Regulatory Reform in the Netherlands

Government Capacity to Assure High Quality Regulation

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Publié en français sous le titre :

LA CAPACITÉ DU GOUVERNEMENT A PRODUIRE DES RÉGLEMENTATIONS DE GRANDE QUALITÉ

FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government capacity to assure high quality regulation* analyses the institutional set-up and use of policy instruments in the Netherlands. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in the Netherlands* published in 1999. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was principally prepared by Rex Deighton-Smith, Administrator for Regulatory Management and Reform in the Public Management Service, and Scott H. Jacobs, Head of Programme on Regulatory Reform, OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in the Netherlands. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Can the national administration ensure that social and economic regulations are based on core principles of good regulation? Regulatory reform requires clear policies and the administrative machinery to carry them out, backed up by concrete political support. Good regulatory practices must be built into the administration itself if the public sector is to use regulation to carry out public policies efficiently and effectively. Such practices include administrative capacities to judge when and how to regulate in a highly complex world, transparency, flexibility, policy co-ordination, understanding of markets, and responsiveness to changing conditions.

Initiatives to improve the quality of national regulation have been underway in the Netherlands for 15 years. They have developed and broadened in scope to include legal and economic standards for good regulation. Especially since 1994, regulatory reform has been fundamental to policies to improve economic performance and to stimulate entrepreneurial energies. Its aim has been to achieve a "new balance between protection and dynamism." Partly under the pressures of the European Single Market, a long-term shift is underway from corporatist to market decision-making, and from pro-producer to pro-consumer regulation. This shift demands profound changes to the processes and culture of policy-making in the public sector.

Good results are seen in some areas in reducing unnecessary regulatory barriers to economic activity and in improving policy cost-effectiveness. Administrative reforms have improved the capacity of the public sector to decide when and how to regulate in a more market-driven economy. Use of innovative policy instruments that produce better policy results at lower cost is among the most advanced in OECD countries. Reform in a few important areas—extension of shop hours, reductions in some permits and licenses, and removal of some monopoly rights for lawyers—have been accomplished. Significant savings may have been achieved by reducing administrative burdens. The public debate is intensive and well-informed, and public fears about potential negative effects of reform on consumer protections and equity are abating, though the sustainability of reform will depend on public perceptions about its effects.

Yet while these steps were necessary, they are not sufficient to have more than a marginal effect on economic performance. The scope of reform should be expanded, and its pace greatly accelerated. Concerns about the complexity and rigidity of the national regulatory system continue to be voiced. Reform has barely touched many areas where consumer choice is restricted, where burdensome requirements discourage market activity, and where innovative instruments can improve performance. Improvements to regulatory responsiveness, transparency, and accountability are needed. Lengthy legislative processes have delayed reform proposals, eroding the benefits of reform, and raising serious concerns about future policy responsiveness in the Netherlands. Regulatory impact analysis will continue to disappoint without improvements to analytical rigour. Finally, regulatory quality reforms made at the national level should be co-ordinated at European and subnational levels to ensure that gains are preserved and extended throughout the regulatory system.

1. THE INSTITUTIONAL FRAMEWORK FOR REGULATORY REFORM IN THE NETHERLANDS

1.1. The administrative and legal environment in the Netherlands

The Netherlands' political culture has been described as having strong corporatist elements, and indeed the typical patterns of corporatist interest representation can readily be seen: comprehensive organisation, stability, orientation toward common interests, and a consensual or problem-solving style of decision-making.[1] The Dutch organisation of economic and social policy-making has been based during most of this century around institutions that incorporate through formal procedures the interests of organised capital and labour. These relationships go far beyond "consultation". An administrative characteristic of importance to regulation is that the state has often shared sovereignty over making and applying public policy with these organised market interests.

The concrete aspects of Dutch corporatism can be seen at political and administrative levels. Governments in the Netherlands are generally formed of coalitions of several political parties. A key advisory body, the Social and Economic Council, is structured to be representative of a range of organised interests in society. A large number of industry and professionally based consultative bodies have grown up over decades. Many of these organisations have been delegated various regulatory functions. This complex of private organisations forms the framework for a pervasive set of cartel arrangements (the background report on The role of competition policy in regulatory reform discusses the Dutch "cartel paradise").

Box 1. **Good practices for improving the capacities of national administrations to assure high-quality regulation**

The OECD Report on Regulatory Reform, which was welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this report, and are reproduced below:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making
3. Build regulatory management capacities

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis
2. Systematic public consultation procedures with affected interests
3. Using alternatives to regulation
4. Improving regulatory co-ordination

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

(In addition to the strategies listed above)

1. Reviewing and updating existing regulations
2. Reducing red tape and government formalities

This institutional structure allows organised interests in the market much influence in the making and applying of policy. They have extensive opportunities to be heard, and they thus profit from a political culture that is disposed toward compromise to secure consensus. Many analysts have praised the Dutch model for its capacity for flexible adjustment to changing external conditions.[2] The Dutch approach has also resulted historically in a high level of compliance with legislation, apparently due to a sense of shared "ownership" or responsibility. It has produced what is widely seen in the Netherlands as a high level of protection for consumers with respect to quality, and its distributional aspects have mediated equity concerns. These arrangements are also said to give government better access to information, improving the basis for policy-making, while use of professional bodies as regulators may offer significant benefits in terms of cost savings and expertise.

However, a number of factors—notably the "Dutch disease" of low labour force participation and unsustainable welfare policies that led to crisis in the early 1980s and the increased integration of the Dutch economy into Europe through the Single Market—have provoked re-examination of many aspects of this corporatist system. The corporatist, cartel-oriented structures underlying much Dutch economic organisation came into conflict with the direction of European legislative change, particularly after the adoption of the Single Market programme. Social changes within Dutch society, such as the emergence of consumer and environmental concerns, also led to questioning of the legitimacy of the tripartite arrangements underpinning many consultative structures. As the society became more pluralist, systems that favoured a limited range of interests became less legitimate.

Regulatory reform in the Netherlands had its genesis in this profound (and continuing) re-examination of the corporatist organisation of Dutch society. Among the earliest re-assessments along this line was the work of the Commission on Deregulation of Governmental Regulations (*Commissie Geelhoed*), which presented its final report in 1984. It concluded that characteristics of the Dutch institutional structure bore major responsibility for an excessively complex, heavy, and far reaching legislative structure. It found that when the Cabinet and individual Ministers made commitments during budget talks and other parliamentary discussions about the content of future regulation, they did not consider the practicality, coherence, and legal feasibility of those commitments. The Commission found that extensive processes of interministerial co-ordination and Parliamentary scrutiny often greatly increased the detail and complexity of legislation. It concluded that, although this process of constant consensus seeking can ultimately lead to results satisfactory for the parties involved, it can also be inefficient, ineffective or even impossible to implement.[3]

The report of the Commissie Geelhoed was one of many sources questioning the regulatory effects of the Dutch administrative and legal system. Extensive reforms in the areas of social, labour, and competition policies in the late 1980s and in the 1990s have reduced to some extent the participation of organised market interests in policy-making and implementation, improved transparency and accountability in the administrative system, and transferred more economic decisions to the market. Yet extensive aspects of the corporatist system have been maintained, amid continuing discussion about both its positive and negative aspects. The benefits of a participatory and largely consensual system of policy formation remain highly regarded in Dutch society. Indeed, some of the changes made have sought to better serve the values of participation in the context of a more pluralist and less organised society. Dutch policy makers have argued that the Government's determination to make changes to the system has forced a re-examination of their roles by the representative organisations, with positive reinventions frequently being the result. "The Dutch case of negotiated social policy reform proves that moderni[s]ation of the European welfare state is possible after all", concluded a recent assessment of reforms to the Dutch state.[4] The direction, scope, and potential of regulatory reform will continue to be defined by the evolution of the relations between the Dutch State, market, and society.

1.2. Recent regulatory reform initiatives to improve public administration capacities

Regulatory reform began in the Netherlands in the mid-1980s, and has passed through several stages, supported by a developing consensus that more and deeper reform was needed. The current regulatory reform programme was established by the previous Government after it came to power in 1994. Regulatory reform was given a prominent position in the coalition agreement (the policy basis on which the government is founded). Following the May 1998 elections, the issue of regulatory reform was again prominent in the negotiation of the new Government's coalition agreement and the programme pursued since 1994 is to be continued and further refined.

The objective of the programme is, according to the coalition agreement, to achieve a "*new balance between protection and dynamism*".[5] Competition and regulatory quality are to be strengthened through three strategies: adoption of a new competition law; increased exposure of the public sector to market forces; and a multi-faceted programme on the "Functioning of Markets, Deregulation and Legislative Quality" (MDW). MDW aims to improve the functioning of markets by strengthening competition through regulatory reform; by abolishing or streamlining regulations to "return to what is strictly necessary"; and by better *ex ante* analysis of likely effects to improve the quality of new regulations, both laws and lower-level regulations. The MDW programme is the main vehicle for improving regulatory quality, and as such is the centrepiece of Dutch regulatory reform policy.

MDW is part of wider policy changes indicating a new relationship between State and market. The key initiative affecting competition was the adoption of an entirely new competition law, which took effect in January 1998 (see background report to Chapter 3). A principal purpose of this law is to make Netherlands competition policy consistent with EU directives on competition. However, changing views on competition in the Netherlands may have led to significant reform even without that incentive. Such changes made possible current efforts to introduce and/or strengthen competition as a means of improving efficiency and service quality in a range of government provided or government funded activities including health, education and social security. Changes to consultation processes over the last several years, which have de-emphasised consensus seeking and co-operative (and frequently collusive) structural elements, also suggest changing attitudes about market forces.

Box 2. **Activities under the MDW programme**

Special subjects

Each year, about ten in-depth reviews of specific areas of legislation are proposed by the Civil Service Commission following consultations with interested parties and are approved by the Ministerial Commission. Working groups conduct the reviews and recommend reforms. **See Section 4**.

Critical assessment of draft legislation

Regulatory impact assessment has been required in the Netherlands since 1985. A significant overhaul of the programme was implemented under the MDW programme. RIA is today broad ranging, covering a proposal's impacts on business and the environment, as well as assessing its feasibility and enforceability. **See Section 3.3**.

Reducing administrative burdens

A programme to reduce administrative burdens has been part of MDW since 1994. In 1993, it was estimated that aggregate costs of administrative burdens was 13 billion Dfl. A target of reducing costs by 10%, or 1.3 billion Dfl, was set. This was judged to have been met in 1998 and a new target of a further 25% reduction is being considered for the second stage of the programme. The programme contains a number of elements including reviews by administering agencies, consultations with a panel of entrepreneurs and technology based projects**. See Section 4b**.

Box 3. **MDW 2**

Following the May 1998 elections, on 12 October 1998, the Ministers for Justice and Economic Affairs sent a letter to Parliament informing it of the future shape decided for the MDW programme. The programme will continue along broadly the same lines as pursued since 1994. However, three changes should be highlighted:

Selection of "special subjects"

The process of selecting subjects for review is to be made more open to outside input through the implementation of a new "orientation phase" of several months at the commencement of the "MDW 2"programme, during which business and public input will be sought through conferences, round table meetings, and talks with public organisations.

Faster implementation

The need for faster implementation of reforms (discussed in the recommendations below) has been acknowledged. Process changes are not proposed, but it is hoped that the greater involvement of business and the public in setting the MDW2 agenda will lead to a faster process as its supporters become more vocal in its support and it is "not only pushed, but also pulled".

Greater transparency in the "advisory phase"

Process changes are, again, not proposed in response to criticism that interested parties are not sufficiently closely involved in the design of specific MDW reforms. Instead, Cabinet has taken the view that this objection can be largely eliminated by "making what happens in the overall MDW process more visible to the outside world".

The current programme builds on a decade of earlier efforts. Reform began in the Netherlands as a question of legislative quality, seen in its widest sense of accountability, feasibility, effectiveness, and legitimacy. Concerns about economic impacts, business costs, and market incentives emerged in an important way only in the 1994 programme. As a result, regulatory reform was long seen as being of particular interest to legal experts. The primary role in reform has traditionally rested with the Ministry of Justice, which played a pioneering role in getting regulatory reform onto the political agenda.

Several commissions were established by governments from the early 1980s to consider broad reform issues. The mandates of these committees were oriented to technical legal issues and they were primarily constituted from legal experts. The policy changes that followed from their work, as well as from reform thinking within the administration, have covered a range of fields.

The first of the commissions appointed was the Commissie Geelhoed, mentioned above. It concluded that there was too much regulation and that it was excessively complicated, and made a key contribution through its analysis of the institutional reasons for these problems. Another important commission, established under the auspices of the Ministry of Justice, was the Commission for the Assessment of Legislative Projects, which operated between 1987 and 1993 and conducted 55 assessments that concluded in recommendations for reform. Although substantive reforms were achieved in about half of these cases, it attracted relatively little political attention and support. Its approach was legalistic, and it did not base its findings on the economic impacts of regulations. It was replaced by the more economically-focused MDW programme in 1994.

An Interdepartmental Commission on the Harmonization of Legislation (ICHW) was also established in this period and continues to operate. In 1985, the Minister of Justice sought the involvement of the Council of State in reform efforts by inviting its comments on the most pressing regulatory quality issues. The Council identified problems in the relationships between legislative and policy functions within the administration, inadequate inter-ministerial co-ordination, and the need to focus on the

recruitment and development of law-drafting experts. In 1992, revised Directives on Legislation, prepared by the Ministry, were formally issued by the Prime Minister. They focused on the need for reform, set out quality criteria for legislation and stressed the use of alternative policy instruments and alternative legal structures.

Box 4. **Milestones in Dutch regulatory reform**

1984	Final report of Commission on Deregulation of Government Regulations (Commissie Geelhoed) argues that the corporatist elements of the Dutch administrative and legal system bear major responsibility for an excessively complex, onerous and far reaching legislative structure.
1984	Revised Directives on Legislation issued by Prime Minister. They are expanded to include a wider range of legislative quality issues not related to technical law-drafting issues.
1985	Grapperhaus Commission assessed administrative compliance costs and proposed reforms.
	Requirement for Regulatory Impact Assessment introduced.
1985	Council of State identifies major regulatory quality issues at the request of Ministry of Justice. Highlights legislative/policymaking relationships, interministerial co-ordination and recruitment and development of law-drafting experts.
1987	Commission on Assessing New Legislative Projects (CTW) introduced.
1989	Ministry of Justice given explicit responsibility for legislative policy and the General Legislative Policy Division was created.
1991	Minister of Justice issues legislative policies guidance paper "Legislation in Perspective" with Cabinet authority.
1992	Revised Directives on Legislation drafted by Ministry of Justice and issued by Prime Minister.
1993	General Accounting Office completes review of regulatory processes, concluding that most of the problems identified by the Council of State in 1985 were still unsolved.
1994	MDW programme incorporated into the programme of the newly elected government. Includes a mechanism for reviewing existing legislation, overhaul of RIA requirements and an administrative burden reduction programme.
	Van Lunteren Commission examines taxation on SMEs and new enterprises.
1998	New Competition Act comes into force. New coalition agreement establishes "MDW 2".

The General Accounting Office was also involved in reviewing the functioning of the regulatory process, and in assessing the progress made by earlier reform efforts between 1991 and 1993. It concluded that, of the issues raised by the Council of State in 1985, only in the area of Harmonization of legislative activities had progress been made. Moreover, it was unable to conclude whether the 1990 quality criteria for legislation were actually being used by ministries, as only rarely was the use of the criteria documented. Its findings were important in showing the need for a stronger programme such as the MDW.

2. DRIVERS OF REGULATORY REFORM: NATIONAL POLICIES AND INSTITUTIONS

2.1. Regulatory reform policies and core principles

The 1997 *OECD Report on Regulatory Reform* recommends that countries "adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation."[6] The *1995 OECD Council Recommendation on Improving the Quality of Government Regulation* contain a set of best practice principles against which reform policies can be measured.[7] The content of, and political commitment for, Dutch regulatory reform policies demonstrates a generally high level of consistency with these recommendations.

Since the 1980s, explicit national policies on regulatory quality and regulatory reform have been adopted in the Netherlands, and have steadily expanded in scope and ambition. The direction of policy evolution has been from legal concepts of regulatory quality (technical law-drafting quality, codification), toward development of procedural and empirical standards (use of regulatory impact analysis, directives setting out explicit technical, legal and process guidance on regulation making) and recently to strategies aimed at changing long-held administrative habits and incentives (review mechanisms, transparency, use of alternatives, targeted reform of existing regulations), backed up by reform drivers inside the administration. Over time, more care has been demanded of ministries in their use of regulatory powers.

The current reform policy establishes clear political accountability. A Ministerial Committee chaired by the Prime Minister directs the reform process. Other standing members include the Ministers of Justice and of Economic Affairs (also responsible for competition policy), who are considered the "co-ordinating Ministers" for the MDW programme. All Cabinet Ministers have a standing invitation to attend the Commission and, in practice, other Ministers often participate. At the political level, then, the MDW programme is managed by a body with the authority, accountability, and cross-cutting vision to provide strong impetus for reform.

Strategic objectives have been set for the reform programme that should help give general direction to efforts in the ministries. The programme aims to increase economic performance and "dynamism," and to ensure that the benefits are reaped by consumers, through prices, choice, and high levels of protection. Reform also aims to improve policy effectiveness. However, except for quantitative targets for administrative burden reductions, the programme lacks results-oriented goals that would serve to "operationalise" these strategic objectives and allow ministries to be held more accountable for performance. The OECD Report also recommends that governments "ensure that reform goals and strategies are articulated clearly to the public". Engaging the public in a dialogue on the aims, benefits, and costs of regulatory reform has received, and will continue to need, attention in the Netherlands, given opposition from entrenched market interests, and others anxious that a "24-hour economy" will reduce the quality of life.

Consistent with OECD recommendation that "governments establish principles of 'good regulation' to guide reform," explicit standards for regulatory quality have been adopted, as have principles of regulatory decision-making. The Dutch principles cover both economic and legal quality concepts. The primary reference for quality standards is the "Directives on Legislation" developed by the Ministry of Justice since 1972. These are a set of binding rules for all Ministries involved in preparing and drafting legislation (both primary and subordinate) and are formally issued by the Prime Minister. Structured as a set of instructions with explanatory/advisory material, they constitute explicit criteria for making decisions as to whether and how to regulate. Key standards are:

– The need for regulation should be justified (*i.e.*, by applying a "threshold test" regarding the size of the problem and the appropriateness of regulation as a solution).

– Objectives of regulation should be clearly defined.

– The regulation should be clear.

– The most cost-effective regulatory or non-regulatory alternative should be chosen.

– Indirect effects, including competitiveness, investment climate, etc. should be considered.

– The regulation must be enforceable.

The content of these quality standards is comprehensive and well-conceived, and compares favourably to regulatory quality standards in place across the OECD area. The Dutch directives have, in fact, been used by some non-OECD countries as a model in developing regulatory quality systems. However, the Ministry of Justice's recent review of the use of these directives found that they have had limited effectiveness in practice. This may be due to inadequate quality control over their use. An inter-departmental working group is currently "reviewing the possibilities for increasing the familiarity, practicability and consequently the application of these tests" And it is expected that the general principles will be translated into specific rules, so that they can be fitted to specific subject areas.[8]

A notable gap should be identified. The OECD has recommended as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society." This principle is referred to in various countries as the "proportionality" principle or, in a more rigorous and quantitative form, as the benefit-cost test. Such a test is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being "socially optimal" (*i.e.*, maximising welfare).[9] This key principle is insufficiently developed in the Netherlands, although an early result of this review has been the establishment of an inquiry into the possibility of adopting an explicit and quantitative benefit-cost test to be performed when discussing draft legislation.[10]

The Directives on Legislation require consideration of proportionality during the development and drafting of legislation, and there is a degree of external verification (through the Ministry of Justice review of draft legislation prior to submission to the Council of Ministers). Moreover, proportionality is a guiding principle of the European Union in its legislative activities, and so is considered in the development of that part of Dutch legislation originating at EU level. However, the Dutch framework for regulatory impact assessment includes neither consideration of proportionality nor a benefit-cost test. Thus, there is no mechanism by which ministries document their application of the proportionality test, no public testing of these conclusions, and no opportunity for challenge.

2.2. Mechanisms to promote regulatory reform within the public administration

Reform mechanisms with explicit responsibilities and authorities for managing and tracking reform inside the administration are needed to keep reform on schedule, and to avoid a recurrence of over-regulation. As in all OECD countries, the Netherlands emphasises the responsibility of individual Ministers for matters within their portfolios. Each Minister is formally seen as having a significant responsibility for the implementation of regulatory reform policy.

But it is often difficult for ministries to reform themselves, given countervailing pressures, and maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based. Hence, the Netherlands has established a series of centralised oversight bodies for regulatory reform. In fact, the administrative drivers by which MDW is administered and legislative quality is promoted are among the most developed in OECD countries. The large number of bodies within the administration with specific responsibility for elements of regulatory management and reform may constitute an important strength of the Dutch system, as reform is carried out across a broad front and has numerous supporters or "champions". At the same time, this complexity throws the question of co-ordination between reform bodies into sharp relief. This issue is considered in Section 5.3., below.

The MDW programme is managed by a highly formalised set of structures. In addition to the Ministerial Committee chaired by the Prime Minister (described above), defined implementation responsibilities are allocated to the Ministries of Justice and Economic Affairs. The two ministries work with a high level and independent (that is, not contained in any ministry) Civil Service Commission with two key functions: (1) it identifies priority areas for reform under the "special topics" element of MDW and prepares proposals for consideration by the Ministerial Commission; and (2) it appoints *ad hoc* working groups to prepare specific proposals. Allocating these responsibilities to an independent commission reinforces the advantages of a Cabinet committee in that reform is again conceived as a government wide and cross-cutting responsibility, rather than of interest only to single departments and carried out by sectional interests. Moreover, it improves capacity to provide strong central direction for the overall performance of the reform programme.

The working groups appointed by the Civil Service Commission have civil service members but may also include experts from the private sector, academia, or local or provincial governments. Notably, private sector appointees do not have full access to the deliberations of the working groups. Chairs of working groups are generally civil servants, but, in order to enhance the independence of reviews, they are not appointed from the department with major responsibility for the area under review.

This interministerial structure also means that review topics do not need to be restricted by policy demarcations between individual ministries, which should allow for more "thematic" and cross-cutting reviews and yield more integrated recommendations for reform.

Day to day responsibility for MDW falls to the Ministries of Economic Affairs and Justice, each of which runs a support desk providing services such as guidance and assistance on the scrutiny of regulatory proposals. The Ministry of Environment also provides assistance to agencies in answering the environmental aspects of the RIA question framework. Thus, regulatory quality control is able to draw on economic, legal and environmental expertise provided in a co-ordinated way.

The Ministry of Justice has other key management roles for legislative quality assurance. In 1989, the Ministry of Justice was given exclusive responsibility for legislative quality policies, and in 1990 the General Legislative Policy Division was established for this purpose. In addition to producing the Directives on Legislation, the division reviews, assesses and negotiates with ministries all draft laws prior to submission to the Cabinet. While the division cannot stop bills that it finds to be unsatisfactory, it can advise the Cabinet of its opinion. This mechanism has sometimes resulted in the return of draft bills by the Cabinet to ministries for further consultation with the Ministry of Justice. In addition, the Inspectorate of Law Assessment has responsibilities for legislative enforcement and enforceability. It acts as an internal consultancy for Ministries and develops extensive guidance materials to assist them to improve compliance rates.

An important new mechanism to promote legislative quality—a programme of rolling audits of the legislation making processes of all Ministries—has been launched. The Minister of Justice has appointed an independent review committee (three academics, three Ministry staff and three members from "government/society at large"). Their review is based on self-assessment supplemented by an external review by independent experts. The self-assessment involves a review of each ministry's performance against criteria such as:

- The quality of the legislative process—including the relationship between legislative, policy-making and executive units, and the interministerial, political and international context in which the work is done.

- The quality of staff involved in preparing legislation, *i.e.*, the professionalism of the organisation with regard to the task of preparing legislation.

- The quality of the organisation, including the way the work is organised.

Once Ministries have completed self-assessments, they will be visited by a review team, who will provide a report and recommendations to the responsible Minister. This process should take around 18 months, with follow up reviews conducted on one third of Ministries every two years subsequently. In addition, a report detailing overall progress will be made to Parliament every two years. This review process conforms closely to best practices regarding the need to balance Ministerial responsibility for conducting analysis with quality assurance through independent assessment. It provides a high level of transparency, through parliamentary reporting, and has a dynamic focus, with reviews to be repeated at regular intervals. This new mechanism has the potential to contribute significantly to legislative quality.

2.3. Co-ordination between levels of government

The 1997 OECD Report advises governments to "encourage reform at all levels of government." This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and subnational levels. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform. The Netherlands is a unitary country, yet co-ordinating reforms with both local and supranational levels of government would enhance its reform efforts.

At subnational levels, the Netherlands has 12 provincial governments and 560 municipal governments. The regulatory powers of these governments are quite limited (although it is possible for them to make supplementary regulations in areas that have already been regulated at the national level), but they have important implementation and enforcement functions, particularly in physical and environmental planning.

A significant legislative change to enhance regulatory co-ordination with sub-national governments took effect in January 1994. It requires that subnational governments be consulted whenever proposed regulations would charge them with carrying out specific tasks. This consultation is generally conducted through their representative associations. At the same time, there are moves to delegate more regulatory authorities to sub-national governments. For example, the most recent National Environmental Policy Plan[11] states that changes will be made in environmental regulations "to increase the autonomy of regional and local authorities..." Such moves place higher priority on improving the regulatory decisions of subnational authorities in line with national quality standards.

Of considerable importance is co-ordination of regulatory reform initiatives with the institutions of the European Union. A significant part of Dutch legislation and other regulation has its origins in European directives and regulations, and a 1995 study found that "to an increasing degree, regulations with business impacts find their roots in European mandatory legislation."[12] The important role of European legislation adds complexity to Dutch reform efforts and has likely had both positive and negative effects. It is probable that in important areas such as competition law, the presence of strong European level requirements have strengthened the hand of reformers within the Netherlands (see background report on The role of competition policy in regulatory reform, for further discussion). On the other hand, Dutch policy makers have expressed frustration with aspects of the European regulatory structure, arguing *inter alia* that it has tended to inhibit their efforts to adopt alternatives to traditional regulation in some areas. Concerns over technical quality issues lead the Netherlands to focus on legislative quality as a major topic of its 1997 Presidency of the EU. This led to an intensified programme of work within the European Commission to improve the quality of European legislation and. has been followed-up by the subsequent British and Austrian Presidencies in 1998. Dutch officials have indicated that a future priority is to improve the flow of information to Brussels on regulatory assessment issues so as to provide timely and useful inputs to assessment efforts within the European Commission.

Box 5. **European law in EU Member countries**

European legislation is implemented via two major instruments: Regulation and Directives. Regulation is required to be adopted in whole and without amendment by Member countries and is used where complete regulatory uniformity is considered necessary to achieve the legislative requirement. Directives are considerably more flexible. They consist of "Common Essential Requirements" which must be incorporated into legislation by Member countries. However, the form in which they are incorporated is left to the Parliaments of those countries to determine. The EU operates according to the principle of subsidiarity, which states that decision should be taken as close as possible to the citizens of the Union. Thus, the use of Directives is favoured as a general rule, with regulation being used only where Directives are seen as unable to achieve the object of the legislation.

From 1992, a significant programme of European legislation has been undertaken in order to implement the commitment to achieving the Single Market. The Single Market is based on the idea of the "four freedoms"; that is, that there should be free movement of people, capital, goods and services between Member states. This programme of legislation is now largely complete, which has meant that the annual number of legislative proposals from the European Commission has been falling in recent years.

3. ADMINISTRATIVE CAPACITIES FOR MAKING NEW REGULATION OF HIGH QUALITY

3.1. Administrative transparency and predictability

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influence by special interests. Just as important is the role of transparency in reinforcing the legitimacy and fairness of regulatory processes. Transparency is a multi-faceted concept that is not easy to change in practice. It involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeals processes that are predictable and consistent. The Dutch regulatory system has made much progress in these areas, but some problems merit further attention.

Transparency of procedures: administrative procedure laws

Dutch legislation sets out specific requirements for administrative procedures to be followed in promulgating both legislation and subordinate regulation, and hence meets the OECD benchmark in this area. The 1983 Constitution enjoined the legislative authorities to promulgate general rules of administrative law. As a result, a process of codification of the existing administrative law has been undertaken and in January 1994 the General Administrative Law Act came into effect, considerably enhancing the transparency of administrative rights. The Act sets out in detail the procedures to be followed in making administrative orders as well as in objecting to orders and appealing against their application.

Transparency for affected groups: use of public consultation

Dutch values of consensus are reflected in national consultation practices. Consultation in the Netherlands is extensive, multi-faceted and strongly institutionalised. It has undergone rapid change in recent years in response to dissatisfaction with its inefficiencies, to improve safeguards against excessive influence by interest groups, and to reflect broader trends toward a more pluralistic Dutch society. Reform of consultation is likely to be a continuing process, and further areas for reform are identified below.

A central principle in Dutch consultation is that of "separation of advice and consultation". This principle reflects two underlying objectives: the search for expert advice to improve regulatory quality and the search for consensus as a political value. Its adoption has resulted in the existence of two formal and distinct consultation structures.

The first of these, constituting the "advisory" function, is composed of a wide range of formal advisory bodies, created in an *ad hoc* fashion by individual legislation to work closely with ministries on policy issues of strategic importance. Membership is notionally based solely on expertise, although in practice direct interests are also represented (for example, the consumer credit advisory body includes consumer and banking associations). The Dutch constitution explicitly authorises and recognises these bodies as "permanent advisory bodies for matters of legislation and administration of the State". The most important advisory body is the Council of State which until recently was required to be consulted on all draft legislation, Orders in Council, and international agreements requiring parliamentary approval. Members are former politicians, judges, scholars, and civil servants and have permanent appointments (until age 70).

The second structure, representing the "consultation" function is composed of the network of advisory bodies created under the Industrial Organisation Act of 1950. Here, the *tripartite principle* is the underlying factor determining representation. The chief consultative body under the Act is the Social and Economic Council (SER), composed of 15 members representing employers' interest, 15 representing employees and 15 independent experts appointed by the Crown on the advice of the government. The industrial advisory bodies also wield considerable regulatory power for their members in areas such as registration, production, sales, wages, training, and enforcement.

These bodies have historically been used within the corporatist system to introduce checks and balances into decision-making, to increase the legitimacy of legislation, to identify "acceptable" policies, and improve the level of "voluntary" compliance, including a smooth and rapid implementation of new legislation, once agreed. Such consultation also ensures that affected parties are well-informed of new regulation in advance and are able to minimise adjustment costs through forward planning. This seems theoretically to be an important consideration, although there is apparently no research to indicate its significance in practice. In recent years, however, these structures have been criticised as unsuited to contemporary economic, social, and administrative realities:

- They have severely dampened policy responsiveness. On average, seven years was required to introduce new legislation, a considerable fraction of which was traditionally spent in consultation.

- The separation of "advice and consultation" has been compromised in practice. Advisory bodies have too often functioned as defenders of narrow self-interests, rather than as providers of expertise.

- As the Commissie Geelhoed found, extensive consultation based on the search for consensus promotes regulatory complexity, as additional details are added in an attempt to balance competing interests.

- By "locking in" consensus solutions at an early stage, the advisory and tripartite bodies have been accused of limiting the role and freedom to act of the Government and Parliament.

- The corporatist and cartel-like structures established under the Industrial Organisation Act are increasingly inconsistent with EU single market policies, particularly competition principles.

- Changes in Dutch society, including a decline in union membership and the rise in other forms of social organisation, meant that the representativeness and hence the legitimacy of the tripartite structures was diminished. The Dutch Government stated in 1993 that *"The desired social base cannot always be obtained by consulting advisory bodies"*.[13]

The Dutch Government has responded with significant reforms. The number of advisory boards was drastically reduced, from 491 in 1976 to 161 in 1991 and 108 in 1993. A yet more radical reform in 1997 abolished all 108 remaining bodies and replaced them with a single advisory body for each Ministry. This reform aims to clearly separate advice and consultation, and to refocus these bodies to major policy issues away from details. The oversight ministries are concerned that too many consultative groups have been re-established following the abolition, but they believe that the change has, nonetheless, improved the situation. Old habits die hard, however, and, without limits on their numbers, there is a continuing danger of proliferation of "new" advisory bodies.

Another fundamental change taken in 1997 is removal of the legal requirement for the government to consult advisory bodies. This follows a more limited change implemented in 1994 (via the General Administrative Law Act) abolishing the consultative requirement in cases where legislation is limited to implementing binding EU legislation. Both of these changes affect the peak consultative bodies (the SER and Council of State). A time limit of three months was also imposed for the provision of advice to reduce the contribution of consultation to the length of the Dutch legislation-making process.

The full effects of these changes cannot yet be estimated. However, recent studies have indicated that the average time taken to implement legislation has been significantly reduced, to about four years.[14] Interestingly, there is some support for the changes from among the major consultative bodies themselves. The SER has stated that it sees significant benefits because the government will request its advice as a matter of choice, rather than by legal necessity. This will permit consultative bodies to focus resources where advice is most likely to be influential.

Despite these changes, ministries are increasingly turning to other consultation approaches that offer still more flexibility and openness. “Informal consultation” is conducted at the discretion of Cabinet, individual Ministers or departments in the absence of any legislative requirement. Since informal consultation is discretionary, the initiator can choose who will participate, and how. Evidence suggests that informal consultations are increasingly being used to do the real work of consensus building, and that formal legislated processes are becoming little more than a subsequent formality. This reflects the fact that informal approaches can be less cumbersome and more flexible and hence better adapted to the need for speed and participation of a wider range of interests.

Another consultation mechanism—the “notice and comment” requirement—is increasingly, though not widely, used. Some laws require pre-publication of regulatory proposals and invitation to comment from all members of the public. This mechanism, like “informal consultation”, is more open and non-corporatist than traditional approaches. The Dutch experience with “notice and comment” forms of consultation has not been very successful due to a low level of public participation. One explanation is that the “notice and comment” process is more mechanical and not dialogue-oriented, while Dutch interest groups prefer dialogue. However, it may also be related to the infrequent use of this tool (estimated at less than 10% of regulatory proposals) and its newness. Greater experience may increase its effectiveness, as might attention to better notice of consultation opportunities and provision of better information on policy proposals, particularly by providing regulatory impact assessments as part of the proposal.

Assessment of consultation reforms. Together, these reforms represent a major overhaul of virtually all aspects of consultation. By giving the administration greater flexibility on who to consult and when, these reforms have sought to enhance the value-added of consultation in producing hard data and expert opinion, and to streamline the process and reduce delays. Increased use of open “notice and comment” processes aims to increase participation by a greater range of interests. The reforms are consistent with an international trend toward more transparent and accessible regulatory processes.

How well have the reforms actually performed? Have they caused additional problems? The answers are as yet largely unknown. Many of the changes made are recent, and as in most OECD countries, there has been no formal evaluation of the performance of consultation in the Netherlands. It is likely that the more flexible, accessible, and targeted approach to consultation will in fact produce important benefits for the quality of regulation, not least because consultation is today occurring within the context of more rigorous controls on regulatory quality. This is seen, for example, in the re-emphasis of the “advice” function over that of “consultation”. These changes indicate that consultation is seen today as an input to quality decisions, rather than as an end in itself, which is a major cultural change. One issue that should be closely watched is the tension between flexibility and accessibility. If ministries have too much discretion to pick and choose who will participate, the risk is great that “insider” groups will gain too much access and influence at the expense of “outsiders”, and that transparency will be lost. The OECD has recommended that “all interested parties” should have the opportunity to present their views, and this will require systematic and predictable consultation processes of some kind.[15]

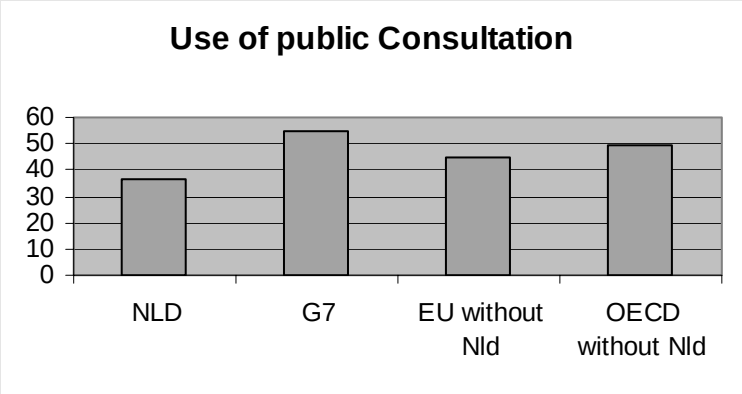
Transparency in implementation of regulation: communication, compliance and enforcement

The Netherlands is rare among Member countries in specifically addressing issues of compliance and enforcement as part of the process of making legislation and Cabinet regulations. There are three sources of requirements on these issues: the Directives on Legislation of the Ministry of Justice, the Inspectorate of Law Assessment, also within the Ministry of Justice, and the compliance element of the RIA question framework.

The *Directives on Legislation* require regulators to ensure, before adopting a regulation, that they will be able to "adequately" enforce it. They must explicitly consider whether enforcement under administrative, civil or criminal law would be most appropriate. Explanatory notes to these instructions specify general legislative drafting principles for improving enforceability, including minimising scope for different interpretations, minimising exceptions, directing rules at "situations which are visible or which can be objectively established" and ensuring practicability for both enforcers and the regulated.

Box 6. **Use of public consultation in selected OECD countries**

In this synthetic indicator of the scope and systematic use of public consultation, the Netherlands falls slightly under both the OECD average score and the average for EU Member countries. This indicator looks at several broad aspects of the use of consultation and ranks more highly those that are routine, non-discretionary, accessible to all interested parties, and used earlier in decision processes. Despite the widespread use of public consultation in the Netherlands, its consultation programme is relatively less open to all interested parties, and gives regulators more discretion about when and how to consult, potentially reducing transparency and raising the risk of undue access by special interests.



Source: Public Management Service, OECD.

In addition to considering administrative, civil or criminal enforcement, drafters are required to determine what role the law on professional misconduct can play and the utility of preventative methods such as information campaigns. The potential benefit of combining enforcement methods should also be considered.

The *Inspectorate of Law Assessment* within the Ministry of Justice acts as consultant to ministries on issues of enforcement and enforceability in relation to legislative proposals. The Inspectorate regards enforceability assessment as essentially probabilistic, recognising that there is inevitably significant uncertainty. It aims to identify the two or three key "risk factors" for compliance/enforcement in relation to each regulatory proposal reviewed to enable policy makers to address these issues in advance.

The review is made as consistent as possible through adoption of standard checklists and other instruments. A key tool is the "table of eleven" key determinants of compliance. These were developed jointly by the Ministry of Justice and Erasmus University and derive from the academic literature in the areas of social psychology, sociology and criminology, supplemented by the Ministry's practical experiences and viewpoints on law enforcement. The table is in three parts:

- *Spontaneous compliance dimensions.* These are factors that affect the incidence of voluntary compliance—that is, compliance which would occur in the absence of enforcement. They include the level of knowledge and understanding of the rules, the benefits and costs of complying, the level of acceptance of the "reasonableness" of the regulations, general attitudes to compliance by the target group and "informal control", and the possibility of non-compliance being sanctioned by non- government actors.

- *Control Dimensions.* This group of factors determines the probability of detection of non-complying behaviour. The probability of detection is directly related to the level of compliance. The factors considered are the probability of third parties revealing non-compliance, the probability of inspection by government officials, the probability of inspection actually uncovering non-compliance and the ability of inspection authorities to target inspections effectively.

- *Sanctions dimensions.* The third group of factors determines the expected value of sanctions for non-compliance, that is, the probability of a sanction being imposed where non-compliance is detected and the severity and type of likely sanctions.

The Table of Eleven is used both to guide reviews of compliance and enforcement relating to existing legislation and as an analytical tool in the development of new regulation. The Table is an innovative and promising approach to the problematic issue of improving compliance. Serious concerns about compliance levels are prevalent in OECD countries as regulatory inflation and the increasing use of complex technical standards put pressure on all three of the compliance factors identified above. The "checklist" approach used in the Netherlands can help regulators consider compliance issues in a detailed, systematic fashion, and also provide a useful review and quality control tool.

3.2. Choice of policy instruments: regulation and alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. The range of policy tools and their uses is expanding as experimentation occurs, learning is diffused, and understanding of the markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically strong disincentives for public servants to be innovative. A clear leading role—supportive of innovation and policy learning—must be taken by reform authorities if alternatives to traditional regulation are to make serious headway into the policy system.

Here, the Dutch system presents both strengths and weaknesses. On the one hand, the Ministry of Justice's Directives on Legislation encourage regulators to consider alternative policy instruments. In the case of primary legislation, the reason(s) that alternatives have not been used must be explained to Parliament. On the other hand, there is no operational guidance on the characteristics and uses of alternatives for regulators to consult. The RIA system does not require that alternatives be identified and assessed in the impact analysis, so there is little transparency or accountability as to the choice of regulation over other options, nor even necessarily identification of the alternatives that have been considered.

Despite this, there is considerable experience with the use of some kinds of alternatives in the Netherlands, primarily co-operative forms of regulation that are related to corporatist traditions, and also with some market incentives. The co-ordinating agencies for MDW believe that alternatives are "widely and seriously considered"[16] and that the search for alternatives is partly driven by the need to find faster ways to implement policies, given the length of time taken for legislative change. There is little sign as yet, however, that the diversity and scope of alternative instruments has increased in practice in recent years.

The most innovative policy field is in the area of environmental protection, where a wide range of instruments including subsidies and taxes, Environmental Management Plans and Environmental Audits (which will be compulsory for some 300 major firms) are employed. The National Environment Policy Plan[17] emphasises the need to use "legal, financial or social instruments and information" to achieve environmental policy objectives and states that "The success of environmental policy stands or falls on the mix of instruments chosen". Here too, concerns about the length of the legislative process are expressed: "The long gestation period and lack of flexibility mean that legislation is increasingly perceived as an obstacle to social renewal."[18]

Interestingly, concern for choosing the most effective instrument is accompanied by awareness of the overall costs of regulation. Research by the National Institute of Public Health and Environmental Protection has arrived at an estimate of total environmental costs (2.7% of GDP in 1995, including public and private expenditures) and projected their change over time (estimating a slight fall to 2.5% by 2010).[19] Benefits have not been similarly quantified.

Alternative policy instruments used by the Environment Ministry are generally seen as mutually supporting elements, with a strong regulatory component, rather than as being a stand alone policy option. For example, firms that have Environment Management Plans benefit from the application of less detailed licensing requirements than those that do not. Firms completing the environmental audit process are similarly rewarded. Development of complex policy mixes in which various regulatory and market incentives work together has been noted in most areas where alternatives are prominent.[20]

Tradable permits. Tradable permits are used in the Netherlands mainly in the agricultural sector. Examples include fisheries licenses, fishing quotas for plaice and sole, manure spreading rights and milk quotas. Tradable permits have also been used in the road haulage sector (now superseded) and in inland shipping. The environment sector has not been a user of tradable permits to date, but an upcoming "green energy permits" scheme will represent a significant use of this instrument.

Taxes and subsidies. Tax reform has become a key aspect of Dutch environmental policy. New environmental taxes have been introduced over the last two years in a revenue neutral context (for instance the revenue of the "regulatory tax on energy", introduced in 1996, is redistributed to the payers (mainly households) in the form of reduced income taxes (households) and reduced social security contributions (small businesses)). Two other examples are income tax deductions for commuting via public transport and differential indirect tax rates to favour the use of unleaded petrol.

There has been a progressive evolution of the use of economic instruments in the Netherlands. Starting in the early 1970s with a series of earmarked charges (basically to finance environmental expenditures), it has evolved since the mid 80s toward non-earmarked taxes progressively integrated into comprehensive tax reforms. In 1997, the Dutch Green Tax Commission issued its report, recommending a number of adjustments in the tax system. Green tax reform is a major vehicle for integrating economic and environmental policy, and can be regarded as a major piece of regulatory reform.

Information disclosure. Information disclosure is another alternative policy instrument that is used predominantly in relation to environmental issues. One key element, shared with a large number of countries, is the use of Environmental Impact Assessments in relation to large project proposals. Provision for EIAs has been incorporated in Dutch environmental legislation since 1987. Another widely used information disclosure strategy is the "eco-labelling" of products—that is, the provision of information to consumers on the environmental aspects of the manufacture, use and/or recycling of the product.

Box 7. **Environmental covenants in the Netherlands**

Covenants, used in the Netherlands since the 1980s, are employed in most major policy areas. A survey in the early 1990s produced a list of more than 150 covenants in force, and the numbers have continued to grow. Their largest use is for environmental protection, where the number of covenants increased from 40 in 1994 to over 50 in 1998. Covenants have been concluded in areas such as basic metals, paper and cardboard production, dairy products, batteries, PET bottles, CFC and phosphate use, wastes, and in the chemical industry.

The covenant is a negotiated agreement between a ministry and industry group for specific actions to be carried out. Covenants can have a fixed or indefinite duration. The majority of covenants are concluded between a Ministry and an industry umbrella organisation (usually in sectors dominated by large firms) and bind all members of the organisation. Hence, the influence of the covenant can be far-reaching. The roots of this type of covenant in Dutch corporatist traditions are evident. Often characterised as "voluntary agreements", some covenants are in fact concluded under civil or administrative law and are legally enforceable.

The Dutch government uses covenants in three ways: as a temporary instrument pending the passage of legislation; as a supplement to legislation to achieve higher standards; and as an alternative to legislation. In all three cases, the National Environmental Policy Plan explicitly recognises the importance of securing the co-operation of target groups in achieving the objectives. In practice, the majority of covenants are concluded as supplements to legislation. Governments have been reluctant to use them as alternatives to regulation, perhaps due to uncertainties or difficulties with enforcement. It is also possible that a lack of public confidence in the instrument and a preference for clearly enforceable sanctions limits use of the covenant as a stand-alone tool.

Use of covenants as a temporary measure seems to be a direct result of the length of the legislative process in the Netherlands: When seven or more years can elapse before legislation is in place, there is considerable demand for a more responsive form of policy action.

For producers, the attraction of covenants is that they are negotiated with individual industry sectors (unlike most legislation) and the process allows more significant input. Convenants are seen as potentially more responsive to industry needs in terms of means of implementation, scheduling of requirements, and so forth.

Significant dissatisfaction arose with the early use of covenants, focusing on their lack of clear obligations to achieve results, uncertain legal status, lack of third party involvement, and concern that the role of parliament was being supplanted. These concerns were addressed via the issue of guidelines on the use of covenants. The most recent, in the form of a 1995 Cabinet regulation, includes criteria for choosing policy instruments, binding of the parties, openness, making objectives and obligations explicit, accounting for interests of third parties, dispute resolution, and evaluation.

Notwithstanding the guidelines, the making of covenants is less open to third parties than is the legislative process, and concerns about legitimacy remain. Moreover, while the guidelines require consideration of whether parliament ought to be involved, there is no requirement that this occur. Finally, there are concerns about the possible effects of these industry agreements on competition.

Source: Bastmeijer, Kees (1997), "The Covenant as an Instrument of Environmental Policy: A Case Study from the Netherlands," published in Huigen, Hans, ed. (1997), *Co-operative Approaches to Regulation*, PUMA Occasional Papers No. 18, OECD, Paris.

Management Plans. Businesses are increasingly required to develop individual management plans, based on their own assessments of health, safety and environmental risks pertaining to their specific operations. Management plans consist of priority listings, budgets, timeframes and evaluations. Environment ministry officials state that their organisation responds to the existence of realistic and relevant management plans by adopting a considerably more flexible approach to their activities.

Replacing ex ante licenses with general rules. One of the more damaging forms of regulation is the *ex ante* licensing or permitting requirement. These kinds of regulations increase investment delays and uncertainties, have disproportionate effects on SME start-up, and are very costly for public administrations to apply. Yet they are pervasive in OECD countries. The Netherlands has made substantial reforms in this area, although the potential for further gains remains substantial.

A significant reduction in licences and permits was accomplished by the liberalisation of the Business Establishment Law in 1996. Under the new law, narrowly defined requirements were withdrawn or replaced by general ones governing three categories of businesses: in the first group, no legal entrance requirements are required; in the second, including bakeries and butchers, some general professional skills are demanded; in the last group, specific skills are required. In total, establishment rules were reduced from 88 to eight. In practice, the reform also meant, for instance, that 60 000 retailers and hotel and catering businesses do not need any longer to obtain licences that used to cost between Gld 2 000 and Gld 15 000. They instead must simply comply with general rules and report to the local authority, at a cost of less than Gld 50. Nevertheless, because of remaining concerns about the effect on start-ups, a review of this new law will be brought forward by three years to 1998.[21]

In the environment area, one of the significant results of the MDW programme has been a significant reduction in the number of firms subject to environmental licensing. Where licenses are removed, control instead falls to the use of general regulatory standards. This significantly reduces burdens for those firms not among the highest priority areas for environmental surveillance by eliminating the paperwork and inspection burdens associated with the licensing process. As a result of this policy, the number of firms required to hold an individual environmental license has fallen from around 100 000 to 80 000 over the last two to three years and is expected to fall further.

While this represents a significant shift, over 20% of Dutch firms remain subject to environmental licenses. By comparison, a similar process of reform conducted in the Australian state of Victoria over several years reduced the number of firms subject to environmental licences to around 1 600, or little more than 1% of the total.[22]

Assessment of the use of alternative instruments. The Dutch experience with alternative policy instruments is more extensive than that of many OECD countries, and the results appear to be positive with respect to cost-effectiveness of policy delivery. Significant experience with alternatives has accumulated in some areas, with the Environment Ministry taking a leading role. The use of covenants, the substitution of individual permits for general rules, and the use of environment management plans in the permitting system have probably had large impacts on both costs and effectiveness. The use of covenants may be favoured by the consensus oriented Dutch political culture which emphasises social responsibility and would therefore tend to increase the scope for voluntarism in addressing policy goals. Delays in the legislative process have provided another incentive for ministries to develop alternatives.

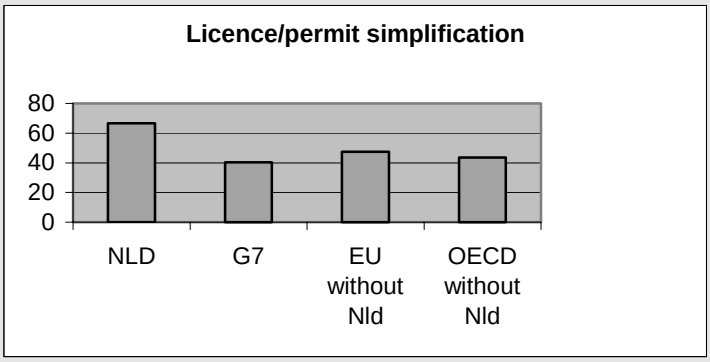
In other policy areas, however, alternatives have been slow to be embraced. For example, major reform of occupational health and safety rules to implement performance based standards is currently underway in the MDW process, though such approaches have been progressively implemented since the 1970s in a number of other countries. Questions of the legitimacy of some alternatives have been raised. These concerns appear to relate both to the concept of voluntarism *vs.* obligation, and inadequate transparency in the development and implementation of some alternatives. Not enough is known, however, and the benefits and costs of alternative instruments are ripe for evaluation.

Practices in other OECD countries suggest possible improvements to the capacities of the administration to identify alternative approaches. The Directives on Legislation include a general requirement for alternatives to be considered and used where possible and (for primary legislation) for reasons for their non-use to be set out explicitly. Yet lack of a requirement for consistent identification and analysis of the relative merits of different alternatives has slowed Dutch efforts to improve policy cost-effectiveness.

Resolving this problem requires action on a number of fronts: implementation of a formal requirement to analyse alternatives in the RIA context, strategies to ensure that RIA occurs before agencies are strongly committed to particular policy choices and strategies to ensure that there is a widespread awareness and understanding of the characteristics of a range of alternative policy instruments. The latter is often successfully combined with RIA training programmes.

Box 8. **Simplifying permits and licenses in selected OECD countries**

This synthetic indicator of efforts to simplify and eliminate permits and licenses looks at several aspects, and ranks more highly those programmes where countries use one-stop shops for businesses and the "silence is consent" rule to speed up decisions, where there is a complete inventory of permits and licenses; and where there is a specific programme, co-ordinated with lower levels of government, to review and reduce burdens of permits and licenses. The Netherlands ranks very highly on these scores relative to other OECD countries, missing only an inventory of permits and licenses that would probably be of assistance in making further progress.



Source: Public Management Service, OECD.

3.3. Understanding regulatory impacts: the use of regulatory impact analysis (RIA)

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments "integrate regulatory impact analysis into the development, review, and reform of regulations." A list of RIA best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries*,[23] and provide a framework for the following description and assessment of RIA practice in the Netherlands.

Regulatory impact analysis has been formally required for new regulation in the Netherlands since 1985 through the revised Directives on Regulation issued by the Prime Minister. The original (1972) edition of the Directives was concerned with the procedural aspects of legislative quality, and with questions of law-making techniques. Thus, the inclusion of RIA broadened the tools of regulatory quality to include the *ex ante* measurement of the likely cost and effectiveness of proposed legislation.

However, the RIA requirements imposed in 1985 were ineffective. Only very general requirements were established, an approach that was recently being described by officials as "formalistic"—in essence based on answering very general questions in Cabinet coversheets—and with little supervision of the quality of work. Moreover, the focus of RIA was on indirect or "side-effects" of regulations, that is, on ensuring that impacts that might be overlooked were identified, rather than on a careful weighing of the whole impact. A review of RIA in 1994 (General Accounting Office)[24] and another in 1995 (EIM) both concluded that very rarely were full analyses of the issues described in the directive undertaken. RIA were largely conducted through qualitative analyses, and use of very general statements of effects was widespread. RIA had not developed into an adequate and reliable tool for decision-making, and as a result little was achieved via the RIA requirements in this period.

The RIA programme was completely overhauled in 1994-5 as part of the new Cabinet's policy on regulatory reform. The new RIA programme stressed co-operation between three agencies (Justice, Economic Affairs and Environment) in improving the quality of analyses. A facilitative approach was taken, with a centrepiece being a "help desk" staffed by these three agencies to which regulators could turn for assistance in completing RIA.

The general consensus today is that the degree of quantification of regulatory benefits and costs has slightly improved, but remains low. A useful indirect measure of the impact RIA is the frequency with which the RIA process has resulted in amendments to, or the abandonment of, proposals. In early 1997, it was reported that, during the first 18 months of the operation of the help desk, around 20% of legislation tested was modified or abandoned. In early 1998, Dutch officials believed that a similar ratio had continued since. This is a relatively high percentage, and one which can only be increased if the current moves to investigate the feasibility of using a more explicit and quantified approach to RIA result in substantial change.

In the following paragraphs, the Dutch experience with RIA is gauged according to the best RIA practices identified by the OECD.

Maximise political commitment to RIA. Use of RIA to support reform should be endorsed at the highest levels of government. The Dutch system rates highly on this criterion. RIA is a central element of the MDW programme and therefore enjoys the public commitment of senior ministers in the Dutch Cabinet: the Prime Minister, the Minister for Justice and the Minister for Economic Affairs. One practical result of this support is that the Dutch RIA programme covers all legislation as well as Cabinet regulations, which is rare, and laudable, among OECD countries.

Allocate responsibilities for RIA programme elements carefully. To ensure "ownership" by the regulators while at the same time establishing quality control and consistency, responsibilities should be shared between regulators and a central quality control unit. The Dutch approach gets mixed reviews in this regard.

As in virtually all countries, regulatory impact assessments in the Netherlands are conducted primarily by the regulators responsible for the decisions. There is a profusion of quality control. Comments are received from other Ministries, and the Helpdesk (Ministries of Economic Affairs, Justice and Environment). The Ministry of Justice separately assesses the quality of RIA information as part of its broader quality assessment function before draft legislation goes to the Council of Ministers. An additional review is provided by the Council of State at Government request.

If the explanatory memorandum (containing the RIA) is considered inadequate, the Ministry of Justice can oppose the forwarding of the proposal to the Council of Ministers. This ability to delay the consideration of the proposal provides some incentives to regulators to ensure that the RIA is adequate. However, the power provided to the Ministry falls short of a formal requirement for approval of the analysis, and, given the political capital required, it is probably not realistic to suppose that the Ministry of Justice is able to act consistently in blocking inadequate proposals.

Establishment of the "help desk" was expected to contribute to improving the quality of assessments in other ways. Regulators are able to discuss assessments with specialists in the relevant areas (*i.e.*, business impact, environmental impact) at an early stage. The help desk is able to assist with the design of analyses, the collection of necessary data, and its analysis and interpretation. The help desk's resources include the services of a statistician, who is available without charge to Ministries, and financing (between 700 000 and 1 million Dfl in recent years) for necessary research. Providing dedicated resources from an external source is likely to address a key problem in relation to RIA quality: the reluctance of regulators to divert scarce agency resources to impact analysis.

The Dutch RIA system involves a number of players and is unusual in OECD countries in drawing on the expertise of three different departments in implementing quality controls. This is potentially a very strong partnership. However, oversight appears to be compromised by the lack of a clear distinction between RIA review and the more general review of legislative quality by the Ministry of Justice. The split in the exercise of *ex ante* assessment of legislation in the Netherlands does not conform to a "technical legal quality" *vs.* "policy issues" dichotomy. Instead, elements of the policy process are contained within the assessment made by the Ministry of Justice, rather than within the policy based RIA process. This has historical roots and could relate to the strong role still exercised in regulatory reform by the Ministry of Justice. However, the lack of explicit accountability for RIA quality appears to reduce the scope and effectiveness of the RIA process.

In addition, the extremely active and interventionist role taken by the help desk has meant that regulating ministries feel a diminished sense of responsibility for the conduct of RIA and, arguably, for the quality of the final product. This problem is recognised within the co-ordinating ministries, who consider it to be a key challenge for the future. A strategy needs to be developed to address the issue without compromising the benefits, mentioned above, of the current interventionist approach.

Train the regulators. Regulators must have the skills to do high quality RIA, yet RIA is one of the few areas of regulatory reform in which detailed guidance material has not been developed and issued to ministries. Moreover, the co-ordinating ministries have not developed training programmes in RIA skills, preferring to invest in skills through the help desk function. The primary source for RIA guidance is the Directives on Legislation, since most of the issues treated in the Directives are in many countries dealt with in guidelines on the conduct of RIA.

While these guidelines are in many ways equivalent, and perhaps gain authority by being of more general application, they are not presented in terms of RIA requirements. In addition, they arguably address legal issues at the expense of economic/policy concerns. This approach must retard the development of the "cultural change" among regulators and reduce the development of a sense of responsibility for the conduct of RIA.

A major first step would be a concerted attempt to provide training and guidance materials to large numbers of policy staff within ministries. Training and guidance should emphasise the role of RIA in making good policy choices and the importance of benefit-cost principle in ensuring that social resources are used well. It should provide practical guidance on data collection and methodologies. Provision of

guidance material could help achieve consistency in methodological approaches and assumptions between different RIA. It could also contribute to the co-ordinating ministries' objective of enhancing the degree of responsibility taken by ministries for their own RIA. Finally, the issue of guidance documents may need to be considered in a broader context, given the concern expressed by officials about developing "guideline inflation". Attention to the relationship between different training and guidance initiatives may be a crucial determinant of the effectiveness of this approach.

Use a consistent but flexible analytical method. The Directives on Legislation require that a "General Impact Analysis" be undertaken, wording that has remained essentially unchanged over the years. RIA is guided by a list of specific questions required to be answered. There are currently 15 questions, covering business effects (7 questions), environmental effects (4 questions) and feasibility and enforceability (4 questions). The nature of the questions is such that a broad view of the effects of the proposed legislation, covering both costs and benefits, is required. However, the questions are, apparently deliberately, expressed in a way that does not imply quantified answers.

Additional detail on the costs to be considered in weighing regulatory proposals and alternatives is provided in the Directives on Legislation. These lists cover costs both to the private sector and to government. However, while departments are formally required to consider these costs, there is no requirement to document the costs in the RIA. Thus, there is little basis for ensuring that this element of the Directives is complied with in practice. The absence of a formal requirement for benefit/cost analysis means that there are few incentives for ministries to quantify and compare the various impacts of regulatory proposals.

Improved training and guidance material may stimulate more extensive and quantified RIA analyses that are better able to guide decisions. A more explicit requirement for quantification, such as the adoption of a formal cost/benefit test, would clarify that all reasonable steps toward quantification are required to be taken. The record in OECD countries shows a trend for more precise and analytical RIA requirements to be adopted, covering a wider range of impacts, as experience with RIA accumulates and expertise develops, and as policy officials become more sophisticated as consumers of analytical information. Since the commencement of this review, the Dutch Government has commenced an inquiry into the feasibility of implementing a more formal requirement for quantified benefit/cost analysis to be conducted in respect of draft legislation.

Develop and implement data collection strategies. As noted, training and guidelines have not been a part of the RIA programme to date. However, the help desk function has included the availability of a specialist statistician as well as the ability to make funding available to conduct RIA research. Thus, assistance is available to ministries in collecting and analysing data. Nonetheless, development of guidance on various methods of data collection for RIA would improve ministry responsibility for RIA and reduce the burden on help desk resources.

Target RIA efforts. RIA resources should be targeted to those regulations where impacts are most significant, and where the prospects are best for altering outcomes. In all cases, the amount of time and effort spent on regulatory analysis should be commensurate with the improvement in the regulation that the analysis is expected to provide.[25] Dutch RIA efforts perform well here. The RIA requirement initially applied to all draft legislation and Cabinet level regulation, although regulations made by individual Ministers have been, and continue to be, excluded for reasons of perceived practicality. But changes made in 1994 have moved toward a more selective approach. In the first instance this means restricting the RIA requirement to only those proposals that meet certain criteria. As a result, only 8 to 10% of regulations are currently being selected for assessment.

Secondly, the questions to be addressed in the RIA are adapted to the specific regulation. The Ministerial Committee reviews the regulatory proposals and determines which of the 15 questions contained in the Directive must be answered for each regulation. This "customisation" of the RIA requirement has been taken quite far, with no case having occurred since 1995 of every question having to be answered for a single regulatory proposal.

Another aspect of coverage relates to the treatment of European legislation. Although it has been subject to impact assessment since 1986, the quality of these assessments in practice has generally been low. Yet national legislative quality is, for an EU Member, closely related to the quality of EU legislation. In July 1996, the Ministers for Economic Affairs and Justice informed Parliament that a "limited number of important Brussels dossiers will be subjected to an assessment based on MDW aspects".[26] The co-ordinating ministries believe that the RIA processes should be developed to enable a flow of information on regulatory impacts to the European Commission to improve its ability to conduct RIA on proposed Community law. This is consistent with attempts during the Dutch Presidency of the EU to focus on means of improving RIA in the European context.

Integrate RIA with the policy-making process, beginning as early as possible. Regulatory reformers in the Netherlands emphasise that the approach adopted by the help desk is a co-operative one and that this has been successful in encouraging regulators to make use of the expertise made available. A 1996 evaluation (IME Consult) found that most regulators now see RIA as "an essential and natural part of their policy choices" and "expect it to speed the decision-making process on legislation in the Council of Ministers due to the improved preparation".[27]

Notwithstanding this, the Ministry of Justice states that approximately 10% of legislation subject to its quality control is regarded as inadequate, even after discussions with the ministries involved. Evidence suggests that the effectiveness of RIA has been constrained in part by the fact that ministries have a significant commitment to a particular regulatory approach by the time RIA is applied. They are thus reluctant to modify them even where weaknesses are demonstrated by the analysis, a tendency that can only be exacerbated by the length of the legislative process.

The Ministry of Economic Affairs identifies as a key challenge the need for the help desk to become involved with ministries at an earlier stage, to ensure that RIA is commenced earlier, and thus improve its ability to change policy where analysis points to weaknesses. This will require a more proactive approach in identifying and selecting dossiers for analysis as well as improving knowledge of RIA requirements and encouraging better consultation. Implementing a training programme, supplemented by guidance materials, as discussed above, would also make a significant contribution.

Involve the public extensively. Impact assessments on primary legislation are submitted to Parliament as an input to its decisions. As a result, they are made publicly available prior to the legislation being debated and adopted. However, there are no formal publication requirements other than those applying to all tabled documents. Thus, the level of awareness of RIA is low. There is no formal mechanism for soliciting public comments on the basis of RIA. While the Netherlands has a highly developed public consultation process, it is not integrated with RIA. The opportunity to use consultation as an additional quality control on RIA, by exposing assumptions and methodologies to scrutiny and argument from affected parties, is lost.

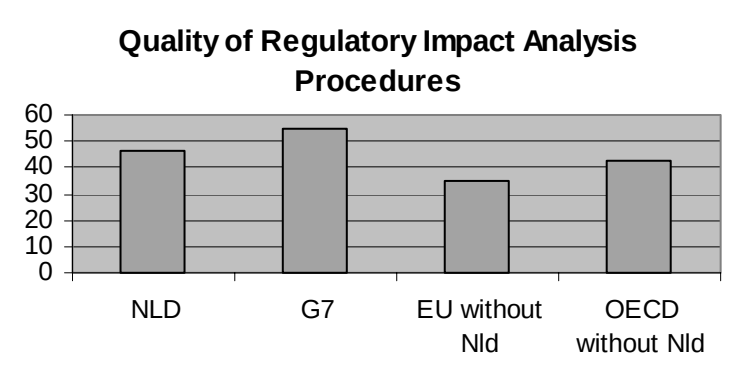
The situation is still less transparent with regard to RIA for Executive Orders and Ministerial regulations. RIA are submitted to Cabinet as a guide to decision-making. However, unlike the case with submission to Parliament, this does not imply any public availability of the analysis prior to the adoption of the regulation. The analysis is, however, published as part of the explanatory notes to the regulation after adoption.

Involving the public in the development and review of RIA is a high priority for improvement of Dutch RIA processes. The extensive nature of consultation in the Netherlands provides an excellent opportunity to improve the quality of RIA at small extra cost.

Apply RIA to existing as well as new regulations. RIA disciplines are equally useful in the review of existing regulation as in the *ex ante* assessment of new regulatory proposals. Indeed, the *ex post* nature of regulatory review means that data problems will be fewer and the quality of the resulting analysis potentially higher. Currently, there does not appear to be a high degree of consistency in review methodologies in the Netherlands. There are no standardised evaluation techniques or decision criteria promulgated as the basis for conducting review. Cost savings or enhanced benefits likely to flow from reform proposals are frequently quantified, but a formal regulatory impact analysis approach is not widely used. This is a major area in which RIA could be better used to improve regulatory performance.

Box 9. **Use of Regulatory Impact Analysis in the Netherlands**

This synthetic indicator of the application and methodology of regulatory impact analysis looks at several aspects of the use of RIA, and ranks more highly those programmes where RIA is applied both to legislation and lower-level regulations, where independent controls on the quality of analysis are in place, and where competition and trade impacts are identified as well as the distribution of effects across society. It also ranks more highly the use of RIA documents for consultation purposes, RIA programmes where benefits and costs are quantified, and where a benefit-cost test is used in decision-making. The Netherlands has a middle ranking score on this indicator, being slightly ahead of the OECD average and somewhat ahead of the EU average, but behind the G7 average. Key shortcomings in terms of performance on this indicator are the failure to adopt a benefit-costs test (although this is now under consideration), to quantify costs and benefits consistently and to release of RIA documents for consultation. Better integration of RIA and consultation is identified as a key policy priority in this report.



Source: Public Management Service, OECD.

4. DYNAMIC CHANGE: KEEPING REGULATIONS UP TO DATE

The OECD Report on Regulatory Reform recommends that governments "review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively." In the Netherlands, institutionalised processes have been established for the review and reform or elimination of the large body of existing regulations, and much review activity has been undertaken. A high level of independence and transparency has been designed into these processes. There are also explicit programmes to review and reduce red tape and government formalities, which have had some success to date and are being broadened and further developed. These include reforms to key areas of business licensing as well as paperwork burdens.

However, there is not a high degree of consistency in review methodologies. There are no standardised evaluation techniques or decision criteria promulgated as the basis for conducting review. Cost savings or enhanced benefits likely to flow from reform proposals are frequently quantified, but a formal regulatory impact analysis approach does not appear to be widely used. As the Chair of the Social Economic Council observed, "We are better at making laws than at revising them".[28]

Reviews under the MDW programme. Targeted review of specific areas of regulation are carried out under the MDW programme. These reviews can relate to a particular regulatory "theme", or to an industry, activity or profession. The reviews are expected to be completed on an approximately annual cycle, and the MDW programme has passed through four "stages" since its launch in 1994. Review proposals are formulated by the Civil Service Commission and submitted to the MDW Ministerial Commission for approval. Selection of issues for review is based on several criteria:

– Economic significance of the subject.

– Likelihood of achieving fewer regulations and thus stimulating the economy and increasing employment.

– Whether dealing with the subject in the MDW framework adds value.

– Practical considerations, such as whether the project can be completed within one year.

– Considerations with respect to the equilibrium and representativity of the overall package.

Selection of areas for review by the Civil Service Commission includes an element of consultation with relevant interests including employer and employee groups, consumer associations, special interest groups (*e.g.*, environmental groups) and the parties responsible for implementation of the regulations. Once the Ministerial Council has approved the reviews, Working Groups are established to conduct research and draft reform proposals.

Legislation reviewed during this time includes significant elements of both social and economic regulation. In the former category are reviews of occupational health and safety, environmental permits hospitals, product liability and food regulation, while reviews of economic regulation have included the regulation of lawyers, accountants, real estate agents, the electricity industry, and taxis and professional pension schemes. In addition, action has been commenced on particular legislative themes of general application, such as the potential use of certification as an alternative form of regulation.

Box 10. **Activities reviewed under the MDW programme**

1st phase projects:

- Shop trading hours
- Taxis
- Environmental licenses
- Occupational health and safety regulation (move to performance basis)
- Driving hours (trucks)
- Legal practice monopolies
- Quality of EU regulation
- Standardisation and certification
- Citizens' contributions to collective organisations

2nd phase projects:

- Food legislation
- Hospital care (market based reforms)
- Noise pollution Act (decentralisation of implementing authorities)
- Higher education (more market based)
- On-charging of enforcement costs (general)
- Insurance agents (freeing entry to the profession)
- Compulsory professional pension schemes (relaxing/removing requirements)
- Partnership law reform (streamlining supervision requirements)
- Payments to local governments (streamlining administrative processes)
- Market and government (*i.e.*, competitive neutrality/withdrawal of government from commercial operations).

Third phase projects:

- Competition clause (review of laws enabling employers to bind former employees not to compete with them for a certain period after leaving their employ)
- Accountancy (review of professional regulation)
- Health care (market based reforms)
- Surface Water Pollution Act (permit reforms)
- Product legislation (rationalisation of legislative requirements & review of substantive laws)
- Bailiffs (review of professional regulation)
- Construction regulations (reducing and streamlining regulatory requirements)

Fourth phase projects:

- Estate agents
- Pilotage service
- Supervision and co-operation of copyrights
- Electronic performance of legal acts
- Access to the Health Insurance Act
- Business licensing procedures
- Petrol retailing

Cutting Red Tape. The OECD Report noted that governments should place a high priority on reviewing and reforming government formalities, particularly those that overload SMEs. Streamlining and reducing these burdens can free up scarce human and financial resources for more productive activities, and open opportunities for new businesses.

Reducing the administrative costs of compliance with regulations and taxes has been a major policy thrust for 10 years. The Netherlands has developed a range of policy responses to the problem, including one-stop shops, inventories of formalities, and programmes to reduce licenses and permits. No independent assessment of the success of these approaches exists, though self-assessment by the ministries indicates that they have cut some existing burdens. Hiring employees for the first time is still complex and expensive, particularly for SMEs.[29] It appears that at best, the Netherlands has stopped, or perhaps slightly reduced, the growth of the paperwork burden.

Since the early 1980s, the Netherlands has launched a series of initiatives to assess and reduce administrative burdens. Special commissions, like the Grapperhaus Commission (1985) and the Van Lunteren Commission (1994) demonstrated a high level of political concern in this area. The efforts have been sustained by a constant endeavour to refine reliable cost assessment tools (see Box 11) in this difficult area. In 1994, these efforts crystallised into a programme to reduce administrative compliance costs as one of the three elements of the MDW programme. The programme is the responsibility of the State Secretary for Economic Affairs and its progress is reported annually to Parliament. It focuses both on streamlining the content of regulatory requirements, and on improving government efficiency in applying regulations.

The 1994 programme has a number of elements. First, the government committed to reduce aggregate administrative compliance costs by 10% from 1994 to 1998. Ministers were asked in 1995 to self-assess the possibilities for burden reduction within their portfolios to achieve that figure. This resulted in a reform plan that is being implemented under the supervision of a group of senior officials representing all agencies involved.

Second, the State Secretary consults regularly with a panel of about 20 entrepreneurs, mainly from the SME sector, to identify further options for reform.

Third, reforms have been supported by a re-engineering of formalities and development of cost-effective alternative ways to apply them. For instance, several projects are underway to reduce burdens by better use of information and communication technologies. The government has continued to establish and expand one-stop shops for SMEs (*Ondernemershuizen* or “business houses”) in local chambers of commerce and other business organisation to help SMEs with information and problem solving instruments.

Results of the administrative burden reduction programme were assessed in 1996 through a process of aggregating the reductions made and comparing the total to the initial (1993) total burden figure. It was stated, though not documented, that the target of a 10% reduction in burdens had been met,[30] and a new target of a 25% reduction was set. Measurement of performance undertaken was "static", that is, it ignored additional burdens imposed due to new requirements. Hence, the 10% reduction in burdens represents not a net reduction but a reduction of those burdens existing in 1993. This is consistent with the approach taken in other programmes of this sort, including the U.S. Paperwork Reduction Act programme, but not terribly satisfying to businesses who might expect that their administrative costs would decline as a result of the programme.

The goal of reducing administrative burdens is also reflected in the two other major elements of MDW. Reducing burdens is one of the criteria employed in selecting candidates for "special project" status. Administrative burdens are explicitly considered in regulatory impact assessments. A recently proposed initiative would systematically bring business into the *ex ante* assessment of burdens in a manner similar to the Danish Business Test Panel.

Since the mid 1980, the Ministry of Finance has reformed and modernised the tax system. This was complemented by an important reform from 1987 to 1992 of the Tax and Custom Administration (TCA). The improvements include: unification of the tax base for wage tax and social insurance contribution; the establishment of specific units to deal with all tax affairs assigned to firms ("clients"), and the re-organisation of tax audits and the use of risk analysis in order to single out businesses which need special scrutiny, while *bona fide* conduct of firms is rewarded with more lenient and less frequent handling. TCA has also been experimenting with the use of electronic data interchange (EDI) to replace paperwork.

Box 11. **Calculating administrative compliance costs in the Netherlands**

Relative to many OECD Member countries the Netherlands has been a leader in the assessment of administrative costs on businesses. Two complementary methodologies have been used: evaluation through opinion surveys ("top-down approach") and assessment of the potential costs of relevant regulations through modelisation ("bottom-up approach").

Top-down approach: business surveys

In 1993, the Ministry of Economic Affairs commissioned EIM, a consulting firm, to carry out a business survey to estimate administrative compliance costs. The survey found that total costs were Gld 13.1 billion, or more than 2% of GDP. Compliance costs of taxes and levies were Gld 6.1 billion (47%), those of labour-related regulations amounted to Gld 1.41 billion (10.8%), while compliance costs of eight business-related regulations, including environmental regulation, amounted to Gld 5.54 billion (43.3%) (OECD, 1995, p. 10). The results of this survey can be compared to a 1989 survey undertaken by the Centre for the Economics of Local Government of the University of Groningen. Both studies found that compliance costs fall relatively more heavily on smaller enterprises than large ones, and that taxes and levies play an important part in the administrative compliance costs. It is interesting that the 1993 survey showed higher aggregate costs than did the previous survey. This may be due to differing definitions in the two surveys, but may also reflect actual increases in administrative costs (related to environment, municipal taxes, import/expert regulations and transport areas). However, a lower estimate is obtained for taxation for 1993. This may be due to an increased use of IT among businesses and simplifications related to tax law reform.

Bottom-up approach: the MISTRAL project

Since 1985, the Dutch government has been developing and refining a computer model, MISTRAL, to evaluate the business impact assessment of regulations. MISTRAL works in three stages: (a) an in-depth analysis during which all "data transfers" between a business and the authority (*e.g.* a document, a telephone call, and inspection, etc.) are isolated and defined; (b) the time involved in each "data transfer" and the function level of the person performing it (related to professional qualification and hourly wage-rate) are then determined; (c) the data are compiled by the computer to produce cost estimates. The two first steps are based on a multi-stage process of intensive consultation and discussion—individually and in groups—with experts from firms, accountants, employers and enforcing authorities. MISTRAL has been used to quantify administrative compliance costs of different laws and regulations, including evaluation of the information requirements of labour law, annual accounts, corporation tax, wage tax and social premiums, legislation concerning working conditions and environmental legislation.

Source Van der Burg, B.I. and Nijsen A.F.M., *How can Administrative Burdens of Enterprises be Assessed? Different Methods: Advantages and Disadvantages*, published in Kellerman, A.E.; Ciavarini Azzi, G.; Jacobs, S.H.; and Deighton-Smith, R. (1997), *Improving the Quality of Legislation in Europe*, T.M.C. Asser Instituut/Kluwer Law International, The Hague, p. 268 - 269; Communication from the Ministry of Economic Affairs (1993).

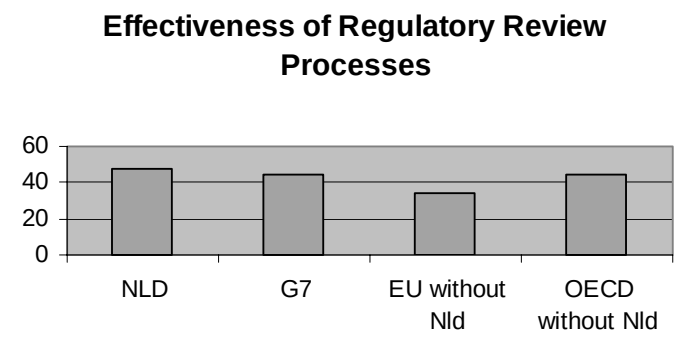
After nearly 6 years work, the Ministry of Social Affairs and Employment established a new system to process entitlements and benefits based on individual records. This has reduced the number of items on the annual statement required by the Joint Administration Office (GAK), which co-ordinates the thirteen insurance boards in the country, from 55 to 7 per employee. GAK has also established a single information retrieval and distribution centre where businesses can send information to be distributed to various GAK units. Eventually these centres should be extended to include other administrative agencies (TCA, pension funds, national health insurance, Central Bureau of Statistics, etc.). GAK has also been working on the use of electronic means (Videotext, and EDI) to reduce paperwork and automate the information requirements based on businesses' owned computer systems. A promising experiment consists of providing employees with a chip card where all the necessary information can be updated and retrieved by employers.

Based on the Grapperhaus Commission recommendations the Central Bureau of Statistics has implemented a policy to reduce real and perceived (which according to some studies is 10 times higher than the real) compliance costs of statistics collection. The initiatives underway include: reduction in the size of questionnaires; decreasing the frequency of surveys, and setting up a sample system in order to avoid, whenever possible, selecting the same firms for different studies in short periods of time. Other initiatives to reduce burdens concern the use of plain language in information requirements, establishment of electronic links with larger firms, targeting of "information operators" (*e.g.* accountants, consultants, administrative agencies) in order to make better use of existing records held by other parties and offices, and establishment of "delivery and distribution points" (DDPs) to provide a single collection point for all employee-related data.

Legislated review provisions. A review mechanism frequently used in the Netherlands is the inclusion of a requirement in a law requiring that it be reviewed within a certain period. These may be "one off" in nature or may require regular reviews. "Sunsetting", or automatic repeal after a certain period of operation, is also sometimes used in relation to both primary and subordinate legislation. These mandated reviews are frequently conducted by independent consultants (*i.e.*, external to government). The Government is currently giving consideration to ways of making such review activity more systematic by developing a specific legislative review policy.

Box 12. **Effectiveness of regulatory review processes in the Netherlands**

This synthetic indicator (based on self-assessments) of regulatory review processes looks at several aspects of methodological quality in the review and reform of existing regulations. It ranks more highly reviews that use standardised evaluation methods incorporating RIA, that include independent quality checks, and that are open to the public. The indicator includes a self-assessed measure of the frequency with which reviews have led to concrete changes. The Netherlands ranks about equal to the OECD average on this score, but somewhat ahead of the average for EU countries. It is weak on use of standardised methods including RIA and the ability of the public to identify areas for review.



Source: Public Management Service, OECD.

5. CONCLUSIONS AND POLICY OPTIONS FOR REFORM

5.1. General assessment of current strengths and weaknesses

In 15 years, the Netherlands has installed much of the administrative infrastructure to produce high quality regulations and to promote and carry out beneficial regulatory reforms. New disciplines have been built into the administration. Institutions with responsibility and incentives for good regulation—and with accountability at the highest political levels—have been created to make things happen. Quality standards based on good regulatory principles; decision tools such as regulatory impact analysis; and more transparent processes such as open public consultation have been adopted. Reductions in administrative burdens have decreased some costs. Innovative policy instruments are used more often than in most OECD countries.

In these formal aspects, the Netherlands ranks high among OECD countries. The combination of competition, deregulation, and good regulatory quality shows potential to be an effective policy mix for improving economic dynamism, while maintaining protection. Moreover, the reform programme is itself extraordinarily dynamic, the debate inside and outside the administration is well-informed and vigorous, and the search for better solutions continues through a pragmatic results-oriented approach. This flexible pragmatism is perhaps the greatest strength of the Dutch reformers.

These reforms have not been easy—much regulatory reform and its move toward market principles, transparency, and empirical decision-making has struggled with the powerful entrenched habits and interests of the traditional corporatist state, as well as the universal conservatism of public administration that makes innovation difficult. Although major consumer groups have become more supportive of reform, there are still substantial fears about the impact of reform on traditionally high levels of protection for citizens, about impacts on the environment, on the Dutch life-style, and on distribution of wealth in a society that highly values equity.

Reform has been aided, however, by the integration of European markets under the policies of the Single Market programme, and the opportunities for fast-moving, dynamic enterprises in traded sectors who now tend to see domestic competition as a strength in Europe rather than as a threat.

Yet the considerable investment in processes, administrative reforms, and proposals has yet to produce the results expected. Several years were lost by relying too much on directives, guidance and good intentions, and not enough on political commitment and institutionalised pressures. This lesson was learned, and a profound restructuring of the reform programme took place in 1994.

The 1994 programme is built on a more realistic understanding of the difficulties in introducing reform into public administrations, and important reform tools have been developed and put into use. However, many areas of economic and social policy are as yet untouched, particularly in sheltered sectors and in public sector activities. Many areas of regulation are still too detailed and unnecessarily burdensome for enterprises, particularly for SMEs. There remains tremendous scope for efficiency gains in streamlining and eliminating administrative formalities. For example, administrative barriers to self-employment linked to the tax and social security systems have a negative impact on entrepreneurship, while administrative costs for hiring employees are still among the highest in OECD countries.[31] Anti-competitive practices are pervasive through the sharing of regulatory powers with industrial organisations, with little control and transparency in how those powers are used. A serious problem is that little monitoring of the impacts of previous reforms was undertaken. As a result, assessments must be piecemeal, indirect, qualitative, and tentative.

Even in the areas where reforms have been identified, implementation of proposals has been very slow, reducing the concrete benefits of reform. Legislative changes as a result of MDW have, to date, been limited, although larger numbers have, in very recent times, begun to bear fruit. At the commencement of this review in April 1998 only three significant reforms had been implemented: the substantial (though still partial) liberalisation of shop trading hours; the first stage of an ongoing programme of reducing the number of businesses subject to environmental licensing; and removal of lawyers' monopoly rights to represent clients in legal proceedings. By early 1999, 9 of the 36 MDW projects started between 1994 and 1998 had been finalised, while a further 6 had produced significant results, though as yet were unfinished.

Nonetheless, the Central Planning Bureau has concluded that regulatory reform has already had a measurable impact on consumer prices (see Chapter 1 for more detail on the macroeconomic effects of reforms to date). A much larger number of reforms are expected to emerge over the next few years, with 36 additional legislative proposals now in train as a result of MDW efforts. A target has now been adopted of completing reforms within a single Cabinet period—*i.e.*, four years. While this indicates recognition of the importance of this issue of policy responsiveness, it may also raise questions about the feasibility of maintaining reform momentum toward the end of Cabinet periods, as well as those of the likelihood that more complex and difficult—but potentially more important—reforms will be undertaken.

5.2. Potential benefits and costs of further regulatory reform

It is likely that the benefits of further steps to improve the capacity of the public sector to reform regulations and to ensure that new regulations are high quality will be substantial in terms of policy effectiveness and economic performance.

The Dutch are demanding consumers of public services often delivered through regulation, such as environmental protection, consumer protection, health, safety, and many others. Tools such as regulatory impact analysis and rigorous application of government-wide quality standards can be powerful in designing better regulations to deliver policies more effectively. Higher quality RIA can, for example, reduce the risks of policy failure. More to the point, delivering such services more cost-efficiently allows more services to be provided. This has been seen in other countries, where use of tradable permits in air emissions has so reduced the costs of pollution reduction that tighter standards are possible. Disciplines on regulatory quality are part of a larger trend toward results-oriented and accountable government focussed on service quality and consumer choice.

Moreover, moving more quickly in response to identified problems should improve the capacities of the Dutch administration to respond to fast-moving social issues, and to correct policy failures as they arise, with positive implications for the legitimacy of the public administration.

Reform can also enhance the opportunities of Dutch citizens to be actively involved in the legislative processes of government. Indeed, development of new opportunities to date has already been considerable through changes to consultation systems. More can be achieved, especially through integration of consultation and impact assessment, ensuring that the expertise of Dutch stakeholders is fully harnessed as a policy-making resource.

Yet regulatory quality reforms can have costs, too. If carried out inefficiently or mechanically, they can slow down the entire regulatory process, further reducing the benefits of both regulatory and reform actions. While it may indeed be beneficial to slow down poor proposals, this should be done selectively through well-tuned filters. In addition, the administrative resources needed for the kinds of

quality investments discussed here must probably be diverted from other uses that themselves have value, and hence opportunity costs must be considered carefully. In addition, changes to decision processes can destabilise the balance of interests that often permit progress, even if it is slow and step-by-step progress, and therefore have perverse effects on the capacity to reform. Speed and empirical rigor are not necessarily nettles that must be grasped at every step.

On the economic side, faster adjustment to changing conditions in European and international markets will reduce the costs and efficiency drags of outdated regulations. These reforms can boost productivity in many sectors of the Dutch economy. Yet the main benefits for economic performance due to reducing regulatory barriers and administrative formalities are likely to be dynamic in nature. These kinds of reforms can stimulate innovation, entrepreneurship, and investment. Policy responsiveness and regulatory efficiency are likely to be relatively more important for the Netherlands, as a small, relatively open export-driven economy, than for larger economies, and hence regulatory reform is relatively more valuable to the Netherlands.

5.3. Policy options for consideration

Good practices in OECD countries, as outlined in the various OECD reports and agreements among OECD countries, suggest that the Netherlands would benefit from several steps to improve the responsiveness, accountability, and transparency of regulatory reform.

- *Accelerate the scope and pace of reform by reducing the time required for reform proposals to be considered and implemented.*

A key issue for the Netherlands is the lack of policy responsiveness implied by the extremely long law-making process. The seriousness of this problem has been recognised by the Dutch government at least since the 1991 General Legislative Policy. The General Accounting Office (*Algemene Rekenkamer*) has found that the average time taken from policy proposal to final implementation is seven years; completely new laws and major substantive revisions can take ten years. The GAO found that more than half of this time was taken in preparation within Ministries.[32] The length of the legislative process is the key reason that the current programme has produced so few benefits. Only 9 of the 36 MDW projects undertaken in 1994 – 1998 have been finalised. Others are still in the pipeline. As European integration accelerates under the single monetary policy, the incapacity to react more quickly than this could impose substantial costs on Dutch businesses.

The length of time needed for legal change has other negative effects on the quality of the national regulatory system. Ministries are less willing to implement new regulatory quality procedures when their ability to satisfy demands from constituencies for new legislation is already constrained by lack of legislative capacity. Also, ministries have incentives to prefer non-legislative policy actions that enable them to act more quickly. Such alternatives can often be preferred on efficiency and effectiveness grounds, but incentives to use them as timesaving measures are likely to be perverse.

Reform in this area will be difficult, since lengthy decision processes are typical in corporatist systems, due to the number of interests who must be consulted and whose consent must be gained. Action has already been taken in three areas: the legal requirements to hear advisory bodies, their role in relation to European legislation and the parliamentary handling of draft legislation. Significant changes have been made in the first two areas in particular. Evidence suggests that there has been a significant improvement to date, consistent with the current internal target of completing reform actions within a single, four-year Cabinet period. However, an average of four years remains a long time for regulatory development and continued effort in this area is essential.

A review of the specific effects of these recent changes would be a useful step toward considering the direction of further reforms within the line ministries, where much of the problem lies. Although contexts differ greatly, consideration could also be given to the approach taken by the United Kingdom to increase the flexibility of the regulatory system by addressing a lack of legislative capacity in the legislature. The U.K. Deregulation and Contracting-Out Act of 1994 allows ministers to more easily amend or repeal problematic laws. The Act provides "a mechanism to change primary legislation for the purpose of removing or reducing burdens on businesses or others, provided that necessary protection is not removed".[33] Under the Act, ministers may amend or repeal laws by ministerial order, but must consult those affected and provide to the Parliament a document giving the reasons for the change; the benefits in terms of cost savings, new market opportunities, and reductions in constraints; and details of protections provided by the order. Such orders require the positive approval of both houses of Parliament, as well as 60 days for parliamentary scrutiny. Other countries have used omnibus legislation, in which many reforms are packaged together on an accelerated time schedule.

Ironically, one current time-saving measure has the effect of undermining the impact of reform. The MDW criterion of reviewing only those areas where reviews can be conducted within an annual timeframe largely eliminates the possibility of reviewing more complex (but potentially highly relevant) areas of concern. It would be preferable to put more time into the review stage, and less time into the adoption/implementation stage.

- *Strengthen accountability for results within the ministries through development of measurable and public performance standards for regulatory reform.*

One of the strong points of the Dutch reform system is the development of new institutions to promote and drive cross-cutting reforms. The ministerial committee headed by the Prime Minister, and the impressive efforts of the Ministries of Justice and Economic Affairs, have been and will continue to be instrumental in getting reform actions underway.

Yet capacities for central direction are not balanced by effective incentives for the ministries to change themselves, particularly given offsetting pressures from their constituencies and from the political level. In particular, the objectives of the regulatory reform programme are formulated at a high level of generality, and transparent measures of performance for each ministry have not been adopted. That is, objectives are strategic rather than results-oriented. Hence, accountability for results is over-centralised, whereas the skills and resources for reform are decentralised. The fact that incentives for the ministries to produce good regulation are still not very strong may be one explanation for why the regulatory habits of the administration have not changed very much.

If the scope, depth, and pace of reform is to increase, the programme should mobilise the energies of the line ministries by reforming incentive structures through development of performance standards for quality regulation, and linkage of those standards to fiscal budgeting and other credible review mechanisms. These kinds of measures are not well developed in OECD countries with respect to regulatory reform, though they are under development in many other policy areas in many countries, including the Netherlands.[34] One possible model is the U.S. Government Performance and Results Act of 1993, which established a government-wide system, including for regulators, to set goals for programme performance, measurement, and publication of results.[35]

- *Improve the contribution of RIA to good regulatory decisions by increasing methodological rigour, including adoption of a benefit-cost test; expanding it to incorporate detailed consideration of alternatives; and integrating RIA with consultation processes.*

The Dutch RIA programme is in some ways strong. It applies to both primary and subordinate regulation, is targeted toward major regulation, and includes a highly developed and well resourced system of assistance for ministries from co-ordinating agencies. Changes made since 1994 to the RIA system significantly improved its potential to contribute to regulatory quality. For example, targeting of RIA requirements to only the most significant regulations concentrated limited resources to their highest value in improving the cost-efficiency of regulations.

In particular, provision of significant resources through the help desk function is innovative and worthy of consideration by other OECD countries. Creation of a dedicated budget to fund analysis can help to overcome agency reluctance to divert resources to RIA, as can access to dedicated statistical resources from the help desk. The use of three co-ordinating departments to ensure that various aspects of regulatory quality are properly considered is another promising practice.

Yet the RIA programme has not been very effective in producing reliable data that can increase the cost-efficiency of regulatory decisions. OECD best practices suggest that three key steps are needed to improve its effectiveness: (1) increase methodological rigour by providing training, written guidance, and minimum analytical standards including a requirement for benefit-cost tests to line ministries; (2) expand RIA to incorporate detailed consideration of alternatives; (3) ensure greater public scrutiny through integrating RIA with consultation processes.

First, the degree of quantification of regulatory benefits and costs remains low. Training and guidance for policy staff in the ministries would be a useful step, and adoption of standard minimum requirements such as quantitative analysis of direct costs of compliance through tools such as the Canadian Business Impact Test. Adoption of an explicit benefit-cost principle, as is currently being considered, would sharply improve the quality of regulatory decisions. The practical and conceptual difficulties of a formal benefit-cost analysis suggests that a step-by-step approach is needed in the Netherlands, in which the RIA programme is gradually improved, integrating both qualitative and quantitative elements of the analysis, so that over time it better supports application of the benefit-cost principle.

Second, the usefulness of RIA in promoting use of cost-effective policy tools would be significantly enhanced by a formal requirement that feasible alternatives be analysed and compared with the regulatory proposal. MDW does not appear to have had a significant impact in the rate of adoption of alternative policy instruments. While the performance of the Netherlands is relatively good with respect to use of innovative instruments, the use of environmental covenants, while still growing, does not appear to have accelerated as a result of actions taken under MDW. More rigorous assessment of alternatives should help identify a wider range of areas where they are the better choice.

The effectiveness of both of these strategies would be enhanced by integration of RIA with consultation processes. Publication of RIA through a procedure that required regulators to respond to comments from affected parties would enable consultation to function more effectively as a means of cost-effective information gathering, and thereby improve the information needed for good RIA. Access to RIA would also improve the quality of consultation by permitting the public to react to more concrete information. Such integration should, however, be carefully designed so that additional delays to the policy process are not introduced.

- *Further encourage the use of cost-effective alternative policy instruments by developing operational guidance for ministries.*

As suggested above, a requirement that analysis of alternatives currently required by the Directives on Legislation be documented and subjected to public scrutiny through the RIA process could stimulate genuine comparisons of the benefits and costs of various approaches. However, policy makers are likely to require assistance in the identification of suitable alternative policy tools. Operational guidance on the characteristics and use of alternative approaches should be developed for use by the line ministries. Such guidance has been useful in several countries such as Australia and Canada. The current help desk structure would seem to be well-placed to support such an initiative by providing expert assistance in relation to particular policy issues, particularly to the extent that it succeeds in its current aim of becoming involved with ministries at an earlier stage in the policy process.

- *Improve transparency by extending requirements for transparency to non-governmental bodies with delegated regulatory authorities, and by publishing a plan of major upcoming regulatory actions.*

A form of regulation widely used in the Netherlands is that of "co-regulation", or sharing of the regulatory function between government and industry. This has been implemented predominantly through the professional board structure. Such industry based regulatory and enforcement systems can have major benefits in terms of cost and effectiveness, but in many countries professional bodies have used this role to limit competition and increase incomes and, hence, consumer prices. The incentives that exist for rent-seeking require that governments carefully supervise the use of such delegated regulatory powers.

Two mechanisms currently in place are expected to have a significant impact. The new competition law should eliminate or restrict many anti-competitive practices, although the legislation on surveillance of PBO regulations is weaker in important respects than initially proposed by the Government due to changes made in the Parliament. These include, in particular, the 5 year exemption of PBO regulations from the competition law and the exemption of a range of these from requirements for prior approval by Parliament, rather than provision for *ex post* disallowance. (For further details, see the background report on The Role of Competition Policy in Regulatory Reform). The extent of this effect will also clearly depend on the attitude taken by the competition authority in processing requests for exemptions. Secondly, the regulation of several professions has been considered by working groups under the "Special Topics" element of the MDW programme and a number of deregulatory initiatives are in process.

A useful additional step would be development of clear governmental guidelines on the use of regulatory powers, including issues such as the representation of independent "public interest" advocates, the review role of competition authorities, and the need for specific legislative authorisation of regulatory powers, as well as transparency standards. The traditional approach to legitimacy in the Netherlands has been the corporatist system of balanced representation of the social partners, but the erosion of this system suggests that there is a need to re-examine the openness of these activities to public scrutiny. This is especially important to the extent that professional bodies retain regulatory functions, and as regional and international market openness develops. Guidelines would improve the transparency of the industry and professional boards, enhance their accountability to government and the public, including consumers, and maintain market openness.

Another transparency initiative that would improve co-ordination, RIA, and consultation is the publication of a plan of important upcoming regulation. Several countries have found such plans useful in improving the capacity of the public to comment, and the capacity of the administration to co-ordinate actions. This would be consistent with initiatives currently in train in the Netherlands to improve access to existing legislation (through electronic means) and could be integrated with the publication of a summary of proposed primary legislation which is currently undertaken.

- *Better co-ordinate regulatory reform and regulatory quality initiatives.*

There are opportunities to improve the degree of co-ordination between the various regulatory quality assurance and regulatory reform initiatives being undertaken in the Netherlands. Improved co-ordination would be particularly beneficial between RIA and consultation processes, between the Ministry of Justice' legislative quality assurance work (including the Directives on Legislation and the scrutiny of Bills process) and RIA and between RIA and programmes aimed at using regulatory alternatives.

There does not seem to be a clear relationship, or co-ordination, between the Directives on legislation, and the Ministry of Justice assessment of legislative quality, on the one hand, and the RIA process and role of the Ministry of Economic Affairs on the other. This appears to reflect the historically dominant role of the Ministry of Justice in regard to legislative policy and a consequent tendency to view legislative quality as primarily a technical legal concept, rather than as one which has a distinct, and possibly paramount, economics/public policy aspect.

Addressing this issue appears to require a role for the Ministry of Economic Affairs that is more integrated with the Ministry of Justice' work on legislative quality assessment. In addition, formulation of legislative quality guidelines covering economic and public policy aspects of quality that are distinct from (though co-ordinated with) a more streamlined set of "legal" guidelines should be considered. Here again there is a need for a strong co-operative relationship between the two ministries. Moreover, the latter guidelines should be presented in the context of a strengthened set of RIA requirements. Finally, the very limited time available to the Ministry of Justice to review draft legislation and initiate dialogue with the proposing ministry—often less than two weeks—undermines this quality check. Process changes which extended this review period, and began it earlier in the process, are likely to be a positive move, notwithstanding concern over the length of the legislative process.

5.4. Managing regulatory reform

The most important determinant of the scope and pace of further reform is the attitude of the general public. The emphasis in the MDW programme on a "*new balance between protection and dynamism*"[36] must be preserved if reform is to enjoy continued support in a citizenry that places high value on safety, health, environmental quality, and social equity, as well as a consensual approach to public policy. Evaluation of the impacts of reform and communication with the public and all major stakeholders with respect to the short and long-term effects of action and non-action, and on the distribution of costs and benefits, will be increasingly important to further progress.

The example of building support in the main consumer organisation is illustrative. The *Consumentenbond* was concerned that the MDW approach seemed to focus unduly on business interests, with no clear definition of consumer benefits and a lack of transparency in the process. Yet actions on competition law and shop trading hours were seen as having the clear potential for major consumer benefits. As the programme progressed, the government invited participation and was seen as responsive to the consumer association's principles for reform, focusing on the need for clear consumer benefit, an emphasis on re-regulation rather than deregulation and a view of deregulation as an instrument rather than a goal in itself. As a result, the consumer movement is now a supporter of MDW, seeing it as consistent with its overall emphasis on maximising consumer choice in all markets.

While there are continuing concerns about a move to competition in areas such as public transport, health care and social security, views on the most visible reform—the extension of shop hours—are largely favourable. At this juncture, it seems that fears about the effects of reform on levels of protection have not been borne out, but continued reform will proceed faster and more deeply if reformers take concrete steps to demonstrate that protection has been maintained. As the Consumentenbond has noted "Strong markets need strong governments".[37]

There is a positive view of the likely longer term benefits to business from increased competition in the provision of business services, as well as the additional opportunities which will arise from changes to government provision of commercial services (including both withdrawal from the field and the adoption of "competitive neutrality" principles). Like the consumer association, business initially saw MDW as lacking in transparency and opportunities for input by stakeholders, but these concerns have apparently been largely allayed. Significantly, there is support for the more targeted approach of MDW, which is seen as more effective than earlier attempts at a "global" approach to reform.

The kinds of reforms suggested above will be limited in impact if the regulatory activities of other levels of government are not brought into the process. Much of the national regulation of the Netherlands originates in fact at the level of the European Union. Much of the implementation of regulation is in the hands of municipal and other subnational levels of government. Regulatory reform is no longer, if it ever was, an activity that national governments can carry out in isolation. A programme of co-ordination of reforms spanning these levels of government can help protect and extend the benefits of reform in the future. In particular, using information generated through RIA as an input into EU decision-making processes, assisted by the fact that the European Commission is currently looking at means of improving its RIA performance, is potentially of great value.

NOTES

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