

Arms Length Bodies

Prepared by Nick Manning and Geoffrey Shepherd

Background

There has always been a diversity of organizational forms within the public sector. However, in some countries organizational diversification has increased significantly through the distribution of government responsibilities to so-called "arm's-length bodies." This notion reflects their common characteristic of being at arm's length from the control of politicians, outside the hierarchical control of traditional vertically-integrated line ministries and departments. Some prominent examples of such arm's-length bodies are the UK Next Steps agencies, the development of Zelfstandige Bestuursorganen (ZBOs – Independent Governing Bodies) in the Netherlands and the Bundesbehörden (Federal Authorities) in Germany.

There is some uncertainty concerning the scale of this movement of staff and budgets towards such agencies. Some commentators maintain that arms-length agencies have always been found within governments – and that some highly publicized examples of "agencification" have skewed the debate (Wettenhall 2005). Others argue that the creation of distinct entities with independent financial management regimes held responsible for discrete areas of service delivery is a distinct and growing phenomenon.

Classification

To a significant extent, this uncertainty in their numbers stems from the complexity of the grouping. Arm's-length agencies comprise very distinct species with very distinct tasks, ranging from central banks – whose task is the independent oversight of monetary policies - to executive agencies (as in the UK) – whose tasks is to deliver services according to targets defined in a contractual agreement with the respective minister. This diversity raises immense definitional difficulties in defining an arm's-length body. However, some common characteristics can be identified:ⁱ

1. Arm's length agencies entail a degree of specialization. They tend towards a single focus or discrete service delivery area.ⁱⁱ
2. The management of arm's-length agencies is differentiated from traditional vertically integrated ministries. In principle the minister is prevented from interfering day-to-day by:ⁱⁱⁱ
 - a. a contract that limits his/her involvement to an annual contract renegotiation; or
 - b. a legislative framework that makes the entity accountable only to parliament for the way in which it applies the law.
3. Arm's-length agencies combine accountability for the delivery of that service with increased managerial and financial autonomy – and in consequence they can be held accountable for economy and efficiency in delivery.

GET Briefs –intends to capture the knowledge and advice from individual engagements of the World Bank's Global Expert Team on Public Sector Performance (PSP GET). The views expressed in the notes are those of the authors and do not necessarily reflect those of the World Bank. For more information about the PSP GET, contact the GET team leaders Bill Dorotinsky (wdorotinsky@worldbank.org) and Nick Manning (nmanning@worldbank.org) or go to <http://pspget>.

Such agencies can differ significantly along two key dimensions: the form of their political control and the threshold for changing their structure.

As Table 1 shows, political control of agencies can be exercised in diametrically opposed ways. While some agencies (for instance central banks) are designed to avoid ministerial control over their policies, others are (for instance the UK Next Steps agencies) are designed to achieve exactly the opposite. Through contracts, ministers are able to specify in detail what the agency is expected to produce. In sum, *agencies can be designed to increase or to decrease administrative responsiveness to changing political agendas*.^{iv} Service delivery agencies fall into the former category, audit institutions and some regulatory bodies into the latter.^v

Separately, arm's length agencies can both be designed in a way that makes it hard to change them structurally – or in a way that makes them relatively malleable. The former can be achieved through a clear legal identity established by primary legislation, a potentially vocal constituency comprising a well-defined set of "customers" outside of government, and staff whose careers are not affected by wider developments in the civil service.^{vi} Alternatively, they can be structured so that they are relatively malleable. Developments in the Netherlands contrast with the UK experience of Executive Agencies along this dimension.^{vii}

To the extent that agencies are designed to remove activities from cumbersome public sector control systems, they also embody a parallel concern for efficiency or performance improvements. This is a third dimension and is not captured in Table 1.

Table 1: How agencies are designed to increase or decrease administrative responsiveness to changing political agendas

<i>Key purpose is institutional continuity</i>		Complex political control <i>Agency reporting to parliament or with legal requirement to report to the public</i>	↔	Control from single political principal <i>Agency reporting to minister under contract</i>
High threshold for structural change ↑ ↓	<i>Separate legal identity established by primary legislation (public or private), primary customer is external to government (firms, public, parliament), staff employed under private sector labor law</i>	Supreme Audit Institutions Central Bank	Utilities regulators Some Zelfstandige Bestuursorganen (ZBO) organizations in the Netherlands Swedish agencies (Ambetsverk) ^{viii}	New Zealand Crown entities Établissements publics administratifs in France
Low threshold for structural change	<i>No legal separation from the state, primary customer is the Minister, staff employed as civil servants</i>			Agencies in the Netherlands (agentschappen) UK Executive Agencies Canadian Special Operating Agencies

Key purpose is responsiveness

In essence, these differences create entities that respond more or less to the concern to maintain *institutional continuity*, beyond the term of a government, or *responsiveness* to the particular priorities of the government of the day.

The definitional problems have made it somewhat difficult to determine whether arms-length bodies have been used increasingly – i.e. whether or not there is a significant experience to gain from, and indeed what that experience is (Moynihan 2006). The picture is further complicated by the trend towards the decentralization of managerial authority to ministries and departments *in general* without specifically creating new agencies^{ix}, and decentralization *within* central ministries and departments. Decentralization of personnel and budgetary authority to work units within existing ministry structures undermines the argument for creating new agencies to achieve flexibility and a focus on performance.

Whatever the available empirics, there has undoubtedly been a strengthened interest in such organizational forms. On the upside, practitioners strongly appreciate service delivery agencies

as a distinctively responsive form of public agent. Their often relatively narrow focus on a distinct business area with few related tasks (OECD 2002) also allows for good performance results. However, some evidence suggests that, oddly, performance improvements mostly owe more to a culture of performance within the agency than to any ability of the minister to reward or punish (Pollitt 2006).

Risks

On the downside, there are some potential difficulties associated with agency governance that need to be observed. Box 1 provides the key concerns.

Box 1: Potential externalities and collateral damage from creating agencies

Although the case for and against agencies is generally made in relation to the specific task of an agency, a broader examination may reveal areas in which agencies have potentially deleterious impacts on the public sector as a whole:

Policy Lock-In. Are autonomous agencies undermining policy objectives by creating constituencies that will compel governments to maintain existing policies? Agencies are created but rarely closed or merged. Policy becomes what the agencies do, not what the government proposes. This can also create unhealthy institutional rivalry between the agency and the parent ministry which is legally responsible for a given policy domain. In dysfunctional bureaucracies where agencies are created to circumvent the ineffectiveness of the traditional ministries, it is often the case that agencies dominate de facto policy-making at the detriment of the parent ministry. There is a persistent concern that arms-length agencies are creating substantial policy coordination challenges (Christensen and Laegreid 2006, p.137 et seq.). Since agencies commonly lack formal mandate and authority for inter-agency policy coordination, the dominance of an agency in a particular policy domain could cause a serious problem of intra-government policy coordination. The result is often a bureaucracy that responds poorly to changing priorities.

Policy Creep. Are autonomous agencies adopting quasi-fiscal activities that stretch beyond the original policy intention of government? Autonomous status can encourage agencies to engage in quasi-fiscal activities (e.g., fee-based services, special concessions to certain groups) that serve the same role as taxes and subsidies, and exceed the original policy intention of government.

Budget Fragmentation. Are autonomous agencies undermining the coherence of the budget? Unchecked agency creation can destabilize the budget in three ways. First, it can create an argument for earmarked funding, which undermines the strategic ability of government to shift funds to emerging priorities, thereby leading to budgetary rigidities and over-stretched funding. Second, it can create scenarios (a.k.a. "bleeding stump" arguments) in which government must provide additional resources or face the unthinkable — e.g., teachers on strike, nurses without jobs, etc. The arms-length nature of agencies makes "bleeding stump" arguments more likely since the imminent problem is less easily identified by the central agencies. Third, unchecked agency creation can create contingent liabilities for government by borrowing against assets or making other commitments.

Patronage Den. Are autonomous agencies facilitating patronage? Unchecked agency creation can institutionalize patronage in appointments if the agency becomes the implicit bailiwick or property of a coalition party. This undermines the credibility of merit protection regulations for all agencies by offering a haven for patronage appointments. Particularly in governments backed by unstable coalitions,

autonomous agencies – with the implicit promise of a distinct sphere of influence and public profile – can provide an easy route for appeasing fractious coalition members.

Special privileges. Are autonomous agencies distorting public sector incentives? In order to attract qualified staff, autonomous agencies are often given exceptions from the government personnel regime to offer higher salary scales as well as other attractive benefits. The uneven incentive structures within the public sector make it difficult to lure competent individuals to traditional ministries, while those who remain in the non-autonomous parts of the government become unmotivated or even resentful of those receiving better incentives and benefits in autonomous agencies.

Avoiding undesirable work – or avoiding closure. There are also concerns that they can represent a successful attempt by senior staff to avoid becoming enmeshed in the painful details of service delivery (James 2003). There is also a concern that the creation of agencies can distract from the more substantial task of removing non-essential service responsibilities from the public sector (Beblavy 2002).

Opacity. The growth of many divergent organizational forms with complex variations on financial and human resource management regulations and reporting regimes can overload the ability of the executive to ensure their proper governance (OECD 2002).

Source: (Matsuda and Manning 2000; Manning and Shepherd forthcoming)

There is some limited evidence that the growth in regulatory bodies, an intentionally non-responsive (in the sense intended in this paper) form of arms-length body, has been the main growth area (Christensen and Yesilkagit 2006).

Summary

Autonomization, in the sense of creating arms-length agencies, is often attractive to both reformers in countries and to donors because it allows quick circumvention of a number of institutional dysfunctions that plague public sectors in developing and transitional countries. However, there are significant costs associated with inappropriate autonomization. Therefore, benefits and costs should be weighed in each concrete circumstance. A model of autonomization that worked in one context may very well prove to be wholly inappropriate in another setting.

A key challenge is to remove the magic bullet associations with autonomization, and restore it to its position as one dimension of institutional design among many within the public sector. The perennial issue when considering government regulation or provision of goods and services is not "How can we use autonomization?" The fundamental questions are "What is wrong with the present arrangement?" and "What would successfully solve that problem?"

References

- Barker, A. (1998), 'Political Responsibility for U.K. Prison Security: Ministers Escape Again', Public Administration, 76, 1-23.
- Beblavy, M. (2002), 'Understanding the Waves of Agencification and the Governance Problems They Have Raised in Central and Eastern Europe', OECD Journal on Budgeting, 2 (1), 121-139.
- Bouckaert, G. and G. B. Peters (2004), 'The Study of Quangos', in C. Pollitt and C. Talbot (eds.) Unbundled Government: A Critical Analysis of the Global Trend Towards Agencies, Quangos and Contractualisation, London, Routledge.
- Christensen, J. G. and K. Yesilkagit (2006). Political Responsiveness and Credibility in Regulatory Administration. Department of Political Science, University of Aarhus and Utrecht School of Governance, University of Utrecht, <http://www.publicmanagement-cobra.org/pub/paper/Bureaucratic%20credibility.pdf>.
- Christensen, T. and P. Laegreid (eds) (2006), Autonomy and Regulation: Coping with Agencies in the Modern State, Cheltenham, Edward Elgar.
- Gill, D. (2002), 'Signposting the Zoo – from Agencification to a More Principled Choice of Government Organisational Forms', OECD Journal on Budgeting, 2 (1), 27-80, <http://www.oecd.org/dataoecd/12/34/33657633.pdf>.
- James, O. (2003), The Executive Agency Revolution in Whitehall - Public Interest Versus Bureau-Shaping Perspectives, New York, Palgrave Macmillan.
- Lonti, Z. and M. Woods (2008), Towards Government at a Glance: Identification of Core Data and Issues Related to Public Sector Efficiency, Paris, OECD.
- Majone, G. (1996). Temporal Consistency and Policy Credibility: Why Democracies Need Non-Majoritarian Institutions. Working Paper. European University Institute, Siena, http://www.iue.it/RSCAS/WP-Texts/96_57.html.
- Manning, N. and G. Shepherd (forthcoming). Public Management Reform in Latin America and the OECD: Searching for Public Trust and Administrative Legitimacy? (Draft). Washington DC.
- Matsuda, Y. and N. Manning (2000). Difficulties with Autonomous Agencies. World Bank Administrative and Civil Service Reform website, <http://www1.worldbank.org/publicsector/test/civilservice/autonomous.htm>.
- Moynihán, D. (2006), 'Ambiguity in Policy Lessons: The Agencification Experience', Public Administration, 84 (4), 1029-1050.
- OECD (2002), Distributed Public Governance: Agencies, Authorities and Other Government Bodies, Paris, OECD.
- Pierre, J. (2004), 'Sweden: Central Agencies', in C. Pollitt and C. Talbot (eds.) Unbundled Government: A Critical Analysis of the Global Trend Towards Agencies, Quangos and Contractualisation, London, Routledge.
- Pollitt, C. (2006), 'Contrasting Bases for Performance Management in Executive Agencies', in T. Christensen and P. Laegreid (eds.) Autonomy and Regulation: Coping with Agencies in the Modern State, Cheltenham, Edward Elgar.
- Pollitt, C. and C. Talbot (eds) (2004), Unbundled Government: A Critical Analysis of the Global Trend Towards Agencies, Quangos and Contractualisation, London, Routledge.
- Talbot, C. and C. Johnson (2007), 'Seasonal Cycles in Public Management: Disaggregation and Re-Aggregation', Public Money and Management, 27 (1), 53-60.
- Wettenhall, R. (2005). Autonomy Issues in Australian Non-Departmental Public Bodies. Centre for Research in Public Sector Management, Canberra, <http://www.publicmanagement-cobra.org/pub/paper/RLW%20Autonomy%20Issues%20in%20Australian%20NDPBs.pdf>.

- i (OECD 2002) and (Pollitt and Talbot 2004) offer similar perspectives.
- ii From recent research, (Bouckaert and Peters 2004) identify the following agency functions: implementation (direct service delivery, transfer of funds); regulation; advice and policy development; provision of information, research; tribunals and public enquiries; and representation.
- iii Although not always in practice – see for example (Barker 1998)
- iv (James 2003, p. 137) makes a similar distinction between strong and weak central steering and (Pollitt and Talbot 2004) point out that the case of a clear, single principal to which the agency reports is probably rather unusual (Pollitt and Talbot 2004, p. 15)
- v While there is a strong basis for believing that the design and governance of such bodies can be *sufficient* to provide credible reassurance to interested parties that environmental, risk, and other regulatory issues will be dealt with from a long-term perspective, thereby encouraging compliance (Majone 1996), others point out that such bodies are certainly not *necessary*. (Gill 2002) cites the example of the management of police forces on a non-political basis but within traditional ministerial or departmental forms.
- vi (Gill 2002) suggests that the key dimensions involved in determining the degree to which an entity is "arms-length" are:
 - The degree of legal separation from the state (ranging from indivisible from the state to separate legal identity).
 - The nature of the law used to establish the body (Public Law vs. Private Law).
 - The primary customer (ranging from the Minister to purely private customers).
 - The employment contract for staff (Civil Servants vs. private law employment).
 - The sources of funding (ranging from fully tax-funded to fully sales-revenue-funded).
- vii (Talbot and Johnson 2007) highlights the malleability of the UK Executive Agencies.
- viii The placing of the Swedish agencies in this cell highlights the often overlooked point that they have a fundamentally different historical and constitutional starting point to many of the more recent *responsiveness-driven* agency forms. As an expert commentator on the Swedish situation points out: "Cabinet members giving an agency instructions on how to deal with specific cases are guilty of 'ministerial steering' (*ministerstyre*) and may be reprimanded by the Parliament for abusing his/her position." (Pierre 2004, p. 206)
- ix Thirteen OECD countries, including all the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) use lump sum appropriations, as well as a majority of the countries with Westminster systems (Australia, Ireland and the United Kingdom) use lump sum appropriations for their agencies. Most impose a sub-limit on wages (Lonti and Woods 2008, p. 69). A majority of OECD governments now allow entities to keep savings from any efficiencies that they achieve, over and above the imposed efficiency improvements. Most OECD countries require productivity/efficiency improvements from public sector organizations on an annual basis, and these assumptions are embedded in budgetary appropriations. Efficiency estimates can be across the board, sector, or organization-specific (Lonti and Woods 2008, p.134).