

**GOVERNMENT AGENCIES IN POLAND – AN EXAMPLE
OF AGENCIFICATION OF PUBLIC ADMINISTRATION.
COMPARATIVE LEGAL ANALYSIS OF SELECTED MODELS
OF AGENCIES IN EUROPEAN COUNTRIES**

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ABSTRACT

“Agencification” is a term proposed to define the process of creating government agencies, which started in the early 1990s. According to the author, this term should be incorporated into the nomenclature of Polish administrative law, mainly due to the fact that administrative law scholars from other countries have been using it in the same sense as in this article for more than ten years. Therefore, the paper briefly discusses the models of agencies functioning in the legal systems of some European countries where they play an important role.

Key words: agencification, government agencies, model of agency, German agencies, French agencies/autonomous entities, British agencies

1. INTRODUCTION

The agencification of public administration in Poland began in the late 1980s. Primarily, such a form of public administration organization stemmed from the need to adapt the state and its legal system to new public tasks. The term “agencification” has not yet been rooted in the Polish legal thought. For this reason, my intention is not only to explicate this

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term and discuss its origins but also to determine why Polish government agencies are created.

Government agencies in Poland were created to adapt to EU requirements and to emerging new public tasks. There was no legal instrument in Poland that could realize the needs of a society that were still arising. It should also be emphasized that all comparisons based on the agency model from a selected country versus the Polish agency model are difficult for many reasons. First, remember the legal systems in which the agencies have been regulated. Secondly, their cause of creation and internal structure. Thirdly, the tasks and competencies held by the agencies. Commonly in the literature on the subject, there is an erroneous statement by representatives of the doctrine that Polish government agencies are entities that are created at central and local levels, which is visible, for example, in the German system.

In the Polish legal system, government agencies are public administration entities of a special nature that arose as a result of distrusting the powers of governmental authority. It is not without reason that they have been referred to as “government agencies”, and this is because the agencies are supervised by the competent minister in the matter, and this supervision is really the management. The personal, service and structural relationship between a given government agency in Poland or the president of the agency and the competent minister have been regulated by legal provisions in the constitutional law of the agency.

As can be seen, the task that was set to be achieved in this article may be full of contradictions and, unfortunately, it is impossible to compare different models of European agencies in a one-to-one relationship. The difference in the legal system in which the agency operates and in the tasks assigned to it for implementation must be taken into account.

2. AN ATTEMPT TO DEFINE “AGENCIFICATION” OF PUBLIC ADMINISTRATION

The literature¹ lacks a uniform definition of the agency that would describe its legal position and role in a democratic state of law. In order to define the term “agency”, it should be considered both in a strict² and a broad sense³. This is due to the eclectic nature of such entities and the variety of tasks they perform. There is no distinction between the terms “agency” and “government agency” in the literature. They are treated as one, which should obviously be considered inappropriate and unjustified. It is also inappropriate to use the terms “government agency” and “executive agency”⁴ interchangeably,

¹ According to J. Niczyporuk, agencies should be divided into economic agencies, created to perform state economic tasks and agencies that perform typical administrative tasks dealt with by typical government administration. Cf. Janusz Niczyporuk, “Rządowe agencje gospodarcze”, In: *Administracja i prawo administracyjne u progu trzeciego tysiąclecia*, ed. Małgorzata Stahl, Jan Paweł Tarno, Marek Górski, Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2000, 341. According to A. Miruć, government agencies may be created by way of an act and take the form of state legal persons, or have the status of a central public administration body. The author also distinguishes the third group of agencies that functions in the form of commercial law companies. In thine case of this group, an agency is established by way of a notarial deed by the founding body, i.e. supreme state administration bodies. Cf. Alina Miruć, “Wielość podmiotów administrujących”, In: *Nowe problemy badawcze w teorii prawa*, ed. Jan Boć, Andrzej Chajbowicz, Wrocław: Kolonia Limited, 2009, 336.

² It is only about the agencies that are state-owned legal entities named “government agencies”.

³ In broad terms, agencies should be understood as entities of various organizational forms acting as sole-shareholder companies of the State Treasury and administrative offices.

⁴ The concept of the agency was also used by the legislator in the Public Finance Act, (Journal of Laws of 2019, item 869, hereinafter as: u.f.p.) According to art. 18 u.f.p. an executive agency is a state legal entity established on the basis of a separate act to implement the tasks of the state. According to the intention of the legislator, executive agencies in Poland should be modeled on executive agencies operating in the European Union. In addition, state tasks performed by Polish executive agencies should be of a “key” character. It is worth considering here how the term “key” should be understood. It seems reasonable to assume that if the normator in the Act on he did not create a strictly defined catalog of quasi-closed tasks to be carried out by executive agencies, it should be recognized that in fact, every task is “key” for the state and for the agency.

The above standpoint stems from the fact that agencies considered in a broad sense⁵ form a group of diverse entities such as sole-shareholder companies of the State Treasury and administrative offices, whereas agencies approached in a strict sense⁶ should be understood only as state legal persons which have been formed to perform public tasks and share a number of characteristic features. When it comes to the term “executive agency”, its sense is wider than that of “government agency”, for apart from government agencies (agencies *sensu stricto*), it also encompasses such entities as the National Centre for Research and Development and the National Science Centre. The above entities do not display the features of government agencies and thus there are no grounds for considering them agencies *sensu stricto*.

In my opinion, the term “agencification” should be understood as a process of forming agencies whose main objective is to perform tasks in special (specific) subject areas both in public and private law firms of operation⁷. I think it would be wise to use the term “agencification” only to

⁵ In the 1990s, the agencies that prevailed were those functioning in a private form. They were one of the basic forms of public task implementation. This category of entities included: State Agency for Restructuring Black Coal, Agency for the Development of Industry, State Agency for Foreign Investments. Currently, their number has decreased and there is only one agency functioning in this form, the Polish Press Agency. It should be emphasized here that agencies operating in the form of single-shareholder companies of the Treasury, including the Polish Press Agency, have been excluded from the list of public finance sector entities due to the fact that their activity is related to the privatization of public tasks.

⁶ Agency for Restructuring and Modernization of Agriculture [Act of 9.5.2008 on the Agency for Restructuring and Modernization of Agriculture (i.e. Journal of Laws of 2017, item 2137)], Military Property Agency [Act of 10.7.2015 on the Military Property Agency (i.e. Journal of Laws of 2019, item 492, 1214)], Material Reserves Agency [Act of 29.10.2010 on strategic reserves (i.e. Journal of Laws of 2017, item 1846)], National Center for Support of Agriculture [Act of 10.2.2017 on the National Agricultural Support Center (i.e. Journal of Laws of 2019, item 1080)], and Polish Agency for Enterprise Development [Act of 9.11.2000 establishing the Polish Agency for Enterprise Development (i.e. Journal of Laws of 2019, item 310, 836)].

⁷ In the foreign literature, the term agencification is defined as the process of transforming organizational forms typical of a specific legal system into forms that diverge from them in terms of organizational structure, the scope of tasks performed, the relationship between the representatives of public authority, and the legal forms used. They have not

describe agencies *sensu stricto*, that is government agencies, mainly due to their purpose as well as certain coherence and repeatability of their features.

The formation of Polish government agencies is traced back to the change of political system in the late 1980s when new public tasks to be carried out by public administration were regulated. Unfortunately, the then administration lacked bodies or entities that would have competences and legal tools necessary to perform tasks in the economic and military spheres. Due to the lack of bodies specialized in these areas, government agencies seemed to be a golden mean and a kind of compromise for the legislator. The process of forming government agencies, that started in the 1990s, can be divided into three stages. During the first stage, first government agencies were established in Poland: Agency for Restructuring and Modernization of Agriculture, Agricultural Market Agency, Military Property Agency, and Military Housing Agency. During the second stage (2000–2010), the legislator continued creating state agencies and the following ones were established: Polish Agency for Enterprise Development, Agricultural Property Agency, and Material Reserves Agency. During the last stage (2015–2016), the Military Property Agency and the Military Housing Agency were merged to form a new agency, the Military Property Agency. In addition, the Agricultural Property Agency and the Agricultural Market Agency were liquidated, the latter being included in the Agency for Restructuring and Modernization of Agriculture. The gap left after those two was filled by a new government agency, the National Centre for Agricultural Support.

been regulated and named the same way in every legal system, but what they have in common is the implementation of public tasks. Cf. for example government agencies in the United States of America (Brainard Guy Peters, “United States of America”, In: Government Agencies. Practices and Lessons from 30 Countries, ed. Koen Verhoest, Sandra van Thiel, Geert Bouckaert, Per Laegreig, United Kingdom: Palgrave Macmillan UK, 2012; European Union agencies [Alexander Kreher, “Agencies in the European Community – a step towards administrative integration in Europe”, *Journal of the European Public Policy*, 4(1997):226] and direct agencies in the Federal Republic of Germany (Tobias Bach, Martina Jann, “Structure and governance of Germany: A lot of continuity and little change”, In: *Change and continuity in public sector organizations*, ed. Paul G. Roness, Harald Saetren, Bergen: Fakkbokforlaget, 2009, 127 et seq.).

The creation of government agencies in Poland has allowed also citizens to exercise their rights to subsidies (e.g. in the case of farming, the right to a structural pension, running a small or medium-sized enterprise, production of regional products, etc.) for the specific activity they conduct. Of course, the exercise of such a right requires the prior fulfillment of requirements imposed by EU and Polish law simultaneously⁸.

Thus, we can see that the creation of the agency, although it resulted from adapting to EU requirements, or from the growing needs of society, citizens can use the activities and opportunities offered by Polish government agencies daily.

3. THE PURPOSE OF CREATING AGENCIES IN SELECTED EUROPEAN COUNTRIES

According to the views prevailing in the literature, agencies are created so that public tasks of economic nature are performed by specialized entities (e.g. government agencies). Most of the scholars point out that agencies have been formed to relieve public administration bodies of performing tasks, and also to adapt to the new needs of the state and society⁹.

Although it is hard not to agree with the above, answering the question why government agencies are created requires a deeper examination of the goal (goals) the legislator had in their mind while establishing those entities. Therefore, it would be wise to analyse the bills on forming particular government agencies and parliamentary stenographic records.

As regards Poland, in the bill of 2009 on public finances, the legislator expressed a view that government agencies were established to perform key

⁸ Paulina Bieś-Srokosz, "Public tasks performed by government agencies and quality of life in self-government communities", In: *Local Government in Selected Central and Eastern European Countries. Experiences, Reforms and Determinants of Development*, ed. Katarzyna Kuć-Czajkowska, Mariusz Sienkiewicz, Lublin: Wydawnictwo UMCS, 2016, 219–233.

⁹ Paulina Bieś-Srokosz, "Creating government agencies – the legislator's response to the needs of society", In: *Public administration in the face of social challenges and expectations*, ed. Małgorzata Gielda, Renata Raszewska-Skałeczka, Wrocław: Kolonia Limited, 2015, 23–26.

public tasks. Unfortunately, they provided no explanation of what they understood as “key”. Furthermore, they wished Polish government agencies would take the form of the EU executive agencies. It was then when that idea should have already been criticized. This is due to the fact that government agencies are not and will never be identical or similar to one another, neither in terms of the tasks they are to perform nor their status, activities or competences. Similarly to the EU agencies, Polish government agencies possess legal personality, but it is the only similarity between them.

3.1. German state agencies

One may often have an impression that the legislator’s actions are not always guided by a specific idea or intention, but that they aim at copying the solutions existing in other legal systems. The same holds for Polish government agencies that imitate the German model of agency.

As provided for in the Basic Law (Constitution) for the Federal Republic of Germany¹⁰, there are two types of agencies: direct (*unmittelbare Bundesverwaltung*), which from the legal point of view are part of the state and are not legally independent, and indirect (*mittelbare Bundesverwaltung*), which have a legal personality based on public law. The major difference between them is that indirect agencies have autonomy guaranteed by law, which can be demonstrated with their budget. The budget of the indirect agency is prepared by the agency itself and then approved by a competent minister, whereas the budget of the direct agency is part of the budgetary

¹⁰ The Constitution of the Federal Republic of Germany of 29 July 2009 (BGBl. I S. 2248), mainly the article 86. The federal agencies in Germany are established to assist the country’s executive branch on the federal level according to They are hierarchically organized on four levels: 1. low-level federal agencies are subordinate to middle-level agencies and are responsible for relatively small areas such as District Recruiting Offices, Waterways, and Shipping Offices or Chief Customs Offices; 2. middle-level federal agencies are situated between a federal ministry and the lowest administrative level. Their responsibilities are limited to specific regions; 3. upper-level federal agencies can be established. These agencies are directly attached subordinate to a federal ministry and mostly do not have any agencies subordinate to them and 4. top-level federal agencies which are distinguished from all other levels as they are specifically for e.g.: the administrative office of the Bundesrat, the Press and Information Agency of the Federal Government.

plans of a ministry the agency is subordinate to. As a consequence, direct agencies cannot freely implement regulations on financial management in the public sector. As regards human resources management, the same provisions apply to those two types of agencies. They can employ public officials and employees also on the basis of a civil law contract.

Direct and indirect agencies differ in terms of the management structure. Indirect agencies have ordinary management boards consisting of lobbyists, MPs, representatives of ministries, or all of them together. For instance, the board of the Federal Employment Agency involves unions, employers, and representatives of the government. The boards decide about the draft budgets of indirect agencies and exercise supervision over the agency management. By contrast, direct agencies do not have distinct managing groups (they may have advisory bodies which, however, have no formal decision-making authorization). Furthermore, considering the fact that direct agencies are managed by chairmen, boards are more common in indirect agencies.

Another clear difference between direct and indirect agencies is also visible in their social policy activities. As a rule, only direct agencies perform basic functions of the public sector, which involves mainly passing regulations on drugs, general competition, immigration, statistics, industrial property law, and protection of public order¹¹. Those functions are usually devolved by way of an act to higher or intermediate federal authorities (which resemble decentralized organizations). When it comes to federal institutions, they are established by way of a ministerial decree in order to: do research, provide consulting services, perform health promotion, do research on agriculture and IT.

Most of the indirect agencies have the status of state bodies that are normally responsible for social security systems (unemployment, accidents, illnesses, long-term care). Most of those bodies are not directly supervised by ministries, and there are no government representatives in their management boards. It means that the minister is not authorized to

¹¹ Tobias Bach, Martina Jann, "Structure and governance of Germany: A lot of continuity and little change", In: Change and continuity in public sector organizations, ed. Paul G. Roness, Harald Saetren, Bergen: Fakhbokforlaget, 2009, 127 et seq.

supervise and administer those bodies. Agencies are usually financed (with some exceptions) from the state budget.

As regards the state policy implementation, federal agencies have been given quite a high level of autonomy, which refers particularly to their main activity and setting their priorities. Indirect agencies are characterized by a much higher degree of autonomy in their general activity and in setting their priorities¹². It should be noted that an agency's involvement in shaping its policy manifests itself in the fact that agencies often serve as sources of information for ministries they are subordinate to¹³. It is a task performed by numerous agencies. The results of a survey conducted by *Comparative Public Organization Data Base for Research and Analysis*¹⁴ indicate various levels of the politicization of agencies and a variety of actions undertaken as part of their development¹⁵. It is worth mentioning that the agencies' involvement in the development of the financial policy depends, to a large extent, on the will of the government administration which determines the level of the agencies' contribution to the state policy. In addition, the experience of agencies is utilized mainly during the preparation of political solutions regarding their organization and finances.

Direct agencies are, as a rule, subject to two types of supervision: hierarchical-functional and legal. The functional supervision concerns employees, organizational structure, and the use of formal procedures. The legal supervision (*Rechtsaufsicht*) is more limited, for it enables the competent minister to check the compliance of the regulations applied by the agency with superior legal acts. When it comes to indirect agencies, the competent minister exercises only legal supervision. Only several ministries have principles governing the exercise of functional supervision distinctly stipulated.

¹² Ibid., 127–147.

¹³ Cf. Marian Döhler, *Die politische Steuerung der Verwaltung. Eine empirische Studie über politisch-administrative Interaktionen auf der Bundesebene*, Baden-Baden: Brotschert, 2007.

¹⁴ COBRA.

¹⁵ Tobias Bach, "Policy and management autonomy of federal agencies in Germany", In: *Governance of Public Sector Organizations—Proliferation, Autonomy and Performance*, ed. Per Leagreid, Koen Verhoest, Hampshire: Palgrave Macmillan UK, 2010, 89–110.

In 2008, the ministers agreed to adopt inter-departmental guidelines on the exercise of functional supervision. According to the departmental principle of sovereignty, each ministry can independently decide whether or how to implement those guidelines (which are general and contain mainly a list of the aims of that supervision and the tools necessary to exercise it)¹⁶.

According to the research conducted by COBRA company, the ministerial supervision exercised over indirect agencies was more diverse than the supervision exercised over direct agencies. The supervision exercised by ministers concerned mainly management issues rather than the policy, which finds reflection in the high level of the agencies' autonomy, the possibility to make hierarchical interventions in political decisions, and numerous restrictions as regards making decisions about finances and personnel issues¹⁷. It stems from "a strong conviction that giving authorities a mandate is sufficient to ensure administrative efficiency"¹⁸. That mandate is rooted in the administrative tradition of the country (*Rechtsstaat*).

Unlike in other countries, new *quasi*-autonomous entities are not being created in Germany, and the number of agencies is decreasing because of transforming and merging them into more autonomous legal bodies. Although some agencies had clearly worded contracts with competent ministers, it seems that quality management tools are more frequently used for the purposes of the internal management of agencies rather than efficiency-based ministerial supervision.

3.2. French agencies

Before discussing the agencies functioning in the French legal system, it should be noted that agencification of the French public administration began in the early 1990s with the establishment of responsibility centres.

¹⁶ Tobias Bach, "Germany", In: Government Agencies. Practices and Lessons from 30 Countries, ed. Koen Verhoest, Sandra van Thiel, Geert Bouckaert, Per Laegreig, United Kingdom: Palgrave Macmillan UK, 2012, 177.

¹⁷ Tobias Bach, "Policy and management autonomy...", 91 et seq.

¹⁸ Tobias Bach, Marianna Jann, "Animals in the administrative zoo: the organizational change and agency autonomy in Germany", International Review of Administrative Sciences 3(2010): 462.

The main and characteristic features of these centres were employed in shaping the majority of state operational units (created in 2000), as well as in a new category of non-autonomous state bodies (created in 1997).

In February 1989, the Prime Minister of the French Republic announced the reform program “Renewal of public service” (Renouveau du service public). It was a turning point in the modernization of the French administration. The program assumed, among others, creating “more autonomous administrative units” called centres of responsibility (*centre de responsabilité*). The inspiration for adopting such solutions was drawn most likely from the British legal system, from British executive agencies to be more precise. Creating responsibility centres entailed creating entities that would have more autonomy in managing human resources. Thus, responsibility centres were to have increased autonomy in financial management owing to the simpler (*ex ante*) control of financial procedure¹⁹. In 1995, the process of de-concentration of state administration was initiated, which encompassed the state central administration. The basic criterion for transforming administrative units into responsibility centres was the services that were to be provided to the general public and public administration bodies.

Nevertheless, the term “executive agencies” (agencies) does not function independently in the literature. Instead, there are “autonomous public units”, which are an example of the agencification of entities functioning in the French legal order, i.e. those entities that are public units and have legal personality. Autonomous public units form an important part of the French state administration. Currently, there are approximately 584 autonomous units, which have about 366,000 full-time employees (the total number of administration employees is about 2.4 million).

The French autonomous public units were created *ad hoc*, not always in line with the previously adopted plan for how to create them and how they should function. Initially, the assumption was that autonomous units would become specialized in specific areas and thus better prepared for performing such special tasks. Currently, they are perceived as a kind of

¹⁹ Francois Lafarge, “France”, In: Government Agencies. Practices and Lessons from 30 Countries, ed. Koen Verhoest, Sandra van Thiel, Geert Bouckaert, Per Laegreig, United Kingdom: Palgrave Macmillan UK, 2012, 99.

“escape” from administrative regulations. It is worth noting, however, that the tendency to “escape” from the regulation of administrative law resulted in some units applying only part of administrative law. The fact that the units have legal personality contributes to the increase in the significance of their actions. Moreover, having legal autonomy means having own management bodies and budget. The establishment of autonomous public units in the sectors of the state policy was unsystematic. Therefore, activities are currently undertaken simultaneously by the central or local administration, and by the autonomous entities²⁰.

The French model of a unit with legal personality was widely used by the state administration to create entities that were to undertake a profit-oriented private activity or non-profit activity (mainly associations and foundations). In addition to public autonomous units, alternative entities were created, which were subject to administrative law regulation to a considerably lesser extent. In 1982, a public interest group was created to facilitate cooperation between public institutions and public and private law entities. It is emphasized that this is how the sphere of administrative law was made accessible to private law. Nevertheless, it is not possible to make a clear distinction and draw a borderline between private and administrative law. Hence, it is judicial decisions that have been the source of solutions in that respect. Both the judges and the scholars question the validity of the criteria (principles) which were the basis for determining whether the public activity of a given organization should be considered in terms of administrative law or private law. This is due to the fact that similar actions taken by various autonomous public units were in some cases classified as public law and in other cases as private law activities. It would be advisable that their legal position is determined in detail at the highest level of political structure.

The first of the rules allowing to determine the legal form of a given unit is the principle of *attachement*. It helps to describe the level of dependency of an autonomous public entity and its close relations with the state. It stems from the fact that autonomous public entities: 1.) are created by the state, 2.) are financed mainly by the state, and 3.) implement state tasks. Even if the consequences arising from this principle are

²⁰ *Ibid.*, 100 et seq.

far from being formalized, they are of great importance, for it means a representation of the state in relations with other entities, as well as the state's participation in strategic supervision and in the process of making the most important strategic decisions²¹.

The principle of *attachement* can be a source of two main problems in relations between the state and its autonomous public units. Firstly, the ministry can develop a procedure for supervising the activities of its subordinate bodies (entities). Secondly, more than one ministry is usually in charge of one body (entity), which means that the former tries to influence the actions of the latter by orienting them towards their own priorities. As a result, strategic supervision and even *tout court* (court supervision) is not clear or even does not exist.

Autonomous public institutions are subject to financial control. It covers all their expenditure decisions even if they participate in various financial audits resulting from their mission. Generally speaking, commercial and industrial activities undertaken by autonomous public entities are subject to control referred to as “general economic and financial control of the state”, which was originally intended for controlling the activities of state-owned enterprises and companies co-owned by the state.

According to F. Lafarge²², the French state creates new categories of executive agencies (defined as national services, a category created in 1997), but with state executive agencies (in particular autonomous public bodies) being granted a wider scope of autonomy. The author's opinion is that if the majority of currently introduced changes are similar to NPM tools²³, the main political program introducing these changes should not be considered inspired by NPM.

In order to reduce the costs incurred by the French Republic to finance the activities of autonomous public bodies, these entities underwent restructuring, which concerned mainly their management and financial control. Owing to the changes that have been being introduced since 2000,

²¹ Étienne Fatôme, *A propos du rattachement des établissements publics*, ed. Mélanges Jacques Moreau, Paris: Economica, 2003, p. 151.

²² Francois Lafarge, “France”, In: *Government Agencies. Practices and Lessons from 30 Countries*, ed. Koen Verhoest, Sandra van Thiel, Geert Bouckaert, Per Laegreig, United Kingdom: Palgrave Macmillan UK, 2012, 108.

²³ *New Public Management*.

executive entities (bodies) that may be close (in terms of their operation) to the model of the executive agency are nowadays quite rare.

3.3. *British government agencies*

Currently, there are about 1148 *quasi*-autonomous public institutions known as agencies in the public sector of the United Kingdom of Great Britain and Northern Ireland. These entities operate at the level of government administration or act as administratively decentralized institutions, particularly in Scotland, Wales and Northern Ireland. Executive agencies should be classified as *quasi*-autonomous organizations²⁴. They are headed by directors who cooperate with competent ministers. Executive agencies in the United Kingdom carry out tasks that cover the following areas: defense, social security, health administration, environmental protection, agriculture, fishery, justice, transport, land registration, and intellectual property. Most of them are focused on satisfying the needs of society and pursuing its public interests, while others deal with conducting research or drafting legal regulations.

Executive agencies have their own budget, which can be created in three ways. First of all, they can be financed entirely from the state budget. However, the number of funds to be allocated to a particular agency should first be voted by the parliament. Executive agencies functioning this way are subject to total control, both in terms of expenses and revenues. The second way is net financing. Since the state partially finances the agency's activities, it exclusively exercises control but only of its expenditure. Under the net financial system, the agency's expenditure threshold may be increased, but only if it has seen an adequate increase in revenue. The third way is self-financing. As a consequence of such financing, the agency is defined as a market entity that is free to set and differentiate (depending on the demand) the prices of the services provided to customers²⁵.

²⁴ Oliver James, Sandra van Thiel, "Structural Devolution to Agencies", In: *The Ashgate Companion to New Public Management*, ed. Tom Christensen, Per Laegreid, Farnham: MPG Books Group UK, 2010, 209–222.

²⁵ Office of Public Services Reform and HM Treasury, "Better government services: Executive Agencies in the 21st Century", London, 2002.

There are a variety of management structures in executive agencies. The model of employment is stipulated in the agency's framework document²⁶. Each agency should have a departmental sponsor, who can be the oldest civil servant enjoying the trust of the minister and the president of the agency. The departmental sponsor is a "source of advice" located outside the government administration. They help achieve efficiency and establish the framework for managing the agency, advise the minister on providing information on the agency's performance, and advise the president of the agency on its actions.

Another element of the internal structure of British agencies is the management board, whose task is to support the agency's president. It consists of at least two members from outside the agency's executive bodies. These members' task is to provide the supervisory board with external expert opinions. Although they advise and support, they have not been authorized to issue instructions, and they are not responsible for the agency's actions.

The UK's model of the executive agency has been designed in such a way so as to strengthen the separation of politics from government administration management by giving the minister the control over the management, and the agency's president the autonomy from political decisions. The broad political framework and general vision of the agency's work are set by the competent minister after consultation with the minister of Treasury and with the office of the minister of civil service. The framework document published for each agency contains a detailed list of tasks and activities, as well as the agency's political goals. It also shapes the relationship and the division of responsibility between the agency's president and the minister and other parties. The agency's president is directly accountable to the minister for its efficient and effective work, whereas the minister is responsible for its political goals.

The framework document is evaluated every five years in terms of the effectiveness of the agencies' work and implementation of government goals. It may also be considered whether the agency's goals should be changed or whether its service is needed at all. As a consequence, a decision may be issued on reorganizing the agency or terminating its existence.

²⁶ "A guide for departments", Agencies and Public Bodies Team, Cabinet Office, 2006.

The above-mentioned decisions are influenced by political and ideological preferences of currently ruling political factions.

For a long time, the United Kingdom used *quasi*-autonomous bodies, usually executive agencies, which were not part of public administration. The increase in the number of agencies in the late 1980s and 1990s was a breakthrough. At the end of the 1990s, the number of agencies and autonomous forms of public administration began to decrease. The core of the executive agency system seems to have been intact, though it is subject to continuous changes. The British model of the agency has been transferred to other legal systems in countries such as Canada, Korea, and Japan. In addition, the activity of agencies in the UK contributed to the increased transparency of the services provided by the government administration. As a consequence, attention was drawn to those services themselves and the agencies could act as enterprises oriented towards results and economic effects. Still, neither the final balance of total profits gained by all the agencies nor the costs of their activities as a whole has been fully assessed²⁷.

3.4. Polish government agencies

Government agencies are a group of public administration entities characterized by special features which make it possible to distinguish them from typical entities. As it has been said, government agencies have legal personality, which is the basic feature distinguishing them from public administration entities. Owing to legal personality, government agencies can participate in civil law transactions. They have been conferred legal personality so that they can perform public functions with the help of their own business activity. Having legal personality means also the capacity to act in law and legal capacity granted by civil law. State agencies may, therefore, hold rights and obligations as well as be a party to obligation relationships. At the same time, the fact that government agencies are established by way of an act, perform public tasks and are authorized to use administrative power leads to the conclusion that they are both public

²⁷ Cf. Oliver James, *The Executive Agency revolution in Whitehall*, Basingstoke: Palgrave Mcmillan, 2003, 2–7 and 41–55.

and administrative law entities, and that they can act as a²⁸ party to administrative²⁹ proceedings.

First of all, it should be emphasized that government agencies are created and act on the basis of statutory regulations. The legislator decides about the organizational structure, organs, tasks and financial management of government agencies. Nevertheless, the regulations serve only as a framework which is then complemented and specified by the statutes (rules and regulations) of particular agencies. When it comes to the organizational structure, it is centralized. The agency's president is authorized to determine the internal organization of its particular organizational units based on the internal regulations. They also manage the agency and represent it outside. The president performs a considerably wide range of tasks, which means they have an influence on the work of the agency in general. The centralized system of the agency consists of the central office with the president, at the lower level there are regional branches headed by directors, and then poviát offices (local offices) headed by managers. The organs of these organizational units are subordinate to the president of the agency, however, they have a separate list of tasks and competences to be performed in their areas.

Second of all, state agencies are characterized by hierarchical dependency (subordination) on government administration bodies. At this point, it should be clarified that it is permissible to use the terms "dependency" or "subordination" to refer to the supreme bodies of state administration. Pursuant to the statutory provisions on establishing a given government

²⁸ Cf. Józef Filipek, "Podmiotowość w prawie administracyjnym", In: Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z konferencji jubileuszowej Profesora Eugeniusza Ochendowskiego, Toruń: TNOiK, 2005, 184–185; Jacek Supeł, "W sprawie podmiotowości administracyjnoprawnej", In: Prawo do dobrej administracji. Materiały ze Zjazdu Katedr Prawa i Postępowania Administracyjnego, ed. Zygmunt Niewiadomski, Zbigniew Cieślak, Warsaw: Uniwersytet Kardynała Stefana Wyszyńskiego, 2003, 590–591.

²⁹ Cf. Grzegorz Łaszczycza, Czesław Martysz, Andrzej Matan, Postępowanie administracyjne ogólne, Warsaw: C.H. Beck, 2003, 292; Janusz Niczyporuk, "Podmiotowość administracyjnoprawna a zdolność administracyjnoprawna-delimitacja pojęć", In: Współczesne zagadnienia prawa i procedury administracyjnej, ed. Marek Wierzbowski, M.; Jacek Jagielski, Aleksandra Wiktorowska, Ewa Stefańska, Warsaw: Wolters Kluwer, 2009, 182–185.

agency, this entity is subordinate to and supervised by the competent minister. In nearly all cases the relation of supremacy and subordination between the government agency and the competent minister takes the form of management. However, if the competent minister establishes the statute of an administrative agency by way of an ordinance, then it is organizational subordination. This subordination means that the superior body is authorized to issue legal acts that bind those entities and stipulate their general structure, tasks, competencies, procedures, etc.

Third of all, the public tasks performed by government agencies concern the specific scope of matters. Most of the government agencies provide financial support to farmers, producers of healthy and organic food, private entities conducting an innovative activity, and entities implementing programs specified by the agency. Under the current law, each administrative agency implements its tasks using civil law agreements based on specific provisions regulating the establishment and work of such entities. The analyses of the legal forms used by the government agencies show that the private law form of operation is prevalent.

Unfortunately, the Polish legislator does not always act rationally. When analyzing the parliamentary stenographic records, one can discover that the Polish legislator imitates or intends to imitate the legal solutions that already exist in other legal systems. An interesting example is the merger of the Military Property Agency and the Military Housing Agency into one government agency, the Military Property Agency, which took place in 2015. Even the first articles of the Act on Military Property Agency³⁰ raise many doubts and questions as to its legal status and classification among the proper group of entities. In Article 5 of the above-mentioned Act, the legislator states that the Military Property Agency is an executive agency. In my opinion, this provision shows not only the legislator's inconsistency in using the proper nomenclature but also the lack of logic in their actions.

Taking into account the content of the stenographic records regarding the bill on Military Property Agency, it must be stated that this agency has been established first of all because the European and global arms

³⁰ The Act of 10 July 2015 on Military Property Agency (Journal of Laws of 2015, item 1322).

markets have changed so much that a large number of countries do not want to talk about the purchase of arms with potential suppliers, i.e. entrepreneurs who produce such arms, and that is why this task has been delegated, in a specified scope, to the Military Property Agency; second of all, the hitherto prevailing practice in other countries shows that their method is to establish a government agency which, on behalf of the minister of national defence, can trade in military property and offer it to other countries under agreements between governments. According to the position of the Director of the Armament Policy Department of the Ministry of National Defense, General Włodzimierz Nowak, the adoption of the above-mentioned solution aims to ensure that “the Military Property Agency is an executive agency of the Minister of National Defence. This is provided in detail in Article 57 of the Act on Military Property Agency, which stipulates that, on the basis of a decision issued by the minister in connection with the conclusion of an agreement between governments, the Military Property Agency may be a government agency performing tasks that arise from this agreement”³¹.

The above-quoted statement of General Włodzimierz Nowak substantiates my opinion that there is a lack of consistency in using the terms government agency and executive agency. Furthermore, as the stenographic record shows, the establishment of Military Property Agency as a new untypical entity within public administration was motivated by the fact that a similar model had already existed in other legal systems. Therefore, believing in its success, the legislator decided to transfer that model to the Polish law. In my view, the legislator’s reasoning and approach to creating legal solutions raise certain doubts, as well as it does not necessarily correspond to the needs of the society.

3.5. Is the Polish state agency a copy of the German model?

There is no doubt that the above-described German agencies resemble, in most areas, the Polish government agencies. The model of Polish government agencies is an example of the so-called legal transplants in admin-

³¹ <http://orka.sejm.gov.pl/Zapisy7.nsf/wgskrnrr/OBN-128>, Bulletin No. 4731/VII, (access date: 31.08.2019)

istrative law³². However, it is impossible to compare it with the French or the British models (especially with the latter). Above all, this is because these agencies are autonomous entities, which is the opposite of the Polish agencies. Admittedly, if one tries hard, they can find some similarities to the British model, such as the cooperation of the agency's director with the minister, or the scope of matters dealt by the agency. Nonetheless, the structure and legal nature of the British agency is different from the Polish one, which means that the latter can not have been based on the former.

The similarities should be sought between the Polish and the German models. Firstly, in both cases, the legal basis for establishing an agency is a normative act of statutory rank. The normative act stipulates about the agency's tasks, the agency's body's tasks, the financial management, and the supervision over the agency. Secondly, both agencies are headed and managed by presidents. The president is responsible for the agency's work and represents it outside. Thirdly, the scope of activities undertaken by the Polish and the German agencies is similar in areas such as the army, property management, and support of agricultural production. Fourthly, the activity of both the Polish and the German state agencies is financed from the state budgets. Fifthly, the relationship between the minister and the agency is of hierarchical nature in both countries. This subordination allows the minister to issue additional orders or internally binding acts imposing additional tasks on the agency.

The transfer of the German model of the agency to the Polish legal system should arouse certain hesitancy in its correct and proper functioning. Because German agencies operate under federal law, which cannot be referred to Poland. Of course, legal transplants, as in the great examples in administrative law, were applied in full without the Polish legislator distinguishing between German direct and indirect agencies. Hence, the Polish agency model has the characteristics of these two German agencies.

³² Cf. Paulina Bieś-Srokosz, "The Transformation of Administrative Law Through Legal Transfers: the Case of Government Agencies in Post-1989 Poland", *Wroclaw Review of Law, Administration & Economics* 2(2016): 151-162; Jonathan Miller, "A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process", *The American Journal of Comparative Law* 51(2003): 845-868.

4. CONCLUSIONS

It seems justified to say that the idea behind establishing the government agencies was (and is) not to satisfy the social needs and carry out specific tasks but to transfer foreign agency models to the Polish system. This could (can) stem from the fact that at a given moment the legislator was (is) not able to create a completely new entity model that would fully “fit in” the Polish legal system. One can get the impression that the legislator often (as in this case) seeks ready-made legal solutions that have proved to work properly in other countries, for example in Germany.

Government agencies function not only in Europe but also in the United States of America, which is considered to be the precursor in that field. The American legal solutions have become a model that is being adopted by other countries. The concept of *quangos*³³ adopted in the United Kingdom of Great Britain and Northern Ireland, as well as the concept of administrative authorities in France, are derived from the model of American agency³⁴.

It is also worth to mention the agencies functioning within the European Union. However, they are so diverse in terms of establishment procedure, operation and autonomy that it is difficult to identify their common reference point, like in the case of Polish agencies and their equivalents from France, the UK, and the EU. It is the German model of agency that finds reflection in Polish agencies, which is an effect of legal transplantation performed by the Polish legislator.

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³³ *Quasi-autonomous non-governmental organizations*.

³⁴ Hubert Izdebski, Michał Kulesza, *Administracja Publiczna. Zagadnienia ogólne*, Warsaw: Liber, 1999, 156 et seq.

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