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Financiële controle op zelfstandige bestuursorganen

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Document Version

Publisher's PDF, also known as Version of record

Publication date:

1999

[Link to publication in University of Groningen/UMCG research database](#)

Citation for published version (APA):

Kuiper, G. M. (1999). Financiële controle op zelfstandige bestuursorganen. Groningen: s.n.

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Financial oversight of independent agencies

In the Dutch context, an independent agency may be defined as a unit of the national public administrative organization over which ministerial jurisdiction is limited. Thus independent agencies are to a large extent autonomous in the execution of their tasks. The capacities of the minister to influence the execution of these tasks are limited to competencies that have been laid down in the rules that are made especially for the specific agency. Relative autonomy in the execution of a public task without political interference may be considered necessary for a number of reasons. At the same time, the fact that independent agencies are working with public moneys requires close scrutiny of their revenues and expenditures.

There is a certain tension between the agency's attribute of relative autonomy in the execution of public tasks and the necessity of financial oversight of the agency's handling of public funds. The central question of this thesis is, how requirements of relative autonomy in the execution and scrutiny of financial dealings can be made compatible.

The legal arrangements that govern the position of the many different independent agencies within the Dutch politico-administrative framework show great diversity. A major distinction is that between independent agencies that do possess legal personality and independent agencies that do not.

The financial practices of independent agencies without legal personality are governed by the same rules that apply to all central government agencies. These rules are strict and give the minister and his staff a lot of capacity to influence an independent agency not only with respect to its financial management but also with respect to the way its public tasks are being executed. The autonomy of these independent agencies with respect to the execution of public tasks could thus be distorted through the use of inappropriate means.

On the other side of a continuum of financial oversight arrangements that extends from an almost all embracing ministerial competency to virtually no ministerial competency at all, there are the independent agencies that possess legal personality. At present there are hardly any general regulations for the financial oversight of these agencies. Therefore the guarantees for effective financial oversight depend upon the specific rules that are made for each of these agencies individually. In general these rules leave much to be desired.

One of the main conclusions of this study is that a division of labor between oversight authorities is necessary to deal with the tension between autonomy and adequate financial oversight. It is argued that the division of labor could best be organized according to the subprocesses of the oversight process: a. information gathering, b. appraisal and c. intervention. The minister should be competent only to intervene. Collecting and assessing information about the agency's financial management should be reserved for an independent control authority.

Existing independent control authorities, such as the National Audit Office, are not suitable for the specific day-to-day oversight of independent agencies that is needed. Instead, the thesis asserts the necessity of the foundation of a new independent oversight authority specifically for independent agencies.

Apart from the necessity of the division of labor in the oversight process it is argued that there is also need for a special law with general rules for the financial oversight of independent agencies. Again the rules such a law should contain may be categorized according to the subprocesses of oversight.

With respect to information gathering, the proposed outline of this law is: a. the independent agency is required to systematically provide data on its basic budget and expenditure records to the oversight authority and the minister; b. the independent agency is obliged, when asked by the oversight authority, to supply the oversight authority with all the information it needs for the execution of its control task; c. the oversight authority is competent to collect all the information it needs within the controlled agency.

With respect to the appraisal of the agency's financial management, the law should pay attention to the extent and the precision of the performance criteria. In general the criteria of legitimacy and efficiency as being used by the National Audit Office are applicable.

With respect to the process of intervention the proposed outline of the general law is: a. the minister decides on the total amount of money that an independent agency may spend annually and he is also competent to give general rules for the layout of the budget documents; b. In addition to the rules that are part of the general law itself, the minister is competent to make rules about the financial administration of the agency; c. the minister is competent to withdraw or re-claim funds when financial shortcomings are being revealed within the independent agency and in extreme conditions he is also competent to appoint an administrator.

The proposed division of labor between the minister and the oversight authority calls for accessory provisions to ensure coordination. The general outline of the coordination arrangement that is proposed in the thesis is: a. the oversight authority informs the minister periodically about the main results of its oversight activities; b. the oversight authority reports to the minister in depth about serious financial shortcomings that it has found; c. the oversight authority advises the minister how to deal with these shortcomings; d. the minister is competent to order the oversight

authority to execute an investigation within a specific independent agency but has no jurisdiction over the way the investigation is conducted.

The general conclusion of this study is that a balanced arrangement, fulfilling the requirements of both relative administrative autonomy and vigilant financial control should possess the following features: a division of labor in the process of financial oversight, the foundation of a control authority especially designed for the financial oversight of independent agencies, and a general law with a number of procedural and substantive requirements pertaining to financial management and financial oversight.