The Slovene Agency System

Danilovgrad, 9-11 Oct 2013

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   - Democracy Index (2012): 27th/200
   - Rule of law, reg. quality…: high & decreasing
   - GDP per capita (2012): 28,700 USD (54th)
   - GDP growth (2012/13): -2.5%–2.4%
   - Export (2012): 20% Germany (I, A, CRO…)
   - Domestic consumption (2012/13): -6.5%–4.1%
   - Labour force (2013) em.: 788,700; unem.: 120,600 (13.3%)
   - Aver. earning/growth (2013): 1,524/998 EUR gros/net-2.5%
   - Public sector/PA: 160,000/45,000 civil servants (app. 18%)

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

6. Reanalysis of Public Authority Entities in Montenegro, International Benchmarking Seminar

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PA reforms in SLO 1991-2013

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

Periods:

<table>
<thead>
<tr>
<th>Period</th>
<th>Reform orientation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991-1996</td>
<td>Founding new state</td>
</tr>
<tr>
<td>1997-2003</td>
<td>Europeanization</td>
</tr>
<tr>
<td>2000-2004</td>
<td>New organic legislation, TQM …</td>
</tr>
<tr>
<td>2004-2008-2013</td>
<td>Strategies on priorities and rationalization within EU</td>
</tr>
</tbody>
</table>
NPM & Good Governance as reform/agencification incentives

Private sector (entrepreneurial concept/methods)
- Democratization
- Effectiveness, efficiency

Public sector (public interest, legality …)

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

New legislation in 2000-2003 etc.
- State Administration Act (ZDU)
- Inspection and Supervision Act (ZIN)
- Novelties in Local Self-gov. Act
- Public Agencies Act (ZJA)
- Public Funds Act (ZJS)
- Public Institutes Act (ZZ)
- Civil Service Act (ZIU)
- Law on Wages in Public Sector (ZSPJS)
- Freedom of Information Access Act (ZDIJZ)
- General Administrative Procedure Act (ZUP)
- Law on E-business and E-signature (ZEPEP)

Civil service&unified PS pays

- State administration: 35,000
- Local administration: 4,500
- Holders of PA authority: 5,500
- Other state bodies: 5,000
- Public institutions:
  - Child Care & Education: 57,000
  - Health care: 32,000
  - Social care: 11,000
  - Culture: 6,000
  - Research: 5,000

160,000

New legislation in 2000-2003 etc.
- State Administration Act (ZDU)
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Types of agencies in SLO by status

1. Agencies as body within ministry (executive, next step)
   - Internal privatization

2. Public agencies (regulatory & executive, legal person)
   - External privatization

3. Other independent bodies

New legislation in 2000-2003 etc.
- State Administration Act (ZDU)
- Inspection and Supervision Act (ZIN)
- Novelties in Local Self-gov. Act
- Public Agencies Act (ZJA)
- Public Funds Act (ZJS)
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- Law on Wages in Public Sector (ZSPJS)
- Freedom of Information Access Act (ZDIJZ)

SLO PA structure (2013)

Direct Administration
- State Administration:
  - 11 ministries (+ Minister/s Portfolio) & 10 governm. offices
  - 34 autonomous bodies within ministries (ex. ag. ?)
- Local self-government: 212 municipalities

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

Direct PA: state & municipal

Direct PA

Indirect PA

State administration

Local self-government

GOVERNMENT

REGIONAL

LOCAL

PS PA

PS

PA
**Agencies=adjusted within ministries**

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

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**Public agencies (PAG)**

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

---

**Ministries and their semi-autonom. bodies in 2013 (0-6 P) All “executive agencies”?**

1. PAG Act (2002) stipulating

- Basics: public law, establishment criteria ...
- Est. steps: spec.law(&gov. decree), head nomination, entry into register (by court)
- PAG’s bodies: Director & Council (3-9)
- Tasks: PAG as general acts issuer, regulatory, ind. decisions, develop&profess, supervisory
- Relation towards users: publicity
- Programme, reporting, supervision
- Assets, financing: budget & selling & other resources
2. Specific laws stipulating

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

**Case: Energy Agency**

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

**Agencification process**

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

**Agencification in SLO in No.**

<table>
<thead>
<tr>
<th>Period</th>
<th>No. of new PAGs</th>
<th>Sum</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994-2000</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2000–2004</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>2005–2008</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>2009–2012</td>
<td>7</td>
<td>18</td>
</tr>
<tr>
<td>2013-2014</td>
<td>-2,3 ...</td>
<td>16, 15 ...</td>
</tr>
</tbody>
</table>

**Independent state bodies as 3rd type of agencies?**

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

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

- Independence = external
- Autonomy = internal: agency vis a vis parent ministry
  1. Organization/status: PAG=separate personality under public law
  2. Legal
  3. Professional/mgt
  4. Financial/Budgetary
  5. Personal/Personnel
Agencification forms in SLO as a factor of autonomy

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

Legend:
- Guideline
- Supervision
- Agency

Unclear & inconsistent status of some agencies

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

Case: agencies in/under MF

Directors:
1. Financial system
2. Treasury
3. Public income (tax, customs)
4. Budget
5. Public property
6. Public accounting

"Agencies" within MF:
1. Customs Office
2. Tax Office
3. Administration for public payments
4. Office for supervision over gambling
5. Office for budget supervision
6. Office for money laundering prevention

PAGs:
1. Public Supervision Revisons Agency
2. Public Legal Records and Related Services Agency
3. Insurance Supervision Agency
4. Market Security Agency

Funds:
- Fund of RS for succession

Agencies in M (OVSIM) v. PAG

<table>
<thead>
<tr>
<th>Established by</th>
<th>Agencies in M (OVSM)</th>
<th>Public agencies (JA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governmental acts</td>
<td>Efficiency &amp; depolitization</td>
<td>Yes, direct budgetary user Budget, rarely fees</td>
</tr>
<tr>
<td>Organic law criteria</td>
<td>Efficiency &amp; depolitization</td>
<td>Yes, indirect budget user Budget &amp; fees</td>
</tr>
<tr>
<td>Tasks</td>
<td>Comparative type</td>
<td>Financial autonomy Resources</td>
</tr>
<tr>
<td>Efficiency</td>
<td>Executive</td>
<td>Yes, direct budgetary user</td>
</tr>
<tr>
<td>1</td>
<td>2 &amp; recently more 1</td>
<td>Budget, rarely fees</td>
</tr>
<tr>
<td>No. 2011-14 (13)</td>
<td>34-39 (34)</td>
<td>Yes, indirect budget user</td>
</tr>
<tr>
<td>34-39 (34)</td>
<td>15-19 (16)</td>
<td>Budget &amp; fees</td>
</tr>
<tr>
<td>No. of em. 2013</td>
<td>218</td>
<td>Head nomination Civil service</td>
</tr>
<tr>
<td>31,967/Civil=14,859</td>
<td>Government/open competition Yes, all (head+officials+staff)</td>
<td></td>
</tr>
<tr>
<td>In M’s ap. weekly</td>
<td>Yes, all (head+officials+staff)</td>
<td></td>
</tr>
<tr>
<td>7,205</td>
<td>Agency Council</td>
<td></td>
</tr>
<tr>
<td>7,477, Police 8,439, Prison 865</td>
<td>Except director partial CSA</td>
<td></td>
</tr>
<tr>
<td>(3 PAGs not in gov. Plan=180)</td>
<td>Continuity</td>
<td></td>
</tr>
<tr>
<td>All app. 1,000</td>
<td>Adm. appeal within ministry, judicial review</td>
<td></td>
</tr>
<tr>
<td>Differences: 3,250</td>
<td>Rarely M approval for general acts &amp; usually no adm.appeal, judicial ind. acts review</td>
<td></td>
</tr>
<tr>
<td>Big differences: 3,250</td>
<td>PAGs for definite reasons</td>
<td></td>
</tr>
</tbody>
</table>

Agencies in M (OVSIM) v. PAG

<table>
<thead>
<tr>
<th>Agencies in M (OVSIM)</th>
<th>Public agencies (JA)</th>
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</thead>
<tbody>
<tr>
<td>Supervision</td>
<td>Direct ministry</td>
</tr>
<tr>
<td>Legal personality</td>
<td>No</td>
</tr>
<tr>
<td>Financial autonomy Resources</td>
<td>Yes, direct budgetary user Budget, rarely fees</td>
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<td>Head nomination Civil service</td>
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<td>Legality review</td>
<td>Adm. appeal within ministry, judicial review</td>
</tr>
<tr>
<td>Continuity</td>
<td>PAGs for definite reasons</td>
</tr>
<tr>
<td>Differences:</td>
<td>“Classical regulatory” yes, other very often changes</td>
</tr>
</tbody>
</table>
Performance issues in practice?

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

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

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

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

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

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

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

Lessons 2: legal framework

- Role of system approach & organic law’s (lex generalis):
  - As a guiding scheme in areas & antifragmentation
  - By system approach overcoming lack of dem. legitimacy

- However, in parallel following:
  - Inclusion of all agencies’ types under common PA legislation (finances, civil service, freedom of information, adm procedures, jud. review …) &
  - Recognizing differences: esp. regulatory v. executive

- Agency’s status in a function of its tasks, not vice versa
- Note “Name’s Myth”!

Autonomy of PAGs: OECD v. SLO

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Organizational characterstics</th>
<th>OECD - governance, environment</th>
<th>OECD – mgmt.-prof. autonomy</th>
<th>SLO PAG Act implementental (gap)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Efficiency</td>
<td>a. Specialization, user orientation requested</td>
<td>possible</td>
<td>requested/moderate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Managerial methods, management by results</td>
<td>requested</td>
<td>possible</td>
<td>requested/low</td>
</tr>
<tr>
<td></td>
<td>c. Loosened adm. and financial rules</td>
<td>possible</td>
<td>possible/ requested</td>
<td>requested/ moderate only</td>
</tr>
<tr>
<td>2. Professionalism</td>
<td>a. Independence recommended</td>
<td>requested/no</td>
<td>requested/ differ, possible</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Continuity</td>
<td>possible</td>
<td>requested/ possible</td>
<td>possible/often</td>
</tr>
<tr>
<td></td>
<td>c. Participation of civil society</td>
<td>possible</td>
<td>requested/ possible</td>
<td>possible/low</td>
</tr>
<tr>
<td></td>
<td>d. Participation of users, partnerships</td>
<td>possible</td>
<td>requested/ possible</td>
<td>requested/ moderate</td>
</tr>
</tbody>
</table>
Lessons 3: reasoning agencies

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

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

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

Concluding recommendations

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

Thank you!
Discussion?