

# Summary

## Estimate, weigh and legislate

### *Deregulation and Better Regulation policy*

Since the nineteen eighties the Dutch Government aims at the reduction of legislation. Initially the governments focused on the strengthening of the supply side of the economy, but later they emphasised on the legislative quality. Despite these efforts the number of laws in the Netherlands increased approximately 2% per year over the past 30 years. This growth seemed to have ended during the last few years, but in 2008 the production of laws was back to its old level. The Dutch attention to the growing number of rules and the problems business has with the (administrative) burden is not a unique phenomenon, since many European countries face similar problems. In many countries we find parallels with the Dutch policy. In the 1980s the emergence of the monetarist economic ideology and New Public Management resulted in a growing attention for deregulation and the removal of barriers for a free market. At a later stage, many countries introduced an integral better regulation policy. The European better regulation policy and the attention of the OECD for regulatory reform increased the attention for regulatory quality and its institutional implementation in many countries. The question is how the Dutch policy and the legislative production compare with that of other European countries. It is a question whether, and if so, how the other countries are able to decrease their legislative production and administrative burdens.

The aim of the research was to investigate the way in which better regulation policy reflects on legislation. In this research we were interested in both the quantitative legislation (number of laws) as the factual burden of legislation (in this research we took only administrative burdens into account). The research looks into the effects of ex ante assessments like *regulatory impact assessment* (RIA), as well as explanations within the institutional framework of the legislative process. It also contains an assessment of the effects of ex post instruments, such as regular reviews of existing laws. For a proper comparison it was necessary to gain an insight in the hierarchy of laws, so shifts in legislation to for example delegated legislation could be determined. The above resulted in the following question, which was broken down into seven sub questions.

*What are the (institutional) opportunities for limiting the growth of new laws, so that the downward trend in the Netherlands that seems to occur since a few years can be consolidated or expanded and a contribution can be delivered to the reduction of the burden of legislation?*

- 1 What is the hierarchy of rules in the legislation that are made annually in four European countries with a similar context and approach to problems as the Netherlands?

- 2 What reflective steps have been built in the law drafting procedures in the above mentioned four European countries?
- 3 Do these reflective steps in the law drafting procedures result in repealing of legislative proposals, amendments or the hierarchical status of the established rules in force?
- 4 Is there an instrumental deregulation policy in the four European countries?
- 5 Does the instrumental deregulation policy result in a change in the contents, the hierarchical status or the repeal of existing or future legislation?
- 6 Which trend is visible in the period 1995-2008 in respect of the production and the repeal of laws and what is the cause of this trend?
- 7 What insights offers the comparative law study with regards to the possibilities of deregulation (quantitative) and reduction of regulatory burdens (qualitative) in the Netherlands?

### *Research design*

The research is carried out in three stages. In the first stage, the selection of countries was made. In the eight countries a quickscan was carried out. We scored a number of instruments and facilities in the countries. We selected five leading countries; the United Kingdom, Sweden, Finland, Austria and the Netherlands. These leading countries continued to the second stage of the research. In the second stage the better regulation policy in each country was more fully investigated. We have systematically listed how the legislative process is carried out, what the legislative hierarchy looks like, what policy instruments are applied and what role institutions play. The production of laws in the period 1995-2008 is also listed. In the third stage of the research a comparison of the five countries has been made to explain trends in law production.

### *Results*

During the departmental preparation of a law many investigations take place. In all countries in our selection roughly the same reflective steps must be carried out. The following *ex ante* instruments are described:

- 1 limitation of the legislative capacity;
- 2 *Regulatory Impact Assessment* (RIA);
- 3 consultation.

In addition to these *ex ante* instruments we discussed also two *ex post* instruments, namely:

- 4 different forms of the withdrawal of rules;
- 5 administrative burdens reduction policies.

*Limitation of the legislative capacity*

All formal laws in the United Kingdom are drafted by the Office of the Parliamentary Counsel (OPC). The capacity of the OPC is scarce. Once a year, all ministries send in a programme with their legislative wishes. It has been agreed that the total production of laws will not exceed a certain limit. Then, a legislative programme is drawn up which contains an agreement on the laws that will be sent to the Parliament. The procedure results in a limited production of primary laws. Whether this system results in an increased production of secondary laws is not known.

*Regulatory Impact Assessment*

In all countries in our selection a form of RIA is (de facto) required. This obligation is in every country laid down in one or more RIA-manual(s). In theory, a RIA is an instrument that, when properly implemented, has the potential to improve the legislative quality and possibly even limits the production of laws. In practice, the effects of RIA appear to be limited. RIA in all countries faces similar quality problems:

- 1 RIA is rarely carried out at the right time.
- 2 Alternative instruments are not often considered.
- 3 The quantification of effects is problematic.
- 4 There is a bias towards corporate and economic impacts.
- 5 The effectivity of RIA (by means of reduction of law production and improvement of legislative quality) is scientifically still unproven.

In the policy documents the consideration of alternatives and quantification of effects are often emphasised, but in reality these two aspects are still underdeveloped. Consideration of alternatives does hardly take place because the timing of RIA appears to be problematic. If the RIA is carried out too early, it suffers insufficient information. If the RIA is carried out in a late stage, the choice for the instruments has already been made. In the United Kingdom RIA is implemented in phases. Gradually more and more information is added and the RIA is ever further completed. In this way RIA is the outcome of a process and not an isolated document.

For a proper quantification of effects, for example the monetary validation of soft interests, methods are still underdeveloped. The costs (for example the administrative burdens and compliance costs) are relatively easy to quantify. The benefits however, which consist mostly from soft social consequences, are often much harder to value financially. The result is that many RIA's emphasise on the costs of the planned policy.

In countries with a negotiation phase in the legislative process RIA is hard to apply. In Sweden for example the negotiations takes place between the departments and in Austria with the social partners. If RIA is carried

out before the negotiations, there are still too many issues open about the details. When RIA is executed after the negotiations the results of negotiations are fixed and there is no reconsideration of alternatives possible any more. Therefore both countries have been experimenting with more flexible forms of RIA.

### *Consultation*

The openness of consultation varies. In neo-corporatist cultures such as Austria and Finland consultation is reserved for organized interest groups. In particular the social partners have a privileged position. In more liberal countries such as the United Kingdom and Sweden consultation is open to everyone.

In many countries, with the exception of the United Kingdom, consultation is hardly centrally managed. The United Kingdom has a relatively strong consultation policy. The United Kingdom has established a consultation guidance and within the departments there is consultation coordinator. In the Netherlands the anchoring of the consultation policy in the legislative process is weak. That becomes clear from the following:

- 1 In many cases consultation is not mandatory.
- 2 It is not laid down who has to be consulted.
- 3 There is no methodology developed in – for example – a consultation guidance.
- 4 No institution supports or challenges the consultation process.

The trial in the Netherlands with internet consultation offers only a solution to the second problem.

### *Repeal of laws*

The ex post policy consists partly of ‘cutting dead wood’. Of more fundamental nature is the removal or simplification of burdensome legislation. Almost every country has such a programme. In all countries (except Finland) are mechanisms in order to review the stock of laws and to repeal unnecessary or burdensome laws. This happens in a number of ways:

- 1 Research by a special permanent Law Commission as in the United Kingdom. This Law Commission is in terms of quantity not very effective.
- 2 Through ad hoc action. Departments are ordered to review their stock of legislation and to withdraw unnecessary or elaborate legislation. This is what happens in all countries examined except Finland. For the repeal or simplification of legislation there exists in the United Kingdom a specific instrument (the Regulatory Reform Order). This RRO enables a minister to change or repeal primary laws quickly and without the intervention of the Parliament. Ad hoc policies are effective

as regards the withdrawal of unnecessary or elaborate legislation. In particular the Netherlands and Austria have succeeded in repealing a lot of unnecessary legislation. Because the majority of this legislation has been elaborated these actions result hardly in a reduction of the administrative burdens.

- 3 Continuous screening through a legal obligation. In Austria is laid down by law that a Ministry for any amendment of a law has to assess whether the full law (or parts of it) may be repealed. This legal obligation does not have the desired effect in practice, because the ministries give a too low priority to the better regulation agenda.
- 4 By a guillotine-style approach, which provides that all rules before a certain date (as in Austria) or which have not been notified by the responsible agency (as in Sweden) are automatically repealed. Guillotine-style approaches only have a temporary impact.
- 5 By consultation of citizens. In Austria, the Netherlands and the United Kingdom citizens may indicate via an Internet site which regulations are unnecessary, burdensome or inconsistent. In Sweden the industry was given the opportunity to notify bad legislation in a special consultation action. The internet consultation in the Netherlands has shown that citizens and firms mainly have problems with the inconsistency of explanation of laws and not with inconsistency of laws itself. By consultation in Sweden a large number of potential simplifications have been supplied by the industry. This policy will be evaluated at the end of this year and it is therefore too early to determine whether this policy has been effective.

#### *Administrative burden policies*

All countries in our selection have developed a policy that sets a target to reduce 25% of the administrative burdens before 2010 or 2012 (this varies per country). Only the Netherlands also focuses on a reduction of burdens for citizens, the other countries involve only companies (and the United Kingdom also the third sector). For monitoring the development of the administrative burdens all countries use the Standard Cost Model. In terms of reducing the administrative burden of laws in particular the Netherlands and the United Kingdom have succeeded. Sweden is less successful. This is attributed to the long legislative procedures which take up to 3 years. This is why policy changes usually progress slowly in Sweden.

#### *Final consideration*

It has proved to be difficult to find the main 'brakes' on the legislation for two reasons. In the first place, it appears that the legislative production of the countries showed no abrupt changes. Legislative production usually fluctuates around an average. A few times we found an increase or decrease of the production, but this change often took place gradually,

and had already started before 1995. In the second place it turned out to be very difficult to relate any trends to institutional differences or policy impact in the respective countries. On the other hand, it cannot be said that if the production of laws remains constant there is no effect, because no one knows what would happen if there was no better regulation policy.

On the basis of the available information it was often not possible to determine causal relationships. In some cases we could determine probable causality. In other cases, a clear relation was expected, but there was no scientific proof found. These (expected) relations are discussed below:

- 1 Delegation of tasks to local authorities or Member States, such as happens in the federal states, results in a low production of laws at the federal level. There may be a shift of law production to the Member States.
- 2 The limitation of the law drafting capacity in the United Kingdom seems to work well. Although on the basis of our information we have no real proof, the information suggests a shift to secondary legislation occurs. A strict legislative planning might work if the secondary legislation will be included.
- 3 *Regulatory Impact Assessment* is a promising tool, but is (still) not to be regarded as a serious brake on the legislative production. RIA faces in all countries similar quality problems. Law making officials often consider RIA as an administrative obligation and they often carry it out late. As a result RIA plays a modest role in the consideration of instruments.
- 4 Analytical methods for RIA are still not sufficiently developed. Moreover, policy documents often stress the quantification of effects, but provide very little or no quantification tools.
- 5 The administrative burden policy works well in the Netherlands and the United Kingdom. A relatively clear and simple method to quantify the administrative burdens has been developed. On the other hand in the Netherlands and the United Kingdom a watchdog has been established, which is monitoring the implementation of the administrative burden policy. In Sweden until recently this watchdog was missing and there the administrative burden policy is less successful.
- 6 Consultation appears not to be an instrument to withdraw bad law proposals. Consultation rarely results in the repeal of legislative proposals, but it must be assumed that it mainly results in technical amendments of the law texts.
- 7 The Parliament of the countries examined does not often vote against law proposals submitted by the government. Also the Senate (if applicable) in quantitative terms is a negligible player in the blocking of bad legislation.

Ex ante better regulation instruments don't seem to be able to constrain the number of laws produced. Legislators consider a lot of aspects, but finally they will legislate. With the (ex post) withdrawal of legislation some countries achieve quantitatively good results, but these operations have little impact on the actual burden of legislation. In some countries success is achieved with the reduction of the administrative burden, in particular in the Netherlands and the United Kingdom. This is done by both ex ante instruments as well as by repealing and simplifying existing rules.