

Strategic Study

**Information obligations in the Dutch constitutional state**

Compliance costs for business

André Nijsen

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## Preface

The underlying Strategic Study into information transfer obligations of and information transfer compliance cost incurred by private enterprise (occasionally termed administrative burdens) entails part of a PhD route. The conception thereof had initially been debated with Prof.Dr. I.Th.M. Snellen, Professor Emeritus Public Administration at the Rotterdam Erasmus University, in January 1999. Back then, Professor Snellen showed his inclination to act as supervisor. The factual start of the underlying Strategic Study materialized in Spring 1999. The intention embraced entails the completion of the PhD route by Spring 2002.

The underlying part of the Strategic Study focuses mainly on subject-related history, theoretical foundation and definition. Further studies in this respect will also elaborate on an assessment of information transfer compliance cost, while employing EIM's MISTRAL assessment methodology as the key tool. As far as known to me, this is the very first study of such dimensions examining the theoretical foundation as well as the defining terminology as regards the phenomena of information transfer obligations and information transfer compliance cost. Obviously, my conceptions recapitulated in the underlying Strategic Study are subject to improvement. I therefore invite everyone - particularly those who disagree with the hypotheses put forward - to furnish reactions to my E-Mail address any@eim.nl.

Besides to Prof.Dr. Snellen, I owe a great deal of appreciation to Dr. Brigitte van der Burg (Raad voor Zelfstandig Ondernemerschap Rzo (Independent Entrepreneurship Council)), Dr. Maarten Allers (Groningen University) and drs. Sander Wennekers (EIM) for their stimulating contribution to the underlying part of my study. Furthermore, I am most grateful to my fellow-researchers John Boog and Gerard Regter as regards the many stimulating discussions that enabled me to capitalize on their huge practical experience with research into administrative burdens. Last but not least, I acknowledge the expertise of Mrs Shirley Cooper who translated the Dutch version into English, and I am grateful to Dr. Belaid Rettab (EIM) for his critical revision of the entire English text.

André Nijsen, Zoetermeer, July 2000



## Summary

### *Introduction*

The period within which the 'contrat social' was, particularly, intended for the defence of national borders is now far behind. In a social constitutional state, citizens expect from the government to provide social security, friendly environment, and good working conditions. Citizens also require adequate provisions of health care, education, infrastructure, etc.

To finance such public services, the government should be entitled, by law, to levy taxes. The wishes of citizens become explicit though in the process of political democracy. Through this process, the government is assigned several tasks (responsibility) and being provided several instruments/tools (authority) to be able to meet the above-mentioned expectations. Such responsibility and authority of the government are clearly specified in the administrative law.

Administrative law entails burden for citizens as well as the business community. The objective of this law is first, to guarantee the compliance of citizens and businesses with the stipulated law and provide the necessary information regarding their behaviour and the result of this behaviour, and, second, meet their expectations with respect to public services, such as social security, sound environment, etc.

These obligations do generally govern the behaviour of citizens and businesses: 'thou shalt or thou shalt not'. The regulations regarding information transfer affecting businesses and the related compliance costs are the subject of this study.

In accordance with the administrative law, the government imposes obligations on citizens and businesses to regulate their behaviour and acquire information about their activities for control purposes.

There are two types of obligations. The first type relates to the 'content' of these activities and endeavour to achieve compliance of businesses with the stipulated norms by society. The second type relates to the compulsory transfer of information by businesses.

Both citizens and businesses have to deal with such regulations as soon as they participate in society.

The fact that government requires businesses and citizens to comply with the obligation to transfer information can also incur costs for the government. Take, for example, the cost of monitoring whether businesses or citizens actually comply with these regulations. Such costs are called administrative costs.

In this way, three types of costs could be distinguished:

- Administrative costs incurred by the government

- Compliance costs applying to the 'content' for the account of the business or citizens
- Transfer of information obligation costs, also called information compliance costs, again for the account of business or citizens.

The information compliance costs incurred by businesses and citizens are in fact hidden costs. No explicit account of these can be found in any administration kept by citizens or businesses. Even more serious is the fact that the compliance costs for businesses and civilians are not included when compiling the National Budget.

Officials who are responsible for designing new legislation and regulations are generally badly informed about the 'off-budget' effects of regulations. Usually, estimates of costs and benefits of legislation and regulations are limited to the consequences for the National Budget ('on-budget' effects).

Consequently, when estimating the budget, calculations are, usually, based on considerably low budgetary price, and thereby little incentive for reduction of costs of regulation is left.

The hidden costs of regulation in general should not be underestimated. The information compliance costs for the Dutch business community was estimated to be about 2.2 percent of the GNP (1998). Unnecessary compliance costs may have adverse effects on economic growth and employment. Compliance costs place a relatively heavy burden on medium-sized and small businesses.

As a consequence of the one-sided ideological approach to the problem, there is insufficient information about the background of the regulation concerning the provision of information. Relevant questions in this respect are: How long has the interest in information transfer existed? What is the origin of such obligations and how are they legitimised?

Although interest in the phenomenon of the obligation to transfer information and the accompanying compliance costs has recently increased, little attention has been paid to their theoretical foundation behind which the following questions could be put forward. What sort of process led to their existence? Which determinants are decisive for information transfer compliance costs? Which definition of compliance costs is most meaningful, taking into account the fact that the objective is to reduce unnecessary costs for society as a whole? Which part does the perception of business play?

This study attempts to fill in the above-mentioned gaps and concentrates on the obligation to transfer information and the accompanying compliance costs as these apply to businesses. The use of the term 'information compliance costs' instead of the more commonly used term administrative burdens is a well-considered choice being made to account for the ideologically charged interpretation of the latter.



### ***Increasing recognition***

More than 200 years passed after Pope's first phase, consciousness of professionals, before the final phase, monitoring, was reached. The table below shows the total overview. The periods cannot be distinguished exactly - there is some overlapping.

Phases of growing consciousness of the costs of information transfer compliance

Phase	Period*
Recognition by professionals	± 1750 - ± 1935
Quantification	± 1935 - ± 1995
Recognition by politicians	± 1985 - ± 1995
Effective policy measures	From 1990
Monitoring	From 1999**

\* The period stated is approximate.

\*\* Only in the Netherlands and, to a lesser degree, in the US.

It is striking that recognition by politicians has taken so long: approximately 60 years after the initial quantification of the cost of complying with information transfer requirements. From that time onwards, more attention has been paid to this issue. This development could be explained by at least five reasons.

One is the density of regulations. The extent of social regulations to protect consumers, employees and the environment increased significantly in the last ten years or so. Previously, information regulation was more economic and general in nature, especially taxation was dominant.

Another reason is the increasing interest of politicians to enhance the use of information technology in reducing compliance costs.

A third reason is the fast development of communication technology.

A fourth reason entails the pulling-back behaviour of governments as a result of growing democratisation.

A fifth reason is the globalisation and accompanied world-wide competition.

### ***Theoretical framework***

#### ***Introduction***

It's important to understand the theoretical background of the regulations applying to the transfer of information imposed on business and the accompanying costs for business involved in complying with these regulations, the transfer of information compliance costs. For that reason, we developed a theoretical model.

#### ***The theoretical model***

The core of the theory is that there are two processes involved. One process in which the individual preferences of free citizens and businesses are translated

into social values, norms, rules of conduct and the obligation to adhere to these rules of behaviour. There is a second process in which citizens and businesses in their role of subjects are obliged to provide information about their behaviour or circumstances with reference to the values, norms and rules of conduct mentioned previously. These two processes run in opposite directions, but both start with the citizen i.e. business. The model has five actors. Citizens and business operating within the private domain, parliament and government within the public domain and, finally, the implementing institutions which can be active within both the private and public domains. The actors are all in contact with each other via instruments or tools, as we have called them in this model. There are four instruments in this model: elections/business lobby, legislation, steering and design. The election/business lobby determines the relationship between the citizens/businesses and the parliament. Parliament and government interact through the instrument of legislation. The steering instrument enables the government and institutions to be in close contact. And, finally, the design instrument (of both content and the obligation to transfer information) determines the relationship between the institutions and business i.e. the citizens. Each of these instruments has its own specific impact on the transfer of information obligation imposed on business and, therefore, the accompanying compliance costs. The model assumes that each of the four instruments has an effect on the determinants of the compliance costs. The increasing directness of the effect is also considered. The election/business lobby effect is most indirect, and the most direct effect is that of the implementation instrument.

#### *Elections/business lobby*

Elections/business lobby have emerged from the collectivisation process which has its roots in feudal times. The increasing interdependence between rich and poor, posing a threat to the rich (external effects), formed the core of this process. Therefore, collective action was necessary. Such collective action took the form of obligatory, national and collective welfare arrangement to prevent free riding. Elections and business lobbying, certainly in principle, exert significant influence on the choice society makes as to values and norms and, therefore, also on the extent and the nature of the content of codes of conduct and behaviour and the extent and nature of the transfer of information obligations applying to citizens and businesses.

#### *Legislation*

There are two elements which, as part of the legislation instrument, have a fundamental effect on the transfer of information obligations applying to businesses: the way in which the rules of behaviour have been specified in legislation and the legitimisation of this legislation.

Transfer of information obligations belong to administrative law. The way in which they are established differs greatly among the various administrative

organisations that impose these regulations. There is not one, fully comprehensive book for administrative law in general and the transfer of information obligations in particular. In general, it is possible to distinguish three clusters of administrative law which are relevant for information transfer requirements: economic, social and administrative regulations. The importance of social regulations and the accompanying transfer of information obligations is expected to increase. The concerted actions of parliament and government lead, often unintentionally, to changes - which are not part of policy - in all sorts of legislative domains. Complex information transfer regulations are often the result. By and large, the way in which information transfer regulations have been included in legislation has resulted in very little tuning between the various fields of legislation and, in proportion, to considerable complexity.

There is a direct link between the extent of the legitimisation of legislation or a certain information regulation and the extent to which business complies with this regulation. To be able to understand this more clearly, it is important to distinguish between formal and material legitimisation. Administrative law formally empowers the government i.e. government institutions to impose transfer of information obligations on businesses. The legitimising function of administrative law specifically aims to modify, change the status quo and not so much to codify, stipulate social behaviour which has already developed. The, in principle, modifying character of administrative law and the information transfer regulations which accompany it, indicate the importance of the material legitimisation of information transfer regulations. In this context, the material legitimisation of legislation is the attitude of businesses towards objects such as policy-making organisations, political systems, legislation itself and general policy making. The foundations on which the material legitimisation of content obligations and the accompanying transfer of information obligations rest are their sources, the procedures or their cohesion with business values and norms. It is expected that material legitimisation, as a factor which indirectly affects the cost of complying with information transfer regulations, will be more relevant for the content obligation which includes rules governing behaviour, rather than for the transfer of information obligations. There is, however, the threat of material legitimisation being eroded as a consequence of the extent, complexity, lack of transparency and never-ending changes of information transfer regulations.

### *Steering*

The government can choose from among three types of steering models to steer the institutions which are responsible for implementing content and information transfer regulations: legal, economic and communicative. The legal steering model is enforcing and can impose sanctions. The economic model is not, in principle, enforcing and employs financial stimuli: levies and subsidies. The communicative model is based on trust and the transfer of information. Both the legal and economic steering model recognise both the content and

information transfer obligations referred to in our theoretical model. There are no content or information transfer regulations in the communicative model.

In order to encourage businesses to comply with the content obligation, the government, when steering the implementing institutions, can choose to use either stimulating or repressive policy instruments. There is a wide range of such instruments. The legal steering model can make use of the policy instruments agreement (stimulating) and orders/bans (repressive), but also of many intermediate forms such as permits, covenants and collective labour agreements. The economic steering model also offers a great variety of means: subsidies (stimulating) and levies (repressive) and everything between the two: credit, financial assistance and contributions, tax deductions, etc. We consider all transfer of information obligations and the accompanying costs of both stimulating and repressive policy instruments, which are part of the economic and the legal steering model, to be transfer of information obligations and transfer of information compliance costs as referred to in our model. The core criterion that led us to this decision is that the information transfer regulations which are part of the government's economic and legal steering model aim to achieve social objectives only. It is not the mould into which these regulations have been cast, stimulating or repressive, but the objective they aspire to achieve which is decisive.

### *Design*

The implementing institutions can choose between various means of imposing information transfer regulations on businesses. In cohesion with the transfer of information compliance costs, both objective and subjective aspects of the design of the information transfer regulations are of importance. The objective aspects of the design refer to the specifications of the regulations and the information technology used. The subjective aspects refer to the way in which these regulations are viewed by businesses. Ensuring compliance with the content obligations is an important aspect when setting out the stipulations of the information transfer regulations and shaping the relationship between the implementing institutions and businesses.

One of the objective aspects of the design of the information transfer regulations could be that the implementing institutions choose to compel businesses to supply the information (bring). On the other hand, there could be reasons why the implementing institution chooses to obtain the information from businesses itself (fetch). These same institutions also have the right to request the business to provide information about third parties. Information logistics, the second objective aspect of design, is responsible for the interrogation techniques.

The subjective aspects of design of information transfer regulations address the acceptance, compliance and psychological costs of these regulations for

businesses. The acceptance of an information transfer regulation is the fact that businesses can agree with this specific regulation. The extent to which businesses accept the regulation, influences the intention to take action. To act in accordance with, or not in accordance with an information transfer, or to comply, can depend on the opinion about this regulation and the intention of how to behave, based on this opinion. But also on a large number of other factors including, for instance, positive or negative sanctions. When deciding whether or not to accept a regulation, the business' own interests are an important consideration. It is possible that there is little likelihood of a transfer of information obligation being accepted by business if, in the perception of business, the regulation is of little or no use for business operations. In such cases there can be said to be psychological costs or irritation costs for businesses.

Information transfer regulations are one component of the range of preventive measures. The obligation to report about compliance with a content obligation, it is assumed, will increase the chances of actual compliance with this regulation. Administrative law has administrative means - monitoring and sanction rights - which can be used by the institutions responsible for implementing the regulations to enforce compliance. By imposing the transfer of information obligations, the implementing institutions compel business to inform them about actual behaviour or actual circumstances. Based on this information, it is possible for the implementing institutions to judge to what extent, in relation to the social objectives to be achieved, the actual situation is in line with the desired behaviour or desired circumstances. In this way, the transfer of information obligation is at the head of the chain of administrative enforcement methods and is part of the monitoring system.

#### *The determinants of information transfer compliance costs*

In the theoretical model, the relationships between the actors, which run via the four instruments - election/business lobby, legislation, steering and design - affect the determinants of the level of information transfer compliance costs. These are the final components of the model. Knowledge of the determinants leads to insight into the background of the level of information transfer compliance costs. It also becomes apparent where measures could be taken to avoid or reduce unnecessary compliance costs. The level of information transfer compliance costs is influenced by a number of exogenous and endogenous determinants. Exogenous determinants cannot be influenced by one single business but endogenous determinants can.

#### *Conclusions*

Transfer of information obligations imposed on business are part of a greater whole. They are not simply the consequences of arbitrary bureaucratic decisions. Information transfer regulations are an essential part of the democracy of the modern constitutional state. It is, however, worthwhile to subject the

extent of these regulations to a critical appraisal. The process through which the preferences of free citizens and businesses are translated into social values, norms, content and information regulations focuses primarily on policy and does not pay sufficient attention to implementation aspects such as feasibility, enforcement and compliance. This can result in transfer of information obligations becoming too extensive and unnecessarily complicated for business. This, in turn, can lead to unintentional and undesirable social side effects such as insufficient compliance with content obligations by businesses or excessively high transfer of information compliance costs for business.

### ***Conceptualising the term information transfer compliance costs***

#### *The marginalist concept versus the integralist concept*

In general, we reject the marginalist concept of the term transfer of information compliance costs. The most important arguments for rejection are as follows

The 'marginalists pur sang' deny, in our opinion incorrectly, that the transfer of information compliance costs should be considered as an integral part of business operations. We do not consider the exclusion of avoidable costs, for example as the consequence of taking advice or applying for subsidies and permits, to have any point.

The attraction of the 'marginalists of the lawyers concept' gains its merit from the idea that compliance belongs to the integral functions of the business and in the acceptance of 'the costs which a reasonable man would incur'. In this way, the costs for the tax consultant and for applying for subsidies and permits are part of the transfer of information compliance costs.

The 'marginalists of the lawyers concept', however, do not succeed in making a clear distinction between the costs of normal business operations on the one hand and the extra costs as a consequence of information transfer compliance on the other. The fiction which they ply - the extra costs are the costs that would no longer exist should there be no regulation - is not feasible in daily business practice. For us, this is the most important reason to distance ourselves from the opinions of the 'marginalists of the lawyers concept'.

Then there is also the question of the gross, 'social compliance costs' or net information transfer compliance costs, 'tax payer compliance costs'. The net information transfer compliance costs are considered to be less meaningful for our purposes. By deducting all sorts of items of varying origin from the information transfer compliance costs there will no doubt be a good picture of the definite costs for the business that complies with the information transfer regulation. One important disadvantage is that the view of the real costs of information transfer is lost. This objection no longer applies, of course, once both the gross and net transfer of information compliance costs are available.

We opt for the gross transfer of information compliance costs, or, in other words, the 'social compliance costs'.

And now we are back to our own integralist concept of the transfer of information compliance costs. Why did we choose this? First and foremost, because the integralist concept connects well to the basic idea of our theoretical model which is that compliance with information transfer regulations is an integral function of business operations. And with this we choose in principle for the information logistics approach. So, information compliance costs are the integral costs of all the proceedings to comply with information obligations in an adequate way and which proceedings a business cannot ignore without offending against the law. To comply in an adequate way refers to the 'lawyers concept'. That's why avoidable costs like the costs of asking for advice belong to the integral information compliance costs. This is what we call the fundamental argument.

In addition, there is also the practical argument that business would not be able to imagine a situation without legislation and regulation. Finally, using the bookkeeping obligation as an example, we have shown that only specifically stipulated information obligations result in the transfer of information compliance costs.

#### *Integralist definition of information compliance costs*

Having looked at all aspects, we now arrive at the following definition of structural and one-off information transfer compliance costs.

#### ***Structural information transfer compliance costs***

***Structural information transfer compliance costs are the integral costs of the annually recurring administrative proceedings connected to complying with the obligation to transfer information, as specifically stipulated in the regulation applying to businesses operating in country X, to the government or comparable body of country X, which obligation business cannot ignore without offending against the law. The government or comparable body of country X uses the information thus obtained to check and maintain compliance with content obligations deemed by society to be of value.***

This definition contains a number of core elements which require some explanation:

- *Structural costs*: the annually recurring costs for compliance with transfer of information obligations.
- *Integral costs*: the integral cost price of all the administrative proceedings actions which are necessary to comply with a transfer of information obligation. This refers to Sandford's lawyers concept. Only those reasonable costs can be counted as belonging to the information transfer compliance

costs regulation. As we, following Dean's example, consider compliance with the transfer of information obligation as an integral function of business operations, the overhead costs are, in proportion, included.

- *Administrative proceedings*: all activities that are necessary for the compulsory transfer of information to the government or the implementing institution. These actions include the 14, mainly administrative, actions mentioned in paragraph 3.9.
- *Regulation*: all legislation and regulation used by the central government and lower authorities together with other bodies with delegated authority, to control their legal relationship with businesses in connection with socially stipulated behaviour. These also include grey regulations.
- *Specifically stipulated information transfer obligation*: accurate and precise definition in legislation and regulation of the content of the information that the business must provide to the government or implementation institution. This passage clearly defines the distinction between this and the generic information which is stored in the business administration.
- *Businesses operating in country X*: within the terms of reference of this study, the subject is the Netherlands and the legislation and regulations that apply to the Dutch and foreign businesses operating on Dutch territory. This definition is important in order to prevent double counts should international comparative studies be made. Business is taken to include all private individuals and legal persons who are engaged in business and not in the government sector, in the sense of the internationally applicable definitions according to the National Accounts.
- *Government or comparable body of country X*: de Dutch government and comparable Dutch bodies.
- *Which a business cannot ignore without offending against the law*: this refers to the legal obligation to transfer information and is the core of the definition. It indicates explicitly that information transfer compliance costs are not exclusively the extra costs that would disappear should the law disappear (the concept of the marginalists). The transfer of information compliance costs are the costs of all the administrative proceedings required to actually execute the information transfer, whether these actions are of any use for the businesses' own operations or not.
- *Content obligations regulations deemed by society to be of value*: rules of behaviour/conduct which apply to values and norms, laid down by parliamentary decree in legislation or regulation or in grey regulations derived from these.

#### ***One-off transfer of information compliance costs***

The definition of one-off transfer of information compliance costs is identical to that for structural transfer of information compliance costs, as long as it is remembered that this applies only to situations in which there are major changes to existing laws and regulations, or new laws and regulations.



# 1 Introduction

## 1.1 'Le contrat social'

*'L'homme est né libre, et partout il est dans les fers. Qu'est-ce qui peut le rendre légitime'<sup>1</sup>?*

Rousseau (1762) started his debate about the identity from the above question to develop his ideology of democratic identity based on the hypothesis of the voluntarily accepted agreement of social behaviour, the 'contrat social'. This agreement would involve the acceptance of general laws and regulations, ideally by common intent, but in reality through the vote of the majority.<sup>2</sup> The principle of political democracy can now be considered to be the dominant identity principle in the twentieth century of developed Western society<sup>3</sup>.

The period within which the 'contrat social' was, particularly, intended for the defence of national borders is now far behind. In a social constitutional state, citizens expect from the government to provide social security, friendly environment, and good working conditions. Citizens also require adequate provisions of health care, education, infrastructure, etc.

To finance such public services, the government should be entitled, by law, to levy taxes. The wishes of citizens become explicit though in the process of political democracy. Through this process, the government is assigned several tasks (responsibility) and being provided several instruments/tools (authority) to be able to meet the above-mentioned expectations. Such responsibility and authority of the government are clearly specified in the administrative law.

Administrative law entails burden for citizens as well as the business community. The objective of this law is first, to guarantee the compliance of citizens and businesses with the stipulated law and provide the necessary information regarding their behaviour and the result of this behaviour, and, second, meet their expectations with respect to public services, such as social security, sound environment, etc.

These obligations do generally govern the behaviour of citizens and businesses: 'thou shalt or thou shalt not'. The regulations regarding information transfer affecting businesses and the related compliance costs are the subject of this study.

<sup>1</sup> Quoted from '*Le contract social*', Rousseau, 1762.

<sup>2</sup> C.J. Friedrich, *Man and his Government: An Empirical Theory of Politics*, McGraw-Hill, New York/San Francisco, 1963, p. 234.

<sup>3</sup> A. Hoogenwerf, M.J. Arendtsen and P.J. Kok, 1993.

## 1.2 Obligations issuing from administrative law

### ***Introduction***

In accordance with the administrative law, the government imposes obligations on citizens and businesses to regulate their behaviour and acquire information about their activities for control purposes.

There are two types of obligations. The first type relates to the 'content' of these activities and endeavour to achieve compliance of businesses with the stipulated norms by society. The second type relates to the compulsory transfer of information by businesses.

Both citizens and businesses have to deal with such regulations as soon as they participate in society.

### ***Businesses***

Taxation, for example, is a legislation whereby the government imposes both types of obligations on businesses. Corporate tax, in its content, implies the payment of due tax, while the information transfer obligation allows the tax authorities to control whether the payment is made accordingly.

In our view, the so-called 'third-party disclosures' should be considered as content obligations and not as information obligations. In the case of 'third-party disclosures', businesses are obliged e.g. to give product information to consumers or to inform citizens about privacy aspects. On the other hand, informing government about the compliance with 'third-party disclosures' should be considered as information obligations.

As a result, businesses are confronted with two types of costs. First, the corporate tax paid, which is part and parcel of the costs of compliance with the standards, and, second, the integral costs of compliance with the obligation to transfer information.

### ***Citizens***

Both types of obligations are applicable for citizens as well. For example, the Planning Act, the Housing Act and Building Regulations impose obligations on citizens when renovating or expanding their dwellings. The construction work has to meet certain standards, which could be viewed as a first type of obligation 'content'. The local authorities also wish to be informed about the proposed alterations before they are willing to issue a building-permit, this is the second type of obligation, namely information transfer.<sup>1</sup>

<sup>1</sup> There may be many other government regulations to comply with by citizens. For instance, should the citizen - if he suffers loss of income because of illness/disablement, unemployment, divorce - apply for social benefits, he first has to comply with both types of obligations, 'content' and 'information obligation'. In this case the first type of obligation ('content') could be certain *rules of conduct* to be observed when cohabiting. The second ('information obligation') compliance can for example involve reporting additional income to the Social Benefit

### **Government**

The fact that government requires businesses and citizens to comply with the obligation to transfer information can also incur costs for the government. Take, for example, the cost of monitoring whether businesses or citizens actually comply with these regulations. Such costs are called administrative costs.

### **Three types of costs and communicating vessels**

In this way, three types of costs could be distinguished:

- Administrative costs incurred by the government
- Compliance costs applying to the 'content' for the account of the business or citizens
- Transfer of information obligation costs, also called compliance costs, again for the account of business or citizens.

It is, however, important to recognise that the administrative costs incurred by the government and the information costs incurred by business or citizens are often communicating vessels. Van Lunteren speaks of a 'ménage à trois', in which all the interested parties join in the game of 'passing the buck'.<sup>1</sup>

The government may reduce its administrative costs - for example those connected to keeping records - by insisting that businesses use a bookkeeping system so that the government needs only to receive the results. The government makes considerable use of banks; in particular, to provide information that enables the government to monitor to what extent the clients comply with law. Examples of such regulations are reporting about interest and dividend but also about extraordinary transactions, e.g. money laundering.

The banks are required, annually, to inform the Tax Department about any interest or dividend earned by individual account holders or depot holders. This is to facilitate the Income Tax Authorities in claiming the correct amount of income tax.

## **1.3 Hidden costs**

The compliance costs incurred by businesses and citizens are in fact hidden costs. No explicit account of these can be found in any administration kept by citizens or businesses. Even more serious is the fact that the compliance costs for businesses and civilians are not included when compiling the National Budget.

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Services, and filling in the annual income tax form, an example of an ever re-occurring obligation.

<sup>1</sup> J.N. van Lunteren, 'Lightening of administrative formalities in tax-legislation', in: *Improving the Quality of Legislation in Europe* (ed. A.E. Kellermann, G. Ciavarini Azzi, S.H. Jacobs, R. Deighton-Smith), T.M.C. Asser Instituut, Den Haag 1998, Kluwer Law International.

Officials who are responsible for designing new legislation and regulations are generally badly informed about the 'off-budget' effects of regulations. Usually, estimates of costs and benefits of legislation and regulations are limited to the consequences for the National Budget ('on-budget' effects). In this respect, van der Bij refers to internal and external regulation costs.<sup>1</sup> Regulation costs which are included in the National Budget are termed *internal regulation costs*, the remaining regulation costs, which remain outside the budget<sup>2</sup>, are termed *external regulation costs*.

Consequently, when estimating the budget, calculations are, usually, based on considerably low budgetary price, and thereby little incentive for reduction of costs of regulation is left.

Nowadays, this problem is internationally recognised. 'The perceived intrusiveness of government regulation in many OECD countries could be detected only through anecdotal information, partial indicators and general impressions. Systematic efforts to track and account for regulatory effects are uncommon despite a recognition that the scope of regulation is broad indeed.'<sup>3</sup>

#### **1.4 The cost of complying with information transfer requirements is substantial**

The hidden costs of regulation in general should not be underestimated. Both citizens and businesses take measures to comply with the regulations concerning information transfer imposed upon them by the government. Such measures are accompanied by significant costs which otherwise would not be necessary. EIM estimated these costs for the Dutch business community to be about NLG 16.5 thousand million, i.e. 2.2 percent of the GNP (1998).<sup>4</sup> Estimates of the cost of complying with information transfer for business within other countries of the European Union vary from 3 to 4 percent of the GNP.<sup>5</sup> The annual compliance costs for citizens as related to taxation, benefits and subsidies were estimated to amount to about NLG 2.6 thousand million

<sup>1</sup> J. van der Bij, *Kosten van regelgeving*, Regelmaat 1994, p. 227 e.v.

<sup>2</sup> J. van der Bij gives the example of what he terms external regulation costs, those connected with pay roll tax administration and compiling annual tax report.

<sup>3</sup> Th.D. Hopkins, 'Developing general indicators of regulatory costs', in: *Regulatory Impact Analysis, Best Practices in OECD countries*, OECD, Paris 1997, p. 264.

<sup>4</sup> J.J. Boog e.a., *Monitor Administratieve Lasten Bedrijven: 1993-1998; Doelstelling Paars I getoetst*, EIM, Zoetermeer 1999.

<sup>5</sup> EIM, *The European Observatory for SMEs (1995), Third Annual Report*, EIM, the Netherlands, Zoetermeer.

(1991/1992).<sup>1</sup> In terms of 1998 real prices, these costs amount to approximately 400 thousand million guilders.

## 1.5 Brake on economic growth

To an increasing extent, it is becoming recognised that unnecessary compliance costs may have adverse effects on economic growth and employment. Compliance costs place a relatively heavy burden on medium-sized and small businesses. For this reason, a policy is being developed, both nationally and internationally, to aim at eliminating or preventing unnecessary compliance costs - in particular for small and medium-sized businesses.<sup>2</sup> Sandford argues that tax compliance costs have undesirable distributional effects. They are capricious in their incidence, regressive and fall with disproportionate severity on small firms in particular. Moreover, small firms suffer from a disadvantaged position being created by the state. Additionally, tax compliance costs fall much more heavily on the self-employed than on employees.<sup>3</sup>

## 1.6 Ideologically charged policy discussions

Generally speaking, policy discussions about information compliance costs are characterised, on the one hand, by their highly practical content and, on the other, by their very ideological content. The 'Leitmotiv' for many discussions can be best described by mottoes such as 'cut the red-tape burden' and 'Bürokratieüberwälzung'.

One illustration of the tone of the political debates on this subject in the US is revealed by the remarks made by Senator John Glenn: '... Together, I believe, these expanded agency requirements provide the greatest opportunity for progress in the war against red tape'.<sup>4</sup> The focus is often one-sided, aiming to reduce the costs of information compliance, but paying little attention to the benefits for society. Another aspect is that, through the ties with the information compliance costs, the political objectives and the regulation itself have become, indirectly, the subject of discussion.

<sup>1</sup> M. Allers, *Administrative and Compliance Costs of Taxation and Public Transfers in the Netherlands*, Rijksuniversiteit Groningen, Groningen 1994, Wolters Noordhoff.

<sup>2</sup> OECD, *Regulatory Impact Analysis, Best Practices in OECD countries*, and EIM, *The European Observatory for SMEs, Third Annual Report*.

<sup>3</sup> C. Sandford, 'The rise and rise of tax compliance costs', in: *Tax Compliance Costs Measurement and Policy*, Ed. by C. Sandford, Fiscal Publications in association with the Institute for Fiscal Studies, Redwood Books, Trowbridge Wiltshire 1995, p. 5.

<sup>4</sup> Floor remarks of Senator John Glenn, 141 Cong. Rec. S 5276 (April 6, 1995) in: *The Paperwork Reduction Act of 1995: Implementing Guidance for OMB Review of Agency Information Collection*, Office of Information and Regulatory Affairs, Office of Management and Budget, June 1999, p. 54.

As a result of the above one-sided approach, policy aiming at reducing information compliance costs now unnecessarily finds itself in a political field of influence. This is an adverse effect on the effectiveness of the policy. One example of this is the United States where making information compliance costs a political issue has proved to be an obstacle to the further reduction of these costs.<sup>1</sup>

## 1.7 Need for definitions and more information

### *Introduction*

As a consequence of the one-sided ideological approach to the problem, there is insufficient information about the background of the regulation concerning the provision of information. Relevant questions in this respect are: How long has the interest in information transfer existed? What is the origin of such obligations and how are they legitimised?

Although interest in the phenomenon of the obligation to transfer information and the accompanying compliance costs has recently increased, little attention has been paid to their theoretical foundation behind which the following questions could be put forward. What sort of process led to their existence? Which determinants are decisive for information transfer compliance costs? Which definition of compliance costs is most meaningful, taking into account the fact that the objective is to reduce unnecessary costs for society as a whole? Which part does the perception of business play?

### *Approach of the study*

This study attempts to fill in the above-mentioned gaps and concentrates on the obligation to transfer information and the accompanying compliance costs as these apply to businesses. The use of the term 'information compliance costs' instead of the more commonly used term administrative burdens is a well-considered choice being made to account for the ideologically charged interpretation of the latter. In business economics, the term perception costs is used to indicate the same concept as information compliance costs.<sup>2</sup>

### *Problem definition*

This report deals with the theoretical background of the study and pays attention to the historical review of the phenomenon of information transfer com-

<sup>1</sup> Commissie Administratieve Lasten, *Regels zonder overlast*, Eindrapport, Den Haag, 25 november 1999, p. 5.

<sup>2</sup> EIM, *Nota betreffende de uitkomsten van een onderzoek naar het niveau van de perceptiekosten in het midden- en kleinbedrijf*. Business Economics Publications, 's-Gravenhage, February 1970.

pliance costs. Briefly speaking, this report will attempt to answer the following questions.

1. Which stages in the recognition of the phenomenon information transfer compliance costs could be distinguished in the various countries of the EU and the OECD?
2. Which are the hypothetical determinants of the level of compliance costs?
3. Which regulations does the government impose on businesses?
  - Which types of regulations could be distinguished?
  - What is their origin?
  - How are they legitimised?
4. What are the information transfer compliance costs for businesses?
  - Which types of compliance costs could be distinguished?
  - How could information transfer compliance costs be defined?
  - What is the definition of information transfer compliance costs?

### **Outline**

Chapter 2 provides a historical review of the increasing consciousness of the social importance of information transfer compliance costs. In Chapter 3, the theoretical framework for the two central themes - the obligation to transfer information and the costs of compliance - are dealt with. The definition of the term compliance costs will be given in Chapter 4. The report starts with a summary.

## **1.8 Summary**

The period within which the 'contrat social' was, particularly, intended for the defence of national borders is now far behind. In a social constitutional state, citizens expect from the government to provide social security, friendly environment, and good working conditions. Citizens also require adequate provisions of health care, education, infrastructure, etc.

To finance such public services, the government should be entitled, by law, to levy taxes. The wishes of citizens become explicit though in the process of political democracy. Through this process, the government is assigned several tasks (responsibility) and being provided several instruments/tools (authority) to be able to meet the above-mentioned expectations. Such responsibility and authority of the government are clearly specified in the administrative law.

Administrative law entails burden for citizens as well as the business community. The objective of this law is first, to guarantee the compliance of citizens and businesses with the stipulated law and provide the necessary information regarding their behaviour and the result of this behaviour, and, second, meet their expectations with respect to public services, such as social security, sound environment, etc.

These obligations do generally govern the behaviour of citizens and businesses: 'thou shalt or thou shalt not'. The regulations regarding information transfer affecting businesses and the related compliance costs are the subject of this study.

In accordance with the administrative law, the government imposes obligations on citizens and businesses to regulate their behaviour and acquire information about their activities for control purposes.

There are two types of obligations. The first type relates to the 'content' of these activities and endeavour to achieve compliance of businesses with the stipulated norms by society. The second type relates to the compulsory transfer of information by businesses.

Both citizens and businesses have to deal with such regulations as soon as they participate in society.

The fact that government requires businesses and citizens to comply with the obligation to transfer information can also incur costs for the government. Take, for example, the cost of monitoring whether businesses or citizens actually comply with these regulations. Such costs are called administrative costs.

In this way, three types of costs could be distinguished:

- Administrative costs incurred by the government
- Compliance costs applying to the 'content' for the account of the business or citizens
- Transfer of information obligation costs, also called compliance costs, again for the account of business or citizens.

The compliance costs incurred by businesses and citizens are in fact hidden costs. No explicit account of these can be found in any administration kept by citizens or businesses. Even more serious is the fact that the compliance costs for businesses and civilians are not included when compiling the National Budget.

Officials who are responsible for designing new legislations and regulations are generally badly informed about the 'off-budget' effects of regulations. Usually, estimates of costs and benefits of legislations and regulations are limited to the consequences for the National Budget ('on-budget' effects).

Consequently, when estimating the budget, calculations are, usually, based on considerably low budgetary price, and thereby little incentive for reduction of costs of regulation is left.

The hidden costs of regulation in general should not be underestimated. The information compliance costs for the Dutch business community was estimated to be about 2.2 percent of the GNP (1998). Unnecessary compliance costs may have adverse effects on economic growth and employment. Compliance costs place a relatively heavy burden on medium-sized and small businesses.



As a consequence of the one-sided ideological approach to the problem, there is insufficient information about the background of the regulation concerning the provision of information. In this respect, relevant questions are: How long has the interest in information transfer existed? What is the origin of such obligations and how are they legitimised?

Although interest in the phenomenon of the obligation to transfer information and the accompanying compliance costs has recently increased, little attention has been paid to their theoretical foundation behind which the following questions could be put forward. What sort of process led to their existence? Which determinants are decisive for information transfer compliance costs? Which definition of compliance costs is most meaningful, taking into account the fact that the objective is to reduce unnecessary costs for society as a whole? Which part does the perception of business play?

This study attempts to fill in the above-mentioned gaps and concentrates on the obligation to transfer information and the accompanying compliance costs as these apply to businesses. The use of the term 'information compliance costs' instead of the more commonly used term administrative burdens is a well-considered choice being made to account for the ideologically charged interpretation of the latter.

## 2 Increasing recognition

### 2.1 Introduction

Since the eighties, interest in information transfer compliance costs has increased reasonably, not only in the Netherlands but also in the other EU and OECD countries. Most attention has been paid to the field of fiscal legislation because this area is responsible for a substantial part of the total costs. It appears to be plausible then to assume that the conclusions drawn in literature concerning the increasing awareness regarding cost of complying with the transfer of information obligation in the fiscal area will, on the whole, also apply to other areas of legislation.

Pope distinguishes five phases in the recognition of information transfer compliance costs for Australia:<sup>1</sup>

- Recognition of quality by professionals (economists, tax consultants, etc.)
- Quantifying the scope
- Recognition by politicians: the subject is placed on the political agenda
- Development of policy measures aiming at lightening the burden of compliance costs
- Monitoring the developments.

It seems plausible that these various stages of consciousness are recognisable in more countries than Australia.<sup>2</sup>

The five stages that have been distinguished will be dealt with one by one later in this chapter.

First of all, general comments will be made for each of the above listed stages. Subsequently, attention will be paid to the experience in EU and OECD countries, and, concludingly, by reviewing the situation in the Netherlands.

### 2.2 Recognition by professionals

#### *General*

The issue of information transfer compliance costs started to draw serious attention since the second half of the 18th century. However, professionals have been familiar with this issue for a longer time. As early as 1778, in his *Wealth of Nations*, Adam Smith reported four theories concerning the levying of taxes: Equity, Certainty, Convenience and Economy, that referred to compli-

<sup>1</sup> J. Pope, *The Compliance Costs of Personal Income Taxation - a Review of the Lessons*, Discussion Paper 89.03, Nedlands: Department of Economics, University of Western Australia, pp. 2-7.

<sup>2</sup> M. Allers, *Administrative and Compliance Costs of Taxation and Public Transfers in the Netherlands*, Wolters-Noordhoff, RUG, Groningen 1994, p. 7.

ance and compliance costs.<sup>1</sup> Economic theory refers most directly to the costs of information transfer compliance: 'every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state'.

His theory of Equity received by far the most attention as far as policy is concerned, and only lip service was paid to the other three.<sup>2</sup> Accordingly, this remained so until the second half of the 20<sup>th</sup> century.<sup>3</sup>

### ***EU, OECD and the Netherlands***

As far as recognition by professionals is concerned, there is nothing special to report about the Netherlands. The same holds for EU and OECD countries, which entered the picture much later.

## **2.3 Quantification**

### ***General***

Since the recognition of the information transfer compliance costs by professionals, it took two centuries before the first concrete steps were taken towards the quantification thereof.

The first step involved the information transfer compliance costs for levying taxes in the United States and Canada, the Netherlands, Germany, Switzerland, the United Kingdom and Ireland. The initial investigation in this field took place in 1930 (United States). In Europe, the first studies on this subject were carried out in the forties (the Netherlands), to be followed in the fifties and sixties by Germany and Switzerland, and by England and Ireland in the seventies and eighties.<sup>4</sup>

Except the legislation, which regulates the transfers (taxes/premiums and social benefits/subsidies) between government on the one hand and citizens and

<sup>1</sup> Smith, *Inquiry into the Nature and Causes of the Wealth of Nations*, Book 5, Chapter 2. See e.g. Smith [1966, pp. 307-309].

<sup>2</sup> C.T. Sandford, M.R. Godwin, P.J.W. Hardwick, *Administrative and Compliance Costs of Taxation*, Fiscal Publications, Bath, 1989.

<sup>3</sup> M. Allers (1994), p. 8. Allers gives one exception: R. McCulloch (1975, first published in 1845, pages 38 and 399, who emphasises that the last three theories mentioned are actually the most important. He even provides some estimates of administrative costs as examples of taxes that offend against these rules. In France, for example, 120 million livres were spent to acquire 30 million (net) in taxation.

<sup>4</sup> To obtain a complete review of a great many Dutch, German and English studies in this field, refer M. Allers, *Administration and Compliance Costs of Taxation and Public Transfer in the Netherlands*. Groningen University, 1994, Appendix B, *Review of earlier studies on operating costs*.

businesses on the other, no quantification of information compliance costs took place up to the nineties.

### ***EU en OECD***

In the EU and OECD, the first attempts to quantify information transfer compliance costs were made in the middle of the nineties. For example in 1995, a comparative study was carried out in all the Member States of the EU about the extent of compliance and possible policy strategies to reduce the compliance costs.<sup>1</sup>

### ***The Netherlands***

As mentioned previously, the first attempts to quantify the costs of complying with information transfer for tax levies were made for the Netherlands in the forties. Up to 1994, except a study carried out by Allers (1994) for the situation in the Netherlands in 1990, there were no studies at all which assessed the cost of complying with information transfer regulations for social benefits and subsidies. But, since 1994 onward, serious attempts were made for the Netherlands to quantify the costs involved in complying with the regulations for the transfer of information, not only in the sphere of taxes but also in other areas such as social benefits and subsidies. Most of these studies were carried out by EIM.<sup>2</sup>

## **2.4 Recognition by politicians**

### ***General***

Once the substantial amounts involved in complying with the transfer of information obligation became commonly known - in the eighties and beginning of the nineties - politicians in the various countries became able to place this subject on the political agenda.

### ***European Union***

#### ***General***

Nevertheless, political consciousness, as regards the issue of information transfer compliance costs for businesses, increased considerably within the European Union in the eighties and nineties.

At the European Union level, the general principle is to prepare European legislation in the form of directives to be implemented in national legislation al-

<sup>1</sup> EIM, *The European Observatory for SMEs (1995), Third Annual Report, Theme Study Administrative Burdens*, chapter 14, EIM, the Netherlands, Zoetermeer.

<sup>2</sup> J.J. Boog e.a., *Administratieve Lasten Bedrijven 1993*, EIM, Zoetermeer, 1994. From 1994 onwards, EIM carried out far more studies in the field of information compliance costs.

lowing it to fit better with the existing practical execution in the Member States. As far as the Union's own legislation is concerned, it is worthwhile mentioning that the process of 'regulatory reform in the European Union' has paid attention to information compliance costs. This programme consists of the following elements:

- 'Better Lawmaking', based on the principles of subsidiarity and proportionality. The final objective is the simplification, consolidation and improvement of transparency of European legislation. In the meantime, the Commission has issued a progress report.<sup>1</sup>
- The Single Market Programme, the most important EU legislation programme for business. The completion of the Common Market itself had considerable influence on regulatory reform. This included:
  - the revoke, simplification and standardisation of legislation in almost 300 areas of legislation;
  - the revoke of thousands of laws and regulations at national, Member State, level;
  - replacing these with new laws and regulations which regulate many aspects of business behaviour;
  - the SLIM-initiative, Simpler Legislation for the Internal Market, with as subject the existing legislation of the Common Market itself.
- The EU Small and Medium-sized Enterprise Policy (SME Policy), which includes special attention to be paid to the application of the regulatory reform in order to simplify and improve the administrative and regulatory environment.
- Development of analysis tools, such as a tool for business impact assessment, to estimate the cost effectiveness of proposed measures (ex-ante appraisal of legislation). In 1985 the Commission adopted the principle that every Commission's proposal for legislation sent to the Council must be accompanied by an assessment of its impact on business, SMEs in particular, and on job creation. The procedure became operative on 1 June 1986. In carrying out the assessment, the Directorate-General has to take into account compliance costs and the potential administrative burden for business<sup>2</sup>.
- Working Parties (Monitor Group and BEST, the Business Environment Simplification Task Force), Conferences (the Birmingham conference on simpli-

<sup>1</sup> European Commission (1997), *Better Lawmaking 1997*, Com(97) 626 final.

<sup>2</sup> For more references on this topic, see:  
European Communities (1993), *Bulletin of the European Union*, EC 10-1993, p. 128.  
European Commission (1994/1996), *Integrated Programme in favour of SMEs and the Craft Sector*, 1994, Com (94) 207 final, and Com (96) 329 final.  
The European Parliament (1997), *Report on Strengthening the Business Impact Assessment System*, no. A4-0413/96 of 24<sup>th</sup> April 1997.

fication in 1992, the conference in The Hague in 1997 on the quality of European and national legislation in relation to the Internal Market).

- European Business Panel, to introduce the direct experience of enterprises into the review of this area of legislation.

#### *The individual Member States*

There are also indications for increasing consciousness within the individual Member States of the EU. The afore-mentioned study on compliance costs, which covered the several Member States, showed that there was still a considerable degree of variation in the strategies, policies and measures adopted in the different countries and that in some countries, the reduction of administrative burdens just started<sup>1</sup> (see also the table below).

The fourth report (1996) noted that a similar pattern was emerging in the responses at a national level to the problem of administrative burdens. Most countries had established a committee to analyse the status quo, and to make recommendations on how and where burdens could be reduced. Most had also taken the 'first steps' of introducing systems to review proposals for new legislation and of modifying the systems for collecting taxation. The fifth report (1997) confirmed this picture. In the period 1996-1997, in almost all Member States, with the exception of Greece and Iceland, actions to reduce the compliance cost for information transfer for business, in the various European countries, were undertaken or being planned to be undertaken.

<sup>1</sup> EIM, *The European Observatory for SMEs, Third Annual Report, Theme Study Administrative Burdens*, chapter 14, EIM, the Netherlands, Zoetermeer.

Strategies, policies and measures to reduce administrative burdens in the different European countries

Country	Strategies, policies and measures to reduce administrative burdens						
	1	2	3	4	5	6	7
Austria	X	X		X	X		X
Belgium	X		X	X			
Denmark		X	X	X	X	X	X
Finland	X			X		X	
France	X	X	X	X	X		X
Germany	X	X				X	
Greece			X	X		X	
Ireland			X		X		X
Italy				X	X		
Luxembourg	X	X	X	X			
Netherlands	X	X		X	X	X	X
Norway	X	X	X	X			
Portugal	X	X		X		X	X
Spain		X					X
Sweden	X		X			X	
United Kingdom	X	X	X	X	X	X	X

Notes:

- |                                      |   |
|--------------------------------------|---|
| 1. Research.                         | 5. Special rules for SMEs.                          |
| 2. Information and advice.           | 6. Replacement of existing laws.                    |
| 3. Forms and reporting requirements. | 7. Possible burdens connected with new legislation. |
| 4. Administrative procedures.        |   |

Source: EIM, *The European Observatory for SMEs (1995)*, Third Annual Report, Theme Study Administrative Burdens, chapter 14, EIM, the Netherlands, Zoetermeer.

It would be inopportune, in this context, to discuss the situation in each separate Member State in much more detail. For illustration purposes, the discussion will however be limited to the case of the United Kingdom. In a later stage in this report, special attention will be paid to the Netherlands.

Deregulation has been receiving considerable attention for quite some time in the United Kingdom (since the Thatcher period). However, the United Kingdom has no autonomous policy concerning compliance costs for information transfer.<sup>1</sup>

The Deregulation Unit of the Department of Trade and Industry (DTI) was the one responsible for the development and co-ordination of the deregulation policy. Generally, each Department in the United Kingdom has its own unit for Deregulation (DDU). The role played by the DTI is comparable with the co-ordinating function of the Netherlands Ministry of Economic Affairs for the

<sup>1</sup> I.Th.M. Snellen, *Report Visit to the UK*, on behalf of the Commissie Administratieve Lasten, 15 July 1999, The Hague.

Market Deregulation and Legislation Quality project (MDW-project). More about this subject later on.

The Deregulation Unit of the DTI was transferred to the Cabinet Office by the Major Government, where this unit developed a Compliance Cost Assessment (CCA) and a Regulatory Appraisal (RA). A CCA is a method being developed to ensure a rough but systematic estimate, in broad lines, of the anticipated compliance costs for business, should there be new or amended regulations. Departments are expected to execute the CCA as policy proposal, which according to expectations will have consequences for business. The RA pays specific attention to the anticipated benefit of new or amended regulations.

The Blair government has taken over this part of the Major government's policy. The reduction of superfluous regulation is one of the priorities in the Blair/Schröder Manifesto.<sup>1</sup> The Blair government has replaced the Deregulation Units with Better Regulation Units, and, consequently, the CCA and the RA with Regulatory Impact Assessment (RIA), which simultaneously attempts to map out the costs and benefits of regulations.<sup>2</sup> In the mean time, the name of the Better Regulation Units has been changed to Regulatory Impact Unit. In addition, the Blair government has also established a Better Regulation Task Force (BRTF). This is a watchdog outside the government. It is a Quango (quasi autonomous non-governmental organisation), a private organisation that fulfils a government function almost autonomously. The BRTF pays particular attention to the transparency, proportionality, objectivity and consistency of regulation. The BRTF also monitors the way in which the government fulfils its responsibilities to its citizens and to business.<sup>3</sup>

### **OECD**

Even in many other OECD countries, there is an increasing consciousness of regulatory costs for business, including the transfer of information compliance costs. The following excerpt illustrates that 'Improving the empirical basis for regulatory decisions through impact analysis of new regulatory proposals is a popular reform strategy in OECD countries. By 1996, more than half of the OECD countries had adopted Regulatory Impact Analysis (RIA) programmes, up from one or two in 1980, and an increasing proportion of laws and other regulations affecting citizens (and businesses) are being shaped in part by various

<sup>1</sup> For example: 'We should make it easy for individuals to set up businesses and for new companies to grow by lightening administrative burdens, exempting small businesses from onerous regulations', and Quotation from the Blair/Schröder Manifesto, Europe: The Third Way/Die Neue Mitte, *The Amsterdam Post*, 11 June 1999.

<sup>2</sup> Better Regulation Task Force, *Annual Report 1997/1998*, UK, September 1998, p. 2.

<sup>3</sup> For more information about BRTF, see Better Regulation Task Force, *Annual Report 1997/1998*, Cabinet Office, London, September 1998.



forms of RIA. In 1995, governments in all OECD countries agreed to use techniques such as RIA to improve the quality of new regulations.<sup>1</sup>

### ***The Netherlands***

#### *The 'Extensive operations'*

In the Netherlands, the process of regulation was strengthened by the recessions in the Seventies and beginning of the Eighties, which led to the 'crisis' in the Dutch constitutional state. This resulted in a political climate in which the role of the public sector within the economy became the subject of discussion. Discussions about the size of the public sector and the increasing complexity of regulation resulted in the conclusion that business was subject to substantial regulation. Deregulation then became an explicit political objective, and there was consensus on the opinion that the size of the public sector had to be reduced.<sup>2</sup> The Eighties were also the years of 'extensive operations', such as those to improve government organisation at national level, undertaken by the government itself.<sup>3</sup>

This involved the reorganisation of the civil service, decentralisation, privatisation and trimming down the government machine.<sup>4</sup> These operations were continued later in a slightly different form under the heading of extensive efficiency operations, social renewal, etc. At the same time, the Cabinet also made a contribution under the motto of statesmanship, governmental and constitutional renewal under the lead of the *Deetman Committee*.

#### *Committees aiming at simplifying the regulations governing information transfer*

In the Eighties and beginning of the Nineties, the establishment of three Government Committees greatly stimulated consciousness of the phenomenon of the cost of complying with information transfer regulations among policy makers. These government committees were assigned to submit proposals to simplify the information transfer regulations for individuals and businesses. The emphasis for the three committees was on fiscal information regulations, tax on wages and other income, and associated obligations in the field of national insurance and occupational insurance.

The first committee, the committee with the assignment to lighten administrative burdens for businesses, was installed on 12 April 1984 and named after its

<sup>1</sup> OECD, *Regulatory Impact Analysis, Best Practices in OECD Countries*, 1997, p. 13.

<sup>2</sup> M. Allers, op. cit., 1994, p. 11.

<sup>3</sup> For more information about the 'Extensive operations', see F.K.M. van Nispen and P. Noordhoek (red.), *De grote operaties*, Deventer, 1986, en C.A. de Kam, J. de Haan, *Terugtrekkende Overheid: realiteit of retoriek?* Schoonhoven, 1991.

<sup>4</sup> P. de Haan, Th. Drupsteen and R. Fernhout, *Bestuursrecht in de Sociale Rechtsstaat, deel I, Ontwikkeling, Organisatie, Instrumentarium*, Kluwer, Deventer, 1996, p. 189.

chairman - the *Grapperhaus Committee*. The Grapperhaus Committee was occupied mainly with regulations applying to information compliance in the field of social insurance and tax legislation and had been instructed to submit concrete proposals to reduce the compliance costs of information transfer regulations. In 1985, the Grapperhaus Committee submitted its final report titled *Heerendiensten*<sup>1</sup>.

The title of this report refers to the concept of the Feudal Services relating to the Middle Ages whereby services were provided to the Feudal Lord without receiving payment. The above committee described the political climate of 1985 in the Netherlands as follows '... Trying to make more structural changes to society in the Netherlands is like trying to demolish the Chinese Wall with a sledge hammer ...'.

The chairman of the committee also indicates that he has little faith in the extent to which the problem of information transfer compliance costs is recognised by politicians. He added 'In my eyes the tendency in Dutch society to regulate everything down to the smallest detail, thus creating a situation in which complexity and obscurity prevail, seems to be founded on an unquenchable thirst for equality and justice'.

The committee distinguished in her recommendations two types of information obligation transfers, (1) partial information transfer by businesses concerning a specific part of an operational process such as the calculation of the annual loss/profit, and (2) information transfer concerning non-operational processes such as information on the wage tax and social premiums.

The compliance with the second category is considered by the committee to be a government tax levied in kind, because otherwise this information will not be compiled. The committee also questioned the legal foundation of such regulations. The fact that the time was not yet ripe for real changes was apparent from the Cabinet's reaction one year after the publication of the committee's recommendations (1986)<sup>2</sup>. In general, many parties felt that the reaction of the Cabinet in this respect was conservative, lax and disappointing.

In September 1985, a committee was inaugurated specifically to simplify income tax. The committee was named after its chairman the *Oort Committee*. This committee produced its final report in May 1986, '*Perception of simplicity*'. In its proposals, the committee aimed to lighten the information compliance regulations applying to tax payers (both employees and unemployed persons), tax leviers (businesses/social funds) and the tax authorities. The committee made recommendations aiming to reduce the complexity of the regula-

<sup>1</sup> Committee to lighten administrative burdens for businesses, *Heerendiensten (Feudal Service); preface and summary of part 1 and part 2-7*, Government Publications The Hague, 28 June 1985.

<sup>2</sup> *Regeringsstandpunt inzake de aanbevelingen van de Commissie tot Verlichting van de Administratieve Verplichtingen voor het Bedrijfsleven*, August 1986.

tions themselves, and not specifically on the accompanying complicated procedures and forms.

In April 1990, the *Stevens Committee*, a third committee working in the same field of tax reform, was appointed. Her first report<sup>1</sup> was published in July 1991. This committee was instructed to concentrate on three elements: (1) reducing wage tax, (2) reducing income tax through expanding the base of the levying, and (3) simplifying the base of levying tax.

The proposals to reduce information obligations of firms emphasise particularly a single levying of social premiums and wage tax following a single method, by a single institution and, finally, in accordance with a single procedure for objections and appeals.

These proposals encountered strong opposition by the executing bodies responsible for employees' insurances. The social debate on this subject has now lasted for about ten years. In 1999, the second Kok Cabinet decided in favour of continuing the existing situation. The Committee's proposal was rejected.

#### *Operation Market, Deregulation and Legislation Quality*

The operation *Market, Deregulation and Legislation Quality* (MDW) was initiated by the first Kok Cabinet.<sup>2</sup> Deregulation, as part of the MDW operation, aimed at lessening and simplifying government regulations. Reducing information transfer compliance costs for businesses was one of its priorities<sup>3</sup>. One of the tools being made available for the operation was the *Legislation Test* of 1985 (*Wetgevingstoets*). The tool served to test new legislation in terms of legitimacy, effectiveness, feasibility, simplicity and the extent of compliance costs for businesses as well as administrative costs for executing institutions.

This general test consists of several parts. One is the *Business Impact Test* (BET) which examines, among others, the compliance costs for businesses with new or amended legislation. The intention was that the BET would be applied by each department whenever there was new or amended legislation. However, in practice, only modest use has been made of this possibility, due to, among others, the parliament's rejection of the *van Erp Motion* which proposed to impose the utilization of the BET to determine the cost of complying with information transfer for every new law or amendment.

#### *The Administrative Burdens Committee*

The *Slechte Committee*, named after its chairman Mr. Slechte, was appointed on 27 November 1998, to give a strong incentive to policy making in the field

<sup>1</sup> *Graag of niet, Verlagings, Vereenvoudiging, Verbreding*, Rapport van de Commissie voor de Bestaandherziening, Sdu Juridische & Fiscale Uitgeverij, The Hague, July 1991.

<sup>2</sup> P. de Haan, op. cit., 1996, p. 189.

<sup>3</sup> Tweede Kamer, 24 036, nr. 5.

of administrative burdens reduction<sup>1</sup>. The appointment of this committee led to the thread - that had been broken by the discouraging attitude of the Cabinet towards the recommendation of the Grapperhaus Committee in 1986 - being picked up again. Both the Slechte Committee as well as the Grapperhaus Committee, specifically, addressed the subject of reducing the information transfer compliance costs for businesses. It is remarkable that, with the appointment of the Slechte Commissie, attention was paid for the first time to the costs of complying with information transfer regulations in areas other than tax legislation and social insurance. In principle, the Slechte Committee did not exclude any type of information regulation, neither did it exclude it for other authorities, such as provinces and local councils.

The terms of reference of the Slechte Committee show that it appears that a lesson has been learnt from the disappointing experience concerning the ineffectiveness of the policy aimed at reducing the regulation of information transfer since the time of the Grapperhaus Committee. According to Article 3, item 1, the brief of the Committee is to provide the Minister with advice on the subject of MDW (Market, Deregulation and Legislation quality) to achieve a substantial reduction in the administrative burdens for business, and to improve the involvement of business as a whole in the compilation and execution of new legislation and regulation, insofar as legislation and regulation apply to business<sup>2</sup>.

On 25 November 1999, the Slechte Committee submitted its final report (*Regulations without inconvenience*). The Slechte Commission bases its recommendations on a basic philosophy resting on three instruments: erosion of legitimacy, integral or individual checks of information transfer compliance costs, and responsibility and counter force.

Erosion of legitimacy refers to the Committee's fear that the increasing costs of information transfer compliance could lead to the erosion of the legitimacy of the legislation itself. By integral or individual checks, the Committee indicates that they, when taking initiatives to control information transfer compliance costs, plead for the question as to whether the government is doing the right things (this is mainly a political query) to be kept separate from the question of whether the government is doing things in the right way (information logistics).

Finally, responsibility and counter force whereby the Committee refers to the desirability of a change in culture by government institutions themselves (more character by accepting self-responsibility for the quality and efficiency of the demand for information) in combination with the establishment of an

<sup>1</sup> 'Instellingsregeling Commissie Administratieve Lasten', 27 November 1998/nr. 98069082 WJA/W, *Staatscourant* 1998, nr. 232, p. 9.

<sup>2</sup> *Regulation without inconvenience; lesser, simpler, more efficient*, Final report of the Commissie Administratieve Lasten, Annex 1a, page VIII, The Hague, 25 November 1999.

independent body, at a distance from the governmental organisation itself, that monitors and approaches the one primarily responsible for the demand for information (counter force).

The recommendations of the Slechte Committee had a favourable reception from the Cabinet. The Cabinet has stated that it will support the framework and will examine and work out the policy guidelines sketched by the Committee and, where necessary, crystallise its reaction to the final report<sup>1</sup>. So now the tide seems to have turned. The time is now ripe to take effective measures to reduce the cost of complying with information transfer regulations.

## 2.5 Effective policy measures

### *General*

Until 1994, neither the Netherlands nor other countries were in Pope's fourth and fifth stages, taking effective policy measures and monitoring. Allers (1994) refers to this as follows: 'All in all, we must conclude that, although policy recognition has been on the increase lately, the last two phases of Pope, i.e. implementing effective policy measures and continual monitoring of operating costs, have not yet been reached in the Netherlands nor indeed in any other country<sup>2</sup>. This situation changed in the second half of the Nineties. Policy making applying to the field of information transfer compliance costs started to improve and has become adapted for action. One important reason for this is, presumably, that in the first half of the Nineties the result of surveys carried out into the quantifying of the extent of the costs of complying with information transfer resulted in a shock effect among politicians in the various countries. Probably, new possibilities in the field of ITC have also played a positive part in the realisation of effective policy measures.

### *OECD*

A study carried out in 1998 in nine countries (Australia, Canada, Denmark, Germany, England, Norway, the United States, Sweden and New Zealand) has assessed several projects in the field of ICT and administrative burdens. This study has resulted in the identification of 56 projects all having the same objective, namely to reduce the costs of information transfer compliance for businesses<sup>3</sup>. Most of these projects were based on electronic data exchange, pro-active service (e.g. one counter), unique identification number, authentic

<sup>1</sup> Letter to the Chairman of the Second Chamber of the Dutch Staten-Generaal, ref. ES/MDW 99067227, 20 oktober 1999, and 00009455, 11 February 2000.

<sup>2</sup> M. Allers, op. cit., 1994, p. 13.

<sup>3</sup> Ministerie van Economische Zaken, *Eindrapport 'ICT en administratieve lasten'*, The Hague, 12 November 1998.

data management and basic registration. This study showed that there are significant similarities in the ideas and initiatives developed in the field.

For the purpose of illustration, a number of examples of policy measures, being taken currently in OECD countries, are given below.<sup>1</sup>

In the United Kingdom the following initiatives have been taken to reduce information compliance costs by using ITC. These are mainly important for small businesses:

- Direct Access Government is a 'one-stop shop' or a 'single counter' facility for businesses. A project initiated by the Cabinet office to offer entrepreneurs the opportunity to use inter-active forms to be completed and submitted through the Internet.
- The Small Business Service, a project managed by the DTI (Department of Trade and Industry) since May 1, 1999. This initiative aims to give the small-scale entrepreneur a say within the government. Possibly, this service will become a 'single electronic gateway' for small businesses. The service became operational in November 1999. It is expected that, possibly, this service will take over the above-mentioned one (Direct Access Government).
- The INFOSHOP, a pilot project at local level aiming at providing enterprises with a review of all the applicable variations of legislation and measures applying in the region through a single window. Many laws made by central government are implemented at local or regional level in the United Kingdom.

In Denmark, the following ICT applications aiming to reduce the cost of information compliance are worth mentioning:

- Within the Ministry of Trade and Industry a special agency is responsible for reducing the costs of information transfer compliance, this is the *Ehrvervs- og Selskabsstyrelsen*. This Agency is assigned to copy all governmental forms onto the Internet. In due course, this is expected to lead to a certain amount of unification.
- Ideas are being developed to offer small businesses the possibility to out-source to administration offices all contacts with the government involving the exchange of information and the accompanying legal obligations.

Finally, in Norway, there is a Central Co-ordinating Register of Legal Entities *Bronnoysundregistrene*, which exists since 1980 and aims at reducing compliance costs.

This Register is an agency belonging to the Ministry of Justice and manages registers for various other ministries. The objective of the agency is to promote trustworthy relationships in society. One of the agency's responsibilities is to

<sup>1</sup> Information taken from country reports, reports of fact-finding missions which Prof. I.Th. Sneelen has compiled on the instructions of the Committee for administrative burdens. These refer to the United States, the United Kingdom, Denmark, Norway and Sweden, July-September 1999.

encourage efficiency in the traffic between the public and private sector and to avoid the same information being stored many times. In 1997, a new *Register of Administrative Regulations* was established to contain a record of all forms that regulate the traffic between businesses and the Government. The legal tasks of this register are to co-ordinate existing and new information regulations, act as an information centre for business and government, organise hearings for the legislator and also to work out definitions for data collection by public authorities.

### ***The Netherlands***

One of the first definite initiatives, aiming at the reduction of the costs of complying with information transfer regulations in the Netherlands, was the establishment of the *Foundation for Enlightening Administrative Burdens of Small and Medium-Sized Businesses* (Stichting Administratieve Lastenverlichting Midden- en Kleinbedrijf, SALM) in 1990. The initiative was a combined venture involving the association of entrepreneurs, enforcement authorities, the business community and the government (the Ministry of Economic Affairs). SALM was mainly preoccupied with the reorganisation of the infrastructure for information transfer between businesses and enforcement agencies by external integration. Electronic data and one central collection point were major key words for this initiative.

Another significant initiative was the appointment of the van *Lunteren Committee* in 1994, a committee named after its chairman, the Director-General of the Taxation Authorities. The objective of the committee was to reduce the compliance costs of information transfer in the field of taxation. The initiative was taken by the Ministry of Finance to create a platform for structural discussions between the Ministry and business associations. The subject of discussion was the execution models of information transfer regulations in the field of taxation. So, it was not taxation itself that was under discussion but the method by which taxes were levied. In 1995, this committee was converted by the Secretary of State for Finance into a permanent consultative body for the business organisations and the Tax authorities. One of the items placed on the agenda of this consultative body concerned the development of a tool to measure the costs of complying with fiscal information transfer regulations for businesses, the *Standaardkostenmodel Fiscale Verplichtingen*<sup>1</sup> (Model of the Standard Cost of Tax Regulation), developed by EIM as a special module of MISTRAL (**M**asuring **InSTR**ument **A**ministrative **L**oads).

The statement of the first Kok Cabinet, during its government period 1994-1998, to reduce the costs of information transfer compliance for business by 10% had a significant impact on policy making in the Netherlands. The Minis-

<sup>1</sup> *Reducing administrative costs for businesses*. Final report of the Committee for the reduction of administrative regulations for business, Ministry of Finance, The Hague, October 1995, p. 3 of the State Secretary's letter of 12 October 1995.

try of Economic Affairs was (and still is) responsible for co-ordinating the actions required to achieve this goal. The Cabinet regularly informed the Lower House about the progress and results of this policy.<sup>1</sup> During the period 1994-1998 a total of 69 definite amendments were made to the legislative regulations concerning information transfer from businesses to the government. The majority of these amendments originated from the explicit objective to reduce compliance costs by 10%<sup>2</sup>. Also the second Kok Cabinet has decided to reduce the information transfer compliance costs by another 15% during its second period in government.

In 1998 there were about 53 projects with common goal to reduce information transfer compliance costs by using ICT.<sup>3</sup> Most of these projects were based on electronic data exchange, pro-active service (e.g. one counter), unique identification number, authentic data management and basic registration.

## 2.6 Monitoring

### *General*

By monitoring we mean following the annual developments of the compliance costs of information transfer systematically and in separate fields of legislation. This is the area where the situation in the Netherlands differs from the United States. In the US, monitoring is more general in nature.

So far, the available literature suggests that Pope's final phase - monitoring the administrative burdens - has been reached only in the Netherlands and to a lesser extent in the United States.

### *The Netherlands*

In the Netherlands, the initial results on the subject of monitoring the costs of complying with information transfer regulations appeared in 1999; these covered the period 1993-1998. In the future, there will be an annual report of the developments in information transfer compliance costs for Dutch businesses.<sup>4</sup>

<sup>1</sup> Lower House, *Towards fewer administrative burdens*, 27 June 1995; Lower House, *Progress in the reduction of administrative burdens for businesses*, 14 July 1997; Lower House, *Present state of affairs of the project to reduce administrative burdens*, 14 April 1998; Lower House, *Report of general discussions on the lightening of administrative burdens for businesses*, 26 August 1998.

<sup>2</sup> J.J. Boog and others, *Monitoring Administrative Burdens for Businesses; Checking the objective of the first 'Purple' government*, EIM, Zoetermeer 1999, p. 37.

<sup>3</sup> H. van der Zijden and others, *Final report 'ICT and administrative burdens'*, Ministry of Economic Affairs, The Hague, 12 November 1998.

<sup>4</sup> J.J. Boog and others, op. cit., 1999.



## United States

In the United States attempts are being made to monitor the entire costs of regulation for businesses. Information transfer compliance costs are an especially recognisable part. These costs are measured in hours. As far as is known there are data available for the period 1977-1998.<sup>1</sup>

## 2.7 Summary

More than 200 years passed after Pope's first phase, consciousness of professionals, before the final phase, monitoring, was reached. The table below shows the total overview. The periods cannot be distinguished exactly - there is some overlapping.

Phases of growing consciousness of the costs of information transfer compliance

Phase	Period*
Recognition by professionals	± 1750 - ± 1935
Quantification	± 1935 - ± 1995
Recognition by politicians	± 1985 - ± 1995
Effective policy measures	From 1990
Monitoring	From 1999**

\* The period stated is approximate.

\*\* Only in the Netherlands and, to a lesser degree, in the US.

It is striking that recognition by politicians has taken so long: approximately 60 years after the initial quantification of the cost of complying with information transfer requirements. From that time onwards, more attention has been paid to this issue. This development could be explained by at least five reasons.

One is the density of regulations. The extent of social regulations to protect consumers, employees and the environment increased significantly in the last ten years or so. Previously, information regulation was more economic and general in nature, especially taxation was dominant.

Another reason is the increasing interest of politicians to enhance the use of information technology in reducing compliance costs.

A third reason is the fast development of communication technology.

A fourth reason entails the pulling-back behaviour of governments as a result of growing democratisation.

A fifth reason is the globalisation and accompanied world-wide competition.

<sup>1</sup> Thomas D. Hopkins, 'The Costs of Federal Regulation', in: *Journal of Regulation and Social Costs*, Vol. 2, No. 1, March 1992, pp. 5-31; up-dated data appear in *Regulatory Costs in Profile*, Policy Study No. 132, centre for the Study of American Businesses, Washington University, St. Louis, Missouri, August 1996.



## **3 Theoretical framework**

### **3.1 Introduction**

This chapter is devoted to the discussion of the theoretical background of information processing imposed on businesses and the resulted information transfer compliance costs.

For this purpose, a theoretical model, which explains the emergence of information obligation and compliance costs, has been developed. The chapter starts with explaining the general structure of the model and treats the four instruments of the model, namely: elections/business lobby, legislation, steering and design. Furthermore, the chapter discusses the way businesses perceive and accept the information transfer obligations and related psychological (irritation) burdens.

An examination of the determinants of information transfer compliance costs concludes this chapter.

### **3.2 Theoretical model for information transfer regulations and compliance costs**

#### **3.2.1 Introduction**

When businesses are obliged to comply with the regulations governing the transfer of information, this leads to compliance costs. Important questions in this respect are: Where does this information transfer regulation come from? What is its origin? How is it legitimised? How is it designed and how enforced?

To answer these questions, a theoretical model, within which the information transfer regulations themselves have been integrated, is developed. In this model, relevant insights on the position and nature of the determinants of the costs of complying with information transfer regulations are provided (see page 44 for a diagram of the model). The cohesion in the model between the several components will be discussed and explained, but in general terms.

The regulations governing the transfer of information for businesses and the cost of complying with these regulations is the main subject of this report. To be able to present a complete picture of the relevant cohesion in the model it is necessary to give the citizen, as individual actor, a place in the model.



### 3.2.2 Actors and instruments

Five interconnected actors form the skeleton of the theoretical model. The first two individual actors are citizens and business companies; they operate within the private domain. Two other actors are parliament and government, both positioned in the public domain. Finally, there are the institutions which operate partly in the public domain, for example the Tax Authorities, and partly in the private domain, e.g. Labour Circumstances Authorities.

The individual actors have, as far as information transfer regulations are concerned, a mutual structural relationship. These structural relationships are maintained through the instruments utilised in this model. The contacts between civilians/businesses and parliament are mainly realised through the instrument *election/business lobby*. Parliament and government interact through the instrument *legislation*. The government maintains contact with institutions through the *steering* instrument. Last but not least, the relationship between the institutions and businesses or civilians is maintained through the *design* instrument of the information transfer regulations. Citizens and businesses have therefore their role to play, at the beginning of the process they have *the right to state their preferences* by way of elections or business lobby, while at the end of the process they have the duty to comply with information transfer regulations.

At the beginning of the process of regulating information transfer, citizens have in a democratic state the right to speak so as to determine the social values that they may consider important. Similarly, at the end of the process, these persons have to be obedient and co-operate in the execution of the government policy and comply with the laws and other regulations<sup>1</sup>.

#### ***Instrument 1: Elections/business lobby***

Citizens have personal preferences with respect to social values such as safety, environment, labour conditions, health, social security and equity. Citizens indicate social preferences at the elections by voting for the political party whose programme corresponds best to their preferences. In an ideal situation, the elected parliament, actor 2, is then a reflection of the sum of the individual preferences of those citizens who have made use of their right to vote. The relationship between citizens and parliament comes into being via the *election* instrument.

Noticeable is that businesses, being legal entities, have no personal role to play within the instrument of elections. Of course, businesses are private co-

<sup>1</sup> A. Hoogerwerf, M.J. Arentsen, P.J. Kok. *For acceptable policy; A Study of the social acceptance of government policy*. Centre for Social Administration Research and Education, Faculty of Social Administration, University of Twente, Enschede, January 1993.

operations of citizens, but have as such no voting rights, because that is a personal privilege.

However, the involvement of citizens in businesses can take many forms and may vary from extremely strong involvement to no involvement at all. A citizen could, for example, be the director-owner of a company but he could also be a shareholder or manager. In addition, a citizen could be an (ex-)employee, customer or supplier of a business. The ultimate form of involvement is the independent entrepreneur who, as a private person, runs a business without corporate rights.

For self-employed the role of citizen and business merges. In western social constitutional states, most citizens have, either directly or indirectly, some sort of relationship with one or more companies. Many citizens are also stakeholders. This implies that preferences of individual citizens are always represented, to some extent, in individual companies. Naturally, this does not apply to the same extent for all citizens and all businesses. It is also common practice that organised business uses political lobbies to make its preferences known to members of parliament. For that reason, we added business lobby as a separate element to instrument 1. The preferences of organised business circles are not always identical to the preferences of citizens. Mostly, the business lobby tries to mitigate the policy effects of preferences of citizens. For the rest, businesses are prepared to accept social responsibility more and more.<sup>1</sup>

### ***Instrument 2: Legislation***

Parliament, actor 2, sets social goals and objectives taking into account the preferences expressed by the majority electorate. The 'contrat social' is agreed in parliament and the citizen transfers part of his/her individual rights to collectivisation. Parliament passes the responsibility for executing these policies to the government, actor 3. The government then compiles laws and regulations, the determination of norms and values in behavioural patterns, which will regulate the behaviour of the citizens in such a way that the specified goals and objectives can be achieved. In addition to the determination of behavioural patterns, the legitimisation of legislation is essential, not only in the relationship between parliament and the government (formal legitimisation), but certainly in the relationship between government/institutions and citizens/businesses (legitimation of content).

The government draws up a budget to finance all the relevant activities required to achieve these objectives. Parliament supervises by either approving or rejecting proposed legislation and regulations and the budget itself. The relationship between parliament and the government comes into being primarily through the process of legislation, instrument 2.

<sup>1</sup> H. Noordegraaf, J. van Workum (red.), *Maatschappelijk verantwoord ondernemen; een nieuwe fase in het kapitalisme*, Kok, Kampen, 2000.

### ***Instrument 3: Steering***

The government, actor 3, chooses the suitable policy instruments for achieving its social objectives. In principle, the government has a choice out of three steering models to influence the behaviour of the citizens and businesses: the communicative model (persuasion), the economic model (subsidy) and the legal model (enforcement). For each type of steering model, there is a specific type of institution, actor 4, which is responsible for the execution of the law or regulation applying to behavioural control (with respect to obligations).

Agreements are made between the government and the institutes to defray the institutes' execution costs. These costs incurred by the institutes are, in principle, an item in the National Budget (on-budget). An exception to this rule is the (privatised) institutes, which operate outside the public domain, for example the Labour Circumstances Authorities. Here, the cost is borne by businesses (off-budget), which are legally obliged to be associated with such an authority. For businesses these are the costs of complying with legislation and regulations. The relationship between the government and the institutes is governed by instrument 3, the choice of steering models.

### ***Instrument 4: Design***

Actor 4, the institute, applies the chosen instrument to businesses (actor 5), and to civilians (actor 1). Regulations are imposed on both businesses and citizens to steer social behaviour in the desired direction. As soon as the institute wishes to be informed about the effects of this behavioural manipulation, then the aspect of the obligation of businesses or citizens to transfer information comes into picture. Whenever monitoring the 'content' of the obligation is involved, the institutes enforce the transfer of information obligations. Such transfer of information obligations enforced by the institutes result in information transfer compliance costs for businesses. From the point of view of business both endogenous and exogenous determinants play a part in determining the extent of the information compliance costs.

In addition to the actual cost of complying with information transfer regulations, the psychological costs are also significant. These are determined to a great extent by business' degree of acceptance of the information transfer regulations. The nature of the relationship between the institutes and citizens/businesses, which ensues from this obligation to transfer information, is determined via instrument 4, the design of the information transfer regulations.

### **3.2.3 Data flow as feedback**

The relationships described in the model begin by actor 1 (the citizen) and proceed through parliament (actor 2) to the government (actor 3). The government gives instructions to the institutes (actor 4) that impose regulations on businesses (actor 5) and citizens (actor 1). Then the circular flow is round.

The objective of the processes set in course is to enforce/ensure the required social behaviour.

For the actors in the public domain it is essential to have access to information about the extent of compliance by businesses and citizens in the private domain with the socially desired behaviour. The actors in the public domain need this information to be able to assess whether the required objectives have been achieved or not, and, if not, to what extent they need to be adjusted. In the model, the flow of information concerning the compliance with legislation and regulation is shown by arrows marked information, which move counter-clockwise. The flow starts by the one who is deemed to comply with the information transfer regulations, the businesses and citizens, and ends at the citizen. The conclusion of the 'contrat social' should be that the citizen is informed about the effectiveness of collectivisation. What has he/she received in return for sacrificing part of his/her personal freedom to collectivisation? To what extent have the desired social objectives - good social security, good health care, the fair distribution of income, etc. actually been achieved?

The transfer of information from businesses to the institutions, and the accompanying compliance costs, form the core of this study. Information exchange concerns the reports of individual businesses to the institutes. Government funds the compliance costs of neither businesses nor citizens, anyway. Compliance costs of businesses and citizens are no part of the National Budget. That's why we call them 'off-budget' costs. Other information flows - from the institutes to the government, from the government to parliament and from the parliament to the electorate - are in principle the responsibility of the National Budget ('on-budget'). The latter information flows and related on-budget costs will not be dealt with further.

### **3.2.4 Summary**

The theoretical framework relies on two main relevant processes. One relates to the process whereby individual preferences of citizens and businesses are transformed into social values, norms and behavioural rules, and the obligation to adhere to these rules. Another is the process whereby citizens and businesses are obliged to transfer information relating to their behaviour. These two processes run in opposite directions but both start with the citizens i.e. businesses.

The theoretical model has five actors. Citizens and businesses are operating within the private domain, parliament and government within the public domain, and, finally, the implementing institutions, which might be active within both domains, private and public.

The actors are bound to each other by contact, through several instruments. There are four instruments, namely: elections (business lobby for businesses), legislation, steering and design:



- Elections (business lobby) determine the relationship between the citizens/businesses and the parliament.
- Parliament and government interact with each other through the instrument of legislation.
- The steering instrument enables the government and institutions to be in close contact.
- The design instrument (of both content and the obligation to transfer information) determines the relationship between the institutions and business i.e. citizens.

Each of these instruments has its own specific impact on the transfer of information obligations imposed on businesses and, subsequently, the accompanying compliance costs.

### 3.3 The four instruments

#### 3.3.1 Introduction

In this paragraph, detailed information will be given about the four instruments - election/business lobby, legislation, steering and design. The idea behind this model is that each of the four instruments has an impact on the determinants of the information transfer compliance costs. The effect of legislation/business lobby on the extent of information transfer compliance costs, for example, is indirect, and works through the other three instruments. From the instrument design, in the model, there is a sort of cumulative direct effect on the information transfer compliance costs. The indirect effects of the first three instruments - legislation/business lobby, legislation and steering - are added to the direct effect of design on the information transfer compliance costs.

#### 3.3.2 Elections/business lobby

How and why do citizens come to agree to sacrifice part of their individual freedom for collective, national and binding regulations, intended to influence behaviour, and imposing information transfer on the collective entity?

According to de Swaan, collectivisation is the basis of this process.<sup>1</sup> The core of this collectivisation was the increasing interdependence of the poor and the rich. The idea of extending and intensifying human interdependence originated from the historical sociology of Norbert Elias. In feudal times, the poor were both a threat, fear of them attacking possessions of the rich, and a con-

<sup>1</sup> A. de Swaan, *In care of the state, Health care, education and welfare in Europe and the USA in the Modern Era*, 1988, ref. the Dutch translation, *Zorg en Staat; 'Welzijn, onderwijs en gezondheidszorg in Europa en de Verenigde Staten in de nieuwe tijd*, Publisher Bert Bakker, Amsterdam, 1993, pp. 224-262.

venience to be used as a labourer or soldier to keep the established order. Later, in the era of nationalism and capitalism, the poor were considered mainly as a threat to public order, labour unrest, but at the same time, also as a reservoir for labour, recruits, consumers and political supporters. Wealthy individuals were not capable of controlling the external effects.

The term external effects is taken from Baumol's Welfare Economy. The indirect consequences that shortages or setbacks affecting the poor could have on the wealthy, became ever more threatening as the interdependence between rich and poor grew. Therefore, collective action was necessary. However, external effects are difficult to combat using commercial or voluntary agreements, because of the risk of free riders who could benefit without complying, as described by Mancur Olson. This created a need for compulsory, national and collective welfare arrangements. The obligation to transfer information about compliance with the content of the obligation is inherent to such compulsory regulations as one aspect of collectivisation. Only then is it possible to have the weapons to combat free riders.

According to de Swaan, the collectivisation of these 'welfare arrangements' took place along three axes. First, the scale of these arrangements widened from applying locally to applying to the entire nation<sup>1</sup>. Secondly, the informal collective character of these arrangements changed from informal agreements to formal regulations. Finally, the state, or a public body derived from the state, gradually developed into being responsible for such arrangements, equipped with both the authority to enforce compliance and the bureaucratic organisation necessary for the execution.

De Swaan found that after 1945 there was a hyperbolic expansion of collectivism, with significant consequences for society. As more and more citizens started to participate in such collective arrangements, it became increasingly difficult to implement specific economies. There were always influential groups who objected. And also a stratum of professional experts and administrators came into being who needed these collective arrangements to keep them in work. They, too, had an interest in maintaining and expanding the collective arrangements. Finally, there was a wide-scale change of mentality among the citizens living in the constitutional state who began to consider - in addition to their physical safety - other items such as health, knowledge and guaranteed income to be increasingly important.

There was also a shift to more self-discipline (savings) and more specific attention to the future (provisions for old age). Finally, there was a growing awareness of increasing mutual dependence, and with it the transition from parochial charity to social consciousness. To an increasing extent, this social consciousness became linked to an abstract feeling of responsibility that did not

<sup>1</sup> As a consequence of the advancing globalisation it may be presumed that scale enlargement of such welfare arrangement will become world-wide in the future.

encourage personal action, but expected the needy, in general, to be taken care of by the state and the public purse. All this was accompanied by an increasing need for information about compliance with the contents of the regulations belonging to collectivisation (behavioural changes), but having a much wider scope than physical safety and the levying of taxes as was the case at the beginning of the collectivisation process. In the post-war era, there was a 'guided economy' with production taking place in enterprises. Consequently, businesses became increasingly involved in complying with information transfer regulations.

The hyperbolic expansion of collectivisation reached its peak in the 1970s. From the Eighties onwards there is evidence of re-thinking of government tasks in the form of deregulation and 'back-to-the-core business'. The welfare arrangements were examined from the point of view of the desirability of a basic set of provisions in combination with individual responsibilities for more extensive provisions.

An analogy with Maslow's reasoning about hierarchic sequence - from low to high - in the satisfaction of needs is relevant here. The basic physical requirements demand private collective actions such as the distribution of employment and production within enterprises. Meeting other needs such as protection and safety and the need for (social) security require another type of collective public action together with compulsory regulations. Finally, the need for affection and solidarity as well as self-respect and the need to respect others require individual action. However, for some, it appears that at the peak of the constitutional state collective action is expected to provide for one final need: the right to happiness.<sup>1</sup>

### 3.3.3 Legislation

#### *Introduction*

The relationship between parliament and the government runs via the instrument of legislation. The social objectives, decided upon by majority's vote in parliament, are transferred to the government with instructions to ensure that these objectives are achieved. The government has two important instruments at its disposition: determining behavioural regulations and legitimising these regulations. The establishment of rules of behaviour is based on common law in which the government is instructed to provide legislation<sup>2</sup>. Legitimation indicates the principle that the power of the government is limited to the authority assigned to it. This paragraph attempts, based on a theoretical model, to show the relationship between the legislation instrument on the one hand and the obligation to transfer information and the accompanying information

<sup>1</sup> A. Maslow, *Motivation and Personality*, Harper & Row, 1970.

<sup>2</sup> P. de Haan, op. cit., p. 8.

transfer compliance costs, on the other. The establishment of rules of behaviour and legitimisation will be used as aspects of the legislation instrument.

### ***Establishing rules of behaviour/conduct***

Collectivisation has taken place in areas in which individual objectives can be achieved only through collective action. Examples of such areas include good social security, a friendly environment, good health care, a good educational system and the fair distribution of income, etc. Taken all together, individual objectives become social objectives. Collective action requires the regulation of behaviour (conduct) through compulsory regulation in order to minimise free riding. Such rules of conduct are set down in administrative law. One important question is how has administrative law developed, and are there any conclusions that can be drawn about the consistency, nature, extent and design of information transfer regulations?

### ***Cohesion with administrative organisation***

The Dutch administrative law came into being as exceptional administrative legislation. Due to the lack of a strong central authority, this exceptional legislation originally consisted of regulations compiled by de-centralised bodies. Characteristic for each form of administrative law is the cohesion with one certain administrative organisation. The very limited amount of mutual tuning/consistency of the existing information transfer regulations probably also dates from the past.

In most countries, as in the Netherlands, the first collective actions were intended to provide protection against the threat of physical danger. Taking the exceptional natural circumstances in the Netherlands into account - a major part of the country is below sea level - the threat of the lower parts of the country being flooded was great. Only by using combined and co-ordinated efforts would it be possible to combat this threat effectively. The 'polder model', therefore, is an example of one of the first types of collective activities in the Netherlands.

The 'content' obligations (rules of behaviour) were laid down in the statutes, rules and regulations governing water management. These belong to the oldest parts of the Dutch administrative legislation. Their history, like that of the water boards, dates from the 13<sup>th</sup> century. The first charters, giving towns special rights and privileges, were also granted in this period. Feudal Law also dates from this period. Little is known about the transfer of information obligations at that time. It may be assumed that the most common form of information transfer regulation in those days consisted of the fact that when citizens were checked it was compulsory for them to provide information about their behaviour.

### *No comprehensive Law Book*

Originally there were no distinct differences between the types of laws; constitutional, administrative and criminal regulation were all part of one indistinct whole. In the 19<sup>th</sup> century, the differentiation process in the distribution of authority and the development of law had progressed so far that, for the first time, there was talk of administrative law. In Germany, this development was based on the *Kameralwissenschaften*. The Dutch administrative law has been influenced by both the developments in Germany and those in France. Dutch constitutional law speaks explicitly of regulations based on administrative law. This means that, contrary to civil law and criminal law which are regulated in the general statutes, no measures are taken to achieve comprehensive codification for administrative law. The factual stipulations of Dutch administrative law are not contained in one comprehensive Law Book but in a large number of individual 'Special Volumes'. In addition, there is also one 'General Volume', the main contents of which are abstracts from the 'Special Volumes'.

It is not simple to obtain a cohesive review of the Special Volumes of administrative law. This problem does not apply specifically to the Netherlands. Such a review is essential to obtain a clear, integral picture of the areas in which, at the present time, collectivisation has led to compulsory regulation both as to content and information transfer. Various alternative distinctions are found in literature. The most common are:

- Classification based on the function of the regulation
- Classification based on the subject of the regulation.

Classifications related to functions make a distinction between economic, social and general regulation. The function of economic regulation is to protect consumers and businesses against financial risks of economic phenomena such as monopolies and destructive competition. Economic regulation applies mainly to businesses, business processes and the market; for example, maximum prices, etc. On the contrary, social regulation concentrates on risk reduction, i.e. it aims to protect consumers, employees and the environment against risks which could occur as a consequence of economic business. These could include health risks for employees and consumers, loss of income, etc. General regulation, which is the oldest of the three, deals mainly with subjects such as levying taxes, public order and safety, privacy laws, etc.

Geelhoed mentions the evolution from a national democratic constitution, which mainly concentrates on a *regulatory function*, to a state which, increasingly, concentrates on *insurance functions* such as in case of social security and social care, and *performing functions* such as in the fields of education and physical and technical infrastructure, and, finally, *intervening functions* such as

planning, environment improvement, distribution of income, economic stability and growth<sup>1</sup>.

The above evolution from the regulatory state (minimal state) to the insuring, performing and intervening state also took place outside the Netherlands in Western Europe, but also the USA and many other OECD countries<sup>2</sup>. Increasingly over the last two decades, the emphasis of regulatory effects has shifted from economic regulation to social regulation. Regulatory concerns dominating the policy agenda today involve issues such as greenhouse warming, nuclear safety, consumer protection, equal opportunity/access for the handicapped, job safety, the effect of pollution on health, and more generally environmental quality. In the United States, the largest contributor to new regulatory costs is environmental regulation<sup>3</sup>.

The relative importance of social regulation will probably increase compared to economic regulation. Economic regulation is relatively well embedded in society. In many cases, economic regulation will become superfluous, because increasing international competition and the development of national economies has resulted in a market where less governmental regulation will be required. The need for social regulation, on the contrary, has recently increased and will become increasingly important as the social prosperity and the need for social protection also grow. The development of a worldwide economy is also creating new categories of regulatory problems because effective policy applying to climatic changes and the preservation of scarce natural resources also implies a worldwide scale of regulation<sup>4</sup>.

The item-related classifications of regulations issuing from administrative law apply more to business processes and the treatment of the employee and customer within these business processes, as well as the business processes themselves. Some examples are: regulations concerning the management of an enterprise, regulations in sectors such as construction, transport, mining, but also regulations governing intellectual property, public tenders, etc.

The two classifications related to function or item are, generally speaking, easy to combine.

#### *Positive co-ordination and complicated regulation*

Policy co-ordination in the public sector attempts to find the best possible solution for all relevant interests, this is also called endeavouring to achieve

<sup>1</sup> L.A. Geelhoed, 'Legislation and government in the semi-sovereign state', in: *Interweaving and shifting of legislation complexes at the beginning of the 21st century*, Staatsrechtkring publications, no 12, Tjenk Willink, Zwolle, 1998, p. 2.

<sup>2</sup> L.A. Geelhoed, p. 2.

<sup>3</sup> W. Kip Viscusi, 'Improving the analytical basis for regulatory decision making', in: *Regulatory Impact Analysis, Best practices in OECD countries*, OECD/PUMA, Paris 1997, p. 178.

<sup>4</sup> W. Kip Viscusi, p. 178.

Pareto efficiency. Geelhoed gives an example of positive co-ordination; an integral co-ordinated income policy together with an optimum planning for the 'green heart' and an integral construction policy.

The more government intervention focuses on objectives and instruments in terms of policy and instruments, the greater the positive co-ordination becomes. As a consequence, decision making - in parliament and between the parliament and the government - in the annual budget cycle is under severe pressure by the ex ante assessment of the consequences of these decisions for the development and distribution of income. In this way, all sorts of unusual policy interventions occur in many areas of legislation in administrative law, such as taxation and social security, which also have consequences for information transfer obligations for business; the extension of the 'policy balance'. As such, amendments are made each year, and the fields of legislation involved become increasingly complicated<sup>1</sup>.

### ***Legitimation***

One important question addresses the subject of the legitimation of information transfer regulations. There is a direct link between the degree of legitimation of a certain information transfer regulation and the degree to which citizens and businesses comply with this regulation. It is therefore important to make a distinction between legitimation in the formal sense and legitimation in the material sense.

#### *Legitimation in the formal sense*

The government has power only insofar as it is granted authority. The law plays herewith a crucial part. By bestowing this authority, the law allows the government to take action but, at the same time, regulates such actions and offers citizens (businesses) protection against unregulated government actions<sup>2</sup>.

The legitimation of information transfer regulations, in the formal sense, originates from administrative law. The administrative law's functional approach distinguishes the *instrumental function*, *insurance function* and the *legitimising function*, which is implicit in both previous functions. De Haan considers the legitimising function of administrative law to be the most common. If there were no administrative law, the administration would not be empowered to act. This function of administrative law, therefore, has a direct link with the constitutional principles of the legality of administration. The legitimising function comes into practice when it establishes administrative bodies, grants administrative authority and regulates administrative procedures.

<sup>1</sup> L.A. Geelhoed, 'Legislation and administration in the semi-sovereign state', in: *Interweaving and shifting of legislation complexes at the beginning of the 21st century*, Staatsrechtkring publications, Tjenk Willink, Zwolle, 1996, pp. 13-14.

<sup>2</sup> P. de Haan, p. 21.

Unlike the civilian, the government does not have the natural right to perform legal actions and to form legal relationships.

Under administrative law, governmental authorities are, or will be, legitimately allowed to impose information transfer regulations on citizens and businesses. In administrative law, the legitimising function of civil law works mainly on modification, applied to changes in the status quo, and not on codification (reflecting social behaviour already developed). The purpose of these administrative laws is, in connection with new governmental tasks, to establish new administrative organisations, to grant new or adapt existing authority and regulating procedures for exerting this authority.

#### *Legitimation in the material sense*

Legitimation in the material sense means that information transfer regulations should be compatible, from society's point of view, with generally accepted values. In fact, the objective is to ensure that there is sufficient internalisation among the citizens, and through them among businesses, to allow them to understand that the information transfer regulations are intended to achieve social objectives.

De Haan says in this context that administrative decisions and administrative measures should be legitimised in the material sense. In other words, they have to comply with the rules of the written and unwritten law. The legitimising function of administrative law goes beyond setting limits to administrative actions. In fact, administrative law aims to justify all the actions of the administration by setting standards, both as to content and procedures, using rule of law<sup>1</sup>.

What is the role of legitimisation, in the material sense, in the compliance with legal information transfer regulations and related compliance costs?

Literature has much to say about the importance of legitimisation in the material sense.

Scholten defines legitimacy as the personal conviction to obey persons with authority (in specific domains). This personal conviction is based on an individual perception with respect to these authorities, their behavioural patterns, the relevant situation as well as the person's evaluation of these authorities as influenced by personal norms and values<sup>2</sup>.

Potman adds that, besides the legitimacy of these authorities, of flesh and blood, as well as of a regime, it is also relevant to speak of legitimacy of a law

<sup>1</sup> P. de Haan, pp. 37-38.

<sup>2</sup> G.H. Scholten, 'An empirical approach to legitimacy', in: *Policy and Society*, 1975, volume 2, p. 18.



or policy in general<sup>1</sup>. Legitimacy in the practical sense is, therefore, the result of a process of legitimisation. Legitimacy involves an attitude. Potman rejects a behavioural approach to legitimacy. If a law or policy is accepted as being legitimate, this does not necessarily mean that there is compliance with the accompanying regulations. All sorts of other factors, such as anticipated costs and benefits of norm-conformist and non-norm-conformist behaviour, are involved in determining the behaviour of individuals. More about this later when the instrument design will be discussed.

Legitimation of a law or a policy in the material sense is, according to Potman, not the same as the acceptance of a law or policy. Legitimation in the material sense refers more to a general fundamental attitude towards a law or legislation, while acceptance applies much more to the existence, design, content and effects of such a concrete policy or law. Acceptation will also be dealt with when the instrument design is examined.

Now that we have defined the term 'legitimation in the material sense', we come to the origins from which legitimacy can be derived. Based on literature, Potman distinguishes three types of origins for legitimacy. These origins are captured through the next questions: Who takes decisions about policies and commands? How are these decisions taken? What is the content of the decision?

In the case of legitimacy origins, which emphasise *from whom does a policy or command come from* (a person), focus is on the behaviour of the person in charge, no matter what is the content of the respective policy or how it developed. The concerned persons will accept the policy, in any case. This type of legitimacy seems to have relatively little importance for the information transfer regulations in a modern democracy.

The liberal constitution principle forms the foundation for sources of legitimation based on the question *how* a decision (law or regulation) was made. The form of legitimation places a strong emphasis on the procedures followed. Nicholas Luhman is the exponent of this school (see his book *Legitimation durch Verfahren*). The citizens involved must be willing to accept a decision without paying any attention to the content, and they must adapt their own behaviour to suit this decision. This form of legitimation also seems to play a minor role in a modern democracy.

Finally, the sources of legitimacy, which are tuned to the assessment of *what* the policy represents as to content, based on the values and norms of each particular individual. Stilman is the most important representative of this school of thought. He defines legitimacy as follows: *legitimacy is the compatibility of the results of governmental output with the value patterns of relevant systems*. This form of legitimacy is most significant for the legitimation

<sup>1</sup> H.P. Potman, *Policy Acceptance. Study of the Noise Nuisance Act, investigating an administrative term* (diss.), Kerkebosch, Zeist, 1989, pp. 35-38.

of the transfer of information obligations in the social constitutional state. Stilman takes over this terminology from Harold Lasswell. From Lasswell's value typology, it is clear that legitimisation takes place at a sort of meta level. Legitimation involves a fundamental attitude concerning values such as power, respect, justice, affection, well-being, prosperity, professionalism and enlightenment.

The relevant systems distinguished by Lasswell are the social systems that are confronted with government products. Legislation and regulation in general, and information transfer regulations in particular, are the government products referred to here. Lasswell distinguishes four system levels; the international system, society, groups within society and individuals within society. Businesses that are exposed to information transfer regulations could be, in Lasswell's classifications, considered to be a social system. The values of businesses i.e. of the citizens that represent businesses can be considered as grounds for legitimisation within the framework presented by Stilman.

One of the basic elements of the basic philosophy of the Commissie Administratieve Lasten is the recognition of the relevance of legitimacy with respect to the compliance with information obligations. The Commission is warning for a threat of erosion of legitimacy. According to the Commission, the size, the complexity, the lack of transparency and the never ending changes in the document flows are the main reasons for this threat of legitimacy erosion.<sup>1</sup> The lack of legitimacy does not refer specifically to the information obligation itself, but to a general negative attitude regarding the policy-making institutions, the political system and the administrative law in general.

### **3.3.4 Steering**

#### ***Introduction***

In the previous section we ascertained that individual citizens and businesses appeal to election/business lobby (instrument 1 in our model) to achieve certain objectives. Parliament's decision making reflects society's preferences within the multitude of objectives. The government is requested to register these objectives in a binding form, legislation and regulation (instrument 2) for the participants involved (citizens and businesses).

Subsequently, a relevant question which arises is, how could the government achieve the fixed goals, and what is the role of information transfer regulations?

<sup>1</sup> Commissie Administratieve Lasten, op. cit., p. 3.

This brings us to what van der Doelen termed the toolbox of the government - the steering models<sup>1</sup>. Using these steering models (instrument 3 in our model), it is possible to shape the nature of the relationship, the legal position between the citizens and the government. In most cases, the government does not deal directly with the citizen or businesses, but it establishes bodies/institutions for this purpose, such as the Tax Authorities, Labour Inspection, Environmental Authorities, Central Bureau for Statistics, Social Security Authorities, Pension Funds, etc. The costs of such bodies are financed by the National Budget or by specific premiums and/or levies. These are the on-budget costs of legislation and regulation.

### ***Growing horizontal relationship between government and citizens/businesses***

According to de Haan, the development of the social constitutional state was associated with improved horizontal relationship between government, citizens and business. Besides the administrative relations between government and citizen/business, whereby government possesses clearly the authority (vertical), the government and citizen/business co-operate with a certain degree of equality (horizontal), as is usually the case in a social constitution.

The following stages can be distinguished in the process of creating this horizontal relationship between the government on the one side and the citizen/business on the other, in situations in which:

- the legal position of the citizen or business is determined solely by the government: conscription for military service, levying taxes.
- the government is dependent on the co-operation of the citizen/business: tax statements filled in by the citizen/business, citizen's/business' application for permit or licence, the citizen or business has the right to be heard before a (negative) decision is made.
- the government recognises private persons and private organisations (businesses) and grants subsidies for the execution of public tasks.
- the government renounces its right to use public law in favour of semi-legal instruments such as covenants, letters of intent or policy agreements.

These growing horizontal legal relationships between government and citizen or business re-appear in various types of government steering models, the toolbox.

### ***Steering models***

Literature distinguishes three basic forms of steering models; a communicative, economic and legal steering model, Winsemius illustrates these three types as follows. He means by steering models the different policy types or executive types. He added that there are three types of policy and three meth-

<sup>1</sup> F.C.J. van der Doelen, 'The government's toolbox; An inventory', in: *Policy instruments from an administrative point of view*, J.Th.A. Bressers, P. de Jong, P.J. Klok, A.F.A. Korsten (ed.), Van Gorcum, Assen/Maastricht, 1993, pp. 17-31.

ods of execution. The policy has certain objectives - that is the hoop. Certain people and certain businesses have to pass through the hoop. You can make them do that by using laws and regulations - that is one method - the stick. You can also hold a carrot in front of their nose - that is the subsidy or the levy, perhaps. Or you can just say: well, decent people just jump through the hoop<sup>1</sup>.

In terms of our model concerning information transfer regulations, jumping through the hoop is a 'content' regulation. To inform government that you jumped through the hoop, is an information obligation. Such obligations can in principle, as we have already seen, be influenced in three different ways by the government.

#### *Legal steering model*

The legal steering model uses a stick and is coercive. This is usually accompanied by sanctions. The legal steering model is the oldest and goes back to ancient history - the Greeks and Romans. In this model, a human is seen as a 'homo politicus', who sets out norms and values in formalised rules of behaviour (laws and regulations) governing the conduct of the government, citizens and businesses. Transfer of information compliance comes into the legal steering model as soon as the government needs, in any way, to be informed about the compliance with the 'content' regulation - jumping through the hoop.

#### *Economic steering model*

The economic steering model uses the carrot and is not coercive. The 'homo economicus' is central in this model and is supported by Bentham's utilitarianism. This theory states that man serves two masters: pain and pleasure. Characteristic of the economic steering model is the fact that the government attempts to determine the advantages and disadvantages of certain choices by changing the consequences of these alternatives, usually with financial stimulants: levies and subsidies. To obtain the subsidy or be exempt from the levy you have to jump through the hoop - the 'content' rule of behaviour.

A significant difference between this model and the legal model is that jumping through the hoop is no longer compulsory. The obligation has shifted. Two situations could now be distinguished. In the first situation, the person who does not jump through the hoop has to pay a levy ('content' regulation), and those who do jump through the hoop if they wish to be eligible for their reward in the form of a subsidy have to meet the requirements stated on the application form. The first is to jump through the hoop, which now has the character of a 'content' regulation as a condition of obtaining the subsidy.

<sup>1</sup> F.C.J. van der Doelen, pp. 17-31, was consulted for this and the following sub-paragraph. See also P. Winsemius, 'Decent people sing as they jump through the hoop', in: *NRC Handelsblad*, 24 December 1985, p. 13.

Then there is often the obligation to transfer information to supply the government with the information it requires granting the subsidy.

*Communicative steering model*

Finally, the communicative steering model which rests on the trust of the *Enlightened Thinkers* in human sense. If one does something bad or stupid, from a certain point of view, then this is a way of thinking, which is blamed on a lack of reasonableness, in the widest sense of the word. Using the communicative steering model, the government, by transferring information to citizens and businesses, wants to change their behaviour, through the knowledge or appreciation of certain choices; it would be sensible to jump through the hoop. Contrary to the other two steering models, the communicative model knows no legal obligations; it is not compulsory to jump through the hoop. At most, there could be some moral obligation together with some social control within certain social groups such as the environmentalists, for example, whereby people with certain values and norms will jump through the hoop.

***From stimulating to repressive steering***

The three steering models mentioned are still too general to be used for a more detailed examination of the third instrument, *steering*, in our information transfer regulations model. A general ban and permits/licences usually belong to the legal steering model. This involves completely different cases, each with its own consequences for content and information regulations. The same applies to levies and subsidies as elements in the economic steering model. In literature, therefore, various supplementary dimensions are added to the three steering models. Van der Doelen's stimulating-repressive dimension is of most interest for our model.

The distinction between increasing compulsion, or, in other words, the declining freedom of citizens and businesses, is essential. When communication is used as a steering model, the freedom of citizens and businesses is increased by the provision of knowledge. The stimulation in the economic steering model forms a sort of link (transitional stage) between freedom (subsidy) and coercion (levy). These are followed by the regulations of the legal steering model: thou shalt (command) and thou shalt not (prohibition). The mentioned dimensions are listed in the next table.

The stimulating and repressive form of the communicative, economic and legal steering models

<b>Steering model</b>	<b>Stimulating</b>	<b>Repressive</b>
<b>Communicative</b>	Information	Propaganda
<b>Economic</b>	Subsidy	Levy
<b>Legal</b>	Agreement	Prohibition, ban

Source: Van der Doelen, 1993.

When the steering models are combined with the stimulating/repressive dimension, concrete policy instruments appear in the cells. As mentioned earlier, the communicative steering model - because it contains no obligations, neither stimulating nor repressive - is no longer of importance for the development of our model for information transfer regulations.

#### *Repressive policy instruments*

The repressive policy instruments of the economic and legal steering models are used to impose regulations on citizens and businesses. For levies - a policy instrument belonging to the economic steering model - it must be said that the initial behaviour as to content is not compulsory, but should the business or citizen show signs of this behaviour, then a levy must be paid. There may be said to be a sort of substitute 'content' regulation, and that is to pay the levy. Should the government have to be informed, then there is the obligation to transfer information. Within the legal steering model we see commands and bans as repressive policy instruments. In both cases, there is a 'content' obligation for both businesses and citizens. As soon as the government, in this case, wishes to be informed as to what these particular citizens are doing, or not doing, then the obligation to transfer information appears.

#### *Stimulating policy instruments*

As far as the stimulating policy instruments are concerned, the translation to our information transfer regulations model is less unequivocal. The question is whether the application for a subsidy or making an agreement to achieve a social objective - a covenant - could lead to information transfer commitments for businesses and consequently to information transfer compliance costs in the intention of our model? Applying for subsidies and making covenants are, in principle, measures based on the interested parties' freedom of choice. Businesses are not obliged to apply for subsidies or to make covenants.

Let us start with subsidies, with the stimulating policy instrument as an element of the economic steering model. With subsidies, just as with levies, the government attempts to steer the behaviour of the actors (businesses and citizens) in the socially desirable direction. Subsidies and levies are therefore opposite sides of the coin. By increasing the costs of certain undesirable behaviour by imposing levies, that behaviour is discouraged. On the other side, increasing the benefits of certain desirable behaviour by granting subsidies stimulates this behaviour. Levies and subsidies are therefore constituent components of the economic steering model. Exactly what a subsidy is and what a levy is cannot be clearly defined without considering the existing taxation structure.

There is a wide variety of economically tinted policy instruments, such as credits, support, contributions, guarantees, tax deduction, participation, retributions, price measures, tariffs and taxes, between the purely stimulating type of subsidy granted after application and the levy. It appears to be very plausible,

therefore, that, where in the economic steering model information transfer regulations are imposed on businesses, the accompanying costs should be considered to be information transfer compliance costs, even when voluntary measures such as applying for subsidies or taking advantage of tax facilities (tax deductions) are involved.

The argument that applying for a subsidy or taking advantage of tax deductions is not compulsory and that the costs involved do not include compliance costs - in the sense in which we consider them - is not justified. The decision to become an entrepreneur is almost always voluntary. If the lack of *voluntariness criterion* will be added to the definition of information transfer compliance costs, then these costs would be reduced to zero for businesses. The entrepreneur made his choice, however, voluntarily. Essential is the fact that we are dealing with the regulations applying to the transfer of information to the government, with the objective of realising relevant social goals and values.

Finally, the agreement of stimulating policy instrument, as an element in the legislative steering model, will be discussed. Literature shows that there is a strong analogy between the use and dosage of stimulating and repressive policy instruments within the economic and the legal steering model. What subsidies and levies represent in the economic steering model is represented by agreements and commands/bans within the legal steering model. Van der Doelen draws attention to the tension between legitimacy and effectiveness that exists in the legal steering model. 'Thou shalt, thou shalt not', the repressive policy instruments are often confronted by resistance from society - inadequate legitimisation in the practical sense - and pay the penalty of reduced effectiveness.

Agreements (covenants) aimed to achieve social goals, the stimulating policy instruments, on the other hand can boast of adequate legitimacy but are often not very effective. Combining stimulating and repressive rules and regulations, the 'mays and the musts', seems to have a favourable effect on both the legitimacy and effectiveness of the policy.

Agreements, which endeavour to achieve social goals, in the form of covenants such as collective labour agreements and sector agreements, do involve social institutions in the process and render them accomplice, and so does the government subsequently legitimate policy.

Coercive regulations, and that is the other side of the coin, often act as hidden threats in the creation of covenants, collective labour agreements and specific business sector agreements. As is the case between subsidies and levies, there are all sorts of transitional forms between the stimulating policy instrument agreement and the repressive policy instrument *must/must not* within the legal model. Some examples are permission, exemption and permits/licences. As we concluded for the economic steering model, it seems to be very plausible that, in circumstances involving covenants, collective labour agreements, and agreements for specific sectors of business whenever information has to be

provided by businesses, this should be considered to be compliance with information transfer regulations - within the context of our model - with the accompanying compliance costs. Here again, the decisive argument is that the information transfer regulations endeavour to achieve socially relevant goals.

### 3.3.5 Design

#### *Introduction*

The government (actor 3), depending on the steering model selected (instrument 3), hands over the execution of the regulations to actor 4, the implementing institutions. Such implementing organisations, in turn, contact the businesses (actor 5) that and citizens (actor 1) who have to comply with these regulations.

A reminder - the citizens fulfil a double role in the model, they are both free citizens who determine the objectives they wish to transfer to collectivism and at the same time subjects who are expected to obey the ensuing regulations. This double role is the essence of Rousseau's 'contrat social'; freedom in restraint.

The obligations are shaped in instrument 4, design. As we have already seen, the implementing institutions impose two types of regulations on businesses; one as to the content and the other as to information transfer. Citizens will be left out of consideration from now on. The content obligations, applying to behaviour, are of primary importance and do stand alone. The information transfer obligations derived from them are a part of the administrative enforcing instrument: monitoring. It is of relevance that enforcement and monitoring should be understood in a broad sense. At first, the enforcement and monitoring of the compliance with 'content' obligations by individual businesses is important.

Which forms could be distinguished in the compulsory information transfer between businesses and implementing institutions, and to which extent does monitoring play a part in compliance? Which part does acceptance play in the way in which businesses comply with the transfer of information obligations? How does acceptance of the regulations influence the psychological costs for businesses? Which part do information transfer obligations play in complying with content obligations?

As we continue to discuss the instrument design, we shall make a distinction between what we shall call objective and subjective aspects of design. When we speak of the objective aspects, we refer to items such as the structure of the information transfer regulations and information technology. The subjective aspects refer to how businesses experience the information transfer regulations i.e. the citizens who, on behalf of businesses, have to comply with such regulations.



In principle, the costs of complying with information transfer obligations are considered by business to be high for two reasons; these are:

- They are high compared to other operating costs. This is an economic reasoning, which is linked to the objective aspects of the design of the information transfer obligations.
- They are found to be high without any rationale from a business economics point of view. In other words, a psychological reaction influenced by the subjective aspects of the design of the information transfer obligations.

### ***Objective aspects of design***

#### *Introduction*

The objective aspects of the design of information transfer obligations apply to the structure of the information transfer obligations. These will be viewed against the background of the requirements imposed to monitor compliance. Then there will be a brief review of some technical aspects of the final information question, information technology.

#### *The structure of information transfer obligations*

Information transfer obligations are part and parcel of an instrument used to enforce administrative law - monitoring/supervision. Monitoring may be either a passive or active information transfer obligation. We speak of an active information transfer obligation when a business, in some way or other, has to provide the implementing institution with information; the business has a 'bring' obligation. When there is a passive information transfer obligation, the business has to provide the implementing institution with the opportunity to come and fetch the information; the implementing institute has a 'fetch' right. One complicating factor is that businesses can sub-contract the information transfer obligation to, for example, a bookkeeper or an accountant. In our opinion this is, in itself, not a separate form of information transfer obligation. The sub-contracting business remains responsible, in the eyes of the implementing institution, for compliance with the information transfer obligations. In other words, within the framework of the compliance with information transfer obligations, there is a legal relationship between the business that must provide the information and the implementing institution, but not between the bookkeeper and the accountant who actually supply the information and the implementing institution.

There is also the possibility to call in third parties to gather the information. One example is: a business provides the tax authorities with information about its employees for income tax purposes. Another case involves banks that must provide the tax authorities with information about any dividend or interest paid to their clients. The various types of compulsory information transfer between businesses and implementing institutions are shown in the table below.

Typology of obligatory transfer of information between businesses and the implementing institutions

Information about	'Bring' obligation	'Fetch' obligation
Own business	I	II
Third parties	III	IV

Berkvens uses the Tax Authority to work out the problem of information exchange<sup>1</sup>. To illustrate the diversity of information transfer obligations, we have made a generalisation of Berkvens' examples. For our purpose, the implementing institution thereby replaces the Tax Authority. The resulted information relationships are included in the above table.

*Quadrant I:* In this case, the implementing institution requests a company to provide business information. The business has to send this information to the implementing institution. Some examples are corporate tax, VAT, the law on Annual Accounts and applications for permits.

*Quadrant II:* This case relates to auditing the bookkeeping or controlling a specific situation or condition on the business floor, such as production process, working conditions, etc., by the implementing institution. Such audits could involve inspection of the books by the tax authorities or checks by the Labour Inspection or Environmental Inspection. The statutory obligation of businesses to keep and update information is in fact a *passive information transfer obligation* which, being complementary to the active information transfer obligation of quadrant I, belongs to quadrant II. Generally, the passive information transfer regulations in quadrant II are complementary to the active information transfer regulations in quadrant 1.

*Quadrant III:* The implementing institution requests a business to provide information about a *single* third party, which could be a citizen or a business, or about a certain category of third parties (citizens or businesses). The latter refer to the so-called 'series requests' for information. The business must send the requested information to the implementing institution. Examples of such information regulations are requests to a company, regarding data about the illness of a certain employee, income tax and social insurance premiums for employees. Example for series requests are the obligation of banks to provide the tax authorities with information about the interest and dividend earned by their clients, requests for information within the framework of European Directives, for preventing misuse of financial systems for laundering money<sup>2</sup>.

*Quadrant IV:* Auditing the company's books on the floor by an implementing institution to control a single third party or a category of third parties. The general obligation to keep and update relevant information about associated third parties belongs also to this quadrant. Quadrant IV concerns mainly the

<sup>1</sup> J.M.A. Berkvens, *From Feudal Service to Information Services; on the way to the second privacy crisis*, article, March 1992, pp. 4-6.

<sup>2</sup> European Commission, *Publication sheet L 166*, dated 28.6.1991.

passive pendant (fetch right) and the active information transfer regulations (bring obligation) from quadrant III.

To which extent does a particular enforcement situation determine the design of the information transfer regulation, direct/indirect or active/passive?

Quadrants II and I relate to *direct request* for information to businesses about their behaviour. Generally, companies are themselves the best informed about their own behaviour. Subsequently, the *active* information transfer regulation is consistently adopted in this situation (the 'bring' obligation in quadrant I).

The implementing institution plans its recurrent visits to check the available information about the business behaviour ('fetch' right in quadrant II). The number of checks carried out depends, among other things, on whether there may be a specific reason to assume that the information provided by a business does not correspond with its actual behaviour or with the situation as it really is - as a consequence of the behaviour in that business. The number of inspections carried out will also depend on the inspection capacity of the implementing institution and the presumed seriousness of the suspected discrepancy between the reported behaviour/situation and the actual behaviour/situation of businesses. Efficiency factors dominate the choice of the method of requesting information in quadrants I and II.

The transfer of information obligations in quadrants III and IV concern the indirect questions put to businesses about third parties. In this case, it is verifying not only the behaviour or the situation of the business providing the information but also the behaviour of third parties that are connected in one way or another with the business providing the information. Roughly speaking, two variants can be distinguished. The first seems to be prompted by efficiency considerations. It deals mainly with the transfer of information about wages, deductions for taxation, social premiums, etc. from citizens who are tied to the business as employees. In most cases, the employees are not expected to supply this information to the implementation institutions themselves because the employer has this information. As far as verification (passive transfer of information obligations) is concerned, the same applies as in quadrants I and II. The choice for the second variant, on the contrary, originates from the intention to combat fraud: mainly not declaring income to the tax authorities. In principle, we are speaking of monitoring the behaviour of the clients or other contacts of the business providing the information. These clients and contacts are also subject to information transfer regulations. Should one wish to label the information transfer regulations as Feudal Services, then the regulations in quadrants III and IV are most appropriate. We expect the degree of acceptance of these last mentioned information transfer regulations to be proportionally lower among that part of business involved. We shall return to this later.

### *Information logistics*

Another aspect of the design of information transfer regulations is the questioning technique; the information logistics. Many factors can have an effect here; for example, how the questions are formulated, the definition used and their link to the business administration. Request for information using forms or through the electronic highway, the period within which and the frequency with which the information is required, the professionalism of the implementing institutes' staff, etc. All these items can be expected to have a significant effect on the degree to which the information transfer regulations are accepted by businesses. It is specifically in the field of information logistics where there is everything to gain as far as the reduction of information transfer compliance costs is concerned.

### ***Subjective aspects of design***

#### *Introduction*

Legislation is the instrument used by government to safeguard social values. In principle, the aim of each element of legislation is to achieve benefits, and to realise the implicit value at which it aims. The contemplated benefits form the legitimacy of both existing and new legislation. These benefits could be affected only if the regulations issuing from the legislation in question are complied with by businesses.

There is increasing recognition of the fact that compliance with laws and regulations in general and the transfer of information obligations in particular are accompanied not only by implementation costs for the government (on-budget effects) but also by costs for businesses (off-budget costs). Compliance with information transfer costs imposed by laws or regulations therefore enters an area of tension with more systems; the micro-systems of individual businesses and the macro-system of the government.

Especially this field of tension makes the optimum compliance of business with the information transfer obligations a serious matter. For various reasons, a sub-optimal compliance and a subsequent enforcement problem could arise. To be able to explain this it is necessary to make first, in accordance with our theoretical model, a few comments about the relationship between the acceptance of a regulation and the compliance with this regulation.

#### *The acceptance of and compliance with information transfer obligations*

It should not be forgotten that when talking about the acceptance of and compliance with regulations there are two sorts of regulations, those which refer to the content - certain behaviour by a business - and the obligation to report this behaviour, the transfer of information obligations.

In the future, when we speak of acceptance of and compliance with regulations we mean the transfer of information obligations.

The relationship between the acceptance of and compliance with the content obligations on the one hand and the transfer of information obligations on the other hand, is not always a '1 to 1' relation. E.g. the need to inform government about the compliance with a fully internalised content obligation might be lesser. Another example: a too bureaucratic way of asking businesses for information could lower the compliance with the information obligations, also in case that the content obligation is fully accepted and complied with.

On the one hand, legislation is a reflection of social actions already developed. Recording such actions in rules of conduct/behaviour (laws) is called codification. On the other hand, there are laws that try to change or steer certain social processes and structures. Such laws have a modifying character<sup>1</sup>. By far the most of the transfer of information obligations applying to businesses originate from administrative law that has a mainly modifying character. Just this modifying character of many information transfer obligations implies that the acceptance of and compliance with such regulations by businesses is by no means merely a matter of course.

Potman makes a practical distinction between acceptance (of regulation) and compliance (with regulation). He views acceptance to be an attitude of the businesses involved i.e. the citizens involved on behalf of the businesses. An attitude consists of three components: a cognitive, an affectionate and a behavioural component. The cognitive component is the product of information processing about the information transfer regulations at a certain moment in time (the existence and the design). The affectionate component has to do with the more enduring emotions about information transfer regulations (the contents and the effect). As last, the behavioural component is predisposition, the tendency to comply - or not - with the information transfer regulation; a certain action. The businesses or the people involved in the businesses have all sorts of expectations about the consequences of their actions in their own situation. The acceptance of an obligation, according to Potman, does not imply compliance with this obligation. Factors that affect the individual business and situational factors contribute to a possible discrepancy between attitude and behaviour.

The acceptance of an information transfer obligation involves agreement with this regulation and influences the intention to take action. Action in compliance with or in non-compliance with an information transfer obligation could depend on the assessment of this transfer of information obligation and the intention of how to behave based on this assessment, but there are also a large number of additional factors including, for example, positive or negative sanctions.

<sup>1</sup> H.P. Potman, p. 17. Potman took this information from T. Koopmans, 'The role of the legislator', in: *One Hundred Years of law*, Jubilee number of the Netherlands Legal Association, Zwolle. 1970, pp. 221-235.

Compliance with information transfer obligations is the behaviour of a business, irrespective of the opinion about this regulation or the intention of how to behave based on this opinion. The acceptance of information transfer obligations by businesses has therefore become an independent concept: *qua attitude acceptance*. Compliance with the information transfer regulations is *action*<sup>1</sup>.

#### *Acceptance and psychological costs*

How does acceptance of the obligation influence the psychological costs for businesses? The psychological costs accompanying information transfer compliance are also called *irritation costs*.

As far as acceptance is concerned, in contrary to what we found in legitimacy in the practical sense, the firm's utility plays a role. One may speak of a grudging acceptance of information transfer obligations by businesses if businesses perceive that:

1. little attention is being paid by parliament, ministries and implementing institutions to off-budget effects of laws and regulations (recognition problem).
2. there is insufficient social basis for the transfer of information obligations (legitimation problem).
3. there are too complicated procedures for information obligations compliance (complexity problem).
4. there is lack of transparency and clarity of the function of the information obligations and proportionate costs (functionality problem).
5. the accumulated costs of complying with the information transfer regulations are for micro-systems higher than social benefits for citizens and businesses, in the absolute sense (problem of a negative result on the social balance sheet)<sup>2</sup>.
6. there is a too long time span between the realisation of the information transfer compliance costs and the realisation of benefits (forward planning problem).
7. the location of the information transfer compliance costs and the location of the benefits for the citizens and businesses are highly separated (location problem).
8. there is an unequal distribution of the information transfer compliance costs among the various categories of citizens (self-employed versus employees, active versus non-active) and businesses (small versus large, between sectors or countries) (distribution problem).

<sup>1</sup> H.P. Potman, pp. 26-47.

<sup>2</sup> The fact that information transfer compliance costs could be relatively easily quantified as compared to social benefits which refer sometimes to un-quantifiable aggregates, is a problem.

9. the distribution of information transfer compliance costs among citizens and businesses on the one hand and the implementation costs for the government on the other is unequal (problem of communicating vessels)<sup>1</sup>.

The more the problems listed above occur, the higher the psychological costs of the transfer of information compliance for businesses will be.

### ***Enforcing content obligations***

#### *Introduction*

Enforcement is an essential part of regulation<sup>2</sup>. Literature defines the term enforcement as such to encompass all instruments, which contribute, directly or indirectly, to (willingness) compliance<sup>3</sup>. This very broad interpretation of the term enforcement indicates that it consists of more than coercion, and includes preventive measures. Information transfer obligations can be considered to belong to preventive measures as a whole. Which role do information transfer obligations play within the system of law and order?

#### *Concurrence of legal areas*

Enforcing the compliance of information transfer obligations usually moves among various legal areas. Administrative law, criminal law and civil law are all involved. The legal areas may be said to be an extension of each other and supplement each other where necessary.

Administrative law includes administrative enforcement tools in terms of control and sanctions, whereby the implementing institutions are responsible for executing the compliance enforcement. Relevant examples are the withdrawal of permits and financial penalties. Administrative enforcement is 'reparatoir', and as such does not aim at punishing but at 'restitutio in integrum'- restoration of the desired situation. Order must be restored, to a situation which is in harmony with legal regulations. By imposing information transfer regulations, the government compels businesses to keep it informed about their actual behaviour or actual situations. Based on this information, the government can assess the extent to which actual behaviour or actual situation corresponds, taking into account the realisation of social objectives, to the desired behaviour or the desired situation. The transfer of information obligations are the first in a chain of administrative enforcement tools which are part of monitoring.

<sup>1</sup> The way employees of implementing institutions perceive means made available for execution of their assignments could affect the enforcement of information transfer compliance.

<sup>2</sup> Tweede Kamer, *Nationaal Milieubeleidsplan*, vergaderjaar 1998-1999, 21 137, nrs. 1-2, p. 186, information transfer compliance.

<sup>3</sup> Tweede Kamer, *Nationaal Milieubeleidsplan-plus, Notitie Instrumentarium*, vergaderjaar 1989-1990, 21 137, nr 22.

Civil law is an important supplementary enforcement tool which acts in case the administrative legislation is not able. Examples are to impose bans of civil law should businesses tend not comply with the law.

In supplementing administrative law, criminal law provides the possibility to prosecute and punish suspect businesses (punitive character of criminal law)<sup>1</sup>. Neither civil nor criminal law knows information transfer obligations such as those which are the subject of this study.

### **3.3.6 Summary**

#### ***Introduction***

There are four instruments in this model: elections/business lobby, legislation, steering and design. The election/business lobby determines the relationship between the citizens/businesses and the parliament. Parliament and government interact through the instrument of legislation. The steering instrument enables the government and institutions to be in close contact. And, finally, the design instrument (of both content and the obligation to transfer information) determines the relationship between the institutions and business i.e. the citizens. Each of these instruments has its own specific impact on the transfer of information obligation imposed on business and therefore the accompanying compliance costs. The model assumes that each of the four instruments has an effect on the determinants of the compliance costs. The increasing directness of the effect is also considered. The election/business lobby effect is most indirect, and the most direct effect is that of the implementation instrument.

#### ***Elections/business lobby***

Elections/business lobby have emerged from the collectivisation process which has its roots in feudal times. The increasing interdependence between rich and poor, a threat to the rich (external effects), formed the core of this process. Therefore, collective action was necessary. Such collective action took the form of obligatory, national and collective welfare arrangement to prevent free riding. Elections and business lobbying, certainly in principle, exert significant influence, on the choice society makes as to values and norms and, therefore, also on the extent and the nature of the content of codes of conduct and behaviour and the extent and nature of the transfer of information obligations applying to citizens and businesses.

#### ***Legislation***

There are two elements which, as part of the legislation instrument, have a fundamental effect on the transfer of information obligations applying to

<sup>1</sup> M.J.J. van der Anker, A.B. Hoogenboom, pp. 60-61.



businesses: the way in which the rules of behaviour have been specified in legislation and the legitimisation of this legislation.

Transfer of information obligations belong to administrative law. The way in which they are established differs greatly among the various administrative organisations that impose these obligations. There is not one, fully comprehensive book for administrative law in general and the transfer of information obligations in particular. In general, it is possible to distinguish three clusters of administrative law which are relevant for information transfer requirements: economic, social and administrative regulations. The importance of social regulations and the accompanying transfer of information obligations is expected to increase. The concerted actions of parliament and government lead, often unintentionally, to changes - which are not part of policy - in all sorts of legislative domains. Complex information transfer obligations are often the result. By and large, the way in which information transfer obligations have been included in legislation has resulted in very little tuning between the various fields of legislation and, in proportion, to considerable complexity.

There is a direct link between the extent of the legitimisation of legislation or a certain information obligation and the extent to which business complies with this regulation. To be able to understand this more clearly it is important to distinguish between formal and material legitimisation. Administrative law formally empowers the government i.e. government institutions to impose transfer of information obligations on businesses. The legitimising function of administrative law specifically aims to modify, change the status quo and not so much to codify, stipulate social behaviour which has already developed. The, in principle, modifying character of administrative law and the information transfer obligations which accompany it indicate the importance of the material legitimisation of information transfer obligations. In this context, the material legitimisation of legislation is the attitude of businesses towards objects such as policy-making organisations, political systems, legislation itself and general policy making. The foundations on which the material legitimisation of content obligations and the accompanying transfer of information obligations rest are their sources, the procedures or their cohesion with business values and norms. It is expected that material legitimisation, as a factor which indirectly affects the cost of complying with information transfer obligations, will be more relevant for the content obligation which includes rules governing behaviour, rather than for the transfer of information obligations. There is, however, the threat of material legitimisation being eroded as a consequence of the extent, complexity, lack of transparency and never-ending changes of information transfer obligations.

### *Steering*

The government can choose from three types of steering models to steer the institutions which are responsible for implementing content and information transfer obligations: legal, economic and communicative. The legal steering

model is enforcing and can impose sanctions. The economic model is not, in principle, enforcing and employs financial stimuli: levies and subsidies. The communicative model is based on trust and the transfer of information. Both the legal and economic steering model recognise both the content and information transfer obligations referred to in our theoretical model. There are no content or information transfer obligations in the communicative model.

In order to encourage businesses to comply with the content obligation, the government, when steering the implementing institutions, can choose to use either stimulating or repressive policy instruments. There is a wide range of such instruments. The legal steering model can make use of the policy instruments agreement (stimulating) and orders/bans (repressive), but also of many intermediate forms such as permits, covenants and collective labour agreements. The economic steering model also offers a great variety of means: subsidies (stimulating) and levies (repressive) and everything between the two: credit, financial assistance and contributions, tax deductions, etc. We consider all transfer of information obligations and the accompanying costs of both stimulating and repressive policy instruments, which are part of the economic and the legal steering model, to be transfer of information obligations and transfer of information compliance costs as referred to in our model. The core criterion that led us to this decision is that the information transfer obligations which are part of the government's economic and legal steering model aim to achieve social objectives only. It is not the mould into which these regulations have been cast, stimulating or repressive, but the objective they aspire to achieve which is decisive.

### *Design*

The implementing institutions can choose between various means of imposing information transfer obligations on businesses. In cohesion with the transfer of information compliance costs, both objective and subjective aspects of the design of the information transfer obligations are of importance. The objective aspects of the design refer to the specifications of the regulation and the information technology used. The subjective aspects refer to the way in which these regulations are viewed by businesses. Ensuring compliance with the content obligations is an important aspect when setting out the stipulations of the information transfer obligations and shaping the relationship between the implementing institutions and businesses.

One of the objective aspects of the design of the information transfer obligations could be that the implementing institutions choose to compel businesses to supply the information (bring). On the other hand, there could be reasons why the implementing institution chooses to obtain the information from businesses itself (fetch). These same institutions also have the right to request the business to provide information about third parties. Information logistics, the second objective aspect of design, is responsible for the interrogation techniques.

The subjective aspects of design of information transfer obligations address the acceptance, compliance and psychological costs of these regulations for businesses. The acceptance of an information transfer obligation is the fact that businesses can agree with this specific regulation. The extent to which businesses accept the regulation influences the intention to take action. To act in accordance with, or not in accordance with an information transfer, or to comply, can depend on the opinion about this regulation and the intention of how to behave, based on this opinion. But also on a large number of other factors including, for instance, positive or negative sanctions. When deciding whether or not to accept a regulation, the business' own interests are an important consideration. It is possible that there is little likelihood of a transfer of information obligation being accepted by business if, in the perception by business, the regulation is of little or no use for business operations. In such cases there can be said to be psychological costs or irritation costs for businesses.

Information transfer obligations are one component of the range of preventive measures. The obligation to report about compliance with a content obligation, it is assumed, will increase the chances of actual compliance with this regulation. Administrative law has administrative means - monitoring and sanction rights - which can be used by the institutions responsible for implementing the regulations to enforce compliance. By imposing the transfer of information obligations, the implementing institutions compel business to inform them about actual behaviour or actual circumstances. Based on this information, it is possible for the implementing institutions to judge to what extent, in relation to the social objectives to be achieved, the actual situation is in line with the desired behaviour or desired circumstances. In this way, the transfer of information obligation is at the head of the chain of administrative enforcement methods and is part of the monitoring system.

### **3.4 Determinants of information transfer compliance costs**

#### **3.4.1 Introduction**

The relationships between the actors, as shown in the theoretical model, which occur via the four instruments, election/business lobby, legislation, steering and design, influence the determinants of the level of compliance costs. These form the closing part of the model.

Understanding these determinants improves the insights about the background of the level of the information transfer compliance costs, and helps identify where to interfere to avoid or reduce these costs.

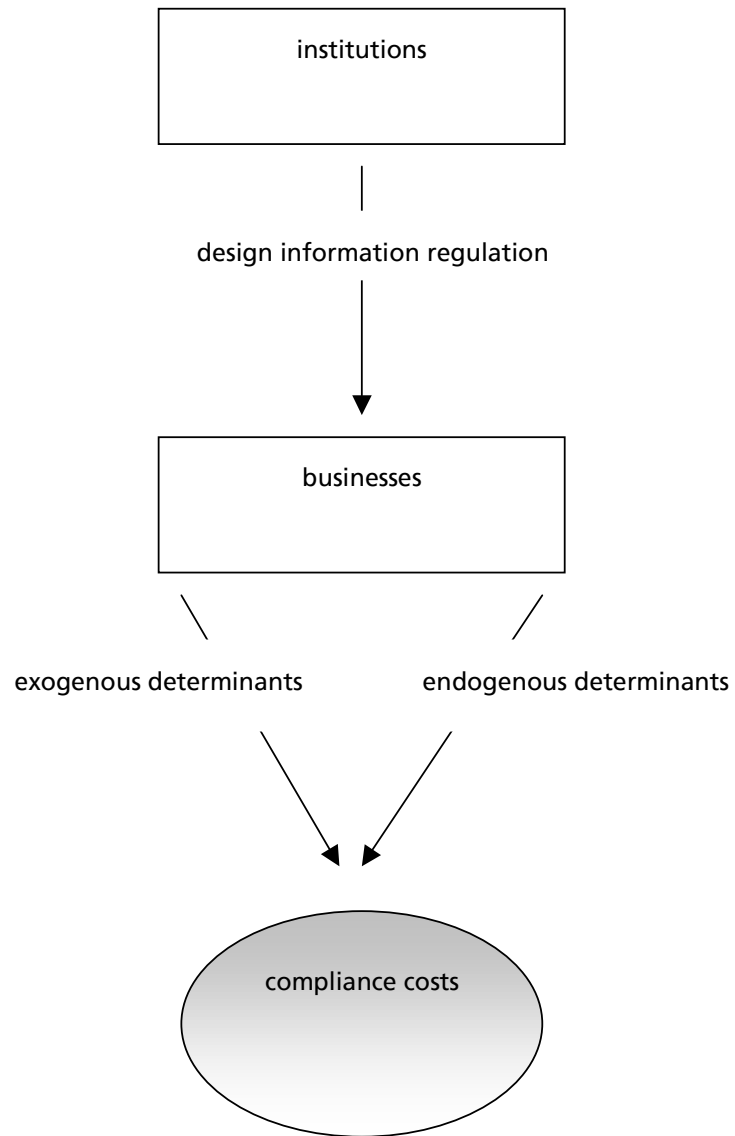
The level of information transfer compliance costs is influenced by a number of exogenous as well as endogenous determinants. Individual companies could not influence exogenous determinants, but they could do so as regards the

endogenous ones<sup>1</sup>. The exogenous determinants are compatible with what we previously called the objective aspects of the design of the transfer of information obligations, while the exogenous ones are more compatible with the subjective aspects. Using our theoretical model, we assume that in instrument 4 (design), all those factors, whatever role they play in the previous three instruments, meet each other. Through instrument 4, the free citizen imposes information transfer obligations which he deems to be important on himself as subject, and on businesses.

The next diagram illustrates the interdependency between the design of the information obligations on the one hand and on the other hand the exogenous and endogenous determinants of the information compliance costs.

<sup>1</sup> M. Allers, p. 33.

Determinants of compliance costs



### 3.4.2 Exogenous determinants

The table below lists the exogenous determinants.

Exogenous determinants

Description	Explanation
Decision making in Parliament	The process of decision making in Parliament determinates the number, the type and the content of the information obligation.
Design of regulation	Complex regulation requires more time to be kept up-to-date, complexity can also frighten people from using it (e.g. applying for subsidies) and so reduce the total information transfer compliance costs.
Differences in definitions between policy areas	Different definitions may lead to higher information compliance costs.
Differences between enforcing institutions	The existence of a great variety of enforcing institutions with each their own way of asking for information could raise information compliance costs.
Design of information obligation	Information transfers concerning non-operational processes probably lead to a higher level of information compliance costs for businesses than information transfers concerning the operational process of a business. The choice to gather information by a 'bring' obligation or a 'fetch' right might influence the level of information compliance costs.
Changes in regulations	More of one-time adaptation costs.
Technological progress	Automation, ICT, EDI, etc. result in reduced costs. On the other hand, the government could make use of these by asking for more information.
Scale (size of business)	Because of high fixed costs and low variable costs the information transfer compliance costs are relatively high for small businesses.
The complexity of the case	Deviation from the standard obligation could lead to higher information transfer compliance costs, one example is the case of the self-employed (mix private-business).

Source: M. Allers, pp. 33-35; adapted by the author.

### 3.4.3 Endogenous determinants

Endogenous determinants of information transfer compliance costs are given in the table below. Of course, in most cases businesses will prefer the most efficient way of compliance. The table recapitulates some examples of endogenous determinants.

#### Endogenous determinants of information transfer compliance costs

Description	Explanation
Own voluntary choice	It is not compulsory for a business to go to the utmost limit of information compliance costs to minimise e.g. the tax to be paid.
Non-compliance	Small businesses have more possibilities for non-compliance because they are more difficult to monitor than big businesses.
Degree of efficiency	Business will endeavour (via investment) to comply with the transfer of information obligations at the lowest possible (structural) costs.

Source: M. Allers, pp. 33-35; adapted by the author.

As far as endogenous costs are concerned, the relationship, mentioned earlier, between acceptance of the information transfer regulation (attitude) and actual compliance is important. The higher the psychological costs and the smaller the chance of negative sanctions, the more businesses will tend to choose not to comply with the information transfer regulations. Such behaviour may, in principle, lead to a lower level of the transfer of information compliance costs. But, as a reaction, the implementing institutions could make increased use of the monitoring and enforcement instruments at their disposal. This would again result in higher information transfer compliance costs. And the vicious circle is complete.

#### 3.4.4 Summary

In the theoretical model, the relationships between the actors, which run via the four instruments - election/business lobby, legislation, steering and design - affect the determinants of the level of information transfer compliance costs. These are the final components of the model. Knowledge of the determinants leads to insight into the background of the level of information transfer compliance costs. It also becomes apparent where measures could be taken to avoid or reduce unnecessary compliance costs. The level of information transfer compliance costs is influenced by a number of exogenous and endogenous determinants. Exogenous determinants cannot be influenced by one single business, but endogenous determinants can.

### 3.5 Summary and conclusions

#### 3.5.1 Summary

##### *Introduction*

This chapter deals with the theoretical background of the regulations applying to the transfer of information imposed on business and the accompanying costs for business involved in complying with these regulations, the transfer of information compliance costs.

### ***The theoretical model***

The core of the theory is that there are two processes involved. One process in which the individual preferences of free citizens and businesses is translated into social values, norms, rules of conduct and the obligation to adhere to these rules of behaviour. There is a second process in which citizens and businesses in their role of subjects are obliged to provide information about their behaviour or circumstances with reference to the values, norms and rules of conduct mentioned previously. These two processes run in opposite directions but both start with the citizen i.e. business. The model has five actors. Citizens and business operating within the private domain, parliament and government within the public domain and, finally, the implementing institutions which can be active within both the private and public domains. The actors are all in contact with each other via instruments or tools, as we have called them in this model. There are four instruments in this model: elections/business lobby, legislation, steering and design. The election/business lobby determines the relationship between the citizens/businesses and the parliament. Parliament and government interact through the instrument of legislation. The steering instrument enables the government and institutions to be in close contact. And, finally, the design instrument (of both content and the obligation to transfer information) determines the relationship between the institutions and business i.e. the citizens. Each of these instruments has its own specific impact on the transfer of information obligation imposed on business and, therefore, the accompanying compliance costs. The model assumes that each of the four instruments has an effect on the determinants of the compliance costs. The increasing directness of the effect is also considered. The election/business lobby effect is most indirect, and the most direct effect is that of the implementation instrument.

### ***Elections/business lobby***

Elections/business lobby have emerged from the collectivisation process which has its roots in feudal times. The increasing interdependence between rich and poor, posing a threat to the rich (external effects), formed the core of this process. Therefore, collective action was necessary. Such collective action took the form of obligatory, national and collective welfare arrangement to prevent free riding. Elections and business lobbying, certainly in principle, exert significant influence on the choice society makes as to values and norms and therefore also on the extent and the nature of the content of codes of conduct and behaviour and the extent and nature of the transfer of information obligations applying to citizens and businesses.

### ***Legislation***

There are two elements which, as part of the legislation instrument, have a fundamental effect on the transfer of information obligations applying to



businesses: the way in which the rules of behaviour have been specified in legislation and the legitimisation of this legislation.

Transfer of information obligations belong to administrative law. The way in which they are established differs greatly among the various administrative organisations that impose these regulations. There is not one, fully comprehensive book for administrative law in general and the transfer of information obligations in particular. In general, it is possible to distinguish three clusters of administrative law which are relevant for information transfer requirements: economic, social and administrative regulations. The importance of social regulations and the accompanying transfer of information obligations are expected to increase. The concerted actions of parliament and government lead, often unintentionally, to changes - which are not part of policy - in all sorts of legislative domains. Complex information transfer obligations are often the result. By and large, the way in which information transfer obligations have been included in legislation has resulted in very little tuning between the various fields of legislation and, in proportion, to considerable complexity.

There is a direct link between the extent of the legitimisation of legislation or a certain information obligation and the extent to which business complies with this regulation. To be able to understand this more clearly, it is important to distinguish between formal and material legitimisation. Administrative law formally empowers the government i.e. government institutions to impose transfer of information obligations on businesses. The legitimising function of administrative law specifically aims to modify, change the status quo and not so much to codify, stipulate social behaviour which has already developed. The, in principle, modifying character of administrative law and the information transfer regulations which accompany it, indicate the importance of the material legitimisation of information transfer obligations. In this context the material legitimisation of legislation is the attitude of businesses towards objects such as policy-making organisations, political systems, legislation itself and general policy making. The foundations on which the material legitimisation of content obligations and the accompanying transfer of information obligations rest are their sources, the procedures or their cohesion with business values and norms. It is expected that material legitimisation, as a factor which indirectly affects the cost of complying with information transfer obligations, will be more relevant for the content obligation which includes rules governing behaviour, rather than for the transfer of information obligations. There is, however, the threat of material legitimisation being eroded as a consequence of the extent, complexity, lack of transparency and never-ending changes of information transfer obligations.

### ***Steering***

The government can choose from among three types of steering models to steer the institutions which are responsible for implementing content and information transfer obligations: legal, economic and communicative. The legal

steering model is enforcing and can impose sanctions. The economic model is not, in principle, enforcing and employs financial stimuli: levies and subsidies. The communicative model is based on trust and the transfer of information. Both the legal and economic steering model recognise both the content and information transfer obligations referred to in our theoretical model. There are no content or information transfer obligations in the communicative model.

In order to encourage businesses to comply with the content obligation, the government, when steering the implementing institutions, can choose to use either stimulating or repressive policy instruments. There is a wide range of such instruments. The legal steering model can make use of the policy instruments agreement (stimulating) and orders/bans (repressive), but also of many intermediate forms such as permits, covenants and collective labour agreements. The economic steering model also offers a great variety of means: subsidies (stimulating) and levies (repressive) and everything between the two: credit, financial assistance and contributions, tax deductions, etc. We consider all transfer of information obligations and the accompanying costs of both stimulating and repressive policy instruments, which are part of the economic and the legal steering model, to be transfer of information obligations and transfer of information compliance costs as referred to in our model. The core criterion that led us to this decision is that the information transfer obligations which are part of the government's economic and legal steering model aim to achieve social objectives only. It is not the mould into which these regulations have been cast, stimulating or repressive, but the objective they aspire to achieve which is decisive.

### ***Design***

The implementing institutions can choose between various means of imposing information transfer obligations on businesses. In cohesion with the transfer of information compliance costs, both objective and subjective aspects of the design of the information transfer obligations are of importance. The objective aspects of the design refer to the specifications of the regulation and the information technology used. The subjective aspects refer to the way in which these regulations are viewed by businesses. Ensuring compliance with the content obligations is an important aspect when setting out the stipulations of the information transfer obligations and shaping the relationship between the implementing institutions and businesses.

One of the objective aspects of the design of the information transfer obligations could be that the implementing institutions choose to compel businesses to supply the information (bring). On the other hand, there could be reasons why the implementing institution chooses to obtain the information from businesses itself (fetch). These same institutions also have the right to request the business to provide information about third parties. Information logistics, the

the second objective aspect of design, is responsible for the interrogation techniques.

The subjective aspects of design of information transfer obligations address the acceptance, compliance and psychological costs of these regulations for businesses. The acceptance of an information transfer obligation is the fact that businesses can agree with this specific regulation. The extent to which businesses accept the regulation, influences the intention to take action. To act in accordance with, or not in accordance with an information transfer, or to comply, can depend on the opinion about this regulation and the intention of how to behave, based on this opinion. But also on a large number of other factors including, for instance, positive or negative sanctions. When deciding whether or not to accept a regulation, the business' own interests are an important consideration. It is possible that there is little likelihood of a transfer of information obligation being accepted by business if, in the perception of business, the regulation is of little or no use for business operations. In such cases there can be said to be psychological costs or irritation costs for businesses.

Information transfer obligations are one component of the range of preventive measures. The obligation to report about compliance with a content obligation, it is assumed, will increase the chances of actual compliance with this regulation. Administrative law has administrative means - monitoring and sanction rights - which can be used by the institutions responsible for implementing the regulations to enforce compliance. By imposing the transfer of information obligations, the implementing institutions compel business to inform them about actual behaviour or actual circumstances. Based on this information, it is possible for the implementing institutions to judge to what extent, in relation to the social objectives to be achieved, the actual situation is in line with the desired behaviour or desired circumstances. In this way, the transfer of information obligation is at the head of the chain of administrative enforcement methods and is part of the monitoring system.

#### ***The determinants of information transfer compliance costs***

In the theoretical model, the relationships between the actors, which run via the four instruments - election/business lobby, legislation, steering and design - affect the determinants of the level of information transfer compliance costs. These are the final components of the model. Knowledge of the determinants leads to insight into the background of the level of information transfer compliance costs. It also becomes apparent where measures could be taken to avoid or reduce unnecessary compliance costs. The level of information transfer compliance costs is influenced by a number of exogenous and endogenous determinants. Exogenous determinants cannot be influenced by one single business but endogenous determinants can.

### **3.5.2 Conclusions**

Transfer of information obligations imposed on business are part of a greater whole. They are not simply the consequences of arbitrary bureaucratic decisions. Information transfer obligations are an essential part of the democracy of the modern constitutional state. It is, however, worthwhile to subject the extent of these regulations to a critical appraisal. The process through which the preferences of free citizens and businesses are translated into social values, norms, content and information obligations focuses primarily on policy and does not pay sufficient attention to implementation aspects such as feasibility, enforcement and compliance. This can result in transfer of information obligations becoming too extensive and unnecessarily complicated for business. This, in turn, can lead to unintentional and undesirable social side effects such as insufficient compliance with content obligations by businesses or excessively high transfer of information compliance costs for business.

## 4 Conceptualising the term information transfer compliance costs

### 4.1 Introduction

The discussions about the content of the term information transfer compliance costs are not always enlightening. This is even more so when the more familiar term of administrative burdens is also applied, without any explicit explanation from which point of view the discussion is being held.

Allers indicates that, in spite of the apparent clarity of the definition, there is still quite some discussion as to the exact meaning of the term information transfer compliance costs. He even goes as far as to say that the discussion about the content of the term information transfer compliance costs is merely academic. In his opinion, each definition leads to measuring problems because measuring information transfer compliance costs is a complex affair. The margins for error will be substantial. Endeavouring to provide a very precise definition, therefore, according to Allers, has no sense.<sup>1</sup>

In this chapter we shall show that it is indeed possible to choose a better content definition for the term information transfer compliance costs. To do this, we have taken a statement made by Max Weber as our source of inspiration: 'Scharfe Scheidung ist in der Realität oft nicht möglich, klare Begriffe sind aber dann deshalb um so nötiger.'<sup>2</sup>

In this chapter will shall take a closer look at the most important elements which, both nationally and internationally, play a role in the discussion as to the exact meaning of the term transfer of information compliance costs.<sup>3</sup> Two questions will then be central:

- What sort of information obligations result in information transfer compliance costs as referred to in social discussions? Are these only the legal obligations imposed by the central government or are they also information regulations originating from lower authorities and grey regulations? The clear definition of regulations is the central theme here.
- What costs may be considered as information transfer compliance costs? Unavoidable costs only? Only those extra costs which would no longer apply if there were no legal information transfer obligation? This involves

<sup>1</sup> M. Allers, op. cit., pp. 31-32.

<sup>2</sup> A.J.F. Köbben, 'Beroep: Antropoloog', article in: *Facta Sociaal-wetenschappelijk magazine*, 1999-7, p. 7. This refers to a quotation from a book by P.H.H. Vries, 'Verhaal en betoog; geschiedbeoefening tussen postmoderne vertelling en sociaal-wetenschappelijke analyse', in: *Leidse Historische Studiën*, 1995.

<sup>3</sup> Allers' thesis contains a good review of the discussion up to 1995; M. Allers, op. cit., pp. 30-35.

making a clear distinction between information transfer compliance costs and the normal operating costs.

After we have answered these questions, we shall take a closer look at two additional questions: what administrative measures/procedures comprise compliance with information transfer obligations in general, and what cost components form the information transfer compliance costs?

This chapter is constructed as follows: first, the discussion around the types of information obligations will be dealt with. Next, attention will be paid to the discussion about the costs. Subsequently, the various types of administrative proceedings will be discussed, and, next, the sorts of costs. This chapter is concluded by the definition of information transfer compliance costs.

## 4.2 Definition of regulation

### *Introduction*

The question to be answered is what types of information obligations result in the transfer of information compliance costs as referred to in social discussions? Only those information obligations imposed by central government, or also those originating from lower authorities and grey regulations? Supplementary questions are how to deal with information transfer obligations imposed by foreign authorities on businesses located in the Netherlands and how to deal with the information transfer obligations imposed by the Dutch government on foreign businesses operating in the Netherlands?

In addition to the central government, lower authorities (provinces, local councils and water boards) all impose transfer of information obligations on businesses. In all these cases, regulations belonging to administrative law are involved. In addition, the government is increasingly choosing to achieve social values by using forms of regulation outside administrative law. In other words, more horizontal types of regulation such as self-regulation, covenants and collective labour agreements. When there are more horizontal types of regulation, the government refrains from imposing regulations in administrative law on condition that the alternative forms of regulation actually exist and are enforced. In literature, such regulation is also called 'grey regulation'. Because opinions are changing as to the role of government it may be expected that this type of regulation will increase in importance. Complying with any obligation to transfer information ensuing from grey regulations will, of course, result in costs for businesses. The question is whether such costs should be included when assessing the extent of information transfer compliance costs?

### *Regulations imposed by lower authorities*

In literature there is little explicit information about the effect of transfer of information obligations imposed on businesses by lower authorities. Often it

can be implicitly derived that the intention is to limit compliance costs in general and information transfer costs in particular to those originating from administrative legislation (central government and lower authorities). In large countries with a Federal structure, however, there is a tendency to limit the transfer of information compliance costs to those of complying with Federal transfer of information obligations. One example of this is the Paperwork Reduction Act (PRA) of the Office of Management and Budget (OMB) in the United States. When speaking about whether or not legislation from lower authorities should be included, the PRA says, among other things, the following: 'A collection of information conducted or sponsored by a Federal agency that is also conducted or sponsored by a unit of State, local, or tribal government is presumed to impose a Federal burden except to the extent that the agency shows that such State, local, or tribal requirement would be imposed even in the absence of a Federal requirement'.<sup>1</sup> The PRA includes only the costs ensuing from 'Federal regulations' in the information transfer compliance costs. This implies the regulations imposed by lower authorities are left out of consideration when defining information transfer compliance costs. This same principle also applies in Australia, for example when 'non-Federal taxes' are omitted when determining the transfer of information compliance costs of tax regulations.<sup>2</sup>

### ***Grey regulations***

As one of the few, Allers does explicitly limit administrative law by excluding the grey regulations. He defines information transfer compliance costs as follows: 'Compliance costs may be defined as the costs of complying with regulations (related with tax-benefit programmes) of the private sector.'<sup>3</sup> Allers strictly limits the term regulations to the public domain of civil law. Obligations ensuing from other types of regulation, which are often derived from special parts of administrative law, such as collective labour agreements, etc. are not taken into consideration by him. One important consideration for Allers' choice was, in all probability, that his research focussed on financial transactions to and from the government. It seems unlikely that business, taking into account practices in the Netherlands - would be capable of distinguishing the transfer of information compliance costs linked to financial transactions involved in items such as collective wages agreements - so-called sector agreements such as early retirement or training funds, from the transfer of information compliance costs ensuing from the financial transfers for the compulsory legal social insurances for employees. The transfers for business sector agreements often go along with the transfers for legal insurances.

<sup>1</sup> Paperwork Reduction Act of 1995: *Implementing Guidance*, op. cit., Draft June 1999, p. 38.

<sup>2</sup> M. Walpole et al., 'Taxation Compliance Costs: Some Lessons from 'Down-under'', in: *British Tax Review*, No. 4, Sweet & Maxwell and Contributors, 1999, p. 248.

<sup>3</sup> M. Allers, op. cit., p. 30.

In Hopkins it is not completely clear what is meant by the term 'regulation'. He states that the term 'regulation' is not easy to define: 'The scope both of regulation (and of its cost or burden) is contentious, although a useful starting point is a definition of regulation as any mandated action not funded by government.'<sup>1</sup> With this definition, Hopkins makes a strong link between the obligatory character of the compliance and the lack of any contribution from government means towards the cost. In this sense, the transfer of information obligations imposed via self-regulation, covenants and collective labour agreements which also have as consequence transfer of information are compliance costs as meant here. The costs of complying with such obligations is never, in any way whatsoever, reimbursed, therefore also not from government means.

The OECD also pays attention to 'grey regulations'. 'A closely related and rapidly emerging problem is that of the increasing use of 'grey regulation'. This term denotes informal regulatory instruments such as guidance notes, instructions, agreements, Ministerial policies or decrees and other 'quasi-regulatory' means used by administrations to influence private behaviour. Not enough is known about these kinds of regulatory actions, but anecdotal evidence suggests that their use is expanding throughout the OECD area and that it is very difficult to include them in Regulatory Impact Analysis programmes.'<sup>2</sup> It is interesting to note which definition of regulator is used by the OECD: 'A person or organisation with significant control over the content of laws or lower-level rules. Traditionally, this refers to parliaments and government departments (subject to Ministerial direction), but can also include industry or professional bodies, standards organisations and supra-national harmonisation bodies.'<sup>3</sup>

In the United States, the 'grey regulations' are excluded from the information transfer compliance costs as referred to in the PRA.

### ***Dutch legislation and businesses operating in the Netherlands***

The study in question focuses primarily on the transfer of information obligations in the Dutch constitutional state. The Dutch government is mainly responsible for the extent of the information transfer compliance cost, insofar as these are the consequence of Dutch administrative law and the other obligations derived from this insofar as these affect businesses operating in the Netherlands. In other countries it is possible, of course, to chose for the administrative law which applies there and the effect for the businesses operation there. This choice can result in double counts appearing in international comparative studies of information transfer compliance costs.

<sup>1</sup> Th.D. Hopkins, 'Developing general indicators of regulatory costs', in: *Regulatory Impact Analysis, Best Practices in OECD countries*, OECD, Paris 1997, p. 263.

<sup>2</sup> R. Deighton-Smith, 'Regulatory Impact Analysis, Best Practices in OECD Countries', in: *Regulatory Impact Analysis, Best Practices in OECD Countries*, OECD/PUMA, 1997, p. 237.

<sup>3</sup> R. Deighton-Smith, op. cit., pp. 212-213.



## **Conclusion**

There is little discussion about including information transfer obligations imposed by lower authorities in the definition of information transfer compliance costs. Only large countries with a Federal structure can consider excluding the regulations of lower authorities from consideration when determining the extent of information transfer compliance costs at Federal level. In order to obtain a complete picture and also to make international comparisons, it will be necessary to take separate measurements for the information transfer compliance costs in those areas which belong to the Federation and to add the aggregated results of these measurements to the Federal information transfer compliance costs.

Literature is not unanimous about whether to include 'grey regulations' in the definition of information transfer compliance costs. In chapter 3, 'Theoretical backgrounds', we looked closely at the various types of steering that the government could use to achieve those goals considered to be of social importance. Inside the economic as well as inside the legal steering model we saw all sorts of forms of information provisions derived from stricter, purer legal regulations. In this context we have seen that the government can choose between various forms for the structure of the legal relationship with business, varying from a one-sided determination of its legal position based on a power relationship (the levying of taxes) to co-operation on a basis of a certain equality with semi-legal instruments (e.g. covenants). The imposition of information transfer regulations based on a power relationship is also seen as a vertical relationship and the co-operation form as a horizontal relationship. To an increasing extent, the government is relinquishing vertical relationships. Consequently, individual businesses are being confronted with information transfer obligations originating from the organised business world (employee and employers' associations), collective labour agreements, for example. Another example is the environmental covenants in which businesses in a certain sector make mutual agreements to avoid civil law regulations. One important condition is that these covenants refer to regulations which apply to generally accepted social values and their associated norms. For instance, the quality requirements that businesses in the same branch impose upon each other associated with ISO certification are not recognised as belonging to this covenant unless certification also refers to values such as health and safety at work (Working Conditions Act) or an environmentally friendly structured production process (Environment Act).

Finally, from the point of view of the individual company, and this certainly applies to entrepreneurs in smaller businesses, it makes no difference whether a regulation originates directly from administrative law or that it is an obligation imposed by parties in the collective labour agreements or comparable institutions. Therefore, we have chosen to include those costs incurred by businesses for complying with the obligation to transfer information ensuing from

grey regulations in the information transfer compliance costs. After all, from the point of view of the individual business and taking into account the trend towards the increasing horizontalisation of the relationship government-business/citizen mentioned previously, the exclusion of the grey regulations would result in the significant curtailment of the term information transfer compliance costs. This choice also avoids the possibility that the, merely formal, change of an information obligation from a purely legal obligation to, for example, a regulation based on a covenant, could lead to a reduction of the information transfer compliance costs for a business, while, factually, nothing changes.

In this study it has also been chosen to limit information transfer compliance costs to those originating from Dutch law and applying to businesses operating in the Netherlands.

### 4.3 Definition in relation to normal operating costs

#### *Introduction*

In the discussions as to what the real information transfer compliance costs are, one interpretation plays a dominant role: one may speak of information transfer compliance costs only insofar as there are costs which are additional to those of normal operating costs. This is what we call the marginalist concept. There are two recognisable streams within this marginalist concept. One of these advocates that the extra costs should be limited to the inevitable costs, the other considers the avoidable costs as extra costs also. The representatives of the first group will be called 'marginalists pur sang', the others 'marginalists of the lawyers concept'.<sup>1</sup>

Within the marginalist concept, the question of gross or net information transfer compliance costs is also raised. In the fiscal domain in particular the question arises as to what extent, when determining the information transfer compliance costs, account should be taken by businesses of tax advantages gained through compliance. The terms 'social compliance costs' en 'tax payer compliance costs' are used in literature.<sup>2</sup> We are inclined to consider these streams as a variant within the 'marginalists of the lawyers concept', after all the 'marginalists pur sang' do not accept the, in their view avoidable, costs for tax consultants, etc.

We also intend to place our own concept i.e. that of the integral costs next to the marginalist concept. We call our concept the integralist concept.

<sup>1</sup> Allers was our main source of information for the discussions about the marginalist conception.

<sup>2</sup> M. Walpole et al., op. cit., 1999, pp. 246-249.

## ***The marginalist concept***

### ***'Marginalists pur sang'***

The 'marginalists pur sang' started their discussions at the beginning of Sixties. In Johnston's view, the exponent of the pur sang marginalist conception, the important question that should always be answered is whether the compliance costs increase the operating costs or whether they result only in a more intensive use of existing facilities. The answer to this question depends on the extent of the utilisation of capacity and the scale to which (additional) production factors can be involved. The extent of capacity utilised and the scale vary among businesses. The 'marginalists pur sang' are of the opinion that compliance with information transfer regulation can result in genuine information transfer compliance costs only when these costs:

- are unavoidable;
- are not higher than the cost of the empty hours of the personnel usually occupied in dealing with matters connected to compliance or the costs as consequence of working at sub-optimum capacity;
- do not continue when the obligation to transfer information no longer exists.

Therefore, Johnston makes a distinction between avoidable and unavoidable costs. The unavoidable costs are the consequences of strict compliance with the information transfer regulations as stipulated by law and regulations. Avoidable costs are, for example, the costs of consulting a tax advisor with the intention of having to pay as little tax as possible.

Johnston also views applications for subsidies or a permit as voluntary measures which are therefore avoidable costs.

A second item of discussion among the 'marginalists pur sang' is the question of the concurrence of the costs and normal business operations. In this case, the question poses the problem of how to deal with the cost of information transfer obligations which are complied with in the hours in which personnel have nothing better to do or when working below capacity. The problem here is to what extent can under-utilisation serve as time to be used for dealing with information transfer regulations. In as far as it is possible to answer 'yes' to this question, the 'marginalists pur sang' are of the opinion that complying with information transfer regulations does not result in real costs. Yocum and Johnston hold these views. However, both assume that businesses always have an optimum personnel capacity. Based on this conception, each hour spent on complying with administrative regulations, unless unavoidable, results in real costs.

A third item of discussion is the allotment of overhead costs. Johnston defines tax compliance costs as being: 'the reduction in a corporation's operating costs - exclusive of the tax itself - which would result if the tax were eliminated. Those costs which would continue to be made in the absence of the tax cannot

be compliance costs'. The consequence of this approach is that most overheads for common facilities, such as housing, are excluded when determining the transfer of information compliance costs.

*'Marginalists of the lawyers concept'*

One of the first to distance himself from the conceptions of the 'marginalists pur sang' was Dean. In 1975, he stated that conformance with laws and regulations should be considered to be an integral part of business operations. Dean defined information transfer compliance costs as follows: 'all those extra costs which the entrepreneur must budget for simply in order to comply with tax requirements'. These costs would not have existed if there had been no tax laws. It goes without saying that this definition can be widened to include many other fields of legislation.

Sandford is another well-known opponent of excluding avoidable costs. Sandford suggests using the lawyers concept when defining the information transfer compliance costs: 'the costs which a reasonable man would incur'. These costs include the usual costs of a tax consultant and those of applying for a subsidy and a permit. Sandford may be considered to be *the* exponent of the 'marginalists of the lawyers concept'.

The core of the concept of the 'marginalists of the lawyers concept' is that only those costs of complying with the transfer of information obligations which are in addition to the costs of normal business operations may be viewed as information transfer compliance costs. In other words, the costs that would no longer exist if there were no regulation. This concept is the most common one in international literature about compliance costs in general, and the transfer of information compliance costs in particular. As an illustration, several of the most prominent definitions will be presented in this paragraph.

Sandford gives the following definition of information transfer compliance costs: 'Tax compliance costs are the costs incurred by taxpayers in meeting the requirements laid on them by the tax law and the revenue authorities. They are costs over and above the actual payment of tax and over and above any distortion costs inherent in the nature of the tax; costs which would disappear if the tax was abolished.'<sup>1</sup>

Hopkins alternately uses the terms compliance costs and regulatory costs and means both content costs as well as information transfer compliance costs. Hopkins states: 'The scope both of (regulation and of its) cost or burden is contentious. ... The burden can be defined as any adverse effect experienced in the private sector from such regulation.' Hopkins then applies the classical concept of opportunity costs to compliance costs: 'Fundamentally, a cost is imposed only if some valued resource use is displaced, and the amount of the

<sup>1</sup> C. Sandford (ed.), *Tax Compliance Costs Measurement and Policy*, Fiscal Publications in association with The Institute for Fiscal Studies, 1995, p. 1.

cost is the value that is forgone. This is the basic economic concept of opportunity cost; if a regulation diverts no valued resources, it imposes no costs. By saying this, Hopkins considers only the additional costs of legislation and regulation to be compliance costs which would no longer exist if the legislation and regulation ceased to exist.<sup>1</sup>

One interesting effect of this conception can be found in the regulations of Office of Management and Budget (OMB). Through these regulations, the government is offered an opportunity to exclude part of the costs of information transfer compliance outside the definition of compliance costs. 'The time, effort and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g. in compiling and maintaining business records) will be excluded from the 'burden' if the agency demonstrates that the reporting, record keeping, or disclosure activities needed to comply are usual and customary'.<sup>2</sup>

In the spirit of the Paperwork Reduction Act (PRA), information transfer compliance costs should be considered to be an extra cost in relation to 'usual and customary activities'. Significant is that it is stated explicitly in the PRA that the agency must be able to show that the activities connected to reporting, filing and disclosing are all activities which are part of the normal business administration. As long as the agency is not able to prove the relationship with the normal business administration, there will always be talk of information transfer compliance costs in the sense of extra costs. That this is no simple task for an agency, is apparent from research by the United States General Accounting Office (GAO) into the cost of complying with regulations, published in 1996. One of the findings of this research was: '... The companies generally did not identify the incremental costs that were attributable to regulatory requirements because they could not determine what costs they would have incurred in the absence of regulations. The companies' financial information systems were not geared to identifying costs associated with regulations. No business purpose would be served by such information, and collecting it regularly would be a substantial incremental cost in itself.'<sup>3</sup>

This discussion of the opinions of the supporters of the 'lawyers concept' will be concluded with a variant from 'Down-under', Australia. As explained, this variant has its origin in the fiscal domain. The fundamental reasoning, in our opinion, may without objection be applied to all legislative domains in which financial transfers are involved. Examples are applying for subsidies or reduced levies in general. Of principle importance in this conception is the distinction

<sup>1</sup> Th.D. Hopkins, 'Developing general indicators of regulatory costs', in: *Regulatory Impact Analysis, Best Practices in OECD countries*, OECD, Paris 1997, pp. 263-265.

<sup>2</sup> Paperwork Reduction Act of 1995: *Implementing Guidance*, op. cit., Draft June 1999, p. 38.

<sup>3</sup> General Accounting Office, *Regulatory Burden, Measurement Challenges and Concerns raised by selected Companies*, Report to Congressional Requesters, GAO/GGD-97-2, November 1996, pp. 5, 48-52.

between 'social compliance costs' and 'tax payer compliance costs'. The 'social compliance costs' are considered to be the information transfer compliance costs for society, the 'tax payer compliance costs' to be the transfer of information compliance costs for businesses (and the citizens). The 'social compliance costs' are the transfer of information compliance costs where there will be no settlement with possible tax advantages as a consequence of the way compliance took place, this *is* the case in the tax payer compliance costs. When speaking of tax advantages, these include items such a reduction of the tax to be paid as a consequence of the deduction of information transfer costs and possible financial advantages such as interest, because of the difference between the provisional and the definite statement, i.e. cash flow benefits. The philosophy behind this is that by using 'tax planning', which in itself results in more information transfer compliance costs, businesses and citizens will, on balance, obtain advantages compared with the situation without 'tax planning'.<sup>1</sup>

### ***The integralist concept***

#### *Introduction*

As regards the integralist conception, we agree with Dean's concept, quoted by Allers, that compliance during the daily work of businesses is an integral function of business operations.<sup>2</sup> The theoretical model of information transfer regulations and information transfer compliance costs presented in chapter 3 also fits well in Dean's conception. By the way, in our view, Dean is a representative of the 'marginalists of the lawyers concept'. We call the fundamental argument the view that the compliance with regulations is an integral function of business operations and that by consequence the integral cost of the compliance with information obligations are information compliance costs. In addition, we also use a more practical argument that focuses on the impossibility for businesses to imagine a situation in which there is no legislation or regulation. And, what is more, we support the argument for the desirability of a clear definition of the costs of normal business operations.

#### *Fundamental argument*

The fundamental argument is derived from our theoretical model in chapter 3. Business information transfer obligations do not exist alone. The process of economic generation by business is an essential and integrating component in the total social system. Achieving social values through pre-planned and stipulated legal norms, cannot be done without the active participation of business. It is, therefore, quite understandable that the government, because of its administrative responsibilities, imposes information transfer obligations on busi-

<sup>1</sup> M. Walpole et al., op. cit., 1999, pp. 245-271.

<sup>2</sup> M. Allers, op. cit., 1994, p. 32.

ness to acquire information about the extent to which the business world complies with these norms (content obligations). The legal information transfer obligations as such, and their content, can be determined simply and unambiguously - if specifically specified - by consulting the specific text of the relevant law or grey regulations. The same applies to the work associated with the compliance with these regulations and the accompanying integral costs. The aspect of specifically specifying the information obligation will be dealt with in more detail in the next paragraph about the general bookkeeping obligation as a criterion for definition. When determining the integral costs, we are interested purely from the information logistics point of view: how much does it cost businesses to find out what information the government wants, to collect this information, make calculations, check, file and finally prepare the information in a suitable way to send it in and then actually send it? In other words: the costs of all proceedings related to the compliance with information obligations which a business cannot ignore without offending against the law. Questions about whether certain costs could be avoided or what costs would remain if the legislation was repealed or the net information transfer compliance costs, as proposed by the marginalists, are not considered to be relevant in this context. The choice for integral costs in no way detracts from the fact that the costs of the information obligations may not exceed the benefits. However, the government must always strive to keep information transfer compliance costs as low as possible. That is why political recognition of the phenomenon is so important.

Choosing such a one-dimensional concept for the integral costs of information logistics avoids discussions such as 'useful for the businesses' own operations' and 'the business did it anyway'. With this choice, we support the advice of the Committee for Administrative Burdens (Slechte Committee): 'An assessment of administrative burdens may not be part of a wide business assessment or a general profit/loss analysis for proposed legislation. The Committee considers a separate assessment to be necessary, and this should focus exclusively on the efficiency and effectiveness of the information logistics of laws and regulations. Only when (the result of) this assessment is available, should this, together with other assessments, become part of the integral political judgement. Initiatives to control administrative burdens, therefore, should not address the question of whether the government is doing the right things (that is, in essence, a political question), but pose the question whether the things that the government wants are being done in the right way as far as administrative consequences are concerned.'<sup>1</sup>

#### *Practical argument*

The practical argument for opting for the integralist conception is that businesses in general are not able to split the costs of business operations into the

<sup>1</sup> Commissie Administratieve Lasten, op. cit., p. 5.

cost of conforming with legislation and regulation and another part that would continue without regulation. We have seen one illustration of this in the research carried out by the General Accounting Office in the United States quoted previously.<sup>1</sup> One explanation for this is that administrative law and regulations derived from this law apply, to some extent, to social behaviour already developed.<sup>2</sup>

The social constitution, as it is known in the Netherlands, came into being through a process of parliamentary democracy. This implies that there is a more or less permanent exchange between parts of society, including businesses, and the law-making process of the government. Of course, there is much that could be improved in this process, but that is not the subject of discussion here. The point in question is that many transfer of information obligations have been internalised - in the sociological sense - by business. 'We always do it this way'.

One familiar example is the wage and salary administration. When setting up this part of the business administration, full account is taken, in addition to the business' own need for information, of the content and information transfer obligations in the laws on income levies and employee insurances. Provisions are also made to be able to comply with the obligations ensuing from business sector agreements (Early Retirement, and pension schemes, training, education, etc.) which often form part of collective labour agreements. When the needs of businesses themselves and the needs of the government are so closely interwoven it must be deemed to be almost impossible that there can be one unambiguous answer to the question what are the extra costs incurred by complying with the transfer of information obligations imposed by the government. Where do the costs of a business' own operations cease and where do the costs of complying with information transfer begin? In other words, what costs would disappear as soon as the law on income levies no longer existed, and there were no employee insurances and no business sector agreements?

One example as an illustration. Of course, a business wants to know what are the costs of e.g. the overtime work of its employees. From this point of view, the cost of gathering information about the number of overtime hours are part of the 'normal' operating costs and not of the information compliance costs. However, in most cases, taxation rates of overtime hours are different from normal working hours. Therefore, the government wishes to be informed. From this view point, the costs of collecting, calculating, etc. these components of the payroll costs now are no longer the business' own operating costs but extra costs in the sense of information transfer compliance costs. The question whether certain costs belong to normal operating costs or to in-

<sup>1</sup> General Accounting Office, *op. cit.*, 1996, pp. 48-52.

<sup>2</sup> H.P. Potman, *op. cit.*, 1989, p. 17.



formation compliance costs is hardly to be answered unambiguously. Questions to which an unambiguous answer can be given are: what information does the government wish to have and what do businesses have to do to provide it, quite apart from the question whether they would have done it or not anyway for their own business operations.

#### *Bookkeeping obligation as criterion for definition*

In the integralist concept of information transfer compliance it is also necessary to make a clear definition of information transfer compliance costs in relation to the business' normal operating costs.

Businesses store information in their information systems (financial administration, stock administration, personnel and salary administration, etc.). Generally speaking, the businesses are free in their choice of system, and the associated costs are considered to be a part of the normal operating costs. However, the government imposes a generic obligation as to the quality of such administration systems, the so-called bookkeeping obligation.

The bookkeeping obligation for private persons running a certain business is governed by the conditions in the Law Book of Commerce (art. 6, sub 1) and in the book of Common Law (art. 14, Volume 2) for legal entities, irrespective of whether they run a business or not. More recently, the bookkeeping obligation was also included in Common Law on national taxation (AWR, art. 52, sub. 1). One of the considerations when deciding to include the bookkeeping obligation in the national taxation law (AWR) was also to take into account more modern means of information transfer than books and other similar items. The general tendency of the bookkeeping obligation is to ensure that all business administration meets certain minimum requirements regarding clarity, auditing and filing.<sup>1</sup> Based on the bookkeeping regulations, it could be possible to choose to consider the costs of the entire business administration to be information transfer compliance costs. This reasoning has the attraction of simplicity, because then the discussion about which elements form part of the transfer of information compliance costs could be ended. However, the consequence for businesses of such a change in definition would be that these costs would be more than tripled.<sup>2</sup> We reject such a wide interpretation of the term transfer of information compliance and our rejection is based on the following arguments.

<sup>1</sup> Article 52, sub 1, of the national taxation law (AWR): Those subject to administrative regulations shall conduct an administration as to their capital position and to everything concerning their enterprise, their independent profession or work done to the requirements of the enterprise, that independent profession or the work in such a way that the books and other items and information carriers belonging to this administration shall be kept, so that at all times their rights and obligations as well as data of importance for tax purposes shall be clearly shown.

<sup>2</sup> J.J. Boog et al., *Administratieve Lasten Bedrijven 1993*, EIM, Zoetermeer, 1994.

The fact that the entrepreneur is free to set up his bookkeeping system as he wishes is characteristic of the bookkeeping obligation. There is no sanction on compliance. The content of the bookkeeping obligation is determined by the nature and the extent of the business activities as long as the contents are recorded in such a way that privacy rights are guaranteed at all times. In this case, it is not an obligation to transfer information to the government as administrator but to all those who, in some way or another, have to do with the enterprise - the stakeholders - and who benefit from a good insight into the ins and outs of the enterprise. These could include the banks, creditors, personnel, trade unions and, of course (local) government.<sup>1</sup>

The bookkeeping obligation is, therefore, a content obligation to realise a certain social value (goal prescription) and not a specific, clearly defined transfer of information obligation (instrumental prescription). Each enterprise is free to choose how to set up its administration. However, during inspections or audits by governmental authorities, comments and criticism can and will be heard if the business administration does not comply or does not comply well enough with the accepted usual minimum requirements in that business sector or size of business. 'According to good trading practices' can be taken as generic norm. It goes without saying that this norm will have other consequences for an enterprise without employees than for a multinational company.

The table below summarises the most important elements of the discussion.

Positioning the transfer of information compliance costs within the total business administration

Type of information	Bookkeeping obligation*	Specific information obligation
Useful for own business operations	No transfer of information compliance costs	Information transfer compliance costs
Not useful for own business operations	Not applicable	Information transfer compliance costs

\* Normal business bookkeeping which must, at least, meet the requirements of the general bookkeeping obligation.

### Conclusion

In general, we reject the marginalist conception of the term transfer of information compliance costs. The most important arguments for rejection are as follows.

The 'marginalists pur sang' deny, in our opinion incorrectly, that the transfer of information compliance costs should be considered as an integral part of business operations. We do not consider the exclusion of avoidable costs, for example as the consequence of taking advice or applying for subsidies and permits, to have any point.

<sup>1</sup> Commissie tot verlichting van administratieve verplichtingen voor het bedrijfsleven, op. cit., Special Volume III, 1985, pp. 44-45.

The attraction of the 'marginalists of the lawyers concept' gains its merit from the idea that compliance belongs to the integral functions of the business and in the acceptance of 'the costs which a reasonable man would incur'. In this way, the costs for the tax consultant and for applying for subsidies and permits are part of the transfer of information compliance costs.

The 'marginalists of the lawyers concept', however, do not succeed in making a clear distinction between the costs of normal business operations on the one hand and the extra costs as a consequence of information transfer compliance on the other. The fiction which they ply - the extra costs are the costs that would no longer exist should there be no regulation - is not feasible in daily business practice. For us, this is the most important reason to distance ourselves from the opinions of the 'marginalists of the lawyers concept'.

Then there is also the question of the gross, 'social compliance costs' or net information transfer compliance costs, 'tax payer compliance costs'. The net information transfer compliance costs are considered to be less meaningful for our purposes. By deducting all sorts of items of varying origin from the information transfer compliance costs, there will no doubt be a good picture of the definite costs for the business that complies with the information transfer regulation. One important disadvantage is that the view of the real costs of information transfer is lost. This objection no longer applies, of course, once both the gross and net transfer of information compliance costs are available. We choose for the gross transfer of information compliance costs, or, in other words, the 'social compliance costs'.

And now we are back to our own integralist concept of the transfer of information compliance costs. Why did we choose this? First and foremost because the integralist concept connects well to the basic idea of our theoretical model which is that compliance with information transfer regulations is an integral function of business operations. And with this we choose in principle for the information logistics approach. So, information compliance costs are the integral costs of all the proceedings to comply with information obligations in an adequate way and which proceedings a business cannot ignore without offending against the law. To comply in an adequate way refers to the 'lawyers concept'. That's why avoidable costs like the costs of asking for advice belong to the integral information compliance costs. This is what we call the fundamental argument.

In addition, there is also the practical argument that business would not be able to imagine a situation without legislation and regulation. Finally, using the bookkeeping obligation as an example, we have shown that only specifically specified information obligations result in the transfer of information compliance costs.

#### 4.4 Definition of administrative proceedings

Information is normally stored within business administrative systems. Examples are the financial administration, accounts receivable, stock, and personnel and salary administration. Even so, if entering this information into these systems requires administrative proceedings, that also applies to providing the government with information from these systems. Therefore, most of the actions that have to be taken to comply with information transfer regulations are administrative proceedings. What sort of proceedings are then involved?

The Paper Reduction Act (PRA) from the US is most explicit and complete in naming the actions generally needed to comply with the transfer of information. The information transfer compliance costs are made up of 'time, effort, or financial resources expended by persons to generate, maintain or provide information to or for a Federal agency, including the resources expended for:

- a. reviewing instructions;
- b. acquiring, installing, and utilising technology and systems;
- c. adjusting the existing ways to comply with any previously applicable instructions and requirements;
- d. searching data sources;
- e. completing and reviewing the collection of information; and
- f. transmitting, or otherwise disclosing the information.<sup>1</sup>

When naming the administrative proceedings, Sandford makes a distinction between individuals and businesses. The proceedings Sandford describes for individuals also apply to small independent entrepreneurs. When he writes about the information transfer compliance costs, Sandford names the following proceedings, and it is important not to forget that that Sandford's study was limited to transactions in the field of taxation.<sup>2</sup>

For individuals (read small independent entrepreneurs), the following actions are given:

- acquiring sufficient knowledge to meet their legal obligations;
- completing their personal tax returns, and obtaining, filing and storing the data to enable them to complete their returns;
- to visit a tax adviser or the revenue authorities;
- helping other family members or friends who are less able to cope.

And for businesses:

- collecting, remitting and accounting for tax on the products and profits of the business and on the wages and salaries of its employees;
- acquiring and updating the knowledge to enable this work to be done, including knowledge of legal obligations and penalties.

<sup>1</sup> Paperwork Reduction Act of 1995: *Implementing Guidance*, op. cit., Draft June 1999, p. 38.

<sup>2</sup> C.T. Sandford, op. cit., 1995, p. 1.

The definition of information transfer compliance costs as these are used in the Netherlands Ministry of Economic Affairs' Business Impact Assessment, confirms the wide scope of administrative proceedings found: 'Administrative costs are the costs of administrative regulations, i.e. the procedural and administrative actions that businesses take for the adequate execution of the draft legislation. Such actions include both those actions explicitly mentioned in the draft regulation and also those actions necessary to comply with the content of the draft regulation.'<sup>1</sup>

Literature covers almost the entire scope of administrative proceedings connected to compliance with information transfer, including the entire preparation and follow-up. Complying with information transfer obligations, therefore, demands much more from business than only the act of transference itself.

It is also important that proceedings 'of becoming acquainted with information transfer obligations' (one-off) and 'remaining up-to-date with the information transfer regulations' (structural) are mentioned explicitly. Becoming familiar with an information transfer obligation, for example, an amended or new regulation is usually seen as a one-off proceeding. Keeping up-to date usually refers to slight adaptations and is seen as a structural, usually annually recurring proceeding. Compliance with the transfer of information obligations usually applies to existing legislation and regulation.

Compliance with information transfer obligations usually has a structural character, in other words, administrative proceedings that should be carried out at regular periods (annually, each quarter, monthly or depending on the situation). There are, in addition, also proceedings with a one-off or temporary character when:

- businesses are confronted with major changes in existing regulations, for example, the introduction of a new taxation system;
- businesses have to deal with new regulations.

The situation in which business are confronted, for the first time, with existing regulations does not belong to the one-off classification; for example, starters, but also businesses which have existed for a longer period and for the first time employ personnel or start to export. When making a distinction between one-off proceedings and structural proceedings, changes in legislation are the most important factor and not the specific situation of a business.

### **Conclusion**

Complying with the transfer of information obligations is usually accompanied by the following administrative proceedings:

1. becoming (one-off) and remaining (structural) familiar with the transfer of information obligations;

<sup>1</sup> Ministry of Economic Affairs, *Business Impact Assessment*, op. cit., p. 16.

2. receiving the information;
3. collecting the required information;
4. judging whether the information transfer obligation is applicable;
5. filling in or entering the required information;
6. making calculations or valuations;
7. printing out the results of the calculations;
8. checking and possibly correcting the results;
9. obtaining advice;
10. consultation;
11. explanation;
12. executing the instructions to pay;
13. sending the information, the message;
14. filing the data.

#### 4.5 Definition of costs

What sort of costs or cost components should be counted as belonging to information transfer compliance costs?

Literature usually distinguished the following categories: financial costs, time spent and psychological costs.<sup>1</sup> In an analogy with the administrative proceedings, the types of costs mentioned can also be classified as either structural or one-off costs, depending whether they recur annually or not. Those costs connected with structural proceedings are called structural information transfer compliance costs. The structural transfer of information compliance costs are usually fixed annually. The principal item of one-off costs is the cost of keeping up with changes and any costs connected to the re-structuring of the business administration.

In literature the dominating concept is that information transfer compliance costs consist not only of financial payment, but that the time spent by the entrepreneur and/or his paid or unpaid employees or family workers - expressed in money - should also be taken into account. Psychological costs are mentioned, but the general opinion is that these cannot or should not be valued in terms of money. Psychological costs are therefore not included in the transfer of information compliance.<sup>2</sup> This in no way detracts from the fact that psychological or irritation costs play an important role in the acceptance of and compliance with the information transfer regulations. In chapter 3, when discussing the instrument design as part of our theoretical model, this item was dealt with.

<sup>1</sup> M. Allers, op. cit., 1994, p. 31.

<sup>2</sup> M. Allers, op. cit., 1994, p. 31, C.T. Sandford, op. cit., 1995, M. Walpole et al., op. cit., 1999, pp. 246-251.

In general, a business economics approach is chosen for the costs which form the constituent components of the transfer of information compliance costs. In the Paperwork Reduction Act (US), two sorts of costs (burdens) are distinguished which should be measured separately:<sup>1</sup>

1. Time, measured in hours and sub-divided into four qualification levels:
  - clerical and other unskilled workers;
  - skilled- and craft-labour and other technical workers;
  - professionals and managers;
  - executive.

All wage rates need to be full-loaded, i.e. reflect the full cost of labour including fringe benefits.

2. Financial costs and all other aspects of burden, including both non-recurring costs and recurring costs. All costs need to be valued at market prices.

The Regulatory Impact Assessment (UK) also chooses for a broad business-economics approach and distinguishes between structural and once-only costs:

- 'recurring costs: additional and indirect costs arising from the legislation, such as extra administrators, 'opportunity costs' (i.e. the cost of existing staff who might otherwise be used more profitably), consumable materials, periodic inspections and licence fees';
- 'non recurring costs: one-off costs such as additional expenditure on plant and machinery, buildings, infrastructure, computer systems and other capital expenditure.'<sup>2, 3</sup>

All costs have been measured on a full cost basis, regardless of whether extra expenditure would actually be incurred. For example, staff time has always been valued at gross salary costs plus 50 per cent to 60 per cent (for overhead and accommodation), even though, in most cases, extra staff would not need to be recruited.<sup>4</sup>

In literature there is consensus about a business-economics approach to information transfer compliance costs: time is money and the costs should be calculated at market prices. Together with payroll costs, capital costs are also part of information transfer compliance costs. Overheads should also be included when ascertaining the costs of information transfer compliance. The psychological costs are mentioned but not measured in time or money and are

<sup>1</sup> Paperwork Reduction Act of 1995: *Implementing Guidance*, Draft June 1999, p. 47.

<sup>2</sup> Department of Trade and Industry, The Deregulation Initiative, *Checking the Cost to Business, a Guide to Compliance Cost Assessment*, UK, December 1992, p. 1.

<sup>3</sup> Better Regulation Unit, *The Better Regulation Guide and Regulatory Impact Assessment*, UK, 1998, p. 37.

<sup>4</sup> B. Glassberg, C. Smyth, 'Tax Compliance Costs: The Problems and the Practice - Inland Revenue', in: *Tax Compliance Costs Measurement and Policy*, C. Sandford ed., Fiscal Publications, 1995, pp. 33-34.

therefore excluded from the definition of transfer of information compliance costs.

The distinction between structural annually recurring and one-off costs in information transfer compliance costs is of essential importance.

### **Conclusion**

Transfer of information compliance costs consist of:

- a. if the businesses themselves execute the transfer of information:
  - Wage/salary costs and/or the valued wage of the entrepreneur
  - Costs for the computers, software, etc. used
  - Allowance for overhead costs;
- b. if the businesses out-source the execution of the information transfer regulations: the cost of out-sourcing.

## **4.6 Summary: definition of information compliance costs**

Having looked at all aspects, we now arrive at the following definition of structural and one-off information transfer compliance costs.

### ***Structural information transfer compliance costs***

***Structural information transfer compliance costs are the integral costs of the annually recurring administrative proceedings connected to complying with the obligation to transfer information, as specifically stipulated in the regulation applying to businesses operating in country X, to the government or comparable body of country X, which obligation business cannot ignore without offending against the law. The government or comparable body of country X uses the information thus obtained to check and maintain compliance with content obligations deemed by society to be of value.***

This definition contains a number of core elements which require some explanation:

- ***Structural costs***: The annually recurring costs for compliance with transfer of information obligations.
- ***Integral costs***: The integral cost price of all the administrative proceedings which are necessary to comply with a transfer of information obligation. This refers to Sandford's lawyers concept. Only those reasonable costs can be counted as belonging to the information transfer compliance costs. As we, following Dean's example, consider compliance with the transfer of information obligation as an integral function of business operations, the overhead costs are, in proportion, included.



- *Administrative proceedings*: All activities that are necessary for the compulsory transfer of information to the government or the implementing institution to take place. These actions include the 14, mainly administrative, actions previously mentioned.
- *Regulation*: All legislation and regulation used by the central government and lower authorities together with other bodies with delegated authority, to control their legal relationship with businesses in connection with socially stipulated behaviour. These also include grey regulations.
- *Specifically stipulated information transfer obligation*: Accurate and precise definition in legislation and regulation of the content of the information that the business must provide to the government or implementation institution. This passage clearly defines the distinction between this and the generic information which is stored in the business administration.
- *Businesses operating in country X*: Within the terms of reference of this study, the subject is the Netherlands and the legislation and regulation that apply to the Dutch and foreign businesses operating on Dutch territory. This definition is important in order to prevent double counts should international comparative studies be made. Business is taken to include all private individuals and legal persons who are engaged in business and not in the government sector, in the sense of the internationally applicable definitions according to the National Accounts.
- *Government or comparable body of country X*: The Dutch government and comparable Dutch bodies.
- *Which a business cannot ignore without offending against the law*: This refers to the legal obligation to transfer information and is the core of the definition. It indicates explicitly that information transfer compliance costs are not exclusively the extra costs that would disappear should the law disappear (the concept of the marginalists). The transfer of information compliance costs are the costs of all the administrative proceedings required to actually execute the information transfer, whether these actions are of any use for the businesses' own operations or not.
- *Content obligations regulations deemed by society to be of value*; rules of behaviour/conduct which apply to values and norms, laid down by parliamentary decree in legislation or regulation or in grey regulations derived from these.

#### ***One-off transfer of information compliance costs***

The definition of one-off transfer of information compliance costs is identical to that for structural transfer of information compliance costs, as long as it is remembered that this applies only to situations in which there are major changes to existing laws and regulations, or new laws and regulations.



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