



Adviescollege
toetsing regeldruk

Annual Report 2018

Adviescollege toetsing regeldruk

2018 Overview:

**Positive initial experiences
with early advice ATR**

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Workability is key

This Annual Report describes the activities of the Dutch Advisory Board on Regulatory Burden (Adviescollege toetsing regeldruk, ATR) in 2018. When ATR was established in June 2017, we decided to focus our attention on the workability of regulations. Workable regulations have two features. Firstly, they are suitable for the problem they are supposed to solve. Secondly, they fit in with the everyday practice of those people or organisations that have to comply with these regulations. If the regulations are not sufficiently workable, there is a high probability that the policy objective for which they were designed will not be achieved.

“SMEs are often unable to manage all the regulations. Review of regulations in an early stage of the legislative process increases their effectiveness and reduces regulatory burden.”

Leendert-Jan Visser

Managing Director of the Dutch Federation of Small and Medium-Sized Enterprises

The opinions that we have issued in 2018 show that it is not self-evident for legislators to pay attention to workability. It requires a change in perspective: when drawing up regulations, the legislator must not only look at the aims he wants to achieve for society as a whole, but he also has to take into account the perspective of the person who must comply with the regulations. This is only possible if the legislator has a clear picture of how the target group has organised (and often also automated) its life or work. It is worrying to note that, in 2018, the focus on workability was inadequate in nearly half (45%) the regulations submitted to us. A clear example of this have been the protests in the medical sector against the obligation to mention the BIG number (a unique, personal number for registered health professionals in the Netherlands) in waiting rooms and on invoices.

From the perspective of the target group, workability opens up yet another dimension. In many cases, the target group has to deal with multiple legislative areas. An entrepreneur combines several roles: taxpayer, employer and investor. This means that entrepreneurs need to comply with regulations in various legislative areas. Practical experience shows that concepts and work processes may not be properly aligned with one another. A telling example is the VAT number for self-employed persons without employees, which is based on their citizen service number (BSN). Whereas the government's privacy policy argues for extreme restraint in making the BSN public, the tax regulations stipulate that self-employed persons must display this number on their website. Fortunately, this incompatibility between privacy and tax regulations has now been removed.

“Event organisers are increasingly facing problems due to complex administrative procedures and unclear, sometimes unnecessary safety requirements. Impracticable permit conditions prevent volunteers from doing what they enjoy: independently organising meaningful activities.”

Pieter Verhoeve

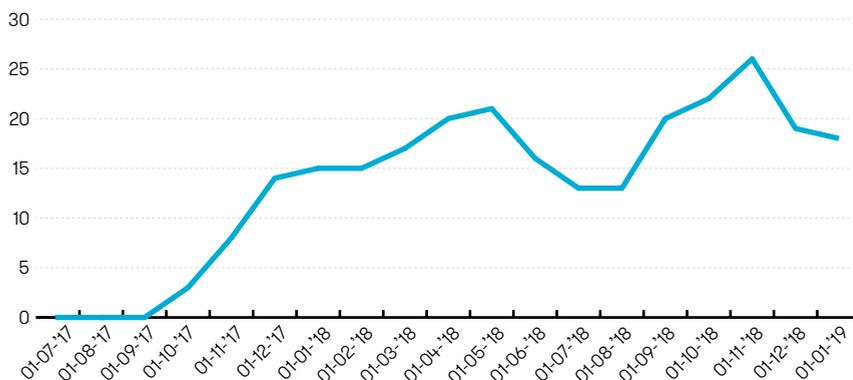
Mayor Oudewater, Chair of the Royal Federation of Orange Associations

Involvement at an early stage is effective

ATR advises ministries on how they can improve the quality of regulations by avoiding or reducing unnecessary regulatory burdens for citizens, businesses and professionals. We aim to provide opinions as early on as possible in the policy-making and legislative process. At this stage, ministries still have ample opportunity to take our advice on board and keep the regulatory burden in mind when designing their policy instruments.

In 2018, ministries gradually started submitting an increasing number of draft regulations to ATR in the pre-consultation phase. Figure 1 shows that, after an initial phase in 2017, the average number of dossiers submitted early on in the process varied between 15 and 25 per month.

Figure 1 Requests for opinions, also including a preliminary phase (three-month moving average, % of total)



The opinions we issue in the early phase of the legislative process are confidential in nature. This is because the draft regulation is not yet public at that time. The contact between ATR and the ministries is also confidential at this stage. It is therefore difficult to provide a complete picture of the result of our contribution in this pre-consultation phase. However, there is one example that illustrates what this contact can lead to. This relates to the Plant Health Act (Plantgezondheidswet). The Act itself has no direct consequences in terms of regulatory burden. However, the secondary legislation that elaborate the Act, does have such consequences. The Act itself merely lays down the approach, while the secondary regulations enhance the act with concrete measures. The purpose of the approach only becomes clear through these measures. Seen from the regulatory burden perspective, the problem is that it is too late to adjust the approach once the secondary regulations have been formulated, because the Act will already be in place by that time. Hence, ATR has recommended that the consequences of the regulatory burden should be identified when drafting the Act. This is possible with the help of scenarios and by defining certain limits in terms of the impact of the Act. The Ministry of Agriculture, Nature and Food Quality has accepted this suggestion, as a result of which it was possible to take the consequences of the regulatory burden into account in the Plant Health Act.

“An important element of the Environment and Planning Act (Omgevingswet) is that we have taken all relevant interests into account beforehand, including the aspect pertaining to the regulatory burden. In this regard it helps if ATR is involved very early on in the process.”

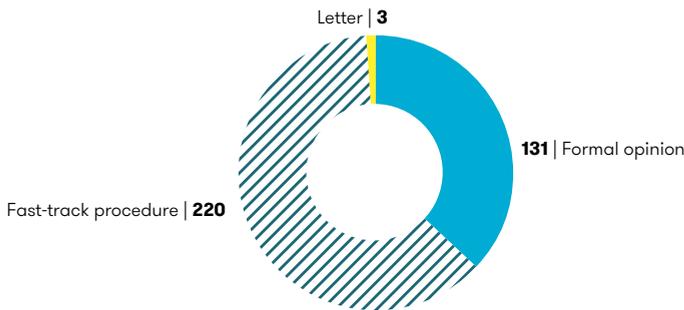
Rosemarie Bastianen

Director of the Simply Better (Eenvoudig Beter) initiative (Ministry of the Interior and Kingdom Relations)

Proportionate review

ATR received 390 requests for advice in 2018, of which 354 were handled within the same year. The rest will be dealt with further in 2019.

Figure 2 Method of handling requests for advice



We try to process requests for advice in an appropriate and proportionate manner. This means that we do not issue a formal opinion in all cases. We have done that in 131 of the 354 cases (37%). In case of a formal opinion, we indicate the areas of concern and suggested points of improvement in a letter to the responsible minister. In 3 of the 354 cases, we sent a different type of letter, stating that we had decided not to issue an opinion. This was either because the proposal had not been submitted to us in time or because regulatory burden was not relevant to the proposal. In the remaining 220 cases, we followed the so-called “fast-track” procedure. These requests for advice are handled by ATR at an administrative level. We do this primarily for ministerial regulations that do not have any major impact in terms of regulatory burden. The fast-track procedure allows us to work efficiently. As a result, we can devote our efforts to more important dossiers (from a regulatory burden perspective). The procedure also makes it possible for us to provide advice in time: we deliver 98% of our formal opinions within the maximum advisory period of four weeks. The fast-track procedure helps us ensure that our advisory procedure remains proportionate. As a result, legislative dossiers with few consequences in terms of the regulatory burden can be handled within a few working days. This also ensures that ministries are quickly informed of ATR’s findings. They greatly appreciate this proportionality.

“The efficient and quick interaction with ATR means that we face no problems in the planning schedule for regulations.”

A policy advisor who submitted a request for advice

Review criteria and dicta

Our advice focuses on what citizens, businesses and/or professionals must do to comply with the obligations specified in the proposed legislation. In addition, ATR checks whether these obligations are proportional and not unnecessarily burdensome. We also examine whether the obligations are workable. Finally, we review whether the impact of the regulatory burden (compliance costs) has been properly assessed in terms of quality and quantity: does the explanation offer a good overview of all the actions that people have to perform in order to fulfil their obligations?

When we issue an opinion, we also add a dictum to this as a summary of our recommendation. This dictum may vary from “Submit” to “Do not submit”, with two intermediate variants. It indicates whether the relevant legislation is suitable, from a regulatory burden perspective, for being submitted for decision-making. If that is the case, the dictum indicates that the proposal is fit for submission to the cabinet.¹ This was indisputably the case in 18% of our opinions. That means that, in fewer than one in five cases (18%), we had no remarks regarding the draft legislation. In the remaining 82% we did have such remarks. In 60% of the opinions issued by us, we assessed the proposal as being suitable for decision-making provided a number of changes were made (“Submit after”). In 21% of the opinions, the proposed changes were substantial and hence the dictum dictated “Do not submit unless”. In the remaining 2%, the substantiation of the proposed legislation was so weak that we advised that it should not be submitted at all (or at least not in its present form). Since the autumn of 2018, the Ministry of Economic Affairs and Climate Policy has been monitoring the manner in which ministries respond to the opinions issued by ATR. The initial impression is that the ministries comply with a significant number of these opinions.

Figure 3 Distribution of opinions based on their dictum in 2018

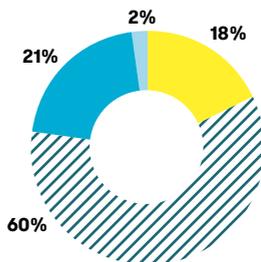
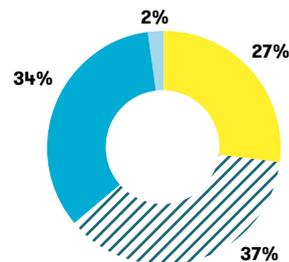


Figure 4 Distribution of opinions based on their dictum in 2017



● Submit ▨ Submit after ● Do not submit unless ● Do not submit unless

¹ Here, “submission” only relates to draft regulations on which the cabinet takes decisions. If the minister concerned is competent to adopt the draft regulations, the operative part is expressed as “Adopt” (or “Do not adopt”).

In 2018, we issued fewer opinions with dictum 1 than in 2017. This means that, in comparison to 2017, ATR received fewer requests for advice for which we had no remarks in 2018. On the other hand, the nature of the remarks seems to have become somewhat less serious: in 2018, 78% received dictum 1 or 2, while this was only 64% in 2017. The challenge for the ministries is to continue this decreasing trend in 2019 and ensure that there is an increasing percentage of opinions with dictum 1.

Initial overview of the regulatory burden

Based on the initial overview, it appears that the systematic increase in the regulatory burden has, on balance, decreased slightly in 2018. This is the result of the decrease in the regulatory burden for citizens, mainly as a result of the amendment of the Electronic Publication Act – General Announcements and Communications (Wet elektronische publicatie algemene bekendmakingen en mededelingen). This proposal stipulates that all general government announcements must be made digitally accessible to citizens and businesses. People no longer have to consult different websites and free local papers. The Ministry of the Interior and Kingdom Relations has calculated that this will lead to a decrease of €151 million in the regulatory burden.² The incidental regulatory burden has increased by approximately a quarter of a billion euros. This mainly includes adjustment costs incurred by the target groups to meet the new or changed obligations.

Table 1 Increase (+) or decrease (-) in regulatory burden as calculated by ministries

Target group	Structural	Incidental
Businesses	€71,967,907	€210,918,575
Citizens	-€170,146,780	€1,171,100
Professionals	€52,424,727	€42,412,305
Total	-€45,754,146	€254,501,980

Source: The figures have been taken from the proposals submitted for scrutiny by ministries. They are approximate indications.

² It should be noted that this overview only contains the consequences of the regulatory burden of proposed regulations (as identified by the ministries themselves). It does not contain the result of the cabinet's efforts to reduce the regulatory burden of existing regulations.

We would like to emphasise that the final costs of the regulatory burden will deviate from this initial overview. These final consequences can only be determined on the basis of the adopted (and published) regulations. Differences between the two arise when ministries, on the advice of ATR, opt for a less burdensome alternative, make a proposal more workable and/or adjust or supplement the calculation of the costs of the regulatory burden in some way. In this context, we feel it is important to point out that our analysis of the consequences of the regulatory burden does not constitute a prelude to an argument for a quantitative reduction target. After all, such an objective does not take into account the benefits of the regulations. In addition, the challenge for Dutch policy is to identify these benefits in a systematic manner. Only then can one determine the added value of the regulations for society and assess the proportionality of the costs of the regulatory burden associated with these regulations. With such an extension, the Dutch approach moves towards a fully-fledged impact assessment system, as advised by the OECD and as also used, for example, by the European Commission.³ In 2019, together with the Ministry of Economic Affairs and Climate Policy, we will investigate the possibilities for broadening the Dutch methodology.

Recurring points for improvement

When we issue an opinion, we regularly come across the same areas of concern and points for improvement. Below, we describe the points that stood out in 2018. Remarkably, in many cases, these points should not have been an issue, since they have already been addressed in the Instructions for the Regulations (Aanwijzingen voor de regelgeving). These Instructions are mandatory: legislators are obliged to follow them.

Opting for regulations

When opting for regulations as a policy instrument, legislators must make a reasonable case for these regulations being an effective, efficient and proportionate response to the problem that is to be solved. This requires sufficient certainty that (1) the proposed scheme will actually lead to solving or reducing that problem, (2) there are no alternatives that are less burdensome and (3) the costs and burdens of these regulations are justified by the seriousness of the problem. These criteria for the use of regulations are reflected in the scrutiny framework used by ATR. The first two questions are particularly relevant. If the benefit and necessity of a proposal cannot be demonstrated and/or if anything other than the least burdensome alternative has been chosen (without properly

³ OECD, Regulatory Policy Outlook 2018, pages 216-217. The OECD notes that, since 2015, the Integral Assessment Framework (IAK) has been expanded to include certain other types of benefits, but the emphasis of the Dutch Better Regulation (Betere regelgeving) approach is still largely cost-based.

substantiating the reason for this), we issue an opinion with dictum 3 or 4. This means that we do not consider the substantiation of such a proposal to be adequate as yet. In other words, the legislator has not yet clearly demonstrated whether the proposal meets the criteria specified in Instruction 2.2 of the Instructions for the Regulations. In 2018, this was the case in almost a quarter (23%) of ATR's formal opinions.

Knowing regulations

Citizens are expected to know the law. This is not easy, because legislation is often complicated. This is especially true for laws that do not pertain to public law. This includes, for example, the standards drawn up by the Dutch NEN standardisation institute. Legislators use these standards to align the legislation to “the self-regulating capacity of society”; by using these standards, legislators know that they are setting requirements that fit in with what is generally accepted and desirable in society. In principle, this reference must be non-binding; the standard is ‘merely’ a possible interpretation of the legal requirement, without excluding the possibility of doing things in a different way (Instructions for the Regulations 3.47, paragraph 2).

If deviation from the standard is not desirable, the laws and regulations may make a mandatory reference to this standard. The standard must then be either explicitly incorporated in the law or made available free of charge. The reference to this standard must occur in a static manner, which means that these standards must be referred to as they are laid down at a specific point in time. If the reference also includes later changes, these changes must also be published in the Government Gazette (Staatscourant). This is to prevent private parties, rather than legislators, from changing the content of a law (by changing the standards).

In 2018, ATR came across several dossiers in which the documents relating to standards were not easily accessible. This means that citizens and businesses were unable to access these documents and therefore could not be expected to know the law.

Examples of dossiers with inaccessible standards-related documents:

- *Amendment of the Regulations on Reductions in Landlord Levy 2014 (Regeling vermindering verhuurderheffing) (ATR Opinion dated 16 November 2018);*
- *Implementing Decree on the Environment and Planning Act (Invoeringsbesluit Omgevingswet) (ATR Opinion dated 21 December 2018).*

Minimum implementation period for regulations

Legislative amendments must come into effect on a specific date. In 2009, the government laid down the principle of Common Commencement Dates (CCD). Common Commencement Dates make it easier for citizens and businesses to learn when new regulations come into effect. Furthermore, they must be given at least two months to prepare for the implementation of the new regulations. Legislators may deviate from the Common Commencement Dates and the minimum implementation period if there are good reasons for doing so. Legislators must state these reasons in the explanatory notes to the draft regulations. The grounds for derogation also form part of the CCD system. The system is defined in Instruction 4.17 of the Instructions for the Regulations.

Experience from 2018 shows that ministries do not always adhere to the CCD system. This was the case, for example, in the case of two proposals for amending the tariffs of the Human Environment and Transport Inspectorate (ILT). In this case, the reason for the deviation from the minimum implementation period of two months was unclear (ATR Opinions dated 8 January 2018 and 21 November 2018). The same applied to the regulations for the implementation of the fourth EU Railway Package (ATR Opinion dated 12 November 2018) and the Tachograph Regulations (Regeling Tachografen) (ATR Opinion dated 1 November 2018).

One-time delivery and multiple use of data

An important aspect of the quality of legislation is consistency in the definitions of terms and concepts. After all, it is very confusing (i.e. not very workable) when different laws and regulations use different definitions for the same concept. The basic principle is that the definitions in proposed regulations must be in line with the definitions that have been drawn up for the principal databases. This is stated in Instruction 5.31 of the Instructions for the Regulations. This Instruction also stipulates that the government must use the principle of “one-time delivery, multiple use” with regard to the data of businesses and citizens. This means that, if the government already has certain data, it may not request these data again from the person concerned.

In 2018, some of the proposals submitted to ATR did not meet the criterion of “one-time delivery, multiple use”. Examples of such proposals are:

- *Amendment to the Elections Act (Kieswet) (ATR Opinion dated 26 January 2018);*
- *Legislative proposal for the screening of police officials and external police staff (ATR Opinion dated 13 February 2018);*
- *Regulations on Reductions in Landlord Levy (ATR Opinion dated 16 November 2018).*

Conclusion

The initial experiences with the involvement of ATR in the early stages of the legislative process have been positive. Ministries have been more receptive to the opinions. In many cases, this has also led to a clearly improved working relationship. Furthermore, in 2018 we have issued more opinions with dictum 1 or 2 than in 2017. Of course, this is not to say that there are no issues that require attention and improvement.

Firstly, in 2018, there were relatively fewer dossiers that earned the “Fit for purpose” rating. The number of requests for advice for which we had no remarks decreased by one-third, from 27% in 2017 to 18% in 2018.

Secondly, the calculations made by the ministries of the consequences for the regulatory burden of their proposed regulations indicate a slight decrease in the costs of the regulatory burden. This decrease only applies to citizens, not to businesses and professionals. The actual development of the regulatory burden can only be measured after adoption (and publication) of the relevant regulations.

The third area that requires attention relates to the Instructions for the Regulations. These Instructions are intended to ensure that regulations are effective, efficient and proportionate. However, ministries do not always follow the Instructions, despite their mandatory nature. This means that they fail to make use of important ways of reducing the regulatory burden.

The final focus area concerns workability. At the start of this Annual Report, we indicated that we devoted a great deal of attention in 2018 to determining whether the proposed regulations are workable. This proved necessary – in almost half our formal opinions (45%), it was unclear whether the proposed regulations were in line with the everyday practice of citizens, businesses and professionals. This is worrying, because this lack of alignment is precisely what leads to irritation and the perception of a greater regulatory burden among these target groups. That is why we intend to continue focusing attention in our advice for 2019 on whether the regulations are appropriate and sufficiently geared to everyday practices.

Advice on existing regulations

The House of Representatives passed several motions to add a number of tasks to the Decree establishing ATR.⁴ These tasks relate to the regulatory burden resulting from existing regulations. ATR may perform these tasks, provided that this does not stand in the way of our task of issuing advice on proposed legislation.

1 Advice on existing government legislation

In 2018, at the request of the House of Representatives of the States General, we conducted a study into the regulatory burden in the so-called “gig and sharing economy.”⁵ The House suspected that fewer regulations were applicable to this section of the economy. The question therefore related to which regulations could be removed. Our [study](#) resulted in a number of concrete options for reducing the regulatory burden for the traditional economy. We also saw three regulatory differences between the traditional economy and the gig and sharing economy.

1. The new revenue models in the gig and sharing economy work in a fundamentally different way from those in the traditional economy. Citizens can offer their services and products through various platforms in the gig and sharing economy. The fact that this is done via a digital platform offers better possibilities, for example, for allowing consumer opinions to play a more important role in monitoring and safeguarding public interests.
2. The study looked into a number of statutory obligations. It found that there were differences between the traditional and the gig and sharing economy with regard to 7 out of the 24 statutory obligations examined. These are differences that occur in comparable situations, such as the statutory reporting obligation relating to the environmental management aspects of food preparation, operating licences for hotel and catering establishments, mandatory closing times and mandatory hazard identification and assessment to be prepared in accordance with the Working Conditions Act (Arbowet). Providers in the gig and sharing economy are not obliged to meet these obligations, yet providers in the traditional economy are, even though the risks are very limited.

⁴ Parliamentary Papers, 2016-2017 Session, 29 515, Nos. 404, 408, 409, 410, 411 and 412.

⁵ The request was made during a special emergency debate (dertigledendebat) held on 5 October 2017.

3. The third difference is due to the choice of the point of reference for the obligation, i.e. what the obligation applies to. If an obligation applies to a location, an establishment or an object, it is often applicable to the traditional economy, but less so to the sections of the gig and sharing economy included in the study. If the obligation applies to products, services or activities, it does not matter which revenue model is used.

In addition, we observed two other causes for differences between the traditional and the gig and sharing economy. The first relates to employers' obligations. The platforms in the gig and sharing economy are often not considered employers and are therefore not bound by the corresponding obligations. The second cause relates to the obligation to obtain consent for processing personal data. This is easier online, as in the case of the gig and sharing economy. Parties in the traditional economy either do not have access to this online option or their access is more limited. An important characteristic of both these differences is that they cannot be eliminated without affecting public interests. Those interests would then need to be safeguarded in a different way. Hence, the differences call for a broader political framework.

“Excessively tight regulations are a major problem for entrepreneurs. ATR has an important role in helping to effectively combat this regulatory burden.”

Hans Biesheuvel

Co-founder of the employers' organisation ONL voor Ondernemers

A second opinion regarding existing regulations concerned the Message Box (Berichtenbox), a mailbox for digital mail from government organisations. ATR noted that about 2 million citizens do not see the messages in their Message Box and are not aware of the consequences of this. For example, they may be fined unnecessarily. In our [advice to the State Secretary of the Interior and Kingdom Relations](#), we indicated that the design and operation of MijnOverheid.nl's Message Box can be improved with respect to five areas:

1. Offer governmental bodies the option to check whether citizens have viewed the messages in the Message Box. Optionally, the citizens concerned can be additionally informed about the content of the messages in the Message Box and the importance of performing the mandatory actions contained in the messages via another communication channel.
2. Offer citizens the option of forwarding messages from the Message Box more easily or automatically to their own email address.

3. Make the message notification in the Message Box more informative, by indicating what a message is about, for example. In addition, we advised that there should also be an option to receive notifications via other channels, such as via an app. The Message Box app has since become operational.
4. Offer citizens the option of responding to the sender of the message via the Message Box.
5. Improve the Current Matters (Lopende Zaken) section so that citizens can see a complete picture of current government matters (and obligations) relating to them on this overview page. At present, only some government organisations use this part of the Message Box to inform citizens. As a result, citizens may wrongly get the impression that they have no current obligations related to the government.

The above points for improvement appear to stem from a discrepancy between how the government sees the Message Box (as an alternative to a mailbox) and how citizens want to work with it (as a mailbox). This discrepancy again indicates the importance of having a proper understanding of a policy instrument from the perspective of the end user.

Furthermore, in 2018, we initiated a study in the context of the Policy Review of the Personal Records Database (Beleidsdoorlichting Basisregistratie Personen, BRP). This policy review is performed by the Ministry of the Interior and Kingdom Relations. The Ministry has requested ATR to examine the regulatory burden aspect of the policy review. To this end, we will not only investigate whether and to what extent the BRP has had an impact in terms of the regulatory burden, but also whether the records have led to an improvement in the quality of government services. In addition, we will look into the possibilities for the further improvement of the BRP and how it is used.

2 Advice to local and regional authorities

Actal, the legal predecessor of ATR, had been authorised, since November 2014, to advise cooperating municipalities and the Association of Netherlands Municipalities (VNG). Therefore, Actal functioned as a centre of expertise for the municipalities. As the legal successor to Actal, ATR has been granted a broader mandate, in that it may issue advice not just to the municipalities, but also at the request of the provinces and the regional water authorities regarding the consequences of the regulatory burden arising from their regulations. We only honour these requests if we see opportunities to make our opinions accessible to other parties as well. This means that, if we advise a municipality on its general municipal bylaw, for example, we consider ways to also make this advice useful for other municipalities. On this basis, in 2018, we issued [advice](#) on the general municipal bylaw of Zaanstad and on the adjustments made to it in view of the new

environmental legislation. We are currently in discussion with Zaanstad and the Association of Netherlands Municipalities regarding the best way to bring this advice to the attention of other municipalities.

ATR also serves as a centre of expertise for local and regional authorities in another way. We participate in the VNG Advisory Committee on Local Government Law (VNG Adviescommissie Gemeenterecht) as well as in the Kloosterhoeve Consultations (Kloosterhoeveberaad). In both bodies, we draw attention to options for making draft regulations less burdensome, among other things. This means that all municipalities that use such a model regulation implicitly apply the insights of ATR.

3 Advice on policy regulations

The regulatory burden in the healthcare sector is a recurring topic in both traditional and social media. In 2018, ATR decided to explore, together with the Ministry of Health, Welfare and Sport, ways to diminish this regulatory burden. This exploratory study has given rise to four projects, on which we want to work jointly in order to considerably reduce the regulatory burden. These projects will kick off in 2019. The intention is that this will be done from the perspective of the healthcare professional and the patient. This means that the approach does not only relate to the Ministry's regulations, but also to those of executive organisations and regulatory bodies. These organisations and bodies draw up policy regulations in which they indicate how they intend to perform their duties. In a formal sense, these regulations cannot contain generally binding regulations, since they are only binding on the relevant administrative body. However, we have recently received new indications that policy regulations do contain generally binding regulations.⁶ These include implementing regulations on a website or in a circular letter in which the relevant administrative body outlines the submission requirements for obtaining approval. We will present the results of the study of the regulatory burden in the healthcare sector in our Annual Report for 2019.

4 Advice at the request of the States General

In 2018, ATR provided information to both Houses of the States General in various ways. For example, we participated in a meeting of experts on feasibility testing in the House of Representatives held on 19 June 2018. During this meeting, our Chair informed the Members of Parliament of the working method of ATR and the special attention focused on the workability of legislation. Whereas other feasibility and enforceability tests are performed from the perspective of the executive

⁶ For earlier indications, see the study report (<https://www.siraconsulting.nl/2017/04/forse-regeldruk-als-gevolg-beleidsregels/>) and Acta's advice based on this report (<http://www.acta.nl/beleidsregels-veroorzaken-onzichtbare-maar-zeer-voelbare-regeldruk/>).

organisations and regulatory bodies, we focus on the perspective of the relevant target group (citizens, businesses and/or professionals).

We also spoke to the Secretary General's office of the House of Representatives about how the opinions issued by ATR would be sent. Ministries have an active duty to provide information; if they send a legislative proposal to the House of Representatives, it must be accompanied by the opinions issued by advisory bodies regarding that proposal. However, this does not always happen. To ensure that the House actually receives ATR's opinions, we have made agreements with the Secretary General's office of the House of Representatives to ensure that ATR's opinions are forwarded to the parliamentary standing committees. In the meantime, nine committees have indicated that they would be happy to receive these opinions.

5 International

ATR is a member of the network organisation RegWatchEurope (RWE).⁷ RWE consists of organisations that play a role similar to that of ATR. They independently provide advice on the consequences of draft regulations. The objective of RWE is to:

- improve the expertise of its members by exchanging knowledge and sharing best practices;
- help strengthen the Better Regulation approach at the European level;
- inform other European Member States about the added value of independently reviewing proposed legislation (through bilateral contacts, at national meetings or via international organisations).

RWE's activities are aimed at strengthening the European Better Regulation policy. The ultimate goal is for European legislation to be effective, efficient and proportionate. Much of the Dutch legislation originates from European legislation. Therefore, properly designed European policy would also benefit the Netherlands. To this end, RWE exchanges experiences and expertise with the Regulatory Scrutiny Board (RSB), the European Commission's review body. In recent years, RWE has also held regular consultations with the First Vice-President of the European Commission, Mr Timmermans.

RWE also maintains contacts with the Organisation for Economic Co-operation and Development (OECD). This international think-tank advises its member states on the Better Regulation policy. It provides advice via country studies and by disseminating best practices. In 2018, RWE contributed to the overview studies carried out by the OECD Regulatory Policy Committee.⁸

⁷ See www.regwatcheurope.eu.

⁸ These contributions are recorded in two publications: the [OECD Regulatory Policy Outlook 2018](#) and the [Case Studies of RegWatchEurope Regulatory Oversight Bodies and the European Union Regulatory Scrutiny Board](#).

Facts and figures on advice regarding proposed legislation

In 2018, we received almost 400 requests for advice. After receiving a request, ATR issues its opinion within four weeks. This may be a formal opinion or we may apply the fast-track procedure. According to this procedure, instead of issuing a formal opinion, ATR authorises its secretariat to handle a request for advice on an administrative level. We use this fast-track procedure for proposals for laws and orders in council that have no consequences in terms of the regulatory burden, as well as for ministerial regulations that have no significant regulatory burden. We have created the procedure because, in such cases, it allows us to inform ministries quite quickly – often within two or three working days – about whether they can expect to receive an opinion from us. This short lead time enables them to continue with the legislative process without delays. The feedback we have received from the ministries indicates that this approach is highly appreciated. In our view, it is one of the reasons for the good working relationships that ATR has built up with the ministries in the past year.

ATR's opinions are based on a clear review framework. We always ask four questions:

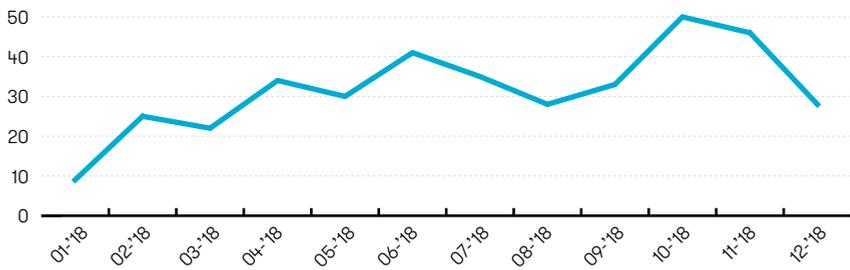
1. Does the government have an added value to intervene? If so, is legislation the best solution to achieve the policy goals?
2. Are there any less burdensome alternatives?
3. Is it feasible for the targets groups to comply to the new or changed legislation?
4. Have all the compliance costs been quantified correctly?

As a summary, we issue a dictum with our opinions (see Appendix entitled “Opinion and operative part” for the criteria). Dictum 1 (Submit) and dictum 2 (Submit after taking into account our remarks) are known as the “positive” opinions. Opinions with dictum 3 (Do not submit unless our remarks have been taken into account) and dictum 4 (Do not submit) are the “negative” opinions. However, we would like to emphasise that ATR does not express an opinion on the political desirability of the policy or the proposed measure. The aim of the review is to help improve the quality of regulations and focus on the quality of the substantiation of the proposal. The dictum expresses whether and to what extent the submitted proposal is suitable for political or other forms of decision-making.

1 Requests for advice received

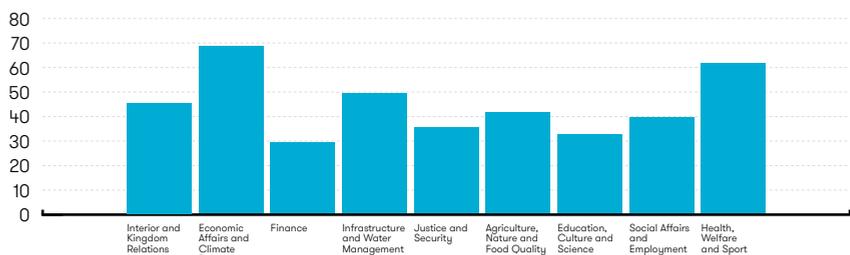
ATR received 390 requests for advice in 2018 (including one from the House of Representatives). Figure 5 shows how the number of dossiers submitted to ATR for advice has evolved over time. It is clear that the number of submitted dossiers increased steadily in the first six months. This increase continued in the second half, although the requests per month showed a greater fluctuation during this period. The decrease in July-August and December reflects the influence of holiday periods.

Figure 5 Number of requests for advice received per month



ATR received an average of 32 dossiers per month. In the second half of 2017, this was 20. The current government appears to have “gathered steam” in 2018, with a resulting increase in the number of proposals to be reviewed by ATR. Not all ministries produce the same number of proposals for new regulations. Figure 6 shows that ATR received the largest number of dossiers from the Ministry of Economic Affairs and Climate Policy, followed by the Ministries of Health, Welfare and Sport, Infrastructure and the Environment and the Interior and Kingdom Relations. The Ministry of Finance submitted the smallest number of requests for advice, although it should be noted that a large dossier such as the Tax Plan only counts as one request.⁹

Figure 6 Number of requests for advice per ministry



⁹ ATR has reason to believe that, at least in the initial period, more dossiers should have been submitted to ATR. However, it is not known how many dossiers this involves. The analysis only relates to dossiers actually submitted to ATR.

Not all proposed laws and orders in council were sent to ATR for scrutiny in 2018. In the first nine months of 2018, 337 laws and orders in council were published in the Bulletin of Acts and Decrees. Of these, 57 were submitted to ATR, while 180 were not submitted. Some of the 180 dossiers did not need to be submitted. In 65 cases, it involved proposed legislation for which the consultation had taken place prior to the establishment of ATR. In 52 cases, it related to budget statements containing purely financial information. In 84 cases, it concerned publications that only laid down a particular date (for example, date of entry into force). Of the remaining 79 cases, 36 also had a valid reason for not being sent to ATR for review. Of the 43 remaining publications, it is not clear why they were not sent for scrutiny.

Table 2 Publications in the Bulletin of Acts and Decrees (January through September 2018)

Total number of publications	337
Of which:	
Submitted to ATR	57
Consultation prior to 1 June 2017	65
Budget statement	52
Date specification	84
Valid reason (e.g. pertaining to criminal law)	36
Not submitted, reason unknown	43

2 Formal opinions and administrative handling

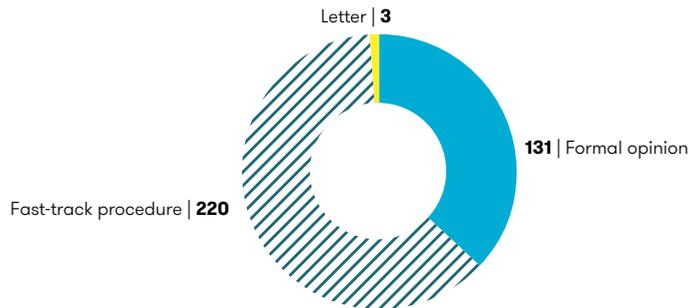
ATR handled 354 of the 390 requests for advice received. The remaining 36 requests are still being processed and will therefore be dealt with further in 2019. We have two procedures for handling requests for advice. The first involves a formal opinion being issued. This is the standard procedure, where we use our scrutiny framework to assess whether the substantiation of the consequences of the regulatory burden of the legislative proposal is sufficient for prudent decision-making. The second procedure is the fast-track procedure, where ATR decides that the request for advice can be handled at an administrative level by the ATR secretariat. Hence, no formal opinion is issued. The advantage of the fast-track procedure is that ministries know where they stand in a matter of days. Moreover, it enables ATR to use its capacity in a targeted and efficient manner for laws, orders in council and more important ministerial regulations.

Figure 7 shows that ATR issued formal opinions in 131 cases (37%). In 220 cases (62%), we opted for the fast-track procedure.

In the remaining three cases (1%), no formal opinion was issued and the fast-track procedure was also not applied. In one case, we sent a letter to the responsible Minister, drawing attention to the fact that the draft legislation had not been

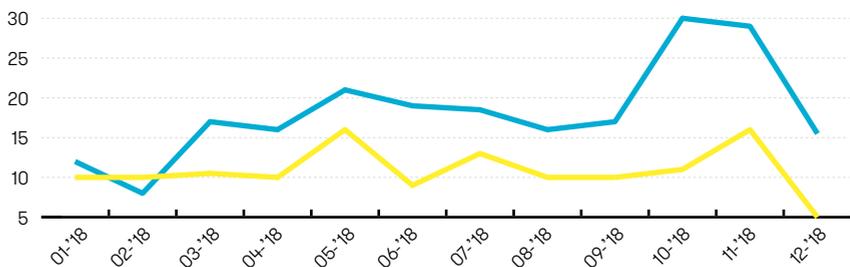
submitted to ATR for review as it should have been.¹⁰ In the other cases, no regulatory burden was involved, so we did not issue any advice. We informed the Ministers concerned about this by letter.

Figure 7 Method of handling requests for advice



The method of handling these requests for advice differs over time (see Figure 8). Particularly in the last quarter of 2018, the number of requests for advice handled at an administrative level increased compared to the number of formal opinions issued. During this period, a relatively large number of legislative proposals submitted to ATR did not involve any significant consequences in terms of the regulatory burden.

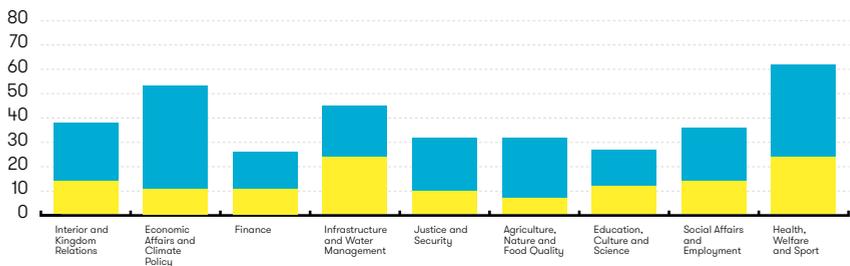
Figure 8 Method of handling requests for advice, per month



¹⁰ This concerned the Act amending the General Data Protection Regulation (Aanpassingswet algemene verordening gegevensbescherming).

Figure 9 shows, per ministry, how often ATR has issued a formal opinion and how often the fast-track procedure has been used.

Figure 9 Number of requests for advice handled per ministry



3 Quality of the dossiers: opinions with accompanying operative parts

We attach a dictum to our opinion as a conclusion of our opinion. This dictum expresses whether the proposal is sufficiently suitable for decision-making from a regulatory burden perspective.¹¹ When assigning a dictum, we take into account the weight of the shortcomings.

Figure 10 shows how often we issued the various dicta in the past 12 months. In 18% of the cases, our opinion was that the proposal was fit for submission. In 60% of the cases, we felt that submission was only appropriate if certain changes were made. In 21% of the cases, the required changes were very substantial. In 2% of the cases, the substantiation was so weak that we advised not to submit or adopt the draft legislation.¹² We had no remarks for only 18% of the requests for advice handled by us.

In 2018, compared to 2017, we issued opinions with dictum 1 less often (see Figure 11). This means that cases involving no remarks at all regarding the proposal were less frequent. On the other hand, we issued dictum 2 more often in 2018 and dictum 3 less often. In total, the percentage of “positive” opinions (operative parts 1 and 2) increased from 64% to 78%. The percentage of opinions with dictum 4 remained the same (2%).

¹¹ The criteria applied by ATR for determining a dictum are set out in an appendix to this Annual Report.

¹² The percentages add up to more than 100% due to differences in rounding.

Figure 10 Distribution of opinions based on dicta in 2018

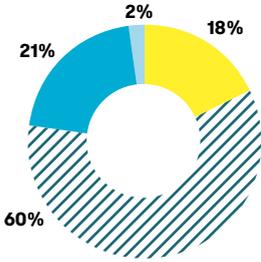
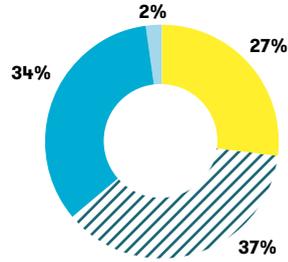


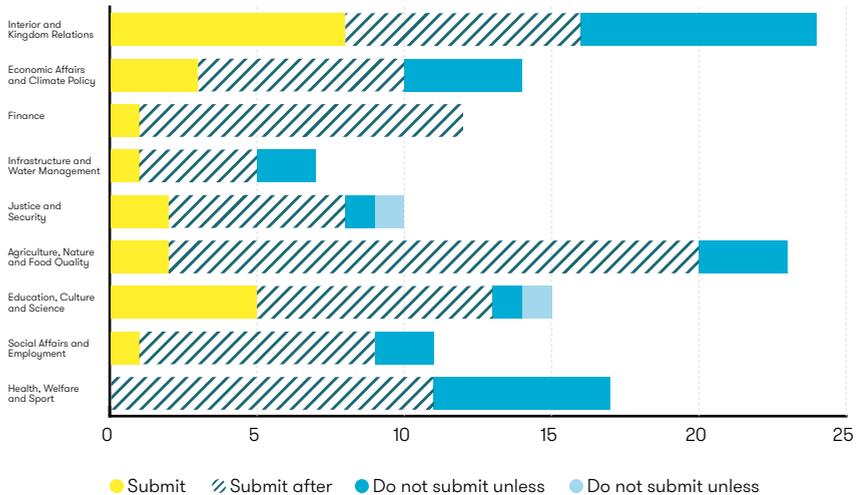
Figure 11 Distribution of opinions based on dicta in 2017



Submit Submit after Do not submit unless Do not submit unless

The number of positive or negative opinions issued is not the same for all the ministries. Figure 12 shows the number of opinions and the accompanying dicta received by the ministries. It should be noted in this respect that the number of requests for advice sent by some ministries is quite limited. After 2019, it should be possible to create a reliable overview of the relative performance of ministries.

Figure 12 Dicta per ministry



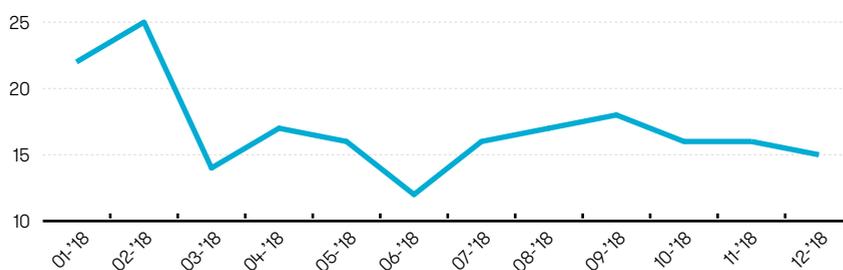
Submit Submit after Do not submit unless Do not submit unless

4 Lead time for issuing advice

Based on its mandate, ATR has 4 weeks (28 calendar days) to deal with a submitted proposal. This advisory period may be longer if the consultation phase closes at a later date, if ATR has made other agreements with the relevant ministry or if the submitted dossier is so complex that ATR needs more time. In the last case, an extension of another four weeks is possible.

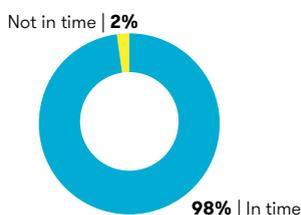
Figure 13 shows the average lead time for requests for advice in 2018. This varies between 11 and 25 calendar days. In 2018, on average, we remained well within the prescribed advisory period.

Figure 13 Average lead time for handling requests for advice, in calendar days



The average lead time does not indicate whether ATR has or has not exceeded the maximum advisory period in individual cases. Figure 14 shows that, in 2018, we handled 347 of the 354 requests for advice (98%) within the set advisory period. In seven of the remaining cases, our advice was issued outside the set advisory period. In five of these cases, the advisory period was exceeded by one or two working days. In these five cases, we only barely failed to include ATR's findings in the formal opinion in time. In the other two cases, the advisory period was exceeded because the dossier holder of the relevant ministry was not available for a certain period of time.

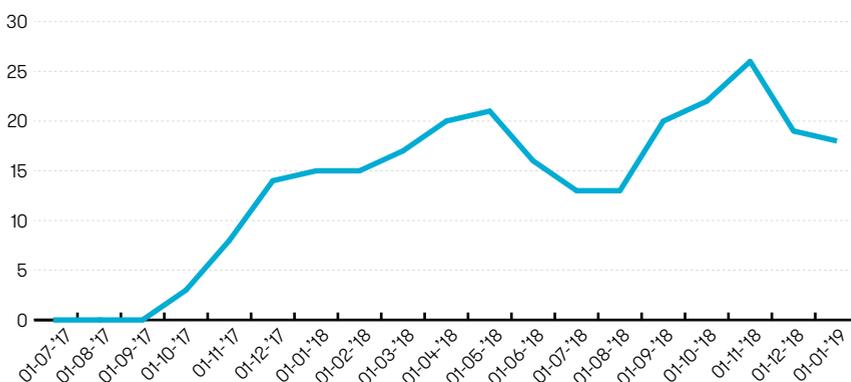
Figure 14 Timeliness of handling requests for advice, % of total



5 Involvement in the pre-consultation phase

Ministries have the option of consulting ATR before the start of the Internet consultation phase. In this pre-consultation phase (or preliminary phase), we help to identify less burdensome alternatives or ideas for making a proposal more workable, among other things. We also make suggestions to improve the calculations of costs related to the regulatory burden. Figure 15 shows that, over time, ministries have started making increasing use of the option to avail themselves of our expertise during the pre-consultation phase.¹³ Currently, one in five requests for advice are being submitted to ATR in the preliminary phase.

Figure 15 Requests for advice with a preliminary phase (three-monthly moving average, % of total)



The suggestions made by ATR in the pre-consultation phase are often adopted. A good example of this is the Plant Health Act. This is a framework Act that does not have any direct consequences in terms of regulatory burden. The burden arises only when the act is further elaborated in the form of subsidiary regulations. By then, it is too late to make any substantial changes in the approach, because the Act is already in place. Nevertheless, in line with ATR's suggestion, the Ministry of Agriculture, Nature and Food Quality has mapped out the consequences of the regulatory burden arising from the Plant Health Act, making use of defined limits for the final impact. This has made it possible to also take into account the consequences of the regulatory burden in the decision-making on this Act.

6 Compliance with ATR's opinions

Ultimately, our advice should lead to regulations of a higher quality. Therefore, it is important to examine the result of ATR's activities. Do ATR's opinions have any effect? This question is difficult to answer, because there is no systematic overview of what

¹³ The three-monthly moving average was chosen to gain insight into trends.

the ministries are doing with our advice. We have agreed with the Ministry of Economic Affairs that they will keep track of how ministries deal with our advice. Initial feedback suggests that ATR's method of providing advice on proposed legislation is widely appreciated by the ministries, not least of all because of the input provided by us at an early stage of the legislative process. In her letter to the House of Representatives, the State Secretary for Economic Affairs and Climate Policy states that we are making an important contribution to her regulatory burden policy.¹⁴

ATR's contribution can be demonstrated with the help of a number of examples.

- In our advice on the Implants Registration Decree (Besluit Registratie Implantaten) we concluded that the proposal might not be properly workable because no information standards and protocols have been provided to allow for the necessary data exchange between patient records (files) and the implants register. These standards and protocols must be established in time so that they can be implemented by the care providers and the holder of the register. The Ministry has taken this recommendation on board.
- Another example is the Amendment to the Individual Healthcare Professions Registration Decree (Wijziging Registratiebesluit BIG). Our advice was that the BIG number should not be included on prescriptions. Since the visit to the care provider has already occurred, there is no longer any need to mention this number for identifying the care provider. This recommendation has also been taken on board. Unfortunately, this does not apply to other recommendations issued by us, which means that a certain amount of irritation and discomfort will remain in many cases.
- A third example concerns the legislative proposal on shortening the risk period applicable under the Return to Work (Partially Disabled Persons) Regulations (Werkhervatting gedeeltelijk arbeidsgeschikten, WGA). In our opinion, we noted that the benefit and necessity of this proposal had not been sufficiently substantiated. Based on this, the responsible ministry has not submitted this legislative proposal.
- A final example shows that the outcome of an ATR opinion is sometimes only evident after a certain period of time. In July 2017, we issued an opinion on the proposal for making the definition of medicines in the Turnover Tax Act (Wet op de omzetbelasting) more specific. This opinion contained a specific recommendation regarding the Medicines Data Bank (Geneesmiddeleninformatiebank). This data bank contains the details of all products registered as medicines. It is intended for use by experts. However, other stakeholders, such as accounting employees, are also obliged to consult the data bank, in order to determine the VAT rate they need to apply for a product, for example. It turned out that the data bank was not easily accessible (and therefore not workable) to these stakeholders. After advice from and consultation with ATR, the accessibility of the data bank was greatly improved in August 2018.

¹⁴ Letter to Parliament from the State Secretary for Economic Affairs and Climate Policy dated 22 February 2019.

Appendix

Organisation

The Board of ATR consists of three members: Ms M.A. (Marijke) van Hees (Chair), Dr E.J. (Eric) Janse de Jonge and Mr J.W.R. (Remco) van Lunteren.



The Board is assisted by the Director, Dr R.W. (Rudy) van Zijp and the staff members mentioned below.

Mr R.F.J. (Ruben) Spelier MSc.	<i>Ministry of Infrastructure and the Environment, Ministry of the Interior and Kingdom Relations, signs of existing regulatory burden</i>
Mr mr. M.J.P.M. (Marcel) Kieviet	<i>Ministry of Social Affairs and Employment, Ministry of Health, Welfare and Sport</i>
Ms drs. P. (Paulien) Officier	<i>Ministry of Economic Affairs and Climate Policy, international affairs</i>
Mr H. (Herman) Schippers	<i>Ministry of Finance, Ministry of Foreign Affairs, ICT</i>
Ms drs. J. (Marianne) Ringma	<i>Ministry of Education, Culture and Science, local and regional authorities, supervision</i>
Mr drs. J.A.M.N. (Jos) Tonk	<i>Ministry of Agriculture, Nature and Food Quality</i>
Ms mr. A.J.E.M. (Angelique) van Erp	<i>Ministry of Justice and Security, Ministry of the Interior and Kingdom Relations, House of Representatives</i>

Ms drs. I.M.J. (Isabelle) de Bruijne	<i>Ministry of Infrastructure and Water Management, Ministry of the Interior and Kingdom Relations</i>
De heer A.A. (Ahmed) Moaty	<i>Policy support</i>
Mevrouw B. (Birgul) Samburkan	<i>Management and policy support</i>

Review framework

ATR considers it important to clearly demonstrate in advance how it intends to perform its remit. ATR applies a review framework consisting of four questions.

1. Does the government have an added value to intervene? If so, is legislation the best solution to achieve the policy goals? Benefit and necessity: is there a task for the government and is legislation the most appropriate instrument?
2. Are there any possible less burdensome alternatives with a lower burden?
3. Is it feasible for the targets groups to comply to the new or changed legislation? Is the chosen implementation method feasible for the target groups that must comply with the legislation?
4. Have all the compliance costs the consequences for the regulatory burden been quantified correctly?

1. **Does the government have an added value to intervene? If so, is legislation the best solution to achieve the policy goals?**

During the review process, ATR examines the substantiation of the policy objective underlying the proposal and whether insight has been provided into why legislation is the most appropriate instrument.

2. **Are there any possible less burdensome alternatives?**

An analysis of any alternatives with a lower burden should be included in the explanatory information accompanying the proposal. If the alternative with the lowest burden is not chosen, ATR recommends that this decision be properly substantiated.

3. **Is it feasible for the targets groups to comply to the new or changed legislation?**

Workability refers to the extent and the way in which, during the preparation of the draft regulations, account has been taken of how these regulations fit in with the actual practice of the target groups and how these groups perceive the regulations “on the shop floor”.

4. **Have all the compliance costs the consequences for the regulatory burden been quantified correctly?**

The regulatory burden must be clearly identified based on a central government-wide methodology, both qualitatively and quantitatively. This should clearly show whether all the actions necessary for complying with the statutory obligations have been properly identified.

Opinion and dictum

Criteria for ATR dicta

Dictum	Opinion	Criteria
1	Submit <i>(no changes needed)</i>	Criteria (<u>a</u> ll criteria must be met): <ul style="list-style-type: none"> • The proposal takes the regulatory burden into consideration. • Regulation is the most appropriate instrument. • An alternative with the lowest burden, in terms of policy, implementation and supervision, has been examined. • Less burdensome alternatives have been examined. • The consequences have been clearly identified in both qualitative and quantitative terms.
2	Submit after... <i>(the legislative proposal and/or substantiation must be amended slightly)</i>	Criteria for departing from dictum 1: <ul style="list-style-type: none"> • The consequences have not been adequately identified in qualitative and quantitative terms: there are one or more minor shortcomings that need to be rectified for increased workability.
3	Do not submit unless... <i>(parts of the legislative proposal and/or substantiation must be considerably improved)</i>	Criteria for departing from dictum 2 (one criterion suffices): <ul style="list-style-type: none"> • Workable alternatives with a lower burden, in terms of policy, implementation and supervision, have been examined, but the alternative with the lowest burden has not been selected, without this being adequately explained. • The consequences have not been clearly identified in qualitative and quantitative terms: the calculations show substantial shortcomings, in the sense that important target groups or groups of actions have not been taken into consideration and there are important areas of concern with regard to workability.
4	Do not submit <i>(there are fundamental drawbacks to the legislative proposal and/or the substantiation is seriously inadequate or absent)</i>	Criteria for departing from dictum 3 (one criterion suffices): <ul style="list-style-type: none"> • There is no structural problem. • Regulations are not the most appropriate instrument. • No research has been carried out into workable, less burdensome alternatives in terms of policy, implementation and supervision, which raises serious questions about workability. • The consequences have hardly been identified or not at all (at the level of actions), both in qualitative and quantitative terms.





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