

# 018

# WORK2018

ADVISORY BOARD ON REGULATORY BURDEN

# PROGRAMME

## ATR

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The Advisory Board on Regulatory Burden (ATR) advises the government, the House of Representatives and the Senate on the effects of the regulatory burden of proposed laws and regulations. To that end, ATR advises ministries at an early stage in the legislative process.

Furthermore, ATR examines whether the regulatory burden of existing legislation can be reduced. It selects its advisory topics following consultation with ministries and key social stakeholders.

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**This is the first work programme of the Advisory Board on Regulatory Burden (ATR). This programme relates to 2018, which coincides with the first full year of the new Dutch government. ATR has now been in existence for six months. ATR has a substantially revised mandate compared to that of its predecessor Actal.**

**Its core task is to advise on and review proposed legislation. ATR issues advice at an early stage in the legislative process.**

This work programme outlines the Board's working method. Working agreements were made with the ministries on the ATR's working method over the past few months.

Furthermore, ATR is tasked with advising on existing legislation. The Board aims to tie in with the focus areas set out in the coalition agreement. It will also use signals of unnecessary regulatory burden from society for this purpose. However, in view of the ATR's limited advisory capacity, priorities need to

be set. ATR also wants to be able to respond to requests from Parliament.

The Dutch policy on regulatory burden is praised internationally. This cannot be taken for granted as other countries are making headway in this area. The Netherlands can learn a great deal, for instance, from the OECD's recommendations, the experiences of 'better regulation' policy in other European Member States and the European Commission. The challenge is to translate those experiences into lessons that are relevant to and workable for the Dutch situation. ATR will assist the government in developing this agenda and the associated new instruments and methodologies.



## **Core task: advising on and reviewing proposed legislation**

**ATR's core task is to advise on proposed legislation, such as laws, general administrative orders and ministerial regulations.**

It will provide advice at an early stage in the legislative process, prior to or during the (internet) consultation. This will enable ministries to make use of ATR's knowledge and expertise early on in the legislative process. Stakeholders will also be able to view (and respond to) proposed legislation and its intended effects at an early stage.

ATR advises on all proposed legislation that has consequences for the regulatory burden. As an independent board, ATR must be able to assess independently whether there are any consequences

for the regulatory burden. In principle, ministries should submit all draft regulations to ATR for this purpose. During the review process, ATR examines the consequences of the regulatory burden for citizens, businesses and professionals in health care, education, safety and social security.

ATR will periodically provide insight into the number of proposals it has reviewed and the opinions it has issued on those files. ATR will additionally report on general findings and lessons learned ('common threads').

# The review framework

The ATR considers it important to provide clarity beforehand on the way in which it performs its mandate. ATR applies a scrutiny framework consisting of four questions.

- 1 Added value of intervention: Is there a task for the government and are regulations the designated instrument?**  
During the review process, ATR examines the substantiation of the policy objective underlying the proposal and whether insight is provided into why legislation is the most appropriate instrument.
- 2 Are less burdensome alternatives feasible within the solution proposed?**  
An analysis of any alternatives with a lower burden should be included in the explanatory information accompanying the proposal. Should the alternative with the lowest burden not be chosen, the ATR recommends providing good reasons for doing so.
- 3 Is the new or revised regulation congruent with the working processes of the target groups that have to comply to the new obligations?**  
Practicability and implementability refer to the extent and the way in which account has been taken of how the draft regulation is experienced 'by the shop floor' during drafting. The SME test might be included in this question in 2018.
- 4 Have the consequences for the regulatory burden been fully and accurately identified?**  
The central government-wide methodology should be used to identify the regulatory burden, both qualitatively and quantitatively. This should clearly show whether all the actions that must be performed in order to comply with the statutory obligations have been clearly identified.

## Organisation

The ATR Board consists of Marijke van Hees, Eric Janse de Jonge and Remco van Lunteren.



Budget  
**€ 1.7 miljoen**



Support office  
**11 people (10 FTEs)**

# Opinion and operative part

Every opinion issued by ATR includes a dictum. With a dictum the Board states whether the questions in the review framework have been answered adequately. The dictum shows whether the legislative proposal is fit for decision-making.

Opinion	Criteria
<b>1</b> Fit for purpose <i>(without further recommendations)</i>	<b>Criteria (all have to be met):</b> <ul style="list-style-type: none"><li>• Legislation is the best choice of instrument.</li><li>• Less burdensome alternatives have been considered within the proposal when setting policy goals, the executive framework and the supervision/enforcement framework.</li><li>• The less burdensome alternatives have been chosen, or there is a solid motivation when this is not the case.</li><li>• The effects on compliance costs have been fully calculated.</li></ul>
<b>2</b> Fit for purpose after ATR's opinion has been taken into account	<b>Criteria to deviate from dictum 1</b> <ul style="list-style-type: none"><li>• The calculation of the effects on compliance costs are not fully complete;</li><li>• OR recommendations on the content of the proposal are minor</li></ul>
<b>3</b> Not fit for purpose unless ATR's opinion is taken into account	<b>Criteria to deviate from dictum 2</b> <ul style="list-style-type: none"><li>• No less burdensome alternatives have been considered. The motivation why these have not been considered is weak;</li><li>• OR the calculations of the compliance costs are far from complete (i.e. complete target groups missing, essential obligations not calculated)</li></ul>
<b>4</b> Not fit for purpose	<b>Criteria to deviate from dictum 3</b> <ul style="list-style-type: none"><li>• There is no evidence of a structural problem;</li><li>• OR legislation is not the best solution;</li><li>• OR no less burdensome alternatives have been considered.</li><li>• OR the compliance costs are not calculated or have not been made on the level of the obligations.</li></ul>

A positive dictum indicates that the substantiation of the particular legislative proposal is adequate from the perspective of regulatory burden (and that some minor points may need to be improved). A negative dictum means that the substantiation is inadequate. The decision on how to deal with such a proposal is a political decision. ATR informs the Ministry of Economic Affairs and Climate of opinions

with a negative dictum so that the ministry can ensure that these legislative proposals are not considered for decision-making or are not adopted.

In addition to the ex ante review of proposed legislation, ATR can also advise on amendments and private members' bills.

# Making existing legislation less burdensome

**In addition to its core task, the Board can also advise on how to make existing legislation less burdensome. It will initially look at the focus areas in the coalition agreement.**

This includes the opportunities for housing associations to invest in residential construction/social housing, the certainty of self-employed workers about their status as an entrepreneur, the obstacles for employers in hiring people with an occupational disability and the regulatory burden for professionals. In the healthcare sector this concerns nursing home care, hospital care and home care. In the education sector, the regulatory burden for teachers. In the safety sector, the regulatory burden for professional police officers and in the judicial supply chain.

A key cross-cutting theme is the contribution IT solutions can make to reducing the regulatory burden. In addition to these themes, the House of Representatives recently requested ATR to conduct or commission a study into the regulatory obstacles to the 'sharing economy'. ATR will conduct this study in 2018.

ATR can also issue advice based on signals from society. It will initially carry out a quick scan to find out whether the signal actually relates to regulatory burden and addresses a structural problem (or just an incident). A preliminary survey of alternatives with a lower burden will be carried out to identify the advisory potential. Based on the survey, the Board will make a decision on issuing an opinion.

Furthermore, ATR can advise municipalities, provinces and water authorities on request. It therefore participates in various bodies including the Advisory Committee on Local Government Law. This committee focuses mainly on the Municipalities Act (Gemeentewet) in conjunction with the General Administrative law Act (Algemene Wet betuursrecht). The ATR's participation means that it can efficiently make available its knowledge and expertise to the municipalities at an early stage. This applies in particular to the ATR's involvement in model bylaws.

The Board aims to make agreements with the organisations vested with a strategic advisory role by the government. Firstly, this concerns the public-private committee that advises the government on reducing the existing regulatory burden for businesses. Secondly, this concerns the Regulatory Council for Responsive Government tasked with examining how the relationship between government and citizens can be improved. These agreements aim to provide both organisations with access to ATR's knowledge and expertise.

Given ATR's limited capacity, the proper performance of ATR's core task poses a considerable challenge. The Board wishes to point out that advising on the regulatory burden of existing legislation will come under pressure. The extent to which this will occur will become clearer in the course 2018.

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**“ All too often we become mired, with the best intentions, in detailed government regulation.**

**But this is not the solution. ”**

- COALITION AGREEMENT 'CONFIDENCE IN THE FUTURE'

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## International cooperation

A great deal of legislation relevant to the Netherlands is of international origin (EU, UN, WTO, etc). ATR has a limited task in terms of this legislation: it focuses mainly on the scope available to the Netherlands for implementing and transposing this legislation into national legislation. The ATR's main activities are in the area of exchanging knowledge and experiences with its sister organisations in Germany, Norway, Sweden, Finland, the Czech Republic and the United Kingdom. This takes place in the network organisation *RegWatchEurope* (RWE). RWE regularly shares experiences with several international organisations, such as the OECD and the *Regulatory Scrutiny Board* (RSB) of the European Commission. RWE and RSB share their views and experiences with the European Commission.



## Revision of the 'better regulation' policy

**At the time of preparing this work programme, the government was formulating the new agenda for the 'better regulation' policy.**

The Board has offered to contribute the ATR's knowledge and experience. It primarily sees good opportunities for using the OECD's insights in drawing up the new agenda. The challenges facing the Netherlands are mainly in the following areas:

- 1** *Paying greater attention to the extent to which statutory obligations are actually workable for those on the shop floor who are required to comply with them.*
- 2** *Expanding the role of the ex post policy evaluations in ex ante policymaking by, for instance, applying the principle of 'evaluate first'. Legislative amendments will then only be implemented on the basis of a public policy evaluation.*
- 3** *Devising new methodologies for further developing the 'better regulation' policy. These methodologies relate, for instance, to the regulatory burden experienced and perceived. Behavioural science aspects could also play a role here. Moreover, in view of the OECD's recommendations and the experiences of bodies such as the European Commission, it is equally important to identify the qualitative and/or quantitative benefits arising from policy. This will enable the legislator to give a more balanced opinion on the social added value of draft regulations.*

Another important topic for the new 'better regulation' agenda is how to deal with European legislation, which has significant consequences for the regulatory burden in the Netherlands. Therefore, it is vital to acquire greater and earlier insight into those consequences. In 2018 ATR aims to examine how it can help ministries in this regard. In the period ahead, ATR will consider how it can contribute its knowledge and expertise in designing a new 'better regulation' policy agenda that will again lend prominence to the position of the Netherlands on the international stage.