



Adviescollege —
toetsing regeldruk

Annual report 2019

Dutch Advisory Board on Regulatory Burden

2019 Overview:

Details in agreements lead to unnecessary regulatory burden



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This annual report describes the findings of the Dutch Advisory Board on Regulatory Burden (Adviescollege toetsing regeldruk, ATR) in 2019. This is ATR's second full reporting year.

Leave room to develop solid policy instruments

Last year, we concluded that the ministries and ATR were working together well. We found that ministries were increasingly approaching us for help and advice at an early stage in the legislative process. This trend continued in 2019.

A less positive development is that the quality of the substantiation for proposed legislation appears to have declined in the past year. This is shown by the fact that ATR issued fewer positive opinions in 2019 than in 2018, meaning that the quality of substantiation of legislative proposals did not facilitate thorough decision-making. In 2018, the proportion of positive opinions was 78%. In 2019, this proportion fell by about 10%-point to 67%. This was due in part to the high number of proposals that were a direct result of agreements between political or civil-society parties. The government relies on such agreements to gain political and/or societal support for its policies. Examples include the Prevention Agreement, the Sports Agreement, the Climate Agreement, the Pension Agreement, and obviously the Coalition Agreement itself. These agreements are designed to do justice to the wishes of all the parties involved. As a consequence, they often end up being highly detailed, not least when it comes to the elaboration of instruments to achieve the objectives in the agreements. This high level of detail also applies to legislation drawn up as a result of such agreements. Detailed legislation usually means a greater number of obligations as well. More importantly, the instrument-oriented and detailed nature of the agreements leaves little room for less burdensome alternatives that help achieve the envisioned objectives more efficiently.

The draft Climate Agreement

In March 2019, ATR sent a ‘letter of attention’ to the Minister of Economic Affairs and Climate Policy (EZK) about the draft Climate Agreement.¹ In this letter, we wrote that the success of the Agreement would depend on the extent to which civil-society parties would perceive the measures in the agreement as proportional and not unnecessarily burdensome. The letter highlighted a number of points for attention in this regard.

The first point of attention is the coherence of the approach. The measures will only lead to the expected behavioural change in both citizens and businesses if the target groups of the policy have a clear idea of the measures that apply to them and if those measures are sufficiently coherent. This means that the policy should remain as consistent as possible, and that any changes that do need to be made should be predictable. In addition, existing instruments should be used as much as possible, and an accumulation of new and parallel instruments should be avoided. Further to this, the various levels of government and administrative bodies should coordinate their measures, exchange expertise and seek to form partnerships where useful.

The second point of attention concerns the choice of instruments in the societal cost of the agreement. In our letter, we mentioned various ways to provide financial incentives. Subsidies come with a relatively high regulatory burden, but this is usually acceptable because of the financial advantages they represent.

The challenge for the implementation of the agreement is to consider other, less burdensome financial instruments on their merits. In this respect, we referred to the option of a VAT exemption for some target groups or investments. Such an exemption usually adds less to the regulatory burden than instruments such as a subsidy. This is also the reason why we advised against abolishing the netting scheme in November 2019.²

A third point for attention is the importance of not cancelling out measures that have already been taken. This will undermine support for further sustainability improvements. To keep the cost of change as low as possible, measures could be embedded in the investment cycles of business, institutions, citizens and the government itself. An example is the use of flexible payment terms.

Some policy measures do not allow for this kind of flexibility. For instance, this was the case for the ban on asbestos roofing that was to apply as of 31 December 2024.³ Improving the sustainability of vehicle fleets is another example. By tailoring the measures to flexible depreciation and replacement periods, sustainability can be improved at a lower cost.

¹ See <https://www.atr-regeldruk.nl/wp-content/uploads/2019/05/U034-Ministerie-van-EZK-Klimaatbrief-27-03-2019-w.g..pdf>

² See www.atr-regeldruk.nl/wetsvoorstel-afbouw-salderingsregeling

³ The proposed ban on asbestos roofing was rejected by the Senate on 4 June 2019. Asbestos roofing will remain legal until 2028 and in some extreme cases even until 2030. This will enable replacement at a time better suited to investments in and maintenance of the buildings concerned, so that the roofing can be replaced at a lower cost.

In our previous annual report, we wrote that the practicability of legislation and regulations is a key concern in our opinions. When reviewing practicability, we examine the ease of complying with the statutory obligations in the proposed legislation. This is important, as we believe the legislator should be aware of the perspective of those affected by the legislation. We were therefore concerned to find that less attention was paid to practicability in 2019 compared to 2018. In 2018, 45% of our formal opinions included a point for improvement with regard to the practicability of the legislative proposal in question. In 2019, this had risen to 62%.

Involvement at an early stage is effective

ATR advises ministries on how they can improve the quality of regulations by avoiding or reducing the regulatory burden on citizens, businesses and professionals. We prefer to issue opinions as early on as possible in the policy-making and legislative process. At that stage, ministries will still have ample opportunity to take our opinions on board and keep the regulatory burden in mind when designing their policy instruments. The ministries seem to recognise this. Since the establishment of ATR in 2017, they have submitted an increasing number of draft regulations to ATR in the pre-consultation phase. In 2017, they submitted an average of four dossiers per month. This rose to 7.5 dossiers in 2018 and more than nine in 2019. This allows ATR to suggest possible improvements to draft regulations and provide a substantiation of such improvements to the ministries at an early stage.

Environmental and planning law and a timely focus on regulatory burden

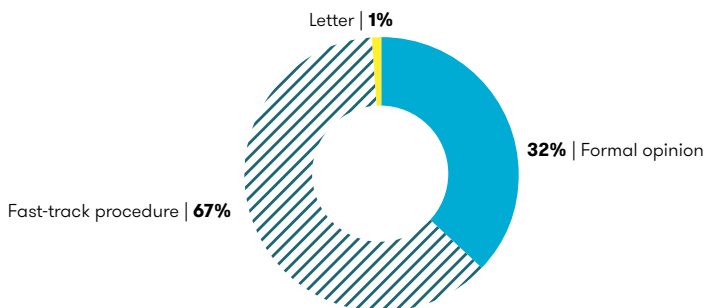
One of the responsibilities of the Ministry of the Interior and Kingdom Relations (BZK) is the revision of environmental and planning law. Among other things, this revision has the aim of reducing the societal cost of environmental and planning law. The regulatory burden is an important component of the societal cost. With this in mind, ATR agreed with BZK that it would be involved at a very early stage in the formulation of the various decrees and ministerial regulations that are necessary for the revision of environmental and planning law. This enables ATR to provide input early on and stress the importance of analysing the consequences of draft regulations for the regulatory burden.

Proportionate review by means of a fast-track procedure

In 2019, we received 469 requests for an opinion, of which we processed 426 in the same year. The remaining 43 requests were still under review in 2020. This means that the number of processed requests for an opinion was almost 20% higher than in 2018 (426 as opposed to 354). There are two ways for ATR to process requests for an opinion. The first consists of a formal opinion. This takes the form of a letter to the minister involved in which ATR indicates how the substantiation of the legislative proposal under review can be improved. ATR uses a standard review framework for this purpose (see below). The second way to process requests for an opinion involves a ‘fast-track’ procedure. As part of this procedure, the request for an opinion is processed at an administrative level once the Board of ATR has given its approval. This procedure is used mainly to process requests for an opinion on ministerial regulations that have little effect on the regulatory burden. The fast-track procedure allows us to use our capacity efficiently and process the large number of requests for an opinion in a timely fashion: we issue more than 97% of our formal opinions within the maximum advisory period of four weeks. Moreover, the procedure allows us to process requests for an opinion in an appropriate manner. As a result, we are able to process legislative dossiers that have little effect on the regulatory burden within a few working days. This also ensures that ministries are quickly informed of ATR’s findings. They greatly appreciate this proportionality.

In 2019, ATR processed 67% of the received requests for an opinion through the fast-track procedure, compared with 62% in 2018.

Figure 1 Ways in which ATR processes requests for opinions



Review criteria and operative part

Our advice focuses on what citizens, businesses and/or professionals must do to comply with the obligations specified in the proposed legislation. The first criterion we look at is whether the benefits and necessity of those obligations have been explained clearly. Occasionally, it is unclear what the objective of the legislative proposal is or why it would serve as a solution to a societal issue. The proposed

Non-Discriminatory Recruitment and Selection (Supervision) Act (*Wet Toezicht discriminatievrije werving en selectie*) is an example. Under this legislative proposal, employers would be required to draw up a recruitment and selection procedure setting out their approach to recruitment and selection and their efforts to prevent illegal discrimination. A key consideration in this regard was that the process of drawing up the procedure itself would make employers aware of the fact that discrimination must be prevented. However, the explanation that accompanied the legislative proposal failed to clarify how to prevent the procedure from becoming nothing more than a ‘paper tiger’. Furthermore, the substantiation of the proposal was inconsistent, as smaller businesses were to be exempt from drawing up a procedure themselves; they would be able to use the occupational health and safety catalogue instead. It therefore seemed as if awareness among those employers could be raised without requiring them to draw up a procedure. As a consequence, ATR concluded that the explanation of the proposal did not sufficiently explain why drawing up a procedure was an effective measure to combat discrimination and why this process was not needed to raise awareness among smaller businesses.⁴ For the second review criterion, we look into the availability of less burdensome alternatives. If the stated policy objective can be achieved in a way that involves less regulatory burden, that might be preferable. For instance, this was the case regarding the amendment of the Driving Instruction (Motor Vehicle) Act (*Regeling rijonderricht motorrijtuigen*). To achieve the objectives of the act, it was not necessary to subject all groups of driving instructors to the same requirements. We therefore recommended investigating if any exemptions could be made, and if so which ones, ahead of the next review of the act. This opinion was taken into account in the evaluation of the act.

For the third review criterion, we examine whether the statutory obligations are practicable. An example of legislation that required this approach is the Senior Executives in the Public and Semi-Public Sector (Standards for Remuneration) Act (*Wet Normering Topinkomens, WNT*). We found that the body of legislation regarding senior executive remuneration was becoming increasingly expansive and complex. This development made it more difficult to comply with statutory obligations, even for parties that were bona fide. In its response, the ministry stated that a simplification of the implementation of the WNT and the resulting easing of the regulatory burden would be a key topic during the next review of the WNT, and that it would involve ATR in this review. An important tool to assess the practicability of legislation is the SME test. This test allows SMEs to indicate the bottlenecks they expect to encounter in practice if a legislative proposal becomes law.

⁴ See <https://www.atr-regeldruk.nl/wet-toezicht-discriminatievrije-werving-en-selectie>. Moreover, ATR found that there was a less burdensome alternative: the Social Affairs and Employment Inspectorate could carry out risk-based assessments or launch an investigation following a complaint of discrimination. This would prevent businesses from being confronted with the additional cost of having to draw up a procedure. According to the government’s own calculations, this would save them a one-off sum of €33 million and annual fees of €6.4 million.

The final review criterion concerns a qualitative and quantitative evaluation of the legislative proposal's consequences for the regulatory burden. The main question is whether the proposal's explanation gives a good idea of all the actions required to comply with the statutory obligations. Most of ATR's opinions in this regard are adopted. Usually, ATR's involvement in an early stage of the legislative process leads to better insight into the consequences for the regulatory burden as well.

When ATR issues an opinion, it also adds a 'dictum' to this as a summary. This dictum indicates whether the relevant legislation is suitable, from a regulatory burden perspective, to be submitted for decision-making. If this is the case, the dictum indicates that the proposal is fit for submission to the Council of Ministers.⁵ Following the review stage, ATR records its opinion with one of the following dicta: (1) Submit, (2) Submit after our recommendations have been incorporated, (3) Do not submit unless our recommendations have been incorporated, and (4) Do not submit.

In 2018, we issued a positive opinion (i.e. an opinion with dictum 1 or 2) in 78% of cases. However, the figures for last year show a different picture. The proportion of positive opinions fell by more than 10%-point to 67% (see Table 1).

Table 1 Proportion of dicta in 2017, 2018 and 2019 (in % of the total per year/period)⁶

	2017 (second half)	2018	2019	Total for the period
1. Submit	27	18	16	17
2. Submit after	37	60	51	56
3. Do not submit unless	34	21	26	23
4. Do not submit	2	2	6	4

As evidence of this decline, a larger proportion of the opinions we issued in 2019 included advice about less burdensome alternatives (47% compared with 34%) and about the practicability of proposals (62% compared with 45%). Ministries continue to struggle with investigating the practicability of proposals thoroughly and assessing potentially less burdensome alternatives. A possible reason for this is that they have (or take) too little time (or have insufficient political wiggle room) for a rigorous analysis and substantiation of legislative proposals. On the other hand, the quality of the calculation of regulatory burden consequences improved somewhat. In 2018, we issued no comment on the calculation of regulatory burden consequences in only 25% of dossiers. In 2019, this figure was 32%. Nevertheless, this still means that two-thirds of dossiers contained calculation errors that merited advice.

⁵ The dictum is expressed as 'Submit' if a decision regarding the draft regulations in question needs to be taken by the Council of Ministers. If the minister concerned is competent to adopt the draft regulations autonomously, the dictum is expressed as 'Adopt'.

⁶ The percentages may add up to more or less than 100% due to differences in rounding.

Initial overview of the regulatory burden

Legislative proposals must be accompanied by a calculation of the potential regulatory burden, so that these consequences can be taken into consideration during the political decision-making process. Table 2 shows the results of these calculations for the dossiers submitted by the ministries to ATR for advice in 2019. The results in the table provide an initial overview, i.e. they display the consequences of the regulatory burden of the relevant draft regulations based on the ministries' calculations. According to those calculations, the proposals submitted to ATR will lead to a structural increase in the regulatory burden on businesses of €734.4 million in total and a structural decrease of €137.5 million. On balance, the calculated regulatory burden on businesses will therefore increase structurally by €596.6 million. Around two-thirds of this increase are due to the amendment of the Buildings Decree (Bouwbesluit) 2012 as a result of amended European regulations. According to the ministries' calculations, the one-off regulatory burden on businesses will increase by €700.4 million. These are mainly inspection costs and costs for the one-off amendment of operational systems and procedures. As for citizens, the structural increase will amount to €57.7 million and the one-off increase will amount to €291.3 million. For professionals, the structural regulatory burden increase will be €3.2 million on top of a one-off increase of €5.8 million. This one-off regulatory burden mainly involves costs that the target groups incur in order to familiarise themselves with new or amended obligations.

Table 2 Regulatory burden changes in 2019 as calculated by ministries (in millions of euros)

Target group	Structural		One-off ⁷
	increase	decrease	increase
Businesses	€ 734.4	€ 137.5	€ 700.4
Citizens	€ 59.8	€ 2.1	€ 291.3
Professionals	€ 3.2	none	€ 5.8
Totaal	€ 797.3	€ 139.6	€ 997.6

Source: These figures have been taken from requests for an opinion submitted by ministries and are approximate indications. The total figure may incorporate differences in rounding.⁸

⁷ The one-off regulatory burden always increases, as it involves one-off costs that must be incurred to learn about the law and to adapt everyday working practices to comply with new or amended statutory obligations.

⁸ The regulatory burden consequences may deviate from these figures because of changes to the draft regulations (or in the calculations of the consequences).

Most significant regulatory burden increase

The most significant regulatory burden increase was due to the amendment of the Buildings Decree 2012 with regard to BENG and NTA. Because of this amendment, the obligation to build near-zero energy buildings (bijna energie neutrale gebouwen, BENG) now applies not only to government buildings, but to all functional units. The amendment also simplified the method to determine a building's energy performance (NTA 8800). This replaces a disparate set of determination methods. The amendment of the Buildings Decree is expected to lead to a structural regulatory burden increase of between €161.6 million and €720.4 million (the table above assumes an increase of €411 million).

Most significant regulatory burden decrease

The most significant regulatory burden decrease arose from the amendment of the Turnover Tax Act (Wet op de omzetbelasting) 1968 with regard to the implementation of Sections 2 and 3 of the E-Commerce Directive. This will lead to a structural decrease of €115 million, largely because business owners will no longer need to register separately for VAT levies in Member States where they do not have a business location. They can now declare and pay VAT in a single Member State. Furthermore, the change in the law amended the VAT arrangement with a view to preventing unfair competition.

The figures above give an initial overview of the development of the regulatory burden costs at the macro level. We would like to emphasise that the final costs of the regulatory burden will deviate from this initial overview. The 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 practicable 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. In the past, such a target served to make the legislator aware of the societal cost of regulations. Nowadays, however, the challenge for Dutch policy is to identify the costs and benefits of regulations in a systematic manner. Only then can we 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 would move towards a fully fledged impact assessment system, as advised by the OECD and as also used, for example, by the European Commission.⁹ We will issue an opinion on this development following ATR's evaluation in 2020.

Substantive findings

The 2018 annual report mentioned a number of recurring points for improvement. To an important extent, these pertained to the method of drafting the submitted proposals. We found that:

1. the choice of regulatory instrument was not always well-substantiated;
2. not enough attention was paid to the accessibility of legislation, mainly because legislative standards are not public;
3. legislation regularly deviated from the mandatory Legislative Drafting Instructions, particularly with regard to the minimum implementation period and the one-time delivery and multiple use of data principle.¹⁰

Unfortunately, these points for improvement were not always adhered to in 2019 either.

Last year's experiences have brought us a number of new insights. These pertain to (1) the distribution of competences and responsibilities between the national and local governments, (2) transparency during consultations and (3) the threat of complexity to the effectiveness of regulations.

Distribution of competences and responsibilities: national versus local

In a number of policy areas, the responsibilities of local and regional authorities have expanded considerably over the years. This is already the case, for instance, for social security and youth. With the imminent introduction of the new environmental and planning law, this will soon apply to spatial planning as well. An important consideration with regard to this decentralisation of competences and responsibilities was that local governments were better able to take account of local wishes and circumstances in their policy considerations, leading to opportunities for tailor-made local policies. As a logical consequence, there are now many differences at the local level. We found that the national government does not always fully appreciate these differences. As an example, the government recently introduced a legislative proposal that would compel municipalities to conduct a minimum number of interviews with citizens entitled to social assistance.¹¹ This prompted the question whether the original consideration (local consideration leads to opportunities for tailor-made local policies) still formed the point of departure. Party as a result of an ATR opinion (and similar responses from various stakeholders), the proposal was withdrawn. It should also be pointed out in this regard that those involved in the decision-making process about decentralisation usually have little notion of the consequences for the regulatory burden at the local level.

⁹ 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.

¹⁰ See <https://wetten.overheid.nl/BWBR0005730/2018-01-01>.

¹¹ Amendment of the Participation Act (*Participatiewet*) with regard to improving support for persons entitled to social assistance

For example, this applies to the amendment of environmental and planning law. Although the regulatory burden as a consequence of statutory obligations is being investigated at the national level, the same is not being done for the consequences of the increased competences of local governments.

Transparency during consultations

ATR issues opinions on the substantiation of the regulatory burden consequences of draft regulations at an early stage of the legislative process. Most of these opinions are given during the ‘consultation phase’, the phase during which the ministry responsible for the policy submits the draft regulations to stakeholders and the general public for feedback.¹² The point of departure should be that the parties involved gain insight into the potential consequences of the draft regulations in question. We found that this insight was regularly lacking. In a significant number of cases, the regulatory burden consequences had not yet been identified or identified sufficiently. As a result, parties were unable to provide feedback on the expected consequences of the draft regulations. This deprived the ministries involved of an opportunity for feedback on the regulatory burden their proposals entailed.

Regulatory burden consequences unclear during internet consultation

ATR had doubts about the transparency and quality of the regulatory burden calculations in many of the dossiers submitted for consultation. As an example, the calculation of the regulatory burden consequences of the Remote Gambling Regulation and the Gambling Implementing Regulation, while satisfactory in its own right, was not made public during the internet consultation. In many other cases, however, the calculations themselves left room for improvement. Examples were the calculations for the Protocol to Eliminate Illicit Trade in Tobacco Products (*Wet uitbannen illegale tabakshandel*) submitted by the Ministry of Health, Welfare and Sport (VWS) and for the Plastic Beverage Bottles (Measures) Decree (*Besluit maatregelen plastic drankflessen*) submitted by the Ministry of Infrastructure and Water Management (IenW). ATR made suggestions as to how the calculations for these proposals should be improved. In both cases, the ministries indicated they would adopt the opinion. There were also dossiers in which the regulatory burden consequences were described only in qualitative terms. An example of this was the proposed amendment of the Incentive Scheme to Realise Energy Savings at Home submitted by BZK. On ATR’s recommendation, the regulatory burden consequences were calculated at a later stage.

Complexity threatens effectiveness

Changing insights and political preferences often lead to changes in terms of policy and legislation. Such changes always involve a certain regulatory burden.

¹² See <https://www.internetconsultatie.nl>

If they are very frequent, the regulatory burden may be perceived as particularly heavy. In that case, the legislative framework no longer provides for the formal crystallisation of societal norms, but becomes a source of uncertainty itself, forcing parties in society to adapt time and time again to new changes in the legal framework in which they operate. As the existing framework is expanded with new rules, the entire system increases in complexity. This brings about a fundamental sense of uncertainty, such as about which business model is permissible and acceptable, and hence recurring regulatory burden costs, for example if the aforementioned business model needs to be adapted repeatedly to the changing legal framework. One of the areas in which this has been an issue is the policy area of the Ministry of Social Affairs and Employment (SZW), which has undergone several corrections over the years regarding the still-recent Balanced Labour Market Act (*Wet Arbeidsmarkt in Balans*), the rehabilitation instruments at the disposal of employers and the Wajong benefit regulations. Although there may have been good reasons for those corrections, they have ended up being a source of perceived regulatory burden that needs to be taken into account when preparing policies and making decisions.

Occasionally, policy changes are reflected in legislation and regulations in another way. In the social domain, for instance, new obligations and standards may apply to new cases only. The explicit objective of the legislator in these cases is to respect existing situations or rights. Although this offers the parties involved a measure of certainty, it also leads to a different type of regulatory burden: a lack of transparency when it comes to the regulations that apply. The many changes to Wajong legislation are a well-known example. At the moment, three sets of regulations coexist: the old-style Wajong regulations (prior to 2010), the Wajong regulations 2010 and the Wajong regulations 2015. This complexity increases the workload of executive organisations, not least because their IT infrastructure may not be able to cope with it. This may lead to errors that cause more uncertainty and defeat the change's original purpose (of limiting uncertainty).¹³

The education sector is faced with a high level of complexity as well. As an example, the Pre-School Education (Improvement) Decree (*Besluit versterking voorschoolse educatie*) involves an expansion of pre-school education to cover children aged 2.5–4 years and the compulsory recruitment of an education policy officer. However, municipalities and childcare centres have had little time to prepare. The transitional regime will lead to further differentiation in practice. A similar situation applies to pre-vocational (VMBO) and senior secondary (MBO) vocational education, where the number of transitional learning pathways between VMBO and MBO has almost doubled. While these pathways appear to promote the transition of students to MBO and limit early school-leaving, there are concerns about the complexity of their implementation, particularly regarding the laboriousness of administrative procedures and the method of funding.

¹³ See Lokin (2019), *Wendbaar wetgeven* (Versatile legislation), <https://www.internetconsultatie.nl>

According to the Education Council, the education system is suffering from ‘excessive differentiation’ and requires fundamental changes if it is to meet societal challenges in the long term.¹⁴

Complexity of legislation hampers practicability

Sometimes, the legislator prescribes additional requirements or obligations that are not workable in practice. An example of this are the ever stricter obligations regarding the business operations of health care providers, partially as a result of reports in the media about large-scale fraud in the health care sector. Pursuant to the Health Care (Market Regulation) Act (Wet marktordening gezondheidszorg, Wmg), certain groups of health care providers must keep a record of how they have allocated tasks, competences and responsibilities with regard to the financial aspects of their organisation (Sections 40a and 40b). This was designed to reduce opportunities for fraud. Originally, the intention was that certain groups of health care providers would be exempt from this obligation. However, the Third Memorandum of Amendment to the Act amending the Health Care Providers (Accreditation) Act (Aanpassingswet Wet toelating zorgaanbieders, AWtza) stipulates that Sections 40a and 40b of the Wmg apply to all health care providers. As a result, the obligation will apply not only to the 3,000 health care providers for which it was originally intended, but also to an additional 14,800 institutions and 33,500 individual practitioners. This will lead to an increase in the regulatory burden of at least €42 million per year, an increase that will mainly affect smaller health care providers. The question is whether they are even capable of accommodating the compulsory allocation of tasks. The Third Memorandum of Amendment provides no information on this. We therefore issued a ‘Do not submit’ opinion.

¹⁴ See <https://www.onderwijsraad.nl/publicaties/adviezen/2019/02/22/hoofdlijnen-stand-van-educatief-nederland>; <https://www.atr-regeldruk.nl/wp-content/uploads/2019/02/U017-Ministerie-van-OCW-Wetsvoorstel-doorlopende-leerroutes-vmbo-mbo-w.g.pdf>

Advice on existing regulations

The House of Representatives has passed a motion to add a number of tasks to the decree establishing ATR.¹⁵ These tasks relate to the regulatory burden resulting from existing regulations. ATR may carry out these tasks, provided that this does not stand in the way of its task of issuing advice on proposed legislation.

Advice on existing national government legislation

In 2019, our advice on existing legislation focused on three key themes. First, we contributed to the policy review of the Key Register of Persons (BRP). Then, we advised on the issue of specific permission to access medical data. And finally, we launched an investigation into the implementation of the Energy Performance of Buildings Directive (EPBD) in the Netherlands. This investigation offers insight into how European legislation is implemented generally.

Policy review of the Key Register of Persons

In 2018, we initiated an investigation of the Key Register of Persons (BRP). This investigation took place within the framework of a policy review by BZK.¹⁶ The BRP is the legal successor of the municipal personal records database (GBA). It contains the personal data of all Dutch residents. The main objectives of moving from the GBA to the BRP were to improve the quality of the services offered by the government and ease the regulatory burden on citizens. In our investigation, we concluded that the BRP contributed to the achievement of both objectives. We investigated 10 specific case studies for which the compliance costs had fallen by a structural amount of around €36 million. Without the BRP, this would not have been possible. However, this does come with a caveat. This decrease was not due to the conversion to the BRP alone. The compliance costs would not have fallen if there had not been an improvement to other procedures or their structure as well. These include improvements with regard to the registration of the ownership of vehicles. We found that while the BRP was necessary for the reduction of the regulatory burden, it was not sufficient on its own.

¹⁵ Parliamentary Papers, 2016–2017 session, 29 515, Nos. 404, 408, 409, 410, 411 and 412.

¹⁶ It was carried out by Ockham Groep/Kafka Brigade on the instructions of ATR. See Ockham Groep/Kafka Brigade, Final report of investigation into the regulatory burden of the BRP, 19 June 2019. As a result of this investigation, ATR forwarded an opinion to State Secretary for the Interior and Kingdom Relations Raymond Knops on 24 June 2019. For details of the opinion and the investigation, see <https://www.atr-regeldruk.nl/regeldrukvermindering-basisregistratie-personen-brp/>.

The second conclusion of our investigation was that improvements to citizens' data flows may encourage the government to ask its citizens for more data. If processing citizens' data becomes easier and/or cheaper, it will lower the threshold for asking for more or new data. This is clearly illustrated by the certificate of conduct application procedure. A certificate of conduct (Verklaring Omtrent het Gedrag, VOG) has become compulsory in many sectors and professions. A third conclusion of the investigation was that the possibilities of the BRP are far from exhausted. For instance, government bodies no longer need to ask citizens for data, but can retrieve them straight from the BRP instead. While the investigation showed that various municipalities still required applications for a licence under the Licensing and Catering Act 2013 to be accompanied by an extract from the BRP, those municipalities could easily consult the BRP themselves. There are many more examples of such unnecessary requests for information:

- On the permission to travel form for under-age children of divorced parents, the national government still asks for a 'recent international extract from the Key Register of Persons'.
- Some pension funds regularly ask for a life certificate (i.e. proof of life), while they can retrieve this information from the BRP.
- Some civil-law notaries still request an extract from the BRP to prepare a certificate of inheritance, even though they have access to data in the BRP.
- The office set up to assist persons with debt restructuring pursuant to the Debt Restructuring (Natural Persons) Act (Wet schuldsanering natuurlijke personen, Wsnp), which comes under the umbrella of the Legal Aid Board, still asks for an extract from the BRP to accompany some applications for support.

Such requests for information are redundant, as the relevant bodies are able to consult the BRP directly. A crucial precondition for the correct functioning of the BRP is that the data in the register are correct.

The BRP presents an important step forwards, but it is far from perfect. As an example, the register could be expanded to include citizens' email addresses and mobile or landline phone numbers. Registering these data need not be too difficult: the Message Box used by the government already registers the email address of citizens who sign up to receive alerts for new messages in their inbox. Furthermore, DigiD already registers the mobile phone number of citizens to whom it sends an SMS for two-factor authentication purposes. In accordance with the one-time delivery and multiple use of data principle, it would be appropriate to use these data to contact citizens for other purposes as well (if possible and desirable). An advantage of the BRP is the possibility to use personal data for a wide variety of objectives. However, there is a danger inherent in this. If the data are incorrect, the wrong data will be used for multiple objectives. This can have serious negative consequences for the citizens involved. By way of an example, they can be faced with the automatic termination of benefits and with demands to repay benefits supposedly received in error. If a citizen were to be registered as deceased by

mistake, the consequences would be even more dire. It is important to amend the incorrect data and mitigate the consequences of any errors as quickly as possible. In our opinion, we therefore argued for a provision or government body to assist people, with the power of overriding authority. A single contact point for assistance is required because the data in the BRP are used for so many purposes and citizens have no insight into which bodies used the incorrect data. This will prevent citizens from having to contact multiple government bodies and have each of them amend the incorrect data in turn. In his response to our opinion, the State Secretary for the Interior and Kingdom Relations stated his intention to make support options available for citizens to amend errors in the BRP and their negative consequences. He made this explicit in his letter of 25 November 2019, in which he promised to set up a central contact point to help citizens amend incorrect details in the BRP in person.¹⁷

Specific permission to access medical data

A second ATR opinion on existing regulation concerned the Processing of Personal Data in Health Care (Additional Provisions) Act (*Wet aanvullende bepalingen verwerking persoonsgegevens in de zorg, Wabv pz*). This act entered into force on 1 July 2017. However, certain aspects of the act were supposed to take effect on 1 July 2020. These aspects pertain to the introduction of the ‘specific permission’ to be given by the client/patient for the electronic exchange of medical data. As of 1 July 2020, clients/patients would have to indicate the groups or individual health care providers who would be given permission to access their medical data prior to this exchange, i.e. they would have to indicate specifically which health care providers (GPs, specialists, etc.) to give access to and permission to use their medical data. In addition, they would have to specify the medical data to which the permission applied.

In order to arrive at a practicable implementation, the Specific Permission Programme (*Gespecificeerde Toestemming, GTS*) developed a scenario to set up this provision. The idea was that clients/patients would be able to record and manage up to 160 specific permission(s) online. ATR expressed serious doubts about the practicability of this scenario. In response, the GTS Steering Group suggested a less strict interpretation of the management requirement, reducing the number of specific permissions from 160 to 28. This was still a high number. An additional consequence of the reduction was to render the permissions less concrete, making it more difficult for clients/patients to make the right choice for each. Moreover, the proposed implementation no longer met the specific permission requirement as laid down in the law. There was therefore a risk of the permissions register being found legally wanting in the event of incidents arising during medical procedures (treatment errors, preventable death, etc.). This might have prompted a restructuring and recompilation of the register, which would have cost all parties considerable time and money (regulatory burden).

¹⁷ Parliamentary papers II, 2019–2020, 32 761, No. 153.

At the request of the Minister of VWS, ATR issued an opinion on the GTS on 18 September 2019. In this opinion, we concluded that the GTS was designed to serve two interests, which are not necessarily compatible. The first interest is the quality of care. This requires a careful, timely and accurate exchange of data, including medical data. It is in the interest of neither the client nor the institution/professional if the lack of data leads to missed chances in terms of adequate treatment. The second interest concerns privacy and the ability of clients/patients to manage access to their data. At the heart of this management issue is the question of who may access what data and for what purpose (purpose limitation). The challenge lies in satisfying both of these interests. The solution involving 160 specific permissions is not practicable. The solution involving 28 permissions is not practicable either and may not be legally sound. In ATR's opinion, priority will have to be given to either one of these two interests. We noted that the privacy of patients could be safeguarded in other ways than by specific permission, for instance by a system that would make the exchange of data for the benefit of the quality of care a matter of trust in the institution/professional and in which clients/patients would have the option to verify the exchange and manage access to their data through the right of inspection. Another possibility would be to give clients/patients the right to object to the exchange of data. The objection could be related to the exchange of specific data or to the sharing of data with specific health care providers. Such an opt-out system would be based on the assumption that unless a client/patient has raised an objection, he/she permits the exchange of data. A similar system is already in use to record permission for organ donation. In his response, the Minister of VWS said he would consider the suggestion. The temporary emergency regulations governing the exchange of data in A&E departments and for the benefit of emergency care during the COVID-19 pandemic provide for a first step towards such a system. The regulations allow for the consultation of medical data through the National Exchange Point without the prior permission of the patient.

On 4 October 2019, the Minister of VWS wrote to the House of Representatives that ATR opinion called for a review of the specific permission proposal. As a consequence, Section 15a, paragraph 2 of the Wabvpz will not enter into force on 1 July 2020. The minister will submit a suggestion for a review of the introduction of specific permission to the House of Representatives in the first half of 2020.

Regulatory burden caused by the European Energy Performance of Buildings Directive

In 2019, ATR launched an investigation into the implementation of the European Energy Performance of Buildings Directive (EPBD) in the Netherlands, Germany, Norway, Portugal and the United Kingdom. This investigation is being carried out by the Economic Institute for the Construction Industry. A key reason for the investigation was the then-current elaboration of instruments within the framework of the Climate Agreement. The objective of the investigation is to provide insight into how future regulations could help achieve the energy, sustainability and climate

targets as efficiently and effectively as possible. The investigation is not only concerned with costs, as is usually the case with regulatory burden investigations, but should also produce an overview of how the regulations will benefit society. The aim of the international comparison is to learn from the attempts of other countries to achieve similar targets. The challenge faced by the investigators is how to illustrate the benefits comprehensively. Ultimately, the investigation should yield clues as to how the regulatory approach in the Netherlands could be expanded to an approach that also provides a comprehensive overview of the other consequences of regulations. This could be a first step towards an impact assessment system like the one used by the European Commission.

Advice to local and regional authorities

ATR can issue opinions on not only national regulations, but also on regulations drawn up by local and regional authorities (i.e. provinces, water boards and municipalities). A key precondition is that these opinions should not impede the authorities in carrying out their core task. Due to this precondition, we have restricted our advice to local and regional authorities to participation in the Association of Netherlands Municipalities (VNG)'s Advisory Committee on Local Government Law and the 'Kloosterhoeve consultations'. In both bodies, we have made suggestions as to make draft regulations less burdensome. This means that all municipalities that use one of VNG's model regulations are implicitly drawing on the insights of ATR. Furthermore, ATR has written to the VNG to call attention to the local and regional implementation of the Environment and Planning Act and the ensuing regulatory burden.¹⁸

Advice on policy regulations

ATR can also issue opinions on the regulatory burden consequences of policy regulations. Formally speaking, these regulations have no regulatory consequences, as they apply only to the administrative body concerned. However, an investigation carried out by Actal, ATR's legal predecessor, found that there were indeed consequences, because policy regulations often contain more generally binding regulations.¹⁹ 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.

¹⁸ See <https://www.atr-regeldruk.nl/decentrale-implementatie-omgevingswet>.

¹⁹ For earlier indications, see the investigation report (<https://www.siraconsulting.nl/2017/04/forse-regeldruk-als-gevolg-beleidsregels/>) and Actal's opinion (<http://www.actal.nl/beleidsregels-veroorzaken-onzichtbare-maar-zeer-voelbare-regeldruk/>).

ATR had intended to prepare an opinion on the regulatory burden caused by policy regulations in 2019, but it was prevented from doing so by a greater than 20% rise in the number of requests for an opinion. ATR is currently examining whether it will be able to free up capacity in 2020 to prepare such an opinion.

Advice at the request of the States General

Ministers are expected to forward ATR's opinion to both Houses of the States General. Usually, our opinions will have already become public by that time. This applies in particular to opinions issued during the consultation phase. If they are not yet public (for example, because no public consultation took place), they will become so when the minister submits the draft regulations in question to parliament. ATR also forwards its opinions to the House of Representatives itself. The majority of the parliamentary standing committees have indicated that they appreciate this gesture.

International

ATR is a member of the network organisation RegWatchEurope (RWE).²⁰

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. As much of the Dutch legislation originates from European legislation, it stands to reason that properly designed European policy also benefits 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, and more recently with his successor, Mr Šefčovič.

²⁰ See www.regwatcheurope.eu.

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 2019, RWE contributed to an OECD study into how an impact assessment system could be established in the Netherlands.²¹

²¹ This contribution was laid down in OECD, Regulatory Policy in the Netherlands: Capacity and Institution Building for Regulatory Impact Assessment, December 2019.

Appendix

Facts and figures on advice regarding proposed legislation

In 2019, we received 469 requests for an opinion. Pursuant to ATR's mandate, it must issue an opinion within four weeks of receiving a request. This may be a formal opinion, or we can apply the fast-track procedure. According to this procedure, instead of issuing a formal opinion, the Board of ATR authorises its secretariat to handle a request for an opinion 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 carry no significant regulatory burden. We have created the procedure because, in such cases, it allows us to inform ministries as quickly as possible – 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. Benefit and necessity: is there a task for the government and is legislation the most appropriate instrument?
2. Are there any possible alternatives with a lower burden?
3. Is the chosen implementation method feasible for the target groups that must comply with the legislation?
4. Have the consequences for the regulatory burden been fully and accurately identified?

As a summary, we issue a dictum with our opinions (see the section of the appendix entitled 'Opinion and dictum' for the criteria). In doing so, 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 (or its regulatory burden consequences). The dictum expresses whether and to what extent the submitted dossier is suitable for political or other forms of decision-making.

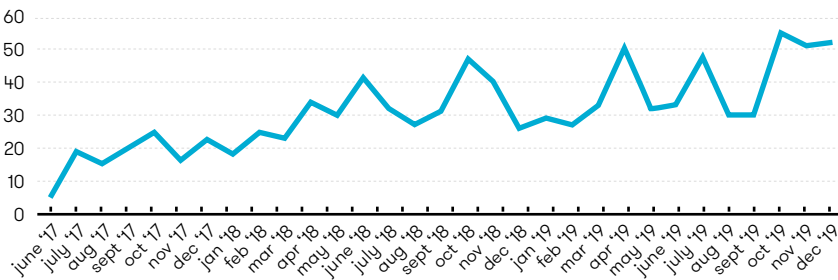
In the first instance, an annual report focuses on acts and proceedings in the preceding year. However, we have decided to use this annual report to present our findings since the date of establishment of ATR. This offers an opportunity to assess developments in the longer term.

1 Requests for an opinion received

In the period from 1 June 2017 until 31 December 2019, ATR received 966 requests for an opinion. Of these requests, 965 were submitted by ministries and one on the initiative of the House of Representatives.

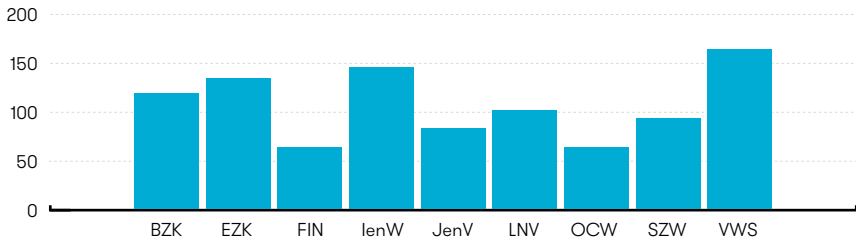
Figure 1.1 shows how the number of dossiers submitted to ATR for an opinion has evolved over time. It is apparent that the number of requests for an opinion increased steadily until October 2018. The number then stabilised at around 35–40 per month, with significant fluctuations both upwards and downwards. The last quarter of 2019 saw a peak, with more than 50 requests for an opinion submitted each month.

Figure 1.1 Number of requests for an opinion per month



Not all ministries produce the same number of proposals for new regulations. Figure 1.2 shows that ATR received the largest number of dossiers from VWS, followed by IenW, EZK and BZK. The Ministry of Finance (FIN) submitted the smallest number of requests for an opinion, although it should be noted that a large dossier such as the Tax Plan only counts as one request.²²

²² ATR has reason to believe that, at least in the initial period, more dossiers should have been submitted. However, it is not known how many dossiers this involves. The analysis only relates to dossiers actually submitted to ATR. Additionally, the Ministry of Foreign Affairs was not included in this analysis, because by its very nature, it produces few regulations that add to the regulatory burden on Dutch citizens.

Figure 1.2 Number of requests for an opinion per ministry

Not all proposed laws and orders in council need to be submitted to ATR for an opinion, because certain policy areas are outside the remit of the approach to lower the regulatory burden. One example is criminal law. Vice versa, some draft regulations are wrongly not submitted to ATR for an opinion, occasionally because those responsible for the dossier are unaware what type of legislation should be submitted to ATR. ATR does not keep a record of how often this happens as a matter of course, but it does register instances when it becomes aware that draft regulations have not been submitted when they should have been.

2 Formal opinions and administrative handling

Between 1 June 2017 and 31 December 2019, ATR received 965 requests for an opinion from ministries. We have processed 880 of these. The remaining 85 requests are still being processed and will therefore be dealt with further in 2020. These 85 dossiers are (1) dossiers that were submitted and subsequently withdrawn, and (2) dossiers still being processed by ATR (either in the pre-consultation phase or as a work in progress in the opinion phase).

The formal processing of requests for an opinion can take a number of different forms. The principal form involves a formal opinion. This opinion is forwarded to the responsible minister (or to the House of Representatives, in the case of legislation initiated by parliament). ATR issued a formal opinion for 310 of the 880 requests for an opinion (35%). Pursuant to ATR's mandate, these concerned legislative proposals and orders in council with regulatory burden consequences, as well as proposed ministerial regulations that were expected to have substantial regulatory burden consequences.

The second form involves the fast-track procedure for 'administrative handling' (see elsewhere in this annual report for a description). In the period under review, ATR used the fast-track procedure in 559 cases (64%).

The third form of processing is by means of a letter. This applies to dossiers that in the opinion of ATR do not merit a formal opinion or administrative handling, but for which it would still like to suggest points for attention or considerations to the minister involved, for example regarding the past and future legislative process. Since the establishment of ATR, this procedure has only been used nine times (1%). A further two dossiers were processed informally. In the case of one of these dossiers, there was no formal need to submit it to ATR for an opinion, given that it involved the literal implementation of European legislation (with no scope for national policy deviations). The other dossier involved legislation of which the consequences had already formed the subject of an earlier opinion.

Figure 1.3 Total formal opinions and fast-track procedures per month

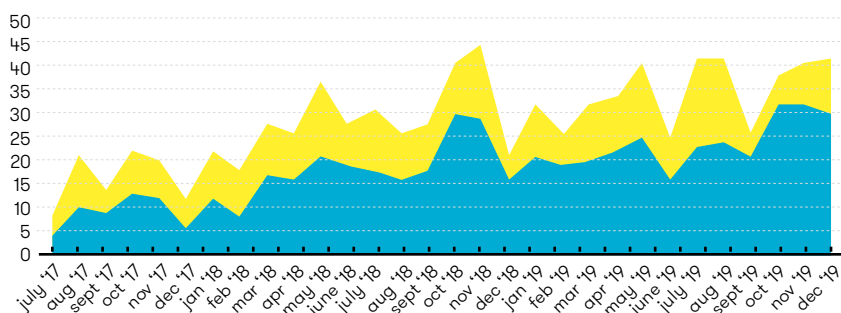
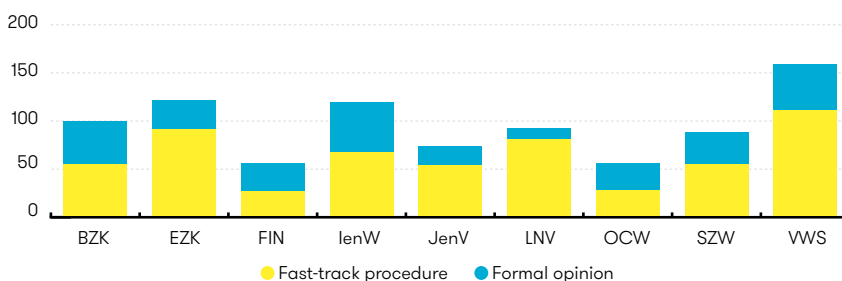


Figure 1.3 shows the total number of requests for an opinion processed over time, broken down by processing form. Figure 1.4 shows a breakdown of requests for an opinion by ministry. The figure illustrates that requests for an opinion from the Ministries of Justice and Security (JenV) and Agriculture, Nature and Food Quality (LNV) were processed relatively often using the fast-track procedure. This means that these ministries submitted a relatively large number of ministerial regulations to ATR that in the view of ATR would not have significant consequences for the regulatory burden.

Figure 1.4 Breakdown of formal opinions and fast-track procedures per ministry



3 Quality of the dossiers: opinions with accompanying dicta

Every opinion we issue includes a dictum, which is a summary of our verdict regarding the substantiation (and the quality thereof) of the submitted draft regulations. The dictum expresses whether the dossier is sufficiently suitable for decision-making from a regulatory burden perspective.²³ When assigning a dictum, we take into account the seriousness of the shortcomings.

Table 1.1 shows how often we issued the various dicta in the period from June 2017 until December 2019 (see the 'Total' column). In this entire period, we felt that the legislative proposal could be submitted without changes in 17% of the cases. In 56% of the cases, we felt that submission was only possible if certain changes were made. In 23% of the cases, those changes were substantial. In 4% of the cases, the substantiation was so weak that we advised not to submit the draft regulations.

Table 1.1 Proportion of dicta in 2017, 2018 and 2019 (in % of the total per year)²⁴

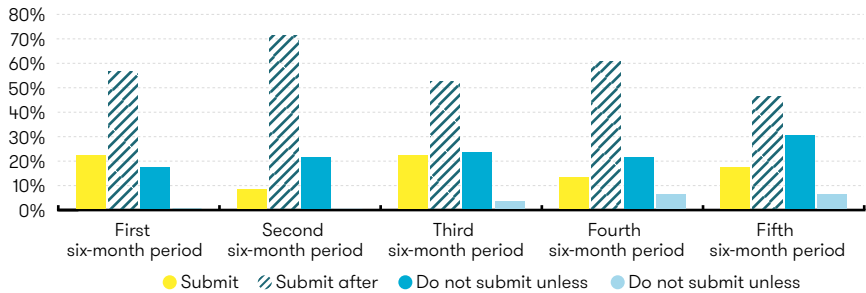
	2017 (second half)	2018	2019	Total for the period
1. Submit	27	18	16	17
2. Submit after	37	60	51	56
3. Do not submit unless	34	21	26	23
4. Do not submit	2	2	6	4

The table shows that, although ministries got off to a promising start, their progress was only temporary. In 2017, the proportion of positive opinions amounted to 64%. In 2018, this rose to 78%. In 2019, however, it fell by about 10%-points to 67%. Figure 1.5 shows the development of the proportion of dicta over time per six-month period. Of note are the increase in the proportion of opinions with dictum 4 in 2019 as well as the increase in the proportion of opinions with dictum 3 in the latter half of 2019.

²³ The criteria applied by ATR for determining a dictum are set out in an appendix to this annual report.

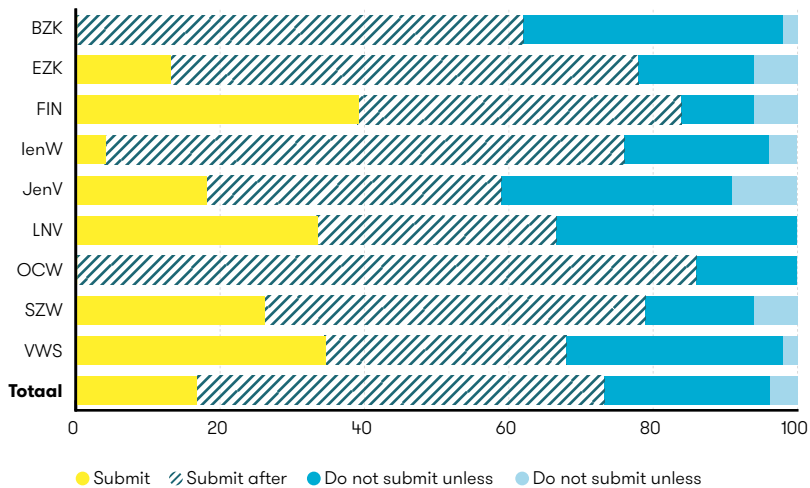
²⁴ The percentages may add up to more or less than 100% due to differences in rounding.

Figure 1.5 Development of the proportion of dicta per six-month period



The number of positive or negative opinions issued is not the same for all the ministries. Figure 1.6 shows the number of opinions and the accompanying dicta received by the ministries (as a percentage of the total).

Figure 1.6 Breakdown of dicta per ministry as per 1 January 2020



The deterioration in the ministries' performance was not equal across the board:

- EZK, FIN, lenW, OCW and SZW were issued an above-average proportion of positive opinions. In this regard, lenW's performance showed an above-average improvement in 2019. For LNV, the opposite was true.
- BZK, JenV, LNV and VWS were issued an above-average proportion of negative opinions.
- JenV received the highest proportion of opinions with dictum 4 (Do not submit), followed by EZK, FIN and SZW. Nonetheless, the performance of JenV and FIN was much improved compared to the previous year.

An explanation for the difference between the dicta issued in 2018 and 2019 may be found in the nature of the dossiers. For some dossiers, ministries have less political wiggle room to make changes to draft regulations than for others. This is mainly true for dossiers based on agreements between political or civil-society parties. The proposals to bring about the smoke-free generation are an example of such a dossier. These proposals are a result of the National Prevention Agreement. The nature of the agreement leaves no room for a smoking ban for under-age children, even though this would be more effective and in any case less burdensome. The parties felt that the existence of an agreement between several key civil-society stakeholders seemed to reduce the need for a solid evidence base.²⁵ The same situation arises in the case of draft regulations with an important ideological component. This was the case for the Regulation on guarantees of origin for energy from renewable energy sources and high-efficiency cogeneration electricity, due to the additional provision for certificates of origin. This arose from an amendment submitted by the Members of Parliament Dik-Faber and Jetten. The amendment proposed a national system of ‘full disclosure’.²⁶ However, its substantiation failed to make clear why consumer demand for green energy would increase if consumers were to gain more insight into the origin of grey energy.

4 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 practicable, among other things. We also make suggestions to improve the calculations of costs related to the regulatory burden.

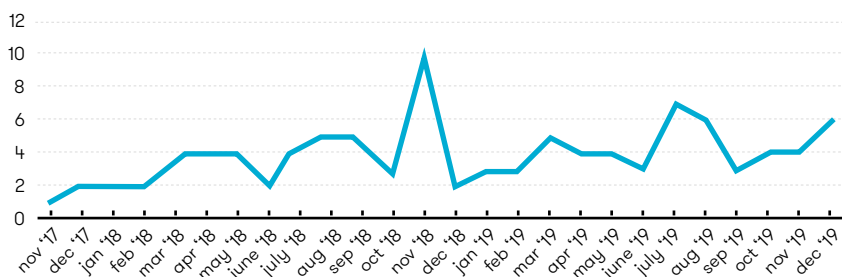
Figure 1.7 indicates how many formal opinions ATR issued per month for dossiers that involved a request for its expertise during the pre-consultation phase.

Currently, one in five requests for an opinion are being submitted to ATR in the preliminary phase.

²⁵ See also the 2018 annual report of the Council of State, page 12.

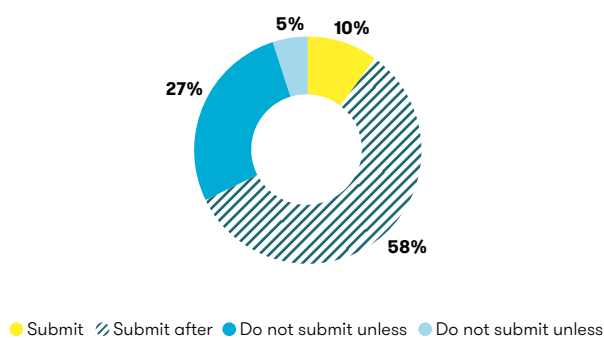
²⁶ House of Representatives, 2017–2018 session, 34 627, No. 43.

Figure 1.7 Number of formal opinions that included ATR's involvement in the pre-consultation phase per month



The dicta of the dossiers submitted to ATR in the pre-consultation phase are less positive than those of all formal opinions. Figure 1.8 shows that 68% of the dossiers submitted in the pre-consultation phase were issued an opinion with a positive dictum. For all opinions, this figure was 73%. The reason for this difference is that mainly the larger dossiers are submitted to ATR at an early stage of the legislative process ('self-selection'). The substantiation of the regulatory burden consequences of these dossiers is more complicated than for smaller dossiers with less far-reaching consequences.

Figure 1.8 Dicta of formal opinions that included ATR's involvement in the preliminary phase, June 2017–January 2020



5 Lead time for issuing an opinion

Pursuant to its mandate, ATR has four weeks (28 calendar days) to process a submitted dossier. ATR can deviate from this deadline if the end date of the consultation phase is postponed or if it needs more time due to the complexity of the submitted dossier. In the first instance, the deadline is the end date of the consultation phase. In the second instance, ATR may extend the deadline by another four weeks. There has been no need so far to use the latter option. On average, ATR remains well within the prescribed advisory period. In the entirety of its existence, ATR has processed more than 97% of the requests for an opinion it has received within the maximum advisory period.

6 In closing

More than years after the establishment of ATR, we can conclude that the ministries and ATR are cooperating smoothly. ATR is involved at an early stage of the legislative process in an increasing number of cases, and the working agreements between ATR and the ministries are now sufficiently well embedded. This is not to say that there have been no issues along the way. It still happens that dossiers are wrongly not submitted to ATR for an opinion.

The eventual goal of ATR's advice and review process is for ministries to pay attention consistently to the regulatory burden consequences of draft regulations. This is key to ensuring that the consequences are weighed against other effects and interests. It is also necessary to prevent persons and organisations affected by the regulations from being unduly burdened. This allows for an efficient safeguarding of the public interest. It should be noted that, in the past few months, ATR issued a negative opinion more frequently than in the preceding period. As regards the attention paid to the regulatory burden by ministries, the view is not uniformly positive: the proportion of positive opinions (with dicta 1 and 2) was 10% lower in 2019 than in 2018. Without a further analysis, it will be difficult to uncover the reasons for this. At any rate, it is not because ATR has become less involved in the preliminary phase. On the contrary: the early involvement of ATR has increased in absolute terms. As a point of interest, ATR issued a negative opinion more frequently for dossiers with which it became involved in the preliminary phase than for dossiers for which this was not the case. This can be explained by the fact that these dossiers were mostly large, relatively complex and prone to external pressure from political and societal actors, as a result of which other interests prevailed over minimising the regulatory burden.

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 secretary, Dr R.W. (Rudy) van Zijp and the staff members mentioned below.

Mr R.F.J. (Ruben) Spelier MSc	<i>BZK, IenW, signs of existing regulatory burden</i>
Mr M.J.P.M. (Marcel) Kieviet	<i>SZW, VWS</i>
Mr S.J.A. (Sjors) Hegger	<i>EZK</i>
Mr H. (Herman) Schippers	<i>FIN, BZ, ICT</i>
Ms J. (Marianne) Ringma	<i>OCW, local and regional authorities, supervision</i>
Mr J.A.M.N. (Jos) Tonk	<i>LNV</i>
Ms A.E.J.M. (Angelique) van Erp	<i>JenV, BZK, House of Representatives</i>
Ms I.M.J. (Isabelle) de Bruïne	<i>IenW, BZK, international affairs</i>
Mr A.A. (Ahmed) Moaty	<i>Policy support</i>
Ms B. (Birgul) Samburkan	<i>Management and policy support</i>

Review framework

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

1. ***Benefit and necessity: is there a task for the government and are regulations the most appropriate instrument?***

During the review process, ATR examines the substantiation of the policy objective underlying the proposal and whether it justifies legislation as the instrument of choice.

2. ***Are there any possible alternatives with a lower burden?***

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 the method of implementation practicable for those who must comply with the legislation?***

Practicability 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 the consequences for the regulatory burden been fully and accurately identified?***

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 operative part

Criteria for ATR's operative parts

Dictum	Advice	Criteria
1	Submit <i>(no changes needed)</i>	Criteria (<u>all</u> criteria must be met): <ul style="list-style-type: none"> • The proposal includes the regulatory burden. • Regulations are the most appropriate instrument. • An alternative with the lowest burden, in terms of policy, implementation and supervision has been examined. • The alternative with the lowest burden has been selected, or the choice of another practicable alternative has been adequately explained. • 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 operative part 1 (one criterion is sufficient): <ul style="list-style-type: none"> • The consequences have not been adequately identified, neither in quantitative nor in qualitative terms. • There are one or more minor shortcomings that need to be rectified for increased practicability.
3	Do not submit unless... <i>(parts of the legislative proposal and/or substantiation must be considerably improved)</i>	Criteria for departing from operative part 2 (one criterion is sufficient): <ul style="list-style-type: none"> • Practicable 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, neither in quantitative nor in qualitative terms: the calculations show substantial inadequacies in that key target groups or groups of actions have not been included. • There are several key points for attention to increase practicability.
4	Do not submit <i>(there are fundamental objections to the legislative proposal and/or the substantiation is seriously inadequate or has been omitted)</i>	Criteria for departing from operative part 3 (one criterion is sufficient): <ul style="list-style-type: none"> • There is no structural problem. • Legislation is not the most appropriate instrument. • No research has been carried out into practicable, less burdensome alternatives in terms of policy, implementation and supervision, which raises serious questions about practicability. • The consequences have hardly been identified or not at all (at the level of actions), neither in quantitative nor in qualitative terms.



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