

THE COMPLIANCE STRATEGY IN THE NETHERLANDS

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SUMMARY

This paper illustrates the Dutch Compliance Strategy developed by the Ministry of Housing, Spatial Planning and the Environment. The compliance behaviour of the regulatees is the central point in all the action the department takes to reach the policy goals: contribution to a safe, healthy and sustainable environment. A regulatee has certain reasons to respond positive or negative on regulation. The responses are summarised in the so-called Table of Eleven, a broadly accepted and used list of reasons for non-compliance in the Netherlands. Therefore, knowledge of compliance behaviour is essential for the ministry to do the right things, to do the things right and be accountable. Experience with the implementation of the Compliance Strategy is shared. Some examples are given of experiences with the compliance strategy.

1 INTRODUCTION

The final purpose of an environmental policy is the reduction of the load of the environment and eliminating harmful effects on humans, animals and vegetation. Legislation is one of the tools to reduce the effects. This legislation aims to alter the behaviour of the regulatee in order to obtain the set environmental objectives. But rules have to be complied. The ministry of Housing, Spatial Planning and the Environment has developed a Compliance Strategy in 2002. This strategy contains a clear compliance and enforcement message. It is a framework for both policymakers and Inspectorate how to stimulate compliance and how to enforce it.

In 2003 this strategy was approved by the whole department (policy makers and Inspectorate) and since this moment the strategy was fully implemented. So we have now some two years of experience with the implementation of the Compliance Strategy!

2 COMPLIANCE AS A CENTRAL

FACTOR IN THE DUTCH COMPLIANCE STRATEGY

Compliance in the Dutch Compliance Strategy is seen as the behavior a regulatee shows to respond to regulatory requirements. So the key word is behavior. By approving the Compliance Strategy, the ministry pinpoints the behaviour (and the manipulation of the behaviour) of the regulatee as the focus point in her compliance strategy. Knowledge of compliance behaviour is essential for the ministry to do the right things, to do the things right and thereby to reach the objective of the ministry: contribution to a safe, healthy and sustainable environment.

3 THE COMPLIANCE STRATEGY IN SHORT

The strategy can be seen as a way to make compliance transparent and to use newly developed indicators for several purposes: priority setting (doing the right things), effective enforcement (doing the things right) and accountability.

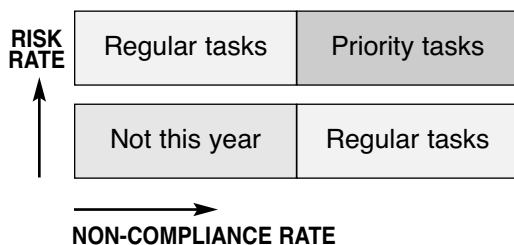
One of the first activities employed within the Compliance Strategy was the identification of all the sets of environmental legislation confined to firms, citizens and other governmental actors (provinces, municipalities). In the Netherlands there are about 450 sets of legislation the Inspectorate has to observe. Some 70% of these regulations concern environmental regulations. The next step: per set of environmental legislation all the regulatees were identified. On this regulatee-level the present state of risks and compliance behaviour were identified and classified in risk- and compliance indicators. The heights of the risk and compliance indicators were all estimated and are based on expert knowledge (Inspectorate and policy makers).

The compliance indicator is a measure for non-compliance. The compliance indicators will be used to calculate the compliance efforts the ministry (policymakers and the Inspectorate) has to make on a yearly base.

Risk indicators are developed on the same way: in several expert workshops risks were estimated per piece of environmental legislation per regulatee on the effects on: public health, safety, sustainability and social factors in case the Inspectorate should not enforce compliance.

When risks and the non-compliance rates are known, the ministry can prioritise the tasks with the help of a 2 x 2 matrix (see figure 1). So this will help the department to pick the right things and be accountable for the choices she makes. Finally the reasons for non-compliance were identified per set of regulation and per regulatee.

Figure 1: Priority setting with the Dutch Compliance Strategy



4 DO THE THINGS RIGHT: COMPLIANCE BEHAVIOR

A regulatee has certain reasons to respond positive or negative on regulation. The responses to regulation are summarised in the so-called Table of Eleven®, a broadly accepted and used list of reasons for non-compliance in the Netherlands.

The base of this table is formed by a combination of social, psychological and criminal theories found in literature on compliance behaviour and on practical experience within the field of the maintenance of law and order. The dimensions of the table of eleven can be seen as behavioural scientific parameters, which can influence the compliance behaviour.

Box 1: Table of Eleven

Aspects of spontaneous compliance:

1. knowledge of the regulation
2. cost / benefit ratio
3. degree of acceptance of the regulation
4. loyalty and obedience of the regulatee
5. informal monitoring

Aspects of monitoring:

6. informal report probability
7. monitoring probability
8. detection probability
9. selectivity of the inspector

Aspects of sanctions:

10. chance of sanctions
11. severity of sanctions

5 INTERVENTIONS

In order to do the things right, the reasons for non-compliance have to be taken into account. Within the ministry it is decided that the policy makers will tackle interventions on the dimension of spontaneous compliance; the Inspectorate will tackle the monitoring- and sanction dimen-

sions. Per reason for non-compliance an intervention mix can be generated to make the regulatee comply as meant by the regulations. This leads to a general Intervention Strategy.

Of course before actual intervening the context factors have to be taken into account: what type of firm is it? What is the financial status of the firm? What investments are already made in order to comply? What is the history of the firm: does he have a large history of regular non-compliance or is this the first time of non-compliance? Is there a compliance pattern detectable within the whole branch? See also the questions following each non-compliance dimension in appendix A.

This will lead to a tailor made smart intervention strategy, with a mix of quite a number of (possible) intervention tools:

- Policy interventions.
- Policy development (new regulation, cost reduction programmes etc.).
- Communication.
- Prevention.
- Compliance assistance
- Deterrence.
- Enforcement; administrative, criminal and civil.
- Feedback to the minister and parliament (annual report of the Inspectorate).

At this moment we are busy to define per reason of non-compliance the possible sets of interventions on experience based investigations. This is a way of working – by translating the focus of the regulatee to the work of policymakers and inspectors - which is quite new and attractive!

6 WHERE ARE WE NOW?

Within three years work, the ministry has developed a robust model form compliance management based on indicators of the present state of compliance and risks at stake. But note: most indicators are estimated!

The use of estimation as a method was a deliberate choice: quickly and at low costs results were obtained. Three years of priority setting with the Compliance Strategy have proved the use: we have a good tool to make risk- and compliance-rate based priority choices. In the departmental Agenda for 2005 we have set ambitious goals for the priority tasks in a more year perspective. This makes us more accountable. The challenge will be to find effective ways to reach the set objectives. We now run a programme on 'smart enforcement' in order to develop sophisticated intervention toolboxes to support this challenge.

In 2004 a supporting evaluation programme is launched to test if the policy objectives are within reach (compliance evaluation, ex-ante and ex-post). In 2003 we have started to validate the risk-based indicators with scientific data. This project will be finished in 2005. The first results are promising.

Also we are developing a compliance indicator monitoring system. This system is based on the OECD input-output-outcome model to classify compliance and enforcement indicators in order to manage compliance. The following indicators are already monitored and used to manage compliance:

Inputs:

- Compliance promotion officers (policymakers)
- Compliance enforcement officers
- Investments in Training IT, sampling etc (in €)
- Days planned for compliance: promotion and enforcement

Outputs:

- Compliance promotion campaigns
- Of inspections
- Of prosecutions
- Of penalties
- Days realised for compliance: promotion and enforcement

Intermediate outcomes:

- Compliance rates
- Risk rates

Final Outcomes:

- Ambient load of pollutants in air and water by a Pollutant Release and Transfer Registry system.
- Environmental effects monitoring in the yearly State of the Environment and State of Nature reports of the State Institute for Public Health and the Environment.

7 TWO EXAMPLES TO ILLUSTRATE THE IMPLEMENTATION OF THE COMPLIANCE STRATEGY

7.1 High Priority: Asbestos Removal Decree

Asbestos is found in half of all demolished buildings. If the asbestos is not removed selectively, it will remain in the rubble. Asbestos can be released during demolition work, during transport and in usage in other products like roads. As such it is a risk for the public health and for the processors of the asbestos rubble.

Regulatee:

- Citizens who deliver asbestos containing rubble.
- Asbestos containing rubble processors.
- Owners of asbestos containing products.

Reasons for non-compliance:

- Knowledge of the rules (T 1)
- Cost / benefit ratio (T 2)
- Degree of acceptance of the regulation (T 3)
- Loyalty and obedience of the regulatee (T 4)
- Monitoring probability (T 7)
- Severity of sanctions (T 11)

Intervention mix:

- Communication (T 1).

- Frequent (T 7) and severe enforcement actions: administrative, criminal, civil

—(T 2, 3, 4,). Often the costs of separating asbestos from other material at the beginning of the rubble chain are not very high (it only takes time and knowledge of what is asbestos or not – the particles are large enough to detect); further on in the chain when the asbestos containing rubble processors are the regulatee, the costs of separating asbestos from the rest rise enormously and the regulatee takes the chance of being detected.

- Higher sanction rates (T 11).

7.2 High Risk, Low Non-Compliance Rate: Fireworks Decree (Fireworks For Consumers)

Most of the important regulatees (the wholesalers) comply. But, if there were to be an explosion it would create a great risk (safety and health). Buildings could be damaged and, far more serious, there could be fatalities.

Regulatee:

- Wholesalers usually store fireworks safely. They adhere to requirements concerning quantities, packaging and distance to surrounding buildings.
- Citizens: a diffuse group with unknown storage of fireworks (quantities and quality).

Reasons for non-compliance:

Wholesalers:

- Cost / benefit ratio (T 2): large investments have to be made in order to comply to the rules. At this moment we see many wholesalers stop their business because of the costs. Reducing the standards is non-negotiable.
- Chance of detection (T 7)
- Severity of sanctions (T 11): sanction rates are so low, that some wholesalers take the risk

Citizens:

- Knowledge of the rules (T 1).
- Cost / benefit (T 2): there is a lot to win in storing and selling (illegal) fireworks (large benefit factor).
- Acceptance of the rules (T 3) : rules are for anyone but me.
- Severity of sanctions (T 11): sanction rates are so low, that citizens often take the risk.

Intervention mix:

Wholesalers:

- Heightening the perception of monitoring, by selective action (T7).
- Communication: deterrence, use of the media, shame and blame etc (T2).
- Enforcement: frequent and severe enforcement actions: administrative, criminal, and civil. Selection of the well known non-compliers (T2).
- Higher sanction rates (T11).

Citizens:

- Communication (T1, T3).
- Deterrence (T2 and T3).
- Enforcement (T2 and T11).

Appendix A

In order to get a feeling on how the table of eleven is used in the Netherlands, some questions can be formulated to get an impression of the behavioural choices the regulatee makes:

1. **Knowledge of the regulation:** the acquaintance with and clarity of the regulation within the regulatee group.
Does the regulatee know the rules? Is the regulation not too extensive? What should the regulatee do in order to know the regulation?
Is there a possible doubt (within the regulatee group) about the applicability of the regulation? Does the regulatee understand what is

meant by the regulation? Is a certain level of (technical or juridical) expertise necessary to understand the regulation?

2. **Cost / benefit:** the financial and material pro's and con's which follow compliance or non-compliance of the regulation in terms of time, money and effort.

Financial:

How big is the effort to comply (administrative, physical)? Are there specific advantages due to compliance, e.g. financial incentives?

Disadvantage of violation: Are there specific (physical) circumstances, which interfere with violation of the regulations (is there a violation threshold)?

Advantage of violation: does violation of the regulation deliver advantages for the regulatee in terms of time, money?

Immaterial:

Is compliance (or non-compliance) good for the image or reputation of the regulatee?

Does compliance or violation of the rules deliver other social pro's and con's?

3. **Degree of acceptance of the regulation:** the extent in which policy and regulations are acceptable for the regulatee.

Does the regulatee accept the policy and the derived standards as reasonable? Can the regulatee agree with the underlying policy assumptions or is there a difference in point of view between policymakers and regulatees? Are there other actors (branch organisations or implementation organisations), which can promote compliance? Can the regulatee himself contribute to the policy (self regulation)?

4. Loyalty and obedience of the regulatee: the extent of conformance of the regulatee to the power of government.

Does the regulatee comply most of the time? Does the regulatee respect government, the law, and the supervisor?

In what extend do the values of the regulatees conform to the values of government? Does the regulatee have other customs, which compete with the rules?

5. Informal monitoring: the perceived chance on positive/negative sanctioning of the behaviour by non-governmental actors.

Does the environment notice non-compliance? Is there tight bond between the regulatee and his environment? Are there informal monitoring structures? Is there a form of social sanctioning?

6. Monitoring probability: the chance that an act of non-compliance will be reported tot government.

Does the environment of a regulatee usually intent to report acts of non-compliance to the government? Do they know where to report to? Are there means tot enlarge the probability to report to the government? (snitch-lines / blab-lines).

7. Monitoring probability: the perceived chance of monitoring an act of non-compliance.

How big is the actual chance (monitoring density)? How big does the regulatee think it is? On what issues the subjective monitoring probability depend?

8. Detection probability: the perceived chance of detection of the violation when supervised by the supervisor.

How difficult is it to detect the

violation? Are violations time- and/ or place bound and therefore more difficult to detect? How difficult is it to lead the violation back to the regulatee? Is it easy tot falsify important documents?

9. Selectivity of the inspector: the (heightened) perceived chance on monitoring and detection due to selection of regulatees (firms, persons, acts, domains).

Are there more non-compliers detected by random / non-random sampling? Does the regulatee think he is monitored more often than the ones who comply? What are the used methods to track down offences?

10. Chance of sanctions: The perceived chance of sanctions after detecting an offence.

How big is the chance that a sanction will be given after detection? How big does the regulatee think it is? Is it hard to prove an offence? Does the regulatee think that the chance of acquittance is high? What about the tolerance strategy of the government?

11. Severity of sanctions: the height and sort of sanctions and the negative impact of sanctioning.

Does the regulatee know which sanction can be given when non-complying? Does he think it will be high (long imprisonment, high penalty, much effort to undo the loss)? Does the sanction bring the financial probabilities of the offender into account? How fast will the sanction be set? Is there a shame-and-blame policy?

Is the fact that one is prosecuted more important than the actual sanction? Are there other impacts at stake when sanctioned (loof reputation, image etc)?