

OECD Reviews of Regulatory Reform

# Netherlands

## Ex Ante Regulatory Impact Assessment

2020



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# **Ex Ante Regulatory Impact Assessment in the Netherlands**



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## What is the Regulatory Policy Committee?

The Regulatory Policy Committee (RPC) was created in 2009 with the underlying mission to “promote an integrated, horizontal and multidisciplinary approach to regulatory quality and seek to ensure that the OECD as a whole promotes sound regulatory policy and practices”.

In practice, the RPC has established itself as a forum for policy dialogue and with senior regulatory policy officials from Member and Partner countries. It aims to provide delegates with a valuable source of ideas, information, innovations and analysis related to ongoing challenges in regulatory policy and governance.

## What are Reviews of Regulatory Reform?

The Reviews of Regulatory Reform of the OECD are comprehensive multidisciplinary exercises that focus on regulatory policy, including the administrative and institutional arrangements for ensuring that regulations are effective and efficient. The peer-reviews are based on the principles expressed in the Recommendation of the OECD Council on Regulatory Policy and Governance that has served as framework to assess regulatory policy in almost 30 countries. For reference to the scope of the analysis in the reviews please refer to: <https://oe.cd/regpol>.

- The reviews generate detailed recommendations for policy makers to improve the country’s regulatory frameworks.
- Thematic areas include; governance arrangements and administrative capacities that enable regulatory reform; regulatory management tools; review of the stock of existing regulations; regulatory compliance, enforcement and appeal processes; and, multi-level regulatory governance.
- Reviews can cover specific regulatory frameworks in one or more sectors. The specific sectors could include power, water, transportation, telecommunications, and natural resources.

The Scan versions of regulatory reform reviews focus on one particular element of regulatory governance and aim to deliver a diagnosis in a shorter period of time and in the format of a more concise output. Data collection is based on OECD surveys and complemented with a fact-finding mission.

This Scan specifically focuses on improving regulatory impact assessment in the Dutch rule-making process as compared to OECD practices and standards.

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# Summary findings and recommendations

RIA (regulatory impact assessment) is both “a tool and a decision process for informing political decision makers on whether and how to regulate to achieve public policy goals”, as laid out in the OECD 2012 Recommendation of the Council on Regulatory Policy and Governance (OECD, 2012<sup>[1]</sup>). If used systematically and as a system-wide approach, RIA provides a critical tool to ensure greater quality of government intervention. In addition, the documentation and publication of the evidence and analysis to design interventions provides the opportunity to enhance accountability and transparency in the policy-making and decision-making processes.

The Dutch Government has made significant improvements to its RIA system since it introduced the *Integraal Afwegingskader* (IAK) in 2011. This was established following previous OECD reviews of Dutch regulatory policy in 2010 (OECD, 2010<sup>[2]</sup>) and 1999 (OECD, 1999<sup>[3]</sup>). However, the IAK continues to face a number of challenges with regards to ensuring that it is an integral, systematic part of the government’s policymaking process. RIA is the Netherlands’ weakest area of regulatory policy according to the indicators of the OECD’s Regulatory Policy and Governance (iREG) survey. In this survey, the Netherlands scores significantly below the OECD average and has only slightly improved since the previous survey in 2014 (OECD, 2018<sup>[4]</sup>).

In 2019, the Dutch Government invited the Regulatory Policy Division of the OECD to conduct an analysis of the current institutional setup for IAK and provide recommendations for improvement based on a comparison with OECD best practice.

The OECD evaluation exercise seeks to assist the Dutch Government and other stakeholders by:

- taking stock of the current policy landscape around *ex ante* evaluation of new regulations.

- understanding Dutch policy and its practical application, given the unique aspects of the Dutch system of government.
- facilitating mutual understanding and dialogue amongst the various stakeholders with an interest in the IAK system.
- shared experiences from other the RIA frameworks in other OECD member countries.
- proposing possible reforms to the IAK system in line with OECD standards and good practice.

Evidence underpinning the report has been gathered primarily through a review of background documents, OECD databases, and a fact-finding mission of an OECD secretariat team to The Hague from 2nd to the 6th of June 2019. Discussions with institutional actors (including government ministries, centre-of-government bodies) and with representatives of the planning bureaus, trade unions, business organisations and academia have provided multi-stakeholder insights and up-to-date information.

The OECD presented the draft findings and recommendations at a workshop in The Hague on 12 November 2019, where the participants included representatives from a number of ministries as well as key external stakeholders.

## Key findings

- The introduction of the IAK in 2011 represented a strong improvement on the previously more disparate and overlapping analytical processes which policy officials needed to follow when developing new regulations. Through the IAK, the Government has made steps towards introducing a standard RIA process. There is continued strong political support across ministries and external stakeholders for the principles underlying the IAK.
- Certain parts of the IAK are quite well organised, with strong regulatory oversight and supervision, in particular the requirement to calculate regulatory burden on businesses and citizens. The ATR performs a useful function in advising ministries on individual burden assessments and potential less burdensome options at the early stage of the policy process.
- However, the IAK differs from the standard RIA process in a number of ways. For instance, the IAK does not appear to be incentivising ministries to consider alternative ways of addressing potential solutions to the identified problem, including regulatory and non-regulatory alternatives, or a mix of instruments (although the ATR's efforts to provide advice on less burdensome alternatives



earlier in the policy process are very welcome). In addition, the IAK directs ministries to calculate the impact of a proposal after having selected the preferred instrument, as opposed to preparing analysis on multiple options beforehand. Furthermore, ministries are not obliged to provide an integrated assessment of the overall impacts of a new regulatory measure.

- The IAK process has not yet been effectively joined up with ex-post monitoring and evaluation of regulatory measures – a crucial part of ‘closing’ the regulatory cycle.
- There is no part of government currently able to provide a strong co-ordination and regulatory oversight function, to ensure quality control of new proposals. This is largely due to the fact that Dutch ministries traditionally operate with a strong degree of autonomy.
- As ministries have continued to add their desired quality requirements to the IAK since 2011, the simplicity of the framework has been progressively eroded by its ever increasing scope. However, there is the perception amongst external stakeholders that the framework is still predominately focused on burden reduction, in part because this area receives more supervision and support from the ATR.
- A review by the OECD team of IAK documents published for internet consultation found them to be lacking in detail, whilst any data on estimated regulatory impacts tends to be found in accompanying Explanatory Memorandums. Furthermore, whilst these documents often contain data on estimated regulatory burdens to business, they do not tend to contain analysis on the wider costs and benefits of regulations to society.
- The OECD team could find little clear evidence that the IAK is having an impact on decision making within government. A number of ministries and external stakeholders have pointed to the fact that the IAK template tends to be completed late in policy process, and that there is little room to consider alternatives to the regulatory proposal.
- The nature of Dutch Coalition agreements (*Regeerakkoord*) makes it difficult to integrate IAK into policy considerations, as specific regulatory instruments are set out in these agreements to address policy issues, meaning that there is little space to consider alternatives.
- There is a great deal of established analytical expertise situated throughout (and external to) government which the IAK does not seem to be joined up with or draw upon e.g. the research outputs of the four planning bureaus.

- There is a lack of centralised training provision on IAK for policy officers across ministries, on either how to carry out the overall process or more detailed analytical training on regulatory impact calculations. Furthermore, whilst the main IAK website contains information on the main IAK questions, mandatory tests and requirements, it also contains information on many other suggested tools, making it potentially difficult for policy officials to understand. It can be unclear whom policy officials are supposed to approach for help in preparing an IAK.
- External stakeholders generally expressed dissatisfaction with the transparency of the internet consultation process, as it perceived that consultations tend to take place at a late stage of the policy process when a proposal is already quite advanced. It is not clear what impact the consultations have on the final policy, as ministries do not always provide feedback provided on what has changed.

## Key recommendations

- The OECD has set out a number of recommendations below for reforming the IAK, for the Dutch Government to take forward in conjunction with the key stakeholders. As the IAK is already established within government and ministries are largely familiar with it, the OECD views this approach to reform as more proportionate and likely to achieve the desired outcomes than developing an entirely new RIA framework.
- In order to provide the Dutch Government with an idea of **how to prioritise the various recommendations**, the OECD have ranked them ***with the highest impact recommendations listed first.***
- In order to assist with the higher impact and potentially more challenging reforms regarding the oversight and methodology of IAK, the Government could **run pilot projects on** a number of IAKs. These pilots could be utilised as “game changers” because they have been carried out according to good practices and quality standards and can be used to “sell” the benefits of deploying the tool. In addition, the pilots could focus on a crucial area of government policy such as climate policy, to demonstrate how the IAK can facilitate policy makers in addressing these issues.

## Recommendations: higher impact reforms ranked first

- There is scope for the Government to clarify the role and purpose of IAK through a **refreshed, cross-government IAK policy** taking account of the more detailed reforms set out below. This could be implemented through an updated Kabinetsplan, to present IAK as a pivotal tool to enhance regulatory quality and not only to reduce business burdens. This could also help to link the IAK more clearly with the Government's policy priorities e.g. the climate policy which will have a major impact on firms and citizens.
- It is **crucial that regulatory oversight and supervision of the IAK is strengthened**, ensuring that key roles and responsibilities are clearly understood, and that regulatory management tools are used effectively. There are **options for where this strengthened regulatory oversight function could be placed**, including
  - setting up a **new regulatory oversight body**, which operates with a certain degree of autonomy from central government, to oversee the core quality requirements (e.g. this could have a similar mandate to the EU Commission's Regulatory Scrutiny Board). OECD best practice suggests that robust and autonomous supervision, independent from political influence, is important for improving the quality of IAK analysis. Alternatively, instead of setting up a new body, the **scope of the ATR could be reviewed to widen its mandate** beyond its current focus on regulatory costs to business.
  - a **new Ministerial Committee**, supported by a secretariat of officials, to co-ordinate and oversee a new IAK policy, as well as overseeing the performance of IAK and any reform efforts. Such a Committee would help ensure that IAK is seen as whole-of-government rather than being owned by any particular ministry. The Netherlands has successfully used such Committees in the past to drive cross-government reform (e.g. the past Ministerial Steering Group on Better Regulation).
- The **IAK process should be restructured** to more closely follow examples of RIA best practice (according to the *OECD RIA Best Practice Principles* – see Box 2.2). These reforms could include:
  - developing a new standardised IAK template for ministries to complete when developing new regulations. This document could be made publically available and be a useful means for stakeholders to examine the Government's underpinning analysis. It should include a short, easy-to-understand summary justifying why the preferred option has been selected.

- reviewing the structure of the seven IAK questions to encourage ministries to consider and list alternative ways of addressing potential solutions to the identified problem, including regulatory and non-regulatory alternatives, as well as providing an appropriate level of analysis before selecting the choice of the best instrument.
- incentivising policy teams to expand the scope of their IAK analysis, to move beyond the current focus on regulatory costs to business, to encompass benefits and wider societal impacts of new regulatory proposals. This wider analysis should be contained in the published IAK documents.
- reviewing and possibly streamlining the current list of IAK quality requirements to a core, proportionate set of tests for ministries to consider during the policy process.
- The Government should **consider how to effectively target the IAK efforts in order to allocate most analytical resources** to where they could potentially deliver greatest added value. There are a number of possible methods that government could use for sorting out which legislative proposals require a higher level of IAK analysis, including setting quantitative thresholds, multi-criteria analysis or introducing a set of criteria. This will **require an effective forward planning tool**, enabling the government to prioritise which upcoming pieces of legislation to focus upon. This could possibly be facilitated by making it mandatory for ministries to submit their legislative plans into the KIWI system.
- The Government should **clearly communicate the goals of IAK**, both internally and externally i.e. presenting it as a pivotal tool for enhancing regulatory quality. The Government should liaise internally – central government – and externally – stakeholders like Parliament, universities, think tanks, mass media – to carry out public relations activities (e.g. forums, seminars, interviews, communicational campaigns) explaining the use and importance of IAK and its direct link with better policy making.
- **IAK training, on the overall process, should be systematically provided** to policy officials across ministries to encourage the development of expertise in evidence-based policymaking. The existing network of regulatory co-ordinators could be utilised to provide more specialised training, where required, on more complex methodological analytical approaches. Officials preparing IAKs should also have a clear point of contact to approach for advice and training requests.

- The **current methodological guidance documents should be revised** by creating one “IAK Guidance Handbook”, meaning that policy officials do not have to search between different sources for advice. **The IAK website could also be streamlined** to provide policy officials with a clearer, less complex overview of the general IAK process – focusing upon the key steps and useful links to sources of guidance. A **new software tool could be developed** to assist officials in calculating the potential impact of a regulatory proposal at different stages of the IAK process.
- The Government should consider **strengthening the links between the IAK and the stakeholder engagement processes**, including feeding back to stakeholders on the results of the internet consultation process, and ensuring that a more comprehensive, updated IAK document is published to inform the debate.
- The Government should continue **strengthening the links between IAK and ex-post evaluation of regulatory measures**, by building upon the implementation of Article 3.1 of the Accountability Act. As part of IAK, ministries should regulatory assess whether regulations have achieved their stated policy goals. The Government should ensure that ministries have the necessary resources, including the analytical capacity, to carry out this evaluation work.
- The Government could fund the establishment of a **Centre for Regulatory Excellence**, as an autonomous organisation that could bring together regulatory specialists to share best practice on international examples of RIA, carry out research to develop an evidence base on cutting-edge RIA concepts (e.g. the relationship between regulation and innovation, the role of behavioural insights in regulatory policy). It could also build RIA capacity through developing a programme of capacity building and running training sessions.
- In the longer term, the Government could explore how to **integrate the IAK within the Coalition Agreement process** e.g. through establishing goals or objectives within agreements where possible, instead of specific policy instruments, then utilising the IAK to choose the most appropriate instrument.

# 1 The importance of RIA

Evidence-based policy making is a well understood and accepted tenet of good governance. However, government interventions, whether they are a policy, law, regulation or other type of “rule”, do not always fully consider their likely effects at the time of their development. In addition, government intervention has costs and there might be cases where those costs might outweigh the anticipated benefits. As a result, there are many instances of unintended consequences and ultimately negative impacts for citizens, businesses and society as a whole that could be avoided, and essentially result from badly designed interventions. Often, these negative impacts are felt more by smaller, unorganised, hard-to-reach, less well informed or marginalised constituents in society, which is detrimental to achieving inclusive growth, sustainable development, building trust and maintaining the integrity of the rule of law.

If used systematically and as a government-wide approach, RIA provides a critical tool to ensure greater quality of government intervention. In addition, the documentation and publication of the evidence and analysis to design interventions provides the opportunity to enhance accountability and transparency in the policy-making and decision-making processes. RIA provides crucial information to decision makers on whether and how to regulate to achieve public policy goals.

It is challenging to develop “correct” policy responses, which also maximise societal well-being. It is the role of RIA to help assist with this, by critically examining the impacts and consequences of a range of alternative options. Improving the evidence base for regulation through RIA is one of the most important regulatory tools available to governments.

RIA also helps policymakers to defend decisions not to intervene in markets where the costs of doing so outweigh the benefits. RIA further helps defend policymakers’ decisions by presenting that there are in fact benefits to regulation – something that is often overlooked by society and governments.

The OECD, through the Regulatory Policy Committee, published the Recommendations of the Council on Regulatory Policy and Governance in 2012. These recommendations explicitly emphasise the importance of implementing a process that monitors the quality of regulations. For example, the first recommendation of the Council states the commitment at the highest political level of an explicit whole-of-government policy to monitor the quality of regulations. The second recommendation refers to the principles of open government, including the participation of stakeholders in the regulatory process, and the development of comprehensible and clear regulations. The fourth recommendation focuses on RIA, a specific tool to evaluate the possible effects of rules – see Box 1.1; (OECD, 2012<sup>[1]</sup>).

### Box 1.1. The 2012 OECD Recommendation on Regulatory and Policy Governance – Principle 4

*Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach.*

- 4.1 Adopt *ex ante* impact assessment practices that are proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.
- 4.2 *Ex ante* assessment policies should require the identification of a specific policy need, and the objective of the regulation such as the correction of a market failure, or the need to protect citizen's rights that justifies the use of regulation.
- 4.3 *Ex ante* assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. *Ex ante* assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.

- 4.4 When regulatory proposals would have significant impacts, *ex ante* assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. *Ex ante* assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects.
- 4.5 Regulatory Impact Analysis should as far as possible be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to gain input from stakeholders and assist political decision-making. Good practice would involve using the Regulatory Impact Analysis as part of the consultation process.
- 4.6. *Ex ante* assessment policies should indicate that regulation should seek to enhance, not deter, competition and consumer welfare, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation cannot be achieved by other less restrictive means.
- 4.7 When carrying out an assessment, officials should:
- Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects;
  - Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets;
  - Evaluate the impact on small to medium-sized enterprises and demonstrate how administrative and compliance costs are minimised.
- 4.8 RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government.

Source: (OECD, 2012<sup>[1]</sup>).



In addition, the OECD RIA Best Practice Principles (see Box 1.2) provide an extension and elaboration of principles from the 2012 Recommendation. The principles are intended to be relevant and useful to all member governments and provide general guidance rather than detailed prescription. **Few if any countries could be expected at this point to meet them all.** However, they are also grounded in the actual experience of different countries, so should not be seen as unattainable or merely aspirational.

Governments have a number of possible paths for the gradual introduction of RIA. These include running a RIA pilot phase and then the institutionalising RIA for all major regulations; as well as starting with a simplified methodology and then expanding the scope (e.g. moving from measuring administrative costs to Cost Benefit Analysis – CBA). Other options include focusing a RIA framework on major regulatory proposals at the beginning, and then lowering the threshold over time to cover less significant regulations. Where a country lacks specific quantitative skills, they can also start with single- or multi-criteria qualitative analysis, and then gradually moving to quantitative analysis (CBA or other).

### Box 1.2. Best Practice Principles for Regulatory Impact Analysis

#### 1. Commitment and buy-in for RIA

- Governments should:
  - Spell out what governments consider as “good regulations”.
  - Introduce RIA as part of a comprehensive long-term plan to boost the quality of regulation.
  - Create an oversight unit for RIA with sufficient competences.
  - Create credible “internal and external constraints”, which guarantee that RIA will effectively be implemented.
  - Secure political backing of RIA.
- Securing stakeholder support is essential.
- Governments have to enable public control of the RIA process.

#### 2. Governance of RIA – having the right set up or system design

- RIA should be fully integrated with other regulatory management tools and should be implemented in the context of the Regulatory Governance Cycle.

- RIA and its implementation should be adjusted to the legal and administrative system and culture of the country.
- Governments need to decide whether to implement RIA at once or gradually.
- Responsibilities for RIA programme elements have to be allocated carefully.
- Efficient regulatory oversight is a crucial precondition for a successful RIA.
- RIA should be proportional to the significance of the regulation.
- Parliaments should be encouraged to set up their own procedures to guarantee the quality of legislation, including the quality of RIA.

### **3. Embedding RIA through strengthening capacity and accountability of the administration.**

- Adequate training must be provided to civil servants.
- Governments should publish detailed guidance material.
- There should be only limited exceptions to the general rule that RIA is required.
- Accountability and performance-oriented arrangements should be implemented.

### **4. Targeted and appropriate RIA methodology**

- The RIA methodology should be as simple and flexible as possible, while ensuring certain key features are covered.
- RIA should not always be interpreted as requiring a full-fledged, quantitative cost-benefit analysis of legislation.
- Sound data governance strategies can help produce, collect, process, access and share data in the context of RIA.
- RIA has to follow all stages of the regulation-making process and has to start at the inception stage in order to inform policy development.
- No RIA can be successful without defining the policy context and objectives, in particular the systematic identification of the problem.
- All plausible alternatives, including non-regulatory solutions must be taken into account.
- It is essential to always identify all relevant direct and indirect costs as well as benefits.

- Stakeholder engagement must be incorporated systematically in the RIA process.
- Insights from behavioural science and economics should be considered, as appropriate.
- The development of enforcement and compliance strategies should be part of every RIA.
- RIA should be perceived as an iterative process.
- Results of RIA should be well communicated.

### **5. Continuous monitoring, evaluation and improvement of RIA**

- It is important to validate the real impacts of adopted regulations after their implementation.
- RIA systems should also have an in-built monitoring, evaluation and refinement mechanism in place. This includes early plans for data collection or access to data.
- A regular, comprehensive evaluation of the impact of RIA on the (perceived) quality of regulatory decisions is essential.
- It is important to evaluate the impacts in cases where the original RIA document does not coincide with the final text of the proposal
- Systematic evaluation of the performance of the regulatory oversight bodies is important.

Source: (OECD, 2020<sup>[5]</sup>).

# 2 Better regulation policy in the Netherlands

## Trends in better regulation policy

The IAK is part of a long tradition of the Dutch Government's innovative regulatory policies, which have historically focused on reducing regulatory burdens on business. In 1991, the cabinet policy letter 'Focus on legislation' (*Zicht op wetgeving*) announced a plan for the further development and implementation of regulatory policy.

The Market Forces, Deregulation and Legislative Quality Programme (*Marktwerving, Deregulering en Wetgevingskwaliteit - MDW*) was set up in 1994 to improve the regulatory and structural environment for more open markets. Dutch governments at this time sought a new balance between "protection and dynamism", by means of increased competition, regulatory reform and market openness. Part of the MDW Programme included the reduction of administrative burdens. This was also a decade when significant efforts were made to develop a stronger policy for the development of new regulations, *including ex ante impact assessment*, to avoid the problems of the past.

A second phase of better regulation policy started in the late 1990s, with growing emphasis on the reduction of administrative burdens for business, which was given policy shape through increasingly detailed and wide ranging programmes based on quantification of the burdens and of targets for reduction. Better regulation's link with economic performance was strengthened in by the 1998 Coalition Agreement which emphasised the promotion of a more innovative, enterprising and competitive economy. During this period, the Netherlands were pioneers in the development of a measurement system for administrative burdens, which gave rise to an international brand (the Standard Cost Model – SCM), that has been adopted by a growing number of countries in recent years.

The report of the *Slechte Committee* in 1999 proposed that progress was best made and politicisation avoided by giving the administrative burden reduction programme a relatively narrow focus on business costs. The establishment of ACTAL (*Adviescollege Toetsing Administratieve Lasten* – Advisory Board on Administrative Burdens), the independent external watchdog for the programme, in 2000 marked an institutional milestone. ACTAL was established as an independent review body for the programme on administrative simplification. It was originally established to advise the government on the impact of proposed new regulations on business, but its remit steadily expanded to encompass other better regulation policies as they emerged.

The 2003-07 Cabinet then pursued a 25% net burden reduction target allocated across ministries, which it broadly achieved. The Government subsequently identified the success factors as including a combination of regulatory burden measurement (the SCM method for the measurement and mapping of burdens); setting a time-bound quantitative target (divided among ministries); a strong inter-ministerial co-ordinating unit at the centre of government; independent monitoring of and supervising regulatory burden measurement via the watchdog ACTAL; linking the better regulation programme to the budget cycle; and not least, political support, helped by the narrow focus of the programme on administrative burdens which helped to avoid controversy. Subsequent cabinets maintained this focus on a quantitative burden reduction target as part of their better regulation policy, even though the scope was subsequently broadened to other regulatory costs.

In 2011, as part of a suite of policy reforms, the then Government introduced the IAK, to integrate the numerous *ex ante* quality tests for new regulations within one streamlined framework (see *Section 4 for more detail on this*). The 2012-17 Cabinet's better regulation programme also included a quantitative target to reduce the regulatory burden for businesses, citizens and professionals by EUR 2.5 billion (the final result reported was a reduction of EUR 2.48 billion); as well as focusing on smarter, better and more efficient supervision; improved co-operation with local governments and at the EU level; and better digital services.

However, following the 2017 elections, the Cabinet announced that the focus of its regulatory programmes is to shift from a quantitative burden reduction target, towards a more *qualitative* approach to ensure that businesses *perceive* the change in regulatory burden in practice. Under the "Noticeably Better Regulations and Services 2018-2021" initiative, the Cabinet has announced that its better regulation policy will be based upon five pillars:

1. Better new rules through effective consultation, independent testing and more room for experimentation;
2. Noticeably more room for innovation and entrepreneurship;

3. Better, smarter and more efficient supervision;
4. Better regulation in Europe and with municipalities;
5. Better (digital) services.

This suite of measures included the introduction of a new SME Test with the aim of ensuring better consultation with entrepreneurs early in the legislative process; as well as a Strategic SME Committee for Better Regulation, made up of officials and industry representatives, that addresses regulatory burdens in existing legislation. A new Advisory Board on Regulatory Burden (*Adviescollege toetsing regeldruk* - ATR) was established in 2017 (replacing ACTAL) to provide independent advice on burden reduction to departments at an earlier stage of the legislative process; and an internet consultation website and legislative calendar have been established to drive more effective consultation and transparency on upcoming legislation. (Ministry of Economic Affairs and Climate Policy, 2018<sup>[6]</sup>)

### ***History of regulatory impact assessment***

*Ex ante* RIA has a long history in the Netherlands. Some form of impact assessment has been required since 1985, via the Directives on Regulation. The early requirements were generally viewed as ineffective, consisting of a very general questionnaire that only sought to identify side effects of proposed regulations (i.e. what might be overlooked), rather than a careful weighing of the whole impact. Impact assessment was overhauled in 1994-95 as part of the then new cabinet's policy on regulatory reform. It stressed co-operation between three ministries – Justice, Economic Affairs and Environment – to improve the quality of analysis, and established a central help desk, shared by the three ministries.

A new and mandatory RIA process was agreed in 2002 by the Cabinet, covering several distinct impact assessments, such as a Business Impact Assessment, Environmental Impact Assessment and Cost-Benefit Analysis. There were no standard or compulsory analytical methods mandated upon ministries. A number of initiatives existed to encourage co-operation across ministries. A Proposed Legislation Desk (*Meldpunt voorgenomen regelgeving*), operated jointly by three departments, represented the institutional focal point of the RIA process and checked the quality of impact assessments and provided help and guidance to ministries. The Regulatory Reform Group (*Regiegroep Regeldruk* - RRG) made up of officials from the Ministry of Finance and the Ministry of Economic Affairs was established to manage the programme for reducing administrative burdens on business, including reporting progress to Cabinet and Parliament, and developing methodologies and training of civil servants. A high official committee (*SG overleg Regeldruk*) and Ministerial Steering Group for Better Regulation, chaired by the Prime Minister, met

every quarter to give high-level support and monitor progress on different aspects of the Better Regulation policy.

However, by 2010, the OECD (see Box 2.1) found that *“there is widespread agreement that the current process is in practice unsatisfactory, weak and ineffective...impact assessment comes too late in the decision-making process to have any effect on outcomes, inadequate consultation, lack of transparency, failure to take into account benefits as well as costs, and the need to define a clear methodological approach balancing qualitative and quantitative analysis.”* (OECD, 2010<sup>[2]</sup>) The recommendations of this report also broadly echoed those from an earlier 1999 OECD report on the Dutch RIA system (OECD, 1999<sup>[3]</sup>).

### Box 2.1. Key Recommendations from previous OECD Reports on Netherlands

#### Better Regulation in Europe: Netherlands 2010

The key recommendations for reform of the RIA system included:

- A new approach needs to be developed. The government needs to develop and promote a clear vision and integrated approach to impact assessment, which sets out what impact assessment is for and how it can contribute to stronger, more effective, evidence based policy making.
- Responsibility for carrying out impact assessments should remain with the individual ministries, framed by strong central supervision and quality control.
- Effective training and guidance need to be in place. Officials will need to be trained in the new approach and especially, in the application of the new methodology.
- The methodology should therefore have a strong quantitative element, drawing inspiration from the experiences of other OECD countries that are already applying quantification (such as the United States, United Kingdom, Australia). It should also incorporate a strong qualitative aspect, supported by multi-criteria analysis, not least to capture future benefits that may be difficult to monetise.
- A single integrated, standardised process will help to give impact assessment the focus it needs to be adopted by ministries. Current separate processes need to be integrated into a single process which regroups the different assessments and legal quality tests.

- Consultation needs to be a formal part of the impact assessment development process and engage all potential stakeholders. Broadly based consultation...should start early to give stakeholders the opportunity to comment on proposals before it is too late to influence the outcome, including the possibility of alternatives to regulation.
- *Ex post* evaluation also needs to be built into the new process. Feedback to the government on the effectiveness of the impact assessment process should be built in from the start, as part of the new strategy.
- The Ministry of Justice efforts to draw attention to consideration of alternatives to regulation need support and further development, including and not least as part of an enhanced impact assessment process.

### **OECD Reviews of Regulatory Reform: Regulatory Reform in the Netherlands 1999**

The key recommendations for reform of the RIA system included:

- Improve the contribution of RIA to good regulatory decisions by increasing methodological rigour, including adoption of a benefit-cost test; expanding it to incorporate detailed consideration of alternatives; and integrating RIA with consultation processes.
- Training and guidance for policy staff in the ministries would be a useful step, and adoption of standard minimum requirements such as quantitative analysis of direct costs of compliance through tools such as the Canadian Business Impact Test.
- Adoption of an explicit benefit-cost principle, as is currently being considered, would sharply improve the quality of regulatory decisions.
- The usefulness of RIA in promoting use of cost-effective policy tools would be significantly enhanced by a formal requirement that feasible alternatives be analysed and compared with the regulatory proposal.
- The effectiveness of both of these strategies would be enhanced by integration of RIA with consultation processes. Publication of RIA through a procedure that required regulators to respond to comments from affected parties would enable consultation to function more effectively as a means of cost-effective information gathering, and thereby improve the information needed for good RIA.

Source: (OECD, 2010<sup>[2]</sup>) and (OECD, 1999<sup>[3]</sup>).



The current IAK framework was then announced by the Dutch Cabinet in 2011 as the central part of the Netherlands' approach to RIA. It brought together 110 different and overlapping quality requirements into one integrated administrative framework, structured around seven central questions along with 18 mandatory "quality requirements" which ministries were obliged to check for new proposals.

The OECD's Regulatory Policy Outlook publications in 2015 (OECD, 2015<sup>[7]</sup>) and 2018 (OECD, 2018<sup>[4]</sup>), have mapped countries' efforts to improve regulatory quality, and ranked countries according to the quality of their regulatory management systems. In these publications, the Netherlands has scored significantly below the OECD average for the quality of its RIA framework (see Box 2.2). In the 2018 publication, the IAK showed a number of areas for improvement, compared with OECD best practice. Some of the points for concern including that the IAK:

- is heavily focused on assessing different types of costs of regulation, and does not and does not include a systematic assessment of benefits.
- does not include a systematic assessment of environmental impacts.
- does not include a comprehensive assessment of social and distributional impacts e.g. impacts on specific social groups or regional areas, or distributional effects of regulations are not analysed.
- lacks a proportionate approach i.e. there is no requirement that impact assessments are proportionate to significance of the regulation.
- does not include an assessment of risk.
- is not effectively linked to *ex post* evaluation of regulations.

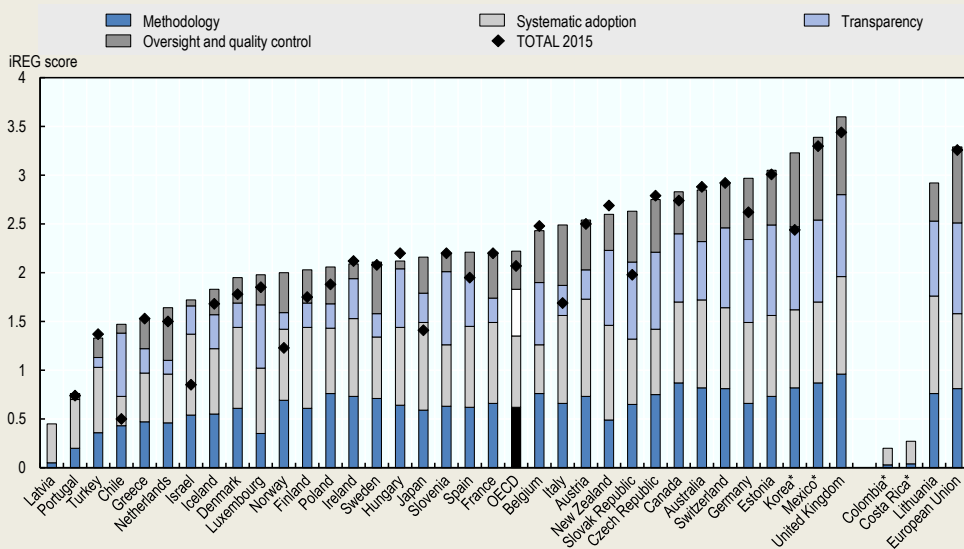
### **Box 2.2. Regulatory Policy Outlook 2018: Recent Trends in Regulatory Impact Assessment**

The Regulatory Policy Outlook 2018 maps country efforts to improve regulatory quality and utilizes data through the Regulatory Indicators Survey, which gathered information in 2014 and 2017. Areas which showed improvement included the area of systematic adoption of RIA in relation to primary laws, which assesses whether there are developed formal requirements for RIA, including proportionality and institutional arrangements (OECD, 2015<sup>[8]</sup>).

The next best improvement between 2014 and 2017 was in relation to oversight and quality control. Oversight and quality control measures whether the functions are in place to monitor the practice of RIA as are the requirements to assure the quality of the analysis (OECD, 2015<sup>[8]</sup>). However, the data also showed that RIA is not always

targeted to the most significant laws and regulations. Moreover, while attention tends to be focussed on major economic impacts of regulations, assessments largely ignore other significant effects, such as social impacts.

**Figure 2.1. Composite indicators: regulatory impact assessment for developing primary laws, 2018**



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This figure therefore excludes the United States where all primary laws are initiated by Congress. \*In the majority of OECD countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by the legislature.

Source: (OECD, 2018<sub>[41]</sub>)

# 3

## Overview of the Dutch rulemaking process

### ***Structure of the Executive***

There are twelve ministries within the Dutch Government, each headed by a minister (sometimes two), supported by one or more Secretaries of State. As in most other OECD countries, decision-making is collective, based on a network of ministerial committees, ultimately reporting to the Council of Ministers, which meets weekly. Policy proposals go to the relevant ministerial committees, after discussions at official levels. Ministries operate with a high degree of autonomy and the Dutch Prime Minister has a relatively small number of direct staff and as a rule refrains from actively steering ministers. Under this system, policy *must be adopted collectively*.

### ***Coalition agreements and the planning cycle***

The government works on the basis of coalition agreements (*Coalitieakkoord*) which set the policy framework for the four years of the electoral cycle, and annual budget plans. Together these generate proposals for policy/legislation. The annual planning and reporting cycle starts with the Government's Annual Budget Memorandum and Ministerial Budgets to the parliament (September) and concludes with annual reports to the Parliament on the past year (May). This process of forming coalition agreements is a crucial part of the distinctive Dutch *culture of consensus-based decision making*, with important implications for the implementation of IAK across ministries – as discussed later in the paper.

## Law-making process

### Box 3.1. Overview of the Dutch law-making process

The Dutch Government contains twelve Ministries, each responsible for specific areas of policy and the development of new regulatory proposals in those areas. After a Ministry has developed a piece of draft legislation, the draft is scrutinised on different aspects by different internal and external agencies e.g. legislative scrutiny by the Ministry of Justice and Security and administrative burden scrutiny by the ATR. Then the draft is sent to one of the official “Voorportalen”, a meeting of senior civil servants, which conducts an assessment on the answers to the IAK questions in the proposed documents.

After the Voorportalen, the bill will be sent to a sub-council, a group of substantively involved Ministers. After the sub-council, the bill is discussed in the Council of Ministers. The bill is not made public during official preparation.

If agreed upon, the text then goes to the Council of State for scrutiny as to whether it is compatible with other laws and treaties (the Constitution, international treaties such as the European Convention on Human Rights, and European law (or, in the case of a draft Order in Council, statutory law). The Council also considers proposed legislation from a wider angle, whether it is a “good” law that will serve the interests of citizens.

The proposal then goes to the Monarch for signature (a formality), before it is tabled the House of Representatives. The advice of the Council of State as well as an Explanatory Memorandum (purpose and contents) is attached to the draft bills.

The bill is subject to scrutiny by the relevant parliamentary standing committee. The committee may arrange a hearing, and make enquiries, or request a briefing by government advisory bodies such as the Central Planning Office, the Central Bureau of Statistics, or external experts. A report is drawn up and sent to all members of the House, and to the Government. The Government responds to this report.

The draft bill then goes to plenary for debate. Amendments may be tabled by members of the House during the debate. The bill – amended or otherwise – is then sent to the Senate.

Once passed by the Senate, the bill is returned to the monarch for formal signature, alongside the responsible minister. The act is then signed by the Minister of Justice, who arranges for it to be published in the Bulletin of Acts and Decrees.

Source: Information provided by the Dutch Government and (OECD, 2010<sup>[2]</sup>).

### **Administrative procedures**

Within the Netherlands Government, there is no single administrative procedure for developing regulation as exists in some other OECD countries. Instead, general procedures for rule-making are laid down in the Constitution, and elaborated in internal regulations within the administration and the parliament. Legal drafters must, however, comply with the “*Directives on Legislation*” (*Aanwijzingen voor regelgeving*). These are a set of rules, developed by the Ministry of Justice and Security, agreed by the Cabinet and issued by the Prime Minister, which cover general quality criteria, rules of procedure and legal and editorial instructions. For example, Chapter 2.3 of the Directives refers to the requirement for ministries to prepare an IAK to support the assessment and accountability process when formulating policy and regulations. (Ministry of Justice and Security, 2018<sup>[8]</sup>) The chapter also states that before deciding to develop a new regulation, ministries should undertake the following steps:

- knowledge is gathered about the relevant facts and circumstances with regard to the subject in question;
- the objectives to be achieved are determined as concretely and precisely as possible;
- it is investigated whether the goals can be achieved through the self-regulatory capacity in the sector or sectors concerned, or whether government intervention is required for this purpose;
- if government intervention is necessary, it is investigated whether the chosen goals can be achieved through adaptation or better use of existing instruments or, if this proves impossible, which new instruments can be used to achieve the goals; and
- the various options are carefully balanced.

In addition, the Ministry of Justice and Security has also produced a “*Roadmap for Regulation*” (*Draaiboek voor de Regelgeving*) which provides civil servants with a description of the different steps in the legislative process, and lists the procedures, regulations and models that apply to the entire civil service with instructions, including the information/documents which need to be presented at the different stages of the process. (Ministry of Justice and Security, 2020<sup>[9]</sup>)

# 4 Overview of the Dutch approach to RIA

## ***IAK policy***

The IAK was announced in a letter (*the Cabinet Plan*) from the Dutch Cabinet in 2011 as the Netherlands' approach to RIA. This letter provided the administrative mechanism for mandating the use of the IAK across government. It stated that the Cabinet's policy objective was to “create a more efficient, effective and transparent administrative and political decision-making process” and that “legislation is created that is really necessary and proportional, with as little regulatory pressure as possible”. (Ministry of Security and Justice, 2011<sup>[10]</sup>)

The new framework brought together 110 different and overlapping quality requirements into one integrated administrative framework, structured around seven central questions and 18 mandatory “quality requirements” (or estimated impacts) that ministries are expected to assess during the process (e.g. the expected regulatory burden on business and citizens). The Council of Ministers decides on the deletion or addition of the mandatory quality requirements.

The IAK is publicly available online and provides ministries with the necessary information for developing new policies and regulations and includes links to all existing instruments used in legislative preparation, such as guidelines, manuals and government positions. (Ministry of Justice and Security, 2020<sup>[11]</sup>)

## ***Methodology***

The IAK is structured around seven central questions (see Box 4.1) which set out the various steps of the process, which ministries should follow in developing new legislative proposals. Ministries have to provide an adequate response to these seven questions, in the accompanying notes of the legislation or the Explanatory Memorandum and in policy documents, when submitting new proposals for

regulations (as well as amendments to legislation and the most important secondary legislation) to the Council of Ministers.

The first three IAK questions focus on: analysing the problem which the government is trying to address, followed by questions on the policy goal and justification of government intervention, followed by questions on selecting the most appropriate instrument (e.g. regulatory or non-regulatory) to address this problem, and then assessing the potential impacts of the chosen instrument.

### **Box 4.1. Methodology for the IAK**

The Cabinet announced in 2011 that the IAK would be applied to new proposals policies and regulations that are submitted to parliament. Ministries are responsible for applying the IAK to new regulatory proposals and ensuring that adequate answers are developed to the seven central questions set out below:

#### **Problem analysis**

1. What is the reason to start?
2. Who are involved?
3. What is the problem?
4. What is the purpose?
5. What justifies government intervention?

#### **Instrument selection**

6. What is the best instrument?

#### **Impact assessment**

7. What are the consequences for citizens, companies, government and the environment?

Source: (Ministry of Justice and Security, 2020<sup>[11]</sup>).

## ***IAK process***

A summary showing the typical steps of how IAK is integrated into the Dutch rule-making process is provided in Box 4.2. Under the Dutch tradition of ministerial autonomy, individual ministries are responsible for guaranteeing the quality of their own regulations and therefore for producing an adequate response to the seven IAK

questions. The ministry is responsible for assessing which components of the IAK are relevant to the draft proposal.

### Box 4.2. Key overview of the IAK process

The IAK is intended to provide ministries with a structured approach for formulating sound policy and legislation and ensuring that ministries carry out a number of *ex ante* quality requirements (or assessments) on proposed legislation.

The level of detail provided by IAK analyses is supposed to be proportional and can therefore vary depending on the expected impact of a proposal. The Cabinet also recommended that ministries develop their IAKs “in collaboration with relevant stakeholders”.

The IAK can be applied at any time in the policy process and should be seen as an iterative process, where ministries can return to earlier analyses as more information becomes available. However, it should ideally follow the following steps:

#### 1. Initiation of new regulations:

- Within a ministry, policy officials responsible for developing a new regulatory proposal are able to contact their IAK co-ordinator for advice on the steps of the IAK process, and their departmental regulatory burdens co-ordinator for advice on regulatory burdens.
- At this early stage, officials can request ATR to provide support with mapping and analysing possible regulatory impacts of new regulations.
- If officials expect that a proposal will contain substantial regulatory burdens on SMEs, they should carry out an SME test, which involves consulting with entrepreneurs on the workability and feasibility of the proposal.

#### 2. The IAK:

- Officials to decide which parts of IAK are relevant and prepare responses to the seven central IAK questions as well as draft an accompanying Explanatory Memorandum and/or a policy document containing a paragraph on estimated regulatory burdens.
- As part of IAK, ministries should assess their proposals according to the relevant 20 mandatory quality requirements (or tests). Examples of these requirements include: Business Impact Assessment; Impact on Citizens; Impact on Developing Countries; and Impact on Gender Equality.



### 3. Consultation and review stage:

- ATR to review proposals and regulatory burden calculations.
- Ministries are encouraged to submit legislative text of proposals to the internet consultation process (on <https://www.internetconsultatie.nl/>), along with an Explanatory Memorandum and summary IAK document placed on the website.
- If the consultation leads to "significant" changes in regulatory burdens, ATR can review the proposal again (ATR decides this itself).
- Ministries can use the digital tool (*Toetsloket*) to present their proposal to some parts of central government responsible for scrutinising particular quality requirements.
- The final quality requirement, the Government Wide Legislative Review (*Wetgevingstoetsing*), is carried out on selected proposals by the Ministry of Justice and Security. The Ministry then states whether the IAK questions have been addressed on the official "Offer Form" for the Council of Ministers that accompanies a draft proposal.

### 4. Submission stage:

- The proposal is submitted to one of the relevant Voorportalen (High Committee of Senior Officials), followed by one of the Sub-Councils of Ministers and then the Council of Ministers.
- If the Council of Ministers agrees the proposal, it is reviewed by the Council of State
- Once the Council of State has reviewed the proposal, it is submitted to Parliament.

Source: Information provided by via email from the Dutch Government and (Ministry of Justice and Security, 2020<sub>(11)</sub>).

## Scope

As mentioned previously, the IAK lists **20 mandatory IAK quality requirements**, or *ex ante* assessments, which ministries are obliged to consider, where relevant, whilst preparing their IAK analyses. There is no weight given to any of the particular quality requirements, nor is there a requirement for ministries to produce an overall integrated assessment of these tests at the end of the IAK process. **Regulatory oversight or supervision for these quality requirements does not fall to one institution** (e.g.

like the EU Commission's Regulatory Scrutiny Board, which provides a central quality control and support function for Commission impact assessment and evaluation work), but is instead **spread amongst a number of review authorities** throughout central government.

For example, ministries are obliged to calculate the expected regulatory burden of proposals through the **Business Impact Assessment** (*Bedrijfseffectenstoets*). This has been a key focus of the Dutch approach to RIA since the beginning. Guidance on the methodology for calculating regulatory burdens, using the SCM methodology, is set out in the "**Manual for Measuring Regulatory Costs**"<sup>1</sup> (*Handboek Meting Regeldrukkosten*) produced by the Ministry for Economic Affairs and Climate Policy. Under this assessment, ministries should also assess the expected impacts on innovation, the operation of markets and the impact on SMEs. There is no requirement to assess regulatory benefits under this assessment.

One of the most recent additions to the lists of quality requirements has been the **SME test** which was added to the IAK in 2019 as part of the Business Impact Assessment. The aim of this test is to increase the involvement of entrepreneurs in the design and analysis of regulations at an early stage of the legislative process. If ministries estimate early in the legislative process that a proposal may have substantial regulatory impacts, the SME test is mandatory. The test takes the form of a panel discussion with individual SME entrepreneurs, to which small businesses in particular are invited and the workability and feasibility of the legislative proposal is mapped out and what this means for the regulatory pressure of these companies is examined.

Ministries can also request the **ATR** to provide assistance at an early stage of the policy process on mapping out regulatory costs, including methodological advice. The ATR then reviews the proposals and regulatory burden calculations at consultation, and can decide to review them again if the consultation leads to significant changes in the regulatory burdens of the proposal. The Ministry of Economic Affairs is the relevant scrutiny authority for this quality requirement, drawing upon the advice of the ATR.

The **General Guidance for Social Cost-Benefit Analysis** (*Algemene Leidraad Maatschappelijke Kosten-Baten Analyse - SCBA*) is another quality requirement, through which ministries can calculate the societal costs and benefits of different policy options in monetary terms, before selecting the option demonstrating the greatest benefit. A general guidance document was published jointly by the Central Planning Office (CPB) and the Planning Office for the Environment (PBL) in 2014.<sup>2</sup> The general guidance is the successor of an infrastructure-specific guidance that was developed in 2000. The SCBA, which was originally developed for infrastructure projects, is still primarily used in these areas, but this is changing as the Dutch Cabinet

has expressed a desire to spread its usage into more policy areas and as interest in other policy areas is growing. (Ministry of Finance, 2013<sub>[12]</sub>) The Ministry of Finance chairs a cross-government officials group (the SCBA Group) with the aim of spreading best practice, and deepening understanding and stimulating further development of the tools.

The Legal Affairs and Legislative Policy Sector (JZW) of the Ministry of Justice and Security scrutinises the legal quality of draft proposals, through the **Government Wide Legislative Review** (*Wetgevingstoetsing*), according to the Directives for Regulations and the IAK requirements. This is the final quality test carried out on proposals before they are submitted to one of the Voorportalen, the Sub-Council of Ministers and finally the Council of Ministers. On the official “Offer Form” for the Council of Ministers that accompanies a draft proposal, the Ministry must state whether it agrees with the draft proposal. The Ministry does not apply this quality requirement to every legislative proposal, but tries to focus on particularly complex dossiers where this test can add value.

Since 2011, the Cabinet have **increased the number of mandatory quality requirements**, bringing the *total number to 20*, with recent additions examining the impact on gender equality & developing countries. A complete list of the quality requirements is provided in **5Annex A**.

### ***Monitoring and evaluation***

The IAK was recently updated in 2018 to strengthen requirements on ministries to monitor and evaluate regulatory proposals. This happened in response to Article 3.1 of the Accountability Act 2016,<sup>3</sup> which committed government to provide an explanation of the objectives, efficiency and effectiveness pursued when introducing new legislation. (Ministry of Finance, 2017<sub>[13]</sub>) To implement this, additional text was added to questions six and seven of the IAK, relating to monitoring and evaluation, and ministries must now provide text in the Explanatory Memorandum explaining how the legislation will be evaluated, the indicators chosen, the evaluation methods to be used, the required data, as well as the planning and the performer of the evaluation.

### ***Proportionality***

Ministries have a degree of flexibility as to the level of detail contained in an IAK document, as the original Cabinet Plan sets out a **proportionality** principle, stating that *“the detailed nature of the reply to the questions must be proportional and can therefore vary per proposal, for example, depending on the nature of the proposal and the size and impact of the expected effects of a proposal.”* However, the IAK does not

appear to *operationalise* this principle e.g. by setting out a clear triage approach or threshold rule to ensure that ministries target IAK towards policies estimated to have the highest regulatory impact.

### **Consultation and transparency**

The Netherlands has made a number of steps to enhance the transparency of its legislative process in recent years, through placing more information about the process online. The country has a longstanding tradition of very structured consultation processes (via the search for a consensus through established groups and committees (e.g. the Social and Economic Council), and the commissioning of expert advice.<sup>4</sup>

However, in 2011, the Government announced that the Cabinet would like to increase the use of **internet consultation** (via the website [www.internetconsultatie.nl](http://www.internetconsultatie.nl)) as a supplement to existing consultation practice. (States General, 2011<sup>[14]</sup>) The consultation website is administered by the Ministry for Justice and Security.

Major draft regulations are increasingly being put on the website for comment, including the draft legislative text, an Explanatory Memorandum (*Toelichting*) as well as a summary IAK document (although not the complete IAK analysis). The Government has committed to increase the number of draft legislative proposals put forward for consultation, including documents on the nature of the policy problem. However, there is no binding rule mandating the use of internet consultation, and the decision on whether to use it must be made by the ministry taking forward the proposal.

The Ministry of Justice and Security also co-ordinates an **online legislative calendar** (via the website <https://wetgevingskalender.overheid.nl>) with the aim of providing a clear view of the legislative process and enabling stakeholders to follow each stage of the law, including the consultation process. The Cabinet has announced that it wants to increase the use of the calendar for each phase of the legislative process of a particular proposal, making more documents public, including the input of stakeholders. (Ministry of Economic Affairs and Climate Policy, 2019<sup>[15]</sup>)

In addition, the Government added a new consultation initiative, the **SME test** (referred to earlier in the report), to the IAK in 2018 as an additional quality requirement. This test is intended to increase the involvement of entrepreneurs in the design and analysis of regulations at an early stage of the legislative process. It takes the form of a panel discussion with individual SME entrepreneurs, to which small businesses in particular are invited and the workability and feasibility of the legislative proposal is mapped out.

## ***Forward planning***

Beyond the very general framework that is set by the Coalition Agreement and subsequent annual policy/legislative plans, there is no centralised system for the forward planning of new regulations. Each ministry has its own planning system. However, a growing need to share information on legislative projects has led the Ministry of Justice and Security to develop a set of standards for planning and control, the KIWI system (see subsection “Inter-ministerial co-ordination” for more detail) aimed at greater interoperability between systems across ministries. However, it remains up to ministries to decide for themselves what information is shared with other parties or systems.

## ***Inter-ministerial co-ordination***

There are no formal requirements for ministries to consult each other in the development of new regulations and the approach towards inter-ministerial co-ordination differs per ministry. There is, however, an incentive for ministries to carry out some inter-ministerial consultation in order to avoid delays and blockages, for example, when a draft goes to Council of Ministers for approval.

However, the Ministry of Justice and Security oversees a number of tools that ministries can use to collaborate on new proposals. Ministries decide for themselves what information is shared with other parties or systems, unless a government-wide agreement has been made (e.g. for delivering information to the legislative calendar). When drafting legislation, ministries use a digital legal system (*KIWI*), making it possible for a ministry to:

- Register a draft proposal.
- Follow a draft proposal through the legislative process.
- Present a draft to a scrutiny authority within central government (*toetsloket*).
- Start an internet consultation on the draft proposal ([www.internetconsultatie.nl](http://www.internetconsultatie.nl)).
- Present information to the online legislative calendar (in a certain phase of the legislative process), ([www.wetgevingskalender.overheid.nl](http://www.wetgevingskalender.overheid.nl)).
- Produce monitoring reports about the legal draft production of a ministry.
- Monitor the implementation of all European directives.

During the IAK process, ministries can also make use of a **digital tool (*toetsloket*)** to present a draft legislative proposal to the several scrutiny authorities throughout central government (e.g. legislative quality scrutiny by the Ministry of Justice and Security). The scrutiny authority returns their comments on the draft through the portal

and the ministry responds to the comments. The discussion is ended with an approval to the (changed or not) legal draft in the digital portal (or no approval is given).

A number of informal **cross-government officials and ministerial groups** have been setup to facilitate the sharing of information and best practice. For example:

- The Ministry of Justice and Security co-ordinates and chairs an IAK Working Group, responsible for co-ordination of the editing, updates and implementation of the IAK.
- The Ministry of Finance chairs a Societal Cost-Benefit Analysis Group (the SCBA Group) of officials with the aim of spreading best practice, and deepening understanding of these tools.
- The Ministry of Economic Affairs and Climate Policy co-ordinates and chairs a network of Regulatory Coordinators, who are officials responsible for overseeing better regulation programmes within each ministry.
- At the political level, there have also been ad-hoc informal meetings of ministers at the Catshuis in which better regulation issues have been discussed.

### ***Training and guidance***

There are a number of different sources of guidance for ministries to utilise for the IAK. The IAK website, administered by the Ministry for Justice and Security, sets out a detailed amount of information on the different steps of the IAK process, and the list of mandatory quality requirements, and the different scrutiny authorities for the quality requirements. It also provides information on suggested tools and guidance documents that ministries can utilise in their analysis.

The IAK website also provides links to different pieces of guidance related to the quality requirements. For example, the “**Manual for Measuring Regulatory Costs**”, produced by Ministry for Economic Affairs and Climate Policy, provides guidance on the methodological approach for mapping regulatory burdens, using the Standard Cost Method. As such, it provides definitions of key concepts, describes the process that ministries should follow (e.g. when to approach the ATR for assistance), methods for calculating regulatory burdens, and how to obtain data and information on alternatives to regulation.

The **General Guidance for Societal Cost-Benefit Analysis** (*Algemene Leidraad Maatschappelijke Kosten-Baten Analyse - SCBA*) was published jointly by the Central Planning Office (CPB) and the Planning Office for the Environment (PBL). The SCBA was originally developed for infrastructure projects, and is being gradually rolled out to other sectors.

There is a **lack of centralised training provision** for different aspects of the IAK system across ministries, including methodological training for the different quality tests (e.g. how to calculate regulatory burden calculation, Cost Benefit Analysis calculation). The IAK is part of the standard education programme Academy for Legislation and Government Lawyers (*Academie voor wetgeving en overheidsjuristen*<sup>5</sup>), however the OECD officials found little awareness of this training provision during the mission. The OECD team were informed that training on the IAK system had not been systemically provided across the ministries in recent years. Ministries are of course free to organise their own training, and there are cross-government efforts to spread awareness of certain analytical approaches (e.g. through the Regulatory Coordinators Group) but there is no uniform provision across government.

### ***Institutional framework***

In line with the Dutch Government tradition of ministerial autonomy, supervision and regulatory oversight of the IAK framework is spread amongst a number of different parts of government (i.e. scrutiny of the quality requirements). No one ministry is clearly able to exercise authority over the other, so there is an emphasis on ***consensus and collective decision-making***.

**Individual ministries are responsible for guaranteeing the quality** of their own regulations and for producing an adequate response to the seven IAK questions. Also, there is a lack of centralised training provision for different aspects of the IAK system across ministries, including methodological training for the different quality tests, with ministries responsible for organising their own training.

Furthermore, **responsibility for providing advice and sharing best practice on IAK and analytical training is spread throughout the government**. As explained in the subsection “Inter-ministerial co-ordination”, a number of informal cross-government officials groups have been setup to facilitate the sharing of information and best practice.

The **Ministry of Justice and Security** is formally in charge of the overall development of the IAK framework and for scrutinising whether the quality requirements set out in the IAK have been met during the preparation of a regulation (through the *Wetgevingstoetsing* test). The Ministry also co-ordinates and chairs an IAK Working Group, which is responsible for co-ordination of the editing, updates and implementation of the IAK. In addition, the Ministry is also responsible for the internet consultation policy, including overseeing and maintaining the consultation website. The Secretary General of the Ministry also chairs one of the *Voorportalen*, which conducts an assessment on the answers to the IAK questions in the proposed

documents, before they go on to sub-ministerial councils and finally to the Council of Ministers.

The Better Regulation unit in the **Ministry of Economic Affairs and Climate Policy** co-ordinates and reports to Parliament on the Government's better regulation program. It also co-ordinates and chairs a network of Regulatory Coordinators responsible for overseeing better regulation programmes within each ministry. Additionally, based on the opinions of ATR, the Unit checks the quality of the regulatory burden assessment of regulatory proposals before they are discussed in the Voorportalen and Council of Ministers.

The **Dutch Advisory Board on Regulatory Burden** (*Adviescollege toetsing regeldruk - ATR*), located at arm's length from government, provides oversight and advises government on the quality of burden assessments for new regulatory proposals. It was setup in 2017, replacing its predecessor ACTAL, with the aim of advising ministries early in the process of preparing regulations. It reviews all proposals for legislation and regulations (not only those with major regulatory burdens). Also, if changes are made to draft legislation or regulations after the formal review, of which significant consequences are expected for the regulatory burden effects, ATR can provide an additional opinion before the decision-making in the Council of Ministers. Unlike ACTAL, it no longer has a formal role in providing strategic advice on the Government's broader better regulation policy process.

### Box 4.3. Regulatory oversight of business impacts in the Netherlands

The Netherlands has been one of the leading OECD members with regards to ensuring robust oversight of regulatory impacts on business. In 1998, the Cabinet set up the Committee for Reduction of Administrative Burdens on Enterprises (the Slechte Committee) which aimed to advise the Minister of Economic Affairs advice on how to realise a substantial reduction in administrative burdens on business.

In reaction to a report produced by the Committee, the Dutch Government stated that administrative burden reduction should be seen as a continuous process and aimed to achieve a cultural shift. In support of this, ACTAL (*Adviescollege Toetsing Administratieve Lasten – Advisory Board on Administrative Burdens*) was setup in 2000, with responsibility for external quality control of administrative burden reduction efforts, along with co-ordinating units in each ministry.



ACTAL's mandate changed significantly over the years. However, its core tasks included providing independent scrutiny on new regulatory proposals for administrative and compliance costs and advising on the potential for non-regulatory alternatives (mainly before the proposal was submitted to the Voorportalen stage). It operated according to a proportionality principle whereby it would only scrutinise proposals with substantive estimated regulatory impacts. The body also had the formal task of providing strategic advice to the government on the better regulation system, based upon "signals" (e.g. regularly occurring complaints) from the business community and civil society.

ACTAL's mandate came to an end in 2017. Following an independent evaluation, the Government established the Dutch Advisory Board on Regulatory Burden (Adviescollege toetsing regeldruk - ATR), which is similarly constituted as an independent advisory body located at arm's length from government. The board consists of three members, who are supported by staff and a director. The body decides what it advises on (within its mandate) as well as on the content of these opinions. Both government and Parliament can approach the body for advice.

Compared to ACTAL, the ATR advises ministries mainly in the early stages of the policy process i.e. problem identification. It does not operate according to a proportionality principle and assesses the regulatory consequences on business of all primary legislative proposals and administrative measures, and also scrutinises ministerial decrees if they have substantial effects on compliance costs. It scrutinises regulatory proposals based on the following testing framework:

1. Benefit and necessity: is there a task for the government and is legislation the most important designated instrument?
2. Are less burdensome alternatives possible?
3. Has an implementation method been chosen that is workable for the target groups that they have to comply with legislation?
4. Have the consequences for the regulatory burden effects been fully and accurately identified?

ATR has no formal role in providing strategic advice to government on the overall better regulation system. More recently, the ATR has taken on a new role of scrutinising the new SME Test and has worked closely with ministries on preparing for its introduction.

Source: (OECD, 2018<sup>[16]</sup>)

The **Ministry of Finance** has been traditionally responsible for those parts of the evaluation system that focus on the financial impact to government's budgets. The Ministry has co-ordinated spending reviews (*Interdepartementale beleidsonderzoeken*) which have been in place since the 1980s. These reviews are performed by interdepartmental working groups commissioned by governments and examine broad policy areas or generic policy issues where usually several departments are involved. This policy instrument has a number of specific rules, such as an independent chairman, an interdepartmental working group possibly supplemented with external experts, political independence and the non-veto principle with regard to policy variants. Since 2018, the Ministry has also taken on responsibility for setting out the requirements and monitoring the compliance of **Article 3.1 of the Accountability Act**, which aims to strengthen the monitoring and evaluation requirements of new legislative proposals. In addition, the Ministry is co-ordinating a government-wide review of the Dutch approach to the evaluation of policies and processes called "**Insight into Quality**" (see subsection "Future policy initiatives" for more detail).

The **Council of State** (*Raad van Staat*) is a form of constitutional court, advising government on all draft bills and royal decrees (Orders in Council). Although its advice is not formally binding, it carries considerable weight, as governments regularly amends bills on its advice. The Advisory Division of the Council of State reviews proposals after they have been agreed by the Council of Ministers and before they go to Parliament. Their review consists of three parts: a policy analysis test (i.e. how clearly explained is the rationale of the proposal), a legal test (i.e. is the proposal compatible with higher law); and a technical test (i.e. the technical quality of the drafting).

A key player beyond the executive is the **parliament** (also known as the States General). The Dutch political system works on the basis of coalition agreements, which set the policy framework for the four years of the electoral cycle. The parliament holds government closely accountable for implementation of the coalition agreements. Although there is no specific parliamentary committee for better regulation, the parliament takes a keen interest in reports on progress, and has started several initiatives for reform in the past. The parliament was instrumental in pushing for a new approach to inspections and enforcement. It is regularly sent progress reports on different aspects of the better regulation programme.

There are three **Planning Bureaus** within the Netherlands,<sup>6</sup> each respectively providing independent advice to government on economic policy, environmental and nature conservation policy; social policy and urban planning policy. Whilst they sit under the political sponsorship of ministries, they control their own research programmes and can undertake research at their own initiative, although ministries

can request that they carry out particular research projects. Their research programmes have a huge degree of authority within public opinion and within government, and political parties now submit their election manifestos to the bureaus for an assessment of how their platform will perform in economic and environment terms. They have standing invites to attend Voorportaal, sub-Council and Council of Ministers meetings, although it is unclear to what extent this happens in practice.

The **Netherlands Court of Audit** provides *ex post* scrutiny of government actions. It investigates whether public funds have been collected and spent legitimately, efficiently and effectively. It is independent of government and parliament. It publishes an annual programme of audit projects, which set out factual findings, and make recommendations for improvement. The NCA has previously carried out previous audits of the programme for administrative burden reduction on business, and an audit of the transposition of EU directives.

### ***Future policy initiatives***

The Ministry of Finance has been co-ordinating the “*Insight into Quality*” programme since 2018, which emanates from the 2017 Coalition Agreement. (Government of the Netherlands, 2017<sub>[17]</sub>) This programme aims to increase the societal impact of government policy, increase knowledge of policy effectiveness and efficiency and reform the evaluation system (*ex ante*, *ex durante* and *ex post*) where necessary. The Ministry has been working closely with other parts of the government, and plans to draw upon the expertise of independent experts, including the Planning Offices and universities.

For the first part of the programme, the Ministry has been working with other ministries to select a programme of evaluation activities to develop understanding of the added societal value of these activities and to spread best practice. In addition, the Ministry has been mapping out the current range of evaluation tools across government, examining how these operate in practice and also taking into account the culture towards evaluation within ministries. At the time of writing, the programme is ongoing, but any reform proposals that come from it could clearly have an impact on the IAK.

## Notes

<sup>1</sup> [https://www.kcwj.nl/sites/default/files/handboek\\_meting\\_regeldrukkosten\\_v\\_1-1-2018.pdf](https://www.kcwj.nl/sites/default/files/handboek_meting_regeldrukkosten_v_1-1-2018.pdf)

<sup>2</sup> <https://zoek.officielebekendmakingen.nl/blg-270482.pdf>

<sup>3</sup> Article 3.1 of the Accountability Act came force into January 1, 2018

<sup>4</sup> Special laws and general administrative measures may also prescribe other forms of consultation, for example with IPO, VNG and trade unions.

<sup>5</sup> <https://rechtenoverheid.nl/>

<sup>6</sup> Netherlands Bureau for Economic Policy Analysis (*Centraal Planbureau*);  
Netherlands Environmental Assessment Agency (*Planbureau Leefomgeving*);  
Netherlands Institute for Social research (*Sociaal-Cultureel Planbureau*).

# 5 Key findings and recommendations

In 2019, the Dutch Government invited the Regulatory Policy Division of the OECD to conduct an analysis of the current institutional setup for IAK and provide some policy options for improvement based on a comparison with OECD best practice.

The Dutch Government has made significant progress since 2011 in introducing an integrated IAK framework, which represented a clear improvement on the previous series of unco-ordinated quality tests. Parts of the framework are well structured and strongly overseen, in particular the requirement to calculate regulatory costs on business. Furthermore, the political will continues to exist at Cabinet-level and throughout the ministries for an evidence based and transparent decision-making process, as demonstrated at the time of writing by the *Operation Insight into Quality*.

However, the current IAK has not become an integral part of governmental decision-making process in the manner intended and tends to be produced late in the policy process. Nor is it driving sufficient transparency for stakeholders in the rule making process. In a number of ways, the IAK does not resemble a standard RIA process (according to OECD best practice) and it also lacks strong regulatory oversight to ensure regulatory quality and the integration of horizontal objectives.

The Netherlands is not alone in facing this issue. The evidence internationally shows the challenges and shortcomings of RIA implementation. As pointed out in the OECD's 2018 Regulatory Policy Outlook, in many instances:

*“RIA has become over-procedural and is not targeted to the most significant laws and regulations, either because there is no triage system or because regulatory proposals with significant impacts are exempted. Where assessments are undertaken, they often focus on narrowly defined economic impacts, such as regulatory burdens for business, ignoring other significant effects.” (OECD, 2018<sup>[4]</sup>)*

This section focuses on the most pressing or current issues affecting the Netherlands *ex ante* IAK process that arose from the OECD's desk research and the June 2019 fact finding mission. Based on these issues, this section makes a number of suggestions for reform for the Government to take forward in conjunction with the key stakeholders.

The OECD views this approach to reform as more proportionate and likely to achieve the desired outcome of a strengthened RIA framework, as the IAK is already established and ministries are largely familiar with it, compared with the alternative possibility of developing an entirely new RIA framework. **There are a number of different possible paths that the Government could choose for rolling out a reformed IAK system**, either at once or gradually, as described below:

- A pilot phase, then the institutionalisation of RIA for all or all major regulations;
- Starting with a simplified methodology, and then expanding;
- Starting from some institutions, and then expanding RIA to others;
- Starting from major regulatory proposals, and then lowering the threshold to cover less significant regulations;
- Starting with binding regulation and then moving to soft-law;
- Starting with single- or multi-criteria qualitative analysis, and then gradually moving to quantitative analysis (CBA or other);
- From concentrated RIA expertise to more distributed responsibilities.

### ***A number of positive features can be highlighted from the Dutch approach to RIA***

The IAK is another example of Netherlands long-standing commitment to innovative regulatory policies, going back to the 1980s. Importantly, the OECD review team noted the continued **strong political support** across ministries during the fact-finding mission for the principles underlying the IAK framework, and its desired outcome for an efficient, effective and transparent administrative and political decision-making process (*Operation Insight into Quality* is a strong example of this continued commitment to improving the evaluation system). Discussions across ministries and with external stakeholders revealed broad support for the *principles* underlying RIA, with the most frequently recurring complaints surrounding how the framework is being applied *in practice*.

As previously noted, the introduction of the IAK in 2011 **represented a strong improvement** on the previously more disparate and confusing processes, which policy officials needed to follow when developing new regulations. The IAK has made

steps towards introducing a standard RIA process by setting out a structured process for policy officials to follow (the seven questions), with the first three questions directing policy officers to define the problem. Furthermore, the Cabinet's policy intention (in the Kabinetsplan) was for the use of the IAK to be **proportional** and therefore vary in length and detail per proposal, depending on the estimated impacts of a proposal.

In developing new proposals, the ministries are obliged to **assess a broad range of regulatory impacts** in the IAK, through the various mandatory quality requirements. The Cabinet's policy intention has clearly been that ministries should capture a broad range of societal impacts in their *ex ante* analyses.

Certain parts of the IAK are quite tightly organised, with strong regulatory oversight and supervision, **in particular the requirement to calculate regulatory burden on businesses**. The knowledge on how to calculate regulatory burdens is now quite firmly embedded across ministries, in particular through the SCM methodology. In addition, the ATR performs a useful function in advising ministries on the quality of individual burden assessments at the early stage of the development of a proposal and can recommend improving the assessment if it is deemed inadequate. However it should be noted, that in the fact finding missions certain stakeholders pointed to a number of challenges facing the ATR, including the difficulty in measuring its impact particularly in the early stages of policy making; and how to ensure proportionality in its work programme (as all types of legislation have to be submitted for ATR scrutiny).<sup>1</sup>

There are also a **number of interdepartmental forums (of both an informal and formal nature) at different levels of government** to facilitate cross-government co-ordination and discuss issues and improvements regarding the IAK process. These include, at official level, the interdepartmental IAK Working Group and the monthly Regulatory Coordinators meetings; as well as the Voorportalen meetings. At the political level, there have also been ad-hoc informal meetings of ministers at the Catshuis in which better regulation issues have been discussed. There are also useful IT tools available to ministries including the KIWI system and the digital portal to facilitate interdepartmental collaboration on new regulatory proposals.

Government has accrued substantial experience in **utilising Social Cost-Benefit Analysis (SCBA)**, mainly in infrastructure projects, and is in the process of rolling it out to more sectors. It would be instructive to consider the lessons of how this analytical process has been integrated into policy development, including the strong role played by the Planning Bureaus (in developing guidance and providing scrutiny of government's SCBA analysis) and if this could be applied to the IAK.

However, the IAK continues to face a **number of on-going, substantial challenges** with regards to ensuring that it becomes an integral, systematic part of the government's policymaking process and fulfils the Cabinet's original policy objectives.

### ***IAK policy and perception***

The OECD team could find **little clear evidence that the IAK is having an impact on decision making** within government, at either official or ministerial levels. A number of ministries and external stakeholders have pointed to the fact that the IAK template tends to be completed late in policy process, at the administrative "Voorportal" stage before submission to Council of Ministers, after key decisions have already been made and there is little room to consider alternatives to the regulatory proposal. Furthermore, the results of the IAK are used to provide input for the Explanatory Memorandum (*Memorie van Toelichting*), and the full IAK analyses are not discussed within the Council of Ministers or even later presented to Parliament.

Despite the Cabinet's intention that the IAK should cover a range of societal impacts (hence the increase in the number of quality requirements since 2011), some of the external stakeholders that the OECD team spoke to continue to perceive that the framework is **still predominately focused on burden reduction**. A possible explanation could be that the area of burden reduction receives more supervision and support from the ATR, whilst the other quality requirements do not receive the same level of support, making it more difficult to ensure compliance.

On this basis, **the IAK does not fulfil its original intended objectives** i.e. *it is neither providing the government with an integrated view of potential regulatory impacts or enhancing the transparency of the policy making process.*

## **Recommendation 1: Clarifying and communicating the purpose of the IAK policy**

There is scope for the government to clarify the role and purpose of IAK through a **refreshed cross-government IAK policy** taking account of the more detailed reforms set out below. This could be implemented through an *updated Kabinetsplan*, to present IAK as a pivotal tool to **enhance regulatory quality** (see Box 5.1) and not only to reduce regulatory costs on businesses. Only if the IAK is explicitly and publically declared as a key basis for government decision-making will it begin to become more relevant.



The Government should **clearly communicate the goals of IAK**, both internally and externally. This should what cover the IAK is used for and its objectives i.e. presenting it as a pivotal tool for enhancing regulatory quality. This would help raise awareness of benefits, and experiences of carrying out IAK, and its objectives amongst ministries and external stakeholders. The Government should liaise internally – central government – and externally – stakeholders like Parliament, universities, think tanks, mass media – to carry out public relations activities (e.g. forums, seminars, interviews, communicational campaigns) explaining the use and importance of IAK and its direct link with better policy making. This could also help to link the IAK more clearly with the Government’s overall better regulation strategy “*Noticeably Better Regulations and Services 2018-2021*” which has moved away from focusing on a quantitative regulatory costs reduction target.

This refreshed policy and narrative, could be used to reinforce the message amongst ministries, the public and relevant stakeholders that:

- RIA is analytical tool: to make evidential justification more robust and more transparent.
- RIA is a communication tool: to enhance the substantive dialogue with stakeholders as well as internal “horizontal” co-ordination when elaborating policies.
- RIA is a discipline tool: to curb regulatory “inflation”, excessive amendments, hence low predictability and therefore reduced investments.
- RIA is a learning tool: to better connect findings from post implementation reviews to *ex ante* assessments, to better inform policy and regulatory initiatives.

### Box 5.1. Defining regulatory quality

Regulations are the rules that govern the everyday life of businesses and citizens. They are essential for economic growth, social welfare and environmental protection. However, they can also be costly in both economic and social terms. In that context, “regulatory quality” is about enhancing the performance, cost-effectiveness, and legal quality of regulation and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency, accountability and evidence-base. Beyond process, the notion of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient (do not impose unnecessary costs), coherent

(when considered within the full regulatory regime) and simple (regulations themselves and the rules for their implementation are clear and easy to understand for users).

Building and expanding on the 1995 “OECD Recommendation on Improving the Quality of Government Regulation” (OECD, 1995), it is possible to define regulatory quality by regulations that:

1. serve clearly identified policy goals, and are effective in achieving those goals;
2. are clear, simple, and practical for users;
3. have a sound legal and empirical basis,
4. are consistent with other regulations and policies;
5. produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
6. are implemented in a fair, transparent and proportionate way;
7. minimise costs and market distortions;
8. promote innovation through market incentives and goal-based approaches; and
9. are compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Source: (OECD, 2015<sup>[7]</sup>)

## ***Regulatory oversight***

Allocating roles and responsibilities and defining tasks throughout the regulatory process, especially ensuring that regulatory management tools are used effectively, are **key success factors in any RIA system**. Accordingly, the OECD have stated that bodies tasked with regulatory oversight should be **tasked with five key functions** (see Box 5.2 for more detail):

1. Quality control and scrutiny of the process of developing regulation.
2. Identifying areas of policy where regulation can be made more effective.
3. Advising on to the systematic improvement of regulatory policy framework.
4. Co-ordinating and promoting a whole of government, co-ordinated approach to regulatory quality.

## 5. Providing guidance, advice and support.

A salient feature of the Netherland's system of government is that **ministerial departments traditionally operate with a high degree of autonomy** and even the Prime Minister operates with a small number of support staff and refrains from actively steering ministers. Ministries are very dependent on the lead ministry for their involvement in the early phases of policy preparation and the approach towards inter-ministerial co-ordination differs per ministry.

In light of this fact, **regulatory oversight appears to be quite fragmented in the Dutch Government** as there is no one ministry providing co-ordination and oversight to ensure quality control and the integration of horizontal objectives. **Regulatory oversight or quality control is divided across a multitude of government institutions**, on how the various requirements in IAK are being applied.

The only section of IAK that could be described as robustly overseen and supervised is the **calculation of burdens on business** whereby the ATR provides oversight in both the early and final phases of the legislative process. A number of officials and stakeholders who the OECD met with during their mission called for an oversight body, akin to the ATR, who would **supervise a broader range of quality requirements** than regulatory burdens on business.

The Ministry for Justice and Security formally oversees the design of the IAK e.g. proposing changes to improve the regulatory governance framework, monitoring and reporting on the IAK to Parliament, as well as overseeing the legal quality of proposals. However, **the Ministry has its own policy portfolio on which it needs to gain cross-government agreement** (e.g. immigration policy), so their Minister will be unlikely to hold up cabinet colleagues' policies on a regular basis based on insufficient impact assessments, *and also may have difficulty with driving large scale reform of the IAK, especially if this would mean imposing stricter rules on his/her colleagues*. There are also existing cross-government initiatives, such as the IAK Working Group, which work to improve the usability and structure of the IAK.

There is also **no part of government with responsibility for providing guidance, advice and capacity building**. The IAK is part of the standard education programme Academy for Legislation and Government Lawyers (*Academie voor wetgeving en overheidsjuristen*), **however the OECD officials found little awareness of this provision during the mission**. This responsibility for training provision is largely left to ministries to organise internally and therefore general IAK training and specialised methodological training is not systematically provided across government (see Recommendation 3: Strengthening the IAK methodology for more detail on this).

## Box 5.2. Regulatory oversight according to the 2012 OECD Recommendation

Principle 3 of the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance calls for countries to “establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy and thereby foster regulatory quality”. The Recommendation highlights the importance of “a standing body charged with regulatory oversight (...) established close to the centre of government, to ensure that regulation serves whole-of-government policy” and outlines a wide range of institutional oversight functions and tasks to promote high quality evidence-based decision making and enhance the impact of regulatory policy.

In line with the Recommendation, a working definition of “regulatory oversight” has been employed in the 2018 Regulatory Policy Outlook, which adopts a mix between a functional and an institutional approach. “Regulatory oversight” is defined as the variety of functions and tasks carried out by bodies/ entities in the executive or at arm's length from the government in order to promote high-quality evidence-based regulatory decision making. These functions can be categorised in five areas, which however do not need to be carried out by a single institution / body:

**Table 5.1. Areas of regulatory oversight**

Areas of regulatory oversight	Key tasks
Quality control (scrutiny of process)	<ul style="list-style-type: none"> <li>• Monitor adequate compliance with guidelines / set processes</li> <li>• Review legal quality</li> <li>• Scrutinise impact assessments</li> <li>• Scrutinise the use of regulatory management tools and challenge if deemed unsatisfactory</li> </ul>
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	<ul style="list-style-type: none"> <li>• Gather opinions from stakeholders on areas in which regulatory costs are excessive and / or regulations fail to achieve its objectives.</li> <li>• Reviews of regulations and regulatory stock.</li> <li>• Advocate for particular areas of reform</li> </ul>
Systematic improvement of regulatory policy (scrutiny of the system)	<ul style="list-style-type: none"> <li>• Propose changes to improve the regulatory governance framework</li> </ul>

	<ul style="list-style-type: none"> <li>• Institutional relations, e.g. co-operation with international for a</li> <li>• Co-ordination with other oversight bodies</li> <li>• Monitoring and reporting, including report progress to parliament / government to help track success of implementation of regulatory policy</li> </ul>
Co-ordination (coherence of the approach in the administration)	<ul style="list-style-type: none"> <li>• Promote a whole of government, co-ordinated approach to regulatory quality</li> <li>• Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle</li> <li>• Facilitate and ensure internal co-ordination across ministries / departments in the application of regulatory management tools</li> </ul>
Guidance, advice and support(capacity building in the administration)	<ul style="list-style-type: none"> <li>• Issue guidelines and guidance</li> <li>• Provide assistance and training to regulators/administrations for managing regulatory policy tools (i.e. impacts assessments and stakeholder engagement)</li> </ul>
Source: (OECD, 2018 <sub>[16]</sub> )	

## Recommendation 2: Strengthening Regulatory Oversight of the IAK

The Netherland's should seek to **strengthen regulatory oversight and scrutiny of the IAK** across a number of areas, including regulatory quality, ensuring that the key roles and responsibilities (as set out below) are clearly understood, tasks are clearly defined and especially ensuring that regulatory management tools are used effectively. An effective oversight function is critical to ensuring high quality evidence based decision making and enhancing the impact of RIA frameworks.

Taking into consideration the features of an effective oversight that are considered best practice (Box 5.2), the **Government should ensure that the regulatory oversight function will include the following activities:**

- promoting a whole of government, co-ordinated approach to regulatory quality through the IAK process.

- drawing up and publishing objective and transparent criteria (i.e. quality tests) for the scrutiny of IAK documents. Reviewing this list regularly to test its effectiveness as well as the administrative burden it places on line ministries.
- checking the quality of (selected) IAK documents i.e. ensuring that quality tests have been adequately carried out and issuing opinions on quality to the line ministries in charge of the policy initiative.
- directly offering or organising the transfer of *ad hoc* expertise on IAK to line ministries and co-ordinating an IAK training and capacity-building programme.
- monitoring and reporting on IAK performance across government, including publishing annual reports to Parliament on the performance with IAK by individual ministries against performance benchmarks, as well as drawing up recommendations for further improvements.
- developing an “IAK Handbook” through amalgamating the various sources of methodological guidelines for IAK into one document, including drawing upon any useful international sources where possible, and ensuring their diffusion and use across government.
- co-ordinating with all relevant authorities within government responsible for the implementation of the IAK (e.g. regulatory co-ordinators), so as to ensure synergies, co-ordination, and economies of scale.

The OECD has found that internationally, the parts of governments responsible for reviewing the quality of regulation are often situated in the centre of government. There are a number of advantages for setting up regulatory oversight in the centre as it gives the function a broad overview of departmental activity and therefore might contribute to better consistency of individual policies and regulations issued by ministries and their alignment with government’s policy goals. (OECD, 2018<sup>[16]</sup>) However, the Netherland’s government is based around strong autonomy of ministerial departments and consensus decision making.

Nevertheless, there have been a **number of past examples** where Dutch ministries have setup interdepartmental bodies to facilitate co-operation e.g. the Proposed Legislation Desk, which was operated jointly by three ministries, checked the quality of impact assessments and provided help and guidance to ministries. In addition, the RRG was established to manage the programme for reducing administrative burdens on business, including reporting progress to Cabinet and Parliament.

There are a **number of options** for where responsibility for a strengthened, more co-ordinated regulatory oversight function should sit within the Dutch Government. Importantly, it should be emphasised that the regulatory oversight functions **do not need to be carried out by a single institution / body**, although effective

co-ordination between these functions is crucial. These **options for reform** could include:

- **Setting up a new regulatory oversight body, which operates with a certain degree of autonomy from central government**, to provide oversight of the core regulatory quality tests, with its focus including the scrutiny of wider societal costs and benefits (e.g. Cost-Benefit Analysis) as well as stakeholder engagement. Alternatively, instead of setting up a new body, the **scope of the ATR could be reviewed** to widen its mandate beyond its current focus on regulatory costs to business. Robust and autonomous supervision, independent from political influence, is important for improving the quality of IAK analysis. For example, in the United Kingdom, the Regulatory Policy Committee (RPC)<sup>2</sup> provides external, independent scrutiny of new regulation, and consists of a mix of eight independent experts (supported by a secretariat of eleven civil servants) with a wide range of experience and current knowledge of business, employee and consumer issues. Table 5.2 overleaf provides examples of the differing scope of regulatory oversight bodies across Europe, including the types of impacts they scrutinise.
- a **new Ministerial Committee**, supported by a secretariat of officials, to co-ordinate and oversee a new IAK policy, as well as overseeing the performance of IAK and any reform efforts (*this could possibly have a similar role to the old Ministerial Steering Group on Better Regulation*). Such a Committee would help ensure that IAK is seen as whole-of-government rather than being owned by any particular ministry.

There are **advantages and disadvantages** to each option of where to place the regulatory oversight function. A new regulatory oversight body, operating with autonomy from government, can provide reassurance to external stakeholders in the quality of the government's IAK analysis, as it could be viewed as an impartial and credible actor in the regulatory process. However, these autonomous bodies can face challenges in ensuring that their opinions are fed into the legislative process and can influence decision making. The option of a new Ministerial Committee, supported by a secretariat of officials, has been utilised successfully in the past to drive cross-government policy reform in areas such as reduction of burdens on business. On the other hand, such an organisation would be reliant on the co-operation of ministries, which tend to act with a high degree of autonomy, and may be less likely to be viewed as impartial in the eyes of stakeholders.

**Table 5.2. Regulatory oversight bodies: impacts scrutinised**

	Compliance costs	Administrative costs	Business costs	Costs to professionals	Costs to citizens	Costs to civil society	Direct costs	Indirect costs	Benefits	Impacts on specific sectors	Small Business Test	Alternatives
ATR <sup>1</sup>	X	X	X	X	X		X			X	X	X
NKR	X	X	X	X	X	X	X				X	X
FCRIA	X	X	X		X	X	X	X	X	X		X
NBRC	X	X	X	X			X	X	X	X	X	X
SBRC	X	X	X	X			X	X			X	
RIAB	X	X	X	X	X	X	X	X	X	X	X	X
RPC	X	X	X			X	X	X	X		X	X
RSB	X	X	X	X	X	X	X	X	X	X	X	X

<sup>1</sup> ATR = Dutch independent advisory body (Adviescollege Toetsing Regeldruk); NKR = German national regulatory control body (Nationaler Normenkontrollrat); FCRIA = Finnish Council of Regulatory Impact Analysis; NBRC = Norwegian Better Regulation Council; SBRC = Swedish Better Regulation Council; RIAB = Regulatory Impact Assessment Board (Czech Republic); RPC = Regulatory Policy Committee (United Kingdom); RSB = Regulatory Scrutiny Board (EU Commission).

Source: (OECD, 2018<sup>[16]</sup>).



## ***IAK methodology***

If the IAK is **compared with OECD best practice on RIA** (see Box 1.2. Best Practice Principles for Regulatory Impact Analysis), it has certain similarities to a standard RIA process, by setting out a structured process for policy officials to follow (the seven questions), and directing policy officers to focus on problem definition in the first three questions. However, there are also a number of important ways in which the **IAK differs from the standard RIA process**.

Whilst the IAK brings the various quality requirements together into one framework, it does not require or incentivise ministries to **provide an overall integrated assessment** of the different impacts of a new regulatory measure (*i.e. are the estimated benefits of the regulation greater than the cost*). There are a number of examples internationally of how governments produce integrated assessments of the costs and benefits of proposed; either quantitatively through Cost-Benefit Analysis (CBA) or qualitatively as through multi-criteria analysis. However, the choice of such a methodology must first suit the objectives of a country's RIA system as well as the administrative context and capacity.

The IAK does not appear to be incentivising ministries to **consider and list alternative ways of addressing potential solutions to the identified problem**, including regulatory and non-regulatory alternatives, or a mix of instruments. OECD best practice suggests that all plausible alternatives, including non-regulatory solutions should be taken into account in a RIA process. A 'do-nothing option' or "baseline" – the assumed state of the world in the absence of the regulation, should always be included.

In addition, under the IAK, a ministry is only required to calculate the impact of a proposal (question seven) **after having selected the preferred instrument**. There is no requirement to prepare **analysis on multiple options** before selecting the choice of the best instrument, which would give ministries the incentive to consider alternatives to choosing regulations.<sup>1</sup>

Furthermore, whilst the OECD could find examples, in the IAK summaries or memorandums, of ministries calculating the estimated regulatory burdens on business, they were unable to find published examples of ministries preparing analysis **on the wider costs and benefits to society**. This has fed into the perception amongst external stakeholders that the IAK remains predominately concerned with costs to business.

It is also not clear that the IAK is incentivising ministries to prepare sufficiently detailed analysis of the impacts of regulatory proposals. The OECD reviewed a selection of

completed IAK documents published for internet consultation<sup>2</sup> and found them to be quite **high level, descriptive and lacking in detail** (a view shared by number of external stakeholders), whilst any quantitative data on estimated regulatory impacts tends to be found within the accompanying Explanatory Memorandums. Other areas of analysis, which appear missing from IAK analyses, include any analysis of distribution of costs and benefits between social groups or geographical areas such as regions, or any assessments of risk.

Furthermore, as ministries have continued to add their desired quality requirements to the IAK since 2011, the **simplicity of the framework has been progressively eroded** by its ever increasing *scope*, through the addition of more quality tests covering a number of policy areas including: Innovation, SME Test, Developing Countries, Gender Equality. During the fact-finding mission, a number of policy officers in different ministries pointed to the **complexity of the IAK framework, and the related volume of quality requirements**. Evidence from OECD countries shows that governments get the most out of RIA reforms if the design and the implementation of the RIA system is thoroughly integrated with other government processes and tools – currently the IAK feels to a number of stakeholders as a complex list of tests, which bear little relationship to each other.

In addition, the IAK process has **not been effectively joined up with ex-post monitoring and evaluation** of regulatory measures – *a crucial part of ‘closing’ the regulatory cycle*. In the fact finding mission stakeholders within ministries and external stakeholders also pointed to the difficulty of monitoring new regulatory measures, due to the lack of clear goals set out in the legislation. However, since the enactment of Article 3.1 of the Government Accounts Act in 2018, a section on “Evaluating and Monitoring Policy” has been added to the IAK framework and ministries are required to insert an evaluation paragraph to the Explanatory Memorandum – **a crucial success factor will be whether ministries have the resources and capacity to meet this obligation**.

There is a **great deal of established analytical expertise** situated throughout (and external to) the Dutch Government which the IAK does not seem to be joined up with or drawing upon. For example, the three planning bureaus are recognised by ministries and external stakeholders as providing authoritative advice and analysis on economic, environmental and social policy. These bodies appear to have little relationship with the IAK process, e.g. being asked to provide analysis or guidance.

Importantly, there is also **a lack of centralised training provision on IAK** for policy officers across ministries, on either how to carry out the full process or more detailed analytical training on regulatory impact calculations. Whilst there is a great deal of

analytical expertise throughout the Dutch Government, **it can be unclear whom officials are supposed to approach for help** in preparing an IAK.

There is **guidance available online**, located within different documents: the “Manual for Measuring Regulatory Costs” and “General Guidance for Societal Cost-Benefit Analysis” to explain the methodological approaches to calculating regulatory impacts. Furthermore, the **main IAK website** contains information on the main questions, the mandatory tests and requirements, but also many other suggested tools, making it potentially difficult and complex for policy officials to understand.

In addition, each ministry has at least one Regulatory Coordinator and one IAK Coordinator (in some departments one official occupies both roles). Whilst these co-ordinators/IAK officers can provide advice to policy colleagues, they are limited in the amount of capacity building they can undertake.

Based on these findings, it is clear that **the IAK is not currently operating as a standard RIA process.**

### Recommendation 3: Strengthening the IAK methodology

There are a **number of possible options** through which the Dutch Government could review the IAK structure and methodology so that it **more closely follows a best practice RIA process**. This programme of work could be overseen by the section (or sections) of government tasked with the new regulatory oversight function (see Recommendation 2: Strengthening Regulatory Oversight of the IAK). The Government, could consider running a pilot process in order to:

- **introduce a new standardised IAK template** for ministries to complete when developing new regulations. This document could be made publically available and be a useful means for stakeholders (including Parliament) to examine government’s underpinning analysis. As such, it should contain the regulatory burden data currently found in other legislative documents, including the Explanatory Memorandum, and aspire to contain data on wider costs and benefits, including Cost Benefit Analyses as well as any relevant data from external stakeholders (such as the research of the Planning Bureaus) and relevant evaluation reports. References should be made available in annexes to allow interested users to find the background information used to undertake the RIA and inform about the robustness of the evidence base, assumptions and their limitations, etc. See Annex B for an example of the UK Government structures its RIA template.

- **include a short, easy-to-understand summary and integrated assessment** in the new IAK template, e.g. in a form of the table, briefly introducing the assessed options, their costs and benefits and justifying why the preferred option has been selected.
- **review the structure of the seven IAK questions** to incentivise ministries to consider and list alternative ways of addressing potential solutions to the identified problem, including regulatory and non-regulatory alternatives and a “do nothing” option. In addition, the IAK should encourage ministries to provide an appropriate level of analysis *before* selecting the choice of the best instrument – thereby giving ministries the incentive to consider alternatives to choosing regulations.
- **review the list of quality tests**, considering where any overlap between the different tests may occur, and where the list of requirements could be streamlined to a **core, proportionate set of tests** for ministries to consider during the policy process. In future, the oversight function should advise the Council of Ministers as to whether the addition of quality tests is proportionate and adding undue complexity to the system. Each quality test should not feel like an individual, atomised task, but rather they should be connected through a well-defined, co-ordinated methodological approach.
- clearly **set out the minimum requirements for IAKs analyses** and sharing best practice examples, while specifying the analytical and quality standards expected for a more in-depth IAK. The Government should look to OECD international best practice (see Box 5.3) to consider **whether any core areas of analysis are missing from the IAK** e.g. should the IAK quality tests include an analysis of distribution of costs and benefits between social groups, regions or an assessment of risk.
- continue with the implementation of Article 3.1 the Accountability Act, to better link IAK with **ex post monitoring and evaluation of regulatory measures** – a crucial part of ‘closing’ the regulatory cycle. As part of IAK, ministries should regularly assess whether regulations have achieved their stated policy goals. The Government should consider whether ministries have the resources and analytical capacity to meet this obligation.

The Government should **ensure that IAK training is systematically provided across ministries** to encourage the development of expertise in evidence-based policymaking. There should also be specialised training on applying the methodology, drawing on support from economists as necessary (given that many officials are not economists by training). The new oversight function could directly offer or organise

the transfer of ad hoc expertise on IAK to regulatory co-ordinators and/or IAK Coordinators to ensure that they have the necessary training. Training provision could be funded from a central budget which ministries could then approach to draw down funding for their internal training courses. Furthermore, the Government should ensure that ministries and their officials are aware of existing training provision, such as that provided by the Academies of Legislation and Government Lawyers.

The Government should also ensure that ministry officials preparing IAKs have a **clear point of contact to approach for advice and training requests** throughout the policy process. The existing network of Regulatory Coordinators and the IAK Coordinators provide an excellent network across the Government for exchanging best practice on IAK issues. With enhanced resourcing and political support, their role could be greatly enhanced to ensuring that IAK training is embedded in their respective ministries.

To ensure that policy officials do not have to search between different sources for methodological advice, the Government could look to **amalgamate the key methodological guidance documents** (e.g. regulation burden calculation and Cost-Benefit Analysis etc.) into one “**IAK Guidance Handbook**”. The guidance would offer a unified government language and a framework for collaborative work in the preparation of IAK analyses.

The Government should **consider reviewing the IAK website**, alongside the aforementioned reforms to the IAK process, to make it more straightforward for policy officials to use. It should be focused upon the most salient elements of the IAK process, including the structured process that officials are expected to follow, the core quality requirements to be considered at each stage and key sources of advice (e.g. analytical guidance) if they require further assistance.

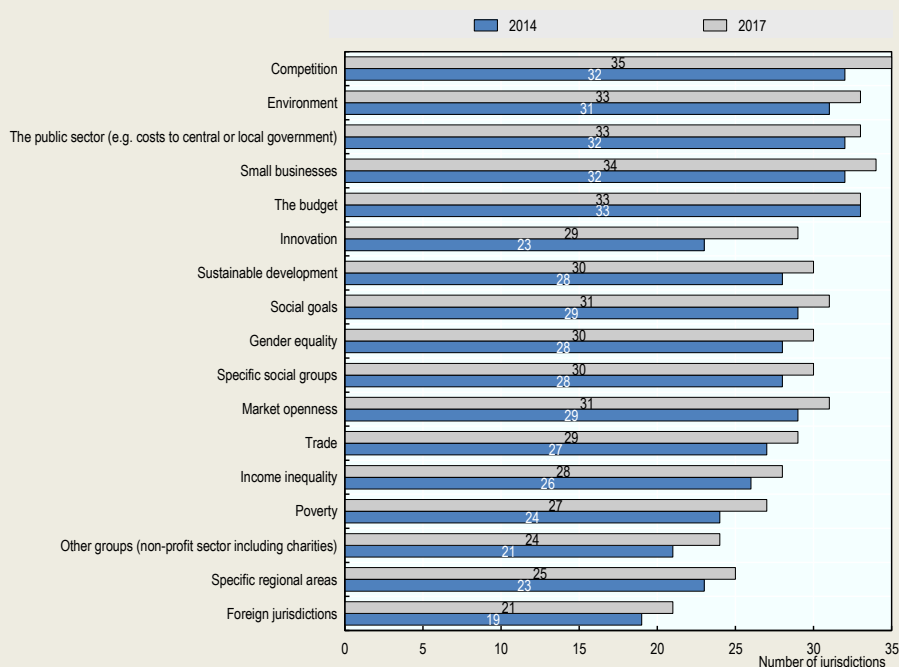
The Netherlands could also look to **developing a software-based tool to assist in IAK development**. These calculators are, in some countries,<sup>3</sup> accessible also to stakeholders, which can calculate the costs of current, drafted or potential regulations or their changes. A new software tool could assist officials in calculating the potential impact of a regulatory proposal at different stages of the IAK process. For example, it could be used earlier in the policy process to determine whether a legislative proposal is estimated to have a high impact and therefore requires more detailed IAK analysis (see Recommendation 4: Targeting resources effectively).

### Box 5.3. Types of impacts assessed in regulatory impact assessment

According to the *Regulatory Policy Outlook 2018*, the number of countries requiring an assessment has slightly increased, for most types of impacts. Economic impacts, such as on competition and on small businesses, impacts on the environment and on the public sector as well as the budget remain the most frequently assessed types of impacts. Despite an increase, the analysis of social impacts, e.g. on income inequality and poverty remains comparably less developed across countries.

Likewise, the assessment of impacts on foreign jurisdictions remains low compared to other types of assessment, with about nearly two-thirds of OECD countries requiring an assessment at least for some regulations. Interestingly and in line with a dynamic technological environment, there has been a significant increase of countries assessing the impacts of new regulations on innovation, which is now done in 29 OECD countries.

Figure 5.1. Types of impacts assessed in RIA



Note: Data is based on 34 OECD member countries and the European Union.

Source: (OECD, 2018<sup>[4]</sup>).

A new **Centre for Regulatory Excellence** could be established with the aims of sharing best practice on international examples of RIA, carrying out research developing an evidence base on new and innovative regulatory concepts and building capacity through training provision. As an example, the Government of New Zealand have established the Government Regulatory Practice Initiative (G-REG) to lead and contribute to regulatory practice initiatives, including developing people capability, organisational capability, and building a professional community of regulators. As part of this initiative, the Government have established a Chair in Regulatory Practice at Victoria University of Wellington to develop world-leading research on regulation (see Box 5.4 for more information).

### Box 5.4. Structuring communities of regulatory practices in New Zealand

New Zealand Government Regulatory Practice Initiative (G-REG) is a network of central and local government regulatory agencies established to lead and contribute to regulatory practice initiatives. G-REG focuses on developing people capability, organisational capability, and building a professional community of regulators. It is a network for all regulators in the public sector, whether at central or local government.

Among other things, G-REG implements the recommendations of the New Zealand Productivity Commission, which reported in 2014 on the need “to build on the hard work and dedication of those individuals who see the practice of being a regulator as important, and who have sought to improve the capability of regulatory agencies and those that work within them”.

G-REG’s primary activity to date has been the development and delivery of a qualifications framework. Having a common qualification in the public sector is intended to make it easier for regulatory agencies to work together, when their people have common ways of operating and transferable skills and qualifications.

G-REG is working to unify and professionalise the regulators of New Zealand and has made the sector more aware of itself, by bringing it together through a series of workshops, in highly successful annual conferences, articles in industry journals, and intellectual credibility by establishing a Chair in Regulatory Practice at Victoria University of Wellington. Collectively this represents the development of a professional community of regulatory professionals.

The Chair in Regulatory Practice plays a crucial role in connecting the New Zealand regulatory community to the rest of world. The Chair's research programme incorporates advances in regulatory practice outside New Zealand, focusing on innovative regulators, regulatory instruments and processes. This enables international regulatory best practice and knowledge to be disseminated to G-REG and the wider regulatory community (through blogs, seminars and guest lectures), so New Zealand can learn from the rest of the world. G-REG's peer learning framework incorporates an international element by, among other things, focusing on the need to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industries and supply chains, which are often international or regional.

G-REG is a key audience and community of knowledge for wider international regulatory co-operation initiatives in New Zealand. For example, G-REG members provided their expertise for a report on international regulatory co-operation prepared by the New Zealand Institute of Economic Research. G-REG will also be a key audience for the New Zealand IRC toolkit that is currently being developed.

Source: (OECD, Forthcoming<sup>[18]</sup>).

### ***Forward planning and proportionality***

The Government's 2011 Cabinet letter did try to address this issue by stating that the detailed nature of the reply to the IAK questions *must be proportional*. However, ministries are given no further detailed guidance on how to ensure proportionality in their IAK analyses. It appears that the IAK in the Netherlands is **not really targeted** towards those policies where the analytical resources are likely to make the greatest positive impact.

Requiring a detailed level of IAK analysis across the board might **stretch already busy policy officials under time pressure**, and lead to the analysis being produced late in the policy process. There is a risk of **dissipating analytical investment** across numerous proposals with limited impact, instead of privileging a better tailored, strategic allocation of resources. Accordingly, 11 OECD countries have introduced some sort of proportionality system for their RIA processes (see Box 5.5 for some examples). They have limited the types of government initiatives for which a RIA is required, or they have opted for a tiered approach that progressively tailors the depth and type of the analysis carried out.



In addition, there are **no standard legislative planning procedures** in the Dutch Government as to when to start legislating and every department has its own processes. The Ministry of Justice and Security has developed the KIWI system, a set of standards for planning and control aimed at greater interoperability between systems across ministries. However, it remains up to ministries to decide for themselves what information is shared with other parties or systems. It was also pointed out to the OECD that Regulatory Coordinators in ministries sometimes do not see upcoming legislation at an early stage, and therefore find it more difficult to influence proposals at an early stage.

Importantly, the **nature of Coalition agreements and the Regeerakkoord** make it difficult to integrate IAK into policy considerations, by specifying specific regulatory instruments to address a policy issue.<sup>4</sup> This issue was raised by a number of ministries during the OECD fact-finding mission, as a crucial issue limiting the ability of the IAK to influence decision making.

### Box 5.5. Threshold tests to apply RIA: Some country examples

In Australia, a Preliminary Assessment determines whether a proposal requires a RIA (or a RIS, regulation impact statement as they call it) for both primary and subordinate regulation (as well as quasi-regulatory proposals where there is an expectation of compliance). A Regulation Impact Statement is required for all Cabinet submissions. This includes proposals of a minor or machinery nature and proposals with no regulatory impact on business, community organisations or individuals. A RIA is also mandatory for any non-Cabinet decision made by any Australian Government entity if that decision is likely to have a measurable impact on businesses, community organisations, individuals or any combination of them.

Belgium applies a hybrid system. For example, of the 21 topics that are covered in the RIA, 17 consist of a quick qualitative test (positive / negative impact or no impact) based on indicators. The other 4 topics (gender, SMEs, administrative burdens, and policy coherence for development) consists of a more thorough and quantitative approach, including the nature and extent of positive and negative impacts. Canada applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The Triage System underscores the Cabinet Directive on Regulatory Management's principle of proportionality, in order to focus the analysis where it is most needed. The development of a Triage Statement early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA, based on costs and other factors:

- Low impact, cost less than CAD 10 million present value over a 10-year period or less than CAD 1 million annually;
- Medium impact: Costs CAD 10 million to CAD 100 million present value or CAD 1 million to CAD 10 million annually;
- High impact: Costs greater than CAD 100 million present value or greater than CAD 10 million annually.

Mexico operates a quantitative test to decide whether to require a RIA for draft primary and subordinate regulation. Regulators and line ministries must demonstrate zero compliance costs in order to be exempt of RIA. Otherwise, a RIA must be carried out. For ordinary RIAs comes a second test – qualitative and quantitative – what Mexico calls a “calculator for impact differentiation”, where as a result of a 10 questions checklist, the regulation can be subject to a High Impact RIA or a Moderate Impact RIA, where the latter contains less details in the analysis.

The United States operates a quantitative test to decide to apply RIA for subordinate regulation. Executive Order 12866 requires a full RIA for economically significant regulations. The threshold for “economically significant” regulations (which are a subset of all “significant” regulations) is set out in Section 3(f)(1) of Executive Order 12866: “Have an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”

In the European Commission, a qualitative test is employed to decide whether to apply RIA for all types of regulation. Impact assessments are prepared for Commission initiatives expected to have significant economic, social or environmental impacts. The Commission Secretariat general decides whether or not this threshold is met on the basis of reasoned proposal made by the lead service. Results are published in a roadmap.

Source: (OECD, 2015<sup>[7]</sup>)

## Recommendation 4: Targeting resources effectively

The Government should **consider the following options for targeting the IAK efforts** in order to allocate analytical resources to where they could potentially deliver the greatest added value.

- The Government should **develop an effective forward planning tool**, to ensure that it can have some idea as to where to aim its resources more effectively. The new regulatory oversight function could require ministries to submit plans for upcoming regulations as a first step towards a more targeted IAK programme. This could possibly be facilitated by **making it mandatory for ministries to submit their legislative plans into the KIWI system**.
- The Government could **run pilot projects on a few IAKs** that can then be considered a “game changer” because they have been carried out according to good practices and quality standards and can be used to “sell” the benefits of deploying the tool. The sample of “proper IAKs” could be expanded over the years, as capacities and familiarity with the tool increase. **There are a number of possible alternatives that government could use for sorting out which legislative proposals have to go through a certain level of analysis** including:
  - setting quantitative thresholds (e.g. potential impacts over USD 100 mil. in the United States);
  - introducing a set of criteria (on issues such as the extent of the impact on competition, market openness, employment, productivity, innovation, investment as well the number of people affected by the proposed regulation.);
  - multi-criteria analysis.<sup>5</sup>
- In the longer term, the Government could explore **how to integrate the IAK within the Coalition Agreement process**. For example, the Cabinet could commit, in the new IAK policy announcement (see Recommendation 1), to establishing *goals* or *objectives* within agreements where possible, instead of specific policy instruments and subsequently ministries could utilise the IAK process to help determine the most effective instrument for achieving these goals/objectives.

### ***Stakeholder engagement***

The Dutch Government has a **longstanding tradition of very structured consultation processes** through established groups and committees. It has made a number of efforts to enhance the transparency of its stakeholder engagement processes including increased use of internet consultation, the online legislative calendar and the introduction of the SME Test. The OECD received a number of positive comments regarding the SME Test within ministries and externally, who viewed it as adding value by inputting the views of SMEs early in the policy process. Furthermore, expert bodies such as the planning bureaus, are able to provide advice

directly to the Voorportalen and the Council of Ministers (albeit this is at a later stage of the policy process which limits the potential for ministries to pursue alternative regulatory proposals based on this advice).

However, in the OECD fact-finding mission, external stakeholders across the political spectrum consultation expressed **dissatisfaction with the transparency of the internet consultation process**. Complaints focused around the fact that the consultations tend to take place at a late stage of the policy process when a proposal is already quite advanced and key decisions have been made. It is not clear what impact the consultations have on the final policy, as ministries do not always provide feedback provided on what has changed.

As part of the internet consultation process, ministries are encouraged to submit legislative text of proposals, an IAK summary document and an Explanatory Memorandum to the internet consultation website. However, **the actual detailed IAK analysis is not systematically made public** for the consultation (see Recommendation 3: Strengthening the IAK methodology). Additionally, in the cases where no online consultation takes place, the public will only learn that IAK analysis has been carried out once the opinion of ATR is made public.

## Recommendation 5: Strengthening the links between IAK and stakeholder engagement

The OECD advocates close co-operation with stakeholders when defining the problem that is to be solved by a new regulation, setting its objectives, identifying various alternative solutions (including non-regulatory ones) and assessing potential impacts of these alternatives as well as when designing potential implementation mechanisms. In other words, **every single phase of the RIA process requires input from interested parties** (see the example of consultations on RIA in Canada – Box 5.6).

The Dutch Government should consider taking forward the following reforms to strengthen the links between the IAK and the stakeholder engagement processes.

- As mentioned in Recommendation 3, **a refreshed, more substantive IAK document** could provide stakeholders with more detailed and substantive information on the costs and benefits of regulatory proposals considered, including the alternatives options considered. This could be **included on the internet consultation website** as a means of informing the stakeholder debate.

- Ministries should endeavour to **feed back on the results of the internet consultation process**, how/if the regulatory proposal has been changed as a result and then produce an updated and publically available IAK document, before the proposal is submitted to the Council of Ministers.
- Ministries should also continue building on current efforts to **include stakeholders in earlier stages of the policy development process**, including consulting and gaining stakeholder views on defining the nature of the policy problem.

### Box 5.6. Required consultations on Regulatory Impact Analysis Statements (RIAS) in Canada

Consultations on regulatory proposals and their accompanying RIAS have been a longstanding practice in the Canadian system. As per the Treasury Board Secretariat Guidelines for Effective Regulatory Consultations, government departments and agencies must make systematic efforts to ensure that interested and affected parties have the opportunity to take part in open, meaningful, and balanced consultations at all stages of the regulatory process (development, implementation, evaluation, and review).

A variety of methods are used to involve stakeholders in consultations on the RIAS. They include the use of emails, phone calls, third-party facilitated sessions, roundtable meetings and online consultations. In a second step, regulatory proposals and their accompanying RIAS are pre-published in the Canada Gazette, Part I for public consultation. Regulatory organisations are asked to revise the RIAS according to the results of the pre-publication consultation process. Stakeholders can comment on the draft RIAS documents, submit comments in the form of letters via email, fax or by mail to the listed departmental contact in the RIAS. Their input can either highlight concerns regarding methodology or reasoning, or point towards concerns related to distributional questions (e.g. undue burden placed on one region or industry), or be a submission of alternative analysis prepared by the stakeholder for consideration by the department or agency.

A great number of regulations are updated as a result of the consultation process on the draft text and the RIAS. Departments and agencies review comments and respond to stakeholders' concerns through a variety of measures, including through letters, alteration of the regulatory proposal (e.g. by adding amendments and/or providing clarifications) and, in exceptional cases, adapting the costs and benefits section if the consultation alerted the regulators to unforeseen regulatory

impacts. Furthermore, departments and agencies must summarise the comments received, explain how stakeholder concerns were addressed, and provide the rationale for the regulatory organisation's response (i.e., the decision to change or not change the draft regulation) in the final RIAS, which is then published in the Canada Gazette, Part II together with the final regulation.

Source: (OECD, 2016<sup>[19]</sup>).

## Notes

<sup>1</sup> The ATR itself referred to these challenges in the 2018 OECD publication “Case Studies of RegWatchEurope Regulatory Oversight bodies and the European Union Scrutiny Board” (OECD, 2018<sup>[16]</sup>)

<sup>2</sup> <https://www.gov.uk/government/organisations/regulatory-policy-committee>.

<sup>1</sup> This particular point has been picked up by the academics Mr Arnout Mijs & Dr. Adriaan Schout in “*Better Regulation in the EU and The Netherlands: A Comparison of Impact Assessment Systems*” and Professor Anne Meuwese in “*Waarom het IAK het keurmerk 'IA' (nog) niet mag voeren*”.

<sup>2</sup> Posted on <https://www.internetconsultatie.nl>.

<sup>3</sup> For example, the Australian Government have developed a compliance costing tool called the Australian Commonwealth Regulatory Burden Measure: <https://rbm.obpr.gov.au/home.aspx>.

<sup>4</sup> One example can be taken from the 2015-17 Coalition Agreement, Chapter 3 which contains a section entitled “Measures” which sets out some quite specific policies including “*The scope of the Renewable Energy Grant Scheme (SDE+) will be broadened...*” and “*We will introduce distance-based road pricing for heavy goods vehicles ('Maut'), as in neighbouring countries, as soon as possible*”.

<sup>5</sup> For example in Switzerland, a more complex RIA is required when three criteria from a list of 10 are met.

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# Annex A. List of mandatory quality requirements for the IAK

	Review authorities
Mandatory Quality Requirement	
Instructions concerning the performance of market activities	Ministry of Economic Affairs and Climate Policy
Instructions on covenants	No review authority
Instructions for the legislation and regulations	Ministry of Justice and Security
Instructions for granting subsidies	Ministry of Finance
General Guideline on Societal Cost-Benefit Analysis (SCBA)	No review authority
Business Impact Assessment (including regulatory burden effects)	Ministry of Economic Affairs and Climate Policy
Assessment framework for inter-administrative relationships	Ministry of the Interior and Kingdom Relations
Decision framework Privatization	No review authority
Ability of citizens to act as intended	No review authority
Effects on gender equality	Ministry of Justice and Security
Effects on developing countries	Ministry of Justice and Security
Limits to tolerate illegal behaviour	Ministry of Justice and Security
Manual for measuring regulatory costs	Ministry of Economic Affairs and Climate Policy Ministry of the Interior and Kingdom Relations
'Worth a try' - Final report of the interdepartmental legislative council on experimental provisions	Ministry of Justice and Security
Basic principles when choosing a sanction system	Ministry of Justice and Security
Cabinet position on conformity assessment and accreditation in the context of government policy	Ministry of Economic Affairs and Climate Policy
Keeping track: passing on admission and enforcement costs	Ministry of Justice and Security
SME test	Ministry of Economic Affairs and Climate Policy
Privacy Impact Assessment	Ministry of Justice and Security Ministry of the Interior and Kingdom Relations
Feasibility and enforceability by agencies (U&H)	Ministry of Justice and Security

Source: Ministry of Justice and Security (2019), Integral assessment framework for policy and regulations: Mandatory Quality Requirements, <https://www.kcwj.nl/kennisbank/integraal-afwegingskader-beleid-en-regelgeving/verplichte-kwaliteitseisen>.

# Annex B. UK Regulatory Impact Assessment Template (2019)

<b>Title:</b> <b>IA No:</b> <b>RPC Reference No:</b> <b>Lead department or agency:</b> <b>Other departments or agencies:</b>		<b>Impact Assessment (IA)</b>			
		<b>Date:</b> 01/01/2018			
		<b>Stage:</b> Development/Options			
		<b>Source of intervention:</b> Domestic			
		<b>Type of measure:</b> Primary legislation			
		<b>Contact for enquiries:</b>			
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> RPC Opinion Status			
<b>Cost of Preferred (or more likely) Option (in 2016 prices)</b>					
<b>Total Net Present Social Value</b> £m	<b>Business Net Present Value</b> £m	<b>Net cost to business per year</b> £m	<b>Business Impact Target Status</b> Qualifying provision		
<b>What is the problem under consideration? Why is government intervention necessary?</b> Maximum of 7 lines					
<b>What are the policy objectives and the intended effects?</b> Maximum of 7 lines					
<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> Maximum of 10 lines					
<b>Will the policy be reviewed?</b> It will/will not be reviewed. <b>If applicable, set review date:</b> Month/Year					
Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Is this measure likely to impact on international trade and investment?			Yes / No		
Are any of these organisations in scope?			<b>Micro</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

## Summary: Analysis & Evidence

## Policy Option 1

Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b> Maximum of 5 lines					
<b>Other key non-monetised costs by 'main affected groups'</b> Maximum of 5 lines					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b> Maximum of 5 lines					
<b>Other key non-monetised benefits by 'main affected groups'</b> Maximum of 5 lines					
<b>Key assumptions/sensitivities/risks</b> Maximum of 5 lines					<b>Discount rate (%)</b>

### BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	

## Evidence base (for summary sheets)

- There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:
- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including status-quo);
- Monetised and non-monetised costs and benefits of each option (including administrative burden);
- Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);
- Risks and assumptions;
- Direct costs and benefits to business calculations (following BIT methodology);
- Wider impacts (consider the impacts of your proposals). Document any relevant impact here and by attaching any relevant specific impact analysis (e.g. impact on small and micro businesses, equalities, etc.) in the annexes to this template)
- A brief qualitative summary of the potential trade implications of measure. This should include an assessment of whether the measure is likely to impact on trade or investment. For further assistance and guidance please refer to DIT.
- Summary and preferred option with description of implementation plan.

Source: Government of the United Kingdom (2011), Regulatory impact assessment template for government policies, <https://www.gov.uk/government/publications/impact-assessment-template-for-government-policies>.

OECD work on regulatory policy: <http://oe.cd/regpol>

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