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LESSONS LEARNED: EX-ANTE CONTROL OF EXTERNALLY AUTONOMISED ENTITIES IN THE NETHERLANDS AT THE NATIONAL LEVEL

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ABSTRACT

As in many countries, autonomisation of organisations in the public sector has been common practice in the Netherlands in the last decades. A wide variety of organisational structures has been used which makes it hard to understand how autonomised organisations are controlled. In this project, emphasis is on the ex ante controls that are used by Parliament to create organisations as well as to appropriate resources to them. Attribution of responsibility and production characteristics including issues on ownership and commissioning are important aspects to be considered when organising ex ante controls for autonomised organisations. Given these characteristics, a one size fits all approach in controlling autonomised organisations is not suitable, not even within subgroups of organisations. An empirical study on cases from within one subgroup of autonomised organisations shows that there is still a strong emphasis on budgetary control only rather than on performance control. Little attention is given to specifications of services and problems of ownership and commissioning which could be used as tools for differentiation in control.

Key words: new public management, autonomisation, budgeting, performance management, public services.

INTRODUCTION

In many countries, NPM theories have led to changes in the organisational setting in which government

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services are produced and delivered to society. The traditional departmental setting is not the standard anymore, but is complemented by several forms of institutional arrangements at arm's length of government (e.g. Talbot 2004), commonly referred to as 'quangos' (e.g. Barker 1982). Autonomisation and quangocratisation (Van Thiel 2000) are two concepts very close to each other. Quangocratisation and autonomisation have a relationship to privatisation (Boorsma and Mol 1983, Von Weizsäcker, Young, and Finger 2005), but essentially under autonomisation government still holds a form of interest – politically or financially – in the newly formed organisation.

Autonomisation is a process in which managerial responsibility is transferred from bureaucratic hierarchy to managers that can be held accountable for the responsibilities attributed. In this context, the OECD refers to manager's autonomy as '...the ability to make decisions...without constant involvement or need for approval by the line minister' (OECD 2002: 13). Autonomisation differs from privatisation as privatisation has two clear cut forms: either creating a private law entity from a former government unit or privatisation is the result of a process in which government withdraws all responsibility for planning, funding and production and leaves it to the market. Autonomisation has two forms as well: external autonomisation by creating a new legal entity and internal autonomisation which merely creates more degrees of freedom for management within an existing legal entity (see e.g. Van Thiel 2000: 8; Kummeling and Duijkersloot 2003: 80).

Studies on quangos often focus on creation and implementation (e.g. Pollitt and Talbot 2004) or on management tools (e.g. Lægreid, Ronness and Rubecksen 2007) and institutional arrangements (e.g. OECD 2002). Studies on the relation to the budget authorisation and

appropriation dimension do not exist. The Netherlands Court of Audit [NCA] noted in its most recent report on a particular form of Dutch externally autonomised organisations, that information provision on accountability of operations towards Parliament of these organisations needs more attention (Parliament 2006a: 9). Accountability can only be realised when it is possible to compare to a certain standard. The budget authorisation process sets these standards. So, before accountability can be realised, it is worthwhile to study the authorised arrangements set by politicians in relation to externally autonomised entities.

In this paper I will address the following research question: What are the ex ante control tools available to Parliament to find a match between the level of autonomisation and political control with respect to external autonomisation of provision of services in the public domain?

The paper starts with a brief summary on theory with respect to autonomisation (section II). Section III provides a description of institutional arrangements that are used in the Dutch setting for providing government services. Legislation and other instruments can be used to set a framework under which the services can be provided by autonomised entities. These instruments will be discussed in section IV. In section V, I will address empirical findings on actual control used by government in their relation to the autonomised entities. Finally, section VI provides some conclusions.

AUTONOMISATION AS PART OF PUBLIC MANAGEMENT REFORM

Traditional government consists of a (federal) State, an intermediate government level (provinces in the Netherlands) and a number of local government entities. As of the 1980-ies, in several countries under budgetary

constraints, there has been an urge to improve efficiency and effectiveness of government (e.g. Osborne and Gaebler 1992; Pollitt and Bouckaert 2004). Part of the problem of inefficiency of the public sector is according to public choice theory caused by the monopolistic characteristics of many of the services provided in the public sector (Boyne, Farrell, Law, Powell and Walker 2003: 8). A solution to this problem could be the introduction of a more competitive setting. Niskanen (1968: 305) suggested that activities performed by a bureaucracy could be taken over by private – profit seeking – entities. As a result, both politicians and bureaucrats would be restricted in their efforts to follow their own interests (Walsh 1995: 19). This basically economic argument is contested in literature. The problem of public service provision and the effects of government intervention do not change as a result of rearranging an organisational structure (Pollitt and Bouckaert 2004: 161; Homburg, Pollitt and Van Thiel 2007: 7). Furthermore, organisational change may lead to fragmented government with negative impact for transparency and accountability (Pollitt, Talbot, Caulfield and Smullen 2004: 4).

The emphasis on accountability with respect to restructuring of government services can be discussed as well: accountability can only be realised when it is clear beforehand what responsibilities exist at what level and what goals must be realised. Thus the attribution of responsibilities is a key element in the autonomisation debate. This also implies that the dichotomy government provision versus commercial private provision of services is not as strict as has been suggested by Niskanen. In 1983, Boorsma and Mol identified five market concepts with respect to provision of services (Boorsma and Mol 1983: 25-26; Bokkes 1989: 10). Table 1 summarises these five concepts.

Table 1
Forms of government provision of services

	Consolidated provision	Contract provision	Grant provision	Regulated provision	Private provision
Government plans	X				
Government funds	X				
Government produces	X				

Source: author's compilation.

The options mentioned in table 1 on external autonomisation (hiving off) government activities are not the only developments in organising public service provision. In 't Veld (1995: 10) indicates that in some cases activities that were formerly privately organised are transformed to government controlled entities. This process is labelled hiving in (Van Thiel 2000: 10) in Dutch 'verstatelijking'. I note that hiving in and hiving off are opposites similar to nationalisation and privatisation. Nationalisation is unusual in a Dutch context (De Vries and Yesilkagit 1999: 118-119) and would not provide an accurate description of the position of an entity that is hived in.

The economic-organisational dimension of service provision in the public domain is one issue but not the whole story. Services delivered towards or on behalf of government can have a variety of characteristics. Some services are directly aimed at citizens, for example in the health sector. Others are provided because they are in the general interest, for example financial markets oversight.

These differences have an effect on the possibilities for funding of the services provided and on the level of demand for that service. In the control relation between government and the entity providing the service, in some cases this results in problems between the ownership role with respect to service provision and the commissioning role. From an ownership perspective, government is concerned about continuity of the organisation; from a commissioning perspective, the main issue is receiving the required services at an appropriate price (Van Oosterom 2002: 116; Linker 2006: 101). The difference between the ownership perspective and the commissioning perspective may lead to conflicts of interest within the government 'controlling' the organisation or between the government and the 'controlled' entity.

Whether a process of 'hiving off' or of 'hiving in' is realised, in most Dutch cases a separate legal entity is producing the required services. The main exception to this rule is the form in which government provision is realised by means of internal autonomisation (creation of executive agencies). The Quango concept ranges from executive agencies to charities that may only have a financial relation to government (Van Thiel 2000: 8). To avoid misinterpretation of concepts, I will use the concept of 'associated entities'. An associated entity is a separate legal entity with an appointed board and a governance structure that is influenced by government and has a long term business-like relationship with government to deliver services on behalf of government intended to have effect on society. This definition excludes contract relations that only regard service delivery towards government such as is the case with lease of offices, catering or entities providing services in the public domain where government has no influence at all such as the Red Cross.

Before I can apply the theoretical notions on autonomisation and service provision with respect to Dutch

associated entities, I will first provide a general description of the different types of entities that exist at the Dutch national level.

THE DUTCH STATE AND ITS ASSOICATED ENTITIES

BACKGROUND

The Netherlands is a decentralised unitary State in which three main levels of government exist: the national government, provincial governments and local governments. Policies of national interest are controlled by the national government. Local and provincial governments can develop their own policies within the legal frameworks set by the constitution. In a number of policy sectors, national government sets a policy framework which is executed on the local level with (partial) funding of national government in co-government programs. In this paper I only focus on associated entities at the national level.

At the national level, associated entities can be created by government based on public law or private law. From a governance perspective, responsibility of the minister with respect to associated entities is restricted. The Dutch system is based on individual ministers' responsibility rather than full government responsibility for autonomised entities (see Christensen, Lægreid and Wise 2002: 161). A minister is fully responsible for all acts of the department he is managing, but his responsibility for an associated entity is restricted to three issues: first, a minister is responsible as far as authority is attributed to him/her. Second a minister is responsible and thus accountable for the framework in which the associated entity is operating in and third, a minister is responsible for his/her acts with respect to the associated entity – either

public or private - (Kummeling et al. 1999: 19-20). In the relation between minister and associated entity, the first two issues are most relevant because they determine the structural relations whereas the last issue only oversees individual actions.

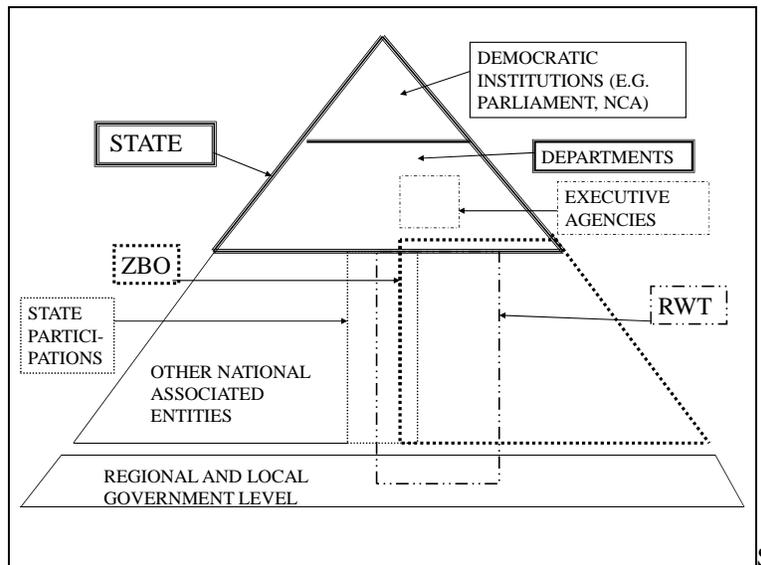
Associated entities basically emerge either by creating an entity that formerly has been part of government activities. Alternatively a private entity is hived in to the public domain because the services delivered are regarded as part of the public domain. In the Dutch context, historically a number of services which are now regarded as services in the public domain were developed on the basis of private initiatives.

ASSOCIATED ENTITIES AT NATIONAL LEVEL

In the Netherlands, four main groups of associated entities can be identified. The political relevance of these groups in the decision making process varies both between groups as well as within the groups. The first group are 'Zelfstandige Bestuursorganen' [ZBO]; similar to British Non Departmental Public Bodies (Van Thiel 2000: 6). A ZBO has been assigned an authoritative unilateral decision making task but generally operates outside the hierarchical structure of a department, except for some very small ZBOs which are included within the departmental structure for practical reasons. All ZBOs are materially independent from government. Examples of ZBOs are the land registry office 'Kadaster', market authorities such as those for the financial markets (AFM; see appendix for full names) and competition (NMa) and income providing entities such as SVB, which provides the national pension benefits. Depending on how they are counted, the number ranges from some 140 (Parliament 2008a) to some 540 (Parliament 1995: 10). Financial operational relevance adds up to some € 8 bln. (Source: own calculations based on

annual reports 2006 and budget documents); a number of them provide income transfers adding up to some €35 bln. The second group is labelled 'Rechtspersonen met wettelijke taak' [RWT] (Legal entity with statutory task, see e.g. Kummeling and Duijkersloot 2003). RWTs partly overlap ZBOs; in this paper reference is only made to RWTs that do not qualify as ZBO. Such an RWT has no authoritative power; but services that are provided are publicly funded. The RWT-group includes institutions of primary and secondary education (some 1,600 entities) and next to them some 150 other institutions such as regional police forces, private – not for profit - detention centres, national musea and health insurance services. ZBOs and RWTs are the two groups that qualify under the Dutch Budgeting and accounting act 'Comptabiliteitswet' (CW2001:91d) as publicly funded entities. ZBOs and RWTs are listed in an annex to the departmental budget documents. The two other groups discussed below do not qualify as publicly funded and are not separately listed in budget documents. Despite of that they can still be regarded as associated entities. State participations (and formerly state companies) are entities in which the Dutch state holds shares. For some reason that particular company is regarded as being of national interest and is thus at least partially government controlled. An example is Schiphol Airport. Again, in a few cases (e.g. Central Bank) the State participation has a ZBO/RWT status as well. The last group is labelled 'others'. Prominent groups of organisations in this category are hospitals and care institutions as well as social housing associations. Although these types of entities operate at local or regional level, they provide services within a national legal framework and are only indirectly or not at all funded by taxes or fees.

Figure 1: *Overview of Dutch national governments and its associated entities*



source: author's compilation.

CREATING ASSOCIATED LEGAL ENTITIES

The process of creating associated entities will be presented from a legal analytical perspective. Christensen et al. (2002) indicate that it depends on instrumental-structural, historical-institutional and environmental features how transformation towards autonomised entities in a particular jurisdiction is realised. In the Netherlands, there has been no structural plan for autonomisation. Only in the case of executive agencies, a framework for creating such units was included in CW before the first executive agency was created (Ministerie van Financiën 1991). With respect to external autonomisation, Van Thiel (2006: 116) noted that no systematic patterns in assigning tasks to associated entities exist. Furthermore, the type of associated entity may vary over time without changes in

services provided. Both Van Thiel (2006) and Bertelli (2006) note that there is a tendency for an approach in which less autonomy exists, particularly for public law based autonomised entities. This is a reflection of political concern on control of associated entities that started with debates on ZBOs and by 2008 also covers other types of associated entities (Parliament 2008b) The fact that structured plans on autonomisation have been missing, may be a threat to transparency. An analysis of the tools available for ex ante control on associated entities can contribute to future transparency when creating new entities.

The legal procedures for creation of an externally autonomised entity with a separate legal status by government vary with the type of legal entity to be created. The Dutch constitution requires that a new public law legal entity is created by law, which implies that Parliament has to pass a law which defines governance structure, task and funding of the newly created entity. The minister also has an option to create a private law legal entity under the regulations laid down in the 'Comptabiliteitswet' [CW]. As of 1995, the proposal to create a new private law entity is announced and Parliament has the opportunity to object. If not, the minister is allowed to create the new private law entity. Dalhuisen (2004) noted that in fact there are three options for a minister to create a new – private law - legal entity. In two cases the regulations of CW apply: when the minister is the only one involved in creating a legal entity or when the minister creates the entity in cooperation with private partners (joint creation). There is a third option, the minister supports creating a new legal entity but is not involved in the formal procedure of writing up the statutes. In that case, formally private parties create the entity and the CW requirement of Parliamentary consent is not applicable.

The other solution to arrive at associated entities is realised by hiving in an entity the domain of government. In that case, an existing private law entity is regarded to be influenced by a government level with respect to their operations. The most extreme form of hiving in exists in the case of passing a law in Parliament which gives the legal entity a new status within the public domain. An example of this case is the Financial Markets Authority (AFM) which originally started as a private entity created by the financial industry. The other solutions are that when certain criteria are met, the legal entity may be entitled to act on behalf of, or is funded by government. This holds for example in the education, health/care and social housing sectors. Other options to hive in are buying shares in an existing entity or through funding and or financing agreements.

The general trend in the past 20 years has been that actively taking a stake in companies is not a government policy anymore (Parliament 2006c: 33). Table 2 summarises the options that exist for creating associated entities.

Table 2: *Forms of creating associated entities*

Creating an associated entity	Hiving in an associated entity	Regards associated entity
By law, with approval of Parliament.	By law, with approval of Parliament.	ZBO
By decree, based on CW with consent of Parliament.*	Not applicable.	Executive Agency
By statutes, with consent of Parliament. <ul style="list-style-type: none"> • actively creating • joint creation 	Buying shares. By recognising entity under criteria set in laws/decrees. By creating a long term funding or financing relation.	ZBO; RWT; State participation.
By statutes: no ex ante consent. <ul style="list-style-type: none"> • support creation 	By recognising entity under criteria set in laws/decrees. By creating a long term funding or financing relation.	Others
* Listed to give a full overview. This holds only for executive agencies which are in fact not separate legal entities but units with some autonomy within the hierarchical structure of a ministry.		

Source: author's compilation.

MANAGING EX ANTE CONTROL OF ASSOCIATED ENTITIES

The lack of market mechanisms in the public sector requires that another allocation mechanism is used to decide upon the level and quality of services to be provided. In the classical setting, services provided by government units are based on the allocation decisions made by the legislative branch of government. In the

Netherlands, budget appropriation is the responsibility of the minister. The budgeting process is also the prime ex ante control tool with respect to associated entities, particularly when the associated entity is funded by government. In the Netherlands, insufficient authorised resources are not an argument to neglect contractual financial agreements. In case overspending is forecasted or realised, this can be legitimised ex post by Parliament. (Janse de Jonge 1993: 369). It depends on the political impact of overspending, confidence in the minister and the ministerial responsibility in the particular case whether or not a minister will have to leave office.

In a number of cases, budgets cannot be appropriated by the minister because funding is based on compulsory fees or other user charges. In that case the budgeting process is not a suitable instrument for ex ante control on associated entities. The type of ex ante control mechanisms that exist next to the budgeting control tools can be classified in two main groups, one for entities created by the legislator or the minister and one for entities that were hived in after they were created. In both cases, a differentiation can be made between ex ante controls during the process of creating/hiving in an entity and ex ante controls during regular operations. I will start discussing the ex ante tools available to the minister in case of creating/hiving in an entity and then focus on ex ante controls during regular operations.

EX ANTE CONTROLS IN THE START UP PHASE

Before an associated entity will be created or recognised, government must have created a legal framework in which the particular service to be delivered by the associated entity is described. The legislator can attribute authority to the minister in case a public law based entity is created. After a political debate that lasted some 10

years, a framework law has passed Parliament in which the requirements in the governance structure and the distribution of responsibilities between minister and board of a ZBO – the most commonly created public law entity – are described (Parliament 1995; Parliament 2008a). I will discuss some details of these elements later on, as they can in theory be applied to all entities to be created. Furthermore, a transition program will be prepared for existing ZBOs (Parliament 2008a). In case of creating a new private law entity, the role of Parliament is restricted. In principle, CW2001:34 allows a minister to create a private law based legal entity unless Parliament explicitly requires that a law is passed in which the minister is authorised to create the new entity or to participate for more than 5% in shares or bonds of an existing entity. This solution assures that democratic control exists when a minister wishes to use a private law solution to deliver public services. In particular, when a minister is creating a foundation, a framework exists that describes the possible authority to be attributed to the minister. If it is preferred that a minister holds a major part of the authority to be distributed, creating a foundation is not the proper solution for a particular activity (Parliament 2006b: 6).

Up till now, only the general ex ante controls regarding the creation of an associated entity are discussed. Kummeling et al. (1999: 39) have classified the authority that may be attributed to a minister in case of creating an associated entity into four groups: normative authority, issues regarding information provision, issues regarding governance structure and cyclical authority. In the legislative process of creating a public law associated entity, Parliament can by means of passing an amendment to a proposed law change the actual authority attributed to a minister. In all other cases, influence of Parliament is less strong: at most Parliament can ask the minister to include or exclude particular elements of authority.

I will now discuss the three relevant groups of authority; the information provision issue is neglected because it covers issues as accountability and general information provision by the entity, which are mainly ex post control tools aimed at all stakeholders. In the other three groups, a mixture of ex ante and ex post controls exists. First, normative authority covers issues such as general instructions and policy rules which are typical ex ante controls. From an accountability perspective, these rules have two functions. First, they set the standards under which the associated entity operates. If a minister has the authority to determine or approve such rules, the principle of ministerial responsibility implies that Parliament can hold the minister accountable for that decision. Second, normative controls set the rules under which the entity operates and has to comply with. In hindsight, it is possible to assess to what extent compliance has been realised. If insufficient, the minister has to account for his/her acts towards management to assure compliance. Both forms cover democratic control on operations of autonomised entities. Normative authority is related to decision making processes to assure equal treatment in equal cases. Associated entities that require regulations of this type are likely to be classified as ZBO rather than an 'ordinary' associated entity. In the case of ZBOs, the normative arrangements are presently included in the framework law on ZBOs [kZBO] and thus part of a standard format.

Second, the ex ante governance controls are found in arrangements on appointment of members in (supervising) boards and ex ante controls on certain decisions. Basically, similar governance tools exist in any type of associated entity. Examples of ex ante controls on decisions can be approval of changes in charters, approval of certain type of investment decisions (kZBO: 32). These governance tools are meant to assure that the minister is able to realise his/her responsibility towards Parliament on

monitoring the board. If many ex ante controls are applied, relative autonomy of an associated entity is low. The governance controls in ZBO cases cover more issues than in the case of the 'other associated entities'. Furthermore, it prevents that boards can decide upon restructuring the autonomised entity without prior consent, resulting in an entity without any control by government at all. The last group of ex ante controls regards cyclical responsibilities such as the approval or decision on budgets by the minister. I will discuss these controls in the next section as they are related to ex ante controls during operations.

When an entity is hived in to the domain of government, the ex ante start up decision is either found in recognition criteria, buying conditions or in a full legislative procedure. In all cases of hiving in, the underlying criteria may be similar to the criteria used when an entity is created by government: for example cyclical criteria such as approval of fees or a prescribed governance structure to be laid down in a (revised) charter may be required. Instead of approval of fees, price controls by setting maximum price increases can be used as well. In case a law is used to hive in the entity, the procedure is similar to that of creating an entity and can include all types of authority.

By now, the ex ante controls that may be used while creating an associated entity have been discussed. The key is that the distribution of authority between minister on the one hand and the board of the associated entity is laid down in the law or charter in which the associated entity is created. Particularly in the case of hiving in an entity, the instruments of price controls and qualification requirements laid down in a program law may be used as well.

EX ANTE CONTROLS DURING OPERATIONS

Once an associated entity is created, operational control is executed in line with the responsibilities attributed to minister and management. At this stage the cyclical controls as identified by Kummeling et al. (1999: 39) have a prominent role. The most prominent of the ex ante controls during operations is financial ex ante control. There are two basically different forms of financial ex ante controls to be identified. First, the annual budgeting procedure is to be mentioned. Second, contract based or rule driven funding is the other option. In principle, at least for traditional budgetary controls, accountability is aimed at the political system and is not essentially different from the accountability for the hierarchical structures within government. This is different when contract or rule driven funding exists as these forms allow for assessment of efficiency and performance. Cyclical controls do not only have a function in the political domain, but also serve an accountability role to all other stakeholders.

The ex ante control realised by budgeting methods has two alternative options. First, there is an immediate authorisation of the budget of the associated entity by the legislative body. Although not externally binding, the minister is likely to appropriate the resources allocated to the relevant associated entity. Whether the resources are allocated on a classic input budget basis or on a more sophisticated performance related agreement (Von Weiszäcker et al. 2005: 7-8) is a matter of political preferences and possibilities for specification of services. Of course, ex post accountability can benefit from performance based budgets, rather than from traditional input budgets. When a budget is to be authorised by Parliament, implicitly there has been an approval by the minister in charge to include the budgeted level into the proposed budget of his department. One might claim that

this is a form of a pre – ex ante control in relation to the authorisation provided by Parliament. However, the level of detail in budgetary documents of the Dutch State has diminished strongly over the last decades (de Kruijf 2005: 7) under the influence of changing accounting rules. This means that in many cases, budgets of associated entities can only be found in a budget that covers more than the activities of the associated entity only. In that case, the main ex ante control is not in the formal budget authorisation, but in the budget appropriation by the minister who decides to distribute resources to the associated entity. The basis for that decision is the approval of the budget as submitted by the associated entity to the relevant government. The approval of a budget of an associated entity is a strong instrument even when budgets are not funded by the minister. When a budget of an associated entity has to be approved, this has an impact on the level of fees that can be charged as well, assuming that not approving a budget means that the fees that can be derived from that budget are also not accepted.

In a setting in which public services can be provided from a more market based setting, it is possible to use a form of a contract in which services are specified rather than a mere approval of a budget. Von Weizäcker et al. (2005: 7-8) specify a number of contractual forms related to different types of associated entities. This ranges from service contracts with private entities to concessions and diverse intermediate forms of public-private co-operation. Depending on the type of contract, ex ante control is on a unique individual basis as is for example the case in a public-private partnership program aiming at e.g. toll roads. Other types of contracts may have a more cyclical character, for example when tendering procedures for concessions or service delivery are used. The ex ante controls are then limited to the program specifications on the case basis and the market mechanism decides which

provider has the winning bid. Although such contracts are close to market relationships, there still is a residual risk involved that can be regarded as a typical risk in case of associated entities. The remaining residual risk refers to the case that the entity that won the tendering procedure fails to provide the service. Government then has to fall back to other solutions – at a certain price – to assure that service-levels towards citizens remain assured. That this is not a theoretical proposition can be illustrated by the case of a nationwide care provider that went bankrupt and where local and national government had to find solutions to guarantee that services were delivered (Parliament 2008c: 2).

Theory can provide a general remark on ex ante controls in these forms of contract based public private partnerships, but an assessment of the actual impact of ex ante controls in these cases can only be based on case studies of individual contracts. Therefore I will neglect the ex ante controls on contracts in the remainder of this paper.

In this section, I have discussed the ex ante controls available to legislative body and/or minister. The most important issue is the distribution of authority at the start-up of an associated entity. After creation of an entity the cyclical authority attributed to Parliament (budget authorisation) and/or minister are the prominent ex ante tools. In table 3, I have summarised these tools. In the next section, I will focus on empirical results with respect to the use of the ex ante tools.

Table 3:
Ex ante controls available with respect to associated entities

Entity created	Entity hived in
Budgetary funding. Contracting. Performance standards.	Budgetary funding. Contracting.
Program legislation • Defining tasks	Program legislation: • Recognition requirements • Price controls
Ministerial responsibility laid down in charters • Normative tools • Cyclical tools • Governance tools	Changes in charters enforced.

Source: author's compilation.

PRACTICES IN EX ANTE CONTROL OF ASSOCIATED ENTITIES

National government has the opportunity to create arrangements in which ex ante control tools in their relation to associated entities can be institutionalised. The fact that tools can be available does not necessarily imply that these tools are used in the actual relation between government and associated entity. In this section I will focus on the use of the control tools that are available. Due to the wide range of arrangements, it is not possible to pay attention in full detail to all possible associated entities. I have chosen to focus on the group of ZBOs and will discuss the other groups of associated entities only briefly.

The research methodology used for ZBOs is based on finding indicators that provide clues to the specification of production to be delivered by the entities on behalf of government. I used data based on original research with respect to ex ante control of ZBOs. The data are derived

from 11 case studies on particular groups of ZBOs (De Kruijf and Mol 2007) in which relevant documents on ex ante control were studied next to interviews with representatives of the ZBO and the ‘controlling’ ministry. Appendix 1 lists the ZBOs that were included in this study.

The case studies of ZBOs allowed for a detailed evaluation of the authority provided to the minister. Therefore, it is possible to assess whether or not a minister decides on a budget proposal or merely approves it, whether or not documents exist in which the desired level of services are mentioned, approval of investments and the allocation of the operational surplus at the end of a fiscal year.

As stated, I have studied 11 ZBOs. These ZBOs were selected based on specific characteristics in activities – either providing income transfers or acting as a monitoring institution. Five of these ZBOs originate from private activities and were thus hived in to the public domain. There is no clear pattern that suggests that hived in ZBOs are treated differently from those that were hived off. To put it stronger, some of the entities that originate from the private sector are now under very strict ex ante control by the minister. In *table 4*, I have summarised the findings on the ex ante control tools that were used by ministers with respect to the selected ZBOs.

Table 4: *Cyclical ex ante controls used by minister with respect to selected ZBOs (N=11)*

Type of control tool	Determine	Approval/ consent	No arrangement
Explicit performance indicators	4	0	7
Budget proposal	5	5	1
Investment proposals	4	1	6
Reallocation of surplus	8	0	3

Source: author's compilation.

The general impression that can be derived from *table 4* is that there is an emphasis on ex ante budgetary control. This is in line with Bertelli's (2006) observations on public law ZBOs. In only a minority of cases a relation has been made to the actual services to be provided, which can be concluded from the lack of performance based arrangements. In all other cases, there is an implicit assumption that the law which describes the activities of the respective ZBOs is sufficient to control the individual entity. Schillemans and Van Thiel's (2009) study on reputation of ZBOs indicates that in general, attention given by stakeholders - including Parliament – focuses on superficial and affairs rather than on what is actually happening within the organisation. Such an attitude might also be part of an explanation for a lack of performance based controls on ZBOs.

A remarkable issue from a control perspective is that in many cases there is no explicit investment arrangement. Budgetary control may be jeopardised when management has the freedom to choose the investment level. The problem can be mitigated because in operations financing of investments is in many cases only possible through the ministry of Finance, which can decide not to

provide the requested resources. Second, on the level below the formal decision making indicators described here, a difference in political attention with respect to the ZBOs studied is found. In some cases politicians are actively involved in the control process, in others the whole process is left to the civil servants and ministerial consent is only a formality. On the one hand this can be explained by political relevance, on the other differences in attitude towards ZBOs within different departments and reserves to intervene – particularly with respect to impartial monitoring institutions – are other explanations for differences in controlling ZBOs.

Third, possible role conflicts of owner and commissioner of the services provided can be observed. One of the issues with respect to ownership is whether or not boards of ZBOs should be supported by a Supervising Board operating on behalf of the owner. Particularly in those cases where the ZBO originates from government there is reluctance to use such a governance structure. It is claimed that a Supervising Board would result in less control by ministers. Van Thiel, Canté and Van Meerkerk, (2009, p13) note that Supervising boards may not be the solution due to the political background of many members of Supervising Boards or the inclusion of interest groups in the Boards. As a result, they focus on other issues than the continuity of the organisation they are supposed to supervise. Furthermore, the ownership role is under pressure due to discussions whether or not a certain level of equity should be available to management of the ZBO. This is contrary to kZBO, in which an explicit requirement is made allowing equity for ZBOs to cover fluctuations in operational results.

Fourth, the distinction between different forms of service provision as identified by Boorsma and Mol (1983) does not seem to be helpful to address control approaches for groups of associated entities. Based on the knowledge

on the services provided, the organisational structure and the sources of funding of individual cases, *table 5* shows that both ZBOs and RWTs are split up over most categories. This result does not imply that the classification of service provision should be rejected, it only indicates that it is not useful in an attempt to generalise the activities of groups of associated entities.

Table 5: *Classification of service provision applied to associated entities.*

	ZBO	RWT	Others
Consolidated provision	NMa		
Contract provision	RvR, UWV, SVB, CVZ	Police, Detention centres, Care provision	
Grant provision	NZA, Pf/Vf, fBKVB	Education; health insurance; health provision	
Regulated provision	NAK, AFM, CFV		
Private provision			State Participation; Public utilities.

Source: author's compilation.

Finally, some remarks are made with respect to ex ante control of the associated entities that were not explicitly studied as well. Police forces and private detention centres – both RWTs - are publicly funded and thus subject to the ex ante allocation mechanism. In the appropriation process, the minister uses explicit performance and or cost price based arrangements. In the

case of the police forces even a bonus system exists that allows for additional resources to be used for program activities when targets are met. With respect to the police force, normative and governance controls also exist, whereas in the detention centres normative controls (treatment and the like) exist. In the health insurance branch, ex ante influence is determined by the requirements on the insurance program (normative control) to be provided. Given that program, the market is open for competition and no other ex ante controls are used by minister or Parliament. Another group of RWTs – national musea – is, as of 2009, budgetary funded on a long term subsidy contract and a monitoring program. Next to the ex ante budgetary controls, the minister still has the power to appoint/dismiss the board of a museum (Parliament 2005) as part of the governance controls available.

State participations cover in most cases market activities. The ex ante controls available are attributed to the minister as shareholder and thus mainly affect the governance structure issues. Parliament is only involved when general policy on the State's strategy towards holding State participations is discussed (see Parliament 2006c), or in the formal case when a new State participation is realised under the CW2001 regulations.

Under 'other' associated entities at the national level, entities such as hospitals, care-institutions and social housing associations are included. Ex ante control on these organisations is only indirect: the law regulates prices (health/care) or price increases (housing) for the services to be delivered.

CONCLUSIONS

In this paper I focused on ex ante controls with respect to public services provided by autonomised entities in the Netherlands. My research question was: What are the

ex ante control tools available to Parliament to find a match between the level of autonomisation and political control with respect to external autonomisation of provision of services in the public domain?

The main topics derived from theory to address control of autonomised government units are the distribution of responsibility, characteristics of provision of services and the possible role conflicts between ownership and commissioning role of government with respect to the services delivered. Studying autonomisation suggests that government transfers activities to entities outside the immediate hierarchical control of government. In some cases however, government has gradually claimed stronger controls on services that were originally provided by private entities. In this paper both 'hiving off' and 'hiving in' were included under the label 'associated entities'. The variety of associated entities does not allow for a 'one size fits all' approach for ex ante control. The study showed that responsibilities attributed to a minister in the ZBO-cases selected include in most cases financial controls. In the majority of cases, performance controls have not been made explicit. With respect to other associated entities, in some cases normative (regulations) and or governance (appointments and the like) controls exist, but these are not applied in all cases along similar lines. The role conflict between owner and commissioner is recognised and in some cases explicit separation of roles has been created. The effectiveness of this solution as well as of using a Supervising Board may be discussed.

Distribution of responsibility depends on the type of associated entity and the services provided. In some cases, it appears that a mismatch between formal and actual distribution of responsibilities exist. In the cases studied, an emphasis on (traditional) budgetary control in the ZBO cases was found. This might be in conflict with the intended autonomy of ZBOs. The overall conclusion of this

paper is that although a framework for ex ante control of associated entities exists, at least three problems are not solved yet. This regards first the specification of services requested. Second, the role conflict between commissioner and owner, which is particularly an issue when the minister has both roles under his responsibility remains problematic. Finally the ex ante control on associated entities that operate locally or regionally under a national framework can be problematic due to the restricted – framework – responsibility a minister has, which does not fully cover possible risks at the level of individual associated entities.

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APPENDIX 1: ZBOS INCLUDED IN THIS STUDY.

ZBO	Hived in?
Uitvoering Werknemersverzekeringen (UVW)	Yes
Sociale Verzekeringsbank (SVB)	Yes
Raden voor Rechtsbijstand (RvR)	No
Autoriteit Financiële Markten (AFM)	Yes
Centraal Fonds Volkshuisvesting CFV)	No
Fonds Beeldende Kunsten, Vormgeving en Bouwkunst (fBKVB)	No
Participatiefonds/Vervangingsfonds (Pf/Vf)	Yes
Nederlandse Zorgautoriteit (NZA)	No
Nederlandse Mededingingsautoriteit (NMa)	No
Nederlandse Algemene Keuringsdienst voor Zaaizaad en Pootgoed (NAK)	Yes
College voor Zorgverzekeringen (CVZ)	No