Roadmap for Better Regulation

focus on strategic advice

Actal

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Contents

Foreword

Powerful strategic advice is part of a mature approach to excessive regulation. The reduction of excessive regulation in the Netherlands seems to be finding itself more and more in the 'no pain-no gain' stage, causing the advice given to touch upon the (political) policy considerations with an increasing frequency. This is exciting and challenging, yet it also means a greater responsibility for an independent and external advisory board. Merely indicating that a proposal leads to an increased regulatory burden is not enough; the following aspects are often also relevant:

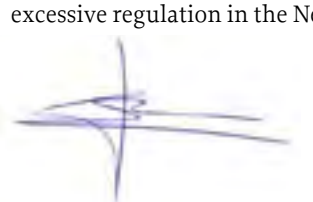
a the right consideration in the choice of instruments
b the proportionality of the regulatory pressure compared with the policy objective.

The 'no pain-no gain' stage implies that the reduction of excessive regulation also has a price tag. Consequently, advice needs to meet high standards. In this brochure, Actal aims to show how its strategic advice is shaped. It is my firm belief that the importance of this type of advice will only increase in the future.

Actal is primarily known internationally as an independent advisory board that monitors the consequences of administrative burdens on proposed (national) regulations. This is an important role, and we are proud of the way we have been doing this since 2000. At the same time, in addition to the consequences for administrative burdens, also involving other forms of regulatory burdens has proven important, such as the actual costs of compliance and supervisory tasks. Moreover, attention has increased for other sources of increased regulatory burden, such as European and regional authorities.

Over the past few years, the approach to excessive regulation has gradually grown in breadth as well as depth. Interest in Actal's strategic advice has also increased in the process. Actal wants to continue to increase the implementation of strategic advice in the years to come. Actal would like to indicate where problems lie, and where improvements can be made in specific policy domains, even more so than it has done in the past.

This document contains Actal's strategic advice for 2010. This strategic advice relates to (A) the cabinet policy on excessive regulation; (B) securing the process involved in policy preparation; (C) specific policy domains; (D) specific policy instruments. For each of these areas of special interest, in providing its advice, Actal monitors the consequences of excessive regulation, the consideration of the choice of instrument, and the proportionality of excessive regulation compared to the policy objective.
In this way, strategic advice can make a structural contribution to the reduction of excessive regulation in the Netherlands.



Dr. S.R.A. van Eijck, *Chairman of the board*

A The cabinet policy on excessive regulation

A1 Rich past, a promising future for the decrease of regulatory burden

To the Prime Minister | The Hague, 29 October 2010

We would like to extend our congragulations on your appointment as Prime Minister. In its coalition agreement, your Cabinet sets out its ambitious aim to reduce regulatory pressure. We trust that our advice will make a valuable contribution to the realisation of this aim.

In previous years significant progress has been achieved in tackling regulatory pressure. The net has gradually been widened to encompass a variety of target groups: businesses, citizens, professionals and local and regional authorities. Tangible reductions have been achieved. Steps have also been taken to develop the integrated assessment framework into a system of impact evaluation. In our opinion, this is in line with the Cabinet's aim to take further steps towards tackling regulatory pressure, for example by limiting substantive compliance costs and administrative burdens. The Actal evaluation has revealed that many of those involved deem such steps necessary.[1]

In addition to the reduction of regulatory pressure by the national government, the drive to reduce regulatory pressure has now been extended to encompass regulatory pressure stemming from Europe and from local and regional authorities. In the near future, we will be advising on opportunities for integrating the effects of European proposals into the Dutch framework in a more timely manner.

Attention to regulatory pressure is not necessarily self-evident. After the fall of the fourth Balkenende cabinet, we expediently conducted three studies to help the new Cabinet select the correct approach to tackle regulatory pressure. Enclosure 1 outlines the most important findings and key points for each study.The three studies that were undertaken are as follows:

1 **Internalisation study**
This study looks at the internalisation of attention to administrative burdens by government officials. The general findings of the internalisation study are described in the co-ordinating report *Internalising Administrative Burdens III*, enclosed with this letter. The specific findings for individual ministries are set out in departmental reports. Using these reports as a basis, we provide the relevant ministers and state secretaries with advice on ways to further intensify their efforts towards combatting regulatory pressure on their ministries. The report for the Ministry of General Affairs (AZ) is enclosed with this letter. It is accompanied by a brief memo in which we examine the conclusions and advice on internalisation within the Ministry of General Affairs. The memo is attached as Enclosure 2.

2 **Evaluation of agreements with ministries**
This evaluation concerns the agreements that Actal has concluded with six ministries

1 See the report 'Actal Evaluation 2007-2010', dated 12 October 2010

on the ex ante evaluation. The agreements stipulate that the ministries themselves are responsible for carrying out the ex ante Actal evaluation and that Actal only performs an evaluation at the system level.

3 Evaluation by Actal

The third study is the Actal evaluation, performed by research agency KplusV. The study was sent to the Minister of Finance, who commissioned the evaluation, on 14 October.

The Netherlands boasts a rich history of reducing regulatory pressure. The methodology employed has earned considerable international respect and continues to be adopted by a growing number of countries. The Cabinet has expressed its aim in the Coalition Agreement to reduce regulatory pressure even further. This lofty aim, underpinned by a rich history, heralds a promising future for the reduction of regulatory pressure in the Netherlands. We look forward to consulting with you in the short term on the way in which that future can be actualized.

For the sake of completeness, we would like to inform you that we have sent a copy of this letter, excluding the departmental advice for the Ministry of General Affairs, to the Minister of Economic Affairs, Agriculture and Innovation and to the Minister of the Interior and Kingdom Relations for their perusal.

Enclosure 1

Advice from the co-ordinating Internalisation report

In this advice, we distinguish between two aspects of internalisation: internalisation at *organisational* level and internalisation at the level of *individual government officials*. The study examines the knowledge, attitudes and conduct of individual government officials in relation to the limitations of administrative burdens. A survey was conducted among employees of all ministries. The study on internalisation at organisational level (structural embedding) considers whether, and to what degree, ministries devote attention to limiting regulatory pressure in the process of drafting legislation and regulations. Within this scope, use is made of Actal's experiences with the various departments during the ex ante evaluation of proposed legislation and regulations. We conclude by focusing on the findings of the Actal evaluation, which we presented to the Minister of Finance on 14 October.

1 Internalisation

1.1 Study framework

The internalisation of government officials was measured by a survey conducted among nearly 1000 government officials, spread across all relevant ministries. The total score for internalisation is the average of the scores for the dimensions of knowledge, attitude and conduct. The study builds further on similar measurements conducted in 2005 and 2006.

1.2 Importance of the study

The study provides an insight into the knowledge, attitudes and conduct of

government officials. The underlying principle is that the reduction of regulatory pressure must be achieved by government officials and that this should take place as early in the policy-making process as possible. To achieve this, it is crucial to be able to rely on government officials who have the 'knowledge', and 'willingness' to take 'action'.

2.3 Conclusions

- **The current internalisation average is 56 per cent.** The scores for knowledge are the highest, followed by attitude; this applies to all ministries. Conduct has the lowest relative score. This implies that measures must be taken in all ministries to fill gaps in knowledge (knowledge), overcome attitudes (willingness) or to assure behaviour (action).
- **Over 70 per cent of government officials are of the opinion that your Cabinet should also make it a priority to reduce the administrative burden for businesses and private individuals.** At the same time, it appears that the willingness to compensate administrative burden increases within individual ministries is limited (30 per cent). Control and pressure, including external pressure, are therefore vital if results are to be achieved.
- **Only a quarter of respondents are of the opinion that attention to administrative burdens can also be maintained without the external and independent safeguarding function.** An external and independent monitoring function is viewed as a vital link in a firm approach to tackling regulatory pressure.
- **New government officials have lower scores for internalisation than their more experienced colleagues.** We would like to point out that we have developed a training module in collaboration with the Regulatory Reform Group and REAL. This training module has been integrated with existing training courses at ROI and RAFE. In addition, we see opportunities for greater emphasis on introduction programmes for new employees, as well as the foundation programme for trainees.
- Government officials who maintain regular contact with policy target groups score **higher marks than their colleagues.** Against this backdrop, there are enormous advantages to involving target groups and executive agencies more regularly. The use of compulsory consultation, including internet consultation, may prove to be a good incentive.
- **Government officials who submitted proposals to Actal for evaluation score relatively highly for knowledge, attitude and conduct.** This essentially ties in with the finding that government officials who are more frequently involved in drafting new regulations achieve a higher internalisation score. Evidently, this group of government officials is adequately covered by the current infrastructure.

2 Embedding the ex ante evaluation

2.1 Methodology

In terms of proposed legislation, Actal plays a key role in the ex ante evaluation of the effects of the administrative burden. During the Cabinet's previous term, Actal devoted its efforts to agreeing with ministries that they would take responsibility for the ex ante evaluation. This was the starting point for the quality of the dossiers in combination with departmental embedding. Where both these aspects were adequately reliable, agreements were made for ex ante evaluation to be performed by the ministry, with evaluation carried out by Actal. These arrangements are set down in agreements between Actal and the ministry concerned. The evaluation of the agreements focuses primarily on the quality of the dossiers.

2.2 Importance of the agreement action plan

The agreement action plan provides an insight into departmental embedding and into the scope and quality of dossiers in all ministries. Above all, the action plan has provided experience on the degree to which departments can independently – that is to say without external evaluation – arrive at a reasonable ex ante assessment of the effects on the administrative burden.

2.3 Conclusions

- **Actal has concluded agreements with six ministries.** These include the ministries of Agriculture, Nature and Food Quality (LNV) dated 17 December 2008; Housing, Spatial Planning and the Environment (VROM) dated 11 June 2009; Justice dated 24 September 2009; Education, Culture and Science (OCW) dated 23 November 2009, Economic Affairs (EZ) dated 14 December 2009 and Health, Welfare and Sport (VWS) dated 18 December 2009.
- **Actal has not concluded agreements with the ministries of Social Affairs and Employment (SZW) and Transport, Public Works and Water Management (VenW).** Neither of these ministries were able to comply with the agreement criteria on time and were consequently unprepared in terms of structural embedding. Furthermore, in previous years the ministry of SZW has wrongfully failed to submit a relatively large number of dossiers to Actal. As a result, this ministry was also deemed ineligible for an agreement based on the quality of dossiers associated with the aspect of administrative burden.
- **The Ministry of Finance indicated in a letter dated 14 December 2009 that it did not wish to enter into a agreement.** Considering the huge importance of the reductions that still needed to be achieved by the Ministry of Finance, the ministry wished to keep Actal's evaluation and expertise at close quarters instead of further distancing them. The ministry set great store by the 'twin lock' ex ante evaluation carried out by Actal.
- **We have not concluded agreements with ministries who rarely or never draft legislation that has an effect on the administrative burden.** These ministries may build up inadequate expertise as a result. It is not efficient for them to independently invest in structurally embedding attention to regulatory pressure. This concerns the ministries of General Affairs (AZ), the Interior and Kingdom Relations (BZK), Foreign Affairs (BuZa) and Defence.

Recently, we carried out an interim evaluation of the six agreements. This led to the following conclusions:

- **On the basis of the EZ, Justice and OCW dossiers evaluated, we were able to establish that promising developments are taking place in these departments.** It should be noted here that these ministries only recently took independent responsibility for assurance.
- **The evaluations of the ministries that had been responsible for the ex ante evaluation over the longest period of time, VROM and LNV, gave rise to further agreements.** The ex ante evaluation for these ministries did not prove to be sufficiently in order. As a result, agreements were reached with these ministries in an addendum to significantly improve the ex ante evaluation, in which Actal would be more closely involved.
- **One ministry (VWS) was unable to be evaluated, because there was only one dossier during the agreement period that had an effect on regulatory pressure.**

3 Evaluation by Actal

3.1 Study framework

Pursuant to Article 28 of the Advisory Bodies Framework Act, we issued instructions for the Actal evaluation to be carried out at the request of the fourth Balkenende cabinet. To achieve this, a research agency was approached and a feedback group was formed (Regulatory Reform Group and REAL). The research is based on the analysis of documentation and interviews. We sent this evaluation to the Minister of Finance, who commissioned the evaluation, on 14 October.

3.2 Importance of the study

The study provides an insight into the functioning of the existing method of dealing with regulatory pressure, as well as the role of the external evaluation body Actal. These results are essential to shaping the future approach to dealing with regulatory pressure.

3.3 Conclusions

- **The evaluation has identified a need in departments for broadening the ex ante evaluation to include an evaluation of the effects on regulatory pressure.** Given the current Actal mandate, it is not possible to evaluate all the effects on regulatory pressure in the ex ante evaluation. In order to better address the ministries' practical policy needs, an expansion of the ex ante evaluation to include regulatory pressure is inevitable.
- **Attention to the effects on regulatory pressure continues to be of enduring importance.** The evaluation demonstrates that this attention is not necessarily self-evident. That is logical, since the effects on regulatory pressure in the policy-making process compete with other interests. This leads to the conclusion that the assessment of the effects on regulatory pressure should not be made solely and independently by ministry employees and superiors.
- **An external and independent regulator should guarantee attention to regulatory pressure.** The evaluation concludes that attention to regulatory pressure in the policy-making process arises from the certainty that Actal will issue an advice, should the assessment fall short. It is for this reason that parliamentarians and policy target groups positively value the Actal evaluation function and stress its necessity. This is in line with a structure of checks and balances and should, in our opinion, be embedded.

A2 Coalition agreement and limiting regulatory pressure

To the Prime Minister | The Hague, 19 November 2010

Your Cabinet has formulated an ambitious goal to reduce regulatory pressure. In order to provide an insight into the feasibility of the reduction target, we have made an inventory of the policy proposals detailed in the coalition agreement that may affect regulatory pressure. Furthermore, we have assessed whether these proposals lead to a reduction in regulatory pressure for citizens, businesses and professionals respectively, as well as the inter-governmental burdens for related governmental institutions. We are pleased to present you with the report 'Freedom and Responsibility: Limiting Regulatory Pressure'.

The coalition agreement provides good opportunities for reducing regulatory pressure in the Netherlands. These opportunities are set out in the Economy, Health and Governance chapters. The risk of an increase in regulatory pressure is particularly evident in the area of immigration. If cabinet policy is to succeed in reducing regulatory pressure in the Netherlands, we advise establishing the following agreements and regulations:

- Ensuring that attention to regulatory pressure is properly embedded in departments and setting up a powerful steering function within the Cabinet.
- Formulating quantitative reduction targets for tackling regulatory pressure on citizens, professionals and local and regional authorities.
- Making concrete and accountable agreements on compensating potential increases in regulatory pressure, so that a freeze remains in force at the very least.
- Implementing an ex ante regulatory evaluation that quantitatively identifies the effects of legislation and regulations.

For the sake of completeness, we would like to inform you that we have also sent our findings and report to the Minister of Economic Affairs, Agriculture and Innovation, the Minister of the Interior and Kingdom Relations, and the chairman of the House of Representatives.

A3 Progress Report on Regulatory Burdens for Businesses November 2009

To the Secretary of State for the Ministry of Finance | The Hague, 14 January 2010

The Cabinet has undertaken a wide range of initiatives to reduce regulatory pressure for business owners. The Progress Report on Regulatory Pressure on Businesses states that the reduction in regulatory pressure is on target (Parliamentary Papers II 2009 – 2010, 29 525 no. 305). In addition to the target, the speed at which the Cabinet visibly reduces regulatory pressure is vital, particularly since 2010 has already begun. The Cabinet has proposed a reduction in administrative burdens for businesses of 25% for 2011. For the time being, this target is unachievable.

The Progress Report on Regulatory Pressure on Businesses has fuelled our concern about the speed at which these reduction measures will come into effect. We are therefore sending this Advice on the Progress Report on Regulatory Pressure on Businesses to the Cabinet and Parliament.

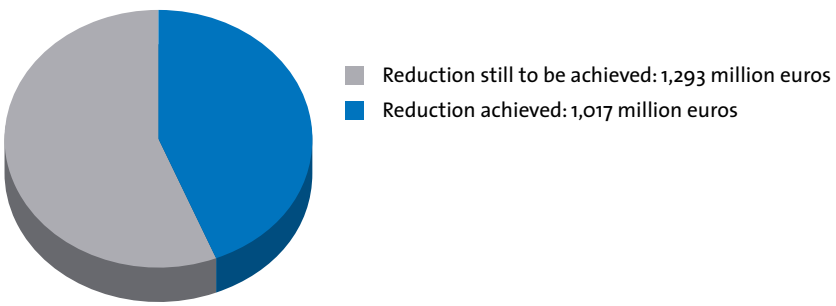
The Progress Report on Regulatory Pressure on Businesses is limited to the reduction of regulatory pressure on business owners. The State Secretary of the Interior and Kingdom Relations presented the Progress Report on Service Provision, Regulatory Pressure and Information Policy to the House of Representatives on 18 December 2009. We will be issuing a separate advice on this report.

1 Reduction in administrative burdens for businesses with 25% at government level

In our previous Advice on the Progress Report on Regulatory Pressure on Businesses dated 20 August 2009, we indicated our concern at the progress made in reducing regulatory pressure. We conclude in this advice that the Cabinet must implement short-term adjustments if it is to achieve its reduction target within the allotted time.

We infer from the Progress Report that the Cabinet has not yet succeeded in achieving half of its target for lightening the administrative burden on businesses.

Current level of reduction in administrative burdens on businesses (Autumn 2009)



It is well known that the heaviest administrative burdens for businesses lie in the policy-making areas of the ministries of Finance, Housing, Spatial Planning and the Environment (VROM), Justice, and Social Affairs and Employment (SZW). Three of these departments are faced with a huge task.
With 4.1 billion euros for the baseline measurement of 2007, the Ministry of Finance is responsible for almost half of the administrative burdens for companies. This department has been set the task of reducing the administrative burdens by 905 million euros by 2011. At the end of 2009, the Ministry of Finance had realised a reduction of approximately 413 million euros. This means that 45% of the target has been achieved for the Ministry of Finance policy area.
The Ministry of Finance has also had to deal with some setbacks. One of these was the employee expense allowance scheme, which was amended after the debate in the House of Representatives, thereby delaying the achievement of a reduction in administrative burdens. The Progress Report has identified that the Cabinet is not capable of managing setbacks of this nature.

The Ministry of VROM achieved a reduction of 263 million euros in administrative burdens at the end of 2009. That amount still needs to increase to 410 million euros. This means that 64% of the target has been achieved for the Ministry of VROM policy area.
The Progress Report states that the total reduction in administrative burdens resulting from the Environmental Licensing Act (WABO) and the implementation regulations (Decree on Environmental Law and the Environmental Law Regulations) totals approximately 105 million euros. The implementation of the Environmental Licensing Act has been subject to a considerable delay. The Progress Report inadequately identifies the effect that this delay will have on realising the reduction target.

The Ministry of SZW is faced with the task of reducing the administrative burdens for businesses by 269 million euros. At the end of 2009, this department had not even achieved 10% of its reduction target. This means that the Ministry of SZW is faced with the target of lightening the administrative burdens for businesses by a further 247 million euros in 2011. The enclosure in the Progress Report states that administrative burdens will decrease in January 2011 by 92 million euros as a result of the 'exploration into the simplification of RI&E'. It is unclear as to what this proposal includes. The Progress Report inadequately identifies whether this relates to a concrete reduction measure.

These examples mean that the Progress Report on Regulatory Pressure on Businesses does not provide us with satisfactory assurance that the Cabinet is capable of managing existing or even new setbacks. We conclude from the Progress Report of November 2009 that the Cabinet is conducting risk analyses in order to signal potential setbacks in good time. The scope and effect of these risk analyses is unclear.

We advise that the Cabinet provide insight on:
- **Which dossiers have been subjected to risk analysis.**
- **What the nature and scope of the risks is.**
- **Which measures the Cabinet has taken as a result of the analyses.**

On several occasions in the past, we urged for a reduction in administrative burdens and regulatory pressure using ICT applications. One good example of how ICT applications can be used is the legalisation of electronic private agreements, such as electronic insurance policies, from 1 January 2010.

We are concerned about the perceptibility of administrative burden reductions, which need to be effected with the aid of ICT. The administrative burden reduction, which relies on the ICT initiatives, will not be perceptible until companies actually start using these ICT facilities. Consequently, the extent to which Standard Business Reporting (SBR, previously denoted as XBRL) is used is, in our view, worrisome. The Progress Report states that the various partners, such as the Inland Revenue, Central Statistics Office, Chambers of Commerce and Dutch government organisation for ICT implementation are working on a new framework for alignment with market parties. The Cabinet is striving towards completing the transition to the new approach by 1 January 2010 and subsequently identifying the effects of the reduction on administrative burdens.

We advise that the Cabinet inform the House of Representatives on:
- **The developments in the use of Standard Business Reporting.**
- **The extent to which Standard Business Reporting reduces the administrative burdens on businesses.**
- **The moment at which this reduction becomes perceptible to businesses.**

We are also conducting a study into the possibility of promoting the use of ICT services, including Standard Business Reporting. By doing so, we are attempting to provide the Cabinet with concrete advice for promoting the use of ICT applications, in order to perceptibly reduce administrative burdens at an earlier stage with a view to using ICT.

2 Reduction in substantive compliance costs

We are delighted that greater form and content is being given to the reduction of substantive compliance costs. The Cabinet has decided to tackle 87 sticking points. The Cabinet had previously aimed at reducing substantive compliance costs by 292 million euros. The Cabinet is also aiming to reduce over half a billion euros in substantive compliance costs and plans to take initiatives in order to further limit these costs.
The Progress Report shows that by far the highest amount of non-operational compliance costs originate in the policy area of VROM. These costs amount to 1.1 billion euros. Table 3 in enclosure 2 shows a number of environmental measures, whereby substantive compliance costs can be reduced by 96 million euros. That is a reduction of just 9%.
We would further point out that this is not a net percentage. The Progress Report does not identify whether substantive compliance costs rise. In enclosure 2 of the Progress Report, the Cabinet provides only an overview of substantive compliance cost reductions. In contrast to enclosure 1 on administrative burdens, the increases in substantive compliance costs are not identified.
We advise, particularly in the policy area of VROM, increasing the net reduction percentage of the amount for substantive compliance costs.

3 Reduction of inspection burdens by 25%

The Cabinet has decided that additional measures are necessary. The Secretary of State for Finance and the Secretary of State for Economic Affairs (EZ) have been assigned the role of motivator. The idea is for inspectorates and line ministries to co-create supplementary measures as soon as possible.

We share the Cabinet's conclusion that additional measures are necessary in order to reduce inspection burdens by 25%. This conclusion follows on from our advice

'Modernising Inspection: From Effort to Results' dated 8 June 2009. As stated in our earlier advice, the achievement of the reduction does not lie with substantive opportunities, but primarily with the way in which responsibilities are covered and the extent to which ministries and inspectorates are held accountable for realising the objective.

We view the 'motivating role' of the Secretary of State for Finance and the Secretary of State for EZ as an important step forward. They can remind the parties involved of their responsibility to reduce inspection burdens. At the same time, we see risks related to achieving the reduction target, since a great deal still needs to take place if the burden is to be reduced by another 25% by the end of this cabinet period.

In the following Progress Report, we advise providing an insight into the activities that have been introduced to reduce inspection burdens and to indicate which inspections and inspectorates are crucial if the target of a 25% reduction in inspection burdens is to be achieved.

4 Common Commencement Dates

On 11 December 2009, the Minister of Justice and the State Secretaries for EZ, Finance and BZK, sent a letter to the House of Representatives about common commencement dates (CCDs) (Parliamentary Papers II 2009 – 2010, 29 515, no. 309). We are delighted that our advice CCDs dated 20 November 2008 was followed up in that CCDs and the minimum implementation period are also being applied to ministerial regulations as well as extending to the target groups citizens, public professionals and related government institutions.

We would like to remind you that we have also advised that a position be defined regarding the implementation of CCDs with executive agencies, non-departmental public bodies and related government institutions. The Cabinet has not yet responded to this request. We are curious about whether the Cabinet sees opportunities within this extension for further reducing regulatory pressure and if so in which way the Cabinet is able to contribute to establishing the use of CCDs in policy regulations. **We advise the Cabinet to define its position on the implementation of Common Commencement Dates (CCDs) within executive agencies, non-departmental public bodies and related government institutions as soon as possible.**

We would point out that we also stressed the importance of the disciplined application of CCDs in our advice of 20 November 2008. We are of the opinion that embedding the procedure in the Directives on Streamlining Regulations is inadequate. Instead of the fragmented monitoring carried out by the Ministry of Justice (through the evaluation of regulatory tools), the Council of State and by parliamentary control, we advise that the results of using CCDs be periodically reported in the Progress Report on the Reduction of Regulatory Pressure.

- How often is a CCD and the minimum implementation period deviated from and on the basis of which exceptional grounds?
- What does a CCD and minimum implementation period mean *quantitatively* to the reduction of regulatory pressure?

In our opinion, the exclusion of these details constitutes an omission of information in the Progress Report on Regulatory Pressure on Businesses. However, enclosure 1 on page 22 does state that the administrative burdens for businesses are reduced by 3 million euros with the implementation of CCDs for legislation and General

Administrative Orders. The potential for a reduction created by extending the use of CCDs to ministerial regulations is lacking.

We advise including substantive and quantitative results on the use of a Common Commencement Date (CCD) and minimum implementation period in the following Progress Report.

5 Reduction of regulatory pressure on municipalities and executive agencies

Municipalities currently make an important contribution to reducing regulatory pressure across the board. We think it is crucial that these initiatives – including Governmental support - are intensified after the municipal elections in March 2010. We aim to support this further by issuing advice to municipalities. For instance, we are currently examining the extent to which municipal electoral programmes give attention to the reduction of administrative burdens and regulatory pressure (such as setting reduction targets or improving services) and what the impact on regulatory pressure is as a result of proposals in municipal electoral programmes.

The Progress Report contains information on the Certificate of Satisfactory Service. This is an instrument that municipalities can use to improve their service to business owners. The Certificate of Satisfactory Service is an important method that enables municipalities to achieve improvements in service provision and subsequently reduce regulatory pressure. We endorse the importance of the financial support that the Government lends to municipalities for implementing the standards framework (by means of the voucher scheme).

The Cabinet has announced that it intends to work towards introducing the Certificate of Satisfactory Service in collaboration with a top 10 of service provision organisations, such as the Labour Inspectorate, Food and Consumer Product Safety Authority, Road Traffic and Transport Authority, National Service for the Implementation of Regulations, and the Inland Revenue and Customs. We think this is an exciting initiative and are curious about the results. We are concerned, however, about the progress at UWV, the Chambers of Commerce, SenterNovem and the water boards. According to the Progress Report, these organisations still have no established methodology.

In the following Progress Report we advise to report on the use of the Certificate of Satisfactory Service in service organisations.

Conclusion

We conclude that a wide range of initiatives have been taken to reduce regulatory pressure for business owners. In this advice we provide action points for intensifying Cabinet policy to ensure that the Cabinet's objectives are achieved within good time.

A4 Progress Report on Service Provision, Regulatory Burdens and Information Policy

To the Secretary of State for the Ministry of the Interior and Kingdom Relations | The Hague, 5 March 2010

At the end of 2009 the Progress Report on Service Provision, Regulatory Pressure and Information Policy was presented to the House of Representatives (Parliamentary Papers II 2009 – 2010, 29 362, no. 157). The report shows a broad and varied programme for reducing regulatory pressure on citizens, professionals and local and regional authorities. The reduction of regulatory pressure for local and regional authorities is now underway. In addition, one favourable development is that government support is being administered in an increasingly well-coordinated fashion.

The decision has been taken to adopt a new presentation for the Progress Report on Provision Services, Regulatory Pressure and Information Policy. The report now refers to a great number of enclosures that have been published on the website of the Ministry of the Interior and Kingdom Affairs. Another new feature is that the report is written from the perspective of target groups, namely citizens, professionals and local and regional authorities.
This approach pays attention to the sticking points and irritations that are experienced as highly irritating. However, the presentation opted for does not give a complete picture of the progress achieved for various reduction targets.

In our opinion, it is essential that all the topics about which the Cabinet informed the House of Representatives at the end of 2009 remain on the agenda in the near future and that the infrastructure that has been built up is retained. We are particularly concerned about the course and speed taken to reduce administrative burdens for professionals and inter-governmental burdens.

1 **Reduction in administrative burdens for businesses of 25% at government level**
The Progress Report states that the target for reducing the time taken to deal with governmental administrative burdens for citizens has been achieved. The burden has been reduced by a net time of 28%. The net reduction will be 31% in 2011. The net reduction for out-of-pocket costs is 21% and a net reduction of 25% is expected to be achieved in 2011.

We conclude from the Progress Report that the target for reducing administrative burdens on citizens and resolving the 10 major sticking points in the provision of services needs to be achieved by the end of 2010. This raises the question as to whether the Cabinet thinks that by achieving this target citizens will no longer experience any further sticking points and irritations.
We advise pressing ahead with this method and the resulting dynamic for the foreseeable future.

We also urge that the reduction of inspection burdens on citizens is dealt with and coordinated effectively. In our advice 'Modernising Inspection: From Effort to Results' dated 8 June 2009, we stress the importance of effective coordination. In line with this advice, we also envisage a situation where the Secretary of State for the Interior and Kingdom Affairs will play an instrumental role.

We advise looking at the perceptible reductions that can further be achieved for citizens in the area of inspection burdens.

We are concerned about the disbandment of the REAL team, which coordinated, facilitated and monitored the reduction in administrative burdens for citizens within the Ministry of the Interior and Kingdom Relations during the previous term. We do not think this development is aligned with the need for permanent attention to regulatory pressure that the government creates for citizens.

We advise safeguarding the knowledge and experience acquired in the coordinating department (BZK) and other departments, to ensure sustainable low-cost administrative burdens for citizens.

2 Common commencement dates

We consider it an improvement that the common commencement dates and the minimum implementation period will be applied from now on to ministerial regulations and extended to the civilian, public professional and local and regional authority target groups. There is no insight at this moment into the number of deviations from a common commencement date and minimum implementation period or the exceptional grounds that have been applied.

We advise that the Cabinet periodically informs the House of Representatives on the substantive and quantitative results of applying common commencement dates and the minimum implementation period.

3 Profiles

In the BZK approach, the decision has been taken to work across the board with profiles, examples of which include a *disabled child*, an *elderly person with dementia* or a *foreign student*. The method must ensure that administrative burdens for citizens are perceptibly reduced. The same applies to the reduction of administrative burdens for professionals and inter-governmental burdens. Working with profiles is perceptible for citizens. The disadvantage of this method is that the Progress Report does not identify which results have been achieved for each profile or where any additional measures are necessary. Nor does the information made available on the internet offer satisfactory insight.

We advise providing a profile-specific insight as from 2007 into the net reduction of administrative burdens on citizens and professionals and inter-governmental burdens.

4 Reduction in burdens on professionals

In the reduction of administrative burdens on professionals, the Cabinet restricts itself to the domains of healthcare, education, safety and social security. In a letter to the House of Representatives, the State Secretary for BZK wrote that she has set up a series of instruments to establish where and how great the pressure of that burden is on

the work of various professionals. The most important sticking points and potential solutions are identified using interviews.

It is unclear as to the existence and if so the degree of bureaucratic power the Secretary of State for BZK requires in order to practically reduce the burden on professionals. It does state, however, that hardly any results have been achieved in reducing the administrative burdens for professionals. One possible explanation for this might be that the method and objective create confusion.

We advise that the Cabinet formulates clear and concrete proposals for reducing the burden on professionals, that working agreements to this effect are made within the Cabinet and that it informs the House of Representatives on this matter.

One of the enclosures accompanying the Progress Report is the Report 'Reducing the Administrative Burden on Professionals'. The Secretary of State for BZK also bases the report on the findings of a number of agencies. One point for attention is that the report does not provide a one-to-one comparison of figures, which only give an indication. Their powers of expression are therefore extremely limited.
Another point for attention is that the memorandum is not based on the principle of information obligations, as is customary in the reduction of administrative burdens for businesses and citizens. The memorandum makes a distinction between *administrative tasks* and *administrative burdens*. The distinction adds nothing to the actual reduction of the information obligations for professionals. It may be possible that only irritating information obligations are given an opportunity. This method is inadequate and misses the fact that administrative tasks as well as administrative burdens are carried out at the expense of deploying professional capacity.

We advise that for the benefit of reducing information obligations for professionals, a single uniform and unambiguous measure is carried out and a quantitative reduction target is established.

5 Reduction in inter-governmental burdens.

The Cabinet agreed to reduce inter-governmental burdens for local and regional authorities in the governmental agreement. A baseline measurement, restricted to 28 obligations with the highest burdens, was conducted for this purpose. The Progress Report states that the reduction in the number of specific benefits and the introduction of Single Information and Single Audit will result in a reduced burden, clear responsibilities and permanent accountability moments. The Progress Report does not identify the current status of this reduction target.

We advise that all increases and decreases in inter-governmental burdens be identified for each department as of 2007.

6 Reduction in regulatory pressure through the use of ICT

We have familiarised ourselves with the National Implementation Programme (NUP) and the gateway review of this programme, which you sent to the House of Representatives on 18 February 2010. The review conveys the image that a relatively large number of government ICT projects are either lagging behind or are in danger of failing. The final verdict of the review is that the National Implementation Programme is a no-go. The review points to the great risk of harm if the NUP is not implemented

correctly and results, for instance, in the violation of citizens' rights (such as incorrect registrations of identity, nationality and ownership), errors in transactions between the government and citizens, or errors in government enforcement. The conclusions and advice from the gateway review are in line with earlier Actal ICT advice, in which we pressed, among other things, for the strengthening of control over ICT projects, the strengthening of programme management to improve cohesion between the various projects, an increase in attention for project management and risk management, and technical (hands-on) support for municipalities during the implementation of registration databases.

We note that during the past few years many studies have been carried out into the failure of ICT projects. The advice from these studies relate to the complexity, planning, business cases and changing functional requirements of the projects. The government has taken measures to make large ICT projects more manageable during implementation (by way of quarterly reports, CIOs in each department, and gateway reviews). Yet in spite of this, many of these projects suffer from problems that arose in their initial phase, during which they were not sufficiently acknowledged or prevented. We find it worrying that the government has taken no visible measures to prevent these problems related to complexity, planning, business cases and changing functional requirements.

The situation described above is illustrated by the fact that the implementation of a registration database itself has not lead to the desired reduction in administrative burdens. A large number of government institutions continue to request information that is included in registration databases. The reduction in administrative burdens and the improvement of service provision will only be perceptible to citizens and businesses if they are no longer required to provide this information to government institutions. Municipalities and other executive agencies still request documents such as extracts from the Municipal Personal Records Database (GBA) or certificates from the Chamber of Commerce. Also, the police still request a vehicle registration certificate, despite the fact that the information on this certificate originates from the vehicle registration database. The situation is such that registration databases are still incomplete and are also poorly aligned or have still not been adequately integrated into the workflows of the government organisations concerned.

The Cabinet has announced that it will indicate its position on the gateway review of the NUP before 1 April 2010.

We advise that the Cabinet not only indicates its position on the NUP, but that it also sends an action plan that eliminates the problems identified in the gateway review to the House of Representatives.
We will issue our advice on that position and any action plan based on the findings of the gateway review and the results of our own study into the government's use of ICT products.

7 European reduction of burdens for citizens, professionals and local and regional authorities.

We think it is important that the Ministry of BZK makes out the case for a European approach to administrative burdens on citizens, professionals and local and regional authorities. We applaud the formation of the 'Quickscan for European administrative burdens on citizens and professionals'. This study provides a practical handle on

making potential reductions more tangible and underlines the need for paying careful attention to the effects on citizens, institutions, professionals and local and regional authorities when negotiating proposed European legislation. The Ministry of BZK has also invested in setting up networks, such as the European Public Administrations Network (EUPAN learning team on administrative burdens for citizens), and the High Level Network on Governance (HLNG). This investment requires the retention of the Dutch infrastructure.

We advise ensuring that Dutch knowledge can continue to be shared within the European playing field.

Conclusion

We are delighted that a reduction of 25% was achieved in lowering administrative burdens for citizens in the period 2005 – 2011. It is essential to forge ahead with the current working method in the coming years and to establish a new target for a perceptible reduction in administrative burdens on citizens. We note that there are valuable developments at a local and European level for the reduction of regulatory pressure.

We advise changing the course in the near future and stepping up the pace in reducing administrative burdens on professionals and inter-governmental burdens. In order to achieve this, it is necessary to set an ambitious, tangible and measurable reduction target. We advise accelerating the launch of the registration database and ensuring that government organisations do not request citizens and businesses to provide information already contained in their registration databases.
In short, we advise ensuring that the investment in knowledge, procedures and experience in curbing regulatory pressure results in structurally low regulatory pressure for all target groups.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B Securing the process involved in policy preparation

B1 Towards a system of impact assessment for proposed legislation and policy

To the Minister of Justice | The Hague, 12 April 2010

We are pleased to present you with the Study Report on Users' Requirements for an Integrated Assessment Framework for Legislation and Policy-Making. The study is in line with our advisory task in this area and follows on from our earlier advice on aiming at an assessment system that takes the form of Regulatory Impact Assessments. In that advice[1] we drew attention to the fact that an impact assessment system needs to be particularly useful in the legislation and policy-making process. Up until now, impact assessment users have not featured a great deal in discussions on how this type of system should be designed. We are therefore focusing this advice predominantly on the requirements that these users (in the broadest sense of the word) have for such a system.

The most important users (MPs, current and previous cabinet members, civil servants and stakeholders) were asked if they have any need for a system of this kind. They spoke about the scope of the analysis, the opportunities for consultation and the design of reporting and monitoring.

The overall conclusion of the study is that there is a clear need for an impact assessment system which includes evidence-based legislation and policy-making. There is also wide support among users for the integration of relevant alternatives into the assessment, as well as abridged reporting. The system must guarantee the proportionality and reliability of the assessment. The report outlines the conditions and risks of the system.

We advise that an integrated evidence-based assessment system for proposed legislation and policy-making is developed and implemented.
The key conditions for this evidence-based assessment system are as follows:

- **Regulators quantify all significant effects consistently.**
- **Regulators consider relevant alternative policy instruments (including the zero option).**
- **Regulators create at least an abridged report of the analysis and results.**
- **Stakeholders are involved and consulted in good time.**
- **Robust monitoring is in place, which also ensures that the analysis system is used consistently.**

The study identifies considerations that play a key role in the development and implementation of an evidence-based assessment system. We examine these considerations below in more detail.

1 Contents of the assessment

The study shows that all interviewees recognise the need to explicitly start by asking which problems legislation and regulations are intended to resolve, including the

1 Actal advice on the Design of an Integral Assessment Framework for Legislation and Policy-Making dated 12 June 2008. See www.actal.nl (section on Advice/ Integral Assessment Framework).

question of whether legislation and regulations are the best solution to this problem. Furthermore, virtually all interviewees recognize the need for evidence-based policy making, which includes quantifying the impact. This method ensures that the impact can be weighed up unambiguously. All the target groups do, however, warn about the false sense of security that quantification can give. Finally, many draw attention to the importance of a more integrated approach to evaluation.

We advise that an evidence-based assessment system with the following attributes is developed:

a Broad analysis of subjects, for which potential consequences may arise. This means, among other things, that the effects on implementation and monitoring will be analysed in addition to the impact on local and regional authorities.
b Substantial effects should be mapped quantitatively as much as possible.
c Depending on the situation, relevant alternatives should be included in the assessment.

We also advise that guidelines are drawn up for the evidence-based assessment system; they must identify when a certain analysis technique should be used, and what the options are in the event of missing or inadequately robust information.

2 Priorities

The majority of interviewees think that higher priority should be given to the quality of the assessment instead of the rapid completion of the legislative process. The same applies to the contents of the assessment (quantifying the effects of and studies into alternatives).

We advise that the system be designed in such a way that the legislative process provides ample room for carrying out impact assessments on legislation and policy-making proposals that have an enormous social impact. Policy officials must be given the opportunity to collect missing information and to make calculations if they are to give stakeholders sufficient time to respond and to thoroughly examine the alternatives.

3 Practical implementation

Many interviewees warn that efforts expended on analysis should be proportional to the proposed policy or legislation. Furthermore, there is a consensus that departments should carry out the analysis themselves and that regulators are in need of support.

We advise, within the scope of proportionality, that a lighter version is developed alongside the standard assessment, which can be used if the scope of the estimated impact is limited by previously determined criteria. This means that the system should contain a useful selection mechanism to determine when the lighter version should be employed.
We advise that the departments carry out assessments.
We advise that interdepartmental and departmental support is offered to regulators, for instance, during the selection of analysis and survey techniques. This support may take the form of guidelines, ICT tools and opportunities for tendering.

4 Stakeholder involvement

Opinions are strongly divided regarding the question of whether stakeholders should be involved consistently and by means of public consultation. Some interviewees are

of the opinion that this already takes place to a satisfactory degree. Others certainly acknowledge the benefits of extensive and transparent consultation. There again, others point out the risk of organised stakeholders gaining too much influence.

We advise that a study be undertaken to determine how the assessment system and underlying documentation might be assigned a role in the consultation process and how they might improve that process.

5 Reporting

Almost all of the participants who took part in the study think that assessment system reporting should be abridged. In contrast, the stakeholders think that a detailed assessment description (including the choices made, reference sources, amended adoptions, etc.) should be made available.

We advise that the assessment should be consistently translated into an abridged summary report with a permanent structure. The more detailed, underlying analyses should only be made available if requested. Their availability is vital, because it enables the government to fulfil its accountability to society and to clearly demonstrate that it has done everything in its power to create qualitatively good legislation and policy, in which all joint interests are recognised, identified and carefully considered.

6 Monitoring

The various target groups agree that the assessment system should be monitored independently and externally. This is in line with experiences in other countries, where an authoritative external organization is responsible for the monitoring process and users are able to rely on the objectivity and quality of assessments.

We advise that the assessment process is monitored independently and externally in order to guarantee the quality and results of assessments.
We also advise that the choice between the light and standard assessment version, between alternatives, and the method of consultation are all monitored, since these factors have a huge impact on the results of the assessment. This advice is also based on experiences in other countries, where an authoritative and external organization is responsible for the monitoring process and users are able to trust the objectivity and quality of assessments.

7 Recognition

Knowledge in the Netherlands of the current analysis system (IAK) appears to be limited at this time. The success of the assessment system advised is only guaranteed if substantial investments are made to expand the knowledge of assessment and the assessment framework within departments.

We advise that recognition of the current assessment system is substantially increased on the basis of expertise and experiences at home and abroad, by making adequate knowledge and capacity available, and by making the system as user friendly as possible.

Conclusion

In our opinion, this study provides important points that are worth acting on if the Netherlands is to grow into an international forerunner in evidence-based assessment

systems. We note that the current version of the Integrated Assessment Framework for legislation and policy making does not adequately satisfy the above-mentioned conditions.

We look forward to receiving your response to this advice, so that we can include it in our coordinating advice on impact assessment in the Netherlands.

B2 Assuring the Zero Option for New Policy-Making

To the Prime Minister | The Hague, 2 June 2010

We are delighted to present you, as chairman of the Ministerial Steering Group for Better Regulation (MSR), with a report on the zero option consideration. The study relates to the way in which prior consideration is given to the question of whether new policy concerns a government task, and whether legislation in the case in question is the best instrument. By consistently giving this consideration prior to creating new policies, the implementation of superfluous or unnecessarily burdensome legislation and regulations can be prevented.

The study concerns the consideration that *is given* to ministerial regulations. The reason behind this is that considerations taken for ministerial regulations are not subject to any external control. In this respect, assurance deviates from *laws* and *orders in council* where the Ministry of Justice and the Council of State evaluate the zero option respectively, within the scope of legislative quality and the policy assessment evaluation.

The empirical basis of the study rests on recent ministerial regulations, dating from the period between January 2008 and September 2009. This implies that the study is a reflection of the way in which ministries *currently* deal with these considerations.

We are convinced that the consideration of whether a government task is involved and whether legislation is the best instrument in the present political and economic circumstances is essential to the effectiveness of the policy-making process. The reconsiderations recently presented by your cabinet are a striking example of this. Where existing policy is fundamentally reconsidered, a logical consideration of new policy must follow suit.

In this letter, we therefore outline several recommendations to achieve this. We base our advice on the enclosed study that was commissioned by Actal.

Advice

We attach great value to transparency in the legislative process. For this reason, the study began by evaluating the extent to which ministerial regulations provide an insight into the considerations taken for the zero option. To achieve this, 350 regulations were closely examined. The conclusion is that no explicit zero option consideration was found in the explanatory notes of a single ministerial regulation.

In addition, the study screened the explanatory notes of these regulations for passages that might be viewed as an implicit consideration. The conclusion was not reassuring. Of the 350 regulations examined, 17 per cent of explanatory notes were found to contain a passage that might be viewed as an implicit consideration of whether a governmental task

was involved. An implicit consideration of the choice of instrument was found in 8 per cent of the notes.

This means that both important considerations, which are generally regarded as the starting point for new policy, are usually unclear in the explanatory notes for ministerial regulations.

We advise that the considerations on whether the new policy relates to a government task and whether legislation is the most appropriate instrument are explicitly included in the explanatory notes accompanying new ministerial regulations.

The more detailed analysis of the cases in which considerations do appear shows that the reasoning is often of a technical and formal character. Any substantive consideration, focused on the social need and consequences, is virtually non-existent.

The policy substantiation needs to include an answer to the questions of government task and instrument choice, in which detailed emphasis is given to the added social value of the proposed policy. This requires an explicit and more specific reason than the considerations found in the regulations examined. If we start with the question of the government's task, then it is not enough to simply note that the market is not solving a problem. After all, the government should not have to do *everything* that the market does not. Nor is it enough to ascertain attention to vulnerable groups is involved, because not every form of attention to these groups qualifies as a government task.

Also, the demand for legislation to be chosen as the most appropriate instrument is typically answered in highly general terms. In addition, ministries point out the unambiguous status of legislation, the binding character and/or the equal application of rules. On the basis of the arguments found, it appears as though more box ticking than consideration is taking place. Moreover, the arguments do no justice whatsoever to the available range of policy instruments and the associated assessment tools that are to be found in literature on market failures, public interest and instrument choice in policy-making.

We advise that a substantive consideration is undertaken in which the added social value of the proposed policy and the chosen range of instruments are assigned a key role and that, in compliance with our first advice point, this more specific consideration is included in the explanatory notes.

The enclosed study shows that the zero option consideration in ministerial regulations, whereby the evaluation is arranged by the ministry itself, is generally either not forthcoming or does not come up to the mark. The fact that no external evaluation takes place for ministerial regulations – unlike the case of legislation in the formal sense and orders in council – is, in our opinion, a relevant circumstance. Earlier studies have shown a positive connection between the existence of an external assessment and the extent to which a consideration is actually taken[1].

We advise that the zero option consideration in ministerial regulations is externally assured.

1 *Practical Study of Regulatory Impact Assessments* (July 2008). This study is within the scope of the advice on the Integrated Assessment Framework (IAK) presented to the Minister of Justice.

A more detailed substantiation of the observations can be read in the report. Furthermore, we would be delighted to exchange views with you on the question of how our future advice can best be put into practice. An important part of this involves exploring the wider implications of this conclusion, such as those related to assuring the quality of an impact assessment system[2].

2 Please refer also to the *Study Report on Users' Requirements for an Integrated Assessment Framework/ Regulatory Impact Assessment* (April 2010).

B3 Strengthening Dutch EU Policy Preparations in Order to Curb European Regulatory Burdens

To the Minister of Foreign Affairs | The Hague, 12 November 2010

European regulatory impact continues to be a frequent blind spot in Dutch policy preparation. The interests of Dutch businesses and citizens require that regulatory impact which stems from European legislation be curbed. The fact is that approximately 50 per cent of administrative burdens on businesses in the Netherlands originate from European legislation. In addition to reducing regulatory burden on existing directives and regulations, it is important to minimise the effects of regulatory burden created by new European legislation. We have commissioned a study into attention to the effects of regulatory burden in Dutch policy preparation for proposed European legislation. This has resulted in the enclosed report *Impact Assessed*. The study provides an insight into whether the Netherlands is adequately equipped to spot and tackle regulatory burden from Brussels. To this end, the study primarily examines the Assessment of New Commission Proposals (BNC) datasheets. On the basis of this study we advise how the Netherlands can more effectively reduce regulatory burden that stems from new EU legislation proposals.

Strengthening policy preparation in the Netherlands

During a period of political policy-making or determining the Netherlands' standpoint, it is vital that adequate insight is available into the effects of regulatory burden in the Netherlands. The enclosed report concludes that:

- Three quarters of BNC datasheets examined, which contain a regulatory burden component, do not or are unable to clearly identify the effects of the European Commission proposal on administrative burdens;
- Only 5.5% of datasheets examined, which contain a regulatory burden component, give attention to alternatives;
- Only 2% of datasheets examined, which contain a regulatory burden component, give attention to low-burden implementation;
- Considerations on the extent to which a regulatory burden assessment is carried out are not included in the BNC datasheet; and
- Users of the BNC datasheet indicate that they generally find that regulatory burden information contained in the datasheet is hardly ever correct.

The usefulness of the BNC datasheets in reducing European regulatory burden depends on the way in which interpretation is given to these datasheets. We conclude that at present the datasheets do not provide sufficient insight into the effects of regulatory burden and therefore have less added value for Dutch EU preparations than is possible. This creates a lost opportunity for gaining timely insight into the effects of a proposal on the Dutch business community, citizens and government. It undermines the potential for introducing less burdensome alternatives during negotiations. In this respect, the provision of information on the effects of regulatory burden to the Senate and the House of Representatives is also inadequate. This limits the opportunity for both Houses to be able to estimate what the proposal means for the Netherlands and thereby weakens the controlling role of the States General.

We advise that the consistent and mandatory use of a regulatory burden assessment for European legislation proposals is made part of the BNC datasheets. This assessment should only be allowed to be absent in accordance with the 'comply or explain' principle.

The regulatory impact assessment should examine the various aspects of regulatory burden (substantive compliance costs, administrative burdens, financial costs) and potential alternatives with less regulatory burden. Consideration should be given at an early stage to how future implementation is to be carried out. The relevant implementing bodies should be involved in this. Insight should be furnished regarding the extent to which regulatory burden stems from European legislation and the extent to which it arises from the way in which it is interpreted in the Netherlands. The method of assessment should also integrate with existing methods for measuring regulatory burden.

Drawing up an integrated impact assessment (IA) for certain legislation proposals is mandatory within the European Commission. An IA also includes the effects of regulatory burden. The study indicates that, in practice, little use is made of information contained in the Commission impact assessments. European road maps, which give an initial indication of proposed European Commission policy, do not seem to be very well known among Dutch policy-making officials. We advise that when making a regulatory impact assessment for the Netherlands, more use is made of the information that is already available, namely the European impact assessments and the European road maps, so that the effects of regulatory burden stemming from proposed European legislation can be anticipated sooner and better.

In our earlier advice Towards a System of Impact Assessments for Proposed Legislation and Policy[1] we indicated the need for developing an integrated and evidence-based assessment system for proposed legislation and policy-making. Given the impact that proposed European policy has on the Netherlands, and the fact that nowadays there is little room for negotiation on the implementation of European legislation, it is essential that proposed European legislation becomes part of such a system.

We advise the timely use of impact assessments for proposed European legislation so that an initial indication of the effects on the Netherlands can be included during negotiations.

Quality assurance for regulatory impact assessment

At the moment, the Regulatory Reform Group and REAL both play an active role in attention to regulatory burden from proposed European policy. In these roles, they depend on cooperation between the departments responsible. They ensure that sufficient attention is given to regulatory burden in Dutch EU preparation. Parliament also has a controlling role. Interviewees from the House of Representatives indicate that awareness on the subject of regulatory burden is generally low within the fraction and among parliamentarians. REAL has indicated that it is not sufficiently integrated with EU preparation at the present moment. The Regulatory Reform Group focuses primarily on priority dossiers within the BNC process. The quality of BNC datasheets on regulatory burden is not adequately controlled. This may result in the loss of important signal moments, through which regulatory burden for the Netherlands, as well as the associated costs and irritation, are unnecessarily high. According to the study, there is a requirement for an independent organisation that evaluates the BNC datasheets, thereby increasing their quality and assuring the objectivity of assessments.

1 Advice to Minister Hirsch Ballin of the Ministry of Justice dated 12 April 2010.

We advise that ex ante quality assurance is organised for the regulatory burden paragraph in BNC datasheets.

Strengthening policy preparation in Europe
The Commission does not draw up an IA for all proposals. The decision to do this lies in the hands of the Commission. It appears to be difficult for member states to exercise any influence in this area. We are of the opinion that an IA, and possibly a lighter IA, should accompany all European proposals. In addition, it is particularly desirable that an indication is given as to the added value a proposal has with regard to the existing situation and to other instruments.

The study reveals that the Netherlands hardly ever pushes for impact assessments of European proposals at the Commission, despite the fact that possibilities to do so exist via the informal route. In view of the pioneering role that the Netherlands plays in the European Union regarding the reduction of regulatory burden, it is part and parcel of our role to press the European Commission for the more frequent use of IAs.

We are at your disposal in order to work together with the Cabinet to give further shape to our advice.


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C Specific policy domains

C1 Unfettering School Heads

To the Minister of Education, Culture and Science | The Hague, 27 September 2010

The school head operates on a broad and complex playing field involving many different parties. Each of these parties has its own interests, which are frequently translated into a demand for accountability from the school head. School heads generally understand very well that they need to be accountable, but it is the manner in which this takes place that is key. The accumulation of a variety of demands for accountability results in the school head being faced with countless accountability burdens during the course of his or her daily routine. These burdens are increased by overlap, inconsistencies and differences in the frequency and timing of demands for accountability. In this advice, we indicate the manner by which regulatory burdens experienced by school heads can be reduced, and the role that your ministry can play in this.

Actal has commissioned a study into the regulatory burdens that school heads experience in primary education, secondary education and vocational and adult education. This is in line with the objective of reducing regulatory burdens to give professionals more leeway.

The study *Unfettering School Heads* provides an insight into the fragmented view of the playing field from the perspective of the school head. As part of his or her duties, the school head is required to deal with at least nine different categories of organizations that demand accountability, namely:

1 Ministry of Education, Culture and Science
2 Education Inspectorate
3 Education Executive Agency (DUO)
4 Other ministries (Social Affairs and Employment, Finance, and Housing, Spatial Planning and the Environment)
5 Umbrella organisations (Primary, Secondary and Secondary Vocational Education Councils)
6 Local authority
7 Regional Reporting and Coordination Centre (RMC)
8 School board
9 Parents

These organizations demand accountability on the following matters:

1 Funding
2 Education performance (timetables, compulsory education, standard hours, pupil numbers), including the annual report and accounts, the provision of information to the Central Financial Institution (CFI), DUO and the accountant.
3 School staff
4 Duty of care (special needs students)
5 Subsidies
6 School buildings
7 Other matters

The accountability burden for school heads is not only large because of the number of organizations demanding accountability and the number of aspects for which accountability must be established. As we have just indicated, the burdens experienced also arise from overlap, inconsistencies, and differences in the frequency and timing of demands for accountability.

A first step in reducing regulatory burdens on school heads is to ensure that agreements are made with the various organizations that demand accountability to reduce regulatory burdens on school heads. With regard to the reduction of demands for accountability made by the government, a programme-based approach can be employed that includes the reduction of regulatory burdens on the education sector as a key objective, for which performance agreements can be made with those who demand accountability. Starting points for reducing the accountability burden include harmonising the information requested, the timing and frequency of requests, and the way in which information needs to be submitted. It may be possible to introduce fixed accountability moments. It is reasonable to expect that your department will take on the role of controller in the above-mentioned programme-based approach and that you will be appealing to others who demand accountability to reduce regulatory burdens on school heads.

We advise that you arrange for the programme-based reduction of regulatory burdens on the education sector and that you assume control of this approach.

At the same time, it appears that the number of organizations that demand accountability is becoming a problem in itself. An approach such as that outlined above may make it possible to reach agreements on reducing the number of organizations that demand accountability from the school head.

As stated above, overlapping demands for accountability form an unnecessary burden for the school head. The choice for a more horizontal system of accountability in the education sector has not always led to less vertical accountability. In practice, horizontal accountability is stacked above vertical accountability burdens, while it is possible to reduce this vertical accountability. When horizontal accountability functions well, vertical accountability can be reduced. This prevents the school head from having to be accountable in 'a variety of different directions'.

We advise that you prevent an overlap in accountability, by (1) not stacking horizontal and vertical accountability and by (2) ensuring that information is requested from a school head on a once-only basis.

Accountability for individual (small) subsidies and specific learning packages is experienced as burdensome. A percentage of this overlaps with the differing origins of these subsides and, as such, with the number of organizations demanding accountability. In addition, it is evident that accountability for a lump sum can be far better coordinated with a burden-free method than when school heads are required to demonstrate accountability for individual subsidies.

We advise that funding schools with a lump sum as often as possible to reduce accountability burdens related to subsidies.

The study shows that unfulfilled expectations also exist in some cases. The researchers point at that school heads often expect that accountability will reduce as autonomy

increases. This does not always prove to be the case. As school heads are given more autonomy, the number of subjects for which accountability is demanded often increase in practice. The researchers refer to this as an autonomy paradox.

School heads indicate that they view accountability for the primary education process as self-evident. In particular, accountability for the secondary process (personnel, school buildings) is experienced as a burden. It is therefore reasonable to expect accountability for the secondary process to come under scrutiny. Moreover, there is a desire among school heads for better coordination with the education inspectorate with regard to the accountability of the education sector. Among other things, this includes the demand for the subject of accountability (the what, why and how), or - as in the case of the citizenship learning package - better coordination of learning objectives. This can be viewed as a response from a professional who feels primarily controlled and is unable to provide adequate interpretation from the perspective of personal commitment. With that, those who demand accountability are not well aligned with the practices of the school head.

Following on from this, the risk approach can be developed in a burden-free manner. In order to achieve this, the Ministry of Education, Culture and Science applies the concept of 'earned trust', which implies that schools which perform well will receive less frequent visits from the education inspectorate. As an alternative to this, it can be presumed in principle that all schools will have a lower frequency of inspection and that a higher frequency will only be applied should there be reason to do so, for example in response to signals provided on the basis of an alert system. Schools that function well are thereby spared and school heads gain greater leeway. Limiting the amount of information demanded by institutions that function well could also increase this leeway. At the same time, a more stringent sanction regime can be taken into consideration, thereby ensuring that schools that do not function adequately can be coordinated and that potential incidents do not undermine the leeway gained for schools that do function well.

We advise a lower frequency of inspection in combination with an alert system and a more stringent sanction regime.

We hope that the advice enclosed will give an additional impulse to the reduction of regulatory burdens in the education sector by providing professionals with greater leeway. In addition, we would also like to lend our support to all the efforts your ministry is already expending in this area. We would be delighted to provide more detailed information on this advice in a meeting.

C2 Regulatory Burdens – Sustainable Procurement Programme

To the Secretary of State for the Ministry of Infrastructure and the Environment | The Hague, 6 January 2011

On 1 June 2010 we received a request from your predecessor to issue advice on the administrative burdens arising from the policy for sustainable procurement carried out by the State. We outline that advice in this letter. We would also like to point out that our advice is not only related to administrative burdens arising from sustainable procurement. The Rutte cabinet intends to reduce all regulatory pressure, including substantive compliance costs as well as administrative burdens. We are therefore focusing our advice – which is also consistent with our earlier advice of 8 June 2009 – not only on administrative burdens arising from sustainable procurement, but also on burdens arising from substantive compliance costs. We have conducted an additional study into these compliance costs in key sectors such as catering, building, office furniture and transport services. The study report 'Substantive Compliance Costs Sustainable Government Procurement Programme: A Study of 4 Sectors' is enclosed with this advice. This study forms an important basis for our advice, in conjunction with the findings from the study 'Administrative Burdens of Sustainable Procurement' (SIRA) and expert panels.

During the process of drawing up our advice, we noted that there is wide public support for the government's drive towards sustainability. The role that the previous cabinet envisaged for the government is one of launching customer. As part of this vision, sustainable procurement has been selected as an instrument based on criteria documents, used by the government to make procurement decisions in line with environmental and social criteria. We conclude that this choice of instrument has enormous consequences for regulatory pressure on businesses, whereas major doubts exist about the degree to which this policy instrument contributes to the ultimate policy aim of sustainability. We therefore advise you to fundamentally revise the policy on sustainable procurement. We explain this conclusion in detail below.

1 Overlap and a lack of vision lead to unnecessary regulatory pressure.
The previous cabinet commissioned a study into the administrative burden of Sustainable Procurement and concluded that these burdens amount to a maximum of 169 million euros a year[1]. The substantive compliance costs are an additional element. They already total a minimum of 125 and a maximum of 375 million euros in the building sector alone. Furthermore, the study into substantive compliance costs reveals that the policy hits smaller businesses relatively harder, and that in practice it proves to be an entry restriction.

We note that a percentage of these costs are related to an overlap between criteria documents and existing legislation and regulations. This is because the product requirements established on the basis of the criteria documents are also established on the basis of existing legislation and regulations that apply to manufacturers. As a result of the sustainable procurement policy, the business owner is required to demonstrate

1 The SIRA report states a bandwidth of 10.8 to 169 million euros, whereby it is indicated in the conclusions that administrative burdens will rise towards the maximum scenarios if the objective to increase the use of 'most economically advantageous tender' (EMVI) is achieved.

for each transaction that he has complied with the law. The attached report reveals that these administrative burdens occur particularly in the transport and office furniture sectors. The fact is that this creates additional inspection.

We advise scrapping all product criteria that overlap with current legislation and regulations.

In practice, sustainable procurement creates an incentive for certification. This is because a certificate is a simple means of proof for a buyer to check. We recently issued advice on certification and its effects on regulatory pressure[2]. In this advice we draw attention to the risk of mounting regulatory pressure during implementation. This also arises during sustainable procurement. In the example of office furniture coating, it emerged that the certificate does not always suffice and that expensive test reports (costing 150,000 euros each) are requested in addition.

2 The contribution that the policy instrument makes to the policy objective is unclear.

For the policy instrument Sustainable Procurement criteria for various product groups has been established to determine the degree of sustainability. These criteria documents are 'living' documents that are regularly amended. This is logically dependent on the choice of instrument that the government uses in its attempt to encapsulate the evolving developments in sustainability into criteria. The government is not going to put a dot on the horizon for business owners to anticipate. In the event that the government does sketch a future perspective, such as the use of the CO_2 performance ladder, this seems to be far better aligned with business owners' business processes.

The choice for criteria documents, and not for sketching a future perspective on sustainability, means that these documents often need to be amended for new developments. This frequent adjustment is undesirable for two reasons. Firstly, it is difficult to relate to investment depreciation periods. Against this background, the current frequency is too high (documents for several sectors were amended twice in 2010). Secondly, it appears that buyers from different authorities are not always up to date with developments. The result is that instead of being able to automatically rely on the most recent criteria document, business owners are faced with an inconsistent government with changing requirements.

We advise setting objectives on providing an insight into sustainability and indicating which sustainability objectives business owners must fulfil and within which time frame.

Obviously, fostering sustainability is an issue for the government. The present sustainable procurement policy does not automatically contribute to this. The enclosed study into the substantive compliance costs of the Sustainable Procurement policy concludes that the chosen instrument results in lower innovation. The conclusion is that in various cases the policy instrument causes innovation focused on sustainability, and with that sustainability itself, to be slowed down.

The reason for this is that the criteria documents instrument is unfit for the purpose of doing justice to the complexity and versatility of the principle of sustainability. In practice, criteria documents degenerate into check lists, thereby resulting in

2 Advice on Certification and Regulatory pressure dated 3 December 2010, reference: SvE/MK/2010/197

the creation of a paper reality. For instance, in the catering sector the percentage of organic products are examined, while the mode of transport or whether the products have been grown in an energy-generating greenhouse is not taken into account, and the percentage of wastage due to products being thrown away is not considered. Similar examples have been found for other sectors. We must therefore conclude that the principle of sustainability has been translated into the current sustainable procurement policy in an arbitrary fashion.

As a result of the progressive measurements, the principle of sustainability appears by definition to be difficult to encapsulate in criteria. The choice of instrument is incorrect, because there is tension between the innovative dynamic and the static criteria documents. This carries the risk that minimalism instead of innovation is stimulated with regard to sustainability.

We advise not to proceed with the procurement policy based on sustainability criteria until it is absolutely certain that it contributes to actual sustainability in the sector concerned.

Finally, we would like to draw your attention to our earlier advice on Sustainable Procurement, dated 8 June 2009. Various suggestions are included for setting up sustainability policy in a way that provides greater relief from burdens. Judging by the response of 1 June 2010, it appears that these suggestions call for a far-reaching effort from the department. We wish to point out that sustainable procurement policy is currently demanding more than ever from business owners and procurement officers at several government organisations and we therefore urge you not to evade this responsibility.

D Specific policy instruments

D1 ICT policy and reduction of regulatory burdens

To the Secretary of State for the Ministry of the Interior and Kingdom Relations | The Hague, 10 May 2010

The present cabinet has set itself the objective of perceptibly reducing administrative burdens for citizens and the business community by 25%. The use of ICT plays a key role in this. Actal has noted that a significant proportion of the administrative burden reduction will either be delayed or not achieved at all as a result of enormous setbacks affecting government ICT projects. It is important to society, however, that within the scope of greater trust in the government and as a contribution to economic recovery, the planned reduction is still achieved using ICT applications within a reasonably short period of time.

In this advice we wish to provide you with a number of considerations for improving ICT applications. These considerations are based on a study carried out on our behalf by the University of Delft and on discussions with a number of experts. We are pleased to present you with the enclosed study report 'Out of Sight: Policy Measures for Accelerating the Use of ICT Applications to Reduce Administrative Burdens'. This study examines two cases: the XBRL project (otherwise referred to as SBR) and the digital Environment Advice Centre for the Environmental Law (General Provisions) Act (WABO). The considerations contain important lessons for the future. They can make a valid contribution to achieving the reduction in administrative burdens for citizens and businesses, and thus to the restoration of confidence in the government and economy.

In our response of 5 March 2010 to the Progress Report on Service Provision, Regulatory Burdens and Information Policy presented to the House of Representatives (Parliamentary Papers II 2009 – 2010, 29 362, no. 157) we note that in previous years many studies have been carried out into the failure of ICT projects, including studies carried out by the Court of Audit[1]. The recommendations from these studies refer, among other things, to the complexity, time schedule, business cases and changing functional requirements of projects. The government has taken measures to make large scale ICT projects manageable during their implementation by way of quarterly reporting, CIO per department and gateway reviews. The study carried out by University of Delft revealed that many of these projects encounter problems that arise during the initial phase and that these problems are not adequately acknowledged or prevented during this period. We have noted your response to the Gateway Review NUP, as sent to the House of Representatives by you on 1 April 2010. We find it a cause for concern that in your response to the Gateway review NUP you do not propose any adequate measures for the problems surrounding complexity, planning, business cases and so forth.

In this advice we examine the conclusions from study reports carried out by the University of Delft and concrete suggestions for accelerating the use of the ICT instruments studied. These recommendations are partly generic in nature. In this advice we also focus on

1 Court of Audit 2007/2008, Lessons from Government ICT Projects, Parts A and B.

the widely noted problems surrounding the preparation, approach, accountability and coordination of government ICT projects, and provide a possible solution.

Acceleration of the use of ICT applications

The University of Delft cites a number of recommendations for accelerating the use of ICT applications. It appears that the end user often loses sight of the focus on reducing administrative burdens because too much attention is given to technology and the importance of the directly involved parties. At a macro level, claims are made about administrative burden reductions that are imperceptible to users. The government should not be forced to act as problem owners on the behalf of users, but rather users should define problems themselves from the first moment they are encountered. As users of ICT applications, authorities, professionals, citizens and businesses often encounter difficulties when using new facilities. The assumption that use automatically results in the reduction of burdens is incorrect in these cases. Use demands that users make an investment by learning how to use a facility. Good support is necessary if the barriers to use are to be lowered. Moreover, users are a heterogeneous group and not a homogenous one. It is important to create clearer incentives for the various user segments if the new procedure is to be adopted. The use of ICT applications by authorities and professionals will need to result in a significantly perceptible time saving. Lowering the fees on the Online Environmental Advice Centre may serve as an incentive to building permit applicants. For business owners or intermediaries, the use of XBRL could be encouraged by introducing a lower price for filing annual accounts or a discount on the annual Chamber of Commerce subscription. Measures such as these will increase the net benefits for these users.

We advise you to prevent ICT users from disappearing from sight. It is important that users are not only involved in the development of ICT, but that separate business cases are set up for each relevant user segment. In order to encourage the use of the ICT application, the business cases should demonstrate the benefits to the specific user groups of using the application. Incentives for these user groups may accelerate use further.

Control, accountability, approach and monitoring

The University of Delft study reveals that the user has been lost sight of in the projects examined. Consequently, there is a greater risk that the benefits estimated for the user at the beginning of the project will not be realised. In the event that changes are made to the functional specifications of the application to be developed, for example as the result of a technical complexity estimate, it is wise to consider in the interim period whether the benefits can still be weighed against the costs to be incurred. Furthermore, many delays can be attributed to incorrect decisions during the first phases of a project.

We advise you to carry out a new cost-benefit analysis for large-scale ICT projects in which specifications have been substantially amended, insofar as this has not yet taken place. The analysis should take into account the net benefits for the government itself and those for citizens, professionals and businesses.

The above-mentioned study also reveals that the link between the ICT application and applicable new legislation may be a key factor behind delays.

We advise you to create a workable link between legislation and ICT applications. Legislation can stimulate the use and quality of the ICT application. Delays caused by new legislation should be prevented from having a knock-on effect on the ICT application.

In 2007/2008, the Court of Audit also examined government ICT projects and found that the most significant cause for the complete or partial failure of these projects was that they are often overly ambitious and complex due to the combination of political, organisational and technical factors. These overly complex projects are characterised by a lack of balance between ambition, available manpower, resources and time. In the recent Gateway review NUP it is noted that the level of ambition is too high in relationship to the number of projects to be achieved, and also that there is insufficient coherence in the development of these projects, with project and programme management falling short of the mark.

We advise you, partly on the basis of the University of Delft study, to consider first developing small facilities that lead to proven benefits for certain users. These small facilities can then be rolled out for other user groups at a later date on the basis of proven technology and concept. This is on the condition that the government first has its own affairs in order and does not itself form a hindrance to use.

In addition, there are two more fundamental measures that we consider essential if these problems are to be solved:

- The creation of greater control and effectiveness by giving a central organisation more authority to steer and coordinate, in addition to more responsibilities. In order for effective coordination to take place, certain preconditions including adequate expertise and an overview of all ICT projects must be fulfilled.
- Increased monitoring should not only be introduced during the execution of ICT projects, but also external experts should be engaged to carry out checks on the presence and quality of the business case, feasibility, complexity, etc. This does not merely involve avoiding familiar pitfalls. The verdict of external experts is also required in order to establish which government organisations are relevant, what the best methods are for these organisations, in which way future users and stakeholders may become and remain involved, and which issues can be computerized, either centrally or by the organisations involved.

We advise you to identify the above-mentioned and all other potential solutions and to further investigate exactly how they can best be put into practice.

In order to emphasize the importance of this advice, we refer to the magnitude of government ICT expenditure (a total of Đ 2.3 billion euros in 2004). XBRL and the Environmental Advice Centre could save Đ 0.5 billion.

D2 Certification and Regulatory burdens

To the Minister of Economic Affairs, Agriculture and Innovation | The Hague, 3 December 2010

Certification is seen as one possibility for reducing regulatory burdens. Certification offers the business community insight into the quality of its products, services and processes through self-regulation. In principle, government standardization and monitoring may not be forthcoming where certification is concerned.

In order to gain an insight into the impact of certification on regulatory burdens, we commissioned a study of existing certification systems in the Netherlands. The study was aimed at systems directly or indirectly linked to legislation and regulations. As the minister responsible for tackling regulatory burdens, we are pleased to present you with the study report *Certification and Regulatory Burdens*.

The study shows that certification does not automatically lead to lower regulatory burdens. This is due to the fact that the direct or indirect link between certification and legislation and regulations incurs the following risks:

1 The risk of mounting implementation:
   - mounting obligations for business owners to cooperate with evaluation research and the provision of information; and
   - mounting public and private monitoring and/or enforcement of regulations
2 The risk of mounting standards (legislation and regulations cause private standards of the certification system to be supplemented with public standards).

These risks are strengthened if multi-tiered governance is involved and/or standards are inadequately clear and assessable.

We advise the Cabinet to adopt a reticent stance on setting supplementary government standards and government monitoring for the purpose of certification, and to consciously weigh up the risks of regulatory burdens.

Furthermore, the study shows that legislators have little knowledge of the way in which certification may be used as a burden-free instrument.

We advise the Cabinet to develop an impact assessment for utilizing certification as a policy instrument. This impact assessment must focus on consciously weighing up the risks of unnecessary regulatory burdens and on combating the incorrect use of the certification instrument.

To this end, the impact assessment should at least give attention to the following questions:

1 What is the problem and who is the problem owner?
2 Is it possible to apply the zero option?

3 What is the current practice and attitude of the sector/trade?
4 What potential policy instruments are available for solving the problem? Why is certification in particular being chosen? What are the risks of mounting standards?
5 In the event that the decision is taken to link with certification, does the sector/trade have sufficient knowledge to perform certification well in practice? What impact will this have on potential new parties, for example, with regard to compliance costs?
6 If monitoring is to play a role, is having a certificate sufficient in order to satisfy inspectorate requirements? Alternatively, will other additional requirements be made? What impact will these additional requirements have on mounting regulatory burdens?

Furthermore, the study shows that the State does not have adequate insight into which certification systems are linked to legislation and regulations; there is no complete overview whatsoever. This lowers the opportunity for introducing certification as a means of reducing regulatory burdens.

We advise you to use the above-mentioned impact assessment to identify the existing uses of certification and to review whether these certification uses are as burden-free as possible.

The impact assessment can thus be used to clarify and strengthen the way that independent judgements are formed regarding the use, necessity and effectiveness of a link between public monitoring/enforcement and private certification.

We also advise you to place a strong emphasis on the impact that this link is expected to have on regulatory burdens, as early in the proposed policy consultation as possible.

We trust that this advice provides you with a greater insight into the use of certification as a self-regulation instrument that offers an alternative to government-based legislation and regulations, in addition to the opportunities certification offers for contributing to a reduction in regulatory burdens on businesses.

For the sake of completeness, we hereby inform you that we have sent a copy of this advice to the Minister of Security and Justice, due to his responsibility for the quality of legislation and regulations in the Netherlands.

D3 Sunset legislation

To the Minister of the Interior and Kingdom Relations | The Hague, 3 December 2010

The use of a sunset clause in legislation or regulations is often seen as an opportunity for reducing regulatory burdens. The reason for this is that a clause of this nature explicitly contains a common repeal date, after which legislation or regulations lose their legal force. Continuation is only possible when an evaluation gives reason to extend the effective duration. This extension requires a new decree.

In order to gain an insight into the opportunities for using a sunset clause to reduce regulatory burdens, we commissioned a study into the prerequisites that need to be satisfied. As the minister responsible for the advisory request regarding the confidentiality approach in the Netherlands, *we hereby present you with the study report A Closer Look at Sunset Legislation*. The report shows that two prerequisites need to be met:

1 *Temporariness*: Sunset legislation can be utilized for developments of a temporal nature and/or when the result/objective has been achieved after a certain period.
2 *Uncertainty*: The period within which the results of the legislation can be achieved is uncertain and/or there is uncertainty about the ultimate degree to which the legislation will have effect.

We advise that the use of a sunset clause in legislation and regulations should be a standard consideration if these prerequisites are satisfied.

The study shows that regulators generally have little knowledge about the use of sunset clauses. As a result, there is a greater risk that the opportunities for using a sunset clause to reduce regulatory burdens are insufficiently recognized.

In order to promote the use of the sunset legislation when the prerequisites are satisfied, we advise the Cabinet to take measures to make the use of sunset clauses more widely known.
For instance, these measures entail:

- **Including a separate 'sunset clause' reference in the *Drafting Instructions for Legislation*; and**
- **Formulating an unambiguous definition of sunset legislation and a sunset legislation decision tree that identifies the differences between sunset legislation, temporary legislation, experimental regulations; and**
- **Including the definition and decision tree in the Integrated Impact Assessment and embedding them in the future *impact assessment methodology*.**

Furthermore, the study refers to the risks that improper use of the sunset clause may incur. For example, the study identifies that the sunset clause may lower the threshold for new legislation and regulations because the clause deems it 'merely' temporary. We do, however, consider it quite possible that such risks form part of the above-mentioned

decision tree and do not consider the risks such that use of the sunset clause should be completely abandoned. We are confident that combined with our advice use of the sunset clause will win wider support within national government and the business community. We remain at your disposal in order to assist you in giving further shape to our recommendations.

Finally, we would like to draw your attention to the fact that this advice has been issued in response to the previous Cabinet's request for advice on applying a confidentiality approach to see how regulatory burdens can be reduced for the business community. It forms part of a series of recommendations made by Actal regarding this approach. Our previously issued recommendations include 'Towards a System of Impact Assessments for Proposed Legislation and Policy', 'Assuring the Zero Option for New Policy-Making' and 'Unfettering School Heads'.[1] In conjunction with this advice, we have also issued the advice 'Certification and Regulatory Burdens'.

For the sake of completeness, we hereby inform you that we have also sent this advice to the Minister of Economic Affairs, Agriculture and Innovation and the Minister of Security and Justice.

1 Actal recommendations dated 12 April 2010 (ref. 2010/085), 2 June 2010 (ref. 2010/118) and 27 September 2010 (ref. 2010/162)

Theme of the photos: *Dutch horizons*

If you have any questions regarding the work of Actal, please feel free to contact our staff at any time.

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