - requirements	The national legislation cannot reduce the regulatory powers allocated by the EU law or determine the hierarchy of regulatory objectives. The government or legislature cannot issue instructions or guidelines about the manner of executing regulatory powers (e.g. ordering to lower tariffs or block specific transactions) or interfere in the pending administrative proceedings, e.g. by terminating procedure or ordering to undertake specific investigatory activities. The government (or legislature) should abstain from imposing any form of sanctions associated with their assessment of the regulatory decisions of the NRAs, especially in the form of dismissal of their management, budget cutting or public reprimand. Decisions (administrative acts) undertaken by the NRA within its regulatory remit can be subject to review only by the court. The ministry or any other government body cannot act as an appeal body.
Policy and interventional autonomy – legitimate restrictions	The government (portfolio ministry) may issue general policy guidelines reflecting the government's policy for the relevant sector. These policy guidelines should not take the form of instructions regarding the resolution of particular cases, but may include recommendations on e.g. tackling specific types of irregularities and distortions in the market, enhancing competition on the market or protection of consumers' rights, contributing to the objective policy targets. The NRA may also be asked to provide input to the policy formulation process, by developing proposals or sharing comments on the portfolio ministry's proposals. The EU *acquis* does not regulate horizontal standards for performance management and reporting. Member States are able but not obliged to ask regulators to prepare annual plans and reports, specifying objectives and targets in a format defined by legislation or government acts. NRAs might be required to discuss the plans and reports with the portfolio ministry, though no formal approval of the ministry should be required. The performance of the NRA may be discussed regularly with the portfolio ministry, but without formal scoring or appraisal. As the NRAs are required to act in a transparent manner, the government (portfolio ministry) has the right to obtain information and explanations about the NRA's activities and position in the regulated sector, observing special rules relating to the protection of commercial secrets and other types of confidential information. The legislature may exert classical instruments of parliamentary oversight towards NRAs, including interpellations, requests for information, hearings of the senior management, discussing annual reports or requesting the supreme audit institutions to conduct audits of the respective NRA.
Structural autonomy - requirements	The members of the management of the NRA should be appointed in a transparent, non-discriminatory and merit-based procedure for a fixed or open-ended mandate. In the case of electronic communications and energy markets regulators, a fixed-term appointment is required, respectively for at least three up to seven and five up to seven years. Irrespective of the term of appointment, early dismissal of senior management should be restricted to situations when they longer fulfil the conditions required for the performance of their duties. These conditions should be established in advance by the national law and may specifically refer to serious misconduct, misbehaviour or conflict of interest, undermining the neutrality and objectivity of the NRA. Discontentment with regulatory decisions made by the NRA or generally formulated unsatisfactory performance cannot serve as grounds for early dismissal. Dismissal should be justified.
Structural autonomy – legitimate restrictions	No specific structure of management is required. In particular, both monocratic and collegial management is allowed. There is no requirement for dual management structure (management + supervisory board). There is no requirement for involvement of the parliament in appointment or dismissal of the senior management. Decisions may be taken by the government as a whole or by the portfolio ministry. In the case of railway market regulators, appointments must be made by a public authority that does not perform a supervisory role over providers of railway services.
Financial autonomy - requirement	The NRA can be financed from the state budget. Alternative funding options may include fees collected from the market operators. There should be a separate allocation for the NRA – its budget cannot constitute part of the portfolio ministry's budget.

	The budget should be sufficient for effective performance of the regulatory functions, although there are no objective criteria established by the EU law to assess the adequacy of the budgetary allocation. The allocated budget should be managed (executed) by the NRA autonomously, observing the general rules of public financial management pertaining to the release of public funds.
Financial autonomy – legitimate restrictions	The budget of the NRA can be adopted in the standard government budgetary procedure, i.e. negotiating the allocation with the ministry of finance, followed by approval of the budgetary proposal by the government and adoption by the parliament. The budgetary allocation may take the form of a lump sum (total allocation) or a more detailed breakdown (e.g. staff, capital expenditure). Budgetary cuts (e.g. on a year-to-year basis) are generally allowed, but the context is important for the assessment of their compliance with the EU law. If the cuts are based on objective grounds (e.g. budgetary crisis) and apply to all or most of the public authorities, they could only be challenged if they seriously hindered the NRAs' capacity to perform its basic functions. In such a case, the NRA should provide clear evidence of the significant and detrimental impact of the cuts. Income generated by the regulator (e.g. from fees or fines) may be transferred to the state budget or retained by the NRA proportionately and under conditions specified by law.
Managerial autonomy - requirements	Sufficient staffing should be secured, although there are no objective criteria established by the EU law to assess the adequacy of the staff capacity of the NRA. The staff and the allocated budget should be managed by the NRA autonomously. This appears to exclude the interference of any external body on individual decisions for recruitment, allocation, promotion or termination of employment of NRA staff. Once the NRA's budget is adopted, the spending decisions within this budget, in principle, should be made without a special external approval process enabling any external body to decide arbitrarily whether specific spending should be allowed or not.
Managerial autonomy – legitimate restrictions	The staff of the NRA can be part of the civil service system of the government. The rules regarding recruitment, categorisation of staff, allocation, promotion, performance appraisal or termination of employment may apply fully to the personnel of the NRAs, as long as they do not envisage external interference in decisions relating to individual staff members, e.g. in the form of appointment of the heads or staff of the NRA's internal units by the portfolio ministry. Sublegal acts issued by the government, e.g. setting detailed rules on performance appraisal or disciplinary proceedings may apply as long as they do not imply external involvement in appraisal or disciplinary procedure pertaining to individual staff members. Legislation on salaries can apply fully, including the salary scales determined by law or by the decision of the government based on the delegation in the law. Individual application of these rules should remain the decision of the NRA's management. The general rules on expenditure control within the government may apply to the NRAs fully. Depending on the system of expenditure controls adopted in the relevant country (see: International Monetary Fund 2016), this may include apportionments by the ministry of finance (granting spending authority for specific periods), centralised payments, monitoring budget execution by the ministry of finance or system of *ex ante* approvals of the ministry of finance for specific types of transactions. The NRA may participate in a cross-government shared services system (provision of back-office services by a single body for multiple government institutions), though on a voluntary rather than a mandatory basis, especially if this covers such issues as centralised procurement or recruitment. The legality and integrity of financial, HRM and operational management could be subject to inspections conducted by the portfolio ministry, ministry of finance and other competent government bodies. This does restrict the inspection powers of independent accountability bodies, such as supreme audit institutions, anti-corruption agencies or ombudsmen.

Source: SIGMA analysis of the EU *acquis*.

The EU concept of functionally independent regulators corresponds well with the guidelines produced by OECD in the *Recommendation of the Council on Regulatory Policy and Governance* and *Best Practice*

Principles for Regulatory Policy: The Governance of Regulators (OECD, 2014[46]), followed by more recent *Practical Guidance against Undue Influence* (OECD, 2017[47]). The OECD also clearly locates regulators within the public administration where they function with sufficient autonomy within the powers delegated by the legislature and national policy frameworks. The 2014 *Best Practice Principles for Regulatory Policy* explicitly provide room for government (ministerial) stewardship of regulators that should rely on the powers clearly defined in the legislation. This is intended to uphold alignment "between the long-term policy goals of the regulator and the broad, strategic national priorities as set by elected representatives in the executive, congress or parliament" (OECD, 2016, p. 4[48]) (OECD, 2014[46]).

The OECD instruments (see Box 4, and in particular Principle 7 of the *Recommendation of the Council on Regulatory Policy and Governance*) reaffirm the importance of transparent appointment procedures for the senior management of the regulator, emphasise the importance of the stability of mandates and for restricting the grounds for early dismissal to specific types of misconduct or incapacity. In financial matters, OECD emphasises the benefits of multi-annual budgetary allocations, in order to reduce the risk of undue pressure during annual budgetary negotiations. The need for securing spending autonomy is another dimension of financial autonomy (OECD, 2017[47]) (OECD, 2014[46]).

Box 4. Selected OECD guidance for independence of regulators

Legal/functional autonomy

- The mandate of the regulators should be established in the legislation.
- They should regularly report to the executive and/or parliament on its performance and operate in line with long-term national policy for the relevant sector.
- Governments and/or the legislator should monitor and review periodically that the system of regulation is working as intended under the legislation. In order to facilitate such reviews, the regulator should develop a comprehensive and meaningful set of performance indicators.
- While performing their regulatory functions autonomously, they should also be required to co-operate with other government bodies and provide advice in policy making processes.
- Appeals against the decisions of the regulators should be considered by an independent body located outside the government.

Structural autonomy

- Management should be appointed by transparent procedure with selection criteria known in advance.
- The number of terms of appointment to the management of the regulators should be limited.
- Special conflict of interest rules should apply to the members of management, including conflict of interest registers, declaration of assets/shares/interests or duty to publish justifications of the key decisions.
- The grounds for dismissal should be established in the law and limited to serious cases of misbehaviour.

Financial/managerial autonomy

- The budget can be decided on a multi-year basis (e.g. for three years) and should be spent with appropriate and accountable autonomy with the general rules of public spending and procurement, as well as auditing, fully applicable.

- Regulators should not set the level of their cost recovery fees, or the scope of activities that incur fees, without arm's-length oversight.

Source: Based on: OECD Best Practice Principles for Regulatory Policy; Creating a Culture of Independence, Practical Guidance against Undue Influence; 2012 Recommendation of the Council on Regulatory Policy and Governance (OECD, 2014[46]) (OECD, 2017[47]) (Casullo, Durand and Cavassini, 2019[49])

The box below provides brief descriptions of multi-sector NRAs in Ireland and Latvia, demonstrating the national interpretations of the EU's principles of NRA independence. In some aspects (e.g. funding regime), they go beyond the minimum required by the EU *acquis*.

Box 5. NRA independence in action (Latvia, Ireland)

Two performance assessment peer reviews produced by the OECD Network of Economic Regulators provide useful insight on specific ways to safeguard functional autonomy.

The Latvian Public Utilities Commission (PUC) is a multi-sector regulator responsible for electronic communications, energy, postal services, water management and waste disposal. The law defines the PUC as an autonomous public institution, with institutional and functional independence and an independent balance sheet and account with the Treasury. The PUC is financed through fees from the regulated sectors established by law and calculated as a percentage of the net turnover of public utilities, and the Ministry of Finance incorporates the budget within the state budget proposal that is approved by Parliament. The PUC also has other arrangements in place designed to foster its independence. For example, it does not receive guidance from the Government related to regulatory decisions, and board members are subject to cooling-off periods after their term ends.

Moreover, the PUC remains accountable to multiple public bodies. It is legally bound to report yearly to Parliament, and it is subject to the control of the State Audit Office. The PUC's accountability to Parliament involves the presentation of an annual action plan, including strategic and operational objectives. This is complemented with the obligation to present to the legislature a report on its activities and an audited financial statement annually. In addition, the PUC has also been invited to provide evidence in the parliamentary committees on a number of issues related to the sectors regulated by the PUC (OECD, 2021[50])It is also subject to the control of the State Audit Office.
Beyond providing an advisory function and issuing formal opinions to Ministries, the PUC is proactive in co-ordinating and exchanging information with ministries and other key institutions. Regular informal exchanges at the technical and political levels with sector ministries and other key institutions complement formal processes and co-ordination agreements. There are regular meetings between, for example, the Minister of Economy, State Secretaries and the PUC Board. In addition, staff from key ministries and the State Secretary meet quarterly with the PUC Board.

The ability of regulated entities or members of the public to appeal decisions of the regulator is another important control on regulatory decision making. Consumers and regulated entities can appeal an administrative act or action of the PUC to an Administrative Regional Court, which adjudicates the matter as a court of first instance (OECD, 2016[51]).

Ireland's Commission for the Regulation of Utilities (CRU) is a multi-sector regulator with responsibilities for economic regulation of the electricity, gas and water sectors as well as for energy safety. Its founding legislation states that the CRU "shall be independent in the performance of its functions" (Electricity Regulation Act as amended, 1999). In accordance with its formal independence, the CRU maintains independence over its budget, which is funded entirely through levies. The Government and legislature do not review or approve the levies, and the levies are not part of the government budget. The CRU's legal and regulatory framework specifies certain arrangements designed to maintain the CRU's independence. For example, CRU Commissioners are subject to a one year cooling-off period after their terms.

The CRU is under the aegis of two ministries, the Department of Communications, Climate Action and Environment (DCCAE) and the Department of Housing, Planning and Local Government (DHPLG). The CRU provides annual work plans to the two Ministers. The regulator also submits an annual report to the Irish Parliament via the DCCAE, which presents the materials to Parliament. This channel of communication reflects the requirements of the legislation for the communication of such documents to Parliament rather than any formal approval or appraisal of the documents by the Department.

The CRU provides both informal and formal inputs to the DCCAE and DHPLG on policy formulation. Formal input takes the form of participation in consultation processes and provision of expertise. In some instances, such as when providing feedback to EU legislation, the DCCAE relies on CRU technical expertise. In the water sector, the DHPLG has called on the CRU frequently to provide advice on matters pertaining to CRU duties. Indeed, according to Section 40 of the Water Services Act (2) 2013, the CRU may also advise the Minister on the development and delivery of water services.

Informal input takes the form of information-sharing through meetings and personal connections. CRU senior management meets with Ministers or senior management in the respective Departments on a regular basis to share information about activities and sector issues. The CRU also provides informal feedback to DCCAE on legislation. Given the small size of the administration, informal exchanges between staff of the CRU, the DCCAE and the DHPLG are common and are seen to aid effective communications. While these informal interactions keep communication channels open, the OECD peer review recommended that CRU build more transparency into information-sharing and co-ordination channels with the executive and maintain a more structured and predictable relationship with Parliament in order to enhance the CRU's accountability. Regulated entities can appeal the CRU's regulatory policy decisions through judicial review in the High Court or the Commercial Court. Minister for DCCAE (OECD, 2018[52]) (OECD, 2021[50]).

Expanding the standards of autonomy to non-regulatory bodies

EU regulations on the institutional setup of agencies are focused primarily on NRAs, but also cover some aspects of non-regulatory bodies. The notion of independence recurs in different contexts, also with regard to other types of agencies. In some cases, the guarantees of autonomy are of similar scope. For others, they are limited to functional autonomy in performing core functions. Even for experts, the fragmentation of these standards and lack of uniform definitions of key concepts make it difficult to understand the exact requirements set out by the EU. The European Commission therefore produced the "Guide to the main administrative structures required for implementing the *acquis*" for EU candidate countries and potential candidates in 2013. However, this guide was never published and has not been updated. SIGMA therefore conducted a thorough review of these standards to provide updated and detailed guidance.

Extensive autonomy requirements have been established for the **national data protection authorities** (Regulation (EU) 2016/679). In addition to ensuring their complete independence and freedom from external influence in performing their tasks, EU member countries are required to guarantee:

- Sufficient human, technical and financial resources, premises and infrastructure.
- Autonomy in recruiting and managing staff.
- Separate budget allocation.

Members of the management of national data protection authorities should be appointed through a transparent procedure by the parliament, the government, the head of the state or a designated independent body (e.g. bodies of the judicial branch). Early dismissal of the senior management should be possible solely in cases of serious misconduct or situations where the respective member no longer fulfils the conditions required for the performance of their duties.

Some guarantees of the functional autonomy of **national equality bodies** have been established by a series of Directives (Directives: 2000/43/EC, 2004/113/EC, 2006/54/EC, and 2010/41/EU). Their mission is to tackle various forms of discrimination on grounds of gender and racial or ethnic origin. Equality bodies are ombudsman-type institutions protecting and promoting equal treatment. They may operate either as standalone, specialised equality bodies, or their functions might be performed by national human rights institutions. There are several examples of these functions being performed by the ombudsperson institution (Bosnia and Herzegovina, Czech Republic, France, Georgia, Greece, Kosovo, Latvia, Montenegro, and Poland). Regardless of the institutional model, EU member countries are obliged to enable them to provide independent assistance to victims of discrimination, conduct independent surveys and publish independent reports.

Another group of non-regulatory bodies enjoying special guarantees of autonomy are **safety investigation authorities** in air, maritime and railway transport (Regulation (EU) No 996/2010, Directive (EU) 2016/798 and 2009/18/EC). The civil aviation safety investigation authority must be functionally independent in particular of aviation authorities responsible for airworthiness, certification, flight operation, maintenance, licensing, and air traffic control or aerodrome operation. They should also be functionally independent from any other party or entity, the interests or missions of which could conflict with the task entrusted to the safety investigation authority or influence its objectivity. It is not explicitly determined whether the civil aviation safety investigation authority could remain within the organisational structure of the respective ministry, but in such a case, it should definitely enjoy greater guarantees of autonomy than a typical organisational unit of the ministry. Safety investigation authorities in maritime transport and railways should be provided with independence in their organisation, legal structure and decision making from any party whose interests could conflict with the task entrusted to them. This does not imply, however, the need to create an 'independent enclave' outside the public administration, but rather to secure this authority from interference in performing impartial investigations. In the case of national safety authorities for railways, the Directive explicitly states that this body can be situated within the national ministry responsible for transport matters. This possibility also applies to other safety investigation authorities, as their location within the ministry does not pose inherent conflict with their functions.

Specific standards of independence are also set for **quasi-judicial, dispute resolution bodies**, including procurement review bodies (Directive 89/665/EEC). If EU member countries decide to establish procurement review bodies of non-judicial character, they are required to ensure that members of such bodies are appointed and dismissed under the same conditions as members of the judiciary, as regards the authority responsible for their appointment, their period of office, and their removal. Further, at least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary.

The autonomy of **national statistical institutes** (NSIs) is subject to EU regulation (Regulation (EC) 223/2009). In this case, the EU law introduces the concept of 'professional independence' of officials performing the NSIs' tasks, defined as the power to autonomously develop, produce and disseminate statistics, with any instructions from government or other bodies, regarding performance of this core mission, precluded. The content of this principle is the same as "functional independence" used in the context of the NRAs. In both cases, the EU law focuses on ensuring autonomous performance of the core functions of relevant bodies. Similarly to the NRAs, the Regulation (EC) 223/2009 contains some subsidiary requirements on other aspects of the NSIs' autonomy, such as autonomy in internal management, or the principle of transparent and merit-based appointment of the heads of the NSIs. As regards grounds for dismissal of the heads of the NSIs, there is a general rule that it should "not compromise professional independence". This allows for greater autonomy of the government to remove the heads of the NSIs (e.g. based on negative performance assessment), although dismissal as a sanction for refusing to follow the government's instructions on performing core functions would still be illegitimate.

Finally, in several cases the EU *acquis* uses the attribute of "independence" of some bodies, but in the specific context of separating them from other institutions and parties in order to prevent conflict of interest,

not with the intention of creating organisations enjoying special status within the government administration. These bodies remain classic government agencies (or ministries), but should be institutionally separated from the bodies they oversee. This applies to the following institutions:

- National accreditation bodies should be independent from the conformity assessment bodies they assess (Regulation (EC) 765/2008).
- Market surveillance authorities should operate independently from the market operators they control (Regulation (EC) 765/2008).
- Certification bodies should be independent from paying agencies managing the payments from the Common Agricultural Policy, which are subject to auditing by the certification agencies (Regulation (EU) 1306/2013).
- National enforcement bodies protecting the rights of passengers when travelling by sea and inland waterway should be independent from market operators (Regulation (EU) 1177/2010).
- Regulatory authorities in the field of radioactive waste management should be separate from any body concerned with the promotion or utilisation of nuclear energy or radioactive material (Council Directive 2011/70/Euratom).
- Dispute settlement bodies for disputes on access to transport networks and to storage sites for the purposes of geological storage of produced and captured carbon dioxide should be independent from the parties of such disputes (Directive 2009/31/EC).

Summary – EU standards for national agencies

Generally, national governments can decide on the organisation of the public administration, yet the scope of EU *acquis* regulating these matters has gradually expanded to support effective implementation of the EU legislation by the national administration. The goal of EU legislation is to shield the respective national authorities from undue influence and pressure from the markets, interest groups and elected politicians. NRAs are of particular interest to the EU, resulting in the most extensive regulation.

Nonetheless, the NRAs do not constitute a “fourth branch of government”. The central attribute required by the EU legislation is functional autonomy, i.e. formally guaranteed powers to apply their regulatory powers with no external influence, except for judicial review of regulatory decisions. All other standards relating to legal status, composition of management, financial or HRM matters differentiate the status of NRAs to only a limited extent from other public agencies. As such, NRAs remain firmly located within the executive branch of the state.

The EU did not invent the notion that elected politicians should not interfere in individual proceedings or decisions, or that civil servants should be bound by law, not the will of political leaders. However, EU law is more explicit in curbing ministerial power over administrative acts of the NRAs. However, when translated to the EU Enlargement (Western Balkan) and neighbourhood context these realities get lost in translation.

III. International experience and tools for agency governance

Ministerial management and oversight tools to balance agency autonomy and control

All governments search for the same ideal in managing agencies – a regulatory and institutional framework that strikes the perfect balance between agency autonomy and control. A perfectly-balanced framework would grant extensive autonomy to agencies, but at the same time ensure oversight of the results achieved and allow for adequate control and risk management. Achieving this equilibrium means avoiding the micromanagement of agencies on the one hand and a governance vacuum on the other. Micromanagement undermines the very purpose of creating agencies – if the agency is managed in the same way as an organisational unit in a ministry, what is the added value of its formally distinct organisational status? A governance vacuum, characterised by a lack of clearly-defined expectations towards agencies, a lack of results-oriented performance management schemes and random interventions in their operations, is problematic because the portfolio ministry remains ultimately accountable for the performance of the whole policy area, including the tasks transferred to the agencies.

Table 5. In search of equilibrium: calibrating ministerial management of agencies

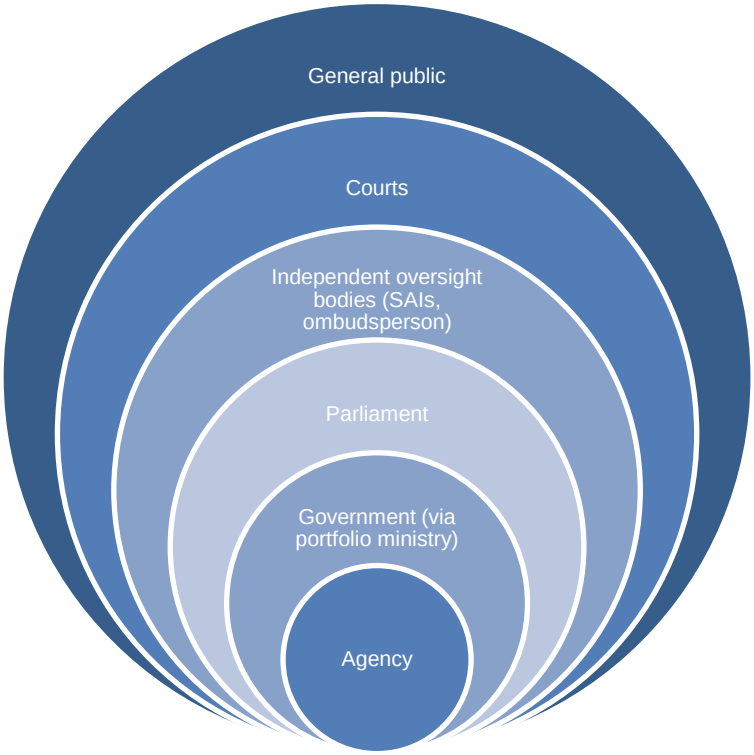
DISBALANCE: GOVERNANCE VACUUM	EQULIBRIUM	DISBALANCE: BUREAUCRATIC MICROMANAGEMENT
▪ Limited influence of the ministry (government) on governance of agency, e.g. senior management appointed by the parliament, work plan and budget adopted solely by the parliament; ▪ Lack of clear reporting obligations towards the ministry; ▪ Lack of supervisory powers of the ministry, e.g. right to issue guidelines; ▪ The agency articulates government policy for the sector	▪ Limited interference of the ministry in day-to-day management, e.g. confined to *ex ante* approvals of some activities, *ex post* financial, compliance and performance auditing; ▪ Ministry empowered to issue general policy guidelines; ▪ Objectives and targets negotiated and agreed between ministry and agency	▪ Unrestricted power of the ministry to appoint/dismiss the senior management ▪ Extensive influence of the ministry on day-to-day management, e.g. staff management, internal structures, *ex ante* approvals required for most of the operations (e.g. spending decisions); ▪ Unrestricted powers of the ministry to issue binding instructions and guidelines on all issues; ▪ Objectives and targets imposed compulsorily by the ministry

It is easy to agree on a balanced governance approach as an overarching goal, but harder to translate this objective into specific guidelines. A useful first step is to establish basic rules describing the relationships between a ministry and the agencies operating in its domain. These rules should ensure that agencies are accountable for implementing policies shaped by the government and clarify the degree of agency autonomy necessary by making a clear distinction between legitimate and excessive forms of ministerial interference for different types of agency with different levels of autonomy. These rules should be established in the relevant legislation. It is recommended that, where the legal framework is not robust, governance models and organisational arrangements are developed when a new agency is created. Once

autonomy is granted, in particular in a transition environment, agencies may use their relationships with stakeholders and media to resist changes they dislike. (Beblavý, 2002, p. 32[53])

Ministerial management represents only one layer of the oversight and accountability applicable to agencies. Properly designed, a comprehensive model for agency accountability would address multiple layers. It involves numerous actors overseeing the actions of agencies. Some of them have the power to impose sanctions (courts, parliaments) or grant rewards (parliaments) to the agencies, others are only empowered to request information or conduct investigations (independent oversight bodies, general public).

Figure 4. Layers of agency accountability



General public: Requesting public information; providing customer feedback on performance

Independent oversight bodies: conducting investigations on alleged violations of human rights by the agency (Ombudsperson); financial, compliance and performance external auditing (supreme audit institutions)

Courts: Reviewing the administrative acts of the agency

Parliament: Requesting information and documents; arranging hearings regarding the agency's activities; in some cases, involvement in the appointment of senior management; budgetary oversight by parliamentary finance committee

The degree of autonomy from the ministry remains the central criterion distinguishing various types of agencies. This is demonstrated in international practice. In some countries, an official typology of agencies is established by organic laws on public administration. In other cases, there is no official typology, but different types of agencies are commonly recognised. The table below provides examples of typologies of administrative agencies in selected countries representing various European administrative traditions.

Table 6. Typologies of public agencies in selected European countries

Country	Types
Bulgaria	▪ State agencies – established by law or decree of Council of Ministers; budgetary legal entity directly subordinated to the Council of Ministers responsible for developing and implementing policies in the areas where the ministry was not established. Head is appointed by the Council of Ministers. ▪ State commissions – established by law or decree of Council of Ministers; budgetary legal entity collegial body directly subordinated to the Council of Ministers responsible for licenses, permits and control. Members are appointed by the Council of Ministers. ▪ Executive agencies – established by law or decree of Council of Ministers; body accountable to the relevant ministry, responsible for provision of administrative services. Head is appointed by the relevant minister
Germany	▪ Direct administration – no legal personality, operate under legal and functional supervision of parent ministry, their budget is part of ministry's budget, usually governed by monocratic managing body ▪ Indirect administration – legal personality of public law, restricted supervision of the parent ministry (legal supervision), separate budget, more flexibility in HRM, often managed by collegial boards consisting of members appointed by various actors
Malta	▪ Departments – default option for performing policy implementation functions under direction of the relevant ministry ▪ Agencies – body having a separate and distinct legal personality and capable of entering into contracts, of employing personnel, of acquiring, holding and disposing of any kind of property for the purposes of its operations, and of suing and being sued. Government may issue instructions to ensure that agencies coordinate their activities with other agencies, departments, government entities and local councils as applicable; put into effect measures to improve the performance of agencies and the quality of the services they deliver to the public. The Government should enter into performance agreement with each agency
Netherlands	▪ Contract (executive) agencies – have no legal personality and are fully subordinated to the portfolio ministries; autonomous in day-to-day management, but with limited financial autonomy ▪ Autonomous Administrative Bodies (ZBOs) – more autonomous, most of them have legal personality of public or private law. Ministries supervise them mainly through performance agreements
Slovenia	▪ Bodies within ministries – created by government regulation, lack separate legal personality, operate under direct supervision of the minister, financed via financial plan adopted by the minister, minister fully responsible for their performance ▪ Public agencies – created by special laws, have separate legal personality, enjoy operational independence, supervised by the relevant ministry, financed via appropriations agreed with the ministry or via fees defined in legislation
United Kingdom	▪ Executive agencies – remain part of the government departments, established in order to perform policy implementation functions under departmental hierarchy, staffed by civil servants, included in the department's budget ▪ Non-departmental public bodies – operate at arm's length from ministers that are responsible for their overall performance, have separate budget, department establishes their strategic framework ▪ Non-ministerial departments – they are similar to normal government departments in terms of functions, but are free from direct political oversight of the ministers, have separate budget, set own delivery policies, although relevant ministry may set strategic framework

Source: Law of Bulgaria on Administration, no. 130/5.11.1998; The 2002 Law of Slovenia on Public Administration; The 2002 Law of Slovenia on Public Agencies; The 2019 Public Administration Act of Malta; Cabinet Office 2016; Bach 2012; Yesilkagit & Van Thiel 2008.

The table shows a rather consistent approach to the design of agency architecture across countries. The most common approach seems to be the distinction of two or three types of agencies, differentiated by the institutional distance from the portfolio ministry, i.e. the dimensions of accountability. However, it should be emphasised that even highly autonomous agencies remain embedded in the public administration, with extensive oversight, co-ordination and control powers of the government, in particular the portfolio ministry. The regulation of relations between ministries and Independent Administrative Bodies (ZBOs) in the Netherlands is a good illustration of this model (Box 5). ZBOs represent the more autonomous type of Dutch agencies (including regulatory authorities), but they remain firmly located within the administrative apparatus of the Government.

Box 6. Ministerial powers towards Independent Administrative Bodies (ZBOs) in the Netherlands

Governance: The portfolio ministry has the power to appoint and dismiss the members of the senior management of the ZBOs. It also decides on the salary of the senior management.

Policy matters: With regard to policy issues, the ministry may set policy rules relating to performance of the agency's core tasks. Further, it may reverse a decision made by a ZBO (with the exception of regulatory authorities, where the EU law precludes ministerial review of decisions made by the regulator). The law also provides the ministry with general competence to take whatever measures are necessary should a ZBO 'seriously neglect its duties'. The ZBO is required to submit its annual report to the ministry.

Financial management: Budgetary proposal of the ZBO should be submitted to the portfolio ministry for approval.

Ex ante approvals: The ministry may decide that the following actions of the ZBO require e*x ante* approval of the ministry: the establishment or acquisition of an interest in a legal person; the acquisition of title to, the alienation or the encumbrance of registered property; the conclusion of credit agreements and loan agreements; the conclusion of agreements whereby the autonomous administrative authority undertakes to provide security, including security for third-party debts, or whereby it binds itself as guarantor or joint and several debtor or warrants performance by a third party; filing for bankruptcy or protection from creditors.

Source: The 2006 Autonomous Administrative Authorities Framework Act

In other European countries, the portfolio ministries are provided with similar powers towards agencies operating in their respective policy domains. The table below extracts ministerial management instruments from the framework laws on public administration in selected European countries. It focuses on the countries where the respective framework laws on public administration regulate this issue generally for all agencies. It demonstrates a relatively consistent approach, with similar tools available to the portfolio ministries in order to ensure consistent implementation of the laws and government policies by the sub-ministerial apparatus.

Table 7. Selected European countries with framework laws – examples of ministerial management instruments

Country	Ministerial management instruments
Estonia	Towards subordinated executive agencies and inspectorates: ▪ Adopting statute; ▪ Creating, reorganising and terminating local branches; ▪ Appointing and dismissing heads of the institutions; ▪ Monitoring performance; ▪ Exercising supervisory control over the decisions in terms of legality and purposefulness (not applicable to regulatory bodies); ▪ Specifying the internal structure and governance regime; ▪ Approving budget.
Malta	Towards all subordinated bodies: ▪ Giving directions and setting targets, except for the issues where department is obliged by law to act independently; ▪ Monitoring and assessing performance in relation to these directions and targets; ▪ Ensuring timely, effective, efficient and economic performance of functions and delivery of public services.
Poland	Towards all subordinated bodies (unless the special law determines otherwise): ▪ Submits the proposal of the statute of the subordinated body for the approval of the Prime Minister; ▪ Establishing and abolishing subordinated bodies; ▪ Appointing and dismissing heads of the subordinated bodies;

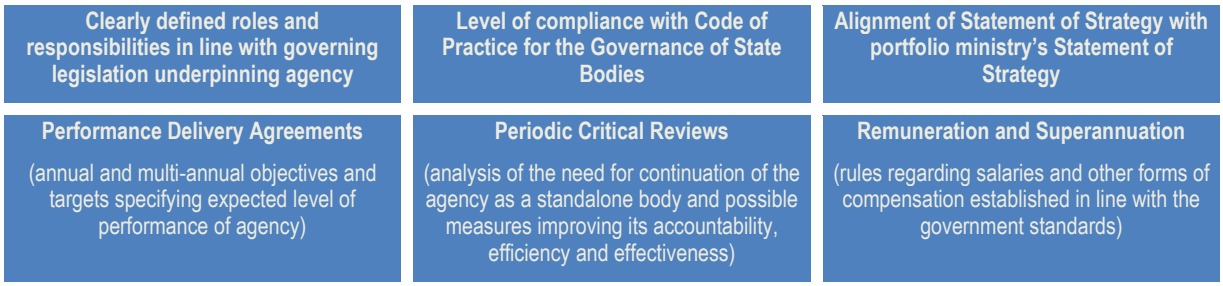
	▪ Inspecting and supervising their activities; ▪ Issuing binding policy guidelines that may not relate to the issues resolved in the course of administrative proceedings; ▪ In some cases, acting as appeal body in administrative proceedings.
Slovenia	Towards bodies within ministries: ▪ Appointment and dismissal of head (government at the proposal of the minister); ▪ Adopting budget and annual plan of the relevant body upon proposal of its head; ▪ Determining the internal organisation of the relevant body at the proposal of the head (which in practice means approving the proposal of the head); ▪ Issuing general guidelines; ▪ Issuing binding instructions and orders to undertake specific actions; ▪ Representing the relevant body before the Government and Parliament; ▪ Overseeing the work of the body; ▪ Reviewing the annual report; ▪ Requesting information, documents and reports; ▪ Acting as appeal body in administrative proceedings. Towards public agencies: ▪ Appointing members of the board (government at proposal of the minister); for some regulatory bodies (electronic communication, energy) the board is appointed by the Parliament at the proposal of government; ▪ Monitoring legality, efficiency and effectiveness of the work of the relevant agency (excluded for regulatory bodies); ▪ Agreeing on the annual budget of the agency; ▪ Acting as appeal body in administrative proceedings (excluded for regulatory bodies); ▪ Approving loan agreements; ▪ Approving allocation of surplus of revenues over expenses.

Source: The 2005 Government of the Republic Act (Estonia); The 2019 Public Administration Act (Malta); The 1996 Law on the Council of Ministers (Poland); The 2002 Law on Public Administration and the 2002 Law on Public Agencies (Slovenia)

Note: Instruments of ministerial steering established in the framework laws on public administration might be modified or deactivated with regard to individual bodies by special legislation regulating their status.

A slightly different approach is taken in Ireland, where the ministerial governance frameworks are not established in detail by law, but are subject to oversight agreements between the ministry and the agency, allowing for some flexibility and more tailored arrangements. However, even in this case, key elements of the governance framework are specified at the central level in the Code of Practice for Governance of State Bodies. This document establishes a catalogue of management mechanisms and lists the issues to be regulated in detail through oversight agreements between ministries and agencies under their aegis.

Figure 5. Building blocks of the ministerial governance framework for agencies. The case of oversight agreements in Ireland



Source: Department of Public Expenditure and Reform 2016

The catalogue of specific ministerial managementmechanisms is similar across the European countries. The most important criterion differentiating the scope of ministerial interference in an agency's autonomy is the type of agency. Some instruments might be deactivated for more

autonomous agencies. There is no uniform standard for determining the allocation of individual bodies to the relevant type of agencies. However, in the context of the European Administrative Space (EU member countries and those harmonising their legislation with EU law), the crucial factors to consider are the autonomy standards formulated in the EU *acquis* for specific type of agencies, especially NRAs. The governance framework for agencies should recognise their special status in some dimensions, while ensuring that they are part of the government administration and remain subject to an effective, results-oriented accountability regime.

Performance management systems

Irrespective of the type of agency, results-oriented performance management, combining agencies' operational autonomy with accountability for the outcomes delivered, is the cornerstone of the ministry-agency relationship. Agencies should be accountable to ministries for delivering clearly-defined (agreed) objectives and targets. Various models exist for such performance management. In international practice, we may distinguish two models of results-oriented performance management of agencies:

- **Uniform and strictly regulated model.** This model relies on detailed regulation of the whole process of planning, performance measurement and assessment. Objectives, indicators and targets are presented in a structured manner, using a standardised performance matrix. Communication between ministry and agency is regulated by law with strict division of tasks in the process, leaving little room for negotiation or deliberation on the plans and performance of agencies.
- **Flexible and decentralised model.** This model is characterised by a modest legislative framework and a greater role for well-established administrative practice, as well as a more flexible, sometimes contractual model of relations between the ministry and the agency. It also concentrates less on the rigorous application of the concept of management by objectives. The objectives are not always accompanied with measurable indicators and targets, but focused on setting priorities and assignments of particular relevance.

Both models have their advantages and disadvantages. A flexible and decentralised model may be difficult to implement in administrations without a long-standing tradition of "performance culture". The latter model may look bureaucratic and rigid, but it contributes to greater consistency across the government and helps to implement basic rules of results-based management to institutions unfamiliar with this model. The former model was implemented by Portugal, where the performance management system and documents produced within this process are regulated in detail by law (box 6).

Box 7. Integrated System of Management and Performance Assessment in Public Administration (SIADAP) in Portugal

The SIADAP was introduced in 2004 as a comprehensive management and performance appraisal system consisting of three components: (1) System for performance assessment of administrative bodies (SIADAP 1); (2) System for performance appraisal of managers in public administration (SIADAP 2); and (3) System for performance appraisal of employees in public administration bodies (SIADAP 3). Each system is regulated in detail by law and Government sublegal acts.

In the context of ministry-agency relations, SIADAP 1 is the most important element of the system. It embraces a full cycle of results-based performance management, from setting mission-based, multi-annual strategic objectives for each body, through establishing annual objectives, performance indicators and targets, to assessing their accomplishment and identifying any divergences in meeting them, as well as their causes. Objectives are proposed by each institution, but they are subject to approval by the portfolio ministry. Performance assessment begins with a self-assessment completed

by the respective institution. The results are presented in the annual report of the institution. In addition to analysis of the implementation of the objectives, the annual report should include user appraisals of the services provided by the institution, explanation of any failures in delivering expected results, measures planned for improving performance and comparisons with performance of similar services, both at national and international level.

The self-assessment is followed by a critical analysis provided by the unit of the portfolio ministry responsible for planning, strategy and assessment. The ministry is not only required to review the performance of individual subordinated bodies, but also to compare performance across all bodies under its supervision and distinguish the best and the weakest performers. Based on the self-assessment and review conducted by the portfolio ministry, the process is concluded with the final score proposed by the head of the institution and approved by the portfolio minister: a) Good performance – all objectives were attained and performance with regard to some objectives was higher than expected; b) Satisfactory performance – all or at least most relevant objectives have been achieved; and c) Insufficient/poor performance – most relevant objectives were not achieved.

Source: Law no. 66-B/2007 of 28 December 2007 establishing the integrated system for management and performance assessment in Public Administration; (Madureira, Rando and Ferraz, 2020[54])

Several other countries follow a more flexible approach. For example, governing agencies through annual instruction letters (letters of appropriation) is characteristic to Norway and Sweden, while performance contracts are the key tool regulating ministry-agency relations in Finland or Ireland. These countries, having extensive traditions of agencification and agency autonomy, opted for less rigorous approaches to performance management. In particular, while following the general principle of results-oriented management, they do not require agreement on all of the agencies' objectives and detailed quantitative targets for each of them. They also provide greater room for adjusting the general rules of the performance management process to individual preferences and the practices of the respective ministries and agencies.

Box 8. Governing agencies through annual letters of appropriations and performance contracts (Sweden, Norway, Ireland, Finland)

Sweden is well known for its long tradition of public agencies (dating back to at least the nineteenth century) and its consistently-applied model of small ministries responsible solely for policy making accompanied by a large number of agencies performing all operational functions. The extensive autonomy of agencies guaranteed at the constitutional level is also characteristic to this model. Since the 1970s, the governance model for the agencies gradually evolved from detailed regulations towards management by objectives. The central managementinstruments are annual letters of appropriations (*regeringsbrev*) addressed by the Government to each agency. Draft letters are prepared by the relevant ministries, but adopted by the whole Government. The format of the letters is uniform. They usually consist of the following elements:

- A list of major objectives and requirements for how their implementation will be reported to the Government – it is interesting to note that the formulation of objectives rarely meets the well-known SMART criteria (specific, measurable, attainable, relevant, time-bound), they are often vague and general.
- Other reporting requirements, e.g. additional reports on implementation of specific strategies or legislative acts.
- Other specific assignments (e.g. request to present expenditure forecasts for upcoming years) and areas to be prioritised in the agency's work.
- Overall funding provided to agency.
- Conditions tied to allocated funds (e.g. indication of funds earmarked for specific projects);
- Other financial conditions (e.g. loan limit).
- Estimated budget for fee-based operations in which the revenue is available for allocation.

The annual reports of the agencies, and all other reports submitted to the Government according to the requirements set in the letters of appropriation, serve as a basis for assessment of the agencies' performance that takes the form of a performance dialogue between agency and portfolio ministry.

A similar model exists in **Norway**, but the letters of appropriation (*tildelingsbrev*) to the agencies are issued by the portfolio ministries. The structure of this document is similar to the one in neighbouring Sweden, yet some differences are worth noting. For example, Norwegian letters of appropriation contain a management calendar envisaging key events in the ministry-agency relationship (e.g. meetings to discuss performance or key steps in the budgetary process for the next year). They also appear to put more emphasis on setting measurable performance indicators for each of the main objectives.

Public agencies in **Ireland** are governed by their respective portfolio ministries primarily through performance delivery agreements (PDAs), containing both annual and multi-annual objectives and targets, based on the ministry's statement of strategy. The format and content of the PDA is determined by the Code of Practice for the Governance of State Bodies published by the Department of Public Expenditure and Reform (responsible for public administration matters). The PDA should consist of the key priorities and objectives of the agency aligned with the Government's strategic policy framework, services and outputs to be delivered by the agency and the resources allocated to attain them, potential risk factors, mechanisms of performance measurement, monitoring arrangements, rules for amending targets (in exceptional cases) and the duration of the agreement (in principle, three years).

Relations between ministries and subordinated agencies in **Finland** are regulated by the multi-annual performance agreements. These documents contain performance targets for each budget year combined with the allocation of the resources needed to attain them. Performance agreements are developed in negotiations between the ministries and agencies, based on a draft that could be prepared by either party. Drawing from the Government programme, the initial version of the performance agreements includes performance targets for the first year and provisional targets for the second, third and four year. Subsequently, the agreement is updated with specific targets for each of the remaining years. Every year, the agencies report on the implementation of the targets. Further, there is a practice of in-year monitoring of progress in delivering the agency's objectives, through mid-term reports every six months and regular dialogue between ministries and agencies. At the end of the four-year period covered by the agreement, a detailed performance report is prepared.

Source: (Jann et al., 2008[55]) (Levin, 2009[56]) (Askim, 2019[57]) (Öberg and Wockelberg, 2020[58]);review of annual letters of appropriation of various agencies, (Department of Public Expenditure and Reform, 2016[27]) (Ministry of Finance of Finland, 2020[59])

Regardless of the model selected, a performance management regime should embrace all public agencies, though with some minor modifications for NRAs. In essence, the portfolio ministries should abstain from imposing specific objectives and targets on agencies, but rather seek agreement on major priorities. The performance of NRAs should be discussed with the portfolio ministry, but any rating or imposing of sanctions for unsatisfactory performance should be avoided.

Classic ministerial controls

The performance management system is the foundation of the ministry-agency relationship, determining the scope of the agency's autonomy and accountability. However, ministries also possess a range of classic control instruments. The catalogue of tools of ministerial control may differ, especially considering the type of agency. The most crucial restrictions apply to the NRAs. The matrix below provides a list of typical tools with a special focus on tools that should be excluded for NRAs, according to the standards established by the EU *acquis*.

Figure 6. Classic mechanisms of control of agencies by portfolio ministries

GOVERNANCE	CORE FUNCTIONS	ORGANISATIONAL MATTERS
Appointment and dismissal of the senior management	Developing policies in the area of agency's activities	Monitoring agency's compliance with the regulations on internal management through audits and inspections
Approving the internal organisational structure	Setting general policy guidelines	Approving or agreeing on the budget in co-operation with the ministry of finance
Creating or terminating territorial branches	Requesting information, documents and explanations	Approving or determining the staff number
	Issuing detailed instructions and orders on specific activities	
	Reviewing administrative acts issued by the agency	

Notes: Dark blue represents tools applicable to all public agencies. Light blue represent tools that may not be applicable to NRAs.

The administrative capacity of parent ministries is often neglected in discussions on the agency setup. However, even when a law or a contract introduces a sufficient management mechanisms, only institutions with sufficient capacity can effectively use them to prevent the risk of losing political control, without violating the agency autonomy. As early as 2001, SIGMA warned that trained staff, adequate information systems or sufficient financial resources are needed to carry out control and governance arrangements embodied in legislation; an inability to implement them invites failure (OECD, 2001[12]).

Staffing and information can become an issue even in countries with long traditions of constructing ministry-agency relations. New skills and competencies of parent ministry staff are needed, in particular when hierarchical relations (based on traditional HR and financial controls) are supplemented with or replaced by a results-oriented approach. Some countries have developed specific competency frameworks for civil servants working in this role (Cabinet Office, 2014[60]), introduced educational and training programmes (Cabinet Office, 2014[61]) or reallocated staff in order to address supervision capacity problems (OECD, 2015[62]). Some administrations have issued central guidance on the supervision of executive agencies by ministries (Department of Public Expenditure and Reform, 2016[27]) or guidance for members of the boards of such bodies (OECD, 2018[63]).

Proper internal arrangements need to be made where financial supervision and that of policy execution are formally attributed to different units in the ministry, to prevent inconsistent expectations for the subordinated agency (OECD, 2015[62]). In cases where a representative of a ministry is a member of an agency board, the oversight role in the ministry should not be the responsibility of the same individual.

Developing a culture of ministry-agency collaboration and clarifying roles

Day-to-day relations between (portfolio) ministries and agencies depend not only on formal mechanisms, but also on something much less tangible, namely a culture of co-operation based on shared goals and values and a common understanding of the roles, responsibilities and autonomy of both actors. Particularly in the Western Balkans and the European Neighbourhood, where the concept of autonomous agencies remains a novelty, it is important to invest time and resources to raise awareness among portfolio ministries and agencies about the specific nature of the ministry-agency relationship. Building a culture of independence within an autonomous agency and in its ecosystem and relations with other government actors takes time. (OECD, 2017[47])

Building a collaborative culture is more difficult than establishing formal rules, but may be supported with general guidelines. For instance, the UK Government developed a Code of Good Practice for partnerships between departments (ministries) and arm's length bodies (agencies).

Box 8. The UK Code of Good Practice for partnerships between departments (ministries) and arm's length bodies (agencies)

The partnership between ministries and agencies should rely on four principles: (1) Purpose – mutual understanding of the purpose, objectives and roles of agencies set out in the relevant documents, clear lines of accountability; (2) Assurance – proportionate approach of the ministry to supervision of agencies, giving them autonomy to deliver effectively and ensuring that their performance is assessed by the ministry; (3) Value – sharing skills and experience between agency and ministry; and (4) Engagement – open, honest, constructive and trust-based relationship based on clarity about mutual expectations.

In addition to these general principles, more specific guidelines are also formulated, including:

- There is a strategic alignment between the purpose and objectives of the ministry and the agency.
- The ministry's approach to supervision (assurance) of the agency is based on an assessment of the risks posed by the agency.
- The ministry has an appropriate overview of operations of the agency, proportionate to its purpose and required degree of autonomy.
- The ministry and agency have access to the data they need to assess the agency's performance;
- There is a regular exchange of skills and experience between ministry and agency, including secondments, joint programmes or project boards, forums for staff of both bodies to learn from each other.
- There is a clear process to resolve disputes between ministry and agency.
- The relationship between ministry and agency is regularly reviewed and assessed by both parties.

Source: (Cabinet Office, 2017[64])

An important element of the culture of ministry-agency relationships is clarity about the roles of each body. The policy development role is crucial. In principle, the ministry should be responsible for policy formulation, while the agency for policy implementation is under ministerial oversight. However, practice in countries with an extensive track record in agency governance demonstrates that this clear division of labour may become blurred and agencies may also have substantial impact on the formulation of the public policies they are expected to implement. For example, as agencies in **Sweden** have more expertise and capacities (especially staff), they act as partners to the relevant ministries in policy design (Niklasson and Pierre, 2012[65]). In **Germany**, in the context of the global financial crisis of 2008, the financial market regulatory agency took a leading role in shaping the policy response with regard to financial market policies (Handke, 2012[66]). Upholding the separation between policy making and policy implementation functions through agencification does not always work in practice. However, instead of trying to prevent agencies from influencing public policies, the government should rather clarify the rules of such involvement. Based on international experience, the following instruments could be considered:

- Ensuring that the role of agencies in developing policy or legislative proposals is subsidiary and the respective unit and officials of the ministry remain in command.

- The influence of the agency is focused on providing data, insights from practice of implementation of policies and laws and comments on the ministerial proposals from the perspective of an organisation that has more insight into day-to-day practice in the respective field.
- Policy making is not "outsourced" by the portfolio ministry to the agency by requests for developing full policy or legislative proposals.
- Any proposals developed by the agency are reviewed by the respective unit and officials in the ministry before they are taken over as official government policy proposals.
- The co-operation between ministry and agency in the policy making process could be institutionalised in the form of working groups or taskforces.
- The expectations of the ministry in terms of agency involvement in policy making should be clearly established in the performance management framework.

Nevertheless, direct agency involvement in policy making should be reserved for exceptional cases. Portfolio ministries have the democratic legitimacy and responsibility to develop public policies and the primary role of agencies is ensuring that these policies are effectively implemented.

Summary - Good practices and tools for agency governance

There is no 'one-size-fits-all' solution for managing agencies. However, there is a common list of challenges requiring similar actions. Based on a review of international trends, practices and standards, a set of good practices and tools can be identified that help governments manage the agency landscape and strike a balance between agency autonomy and accountability. These good practices and tools for agency governance are not widely applied in the Western Balkans and the European Neighbourhood, as shown in the next Chapter. In transition economies, the elements above often need to be specified in the legal and institutional framework for public agencies and overall responsibility for managing the government's policy towards agencies should be clearly allocated. Once the legal and institutional foundations are set, the quality and consistency of day-to-day management, as well as the stability and continuity of high-level commitment to good governance of agencies, will be the key factors determining the performance of the public administration.

Figure 7. Summary of good practices and tools for agency governance

WHOLE-OF-GOVERNMENT LEVEL FUNCTIONS *Consistent standards for governing agencies and ensuring regular optimisation of the agency landscape*	• Taxonomy (typology) of agencies (established in the legislative framework) is based on different levels of autonomy required by them to perform their functions, taking into account the EU standards for specific types of agencies. • Procedure for *ex ante* review of proposals for creation of new agencies. • Regular reviews of existing agencies at individual level to establish the case for their continuation and at collective level to seek optimisation e.g. by grouping agencies or considering alternative delivery options for government functions. • Whole-of-government regulations and standards applicable to all agencies concentrated on ensuring consistent and efficient management across government.
PORTFOLIO MINISTRY LEVEL FUNCTIONS *Mechanisms for agency accountability for results preserving necessary autonomy*	• Steering framework structured around results-oriented performance management system and ensuring that agency objectives and targets are agreed (negotiated) between portfolio ministry and agency. • Clear delimitation of the agency's autonomy, including "no-go zone" for the portfolio ministry. • Classic mechanisms of ministerial control, such as appointment of the agency's management, conducting inspections, requesting information or issuing guidelines and instructions (see box 6 for NRA-specific mechanisms).

IV. Agencies in the Western Balkans and the European Neighbourhood– how autonomous? How accountable? How to reform?

Introduction

This Chapter begins by briefly explaining how the central government landscape has changed in the Western Balkans and the European Neighbourhood since the idea of agencification became established, identifying the main causes of what may be characterised as "agencification on steroids" and five challenges that this development has resulted in for the public administration and citizens. The following section analyses the levels of autonomy and accountability of different types of agencies. The final section summarises lessons learned from past reform initiatives.

Ten administrations were analysed, drawing primarily on data from SIGMA Monitoring Reports and a survey. The survey covered: Albania (ALB), Armenia (ARM), Bosnia and Herzegovina (BIH), Georgia (GEO), Kosovo (XKX), Moldova (MDA), Montenegro (MNE), North Macedonia (MKD), Serbia (SRB) and Ukraine (UKR). Details about the survey are presented in the next section. The Western Balkan administrations benefited from two full rounds of SIGMA monitoring (2017 and 2021), whereas in Ukraine and Armenia only a baseline was established (2018). No SIGMA Monitoring Reports are available for Georgia and Moldova in this area, but data has been collected for this paper for a subset of sub-indicators to enable comparison[6]. SIGMA's engagement in agency governance reforms in Albania, Kosovo, North Macedonia, Serbia and Ukraine also provided useful additional information to validate the other data sources and to write the final sub-section of this chapter.

Agencification in the Western Balkans and the European Neighbourhood – an overview

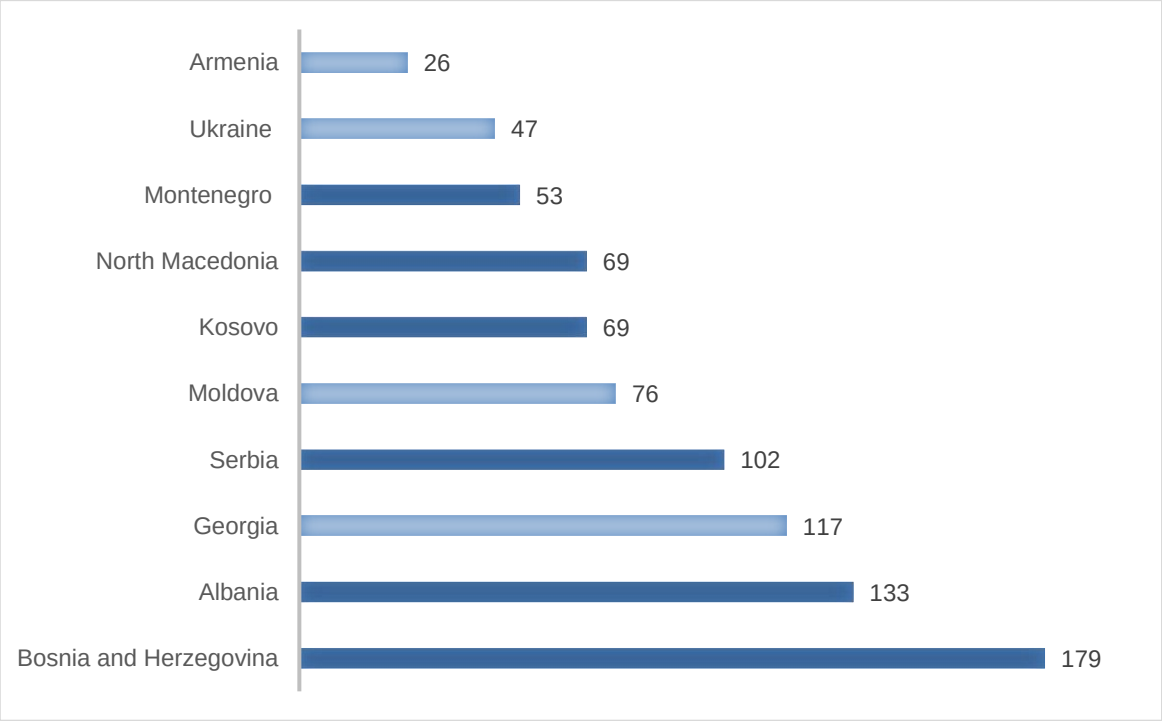
The global phenomenon of agencification was enthusiastically embraced by all Western Balkan and European Neighbourhood administrations, following the general trend in other post socialist countries of Central and Eastern Europe (CEE). Governments launched very ambitious reform programmes to restructure central government and public agencies – often driven by EU accession – but had much less "reform capacity" than the EU and OECD countries that were the source of inspiration. Previous scholars have documented the warped logic that the wave of agencification brought in CEE countries' transition

[6] SIGMA Monitoring Reports: http://sigmaweb.org/publications/monitoring-reports.htm

context, perhaps as a result of half-implemented reform programmes. Case studies document paradoxical outcomes in terms of agencies aggressively charging user fees, having politically appointed senior managers and receiving unjustifiably higher salaries compared to other public bodies (Randma-Liiv, 2011[67])

This Chapter shows that the history of CEE countries is already repeating itself in the current Western Balkan and European Neighbourhood administrations. While the number of central government agencies differs, as shown in Figure 6, in all of them agencies constitute a significant part of the public administration. Where the number of public agencies is lower, it is often because a high number of quasi-agencies have been created instead, e.g. state-owned enterprises (Moldova, Ukraine, Serbia[7]) or foundations (Armenia). These quasi-agencies are not counted below.

Figure 8. Number of public agencies in the Western Balkans and the European Neighbourhood



Source: Data collected by SIGMA from national administrations and by national experts from publically available sources.

Note: A public agency is defined as a sub-ministerial public law body responsible primarily for implementation of laws and policies, excluding educational, cultural or healthcare institutions. Quasi-agencies, defined as private law bodies such as state-owned enterprises and trusts, are not included, but are widespread in Armenia, Moldova and Ukraine. The distribution of agencies in Bosnia and Herzegovina is 46 in the Federation of BiH, 65 in the Republika Srpska, and 68 at State level. Dark blue represents the Western Balkan region and light blue the Neighbourhood region.

Agencies proliferated in post socialist CEE countries partly because governments followed the general international trend of agencification, but a wide coalition of stakeholders amplified this trend. These include international actors, in particular the EU and other donor organisations. They expected that the creation of

[7] There is no full dataset available on the number of state-owned enterprises in all Western Balkan and European Neighbourhood countries. However, a recent OECD study provides data for the Western Balkans, demonstrating that in Serbia this number is particularly high (154 state-owned enterprises). While only some of them perform functions that could be organised alternatively through agencies, this number cannot be ignored when assessing the governance challenges related to management of the public sector (OECD, 2021[82]).

agencies would improve the performance and professionalism of public sector organisations (Beblavý, 2002[53]). Setting up new, autonomous bodies responsible for the policy areas specified was an attractive option for international actors as it seemed to provide greater and more direct influence on policy through these new institutions, bypassing dysfunctional traditional bureaucracies. An autonomous agency shielded from political tensions and red tape was a recipe for quick wins. Even the establishment of the agency would count as an achievement. Agencies in these priority areas could be staffed with selected people, who might be more competent and driven than the average civil servant. However, it later became clear that the price was fragmentation, policy "silos", duplication of tasks, and in the worst cases opportunities for patronage (Hajnal, 2011[21]; Pollitt, 2012[35]). In these cases, the logic of agencification was distorted by interest groups to secure highly paid and less exposed positions for political appointees. Such political bargaining made later reform efforts almost impossible due to vested interests.

All of the Western Balkan and European Neighbourhood administrations reacted to the agencification trend and its challenges primarily by adopting framework laws on public administration, aimed at setting general rules for the organisational setup of the government administration. SIGMA's long-standing engagement in the Western Balkans and the European Neighbourhood has documented that the adoption of framework laws has not adequately addressed the governance challenges that agencification brought.[8] Five challenges are identified below for all ten administrations.

1. Lack of overarching vision of the organisational setup of the public administration, including the role of agencies

Despite the existence of framework laws on public administration, the architecture of the state is still not clear. Framework laws lack normative value to determine the form that follows the function. In practice, numerous administrative bodies remain "out of category" and/or not aligned with the official typology. In some examples, it is not even clear whether agencies should only concentrate on policy implementation as their core function or also play a role in policy making, as an alternative to inefficient ministries (see the case of Armenia in the box below). This lack of clarity not only hampers the transparent division of responsibilities within the government, but also poses a challenge to democratic accountability. Ministers, as members of the cabinet, are directly accountable to the legislature for respective policy areas, while heads of agencies are not usually directly exposed to these accountability mechanisms.

[8] SIGMA Monitoring Reports: http://sigmaweb.org/publications/monitoring-reports.htm, as well as OECD (2007), "Organising the Central State Administration: Policies & Instruments", *SIGMA Papers, No. 43*, OECD Publishing, Paris, https://doi.org/10.1787/5kml60q2n27c-en.

Box 9. Dysfunctional division of labour between ministries and agencies: the case of Armenia.

The Tourism Committee and the Urban Development Committee are two examples where policy development is performed by non-ministerial bodies in practice. Interviews with the Ministry of Emergency Situations and subordinated bodies suggest that this Ministry performs no policy-making functions in practice, but operates as an organisational umbrella for various rescue and emergency services. This type of ministry is characteristic of some post-Soviet countries (the Russian Federation, Belarus and Kazakhstan). The responsibility for policy making in the area of internal affairs is not clearly assigned and the management of the rescue and emergency services is heavily centralised. The Committee of Civil Aviation is formally subordinated to the Ministry of Transport, Communication and Information Technologies but in practice enjoys complete autonomy, as the Ministry does not have the expertise and capacity needed to supervise it. This body used to report directly to the Council of Ministers. With the adoption of the Law on Public Administration Bodies it was formally transferred to the Ministry of Transport, Communication and Information Technologies without securing the necessary expertise and capacity for the Ministry to perform its new role effectively.

Source: OECD (2019) *SIGMA Baseline Measurement Report: Armenia*, OECD, Paris, p. 86.

2. Uncontrolled proliferation of agencies and lack of mechanisms preventing unjustified creation of new bodies.

There are no examples of comprehensive and robust policy and regulatory frameworks that can prevent uncontrolled proliferation of agencies in the administrations covered by this study. No administration fulfills all of the criteria from the Methodological Framework for the Principles of Public Administration. However, some have made progress since 2017 (table below). All administrations now have in place procedures for establishing, merging and abolishing central government bodies, but North Macedonia is the only one with an overall policy plan for institutional development of the central government. Albania is the only administration with a body within central government that has formal responsibility for regular reviews of the organisation of central government (though having a weak record on performing this function in practice), and fulfills all criteria except having an overall plan for institutional development. Despite the existence of policies and regulations to manage the process of creation of new bodies, the proliferation of agencies continues without strong *ex ante* control (see figure 9 below).

Table 8 Existence of policies and regulations to manage central government agencies

Criteria	ALB	ARM	BIH	XKX	MNE	MKD	SRB	UKR
Plan for institutional development of central government is specified in policy document(s)					◀	▶		
Procedure for establishing, merging and abolishing each type of central government body is specified in the legislation	●	●	●	▶	▶	▶	●	●
Procedure for establishing, merging and abolishing each type of central government body requires participation of prime minister's office, ministry of finance and HRM authority	▶			▶	◀	▶	▶	
Creation of a new body must be accompanied by *ex ante* analysis covering at least: 1) assessment of the need to create the new body; 2) analysis of alternatives to creation of the new body; and 3) estimated cost and staffing of the new body	▶		▶	▶	●	▶	▶	
A body within central government is responsible for regular reviews of organisation of central government and planning institutional development	▶				◀	◀		

Source: (OECD, 2018[68])

Note: Data for the six Western Balkan administrations is from 2021. Data for Ukraine and Armenia is only available for 2018. A green triangle denotes that this criterion was not fulfilled in 2017 but was in 2021. A red triangle shows where the criterion was fulfilled in 2017 but no longer in 2021.

3. Lack of clear and comprehensive typology of agencies setting consistent and common rules for their autonomy and supervision.

The framework laws for organisation of public administration recognise agencies as a part of the public administration in all cases. The official typologies of agencies differ considerably but they follow a similar model. While most of them clarify the legal status of public administration bodies and set the basic rules for their internal organisation (managing bodies, institutional locus), they lack clear distinction between various types of bodies, leading to different degrees of autonomy. In some cases, such as in Kosovo, even if a framework law has been adopted by parliament, the positive effects of an official typology are nullified by the existence of conflicting sector legislation and lack of harmonisation of laws. In Albania, the distinction in the law is so unclear that most of public administration bodies meet the criteria for each type of body. Moreover, bodies of the same type may operate in different regimes relating to the financial management or status of the staff. Therefore, in practice, most agencies continue to operate under individually crafted governance schemes resulting more from political bargains rather than a clear, overarching vision of organisation of the public administration. Across the administrations covered, many public bodies continue to exist outside the official typology, enjoying "special" status. All of these factors result in a chaotic, fragmented and unmanageable organisational landscape, with very practical and tangible deficiencies, such as unexplainable differences in salaries for the same position and other variations in employment conditions across the public sector.

Table 9 Clarity and comprehensiveness of official typology of central government agencies

Criteria	ALB	ARM	BIH	XKX	MNE	MKD	SRB	UKR
Legal status is explicitly regulated for all types of central government bodies	●		●	▶	▶		●	●
Functional criteria for establishment are explicitly regulated for all types of central government bodies						◀		
Managing bodies are explicitly regulated for all types of central government bodies	●		●		●	●	●	●
Subordination/supervision schemes are explicitly regulated for all types of central government bodies	●		●		◀	▶	●	
Degree of autonomy in financial management and HRM is explicitly regulated for all types of central government bodies	●		●		▶		●	●

Source: (OECD, 2018[68])

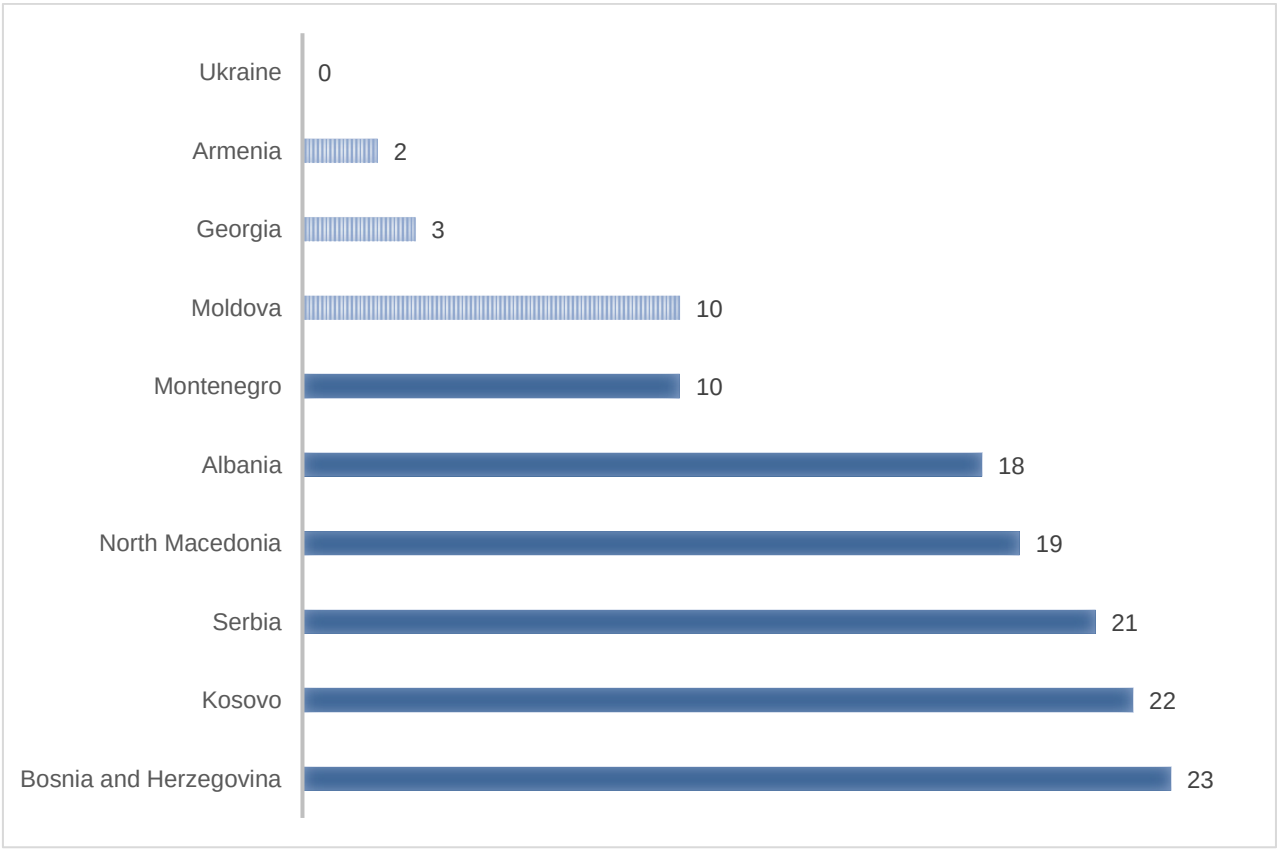
Note: Data for the six Western Balkan administrations is from 2021. Data for Ukraine and Armenia is only available for 2018. A green triangle denotes that this criterion was not fulfilled in 2017 but was in 2021. A red triangle shows where the criterion was fulfilled in 2017 but no longer in 2021.

4. Large number of classical executive agencies placed under (weak) stewardship of parliaments and thereby escaping oversight and ministerial management.

The notion of "excessive autonomy", especially characteristic in the Western Balkans, is the trend to set up agencies under parliament that would normally be part of the government administration and carry out traditional executive functions, such as implementation of laws and policies or even service delivery. This often leads to duplication of agencies, tasks, waste of resources, problems with policy co-ordination and undermines the government's legitimate right to oversee agencies and policy implementation and to control any irregularities in the use of public funds.

As described in Chapter 3, bodies performing executive functions of the state should – as a rule - remain part of the government administration, reporting to respective portfolio ministries. This allows governments to oversee implementation of policies and ensure consistent activities of the whole administrative apparatus. The role of the legislature is to exert classic parliamentary oversight, e.g. request information and conduct inquiries or commission audits of relevant government bodies. Parliaments do not have capacities to manage agencies and conduct effective day-to-day oversight of their activities. Paradoxically, parliaments' oversight capacities appear weakest where the number of bodies reporting to the legislature is the highest, as shown in Figure 7. In Kosovo, which has the highest number of agencies reporting to the parliament except for Bosnia and Herzegovina, only one person in the Assembly is tasked with overseeing reporting and daily management of agencies.[9] Neither the members of legislature nor the small secretariats have time or sufficient sectoral expertise to effectively perform their supervisory functions. It is simply not their job. Thus, agencies reporting only to the parliament often operate in a governance vacuum, as largely self-governing bodies. They are not integrated into the government's policy processes and the government's steering mechanisms. With very limited parliamentary oversight and unclear position in the state administration, they are also particularly exposed to the risk of agency capture by the interest groups.

Figure 9. Number of agencies subordinated to the parliament in the Western Balkans and the European Neighbourhood (constitutional bodies excluded)



Source: (OECD, 2018[68])

[9] SIGMA Monitoring Report 2017 for Kosovo, page 87

Note: Data for the six Western Balkan administrations is from 2021. Data for Ukraine and Armenia is from 2018. Moldova data was collected by SIGMA in 2021 for the purposes of this paper. For Bosnia and Herzegovina, 3 agencies are in the Federation of BiH, 10 are in the Republika Srpska, 2 in the Brčko District and 8 at State level. Dark blue represents the Western Balkan region and light blue the Neighbourhood region. Bodies mentioned in the constitution, such as the supreme audit institution, the ombudsperson institution, central bank, etc. are not included. The exclusion of constitutional bodies distorts the number for Ukraine, as the Ukrainian Constitution stipulates that some bodies performing executive functions are subordinated to the Parliament. This relates, for example, to the competition protection authority and the State Property Fund.

As mentioned in Chapter 2, subordination of agencies to the parliament is not required by the EU *acquis*, even for the most autonomous NRAs. The dominant model among the EU Member States ensures the functional autonomy of NRAs within their setting in the government administration. In the Western Balkans and the European Neighbourhood the situation is different, as formal subordination of the NRAs under the parliament of often simplistically and incorrectly equated with "independence".

The table below presents data for four types of NRAs, responsible for competition protection, energy markets, audio-visual media services and electronic communications. It shows that in the Western Balkans and the European Neighbourhood the vast majority of the NRAs report directly to national parliaments, not the government administration. This clearly contrasts with the dominant practice of EU Member States, where only a few NRAs are subordinated to the legislature (OECD, 2021[69]). Audio-visual media service regulators are an exception, as close to a majority of EU NRAs in this sector report to parliaments. Nevertheless, the general trend is clear. The Western Balkans and European Neighbourhood provide examples of regulatory "gold-plating", i.e. excessive transposition of the EU rules, going far beyond what is required by the EU *acquis*.

Table 10 National regulatory authorities reporting to the Parliament in the Western Balkans and the European Neighbourhood

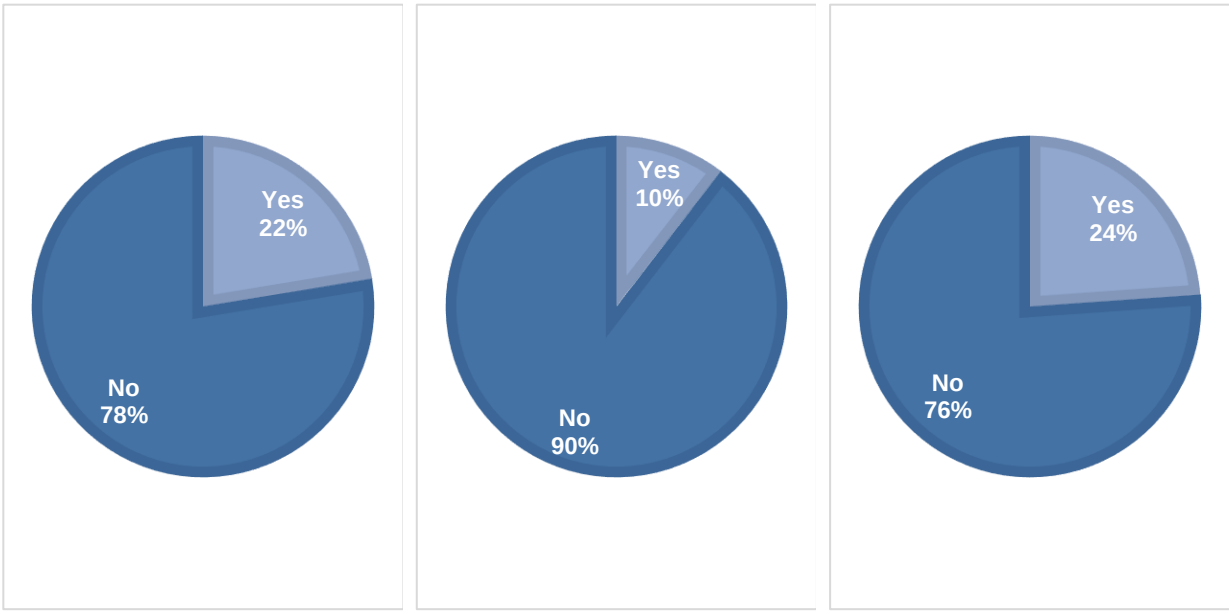
Regulators	ALB	ARM	BIH	GEO	XKX	MDA	MNE	MKD	SRB	UKR	Total (10)	EU27
Competition protection	●	●			●	●	●		●	●	7	5
Energy markets	●	●	●	●	●	●	●	●	●		9	6
Audio-visual media	●	●		●	●	●	●	●	●		8	12
Electronic communications	●	●		●	●		●				5	5

Source: Data collected by SIGMA based on desk review of legal acts.
Note: A NRA is considered as reporting to the parliament when its management is appointed and dismissed by the legislature.

5. Lack of results-based management and performance evaluation

At the level of ministry-agency relations, the principal problem is a lack of results-based management of agencies and a culture of performance evaluation with strong mechanisms. Annual and/or multi-annual plans often do not have specific objectives and targets to be achieved by the agencies. Performance monitoring is rarely carried out and there are few established practices for providing regular feedback about agency performance (figure below).

Figure 10. Results-oriented governance of agencies in the Western Balkans and the European Neighbourhood



Source: (OECD, 2018[68])
Note: Data for Georgia and Moldova not available.

How autonomous, how accountable?

As shown in Chapter 3, good governance of agencies entails a balance between the necessary level of autonomy for the agency and the necessary accountability mechanisms towards the portfolio ministry for the outcomes achieved. Autonomy is not a binary concept, although this is often how it is perceived in the Western Balkans and the European Neighbourhood. Different types of agencies require different levels of autonomy across different dimensions, depending on their functions.

To explore the levels of autonomy of different types of agencies in the Western Balkans and the European Neighbourhood, SIGMA conducted a survey among agencies and portfolio ministries. This provides unique insights into the nature and specific challenges of agencification in the Western Balkans and the European Neighbourhood. This data enables us to understand the five challenges mentioned previously in more detail and provide better evidence-based advice on the necessary reforms.

With a total of 236 respondents, this survey provides the first and most comprehensive cross-country empirical evidence for the state of agency governance in the region. More than 136 senior managers of public agencies and 100 senior civil servants in portfolio ministries were surveyed. A total of 17 sectors were covered. Agencies operating in the following 4 sectors are collectively referred to as NRAs:

- audio-visual media services
- competition protection

- energy markets
- electronic communications.

The remaining sectors covered are civil aviation, civil aviation safety investigations, civil registration, data protection, financial markets, health insurance, pension funds, national statistics, prison administration, road administration, tax administration, food safety inspections and labour inspections.

How autonomous?

Both respondents from agencies and portfolio ministries recognise that public sector agencies in general have extensive autonomy in the regions. Respondents from NRAs (especially competition protection authorities and audio-visual media services regulators) as expected report the highest degree of autonomy. Respondents from other public agencies report lower levels of autonomy, but 40% state that they have "extensive autonomy". Overall, this corresponds with the SIGMA findings above that agencies have extensive autonomy in the regions and the fact that a vast majority of the NRAs in the Western Balkans and the European Neighbourhood report only to parliaments.

Table 11 Agency autonomy – differences in views across agencies and portfolio ministries

	Average (1-5)	1 Little autonomy	2	3	4	5 Extensive autonomy
Senior managers in all agencies	3.85	3%	9%	27%	20%	40%
Senior managers in NRAs	4.24	0%	9%	21%	6%	64%
Senior officials in portfolio ministries	4.11	3%	3%	21%	25%	47%

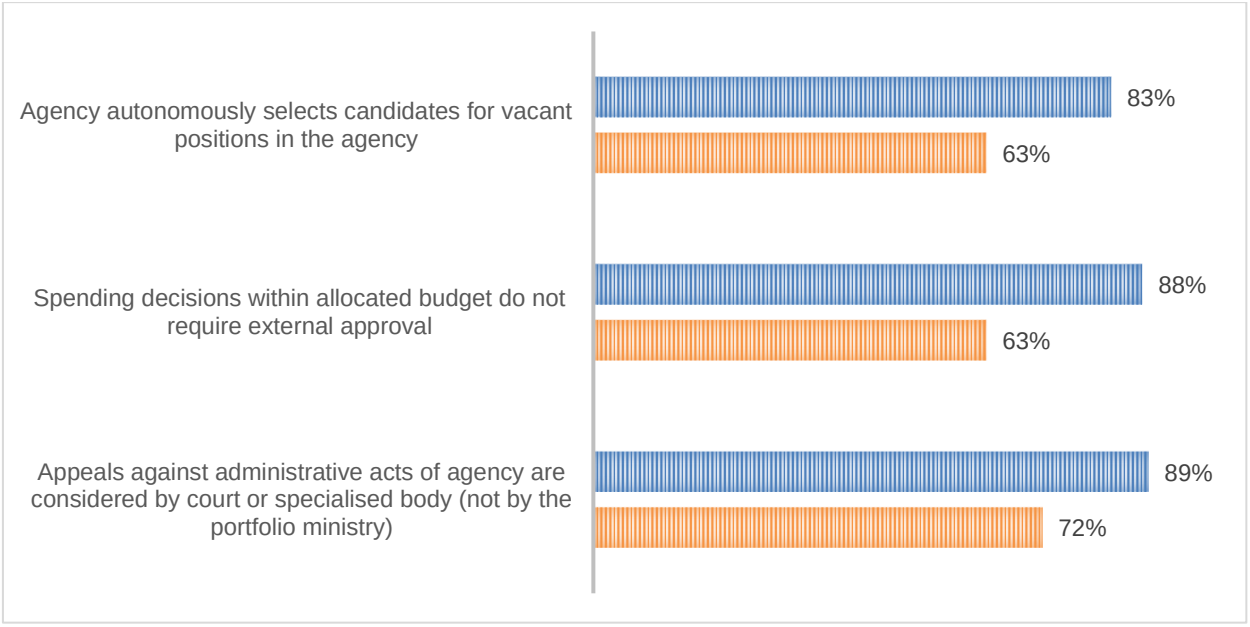
Source: SIGMA survey on agency governance: how autonomous, how accountable, how collaborative?
Note: The survey asked "Would you say that public sector agencies generally have little or much autonomy in their daily operations and decision-making? Use a scale from 1 (little autonomy) to 5 (extensive autonomy)" Respondents could answer on a scale from 1-5. 1 being "little autonomy", defined as "The ministry has strong and regular oversight, influence on internal management issues and strategic decision", and 5 being "extensive autonomy" defined as "The agency decides both on day-to-day operational issues and strategic directions, with only limited oversight performed by the ministry". The average is the simple arithmetic mean of the answers of all respondents. "All agencies" include NRAs.

The stated levels of autonomy correspond well with more detailed parameters of agency autonomy explored by the survey. Most agencies operate as standalone bodies, clearly separated from the portfolio ministries. The figure below depicts the degree of agencies' autonomy, based on the most common characteristics of their organisational setup and governance. It demonstrates that the majority of agencies enjoy extensive functional autonomy, as the portfolio ministries are not empowered to review the administrative acts issued by the agencies within their core functions. Further, the organisational (managerial and financial) autonomy of agencies is enhanced by their capacity to spend the allocated budget and select staff without external interference. The most important limitations of their organisational autonomy relate to establishing the salary scales in the laws or acts of the government. In over 60% of agencies, salary scales are determined by law or by the decision of the government, not by the agency autonomously. However, in the context of salaries, it should be noted that in some cases, setting salary scales by law or decision of the government does not preclude the agencies from bypassing these restrictions. For example, in Ukraine agencies are allowed to pay unlimited allowances and bonuses to employees with the only limit being the total salary fund available for the agency.

As SIGMA has encountered numerous doubts and misunderstandings about interpretation of the EU *acquis* when it comes to the specific dimensions and levels of autonomy required of national regulatory authorities (NRAs) in its work in the Western Balkans and the European Neighbourhood, Figure 11 presents data separately for NRAs. NRAs stand out as bodies enjoying particularly extensive autonomy

from portfolio ministries. In particular, the respective portfolio ministries are not involved in shaping the regulatory priorities of the agencies and monitoring their performance. It should be reiterated in this context that functional autonomy of NRAs in making regulatory decisions does not preclude ministerial involvement in shaping their strategic objectives through extensive consultations, negotiations and seeking mutual agreement, to ensure that NRAs contribute to implementation of government policies. Otherwise, there is a governance vacuum, as lack of ministerial policy oversight is not compensated by powers of other bodies, especially parliaments. Further, in financial and organisational matters, some NRAs appear to be exempted from the general regime for public administration. This particularly concerns agencies whose budgets are not included into state budget laws and where salary scales are adopted fully autonomously by the agencies.

Figure 11. Key characteristics of agency autonomy



Source: SIGMA survey on agency governance: how autonomous, how accountable, how collaborative?
Notes: Bars represent share of agencies for which the relevant statement is correct. Orange bars represent all agencies. Blue bars are NRAs.

The extensive autonomy of the NRAs may also be demonstrated from a more detailed perspective, with more variables analysed. The box below describes the major characteristics influencing the degree of autonomy of energy market regulators in the Western Balkans and the European Neighbourhood. It is based on responses provided by these bodies in six countries (Armenia, Moldova, Montenegro, North Macedonia, Serbia, Ukraine), where SIGMA obtained a sufficient amount of information.

Box 10. Autonomy of energy market regulators in the Western Balkans and the European Neighbourhood

Based on the aggregated responses provided by respective regulatory bodies in the field of electricity and gas market regulation, the following attributes of autonomy are guaranteed for the vast majority of these NRAs (any exceptions are of minor relevance).

Functional autonomy. The administrative acts (decisions) of the agencies are subject to judicial review only, with the right of the portfolio ministry or any other government body to repeal such acts excluded. The agencies autonomously decide on adoption of their multi-annual strategies and annual plans. They are also autonomous in setting objectives and performance targets. In only two (out of six) cases the government or portfolio ministry may address the agency with general policy guidelines. The annual report of the agency in some cases is subject to approval of the parliament, but this procedure does not result in structured performance feedback being provided. It is a purely formal, "box-ticking", exercise with no significant impact on agency operations.

Financial autonomy. Agencies are autonomous in developing budgetary proposals and the final decision on formal approval of the budget is made by the legislature, either through adoption of the state budget law or in a separate procedure. In the latter case, the government is completely bypassed in the budgetary process. Half of the energy regulators analysed retain the income from the fees and fines they impose, which enhances their autonomy but may also (in the case of fines) create adverse financial incentives for the agencies. In terms of budget execution, all agencies are free to make spending decisions with no prior external approval required, regardless of the type and value of transactions.

Managerial autonomy. The number of staff is determined by the agency itself in most cases. Agencies are also autonomous in recruitment of new staff, as well as setting salary scales, with restrictions imposed by law in only a few cases.

Interventional autonomy (interventions of the portfolio ministry). The influence of the portfolio ministries on the agencies' operations seems to be nil. All of the agencies reported lack of performance auditing or inspection of legality by ministries, as well as absence of performance feedback.

To summarise, the overall degree of energy regulators' autonomy appears to exceed the requirements established by the EU *acquis*. In particular, these standards are misinterpreted in terms of functional and interventional autonomy as requiring the portfolio ministry to completely abstain from any influence on the policy priorities of the agencies. This approach ignores the overall responsibility of each ministry for the policy areas in which the NRAs operate. Further, the financial and managerial autonomy might be excessive in some cases, especially the autonomy to set salaries and dispose of the income from fines.

Source: SIGMA survey.

How accountable?

In order to find the appropriate balance in governing agencies, their relatively extensive autonomy should be accompanied with adequate mechanisms of accountability, especially towards portfolio ministries. In this context, avoiding the trap of bureaucratic micro-management while ensuring continuous and rigorous performance control, remains a major challenge. Portfolio ministries should not micro-manage the agency's daily operations. Instead, the ministry should set clear expectations towards the agency, pertaining to its core functions, and subsequently monitor and assess their implementation, concluding this process with performance feedback provided in a structured manner. Key performance indicators with targets are an essential part of good accountability structures. A collaborative and results-oriented style of interaction between the portfolio ministry and the public agency is at the heart of good agency governance.

The table below shows how respondents from ministries and agencies themselves perceive the style of interaction.

Table 12 Ministry-agency interaction – differences in views across agencies and portfolio ministries

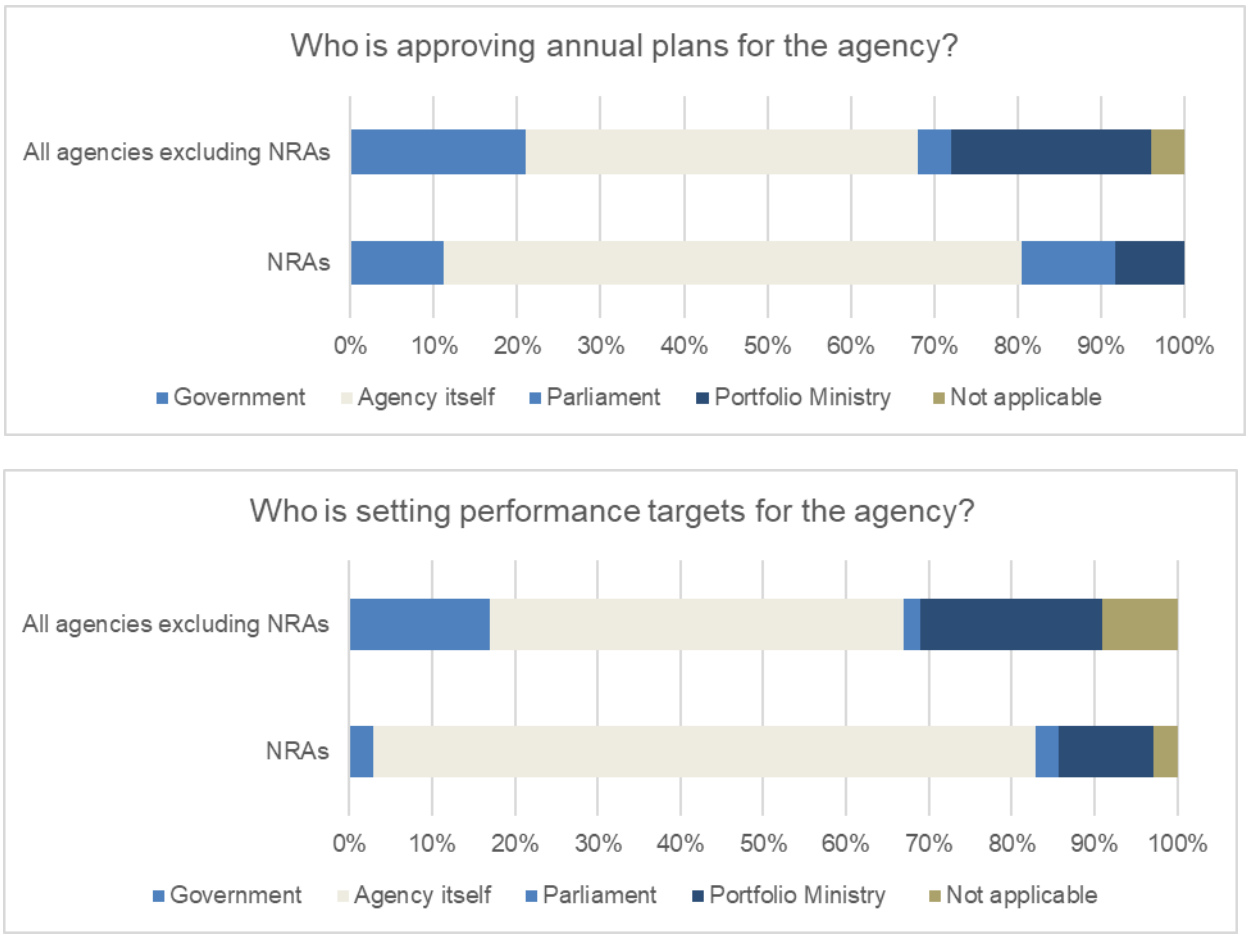
	Average (1-5)	1 Legalistic	2	3	4	5 Results-oriented
Senior managers in all agencies	3.3	9%	8%	44%	21%	18%
Senior managers in NRAs	3.6	9%	9%	25%	25%	31%
Senior officials in portfolio ministries	3.5	6%	11%	32%	27%	24%

Source: SIGMA survey on agency governance: how autonomous, how accountable, how collaborative?
Note: The survey asked "How would you describe the relationship and style of interaction between portfolio ministries and public sector agencies? Use a scale from 1 (legalistic) to 5 (results-oriented)" Respondents could answer on a scale from 1-5. 1 being "legalistic", defined as "Focused on controlling legality and procedural correctness", and 5 being "Results-oriented" defined as "Focused on assessing performance against pre-defined specific objectives and targets relating to the policy area". The average is the simple arithmetic mean of the answers of all respondents

The table shows wide variation. Nine percent of senior managers in all agencies consider the style of interaction to be completely "legalistic", focused on controls and procedures, whereas 18% consider it to be completely "results-oriented", focused on assessing performance. Senior managers in NRAs perceived the interaction to be more results-oriented than agencies in general. In all agencies, the majority of senior managers chose the middle option (44%), which may suggest a lack of consistency in the model of ministerial governance applied or a lack of clear vision of how the accountability of agencies towards ministries should be organised in general. This perception of the governance culture also has to be contrasted with more specific and objective indicators of the agency-ministry relations and agency accountability, which show that ministries are not sufficiently active in setting expectations towards agencies, monitoring their performance and providing feedback on the results delivered.

The figures below show that portfolio ministries are surprisingly absent in the process of planning and setting performance targets for agencies. The vast majority of the portfolio ministries are not involved in this process, neither approving annual plans nor setting performance targets for the agencies. This problem is common among all types of agencies. The majority of agencies remain self-governing bodies in terms of planning priorities and targets. It is likely that some of these agencies interact or co-ordinate with the portfolio ministries in the planning process, but the formal position of the portfolio ministries appears to be weak. On the other hand, even if this is a small proportion of cases, it is surprising that portfolio ministries approve annual plans for NRAs, as these agencies generally have greater autonomy. Formal approval is generally not needed, but dialogue with and even endorsement from the portfolio ministries are useful. Performance targets for NRAs do not, however, need to be set only by the agency itself. The survey shows that in practice governments and parliaments very rarely set performance targets for NRAs in the administrationss covered.

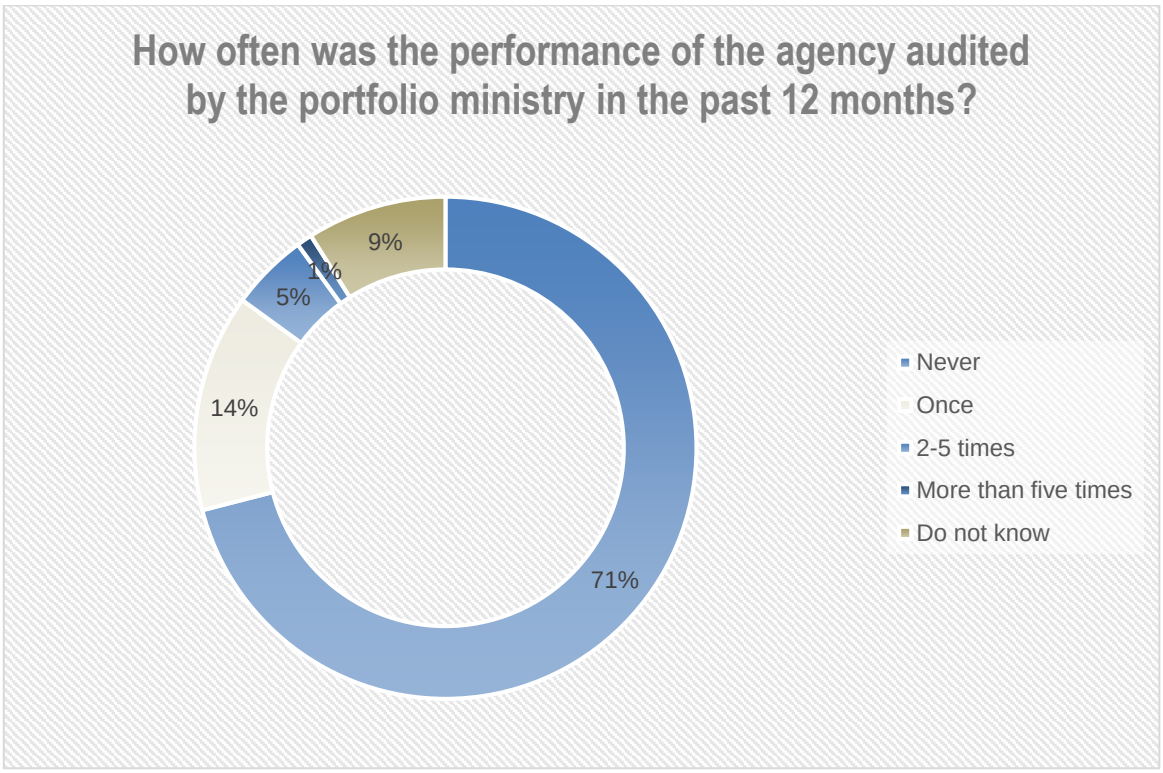
Figure 12. Bodies approving annual plans and setting targets for agencies



Source: SIGMA survey on agency governance: how autonomous, how accountable, how collaborative?

The portfolio ministries' failure to use the processes of annual planning to manage the performance of agencies may be partially compensated by other means, especially active in-year performance monitoring and the provision of regular feedback on agency performance. However, none of these instruments appears to be widely used by administrations of the Western Balkans and the European Neighbourhood. A clear majority of the agencies (both in the Western Balkans and in other countries) report that they were not subject to performance audit conducted by the portfolio ministries for the past year. Combining this with the dominant lack of ministerial involvement in setting objectives and targets, we can conclude that the basic component of results-oriented performance management of agencies is not applied for a majority of agencies.

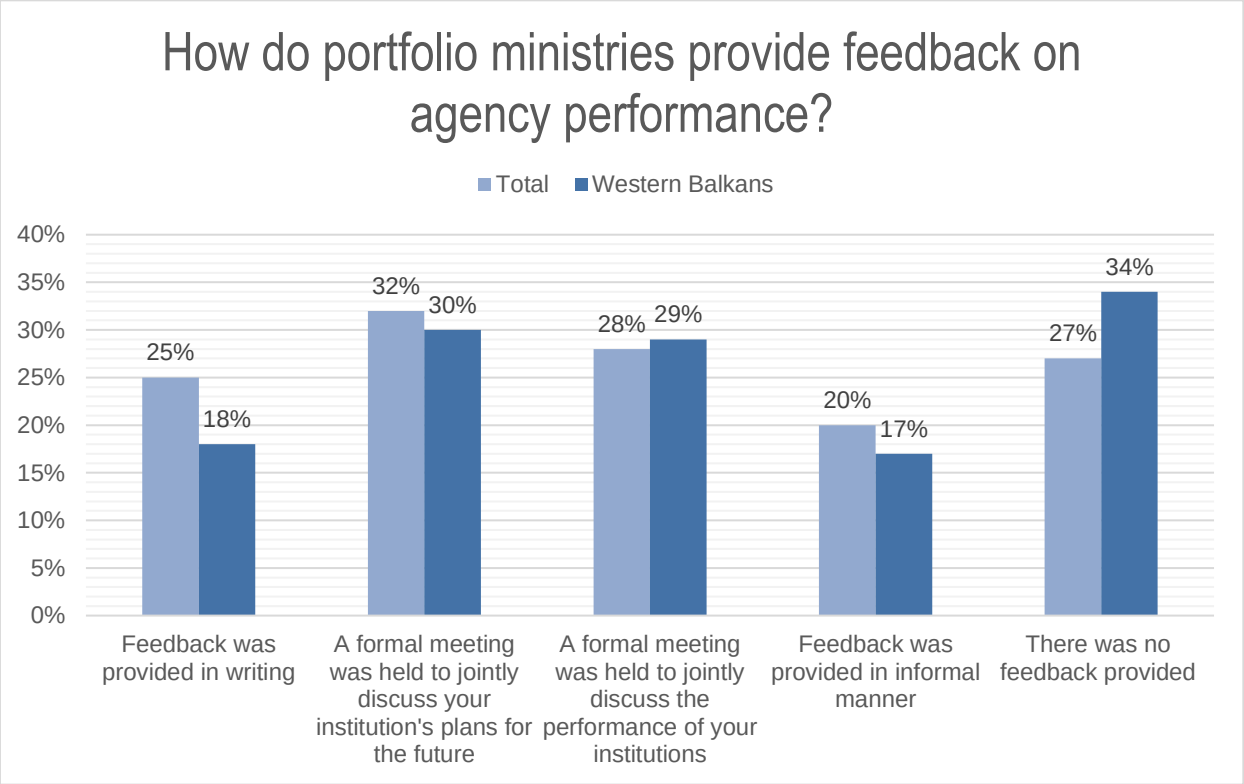
Figure 13 Use of performance auditing by portfolio ministries



Source: SIGMA survey on agency governance: how autonomous, how accountable, how collaborative?

The picture slightly improves if we consider less formalised and structured mechanisms of providing performance feedback by the portfolio ministries. Two-thirds of agencies did experience some type of feedback from their portfolio ministry, even if this is not rigorously linked with predefined objectives and targets and most often did not involve any written feedback.

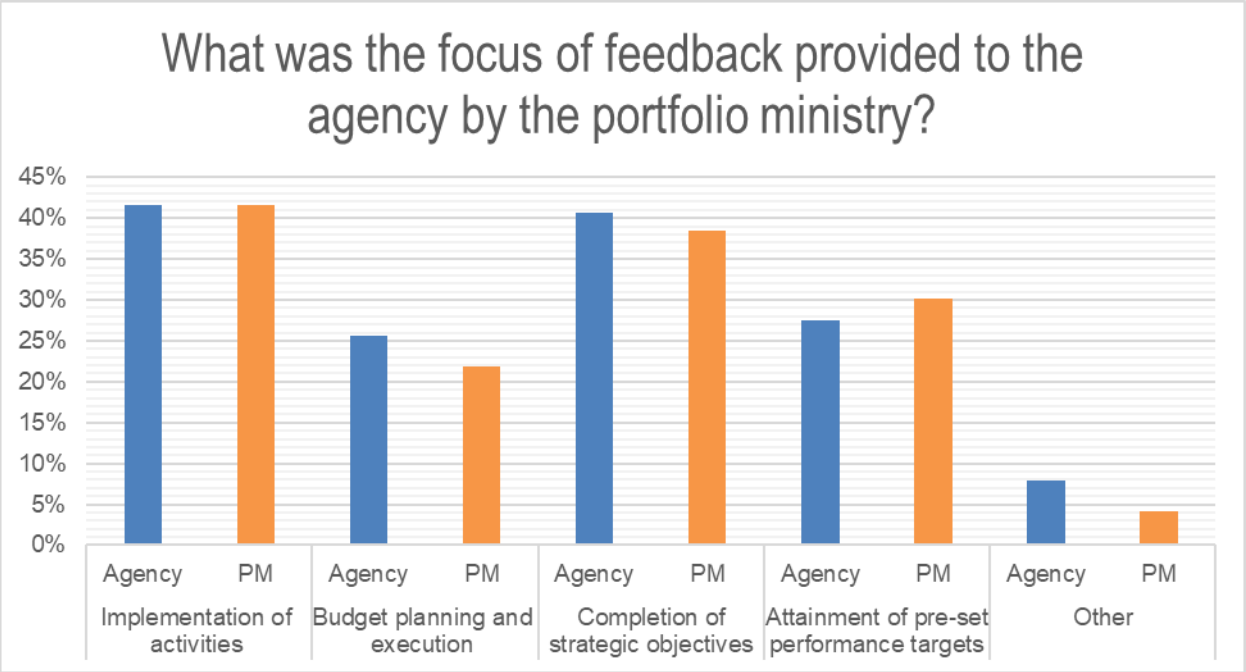
Figure 14. Ministerial feedback mechanisms on agency performance



Source: SIGMA survey among agencies in the Western Balkans and the European Neighbourhood.
Note: Respondents could choose multiple answers.

Whenever feedback was provided, it was not just activity-oriented, i.e. focused on implementation of specific tasks. Within the sub-set of agencies and portfolio ministries that engaged in feedback there was also a significant group that stated that feedback also concerned completion of strategic objectives and attainment of pre-defined objectives and targets.

Figure 15 - Types of feedback provided by portfolio ministries to agencies



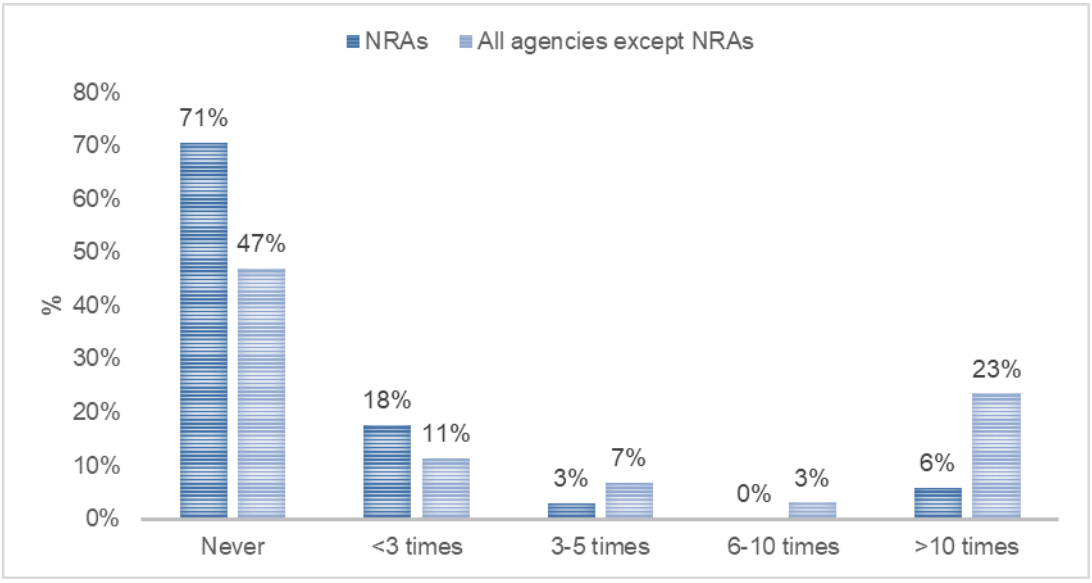
Source: SIGMA survey among agencies in the Western Balkans and the European Neighbourhood.
Note: Respondents could choose multiple answers. "PM" is short for portfolio ministry.

As evidence of successful transition towards results-oriented governance of agencies is weak in general, one could assume that the opposite management style, i.e. bureaucratic micro-management, would be more present. However, the survey results do not confirm this view. Nearly half of the respondents did not record any formal and binding instructions from their portfolio ministries in the past 12 months, pertaining to the performance of the agencies' core functions.

On the other hand, almost quarter of the agencies receive such binding instructions very frequently, indicating that portfolio ministries are heavily involved in directing their activities. Labour inspectorates and tax administrations stand out as bodies subject to the most intense and frequent direction from the portfolio ministries. In these cases, there might be little difference between the status of agencies and internal units of the respective ministries, undermining the rationale of agencification. The figure below shows an unbalanced approach to how ministries manage agencies. Ministries either disengage, or micro-manage.

For NRAs, it is surprising that binding instructions are used at all by portfolio ministries as these could undermine the functional autonomy of the agencies. This illustrates a lack of clarity regarding the role of portfolio ministries towards different types of agencies and which tools it is appropriate to use.

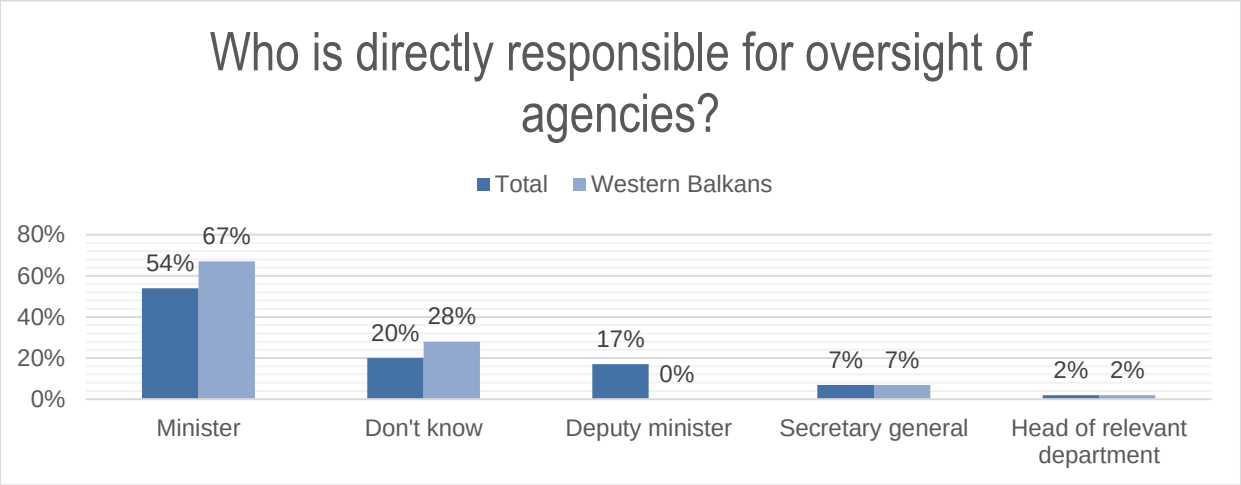
Figure 16. Use of binding instructions by portfolio ministries



Source: SIGMA survey among agencies in the Western Balkans and the European Neighbourhood.
Note: Respondents were asked: "Based on your experience the past 12 months, please indicate how often your portfolio ministry approached your agency through formal and binding instructions relating to performance of your functions"

Another characteristic feature of how ministries manage agencies in the Western Balkans and the European Neighbourhood is the allocation of responsibilities for oversight of the agencies within the ministerial apparatus. It appears that a political mode of governance prevails over decentralised and professional supervision. Portfolio ministries answered that responsibilities for oversight of agencies are executed in nearly three quarters of cases directly by the ministers or deputy ministers. Senior civil servants (secretaries general, heads of respective organisational units in the ministries) play a surprisingly minor role. This may partially explain the deficits of the steering mechanisms. Ministers as political appointees are usually neither familiar with nor interested in following structured and rigorous protocols of results-oriented governance. They are also overburdened with other responsibilities, leaving little room for effective supervision of agencies. If this task is not delegated to the level of senior civil servants, the risk of a "governance vacuum" increases. As presented in the previous chapters, professional "steering" of the subordinated agencies requires specific skills and competencies by the ministerial officials, on top of the relevant legal framework.

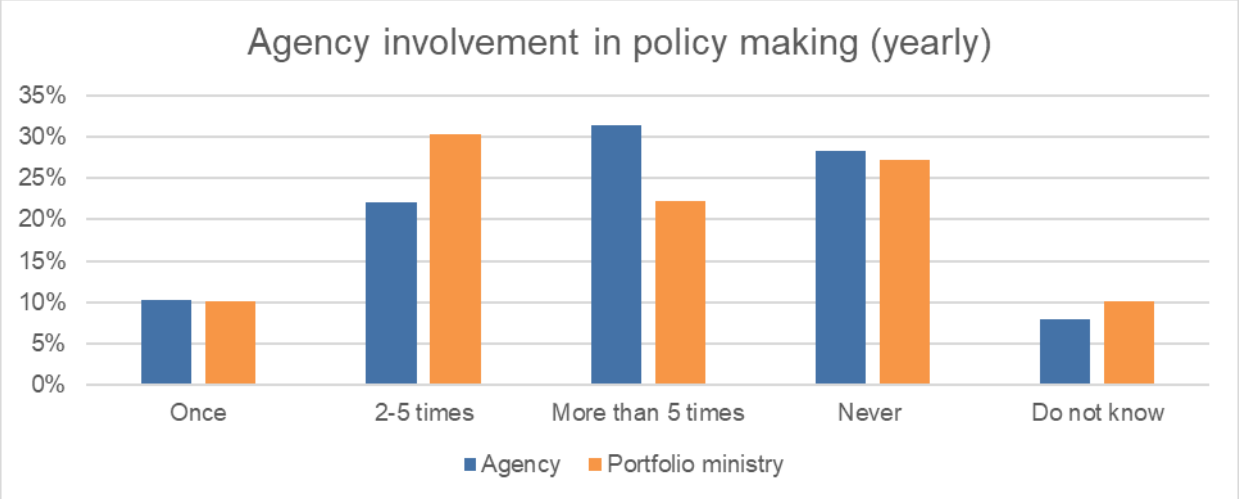
Figure 17. Allocation of responsibility for oversight of agencies within portfolio ministries



Source: SIGMA survey among portfolio ministries in the Western Balkans and the European Neighbourhood.
Note: The respondents were asked: "Please specify, who is directly responsible for the oversight of the agency operating in your policy domain" and could select only one option

The survey data shows a governance vacuum and absence of strong accountability mechanisms for public agencies. Ministries only apply strong controls in rare, selected areas, and in these cases it may amount to micro-managing. Most often, there is a lack of consistent and rigorously applied results-oriented management. The agencies, in terms of formal relations, are rather detached from the ministries and left unmanaged, with no clear expectations and well-established accountability mechanisms. It appears that the portfolio ministries do not see the agencies as components of the ministerial systems, but rather a separate branch of administration, where some tasks may be conveniently transferred without keeping overall responsibility of the ministry for agencies' performance. One function that is particularly problematic is outsourcing of policy making. The survey data shows that ministries routinely – not exceptionally – ask agencies to develop proposals for laws, regulation or policies.

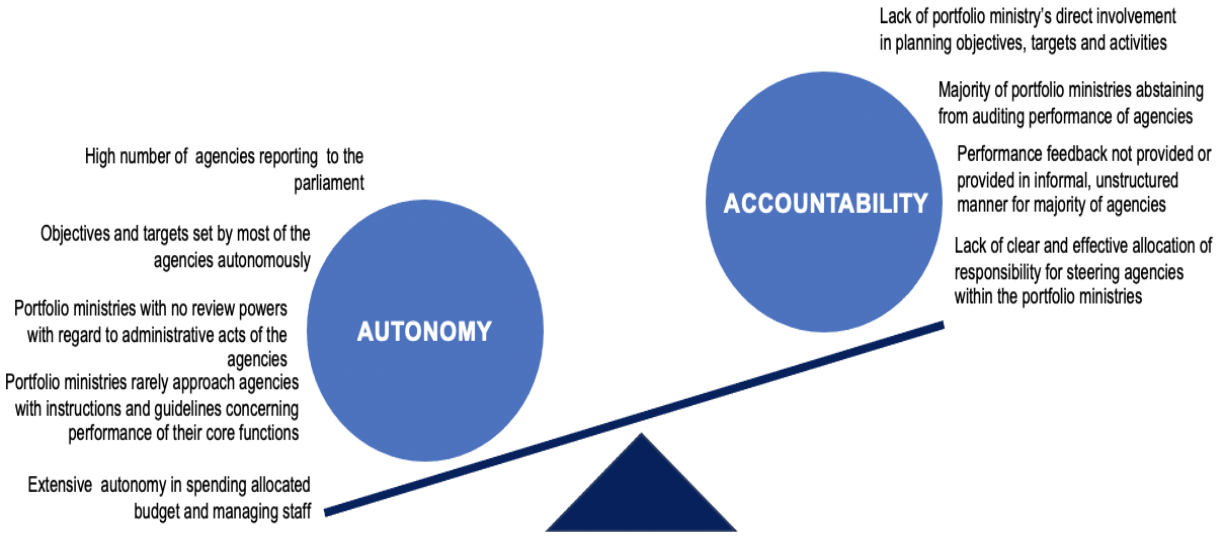
Figure 18. Agency involvement in policy making



Source: SIGMA survey among portfolio ministries in the Western Balkans and the European Neighbourhood.
Note: The respondents were asked: "Based on your experience in the past 12 months, please indicate how often your portfolio ministry requested your agency to develop proposals for laws, regulations, or policies (strategies, programmes)".

In the overall balance between agency autonomy and accountability, extensive autonomy clearly prevails. This overall picture suggests that while the Western Balkan and European Neighbourhood administrations were quick to adopt the idea of agencification, they have not yet adopted the accompanying governance tools and administrative culture. This results in a governance vacuum, where the agencies enjoy extensive autonomy and are not accountable to ministers. It appears that agencification was used as a convenient strategy not only to relieve ministries from policy implementation matters, but in reality to transfer large areas of government responsibilities to self-governing, largely unaccountable bodies. Other side effects, such as misusing agencification to "escape" the civil service regime or salary restrictions, are also widely represented in practice in the Western Balkans and the European Neighbourhood.

Figure 19. Imbalanced autonomy and accountability of agencies in the Western Balkans and the European Neighbourhood



How to reform? Lessons learned from SIGMA support

In recent years, many Western Balkan and European Neighbourhood governments have recognised the need to improve the organisational framework for public administration and in particular governance frameworks for agencies. In most cases, the pressure for reforms came from the EU and SIGMA was requested to assist those carrying out reforms. A few governments embarked on large-scale, ambitious restructuring programmes. Others took smaller steps and began simply mapping the chaotic landscape of public bodies. However, to date there are few clear success stories. Rather, the experiences so far are illustrative of how challenging it is to substantively redesign the organisational setup of public administration. Nevertheless, some useful observations can be drawn from the experience of governments that launched reforms in this area.

Large-scale restructuring projects

Albania and Kosovo launched the most ambitious and comprehensive restructuring projects, but in both cases, the idea of rationalisation of agencies faced significant organisational, technical and political obstacles. In 2017, following reorganisation of the ministries, the Government of **Albania** launched a large-scale project for restructuring of agencies (Government of Albania, August 2017[70]). It was intended to merge institutions with similar functions, streamlining territorial administration and introduce a new typology

of administrative bodies. A high-level Steering Committee was established to lead the reforms.[10] SIGMA assisted the Government in developing a detailed methodology to steer and guide the restructuring process and promote evidence-based organisational reforms.

However, the outcomes of this initiative are rather limited and ambivalent. In terms of reducing the number of agencies, the Government did succeed in consolidating a number of territorial bodies, e.g. regional agencies for agricultural development and directorates of education. At the central level, paradoxically, several new agencies were created by detaching ministerial units. The creation of these new agencies lacked substantial justification and *ex ante* analysis and accountability mechanisms towards ministries, including results-oriented performance frameworks, were not clearly specified.. Central management of the restructuring process was weak and line ministries were not given incentives to contribute to the restructuring of subordinated institutions. A decentralised approach to rationalisation does not fundamentally undermine its effectiveness, as long as the line ministries receive strong central guidance and there are clear expectations articulated at the central level with regard to the outcomes of the process. This was not the case in Albania (SIGMA, 2019[71]). The process lost its initial impetus. The Steering Committee has not held any meetings since 2019 and new agencies are still created outside the restructuring process, without rigorous *ex ante* control.

In **Kosovo**, the reform process of agencies began in 2016 when the Ministry of Public Administration (MPA), with the support of SIGMA, carried out a review of all agencies (Ministry of Public Administration, 2016[72]) . This served as a background document for the Government Action Plan for the Rationalisation of Agencies that envisaged the implementation of a restructuring programme in four waves. Round one consisted of eight executive agencies under the Assembly to be transferred through the necessary legislative changes to the Government (December 2018), round two and three consist of government agencies where functions are duplicated or the classification of the type of agency and its reporting lines is inconsistent with EU practices (December 2019-2020) and round four consists of regulators that are currently managed by the Assembly who would in most European countries be within the executive (December 2021). In parallel, the new legislative framework for state administration was adopted, including the Law on the organisation and functioning of state administration and independent agencies.

Box 11. New framework law on state administration in Kosovo

The Law no. 06/L-113 on Organisation and Functioning of State Administration and Independent Agencies, developed with significant support from SIGMA, entered into force in 2019. It envisages two types of agencies: executive agencies and regulatory agencies. This distinction relies on different degrees of autonomy. Executive agencies, as a default type, remain under closer supervision of portfolio ministries. Regulatory agencies enjoy greater autonomy, particularly with regard to performing their core functions. For example, the administrative acts issued by the regulatory agencies should be subject to appeal directly to the courts, while acts of the executive agencies might be reviewed by the portfolio ministries. This explicitly reflects the concept of functional autonomy enshrined in the EU legislation.

While regulatory agencies are more autonomous, they remain firmly located within the Government administration. The portfolio ministries have the power to request information and documents relating to their work and monitor the legality, effectiveness and efficiency of their operations. Further, they are included in the cross-government performance management system, agreeing their performance plan with the respective portfolio ministries. They are also obliged to report on an annual basis on the implementation of objectives and targets, interacting with the portfolio ministry in the form of a performance dialogue.

[10] Order of the Prime Minister No. 157 of 4 October 2017 and Order of the Prime Minister No. 59 of 26 March 2018.

However, full implementation of this new regime requires adjustments in the special laws currently regulating the ministry-agency relations individually for each agency. This process has been stalled by political instability. Further, completing this reform depends on the political will to relocate a large number of agencies operating under the Parliament to the Government administration. These tasks have not been implemented yet.

In its initial phase, the rationalisation process received high-level political endorsement. The Speaker of the Assembly and the Prime Minister of Kosovo signed a Letter of Commitment to support the rationalisation process and appointed responsible persons from both branches of power to spearhead the reform. However, the process of implementation of the ambitious reorganisation plans stalled with the period of political instability that followed the end of the Haradinaj Government and the early elections. As a result, no significant progress has been achieved in reducing the number of agencies or improving their accountability. On the other hand, in a few cases attempts to create new institutions were prevented, due to lack of clear justification for establishing new bodies. Further, the Kurti Government reconfirmed its commitment to these reforms that are central to the EU's agenda for public administration reform and initiated a programme of restructuration during the brief period from February to March 2020, asking SIGMA for support with rationalisation of ministries and later agencies. On March 25 2020, the Kurti Government lost a vote of no confidence in the Assembly and political instability again prevented progress (Balkan Policy Research Group, 2020[73]).

Smaller reform initiatives

Other Western Balkan and European Neighbourhood governments launched initiatives of smaller scope, but still combining reorganisation reforms with modernisation of typology and governance frameworks for agencies. In 2018, **Montenegro** adopted a new framework law for state administration. This Law on State Administration[11] abolished the concept of bodies within ministries as a special type of quasi-agency, enjoying autonomy only slightly more extensive than organisational units of the ministries. Further, the new typology of government bodies was introduced, comprising state agencies and state funds. State agencies may be established to perform regulatory functions and to enforce laws in certain area, solely if there is a clear request for the functional and organisational independence of a body resulting from the EU law or international agreement. State agencies enjoy extensive functional autonomy, as their administrative acts cannot be reviewed by the portfolio ministries, but are subject solely to judicial review. In terms of organisational setup, the rules for state agencies and state funds are similar. While this simplification of typology is welcomed, it should also be noted that the Law on State Administration does not contain a list of bodies under each type, which makes the scope of its application unclear. The list was included in the government-sponsored draft, developed with SIGMA support, but later removed in Parliament. Furthermore, this typology is not comprehensive, as there is a large number of bodies that operate according to special laws as "other holders of public authority".

In 2018, the new Strategy for Public Administration Reform 2018-2022 was adopted in **North Macedonia**, also envisaging reorganisation of the Government administration.[12] Based on the mapping of the Government institutions, the new organisational concept was developed with three types of bodies: a) ministries responsible for policy design; b) agencies responsible for policy implementation; and c) inspectorates performing control functions. The latter two types are meant to operate under strong oversight and direction from ministries. The overarching idea of this concept is to ensure that ministries have powers and capacities in relevant policy areas to manage, guide and control agencies. This concept also implies organisational changes. However, it is too early to assess the progress in implementation of

[11] Law of 22 November 2018 on State Administration, Official Gazette no. 78/2018.

[12] Ministry of Information Society and Administration, Public Administration Reform Strategy 2018-2022, https://mioa.gov.mk/sites/default/files/pbl_files/documents/strategies/par_strategy_2018-2022_final_en.pdf.

this new policy. Further, the concept itself appears to rely on a rather dogmatic approach, pushing for a shift of policy implementation to agencies as a default option. There will be a risk of proliferation of agencies if only the theoretical model is enforced and there is not a clear, pragmatic rationale.

The need for establishing a clearer typology and governance structures for agencies was also recognised in **Georgia**. The Law on Legal Entities under Public Law from 1999 allowed a new type of agency called Legal Entities under Public Law (LEPL) to be created easily. LEPLs are an all-encompassing category with almost unlimited autonomy. LEPLs quickly proliferated, from 0 in 1999 to 90 in 2017, and took over policy making and regulatory roles. A large-scale, whole-of-government functional review was launched in 2017 to correct the functional irregularities created and a proposal for a new, more detailed categorisation of agencies was developed.[13] However, the work on adoption and implementation of this revised model has stopped. Similarly, little or no progress has been achieved in **Armenia** despite the problems identified with private law bodies being created to spearhead policy formulation and implementation for Government priority initiatives and the example of dysfunctional division of labour between ministries and agencies illustrated in Box 9 above (SIGMA, 2019[6]). In **Moldova**, no major reforms have been implemented either, except for a reduction of the number of inspection bodies from 33 to 18[14].

Ukraine has not initiated comprehensive reforms in this area. However, some relevant initiatives were introduced through civil service legislation. Ministers were mandated with setting annual targets with regard to key performance indicators for the heads of subordinated agencies.[15] A maximum of three key performance indicators (KPIs) accompanied with targets may be determined by the portfolio minister. Another two KPIs with accompanying targets can be set by the Cabinet of Ministers and apply generically to all heads of agencies. This model, introduced in 2019, focuses on the head of agencies, rather than the overall performance of the organisation.

All in all, Western Balkan and European Neighbourhood administrations are at the early stages of reversing the functional irregularities created by excessive agencification. The proliferation of agencies created a complex and fragmented organisational landscape in all of them. This cannot be fixed by a single, large-scale intervention or incremental changes. Understanding the causes of agencification and the blockages that recent reforms have faced is a first step to mitigating “failure factors” in the future. The key lessons learned are:

1) Continuous, high-level political support is needed to drive through long-term reform agendas. Quick wins are necessary to galvanise support and engaging Members of Parliament proved key in the case of Kosovo. Nevertheless, in the context of political instability those carrying out reform need to invest significant energy in keeping the issue on the agenda. The political leadership must act in a determined and consistent way and must not be biased by partisan or clientelist motives when deciding on the establishment and selection of the institutional type. This is a reform that requires a high level of “political discipline”.
2) A sound, rational typology of administrative bodies in policy and legislation with clearly defined criteria for establishment and selection of the fit-for-purpose type is a requirement.
3) A strong *ex ante* gatekeeping and *ex post* review role for the co-ordinating centre-of government body or ministry of public administration is indispensable.

[13] The Whole-of-Government Functional Analysis Report and associated Methodology prepared by the USAID Good Governance Initiative (GGI) project

[14] Law no. 230 of 23 September 2016 for amending and supplementing some legislative acts.

[15] Resolution of the Cabinet of Ministers of Ukraine no. 640 of 2017 On approval of the Procedure for evaluating the performance of civil servants: https://zakon.rada.gov.ua/laws/show/640-2017-%D0%BF#n357)

4) Implementation is key, and hinges on the ability of the administration to manage a whole-of-government reform agenda. Overambitious restructuring programmes can overwhelm the administration and may be abandoned. Lengthy analytical exercises risk missing the window of opportunity when political support is mobilised. Sequencing reforms in concrete, management steps in action plans is recommended.

5) There may be strong resistance to changes from various interest groups. The fragmented institutional landscape with a multitude of agencies not accountable to ministries has powerful advocates in each administration, e.g. among the management of agencies enjoying excessive benefits or autonomy, or among political patrons of some agencies. Even donor organisations lobby to keep the agencies that they helped create. Misquoting the EU *acquis* is a common tactic to halt reforms.

6) The advantages of a reform should be clearly explained to the political leadership, in particular the political gain obtained by finding a proper balance between autonomy and accountability and creating a setup where performance objectives for the agencies are co-created by the government and the agencies can be held accountable for performance.

Summary

Combining the findings of SIGMA monitoring, the outcomes of reform initiatives and the insights from the survey carried out for this paper, provides for a consistent analysis of where the Western Balkan and European Neighbourhood administrations are in their journey towards good governance of agencies. All in all, the notion of a “governance vacuum” may serve as the most accurate depiction of agency governance in the Western Balkans and the European Neighbourhood. This vacuum begins at the macro level with the lack of a clear vision and logic for when agencies should be created, which type of agency should be applied in specific cases, how to prevent uncontrolled proliferation and how to ensure that they are governed according to clear and consistent rules. It continues at the meso-level with a lack of accountability mechanisms in the interaction between portfolio ministries and public agencies.

As demonstrated by the survey, the governance vacuum at the central level is not compensated by effective governance of agencies at the level of individual portfolio ministries, and it is not a matter of legalistic versus results-oriented management culture. The dominant model of relations between portfolio ministries and agencies could be described as a mixture of rather extensive autonomy and a more general absence of performance monitoring and accountability for results. Portfolio ministries do not apply the typical tools for managing agencies developed by OECD countries. The Western Balkans and the European Neighbourhood have a unique and arguably dysfunctional characteristic in largely bypassing senior civil servants and placing the formal management and oversight responsibility directly in the hands of ministers.

The consequence is that portfolio ministries fail to have full ownership of their policy areas and lack sufficient interest in enhancing the agencies’ performance. In the case of the NRAs, there is also an issue of misunderstandings about the requirements of the EU law. The table below summarises the key problems and deficits identified both at the level of the whole system and individual ministry-agency relations, as well as the consequences of these problems for the overall performance of government administration.

Table 13 Summary of key deficits in agency governance in the Western Balkans and the European Neighbourhood

LEVEL	MISSING ELEMENTS	EFFECTS
Macro-level (government policy and general legislative framework)	Sound typology of agencies and clear criteria for establishment and selection of the adequate type Rigorous ex ante control of agencification and analysis of alternative options for delivering government functions	Proliferation of agencies lacking clear justification and benefits; Steering problems associated with multitude of agencies of various types, degrees of autonomy and governance regime
	Regular reviews and fine tuning of the agencies' landscape	Inefficient administrative structures and missed opportunities for efficiency gains and savings
	Consistent governance regime covering all agencies and striking proper balance between agencies' autonomy and accountability, including preventing establishing agencies directly under supervision of parliaments	Autonomy of agencies determined individually for each agency resulting often in their excessive autonomy or special privileges, e.g. exemption from rules on transparent recruitment, salary scales or financial controls;
	Strong ministerial ownership and accountability for relevant policy areas due to high number of agencies located outside the executive and reporting to the parliament only	High risk of inefficiencies and irregularities (e.g. agency capture by interest groups) associated with weak parliamentary oversight; Lack of instruments for the government to ensure consistent implementation of sectoral policies
Meso-level (ministry-agency relations)	Well-established, results-oriented culture of ministerial steering and performance management	Agencies operating without clearly defined expectations and rigorous accountability for delivering policy outcomes
	Clear allocation of responsibility for steering agencies within the ministry	Steering responsibilities are not effectively and consistently performed, leaving the agencies in the governance vacuum

The agencification experience of the Western Balkans and the European Neighbourhood is already so vast that it serves as a basis for tailored and specific recommendations. The table below summarises the principal "dos and don'ts" for governing agencification.

Table 14 Dos and don'ts of agencification - key recommendations

Do's	Don'ts
• Consider a wide array of organisational options for delivering government functions and make final choice based on thorough, unbiased analysis rather than dogmatic, theoretical assumptions and models; • Remain sceptical towards any proposals for creation of new institutions – demand clear and strong business case for establishment of new bodies and consider it as a last resort; • Work towards "compact government" – constantly counteract natural tendency of administrative apparatus to swell by pursuing smaller, more integrated, but also more efficient and effective administration; • Consider governance of agencies as one of the key responsibilities of ministries and ensure that it is clearly assigned with the necessary management and supervision capacities; • Search for balance between autonomy and accountability in governing agencies – too many governments enthusiastically adopted the idea of autonomous agencies, forgetting about securing accountability of agencies. Let the (agency) managers manage, but also hold them accountable for the results they deliver.	• Do not be dogmatic – the idea of splitting policy making from policy implementation does not serve as a sufficient justification for massive agencification; • Do not take the benefits of agencification for granted – the abstract and theoretical assumptions about efficiency gains of agencification are not sufficient to justify the creation of new bodies; • Do not expect that staff in ministries do not need specialised skills when tasks are delegated to agencies; • Do not confuse agency autonomy with independence – agencification makes sense if considerable autonomy (combined with accountability) is provided to newly created agencies. However, even the most autonomous agencies, such as the NRAs, do not constitute a "fourth branch of the government". They remain part of the executive that should be held accountable for implementing government policies; • Do not let the agencies move too far away from the government – agencies should remain firmly located within public administration in terms of staffing, salary or financial management rules. Too often agencification is used as a vehicle to create a grey zone of excessively paid political appointees and non-transparent spending.

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