



Supervising public interests

Towards a broader perspective on government supervision

SYNOPSIS OF WRR-REPORT NO. 89

WRR

Supervising public interests. Towards a broader perspective on government supervision

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Prof. M.P.C. Weijnen

Secretary: Dr. W. Asbeek Brusse

The WRR's offices are located at:
Buitenhof 34
PO Box 20004
2500 EA The Hague, The Netherlands
Phone +31 (0)70 356 46 00
E-mail info@wrr.nl
www.wrr.nl

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Background

This publication is a translation of a synopsis of *Toeziën op publieke belangen* (WRR report No. 89) by the Netherlands' Scientific Council for Government Policy (WRR). The conclusions and recommendations presented here are based on an in-depth analysis that can be found in the full report. Other sources are the sector-specific and theme-based studies carried out for the report, which are available as web publications at www.wrr.nl. Abridged and amended versions of these studies can be found in the WRR foresight study *De staat van toezicht. Sector- en thema-studies* (edited by Pieter Welp et al.).

The Council presented the report *Toeziën op publieke belangen. Naar een verruimd perspectief op rijkstoezicht* (ISBN 978 90 8964 595 1) to the Dutch Government on 9 September 2013. It is commercially available and can be ordered from Amsterdam University Press. A PDF of the report can also be downloaded from www.wrr.nl.

Compiled by: Jos Dohmen

Translation: Balance Amsterdam/Maastricht

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I INTRODUCTION

The Netherlands regularly finds itself facing shocking incidents that cause Dutch society to wonder whether they could have been prevented by more and better supervision. Examples include incidents in the health care system, financial fiascos in housing corporations and care and educational institutions, hazardous situations in the chemicals industry, suspected fraud with certificates in higher vocational education, banking institutions in financial distress, and food incidents (for instance the EHEC bacterial outbreak).

Such incidents not only undermine confidence in the sectors subject to supervision, but also harm public confidence in government's ability to protect public interests. In fact, confidence in government has come to depend heavily on the trust the public places in government supervision. Investigations of these and other incidents and the interest they rouse among the public, politicians and the media usually lead to calls for more, better, and stricter government supervision.

But there is more going on than simply a demand for more supervision after an incident. At the same time, many people also fear that we are creating a society in which one form of supervision is piled on top of another: supervision by the European Union, by national inspection agencies and market regulators, and by the regional and local authorities, all in addition to the supervision exercised within enterprises and institutions. Are the burden and expense involved really in proportion to the benefits attained? In periods when incidents are few and far between, people often ask "Why do we need all that repressive supervision?" At those times, they are apt to think that supervision stifles social innovation and individual development and leads to undesirable administrative and financial burdens. That is when society wants limits set on supervision: "curtail it and make it cheaper".

These contrary demands – less supervision on the one hand and more on the other – give rise to an intriguing paradox: the struggle to limit supervision in a sector in incident-free periods (give the sector more responsibility, cut down on bureaucracy and expense) versus the tendency to increase it following incidents (expand and intensify supervision, make it stricter). This problematic relationship between society and supervision calls for a reconsideration, in the WRR's view. How can government handle the challenges facing government supervision in policy and in actual practice? How can it make such supervision more valuable for society?

In its report *Supervising public interests (Toezien op publieke belangen)*, the WRR therefore asks the following key question:

What changes are needed in supervisory policy and practice to make government supervision more valuable to society?

In order to answer this question, the Council analyses the main trends in supervisory practices and general supervisory policy. It then assesses policy and practice and proposes a different perspective. Finally, the Council makes a series of recommendations for government policy and the practice of government supervision.

II SUPERVISORY PRACTICES

It is the task of government supervisory bodies (inspectorates, market regulators) to ensure a satisfactory level of compliance, risk management and quality assurance. But no matter how much government tries to minimise risk, there will always be new problems and incidents. Politicians debate how much of the public purse should be spent on battling these risks, and what rules should be imposed. They also weigh the economic interests involved against the interests of safety. Politicians and public administrators must also bear in mind that citizens, enterprises and institutions want to be protected against all sorts of risks on the one hand, but also complain about regulatory pressure and the administrative burden on the other.

In recent years, government inspectorates and market regulators have concentrated increasingly on how to achieve the same or even better results while using fewer resources. One predominating view is that there is too much supervision, and that supervisory bodies ought to economise, shrink their organisations, and merge. Another prevailing idea is that supervision is unnecessarily disruptive, and that the burden on society would be diminished by introducing a system of selective, risk-specific and cooperative supervision in which decent, compliant enterprises, institutions and citizens are spared as much as possible.

In order to do their job and live up to what are often undue expectations, most supervisory bodies have decided to professionalise and innovate their work. That means, for example, keeping their expertise up to scratch, developing new types of expertise and new competencies, using ICT, and cooperating more with other supervisory bodies. It also means developing new forms of supervision, for example risk-specific, system-specific and private supervision, and following up on tips from the public. Pressured by dwindling resources and austerity measures, they professionalise and innovate to make supervision not only better and more effective but above all cheaper and more efficient.

There is a trend towards more penalty-based supervision and stricter enforcement. Not only is enforcement applied in cases where it was previously ignored, but the types of intervention are stricter: bigger fines and penalties, and joint and several liability. Alongside this new strictness, there is also – paradoxically enough – a new kind of flexibility. After all, for some time now one of the key principles of government policy has been to leave as much as possible to the “self-regulating capacity of society”.

So too when it comes to supervision. Government wants to rely more on the

self-regulating capacity of sectors and to create more scope for initiatives led by citizens, enterprises and institutions. And so the pendulum swings between the two extremes of strictness and flexibility, depending on the spirit of the times and sector-specific incidents and developments. These tendencies appear to be contradictory, but in fact they are closely intertwined. Conditional trust is the principle underpinning the supervisory relationship, but those who betray that trust can reckon on severe penalties from the supervisory body.

It is not clear to many supervisory bodies just how effective the various interventions really are, however. Research into this question is still in its infancy. According to the WRR, research on the quantitative and qualitative effects of interventions could make an important contribution to public accountability concerning the benefits and value of government supervision for society. Such accountability is needed for a satisfactory political assessment of burdens and benefits. By investigating the effects and by rendering an account, supervisory bodies can demonstrate more clearly which political and public expectations of supervision are or are not realistic. In other words, if supervisory practices are to evolve, then supervisory bodies must study the effects of their interventions and hold themselves accountable.

III SUPERVISORY POLICY

In the previous section we noted various changes in society and government that pose challenges to government supervision, and gave a brief sketch of how supervisory practices have altered in response to these challenges. In response to these developments, the national government has been developing a specific “supervision policy” ever since the 1990s. Below, we describe how government has so far dealt with supervisory issues and what overall patterns can be detected in its approach. These patterns also indicate the starting point for future policy.

Government supervision has moved increasingly into the political and policy limelight since the 1990s. Some of the fundamental principles of supervisory policy dating from that period still apply today: the separation of roles, the impartiality of supervision in the policy cycle, and the independent exercise of supervision. Equally important, however, is the principle that government supervision is primarily a ministerial matter, and that it is the relevant ministry that is responsible for the role that supervisory bodies play and the duties with which they are charged. The notion that compliance and enforcement are the main tasks of supervision follows naturally from this principle. These basic principles have been the unifying themes of general supervisory policy in the past few decades.

In the mid-2000s, another theme arose in government supervisory policy: the notion that the financial and administrative burden associated with supervision should be limited. This theme grew out of the perception that supervision was burdensome and that supervisory bodies had proliferated. An important contributing factor was the wish, broadly supported by politicians and public administrators, to reallocate responsibilities between government and society. Government supervision was to supplement the self-regulating capacity of civil society actors. The emphasis placed on the burden of supervision led to various programmes focused on reducing that burden. With responsibilities being shifted between government and society, “trust” became an issue in supervisory policy. Spurred on by the growing budgetary pressure in national government, these factors meant that supervisory bodies also had to meet strict financial targets and that they were subject to a wave of mergers.

In more recent years, policymakers have grown less interested in developing (or continuing to develop) core values for supervision, or in reviewing government’s general vision of the role of government supervision. An illustrative example is the approach taken to the core value of independence. Its importance has been emphasised repeatedly, including in vision statements on supervision. Now, however, the conviction seems to be that we have exhausted the debate about

supervision operating independently of politics and public administration (and the scope of that independence) and must consider the discussion closed. In reality, however, there are frequent tensions, often as a result of incidents, and independence is by no means an “undisturbed possession” for many supervisory bodies. The emphasis on lightening the burden, achieving budgetary targets and effecting mergers appears to have side-lined the debate about the core values of proper supervision, including independence, but also impartiality and accountability.

IV DIAGNOSIS: DOMINANT APPROACHES

Developments in supervisory practices and policy show that government and its supervisory bodies are struggling with complex, rapidly changing circumstances in society and governance. Public administrators, politicians, organisations subject to supervision and citizens have diverging expectations; each one is attempting to steer supervision in a different direction. Notable in this respect is that attitudes and actions have converged into three dominant approaches in recent years.

EMPHASIS ON ADMINISTRATIVE AND FINANCIAL BURDEN

If things have been “quiet” for a while in a certain sector, with no significant problems or incidents, then the focus shifts to the administrative and financial burden. The dominant perception is that the regulations and supervision are irksome and useless. Investing in supervision is no longer seen as a priority. When the emphasis is on the administrative and financial burden of supervision, government and its supervisory bodies engage in an ongoing search for an effective – or more effective – exercise of supervision using fewer resources.

That search gives rise to many practical innovations, for example risk-based supervision, system supervision, the trust-based approach, and private forms of supervision. Government is also acknowledging the importance of flattening the supervisory structure in this way, reflecting the less hierarchical nature of modern society. Almost all supervisory bodies are experimenting with such innovations, or have implemented them in their quest for “cheaper” supervision. In and of itself, that is a positive development, provided that supervision is in fact equally or even more effective than before. But because they are under pressure to economise and meet the targets set for them, supervisory bodies are sometimes persuaded by the hype surrounding such innovations that they will not only be cheaper and less burdensome but also at least as effective – without having any evidence to support these claims.

As understandable as it may be, being fixated on the financial and administrative burden will not contribute to an open discussion of the people, resources and expertise needed to exercise proper supervision. It seems quite probable that the austerity measures of recent years not actually resulted in efficiency gains (the same level of supervision with fewer resources) so much as in other accents in the exercise of supervision, without such shifts being preceded by transparent discussion and decision-making.

EMPHASIS ON COMPLIANCE AND ENFORCEMENT

As soon as a major incident or unfavourable development occurs in a sector, the mood often quickly veers towards supporting more compliance and enforcement. The media, the public and politicians react with dismay, and their outrage is often directed towards government (i.e. the relevant supervisory body) rather than the business or institution that is at fault. Supervision comes under fire. How could the authorities have let this happen?

A preoccupation with compliance and enforcement leans heavily on the more or less explicit assumption that compliance will guarantee the attainment of politically approved policy aims and the preferred societal order implicit in those aims. This theory is too simple, however, because compliance will not cover all relevant societal risks. Once a policy is being implemented, new problems often arise and adjustments need to be made.

The focus on compliance and enforcement leads irrevocably to political and public disappointment with the supervisory system and, in turn, with government in general. Supervisory bodies and policymakers should not exclusively focus on non-compliance (and the attendant risks). A supervisory body should look beyond legislative and regulatory boundaries and uncover the risks and threats to the entire system that it is supervising.

EMPHASIS ON POLITICAL-ADMINISTRATIVE ROLE

Incidents or unfavourable developments in a sector and the uproar surrounding them often provoke a forceful response from politicians and public administrators. Ministers announce in no uncertain terms that they will be keeping a very sharp eye on the relevant supervisory body, and they often conduct a review of the way it is managed. Impartiality, independence and other core values are downgraded and the message that is often conveyed to the supervisory body is: make sure this never happens again.

Although government supervisory bodies are frequently described as impartial and independent on paper, the reality is often otherwise. There have been several occasions in recent years when supervisory bodies felt that their impartiality had come under political pressure or – less obviously – when their unique expertise was disregarded and not taken into account in policymaking. Public administrators and politicians do not always automatically respect the impartiality and independence of supervisory bodies, and may be sorely tempted to interfere in their work.

While there is broad consensus in political and administrative circles that an impartial attitude and independent position are important in supervision, clear or consistent answers to practical questions – why impartiality and independence are important, what they actually mean, and how they can best be guaranteed – are often lacking. A distinction must be made between independence as a formal status and impartiality as the hallmark of an attitude. Formal independence has many different dimensions (legal, financial, policy-related, organisational, and so on). Does a supervisory body have legal personality? Can the supervisory body implement its own personnel policy? Who appoints the inspector-general or the members of the management board? How long is their term in office? Who decides on the budget, and how long can the supervisory body depend on that budget? To what extent does the supervisory body set its own priorities and working methods? Ultimately, it is above all a matter of attitude. A supervisory body has to live up to its formal independence by adopting an impartial attitude, and ministers, parliament, the sector that it supervises, and the public must also respect its role and position.

CONCLUSION

The three approaches to policy and practice described above – the emphasis on “burdens”, on “compliance” and on the “political and administrative role” – are all legitimate as such. It is understandable that government and supervisory bodies should not wish to saddle companies and institutions with an unnecessary supervisory burden, and that they should want to keep their own expenditure on supervision under control. Why should supervisory bodies be exempt from economising and trying to accomplish the same or even more with less? And is compliance with the law and regulations not one of the main reasons that supervisory bodies were created for in the first place? On top of that, if politicians and public administrators are not in charge of supervision, then who is? But as comprehensible and legitimate as these approaches may be, a unilateral focus will lead to problems. The perspective should be broadened to look beyond the incidents of today. The question in that case is what role supervision plays in society and what its value is or could be.

Government supervision is essentially a policy instrument that should operate within politically defined frameworks. But the value for society is closely bound up with the impartiality of that role and the associated independence from politics and public administration. Impartiality and independence from those operating “in the field” are likewise absolute requirements. As core values, they must be firmly entrenched before the public can place its trust in supervision, but also before supervisory bodies can play a vital role in identifying and addressing problems and risks and amending policy and legislation.

V **BROADER PERSPECTIVE: PUT PUBLIC INTERESTS FIRST**

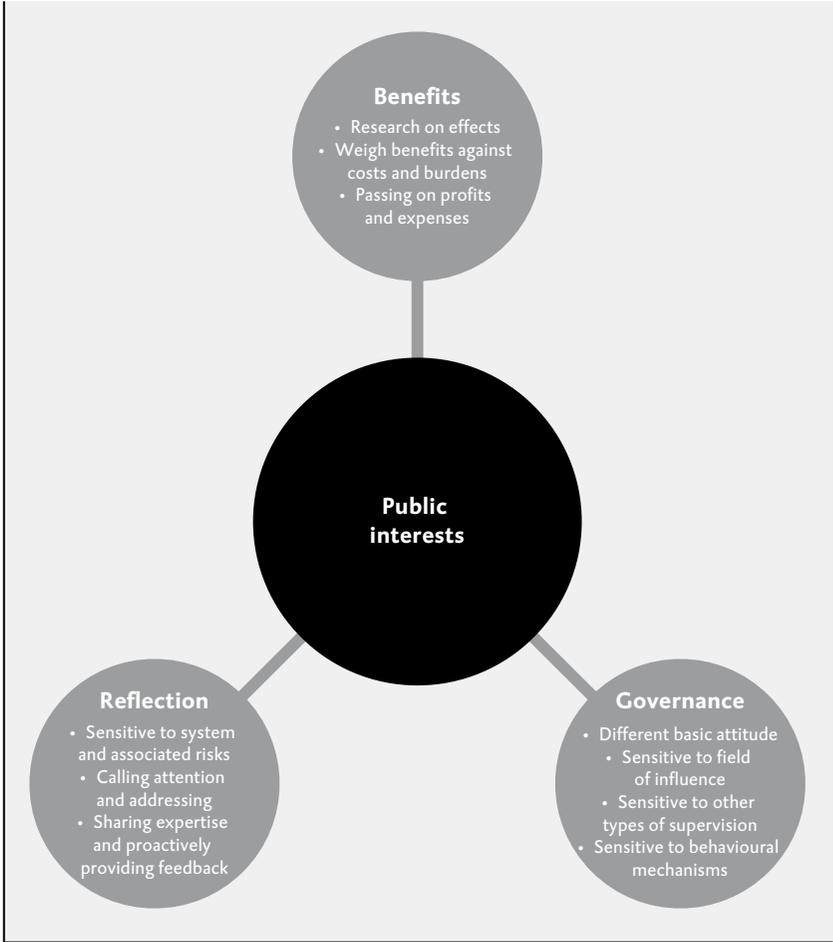
The disproportionate emphasis on “burdens”, “compliance” and “the political-administrative role” is both comprehensible and problematic. The WRR therefore advises approaching supervision from a broader perspective that focuses on its role in society. Public interests form the benchmark in this approach, the starting point for all considerations of the role and then the structure of supervision. Approaching supervision in this way makes it possible to weigh its intended and actual benefits against the administrative and financial burden.

In its report *Supervising public interests (Toezien op publieke belangen)*, the WRR suggests an approach to external government supervision that is broader than the dominant policy and practices of recent years. In the Council’s view, this broader approach does greater justice to the complex, dynamic nature of the society in which government supervision must fulfil its role, and it will therefore help make supervision more valuable to that society. This broader perspective consists of the following interrelated elements, which can be used to assess whether government supervision should be introduced or reduced in scale, and how it should be exercised in actual practice.

When considering whether to introduce or terminate government supervision or how to structure supervisory arrangements and exercise supervision, the WRR believes that the public interests at stake should come first. This position seems self-evident. However, when there is a heavy emphasis on compliance, the level of compliance with laws and regulations is the dominant starting point; if the emphasis is on burdens, it is minimising expenditure. How the relevant issue relates to public interests is gradually side-lined. Taking public interests as the starting point means putting supervision’s role in society first.

Prioritising that role in turn makes it possible to gain a new perspective on the value (or added value) of government supervision. Putting the intended and actual benefits of supervision closer to the heart of policy and practice leads to more evenly balanced societal benefits and societal burdens. It also paints a realistic picture of what supervision is capable of achieving and helps legitimise supervision and supervisory bodies. Innovative supervisory approaches and styles can then be assessed on their merits for society and not only on assumptions that they will ease the administrative burden or cut expenditure.

A BROADER PERSPECTIVE ON STATE SUPERVISION



The WRR believes that any motion to introduce, terminate or structure government supervision should be based on a transparent analysis of the existing governance structure in the supervisory domain. This involves mapping out and tracking the entire field of influence in that domain, including the existing checks and balances, societal forces, incentive structures and behavioural mechanisms. It also means identifying what value supervision can bring to that field in order to attain the intended societal order and to safeguard public interests. Government supervision “can’t do it alone” and must interact constructively with citizens, enterprises and institutions. Of particular importance in that field of influence is how institutions and enterprises have organised their internal governance (specifically, internal supervision) and what other forms or levels of supervision are at work (i.e. local and international). How can government supervisory bodies

make use of these structures and mechanisms, and how might they support them?

Reflecting on the domain of supervision means being alert to domain-specific developments (e.g. technical innovations) as well as cross-domain developments in society (e.g. internationalisation) that impact on the public interests to be protected and the relationships in the relevant field of influence. Reflection also means analysing legal and regulatory roadblocks in relation to one's own performance or societal or sector-specific developments that involve new or larger threats and opportunities.

Supervisory bodies are in a unique position to act as early warning systems for problems or opportunities that affect public interests. A reflective supervisory body calls attention to and addresses such problems and opportunities, shares its expertise with others, and proactively provides politicians and public administrators with feedback. Occasionally, as they reflect on their domain, supervisory bodies should also indicate what domain-specific trends and developments are making supervision less effective or efficient, what impediments to and opportunities for improvement exist, and what clashes they have observed with public interests. Supervisory bodies can also share their knowledge with the public. By allowing public access to the information they possess, they can play a key role in empowering citizens, institutions and enterprises.

Ultimately, budgetary restrictions (what should supervision cost) and public attitudes towards government intervention in society (no one wants a nanny state) put limits on what government supervision is able to do. It is important to note that supervision is virtually never capable of solving fundamental shortcomings in primary processes or of repairing systemic flaws in policy or legislation. However, pointing out and addressing these shortcomings will lead to more realistic expectations about what supervision can and cannot do.

Broadening our perspective on supervision also requires firm guarantees for the three core values: supervision must be impartial in attitude, independently positioned, and publicly accountable. Only then, says the WRR, can a supervisory body exercise supervision legitimately and authoritatively and deliver the intended value.

VI CONCLUSION AND RECOMMENDATIONS

Supervision has become increasingly important in recent decades as one of national government's policy instruments. While government has distanced itself more from public services, politicians and society still demand that public interests be safeguarded. In response, government supervision has come to play a prominent role in numerous societal domains, whether that involves encouraging competition or fair trading practices on markets, improving the quality of public services, or contributing to the safety of products or production processes. Attitudes towards supervision are ambivalent, however. On the one hand, supervisory bodies are seen as the guardians of public interests, for example quality and safety, and society places a great deal of trust in them. On the other hand, many parties also believe supervision causes unwanted administrative burdens and impinges on the freedom of movement and innovative capacity of professionals and enterprises.

The WRR believes that in order to prepare government supervision for tomorrow's challenges and make it more valuable for society, we must broaden our perspective. The key is to (once again) put public interests and societal challenges first in both policymaking and practice.

The report *Supervising public interests (Toezien op publieke belangen)* provides a frame of reference for making state supervision more valuable for society and has led the WRR to make the following recommendations. Although the recommendations are addressed first of all to the Dutch government, which bears primary responsibility for supervisory policy in the Netherlands, they are also useful for those who work in the field of supervision.

1) *Review the national government's vision of supervision.* The starting point can be the role supervision plays in society and its value in safeguarding public interests. The main elements that government should address include the way the intended societal benefits of supervision are weighed against the costs to society and the financial and administrative burden; the way that supervision keys into the governance structure – the overall field of influence in the supervisory domain; and the way that supervision points out problems in a sector or in legislation.

2) *Encourage a culture that focuses on benefits and improve the knowledge infrastructure so that supervision can be properly evaluated and backed by scientific evidence.* This means, for example, supporting the creation of “academic networks” for supervision and having supervisory bodies cooperate more with

other parties in the knowledge infrastructure (universities, planning agencies and other research institutions). The insights acquired through research should be incorporated into education and continuing professional training programmes in the discipline.

3) *Encourage the use of force field analyses when introducing, structuring or exercising government supervision.* Accordingly, the supervisory bodies must improve the way they deal with information, monitoring and expertise in their own organisations. All supervisory bodies should describe in their annual plans how they utilise existing checks and balances and countervailing forces, and how they make use of and contribute to other types of supervision (internal, local, European, private, citizen, etc.).

4) *Improve the reflective capacity of supervisory bodies.* This means improving the feedback that supervisory bodies provide for purposes of agenda-setting and policy preparation and evaluation. Ask all supervisory bodies to draw up a public “state of the sector” report each year in which they survey and analyse opportunities and threats in safeguarding public interests.

5) *Put firm guarantees in place that allow supervisory bodies to act impartially and, in conjunction with this, to position themselves independently.* Question the validity of arguments underpinning the prevailing diversity of arrangements; investigate whether a legal statute is of use in this respect. Consider the proposal of the joint inspectorates to draw up an “independence protocol” that guarantees independent risk analyses and consistent disclosure of reports.

6) *See to it that supervisory bodies are held publicly accountable for the capacity and instruments deployed and for the results achieved, and that they have an appropriate accountability relationship with parliament.* Ask supervisory bodies to improve their public information channels and accountability arrangements.

7) *Create a realistic relationship between the anticipated benefits of supervision and the available quantitative and qualitative capacity.* Review the basic principle of funding supervision entirely from the public purse and consider how passing on part of the cost may motivate companies subject to supervision to take more responsibility themselves.

VII FINAL REMARKS

Government supervision – in all shapes and sizes – plays a vital role in achieving policy objectives and safeguarding public interests. It is one of the cornerstones of society, a “basic institute” that matters. In the dynamic arena in which government supervision is carried out, and pressured by shocking incidents or tight budgets, government is often inclined to choose “one-dimensional” solutions when it comes to supervision. Examples include deciding to exercise stricter supervision with a unilateral focus on compliance, or – moving in the opposite direction – cutting back on the number of supervisory bodies across the board, or regarding supervision merely as the final piece of policy implementation and disregarding its impartiality and independent role.

However, the WRR believes that the complex and changing nature of societal circumstances requires us to take a broader view of supervisory matters. While it is true that, in certain subareas and in the specific practice of supervision, there are differences in emphasis between various sectors and types of supervision that require a customised approach, the problems associated with supervision are strikingly similar. These similarities in fact offer an important basis for a coherent, cross-sector approach to supervision in policy and in practice. By focusing on the public interests to be served, highlighting and substantiating the societal benefits of supervision in relation to the costs, clarifying the role of supervision in a complex field of influences, and improving the role that supervision plays in reflection and in drawing attention to problems, government can support a shock-proof and balanced supervisory policy.

In the WRR’s view, the recommendations set out in the report will create the scope needed to deal effectively with the inherent tensions and dilemmas of supervision and will contribute to ongoing improvement in government supervision.

VIII HOW TO ORDER

The report *Toezen op publieke belangen. Naar een verruimd perspectief op rijkstoezicht* (ISBN 978 90 8964 595 1) is commercially available and can be ordered from Amsterdam University Press. A PDF of the report can also be downloaded from www.wrr.nl.



Toezen op publieke belangen. Naar een verruimd perspectief op rijkstoezicht,
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Supervision by government inspectorates and market regulators has become increasingly important in recent years, but it has also come under growing pressure. The public, enterprises, professionals and public administrators expect a great deal of supervisory bodies, but their expectations are often also contradictory. On top of that, we want more supervision when something goes wrong and less when things go well. The emphasis has shifted to reducing the burden and expense of supervision, compliance with the rules, and using supervision as an extension of public administration and policymaking. The question of how supervision can best serve public interests has been side-lined in the process. The WRR argues that national government should take public interests as the starting point for policy on supervision, and pay closer attention to the effectiveness of supervision and the social benefits that it delivers. Government can make supervision more valuable by coordinating it more closely with the forces operating in society and by enhancing its role as a warning signal and agenda-setter. That involves taking a closer look at the impartiality, independence and public accountability of supervisory bodies.

The Scientific Council for Government Policy (WRR) serves as an independent think tank for the Dutch government. It provides the government with solicited and unsolicited advice focusing on the longer term. The subjects it addresses are cross-sector in nature and concern social issues that the government is likely to be facing in future.

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