

## The Sisyphus paradox of cutting red tape and managing public risk The Dutch case

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### 1. Reducing the administrative burden: economic necessity or a political pamphlet?

Regulation comes with consequences: *simple comme le beau jour*. There will always be burdens as a consequence of legislation, simply because regulation is a necessity in a market-based society. First of all, legislation is a prerequisite for the functioning of economic markets. Rules create the conditions under which markets operate. They allow trust and stable trade relations by providing the normative framework for market relations. Legal concepts like property, contract and mechanisms for dispute settlement are essential for trade. Legislation does not only provide cornerstones for market operation, it also corrects the way markets function, for instance by ensuring fair market or competition relations or by protecting vulnerable actors (*e.g.* consumer law and employment law), addressing undesirable effects (*e.g.* environmental measures) or reducing poverty, inequality (*e.g.* anti-discrimination law) or risks (*e.g.* rules imposed on financial institutions). It is difficult to calculate the actual benefits of such legislation. They are more or less engrained in the fibre of our economy, which in turn – to a high degree – determines our social relations and political life.

Rules do not only produce benefits but also burdens. In a complex society such as the Netherlands, to which this contribution is largely confined, the legislator must intervene and take corrective action on a regular basis. Such action is common in many policy areas and affects many actors. These interventions are not politically neutral but do result in frequent clashes of interest and in many cases in turn result in a subsequent necessity to follow up with new corrective measures after initial corrective action. The dynamics of our modern-day democratic political systems (in which governments may show their drive by means of legislation) push the demand for legislation, resulting in an ever increasing number of rules.<sup>1</sup> These rules tend to

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<sup>1</sup> Existing rules tend to feed the thirst for new rules. This autonomous inflation of rules is also of all times. In the Netherlands, for example, the number of rules issued by the national Government has steadily grown since 1980, despite two major deregulation operations. More new laws are enacted than repealed. In this period, the number of laws in force has grown from 1,100 to 1,872; the number of general

originate from a great variety of sources, are complex and not always well coordinated. This explains why they sometimes do not only have the intended consequences but produce excessive burdens – even unintended burdens. Excessive burdens may slow down economic growth. In recent years these regulation-induced burdens have come into focus. According to some, they have received rather too much attention.<sup>2</sup> At various levels, it is believed that especially *administrative burdens*, as a consequence of legislation – or as it is commonly known: ‘red tape’<sup>3</sup> –, are frustrating economic growth. The label administrative ‘burden’ has, undeniably, a pejorative ring to it. When we speak about an administrative burden most of the time we imply unnecessary, disproportional or excessive burdens caused by legislation. In a somewhat more objective way the concept of an ‘administrative burden’ is used to denote the time and costs incurred on citizens and businesses by government services.<sup>4</sup> Although as a concept an administrative burden is not all that clear-cut (it is virtually impossible to calculate all burdens and benefits of legislation), for most intents and purposes it is used to refer to burdens that hamper economic development. Already for more than ten years the Organisation for Economic Cooperation and Development (OECD) has continually called attention to the potential consequences of regulation for economic growth.<sup>5</sup> The organisation urges its member states to take account of and chart burdens arising from regulation. The OECD takes the following view:

‘The viability of business activities depends on the market opportunities present, but it is also influenced by legislation, regulations and the administrative requirements governments impose in implementing public policies. The regulatory framework designed by governments is a major factor in the competitiveness of businesses.’<sup>6</sup>

The recommendations and initiatives of the OECD have gained a great deal of support throughout Europe. In the Netherlands, for example, the Balkenende II to IV administrations (2003-2008) made great efforts to try to come up with more enabling legislation<sup>7</sup> and to reduce regulation-induced administrative burdens (which will be dealt with in more detail below).

In other European countries, too, governments are taking great pains to simplify regulations and reduce administrative burdens. This is a real trend, which is inspired not only by the OECD’s appeal but also by the attempts of EU Member States to meet the European Union’s Millennium

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administrative orders currently stands at 2,695 and the number of ministerial regulations now stands at about 7,500. This means that the total number of national Government regulations is now about 12,000. The implementation of European directives accounts for about 15% of the annual number of new Acts of Parliament, amendment Acts and general administrative orders. See M. Herwijer & P.O. de Jong, *Alle regels tellen: de ontwikkeling van het aantal wetten AMvB’s en ministeriële regelingen in Nederland*, 2004 (All rules count: developments in the volume of statutes, Royal decrees and ministerial regulations in the Netherlands).

2 As a result of the one-sided focus on deregulation and reducing administrative burdens in recent years, people sometimes forget that besides ‘the burdens of regulation’, there is also such a thing as ‘the benefits of regulation’. See, for example, P. Eijlander, ‘Het wetgevingsbeleid na de Bruikbare rechtsorde; in de beperking toont zich de meester?’, in: L. de Loeber (ed.), *Bruikbare wetgeving, preadviezen van de vereniging voor wetgeving en wetgevingsbeleid*, 2007, p. 70.

3 Red tape is the Anglo-American way of referring to administrative burden or byzantine bureaucratic procedures and protocols. The origin of the term is not quite clear but it is generally held that ‘red tape’ refers to the 17th and 18th century English practice of binding documents and official papers with red cloth tape. Another explanation holds that the 19th century records of US Civil War veterans were bound in red tape, which was particularly difficult to remove.

4 See for instance P. Tang, *Reducing the administrative burden in the European Union*. Paper provided by the Dutch Bureau for Economic Policy Analysis (*Centraal Plan Bureau, CPB*), 2007, in its series CPB Memoranda with number 93, <http://econpapers.repec.org/paper/cpbmemodm/93.htm> (downloaded on 16 October 2008).

5 This is shown, for example, by the report issued by the Organisation for Economic Cooperation and Development, *Regulatory Reform in the Netherlands*, 1999.

6 Organisation for Economic Cooperation and Development, *Cutting Red Tape: Comparing Administrative Burdens across Countries*, 2007. This latter report also reflects the most recent development in the policy of the OECD: the organisation is searching for reliable indicators for administrative burdens.

7 See the memorandum ‘De bruikbare rechtsorde’ (An enabling legal order), *Kamerstukken II* (Dutch Parliamentary Papers) 2003-2004, 29 279, no. 9.

Development Goals adopted in the year 2000 (known as the Lisbon goals).<sup>8</sup> These goals can also only be achieved by means of simpler and supporting regulations that involve fewer administrative burdens.

More and more countries are in the process of setting up ambitious reduction programmes, just like the Netherlands. Examples include the British Regulation Reform Programme,<sup>9</sup> the Belgian Kafka Test,<sup>10</sup> and the recent Danish, Swedish, French, Czech and German policies aimed at reducing the regulatory and administrative burden, and, where possible, simplifying regulation itself.<sup>11</sup>

Concerns about economic growth and competitive position have also prompted the EU itself to develop policies, methods and instruments aimed at reducing administrative burdens. As early as 2005, EU Commissioner Verheugen announced the goal of reducing the administrative burden by 25%<sup>12</sup> in the context of his Better Regulation strategy, yet again a goal very similar to that of the Dutch Government.

In this contribution, we will not deal with all these initiatives, but confine ourselves to recent Dutch efforts to reduce red tape as a result of both the existing and future regulatory framework. In doing so, we will deal with the backgrounds of these policies (why?), the different approaches and solutions to the problem (how?), the institutional setting (who?) and, finally, the results to date (what?).

Finally, we will consider the Dutch policies and experiences in a more comprehensive perspective. We will try to see whether it is possible to discern some critical success factors. In this respect we will deal, first, with the usual suspects: method, political commitment, communication and embeddedness. After that we will try to further our scope and look into the element of tough or controversial political choices. Are Dutch success rates of better regulation affected by tough political choices? Is better regulation instrumental to tough political choices, or are the best results yielded by avoiding them? Another – more elusive – critical success factor discussed is the question whether the law of diminishing returns<sup>13</sup> applies to the most recent episode of Dutch reform policies. The contribution concludes with the double-faced hypothesis of the *Sisyphus paradox*, according to which:

- a. the law of diminishing returns seems to play a role in red-tape reduction policies, making it – after initial phases – exponentially increasingly difficult to relieve administrative

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8 These entail that by 2010, the EU should be the world's most competitive and dynamic economy. In 2008, it does not look as though the EU will be able to achieve this. But that is another matter.

9 In connection with its policy to achieve more effective regulation, the British Government established a Better Regulation Executive in 2005 (as the successor to the Better Regulation Task Force) for the purpose of supporting the reduction of administrative burdens by means of more effective legislative procedures. See also <http://www.betterregulation.gov.uk/>

10 For the Belgian Kafka test, see <http://www.kafka.be/showpage.php?iPageID=42>. See also L.R.M. Monserey, 'Het terugdringen van administratieve lasten: een bijdrage uit België', 2004 *RegelMaat*, pp. 59-66; and the report by C. Cordova-Novion & Scott Jacobs (Jacobs and Associates, Inc.), *Regulatory Management and Administrative Simplification in Belgium and Flanders*, May 2004, <http://www.regulatoryreform.com/pdfs/regmanadminsimplbelflan.pdf#search=%22cutting%20red%20tape%20kafka%20Flemish%22>

11 See the overview of simplification initiatives see [www.administrative-burdens.com](http://www.administrative-burdens.com) (last visited 16 June 2008).

12 See also the European Commission's policy with respect to Better Lawmaking, COM(2002) 275 and the subsequent Communication from the Commission to the Council and the European Parliament, Better Regulation for Growth and Jobs in the European Union, COM(2005) 97 final. The EU already had a target of 25% with respect to simplification (in particular focused on the reduction of the number of pages of the '*acquis communautaire*'), and this target has even been raised. Incidentally, the 25% reduction target seems to have a magical ring to it. In most EU Member States that have sought to reduce the regulatory or administrative burden in recent years, the target has invariably been fixed at 25%. An example of a regular coincidence?

13 This law entails that in a production system with fixed and variable inputs (say factory size and labour), beyond some point each additional unit of variable input yields less and less additional output. Conversely, producing one more unit of output costs more and more in variable inputs.

- burden, due to increasing politicization of the decision making and the increasing compromise of existing levels of public risk management;<sup>14</sup>
- b. the constant pressure on modern governments to reduce public risk on the one hand and the desire for business enabling legislation on the other, leading to a perpetual cycle resulting in the constant production of red tape and the parallel need to reduce this.

## **2. Why combat red tape?**

As was indicated in the first section modern market-based political societies are subject to semi-autonomous processes of legislative proliferation. Especially if incidents occur (risk, injustice, inequality or ineffectiveness), it is likely that new, more stringent rules are called for by lobby groups, the press and Parliament, or governments for that matter. In the Netherlands recent (major) incidents – an explosion at a firework factory, large-scale fraud in the construction industry and several outbreaks of animal diseases – have noticeably spurred legislation. Even when the actual problems are not caused by the absence of legislation but by failing implementation or enforcement of existing rules, the political reflex often calls for and results in the form new rules.

In 2006 the UK Better Regulation Commission (BRC) raised the alarm concerning this self-reinforcing process of political reflexes to major incidents and perceived risks.<sup>15</sup> In the UK as well as in the Netherlands a typical response to incidents is to regulate in order to ward off the risk and repetition of incidents. This, however, reinforces the role of the Government as a risk manager – and levels of expectation – and – in its wake – produces more and increasingly complex legislation, most of the time even more difficult to implement and enforce and costly for citizens, industry and businesses alike. This, in turn, shifts national levels of frustration up a notch, as the BRC observes, which can lead to even more legislation and parallel bureaucracy.

There is even another factor in play. Modern governments in our type of societies need to be well informed in order to be able to perform their extensive functions. Governments cannot, for instance, assess risks to public health, public safety, the environment etc. if they are not properly informed. The fuel of modern-day administrations is information. To be able to function ever more information is required. Since most of this information cannot be harvested on the basis of voluntary cooperation by citizens, organisations and citizens are required by law to satisfy the Government's increasing thirst for information. These information obligations include data statistics, annual accounts, tax forms, labour safety evaluations, and many more. In this way risks or perceived risks drive regulation in a double way: directly – warding off future risks – and indirectly by satisfying the information thirst of the Government resulting in information obligations.

In the Netherlands these obligations constitute the core of the administrative burdens which the present Government wants to tackle. Economic operators, institutions and citizens, it was felt, are vexed by repetitive, overlapping information requests: sometimes the exact same information is required by different government agencies and at different times each year, only using slightly different definitions, making it increasingly difficult for citizens and companies to comply. This to the detriment of businesses, entrepreneurship and the competitiveness of the Dutch economy. The Dutch Bureau for Economic Policy Analysis forecasts that the additional growth of the Gross

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14 See for instance A. Dodds, 'The Core Executive's Approach to Regulation: From 'better regulation' to 'risk-tolerant deregulation'', 2006 *Social Policy and Administration* 40, no. 5, pp. 526-542.

15 Better Regulation Commission, *Risk, Responsibility and Regulation; whose risk is it anyway?*, October 2006.

Domestic Product in the Netherlands resulting from a 25 % reduction of administrative burdens – the target of the Balkenende administrations between 2003 and 2007 – will amount to 1.5%. There is even an additional benefit: the administrative burden relief can also improve enforcement and compliance. This on the – not altogether convincing – premises that when it is less costly for companies to comply, they will be more amenable to provide the necessary information of their own free will. The first results in the Netherlands do however indicate that simpler rules can indeed be more effective, do provide for better statistics, the higher quality of public services, higher tax revenues, etc. Finally, bureaucracies may become more efficient if information obligations are reduced. Asking less information also means having to process less information. Enforcement becomes less costly, which can be used to cut the budget or to improve the quality of public services. In the Netherlands, for instance, the gains of cutting red tape in health care are used to increase the number of people treating patients (and not cutting the budget). The Netherlands Bureau for Economic Policy Analysis has calculated that diminishing the administrative burdens by 25% in health care would ‘liberate’ 24,000 man-years for actual care.<sup>16</sup>

### 3. Simplifying the regulatory environment: recent history in the Netherlands

It is not the first time Dutch governments have attempted to get to grips with the volume of legislation and its consequences for businesses and industry. In fact it seems to be almost a law of physics in Dutch politics that whenever economic growth is slowing down, the heat is on for legislation. The swing of this pendulum dictated that after the economic crisis at the beginning of the 1980s the first Lubbers administration (1982-1986) pursued a rigorous regulatory simplification policy. In 1994-1998 the social-liberal coalition under Prime Minister Kok – inspired by the need for economic growth – conducted an elaborate multi-annual simplification programme more or less on the same footing (deregulation). This programme – aiming to support entrepreneurship, to create level playing fields in hitherto uncompetitive markets and to raise the overall quality of legislation – combined better regulation elements in an integrated approach. The programme – labelled the MDW<sup>17</sup> programme – was continued under the second term of the purple coalition (1998-2002). It met with some success: some 70 simplification projects were concluded resulting in a € 470 million red-tape relief.<sup>18</sup> The programme was also interesting because it showed first attempts to quantify and reduce the administrative burden as a consequence of legislation, although still in a rudimentary form.

The Balkenende II and III administrations (2003-2006) also put better regulation, simplification, and red-tape relief high on the agenda. However, they did – in comparison to the former programmes – narrow the better regulation focus down to specific red-tape relief. By specifically targeting the administrative burden for companies as a consequence of legislation the Balkenende cabinets tried to kill two birds with one stone: to meet the increasing complaints about bureaucracy in general and the costs of administration, information obligations and red tape in particular and to foster economic growth at the same time. Although it is difficult to estimate, because no zero base measure is available, especially in the period of 2001-2003 the administrative burden seems to have rocketed in the aftermath of some large-scale incidents and misfortunes (a major firework explosion in Enschede, a fire in a bar in Volendam, fraud in the construction industry,

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16 Dutch Bureau for Economic Policy Analysis, *Economische effecten van een verlaging van de administratieve lasten* (Economic effects of reducing administrative burdens), April 2004; to be found at [www.cpb.nl](http://www.cpb.nl) (in Dutch).

17 Abbreviation of ‘*Marktwerking, Deregulering en Wetgevingskwaliteit*’ (Market Forces, Deregulation and Legislative Quality).

18 *Kamerstukken II* (Dutch Parliamentary Papers) 2002-2003, 24 036, no. 284.

veterinary epidemics, etc.). The programme aiming for a structural 25% reduction of regulatory-induced red tape (€ 4.1 billion), using pre-fixed targets and a sound quantification of burdens yielded significant results.<sup>19</sup> The Dutch General Audit Chamber, in its 2006 audit,<sup>20</sup> acknowledged the progress which the programme had made (20% of the originally targeted 25%). The Audit Chamber did however note that in the perception of businesses the programme had not as yet resulted in significant or tangible relief. Various reasons may account for this contradictory outcome. For instance, some of the eliminated information obligations in legislation were not complied with anyway, business did not adapt their administrative procedures to the new, less burdensome, regimes – they kept on reporting and registering even when this was no longer obligatory. The programme seems also to have raised the red-tape awareness of businesses. By 2006 they voiced that they felt that the scope of the ongoing programme was too limited and too (central) government-centred. Especially the compliance costs, *i.e.* the costs for business involved in reporting to inspectors and enforcement authorities, were felt as the single most excessive burden. It was not as much the initial burden caused by direct information obligations in legislation that weighed upon businesses, but the indirect, secondary information obligations as a result of compliance issues. Many of these burdens are – according to Dutch businesses – caused by the poor level of service, coordination and performance of controllers, inspectors and enforcement agencies at all levels – central and decentralized.

This is one of the reasons why the current Balkenende administration has widened the scope of its red tape reduction programme. The updated regulatory reform policy – launched by a letter to Parliament on 17 July 2007<sup>21</sup> – adopts a more integrated approach to the reduction of the administrative burden, by aiming for:

- a further reduction of 25% of the administrative burden for companies;
- a reduction of substantive compliance costs in areas where they are considered disproportionate;
- a 25% reduction of the costs of inspectorates, by improving the quality of enforcement and inspections in a number of specific sectors;
- improving the procedures for licensing, among other things by expanding the application of the so-called ‘*lex silencio positivo*’ (meaning: no news on an application for a licence is good news – the licence is then deemed to be issued automatically) and by a further bundling of licensing;
- less burdensome subsidy and grant requirements;
- improving the quality of service provided by governments, municipalities, inspectorates and enforcement agencies to companies;
- improving the information provided *to* companies, among other things by strengthening the Internet portal and the implementation of so-called ‘common commencement dates’<sup>22</sup> or ‘fixed change dates’.

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19 At the outset of the programme the total cost of the regulatory administrative burden was estimated to be a staggering € 16.4 billion. *Kamerstukken II* (Dutch Parliamentary Papers) 29 515, no. 1.

20 Report of the General Audit Chamber (*Algemene Rekenkamer*), *Reductie administratieve lasten voor het bedrijfsleven* (Reduction of administrative burdens for businesses), *Kamerstukken II* (Dutch Parliamentary Papers) 2005-2006, 30 605, nos. 1-2.

21 *Plan van Aanpak Regeldruk Bedrijven 2007-2011* (Action Plan for the Regulatory Burden for Businesses 2007-2011).

22 This system, already in place in the UK, entails that new legislation does not enter into force at various moments throughout the whole of the year, but grouped, at concentrated moments once or twice a year. In the United Kingdom, these fixed change dates have produced positive effects in recent years. One of the disadvantages of this system, however, is that it delays the implementation of EC directives. See W. Voermans & B. Steunenberg, *The Transposition of EC Directives: A Comparative Study of Instruments, techniques and Processes in Six EU Member States*, 2005. The full report can be downloaded at SSRN: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1215542](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1215542)

The differences between the current approach and earlier programmes and projects are considerable. Whereas the initiatives launched in the 1980s and 1990s invariably concerned specific projects carried out on the basis of political (and not very precisely defined) estimations and assessments of the burden of regulation, the current policy is much more systematic, based on an objective and accurate calculation of administrative burdens and direct compliance costs for businesses. Where administrative burdens used to be estimated ‘on the edge of the newspaper’ as it were, present-day calculations are based on very carefully defined concepts and collectively agreed and endorsed parameters. The business sector is also involved as a partner in the efforts to come up with mutually accepted and practicable arrangements.

The Dutch Taxonomy project provides a good example of the latter. As of 1 January 2007, businesses and intermediaries can report their financial data to the Government using the standardized XBRL (eXtensible Business Reporting Language) taxonomy. This Standard Business reporting method enables the exchange of information on a large scale between businesses, their intermediaries (consultants, accountants, etc.) and the Chamber of Commerce (*Kamer van Koophandel*), the Tax department (*Belastingdienst*) and the Netherlands Statistics Bureau (*Centraal Bureau voor de Statistiek*). The general idea is to have a one-stop-shop system in financial reporting. By offering a standardized mark-up language the project tries to moderate and facilitate developments in certain financial reporting chains. It is believed that this way of reporting might save up to 30% of the time originally involved in financial reporting. XBRL reporting is not mandatory in the Netherlands but is operated on a voluntary basis. The project itself was a joint initiative by the Dutch Government and business. At present more than eighty companies and government organisations have committed themselves to the use of the Dutch taxonomy and the Process infrastructure in a covenant.<sup>23</sup>

The action plan of the present Government makes a firm and energetic impression, but one may wonder whether present policy is not overambitious. The Balkenende IV cabinet programme has the aim of (yet again) reducing the administrative burden caused by legislation by 25% between 2007 and 2011. This comes on top of the 20% reduction that was already targeted between 2003 and 2007. The total volume of Dutch red tape for companies was in 2003 measured and found to be € 16.3 billion on a yearly basis. That is 3.6% of the Dutch GDP. To diminish this by 25% (a random figure, chosen in 2003, based on expert opinions more than on a feasibility study) called for an extensive programme of deregulation and simplification of legislation. In 2007 a new baseline measurement was conducted to create a new benchmark in order to have a point to fix the new target of 25% to. It remains to be seen whether the feat of the 20% reduction of the former period 2003-2006 can again be accomplished. Especially when we consider that the previous reduction programme was of a more or less technical nature. The operation itself did not amount to many complicated or painful political assessments. There were no major debates on principle or on the levels of acceptable risks when information obligations were cut away. What actually happened was that a great deal of ‘noise’ was removed from the existing volume of statutory regulations in particular. All of the non-controversial easy wins were booked. On top of that: a great deal of the information obligations that were struck from the books were also relatively new. Not seldom, this was the result of legislation that followed the major national incidents of 2001 and 2002. The reduction programme in 2003-2006 did not cause much of a stir, but things may now be completely different.

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23 See <http://www.xbrl-ntp.nl/english> (last visited 15 May 2008).

To realize the current policy until 2010 the method is yet again based on a number of – best practice<sup>24</sup> – ‘building blocks’. These blocks consist of:

- a) measuring the administrative burdens of all existing legislation per 01/03/2007, using the standard cost model;
- b) differentiated administrative burden targets (ceilings) per ministry, adding up to an overall 25% reduction target, the result from a list of concrete solutions to problems perceived by companies;
- c) the reduction of existing administrative burdens and a wider set of compliance costs and regulatory issues through departmental simplification programmes, monitored by a programme directorate under the aegis of the junior Ministers for Economic Affairs and Finance;
- d) the identification of additional regulatory costs in the context of impact assessments for new legislation, and the introduction of a compensation requirement (new administrative burdens are compensated on top of the above targets);
- e) creating a network of co-ordinating units within departments, strengthened by the independent Advisory Board on Administrative Burdens (*Adviescollege toetsing administratieve lasten, Actal*) to check the effectiveness of departmental programmes; and, finally,
- f) the involvement of the business sector in identifying simplification potential.

#### **4. Methodology for determining the size of administrative burdens: the SCM model**

The Dutch experiences over the years have taught us that the burden reduction policy – if it wants to meet with success – begins with solid and objective quantification. Estimating the volume and origin of red tape has, however, proven to be politically sensitive and indeed difficult in the last few decades. The first bone of contention always concerns the definition. What is exactly meant by an ‘administrative burden’?

The current Dutch policies on reducing administrative burdens – in contrast to the former deregulation policies – are based on a precisely defined concept of administrative burden. Administrative burdens are – in essence – nowadays commonly understood as a part of the regulatory compliance costs for businesses. More specifically, administrative burdens are defined as: the costs that the corporate sector must incur in order to comply with the information obligations resulting from Government-imposed legislation and regulations.

In order to overcome the manifold pitfalls of red-tape reduction in the Netherlands the Standard Cost Model (SCM) was developed, offering both objectivity and solid common ground when analysing or forecasting administrative burdens. The SCM methodology quantifies administrative burdens by identifying demands on economic operators, institutions and citizens in legislation and by putting a price tag on these demands consisting of the time and money spent in fulfilling the requirements.

The SCM is both an identification and a reduction tool in order to search, quantify and reduce administrative burdens arising from existing legislation (stock) as well as a design tool to limit administrative burdens stemming from new legislation (flow) as much as possible. The SCM approach allows for either a measurement concentrating on some specific fields of existing regulation or – as part of impact assessment procedures – an ex-ante measurement of administra-

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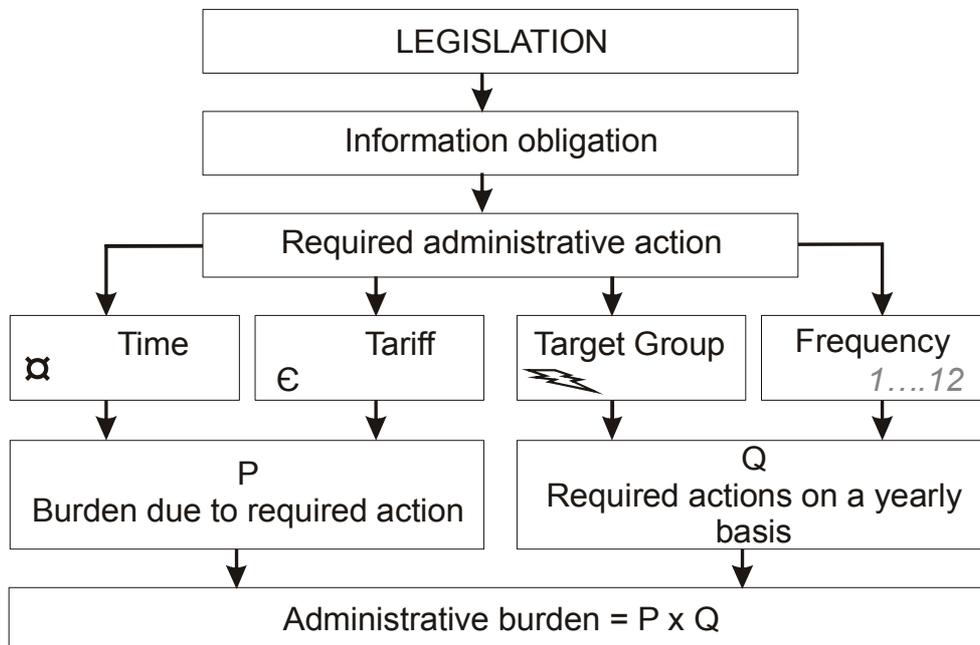
<sup>24</sup> See OECD (*Cutting Red Tape: Comparing Administrative Burdens across Countries* 2007 also available on the [www.administratieburdens.com](http://www.administratieburdens.com) website. See also [www.administratievelasten.nl](http://www.administratievelasten.nl) (last visited 1 June 2008).

tive burdens resulting from new legislation. The SCM is suitable for both a limited and a full-scale measurement (all legislative areas). The limited scale approach can be used to first build up some technical knowledge and practical experience with the methodology, before deciding whether or not to proceed at a full-scale level. The model has met with some success. That is why Denmark and more recently the UK, the Czech Republic, France, Germany and Norway have chosen to adopt the Dutch red-tape approach in an integral way, that is to say on a full-scale level. This is not a coincidence, as all these countries share ambitious reduction targets. As a matter of fact, if one wants to identify systematically where and how administrative burdens can best be reduced, one basically has to measure all national legislative areas.

*The mathematics of the quantification*

To quantify the red-tape effect, the time normally spent on fulfilling an individual information requirement is valued at the going labour cost rates (tariff). This shows how much the individual information requirement costs ( $P = \text{time} \times \text{tariff}$ ). By multiplying the price with the frequency of the information obligation (e.g. monthly, annually) and the number of companies involved (Q) the total burden is calculated. Within this methodology the administrative costs are identified at a detailed level of individual information demands and their price.

When determining the amount of the administrative burden, it is impossible to avoid making assumptions. It is important to handle these assumptions in a uniform manner. The assumptions contained in existing measurements have been made explicit, using the SCM. The size and composition of all the administrative burdens are visible and the methods for monitoring progress have been established.



## 5. Prevention and reduction

Knowing the size and origin of administrative burdens is one thing, getting rid of them is quite another. In order to effectively cut red tape the current Dutch administration uses a twofold approach. The Dutch strategy is to *reduce existing burdens, as well as to prevent and limit* new administrative burdens at their source.

One of the instruments used to further this end is the mechanism of administrative burden-ceiling per ministry. The reduction and prevention strategy consists of individual simplification programmes for ministries and compensation arrangements. Arriving at a 25% net reduction of red tape, by attacking it at the roots, *i.e.* the departmental production of the legislative burden,<sup>25</sup> is hardly a matter for one ‘size fits all’ policies. The 25% target does however not apply equally to all ministries or policy areas. For different reasons it cannot be applied uniformly. Targets are therefore differentiated. In some areas (such as statistics, taxation) red tape had already been significantly reduced before 2003. In other policies a 25% target is unwarranted because new legislation, adding to the burden, is necessary because of European obligations or because of national priorities. This, for instance, was why the revision of the health care system was set outside the margins of the target.

In order to ensure that the net target of a 25% reduction is met, compensation for unforeseen new burdens is pivotal in the eyes of the Balkenende IV administration. The differentiated target mechanism gives an incentive to prevent the introduction of new administrative burdens, or at least to keep them to a minimum. Because rises must be compensated elsewhere, new administrative burdens have been given ‘a price’. This promotes long-term attention to administrative burdens.

Besides this mechanism and its ‘rules of the game’, it is critical – according to the present Dutch Government – that a long-term focus on red tape should be embedded in the infrastructure of ministries. Therefore, in the first phase of the operation in 2003, separate project departments and project bureaus were set up in all ministries causing administrative burdens for companies. Over the years, these ministries have embedded these project departments more and more in their normal structure (for example, within financial directorates). The departmental project bureaus organised the operation. Progress was however monitored by the ‘legislative burden section’ of the Ministry of Finance, in the context of the budget cycle. This means that at the same moments in the year when ministries report on spending and the budget, they also inform the Minister of Finance about the progress of their programme for simplification.<sup>26</sup> In this context, he has enforced the compensation requirement.

### *Regulatory Impact Assessment*

Obviously, in order to reach the net target, the administrative burdens of new rules and laws need to be estimated. For this – again – the standard cost model is used both as a diagnostic and a

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25 Nearly all of the Dutch statutory laws (*i.e.* Parliamentary acts) are the result of departmental initiatives. Furthermore, most subordinated legislation at the central level of government (Statutory instruments) is enacted by either by the Government or the Ministers (and prepared and drafted within ministries).

26 The ‘legislative burden section’ of the Ministry of Finance monitored progress in realizing the differentiated targets over the period 2003-2006. Each Ministry established its own Red Tape bureau in that same period. These red tape project bureaus within the Ministries provide the legislative burden section with biannual reports on the measures realized and new proposals. The burden section prepares reports to Parliament, co-operates with other countries, international institutions, communities and municipalities and supports the ministries involved in providing instruments. They are responsible for the uniform application of the SCM. Finally, they support the Minister of Finance in his negotiations with his colleagues on the realisation of targets and the compensation rule. Under the present administration a joint programme directorate from the Ministries of Economic Affairs and Finance has taken over this role.

design tool. To prevent the administrative burden re-emerging over and over again in legislation, attempts are made to improve the awareness of lawmakers and a questionnaire on administrative costs is added to the national Regulatory Impact Assessment (RIA) requirements for new legislation.

The SCM constitutes an integrated part of the existing regulatory impact assessments (RIA) and is mandatory for all draft legislation. The uniform RIA, which in the Netherlands is an integral test that also includes a business effects test, works on the basis of the costs and effects that are the outcome of the SCM test. All draft legislation is subject to RIA scrutiny before it can be submitted to the Council of Ministers (who, in turn, subject their approval, will submit it to the Council of State for consultation, and afterwards to Parliament). Every explanatory memorandum accompanying draft legislation needs to report on the way the administrative burden was quantified (on the basis of a precise calculation) and considered. Furthermore, it needs to show how the burden is proportional to the goals to be achieved, how the burden is kept to a minimum and how any new burdens will be compensated by extra reductions of already existing legislation. The review is not merely intra-departmental. An independent advisory body – Actal – scrutinizes the departmental calculations on draft legislation to verify that the SCM is used adequately and informs the Council of Ministers whether the most efficient alternative has indeed been chosen. We will discuss Actal in Section 7 in more detail.

## **6. Screening the legislative stock**

In the former section we discussed how differentiated reduction targets are allotted to all Dutch departments. Ministers are the ones responsible for meeting the target. They are closely monitored. At the outset of the current programme all Ministers submitted to Parliament a list of proposals on how they intended to screen and revise the existing legislation falling within the scope of their portfolio and how to reduce the administrative burden resulting therefrom. The target legislation on these lists were identified and elaborated in close cooperation with businesses. The reduction needs to be realized during this Government's term. Analyzing the proposals one can identify the following types of planned revisions:

- Simplifying the information requirements by getting rid of unnecessary and, in terms of administrative cost, too expensive requirements. This includes lowering the frequency of requirements (asking information less often per year in the field of statistics) and decreasing the number of companies involved (for instance, excluding small and medium-sized businesses from certain requirements in annual accounting);
- To make it easier to fulfil the requirements by using modern information and communication techniques, for instance in taxation (see the Taxonomy project mentioned in Section 3);
- Reorganizing the information requirements through more intensified cooperation between Ministries (not asking slightly different information twice and bundling licensing requirements), and
- Switching to less burdensome regulation alternatives (self-regulation and co-regulation in certification and standards).

Though helpful, this alone will not cut it by 25%. To secure a net reduction by a quarter requires – the Government admits – a permanent search for new reduction opportunities. This search – one might even call it ‘scraping’ – is done by intensively analyzing the inventory of the

departmental administrative burdens, looking for new opportunities to reduce the burden by using ICT and inter-Ministerial cooperation across sectors. The eyes and ears of this exercise are not only in the departments, there is also a sort of a Watch Tower. The Ministries have opened up a website where economic operators are welcome to complain about the regulatory burden and red tape.<sup>27</sup> It has in fact already yielded some results. The Ministry of Social Affairs and Employment, for instance, is currently saving over € 100 million for companies by simplifying the – contested and detested – rules on ‘labour safety’. They have done this by developing branch-specific reporting tools and by improving access to relevant information (on the Internet). Another complaint-based action is that, recently, small and medium-sized companies have been exempted from the strict requirements for annual accounting that are necessary to monitor larger businesses. The European Commission followed suit here. This combined action is believed to save over € 80 million for Dutch companies.

## **7. First results**

As indicated the total cost of red tape in the Netherlands was in 2003 estimated at more than 3% of the GNP. This is substantial, even if it is not a high figure compared to other countries. The approach opted for from 2003 onwards made it clear that this red tape was for the most part caused by tax legislation or legislation concerning annual accounts. The data that businesses have to provide to the Dutch Statistics Bureau did not form a large proportion of these burdens, but research revealed that they were a major source of irritation for businesses.

The first programme in 2003-2006 was well on schedule during the Government’s term of office, but the Government’s premature resignation in 2006 slowed down the pace somewhat at the end of the term. In the end, the period between 2003 and 2006 saw a reduction of 20%. This is a good result in absolute terms, but, as the Dutch Audit Chamber noted (see Section 3), the business sector did not share this positive outlook, partly because the project did little more than give them a wake-up call as regards the awareness of the administrative burden, and partly because the real sources of irritation had not been removed. For example, the Government implemented simpler accounting rules in which businesses were not really interested. The gains were booked, however.

In total the 2003-2006 reduction programme achieved a net € 3 billion reduction in the regulatory burden in recent years. To prevent the reduction programme from being out of touch with the needs of the business sectors in the coming years again means that they have to be more closely involved. This will however make it more difficult for ministries to achieve the reduction target of another 25%, as purely accounting measures are no longer included in the calculation.

### *Actal*

The independent ‘administrative burdens watchdog’ Actal has played an important part in achieving the targets defined by the previous Government. This advisory board had already been established under the social-liberal (purple) administrations and was supposed to exist only temporarily. After eight years and extension upon extension, however, it is safe to assume that Actal now has a semi-permanent status. The board advises the Government – and Parliament, too, if it submits a request to that effect – on administrative burdens that arise from proposed or existing legislation. If any legislative proposal involves burdens exceeding € 5 million,<sup>28</sup> these

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<sup>27</sup> Complaints can be made at the website [www.administratievelasten.nl](http://www.administratievelasten.nl) and [www.compliancecosts.com](http://www.compliancecosts.com) (last visited 14 May 2008).

<sup>28</sup> Calculated through the SCM method.

proposals must always be submitted to Actal and the latter always renders its advice thereon. If the burdens represent an amount between € 1 and 5 million, the ministries must submit the proposal to Actal, but the board itself will assess, on the basis of the file, whether it will render an opinion thereon. In the context of its rendition of advice on proposed regulations, Actal also verifies whether the ministerial calculations and statements about the application of the SCM are right and examines whether in the assessment of the various options, the least burdensome option has been chosen. Actal's review reports are published. In this way the board hopes to contribute to a cultural shift with respect to the awareness and minimization of administrative burdens as a result of regulations at the ministries.<sup>29</sup> According to the board's annual reports, progress is being made in this area.

*Making it even harder: the cost and limits to burden relief*

The 2003-2006 period made it quite clear that reducing the administrative burden is no small feat even if there is commitment and there are a lot of advantageous contributing factors. The new 25% reduction target for 2007-2010 will prove to be tough going for the Government due to its attractive side for the business sector: it has a real net target. The need to compensate burdens elsewhere (ceilings) once burdens arise as a result of new legislation is a very strict policy. Even if the Government will be able to scrape effectively, one may wonder at what cost. Evidently the risk-tolerance levels and levels of legal protection will need to be lowered at some point in time in order to attain the result. To do this only two routes are available:

- a. To do it openly and to open up an undoubtedly very controversial debate, slowing down the pace of the burden relief if not grind it down to a complete halt. This is, for instance, the case in the present administration's proposal to relax the law on the termination of employment. This would reduce burdens considerably, but is highly controversial and hence has been 'parked' for the moment.
- b. To do it more or less covertly in a technocratic way and avoid as much as possible any discussion as to how risks should be regulated. Dodds<sup>30</sup> has, convincingly in our mind, made the case that the new principled risk discussions are undeservedly side-railed by proponents of the new risk-tolerance movement.<sup>31</sup> Power and Beck, too, have argued that it is preferable not to evade a public debate on risk, but rather to initiate it, to make competing views transparent, to come up with a public language of risk which accommodates and highlights trade-offs.<sup>32</sup>

## **8. Embedding impact assessment in the Dutch legislative process**

The success of the current administrative burdens approach can partly be explained by the fact that it circumvented 'normal' routes and rules of the 'normal' legislative process. Project bureaus provided a separate infrastructure. Co-ordination and monitoring were performed by a specialist directorate, in the context of the budget cycle and the Actal body checked exclusively the quality of measurements by administrative burdens. This focus was necessary in order to realise a one-

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<sup>29</sup> For the terms of reference and working methods, see <http://www.actal.nl>. (last visited 30 April 2008).

<sup>30</sup> See Dodds, *supra* note 14, p. 539.

<sup>31</sup> See Better Regulation Commission, *supra* note 15.

<sup>32</sup> U. Beck, 'Risk and Power: why we need a culture of uncertainty', in: European Business Forum, *Managing Risk*, 2003; M. Power, *The Risk-management of Everything: Rethinking the Politics of Uncertainty*, 2004.

time net target. It is still an open question whether a next government will again formulate such an ambitious target, and whether it will again primarily focus on administrative burdens.

In the long term, however, it seems inevitable that dealing with administrative costs for businesses needs to be embedded in the ‘normal’ legislative process. Regulatory impact assessments and effects tests for new legislation will need to continue to quantify administrative burdens. Unnecessary costs and effects (the wider set of compliance issues) need be avoided also after the 25% target is met. So-called regulatory creep (the automatic recurrence of unnecessary administrative costs) should be avoided. For this the RIA system in the Netherlands will be strengthened. The different tests available will be integrated into one system. Actal is asked to (*ex post*) evaluate whether this integral test is applied in the right manner and to check whether the outcome of the test is sufficiently taken into account in the legislative process, while keeping the responsibility to *ex ante* check the calculations on administrative burdens.

To prevent certain information obligations, with their extra administrative burdens, from cropping up again and again in legislation, it is important to enhance the legislators’ ‘awareness of administrative burdens’ by means of a number of tests against which they are able to assess every new regulation. An example of this kind of test is the business effects test (BET), which has existed for quite some time now. This test reveals the consequences of proposed regulations for businesses on the basis of targeted questions and a calculation method. The instrument is primarily intended to assess the general effects of proposed acts, general administrative orders and ministerial regulations for businesses. Generally speaking, the test seeks to assess the usefulness and necessity of the proposed regulation, and, in particular, the permit systems contemplated therein (always a source of administrative burdens) by means of the Assessment Framework for the Simplification of Permits. Besides the BET, there are other tests that are applied with respect to proposed regulations before these are presented to the Council of Ministers. For example, there is the environmental impact test (*MET*), which seeks to chart the environmental impact of proposed regulations, and the feasibility and enforceability test (*U&H*), which considers the consequences of proposed regulations for administrative and enforcement agencies. And there are numerous other tests applied to proposed regulations. Some people are of the opinion that there are already more than 100; this is rather too many and this may result in erosion. This is why efforts are being made to develop an integrated assessment framework whereby all dimensions of the proposed regulation are addressed.

Improving the legislative process itself can also contribute to diminishing administrative burdens. This is why the Dutch Ministries of Justice and Finance are considering the possibilities to improve systems for consultation and to introduce a system for ‘common commencement dates’ that is already available in the UK. Companies indicate that the costs of legislation are unnecessarily high, not only because of the information obligations included (as measured in the standard cost model). The transition costs of introducing new legislation in itself are also burdensome. They can be reduced by the timely involvement of the business sector in developing new rules and legislation (through consultations). Less costly alternatives can be proposed by companies, based on real-life experiences with existing obligations. Transition costs can further be diminished by timely announcing changes foreseen in the law (providing transparency on necessary changes of administration) and by using common commencement dates. Giving companies the possibility to adapt their administration only once or twice per year, after a sufficient implementation period, could substantially contribute to lessening the administrative burden.

## 9. Critical factors and the Sisyphus paradox

Everybody wants to reduce the administrative burden nowadays. This is a truism, to say the least. Like many other European countries, the Netherlands has made great efforts to tackle the administrative burden and the effects of regulations. It has definitely made progress in this respect. For some years now, the Netherlands has taken pains to make legislation and its effects more manageable as well as to simplify the information relationships, processes and procedures required for that, for example, by using information and communication technology. Ambitious programmes were set up and implemented, a sound methodology was used (zero base measurement, definition, quantification, fixed target reduction, ex ante and ex post scrutiny). Elements of the Dutch approach have served as an inspiration and best practice for other countries and EU policies to simplify the regulatory environment. From the Dutch case some critical success factors emerge. These are method, political commitment, communication and embeddedness. The methodology used and the political commitment over the period 2003-2006 account for a large part for the result, so observers – among them the OECD in a 2007 report<sup>33</sup> – believe. The Dutch Audit Chamber in its 2006 report called for attention to the element of communication. Mere mathematical relief of the administrative burden overshoots the mark if businesses themselves do not notice the effects. Calculations, estimations, and reductions are important, but the process will not take root if it is nothing but a mathematical exercise, as many other countries have experienced as well. This one-sided focus on targets and mathematics is of course a side-effect of the approach adopted, but is an Achilles heel as well. A last factor, of course, is the level of embeddedness. In the 2003-2006 period the relief operation was conducted as a project, not as an integrated part of the legislative process. It is quite evident that if burden relief wants to escape the swing of the pendulum<sup>34</sup> and to have truly long-term effects, it needs to be embedded in the ‘normal’ legislative process.<sup>35</sup> Current attempts to that effect prove that. However, the Dutch case does also show some critical factors that are somewhat below the surface. They are the interplaying factors of the effect of the law of diminishing returns in burden relief and the politicization of the risk-tolerance and legal protection debate. The Dutch case demonstrates that once the easy wins of burden relief have been cashed in (2003-2006), it proves more and more difficult to relieve the burden once again. The Government needs to scrape and come up with a very strict compensation policy. The law of diminishing burden returns presents itself in a twofold way. It becomes harder to achieve the targets set because the ‘noise’ in the legislative stock has already been removed. And, secondly, it will prove even more difficult to relieve the burden in a more or less undisturbed technocrat-bureaucratic way avoiding political attention and principled political debates. The recent case of the relaxation of the law on the termination of employment (2007) provides evidence to this effect. Where in the former period (2003-2006) the relief policies were instrumental to e.g. reforms in health care (promoting more self-reliance), the experiences during the last two years indicate that political discussion in itself may rather prove to be a swamp for relief policies. A last – less visible – factor is to be found in the debate on risk tolerance and legal protection. Relief of the administrative burden may – and does – affect standards of public risk protection and legal protection. The problem is how to deal with this effect. An open debate runs the risk of attracting political ‘heat’ and by this the grinding down

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33 OECD, *Cutting Red Tape: Comparing Administrative Burdens across Countries*, 2007.

34 I. Bartle & P. Vass, ‘Self-Regulation within the Regulatory State: Towards a New Regulatory Paradigm?’, 2007 *Public Administration* 85, no. 4, pp. 885-905.

35 See A.C.M. Meuwese, *Impact Assessment in EU Law Making*, PhD-thesis Leiden University, 2008.

of relief projects, a covert technocratic approach, on the other hand, risks veiling and side-railing debates and trade-offs between competing views on acceptable levels of public risk and legal protection ('silences in the debate').<sup>36</sup> Some authors have argued that these silences in the debate need to be addressed and that the debate on acceptable levels of public risk needs to be forced out into the open in order to prevent incomplete debates and hidden agendas (e.g. Dodds 2006, Beck 2003 and Power 2004). We would argue – on the basis of the Dutch case – that there is indeed a risk of silence in the debate, but that it is probably not necessary to explicitly spur a public debate on risk politics and levels of legal protection; it will most likely emerge automatically due to the dynamics of burden relief policies. What is in play here is, what we would like to call, the Sisyphus paradox of red-tape reduction entailing that burden relief – due to the law of diminishing returns – becomes increasingly difficult over time and when it becomes more difficult it tends to politicize debate which, in its turn, exponentially raises the cost of administrative burden relief efforts. The underlying assumption of this thesis is that a high level of public debate (due to the way modern European governments tend to handle risk debates) results in regulation and – consequently – in an administrative burden.

## 10. An outlook

Although the Sisyphus paradox does not present a promising picture, this is not per se a reason to be pessimistic about burden relief projects in the Netherlands or elsewhere. At present, indeed, there still seems to be a favourable effect on overall economic growth in the Netherlands. There are tangible gains and this may explain why other European countries and the European Union itself are also launching serious projects and programmes aimed at the reduction of administrative burdens. The underlying problem, however, may be that the benefits of the reduction policies may be short-term, vulnerable gains. Deregulation programmes and burden relief policies, however politically backed, systematic and ambitious, tend to have a cyclic element in them if, for instance, we look at the Netherlands. In the last three decades there have been no less than three major deregulation programmes. The problem with these programmes is that it is difficult to yield a lasting result (undoubtedly due to the dynamic of the Sisyphus paradox) and to pay permanent attention to the overall economic effects of legislation.<sup>37</sup> Red-tape reduction programmes seem to be rather dictated by the swing of the political pendulum than inspired by the wish to establish lasting, long-term programmes, institutions and routines to prevent excessive burdens. And maybe rightly so. It would, however, be advantageous for politicians and academics alike, we feel, to recognize the cyclic nature of red-tape reduction policies in order to be able to better cope with it. In this respect the very practical analysis (maybe more than the result) of the Better Regulation Commission used in its 2006 report, *Risk, Responsibility and Regulation; whose risk is it anyway?*, can be applauded in as much as it admits that red-tape reduction is not a mere technical, bureaucratic equation but requires political choices within a broader political context. Cutting red tape in many cases means raising the risk (which, admittedly, is in itself not always a bad thing). This way of opening up the debate takes political courage and maybe the remedy to evade the Sisyphus paradox. The present credit crisis will, we feel, present a very interesting test case. Will the governments Europe-wide openly discuss the side-effects

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36 See C.M. Radaelli, 'Getting to Grips with Quality in the Diffusion of Regulatory Impact Assessment', 2004 *Public Money & Management*, no. 5, pp. 271-276.

37 W.A. Jansen & W.J.M. Voermans, 'Administrative burdens in the Netherlands', in: Statistical Society of Slovenia (ed.), *16th Statistical days: measurement of the development role and efficiency of the public sector and policies*, 2006, pp. 32-39. Also to be found at: [www.stat.si/radenci/program\\_2006/VR\\_Jansen.doc](http://www.stat.si/radenci/program_2006/VR_Jansen.doc)

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of the new (upcoming) policies to control the financial markets and try to alleviate them (*e.g.* by making them of a temporary nature), or in a few years time will 'mum be the word' when the 25% reduction targets will not be met?