Distributed Public Governance

AGENCIES, AUTHORITIES AND OTHER GOVERNMENT BODIES



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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Foreword

In today's fast-moving world, governments need to rethink their role to meet the challenges posed by forces such as globalisation, decentralisation, new technologies, and the changing needs, expectations and influence of citizens. Good governance transforms not only the relationship between governments, citizens and Parliaments, but the effective functioning of government itself.

The OECD seeks to analyse and develop solutions to the common challenges and needs of governments, and to promote good practices that enhance the effectiveness of democratic institutions.

At its 2000 meeting, the OECD Senior Budget Officials Working Party proposed a project on the governance of public agencies and authorities – later renamed "***Distributed* Public Governance: *Agencies, Authorities and other* Government Bodies**". This was confirmed as a priority by the Public Management Committee (PUMA) of the OECD.

A related PUMA project focuses on the ***Governance of* Regulatory Authorities *and* Institutions**. The objective of this work is to improve the institutional basis for effective, market-oriented regulation. It does so by assessing and highlighting the links between regulatory policy performance and regulatory institutions, particularly in high-priority infrastructure sectors. The project also identifies critical issues in the design of institutional arrangements set up to manage sometimes conflicting demands between, on the one hand, strong "independence" and safeguards against capture by private or public specific interests, and on the other hand, improved transparency, accountability and efficiency. The project is led by Peter Ladegaard.

On 19-20 April 2001, experts from 12 OECD member countries gathered to discuss the issues and provided the nine country reports that are included in this publication. These reports present national experiences in the governance of

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public agencies and authorities. The OECD is grateful to individual contributors for providing these high-quality reports.

Since April 2001, PUMA has organised a conference on the same topic held in Bratislava in November 2001 and hosted by the Government of the Slovak Republic as well as another meeting in Paris in March 2002. A special issue of the OECD *Journal on Budgeting* (Volume 2, Number 1) has published papers addressing distributed public governance. The project on Distributed Public Governance has benefited greatly from discussions and work with a number of international experts including Derek Gill (State Services Commission, New Zealand), Rob Laking (Victoria University of Wellington, New Zealand), Nick Manning (World Bank), and Allen Schick (University of Maryland, USA). The project has also built on previous work carried out by OECD/SIGMA (Support for Improvement in Governance and Management in Central and Eastern European Countries – a joint initiative of the OECD and the European Union principally financed by the European Union) and summarised in SIGMA's publication on "Financial Management and Control of Public Agenices".

This publication summarizes the preliminary conclusions of PUMA's work on the issue of ***Distributed public governance: agencies, authorities and other government bodies***. It is published on the responsibility of the Secretary-General of the OECD.

The OECD project on Distributed Public Governance is led by Elsa Pilichowski of PUMA. This publication was prepared by Elsa Pilichowski, edited by OECD Consultant Christine Hemming and Andrea Uhrhammer of PUMA and it received technical support from James Bouch and Jennifer Gardner of PUMA. The Synthesis Report was written by Elsa Pilichowski of PUMA.

The views expressed are those of the authors and do not necessarily reflect those of the OECD or the member countries.

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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.[1] 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[2] 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

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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 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

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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.

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- *Common features*

Organisationally, these bodies have usually been created by:

- isolating structures within ministerial departments and providing them with a quasi-contractual relationship[3] 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

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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*[4]

   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.

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- 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:[5] 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.

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- 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**

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

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,[6] 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".[7]

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

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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[8] shows that their importance within central government in terms of their share of public expenditure and public employment[9] 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").

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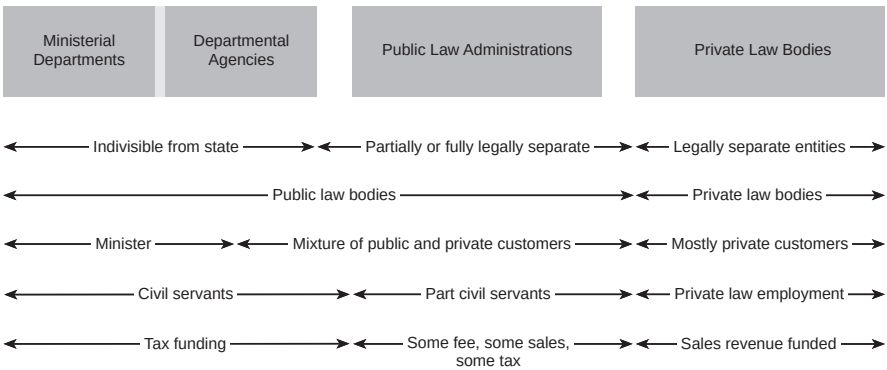
- In Canada, there are three service agencies, accounting for more than 35% of federal government employees. In addition, there are 18 special operating agencies, and one departmental service agency.

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).

Executive Central Government[1]



1. This graph is a simplified version of the graph presented by Derek Gill in his paper (see Footnote 10).

According to this classification, there are three main types of bodies covered by our study (please note we will use the terminology outlined below in the rest of the synthesis report):[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.

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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.

E*xamples*: 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.

E*xamples*: France: Administrative public establishments ("E*tablissements publics administratifs*"), professional public establishments ("E*tablissements publics professionnels*") and autonomous administrative authorities ("A*utorités* A*dministratives* I*ndépendantes*"); Germany: Indirect public administrations; Netherlands:

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Public law ZBOs; New Zealand: many Crown entities (including "statutory corporations", "corporations sole", "Crown agents", schools, "autonomous Crown entities", "independent Crown entities"); Spain: OA administrations and selected regulatory bodies; Sweden: agencies and boards; United Kingdom: many executive non-departmental public bodies.

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.

   E*xamples*: France: Industrial and commercial public establishments ("E*tablissements 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**

	Differentiated governance structure	Differentiated control environment	Management autonomy
Departmental agencies	Limited: DG has operational control	Limited	Extensive
Public law administrations	Extensive	Varies	Varies
Private law bodies	Extensive	Extensive	Extensive

b) T*he 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

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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.

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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,

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"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 sometimes 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: *i*) The creation of Public Law Administrations (PLAs) and Private Law Bodies (PLBs) seems to have come to a stand-still in many countries; *ii*) Departmental agencies have been the preferred way of providing managerial autonomy to government bodies.

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

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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. These organisations would have naturally found their place in the institutional system. 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 of 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.

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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. K*ey emerging issues regarding distributed public governance*

2.3.1. L*ack 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

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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[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

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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.

2.3.3. *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.[15] In presidential systems, many of these autonomous bodies report directly to Parliament, requiring additional capacity from Parliament to

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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.

2.3.4. *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

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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:

i) 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.

ii) 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 "representativity" (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.

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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 precondition for this engagement, as is improving the transparency of nominations, remuneration and general accountability mechanisms.

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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".
7. Laking, Rob (2002): "Agencies: Their Benefits and Risks" – Preliminary Draft prepared for the OECD (PUMA) and the World Bank.
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.
10. Gill, Derek (2002), "Signposting the Zoo – From Agencification To a More Principled Choice of Government Organisational Forms", OECD *Journal on Budgeting*, 2:1.
11. We also recognise that in each country, a few bodies will not fit the classification.

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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.

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Agencies* in Search of Principles

by

Allen Schick**

Why agencies, and why now? The proliferation of agencies is not accidental; it entails much more than merely rearranging the organisational map of government. There is a logic to the popularity of agencies that sheds light on the current state of democratic governance. Every government that embraces agencies does so for its own reasons, but as diverse as they may appear to be, all the reasons are the same. Some governments set up agencies to empower managers, others to emphasise service delivery, still others to evade personnel controls or other administrative constraints. As different as these motives may be, all attest to the belief that the inherited department-centred model no longer satisfies the organisational needs of government.

Why not? One set of explanations is rooted in the theory and practice of management. A body of literature that first emerged in economics, then influenced business management and later migrated to public administration challenges the once dominant view that tightly integrated and controlled organisations are more efficient than fragmented, self-operated units. The argument against integrated organisations can be summarised as follows: hierarchical, centrally-controlled organisations lack initiative, are slow to adapt to changing conditions and are not adequately responsive to the interests of these they serve. Giving agencies operating autonomy spurs them to innovate and improve performance. Because they are freed from departmental fetters, agencies are inherently more adaptive and responsive.

* For purposes of convenience, the author has chosen to use the generic word of "agencies" which covers in the paper both entities that are legally or institutionally separate from the state and central ministries, and those that are not.

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From this "new" managerial perspective, the rise of agencies is simply the latest stage in the never-ending process of organisational change and experimentation. Every generation has its favourite managerial style, and as concepts of good practice evolve, so too does the organisational structure of government. The current fascination with agencies, will not be the last instalment. In fact, one should not be surprised if integrated departments return to favour in the not too distant future.

Managerial developments are not the whole explanation, however, They tell us why the few countries that have adopted the tenets of New Public Management (NPM) have created agencies; they do not explain why other countries that still have old-fashioned public administrations have also established quasi-autonomous agencies. This paper hypothesises that the agency movement has profound implications that affect the role and capacity of the state. Creating agencies may be part of a process of breaking up the state into political enclaves, each with its own interests, power base, and financial resources. Departments were the building blocks of the 20th century state; the disestablishment of departments may be a hallmark of the post-modern 21st century state. The 20th century state was predicated on the concentration of power, the emerging 21st century state may be built on confederate lines, with agencies, sub-national governments, and NGOs vying with the nation state for legitimacy, resources, and authority. If this argument is valid, and it will require more than creation of some agencies to confirm it, then much more is at stake than the configuration of organisation units.

Defining agencies as instruments of management skews the discussion to questions of efficiency, such as: Is the civil service more or less productive when it is employed under an agency model than in centralised departments? Are agencies more willing to innovate than entities housed in departments? Broadening the issue to governance gives rise to questions concerning the changing role of the state, its control over devolved entities, and relationships with citizens. At this stage of analysis, one can only suggest a few of the many questions that may warrant consideration. These include: Does the government have the capacity and will to effectively oversee the actions of its agencies (and other devolved entities) and to intervene when appropriate? How should policy-making be linked to service provision, and what should be done when those who command the two sets of processes clash?

A number of writers have grappled with the difficulty of labelling agencies. Because they are diverse in structure and function, agencies do not fit under a single rubric. Some are within departments, but have operational freedom; some are free-standing units that have no formal links to departments. Some are new units established when the government took on new responsibilities; some are old units that have been restructured. The roster of agency functions includes regulation, policy advice, service delivery, tax collection, police work, technical assistance,

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research, and just about every activity found within government. The only common element is that agencies are not departments, that is, they are not conglomerations of multiple activities. The typical agency has a single or relatively narrow purpose, and each has substantial operating independence, even if it is still housed within a department.

Every agency has its own story, but all the stories are the same. To be an agency is to be an alternative to organisational integration. This facet of agency proliferation is captured in the Canadian concept of agencies as "alternative service delivery" units. Inasmuch as many agencies are not service providers, the label is unduly constrictive. Nevertheless, the word "alternative" conveys a sense of where agencies fit on the organisation map. They are not just free-standing entities, they challenge long-accepted practice. (The word "alternative" often is used to connote anti-establishment behaviour. Thus "alternative medicine" refers to treatment that does not conform to conventional practice, and "alternative dispute resolution" refers to mediation and other non-adversarial means of resolving legal disputes.) The "service delivery" part of the label also is revealing, for it suggests that this has become the defining role of the state. If it is, what special status, if any, is conferred on the state as a service provider? Does it have a superior claim in performing this role compared to other providers? How is the character of the state transformed by depicting service as its principal responsibility? Does the "service delivery" label mean that the big questions on the scope and boundary of the state have been settled, at least for the time being, and politics revolves around lesser issues of how its job should be performed?

In suggesting that agencies are alternatives to centralised government, no claim is made that promoters of this model purposely seek to weaken the state. On the contrary, many proponents argue that the state will be strengthened by freeing up central organs, such as the Cabinet, and the Finance Ministry, to shape policy and monitor performance. Rather than being captured by service providers, policy-makers would keep their distance from them, thereby preserving their capacity to set objectives, communicate expectations, and assure that their instructions are carried out. Cordoning off service provision in agencies would clarify the responsibilities of politicians and managers, and give ministers incentives and tools to hold providers accountable.

In assessing the agency model, one should pay less attention to motive and more to effect. The motive might well be to strengthen those at the top, but the reality might be a lot different. Once service providers gain operational independence, the state's monopoly in the authoritative exercise of governmental power is undermined. Nominally, agencies are (as the word denotes) agents of the state; in fact, however, they often act in their own interest and empowering them with administrative independence gives them license to pursue self-interest. It is for this reason that the rise of agencies has the potential to challenge the state.

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In light of the foregoing discussion, it is appropriate to consider both the managerial and governmental roots and implications of agencification. The first section views agencies as instruments of management, and as means of enhancing efficiency in public administration. The second section reviews some of the conceptual roots of agencification. The third section deals with the implications for governance, especially as regards legitimacy in the exercise of power. The concluding section suggests that agencies may generate a counter-reaction to preserve the state's cohesion and special status. Such a counter-reaction is already underway in some countries that have most fully embraced the agency model.

1. Agencies as instruments of management

Agencies are an old idea that has been invigorated by contemporary management reform. The typical government had agencies before it had departments. When it added a new activity that could not be accommodated within an existing organisation, government created a new agency, not because it had a grand design but because it needed to have an organisation responsible for the work. The expansion of government inevitably led to the proliferation of agencies and to an over-extended span of control, weak co-ordination of related activities, and an unruly public administration. Most governments responded to this predicament by consolidating the separate agencies into functionally integrated departments. Thus, just as agencies are now valued in some countries as antidotes to over-confining departments, departments were once the favoured solution to the excessive fragmentation of agencies. Historically, departments and agencies have been rival forms of organisation: departments have multiple subdivisions and responsibilities; agencies have a single responsibility and a simple organisational structure. Departments promote integration, uniformity, rule-driven behaviour; agencies promote diversity, adaptability, and self-governance.

The form of organisation makes a difference. One cannot argue that the contemporary flight to agencies is significant without also recognising the importance of the departmental form. Organisational structure makes a difference because it influences who has power and how services are provided. One should think of organisational structure as a boundary that influences behaviour just as the geographic boundaries of countries do. In particular, organisations matter because they determine whether related activities are integrated or separated, and whether policy and services are conjoined or de-coupled. The linkage of related activities and of policy and services have managerial and political implications.

Every national government has a portfolio of activities, some of which have no salient connection to one another, but some of which do. National defence and lower education are examples of the first situation; providing job training and unemployment benefits may be examples of the second case. There is no basis

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for placing defence and education within the same organisation; job training and unemployment services, however, may either be placed in separate agencies or integrated in a department that is responsible for other income support schemes. Having separate agencies encourages managers to give singular attention to their assigned responsibilities; integrating related activities in a department encourages managers to co-ordinate their work. Inasmuch as both a sharp focus on services and co-ordination are desirable, there is no permanent solution to this organisational issue.

A similar problem vexes the connection of policy work and service delivery. Every democratic government must both connect and separate its political and administrative organs. It must connect them so that managers and other service providers comply with the policies and rules laid down by political leaders. But it must also disconnect administrative matters from direct political involvement so that managers are free to act in a fair and efficient manner, without regard to political considerations. No democracy can abide governing arrangements which free managers to disregard the policies made by duly selected leaders, and no democracy can allow politicians to intrude in administrative matters without regard to the rights of interested parties. The first criterion justifies the placement of operating units within departments headed by ministers or by senior managers appointed by them; the second dictates the operational independence of administrative units. Striking the right balance between co-ordination and subordination on the one hand and independence and flexibility on the other requires that politicians and managers be both empowered and restrained. Each must have authority and resources to carry out basic responsibilities, and each must be deterred from acting in ways that encroach on the other's domain. The result is an organisational map that is repeatedly restructured through legislation and practice to promote one or the other vision.

In drawing organisational boundaries, a key issue is whether the greater concern should be to promote policy coherence or to protect administrative due process. Where the former predominates, government agencies are likely to be consolidated into functionally integrated ministries or departments corresponding to the main sectors of public policy – transport, education, health, etc. But when administrative independence and responsive services are the paramount considerations, activities tend to be dispersed among free-standing agencies, many with their own boards. The former results in a small number of large organisations; the latter typically ends up with a large number of small organisations.

Through most of the 20th century, the functionally integrated model predominated in democratic countries. But this was not the prevailing arrangement during the 19th century. In the early years of the administrative state, the preferred practice was to separate politics and policy from administration by establishing independent entities to handle new governmental responsibilities. It was widely

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accepted at the time that government is more efficient when administration is walled off from political influence. Independent agencies were associated with other administrative reforms, such as standardised accounting systems and a meritocratic civil service. But as national governments expanded their activities and added free-standing agencies, many were troubled by an overextended span of control, inadequate co-ordination, and lack of uniformity in administrative procedures. These concerns spawned an administrative counter-movement to merge the previously separated entities into departments.

Sweden was one of the few countries to abjure functionally integrated departments. It elevated agencies to constitutional status by barring ministers from intervening in particular administrative cases, This "ministerial rule" doctrine does not prevent the government from providing policy guidance to agencies, but it has been applied in ways that give agencies substantial operating freedom. The Swedish model is said to have influenced a number of countries to establish independent agencies.

In contrast to Sweden, during the 20th century, most countries departmentalised their public administrations. Functional integration in government paralleled and was strongly influenced by vertical integration in business organisations. The latter internalises within the firm production and assembly of the various components that go into final products; the former internalises within the department the various activities contributing to the same objective. Vertical integration enables the firm to more fluidly co-ordinate production. During the heyday, vertical multi-national firms (such as General Motors) dominated their markets and reaped huge profits. The evidence appeared compelling that this form of organisation was more efficient than firms beholden to outside suppliers.

Functional integration in government led to a relatively small number of departments, typically no more than 15, each of which contained related activities which may have previously been assigned to separate agencies. Once functional integration became the norm, governments habitually placed new activities within pre-existing departments. Exceptions were common, however, and it was a rare national government that had no agencies outside its departmental structure. Moreover, specialised bureaux within departments carried out particular tasks, so that the traces of agencies were not entirely erased by functional integration. But the bureaux operated within bureaucracies, that is, within large organisations that imposed uniform rules and procedures on their constituent units. Some bureaux had *de facto* independence; most, however, were truly subordinated by their departments.

Functional integration joins policy-making and service delivery in the same organisation. It assumes that a close linkage of the two is beneficial because operational results can feedback to policy. Although integration makes for an

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elongated, hierarchical chain of command, in its heyday it was thought to reduce administrative costs and friction, facilitate oversight by headquarters staff, reduce the number of officials reporting to political leaders, encourage co-ordination of related activities, and promote uniformity in the provision of public services. Of course, governments that have recently established independent agencies reject this classical view of public administration. They see functional integration as inefficient because it values compliance over performance and uniformity over initiative.

Functional integration does not itself resolve the question of how policy advice and service delivery should be linked. Although they coexist in the same department, there still is a need to distinguish one from the other. Several devices have been introduced over the years to maintain separation within an integrated framework. One is to reserve top positions for political appointees, but to require that the remainder be set aside for career civil servants. Another is to impose procedural rules that assure administrative due process free of undue political influence. Such rules specify how civil service positions are to be filled, purchases made, the form of accounts, and other administrative procedures. The effectiveness of rules within integrated organisations often depends as much on behavioural norms as on legal constraints. Within a country's political administrative culture, there are informal understandings of where the boundaries are drawn and how they are enforced, when and how politicians may intervene in administrative matters, how contract between political and official levels is to be maintained, and so on.

To obtain the benefits of functional integration, it does not suffice that policy and operations be separated; it is also necessary that they be linked. In blueprint, the relationship is supposed to work fluidly by having policy guidance and procedural rules flow downward, and information on activities and services flow upward. Policy-makers would tell administrators what to do (and not to do) and would provide the financial and organisational resources to carry out assigned tasks, while managers would report on their work and on compliance with the policies and rules handed to them. Audits would verify the reliability of reported information and evaluations would assess the effectiveness of policies. Of course, the relationship between policy-makers and advisors rarely conforms to this blueprint. In practice, it is apt to be more interdependent and less hierarchical. Managers make policy and policy-makers often dictate how activities are to be managed.

Functional integration generates both co-operation and conflict. Sometimes, policy-makers and managers work side-by-side, without regard to status or formal roles. They fight on some matters and agree on others, and there are zones of indifference – matters on which some have a strong interest but others do not – which enable them to coexist in the same organisation in relative

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harmony. Formally, policy-makers have the upper hand when interests collide; in fact, however, subordinates may have the advantage because they can withhold or manipulate information on what they are doing to subvert their departmental masters. Agents can opportunistically protect their self-interest because they know more about what is happening within their areas of responsibility than principals do.

2. Agencies as instruments of new public management

The principal-agent problem, which arises out of the differentiation of interests among those who work in hierarchical organisations (and in other settings) and asymmetric information on organisational activities and performance (principals are dependent on subordinates for much of what they know about services and results) is one of the main conceptual drivers in discrediting vertically integrated firms and functionally integrated departments. While they once were seen as business superpowers that dominated their markets, many vertically integrated firms such as General Motors now are regarded as organisational dinosaurs that are inefficient, captured by their internal suppliers, and slow to change. Nowadays, many successful firms out-source production, and rely on external suppliers for various administrative services such as payroll, product design, and marketing. The "virtual" firm, which is divested of all functions other than its strategic core and contracting activities, is rare, but so is the fully integrated firm.

Disintegration has not advanced as far in public institutions, for most national governments still house major activities in big departments. Although all national governments have some agencies, only a few have reorganised their public administrations on this basis. Stray agencies tend to be creatures of expedience; they often are established because it seems the sensible thing to do in the particular case, not to fulfil some grand design. But when a country purposely de-couples agencies from departments, it is likely to be motivated by the argument that independent, single-focus entities are more efficient than departmentalised ones. For some governments, the logic of agencies is rooted in the innovative concepts and practices of New Public Management (NPM). Stripped to its essentials, NPM asserts that the performance of public organisations is enhanced when managers are given operating discretion and are held accountable for their actions and results. The operational independence of agencies is only one of NPM's innovations, others such as performance targets and contracts may be dependent on the agency model.

Successful innovations have many parents, and NPM is no exception. It has roots in classical public administration where the argument has long been made that civil servants cannot be held accountable for performance if they lack freedom to manage, and in business management where the capacity to mobilise organisational resources defines effective leadership. One of the main conceptual

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roots is in "new institutional economics", a field that focuses on principal-agent relationships, transaction costs, incomplete contracts, and other notions to explain why integrated organisations may be less efficient. It would take this paper too far afield to analyse these and other concepts, but it is worth stressing that the form of public organisations is strongly influenced by the form of business organisations. The influence may not be direct or immediate, but over time it is the most powerful explanation of change in the structure of public administration.

NPM has two core principles: One is to "let managers manage" by deregulating the use of operating resources; the other is to "make managers manage" by specifying what is expected of them and measuring their performance against these expectation. This *quid pro quo* – giving managers discretion in exchange for strict accountability – is promoted by carving out a specific area of responsibility for each agency and empowering its managers to operate as they deem appropriate. But having been given discretion, managers must openly account for what they have done and accomplished. The two sides of the bargain are supposed to be interdependent: it is not reasonable to make managers accountable for performance if they are not free to manage; and it is not prudent to give them operating freedom if their performance does not matter. In practice, it often is much easier to fulfil the first part of the bargain than the second. It is much easier to divest administrative controls than to enforce strong accountability. This is certainly likely when expedience is the justification for agency independence. In these situations, it is easy to forget about the accountability part of the bargain.

Properly organised, agencies contribute to both operational efficiency and managerial accountability. Even though it has operational independence, each agency should be clearly responsible to its minister or parent department. Having been separated from its department, an agency remains tethered to it by means of performance targets that give advance notice of what is expected, contracts or framework documents that spell out its responsibilities, and reviews and reports which assess results. Performance is the shared concern of departments and agencies; it should foster an ongoing dialogue between the two sides to the relationship. It should link policy and operations; politicians and managers; money and programmes, plans and results. It depends on a steady flow of data on what is expected and has been accomplished, as well as on key persons who maintain watchful vigilance over actions and results. If those in authority don't pay attention to performance, measurements and other information will be of little value.

The NPM template for implementing the agency model is best exemplified by Britain's Next Steps initiative which was launched in 1988 and has been characterised by a parliamentary committee as the most ambitious management reform of the century. The core idea of Next Steps is summed up in a government report that recommended agencies "should be established to carry out the executive functions of government within a policy and resource framework set by a department."

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Although the first part of this recommendation has received most attention from countries that have sought to imitate Next Steps, the second part, which refers to the parent department's role, warrants equal emphasis. Next Steps freed agencies to operate under the tutelage of their departments. Whitehall, the phalanx of British departments, was not dismantled; it plays a critical role at every stage of agency existence – from initial consideration of whether a particular activity should be entrusted to an agency, to thorough review of the candidate agency's resources and mission, launch of the agency, ongoing review of performance and periodic assessment of whether it should be continued.

Although few governments have fully adopted the British model, many have been influenced by it. Agencies would not be in the vanguard of organisational change if Next Steps or a similar innovation had not become an international success story. In view of Next Steps' salience in the contemporary agency movement, it is important to comprehend its underlying rationale and mode of implementation. Derek Lewis, the former head of the Prison Service who was removed from his post by a minister dissatisfied with his performance provides a splendid explanation of Next Steps:

> *It was a myth that ministers ran major government services such as the* Benefits Agency *or the* Passport Office*; they had neither the knowledge nor the skills to do so.* But *as long as the myth persisted, the civil servants, who were really in charge of the day-to-day operations, were not being given the authority to get on with the job, nor were they being held responsible for the performance of the agencies.* The *intention of* Next Steps *was to describe more precisely the respective jobs of ministers and civil servants, and to get away from the confusion that had persisted hitherto.* Ministers *would be responsible for setting policy, approving the agencies' plans, setting targets and monitoring performance; the civil servants in charge would be given the autonomy to get on and make it all happen.* The *performance of the agency and its chief executive would be closely monitored by key performance indicators ...* Agency *status also brought with it many tools that were commonplace in the private sector.* The *essentials were: clarity of roles, operational autonomy, the delegation of decision-making and holding agencies and their chief executives responsible for results.*

Measured against these aspirations, many contemporary agencies in other countries fall short of the mark. Governments have granted independence without either clarifying roles and responsibilities, or putting the machinery of accountability into place. In many countries, agencies have been misbegotten at their creation, and it is highly unlikely that they will be set aright after that, for they have acquired independence without paying for it in the currency of performance. So little has been demanded of them at the outset that it is hard to ask more from them later on. One of the neglected lessons of Next Steps is that what happens before an agency is launched has a direct bearing on how it performs afterwards. Few countries have replicated the care with which Britain examined each candidate for Next Steps status before deciding whether and how to proceed.

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In the Next Steps process, agencies go through a life cycle that typically consists of eight stages:

- C*andidate status* in which an entity (or activity) is designated as a candidate to become an agency. This stage lasts three to nine months, during which an assessment is made of the appropriateness of this form of organisation.
- P*rior options* is a formal review which considers the entity's mission and alternative ways of performing it.
- M*inistry-agency relationships* are clarified, including matters on which the agency will be authorised to govern itself.
- A *framework document* formally spells out the agency's objectives, operating conditions, responsibilities of the chief executive, relationships with the parent department, and various financial and personnel arrangements.
- A *chief executive* is recruited in open competition and employed under a term contract that specifies working conditions and performance expectations.
- P*erformance targets* are published each year, giving the agency explicit notice of how its performance will be assessed.
- A*nnual reports* compare actual and targeted performance and include audited financial statements.
- P*eriodic reviews* are conducted at least once every five years to evaluate how the agency has performed and to consider changes in its operating charter.

Every country that sets up agencies does so in its own way. Some, like Britain, proceed via administrative processes; some do so via legislation. Some act in a piecemeal manner, establishing an agency when it deems it ripe to do so; some introduce a comprehensive process for conversion to agencies. Regardless of the approach, however, all governments have to grapple with the questions considered in the Next Steps process. Doing so before an agency is established enhances the government's capacity to balance independence and accountability.

3. Agencies as instruments of governance

Judging from the reasons provided by various governments, agencification has been driven by managerial considerations. But conditions of agency creation suggests that political factors are also at play. In most cases, decisions on agencies are made by political leaders who see something in this format that makes sense to them. Moreover, where it is implemented, the agency model has important, sometimes profound, implications for the role and authority of ministers, and the capacity of government to make and enforce policy. Countries that create agencies are not merely importing a new administrative structure; they are making big changes in the operations of government. Inevitably, therefore, political factors weigh heavily in decisions to establish agencies.

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To probe the political logic of agencies, one might inquire: What has happened in the role or conduct of government that makes it receptive to this form of organisation? Agencies have arrived at a particular time in the evolution of democratic governance. What is distinctive about this time that renders integrated departments less politically appealing and single focus agencies more so? One clue in addressing this issue is to focus not on what has changed, but on what hasn't. During approximately the past two decades, the size and scope of government in developed countries has been remarkably stable. National governments have neither rolled back the boundaries of the modern state, nor have they expanded it. Few have seriously tried to do either. Of course, within the state there has been ongoing realignment of programmes and some substitution of new activities for older ones. Although one should be cautious in generalising across countries that are at different stages of political or policy development, it appears that many of the big governance questions have been settled or put aside, at least for the time being. This was the theme sounded by US President Bill Clinton in his second (1997) Inaugural Address: "...we have resolved for our time a great debate over the role of government. Today, we can declare government is not the problem, and government is not the solution." A similar sentiment has been expressed by Jonathan Rauch, an American political journalist, in his 1999 book, *Government's End*, "...it is possible that the government has reached its end... its overall scope and shape is no longer negotiable. They have evolved to a state from which they cannot, if you will, unevolve." If Rauch intends this conclusion to be an immutable statement on the future of government, he is certainly wrong for the current equilibrium might turn out to be only a pause. But as a statement of democratic politics in our times, his conclusion appears to be valid, not only for the United States, but also for the many other advanced democracies where, despite the political rhetoric, there is little programmatic difference between left-of-centre and right-of-centre governments.

The boundaries of the contemporary state are well demarked in the developed world. They include traditional watchman functions, such as the maintenance of law and order, protection against external threat, and basic health and safety measures. As vital as these are, in most national governments, these traditional roles account for a declining proportion of public employment and expenditure. The bulk of public human and financial resources is allocated to the direct provision of services or to financial support. Ours is an age when the definitive role of the state is as a service provider or financier. This is a leading factor in the emergence of agencies, which in Canada and other countries, are predominately service providing organisations.

A service providing role portends a fundamental transformation in the relationship between governors and governed. Where this relationship was once defined in terms of the rights and obligations of citizens, it is now often characterised

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in terms of the entitlement of customers to public services. This difference goes beyond labels, for it connotes not only that the language of business has penetrated the public sector, but that government performance is defined through terms and concepts more befitting a commercial than a political relationship. At first consideration, it may appear shocking that people may have greater leverage *vis-à-vis* government as customers than as citizens. But citizenship invests people with a limited voice and virtually no power of exit; customership arms them both with voice and exit. In today's world, it is the customer who is sovereign, because contemporary governments have been socialised to give primacy to services; this is why the state has grown so large and why efforts to cut it down are so feeble. And this is what the demand for performance is about.

With its boundaries marked out and the big questions resolved, at least for the time being, the policy functions of government have become somewhat attenuated. Can anyone claim that today's governments in the OECD community make policy with a reach comparable to that made by predecessor governments a generation or more ago? True, there is much more formal policy analysis than was previously available, but much of it is tinkering at the margins of the relatively fixed boundaries of the state. Much of what parades as policy analysis these days deals with efficiency in the provision of services. Policy analysts compare the costs and benefits of alternative delivery systems; they do not have very much of a role in setting the boundaries.

The agency model is a congenial form of government for the provision of services. In contrast to the departmental structure, it purports to separate policy from operations, and to give each agency a clearly defined focus on the service for which it exists. A department has a portfolio of responsibilities; an agency has a specialised responsibility. It is noteworthy that Australia has been one of the few governments to counter the agency trend, preferring to group programmes in broad portfolios rather than separate them in individual agencies. Australia has been an outlier in yet another way, making much larger policy and programme adjustments than have been tried in other OECD member countries. Departments made sense for Australia; agencies were the preferred way for other countries.

Without stretching the analogy too far, one can think of agencies as the "boutiquing" of government. In the same way, that modern department stores often are organised into specialised boutiques, each with its particular market niche, the modern government department is divided into boutique-like agencies, each with its particular line of work. And as each boutique is a profit centre in the department store, each agency is a service centre in government.

This perspective drives governments to have more rather than fewer agencies. The logic of departments is that they should be few in number, so that cognate activities are grouped together; the logic of agencies is that each service

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should have its own unit so that none is neglected. An agency that has multiple tasks can be expected to perform one or more of them poorly. An agency with a singular task has an incentive to perform its sole responsibility well.

The service providing state is a state whose performance is measured, targeted, reported, audited, analysed, budgeted and so on in contemporary life. After all, performance is what service is all about, whether it is defined in terms of access, efficiency, volume, courtesy or other qualitative or quantitative dimensions. The word performance tells us that the boundaries have been set, now perform – that is, get on with the job. There would be little service to measure if government were not in the business of providing services. Performance, like services, de-politicises government. It is the common interest of liberals and conservatives, and parties of most political stripes. In the 2000 American presidential election campaign, Vice-President Al Gore noted that while he and his opponent George Bush disagreed on various educational issues, "we both are in favour of having new accountability on schools, new performance measurements." Consensus on performance crosses party lines because all sides are assessed by citizen *qua* customers in terms of the quality of public services.

But where there are services, there are alternative means of delivery, as Canada advises. As policy-maker, government has unrivalled authority organs of state power. As service provider, government is only one option, for it has no monopoly on who or how services are provided. Britain's National Health Service, for example, was built to provide universal, uniform care for all citizens. Over the years, however, it has faced growing competition from private providers who charge for their services.

As service providers, national governments have at least three competitors: sub-national governments, non-governmental groups (NGOs) and business firms. Each is reputed to have advantages, which have led some countries to take some direct service responsibilities from the national government, leaving it with a financing role. Sub-national governments are closer to the customer and can adjust their services to local needs and interests. The rationale for fiscal decentralisation is similar to that used in making the case for agencies: Government should be responsive and flexible, and should not insist on one-size-fits-all services. National governments and big departments are too remote from those they serve, too wedded to uniformity and procedural rules to give adequate attention to their customers. In some countries, decentralisation may be a prerequisite for reaping the benefits of agencification.

The same logic explains the contemporary fascination with NGOs. In poor countries, NGOs often are promoted or financed by international organisations in the expectation that they will be more honest, caring and efficient in bringing services to the truly needy; in developed countries, they may be financed by the

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government as a means of enhancing efficiency in public services. In some developing countries, NGOs have acquired informal recognition as substitutes for the government. They are seen as having a legitimacy that the government itself lacks. This broader concept of NGOs opens up troubling questions about democratic legitimacy which have been conveniently shoved aside by caring more about the rights of customers than of citizens. If government habitually fails to perform, why not bypass it altogether and rely on NGOs instead?

Business organisations are the third type of substitute. In almost every democratic country, public services are still overwhelmingly provided by public organisations, but the definition of "core" has shrunk in some countries. Some consider air traffic control as an appropriate candidate for privatisation; some have contracted out policy advice; many rely on commercial firms to audit their financial statements. Some view agencies as a springboard for privatisation; others see them as a means of retaining service delivery in public hands. These distinctions aside, it is increasingly accepted that government and business are alternative service providers, and that choosing between the two should turn on which does a better job. Furthermore, it is now widely accepted that for government to be an efficient service provider, it must be organised along business lines, with managers given latitude to use resources as they deem appropriate.

Herein lies the fundamental challenge of agencification – not that it parcels out responsibility among quasi-autonomous enclaves, but that it is a key part of rethinking the role of the state. In historical perspective, the state is special as the national repository of public authority. This specialness is being eroded for while the state may have a monopoly in exercising governmental authority, it does not have a monopoly in providing services. Services do not depend on legitimacy and authority, but on getting the job done, satisfying customers, and efficiently producing outputs. Once the state is cast as a supplier, it is prudent to select the form of organisation and mode of delivery that are best suited to the particular task, even if the upshot is a weakened state. In the service-oriented state, performance matters; in designing organisations, it may be the thing that matters most.

4. Restoring departmental capacity

Is it possible to reconcile a service-providing, agency-structured government with a strong, effective state? The answer is "yes", but doing so requires a shift in focus from agencies to departments and ministries. The key question should be not whether agencies have freedom to operate efficiently, but whether departments have incentives and opportunity to effectively guide the agencies responsible to them and to oversee their performance.

In some countries, government weakness is regarded as a virtue. This may be the case in those transitional countries which have embraced various reforms that

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dismantle the command and control structures erected during their communist past. Agencies, privatisation, fiscal decentralisation and devolution of administrative responsibility are means of constraining state power. In these countries, the rationale for agencies has more to do with political ideology than with managerial performance. These countries will not move forcefully to reinvigorate the state until they stop being more concerned with over-centralisation than with performance.

In contrast to these countries, most countries that have converted to the agency structure have been swayed by the argument that this move will strengthen the state by clarifying missions and objectives, enabling central authorities to set performance targets and monitor results, and giving agents (those who provide services) incentives to perform according to the dictates of their principals (those in parent departments and central organs). This theme is echoed in the popular management literature which urges governments to steer, not to row. After all, this is the way successful businesses are managed; it should also be the way effective business is run.

Improperly applied, the steering rather than rowing prescription may lead to government that does neither well. Two problems come into play: the freedom that agencies exploit when they gain operational independence; and the capacity of ministries and departments to provide policy guidance and oversee results. It is naive to assume that agents who opportunistically pursue their self-interest when they are formally controlled by principals will be more compliant when they are organisationally independent. It may be equally naive to assume that departments which give inadequate attention to service performance when operations are run by their own administrative subdivisions will be more attentive when services are hived off to independent entities. Principal-agent problems are more likely to arise out of asymmetries in salience and attention than in information. To put the matter bluntly, agencies care more about their services and performance than departments do. The British Government was able to implement Next Steps without encountering opposition from Whitehall because the big departments didn't care much about services and felt little loss when they were relocated to independent agencies. Why should they care more about services now that agencies have operational independence?

In the agency model, too much emphasis is placed on the operational independence of service providers and not enough on the behaviour of departmental overseers. For the relationship to work, that is, for agencies to comply with the policies and targets set out by those to whom they are formally responsible, it is not enough for managers to be free; their departments must actively guide and vigorously monitor what they do. To assess how well the agency model is working, one must examine whether the parent department is living up to its responsibilities.

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Sweden is a case study of how difficult it may be for ministries to guide and oversee agencies. With as many as 300 agencies which employ upwards of 98% of state employees, the dozen ministries are not up to the task. Not only are agencies protected by the doctrine of ministerial rule against outside interference, the meagrely staffed ministries devote most of their resources to Cabinet and legislative work, and other policy or political matters. If they assign anyone to watch over agencies it is likely to be a junior person, not someone with real authority. Since the mid-1980s, the Swedish Government has taken a number of initiatives to enhance its ability to guide agencies and monitor their performance, but none have been particularly successful. These initiatives have expanded the operational discretion of agencies, established a multi-year framework for specifying policies and performance targets, required agencies to report on results, and strengthened the audit process. The government has also overhauled the budget process to focus on results, and it has used the annual "letters of instruction" from ministries to inform agencies of the performance expected of them in the next year. Despite these moves, the government appears to be only marginally more effective in steering agencies than it was when the reforms were first launched more than a decade ago. The mismatch in agency-ministry staff is so great that the government has limited capacity to pay attention to agency performance. In Sweden, there is an ongoing dialogue between ministry and agency staff, formal and informal discussions throughout the year which partly compensate for imbalances in the relationship. Nevertheless, the fact that the government has felt impelled to introduce a series of reforms attests to the perception that it lacks means to steer its many agencies.

New Zealand's managerial system is centred around chief executives who have full responsibility for their departments. However, departments account for less than half of the money that is financed by the state budget. Most funds and many key services, such as health care and education, are provided by Crown entities, non-departmental bodies that have broad operational autonomy. There are approximately 70 Crown entities, plus 2 600 school boards. Most Crown entities have a policy-making board which appoints the chief executive. Each Crown entity has its own accountability framework which typically includes a statement of intent negotiated with the responsible minister and an annual report. Despite these arrangements, studies by the Treasury and the State Services Commission have found serious deficiencies in the relationship between government and its Crown entities. These include: uneven and inadequate monitoring by departments, and inattention by ministers to the Crown entities for which they are responsible; unresponsiveness or disregard by Crown entities of government policies; incomplete and inconsistent accountability requirements; and inadequate governance arrangements, along with confusion over the legal status of some Crown entities. The government has drafted legislation to clarify the status of

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Crown entities, but the heterogeneity of agencies has complicated the task of resolving this matter.

The British experience is most instructive, not only because the reputed success of Next Steps has spurred other countries to adopt the agency model, but because the Blair Government that came to office in 1997 has distanced itself from agency-centred public management. Without disowning Next Steps, it has shifted the focus from agencies to departments and the centre of government. A clue to this reorientation is contained in the 2000 *Next Steps Review* (relabelled the *Executive Agencies Review*). In contrast to the previous editions of this annual publication which listed agencies in alphabetical order, the Table of Contents of the 2000 edition only lists the departments; it has no entries whatsoever for agencies. This may seem a small matter; it is not. The rationale for focusing on agencies is that citizens should have easy access to those who serve them. Restructuring the report is one of a number of signals given by the Blair Government that agencies are to be subordinated to departments, and that the latter are to be the instruments by which government formulates policy and sees to its implementation.

While the Blair Government still says positive things about Next Steps, it has a modernisation agenda that depends on strong policy direction from the centre of government. Modernisation aims to make services more responsive and to improve their quality, but in contrast to Next Steps which pursues this objective through fragmentation, it does so through policy and organisational integration. Moreover, instead of separating policy from operations, modernisation wants them joined. The government issued a Modernising Government White Paper near the end of Blair's first year which did not even mention the Next Steps initiative. Instead of removing services from departmental custody, it made them central to departmental performance, and rather than relying on agencies for service performance, it placed responsibility on departments. In a sharp break with the logic of agencies, the White Paper relied on departments to take the initiative in promoting change. "Within Whitehall", the White Paper insisted, there should be "a new focus on delivery – asking every permanent secretary to ensure that their department has the capacity to drive through achievement of the key government targets and to take personal responsibility for ensuring that this happens".

Where does this department-centred strategy leave agencies? Agencies have survived, but with somewhat less autonomy than the initial design promised. Excessive independence, the modernisation logic dictates, gets in the way of policy cohesion and service integration. This theme is sounded in *Wiring It Up*, a manifesto on integrated service delivery published by the Cabinet Office in 2000. Revealingly subtitled, "Whitehall's Management of Cross-Cutting Policies and Services", this report demands stronger leadership from ministers and senior civil servants and it urges "using the centre (Number 10, the Cabinet Office and the Treasury) to lead the drive to more effective cross-cutting

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approaches whenever they are needed". The report extols the "Whitehall vertical management structure" because it is "highly effective in delivering many of the government's key policies". The model favoured by the Blair Government is hierarchical, with rules and guidance flowing down, and information flowing up. *Modernising Government* has a different view of public management than the one on which Next Steps is based. The agency model promotes the break-up of the civil service into administrative enclaves, each with its own salary and working arrangements. *Wiring Up Government* insists, as its title suggests, that civil servants should become accustomed to working across organisational boundaries. This report envisions the central government working to co-ordinate and improve the delivery of services. The critical relationship would be between government departments and local authorities; agencies would participate as departmental subdivisions, not as independent entities.

The Blair Government has expanded the annual expenditure review process into a means by which departments negotiate formal Public Service Agreements (PSAs) which specify the outcomes and results they will accomplish in the next three years. Recent PSAs, for the 2001-2004 fiscal years set out approximately 160 "commitments which the government can be held accountable for, and which departments will report on every year in departmental reports". The role of agencies in the PSA process is to contribute to achieving departmental objectives. The approach is top-down: "high-level performance targets", the 1999 Next Steps review stated, "will be cascaded to agencies to assist their attainment".

The government requires that each Next Steps agency be reviewed at least once every five years. The latest instructions for these reviews stress that "agencies do not exist in isolation from the rest of government, and so greater emphasis will be placed on considering the performance of agencies in the context of their contribution to wider departmental and governmental objectives". From a strictly legal perspective, the new emphasis does not change agency-department relations. Departments are formally accountable for policy guidance, programme co-ordination and service results, just as they always have been; and agencies still are accountable within their respective spheres of operations for costs and outputs. However, the new attention to departmental responsibility for services inevitably eats into agency autonomy. Agencies are to do their department's bidding, even if it means doing things the department's way rather than their own.

Much more is at stake in this realignment than operational relationships between departments and agencies. The Blair Government has taken charge of the instruments of management to promote its policy ambitions. Aided by a refocused Treasury and a large, active Cabinet Office, Blair runs government from the centre, with the Public Service Agreements representing commitments by which the government itself will be measured. Blair's interests lie in policy and results,

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but he knows that services connect the two. If the modern state is perceived to be a service provider, as was argued earlier in this paper, then it would be untoward for the government to stand aside and allow agencies a free hand in providing services. In bringing agencies within the ambit of Whitehall, the Blair Government does not want to intervene in operating detail, except when its strategic aims are at risk. It does, however, want to ensure that agencies operate in accord with government dictates to produce the intended results.

Next Steps was a harbinger of the agency movement; it exerted a strong pull on governments that were seeking to modernise the public sector. Does the new stress on departments presage a rethinking of the agency model? Part of the answer lies in the distinctive features of Next Steps. It was implemented by administrative action, without any change in the legal relation between agencies and departments. Ministers and permanent secretaries are as accountable for the use of resources and service results after Next Steps as they were before. Next Steps gave rise to some knotty questions concerning the responsibility of agency chief executives, and occasional confusion as to who should answer to Parliament on particular matters. Nevertheless, because of the manner in which Next Steps was implemented, there is nothing to undo to restoring departmental leadership. The Blair Government has been able to reassert departmental authority without formally retreating from Next Steps. Countries which have legally separated agencies from departments may have a tougher job if they want to reunite the two.

But even countries that have granted agencies statutory independence may be impelled to pull back a bit. As in Britain, the issue is not whether to have agencies – this form of organisation will thrive for some time – but whether agencies should be de-coupled from departments or subordinated to them. To the extent that all governments have a need to co-ordinate policies and services and to join up their many fragments of organisation, the British experience is instructive. Governments will connect agencies and departments; they will have both and neither will be independent of the other.

On this basis, one can foresee a pattern of government management that is different from what has been tried heretofore. Initially there were agencies, then they were swallowed into departments, and recently agencies gained substantive autonomy. Until now agencies and departments have been rivals. The ascendancy of one has spelled subordination of the other. In the future, departments and agencies will coexist, in close alignment, but with each having its own zone of responsibility. When things are going well, the two will stay out of each other's way. When they aren't, each may blame the other, and the challenge for government will be to make sure that accountability does not fall between the cracks.

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Canada

by

Toby Fyfe *and* **Tom Fitzpatrick***

Background

Canada's experience in creating new organisational forms for service delivery is a product of its distinct culture and its political form, federalism. In 1867, Canada adopted a federal form of government. Because the new country included diverse linguistic, cultural and regional communities, federalism was seen as a compromise between full integration of the independent colonies and the status quo. Its champions thought that it would unite different communities under a common government for common purposes while preserving and respecting their differences and diversity through the creation of separate regional governments.

At Confederation, the responsibilities of the federal and provincial governments were separated into what were believed to be two mutually exclusive sets of powers. It was thought that the two levels of government would operate freely in their separate spheres. Responsibilities assigned to the federal Parliament included national defence, interprovincial and international trade and commerce, banking and monetary systems, criminal law and fisheries. The courts have also awarded the federal government jurisdiction over aeronautics, shipping, railways, telecommunications and atomic energy. Provincial legislatures are responsible for education, property and civil rights, the administration of justice, the health care system, natural resources within their borders, social security, health and municipal institutions.

Although these jurisdictions were thought to be exclusive or non-intersecting, the rise of the welfare state in the post-war period, along with major developments

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in the Canadian economy, exposed their deep interdependence. For example, a strategic response to the challenges of international trade (a federal power) could not ignore the importance of education (a provincial power).

Exponential growth in the use of information and communications technologies over the last two decades has extended this interdependence. The issues that the Canadian Government is addressing are increasingly horizontal in nature, and require multi-departmental, multi-jurisdictional and even multi-sectoral responses. As a result, Canada, rather than adopting the view that a clear and simple line can be drawn between basic tasks of government, has moved toward a more holistic view aimed at the management of interdependence through collaboration and partnership.

The Government of Canada's experience over the last 15 years with alternative approaches to delivering public services has progressed from flirtation and experimentation with separate service agencies to a complex discussion of the nature and implications of collaborative partnerships. This discussion reflects the government's growing awareness that collaboration and partnership are powerful new governance tools in a progressively more interdependent world, and its realisation that, through its experience with Canadian federalism, what appeared clear and separable in theory has turned out to be complex and interdependent in practice.

Alternative Service Delivery

In the early 1990s, a major federal government initiative entitled *Getting Government Right*[1] was launched with the aim of renewal in the Canadian Government. A major part of this initiative was Program Review, a government-wide attempt to review systematically the design and delivery of all federal programmes and services. This examination of federal programmes and services focused on such issues as the extent to which they served the public interest, the role of the public sector and federal government, the potential for devolution to another level of government or sector, efficiency and effectiveness, and affordability. In support of the Program Review objectives, a *Framework for Alternative Program Delivery*[2] was approved by Treasury Board Ministers in 1996.

There were three basic conclusions drawn from Program Review and the ASD experience:

- the policy/operations distinction is too simple;
- collaborative partnerships are not only management tools, they are also instruments of governance;
- collaboration is the appropriate response to increasing interdependence.

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It was learned that the notion of separating government activity into policy and operations blurs an important distinction between three essential tasks in an organisation: policy development, programme design and programme delivery. Choices regarding programme design are often separate from those affecting how the programme will be delivered, or of choices regarding the broad policy options and goals that frame programme choices.

Canada's experimentation with alternative delivery of services in Canada has lead to the creation of many organisational forms, including agencies and collaborative partnerships. These varied arrangements for service delivery reflect the pragmatic, case-by-case approach used by the government to create organisational forms that better meet citizen needs and reflect the interdependence of the Canadian federation.

Legal and organisational framework

Since the mid-1980s, Canada, like other OECD member countries, has seen a shift toward the creation of service delivery bodies that are more removed from the direct and administrative or political oversight and control of central agencies such as Treasury Board and the Public Service Commission. The following types of structures and arrangements have been used:

- New organisations within the federal organisational framework, including:
  - service agencies;
  - Special Operating Agencies (SOAs);
  - departmental service agencies.
- Partnership arrangements with other departments, governments and sectors for the delivery of programmes and services, such as:
  - collaboration with other departments;
  - collaboration with other governments;
  - collaboration with the private sector and the not-for profit sector;
  - shared governance corporations;
  - contracting out of federal programmes and services to the private sector.

Governance structures

This section looks first at the three types of agencies in Canada (service agencies, SOAs, and departmental agencies). It then broadly examines the Canadian experience with partnerships and collaborative arrangements. In the context of collaboration, the challenge for the federal government revolves around the involvement of others in governing. Delivering on unique federal and shared mandates to achieve a public policy objective by working co-operatively assumes that there will be:

- distinct or shared authority and responsibility for achieving results for Canadians;

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- joint investment of resources (time, funding, expertise);
- allocation and/or sharing of risk-taking;
- mutual benefits.

In other words, collaborative arrangements become defined in large part by the accountability and responsibility relationships for the delivery of service to Canadians. In working with partners, the government can choose to retain, share or delegate certain functions. These include policy-making, programme design, programme delivery and administrative functions such as human resources and finance functions. Table 1 illustrates the wide-range of potential responsibility alignments for service and programme delivery.[3]

Table 1. **Federal government relationship with its service delivery agents**

Authority	Retained	Shared	Delegated
Policy			
Programme Design			
Programme Delivery			
Administrative (Human Resources, Administration, Finance)			

S*ervice agencies*

In rejecting the notion of creating a single-agency model and moving the service delivery functions of government into this model *en masse*, Canada chose the legislative route to create three large agencies: the Canadian Food Inspection Agency (CFIA), Parks Canada and the Canada Customs and Revenue Agency (CCRA). While all three are responsible to ministers and report to Parliament as federal government departments, each agency operates under very different levels of administrative authority, tailored to their needs and operating context.

While the three agencies account for a large segment of government (35% of employees), they are not far removed from political or central agency control. Central agency policies of Treasury Board and the Public Service Commission do not always apply to these agencies, but they nevertheless report more extensively than traditional line departments to Treasury Board, which must approve their

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corporate and business plans. The three agencies are public institutions and government departments under the *Financial Administration Act*. Parks Canada is the only one with its own legal identity.

In the 1996 budget announcement for the creation of the three service agencies, the Minister of Finance stated:

> *Government should be focused on the needs of citizens, not the needs of bureaucracy. Canadians want their governments to co-operate, not compete. And they want better service delivered at a lower cost. Legislation will be introduced that will allow for the creation of fewer, more effective government agencies.*

These new agencies are demonstrating innovative governance structures and customised management authorities and flexibilities that will allow them to carry out their mandates.

These agencies pose no challenge to ministerial and parliamentary accountability and still have considerable central agency oversight and guidance. However, because they operate under their own administrative regimes and represent such a large portion of the federal public sector, their actions are often precedent-setting, resulting in pressures and demands on the core federal public service finance, administrative and HR regimes. The principles of modern comptrollership are beginning to enter the business planning process with more accountability for performance, and ministers and Treasury Board, through the planning process, have the ability and governance levers to influence the course and direction of these organisations.

Canada Customs and Revenue Agency (CCRA)[4]

CCRA came into effect through federal legislation on 1 November 1999. In addition to being accountable to the Minister of National Revenue, it is also accountable for day-to-day operational decisions to a Board of Management. The board is appointed by a federal Order-in-Council, consisting of 15 members, 11 of whom are chosen from nominees identified by the provinces.

CCRA is comprised of two major service delivery sub-entities, Revenue and Canada Customs. The revenue side of the organisation administers the Tax Program of the Government of Canada, while Customs ensures the integrity and sovereignty of Canada's borders with respect to commercial and human traffic. Responsibility for the development of federal tax policy rests with the Department of Finance.

While we refer to CCRA as a service agency, in legal terms it is a federal government department, but a department with a significant difference. For example:

- it is not covered by the policies of Treasury Board;

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- it is its own employer, can establish its own human resources and administrative regimes (staffing, classification, collective bargaining, etc.); and
- it has significant additional authorities under the *Financial Administration Act* that allow the raising, retention and efficient expenditure of resources.

These significant additional flexibilities and its unique governance and accountability structure better position CCRA to forge new partnerships with provinces and territories in integrating and, ideally, harmonising tax collection across jurisdictions.

The CCRA experience differs from the experience of Australia, the United Kingdom and New Zealand in that it does not really operate at arm's-length from its minister.

Table 2. **CCRA's relationship to the rest of the federal government**

Authority	Retained	Shared	Delegated
Policy	Department of Finance		
Programme Design		Minister of National Revenue Minister of Finance	
Programme Delivery	Minister of National Revenue		
Administrative (Human Resources, Administration, Finance)			CCRA

Canadian Food Inspection Agency (CFIA)[5]

CFIA came into effect through federal legislation in April 1997. It brought together under one service delivery organisation the food inspection activities of three federal departments: Agriculture and Agri-Food Canada, Health Canada, and Fisheries and Oceans Canada. It reports to the Minister of Agriculture. The agency provides inspection services related to food safety, economic fraud, trade-related requirements, and animal and plant health programmes. Health Canada retains the responsibility for policy, standard-setting, risk assessment and audit. All other standard-setting activities relating to animal feed, chemicals, fertiliser and the like, are the responsibility of CFIA.

Unlike CCRA, the agency does not have a governing Board of Directors.

CFIA was brought into existence to:

- clarify the roles and responsibilities for food inspection in Canada;

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- keep the health and safety policy and standard-setting within Health Canada (steering) and let the agency execute its service delivery role in a more integrated and harmonised fashion (rowing);
- reduce overlap and duplication, and provide a more horizontal management of food inspection and safety; and
- place the agency on a footing to forge partnerships with the provinces and territories for a harmonised or even integrated food inspection system for the country.

Like CCRA, the agency is legally defined as a department of the Government of Canada, again with a difference in its authority and independence in specific areas of financial and human resource administration, so that it can:

- implement activity-based costing and improve financial reporting on operations;
- provide the minister with the authority for fee-setting, as opposed to regulation;
- increase the potential for revenue generation;
- use multi-year appropriation to enhance financial and operational planning; and
- become its own employer with the ability to negotiate and enter into collective agreements with its employees, establish classification standards and develop its own staffing regime.

Table 3. **CFIA's relationship to the rest of the federal government**

Authority	Retained	Shared	Delegated
Policy	Health Canada		Regulation and standards – CFIA
Programme Design		Minister of Agriculture Minister of Health	
Programme Delivery			CFIA
Administrative (Human Resources, Administration, Finance)			CFIA

Parks Canada[6]

Parks Canada was established as a federal government agency in the *Parks Canada Agency Act* in December 1998. Its mandate is to protect and present nationally significant examples of Canada's natural and cultural heritage, and to foster public understanding, appreciation and enjoyment in ways that ensure the

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ecological and commemorative integrity of these places for present and future generations. Programmes include National Parks, National Historic Sites, National Marine Conservation Areas, Canadian Heritage Rivers System, Federal Heritage Buildings, Heritage Railway Stations, and Federal Archaeology.

Parks Canada represents the Government of Canada on the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention). As Canada is a member state of the World Conservation Union (IUCN), Parks Canada serves jointly with the Canadian Conservation Institute as the representative to the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM).

The agency was established as a department under Schedule II of the F*inancial* A*dministration* A*ct*. This means that Parks Canada is a separate legal entity dedicated to delivering the programmes set out within the agency's legislation and policy authorities. It reports to the Minister of Canadian Heritage. The minister remains responsible for the overall direction of the agency and is accountable to Parliament for all Parks Canada activities.

Parks Canada has been provided with more flexible human resources, administrative and financial authorities. These authorities include:

- separate employer status to enable the design of a human resources management framework that is more responsive to Parks Canada's particular operational requirements and the conditions in which its employees work;
- full revenue retention and reinvestment to contribute to the financing of services;
- a two-year rolling budget to promote the wise investment of public funds and allow for funding advances; and
- a non-lapsing account to finance the establishment of new national parks, national historic sites and national marine conservation areas.

Parks Canada's Executive Board comprises the chief executive officer, four directors-general, chief administrative officer, executive directors in Quebec and the Mountain Parks, chief human resources officer, senior financial officer, director of communications, and senior legal counsel. As the senior decision-making body, the fundamental responsibility of the Executive Board is to set the long-term strategic direction and priorities for the organisation.

The board also approves resource allocations, new initiatives and service innovations proposed each year in national office, field unit and service centre business plans. The CEO reports to the Minister of Canadian Heritage.

Parks Canada reports to Treasury Board, which approves its corporate, business and capital plans.

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Table 4. **Parks Canada's relationship to the rest of the federal government**

Authority	Retained	Shared	Delegated
Policy	Minister of Heritage		
		Minister of Heritage and Board of Directors	
Programme Design			
Programme Delivery			Board of Directors
Administrative (Human Resources, Administration, Finance)			CEO of Parks

S*pecial* O*perating Agencies* (SOAs)[7]

The SOA concept is designed to achieve a balance between the philosophy of control (and risk avoidance) and the desire to encourage innovation and promote initiative. Agencies support a set of values – including innovation, enhanced authority at the front line, client-centred operation, self-regulation, better management of people and accountability for results – that leads to greater efficiency of operation and improved service quality.

In essence, SOAs give service delivery units increased management flexibility in return for agreed levels of performance and results. SOAs are not independent legal entities – no legislation is required to establish an SOA. They remain part of the parent department, their employees continue to be public servants and union representation stays intact. They remain accountable to their parent department for results.

Unlike other departmental units, however, SOAs operate under a tailor-made, written understanding with the department. This understanding (consisting of a "framework agreement" and a business plan) covers the results and service levels expected, the flexibilities that have been granted, and the resources available to do the job.

In short, the SOA model is intended to provide greater freedom from department and government-wide administrative rules in return for a commitment to clear performance levels. Agencies will be treated "specially". Overall, their managers and employees have greater latitude to act than those of other departmental branches.

Many functions of government lend themselves to the SOA approach. SOAs are viewed as one of several potential options for improving the delivery of government services within the broader context of alternative service delivery.

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The SOA approach is based on five propositions:

- the government wants a service-oriented, client-centred public service;
- there is always room for improvement, which means finding better, more cost-effective ways to do the job;
- choice of organisational form makes a real difference;
- central rules should not inhibit good management or the ability to do things that make sense;
- within a core of central values, there can be diversity in the way that service operations are managed and in the authorities provided to do the job.

Over time, SOAs are intended to:

- improve customer service, client consultation and monitoring of service quality;
- promote cost-effective and more business-like service delivery;
- delegate more responsibility for operational matters throughout the organisation;
- make better use of information technology;
- demonstrate government action and concern for efficient management;
- promote innovation and initiative in the workplace;
- emphasise effective management of people, including support for training and career development.

Consistent with this, SOAs are oriented toward making costs visible, setting targets for improvement, developing better performance measurement systems and techniques, applying better methods, processes and ways of doing business, ensuring that deliverables are responsive to customer needs, and allocating resources to their most productive purposes. In other words, SOAs are oriented toward good management.

Increased operating authority and flexibility comes from the parent department, Treasury Board and other common service organisations.

Often, potential SOAs find that many of the flexibilities they require already exist in the department, but have not been delegated downward from executive levels or outward from central-corporate groups. Discussion between proponents and Treasury Board can identify these cases and lead to solutions.

There is no "template" or set of flexibilities that define agency status. Each SOA is different and has a unique set of "business" circumstances and management challenges. Accordingly, individual negotiations will establish the kinds of flexibilities that are appropriate.

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Illustrative flexibilities have included:

- full authority to set and adjust rates, consistent with the business plan;
- special financial arrangements such as approval to establish a separate revolving fund;
- increased authority to enter into service contracts;
- authority to approve a variety of administrative matters such as hospitality.

SOAs remain part of their parent department and continue their accountability to Parliament through a responsible minister and deputy head. However, these accountabilities are strengthened and clarified under the agency approach. SOAs report to the deputy minister.

Clearly, the deputy may delegate responsibilities. However, deputy ministers (on behalf of ministers) are accountable for:

- negotiating appropriate framework agreements, approving the business plan and establishing a performance contract with the agency head;
- establishing a performance contract between the head of the agency and the deputy minister with the clear understanding as to what constitutes acceptable performance and on the nature of any rewards or penalties;
- setting and approving agency objectives, priorities and strategic directions;
- setting realistic performance targets and renegotiating when circumstances change;
- delegating adequate authority to ensure success;
- ensuring the agency has corporate support and information systems to measure performance and manage risk.

The framework document and the business plan are central to SOA accountability. On the one hand, the framework document sets out the agency mission and its relationships with other parties. On the other, the business plan represents a detailed performance contract between the department and SOA management that is renewed annually. In submitting the plan, the SOA chief operating officer is committing to be held accountable for the achievement of specific objectives and performance levels. In approving the plan, the minister is agreeing to allow agency management to pursue the broad direction and strategies in the plan within the freedoms set out in the framework document. Framework documents themselves are generally treated as public documents and are made available, on request, to any Canadian citizen.

Each agency produces an annual report that covers:

- main aims and activities;

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- matters essential to understanding the reports and accounts, including service and financial objectives;
- a review of performance against the business plan, including activities over the past year and the results achieved relative to the resources allocated;
- general management priorities over the coming year.

SOAs and/or their parent departments (particularly those operating in a commercial environment) are encouraged to establish advisory boards or councils consisting of representatives from their major clients, suppliers and other stakeholders. Review of business plans by the advisory board can provide useful input to the agency head or deputy minister.

Table 5. **SOA relationship to the rest of the federal government**

Authority	Retained	Shared	Delegated
Policy	Minister		
Programme Design		SOA/ department	
Programme Delivery			SOA
Administrative (Human Resources, Administration, Finance)		SOA	

Departmental service agencies

Currently, there is only one such organisation in existence at the federal level: *Meteorological Services Canada* (MSC)[8] in Environment Canada. MSC has framework documents very similar to those of SOAs and, like an SOA, its creation was approved by Treasury Board. However, its management structure is different.

In Environment Canada, there are four business lines, one of those being Weather and Environmental Prediction (WEP). There are four assistant deputy ministers, each responsible for one business line. The MSC is responsible for the WEP business line.

Environment Canada is also divided into five geographical jurisdictions, each of which is headed by a regional director-general who is responsible for the four Environment Canada business lines in the area. Therefore, both the assistant deputy minister for MSC and all five regional director-generals are

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accountable to the deputy minister of Environment Canada for specific MSC programmes.

Such a management structure does not fit the SOA model, nor does it fit the traditional departmental model, hence, the term Departmental Service Agency.

While most SOAs are very small compared to their parent organisation, the Departmental Service Agency is significant in that it is large in relation to its parent, Environment Canada.

Collaborative arrangements and partnerships[9]

Partnerships/collaborative arrangements are arrangements in which the federal government organisation agrees, along with one or more parties, to co-operate with, or delegate the delivery of a programme or service to, another organisation in order to fulfil the objectives and mandates of the Government of Canada. In these arrangements, the parties aim to *work together*. This can range from simple co-delivery of a service to efforts to co-manage large policy areas, programmes and resources. Such arrangements go well beyond the contractual model, often requiring both collaborative planning and shared decision-making.

The Canadian experience with collaborative partnerships shows that they can be used in two different, though related, ways. One is as a *management tool* with the capacity to reshape conventional public sector relationships and attitudes. A second use for collaborative partnerships is as an *instrument of governance*. In particular, successive Canadian federal governments have begun to experiment with them to redefine generic relationships including those between:

- central agencies and line departments within government (*e.g.* by using system-wide outcomes and measures and a business planning process);
- levels of government or different governments (*e.g.* through large structural agreements such as the labour market development agreements or the social union framework agreement);
- citizens and their government(s) (*e.g.* through collaborative partnerships with private and voluntary sector organisations).

Partnership arrangements have the potential for greater efficiency, flexibility, citizen participation and client satisfaction, even though departing from traditional models of delivery to experiment with new forms represents a calculated risk. Improved efficiency and the achievement of results need to be balanced with adequate accountability for the expenditure of public money and the preservation of the public interest.

Canada's experience with collaborative partnerships has taken four main forms:

1. collaborative arrangements with other governments;
2. collaboration with not-for-profit foundations;

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3. collaboration with the private sector, contracting out;
4. shared governance corporations.

Regarding collaborative arrangements with other governments, the Canadian Government collaborates extensively and on a sizeable scale with provincial governments to achieve joint objectives in their shared areas of interest. Examples include:

- labour market development agreements ($7.7 billion between 1995-96 and 1999-2000);
- National Child Benefit ($3.8 billion between 1998-99 and 2000-01 with $1.7 billion per year thereafter);
- Canada Infrastructure Works Program ($2.4 billion between 1994-95 and 1999-2000); and
- regional bilateral agreements ($2.2 billion between 1996-97 and 2003-04).

These arrangements illustrate the flexibility of the Canadian approach, and the interdependence of governments working together to meet objectives.

The Government of Canada continues to delegate to arm's-length organisations and other sectors in order to achieve its objectives. This reflects the government's interest in positioning organisations with a federal public purpose in the hands of local authorities that are more accountable to the communities they operate in and to local circumstances and opportunities.

Delegation has also involved long-term contracting out of critical government functions to the private sector where the federal government confers discretionary authority and responsibility over programme design, planning, management and delivery, and even public policy of federal functions to independent outside bodies. Shared governance corporations usually have corporate boards of directors which operate within a broad strategic policy or regulatory framework provided by the government. Two examples are NavCanada, a not-for-profit entity that is responsible for air navigation services, and the Canadian Airport Authorities (CAAs) in which ownership of local and regional airports has been transferred to local interests.

The government has also created not-for-profit foundations. One example, the Canadian Millennium Scholarship Foundation, was created in June 1998 as an independent corporation at arm's-length from the government. The foundation is comprised of a 15-member board, six of whom are appointed by the government. The members are knowledgeable about post-secondary education, learning and the needs of the Canadian economy.

Collaboration with the private sector (contracting out) is a large part of the Canadian alternative service delivery experience. Certain federal government departments, such as the Department of National Defence (DND), have contracted,

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or are in the process of, contracting out to the private sector major areas of their business. This means that the private sector will be the delivery agent of government for major portions of these departments' mandated business lines.

Under contracting out, the department remains accountable for ensuring results for these business lines even though service delivery for the federal function is delivered though the private sector.

Policy coherence, oversight and accountability mechanisms

Central to accountability is the notion that sharing or delegating federal responsibility with service and programme delivery organisations in no way diminishes or erodes ministerial responsibility for a federal mandate. Therefore, the governance and accountability challenge in the Canadian federation has been to encourage and guide organisational experimentation and learning in a way that respects public sector values, while maintaining the necessary accountability to ministers, Parliament and the Canadian public.

Under the Westminster system of government, ministers are individually accountable to Parliament for their own actions and for all aspects of their departments' and agencies' activities. (This principle is modified somewhat for arm's-length organisations such as tribunals and Crown corporations, where accountability for the organisations' administration explicitly resides with designated officials or boards and not the minister. Nevertheless, accountability to Parliament is through the minister who remains answerable to Parliament.) Ministers are also collectively accountable for the decisions made by the Cabinet. Their officials are accountable to the minister for the operation of their organisations, and not to Parliament. Traditionally, they remain anonymous. However, they may be required to answer to Parliament to explain those operations on behalf of their minister, but they do not answer to Parliament regarding government policy. They are, when required, *answerable* to Parliament but remain formally accountable to their minister. While the practice of ministerial accountability has been tested by elements of public service reform over the last several years, it remains the cornerstone of our Westminster form of parliamentary democracy.

In multi-partner collaborative arrangements, each partner has dual accountabilities. On the one hand, the partnership creates accountability arrangements between the partners (horizontal accountabilities). In addition, each partner retains accountability obligations to its governing body, such as Parliament in the case of federal partners, for the results of the responsibilities, authorities and resources it contributes to the partnership (vertical accountability).

Increasingly there is an expectation on the part of citizens and communities to be involved in many aspects of the programmes and services affecting them. This trend toward citizen involvement has implications for governments related to

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their accountability to citizens, over and above their vertical and horizontal accountabilities. The federal government is responding by naming citizen representatives on certain boards of directors, for example in local airport authorities.

Evaluation, lessons learnt and recent developments

As in the case of other countries faced with similar changes in governance, various new service delivery arrangements in Canada – from agencies to collaborative arrangements to contracting out – have required reconsideration of some central issues in delegated governance. These issues have included:

- the appropriate role of ministers, Parliament and central agencies in oversight and guidance of these arrangements;
- the measurement of and accounting for performance; ensuring that behaviours and business practices are consistent with the values of a public purpose organisation; and
- the appropriate ability and governance of the federal government to make or influence the course and direction of these organisations; and the means of bridging the policy/operations gap.

The federal government's new Policy on Alternative Service Delivery is a response to these governance and accountability challenges. It will guide departments in developing appropriate organisational and structural arrangements for service delivery so that all forms of alternative service delivery have appropriate governance and accountability relationships.

The policy will support innovation while putting in place the legislative, regulatory, policy and results-based management frameworks so that the government can know when and how objectives are met. The policy will apply to all new governance arrangements and ensure that the decision to create an alternative form of service delivery is made within the appropriate context.

The interdependent nature of the Canadian federation and the drive for citizen satisfaction continue to be the hallmarks of the Government of Canada's approach to the creation of organisational forms such as agencies and collaborative arrangements outside the departmental model. The federal government will continue its flexible, case-by-case approach, using alternative service delivery as an important tool of public administration.

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Notes

1. For more information, please refer to the following website: *www.tbs-sct.gc.ca/report/govrev/gfce.html*
2. For more information, please refer to the following website: *www.tbs-sct.gc.ca/Pubs_pol/opepubs/*TB_B4/FR_*e.html*
3. Don Lenihan, Centre for Collaborative Governance.
4. For more information, please refer to the following website: *www.ccra-adrc.gc.ca/menu-e.html*
5. For more information, please refer to the following website: *www.cfia-acia.agr.ca/english/toce.shtml*)
6. For more information, please refer to the following website: *http://parkscanada.pch.gc.ca/parks/main_e.htm*
7. For a profile of Special Operating Agencies see *www.tbs-sct.gc.ca/si-si/asd-dmps/agen/profiles_e.htm*
8. For more information, please refer to the following website: *www.msc-smc.ec.gc.ca/index_e.cfm*
9. For a more complete description of collaborative arrangements and partnerships, please see Fyfe, T. and Fitzpatrick, T. "Distributed Public Governance: Agencies, Authorities and other Autonomous Bodies in Canada", OECD *Journal on Budgeting*, Vol. 2, No. 1, 2002.

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France

by

Claude Rochet *with* **Marc Cabane** *and* **Simon Formery***

Background

For many years France, like many other OECD member countries, has been using public agencies that are independent of central government. The role of these agencies has expanded considerably over the last 20 years or so, in ways which, while doubtless more modern, are sometimes also more complex from a legal standpoint.

This is all the more remarkable given the pre-eminence of the state in the French legal and institutional system.

Before dealing more directly with matters arising from the set of issues under consideration, let us first identify the legal rules relating to the organisation of the state. Historically, the government is organised around the great ministries of the monarchy. Growing specialisation since that era has engendered new ministries: some have a more technical brief (Agriculture, Transport, etc.); some have their origin in specific events (veterans and war victims repatriated after 1962, etc.); others reflect the emergence of new needs or concepts (some of them ephemeral, like Leisure, others corresponding to more lasting concerns, like Environment).

Broadly speaking, competence for organising the administration lies with the Executive, provided that Parliament votes the corresponding budget credits. An administration is formed around the minister, whose legal powers are determined by the laws and regulations that apply to the organisation of government.

By creating an autonomous sphere for the exercise of regulatory power, the 1958 Constitution confirmed principles which had emerged over time, in

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particular through the jurisprudence of administrative courts. The government is competent to organise the services of the state. Article 20 of the Constitution states that the government "shall have at its disposal the civil service".[1] Furthermore, organisation of the civil service does not fall within the scope of statute, defined restrictively by Article 34.

In this spirit, and pursuant to Article 21 of the Constitution which states that "the Prime Minister ... may delegate certain of his powers to ministers", ministers' attributions are defined by decrees taken in the Council of Ministers. The organisation of ministries therefore flows from the powers defined in this way; it does not result from a pre-existing legal framework of general application.

Ministries comprise central directorates, themselves organised into subdirectorates and offices. The legal framework for these directorates is set by decrees of the *Conseil d'État*. The current 15 ministries comprise 160 central directorates, figures which reflect the Executive's efforts to tighten up the administrative apparatus over the last few years.

The problem of "dependence" of autonomous and semi-autonomous bodies *vis-à-vis* the central administration has to be examined within the French context. Different criteria have to be taken into account, including whether or not the agency has a legal personality distinct from that of the state, whether or not the activities of the agency in question are subject to a higher authority, and whether or not it has been given its own precisely defined powers. Other criteria may also apply, such as the arrangements for appointing executives (or members of a collegiate body), financial autonomy, the conditions of supervision and control, etc.

Legal and organisational framework

A *complex administrative structure*

When these criteria are applied in combination, they reveal a complex picture of the administrative apparatus which is resistant to classification by degree of independence. Behind the nomenclature and the legal terminology, the extent of the agencies' true autonomy is extremely varied. Consequently, we shall approach the subject by category, using widely accepted legal definitions.

The terms "agencies and authorities" may be taken to correspond to two broad legal categories that exist in French law. They are, first, public establishments, a long-standing and well-defined category of autonomous public bodies, and second, autonomous administrative authorities, a less conventional category but also one whose configuration is less easy to define.

In addition, terminological uncertainties mean that certain services which, within the ambit of the state, enjoy only limited autonomy may, in certain respects, be regarded as "agencies". The specific powers of these deconcentrated

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services and services with national competence have recently been newly defined.

State services

Certain state services, which as such are placed under the authority of ministers and the government, have been given a newly defined legal form and their own powers, as a result of which they correspond to certain semi-autonomous bodies which may be found in other OECD member countries.

- Deconcentrated Services

Alongside central services, the French administrative apparatus also includes deconcentrated services. Deconcentration is not a new idea. Confused with decentralisation in the last century, it comes down to measures as a result of which decision-making powers are vested in authorities which are responsible for a particular district but are appointed by and answerable to central government. The linchpins of the system are prefects who, since 1982 have been the sole territorial authorities of the state to whom powers may be delegated at *département* or regional level except in specific, restrictively defined areas. In recent years, legal measures have been taken to clarify relations between central and deconcentrated services: central services are responsible for steering, assessment and control; deconcentrated services are responsible for implementing government policies. Deconcentration, however, is not part of the OECD's definition of the wider state sector.

- Services of national scope

The charter for deconcentration, and a subsequent, more general review of the role of the state, led to the construction of a legal framework for the management of operational activities which, while they no longer had a place within central government, could not be deconcentrated because they were exercised on a nation-wide scale or had no specific link with a particular district.

Thus, the decree of 9 May 1997 provided a legal basis for services of national scope which could be attached directly to a minister, to the head of a central directorate or to a deputy director. Under the new framework, the head of the agency can be given the necessary delegations of authority for its action and the corresponding budget resources.

With experience, the new system has meant that training services, support services (data centres, technical documentation) and logistic services, for example, which had enjoyed limited autonomy in relation to the central services into

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which they had hitherto been integrated, could be made into centres of responsibility, and their performance better assessed.

These administrative solutions constitute a response, within the apparatus of the state, to a number of concerns, such as identifying the locus of public decision-making, assessing the responsibility of managers and bringing them closer to local issues and people. As far as management autonomy is concerned, however, the public establishment seems to be the more apposite institution.

Public establishments (*Établissements Publics Nationaux*, EPNs)

The public establishment is the model structure for "management autonomy". It is defined firstly by its legal personality. Public establishments constitute a third type of public law entity, after the state and local authorities.

But public establishments, though autonomous, are necessarily attached to another legal entity, either the state (in which case they are national public establishments) or a local authority. The most common local public establishments are primary and secondary schools and hospitals.

In addition to legal personality, another defining feature of public establishments is managerial independence. According to this principle, the establishment's governing bodies have sole responsibility, within the framework of the laws and regulations that apply, for drawing up rules and making decisions concerning the establishment.

According to a recent survey,[2] both parent ministries and EPN management agree that making implementation of public policy more efficient is the principal reason for setting up a national public establishment. This motive far outweighs any management concerns, since the mechanism is not viewed as a means of providing greater managerial flexibility than is achievable by the central authorities. Important reasons for the creation of the public establishments also include the need to provide independent resources to establishments and the need to hire staff with specialised skills. The more recent the creation of the establishment, the greater the weight of this factor, given the trend towards agencies with technical terms of reference that call for technical or scientific expertise that administrations are unable to provide.

Leaving aside the multitude of establishments attached to local authorities (schools, hospitals), there are now about 1 300 national public establishments comprising more than 1 000 administrative public establishments and about 100 industrial and commercial public establishments in a wide variety of fields (teaching, research, employment, social protection, healthcare, equipment, environment,

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culture, etc.). Staff working in public establishments represent 35% of all staff working on policy implementation and service delivery.

Staff numbers civilian ministries	1 861 012
Defence	409 123
National Public Establishments	252 995
Large national enterprises with EPIC status	675 000
Other national enterprises with EPIC status	15 000

A legal distinction is made between administrative public establishments (*établissements publics administratifs*, EPA), which are generally responsible for implementing government policies or managing a public service, and industrial and commercial public establishments (*établissements publics industriels et commerciaux*, EPIC) which, while maintaining a public service connection, carry on all or some of their business in the competitive sector.

The EPA category spans a wide-range of public establishments, from those "of a scientific, cultural and professional nature" like universities to "economic" public establishments like chambers of commerce. Managing an administrative public service, EPAs resemble state administrations or local authorities. Consequently, they are governed by public law and fall within the jurisdiction of the administrative courts.

In contrast, although industrial and commercial public establishments remain public entities, their activities mean that they pursue ends more similar to those of companies; they are mostly governed by private law and fall within the jurisdiction of the regular courts. EPICs are sometimes called public enterprises, a term which covers both certain EPICs and corporations of which the state (or another public entity) is the sole or majority shareholder, like *La Poste* or *Électricité de France*.

This distinction may appear straightforward at first sight, but the reality is more complex. It is quite common nowadays for public establishments to have EPIC status even though they do not really carry out an industrial or commercial activity. The choice of EPIC status tends to be motivated by the wish not to be subject to the restrictive rules of public law. *La Poste*, for example, has the title of public operator and is an EPIC, as are the *Réunion des musées nationaux* (national museums organisation) and the *Comédie française*.

The absence of ordinary legal status should be emphasised: the legal rules that apply are determined by the statute creating a "category of public establishments" and the decree relating to each establishment. This causes a profusion of individual situations, making it more difficult to distinguish the broader picture.

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A survey carried out in 2001 for public establishments which will be described later in this chapter has tried to make the implicit justifications more explicit.

Public interest groupings

Public interest groups (*groupements d'intérêt public*, GIP) are unusual first by their form, since they are legal entities created by contract, approved by ministerial order. They are also unusual in purpose, since they are intended to provide a framework for co-operation and partnership between public and private entities. Created by the Act of 15 July 1982, GIPs have proliferated in numerous fields, such as education, research, social welfare, the environment and regional development. In certain cases they can constitute "autonomous public bodies" within the meaning of this study.

Autonomous administrative authorities

Autonomous administrative authorities form another major category, having arrived on the French administrative landscape some 20 years ago. These are unusual insofar as they constitute an exception to the traditional French approach to administration, whereby the administrative apparatus of the state culminates in the minister and is subject to the guidance, or at least the supervision, of the government.

In fact, autonomous administrative authorities form part of a vast movement that may be found in most major democracies. Over and above the policy of decentralisation or deconcentration, it seeks a new model for the division and exercise of the power of the state, especially with regard to the exercise of public freedoms and the regulation of certain sectors or markets.

The latest annual report of the *Conseil d'État* contained a definition of autonomous administrative authorities: they 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". In order to fulfil this mission they may be endowed with powers of regulation, individual authorisation, control, injunction and even sanction. In some cases, however, their power is merely one of influence, though it is backed up by a genuine moral authority.

The national data protection agency (*Commission nationale de l'informatique et des libertés*, CNIL) was France's first autonomous administrative authority, created in 1978 by the Data Protection Act (*Loi Informatique et Libertés*). There are now around 30 such autonomous administrative authorities in a wide variety of fields, with responsibilities which include the broadcasting media, the protection of personal data held on computer files, the fight against performance-enhancing drugs in

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athletics and the regulation of areas vital to the smooth running of the economy, especially financial markets and telecommunications.

Several of France's most important autonomous administrative authorities are modelled on examples drawn from other OECD member countries. To give just a few examples, the *Commission des opérations de Bourse*, the stock market watchdog, owes much to the Securities and Exchange Commission created in the United States in the 1930s. The national data protection agency was inspired by similar bodies in Sweden, the United States and Germany. Likewise, the telecommunications regulatory authority has counterparts in the United Kingdom and in Italy.

Autonomous administrative authorities are unusual both from a legal standpoint and in terms of administrative organisation because, not being endowed with legal personality, they are part of the central administration of the state while enjoying definite guarantees of autonomy in relation to the missions entrusted to them.

The most important autonomous administrative authorities are the following:

- the Commission nationale de l'informatique et des libertés (National Data Protection Agency, CNIL);
- the *Conseil supérieur de l'audiovisuel* (audio-visual media watchdog, CSA);
- the *Commission des opérations de Bourse* (stock market watchdog, COB);
- the *Commission des sondages* (opinion poll watchdog);
- the *Autorité de régulation des télécoms* (Telecoms Regulatory Authority, ART).

Other autonomous administrative authorities wield considerable influence, even though they do not have any decision-making powers:

- the *Commission d'accès aux documents administratifs* (agency facilitating public access to official documents, CADA);
- the *Commission nationale de contrôle des interceptions de sécurité* (telephone tapping watchdog);
- the *Commission consultative du secret de la défense nationale* (Consultative Commission on National Defence Secrecy).

To summarise, although autonomous administrative authorities share some common aims with public establishments, autonomous administrative authorities have the advantage of seeking to guarantee the impartiality of state action in certain areas, in the same way as an independent jurisdiction.

Recent concerns regarding the autonomous administrative authorities have concentrated on anchoring them more solidly within France's administrative apparatus, by a variety of means:

1. Strengthening their legal foundations.

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2. Consolidating long-term guarantees of independence by:
   - giving members of collegiate decision-making bodies full-time appointments to ensure that power is not captured by the "technocracy" of administrative departments which may wield considerable clout;
   - as a precaution prohibiting the renewal of terms of office, though as a balancing measure they could be extended;
   - giving them greater autonomy with regard to appointments by ruling out a dual procedure whereby appointments may also be made by high authorities (chambers, *Conseil d'État*, Court of Cassation, etc.) in favour of express appointment by the Executive by way of decree or ministerial order;
   - giving them greater financial autonomy, possibly by introducing a specific budget item along the lines of a "supplementary budget". A specific budget procedure involving an opinion from the Court of Accounts at the budget bill stage is another possibility.
3. Organising the codification of legal rules produced by autonomous administrative authorities so as to meet the objective, which has constitutional value, of making the law accessible and intelligible, as stated by the Constitutional Council in its decision of 16 December 1999.
4. Ensuring that sanctions ordered by autonomous administrative authorities are compatible with Article 6-1 of the European convention on human rights and fundamental freedoms, so that guarantees of a fair trial (due notice, all parties heard) are respected.
5. Lastly, as independence should go hand-in-hand with responsibility, providing for periodical parliamentary control of autonomous administrative authorities with regard to the objectives assigned to them and the impact of their action on the sectors for which they are responsible. This is one of the conclusions of the *Conseil d'État* in its recent annual report: an authority's independence with regard to the administration is not a barrier to parliamentary control.

These are matters for consideration which could doubtless extend to all autonomous and semi-autonomous public bodies.

Establishment authority

Public establishments

The creation of both public establishments and autonomous administrative authorities calls for the involvement of Parliament. Whereas the government alone is competent to organise the civil service within the state, acting by way of regulatory

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decree, the creation of public establishments and independent administrative authorities belongs, within certain limits, to the sphere of statute.

For public establishments, Article 34 of the Constitution states that "statutes shall [...] determine the rules concerning [...] the creation of categories of public establishments". The term "category" means all establishments that are attached to the same legal entity and have a similar speciality.

This means in practice that if the category does not already exist, the creation of a public establishment is a matter for Parliament. Otherwise, the government may create a public establishment, but only within limits already set by statute for the category to which it belongs.

The statute needs to be relatively far-reaching in setting rules for the creation of categories of public establishments. The mission, resources, supervisory authority and structure of the board must necessarily be included in the statute and cannot legally be left to the government's regulatory powers.

Autonomous administrative authorities

Matters relating to the missions and prerogatives of autonomous administrative authorities fall within the sphere of statute, but the rest belong to the sphere of administrative act. These authorities fully remain state authorities, however, bearing in mind that they act in the name and on behalf of the state and incur the state's liability for any prejudicial acts they may commit; and they do not have control over their resources, since they have no permanent staff and their budget often depends on the Prime Minister or another minister.

State involvement in the work of an autonomous administrative authority is not necessarily ruled out. For example, a government commissioner may ask the Competition Council to rethink a decision; certain COB decisions are subject to approval by the Finance Minister; and sometimes an autonomous administrative authority merely gives an opinion which the minister is free to follow or not.

The decisions of an autonomous administrative authority must be lawful; as such, they fall within the jurisdiction of the administrative courts.

Governance structures

From this point, the paper will concentrate exclusively on the case of public establishments because of their greater importance in terms of numbers and the specific accountability problems and issues they pose. The rest of the paper draws heavily on the results of a survey carried out in 2001 by the inter-ministerial delegation on state reform (DIRE – D*élégation* I*nterministérielle à la* R*éforme de l'*É*tat*) with a representative sample of national public establishments (EPNs – *établissements publics nationaux*) and their parent ministries under the heading implementation

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of public policy by means of national public establishments. The survey focused on the contribution of the EPN system to the efficiency and comprehensibility of action of the public sector.

Public establishments are numerous; the legal rules that apply to them are complex and uncertain; they operate in a wide variety of sectors; and pursue a wide-range of objectives. All these factors raise questions about their place and utility in the administrative apparatus and the practical aspects of their relations with the state.

Management autonomy

Parent ministries consider that in the great majority of cases director-generals have very wide powers of decision and boards an effective management role. However, both parent ministries and agencies agree that establishments should enjoy real management autonomy. In some cases, for instance the ENA, no operational decision may be carried out without administrative confirmation from the parent ministry. The powers of the director and the board are thus restricted to the influence they can exert.

However, close control of appointments is generally matched by independence in everyday management. Prior approval by parent ministries of the issues to be considered by the boards is the usual practice. Boards do not consider this as interference but merely prior scrutiny for possible conflicts of doctrine or of law.

In one celebrated case, the government decided a few years ago to "relocate" certain public establishments some distance from the Paris region, the best known being ENA, the *École Nationale d'Administration*, moved to Strasbourg. The *Conseil d'État* overturned these decisions on the grounds that the government could not impose choices which only the board of the establishment concerned was competent to make. This example illustrates the managerial autonomy and the autonomy, within the meaning of this study, of public establishments.

Governing bodies

The rules of organisation and oversight vary considerably from one public establishment to another. This is particularly true of governing bodies: the nature of public establishments means that the composition of their governing bodies can reflect the need for representatives of the economic and social fabric drawn from outside the apparatus of the state, as in the case of social benefits entities. All public establishments have a board whose members generally include representatives of the responsible ministry and, where relevant, of the interested parties concerned (local authorities, users, business, partners of the administration,

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suitably qualified public figures, etc.). The chair of the establishment is generally appointed by decree in the Council of Ministers or by ministerial decree, except when the establishment's independence requires the chair to be appointed by the board (as is the case with universities, for example). The chair sometimes coexists with a director, with the ensuing risk of overlapping powers.

Appointments of chairman and chief executive

In 90% of cases the state has sole power to appoint the director-general and the same applies to the president (chairman of the agency's governing body). The state's right to appoint the latter can be withdrawn only by explicit provision, as in the case of the National Employment Agency (ANPE – *Agence nationale pour l'emploi*) or the Social Security Funds, in which case they are designated by the social partners. State supervision even extends to the appointment of senior staff in 50% of cases.

Members of the boards who are not public servants or *ex officio* are generally chosen by the state. Their work is usually voluntary.

Remuneration of managers

The heads of administrative EPs have no autonomy on matters related to remunerations and those of industrial and commercial ones have very little. As far as the remuneration of the director himself is concerned, the budgets of administrative EPs generally contain a specific provision for it, since all permanent positions are identified by category in the budget and the director is the only person in his category. The amounts in question are discussed with the supervisory authorities at the time the EP is created and then on an annual basis when the budget is examined. Remuneration can significantly exceed the amount provided for in the budget, to take into account factors like the directors' previous salary and the complexity of the assignment. A letter then fixes the actual remuneration from the Budget Directorate. The Budget Directorate has an up-to-date comparative chart of the remuneration paid to heads of administrative and industrial and commercial EPs. Pay is generally higher in industrial and commercial agencies, although the size of an EP plays a more decisive role than its type.

The director has no authority over the remuneration paid to his immediate subordinates. The Budget Directorate of the Ministry of Finance has gradually required all sectors to limit to 15% the pay increases granted to civil servants being assigned to an EP. This is intended to reduce problems when they return to their original ministries.

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Resources and budget process

The budget structure

The budget appropriations of administrative EPs are cash spending limits. The budgets of industrial and commercial EPs are considered to be "estimates of revenues and expenditures". In principle, these estimates are only evaluations, since they depend on the agency's own revenue. However, there are limits on personnel and investment expenditures, which diminishes flexibility in budget execution. The budget includes authorisations for committing multi-year investment projects, the so-called "programme authorisation" or "commitment appropriation". They authorise commitments only, not payments.

Generally, the budget consists of two sections, one for operations and the other for capital expenditures. These two sections are divided into "chapters" and "articles". The budget classification follows the accounting plan, which classifies accounts by economic category.

Budget formulation and approval

The timetable for the budgeting procedure is very strict and national EPs follow the same procedure as the government. The process starts with an annual budget circular sent out on or about 15 April; it is followed by two budget meetings bringing together the Budget Directorate and the ministry with technical supervisory authority. Today, EPs, even major ones, are rarely present at those meetings, as ministries with technical supervisory authority wish to assert their role and limit the authority of the Budget Directorate. However, there are frequent preparatory meetings involving the Budget Directorate and the EP. Appropriations for subsidies to an EP are examined at the same time as those of the reporting ministry and are part of that ministry's own budget.

The budget of an EP is then presented to its board of directors, which has to approve the budget by a vote before the end of October.

Then for the large majority of EPs, the budget must be approved by a joint decision of the two supervisory authorities (as noted earlier, there are exceptions).

The internal allocation of budget appropriations to the agency's divisions takes place in the period from 15 October to 15 December. It is not officially communicated to the supervisory authorities and does not require approval.

Parliament is given information about the budgets of EPs only by means of the subsidies included in the state's budget. Parliament is not provided with the budgets of individual EPs. However, the reporters of the Parliament's committees are free to obtain all necessary information either from the Ministry of the Budget

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or from technical ministries, or else directly from an EP. They frequently do so and Parliament may, at its discretion, modify the budget subsidies for public agencies.

Budget execution and accounting procedures

The budget execution system for EPs is generally more flexible than for the state budget. However, for most EPs, the state budget execution procedures serve as a reference. In the French budgetary system, the budget execution procedure is as follows:

- The authorising officer (*ordonnateur*) is responsible for budget implementation. The line minister (or for EPs the head of the EP) is the authorising officer. The authorising officer, or actually his delegates, commits expenses, that is issues contracts and orders, checks deliveries, invoices and claims, and issues the payment order.
- The financial controller, who is an officer from the Ministry of Finance, controls commitments *ex ante* as well as the other decisions that have a financial impact, such as recruitment. The financial controller verifies that there is an appropriation available and the commitment fits the purpose of the appropriation.
- An officer known as a "public accountant" controls the payment orders issued by the authorising officer. The "public accountant" is in charge of controlling the regularity of the payment orders; he issues the payment through the Treasury Single Account (or the EP's account at the Treasury) and keeps the books.

For management control, in most major private and government organisations of significant size, a principle of separation of duties is applied. This ensures that the same person cannot make orders, control deliveries and make payment. In the French public sector system this rule has been institutionalised. The "public accountant" does not report to the "authorising officer". He is empowered to reject any irregular payment orders issued by the authorising officer.

The principle of separation between the authorising officer and the "public accountant" is a core principle of the French system. It is applied both for expenditure and revenue (*i.e.* revenue assessment is separated from revenue collection). This arrangement, established by the ordinance 59-2, has been reformed in 2001 in order to give more autonomy to the authorising officer and to organise public spending around "programmes".

Because they involve a close control by the Ministry of Finance and are not well adapted to the management of business activities, 12 EPs that are the largest public enterprises have been exempted from those procedures.

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Sometimes, the principle of separation discussed above is altered. Thus, in some public enterprises, the "public accountant" is also the financial director of the EP, and as financial director reports to the head of the EP and authorises expenditures.

The financial control of administrative EPs

Generally, the financial controller controls *ex ante* the commitments and decisions that have a financial impact. The financial controller works closely with the EP administrators; he has consultative status on the board of directors. He performs controls of regularity only, and ensures that directives from the Budget Directorate, either written or oral, are complied with. He controls mainly decisions on personnel (*e.g.* recruitment), foreign travel expenses, investment, subsidies and transfers, and other expenditures above a certain amount (which is sometimes negotiated with the manager).

The state control of industrial and commercial EPs

The "economic and financial control of state" is commonly named "state control". The state control performed by officers from the Ministry of Finance covers the EPs to which the above financial control does not apply, as well as state-controlled corporations, and any other entity which draws most of its revenue from public funds. It covers about 600 entities.

The nature of such controls varies from one EP to the other. Sometimes it consists of an *ex ante* control of decisions with significant financial impact. Most frequently it consists of an audit (*ex post*). For public enterprises of significant size state control is similar to a process audit.

State controllers have consultative seats on the board of directors. They issue annual reports with their assessments of the effectiveness of an EP's policies. The reports are sent to the Ministry of Finance; they are not confidential, but are not widely disseminated either, as it is not mandatory that they be forwarded either to the agency audited or to its supervisory authority.

Policy coherence, oversight and accountability mechanisms

The role of Parliament

The Constitution restricts the power of the legislature to definition of the various categories of public establishment. Its involvement is therefore required in less than 60% of cases when new EPNs are being set up. What the legislature is called upon to do is to define public policy and to make clear which area of public

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policy an EPN is to be responsible for administering in a transparent and efficient manner.

In the case of the Agency for Environment and Energy Management (ADEME – *Agence de l'environnement et de la maîtrise de l'énergie*), no specific provision has been made by the legislature for scrutiny of its activities. As a result, the establishment is governed by ordinary law, in other words its budget is voted by Parliament at the same time as those of its parent ministries and is not subject to special debate:

> *... the agency has so far not established any satisfactory relation with either the National Assembly or the Senate; since it is neither a ministry nor a lobby it finds it difficult to keep members of Parliament properly informed. However, any involvement by Parliament in the Agency's area of work is conditioned by the accuracy of the information it receives... We have had to establish a post of parliamentary attaché within the Agency in order to ensure continuity of contact.*[3]

In contrast, the agency in charge of the management of radioactive waste (ANDRA – *Agence nationale pour la gestion des déchets radioactifs*) work is subject to scrutiny by a National Evaluation Commission, which submits an annual report to Parliament, which then refers it to the Parliamentary Office for Assessment of Scientific and Technical Choices (OPECST). The food safety agency (AFSSA – *Agence française de sécurité sanitaire des aliments*) for its part has been subject to *ex ante* scrutiny of the health watchdog machinery. It also pursues a very active public information policy[4] which makes it a necessary protagonist in the public debate. The 1996 ordinances attached supervisory councils to the Social Security Funds. These councils are made up of members of Parliament and are responsible for reporting to Parliament on implementation of the management contracts between the state and the funds. In any event, since Social Security is governed by a special Finance Act, Parliament is kept informed of implementation of the Finance Act through the report of the Court of Accounts.

Under the ordinary law applicable to EPNs, Parliament is "the great outsider". In only 3% of cases does the machinery for evaluating performance include parliamentarians. When Parliament votes on the budgets of ministries containing budgetary allocations for EPNs, only half of those ministries report to Parliament on the work of their establishments. Unless they make special provision for communicating with Parliament (such as by establishing a post of parliamentary attaché), 60% of EPNs have no contact with Parliament.

Co-operation with users

In contrast, contacts between EPNs and the general public, users and civil society in general, have been making great strides. Of the establishments surveyed, 84% reported formal or informal procedures for interacting with players not

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involved in the work or management of the agency. Another 64% reported having introduced a code of good practice in their relationships with users, whether customers or the general public.

The greater the risk factor in their area of work – environment, food safety, etc. – the greater the emphasis on communication.

Evaluation of communication policy and relations with the public still lies in the future, irrespective of whether what is involved is merely institutionalised information provision or a genuine effort to include the general public in decision-making.

Contracts and performance-based approaches

State controls often appear to concentrate too closely on financial and accounting procedures, to the detriment of strategic objectives. In addition, the supervisory function is sometimes awkward to organise – there may be four or five "competing" supervisory ministries – and difficult to deconcentrate in cases where public establishments have local offshoots.

The present management structures of public establishments reflect the predominance of the law in regulating relations between them and central administrations. However, there has been a marked increase in recourse to contracts between parent ministries and establishments. For example, the Ministry of Agriculture has decided to make it a general practice to draw up agreements on targets with its dependent public establishments, while the Ministry of Culture, in implementation of the Prime Minister's circular of 3 June 1998, has set out detailed, formal procedures for the use of the contract-based approach with a number of prominent agencies (such as the Louvre Museum, the National Union of Museums and the National Dance Centre). Similarly, in the employment and solidarity context, the relations between the state and the National Family Allowance Fund (CNAF) and local family allowance funds (CAF) are being assessed and existing agreements on targets reviewed. While 75% of EPNs claim that a process of reflection and strategic planning is in place between themselves and their parent ministries, the latter report this to be true in only 26% of cases.

Agreements on targets come in a wide variety of forms. Some 40% of EPNs report signing a targets contract that sets out strategic objectives. Another 30% have multi-year plans that include annual target contracts, while 17% have grant agreements.

After a statement of each agency's tasks (which are essentially to serve the public – even in the case of the industrial and commercial agencies (EPIC), which have a duty to provide continuity of service over time and nation-wide), the targets common to all contracts are listed (promotion of partnerships, management

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of human resources, financial management and provision of a high quality of service) followed by the targets specific to the given sector or agency (access to art works in the case of the Louvre, competitiveness in the international arena in the case of the electricity supply authority (EDF) and application of the "polluter pays" principle in the case of the agency for radioactive waste management (ANDRA).

Contracts between Social Security funds and reporting ministries

The 1996 social security ordinances made provision for a system of reciprocal agreements between the state and the Social Security funds covering public policy targets linked to efficiency indicators, advance notification by the state on updating regulations, allocation of operational resources over a three-year period, and evaluation indicators for use by decentralised services (such as the regional health and social services directorates – DRASS), which are then used to produce overall national figures for submission to the supervisory council.

These procedures enable fund directors to enjoy real independence in management, while evaluation introduces accountability for both directors and the state, since the progress report submitted by decentralised evaluators to the supervisory council (composed of parliamentarians) will draw attention to any discrepancy attributable to the state in implementing the agreement or to any difficulties in executing the agreement caused by changes in laws, regulations or the tax system.

Contracts increasingly include commitments to provide benefits or services or to good management of resources. Service commitments can, for example, cover undertakings relating to security of premises, education of students (in some universities), tools available to users (interactive terminals, data links, job vacancy notices issued by ANPE), speed of service (Post Office) or safety (EDF). Resource commitments are also found in contracts, concerning both human resources management, including training, control of absenteeism (Louvre), decentralisation (ANPE), and financial commitments, including cost accounting (ANPE) or tariff policy (Post Office, EDF). In this area, commitments are rarely reciprocal, since commitments by the state are often subject to reservations relating to the annual allocation of resources under the Finance Acts, which amendments to those acts frequently call into question.

A number of agency contracts include indicators that allow the manner in which contracts are carried out to be determined. The Louvre has 85 indicators of

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various kinds, relating to quality, financial matters, production or management; the Post Office and the electricity supply authority (EDF) have a similarly large number. Provision is also made for monitoring and evaluation through inspection by a commission or a technical committee.

A glance at such contracts, however, reveals a number of limitations, despite the progress they represent. The commitments made by the state are often weak or deceptive (making the contract into a set of specifications or an instrument for facilitating supervision by the parent administration), particularly in relation to financial matters where notably they fail to make provision for coverage of more than one year at a time. Reference to the public policy of which the establishment is part (and in which it frequently accounts for only a few percentage points of the overall budget) is generally slight or even absent altogether.

The fact that 75% of EPNs consider there exists a process of reflection and strategic planning in place between the agency and its parent ministry must be tempered by the fact that the central administrations consider a formal process of that nature to be applicable in only 26% of cases. They estimate at 35% the number of EPNs preparing multi-year plans, but consider that strategic planning takes place in no more than 8% of cases. These figures reflect the impression given by case studies, which indicate that strategic planning is generally undertaken on the initiative of the EPN unless initiated by the legislature, as in the case of Social Security funds.

This variation in views shows the interest in strategic planning of both EPNs and parent ministries, the latter considering it a means of optimising budget allocations and improving performance. However, it also appears that the term "strategic planning" is used to cover a very disparate set of practices ranging from resource contracting to multi-year planning. As yet, there is no formal definition of strategic planning or its related practices, to provide a reference standard.

Performance evaluation

Performance evaluation is essential to determine what policies have been achieved. Half the establishments surveyed in the 2001 study considered they had performance-based plans that would show what they have done. However, this is still essentially a financial exercise since only 55% of EPNs report providing indicators that would show how effective a policy had been. In 60% of cases, EPNs report having pilotage arrangements to check that the guidelines set by boards were followed by action, and in 80% of cases to check that resources were being used in line with targets.

Some 70% of EPNs report having an internal evaluation process, but only 44% have any external audit arrangements. The weakness of parliamentary involvement was confirmed, since parliamentarians were involved in only 4% of cases.

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These tentative steps towards a performance-based approach have generally been taken by the establishments themselves, which consider that the central administration is responsible for their performance in only 28% of cases. The principle of giving prior warning of any forthcoming radical legal or technical changes in order to allow agencies to adapt their policies accordingly is virtually non-existent.

Both the survey and the case studies indicate that there has been a real move towards a performance-based approach that is results-oriented and measured by external criteria such as user satisfaction.

The approach is gaining ground on an empirical basis that makes public establishments a testing ground for modernisation of public sector management. A report audit is currently under way and will provide a picture of what is a very varied scene, ranging from lists of work done, figures and statistics, to detailed accounts of public policy and the efficiency and effectiveness of the use made of resources. The more exposed the establishment is to public debate, the more carefully structured is its report, even when it undertakes no communication tasks (AFSSA, ANDRA) or has no special evaluation mechanism.

From scrutiny of public establishment practices, it is increasingly clear that this is the way ahead for public management. Public establishments will give impetus to and gain impetus from the practices being formalised by central state services.

Evaluation, lessons learnt and recent developments

The adaptability of the system

Despite its age, the EPN system has shown a commendable degree of adaptability, as is evident from the changing roles in establishments and from the vigour of new EPNs set up for specific ends, such as scientific assessment tasks.

The National Employment Agency (ANPE – A*gence nationale pour l'emploi*), for example, which started out in a period of full employment with the aim of easing the labour market has become an innovative mechanism for combating unemployment. Creating public establishments has also been a useful means of coping with new public policy challenges such as food safety (*e.g.* AFSSA, the French food safety agency), or radioactive waste (*e.g.* ANDRA, the National Agency for Radioactive Waste Management).

Modern management methods have been adopted by public establishments on the initiative of the central administrative authorities, the government (as in the case of the February 1996 ordinances relating to the social security funds) or the establishments themselves when they move into a competitive or

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risk-related environment or have governing bodies (boards) that include the social partners.

Overall, EPNs have proved well able to adapt to meet the changing demands made of them. A mere 19% admit that their current tasks differ from their statutory duties. ANPE, for example, which was set up at a time of full employment to ease the labour market has become a key player in job creation in the current period of mass unemployment.

Contributing to the better visibility and coherence of government's activities

The results of the survey in 2001 show that the main advantage of this legal form does not lie in the management flexibilities provided to policy implementation and service delivery but in the readability of the policies implemented. Giving these bodies their own resources and allowing them to hire staff with specialised competences and expertise is only a consequence.

Strategic pilotage and performance management

A number of recent studies and reports[5] have reviewed the current scene and point to the need, opportunity and feasibility for strategic pilotage based on monitoring activity-based management.

The current approach consists in acting on organisational inputs in order to improve outputs. The only margins for manoeuvre are thus allocation of financial and staff resources and production of regulations in the hope of improving work whose purpose is defined in a very general way. Action is focused on resources and has little to do with processes. Such an approach removes any hope of improving productivity or efficiency.

The expansion of public expenditure during the past 20 years has led managers to monitor the way resources are being used instead of seeking results that meet quality standards. Such an approach conflicts with the strategy-based pilotage approach and allocation of resources to key targets.

The development of a performance-based approach thus means moving away from the resource-based approach to reach a strategy-based approach. A strategy-based approach relies on pilotage of processes, a process being the string of activities leading to creation of a value for the end customer (the user of the public service).

Strategy-based pilotage consists of:

- starting by defining targets;
- working out the process required to attain them;
- allocating resources to activities crucial to the procedure.

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A formal strategic planning process can provide a framework for dialogue between an establishment and its parent administration on its tasks and operational targets. Strategic planning involves at least three major stages: Firstly, a five-year plan, reviewed every three years, setting out the tasks and targets of the establishment, defining the relationship between the strategic plan and the annual performance plan, pinpointing the external factors that have an impact on those targets, and describing the method and process used to evaluate and update the strategic plan. Secondly, annual performance plans, setting out the programmes, performance targets and performance indicators, generally divided into efficiency indicators (resource consumption) and effectiveness indicators (achievement of results). Thirdly, progress reports, comparing performance against targets, analysing reasons for under-performance, assessing or introducing corrective mechanisms, and evaluating policies and the degree of management freedom accorded to the establishment.

P*erformance contracts*

Performance contracts between the establishment and its parent administration may accord managerial independence in return for a commitment to results. Such contracts by target may fall within the reform of Ordinance 59-2 on public budget management. The parent administration will no longer have a say in the internal allocation of credits among budget items and programmes.

Performance contracts embody the managerial freedom accorded to the agency by the parent administration and the independence of decision left to its director with regard to redeployment of operational resources and staff management.

Once performance contracts have defined the scope of managerial independence, they need to be able to generate an internal pilotage system, including determining poor quality areas, identifying risk areas, and ascertaining activity costs. Internal reviews of this sort enable costs of procedures to be cut without increasing the likelihood of failing to meet targets.

Generally speaking, the aim is to introduce strategy-based monitoring founded on activity-based costing (ABC), as currently practised in industrial and commercial public agencies (EPIC) such as the Public Group Purchasing Union (UGAP).

A management approach of this sort is not currently compatible with the broad principles regulating public-sector accounting and administrative organisation: annual budgeting, accounting by budget line, absence of cost accounting, vertical segmentation of services, etc. These are recognised handicaps and form the basis for the proposed review of the organic law relating to public accounts (Ordinance 59-2).

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The basic principle of strategic management control is to begin by defining what are providable goods and services and identifying quality and acceptability indicators.[6] The quality of providables is governed by key activities in a procedure, which need to be allocated suitable resources.

Strategy-based management control consists of defining procedures, identifying key activities, and determining performance generators and cost items in order to allocate resources as needed.

Dealing with activities on the basis of occupations enables policies to be matched to operational context: measuring results, costing, reporting, performing external evaluation and preparing progress reports bring policies into direct contact with the operational realities of an establishment's work and enable the latter to contribute effectively to preparation of public policies.

Such approaches are of course dependent of data quality and quantity. In general, work charts provide too much data (sometimes several thousands of items) whereas an effective work chart should display no more than a few dozen key data in conjunction with some 10 pilotage variables. Furthermore, the system is affected by the GIGO (garbage in – garbage out) principle, so that a high quality of data is essential.

This reduction in size and the need for quality assurance can be provided in several ways:

- existing statistical data can be used to identify recurring or formative data;
- audit and evaluation procedures, both external and internal, may be used to assess quantity and quality of data. The targets agreement of the Social Security funds gives this evaluation task to the regional directorate for health and social affairs (DRASS), which is in a position to assess, point by point, the relevance of budgeting practices and the reliability of the resultant work charts. External evaluation, at national level, is also conducted by the general inspectorate of social affairs (IGAS).

Reflections on the future for a better strategic planning and performance management

Define a new contract framework and make commitments to numerical results

The non-profit-making nature of the services provided by administrative public agencies is no bar to determining numerical results, just as management by targets in the case of industrial and commercial public agencies can improve the efficiency of their public service tasks.

User-satisfaction is fairly easy to measure by numerical results in the case of industrial and commercial public establishments, where users are paying for a service. However, there is also a need to measure the quality of service provided to

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captive or involuntary users of public services such as social services or social security, or to the excluded or those subject to a special tax system. The Consumers Code has, since 1994, upheld the principle of certification of service in the case of a number of establishments in direct contact with the general public such as ANPE, which has embarked on certification of its local offices.

The relationship between resources and output is a part of management control rather than a measure of the effectiveness of public policy. Budgets need to be linked to targets in a functional format geared to public policy choices as part of a flexible framework capable of validating and justifying the usefulness of the expenditure.

Strengthen accountability for performance

Directors of central administrations must be held accountable for the performance of their establishments and at the same time, they need to be more independent, and in a better position to take the initiative and take risks.

In the case of the Social Security funds, accountability is generated through the evaluation procedure submitted by the regional directorate of health and social affairs (DRASS) to the Supervisory Council (a parliamentary body), but the intertwining of decision-making by government and the administrations makes direct accountability by central administrations difficult to determine.

Since the inception of the contract-based approach, the local Social Security funds that meet the terms of the contract are empowered to carry forward credit allocations. Fund heads are assessed by an IGAS (general social affairs inspectorate) committee which recommends nominations on the basis of its evaluations. The committee provides a list of three possible candidates for local fund directorships for consideration by the social partners, who appoint the director.

Although positive accountability exists, negative accountability is not yet in place and no penalties have yet been provided for a director who fails to meet targets.

The role of boards in the governance structures of establishments needs reassessment. Boards either have a purely symbolic role with no power of decision (as in the case of the National School of Administrative Studies, ENA), or function as a general assembly of representatives of administrations, who are there to defend their own interests. Boards are neither a strategy-building nor a decision-making forum and tend to bring a weak consensus approach into the decision-making process of the establishment, which hampers strategy building.

On the other hand, it is found that in independent agencies such as the Radioactive Waste Management Agency (ANDRA), which are financially dependent not on their parent administration but on their customers in application of

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the polluter pays principle, or in agencies where joint management is practised (Social Security funds, the National Employment Agency (ANPE)), the board is a focal point for discussion of strategy, where contracts under the state plan are considered and debated.

Improvement of the role of boards should lead to their taking responsibility for strategic planning and the content of agreements, making council members accountable. At that stage, a seat on a board would be a special office to be taken into account in evaluating the performance of the council member.

Lessons learnt

To conclude, it is clear that there is a need to improve the overall governance of public establishments through the following actions:

- giving a precise definition of the establishment's missions, identifying the reasons why the legal and operational particularities of a public establishment are appropriate and justified (bringing in partners for state initiatives, managerial flexibility, etc.), especially with regard to the need for separation from the legal personality of the state;
- analysing the structure and role of the board and arrangements for choosing managers and/or executives; clarifying the relationship (not always easy) between the chair and the director of a public establishment;
- evaluating the room for manoeuvre that a public establishment needs in order to operate smoothly: suitable budget and financial framework (management tools, management control); autonomy in the recruitment and management of human resources (choice of managerial staff, assessment and supplementary remuneration of employees);
- defining how supervision is exercised (co-ordination when several ministries are involved; designation of a co-ordinating ministry; framing an unequivocal and consistent policy within the state; precisely defining the public establishment's relations with local services of the state). All these points should be taken into account in a strategic steering reference book of the policy delegated to the establishment;
- placing relations between the state and public establishments on a contractual footing: In addition to missions and objectives, defining commitments with regard not only to services and service delivery but also to the management of resources (human resources, multi-year financial commitments);
- developing policy evaluation through the establishment of *ad hoc* instances like those which already exist in certain fields (Social Security, management of radioactive waste).

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In addition, we would recommend 10 means for making contractual and strategic management a reality for public establishments:

1. In the parent administration, formalise the strategic planning process to allow support to public establishment strategy through the appropriate definition of programmes.

2. Make the director of the central administration accountable for piloting the strategic plan. When a number of administrations are responsible for the establishment, a lead administration should be designated in line with major strategic interests.

3. Give establishments clear terms of reference in the form of a negotiated performance contract that includes numerical targets and performance indicators reflecting the state's strategic priorities.

4. Build these contracts into a formal system of strategy-based pilotage for the establishment through the establishment of scorecards.

5. Account for the implementation of this mandate in an activity report prepared for the parent ministry as well as parliament and the general public concerned by the policy managed by this establishment.

6. Make public establishments a test bed for the implementaion of the new organic finance law.

7. Introduce a system of strategy-based management control based on pilotage by activity, initially in the industrial and commercial public establishments and then extending it to all administrative public establishments.

8. Make full use of the potential of new information and communication technologies and evaluate their impact on productivity and changing occupations and tasks and review their conception according to the needs of strategy-based pilotage.

9. Rely on staff to recast the establishments' organisational and decision-making procedures and introduce accountability at all levels, starting at the top by inserting relevant incentives into staff regulations in both administrative and industrial and commercial public establishments and by systematically establishing performance-based reporting and making social assessment a general practice.

10. Make the board the real governing body of the establishment ensuring that policy implementation, from the negociation of the strategic plan to its implementation, is delegated by clarifying the mission and status of the members of the board and that of its president and director.

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Notes

1. Translator's note: English translation of the 1958 Constitution prepared under the joint responsibility of the Press, Information and Communication Directorate of the Ministry of Foreign Affairs and the European Affairs Department of the National Assembly.
2. 2001 Survey carried out by the Interministerial Delegation on State Reform (DIRE – D*élégation* I*nterministérielle à la* R*éforme de l'*É*tat*), "La mise en œuvre des politiques publiques par les établissements publics nationaux – de la conception de la stratégie à l'évaluation de la politique". Contact: Claude Rochet, c.rochet@dire.pm.gouv.fr
3. Comments by the director-general of ADEME in response to the survey.
4. Notably through its Internet site *www.afssa.fr*
5. For example, the Guillaume report on performance-based management systems and ways of linking them to the state budget (February 2000) gives a comparative review of eight countries: Canada, Denmark, Finland, Italy, the Netherlands, Sweden, the United Kingdom and the United States. There has also been the report of the working group chaired by J.P. Weiss on better public-sector management dealing with indicators and management control in public administration, and the handbook on methods C*ontractualisation dans le cadre du contrôle de gestion*, published by DIRE (September 2001).
6. An item of information derived by a process of analysis might well meet quality standards but have no value if it fails to meet acceptability standards, for example issuance without delay (as in the case of meteorological information).

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Germany

by

Marian Döhler *and* **Werner Jann***, **

Background

An overview of agency creation in Germany

Contrary to popular belief, Germany has a long tradition of public agencies and authorities outside core ministerial departments at both the federal and regional level. The first, the *Reichseisenbahnamt* (Imperial Railway Authority), was established shortly after the foundation of the German Reich in the 1870s, and had the task of regulating (rather than running) the railways. (The appointment of its first president even then caused political scandal, because he was thought to be too close to some banking and industrial interests.) The establishment of the authoritarian welfare state under Bismarck also took the form of special agencies under public law (*e.g. Reichsversicherungsamt*, Imperial Insurance Office of 1884). After 1949 the federal republic continued this tradition without, as in most other aspects of administrative structure and organisation, much theoretical or systematic reflection. The Basic Law of 1949 allows for the establishment of federal agencies (*Bundesoberbehörden*), but only with the consent of the *Bundesländer* (Art. 87, Section 3 GG) where they have decentralised administrative tasks.

There are, of course, a large variety of functions delegated to agencies, ranging from civil and military procurement, scientific research and economic regulation, to safeguarding competition. The main purpose of agencies is to relieve

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federal ministerial departments from so-called "non-ministerial" activities, and to allow them to concentrate on drafting laws and formulating policies, to provide support for ministers and the Cabinet, or to oversee subordinate authorities. If the relevance of agencies is comparatively low at the federal level, this is mainly a result of the division of functions in the German political system, according to which the implementation of laws is largely a domain of the L*änder*, whereas law-making is the main function of the federal government. The organisational consequence of this constitutional rule has been that federal departments are "stand-alone solutions" in administrative terms, *i.e.* they do not operate their own regional or local field offices. Exceptions are the Federal Departments of Defence, Finance (for customs, and a joint tax administration with the L*änder*) and Transport (for inland waterways). But, for example, the building of federal roads, the infamous A*utobahnen*, is delegated as charged administration (B*undesauftragsverwaltung*) to the L*änder*. Nevertheless, the number of federal agencies, subordinated to a ministry, has grown since 1949, reflecting the increasing relevance of federal involvement in policy implementation and regulation. The L*änder* are especially critical about the increasing U*nitarisierung*, as legal scholars have coined this development.

It has been argued that in a state like Germany with these federal constitutional features, pressure for agency-type reforms may be weaker, compared with highly centralist states like the United Kingdom, New Zealand or France. The argument is that federalism and strong local autonomy are factors which guarantee decentralised decision-making competencies and that subsidiarity is a structural equivalent to pluralistic service provider arrangements, again similar to modern ideas for contracting out and client-provider split. The impact of the federal structure is, however, often misinterpreted. It is argued, for example, that the L*änder* administration can be regarded as the functional equivalent to British executive agencies, but this confuses the allocation of functions across different levels of government (central/state/local) and the devolution of functions at one level (ministry/agency).

One of the main reasons for the creation of agencies has been to make use of experts and scientists, which has a long tradition in the German administration. Experts are not only integrated into the administrative structure by employment as civil servants, but also by attachment to advisory committees to agencies. The German legal understanding is that experts, even if they are seconded from interest groups or large companies, turn into neutral S*achverständige* once they are part of the decision-making process. Aside from their role of being addressees of administrative acts, affected citizens do not participate in the decision-making process on a regular basis. But some agencies consult consumers in their advisory committees.

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In recent years the objective of escaping from cumbersome administrative law procedures, flexibility in hiring and firing staff, etc. have played a role in the creation of agencies, particularly in the formal privatisation (corporatisation) of air traffic control (D*eutsche* F*lugsicherung* G*mb*H) and, of course, also in the privatisation or corporatisation of utilities like telecommunications, post and railways.

Improving efficiency or making additional savings have not so far been important in creating agencies. It is only in recent years that these goals have been considered in response to the administrative modernisation movement, but this has mostly resulted in the merging of existing authorities, rather than setting up new ones.

Freedom from political and ministerial influence has not been an argument either, administrative bodies free from ministerial oversight in Germany remaining the exception. The most prominent cases, the B*undesbank* and the B*undeskartellamt* (Federal Cartel Office) emerged in the 1950s after longstanding legislative battles. No need to increase the range of non-majoritarian institutions has been felt since. The general rule that agencies are subordinated to the overseeing power of a federal ministerial department is derived from Article 65 of the Constitution stipulating that within the policy guidelines set by the chancellor and Cabinet decisions, "each federal minister shall conduct the affairs of his department independently and in his own responsibility". An important facet of this so-called "R*essortprinzip*" (departmental principle) is the equally heavy-weighted normative doctrine of ministerial responsibility that requires individual ministers to appear before Parliament and, if asked, to report, answer questions and take the blame for omissions or failures within their domain. Due to this constitutional requirement, ministerial influence is not seen as subverting administrative expertise or neutrality, but rather as a legitimate expression of the political supremacy over administrative affairs.

Newly launched agencies have not usually taken over functions from federal ministerial departments, the replacement of the Department for Post and Telecommunication by the R*egulierungsbehörde für Telekommunkation und Post* (RegTP) in 1998 being a rare exception. Rather, agencies are charged with the responsibility of new functions, mainly in the field of law implementation. In general, devolution is restricted to minor competencies and operational tasks. Federal departments are usually reluctant to shed functions, one important explanation being that a larger ministerial staff enhances upward career mobility. Hence, maintaining even small bureaux, often staffed only with one higher trained official, opens the opportunity for personnel promotion, even if somewhat restricted. This has been criticised for a long time, but pressure to slim federal departments has only been felt in the wake of the recent efforts to modernise the federal level of government.

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Size of the agency sector

The federal government employs less than 7% of all public employees in Germany (*i.e.* about 320 000 people or the equivalent of about 300 000 positions including part-time employment – figures do not include the military). Of these, only about 6% (about 18 000 positions) work directly within federal ministries, while the rest are in some kind of agency or, as in the largest group, civilians in the military (40%). About 22% of positions are in federal agencies without any regional offices (*Bundesoberbehörden*). Agencies created within the last 15 years comprise only a very small proportion of these agencies.

If we look at all public employees, about 10% are employed in what is called *mittelbare Verwaltung* (indirect administration, which is also found at the *Länder* level). Of these, about 275 000 work at the federal level (*mittelbare Bundesverwaltung*), which is about 6% of all public employment, by far the largest agencies being those in labour market and social security administration.

Table 1. **Public employees in Germany**

	Employees	In %
Federal government[1]	320 459	6.9
States (*Länder*)	2 312 103	50.0
Local government	1 537 379	33.2
Indirect (*mittelbar*)	457 083	9.9
of which federal	275 400	6.0
Total	4 627 024	100

1. Without 189 760 soldiers.

Table 2. **Positions in the federal administration in Germany**

	Positions	In %
Ministries	17 910	6
Federal agencies	67 591	22
Tax and customs	45 080	15
Inland waterways	16 536	5
Federal border police	38 283	13
Civilians in the military	118 205	39
Total	303 605	100

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Since agencies are usually budgeted within their parent ministries, it is rather difficult to calculate their share of the overall budget. However, large parts of the federal budget (in areas like labour market, Social Security, agriculture, research, culture, international development, etc.) are distributed through agencies and not directly by federal ministries. Even the current commercial activities related to the recent agricultural crises (BSE and foot-and-mouth disease), *i.e.* the buying of surplus cattle and the compensation of farmers, is handled by an agency (B*undesanstalt für* L*andwirtschaft und* E*rnährung*) of the newly created ministry for consumer protection, agriculture and forestry, not by the ministry itself.

Legal and organisational framework

Germany is among those countries in which the rule-of-law doctrine has strongly pervaded the public sector. A legislative authorisation of each and every governmental activity, including the creation of public authorities, is therefore a general requirement. The legal underpinnings of an agency are typically codified within enabling laws such as the G*esetz gegen* W*ettbewerbs-beschränkungen*, the A*rzneimittelgesetz* or the T*elekommunikationsgesetz*, the enactment of which needs parliamentary approval. If an agency has its own field offices, additional approval is needed by the B*undesrat* (Federal Council), the second chamber of the German Parliament that represents the L*änder* in the legislative process. The rationale is to protect the L*änder* from federal interference in their administrative affairs. As far as setting up an agency is concerned, the legal density of enabling laws is surprisingly low. Whereas there are detailed definitions of functions and instruments, many laws contain only one or two sentences referring to the organisational structure. Filling out the blank spaces is left to the responsible department.

For the time being, the dominant view on administrative performance in Germany is that equipping authorities with a legal mandate is sufficient for their good governance. In recent years some ministerial departments have entered into contractual relations with their agencies in the wake of a proliferation of public management ideas, but this interaction is still in its infancy. Goal agreements (Z*ielvereinbarungen*) are not armed with sanctions if agencies fail to fulfil the defined tasks. Even more important is that agreements do not replace oversight competencies. Consequently, parallel streams of governance are likely to emerge.

Agencies mostly have no legal personality of their own and remain, according to German legal language, *nicht rechtsfähig*. But this does not restrict the agency's capacity to operate, as would be the case in the realm of private law. In German public law the legal status serves as a measure to assign an authority to a particular level of government, rather than to affect the leeway of an agency. Thus, even *nicht rechtsfähige* agencies are allowed to act as complete subjects of law, *i.e.* to sign

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contracts, appear before the courts, etc. Agencies are considered as part of the public administration in various laws.

The Administrative Procedure Act provides a functional, if somewhat circular, definition of authorities, according to which each unit that carries out functions of public administration is a public authority. There is no classification along the lines of policy-making, service delivery or regulation. As policy-making is a generic function of ministerial departments, federal agencies are not subsumed under this title. Service delivery or regulation may well be implemented by federal agencies but, according to the German understanding, are not defining properties of public authorities. Nevertheless, embedded in the standard legal framework (rather than a classification) of federal authorities, there are some indications pointing to a typical allocation of functions.

According to this framework, four basic types of federal authorities can be distinguished:

- federal agencies (direct federal administration, *unmittelbare* B*undesverwaltung*);
- bodies of public law (indirect federal administration, *mittelbare* B*undesverwaltung*);
- private law administration (Bundesverwaltung in Privatrechtsform);
- charged administration (privatrechtliche Auftragsverwaltung).

The first two types belong to the sphere of public law. The other two are private law organisations. Among these types, there is a hierarchy of functional relevance, allowing only Type 1 agencies to administrate core government functions (*hoheitliche* A*ufgaben*). This type of authority enforces major administrative regulations such as in banking, insurance or drug safety, and cartel law. Although the legal rules are rather vague (one of the legal buzzwords being F*ormenwahlfreiheit*: freedom to chose a legal type), a recurrent pattern has emerged of delegating functions with decreasing political relevance to the other three types. Typically, labour market administration, Social Security funds and other distributive policies or some government research institutes are organised as bodies of public law. In contrast, public enterprises and charged administrations have mainly entrepreneurial or service functions that are thought to perform better outside the public sector and do not require a similar degree of legitimacy emanating from ministerial oversight.

As opposed to the international context, the German understanding of the agency concept, on which this country report is based, is more restricted. Mainly Type 1 and roughly half of Type 2 entities are regarded as equivalent to agencies. Type 3 as well as Type 4 entities are rather perceived as belonging to the sphere of non-governmental bodies. It should be noted that Germany has never had direct administration by government departments or ministries in areas like Social Security and labour market, in which agencies have recently been established in

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other countries. Among these types there is an increasing degree of freedom from ministerial oversight, with federal agencies being the most controlled type, and charged administration usually the most unrestricted type of authority. In certain cases, however, the government as owner or shareholder probably has more influence than in some agencies of the second type (*e.g.* public law foundations are rather independent).

No systematic efforts to define or classify federal authorities have been carried out under official auspices so far. But federal departments usually refer to their non-ministerial units on their Internet home pages. Again, this reflects the importance of the departmental principle for governing agencies. Quite in contrast to standard assumptions about the well-ordered public sector in Germany, organisational and legal categories often remain ambiguous. It is generally not possible to infer an agency's legal status from its name. For example, the Federal Research Centre for Virus Diseases of Animals (B*undesforschungsanstalt für Viruskrankheiten der Tiere*), currently relevant for managing the BSE crisis, is not a Type 2 body of public law as indicated in the name, but a Type 1 agency (*selbstständige* B*undesoberbehörde*). Most recently, the staff-unit "modern government – modern administration" inside the Federal Department of the Interior has started to compile an extensive list of federal authorities.

Governance structures

The principle of monocratic leadership is widely held in the German administration, so collegial governing bodies, such as commissions in the United States, are few. The usual practice is to appoint a so-called P*räsident* who is allocated full responsibility (G*eschäftsleitungsgewalt*) and a vice-president at the top. The division of labour between the two is mostly that the president represents the agency in all external and public affairs, while the vice-president is responsible for internal administrative affairs. There is a clear hierarchical organisation in most agencies. In rare exceptions (*e.g.* the B*undeskartellamt* and the new RegTP) some regulatory decision-making is delegated to one or more autonomous collegial decision-making bodies (S*pruchkammern* or B*eschlussabteilungen*).

The board model is used in cases of privatised public functions, mainly to conform to private corporate law. An exception worth mentioning was the T*reuhandanstalt*, a body of public law organised in a business-like fashion with a board and a chairman. The board model has not yet been considered as a serious alternative for Type 1 agencies, mainly because the organisational structure of ministerial departments serves as an almost unchallenged blueprint for all other administrative authorities.

The board model is more common among agencies of the indirect federal administration (Type 2), which are governed after the German principle of

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S*elbstverwaltung* (self-administration). The most prominent examples are the Federal Labour Administration (B*undesanstalt für Arbeit*) and the Social Security Administration (B*undesversicherungsanstalt für* A*ngestellte*), but there are similar authorities at the L*änder* level where the governing board (of non-executive members) is made up of representatives of labour and employers, each holding one-half of the seats (usually the chairmanship of the governing body switching between each group on a regular basis).

Terms of employment for agency heads are generally subject to civil service laws. Aside from a few exceptions in which agency heads are appointed by the Cabinet, the selection of personnel and appointment is usually the sole responsibility of the minister. In some cases this is explicitly stated in the enabling law. Mainly, however, appointment power is regarded as an internal affair of the overseeing department. Hence, there is, with very few exceptions in particularly important agencies (*e.g.* K*artellamt*, RegTP or the B*undesbeauftragter für die* U*nterlagen des* S*taatssicherheitsdienstes der ehemaligen* DDR), no public debate about candidates. The appointment decision is released to the press without giving reasons about the selection process and alternative personnel options. According to civil service laws, appointments have no temporal limitations. More recently a two-year probation period can be applied. Only in the case of a serious violation of the law or duties of office can an agency head be dismissed prior to his or her retirement. It is important to note that the principle of political civil servants, who can be dismissed for political reasons, does not apply to German agencies. This is restricted to the top two layers of civil servants in ministerial departments. (The new civil service laws allow for temporary appointments also for ordinary, non-political civil servants in top positions, but with one exception this has not been applied to agency heads.)

There are perceptible differences in the payment of agency heads, with salaries ranging from B3 to B9 and, in exceptional cases, up to B11. Compared to payment grades in federal ministries, the usual point of reference, the salary for the head of an agency equals either the head of a bureau (B3) or the head of a division (B9). To a certain extent, these payment differentials reflect the political relevance of an agency's function and sometimes also its size. But, in general, it appears as if pay grades are largely based on traditions specific to the responsible department rather than on systematic criteria. There is no regular publication of salary levels. As pay grades adhere strictly to the Federal Remuneration Law, additional benefits are prohibited, except for a car and driver. Since 1997, performance bonuses of up to 10% of monthly basic salaries are permitted, but again, it is not known whether this has been used. Conditions of employment are fixed and therefore no special public disclosure is needed.

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Resources and budget process

As a general rule, the budget of German agencies is part of the budget of their overseeing ministerial departments. Agencies have no financial resources of their own; their budget is allocated top-down from the department. Reviewing the proper use of money is part of the legal oversight by the department.

Given that each federal budget must be approved by Parliament and passed as a law, the financial committee can review each agency-related part (E*inzelplan*) of any ministerial budget proposal. To what extent this affects an agency budget is unknown. An informed guess is that parliamentary budget review does not usually result in perceptible modifications.

Some agencies, such as the Federal Office for Insurance Oversight (B*undesaufsichtsamt für das* V*ersicherungswesen*), raise substantial portions of their expenditures from user charges. Furthermore, research-based agencies can apply for research grants from non-governmental funding institutions. Raising their own money is rather uncommon amongst agencies, however.

Agency budgets are usually debated along with the budget of the overseeing ministry; they are reviewed by the ordinary parliamentary committee (budget committee, H*aushaltsausschuss*) and the Federal Audit Office (B*undesrechnungshof*). The financial situation is only discussed in rare cases when some agency needs large governmental funding for specific reasons (for example the Labour Market Administration in times of high unemployment or the Social Security Administration due to the long-term population development). Agency performance measured in efficiency or even effectiveness terms has not until now played an important role. In the German administrative tradition the legality of governmental decisions has, at least until now, been of much greater importance.

Policy coherence, oversight and accountability mechanisms

In the German administrative tradition and culture, questions of legality have until recently been of much greater importance than problems of efficiency or effectiveness. Performance measurement is thus not yet an established instrument of agency governance. However, some of the seemingly new techniques to improve administrative performance have been implicitly employed previously as part of ministerial oversight. The potential impact of public management ideas is that goal and performance orientation is upgraded and made more explicit. It remains to be seen how and if this will affect agency performance. Until now contract management between agencies and their parent ministries has not been tried on a wide basis, even though there have been some discussions and experiments (*e.g.* in the case of the German Weather Service, D*eutscher* W*etterdienst*).

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Transparency has not ranked high as an issue on the administrative policy agenda either until recently. Therefore, officials both in federal departments and in federal agencies have not been inclined to make statements on this subject. Good governance is still more a topic for a small, though growing, circle of convinced reformers and has not yet matured into a relevant issue for the daily operations of agencies.

Functional and legal oversight

As long as there are no specific regulations in the enabling law, all public law authorities are subject to ministerial oversight, derived from the constitutional doctrine of ministerial responsibility that plays an important role in German political thinking and has a strong impact on agency governance. Based on the idea that individual political responsibility can be invoked only as long and as far as ministers possess influence over their portfolios, ministers are provided with an unlimited right to give instructions. This right in turn is divided into two types. The first, legal oversight, is basically concerned with agency operations in terms of conforming to the enabling law or charter and the Constitution, but also covers budget, civil service or procurement laws. The second, functional oversight, is much more important. It covers all aspects of agency operations and includes the right to issue instructions on substantial policy questions, even to reverse single decisions. Ministerial oversight, however, is not meant as an enduring interference in agency decision-making, but rather as an instrument to correct serious deviations from the mission fixed in law, or to transfer updated political preferences to agencies. Being aware of the ministerial right for instructions, agency officials mostly try to anticipate the political will of their principal, thus reducing the need for hierarchical directives.

Federal agencies have only a distant relationship with Parliament. Sometimes parliamentary committees invite agency officials to give expert testimony, but the main line of communication is through the overseeing department. Addressees of agency regulations are mainly involved in agency affairs on an individual basis or through advisory committees.

Standing to sue against an administrative act issued by a public authority is a highly valued constitutional right in Germany. It is regarded as "the crown of the rule of law". This being a general rule, there are almost no modifications or restrictions on standing requirements in the enabling laws. Courtroom proceedings take place before special administrative courts. A more recent development has been that public authorities enter into "informal" or "co-operative procedures" with their addressees prior to fixing an administrative act, the legal form of administrative decisions. It is difficult to assess to what extent this has helped to circumvent the courtroom, but it is fair to say that negotiations have evolved as an increasingly vital technique to secure the acceptance and legitimacy of administrative decisions.

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Political control and accountability mechanisms

According to German constitutional thinking, the main source of legitimacy for public administration is the unbroken chain of command and control from the voter to Parliament, from Parliament to the minister, and from the minister through various levels down to street-level administration. This chain was interrupted in the case of the D*eutsche* B*undesbank*, as well as in a few other agencies. This provoked some debate about democratic legitimacy, but because these cases remain the exception rather than a newly established norm, few perceptible consequences have emerged.

At a very fundamental level, German governments have dealt with the problem of loss of political control by granting freedom from ministerial oversight only to a small number of federal agencies. Being equipped with a considerable range of instruments to control agencies, the federal government has no need to set up additional safeguard mechanisms. Based on a widely accepted division of labour between legislative and executive powers, the German Parliament has so far expressed no concern about a lack of control over agencies. This is also true for the considerably more independent agencies of Types 2 to 4. The traditional instrument of S*elbstverwaltung* with the involvement (in the case of labour market or Social Security) or even delegation of administrative functions (as in the case of physicians) to involved actors is widely accepted and has not been discussed publicly for many years. Individual citizens with grievances are always able to challenge administrative decisions in administrative courts.

The main route for checking an agency's goal achievement, financial status, and performance is via internal control by the overseeing department. This is carried out as part of the legal and functional oversight. Each ministerial department has special bureaux for overseeing personnel, budget, organisation and substantial policy matters. Thus, it is assumed that ministerial departments command a reasonably complete knowledge about the performance of most of their agencies. However, their findings are not made public. In areas that are usually outside political debate and scrutiny there has been for some time some suspicion that certain agencies run largely on "auto-pilot", hardly controlled or even influenced by their parent ministry (for example, in the area of research).

Although internal controls of agencies are perceived as part of ministerial oversight, thus preventing the need for supplementary measures, the federal government has nevertheless recently pushed forward cost-achievement accounting throughout the public sector, as part of an ongoing effort to modernise public administration. A more concrete measure was written into the Joint Procedural Code (§ 4[6]) in 2000 that asks ministerial departments to launch mission statements, goal agreements, financial controlling, as well as personnel and quality controls on an experimental basis. This also applies to agencies but this initiative

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is in a rather embryonic stage at present. Reliability of reporting and compliance with laws are taken for granted.

Policy coherence and maintaining a whole-of-government perspective

The German Government has not experienced a recent wave of agencification similar to the United Kingdom or other OECD Member countries, so there has not been concern about co-ordination problems. Furthermore, the erstwhile German fad of worrying about a decreasing unity of administration (E*inheit 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.

Agencies do not report to other ministerial departments except where there is the unusual case of dual or triple oversight. In these cases an agency has to report to other departments according to their functional responsibility. There is no special reporting to the Ministry of Finance which is involved only because of its privileged position in the budget process that includes, among others, a veto right to block Cabinet decisions. However, Ministry of Finance involvement with agency affairs is a rare event because agency budgetary matters are perceived to be of minor importance for Cabinet considerations. In any case, agencies strongly depend on their overseeing department on all budgetary matters.

The responsible ministerial department does the main work of policy co-ordination between agencies. There is no published information about the performance of this procedure, but it seems as if no serious shortcomings have appeared. The somewhat cumbersome regulation that ministerial departments are allowed to communicate with agencies outside their domain only via the responsible ministerial department was cancelled in the revised Joint Procedural Code of Federal Ministerial Departments. This is expected to improve the performance of ministerial policy co-ordination. To what extent this will also apply to the co-ordination between federal agencies remains to be seen.

External scrutiny

The major instrument for external control is the Federal Audit Office (B*undesrechnungshof*) which regularly reviews all finance-related aspects of the federal government's operations. Based on different constitutional and statutory regulations, the Audit Office is charged with providing an annual report that also comments on the efficiency of federal agencies. Not every agency is covered each year, but there is a balanced selection to report on single cases that are worth mentioning.

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Aside from this more general government audit, the Cabinet or Parliament can also ask the Audit Office to review single agencies. In addition, private consulting firms are brought in from time to time to evaluate efficiency gains, particularly prior to organisational reforms or mergers. Non-financial aspects of agency operations are made public through regular reports.

It is atypical for agencies to become a subject of Cabinet deliberations. As agency operations in general are regarded as an internal affair of the responsible minister, the incentives to involve the whole government or other Cabinet ministers are low. This department-centred view on agencies is one of the more general reasons why agencies, their activities and performance are not subject to more elaborated obligations for external scrutiny. Thus, there are no particular reporting requirements for ministerial departments addressed especially to Parliament or its committees. On rare occasions legislators ask specific questions about an agency in Parliament and these questions (A*nfragen*) have to be answered by the responsible department within four weeks. The most common source of information are annual or bi-annual reports published by almost every federal agency. As there are no general standards concerning the contents, they vary from encompassing thorough information, including details on personnel, organisation or responsibilities, to rather sparse accounts. Agency reports are mostly dry reading. They are in effect activity reports (T*ätigkeitsberichte*) and thus lack the flavour of accountability reports (R*echenschaftsbericht*) which serve the purpose of defending the performance of an organisation *vis-à-vis* the shareholders.

Evaluation, lessons learnt and recent developments

The performance of agencies in Germany, except for a few cases, has tended toward moderately successful, avoiding serious failures or spectacular success stories. The reasons for this are multiple, ranging from a political decision-making style that accommodates contrary interests, a reliable legal system, to bureaucratic performance standards that are successfully programmed so as to match functional requirements by and large. General conditions that can be expected to support more or less successful operations of agencies are:

- a clear sense of mission, best achieved through a clearly formulated enabling law, possibly in the future implemented through contractual arrangements;
- a range of discretion that motivates officials to engage in innovative implementation;
- more transparency concerning agency tasks and performance, including more information about economic efficiency and particularly the effects of agency activities;

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- policy continuity, particularly with respect to the statutory formulation of tasks.

Sunset laws are used infrequently by German legislators. Thus far, the T*reuhandanstalt* (THA), in charge of privatising former GDR state-owned corporations, has been the only major case in which an agency was set up for a limited period of time. The operation of the THA ended in 1994 after a four-year mandate, but was succeeded by three smaller agencies to administer the remaining assets. Review clauses serving the purpose of evaluating the functional need to maintain or dismantle a federal agency are unusual. In a very abstract sense this sort of review is embodied in the postulate of task scrutiny (A*ufgabenkritik*) that finally has made its way from academic debates into some federal codes. However, this has not yet resulted in closing down agencies.

Following traditional performance criteria, a lack of complaints or visible shortcomings, such as corruption or political scandals, would be sufficient for an agency to be regarded as fulfilling its mandate. As other criteria, possibly known to the overseeing ministerial department, are not published, there is little public evidence for agencies failing seriously to execute their mission. All in all, the performance and evaluation of agency activities has not been very transparent and has remained largely outside public scrutiny and debate. If measurement of agency performance is based on public esteem or reputation, the Federal Cartel Office and, of course, the D*eutsche* B*undesbank* stand out as particularly successful cases. An indicator of the high reputation of these authorities is their prominent role at the EU-level, where both are considered as models for their EU equivalents.

With respect to administrative modernisation in Germany, the federal level can be regarded as a latecomer. Thus, agencies have not been subject to dramatic changes or reforms. The main initiatives started at the local level in the early 1990s, and the concepts and ideas of administrative modernisation diffused upwards at a slow pace. When the wave of NPM-thinking arrived at the federal level in the mid-1990s, ministerial departments became the first point of attention. When agencies were finally scrutinised, the main thrust was to streamline administrative operations, this being mainly an exercise to strengthen efficiency. One result was to merge several agencies, most visibly within the domain of the Federal Department of Transport and Housing. The most far-reaching step, currently under review, would be the amalgamation of three agencies responsible for overseeing financial services (banking, stock exchange, insurance). Some agencies, created during the past decade, reflect an expanding range of functions attached to non-ministerial authorities, however this is not the result of a conscious strategy. Examples worth mentioning are the T*reuhandanstalt*, the Federal Commissioner for the Records of the State Security of the former GDR, and the Regulatory Agency for Telecommunication and Posts.

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As federal agencies have traditionally been regarded mainly as a problem of federal-state (*i.e.* L*änder*) relations, German policy-makers have more or less consciously bypassed the question of possible gains by employing agencies as an instrument to address important policy problems. Setting up new agencies was basically driven by *ad hoc* departmental or policy-related considerations which lacked a broad perspective. Aside from public management-inspired efficiency reforms, therefore, the key lesson for Germany would be to think more thoroughly about the pros and cons of using federal agencies. This makes even more sense given the tendency of the EU Commission to develop their regulatory policies increasingly within the framework of independent agencies.*

* C*f.*"The Role of Specialised Agencies in Decentralising EU Governance", Report presented to the Comission by Michelle Everson, GiandomenicoMajone, Les Metcalfe, Adriaan Schout, Project Director: Giandomenico Majone. Florence/Maastricht 1999.

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Annex. **Structure of German Federal Non-ministerial Administration**

Legal Form	Direct federal administration	Indirect federal administration	Private law administration	Charged administration
	Unmittelbare Bundesverwaltung	*Mittelbare Bundesverwaltung*	*Bundesverwaltung in Privatrechtsform*	*Privatrechtliche Auftragsverwaltung*
Type of law	Public law	Public law	Private law	Private law
Legal entity	Federal Republic of Germany	Subject or foundation of public law	Subject of private or corporate law, government-owned	Subject of private or corporate law, chartered
Legal type	Federal agency, federal commissioner *Bundesoberbehörde* *Beauftragte*	Body of public law *Anstalt* *Körperschaft* *Stiftung*	Private or stock company, registered society *GmbH* AG *e.V.* *Stiftung*	Private or stock company, registered society *GmbH* AG *e.V.*
Requirements for creation	Statutory act	Statutory act or directive	Not regulated	Not regulated
Legal foundation	Basic law	Basic law	Federal budget code	Federal budget code
Governance	Legal and functional oversight	Legal oversight charter	Owner or shareholder instructions	Agreement, contract
Typical functions	Regulation, sectoral oversight, research	Social security, health, research	Public banks, research, funding, culture, utilities	Technical norms, consumer protection, *gemeinnützige Zwecke*
Examples	*Statistisches Bundesamt* *Bundesverwaltungsamt* *Bundeskartelamt* *Regulierungsbehörde für Telekommunkation und Post* (*Reg*TP) *Bundesinstitut für Arzneimittel und Medizinprodukte* (BfArM) *Bundesaufsichtsamt für das Kreditwesen* *Bundesamt für die Anerkennung ausländischer Flüchtlinge* *Bundesbeauftragter für die Unterlagen der Staatssicherheit* (about 70)	*Bundesbank* *Bundesanstalt für Arbeit* *Bundesanstalt für Angestelltenversicherung* *Bundesverband für den Selbstschutz* *Kassenärztliche Bundesvereinigung* *Bundesstiftung Mutter und Kind* *Stiftung Preußischer Kulturbesitz* *Treuhandanstalt (und Nachfolger)*	*Deutsche Flug-sicherung GmbH* DFG *Max-Planck-Gesellschaft* DAAD *Kreditanstalt für Wiederaufbau* *Kernforschungszentrum Jülich GmbH* *Gesellschaft für Strahlen- und Umweltforsch. GmbH* GMD *Goethe Institut e.V.* *Inter Nationes* *Deutscher Entwicklungsdienst GmbH* GTZ *Stiftung Warentest* *Post* AG *Bahn* AG *Telekom* AG	TÜV *Arbeitsgemeinschaft der Verbraucher* *Verein Deutscher Ingenieure* VDI *Deutsche Gesellschaft für Ernährung e.V.* *Deutscher Motoryachtver-band*

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The Netherlands

by

Ronald Van Oosteroom*

Background

Background of creation of agencies in the Netherlands

In the context of Anglophone countries, the term agency is used as an umbrella concept for different forms of what is called in the Dutch context "privatisation" (*i.e.* devolution and delegation of power to more autonomous bodies). To get a good understanding of the Dutch situation, this paper will discuss first a concept framework. This concept framework runs as a thread through this chapter. The term agency covers in the Netherlands both the Dutch "agencies" and the independent administrative bodies (ZBOs) which can be best described as follows:

- An agency is a service that is part of a ministry and is subject to a differentiated set of administrative and financial management rules. Ministerial responsibility remains unchanged. The differentiation can be best described by the following: Agencies are supposed to apply results-oriented management in combination with an income and expenditure administration. They are monitored on performance criteria and their budget presentation is in terms of performance and costs, whereas ministries still have a cash/liabilities administration.
- A ZBO governed by public law is not part of a ministry but is definitely part of the public sector. Ministerial responsibility is then specifically defined. Financial and administrative management rules are tailor-made to the ZBO. There are two types of ZBOs within this category: those that are legally part

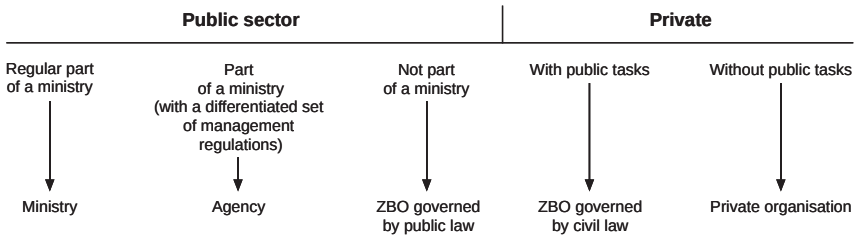
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of the state and those that have their own legal personality and are thus separate from the state.

- A ZBO governed by civil law is not *per se* an integral part of the public sector, but does perform a public task. A specifically defined ministerial responsibility applies to this specific task. Management rules are those that apply to the private sector.

The historical context is relevant for understanding the current situation. The ZBO model dates back to the 1980s, when certain services were designated for the first time as ZBO.



The most important characteristic of the ZBO model is that ministers cannot be held responsible for all the aspects of the operation of the ZBO. This is mainly due to the type of tasks that ZBOs have to carry out:

- when the task itself is specific, does not include some general policy-making, and requires an independent judgement;
- when the activities of the body require direct involvement from different sections of society;
- when the tasks of the entity consist of policy implementation on individual cases that has bearing on a large number of individuals for which the law has described tight boundaries and from which individual citizens enjoy complete legal protection. Independence of implementation is guaranteed by this organisational form.

At the beginning of the 1990s, the Netherlands Chamber of Audit severely criticised the organisational form of ZBOs. Its criticisms included that of unjustified limitation of ministerial responsibility, inadequate rules for monitoring ZBOs' activities, and neglect of management. In a number of cases, the ZBO model was used to avoid management rules of ministries which were considered too burdensome.

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A second historical development regarded the Accounting System Operation, a large-scale operation that was started in the mid-1980s. Its aim was to improve the management and control of expenditure, through, among other things, the introduction of commitment cash-accounting. This meant the registration not only of cash expenditure but also of obligations that could lead to future cash expenditure. At the same time a great deal of attention was paid to improving the financial control of the ministries and obtaining statements of approval from accountants. At that time, management concentrated on input factors. The Accounting System Operation was rounded off at the beginning of the 1990s.

By then there was demand for a new impulse for financial management within central government. The phase in which the control of expenditure was central was superseded by a phase in which a lot of attention was paid to the quality of operational management. The agency model was created for implementing services in which management according to profits (products and cost prices) was a real possibility. The nature of the necessary differentiation is partly financial (accrual accounting, an unlimited end-of-year margin) and partly administrative (management from a distance, more powers with regard to recruitment and selection of personnel and with regard to the numbers of staff).

The Dutch agency model was introduced in 1994 partly as an internal alternative to the ZBOs. The goal was to create bodies which could avoid applying some of the management rules of ministries, without limiting ministerial responsibility.

The report "Becoming Independent Responsibly" introduced a step-by-step plan according to which the most suitable management-organisational design can be determined for the government's task. Questions to be used were the following:

- Is the task of public interest? If not, then there is no reason at all for the government to take responsibility and termination of the task (disposal) is appropriate. If there is a collective interest, the government in principle has a responsibility.
- Is it a government task? If it is determined that the government does not need to carry out the task itself and if the task can also be carried out by a private structure within the market system, privatisation is then appropriate. The form of privatisation is determined by the required type of government intervention.
- If it is a task that government should perform, then the question is which level of management should be carrying it out? This is really the question of the desirability of making lower government responsible for activities that central government had carried out up until then.
- Is it necessary to limit ministerial accountability? Are there urgent reasons for transferring the minister's (managerial) authority? When this appears to

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be the case, the task should be carried out by an independent administrative body (ruled by public law).

- Assuming that there is no reason for transferring ministerial accountability, is it then desirable to apply different control and management rules? If the answer is positive, then the hierarchical subordination to the minister continues to exist, but steering and management rules shall be adjusted.

Considerations about which cases are best suited to becoming a ZBO and which to an agency have been answered – and are still being answered – according to this framework. The formation of ZBOs means that these institutions remain a part of public authorities, but not of the state.

A *model of differentiation*

The agency model was introduced under the flag of differentiation in rules of control. This differentiation is obviously not a goal itself, but a means to achieve greater efficiency. For many years efficiency has been given largely a financial connotation; it was interpreted as producing and supplying services more cheaply. Since the first government-encompassing evaluation of the agency model (1997/98), a number of characteristics of the agency model have altered. The focus on efficiency has now been directed towards three aspects:

- a lower cost price of the product or service;
- a higher quality of the product or service;
- a higher quality of the organisation.

The last aspect was added as a result of the introduction of management control into central government. An organisation that is in control has greater opportunities for guiding and managing, because processes are more predictable and more manageable. In a few cases, savings were expected of an agency right from the start. In most cases, however, no such task was imposed.

Differentiation can be divided roughly into two forms. In the first place is *managerial differentiation*. Agencies have been given their own separate identity. This differentiation has taken shape by distinguishing a number of roles: the contractor (the agency), the principal (chiefly, the policy department), and the owner (chiefly, the [deputy] secretary-general). The relationship between the agency and the principal is characterised by making agreements in advance about the products and services that will be supplied and giving account of their realisation with hindsight. Thus, within this relationship, management is in terms of achievements and cost prices. An internal market has been created. Some agencies have several clients, others only one. Most agencies function more or less as a monopoly. For the internal customer, one can often speak of a forced truck system. The role of the owner is essential in allowing the internal market to function. The importance of

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the role of the owner was underestimated for a long time; it is, however, the oil in the machinery. The owner approves the cost price model, agrees with investment policy and risk policy, and safeguards the quality of the management control system. Transparency is a key factor in the working of the agency model. The following table provides a useful summary of these roles.

Type of roles	Holder of the role
1. Contractor (agency)	The implementing service
2. Owner	The (deputy) secretary-general
3. Principal	The policy department
4. Supervisor	Management staffs (among other) Financial-economic affairs Internal audit division
5. Client	Those who purchase products and services: Citizens or a cross-section of citizens Principal (internal client)
6. Banker	Ministry of Finance

The second form of differentiation is *administrative differentiation*. Up until now, agencies are the only services that make use of accrual accounting instead of commitment-cash accounting. This involves, among other things, creating reserves, drawing up a balance, a cash-flow review and a profit-and-loss account, the creation and maintenance of internal capital. Accrual accounting provides better opportunities for determining cost prices than the commitment-cash accounting system.

Size of agency sector

As of 1 January 2001 there were 23 agencies linked to the Dutch central government. The first agencies came into being on 1 January 1994. The table below contains a summary of government tasks being implemented by agencies. It also shows in which year each agency was set up, under which ministry it resides, and its turnover and internal capital.

A pattern is starting to crystallise with regard to services that become agencies. These are implementing services and inspectorates. As the agency creation movement is not over yet, a growing number of these services are being privatised internally into agencies. Some inspectorates are being privatised externally into ZBOs. This is the case when a restriction in ministerial accountability is advisable. At the same time it is sometimes the case that a ZBO that had been put at too great a distance is reinstated as an agency within the boundaries of a ministry.

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Ministry	Name of agency
Ministry of Foreign Affairs	Centre for promoting imports from developing countries (1998).
Ministry of Justice	Immigration and Naturalisation Service (1994), Judicial Institutions Department (1995), Central Justice Collection Agency (1996).
Ministry of Internal Affairs	Public Servants Information Department (1995), Central Archive Selection Department (1997), Organisation for Information and Communication Technology (1998), National Police Force (1998), Personal details and travelling documents record department (1999).
Ministry of Education, Culture and Science	Central Finances Institutions (1996), National Archives Department (1996).
Ministry of Defence	Buildings Works and Grounds Department (1996), Defence Telematics Organisation (1998).
Ministry of Public Housing, Spatial Planning and Environmental Management	National Buildings Department (1999).
Ministry of Transport, Public Works and Water Management	Royal Netherlands Meteorological Institute (1995), Radio Communication Department (1996).
Ministry of Economic Affairs	Senter (1994), Economic Information Department (2001).
Ministry of Agriculture, Nature Management and Fisheries	Plant Protection Services (1994), Collection Office (1998), Laser (1999).
Ministry of Health, Welfare and Sport	Medicine Assessment Board (1996), Inspectorate for Health Protection, Goods and Veterinary Affairs (2000).

What will remain within the ministries – in the long term – is a nucleus involving policy that does not seem suited to the agency model. At the moment the Netherlands is on the threshold of a spate of new agencies. Large services such as the Tax Authorities, the Crown Lands Services and the Government Department for the Inspection of Livestock and Meat will obtain this status in the near future. There are even plans, for example, for the Department of Public Works and the Public Prosecutor's Department to possibly become agencies in the future.

The share agencies have in the total national budget can be measured according to two criteria, *i.e.* the number of employees and the level of expenses or expenditure. Each criterion gives a totally different picture in the Netherlands.

Looking at the number of employees, on 1 January 2001 agencies had an approximate 30% share in the total civil service. Taking anticipated growth into account, this share is expected to become 80% at the end of 2004. On the one hand, this is due to the creation of new agencies (including the Tax Authorities

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which employ 20% of all civil servants). On the other hand, this is due to the cutbacks in the civil service as a whole. The Central Statistical Office, for example, is going to be turned into an independent administrative body and will no longer be considered part of the civil service.

The level of expense of agencies in comparison with the expenditure of the national budget paints a completely different picture. At 1 January 2001 the share was approximately 4% and will be between five and 10% at the end of 2004. This can be explained by the distinction between expenditure on apparatus and expenditure on programmes. The agencies only spend on apparatus (personnel and material). The funds for programmes are still the responsibility of the policy departments. For example, there is an agency that provides subsidies (programme expenditure). Depletion in terms of expenditure is settled up with the relevant policy department. The only exception at the moment is the Government Buildings Services, whereby the stockpile of buildings has been brought under the responsibility of the agency.

Size of ZBO *sector*

As already indicated the ZBO sector is not as uniform as the agency sector. The numbers in the following table are based on clusters of institutions:

ZBO Form	Number
ZBO governed by public law – part of state	55
ZBO governed by public law – independent from state	77
ZBO governed by civil law	207

Examples of public law ZBOs that are part of the state are the Electoral Council, the Commission for Equal Treatment, the rent tribunals and the Central Agency for the Reception of Asylum Seekers. Likewise there are examples of public law ZBOs that do not belong to the state: the Information Management Group, National Forest Service Netherlands and the land registry. Examples of civil law ZBOs are the Securities Board of the Netherlands, the Dutch Central Bank, the Netherlands Probation and After-Care Foundation and the periodic motor vehicle test inspection centres.

Finally it is important to mention that funding methods can differ. Some ZBOs are funded from a ministry budget, and some from collection of national insurance contributions, or tariffs.

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Legal and organisational framework

In the Netherlands the relevant procedures and rules of accountability between the professional ministry, the Ministry of Finance, the Netherlands Chamber of Audit and the States-General are stipulated in the Government Accounting Act. Further elaboration is contained in the national budget regulations. Establishing agencies and ZBOs is regulated according to a single article in the Government Accounting Act. This states that all forms of privatisation must take place with the approval of the Ministers of Finance and Home Affairs. After their approval and following its consideration by the Council of Ministers, a privatisation plan is sent to the Lower House. The Lower House then has 30 days in which to ask questions or to organise a general discussion. If they do not do this, agreement is automatic after these 30 days.

Apart from this law, a number of other regulations are also pertinent both for establishment and for general functioning. There is, for example, a regulation on conditions with regard to capital, which regulates the realisation of posts in the opening balance and lays down norms for internal capital. There is also a loan and deposit facility regulation, containing rules for using an internal power to take out loans and make deposits. The national budget regulations contain the relevant requirements with a view to the planning and control cycle of the parent ministry. At the moment a regulation is being drafted for rules on reporting, in which reporting (national and international) is polarised towards central government. It precludes a number of alternatives.

Establishment procedures apply in addition to laws and legislation. These lay down requirements which must be fulfilled by a potential agency in order to obtain the formal status of agency. To what extent this is the case is determined by the Council of Ministers, based on the advice of a supervisory privatisation team comprised of experts from the Ministry of Finance and from the Ministry of Home Affairs and Royal Relations. These requirements include:

1. having an unambiguous management model. The environment is mapped out in terms of roles (owner, principal, contractor, banker, client, supervisor) and responsibilities (decisions, payment and earnings). In addition financial flows and data flows are coupled to this. This condition is intended at setting up an unequivocal management model for agencies.
2. having measurable products, services and quality indicators. The criteria provide clarity regarding the possibility of results-oriented management in the agency.
3. describing the operational processes. The description must clarify the connection between the internal planning and monitoring cycle, the identified products and services and the applicable cost prices.

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4. setting up a cost-price model which links the identified products and services with the expenditure ascribed to the periods. The cost-price model offers insight into the possibility of offering products and services cost effectively.
5. establishing a system promoting efficiency which clearly states from the start the indicators on which to base assessment of efficiency in the results-oriented management model combined with the revenues and charges system.
6. having an internal, results-oriented planning and control cycle and harmonised external planning and control cycle. It is necessary that management and control rules by the agency are in line with those of the parent ministry.
7. formulating policy with regard to risk. The aim is to agree in advance on possible risks and clarify responsibilities of both parent ministry and the agency.
8. drawing up an opening balance scenario in order to decrease the risk of late or incomplete completion of the opening balance.
9. drawing up a plan for getting financial management up to scratch. The objective is to ensure that financial management is adequate for a results-oriented management model and that necessary measures for its improvement are clearly stated. Agencies are required to have a more sophisticated financial management than ministries.
10. having a statement of approval from an accountant. Although it does not provide any real guarantees on the structure of financial management, it is a condition requested by the Lower Chamber. The absence of the report usually means that the improvements to be made are so extensive that there would not be enough time to implement them.
11. having had a trial run in a results-oriented management in order to ensure the accuracy of products and services which have been identified for the internal and external planning and monitoring cycles.
12. having undergone a trial run with accrual accounting in order to ensure some experience of modern accounting has been acquired so that the chances of major problems in financial management are reduced.

Much of this legislation has not yet been drawn up for ZBOs. Though it is true that establishing ZBOs falls under the Government Accounting Act, the national budget regulations do not apply. Some necessary changes have been taking place since 2000. For example, a bill has been drafted for using a directive to oblige ZBOs to maintain their liquid assets in the Treasury and that makes a loan facility available to them via the Treasury. Until then the ZBOs could borrow and lend money in the private sector. Because they use public resources, and central government can by definition borrow at the cheapest rates, this possibility has been removed. Draft framework legislation is also underway giving pointers as to what the rules should

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be for establishing a ZBO, and at the very least what they should be regarding ministerial responsibilities and ZBO reporting mechanisms to the parent ministry.

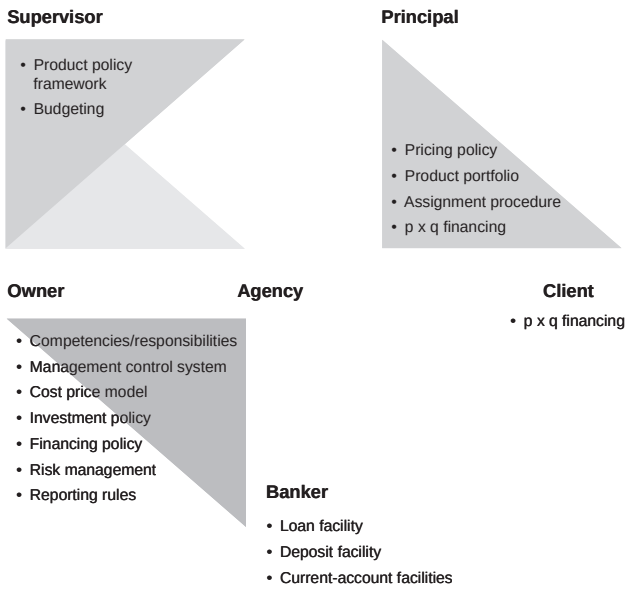
The creation of an agency or a ZBO needs to be approved by the Lower House of Parliament. This is preceded by an evaluation by the Ministers of Finance and Home Affairs and the approval of the Council of Ministers. Agencies are thus set up by means of a resolution and ZBOs by means of legislation. The reason for this difference lies in the fact that ministerial accountability is limited in the ZBOs and the States-General has to approve this.

In June 2001, the Minister of Finance indicated in the Lower Chamber that the establishment rules for agencies will be applied as much as possible to the establishment of new ZBOs, at least to ZBOs that are funded collectively. However, the establishment of the steering relationship between ZBOs and parent ministry has to take into account the need to provide a certain autonomy and independence to ZBOs, which is the very reason for their establishment.

Governance structures

Roles of owner, principal, contractor, client, banker and supervisor

An agency's relationship with its parent ministry is determined by the functions determined in the agency model *i.e.*, the roles of owner, principal, contractor (= agency), client, banker and supervisor. This is shown schematically in the following figure.



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The role of owner is generally filled by the (deputy) secretary-general of the parent ministry. It is important that the owner approves agency policies on investment, finance and risk, as well as the cost-price model and the management control system, and, where appropriate, the regulations on reporting. The owner can obtain advice from all sorts of management staff (such as financial/economic affairs, internal audit division and the personnel department). The division of responsibilities and powers and the internally relevant agreements will be laid down in a separate covenant.

The role of the client often rests upon a citizen or a cross-section of citizens in society. The client purchases products and services. Cabinet policy is that this should, in principle, take place cost-effectively. When there are policy reasons for departing from this, then the difference is charged to the contractor since the agency must recoup all its costs. In that case the customer and commissioner bear the cost price jointly. Clients, however, may not always be outside central government. For example, the Government Buildings Services have the ministries themselves as clients. Some agencies have a board of clients in order to communicate with clients about their range of products.

The role of principal is generally filled by a policy department of the parent ministry. The contractor determines the agency's tasks which consist of implementing tasks that are aimed at realising the policy objectives of the policy department. The financial relationship between the principal and the contractor is that of exploitation; finance and investment falls on the owner. In as far as the contractor's tariff policy is determined other than via cost prices, the contractor is either supplementing or creaming off. Agreements between the principal and the contractor will also be laid down in a separate covenant.

The Ministry of Finance fulfils the role of banker. Investments approved by the owner will be provided in the form of interest-bearing loans, which need to be repaid. The banker is only interested in receiving the interest due and the repayment.

The role of supervisor is a double role: 1) Supervision of the operational management of the agency. Every minister has various management staff (such as financial/economic affairs, internal audit division and the personnel department) who supervise operational management on behalf of the owner; 2) Supervising the implementation of policy is, in principle, in the hands of the principal. In some cases, supervision might be arranged separately, possibly even outside the boundaries of a ministry.

Governing structure and appointment mechanisms

Agencies are part of the ministries. Their staff and management are largely the same. In charge is a director, or in a number of cases – very large services – a

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director-general (Government Buildings Services, Tax Authorities and Department of Public Works). There is no governing board or board of directors. The same applies more or less to the ZBOs.

The rules governing the appointment of executive positions within the agencies are identical to those for other ministry departments. These appointments fall under the responsibility of the secretary-general of a ministry. In practice one sees that the management of agencies participates in mobility planning within the ministry. The conditions of employment for these executives are the same as those for other civil servants. There is no special regime. Within the agencies it is possible to work with special incentive policies, which do not have to fit the incentives framework of the ministry. Employment conditions can be different in ZBOs. When this is the case, it is recorded in the law establishing them. A number of laws establishing ZBOs explicitly state that their employment conditions are the same as those for civil servants. This is to avoid employment conditions being taken into consideration as improper arguments (from a control point of view) in decision-making on the most suitable management/organisational style.

Salary levels of agency executives are the same as those in ministries. The conditions of employment have been laid down in regulations. A study was carried out in the year 2000 to find out whether the salary scales of agency executives were in proper proportion to the scales in policy departments. A number of adjustments were recommended in order to put salaries into a similar position. Other benefits are very similar also, and they clearly differ from those in private industry. The attribution of a company car, for example, is a rare occurrence. Salaries and other benefits are public information.

Resources and budget process

Before having an agency status, services used input budgeting and received a lump sum budget from parent departments. Ideally, once they have an agency status, agencies have to put in place output budgeting, and have to cover all their costs with the sale of products and services.

Agencies which have been created since 1 January 2000 satisfy this approach. However, this ideal has not yet been achieved for a large proportion of agencies. Internal management is based on output management. However, most of their funding still often comes from the attribution of a lump sum by parent ministries. In some cases, income is also obtained from other ministries. This is referred to as working for second parties.

A very limited amount of work is done for third parties. This refers to income obtained from contractors other than central government. This type of income often involves going into competition with private industry. This is not considered advisable. Instructions on the market and government stipulate in which situations

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this may be done and how one should enter into competition (including cost-price calculation). For example, the Royal Dutch Meteorological Institute was forced to divest itself of commercial weather forecasting in favour of the market.

An agency is part of a ministry. Communication with Parliament takes place as an inherent component of the parent ministry's communication. For example, the budget and accountability of the agency are a component of the budget and accountability of the parent ministry. It includes as many achievement indicators as possible to give an impression of how a given agency is performing.

ZBOs cannot be treated as a uniform group. Some of the budget of ZBOs partially or entirely comes from the contribution from parent ministries, so they are controlled through the usual budget process. For ZBOs whose budget comes from their own cost recovery processes, the parent ministry approved the level and nature of these fees, tariffs, premiums, etc.

Policy coherence, oversight and accountability mechanisms

Maintaining policy coherence

The issue of maintaining policy co-ordination is of a different scope for agencies and ZBOs. There is no problem of maintaining policy coherence with agencies. The exchange of information between the policy department placing the order and the agency, both with regard to fulfilling orders and with providing the policy department with the information it wants, is laid down in a covenant. This covenant can be adjusted if necessary. It is not an act or legislation.

The question is more complex in the case of the ZBOs. Formally, information exchanges as well as monitoring and control processes should be regulated in the legislation regulating their establishment. This is not always the case, which leads to some shortcomings in information exchanges and monitoring. An amendment in the law is then necessary, or the minister has to issue a directive. Both are seen as weighty management measures and are therefore employed only in exceptional cases.

Reporting systems

Reporting and control systems of agencies are part of the general management control systems of the parent ministry. This does not apply to ZBOs. In general, the act establishing ZBOs stipulates that their annual accounts need to be checked by an external accountant and presented to the parent ministry. In special cases a parent ministry can request specific supplementary information. Supervision of the activities of a ZBO is mostly carried out by the policy department and sometimes independently of a ministry. This was the case at least for a long time for Social Security and it is still the case for health care.

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The Minister of Finance has a supervisory role over other ministries for budget preparation and implementation, accounting, and budget control. The supervision of ZBOs is organised indirectly. From the point of view of individual ministerial accountability, each minister is responsible for his own ZBO. In supervising the other ministries, the Ministry of Finance supervises the ZBOs of these other ministries.

Performance

The performance of agencies is determined through evaluations. These evaluations check to what extent the agencies still fulfil the conditions of their establishment, to what extent there exist some efficiency gains, etc. Annual performance indicators are used to measure the achievements of the goals laid down by the policy departments.

Agencies have strategic plans and business plans. A great deal of variety exists on the extent to which performance and budget are linked. It is only in the most recently established agencies which use performance budgeting methods that budgets and performance are directly related to one another.

If conflict over performance arises between an agency and the policy department placing an order, this is resolved by the (deputy) secretary-general in his role as owner.

External scrutiny

There is no direct relationship with Parliament. The provision of information takes place primarily via the budget and the parent ministry's annual report. Control over the agency is performed by the internal audit division or by external accountants by order of the responsible minister. The Netherlands Chamber of Audit supervises the quality of financial management and accountability.

Regulations on the means of challenging decisions made by agencies or obtaining redress from administrative authorities are no different from those for the normal ministry departments.

Evaluation, lessons learnt and recent developments

Most agencies developed from a situation in which input management was the central management philosophy. The strengths and weaknesses both involve primarily the culture of the organisation. If the culture is open to change and business-like then it is possible to introduce a results-oriented management model. In addition, the type of task carried out must be appropriate. Tasks with measurable products (and fairly mass-production in nature) are usually a sound basis for the implementation of results-oriented management.

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When an agency is established, an evaluation condition is included in the statute. The idea behind this is not to threaten ending the status of agency. It is up to the parent ministry itself to formulate any consequences involving personnel. For the rest, the approach is not different from regular departments. When agencies do not fulfil their performance targets, the main sanction is that the results of the evaluation are made public. When problems appear, the States-General will demand a plan for solving it quickly, often on the advice of the Netherlands Chamber of Audit. At the moment, dismantling agencies is no longer an option. The idea is to get the whole government apparatus to work in a more target-oriented way (report: "From Budget Policy to Accounting for Policy" [*Van beleidsbegroting tot beleidsverantwoording*]). Furthermore, the decision has been taken that in principal the whole government should work according to accrual accounting. This should reduce the distance between the better and poorer performers.

For ZBOs it may be recorded in the establishment act that the minister is authorised to appoint and dismiss administrators. Reversing the status of a ZBO does occur. The extent of ministerial accountability is the determining factor here. This can be altered over the years. For example, in the first quarter of 2001, the decision was made to withdraw two ZBOs, the Supervisory Committee for Social Insurance and the European Social Fund model. Likewise a foundation was recently recalled by the Minister of Justice (foundation study centre for the administration of justice) and a private limited company by the Minister of Economic Affairs.

By formulating performance indicators, an attempt is made each year to measure progress in realising the aims of the agencies. This is not possible in all cases and an evaluation of the agency is then required. In practice, however, it has proven very difficult to find out whether or not the aims of the agency have been realised. The explanation is often that the definition of products, services and quality indicators were altered shortly after the agency was established. Managing in a results-oriented way seems to require different points of application. To improve this, nowadays a trial run in a results-oriented management model is required prior to commencing. For the rest, the first government-encompassing evaluation showed clear signs that individual agencies are achieving efficiency profits and quality improvements.

Apart from the evaluation of individual agencies, a government-encompassing evaluation of the agency model is carried out once every four years. This evaluation is supposed to show to what extent the existing agencies are functioning efficiently and what adjustments to the agency model are necessary. The results of this government-encompassing evaluation are presented to Parliament's Lower House.

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Recent developments

Based on the first government-encompassing evaluation of the agency model in 1998, a number of large adjustments have been carried out. These are summarised below. It is important to keep in mind that the main budget system in the Netherlands is still integrated commitment-cash accounting and that accrual accounting can only be implemented at the level of agencies (as components of ministries) and ZBOs.

- *Strengthening the requirements for establishing agencies.* In the beginning there were three requirements that the agencies needed to fulfil. They included having:

  1. identifiable products and services;
  2. more efficient working methods ;
  3. a statement of approval from an accountant.

  These requirements were insufficient incentive prior to the start for an agency to achieve immediate maximum quality improvements. After the start, therefore, another sizeable increase in quality was still necessary. Following criticism from the Netherlands Chamber of Audit and Parliament about the functioning of these services, the requirements were made more concrete and checking the fulfilment of these requirements by the Ministries of Finance and Internal Affairs was tightened up (for details on new requirements, please refer to above section on organisational and legal framework).

- *Introduction of a facility for loans and deposits.* Accrual accounting was incomplete at the introduction of the agency model. Investments – both for replacement and expansion – had to be funded from their internal capital. There were seldom sufficient reserves, which meant that the parent ministry had to find funds from its own budget, which did not always take place in the year that would have been optimal for investment. This involved the agency in the management of input and results. When the actual EMU balance had sufficient funds according to the 3% norm (1998), it was decided to introduce a loan facility, so that agencies could borrow directly from the Ministry of Finance for their investments. The loan facility is only available for financing assets and not for corporate finance. Agencies pay interest on loans at market prices. Its counterpart, a deposit facility, was also introduced, under which temporary surplus means can be set aside at interests conforming to market rates.

- *Regulating the financial starting point.* Negotiations on the internal capital that the agency was to receive from the parent ministry always took place when the agency was established. The negotiations over this allocation were

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complicated. Discussions about passing on historical depreciation were held because there were no opportunities for investment loans. Agencies now purchase the balance of long-term possessions of the parent ministry, and finance this with a loan from the Ministry of Finance. The initial burden of interest is reimbursed to the contractor. The net working capital is also purchased. A positive net working capital is paid back in the first year of existence. If the net working capital is negative, then there is a claim on the parent ministry. In this way internal capital remains zero.

- M*aximising the agency's own capital*. Lower and upper limits have been laid down for the size of an agency's internal capital. Internal capital is only intended to fulfil a buffer function. The loan facility has superseded the financing function. An agency's internal capital may not exceed 5% of the average turnover during the past three years. This is to stimulate agencies to allow profits to flow back towards the customers (often citizens) or the contractors (policy departments within the parent ministry). After all, agencies are attempting to be self-supporting, but not profit-making. Too high an internal capital can be reduced by a single dividend payment to the owner (the secretary-general of the parent ministry) or by tariff reduction. Too low an internal capital – in any case when it is negative – must be replenished by tariff increases or a single exceptional contribution from the owner.
- I*ncreased attention to management control*. In recent years, the Netherlands Chamber of Audit has expressed a great deal of criticism about the quality of financial management of the agencies. It is true that it is more sophisticated than financial management in ministries (which still apply commitment-cash accounting and input management), but there is room for improvement. Attention has now been broadened to include operational management, with respect to ensuring that all primary and supporting processes are in control. Implementation of this approach has already made the most progress in the agencies and is being perfected.
- I*ntroduction of the status of temporary agency*. A recent development (March 2001) is that some ZBOs have been drawn back under ministerial responsibility. These organisations already use accrual accounting and plan to work according to the results-oriented management model of the agencies. In general they do not fulfil the set-up requirements with regard to a results-oriented management model. Because it would not be efficient to abolish accrual accounting first and then reintroduce it when the set-up requirements have been met, they have been given a temporary status. This means that these requirements must be met within a maximum period of three years. In order to achieve this, representatives of the Ministries of Finance and Home Affairs draw up an inception screening and a plan of approach.

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- *Assistance for the different aspects of the change process*. The conversion to an agency involves a complex change process. To support this, plans for assistance have been drawn up and best practices collected by the Ministry of Finance. These relate to, among other things, change management, finance, the evaluation and the various establishment stipulations (step-by-step plan for steering model formulation, step-by-step plan for the identification of products and services, drafting of step-by-step plan for risk policy, plan of approach for financial management, scenario opening balance, risk analysis of the change process and the quality of the financial function.

In contrast to the agency model, ZBOs have benefited from far less attention, but this should change in the next few years. Recent adjustments to ZBOs have included an increased attention to operational management of ZBOs. When establishing a ZBO, most attention is paid to the establishment act. The operational management of ZBOs is not an essential point for attention. Because considerations involving control play a role more frequently in the decision to form a ZBO, it is now being given more attention. An establishment procedure similar to the agencies is being considered. This approach is being adopted in transforming the Central Statistical Office.

The three most important lessons to be learned from the creation and management of agencies are:

- *The creation of agencies is an important stimulus for results-oriented operating*. Working according to results is a process that can be taken in various steps. Going through this process improves the transparency of relationships and increases professionalism. In the Netherlands an agency is characterised as a results-oriented management model in combination with the use of accrual accounting. The emphasis is placed upon introducing a results-oriented management model. The accrual accounting system is thereby instrumental.
- *Getting the surroundings of the agency to change as well is an important factor of success*. There is, on the part of would-be agencies, a willingness to change. However, this will not succeed if the surroundings of an agency (in particular the policy department which places the orders) fail to change. If the policy department continues its input-oriented management, then managing an agency according to a results-oriented management model only leads to frustration. This is a problem that was encountered with the first agencies created.
- *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

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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.

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New Zealand

by

Derek Gill*

Background

The emergence of the notion of "Crown entities"

The New Zealand state sector includes about 3 000 organisations. Fewer than 50 of these are departments of state under the Public Finance Act 1989. An even smaller number (fewer than 20) are state-owned enterprises under the State Owned Enterprises Act 1986. Most of the rest are classified as "Crown entities": essentially, a large residual category of state sector organisations that are neither departments nor state-owned enterprises. The label "Crown entities" does not describe a particular organisational form. Nor is it synonymous with the term agency. The term agency is used internationally to include both non-departmental bodies (Crown entities in New Zealand parlance) and departmental subsidiary bodies (the five or six small bodies, which in New Zealand are called SABs or semi-autonomous bodies). Because of their respective size, this paper focuses solely on Crown entities in New Zealand.

Although New Zealand has had a range of non-departmental government bodies for nearly 100 years, the term "Crown entities" was introduced through the Public Finance Amendment Act 1992. The amendment establishes financial management and accountability provisions for the numerous bodies set up by the government or by legislation that are neither departments of state nor state-owned enterprises but should properly be held accountable for their use of public funds.

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Thus the term "Crown entities" is largely an artefact of the public management reforms in New Zealand in the late 1980s. The organising principles for that reform process may be summarised as follows:

- The state should not be involved in any activities that would be more efficiently and effectively performed by the community or by private business.
- Trading enterprises would operate most efficiently and effectively if structured along the lines of private sector business.
- Departments would operate most efficiently and effectively with clearly specified and non-conflicting functions.
- Departmental managers would perform most effectively if made fully accountable for the efficient running of their organisations, with minimum central control of inputs.
- The cost of state activities should, as far as practicable, be fixed through real market factors: in other words, the quality, quantity and cost of products should be determined by the purchaser's requirements, rather than the producer's preferences.

With the introduction of accrual accounting (during the reform process) the government had to clarify what it actually "owned". A select committee reviewed a range of organisations, and those that passed certain tests were designated Crown entities and listed on the Fourth Schedule to the Public Finance Act 1989. In addition, there are other bodies, created by statute not listed on the Fourth Schedule because Parliament has determined the Crown does not own them *e.g.* the Historic Places Trust and Producer Boards.

Compelling cases for Crown entities

Consistent with the proposition that departments should be used for the non-commercial functions of Executive government unless there is a compelling case to set up a Crown entity, organisational separation in a Crown entity may be necessary or desirable to maintain actual or perceived independence from ministers and departments, to accord representation of particular interests directly in decision-making and to involve people with special knowledge directly in decision-making.

A compelling case for placing functions in Crown entity form exists where is a need for a tangible sign of the independence of decision-making because issues of public confidence are so paramount that the placement of a statutory independent function within departmental form would not achieve the desired level of independence. Placement in a Crown entity may also be desirable where there is a need to involve people with special knowledge or expertise directly and collectively in decision-making, or where stakeholder presentation and specialist expertise cannot be obtained through use of a department.

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Government functions and Crown entities

Crown entities are legally separate from the Crown, each has a responsible minister, and each must comply with some (predominantly financial) reporting obligations. Beyond that, Crown entities have little in common. There is tremendous variation *in what they do* – everything from quasi-judicial functions to commercial functions; *in their legal form* – companies, trusts, corporations sole, statutory corporations, other statutory bodies; *in their scope and size* – anything from Auckland Hospital, which has 5 000+ employees – through to entities with no employees (*e.g.* Road Safety Trust); and *in their relationship with the responsible minister* – this varies from total independence to a reasonably close degree of control.

Government functions can be categorised as: *i*) policy-making; *ii*) regulation; and *iii*) service delivery. If the primary function of an organisation is to develop policy, a Crown entity is not the best form. Policy advice involves a degree of interaction with ministers which would erode the arm's-length relationship between the entity and responsible minister and thereby undermine the role of the board. There are, however, some Crown entities which have important policy development functions. Over the last decade, a number of Crown entities have been created to carry out regulatory or service delivery functions that were formerly situated within government departments *e.g.* Transport.

A number of Crown entities have been established primarily to set out and monitor adherence to standards in particular areas, *e.g.* maritime and road safety. However, if a measure of independence is desirable this does not necessarily imply using an organisation outside the Crown. The relationship between a minister and the department can be structured in such a way as to preclude ministers directing departments in respect of particular decisions (*e.g.* Serious Fraud Office, Inland Revenue Department and NZ Police).

Each Crown entity has its own unique history, and set of factors, that have contributed to specific decisions. In practice, the pattern that emerges reflects the case-by-case result of those unique factors rather than the rational application of top-down design principles.

Crown entities currently dominate government's service delivery. Constitutional considerations preclude the use of Crown entities in some sectors, *e.g.* Defence and Foreign Affairs. As a result, Crown entities are not the presumptive type of organisation for service delivery, but can be an appropriate form for service delivery functions when constitutional issues do not arise. Since 1990 many functions such as the following have been transferred from departments to Crown entities:

- *Skill New Zealand* – provides expertise, subsidies, and purchase arrangements for training in industry, and for long-term unemployed and unqualified school leavers;

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- E*arthquake Commission* – provides insurance cover for certain natural disasters in return for premiums paid;
- Civil Aviation Authority;
- Land Transport Safety Authority;
- Maritime Safety Authority;
- L*egal services* – administers legal aid;
- A*ntarctic New Zealand* – administers New Zealand's activities in Antarctica and the Southern Ocean, in particular the Ross Sea Dependency;
- New Zealand Government Property Corporations – administers government property overseas;
- Q*ualifications authority* – develops and maintains a comprehensive, accessible, and flexible National Qualifications Framework;
- Tourism New Zealand;
- Trade New Zealand.
- C*areers Service* – provides high quality career information, advice and guidance services;
- The Civil Aviation Authority, Land Transport Safety Authority, and Maritime Safety Authority all have the facility to act independently in certain functions.

Other Crown entities have been set up to ensure autonomy in decision-making, *i.e.* amongst them:

- Foundation for Research Science and Technology;
- Transport Accident Investigation Commission;
- Office of Film and Literature New Zealand;
- Electoral Commission;
- Building Industry Authority;
- E*nvironmental Risk Management Authority* – controls the introduction into New Zealand of hazardous substances and new organism.

Categories of Crown entities

Proposals for a generic regime for Crown entities led to the preparation of a Crown Entities Bill. The introduction of this bill has been deferred while the government considers other means of improving state sector performance. In the interim the policy framework developed is being used to shape the regime applying to the establishment of new Crown entities and the review of existing ones.

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The proposals outline six categories of Crown entities, two private law and four public law types:

1. *Crown-Owned Companies* (CROCs): A function should be deemed a "commercial function" and incorporated under private law by a state-owned enterprise if the performance is measured primarily in financial terms. If the context or environment in which a function is to be undertaken is not fully commercial, or the entity undertaking a function has mixed objectives, then a quasi-commercial form of statutory governance should be used – *i.e.* a Crown-Owned company (CROC).
2. *Trusts*: there are around seven agencies established as trusts under private trust law. These are generally small single purpose entities with a handful of employees.
3. *Independent Crown entities* (ICE): Where the desire for public confidence is paramount, and there is a desire for independence from ministers for decision-making purposes, a function should be performed (under public law) by an ICE. Locating a function within an ICE ensures that the decision-maker is neither subject to influence or easy dismissal by ministers nor is required to *give effect* or *have regard* to the policies of the government of the day.
4. *Crown Agent*: The best form where service delivery is intertwined with the policy of the government and need to operate under public law. A Crown Agent undertakes a non-independent executive function when:
   - an organisation is needed "to give effect" to government policy *i.e.* must ensure that all its decisions are within the parameters of government policy;
   - it is essential to rely on the management skills and experience of a governance board;
   - positioning outside the legal Crown is critical to success;
   - a degree of separation from ministers in the allocation of Crown resources and delegation of a significant degree of decision-making authority to the entity is needed to distance ministers from politically hard/sensitive decisions, including those involving individuals;
   - there is a need to limit the scope for ministers to become involved in decision-making.
5. *Autonomous Crown Entity* (ACE): An ACE has regard to and/or gives effect to the policy of the government of the day and undertakes a "non-independent executive function" that does not need to be subject to a high degree of ministerial control. This is the most appropriate form where

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the commercial focus is less imperative and the government requires the service of a board as a governance mechanism for improved service delivery.

6. *Schools*: Schools are essentially Crown Agents but they are sufficiently numerous to justify their own governance and accountability regime. Schools can either be Crown-owned (state schools), or privately owned and Crown-funded (integrated schools). Schools have a governance board, appoint the school principal and undertake site management.

Motives for creation of Crown entities

Prior to 1988, creating a non-departmental organisation owned by the Crown (the precursor to a Crown entity) offered an escape from the central government's cumbersome administration procedures and inflexible human resource management practices. Following the public management reforms, such considerations no longer provided a motive for the creation of Crown entities; and state sector human resource management had been freed from centralised control by the State Sector Act 1988 and the Public Finance Act 1989.

Freedom from political influence

The legislation enabling a particular Crown entity, in certain cases, may empower that entity with Statutory Independent Functions (SIFs). An entity with SIFs is responsible directly to Parliament or the courts for the performance of those functions, rather than, as is normally the case with Crown entities, to the minister responsible for the Crown entity. If freedom from political influence is required for the Crown entity to carry out its functions, then the ICE form provides for only minimal political influence. ICEs need have no regard to the specific government policy of the day. Examples of ICEs are the Commerce Commission (which brings about compliance with the Commerce Act and the Fair Trading Act to promote healthy competition), Broadcasting Standards Authority (which hears complaints against broadcasters and works with broadcasters in developing codes regarding programme standards, and imposes mandatory codes if necessary), the Electoral Commission, the Police Complaints Authority, and the Transport Accident Investigation Commission.

Improved service delivery

If improved service delivery is one of the primary aims in setting up a Crown entity there are two forms that may be suitable. For a commercial focus, the company model is the most appropriate. The Companies Act 1993:

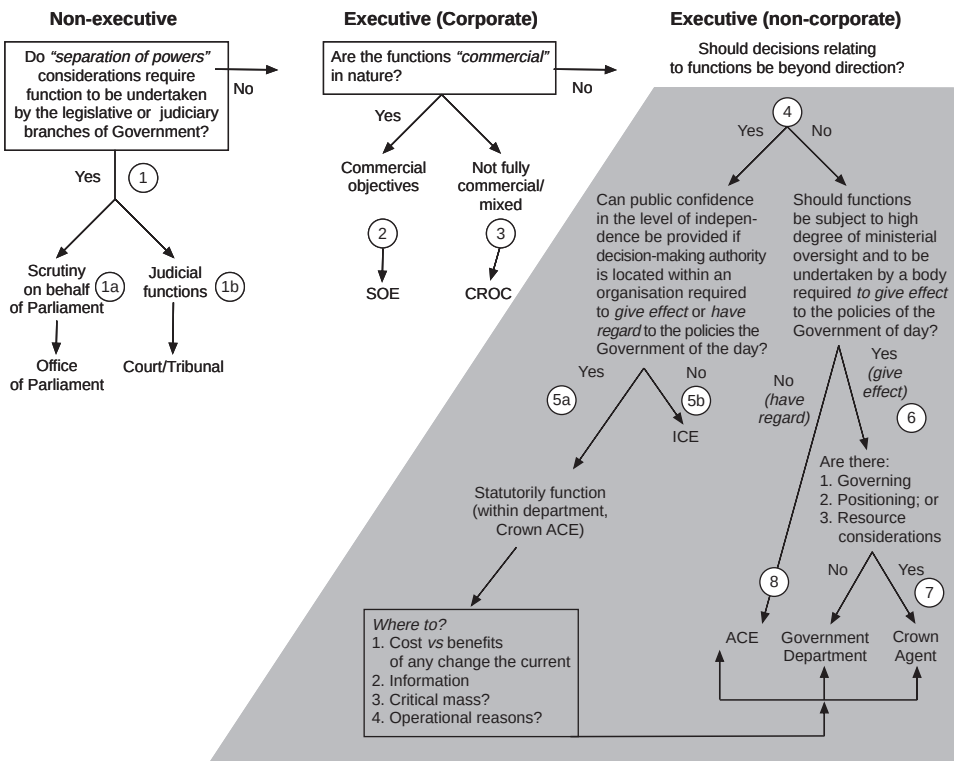
- reaffirms the value of the company as a means of achieving economic and social benefits;

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- provides basic requirements for the incorporation, organisation, and operation of companies;
- defines the relationships between companies and their directors, shareholders, and creditors;
- encourages efficient and responsible management of companies by allowing directors a wide discretion in matters of business judgement while at the same time providing protection for shareholders and creditors against the abuse of management power;
- provides straightforward and fair procedures for realising and distributing the assets of insolvent companies.

If the government's objectives can be met through a purely commercial focus, then a state-owned enterprise is more appropriate than a Crown entity. An example of a state-owned enterprise is NZ Post.

Figure 1. **Understanding the machinery of agencies**



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Size of the Crown entity sector

When state sector reforms began in 1986, 88 000 people worked in the public service. By 1993, the figure was near 36 000, and in 2001 it is just over 30 000. Prior to 1986, there were only two departments with less than 100 staff; by 1993 that had increased to 11 departments. New Zealand Crown entities employ approximately 80% of state sector employees and represent 58% of the Crown's expenses (excluding debt servicing costs, benefits and transfers). Excluding Schools, Tertiary Education Institutes, Trusts, Fish and Game Councils and Reserve Boards, there are 79 Crown entities, of which 29 have been created since 1989.

Legal and organisational framework

Legal background and establishment procedures

Crown entities have separate legal identity from the Crown. To be recognised as Crown entities they need to be added to the Fourth Schedule of the Public Finance Act. The relevant reporting requirements of the Public Finance Act then apply to the entity. However, an entity established under private law does not necessarily require separate enabling legislation *e.g.* trusts do not need to have an empowering act, nor do Crown companies. The trust deed and registration under the Companies Act 1993, respectively, provide for their establishment. Statutory corporations and corporations sole require legislation in order to create separate legal personalities. This sets out their functions, powers and other relevant matters including, in a number of cases, areas in which ministers may direct the entity to undertake certain activities.

Whether or not entities are considered to be "part of the public administration" is a complex issue. In a loose sense, entities are instruments of the Crown. However, they have varying degrees of closeness to government, depending on their objectives and functions, funding arrangements, and the terms of the legislation or document empowering them. There are also a large number of statutory and non-statutory bodies outside the Crown entity framework.

Entities exercising semi-judicial functions are an example of those further away from the Crown where independence in decision-making is vital. Other entities must give effect to government policy when directed by the responsible minister and the Crown can be held liable for their actions as agents in legal proceedings.

Because of a plethora of provisions, the government asked officials to develop an umbrella Crown Entities Bill that standardised governance and accountability arrangements for establishing Crown entities. As mentioned above, the bill is currently on hold while the government considers all options for improving state sector performance.

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Sunset and review clauses

The legislation establishing a new Crown entity may include either a sunset clause (stating that the entity will cease to exist after a certain date) or a review clause (requiring the entity to be formally reviewed by a certain date). A sunset clause may be appropriate where an entity is created to perform a time-bound task with a completion date that can be specified at the outset. A review clause may be more appropriate where the entity's function appears to be time-bound, but a completion date cannot be predicted at the outset.

In practice, relatively few enabling statutes contain either sunset or review provisions. This reflects the fact that entities are generally established to perform ongoing rather than time-bound functions. Also, while it will sometimes be helpful to have a review undertaken by a fixed date, this may result in reviews that are unnecessary or ill timed. Similarly, sunset clauses have the disadvantage of creating "lame duck" organisations as the end of the term approaches. A more flexible approach is for the responsible minister to initiate reviews when the need to do so becomes apparent. This issue was reviewed as part of the Crown entities Bill. The conclusion was that sunset or review provisions should not be made to apply to Crown entities in general, or to particular classes of Crown entity. Instead, a general power responsible for the minister to review individual Crown entity performance has been included in recent pieces of legislation establishing new Crown entities.

Governance structures

The role of the board

The governing body for most Crown entities is a board appointed by the responsible minister, or by the governor-general on the advice of ministers. The board appoints the chief executive. Many Crown entity boards are broadly modelled on those of large private sector firms. A typical description of the role of a private sector board would include the following elements:

- setting strategic direction and developing policy;
- appointing the chief executive;
- monitoring performance;
- ensuring compliance with the law, and the firm's constitution and policies.

This definition would be broadly applicable to many Crown entity boards where the board concerns itself with governing the entity in accordance with the framework of its legislation and accountability documents. There are a number of significant differences between the private and public sectors, notably:

- The role of the responsible minister is not the same as that of an ordinary shareholder, even for Crown entities that are companies. Depending on the

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nature of the institutional and legislative arrangements, the minister has the potential to exercise considerably more influence than a shareholder over a company (other, perhaps, than a parent over a subsidiary). The minister is responsible for matters that in the private sector would tend to fall to the board, such as the process for appointing board members and the chair, succession planning, and the induction of board members. The power of dismissal may also provide ministers with significant influence.

- In smaller Crown entities, particularly regulatory bodies like the Human Rights Commission, the board will also be involved directly in conducting the business of the organisation.
- Crown entities usually have purposes and powers imposed by specific legislation.
- It is unusual for public boards to have executive directors.
- Crown entities often have multiple objectives; financial objectives, while important, are often secondary to policy objectives.
- Crown entities operate under different forms of accountability from private sector companies *e.g.* entities have reporting requirements under the Public Finance Act 1989 and must withstand parliamentary oversight of their activities.

There are three types of governance structures for Crown entities:

1. Crown Owned Companies (CROCs)

   A CROC has a commercial structure established under private law to meet both its public policy and commercial objectives. The Minister of Finance is always one of two shareholding ministers of these companies. The other shareholding minister has a ministerial portfolio in the area in which that company operates.

2. Statutory (non-company) Crown entities.

   There are a variety of statutory entities that are creatures of statute, governed by a board. The most common feature is that in most the chief executive does not sit on the board. This serves two functions – reduces dominance by the chief executive and insulates the chief executive appointment process from ministerial control.

3. Corporations Sole.

   A small number of statutory entities, such as the Retirement Commission and the Police Complaints Authority, are defined or recognised as corporations sole. These differ significantly from other forms of Crown entity. Specifically, a corporation sole is governed by a single person rather than a board. That is, the chief executive of the entity takes on the responsibilities

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that would normally fall on a board in another type of entity (such as, the setting the entity's strategic direction and policy, or ensuring the entity's compliance with the law).

In addition, for completeness, one should mention Crown Trusts. Crown Trusts are used rarely and in relatively unusual circumstances (only seven exist at present). The governance regime depends upon the provisions of the relevant trust deed.

Appointments to the boards

Ministers have an overall responsibility for making appointments to a large number of Crown bodies, either making the appointments or recommending them to the governor-general. Public servants do not generally sit on boards as officials, and it is relatively rare for board members to be employees of state sector organisations.

Departments are now expected to run appointment processes on behalf of ministers unless ministers advise their department otherwise. (Ministers can delegate the management of the appointment process to either departmental officials or ministerial office staff.)

Guidelines were issued in 1999 on the appointment of board members and the processes that should be employed by the relevant department when assisting its responsible minister to appoint board members of Crown entities (Board Appointment and Induction Guidelines). The purpose of this guidance is to ensure a robust process is in place for appointments to Crown entity boards, given that they are part of the wider state sector. Enabling legislation for Crown entities also sets out appointment criteria as well as criteria for dismissal.

The 1999 guidelines make clear that while each Crown entity's statute provides its appointment provisions, there are parts of the process that are generic across all appointments, such as:

- meeting Cabinet's expectation that departments will notify the minister of an impending appointment;
- checking candidates for real or perceived conflicts of interest and providing appropriate solutions to identified conflicts;
- operating within the fees framework established by Cabinet;
- complying with the requirement that all significant appointments go through Cabinet committee and Cabinet processes;
- providing minimum information to the appointee for the purposes of induction;
- reminding the minister of the Cabinet expectation of board members serving up to only two terms.

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The guidelines, prepared by the State Services Commission (and which include Cabinet Office Circulars), are a comprehensive account of most of the possible requirements in any appointment for a wide variety of government positions, and thus do not have to be used in every situation. A "pick and mix" approach to each vacancy is sensible. An appointment to the chair of a large organisation with a NZ$100 million budget will be an entirely different process from an appointment to the board of a significantly smaller organisation. In addition, circumstances may require a more limited process than would be ideal (*e.g.* a board member resigns suddenly, becomes unwell or a conflict of interest arises part way through a term, making continuing on the board untenable). In such situations, an abridged appointment process may be used, but the legal and Cabinet requirements set out in these guidelines must still be complied with.

There are also requirements under general law that apply to Crown entities, requiring that appointees and employees are treated fairly in accordance with the principles of natural justice. One example is the right to natural justice provided under s27 of the New Zealand Bill of Rights Act 1990 as follows:

- Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority that has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.
- Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.
- Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.

An interesting emerging practice, designed to improve the quality of board appointments, is to include an "electoral" college provision into individual entity statutes. Under this sort of provision an independent advisory body provides the responsible minister with a list of credible candidates from which board members are chosen. The information used during an appointment process are potentially discoverable under the Official Information Act 1982. Requests for such information, however, have not been extensive.

The Employment Relations Act 2000 (ERA), the general labour law, applies to entity employees. They are not "public servants" or employees of the Crown but are employed within the wider "state sector". Under the ERA, they may be the subject of a collective agreement setting out terms and conditions of employment

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(sometimes negotiated in consultation with the State Services Commissioner) or subject to individual contracts.

Appointments of chief executives and staff

In a number of cases, the enabling statute for Crown entities also sets out provisions regarding the appointment of chief executives and the employment of staff including, in most cases, a role for the State Service Commission in setting the terms and conditions for Crown entity chief executives. Some enabling statutes also compel good employer and Equal Employment Opportunity (EEO) policy. It is the responsibility of the chief executive to employ staff.

Remuneration

Cabinet has a framework which determines the fees paid to members of all statutory bodies and other bodies in which the Crown has an interest, and in particular bodies with responsible ministers. Responsible ministers set fees within the framework and also approve exceptions, subject to prior consultation with the State Services Commissioner and Cabinet.

The system provides for the classification of bodies into one of the following four groups:

- royal commissions and commissions of inquiry;
- statutory tribunals;
- management boards;
- all other committees.

The last two types cover all the Crown entities, other than Crown-owned companies.

Management boards are responsible for the governance of an agency or an organisation, and there are three criteria used to assess the appropriate fee range for its members: operating budget/turnover; value of total assets managed; and complexity of the business.

Annual board members fees range from NZ$6 000 to $27 500 and chair fees range from $12 000 to $55 000.

"*Other committees*" include a vast array of bodies, from advisory committees to technical review committees, to professional regulatory bodies. The levels of remuneration vary widely and are determined by:

- functions and responsibilities;
- skills, knowledge and experience required by members;
- nature and consequences of decision-making powers;

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- level of autonomy and/or accountability of members;
- relationship of functions and responsibilities to the government's overarching goals and strategic priorities.

There are five levels of salary for these bodies:

- *Level 1 Bodies* are short-term taskforces. The daily rates range is NZ$600-800 (chair) and NZ$450-600 (member).
- *Level 2 Bodies* have professional regulatory responsibilities and have disciplinary functions only, with the power to impose fines and/or prohibit professional practice by an individual. The daily rates range is NZ$430-540 (chair) and NZ$270-340 (member).
- *Level 3 Bodies* have policy-making, and/or decision-making powers, and may provide policy advice directly to a minister (may be a short-term taskforce); exercise substantive regulatory powers; have members where a high-level tertiary qualification or 10+ years' experience is essential; and have a broad focus (*e.g.* output level, or direct impact on strategic priorities). The daily rates range is NZ$330-360 (chair) and NZ$250-270 (member).
- *Level 4 Bodies* advise ministers directly (longer term function) or provide technical advice directly to a minister; exercise a mixture of regulatory and advisory/oversight functions; may have professional regulatory responsibilities which include advisory and registration functions (but not disciplinary); have a mixture of lay and technical/professional members; may have limited decision-making powers and may have a focus at output level. The daily rates range is NZ$250-280 (chair) and NZ$190-$210 (member).
- *Level 5 Bodies* are policy or technical advisors to a department or a minister; have membership which represents the interests of a professional group or body of opinion, or is predominantly lay and does not require a level of tertiary qualification or five to 10 years experience; have a more limited focus; and have no decision-making power. The daily rates range is NZ$190-210 (chair) and NZ$140-160 (member).

The remuneration for all Crown entity executives is disclosed in the annual report. This is modelled on section 211(1)(g) of the Companies Act 1993, which states that a company's annual report must "state the number of employees or former employees of the company, not being directors of the company, who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the value of which was or exceeded $100 000 per annum, and must state the number of such employees or former employees in brackets of $10 000".

Salaries for Chief Executives range from $NZ70 000 to $480 000 depending on the size and nature of the organisation. Non-cash remuneration (cars, etc.) is part of the package.

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Resources and budget process

Appropriation

Appropriations apply to expenses or liabilities incurred by the Crown but not to Crown entities as they are legally separate entities. However, many Crown entities receive funding for the purchase of specific goods and services or a capital injection from a capital appropriation.

Those entities that receive revenue via an appropriation (central government direct funding) describe what goods and services they will deliver to the government and the community in a purchase agreement. The purchase agreement also outlines the performance measures that the entity will meet in delivery of those goods and services. At this stage the purchase agreements cover only services directly funded by appropriation. Crown entity reform policy proposes that in future these agreements be renamed output agreements, and cover also goods and services funded by levies, fees and charges.

Appropriations are reviewed as part of the standard parliamentary review process, which includes examination of the funding, and performance measures with full accrual accounts.

Statutory levies or fees

Some Crown entities (*e.g.* the Alcohol Liquor Advisory Committee, the Earthquake Commission, the Fire Service Commission) are funded from a dedicated levy (*e.g.* collected from levies on liquor or insurance revenue) rather than general tax revenue.

Many other Crown entities are funded by fees and levies for specific services, usually provided under a statutory monopoly (*e.g.* a motor vehicle license can only be granted by the Land Transport Safety Authority, and license holders pay for these through fees).

Third-party sales

Most entities raise small amounts of revenue from minor third-party sales (*e.g.* publications, fixed assets). There are a small number of entities (generally Crown-owned companies) that are virtually completely funded by contestable, trading revenue.

Financial reporting

All entities where the Crown has a material purchase interest are required to prepare a statement of service performance (s41 of the Public Finance Act) that describes to Parliament the goods and services that were provided during the

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year. Those entities in which the Crown has a material ownership interest prepare a statement of intent (also s41 of the Public Finance Act) that relates to that financial year and the following two financial years. There are entities that have both a purchase and an ownership interest and therefore must prepare both statements. All Crown entities are required to prepare an annual report including financial statements within four months of balance date in accordance with the Public Finance Act.

Policy coherence, oversight and accountability mechanisms

The role of the responsible minister and ministerial departments

There is no formal accountability to the line ministry. Crown entities are appointed by, and responsible to, the responsible minister who is in turn accountable to Parliament, and ultimately to the public of New Zealand. Ministers often use departments as advisors.

The role and powers of the responsible minister, and of the relationship between the minister and Crown entity are not well articulated in legislation or elsewhere, and vary from entity to entity. The Public Finance Act refers only to responsibility in respect of financial performance. However, the minister's role will, in general, at least encompass:

- general oversight of the entity, its legislation, and the policy area in which it operates. This will include taking action where serious failure seems indicated;
- appointing or recommending the appointment of the governing body and deciding whether to reappoint or dismiss a board member.

In addition, depending on the nature of the entity, the responsible minister may be required to:

- inform the entity of the government's expectations;
- agree on the terms of a purchase agreement;
- provide input to a statement of intent;
- inform the board on matters of government policy where this is appropriate;
- direct the board where appropriate;
- take part in decisions about capital injections or withdrawals by the Crown, or in relation to investment or borrowing by the entity;
- decide on the nature of any regulations to be made which will affect the entity;
- monitor the performance of the entity.

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The responsible minister's role encompasses informal elements (such as political leadership and relationship management) as well as formal. The formal elements and the associated levers of influence are very important in ensuring that the government's interests and risks are managed properly. The responsible minister has a difficult job, and is relatively exposed, in discharging his or her role in a manner consistent with the powers and functions of an entity. This is because:

- the minister cannot rely (as is the case with departments) on a general power to direct the entity informally. Crown entities are currently not, as a matter of course, required to give effect to government policy;
- departments are clearly obliged to serve the interests of the government as a whole. There is not necessarily any similar obligation on Crown entities, which in formal terms usually relate solely to their minister, and are not bound into Cabinet processes;
- departments have standard governance arrangements and a standard monitoring regime;
- the central agencies – Department of the Prime Minister and Cabinet (DPMC), Treasury and the State Services Commission (SSC) – do not play the same role in relation to Crown entities as they do in relation to departments (*e.g.* the monitoring arrangements referred to above). They have a limited mandate over Crown entities: the Treasury for financial information (there are no formal requirements to the Treasury other than the request to provide *ex ante* and *ex post* financial information for the inclusion in the budget and Crown financial statements);* the State Services Commission on board fees and chief executive remuneration; and defined investigation only where specifically tasked by the responsible minister or the Prime Minister, or the Office of the Auditor-General.

Public service departments are meant to manage effective relationships with Crown entities. Where the responsible minister agrees, departments can:

- assist in board appointment and induction process;
- provide advice on the *ex ante* expectations as required *e.g.* provide advice involving commenting on proposals and advice presented to the minister by the Crown entity;
- monitor performance against expectations;

* In the case of CROCs, the Minister of Finance is generally a shareholding/responsible minister.

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- provide other policy advice, *e.g.* general portfolio advice or post election briefing or a briefing after a portfolio change. This can outline:
  - the minister's responsibilities, the actions and processes needed to discharge those responsibilities, including statutory duties and powers, Cabinet requirements and parliamentary expectations;
  - the level of support the department usually provides or is able to provide to the minister and other possible sources of advice and administrative support;
  - any major or urgent matters associated with Crown entities for which the minister is responsible;
- other statutory responsibilities in individual statutes.

Departmental support of ministers in relation to Crown entities needs to be tailored to the nature of particular Crown entities and the relevant legislation. The nature of this support will also depend on the preferences of the minister.

Accountability

Crown entities are accountable to the minister, to Parliament, and more broadly to the public. Almost all Crown entities are covered by the Official Information Act 1982. Maintaining government control raises two distinct issues: responsiveness to the broader public and political control of the minister.

Political control

The key feature of Crown entities is that they are entities legally separate from the Crown. 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. This means that ministers, where they wish to influence the organisation, have a limited range of levers rather than direct influence on agency operation. The key formal governance levers are appointment (and potential dismissal) and mixture of people on the board and the statement of intent.

Key responsibilities regarding appointments are that the responsible minister retains ultimate responsibility for each appointment, discusses all significant appointments with his or her Cabinet colleagues, decides who should be appointed, and ensures that appointees receive proper induction.

In principle, the Statement of Intent (SOI) is an important document, for the following reasons. Firstly, it is the only formal, forward-looking public accountability document that most of the entities are required to produce. As such, it should provide a basis for accountability to the minister, Parliament and the public. Secondly, it is one of the ways that the minister can exercise formal influence over the

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business of the organisation, to ensure that the Crown's interests are properly managed, and that the activities of the entity are aligned with the government's objectives, where this is appropriate (since the minister can direct the entity in respect of the content of the SOI). Thirdly, it provides for a dialogue between the entity and the minister on the nature of the entity's performance, since the minister must be consulted on the draft SOI. And finally, to be produced properly, it must be the product of an internal business planning process.

Reporting mechanisms and performance measurement

Individual Crown entities report to the responsible minister and through the minister to Parliament. The Crown financial statements consolidate the financial performance and position of all entities owned by the Crown. The annual reports by Crown entities enable an informed assessment of their financial and service performance. This includes governing board composition, remuneration, etc.

Central agencies or their departments are not held accountable for the performance of Crown entities. This is because neither control what Crown entities do. The responsible ministers are accountable to Parliament for their entities.

Central agencies, however, are subject to the same review process as other ministries and departments. These are:

- the review of departmental performance by the State Services Commission;
- members of Parliament Select Committee review of each department/ministry;
- the Office of the Auditor-General Audit (that includes financial and non-financial review).

The performance of agencies may be assessed by the responsible minister, Parliament or the Audit Office. Most ministers ask their department to provide at least an annual assessment of an entity's performance, both as regards delivery of the outputs listed in the purchase agreement and in maintenance (or enhancement) of organisational capability. This review can vary greatly, ranging from judgmental assessments to outcome-based empirical evaluations. On occasions, ministers may initiate a broader-based review *e.g.* on the purpose and functions of an entity.

A Select Committee of Parliament is required to review the performance and operations of each Crown entity annually. Depending on its priorities, the committee may do a substantial review every year or less frequently. The Audit Office routinely provides parliamentary committees with a report on the annual audit and with suggestions for aspects of the entity's performance that merit attention. The annual reviews by committees may be limited to the issues raised by the Audit Office, or range more broadly.

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The Audit Office itself may decide to examine the effectiveness and efficiency of a Crown entity in addition to the annual audit. The Audit Office formally decides the subject of such a review. It may review in response to a request by the government, but the decision on whether or not to proceed, and what the review covers, is made by the Audit Office. The Controller and Auditor General has in the past also reported on the overall governance of Crown entities (1996 review).

Most Crown entities must prepare an SOI for each financial year that focuses on the needs of the Crown as "owner" or "steward" of the entity. While this is not compiled for central agencies, its content is of real interest to central agencies. The SOI is forwarded to the responsible minister who in turn tables this in Parliament. The SOI should include:

- the objectives of the Crown entity or group;
- the nature and scope of the activities to be undertaken by the Crown entity or group;
- the performance targets and other measures by which the performance of the Crown entity or group may be judged in relation to its objectives;
- a statement of accounting policies;
- where required by the responsible minister, the ratio of consolidated shareholders' funds (or equivalent) to total assets, and definitions of those terms;
- where required by the responsible minister, a statement of the principles adopted in determining the distribution of profits to the Crown, together with an estimate of the amount or proportion of annual tax paid earnings (from both capital and revenue sources) that is intended to be distributed to the Crown;
- where applicable, the procedures to be followed before the Crown entity, or any member of the group, subscribes to, purchases, or otherwise acquires shares in any company or other organisation;
- where deemed necessary, a statement of output objectives specifying the classes of outputs to be produced by the Crown entity or group;
- any activities in respect of which the Crown entity or group will be seeking compensation from the Crown, irrespective of whether or not the Crown has agreed to it;
- other matters, including the kind of information to be provided to the responsible minister during the course of the financial year, as have been agreed by the responsible minister and the governing body of the Crown entity.

The diversity of entities means that no general performance requirement can be maintained. In some sectors the line ministry reviews *ex post* performance against benchmarks and goals. It is the responsible minister, however, who has responsibility for the overall direction. The line department (acting as the minister's agent) can review an agency's *ex post* performance. This is used to inform ongoing, forward-looking

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governance and funding levers to improve the performance of the entities. Thus, a key part of the performance management role will depend upon the quality of the relationship between the department and the agency. An example of this was when differences arose between an agency (the Tourism Board) and a department (the Ministry of Commerce) on whether funding appropriated by Parliament could be used for tourism purposes beyond the scope of the original appropriation. A subsequent legal opinion confirmed that the department (acting on behalf of the minister) had a responsibility to ensure appropriations paid to Crown entities were used within the scope of that appropriation.

One interesting recent development is that central government has issued both a statement of government expectations of the state sector and a statement of commitment by the government to the state sector, as follows:

Statement of government expectations of the state sector

A. *We expect the behaviour of all individuals and agencies of the state sector to reflect the following values*:

- Integrity
- Act honestly
- Give free, frank and comprehensive advice
- Be non-partisan and free from bias
- Avoid and manage conflict of interests
- Serve the public interest

Responsibility

- Act with personal and professional responsibility
- Have concern for the consequences of public actions

Respect

- Respect people, as citizens and clients
- Respect the rule of law
- Respect the institutions of democracy
- Respect the Treaty of Waitangi*

* The Treaty of Waitangi was signed in 1840 by the British Crown and Maori, the indigenous people of New Zealand. When state sector organisations act for the Crown, they need to endeavour to uphold the principles of that Treaty, namely partnership, good faith and active protection.

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Statement of government expectations of the state sector (*cont.*)

B. *To give effect to these values in the day-to-day conduct of the government's business, we expect the individuals and agencies of the state sector to be guided by the following principles*:

To be responsive to the community by:
- Demonstrating a commitment to service
- Recognising the legitimate interests of individuals and groups
- Respecting the rights of citizens and others and advising them of their entitlements

To be performance-oriented by:
- Working effectively and efficiently to achieve objectives
- Building the necessary capability in people, systems and processes
- Being committed to ongoing improvement and innovation in organisations, people, systems and processes
- Identifying and managing risk
- Measuring and assessing results

To be accountable by:
- Adhering to the spirit and letter of statutory accountability systems
- Setting clear expectations of individuals and assessing performance against expectations
- Recognising that contributing to team performance is an important accountability
- Fairly rewarding (or sanctioning) individuals according to performance
- Addressing failures, faults and deficiencies

To be a good employer by:
- Ensuring a merit-based, professional employment regime
- Having sound systems and processes for employee management, training and development and succession
- Recognising the employment requirements of particular groups in the community

To have a whole-of-government commitment by:
- Considering the implications of activities for other agencies and the whole of government
- Encouraging and participating fully in processes of consultation and collaboration within and beyond the government

To serve the government by:
- Implementing its decisions effectively and with commitment
- Providing free, frank and comprehensive advice
- Keeping the government advised of issues likely to impinge on its responsibilities
- Being aware of and reflecting the government's priorities

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Statement of commitment by the government to the state sector

- The government recognises that the performance of the state sector will be substantially influenced by the actions and processes of ministers, acting collectively and individually.
- In its working relationship with the state sector, the government and its ministers will:
  - Acknowledge the importance of free, frank and comprehensive advice
  - Provide clear guidance about policy directions and outcome priorities
  - Participate effectively in accountability processes
  - Treat people in the state sector in a professional manner

Audits

All Crown entities (except small reserve boards) are required to prepare annual financial accounts and, since July 2001, the Auditor-General has the legal responsibility to undertake the financial audits of all Crown entities and has the power to undertake efficiency and effectiveness reviews of both financial and non-financial performance. The Auditor-General is an officer of Parliament and as such is independent of the executive.

Responsiveness to the public

While Crown entities are accountable to the responsible minister to serve the government well, they also need to be responsive to the general public. Concerns have been expressed about the lack of ministerial responsibility for Crown entities. The arm's-length relationship between a minister and a Crown entity makes it difficult for ministers to respond effectively to legitimate public concerns about an entity's decision-making because of the limited levers at ministers' disposal.

There is no formal accountability to citizens (other than indirectly through the responsible minister and Parliament). However, there are a number of mechanisms that act to increase responsiveness to market signals from trading activity, political accountability through Parliament, and transparency through the Official Information Act and the news media. In addition some preformatted local service delivery organisations (schools, hospitals) have some board members who are directly elected.

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Openness

The Official Information Act is one of the three key legislative pillars of the state sector (along with the State Sector Act and the Public Finance Act). It operates on a general presumption of openness (with a few exceptions *e.g.* national security) and applies to almost all Crown entities (other than quasi-judicial decision-making).

The purpose of this act is to increase availability of official information to the people of New Zealand in order to enable their more effective participation in the making and administration of laws and policies, and to promote the accountability of ministers of the Crown and officials. The main mechanism is by establishing the presumption that information should generally be made available.

Seeking redress

There are a number of acts under which individuals adversely affected by the actions or omissions of Crown entities can seek redress:

- The Ombudsmen's Act 1975 generally provides for the investigation and review of administrative decisions and recommendations.
- The Human Rights Act 1993 generally provides, amongst other things for the promotion and observance of human rights, and the consideration and investigation of human rights complaints.
- The Privacy Act 1993 generally provides for the promotion and protection of individual privacy, the establishment of privacy principles and the investigation of complaints regarding interference with individual privacy.
- The Health and Disability Commissioner Act 1994 generally provides for the promotion and protection of the rights of health consumers and disability services consumers and includes the power to investigate complaints against bodies or persons.

The Ombudsman

The Ombudsman investigates any decision relating to matters of administration that include most Crown entities. The Ombudsman may make such investigation following a complaint, on his own initiative or after referral by a committee of the House of Representatives or the Prime Minister. One of the key functions of the Ombudsman is to investigate and review (when a complaint is made to him in writing) any decision by which government organisations, including Crown entities, refuse to make official information available. Any entity refusing to disclose information must give the applicant information concerning his or her right, by way of complaint to the Ombudsman, to seek an investigation and review of the refusal.

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The New Zealand Bill of Rights

There is also the avenue of commencing proceedings in the courts, either against individual members or employees of entities or, more likely, against the entity itself. The New Zealand Bill of Rights Act applies to Crown entities, which means that individuals may bring proceedings alleging a breach of that Act. Also, judicial review proceedings may be brought in the courts reviewing administrative actions by Crown entities. The Judicature Amendment Acts 1972 and 1977 set out the scope of an application to the High Court for review of the exercise, refusal to exercise, or proposed or purported exercise of a statutory power. Common law rights to apply for judicial review have in practice supplemented the act.

Government officials' investigation

Government officials have a role in monitoring Crown entities, including the Auditor-General and the State Services Commissioner (where requested under section 11 of the State Sector Act). They may be asked by the responsible minister or the Prime Minister to investigate a matter relating to an entity or entities. The minister may also conduct a review, using his or her legislative information requesting powers (*e.g.* s45, Public Finance Act 1989).

Regarding government policy, the responsible minister has the ability to challenge decisions by Crown entities charged with having regard to and/or giving effect to government policy (such as Crown Agents, ACEs and schools). Local members of Parliament (MPs) are often used by the public to challenge decisions made by Crown entities. MPs are able to bring before the responsible minister a complaint made by a member of the public.

Policy coherence

The arrangements for policy advice co-ordination vary from sector to sector but include:

- *Role of Cabinet*: New Zealand has a relatively well-developed centralised Cabinet/Committee policy process that enables different perspectives to be brought to bear on policy as it is developed.
- *Role of departments*: The general practice has been that departments take the lead on policy advice and assist the minister to manage their relationship with Crown entities.
- *Structure*: Over the last 20 years the pattern has been to create a lead department as a steering organisation on strategy/policy advice, etc. (sometimes including funding allocation and sometimes not). However, in the last two years government has raised concerns about fragmentation and the lack of empirical information available for policy development and advice.

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- *Other mechanisms*: There are also examples of committees between ministries where a policy area is of mutual responsibility. Examples include food (between the Ministry of Health and the Ministry of Agriculture and Forestry) and oceans policy (co-ordinated by the Office of the Minister of Fisheries but involving many ministries across government with diverse interests such as the Ministry for the Environment, the Ministry of Fisheries, the Ministry of Transport and the Ministry of Defence).

Evaluation, lessons learnt and recent developments

Recent developments

The history of the state sector shows that a large proportion of government activity has always been performed by organisations that are not departments of state. These have often been called *quangos*. The first wave of the public management reforms put some of these *quangos* that were trading organisations under the more disciplined, generic governance and accountability regime of the State-owned Enterprises Act 1986. The second wave of reform, implemented through the Public Finance Act 1989 and the State Sector Act 1988, brought greater clarity to departments' roles. This included spinning off a range of service delivery functions into Crown entities. The *Crown entities Initiative* announced on 15 July 1999 is the beginning of a third wave of reform to bring a more disciplined generic regime to the rest of the state sector.

The *Crown Entities Initiative* project had two main strands:

- organisational design, *e.g.* alignment of the entities to undertake specification and organisational forms;
- governance and accountability, *e.g.* the best arrangements to give effect to given functions in a particular form.

The project first produced a number of non-legislative instruments such as guidelines which clarified the roles and responsibilities of those involved in Crown entity governance. More recently, the *Crown Entities Initiative* project prepared a Crown Entities Bill that would introduce a uniform governance and accountability regime for all Crown entities. As noted above, the policy underpinning the bill continues to inform proposals for new Crown entities and the reviews of existing entities. Whether a Crown Entities Bill will be enacted in the future is currently being considered as part of a wider review of state sector performance.

Overall lessons learnt

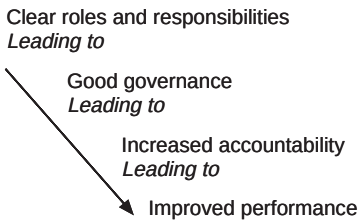
The experience in New Zealand shows that the key elements necessary for the successful management of agencies/authorities:

- clarity about the need to establish an entity;

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- clarity about purpose and functions;
- form reflecting function (quasi-judicial/service delivery);
- clarity about the role, and the relationship, of the minister and the board;
- no duplication in functions with other entities;
- adequate resourcing;
- critical mass to carry out all functions and duties;
- understanding by the public of its purpose and relationship with the minister;
- quality of board selection, appointment and induction review process.

It is clear that good governance requires clear roles and responsibilities that are agreed by key stakeholders. There is a positive causal relationship between good governance and strong performance, by way of:



A key conclusion from the New Zealand experience is that any future framework for the creation of Crown entities should include a regime setting out:

- the role of ministers;
- board appointments and dismissal provisions;
- individual and collective board member duties;
- entity rights, powers and functions;
- financial powers;
- reporting requirements.

Further references:

SSC Occasional Papers 17-21(*www.ssc.govt.nz*)

The Treasury's website, *www.treasury.govtnz/crownentity/default.asp* has related papers that Treasury was responsible for.

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Spain

by

Eduardo Zapico Goñi *and* **Mario Garcés***, **

Background

After the Constitution of 1978, and in less than 15 years, the public sector in Spain has grown significantly and very quickly. Public spending increased from 25% to about 43% of GDP. This growth in public spending in the 1980s and early 1990s occurred simultaneously with increasing complexity of government interventions. The public sector has undertaken increasing responsibility in new social, technical, environmental and other policies. These changes have not been accompanied by a coherent increase in public management capacity.

The legal framework of semi-autonomous public bodies has often been criticised as being increasingly inappropriate for their effective management. During the last quarter of a century the Spanish Government has been immersed in a major transformation. It is still undergoing adaptations to a new and changing environment.

Along with other changes common internationally, two important events are at the origin of this transformation: a process of political decentralisation, and Spain's entry into the European Community. These two events and their implications need to be taken into account in understanding the growth, diversity and

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transformation (*e.g.* regional representation in their governing bodies) of semi-autonomous public bodies in Spain.

A major constitutional demand affecting the administrative structure of the Spanish public sector is related to its shift from traditionally very centralised to decentralised, by creating self-government regions. Seventeen regional self-governments (C*omunidades* A*utonomas*, CCAA) have been created. This is one of the main reasons for the complexity of governance and public management in Spain. The ownership and management of public bodies do not necessarily coincide with the same level of government and increasingly have to be shared through collaboration, in response to the constitutional distribution of competencies among levels of government.

Belonging to the European Union has also demanded the development of highly effective organisations in both public and private sectors. The actual benefits of financial assistance received from the EU depend on public management capacity for complying with highly specific and strict conditions. In general, the official aim for the creation of semi-autonomous public bodies has been to rationalise and adapt decision-making procedures to the increasing diversity of the public management context.[1] In fact, there are many reasons for the existence and development of decentralised government entities. The overriding argument for their creation is the search for efficiency and effectiveness in public services. The creation of many decentralised government entities is due to the difficulties of traditional bureaucracies of government in responding to emerging problems or taking advantage of new opportunities.

New Public Management (NPM) ideas and government reform in the OECD have had an important influence on the Spanish Government. Liberalisation of some economic sectors, privatisation, some shifts from bureaucratic to divisional structures, etc., took place in the 1990s. For instance, the liberalisation of some economic sectors, until recently monopolised, has demanded the creation of regulatory bodies. Some attractive NPM concepts and terminology, such as client orientation and creation of "agencies", have sometimes been introduced, reflecting the intention of adapting government organisations (*e.g.* A*gencia* E*statal de* A*dministracion* T*ributaria*, A*gencia* E*spañola de* C*ooperación* I*nternacional*). This new terminology has not replaced Spain's own, but has co-existed and reflects the existence of further exceptions to a more or less vague general classification.

The arguments often used for the creation of semi-autonomous public bodies in the late 1980s and early 1990s were mainly to escape direct ministerial control and enjoy more flexible management, financial control and procurement procedures. However, according to official reports, this process did not guarantee really efficient management. Adapting performance monitoring and management systems in both central ministries and semi-autonomous entities is also necessary for

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such improvements. Furthermore, centrifugal dynamic may increase the risk of declining transparency.[2]

Legal and organisational framework

Historically, the Spanish Government has been based on departmental and functional organisation. The Council of Ministers is the top executive decision-making body, acting collectively under the chairmanship of the President of the government. The President has the support of a Presidential Office. The main central administrative units are ministries with a hierarchical structure dealing with one or several related policy sectors. Two ministries have also horizontal roles: the Ministry of Finance, responsible for budget formulation and management; and the Ministry of Public Administration, responsible for personnel management. Ministerial top management bodies normally consist of: one minister, two or three secretaries of state, a sub-secretary and several director-generals.

An initial effort for grouping government-related entities was made in 1958 (*Ley de Entidades Estatales Autonomas*) with the aim of clarifying the legal regime of multiple and scattered government entities. In the following years, general and budget legislation continued this effort, adapting their names and legal frameworks. Since 1977, the General Budget Law, modified in 1988, broke down these entities into autonomous bodies with "administrative" roles and those with "commercial, industrial and financial" roles. This law also identifies the legal personality of state-owned corporations, to be ruled under private law. Finally, it institutionalises the existence of "other public entities with special juridical statutes", *i.e.* those remaining government entities not included in previous classification. Entities in the remaining group are to be ruled under their own specific legislation, or by the General Budget Law when explicitly mentioned in it, or on a supplementary basis for whatever issues are not covered in their own statutes.

In the last two decades there has been an increase in the number and dispersion of semi-autonomous government entities. Ongoing debates are taking place concerning this process of decentralisation, sometimes called "centrifugal tendency" or "organisational engineering",[3] and more often identified as running away from public law or "*Huida del Derecho Administrativo*".[4]

On the opposite side there are those who explain this process as a consequence of the inadequacy of general public law (*Derecho Administrativo*) for new fields and criteria of public intervention.[5] Even a prominent advisory body such as the State Council (*Consejo de Estado*) has expressed its concern with the rigidity of public law and has explained that the public administration is looking for "private formulas" to avoid this rigidity. However, it also argues that this process "needs extra care in a country like Spain because of its impact on the whole system of advanced public law".[6]

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To stop the increasing creation of semi-autonomous government entities, a review is underway, in accordance with the new Law of Organisation of 1997 (*Ley de Organización y Funcionamiento de la Administración General del Estado*, or LOFAGE). This law established a simplified and global classification for general government entities into two types: *Organismos Autonomos* (OA, autonomous bodies with administrative functions) and *Entidades Publicas Empresariales* (EPE, Public Entities providing services or goods susceptible to transactions). The former function under public law and the latter under private law, except some specific functions explicitly set by general laws (*e.g.* on budget regimen, strategic decision-making, etc.). The name is somewhat misleading since EPEs are different from state-owned corporations, normally fully ruled by private law (see Annex).

LOFAGE explicitly accepts the existence of several exceptions, called in general *Organismos Publicos* (public bodies), which function under their own specific statutes. These consist of the following:

Cases of public bodies specifically exempted from the typology used by the Law of Organisation (LOFAGE)

- Constitutional bodies (*Consejo de Estado*, *Banco de España*).
- Social Security Administration (*Entidades Gestoras y Servicios Comunes de la Seguridad Social*).
- *Agencia Estatal de Administración Tributaria*, *Consejo Económico y Social* and the *Instituto Cervantes*.
- Regulatory bodies such as the *Comisión Nacional del Mercado de Valores* (Security Exchange Commission), *Comisión Nacional de Energía*, *Comisión del Mercado de Telecomunicaciones*. All of these emerging from the process of privatisation and liberalisation.
- Other public bodies with special treatment because of the sensitive nature of their functions: *Consejo de Seguridad Nuclear*, RTVE (Spanish Radio Television), UNED (Distance University), *Agencia de Protección de Datos*, *Instituto Español de Comercio Español*, etc.).

It is obvious that the increasing diversity of government entities makes it very difficult to formulate an overall typology, or even set the criteria for doing so. Such diversity is not a dysfunction in itself; rather, it is responding to and reflecting a reality. What is more important is the governance of these diverse entities.

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The Law of Organisation (LOFAGE) has reclassified government entities and set a new general framework of rights and duties for government semi-autonomous entities established in past years. If they are not specifically exempted by law, they function under general government regulations. They are created by Parliament. Their statutes are approved by the Council of Ministers, providing global parameters for their functioning and internal organisation. They are autonomous, operating under the guidance of a ministry. In exchange for this freedom from general government regulations, they are accountable to their ministries for management performance.

New semi-autonomous government entities may be created through a standard law dealing with a policy sector (*e.g.* the General Law of Telecommunications created the National Commission of Telecommunications). Recently, however, there has been an increasing number of government entities created or adapted by an annual law, the so-called *Ley de Acompañamiento* (Accompanying Law), presented, for example, along with the Annual Budget Law. This Accompanying Law which introduces every year several social, economic and fiscal measures, often includes the creation of semi-autonomous government entities).[7]

Table 1. **Public entities adapted to the Law of Organisation (LOFAGE)**

Number of entities adapted	Year of adaptation	Legal instrument used for adaptation
41	1997	• Law of Organisation • Sector Laws • 2 Royal Decrees
49	1998	• Law "Accompanying" the Annual Budget Law
29	1999	• 5 Royal Decrees

The law creating a new entity should establish its general aims, the ministry to which it should respond, its economic resources and assets, the general personnel, financial and procurement regimen, etc. Ascribing an entity to a ministry means that the minister or a Secretary of State will be responsible for its policy or strategic decision-making, and the overall evaluation and control of its management performance. Responsible internal management and control systems are to be implemented by each entity. Independent controls from horizontal ministries and external control bodies responding to Parliament close up the governance cycle of government-related entities.

Semi-autonomous government entities have their own legal personality differentiated from government. They have management independence and their own assets. They have the administrative power necessary to accomplish their

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goals, as established in their statutes, with the only exception to expropriate (power to compulsory purchase). Other than government entities' statutes, there are no external rules on how they should be internally structured. The diversity of objectives, technology and contexts in which they perform demand a flexible organisational approach. For instance, in some cases coherent organisation criteria demand that representatives from different levels of government participate in the board of administration of central government bodies.

LOFAGE establishes the distinction between the Autonomous Bodies (OA) and the Public Entities (EPE). Specific differences in the governance regime of OA and EPE are explained in the following section, but essentially, the former play an administrative role and are fully ruled by general public law. The latter play an entrepreneurial role and are ruled under private law, unless otherwise explicitly set down by law.

In the second half of the 1990s, new autonomous public entities were established to regulate liberalised economic sectors (National Commission for Electricity, Commission for the Telecommunication Market, National Commission on Banking and Securities, etc.). These regulatory public entities are treated as exceptions ruled by their own legislation. Following European directives these entities are given substantial autonomy in staffing and budget policies. Furthermore, policy formulation, competence of the ministry, and regulatory functions, competence of the autonomous entity, are separated by law to guarantee neutrality. Their presidents are nominated by the Council of Ministers and appointed by Parliament. Their autonomy is counter-balanced by performance answerability to Parliament and presentation of annual reports. For transparency reasons, they have to publish and explain their decisions. They are under the scrutiny of external oversight bodies.

Governance structures

Normally, a set of top management bodies (management board, president, director-general and advisory commissions) is responsible for the guidance and proper functioning of the entity.

The management board

The management board (*Consejo Rector*) is a collective body including top officials from government, usually from the "parent" ministry. The management board is responsible for:

- providing strategic guidance;
- approving plans of activities;
- draft budget and long-term investments;

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- establishing basic guidelines for internal governance and setting operational and administrative norms not defined in the statutes;
- setting controls and follow-up systems;
- approving the draft of the annual accounts.

Officials occupying specific high-level positions in government (normally in the parent ministry, Ministry of Finance or other related departments) are entitled by law or by statutes to be members of the management board. There used to be criticism against this system because it was supposed to undermine professional membership of the board. However, it is also arguable that these linkages respond to the need for representing ministerial perspective and interests. For instance, representatives of the Ministry of Finance in many boards are an essential channel of influence and information for identifying spending impact of ministerial plans and forthcoming decisions.

Technical support is provided to the management board by advisory commissions Specific governance structure depends on each case (see cases in the Annex). Usually delegates of parent ministry, other levels of governments, stakeholders, etc. have a representation on the board.

P*resident*

The president represents the organisation. He or she is the chairman of the management board and is responsible for:

- signing contracts and agreements;
- decision-making and following up of personnel management;
- authorising budget allocations and financial management functions.

By law the president is responsible to a minister for the performance of the government entity. The entity should be managed in accordance with applicable legislation and should respond to ministerial management follow-up systems. They are also required to respond to control and evaluation by external, independent control bodies. There is a general acknowledgement of a growing professional decision-making style in top public management, mainly in public entities. Widening use of business management techniques and culture within the "entrepreneur" public sector is used to explain this change.

Presidents' appointments are the domain of the Council of Ministers following the proposal of the minister responsible for the entity. LOFAGE requires that they should be appointed on the basis of professional competence and expertise. Usually governments search for consensus among political forces and interest groups to define the appropriate profile of a president for the government entity. Currently there is a widespread consensus for these appointments to be

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based on specific previous experience in public or private business in a similar or related sector.

One of the differences between OAs and EPEs is contract conditions for top managers. The former are under public law and the latter under private law. The president of an EPE may come from the business world or be a civil servant, while the president of an OA is normally a career civil servant or a top official in government.

Director-general

The director-general is responsible for the execution of plans and decisions of top management bodies and for the general co-ordination of internal administrative services. He reports and is accountable to the management board. He is responsible for presenting proposals and executing board decisions.

General statutes

The draft law creating a new entity should be presented along with a proposal of statutes and the initial plan of activities. Statutes should define top management bodies and appointment procedures for their members. Statutes establish the main functions, the distribution of competencies and the general powers of top management bodies. They also identify economic resources and assets allocated to the entity, and its management regimen for human resources, procurement and assets. Statutes may reflect the delegation of power and conditions to create or participate in private corporations when considered necessary for achieving its objectives.

The initial plan of activities includes main objectives, human resources and financial resources needed by the entity for starting its activities. This plan needs the approval of the parent ministry as well as that of both the Ministry of Public Administration and the Ministry of Finance. The statutes have to be approved by the Council of Ministers, through a Royal Decree, and made public before the entity can start functioning.

Modification of statutes has to be made by law if there is a substantial change (*e.g.* in the general aims, type of entity, economic resources, personal regimen, etc.). Otherwise statutes have to be approved by the Council of Ministers, following the proposal of the parent ministry.

The dismantling of an entity may be decided by law, or by Royal Decree when: statutory goals have been fully achieved; statutory expected time of existence has elapsed; objectives and competencies are overtaken by self-governing regions (CC.AA) or by the general government itself.

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Resources and budget process

The overall financial management legislative framework of government-related entities is the General Budget Law (*Ley General Presupuestaria*). This and other specific budget legislation (*Leyes Anuales de Presupuesto*, *Ley de Contratos*, etc.) cover budgeting, financial control, public procurement and other financial management procedures. This financial framework is generally applicable to semi-autonomous government entities, unless there exist specific exceptions approved by the Parliament.

Since the classification of semi-autonomous government entities in the General Budget Law has not yet been adapted to the one in the Law of Organisation, every year the Annual Budget Law identifies with necessary detail the entities under general budget rules and those with specific financial management treatment. Autonomous bodies with "administrative" roles are fully ruled as established by the General Budget Law. Other entities are to be managed under their own specific legislation and private law, or by the General Budget Law whenever it is explicitly set by law or, on a supplementary basis, for whatever issues are not covered in their own statutes.

Although conceptually there seems to be a move from public to private law, in fact, since 1990, new laws or statutes creating a government entity to be ruled by private law are checked and adapted by the Ministry of Finance, and sometimes by the Ministry of Public Administration, in order to include procurement and financial management conditions like those in public law. Even personnel management, in general under private law, has public-like management procedures. For these reasons some think that there are no "logical" reasons to create semi-autonomous government entities aiming to be ruled by private law.[8] This may explain a new step in the delegation process with the creation of foundations as organisations still ill-defined and with public/private blurred limits.

The analysis of the aggregate economic classification of revenues and expenditures of government entities shows that they operate mainly by granting subsidies and distributing transfers to society (unemployed workers, self-governing regions, farmers, etc.). Similarly, the revenue side shows a strong dependence on general government transfers and from European Union financial aid. Their own fiscal revenues are earmarked to specific goals.

The budget evolution reflects the expansion of these entities. The following tables show the relative budget importance of semi-autonomous government entities in Spain. In aggregate terms, around half of the general government budget is executed by semi-autonomous entities. Because of its size and importance, the Social Security Administration (autonomous body) is presented separately. Centralised general government accounts for 48.3% of the budget, while semi-autonomous entities account for the remaining 51.5%. The tendency is that the

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Table 2. **Budget of government entities (economic classification)**

Revenues budget 2001			Expenditures Budget 2001		
Concepts	(*Meuros*) Budget 2001	%	Concepts	(*Meuros*) Budget 2001	%
Taxes	14 292.69	50.0	Personnel	1 711.32	5.9
Tariffs and charges	1 007.34	3.5	Operational spending	1 627.44	5.6
Current transfers	8 903.65	31.2	Financial spending	25.43	0.1
Other revenues	2 195.05	7.7	Current transfers	23 122.66	79.2
Total current revenues	26 398.74	92.4	Total current spending	26 476.86	90.7
Capital reduction	255.95	0.9	Capital investment	1 626.19	5.6
Capital transfers	1 926.19	6.7	Capital transfers	1 089.96	3.7
Total capital operations	2 182.14	7.6	Total capital operations	2 716.15	9.3
Total non-financial operations	28 580.87	100.0	Total non-financial operations	29 193.00	100.0
Financial assets	1 109.59	3.9	Financial assets	474.55	1.6
Financial obligations	91.14	0.3	Financial obligations	114.06	0.4
Total financial operations	1 200.74	4.2	Total financial operations	588.61	2.0
Total budget	**29 781.61**	**104.2**	**Total budget**	**29 781.61**	**102.0**

Source: *Ministerio de Hacienda, Libro de presentación del Presupuesto para el* 2001.

budget size of these entities is increasing. At the beginning of the 1990s these percentages showed more or less the opposite distribution. Since then, the budget growth in the percentage of public bodies with exceptional treatment specifically exempted from the typology in LOFAGE was outstanding (about 380%), although the small proportion at the starting point explains it, at least from a quantitative point of view (see Table 3).

Table 3. **Budget dimension**

General government sub-sectors	Budget (million pts.)	%
Ministries and General Directorates	17 553 012	48.3
Social Security	14 281 883	39.3
Government semi-autonomous entities: (Autonomous bodies, OA, and public entities, EPE)	4 468 573	12.2
• Other OA and EPE	(4 310 021)	(11.8)
Public bodies (exceptional treatment)	(158 552)	(0.4)
Total (consolidated)	**36 303 468**	**100**

Source: *Ministerio de Hacienda/Informe económico-financiero de los Presupuestos Generales del Estado del* 2000.

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Table 4. **Evolution of budget dimension**

General government sub-sectors	1990	1995	2000	1990-2000 (%)
Ministries and general directorates	10 117 612	14 515 614	17 553 012	73.48
Social Security	6 383 008	10 657 006	14 281 883	123.74
Government-related entities: (Autonomous bodies, OA, and Public Entities, EPE)	2 629 804	4 447 524	4 468 573	446.47
• Other OA and EPE	(2 596 807)	(4 294 149)	(4 310 021)	(65.97)
Public bodies (exceptional treatment)	(32 997)	(153 375)	(158 552)	(380.50)
Total (consolidated)	**19 130 424**	**29 620 145**	**36 303 468**	**89.76**

Source: Ministerio de Hacienda/Informe económico-financiero de los Presupuestos Generales del Estado de los años 1990, 1995 y 2000.

However, aside from a few cases, government entities represent a small fraction of the general government budget. In most cases the budget weight of individual autonomous bodies is small. Also the so-called public bodies (*Agencia Tributaria*, *Instituto Cervantes*, *Consejo de Seguridad Nuclear*, etc.) have small budgets. However, they may play very sensitive roles and are treated as exceptions by LOFAGE (see complete list above). Taking a less aggregate look, one can observe the relatively large size of the main autonomous bodies (EPEs not included). Four OAs represent about 75% of the consolidated spending of all of them. This reflects the usually small size of the remaining autonomous bodies.

Table 5. **Budget weight of main autonomous bodies**

Autonomous bodies	Initial budget 2001 Million pts.	Initial budget 2001 Million euros	(%)
National Institute of Employment	2 207 743	13 268.80	44.6
Agriculture Guarantee Fund	1 067 923	6 418.35	21.6
Lottery Administration	320 281	1 924.93	6.5
Civil Service Social Insurance	198 525	1 193.16	4.0
Others	1 200 791	6 849.17	23.3
Total	**4 955 243**	**29 654.41**	**100.0**

Source: Ministerio de Hacienda/Libro de Presentación del Presupuesto para el 2001.

The evolution of the personnel dimension has had a similar path. However, due to personnel transfers from general government to self-autonomous regions (CC.AA), it is difficult to show this as clearly.

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Table 6. **Personnel of government entities**

Central Government	1995		2001	
Ministries and general directorate	252 160	49.61%	94 070	29.74%
Autonomous bodies	189 004	37.9%	164 670	52.05%
Other public entities[1]	67 096	13.20%	57 596	18.21%
Total	**508 260**	**100%**	**316 .336**	**100%**

1. Including public bodies with exceptional treatment.
Source: Data provided by D.G. Of Personnel Costs, Ministry of Finance.

Policy coherence, oversight and accountability mechanisms

Performance reporting

Proper devolution and decentralisation of power to autonomous government entities depends on an effective monitoring system that allows the adaptation of management control and accountability systems of government entities. Performance monitoring of spending programmes is intended to be the basis for reporting on results; setting priorities among alternative spending proposals, and reallocating resources accordingly. All government entities have to submit annual reports to the Council of Ministers, through their parent ministry.

Since 1988, following mandates of successive Annual Budget Laws (*Ley* 37/1988 *y Orden Ministerial* 1989), the Ministry of Finance has established a system of performance monitoring of budget programmes. This monitoring system is focused on the efficiency and effectiveness of selected government entities. One of the objectives of this initiative is to encourage a management culture further oriented towards results.

Semi-autonomous government entities are controlled by the IGAE (Financial Controller at the Ministry of Finance) reporting to the Council of Ministers. Financial controls on autonomous bodies are carried out in the same manner and using similar procedures to general government ones. *ex ante* control on all spending decisions is executed by the IGAE representative (*Interventor Delegado*) in each autonomous body. Public entities are only subject to *ex post* audit of their financial management and accounts. They may also be audited by external private firms. Annual information and accounts of these entities are subject to the external control of the Court of Accounts (*Tribunal de Cuentas*), reporting to the Parliament.

In general, performance measurement monitoring systems of government entities have substantially advanced in the last decade. But improvements differ

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depending on each ministry and entity. Further comparative empirical research is needed on this issue. In fact, improvements in the field of performance measurement, assessment and budgeting are proving to be more difficult than expected.

In recent years, Spanish governments have tried to improve the efficiency of the public sector through a more professional civil service and organisational restructuring, legal rationalisation and privatisation. A recent step forward in Spain has been the approval by law of the obligation of the government to report to the Parliament on the results of budget programmes and plans of activities selected to be monitored (*Ley* 21/1993, *de Presupuestos Generales del Estado*).

However, as in other countries, government reorganisation has proven to be a longer and more difficult process to manage than expected. Although traditionally strong, oversight bodies and central co-ordination mechanisms need to be reinforced to provide the effective guidance of the implementation of administration-wide reforms.

Evaluation, lessons learnt and recent developments

Steps forward on co-ordination, consultation and transparency

Normally, semi-autonomous entities depend on a single ministry, though there may be some depending on several. In these cases, all ministries are represented on their board of administration. These entities act, in fact, as co-ordinating inter-ministerial initiatives.

This is also an increasingly extended co-ordination mechanism between general and regional governments, complementary to high-level institutional co-ordination carried out in "Sector Conferences" for each government policy. These Sector Conferences are meetings of top officials from both central and regional governments in which collaboration on common issues is often reached. There are other informal meetings among these officials at a more technical level. "Collaboration" may imply the creation of special inter-governmental organisations, "consortiums" with their own personalities. The aims and competences of these consortiums are set by statutes. An example of inter-governmental co-ordination is the network of Port Authorities which have a multiple-layer government representation on their management boards.

Criticisms of these entities 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. Empirical research, on a case by case basis, is needed to clarify the state of affairs.

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According to previous OECD reports, LOFAGE goes in the right direction towards more transparency and less discretion for government practices.[9] Furthermore, consultation mechanisms have been improved in the last decades. For instance, for regulatory initiatives there is now a constitutional obligation to consult with public interest. In line with the Constitution, LOFAGE requests that for secondary regulations timely consultation should take place.

Searching for an integrated legal framework

The new order set by LOFAGE has systematised a legal typology. However, many public entities are included in the additional annex of the law without clear allocation. Some consider this a limitation of the law.[10] Besides, the general legal framework requires some modifications to incorporate emerging types of public entities. This is the case, for instance, of private foundations created by public authorities.

Furthermore, there is a need for improving the coherence between the classification of semi-autonomous government entities according to LOFAGE and the classification used currently by financial management legislation. Although the classification of decentralised government entities used by the General Budget Law has not yet been adapted to the new typology set in LOFAGE, adjustments are made through identifications and specific references in the Annual Budget Law.

There seems to be a need for a globally co-ordinated and consensus-based reorganisation strategy, with sufficient political support, to facilitate a further clarification and identification of all government-related entities. There will soon be an opportunity due to a forthcoming compromise to approve a new General Budget Law, most likely before the end of 2001. A "Draft Law on Budget Stability", in the phase of parliamentary debate, sets the obligation for the Executive to reform the General Budget Law.

It is generally accepted that the new General Budget Law will have to update the legislation to clarify and regulate emerging forms of semi-autonomous government entities. The normative framework not only needs some improvements on the classification and legal regime of these entities but also on their management performance, *e.g.* introducing incentives for better planning and management by results, reinforcing control and follow-up systems on public programmes, etc.

Beyond a legal approach to improve semi-autonomous governance of entities

Some experts have identified a pendulum-like movement from centralisation to delegation of power, and vice-versa, of semi-autonomous government entities trying to move back and forth from general public law to private law. They argue that this is the reason why several laws were approved in 1958 (*Ley de Entidades Estatales Autonomas*) and 1977 (*Ley General Presupuestaria*). We are supposed to be

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now in the limit of the decentralised side and need to move back towards a certain reunification.[11]

However, considering obstacles of previous reorganisations (*e.g.* weak advance with performance measurement, slow adaptation of accountability systems and management by results) what the pendulum theory seems to be explaining is the limitation of using just legal instruments for reforming the governance of these semi-autonomous entities. Actual functional autonomy, no interference from political or ministerial levels in operative management, appropriate performance accountability systems, strategic capacity at central services, a statute for public managers, capacity to guide a decentralised system under a contractual relation basis, encouraging a collaborative culture, etc., are some of the instruments so far not sufficiently considered for the hands-off management of government-related entities. Just changing their legislation from a centralised to a semi-autonomous framework is an effort most likely without organisational learning value for improving their governance.

Further and different efforts are needed for improving performance measurement and monitoring. Management monitoring systems in ministries and control by independent oversight bodies would be more effective if quantitative or qualitative performance standards were developed. So far, important but not sufficient or properly co-ordinated efforts have been made. The forthcoming new General Budget Law is expected to provide a clear and consistent legal framework, and new incentives to identify policy goals, etc.

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Notes

1. Ministerio de Administraciones Públicas, 2000. *Libro Blanco para la mejora de los Servicios Públicos*. Madrid, p. 95.
2. S. E. Hacienda, 1992. Informe sobre la Gestión Económico Financiera del Gasto Publico en España, p. 66.
3. Bermejo, J. L., "Las fundaciones privadas de iniciativa pública y la 'huida' del Derecho Administrativo". En: *El Derecho Administrativo en el umbral del siglo* XXI: *Homenaje al Profesor. Ramón Martín Mateo*. Valencia, Tirant Lo Blanch, 2000. TI, pp. 935-60.
4. Borrajo, 1993, "El Intento de Huir del Derecho Administrativo", En: *Revista Española de Derecho Administrativo*, No. 78, pp. 233ff.
5. For example, Jiménez de Cisneros, F. J., 1996-97. "Organización instrumental pública en la Ley de Organización y Funcionamiento de la Administración Pública", En: *Documentación Administrativa*, No. 246-47, pp. 393-416 (p. 393ff.).
6. Consejo de Estado, 1993, "Memoria del año 1992", p. 112.
7. Source: Ministerio de las Administraciones Públicas, *Libro Blanco para la mejora de los Servicios Públicos*, p. 98.
8. For example, Jimenez de Cisneros, *op.cit.*, pp. 400-02.
9. OECD, Regulatory Reform 1999, draft paper, p. 21.
10. Serna, M. N., 1997. "Organización instrumental privada en la Ley de Organización y Funcionamiento de la Administración Pública". En: *Documentación Administrativa*, No. 246-47, pp. 495-510.
11. Jimenez de Cisneros, *op. cit.*, p. 416.

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Annex

Government Entities Classified by Ministries

Ministries	Autonomous bodies	Public entities and other public bodies
Ministerio de Asuntos Exteriores	– *Agencia Española de Cooperación Internacional*	– *Instituto Cervantes*
Ministerio de Justicia	– *Centro de Estudios Jurídicos de la Administración de Justicia* – *Mutualidad Judicial General*	
Ministerio de Defensa	– *Canal de Experiencias Hidrodinámicas de El Pardo* – *Fondo de Explotación de los Servicios de la Cría Caballar y Remonta* – *Gerencia de Infraestructura y Equipamientos de la Defensa* – *Instituto Nacional de Técnica Aeroespacial "Esteban Terradas"* – *Instituto Social de las Fuerzas Armadas* – *Instituto para la Vivienda de las Fuerzas Armadas* – *Servicio Militar de Construcciones*	
Ministerio de Economía	– *Instituto de Comercio Exterior* – *Instituto de Contabilidad y Auditoría de Cuentas* – *Instituto Nacional de Estadística* – *Instituto de Turismo de España* – *Comisionado para el Mercado de Tabacos* – *Comisión Liquidadora de Entidades Aseguradoras*	– *Consorcio de Compensación de Seguros* – *Instituto de Crédito Oficial* – *Comisión Nacional de la Energía*
Ministerio de Hacienda	– *Parque Móvil del Estado* – *Instituto de Estudios Fiscales* – *Organismo Nacional de Loterías y Apuestas del Estado*	– *Agencia Estatal de Administración Tributaria* – *Fábrica nacional de Moneda y Timbre* – *Sociedad Estatal de Participaciones Industriales*
Ministerio del Interior	– *Jefatura Central de Tráfico* – *Trabajo y Prestaciones Penitenciarias* – *Gerencia de Infraestructura de la Seguridad del Estado*	– *Agencia de Protección de Datos*
Ministerio de Fomento	– *Centro Español de Metrología* – *Centro de Estudios y Experimentación de Obras Públicas* (CEDEX) – *Centro Nacional de Información Geográfica*	– *Aeropuertos españoles y Navegación Aérea* – *Red Nacional de Ferrocarriles Españoles* – *Ferrocarriles Españoles de Vía Estrecha* – *Ente público Puertos del Estado* – *Autoridades Portuarias* – *Red Técnica Española de Televisión* – *Sociedad Estatal de Promoción y Equipamiento de Suelo* – *Sociedad de Salvamento y Seguridad Marítima*

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Ministries	Autonomous bodies	Public entities and other public bodies
Ministerio de Fomento		– Gestor de Infraestructuras Ferroviarias – Correos y Telégrafos
Ministerio de Ciencia y Tecnología	– Instituto Astrofísico de Canarias – Consejo Superior de Investigaciones Científicas – Centro de Investigaciones Energéticas, Medioambientales y Tecnológicas – Oficina Española de Patentes y Marcas – Instituto Español de Oceanografía – Instituto Tecnológico Geominero de España – Instituto Nacional de Investigación y Tecnología Agraria y Alimentaria	– Comisión del Mercado de las Telecomunicaciones – Instituto para la Diversificación y Ahorro de la Energía – Centro para el Desarrollo Tecnológico Industrial – Gerencia del Sector de la Construcción Naval – Centro para el Desarrollo Tecnológico e Industrial – Entidad Pública Empresarial RED.ES
Ministerio de Educación, Cultura y Deporte	– Museo Nacional de Prado – Museo Nacional Centro de Arte Reina Sofía – Biblioteca Nacional – Instituto Nacional de las Artes Escénicas y de la Música – Instituto de la Cinematografía y de las Artes Audiovisuales – Consejo Superior de Deportes – Gerencia de Infraestructuras y Equipamiento de Educación y Ciencia	
Ministerio de Presidencia	– Boletín Oficial del Estado – Centro de Estudios Políticos y Constitucionales – Centro de Investigaciones Sociológicas – Consejo de Administración del Patrimonio Nacional	– Ente Público Radio Televisión Española
Ministerio de Trabajo y Asuntos Sociales	– Fondo de Garantía Salarial – Instituto Nacional de Empleo – Instituto de la Juventud – Consejo de la Juventud de España – Instituto de la Mujer – Instituto Nacional de Seguridad e Higiene en el Trabajo – Real Patronato sobre Discapacidad	– Instituto Nacional de la Seguridad Social – Instituto Social de la Marina – Instituto de Migraciones y Servicios Sociales – Tesorería General de la Seguridad Social – Gerencia Informática de la Seguridad Social
Ministerio de Agricultura, Pesca y Alimentación	– Fondo Español de Garantía Agraria – Fondo de Regulación y Organización del Mercado de los productos de la Pesca y Cultivos Marinos – Agencia para el Aceite de Oliva – Entidad Estatal de Seguros Agrarios	
Ministerio de Administraciones Públicas	– Instituto Nacional de Administración Pública – Mutualidad General de Funcionarios Civiles del Estado	
Ministerio de Sanidad y Consumo	– Instituto Nacional de Consumo – Instituto de Salud "Carlos III" – Agencia Española del Medicamento"	– Instituto Nacional de la Salud
Ministerio de Medio Ambiente	– 9 Confederaciones Hidrográficas – Parque de Maquinaria – Mancomunidad de los Canales de Taibilla – Parques Nacionales	

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Bibliography

Bermejo, J. L. (2000),
"Las fundaciones privadas de iniciativa pública y la "huida' del Derecho Administrativo". *El Derecho Administrativo en el umbral del siglo* XXI: *Homenaje al Profesor… Ramón Martín Mateo*. Valencia: Tirant Lo Blanch, 2000. T. I, p. 935-960.

Borrajo (1993),
"El Intento de Huir del Derecho Administrativo". *Revista Española de Derecho Administrativo*, No. 78 p. 233 and ff.

Colmenar, E. (2000),
"Plan de Inversiones en Puertos 2000-2003, Sector Estratégico". *Revista del Ministerio de Fomento y Medio Ambiente*, No. 484.

Consejo de Estado (1993),
"Memoria del año 1992".

European Commission (1998),
Single Market Scoreboard, No. 3, DG XV October, p. 4.

Gray, A. *et al* (1995),
"Integrating Budgeting Auditing and evaluation", *Transactions*.

Jiménez de Cisneros, F. J. (1996/1997),
"Organización instrumental pública en la Ley de Organización y Funcionamiento de la Administración Pública". *Documentación Administrativa*, No. 246-247, p. 393-416.

Ley 37/1988 de Presupuestos General del Estado para 1989 y Orden Ministerial de 11 de abril de 1989.

Ley 21/1993, de Presupuestos Generales del Estado.

Ley 14/1997, de abril, n^0 6/97 de Organización y funcionamiento de la Administración General del Estado (LOFAGE).

Martínez, J. M. (2000),
"Límites a la huida del Derecho Administrativo a través de entidades instrumentales". CUNAL: *Revista de Estudios Locales*, No. 37, p. 31-49.

Ministerio de Administraciones Públicas (2000), *Libro Blanco para la mejora de los Servicios Públicos*. Madrid p. 95.

Ministerio de Fomento (1998),
"Marco Estratégico del Sistema Portuario Español". *Puertos del Estado*, Boletín información mensual, No. 56, Septiembre.

Ministerio de Fomento (1998),
Modelo de Negocio. *Puertos del Estado*, Boletín información mensual, No. 57, Octubre.

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Ministerio de Fomento (1999),
"Los Transportes y Servicios Postales". *Informe Anual*, p. 110 a 125.

Ministerio de Fomento (1999),
Especial, Unión Europea: "Sistema Portuarios de la Unión Europea". *Puertos del Estado*, Boletín información mensual, No. 66, julio.

Ministerio de Fomento y Medio Ambiente (2000), *Sector Estratégico Revista del Marzo*, No. 484.

Ministerio de Fomento (2000),
"Los Transportes y Servicios Postales". *Informe Anual* 1999.

Ministerio de Hacienda, Libro de presentación del Presupuesto para el 2001.

Ministerio de Hacienda/Informe económico-financiero de los Presupuestos Generales del Estado del 2000.

Ministerio de Hacienda/Informe económico-financiero de los Presupuestos Generales del Estado de los años 1990, 1995 y 2000.

Ministerio de Hacienda/Libro de Presentación del Presupuesto para el 2001.

Navajas, M. (2000),
La nueva administración instrumental. Madrid: Colex.

OECD (1999),
Regulatory Reform, draft paper p.8 y p. 21.

Palma, J. L. (1997),
La Seguridad Jurídica ante la abundancia de normas. Madrid: Centro de Estudios Políticos y Constitucionales.

Palomar, A. (1997),
"La organización instrumental pública en el ámbito de la Ley de Organización y Funcionamiento de la Administración General del Estado". *Documentación Administrativa*, No. 246-247, p. 417-438.

Pérez, L. (2000),
"La contratación administrativa de los entes instrumentales: ¿huida del Derecho Administrativo o levantamiento del velo?" *El Consultor de los Ayuntamientos y de los Juzgados*, No. 19, p. 3137-3146.

S. E. Hacienda (1992),
Informe sobre la Gestión Económico Financiera del Gasto Publico en España, p. 66.

Serna, M. N. (1997),
"Organización instrumental privada en la Ley de Organización y Funcionamiento de la Administración Pública". *Documentación Administrativa*, No. 246-247, p. 495-510.

Sociedad Estatal para la Promoción y Equipamiento del Suelo (SEPES) (2000),
Informes Anuales 1991, 1995 *y* 2000.

Tribunal de Cuentas (2000),
Informe Anual sobre el Sector Publico Estatal en el año 1996.

Zambonino, M.(2000),
"¿Hacia nuevas fórmulas de descentralización territorial?: Entes instrumentales estatales gobernados por las Comunidades Autónomas para gestionar los puertos de interés general". *El Derecho Administrativo en el umbral del siglo* XXI: *Homenaje al Profesor… Ramón Martín Mateo.* Valencia: Tirant Lo Blanch, T. I, p. 489-525.

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Sweden*

by

Torbjörn Larsson*

Background

The Swedish public administration, and especially the central administration, is organised quite differently from other European governments, with the possible exception of Finland. While many democratic states have started recently to introduce agencies as a way of modernising their public administrations, Sweden has for almost 200 years built its state bureaucracy on semi-autonomous agencies. Only a small percentage of civil servants of the central administration are employed by ministries, the majority by agencies or boards.***

Another important special feature of Swedish administrative and political structure, is the almost total absence of "ministerial rule". A minister cannot make decisions on his own, almost all decisions have to be a collective Cabinet decision. Secondly, not even the Cabinet as a collective group may interfere with decisions made by agencies regarding the application of the law. Ministers trying to interfere with the application of law may even be removed from office. Every year the Standing Committee on Constitutional Affairs in Parliament has to examine cases where ministers have been accused of doing this.

The reasons for the unique organisation of Sweden's central administration are to be found in its history. Sweden is one of the few countries in Europe which has never been occupied by a foreign power, at least not since Gustav Vasa united the country in the 16th century. Nor has there been any civil war since that time. These facts have influenced the development of the government, by allowing slow

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*** An agency is, for purely historical reasons, sometimes named a board in Sweden. However, in this text, only the term of "agency" will be used.

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incremental changes which have kept the old institutions while adapting them to modern times.

The division of the central administration into ministries and agencies that exists today is the result of the 1809 Instrument of Government. At that time, Sweden had been approaching a system of ministerial rule as had many other countries in Europe in the 18th century. The Swedish experience of sovereign kings in the late 18th century influenced the authors of the new Constitution towards diminishing the influence of the monarch. Those who feared the development towards parliamentarism also realised the advantages of a freer position of the agencies in relation to government. Thus, the re-establishment of semi-autonomous agencies and boards, which had existed in the 16th and 17th centuries, was part of a broader power-sharing arrangement between Parliament and the King. The influence of both over the public administration was thus limited, though the Constitution of 1809 clearly stated that the civil service was expected to obey the monarch.

The administrative reform of the government offices (the collection of ministries, in Sweden called "departments") in 1840 presented an opportunity to arrange the agencies into ministries. But at this time, the organisationally independent agencies had existed for so long that there were strong vested interests in opposing such a reorganisation. The division thus prevailed. At other occasions, in the y and mid-20th century, suggestions were made either to merge the small ministries with their corresponding agencies and boards, or to abolish the ban on ministerial rule, but to no effect to this day.

The creation of the Swedish welfare state in the 1950s and 1960s increased the importance of agencies since the welfare state was to a large extent manifested by the activities of the expanding central government agencies. The government and the Parliament (R*iksdag*) not only made it the main task of the agencies to implement government decisions, agencies were also given the resources necessary to plan the future expansion of the welfare state. In this way, agencies kept a very strong position, and there were several examples of powerful agencies almost pushing ministries and ministers in front of them. In fact, Swedish agencies have in reality played an important role as policy-makers in many areas. It has not been unusual for the government to address different societal problems by setting up agencies and giving them a rather free hand in finding the needed policy and solution. Agencies also held a strong hand over how regional and local governments implemented the laws and decisions taken by the Parliament and the government.

In the 1980s things changed drastically. The very idea of strong central agencies to uphold the welfare state was questioned. Instead, the importance of far-reaching decentralisation and deregulation of the state's activities was discussed,

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and concepts such as market forces and competition became more important in the organisation of public activities. This resulted in the merger of several agencies, in the scaling down or closing of others, and in splitting agencies with more than one role into two or three agencies. Other agencies were transformed into more business-like entities (still with the formal standing of an agency) and these public enterprises (*affärsverk*), in turn, were transformed into state-owned companies (*e.g.* the State Power Board, the Swedish Telecom and the Sweden Post) and some of the state-owned companies were privatised (*e.g.* in the pharmaceutical industry). The agencies that remained often saw their roles redefined. The agency was no longer cast as supervisor and inspector but more often as evaluator, adviser and consultant to the subordinate agencies, regional and local governments. Interestingly enough, the party political consensus was fairly broad about these changes.

The halt of the growth and the partial downsizing of the welfare state in the 1980s and 1990s changed the power of the central agencies. In an ambition to save the welfare state, even if some parts were privatised, other functions were decentralised to regional and local governments. Consequently, a large part of the controlling functions of the central bureaucracy was cut off and activities were decentralised to lower levels of the bureaucracy. However, today some of those agencies that vanished during that period have made a comeback.

Public administration and agencies in Sweden

In organisational terms the state administration is divided into three main levels – central, regional and local. The central level is divided into very small ministries ("departments") and the central administrative agencies. With the exception of the Ministry of Foreign Affairs, that includes embassies around the world, each ministry employs at most only a few hundred persons. The number of ministries may vary with the government of the day but for the past two or three decades the number has fluctuated between 12 and 14; currently there are only 10. The ministries and the Prime Minister's Office are referred to as the government offices (R*egeringskansliet*). The main functions of the government offices *vis-à-vis* the government are preparation, planning and co-ordination.

The number of employees in government offices has grown. There are presently 3 800 employees not including the embassies of the Ministry of Foreign Affairs. In comparison, a little more than 200 000 civil servants are employed by agencies. The size of agencies may range from very large units with thousands of employees to small agencies with very specific tasks carried out part-time by just one or two civil servants. There are about 600 agencies in Sweden today, down from roughly twice this number in 1990.

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The regional level encompasses both separate regional agencies (county administrations) and regional branches of central agencies. Many agencies also have a local organisation, with offices around the country, *e.g.* labour market exchange offices and Social Security offices.

Another feature making Sweden unique is the delocalisation of agencies from Stockholm. Many of the central agencies have been delocalised from Stockholm, and are now scattered all over the country. Already in the late 1960s, the delocalisation of agencies became part of the regional and employment policies of the government. The increasing concentration of employment opportunities in the big cities was dampened by the delocalisation of existing agencies and the establishment of new ones outside Stockholm. Today, therefore, there are agencies in towns as distant as Kiruna in the far north and Karlskrona in the south.

Thus, one explanation for the small size of Swedish ministries is that much of the implementation of government policies is carried out by semi-independent administrative agencies and their regional and local organisations. Another explanation is that the investigations and preparatory work which precede a government bill are basically conducted by the government's commissions of inquiry. Approximately 250-300 commissions are active every year, employing some 600 people. Most commissions finish their work in one to two years' time though some may run for several years.

Commissions of inquiries and the decision-making process

Government bills are usually preceded by some form of inquiry. This may be done in a number of ways. For example, the government may choose a ministry to make an inquiry, which will be carried out in the form of a work-group, sometimes with the involvement of private consultants. The government may also request an agency to conduct the inquiry, since agencies have both the expertise and the resources. But on large and comprehensive issues, the government usually appoints an *ad hoc* commission of inquiry.

These commissions have the legal standing of an agency but have less control over their resources. Being an agency means, among other things that all material produced by the commission is public. Commissions may be seen as a functional extension of the government offices. Much of the preparation that in other countries is carried out by the ministries is in Sweden carried out by these organisationally independent *ad hoc* commissions. The government uses several instruments to control these *ad hoc* commissions. Initially, almost all are given written instructions. These may be more or less open, but usually offer a fairly exact and definite framework within which the commissions may seek solutions. However, the report to the government is the sole responsibility of the commission and may not be dictated by the government.

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The government also supplies the *ad hoc* commissions with the necessary financial resources, though all expenditure has to be cleared with the parent ministry.

The government also determines the organisation of the commissions and their composition which may vary. More than half of the government's *ad hoc* commissions consist of only one person, aided by a number of experts and advisers. In these cases, the chairman alone is responsible for the report of the commission, even if he or she has many experts and advisers at his or her disposal.

Multi-member commissions comprise several people representing several political parties and organisations, and have collective responsibility for the inquiry and its results. Any member or adviser of a commission of inquiry who does not agree with the conclusions of the majority can submit a written reservation – an expert needs the permission of the commission to submit a reservation. In the case of important or politically controversial issues, multi-member commissions may be composed of representatives of all political parties in Parliament. To a certain extent, the number of seats offered to the political parties in the *ad hoc* commissions depends on the size of the party in Parliament.

The government may also influence and control *ad hoc* commissions in a more informal way. In almost two-thirds of the *ad hoc* commissions there is a civil servant, who may act as the eyes and ears of the ministry. He or she usually has a position as expert or secretary.

The referral process that follows when an *ad hoc* commission has submitted its report to the government is often very extensive. All agencies and organisations that the government thinks are affected by or interested in the matter is given a copy of the report and encouraged to submit a written opinion on the report usually within three months. Any Swedish citizen may submit an opinion on a commission report. These opinions may range from a few lines to hundreds of pages. Obviously, those by the agencies and organisations that have been asked to state their opinion are most likely to influence the position of the government.

This decision-making process offers opportunities for various interests to influence the decision, but the government nevertheless has the upper hand. First of all, the government retains a great deal of influence on *ad hoc* commissions of inquiry. For example, the same ministerial civil servant who wrote the instructions to the commission, on behalf of the government, may also act as an expert or secretary in that *ad hoc* commission, and then compile the opinions and write the government bill to Parliament. Furthermore, it is not unusual for the chairman of the *ad hoc* commission to keep in touch with the ministry on a fairly regular basis.

Finally, it should also be mentioned that some of the so-called *ad hoc* commissions of inquiries have a more permanent character and have assignments of implementing rather than preparing policy. There are instances of commissions

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which have existed for more than 20 years. They may then take on the character of regular agencies.

Legal and organisational framework

Restrictions to the power of the government to govern agencies

The absence of formal ministerial rule in Sweden regulated in the Instrument of Government is not the only thing that restricts the power of a minister or the government to govern the agencies. The same law implies that neither the government, nor the R*iksdag*, nor any public agency, nor the decision-making body of a regional or local government may determine how an agency shall make its decisions in a particular case concerning the exercise of public authority against a private subject (citizen or firm) or against a regional or a local government, or concerning the application of law.

Consequently, even as a collective body, the Swedish Government cannot interfere with the application by an agency of the laws adopted by the Parliament. This means, on the other hand, that ministers are not responsible for the application of laws by agencies. A large part of the activities of the agencies does not, however, concern the application of laws or the exercise of public authority. Therefore, when an agency is engaged in other types of activity, it may be supervised in much more detail by the government.

The Instrument of Government also states that "public power shall be exercised under the law" and "courts, public agencies and other performing functions within the public administration shall observe in their work the equality of all persons before the law and shall maintain objectivity and impartiality". Furthermore, the Constitution states that when making "appointments to posts within the state administration attention shall be directed to objective factors such as merit and competence". Finally, in preparing its decisions, the government is required to obtain the necessary information and opinion from the agencies concerned, and associations and private individuals shall be given an opportunity to express their views where necessary.

Framework documents

According to the Instruments of Government it is the government that controls the agencies. Consequently, most of the regulation concerning agencies is in the form of government decrees. Some, however, are in the form of parliamentary legislation.

A number of decrees and laws guide the work of agencies, *e.g.* V*erksförordningen*, which stipulates in more detail how agencies should be organised and managed. In this decree, agencies are given the right to set up their own organisation. The

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decree obliges the head of the agency to supply the necessary information for the government in order for it to make decisions on the scope and range of the future policy. The decree also obliges the agency to co-ordinate its activities with other agencies and policies, to continuously evaluate its own activities, to give good service to the public and to keep good accounting.

Separate directives are also given to each agency, setting out whether it shall have a board and how that board shall be organised, what the duties of the agency are, the duties of the head of the agency and its board, the relationship of the agency to the government when the agency is acting on behalf of the government in European Union negotiations and policy-making, how and when the employees should be involved in the running of the agency. There may also be rules regulating the internal decision-making procedures, employment and appeals. Another directive regulates the annual accounts the agency has to give to the government. This document is perhaps, not only from an economic point of view but also from a performance point of view, the most important means the government has of controlling agencies.

Today, agencies are increasingly financed by fees which are regulated by a law. It is also possible for agencies to take up loans in the Swedish Debt Office or to save money and receive interest.

In addition, there are laws governing the conditions of employment and recruitment, that are today very similar to those governing private businesses.

The laws concerning openness and the disclosure of information, as well as the role of agencies in relation with citizens (*Förvaltningslagen*) are very important. These laws demand that citizen's requests for information must be met and that agencies are obliged to serve citizens fairly and equally and with respect for integrity.

Types of agencies

The form in which public activities shall to be carried out is decided by Parliament, but on the initiative of the government. At least three main types can be distinguished: agencies, public enterprises and state-owned companies. The agencies are the most tightly controlled and regulated by the government. State-owned companies enjoy a very free position and are meant to function more or less as any private company, at least so long as they make a profit. Public enterprises occupy a middle position. They are agencies, but that part of their activities which is exposed to competition is regarded in the same way as in a private company. This means that some information may be kept secret for business reasons and that they enjoy possibilities to borrow money more freely. Public activities may also be organised as *ad hoc* commissions (as mentioned above) if they employ only a small number of people. As such, they have the standing of an agency but may be more strictly controlled by the government. Occasionally public activities

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may also be organised in the form of foundations. This is done when it is considered desirable to limit government influence even more than in the case of agencies. In some cases we find small agencies that are part of a bigger agency. The small agency has its own head and sometimes a board, and is in this way autonomous, though relying on administrative support from the parent agency.

In matters regarding the operation of the machinery of government a few agencies are regarded as more closely linked to the government than others. They include the Swedish National Financial Management Agency, the Swedish National Audit Office, the National Council for Quality and Development and the Swedish Agency for Public Management. The agency responsible for collective bargaining within the state administration, the Swedish Agency for Government Employers, is, on the other hand, an agent for and controlled by all other agencies and not by the government.

Governance structures

The absence of ministerial rule in Sweden has had consequences for the organisation of the central government administration. This administration consists of the government and its offices, and the agencies. These agencies are responsible to the government – or more precisely, to the Cabinet – as a collective body but are each placed under a separate ministry. The government offices are very small and divided into different ministries ("departments"), but nevertheless functions as an entity and as a staff organisation to the government, designed for the preparation of bills and directives, etc. and for planning and co-ordination.

Governing boards

There are three main types of governance arrangements in Swedish agencies: one-man rule and two different board principles. In the case of one-man rule, the head of an agency is solely responsible for all decisions. An advisory board is often appointed to provide advice and insight on the agency's performance.

The first board principle is the most commonly used. In this case boards have what is called "limited responsibility", and the extent of their responsibility is laid down in the general decree stipulating how agencies should be organised and managed. These boards are the most common, they are usually chaired by the director-general and members have three-year contracts.

The other board principle gives the board a "full responsibility". In the special decree governing the agency it is said that such an agency "is managed by a board" rather than "managed by the agency head", as in other agencies. Consequently, boards with "full responsibility" may interfere with any of the decisions of the agency, whereas this is not possible for boards with "limited responsibility". They are limited to decisions on budget requests, annual reports and audit

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reports and play an advisory role on other issues. Boards with "full responsibility" do not have the director-general as the chairperson, their members have a one-year mandate, they are usually smaller in size and include more representatives from the private sector. In practice, the distinction between the two types of board is not so clear, a mixture being rather common. Irrespective of whether an agency is governed by a board or by one-man rule, in most cases decisions are made fairly far down in the agency's hierarchy. Only the most important and strategic decisions end up on the table of the agency head or the board. Despite the term "full responsibility" it is still the government that appoints the agency head.

If the board principle is used, the most important decisions are made by a board. Members of the board include members of other agencies, political parties represented in Parliament, and sometimes representatives of interest organisations or persons who have been appointed due to their individual competence on certain issues rather than representing any particular organisation.

The problem of co-ordinating the activities of the different agencies, and the risk that the they will adopt too narrow a perspective on the societal problems they were facing was addressed by the government in a special way in the 1960s and 1970s. The government tried in the first place to give the agencies a wider field of competence. Second, in order for agencies to improve their ties with their main clients, to better co-ordinate their activities with those of other agencies and to increase public control over them, the government included on the boards representatives from political parties, organisations and other agencies. Boards composed in this way were called laymen boards (*lekmannastyrelser*). The introduction of laymen boards was seen as the solution to all these needs. A laymen board was created for the first time in the early 20th century (in the State Power Board). The phenomenon remained rare for a long time, but by the 1970s, almost 90% of agencies had laymen boards.

During the 1980s in particular, the use of laymen boards was criticised. The criticism concerned first of all the fact that representatives of several interest organisations had seats on the boards, and often, it was thought, for obscure reasons. In this way, the interest organisations became the extended arm of the government, a form of corporativism, according to critics. There were also some questions on the appropriateness of appointing members of Parliament to agency boards. On the one hand, this was believed to create an ambiguous situation as to the proper tasks of the elected representatives in a political system, and on the other hand, there was a risk that members of Parliament would be biased in favour of "their" agencies. For example, it was considered inappropriate for members of Parliament first to take part in the decision of an agency board on the size of appropriations to ask for in the next budget, and then to be involved in the decision on the same appropriations in Parliament. Sometimes, members of Parliament were seen as presenting the agencies with an opportunity to exert influence

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rather than as persons appointed to scrutinise the activities of the agencies, or to supply the agencies with a broader perspective on their activities. This criticism was taken seriously by the government, and today the number of laymen boards has decreased considerably, those remaining often having their power to make decisions restricted. Furthermore, there are fewer representatives of interest organisations today than there were previously.

Whether or not an agency should have a board and of whom it should be comprised is decided by the government, sometimes acting on suggestions made by the director-general. The economic compensation given to board members is public knowledge, just like the salaries of the director-general and the other employees. The salary of a civil servant is always regarded as an official document and may, therefore, be revealed. Occasionally a director-general may have a higher salary than that of most ministers or even that of the Prime Minister.

T*he appointment of director-generals*

The government may also control the agencies through its appointments to the highest positions, *i.e.* director-general, deputy director-general, county governor and ambassador. Formally, appointments to these positions shall be made according to criteria such as tenure and skills. These posts are fairly often filled by people who have held political positions such as ministers, under-secretaries or members of Parliament. Sometimes these positions are also filled by career civil servants with no political past. Today it is important to appoint men and women in equal numbers since appointments are regarded as an important tool in achieving gender equality.

An assignment to a leading position in an agency is usually limited to six years, but it may be extended, commonly for a three-year period. The ambition of the government is to preserve flexibility and promote mobility of agency heads. For an agency to have the same head for 12 years is nowadays extremely rare, but it has occurred. In principle a director-general may be transferred during the assignment period if the government so decides (recently, in one case, objections have been raised concerning the legal rights of a director-general to remain in office during the assignment period), but if the director-general is not offered another agency, he or she may keep his or her salary for the rest of the period of assignment. The periods of appointment are not co-ordinated with those of the government. This means that many of the higher civil servants at the agencies with whom the government has to co-operate, may have been appointed by the previous government.

The appointment of director-generals has in recent years become somewhat controversial and the political opposition has accused the government of favouring members from its own party when appointing new heads of agencies. In its annual assessment of the government's use of its agencies, the Standing Committee on

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Constitutional Affairs regularly checks how positions as heads of agencies have been distributed.

The recruitment and position of civil servants

The employment of civil servants is regulated both by law and by collective agreements. There is an ambition to reduce the differences between regulations in the public and private sectors, and to avoid, as far as possible, introducing special rules for the public sector by legislation. The aim is to increase flexibility and variation in the public sector by making individual solutions possible in different sectors and agencies. The staffing policy is thus seen as an important instrument by Parliament and the government towards achieving an efficient administration. But this ambition of equity between private and public enterprise has proved difficult to implement.

Very few posts in the Swedish central administration are filled according to political criteria and those that exist are in the ministries. Instead, employees are appointed, and their possibilities of making a career are based primarily on skills and tenure according to the Constitution. However, the Constitution lacks substance in this respect, since the interpretation of Parliament in 1985 that tenure should be considered only if the competing candidates were equal with respect to skills. Skills are evaluated on the basis of different variables, including education and leadership experience. Tenure, on the other hand, is measured solely by the number of years of employment.

The most recent Law on Public Employment, adopted in 1994, states that each agency may decide how to recruit its staff. The greater freedom of the agencies to spend their own administrative appropriations has also resulted in greater freedom for them to set the salary levels of their own civil servants.

Resources and budget process

Today the government's ambition is to have a budget process which is more top-down than bottom-up, and which includes all relevant economic information about incomes and expenditures as well as information on the state of affairs of the Swedish economy and predictions about the future. The budget law which regulates the process obliges Parliament to make a decision in late Spring on the overall budget ceiling that is compatible with the Swedish economic outlook. The budget is divided into 27 expenditure areas, each with its own ceiling. The ceiling for the budget as a whole, together with ceilings for each expenditure area for the next three years, are decided annually. In this way the budget is cemented in different ways. First of all the government is forced by the budget law to take action should it not be able to stay within the limits of the overall budget ceiling decided by Parliament. Furthermore, if any of the standing committees in Parliament

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cannot stay within the limits of their respective expenditure area, the Standing Committee on Financial Affairs must be consulted. The ambition with these "locking and blocking" techniques is to make it easier for a minority government to have its budget accepted by Parliament without changes that might cause a budget deficit.

At the other end, the annual budget process starts at the agencies when they receive their instructions from the government on how their budget requests should be calculated and presented. In some cases, this means that the agencies receive or have earlier received instructions specifically designed for that agency. Such special instructions present the conditions for the activities laid down by Parliament and government, and the kind of information that the government needs in order to decide upon a more general and long-term plan for the agency. Consequently, there are two types of budget requests: one simple and annual; and one advanced, long-term budget request. In the case of the latter, the activities of an agency are verified comprehensively and in great detail, both with respect to an external and an internal perspective. With an internal perspective, it is primarily the activities of the agency itself that are being examined, *i.e.* the quantity and cost of the agency's achievements and to what extent these achievements may be related to its objectives. With an external perspective, the effects of the activities of the agency on society are examined. The decision taken by Parliament is, however, restricted to one year of appropriations, albeit with a longer view. In practice and despite initial ambitions, the long-term budget request has become very rare. Instead almost all agencies submit an annual budget request.

The initial ambition to give agencies a long-term budget (three years was envisioned) has given way to another technique. Since 1993 an agency may to some extent postpone the use of appropriations, should there be any money left at the end of the budgetary year. An agency may even, up to a specified amount, borrow from its future forthcoming appropriations, should the need arise. In this way agencies are granted a means to cope with the unforeseen and to plan ahead.

The budget requests of the agencies are first examined by the respective specialised ministry under which the agency is placed.

Following a new budget law introduced in 1997, the government starts its budget examination from an overall assessment of how much public spending the national economy can afford. From this estimate, ceilings for the 27 different expenditure areas are created. Expenditure areas correspond to the standing committees of Parliament, some committees having more than one expenditure area. With some exceptions, expenditure areas also correspond to the division into ministries. For the last several years expenditure areas have been further

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subdivided into almost 50 policy areas. Within the expenditure areas and limits, the respective minister and ministry may then freely, and in more detail, in preparing the budget bill to Parliament, decide on the distribution of economic resources among agencies and among fields of activity.

This procedure is intended to leave much of the detailed work and the priorities within the expenditure areas to the respective specialised ministry. However, there are still issues to be discussed between the specialised ministry and the Ministry of Finance. It may prove difficult to stay within the ceilings previously set for the expenditure areas or it may be considered desirable to reallocate resources between them, still maintaining the overall expenditure ceiling. This is possible, to some extent, but requires the involvement of the Ministry of Finance. The soundness of the calculations of the specialised ministries is also scrutinised by the Ministry of Finance. There are also issues cutting across specialised ministries and even expenditure areas that have to be discussed across ministries. These issues are discussed first at a low-level of the civil service, then, if unresolved, on an increasingly higher level until they reach the ministers and finally the government as a collective.

When the government has reached consensus, the budget is presented to Parliament in the Budget Bill. The budget examination in Parliament starts with a general political debate on the economic policy of the government for the coming year, and the economic limits for different economic areas as well as for the budget as a whole are set by Parliament. It is very difficult for Parliament to change the budget proposal of the government, since it has to agree on reallocations that both fit within the expenditure ceiling that Parliament itself has decided one or even two years before, and meet the targets previously decided, also by Parliament, on budget balance. The Standing Committee on Finance is particularly important due to its responsibility for co-ordinating the specialised committees and adjusting the ceilings of the expenditure areas proposed by the government before the budget work commences in the specialised committees. The budget is then divided up between the specialised committees of Parliament for a more detailed examination, since each specialised committee is responsible for its own expenditure area(s). The Standing Committee on Finance supervises the budgetary process with a view to keeping the budget within limits. The Standing Committee on Finance does not have the same influence over or the same co-ordinating responsibility for the budget as does the Ministry of Finance within the government offices, although it may be called upon if a committee does not manage to keep within its given expenditure ceilings.

When the budget examination is concluded, and Parliament has made the bill into an act, wherein each agency is given specified appropriations, the government issues instructions that in more detail direct the agencies on how to use the appropriations. This is done by way of an official document, a letter of instruction

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(*regleringsbrev*) which places the appropriation at the disposal of the agency concerned. The letter of instruction contains both a financial part and a part on activities, with goals and targets. The general tendency today is to offer the agencies a fairly free hand in using their financial means in the form of a frame appropriation.

Programme budgeting

The Swedish budget process has changed over the years. In the 1960s and 70s the programme budgeting philosophy imported from the United States inspired new developments in Sweden. The introduction of programme budgeting was perhaps less drastic and more gradual in Sweden than in the United States, and the technique was never fully used in the public administration. The government offices, for example, never adopted it. Programme budgeting was succeeded by the zero-base budget and sunset budgeting, which have had only a minor influence on the Swedish budgetary process.

From the outset, the budget process presupposed that the agencies in their budget requests to the government could base their spending estimates upon marginal deviations from the level of spending the previous year. In the 1970s, efforts inspired by programme budgeting were made to make agencies present alternative spending programmes, with varying levels. This practice did not function well and in the more difficult years of the mid-1970s, agencies were simply requested not to present higher spending estimates than the previous year and, finally, were asked to present estimates with specified reductions of first 1%, then 2% and then 11% distributed over three years. The ordinary budget process was complemented with an extra budget process, with special cut-back bills. The climax of these procedures was reached in the early 1990s when series of cut-back bills were presented in order to bring the government back on to a sound financial platform. These measures were undertaken due to the difficulty of making the ordinary budget process work in the opposite direction, *i.e.* towards budget cuts, and with enough speed. In this way, the annual budget process lost some of its importance as an instrument for designing government policies. On the other hand, the Ministry of Finance gained an even stronger control over the political agenda by enforcing a macro-economic perspective on the day-to-day operations of the government.

This proved a very uncomfortable situation for the government. Out of these experiences grew the need for a more stable and long-term budget policy. Already in 1985 the government started experimenting with what at that time was called "three-year budgets", global appropriations, possibilities for agencies to save and borrow, deregulating acquisition of offices, computers and other resources, devolving hiring and firing of staff and requiring agencies to deliver yearly reports on economy, operations and goal-achievements. To a consider-

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able extent, this was the return of programme budgeting. It was enacted in full in 1992. The new budget law with a much more tightly controlled budget process, described above, was launched in 1995 and went into operation in 1997. It combines financial discipline with stable, long-term resource commitments to the expenditure areas. As a consequence, the former, prevalent practice of separate bills requesting money has been abolished. All requests for money are to be channelled through the budget process. Annual appropriations are only marginally complemented in the spring and autumn in connection with the ordinary budget bills. As previously mentioned, the ambition to give the agencies a three-year planning period failed but gave way to a new form of appropriation that permits a flexible use of the means over time. This reform had a tremendous incentive on efficiency. In only a few years, the agencies built up savings equivalent to 20% of administrative budgets. In this way a bottom-up and a top-down perspective were combined.

A weak point in the budget process is the capacity of analysis in the Government Offices. It lays a heavy burden on the ministries to analyse the follow-up information and the evaluation reports. The idea to have in-depth reviews of agencies taking place every third year failed, partly because of lack of analytical and policy-making skills. Another reason was the steep economic downturn in the early 1990s, that took everyone by surprise. Even now, however, under much more stable economic conditions there has not been a revival of recurrent reviews. Instead they are done *ad hoc*.

This means that the possibilities of renewing policies on suggestions from the agencies has been cut and the burden of renewal has been placed on the ministries. The ministries, however, seem to have a difficult time measuring up to that role. What remains is *ad hoc* reviews undertaken by special commissions and investigations, various staff agencies and by the auditors.

The openness of the budget process

All budget requests, just like any communication in writing, become public documents. In Sweden the principle of public access to official records means that a large part of the communication in the budget work between the agencies and government is, in fact, public. This openness creates some particular problems of control in the budget process that are unique to this country. Since the budget requests of the agencies on their future activities constitute public documents, the agencies could use the media and public opinion to put pressure behind their demands. However, though the general public in Sweden, through the procedure of openness gets a fairly good knowledge of the budget requests, the simplified budget request procedure that was introduced in 1993, restricts agencies' arguing for their budgets – they are just asked to estimate their cost one year ahead.

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Policy coherence, oversight and accountability mechanisms

Policy coherence

A central public administration which to a large extent consists of semi-autonomous agencies need to be co-ordinated and carefully planned, a heavy burden mainly carried by the government. This is why a vast number of mechanisms to facilitate the co-ordination and the planning has been established inside the government and the government offices.

Despite the fact that nothing is mentioned in the Constitution about how to prepare issues in the government (except that decisions should be made at Cabinet meetings), negotiations within the government are conducted according to certain traditional observances. Formal Cabinet meetings are usually held at least once a week, with the exception of the summer months. These Cabinet meetings are strictly formalised, and constitute a simple registration of decisions which have already been made. The government normally makes several hundred decisions in little more than 30 minutes.

The real negotiations within the government take place during the so-called informal sessions of the Cabinet (*allmän beredning*). The summons to these informal sessions are issued by the Prime Minister's Office, and usually follow directly upon a Cabinet meeting. During these informal sessions a minister will present to his colleagues the issue at hand, often assisted by civil servants from the relevant ministry. When the reports have been presented, the civil servants leave the room and wait outside while the Cabinet discusses the issue. Votes are extremely rare at such meetings, and the normal procedure is that the Prime Minister summarises the debate after general discussion and establishes the government policy. It is difficult to estimate the number of matters brought up during informal sessions of the Cabinet but it probably amounts to somewhere between 1% and 2% of the total number of annual decisions. It should be noted, however, that most government decisions are of limited importance; collective negotiations therefore often seem quite unnecessary. A couple of times a year, the government assembles for longer meetings which can last for one or two days.

The existence of other forms of collective negotiations is the reason for the small number of questions presented during the informal sessions of the Cabinet. Most ministers usually lunch together every working day (*lunchberedning*), during which matters of common interest – appointments, for example – are discussed.

The method of joint preparation (*gemensam beredning*) denotes negotiations where two or more ministries participate. This type of bi-lateral negotiation between ministers and ministries is obligatory when more than one ministry is involved, and usually includes the Ministry of Finance. This is because of an internal government regulation that joint preparation with the Ministry of Finance

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should always be held on issues which involve or might involve expenditure or concern organisational changes.

Furthermore, it is the common practice of the government and its offices that all government bills, answers to interpellations and questions raised in Parliament, written communications to Parliament and instructions to government commissions should be communicated (*delning*). This means that draft decisions must be circulated to all ministries before they are addressed at Cabinet meetings. If a civil servant or minister who receives a matter which is being circulated in this way objects to its contents, he or she should write comments to this effect in the margin of the proof and sign it. All such objections are sorted out before the documents are made public.

There are specific bodies in the government and Government Offices with special responsibility for co-ordinating government policies. One of these is the Prime Minister's Office. The organisation of this office may vary a great deal according to who is Prime Minister at the time, but it always contains a small group of politically recruited persons who keep themselves informed about what is going on within the other ministries. In a coalition government, this co-ordination group of the Prime Minister is also responsible for co-ordination *vis-à-vis* the other coalition parties. In a coalition government, each party (except the party of the Prime Minister) has a small office of its own, the task of which is, *inter alia*, to co-ordinate itself with the offices of the other parties and to keep an eye on the ministries run by other parties. In an organisational context, these co-ordination units (*samordningskanslier*) may be incorporated into the Prime Minister's Office, but they report to the respective party and its leader. Much of the day-to-day co-ordination in a coalition government is thus handled by the political advisers in this co-ordination organisation.

The Minister and the Ministry of Finance are also assigned a particular task in the co-ordination of government policies. Naturally, this co-ordination mainly concerns economic policy, but since most politically important issues concern economics in one way or another, the co-ordinating effort of the Ministry of Finance can be seen almost everywhere. There is a special department within the Ministry of Finance – the Budget Bureau – of about 50 civil servants, whose task it is to see what other ministries are engaged in, and above all to take notice of decisions that might result in further expenditure. The Ministry of Finance is also responsible for carrying out economic analyses of government expenditure and income both in a short- and long-term perspective. Civil servants from the Bureau of the Budget may participate as experts in commissions of inquiries if the commission is expected to come up with proposals that have severe economic consequences for the budget. Occasionally they may also be members of a board of an agency. A civil servant from the ministry under which a commission of inquiry is placed frequently participates in the work, either as an expert or as a secretary, as has been

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previously mentioned. In rare cases a civil servant from the parent ministry may be a member of a board of an agency.

In the regulations governing the work of the agencies, the government quite often includes the requirement that they co-ordinate their activities in certain areas with those of other agencies. And, as has been mentioned earlier, the statutes and regulations guiding the work of all agencies include a general requirement for the agencies to co-ordinate their work with other agencies on their own initiative.

Another means of co-ordination are the proposals for major reform of government policy presented either by commissions of inquiry or other government bodies, routinely sent out to all concerned agencies for written comments – the so called referral process (see above).

Reporting mechanisms

Instead of detailed line items and other regulations for the use of the financial means, the agencies are required to report back annually, on finances, activities and results. The report must include: a statement of accounts; a profit and loss account and balance sheet; an appropriation account and a financial analysis; and a performance report. Agencies are also required to present a simplified version of the annual report six-monthly, and provide monthly prognoses for their use of resources for the year.

Through supervision, evaluation and analysis of the result, the ambition is to determine whether or not the activities of the agency are in order. In the annual report, each agency must show that it has developed methods to measure the efficiency of the organisation in economic and other terms. The government's instructions on how these annual reports should be presented are in order to make possible comparisons, auditing and overall judgement of the reports of different agencies. While annual reports were previously seen mainly as follow-up documents, their importance has increased considerably in recent years and they have become almost the most important general measure by which the government controls the agencies. The annual reports are examined first by the National Audit Office which then presents a report to the government.

Follow-up and evaluation have become the major techniques of controlling the agencies in Sweden. The performance management system may be described in the following way. Parliament sets fairly general and abstract goals for policy areas, and often more specific goals for programmes within a policy area. These goals more often than not indicate a direction, a mission or an ultimate social purpose rather than specified targets to be met within a specified time. The government, in its letters of instructions to the agencies, pass on these goals and

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sometimes, but not always, make them more specific. On rare occasions agencies are given operational targets.

During the last couple of years a lot of effort has gone into making goals more specific and providing goals for different layers of a programme structure that are logically connected. But still the main emphasis is on following up and evaluation. This means that whatever the goals, agencies are required to deliver a substantial amount of statistics and indicators that are related to these goals. It also means that evaluations are common and abound over the whole field of policies, programmes and agencies.

To a large extent the follow-up and evaluation is still done separately for activities, outputs and effects on the one hand, and for financing and costs on the other hand. In a recently launched proposal (the "VESTA-project") there is an effort to connect costs and resource consumption with goals, outputs and effects.

On the basis of this information, cuts and changes in programmes are decided, discussions are held with the management of agencies, and letters of instructions are formulated demanding changing priorities. It is largely an analytical way of dealing with performance information.

E*valuation and audits*

The main function of a small number of bodies is to evaluate the work carried out by agencies and boards in terms of efficiency and results, on a government mandate. The most important evaluating bodies are: the National Audit Office (RRV), the Swedish National Financial Management Agency (ESV), the Expert Group of Public Finance (ESO), the Swedish Agency for Public Management (S*tatskontoret*) and the Parliamentary Auditors (RR). The hierarchical position of these bodies is not, in fact, superior to that of the agencies they evaluate, since they are formally speaking agencies themselves. They report directly to either the government or the Parliament. Almost all evaluations and follow-up reports, whether carried out on the government's or Parliament's mandate, are made public once the job is finished and consequently can be accessed without restrictions.

The work carried out by the auditing agencies consists of extensive evaluations. Although the auditing has been carried out by a body either under the government – in the case of the RRV – or under the Parliament – in the case of the RR – they are free to make their own decisions on what areas or which agency to scrutinise. Assignments which have been commissioned either by the government or Parliament are a special case of auditing since the formulation and content of the audit is guided by instructions from the principal. In addition to the performance auditing, which affects only a few agencies each year – (in the case of the RRV, about 20 self-initiated performance audits per year), these bodies also review all the annual reports submitted to the government by the agencies. RRV has an

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especially important function since it carries out a mandatory audit of the annual accounts of all central government agencies and public enterprises, and certain foundations and state-owned companies. An opinion is expressed on the management and administration of the agency, on how regulations have been followed and on the quality of the financial and economic situation *i.e.* the annual report. In this way RRV expresses an opinion on some 430 central government agencies and other organisations. Many of these have regional and local offices. The auditing work therefore covers about 2 000 organisational units per year. The agencies' annual reports also include, what could be called performance accounting, which, among other things, presents the goals, achievements, productivity and quality of the work of agencies. This information is also reviewed by RRV. In a yearly report, RRV summarises its observations on the state of accounting and reporting among the agencies.

The parliamentary auditors are responsible to the Parliament, but it is much smaller in size than the National Audit Office, that reports to the government. The auditors of the Parliament, however, are allowed to supervise the activities of the government and the government offices which the National Audit Office may not. Recently a decision has been taken to merge the two into one body under the control of Parliament.

Control by Parliament

The control of the agencies in Sweden on behalf of Parliament is predominately achieved through Parliament's control of the government. To perform this function, Parliament has all the traditional instruments of control, such as MPs' question hour, the right to interpellation, vote of no confidence, the appointment of the Prime Minister and the Cabinet, the scrutiny by standing committees of Parliament of governments bills, the annual examination by the Standing Committee on the Constitution and the annual budget. An interesting aspect of the Swedish administrative system is, of course, that during question hours or otherwise in a parliamentary debate, a minister is not obliged to answer questions on decisions taken by agencies in individual cases. In fact, should it happen, it could be regarded as a form of ministerial rule which would not be allowed by the Constitution.

A standing committee may in its scrutiny of the annual budget or for any other reason call on the head of an agency to appear at a hearing with or without representatives from the government. However, the agency in question usually co-ordinates itself with the ministry, under which it is placed, before appearing in front of a standing committee.

Another way for Parliament to control the government is through the annual examination by the Standing Committee on the Constitution of how the ministers perform their duties and the handling of government business. Although it com-

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prises representatives of different parties, this committee has to make an annual examination of a judicial nature as to whether or not the ministers, in their decision-making, have stayed within the limits of what the Constitution and other laws prescribe. However, this examination will not result in the dismissal of the government or a minister unless it is followed by an application for a vote of no confidence.

In 1990, a decision was taken by Parliament to try to improve its capacity for evaluation and follow-up investigations. An education programme was started, to improve the knowledge among MPs and civil servants in Parliament of how to work with evaluation procedures and different types of follow-up techniques. It also became possible for the standing committees to initiate evaluation and follow-up studies on their own or to ask for assistance from the Parliamentary Audit Office or Parliament's Special Unit for Information Collection and Research. A commission assigned by Parliament to review the efforts so far concluded that in year 2000 Parliament still had quite some distance to go before evaluation and follow-up studies would become important elements in the daily work of the parliament. Four parliamentary committees had so far, according to the report, set up special working groups in order to improve their evaluation and follow-up in different areas but the results of these have not yet been seen.

A study by the Swedish National Financial Management Agency (ESV) criticised Parliament and the government for being too passive and unwilling to use the rather extensive and qualified information that today is given to them in terms of financial and performance accounting.

Increasingly, during the last few years, the government has tried to focus its control of the agencies on results, *i.e.* how well they fulfil their goals in relation to the use of resources. The ambition has also been, as mentioned earlier, to link the information on performance together with that of the budget and other economic measures. However, when judging effectiveness and efficiency, it is not always easy, or even fair, to compare one agency with another, as they usually have unique assignments. Instead a growing interest can be noticed in benchmarking and other techniques in comparing the national agencies with similar administrative bodies from other countries.

O*penness*

Several laws and rules guide the work of the public administration of Sweden. To begin with, the four fundamental laws of the Swedish Constitution: the Act of Succession, the Instrument of Government (the Constitution proper), the Freedom of the Press Act and the Freedom of Speech Act. The basic rules of the Swedish Constitution are laid down in the Instrument of Government. In this fundamental law the relations between the government, Parliament, the administration and the courts are described, as well as the essential features of their organisation. The

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Freedom of the Press Act was introduced for the first time in 1766 to protect the written word, but today this law also encompasses photographic and visual recordings. There is a separate law for radio and television: the Freedom of Speech Act (1992).

Chapter 2, Article 1 of the Press Act stipulates a far-reaching access to official documents for the general public and the media: "In order to encourage the free interchange of opinion and the enlightenment of the public, every Swedish subject shall have a free access to official documents" (the so-called Principle of Publicity). What is to be regarded as "documents" is defined in Article 3 as "any representation in writing, any pictorial representation, and any record which can be read, listened to or otherwise comprehended only by means of technical aids". A document is "official" if it is in the keeping of a public agency, and if it can be deemed under the terms of Article 6 or 7 to have been received, prepared or drawn up by an agency.

The public's right to access official documents may be restricted only if they are classified. Classification of documents rests on a perceived threat to: *i*) the security of the Realm or its relations with a foreign state or an international organisation; *ii*) the central finance policy, monetary policy or foreign exchange policy of the Realm; *iii*) the inspection, control or other superior activities of a public authority; *iv*) the interest of preventing or prosecuting crime; *v*) the public economic interest; *vi*) the protection of the personal integrity or economic conditions of private subjects; *vii*) the preservation of animal or plant species.

An agency is required to keep a *register* of all documents, classified or not. The register is of great importance for the public and the media to be able to search for documents.

In Sweden, where every citizen has the Constitutional right to approach an agency and demand to see its documents. The individual does not even need to state his or her name or a reason for the request.

The right of access to official documents offers an important possibility for the public to gain insight into the activities of agencies. When a decision is made by an agency, all its materials becomes public. All materials of an *ad hoc* commission of inquiry as well as letters to and from civil servants or the Prime Minister and other ministers are public documents – even postcards and emails. The media employ journalists who regularly check the incoming mail of ministries and important agencies.

Civil servants are in a unique position also in the sense that the Constitution grants them the right to inform the media (and that means primarily newspapers, TV, researchers, etc.) on the activities of the agencies – and this includes even the content of *secret* (classified) acts: the so-called Freedom to Impart Information (*meddelarskyddet*). A limited set of classified information (highly secret) is exempt.

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Civil servants have no obligation to "inform the media", nor are agencies permitted to investigate who has done so. The degree of leakage to the press is probably limited. The tendency of civil servants is rather to develop a significant degree of loyalty to and identification with his or her own agency and tasks, which limits their ambition to criticise their own activities. Furthermore, the ties of the agencies with the media are often tailored in the form of professional information officers in all large agencies.

Seeking redress

The rather special type of organisation of the Swedish public administration where central, regional and local bodies are not responsible to each other in any simple hierarchical way, but often constitute different organisations, makes it possible to have a superior body appeal against decisions made by lower bodies. This way of organising appeals means that the government itself in some cases is the last body of appeal. However, today a citizen appeal will in most cases be handled by special administrative courts handling only administrative complaints. In some cases appeals can also be handled by criminal courts which also handle civil law cases.

For this reason, appeals are sorted according to whether they should be handled by administrative courts or by superior agencies. The basic principle is that appeals involving many discretionary judgements (*skönsmässig bedömning*) are handled by the agencies, while appeals involving judgements on the rule of law are handled by the administrative or criminal courts.

There are also special courts for certain types of issues and in some cases a special court may be organised as part of a large agency.

Sweden has been taken to the European Court of Human Rights for infringements on human rights. The court has approved some of these appeals. To use the government as the last body of appeal is one of the things that has been criticised by the court. As a result of this, in certain cases it is now possible to examine the legality of the government's decision in the Supreme Administrative Court which is the highest administrative court in the Swedish system.

The possibility of taking appeals all the way to the government is based on the ancient right of the Swedish people to appeal to the King. With the demise of royal authority, this role was handed to the government, which was soon overloaded by appeals. In the early 20th century, the Supreme Administrative Court was set up to take over some of the appeals to the government. In the 1970s, an entire system of administrative courts was established: county administrative courts at the local level and administrative courts of appeal at the regional level. The purpose was the same as with the Supreme Administrative Court, to relieve the agencies of some of their overload of appeals. There was also, however, a will

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to find forms of appeal that could better serve the rule of law than before, especially with a view to cases in the European Court of Human Rights. Today, appeals are mostly directed to a court, unless government appeal is stipulated.

The number of appeals has increased nevertheless, both to the administrative courts and to the agencies, and certain restrictions on the right to appeal have been introduced. Many groups of issues may only be appealed once, and an appeal to the Supreme Administrative Court requires a leave to appeal (the Supreme Court may reject to try an appeal). Permissions are granted only on issues that may become precedents. One explanation of the increasing pressure on the administrative courts is the ambition to abolish the special courts and hand over their tasks to the administrative or criminal courts.

A leave to appeal is not necessary in order to appeal to the government, but the number of appeals that can make their way to the government today is limited. They do not constitute a problem to most ministries. Certain appeals, concerning planning, construction, environmental and natural resource issues still create a heavy workload for some ministries, however.

Today, the agency that has made a decision also constitutes the first body of informal appeal of a matter, before it is turned over to the formal body of appeal.

T*he* O*mbudsman*

There are other bodies apart from the media and interest organisations which control agencies on behalf of the public. In fact, special organisations (formally also agencies) have been set up to take care of the interests of the individual citizen *vis-à-vis* agencies. The most important of these is the Parliamentary Ombudsman. The Ombudsman may initiate an examination of an agency on his own or following a request from citizens claiming to be victims of power abuse.

The Ombudsman answers to Parliament. The Office of the Parliamentary Ombudsman is one of the best known Swedish agencies, and is a constitutional innovation that has spread abroad. The Swedish Office of the Ombudsman is subject to few restrictions. All state and communal bodies, including bodies that in a formal sense are not agencies but nevertheless partly exercise public authority, may be scrutinised by the Ombudsman. Exceptions to this are rare, the most important being members of Parliament, the agencies of Parliament, the government, the ministers, the Office of the Chancellor of Justice and representatives of local government assemblies.

Considering the large number of notifications to the Parliamentary Ombudsman each year, remarkably few result in anything further than disciplinary caution.

The Chancellor of Justice is another body with much the same tasks, but he or she is responsible to the government. Moreover, the tasks of the Chancellor of

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Justice comprise some further functions that are directly related to the protection of the interest of the citizen. For example, the Chancellor of Justice is the legal adviser of the government and looks after the interests of the state in civil cases. The office of the Chancellor of Justice was created in the early 18th century, and when the 1809 R*iksdag* asked for a corresponding office, the Parliamentary Ombudsman was installed.

There are also a number of more specialised ombudsmen, established in later years, who come under the government. There is an Equal Opportunities Ombudsman, an Ombudsman against Ethnic Discrimination, a Consumer Ombudsman, and one for the Rights of Children. The responsibilities of these ombudsmen are also different in important respects from those of the Parliamentary Ombudsman.

Evaluation, lessons learnt and recent developments

Agencies and the international scene

How the knowledge and experience of the agencies should be used in the context of the European Community has been a new challenge faced by the Swedish Government. In very many instances, Sweden is not represented by civil servants from the ministries but from the agencies. This new situation has been approached in different ways, varying from one ministry to another, but generally speaking the ministries are responsible for the working groups and council meetings while agencies' main responsibility lies in following the work of the comitology (*i.e.* committees set up by the Council to help the Commission implement EU Directives and decisions) and expert groups and other meetings within the Commission. In many cases Sweden will attend EU meetings with representatives from both agencies and ministries.

There has thus been a need for new channels for contacts and co-ordination that have further shortened the distance between the ministries and the agencies. The way this is handled is through government directives, mandating an agency to act and negotiate on behalf of the government. The directive will contain specific instructions relating to the issue at hand. However, in some cases regulative agencies are obliged to follow EU regulations in handling certain matters, for example the internal market, which have made them even more autonomous *vis-à-vis* the government compared to the situation before membership of the European Union.

The realisation of the importance of the international arena to national decision-making has made a real impact on Swedish agencies. Sweden is a member of some 2 000 international organisations. Since ministries are small, civil servants in the agencies have, to an increasing extent, been representing Swedish interests in

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various international settings. In addition to this Swedish agencies increasingly get in touch with their counterparts in other countries to learn and share experiences. It presents a real challenge for the government to control and survey all these ties with other countries.

The transforming of national governing into multi-level governance has in other words in Sweden generated a new debate on the functionality of a autonomous agencies. The pros of negotiating on the basis of real expertise are being weighed against the cons of co-ordinating.

Overall lessons learned

The Swedish system is living proof that almost any type of public activity can be organised in terms of agencies, possibly with the exception of the foreign office. The agency system runs as smoothly as any administration governed by ministerial rule and the degree of corruption is low. Therefore, the overall impression one gets when looking at the Swedish system, especially from a historical perspective, is a system where the flexibility and the ability to adapt to new ideas lies more with agencies than with the ministries and the government. In many cases it is the agencies themselves that are the advocates for change and adaptation to new thoughts that have emerged in their field of responsibility. On the other hand, while agencies tend to quickly adopt and implement new ideas, the government itself, not to mention Parliament, is rather slow in adjusting its organisation to the new demands following from administrative reforms or new techniques. Agencies expect feedback and reaction from the core Executive on new ideas, for example on how to use new information technologies, but do not get enough response. The agencies may sometimes become the policy-makers and in that capacity they force the ministries to adopt and change their policy instead of the other way around. The lack of response is also evident concerning all the work that the agencies put in on producing information on results and achievements.

In order to be under control and accountable, a system with very independent agencies is to a large extent dependent on openness on the one hand, and informal contacts between agencies and the government on the other hand. The organisation into separate agencies makes the administration more visible to the general public. In combination with different instruments, such an organisation helps create an open administration, with agencies that become, to a certain extent, directly accountable to the general public.

The government can influence the general direction of the activities of the agencies in different ways but, surprisingly enough, a government rarely has to use its "sharp instruments". Usually more informal means are enough to achieve compliance on the part of the agencies with the policy of the government. On the other hand, occasionally it is rather convenient for the government and its

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ministers to be able to refer to the free position of the agencies when something goes wrong in the Swedish bureaucracy. Nevertheless, an administrative structure built on a "dual" central administration creates heavy demands on the co-ordinating and planning capacity of the core executive – *i.e.* the government and its offices – which is not always forthcoming. That leaves a substantial amount of co-ordination to be undertaken spontaneously by the agencies, something that can be said to be an integral part of the administrative culture among Swedish agencies, although it does not always function.

In many ways the Swedish administrative system can best be described in terms of informality and mutual interdependency instead of hierarchies and control. The ministries are small, which means that their expert knowledge on particular issues is limited. Instead, the competence is found among the civil servants of the many, and sometimes large, agencies. The government and its civil servants therefore depend on the agencies' active participation in the formulation of policies and not only on the loyal offering of their knowledge. The agencies, on the other hand, depend on the government and ministries for their economic resources and public support. Thus both sides have something the other needs, which means that the perceptiveness of the needs of the other is considerable and mutual.

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United Kingdom

by

Rob Wall *and* **Paul West***

General introduction

In the United Kingdom, the term "public agencies" is used to cover a wide part of public organisations including:

1. ministries;
2. executive agencies;
3. non-departmental public bodies;
4. nationalised industries and other public corporations;
5. local government bodies;
6. the National Health Service.

This report will focus successively on executive agencies and non-departmental public bodies, which are the two types of organisations that fall within the scope of the OECD's project on distributed public governance.

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Part 1

Executives Agencies

Background

The introduction of agencies in the United Kingdom

The executive agency concept originated as one of a series of reforms within the United Kingdom civil service in the 1980s. In 1988, Sir Robin Ibbs and Kate Jenkins identified a number of key weaknesses in the delivery of public services by central government in the United Kingdom, namely: *a*) ministers were overloaded and top management was dominated by its policy role; *b*) insufficient attention was given to the management and the delivery of outputs; *c*) there was a shortage of management skills and experience in the civil service; d) the civil service was too big and too diverse to be managed as a single organisation.[1]

In light of these weaknesses, the Ibbs and Jenkins Report made three main recommendations:

- "Agencies" should be established to carry out the executive functions of government within a policy and resources framework set by departments.
- Departments were to ensure that their staff were properly trained and experienced in the delivery of services – whether inside or outside of central government. Staff would then be in a position to develop and interpret government policy and manage its agencies in a way that could maximise results.
- A full permanent secretary should be designated as "project manager" to ensure that the changes took place.

The government accepted the recommendations in the report and the then Prime Minister announced the *Next Steps* initiative to Parliament in February 1988. The primary driver was the need to increase the efficiency with which services were delivered to the public. The agencies were to operate within their parent departments in a way that is somewhat akin to an autonomous business unit within a large corporation.

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The role and size of agencies

Most agencies deliver a service (either to the public or to other service providers) or have a regulatory role. Many also have a technical policy role in addition to their operational functions.[2]

There are currently 131 agencies in the United Kingdom (and four other organisations working along N*ext* S*teps* lines). These employ over three-quarters of the civil service (around 375 000 staff). All executive agencies have been established within the last 15 years. The first agency, the Vehicle Inspectorate, was launched in August 1988.

Legal and organisational framework

The executive agency model is very flexible. As Sir Peter Kemp, former Cabinet Office Permanent Secretary, said "we had no blueprint or mould; our aim was to design agencies that reflected their individual circumstances and objectives".[3]

Executive agencies are legally part of the Crown. They do not usually have their own legal identity, but operate under powers delegated by ministers and departments. If it is necessary for an executive agency to have a legal identity – for instance, for control of assets or liability purposes – legislation may be required.

Those parts of departments that have become agencies usually have the following features in common:

- discrete administrative units, sufficient in size to justify major structural change;
- predominantly concerned with the delivery of services to the public or government; but can, in some cases, also have an important policy advice role;
- capable of being made separately accountable within their department. They must be capable of having agency-specific targets, which are reported to Parliament. They must also produce agency annual reports and accounts (to Cabinet Office and HM Treasury guidance).

Areas of work where the day-to-day involvement of the department or ministers is inevitable, or where policy and its execution are inextricably linked, are unlikely to operate as agencies. As the Ibbs and Jenkins report stated, the "presumption must be that, provided that management is operating within the strategic direction set by ministers, it [the agency] must be left as free as possible to manage within that framework".[4] This is an essential precondition to establishing a function of government as an executive agency. This does not mean that the

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model excludes ministerial intervention in all circumstances. As Sir Peter Kemp also said:[5]

> [*Agencies*] *were left within government partly because it was recognised that there were or could be particular cases when ministers would want to get more involved – hence the word "normally" which qualifies the minister's usual role of standing back.*

Public functions for which a greater degree of distance from ministerial control is desirable are likely to be more suited to becoming a Non-Departmental Public Body (NDPB).

Governance structures

Agency chief executive and staff

Agencies are headed by a chief executive. They do not have governing boards. However, many agencies (like departments) have a management board made up of senior staff and one or two external members. A number of sub-committees may report to the management board (including an audit committee in line with government accounting rules).

Agency chief executives are appointed by ministers for a fixed term, usually by open competition. The appointment needs to be cleared with the head of Civil Service Corporate Management (Cabinet Office), the Office of the Civil Service Commissioners[6] and the Treasury (given its role as Accounting Officer). There is usually an element of performance-related pay built into the employment contract.

Most agency staff (including the chief executive) are civil servants. They are employed on civil service terms, conditions and pension arrangements and are subject to the *Civil Service Code*. Within this framework, the chief executive usually has considerable flexibility to determine grading, pay, bonus schemes and promotion for agency staff below the level of the senior civil service. The chief executive's personnel delegations are set within a wider framework of departmental civil service procedures. The statutory basis for the freedoms embodied in agency chief executive personnel delegations is the Civil Service (Management Functions) Act 1992.

The provisions in the Employment Act of 1996 relating to unfair dismissal apply to civil servants. Consequently, agencies have procedures in place to ensure that dismissal or any other serious penalties are actions taken only after a full and fair consideration of the circumstances and after taking into account the employees' point of view. Nevertheless, agency staff, like other civil servants, can be dismissed for acts of gross misconduct. These include theft, fraud, deliberate falsification of records, serious negligence, serious incapacity for work under the influence of drink or drugs during working hours, unauthorised disclosure of protectively marked information, deliberate damage to property, indecent conduct, threats or acts of physical violence, and incitement or actual acts of discrimination.

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In addition, compliance with the provisions of the *Civil Service Code* is a condition of civil service employment. If a civil servant knowingly breaches the *Civil Service Code*, then this could lead to disciplinary action by the agency employing that civil servant, including dismissal.

Civil servants who are dismissed can appeal to one or more of the following: the appropriate permanent secretary; an Employment Tribunal (if employed for more than 104 weeks); or the independent Civil Service Appeal Board.

Ministers do not need to seek parliamentary approval to appoint or dismiss chief executives or other agency staff. They might, however, have to answer questions from select committees on the circumstances leading to the appointment or dismissal of the chief executive or other senior staff of a high-profile agency.

Remuneration

The pay ranges of the chief executive and senior civil servants employed by the agency are disclosed in the agency's annual reports and accounts which are publicly available. The annual salary varies considerably according to the size and importance of the agency but would normally be in the range of £60 000 to £120 000. In general, they do not receive benefits such as apartments or cars. Most agency chief executives are members of the Civil Service Pension Scheme.

A study by Hay Management Consultants mapped leadership roles across the public and private sectors to establish groups of equally sized leadership roles, and determine base pay ranges for each group. This shows that at lower levels of management, the public and private sector base salaries are roughly on a par (although these figures exclude benefits). For more complex and senior jobs, base pay rates in the wider public sector are roughly 25-30% below the comparable private sector rate, and civil service rates for those in executive agency postings are 40-50% below. Adding in bonuses, share options and wider benefits, which can comprise a substantial share (up to 50%) of total remuneration for private sector executives, the "real" gap is considerably wider at the higher levels.

Independent strategic advice

Most ministers with responsibilities for agencies have an independent source of strategic advice on an agency's performance and that of its chief executive. There are three principal models for this:

- The **Fraser figure** (sometimes called the Senior Departmental Sponsor). Sir Angus Fraser's 1991 report to the Prime Minister envisaged a senior figure within a department, enjoying the trust of both minister and chief executive, acting as the main source of external advice on the performance of an agency. The Fraser figure is not a surrogate for a chief executive. Neither is

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the role comparable to that of a chairman of a company. Because the Fraser figure role for a given agency is likely to be only a proportion of the functions of the incumbent, it is important that there are no conflicts of interest with other roles he or she may have in the department.

- **Ministerial Advisory Board (MAB)**. This board will usually comprise senior departmental officials, the chief executive and a number of external members. Typically, a MAB might meet four times a year from which the chief executive would produce a quarterly report. Most agencies within departments have MABs. Where there is a Fraser figure as well, he or she is usually the chair of the MAB.

- Where there is no Ministerial Advisory Board there is usually a higher composition of **external, independent members** on the agency management board. These can provide particular business or technical expertise and represent major stakeholders. Some agencies without Ministerial Advisory Boards have up to half the management board comprised of external members. The responsible minister normally has a right to consult these members individually.

These models are not mutually exclusive. Agencies can have a Fraser figure *and* a substantial non-executive presence on their management boards. Governance arrangements are scrutinised as part of an agency's Quinquennial Review.

It should be noted that none of these arrangements undermines the direct accountability of the chief executive, and right of access, to the responsible minister which is a key feature of the agency model.[7]

Resources and budget process

Financial arrangements

Agencies are generally financed through their parent department. Many agencies are expected to recover from their users the full economic cost of their main activities and have financial targets reflecting this.

An important innovation of the current government is the three-year allocation of funds to departments and agencies introduced in the Comprehensive Spending Review of 1998. The current allocation was set in negotiations between departments and HM Treasury in the 2000 Spending Review and commits agencies and parent departments to a range of outcomes termed public service agreements and service delivery agreements. However, if there was to be a change of government during the Spending Review period these allocations could change.

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Trading Funds

Some 18 agencies have been set up as Trading Funds, giving them greater financial freedoms. These include the Defence Evaluation and Research Agency, Medicines Control Agency, Meteorological Agency and Driving Standards Agency. Trading Funds were introduced by the Government Trading Funds Act 1973 (as amended by the Government Trading Act 1990) which provides the general enabling powers to establish them. A Trading Fund is a financial framework under which accountable units of government, such as agencies, operate outside the traditional funding regime. A Trading Fund is granted standing authority to meet its outgoings from receipts and there is no detailed advance approval by Parliament of its gross income and expenditure. However, when setting up a Trading Fund, Parliament sets the financial framework.

A Trading Fund has the power to borrow money from its parent department, at commercial interest rates, to fund investments or short-term deficits. It is also allowed, within set limits, to carry forward cash reserves of surplus funds to be used for investment or protect against future losses.

A Trading Fund cannot be established without the approval of Parliament. In addition, a number of statutory and administrative conditions have to be met before the Trading Fund is established and the act allows that appropriate persons may be given the opportunity to make representations.

A Trading Fund sets an External Financing Limit (EFL) which is a cash limit on the fund (any new loans from the parent department less repayment of the principal on any loans). This represents the difference between the Trading Fund's requirements and its self-generated funds.

Together, the controls over their establishment, the setting of financial and service standards and the EFL provide a framework of controls under which the Trading Funds operate. These are essentially strategic level controls with the operational level controls being devolved to the Fund's management. The Fund's accounting officer (normally the chief executive) is responsible for the operational efficiency and effectiveness of the Trading Fund and may be summoned before the Public Accounts Committee.

Policy coherence, oversight and accountability mechanisms

Accountability mechanisms

Agencies operate within the context of their framework document. This sets out the key elements of the policy and resources framework for the agency and the relationship and respective responsibilities of the chief executive, the relevant minister, the departmental permanent secretary, the appropriate Treasury

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expenditure team and other departments, agencies and organisations with which it will have a relationship. The framework document must be approved by Cabinet Office and Treasury ministers before publication.

Key ministerial targets for the agency are set by the responsible departmental minister and, for the first year of the agency's existence, must be approved by Cabinet Office and Treasury ministers. Targets are announced to Parliament before the start of the financial year. Targets, the target-setting process and agencies' performance against the targets are outlined in detail in Chapter 2 of *Executive Agencies: 1999 Report*, as well as included in annual reports, corporate plans and business plans. In total, 1 063 targets were set for 104 agencies and two departments operating on agency lines. Although every agency will have its own targets specific to what it does, all targets aim to: *a*) promote better performance; *b*) focus on what the customer requires; *c*) encourage greater efficiency; *d*) improve service quality; *e*) promote value for money; *f*) increase transparency and accountability.

Agencies must prepare and usually publish corporate and business plans. These need to be agreed with Cabinet Office and Treasury ministers prior to launching. If the plans are unsuitable for publication because of commercial sensitivity, this must be justified and agreed by the Cabinet Office and Treasury and a statement to that effect included in the framework document. The corporate and business plans should include key targets under the following four broad headings: 1) financial performance; 2) volume of output; 3) quality of service; 4) efficiency.

In addition, all agencies are required to produce annual reports and accounts[8] which are presented to Parliament after auditing by the Comptroller and Auditor General (the head of the UK National Audit Office). While there is a large area of discretion for each agency about the extent of information to include and the way in which it is presented, the main body of annual reports must include the following: *a*) the agency's aims and objectives; *b*) an annual review of activity; *c*) performance against targets; *d*) a summary of performance against Service First standards for those agencies which serve the public directly (and for those which do not, information on how they have applied the relevant principles); *e*) information on commercial activity with respect to selling government services into wider markets; *f*) information on future strategy.

The annual report is set in the context of the business plan. As part of this, agencies must:

- review the main areas of activity, and provide a commentary on the year's achievements and changes in efficiency, quality (including quality of service) and throughput (where relevant), giving reasons for any significant changes or developments. Agencies may wish to provide examples, where

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appropriate, in the form of case studies to illustrate particularly noteworthy achievements;

- comment upon financial performance (such as the agency's investment programme, the extent to which the agency has successfully operated within its resources) and manpower aspects (such as employee relations);
- provide the names of the key staff, management board, any non-employee members of management or advisory boards, and the auditors.

Finally, every five years, agencies are fundamentally reviewed by their parent departments in consultation with all stakeholders (the Quinquennial Review). The review looks at the past performance of the agency and makes recommendations as to future status and, if agency status is to continue, what improvements should be made. The review's main recommendations are agreed with Cabinet Office and Treasury ministers.

Policy coherence

There are a number of established mechanisms for encouraging co-operation between agencies:

- Parent departments are responsible for carrying out Quinquennial Reviews of agencies. These reviews take place in two stages. The first stage examines alternative "models" for carrying out agency's functions: *i.e.* abolition; continued agency status; NDPB; market testing; merger; rationalisation; privatisation or contracting out. The second stage takes a forward look at how to improve services once the status of the organisation is clear. In considering these options, it may be that opportunities for closer working or merger with other agencies and public bodies are identified.
- The Invest to Save Budget provides funding for innovative projects bringing together two or more public bodies to improve service delivery. The Cabinet Office and the Treasury jointly manage the scheme. The first bidding rounds supported 136 imaginative projects. On 14 February 2001, ministers agreed to a further 123 projects for funding at a cost of £61 million over three years. Total funding over the period 1999-00 to 2001-02 will be £230 million. In the Spending Review 2000, the Chancellor of the Exchequer announced that the Invest to Save programme was to be extended to 2003/2004, by which time the government expects to have invested in excess of £380 million through the scheme.
- Departments may initiate and oversee joint work programmes involving several agencies within their jurisdiction. For example, the Department of the Environment, Transport and the Regions (DETR) has set up the Driver Vehicle Operator (DVO) Group. This consists of the Driver and Vehicle

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Licensing Agency (DVLA), Driving Standards Agency (DSA), Traffic Area Network (TAN), Vehicle Certification Agency (VCA), Vehicle Inspectorate (VI), parts of the DETR and Department of Environment (Northern Ireland) (Observer) and Highways Agency (Observer). The DVO Group has made significant progress both in establishing a group identity and in delivering cross-agency projects to improve customer service. A number of individual initiatives on integrated electronic customer information have also been successfully delivered. One key aim for the future is to construct service delivery arrangements using electronic means where possible to give the needs and convenience of its customers' primacy over agencies' own requirements. This is to be achieved through the implementation of an e-business programme for the Group. This has at its core the restructuring of service and information delivery around citizen-focused life events of which there are 76 covering over 90% of the DVO Group agency functions. Work on these events has also identified considerable scope for streamlining processes and joining-up of group activities.

Recent improvements of accountability and policy coherence mechanisms

The *Modernising Government White Paper* (March 1999) set out a programme of reform for the public sector. A key theme was ensuring that all public bodies are clearly focused on the results that matter to people and that they do not allow bureaucratic boundaries to get in the way of sensible co-operation. Improvements have come from the following concrete initiatives:

1. Accountability has been tightened recently with **Public Service Agreements** (PSAs) **and Service Delivery Agreements** (SDAs). These represent a major change in the way government delivers and accounts for public services, and in the way it plans future activity in order to deliver policy aspirations. Major departments have agreed on key targets to improve public services over the period 2001-2004.

   Departments are required to account for their performance against a range of published high-level targets in a Public Service Agreement (PSA) which contribute to achieving important outcomes, such as reducing crime, improving health and raising standards in schools. They are transparent commitments to which the government can be held accountable. In some areas, such as criminal justice and action against illegal drugs, results will only be delivered effectively if different organisations co-operate. Cross-cutting Public Service Agreements define what needs to be achieved through joint action.

   The PSA also encourages departments to work jointly on shared problems and break down the barriers between policy and delivery. The 2000

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Spending Review has produced a new set of targets in 18 departmental PSAs and six cross-cutting PSAs. Progress against PSA targets is published in departments' annual reports, providing a clear statement of government performance.

How departments deliver improvement is set out in Service Delivery Agreements (SDAs); the first of these was published in November 2000. SDAs incorporate the key elements of the plans government departments are putting in place to deliver the commitments in the *Modernising Government White Paper* and to engage in civil service reform.

Ministers and their departments will be held to the delivery of the priorities set out in the PSAs. The government will ensure that these priorities are cascaded through the targets and measures which will be set for all public bodies, in consultations with those who receive services. On both targets and inspections, attention will be focused on key outcomes and the aim will be to strike an appropriate balance between intervening where services are failing and giving successful organisations the freedom to manage.

2. The **Comprehensive Spending Review** established a new approach to improving service delivery. It provided significant additional resources for key services and made it clear that this money would be used for modernisation and investment in reform.

3. The government has developed a **new approach to public expenditure planning and control**. In place of annual plans, ministers have – wherever possible – set firm three-year spending plans for departments.

4. The government is doing more to **develop its commercial skills**, so that departments and agencies can work more productively in partnership with industry to get the best deal for users. For example, independent reviews of central government procurement and the Private Finance Initiative will strengthen performance by making better use of public-private partnerships and closer collaboration between organisations. In addition, a **new Public Services and Productivity Panel**, bringing together public and private sector expertise to help achieve improvements in public service delivery, was set up.

5. In addition, the Public Sector Benchmarking Service (PSBS) will provide a new method of performance measurement for the public sector. The PSBS was launched a year ago by Cabinet Office and HM Customs and Excise. In this time, the new service has developed to include a helpdesk, website and searchable databases of information that include good practice, case studies and events. It will help to deliver government commitments by providing departments with access to information on best practice,

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partners to benchmark against and the opportunity to subject their own work to rigorous challenge. For example, a civil servant carrying out a Better Quality Services review will be able to locate helpful and relevant experience from a local government officer's Best Value review or from the work of a manager in the National Health Service (NHS). The PSBS is a co-operative learning facility for public sector services rather than a competitive comparison between services.

6. In similar vein, a new development scheme to help public sector managers work across organisational boundaries to deliver better public services was introduced recently. The Public Service Leaders Scheme is designed for middle managers in the civil service, NHS, police service and local government. It aims to help them work together to develop their leadership skills across the boundaries and to develop the confidence to tackle complex issues and provide better services for the public. It includes action learning sessions, skills workshops, cross-sector case studies and simulations, secondments between public sector organisations and mentoring.

Internal controls and quality initiatives[9]

A number of internal controls and quality initiatives exist to ensure that decisions are made and resources used to support agencies' aims and objectives. Three of the more important are the European Foundation for Quality Management (EFQM) Excellence Model, the Charter Mark and the Investors in People scheme.

EFQM M*odel*

The EFQM model provides an ideal framework for all public bodies to assess their quality and target improvements. It gives a perspective over the whole of an organisation's activities, looking not only at the various outcomes and outputs but also linking these to the internal processes and resource inputs. As a consequence, it allows an overall measure of performance to be generated, as well as providing detailed assessments of particular elements contributing to the whole. In addition to providing a snapshot picture of performance, the model is a framework that can be applied over time and with a range of different organisations. It therefore allows comparisons to be made revealing trends over time within a particular organisation and also that organisation's performance in contrast with that of others, whether in the public or private sector. These comparisons provide pointers about areas of relative strength and weakness that in turn helps managers to think about where to focus improvement effort.

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Charter mark

Charter Mark is the government's award scheme for encouraging and rewarding improvement in the delivery of public services. Those services that are assessed as providing an excellent standard of service get the public recognition of the Charter Mark Award. In addition, every applicant gets an independent assessment and detailed feedback on how to improve. The scheme focuses on the quality of service that users actually receive. It is flexible, easy to understand and applicable to all sizes of public sector organisations delivering services directly to the public. It is a standard of excellence rather than a competition so there is no limit to the number of winners and these continue to grow.

Investors in people

Investors in People (IIP) is a national standard for effective investment in the training and development of people in order to achieve organisational goals. It is based on four key principles:

- commitment from the top to develop all employees;
- regular review of the training and development needs of employees and a plan to meet those needs;
- action to train and develop individuals throughout their employment;
- measurement of the organisation's success in using its investment in training and development effectively.

Accountability to Parliament

The standards that Parliament expects for ministerial accountability to the House are reflected in two resolutions passed in March 1997. The Resolution on Ministerial Accountability (adopted by the House of Commons 19 March 1997) was as follows:

1. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and Next Steps agencies.
2. It is of paramount importance that ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister.
3. Ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the

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Government's Code of Practice on Access to Government Information (second Edition, January 1997).

4. Similarly, ministers should require civil servants who give evidence before parliamentary committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code (January 1996).

The House of Lords adopted a similar Resolution on Ministerial Accountability on 20 March 1997.

When a new agency is launched, this is announced to Parliament along with the targets to be set for the first year of operation. If Parliament is in recess at the time of the launch, MPs with a constituency interest in the new agency are informed by the relevant departmental minister and a retrospective announcement is tabled for the start of the next session. The new agency may also issue a press release and organise an appropriate launching event.

The relevant Secretary of State is accountable to Parliament for the performance of the agency. Ministers in the parent department are responsible for answering parliamentary questions and will normally respond to correspondence from members of Parliament about the agency. Advice on these matters will be provided by the agency to the relevant minister.

The chief executive or director-general of the agency is liable to be summoned to appear before the Public Accounts Committee or Parliamentary Select Committees, where he or she can be questioned about the activities of the agency. It is usually possible for members of the public and media to attend.

Agencies' annual report and accounts are presented to Parliament after auditing by the Comptroller and Auditor General (the head of the UK National Audit Office).

In general, agencies are subject to the jurisdiction of the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman).

Accountability to citizens

Agencies that provide services to the public directly must prepare a Charter Statement setting out the standards of service that the public and business can expect from the agency. These are designed to be meaningful to all users. They usually focus on different issues from the strategic performance targets set by ministers for their departments and agencies.

The six Whitehall standards – which cover correspondence handling, appointments, the provision of information and telephone enquiry points, consultation with users, complaints handling, and accessibility – set out the minimum standards that

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central government departments and executive agencies should apply in their dealings with the public. Charter standards are normally built on these.

The standards adopted normally take into account the views of users and potential users. Front-line staff may also be involved. This is a major part of the government's drive to modernise public services. It is a quality scheme that judges an organisation on the service the customer actually receives. Holders of a Charter Mark demonstrate high standards in public service. Many agencies consult regularly with customers, staff and their trade unions and other stakeholders to seek their views about the quality of the services being delivered and how this could be improved. They may have standing committees and regular forums for this purpose. In addition, many also commission market research to test users' satisfaction with the agency's performance and its targets.

Openness

Government policy on access to information is contained in the *Code of Practice on Access to Government Information*. The *Code of Practice* makes the assumption that information held by departments and other public bodies should be released except where disclosure would not be in the public interest. The *Guidance on Interpretation* provides a more comprehensive guide to the principles contained within the *Code*.

The Freedom of Information Act was approved in 1999 to replace the *Code of Practice* and is currently being put into force in stages. It aims to give citizens a statutory right of access to information held by all public authorities.

Seeking redress

The courts exist to ensure compliance by government departments and agencies with the law. It is open to the courts to use their powers to compensate a party that has suffered as a result of non-compliance with the law by a department or agency. Where European Union law is involved, the Commission has a general responsibility for ensuring compliance.

In extreme circumstances, individual civil servants can be held to account by the legal system for non-compliance with the law. If a civil servant knowingly breaks the law in carrying out his or her duties, this might well give rise to an action for damages for misfeasance in public office.

Where a complaint is made against an agency, there is usually an opportunity for the complainant to raise the complaint internally within the parent department or agency. This may lead to a satisfactory outcome for both parties without the need for legal or other formal action. It is also open to the complainant or his or her MP to write to the responsible minister, or chief executive of the organisation.

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If the complaint involves an administrative failure, the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) may intervene and may recommend compensation.

Evaluation, lessons learnt and recent developments

Reviewing the agency programme

The United Kingdom is in the very early stages of conducting a policy review of the agency programme. This review will look at the strengths and weaknesses of current arrangements and identify which models best suit particular circumstances. Performance reporting arrangements will also be considered.

Cabinet Office officials will be establishing a small steering committee for the review, which will seek a wide-range of views and take about six months to complete. Chaired jointly by Cabinet Office and the Treasury, and including senior officials from departments and agencies, the review will focus on:

- determining the versions of the agency model which have been the most (and least) successful;
- the degree of control by parent departments and the centre, and the degree of freedom in management which is most appropriate;
- the appropriateness of the current level and scope of central scrutiny, including Quinquennial reviews, Better Quality Services reviews and PSA/SDA monitoring;
- how joint service delivery can best be promoted via the agency model;
- the best way to integrate service delivery and policy so as to ensure that policy is properly informed by practicalities;
- how to ensure that agencies have in place appropriate corporate governance arrangements including the roles of Ministerial Advisory Boards and "Fraser" figures;
- the best means of securing transparency and thoroughness in reporting on agency matters, including performance, to the public.

Success of agencies

The *Executive Agencies 1999 Report* contained an analysis of performance for 1998-99. This showed that there had been an increase in meeting targets, a sizeable increase in measurable targets being in place and identified a number of examples of good practice. Of the 1 063 agency targets listed, 75% were met or exceeded and the remaining 25% were missed. Where targets are comparable year-on-year, in 1998-99, 34% were set at a higher level, 50% were the same and

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16% were set at a lower level than the previous year. For comparable targets set in 1999-2000, 29% were set at a higher rate, 55% the same and 16% were lower.

However, the government believes that there is scope for improvement in the following areas:

- too many targets do not measure key things that matter to people;
- too many targets are not stretching enough;
- and several agencies have too many targets to enable sensible management.

Recent developments

By the mid-1990s, the agency model was the principal organisational type for many forms of public service delivery, including prison administration, welfare provision, many regulatory functions and much of the logistical, procurement and administrative support to the armed forces.

The end of the main creation phase was announced in the *Next Steps* report for 1997, by which time over three-quarters of civil servants were working in executive agencies. The Chancellor of the Duchy of Lancaster announced that the main task of creating new executive agencies was then complete and that the main focus in future would switch from agency creation to performance improvement:

> *In the 1997 Next Steps Report, the government announced a shift away from the previous emphasis of the Next Steps initiative on creating new executive agencies. Agencies would still be created where this offered the best prospect of securing high quality, cost effective public services. But with over three-quarters of the civil service already in agencies or departments operating on Next Steps lines, the main focus would in future be on using those agencies so far created in the most effective way.*
>
> *This has entailed a greater emphasis on performance, embracing both the targets set for particular agencies and their effectiveness in contributing to achievement of wider policy goals.*
>
> (Foreword to the 1998 Next Steps Report – Cm 4273)

Although the main focus of government policy has shifted away from creation of agencies towards improving their performance, this was never intended to rule out the establishment of additional agencies, where appropriate, or changes to the status of existing agencies.

This new phase of agency policy has resulted in greater attention being given to performance measurement and performance management. Following the 2000 Spending Review, the government published new Public Service Agreements covering the period 2001-2004, together with new Service Delivery Agreements (SDAs) including key commitments on the management of public services. Some agencies will be involved directly with these SDAs, however in many cases high-level performance targets will be cascaded to agencies to assist their attainment. This is

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reflected in their key ministerial targets which are published before Parliament every year and it is these targets that are used to judge how successfully an agency has delivered its services. This period has also seen a growth in the number of inspectorates, external auditors and other permanent external bodies who review aspects of public sector performance with a view to improving performance.

For further reading:

The following websites provide further information:

www.cabinet-office.gov.uk/eeg/index/publications.htm (for information on executive agencies, including the *Executive Agency: 1999 Report*).

www.servicefirst.gov.uk (for information on the Service First/Charter programme and quality schemes).

www.cabinet-office.gov.uk/moderngov/whtpaper/index.htm (for the *Modernising Government White Paper*).

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Part 2

Non-Departemental Public Bodies (NDPBs)

Background

Definition

In 1979, Sir Leo Pliatsky was commissioned by the government to undertake a review of so-called "fringe" bodies. This followed an earlier review carried out by the Civil Service Department (now the Cabinet Office) which had examined all "fringe" bodies with a view to abolishing those which had outlived their usefulness or which could not be justified in the context of the government's objectives of reducing public expenditure and the size of the public sector. Sir Leo's review had the following objectives:

- to make a complete survey of "fringe" bodies;
- to bring together the decisions of departmental ministers on the bodies in their fields of responsibility;
- to examine the experience gained in the case of "fringe" bodies handling large amounts of money;
- to comment on the arrangements for control and accountability of these bodies.

The review was published in January 1980 and became the first report on the size and spend of the United Kingdom's NDPB sector. (The term "Non-Departmental Public Body" or "NDPB" derives from the terminology used by Sir Leo in his review.)

AN NDPB is formally defined as "a body which has a role in the processes of national government, but is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm's-length from ministers".[10] This means a national or regional public body, operating independently of ministers, but for which ministers are ultimately responsible. Within the United Kingdom, such bodies are commonly referred to as "quangos". There are two main types of NDPB:

- **Executive NDPBs**. This category includes those NDPBs which have an "executive" function, *i.e.* which carry out executive, administrative, regulatory or

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commercial functions. Executive NDPBs are generally not part of the Crown and employ their own staff and manage their own budgets.

- **Advisory NDPBs**. This category includes those NDPBs which are set up administratively by ministers to advise them and their departments on matters of particular interest. Advisory NDPBs are normally supported by civil servants from within the relevant sponsoring department and rarely incur expenditure on their own account. NDPBs operating in devolved areas in Scotland, Wales and Northern Ireland are the responsibility of the Scottish Executive, the National Assembly for Wales and the Northern Ireland Assembly respectively. NDPBs operating in non-devolved areas remain the responsibility of the British Government.

The role of NDPBs

NDPBs are set up where they represent the most appropriate and cost-effective "model" for delivering the required functions. Their principal strengths are:

- NDPBs operate *at arm's-length* from ministers. This enables functions to be delivered independently of ministers and civil servants. For example, some regulatory functions (such as those relating to health and safety and the environment) and some funding decisions (such as those relating to the funding of the arts, sport and the sciences) are best carried out at arm's-length from ministers. This underlines the independence of the regulator or funding body and ensures that political considerations play no part in investigations or in decisions about the funding of particular projects.

- NDPBs provide *independent, expert advice* to ministers. This enables the government to draw on specialist advice (such as on AIDS, GM foods, human genetics, etc.) not available within government.

- NDPBs enables ministers to provide a *fast response* to matters of particular concern. For example, the Committee on Standards in Public Life was set up quickly to address concerns about "sleaze" in public life; and the New Deal Task Force was set up quickly to help take forward the government's New Deal programme (on unemployment).

- NDPBs provide a *flexible model* for delivering functions. They can be set up in a number of ways: by statute; as a company (limited by guarantee or by shares); as a Royal Commission, by Royal Warrant or under the Royal Prerogative; or simply administratively. They can range in size from small, advisory NDPBs with no staff and negligible spend to high-profile, executive NDPBs which employ hundreds of staff and spend hundreds of millions of pounds.

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- NDPBs offer the opportunity of *bringing a large number of ordinary people into public life*. For example, some NDPBs, particularly those representing the views and interests of consumers, have a large number of lay (or non-expert) members on their boards.

The functions of NDPBs

NDPBs carry out a wide-range of executive, administrative, commercial, regulatory and advisory functions. Examples include the Equal Opportunities Commission; the national Arts Council; Remploy Ltd (which provides jobs for over 6 000 severely disabled people); the Environment Agency (controlling pollution and water resources); and the Expert Advisory Group on AIDS. Most NDPBs carry out "new" functions, *i.e.* those never undertaken by central or local government, though a small number have taken over functions previously performed by government.

An annual directory of NDPBs, which includes information about staffing, expenditure and board membership, is published by the Cabinet Office.[11]

Classification

The Cabinet Office is responsible for policy on classification and for ensuring that all new and reconstituted public bodies are "measured" against longstanding criteria to determine whether or not they are an NDPB (as opposed to, say, a non-ministerial department, an agency, parliamentary body or a private sector body).

Executive NDPBs usually display the following characteristics:

- They are set up by ministers to carry out administrative, commercial, executive or regulatory functions on behalf of the British Government.
- They have a national remit (*i.e.* their functions cover England, England and Wales, GB or the UK).
- They are legally incorporated and have their own legal identity. This means that they are established by Act of Parliament, by Royal Charter, under the Royal Prerogative, or incorporated under Companies Act legislation.
- They are not government departments or executive agencies.
- They are not Crown bodies and do not have Crown status.
- Appointments to the boards of the bodies are made by ministers, by officials on behalf of ministers, or by the Queen on the advice of ministers.
- Ministers are ultimately answerable for the performance of the bodies and for their continued existence.

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Advisory NDPBs are distinguished by the following characteristics:

- They are established by or on behalf of ministers to provide independent expert advice or input into the policy-making process.
- They have a national remit.
- They are formal bodies with defined membership and clear terms of reference.
- They meet on a regular basis (at least once a year).
- They are standing bodies (*i.e.* in existence for more than 12 months).
- They are not part of a department or agency, or some other organisation.
- Appointments are made by ministers, officials on behalf of ministers, or by the Queen on the advice of ministers.
- Those appointed to the body are independent of government and drawn from outside the public sector.
- Ministers are ultimately answerable for the performance of the bodies and for their continued existence.

The size and spend of the NDPB *sector*[12]

At 31 March 2000, there were 1 035 NDPBs in the United Kingdom, employing around 115 000 staff. (This included 200 NDPBs for which the Scottish Executive, the National Assembly for Wales and the Northern Ireland Assembly were responsible.) Although the NDPB "label" has only been in existence since 1980, some NDPBs have been around for a lot longer. For example, the Horserace Totalisator Board dates back to 1928 and the Lighthouse Authorities date back to Tudor times (set up by Henry VIII).

During the 1999/2000 financial year, total NDPB expenditure was around £24 billion of which £19 billion of this was funded directly by the government and the devolved administrations. The remainder was financed through a combination of fees, statutory levies and other charges.

Over the last 15 years, the number of NDPBs across the United Kingdom has fallen by 619 (around 40%).

Legal and organisational framework

The legal status of each NDPB will depend on how it is established.

- Most executive NDPBs are set up by legislation as bodies corporate. They have their own legal identity and are independent of the Crown. (In the UK, all government departments and agencies are part of he Crown). Other executive NDPBs are set up either by letters patent (*i.e.* on the authority of the Queen) or are incorporated as companies under the Companies Act.

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Again, NDPBs set up in this way have their own legal identity and are independent of the Crown.

- Most advisory NDPBs are set up by administrative action (*i.e.* when ministers decide that they want a new advisory body to provide independent, expert advice on a particular issue). Such bodies have no separate legal identity but are regarded as "emanations" of the Crown. A small number of advisory NDPBs are, however, set up by statute.

There is no rigid framework for the setting up of an NDPB. However, the Cabinet Office issues general guidance[13] to departments on how to create a new NDPB and Cabinet Office officials are generally involved in their establishment (especially executive NDPBs). Where an NDPB is created by statute, Cabinet Office officials will be involved in the drafting of the relevant provisions of the bill to ensure that it contains, for example, sufficient powers for the minister to dismiss board members.

Most "governance" issues are not addressed in legislation. This would be too prescriptive and make it difficult to change governance arrangements as the legal and political environment changes. Instead, good "governance" is built into the various framework documents which set out the roles and responsibilities of the NDPB and into the contract of appointment for board members and the contract of employment for staff.

The role of Parliament *in setting up* NDPBs

If an NDPB is being established under legislation, parliamentary consent must be given before the bill can receive Royal Assent. Where an NDPB is set up by the Queen, under the Companies Act or administratively, parliamentary approval is not necessary. By convention, where functions are being transferred out of government and into an NDPB, parliamentary approval should be sought. This effectively means setting up the NDPB by legislation.

All NDPBs, whether set up with parliamentary approval or not, are directly accountable to Parliament through investigation by parliamentary bodies (such as the Parliamentary Ombudsman and the National Audit Office) and through scrutiny by parliamentary committees.

Governance structures

Role of the governing board

All NDPBs are headed by governing boards, typically comprising a chair and a number of non-executive members. Occasionally the chief executive of the NDPB, or other senior staff, serve on the board as executive members. The majority of

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appointments are unpaid and part-time, ranging from a few days a week to a few days a year. The role of the board is essentially to provide leadership, vision and continuity of purpose. Its key tasks are:

- to ensure that the NDPB fulfils its legal responsibilities;
- to ensure that the NDPB complies with any legal or administrative requirements for the use of public funds;
- to develop strategies, plans and policies;
- to uphold and promote commitment to core values, policies and objectives;
- to provide information about the objectives of the organisation and their achievement, and about stewardship of public monies;
- to ensure that the highest standards of corporate governance are observed at all times.

The roles and responsibilities of board members are set out in the individual NDPB's *Code of Practice*, based on a model issued by the Cabinet Office.[14] The latter states that all members of the board have corporate responsibility for ensuring that the authority complies with statutory and administrative requirements for the use of public funds. Board members of executive NDPBs also have responsibilities as employers. They must ensure that:

- they comply with relevant legislation and employ suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of staff employed by public bodies. All staff should be familiar with the NDPB's main aims and objectives;
- they adopt management practices which use resources in the most economical and efficient manner;
- advancement is on merit on the basis of equal opportunity for all applicants and staff. In recruiting senior staff, they should satisfy themselves that an adequate field of qualified candidates is considered, and should always consider the merits of full open competition;
- staff, and the board itself, have appropriate access to expert advice and training opportunities in order to enable them to exercise their responsibilities effectively.

Appointments to the governing board

Appointments to the boards of NDPBs are usually made by ministers (although, in a few cases, certain groups or bodies have nominating rights). There are currently around 26 500 men and women serving on the boards of NDPBs.

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Since 1995, there has been an independent Commissioner for Public Appointments who regulates the process for the appointments made by ministers to the boards of NDPBs. The Commissioner issues guidance[15] on making appointments and investigates complaints about individual appointment exercises. The Commissioner's guidance requires all appointments to the boards of NDPBs (and other public bodies) to be made in accordance with the *Code of Practice for Public Appointments*, which states that all appointments must be based on the following principles:

- *Ministerial responsibility*. The ultimate responsibility for appointments rests with ministers.
- *Merit*. All public appointments should be governed by the overriding principle of selection based on merit, by the well informed choice of individuals who, through their abilities, experiences and qualities, match the needs of the public body in question.
- *Independent scrutiny*. No appointment shall take place without first being scrutinised by a panel which must include an independent assessor.
- *Equal opportunities*. Departments should sustain programmes to promote and deliver equal opportunities.
- *Probity*. Board members must be committed to the principles and values of public service and perform their duties with integrity.
- *Openness and transparency*. The principles of open government must be applied to the appointment process, its workings must be transparent, and information about appointments must be provided.
- *Proportionality*. The appointment procedures need to be subject to the principle of "proportionality". That is, they should be appropriate for the nature of the post and the size and weight of its responsibilities.

The majority of appointments to the board are part-time and for a fixed term of three to five years. Subject to a satisfactory performance assessment, the chairman and board members may be re-appointed for an additional term. When new appointments are made to the boards of NDPBs, or when an existing member is re-appointed, this is publicly announced by a press notice. For certain high-profile appointments, there may also be a statement or announcement in Parliament. The announcement will include biographical details about the individual, the terms of their appointment (including levels of remuneration) and details of any political activity.

Where an NDPB is set up in legislation, the act will state certain conditions under which a board member may be removed (*e.g.* if he or she is continually absent from meetings, gets a criminal record, goes bankrupt, etc.) In addition, where an individual board member acts illegally or improperly, or otherwise falls short of those standards to which all public servants should work (as set out in

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"The Seven Principles of Public Life") then prompt action will be taken. Clearly, ministers and their departments will also need to take action in cases where an individual is failing to perform his or her duties effectively. Where appropriate, these may lead to dismissal.

The Seven Principles of Public Life are:

- S*elflessness*. Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- I*ntegrity*. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- O*bjectivity*. In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merits.
- A*ccountability*. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- O*penness*. Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- H*onesty*. Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interests.
- L*eadership*. Holders of public office should promote and support these principles by leadership and example.

Chairman

The chairman has particular responsibility for providing effective strategic leadership. The chairman:

- formulates the NDPB's strategy for discharging its statutory duties;
- encourages high standards of propriety, and promotes the efficient and effective use of staff and other resources throughout the organisation;
- ensures that the board, in reaching decisions, takes proper account of guidance provided by the sponsoring department and its ministers;
- ensures that the board meets at regular intervals and that minutes of meetings accurately record decisions taken and, where appropriate, the views of individual members;

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- represents the views of the NDPB to industry and the general public;
- provides an assessment of performance of individual members, on request, when they are being considered for re-appointment or for appointment to the board of some other public body.

Remuneration of board members

Most board members of NDPBs are unpaid and receive no remuneration other than reimbursement of travel and/or subsistence expenses. Where board members do receive remuneration, this can vary from a few hundred pounds to more than £100 000 (although such high payments are very rare). The remuneration of each board member is disclosed when the appointment is made and is published in the various reports which individual NDPBs produce. In addition, the annual Cabinet Office directory[16] of NDPBs provides, in one place, details of the levels of remuneration paid to all board members and chief executives of all NDPBs. It is unusual for board members to receive any other non-pay benefits (such as cars or apartments). If so, this would have to be publicly declared.

Chief executive

The chief executive (or equivalent) has responsibility, under the board, for the overall organisation, management, and staffing of the NDPB and for its procedures in financial and other matters, including conduct and discipline. This involves the promotion by example of the values embodied in the Seven Principles of Public Life.

The chief executive is usually designated as the NDPB's accounting officer and is responsible to Parliament and to the sponsoring department for the resources under his control. The essence of the role is a personal responsibility for the propriety and regularity of the public finances for which he is answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the resources in his charge. The accounting officer has a responsibility to see that appropriate advice is tendered to the board on all these matters.

Staff

The larger NDPBs typically employ their own staff. Staff directly employed by NDPBs are not civil servants but are employees of the NDPB concerned and subject to general employment law. The smaller, advisory NDPBs do not usually employ staff. Instead they are supported by civil servants from within the appropriate government department who remain employed by the Crown and subject to civil service terms and conditions.

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All NDPB boards which employ staff have certain moral and legal responsibilities. The board, as an employer, is responsible for ensuring that the NDPB:

- complies with employment law;
- avoids discrimination against potential or actual employees;
- has a statement of terms and conditions of employment and clear policies on a wide-range of human resource management issues such as promotion, disciplinary and grievance procedures and staff development;
- observes health and safety requirements.

Resources and budget process

Most executive NDPBs are financed by grant-in-aid. This form of financing, as opposed to the payment of a grant, is most appropriate where the government has decided, subject to parliamentary and departmental controls, that the recipient body should operate at arm's-length from ministers. Some NDPBs, however, are financed in whole or part by fees or charges. This will normally apply where the NDPB's services benefit a particular group of people and can be financed by that group (but can also apply to services to the public sector). Some NDPBs are also funded via a statutory levy.

Advisory NDPBs are usually supported by their sponsoring department and any expenditure is carried on that department's vote.

The board of an NDPB has collective responsibility for the proper conduct of affairs and for ensuring that staff maintain the highest standards of financial propriety. Where the NDPB has been set up by statute, the board has a duty to ensure that the requirements of propriety, regularity and value-for-money are met in its use of public funds. Where the NDPB is set up under the Companies Act, it must also meet that act's requirements. The board must ensure compliance with any appropriate financial requirement laid on it by the sponsoring department. In all cases where a sponsoring department gives a grant or grant-in-aid to an NDPB, there must be a clear understanding of the responsibilities of all the key players.

Parliament plays no specific role in decisions about the amount of grant-in-aid awarded to NDPBs. However, most NDPBs are required to lay an annual report and accounts before Parliament. The Comptroller and Auditor General examine the accounts of most NDPBs (although he is currently prevented, under the Companies Act, from auditing NDPBs which are companies). The Comptroller and Auditor General is a servant of Parliament and reports to a parliamentary committee on his work. In addition, Parliamentary Select Committees and the Public Accounts Committee (both committees of Parliament) can call the Chairman, board members and the chief executive of the authority before them at any time

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to explain their work and account for their actions. This includes decisions on expenditure.

Policy coherence, oversight and accountability mechanisms

The role of the sponsoring department

Each NDPB will have a parent or "sponsoring" department. The sponsoring department and its ministers are ultimately answerable to Parliament for the policies and overall performance of the NDPB, including its degree of independence, its usefulness as an instrument of government policy and its use of resources.

As with executive agencies, executive NDPBs should operate within the context of framework documentation set by sponsoring departments. This typically comprises a management statement and a financial memorandum which together, set out the key elements of the policy and resources framework for the NDPB and the roles and responsibilities of all the key players (*i.e.* the board, the chairman, the chief executive, the relevant minister, the sponsoring department, etc.).

Executive NDPBs will also agree targets with the sponsoring department, prepare corporate and business plans and publish annual reports and accounts in the same way as executive agencies. Advisory NDPBs usually produce a "light touch" annual report.

Accountability to Parliament

Parliament's principal role is to ensure that NDPBs, and ministers, are held to account for their policies, actions and expenditure, and is involved in the creation of most new NDPBs when they are set up under legislation.

All NDPBs are directly accountable to Parliament in the following ways:

- through the Act of Parliament establishing the NDPB (for those NDPBs set up by legislation);
- through the sponsoring department whose ministers answer to Parliament on the NDPB's behalf;
- through the Public Accounts Committee which can call to account the accounting officer of NDPBs (usually the chief executive) to ensure that public money is being spent in accordance with those objectives set out in legislation and in line with government accounting procedures;
- through the relevant Parliamentary Select Committees of the House which have the power to examine the expenditure, administration and policy of all NDPBs.

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In addition, members of Parliament can question ministers on the actions and performance of their NDPBs by tabling parliamentary questions or by correspondence. Ministers are obliged to answer all such requests for information promptly.

All executive NDPBs produce annual reports and accounts, which are made available to Parliament. The Comptroller and Auditor General is either the external auditor of, or has inspection rights to, all executive NDPBs. The majority of executive NDPBs, and those advisory NDPBs which have significant dealings with members of the public, are subject to investigation by the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman).

Accountability to users/members of the public

All NDPBs are expected to consult regularly with customers, staff and their trade unions, and other stakeholders to seek their views about the quality of services being delivered and how this could be improved. NDPBs are encouraged to take part in the Charter Mark Programme and other quality initiatives along with executive agencies. And the Quinquennial Review process, which is mandatory for all NDPBs as it is for agencies, actively seeks the views of stakeholders on the organisation and operation of individual NDPBs.

All NDPBs have an obligation to be as open and transparent as possible about their decisions and actions. To this end, NDPBs now pro-actively release a wide-range of information about themselves. For example, most NDPBs:

- publish an annual report setting out the authority's role, responsibilities and the work undertaken during the previous 12 months;
- publish annual accounts of expenditure;
- publish corporate and business plans setting out their objectives for the coming years, together with their plans for meeting these objectives;
- publish information about the chairman, board members and senior staff, including a comprehensive register of members' interests;
- provide information (such as agendas and minutes) on board meetings;
- maintain a website containing a wide-range of information about their work, press releases, copies of key publications, etc.

In 2000, the Parliament passed a Freedom of Information (FOI) Act. This means that, for the first time, members of the public have a statutory right of access to a wide-range of information held by public bodies. Most NDPBs are covered by the provisions of the FOI Act, which are being phased in over the next couple of years.

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Seeking redress

All NDPBs should have formal procedures in place to deal with complaints about service delivery.

Many are also within the remit of the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman). The Parliamentary Ombudsman exists to hear complaints from individuals who have suffered an injustice in administration. This includes complaints about rudeness, incompetence, refusal to answer reasonable questions, neglecting to inform a complainant of his or her rights or entitlements, knowingly giving advice which is misleading or inaccurate, and bias.

The courts are also a means by which complainants can seek redress against the decisions or actions of an NDPB. As most NDPBs are not Crown bodies, they are not subject to any of the immunities which the Crown enjoys.

Evaluation, lessons learnt and recent developments

Constant reviews of the functioning of NDPBs

The NDPB model and the NDPB control regime are under almost constant review. Current work includes:

- Review of the Quinquennial Review process (whereby all executive agencies and NDPBs undergo a rigorous "root and branch" review at least once every five years). This is being led by officials from the agency and NDPB policy teams within the Cabinet Office and will involve consultation with a wide-range of stakeholders.
- Review of the Commissioner for Public Appointments' "rules" for making appointments to the boards of NDPBs. This is being led by officials from the Commissioner's office in consultation with departments.
- Work on "best practice" in making appointments. Officials in the Cabinet Office are working with departments and the Commissioner for Public Appointments' office to identify and promulgate "best practice".
- Review of ministerial accountability. The Public Services Productivity Panel are conducting a project on how NDPBs and other public bodies (including agencies) are accountable to sponsoring departments. The project will generate a framework and advice that will help departments and NDPBs develop more effective accountability mechanisms and practices.

There are also reviews taking place elsewhere within government – (such as the Cabinet Office/HMT review of executive agencies and the Scottish Executive review of NDPBs) which may well bring about changes to NDPB policy. For example, the agency review will be looking at transparency and thoroughness in reporting, issues which are equally applicable to NDPBs. In addition, the Public

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Administration Select Committee (a parliamentary committee) takes a key interest in the "quango" sector and regularly publishes reports on, and recommendations about, NDPBs.

The NDPB model has proved popular, with new NDPBs being created by government all the time. There is now also general agreement that NDPBs are an essential part of modern government. There is still some concern about the accountability and openness of NDPBs, and the popular perception of NDPBs as secretive, unaccountable, and undemocratic persists. The British Government recognises that it needs to address these concerns.

Recent developments

As with agencies, the main focus on NDPBs is moving away from their creation towards improving their performance and ensuring that they are open, accountable and effective. Recent parliamentary reports have reinforced this. For example, the Public Administration Select Committee[17] have recently said that:

> *the quango* [NDPB] *sector is a permanent and dynamic aspect of modern government in the United Kingdom... Whatever view is taken of quangos, it is essential that we can identify them clearly and assess how accountable they are.*

Wider initiatives, such as new Data Protection legislation and the new Freedom of Information Act, are already changing the way in which all public bodies (including NDPBs) hold, and make available, information; and devolution has resulted in hundreds of public bodies (including around 200 NDPBs) being transferred to new, democratically elected chambers in Edinburgh, Cardiff and Belfast. The establishment of the Greater London Authority has also changed the way in which "London" bodies work. These new administrations will, over time, develop their own accountability and governance arrangements and there may be lessons which the UK Government can learn from the devolved administrations.

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Notes

1. Quoted in *After Next Steps* – The Massey Report, January 1995, p. 14.
2. The *Executive Agencies*: 1999 *Report*, a Cabinet Office publication, gives basic details about each agency's functions and performance against targets. The report is available on the Cabinet Office website at: *www.cabinet-office.gov.uk/eeg/index/publications.htm*.
3. Public Finance, Sir Peter Kemp, February 2001.
4. *Improving Management In Government: The Next Steps*, Efficiency Unit report by Karen Caines, Andrew Jackson and Kate Jenkins, 1988, p. 9.
5. Public Finance, Sir Peter Kemp, February 2001.
6. The Civil Service Commissioners are appointed directly by the Crown under the Royal Prerogative. They are not appointed as civil servants and are independent of ministers. They report annually on their work to the Queen and this report is published. The Civil Service Commissioners are responsible for upholding the principle, in the context of recruitment to the civil service, that selection should be solely on merit on the basis of fair and open competition. The Commissioners have an Internet site at: *www.open.gov.uk/ocsc/ocschome.htm* .
7. There are exceptions to this, namely the Ministry of Defence model and the 2000-2001 provisional arrangements for the Office of Government Commerce agencies but such deviations need to be discussed in advance with the Cabinet Office.
8. The Cabinet Office's guidance on agency annual reports is available at: *www.cabinet-office.gov.uk/eeg/index/publications.htm*.
9. The Cabinet Office has produced a *Guide to Quality Schemes and the Delivery of Public Services* available at *www.cabinet-office.gov.uk/servicefirst/index/quality.htm* to show how these schemes link together and how they can deliver government policy on the ground. The guide includes several case studies available at *www.cabinet-office.gov.uk/servicefirst/2001/taskforce/gettingittogether/04.htm* from across the public sector to illustrate the effectiveness of these schemes.
10. *Report on Non-Departmental Public Bodies*, Her Majesty's Stationery Office, January 1980.
11. The most recent edition, covering the 1999/2000 financial year, is entitled *Public Bodies*, The Stationary Office, January 2001. [www.cabinet-office.gov.uk].
12. All figures taken from *Public Bodies* 2000, The Stationary Office, January 2001.
13. *Non-Departmental Public Bodies*: A *Guide for Departments*, Cabinet Office, March 2000.
14. *Guidance on Codes of Practice for Board Members of Public Bodies*, Cabinet Office, February 2000.
15. *The Commissioner for Public Appointments' Guidance on Appointments to Public Bodies*, Office of the Commissioner for Public Appointments, July 1998.
16. *Public Bodies* 2000, The Stationery Office, January 2001.
17. *Public Administration Select Committee Fifth Report*: "*Mapping the Quango State*", The Stationery Office, March 2001.

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United States

by

Ronald C. Moe*

Background

Definition of agencies

The use of the term "agency" in the United States is crucial to understanding how the national government is organised and managed. Agency is a term and concept defined and employed generically to refer to all Executive branch entities. The precise nomenclature used to designate an entity has no bearing upon its legal status. Thus, the Department of the Treasury, Peace Corps, Federal Bureau of Investigation, Office of Comptroller of the Currency, Agency for International Development, and Pension Benefit Guaranty Corporation, are all agencies of the government. In Title 5 of the US Code, it is noted that the entire Code applies to all agencies of the United States. This is also critical because it means that all laws and relevant regulations apply to all agencies unless specifically exempted as a category of organisation, or exempted in the enabling legislation of the agency. There are a number of exemptions, but those seeking them have been forced to overcome a substantial burden of proof favouring general applicability.

Background of agencies in the United States

The source of authority respecting the organisation and governance of the federal (national) government of the United States is the Constitution of 1787. While questions regarding how best to organise the Executive branch were raised in the Constitutional Convention, the Constitution itself is nearly silent on organisational

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matters.[1] The document does reflect, however, the clear intentions of the Founders to organise a government based on three political principles:

- the institutions of government shall be divided among three co-equal branches, the legislative, Executive, and judiciary, and these branches shall be at once institutionally separate and interdependent;
- all administrative functions are to be located within the executive branch and responsible to the President and through the latter accountable to Congress;
- there shall be a governmental sector (agents of the sovereign) and a private sector and they shall be kept separate and function under distinctive theories of jurisprudence.

The Constitution provides for a democratic republic[2] in which central legal authority is vested in Congress. The powers of Congress are defined and listed in Article 1, a location selected intentionally. It is Congress that establishes departments and agencies and, to whatever degree it chooses, the internal organisation of agencies. It is Congress, through law, that determines the mission of agencies, personnel systems, confirmation of executive officials, funding, and ultimately evaluates whether the agency shall continue in existence. No agency or office of the United States may be created or dissolved except by explicit approval of Congress.

The decision to establish a unitary administrative structure under the President, an innovation at the time, was intended by the Founders to complement their more comprehensive theory of government. They believed that efficient administration was more likely in an integrated Executive branch under a President elected independently of the legislature. Congress was to retain significant administrative powers and oversight, as has been previously noted. This arrangement was viewed as a critical precondition for workable lines of political accountability, the latter being the highest value in the system.

An integrated Executive branch under the President retained its appeal throughout the 19th century though, in fact, presidents often lacked the institutional capacity, budgetary tools and inclination to be active managers. For the most part, it was Congress that provided whatever Executive branch oversight was forthcoming.[3] Departmentalism, that is the placement of virtually all agencies within Executive departments, retained its hold until Congress approved the creation of the plural member Civil Service Commission in 1883 and the Interstate Commerce Commission in 1887. This break with departmentalism and the single administrator headed agency was associated in many respects with the triumphant civil service reform movement that sought to cleanse administration of partisan politics by introducing the merit system.

In the 20th century the concept of a strong Executive emerged as a driving force in government organisation and management.[4] Various landmark commissions issued reports calling for presidents to exert more managerial leadership,

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the creation of central management agencies, and the re-integration of Executive agencies in departments reportable to the President. The view that all government activities should be accountable in some manner to politically responsible officials received its most forceful expression in the 20th century in the Hoover Commission Report in 1949:

> [We] *must re-organise the* Executive *branch to give it simplicity of structure, the unity of purpose, and the clear lines of executive authority originally intended…*
>
> [The] *organisation and administration of the government.. must establish a clear line of control from the* President *to the department and agency heads and from them to their subordinates with correlative responsibility from those officials to the* President, *cutting through barriers which in many cases made bureaux and agencies partially independent of the chief executive.*[5]

Through the mid-1970s the organisation and management of the Executive branch followed some basic rules. If an entity was established by Congress to accomplish a public purpose, it would be considered an agency of the United States operating under the general management laws enforced by the President and the central management agencies. These values, originating with the Founders and reinterpreted by successive generations of reformers, featured the centrality of public law, departmental integration and political accountability. The purpose of federal management was to implement the laws passed by Congress.[6] The President was charged with responsibility for management of the Executive branch. The governmental and private sector co-operated, but were kept legally separate and distinct in the interest of protecting citizens' rights against a potentially arbitrary government. This public law, or constitutionalist, paradigm of government organisation and governance prevailed largely unchallenged to the late 1970s.

The concept of a unitary Executive branch is increasingly under pressure to permit exceptions. Within the Executive branch it is natural for agencies and their chiefs to seek autonomy from central direction in both policy and operations. In this quest for autonomy, the internal forces are often reinforced by outside support organisations. It takes considerable resources and skills by the President and central management agencies to counter the prevailing centrifugal forces. Since the late 1970s, the advantages have been with those who seek to disaggregate the Executive branch.

This trend toward disaggregation has taken several forms: legal, organisational, financial and personnel. There are more agency-specific management laws today than 30 years ago. Agencies (*e.g.* Social Security Administration) are being split away from departments and assigned independent agency status. More agencies are being given control over their funding systems and revenues, and the number of separate personnel systems has increased. Philosophically, the federal government is often out-of-favour with the public hence there is pressure to create new, hybrid organisations that appear less bureaucratic. Financially, budget constraints encourage agencies to develop new sources of revenue and with this

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revenue comes renewed efforts to function outside the traditional framework of government organisation. For many, the goal is to shift functions either out of the government entirely (privatisation) or to contractors. This latter thrust gives the impression, though it may not be true in fact, of reducing the size of government.

Coupled with this trend toward disaggregation has been the popularisation of new management principles. A "New Public Management" (NPM) paradigm (model) emerged in the early 1990s and rapidly gained currency through its promotion by the OECD and others.[7] The underlying premise of the NPM is that the governmental and private sectors are alike in their essentials and subject to generic management theory based on economic premises. Promoters of NPM ("entrepreneurs") rely on literature, propositions and practices that strive toward convergence of the governmental and private sectors. The acceptance of the convergence model of public management worldwide has been both rapid and in some instances disrupting.[8]

In the United States, Vice President Al Gore (1993-2001) was the leader of the "reinventing government" exercise that was premised in large measure on the ideas flowing from the NPM paradigm. There was a substantial scaling down of federal managers and employees with a concomitant increase in contracting out of support and management services to third parties. Government agencies were instructed to act like private corporations. Success was to be measured by "customer satisfaction." Finally, the reinventing government exercise strove to alter the political balance of power in the United States away from Congress and towards the President.[9] In this latter strategy, the exercise was judged by some to have failed.[10]

While the pressures favouring disaggregation and entrepreneurial management have resulted in some changes in government organisation and management style, by and large the federal government remains faithful to the political philosophy and organisational concepts promoted by the founders. If George Washington or James Madison were to return to their creation, they would be struck more by the resemblance of the current government to their ideals than by its differences.

Legal and organisational framework

General management laws

Although the Executive power of the United States is vested in the President, the powers of Congress are such that their relationship is one of co-management of the Executive branch. The principal tool by which Congress and the President co-manage are the management laws of general applicability. "General management law," as used in this report, refers to those cross-cutting laws regulating the

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activities, procedures and administration of all agencies of the federal government, except where exempted by category of organisation or by a provision in their enabling statute.[11]

General management laws are intended to provide appropriate uniformity and standardisation for government organisation and governance processes, with the recognition that "one size does not fit all". What these laws reflect are the conceptual and legal agreements between the branches respecting the management of the Executive branch. In functional terms, general management laws are statements of presumption guiding governmental behaviour, that is, certain doctrinal provisions reflected in legal language stand until and unless an exemption is permitted. Exemptions may be assigned by a general statute to a category of agency, or they may be present in provisions of the agency's enabling statute. Exemptions from general management laws may be mandatory or discretionary.

General management laws come in various guises and may be dramatic in their coverage and impact, as is the case with the Administrative Procedure Act, Budget and Accounting, Ethics in Government, and Freedom of Information Acts, or they may be of relatively low visibility (though no less important) such as the Federal Advisory Committee Act, and the User-fee Act of 1951. In recent years, two somewhat contradictory trends have been evident. Firstly, there have been many new general management laws (*e.g.* Inspectors General Act, Chief Financial Officers Act), each supported and justified on its supporters' definition of a problem, but often with what some observers believe to be little consideration of its probable impact upon other related general management laws. Secondly, agencies and interest groups have been increasingly successful in gaining exemption from the coverage of these acts, especially exemptions in the fields of personnel, compensation and intra-governmental regulations.

Organisation and types of agencies

In analysing the organisation of the Executive branch, the organisational categories may be helpfully viewed as a series of concentric circles around the President. The nearest circle includes those agencies and entities closest to the President and the furthest circle those with the least ties to the President.

The Cabinet [ed. Note: The Cabinet and subsequent organisational categories are subsets of the above]

The President's Cabinet is an institution whose existence rests on custom rather than law. The Cabinet came into existence in 1793 because George Washington found it useful. While all subsequent Presidents have considered it necessary to meet with the Cabinet, their attitudes toward the institution and its members have varied greatly.[12] Some Presidents have convened their Cabinet

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only for the most formal and routine matters while others have relied heavily upon it for advice and support.

There are presently some 14 departments in the Executive branch, the heads of which serve in the Cabinet. Recent Presidents have exercised their prerogative to invite others (*e.g.* Assistant to the President for Homeland Security) to attend meetings and have "cabinet rank." Members of the Cabinet, like most other presidential appointees, serve at the pleasure of the President.

The Cabinet is not a body with collective responsibility, as is usually the case in parliamentary regimes. The Cabinet never resigns *en masse* simply because Congress has rejected one of the President's proposals. The single common thread for the members of the Cabinet is their shared loyalty to the President who appointed them.[13] Presidents, recognising the limitations inherent in the institutionalised Cabinet, have long sought alternative ways to provide themselves with advice and political support. In the post World War II period, sub-cabinet groups such as the National Security Council were established, and other councils have been established from time to time with membership of departmental secretaries and others.

Executive Office of the President

The Executive Office of the President (EOP) was established in 1939[14] and today consists of the White House Office[15] and approximately 14 additional offices reporting directly to the President.[16] Although the Cabinet is formally the body closest to the President, in practice there is general agreement that the President relies most heavily upon his immediate staff offices and officers. The earliest and most important unit is the Office of Management and Budget (OMB), until 1970 known as the Bureau of the Budget.[17] The OMB is the central management agency for the President. Other major units in the EOP include the National Security Council and the Office of Special Trade Representative. Lesser units include the Office of Administration, Office of National Drug Control Policy, and the Council of Economic Advisors. The President has flexibility within the EOP to establish councils and committees (*e.g.* Economic Policy Committee) composed of various officials both in and outside the EOP. Altogether, the EOP has about 2 000 personnel, a figure that does not include support personnel such as the Armed Forces Communications Centre or the National Park Service personnel who maintain the grounds.

A distinction may be properly drawn between those units and staff that serve the personal and political interests of the incumbent President and those units in the EOP that are intended to serve some institutional interest of the presidency. At times the line may become blurred as when particular directors of OMB have functioned more as special assistants to the President than as institutional leaders

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one step removed from the White House. Some professional organisations and special interest organisations seek to have units in the EOP to advocate their particular interests. There are, or have been at one time or another, offices promoting drug control, space policy, poverty programmes and environmental interests located within the EOP although it is not altogether clear that this location is advantageous to the interests being promoted.

Congress is no longer willing to give the President a free hand with respect to organising the EOP. Most of the top officers of units in the EOP, units established by law, now require Senate confirmation and thus must appear before Congress. The White House Office, however, still remains the preserve of the President. On occasion, Congress has forced upon the President a unit within the EOP, as with the Office of Federal Procurement Policy (OFPP), a sub-unit within OMB. In the case of the OFPP, it was initially viewed as reporting to both the President and Congress. Over time, however, the OFPP has become solely a presidential unit. Experience indicates that as a practical matter, the President cannot be compelled to utilise a policy-making and advisory apparatus in the Executive Office against his own preferences.

D*epartments*

The 14 departments in the Executive branch vary widely in size, importance and traditions of management. Having been created at different times and having developed different administrative cultures, numerous issues exist with respect to their roles, relationships and effectiveness.[18] Three of the departments – Treasury, Justice and State – have broad-ranging responsibilities often cutting across the government. The remaining departments reflect a number of motivating factors. As a general proposition, departmental status is reserved for those agencies that administer a wide-range of programmes directed toward a common purpose of national importance.

Some departments reflect and represent clientele interests, such as the Departments of Agriculture, Labour, Veterans Affairs and Commerce. Others were initially created to address what were considered at the time to be problems of major and lasting interest, such as the Departments of Education, Housing and Urban Development, Energy and Interior. The Department of Defence is a department with strong constituency interests but also tends to view itself as a presidential agent since the President is Commander-in-Chief.

Departments differ in their ability to develop department-wide policies. Some departments are organised in such a way that the secretary can make reasonably coherent department-wide policies involving a number of bureaux. The Transportation Department is one such department because it is organised according to modes of transportation (*e.g.* Federal Aviation Administration,

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Federal Railway Administration), thereby facilitating the secretary's ability to make trade-offs between transportation modes and the bureaux themselves. Other departments, such as the Commerce Department, are essentially "holding companies" with bureaux functioning with little relationship one to another, (*e.g.* Bureau of the Census and the National Oceanic and Atmospheric Administration). The primary loyalty of most career employees is to their specific bureau and its programmes, not to their department and its secretary.

B*ureaux within departments*

Every department is composed of a number of bureaux. These are the operating units responsible for implementation of programmes and in some instances for actual delivery of services. There are approximately 200 civilian bureaux spread among the departments. In many respects, the bureaux are the basic unit of government and the bureau chiefs the critical players.[19] The relationship of a bureau to the department may vary greatly depending upon a number of circumstances. For one thing, the bureaux and their relationships with Congress, clientele organisations and other bureaux may have predated the creation of the department. Some bureaux have a strong professional culture that inhibits secretaries who might otherwise want to intervene on policy or personnel matters.

The President nominates the heads of bureaux although he and his Office of Presidential Personnel may receive input from many sources, especially departmental secretaries. In some instances Presidents may be limited in their choices by formal requirements in law (*e.g.* the nominated person must have specified professional experience) or by tenure requirements. An increasing number of bureau chiefs have statutory tenure, such as five-year appointments. A specific term in office does not, however, limit the President's right to dismiss the official. Set terms of office do carry the presumption that the individual holding the position will remain until the end of their term and thus removals may carry some political risks to the President and the secretary of the department in question. Also, if the phrase, "removal only for cause", such as malfeasance, neglect of duty, etc. is incorporated into the statute it generally means that no removal will be attempted since the threshold for meeting the "for cause" test is almost impossible to meet.

I*ndependent agencies*

The term "independent agency" is often used loosely to imply that somehow such an agency is less "governmental" than the standard bureau within a department. In fact, an independent agency simply refers to an agency outside of an Executive department. Independent agencies are regular agencies of government subject to all the same laws as are agencies within executive departments, except

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where individually exempted. The heads of independent agencies, in theory at least, report directly to the President. In practice, however, presidents rarely spend time or resources managing the independent agencies leaving such matters principally to budget examiners in the OMB. Generally speaking, Congress gives greater oversight attention to independent agencies than is the case with agencies within departments.

Independent agencies, of which there are approximately 60, perform all sorts of functions and come in all sizes. Independent agencies may be large, such as the Social Security Administration (SSA), National Aeronautics and Space Administration (NASA), and Environmental Protection Agency (EPA) or small, such as the Federal Mediation and Conciliation Service or the Selective Service System. In some cases, the choice of independent agency status is the result of interest group pressures or of interest by Congress and the President to highlight their concern for a particular problem as was the case when the establishment of NASA symbolised interest and concern for space matters. Sometimes independent agencies are created as a way to settle a jurisdictional dispute between two departments. The creation of the Arms Control and Disarmament Agency as an independent agency settled a jurisdictional dispute between the Departments of State and Defence. And finally, independent agency status has appeal if the goal is administrative flexibility for a temporary agency.

I*ndependent regulatory commissions*

There are a number of agencies (14 are generally cited) referred to collectively as "independent regulatory commissions" (IRCs). These agencies are characterised by two features: *i*) a degree of detachment from central management agencies and directives; and *ii*) the presence of plural executive leadership.[20] From the creation of the first IRC, the Interstate Commerce Commission in 1887, down to the present day, there has been debate and conflict regarding the relationship of the IRCs to the President and to Congress, especially the latter. In the Progressive era (1905-15), the argument was made that IRCs should be viewed more as "arms of Congress" than as Executive branch agencies and several provisions were regularly included in law (*e.g.* staggered terms of commissioners to insulate them from political transitions) intended to achieve this result. The fact is, nonetheless, that for most administrative purposes the IRCs remain in the Executive branch, albeit outside of departments,[21] with tenuous lines of accountability to the President.

The writing of regulations is the principal and critical task of most agencies in government and most agencies are headed by a single administrator. The Environmental Protection Agency and the Food and Drug Administration are two examples of major regulatory agencies headed by single administrators, the former independent and the latter a bureau within an Executive department. Yet, for over

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a century, there has been a second view on the proper organisational setting for making regulatory policy and enforcement. There is a body of opinion (principally held by lawyers) that contends that regulatory policy and administration are essentially quasi-judicial in character and therefore ought to be conducted in a commission setting resembling a court with adversary proceedings. While IRCs have some "independent" characteristics, they nonetheless remain under both the President and Congress for critical purposes. For instance, Congress can pass laws affecting the jurisdiction of IRCs. And the power of the purse remains with both Congress and the President.

On balance, the IRCs are accorded relatively low marks for policy-making and for political influence. They are not present at the Cabinet meetings and presidents feel little necessity to defend commission actions. Congress, especially its committees, may or may not be protective of "their" IRCs. It is simply not clear whether the IRC organisational option enhances, or detracts from, the development and implementation of federal regulatory policy.

Government corporations

A government corporation, as traditionally understood in the American context, is an agency of government established by Congress to perform a market-oriented public service and produce revenues to meet or approximate its expenditures.[22] At present, there is a wide variation in the legal, financial, structural and policy bases for the 23 entities identified as government corporations. This diversity has raised concern among some policy analysts that the corporate concept has, on occasion, been misapplied to designate agencies having no commercial function and which produce little or no revenue (*e.g.* Legal Services Corporation, Corporation for National and Community Service).

Corporations cover the spectrum from such large, well-known corporations as the US Postal Service and the Federal Deposit Insurance Corporation to small, low visibility corporate bodies such as the Federal Financing Bank in the Treasury Department and Federal Prison Industries in the Justice Department. The number of corporations is in moderate flux with new corporations being added from time to time while others are being disestablished.

Historically, the federal government has been involved in few commercial enterprises. There were some early instances of the federal government participating in otherwise private corporate enterprises on a shared ownership basis, most notably the First and Second Banks of the United States. This practice came into question, however, as a consequence of a Supreme Court ruling in 1819.[23] From that time to the present, the federal government, with few exceptions, has consciously avoided shared ownership involvement with private, non-governmental entities.

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The first time the federal government acquired a corporation outright occurred in 1903 when the Panama Railroad Company was purchased from the French Panama Canal Company. Since then, a number of corporate bodies have been established as part of the federal government, with growth in that number tending to come in spurts and generally in response to emergencies. The first large-scale use of the corporate option accompanied the mobilisation for World War I. Later, the Depression of the 1930s fostered numerous corporations (*e.g.* Reconstruction Finance Corporation, Tennessee Valley Authority). Finally, World War II prompted additional federal corporations. After the passing of each of these emergencies, many of the corporations that dealt with them were abolished or absorbed into the permanent Executive branch agencies.

In 1945, partly in response to the proliferation of corporate bodies created for the war effort, Congress passed the Government Corporation Control Act (31 U.S.C. 9101-9110). Provisions of the act standardised budget, auditing, debt management and depository practices for corporations, as well as listing those organisations covered by the act.

Government corporations, no matter what function they perform or how "private" they may appear to the public, or to themselves, are agents of the state subject to constitutional limitations. As the Supreme Court concluded in the 1995 Lebron case, a government corporation has certain inherent legal characteristics that cannot be shed simply by legislative language or by corporate fiat.[24] The nature of the function performed (*e.g.* managing a railroad) has no effect upon its governmental character. The governmental and private sectors are fundamentally separate and distinct, with the distinctions based largely in legal theory, not economic theory. This understanding is essential to recognising both the potentialities and limitations of the government corporate concept. The government corporation remains governmental in character until Congress determines it shall be fully private, thereby coming under private law.

The government corporation concept may be considered a useful alternative to privatisation of some agency, or it may be employed as a transitional step toward eventual full privatisation.[25] The principal utility of a government corporation as an instrument of sectoral transference is that it can demonstrate marketability and asset value, critical elements in any successful privatisation venture. Because there have been few State-Owned Enterprises (SOE) in the United States, there has been little need for transition strategies and practices.

Other agencies and entities

There are a number of agencies that do not fit squarely into any of the above categories. Here we find such agencies as the Smithsonian Institution, which is assigned by law several unusual characteristics. There are several inter-governmental

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agencies, such as the Appalachian Regional Commission, that, by and large, are "orphans" with little support either from state governors or from the federal government. Agencies in this outer circle may enjoy a substantial degree of autonomy, but they also tend to be more politically vulnerable.

Q*uasi-governmental entities*

In recent years, both Congress and the President have increasingly turned to hybrid organisations (*e.g.* Fannie Mae, National Park Foundation, Policy-American Enterprise Fund) to implement public policy and functions traditionally assigned to Executive departments and agencies. There are today, associated with the federal government alone, literally hundreds of hybrid entities that have collectively come to be called the "quasi-government".[26] The relationship of this burgeoning quasi-government to elected and appointed officials is of growing interest, and some concern, as it touches the heart of democratic governance: To whom are these hybrids accountable? How is the public interest being protected against the interest of private parties?

The truth is that the quasi-government, virtually by its name and the intentional blurring of its boundaries, is not definable in any precise way. In general, the term describes those entities that have some legal relation or association, however tenuous, to the federal government. T*he one common aspect of this melange of entities is that they are not agencies of the* United States *as that term is used in* Title 5 *of the* US C*ode*. This distinction turns out to be critical because it determines which system of jurisprudence shall prevail in the governance of organisations. If an entity is an agency of the United States, it comes under public law. If the entity is not an agency of the United States, it comes under private law.[27] The first task is to break down the many hybrid entities in the quasi-government down into manageable categories about which legal and behavioural generalisations may be made. In rough terms, five categories suggest themselves: *i*) government-sponsored enterprises; *ii*) federally funded research and development corporations; *iii*) agency-related non-profit organisations; *iv*) venture capital funds; and *v*) congressionally-chartered, non-profit organisations.[28]

The distinguishing characteristic of the several organisational categories of the quasi-government is the commingling of the legal characteristics of the governmental and private sectors. It may be an implicit guarantee by the federal government of debt instruments or simply permission to use a logo implying governmental approval. In any case, to some degree the attributes of the sovereign are assigned to an otherwise private party.[29] The decision to create a quasi-governmental body is not politically neutral. Presumably, the private parties receive advantages not available to others. On the other hand, the private beneficiaries

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then become liable for reporting and supervision of their activities by the sovereign to protect it and the citizenry against abuse.

Even in situations where abuse and corruption appear unlikely, it may still exist in subtle forms. Perception can become reality in the political world. The interests of the private and governmental sectors may appear at one level to be congruent or complementary, while at another level to be in direct conflict. At the very least, they are generally different interests. For instance, the federal government's interest in national security against espionage is likely to be greater than that of any one of its contractors engaged in operations. The federal government's concern may be in direct conflict with the private shareholder interests in a government-sponsored enterprise, such as the Federal National Mortgage Association (Fannie Mae).[30] Even in the most tenuous element of the quasi-government, congressional chartered non-profit organisations, the government's interests may be at odds with the interests of, say, the American Legion or the US Olympic Committee.[31]

Governance structures (officers and personnel)

The Constitution provides that the President has the power to appoint officers of the United States to positions established by law; but Congress may by law vest the appointments of such inferior officers (employees) as they may think proper, in the President alone or in the heads of departments. Officers of the United States appointed by the President are subject to the advice and consent of the Senate. The bulk of the civil service are viewed as employees, not officers, of the United States and hence are hired, retained and dismissed according to civil service laws and departmental regulations.

The leadership of departments and agencies of the Executive branch is provided, in large measure, by political appointments made by the President. In recent decades, the number of politically appointed positions has increased. In a number of departments and agencies political appointees now reach four and five levels deep in the organisation.[32] Today, there are some 725 senior positions in the Executive branch: department secretaries, deputy secretaries, under-secretaries, assistant secretaries, bureau chiefs, regulatory commission members and ambassadors, all of whom require presidential appointment and Senate confirmation. There are also lesser positions, such as US attorneys, US marshals, and others, bringing the total number of presidential appointments requiring Senate confirmation to 1 125 positions. Additional lower level appointments are available to each administration to promote its political priorities. Today there are some 700 non-career appointments in the Senior Executive Service (SES), the top career service category, and 1 400 Schedule C positions, the latter positions being of lower rank not requiring presidential appointment or Senate confirmation.[33]

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The job of selecting this cadre of top administrators is assigned to an institutionalised Office of Presidential Personnel (OPP) in the White House.[34] Whenever there is a partisan change in the White House, virtually all of the political executives must resign and in their place a totally new cadre is assembled, confirmed and despatched. Once a small office, the OPP now includes over 50 people.

Political patronage has a long and colourful history in the United States. At one point, patronage was viewed as a necessary component of democracy. In the late 19th century, however, the civil service reform movement gradually brought about a career, non-political and professional workforce.[35] In 1978, the Civil Service Reform Act[36] established a Senior Executive Service (SES) which today has some 7 000 members. The SES has never been permitted to reach its full potential being encumbered by a number of problems not the least of which is a chronically inadequate compensation system.

In 1989, the National Commission on the Public Service, chaired by Paul Volcker, issued a report that detailed the decline of the public service and offered a number of recommendations.[37] One recommendation was to decrease the number of political appointees by one-third and increase the number of careerists in top management positions, especially in agencies with technical responsibilities. No significant results came from the commission's work and in 2001, the overall effectiveness of the SES and the federal workforce generally is viewed as continuing its long-time decline.

In the United States there is no one national university or academy for the training of either executives or professionals in the federal government, nor in the field of public administration. There are over 100 major graduate degree programmes in public management offered across the country, plus several thousand programmes offered at both the undergraduate and graduate levels in areas related to government management. Entry to the SES is largely determined within the various agencies and departments. Initially, it was anticipated that the SES would become a corps of generalist managers with high mobility between the agencies. This vision of the SES was predicated on the view that management is essentially a generic activity in which the substance of the agency's activities is secondary. Experience has generally been counter to this vision, however, and most SES members have substantive field competence which keeps their career ladder pretty much within an agency or department with relatively little crossover.

Resources and budget process

The Constitution provides: "No money shall be drawn from the Treasury but in consequence of appropriations made by law." (Art. I, Sec. 9) This general provision has come to mean in practice that all funding and all funding systems must

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have their basis in public law.[38] This said, it is also true that there are a large number of congressionally approved funding systems.

The single most comprehensive and best understood of the funding systems is the annual appropriations process whereby agencies request, and Congress appropriates, funds for a given fiscal year. What Congress gives in one year, it may withhold or augment the next. These discretionary funds are the heart of both the President's and Congress's hold over most agencies. Agencies must defend their requests twice, first before the executives in OMB and subsequently to appropriations committees in Congress.

Agencies may administer entitlement or mandatory programmes, such as the Social Security programme, and therefore much of their budget is outside of their control. Congress, by law, may alter these entitlements and mandatory expenditures, but agencies typically cannot. Most agencies are not permitted to retain and use incidental revenues or to carry over unexpended balances at the end of the fiscal year. They are returned to the general revenue funds of the Treasury. Governmental accounting and auditing tends to have the limited purposes of preventing the over-obligation of appropriated funds and unlawful expenditures.

Agencies often collect revenues, pursuant to statutory authority, from users of their services or from fees and penalties. These revenues may be critical to the operation of the agency or they may be incidental. Fees may be imposed by agencies for reasons only tangentially related to revenues. The National Park Service imposes fees, for instance, on visits to parks principally to limit their use.

Government corporations illustrate many of the issues present in contemporary funding practices. The Government Corporation Control Act of 1945 recognised the need for a new type of governmental institution designed to meet the requirements of business-type activities. Flexible budget and financial controls were viewed as the key to a successful government corporation structure. A major difference between a government corporation and an agency is to be found in how they finance their operations. A corporation's funds are generally derived from such sources as capital appropriations (Congress usually provides start-up capital funds) which are not subject to fiscal year limitations, revenues and borrowing from the Treasury Department or the public. With few exceptions, government corporations rarely depend upon annual appropriations for their funds.[39]

Government corporations seek to be self-sustaining through user-charges to cover all costs of operations, including interest, depreciation and the cost of services furnished by other government agencies. A government corporation may be authorised in law to borrow money in its own name without directly pledging the credit of the United States, although the financial community believes that the United States Treasury would ultimately stand behind the notes. The principal

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advantage is that such unguaranteed corporate obligations are not included under the public debt ceiling.

A corporation is usually given power "to determine the character and necessity for its expenditures, and the manner in which they shall be incurred, allowed and paid." (1945 Control Act). A corporation is thus exempted from most of the regulatory and prohibitory statutes applicable to the expenditure of public funds, except those specifically applicable to government corporations. Although subject to audit, their expenditures cannot be "disallowed" by the General Accounting Office.

Increasingly, regular agencies of government collect major revenues and on that basis are seeking to be exempted from the appropriations process, in whole or part. The Securities and Exchange Commission, for instance, collects fees and penalties well in excess of its annual appropriations and is seeking to be assigned control of these funds. Similarly, the Federal Aviation Administration would like to be freed from the appropriations process and allowed to function solely on the fees it collects. They argue that if the FAA is to act like a business, it must be free to control its financial environment. Congress, understanding that political accountability is related directly to the source of funds, has been reluctant to give agencies full control of their funding.

Other funding systems in the federal government include various types of revolving funds, trust funds and contract authority, all of which have undergone initial congressional authorisation and continuing oversight.

Policy coherence, oversight and accountability mechanism

Government management in the United States has traditionally been based on public laws. It is law and its uniform application that provide policy coherence and the basis of accountable behaviour. Arbitrary Executive decision-making might provide for scenes of dramatic leadership, but it ultimately erodes the fundamental basis of the rule of law.

It is a major challenge in all societies seeking to be democratic to determine how organisations shall be structured and managed to make them accountable to the people. While there is no claim to universal validity and application, the American choice in this respect has been to entrust the Congress with pre-eminent legal authority, full oversight responsibilities, and the resources to perform both these roles. Congress is the co-manager of the Executive branch in theory and in practice.[40]

The public law approach to Executive branch oversight and accountability is being frontally challenged today by the New Public Management. It is a debate between the constitutionalists and the entrepreneurs. It is a serious debate over the future of public sector management.

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Constitutionalists generally view the government and private sectors as distinct in character, with the distinctions founded in law. The distinguishing characteristic of governmental management, contrasted to private management, is that government actions must have their basis in public law, not in the financial interests of private entrepreneurs or in the fiduciary concerns of corporate managers. The much maligned hierarchical structure found in the Executive branch is designed more to ensure accountability for managerial action; promoting control over employees is secondary. The value of accountability to political leadership and the importance of due process in decision-making trumps the premium placed on performance and results. However, it is less a question of pursuing one value at the expense of the other than it is a matter of precedence in the event of conflict.

Entrepreneurs, on the other hand, have as their underlying premise that the government and private sectors are fundamentally alike and subject to most of the same economically derived behavioural norms. In the private sector the principal, if not exclusive, objective is results, return on equity, and this principle should be applied to the government sector as well.[41] Thus, the first principle listed in the 1993 NPR R*eport* is: "Effective entrepreneurial governments cast aside red tape, shifting from systems in which people are accountable for following the rules to systems in which they are accountable for achieving results."[42]

This shift towards results over legal process as the primary value in government management is a statement about political power as well as administrative management. Vice President Gore indicated as much in 1993 when he stated, "Chief executive officers – from the White House to agency heads – must ensure that everyone understands that power will never flow through the old channels again. That's how GE did it; that's how we must do it as well."[43] Continuing this theme, Comptroller General David Walker recently signalled a shift in his agency away from enforcement of legal processes and toward "performance," however it is defined. "In essence, performance management focuses on results rather than process. The measure of performance is not compliance with rules and procedures, but the achievement of real results. Results (or outcomes) are not to be confused with mere outputs. Outputs give us a sense of how much work has been done, but results give us an indication of the real impact of the work."

Under the entrepreneurial management paradigm, the vision is to create a society of government/private sector partnerships[44] based on pragmatic application of performance-oriented objectives, or what Harlan Cleveland approvingly refers to as the "nobody-in-charge society".[45] Sceptics of this vision see something very different emerging: a society in which the centrality of public law is being unwisely displaced by business axioms. The focus of management, once the citizen, becomes the "customer". Departmental integration is replaced by organisational disaggregation, with managers institutionally insulated from political

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accountability. Under the entrepreneurial paradigm, critics believe the protective wall between the government and private sectors is being breached, not merely as a managerial convenience, but as a philosophy of governance. Constitutionalists believe they see an antidemocratic bias in this new entrepreneurial society, unintended but inevitable.[46]

Evaluation, lessons learnt and recent developments

Contemporary management trends, with their emphasis on private business practices and values, are challenging a number of the basic concepts of government organisation and management. Particularly challenging is the view that somehow the two sectors, governmental and private, are unnecessarily and unwisely separate. Much of what passes for the New Public Management today is aimed at breaking down the distinctions between the sectors, both legally and culturally. Their underlying theme appears to be that agency managers should be given more autonomy from Congress and less supervision by the President and his central management agencies. Since the goal is greater managerial autonomy, there is relatively little interest in organisation *per se*, or in the legal theories that encourage or discourage political accountability for agencies and officers.

In the NPM context, as applied in the United States, the goal is to breach the wall between the sectors as often as possible and let the organisational and governance issues pretty much decide themselves on a situation specific basis. It is not so much that the constitutionally based organisational theory presently in place is being rejected to be replaced by another, equally comprehensive theory of organisation and governance, as it is that organisational theory, *per se*, is being rejected.

It is not likely in the long-term that the basic organisation and management system in the United States will be substantially altered by the NPM wave. What is likely, however, is that new problems of accountability will arise (to include the occurrence of corruption) as the sectors become blended together in "partnerships" and other ambiguous legal relationships. The debate over the future of public management will be between two basic value structures. The first is the traditional public law approach that favours political accountability as the highest value in a democratic system. The second, the entrepreneurial management approach, sees accountability being redefined more in economic and performance criteria than legal concepts. In the final analysis, because organisation and management in the governmental sector are essentially legal issues, the constitutionalists are likely to prevail. But the cost may be high in terms of system legitimacy and in the number of exceptions and compromises necessary to maintain basic principles of democratic governance.

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Notes

1. There are only two indirect references to the question of administrative organisation in the Constitution; namely, that the President " ... may require the opinion, in writing, of the principal officer in each of the Executive departments, upon any subject relating to the duties of their respective offices", and that "the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President, alone, in the Courts of Law, or in the Heads of Departments". Article II, Sec. 2, Paras. 1 and 2.
2. Martin Diamond, *The Founding of the Democratic Republic* (Itasca, IL: F.E. Peacock Publishers, 1981).
3. For a bibliography of congressional inquiries into the conduct of business of Executive departments up through World War I, consult: Gustavus Weber, *Organized Efforts for the Improvement of Methods of Administration* (New York: Appleton and Co., 1919).
4. Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Re organisation Planning*, 1905-1996, 2nd ed. (Lawrence, KS: University Press of Kansas, 1998).
5. US Commission on the Organization of the Government of the United States, *Hoover Commission Report* (New York: Macmillan, 1949), pp. viii, 7-8.
6. Ronald C. Moe and Robert S. Gilmour, "Rediscovering Principles of Public Administration: The Neglected Foundation of Public Law," *Public Administration Review*, 55 (March/April 1995): 135-46.
7. OECD, *Governance in Transition: Public Management Reforms in OECD Countries* (Paris: OECD, 1995).
8. Donald F. Kettl, *The Global Public Management Revolution: A Report on the Transformation of Governance* (Washington: The Brookings Institution, 2000).
9. Donald F. Kettl, a NPM proponent, noted: "First, 'reinventing government' seeks the transfer of power from the legislative to the Executive branch." "Beyond the Rhetoric of Reinvention: Driving Themes of the Clinton Administration's Management Reforms", *Governance*, 7 (July 1994), p. 309.
10. In an assessment written after the close of the reinventing government exercise, James R. Thompson concluded that the net results of the "reforms" undertaken by the Clinton/Gore Administration actually weakened the President and his central management agencies and unexpectedly and unintentionally strengthened Congress. "The Clinton Reforms and the Administrative Ascendancy of Congress," *American Reivew of Public Administration*, 31 (Sept. 2001): 249-72.
11. US Library of Congress, Congressional Research Service, *General Management Laws: A Selective Compendium*, ed. Ronald C. Moe, CRS report RL30267 (Washington: CRS, 2001).
12. For a discussion of the Cabinet, see: Richard Fenno, *The President's Cabinet* (New York: Random House, 1959). Shirley Anne Warshaw, *Powersharing: White House-Cabinet Relations*

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in the Modern Presidency (Albany, NY: State University of New York Press, 1966). Ronald C. Moe, "The President's Cabinet," in James Pfiffner and Roger Davidson, eds., *The Institutional Presidency* (New York: Longman, 1996): 136-56.

13. Louis Brownlow had this to say about the collective consciousness of the Cabinet. "Each [member] feels his responsibility – as indeed it is – personally to the President and not to the President in Council nor to the President and his Cabinet, *and above all not to his Cabinet colleagues*." (Emphasis in the original.) *The President and the Presidency* (Chicago: Public Administration Service, 1949), p. 100.

14. Reorganisation Plan No. 1 of 1939.

15. Bradley H. Patterson, *The White House Staff: Inside the West Wing and Beyond* (Washington: The Brookings Institution, 2000).

16. Harold C. Relyea, ed., *The Executive Office of the President* (Westport, CT: Greenwood Press, 1997). John Hart, *The Presidential Branch: From Washington to Clinton*, 2nd ed. (Chatham, NJ: Chatham House Publishers, 1995), Chapter 3.

17. Shelley Lynne Tomkin, *Inside OMB: Politics and Process in the President's Budget Office* (Armonk, NY: M.E. Sharpe, 1998).

18. National Academy of Public Administration, *Management of Executive Departments*, by Alan Dean (Washington: National Academy of Public Administration, 2001).

19. James W. Fesler and Donald F. Kettl, *The Politics of the Administrative Process*, 2nd ed. (Chatham, NJ: Chatham House Publishers, 1996).

20. There are a number of general works, mostly dated, on independent regulatory commissions. See: Marver Bernstein, *Regulating Business by Independent Commission* (Princeton, NJ: Princeton University Press, 1955). Robert E. Cushman, *The Independent Regulatory Commissions* (New York: Oxford University Press, 1941). Louis Fisher, *The Politics of Shared Power: Congress and the Executive*, 4th ed. (College Station, TX: Texas A&M University Press, 1998), Chapter 5, "The Independent Regulatory Commission: Mahomet's Coffin." David M. Welborn, *Governance of Federal Regulatory Agencies* (Knoxville, TN: University of Tennessee Press, 1977). US Senate, Committee on Governmental Affairs, *Study on Federal Regulation* (*Regulatory Organization*), v. 5, S. Rept. 95-91, 95th Cong., 2nd sess. (Washington: GPO, 1977.)

21. Regulatory commissions need not be independent. The Federal Energy Regulatory Commission (FERC), created in 1977, resides for administrative purposes in the Department of Energy.

22. US General Accounting Office, *Government Corporations: Profiles of Recent Proposals*, GAO/GGD-95-57FS (Washington: GAO, 1995). US Senate, Committee on Government Affairs, *Managing the Public's Business: Federal Government Corporations*, by Ronald C. Moe, S. Prt. 104-18, 104th Cong., 1st sess. (Washington: GPO, 1995). Harold Seidman, *Politics, Position and Power: The Dynamics of Federal Organization*, 5th ed. (New York: Oxford University Press, 1998), pp. 189-96. Jerry Mitchell, *The American Experiment with Government Corporations* (Armonk, NY: J.E. Sharpe, 1999).

23. *McCulloch v. Maryland* (17 US (4 Wheat.) 315, (1819)). The Supreme Court's ruling implied that partial federal ownership of a corporation, in this instance the Bank of the United States, assigned the corporation certain attributes normally reserved to the sovereign authority (*e.g.* non-taxable status). See also: *Osborn v. Bank of the United States*, (17 US (4 Wheat.) 738 (1824)).

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24. The Supreme Court in a 1995 case faced the issue of distinguishing between a governmental and private corporation. The National Railroad Passenger Corporation (AMTRAK) established by Congress (45 U.S.C. 451) was sued by Michael Lebron for rejecting, on political grounds, an advertising sign he had contracted with them to display. Lebron claimed that his First Amendment (free speech) rights had been abridged by AMTRAK because it is a government corporation, and therefore an agency of the United States. AMTRAK argued, on the other hand, that its legislation provides that it "will not be an agency or establishment of the United States Government" and thus is not subject to constitutional provisions governing freedom of speech. The Court decided that while Congress can determine AMTRAK's governmental status for purposes within Congress' control (*e.g.* whether it is subject to statutes such as the Administrative Procedure Act), Congress cannot make the final determination of AMTRAK's status as a government entity for purposes of determining constitutional rights of citizens affected by its actions. To do so, in the court's view, would mean that the government could evade its most solemn constitutional obligations by simply resorting to the corporate form of organisation. *Michael A. Lebron vs. National Railroad Passenger Corporation*; 513 US 374 (1995).

25. The term "privatisation" is defined and interpreted in many different ways. Some define the term expansively to include virtually any decision (*e.g.* contracting with third parties) that moves an activity toward private sector practices. "Privatisation can be defined broadly as relying more on the private institutions of society and less on government to satisfy people's needs." E.S. Savas, *Privatization and Public-Private Partnerships* (New York: Seven Bridges Press, 2000), p. 3. Others define the term narrowly to include only instances where a function or entity is fully shifted (divested) from the governmental to the private sector. Ronald C. Moe, "Managing Privatization: A New Challenge to Public Administration," in *Agenda for Excellence 2: Administering the State*, ed., B. Guy Peters and Bert A. Rockman (Chatham, NJ: Chatham House Publishers, 1996): 135-48. In this country report, privatisation will be defined narrowly as divestiture. Instances of successful privatisation of federal agencies and related corporations are few, but include: Conrail, National Consumer Co-operative Bank, Student Loan Marketing Association (Sallie Mae), College Construction Loan Insurance Association (Connie Lee), and the US Naval Petroleum Reserve.

26. Harold Seidman, "The Quasi World of the Federal Government," *The Brookings Review*, 2 (Summer, 1988): 23-27.

27. Phillip J. Cooper and Chester A. Newland, eds., *Handbook of Public Law and Administration* (San Francisco: Jossey-Bass, 1997).

28. These five categories of quasi-governmental entities are discussed in: Ronald C. Moe, "The Emerging Federal Quasi Government: Issues of Management and Accountability," *Public Administration Review*, 61 (May/June 2001): 276-98.

29. In Great Britain, and some other countries, the term "quango" and "quago" are employed to refer to hybrid entities. A quango is essentially a private organisation that is assigned some, or many, of the attributes normally associated with the governmental sector. A quago, on the other hand, is essentially a government organisation that is assigned some, or many, of the attributes normally associated with the private sector. Under this schema, for instance, the Red Cross would be a quango while the Legal Services Corporation would be a quago. For a general discussion of quangos and their implication for governance in Great Britain, see: Mathew Flinders and Martin Smith,

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eds., *Quangos, Accountability and Reform: The Politics of Quasi Government* (London: Macmillan, 1998).

30. There is a sizeable literature on GSEs, see: Thomas H. Stanton, *A State of Risk: Will Government-Sponsored Enterprises Be the Next Financial Crisis?* (New York: HarperBusiness, 1991). Peter Wallison and Bert Ely, *Nationalizing Mortgage Risk: The Growth of Fannie Mae and Freddie Mac* (Washington: AEI, 2000).
31. Ronald C. Moe, "Congressionally Chartered Corporate Organizations: What They Are and How Congress Treats Them," *The Federal Lawyer*, 46 (July 1999): 35-39.
32. Paul C. Light, *Thickening Government: Federal Hierarchy and the Diffusion of Accountability* (Washington: The Brookings Institute, 1995).
33. For an extended and critical look at presidential appointments, see: "The State of the Presidential Appointments Process," *The Brookings Review*, 19 (Spring 2001).
34. Thomas J. Weko, *The Politicizing Presidency: The White House Personnel Office*, 1948-1994 (Lawrence, KS: University Press of Kansas, 1995).
35. Paul Van Riper, *History of the US Civil Service* (Evanston, IL: Row, Peterson and Co., 1958).
36. Patricia W. Ingraham and Carolyn Ban, eds., *Legislating Bureaucratic Change, the Civil Service Reform Act of 1978* (Albany, NY: State University of New York Press, 1984).
37. National Commission on the Public Service, *Leadership for America: Rebuilding the Public Service* (Washington: National Commission on the Public Service, 1989).
38. Allen Schick, *Congress and Money: Budgeting, Spending and Taxing* (Washington: Urban Institute, 1980).
39. The discussion of funding systems for government corporations is indebted to: Seidman, *Politics, Position and Power*, Chapter 10.
40. Robert S. Gilmour and Alexis A. Halley, eds., *Who Makes Public Policy? A Struggle for Congress Between Congress and the Executive* (Chatham, NJ: Chatham House Publishers, 1994).
41. A parallel set of entrepreneurial ideas, involving behaviour modification by federal government officers, is worth critical analysis. The principal purpose of this behaviour-modification strategy is to alter the management philosophy and reward/punishment mindset of federal managers toward the practices of the private sector. Anne Laurent, an advocate of "bureaucrats as businesspeople," notes: "Unbeknownst to most American taxpayers and to many federal employees, the government is growing its own businesses. Entrepreneurial outposts are taking root inside federal agencies in the fertile soil of management reform, new purchasing rules, downsizing, and performance pressure. Government business people are shaking off the shackles of limited congressional appropriations and staving off job threats using money they earn selling services within their own and other agencies." *Entrepreneurial Government: Bureaucrats as Businesspeople* (Washington: Pricewaterhouse Coopers, 2000), p. 7.
42. US National Performance Review, *From Red Tape to Results: Creating a Government That Works Better and Costs Less* (Washington: GPO, 1993), pp. 6-7.
43. *Ibid.*, p. 63.
44. Pauline Vaillancourt Rosenau, ed., *Public–Private Policy Partnerships* (Cambridge, MA: MIT Press, 2000).
45. Harlan Cleveland, "The Future is Uncentralized," Public Administration Review, 60 (July/August, 2000): 293-97.

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46. For a full case study of the anti-democratic bias allegedly built into the process of having executive agencies create, without explicit statutory authority, private, non-profit organisations to perform functions normally reserved to federal executive agencies, see: A. Michael Froomkin, "Wrong turn in Cyberspace: Using ICANN to Route Around the APA [Administrative Procedure Act] and the Constitution," *Duke Law Journal*, 50 (2000): 17-143.

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Distributed Public Governance:* Principles for Control and Accountability of Agencies, Authorities and other Government Bodies

by
Rob Laking**

Abstract

In recent years, several national and international organisations have attempted to define principles for the governance of the wide variety of public agencies, authorities and other public bodies which are not directly under the control of individual ministers or presidential offices. This paper attempts to synthesise that work into one overall statement of principles for direction and control, both externally by the central organs of government, and internally in the form of the top-level direction of each organisation and the rules for internal supervision and control of its activities.

* This paper is based on a paper prepared for a conference on "Devolving and Delegating Power to More Autonomous Public Bodies and Controlling Them: The Governance of Public Agencies and Authorities" that took place in Bratislava on 22-23 November 2001. The conference was hosted by the Government of the Slovak Republic and organised by PUMA. The intention of the paper is to draw together and synthesise recent writing on public sector governance by the OECD and other national and international agencies. In particular, the paper draws on the reports on public and private corporate governance of SIGMA, the International Federation of Accountants, the Chartered Institute of Public Finance and Accountancy (CIPFA) in the United Kingdom and the Australian National Audit Office (ANAO 1999). Reference has also been made to the OECD's own Corporate Governance Principles (OECD, 2000).

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Background and definitions

The approach taken in this draft paper is that, while there is no universally accepted set of best practices for public governance, there are some principles of good practice which, in broad terms, are endorsed in most instances in OECD Member countries. It does not recommend any particular configuration of external control of public organisations, recognising that every government must judge for itself what is an appropriate degree of separateness or autonomy from central ministries or how differentiated the control environment or the financial and management rules applying to government bodies should be from traditionally functioning ministries. It does not look either at the principles for organisational choice within government. Separate work is being carried out in this area and will be eventually integrated in broader principles.

However, it is assumed that where governments have established such organisations, the issue for those governments is what measures of control are required to safeguard governments against the associated risks.

Government bodies covered under the principles

The principles for good distributed public governance cover central government bodies only which are at arm's-length from traditionally vertically integrated ministries.[1] Because the principles for their governance have been largely covered respectively under the corporate governance principles and central government governance principles, we are excluding government companies and constitutional bodies such as courts of audits.

Meaning of governance

At its most general level, governance in this paper means the constitutional, legal and administrative arrangements by which governments exercise their power as well as the related mechanisms for public accountability, rule of law, transparency and citizen participation. Organisational governance is the rules and processes by which organisations are directed and controlled.

Governance of organisations can be classified as external and internal reflecting the respective responsibilities for governance of organisations:

- The scope of *external governance* of organisations is the authority exercised by the central organs of the state such as the Executive and the legislature and associated central ministries or other authorities which have responsibilities for control and supervision of public organisations.
- The scope of *internal governance* is the systems of direction and control within an organisation which are, at the top level, the responsibility of the governing body and senior management of each public organisation.

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What is "good governance"?

There is "good governance" when governments and their organisations:

- act legitimately; so that public organisations comply with the requirements of the law and act within the authority conferred on them; observe due process in all their activities and respect the rights and aspirations of citizens and other stakeholders;
- meet publicly-declared standards of performance particularly of economy in the use of public resources, the supply of agreed outputs, and achievement of desired economic, social and environmental outcomes; and
- account to citizens and other stakeholders for their actions in terms of these criteria of legitimacy and standards of performance.

Good governance at the level of governments will therefore be characterised by:

- "integrity" – measured by the extent to which public officials carry out their duties according to the law and without self-interest or favouritism;
- "responsiveness" – measured by the ability of citizens to secure performance to given standards from public officials or to obtain redress if these standards are not met;
- "transparency" – measured by the extent to which citizens are well informed about the actions their governments take and the rules governing those actions.

1. The principles for good "external governance" of agencies, authorities, and other government bodies

The form and functions of external governance

If governments intend to transfer authority to organisations and need to safeguard their interests when they do so, they need to define:

- the roles in external governance of different branches of government and entities within them;
- a framework for external governance in terms of the establishment, direction, control and review of the operations of public organisations;
- provisions specific to each organisation established under the framework relating to its individual functions and powers and governance.

There is a wide variation in the constitutional forms of OECD Member governments. In different jurisdictions, significant roles in external governance may be played by offices of presidents or prime ministers; central ministries or departments; legislative committees or agencies; constitutional bodies like public service commissions, audit authorities or councils of state; and the courts.[2]

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Nevertheless there are some functions of external governance that are common to most, if not all, governmental systems and some principles for exercising these functions. The functions include:

- creation and review of public organisations;
- appointment to positions in top-level organisational governance such as board members or chief executives and review of their performance;
- setting organisational policy objectives, approval of business plans or planning agreements and specific directives on policy or operations;
- authorisation of budgets and those financial transactions which require external approval and (as required) approvals relating to appointment and reward of staff;
- monitoring and review of financial and non-financial operations;
- decisions on appeals from the organisation's policy decisions or complaints regarding administrative actions.

Principles of external governance

The key governance principles for exercising these functions are the following:

i) Grouping organisations into classes

Most of the external governance functions listed above will be better served if they apply to classes of organisations. Governments can distinguish, for example, between ministries or departments directly under the control of the political Executive, devolved or delegated organisations, and state-owned enterprises or other fully commercial organisations. The creation, resourcing, direction and control of public organisations – and in particular decisions on the balance between autonomy and control for classes of public organisations – can then be systematic rather than *ad hoc*.

ii) Assigning specific governance responsibilities

In real political life, the governance of public organisations is often contested both between and within branches of government. Legislatures may seek detailed control over the budgets and operations of departments and agencies. Central and line ministries dispute control of the operations of specific agencies. Organisations are sometimes created by one organ of government specifically to bypass or neutralise control by another. But these ambiguities can be usefully reduced, at least within and between ministries or offices of the president, by assigning formal responsibilities for each function of external governance to a specific individual or office.

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iii) A *generic law for organisations*

Principles *i*) and *ii*) above can be given effect in a framework law for creation and governance of public organisations. The purpose of each organisation and the basis for its governance can then be transparently determined and debated. The general procedures for external control of public organisations should also be established in law and may determine different categories of control for different classes of organisation.

Not all law regarding public organisations can necessarily be brought into one statute. Specific aspects of governance – for example public finance or public employment – may be covered in other statutes. However the following matters need to be covered either in a framework law or in other statutes:

- procedure for creation and removal of the organisation – for example by resolution of the legislature under the general law, enactment specific to the agency or presidential decree within the approved classes and purposes of organisation;
- how and in what legal form the functions and powers of each organisation will be defined;
- the powers and duties of responsible individuals or offices (ministers or government departments for example) regarding the external governance of the organisation;
- process and criteria for appointment and removal of chief executive and/or board members;
- the basis and content of agreements with or directives from the responsible external authorities regarding policy or operations;
- financial management: preparation and approval of budgets, banking arrangements, stewardship of assets, borrowing authority, setting fees and charges, financial statements and audit, accounting standards, compliance with rules or instructions of the Ministry of Finance or other financial authority;
- application of law and regulations governing appointment and employment of staff;
- power to establish codes of conduct for behaviour in public organisations;
- requirements for reporting and review.

iv) P*olicy agreements and directives*

The general functions and powers of an organisation should be set out in its founding document together with the basis for the Executive's power to direct the

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policy of the organisation. The founding document should also indicate any powers limiting the operations of the organisation, and outside of general public sector financial, employment or other law, that the Executive reserves to itself. The external governing authority responsible for each organisation should conclude an agreement with the organisation covering one or more years of its operations and annually reviewed setting out the principal results expected of it over the period of the agreement and the basis for funding its financial outlays. This agreement should be published. Any other formal directives to the organisation should also be made in writing and published.

v) F*inancial management*

The general law relating to public finance should provide for the authorisation and accounting by public organisations of: funding from the state budget; borrowing or other liabilities; issue of guarantees for liabilities incurred; financial investment and banking; and acquisition and disposal of assets. Except for fully commercial activities, where private sector accounting standards should apply, standards should generally follow general government accounting principles.

vi) E*mployment and remuneration of public employees*

The general law governing public sector employment needs to specify the employees who form part of the civil service and are therefore subject to general civil service rules regarding appointment, conditions of employment and pay. The status of employees of public organisations and the extent of central control of their pay and conditions may vary from government to government but a common minimum requirement might cover principles of open advertisement of vacancies and appointment on merit of all public sector employees and publication of the salary scales of senior officials in public organisations.

vii) E*xternal reporting and audit*

Public organisations should be required by law to publish annual reports on their activities and achievements, including their financial accounts. The reports should include comparisons of actual with budgeted revenue and expenses and of actual non-financial performance compared with targets set for the organisation in its planning agreement with the government. As far as possible, financial statements should follow a consistent set of government accounting principles and the reports of commercial organisations should comply with generally accepted private sector accounting principles. The annual report should include statements of compliance with all applicable laws, regulations and government directives. There should be common standards set by the government for reporting financial and

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non-financial performance. A committee of the legislature should examine organisations on their performance.

The supreme audit institution should either audit all public organisations or have the power to delegate the audit to another auditor under its supervision. All reports of audits should be made available to the legislature.

viii) T*he planning and control cycle*

There needs to be an overall process put in place for developing and reviewing the plans and budgets of public organisations. The timetable will need to cover in an integrated way:

- development of the government's overall medium-term strategy and fiscal framework and its relationship to organisational strategies and expenditure plans;
- preparation and approval of planning agreements for each organisation including expenditure plans;
- development of budget requests from expenditure plans and of the overall appropriation request from individual requests;
- submission of the annual appropriation requests to the legislature and scrutiny of individual organisations' plans and budgets by the appropriate legislative committee;
- authorisation of budgets and procedures for release of funds;
- regular reporting by organisations on financial and non-financial performance during the year;
- preparation of annual reports and financial statements and provisions for audit;
- review of organisational financial and non-financial performance by central agencies and the legislature.

ix) R*elaxing input control rules*

For organisations funded largely out of the state budget, governments may consider increasing autonomy from control over inputs in the following stages:

- increased delegation of payments authorisation within budget authority, subject to an effective internal control system;
- reduction in line item categories for budgets subject to adequate budget planning and forecasting;
- relaxation of central procurement requirements subject to satisfactory organisational procurement and contract management;

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- greater flexibility of hiring and compensation of staff subject to adequate safeguards for open advertising and merit appointments and effective staff performance management and appraisal.

Governments contemplating a shift in the focus of control from inputs to outputs should do so only when satisfied that all the above conditions can be met and in addition that reliable output measures and performance management based upon outputs can be instituted.

- Creation and removal of public organisations

Decisions to create – and to review the continued existence of – public organisations should be made on the basis of the organisations' contribution to the general principles of good governance in the public sector.

New public organisations should be able to meet the following tests:

- their purpose should be clear and their creation should improve the quality of administration in the public sector;
- the benefits of the organisation should be defined in terms of one or more of the following criteria:
  - improved economy, efficiency or effectiveness through specialisation of function;
  - improved public credibility of governmental operations through enhanced impartiality or legitimacy of decision-making and operations;
- more effective communication or joint decision-making with or control by stakeholders with legitimate interests in the organisation's policies or operations;
- the functions of the organisation should be clearly distinguishable from other organisations and the relationships between the organisation and other public organisations should be well-defined to minimise unnecessary overlaps of function or disagreements about relative responsibilities;
- if organisations are to be devolved or delegated the authorities responsible for external governance should ordinarily be able to achieve the results they require from them through general legal provisions, agreements or directives without requiring detailed day-to-day control over performance or operations.

x) Choice of and nominations of top-governance

Governments should ensure that, whatever the top-level governance structure of an organisation, legal responsibilities are assigned to particular named

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individuals, such as the chief executive, the chairman of the board or other official of the organisation.

The criteria and procedures for appointment of board members (where boards exist) and senior management should be publicly known and appointments should be advertised. Board members should also have relevant expertise in the governance of public organisations or in the business of the organisation to which they are appointed and be free from disabling conflicts of interest. If there is a board with Executive power it should appoint the chief executive. There should also be a clear division of responsibilities between the role of board members and of the chief executive. To ensure transparency in remuneration, fees paid to board members should be set according to a general schedule of fees established for all organisation boards and should be publicly reported. There should be a policy for immunity or indemnification of board members in respect of personal suits brought against them if they have acted lawfully and within their capacity as board members.

2. The principles for good "internal governance" of agencies, authorities and other government bodies

The form and function of internal governance

The top-level internal governance of organisations will vary according to national practice and the purpose of individual organisations and indeed there may be no single body that carries out the functions of a board in a private corporation. Furthermore, governance functions which in the private sector would clearly be within the competence of a board or chief executive may be shared with supervisory ministries or committees of the legislature and the governing body of the organisation. At the apex of the organisation itself, authority may reside in a single director or chief executive (assisted by an advisory board), may be held jointly by more than one person, or may be vested in a supervisory or a management board.

However, the role and functions of top-level internal governance in all cases is to protect the interests of the state in the public organisation by ensuring compliance with all applicable law, agreements or directives; proper performance (economy, efficiency and effectiveness) in the operations of the organisation; and protection of the rights and lawful interests of stakeholders. In particular, the governing body is responsible for:

- developing and reviewing organisational strategy consistent with overall government policy and specific directives;
- ensuring that all necessary elements of the organisation's management are in place and operating effectively;

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- in some cases, appointment and conditions of employment of key personnel;
- ensuring compliance within the organisation with general principles of good governance and specific codes of conduct;
- ensuring integrity of the organisation's financial management and other information systems;
- ensuring compliance with all applicable law and reporting requirements, control of operations to achieve organisational objectives and effective management of risk;
- monitoring the performance of the organisation and accounting to parent ministries and other government agencies for performance;
- ensuring full and adequate communication with internal and external stakeholders and protection of their rights.

P*rinciples of internal governance*

i) *Accounting on the use of public resources, the results achieved, and good governance standards*

Organisations should:

- have a clear and credible set of objectives laid down in their founding instruments;
- have clear published annual objectives for their financial and non-financial performance, contribution to the government's priorities, and standards of management;
- be required to account to the government and the general public for their use of public resources against the normal public criteria of economy, efficiency, effectiveness and due process;
- disclose all information necessary to assure the government and the general public of due propriety in their operations such as the remuneration of board members and senior executives and codes of practice and other processes in place to ensure proper behaviour by management and staff;
- disclose any circumstance or event which is material to an assessment of the risk that they will not achieve their objectives or will affect the government's overall performance adversely;
- ensure that they make information about their operations available to all stakeholders, have clearly understood processes for communication with stakeholders and to enable stakeholders to enforce their rights with respect to the organisation.

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ii) *Accounting to and consulting with stakeholders*

The corporate code of practice should include procedures for ensuring compliance with provisions relating to the rights of stakeholders and particularly informing them of their rights and providing for redress when their rights have been violated. There should be a code of good practice for making information about the organisation's activities and performance available to stakeholders and informing and consulting stakeholders of significant issues relating to the organisation that affect their interests.

The national laws relating to rights of citizens in relation to public organisations (*e.g.* access to official or personal information, redress of complaints about administration) should apply to all public organisations.

iii) *Standards of behaviour*

The government should establish a code of conduct for board members and employees of public organisations covering basic principles of conduct in public life. Each public organisation should have an equivalent code of conduct and systems of monitoring compliance with it by board members, management and employees. Board members and the chief executive should be required to declare any interest which might conflict with their responsibilities for governance of the organisation and be disqualified from participation in any matter affecting these interests. Management and other staff should not have any private interest which would conflict with their duties as employees of the organisation.

iv) *Control and audit*

It is the responsibility of top-level governance to implement an internal control system which will ensure that the requirements of good organisational governance are met. Generally effective internal control will be based on the organisation's functions, legal powers and duties and accountability requirements and will include:

- a clear division of responsibilities within the organisation, based upon the written specification for each employee of his or her duties and powers;
- an appropriate schedule of transfers of authority to specific officials of the organisation and a system for periodically reviewing the exercise and scope of delegations;
- timely and reliable preparation of management information to enable effective control of the organisation's activities;
- an internal audit plan under the control of an Audit Committee either of the board or senior management;
- an effective integrated relationship between internal control and audit and external audit.

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Notes

1. By definition, we are excluding from agencies, authorities and other government bodies, local government entities, private firms and non-governmental organisations (NGOs) even when substantially or entirely funded by central government.
2. A parliamentary system may base responsibility for external governance on the Executive where much of the direction and control will be a consequence of Executive decision; a constitutional system with a stronger law-making perspective (such as the United States) may see the foundation of agency accountability as compliance with laws enacted by the legislature and interpreted by the courts. All aspects of external governance, from the creation of public organisations to their detailed direction and control, may be the responsibility of more than one organ of government.

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