



## SIGMA

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## DRAFTING A CONCEPT PAPER ON THE ORGANISATIONAL STRUCTURE OF THE EXECUTIVE'S PUBLIC ADMINISTRATION

### Introduction

This paper focuses on the essential issues that should be considered in a concept paper on the organisational structure of the state administration. To govern a country and to provide public services, a government must retain an important policy-making and enforcement capacity and have at its disposal effective co-ordination mechanisms. It is clear from the experience of OECD countries that just as much attention should be given to strengthening the capacity of ministries to regulate, control and steer as is given to the design of administrative organisations responsible for the sovereignty concerns and international relationships of the country and for the delivery of public goods and services.

The diversity of organisational forms in the public sector—especially in an immature market economy framework—can pose serious risks to the state's ability of serving the public interest. The management of this risk can be facilitated by umbrella legislation that defines the authority and control of different kinds of organisations. This umbrella legislation could be a law on the organisation and functioning of the state administration.

### Constitutional Options

The first reference in a *Public Administration Organisational Concept* should be to the constitution of the country and to the public administration model that the constitution promotes or embraces. Several constitutional models are found around the world, each of which has different organisational and policy or decision-making consequences. Among others, the following models are salient among OECD countries<sup>1</sup>:

a) One is the *collegiate model*: In this model the prime minister, not the head of state, is the dominant figure. The council of ministers (CoM) is a central element of the decision-making process, and it is collectively responsible to the legislature, which has the power to remove the government. The great majority of executive systems in OECD countries EU Member States belong to this category. However, these systems are not uniform: there is a "spectrum of collegiality", ranging from countries where the prime minister is only "first amongst equals" to countries where the prime minister is regarded as having a quasi-presidential dominance (Spain, United Kingdom).

b) Another one is the *presidential model*: By oversimplifying, one may say that the main feature of this category is the primacy of the presidency and the legitimacy conferred on its holder by direct popular election. There is either no prime minister or he/she is very much subordinate to the president, as are the other institutions of the executive, including the cabinet or council of ministers (CoM).

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<sup>1</sup> See Michal Ben-Gera and Simon James (September 2005), *The Structure and Functions of the Ministry of the President (or Equivalent Organisation) in RIMPE Member Countries*; available at [http://www.rimpe.org/documentos/Rimpe\\_Estructura.Pdf](http://www.rimpe.org/documentos/Rimpe_Estructura.Pdf)

c) A third one is the *semi-presidential model*: This is a variant on the collegiate model, in which a directly elected president is also an active political player, with a particular role in foreign affairs, defence, and many public appointments. The extent of the presidential role tends to depend on the relative strength of the other key actors in the system. It is not a widespread model; the best known examples are Finland, France and Portugal.

There are few pure presidential systems amongst OECD countries, and among them the best known is that of the United States, which is very specific: in this system the executive power is focused on the president; his ministers are dependent on him for their position and authority and (although they might be extremely influential) they are essentially his executive assistants. Cabinet meetings are largely formal and have little influence on policy; decision-making on key issues is dominated by the bilateral relationship between the president and his ministers.

There are other presidential countries where these assumptions hold true, despite the presence of a prime minister: for example, South Korea, which in its response to an OECD survey described the prime minister as “principal executive assistant to the President”, and the republics of Central Asia, where there is usually a prime minister who is in much the same position as the prime minister in Korea.

Among the RIMPE<sup>2</sup> countries, however, these assumptions do not hold true, especially for the majority of Ibero-American countries. First, ministers in most RIMPE countries enjoy a reasonable measure of responsibility. Only in Brazil, Colombia and Uruguay are most decisions taken by the president. In most countries decisions are taken by either the president or individual ministers, and in Honduras and Mexico ministers decide most issues. It is presumably true that the president will be involved in all of the main decisions, but that is true of the head of government in collegiate systems as well.

The constitutional arrangements prevalent in a country will have a decisive influence on the array of public administration organisational choices available and the relationships patterns among them. Therefore any *Public Administration Organisation Concept* should take these arrangements into account and analyse their possible impact.

A second issue to be looked at in the constitution concerns the constitutional entrustments, which may be either explicit or implicit in the constitutional text, on the distribution of responsibilities between the public and private sectors for the provision and production of public goods and services, and the main policy orientations that the constitution provides in this respect. The constitution may provide policy options and political choices that should be taken into account when it comes to proposing specific public administration organisational designs or solutions.

A third issue to be examined from the constitutional viewpoint is the degree of decentralisation, i.e. the territorial distribution of political power within the national territory. The constitution may provide several patterns for this distribution, such as unitary state, federal state, unitary state with heavy decentralisation, etc. The constitutional options will have consequences in terms of the organisational patterns that the state administration will be allowed to adopt. In any case, a *Public Administration Organisation Concept* should provide analyses of the options for the organisation of

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<sup>2</sup> The 21 member countries of RIMPE (*Red Iberoamericana de Ministerios de Presidencia y Equivalentes*) are Argentina, Bolivia, Brazil, Colombia, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Spain, Uruguay and Venezuela.

the state administration across the territory through the deconcentration of services. One important decision to be analysed is whether deconcentrated units should be integrated or disintegrated, i.e. whether each ministry is to be allowed to have its own territorial branches or whether a single office should represent all ministries (or the majority of them) within a given portion of the territory.

### **Three Main Functions of the Public Sector**

Once the constitutional options have been settled and the respective responsibilities of the public and private sectors for the provision and production of public goods and services have been designated, usually the number of options diminishes in terms of organisational structures and governance relationships that are possible for governing the country and its international relations, and for providing and delivering the services for which the state remains responsible.

Depending on political preferences, which may or may not be explicitly reflected in the constitution of the country, the emphasis will be placed on one of the functions listed below or on a mix of functions. Generally speaking, the state has three separate functions:

- a) Public administration organisations are directly responsible for holding the public authority or sovereignty-related functions of the state and for the delivery of services. To do this, the government needs to define (i.e. to legislate) overall legal administrative frameworks for the exercise of public authority functions and the delivery of services and also to determine the services that can be provided through autonomous bodies and the general relationships that should be built for ensuring the good governance of the overall system.
- b) The state is only the regulator of service provision and delivery by the private sector and controls compliance with the regulations. Apart from general market supervision, this function concerns in particular sectors where forms of natural monopoly or undesirable forms of market power tend to emerge: telecommunications, banking sector, insurance sector, electricity, railways, other network industries, etc.
- c) The state is the contractor of services to private entities, especially for certain commercial goods with a clear public service function – under specific conditions – and for certain infrastructure projects requiring substantial capital investment (e.g. concessions), in which the country needs to develop specific monitoring powers and abilities.

### **Organisational Forms**

Usually the three functions listed above will occur, with more or less intensity depending on political preferences, in any kind of contemporary state. Any *Public Administration Organisation Concept* should take into account that the above activities require different organisational forms and different patterns of organisational interaction.

The choice of organisational settings or forms of public administration is dependent on local administrative traditions in countries. The choice should take into account, however, a number of principles stemming from the requirements of a democratic state, such as clear lines of accountability of public institutions, professionalism of the staff, predictability of their actions and decisions, soundness in the allocation of public funds, financial transparency, facility of judicial

review, and organisational transparency for citizens. Such a choice also needs to take into account the requirements associated to acceptable standards of efficiency and effectiveness of public administration channelled through sound procedural rules. A balance should be struck between the requirements of public accountability and the requirements of an efficient management of public services.

In any case, the *Concept* should retain the fundamental idea that the fewer the categories and the more uniform the rules applying to public administration organisations, the more readable the public governance system is to politicians, civil servants and citizens alike. Having too many forms of administrative organisation or too many organisations increases the risk that they will not work together on important common objectives or on those complex problems of public policy that “fall between the cracks” of organisations’ responsibilities, thereby weakening accountability.

### **Core State Responsibilities Should Remain in the Ministries**

Ministries have no separate identity from the state and generally function under public law or general legislation on administrative procedures, or on civil service, budgetary and other general administrative regulations. Ministries are tax-financed and have no ability to borrow for their operational running costs, and typically have limited ability to carry forward budgetary surpluses. They are subject to process controls (*e.g.* for purchasing non-labour inputs, internal financial control and external audit). Their staff are subject to process controls (i.e. civil service law administrative controls) for their appointment, promotion and dismissal.

The main strengths of ministries as an organisational form stem from the fact that they are multifunctional, relatively insulated from political interference in administrative processes (rules on staff and financial management), but they have political interference in matters where the state has a special vested interest (some of the regulatory functions, for instance); they are responsive to the political context and are visible from a democratic point of view, and they have durable organisational forms.

Ministries exist because there is a strong need for direct political oversight, not only of sovereignty functions (defence), but also of other functions that are not directly related to sovereignty and public authority (education, health care) but that may express a high political commitment of the government of the day.

Ministries are best used as an organisational form for those activities where there is a lack of measurability of results and where policy objectives are ambiguous or subject to rapid and unpredictable change, while at the same time having a high political relevance. As such, the ministry is the appropriate organisational form for all multifunctional activities and for policy development and is preferred for all executive functions where – even if politics plays a key role – decisions on policies and their implementation require professionalised staff in charge of public administration know-how and procedures.

However, the number of ministries and their structures changes constantly. Most new governments make changes in the structure of the cabinet and in the number and responsibilities of ministries. They tend to oscillate between fewer and larger departments, with a small and coherent group at the centre, or smaller and slimmer departments.

Overall, however, there is no mainstream trend across countries showing that they have a preference for a specific model. All changes are trade-offs between the various needs that decision-makers want to address and the various values that they want to promote. For example, changes aimed at adjusting political requirements and accommodating political coalitions or at increasing representativeness often tend to undermine focus and manageability. While these changes may in some cases be of a political nature, they have consequences that go beyond the simple political structure and influence not only the institutional decision-making process, and the management culture of the concerned organisations, but also the whole of public administration organisational set-ups and decision-making processes. This is especially the case when staff is replaced at various levels of the hierarchy as a consequence of political adjustments or trade-offs among coalition political parties or among tendencies within a single-party government.

The most crucial long-term factor affecting the structure of ministerial administrations and the allocation of responsibilities across ministries has been the growth in the number of ministries over the past 50 years. The number of ministries increased with their increased specialisation in the post-war years, before becoming a bit more stable as from the 1980s. Indeed, today, in the majority of OECD countries there are approximately between 15 and 20 ministers who are members of the cabinet or council of ministers (CoM). At the same time, most OECD countries have adopted a model where ministers who are members of cabinet are seconded in some areas by more junior ministers, deputy ministers or secretaries of state, who, for the most part, are not considered as full-fledged government members of the CoM or cabinet. These more junior ministers may be called to attend some cabinet meetings but are not part of the core cabinet or CoM.

Ministerial administrations oscillate between larger and smaller organisational structures, both having some political, policy and management advantages and drawbacks. Organisational changes of ministries, which are usually guided by a range of motives, entail costs. The largest immediate costs of organisational restructuring are the costs of disruption. Reorganising distracts the staff's attention, increases the staff's sense of insecurity, and distracts management's attention from immediate management challenges; policy-makers may lose some opportunities for management and policy changes during this disruption of attention. Moving organisations around different buildings, the time required for new nominations, and other costs of transfers (such as reprinting of labels with new names, etc.) are also important costs to take into account. Whatever the case, a well functioning, large council of ministers will require a strong political and administrative centre (prime ministry, ministry of finance, ministry of the presidency, etc.), a well-developed sub-committee system, and standardised bureaucratic processes and structures across ministries; a smaller cabinet will require the establishment of a well-functioning competition mechanism for staff reallocation and sound conflict-resolution mechanisms for budgeting and funding allocation.

Core ministries in charge of state security or sovereignty functions, such as defence, finance, interior and foreign affairs, are less likely to be frequently re-organised. This is not surprising, as the costs and dangers of such re-organisations for the overall functioning of the state might be too important compared to the possible gains of a reorganisation.

Legislation on the administration should contain a number of provisions for standardising the internal structure of ministries across the board. A standardised organisational structure for all ministries contributes not only to making the state organisation understandable by the public and by the civil servants, but also to making it functional, by drawing the dividing line between politics and administration within the ministerial administration.

The names of the managerial levels within ministries vary across countries, but they usually refer to 1) minister, 2) state secretary or deputy minister, 3) undersecretary, 4) director general, 5) head of service/department, etc. The law should draw the line separating political from professional posts.

A law on the organisation and functioning of the administration should not regulate beyond these general issues, as it should only provide the main organisational principles that are relevant to establishing a functioning administrative model with politically preferred interrelations and working patterns. The details should be left to the discretion of either the head of the executive (president or prime minister), or the council of ministers as a whole (or individual ministers), depending on the importance of the matter at stake.

Consequently, any *Public Administration Organisation Concept* should take into consideration all of these concerns and provide policy orientations and organisational choices among competing interests and possibilities so as to better ensure accountability, efficiency and transparency of government structures and public administration organisational settings.

## **Ministerial Agencies**

Relatively recently, many countries have created a profusion of what are now internationally known as “agencies”. The term covers a very wide variety of organisations, which have been created for different reasons and have very different functions. The two most numerous categories are, on the one hand, policy implementation or service delivery agencies, which, for the most part, are regular departments within ministries and, on the other hand, “regulatory” agencies (also known as independent administrative authorities), which tend to be independent and sometimes have unclear reporting obligations and accountability patterns.

Ministerial agencies are a relatively new organisational form. They are not independent entities with a separate legal personality. They are direct subsidiaries of ministries and function under public law, and they are subject to the same general administrative processes that apply to all ministries. Their main difference from ministries is that they are given more managerial freedom and function within the framework of a management and performance contract; targets are established and performance standards are negotiated with the ministry. This means that good reporting on outputs and outcomes by departmental agencies and detailed control of outputs and outcomes by ministries are crucial for the functioning of the system.

Ministerial agencies do not have a governance board. The minister has formal control but this control is less direct than the control he/she has over the ministerial administration, while the director general has operational control. Ministerial agencies are fully taxed or partly taxed / partly financed by user fees. The agencies have an annual budget allocation and may be allowed to carry forward budgetary surpluses. They may or may not be subject to process controls. Their staff are usually part of the civil service. These agencies usually have no power to borrow or lend funds, but they may retain proceeds from what they produce or deliver (in the form of tolls, dues or tariffs, but not at market prices).

Ministry agencies can be very varied and cover a number of functions that ministries usually carry out, in particular the delivery of non-commercial services to citizens or of support services to other state sector bodies. This organisational form is most likely to apply to the delivery of tangible administrative services (e.g. issuing of drivers’ licenses or passports, calculation of pension rights). This organisational form can improve performance through better focus when there is a cohesive

functional grouping of administrative tasks, predominantly for the delivery of tangible, quantitatively measurable services. The agency form allows for an outward-looking focus on one or a few easily standardised and mutually-related services to citizens, a better insulation from politics, a better focus on serving citizens as clients rather than serving the minister, performance contracting with management autonomy and accountability, and improved management expertise in service delivery.

However, like other organisational forms, agencies are not fit for all public services. Where interconnectedness among policies is high, the agency form may result in difficulties of co-ordination. Where political salience is high, the agency form may lead to a loss of political control. Also, only some government activities are measurable, and poor specification may undermine the organisational model. Focused agencies may also resist resource reallocation, which is a particular problem where policy settings are not stable or durable, which is especially the case in transition countries.

*Any Public Administration Organisation Concept* should take all of these considerations into account and propose specific solutions and options for the country in question, thereby laying the foundations for a sound legal and institutional framework. This framework basically consists of a general law on the organisation and functioning of the administration, which includes general rules for all public organisations, classifies organisations, establishes strict principles for the creation and removal of new entities, assigns generic governance responsibilities and individual responsibilities throughout the hierarchy (generic job descriptions), and establishes mechanisms for policy agreements and conflict resolution among the various bodies.

### **Indirect Administration: Autonomous Administrative Bodies and Public Enterprises**

All countries have always had some core government bodies that are somehow separate from ministries. Most of these long-standing bodies have been created over time to provide for a differentiated top governance structure (a differentiated hierarchical structure, boards) or a differentiated control environment (mostly for the application of management, financial and personnel rules, which may be totally or partially different from those applied to ministries). These bodies are also called “indirectly-controlled bodies” or indirect administrations.

Indirectly-controlled bodies are separate from ministries and often are constituted as separate legal entities. Having a separate legal entity has allowed some countries to provide these bodies with a very different governance structure (most notably with the existence of a relatively independent board) and some different management rules from those of ministries. In all cases, as for ministerial agencies, the key to the good functioning of indirectly-controlled bodies lies in the management of a contract based on outputs, which is designed by the parent ministry in collaboration with the indirectly-controlled body, and in the overall accountability and governance mechanisms that apply to the body.

The establishment of autonomous entities usually responds to two “good governance” goals: to improve the performance of the public sector and to make public decision-making more credible by separating it from direct political intervention. Establishing autonomous bodies, however, cannot solve the problems of a generally ill-functioning government. The experiences of transition economies relay mixed lessons about establishing new organisations to evade general problems of governance in the public sector, as even autonomous bodies need to be strongly co-ordinated and overseen by parent ministries. Also, it is impossible to create a lasting performance culture in an environment of non-performing or insufficiently accountable public administrations. Creating

autonomous bodies to escape the constraints imposed by administrative law and to seek the “flexibility” of private law may be a mistake leading to increased opaqueness, arbitrariness and corruption.

Most OECD countries have a significant number and several different types of autonomous public bodies. These could be classified into two groups:

- 1) Public law administrations, mainly functioning under general administrative rules applying to all government entities, which often exercise administrative functions; and
- 2) Public enterprises, mainly functioning under private law, which often undertake commercial, industrial or financial activities.

The distinction between public law and private law is not meant to imply that each body will be completely in one of these legal jurisdictions. For example, private law bodies can be incorporated under private law but still may have been created by statute and may be subject to the budget law or to administrative law with respect to the exercise of certain administrative powers. Similarly, public law bodies may be subject to private law when conducting certain transactions with third parties (entering leases, etc.) and be treated as separate legal entities for those purposes.

Public law autonomous bodies function mostly under the same rules that apply to the public administration. Their main difference with ministries lies in their status as having a differentiated legal personality and in their different governance structure. They may have a full governance board, an advisory board, or be subject to one-person rule. Their control is given to a governing body, which generally delegates to a director general. The minister retains indirect control. They can be either solely tax-financed or financed partly by taxes and partly by users’ –fees. They are often allowed to carry forward their budgetary surpluses. The status of their staff varies between full civil service control, partial control, or regulation by general labour law (but subject to a general framework for state servants on standards of conduct, merit, etc.). There are varying controls on the appointment of the director general, depending on the status of the board. Finally, controls on borrowing, lending and retention of proceeds from assets may also vary.

Public enterprises — grouping state-owned companies (which are incorporated under private law) and also quasi-corporations (they are not separate legal entities but act as if they were a state corporation) – have played a significant role in many countries. The strengths of public enterprises are seen to be the following: their focus on one or a few related services to customers; the existence of a board, which insulates the organisation from politics and thus enables the development of a commercial culture; and the possibility of measuring financial performance. However, the governance board can be undermined whenever public policy objectives dominate or political interference is high. Public enterprises imply some political risk of weak performance. While the relative “autonomy” of some administrative entities may be desirable, their organisational forms should aim at preserving good governance and in particular ensuring accountability with regard to the use of resources.

Although countries differ significantly in the level of activity undertaken by public enterprises, there is a remarkable similarity in the industries in which these enterprises have historically been concentrated (postal services, railways, airlines, telecommunications, electricity generation and distribution, radio and TV provision). State-owned enterprises function under private law and have a separate legal entity from the state. Their overall control is devolved to a board, which delegates to the chief executive of the enterprise. The minister has only indirect control. These enterprises usually have a governance board. Their staff are employed under general labour law. They are mainly financed by sales revenue and they may borrow, carry forward surpluses or lend funds. There are no staff or other input controls. The proceeds from the sales of their assets and

depreciation are retained. These state-owned enterprises have been the first to be affected by the widespread privatisations undertaken in a number of countries in recent years.

It is crucial to bear in mind that if the main organisational option for the production of public goods and services is through autonomous bodies or public enterprises, the whole public administration framework for the governance of the country should be called into question, and most importantly, the capacity of ministries needs to be strengthened in order to steer, control, and maintain a dialogue with the management of these autonomous bodies, especially on issues concerning transparency, performance and accountability. In parallel, the general capacity of the leadership of those organisations to professionally manage the newly created organisations should be ensured. Formally, this means that particular attention should be given to the daily supervision of these organisations by the ministry, and ultimately to the right of the ministry to intervene.

Increasing the managerial control of autonomous bodies over their budgets and staff does not mean abrogating political control and political accountability; it means substituting a form of governance based on detailed external rules and formal approval of any and every individual transactions with another form based on more managerial autonomy, which needs quite strong budget discipline, including monitoring, reporting and audit mechanisms. It means the incorporation of good systems of internal control and internal audit. No government should delegate power without being satisfied that it has in place both the internal and external framework for effective steering and control.

A sound legal and institutional framework is needed in order to limit the number and types of autonomous bodies, provide them with a clear legal basis, and justify any exceptions to the stated rules. Legislation on the organisation and functioning of the administration should contain, with regard to autonomous bodies, provisions on the following:

- a) general arrangements for a management agreement, regularly updated, between the parent ministry and the autonomous body, covering the body's mission, staff management, performance targets and budgets, and reporting arrangements;
- b) powers of the minister or other political authority to set policy or operational directives transparently (by public notice or tabling in the legislature) and to monitor implementation;
- c) emergency powers of the political executive to intervene and dismiss the governing board or the chief executive of the autonomous body if and when there is a significant failure of management, including rules for the appointment and dismissal of top management and governing boards (when they exist);
- d) detailed definition of controls over an autonomous body should be contained in the body's statute approved by law: the framework law needs to clearly define the formal lines of accountability from the autonomous body to the political executive. Even with the correct formal legal framework, the problem is to effectively carry out the day-to-day supervision. This requires the parent ministry to have the necessary competence to administer a performance management system, which requires capabilities that are similar to the operational management skills of the body itself;
- e) emphasis on results management: in OECD countries, it has taken years for organisations to learn how to specify results and how to supplement attenuated control over the management through reports with other forms of monitoring. It is indeed difficult to define measures that properly represent desired results and that are comprehensive in their coverage and reasonably parsimonious in number;

- f) individual accountability of managers for the performance of the organisation and, related to this, means of creating a general culture of performance (e.g. through mechanisms of staff accountability for results);
- g) safeguarding accountability for resources: the risks involved in granting financial and managerial autonomy are important. If autonomous bodies are able to raise their own resources, they can reduce the scope of government control over their overall spending and impact on the economy, and they can disguise inefficiencies by extracting more revenues from their clients. When they are permitted to do their own borrowing or leasing, they may create contingent liabilities for the public treasury.
- h) Managerial autonomy and freedom from general rules regarding the hiring and remuneration of staff can attract skilled staff in core government bodies and also increase opportunities for corruption and patronage.

## Conclusions

1. Reforming the organisational forms of the public administration first requires an analysis of the constitutional set-up of the country, as this is the framework within which any organisational configuration has to take place.
2. Secondly, such an organisational reform also requires the definition of the respective responsibilities of the public and private sectors in the provision and delivery of services. There are some activities which nowadays clearly fall under the responsibility of the private sector, such as those related to banking, industrial production or agriculture. However, in the past some of these activities were within the public sphere of responsibility, particularly in those OECD countries – the majority – where the private sector was too weak or was unwilling to provide these services or guarantee them to the whole population. However, it is true that many of the economic activities related to the above-mentioned areas have now been privatised totally or partially.
3. On the other hand, services that are directly related to the sovereignty or security functions of the state (e.g. diplomacy, justice, police) or services that imply administrative decision-making in the exercise of public authority (e.g. tax collection, customs) are clearly functions of the state, which require the government to retain overall responsibility for the provision and delivery of services.
4. Activities related to infrastructure, education, health and research require more careful consideration and often result in a more mixed picture than the activities mentioned above. In all countries, the state retains an important role in the overall regulation of these activities and in many cases in the provision of services—whether they are delivered by state-owned organisations or private entities contracted out by government entities (typically through concessions).

Paris, 11 June 2008