

# Good governance and public private arrangements

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# Introduction

## A hybrid world

In daily life public and private spheres and values are intertwined but as academics we often separate the public and the private: we differentiate in our research and analyses between the private sector and the public sector, the public sphere and the private sphere, private enterprises and public organizations and the logic of the state and the market. And also in the studies of governance we often distinguish in a very strict way public governance from private (corporate) governance.

Public tasks are performed by a highly diverse range of organisations. Some operate close to government and have to do mainly with government policy and regulations; others are more autonomous and are concerned chiefly with developments in their own sectors while yet others are dealing principally with European regulation. But they all perform public tasks and combine both public and private elements.<sup>2</sup> The diversity is the outcome of a mix of deliberate policy developments, social developments and the interplay of administrative and political forces (see also WRR, 1999; WRR, 2000; SER, 2005; Hupe, 2005).

The studies that are discussed in part one of this paper show organizations and networks that combine characteristics of both the public and the private sector. This kind of organizations with mixed public-private profiles are very common in the Netherlands in health care, housing and education, but also in (policy)sectors that are not discussed in this paper like welfare, labour-reintegration or security.

The fact that mixed public-private organizations are more common in real life than entirely public or private organizations led to the conclusion that it would be useful to develop a model that can help us to analyze the governance of organizations and networks with a mixed public-private profile instead of focusing on models that hold on to definitions and analyses starting from the assumption that organizations are public or private.

## Structure of the paper

In this paper I want to go into the empirical and theoretical consequences of public-private hybridity of organizations and networks for (good) governance. In the first part of the paper the emphasis lies on an empirical investigation of this question and in the second part of the paper I introduce a more conceptual model to analyze the relationship between a mixed public-private profile and (good) governance.

I discuss three studies about good governance and public-private arrangements of the Netherlands Court of Audit (NCA 2005, 2006, 2008). These studies are a part of a larger

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<sup>2</sup> Public tasks are understood to mean tasks that are laid down by or pursuant to the law or that are performed subject to specific conditions laid down by or pursuant to the law.

research program of the NCA about public-private arrangements. This program includes also studies of public-private partnerships (especially in infrastructure) and complex public-private financial relationships between central government and private sector partners.

In part one I discuss two studies about the blurring boundaries between public and private and the consequences of the mix of public and private characteristics for good governance.

- The first study concerns *Public entrepreneurship*: a mix of public and private activities *within* one single organization. In this examination we made a governance analysis for three Dutch ‘public entrepreneurs’ in the sectors of education, health care and technology innovation.
- The second study concerns *collaborative arrangements*: cooperation *between* predominantly public and predominantly private organizations. In this project we studied public-private alliances in three policy sectors in the Netherlands: health care, education and social housing.

In part two I go into a third study in which we developed a first version of a heuristic model to analyze good governance with regard to organizations and networks with a mixed public/private profile (see for comparable models also Perry and Rainy, 1998, in: Koppell, 2003 and Skelcher, 2005, see also Van Montfort & Van Est, 2006 and Van Montfort, 2008).

This paper is work in progress and one of the next steps is to confront the results of the NCA studies with comparable studies in other countries in order to strengthen the theoretical basis for the model explained in part two of the paper.

## **Good governance**

Before I discuss *Public entrepreneurship, collaborative arrangements and good governance (part 1)* and *Good governance at organisations with a mixed public/private profile (part 2)* I would like to spend a few words on the definition of (good) governance. In this paper I differentiate between *internal governance* and *external governance*.

### Internal governance

*Internal governance* refers to the operational management within organizations, the added value provided by ‘mixing up’ public and private, the public reporting and stakeholder dialogues by organizations and the (internal and external) supervision on the management of organizations. I assume that *internal governance* can be analyzed on four levels of analysis (see NCA, 2008):

- Persons: good behavior
- Processes: good interaction (stakeholder dialogue)
- Performance: good (effective, efficient) performance
- Principles: integrity, public accountability, following the rule of law .... and other principles

The studies discussed in this paper provide information about both processes, performance and principles of good governance. One key element of good governance is not covered:

the 'person', that to say the behaviour, leadership and integrity of the individual managers, the 'entrepreneurs'.

### External governance

*External governance* refers to the relationship between government and society (organizations, citizens). The United nations defined in 2002 8 principles of good governance (see figure below).

Figure 1: UN principles of good governance (UN 2002)



They correspond to a high degree with the above mentioned levels of analysis of internal governance, but the perspective is different. Public governance doesn't refer to the management of organizations but to the characteristics and the performance of a system as a whole.

As far as external governance is concerned we paid in the studies that are discussed in this paper special attention to *legislation and regulation* with respect to public entrepreneurship (study 1) and collaborative arrangements (study 2). This refers to the principles of responsiveness ('fits the regulation and legislation to the current situation of public entrepreneurship and collaboration?') and effectiveness ('are regulation and legislation effective?').

In part two of the paper I conclude that improving (good) governance of organisations and networks with mixed public/private profiles requires initiatives of both government (and legislator) and individual organizations. So both internal and external governance, and the interaction between them, are relevant for 'good governance'

## PART ONE

### Public entrepreneurship, collaborative arrangements and good governance

## 1. Public entrepreneurship (study 1)

### 1.1. Introduction

In 2005 the Netherlands Court of Audit performed an audit of organisations combining public-sector tasks and public funding with private-sector activities and private funding. The audit focused on five points: *standards, operational management, added value, reporting and supervision.*

We investigated the standards for public-private arrangements in that were laid down in legislation and in codes of conduct. We looked at three sectors in particular and focused more specific on three individual organizations. We investigated their motives for entering into public-private arrangements, the administrative and organisational form of the arrangements concerned, and the risks associated with them. Finally, the audit included an assessment of whether, in the three organisations concerned, public-private arrangements are producing added value and, if so, for whom.

The conclusions and recommendations were formulated at a supra-organisational level. The audit was intended to inventory the position, identify the problems and formulate the issues at that moment. We are planning to give this audit a follow up in 2010.

The audit about *Public Entrepreneurship* (2005) addressed the following sectors: adult and vocational education, university medical centres (UMCs) and the knowledge and innovation sector. Within these sectors, it focuses on three individual organisations: the Regional Training Centre for the Central Netherlands (ROC MN), Leiden University Medical Centre (LUMC) and TNO (specifically, TNO Nutrition and Food Research).<sup>3</sup>

The three types of organisation considered in the audit engage in different kinds of public-private arrangements. Regional Training Centres (ROCs) engage in private contract teaching alongside the publicly funded education and training that is their main task. The UMCs' main hybrid activities are contract teaching and research funded (at least in part) by third parties. TNO runs research projects with mixed public-private funding, privatises independently viable parts of its organisation, and sells patents and licensing agreements.

In the three individual organisations audited, there is considerable variation in the amount of private income and the proportion it forms of total revenues: the ROC MN derives around €10.2 million of its income from contract activities (7.2% of the total). The LUMC receives about €20 million from private-sector clients (around 5% of its total turnover). TNO earns almost €300 million a year from contracts won in competition with its rivals (approximately 50% of its overall income).

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<sup>3</sup> TNO: Netherlands Organisation for Applied Scientific Research.

## 1.2. Major findings study 1 (situation 2004/2005):

### A. Standards

Little has been done to codify standards for public-private arrangements. A number of general legislative changes are still in progress (including the introduction of statutory rules for public bodies operating in the private sector and the EU's draft Services Directive). The sectoral legislation provides scope for public-private arrangements, but the intended benefits (i.e. added value) are not always clear. The codes of conduct do give general guidance on the internal governance and external accountability of 'public enterprises', but pay little attention to the issues of operational management and added value.

### B. Operational management

The audit of the three organisations produced a varied picture. In all three, there is in theory – and largely in practice – an administrative separation between public and private-sector funds in the parts of the organisations audited.

In all three, however, cost accounting is deficient in certain respects. This creates a risk of cross-subsidisation of private-sector activities by public funds. In the case of the LUMC and ROC MN, the amount of money potentially involved is small, given the relatively modest extent of the organisations' contract activities.

The ROC's contract activities are not yet firmly embedded within the organization. As a result, the risk of a leakage of public funds and adverse effects on the institution's public-sector task cannot be ruled out. However, a complete reorganisation of the ROC's contract activities was taking place during our audit.

The LUMC is taking a number of measures to deal with the risks associated with contract activities. Its cost-attribution and pricing procedures are transparent, but there is a lack of consistency in the charging of staff costs. Also, licence management needs to be improved.

In the case of TNO, the aspects of operational management examined in the audit are generally in order. However, there is room for improvement as regards knowledge management and the cofinancing of projects, for example in the procedures for setting the 'market price' and in licence management.

### C. Added value

We looked at whether public-private arrangements offer added value in practice. It is critical of the fact that policy documents and advisory reports employ no clear definition of added value. We concluded that, although the public-private arrangements do produce added value in a number of respects, the results do not always come up to expectations.

Except as regards their financial benefits, institutions provide little or no information on the added value of their private-sector activities and private funding. There is nothing to prevent them from reporting on these matters, since there are certainly credible and demonstrable examples.

Within the organisations, the audit revealed procedures and rules intended to secure the added value of research findings for society. There are also moves to develop societal impact indicators. However, the organisations' reports contain almost no information about this kind of added value.

#### *D. Annual reports and accounts*

The analysis of the annual reports shows that, although the organisations do provide some information and figures on their public-private arrangements in their published annual reports and annual financial statements, the amount of information and the level of detail vary.

The information published in the annual reports of the organisations involved in the audit is not sufficient to justify any conclusion as to whether their public-private arrangements contribute to a beneficial cross-fertilisation between the public and private sectors. Their annual financial statements and annual reports proved to contain very little explicit information about the potential added value and risks of public-private arrangements.

The general impression is that internal reports provide more detailed information about the nature, extent and financial results of public-private arrangements than external reports, but that even internal reporting systems are not designed to provide information on the added value and risks of public-private arrangements (or on ways of dealing with these risks).

#### *E. Supervision*

##### *E.1. External supervision*

Government has given institutions the freedom to develop public-private arrangements, but has failed to create a clear system for the supervision of such arrangements. The Ministry of Education, Culture and Science's 'Clarity' memoranda on adult and vocational education and higher education are a first step in the direction of extending its supervisory arrangements to include public-private arrangements and compliance with primary and secondary legislation concerning the use of public funds to finance private-sector activities. Actual supervision is marginal and sporadic in the case of institutions of adult and vocational education and completely absent in the case of the UMCs. Where the performance of TNO and the LUMC are concerned, vertical supervision is supplemented by other forms of external assessment, such as benchmarking studies, peer reviews and various societal impact assessments. However, none of these reveal whether public-private arrangements contribute to the institutions' performance, and if so, how.

##### *E.2. Internal supervision*

The audit shows that, in practice, the supervisory boards of the organisations involved are alert to potential problems and receive the right information. In every case, however, the statutory basis or arrangements for the powers and responsibilities of the supervisory board proved to be inadequate. This is not a problem so long as things go well, but could become one if supervisory boards fail to do their job.

##### *E.3. Relationship between external and internal supervision*

In all three sectors involved in the audit, the minister is informed about the activities of the supervisory boards via the institutions' annual reports. However, this information gives the minister only a limited idea of how well each supervisory board is performing. In all three sectors, the role played by the supervisory board within the chain of supervisory responsibilities needs to be clarified. In particular, the division of roles and responsibilities between external and internal supervisory bodies could be more clear-cut. At present, the

minister makes no use of the results of the work of the supervisory boards in her own external supervision of the sectors included in the audit.

### *F. Conclusions Audit 1: public entrepreneurship*

The extent of public-private arrangements varies from one institution to another, as does the freedom of choice available to individual institutions. In a number of respects, the organisations audited have made a credible case for the added value of such arrangements. At the same time, it is not always clear what criteria are used either by the ministries or by the organisations themselves to assess the rationale for public-private arrangements or their structure and performance. Operational management is still deficient in a number of respects. This is particularly true as regards the handling of risks associated with public-private arrangements. Reporting on added value is still inadequate. And, where supervision is concerned, too little attention is paid to the risks of public-private hybridisation and to the added value produced.

## **2. Good governance in practice (study 2)**

### **2.1. Introduction**

In a number of recent publications, the Netherlands Court of Audit has paid attention to developments in good governance as they affect institutions operating at the interface between the public and private sectors.<sup>4</sup> These often find themselves having to deal with both critical clients and a demanding government, pressures which are not always easy to reconcile. It is through well-organised management, accountability and supervision – in other words, good governance – that these entities try to satisfy these demands.

In the report *Goed bestuur tussen publiek en privaat* (Good Governance between the Public and the Private, AR 2006), we noted that little is known as yet about the implementation of the many good intentions expressed in respect of governance. Nor is much known about how well the practice of governance meets the expectations of policymakers and stakeholders.

This study is an attempt to fill these gaps in our knowledge. We examine how institutions in the housing association, health care and education sectors put into practice the principles of good governance laid down in the legislation, regulations and sector codes, and what obstacles they encounter in doing so.

This study focuses upon three sectors: housing, health care and education. They have been chosen because they are at the forefront of developments in good governance in the Netherlands, both at the policy level and “from the bottom up”. As well as describing governance practices in the three specific sectors listed above, this study also covers **alliances within and between policy areas**. This is because we expect increasing numbers of housing associations, educational institutions and health care institutions to forge such alliances, both within and outside their “own” sectors. Their motives for doing so are very varied, ranging from improved efficiency to competitive advantage and greater client

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<sup>4</sup> See, for example, the background studies *Systemen van checks and balances bij rechtspersonen met een wettelijke taak* (Systems of Checks and Balances at Entities with a Statutory Task, AR 2002), *Verbreiding van de publieke verantwoording* (Extending Public Accountability, AR 2004) and *Goed bestuur tussen publiek en privaat* (AR 2006).

focus. We look at the different kinds of partnerships, alliances and affiliations to have emerged in the past few years, and also at their impact as regards good governance arrangements. Particularly when they transcend sectoral boundaries, they demand new forms of regulation, dialogue and accountability. Questions like who is providing what service to whom have to be tackled again from scratch.

This part of the study is the relevant part for this paper. In my description of the major findings of the study I shall focus on the findings about the alliances.

#### *Education*

In this sector, we concentrate primarily upon *higher vocational education* and *secondary education*. The former already has considerable experience with governance-related measures, whilst in the latter there have been many developments but actual implementation is still in its early stages.

#### *Health Care*

Our focus here is *hospitals* and *institutions which combine medical care with other functions*, such as housing and social welfare.

#### *Housing*

In this sector we look not only at “conventional” *housing associations*, dedicated to the provision of low-cost rented homes, but also at those which are *active in related areas* such as supplying and managing premises for educational or health care use.

Because it is a relatively new development I start with examining developments related to partnerships, alliances and affiliations, both *within* and *between* sectors, including the “affiliates” formed by housing associations (A). Then I present the reasons behind such moves (B), before exploring their actual and potential repercussions for governance (C and D). Finally, I present a number of general conclusions as drawn in the NCA-report (E).

## **2.2. Major findings study 2: good governance in practice (public-private alliances)**

### *A. Alliances within and between sectors*

#### *A.1. Alliances within sectors*

Almost a decade ago, the Meurs Commission on health care governance noted a tendency towards growth and networking (Commissie Health Care Governance 1999). This started with hospitals but by then was already spreading into other areas: home care, nursing and residential homes and mental health. Such services were not necessarily being combined into unitary organisations with a single executive and supervisory board, but they were forming networks of holding trusts and collaborating extensively, a development which was raising new governance issues.

More recently (2006) the Dutch Healthcare Inspectorate has observed a strong trend towards the formation of alliances in the field of health care for the elderly. For example, care homes may join forces with other organisations to offer nursing and home care services as well. Or a nursing home might house some of its clients in independent accommodation, with visiting medical services provided by an outside contractor.

Comparable developments are occurring in the other two sectors we have studied. In the housing association sector, for example, large conglomerates have formed, with numerous subsidiaries and even sub-subsidiaries. These often perform very specific tasks,

such as property development or the exploitation of a particular location. And sometimes they are established jointly with one or more partners – a local authority, for instance.

In education, the situation is more varied. The primary and secondary sectors have seen much consolidation in recent years, with schools combining into groups. In higher education, meanwhile, alliances are becoming more and more common, with a few leading to proposals for full-scale mergers. Plans have been mooted to merge the three Dutch universities of technology, for example, and there have also been moves to combine universities with vocational colleges and teaching hospitals (see example below).

**Example: the VU-Windesheim Association**

The “Association for Christian Higher Education, Scientific Research and Patient Care”, better known as the VU-Windesheim Association (Vereniging VU-Windesheim), “owns” three educational institutions: VU University Amsterdam, Windesheim Christian University of Applied Sciences in Zwolle and the VU University Medical Centre in Amsterdam. Although operating under the auspices of this association, which is managed by an executive with at least seven members, each of these institutions has its own form of governance. VU University and Windesheim, for example, have a joint executive board with five members. The association’s supervisory board supervises the governance of all three institutions.

*A.1. Alliances between sectors: crossovers*

Alliances and affiliations are not always confined by sectoral boundaries; they can also cross them. This is a possibility explicitly acknowledged by the Association of Health Sector Organisations (Brancheorganisaties Zorg, BoZ) in its 2005 governance code.

“The development of health care chains and providers’ need to operate on a larger scale have resulted in many and varied mergers and alliances in recent years. In many cases, these have created organisations or working partnerships which transcend traditional sectors.”

One example of this is collaboration between housing and health care institutions: a housing association manages the property which is used by the health care organisation to deliver treatment. Because recent reforms have resulted in institutions like hospitals assuming the capital risk associated with their land and premises, a new market for “health care property” appears to be emerging. This is of interest to both housing associations and commercial real-estate businesses.

The next logical step might be a merger of the two kinds of organisation, but this remains a sensitive issue (see example below). One reason is that all activities of bodies licensed under the relevant regulations and legislation<sup>5</sup> must not only be relevant to their core task but actually contribute to it. And that task is unlikely to include the provision of medical services.

**Example: Espria**

In April 2008, the Netherlands Competition Authority (Nederlandse Mededingingsautoriteit, NMa) approved a proposed merger of health care concern Eveen Groep, care network Philadelphia Zorg and specialist housing association Woonzorg Nederland only after they had revised their plans. Eveen and Philadelphia operate care homes, nursing homes, home care services and care for the disabled, whilst Woonzorg builds and lets private homes, care homes and nursing homes. The merger, to create an organisation called Espria,

<sup>5</sup> i.e. the Subsidized Rented Sector Management Decree (Besluit Beheer Sociale Huursector, BBSH).

was not cleared until Woonzorg undertook to dispose of eleven of its care and nursing homes. According to the NMa, that was needed in order to maintain sufficient competition in the marketplace and ensure freedom of choice for the consumer.

In June 2008, however, the Dutch government overruled the NMa and blocked the merger. In its view, combining a housing association with one or more organisations from outside the sector would be in breach of the prevailing regulations. Although sympathetic to the intentions behind the plan – to develop projects for forms of housing with care provision tailored to residents’ specific needs – the Minister for Housing, Communities and Integration considered a full-scale institutional merger to be going too far: housing associations are explicitly forbidden from taking on care-related tasks.

Another example of cross-sector co-operation involves schools renting premises from housing associations. This can have real advantages for a school, because a corporation has more resources to invest in, say, a new building project. There may even be educational opportunities, with pupils perhaps being given the chance to do work experience with the corporation’s service team. The development of broad-based primary and secondary schools working in partnership with other organisations, such as childcare providers, also counts as a form of co-operation across sectors. And there have been cases where, in the belief that it will create a “win-win” situation, vocational colleges have built practical training facilities such as a convalescent hotel in partnership with housing associations.

#### *B. Reasons for co-operation and affiliation*

Institutions in the health care, education and housing association sectors may enter into partnerships and alliances for financial, strategic or practical reasons (see, for example, Deloitte 2007). The Healthcare Inspectorate, for instance, has established that economic considerations play an important role in driving mergers between organisations in its sector.

One possible financial motive is the possibility of reducing corporation tax or VAT bills.<sup>6</sup> By setting up separate limited companies, activities on which these taxes are payable can be segregated from untaxed ones. And capital originating with a housing association, say, can enable a health or educational institution to provide better services or develop new activities. Moreover, forming alliances or affiliations can help to spread risks.

At the strategic level, close partnerships – possibly in the form of a separate limited company, foundation or association, but not necessarily – may be forged with a view to safeguarding “market share” in a particular region or to face up to competition from commercial providers.

One practical motive for establishing or intensifying alliances is the desire to offer a coherent “chain” of health care provision, say, or to better co-ordinate the supply of housing and care. Others are the effort to improve access to education and to harmonise it more closely with the labour market.

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<sup>6</sup> The significance of this factor has declined in the housing association sector since 1 January 2008, when Corporation Tax liability for housing corporations was extended to include all their activities, including domestic lets.

### C. Internal supervision

In this study we focused on two elements of (good) governance: internal supervision (C.) and the stakeholder dialogue (D.).

Partnerships, alliances and affiliations have repercussions for an institution's entire governance structure: management, accountability and supervision. Many publications about health care governance – and also the relevant legislation and regulations – have very little to say about the supervision of these alternative structures. And the same applies in education, too, where it is difficult even to find information about the exact numbers and nature of the alliances in existence. On the other hand, a number of publications do explicitly address the situation as it relates to “alliances” in the housing association sector (or ‘affiliations’ as they are called in the Housing sector). The Association of Housing Association Supervisors (VTW), for example, has produced a memorandum entitled *Governance bij verbindingen* (Governance of Affiliations, VTW 2006). Here it is pointed out that internal supervisors should be able to oversee such activities, so that “the necessary reviews and any adjustments required are based upon the right information and, above all, can be made in time”.

#### The two governance models in social housing

In general terms, one of two governance models – “group” or “decentralised” – is applied in these circumstances. Both are designed to ensure that affiliations do not escape internal supervision.

##### The group model

This assumes a single supervisory board for the entire housing association as licensed institution under the Subsidized Rented Sector Management Decree. The management structure is layered, with the chief executive responsible for the institution as a whole, the institution responsible for the holding company, the holding company for the operating company and the operating company for the project organisation. The housing association is the sole shareholder empowered to issue general instructions down the line on the policy to be followed, but it is not entitled to instruct the management teams of its subsidiaries on specific matters.

The great advantage of this model is that it keeps policy coherent, since all decisions in that respect are made by the chief executive and the supervisory board. This ensures that the entire organisation is moving in one direction.

##### The decentralised model

This involves the establishment of several supervisory boards at different levels. On the executive management side, there are a number of possible options: the nomination of an external chief executive, the appointment of corporation directors as the chief executives of individual subsidiaries or sub-subsidiaries or the application of the group model.

Even when the group model is adopted, there may be a totally legitimate reason to establish a separate supervisory board at a lower level within the organisation. Particularly when the corporation is involved in a joint affiliation with a third party, holding a stake of 50 per cent or less, it can be useful to have a representative on the supervisory board to keep a close eye on the affiliation's activities. In many cases, this role will be played by a member of the corporation's main supervisory board. The fact that such an affiliation's supervisory board is usually made up of persons appointed by each of the participating bodies enhances its independence and makes it less likely that a conflict of interest will arise. (Source: VTW 2007, pp. 7-8.)

The Central Fund for Public Housing (CFV 2006c, p. 10) asserts that the internal supervisor must ensure that the housing association's executive remains “in control” when it comes to affiliations.

“This means that the supervisor needs to satisfy itself that the corporation knows what risks it is taking when it enters into affiliations, what the chances are that those risks will actually materialise, what the consequences

could be if they do so, what preventive and/or corrective measures can be taken to mitigate them, whether the corporation can bear their effects and whether or not the affiliations themselves are consistent with the corporation's policy in respect of its core activities.”

In its later report on the quality of accountability by supervisory boards in the social housing (CFV 2007, p. 5), however, the fund notes that “accountability in respect of affiliations may have improved since the 2004 and 2005 reporting years, but at least 40 per cent of corporations with such an affiliation still do not mention it in their supervisory boards’ accountability statements”.

In a response to this finding, the Minister for Housing, Communities and Integration stated that she agreed with it. She regards transparency in accountability about affiliations as important to both internal supervisors and external supervisors, due to the risks associated with the potential “leakage” of social capital. In her view, stakeholders should have a complete picture of all the corporation’s activities, including those of its affiliations. And, she believes, the executive board must also be fully acquainted with affiliation activities and any associated financial risks.

“Under their settlement agreement with the Tax and Customs Administration, corporations can opt to transfer part of their assets to an affiliation (legal separation). For this reason, too, it is important to have a clearer picture of those arrangements.” (WWI 2008.)

Still, a number of questions remain. How does the internal supervisor oversee what happens within affiliations? How does it assess risks and their controllability? How can it gain sufficient authority over the affiliations to work effectively? These questions are not easy to answer. During our investigations, a number of possibilities were put forward. One is to provide the affiliation with its own governing body, so that the executive and supervisory boards of the participating organisations are largely sidelined. Alternatively, their risks can be limited to the amount of their investment and so exclude any losses incurred by the affiliation itself. In other cases, specific arrangements have been put in place to ensure that an affiliation falls under the jurisdiction of the participating organisations’ supervisory boards. And one institution admitted to us that its supervisory board did not have a complete picture of what the affiliations were doing.

In the health care and education sectors, too, transparency and the provision of information are essential to the proper internal supervision of affiliation-style relationships. If a health care institution, for example, chooses to organise itself as a single entity licensed under the Health Care Institutions Act and then contracts out all its actual activities to “dependent” companies, it is important that supervision be arranged in such a way that it is able to supervise what those bodies are doing. This also has repercussions for transparency: the parent organisation is responsible for accountability, not the individual companies. The risk that relationships of this kind will undermine transparency is enhanced by the fact that the annual report is prepared at the level of the principal organisation, leading to a danger that its dependent entities will be overlooked.

#### *D. Stakeholder dialogue*

When combined organisations are created in the health care, welfare or social housing sector, the position of their stakeholders can change as well. They may no longer simply be tenants or patients, for instance, but both. In many cases, they find themselves buying different kinds of provision from the same institution. One of the executives we

interviewed stated that his organisation's aim, therefore, was to create a broad-based stakeholder representative body or "client council" rather than dealing with separate tenants', patients' and residents' forums in parallel.

Affiliations and alliances can also distance an organisation from society, making stakeholder management more difficult even as it increases in importance due to the more complex public function being performed by this larger entity.

Many of our interviewees noted that tensions can arise between the needs and wishes of local stakeholders on the one hand and, on the other, political control and financing when they are divided between more than one government department. Stakeholder interests often lie right on the boundary between different ministries' responsibilities, or even transcend them.

Summarizing we draw the following conclusions about good governance of alliances:

*- Internal supervision*

From the governance point of view, the internal supervisor should know the number and nature of any alliances, their risks and their potential added value. Although there are wide differences in this respect, in practice many of the internal supervisors lack complete knowledge. And even when they do know what is happening, they do not possess the tools or authority needed to intervene effectively if something goes wrong.

*- Stakeholder interaction*

Alliances complicate dialogue with stakeholders because there are more of them and their position becomes less clear-cut. Moreover, there is an increased risk that conflicts of interest will arise.

*- Public accountability*

Alliances present their own specific risks: bureaucracy, monopolisation and market distortion. But the institutions involved prefer to emphasise the opportunities to achieve economies of scale, improve service and develop innovative concepts. They can also cite examples of these benefits, such as integrated housing, care and welfare services but the transparency and accountability about these benefits could be improved (see also study 1 about public entrepreneurship). Besides this research into the social housing sector reveals that even basic information about the number and nature of affiliations is not always provided in public accountability exercises. As yet, no comparable studies have been made of the other sectors under consideration here.

### *E. Cross-sector alliances versus sector-based regulations*

Government departments, financing, regulation and interest groups are all organised along sectoral lines. But that system no longer reflects either public demand or actual institutional practice, with more and more services being provided which transcend those boundaries. The current legislative and financing arrangements in the health care and housing association sectors, for instance, are simply not tailored to the increasingly close co-operation between institutions in these sectors.<sup>7</sup> More thorough research is needed to shed more light on the exact nature and scale of problems this presents. It may well be that the regulations in force really are no longer in step with what is happening on the ground, but there is also the possibility that institutions do not know how to make the most of the opportunities afforded them by the systems as it now stands, or that there are good reasons for keep sources of funding separate.

Moreover, formal accountability requirements should not deviate too far from everyday practice and the actual context in which combined health-housing-welfare institutions operate. If they do, a form of "paper accountability" will emerge: one which meets the

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<sup>7</sup> See, for example, *NRC Handelsblad*, 03/04/2008: "Espria krijgt te maken met vijftien verschillende financieringsstromen" (Espria has to work with fifteen sources of funding).

statutory criteria but says very little about the real situation. When discussing both licensing and accountability, a number of our interviewees confirmed that the regulations are out of step with actual practice. In the real world, institutions are seeking to combine education, welfare, housing and care functions, the dividing line between public and private activities is blurred, risks are shared and profits from private activities are being invested in public duties.

## PART TWO

### Good governance at organisations with a mixed public/private profile

#### 4. Introduction

In this part we turn from the empirical study of public private organisations and collaborations to a more theoretical perspective. If most organisations and networks combine public and private characteristics (see part one) and if we want to make a governance-analysis, our analysis should fit to this mixed public-private profile.

Good governance demands that an organisation's governance structure (steering, control, accountability and supervision) reflects its specific combination of public and private elements. Traditional classifications into public sector, legal persons with statutory tasks and autonomous administrative authorities are often unable to accommodate organisations with a mixed public/private profile, because they don't adequately take into account the mixed character of these organisations. Traditional classification and related supervision and accountability systems assume that an organisation is either public or private. This tends to obscure the opportunities and risks for good governance.

In this paper I use the concept of "public/private profiles" to classify organisations that combine both public and private functions more precisely and to get a better picture of the opportunities and risks for good governance. At the Netherlands Court of Audit we developed an analytical model to determine an organisation's public/private profile from which subsequently an opportunity/risk profile for good governance can be derived. This model is no more than a first attempt. Apart from the subdivision it makes into public and private dimensions, other subdivisions, refinements and applications can also be made.

The concept of "social enterprises" (see box) has also been used in recent years to try to classify organisations that combine public and private elements. This concept too, however, accommodates only a limited number of public/private profiles.

#### **Social enterprises or organisations with a public/private profile?**

A social enterprise is "an enterprise incorporated under private law, that pursues a social goal parallel to the public interest and whose profit is not distributed but applied in full solely to achieve the social goal pursued by the enterprise" (de Ru et al., 2005; see also Brandsen et al., 2006). Such enterprises include educational institutions, care institutions and housing associations. Many autonomous administrative authorities and legal persons with statutory tasks are social enterprises. However, not all social enterprises are autonomous administrative authorities or legal persons with statutory tasks.

An interministerial working party chaired by Herman Wijffels issued a report on behalf of the Minister of Justice in summer 2006 on a separate regulation for social enterprises. The working party had investigated the need for a statutory regulation on a separate legal form for social enterprises. It proposed that one be included in the Civil

Code or enacted as a separate law in order to lay down the basic features of a not-for-profit social enterprise. A social enterprise would have an executive board, a supervisory board and stakeholder representatives who have a right of inquiry. The laws on annual accounts would also apply to social enterprises. The Balkenende III government has put off any decision on adopting the recommendations and the submission of a Bill to the next government (Minister of Justice, 2006).

In Great Britain, too, a separate legal form for social enterprises is under discussion. Social enterprises that invest their profits to achieve public goals have been able to register themselves as Community Interest Companies (CICs) since July 2005.<sup>8</sup> A supervisor ("regulator") decides whether a CIC operates in the interest of the community (see UK government – Treasury, 2003).

## **5. Public/private dimensions**

The terms public and private are not unambiguous.<sup>9</sup> They can cover a variety of organisational characteristics, for example an organisation's legal form, ownership, financing or type of activity. We refer to these characteristics as dimensions. An organisation can be classified in public or private terms by scoring it on these dimensions.

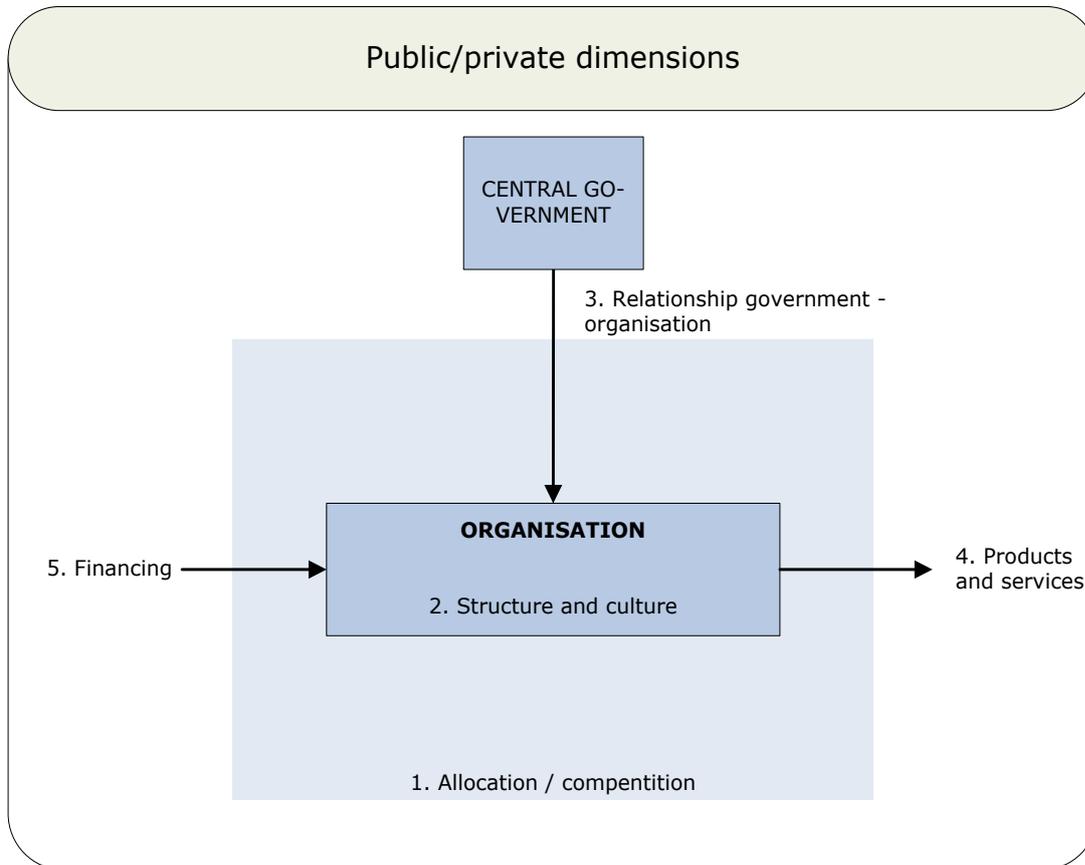
Several, largely overlapping public/private dimensions are recognised in the literature. For the purposes of this study, the Court of Audit has selected five dimensions to classify the opportunities and risks for the public interest. This classification is based on earlier exercises undertaken by the SCP (2002), WRR (1999) and the Court of Audit (2005). The five dimensions are shown in the figure and considered below.

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<sup>8</sup> For regulations on CICs and current developments see: [www.cicregulator.gov.uk](http://www.cicregulator.gov.uk).

<sup>9</sup> See, for example, Hupe (2005) and in particular the opinions and reports of the SCP (2002), SER (2005), WRR (1999) and the Court of Audit (2005).

**Figure 1 Public/private dimensions**



*A. Allocation/competition*

The allocation/competition dimension scores an organisation on whether its goods and services are subject to competition or are allocated by the government.<sup>10</sup> Three forms of competition are possible in this dimension: competition in the market, competition for the market and benchmark competition (SER, 2005). The greater the competition, the more an organisation is classified as a private organisation.

**Competition in the market**

Competition in the market can occur only if goods and services can be individualised (WRR, 2000). The government often intervenes and restricts competition among organisations that perform a public task, e.g. through regulation, grant schemes and taxation, if it thinks free competition could be detrimental to the public interest (SER, 2005).

<sup>10</sup> Where there is *market allocation*, the production of goods and services comes about through competition, coordination by means of the price mechanism and freedom of choice in supply and demand. Allocation by the government, or *public allocation*, involves compulsory take-up or participation, a permanent public supply monopoly and coordination by means of the budget mechanism (Oudshoorn, 1997).

**Competition for the market**

Competition for the market can be implemented if the scale of a service is too small to permit full competition, such as operation of the core railway network. In this kind of market, a monopoly remains in the form of a concession, but suppliers are periodically invited to submit competitive tenders for it (e.g. the High Speed Rail Link South and the NoordNed train service).

**Benchmark competition**

Benchmark competition is a form of quasi-competition that can be used in government monopolies and for collective goods such as the police. Competition is encouraged by comparing performance.

*B. Structure and culture*

An organisation's structure is determined principally by whether it is established under public law or private law.

Its culture is determined by whether its conduct and ethics are based chiefly on public values or on more private values such as profit or prestige.

*C. Relationship between the government and the organisation*

This dimension scores organisations according to their legal relationship with the government and the amount of autonomy they have.

The legal relationship depends on whether the organisation is based on public law or on private law.<sup>11</sup>

An organisation's autonomy is determined by the extent to which the government can control the organisation's performance and operational management. The more influence the government has, the more public the organisation will be classified on this dimension. There is no direct relationship, though, between autonomy in performance of a public task and autonomy in operational management. An organisation that performs a task subject to strict rules can enjoy a great deal of autonomy in the organisation of its operational management (as is the case with the RDW Centre for Vehicle Technology and Information) and, *reversibly*, an organisation that enjoys a great deal of autonomy in its performance of a public task may have less autonomy in its operational management (as is the case with the regional police forces).

*D. Products and services*

Does the organisation perform only a public task or – in addition – does it also perform private activities? All variants can be found in practice: from institutions that perform only a public task (e.g. the Netherlands Authority for the Financial Markets) via organisations that also perform certain private activities (e.g. higher vocational education colleges) to organisations that perform chiefly private activities (e.g. the ANWB Royal Dutch Touring Club).

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<sup>11</sup> A public law relationship can be based on assignment, delegation/mandate, licence/concession or authorisation/accreditation (to which a right to financial support is often attached). A private law relationship can be based on an agreement, contract, covenant or public/private partnership. Combinations are also possible; for example, the minister concludes an agreement on the performance of a public task with the regional police force to which the task is assigned.

### *E. Financing of the organisation*

The question here is to what extent the organisation is financed from public or from private funds.<sup>12</sup>

## **6. Public/private profile**

In principle, all possible combinations of scores on the five public/private dimensions are conceivable for organisations that perform public tasks. In other words, different organisations will have different *public/private profiles*. The dimensions are shown schematically in figure 2. Yet, there often is a coherence between the scores given on some dimensions, such as the allocation mechanism and the legal form: market parties, for example, are usually private law legal persons (WRR, 1999; SCP, 2002, pp. 10-11).

Not only are there many public/private profiles but an organisation's profile can also change over time.

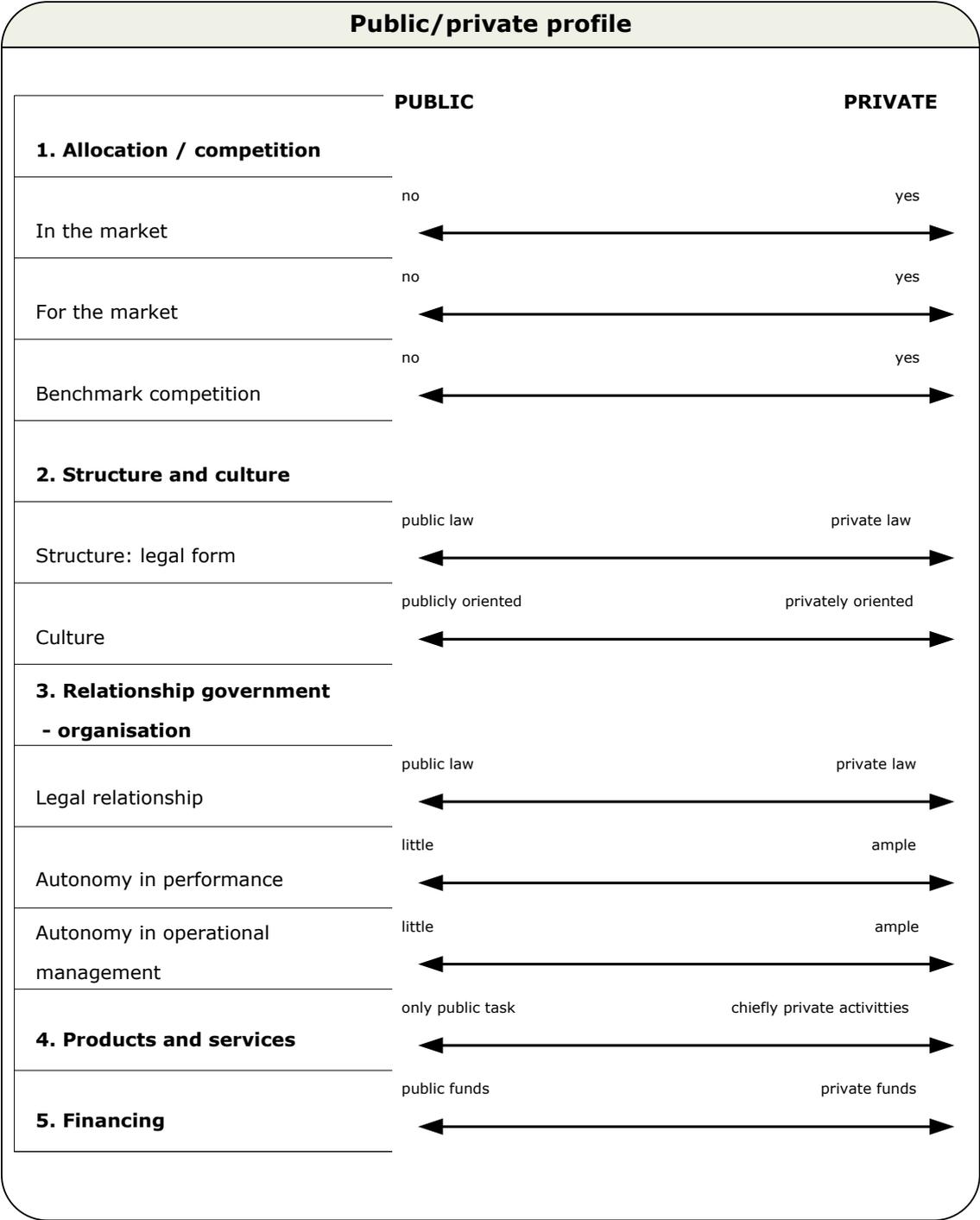
The Scientific Council for Government Policy (WRR) provides a number of examples of how the different dimensions have been handled in successive privatisation operations (WRR, 1999). In some cases, the privatisation of a public service was analogous, although often sequentially, in all dimensions. In the transformation of the PTT postal and telecommunication service into KPN, the relationship of authority was first privatised (the Minister of Transport no longer had direct power of appointment); ownership was then privatised (through two flotations), followed by the legal regime (PTT's employees were no longer civil servants), the competition structure (liberalisation of telephony and now also of the postal market) and finally the financing structure (commercial charges and contracts).

In many other operations, only one or a limited number of dimensions were privatised; this was the case with the Pilotage Service (the legal relationship and financing were privatised but not competition) and Informatie Beheer Groep (legal relationship and operational management).

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<sup>12</sup> Public funds can consist of central government grants or revenue from levies or charges. The taxation must be based on public law and thus be raised and collected unilaterally by the government, possibly through the medium of a third party. The obligation to pay is laid down in a statutory regulation and does not arise from a private law agreement. Otherwise the payment is to be characterized as a price and the organisation is financed from private funds.

**Figure 2 Public/private profile**



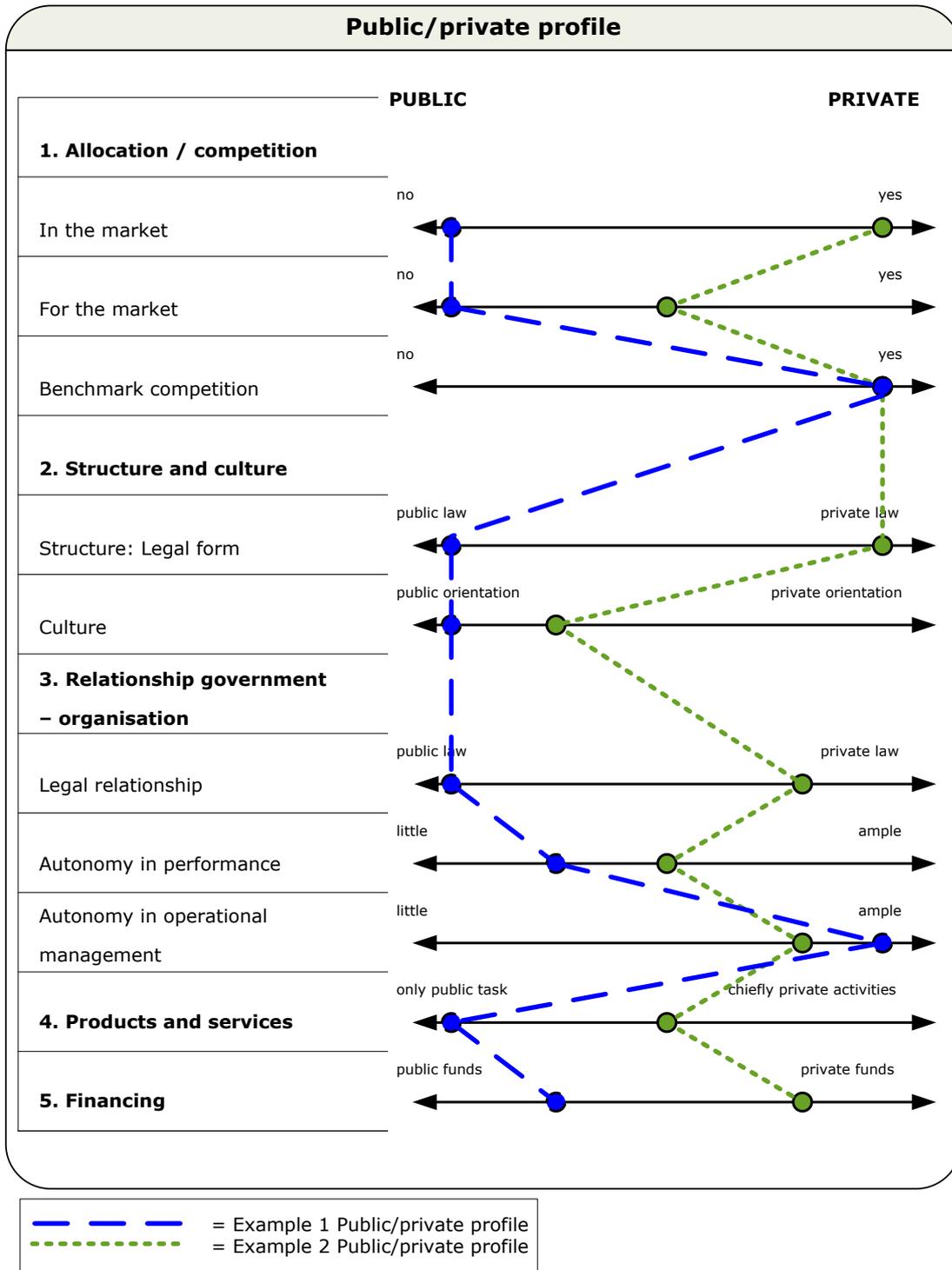
## **7. A range of public/private profiles**

Organisations that perform public tasks can be classified as public or private to one degree or another on several dimensions. The aggregate score produces a specific public/private profile for each organisation. Over the years, a patchwork has arisen of organisations with many different public/private profiles. This range of profiles is due in part to policy decisions and historical developments in each dimension.

In the structure/culture dimension, for example, the growing interest in a market orientation (New Public Management) has introduced elements of business culture and organisation into the public sector. In the allocation/competition dimension, many years' exposure to market forces and deregulation has elicited a shift from public to private. In the products and services dimension, too, the growing hybridisation of various sectors (such as broadcasting, education and the knowledge and innovation sector) has prompted many organisations to perform commercial activities as well as statutory tasks and there has accordingly been a shift in direction towards private. But "counterforces" are also at play in this dimension, particularly in the form of European legislation, which is again heading more in the direction of a distinct choice between the market or the public sector. Also, in view of serious risks to the public interest, "repair work" has been carried out on several dimensions (examples include the regulation of top incomes and treasury financing).

Not every organisation is affected in equal measure by all the developments and this serves only to increase the variety. A great many public/private profiles are conceivable for organisations that perform public tasks. The range of profiles is illustrated by the two hypothetical organisations shown in the figure below.

**Figure 3 Two public/private profiles**



*Organisation 1* is a legal person with a statutory task / autonomous administrative authority that provides a service and does not compete in or for a market but is subject to benchmark competition. It performs public tasks that are laid down in the law and also certain private activities that are laid down in a contract with a

third party. The organisation has some autonomy in the performance of its tasks and a great deal of autonomy in its operational management. Its income is largely public and partially private.

*Organisation 2* is an organisation in the healthcare sector that has traditionally performed public tasks but is now operating in an increasingly competitive environment. Its services are financed chiefly from private sources. It is subject to a more complex supervision regime than organisation 1. There is, for example, a market supervisor that regulates competition, a financial supervisor and a supervisor that monitors the performance of public tasks.

## **8. Ensuring the correct performance of public tasks**

How can assurances be provided that organisations with a mixed public/private profile perform their public tasks correctly given the opportunities and risks facing them? The correct performance of a public task means:

- a public task is carried out effectively, efficiently and in accordance with statutory rules (i.e. regularly);
- the performance of the public task is consistent with the perceived needs and problems (responsive);
- organisations improve their performance through learning.

In essence, assurances on correct performance are embedded in the mechanisms of accountability and supervision (cf. WRR, 2000, p. 60). Public/private organisations should account to ministers and other stakeholders and there should be supervision on whether the organisations perform their tasks correctly and spend public funds regularly and efficiently. Given the democratic principle that public persons must always account for public tasks and public funds in public to a publicly elected forum, final responsibility for accountability and supervision lies with the government (in the person of a minister). But the design of the checks and balances in place at public/private organisations are also important, for example in the form of supervisory boards, quality assurance systems, industry codes, stakeholder dialogues and forms of social accountability (Court of Audit, 2004).

In general, the opportunities and risks in the various public/private dimensions must be specific points of attention in the accountability, supervision and checks and balances. For a public task to be performed correctly, these mechanisms must be consistent with the organisation's public/private profile. Organisations must account in public for their response to opportunities and risks, and internal and external supervision must overcome the risks and, where possible, maximise the use of opportunities. We consider the risks and opportunities in the following section.

## **9. Opportunities, risks and assurances on the performance of public tasks**

Each of the public/private dimensions will bring its own opportunities and risks to bear on an organisation's performance of its public task. Each public/private profile therefore has its own specific mix of opportunities and risks and, moreover, of governance requirements.

The following subsections provide examples of the opportunities and risks in each dimension and the associated considerations for good governance. The final section considers the opportunities and risks for mixed public/private profiles as a whole.

### ***A ALLOCATION/COMPETITION***

Competition is generally seen as a mechanism to increase an organisation's efficiency, responsiveness and learning ability. The market mechanism is an incentive for an organisation to improve its performance (WRR, 2000). On the other hand, the various forms of competition also harbour risks.

#### **Risks in competition in the market**

Where there is competition in the market, cherry picking (through profit maximisation) represents a significant risk to the performance of a public task (WRR, 2000). There are also risks of information asymmetry and (in the event of insolvency) the destruction of public capital. Demand management can also lead to the destruction of public capital because some services will no longer be used if demand for them declines.

#### *Considerations for good governance*

Supervision should be designed to mitigate the risks to the public task. Organisations with a public task that operate in a market are in any event subject to two forms of supervision: supervision of and accountability for the performance of a public task and supervision of general or sectoral Dutch and European competition laws. A further consideration for good governance is that the organisation should not have to answer to a raft of supervisors all applying different information requirements and standards.

#### **Risks in competition for the market**

Where there is competition for the market, the main risks relate to the conclusion of agreements (WRR, 2000). It is almost impossible for a concession contract to anticipate and provide for all eventualities. As a result, the wrong outputs might be delivered, because the agreed outputs or indicators do not measure the actual performance. Furthermore, services can deteriorate and innovation can be stifled if an organisation thinks it “catches the prey” at the granting of the concession. An inherent risk in a concession is the destruction of capital. It occurs when the concession is awarded to another organisation at the end of a concession period.

#### *Considerations for good governance*

A consideration for good governance where there is competition for the market is that good performance indicators must be agreed, ones that allow a certain degree of flexibility so that perverse effects can be reversed and deteriorating services are identified in good time.

## **Risks in benchmark competition**

Where there is benchmark competition, too, there is a risk of unacceptable outputs being delivered if inappropriate performance indicators are set.

### *Considerations for good governance*

Here, too, good performance indicators are essential. Another consideration is that performance data must be comparable and reliable, not only regarding the outputs but also regarding the planning and the use of resources (WRR, 2000).

## ***B STRUCTURE AND CULTURE***

### **Structure**

Legal personality, together with the associated legal regime, is a relatively neutral dimension. It depends mostly on additional regulation what the opportunities and risks regarding the correct performance of a task are .

For a public law organisation, the provisions of the act establishing it apply. For a legal person established under private law, the relevant provisions are laid down in the Civil Code. For some of the organisations, the Civil Code contains provisions on bookkeeping and financial reporting (in particular, accrual accounting); many of its provisions have also been declared applicable to public law organisations. The Civil Code also gives the minister certain control over companies, particularly where there is a degree of ownership (e.g. through a shareholding). Otherwise, control over companies and other private law legal persons must be arranged separately in a statutory regulation or in the organisation's articles.

### *Considerations for good governance*

There is no general (complementary) statutory regulation applicable to all organisations with a mixed public/private profile. Further provisions on supervision and accountability are often applicable, however, to certain categories of organisation and specific sectors. For autonomous administrative authorities and legal persons with a statutory task, certain accountability requirements are laid down in the Government Accounts Act 2001 and in the Act Governing the Disclosure of Top Income Earners in Publicly Funded Sectors. A Framework Bill with general rules on the accountability and supervision of autonomous administrative authorities is currently has recently been established. The accountability and supervision of specific sectors are usually laid down in specific laws, such as the Housing Act.

### **Culture**

Private law organisations often have a reputation for being more flexible and less bureaucratic than public law organisations. Precisely because they are based on private rather than public law, however, their values may be directed at other values than the performance of public tasks. Yet, autonomy at a public law organisation can also lead to a stronger focus on the organisation rather than on the public task.

### *Considerations for good governance*

At organisations with a mixed public/private profile, the "enterprise culture" with its businesslike processes and the "public culture" with its assurance-directed processes can compete for precedence and sometimes clash with each other (see Court of Audit, 2005). According to the Court of Audit, public values can be better than now be assured in public/private organisations by paying, for example in governance codes, more attention to integrity and culture,

## ***C RELATIONSHIP BETWEEN THE GOVERNMENT AND THE ORGANISATION***

This dimension has two aspects, each having its own opportunities and risks: the legal relationship between the government and the organisation, and the organisation's autonomy in the performance of its tasks and in its operational management.

### **The legal relationship**

The legal relationship between the government and the organisation largely determines the extent of the government's influence over the organisation. Relationships based on public law can be changed unilaterally by the government and are usually more flexible. Where the relationship is based on private law, e.g. a covenant or public private partnership (PPP), it is difficult to anticipate and provide for all eventualities correctly and in detail in an agreement. In a private law relationship, a great deal depends on the contractual provisions on, for example, the power of inspection and intervention. In consequence, the government's supervision is generally less effective and flexible. Since failure to shut out the risks can lead to high costs, private law contracts are often highly detailed and thus less flexible (WRR, 2000).

#### *Considerations for good governance*

The one-sided nature of a public law relationship means that government can have a more direct impact by its supervision on an organisation's performance. In the Court of Audit's opinion, the government should be more aware that the type of legal relationship has consequences for its ability to influence an organisation.

### **The extent of autonomy in performance and operational management**

Autonomy in the performance of a task and in operational management creates opportunities for an organisation such as a more responsive attitude. A disadvantage of too much autonomy, however, is that the organisation concentrates on its own goals at the cost of the public task (WRR, 2000).

#### *Considerations for good governance*

The greater an organisation's autonomy in its performance and operational management, the more important social accountability, stakeholder dialogue, supervisory boards, customer panels and peer reviews become. Government supervision can then focus more on the existence and operation of such mechanisms and processes and less on content.

## ***D PRODUCTS AND SERVICES***

This dimension considers the extent to which private activities are combined with public tasks.<sup>13</sup> Organisations that combine public tasks and public financing with private activities and private financing can generate synergetic added value. Government organisations that also carry out private activities, however, are exposed to the following risks (Ministers of Economic Affairs, of Justice and of the Interior, 2004):

- unfair competition (for example through cross-subsidisation);

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<sup>13</sup> Some organisations, such as development organisations, have a strong international focus or assume international obligations to deliver certain products or services. This study does not consider such an international dimension. This dimension will be considered in a further study of public/private profiles.

- commercial risks that endanger the continuity and reliability of the services;
- private activities taking precedence over the public task.

#### *Considerations for good governance*

Supervisors should set criteria to measure the performance of the public task. They should be formulated in consultation with the organisation and its "customers". At organisations that perform both public tasks and private activities, accountability and supervision should concentrate on the added value for the public task and the risks of confusing the public task with the private activities. There is a general requirement to keep separate accounts (Framework Act on Autonomous Administrative Authorities, Competition Act) but detailed investigation of an organisation's operational management is required to determine whether or not there has been cross-subsidisation. In *Public Entrepreneurship* (2005), the Court of Audit found in the cases that it had audited that supervision had paid too little attention to cross-subsidisation. An amendment of the Competition Act is being drafted to combat unfair competition by organisations that perform private activities as well as public tasks.

#### ***E FINANCING OF THE ORGANISATION***

The last dimension relates to the financing method. The challenge is to build an efficiency incentive into the financing method without exposing the public task to risk. If the organisations themselves set the charges or levies from which they are financed there may be no efficiency incentive and there is a risk that the charges or levies are set too high. The risk declines if the services are subject to market forces.

#### *Considerations for good governance*

If only one organisation carries out the public task, the organisation itself should put an effective system in place to monitor the efficiency of its operational management. If the monitoring is delegated to an external supervisor, the supervisor should have a detailed insight into the organisation's operational management. The same applies when the minister sets or approves the level of the charges or levies. Especially at more complex organisations, it is difficult for the minister to set them at the right level without in-depth insight into the organisation's operational management. In the Court of Audit's opinion, standards and methods, such as cost effectiveness ratios, should be used to measure the effective and efficient use of the funds. If more than one organisation performs the same statutory task, benchmarking would be an option.

### **10. Considerations for good governance**

In the previous section we raised a number of considerations for good governance for each dimension. In this section we consider certain points that are relevant to mixed public/private profiles as a whole.

The public debate about legal persons with statutory tasks, autonomous administrative authorities and social enterprises usually covers just one dimension, such as the relationship between the government and the organisation or allocation/competition. In practice, considering just one dimension is too one-sided to obtain a full understanding of

the opportunities and risks for good governance and thus the public interest. Looking at several public/private profiles produces a more accurate picture of the various risk profiles and considerations for good governance. Public/private profiles should therefore be drawn up for each organisation or cluster of similar organisations and the attendant risks and opportunities for good governance should be identified. The mechanisms of good governance (supervision, accountability and checks and balances such as supervisory boards and internal quality assurance systems) would then better reflect the diversity of organisations that perform public tasks.

If an organisation has a mixed public/private profile, a complex supervision and accountability system is inevitable and it is highly likely that there will be several layers of supervision and accountability. The increased supervisory burdens and conflicting supervision requirements could represent a risk factor.

Another consideration is that a mixed public/private profile can produce contradictory incentives, for instance, because public tasks do not obey the logic of the market or because the culture of a public organisation conflicts with an entrepreneurial spirit. A frequent contention is that the autonomy enjoyed by arm's length organisations in their operational management can be at odds with the minister's political responsibility.

Over the years, an organisation can develop a public/private profile that has undesirable effects, contradictory incentives, disproportionately high supervisory burdens and the like. In such cases, two options are open to the legislator and the organisation: either accept the inconveniences of a mixed public/private profile and adapt the supervision and accountability arrangements as appropriate as possible or adapt the profile by making the organisation more recognisably public or private.

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