DISTRIBUTED PUBLIC GOVERNANCE: AGENCIES, AUTHORITIES AND OTHER GOVERNMENT BODIES

Modernising Government: How Well Have Public Administration Policy and Practices Transferred From Developed To Transitional Countries?

London School of Economics
2-3 December 2002

This Round Table is the result of collaboration between OECD, IADB, IPMN and the IIM at LSE. This is a contribution to OECD’s Global Forum on Governance initiative.

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JT00135664

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SYNTHESIS REPORT*

1. Introduction and definitions

1.1. Purpose of the study

“Distributed public governance” is concerned with the protection of the public interest in the increasingly wide variety of government organisational forms. In this report, we concentrate on those differentiated government bodies that we call “agencies, authorities and other government bodies.” We have avoided the single terms used in academic literature such as “agencies”, “quangos”, “non-departmental public bodies”, “arm’s-length public bodies”, “subsidiary organisations”, “autonomous government bodies”, etc. Each of these terms has a specific meaning in the literature and tends to concentrate on certain types of bodies, de facto excluding some categories of government organisations included in our study. Indeed, we believe that one important reason for the shortcomings of international comparative research in this area lies in the use of an ambiguous terminology and the absence of a coherent classification of the variety of organisational forms.

Despite the number and importance of agencies, authorities and other government bodies, the systems that ensure that they function in the public interest have been understudied. While the governance of core government (ministries functioning in a traditional, vertically integrated hierarchy, Parliament, local government) and of the corporate sector (including government-owned companies) have been thoroughly studied across countries, comparative information among countries on agencies, authorities and other government bodies is very limited. This is all the more striking as, in some countries, they account for more than 50% of public expenditure and may employ more staff than traditional vertically integrated ministries.

This lack of information and comparative analysis is due to three main factors:

- The problems posed to central government by this increasingly complex set of government bodies have been identified as systemic only in recent years. Apart from recent coherent programmes to create these bodies, such as the Next Step Agencies programme in the United Kingdom or even the more recent agency creation programme in the Netherlands, most of these bodies have been created throughout history on a case-by-case and ad hoc basis without systematic reflection on the consequences for the government as a whole. Many governments now realise that managing from a distance has created specific accountability and control issues, and have started focusing on improving the governance of these bodies.

- The international debate about distributed public governance has tended to focus on organisations associated with New Public Management (NPM). Too often, the word “agencies”, drawing on the

* This article is taken from Distributed Public Governance: Agencies, Authorities and Other Government Bodies, OECD, 2002.
relatively unique experience of the “Next Steps” agencies in the United Kingdom in the 1980s and 1990s, has been used to describe bodies created over a much longer period and for a wide variety of purposes. The rationale of differentiating organisational forms for the purposes of “autonomisation”, as portrayed by the NPM literature, is not necessarily valid in countries where differentiated organisational forms have existed for a long time. Only in a minority of countries have differentiated government organisations been created specifically for “autonomisation” reasons in the 1980s and 1990s. It is thus important to de-couple the debate over organisational form from the debate over “autonomisation”.

- Acquiring comparative information on the governance of a variety of very different government bodies functioning in different institutional contexts, and drawing general conclusions applicable to different countries, has proven difficult.

This publication seeks to provide unique comparative information and analysis on distributed public governance and to examine old and new governance problems involved in managing arm’s-length government bodies in nine OECD Member countries. By creating a common language and formulating some common concepts, it aims to provide an important tool of analysis for governments and scholars of public management. This introduction builds on the nine country reports provided for this publication, on the discussions that took place during PUMA’s meeting on the topic in April 2001, and on further work undertaken throughout 2001 and in early 2002 in PUMA.

1.2. Understanding the scope of distributed public governance

1.2.1. Diversity and commonality of agencies, authorities and other government bodies

A diverse set of bodies

There are many types of “agencies, authorities and other government bodies”, which differ in their size, their function (from quasi-judicial to regulatory and commercial functions), the rationale for their creation, their funding, their legal and organisational forms, their internal governance structure, their accountability mechanisms and their relationships to the reporting ministry. Their characteristics also vary widely. For example, they can be created by the executive branch of government or by the legislature; they might function under public law, private law or both; and their staff may be considered as part of the civil service or come under general common employment law.

They have also been named differently in different countries, and include:

- In Canada: Service agencies, Special Operating Agencies (SOAs), departmental service agencies, and in some cases shared governance corporations.

- In France: Public establishments (Établissements publics) and independent administrative authorities (Autorités administratives indépendantes).

- In Germany: Federal agencies (direct federal administration, unmittelbare Bundesverwaltung); bodies of public law (indirect federal administration, mittelbare Bundesverwaltung) and some private law administration entities (Bundesverwaltung in Privatrechtsform).
• In the Netherlands: Independent administrative bodies (Zelfstandig Bestuursorgaane, ZBOs) and agencies (Agentshappen).

• In New Zealand: most “Crown entities” and semi-autonomous bodies.

• In Spain: Autonomous bodies with administrative functions (Organismos Autonomos, OA), public entities providing services or goods susceptible to transactions that are different from “state-owned enterprises” (Entidades Publicas Empresariales, EPE), and public bodies (Organismos Publicos).

• In Sweden: Boards and agencies.

• In the United Kingdom: “Next Steps Agencies” and “non-departmental public bodies”.

• In the United States: some agencies, independent agencies, regulatory independent commissions, and government corporations.

Overall, it is poorly defined territory. These bodies are all part of national government. They are defined by exception excluding all traditional, vertically integrated ministries. The fact that they are considered part of government excludes by definition private firms and non-governmental organisations, even when they are mainly funded by government entities. Our definition also excludes government companies, to which corporate governance better applies. Also excluded from this group of entities are bodies resulting from administrative decentralisation (or “deconcentration”), local government, and constitutional bodies (courts, audit bodies, etc.) – which function within specific governance frameworks usually embedded in the Constitution.

Common features

Organisationally, these bodies have usually been created by:

• isolating structures within ministerial departments and providing them with a quasi-contractual relationship with the top hierarchy of the ministry; or

• separating them institutionally from traditional, vertically integrated ministries; and/or

• providing them with a complete or partial legal identity separate from that of the state.

As a result of this organisational and/or legal “separateness”, they are all characterised by some or all of the following features:

1. A top governance structure differentiated from traditional, vertically integrated ministries

• A differentiated hierarchy: They are usually under a different hierarchy from traditionally functioning ministries, reporting directly to the minister, the chief executive of the ministry, and in some relatively rare cases to the head of government or the whole of Cabinet. The head of these bodies, i.e. the chief executive, is usually nominated through procedures that differ from those which apply in the traditional civil service. They can be nominated by the line minister (sometimes requiring the approval of the full Cabinet or the legislature), or by governing boards when they exist.
• Differentiated responsibilities at the top of the hierarchy: The chief executive is generally responsible for the overall organisation, management and staffing of the entity, and for its financial and other procedures, including conduct and discipline. Programme design is a shared responsibility between the line minister/ministry, the governing boards (where they exist), and the chief executive. Depending on the nature of the entity, the minister may inform the entity of the government’s expectations and policies, direct the board, take part in decisions about capital injections, monitor performance, and decide on the nature of regulations.

• Governing boards: In some cases, these bodies are directed by a governing board, which usually includes high-level civil servants designated by central government but also other representatives from the private sector and civil society. Governing boards have extensive strategic decision-making power that can extend to developing policies and strategies, providing information about objectives and their achievement, and ensuring commitment to core values and compliance with legal and financial requirements. They might even choose the chief executive. Usually, ministers remain responsible for appointing board members and, more often than not, have a role to play in the appointment of the chief executive.

• Management boards: In other cases, bodies are directed by a management board, which includes officials from the agency and officials from the reporting ministry and the Ministry of Finance, and even, in some cases, external members.

• Advisory boards: Finally, the governing of agencies and authorities may be shared between the line ministry/minister and the chief executive, but with the advice from an advisory board with no decision-making power.

2. A differentiated control environment – i.e. partially or completely relaxed management, financial, and personnel rules that usually apply to traditional, vertically integrated ministries.

• Personnel rules: Depending on the type of body, personnel may be employed under general civil service rules with flexibility in fixing grades, pay, bonus schemes and recruitment and promotion systems. In other cases, staff may not be considered part of the civil service and may be employed under general employment laws.

• Budgeting, accounting and finance rules: Depending on the type of body, these bodies may be fully funded by taxes, or partially or completely funded by user-fees or private revenue. They may be authorised to borrow, lend and carry forward their surpluses.

3. Some management autonomy

Management autonomy refers to senior management’s ability to make decisions concerning the overall organisation, financial and personnel management of the entity without the constant involvement or need for approval by the line minister or ministry. While this has certainly not been the case throughout history in many countries, an increasing proportion of these bodies now seem to have acquired significant management autonomy. It seems to have been easier in many countries to give management autonomy to bodies that were institutionally separate from traditional, vertically integrated ministries, and that had a differentiated governance structure and, sometimes, a differentiated control environment.

• Contract management: Many of these bodies have a quasi- or fully contractual relationship with their line ministry/minister. Targets are set jointly by the line ministry and the chief executive and boards (where they exist), and chief executives report on, and are accountable for the achievement of these targets.
• Output/outcome-oriented budgeting and management: In many cases, contract management increasingly goes hand-in-hand with output/outcome-oriented budgeting and management. Controls on inputs are being increasingly relaxed.

• Multi-year budgeting: Increasingly, governments are trying to establish multi-year budget allocations for these bodies in exchange for a commitment to a range of outcomes.

### 1.2.2. Reasons for their creation

In order to provide bodies with:

i) a differentiated governance structure; and/or

ii) a differentiated control environment; and/or

iii) some management autonomy, governments throughout the OECD area have created bodies with certain degrees of separateness from traditional, vertically integrated ministries. Behind these organisational motives for creating these bodies, other motives have been:

1. Improving the efficiency and effectiveness of government entities with specialised functions

   • Separateness coupled with a differentiated governance structure allows specialisation of functions and a better focus on clients’ needs.

   • Managerial autonomy, coupled in some cases with a differentiated governance structure, allows the development of a more managerialist culture and a better focus on outputs and outcomes.

   • A differentiated control environment helps the entity escape some cumbersome administrative and financial rules.

2. Improving the legitimacy and expertise of decision-making

   • Policy independence: For some functions (such as the allocation of grants or benefits, economic regulation, professional oversight of some professions, or when the government’s actions are subject to the jurisdiction of the body) and in some institutional settings, differentiating organisational form can help increase independence from on-going political or bureaucratic influence, and signal change. In general, this change will require a differentiated governance structure and a degree of managerial autonomy and a differentiated control environment.

   • Policy continuity: A differentiated governance structure helps ensure policy continuity for some government functions, as nominations for the head of the governing body (chief executive and, in some cases, board members) may be insulated from the political cycle.

   • A differentiated governance structure coupled in some cases with managerial autonomy allows citizens or specialised professionals into the public decision-making process.

   • A differentiated governance structure, often coupled with some management autonomy, enables the establishment of collaborative partnerships between organisations within national government and between organisations belonging to different levels of government.
Table 1. Matching the organisational features of agencies, authorities and other government bodies with the reasons for their creation

<table>
<thead>
<tr>
<th>Organisational features Reasons for their creation</th>
<th>Differentiated governance structure</th>
<th>Differentiated control environment</th>
<th>Management autonomy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specialisation and focus on clients needs</td>
<td>Possible</td>
<td>Possible</td>
<td>Required</td>
</tr>
<tr>
<td>Managerialism and focus on outputs/outcomes</td>
<td>Possible</td>
<td>Possible</td>
<td>Required</td>
</tr>
<tr>
<td>Lighter administrative and financial rules</td>
<td>Possible</td>
<td>Required</td>
<td>Not required</td>
</tr>
<tr>
<td>Policy independence</td>
<td>Required</td>
<td>Not required</td>
<td>Possible</td>
</tr>
<tr>
<td>Policy continuity</td>
<td>Required</td>
<td>Possible</td>
<td>Possible</td>
</tr>
<tr>
<td>Civil society participation</td>
<td>Required</td>
<td>Possible</td>
<td>Possible</td>
</tr>
<tr>
<td>Collaborative partnerships</td>
<td>Required</td>
<td>Possible</td>
<td>Possible</td>
</tr>
</tbody>
</table>

3. The “hidden” set of reasons for their creation

Of course, governments did not necessarily have the purposes we have outlined above in mind when they created the bodies. Otherwise, these creations would have resulted in a more coherent set of bodies. It seems that only in recent years have creations resulted from a well thought-through process of power delegation to separate government bodies.

In certain cases, “when the tests are silent on the reasons for agencies,” it may be, as noted above, simply because they were created in response to a particular political circumstance at the time, and not as part of some coherent review of governance. On the other hand, reasons given may not reflect the real political dynamic which led to agency creation. Agencies may be created to pay off political allies, to create power bases for specific factions, or to provide opportunities for sequestration of public assets or resources”.

In transition and developing economies, which have been through a wave of creation of such bodies in recent years, creating “islands of excellence” within the public service has also been an important reason for creating these bodies. Separating bodies from traditional, vertically integrated ministries has been seen as a way to bypass traditional civil service rules for promotion, allowing relatively more junior and committed management greater autonomy in managing bodies more directly focused on client needs.

1.2.3. The importance of agencies, authorities and other government bodies

It is difficult to get a clear picture of the size and importance of these bodies in all countries. Few countries (New Zealand is a notable exception) have a clear idea of how many bodies exist in their jurisdictions and what share of public resources they represent.

However, partial data shows that their importance within central government in terms of their share of public expenditure and public employment is usually above 50%, and sometimes above 75%:

- In the United Kingdom today, there are 131 executive agencies employing over three-quarters of the civil service. All executive agencies have been established within the past 15 years. In addition, as of March 2000, there were 1 035 non-departmental public bodies, employing over 115 000 staff and spending around £24 billion per year.
• In Spain, more than 51% of the budget is spent by government-related entities (including entities that provide goods and services for commercial transaction but that are not state-owned enterprises); most of this, however, is allocated to the Administration of Social Security.

• In Sweden, there are approximately 300 central agencies today and only a small percentage of civil servants are employed by ministries and not by agencies.

• In France, there are approximately 1 300 “public establishments” created by the national government and an estimated 50 000 created by local authorities.

• In New Zealand, there are 79 Crown entities – excluding schools, tertiary education facilities, fish and game councils and reserve boards – employing approximately 80% of state sector employees and representing 58% of the Crown’s expenses.

• In Germany today, only about 6% of federal public employees work directly within federal ministries, while 22% work in federal agencies and 40% are civilians working in the military.

• In the Netherlands, the Dutch agencies alone represent approximately 30% of the civil service, and it is estimated that by 2004 this percentage will increase to 80%. In addition, there are 339 independent administrative bodies (“ZBOs”).

• In Canada, there are three service agencies, accounting for more than 35% of federal government employees. In addition, there are 18 special operating agencies, and one departmental service agency.

1.2.4. Categorising agencies, authorities and other government bodies

a. Classifying agencies, authorities, and other government bodies

In his paper, 10 Derek Gill has developed a typology of government organisational forms that mixes both institutional and legal features with judgement about the financial, management and personnel rules that apply to them. Data from the country reports shows that most government bodies fit this classification which adds significant value in the understanding of issues governments are currently facing with the governance of this wide set of bodies (issues according to the various types of organisational forms are described in Section 2 of this report).
According to this classification, there are three main types of bodies covered by our study:\(^{11}\)

1. **Departmental agencies**

   Institutional and legal foundations: They are part of ministries, and do not have their own separate legal identity from the state. They function under public law, generally under quasi-contractual relationship with their line ministry.

   Governance structure and control: They do not have a governing board (although they might have management or advisory boards), and the chief executive is directly appointed by the minister. The minister has formal (but less direct) control, while the chief executive has operational control.

   Financial, management and personnel rules: Their staff are employed under general civil service rules, in terms of appointment, promotion and removal, but input controls on the price and quantity of labour are generally relaxed. Most are funded through allocations from the state budget, and their budget is annually reviewed through the state budget process. Some are partially user-fee financed.

   Function: usually delivery of non-commercial services to citizens and support services to other state sector bodies.

Examples: Germany: Direct federal administration; Netherlands: Agencies; New Zealand: Semi-autonomous bodies; Spain: Autonomous organisms; United Kingdom: Executive agencies; United States: Performance-based organisations.
2. **Public Law Administrations (PLAs)**

Institutional and legal foundations: They function mostly under public law, but they are partially or completely institutionally separate from ministries and/or can be partially separate or fully separate legal bodies.

Governance structure and control: They may have a governing board, an advisory board, or under a one person rule. Control is devolved to governing body (with or without a governing board), and the minister has indirect control.

Financial, management and personnel rules: Staff rules vary between full civil service controls, differentiated controls, and general common employment rules, but employees often remain subject to a general framework for state servants. Most PLAs are tax-revenue financed, and their budget is part of the general budget law, although they are often allowed to carry forward surpluses.

Function: They are created to provide: i) a differentiated governance structure (governance board) – allowing more management autonomy or policy independence in some cases; and/or ii) a differentiated control environment; and/or iii) some managerial autonomy. Specific functions range widely from service delivery to regulatory and quasi-judicial functions.


3. **Private Law Bodies (excluding government companies) (PLBs):** quasi-corporations and non-commercial private law bodies

Institutional and legal foundations: They are not companies, but function mostly under private law, usually with a full separate legal identity from the state.

Governance structure and control: They usually have a governing board, and the minister has indirect control.

Financial, management and personnel rules: Staff are usually employed under general employment law, with no, or limited, control on inputs. They are usually mostly sales revenue financed, and can carry forward surpluses, borrow and lend. Their budgets are separate from those of ministries.

Function: They might have a full profit objective or mainly a service objective function subject to a clear cost constraint. Many, but not all, function in the commercial sector according to the Systems of National Accounts (SNA) definition, others are government bodies on their way to privatisation.

Examples: France: Industrial and commercial public establishments (“Etablissements publics industriels et commerciaux”); Germany: Private law administrations and charged administrations; Netherlands: Private law ZBOs; United Kingdom: Some NDPBs.
Table 2. Organisational features and types of agencies, authorities and other government bodies

<table>
<thead>
<tr>
<th>Departmental agencies</th>
<th>Differentiated governance structure</th>
<th>Differentiated control environment</th>
<th>Management autonomy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Limited: DG has operational control</td>
<td>Limited</td>
<td>Extensive</td>
</tr>
<tr>
<td>Public law administrations</td>
<td>Extensive</td>
<td>Varies</td>
<td>Varies</td>
</tr>
<tr>
<td>Private law bodies</td>
<td>Extensive</td>
<td>Extensive</td>
<td>Extensive</td>
</tr>
</tbody>
</table>

b. The myth of the match between organisational form, government function and managerial autonomy

It is tempting to try to classify agencies, authorities and other government bodies according to their organisational forms, the type and extent of their managerial autonomy, the financial, management and personnel rules that apply to them and their function. While all of these groupings are legitimate for policy advice purposes, none is really satisfactory.\(^{12}\)

First of all, government functions do not match specific organisational forms within and across the nine countries studied. For example, non-commercial services to citizens can be delivered directly by ministries, entities separate from central ministries or government enterprises in company or non-company forms.

The only positive conclusions we can draw are that: 1) sovereignty functions of central government are usually carried out by central ministerial departments; 2) arm’s-length bodies tend to carry out relatively coherent, focused and measurable functions; and, 3) entities that carry out more commercial functions tend to function under legal, employment and budgeting rules that are close to, or the same as, those of the private sector. The more an entity’s tasks constitute a “public service”, the more the entity has to conform to general public law, which tends, in many countries, to favour more process-, compliance- and input-oriented management than the private sector.

Second, managerial autonomy and a differentiated control environment do not match specific organisational forms across countries. In some countries, and especially in countries with constitutional or organic rules applying to all state entities, providing a separate legal identity to a government body is the only way to differentiate the control environment that applies to it. In other countries, this is not the case. Similarly, the ability to provide managerial autonomy within ministries varies from one country to another depending on the legal and cultural context, and this ability will in part determine the need to separate some bodies institutionally or legally from ministries. This explains why entities within ministries in some countries might have more managerial autonomy or policy independence than entities that are legally separate from the state in other countries.

c. The problem of policy independence

Many have also tried to classify organisational forms according to the level of policy independence\(^{13}\) they provide.

Again, while this is legitimate for policy advice purposes, the issue is more complex than as usually described in the literature. The trend in public management literature over the last few decades has been to encourage the removal from core government of many functions requiring policy independence. The general idea was to reduce direct ministerial and political influence by providing a differentiated governance structure (with for example, a governing board, and representation from different stakeholders), and sometimes a differentiated control environment and a degree of management autonomy.
The creation of separate bodies for policy independence purposes has proven successful for certain functions. However, in some cases, new dangers have appeared, threatening the very reason for their creation, including the lack of representativity of the governing board and of guarantees to protect its independence (from the unbalanced influence of the various stakeholders as well as from political influence), and the lack of control resulting from a differentiated control environment and management autonomy.

In fact, bodies with policy independence can be found in organisational forms that spread across government. For example, the police in most countries has independence in the pursuit of individual cases, yet is one of the functions least removed from core government. Similarly, we find that some regulatory or quasi-judicial functions, which, again, exercise important independence in respect of individual cases, might be carried out by either private law bodies or public law administrations. In some cases policy independence is actually ensured by a traditional ministerial hierarchy, applying traditional public sector and civil service rules, which include strong guarantees for independence of judgement (such as the guarantees against the dismissal of civil servants, remuneration and promotion rules, procurement rules, etc.). It seems that separateness is most justified when the state or the government of the day, as a special stakeholder, has a particular political interest in the outcome of individual decisions, such as for many regulatory functions.

2. Changing priorities: From the drive to create agencies, authorities and other government bodies to the challenge of achieving good governance

2.1. Changing concerns

In most countries studied, governments report that the creation of bodies with various degrees of separateness has been a largely positive experience. Government reviews show that different goals have been achieved through these various organisational forms, including increased efficiency and innovation; bringing management of services closer to citizens; allowing more effective partnerships between different levels of government; involving citizens, private sector or civil society organisations in the management of agencies; and allowing central ministries to concentrate on policy-making.

At the same time, in most countries, priorities have moved away from the need to create new separate bodies to the challenge of finding the right balance between accountability and autonomy, openness, performance management, as well as strengthening the steering capacity of central ministries. The move from input management to output/outcome contract management poses major challenges of improved capacity for reporting ministries. In some countries, “whole-of-government” issues such as how to ensure policy coherence or a coherent public service, or how to maintain the clarity of the administrative organisational system, have also arisen as crucial issues. Human resources management issues – how to ensure staff mobility among separate entities and that may have different status, career paths or reward mechanisms – are also important in a knowledge-intensive and ageing society.

Finally, criticisms have been voiced over the use of special autonomous or independent bodies to address complex and politically sensitive issues such as food safety, radioactive waste, etc. These bodies provide government with independent advice from independent experts. Critics claim that while independent expertise is often much needed, these new independent entities allow governments to avoid taking political decisions or to take decisions guided only by technical expertise on issues that require a political choice and are at the core of political responsibility.
2.2. Greater awareness of the risks of specific organisational forms and changing trends in the choice of organisational forms for government bodies

As we saw earlier, the creation of agencies, authorities and other government bodies did not appear with the implementation of New Public Management (NPM) concepts in the 1980s. However, it is only in recent years that governments seem to have carried out a systemic reflection on the specific risks associated with various organisational forms. An important dimension of these risks is the impact of organisational form on government’s capacity to reallocate and change its use of resources over time. Reallocation seems to be easier to implement across “soft” organisational forms.

As a consequence, two new trends in the choice of organisational forms for governments bodies have appeared since the 1980s:

a) The creation of Public Law Administrations (PLAs) and Private Law Bodies (PLBs) seems to have come to a stand-still in many countries

Throughout history, PLAs and PLBs have been created on a case-by-case and ad hoc basis, and the trend accelerated in some countries during the 1980s. PLAs and PLBs have generally been created for differentiating rules of control in some countries for some functions and/or for creating a special governance structure in other countries or for some other functions. However, since the 1980s, the pace of creation of PLBs and PLAs has slowed in most countries. In some countries, such as the Netherlands, some PLAs (the Dutch “ZBOs”) are being drawn back under the more direct authority of ministries (under the status of “agencies” in the Dutch context), and in many countries, some PLBs have been given a real company status, i.e. they have been transformed into government companies or fully or partially private companies.

It is possible to argue that governments might have found the right balance and have created the right number of PLAs and PLBs, covering the right government functions. In which case, there would be no need to increase the number of these bodies. However, a closer look at country reports shows that specific concerns have arisen with these organisational forms, including:

- The difficulties with ensuring an accountable differentiated top governance structure, which entails nomination and remuneration mechanisms for both board members and top executives, an appropriate separation of roles and responsibilities between ministers/ministries, senior management of the body and board members (when they exist), and an effective monitoring by line ministries. These difficulties have created some perception of loss of political accountability. In some countries, such as Germany, despite the considerable range of controlling instruments that the federal government has at its disposal, there is suspicion that some agencies function outside of political debate, and are run largely on “auto-pilot” with little control and influence by their parent ministries. It seems that the same debate is taking place in the Netherlands for ZBOs. In New Zealand, the government has been concerned with the lack of clarity in the roles, expectations and responsibilities of those accountable for the functioning and performance of Crown entities, as well as with the inadequacies and inconsistencies in their governance mechanisms and the gaps and overlaps in the legislation that underpins their organisation and functioning.

- The differentiated control environment with relaxed financial and personnel rules that often accompanies the creation of these bodies has occasionally resulted in inadequate financial and management controls and inequity across the civil service. For many PLBs, governments find themselves obliged to justify the use of private sector rules (even without company status) for bodies that remain within the public sector, and often with a monopoly status. For bodies that
clearly follow for-profit objectives, governments have been encouraged to provide them with a clear company status, whether they remain within or outside the public sector.

− Although PLAs and PLBs tend to be more receptive to improved management methods (such as output/outcome-oriented management), their differentiated governance structure and control environment make them less susceptible to mission and budget allocation changes and more difficult to close down than a more integrated government structures such as regular ministerial departments or departmental agencies.

− PLAs/PLBs have lost some of their comparative advantage as management systems within the core public sector. Departmental agencies have appeared in almost every country since the 1980s as a preferred way of providing managerial autonomy to government bodies. As governments saw the need to provide managerial autonomy to more government bodies, they created a new kind of organisational form for central government entities that allows them to avoid running the risks associated with differentiated governance structures and control environment. Departmental agencies do not have a radically differentiated top governance structure (they do not have governing boards and are still parts of ministries), or a differentiated control environment. However, they have been seen as a way to implement output/outcome-focused budgeting and management and multi-year budgeting. Nonetheless, except in the Netherlands and the United Kingdom, these initiatives have been of a rather limited scope. Indeed, the United Kingdom and the Netherlands are the only countries to have implemented a deliberate policy of systematically changing the organisational structure of central ministries and creating departmental agencies. The reasons seem to lie more in the difficulties involved in providing management autonomy (see next section) than in the organisational form itself. It is clear that the use of performance agreements, with some managerial autonomy between the head and subordinate parts of a ministry, can capture many of the elements of the departmental agency form – without formally creating one.

### 2.3. Key emerging issues regarding distributed public governance

#### 2.3.1. Lack of clarity about the differences between the various types of agencies, authorities and other government bodies, their strengths and weaknesses

A consequence of the ad hoc creation of government bodies, and of the centrifugal tendencies of the 1980s and the 1990s, has been the dispersion of government entities and a resulting lack of “readability” of the institutional system. In all countries studied, there is a variety of organisational and legal categories, as well as accountability arrangements, for the same types of autonomous entities. In many countries, the legal rules that apply to these entities are determined at best by both law and decree, creating a profusion of individual situations, rules of organisation and accountability mechanisms. Departmental agencies are usually an exception, as they are not institutionally separate from ministries, and have, in most cases, resulted from a coherent plan to re-organise certain government functions using the same types of organisational forms and applying the same conditions for their creation.

The lack of organisational clarity has important consequences:

- It is unclear whether the best organisational forms have been chosen for the various functions of government. A number of countries are presently rethinking the use of agencies, authorities and other autonomous bodies for different government functions.
• The monitoring and control of these entities by central government is made more difficult because of the different types of relationships the central reporting ministry has to manage with these entities, and the different types of control and accountability mechanisms.

• The lack of “readability” of the institutional system can also potentially undermine citizens’ trust if responsibilities and systems of accountability are unclear.

2.3.2. Lack of clarity regarding roles and accountability and lack of top governance capacity

The lack of organisational clarity has often resulted in poor differentiation of the roles and responsibilities of line ministries, senior management of the agencies, authorities and other government bodies, and board members (where they exist). Overall, the top governance structure of these bodies has rarely been thought through systematically, resulting in unclear responsibility and accountability.

For example, many countries report the need for clearer criteria for establishing different types of boards\textsuperscript{14} – advisory, management or governing boards – and their respective responsibilities. For governing boards, there is a need to establish a clearer division of responsibilities between the board, the chief executive, and the reporting ministry. Problems reported with the use of these boards include their lack of real power, their lack of political accountability and the lack of control by line ministries.

The lack of clarity of the top governance structure is further complicated by the lack of capacity of the top governance bodies. As noted earlier, agencies, authorities and other government bodies have been used as a favoured organisational form for providing management autonomy to parts of the government sector and for implementing results-oriented management and budgeting. This change in autonomy requires an important cultural change. Building the capacity in line ministries to monitor and control agencies, authorities and other government bodies is a major challenge reported in all studied countries.

Finally, in some countries, there has been criticism of the lack of transparency surrounding the appointments of board members (political appointees, cronyism, conflicts of interest), their salaries and other benefits. In other countries, criticism centres on the lack of representativity of their members – mainly in terms of gender and ethnic background.

Senior management of agencies, authorities and other government bodies can also be perceived as secretive, unaccountable, subject to cronyism, and enjoying undeserved salaries and benefits. When senior management comes from the civil service and is subject to civil service rules, the public might perceive them as lacking the managerial capacity to run these semi-autonomous bodies. In other cases, when they do not come from the civil service and are not subject to civil service rules, it is the transparency of their appointment and remuneration that can be subject to criticism.

2.3.4. Weak accountability mechanisms to ministers and ministries, Parliament and civil society

Ministers and ministries

In most countries, some of these bodies are seen as functioning outside of the political debate with little oversight from ministers and weak accountability arrangements. Mechanisms of accountability and control have to be redesigned in certain cases to improve the political oversight of these bodies, as well as the financial and technical control of their activities.
Most countries have started to implement output- and even outcome-oriented reporting through activity-based costing, and some have started to establish multi-year agreements and monitoring mechanisms. Most report fundamental challenges in the implementation of outcome/output management in their agencies, authorities and other autonomous bodies, including:

- the lack of strategic management by activity that would allow a reallocation of human and financial resources;
- the lack of clearly defined outcomes and indicators;
- the lack of multi-year budget agreements;
- the lack of management accountability for agency performance;
- the limited capacity in reporting ministries to analyse data and the need for policy departments to adopt more output/outcome-oriented management as well.

Parliament

In many cases, national audit offices and Parliament have an important role in the control of agencies. When a founding legislation exists (especially for bodies that are separate from the state), it is an important accountability document for Parliament. In some cases, notably for the largest agencies, annual reports are annexed to budget documents that are examined by the legislature. In parliamentary systems, all types of autonomous bodies are accountable to Parliament through their sponsoring department, whose minister answers to Parliament and on the agency’s behalf. In presidential systems, many of these autonomous bodies report directly to Parliament, requiring additional capacity from Parliament to process information and exercise control. In the two systems, the public accounts committee, as well as the relevant select committee are the most common accountability bodies in Parliament.

There is little doubt that the delegation of power to agencies, authorities and other autonomous government bodies has posed a new challenge for Parliament’s control over government. Although many of these entities have been created with some backing in legislation, it remains difficult for Parliament to keep track of the different bodies created and the specificities of the financial and management rules that apply to them. The problem is partly that Parliaments may not have the capacity to analyse the reporting of complex and unfamiliar functions when the executive relaxes its direct control over public functions.

Civil society

When agencies, authorities and other government bodies have a differentiated governance structure, they are seen as providing opportunities to involve citizens both in the management and control of public bodies. Representatives of citizens, consumers or civil society may be represented on the governing board. Also, because of their separateness, these bodies have been more easily focused on outward services to citizens. Their annual report is usually made available to the general public. Most of these bodies are also subject to transparency/freedom of information laws, which provide citizens with an extensive right to access official documents or, as in Sweden, allow civil servants to inform the media of agency activities.

Some governments have started to develop innovative solutions to improve direct accountability mechanisms of these bodies to citizens, as well as sophisticated means of consultation with clients, customers and citizens.
2.3.5. **Weak co-ordination mechanisms**

On the one hand, agencies, authorities and other government bodies have been considered as an opportunity to improve co-ordination between different levels of government (in federal countries, or newly politically decentralised countries) or between different entities at the same level of government (*e.g.*, between two municipalities, or two ministries). Their separateness and differentiated governance structure allows, for example, for the co-monitoring of a service delivery entity by two or three government organisations.

On the other hand, one of the main governance challenges for central government is to maintain government and policy coherence across an increasing variety of government organisational bodies. This means, among other things, maintaining the coherence of agency policy with government policy, service delivery with government policy, and the coherence of government policies among different sectors.

2.4. **Conditions for a better distributed public governance: preliminary conclusions**

Choosing differentiated organisational forms for government is both a management tool and an instrument of improved governance. Until recently, governments put most of their efforts into providing these newly autonomous bodies with room to manoeuvre. It is only in recent years that distributed governance has appeared as a specific challenge to the organisation and functioning of government.

Governments are striving to improve institutional clarity:

1. At the systemic level by clarifying the types of agencies, authorities, and other government bodies and their accountability mechanisms; establishing some general principles for their good governance; improving the legal basis of autonomous bodies; and setting government-wide criteria for their establishment.

2. At the level of agencies, authorities and other bodies, by justifying the choice of organisational form and accountability mechanisms, and by improving transparency on agency tasks and performance.

To improve the structure and performance of governance at the top, many countries are:

- Clarifying the roles, functions and relationships between the board (where relevant), the chief executive and the reporting ministry and, at the same time, strengthening their accountability for the management and performance of these bodies.

- Establishing criteria for the use of governing boards.

- Establishing mechanisms to improve the transparency of nominations and remuneration levels for chief executives and board members (with government-wide criteria, independent review mechanisms, and regular publication of senior management’s and board members’ private and professional interests), increasingly selecting people for their professional capacities rather than for their “representativeness” (of political forces or other stakeholders).

In order to strengthen accountability mechanisms, reporting requirements are also becoming more sophisticated. In exchange for the flexibility provided at input level, autonomous bodies are required to report more systematically on outputs and outcomes. They have to provide more forward-looking documents such as annual statements of intent, and corporate and business plans. Their annual reports must include a review of activities, performance against targets, information and commercial activity and future strategy.
To solve the problems linked to government and policy coherence, innovative solutions include making autonomous bodies work on joint projects and activities, and regular reviews of the activities of these bodies to resolve overlaps and inconsistent institutional design. Some countries are also examining the possibility of improving the joint monitoring of autonomous bodies at Cabinet-level without weakening reporting mechanisms to line ministries. Performance reporting is also considered an important tool for enhancing government coherence.

To improve parliamentary control over the activities of autonomous bodies, governments must make the overall system more legible and the accountability mechanisms, activities and performance more easily controllable by Parliament. Parliament’s capacity to process this information will also have to improve.

There is no doubt that the creation of agencies and authorities provide opportunities to engage citizens in public service delivery and policy-making. Increasing the clarity of the governance system of autonomous bodies is a pre-condition for this engagement, as is improving the transparency of nominations, remuneration and general accountability mechanisms.
NOTES

1. The term “agencies” usually refers to the experience of executive agencies in the United Kingdom, excluding bodies that are institutionally or legally separate from central ministries; “quangos” include non-government bodies and implicitly exclude ministry bodies; “arm’s-length bodies”, “subsidiary organisations”, and “autonomous government bodies” imply value judgements about the degree of autonomy of the bodies and have proved to complicate the classification further.

2. Please note that in this Synthesis report, the bodies known as “departments” in New Zealand, the United Kingdom and the United States, will be referred to as “ministries.”

3. Fully contractual relationships can only be established between separate legal entities. Quasi-contractual relationships between entities which are not legally separate imply that these entities are linked by some kind of agreement (on inputs, targets, performance) which is not legally binding, *i.e.* enforceable by the courts. It is an administrative and political contract enforceable through traditional hierarchical means.

4. In many cases, a differentiated control environment is a key aspect of management autonomy. However, this is certainly not always the case. For example, central civil service rules on recruitment and remuneration conditions might be relaxed for some bodies (allowing employing staff under general employment laws), but with a remaining strong control of central reporting ministries on hiring levels, remuneration, etc. Conversely, entities might have tremendous management autonomy (with flexibilities on overall inputs) while having to abide by budget financial and personnel rules that apply to all central ministries. For example, general civil service rules on hiring and remunerations might apply to an entity which still would have a lot of flexibility on hiring levels.

5. In this context, policy independence refers to the guarantee that individual decisions or policy-making will be free of political influence.

6. In his paper, Rob Laking uses the term agencies as a generic term for our definition of “agencies, authorities and government bodies”.


8. Please refer to the individual country reports of this publication for further information.

9. Please note that all public servants are not necessarily “civil servants” employed under civil service status and rules.


11. We also recognise that in each country, a few bodies will not fit the classification.

12. For a summary of the attempts to classify government organisational forms, see Derek Gill, (PUMA, 2002).
13. In this context, policy independence refers to the guarantee that individual decisions or policy-making will be free from political influence.

14. See Section 1.2.1 for a description of the different types of boards.

15. In some cases, such as Sweden, the head of an agency may be asked to appear at a Parliament hearing with or without representatives of the reporting ministry.
AGENCIES: THEIR BENEFITS AND RISKS
ROB LAKING

Introduction

1. This paper is intended to provide some guidance on analysing the benefits and risks associated with the creation of agencies, a label used here as shorthand for the diverse range of public organisations outside core government – one step removed from direct control by the central political executive. Governments frequently establish public organisations with specific powers and responsibilities that differentiate them from the standard forms of direction and control. There may be good reasons for granting some organisations extra autonomy: they may operate more efficiently or effectively or be more credible in their decision-making. But there may also be risks to the overall coherence of government through loss of central direction and control. The benefits of autonomy should therefore be tested against the risks.

2. Some of the difficulties of any form of generalisation about “standard” forms of governance are discussed below. The paper’s general position is that, where there is a more or less standard core governance, the benefit of the doubt should be given to retaining that form for new organisations. First, it is quite often possible to give core organisations such as ministries or departments specific powers or exemptions from control without creating a new separate legal entity. Proposals to exempt one public organisation from a specific external control beg the question of why this control remains in place for others. Second, once an agency with a new form of governance has been created, it is often quite difficult to reverse the decision. Delegations of authority within a standard legal framework can be more easily withdrawn. Third, novel administrative arrangements increase the complexity of management from the centre and require new skills of direction and control to be acquired. All these reasons suggest that the institutional analyst should proceed with caution before recommending the creation of a new organisational form.

3. The paper draws extensively on work being undertaken in the Directorate for Public Governance and Territorial Development (GOV) of the OECD on the issues involved in distributed public governance for agencies, authorities and other autonomous bodies. It also reflects practitioner concerns within the World Bank. The contribution of GOV’s database on agency experience in OECD countries (GOV, 2002), a working summary of country level developments, is gratefully acknowledged. The database will be published on the World Bank administrative and civil service reform website to encourage further empirical work.

+ This is a draft report.
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Why is it important to think about agencies?

4. In the OECD, agencies mostly work well and meet important needs of good governance. There is no evidence that agencies have resulted in a lower quality of governance in OECD governments. There is indeed some evidence (James, 2001) that in the appropriate roles they have improved both the quality and the credibility of public performance. Furthermore, they have a long history in many countries. In Sweden, most famously, the establishment of semi-autonomous agencies and boards originated in the 16th and 17th centuries and agencies are today the basic form of public organisation in Sweden. The earliest national public agencies and authorities in Germany also date back to the 1870s. Many other OECD countries have long traditions of exercising important government functions outside the classical generic ministerial department.

5. So why is it important now in the agenda of public management reform to focus on the creation of agencies? The current interest within the OECD and the World Bank in the concept of agencies reflects the perceived increased use, during the 1980s and 1990s, of the agency form in public management reforms in a number of developed and developing countries. In developed countries the trend towards more autonomous organisations has varied widely from country to country. In the United Kingdom and the Netherlands, the move towards agencies in the last decade has shifted significant numbers of civil servants from core ministries and departments into agencies. In New Zealand, there has been a proliferation of central “Crown entities” as well as a significant increase in management authority delegated to core government departments. In other countries, such as Canada, the United States and France, the agency form as defined in this paper has had much more limited impact.

6. Overall, in the last two decades, however, most OECD countries have experimented with new forms of agency to some extent. An OECD study concludes that:

   In most countries, there is evidence that, over time, the number of autonomous bodies has significantly increased. Over the last 50 years, it seems that only a few autonomous bodies have been drawn back under the core traditionally vertical integrated hierarchy. (PUMA 2001 p 8)

7. Box 1 gives some indication of recent trends in the OECD, towards increasing the role agencies play in public governance.

Defining and classifying agencies

8. In most of the governments of Western Europe, Asia and Africa, “core government” is fairly readily defined as the ministries or departments of the Executive, which are under the direct hierarchical control of a minister. Manning suggests that a “ministry” in these governments would generally be understood as an organisation that: i) has no separate corporate status; ii) is predominantly funded from taxes; iii) is subject to the general provisions of civil service and public finance law; and iv) is headed by a member of the government. The “base case” assumes that a government will have a common set of statutes, regulations and administrative orders applying to the direction and control of organisations within this core.

9. In a lot of the rest of the world, however, it is not as easy to distinguish a “core” which meets all four of these criteria. In much of Eastern Europe, the Balkans and the former CIS, ministries do have legal status, may not be predominantly funded from taxes and there may be no general civil service law. In the United States, the term “agency” applies to all organisations of the Executive branch. This general term covers departments and the bureaus within them, the organisations within the executive office of the
President, independent agencies and regulatory commissions; government corporations and other entities. There are general laws applicable by default to all these entities but in practice a wide variety and extent of direction and control and degree of distance from direct oversight by the President or members of Cabinet. Similarly in the presidential systems of Latin America, the idea of a “core” in the sense of a common form of ministerial department has less significance. What is important is the proximity of the organisation to direct control or influence by the President.

Box 1. Agencies: Some OECD Trends

- United Kingdom: 131 executive agencies (entities not legally separate from the state) employing over three-quarters of the civil service and all established within the past 15 years; 1,035 non-departmental public bodies (legally separate from the Crown), employing over 115,000 staff.

- Spain: more than 51% of the budget is spent by government-related entities (including those entities providing goods and services for commercial transaction but that are not state-owned enterprises), most of which, however, is allocated to the administration of Social Security.

- Sweden: approximately 300 agencies legally separate from ministries and forming the basic architecture of service delivery and regulation in central government.

- France: about 1,300 “public establishments” (separate legal entities mostly providing services) created by the national government and an estimated 50,000 created by local authorities.

- New Zealand: 79 “Crown entities” (excluding educational and health institutions and some other minor boards and councils) with their own legal identity, employing approximately 80% of state sector employees and representing 58% of the Crown’s expenses.

- Germany: only about 6% of federal public employees work directly within federal ministries, while 22% work in legally separate federal agencies and 40% are civilians working in the military.

- Netherlands: agencies alone (not including independent administrative authorities) represent approximately 30% of the civil service, and it is estimated that by 2006 this percentage should increase to 80%.

Source: Drawn from PUMA, 2001, p 8.

10. As well as the problems of defining the “core”, there is also no universally accepted classification for public organisations outside it. The OECD suggests three main types of organisation that can be distinguished from these core organisations and that are relevant for the purposes of this paper.

- **Departmental agencies** are part of ministries and have no separate legal identity but their internal governance is generally differentiated from that of their parent ministry.

- **Public law administrations** are generally created by a public statute so that they have a separate legal identity under public law; their governance – both internal and external – will generally be different from that of a ministry; they may or may not have a governing board.

- **Private law bodies** are a variety of organisations including corporations, trusts and other organisational forms recognised in private law; they will usually have a governing board and a minister will have only indirect control.
11. A further more detailed analysis is show in the Table in Annex 1 to this paper, (drawn from GOV, 2002). As that Annex shows, classification by legal form is really a shorthand for a range of changed attributes. The conclusion is that it is more useful for an analysis of benefits and risks to focus on the target variable – governance differentiated by types of autonomy – than on organisational form.

**Reasons for setting up agencies**

12. Governments give a variety of reasons for setting up agencies. Annex 2 lists some of the reasons for the establishment of agencies reported in official returns to an OECD questionnaire. In many cases, no specific reason is given or the circumstances are simply described as “historical” – which may be because the reasons have been forgotten, are complex, or lie in specific national political circumstances at the time, rather than broad principles of public management or public governance. A common political motive for setting up a new agency may simply be to signal a new course of direction in policy (Talbot *et al.*, 2000). There may be other motives less compatible with good governance – political patronage or power-sharing deals, capture of public resources for private or sectional benefit, reducing or eliminating accountability for the conduct of certain public functions etc. When reasons are given, however, they appear to fall into two broad headings: the first to do with enhancing the efficiency or effectiveness of government and the second to isolate certain forms of specific policy or regulation from ad hoc intervention by the Executive.

**Efficiency and effectiveness**

13. The most common reason cited by governments for recent agency programmes is improved *performance* in terms of efficiency or effectiveness of public management. For example, countries cite “focus on results and performance” (Canadian Service Agencies), “managerial differentiation in rules control (agreement on achievements and costs)” (Dutch agencies), “functional decentralisation” (French EPAs and EPICs), “improved service delivery” (New Zealand Crown-owned companies or autonomous Crown entities), “managerial and control purposes” (Portuguese national theatres, museums, libraries); “management flexibility” (Spanish autonomous bodies or UK Next Steps Agencies), or “business-focused values” (US quasi-governmental entities).

14. Mostly these reasons reflect management doctrines of efficiencies arising from specialisation of function, clarity of organisational purpose, explicit contracting for results and incentive structures closely related to organisational objectives. For example, efficiencies are expected from:

1. Tasking agencies with a smaller range of closely related outputs so that they can gain from economies of specialisation and can be set more explicit and less conflicted goals and therefore do not have to internalise tradeoffs between competing objectives.

2. Establishing service delivery agencies with the responsibility to make the best use of their resources to deliver high-quality services for users.

3. Enabling agencies to generate revenue from fees, licences or service payments or from commercial activities, thereby reducing demands on general tax revenues and increasing the incentives to generate more independent revenue or to increase efficiency by competition to supply services to or on behalf of the government.

4. Simplifying and clarifying external accountability, thereby enhancing external scrutiny of agency operations and the incentives on agencies to meet accountability requirements.
5. Freeing agencies from the high transactions costs of detailed external control of input use and giving them the flexibility to reallocate resources to achieve their assigned objectives and to link employee reward more closely to results.

6. Related to all of the above: permitting experimentation in trial agencies with the effects of new modes of external control on performance or “enclaving” specific functions of government such as revenue collection to expose them to different incentive structures.27

**Legitimating decision-making**

15. A second broad class of justification for greater autonomy is to legitimate public action by entrusting certain classes of decision-making to particular organisations. There are two broad forms of justification of agencies in terms of legitimacy.

16. **Independence of certain classes of decision-making from direct political intervention:** In many countries the deregulation or privatisation of areas of economic activity – particularly in the so-called network industries such as telecommunications and energy – has been associated with the constitution of new regulatory agencies. Similarly, in some countries the investigation and prosecution of human rights-related cases may be removed from direct political control. The institutional argument for separation of these agencies is that some types of decisions depend fundamentally on the impartial administration of rules and that the credibility of these decisions (e.g. of regulatory “fairness”) therefore depends on independence from interference in specific cases by the political Executive.28 Examples include French AAs,29 authorities enforcing major administrative regulations in Germany, and independent Crown entities in New Zealand. In most countries, central banks set up under their own legislation provide a credibly independent basis for administering monetary policy.

17. **Greater local control of service delivery:** Short of full political devolution, several OECD countries have adopted various flavours of decentralisation, to bring services closer to citizens or increase the possibility of local control. This might involve shifting central services out of the capital (deconcentration) or entering into partnerships with lower levels of government for service delivery. In New Zealand and the United Kingdom, administrative decentralisation was the preferred mode while in Finland, France and Sweden the thrust has been towards political decentralisation. Examples include “partnerships with provinces and territories” (Canadian service agencies) or “positioning organizations in the hands of local authorities” (Canadian shared governance corporations), and local school boards (New Zealand).

**Political circumstance**

18. The official reasons for setting up agencies given may not reflect the real political dynamic which led to agency creation. They may be created to blur political accountability, protect a function from legislative interference, pay off political allies or create power bases for specific factions, or to provide opportunities for sequestration of public assets or resources.

19. Patronage remains an important reason in many countries for the creation of agencies. Many agencies were established during the Marcos Presidency in the Philippines to create conditions for patronage outside the normal civil service rules as a means of rewarding the President’s political allies and extending his power base and sources of income. (Varela, 1995, p 62). Moe reports that, in the United States, the 11 enterprise funds set up under Delaware law to assist Eastern European countries, FSU and southern African region may have become vehicles for Presidential patronage. The President “designates” their boards after “consulting” leaders of each House but appointment “has largely become a
presidential prerogative and, according to critics, involves presidential patronage” (2001, p 24). In Croatia, board positions are allocated to reflect the balance of power amongst Croatia’s various ethnic groups and control of specific agencies by one group or another.30 Similarly the World Bank refers to a “patronage den – when public agencies institutionalize patronage in appointments because the agency becomes the implicit bailiwick or property of a coalition party.” (Manning and Matsuda, 2001)

Concerns about risk in OECD

Political risk

20. If governments lose the capacity to direct or control their agencies they may be exposed to significant political risk. They may simply “lose political control” of their agencies (Talbot and Pollitt, 2001). Creating an agency can create a constituency for that agency which is politically difficult to reverse. When governments attempt to re-assert control over agencies, the most vocal opponents may well be the agencies themselves. In countries such as Germany and the Netherlands “there is suspicion that some agencies function outside of political debate, and are run largely on ‘auto-pilot’ with little control and influence by their parent ministries.” (SIGMA, 2001, p 14). In New Zealand, there have been concerns about “unresponsiveness or disregard by Crown entities of government policies” (Schick, 2001, p 36).

21. The risks can arise from inability to align the policy priorities of the organisation with overall government priorities. Priorities can be locked in by the creation of an agency: “…institutions are prone to survive even if a priority has long been met or is no longer a priority.” (Slovak Republic, p 7). Agencies “might allocate public money for purposes different from those intended by government and Parliament” (SIGMA, pp 25-26) or “adopt quasi-fiscal activities that stretch beyond the original policy intention of government.” (World Bank, 2001). Public agencies may “undermine policy objectives by creating constituencies that will compel governments to maintain existing policies”. (World Bank, 2001). Problems of policy direction and efficient implementation may be compounded by incoherent and prolific development of agencies, leading to fragmentation (and coordination problems), duplication and overlaps of functions. GOV reports that problems of assuring policy coherence have emerged in several countries.

22. Vesting a function in an agency may be perceived as an illegitimate abrogation of political accountability because it distances the political executive from its responsibilities. GOV reports that there is criticism “over the creation of special autonomous or independent bodies to work and reflect on complex and politically sensitive issues such as food safety, radioactive waste, etc. … [because] … these creations of new independent entities allow government to avoid taking political decisions or to take decisions guided only by technical expertise on issues which require a political choice and are at the core of political responsibility.” A closely related problem is when agency activities have political consequences for ministers but they have no formal means of control of the political risk. Ferris (2001) expresses concern over the “democratic deficit” that emerges when policy autonomy is granted to regulators to decide cases within a broad legal framework. In the early 1990s, the Netherlands Chamber of Audit criticised ZBOs in the Netherlands as, among other things, an “unjustified limitation of ministerial responsibility” (Van Osteroom, 2001).

Risks to legitimacy

23. A further common concern is that agencies have been established as a means of evading general rules for control of staff and resources. SIGMA suggests that agencies “might serve as vehicles for the circumvention of financial and administrative rules by parent ministries or other parties” (pp 25-26). In the case of Latvia a comprehensive program of agency creation appears to have been a deliberate attempt to
break away from a previously stultifying bureaucratic order; but the absence of an appropriate framework law setting overall governance and a low priority given to accountability and service quality led to problems of financial control, maintenance of appropriate service standards and blocking of effective oversight by central agencies. (Talbot and Caulfield, 2002). The World Bank refers to “special privileges – when in order to attract qualified staff, public agencies are given exceptions from the government personnel regime to offer higher salary scales as well as other attractive benefits.” Van Osteroom (2001, p 74) reports that “In a number of cases, the [Dutch] ZBO model was used to avoid management rules of ministries which were considered too burdensome.” Exempting agencies from burdensome external control may be justified by their improved efficiency of operations but may expose them to public criticism of perceived excesses in their personnel or procurement policies.

24. Finally, there is some comment that lack of accountability and transparency in agency arrangements can foster political patronage and corruption. SIGMA suggests (pp 25-26) that “Agencies might engage in corrupt practices for the unjust enrichment of ministers, employees or favoured friends, or make it more difficult to enforce existing anti-corruption rules.” On the other hand, the risk of patronage or corruption appears to vary from country to country and does not appear to be a significant issue in OECD countries. Zapico-Goñi 2001 asserts that “Criticisms of [agencies in Spain] argue that unethical reasons are often behind their creation, e.g. avoiding personnel, financial management and public procurement controls, etc. Nevertheless the legal framework and the lack of complete autonomy from ministries do not allow us to say that, in general, the risks are higher in the functioning of these entities than in central government entities functioning under traditional vertical hierarchy” (p 123). Similar comments are reported from Belgium. This suggests that the risk may be a function of the underlying political and civil service traditions more than a particular organisational form. The patronage risks are also likely to be greater where there are boards whose members are appointed on political grounds and are not subject to the same transparent and merit-based criteria as civil service appointments.

**Contingent liabilities**

25. Increased autonomy may improve specific agency performance but expose a government to wider financial and employment risks. If agencies are in part self-funding, they can reduce the ability of the government to control its overall spending and its fiscal impact on the economy. They may create contingent liabilities for governments if they are permitted to do their own borrowing. In some circumstances, agencies freed from general rules regarding hiring and remuneration for staff can compete away skilled staff from core government. Agencies also pose a general management risk to the government which generally inherits the political, financial and employment fall-out from agency management failures.

26. Efficiency concerns also emerge when agencies perform quasi-commercial functions. These agencies may benefit from indirect subsidies through the budget or by privileged regulation of their market activities. (Slovak Republic). Moe (2001) reports that, in the United States, some agencies may receive competitive advantage because of their public or quasi-public status. These include subsidiary organisations funded by non-contestable contracts with their parents; agencies able to borrow with an implicit government guarantee, trading entities receiving tax advantages, and granting exclusive access to government assets (such as databases) to subsidiary trading organisations.
The nature of autonomy

27. The reasons for differentiating agencies from core ministries or departments may be purely cosmetic: simply to give a separate identity to a function which is considered politically important. But more usually agencies are also created to differentiate their governance from the general rules applying to the core of government departments and it is from this degree of relative autonomy that both their benefits and risks will emerge.

28. While there may be no clear standard form of governance from which to differentiate agencies it is still useful to analyse the forms that relative autonomy may take. A simple, if not always watertight, distinction can be made between “policy” and “management” autonomy. Policy autonomy refers to the freedom that an organisation has to interpret or decide policy and management autonomy to the freedom for it to allocate resources to achieve given policy objectives. Gill has defined a parallel distinction: policy autonomy for an agency requires a specific public law power; management autonomy increases the agency’s powers of a natural person.31

29. Typically, policy autonomy is accorded in the form of the power to decide classes of output or individual cases within a legal framework. It may often be associated with an independent statutory power – for example, to adjudicate on market practices in a framework of commercial law, or to decide on individual tax liabilities subject to appeal rights. Policy autonomy may be granted primarily for reasons of legitimacy or public credibility although it may be argued that specialised agencies deciding cases within general rules better satisfy efficiency and effectiveness criteria.

30. Management autonomy conventionally involves a shift from detailed external control of budgets, staffing and procurement and a shift towards internal control of expenditure within broad budget categories and associated greater freedom to decide personnel or procurement policies. But increased management autonomy is rarely uni-dimensional: it usually involves substituting one form of direction and control for another. For example, organisations may made accountable for results defined as outputs or outcomes. The shift towards greater management autonomy requires a general re-balancing of the relationship between external and internal control and decisions on what elements of the governance regime applying to the core will continue to apply to the organisation. Arguments for greater management autonomy tend to emphasize improved efficiency and effectiveness as a result of specialisation and contracting for results.

<table>
<thead>
<tr>
<th>Flavour of autonomy</th>
<th>Managerial</th>
<th>Policy</th>
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<tbody>
<tr>
<td>Characteristics</td>
<td>Increasing self-management of budgets, staffing and other resource decisions.</td>
<td>Authority to decide individual cases or classes of cases.</td>
</tr>
<tr>
<td>Presenting Reason</td>
<td>Efficiency or effectiveness of service delivery.</td>
<td>Credible independence from detailed political decision-making.</td>
</tr>
<tr>
<td>Legal basis</td>
<td>Converging on normal legal status of a natural person.</td>
<td>Specific empowering public law.</td>
</tr>
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31. There does not appear to be any simple relationship of the various flavours of autonomy to any particular classification of agencies such as that suggested by the OECD. There are wide degrees of both basic forms of autonomy possible for most of types of agency. The following chart, developed by Manning and Parison et al (2001) suggests where some of the existing categories of agencies would lie along the two dimensions of autonomy:
32. OECD experience thus is that agencies may be created with varying mixes of policy and managerial autonomy. Indeed it may well follow that the two can never be fully independent: the power of command over resources inevitably carries with it some ability to influence the implementation of policy in specific operational environments. Accordingly, any degree of managerial autonomy in the hands of its agencies carries with it some policy risk for a government – and vice versa.

**Modelling governance risk**

33. A basic model for the identification of risk recognises that the governance of public organisations is a function of both the external institutional environment and the interplay of rules, power and values within the organisation. Identifying sources of risk in agency governance is fundamentally a matter of analysing how these various forces can impact on the mission and performance of the organisation.

34. Governance can be seen as a set of nested relationships (Figure 1) between the internal agency environment, the system of external public governance, the formal institutional environment within which both overall public governance and agency governance exist, and the parallel informal “rules of the game”. It is the interplay of all these elements which determines the behaviour and performance of the agency.
35. The formal elements of the governance model are:

1. The formal internal governance of the agency itself: how it is directed and controlled internally – formal delegations, task and budget decisions, reporting systems, performance management.

2. The formal external governance of the agency: how the central organs of the state direct, control and supervise public organisations; how the central authorities set the mission and structure of the agency, how tasks are defined and resources allocated from the centre, how the top-level governance (board or chief executive) is appointed, what authority is conferred on the agency officials, what rules and constraints are set in place by the centre, and how the agency is to account for its exercise of its authority.

3. The wider institutional environment: the constitution and laws of the country which condition the specific external governance of the agency and within which each public agency has to operate.

Informal elements

36. An institutional risk analysis also has to look at the informal influences on organisational behaviour:

1. How agencies actually work can also depend on who really holds the power: power may be derived from external political relationships or from employee groups or special interests.

2. As well as giving formal direction (objective-setting, budgets, rules for internal governance), the external authorities may also signal other informal criteria or requirements.

3. Social organisation and culture play a part in how agencies operate: family and kinship relations, cultural norms, attitudes to formal authority can have a significant effect on the values of people working in agencies; the attitudes of individual citizens and civil society groups to agency working can also be a constraint.

Analysing the risks

37. The classic approach to the analysis of risk in organisational systems distinguishes between

1. Active failures in performance due to unintended mistakes or deliberate violations of rules or guidelines.

2. Latent failures of defences and safeguards in specific situations thus increasing risk of systems failure.

38. For example in the design of expenditure approval systems active threats might be the (intentional or unintentional) approval of unbudgeted expenses. An associated defence or safeguard which might fail could be the separation of certification, verification and authorisation steps in approval of expenses. A further level of analysis would distinguish between a formal internal governance risk – the incorrect design and implementation of internal control – and an informal internal governance risk – the application of pressure on officials in the approval chain to misallocate the budgeted expense.
39. In most cases, analysis of agency creation proposals is hardly likely to go into this level of exhaustive detail. With regard to latent failure risk, the approach would normally be to try to identify whether the appropriate formal institutions of governance are in place. With respect to active failure risk, the discussion will include cover both failures within the formal system (e.g. inadequate resourcing or management capability) and due to informality (e.g. customary behaviour, opportunism). The analysis suggests possible pressure points for latent and active failure risk for the main elements of agency governance and its environment.

40. It doesn’t follow with some of the identified risks that an agency is differentially “worse” than a government department. If there is high risk of “state capture”\(^3\) for example, then the organisational form that is the vehicle for this predation is probably a secondary consideration. An agency may in some circumstances actually reduce the risks of opportunism of the centre, provided it can be protected from the predatory interest.

**Sources of agency risk**

41. While this paper will not attempt a full exploration of the risk model, some significant formal sources of organisational risk to good governance are discussed under the headings of the nested model:

1. the general institutional environment;
2. the external governance of the agency and central capability for direction and control;
3. the internal governance of the agency and internal agency capability.

**General institutional environment**

42. Problems in the general institutional environment may apply equally to the “core” of government as they do to agencies. Some of the typical and widely reported problems of governance in developing countries and transitional economies that arise because of an inadequate overall framework for public governance include:

1. multiple sources of authority for public law;
2. no clear Executive responsibility for administrative action; multiple budgets and off-budget expenditure;
3. earmarked and sequestered revenue and assets;
4. ambiguity about the political status of public employees;
5. inadequate citizen protections; and
6. the unclear application of private law (e.g. of property or contracts) to public organisations.

43. Conversely, good governance generally implies that:

1. There is a clear basis in law and convention for the roles of the different branches of government in the policy and operations of public organisations.
2. There is a general framework law for the establishment, powers, direction and control of agencies.
3. The financial management of public organisations is subject to a general law on financial management including appropriation, budget presentation and financial review.
4. The civil service and its relationship to the political executive is defined in law (and its coverage – in terms of core government and agencies – is defined).
5. Public organisations are covered by general human rights legislation and protection for minorities and there is a general public law on the rights of citizens in relation to government (covering access to information, personal privacy and investigation of complaints).
6. The status of public organisations as “natural persons” in relation to laws regarding property rights, contracts, competition is clearly defined in law.

Specific legal environment for organisation

44. Symptoms of failures include:
   1. conflicts between specific organisational law and the general legal framework;
   2. conflicts of jurisdiction with other public bodies;
   3. unclear power of direction or review of the organisation;
   4. inadequate rights for citizens to access information from the organisation or to its appeal decisions.

45. The equivalent safeguards follow from these risks:
   1. Exceptions from the general legal environment for public organisations need to be clearly justified.
   2. The founding law for the organisation ought to be consistent with general administrative law and agency framework law and it should be clear how public and private law will apply to the organisation.
   3. If the organisation has powers of regulation there should be a clear legal framework for sectoral regulation and the role of the agency within it and there should be provisions for appeal from decisions by the organisation.

External governance design and capability

46. Risks reported in the external governance environment for agencies are of two types:
   1. Design risks: problems arising because of incoherent relationships between agencies and complex and varying rules for direction and control: bad organisational design can lead to overlap and duplication of functions; multiplicity of forms and complexity of rules increase the difficulty of proper oversight; there may also be problems in specific organisational design – quite often of proper definition of objectives and reporting regimes for organisations.
2. Supervision risks: lack of capability on the part of supervising and reviewing organisations (to system design problems can contribute by making it more difficult for these organisations to exercise their supervisory functions).

47. Some reasons why problems with external governance can arise include:

1. *ad hoc* development of agencies without proper regard to central mechanisms for direction and control;

2. failure to apply appropriate general management regimes uniformly to agencies, where these are required to protect the government’s general interests in public sector finance, employment or codes of behaviour;

3. problems with designing and enforcing performance agreements based upon measures of results rather than direct input controls over finance and staffing;

4. excessive spans of control and/or inadequate capability of central ministries charged with direction and control of agencies.

*Ad hoc development*

48. Experience with managing large-scale change seems to vary from country to country. On the one hand, both the United Kingdom and New Zealand seem to have implemented very significant changes to their overall public organisational governance in the last decade without major risks to the quality of governance. The changes now underway in both countries to increase the coherence of external governance seem very much second-order in relation to the magnitude of the shifts of the preceding decade. On the other hand, some Eastern European countries are struggling with a legacy of a largely incoherent and fragmented agency structure and a sense that agencies had as a result got somewhat out of control.

49. A common theme running through the leading reformers and other countries as well is to assert the need for a uniform and legible system of external governance. Such a system is required to protect the overall interests of the state in an integrated development of public policy and the management of the political, financial and employment risks which governments inevitably inherit from their public organisations. In several cases, these concerns have followed experience with growth in the agency sector, so that legal and administrative changes are attempting to recover a perceived loss of central direction and control.

50. A further change theme emerges from concerns about management capability both at the centre and in agencies themselves. A shift from detailed external control of inputs to greater reliance on internal agency governance – and from there to a shift in focus towards contracting for results – requires not only new management capabilities but a change in incentives and culture as well. To quote a Dutch report:

*Becoming an agency is a complex and time-consuming process of change. Becoming an agency does not take place overnight. Organisations that have gone a long way in introducing results-oriented elements into their management can make the switch responsibly in two to three years. Organisations with a poorer starting position will sometimes follow a transitional path that will take a few more years. It is important not to rush the changes in order to guarantee cultural change within an organisation (PUMA 2002).*

These comments could apply with equal strength to the central ministries on the other side of the contracting relationship.
51. Finally, the context of change may be important. A presentation from the Slovak Republic (Beblavy, 2001) contrasts the arguments for “normalism” and “exceptionalism” in analysing structural change in public sectors. Either “the issues faced in transition are not qualitatively different from issues faced by other countries” or “the process is so different from anything experienced before that any parallels are bound to be irrelevant”. The author then goes on to argue that, in Eastern Europe at least, “transition is a change of a different order than OECD public administration reform, [although] many lessons and comparisons can and should be made”. The argument for difference rests on the significant differences in the legal and institutional environment, the overall speed and scope of change, the context of general decline in quality and quantity of public services, the blurred boundary between public and private sectors, the evolving rule of law and weak administrative capacity. This list could well serve as a checklist for the institutional context of reform in any government contemplating significant structural change.

52. The organisational ecology of the public sector may therefore evolve over time with new functions being added to core ministries or through the creation of new agencies. There may be no overall plan to this evolution. In Germany it is reported that “Setting up new agencies was basically driven by ad hoc departmental or policy-related considerations which lacked a broad perspective” (GOV, 2002). The result can be duplication, fragmentation (in the sense of dividing responsibilities for outputs contributing to the same outcome amongst a number of different agencies) and overlap of functions. In Latvia it is reported that “To an extent, policy fragmentation is an unintended effect from the extensive functional decentralization occurred in Latvian administration. This was especially evident when some quite small units have been set up as autonomous agencies to manage similar EU educational programmes.” (GOV, 2002). On the other hand, in Germany:

*The erstwhile German fad of worrying about a decreasing unity of administration (Einheit der Verwaltung) has lost considerable relevance. Thus, functional specialisation of administrative units is more acceptable today. There have been only a few, rather moderate, inter-agency conflicts caused by some overlapping competencies between sectoral regulatory agencies and the Federal Cartel Office. But lack of co-ordination, at least between agencies, is for the time being not a problem for the federal administration (GOV, 2002).*

53. In other countries however where agencies have proliferated the consequences may be a reduction in the effectiveness of external governance. Central departments or policy ministries charged with steering and control functions may be faced with an excessive span of control. In the Slovak Republic “The management of a large number of subordinated organisations encumbers heavily the central authorities of state administration which leads to their managerial overburdening in this area and weaknesses in control”. (GOV, 2002). Furthermore some countries report a variety of governance regimes applying to public organisations with a consequent loss of administrative “legibility” for central ministries, legislatures and citizens alike. The result is to risk a lack of coherence in policy implementation and failures of cooperation between organisations contributing to the same required outcomes. Priorities may also be less flexible when programmes are the responsibility of specific subordinate organisations and therefore take on a life of their own.

54. Significant risks can also arise from a failure to pay attention to protecting the state’s interest in a comprehensive system of financial management. Firstly there is a risk to budget management. If governments lose control of their revenue sources or permit some categories of organisational expenditure to become entrenched then they lose the ability to re-prioritise their spending across the whole public sector or to control total demands of the public sector on the economy. Second, fiduciary failures of financial management can occur because of inadequate reporting or audit functions.
Problems of ongoing agency direction and control

55. There may be significant difficulties defining agency objectives in terms of outputs or outcomes. These problems can be exacerbated when required results are externalised into arm’s-length contractual relationships. Several countries report difficulties with appropriate specification of results. It may be difficult to define measures which properly represent desired results, are comprehensive in their coverage and reasonably parsimonious in number. The results of inappropriate specification can be the usual problems of performance measurement including focusing on the measure rather than the desired outcome, “gaming” in the setting of performance targets or misrepresentation of performance statistics.

56. In France, for example, problems with performance management of EPs have arisen because:

1. Current budgetary and accounting tools and control procedures are well suited to verify the regularity of the use of resource procedures, but are inadequate to assess performance and support properly policy decision-making.

2. Commitments made by the state in the contracts with EP are often weak or deceptive especially in relation to financial matters.


57. Similarly in Spain improvements are sought in the performance management systems in both supervising ministries and agencies (GOV, 2002).

58. Specific risks arise from establishment of commercial or quasi-commercial functions. Mixed commercial and non-commercial functions may permit the agency to subsidise its commercial activities from its non-commercial revenues (by misallocation of overheads for example). Also the agency may be able to use its public status to competitive advantage in private markets.

59. Increased autonomy for agencies means that the general rules for external control of public money and employment are replaced to some extent by internal control within the agency. However if these controls are not put in place, there are risks to both performance and legitimacy. The risks to performance arise because increased freedom to decide allocation of budgets or appointment and reward of staff can result in a loss of efficiency or economy in delivery of outputs. The risks to legitimacy are non-transparent or non-accountable management and potential corrupt or fraudulent misuse of public money and assets. The problem is intensified if the purpose of establishing the agency was to conceal certain activities or funding sources from official scrutiny.

External governance capability

60. Ministries or other organisations can play a number of roles in external direction and control of the agency. Typically these can include appointment of boards or senior management, negotiation of business plans, representation on management or advisory boards and audit and review of performance.

61. A common concern in many countries is that supervising organisations may be ill-equipped to exercise these functions. The fundamental issue is the significant gap that can emerge between the motivations, competencies and information sources of controlling central ministries and operating agencies. First, effective supervision requires both agreement on the mode of supervision and the information to support monitoring by the ministry. If this framework is not in place, the necessary
information base is not available to the ministry. The incentives for central ministries also frequently lie in
day to day political and policy management, rather than in operational oversight. In addition, ministries
may lack the necessary competence to administer a performance management system which requires
capabilities akin to the operational management skills of the agency itself.

62. Observations on Swedish experience are of interest because of the wide acceptance of the agency
model in Sweden and its long-standing nature.

... agencies and their director-generals have a large information advantage in relation to the
government employees charged with agency guidance and supervision. Even the director-
generals themselves have noted the imbalance between the Government Office and the
agencies. Furthermore, the government employees charged with agency issues are spread out
over many different units, and turnover is high. There is no co-ordinating unit for agency
governance within the Government Office (GOV, 2002).

63. Supervising ministries may therefore find themselves on a cusp between two conflicting
strategies for direction and control. Where agencies present no particular evident political risk, the
temptation for supervising authorities may be simply to abrogate their responsibilities and let the agencies
get on with their business with the minimum of cursory inspection, reacting more intrusively only when
political fire alarms go off. This situation of (generally) benign neglect may be willingly accepted by the
agency. The alternative – which may arise either because of a perceived political risk or because of fear of
loss of a power base in the operational functions – may be a continued de facto reliance on detailed
supervision with its associated costs for efficiency and effectiveness in the organisation and confusions
about accountability for performance. In the Netherlands it is observed that “If the policy department
continues its input-oriented management, then managing an agency according to a results-oriented
management model only leads to frustration.” (GOV, 2002). The problem is how to get supervisors to shift
from detailed day to day control of management decision-making or budgetary control in supervised
organisations to negotiation of performance objectives within a planning framework and ex post
monitoring of performance and costs.

Internal organisational governance

64. The principal risks arise from the substitution, as earlier discussed, of mechanisms of internal
governance (including top-level agency governance) for external direction and control. The risks may
include a steering and control structure inappropriate for functions of organisation; conflicts of authority
between agency boards and chief executives; and weak internal controls.

Internal governance and capability

Poorly constituted top level organisational governance

65. Central government has to define how public organisations will be directed and controlled and
appoint the persons responsible for internal governance. Risks can arise because:

1. the form of top-level governance is inappropriate for direction and control;
2. there is a related problem of unclear definition of roles;
3. there are inappropriate criteria for top-level governance appointments.
66. **Form of top level governance**: In OECD countries, agencies frequently have boards inserted between the political executive and the management of the organisation. Boards can be either advisory (carrying some powers of supervision of policy execution or the right to be consulted by the agency head or to advise the minister on policy matters) or executive (carrying some direct authority over the policy and management of the agency). Advisory boards (*de facto*) and executive boards (*de jure*) both involve some dilution of direct political control. The insertion of boards is common enough in OECD countries to confirm that their political value frequently outweighs the risk to the political authority of loss of direct control. Christensen suggests that, from a minister’s point of view, either an advisory or a management board can (advantageously) blur political accountability, increase commitment to present policies and shield agencies from parliamentary interference. But the authority vested in top-level governance has to fit with the *de facto* requirements of steering and control by the political executive. There will be problems of fit if, for example, formal responsibility for governance is vested in a board but the actual policy-related steering of the organisation requires frequent intervention by a minister or a supervising ministry. These problems can arise if there is a high degree of policy risk in the operations of the organisation, or its activities require extensive central coordination with those of other organisations. In these cases a departmental form with its opportunities for direct control by a minister may be preferable to a public law authority.

67. **Role definition**: Particularly when the responsibility for top-level governance is shared amongst central supervisory ministries, executive or supervisory boards, and the senior management of the organisation itself. The risk will be increased if there is ambiguity about the political accountability of the organisation and particularly about its policy responsibilities. Reported consequences of these ambiguities include continued micro-management of organisation activities by supervisory ministries, confusion between boards and senior managers about the lines of communication with the political executive on policy issues or unclear allocations of responsibility for dealing with legislatures. In Latvia:

   *The layers of intermediary management bodies made the distance from the agency to the minister or ministry quite long. At the same time the proxies and members of councils often lacked necessary sense of government policy priorities and lacked the accountability and responsibility frameworks that hierarchical civil service system offers. Therefore the strategic decision making level has been removed too far from the officials daily responsible for the oversight of the policy implementation (GOV, 2002).*

68. **Board and management appointments**: Risks can arise because board or senior management appointments are made on political criteria which are unrelated to the expertise required for steering or management of the organisation. The risks may emerge in poor quality oversight and direction from board members or inadequate management by officials. Furthermore appointees’ primary loyalties may be to their patrons, rather than the performance and legitimacy of the organisation. Again, in Latvia:

   *The patronage through appointments took place through the appointments of members of council and proxies, not so much through the appointments of CEO, who normally was selected thorough a competitive selection procedure. Often, connections from the council members went straight to the party headquarters, which increased the possibilities for patronage (GOV, 2002).*
Management capability in agencies

69. Management in public organisations themselves may not have the skills or experience to assume the responsibilities of internal governance in terms of planning, task definition, hiring and reward of staff, procurement and contracting, reporting, internal control and audit. Failures in internal governance may either result in a de facto resumption of detailed control by supervisory Ministries or in a vacuum in which there is no effective control of the organisation either internal or external.

70. In Chile for example the external governance regime seems fairly stable and well-developed but there are challenges both for the quality of external surveillance and for agency internal governance:

One of the important challenges for the future will be to increase the capacity of ministries to define public policies, monitor agencies, control and assess their results. At the same time, it will be important to improve communications on policies between agencies and ministries, and the understanding by the ministries of the activities and results of the agencies.

At the same time, it will be important to improve the agencies’ capacity to manage themselves, especially in the context of recent reform which aims at increase technical, financial and personal flexibility of agencies and better define the roles and relationships between definition and implementation of a policy, what is expected of CEOs, their levels of management discretion, and the responsibilities of agency managers (GOV, 2002).

Informal elements – potential sources of errors and violations

71. As well as analysing the formal elements of risk in organisations the analyst will need to be aware of the informal sources of risk.

72. Informal exercise of political and bureaucratic power: There may be significant conflicts between formal and informal agency governance. Problems related to patronage or clientilism can arise in two main ways. One is that while the presenting reason for implementing an organisational change may be for reasons of performance or legitimacy, there may be an underlying agenda of creating a source of power for an individual or group as part of a political deal. Again, this ambiguity can produce objective conflicts for the agency and certainly call into question the justification – in terms of good governance principles – for its establishment. On the other hand, a new agency may upset established client or patronage relationships with powerful stakeholders such as political power-brokers, unions or special interest groups, which can have the same effect of producing conflicted governance regimes.

1. Exogenous influences – potential for specific interest groups, unions, mafia etc to infiltrate the organisation and/or influence and suborn its employees.

2. Internal “culture” (top-level governance and staff) – lack of understanding and acceptance by board members of their steering and monitoring role and their external accountability requirements; and of need to manage conflicts of interest between these roles and their other interests. Lack of staff understanding and acceptance of the external accountability requirements and of the internal requirements of ethical behaviour (and of distinction between public and private roles).

3. Other potential stressors on the organisation – resource adequacy, management capability, quality and openness of communication, unity of purpose (or lack of it) amongst top level governance, management and staff.
Conclusion

73. This paper addresses a specific aspect of the governance of public organisations: identifying the risks of creating agencies with a differentiated and usually greater degree of autonomy from management or policy direction than the standard form for a government department. There is no doubt that there are perceived risks to performance and legitimacy from agency creation. But there are also potential benefits to both criteria of good governance. Therefore an analysis of risks needs to be seen as part of a wider project on public organisations which would include discussion of the principles for creating public organisations in relation to their tasks and the environment in which they operate; and the principles for managing the risks identified in this paper.
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## ANNEX 1
CLASSIFICATION OF NON-DEPARTMENTAL PUBLIC ORGANISATIONS

<table>
<thead>
<tr>
<th>Table 1. Classification of agency types</th>
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<tbody>
<tr>
<td><strong>Attribute</strong></td>
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<tr>
<td>----------------</td>
</tr>
<tr>
<td>Institutional and legal foundations</td>
</tr>
<tr>
<td>Governance structure and control</td>
</tr>
<tr>
<td>Financial management and personnel rules</td>
</tr>
<tr>
<td>Function</td>
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<tr>
<td>Examples</td>
</tr>
<tr>
<td>----------</td>
</tr>
<tr>
<td>France: Centres of responsibility; Germany: Direct federal administration; Netherlands: Agencies; New Zealand: Semi-autonomous bodies; Spain: Autonomous organisms; United Kingdom: Executive agencies; United States: Performance-based organisations.</td>
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</table>
ANNEX 2
REASONS FOR ESTABLISHMENT OF AGENCIES

CANADA

- **Service agencies:** Focus on results and performance emphasis on “whole-of-government” perspective. Can more easily forge partnerships with provinces and territories.

- **Special operation agencies:** Provide greater freedom from department and government-wide administrative rules in return for a commitment to clear performance targets.

- **Shared governance corporations:** Positioning organisations in the hands of local authorities that are more accountable to the communities they operate in, and to local circumstances and opportunities. Has also involved long term contracting out of government functions.

FINLAND

- **HAUS –** Finnish Institute of Public Management: increasing efficiency, mostly starting in 1995.

- **KELA –** The Social Insurance Institution: Improve the administration.

FRANCE

- **Établissement public administratif (ENA):** Functional decentralization: public service.

- **Établissement public industriel et commercial (EPIC);** Functional decentralization: usually industrial and commercial activities.

- **Services of a national scope:** Response to the need of identifying the locus of public decision making, assessing the responsibility managers, and bringing them closer to local issues and local people.

- **Autorité Administrative indépendante – AAI:** Guarantee the independence and impartiality of the actions of the state.

GERMANY

- **Private law administration:** This type of authority enforces major administrative regulations such as in banking, insurance or drug safety, and cartel law.
NETHERLANDS

- **Agencies –1991**: Contractual management. Managerial differentiation in rules control (agreement on achievements and costs); administrative differentiation (accrual accounting) – results-oriented operating. The first agencies come into being on 1 January 1994.

- **Independent administrative Bodies (ZBOs)**: More flexible personnel management, limited ministerial accountability (ministers not accountable for individual decisions but remain accountable for the general functioning).

- **State agencies**: the desire to cut off the paths to corporatisation.

NEW ZEALAND

- **Independent Crown entities (ICEs)**: Freedom from political influence. One of the reasons for creating a number of entities rather than departments was to distance (and signal the distance) of ministers from the operation of entities.

- **Crown-Owned Companies (CROCs)**: Improved service delivery.

- **Autonomous Crown Entities (ACEs)**: Improved service delivery.

- **Crown agents**: Rely on management skills and the experience of a government board.

- **Reserve boards**: To control and manage Crown-owned reserve.

- **Schools**: Crown agents with their own governance/accountability regime.

PORTUGAL

- **Organisations that remain under the authority of government by means of indirect instruments**: Political and historical reasons after 1974 Revolution.

- **State-owned companies**: Ditto.

- **National theatres; national museums; national libraries**: managerial and control purposes.

SPAIN

- **Autonomous body (OA)**: Management flexibility, financial control and procurement procedures.

- **Public entities (EPE) providing goods and services susceptible of transaction**: ditto.

- **Exceptions such as Social Security administration, some regulatory bodies and bodies with special treatment**: ditto.
SWEDEN

- “Starting with 1980s other authorities, which until then had been agencies, were transformed into public service agencies”: Historical background. The downsizing of the welfare state in the 1980 and 1990 changed the power of the central authorities and permitted the creation of the “public entities”.

UNITED KINGDOM

- **Next Step agencies**: Managerial flexibility, efficiency, results- and outcome-oriented management.

- **Non-departmental public bodies (quangos)**: Independence from political power, provision of independent advice to ministers, providing fast responses to matters of a particular concern, bringing a large number of people into public life, providing a flexible model for delivering functions.

UNITED STATES

- **Independent agencies**: Created following interest group pressure or Congress interest and President to highlight concerns over a particular issue.

- **Government corporations**: historical background since the World War II.

- **Quasi-governmental entities**: Encourage creating new sources of revenues, exemption from central management laws, especially statutory ceilings on personnel and compensation, business-focused values, management flexibility.
NOTES

16. As will be evident from the following discussion, there is simply no accurate general name for the many different types of public organisation which are not government ministries or departments. “Agency” is the best of a bad bunch. Despite the definitional problems, this paper uses “agency” as a widely used and convenient short-hand.

17. There is no general overview of agency creation in developing countries or transitional economies comparable to the OECD work. Ongoing work by Professors Colin Talbot, Christopher Pollitt and others includes case studies of agencies in a number of developing countries. See for example Talbot and Caulfield (2002) which includes case studies on Jamaica, Latvia and Tanzania.

18. For the remainder of this paper, these terms are used as if they are synonymous.

19. Personal communication.


22. The budget figures in these examples don’t distinguish between the costs of operating an agency and their total spending which may include payments to other entities or to individuals made as a consequence of policies administered by the agency.

23. Consistent with other OECD work, the definition excludes constitutional bodies (such as audit courts), state owned enterprises, private companies and fully politically devolved bodies (such as regional or local government).

24. *Établissements publics administratifs*: national public bodies responsible for implementing government policies or managing a public service.

25. *Établissements publics industriels et commerciaux*: national public bodies mostly trading in the private sector.

26. Gill (2002) notes that, in many OECD countries, public organisations have been created using private company law which are more akin to not-for-profit enterprises since “they maximise a service objective function (output, services delivered etc) subject to a cost constraint rather than aiming to maximise profit”.

27. This list draws, with free adaptation, on Talbot 2002.

28. The argument is developed in Majone 1996.

29. Autonomous administrative authorities which “act on behalf of the state without being subordinate to the government and enjoy, for the proper conduct of their assignments, guarantees which enable them to act in a fully autonomous fashion, such that their action may not be directed or censured except by the courts.” (*Conseil d’État*, reported in Rochet et al, 2001, p 43).

30. Record of intervention at Bratislava conference.
31. Christensen (1999) offers an alternative classification of “bureaucratic” autonomy (departures from clear and unequivocal ministerial direction and control of public organisations) into “structural” (where alternative top-level governance is inserted between minister and agency), “financial” (where agencies have some independence of control over financial resources and “legal” (where the minister cannot interfere in individual decisions made by agency officials).

32. See Reason 1990.

33. “State capture refers to the actions of individuals, groups, or firms both in the public and private sectors to influence the formation of laws, regulations, decrees, and other government policies to their own advantage as a result of the illicit and non-transparent provision of private benefits to public officials.” See World Bank, 2000.

34. Based on GOV, 2002.

35. Equivalent to the term “chief executive”.

36. Excerpted from responses to the PUMA Questionnaire.