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**Our reference** MvH/RvZ/RS/HS/bs/2020-U162

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Date 11 December 2020  
Subject The Integral Policy and Regulation Assessment Framework for proposed laws and regulations

Dear Mr Dekker,

The government published the programme *Merkbaar betere regelgeving en dienstverlening 2018-2021 (Noticeably Better Regulations and Services 2018-2021)* in 2018. It is stated in that programme that the first step in improving regulation policy involves assessing whether laws and regulations are the most effective instrument for safeguarding public interests. Other instruments can sometimes be just as effective.<sup>1</sup> Such assessments can be made with the aid of the Integral Policy and Regulation Assessment Framework (*Integraal Afwegingskader*, hereafter referred to as 'IAK'). The IAK helps ministries to clearly define social problems, to consider whether government intervention is necessary and to weigh up which instrument will be most effective. The IAK contains seven questions.<sup>2</sup> Since 2011, the framework has been an essential instrument in the advancement of legislative quality in the Netherlands. When used properly, it can help with the enforcement of legislation, put the views of citizens and businesses, among others, to use at an early stage, and limit burdens both perceived and real for citizens, companies, professionals and the government itself.

The Advisory board on Regulatory Burden (ATR) established during its regular activities in the 2017-2020 period that the mandatory IAK document does not always produce adequate responses to the IAK questions. Furthermore, the legislative proposals regularly fail to meet the quality requirements.

This prompted the board to study the availability and quality of the IAK document more closely. The IAK documents featuring in 434 internet consultations in 2018 and 2019 were involved in the study. The key conclusions of the study are as follows:

- The IAK document is missing from a quarter (more than 25%) of the files examined.
- In the internet consultations where an IAK document was included (nearly 75%):
  - 65% of the IAK documents provide no or only a basic insight into possible alternatives, and
  - 77% of the IAK documents provide no or only a basic insight into the consequences of the proposal.
- The explanatory notes accompanying proposed legislation provide a clearer picture

<sup>1</sup> Programme 'Noticeably Better Regulations and Services 2018-2021' (dated 15 June 2018), p. 3.

<sup>2</sup> The IAK questions are as follows: 1. *What is the immediate cause?*, 2. *Who are the stakeholders?*, 3. *What is the problem?*, 4. *What is the objective?*, 5. *What justifies government intervention?*, 6. *What is the best instrument?* and 7. *What are the consequences?*

of the consequences, but in 60% of the files examined that picture remains incomplete.

The board also investigated the causes of these findings, and discovered that ministries fully recognise the importance of the IAK and the responses to the IAK questions. They think the IAK's mandatory quality requirements should be applied from the moment development of policy and legislation begins. However, all those requirements combined mean that the framework contains a surplus of requirements, making its use burdensome for policymakers. The board notes that there is no effective mechanism to ensure the quality of the responses to the IAK questions and fulfilment of the IAK requirements.<sup>3</sup> The government's ambition regarding the quality of legislation is under pressure as a result.

Based on the study and the conclusions, ATR makes the following recommendations:

1. Restructure the IAK questions and the accompanying instructions
  - a. to make their use more intuitive for policymakers and other employees; and
  - b. to ensure that the responses are more informative for parties examining proposed policy and legislation and/or having to make decisions about them; and
  - c. to ensure that all aspects are weighed up when considering policy and legislative proposals.
2. Simplify the use of the IAK so that it is workable and practicable for policymakers to develop policy and regulations that meet the set quality requirements, without scrapping substantive quality criteria.
3. Reinforce the importance of benchmark dates in the policy and legislation preparation phase to ensure compliance with the IAK requirements and to promote the quality of policy and legislation.

These three recommendations set out above will be especially effective provided sufficient flexibility is allowed to consider and compare different policy alternatives. Political and social agreements tend to limit that scope. They contain provisions setting out by what means, often already involving an instrument, policy objectives should be achieved. The board acknowledges that these provisions may be necessary in order to achieve a compromise. The consequence, however, is that there is a possibility of the means becoming ends in themselves. The quality of legislation will benefit if these agreements allow room to consider alternative measures which may help to achieve policy objectives more efficiently.<sup>4</sup>

The following opinion elaborates further on the recommendations specified. With its opinion, the board seeks to contribute to the action plan for the further development of the IAK, which is expected to be presented to the Dutch House of Representatives in early 2021. The supporting research report is enclosed with this letter. Naturally, the board will be happy to explain its findings in more detail.

The opinion and the report have also been sent to Minister Hoekstra (Ministry of Finance), State Secretary Keijzer (Ministry of Economic Affairs and Climate Policy), the Secretary Generals' meeting (SG-Overleg), with copies sent to the Presidents of the Senate and House of Representatives of the States General and the Vice-President of the Council of State.

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<sup>3</sup> See also [OECD \(2020\) Regulatory impact assessment in the Netherlands](#).

<sup>4</sup> The ATR (2018 annual report) points out that the poor quality of the supporting information provided for proposed legislation may be the result of instrument-oriented provisions in agreements. The Council of State signalled earlier in the 2018 Annual Report that the primacy of the legislature appears to be shifting to the executive (and its agreements with social parties).

Yours sincerely,

*(signed)*

M. A. van Hees  
Chair

R. W. van Zijp  
Secretary

Appendices:

1. Study report
2. Appendices report

## Opinion on the use of the IAK and the IAK document for proposed regulation

The findings from the ATR study into the quality of responses to the IAK questions have prompted it to recommend the implementation of improvements in three directions. The first concerns the IAK instrument itself. It needs to be organised properly if its use is to be encouraged and improved. The improvements in the IAK should result in a more logical link being established between the individual requirements and the IAK questions. We have included in this opinion a suggestion as to how this could be achieved. It will involve rewording some of the IAK questions and putting them in a more logical order. This will ensure a better balance between the problem analysis on the one hand and the assessments of potential measures based on the anticipated effects and consequences or spillovers, on the other.

Substantive rewording and restructuring is an important, but not a sufficient, precondition for better responses to the IAK questions. The IAK could also be made more user-friendly. This will involve, in particular, simplifying the instrument, for example by eliminating duplication and overlap of quality requirements.

The third element concerns the use of the IAK document in the policy and legislative process. Different information is required at the various stages in this process, and the IAK serves different functions at those various stages. Hence our suggestion that the IAK document should from now on be used in a proportionate manner, corresponding with the purpose for which it is being used and the stage at which it is used. It is also important that the document is examined closely to establish whether it meets the requirements the particular objective and phase set for it. To that end, several *benchmark dates* are identified in the opinion.

### 1. Restructure the IAK questions and the accompanying instructions

The current IAK questions were developed and put into effect in 2010-2011, when it was decided to divide the process into three phases.<sup>5</sup> Phase 1 is the *problem analysis* phase. IAK questions 1 to 5 inclusive are included in this phase. Those questions are (1) the (usually political) reason for the policy or legislative proposal, (2) the parties affected by the proposal, as well as the parties involved in the development of the proposal and the nature of their involvement (and the reason for it), (3) the social problem the proposal is intended to resolve, (4) the way that problem will be resolved, and (5) the 'justification' for government intervention. Phase 2 is the *choice of instrument* phase. This phase includes IAK question 6 (*What is the best solution?*). Phase 3 is the *impact assessment* phase, where information is provided through the responses to question 7.

The IAK has been supplemented several times over the past few years. A recent example is the Capacity to Act Test.<sup>6</sup> Those supplements have been incorporated into the seven existing IAK questions but their content, order and wording have not changed. The ATR's study into the IAK and the IAK document shows that the layout and wording of the IAK questions require a critical appraisal.

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<sup>5</sup> Letter to the House of Representatives dated 14 April 2011 concerning the 'Government's plan of action for dealing with administrative burdens'. *Parliamentary Papers II 2010/11*, 29515, no. 330. <https://zoek.officielebekendmakingen.nl/kst-29515-330.html>.

<sup>6</sup> The Capacity to Act Test is intended to show whether a proposal is based on realistic assumptions as regards citizens' mental capacities. The test was introduced in response to the Netherlands Scientific Council for Government Policy (WRR) report *Weten is nog geen doen* [*When knowing what to do is not enough*]. See [www.wrr.nl/publicaties/publicaties/2020/09/15/doenvermogen](http://www.wrr.nl/publicaties/publicaties/2020/09/15/doenvermogen).

- It turns out that policymakers do not find the order of the IAK questions intuitive (logical). For instance, responses to IAK question 1 (*What is the immediate cause?*) regularly contain a description of the social problem and not the political or administrative background. However, it is not until IAK question 3 that the social problem comes up for discussion. It seems more logical to start the IAK with the problem because, after all, that is the intrinsic reason why the proposal is being made.
- Nor are the IAK questions answered in accordance with the accompanying instructions. Responses generally address only the main question. Other aspects, which are mentioned only in the instructions, are often not clarified. For instance, IAK question 2 (*Who are the stakeholders?*) often produces only a list of actors. The responses do not make clear which actors (a) are affected by the proposal and which (b) are involved 'only' in its preparation. Nor is IAK question 7 (*What are the consequences?*) answered in accordance with the instructions. The result is that the responses provide no or only a modest insight for anyone examining an IAK document or having to decide on the proposal.
- Question 5 (*What justifies government intervention?*) is an important question in the IAK. It is unfortunately worded because it can create the impression that the government has already decided to intervene. IAK question 6 then asks what 'the best instrument' is. Although the instructions specify that, where possible, alternatives should be considered, it turns out that in practice responses to IAK question 6 contain only a brief explanation of why the instrument selected is the best one, without any consideration given to alternatives. This often results in foregone conclusions.
- The unbalanced distribution of IAK questions also means that it is not always possible to subject proposals to a comprehensive assessment. Five of the seven IAK questions have to do with the problem analysis phase, while only one concerns the choice of instrument and one the impact assessment.
- The current layout of the IAK questions means that the 'impact assessment' takes place *after* a particular instrument has been selected. This order means that little or no consideration is given to the anticipated impact during the instrument selection process. This overlooks the importance of taking account of the consequences for society, key societal issues, the practicability and enforceability of the measure and the impact on the national budget when considering which instrument to choose. It therefore seems obvious that the problem analysis should be followed by an assessment of potential measures, after which the impact of the 'options' will need to be identified. Based on that information, it will be possible to make a substantiated decision regarding the (final) measure(s) to be taken to address the social problem. Changing the layout will allow a comprehensive assessment of proposed policy and legislation.

### **Recommendation 1.**

**The board recommends that the IAK questions and instructions be restructured**

- a. to make their use more intuitive for policymakers and other employees; and**
- b. to ensure that the responses are more informative for parties examining proposed policy and legislation and/or having to make decisions about them; and**
- c. to ensure that all aspects are assessed when considering policy and legislation proposals.**

The board suggests that the following proposed restructuring of the IAK questions be used in the follow-up to recommendation 1. The new IAK questions are accompanied by instructions in appendix 1 to this opinion. It is important that when those instructions are developed in greater detail this is done from the point of view of those required to use the IAK in practice (see recommendation 4.3).

Current seven IAK questions		Proposed seven IAK questions (new)				
IAK question	Phase	IAK question	Phase			
1. What is the immediate cause?	1. Problem analysis	1. What is the problem and what are the causes?	1. Problem analysis			
2. Who are the stakeholders?		2. What is the objective?				
3. What is the problem?		3. Which measures have the potential to achieve the objective?.	2. Identification of measures			
4. What is the objective?		4. What are the consequences for stakeholders and societal issues?	3. Impact assessment			
5. What justifies government intervention?						
6. What is the best instrument?	2. Choice of instrument	6. Which measure has been proposed and why?	4 Choice of measure or measures (Comprehensive assessment)			
7. What are the consequences?	3. Impact assessment	7. Who will be involved, when and why?	1	2	3	4

The above proposal puts the questions in an order which is likely to be more in line with the mindset and perspective for action of a policymaker seeking to resolve a social problem (and not merely intending to prepare a proposal in response to, for example, a letter to the House of Representatives).<sup>7</sup> Those wishing to examine a proposal during the consultation phase also 'intuitively' believe that the problem and the intended policy objective are the first questions that should be answered. The new format of the seven questions is therefore 'more intuitive' for the person preparing an IAK document and also for someone who, for example, wishes to respond to it during the consultation phase.

- The proposed restructuring of the IAK questions has several other advantages as well:
- One important finding from the study is that the pros and cons of the various policy instruments are often not weighed up in a clear (and neutral) way. However, the IAK is intended to provide insight into that weighing-up process. Hence the proposal for the introduction of new IAK question 3 (*Which measures have the potential to achieve the objective?*). This question 'forces' respondents to consider and identify which measures have the *potential* to address the problem and/or achieve the objective.
  - In the present IAK document the impact assessment does not feature until the final

<sup>7</sup> Needless to say, the board recognises that the political and social context (e.g. in the form of an assurance given to parliament or a social agreement) is important to political decision-making. However, that context could well be mentioned in the assessment as to which measure is the best (see the new IAK question 6) because context is an important precondition for the proposed policy or proposed legislation.

question 7. It is proposed that this question be divided into two: A question concerning the consequences for interested parties and social issues on the one hand, and a question concerning the consequences for implementation, enforcement and the budget, on the other. The new questions 4 and 5 show more explicitly that these aspects are relevant in the impact assessment.

- Once potential and realistic policy options have been identified and their consequences analysed, the new IAK question 6 will prompt an examination of which option is best suited to address the problem in question. The question reads "*Which measure is proposed and why?*" The wording is intended to ensure that respondents do not merely justify their choice of a particular piece of legislation by describing it the most appropriate instrument, but also provide solid and substantive information supporting that choice.
- The new format enables the assessment of measures' *effectiveness and fitness for purpose* (in accordance with Section 3.1 of the Government Accounts Act (*Comptabiliteitswet*)) to be included in the IAK. These aspects may be addressed in responses to the new IAK questions 3, 4 and 5. Responses to the new IAK question 6 could therefore include a comprehensive assessment of the choice made in which effectiveness, fitness for purpose, legitimacy, feasibility, enforceability and 'capability' are covered. Specific reference to this can be made in the new instructions. The intertwining of the requirements under the Government Accounts Act relating to effectiveness and fitness for purpose in the IAK will ensure that those requirements become an integral part of proper preparation of policy and legislation.
- The current question 5 (*What justifies government intervention?*) will be dropped as a stand-alone question. The question as to which public interest is involved could form part of question 1 (*What is the problem and what are the causes?*). The question why government intervention is justified could be addressed during the analysis of potential measures (question 3) and when choosing a specific measure (question 6).
- If desired, the questions could be concluded with a new final question 7, which could be used to find out which actors are involved in the preparation of the proposal, at what point and for what purpose. This will encourage respondents to take a new look at which are the right stakeholders to involve (at the right time in the process). In the new format, the parties affected by the proposal are identified in, among others, questions 1 (problem and causes), 2 (objective) and 4 (consequences for stakeholders). The ATR is proposing this division of the current IAK question 2 because the study showed that the responses to question 2 ("who are the stakeholders") often do not make clear whether the actors referred to are those affected by the proposal or those involved in the preparation of the proposal (or whether both options are applicable). These different forms of involvement are presented separately in the new format.

Another advantage of the restructuring is that the IAK will better match elements from the policy analytical assessment of the Council of State's Advisory Division (*comprising a description of the problem, the approach used to address the problem and implementation*).

## 2. Make the IAK simpler to use

It is clear from the study into the quality of IAK documents for proposed legislation that compliance with the quality requirements is poor. The second phase of the study sought to identify the explanations for this. One of the main reasons was the complexity of the IAK and how unwieldy an instrument policymakers using it find it to be. This is because the IAK document contains a surplus of requirements. It is not a particularly workable instrument for policymakers preparing a proposal, especially when they are pressed for time. This conclusion is not intended to cast doubt on the added value or importance of the IAK. The interviews show that the substantive importance and added value of the IAK is broadly recognised. For these reasons it is important and necessary to make the IAK easier to use for policymakers.

### **Recommendation 2**

**The board recommends that the IAK be made simpler to use so that it is workable and practicable for policymakers to develop policy and regulations that meet the set quality requirements, without scrapping substantive quality criteria.**

The board suggests including the following recommendations.

#### *2.1 Streamline IAK requirements*

The board notes that some topics and elements of the applicable IAK requirements overlap and are therefore sometimes "duplicated". Another reason for this is that an accumulation of quality requirements have also been elaborated upon in many sources. Information about quality requirements can also be contradictory or absent. To illustrate instances of such duplicated, absent and contradictory information, the report on the study (in, among others, paragraph 5.3) concentrates on the requirements for analyses of the regulatory burden effects of proposed regulations. As a means of producing a more workable and practicable IAK, the IAK requirements could be simplified by:

- a. eliminating overlap in requirements and limiting the accumulation of information;
- b. eliminating and/or correcting contradictory information; and
- c. adding the relevant missing information in a targeted way.

**2.1 Streamline the IAK requirements to ensure that in terms of content they are unambiguous, mutually exclusive and jointly form a complete whole.**

#### *2.2 Explain the IAK requirements*

There is a host of IAK requirements, making it difficult to obtain a clear overview of all the requirements included in it. Nor are they made available in a user-friendly and logical way. Part of the simplification of the IAK could therefore be achieved by setting out more clearly a. which requirements are applicable *in terms of substance*, b. *how* policymakers could/should comply with them, and c. *when* they must comply with the requirements. At present, these three aspects are intertwined, in part because of the large number of individual explanatory notes.

**2.2 Clarify the IAK requirements so policymakers are clear on**

- a. **what they need to elaborate upon in, among other things, the explanatory notes/supporting information (content),**
- b. **how they should do that (process/method), and**
- c. **when (time), in a manner that is easily implemented.**

When following-up recommendations 2.1 and 2.2 it is important that it is made clear which requirements are mandatory for *every policy and piece of legislation* and which apply only to *specific types of policy or legislation*. A distinction can be made in terms of



the different legal forms of legislation (laws, orders in council or regulations) because certain requirements will apply to, for example, a law or an order in council, but not to a ministerial regulation. A distinction can also be made based on the nature of the mandatory quality requirements. Certain mandatory quality requirements (including the Drafting instructions for legislation) are applicable in full to all types of regulation. Other mandatory quality requirements apply only to proposals with a specific content (or with specific consequences). Examples of the latter category of mandatory quality requirements include: *the SME test*, the *Privacy Impact Assessment*, *Instructions for awarding grants* and *Impact on developing countries*. Ideally, it should be obvious and clear which mandatory quality requirements apply to *which type of proposal* and which do not, and how compliance with those requirements should be accounted for in the explanatory notes. This is not always the case in the current IAK. For instance, it is not always clear when a SCBA is mandatory (to be implemented in accordance with the General Guidance for Social Cost-Benefit Analysis).

### *2.3 Share good examples*

It is difficult for policymakers to be familiar with all the requirements and apply them properly. They often find a specific explanation and reference to the specific sources in which the requirements are laid down helpful. The ATR finds on an everyday basis that many policymakers value such assistance. Good examples can also help to increase understanding of the requirements and, therefore, promote their proper application. Good examples will often even say more than a manual, precisely because of their practical utility. It therefore makes sense to augment the IAK with good examples of different types of policy and legislation. Such examples could include legislative proposals, orders in council and regulations, as well theme-based proposals relating, for instance, to 'subsidy schemes', 'implementing regulations' or 'collective regulations'.

### **2.3 Make good examples of policy and legislation accessible, and provide examples of different types of policy and legislation.**

### *2.4 Embed the IAK in the development and (on-the-job) training of policymakers.*

The ATR believes that the IAK could also be made simpler for policymakers to use by embedding it more firmly in their development and training. The process of preparing and thinking through proposed policy and legislation is one of the core tasks of a policymaker. The IAK, the quality requirements and the seven IAK questions play a central role in that process. This is the reason why the ATR thinks the IAK should automatically be a (mandatory) component of the initial or continuing development and training of policymakers. Giving the IAK a distinct role in that process will also make the use and practical application of the IAK 'simpler'.

### **2.4 Promote the use of the IAK as a fixed and mandatory component of the development and training of policymakers.**

### *2.5 Explore the possibility of a user-friendly 'IAK functionality'*

The aforementioned points (streamlining, clarifying, providing examples and support, and training) could help to make the IAK requirements more workable and practicable from the point of view of policymakers. The ATR notes additionally that there is a fifth option. This option involves a different approach from that taken for the previous four. They are aimed at improving the accessibility and identifiability of the requirements, which may lead to their being simpler to apply. The ATR believes that it is also possible to intervene directly in the practical application of the requirements. One option would be to develop a functionality which involves the policymaker being presented with the specific requirements the supporting information provided for policy or legislation must meet and how and when those requirements must be met. This functionality could ensure that inapplicable requirements do not 'enter the frame'. A user-friendly IAK functionality could lead the policymaker through the requirements using, for example,

decision trees, check lists or flow charts. An ideal user-friendly IAK functionality would 'guide' a policymaker through the applicable requirements and the manner in which they could or should be met during the various stages of the process. If such a functionality is developed, it is essential that this is done based on the users' point of view and with policymakers closely involved.

## **2.5 Explore with policymakers who use the IAK the options for a user-friendly functionality which will help them to apply the IAK requirements for proposed policy or regulations correctly.**

### **3. Reinforce the importance of benchmark dates for new policy and legislation**

In an ideal world, policy and legislation are created in the course of a streamlined process where all the substantive and process-based quality criteria are met. This is not a straightforward matter in practice: the creation process by no means always conforms to the ideal model. Political pressure, implementation deadlines and other reasons mean that policy and legislation have to be created within a short or very short time, and there are occasions when not every quality criterion is met. The IAK requirements therefore represent many hoops through which the policymaker must jump in order to 'get the proposal through'. This sometimes confused nature of the policy and legislation process is unavoidable. That is why using the IAK should not be made unnecessarily burdensome (for the policymaker and the ministry in question). Differentiating the three phases in the policy and legislation process is a helpful way of determining how the IAK can be used in a proportionate manner: (1) the internal phase within a ministry, (2) the external consultation phase, and (3) the political and administrative decision-making phase. The amount of information which must be provided in response to all the IAK questions and the way that information should be provided varies depending on the phase. This also means that each phase requires a *benchmark date* on which a determination will be made to establish whether the supporting information for and responses to the IAK questions meet the requirements relevant to that phase.

#### *1. Internal phase*

The internal phase is where a ministry itself has to decide whether action is necessary, useful and desirable. This is also the phase where the ministry has to form an initial idea of which policy instrument will be the most suitable. This means that the ball is primarily in the 'policy department's' court in this phase. The 'legislation department' enters the frame only if legislation is chosen as the instrument. The responses to the IAK questions (which in some ministries are incorporated into a preliminary memorandum) are intended to facilitate the decision-making process within the ministry during this phase. It is important that alternative measures which would also achieve the policy objective can be explored during the preparations for this decision-making process. This requires the provision of political and other scope for the exploration of those alternatives. The relevant quality requirements, based on the content of the intended measures, need to be identified during this internal phase in order to reduce the complexity of the IAK requirements as early as possible.

#### *2. External consultation phase*

The second phase involves the external internet and other consultations regarding the proposed policy and legislation. During this phase, the IAK document serves as, among other things, a means of communicating content to society, providing as it does a summary of the whys and wherefores of a legislative or other proposal, which assessments were made in the process and what the consequences are. In view of its function and purpose, it is important that an external assessment takes place to establish whether the IAK document satisfies the instructions and criteria set to ensure that it

properly fulfils its function as a means of communicating information to external parties. Based on the ATR study, it is now clear that IAK document is currently not fulfilling that function properly during the phase when internet and other consultations take place.

### *3. Political and administrative decision-making phase*

The third phase is when a decision is made with regard to the proposal concerned. All information should be available at that point. For legislative proposals and orders in council, this is also the phase where preparatory bodies, ministerial sub-councils and the cabinet are involved. In the case of ministerial regulations, the decision is taken by the responsible minister or state secretary. During this phase, it is important to assess whether the proposal is ready for substantiated political and administrative decision-making. For that to be the case it must meet all mandatory and other prescribed quality criteria.

### **Recommendation 3**

**The board recommends that the importance of benchmark dates in the preparation of policy and legislation be reinforced to ensure that IAK requirements are complied with in a proportional manner.**

#### *3.1 A tailored approach and proportionality for each benchmark date (in line with the objective at that particular time).*

At present, there is no scope for the proportional application of IAK requirements. This is remarkable given the widely differing functions of the benchmark dates in the policy and legislation preparatory phase. The ATR believes that those differing functions set different requirements for the use, exactness and accessibility of the information provided in the responses to the IAK questions (in the IAK document). There could be a better connection between the application of the IAK requirements and the responses to the IAK questions. This would have the following benefits:

- It would be possible to ensure a tailored approach and proportionality in, among other things, the exactness and amount of the information available in the first (internal) phase,<sup>8</sup>
- The way in which information is presented during the second phase (external consultation) could be better geared towards the target group examining the proposed policy or proposed legislation, and
- all relevant information could be presented in compact form during the third phase to enable substantiated decisions to be made.

**3.1 Promote a tailored approach and proportionality in the application of IAK requirements (and in the responses to IAK questions) which are in line with the benchmark date in the development phase of the proposed policy and legislation.**

#### *3.2 Promote transparency regarding the fulfilment of IAK requirements*

Since the IAK contains a 'surplus' of requirements, it is not always clear whether, and if so to what extent, the applicable quality criteria have been met in the proposed policy and legislation. Not only do the various IAK tests have to be carried out, the findings also have to be reported. This transparency helps to ensure substantiated decision-making and gives stakeholders the opportunity to see for themselves the extent to which and way in which the quality requirements have been applied. Evidence of that positive

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<sup>8</sup> In the case of the regulatory burden, for example, it is important in the internal phase that there is an *initial indication* of the extent of the regulatory burden. This can be expressed in terms of the size of the target group (Q) and the regulatory burden per obligation per citizen or business (P). The regulatory burden consequences should be identified in phases 2 and 3 in accordance with the methodology used government-wide.

effect has also been seen in recent years through the process of publishing implementation and impact tests (including their mandatory forwarding to the House of Representatives) and making them transparent. The quality requirements in respect of common commencement dates and the minimum implementation periods for new regulations are also a good example of transparency regarding the fulfilment of quality requirements. The basic principle is that new legislation and regulations enter into force taking account of common commencement dates and minimum implementation periods. If the legislator wishes to depart from this principle for the regulation proposed, he states this (explicitly) in the explanatory notes to the regulation ('apply or explain').

The board emphasises that proportionality is also important as regards transparency concerning the fulfilment of quality requirements. In the case of some quality requirements (including compliance with the Drafting instructions for legislation and the specific requirements contained in them) it seems self-evident that the "apply or explain" principle should be applied. For other quality requirements (thematic requirements, for example) the application of that principle would be an obvious course of action if the content of the proposal touches areas to which the thematic quality requirements pertain. For instance, it is obvious that the quality criteria in respect of subsidy provisions will be applied only to proposals for subsidy regulation; from the point of view of proportionality, they can be disregarded for other legislative proposals.

### **3.2 Promote (minimising the burden) transparency regarding the extent to which and the way in which IAK requirements are fulfilled.**

## **4. Final conclusions**

The above recommendations will simplify the IAK and make it more user-friendly, without any loss of content. The board also makes the following suggestions:

### *4.1 Assess new quality criteria to establish how workable and practicable they are*

One objective of the IAK in 2010-2011 was to harmonise and simplify quality criteria and to minimise the number of quality requirements. Since then, however, the number of mandatory and other quality requirements has increased. When new requirements are added, it seems that it is not always clear what this means for the person having to work with them. There are also instances where new quality requirements overlap with existing requirements. This neither improves the workability and practicability of the IAK questions nor fulfilment of the quality requirements. Consideration, or more explicit consideration should be given to this when deciding whether to add new quality criteria to the IAK in future.

### **4.1 The board also recommends that attention be given to the question of how decisions on whether and how any new quality criteria should be included in the IAK in future when the IAK is updated in 2021. It is important that the consistency with already existing criteria and requirements is maintained.**

### *4.2 Promote quality assurance for legislation arising from social or political agreements*

Fulfilment of the quality criteria for new policy and legislation can be difficult, including when political agreements are implemented and elaborated upon in legislation. This is particularly true of 'agreements on resources' (where precise agreements as to how and using which policy instrument a particular objective is to be realised are laid down) in social or political agreements. There is also a more limited application of the quality criteria applicable to proposed legislation in the case of motions and amendments.

### **4.2 The board recommends that attention be given to the way in which quality**

**requirements for legislation can be safeguarded or better safeguarded in the case of legislation arising from social or political agreements when the IAK is updated in 2021.**

*4.3 Include policymakers in the overall process of improving the IAK*

There is a surplus of IAK requirements, making its use burdensome for policymakers. The purpose of the recommendations detailed above is to simplify the IAK, make it more user-friendly and to promote its use. One prerequisite is to establish whether the updated IAK will be workable or more workable for those having to use it in practice. It therefore seems logical to include policymakers in the continued development of the IAK. The IAK will become truly workable and practicable only if sufficient account is taken of their practice-based points of view.

**4.3 The board recommends the inclusion of policymakers throughout the entire process aimed at improving the IAK in 2021 and that they be asked to become ambassadors for the updated version.**

## Appendix 1: Proposal for seven IAK questions accompanied by instructions

Based on the study, the ATR proposes introducing some updated IAK questions with accompanying instructions containing questions. The updated IAK and the IAK questions will need to be tested in practice. The ATR recommends that the instructions containing questions be included in the response format. This will improve compliance in the responses to questions.

### Question 1. What is the problem and what are the causes?

- What are the nature, extent and causes of the problem requiring a solution?
- Which public interest is involved?
- Which actors have a role in the problem?

### Question 2. What is the objective?

- Which policy objective or policy objectives are being pursued? (Where possible formulate the objectives using the SMART method: Specific, Measurable, Acceptable, Realistic and Time-related)
- Which actors are involved in achieving the objective?

### Question 3. Which measures have the potential to achieve the objective?

- What happens if the zero option is applied?
- Which measures can be used to achieve the objective/solve the problem?
- How effective are the potential measures?
- In the case of government intervention; what is the basis and what justifies *government* intervention?

### Question 4. What are the consequences for interested parties and social issues?

- What are the consequences or spillovers for citizens, businesses and professionals (or other interested parties)? (*examples include regulatory burden effects, financial burdens, market effects, ...*)
- Are the measures workable/feasible and acceptable as far as stakeholders are concerned?
- What are the specific consequences or spillovers for the economy, social inclusion, innovation, the climate/environment, Sustainable Development Goals (including gender equality and the impact on developing countries), (...) ?

### Question 5. What are the consequences for implementation, enforcement and the budget?

- What are the consequences for the authorities, including local and regional authorities, implementing bodies and enforcement?
- Are the measures practicable and enforceable for implementing bodies?
- What are the budgetary consequences (for which government parties) of the proposal?

### Question 6. Which measure has been proposed and why?

- Which measure has been proposed following an overall assessment of the possibilities and consequences?
- Which considerations as regards effectiveness, fitness for purpose<sup>9</sup>, legitimacy, practicability, enforceability, as well as workability and 'capability' determined this choice?

### Question 7. Who will be involved, when and why?

- Which citizens, businesses and professionals (or other stakeholders) are involved during the preparation of the proposal?
- How and why were those parties involved in the creation of the proposal?

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<sup>9</sup> The new IAK questions (4 and 5) can also be used to assess the fitness for purpose of the measures (and be included in the overall assessment for IAK question 6). Fitness for purpose can be considered at three different levels: at implementation level, objective realisation (or output) level and at the level of social impacts. See also the (*provisional*) *Drafting guidelines for the explanatory notes to Section 3.1 of the Government Accounts Act*.