



Less

bureaucracy

More

societal

impact

**Recommendations for
the Cabinet based on
the first audit of
regulatory burden**

/Actal



Actal Advisory board on regulatory burden

Less bureaucracy, more societal impact

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Preface to the English edition

Dear reader,

We are proud to present you with the first Regulatory Burden Audit. Besides the tasks on the flow of new regulation (ex ante assessment) and also on the stock of existing regulation (ex post evaluation) the mandate of June 2011 has entrusted Actal with a new task:

advising the government and both Houses of Parliament on the system of assessing the impact of proposed legislation on regulatory pressure experienced by the business community, by citizens, and by professionals in the healthcare, education, security and social security sectors.

In the Netherlands ministries are responsible for reducing and preventing regulatory pressure. Ministries ought to take their own responsibility for assessing legislation for the impact of regulatory pressure and to internalize this in their administrative processes. In practice this means that the assessment of individual dossiers no longer needs to be conducted by an external assessment body such as Actal (though the most important dossiers are still scrutinized by Actal). In stead of external scrutiny ministries should apply the assessments consistently using the Integrated

Assessment Framework (IAK), with some encouragement of the internal scrutiny by the Impact Assessment Board (CET).

The Regulatory Burden Audit examined whether this (new) system safeguards the proper and consistent identification of regulatory burden and whether the effects of regulatory pressure are taken into account to such an extent that external assessment at dossier level is no longer necessary. The following conclusions stand out:

- Within the government, much energy is wasted in a ‘bureaucratic game’ involving regulatory burden. Complying with the administrative work instructions seems more important than actually reducing the regulatory burden as experienced by firms, citizens and professionals.
- The internal scrutiny by CET should review more dossiers.
- The explanatory notes are often incomplete when it comes to depicting the rationale for the role of government, one-off costs, the choice for regulation as a policy instrument, and the consequences for regulatory burden.

We have decided to translate the full report as it has enriched the better regulation agenda in the Netherlands

with a useful new instrument. Furthermore it shows the necessity for an ongoing and ambitious programme on better regulation that is supported by the cabinet of ministers. The analogy for the European Union suggests that Europe too would benefit from an ongoing better regulation programme with ambitious goals that are set by the Commission.

J. ten Hoopen
Chair

Recommendations for the Cabinet

A new impetus is needed to tackle regulatory burden in The Netherlands. The results of the policies on regulatory burden reduction are not sufficiently noticeable for businesses, citizens and professionals. Moreover, it would appear that many policy-making officials experience the current manner of working as a set Hague reality. The Cabinet is faced with the challenge to make its policies on regulatory burden reduction have an actual and noticeable impact on society.

The social objective of simplifying the rules for businesses, citizens and professionals must be at the forefront. The Dutch economy is faltering. It would therefore benefit even more from having as few hindrances as possible. Demarcations, boundaries and barriers between types and sources of regulatory burden - state, provinces, municipalities, Europe, executive organisations and supervising bodies - may not be allowed to impede an effective approach. After all, someone subject to the rules doesn't really care where these rules are coming from. Also, the new approach must look as a whole at all kinds of regulatory burden: administrative burdens, substantive compliance costs and fees.

Realising the social goal is only possible if the Cabinet formulates an ambitious target and firmly steers towards achieving that objective. A new reduction target is essential. In addition, existing rules must also disappear where possible. And the Cabinet should inspire (joint) civil authorities by designating socially identifiable targets.

Within the government, much energy is wasted in a 'bureaucratic game' involving regulatory burden. Complying with the administrative work instructions seems more important than actually reducing the regulatory burden. That way, the full potential of the regulatory burden approach in the Netherlands will not be attained.

An important element of the bureaucratic game in tackling regulatory burden is the way in which ministries use the concept of 'proportionality'. The underlying idea behind proportionality is that ministries need not put much effort in dossiers that have only minor effects on regulatory burden. According to interdepartmental agreements, dossiers having total consequences for regulatory burden of less than 5 million euros (for businesses), or less than 10,000 hours and/or 10,000 euros (for citizens) may be disregarded for the net reduction target. Several ministries then make 'quick' estimates of whether the impacts fall below these limits and leave it at that. This is a missed opportunity, because many small and medium-value dossiers add up to significant new regulatory burdens. By doing this, ministries also fail to adequately recognise that the regulatory burden that these small and medium-sized proposals have on businesses, citizens and professionals entail can be quite appreciable. Actal therefore recommends that the current thresholds - in euros and hours - be abolished.

There are also other aspects of the policy on regulatory burden reduction that need to be strengthened. In 2011, the Cabinet established the Commit-

tee for Impact Assessment (CET) because 'sometimes it takes a fresh pair of eyes to put things into perspective'. The CET has to date only assessed seven dossiers. In order to be more effective the committee should use its eyes more often. Actal therefore recommends that many more dossiers need to be submitted to the CET. Efforts should be made for at least 25% of the appropriate dossiers to be submitted to this committee for review. The opinions of the CET should moreover be made public.

Finally, the explanatory notes to legislation and regulations need to improve. At the present time, explanatory notes often lack a societal focus and are incomplete when it comes to depicting the rationale for the role of the government, the choice for regulation as a means to an end, and the consequences for regulatory burden. In particular, the explanatory notes are focused on the internal deliberations within the ministry, and to a far lesser extent a justification to society. This allows departments to call consequences for regulatory burden on businesses amounting to e.g. 1 million euros 'negligible' in the explanatory notes. Here, the importance of the internal, official accountability appears to take precedence over its significance for society.

Method of working

In the past six months, Actal has, for the first time, audited the regulatory burden at 9 ministries. This investigation focuses on the (departmental) assessment of the consequences for regulatory burden of proposed legislation and regulations.

Within the regulatory burden audit, scrutiny is given to the quality of the deliberations that have taken place and to the organisational structure and culture within ministries. Furthermore, we also have involved other parts of the method of working, including in particular the Committee for Impact Assessment (CET). Actal has involved the National Audit Office in drafting the design of the regulatory burden audit.

Actal has screened a total of 9 ministries, namely:

- Ministry of the Interior and Kingdom Relations (BZK)
- Ministry of Foreign Affairs (BZ)
- Ministry of Economic Affairs, Agriculture and Innovation (EL&I)
- Ministry of Finance (Fin)
- Ministry of Infrastructure and the Environment (IenM)
- Ministry of Education, Culture and Science (OCW)

- Ministry of Social Affairs and Employment (SZW)
- Ministry of Security and Justice (VenJ)
- Ministry of Health, Welfare and Sport (VWS)

These ministries are the main sources of regulatory burden on businesses, citizens and professionals. It is therefore important for society that these ministries adequately combat regulatory burden; those coordinating and monitoring the reduction of regulatory burden need to critically supervise these ministries.

Within these ministries, we found significant differences in the organisation, culture and quality of the deliberations carried out in respect of the selected dossiers.

Our findings on a particular ministry have been extensively shared with that ministry. All ministries have constructively participated in the investigation and moreover have, in response to the discussion of the departmental findings, already announced an intention to tighten their departmental assurance. At the time of the investigation, some ministries were still working on the governance of their regulatory burden reduction approach, due to departmental restructuring.

In addition to the investigations and discussions at the various ministries, Actal also used the expertise of ABD Topconsult. A number of suggestions made by ABD Topconsult have been incorporated into the recommendations in this report.

In addition to the recommendations, we have also found good, inspiring examples in different ministries of tackling regulatory burden. These are examples that also deserve attention at other departments. Currently, however, 'best practice' is still insufficiently exchanged amongst departments. In our view, a better exchange of best practice can promote the reduction of regulatory burden.

Organise a learning day or a topical seminar for the exchange of best practice

Examples of best practice found are as follows:

- OCW has embedded the principle of 'sometimes it takes a fresh pair of eyes to put things into perspective' into the internal quality assurance of the regulatory burden assessment through the role for the Department of Educational Implementation (DUO).
- Based on the integrated assessment framework, EL&I has held a comparatively open consultation process with stakeholders about the proposed Nature Act.
- lenM uses dossier teams in preparation for European regulations and is therefore able to anticipate on this regulation at an early stage in the policy-making process.

Departmental findings

Actal shared its findings and recommendations with the concerned ministries . The aim of this was to highlight to ministries opportunities for making improvements in the way they reduce regulatory burden. A number of general findings for the assurance and assessment of the consequences for regulatory burden apply to several of the ministries surveyed. The four most important findings have been singled out below.

Firstly, in the second half of 2011, ministries were still working on tackling the further development of internal assurances for the assessment of regulatory burden. At the start of the Rutte-Verhagen Cabinet, a comprehensive reorganisation of departmental structures was launched. In concrete terms, for example, these are about:

- The merging of the former Ministry of Economic Affairs and the former Ministry of Agriculture, Nature and Food Quality;
- The transfer of the Directorate General for Housing, Works and

Integration from the former Ministry of Housing, Spatial Planning and the Environment to the Ministry of the Interior and Kingdom Relations;

- The merging of former the Ministry of Housing, Spatial Planning and the Environment with the former Ministry of Transport, Public Works and Water Management.

As a consequence, internal procedures regarding the deliberations over regulatory burden, for example, needed to be realigned, and policy-making officials sometimes still needed to find their way in their new environment.

Secondly, in general, ministries calculated the effects on structural administrative burdens consistently and correctly. As regards this aspect of tackling regulatory burden, clearly, the attention paid to this over the years has had its effects: minimizing administrative burden has become internalised into a common practice.

Thirdly, a number of issues require attention: the inclusion in the picture of one-off administrative burdens, substantive compliance costs and considering the zero option (the question as to whether there is a task for the government and whether regulation is then the most appropriate instrument). For the first time, the Rutte-Verhagen Cabinet has set a net reduction target for substantive compliance costs. It has become apparent that ministries have made a start in also including this type of costs in their calculations, but this is still not happening at all ministries equally consistently or equally well. Furthermore, certain regulatory burden impacts such as non-recurring administrative burdens and, to a certain extent, the zero option are left out of consideration relatively often. For these, moreover, the Cabinet has not set any targets.

Fourthly, ministries use the quantitative approach more for bookkeeping than for substantive consideration of policy alternatives. Using a calculation of the consequences for regulatory burden for the purpose of internal accounting has become more or less commonplace. Applying the same calculation methods to making a qualitatively good assessment of the new policy is often underutilised.

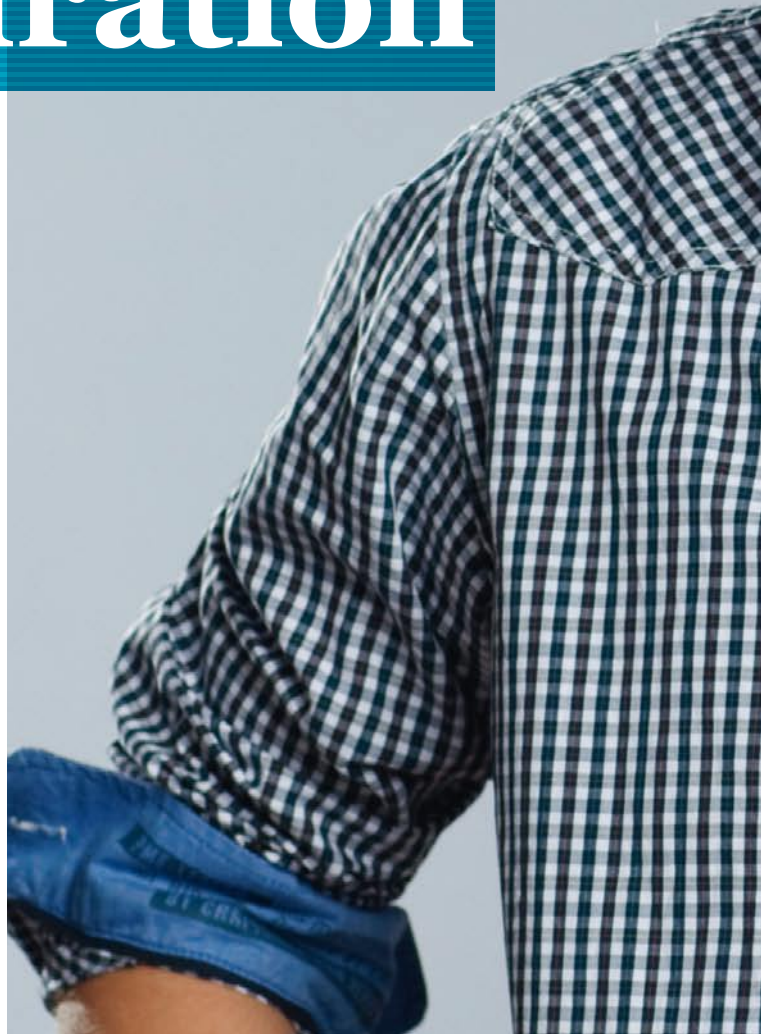
The following sections in this report are about the findings of the investigation and recommendations that transcend individual departments. We therefore direct these recommendations to the Cabinet and the (coordinating) ministries.

Less

fuss

More

inspiration





From bureaucracy to society

Conclusion A new impetus is needed to tackle regulatory burden. Businesses, citizens and professionals are not noticing enough of a result. Moreover, it would appear that many officials experience the current method of working as a ‘Hague reality’, that is, a reality that is only meaningful in The Hague as a bureaucratic center. The Cabinet will need to inspire more and also actually achieve more in order to change this.

Recommendations

1. Put businesses, citizens and professionals central

In tackling regulatory burdens, it is essential to break through demarcations, boundaries and barriers between the sources of regulatory burden (the state, provinces, municipalities, Europe, executive organisations and supervising bodies) and to integrally involve all the types of regulatory burdens (administrative burdens, substantive compliance costs, fees).

2. Formulate an ambitious, comprehensive target for reducing the regulatory burden

In so doing, make clear distinctions between businesses, citizens and professionals.

3. Set inspiring goals

These can include:

- New changes to rules? Not within 5 years after the last ones!
- Reduce decision limits for the government by 25 percent
- Ensure that the departments take up at least 10 initiatives from the 'Right to Challenge'.

4. Make the explanatory notes to legislation and regulations clearer and more complete

Visualise the consequences for regulatory burden more clearly. Focus on accountability to society rather than on internal considerations.

5. Support policymakers in making calculations

Establish a (small) centre of expertise, e.g. at the Dutch Central Bureau of Statistics. In addition, ensure financial support for investigation into the impacts of regulatory burden.

Businesses, citizens and professionals have long been reporting that they see little evidence of the reduction in regulatory burden. Therefore, in discussions with policy-making officials, there has been persistent enquiry into how noticeable the reduction in the regulatory burden is. Officials at several ministries call the present approach an example of ‘the set reality in The Hague’. With this they mean that the reduction of regulatory burden is (partly) a paper exercise. They hereby (implicitly) acknowledge that businesses, citizens and professionals who say that they are noticing insufficient results are right. This means that the societal impact needs to be increased.

Reduction target

In the discussions with the regulatory burden coordinators and the highest officials responsible for tackling regulatory burden within the ministries, emerged that the tackling of regulatory burden is currently very focused on the percentage by which the regulatory burden needs to decrease, i.e. the quantitative reduction target. Although this reduction target is of indispensable value as a management tool, the calculations have the charac-

ter of departmental ‘bookkeeping’ and ‘giving justification’ to the coordinating ministries. The function of the reduction target is above all control. It is a management tool that allows various ministries to be held accountable for their contribution to reducing regulatory burden.

The focus on the reduction percentage means that the regulator loses sight of the target group. The regulator needs to place the focus much more consciously on businesses, citizens and professionals. For society, it does not matter who has caused the regulatory burden - as long as something is done about it. For society, it does not matter whether it is a question of administrative burdens or substantive compliance costs - as long as the sticking points are resolved. This can be done by involving the target groups (even) more in the legislative process by means of consultation. To facilitate this, it is important that a ministry calculates the impacts of regulations, so that these can be brought into the policy deliberations in advance.

For society

According to Actal, explanatory notes to new regulations serve as a justification to society. However, many explan-

atory notes accompanying new regulations reflect a “Hague perspective”. For a government that wishes to make businesses, citizens and professionals the focus, internal considerations and implicit trade-offs are not enough. It is important that the impact for society is clarified by the explanatory notes.

Noticeable

The importance of greater noticeability can be expressed by formulating additional targets to supplement the current approach. These targets should be socially recognisable. They may include specifically exempting the chronically ill, for example, from undergoing (re)examinations. They can also include restraining the piling up of change upon change by introducing moratoria on change for the (domains of) regulations. This could entail a maximum of one change per regulatory domain in each Cabinet term.

The calculation method is very valuable for making a qualitatively good ex ante assessment of policy alternatives. However, the available tools are not being fully used. Policy-making officials need facilitation for making the calculations. The lack of support

arises out of a combination of the time pressures under which regulation comes about and the ready availability of the required expertise.

Tidying up the bulk of regulation

Conclusion As a result of the economic crisis, economising is necessary. The Cabinet will need to have a critical look at how the government spends money and how much. With a view to the desired restoration of the economic and social dynamics, there is an associated question, at least as interesting, of whether something is (still) a public task and, if so, whether regulation is the most appropriate tool.

Recommendations

- 6. Tidy up the bulk of regulation**
- 7. Use deliberations about the zero option to prevent new regulations**

In the analysis of dossiers, attention given to the zero option has been extensively examined, that is to say, the question of whether there is a task for the government and, if so, whether regulation is the most appropriate tool. At the present time, there is insufficient accountability for (considering) the zero option.

Scrapping

The interviews with the highest officials responsible for tackling the regulatory burden reveal that many ministries see new opportunities for scrapping a significant proportion of the bulk of regulation. This fits in with the current economic developments since 2008, in which existing assurances for businesses, citizens and professionals are increasingly brought into discussion.

Various domains are the subject of public debate. These range from the housing and employment markets to pension provisions and the financial markets. Fundamental reforms may well come within sight. It would be good to enrich the debate with the dimension of the consequences for regulatory burden. In the years following the establishment of the first broad baseline for administrative burdens in 2002, there have been extensive reassessments of the bulk of regulation. At that time, much regulation was scrapped. There are opportunities here for a clean sweep. The zero option can serve as the important initial question here. Moreover, it is important to start from the broad definition of regulatory burden and no longer to limit this to information obligations to the government. In concrete terms, this means: administrative burdens, substantive compliance costs and fees.

... and preventing

Regulatory and supervisory arrangements are under pressure. Current developments lead to both the demand for easing as well as tightening of regulations. In this dynamic, it is important to sharply delineate the task of the government. This fits in with a reconsideration of existing regulations and a keen assessment of new proposals. Obviously, this assessment only makes sense if it is given substance, and not seen as being done and dusted through a mere procedural step. The assessment of new proposals relates to both the question of whether there is a task for the government and the question of whether regulation could not be better replaced by other steering instruments.

Breaking through the bureaucratic game

Conclusion At the present time, ministerial coordination of regulatory burden reduction limits itself to dossiers with large impact on regulatory burden. Small and medium-value dossiers - which together nonetheless have substantial consequences for regulatory burden - remain outside the picture. According to interdepartmental agreements, dossiers having a total consequences for regulatory burden of less than 5 million euros (for companies), or 10,000 hours and/or 10,000 euros (for citizens) may be disregarded for the net reduction target. In addition, the ministries spend too much attention on whether the consequences for regulatory burden fall below the thresholds in terms of the figures, instead of bringing the social regulatory burden impacts into view.

Recommendations

- 8. Abolish the regulatory burden thresholds in the monitoring system**
- 9. Include all the consequences for all forms of regulatory burden**
- 10. Have the CET review at least 25 percent of all new regulations**
- 11. Publish the CET opinions together with the proposed regulation**

In analysing the selected dossiers, scrutiny has been made of the way in which the consequences for regulatory burden have been included in the calculations and the deliberations on policy alternatives. Discussions about the findings were held with the responsible policy-making officials as well as the regulatory burden coordinators. In these discussions, the ministries repeatedly pointed to room for interpretation in the applicable definitions and in particular to the inter-departmental agreements on proportionality.

Undesirable dynamics

Based on the interdepartmental agreements on proportionality, ministries are not required to include in the picture the consequences for regulatory burden of small and medium-value dossiers. For the monitoring system, ministries are maintaining thresholds of 5 million euros for companies and 10,000 hours and/or 10,000 euros for citizens. In practice, this leads to unwanted dynamics. Various ministries make 'quick' estimates of whether the consequences for regulatory burden remain below this threshold and leave it at that, without consideration for what a proposal means to society.

Meanwhile, many small and medium-value dossiers add up to a great deal of new regulatory burden. It is insufficiently recognised that small and medium-value proposals also have consequences for businesses, citizens and professionals. Moreover, small and medium-value proposals can also be very noticeable in their consequences.

On a positive note, it should also be stressed that there are examples of ministries that are able to make a difference on small value dossiers. For example, the proposal with regard to the legal parenthood of a mother's female partner other than by adoption. Here, the previously required procedure for adoption for dual mothers has given way to a much simpler acknowledgement procedure. With this, the Ministry of Security and Justice have given a good example by considering and reducing regulatory burden even in smaller value dossiers.

No consensus

The distinction between the different types of regulatory burden can (unintentionally) disguise impacts of regulatory burden. Thus, in an explanatory note it may say that there are no consequences for administrative

burdens, without anything being said about the consequences there certainly are in terms of substantive compliance. The space for interpretation of the definition of substantive compliance also leads to a certain ambiguity if ministries deal with it in different ways.

Less fuss

It is therefore important to focus on the practical consequences for regulatory burden on businesses, citizens and professionals. This means that the fuss about thresholds and definitions must be reduced. Moreover, it means that the legislator must not suffice with internal considerations and implicit tradeoffs. Specifically, this leads to the following two recommendations:

1. The societal impact of a proposal must be explicitly and unequivocally reflected in the explanatory notes;
2. The Committee for Impact Assessment (CET) carries out a review of the consequences for regulatory burden. It is therefore important that this committee always publishes its opinions at the same time that the proposals examined are published.

It is further apparent from interviews that in the nine months since its inception (September 2011 to 1 May 2012), the CET only assessed seven dossiers. By comparison, the period of investigation for this audit of regulatory burden by Actal relates to seven months (1 June to 31 December 2011). According to the statement of the ministries, during this period there were 269 proposals with (potential) impact on regulatory burden. Of these, Actal assessed 53 dossiers (20 percent). From the small number of opinions issued by the CET, it is apparent that the 'fresh broom' principle for which the CET was founded - can be significantly strengthened.

On a positive note, it was noted that within its own organisation, the Ministry of Education, Science and Culture has been able to incorporate the principle of 'sometimes it takes a fresh pair of eyes to put things into perspective' by having an 'Actal review' done by the Department of Educational Implementation. This contributes visibly to the consistent assessment of the consequences for regulatory burden of new legislation and regulations.

Appendix

Investigation

In the first week of January 2012, Actal received from each ministry an overview of all the (legislative) proposals passed into law during the study period. These overviews include acts, orders in council, ministerial regulations and also policy rules. In total, 671 titles were received, of which 269 had (potential) consequences for regulatory burden. Based on the overview submitted, Actal took a sample of approximately 6 dossiers from each ministry. Thus Actal selected a total of 53 titles for further analysis. That is approximately 20 percent of all dossiers with (possible) consequences for regulatory burden and nearly 8 percent of all (changes to) regulation in this period.

The selected cases were evaluated on the quality of the deliberations carried out by the ministry with regard to regulatory burden. The assessment framework for these deliberations with regard to individual dossiers fits in with the criteria of the integrated

assessment framework. Along with this, demands are made both on the calculation of the regulatory burden and on the deliberations with regard to the zero option and policy alternatives.

The earlier departmental organisational analysis was also involved in the performance of this audit of regulatory burden. For each ministry, USG Consultancy [part of Utrecht University School of Governance] compiled a process description for tackling regulatory pressure. Where, on assessing of the dossiers, points of special interest followed for the structural assurance of attention to regulatory burden, the internal processes in the ministries were also scrutinised.

All findings are contained in confidential departmental notes which have been further discussed with each ministry. The discussions have been used to assess the findings and to determine how the findings can be explained.

Colophon

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