



Lost connections?

Summary of main findings of the parliamentary enquiry by the Dutch Senate into privatization and agencification of central government services.

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This summary provides an overview of the most important findings of the parliamentary enquiry by the Senate of the Netherlands into privatization and agencification of central government services. The central question was: In which way and to what degree was attention paid to the projected, expected and achieved effects of privatization and agencification at national level for the relationship between citizens and the government in the parliamentary debates on these decisions during the period 1990-2010?

Between October 2011 and October 2012, multiple studies were carried out. These include four case studies in specific sectors: telephone and postal services, railways, coaching of the unemployed and energy. Furthermore, four background studies have been carried out: an international comparison, an online survey of citizens, a policy overview and an essay on potential consequences for citizens. Finally, the parliamentary committee held eleven public meetings with relevant actors and experts, and many more private interviews. The reports of these activities can be found in the research report (case studies), in the official documents of Dutch parliament (public meetings) and on the website (background studies). In the main report the committee draws conclusions and gives recommendations to improve future policy development and decision-making. This summary provides an overview of the main conclusions.

A complex operation

Consecutive Dutch cabinets have carried out large-scale privatization and agencification of central government services from the 1980s on. At that time, there was much political and societal support for these decisions. The main motives for privatization and agencification were to control the government finances and to size down the administration. A smaller and more efficient government

was expected to contribute to lower fiscal pressure and a less complex public administration.

The first phase of privatization and agencification started with hiving off government units or companies and to run the government more like a business. The agencification of PTT (particularly telephone services)¹ in 1989 set a successful example. However, privatization and agencification soon started to raise new governance questions. The connections between the government and privatized services loosened while new connections grew between these services and citizens. The nature and consequences of these changes were not acknowledged or considered during this phase by the decision-makers.

From 1987 on, EU member states pursued the establishment of a common market. This objective stimulated a new, more market-oriented position for governments. Liberalization of markets places privatization and agencification in a broader framework. The Netherlands has always been a frontrunner in this respect. The political discussions now focus on new challenges: taking away obstacles to market entry and the enabling of competition. Markets did not however develop as naturally as envisaged.

The relation between privatization and agencification on the one hand and the creation of markets on the other hand makes public governance more complex. In this phase, it became clear that the Dutch government had pursued privatization and agencification without a comprehensive vision or a well-developed plan. Ministries

¹ PTT was the integrated company for telephone and postal services. In 1989, the company was turned into a state-owned company (KPN). In 1998 this company was split into a separate telephone (KPN) and postal (TPG) company. The government sold its shares in both companies in different steps between 1994 and 2007.

implemented decisions to privatize or create agencies in very different ways. As a result, there were many differences in organizational structures and types, and how organizations were managed and controlled.

From the year 2000 on a more critical phase began, triggered by disappointing results and unintended consequences of privatization and agencification, for example in the cases of NS (railways) and the postal services. Main concern now became whether the cabinet and parliament had weighed all the relevant aspects in decisions about privatization and agencification, such as enough attention for public interests, the need for market regulation, and the varying experiences with contracting out. It was evident that control by the government was still indispensable. Realizing a smaller government - consisting only of a small number of core ministries - and reducing control activities by putting policy execution at arm's length turned out to be an immense problem.

Privatizations received much public attention, for example in the case of KPN (telephone) and the energy companies. However, the number of privatizations is much smaller than the number of agencies being hived off of the national government. In the case of agencies, government does not cut off the connection entirely. However, agencification does not occur in a uniform way. Due to a lack of a comprehensive vision and a common approach within the civil service, the end result is complex and opaque. The Netherlands Court of Audit has labelled this situation as 'wild growth' in 1995.

Decision-making about privatization and agencification is characterized by a layering of multiple objectives and regulations. This layering leads to new forms of bureaucratization and (re)-regulation. Agencification can take on a variety of legal forms. The end result is a complex situation in which public, semi-public and

private parties cooperate, leading to new, major and persistent control and steering dilemmas.

Sub-conclusion

The parliamentary committee concludes that the national government initially pursued a simpler and smaller national government but that instead the organizational and managerial complexity have increased. There was no coordination of policies, no common road map but there were many differences in the implementation of decisions by ministries. There were no broadly accepted frameworks for decision-making to ensure coherent policy-making. As a result, decision-making about privatization and agencification took up a lot of time and attention in parliament.

The committee feels that the national government should create more uniformity in how decisions about privatization and agencification are implemented. A well-defined structure is needed to achieve more clarity about the different public and private forms of policy execution. This calls for a government wide approach, to be coordinated by the ministry of Internal Affairs and Kingdom Relations in cooperation with the Council of Secretaries General, who should be given sufficient political and governing authority to enforce compliance. It is important to advance new decision-making frameworks and benchmarks, and to supervise the application thereof. This is where parliament has a task.

A new role for parliament

From the first phase of privatization and agencification on, Dutch parliament has been aware that these decisions are part of a major reform of the national government. In view of the need to sanitize the government finances, both Chambers of parliament have generously supported policy proposals by consecutive cabinets of different partisan compositions. Particularly the House of Representatives² was intensively involved in the decision-making process. However, neither Chamber has asked for baseline assessments or benchmarks to measure whether objectives are achieved.

From the mid-1990s on parliament became increasingly critical, among others because of frustrations with the decision-making about the Dutch railways (NS). The House of Representatives agreed hesitantly with the private law contracts between the government and NS, but became more and more uncertain about the new legal basis of the company. Moreover, the Chambers of the States-General became aware of the need to critically assess the possibilities for democratic control of the large number of "ZBO's", a type of agency.

Until then both Chambers had supported privatization and agencification, but now they took a more critical stance. This change in attitude is exemplary for the goal-seeking approach of parliament. The authority and role of parliament after privatization and agencification is not always obvious. Yet both Chambers want to keep control, which leads to a somewhat erratic pattern of decision-making. It is clear that public law frameworks and

² Note that in the Netherlands the bicameral parliament consists of the *Tweede Kamer der Staten-Generaal* (the House of Representatives) and the *Eerste Kamer der Staten-Generaal* (the Senate).

instruments for such control are lacking. Parliament has thus fallen victim to the lack of a general framework for decision-making as well.

The Senate has on several occasions expressed dissatisfaction with the fact that they get involved only at the end-stage of decision-making. The Senate wishes to participate in decision-making on changes in the structure and organization of the public domain. The Senate has made use of so-called policy debates to exert influence on the general policy development by the cabinet. Both Chambers have felt the need to obtain more information. For example, the Second Chamber has asked the Social Economic Council (SER) for advice on how to weigh public interests in market regulation policies.

The analysis of parliamentary debates shows that both Chambers struggled with the increasing complexity of decisions. This raises questions whether parliament is equipped sufficiently to take good decisions. Not only the size of reforms and their complexity make the transformation of the national public administration and the level playing field difficult to oversee, also the shifts in objectives of privatization and agencification as well as the different approaches by ministries. Moreover, it is difficult to foresee all consequences of decisions to privatize or create agencies. Therefore, we need to know more about privatization and agencification, and evaluate decisions more often.

The most typical characteristic of parliamentary decision-making is that in each new phase corrections are made for the – apparently incomplete – decision-making in the previous phase. The introduction of markets is for example an answer to the limitless privatizations in the first phase, when privatized companies became active in markets that were no real markets. Next, the attention for public interests from the year 2000 on is an addition or correction on

the creation of such markets; public interests were not accounted for sufficiently in earlier decisions. This creates an image of parliament constantly renegeing on prior decisions. It does not create a reliable image.

Parliament finds itself more and more frequent in a position that does not feel right. Putting policy implementation and service delivery at arm's length imposes limits on ministerial accountability and hence on parliamentary control. It is necessary to rethink the role and instruments of parliamentary control. Parliament retains a task when it comes to scrutinize the implementation of policies. To that end, parliament can make more use of existing instruments, particularly for monitoring and evaluation. Furthermore, new instruments can be developed. The two Chambers make hardly any use of evaluation reports and have little systematic attention for policy execution. However, parliament has over time become more responsive to societal effects of privatization and agencification.

Sub-conclusion

Parliament has three roles: legislature, control and representation. The committee concludes that parliament has to rethink how it should fulfil these roles in light of the changing context in which it operates. Privatization and agencification have blurred the role of parliament in the recent decades. The authority of parliament should be very clear however, both in terms of its role as legislature and controller. This requires comprehensive legal frameworks, to assess and support decision-making.

Hiving off government units and companies requires that parliament pays more systematic attention to policy execution, to prevent a democratic deficit. It is the opinion of the committee that parliament – including the Senate – should rethink its role. This could be achieved by strengthening the roles of legislature and controller, while taking into account that the public sector has become more complex. Both Chambers can make more use of existing parliamentary instruments to this end.

Effects for citizens and public interests

Privatization and agencification do not only affect the role of parliament but also the relationship between citizens and the government. For citizens, the distance between themselves and the government has increased as well. That makes it unclear who can be held accountable for the consequences of decisions to privatize or create agencies. For citizens an important question is which results have been achieved through privatization and agencification. Decisions about privatization and agencification were taken to improve public service delivery to citizens. It is however questionable whether the citizens' interests have been taken into account truly in these decisions.

In the four case studies citizens' interests were referred to, mostly as client or consumer interests or related to the role of citizens as tax payers because there were big financial implications. The background study by the Social and Cultural Planning bureau demonstrates however that citizens do not only value their own individual interests in their assessment of privatization and agencification. Citizens are also interested in collective interests from which all citizens can profit, like a well-functioning public infrastructure. Unintended or unforeseen effects of privatization and agencification concern both individual and collective interests. Citizens are aware of both; they do not care only for the prices of public services but also for societal effects and the quality of public services as a whole.

In the past two decades, decision-making about privatization and agencification have not stimulated a broad perspective on public interests – partly because of the lack of general frameworks, different approaches by different ministries, the lack of systematic attention in parliament for policy execution and the absence of a more generic vision within the national government. The committee

proposes that the legislature – i.e. parliament and cabinet – should use a broader perspective on public interests in their decision-making processes, particularly in policy sectors where new decisions about privatization and agencification are considered. Such a broader perspective strengthens the position of the legislature and contributes to the trust of citizens in the government.

Sub-conclusion

The committee concludes that by focusing on the roles of citizens as client and tax payer, a too narrow perspective on public interests was used. Consequently, citizens were locked-in in a limited conception, which is one of the determinants for the public's dissatisfaction with privatization and agencification of government services. Therefore, a broader perspective needs to be developed and applied, for example in a societal impact analysis as proposed by the Social and Economic Council (SER).

It is the opinion of the committee that the cabinet and parliament should use a broader and joint understanding of public interests. This should include interests of individual citizens as well as collective interests that benefit all. A broader perspective will reinforce the relationship between citizens on the one hand and parliament and the national administration on the other hand. The Scientific Council for Government Policy (WRR) and SER have written about using such a broader perspective before. This has not led to a change in the political attitudes though.

Reverse or advance? New forms of steering

Several studies within the parliamentary enquiry show that privatization and agencification are a process of trial and error, with unforeseen consequences, incomplete decisions and a complex end result. In some cases, privatization and agencification have not achieved their objectives. In other cases, hived off units and companies have improved their performance. It is not surprising that a societal and political discussion has arisen about the need for additional control and regulation. There is now a wide consensus that decision-making should be rethought before new decisions are taken. However, while some feel that this rethinking should lead to reversing privatization and agencification, others feel that these processes should be given more time to unfold as intended.

The committee has noted that there is no optimal form of (new) control. The quality of managerial and political connections between government and agencies should be elaborated more, in alignment with the principles of democracy and legality, and from a broad perspective on public interests. When rethinking or rearranging the level playing field the following principles should be upheld: democratic legitimacy, transparency, public accountability about public competences, and the standard setting role of the legislature. The committee will not offer concrete recommendations for the case studies in the enquiry,³ but does stress the need for additional decision-making or control by parliament and the government in some of these cases.

The national government can exert control through legislation, statutes and governance arrangements, ownership of stock, and

³ The enquiry is a so-called legislative study i.e. it aims to study and offer recommendations for decision-making processes. Therefore, this is not a study to evaluate the results of agencification and privatization.

regulation/supervision. Within the existing legal framework there are thus many opportunities for control. The committee concludes that the government should take charge in situations where incomplete decision-making has led to unstable situations. If further unfolding of original plans is not possible, the question should be raised whether decisions need to be reversed. Two examples come to mind: the split between the railway company NS and ProRail (maintenance of rail infrastructure), and the 'accidental' privatization of the postal services as part of the integrated company for telephone and postal services (PTT). Service delivery in these sectors is under pressure due to incomplete decisions in the past.

Regarding ZBOs, there is a need to improve governance arrangements. In this case, further unfolding of the original decisions seems most desirable. It is important to improve the supervision of ZBOs. The committee promotes caution regarding the creation of new ZBO's. However, when ZBOs have been established for good reasons, then they should be kept at some distance of the parent ministry and be allowed to function autonomously. ZBOs are accountable for policy execution, but there should always be a policy connection with the parent ministry.

Finally, it is important that the national government rethinks the possibilities to exert control through ownership of stock. More cooperation is needed between the Ministry of Finance – the main shareholder on behalf of the government – and the parent ministries to improve the control of state-owned companies. This cooperation should also include a broad perspective on public interests.

Parliament has several legal instruments to control privatized companies and agencies. These instruments enable parliament to oversee policy execution at arm's length. To complement the circle of supervision it is important that parliament has direct contacts with the organizations in charge of policy execution as well. The

committee therefore recommends that agency CEOs appear in parliament to provide information about their performance.

Conclusion

The committee concludes that control is still possible. In case of agencification the connections with the national government have not been lost. However, the nature and quality of these connections needs some rethinking. This rethinking should be led by the principles of democratic legitimacy and a broad perspective on public interests. The national government needs to intervene in situations where incomplete decisions have led to unsatisfactory outcomes or suboptimal governance arrangements. Parliament should develop new instruments and ways to reinforce its control on policy execution at arm's length.