



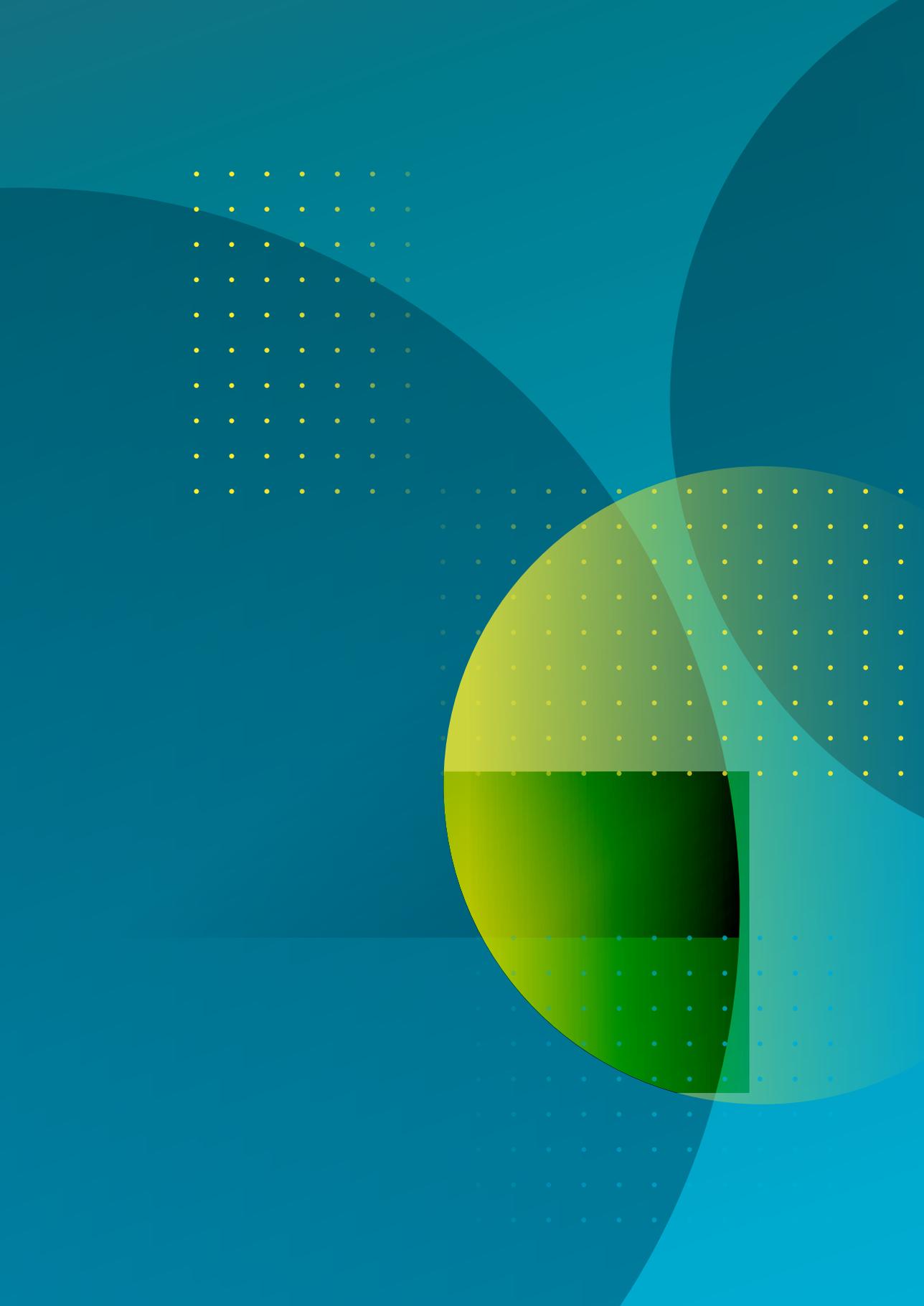
Adviescollege —
toetsing regeldruk

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’

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-verzwaren-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.

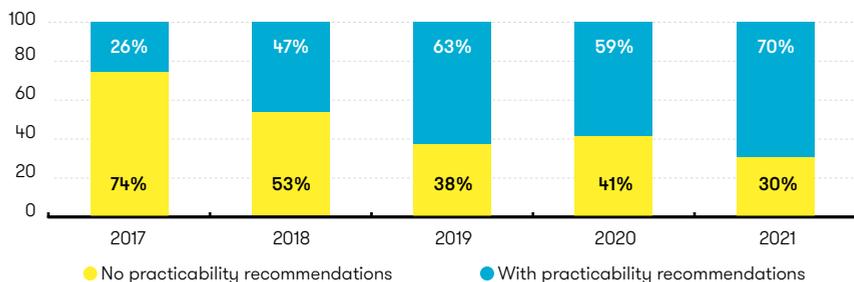
³ www.atr-regeldruk.nl/wijziging-van-de-tijdelijke-regeling-maatregelen-covid-19 and www.atr-regeldruk.nl/wijziging-tijdelijke-regeling-maatregelen-covid-19-stap-3-openingsplan.

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.

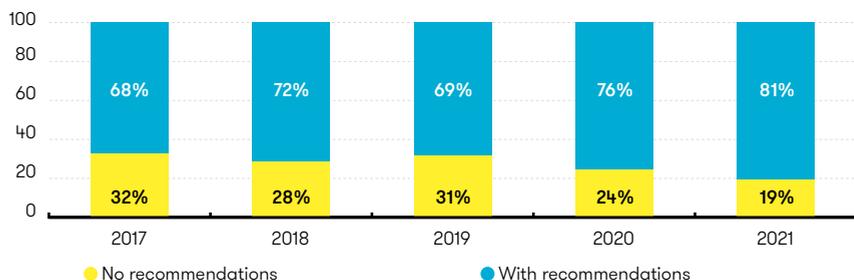
⁷ ATR has suggested including such a clause on several occasions in the past. See www.atr-regeldruk.nl/besluit-eindexamen-voortgezet-onderwijs-2021 and www.atr-regeldruk.nl/wijziging-wegenverkeerswet-1994-verband-ongeldig-maken-getuigschriften-vakbekwaamheid-uitvoering-richtlijn-200359eg-betreffende-vakbekwaamheid-en-opleiding-en-nas.

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 *informatateur*, 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.

Table 1 Share of opinions broken down by dictum, as a percentage of the total per year/period

	2017	2018	2019	2020	2021
Submit	27%	18%	16%	10%	6%
Submit after	37%	60%	51%	65%	46%
Do not submit unless	34%	21%	26%	19%	40%
Do not submit	2%	2%	6%	5%	8%

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

Pre-consultation, formal advice and fast-track procedure

Pursuant to our mandate, we are required to issue an opinion in the (online) consultation phase, or a similar phase, at the latest. An opinion in such an early phase gives the ministry concerned more opportunity to actually benefit from our recommendations and suggestions. ATR can issue advice in two ways; by issuing a formal opinion (a letter with recommendations plus a dictum) or via the fast-track procedure. The formal opinion is discussed and adopted during the weekly Board meeting. The fast-track procedure means that the Board does not select a request for a formal opinion. Instead, it authorises the ATR Secretariat to process the request at the administrative level (usually in the form of an email, possibly with some suggested improvements, addressed to the ministry). The fast-track procedure is intended to ensure the rapid processing of smaller dossiers, so that there are no unnecessary delays in the legislative process and ATR capacity is used as effectively as possible.

Finally, ministries can also engage ATR in the phase preceding the consultation phase. During this pre-consultation phase, all contacts are at the administrative level only, with ATR employees answering questions from the ministry concerned. This collaboration is subject to the express and explicit condition that the Board eventually makes its own independent decision and that the ministry cannot derive any rights from its collaboration with administrative ATR staff. This method enables ATR to assist ministries at a very early stage of the legislative process, while the independence of the Board (and its opinions) remains guaranteed.

Initial picture of the regulatory burden

Proposed legislation has to be accompanied by a calculation of the costs of the associated regulatory burden. Table 2 presents the result of these calculations for the dossiers that the ministries submitted to ATR for an opinion in 2021. The costs

are much higher than in 2020. In that year, the increase in regulatory burden was calculated to amount to 635.7 million euros, compared with 2,824.4 million euros in 2021. The costs of the incidental increase in regulatory burden in 2021, as calculated by the ministries, was approximately 1,495.6 million euros (2020: 1,060 million euros).

This sharp increase in the regulatory burden in 2021 can be largely attributed to two legislative proposals. One of these is the *Extension of Coronavirus Entry Passes (Temporary Provisions) Act* (Tijdelijke wet uitbreiding coronatoegangsbewijzen), which has increased the long-term regulatory burden on private citizens. Under this act it became possible to make coronavirus entry passes mandatory. Its purpose was to limit the number of infections among employees and visitors, also in spaces where care is provided. The long-term regulatory burden caused by this measure amounts to nearly 2 billion euros for private citizens and approximately 433 million euros for companies. In November 2021, ATR issued a negative opinion (dictum 3), as it had identified a less burdensome alternative and also questioned the practicability of the act.¹⁴

The second legislative proposal with substantial consequences for the regulatory burden was the Future of Pensions Act (Wet toekomst pensioenen). This act will cause a significant increase in the incidental regulatory burden on companies in the amount of 1,056.2 million euros. The purpose of the act is to make pension schemes more responsive to economic developments, and to make the pension system more transparent. In February 2021, ATR issued a negative opinion on this legislative proposal (dictum 3). One important reason for doing so was that the new pension system was so complex that private citizens and small employers could not be expected to fully understand it.¹⁵

With regard to the table, moreover, note that the implementation of European regulations adds to the regulatory burden. The *Single-Use Plastic Products Regulations* (Regeling kunststofproducten voor eenmalig gebruik) caused a permanent increase in the regulatory burden on companies of 129 million euros (and 89 million euros in incidental burden). Given the potential impact of European regulations on the regulatory burden, it is important to identify that impact at an early stage so that it can be taken into account in EU legislative and negotiation processes.¹⁶

¹⁴ See www.atr-regeldruk.nl/tijdelijke-wet-uitbreiding-coronatoegangsbewijzen.

¹⁵ See www.atr-regeldruk.nl/wet-toekomst-pensioenen.

¹⁶ See www.atr-regeldruk.nl/regeling-kunststofproducten-voor-eenmalig-gebruik.

The consequences of European regulations for the regulatory burden in the Netherlands made us decide to ask for more attention for EU regulations in our letter to the then informateur and the presidents of the two Houses of the States General.

Table 2 Change in regulatory burden in 2021, calculated by ministries (in millions of euros)

Target group	Permanent		Incidental ¹⁷
	increase	decrease	increase
Companies	€ 790,4	€ 19,0	€ 1.463,7
Citizens	€ 2.034,0	€ 0,1	€ 31,8
Professionals	€ 0,0	€ 0,0	€ 0,1
Total	€ 2.824,4	€ 19,1	€ 1.495,6

Source: The figures are derived from ministries' requests for an opinion. They are indicative and may also reflect rounding differences.¹⁸

Advice on existing regulations

ATR can issue opinions not only on proposed but also on existing regulations. This task was added to the Decree establishing the Advisory Board on Regulatory Burden by the House of Representatives, under a motion.¹⁹ ATR is permitted to carry out this task provided that it does not interfere with its opinions on proposed legislation.

Lessons to be drawn by the legislator from the COVID-19 support measures

The legislation that was necessary for taking COVID-19 measures was realised in a very short period of time. This was an extraordinary achievement by the legislator. In addition, thanks to the early-stage involvement of implementing organisations in the development of the support package for companies, it was clear early on in the process whether the measures would be practicable and effective. This speed and early involvement have been crucial to ensure quick and effective support for many companies, especially in the first stage of the pandemic. These positive experiences gave rise to the question of whether there might be lessons to be learned from the legislative process during the pandemic that could also benefit the regular legislative process. What considerations played a role in the creation of the support package, and could those considerations also apply to the process in normal circumstances?

¹⁷ The incidental regulatory burden is an increase as it consists of the one-off costs to be incurred to keep abreast of changes in legislation and introduce practical changes to ensure compliance with (new or amended) statutory obligations.

¹⁸ The actual consequences for the regulatory burden may deviate from these figures due to adjustments to the underlying calculations or to the draft legislation itself.

¹⁹ Parliamentary papers, 2016-2017 session year, 29 515, Nos. 404, 408, 409, 410, 411 and 412.

In 2021, ATR launched a study to answer these questions. The study focuses on the financial support measures for companies and civil-society organisations. The initial findings are as follows:

- Speed and practicability were key criteria in the design and introduction of the measures.
- The implementation of the measures determined their design. This contributed to their effectiveness.
- Initially, the focus on effectiveness and feasibility resulted in highly workable rules and a relatively low financial and perceived regulatory burden for entrepreneurs.
- Entrepreneurs felt that the government, by providing fast and substantial support, recognised the problems they were experiencing. However, distinguishing between essential and non-essential sectors had the opposite effect.
- Over time, multiple schemes were developed. Indeed, the accumulation of schemes was a major source of actual and perceived regulatory burden.
- Over time, the attention for preventing abuse and improper use of the measures increased. Political and societal pressures resulted in additional conditions, which increased the regulatory burden on entrepreneurs.
- If rules and data checks are tightened during implementation, this creates the impression of goal posts being moved during the game, resulting in higher levels of perceived regulatory burden than if those rules are already known from the start.
- In the measures studied, the psychological aspect of the regulatory burden appears to be more significant than the financial aspect. We expect this is due to the considerable psychological and emotional pressure on entrepreneurs during the pandemic.

The above findings serve as the basis for an opinion that we will issue in the first quarter of 2022.

Current studies

As we write this annual report, ATR was conducting three studies. One is intended to show the extent to which our recommendations are being adopted. One focus point in this study is to find out whether this depends on the nature and subject of the recommendation concerned. The study should provide us with tools and ideas that will help us further improve our opinions.

The second study focuses on the use of auditor's opinions, which are required in connection with a variety of schemes, and subsidy schemes in particular. Sometimes the accountability requirements are so complex that the auditor decides

to issue a qualified opinion. This raises questions as to the added value of such an opinion. The study centres around the question of whether legislation and the monitoring of regulatory compliance have actually become too complex, not only for civil-society parties but even for auditors.

In the third current study we are examining the requirements being imposed on companies that sell organic products. These requirements are quite strict, owing to the need to prevent ‘contamination’ of organic products by non-organic ones. However, according to the Vakcentrum association for retailers, they discourage entrepreneurship in the organic sector.²⁰ ATR is conducting a quick scan to assess the proportionality of the requirements, in collaboration with the Ministry of Agriculture, Nature and Food Quality (LNV) and supervisor Skal.

Advice to other public authorities

ATR can also issue advice on regulations imposed by regional and local authorities (provinces, water authorities and municipalities). One important condition is that this should not interfere with the execution of its main task. Given the available capacity, this condition has made us decide to limit our work for other public authorities to our participation in the VNG Advisory Committee on Local Government Law and the so-called Kloosterhoeveberaad. Within these two bodies, we identify ways to reduce the regulatory burden associated with, for example, draft model by-laws. This means that by using such model by-laws, the municipalities also, indirectly, benefit from ATR’s insights.

Advice to the States-General

The members of the House of Representatives and the Senate are informed about our opinions via the notes to draft regulations, in which ministries are legally required to state how they dealt with our opinions. In addition, there is a possibility for members to receive information about our approach and opinions through hearings or technical briefings. For example, on 9 November 2021 we informed the Economic Affairs and Climate Policy Committee of the Senate on our 2021 progress

²⁰ www.vakcentrum.nl/actueel/2021/openbaar/08-augustus/vakcentrum-pleit-voor-effectief-toezicht-bij-verkoop-biologisch.

report and other topics. Also note that our opinions are publicly available via our website. We also send them to the House of Representatives ourselves. A majority of parliamentary committees have said they appreciate receiving our opinions.

Members of the House of Representatives can also draft legislative proposals themselves, known as private member's bills. In such a case, they can consult ATR about the regulatory burden of such bills. In 2021, we issued the following four opinions on private member's bills:²¹

- Private member's bill on responsible and sustainable international enterprise.
- Private member's bill on displacement tests.
- Proposal for an amendment to the *Working Conditions Act* (Arbeidsomstandighedenwet) in connection with the opening of talks between employer and employees on availability outside of working hours.
- Proposal for an amendment to the *Flexible Working Act* (Wet flexibel werken) in connection with promoting flexible working according to work location (Working Where You Wish Act).

For each of these proposals, ATR found the substantiation to be insufficient to ensure truly balanced decision-making. This raises questions on how to find better ways of supporting members of Parliament who wish to draft a private member's bill. ATR will contact the House of Representatives on this matter in 2022.

International

ATR is affiliated with network organisation RegWatchEurope (RWE),²² whose members include organisations with a role similar to that of ATR. They provide independent advice on the consequences of draft regulations. RWE's objectives are to:

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

RWE's activities are aimed at strengthening the European 'Better Regulation' policy. The ultimate objective is to ensure the effectiveness, efficiency and proportionality of European legislation. Since a considerable proportion of Dutch legislation has its origins in European regulations, an effective design of this European policy will also

²¹ The opinions on these legislative proposals are available on www.atr-regeldruk.nl.

²² See www.regwatcheurope.eu.

benefit the Netherlands. To that end, RWE shares experiences and expertise with the Regulatory Scrutiny Board (RSB), which is the European Commission's body for regulatory impact assessment. In 2021 RWE responded to a Communication from the European Commission on this subject that contained the following elements:

1. A call by the European Commission on the European Council and the European Parliament to apply the better regulation principles, and devote more attention to the consequences of their decisions and amendments for the quality of legislation. RWE supported this call, adding that Member States need to have insight at an early stage into the national consequences of European regulations and into the impact of amendments to the Commission's proposals.
2. A detailed description of the 'one in, one out' rule that the Commission intends to introduce so as to reduce the regulatory burden. RWE shared the Commission's viewpoint that this rule should not be applied mechanically. At the same time, RWE pointed out that the scope of the rule was fairly limited. It only concerned administrative burdens and did not include substantive compliance costs. As such, the impact of the rule would be very limited.

RWE also subscribed to the Commission's commitment to enhancing the involvement of stakeholders, introducing the digital-by-default principle in legislation, minimising the regulatory burden of newly implemented European regulations (no 'gold plating') and strengthening the RSB's mandate. In September 2021, RWE discussed its response with Commission Vice-President Šefčovič, who is responsible for the 'Better Regulation' agenda within the European Commission. This discussion also covered collaboration between the Commission and RWE, with both intending to turn this collaboration into a permanent partnership.

In addition, RWE maintains contacts with the Organisation for Economic Co-operation and Development (OECD). This think tank advises its member states on a range of issues, including better regulation policies, by conducting national reviews and disseminating good practices. RWE participates in the OECD's Regulatory Policy Committee as an observer and an expert.

Appendix 1

Facts and figures about our opinions on proposed legislation

In 2021, we received 617 requests for an opinion, slightly more than in 2020 (608 requests). In accordance with its mandate, ATR is required to issue an opinion within four weeks of receiving a request. One option for ATR is to issue a formal opinion, which consists of a letter including recommendations. Another option is to apply the fast-track procedure. In this case, the Board authorises the ATR Secretariat to process a request for an opinion at the administrative level. We apply the fast-track procedure in the case of proposals for legislation and orders in council (so-called AMvB's) that have no impact on the regulatory burden, and ministerial regulations that have no substantial consequences for the regulatory burden. The fast-track procedure allows us to inform a ministry in very little time – often as little as two or three working days – whether it can expect to receive a formal opinion from us. This enables the ministry concerned to continue the legislative process with minimum loss of time. Feedback from the ministries has shown that this approach is greatly appreciated. We believe it is one of the factors that explain the good working relationship ATR has built with the ministries over the past few years.

The structure of formal ATR opinions reflects a straightforward assessment framework. For each opinion, we ask four questions:

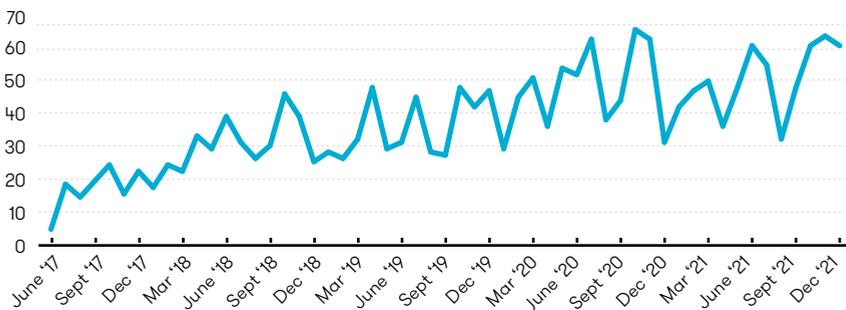
1. Benefit and necessity: is there a task for the government and is legislation the most appropriate instrument?
2. Are there any less burdensome alternatives?
3. Is the method of implementation practicable for those who must comply with the legislation?
4. Is there a comprehensive and accurate picture of the consequences for the regulatory burden?

We add a 'dictum' to every opinion, which serves to summarise our main findings (for the criteria, see the appendix on *Opinion and dictum*). Dictum 1 (Submit) and dictum 2 (Submit after our comments have been incorporated) are 'positive' opinions. Opinions with dictum 3 (Do not submit unless our comments have been incorporated) and dictum 4 (Do not submit) are 'negative' opinions. We wish to emphasise that these opinions do not concern the political desirability of the policy or measure proposed. They 'merely' reflects our findings with respect to the quality of the arguments presented to justify the proposal (and the ensuing regulatory burden). The dictum expresses whether and, if so, the extent to which the submitted dossier contains all relevant information and is sufficient to ensure balanced political decision-making. In this appendix, we present the figures for the period from the start of ATR (1 June 2017) up to and including 31 December 2021. This ample time frame provides an opportunity to place the figures for 2021 in a broader context and identify trends.

1 Requests for opinions received

Between 1 June 2017 and 31 December 2021, ATR received 2,140 requests for an opinion. Of these requests, 2,132 were submitted by ministries and 8 on the initiative of the House of Representatives. Figure 1.1 shows how the number of dossiers submitted to ATR for an opinion has evolved over time. It is apparent that the number of requests for an opinion increased steadily until October 2018. The number then stabilised at around 35–40 per month, but with significant fluctuations both upwards and downwards. An increase is evident from February 2020, although that development too shows considerable fluctuations. Since October 2020, the average number of requests has fallen slightly. Fluctuations however have remained considerable.

Figure 1.1 Number of requests for an opinion per month

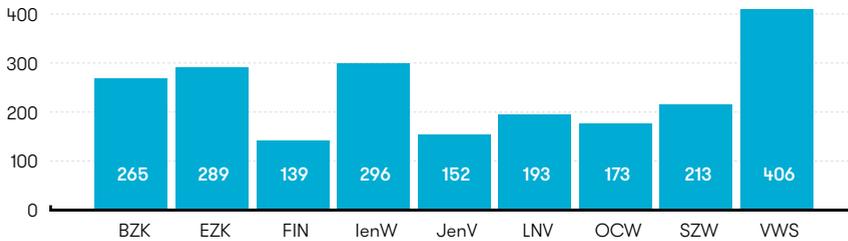


Not all ministries produce the same number of proposals for new regulations.²³ Figure 1.2 shows that ATR received the largest number of requests from the Ministry of Health, Welfare and Sport (VWS), followed by the Ministries of Infrastructure and Water Management (IenW), Economic Affairs and Climate Policy (EZK) and Interior and Kingdom Relations (BZK). The large number of requests from VWS can be explained in part by the fact that this ministry drafted most of the COVID-19 rules and regulations. FIN (Ministry of Finance) submitted the smallest number of requests for an opinion.²⁴

²³ This appendix uses the following abbreviations for the ministries: BZK = Interior and Kingdom Relations, EZK = Economic Affairs and Climate Policy, FIN = Finance, IenW = Infrastructure and Water Management, JenV = Justice and Security, LNV = Agriculture, Nature and Food Quality, OCW = Education, Culture and Science, SZW = Social Affairs and Employment, VWS = Health, Welfare and Sport.

²⁴ Note however that a large dossier such as the Tax Plan counts as a single request. 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, 2017-2021



2 Formal opinions and administrative handling

Since 1 June 2017, ATR has processed 2,043 requests for an opinion. ATR has two different procedures for handling such requests. The first procedure is a formal opinion. ATR has issued 539 formal opinions since its establishment, representing 26% of the total number of requests for an opinion. ATR's 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 second procedure applies in particular to dossiers that involve little or no regulatory burden. Over the past years, a total of 1,491 requests for an opinion (73%) were handled in this way. This percentage increased in 2021, due to the fact that many COVID-19 regulations were processed via the fast-track procedure. Figure 1.3 shows the total number of requests for an opinion processed over time, broken down by processing procedure. This does not include the requests for an opinion that were handled other than via a formal opinion or the fast-track procedure. This concerns 12 cases where we considered a formal opinion or administrative handling inopportune, but did believe it useful to formulate some focus points for the minister concerned, for example about (further stages in) the legislative process.

Figure 1.3 Formal opinions and fast-track procedure, cumulative figures per month

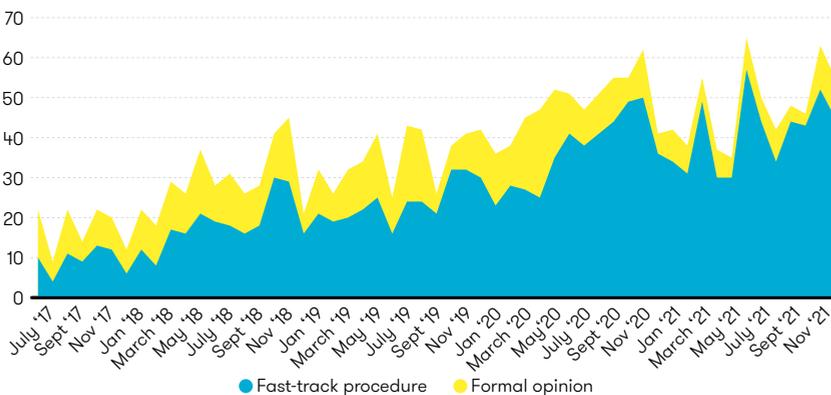
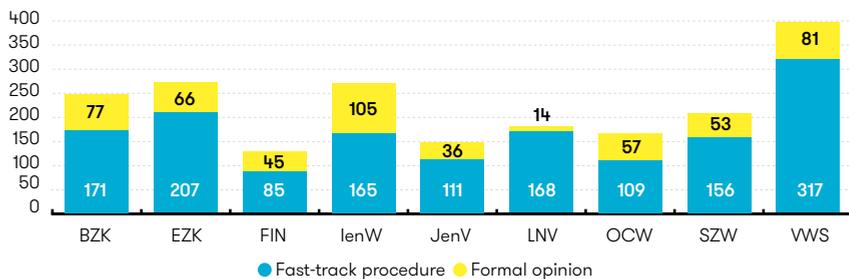


Figure 1.4 presents a breakdown of requests for an opinion by ministry. The figure shows that requests for an opinion from the Ministries of Justice and Security (JenV) and Agriculture, Nature and Food Quality (LNV) were processed relatively often using the fast-track procedure. This means that these ministries submitted a relatively large number of ministerial regulations to ATR which, in ATR's view, did 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 must be adjusted based on the observations of ATR as an official body.

Figure 1.4 Formal opinions and fast-track procedure, dossiers per ministry, 2017-2021



Please note: The requests for an opinion we handled for the Ministry of Foreign Affairs (2) and the House of Representatives (6) have not been included here. The same applies to the requests handled in another manner (12).

3 Quality of the dossiers: opinions with accompanying dicta

Every opinion we issue includes a dictum, which is a summary of our verdict on the quality of the substantiation of the draft regulations submitted. The dictum expresses whether the dossier is sufficiently mature for decision-making from a regulatory burden perspective.²⁵ When assigning a dictum, we take the seriousness of the shortcomings into account.

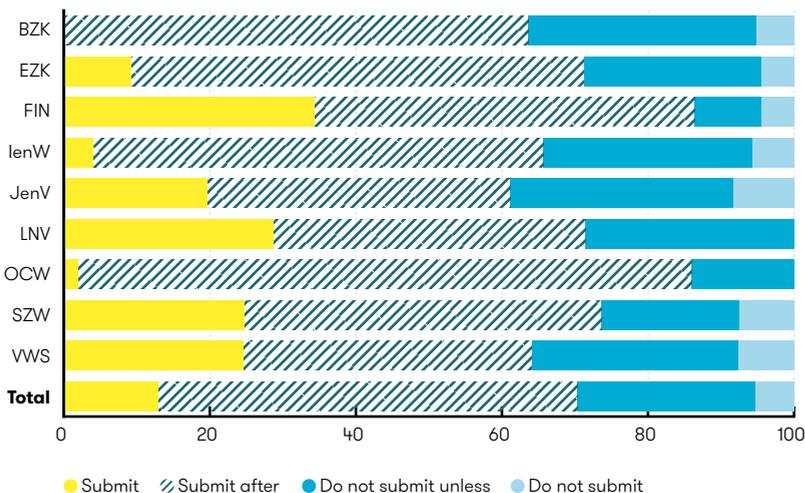
Table 1.1 shows how often we issued the various dicta in the period from June 2017 until the end of December 2021 (see the 'Total' column). The table shows that the share of positive opinions (dicta 1 and 2) fluctuated over the course of time. They accounted for 64% of dossiers handled in 2017, 78% in 2018, 67% in 2019, 75% in 2020 and only 52% in 2021. This means that for nearly half of all dossiers handled in 2021, the justification was insufficient to ensure balanced decision-making.

²⁵ The criteria applied by ATR for determining a dictum are set out in Appendix 3 to this annual report.

Table 1.1 Share of opinions broken down by dictum, as a percentage of the total per year/period²⁶

	2017 (2 nd half)	2018	2019	2020	2021	Total
1. Submit	27%	18%	16%	10%	6%	13%
2. Submit after	37%	60%	51%	65%	46%	57%
3. Do not submit unless	34%	21%	26%	19%	40%	24%
4. Do not submit	2%	2%	6%	5%	8%	6%

The number of positive or negative opinions issued is not the same for all the ministries. Figure 1.5 shows the number of opinions and the accompanying dicta received by the ministries (as a percentage of the total). The positive opinions for the dossiers of FIN (86%), OCW (86%), SZW (74%), LNV (71%) and EZK (71%) are all above average (70%). Positive opinions for the dossiers of JenV (61%), BZK (64%), VWS (64%) and lenW (66%) are below average.

Figure 1.6 Breakdown of dicta per ministry as per 1 January 2022

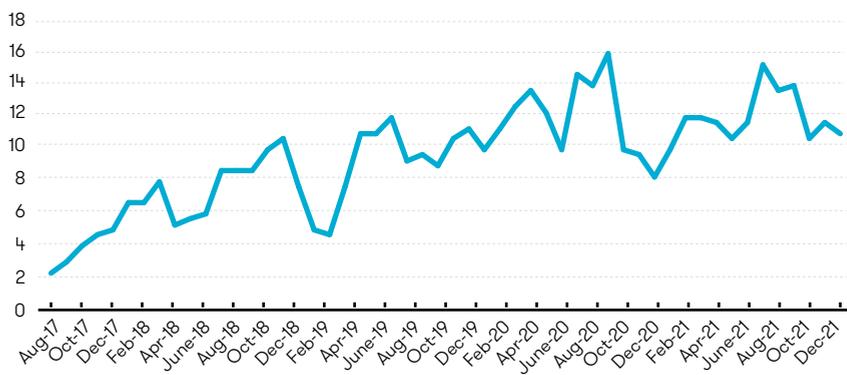
4 Involvement in the pre-consultation phase

Ministries have the option of consulting ATR before the start of the online consultation phase. In this pre-consultation phase (or preliminary phase), we help to identify less burdensome alternatives or ideas for making a proposal more practicable, among other things. We also suggest ways of improving regulatory burden cost calculations. As shown in Figure 1.6, every month ATR receives 12 requests, on average, to consider dossiers in the pre-consultation phase.

²⁶ De percentages tellen mogelijk niet op tot 100 vanwege afrondingsverschillen.

Occasionally, ATR is even asked to comment on important policy memorandums, as in the case of OCW's Higher Education Institutional Accreditation. This is a way of ensuring early attention for the proportionality, practicability and regulatory burden impact of obligations arising from major policy changes, for example in connection with the design of a new system. At this stage ATR is only involved at the administrative level, which means it retains its ability to provide independent advice. This is also clearly communicated in advance to the ministry concerned.

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



5 Lead time for issuing opinions

According to its mandate, ATR has 4 weeks (28 calendar days) to process a submitted dossier. ATR may deviate from 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. In the first case, the closing date of the consultation phase applies. In the second case, ATR may extend the time limit for advice by another four weeks. The latter option has not been used in recent years. On average, ATR remains well within the prescribed time limit for advice. Between 2017 and 2021, ATR has processed more than 97% of the requests for an opinion within the maximum time limit. In cases where this proves impossible, we inform the ministries concerned in a timely manner.

6 In conclusion

The evaluation of ATR in 2020 showed that the collaboration between the ministries and the advisory board proceeded smoothly. The ministries were approaching ATR more frequently in the pre-consultation phase. This situation continued in 2021. The working agreements between ATR and the ministries have also been set out clearly. This is not to say, however, that there have been no issues along the way. There still are cases in which dossiers have erroneously not been submitted to ATR for an opinion. The board will continue to draw attention to this issue.

Appendix 2

Assessment framework

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

1. Benefit and necessity: is there a task for the government, and is legislation 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 less burdensome alternatives?

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

3. Is 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 they are perceived 'on the shop floor'.

4. Is there a comprehensive and accurate picture of the consequences for the regulatory burden?

The regulatory burden must be clearly identified based on a central government-wide methodology, both qualitatively and quantitatively.

Appendix 3

Opinion and dictum

Dictum	Opinion	Criteria
1	Submit <i>(no changes required)</i>	Criteria [all criteria must be met]: <ul style="list-style-type: none"> • The proposal generates a regulatory burden. • Regulations are the most appropriate instrument. • An attempt has been made to find alternatives with a lower burden, in terms of policy, implementation and supervision. • The alternative with the lowest burden has been chosen, or the choice of another workable alternative has been adequately explained. • The consequences have been clearly identified in both qualitative and quantitative terms.
2	Submit after... <i>(the legislative proposal and/or substantiation must be amended slightly)</i>	Criteria for departing from dictum 1 (one criterion is sufficient): <ul style="list-style-type: none"> • The consequences have not been adequately identified, neither in quantitative nor in qualitative terms. • There are one or more minor shortcomings that need to be rectified for increased practicability.
3	Do not submit unless... <i>(parts of the legislative proposal and/or substantiation must be considerably improved)</i>	Criteria for departing from dictum 2 (one criterion is sufficient): <ul style="list-style-type: none"> • Practicable alternatives with a lower burden, in terms of policy, implementation and supervision, have been examined, but the alternative with the lowest burden has not been selected, without this being adequately explained. • The consequences have not been clearly identified, in quantitative or qualitative terms: the calculations are seriously flawed in that key target groups or groups of actions have not been included. • There are several key points for attention to increase practicability.
4	Do not submit <i>(the legislative proposal and/or substantiation contain serious and fundamental flaws that probably cannot be eliminated)</i>	Criteria for departing from dictum 3 (one criterion is sufficient): <ul style="list-style-type: none"> • There is no structural problem. • Legislation is not the most appropriate instrument. • No research has been carried out into practicable, less burdensome alternatives in terms of policy, implementation and supervision, which raises serious questions about practicability. • The consequences have hardly been identified or not at all (at the level of actions), neither in qualitative nor in quantitative terms.

Appendix 4

The Board

In 2021, ATR consisted of Marijke van Hees (Chair), Eric Janse de Jonge and Remco van Lunteren. Remco van Lunteren resigned as a member of ATR effective 1 November 2021, due to his accession to the Executive Board of the University Medical Centre Utrecht. He was succeeded by Hayke Veldman on 1 February 2022. As of that date, the composition of the Board is as follows (from left to right, see photograph): Eric Janse de Jonge, Marijke van Hees (Chair) and Hayke Veldman.



The organisation

The Board is supported by its Secretary, Rudy van Zijp, and the following staff members (reference date 1 February 2022):

Ruben Spelier	<i>BZK, IenW, signs of existing regulatory burden</i>
Marcel Kieviet	<i>SZW, VWS</i>
Sjors Hegger	<i>EZK</i>
Herman Schippers	<i>FIN, BZ, ICT</i>
Marianne Ringma	<i>OCW, local and regional authorities</i>
Jos Tonk	<i>LNV</i>
Wilma Speller-Boone	<i>JenV, BZK</i>
Isabelle de Bruïne	<i>IenW, BZK, international affairs</i>
Ahmed Moaty	<i>Policy support</i>
Birgul Samburkan	<i>Management and policy support</i>



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