ATR
Adviescollege toetsing regeldruk

ANNUAL REPORT 2020

Dutch Advisory Board on Regulatory Burden

2020 Overview:
Inadequate focus on the practicability of legislation

2020 Overview: Inadequate focus on the practicability of legislation

The past year was an eventful year clearly dominated by the coronavirus pandemic. The pandemic is testing the resistance and resilience of Dutch society. In an effort to minimise social and economic damage, the government has taken various measures, including support packages of historic proportions.
The measures require a solid legal basis. Legislation is drafted in line with the ordinary legislative procedures as far as possible, although with a significantly reduced lead time. This means that the Dutch Advisory Board on Regulatory Burden (ATR) has issued opinions within a matter of days on much of the emergency legislation drafted. We were also able to present the government with a less burdensome and more workable alternative in two cases.

Advice on coronavirus-related regulations

In 2020, ATR received 76 requests for an opinion relating to the coronavirus pandemic.[1] ATR issued a formal opinion in 16 cases. The other 60 requests were handled administratively, as they had little effect on regulatory burdens.
ATR issued a negative opinion in two cases.[2] In the case of the ***Temporary Bridging Scheme for Self-Employed Professionals (Tijdelijke Overbruggingsregeling Zelfstandige Ondernemers, Tozo)****, it was not clear how self-employed professionals should demonstrate that they were financially affected by COVID-19. In the case of the* ***Temporary Act Governing the Provision of Information by the National Institute for Public Health and the Environment (RIVM) in connection with COVID-19 (Tijdelijke wet informatieverstrekking RIVM i.v.m. COVID-19)****, telecommunications companies should provide data that were to be used to determine whether groups of citizens were 'mixing' and thus increasing the risk of the virus spreading. However, it was not clear how it this could be done. In turn, this meant that it was not possible to determine the extent to which the objective would be achieved, nor the necessity and proportionality of the imposed measure and the regulatory burden it represented.*

[1] In other words, one out of eight requests for an opinion received in 2020 related to the coronavirus.
[2] www.atr-regeldruk.nl/tijdelijke-overbruggingsregeling-zelfstandig-ondernemers-tozo and www.atr-regeldruk.nl/-tijdelijke-wet-informatieverstrekking-rivm-i-v-m-covid-19.

In response to our opinion, it was clarified that these data would not provide any insight into movements within a municipality. Instead, they were to be combined with information on the infection rate in a given municipality. RIVM can then predict whether the virus is spreading to which municipalities.
In January and February 2021, ATR received 24 coronavirus-related requests for an opinion. The majority of these requests were handled administratively. The ministry adopted our advice to use a different subsidy condition for the ***Coronavirus-Related Health Care Roles Subsidy Scheme (Subsidieregeling Coronabanen in de Zorg)****. In the original proposal, people working in a coronavirus-related health care role had to work for at least 20 hours a week. Now an employment contract of at least 20 hours suffices. This makes these roles more interesting for potential employees and makes it easier for health care institutions to find and hire them. Furthermore, regulatory burdens were limited as supervision only needs to focus on the contracts rather than on actual deployment.*

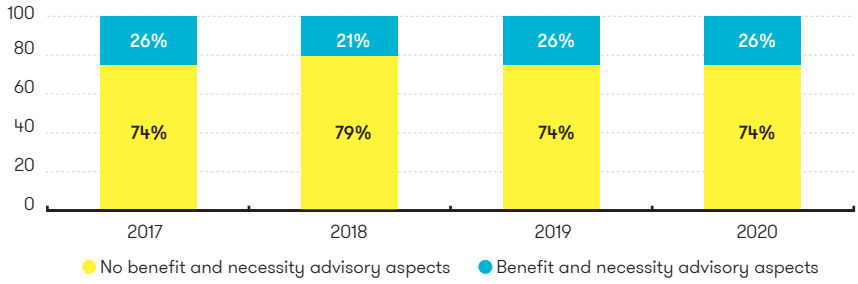
A second feature of 2020 was the attention that the House of Representatives paid to the poor quality of the implementation of legislation. The Temporary Executive Organisations Supervisory Committee (*Tijdelijke commissie uitvoeringsorganisaties*) investigated the causes of problems at executive organisations, and the related issue of losing sight of the human dimension. During the parliamentary inquiry into childcare benefits, the consequences of losing sight of the human dimension became painfully clear. From a regulatory burden perspective, the complexity of legislation is a key contributing factor. Legislative complexity applies in particular to income-dependent schemes. These schemes are strongly interconnected. The exact effects of changes in these schemes are therefore difficult to identify for those who need to use them. This makes it easy to make a mistake.[3] Striving to give everyone precisely what they are entitled to, can lead to such complicated regulations that the ultimate objective is lost sight of. This also seems to apply to the handling of earthquake damage claims in Groningen. In this case, the complexity of legislation conflicts with its effectiveness. In December 2019, therefore, ATR recommended to vest one organisation with the powers to assist property owners effectively and to use a 'capacity to act test' (doenvermogentoets) to determine whether property owners can and will take the required action to reinforce their homes and make them more sustainable.[4]

[3] Actal, ATR's legal predecessor, had already pointed out in 2014 that it is difficult for people to determine what they are entitled to and to check whether they also receive it. This proved to be a virtually impossible task even for professionals. See the Actal report (2014) Regeldruk door Inkomenskoppelingen en Inkomensdrempels (Regulatory burden arising from income-linked schemes and income thresholds) in response to the review of regulatory burden arising from linking schemes to citizens' income, Deloitte, commissioned by Actal, June 2014. The opinion and the review are available on ATR's website (www.atr-regeldruk.nl).

[4] See www.atr-regeldruk.nl/wetsvoorstel-versterking-groningen.

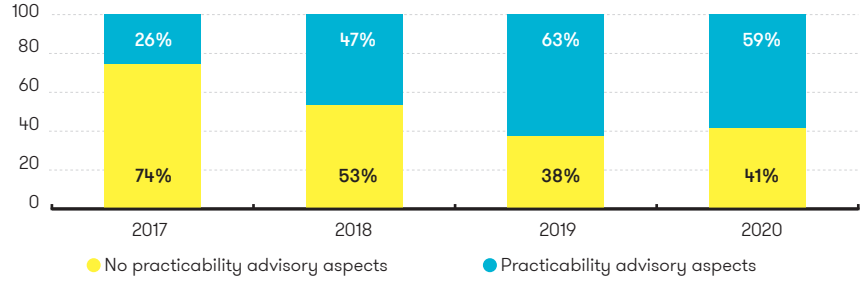
ATR's experiences in 2020 corroborate that the quality of legislation must be improved. It begins with the question whether it is clear why legislation is needed and what its intended social effect is. Between June 2017 and January 2021, in a quarter of our opinions, we made critical comments on the substantiation of the benefit of and/or necessity for the legislation submitted to us.

Figure 1 Substantiation of benefit and necessity (review criterion 1)



In far too many cases the attention paid to practicability leaves much to be desired (see Figure 2). In six out of 10 formal opinions, we had serious doubts about whether businesses, citizens and/or professionals would be able to comply with the statutory obligations in practice. A significant cause for these doubts was that the obligations inadequately take account of the manner in which businesses and institutions have designed their processes and citizens have organised their lives.

Figure 2 Focus on practicability



When drafting legislation, policymakers are required to use the Integrated Impact Assessment Framework for Policy and Legislation (IAK). The IAK contains all the relevant questions that must be answered before drafting legislation. It also contains

the tools that can be used to obtain the answers. During the past year, ATR examined the quality of the answers to the questions (see insert).[5] The conclusion is that the questions in the IAK are not in line with policymakers' intuition. To rectify the problem, we proposed to set out the questions in a different order and to formulate them in a different manner. Furthermore, similar to the OECD, we have concluded that there is a lack of adequate supervision of the IAK and its use. The government's approach is that the ministries should be encouraged to use the assessment framework. However, no one monitors whether they actually do so. Monitoring responsibility has not been assigned to a particular party and as a result the quality often leaves much to be desired.

Transparency and integrated approach during consultations

In 2020, we examined how the seven questions that constitute the core of the Integral Assessment Framework (IAK) were answered. The IAK assists policymakers in selecting the most appropriate policy instrument. The seven 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? (7) What are the consequences?

An IAK document containing the answers to these questions must be submitted for every internet consultation. This document was absent in over a quarter of the consultations. Of the documents that were submitted, 65% paid inadequate attention to any less burdensome alternatives and 77% provided inadequate insight into the social consequences of the proposal. Citizens and businesses therefore do not know what the proposal means for them.

Ministries acknowledge the importance of the IAK and proper answers to its questions. They believe that the IAK should be used from the outset in the policy process. However, they also believe that all requirements in the IAK combined make the framework overly detailed and difficult to work with. It is striking that there is no effective mechanism to ensure that the IAK questions are answered properly and that the IAK requirements are fully complied with. As a result the government's ambition with regard to the quality of legislation is under pressure. Our opinion on the IAK contains concrete suggestions for rectifying this situation. It contains a different classification of the questions, which helps make the use of the IAK more intuitive. Moreover, this classification facilitates a more integral assessment of proposed policy and regulations. Furthermore, the IAK should be trimmed down: the framework currently contains too many overlapping requirements and reviews. Lastly, IAK monitoring can be strengthened by introducing two benchmark dates: one for the internet consultation and one prior to political and administrative decision-making.

[5] See www.atr-regeldruk.nl/gevolgen-wetgeving-vooraf-onvoldoende-in-beeld.

ATR increasingly involved at an early stage

ATR advises ministries on how they can improve the quality of regulations by avoiding or reducing regulatory burdens on citizens, businesses and professionals. We offer this advice during the consultation phase of the legislative process at the latest, preferably even earlier. At that stage, ministries still have ample opportunity to take our opinions on board and to consider the regulatory burden when designing their policy instruments. The ministries also acknowledge this. Since the establishment of ATR in 2017, they have submitted an increasing number of draft regulations to ATR in the pre-consultation phase. The average number of dossiers submitted on a monthly basis amounted to four in 2017, seven and a half in 2018, more than nine in 2019 and over 11 in 2020. This allows ATR to suggest possible improvements to the ministries at an early stage on draft regulations and their substantiation.

Proportionate review by means of a fast-track procedure

In 2020, we processed 561 of the 608 received requests for an opinion; the remaining 47 requests were still being processed in 2021. This means that we received almost 30% more requests for an opinion in 2020 than in 2019 (608 versus 469) and that the number of processed requests was almost 32% higher than in the previous year (561 versus 426). The many coronavirus-related requests certainly contributed to this rise, but even leaving those aside, there was a considerable increase.

There are two ways for the ATR to process requests for an opinion:
The first involves issuing a formal opinion. This takes the form of a letter to the government, in which ATR states how the legislative proposal can be improved. ATR uses a standard review framework for this purpose (see Appendix 2). In 2020, 131 formal opinions were issued.
The second procedure is the fast-track procedure, in which the request for an opinion is handled administratively following the approval of the Board of ATR. This procedure is used mainly to process requests for an opinion on ministerial regulations that have little effect on the regulatory burden. In 2020, 429 requests for an opinion were handled administratively. The fast-track procedure lets us deploy our capacity efficiently, so that we can handle the considerable stream of requests for an opinion promptly.
The 2019 evaluation of ATR showed that we issued 97% of our formal opinions within the maximum four-week time limit for issuing advice. We recorded a similar percentage in 2020. Consequently, in 2020 ATR also complied with the required standard of 95%.

The fast-track 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. ATR processed 76% of the requests for an opinion received in 2020 using the fast-track procedure, compared to 67% in 2019 and 62% in 2018.

ATR evaluation

In accordance with the Advisory Bodies Framework Act (*Kaderwet adviescolleges*), ATR was evaluated in 2020. The evaluation was conducted by management consultancy firm Berenschot.[6]

Core task: issuing advice on proposed legislation

The evaluation of the manner in which ATR carried out its core task focused on three main questions:

1. *How does ATR contribute to improved legislation and improved substantiation of legislation?*
   The government and ATR have agreed on four quantitative performance indicators. ATR must process more than 95% of the requests for an opinion. It must process requests for an opinion in more than 95% of the cases within the statutory time limit for issuing advice. ATR must do so proportionally: in more than 75% of the cases ATR must process requests for an opinion in accordance with the working agreements made. In more than 75% of the processed requests for an opinion, ATR's working procedure is substantively accurate (no factual inaccuracies) and the process is thorough and efficient. According to the evaluation, all these standards were demonstrably and amply achieved. The fifth criterion focuses on improving the quality of the substantiation of the proposed legislation. This is a qualitative criterion, given that it is the legislator who ultimately determines the quality. No powers have been vested in ATR for this purpose. In the opinion of Berenschot's researchers, there is a broad consensus among stakeholders that without ATR, the quality of legislative dossiers would be lower in terms of the regulatory burden aspect. They have made the observation that it is difficult to find out what the ministries have done with ATR's opinions. Berenschot has recommended that the ministries explicitly report on what they have done with the various points on which ATR has issued advice.

2. *In what way does ATR's working procedure support the work of the ministries?*
   An important component of our working procedure is the opportunity for ministries to call in ATR's assistance at a very early stage in the legislative process. They may make use of ATR's insights before reaching any compromises and making decisions. According to Berenschot's researchers, providing early advice is helpful to the ministries. Moreover, it ties in well with the legislative process. During the 2017–2020 period, the ministries increasingly sought assistance from ATR during the pre-consultation phase. In 2018, the average number of dossiers submitted on a monthly basis amounted to seven and a half, compared to over 11 dossiers on a monthly basis in 2020. Berenschot's researchers consider ATR's early involvement so important that they have recommended raising awareness of the opportunity to do so among policymakers.

[6] See www.atr-regeldruk.nl/evaluatie-atr-2017-2020.

3. *What is the opinion of key stakeholders on the manner in which ATR has carried out its mandate?*
   In the course of its evaluation, Berenschot interviewed stakeholders at the various ministries as well as societal and government stakeholders. They rate ATR's work highly. The fact that ATR carries out its work during an early stage of the legislative process means that its opinions are not very visible during the parliamentary debate. Berenschot pointed out that the effects of ATR's opinions can be increased by devoting more attention to them during the parliamentary debate.

Other powers

The evaluation found that ATR had little capacity to be able to advise on existing legislation. Overall, the various societal stakeholders rate ATR's opinions positively. According to the evaluation, the opinions have had a demonstrable impact. This applies, for instance, to the opinion issued on the Personal Records Database (Basisregistratie personen, BRP). It is still too early to determine what happened to the opinions ATR issued in this context in 2020 (see elsewhere in this annual report).

Review criteria and dictum

ATR adds a dictum to its opinions,[7] which indicates whether the relevant legislation is suitable for decision-making from a regulatory burden perspective. Where a dictum is positive, we consider the substantiation of the proposal sufficient for balanced decision-making. During the first six months of ATR's operation, 64% of our formal opinions included a positive dictum (dictum 1 or 2). This rose to 78% in 2018, fell to 67% in 2019 and rose again to 75% in 2020. Over the entire period, 75% of our opinions contained a positive dictum. It is striking that the share of opinions in which ATR had no comments at all declined from 27% in 2017 to just 10% in 2020.[8]

Table 1 Share of opinions broken down by dicta, as a percentage of the total per year/period[9]

	2017 (2nd half)	2018	2019	2020	Total for the period
1. Submit	27%	18%	16%	10%	15%
2. Summit after	37%	60%	51%	65%	60%
3. Do not submit unless	34%	21%	26%	19%	21%
4. Do not submit	2%	2%	6%	5%	4%

[7] For a more detailed description of the dicta and the criteria ATR uses for this purpose, please see Appendix 2.

[8] For a detailed explanation of the opinions, including the dicta, issued by ATR in recent years, please see Appendix 1.

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

Initial overview of the regulatory burden

Proposed regulations must be accompanied by a calculation of the costs of the regulatory burden. Table 2 shows the results of these calculations for the dossiers submitted by the ministries to ATR for an opinion in 2020. The results are similar to 2019, when the structural regulatory burden increased by € 657.7 million on balance. In 2020, the increase amounted to € 635.7 million. The one-off increase amounted to € 1,060 million (compared to € 997.6 million in 2019).

Table 2 Regulatory burden changes in 2020 calculated by ministries (in millions of euros)

Target group	Structural		One-off[10]
	Increase	*Decrease*	*Increase*
Businesses	€ 569,3	€ 6,6	€ 628,8
Citizens	€ 95,6	€ 16,1	€ 406,9
Professionals	€ 2,3	€ 8,8	€ 24,3
Total	***€ 667,2***	***€ 31,5***	***€ 1.060,0***

Source: These figures have been taken from requests for an opinion submitted by ministries and are approximate indications. The total figure may contain rounding differences.[11]

Most significant regulatory burden increase

The Change in the Decree for ***Buildings in the Physical Environment (Verzamelwijziging Besluit bouwwerken leefomgeving)*** *accounted for the most significant regulatory burden increase. The increase affects both businesses and citizens. The change contains measures aimed at making new houses and public buildings more accessible for the disabled. It also tightens the environmental performance requirement for new houses and imposes more stringent safety requirements on construction and demolition projects, and on fire safety in buildings. This has increased the regulatory burden on businesses by € 186.8 million annually and by almost € 211 million on a one-off basis. The structural increase for citizens amounts to € 88.6 million and the one-off increase amounts to € 345.3 million.*

[10] The one-off regulatory burden always increases, because it comprises one-off costs that must be incurred to learn about the legislative changes and to adapt everyday working practices to comply with new or amended statutory obligations.

[11] The regulatory burden consequences may differ from these figures because of adjustments to the calculations of those consequences or to the draft regulations.

Most significant regulatory burden decrease

The dossier accounting for the most significant regulatory burden decrease was the ***Simplification of Funding for Primary Education Bill (Wetsvoorstel vereenvoudiging bekostiging primair onderwijs).***[12] *The structural decrease for institutions and education professionals amounted to € 5 million. The main changes are that all primary schools, primary schools for children with special needs and special education schools will be allocated the same amount for each pupil. The existing components in the basic funding will be combined. The difference between the junior and senior sections will be eliminated in the funding. In addition, the funding of staff costs will be synchronised with the annual pay adjustment.*

The above figures provide an initial overview of the development of the regulatory burden costs at the macro level. We would like to point out that our analysis does not constitute an argument in favour of a quantitative reduction target.
The challenge for the Dutch policy on regulatory burden is to facilitate a more well-informed opinion on the proportionality and social added value of legislation. In this connection, the OECD recently issued recommendations on the IAK as the Dutch impact assessment system.[13] It underlined the importance of an external and independent review of the proper functioning of such a system. In this context, it highlighted the external and independent review of regulatory burden performed by ATR. However, it is not clear who is responsible for ensuring that the IAK is used effectively in the Netherlands. Moreover, ATR is currently still a temporary advisory board. ATR's mandate was recently extended by 18 months until 1 December 2022. We plan to use this period to demonstrate how the proportionality and practicability of legislation can become central aspects when reviewing the regulatory burden of proposed legislation. We would also like to jointly explore with the new government what role can be assigned to ATR in improving the quality of legislation.

[12] See www.atr-regeldruk.nl/wetsvoorstel-vereenvoudiging-bekostiging-primair-onderwijs. It should be noted that the decrease appeared to be even larger for the Decree Implementing the Temporary Act on Groningen (*Besluit Tijdelijke Wet Groningen*), namely over € 12.9 million. According to the opinion issued by ATR, this should have been € 3 million. The original calculation had erroneously assumed that physical property inspections (five hours on average) would be abolished. The time saved by no longer having to submit an assessment under the Valuation of Immovable Property Act (*Wet waardering onroerende zaken, WOZ*) was also overestimated. However, the ministry has erroneously failed to remedy this defect in the version that was sent to Parliament. It has indicated that it will inform Parliament in a letter that will be send late March 2021. The issue here is that the responsibility for the regulatory burden on citizens has not been clearly assigned within the government. As a result, no checks are carried out to verify whether ATR's opinions on draft regulations that have consequences for citizens have been correctly adopted.

[13] OECD, Regulatory Policy Outlook 2018, pp. 216–217. The OECD noted that, since 2015, the IAK had been expanded to include certain other types of benefits, but the emphasis of the Dutch approach was still largely cost-based.

Advice on existing regulations

In 2016, the House of Representatives added a number of tasks to the decree establishing ATR.[14] 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. In addition to the review of the IAK and the related document referred to earlier, we conducted a review on how to obtain a clearer picture of the benefits of policy in 2020. The review focused on the implementation of the European Energy Performance of Buildings Directive (EPBD) in the Netherlands.

Implementation of the Energy Performance of Buildings Directive: proportionality not on the radar

We conducted the review jointly with a number of sister organisations in the RegWatchEurope (RWE) network. The organisations involved were from Germany, Norway and the United Kingdom. Portugal was also involved in the review. The Economic Institute for the Construction Industry (EIB) conducted the review on behalf of ATR.

The main aim of the review was to determine how to obtain a clear picture of the proportionality of legislation. The review focused on the implementation of the European Energy Performance of Buildings Directive (EPBD) in the Netherlands compared to implementation in a number of other European countries. In order to obtain a proper understanding of proportionality, a picture of both the costs and benefits must be obtained. The costs largely comprise regulatory burden costs, in this case the costs of compliance with statutory obligations. The benefits are primarily expressed in terms of energy savings and the reduction of CO_2 emissions. The review found that it undeniably has added value to examine the regulatory burden and the extent to which objectives are achieved in conjunction with each other. A one-sided focus on costs may result in not choosing alternatives that have a greater social effect, because they are more costly. Other key findings from the review are as follows:

1. A label based on a home visit by an energy expert was found to have limited added value to investments in energy-saving measures compared to the digitally available label that was used in the Netherlands until 1 January 2021. With effect from 1 January 2021, only the new label is available, which requires an energy expert to visit the building concerned. The new label costs at least € 150 more than

[14] Parliamentary Papers, 2016–2017 session, 29 515, nos. 404, 408, 409, 410, 411 and 412.

the digital label. This means that the extra costs of an energy label amount to over € 30 million for homeowners. The total costs for all homes in the Netherlands amount to € 720 million. In view of the price difference between both types of labels, the abolition of the digital label is not proportional.[15]

2. The Netherlands tightened the requirements relating to the energy performance of buildings (EPC) in 2015. The level of tightening was more stringent than required under the EPBD 2010. In other countries, such as Germany, this 'gold plating' has not occurred. The additional costs arising from tightening the requirements amount to € 0.5 billion on a structural basis. The costs per tonne of CO_2 emissions avoided was € 1,000. This is high compared to other CO_2 emission reduction methods. It would probably have been more efficient if the € 2.5 billion had been spent on energy-savings measures in the existing housing stock, for instance.

The above findings show that the Netherlands has opted for a non-cost-optimal implementation of the European directive. The decisions on this appear to have been made without obtaining a clear picture of the social costs and benefits.

Experiences in the social domain: an overly optimistic legislator?

As we had already stated in the preceding sections, the legislator scarcely pays any attention to the practicability of legislation. We can provide insight into this aspect based on our experiences of decentralisation in the social and care domains.
With effect from 1 January 2015, various tasks in these domains were transferred to the municipalities. The idea behind this was that municipalities were better placed to provide tailored services to people who need any form of assistance, care or support. The municipalities embarked on their new tasks in a profoundly changing context, with various major legislative changes in the social domain.[16] ATR and its legal predecessor Actal issued opinions on these laws. An analysis of these opinions, the enacted laws, practical implementation and the subsequent proposed amending and remedial legislation has resulted in the following findings:

1. Often, it is not clear what the relevant laws aim to accomplish exactly. As a result, it is difficult to establish whether the statutory obligations are appropriate and proportional. Moreover, during the evaluation it cannot be clearly determined when the objectives have been achieved.[17]

---

[15] The directive stipulates that energy labels must be based on kWh/m^2 as the unit of measurement. The EIB's review points out that this does not mean that a digitally available label is no longer permitted. Abolition of the digital label is not a European requirement, but rather national 'gold plating' that creates an additional regulatory burden.

[16] Examples are the introduction of a quota levy and the tightening of various aspects of the obligation to participate in a civic integration programme.

[17] Examples are the amendment to the Participation Act (*Participatiewet*) in the context of the Broad Offensive and the simplification of the Wage Cost Subsidy Decree (*Besluit Loonkostensubsidie, LKS*).

2. The laws do not always create the right conditions for their effectiveness. So-called 'kitchen table discussions' with those who need assistance, combined with the basic principle of one plan for one family, had to improve the support for those with multiple problems. People would not need to provide the same information and tell the same story time and again. This required the processing, use or reuse of information in a single dossier. The law provided no legal basis for this, and consequently the implementers – partly for fear of penalties and negative media attention – failed to do what the law hoped to accomplish. Over five years later, the ***Bill on Tackling Multiple Problems in the Social Domain (Aanpak meervoudige problematiek sociaal domein)*** had to be introduced to rectify this omission.
3. Often, the legislator does not opt for the least burdensome alternative. This occurs in particular when the law implements a coalition or social agreement (see our 2019 annual report). As an example, a complex system was chosen for the ***Act on Employment Targets and Quotas for the Occupational Disabled (Wet banenafspraak en quotum arbeidsbeperkten)***, in which employers had to record the salaried hours of people with disabilities. Five years later, with the ***simplification of this Act*** (***Vereenvoudiging Wet banenafspraak***, the government opted for a surcharge on the contribution (without a time-recording system), in line with the opinion issued by Actal in 2013. Another example is the system implemented in 2015 requiring businesses to report sickness absence twice, i.e. to the ***Employee Insurance Agency (UWV)*** and to municipalities, for employees on sick leave with a wage cost subsidy. The unnecessary dual reporting system was abolished through amendments to the ***Participation Act*** and the ***Sickness Benefits Act (Ziektewet)*** (Broad Offensive, May 2019).
4. The legislator is often overly optimistic about the consequences for the regulatory burden. This was the case, for instance, with the new ***Youth Act (Jeugdwet)*** and the amendment to the ***Social Support Act 2015 (Wet maatschappelijke ondersteuning, WMO)***. The government at that time had calculated a structural decrease in the regulatory burden amounting to € 15.5 million, despite earlier warnings. The continuous stream of complaints from care providers subject to the WMO and youth care providers clearly demonstrated that the optimism was unjustified. Further legislative proposals that should bring about this reduction are still to be submitted to the House of Representatives.[18]
5. The legislator is also overly optimistic about the practicability of legislation. The ***Youth Act***, the ***Social Support Act 2015*** and the ***Participation Act*** had to be fully implemented in 2016. This proved to be unrealistic.[19]

[18] This is the legislative proposal on improving the availability of care for young people and tackling multiple problems in the social domain.

[19] See the opinions issued by Actal on the Youth (www.atr-regeldruk.nl/meer-bureaucratie-door-nieuwe-jeugdwet) and the Participation Act (www.atr-regeldruk.nl/participatiewet-is-mogelijk-met-minder-regeldruk-voor-werkgevers-en-werknemers).

The implementation required adjustments in work processes, logistics and administrative processes, ICT systems and in staff knowledge and skills levels. The recording of salaried hours, as described above, also proved to be more difficult for businesses to implement in practice than previously thought. This underlines the importance of consistently conducting SME reviews that can provide greater insight into what the changes in the law mean for companies' business operations and logistics processes.

6. 6. Finally, the legislator often also overestimates citizens' and professionals' capacity to act.[20] For example, legislative amendments in the social domain often only consist of institutional changes. They cover who is responsible for implementation, how implementers (in the chain) should carry out their new tasks and how they should account for their performance. The changes fail to remedy the complexity of the set of instruments citizens have to work with. These instruments consist, for example, of the ***personal care budget (PGB)***, various reintegration instruments and various allowances and reimbursements. It is the complexity of this set of instruments that creates problems. Even for professionals, it is extremely complicated to determine who is entitled to what and in which case.[21] People in a multi-problem situation in particular give up on this. Our recent opinion on the Improvement of the ***Availability of Care for Young People Bill (Verbetering beschikbaarheid zorg voor jeugdigen)*** raises this topic once again.[22]

In summary, in many cases the legislator appears to be vague about the objectives it is pursuing. It is too optimistic about what businesses, citizens and professionals can cope with. And important omissions, which were already pointed out during consultations and reviews prior to implementation, are only remedied five years later (by a new government). The result is that those who have to deal with the legislation have to alter their internal work processes several times and therefore experience more regulatory burden than necessary. It may even undermine their trust in the quality of the legislator. A dossier where ATR has warned that the intended simplification will not be achieved is the Environment and Planning Act (*Omgevingswet*). The warning primarily (but not only) concerns the functioning of the integrated digital infrastructure (DSO) as a necessary condition for the success of the Act.

[20] The Netherlands Scientific Council for Government Policy (WRR) distinguishes between people's mental ability and their capacity to act. This consists of people's non-cognitive abilities to make plans, carry them out and persevere in carrying them out despite temptations and setbacks. See WRR (2017) Weten is nog geen doen (Knowledge is not enough to ensure action), The Hague.

[21] See for example the Actal reports *Hoe de regeldruk te verlagen bij de aanvraag van sociale voorzieningen* (How to reduce the regulatory burden when applying for social security benefits) (2016) (www.atr-regeldruk.nl/lastenluwe-toegang-tot-sociaal-domein-heeft-meer-tijd-nodig) and *Regeldruk door Inkomenskoppelingen en Inkomensdrempels* (2014) (www.actal.nl/maak-inkomensondersteuning-eenvoudiger).

[22] See www.atr-regeldruk.nl/wet-verbetering-beschikbaarheid-zorg-voor-jeugdigen.

Advice to local and regional authorities

ATR can also issue opinions on regulations drawn up by the local and regional authorities (i.e. provinces, water boards and municipalities). We have restricted our efforts to participation in the Association of Netherlands Municipalities (VNG)'s Advisory Committee on Local Government Law and the 'Kloosterhoeve consultations'. In both bodies, we draw attention to options for making draft model regulations less burdensome, among other things. This means that all municipalities that use a model regulation implicitly draw on ATR's insights. 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.[23]

Advice at the request of the States General

Ministers are expected to forward ATR's opinions 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 was held), they will become public when the ministry submits the draft regulations in question to parliament. ATR also sends its opinions to the House of Representatives directly. The majority of the parliamentary standing committees have indicated that they appreciate this gesture. Members may obviously also ask ATR questions about or in response to our opinions. However, it should be noted that this opportunity is hardly used. An aspect we need to address is to better inform Members about the opportunities in this regard and about the fact that the regulatory burden is not only relevant to the parliamentary standing committee of the Ministry of Economic Affairs and Climate Policy, but to all parliamentary committees that examine legislation which has consequences for businesses, citizens and professionals.

Members of the House of Representatives may also draft legislative proposals. They may seek advice from ATR on the consequences of the regulatory burden of

[23] See www.atr-regeldruk.nl/decentrale-implementatie-omgevingswet.

such private members' bills. This occurs twice a year on average. In some cases, the questions are only of an informative nature. In other cases, the relevant Member also requests a formal opinion. In 2020, we issued two formal opinions on private members' bills.[24]

Members of the Senate and House of Representatives may also submit questions of a more general nature to ATR. These questions may relate to ATR's working method, the use of the Integral Assessment Framework (IAK) or the future of the regulatory burden policy in the Netherlands.

International

ATR is a member of the network organisation RegWatchEurope (RWE).[25]
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. RSB was on the supervisory committee that conducted a review of the IAK. 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 by means of country studies and by disseminating best practices.

[24] These related to the amendment to the Working Conditions Act (Arbeidsomstandighedenwet) in connection with the mandatory appointment of a confidential adviser and the Minimum Hourly Wage (Implementation) Act (*Wet invoering minimum uurloon*). For the opinions issued by ATR, see www.atr-regeldruk.nl/voorstel-tot-wijziging-van-de-arbeidsomstandighedenwet-in-verband-met-het-verplicht-stellen-van-een-vertrouwenspersoon resp. www.atr-regeldruk.nl/wet-invoering-minimumuurloon.

[25] See www.regwatcheurope.eu.

Appendix 1

Facts and figures on advice regarding proposed legislation

In 2020, we received 608 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, ATR does not issue a formal opinion, but authorises its secretariat to handle a request for an opinion administratively. We use this fast-track procedure for proposals for laws and general administrative orders 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 any delays. We have learned from the ministries that this approach is highly appreciated. In our view, it is one of the reasons for the good working relationships built up by ATR 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?

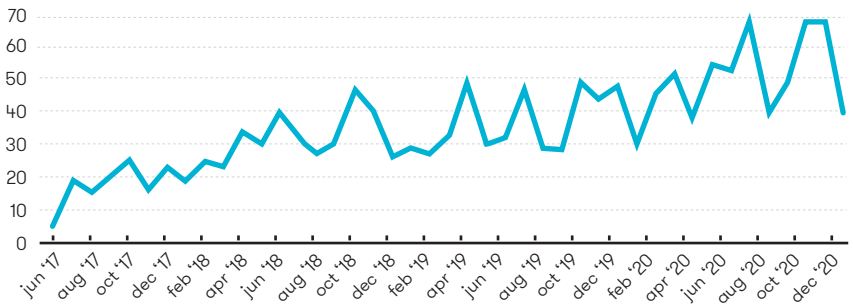
As a summary, we include a dictum in our opinions (for the criteria, see the section of the appendix entitled 'Opinion and dictum'). Dictum 1 (Submit) and dictum 2 (Submit after our recommendations have been incorporated) are referred to as 'positive' opinions. Opinions including dictum 3 (Do not submit unless our recommendations have been incorporated) and dictum 4 (Do not submit) are 'negative' opinions. However, we would like to emphasise that ATR does not express an opinion on the political desirability of the policy or the proposed measure. The aim of the review is to help improve the quality of regulations and focuses on the quality of the substantiation of the proposal (or its regulatory burden consequences). The dictum expresses whether and to what extent the dossier submitted is suitable for political or other forms of decision-making.

An annual report usually focuses on activities and proceedings in the preceding year. However, we have decided to use this annual report to present our findings since ATR's date of establishment. This offers an opportunity to assess developments in the longer term.

1 *Requests for opinions received*

In the period from 1 June 2017 until 31 December 2020, ATR received 1,548 requests for an opinion. Of these requests, 1,543 were submitted by ministries and five on the initiative of the House of Representatives. Figure 1.1 shows how the number of dossiers submitted to ATR has evolved over time. It is apparent that the number of requests increased steadily until October 2018. The number then stabilised at around 35–40 per month, with significant fluctuations both upwards and downwards. An increase is evident from February 2020, although that development shows considerable fluctuations. The increase is in line with ATR's finding in 2020.

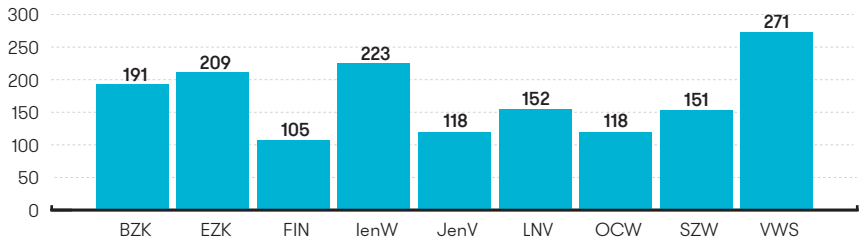
Figure 1.1 Number of requests for an opinion received per month



Not all ministries produce the same amount of proposals for new regulations. Figure 1.2 shows that ATR received the largest number of dossiers from the Ministry of Health, Welfare and Sport (VWS), followed by the Ministry of Infrastructure and Water Management (IenW), the Ministry of Economic Affairs and Climate Policy (EZK) and the Ministry of the Interior and Kingdom Relations (BZK). The Ministry of Finance (FIN) submitted the lowest number of requests, although it should be noted that a large dossier such as the Tax Plan only counts as one request.[26]

[26] ATR has reason to believe that, at least in the initial period, more dossiers should have been submitted to ATR. However, it is not known how many dossiers this involves. The analysis only relates to dossiers actually submitted to ATR. 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 Requests for an opinion received per ministry, 2017–2020



Not all proposed laws and general administrative orders need to be submitted to ATR, because certain policy areas fall outside the remit of the approach to lower the regulatory burden. One example is criminal law. Vice versa, some draft regulations are erroneously 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

ATR processed 1,461 of the 1,543 requests for an opinion received up to and including 31 December 2020. The remaining 82 were still being processed. ATR has two different procedures for handling requests for an opinion. The first procedure is a formal opinion. ATR has issued 452 formal opinions since its establishment, representing 31% of the total number of requests for an opinion. A formal opinion is submitted to the government member responsible (or to the House of Representatives, in the case of a private member's bill). The second procedure for handling requests for an opinion is a 'fast-track' procedure. In such cases, ATR decides not to issue a formal opinion but to handle a request for an opinion administratively. This applied to 992 cases (68%) in the past years. In the remaining cases (less than 1%), ATR considered a formal opinion or administrative handling inopportune, but nevertheless submitted a number of points for consideration to the government member concerned. These points concern the pursued and further legislative procedure. They were communicated by letter.

Figure 1.3 Formal consultations and fast-track procedures, cumulative per month

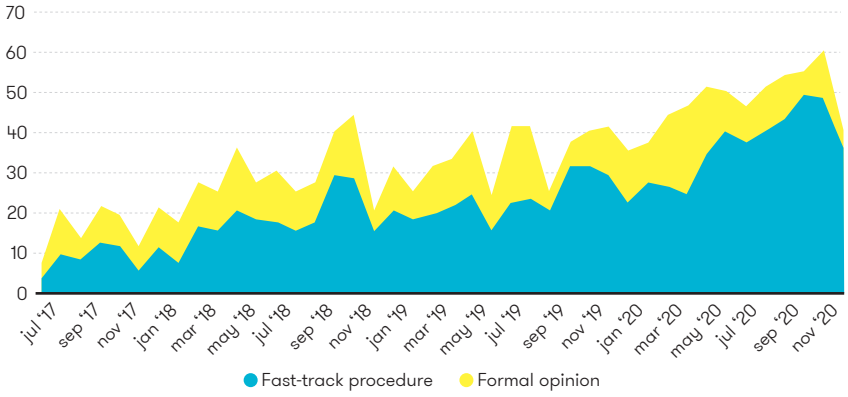
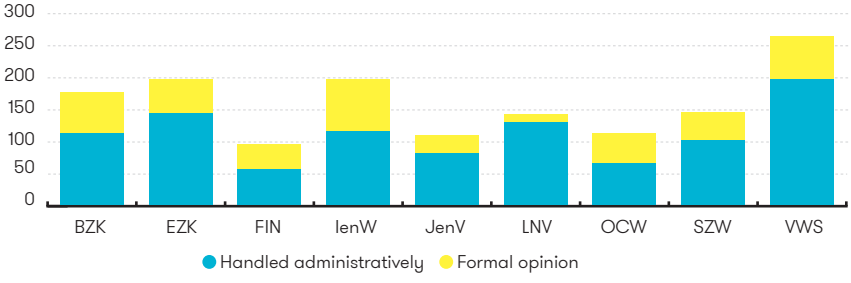


Figure 1.3 shows the total number of requests for an opinion processed over time, broken down by processing procedure. Figure 1.4 shows a breakdown of these requests by ministry. The figure illustrates that requests from the Ministries of Justice and Security (JenV) and Agriculture, Nature and Food Quality (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 which, in ATR's view, would not have substantial consequences for the regulatory burden. It should be noted that the consequences for the regulatory burden must be identified and that they will be adjusted based on the observations of ATR as an official body.

Figure 1.4 Formal opinions and fast-track procedures per ministry, 2017–2020



3 *Quality of the dossiers: opinions with accompanying dicta*

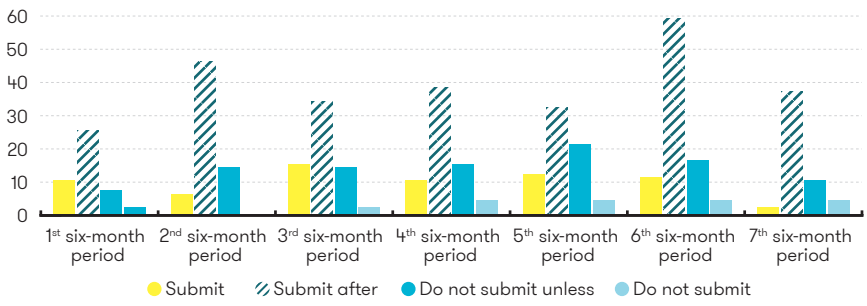
Every opinion we issue includes a dictum, which is a summary of our view on the quality of the substantiation and draft regulations submitted. The dictum expresses whether the dossier is sufficiently suitable for decision-making from a regulatory burden perspective.[27] When assigning a dictum, we take 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 the end of December 2020 (see the 'Total' column). The table shows that the share of positive opinions fluctuated over the course of time. Positive opinions accounted for 64% in 2017, 78% in 2018, 67% in 2019 and 75% in 2020. Figure 1.5 illustrates the development of the various dicta over the course of time (every six months).

Table 1.1 Development of the dicta as a percentage of total formal opinions[28]

	2017 (2nd half)	2018	2019	2020	Total
1. Submit	27%	18%	16%	10%	15%
2. Summit after	37%	60%	51%	65%	60%
3. Do not submit unless	34%	21%	26%	19%	21%
4. Do not submit	2%	2%	6%	5%	4%

Figure 1.5 Development of dicta per six-month period, in absolute numbers

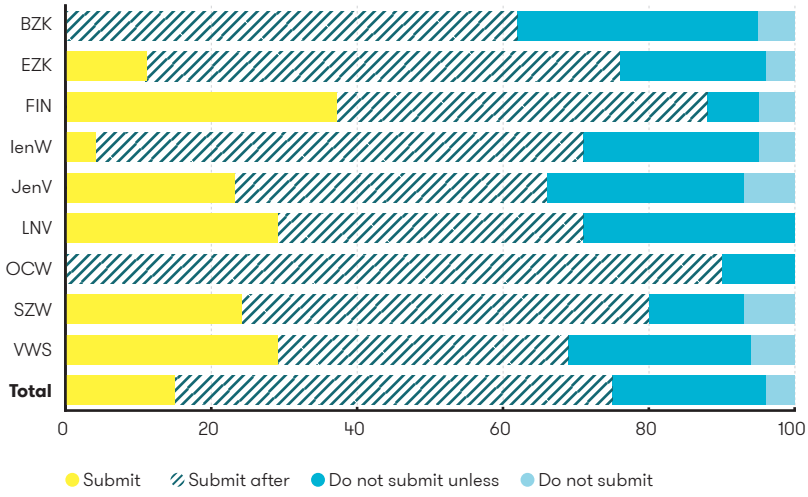


The number of positive or negative opinions issued is not the same for all the ministries. Figure 1.6 shows the number of opinions and the accompanying dicta received by the ministries (as a percentage of the total). A positive opinion was issued more often on average to the Ministries of Economic Affairs and Climate Policy, Finance, Education Culture and Science, and Social Affairs and Employment. Of the other ministries, the Ministries of the Interior and Kingdom Relations and Justice and Security account for a notably high percentage (62% and 66% respectively).

[27] The criteria applied by ATR for determining a dictum are set out in Appendix 2.

[28] The percentages may add up to more or less than 100% due to rounding differences.

Figure 1.6 Breakdown of dicta per ministry as at 1 January 2021

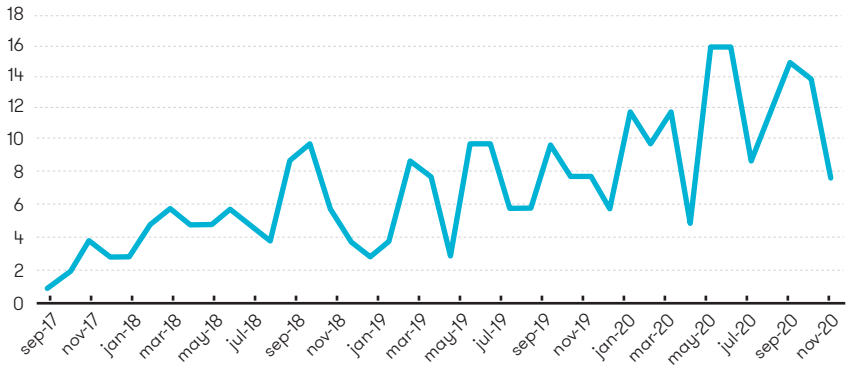


4 *Involvement in the pre-consultation phase*

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. We also make suggestions to improve the calculations of the costs of the regulatory burden.

Figure 1.7 shows how often ATR was approached for assistance with a dossier in the pre-consultation phase. The figure shows that in 2020, the ministries again increasingly approached ATR in the early phase of the legislative process.

Figure 1.7 Number of requests in the pre-consultation phase, per month



5 *Lead time for issuing advice*

In principle, ATR has four weeks (28 calendar days) to process a submitted dossier, pursuant to its mandate. ATR may change this deadline if the closing date of the consultation phase is postponed or if it needs more time due to the complexity of the dossier submitted. In the first instance, the closing date of the consultation phase applies. In the second instance, ATR may extend the time limit for advice by another four weeks. The latter option has not yet been used. On average, ATR remains well within the prescribed time limit for advice. In the entirety of its existence, ATR has processed more than 97% of the requests for an opinion within four weeks.

6 *In closing*

The evaluation of ATR in 2020 showed that the collaboration between the ministries and the advisory board proceeded smoothly. The ministries are approaching ATR more frequently in the pre-consultation phase. The working agreements between ATR and the ministries have also been set out clearly. This does not mean that there have been no issues along the way. There still are cases in which dossiers are erroneously not submitted to ATR for an opinion. The board will continue to bring this to the attention of the ministries.

It should also be noted that not all of the regulatory burdens receive the same level of attention from the government. The Ministry of Economic Affairs and Climate Policy is responsible for the prevention of unnecessary regulatory burden on businesses. This means that the ministry intervenes based, for instance, on a negative ATR opinion. There is no such mechanism for the regulatory burden on citizens and professionals. The responsibility for the regulatory burden on citizens and professionals has not been clearly assigned within the government. The next government can remedy this flaw in the governance of the regulatory burden approach.

Appendix 2

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 following staff members.

Mr R.F.J. (Ruben) Spelier	*Ministry of the Interior and Kingdom Relations, Ministry of Infrastructure and Water Management, signs of existing regulatory burden*
Mr M.J.P.M. (Marcel) Kieviet	*Ministry of Social Affairs and Employment, Ministry of Health, Welfare and Sport*
Mr S.J.A. (Sjors) Hegger	*Ministry of Economic Affairs and Climate Policy*
Mr H. (Herman) Schippers	*Ministry of Finance, Ministry of Foreign Affairs, ICT*
Ms J. (Marianne) Ringma	*Ministry of Education, Culture and Science, local and regional authorities, supervision*
Mr J.A.M.N. (Jos) Tonk	*Ministry of Agriculture, Nature and Food Quality*
Ms W.J.C. (Wilma) Speller-Boone	*Ministry of Justice and Security, Ministry of the Interior and Kingdom Relations*
Ms I.M.J. (Isabelle) de Bruïne	*Ministry of Infrastructure and Water Management, Ministry of the Interior and Kingdom Relations, international affairs Policy support*

Mr A.A. (Ahmed) Moaty	*Policy support*
Ms B. (Birgul) Samburkan	*Management and policy support*
Ms C. (Caroline) Doornbos	*Management and policy support*

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 the central government-wide methodology, both qualitatively and quantitatively.
   This should clearly show whether all the actions necessary for complying with the statutory obligations have been properly identified.

Opinion and dictum

Dictum	Opinion	Criteria
1	**Submit** *(no changes needed)*	Criteria (all criteria must be met): • 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...** *(the legislative proposal and/or substantiation must be amended slightly)*	Criteria for departing from dictum 1 (one criterion is sufficient): • 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...** *(parts of the legislative proposal and/or substantiation must be considerably improved)*	Criteria for departing from dictum 2 (one criterion is sufficient): • 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, in quantitative or 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** *(there are fundamental objections to the legislative proposal and/or the substantiation is seriously inadequate or has been omitted)*	Criteria for departing from dictum 3 (one criterion is sufficient): • 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), both in qualitative and quantitative terms.

Publication details
Text and editing
ATR, The Hague

Concept and realisation
Things To Make And Do, The Hague

Photography
Fotobureau Sicco van Grieken, Zoetermeer

ATR
Rijnstraat 50 (Hoftoren)
2515 XP The Hague
PO Box 16228
2500 BE The Hague

T +31 (0)70 310 86 66

E info@atr-regeldruk.nl
I www.atr-regeldruk.nl