



Less

regulatory

burden

More

entrepreneurship

Preface

Tackling regulatory burden cannot be seen as purely a national issue. Around 40% of the regulatory costs for Dutch businesses stem from EU legislation. Furthermore, many countries in the world are trying to reduce the regulatory burden in the face of the current crisis and develop ways to make regulation smarter. Cooperation on European and international level is essential to improve the methodologies and to exchange best practices in order to truly reduce unnecessary burdens for businesses, citizens and professionals. We believe it important to share experiences and know-how. This brochure, explaining the new role of Actal and our instruments, may contribute to this.

J. ten Hoopen
Chair

Actal

Actal, the Advisory board on regulatory burden, advises both government and Parliament on the maximum possible reduction of regulatory costs for businesses, citizens, and professionals in healthcare, education, safety and welfare. Within this scope, Actal wishes to contribute to a society in which the government achieves its objectives yet individuals are hampered by regulations as little as possible. Actal selects the items on which it issues advice, partly on the basis of signals from society. It seeks new opportunities for keeping regulatory pressure in the Netherlands to a minimum and challenges regulators to take advantage of the ensuing opportunities.

Actal was established by decree in 2000. Its remit was to advise government and Parliament on the administrative burden for businesses of proposed primary and secondary legislation. With this decree, Actal's role in the ex-ante scrutiny of

legislation was established. Through the years, the scope of Actal's competencies was broadened, coinciding with the development of the government's approach to other target groups (citizens and professionals) and other forms of regulatory costs (administrative burdens and compliance costs). Furthermore, Actal no longer advises on proposed legislation (ex-ante) alone, but also on the stock of existing legislation (ex-post) with a view to reducing existing burdens. Figure 1 shows how the competencies of Actal have grown over the years.

In 2011, coinciding with the start of the first Rutte Cabinet, Actal's competencies were changed. Actal was given the competency to scrutinise proposed legislation ex-ante on all forms of regulatory costs. Furthermore, the strategic consulting role of Actal was strengthened. This brochure sets out the new role of Actal, our organisation and our instruments.

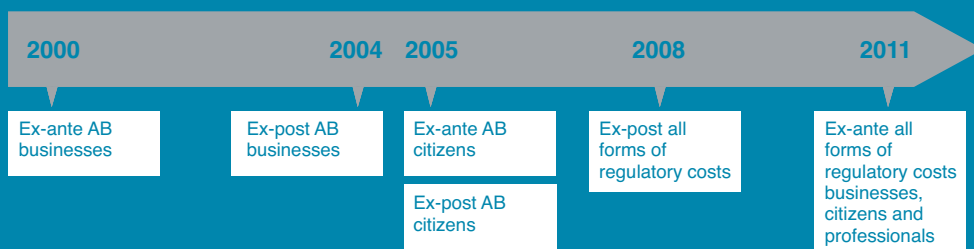


FIGURE 1 Actal's competencies through the years

The Actal organisation

Actal's Board

Actal's board consists of three members: Mr. Jan ten Hoopen (chair, in the middle), Ms. Lili Doude van Troostwijk (on the left) and Mr. Eric Helder (on the right).



Independent and external

The board consists of three members. The board is independent and external. Actal has been set up by decree. This decree lays down Actal's competencies and role. The legislative framework ensures that Actal plays an independent and external role within the regulatory process. All opinions issued by Actal, solicited or unsolicited, are determined by the board.

Actal is an independent and external advisory board. Its independence is essential in order to be credible to both government and Parliament. Actal's board has three members. They are private citizens chosen for their proven knowledge in the field of tackling regulatory costs. They are drawn from the political, the academic and the business community. The board has a mix of entrepreneurial and political experience. All board members have a well-developed network that fits in with Actal's field of work. The board is supported by a staff of thirteen. This staff consists of civil servants with backgrounds in government and the private sector. The board meets on a weekly basis.

Actal is a small and flexible organisation that responds to signals coming from society on burdens experienced and anticipated. The modest size of the organisation means that Actal cannot be expected to solve all individual regulatory burdens on citizens, professionals and businesses. We give priority to signals pointing to structural regulatory burden for a larger group. Other signals may also put us on the trail of structural regulatory pressure that needs tackling.

Less

regulatory

burden

More

innovation



Our priorities for the coming years

Companies are faced with the challenge of strengthening their competitive edge using new, innovative products and services at both national and international level. For these companies, standing still is not an option. In addition, the employment market is also changing: the traditional distinction between employer and employee is fading as a result of new forms of work and new forms of entrepreneurship. Professionals such as police officers, healthcare workers and teachers are asking for more space and autonomy in order to be able to take advantage of developments in their sectors. These changes in Dutch society pose a challenge to the government in its role as regulator. Legislation is designed to create order in community life. Despite this, it is frequently experienced as burdensome. The economic and social costs of burdensome legislation are high.

For the coming years, we have selected four key challenges the government faces on which we will focus when fulfilling our tasks. We have, however, reserved space for requests for strategic advice from the Cabinet, for further support and advice to the House of Representatives and for issuing strategic advice on the basis of existing and potential signals.

Smart regulation and the growth agenda: Regulation can be a significant hindrance to innovation, product development and the creation of and access to new markets. It may hamper the desire to develop towards a bio-based economy, or the efficient application of governmental resources. In such cases, therefore, legislation reduces the potential for structural growth of the Dutch economy. Within this priority, for instance, Actal will issue a strategic advice on regulatory burden as obstruc-

tion to the development of new products and services. Decentralisation of governmental tasks: The Dutch government is planning to decentralise some specific areas in order to bring the execution of policy closer to the citizens. These decentralisations will mainly take place in the social domain. Actal will scrutinise some decentralisation proposals ex-ante, for instance Youth aid.

Redistribution of responsibilities, from government to citizen/entrepreneur: When addressing social problems, the question of who is best equipped to address the issue needs to be asked: is it government or society? These decisions will affect the level of regulatory pressure. They may lead to a revision of existing supervisory relationships and may affect accounting obligations. Actal will issue a strategic advice in which we will assess certain existing regulations to the Zero Option.

Accountability and transparency: There is a strong societal need for transparency and control procedures. In order to safeguard the potential for reduction of regulatory burden in those areas where the government retreats, we will monitor these developments to address the creation of unnecessary new burdens.

Our priorities are laid down in our work programme. Every year we inform the ministers responsible for the national approach on regulatory burden (the Minister of Economic Affairs and the Minister of the Interior) of our work programme, of our priorities and of the activities planned. Both ministers have to approve the work programme, after which it is sent to Parliament.

Four priorities for the coming years

Smart regulation and the growth agenda: Legislation can reduce the potential for structural growth. Actal will address hindrances to innovation, product development and the creation of and access to new markets.

Decentralisation of governmental tasks: Decentralisation is foreseen in order to bring the execution of some policy areas (i.e. Youth) closer to the citizen. Actal will assess these decentralisations.

Redistribution of responsibilities, from government to citizen/entrepreneur: The decision on who is best equipped to address an policy issue needs to be asked: is it government or society? Actal will issue strategic advice in which we assess certain existing regulations to the Zero Option.

Accountability and transparency: There is a strong societal need for transparency and control procedures. This will affect the regulatory burden. We will address the creation of unnecessary new burdens.

Actal's instruments

Actal has a range of instruments for use in challenging regulators.

1. Ex-ante opinion on the flow of legislation

When set up in 2000, Actal scrutinised all proposed legislation that affected the administrative burden for businesses. In 2005, this task was extended to citizens. With the most recent decree of June 2011, a shift occurred in Actal's work. The ex-ante assessment is now focused on policy proposals that have considerable consequences on regulatory burden in the Netherlands for businesses, citizens or professionals. Ministries are responsible for clearly outlining the consequences that their legislation will have on regulatory costs. Actal selects the proposals it wishes to advise on. Amongst the motives for selection will have been the signals from society or requests from Parliament. The House of Representatives can also ask Actal to issue an

opinion on proposals made by the House of Representatives itself (private members' bills and amendments).

When a legislative proposal is selected for ex-ante scrutiny, Actal informs the ministry in order to ensure early involvement.

The ministry sends us the proposal with the calculations of the regulatory burdens and an explanatory note. The explanatory note must always contain a paragraph on regulatory burden.

A proposal is assessed on the following three questions:

1. What goes wrong without the policy under consideration (i.e. if the Zero Option is adopted)?
2. Less burdensome alternatives: Have the effects on regulatory burden been calculated correctly? Has the least burdensome alternative been adopted? If not, why not?
3. Have the effects of implementation and inspection been taken into account?

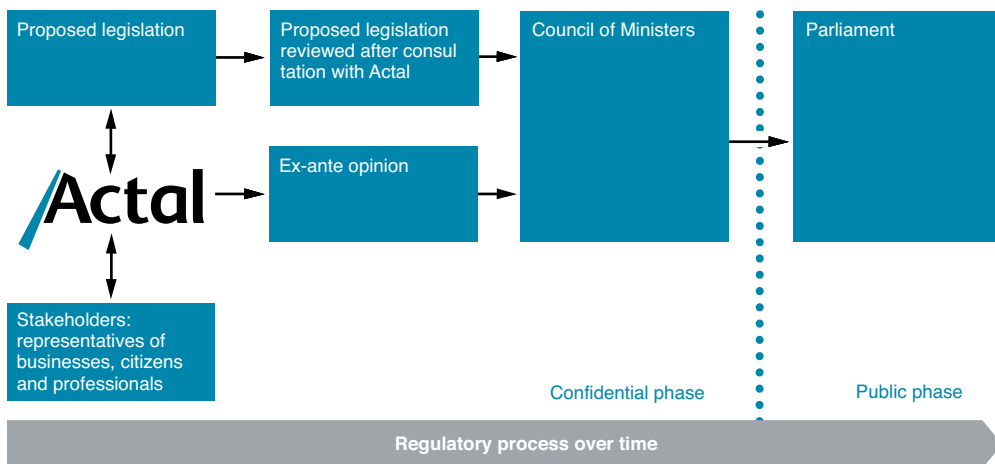


FIGURE 2 Ex-ante scrutiny

When we advise on a proposed piece of legislation (ex-ante), we challenge policy advisors by putting less burdensome alternatives on the agenda. We always underline the importance of a solid calculation of the regulatory costs, because the methodology used forces policy advisors to identify the activities an end-user has to undertake to comply with the legislation. In most cases the legislative proposal or the explanatory note is adapted after consultation with Actal. Outstanding issues are addressed in our ex-ante opinion which is sent with the proposal to the Council of Ministers. Once their approval has been secured, both documents are sent to Parliament. We never advise on the same proposal twice. If, for instance, the Council changes the proposal based on our opinion, our opinion is sent to Parliament with the reviewed proposal. Once the legislation is made public, we place our opinion on our website.

We have an official maximum assessment period of six weeks. In most cases, we assess within four weeks, and when needed, for instance when advising on an amendment, we can react in a few days. The process of ex-ante scrutiny is shown in figure 2.

2. The Regulatory Burden Audit

Besides our tasks on the flow of new regulation (ex-ante assessment) and on the stock of existing regulation (ex-post evaluation), the decree of June 2011 has entrusted Actal with a new task: advising the government and Parliament on the system of assessing the impact of proposed legislation on regulatory burden experienced by the business community, by citizens, and by professionals in the healthcare, education, security and social security sectors.

Conclusion of the first Regulatory Burden Audit

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

In the Netherlands, ministries are responsible for reducing and preventing regulatory pressure. Ministries are meant to shoulder their own responsibility for assessing the legislation they are proposing with respect to its impact on regulatory burden and for internalising this in their administrative processes. In practice, this should mean that the assessment of individual dossiers would no longer need to be conducted by an external assessment body such as Actal (though the most important dossiers are still scrutinised by Actal). Instead of external scrutiny, ministries should perform the assessments consistently using the Integrated Assessment Framework.

The Regulatory Burden Audit examines whether the system safeguards the proper and consistent identification of regulatory burden and whether the effects of regulatory burden are being taken into account to such an extent that external assessment at dossier level is no longer necessary.

Through the years, Actal has experienced a diminishing return on investment as the performance in assessing and addressing administrative burdens by ministries has improved. With the shift from ex-ante scrutiny of all proposals to a systemic ex-post assessment, the notion of proportionality has been introduced. The Regulatory Burden Audit that was held in 2011-2012 found that ministries pay sufficient attention to administrative burden but fail to do so with respect to compliance costs.

3. Strategic advice on the stock of existing legislation

Actal will be focusing on strategic consultation more than it has done in the past. Based on signals received from society, we will indicate how regulatory pressure in the Netherlands can be reduced. Signals can initiate strategic consultation from our side, if it fits in with our competencies and if it addresses a structural issue. Based on the complexity of the signal and the playing field, the board can decide to issue a strategic advice for a complex issue, or an advice for a specific issue.

4. Instrumental opinions

Actal not only advises on proposed and existing legislation, but also addresses issues that can further the regulatory burden approach in the Netherlands and on the European level. The latter is done in close cooperation with Actal's sister organisations: the German Nationaler Normenkontrollrat (NKR), the Swedish Regelrådet, the British Regulatory Policy Committee (RPC) and the Czech Regulatory Impact Assessment Board (RIAB). Through the years Actal has placed various new instruments on the political agenda, such as the principle of silent consent, sunset clauses, common commencement dates, gold-plating, a net reduction target per target group in Euros and the need for a stronger infrastructure within the ministries to tackle regulatory burden. Furthermore, Actal issues advices, when deemed necessary, on the progress reports of the Cabinet on the national approach to reducing regulatory burden. Actal not only analyses the ambition of the Cabinet and its achievements, but also addresses ways in which the Cabinet's approach can be strengthened.

Sector Scan

In order to address the range of legislation a business, citizen or professional faces, we introduced a new instrument, the sector scan. This scan identifies the compliance obligations an end-user has to deal with on a daily basis when exercising its profession or right. The instrument enables us to identify inconsistencies in the various pieces of legislation that an end-user faces and inefficiencies when, for instance, the same information is asked over and over again by different departments of central government or by regional or local government at different levels.

Perceptibility

At the moment, Actal is identifying methods and tools to boost the regulatory approach in the Netherlands and to place emphasis on perceptibility. We are seeking new ideas to modernise the current approach on regulatory burden reduction in the Netherlands. The modernisation should strengthen the support for the approach through concrete results that affect the daily practice of entrepreneurs, professionals and citizens.

Actal Advisory Board on regulatory burden

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