THE GOVERNANCE OF THE WIDER STATE SECTOR: DEFINITIONS AND ISSUES

Forum on Modernising Government, Château de la Muette, Paris
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This note provides background for the Workshop on "Devolving Power to and Controlling Public Bodies: the Governance of Public Agencies and Authorities".

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Background note for the Workshop on “Devolving Power to and Controlling Public Bodies: the Governance of Public Agencies and Authorities”

Background information

1. At its 2000 meeting, the OECD Senior Budget Officials Working Party proposed a project on the governance of public agencies and authorities. On 19-20 April 2001, experts from 12 OECD Member countries gathered in Paris to discuss the main issues regarding the governance arrangements for public agencies and authorities and draw some preliminary conclusions. Experts from Canada, France, Germany, the Netherlands, New Zealand, Spain, Sweden, the United Kingdom, and the United States provided individual country reports detailing national experiences in this field.

2. This short note aims at giving a framework and providing discussion points for the workshop on “Devolving Power to and Controlling Public Bodies: the Governance of Public Agencies and Authorities”, to be held during the Forum on Modernising Government in Paris on 6-7 November, 2001.

Understanding the scope of the topic

3. Public Agencies and authorities form what we call the “wider state sector” - which includes all bodies which are part of local or national government and have been given some autonomy and/or some independence from ministries to which they report¹, and/or are subject to a completely or partially different set of management and financial rules from traditionally vertically integrated ministries.

4. Reasons for creating these bodies vary between and within countries depending on the type and functions of agencies, but they include usually one or more of the following:

   – Providing managerial autonomy and administrative flexibility;

   – Emancipating policy implementation from policy making;

   – Escaping some of the cumbersome administrative and sometimes legal obligations of vertically integrated ministries;

   – Enabling collaborative partnerships between different levels of government and thus allowing collaborative monitoring between different levels of government or between organisations at the same level of government;

¹ In this paper, departments in the sense of the United States administration will be referred to as « ministries. »
Ensuring freedom from politically motivated interference;
Delivering services closer to citizens and allowing citizens/civil society involvement in the management or oversight of the public body;
Preserving policy continuity, which is seen as a necessary condition of policy credibility;  
Allowing professional oversight and establishing insurance bodies for liberal professions.

5. Public bodies included in the definition of the wider state sector have the following characteristics:

- They have been given or created with a certain degree of managerial autonomy or independence from central ministries and/or are subject to a different set of management and financial rules from traditionally vertically integrated ministries;
- They are part of national or local government - they or may not be legally separate from the state (i.e. they may or may not have their own legal personality).
- They have an accountability framework which is partially or completely different from those of traditionally vertically integrated central ministries.
- Their activities are mainly public functions.
- They can be created by the executive part of government or by the legislature.
- They might function under public law or private law or both.
- Their staff can be considered as part of the civil service or function under general common labour law.

6. Entities which constitute the wider state sector vary according to their functions, in their legal and organisational forms, in their internal governance structure, in their accountability mechanisms and in their relationships to the reporting ministry.

7. The terms used to define them differ from country to country. They might include the following: agencies, non-departmental public bodies, public establishments, crown entities, autonomous bodies, independent public bodies, bodies of public law, independent administrative authority etc.

8. Our definition excludes “state-owned enterprises” which mainly carry out commercial activities and should mainly apply corporate governance principles. Excluded from the wider state sector are organisational bodies resulting from political decentralisation and administrative deconcentration, constitutional bodies (courts, audit bodies, central banks etc.), as well as private and not for profit organisations - even if they are substantially funded by the government to perform public tasks.

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Problem Statement

The size of the wider state sector has increased over time...

9. In many countries, there is evidence that over time, the size of the wider state sector has significantly increased. Over the last 50 years, it seems that only few autonomous bodies have seen their autonomy withdrawn and have been brought back under core ministerial hierarchy.

10. Partial data in a number of OECD Member countries show that the importance of the wider state sector in terms of its share of public expenditure and its share of public servants is above 50 per cent, and sometimes above 75 per cent.

11. Developing countries and countries in transition have often been encouraged over the past decade to establish more autonomous public bodies. Within a few years, hundreds of semi-autonomous public bodies have been set up in order to avoid a bureaucratic functioning of public organisations and adopt more entrepreneurial approaches.

...creating some new and specific governance issues

12. Bodies created within the wider state sector have often been established on an ad hoc basis. Few countries have set up specific governance frameworks taking into account the specific challenges involved in the management of the wider state sector, i.e. management from a distance.

13. As a result, new governance problems have emerged in all countries, and national priorities have now moved away from the urge to delegate and devolve to the challenge of finding the right balance between accountability and autonomy, openness, performance management, and issues of steering capacity of central ministries.

14. Governance issues which have emerged include:
   - How to maintain the readability/legibility of the administrative organisational system?
   - How to make sure that the wider state sector does not function outside of political debate, and is not run largely on “auto-pilot” with little control and influence by their parent ministries?
   - How to ensure that good reporting and accountability mechanisms are in place and allow central reporting ministries to monitor the wider state sector in the best possible way?
   - How to maintain a “whole of government” perspective on the activities of the wider state sector?
   - How to ensure policy coherence or a coherent public service?

15. In some transition and developing countries, autonomous and semi-autonomous public bodies have taken an almost unlimited variety of legal and organisational forms. Central departments and ministries also tend to have an uneven capacity to monitor and control the activities of these semi-autonomous bodies. Sometimes, some crucial governance problems have emerged including:
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Policy fragmentation and difficulty in maintaining government coherence -- central departments might not have the capacity to monitor the activities of newly established semi-autonomous bodies. Also autonomous and semi-autonomous public bodies might undermine policy objectives especially when they adopt quasi-fiscal activities that stretch beyond the original policy intention of government.

Inherent weakness of government management and supervisory arrangements – government bodies have not factored in the capacity needs to manage and supervise agencies, i.e. developing performance benchmarks and reporting systems but also ways of co-ordinating activity plans.

Lack of readability of the government’s organisational system - the number of organisational forms and accountability frameworks and the lack of transparency of those arrangements might create problems for monitoring and controlling these bodies as well as undermine citizens’ trust.

Budget disaggregation – the budget and resources of autonomous or semi-autonomous might escape the formal and informal rules of the budget process, including the systems for managing and controlling public expenditure.

Increased political and personal patronage--appointments to general management of semi-autonomous entities might serve party of personal interests of the nominating body.

Disaggregation of the civil service – semi-autonomous public bodies might be given exceptions from the government personnel regime creating different treatments of personnel and undermining staff mobility and in some cases staff morale.

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Areas of focus for improved governance of the wider state sector:

1. **Improve the clarity of the system**

At the systemic level:

- Clarification of the types of autonomous and semi-autonomous bodies, the criteria for their establishment, the legal rules that apply to them, their accountability mechanisms and their employment rules.

- Establishment of general principles for the governance structure of agencies (roles and accountabilities between head of agency and governing body, main reporting mechanisms), and transparency principles (in appointment processes,) while allowing enough flexibility for special standards at the level of the agency

- Establishment of an integrated legal framework and an improved coherence between organisational framework and other legislation such as financial legislation

- Focus on the need for improvement of central ministries capacity to monitor and control semi-autonomous and autonomous public bodies
– Establishment of good policy co-ordination schemes and mechanisms for reporting to cabinet/council of ministers and Parliament

At the agency level:

– Improvement of the clarity of the need to establish a semi-autonomous body and clarity of its mission, possibly through a clearly formulated enabling law, or, in other cases, through improved contractual arrangements
– Improvement of transparency of agency tasks and performance

2. Improve the governance structure

– Improve the clarity and transparency of top governance (relationships between reporting and responsible minister, Board when it exists, and Chief Executive)
– Improve transparency of appointments and remuneration
– Establish clear rules for avoiding conflicts of interests of board members and/or Chief Executives

3. Strengthen reporting to central ministries

– Improve the wholeness of the reporting system
– Strengthen capacity in central reporting and Finance ministries
– Improve performance management systems

4. Strengthen financial management and control and audit

– Review and strengthen rules of financial management and control
– Strengthen capacity of the audit institutions to audit the wider state sector
– Strengthen capacity at central and semi-autonomous or autonomous body level to exercise good financial management and control

5. Strengthen accountability to other stakeholders: Improve parliamentary control over the activities of autonomous bodies

– Make individual autonomous body’s accountability mechanisms, activities and performance more easily controllable by Parliament.
– Improve Parliament’s capacity to process this information.
6. **Maintain government coherence**

- Systematise line ministry reporting to whole of government on agencies’ activities, and performance reporting.

- Improve centralised cabinet processes around the wider state sector (the lead department remains the steering organisation on strategy and policy advice but cabinet is sometimes involved in some major decisions on agencies).

- Improve long term planning of the activities of autonomous bodies

- Organise mandatory reviews of agencies.