THE PUBLIC/PRIVATE SECTOR INTERFACE

Meeting of Senior Officials from Centres of Government on Risk Management
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1. Following contacts with the members of the network of Senior Officials from Centres of Government, the Secretariat and Mr. Ólafur Davidsson, Secretary General of the Office of the Prime Minister of Iceland and host of this meeting, considered that the issue of the interface between public and private sectors would represent a subject of great interest for the majority of the participants.

2. The session (morning of Tuesday 23 October 2001) will have as its objectives:

- To identify the different approaches adopted by OECD Member countries to the relationship between the public and private sectors in order to obtain an overview of the different conception of the respective roles of the State and the private sector; the areas which could be covered include the role of the State, regulation, the supply of services and the privatisation/outsourcing/delegation of functions.

- To identify, beyond differences in approaches and conceptions of the role of the State, the key governance questions posed by the public/private sector interface.

- To determine the priority issues which might be the subject of more in-depth discussion at the meeting of Senior Officials from Centres of Government in 2002.

- To suggest issues for investigation by the Public Management Service within its current and future work programme.

3. In general terms, interface means, at one and the same time, the common limits, point of contact and of separation between two distinct elements. This also holds true for the interface between the public and private sectors. It represents the point at which the competencies and role of one sector ends and those of the other begin - where the two sectors enter into conflict or co-operation. It is also a sort of "grey zone" where the boundaries between them are not always clear (as in the case of references to semi-public or private). The rules to be applied can be easily confused.

4. It is at this contact point that the establishment and respect of governance principles aiming to ensure greater transparency, openness and guarantee accountability of actions undertaken becomes a key issue - perhaps of more crucial importance here than within the public or private sectors themselves.

Different conceptions of the role of the State

5. The conceptions of the role of each of these two sectors vary greatly across OECD Member countries. They reflect different approaches and philosophies regarding the role of the State.

6. On the one hand, certain countries consider the private sector to be pre- eminent and that the role of the State should be limited to one of facilitator and non-interventionist. It creates the necessary conditions for the development of markets and profits. It ensures, in particular, functions of defence,
international relations, security and the respect of a minimum number of rules needed for the development of private enterprise.

7. On the other hand, certain countries consider that the roles of the State and of the private sector are totally distinct in their nature and that the State is the guardian of the public interest in the face of private interests. Under this perspective, the State is obliged to intervene each time the public interest must be protected. In such cases, it will take on the task of delivering services that it knows will not be provided by the private sector, due to their low or unprofitable nature or where it is necessary to safeguard the “public interest”.

8. Between these two extremes lie those countries who espouse a more or less interventionist conception of the State inherited from the past, and who decide to shed functions which might have been delivered by the private sector from the outset (such as banking, insurance, transport, hospitals, logistics). Certain countries undertake privatisation, others create agencies characterised by varying degrees of independence when compared to the fully public sector, such as for example, ministries.

9. For still others, the State should establish the plan of action (for example in the field of education, in allocating financial resources from taxes to specific sectors) with the private sector in charge of implementation.

Lack of clear criteria to distinguish between public and private sectors

10. This raises the challenging issue of whether it is possible to reach agreement on simple criteria defining the frontier between public and private sectors. While the fact that a ministry belongs to the public sector raises few doubts, that of an agency to which a ministry delegates certain tasks or commercial activities soon becomes an issue of debate - given that they operate under a mix of rules proper to both sectors.

11. Profitability and profit-seeking could, in theory, be satisfactory criteria: the State not primarily being driven by the concern for profitability which is, on the contrary, the essential driving force of the private sector. However, these criteria soon show their limits: for example, when trying to classify voluntary or not-for-profit organisations that are indeed private but are not founded on the principle of profit-seeking. On the other hand, today one can hardly claim that the State ignores the issue of profitability and value for money as demonstrated by the introduction of target rates of return for public agencies and enterprises and procedures for evaluating public policy, the impact of public decision-making, the performance of individual public employees, cost/benefit analyses as well as the search for rigorous and better management of public funds.

12. Public service and public interest would, in theory, be the exclusive concern of the public sector while private and specific interests would characterise the private sector. But this distinction can also be contested. In some countries, the public interest is intended to be safeguarded through regulation, including the creation of independent regulators and competition policy. Moreover, non-governmental organisations with humanitarian or environmental goals, for example, defend public interests in protecting individuals against disease, famine, or the dangers of an irresponsible use of natural resources. They are not, therefore, the exclusive preserve of the public sector. Certain private sector enterprises also claim to act in the public interest and may establish Foundations to reinforce this objective.

13. Broader notions, such as that of the “public interest sector” found in the United States, attempt to settle the difficulties raised by reducing what is in fact a complex reality to two distinct sectors. This reality encompasses public institutions on the one hand, and private enterprises and the market on the other - but also covers a sector that does not fall under any public authority but which deals with issues of
interest for the whole community. This involves a shift from duality to a trio composed of the State, the market and civil society (profit-seeking being a line of demarcation within the private sector which may then be divided into the for-profit sector - to which businesses belong - and the non-profit sector such as that of voluntary associations).

The interface between public and private sectors: from conflict to co-operation

The State does not limit itself to a narrow definition of its role

14. Even States that reject intervention in the private sector on grounds of policy may be constrained to do so and to support private sector activity (as in the case of support to airline companies who find themselves in difficulty following an interruption in traffic) or on occasion, to substitute for the private sector when it fails. A State may, for example, under the pressure of circumstances, feel obliged to introduce and enforce security measures for air transport which private sector enterprises have not themselves introduced or whose effectiveness they have not ensured.

15. In other cases, a State concerned to protect the public interest through services to citizens delivered by public authorities may seek to free itself from the specific rules of the public sector, which may be too restrictive, in order to act more like competitive private enterprises. It thereby benefits from a greater degree of flexibility and independent management in the delivery of certain services (for example, through industrial or commercial organisations similar to the operations of private companies), but not necessarily subjecting such enterprises to the same rules of corporate governance.

Each sector seeks to influence the other…

16. The public sector is endowed with coercive powers which are unequalled by the private sector. Public authorities may exercise strong pressure on the private sector through expropriation, adoption of new rules to be applied by private enterprises, border closures, embargoes on trading with certain countries, setting of interest rates by the central bank. These prerogatives may also, of course, be directed towards assisting the private sector: re-establishment of conditions for trade, financial assistance following catastrophes and so on.

17. The private sector seeks to influence the public sector, particularly at the political level of decision-making: this is the case of pressures exerted on national policy-makers by private interests engaged in "lobbying" but also the growing influence of private economic interests on major global policy issues such as the pressure of polluting industries in the field of sustainable development, the weight of banks and financial markets in international relations and negotiations. In certain countries, lobbying is regarded as one of the recognised means of necessary and organised co-operation between the two sectors in the development of public policies.

…and to borrow from one another

18. Examples of "borrowing" from the private sector by the public sector are certainly more common than can be found in the opposite direction. For example, with regard to services, the comparisons made by users with those provided by the private sector have constituted a strong incentive for reform and improvement of service delivery by the public sector. Such "loans" have been made along a scale ranging from the minor and occasional (such as private sector contracts for agency personnel, innovative management techniques undertaken in derogation to public sector rules) through the devolution of tasks to non-State structures, to the privatisation of certain activities previously undertaken by the public sector.
19. The public sector has thus progressively introduced a whole range of more or less independent public entities or organisations - some of which are very close to the private sector. In the majority of Member countries this category includes regulatory activities (e.g. independent regulators for energy, water, telecommunications), commercial activities and activities for which ministerial departments are poorly equipped to perform. Certain activities which are to be distanced from political power and others for which it is intended to associate interest groups and the private sector are also subject to the creation of such bodies. Depending on the country, they may be called executive agencies, "public establishments", delegated or devolved service bodies. For the public sector the aim is essentially to use such bodies to benefit from a greater degree of autonomy, management flexibility and to avoid obligations binding on the public sector (for example public procurement rules). In certain circumstances the public sector wishes to act as an entrepreneur or private sector actor.

20. Furthermore, the State or public sector cannot do everything, given the diversification and specialisation of tasks or for budgetary reasons. It privatises certain tasks it used to perform because, for example, the private sector is technically better equipped to carry them out, or certain functions have become too costly for the public sector or because maintaining direct public management of the activity would conflict with competition rules of the market (e.g. the trend in limiting State monopolies).

21. Such instances represent the extreme case where a public sector activity or function is shifted to the private sector. The opposite shift is equally possible, for example with the nationalisation of banking and insurance sectors and large enterprises for the use of natural resources which have been observed in certain cases.

Complementarity and partnership between the two sectors

22. Finally, for certain activities there may be complementarities and partnership between the public and private sector. A recent example is that of the partnership certain countries have established between public authorities and the private sector for on-line administrative procedures - particularly in the field of setting up a new firm. In certain countries, private banks have become the main point of contact for on-line access to public sector information and for conducting certain formalities. In others, private banks are entrusted with collecting taxes on behalf of the public authorities. In such cases, banks constitute private sector "extensions" to the administration.

23. Partnership with non-governmental organisations (NGOs) is also widespread in OECD Member countries, especially in the delivery of social services, public awareness-raising, contribution to policymaking and implementation (ranging from care of the elderly and terminally ill, AIDS prevention, environmental protection). The public sector relies on such organisations to disseminate information, act as relays for feedback from citizens (e.g. from ethnic minorities), to develop policy options (e.g. on waste disposal) as well as to implement government policy (e.g. delivery of humanitarian aid). It can for example, call upon international NGOs in crisis situations and for field operations. Complementarity between public and private sectors is widespread among Member countries in order to provide citizens with greater choice in terms of cost, quality or core values (for example, the coexistence of religious and lay educational establishments and of public and private health care).
Managing the interface between public and private sectors: issues for policy-makers

- What are the fundamental functions and roles of the State?

24. One of the key questions for political decision-makers is to determine the point at which it is difficult, or even impossible, to delegate or privatise public sector tasks. What are the criteria to apply? For certain countries privatisation is regarded as necessary whenever the State proves unable to manage an activity which would be more efficiently conducted by the private sector. For other countries, even if the activity is effectively managed and profitable, the issue is to return such activities to the private sector given their commercial or service nature or because they are in direct competition with private entrepreneurs. For others it is a question of limiting the State to its core functions of defence, justice, foreign policy, security and respect of democratic principles and institutions. In this perspective, the establishment of sanctions, their application and the exercise of justice would belong to the public sector while the construction and management of prisons where sentences would be served would belong to the semi-private or private sector.

- How far can the State protect the public interest in a process of devolution to the private sector? How can it rely upon a part of the public sector?

25. When an activity is transferred to the private sector, what is the responsibility of the State if private contractors fail to fulfil their obligations (for example if security in public transport is not ensured; transport is unreliable; only profitable routes are maintained)? What measures should be developed and put in place to protect the public interest and ultimately replace the private sector if necessary? Examples of collaboration with the voluntary sector are numerous in OECD Member countries and represents a major source of support to the pursuit of the public interest offered by a certain part of the private sector. Deepening such collaboration appears to be a promising solution for the future by increasing the means for action in particular when responding to certain crisis situations. How can the public sector reinforce its collaboration and partnership with the non-profit private sector in order to pursue its goal of protecting the public interest?

- How to balance autonomy, flexibility and accountability?

26. Within the "grey zone" of the semi-public/semi-private sector, public authorities must ensure that granting a large degree of autonomy does not undermine the application and respect of key governance principles, and especially the obligation to be accountable, according to the specific cases, to central administration, the legislature, the ombudsman, institutions responsible for management control, citizens and the private sector. Citizens and private enterprises consider it their right to be fully informed of the use made of public funds collected through charges and taxes.

27. On the other hand, the capture or improper use of these bodies by either the private or public sector must be avoided. This becomes a particularly crucial issue for independent bodies entrusted with the regulation of certain sectors of the economy (for example, telecommunications).

- How to ensure transparency in the public and private sectors?

28. Information, communication and active participation by citizens in policy-making are among the objectives pursued by OECD Member country governments, with the aim of ensuring a greater degree of transparency in the public sector. In the course of policy-making, public authorities have numerous contacts with different "representatives" of the private sector such as trade unions, NGOs, non-profit associations. In their dealings with such actors, public authorities are faced with a series of questions, for
example: how representative are these interlocutors, what are their sources of financing, what are their objectives? Are the lack of transparency and "rules of the game" real obstacles to dialogue between the public and private sectors, including the non-profit sector? How can the transparency of the non-profit and for-profit private sector be improved?

- **Competition between public and private sectors for the recruitment of qualified personnel**

29. Each sector seeks to attract the best qualified personnel. The private sector, in many countries, has the advantage of offering higher levels of remuneration. The public sector counters this with, for example, employment stability in countries with a career civil service. The effects of the age pyramid, the demand for new skills (for example, for the establishment of e-government, the public sector is seeking employees who have new profiles compared to recruitment in the past) increase the level of competition between the two sectors further still. Several countries are considering modifications to their civil service statutes, the introduction of exceptions within the traditional salary structures, the redefinition of careers and professional development in order to integrate those with new skills from the private sector. In some cases, the passage from one sector to the other is highly facilitated, while others maintain a distinct separation between the two. Certain public functions have been "privatised". What trump cards can the public sector play in order to effectively compete on the employment market?

- **Conflicts of interest, the fight against corruption and ethics**

30. A growing number of instances of conflict of interest (between public interest and private interest), due in particular to the greater level of interaction between public and private sectors at the interface, call for the introduction or strengthening of measures to support ethics and the fight against corruption. Privatisation is a particularly sensitive field - raising issues such as the introduction of standards of behaviour, codes of conduct and the extent of their application. For example, how far and under what conditions do ethics management measures apply to private sector subcontractors undertaking public functions or to independent public agencies? Citizens, for their part, expect continuity in the rules allowing them to trust in their "public" interlocutors - whether or not they have delegated a part of their tasks to the private sector.

- **Finally, the issue of ensuring coherence in the actions of public authorities persists**

31. What policies, legislative frameworks, institutions are in place and what experiments have been carried out to ensure coherence between the public sector, its extensions in the form of autonomous bodies, the private sector engaged in the promotion of the public interest and representatives of private sector interests.

32. How can policy-makers obtain an overview, in particular when for a given policy area - such as health - the number of different public and private actors is high and the relationships between them complex?

33. PUMA has already undertaken, or has included in its future programme of work, investigations of certain of the issues mentioned above.