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A public administration take on legitimacy: Better Regulation as multilevel governance challenge

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1. Introduction: Legitimacy as multilevel challenge

Understanding the role and legitimacy of experts and their expertise in (EU) policy processes demands a multidisciplinary perspective. Whereas others chapters examine the role of expertise from a legal or political science perspective, we take a public management approach and study the organisation of the EU's decision making process. The design of the policy process defines scale, scope, timing, sources (impact assessments, hearings, consultants, etc.), quality standards and transparency of the input of experts (compare Olsen 2005). Hence, the legitimacy of EU policies is influenced by the way in which expertise is designed into the policy process. This design can be efficient if it ensures timely and transparent incorporation of knowledge, merely formal and irrelevant for how policies are actually formulated (fake legitimacy), or inefficient if too many rules and procedures are imposed (Schout 2011). By examining the management of the policy processes at national and EU levels, this chapter addresses the administrative legitimacy of experts and the expertise they provide.

Up until approximately 2000, expertise was largely provided through expert committees advising the European Commission (Pedler and Schaefer, 1996).What the Commission would do with the information remained in many ways unclear because the Commission was primarily a political organisation (Majone 1996). Also the negotiations on the basis of the Commission proposals between Parliament and the Council were driven by political motives. The link between expert input and policy outputs was weak. As a result EU policy witnessed a legitimacy crisis at the end of the 1990s following major upheavals over food safety and complaints over inconsistent policies with too many and too detailed obligations. Scandals such as the BSE crisis had proven that expert input (in particular comitology) was not transparent. The BSE investigation of the European Parliament concluded that it was unclear who had provided which information and on what information decisions were taken (Medina 1997).The low point in the Commission's legitimacy crisis was the fall of the Commission Santer in 1999. Less than half of the EU population thought around 2000 that the EU was a good thing (Schout 2009).

These developments triggered the better regulation (BR) agenda and related reforms in the Commission. Radaelli (2007: 191) defines better regulation as a type of meta-regulation which steers the process of rule formulation, adoption, enforcement, and evaluation. The core of the BR agenda is the Commission's impact assessment system (IA). The BR agenda now comprises a range of objectives including subsidiarity, proportionality, providing empirical proof for policies, sustainability, reducing administrative burdens by 25 per cent, and using the least disruptive instruments. BR principles are now well founded in the Commission's IA

system (2009) and supported by the European Parliament and the Council (Council 2006). The BR agenda applies to all phases of EU policy making including the planning of comitology decisions and other (legal) policy instruments.

The EU's BR agenda does not stand on its own but reflects comparable developments in national administrations. Although there are major differences between administrations, expertise and working with experts has gained importance in the routines of EU and national officials through e.g. hearings, IAs, independent agencies, and the more regulated expert networks (Everson et al. 1999, Piattoni 2009). Policy making has become a continuous balancing act between political assessments, fact finding and analysis (Wiener 2006).

The fact that the EU is a multilevel governance system complicates this drive towards expert input (Schout 2009). Communication between the levels of government becomes difficult if one level (e.g. the European Commission) focuses more on expertise while member states fall behind in better regulation efforts. Similarly, in order to succeed in working with more and better information, the Commission needs facts and figures from the member states to be able to argue whether subsidiarity or proportionality principles apply (Schout 2009). Moreover, if national officials want to influence Commission initiatives, they need to follow the same ways in which expertise is defined and used. For example, the Dutch government – supported by Geert Wilder's Freedom Party - tried to find support for a stricter EU asylum policy by producing a short political paper outlining Dutch ambitions. As emerged in interviews, demonstrating the substantial logic in which the Commission operates, Commission officials simply asked what the problems was, which alternatives were suggested and whether the solutions would be proportional compared to doing nothing. The Dutch political agenda clashed with the more fact-based procedures that the Commission uses when formulating policies (NRC, 21 April 2011).

EU and national decision makers need to follow the same operating principles also with a view to ensuring continuity in the various stages of EU decision making process (Schout and Mijs 2010). The Commission prepares the proposals that are subsequently debated between the politicians in EP and Council (the member states). The Commission might deliver well-prepared proposals based on impact assessments but this will be of little use if EP and Council pay little attention to the substantiation of proposals and continue with 'politics as usual'. Therefore, BR initiatives need to follow parallel trajectories to facilitate the interaction between the administrations within the EU's multilevel administrative system.

The evaluations of the EU's BR initiatives have been lukewarm. Much is achieved but there is little evidence that EU policies have improved much (European Court of Auditors 2010). One explanation might be that the multilevel requirements of BR agendas have been ignored (Schout 2009). EU governance literature looks increasingly at the developments of better regulation policies at both national and European levels (Allio 2008) but the interdependence between BR systems has hardly been explored.

This chapter examines whether the Dutch and the EU's BR agendas are developing towards similar systems and whether these systems are becoming interconnected. It decomposes and compares better regulation policies in Europe and the Netherlands. Although only one of the 27 member states, the Netherlands case is a critical case as it has been one of the frontrunners in better regulation together with the UK, Germany and Denmark. Acknowledging generalisation problems in N=1 studies, if we find diverging patterns in better regulation

policies we may speculate what our findings from the Dutch case may imply for the EU's BR agenda more generally (compare Dukes 1965).

Expertise is closely linked to the debate on the legitimacy of policies. As discussed in section two, legitimacy offers terminology to identify parallels and differences in the EU's and Dutch approaches to BR. Limiting the research period to 2000 – 2010, the EU has been focusing on 'input' legitimacy (procedures to guide micro policy processes) and gradually emphasised 'output' legitimacy (top-down imposed targets to regulate policies in the specific sectors) (section three). As discussed in section four, the Netherlands seemed to have moved the other way round. The Netherlands started with an emphasis on output legitimacy and is now complementing its 'input' procedures. The discussions on the Commission and the Netherlands proceed along the same lines. Innovations in tools of government have to be seen in the context of actual concerns and perceived weaknesses in the administrative systems (Kassim, H., P. Legales (2010). Hence, discussions on the reforms start with short descriptions of the back of the BR agendas. The sections subsequently present the major developments in BR and end with a short discussion on the achievements. Moreover, because at least in the Commission 'transparency' has been an explicit objective of the BR agenda (EC2009) we also include this in our analysis of expertise. The concluding discussion in section five discusses whether the two systems convergence and whether they are becoming interconnected instead of remaining separate BR policies.

The chapter is based on earlier research into the Commission's BR initiatives, the Commission's reform agendas, interdependence between national and EU BR objectives, and Dutch BR-related reforms (Schout and Jordan 2008, Schout and Mijs 2010, Bockel and Sleifer 2012, Linschoten et al. 2009).

2. Legitimacy and Better Regulation

Governance, defined here as value setting, has changed markedly at EU and national levels of government. It contributed to systematic attention for a wide range of quality standards including choice of instruments, integration of horizontal objectives, transparency and expert authority in decision making (EC2009, Jordan and Schout 2008, Treib et al. 2007). The better regulation agendas were formulated in response to specific problems in legitimacy in the different administrations. Yet, although different in background and form, national and international governments opted for 'less and better' policies (Baldwin 2005).

Better regulation agendas are directed at increasing the legitimacy of governance (Radaelli and DeFransesco 2007). Legitimacy is the belief people and industry have in the rules and actions of government. The public has to trust the policies produced by the systems governments have in place for taking technical decisions. 'Legitimacy' has been used differently over time and between authors. Yet, broad consensus has emerged over the composite nature of legitimacy. The current debate concentrates on input and output legitimacy. Scharpf (2003) stated that "legitimacy has come to rest almost exclusively on *trust in institutional arrangements* that are thought to ensure that governing processes are generally responsive to the manifest preferences of the governed (*input legitimacy,* "government by the people") and/or that the policies adopted will generally represent effective solutions to common problems of the governed (*output legitimacy,* "government for the people") (italics in the original).

Input legitimacy relates to the arrangements that govern the policy procedures, i.e. that steer the ways in which day-to-day decisions are taken. It considers what we might see as the 'micro level' of decision making and the political supervision of these processes. Input legitimacy includes better targeted work planning, obligatory hearings and impact assessments, regular evaluations and reports, careful assessment of the instruments chosen, and rules to regulate consultations and transparency (Schout 2011). Such administrative guarantees offer greater hierarchical control and offer the public (private sector, NGOs, citizens) access to policy making. Output legitimacy concerns what has often been referred to as 'depoliticised' decision making through independent authorities (non-majoritarian decision making, Majone 1996). This includes the setting of targets by the political level and entrusting these targets to independent authorities that review the achievements. Examples of output legitimacy include the formulation of the objective of the European Central Bank to ensure a low and stable inflation level and the objective to reduce administrative costs in the Netherlands by 25% leaving the ministries more or less free to implement this target under the watchful eye of a ministerial regulatory reform group and an independent authority (Actal – see below).

The literature also identifies 'throughput legitimacy' which is about how agreements are reached and opens debates about deliberative democracy, transparency and impact assessments. However, we follow Bekkers and Edwards (2006, p. 44) who regard throughput legitimacy as part of input legitimacy because it is linked to questions about who has access to decision-making processes and about the – hierarchical and public –control over the procedures.

In relation to the EU's agenda, better regulation has been equated with tools to improve the preparation of new regulations, i.e. the system in place for taking decisions (input legitimacy). This resonates the now popular vocabulary associated with better regulation, such as evidence based lawmaking and ex ante and ex post evaluations (Schout 2009). In addition to policy to improve the micro level (formulation of individual policies), better regulation also encompasses macro policy objectives by setting specific targets and formulating horizontal objectives. For example, the EU's Lisbon agenda formulated macro aims for competitiveness, growth, sustainable development and cutting red tape. Together, the input (micro) and the output (macro) tools help to implement BR objectives. The input procedures ensure that horizontal objectives are respected in the formulation of all new measures. Output objectives – such as targets to cut red tape by 25% or to increase R&D spending to 3% - concern principally the existing stock of policies and allow departments to select their own actions to reach these objectives.

3.   *Better Regulation in the European Union: from micro to macro*

The EU's BR agenda is the shared agenda of the Council, Commission and EP (Council2006). In practice, the BR agenda is mainly the responsibility of the Commission. Starting in particular under Commission President Santer, and leading to the appointment of Kinnock as Commissioner for administrative reform, BR has been a broad and major ambition of the EU Commission. The Council and the European Parliament have been much less involved in the EU's BR agenda due to their strongly political (i.e. less expert) concerns and their internal fragmentation (political parties in EP and sectoral decision making in the Council) (Scharpf 2003, Schout and Mijs 2010). Hence, the focus is in this chapter on the Commission.

The development of the Commission's BR policy has to be seen in relation to the Commission's own growing pains. BR has been a tool to change the organisation that was in many ways in need of major overhauls. The BSE crisis in the 1990s and the fall of Santer in 1999 marked the low point of the Commission. The Commission had a reputation for being internally fragmented (Mandelkern Group 2001: 64). Internal coordination was compounded by major political appointments, by DGs working rather independently and by cultural differences (Schout and Jordan 2008). Policy making was an informal process and officials could work in relative isolation from other Commission units. The Commission work programme as such was long and rather non-committal. The items in the work programme could easily be ignored while proposals were initiated independent of any programming so that officials could shelter important initiatives from colleagues in other DGs until the proposal was ready to be send to the College of Commissioners for final adoption (Jordan and Schout 2008). Moreover, policies focussed on reaching majorities and were much less concerned with expert input (Majone 1996).

This fragmentation clashed with the increasing number of horizontal objectives such as ensuring sustainable development, attention for regional consequences, subsidiarity and burden reduction. The Commission was forced to work in more integrated ways to ensure that policies would be founded on expert authority, to integrate different horizontal objectives and to ensure transparency of decision making processes. Scharpf (2003) underlined that the involvement of actors representing concerns of other policy areas was much less developed compared to the abilities of national governments to work in joined-up ways. Hence, the Commission was in a comparative backward position compared to member states around 2000.

Given the difficult start in trying to arrive at planned and integrated policies and acknowledging that large organizations are hard to reform, the BR stood little chance (Jordan and Schout 2008). As to be expected in a deeply fragmented organisation, earlier attempts had failed to get IAs accepted that emerged from the sectoral DGs dealing with industry, environment, regional policy, etc. DGs developed their own IAs and expected other DGs to apply them but their was precious little sense of ownership for each others IAs. However, the BR agenda coincided with the Kinnock reforms which resulted in a successful reform of the Commission (Jordan and Schout 2008). The Commission introduced a system of activity-based management together with the strategic planning and programming (SPP) cycle to focus activities and resources. This planning cycle now starts every year around February with rough ideas of policy initiatives DGs would like to take and ends with a strongly reduced realistic work programme that is presented by the Commission president to Council and EP at the end of the year.

As discussed by Schout (2009), integrated IAs are an obligatory part of this planning system and are part and parcel of the legislative processes in which proposals are formulated. A legislative proposal can only be included in the work programme if complemented by an initial assessment ('roadmap'). After accepted in the programme, a first step in the elaboration of all major policy initiatives is the writing of a IA. According to the IAs guidelines (EC2009b), the IA should be presented in a condensed form of about 30 pages reflecting the outcomes of hearings, studies and internal control board (IAB – see below). The content of the IAs is formalised by the IA guidelines which includes questions about risk assessments, baseline scenarios, choice of instruments, etc. IAs are explicitly eclectic ('integrated') and cover a range of horizontal objectives including environmental, regional, and social

consequences as well as concern for gender equality, proportionality and subsidiarity. They force officials to move outside their own 'boxes' and to think in 'integrated' ways (EC2009b).

The modernisation of the Commission's work planning also necessitated new organisational roles and rules and therefore contributed to the much needed bureaucratization of the Commission. The Secretariat General (SG) of the Commission was never as powerful as the nationally appointed Commissioners exercised strong control over 'their' DGs and could easily overrule of the SG (as well as the President of the Commission) (Jordan and Schout 2008). However, the SG's horizontal authority has been greatly upgraded with Barroso's more presidential style, the formalization of the SG role in work planning and in IAs, and its staff expansion. The DGs in the lead of a new proposals hold the first responsibility for writing the IA and for setting up a team of colleagues from other DGs to be involved in the IA (intra-Commission steering group). The SG monitors the writing of IAs by the lead DGs and participates in this intra-Commission steering group. The Commission also established an Impact Assessment Board (IAB) in 2006. The IAB is a high-level team to cement horizontal coordination and supervision of the quality of IAs. It monitors the development of the IAs of the DGs and checks the assessments when proposals are sent to the College. The IAB's comments are presented on the Commission website – a remarkably high level of transparency as this means that the Commission has opened up its internal deliberations. When the proposal finally goes to the college of Commissioners, it is accompanied by the IA and the comments of the IAB.

Core elements in the IAs are the emphasis on factual and structured analysis of a variety of issues and objectives following the logic laid down in the IA guidelines. This has changed the work of officials in major ways. As one official put it "the Commission changed from a French towards a British style" - suggesting that its operating style moved from being hierarchical and focussing on political decision making, towards planned policy making with a careful attention for content and expert input. As this shows, the Commission moved from being closed and fragmented towards rather transparent and working in more integrated ways.

The effects of the planning system including the IAs are still under discussion. One main point of concern has remained that it is difficult to tell what the impact of the analysis is on the actual policy decisions (TEP 2007, ECA 2010). The Court of Auditors (2010) points out that the main results of the impact assessment reports are not always easy to gather and that IAs qualitative rather than quantitative. Similarly, specifying alternative approaches and instruments in IAs seem to be difficult in reality. Moreover, even when pieces of new regulation are thoroughly assessed, it often still remains unclear on what grounds policies are selected for scrutiny or why some alternatives have been explored whereas others have been ignored (IAB Report 2010). As established on several occasions and as also appeared from interviews, it still seems to be the case that DGs use the IAs to justify a particular piece of legislation rather than to use it to explore whether new measures are needed (the 'zero option') or other whether alternatives should be favoured (TEP 2007, Court of Auditors 2010). The quality of the assessments still leaves room for improvement. For example, implementation and enforcement costs and the potential administrative burden of proposed legislation are often insufficiently analysed or quantified (IAB Report 2010). Similarly, the Commission needs to improve communication to enterprises and the public on how it has used the feedback it has received during the consultation phases. However, aware of the learning process it is in, the Commission regularly evaluates the IA system (see its annual IAB reports).

One result of the IA system is that the planning has contributed in major ways to the external and internal transparency of decision making (Jordan and Schout 2008, TEP 2007). As officials explained in interviews, hiding plans and information from colleagues in other DGs has become difficult because all steps in the process and the results from hearing, studies and impact assessments are now put on the Commission website. Moreover, the transparency of the system makes it possible for outsiders to monitor the developments in policies and offers easy access to consultation processes. Hence, although actual differences in policies or quality are difficult to prove, gains have been achieved in terms of internal coordination, transparency and communication (TEP 2007).

As the concerns for 'box ticking' shows, one of the issues that has been constantly laying in the background has been the question of ownership for the IAs and for the range of horizontal objectives (Jordan and Schout 2008). DGs have budgets for doing IAs and can use consultants to carry out surveys and studies and can set up focus groups of industry and other representatives from societal groups. However, ownership for horizontal objectives related to concerns of other DGs remains difficult also because officials from other DGs find it hard to be closely involved in policy initiatives from other DGs due to among others the workload they already have stemming from 'their' primary policy agendas (Jordan and Schout 2008).

In 2007 an external advisory body (the 'Stoiber Group' (High Level Group of Independent Stakeholders)) was created to add external political pressure behind the BR agenda and to help to set priorities for cost reduction. Interestingly, this group of experts from business, environmental and social organizations scrutinizes EU policies from an output perspective to see how the *acquis* as a whole affects the EU's integrated objectives. As appeared in interviews, the focus of the Stoiber Group has been on reduction of administrative costs. The mandate of the Group was broadened in August 2010 and now encompasses assessments of best practices in member states for the implementation of EU-policies and it offer a more structured exchange of views and experience with the IAB (EC2010b).

From input legitimacy to output legitimacy

Emphases and terminology have changed over the past decade. For example, Barroso has rephrased the better regulation into 'smart regulation' although the Commission still uses the BR terminology in practice (e.g. EC2010a). The literature on the EU's BR policies is primarily concerned with the evolving impact assessment system. It therefore focusses on the procedures for formulating new regulations and policies. However, as also the creation of the Stoiber Group in 2007 shows, the Commission has started to experiment with an output oriented approach. Although the emphasis so far has been on IAs and the procedures to formulate new policies, this 'input' oriented approach was never meant to be the only approach within the EU's BR agenda. The Mandelkern Group from 2001 was one of the important driving forces behind the EU's BR policy and underlined that the improvement of the functioning of the internal market required raising the quality of new and of existing EU legislation and promoting collaboration between Commission and the national level (Mandelkern Group 2001). Also the Lisbon agenda - intended to make the EU the most competitive and dynamic knowledge-based economy in the world – was largely output oriented. Similarly, the Commission report on Improving and Simplifying the Regulatory Environment (COM(2001)130 final) outlined the twin approach of combining the systematic use of integrated impact assessments when preparing new policies (input legitimacy) and defining programmes to simplify and update the existing body of European law (output legitimacy). The famous Kok Report (2004) which assessed the failures of the Lisbon process

also underlined the importance of output targets and putting reduction of administrative burdens on the EU agenda and stressed the need to make it easier to start an enterprise. Similarly, ambitious reduction targets have also been used in the field of environment but, partly due to the multilevel complexity of the EU's administrative system these targets never really delivered (Jordan and Schout 2008).

The quantitative ambition to reduce the administrative burdens originating from EU policies have been a major development in the EU's BR agenda over the past few years (EC2010a). Currently, the existing stock of European regulation, is addressed through the Action Programme for Reducing Administrative Burdens in the European Union (EC2009a). It has set the objective of a 25% reduction target of administrative costs. One way in which the EU is trying to achieve this goal is by 13 priority areas: agriculture and agricultural subsidies, annual accounts/company law, cohesion policy, environment, financial services, fisheries, food safety, pharmaceutical legislation, public procurement, statistics, tax law, transport, working environment and employment relations. DG Enterprise carried out a large-scale baseline measurement to reinforce the BR agenda to quantify objectives and specify the achievements in these areas. The baseline scenario assessed the administrative costs incurred by businesses related to legal obligations to provide information to public authorities or third parties (reporting, inspection, statistics, etc.) and concluded that 38 billion euro could be saved out of 124 billion euro of administrative costs (EC2010a).

There are some major problems with the quality of the European baseline measurements as is documented in the minutes of the meeting of the High Level Group of Independent Stakeholders on Administrative Burdens (18 September 2008). The target to reduce administrative burdens for businesses is set at 25 percent. However, this percentage is neither linked to the full *acquis* nor to the flow of new regulations. It is not a 'net' target so that new costs do not have to be reduced elsewhere. As a result, the opportunities that are suggested are discussed within the isolated perspective of the relevant policy area, and not so much in the light of overall cost reduction or broader economic reform agendas (e.g. the EU's 2020 agenda). Moreover, as emerged in interviews, one of the main difficulties with the EU's output approach is that many of costs felt by industry result from national implementation of EU legislation. It is therefore quite difficult to impose a 25% reduction target at EU level so that the Commission emphasises at different places the need for national and EU administrations to work together on implementing the 25% target (EC2010a). Yet, despite these difficulties, the baseline scenario and the quantitative objectives produced help to put pressure on Commission DGs and member states to implement the cost reduction programmes with a view to make the internal market more competitive and to ensure that measures are chosen that are least burdensome to industry (EC2010a).

4   Better Regulation in the Netherlands: From macro to micro; from narrow to broad?

The background of the Dutch BR agenda lies in the historical tradition as consociational welfare state. The Netherlands has had a tightly regulated market economy with an important role for the public sector and for public regulation (Jong and Herweijer 2004). Administrative reform processes have concentrated from the early 1980s onwards on reducing the size of government and on market liberalization. Although concerns were expressed at regular intervals about not ignoring quality, BR has been mainly concerned with quantity (i.e. deregulation and assessing costs of legislation). The first Cabinet of Wim Kok had formulated the 10 per cent cost reduction ambition in 1994. This ambition was raised to 25 per cent

(1998) and was continued by Cabinets from 2002 onwards. With already considerable progress achieved in terms of cost reduction, the present cabinet Rutte-Verhagen agreed to a reduction of 10 percent by 2012 followed by 5 percent reduction targets for the following years. All in all, these targets have resulted in stream of cost reduction activities. It is important to realise that these objectives are net targets so that administrative costs arising from new regulations have to be compensated by reducing administrative costs elsewhere. In addition to reducing costs for industry, burden reduction for citizens has also been added to the agenda in 2005.

In addition to the need to fight the legacy of the consociational economy, the Dutch administration has been strongly based on independent policy making by ministries (Andeweg 1988). Dutch interministerial consultation has long been an excuse for avoiding commitments and has not been very transparent (Popelier et al 2007). Output-oriented net targets for administrative burden reduction implies much less need for horizontal coordination. Hence, hierarchical imposed targets have been a way to avoid coordination of day-to-day policies. The hierarchically imposed net target – rooted in Cabinet decisions - implies that ministries are forced to 'own' the objective and to compensate for any administrative burden resulting from new policies (Linschoten et al. 2009). To operate effectively, the Commission Slechte (1999) resulted in an extension of the Dutch agenda on administrative burden reduction and explicitly recommended a narrow scope rather than a broad impact assessment system. A broader scope would bear the risk of introducing more politics as well as increasing internal opposition and complicating the management of the objectives. Hence, at the start of the 2000s, the emphasis in the Netherlands has been on targets (output legitimacy).

According to the World Bank (2007), the Dutch government had become 'world leader' in cost reduction due to its clear and simple structure, a strong co-ordinating minister (the ministry of finance on behalf of the Cabinet) and the role of an independent advisory and monitoring body (Actal) (see also de Jong and Zijlstra 2009). Actal monitors the cost reduction programme and scrutinizes assessments *ex ante* to ensure that ownership of the targets are indeed reflected in the actions of the individual ministries. In addition, the Netherlands developed two baseline measurements to track the actual reductions. The first baseline measurement (base year 2002) focussed on information industry has to give to public authorities and third parties (other business or citizens) while the second baseline (base year 2007) concerned information obligations to public authorities only. In spite of narrowing of the baseline, the br agenda actually broadened because of compliance costs were included (i.e. information costs plus costs related to investments need to oblige to the rules). Typically for the loosely coupled Dutch administration, the first baseline scenario was primarily done by the individual ministries. The second baseline scenario was more of a collective exercise led by the coordinating ministries (economic affairs, finance and home affairs).

Despite discussions on whether the business sector has actually noticed any reductions and on the dangers of ignoring the benefits of regulation, the assessments of actual cost reductions indicate substantial results on meeting the 25 percent targets (Schout 2009). Moreover, the BR policy has contributed to a culture that is more conscious of the costs policies imposed on business (Linschoten et al. 2009). Van Bockel and Sleifer (2012) in their examination of the effectiveness of the reduction of administrative burdens in 12 Dutch ministries conclude that independent structure scrutinizing the administrative costs assessments and monitoring progress in reaching the reduction targets was one of the success factors. Hence, the output focus helped to establish ownership (supported by an independent monitoring mechanism).

The progress achieved in the cost reduction programmes meant that BR debates could from2000s onwards broaden towards other objectives. Reviews of the Dutch output-oriented programme called for broadening the scope and moving towards integrated impact assessment (OECD 2007, World Bank 2007).

The emphasis on output targets related to administrative costs does not mean that the Netherlands lacked IAs and tests on wider objectives. In fact, the Netherlands had many. The problem was that these were largely unknown, ineffective and not integrated. An estimate of the Ministry of Justice in 2007 uncovered 110 tests and criteria that had to be respected in the preparation of new policies. These included environmental effects, tests to establish the effects of proposed measures on small and medium sized enterprises, and different kinds of social, regional and economic effects. The different impacts were analysed separately rather than integrated and most of these impacts were neither examined systematically nor properly documented so that the link between assessments and final policy choices often remained unclear (IOO 2008). Moreover, these assessments suffered from shortcomings in data and were mostly qualitative (IOO 2008). Whereas the output-based assessment of administrative costs was relatively simple, the assessment of such a range of benefits had proven to be highly complicated.

The final scrutiny of new policies and their assessments takes place by the Council of State which checks the overall quality of the proposal and of the relevant tests before it goes to the Cabinet and parliament for final approval. The Council of State can give a negative advice in which case a new decision of the Council of Ministries is required before it can be sent to Parliament. It is only when the policy is sent to Parliament that the various tests, the work of the independent advisory board on administrative burden (Actal) and the views of the Council of State become publicly available. In fact, this means that the public can not follow the steps in the policy process nor the background studies that have been conducted. Nor can the arguments be traced when a policy is not adopted. Clearly, the Dutch system has been less transparent compared to the Commission's BR procedures.

As the exploration of horizontal tests in 2007 underlines, the Dutch government had started over the past few years to eclipse the burden reduction programme and to integrate it into a new web-based system of impact assessments (Kamerstuk 29515 nr 330, 14 April 2011). This complemented the output-oriented approach based on targets with an BR approach focusing on the input side (policy procedures). The 110 different tests are now reduced to 18 new impact assessment systems. The effectiveness of the new policy procedures remains to be seen as the procedures are currently under construction. Supervision on the impact assessment is carried out by a commission (CET/Commissie Effect Toetsing). This commission constitutes of civil servants and is led by a (top) civil servant of the Ministry of Economics, Innovation and Agriculture. Meanwhile the independent body monitoring regulatory burdens (Actal) will execute a yearly audit on the quality of the assessments as well as on the system of impact assessment as a whole. Similarly, it remains to be seen whether the shortcomings in the available data can be solved as methods to calculations of (unintended) effects in areas other than administrative costs are probably much less developed.

5.   Conclusions: Converging and interconnected agendas?

Although the BR agendas have longer histories, the EU and Dutch BR approaches have been converging in many ways over the past decade. The Commission agenda was primarily concerned with input legitimacy through modernising work planning systems and by elaborating the integrated impact assessment system. Given the progress achieved in institutionalising these procedures related to the formulation of new policies, the Commission has now moved towards output-oriented programmes by including targets for reducing administrative costs. Developments in the Netherlands started from a focus on the output objective (cost reduction) and is now in the process of being broadened towards a (more or less) integrated agenda related to policy processes (input legitimacy). In legitimacy terminology, although coming from different starting points, both systems are now experimenting with complementary mechanisms to increase input and output legitimacy.

To manage these input and output oriented programmes, both levels of government have been investing in building new planning and monitoring institutions both within the administrations - such as the impact assessment board in the Commission and the creation of coordinating ministries in the Netherlands -, as well as outside the administrations (Stoiber Group at EU level and Actal in the Netherlands). Both levels of governance also suffer from difficulties in assessing and quantifying the different kinds of costs and benefits.

That the systems are converging is not by accident. The Netherlands has been lobbying together with other lead-nations in BR such as Sweden, Denmark and the UK for simplification and cost reduction. Parallel, (often the same) governments have been lobbying for advancement with related agendas concerning environmental impacts and regional consequences. For example, the Netherlands was one of the driving forces behind in the (Mandelkern Group 2001, Radaelli and de Francesco 2007, Allio 2008). The Netherlands has also stimulated the development of the Commission's BR agenda. Previous Prime Minister Balkenende, for example, had sent letters to the then coordinating commissioner for BR (Verheugen) offering to make an inventory of possible reductions in administrative burdens of the a*cquis*. Similarly, a letter was sent to Commissioner Verheugen to include administrative costs for citizens in the EU's impact assessment system and reports and comments had been forwarded in response to consultation rounds preceding revisions of the EU's BR agenda (Ministry of Foreign Affairs 2008). Additional reports and position papers that have been produced to influence the EU's agenda include the 'Smart Regulation' report (2010) and the position paper sent to Barroso on 'Achieving a sustainable reduction of administrative burdens in the European Union' produced by Actal (Netherlands), Nationaler Normenkontrollrat (Germany), Regelrådet (Sweden) and the Regulatory Policy Committee (United Kingdom) (2009).

In addition, governments have met in formal and informal working groups to discuss better regulation activities at national and EU levels. The Commission has also kept in close contact with better regulation experts in the member states to ask for specific information and to monitor developments in BR agenda. The so-called SPOCs (Single Point of Contact) within the member-state was set up (2009) to facilitate the emerging EU agenda on BR (www.epractice.eu/en/library/292999).

Yet, there are also differences. Firstly, the Commission has invested heavily in the transparency of policy processes. Work plans, roadmaps, background studies, inputs from governments and from the private sector in hearings and online consultations, impact

assessments and the (sometimes critical) reports from the internal control board (IAB) are all put on the Commission website during the writing of new policy initiatives. The transparency policy in the Netherlands has been less advanced. Eventually, all background documents are attached when the policy goes to parliament but these can only be accessed at the end of the process and only if the policy is adopted by the government. Secondly,whereas the Commission's assessment system is integrated, the Dutch system consists of parallel tests. In addition, there are concerns over the ownership of the BR programmes at both levels of government. In the Commission, oversight is organised through the impact assessment board in the Secretariat General under Barroso and through the external 'Stoiber group'. However, the future of the Stoiber is unclear (its mandate has been extended until 2012). External control in the Netherlands focused on administrative costs through an independent monitoring body (Actal) but is broadening of the BR agenda and shifting towards in integrated assessment system somewhat comparable to the EU's IA system.

One problem that remains is that the programmes have converged but have not become mutually interconnected. The interactions on BR have largely concerned the formulation of policies at both levels of government. They have not produced actual interactions in the day-to-day process of policy making. A recent study found that, although the implications of EU policies for the Netherlands are clear, attention for EU policies are still directed towards the Council phase. Involvement of the Netherlands in the EU's impact assessments has remained modest (KPMG 2010). In fact, reflecting the Dutch reactive approach to EU policy making (Ten Broeke and Schouw 2011), the first Dutch EU policy coordination takes place in the interministerial committee assessing new Commission proposals ('BNC') – hence when the Commission proposal is finalised and sent to EP and Parliament. But even at this stage little attention is paid to the impact assessments of the Commission because the ministries doubt whether the European assessments are sufficiently accurate or relevant to the specific Dutch situation. Hence, the Commission's assessments are often not included in the Dutch assessments of new Commission proposals (KPMG 2010).

Similarly, although the Commission has ways to find information, interviews in the Secretariat General show that "there is a hunger for information" on how policies would affect the 27 member states. There are only a few examples of efforts where the Dutch government has actually tried to influence EU decision making early on in the decision making by providing information on costs and benefits such as in relation to draft legislation concerning energy efficiency of building. This energy efficiency case also shows how important this fact-based input from the Netherlands was in the final impact assessment and proposal (Schout and Mijs 2010). As such cases, the KPMG study and interviews in the Commission indicate, managing the interdependence between the national and the EU's BR agenda is critical for the success of both agendas (Schout 2009, EC2010a). Given the great differences between the 27 member states in terms of climate, soil conditions, etc., the Commission can often only produce relevant and accurate assessments if the member states provide the Commission with timely information. Moreover, national policies are - depending on the specific policy area - strongly influenced by EU policies. Ensuring integrated and well-founded policies at the national level therefore requires suitable EU policies. Furthermore, as discussed, the administrative demands of a multi-level IA system require that the member states incorporate the IA logic in the negotiations in the Council. Otherwise, the Commission will feel few incentives from the Council to perform assessments or to guard a variety of objectives requiring (occasionally painful) co-ordination between DGs.

If this need for deepening the overlap between the national and EU agenda applies to the Netherlands (a lead nation in terms of BR), than it is highly probably that it is not much better in other EU countries. This means that one of the fundamental requirements for successful interconnection of national and European BR agendas has not been met so far (Actal 2011). National and EU officials have been heavily involved in defining BR policies but attention for managing the actual implications on the ground has been poor.

In other words, there is still quite a lot of work to do to strengthen fact-based policies in the EU's multilevel governance system (EC2010a). Moreover, these developments also indicate that officials should be more aware of the interdependence between national and European administrative innovations. There is a lot of 'sending' when it comes to lobbying for effective European BR programmes but probably not enough attention for what the efforts to build EU systems might have to imply in terms of adapting national programmes to ensure that the systems can communicate effectively.

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