Distributed Public Governance

AGENCIES, AUTHORITIES AND OTHER GOVERNMENT BODIES
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...
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 Agencies”.

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

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

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

- The international debate about distributed public governance has tended to focus on organisations associated with New Public Management (NPM). Too often, the word “agencies”, drawing on the relatively unique experience of the “Next Steps” agencies in the United Kingdom in the 1980s and 1990s, has been used to describe bodies created over a much longer period and for a wide variety of purposes. The rationale of differentiating organisational forms for the purposes of “autonomisation”, as portrayed by the NPM literature, is not necessarily valid in countries where differentiated organisational forms have existed for a long time. Only in a minority of countries have differentiated government organisations been created specifically for “autonomisation” reasons in the 1980s and 1990s. It is thus important to de-couple the debate over organisational form from the debate over “autonomisation”.

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

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

1.2. Understanding the scope of distributed public governance

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

- A diverse set of bodies

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

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

- In Canada: Service agencies, Special Operating Agencies (SOAs), departmental service agencies, and in some cases shared governance corporations.
- In France: Public establishments (Établissements publics) and independent administrative authorities (Autorités administratives indépendantes).
- In Germany: Federal agencies (direct federal administration, unmittelbare Bundesverwaltung); bodies of public law (indirect federal administration, mittelbare Bundesverwaltung) and some private law administration entities (Bundesverwaltung in Privatrechtsform).
- In the Netherlands: Independent administrative bodies (Zelfstandig Bestuursorgane, 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.
Organisationally, these bodies have usually been created by:

- isolating structures within ministerial departments and providing them with a quasi-contractual relationship with the top hierarchy of the ministry; or
- separating them institutionally from traditional, vertically integrated ministries; and/or
- providing them with a complete or partial legal identity separate from that of the state.

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

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

   - A differentiated hierarchy: They are usually under a different hierarchy from traditionally functioning ministries, reporting directly to the minister, the chief executive of the ministry, and in some relatively rare cases to the head of government or the whole of Cabinet. The head of these bodies, i.e. the chief executive, is usually nominated through procedures that differ from those which apply in the traditional civil service. They can be nominated by the line minister (sometimes requiring the approval of the full Cabinet or the legislature), or by governing boards when they exist.

   - Differentiated responsibilities at the top of the hierarchy: The chief executive is generally responsible for the overall organisation, management and staffing of the entity, and for its financial and other procedures, including conduct and discipline. Programme design is a shared responsibility between the line minister/ministry, the governing boards (where they exist), and the chief executive. Depending on the nature of the entity, the minister may inform the entity of the government's expectations and policies, direct the board, take part in decisions about capital injections, monitor performance, and decide on the nature of regulations.

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

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

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

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

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

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

3. Some management autonomy

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

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

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

1.2.2. Reasons for their creation

In order to provide bodies with: i) a differentiated governance structure; and/or ii) a differentiated control environment; and/or iii) some management autonomy, governments throughout the OECD area have created bodies with certain degrees of separateness from traditional, vertically integrated ministries. Behind these organisational motives for creating these bodies, other motives have been:

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

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

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

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

2. Improving the legitimacy and expertise of decision-making

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

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

• A differentiated governance structure coupled in some cases with managerial autonomy allows citizens or specialised professionals into the public decision-making process.
A differentiated governance structure, often coupled with some management autonomy, enables the establishment of collaborative partnerships between organisations within national government and between organisations belonging to different levels of government.

Table 1. Matching the organisational features of agencies, authorities and other government bodies with the reasons for their creation

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

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

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

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

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

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

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

However, partial data⁸ shows that their importance within central government
in terms of their share of public expenditure and public employment⁹ 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 enti-
ties (including entities that provide goods and services for commercial
transaction but that are not state-owned enterprises); most of this, however,
is allocated to the Administration of Social Security.

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

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

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

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

- In the Netherlands, the Dutch agencies alone represent approximately 30% of
the civil service, and it is estimated that by 2004 this percentage will
increase to 80%. In addition, there are 339 independent administrative
bodies (“ZBOs”).
In Canada, there are three service agencies, accounting for more than 35% of federal government employees. In addition, there are 18 special operating agencies, and one departmental service agency.

1.2.4. Categorising agencies, authorities and other government bodies

a) Classifying agencies, authorities, and other government bodies

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

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

1. Departmental agencies

Institutional and legal foundations: They are part of ministries, and do not have their own separate legal identity from the state. They function under public law, generally under quasi-contractual relationship with their line ministry.
Governance structure and control: They do not have a governing board (although they might have management or advisory boards), and the chief executive is directly appointed by the minister. The minister has formal (but less direct) control, while the chief executive has operational control.

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

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

Examples: Germany: Direct federal administration; Netherlands: Agencies; New Zealand: Semi-autonomous bodies; Spain: Autonomous organisms; United Kingdom: Executive agencies; United States: Performance-based organisations.

2. Public Law Administrations (PLAs)

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

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

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

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

Examples: France: Administrative public establishments ("Etablissements publics administratifs"), professional public establishments ("Etablissements publics professionnels") and autonomous administrative authorities (" Autorités Administratives Indépendantes"); Germany: Indirect public administrations; Netherlands:

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.


Table 2. Organisational features and types of agencies, authorities and other government bodies

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

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

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

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

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

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

c) The problem of policy independence

Many have also tried to classify organisational forms according to the level of policy independence13 they provide.

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

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

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

2.1. Changing concerns

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

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

Finally, criticisms have been voiced over the use of special autonomous or independent bodies to address complex and politically sensitive issues such as food safety, radioactive waste, etc. These bodies provide government with independent advice from independent experts. Critics claim that while independent expertise is often much needed, these new independent entities 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
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.
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/output-focused budgeting and management and multi-year budgeting. Nonetheless, except in the Netherlands and the United Kingdom, these initiatives have been of a rather limited scope. Indeed, the United Kingdom and the Netherlands are the only countries to have implemented a deliberate policy of systematically changing the organisational structure of central ministries and creating departmental agencies. The reasons seem to lie more in the difficulties involved in providing management autonomy (see next section) than in the organisational form itself. It is clear that the use of performance agreements, with some managerial autonomy between the head and subordinate parts of a ministry, can capture many of the elements of the departmental agency form – without formally creating one.

2.3. Key emerging issues regarding distributed public governance

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

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

The lack of organisational clarity has important consequences:

- It is unclear whether the best organisational forms have been chosen for the various functions of government. A number of countries are presently
rethinking the use of agencies, authorities and other autonomous bodies for different government functions.

- The monitoring and control of these entities by central government is made more difficult because of the different types of relationships the central reporting ministry has to manage with these entities, and the different types of control and accountability mechanisms.
- The lack of “readability” of the institutional system can also potentially undermine citizens’ trust if responsibilities and systems of accountability are unclear.

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

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

For example, many countries report the need for clearer criteria for establishing different types of boards – 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 representativeness of their members – mainly in terms of gender and ethnic background.

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

2.3.3. 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. In presidential systems, many of these autonomous bodies report directly to Parliament, requiring additional capacity from Parliament to
process information and exercise control. In the two systems, the public accounts committee, as well as the relevant select committee are the most common accountability bodies in Parliament.

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

- Civil society

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

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

2.3.4. 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
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.
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.
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 Further-
more, 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 organi-
sation 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 sub-
directorates and offices. The legal framework for these directorates is set by
decrees of the Conseil d’État. The current 15 ministries comprise 160 central direc-
torates, figures which reflect the Executive’s efforts to tighten up the administra-
tive 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 col-
legiate 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 establish-
ments, 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
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
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, 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,
Staff working in public establishments represent 35% of all staff working on policy implementation and service delivery.

<table>
<thead>
<tr>
<th>Staff numbers civilian ministries</th>
<th>1 861 012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defence</td>
<td>409 123</td>
</tr>
<tr>
<td>National Public Establishments</td>
<td>252 995</td>
</tr>
<tr>
<td>Large national enterprises EPIC</td>
<td>675 000</td>
</tr>
<tr>
<td>Other national enterprises EPIC</td>
<td>15 000</td>
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</table>

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.
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
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.
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
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 – Délégation Interministérielle à la Réforme de l’État) with a representative sample of national public establishments (EPNs – établissements publics nationaux) and their parent ministries under the heading implementation.
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,
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.
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
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.
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
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 policy4 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
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
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 artworks 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 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

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.
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.
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 – Agence 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
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 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.
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.

Performance 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).
The basic principle of strategic management control is to begin by defining what are providable goods and services and identifying quality and acceptability indicators. 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
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
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).
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 implementation 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 negotiation 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.
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 – Délégation Interministérielle à la Réforme de l’État), “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 Contrac-tualisation 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).