

REPORTS TO THE GOVERNMENT

56

SAFEGUARDING THE PUBLIC INTEREST

SUMMARY OF THE 56TH REPORT

The Netherlands Scientific Council for Government Policy was set up on a provisional basis in 1972. It was given a formal legal basis under the Act of Establishment of June 30, 1976. The present term of office runs up to 31 December 2002.

According to the Act of Establishment it is the Council's task to supply in behalf of government policy scientifically sound information on developments which may affect society in the long term and to draw timely attention to likely anomalies and obstacles, define major policy problems and indicate policy alternatives.

The Council draws up its own programme of work, after consultation with the Prime Minister, who also takes cognisance of the Council of Minister's views concerning the proposed programme.

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SUMMARY

This report concerns the public/private balance. It deals with the question of 'privatisation'. Numerous government services have been transferred to the private sector in recent times and further possibilities of doing so are being explored. Examples include the utilities (water, electricity, cable, gas and telephone), public transport, social security and home care. The debate about privatisation has not however been completed and doubts have sometimes arisen about earlier results. A 'yes' lacking substantiation can then switch into an equally unsubstantiated 'no'. With this report the Council seeks to clarify the debate on this issue.

Separating the 'what' question from the 'how' question

Two questions generally cut across one another in the discussion about privatisation:

- The 'what' question: which social interests are identified by the government as public interests, meaning that the government takes on the (final) responsibility for these interests in the conviction that they can then only come properly into their own?
- The 'how' question: in what way are the interests for which the government has accepted final responsibility promoted and who bears the operational responsibility?

Failure to draw a clear distinction between the *what* question and the *how* question might lead to giving the wrong answer to the wrong question. This distinction implies in the first place that social interests – even weighty ones – will not automatically be a matter for the government. In respect of certain interests where an effectively functioning market provides for the satisfactory production and allocation of the goods or services in question the government need not (or need no longer) bear the responsibility. The question as to whether this is the case or not – i.e. what is to be understood by 'satisfactory' – is normative in nature.

This means that the 'what question' is primarily a political question, to which an answer cannot be given in scientific terms, or at any event not solely. The 'how' question, by contrast, is much less political in nature. The interests designated by the government as 'public' can be promoted along various lines. Here we are dealing with the pros and cons of implementation modalities, i.e. with advantages and disadvantages that are capable of objectification.

This brings us to the problem addressed by this report: *how should public and private responsibilities be assigned in the promotion of public interests?* The concern in the promotion of public interests is to strike such a balance between public and private responsibilities that the government can discharge its final responsibility as effectively as possible. This in turn raises two questions: who is to bear the operational responsibility? And in what way is the public interest in question to be safeguarded?

Operational responsibilities

The Council distinguishes five possibilities for giving shape to the operational responsibility for public interests. The concern here is with the promotion of public interests by respectively:

- competing private parties under the overall direction of the government;
- private parties to whom the promotion of those interests has been contracted out;
- professional private parties;
- promotion under direct ministerial responsibility;
- engagement of independent administrative bodies.

The private/public issue is taken further in this report by examining how organisations should bear the operational responsibility. Dogmas, the Council would emphasise, need to be avoided here. In the same way private organisations do not necessarily always function more efficiently than public bodies, the promotion of such interests by public organisations is not necessarily more democratic or thorough than private promotion. In fact the discussion here misses the key point: the ‘how’ question is concerned with the way in which public interests can best be promoted or, in the terminology of this report, safeguarded.

Safeguarding mechanisms

In respect of neither private or public organisations may it be assumed that they will of themselves be solely concerned with the public interest. It is therefore necessary to discipline organisations in such a way as to safeguard the promotion of the public interest.

To this end, four mechanisms are distinguished in this report in terms of degree of government involvement. Safeguarding may take place by means of:

- rules (laid down in laws or contracts);
- competition (both competition in and around the market, where tasks are contracted out);
- hierarchy (the political administrator issues instructions to his subordinates);
- strengthening of institutional values (i.e. the values and the norms within an organisation that supports the promotion of the public interest in question).

In this discussion, in which competition frequently occupies such a central place, the Council also draws particular attention to institutional safeguards. The safeguarding mechanism that will be the most appropriate in specific circumstances will of course depend on the nature of the public interest and the weight assigned to such matters as effectiveness, efficiency, democratic legitimacy, legal certainty and legal equality.

Despite the variety of safeguard mechanisms the possibilities for safeguarding in practice are generally not extensive. If something cannot be handled privately this does not necessarily mean that it can be handled publicly. Both options are generally characterised by uncertainties. The government is therefore required to formulate public interests in the light of limited certainties and the Council would recommend that combinations of safeguarding mechanisms be sought. In that case the disadvantages of the one mechanism can be offset by the advantages of another.

Privatisation calls for sober evaluation

Privatisation is not a competition between the government and the market. That antithesis is not only too ideological but also too limited, in that the private sector is much broader than the 'market' (consider for example non-profit organisations) and has more co-ordination mechanisms than competition alone. Furthermore the how question is always concerned with collective responsibility: although private parties may be given operational responsibility, the final responsibility remains with the government (as public interests are involved here).

In the case of privatisation, a sober consideration teaches us, the possibilities for assigning operational responsibilities depend heavily on the degree of specification of the public interest concerned and the extent to which the external effects of a certain choice can be overseen. It is also evident that in the case of privatisation it becomes easier to safeguard public interests the more information the government has about the efforts that a private provider will be required to make, risks are less substantial and risk-aversion among private entrepreneurs is lower. Finally, the organisation and cost of effective supervision of the private party or parties plays a role.

Dynamic context

As will be evident from the above, the possibilities for safeguarding public interests depend in part on the overall context (the latter in fact influences not just the how question but also the what question). Privatisation therefore calls for a sound analysis of the context, particularly since contextual changes do not take place in all policy fields to the same extent. One particular type of solution in one policy field will not therefore necessarily be the appropriate one for all other fields.

In the report three contextual processes are closely examined: internationalisation, the rapid extension of the information and communication technology (ICT) and professionalisation. Internationalisation and ICT provide more opportunities for competition, for instance in the field of the utilities; in this way the government can concentrate on the preconditions of delivery. Moreover, the process of internationalisation stimulates the functioning of the market (in Europe this has particularly been realised through market integration), which may in turn lead to new safeguard mechanisms on the one hand but to the disappearance of old mechanisms on the other. Did the national government originally have an enormous liberty to safeguard the public interest by means of rules, now the process of internationalisation has severely reduced this liberty. This may even be a reason to abandon private implementation of a public interest.

Finally, the process of professionalisation within society and the government makes it more possible to safeguard the public interest by adopting professional standards and values (i.e. institutional safeguards).

Modernisation of the government

The possibilities for safeguard arrangements within both the private and the public sector are to some extent determined by the government itself. The government can improve the scope for safeguards in the private sector by means of active market directorship, including effective supervision. Disappointing experiences with privatisation do not always mean that public implementation is to be preferred; they may also mean that the government has not sufficiently worked out its role as market director and supervisor.

On the other hand substantial improvements are also possible in the public sector. The concern here is to make the structure of government more transparent, to create better mechanisms of accountability and to enlarge the personal responsibility of civil servants and organisation. In general, the government has much to learn in this area from the private sector – without however having to copy the private sector. When it comes to safeguarding public interests, the government's task is one of providing an alternative to the private sector. What are needed are not public entrepreneurs but public professionals.

Strict direction required

Privatisation is not a goal but a means. The goal is that of safeguarding the public interest. Over the past decade this essential feature has, in the Council's view, tended to be neglected. Partly because the issue of effective safeguards has not received the attention it deserves, privatised or hived-off organisations have tended in practice to end up in a grey area, in which there are neither private nor public adequate disciplinary mechanisms.

This realisation prompts three conclusions: in the first place the government, if it settles for privatisation, should hold a strict direction. The more so since the other participants in the decision-making process are committed to other (smaller) interests than the public interest at stake. In the second place privatisation generally is to be handled with reservation if many interests and actors are involved. Thirdly, the Council advises to urgently enlarge the possibilities for safeguarding public interests within the public sector.

PREFACE

This report has been prepared by an internal project group of the Netherlands Scientific Council for Government Policy (WRR). The chairman of this project group was Dr. W. Derksen, a member of the Council. In addition the following individuals formed part of the project group at the time the report was completed:

Dr. P.M. Meurs, member of the Council, Prof. M. Scheltema, chairman of the Council, and staff members Dr. P. den Hoed, Dr. F.J.P.M. Hoefnagel (project secretary) and Dr. J.C.I. de Pree. M.C. Ekelenkamp also contributed to the activities of the project group from 1 September 1998 to 1 December 1999.

The analyses in this report are based in part on the results of various studies carried out on behalf of the Council. During the preparatory stage use was also made of the suggestions and comments of Dr. M.A.P. Bovens, Dr. A.L. Bovenberg, Dr. E.F. ten Heuvelhof and Dr. C.N. Teulings. The Council is indebted to them for their contributions. The Council, however, bears sole responsibility for the content of the report.

1 INTRODUCTION

1.1 THE DEBATE ABOUT PRIVATISATION

The operation of government has for some time been a prominent item on the agenda in the western world. After the heyday of the welfare state, the government changed from being a means into being a problem. The question was asked as to whether the government should confine itself to its *core tasks*. Furthermore the 'ideology of the market' asserted itself: should the government not leave more to the workings of the 'market'? This was a major turnaround. Whereas the government had assumed numerous responsibilities and continued to promote those interests at the time of the welfare state, the emphasis now was placed on the advantages of the private sector. The political tide had turned and the search was for "a new mix between the government and market as coordination mechanisms" (Bovenberg 1999: 6).

The public debate about the state is not however equally clear in all respects. Ideological arguments sometimes threaten to dominate the debate. It is no longer a matter of clearly weighing the arguments; instead it appears to have become a struggle between 'government and market'. The actual subject of the debate has also become the subject of confusion. Is the debate about the (core) tasks and hence the responsibilities of the government, or is it about the question as to how the government should realise those responsibilities?

Different criteria are also often brought to bear. Sometimes the concern with privatisation appears to be solely about efficiency and effectiveness. Others point in particular to the importance of democratic legitimation, legal certainty and legal equality. Both options are too unqualified. Since the discussion about privatisation is inspired by the advantages of the market it is not surprising that efficiency and effectiveness tend to be the prime measures of appraisal. This does however create the risk of falsely placing the private and public sector on the same footing while neglecting other values of relevance for the promotion of public interests: public affairs have traditionally had their own orientation (Jacobs 1992), on the grounds that the nature of the promotion of public interests differs fundamentally in a number of respects from the promotion of private interests.

Finally, the concepts employed in the debate are by no means always clear-cut. In some cases 'privatisation' concerns the transfer of the property (a state-owned limited company is floated), while in other cases a broader definition is employed: the engagement of private parties to promote public interests. Similarly the conceptual duo of 'government and market' is anything but clear. Should the 'market' for example be taken to include professional organisations that are primarily concerned with the promotion of professional values and standards? And where does this leave 'civic society' in this dichotomy?

This raises the question as to whether it is possible to clarify the debate about privatisation. The WRR seeks to do so in this report. The report does not just provide a *conceptual framework* for privatisation; the Council also indicates which aspects demand special attention in the discussion about privatisation. This initial chapter formulates the problem and sets out the background considerations in more detail.

1.2 PUBLIC INTERESTS: THE ‘WHAT’ AND THE ‘HOW’ QUESTION

Two questions generally cut across one another in the discussion about privatisation:

- 1 The ‘what’ question: for what interests should the government bear final responsibility? Do its responsibilities include an (efficient) system of public transport, combating road congestion, ensuring daily postal deliveries and offering each unemployed person a job?
- 2 The ‘how’ question: who bears the operational responsibility for the interests for which the government has assumed final responsibility? Must the government do so itself or can it more effectively engage private parties for this purpose? If the government guarantees good public transport must it then operate trains itself as well or can it more effectively leave this to private transport companies (particularly since advantage can then be taken of competition between these companies)?

Failure to draw a clear distinction between the *what* question and the *how* question might lead to giving the wrong answer to the wrong question. If there is no question of a public interest, the how question is not relevant. If the how question does however arise, it must be accepted that the government bears final responsibility for the promotion of the (public) interests at issue. In that sense the engagement of private actors to promote public interests will always be coupled with new rules and new supervision so that the government is able to exercise its ultimate responsibility.

The ‘what’ question

The *what question* (i.e. for what interest should the government bear final responsibility?) may be illuminated by drawing a distinction between individual, social and public interests. This distinction is based on political or normative attitudes. In many cases individual interests coincide with social interests. Interests are *social interests* if their promotion is desired by society as a whole. Whether this is the case, is a political question. In many cases, the promotion of social interests does not require government involvement. If the level of prosperity is sufficiently high, is reasonably distributed and if there is no scarcity on account of exceptional circumstances, there will generally be enough bread. The exchange mechanism of the market ensures that the continued existence of society is not at risk. Communication is also a social interest that takes place without government involvement.

At the same time the question arises as to whether the bread will be of sufficient quality without government involvement, whether the media will be sufficiently

diversified and accessible, whether the trains will also operate at ‘unprofitable’ times and whether poverty will be sufficiently combated to ensure the dignity of human existence. Clearly not all social interests are promoted without government involvement (or, in the absence of such involvement, will be promoted *less effectively*). Examples include public goods that cannot be produced without government involvement or the unequal and sometimes possibly unfair results of social interaction. Redistribution by the government may therefore be desired if the promotion of social interests is unduly displaced on to certain groups of citizens (people living further inland also benefit from the coastal defences) or if social inequalities become too great (whether differentials are too large is a political judgement).

For these reasons a clear distinction is drawn in this report between social and public interests. *A public interest only arises if the government takes on the promotion of a social interest in the conviction that this interest will otherwise not come into its own properly.* The recognition of social interests as public interests therefore means that the government makes it an *aim* of its policy to promote that interest.

The ‘what’ question is therefore concerned with the issue as to whether the government should take on a certain social interest. Must it accept final responsibility to ensure that interests of importance to society as a whole are in fact promoted? At the same time the fact that certain social interests are insufficiently promoted in society does not necessarily mean that the government is capable of realising those interests. “The choice between markets and governments is not a choice between perfection and imperfection, but between degrees and types of imperfection, between degrees and types of failure” (Wolf 1993: 88-89). It may force the government to avoid acceptance of a final responsibility.

Two questions therefore arise when it comes to deciding whether a social interest should be turned into a public interest:

- 1 Is it a social interest that would not be properly promoted if the government did not take it on?
- 2 Is the government in fact capable of satisfactorily realising that interest?

From this it will be evident that the ‘what’ question is a matter for political judgement. It is not possible to determine objectively when there are social interests and when it is desirable for the government to assume final responsibility. The what question is therefore inherently a ‘political’ question. This is the reason why this report by the *Scientific Council for Government Policy* focuses not on the what question but on the how question.

The ‘how’ question

If the government assumes a particular interest this does not yet indicate *how* the government should give expression to its final responsibility. In principle this can take many forms. The government can itself bake bread, run trains, construct dykes or distribute benefits. The government can also draw up rules which bakers are required to observe in the baking of bread, it can conclude contracts with private transport companies concerning the operation of public transport at ‘unprofitable’

hours, and it can financially support quangoes in international efforts to combat poverty, etc. The how question is therefore concerned with the *operational responsibility* for the promotion of public interests: should that responsibility be a matter for public or for private organisations? From the above it will be clear that the promotion of public interests can *by definition* never be left entirely to private parties, as that would mean that there was no longer any final responsibility on the part of the government and no longer any question of public interests.

It is not surprising that the what and the how question often cut across one another in the administration of government policies; they often arise simultaneously. Must the government for example stick to its original objective if private parties are given greater operational responsibility? Under what public conditions should privatised transport companies operate? And so on. Nevertheless it is highly important to distinguish the two questions analytically as they differ fundamentally. The first question concerns the *objective* of the government to contribute towards the promotion of certain social interests. The second question concerns the *form*: how must the responsibilities be divided over public and private organisations in realising these public interests?

1.3 DEFINITION OF THE PROBLEM

The problem addressed by this report may be defined as follows: *how should public and private responsibilities be assigned in the promotion of public interests?* In the case of public responsibilities the responsibilities of public actors are at issue, and in the case of private responsibilities the responsibilities of private actors. The key factor in distinguishing public and private actors is the *legal form*. Legal entities set up under public law are public, while legal entities set up under private law are private. Where however the government has practical control as a result of membership of two boards of management at once, a particular administrative regime or its stake in a private law legal entity, an exception has been made in this report; in this case too reference is made to a public organisation. This may apply for example in the case of foundations and public limited companies (NVs).

This report therefore focuses on the *method* of promoting public interests. This question lends itself well to an examination from a scientific viewpoint, in that various scientific disciplines provide arguments for the optimal promotion of public interests. The Council also wishes to provide an analysis of *underlying* questions that require clarification before arriving at a specific assignment of responsibilities for the promotion of public interests. This involves indicating as clearly as possible which arguments the various disciplines in question (economics, law and management science) have to offer. To date, rather too fragmentary and selective use has tended to be made of scientific knowledge in the debate. Many of the stances taken in the policy debate in fact reflect a link between the sectional interests represented by the social actor in question and the argumentation derived from a particular discipline. By contrast, all the relevant questions need to be posed and all the arguments generated by the complex of scientific disciplines need to be weighed against

one another. In this regard new developments such as the growth in internationalisation, increasing use of information and communication technology and the growing professionalisation of society call for a new approach towards the allocation of public and private responsibilities.

1.4 THE CORE CONCEPTS MORE CLOSELY DEFINED

The concept of ‘privatisation’ is particularly subject to ambiguity in the debate about the reordering of public and private responsibilities. In part this is due to the fact that various discussions are cutting across one another. These debates are briefly examined below in order to define our core concepts more clearly.

Privatisation

When it had just started, in the early 1980s, the debate about *privatisation* in the Netherlands was mainly concerned with the hiving off of government tasks and with deregulation. In our terminology the ‘what’ question was key: does or does not the government have final responsibility? Later, however, the concept came increasingly to mean the engagement of private parties in the promotion of public interests. In this report the latter definition will be retained: *the engagement of private parties in the realisation of public interests*. This definition is therefore broader than that frequently used in respect of the utilities, where privatisation refers only to the transfer of property from an organisation in the public sector to the private sector, in the sense of the privatisation of government enterprises. In addition the concept of liberalisation or market liberalisation is employed in that world, meaning the facilitation of a market for private actors where formerly there was a government monopoly only.

Corporatisation

The second debate concerns the *corporatisation* of elements of the public sector. In the case of corporatisation the implementation of public tasks *within* the public domain is placed at a distance and so withdrawn from the direct responsibility of the minister. Corporatisation is primarily concerned with the promotion of public tasks by autonomous administrative agencies. Under Dutch law the assignment of tasks to such bodies is a ministerial responsibility, but the actual implementation of those tasks is not. There are various reasons for appointing autonomous administrative agencies, but one reason gradually emerged as central: easing the minister’s responsibilities. Later corporatisation was more concerned with creating greater autonomy for divisions within the ministry while leaving the ministerial responsibility intact.

Market forces

A third dispute concerns *market forces*. This debate relates in particular to the encouragement of market competition, independent of any other public interests at issue. Seen in this light the good operation of the market is in itself a public interest: without government involvement the market will often be insufficiently competitive. But the debate also has clear interfaces with privatisation: precisely by

making competition possible the government need no longer bear final responsibility for the delivery of services and products. In this regard it should also be borne in mind that the private sector covers more than just the market as referred to above. There are many forms of private interaction in which the exchange mechanism of the market plays no or only a limited role, such as the work of non-profit organisations. The market is an important but not the sole modality of the private sector.

Hybrid organisations

The debates about functional autonomy and market forces come together in the debate concerning hybrid organisations. The latter are bodies that are funded both as a task organisation (i.e. they are assigned tasks within the public domain) and as a market organisation (i.e. they compete against other market players within the private domain). Such double-funding can lead not only to distorted competition (when public monies are used within the organisation to market products more cheaply, or cross-subsidisation) but also to the inefficient use of public funds. By placing public organisations at a greater distance from the minister and by encouraging market forces, hybrid organisations may easily emerge. The Dutch government is currently trying to erect a barrier towards the phenomenon of hybrid organisations.

Conclusion

First of all the fundamental question arises as to whether private or public organisations should promote public interests. Secondly the concern is with instrumental mechanisms serving to guarantee that organisations will promote the public interest as effectively as possible. The main characteristic of all these mechanisms is that they act as a *discipline*. Of particular importance from the government's viewpoint is to identify the mechanisms that can help ensure that the public interest in question is optimally promoted.

1.5 THE PROBLEM IN SHARPER FOCUS

The Council does not regard the reordering of public and private responsibilities as a goal in itself but as a means of improving the promotion of public interests. This raises the question as to what should be understood by the good promotion of these interests. In this regard it is customary to take as the starting point generally accepted criteria for good governance. The latter are directly related to the idea of the rule of law, the social and political acceptance whereof is firmly grounded. These are also the requirements that are explicitly or implicitly accepted as assumptions in the various scientific disciplines concerned: democratic legitimation, legal certainty, legal equality, effectiveness and efficiency. At the same time, these five principles of good governance need not be assigned equal weight in the promotion of every public interest.

Nevertheless these five criteria neither individually nor jointly provide an indication for an optimal allocation of responsibilities in the promotion of public interests.

‘Efficiency’ does not by definition call for promotion within the private domain, in the same way that ‘democratic legitimation’ does not by definition demand implementation within the public domain. Private organisations are not by definition more effective than public ones; the implementation of policies by public organisations is not by definition more reliable in the sense of providing greater legal certainty or legal equality. In fact such comparison is also meaningless as long as we do not place the public interests at issue at the centre. The most important point of reference must after all be whether justice has been done to the public interests in question. Or to put it differently: the possibilities for *safeguarding* the specified public interest at issue. If these possibilities are better in the private domain, then this domain must be selected; if the possibilities are better within the public domain, then that should be selected. The choice between public and private therefore ultimately derives from the question as to where safeguarding can best take place. This puts the problem in sharper focus: in what way can the safeguarding of the public interest best take place?

An adequate choice therefore calls for a clear definition and specification of the public interest at issue: the possibilities for safeguarding depend on the nature of the public interest in question. Accordingly the ‘how’ question can not be answered without providing an adequate response to the question of what the government ultimately wishes to bear final responsibility for (the ‘what’ question). It will be clear that in practice *multiple public interests* will generally be at issue which, in some cases, will each demand another allocation of public and private responsibilities.

As noted the Council leaves the political question as to the interests to which the government should commit itself to the political system. This report discusses the question of the way in which those public interests can best be secured: by placing the promotion of those interests in public hands or in the hands of private organisations. In this regard a nominalist definition of ‘public interest’ has been chosen: a public interest first arises if the government undertakes the promotion of that interest as it is convinced that it would not otherwise come properly into its own.

1.6 ARRANGEMENT OF THE REPORT

The possibilities for safeguarding public interests in the private sector are discussed in Chapter 2, and the possibilities for safeguarding in the public sector in Chapter 3. The observations are not so much concerned with the respective advantages and disadvantages of the private and public domains as such, as with the possibilities and limitations of the safeguarding mechanisms offered by the two domains.

The context in which decisions have to be made about the allocation of responsibilities is subject to change in many areas of policy. For this reason the subject of this report is related in Chapter 4 to three developments that will have a major bearing on the promotion of public interests in the coming years; new circumstances of this kind will often call for a different trade-off.

Conclusions are drawn in Chapter 5. This indicates that the ultimate choice (in favour of public or private implementation) must be determined not just by ‘theoretical’ possibilities for the safeguarding of public interests. Situation B may be better than A, but this is not to say that B can in fact be achieved from A. Such experience or knowledge must also be included in the ultimate deliberation. The findings of the Council are also summarised in this concluding chapter.

2 POSSIBILITIES FOR SAFEGUARDING PUBLIC INTERESTS IN THE PRIVATE SECTOR

2.1 INTRODUCTION

The activities of those promoting a public interest do not automatically serve that interest optimally. This applies to both the private and the public domain. In order to safeguard public interests (in the sense of ‘preventing something from going wrong or getting lost’) it is therefore necessary for organisations to be disciplined. The choice between the private and the public domain only arises once the possibilities for safeguarding are clear. This chapter is concerned with the possibilities for safeguarding public interests in the private domain.

This approach makes clear that the line of reasoning in this report differs from many customary responses to the question as to how public interests can best be promoted. It is not primarily a matter of whether the government or the market should promote a certain public interest. In the first place this antithesis is partly incorrect and also unfruitful. It suggests that the government should be equated with hierarchy, budget mechanisms and democracy and the market with the price mechanism and competition. The reality is much more chequered and hence more interesting. Secondly, the choice between promotion in the private or the public domain must be determined by the question as to the best safeguard mechanisms (or combination thereof) the private or the public domain can offer in order to serve the public interest in question as effectively as possible.

We may distinguish four forms of safeguarding the public interest:

- safeguarding by means of competition (a market with more buyers and more sellers is particularly conducive to efficiency of implementation);
- safeguarding with the aid of rules (the behavioural alternatives are limited by means of laws and contracts so that the public interest in question is served to best effect);
- institutional safeguarding (by strengthening values and norms within a particular organisation if these support the promotion of the public interest in question);
- safeguarding by means of hierarchy under the leadership of the political administrator (subordinates are deemed to carry out the instructions of the minister, with the minister being accountable to Parliament).

This chapter discusses the safeguarding of public interests in the private domain. Only the first three of the above mentioned safeguarding mechanisms are therefore examined: by its nature the last form of safeguard is unique to the public sector and may therefore be left out of account at this point. Correspondingly in the next chapter, where the safeguarding of public interests in the public domain is examined, the market mechanism, which is so characteristic of the private sector, will be (largely) absent.

Which safeguarding mechanism is the most suitable naturally depends first of all on the nature of the public interest at issue. The success of safeguarding mechanisms is also related to the nature and culture of the relevant organisation. Different mechanisms exist for the disciplining of private and public organisations. Furthermore, different mechanisms may exist for disciplining differing public organisations.

A preliminary comment of a different nature is in order in this introductory section. Inevitably there is a certain degree of abstraction from reality. In practice the concern will almost always be with a cluster of public interests (cheap power, green power, universal service provision and so on). In the interests of clarity of argumentation, the discussion below is based on the hypothetical situation that just one public interest is at stake.

2.2 THREE FORMS OF SAFEGUARDING IN THE PRIVATE SECTOR

2.2.1 COMPETITION

Competition disciplines players in the market. It not only forces producers to improve their cost efficiency but also means that citizens' preferences are optimally served (i.e. allocative efficiency). The degree of competition depends on the market form. Perfect competition ideally calls for a homogeneous product (without product differentiation), perfect and cost-free information for all players, lack of entry barriers to new producers and free pricing. This perfect situation will not arise in practice.

For our purposes competition may be relevant in two senses:

- 1 Competition can help ensure that goods representing public interests are in fact produced. The market ensures here that public interests are promoted; final responsibility on the part of the government *with respect to the production of the good as such* is not required.
- 2 Advantage can be taken of the disciplinary effect of competition if the market does not of itself produce goods that are in the public interest. In this case the government could itself deliver these goods. It can also contract out their delivery, after competition has identified the best supplier.

The first of these situations currently arises in the case of the world of telecommunications. A number of telecommunication companies are offering their services in the market, while citizens and other companies force these companies to act competitively through exercising choice. The market here is responsible for the telecommunications possibilities itself. The government does however lay down strict requirements. There is for example the obligation of universal service-provision: everyone has the right to a connection at an equal price for a limited number of services. Such competition therefore has advantages particularly in terms of effectiveness (safeguarding public interests), in terms of cost efficiency and furthermore in terms of allocative efficiency (the market between producers and consumers means that citizens' actual preferences are honoured more effectively).

The second situation applies for example to the maintenance of public parks and gardens. Over the past decade many municipalities in the Netherlands have switched to contracting out the maintenance of public parks and gardens to private firms. Similarly government authorities are increasingly contracting out the reintegration of benefit-claimants to private firms (i.e. temporary employment agencies), which compete among themselves for government contracts. It is this competition that disciplines private firms and directs them towards the promotion of public interests. Competition therefore has advantages here in terms of cost efficiency and effectiveness. The market does not provide a means of enhancing the allocative efficiency in this case, as the government itself determines the demand. The latter is determined by democratic means.

An intermediate form is *competition for the market* (in which a concession is periodically awarded). As in the case of outsourcing the various suppliers competing for the market are obliged to put their cards on the table. The government here is the tendering party and the competing firms the bidding party. In the case of outsourcing the highest bidder is awarded the contract, while in the case of competition for the market the highest bidder is awarded the concession. After the concession has been awarded a different kind of market arises. In that market the government is no longer the tendering party; these are the members of the public buying a bus ticket from the transport company that has been awarded the concession (to act as a monopolist in the market for a certain period). The ultimate decisions about the production, consumption and distribution of goods and services are taken by the transport company and the passengers. In the case of competition for the market gains are therefore made in terms of allocative efficiency.

In the case of outsourcing and competition for the market ‘dedicated’ investments may play an important role. Investments are dedicated if they generate value in a particular relationship only – in this case that with the government. Dedicated investments entail the risk of what is known among economists as the hold-up problem, in which one party deprives another party of the return on the specific investments. If the government were to grant the market after one year to another party many investments could be lost as these cannot be deployed in another market. The firm to which the concession has been awarded would not have enough time to recoup the cost of its investments (that are profitable in the context of this relationship only). For this reason firms will always strive for a lengthy concession period. In the event of a shorter period they will demand a higher ‘insurance premium’ and the costs for the government will therefore be higher.

2.2.2 INDUCED COMMITMENT IN ADVANCE THROUGH STATUTORY RULES AND CONTRACTS

Induced commitment in advance through rules and contracts is a second method for disciplining private parties and thereby safeguarding public interests. Unlike in the case of competition the free decision-making room is curtailed in advance by the imposition of rules formulated *in abstracto*. Whenever a case arises coming

under the rules it is necessary to act in accordance with that rule. This is why reference is made to ‘induced commitment in advance’. Induced commitment in advance therefore also indicates the size of the *residual, free decision-making room*. Formally, such free decision-making room does not exist in the case of a *complete* contract: all the parties know what they have to do; there are no alternatives. In practice however the contract will always leave room for independent initiatives. Precisely that residual decision-making room can make a contribution towards the effectiveness and efficiency of policy. In the case of greater independent (residual) decision-making room the implementing party has an incentive to act efficiently.

Rules may take the form of statutory regulations but may also be laid down in contracts. Statutory regulations apply particularly to perfect competition, where the government is not involved as purchaser but solely as regulator. Contracts apply to outsourcing, where the purchasing party (the government) and the supplier lay down the terms and conditions with which the service or product in question must comply. These forms differ legally and the consequences therefore also differ in part, but they have in common the fact that they both serve to limit the freedom of action in advance.

Laying down rules in legislation *appears* a simple method of preventing undesirable behaviour or encouraging desired behaviour. Rules prohibit conduct at variance with the public interest and ensure that the right of property and other rights are respected and that contracts are observed. Citizens are for example obliged to take out insurance against loss of earnings, while the private insurance companies are prohibited from cherry-picking. The rules oblige the insurance companies to offer insurance to both good and bad risks.

At the same time these rules do not automatically lead to a result. For that to occur they must be observed, which does not just happen by itself. Penalties must be imposed on non-compliance with the rule and furthermore carried out where a violation has indeed taken place. In some cases the rule can also hold out the prospect of advantages, such as a grant, tax cuts or a benefit.

Contracts are totally different in nature from rules laid down in legislation. Laws are universal in nature and apply to anyone coming under the scope of the rules. Rules laid down in contracts are binding only on the party with whom the contract has been entered into. This has the advantage that more specific agreements can be made and that the public interests can be determined more precisely. As against this contracts cannot be determined unilaterally by the government but are the outcome of negotiations. This means that a separate significance has to be assigned to the interest brought into the equation by the counterparty. Nor can a contract be amended without the consent of both parties. If the government considers that the maintenance of a contract is not in the public interest it will nevertheless generally be bound to continue it as long as the counterparty sticks to the contract. The democratic legitimation of the agreements laid down in a contract therefore lag behind those of rules enshrined in legislation: the determination and upholding

depend in part on the consent of the specific party in society and are not therefore solely the result of the democratic decision-making process.

2.2.3 INSTITUTIONAL SAFEGUARDS

The third form of safeguarding public interests is more subtle and less direct than the two outlined above. The safeguarding of public interests is more straightforward if the independent values and norms of organisations correspond more closely with the nature of the public interest at issue. This means that the safeguarding of public interests may also take place by *strengthening* those values and norms of organisations that underpin the public interest at issue. Examples of *institutional safeguards* are to be found in many areas. The quality of education is determined not just by rules but also by invoking the professional honour of the teaching profession (for example by publishing appraisal figures). The quality of scientific education is determined not just by the allocation of funds by the Ministry of Education but also by the organisation of ‘visitations’, in which professional colleagues appraise the quality of the work. The quality of healthcare can be improved by placing greater stress on the values and norms of doctors and nursing staff. Correspondingly, one form of institutional safeguard is at risk of being lost now that the housing corporations have been privatised. Unless other forms of institutional safeguards can be found the government must hope that the norms and values that have traditionally governed the activities of housing corporations will continue to help ensure an adequate supply of housing at the bottom end of the market.

Institutional safeguarding is therefore about strengthening values and norms that correspond closely with the public interest in question. Numerous systems are available for this purpose: internal and external quality tests, peer reviews and even disciplinary law. Self-regulation may also be encouraged and the rendering of account to the target group itself may be strengthened. Even the flotation of a former state enterprise may be regarded as a kind of institutional safeguard: the introduction of shareholders has the effect of strengthening the market-orientation of the organisation.

The concept of ‘institution’ is therefore used here in a sociological sense and refers to a complex of behavioural patterns: “Institutions consist of cognitive, normative, and regulative structures and activities that provide stability and meaning to social behaviour” (Scott 1995: 33).

2.3 A SINGLE SAFEGUARDING MECHANISM IS VULNERABLE

However important the three safeguarding mechanisms may be individually, in general it will not be advisable to rely on a single safeguarding mechanism alone. The vulnerabilities of the three mechanisms are first discussed individually below.

Competition

If there is sufficient competition in the market, the market itself will organise the delivery of goods and services (at a reasonable price). At that point the government need not assume final responsibility for the delivery of goods and services. *Other* public interests may however play a role in this situation, namely the preconditions for production and delivery. Market competition does not guarantee that these interests will be promoted. If anything the reverse applies: the competition often means that the public interests in question come under pressure. Statutory regulations will be required in order to safeguard these public interests.

In the event of outsourcing and competition for the market, competition is a useful mechanism to safeguard public interests: it forces suppliers to supply the best possible product at the lowest possible price. But here too competition is not sufficient in itself. The stipulations which both parties are required to observe would need to be laid down in contracts. Needless to say this also concerns the determination of public interests. The contract will need to stipulate that the private party to which the contract is granted considers itself bound by the promotion of the public interest in question.

The fact that competition is not enough in itself to safeguard public interests is clearly apparent in the case of privatisation. *Privatisation forces the government to articulate the public interest at issue more precisely.* Furthermore public interests shift in the case of privatisation and new ones arise. Competition must for example be partly organised by the government; the market is not a natural phenomenon and perfect competition least of all; it calls for a market-master. Competition may also have socially undesirable consequences that need to be mitigated by government intervention.

It is not therefore possible to rely on competition alone for the safeguarding of public interests. This not only means that privatisation will always be linked with ‘induced commitment in advance’ in the form of statutory regulations and contracts but also that there will always remain a mix of public and private responsibilities. However logical that may be, private parties will tend to complain about the large number of rules with which they have to abide after they had been engaged to promote public interests. Evidently the ‘what’ and the ‘how’ question are confused with one another here. The government is after all ‘only’ seeking to identify another organisation for the promotion of public interests. It goes without saying that it will remain accountable in such circumstances for the promotion of public interests and will therefore continue to claim a role for itself.

Institutional safeguarding

The possibilities for 'institutional safeguarding' need to be qualified along comparable lines. However important institutional safeguarding is, it is difficult to rely on it totally. In the first place there may be various subcultures within organisations and the public interests may correspond more closely with one subculture than another (consider for example the differences between the professionals and managers within an organisation). Secondly values and norms cannot only be strengthened (by the government) within an organisation but are also exposed to other influences (such as societal developments). Thirdly it remains to be seen whether the government will succeed in strengthening precisely those values and norms that underpin the public interest in question.

In seeking to safeguard public interests the government can therefore never rely entirely on institutional safeguards. In many cases there will be a need for a combination with another safeguarding mechanism. In some cases rules will be required in order to ensure that public interests are observed in practice, while in others competition can make an additional contribution towards safeguarding public interests. This does not eliminate the fact that fewer safeguards will be required in certain sectors, on account of the prevailing norms and values, than in others. The government benefits here as it were from the norms and values already in place within certain sectors of society.

Induced commitment in advance

At first sight induced commitment in advance by means of rules and contracts might appear the most effective safeguard mechanism. Whereas competition and institutional safeguards both depend to a significant extent on self-regulation, this is not the case here. Here the government determines how private actors are to behave or it will conclude contracts with private players that have been awarded an assignment. Nevertheless this safeguarding mechanism also needs to be qualified. Rules and contracts are not automatically observed and enforcement and supervision are required for the safeguards to be effective. Even with enforcement and supervision the safeguarding of public interests is still not assured. From the literature on public administration it is known just how difficult it is for government to direct private parties. In this regard three barriers may be noted: social diversity, the solidarity and autonomy of the actors to be directed and the interdependencies between them. Precisely on account of that solidarity and the autonomy of the actors to be directed it is not a straightforward matter for the government to negotiate rules with private players. External rules have their own meaning for organisations and hence also for private bodies. Organisations are in this respect 'self-referential'.

Even if organisations do include external rules in their formal programme these may lose their significance in the actual working processes at lower levels. Hospitals are good examples of this phenomenon of decoupling. Although the implementation of statutory regulations may be something that greatly exercises the minds of management, such regulations may have little if any effect on the actual working processes. Decoupling also applies within the government itself. Counter

staff, for example, gear their behaviour equally as much to shared codes as they do to the strict regulations issued by senior management.

Conclusion

Reliance on a single safeguarding mechanism is hazardous. Apart from competition, rules are required in the market. In the case of outsourcing, contracts as well as competition are required. It is important within an organisation to strengthen the norms and values that underpin a particular public interest, but even this does not provide any certainty that the activities of the organisation will wholly serve the relevant public interest. And the enforcement of rules is less straightforward than it appears, while rules can also come over in distorted form in social life. At the same time it is evident that the three mechanisms can be *mutually reinforcing*. They stop one another from becoming too one-sided. The safeguarding of public interests in the private sector is therefore a matter of finding the right *mix* of safeguarding mechanisms.

The possibilities for safeguarding public interests in the private sector are analysed in more detail below. This is done on the basis of the three most common ways of engaging private actors:

- 1 public interests are promoted by private parties under the direction of the government;
- 2 public interests are promoted by private parties on the instructions of the government (outsourcing);
- 3 public interests are promoted by (private) organisations of professionals whose values and norms correspond closely with those interests.

2.4 PROMOTION OF PUBLIC INTERESTS UNDER THE DIRECTION OF THE GOVERNMENT

2.4.1 INTRODUCTION

If the market itself takes care of the production, the government does not bear any responsibility for the product as such. The government may however set conditions for production ‘in the public interest’. The central question is therefore how private parties can be tied to the public interest: how the public interest can be safeguarded in the midst of social life. In addition the government naturally bears responsibility for the effective operation of the market, particularly if the market is delivering a product that represents a public interest.

2.4.2 WHEN IS INDUCED COMMITMENT POSSIBLE?

The safeguarding of public interests in the market depends in particular on induced commitment in advance by means of statutory regulations. The circumstances in which safeguarding by means of rules is more or less effective are described below.

- 1 In the case of induced commitment in advance by rules it is important for there to be consensus within government concerning the public interests at issue, as the adoption of rules for private players presupposes a certain constancy. The rules must be knowable, unambiguous and applicable for those concerned and must not be constantly subject to change. This may be a problem if consensus has not yet been achieved within the government or if the political standpoints are transient in nature. The public interest must have crystallised out sufficiently into a generally accepted, stable public interest before it can be laid down in rules.
- 2 If the government wishes to or must be flexible, rules lend themselves less well to the safeguarding of public interests. This applies to new policies, the external effects of which are not yet clear or where the government is still at the initial exploration stage. It also applies to numerous technological developments that tend to take a turbulent course and that have not yet crystallised out. The government is also permitted to experiment. Why should only the market be used for innovation? Or more specifically, in order to achieve innovation the government must sometimes take initiatives itself. If the government is therefore uncertain about the requirements that it wishes to lay down for a particular good or service in terms of the public interest, it will be less easy to lay those requirements down in statutory regulations.
- 3 In the case of induced commitment by means of rules the interest in question must be capable of being expressed in rules. In some cases it may be difficult to formulate unambiguous rules for implementation purposes. In such cases legal equality may be threatened. The situation may also provide a reason for reconsidering the public interest in question; the acceptance of final responsibility by government when this has only been worked out in the form of poorly enforceable statutory regulations will tend to backfire. From the viewpoint of practicability and the necessary differentiation of rules it can sometimes be better for the public interest to be secured by leaving the regulation to the social partner (e.g. terms of employment and working conditions policy).
- 4 The effectiveness of rules is related to the context in which the public interest is promoted. For this reason induced commitment by means of rules will be more problematical the more the sectional interests of the organisation in question diverge from the public interest to be promoted. The commercial interests of private players may for example be at variance with the public interest being promoted. In that case the company will be inclined – in itself legitimately – increasingly to neglect the public interest when it comes to the price/equality ratio. Where the two interests correspond more closely with one another the safeguarding of the public interest will be more straightforward.
- 5 Rules must be enforceable. The supervision of compliance must be organised. Here we must draw a distinction between supervision of the workings of the market (as part of the government's market-regulation task) and supervision of

the compliance with specific rules that have been laid down in order to safeguard public interests. Supervision is much simpler in the case of strict rules compliance with which can be checked on the basis of readily verifiable information, than it is in the case of vague rules and less readily verifiable information.

- 6 The greater the number of public interests calling for regulation of the market, the more the possibilities for competition will decline. The more public interests the government wishes to realise, the sooner the limits of the model of market forces under government direction will be reached. This discussion applies for example to public transport. Theoretically rail competition is perfectly possible, on condition that the government does not lay down an undue number of preconditions for rail traffic. As the experience in Britain indicates, competition with bus transport by road can be realised subject to the same condition. If on the other hand the government also wishes to safeguard other public interests (such as the environment, accessibility and affordability) the rail competition will be subject to so many preconditions that competition ceases to be possible. In that case competition *for the market* only becomes possible.

- 7 A more far-reaching situation arises in the sphere of social policy. Here the government often lays down so many conditions for insurance that resort to collective arrangements becomes necessary. In this way the market gives way to a 'quasi-market'. In this case the interaction between supply and demand does not take place at the level of the ultimate customer – the employee – but at the collective level of large firms and industrial sectors. It is the latter that make a choice from the alternative benefit agencies, including a contract with the agency that best meets the sector's own terms and conditions. From the literature it is known that such quasi-markets operate under strict conditions only (Bartlett and Legrand 1994). Quasi-markets are subject to a good many risks: 1) the price does not indicate the preferences of the actual customers (the employees); 2) suppliers and demanders become too closely interlinked; 3) the system of block contracts, in which agreements are made for a (large) number of products, gives the supplier the possibility of misusing his information lead; 4) on account of the complexity and uncertainty the transaction costs in quasi-markets are often high. In view of these risks it is understandable that quasi-markets operate laboriously.

2.4.3 CONCLUSION

What do these rules tell us about the desirability of privatisation? In the first place, it is not a matter of whether the market can itself arrange the delivery of products and goods at a reasonable price. If that is the case, the delivery of products is *by definition* not a public interest. The concern here is the possibility of laying down conditions for the delivery and production of goods and services. The more that the public interest can be translated into unambiguous, strict and lasting rules, the more this will be possible. An additional consideration is supervision of compli-

ance with the rules: the more difficult it is to obtain information on compliance the less certain it will be that the public interest is being adequately safeguarded. Finally privatisation makes less sense when so many rules come into play that little if any room is left for competition.

The privatisation of a task by placing it on the market and safeguarding the public interest by means of statutory regulations will not therefore be appropriate in all cases. In addition other options also have their limitations and drawbacks. This sometimes raises the question as to whether the government should not open up its final responsibility to debate.

2.5 PUBLIC INTEREST AND OUTSOURCING

2.5.1 INTRODUCTION

Outsourcing provides the government with an excellent means of taking advantage of the competition mechanism to safeguard public interests. Here the government acts as the only buyer and the competition takes place between various suppliers. The nature of the task rules out the possibility of a normal market, as applies in the case of many public facilities or if there is a natural monopoly.

Two mechanisms may be used in order to safeguard public interests: competition, which forces suppliers to promote public interests as effectively and efficiently as possible, and induced commitment in advance by means of rules. Since the government enters into a relationship here with one or more specific parties, rules will be mainly laid down in contracts. In addition the legislator will generally have laid down the basic rules for the execution of the task. The scope for outsourcing is therefore related to the possibilities for competition and induced commitment in advance through contracts.

2.5.2 WHEN IS COMPETITION POSSIBLE?

- 1 Not every government task lends itself to outsourcing. This applies to *determining* the fundamentals of the legal order and to a large extent to the maintenance of the legal order, without which a market cannot function properly.
- 2 The execution of the task must be the subject of competition. It must be a task that *multiple* private parties can perform and there must be a large enough scale for competition. Where the assets are highly specialised (e.g. if specialised technical means of production are used, or if workers with special skills are needed who cannot readily be deployed elsewhere) the number of suppliers will be lower. In addition outsourcing will sometimes involve products for which the government alone acts as the buying party. This makes it less attractive for private players to enter the market: in the absence of a contract from the government it is not possible to make a return.

- 3 The more specialised the investments required for the task in question the more difficult it is to organise competition in the event of outsourcing. Dedicated investments are those that only provide a return on capital between specific parties and which are lost when that relationship is terminated. Such investments can rapidly become prohibitive when it comes to switching to another private player. Although this may involve outsourcing to a private player, genuine competition is no longer possible between multiple potential suppliers. An example would be investments in the rail infrastructure. The government can hardly transfer ownership of the infrastructure of 'unprofitable lines' to a private transport company if it wishes to have the ability in the future to contract out (the use of) these lines to another company. In the case of sizeable dedicated investments a part of the promotion of the public interest can of course be left to the market, namely the operation of the transport on the infrastructure in question. This is relevant as the debate tends all too readily to deal with the sector as a whole, rather than differentiating in terms of individual elements or functions within that sector.
- 4 The institutional framework must lend itself to competition. Market forces presuppose a certain attitude on the part of the players: they must be primarily guided by competition and the maximisation of individual utility. The institutional tradition as this has evolved within a particular sector may result in a totally different mental attitude on the part of the players, due to which other considerations become dominant. In social policy for example market forces are in many cases undermined because the stakeholders base their transactions on factors other than economic considerations alone. Social security tends to be an area in which the prevailing ethic is one of social integration based on the values of particularism, loyalty and role regulations rather than competition and the maximisation of utility.
- 5 An effectively functioning market is not a natural phenomenon. Competition does not always arise, for example because the territorial scale of the market is too small, so that there is no level playing field. Unbalanced relationships in the market may also militate against competition. Suppliers for example have an interest in keeping out new entrants by holding prices artificially low.

2.5.3 WHEN IS INDUCED COMMITMENT POSSIBLE?

- 1 The safeguarding of public interests with statutory rules and contracts requires a certain consistency over time in the determination of the public interests at issue. This in turn requires sufficient and sustained consensus about those public interests. It is not possible for the goal is to be indeterminate.
- 2 If there is a need for flexibility among the government in order to learn from past experience there will be less scope for safeguarding by means of contracts, since contracts are entered into for a fixed term. The minister will in general be able to deal more flexibly with regard to his own department than with regard to

private organisations. Contracts with private parties therefore call for a commitment on the part of the government. On the other hand flexibility can to some extent be built into contracts, concession conditions and so on. Moreover, the government may also wish to protect itself against its own inconsistency over time. For that reason the Dutch government often leaves the maintenance of nature conservation areas to private organisations.

- 3 The public interest at issue must be sufficiently capable of *operationalisation* for it to be laid down in a contract. The output of the one organisation is more readily quantified than that of another (Wilson 1989). Certain activities will also be more readily definable than others (e.g. innovative capacity, mentality). The question arises here as to how explicitly or implicitly the goal should be articulated in a contract. In the case of explicit contracts (laid down for example in terms of performance indicators) there is the risk of perverse effects in that these indicators will become a goal in themselves in the performance of the contracts, while less measurable but nevertheless valuable aspects that were originally the key consideration are lost to sight. This is sometimes referred to as the performance paradox: the use of certain performance indicators can provide a false impression and even contribute towards a loss of organisational effectiveness and efficiency (Meyer and Gupta 1994).

On the other hand implicit contracts, in which the contracting party is given a high degree of freedom in performing the task, renders the government highly dependent on the goodwill of the private organisation. Particularly if such an organisation is primarily concerned with profitability and enhancing its own continuity, the public interest may find itself squeezed out. Although the reputation mechanism may provide a certain counterweight it does not eliminate the risk as such.

- 4 The government must have sufficient *information* in two respects. In the first place there must be sufficient information in advance concerning the prospects of achieving the desired situation. If that is not the case we refer to 'imperfect information'. Secondly, both parties – government and private player – must be able to maintain sufficient sight of one another's activities. It is difficult for the public interest to be contracted out if the government as buyer has insufficient information on the efforts that the supplier has to make. The principal needs to have a broad idea as to what the agent will need to do in order to achieve the desired result before it will be willing to enter into contracts offering some form of return. In economic theory this phenomenon is known as asymmetric information, i.e. the two parties are not equally informed. Needless to say the reputation of a firm may moderate the problem of asymmetric information: in certain cases the government will be able to rely on the fact that the firm will not overcharge for the activities in respect of which the government does not have a full grasp.

- 5 Safeguarding the public interest with contracts is possible only if the formulation of that interest results in a sufficiently unambiguous norm for implementation that the normal requirements of legal equality and legal certainty can be satisfied. Providing such a norm is by no means always possible. This may be due to a number of reasons. There may, for example, be a large number of partly conflicting public interests at issue without any clear order of priority. Alternatively a large measure of policy freedom may be required because the assessment of each individual case calls for a detailed differentiation and elaboration of the norm that cannot be provided in advance. Where legal certainty and legal equality cannot therefore be safeguarded by means of contracts, implementation by private parties will not be in prospect. This applies all the more since implementation within the public domain provides specific, formal opportunities for legal protection and the protection of interests. These must also be taken into account in the political deliberation. NB: this is not a matter of *reliability* (in the sense of ‘supporting a line once it has been adopted’) but of legal certainty in the sense of the predictability of executive agencies.
- 6 The greater the risks and the risk-aversion among private entrepreneurs, the less readily the public interest is contracted out. In such cases the private player will possibly require excessive insurance from the government as compensation for any misfortune for which it does not consider itself responsible. In practice, however, safeguarding the public interest by means of a contract in this situation is possible, but the costs may be so high that the government can better opt for promotion within the public domain. The public nature of unemployment and invalidity insurance may be understood in these terms.
- 7 It must be possible for the fulfilment of the contract to be confirmed. A large number of the aspects referred to earlier will be relevant here, such as the information available to both parties. If the intended output cannot be readily verified it will not be possible for a third party – for example a judge – independently to determine whether the commitments have been met. Compliance with the statutory and contractual obligations will not then be guaranteed. If the output is verifiable to only a limited extent, not only will the safeguarding of the public interest be uncertain but supervising compliance will also involve high costs as regards the collection of information, appraisal and correction. At the same time, however, the reputation of firms may smooth out the roughest edges of this problem.

2.5.4 CONCLUSION

Outsourcing relies on two types of safeguard: competition and induced commitment by means of contracts. Both mechanisms have their limitations. It is particularly important to check closely that there are sufficient opportunities for competition. In this regard a clear distinction needs to be drawn in terms of *functions* within a particular sector. Although competition might not be possible for the product as such, competition may be possible in certain areas.

If competition is not possible there is little reason to proceed with outsourcing. One important exception may however be considered, namely where a private player has more or much more professional knowledge or relevant information that is essential for the proper promotion of the public interest (such as non-contractible human capital).

In addition, even if outsourcing is possible for all sorts of reasons, the *transaction costs* may be an important consideration in nevertheless deciding *not* to proceed with outsourcing. From the literature it is known that the transaction costs for outsourcing can be high or even very high. This is also traditionally the reason why not transaction but hierarchy is the leading coordination mechanism within enterprises, as Coase indicated over half a century ago (Coase 1937). Transaction costs involve not just the costs of contracting and monitoring but also those of bonding (i.e. costs incurred by the agent in order to make it clear to the principal that the agent will not be guilty of undesirable behaviour) and residual costs (i.e. the remaining loss: discrepancies between the behaviour of the agent in reality and the behaviour that would maximise the principal's proceeds). Such transaction costs are particularly high if extensive use is made in a production process of specific assets or knowledge (or when it comes to specific products that are not on sale elsewhere and if the investments lend themselves barely if at all to other purposes), if the uncertainty (e.g. in the market) is great and if the relevant transaction occurs frequently. Finally transaction costs may be higher on account of cultural factors. Path dependence, for example, may mean that future options are limited by choices made at an earlier point.

On the other hand a full deliberation also involves an examination of the alternatives. What are the possibilities and limitations of those alternatives? How high for example are the *internal* transaction costs? For, the promotion of public interests within the public domain also involves transaction costs. Also to be taken into account is the weight to be assigned to the public interest by the principal in relation to the advantages of outsourcing in terms of efficiency. And to what extent do the various public interests at issue lead to conflicting conclusions? And which public interest should then weigh the most heavily?

2.6 PUBLIC INTERESTS AND PROFESSIONAL ORGANISATIONS

2.6.1 INTRODUCTION

Engaging the market takes advantage of competition as a disciplinary mechanism. Under certain conditions this proves highly effective. The key problem nevertheless remains bringing the competition and the public interests at issue into alignment with one another. The disciplinary effect exerted by competition may sometimes serve other than just the relevant public interests; precisely for this reason the 'marketing' of education or healthcare call for special attention. Rules and contracts are required as an additional means of safeguarding the public interests.

It is precisely for this reason that there is in practice also a third form of safeguarding public interests based not on competition but on *enlarging* the convergence between the norms and values in certain organisations and the relevant public interest. This section examines this ‘institutional safeguard’ of public interests in respect of one modality, namely the safeguarding of public interests within (private) professional organisations. In itself the concept of institutional safeguarding is wider: safeguarding by strengthening norms and values that support the relevant public interest.

Furthermore professional organisations are by no means always private; this does apply to healthcare but certainly not to education. Many professional organisations are at the cutting edge between the public and private spheres: they are publicly funded but enjoy administrative and substantive autonomy within our system.

2.6.2 PROFESSIONAL ORGANISATIONS

The meaning of the word ‘professional’ is changing. In the classical sense professionals are generally self-employed professional practitioners operating on the basis of a separate code of conduct and their own professional rules. Doctors, lawyers, pharmacists and architects are well known examples of professionals in the classical sense. They have their own professional association regulating training and registration and in many cases even have their own disciplinary law. They have acquired their specialist knowledge (i.e. their specific professional skills) after lengthy and intensive training. The profession is protected: people are only allowed to set up as a doctor or lawyer after having completed a recognised course and after registration by the professional association.

In more modern and recent thinking about professionals the main focus is on knowledge and expertise. The concept covers all those having specialist knowledge and skills and who are to a significant extent guided by professional standards and values. More and more occupations are organising themselves along these lines, while at the same time often taking over the features of the classical professional: the establishment of separate professional associations and the drawing up of separate professional codes of conduct, etc.

Furthermore the professional increasingly operates within organisations. This has given rise to ‘professional organisations’. These are bodies in which the primary process is controlled by professional practitioners and where the realisation of the organisation’s central role depends heavily on the knowledge and expertise of professional practitioners. The lack of hierarchical direction is therefore also highly characteristic of professional organisations. Examples include hospitals, law firms, firms of consultants and accountants as well as educational institutions, scientific institutes and universities, et cetera.

The separate standards and values play an important role in such organisations. Scientists are for example primarily concerned with pushing back the ‘frontiers of

knowledge'. Primary teachers are primarily concerned with the teaching and raising of little children.

This is not to deny that the profit motive may sometimes be the dominant consideration within a professional organisation. Doctors' partnerships are not just concerned with the health of their patients but, equally, with the income they are able to generate by working in that way. Law firms are in many respects normal businesses that seek to increase their return in financial terms by means of mergers and cooperative arrangements. Also, the separate professional values and standards will carry more weight in one professional organisation than in another. This does not eliminate the fact that those professional values and standards will always be of greater or lesser significance.

What all this means is that the direction of professional organisations imposes special demands. From the literature it is known that professional organisations operate the most effectively given relatively great autonomy (Mintzberg 1983). In this regard it is confusing for the government that professional organisations consist not just of trained professionals but also of administrative managers. As long as the government is communicating with these managers a hierarchical mode of direction will appear much more successful than it ultimately proves to be. Similarly the aim of introducing greater market forces within universities is supported more actively within the world of university administration, with its links to the ministry, than it is among academics themselves.

This also makes it clear that the work of professional organisations is not just determined by professional standards and values. In the first place the profit motive is to a greater or lesser extent an important factor for professionals. Secondly professional organisations are subject to the tension noted in the literature between managers and professionals. The former often subscribe to different values and standards from the latter.

2.6.3 POSSIBILITIES FOR SAFEGUARDING WITHIN PROFESSIONAL ORGANISATIONS

In order to make use of the instrument of institutional safeguards within professional organisations four conditions need to be satisfied.

- 1 The public interests must correspond closely with the pattern of values and norms of the professionals. In the absence of such congruity, reliance on professionals is certainly not without its risks. Legitimated by their professional status, it is professionals in particular who go their own way – on occasion to the detriment of the public interest in question. In safeguarding public interests within professional organisations it is however possible to take advantage of the differences between the professionals and the managers. If the professionals pay little heed to financial considerations, it is better for economies to be effected through the managers. In healthcare, for example, the instrument of 'bed reduction'

appears to have been particularly responsible over the past decade for the reduction in health spending. Not by accident this is an instrument in which the professionals played no part.

- 2 Like other forms of safeguard, institutional safeguards are never enough in themselves. A combination with some other form of safeguard is required. Induced commitment by means of rules and contracts is the most obvious course of action. As noted above, the market mechanism is by no means always consistent with the institutional environment of professionals. And where use is made of market forces, these may be better directed to the managers in the professional organisations. Rules and contracts must also fit in with the professional context. This means that it is necessary to allow for the relative autonomy of the professionals. Rules and contracts must be aimed at enlarging professional responsibility; working towards certain objectives works better than output targets. In addition rules and contracts must strengthen the professional values and norms that support the public interest in question. Investments must be made in such values and norms. Among other things this can be done by placing a premium on peer appraisal. Competition between professionals may also be an important instrument in the professional world – although this is a form of competition that need not involve the profit motive or financial remuneration. In the world of professionals, professional status is often a better form of remuneration than the return made by the organisation. Finally, disciplinary law is generally an important institutional safeguard among professionals.
- 3 The engagement of professional organisations in safeguarding public interests calls for a certain level of transparency. Although professionals may have their own values and norms, the way in which they operate will need to be clear and transparent if they bear responsibility for the realisation of public interests. The financial accounting will need to provide insight. The fact that it will often be better not to set output targets is not relevant in this respect; what will need to be clear is the way in which resources are used in order to promote the public interest at issue.
- 4 Professionals must be able to render account to their clients and towards their peers. To this end extra checks and balances may be introduced into the system that can bind professionals to the public interests and strengthen the relevant professional values and norms. The position of patient associations, of student bodies in university education, of parent associations at primary level and society in general in university research, et cetera, requires attention in this regard. It is the government that must ensure that such mechanisms of accountability are in place and also effective.

2.7 IMPROVED SCOPE FOR SAFEGUARDS IN THE PRIVATE SECTOR

2.7.1 SUPERVISION AND RENDERING ACCOUNT

Accountability plays an important role in the three forms of safeguarding, particularly if the safeguards are to be effective. In the case of competition the accountability takes place in the market, while in the case of induced commitment by means of rules and contracts this generally takes place in retrospect through supervision. In the case of institutional safeguarding account is often rendered towards clients (patients, the parents of pupils and so on). All these accountability mechanisms increase the effectiveness of the safeguards. Or more precisely, they generate the information required for the safeguarding to be successful. But accountability cannot be assumed; supervision is also required.

Against this background a number of aspects of relevance for the supervision of private organisations are discussed below. By supervision is understood the collection of information concerning the question as to whether an action or matter meets the requirements laid down, forming a judgment on that basis and then intervening if necessary.

- 1 The place of supervision within the policy system is not always clear. On the one hand this function must be clearly distinguished from such functions as policy formulation and implementation so as to prevent any confusion of interests. On the other it needs to be closely related with the other functions, especially the preceding policy determination phase; many problems associated with supervision are rooted in this preliminary phase.
- 2 The nature of the public interest and of the context in which that interest must be promoted should determine the nature of the supervision. Where markets have crystallised out and are operating effectively a less rigorous form of supervision will generally suffice. In the case of new, highly dynamic markets the supervision will need to go further and involve more detailed regulations. This certainly applies to the new markets of the utilities. It is not for nothing that the supervisor is designated as the regulator in the international literature in this field.

In a general sense the degree of congruence between the desired public interest and the social reality will determine the intensity of supervision. If that congruence has not been properly established beforehand there is a real risk that the wrong type of supervision will be selected. Similarly a failure properly to acknowledge the conflicts between the various public interests at issue will result in ambiguous, impractical standards and it should come as no surprise if the supervision falls short of the mark.

- 3 Putting supervision in place requires the necessary time. This does not primarily concern the organisational structure; more important is ensuring that the supervisory body is equipped with the necessary knowledge and skills and has the

requisite practical authority. In the beginning, the existing market player – the previous monopolist – will tend to hold all or most of the sector-specific information. This will mean that the supervisory body will be under-equipped at the beginning stage when it faces the heavy burden of setting the market up.

- 4 This information problem will also persist during the next phase. Given their competitive position the market players themselves will have no interest in providing the supervisor with the necessary information. There is a greater consciousness of this problem in countries that had experience with building up the function of market-master, e.g. the United Kingdom, than there is in the Netherlands. It is at any event not a teething problem that will go away as experience is gained ‘on the run’.
- 5 Finally consideration needs to be given to the positioning of the supervisory body in relation to the politically responsible minister on the one hand and the relevant sector on the other. Positioning close to the sector has advantages in terms of strengthening the public authority and in relation to knowledge and information but demands a price in terms of independence. The latter applies equally to a position close to the minister.

2.7.2 THE NEW ROLE OF THE GOVERNMENT: MARKET-MASTER

From the privatisation in recent years it has now become clear that it is *more* than just a matter of supervision. Ideally an effective and, given the public interest, also a properly conditioned market presupposes that a clear institutional framework will have been put in place beforehand by the government, the most important elements in which will be proper legislation, inspection and supervision. This new public function, to be shaped by the government, is also referred to as ‘market-mastership’. This function is fairly new in the Netherlands.

The importance of this new role of the government has evidently grown because a greater number of public tasks have been placed at a distance in the past two decades. Experience has also indicated that the creation of a new institutional framework and the organisation and introduction of supervision not infrequently prove awkward and problematical. In part this is because there is a real danger of inconsistency over time between the arrangements put in place for the public function of market-mastership and developments in the market. The game gets under way before the rules have in fact become clear and can be induced. In addition the costs of market-mastership often tend to be underestimated in advance. Seen in retrospect, the way in which market-mastership is organised can be so complicated and expensive that a decision in favour of outsourcing or privatisation must be reconsidered.

On the other hand the possibilities for privatisation may be underestimated because too little is done about effective market-mastership. In that respect it is important to draw a distinction between structural negative conditions for private

safeguards and negative conditions arising from inadequate government action or the lack of effective supervision. In contrast to the former, the latter conditions can of course be redressed. In that respect the government partly has the success of safeguarding public interest in the private sector in its own hands, as it can help ensure that there are better possibilities for safeguarding those interests.

3 SAFEGUARDING PUBLIC INTERESTS IN THE PUBLIC SECTOR

3.1 INTRODUCTION

This chapter focusses on the mechanisms with which public interests can be safeguarded within the public sector. Traditionally, the emphasis in this sector has been on rules, hierarchy and institutional safeguards. As it is not possible for everything to be determined in advance in the legislation, political administrators at the top of the organisation determine how matters are handled within government – for which they can also be held to account. This is handled by means of hierarchy between the minister and civil servants and by the system of ministerial accountability. Institutional safeguarding forms the complement. The public service is characterised by its own values and norms that are aimed at supporting the promotion of public interests.

As safeguarding mechanisms, hierarchy and induced commitment by means of rules, in particular, are beginning to display their shortcomings. Rules are not always observed and the hierarchy found in government departments nowadays is far removed from the classical bureaucracy of the Weberian ideal-type (sections 3.2 and 3.3). When it comes to autonomous administrative agencies, the ministerial authority and accountability have even been consciously restricted. The imperfections in the safeguarding of public interests raises the question as to how such safeguards can be improved (section 3.4).

Following this general survey the possibilities for safeguarding public interests in the case of autonomous administrative agencies and within government departments are described in more detail (sections 3.5 and 3.6). Finally possible improvements in the safeguarding of public interests within the public domain are examined in more detail.

3.2 SAFEGUARDING BY MEANS OF RULES

Within the government public interests are primarily safeguarded by means of democratically legitimated legislation; executive civil servants are also bound by such rules. In practice, however, rules also have their limitations in the public domain. A number of these are the same as those in the private domain. Induced commitment by means of rules requires a certain degree of consensus within the government concerning the public interests at issue and the ability to encapsulate the relevant public interest in rules. In addition the following aspects are of relevance:

- 1 In practice rules are able to predetermine future action in part only. If circumstances change it is also impossible to change the behaviour as long as the rules remain unchanged. Furthermore rules – particularly as government organisations become more professional – are more likely to result in obstructive rigidity and to hold back creativity and innovation.

- 2 There is no question of systematic, comprehensive checking of compliance with the rules laid down by the government organisation. The courts are able to check the correct implementation of the law by the executive in part only, for example because the disadvantaged parties are by no means always aware of their rights or because they are dissuaded by the drawbacks of instituting proceedings. Furthermore, executive action that works out favourably for a stakeholder is of course no reason for recourse to the courts. Research into public administration commonly indicates that executive agencies draw up their own rules instead of applying the statutory ones.
- 3 At the same time the ministerial responsibility offers only limited possibilities for checking the application of the rules. Although the minister is responsible he can only be held to account if information is available to Parliament on the application of the rules. As a result of the public information requirements incidents regularly come to light, but these do not generally leads to systematic checks. If a task has been assigned to an autonomous administrative agency, ministerial responsibility will be lacking in respect of the application of the rules in individual cases.

In this way the safeguarding of public interests within public sector organisations by means of rules is subject to considerable shortcomings in practice. The notion that legal and political control is possible may be theoretically correct, but in practice that notion has long deflected attention away from the actual shortcomings.

3.3 SAFEGUARDING BY MEANS OF HIERARCHY

3.3.1 PRACTICAL FUNCTIONING OF THE HIERARCHY

Theoretically the mechanism of hierarchy is well regulated and can be a highly significant means of safeguarding public interests. Practice tends however to differ from theory. Three developments mean that the political direction of an entire governmental organisation by the minister has become doubtful:

- 1 Government organisations are now on a much larger scale than they were at the time when ministerial responsibility, to which the principle of hierarchy is linked, was introduced. Ministers are no longer in a position to oversee and control all the happenings within the organisation as a whole.
- 2 The level of professionalism within government organisations has increased greatly. The civil service has been permeated by modern sciences and their representatives (engineers, economists, management consultants, lawyers). Consequently the requirements of precise argumentation and the furnishing of proof have come increasingly into conflict with the requirements of the hierarchy. Such an organisation calls for a different form of management, creating conditions for expertise and creativity rather than directly indicating in detail what civil servants are required to do.
- 3 The second half of the 20th century has seen a high degree of *horizontalisation* not just within society but also in intradepartmental relationships. The actual situation is marked in particular by an ever widening network of mutual inter-

dependencies. The Weberian bureaucracy has been largely replaced by a government organisation which operates on the basis of different principles. A subtle balance of power has arisen between minister and civil servants, civil servants have become politicised and politicians have become bureaucratised (Peters 1989).

Thus the hierarchical direction of the government machinery by the political leadership has gradually lost its significance in practice. As a consequence the political administrator has fewer possibilities at his disposal to safeguard the relevant public interests in the public sector.

3.4 INSTITUTIONAL SAFEGUARDS

The safeguarding of public interests can rely heavily in the public sector on the public-mindedness of civil servants. Precisely on account of the (sometimes) high degree of convergence between the norms and values of civil servants and the relevant public interest, institutional safeguarding is a usable supporting instrument here, which is in fact also used as such. Although (unlike the civil service in the UK) the Netherlands does not have its own training programme for civil servants, efforts are made to strengthen the distinctive values and norms of integrity, responsiveness, service-orientation and responsibility in all sorts of courses and, nowadays, even by taking the civil service oath.

Nowadays the instrument of institutional safeguarding must also be used now that hierarchy and induced commitment by rules have lost some of their force. In particular the professionalisation of the civil service machinery provides particularly good opportunities for institutional safeguards. This applies all the more if the professional norms and values of the professional civil servants coincide with public values and norms, as separate professional values and norms tend to be dominant within professional organisations. This is however subject to the precondition that the professional norms do not result in the displacement of the norms and values of the department or of official policy. The government must therefore continue to invest heavily in the values and norms within departments responsible for supporting the promotion of public interests.

3.5 OTHER TYPES OF SAFEGUARD

3.5.1 INTRODUCTION

The declining power of hierarchy as a significant instrument for safeguarding public interests within the public sector has often been a reason for exploring the possibilities for safeguards within the private sector. But the safeguarding of public interests in the private sector is also not straightforward. It may be that this policy line ('turning to the market') may have been taken too quickly. Both the safeguarding of public interests in the public and the private domain require a definition of the problem. Precisely in that light it can then be decided whether there is more

scope for protecting public interests within the public domain. To what extent can safeguarding mechanisms from the private domain be applied within the public sector? The analysis below indicates what improvements are possible within the government.

3.5.2 COMPETITION AND THE PUBLIC DOMAIN

Can competition contribute towards the more effective safeguarding of public interests within the public domain? If by competition is understood that market form in which players are financially held to account for their performance and bankruptcy is a genuine possibility, there is little scope for competition within the public sector. If on the other hand competition is viewed as not necessarily involving 'settlement' in financial terms as called for by the price mechanism there will be more possibilities.

Within the government the price mechanism can have a certain function, for example for the internal charging of services that are supplied by facility services units in the department in question. This provides a means of increasing the transparency of the organisation. Here the price mechanism, however, functions primarily as an aid and therefore in a totally different way from what it does in a normal, competitive private market. Nor is it clear how civil servants coming under ministerial responsibility could operate in terms of both the hierarchy within their own organisation and the competition with another organisation. In addition the question arises as to how competition and market incentives can be reconciled with dedication to the public interest, which is meant to have primacy within government departments.

Many of these arguments also militate against competition between elements of departments and private organisations. Matters differ when it comes to autonomous administrative agencies, whose activities do not come under ministerial responsibility. Such competition does however raise the question as to why autonomous administrative agencies (the government) should supply products or services if they can also be supplied by private organisations. This does not entirely conclude the debate about *hybrid* organisations, i.e. organisations which promote public interests as well as performing commercial activities. As they are both task-oriented and market organisations they have *dual financing relations*: they receive a budget from the government and earn money in the (private) market. The argument often advanced in their favour is that competition is said to exert a stimulus that also extends to the 'public' elements of the organisation not operating under direct competition (In 't Veld 1997). At the same time the presumed 'gains' of the hybrid status have barely been demonstrated. In addition the potential gains must be examined in the light of the public interests at issue. Does competition lead here to the better safeguarding of public interests? Does the combination of public and private tasks not lead to the imperfect promotion of public tasks, which is not outweighed by the potential gains from synergy? Finally gains in terms of 'new (public) entrepreneurship' can easily be at the expense of such values as responsiveness,

responsibility, service-orientation and integrity which the public sector can provide as an added value.

Competition as this takes place in the private market is therefore not an option for the government. If however competition is interpreted in a broader sense, independent of the relationship with the private market, there are better opportunities. Here the focus must not be on *settlement* but on *comparison*. In that sense it is possible to benefit from benchmarking – not so as to hold people within the public sector to account but in order to provide them with incentives to deliver better work. By increasing the transparency of the public sector it is also possible to generate the information required for public interests to be effectively safeguarded within the public domain.

3-5-3 INDUCED COMMITMENT IN ADVANCE WITH CONTRACTS IN THE PUBLIC DOMAIN

A contract within a department is something of a contradiction in terms that is moreover at variance with ministerial responsibility. In a legal sense, contracts with ‘parts’ of the same legal entity – the state – are an anomaly. In a substantive sense it is inconceivable that the minister would be required to negotiate with elements of his own department, subordinate to himself, concerning the performance required of them. Finally a contract implies that what has not been regulated by contract remains a matter of separate responsibility. This cannot be the case here since the minister is responsible for the entire functioning of the department.

These problems apply to a lesser extent if the relevant organisation is *formally* placed at arm’s length. Or more specifically: when there is an autonomous administrative agency, for the minister is not responsible for the functioning of such bodies, except in so far as it has been expressly assigned tasks and powers. Nevertheless a contract between the minister and an autonomous administrative agency is not axiomatic as it is not clear on behalf of whom that body is required to negotiate with the minister. The promotion of public interests would consequently become dependent on the willingness of an autonomous administrative agency to co-operate in such promotion.

Particularly for legal reasons, contracts do not take us much further in the public domain. Imitation of the private domain has little point. The government can, however, also learn here from the private domain as this residual decision-making room may spur the ‘agent’ into greater involvement with and more efficient promotion of public interests. Needless to say greater freedom can also be deployed on other interests. It is therefore a matter of encouraging the involvement of public organisations by leaving them with more freedom and at the same time committing them to the promotion of public interests.

In fact the phenomenon of the autonomous administrative agency takes advantage of the principle of *reciprocity*. The promotion of the public interest is placed at

some distance and the autonomous administrative agency is given greater responsibility of its own than would have been the case within the department. This construction can provide an additional incentive for involvement in the promotion of public interests. It was for this reason that corporatisation was long promoted. Corporatisation would bring the public interests out into the open and the residual decision-making room of the autonomous administrative agency would result in greater involvement in the promotion of the public interest in question. In practice, however, it often turns out to be very difficult to lay down clear frameworks for the operation of autonomous administrative agencies. As a result the policy freedom of the body in question would sometimes be too wide, which was not to the benefit of the promotion of other (public and non-public) interests.

3.5.4 CONCLUSION

It is evident that the competition and contracts with which we are familiar from the private sector cannot be applied as they stand within the public sector. The public domain is too distinctive in nature for this. Thus certain combinations of safeguards are not realistic for the public sector. Ministerial responsibility for example cannot be combined effectively with competition between departmental units and private parties. Similarly the conclusion of contracts with departmental units squares oddly with ministerial responsibility.

But the government can learn from the private sector. Transparency can be increased within the public sector by means of competition and benchmarking. Greater residual decision-making freedom for civil servants can enhance involvement.

3.6 PUBLIC INTERESTS AND AUTONOMOUS ADMINISTRATIVE AGENCIES

3.6.1 POSSIBILITIES FOR SAFEGUARDING WITH RULES AND CONTRACTS

The relevant considerations are broadly the same as those for the outsourcing of public tasks to private players. In the case of autonomous administrative agencies public interests can be safeguarded by induced commitment in advance with rules:

- 1 if there is sufficient consensus about the public interests at issue;
- 2 if the consensus and the formulation of the public interests are lasting in nature;
- 3 if the public interests at issue can be operationalised: it must be possible for them to be laid down and spelled out in contracts;
- 4 if sufficient information is available on future developments and the efforts that the autonomous administrative agency will need to make in order to realise public interests;
- 5 if the enforcement of rules and contracts is possible: the results must be verifiable.

Nevertheless there are also significant differences from the commitments imposed on private players under outsourcing arrangements in the case of autonomous administrative agencies:

- 1 There is a different structure of authority: the party bearing political responsibility can lay down the requirements that autonomous administrative agencies are to observe in the form of rules. Among other things this means that any risk-aversion will be less of a factor among such bodies, since it is not formally up to them to decide by themselves whether they regard the risks as too great to enter into a relationship with the minister and the latter's department. This means that it would not be very appropriate to leave the realisation of public interests to autonomous administrative agencies where there are large risks. In that case there are sufficient arguments for keeping the promotion of the public interest in question under direct ministerial responsibility.
- 2 The 'outsourcing' of public tasks to autonomous administrative agencies lacks the gain in the information obtained in circumstances of competition when outsourcing arrangements are made with private players. The supervision of rules and enforcement of contracts consequently become more difficult. High standards are laid down for the verifiability of output. The risk of the aforementioned performance paradox is clearly greater. By contrast competition can be an important instrument in preventing ritualisation and proceduralism in the determination and especially the representation of output.
- 3 It may be possible to compensate for imperfections within autonomous administrative agencies more effectively than in a market between private players. This notion is based on the assumption that public interests will differ more readily from entrepreneurs' interests than from the objectives of autonomous administrative agencies, as the latter are primarily concerned with public affairs.

Commitment to public interests differs inherently from commitment to the (parent) department. Thus a comparison between the department and an autonomous administrative agency indicates that precisely the lack of commitment (to the parent department) can be to the advantage of the autonomous administrative agency, in that the public interest sometimes calls for *independence*. This is illustrated by the following situations:

- 1 Legal equality in the implementation of policy can call for a certain distance in relation to the political system. If that distance cannot be effectively organised within the department, implementation by an autonomous administrative agency will be more appropriate.
- 2 Certain policy functions, such as the supervision of private actors, are more effective if they are not unduly intertwined with policy.
- 3 The nature of the policy field sometimes calls for an absence of direct substantive interference on the part of the politically responsible authorities (e.g. the provision of subsidies in the cultural field).

3.6.2 POSSIBILITIES FOR INSTITUTIONAL SAFEGUARDS

Given their public orientation, there is often a high degree of convergence between the culture of autonomous administrative agencies and the public interests which they serve. In this regard it may be assumed that the enshrining of values and norms within autonomous administrative agencies will be stronger the greater the level of professional expertise within such bodies. The specific possibilities for institutional safeguarding may even provide a reason for engaging an autonomous administrative agency. The promotion of public interests at a certain distance from the department creates new possibilities for developing a certain culture and a certain system of norms and values. Precisely in that new culture it will be possible to safeguard certain public interests more effectively than in the more bureaucratic and quasi-political culture of the department. At the same time, however, separate normative and value systems can be developed within departmental units that provide new opportunities for safeguarding public interests.

3.6.3 CONCLUSION

The possibilities afforded by autonomous administrative agencies for the safeguarding of public interests have been discussed above. Competition with private players does not appear particularly advised. The induced commitment of autonomous administrative agencies by means of rules provides better possibilities. In particular the combination of institutional safeguards would appear a fruitful path, subject to the condition that investments are made in public values such as service-orientation, responsiveness and integrity, instead of focusing primarily on profits and customers.

3.7 PUBLIC INTERESTS AND THE DEPARTMENT

The possibilities for safeguarding public interests within the department are described more readily in a negative than a positive sense. From the above it has already become clear when safeguarding within departments is not so possible:

- 1 If legal equality in the implementation of government policy calls for a certain distance in relation to the political system and if such distance cannot be effectively organised within the department.
- 2 When it comes to policy functions such as the supervision of private actors, which are more effective if they are not unduly intertwined with government policy.
- 3 If the nature of the policy field calls for the politically responsible authorities to refrain from direct substantive interference (e.g. in the case of cultural grants).

This is not to say that safeguarding within the department will then be possible without further ado in all other cases. In this regard the Weberian hierarchy belongs to the past. At the same time the possibilities for induced commitment through contracts and for competition between departments must be put in perspective. Induced commitment by means of statutory rules is equally subject to

limitations. It is therefore difficult to make general statements concerning the possibilities for safeguarding public interests within departments.

At the same time it should be noted that the promotion of public interests under direct ministerial responsibility is often a final option. If public interests cannot be effectively safeguarded within the private domain or within an autonomous administrative agency, there will often appear to be only one available solution: implementation by the department itself. Such a line of reasoning is not uncommon, particularly within the public sector. At the same time, however, it is too government-centric and unduly neglects the limitations within the departments. In this case it is better to accept that both the private and the public domain offer unlimited possibilities for safeguarding the public interests at issue.

In such a situation there are three possible courses of action. In the first place it may be decided to deal with the public interest in question differently or to abandon it entirely. Secondly it is still possible to opt in favour of private safeguards, possibly coupled with acceptance of a greater risk of loss of effectiveness. Thirdly the circumstances for safeguards within departments can be improved. This is examined in the next section.

3.8 IMPROVED POSSIBILITIES FOR SAFEGUARDS WITHIN THE PUBLIC DOMAIN

In the first place, no matter how much the government can learn in certain areas from the private sector, it does not stand to benefit by starting to copy the private sector. If the government begins to compare itself with a firm and seeks to imitate corporate strengths the only (albeit unlikely) result will be that another firm is added to the private sector. The possibilities for safeguarding public interests are not therefore increased. In order to increase these possibilities within the public sector the government would need to emphasise the specific advantages and specific nature of the public sector, rather than seeking to take over the specific advantages of the private sector.

Secondly the specific advantages of the public sector are nowadays not necessarily located in the hierarchical sphere. Although many civil servants still carry out the instructions of their superiors, the self-evident nature of the hierarchy has disappeared. The specific strength of the public sector *may* now lie more particularly in the involvement in public affairs, the ability to rise above sectional interests and the sharing of norms and values associated with the performance of public duties, such as integrity, responsiveness, service-orientation and responsibility. This is not to say that all civil servants behave in terms of these norms and values and that all civil servants are utterly and solely involved with public concerns - or that such norms are not to be found in the private sector. Nevertheless the involvement with public concerns and the shared public values and norms provide the government with a potential added value in relation to mutually competing market players. It is precisely this advantage that is at risk of rapidly being eroded if the government

engages in commercial activities. The government would therefore be better advised not to develop any commercial activities. It needs to operate efficiently but not to be geared to profit-making. In addition it is highly important to maintain public values and norms within the public sector.

Thirdly the government can also learn from the market without imitating or copying it. The great advantage of the market (given perfect competition) lies in the generation of information concerning the true preferences of citizens and the actual cost of services and products. Precisely for safeguarding public interests this information is critically important. In essence a comparison of possible safeguarding methods is also a comparison between methods of information gathering. The shift from the public to the private domain in recent decades can also be partly explained in these terms. The market is deemed to generate information that could not be obtained within the government bureaucracy.

The information required in order to safeguard public interests effectively within the public domain can also be generated within the public sector by increasing the *transparency*. As noted earlier, the price mechanism lends itself to this purpose to only a limited extent. By contrast competition in the more general sense – based on the codes of professionals working within the government – may be a suitable mechanism. Here benchmarking may be used, not so much to hold people within the public domain to account as to provide incentives for better work. These possibilities for increasing transparency are unmistakably increased by new forms of information and communication technology.

Fourthly more information can be generated by improving the accountability mechanisms within the government. This applies not just within departments but also to the relationship with many autonomous administrative agencies. Accountability vis-à-vis the public can also be improved in all sorts of ways. Citizens' charters would be a welcome means to this end. These not only generate information but provide the desired incentives, particularly if citizens can count on compensation if the government fails to meet its service pledges.

Fifthly economics provides interesting insights into the way in which principal/agent relationships can be dealt with within the public sector. With the professionalisation of the civil service the information asymmetry between leading politicians and civil servants has widened. Furthermore this relationship often involves non-verifiable information. In such situations it is better to enlarge the responsibilities of the 'agent', not only by giving him more freedoms but also by making him specifically responsible. As against the enlargement of responsibilities are the gains from the greater involvement of the executive agent (reciprocity).

The enlargement of 'devolved' responsibilities does of course also involve new risks. The devolved policy freedom can be used for other matters. This risk can be minimised by placing the emphasis on professionalism and public values and norms and by introducing new accountability mechanisms.

Finally the government can do more to recruit and retain good people for the promotion of public interests. In order to attract good quality people the government will need to improve its image. To recruit and retain good people the employment conditions, salary and internal working culture are highly important. It may be asked whether the present substantive civil servants law does in fact provide sufficient room for differentiation and whether the culture within the public service sufficiently encourages each employee to excel as a *public professional* and to exploit their talents to the full. The emancipation of talent at each level within the culture of the public service needs to be more firmly embedded. In this regard the new civil servant is not a 'public entrepreneur' but a public professional, in that the added value of the government resides in *public professionalism*. This public professional will also take part in the public debate, without undermining the legitimacy of government policy.

Particularly by investing in public values and norms and in involvement in public affairs, the government can create possibilities for safeguarding public interests within its own domain. This therefore provides an obvious example of *institutional safeguarding*.

3.9 CONCLUSION: A COMPARISON BETWEEN PUBLIC AND PRIVATE

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This chapter has analysed the possibilities for safeguarding public interests in the public sector. The previous chapter analysed the possibilities in the private sector. A comparison may now be made.

It may be noted in advance that in practice the scope for safeguards is not extensive. Safeguarding in both the public and private sector has its advantages and disadvantages. Where safeguarding is not possible in the private sector, this does not necessarily mean that it will be possible in the public sector. The safeguarding of public interests often involves a choice between two options, both of which have their pros and cons. Furthermore both options are often characterised by uncertainties. For this reason the government would be well advised to formulate public interests in the light of limited certainties and in addition preferably to identify *combinations* of safeguard mechanisms. In this way the disadvantages of one mechanism can be compensated for by the advantages of another.

It is however clear that the arguments in favour of privatisation are stronger if:

- there are fewer and also less complex public interests at issue;
- there is more consensus within the government about the public interests at issue and so no question of goal-indeterminacy. If the latter is the case, promotion within the public domain will be more advised, partly because the reversal of privatisation involves high costs;
- the external effects of a particular choice can be more clearly identified. This will apply to a lesser extent in the case of new policies where the government confines itself to an initial exploration and a limited number of experiments. In that regard the government must be permitted to experiment and make innovations itself;

- public interests are easier to operationalise in statutory regulations or in contracts and the more that (partly in consequence) the performance of private players is verifiable;
- a clear-cut norm for implementation can be provided so that the requirements of legal certainty and legal equality can be satisfied. This requirement will be less readily met if a large measure of civil service policy freedom is inevitable, because the assessment of each individual case will call for detailed specification and elaboration of the norm;
- the safeguarding of the public interests at issue does not disrupt the mechanism of supply and demand, while competition is indispensable for disciplining the players. Given a large number of public interests too few areas may be left in which the players can compete;
- the implementation does not call for dedicated investments. If it does, competition (through outsourcing) becomes more difficult to organise as these dedicated investments would rapidly become prohibitive if a switch were to be made to a different private player;
- the government has more information on the likelihood that the intended situation will be achieved and the efforts that will need to be made by a private supplier to whom the operational responsibility is to be assigned;
- the risks are less substantial and the risk-aversion among private entrepreneurs lower. Where the risks are substantial and there is marked risk-aversion, private players may demand excessive insurance from the government by way of compensation, when the costs become so high that the public interest is better promoted within the public domain;
- effective supervision of the private sector can be organised effectively and the costs thereof (for the collection of information, assessment and correction) are reasonable.

4 DIVERGENT DYNAMICS IN THE CONTEXT OF GOVERNMENT POLICY

4.1 THE IMPORTANCE OF CONTEXTUAL CHANGES

Decisions about public interests and their protection must be taken in the light of the context and the likely changes in that context in the near future. The first of these in fact speaks for itself if the possibilities for safeguarding are analysed, but the second much less so, as the scope for safeguarding must then be examined in terms of not just the current but also the future context. It even calls for the prioritisation of the public interests that will be at issue in the future.

Relevant changes in the context generally have their origin outside the (national) government (e.g. technological developments, internationalisation and European directives). Nevertheless it is not just the exogenous developments that provide grounds for a rearrangement of responsibilities. Contextual changes that are determined in part by the government itself (the establishment of a tight institutional framework for privatisation, the enhancement of transparency within the government machinery and the professionalisation of the public service) or the setting of different priorities within the political system may also provide grounds for a reconsideration. The contextual changes sometimes relate to the ‘what’ question (i.e. the public interest must be redetermined) and sometimes to the ‘how’ question (i.e. the possibilities for safeguarding public interests change). In this way, depending on the nature of the change in the contexts (endogenous or exogenous) and depending on the question (‘what’ or ‘how’) requiring a new answer, there are four possibilities. Particularly in relation to the political debate it is important for these four situations to be clearly distinguished:

- a *Exogenous developments with consequences for the formulation of the public interest.*

The government is forced by exogenous developments to review its ultimate responsibilities. New public interests arise and old ones disappear because (structural) involvement by the government is no longer needed or because its declining capacity to act means that the government is no longer able to effect something for which it bears final responsibility. Or in other words, it is no longer needed or no longer possible.

Thus ongoing internationalisation and the application of information and communication technology (and other new technologies) have meant that there is greater room for competition, especially in the field of public utilities. Where the market itself organises the delivery of certain products and services the government need no longer treat the production and delivery as a public interest. In addition internationalisation can deprive national governments in a less fundamental way of the ability to promote public interests. It can for example make it impossible for national governments effectively to supervise compliance with the conditions laid down by the government. And where the involvement of the

government and the protection of interests are purely symbolic it is better to withdraw altogether.

- b *Endogenous developments with consequences for the formulation of the public interest.*

A new political consensus may emerge concerning different public interests. Over the past 15 years, for example, the goal of income support has gradually become less important in the field of social security, with a shift in favour of reintegration. An example of a new policy that has come to the fore in recent decades is environmental protection.

- c *Exogenous developments with consequences for the ability to safeguard public interests.*

There are numerous exogenous developments that affect the possibilities for safeguards within both the public and the private domain. The process of horizontalisation so characteristic of modern social relationships has also made its presence felt within the public sector. Even the professionalisation of the public sector is partly an exogenous development.

In the private sector the growing professionalisation and growing proto-professionalisation (i.e. growing knowledge in combination with greater assertiveness) of citizens are equally as relevant. The professionalisation is making possible new forms of institutional safeguards; the proto-professionalisation provides better opportunities for creating direct relationships of accountability towards the public.

Finally a European or even global market has in many cases supplanted the Dutch market. European regulations can substantially limit the scope for safeguarding the public interest by means of Dutch legislation, while foreign operators are able to avoid the Dutch regulations. This narrows the national government's possibilities for keeping control over the preconditions for production and delivery by private players (and therefore to safeguard public interests). This could even be a consideration for preserving a specific governmental responsibility for the production and delivery of a product and not allowing the responsible government agencies to be transferred into private hands.

- d *Endogenous developments with implications for the ability to safeguard public interests.*

The government can modernise its own organisation, with the result that more or at any event different safeguarding mechanisms arise within the public sector. Needless to say the government has less influence over the functioning of the private sector, but here too the government can increase the possibilities for safeguarding public interests by being an effective market-master.

This is summarised in the diagram on the next page.

	exogenous	endogenous
what	<ul style="list-style-type: none"> ● greater competition (e.g. through ICT) renders final responsibility of government superfluous ● new social problems call for new involvement 	<ul style="list-style-type: none"> ● change in political priorities ● shifting political consensus
how	<ul style="list-style-type: none"> ● horizontalisation ● new insights concerning organisations ● new dependencies (see: European directives) 	<ul style="list-style-type: none"> ● enlargement of transparency of public sector and market ● market-master

4.2 DEVELOPMENTS NOT TAKING PLACE EVENLY IN ALL AREAS

The context in which public interests must be promoted is subject to change, but not continually and not in the same way in all areas of policy. In addition the timing and extent of contextual changes are often unpredictable. Significant privatisation has, for example, taken place in the Netherlands in recent years in the area of telecommunications. The reason was clear: new technology was resulting in greater product differentiation, a development leading worldwide to a switch from government control to conditioned market forces. The government consequently need no longer treat the production and delivery of telephone services as a public goal, although the government does still assume final responsibility for the framework conditions for production and delivery. As a result of technological innovation the public interest has therefore shifted and a different division of public and private responsibilities has arisen when it comes to binding the markets to the politically determined framework conditions (universal service-provision, etc). Since the answer to the ‘what’ question has changed, the ‘how’ question also requires a new response.

A different situation arises in the case of public transport. Here, European regulations are calling for (or at least encouraging) a new response to the ‘how’ question. In district transport a start has been made on creating competition *for* the market. Although it is as yet by no means clear as to whether the party that first obtains a concession will later manage to build up too great a lead over possible competitors, competition would provisionally appear possible. Matters are more complicated when it comes to the national rail network. Good arguments are put forward to suggest that competition *on* the national network is undesirable and more particularly impossible. Competition for the national network looks equally hypothetical for the time being when the government is dependent on both effectively functioning public transport and Netherlands Railways (NS), and when sizeable dedicated investments are at stake. The competition could at most relate to the management, which, however, can also be ruled out if the Netherlands Railways are to remain in public hands.

Contextual changes therefore provide less reason for changing the final responsibility of the government with respect to the national rail network than they do in the world of telecommunications. The question as to how the unchanged public interests should be safeguarded remains a topical one. Furthermore it needs to be examined whether it is advisable for the Netherlands to take the lead in implementing European directives as long as other countries are not implementing those directives properly. As long as there is no genuine competition on the Dutch rail network, there is certainly no reason for the Netherlands Railways to be floated. The creation of private monopolists is not a task for the government. At this point, now that no realistic alternatives have emerged, there is a stronger case for increasing the government's control over NS. This government public limited company (NV), which formally is still fully in the public domain, has ended up in a 'grey' area where neither hierarchy nor competition provide sufficient possibilities for safeguarding public interests.

In other areas it is much less clear why a changing context should call for different responses to the what and how questions. This is not to say that it is not advisable periodically to review both questions. *It does, however, mean that the right solution in one area of policy need not necessarily be the right solution in another.* If privatisation is a sensible strategy for telecommunications this need not automatically apply to social security benefit agencies. If privatisation of the energy sector is advisable, this need not necessarily apply to the water supply. Not only do policy fields have their own characteristics but the contexts of the various policy areas also change in distinctive ways. Such changes take place by no means universally or to the same extent.

In addition the examples also provide grounds for a different conclusion: the most important reason for fundamentally changing the allocation of operational responsibilities for the promotion of public interests is if the public interest itself has changed in nature.

4.3 CERTAIN DEVELOPMENTS

There is still a lack of clarity about the future context in many areas. In respect of many long-term developments it is unclear how extensive these will be and how they will take place. What is certain is the fact that these are developments that will make their impact felt in the future. This limited certainty already provides sufficient indications to reconsider the assumptions and methods of policy formulation. The overall certainty that developments such as internationalisation and technological innovation will be sustained in the future for example changes the nature of the question as to whether a switch should be made from direct government management to market forces in promoting a particular public interest. The question as to whether this switch is desirable in itself will become increasingly difficult to answer within the framework of national policy autonomy and the cultural

assumptions of the national policy tradition. This also applies in areas traditionally coming under domestic policy.

Furthermore it is not just a matter of the certainty of future developments but also of the sound qualitative and administrative interpretation of them: will they bear on the 'what' question (must the government review its final responsibility?) or on the 'how' question (how must the government put its final responsibility into practice?). In particular, if the new developments undermine the realism of classical administration concepts this has major consequences for the nature of the argument. Contextual developments for example do not just have consequences for the goals (the government's final responsibility) and the means (the allocation of responsibilities to public and private actors in the realisation of public interests) but also affect the concepts in terms of which government and society could traditionally be described. The already vague distinction between centralised and devolved, between policy determination and policy implementation and between domestic and foreign policy will decline further. At this conceptual level the impact of European law may well be the most significant: key concepts such as government and enterprise need to be translated in terms of this right to estimate realistic risks properly in advance.

5 THE DYNAMICS OF IMPLEMENTATION: THE DESIRABLE STRATEGY

5.1 INTRODUCTION

From the above it is evident that a deliberation as to whether the (operational) responsibilities for the promotion of public interests should be assigned to the public or to the private sector must consist of the following elements:

- 1 a proper specification of the public interests at issue;
- 2 an analysis of the possibilities for safeguards within the private and the public sector;
- 3 an analysis of the context and likely changes in that context.

In this final chapter one further requirement has been added:

- 4 a good estimate in advance of the risks that a switch of responsibilities may involve.

Such appraisal needs to allow for the fact that in practice the situation will always differ from the drawing board conceptions drawn up in advance. In practice the result is not just determined by the idea as such but, in particular, by the compromises between the numerous stakeholders, by dependencies and by positions of power. This can have consequences for the ultimate safeguarding of the public interest. A theoretical preference for situation B over situation A does not necessarily mean that in practice preference should always be given to B. The transitional risks are greater the more complex the target situation, the more the latter differs from the initial situation, the greater the number of parties involved in the reorganisation and the more limited the consensus about such reorganisation.

The aforementioned transitions generally face the kinds of problems thrown up by reorganisations in general. From the literature it is known that reorganisations often involve (at least) three problems. In the first place reorganisations succeed one another too rapidly. Light (1995) refers in this context to 'the ebb and flow of reforms', as a result of which there is too little time to complete a reorganisation and for it to prove itself. Secondly a reorganisation rarely takes place in isolation but generally at the same time as other reorganisations, which can sometimes nullify the assumed advantages. Thirdly many reorganisations spring from ideology rather than from a 'thoughtful, impartial evaluation of the models' (Peters 1996).

Apart from these general transitional problems, two specific transitional problems arise in the case of privatisation. In the first place the creation of a market and the safeguarding of competition is less straightforward than might be assumed. Secondly the creation of clear relationships between the government and the privatised organisation is not entirely straightforward. This aspect has a direct bearing on the scope for 'induced commitment in advance'.

5.2 THE CREATION OF A MARKET

The fact that competition cannot be created entirely straightforwardly is understandable enough since it is not in the interests of all concerned. Competition may offer advantages for society as a whole, but suppliers would prefer to have a monopoly position and, as a minimum, not too much competition. For this reason the (future) suppliers therefore frequently develop contra-strategies to obstruct the introduction of competitive markets. In consequence the government frequently finds itself lagging behind the ball-game.

Upon a switch from government management to conditioned market forces, problems moreover arise in relation to the organisation of arm's length arrangements and independence. The role that the government needs to fill as market-master has been examined in this regard. Precisely in the case of the aforementioned change-over this role can generate problems because the government must create a distance in relation to the existing monopolists. The legislation facilitating the conversion calls in many respects for a weakening of the position of the existing monopolists (for example: non-discriminatory access to an independent management of the infrastructure). The classical model still provided for an interaction between the government and implementing organisation.

Adequate supervision also presupposes a degree of knowledge and experience within the government that will not always be available; particularly in the initial situation the monopolists will have an information lead. In the interests of effective control the government will often need to consult the very monopolist that is to be controlled.

Clear direction is therefore required from the government in the case of privatisation, but this is often not possible. In addition the government appears to display a lack of any doubt (which does not improve the situation). The Dutch literature refers for example to the 'social shaping' thinking that often underlies the aim of privatisation and market forces. It is at any event striking that the belief in the shapability of society of the 1970s may have disappeared but that the belief in the shapability of the market in the 1990s is still flourishing. In reality, the new market is very difficult to create.

5.3 CLEARER RELATIONSHIPS

For the same reason it turns out to be far from straightforward in practice to establish clearer relationships between the government and the privatised (and corporatised) organisation. This is not a specifically Dutch problem. Kreukels and Hagelstein (1998) refer to Canada, noting that there too the new independence of organisations results in a conflict of interests, the unclear setting priorities and failures in assignment and responsibility. It even leads them to question whether all that corporatisation does not smack of opportunism.

This creates a real risk in both the public and private sector of a 'grey' area where, as a result of transitional problems, none of the safeguarding mechanisms work effectively. Although organisations are placed at a distance they are not exposed to sufficient competition when privatised, while in the case of corporatisation the direction and control of the new organisations by the department are inadequately regulated. In this way organisations can arise that are not held to account sufficiently since neither the political system (i.e. ministerial responsibility) nor the consumer (the market) is capable of bringing about the necessary correction. In these cases accountability is lacking.

Nevertheless it is not the case that privatisation and corporatisation inevitably get stuck halfway. Much will depend on the direction given by the government (does it hold fast sufficiently during the process to the rationale of the reorganisation?), on the consensus concerning public interests, on the distribution of power between stakeholders and on the possibilities created within the sector in question in the past (path-dependence). It will be clear that the organisation concerned is not the best placed to monitor the accountability arrangements. The organisation will be more inclined to think of its own (future) sectional interests than of the public interests at issue. There is a clear task here for the government.

At the same time it will not always be in the interests (in the short term) of those bearing political responsibility to regulate corporatisation and privatisation effectively. As *The Economist* has noted, a government enterprise that is allowed to continue as a monopolist can be sold much more readily than an enterprise that will face stiff competition. The politicians themselves also stand in one respect to benefit from a lack of formal authority over corporatised organisations: those lacking authority cannot be held accountable in Parliament for the functioning of the organisations in question.

5.4 DESIRABLE STRATEGY

In view of the above the strategy towards privatisation should be based on the following principles:

- 1 'Precautionary principle'. A good analysis and weighing must take place in advance of the risks that can occur during the transition. What possibilities do established parties and well-organised and articulate sectional interests have for shaping plans in their own favour? To what extent would the government be dependent during the transition on parties that are in fact busy securing their own future? These risks need to be covered as effectively as possible when irrevocable steps are taken.
- 2 Restraint if numerous public and private interests are simultaneously at issue and if the outcome is overly dependent on the compromises that need to be concluded with too many actors. If it is decided in this situation to opt for the rearrangement of responsibilities it is not inconceivable that one ('definitive') effort at 'system reform' will come hard on the heels of the next, so that the effects of the individual reviews can barely be determined.

- 3 The more *coercive* the context becomes as a result of internationalisation and technological advances, the more the problems in the transitional stage can be controlled. The changing context not only calls for the redistribution of responsibilities but may also itself be regarded as a facilitating condition. This perhaps accounts for the relative success of the privatisation of telecommunications. Precisely when the context is less coercive, room is created for actors who oppose the reorganisation to develop counterstrategies, with all the transitional problems that this entails.
- 4 Sequence of steps. The transfer of ownership needs for example to be avoided too early on. In many cases there is a marked fixation with this one element of the privatisation process at the expense of other, in themselves more important, elements such as genuine market forces and a proper institutional framework. The transfer of ownership should ideally be the culmination rather than the starting point of the operation.
- 5 Building in learning processes by operating on the principle of 'variety and selection'. This principle involves testing out a number of variants in practice and ultimately selecting the variant offering the best results, so that variety can nevertheless give rise to a uniform framework. Experience in other countries indicates that it is precisely such variety at the pilot stage that enables best practice to be selected at a later point. And should not variety be accepted as a permanent phenomenon in a highly dynamic world? In this respect the ultimate uniformity need relate only to the overall framework. The complex social reality requires the ability to adapt the uniform framework to local conditions at all times – i.e. not just at the time of a reorganisation. Seen in this light variety will always be the starting point within a uniform set of rules.
- 6 Improvement of the functioning of organisations. This can be done in many ways. In this regard comprehensive changes to structures and systems are just one of the possibilities for improvement. The fact that policy has traditionally focused on this one condition is at the expense of realising that there can be more than one way of doing things. The internal management philosophy can be made less bureaucratic and greater scope can be provided for the professionalisation of the civil service machinery. The organisation can be made less hierarchical and responsibilities can be more widely shared with the executive civil servants.

5.5 EPILOGUE

This does not provide an answer to the question as to whether the government should privatise to a greater or to a lesser extent. From the foregoing it may be evident that this question is not capable of such a simple answer; the 'how' depends to a significant extent on the 'what'. An answer to the question as to whether the Council is for or against 'continuing privatisation' therefore has little meaning: it is up to the democratically legitimated government to determine which interests in this society should be 'publicly' promoted.

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- 23 Onder invloed van Duitsland. Een onderzoek naar gevoeligheid en kwetsbaarheid in de betrekkingen tussen Nederland en de Bondsrepubliek (*The German Factor, A Survey of Sensitivity and Vulnerability in the Relationship between the Netherlands and the Federal Republic*), 1982.
- 24 Samenhangend mediabeleid (*A Coherent Media Policy*), 1982.

Third term of office (1983-1987)

- 25 Beleidsgerichte toekomstverkenning: deel 2; Een verruiming van perspectief (*A Policy-oriented Survey of the Future: Part 2: Towards a Broader Perspective*), 1983.
- 26 Waarborgen voor zekerheid; een nieuw stelsel van sociale zekerheid in hoofdlijnen (*Safeguarding Social Security*), 1985.
- 27 Basisvorming in het onderwijs (*Basic Education*), 1986.
- 28 De onvoltooide Europese integratie (*The Unfinished European Integration*), 1986.
- 29 Ruimte voor groei (*Scope for Growth*), 1987.
- 30 Op maat van het midden- en kleinbedrijf (*Tailoring Policy to the Needs of the Small and Medium-sized Business*), 1987.
- 31 Cultuur zonder grenzen (*Culture and Diplomacy*), 1987.
- 32 De financiering van de Europese Gemeenschap (*Financing the European Community*), 1987.
- 33 Activerend arbeidsmarktbeleid (*An Active Labour Market Policy*), 1987.
- 34 Overheid en toekomstonderzoek (*Government and Future Research*), 1988.

Fourth term of office (1988-1992)

- 35 Rechtshandhaving (*Law Enforcement*), 1989.
- 36 Alloctonenbeleid (*Immigrant Policy*), 1989.
- 37 Van de stad en de rand (*Institutions and Cities; the Dutch Experience*), 1990.
- 38 Een werkend perspectief (*Work in Perspective*), 1990.
- 39 Technologie en overheid (*Technology and Policy*), 1991.
- 40 De onderwijsverzorging in de toekomst (*Educational Support in the Future*), 1991.
- 41 Milieubeleid; strategie, instrumenten en handhaafbaarheid, (*Environmental Policy: Strategy, Instruments and Enforcement*), 1992.
- 42 Grond voor keuzen; vier perspectieven voor de landelijke gebieden in de Europese Gemeenschap (*Ground for Choices*), 1992.
- 43 Ouderen voor Ouderen; demografische ontwikkelingen en beleid (*Demographic Developments and Policy*), 1993.

Fifth term of office (1993-1997)

- 44 Duurzame risico's: een blijvend gegeven (*Sustained Risks: a Lasting Phenomenon*), 1994.
- 45 Belang en beleid; naar een verantwoorde uitvoering van de werknemersverzekeringen (*Interest and Policy; to a Responsible Implementation of Employee Insurances*), 1994.
- 46 Besluiten over grote projecten (*Decision-making on Complex Projects*), 1994.
- 47 Hoger onderwijs in fasen (*Higher Education in Stages*), 1995.
- 48 Stabiliteit en veiligheid in Europa; het veranderende krachtenveld voor het buitenlands beleid (*Stability and Security in Europe*), 1995.
- 49 Orde in het binnenlands bestuur (*On the Organisation of Public Administration*), 1995.
- 50 Tweedeling in perspectief (*Social Dichotomy in Perspective*), 1996.

- 51 Van verdelen naar verdienen; afwegingen voor de sociale zekerheid in de 21e eeuw (From Sharing to Earning. Considerations for Social Security in the 21st Century), 1997.
- 52 Volksgezondheidszorg (Public Health Care. Priorities and a Sound Financial Basis for Health Care in the 21st Century), 1997.
- 53 Ruimtelijke-ontwikkelingspolitiek (Spatial Development Policy), 1998.
- 54 Staat zonder land. Een verkenning van bestuurlijke gevolgen van informatie- en communicatietechnologie (Governments losing Ground. An Exploration of Administrative Consequences of Information and Communication Technology), 1998.

Sixth term of office (1998-2002)

- 55 Generatiebewust beleid (Generationally-aware Policy), 1999.
- 56 Het borgen van publiek belang (Safeguarding the Public Interest), 2000.
- 57 Doorgroei van arbeidsparticipatie (A Continuing Growth of Labour Force Participation), 2000.
- 58 Ontwikkelingsbeleid en goed bestuur (Development Policy and Good Governance), 2001.

Reports nos. 13, 15, 17, 18, 28, 31, 32, 42, 44 and 48 have been translated into English; English summaries are available of Reports nos. 16, 18, 19, 20, 25, 26, 27, 29, 30, 33, 34, 37, 38, 41, 47, 50, 51, 52, 53, 54, 55 and 56; Report no. 23 has been translated into German. Of Report no. 42 a German and a Spanish Summary is available, as well as a full French translation.

PRELIMINARY AND BACKGROUND STUDIES

Below publications in the series Preliminary and Background Studies are listed from the fourth term of office onwards. A complete list of these studies is available on the WRR website (<http://www.wrr.nl>) or at the Council's Bureau (+31 70 3564625). Most studies are available in Dutch only; a number of studies have been published in English.

Fourth term of office (1988-1992)

- V63 Milieu en groei (Environmental Control and Growth) Verslag van een studiedag op 11 februari 1988 (1988)
- V64 De maatschappelijke gevolgen van erfelijkheidsonderzoek (Social Consequences of Genetic Research) Verslag van een conferentie op 16-17 juni 1988 (1988)
- V65 H.F.L. Garretsen en H. Raat (1989) Gezondheid in de vier grote steden (Health in the Four Big Cities)
- V66 P. de Grauwe, A. Knoester, A. Kolodziejak, A. Muijzers, F. van der Ploeg, C.J. Rijnvos (1989) De Europese monetaire integratie vier visies (European Monetary Integration Four Visions)
- V67 Th. Roelandt, J. Veenman (1990) Allochtonen van school naar werk (Immigrants from school to work)
- V68 W.H. Leeuwenburgh, P. van den Eeden (1990) Onderwijs in de vier grote steden (Education in the four Big Cities)
- V69 M.W. de Jong, P.A. de Ruijter (red.) (1990) Logistiek, infrastructuur en de grote stad (Logistics, infrastructure and the Big Cities)
- V70 C.P.A. Bartels, E.J.J. Roos (1990) Sociaal-economische vernieuwing in grootstedelijke gebieden (Social economic innovation in the Big Cities regions)
- V71 W.J. Dercksen (ed.) (1990) The Future of Industrial Relations in Europe; Proceedings of a Conference in Honour of Prof. W. Albeda
- V72 Sociaal-economische gezondheidsverschillen en beleid; (Socio-economic differences in health and policy-making) (1991)
- V73 F.J.P.M. Hoefnagel (1992) Cultuurpolitiek het mogen en moeten (Cultural Policy)
- V74 K.W.H. van Beek, B.M.S. van Praag (1992) Kiezen uit sollicitanten (Competition in Seeking Employment)
- V75 Jeugd in ontwikkeling (Youth in Development) (1992)
- V76 A.M.J. Kreukels and W.G.M. Salet (eds.) (1992) Debating Institutions and Cities; Proceedings of the Anglo-Dutch Conference on Urban Regeneration
- V77 H.R. van Gunsteren and P. den Hoed (eds.) (1992) Burgerschap in praktijken (Citizenship in practice)
- V78 F. Bletz, W. Dercksen and K. van Paridon (eds.) (1993) Shaping Factors for the Business Environment in the Netherlands after 1992
- V79 N.T. Bischoff, R.H.G. Jongman (1993), Development in Rural Areas in Europe; The Claim of Nature
- V80 Verslag en evaluatie 4e raadsperiode; 1988-1992 (Report on the Fourth Term of Office 1988-1992) (1993)
- V81 F.J.P.M. Hoefnagel (1993), Het Duitse Cultuurbeleid in Europa (The Dutch Culture Policy in Europe)

Fifth term of office (1993-1997)

- V82 W.J. Dercksen, H. van Lieshout (1993) Beroepswijs Onderwijs; Ontwikkelingen en dilemma's in de aansluiting van onderwijs en arbeid (Vocational education)
- V83 W.G.M. Salet, (1994) Om recht en Staat; een sociologische verkenning van sociale, politieke en rechtsbetrekkingen (On law and state; a sociological exploration of social, political and legal relations)
- V84 J.M. Bekkering, (1994) Private verzekering van sociale risico's (Private insurance of social risks)
- V85 C. Lambers, D.A. Lubach, M. Scheltema, (1994) Versnelling juridische procedures grote projecten (Acceleration of legal procedures for complex projects)
- V86 Centrum voor Studies van het Hoger Onderwijsbeleid, (1995) Aspecten van hoger onderwijs; een internationale inventarisatie (Aspects of higher education; an international survey)

- V87 T. van der Meij, J.H.W. Hendriks, D.J.M. Musters, H.J. de Graaf (1995) Ontwikkelingen in de natuur, Visies op de levende natuur in de wereld en scenario's voor het behoud daarvan (Developments in nature)
- V88 L. Hagendoorn, K. Phalet, R. Henke, R. Drogendijk (1995) Etnische verhoudingen in Midden- en Oost-Europa (Ethnic relations in Central and Eastern Europe)
- V89 H.C. Posthumus Meyjes, A. Szász, C. Bertram, W.F. van Eekelen (1995) Een gedifferentieerd Europa (A differentiated Europe)
- V90 J. Rupnik, P. Hassner, M. Tatu, M.C. Brands, R. Havenaar (1995) Challenges in the East
- V91 J.P.H. Donner (rapp.) (1995) Europa, wat nu? (Europe, what now?)
- V92 R.M.A. Jansweijer (1996) Gouden bergen, diepe dalen de inkomensgevolgen van een betaalbare oudedagsvoorziening (Distribution of income under a sustainable old age pension system)
- V93 W. Derksen, W.A.M. Salet (eds.) (1996) Bouwen aan het binnenlands bestuur (Towards the organization of public administration)
- V94 SEO/Intomart (1996) Start-, slaag- en faalkansen van hoger opgeleide startende ondernemers (Factors determining the chance of success of higher educated starting entrepreneurs)
- V95 L.J. Gunning-Schepers G.J. Kronjee and R.A. Spasoff (1996) Fundamental Questions about the Future of Health Care
- V96 H.B.G. Ganzeboom and W.C. Ultee (eds.) (1996) De sociale segmentatie van Nederland in 2015 (Social segmentation in the Netherlands in 2015)
- V97 J.C.I. de Pree (1997) Grenzen aan veranderingen. De verhouding tussen reorganisatie en structuurprincipes van het binnenlands bestuur (Limits to the changes in the organisation of public administration)
- V98 M.F. Gelok en W.M. de Jong (1997) Volatilisering in de economie (Volatilization in economy)
- V99 A.H. Kleinknecht, R.H. Oostendorp, M.P. Pradhan (1997) Patronen en economische effecten van Flexibiliteit in de Nederlandse arbeidsverhoudingen (Patterns and economic effects of flexibility in Dutch labour effects)
- V100 J.P.H. Donner (1998) Staat in beweging (State in motion)
- V101 W.J. Vermeulen, J.F.M. van der Waal, H. Ernste, P. Glasbergen (1997) Duurzaamheid als uitdaging. De afweging van ecologische en maatschappelijke risico's in confrontatie en dialoog (Sustainability as challenge)
- V102 W. Zonneveld en A. Faludi (1998) Europese integratie en de Nederlandse ruimtelijke ordening (European integration and the Dutch spatial planning)
- V103 Verslag en evaluatie van de vijfde raadsperiode (Report and evaluation of the fifth term of office) (1998)
- Sixth term of office (1998-2002)**
- V104 Krijn van Beek (1998) De ondernemende samenleving. Een verkenning van maatschappelijke gevolgen en implicaties voor beleid (The entrepreneurial society)
- V105 W. Derksen et al (1999) Over publieke en private verantwoordelijkheden (On public and private responsibilities)
- V106 Henk C. van Latesteijn (1999) Land use in Europe: a methodology for policy-oriented future studies
- V107 Aart C. Liefbroer en Pearla. Dykstra (2000) Levenslopen in verandering. Een studie naar ontwikkelingen in de levenslopen van Nederlanders geboren tussen 1900 en 1970 (Changes in life cycles. A study on development in the lifecycles of Dutchmen born between 1900 and 1970).
- V108 Bart Wissink (2000) Ontworpen en ontstaan. Een praktijktheoretische analyse van het debat over het provinciale omgevingsbeleid (Policy design and emergence. A province-theory analysis of the debate concerning provincial environmental policies)
- V109 H. Nommeas, m.m.v. M. van den Heuvel en W. Knulst (2000) De vrijetijdsindustrie in stad en land. Een studie naar de markt van belevenissen (The leisure industry in city and countryside. A study on the market for entertainment)

Other publications

Voor de eenheid van beleid. Beschouwingen ter gelegenheid van vijftig jaar Ministerie van Algemene Zaken (Unity of policy, 1987

Eigentijds burgerschap (Contemporary citizenship); WRR-publicatie o.l.v. H.R. van Gunsteren, 1992

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