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CENTRE FOR CO-OPERATION WITH NON-MEMBERS
PUBLIC MANAGEMENT SERVICE

**OECD Global Forum on Governance
Public Governance**

BACKGROUND NOTE

Conference for High-Level Officials "Devolving and Delegating Power to More Autonomous Bodies and Controlling Them: The Governance of Public Agencies and Authorities"

Bratislava, 22-23 November 2001

*Hosted by the Government of the Slovak Republic
Organised by the Public Management Service (PUMA) of the OECD*

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BACKGROUND NOTE

Understanding the scope of the conference

1. Public agencies and authorities form what we call the “wider state sector” — which includes all bodies which are part of national government and have been given some autonomy and/or some independence from ministries to which they report¹ and/or are subject to a completely or partially different set of management and financial rules from traditional vertically integrated ministries. Their main activities are public functions. They are part of national or local government — but they may be legally separate from the state (*i.e.* have their own legal personality), or not. They have an accountability framework which is partially or completely different from those of traditional vertically functioning central ministries.

2. Other characteristics vary from one country to the other. They can be created by the executive branch of government or by the legislature. They might function under public law or private law or both. Their staff can be considered as part of the civil service or function under general common labour law.

3. The creation of entities of the wider state sector has corresponded to two main types of reforms, and both can be found in many OECD Member countries:

1. *Delegation* of power to entities which remain legally indistinguishable from the state but which are given some autonomy and/or independence and have a quasi-contractual (target setting) relationship with the reporting ministry.
2. *Devolution* of power to entities which are legally separate from the state (they have their own “legal personality”) and are often in a contractual relationship with reporting ministry.

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

- providing managerial autonomy and administrative flexibility;
- emancipating policy implementation from policy making;
- escaping some of the cumbersome administrative and sometimes legal obligations of vertically integrated ministries;
- enabling collaborative partnerships between different levels of government and thus allowing collaborative monitoring between different levels of government or at the same level of government (by creating joint institutions);
- ensuring freedom from politically motivated interference;

1. In this paper, departments in the sense of the United States administration will be referred to as “ministries”.

- delivering services closer to citizens and allowing citizens/civil society involvement in the management or oversight of the public body;
- preserving policy continuity, which is seen as a necessary condition of policy credibility;²
- ensuring professional oversight and establishing insurance bodies for liberal professions.

5. Entities which constitute this wider public sector vary according to their function (from quasi-judicial or regulatory to commercial functions), in their legal form (can be legally separate from the state or not, can be boards, corporations, specific bodies, etc.), in their size, in their organisational structure, in their managerial and budgetary freedoms, and in their relationship with the responsible minister.

6. The terms used to define them differ from one country to the other. They might include the following: agencies, authorities, non-departmental public bodies, public establishments, Crown entities, autonomous bodies, independent public bodies, bodies of public law, independent administrative authorities, etc.

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

Problem statement

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

8. In most OECD Member countries, there is evidence that over time, the number of autonomous and semi-autonomous public bodies has significantly increased. Over the last 50 years, only few of them have seen their autonomy withdrawn and have been brought back under core ministerial hierarchy.

9. Central and eastern European countries have been encouraged as part of the transition process to establish more autonomous public bodies since the 1990s. Within a few years, hundreds of semi-autonomous public bodies have been established in order to promote managerialism in the public sector and adopt more entrepreneurial approaches.

...Creating new governance problems.

10. Only very few OECD Member countries still envisage today major waves of delegation or devolution. In most OECD Member countries, priorities have moved away from the need for delegation and devolution to the challenge of finding the right balance between accountability and autonomy, openness, performance management, and issues of steering capacity of central ministries.

2. “The Role of Specialised Agencies in Decentralising EU Governance”, report presented to the Commission by Michelle Everson, Giandomenico Majone, Les Metcalfe, Adriaan Shout, September 1999. <http://europa.eu.int/comm/governance/documents>.

11. In some central and eastern European countries, autonomous and semi-autonomous public bodies have taken an almost unlimited variety of legal and organisational forms. The term “autonomous” or “independent” has too often meant weakened accountability mechanisms. Many of these new bodies have their own legal personality, and they have often been made accountable to the whole of government instead of having clear reporting lines to sectoral and finance ministries. This situation prevents good monitoring of these agencies by central government because there is little capacity at the level of whole of government to monitor these agencies.

12. In some other countries, old departments have been transformed into agencies but it has just been a change of name, as these new agencies have not been given any managerial freedom.

13. Too often, autonomous bodies have been created to respond to problems which should have been solved through other means:

- lack of policy making capacity at central ministries level;
- central ministries are seen as functioning too much in a bureaucratic manner, and agencies are seen as a way to bypass burdensome compliance requirements;
- agencies have been used as a way to give more responsibilities to some more junior staff who were trusted for their motivation to make administrations more efficient (and often also for their political support to parties newly arrived in power). Moreover, these new staff have often been paid higher wages because these autonomous bodies often have their own salary scales;
- central co-ordination mechanisms between different departments are considered as very heavy and creating autonomous bodies is considered as a way to bypass these mechanisms.

14. A number of crucial governance problems have emerged:

1. Policy fragmentation and difficulty in maintaining government coherence — central departments might not have the capacity to monitor the activities of newly established semi-autonomous bodies. Also autonomous and semi-autonomous public bodies might undermine policy objectives especially when they adopt quasi-fiscal activities that stretch beyond the original policy intention of government.
2. Inherent weakness of government management and supervisory arrangements – government bodies have not factored in the capacity needs to manage and supervise agencies, *i.e.* developing performance benchmarks and reporting systems but also ways of co-ordinating activity plans.
3. Increased capture of the work of public organisations by special interests.
4. Inherent weakened policy making capacity at central ministries’ level and undermined government’s accountability.
5. Lack of readability of the government’s organisational system — the number of organisational forms and accountability frameworks and the lack of transparency of those arrangements might create problems for monitoring and controlling these bodies as well as undermine citizens’ trust.
6. Budget disintegration – the budget and resources of autonomous or semi-autonomous might escape the formal and informal rules of the budget process, including the systems for managing and controlling public expenditure.
7. Increased political and personal patronage and cronyism — appointments to general management of semi-autonomous entities might serve party of personal interests of the nominating body.

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

Main points to be discussed during the conference

- What should be the reasons and pre-conditions for devolving and delegating power to more autonomous bodies? Should countries first try “delegation” to non-legally separate bodies, as devolution is very difficult to reverse? Should the creation of autonomous bodies have some backing in law? What is the benefit of having an umbrella law for the creation of all these bodies?
- How to avoid duplication of work between central sectoral ministries and autonomous bodies?
- How to best ensure clear lines of accountability to sectoral and finance ministries? How to best ensure that reporting ministers are responsible for policy making, evaluation and monitoring of autonomous bodies.
- How to strengthen capacity at central ministry’s level to monitor and control these autonomous bodies?
- What type of contractual or quasi-contractual relationships should be established between autonomous bodies and central ministries? Should the autonomous body first be committed to delivering both inputs and outputs?
- What rules for avoiding conflicts of interest should be established or strengthened with strong incompatibility rules for Chief executives and board members (when relevant)?
- How to strengthen the capacity of Courts of Audit to control these autonomous bodies and the role of the Ministry of Finance?
- How to strengthen budget process so that the budgeting process of these autonomous bodies is the same as that of central ministries and all their available funds are budgeted within the main budget law?
- Should regular reviews of the agency system be carried out every few years to assess the benefits and shortcomings of the agency system?

Organisation of the session of the conference

15. *The first morning* of the conference will be dedicated to a general introduction of the topic. This session will review OECD Member country’s experiences with the creation of autonomous bodies to promote a more efficient and effective public sector, and the new control and accountability problems that have emerged from these waves of autonomisation.

16. *The first afternoon session* of the conference will examine how to best maintain government coherence and a whole of government perspective on policy making and service delivery in a context of government devolution of power to more autonomous bodies. More precisely, the session will look at the following issues:

- i. types and degrees of autonomy or independence provided to the different types of public bodies with different types of functions;
- ii. the legal coherence of the administrative organisation (legal personality, status of public agents);

- iii. the clarity of the whole administrative system (rules for the creation of agencies, clarity of missions, clarity/classification of organizational and governance arrangements for the management of autonomous bodies);
- iv. the coherence of public bodies internal governance structure (existence of a board with what functions, relationships between heads of boards, CEOs, etc.);
- v. the performance of government management and supervisory institutions (who and with what means does the government manage the agencies it has created and supervises whether they fulfil their public objective and remain within the framework of general public sector social and economic policies);
- vi. policy coordination schemes and mechanisms for reporting to cabinet/council of ministers and Parliament on agencies' activities.

17. A description of reforms put in place to improve government coherence might include some of the following elements:

- Improvements can be made at the following levels:
 - ◆ at the systemic level:
 - clarification of the types of bodies, the criteria for their establishment, the legal rules that apply to them, their accountability mechanisms and the employment rules of these different types of agencies;
 - establishment of general principles for the governance structure of these bodies (roles and accountabilities between head of agency and governing body, main reporting mechanisms), and transparency principles (in appointment processes,) while allowing enough flexibility for special standards at the level of the agency;
 - establishment of an integrated legal framework and an improved coherence between organisational framework and other legislation such as financial legislation.
 - ◆ at the autonomous body level:
 - improvement of the clarity of the need to establish a body and clarity of its mission, possibly through a clearly formulated enabling law, or, in other cases, through improved contractual arrangements;
 - improvement of transparency on entity tasks and performance.

18. *The first session of the second morning* will focus on the financial management and control risks inherent in the devolution of budget and spending authority to more autonomous public bodies including the following:

- i. the lack of coherence of the overall budget process;
- ii. the misuse of public money and assets;
- iii. the increase of public borrowing beyond approved limits;
- iv. the new opportunities for corruption;
- v. the neglect/irrelevance of financial reporting and audit.

19. The session will look at the following factors of good financial management and control:

- i. needed capacity at central and agency level to exercise good financial management and control;

- ii. budget review and financial accounting and reporting mechanisms;
- iii. general rules for the management of liabilities and assets, in particular of real property assets;
- iv. oversight of agency borrowing;
- v. agency revenue policies;
- vi. the principles of earmarked contributions to agencies;
- vii. increased capacity of audit bodies to carry out their function in relation to these bodies.

20. *The second session of the second morning* will be dedicated to important governance issues of sectoral regulators that might be adaptable to other arm's-length bodies such as agencies. Its goal is to identify and examine some of the key elements in relation to the design of the institutional framework for economic regulation, particularly in the industries, such as telecommunication, electricity, gas, transports, etc. In particular, some of the following points will be addressed:

- What are the current trends in OECD countries with respect to establishing independent sectoral regulators?
- How independence can be built through clearer role and scope of the authority and appropriate instruments for action, capacities and work methods? How can the risks of capture be minimised?
- How independence can be counterbalanced with adequate accountability measures?
- The importance of general coherence and relations with other institutions for the well functioning of sectoral regulators, particularly how they need to relate to the competition and consumer protection authorities as well as to parliament and the judiciary?
- Recent experiences of using code of conducts to police sectoral regulators.

21. *The first session of the second afternoon* will concentrate on mechanisms for reporting to central ministries (including performance reporting), Parliament and citizens. It will also concentrate on issues of capacity both at agency and at central ministry and Parliament level (for monitoring purposes).

- This session will specifically look at the following:
 - i. formal reporting mechanisms including content of annual report and review process;
 - ii. the difficulties in establishing performance reporting and needed reforms to be put in place: the lack of strategic management by activity allowing a reallocation of human and financial resources; the lack of a clear definition of outcomes and indicators; the lack of accountability of managers for the performance of their agency; the lack of multi-year agreements; the need to get the policy department to change to more outputs/outcome-oriented management; the need to connect costs and resource consumption to goals, outputs and outcomes; the limited capacity at central government to analyse data;
 - iii. the mechanisms put in place to strengthen accountability to Parliament and citizens.

22. *The last session of the conference* will be dedicated to discussing overall principles for the good governance of the wider state sector.