



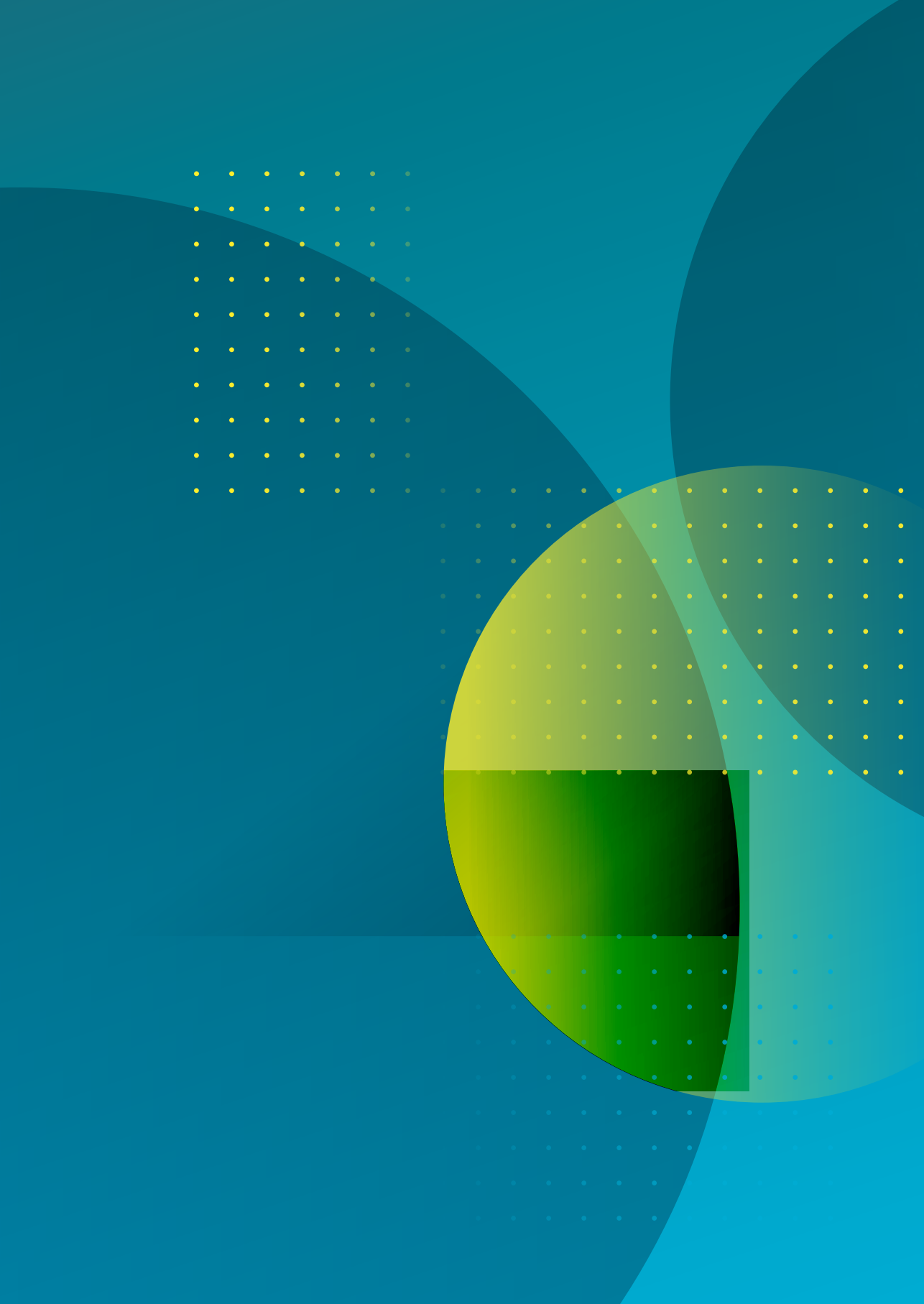
Adviescollege
toetsing regeldruk

Annual Report 2021

*Dutch Advisory Board on
Regulatory Burden (ATR)*

2021 Overview:

Further decline in focus on
citizens and businesses



2021 Overview: Further decline in focus on citizens and businesses

2021 was the second consecutive year in which the Netherlands had to contend with the consequences of the coronavirus pandemic. Over the past year, the government took a range of measures to limit the spread and (medical and social) consequences of COVID-19. Most of the legislation required for that purpose was submitted to ATR for urgent advice and handled in a few days. Speed was of the essence, especially in the initial phase of the pandemic. This meant that there was not always enough time for reflection on the effectiveness and proportionality of the measures.

In 2021, ATR received 123 requests for an opinion relating to the coronavirus pandemic, and issued an opinion on 15 of those requests. It dealt with the other requests via the fast-track procedure, as they had little or no impact on the regulatory burden. In its opinions, ATR focused on the need to clarify exactly which objectives the measures were intended to promote. This was essential not only for an accurate assessment of the proportionality of those measures, but also for ensuring social support.¹ In addition, we issued various opinions on the coronavirus entry pass (see box). In one case our advice was to include a hardship clause in the proposed legislation.² We also recommended the use of less burdensome alternatives. For example, it was not clear why the retail trade was only permitted to use a 'click&collect' system. One alternative was the option to work with a maximum number of customers per square metre. Nor was it clear why the maximum of 50 people in cafés and restaurants was supplemented with the 'two shifts maximum'

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- ¹ For instance, see our opinions on compulsory closing times for the hospitality sector, sports venues, non-essential shops and services, cultural institutions etc. (www.atr-regeldruk.nl/wijziging-van-de-tijdelijke-regeling-maatregelen-covid-19-in-verband-met-enkele-verzwarigen-waaronder-een-verplichte-sluitingstijd), on the use of the coronavirus entry pass in higher and professional education (www.atr-regeldruk.nl/wetsvoorstel-en-besluit-coronatogangsbewijzen-in-het-onderwijs) and on the 24-hour maximum for multi-day (www.atr-regeldruk.nl/wijziging-tijdelijke-regeling-maatregelen-covid-19-stap-4-openingsplan).
 - ² For instance, this applies to the 2021 Secondary Education Leaving Examinations Decree (Eindexamenbesluit VO 2021). We recommended to include a hardship clause allowing schools to offer individual pupils an extra resit in cases of 'extreme unfairness' (see www.atr-regeldruk.nl/besluit-eindexamen-voortgezet-onderwijs-2021). The 2020 Secondary School Leaving Examinations Decision (Besluit eindexamens voortgezet onderwijs 2020) already contained such a clause.

requirement between 18.00 en 22.00. These alternatives would have given the hospitality sector more room to manoeuvre.³

The coronavirus entry pass

Many of our opinions concerned the design and scope of the coronavirus entry pass (*coronatoegangsbewijs*, *ctb*). One important point to consider was that not every individual was in a position to obtain an integrated digital entry pass, due to flaws in the exchange of data between some general practitioners' (GP) information systems and the National Institute for Public Health and the Environment (RIVM). As a result, people who had received their vaccinations via their GP and their booster via the Municipal Health Service needed two (often paper) entry passes. As a short-term solution, we recommended assigning to a booster-only digital entry pass the same rights as to the integrated digital entry pass. After all, people only receive a booster after having had one or more vaccinations.⁴

A second point for attention in our opinions concerned the authority to make the coronavirus entry pass obligatory. Under the Extension of Coronavirus Entry Passes (Interim Measures) Act (*Tijdelijke wet uitbreiding coronatoegangsbewijzen*), that authority was assigned to employers and venue managers. They could require their employees and contractors to show a coronavirus entry pass, just as they could with their customers and visitors. We wondered whether employers and managers were sufficiently equipped to assess the necessity and proportionality of the obligation to have and present a coronavirus entry pass. We also pointed out that it was not clear why the rules for the entry pass were different from those in the education sector. In higher education and secondary vocational education, the authority to impose this obligation lay with the government, not with the boards of the institutions concerned.⁵

One important focus of the assessment by ATR is the practicability of the proposed legislation that has been submitted to us. Practicability depends on the question of whether it is realistic to expect that citizens, companies and civil-society organisations will be able to comply with the proposed legislation. Figure 1 shows that last year, ATR had more doubts about that than ever before. In 2021, only 30% of our opinions did not include comments about the practicability of the proposal concerned. This percentage is significantly lower than in previous years.

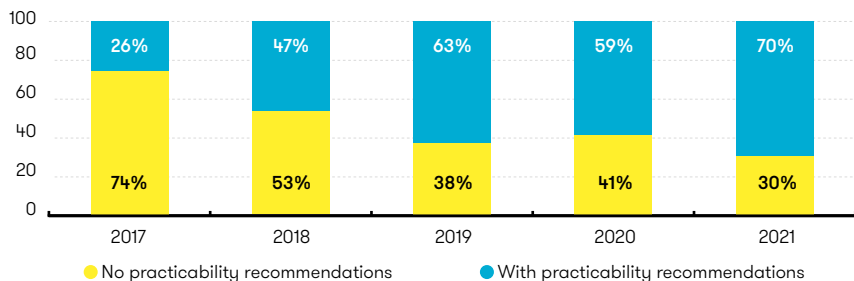
³ www.atr-regeldruk.nl/wijziging-van-de-tijdelijke-regeling-maatregelen-covid-19 and www.atr-regeldruk.nl/wijziging-tijdelijke-regeling-maatregelen-covid-19-stap-3-openingsplan.

⁴ www.atr-regeldruk.nl/wijziging-van-de-tijdelijke-regeling-maatregelen-covid-19-trm-en-de-tijdelijke-regelingen-maatregelen-covid-19-bes-eilanden-in-verband-met-het-stellen-van-regels-inzake-het-beperken-van-de-geldigheid.

⁵ www.atr-regeldruk.nl/tijdelijke-wet-uitbreiding-coronatoegangsbewijzen and www.atr-regeldruk.nl/wetsvoorstel-en-besluit-coronatoegangsbewijzen-in-het-onderwijs.

One example of a proposal which, according to ATR, might not be practicable was the Urban Logistics Zero Emission Zones (Temporary Provisions) Decree (*Besluit tijdelijke bepalingen nulemissiezones stadslogistiek*). In this proposal it was not clear how private individuals who use a van for non-business purposes could be exempted so as to be able to enter a zero-emission zone. In particular, it was not clear how such private individuals were to be distinguished from groups such as the self-employed. The proposal also failed to provide a central location (website) with comprehensive information not just about zero-emission zones but also other environmental zones. Another example was the Act concerning the Future of the Accountancy Sector (*Wet toekomst accountancysector*). Pursuant to that act, the NBA (the professional association for the accountancy sector) was authorised to assign an audit firm to an audit client if that client failed to contract such a firm itself. The designated audit firm could then submit an opinion in response to the NBA's decision if it felt that the assignment was incompatible with the independence rules. However, it is conceivable that there are also other compelling considerations, risks and objections that oppose such an assignment. The proposal failed to make clear why the audit firm concerned could not invoke those other objections in its opinion.

Figure 1 Focus on practicability (assessment question 3)



The limited attention for practicability illustrates that the findings of the parliamentary inquiry into the *childcare allowance system* (POK) and the findings of the *Temporary Committee on Executive Agencies* (TCU) have not yet been integrated into legislative practice. Both inquiries called for efforts to reintroduce the human dimension in policy and legislation. In response, the Coalition Agreement aims to restore the relationship between citizens and the government by, for example, assessing legislation for simplicity, practicability and commitment to the human dimension.⁶ To that end, the government wants to introduce hardship clauses in its legislation. Under a hardship clause, people are exempted from a

⁶ www.kabinetsformatie2021.nl/documenten/publicaties/2021/12/15/coalitieakkoord-omzien-naar-elkaar-voor-uitkijken-naar-de-toekomst.

statutory regulation if it hits them disproportionately hard.⁷ In addition, the government intends to review legislation one year after its effective date to determine the extent to which it has proved to be feasible in practice (implementation review). In 2022 it will be evaluated whether these measures have sufficiently highlighted the need for practicability in the legislative process.

Groningen

One important dossier in which the government wants to reintroduce the human dimension is the Groningen dossier. The previous government made a distinction between the programme for reinforcing homes in the earthquake zone and the procedures people had to go through to qualify for compensation for damage to their properties. The institutional design of these two programmes reflected the split in responsibilities between the Ministry of the Interior (reinforcement of homes) and the Ministry of Economic Affairs and Climate Policy (compensation for damage), resulting in two separate implementing organisations. ATR has brought up this institutional split in several opinions in the past. For example, in 2018 we found it was not clear how the Institute for Damage due to Gas Extraction in Groningen (IMG) was supposed to relate to other public organisations that fulfil expert and support roles for persons affected. In 2019, we found that residents and property owners had to deal with a variety of organisations, including the municipality, the National Coordinator for Groningen and the (then) Temporary Committee for Damage due to Gas Extraction (TCMG, later IMG). Our advice was to consider establishing a single implementing organisation (a one-stop window) to guide citizens in damage settlement and reinforcement procedures. In 2020, we advised the government to link investments in sustainability measures to investments in home reinforcement measures, as it often makes sense to invest in these two types of measures at the same time. We also considered it unnecessary to ask people to send, along with their subsidy applications, documents that were already in the possession of the government (such as the home reinforcement agreement). We reiterated this latter recommendation in 2021. In 2020, we also advised the government to provide a central location where residents and property owners could monitor progress in the processing of their dossiers.⁸ The problems in the collaboration between IMG (home reinforcement) and the National Coordinator for Groningen (compensation for damage caused by earthquakes) are now widely known.

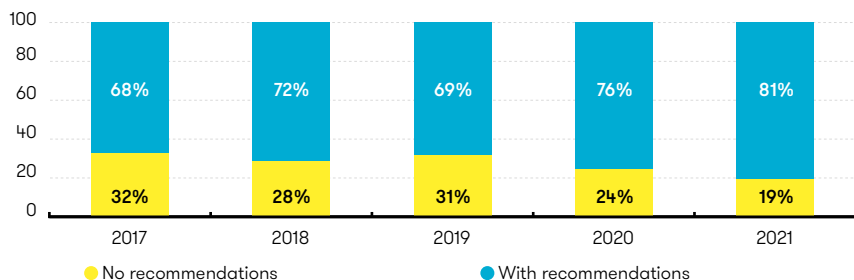
⁷ ATR has suggested including such a clause on several occasions in the past. See www.atr-regeldruk.nl/besluit-eindexamen-voortgezet-onderwijs-2021 and www.atr-regeldruk.nl/wijziging-wegenverkeerswet-1994-verband-ongeldig-maken-getuigschriften-vakbekwaamheid-uitvoering-richtlijn-200359eg-betreffende-vakbekwaamheid-en-opleiding-en-nas.

⁸ This concerns, in the given order, the Legislative Proposal for an Institute for Mining Damage in Groningen (2018), the Legislative Proposal on Reinforcement in Groningen (2019), the Amended Energy Saving for Homes (Groningen Field Building Reinforcement Programme) Regulations (2020) and the Subsidy Scheme for the Sustainability, Maintenance and Improvement of Buildings in the Groningen Earthquake Zone (2021). These opinions can be found on www.atr-regeldruk.nl.

The new government has recently proposed to introduce a working method that should improve collaboration between the two organisations. In our opinion on that proposal, we pointed out that the current government had assigned responsibility for both operations to a single person, the State Secretary for the Extractive Industries. This offers the opportunity to correct a historical flaw in the design of the implementation process. This could be achieved by integrating the two organisations or, if that takes too much time, by appointing a coordinator with sufficient overriding authority to make the implementation compatible with the wishes and needs of residents in the earthquake zone.⁹

For a balanced decision-making process, it is essential to have an accurate and comprehensive picture of the regulatory burden associated with the proposed legislation. Figure 2 shows how often our opinions contain critical comments regarding the way in which the regulatory burden has been highlighted. In previous years (2017-2020), we had such comments in approximately 7 out of every 10 opinions. In 2021, we had these comments in more than 8 out of every 10 opinions. This confirms the general picture that last year the quality of the substantiation of proposed legislation was lower than in the years before.

Figure 2 Quality of the calculation of consequences for the regulatory burden (assessment question 4)



The developments in the quality of the substantiation of proposed legislation as outlined above pose questions regarding the best way forward in addressing the regulatory burden. As stated, the Coalition Agreement contains several measures aimed at reintroducing the human dimension in the legislative process. The agreement also includes a measurable approach to address the regulatory burden.

⁹ This concerns our opinion on the Amendment to the Groningen (Interim Measures) Decree (Besluit Tijdelijke wet Groningen) concerning coordination of the implementation of reinforcement measures and damage compensation measures. See www.atr-regeldruk.nl/wijziging-van-het-besluit-tijdelijke-wet-groningen-i-v-m-de-afstemming-tussen-de-uitvoering-van-de-versterking-en-de-vergoeding-van-schade.

In addition, the government intends to strengthen the position of advisory bodies (including ATR).¹⁰ In 2021, we examined ways for ATR to help strengthen the regulatory burden policy in the Netherlands in the early stage of the legislative process in which we issue our opinions. In our letter to the then *informateur*, Ms Hamer, and the Presidents of the House of Representatives and the Senate, we outlined a number of routes for the continued development of policy on this issue:

- Broaden the measures to address the regulatory burden by including the criteria of proportionality and practicability. This calls for more insight into the extent to which proposed legislation will achieve its objectives. A broader approach is also in line with our finding from 2021 that more attention should be given to the practicability of legislation.
- Prevent or reduce complexity in legislation. Complexity results from an accumulation of policies and/or from the use of legislation from one policy domain in other, incompatible policy domains.
- Increase insight into the national consequences of European legislation, enabling the Netherlands to learn as much as possible from other EU Member States.¹¹

In our letter we pointed out that the further development should also include a focus on the governance of regulatory burden policy. This is because currently not all forms of regulatory burden receive the same amount of attention. The Ministry of Economic Affairs and Climate Policy is responsible for the prevention of unnecessary regulatory burdens on businesses. In concrete terms, this means that the ministry intervenes based on, for instance, a negative ATR opinion. There is no such mechanism for reducing the regulatory burden on citizens and professionals. The division of tasks within the new government offers opportunities in this regard. Responsibility for the regulatory burden on citizens rests with the State Secretary for the Interior and Kingdom Relations. In the new constellation, the Ministry of the Interior and Kingdom Relations could play a role towards citizens similar to the role of the Ministry of Economic Affairs and Climate Policy in reducing the regulatory burden on businesses. The Board looks forward to discussing the options with the government.

Review criteria and dictum

ATR adds a dictum to its opinions.¹² The dictum indicates whether, from a regulatory burden perspective, the relevant legislation is suitable for decision-making. 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 activities (the second half of 2017), 64% of our formal opinions included a positive dictum (dictum 1 or 2). This rose to 78% in 2018, and fell to 67% in 2019. In 2020 it rose once more to 75%, to decrease to 52% in 2021 – the lowest level since the formation of ATR.¹³

¹⁰ See also the Klaver/Ploumen motion (House of Representatives, 2020-2021 parliamentary year, 28 362, No. 44, dated 29 April 2021) and the Graus c.s. motion (House of Representatives, 2021-2022 parliamentary year, 35 925 XIII, No. 20, dated 4 November 2021).

¹¹ www.atr-regeldruk.nl/versterken-aandacht-voor-gevolgen-wetgeving-in-nieuw-kabinet.

¹² For a description of the dicta and the criteria ATR uses for this purpose, see Appendix 3.

¹³ For a detailed explanation of the opinions, including the dicta, issued by ATR in recent years, see Appendix 1.

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