



Adviescollege —
toetsing regeldruk

Report in response to the ATR study regarding the use of the IAK and the IAK document for proposed laws and regulations

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Executive summary

In 2011, the Dutch government decided to start applying the Integrated Impact Assessment Framework for Policy and Legislation (IAK) to all new policy and legislation proposals presented to parliament. The IAK was announced as a methodology which could be used to "assess in full and account for the quality aspects of policy and regulations in order to improve policies and legislation". According to the government, the IAK is "the Dutch equivalent of an impact assessment".¹ The IAK helps ministries to clearly define social problems, to consider whether government intervention is necessary and to determine the most effective instrument. It does this using seven questions.² When used properly, it can help with enforcing regulations, utilising the views of (among others) citizens and businesses at an early stage, and limiting perceived and actual burdens for citizens, companies, professionals and the government itself. A separate document containing responses to the seven IAK questions is a mandatory requirement for regulations being consulted.

The ATR established during its advisory activities in 2017-2020 that the IAK document does not always provide adequate responses to the IAK questions. Furthermore, the legislative proposals by no means always meet the quality requirements. This prompted the board to study the availability and quality of the IAK document more closely. The IAK documents featuring in 434 internet consultations in 2018 and 2019 were involved in the study.

The key conclusions of the study are as follows:

- **The mandatory IAK document is missing from a quarter (25%) of the files examined.**
- **In the internet consultations where an IAK document was present (75%):**
 - **65% of the IAK documents provide no or fairly poor insight into any alternatives, and**
 - **77% of the IAK documents provide no or fairly poor insight into the consequences of the proposal.**
- **The explanatory notes accompanying proposed legislation provide a clearer picture of the consequences, but in 60% of the files examined, that picture remains insufficiently clear.**

The ATR further examined the causes of these findings, discovering that ministries do indeed recognise the importance of the IAK and the responses to the IAK questions. They think the IAK's mandatory quality requirements should be applied from the moment development of policy begins. The following aspects are responsible for the fact that responses to the seven IAK questions (in the IAK document) usually do not comply with the requirements and instructions:

- a. The IAK, with all the accompanying mandatory and other quality requirements, is excessively detailed, not readily accessible and does not provide clarity for all

¹ Letter to the House of Representatives dated 14 April 2011 concerning the 'Government's plan of action for dealing with administrative burdens'. *Parliamentary Papers II 2010/11, 29515, no. 330.* zoek.officielebekendmakingen.nl/kst-29515-330.html.

See also the Letter to the House of Representatives dated 3 April 2020 concerning 'Improvements in accounting and budgeting'. *Parliamentary Papers II, 2019/20, 31865, no. 168.* zoek.officielebekendmakingen.nl/kst-31865-168.html

² The IAK questions are as follows: 1. What is the immediate cause?, 2. Who are the stakeholders?, 3. What is the problem?, 4. What is the objective?, 5. What justifies government intervention?, 6. What is the best instrument? and 7. What are the consequences?

aspects. As a result, ministries find compliance with all IAK requirements pertaining to proposed laws and regulations to be very burdensome and a challenging task.

- b. The seven IAK questions may be brief, but a great deal of knowledge and information is required if they are to be answered properly and in accordance with the instructions.
- c. The extent to which instructions are followed in part depends on the form of the preliminary phase of legislation within the Ministry, the 'culture' within a department (as regards legislation as a policy instrument) and the extent to which the IAK document is 'judged' externally.
- d. The IAK and the IAK form can serve various purposes and functions. Those purposes are not explicitly set out and are often unclear to the parties involved at the ministries. Civil servants regularly regard and experience the IAK document as an 'internal obligation', although it primarily has an external function during the internet consultation process, which is to inform external stakeholders about the proposal.
- e. Time pressure and other pressure experienced within ministries to prepare and publish regulations expeditiously.

Furthermore, there is no clear-cut and effective mechanism to ensure the quality of the responses to the IAK questions and compliance with IAK requirements. Consequently, quality control as regards to the content of the IAK document falls short.³ The government's ambition with regard to the quality of legislation is under pressure as a result.

³ See also in this context [OECD \(2020\) Regulatory impact assessment in the Netherlands](#).

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1. Introduction

In 2011, the Dutch government decided to start applying the Integrated Impact Assessment Framework for Policy and Legislation (IAK) to all new policy and legislation proposals presented to parliament. This decision was made after 22 pilot projects involving the IAK were successfully conducted in 2010. At the time, the IAK was announced as a methodology which could be used to *"assess in full and account for the quality aspects of policy and regulation in order to improve their quality"*. The IAK has its origin in the Regulatory Impact Assessment used in several European countries. According to the government, the IAK is "the Dutch equivalent of an impact assessment".⁴ One of its objectives is to contribute towards a "more efficient, effective and transparent administrative and political decision-making process". The government believes that this will ensure that only legislation that is really necessary and proportional, with as little regulatory burden as possible, is created.⁵

Most of the parties involved believe that the IAK provides particular added value when it is used at an early stage of the policy or legislative process. A mandatory separate document containing the responses to the seven IAK questions should be included during the internet consultation process concerning proposed legislation (originating from the government). According to the Centre of Expertise for Legislation and Legal Affairs (KCWJ), the primary purpose of the IAK document during the internet consultation process is to provide participants in that process with insight into what the proposal entails.

The Dutch Advisory Board on Regulatory Burden (ATR) assesses proposed laws and regulations during the internet consultation phase and other consultation phases. It primarily assesses the quality of the proposed provisions and the explanatory notes accompanying proposals. The most important document is the proposal itself and the explanatory notes to it. Where possible, the ATR also includes the IAK document in the assessment. The document generally provides a description of what the proposal entails and of its consequences.

There are three reasons which prompted the ATR to begin a study into the quality of the IAK document when used for proposed laws and regulations during the consultation phase:

1. The ATR's findings when it assessed proposed laws and regulations in the period between June 2017 and June 2020. The document containing responses to the seven IAK questions should also be included as a separate document during the internet consultation process. In the case of multiple files, the ATR noted that the IAK document was not included during the internet consultation process (or only very brief details had been provided).
2. In early 2020, the Organization for Economic Cooperation and Development (OECD) published a critical report on the quality of impact assessment in the Netherlands (which, according to the government, has its equivalent in the IAK).⁶ That study

⁴ Letter to the House of Representatives dated 14 April 2011 concerning the 'Government's plan of action for dealing with administrative burdens'. *Parliamentary Papers II 2010/11, 29515, no. 330.* (zoek.officielebekendmakingen.nl/kst-29515-330.html). The government also indicated in 2020 in the Letter to the House of Representatives dated 3 April 2020 concerning 'Improvements in accounting and budgeting' that the IAK is the Dutch equivalent of the Impact Assessment. *Parliamentary Papers II, 2019/20, 31865, no. 168* (zoek.officielebekendmakingen.nl/kst-31865-168.html)

⁵ Letter to the House of Representatives dated 14 April 2011 concerning the 'Government's plan of action for dealing with administrative burdens'.

⁶ [OECD \(2020\) Regulatory Impact Assessment in the Netherlands.](#)

was of a limited empirical (case level) nature. The present study is a contribution to it since the use of the IAK and the IAK document is examined at case level.

3. The IAK and the internet consultation process are becoming an ever more important component of the legislative quality system in the Netherlands. Those instruments have also been expanded and given more prominent positions in recent years. For instance, in 2017, the government decided, in principle, to use the internet consultation process for all legislative and regulatory proposals. This was in part due to the importance of transparency and early consultation of stakeholders. Specific quality requirements are also usually incorporated into the IAK and/or the internet consultation process, including, for example, the 'capability' (*doenbaarheid*) requirements for proposed regulations. The 'Capacity to Act' test (*Doenvermogen*) for citizens was developed for that purpose. The obligation to take account of the capacity to act of the target group or groups concerned when preparing policy and regulation has been included in the IAK as a new mandatory quality requirement: *Capacity to act* (Doenvermogen).⁷

⁷ Letter to the House of Representatives dated 29 June 2018 which deals with the actions taken as a result of the government's response to the WRR report entitled *Weten is nog geen doen* (Knowing what to do is not enough). *Parliamentary Papers II 2017/18, 34775 VI, no. 113*. zoek.officielebekendmakingen.nl/kst-34775-VI-113.html

2. The IAK and the IAK document for proposed laws and regulations

2.1 The Integrated Impact Assessment Framework for Policy and Legislation (IAK)

The IAK is used during the phase in which policy, laws and regulations are being prepared. According to the government, the IAK makes it "easier to make ex ante evaluations of all relevant information about the impacts of policy and legislation on the various parties and to explain the choices made clearly to all stakeholders afterwards". It should help to ensure:

- policy and legislation with limited regulatory burden for citizens, businesses and institutions;
- more transparency in the policy and legislative process; and
- better coordination between policy, legislation and implementation.⁸

As noted in the Introduction, the IAK is intended to function as the Dutch form of an impact assessment. All the mandatory quality aspects which may play a role in a proposal are included in the IAK in the form of seven central questions. In the generic introduction of the IAK in 2011, the government stated that *"the answers to the IAK questions should be indicated in a proposal in as identifiable and transparent a way as possible"*. This being on account of *"the importance to the administrative and political decision-making process, but also as a means of ensuring that decisions made are accounted for transparently and in full"*.⁹ Each policy or legislative proposal presented to parliament must therefore contain adequate responses to the seven IAK questions:

1. What is the immediate cause?
2. Who are the stakeholders?
3. What is the problem?
4. What is the objective?
5. What justifies government intervention?
6. What is the best instrument?
7. What are the consequences?

The IAK was introduced in 2010-2011 in order to examine and reduce the large number of inter-ministerial quality requirements, tests and tools (110). The IAK was initially intended, among other things, "to harmonise and, where necessary, simplify" the use of quality instruments. Over the past 10 years, the IAK has been developed further and embedded in the preparatory phase of new policy and new legislation. Many ministries have incorporated the IAK into the initial memorandum which is drawn up during the process of preparing legislation.

The IAK is accessible government-wide. The KCWJ plays an important role by providing information about, and practical tools which can be used for, the IAK.¹⁰ At present, 21 mandatory quality requirements have been brought together in the IAK.¹¹ They include the 'Drafting instructions for legislation' (*Aanwijzingen voor de regelgeving*), the

⁸ Letter to the House of Representatives dated 11 December 2009 on 'Comprehensive legislative policy' (*Integraal wetgevingsbeleid*). *Parliamentary Papers II, 2009/10, 31731, no. 6* zoek.officielebekendmakingen.nl/kst-31731-6.html

⁹ Letter to the House of Representatives dated 14 April 2011 concerning the 'Government's plan of action for dealing with administrative burden' (*Kabinetsplan aanpak administratieve lasten*). *Parliamentary Papers II 2010/11, 29515, no. 330*. zoek.officielebekendmakingen.nl/kst-29515-330.html

¹⁰ www.kcwj.nl/kennisbank/integraal-afwegingskader-voor-beleid-en-regelgeving. The website www.naarhetika.nl created earlier also now directs users to the KCWJ web page mentioned first.

¹¹ www.kcwj.nl/kennisbank/integraal-afwegingskader-beleid-en-regelgeving/verplichte-kwaliteitseisen

'General Guidance for Social Cost-Benefit Analysis (MKBA)' (*Algemene Leidraad Maatschappelijke Kosten-baten Analyse (MKBA)*), 'Capacity to Act' (*Doenvermogen*) and 'Feasibility and Enforceability' (*Uitvoerbaarheid en handhaafbaarheid*).

2.2 Mandatory publication of IAK documents for internet consultation concerning regulations

Since 1 January 2014, providing responses to the seven IAK questions has been a mandatory requirement in the internet consultation process. The format of this document is prescribed government-wide and is available through the KCWJ. The obligation to answer the seven IAK questions in a separate document and publish it separately for the internet consultation process is laid down and explained in various sources:

1. The Roadmap for Regulation (*Draaiboek voor de regelgeving*), in particular provision no. 16 Internet consultation.¹²
2. The central government-wide Guide for Internet Consultation (*Rijksbrede handleiding Internetconsultatie*) (2015 and 2019 versions).¹³
3. The Letter to the House of Representatives dated 12 September 2013 concerning 'Modernisation of the government'.¹⁴

The ministries are responsible for answering the IAK questions and providing access to the document. Concise answers may be given to the questions in the IAK document and, where appropriate, references made to specific passages in the explanatory notes to the legislation.

2.3 Objective(s) of the IAK document during the internet consultation process

The primary objective of the IAK document during the internet consultation process appears to be to inform external parties (participants in the internet consultation) about the content of the proposal. However, various sources concerning the IAK and internet consultation indicate that the IAK document serves a variety of purposes. Although there is some overlap between the three objectives, the focus and significance differ:

1. *Provide participants in the internet consultation process or other consultation process with insight into what the proposal is about.*

The KCWJ cites this as the main objective of the IAK document in the internet consultation process.¹⁵ This also brings the IAK document in line with the more general objective of internet consultation regarding proposed laws and regulations. Consultation enables "citizens, businesses and social organisations to examine legislative proposals and express their views on them. The objective is to improve the transparency of the legislative process and contribute to the quality of legislation."¹⁶

2. *Provide target groups with insight into the considerations taken into account during the preparation of legislation and the anticipated impacts.*

This objective of the IAK document during the internet consultation process concerning

¹² Web page 'No. 16. (Internet consultation) Roadmap for regulation' on the KCWJ website: <https://www.kcwj.nl/kennisbank/draaiboek-voor-de-regelgeving/hoofdstuk-2-formele-wetten-op-voorstel-van-de-regering-n-94>

¹³ This is an internal central government document (for policymakers and available through the KCWJ).

¹⁴ Letter to the House of Representatives dated 12 September 2013 regarding 'Modernisation of the government'. *Parliamentary Papers II 2012/13, 29362, no. 224* (zoek.officielebekendmakingen.nl/kst-29362-224.html).

¹⁵ Web page about the 'Integral Assessment Framework for Policy and Regulation' on the KCWJ's website: www.kcwj.nl/kennisbank/integraal-afwegingskader-voor-beleid-en-regelgeving

¹⁶ www.overheid.nl/help/internetconsultatie

proposed legislation follows from, among other publications, the Manual for Measuring Regulatory Burden (*Handboek Meting regeldrukkosten*) and the Guide for Regulatory Burden Accounting (*Handleiding Regeldruk-verantwoording*) and associated legislative quality instruments. The purpose of the manual and the guide is to familiarise policymakers with the instruments and the process for regulatory burden accounting and related legislative quality instruments which can be used when proposing laws and regulations.¹⁷

3. *Make it possible for consultation participants to respond adequately to draft regulations.*

Among others, this third objective follows from the letter to the House of Representatives of September 2013 concerning the government modernisation. According to that letter, the internet consultation process and the IAK document are also in keeping in the broader context of an open and transparent government. This includes the consultation of the parties concerned with the laws and regulations at an early stage and the "active publication of information and clarification of why a specific decision was made".¹⁸

2.4 Instructions for responses to the 7 IAK questions in the IAK document

Government-wide instructions on how the IAK questions in the mandatory IAK document should be answered were drawn up and have been applicable since 1 January 2017. In this format, each IAK question is accompanied by instructions comprising sub-questions and specific instructions for the IAK question concerned. These instructions, provided for the internet consultation process, are the same as the instructions for the IAK questions in the presentation form which must be drawn up when a proposal is presented to the preparatory bodies and ministerial sub-councils, among others.¹⁹ The ATR took the government-wide instructions for the IAK document as starting point for its study. Section 3.3 (and Annex 6) details the study approach, including the way in which the instructions were included for the assessment of the quality of IAK documents.

¹⁷ Web page '7.2 Consequences for businesses' on the KCWJ website: www.kcwj.nl/kennisbank/integraal-afwegingskader-beleid-en-regelgeving/7-wat-zijn-de-gevolgen/72-gevolgen-voor

¹⁸ Letter to the House of Representatives dated 12 September 2013 regarding 'Government modernisation' (*Modernisering van de overheid*). *Parliamentary Papers II 2012/13*, 29362, no. 224 (zoek.officielebekendmakingen.nl/kst-29362-224.html).

¹⁹ Annex 1 of the Annexes Report contains the format of the IAK document and the instructions for the seven IAK questions.

3. Central question and study approach

3.1 Central question

With the study into the IAK and the IAK document, the ATR seeks to contribute to the development and improvement of the quality of proposed laws and regulations and the instruments used in the creation process by means of:

- a. an analysis of compliance with quality requirements and procedural agreements in respect of the IAK and the IAK document in the context of internet consultation in 2018 and 2019, and, based on that analysis:
- b. recommendations on how to improve the quality of the IAK and the IAK document and their use.

In early 2021, the government will share an action plan aimed at improving the IAK with the House of Representatives. The aim of the action plan is "to simplify the IAK, make it more user-friendly and encourage its use".²⁰ This action plan also follows the OECD report of early 2020 and the finding that the size of the IAK and its limited connection to decision-making in practice is not conducive to its being used properly.

With this study, the ATR seeks to make a concrete contribution to elements of the action plan. For that reason, the ATR also kept the ministries (in particular the Ministry of Justice and Security and the Ministry of Economic Affairs and Climate Policy) updated concerning the progress of the study and its provisional findings.

In line with this study objective, the study's central questions are as follows:

- A. Is the IAK document used during the internet consultation process for proposed laws and regulations?;**
- B. Do the responses to the IAK questions meet the substantive quality requirements and procedural agreements set?;**
- C. What lessons can be learned to improve the quality of the IAK and the IAK document and the internet consultation process?**

3.2 Scope of the study

In total, the ATR analysed and assessed 434 IAK documents for proposed laws and regulations. The 434 files concern proposals which had been consulted via the website www.internetconsultatie.nl, where the consultation start dates were in the period between 1 January 2018 and 31 December 2019. The proposals were made by the government. Legislation initiated by parliament (by members of the House of Representatives) was disregarded. Furthermore, the proposals studied were those pertaining to *laws and regulations*. Policy documents or policy initiatives were not included in the scope of the study.

The study was therefore aimed at proposed laws and regulations because the quality requirements provided for by, among other instruments, the IAK were applicable.

²⁰ Letter to the House of Representatives dated 3 April 2020 concerning 'Improvements in accounting and budgeting' (*Verbetering verantwoording en begroting*). *Parliamentary Papers II, 2019/20, 31865, no. 168*. (www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2020Z06163&did=2020D12931)

The 434 files covered by the scope of the study were divided as follows among the Ministries:

| Ministry | files | Ministry | files |
|---|-------|--|-------|
| Ministry of General Affairs (AZ) | 4 | Ministry of Infrastructure and Water Management (IenW) | 60 |
| Ministry of the Interior and Kingdom Relations (BZK) | 54 | Ministry of Justice and Security (JenV) | 69 |
| Ministry of Foreign Affairs (BZ) | 1 | Ministry of Agriculture, Nature and Food Quality (LNV) | 20 |
| Ministry of Defence (DEF) | 0 | Ministry of Education, Culture and Science (OCW) | 37 |
| Ministry of Economic Affairs and Climate Policy (EZK) | 55 | Ministry of Social Affairs and Employment (SZW) | 48 |
| Ministry of Finance (FIN) | 54 | Ministry of Health, Welfare and Sport (VWS) | 32 |

3.3 Study approach²¹

The ATR conducted the study between July 2020 and November 2020. The study comprised two phases.

Phase 1: Document study: Assessment of IAK documents (July-October)

A document study was carried out in phase 1. The main part of the document study involved the assessment of 434 proposals which had been consulted via the internet consultation process, and in particular the 325 IAK documents included with them. No IAK documents had been included for the other 109 consultations. The responses to the seven IAK questions in the 325 IAK documents were assessed using a standards framework which is consistent with the contents of the (government-wide) instructions on answering the seven IAK questions. To begin with, the IAK documents were assessed by two advisers (separately). The advisers then discussed those assessments. This led to minor adjustments to the assessments for a small number of files.

Following phase 1, the ATR commissioned a separate, in-depth (external) study. Its purpose was to establish how the quality of the IAK document (in the responses to IAK question 7) compares with the quality of the explanatory notes to proposed legislation.²²

Phase 2: Interviews and in-depth study (October-November)

Interviews with ministries, in particular with directors for legislation and legal matters, were conducted in phase 2. Policymakers and policy advisers from various ministries (from policy departments, in particular) were also interviewed. The working group of IAK coordinators/stakeholders and the inter-ministerial working group of internet consultation coordinators were consulted as well.

²¹ A more detailed description of the study approach and the justification for the study is included as Annex 6 in the Annexes Report accompanying this study.

²² This in-depth study was conducted independently and externally by the Panteia research agency. Some of the results of the study are described in section 4.4 of this report. A full description of the results is included in the memorandum *entitled* 'Comparison of the consequences described for businesses, citizens, the government and the environment in the explanatory notes to the proposed legislation with the responses to IAK question 7 regarding those consequences' (*Vergelijking beschreven gevolgen voor bedrijven, burgers, overheid en milieu in de toelichting voorgenomen regelgeving met het antwoord op IAK-vraag 7 over die gevolgen*). That memorandum is included in the annex to this report.

The study was conducted by advisers from the ATR secretariat, assisted by an external adviser. The ATR used a sounding board group of experts during the study.²³

3.4 Basic principles

The following basic principles were applied to the assessment of the IAK documents published for proposed laws and regulations during the study:

1. The quality of the responses to the seven IAK questions in the IAK document were assessed based on *the requirements set and instructions given by the central government* for the IAK document.²⁴ Annex 1 to this report contains the instructions accompanying the IAK document which the ATR used to assess the quality of the IAK responses in the IAK document.²⁵
2. The assessment of the IAK documents involved establishing whether the answers to the seven IAK questions "*provide insight into*" the IAK question concerned. This perspective was chosen to ensure alignment with the objective that the IAK document should provide participants in the internet consultation process with insight into what the proposal is about. With this basic principle, the ATR aimed to assess the substance of the responses, and not just 'formally' establish whether the instructions had been followed in full.
3. During the assessment of responses to specific IAK questions information provided for earlier IAK questions in the IAK document was included in the evaluation of the quality of an IAK response. If, for example, information provided for IAK question 1 was also relevant to the response to IAK question 3, the information provided for IAK question 1 was taken into account in the assessment of the quality of the response to IAK question 3. Particularly in respect of IAK questions 3, 4 and 5, the ATR noted in the preparatory phase that information relevant to those three questions is regularly provided for earlier IAK questions, including IAK question 1.

²³ Annexes 2 and 3 contain a list of the organisations consulted, as well as details of the members of the sounding board group.

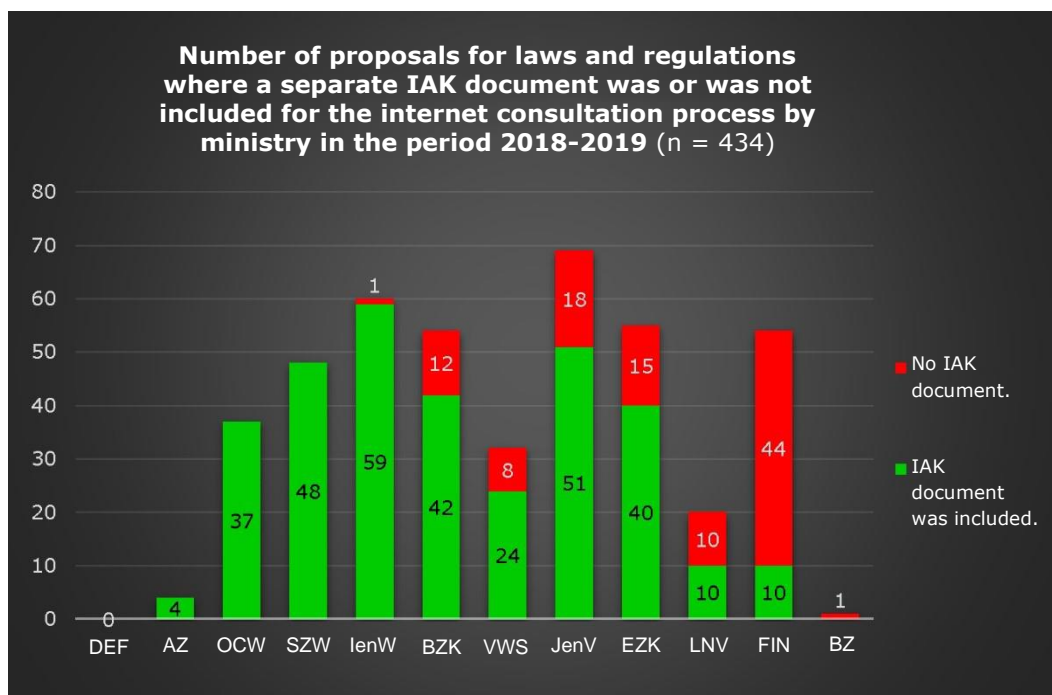
²⁴ Annex 1 to this report contains the format to be used to answer the seven IAK questions for the purposes of the internet consultation process; this government-wide format also includes the instructions for each IAK question.

²⁵ Annex 6, which sets out the study approach, covers the standards framework used for the assessment in greater detail.

4. Using the IAK and the IAK document for proposed laws and regulations

4.1 Inclusion of the IAK document for proposed laws and regulations

Ministries are obliged to include a separate document for the internet consultation process concerning proposed legislation which contains responses to the seven IAK questions. In total, 434 proposals presented by ministries were consulted by means of an internet consultation process in the period between 1 January 2018 and 31 December 2019. A separate IAK document had been included for 75% of those proposals. No such document was included for the internet consultation process for 25% of the proposals. The following figure sets out the distribution of proposals presented with and without an IAK document, broken down by ministry.



In total, 109 of the 434 files did not include a separate IAK document. It is also noted that 44 of the 109 files come from the Ministry of Finance. The ATR carried out a concise analysis of those 109 files to find out why they did not contain an IAK document. Four aspects were examined in the analysis.

a. Reason for the file.

Of the 109 files without an IAK document only six result directly from the Coalition Agreement.²⁶ For that reason, no link has been established between the absence of an IAK document and the Coalition Agreement. However, it is notable that of the 109 files without an IAK document, 26 are files concerning EU implementing regulations. This amounts to around 24% of the total number of files without an IAK document. Looking at the total number of files concerning EU implementing regulations (approximately 45) in the total number of files involved in the internet consultation process (434), it becomes apparent that a relatively large number of those files lack an IAK document. Implementing regulations, therefore, are more often (than regulations without a

²⁶ No files involving a political agreement other than the Coalition Agreement were found in this group.

'European [Union] origin') published without an IAK document for the internet consultation process.

b. Contents of the file.

The question of whether the files published for internet consultation without an IAK document have a financial content was examined. This was prompted by the finding that most files without IAK documents come from the Ministry of Finance (44 of the 109). The analysis shows that 20 of the 109 files (18%) have a financial content, with 18 coming from the Ministry of Finance. The other two are from the Ministry of the Interior and Kingdom Relations. In addition, 10 Ministry of Finance files have 'financial supervision' as their subject-matter. In short, of the 44 files without IAK documents and originating from the Ministry of Finance, 28 have a specific financial content or have to do with financial supervision.

Two further aspects were put forward to explain the failure to provide IAK documents for the internet consultations concerning proposed laws and regulations during the interviews with ministries:

c. Pressure of time and priority

Laws and regulations are regularly created under great pressure of time, for example, because the minister or state secretary responsible wants to meet a particular date of entry into force. This can sometimes mean that very little time is available for the preparatory phase of legislation. Some ministries stated that as a result there is regularly insufficient time/scope (and priority given) to prepare a proper IAK document for the internet consultation process.

d. Ignorance of the obligation

Some ministries state that failure to provide an IAK document can also be the result of ignorance of the obligation to publish a separate document containing responses to the seven IAK questions. According to those concerned, new staff can sometimes be unaware of the obligation because they are not yet familiar with all the procedural and other requirements in respect of proposed legislation.

In conclusion:

- The mandatory separate IAK document is most likely to be missing from the internet consultation process concerning proposed laws and regulations where the proposals concern implementing regulations.
- There is no unequivocal explanation for failures to provide a separate IAK document for the internet consultation process. The ministries themselves cite pressure of time and ignorance of the obligation to publish a separate document as the main reasons.

4.2 Quality of IAK documents published for proposed laws and regulations

4.2.1 Does the IAK document provide insight into what the proposal addresses?

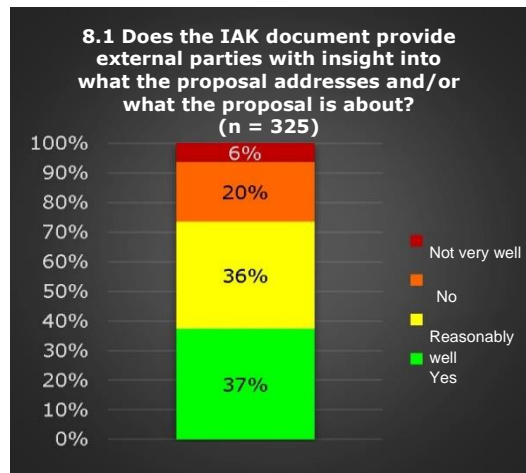
One of the objectives of an IAK document published for proposed legislation is to provide participants in the internet consultation process with insight into what the proposal is about. The seven IAK questions do not include one which reads "*What does the proposal provide for?*" However, if the seven questions are answered properly in terms of content, participants will gain clear insight into what the proposal entails.

The ATR assessed the 325 IAK documents from 2018-2019 to establish whether the IAK document provides participants in the internet consultation process with insight into what the proposal concerned provides for.

The graph on the right shows the outcome of the assessment of the IAK documents as regards this question.

About a quarter of the IAK documents (26%) provides no or only fairly poor insight into what the proposal is about.

There are three reasons why IAK documents provide no or fairly poor insight into what a proposal provides for:



1. The IAK questions are not answered or are not answered substantively.

In a number of IAK documents one or more IAK questions are not answered in full, are merged or are 'answered' only with a reference to an external source (for example, the explanatory memorandum or an external report). As a result, it is difficult to work out from the text of the IAK document what the proposal addresses.²⁷

2. IAK questions are answered with information to which external readers do not have access.

In such cases, the extent of parties' involvement, the nature of problem addressed, the policy objective pursued, the specific public interest served, the reason for government intervention or the best instrument for the problem are not clearly defined or the particular question is left unanswered. As a result, the reader gains no or only limited insight into what the proposal is about.

3. Answers to IAK questions are phrased in technical or legal, or overly technical and legal, terms.

The ATR notes that technical language is used in answers to the IAK questions and/or that they are accompanied by explanatory notes phrased in legal terms in several IAK documents. This means consultation participants are not always clear as to what the proposal addresses. In such cases, although the IAK responses may, for example, make clear (in legal terms) which current regulation is being amended, they do not clarify the new situation in practical terms or what the proposal itself is addressing.

In addition to the above, the ATR also notes that the question "What does the proposal address?" is not included. As a rule, an IAK document will clarify what a proposal entails provided solid substantive answers have been given to the seven IAK questions. However, this is not always the case. For example, if one or more of the IAK questions, 4, 6 or 7 (What is the objective?, What is the best instrument? and What are the consequences?, respectively) have not been answered properly, it will not always be clear what the proposal addresses. This shortcoming could be remedied if the IAK

²⁷ The ATR notes that some of the IAK documents published for proposed laws and regulations consist solely of repeated (general) references to explanatory memoranda or explanatory notes. Consequently, those IAK documents do not contain substantive answers to the seven IAK questions.

document began with the words "What the proposal addresses".

4.2.2 Does the IAK document provide sufficient insight to enable the content of the proposal and its effects to be assessed?

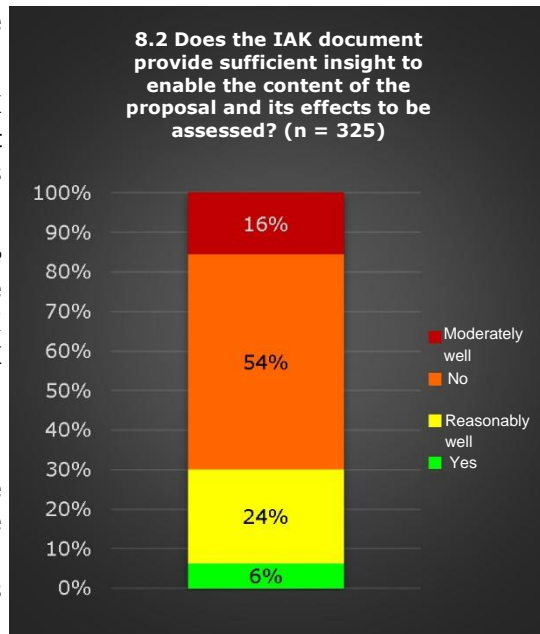
The responses to the seven IAK questions regarding the proposed legislation are intended to clarify the content of the proposal and its effects. They provide consultation participants with insight into the content of the proposal and the likely effects. For that reason, the ATR also assessed the 325 IAK documents with regard to those aspects.

The diagram on the right shows the findings.

Approximately 70 per cent of the IAK documents provide no or fairly poor insight into the content of the proposal and its effects.

IAK question 7 (*What are the consequences?*) is key to this issue. The ATR notes that in the majority of IAK documents the responses to this IAK question are unsatisfactory (see also section 4.3.5).

It follows from the analysis that the following three reasons are regularly the cause of difficulty in assessing or assessing properly the content of a proposal and its effects based on an IAK document.



1. Substantive answers are not provided for IAK questions (in particular, IAK question 7)

These IAK documents include:

- a. a reference to an external source, or
- b. a statement referring to the fact that the consequences have been identified separately from the consultation.

In both situations, the consultation participant reading the IAK document is unable to assess properly the content and effects of the proposal based on the responses to the IAK questions alone.

2. The consequences are described in general and qualitative terms, and lack a quantitative explanation.

Many IAK documents contain a general (qualitative) description of the consequences, but no quantitative explanation is provided. It is therefore impossible, based on the IAK document, to ascertain a proposal's impact. The consequences involved are by no means regulatory burden-related consequences alone. The absence of a quantitative explanation also has to do with the fact that an IAK document will often fail to make clear the size of the target group of citizens or businesses which will be affected by the proposal, or roughly what the financial consequences will be for society and/or the government.

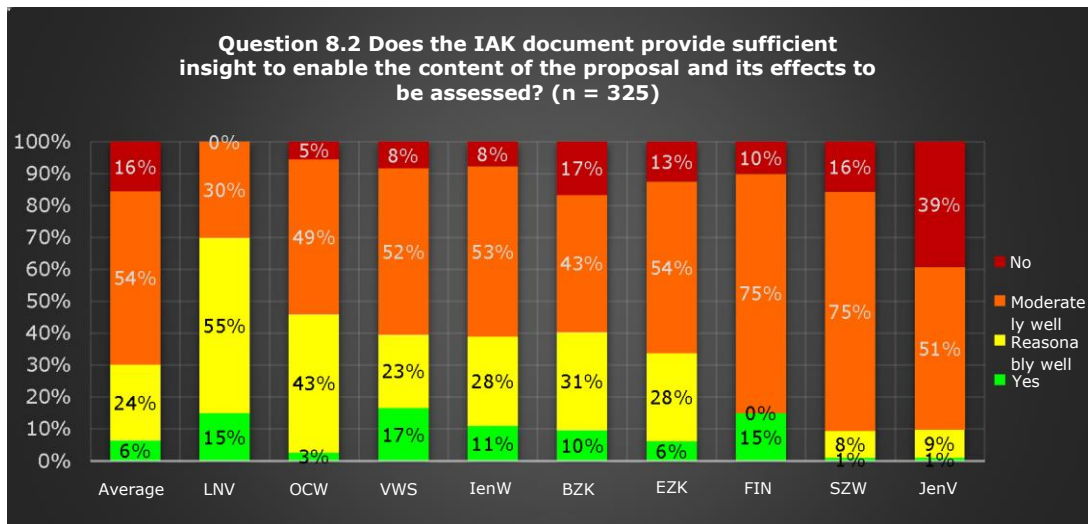
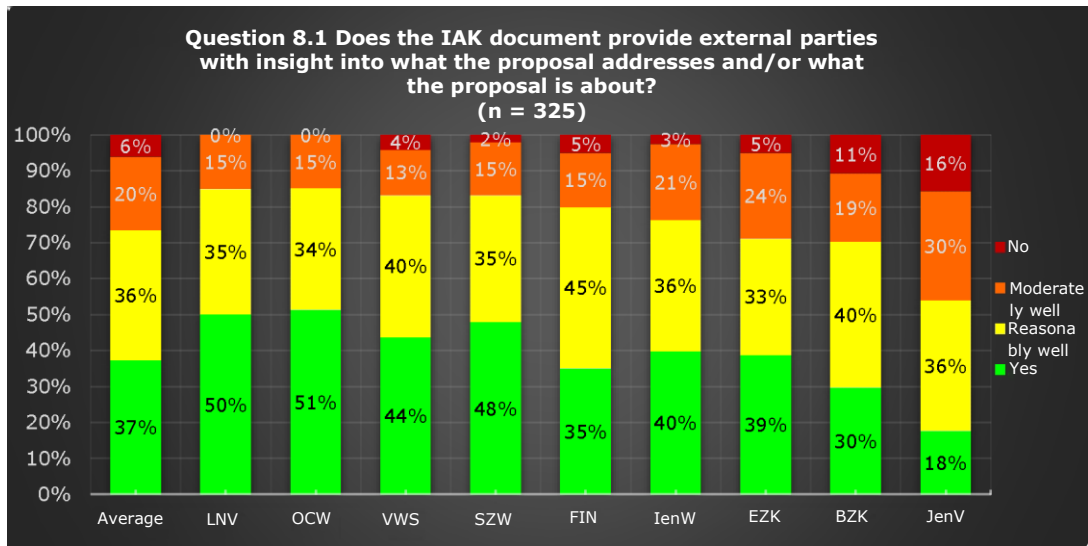
3. Only some of the consequences are described

Although several IAK documents include a description of consequences, not every one of these is described. For example, regulatory burden related consequences are addressed in the IAK documents, whereas no or less attention is paid to the financial consequences, or to the consequences of implementation for the government or the side effects for groups which are not the target of the proposal but are affected by it.

The interviews conducted during the study show that ministries find IAK question 7 (What are the consequences?) the most time-consuming and therefore sometimes find it difficult to meet all the requirements set for that question. Another factor is that civil servants sometimes encounter a substantial overlap ('duplication') between the IAK document and the explanatory notes to the legislation. Section 5.3 covers this in greater detail.

4.2.3 Quality of IAK documents published for proposed laws and regulations by Ministry

The study shows that the quality of the IAK documents differs from Ministry to Ministry. The assessment of the generic questions dealt with above (8.1 and 8.2) is broken down by ministry in the following figures.

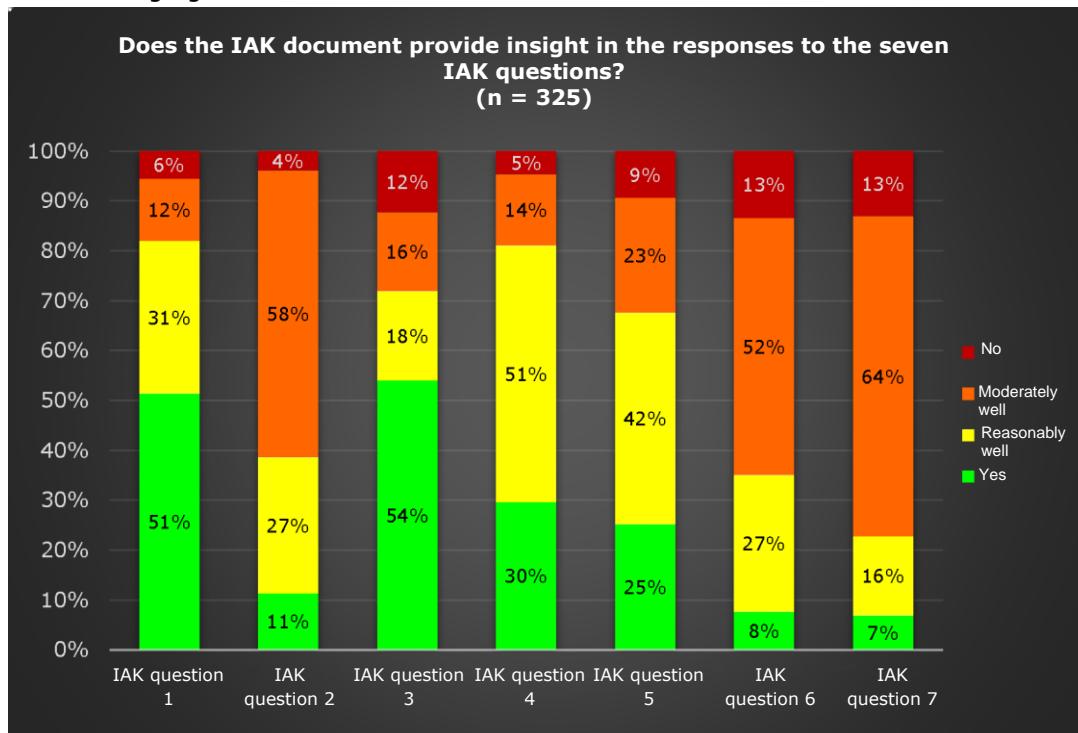


The figures show that on average ministries provide reasonable to good insight into what a proposal is about in nearly three quarters of the cases. However, not even a third of the files identifies the effects of the proposal reasonably well or well. The classification 'good' applies to just one in twenty files.

4.3 Quality of the responses to specific IAK questions

4.3.1 Quality of the responses to the seven IAK questions

The ATR assessed 325 IAK documents to establish whether the responses to the seven IAK questions provide good insight into what is intended by responding to those questions. The outcome of the assessment of those seven IAK questions is illustrated in the following figure.



The assessment reveals the following:

- Nearly three quarters of the IAK documents provides insight or reasonable insight in the responses to IAK questions 1, 3 and 4 (respectively, *What is the immediate cause?*, *What is the problem?* and *What is the purpose?*).
- Only 35% to 40% of the IAK documents provides reasonable to good insight in the responses to IAK question 2 (*Who are the stakeholders?*) and IAK question 6 (*What is the best instrument?*).
- Less than a quarter (23%) of the IAK documents provides reasonable to good insight in the responses to IAK question 7 (*What are the consequences?*).

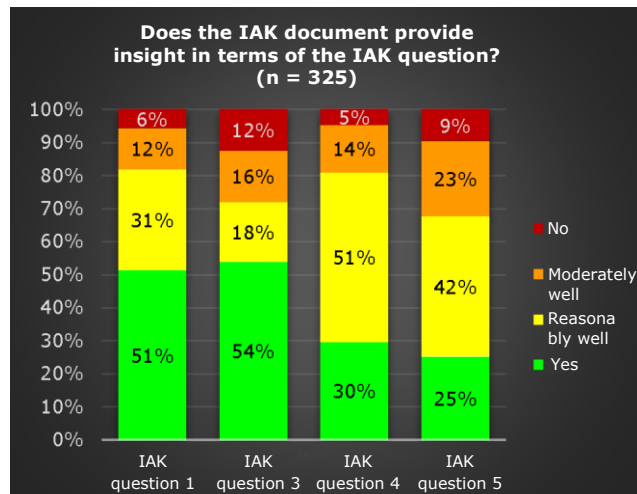
The IAK flyer published in 2017 divides the seven IAK questions into three phases for clarification purposes: Phase 1 is the *problem analysis* phase. which, according to the flyer, includes IAK questions 1 to 5. Phase 2 is the *choice of instrument* phase. which, according to the flyer, includes IAK question 6. Finally, there is phase 3, the *impact assessment* phase. which, according to the flyer, includes IAK question 7. The above assessment shows that (with the exception of IAK question 2) the IAK questions in the problem analysis phase are answered relatively well. The IAK questions pertaining to the choice of instrument (6) and the impact assessment (7) are answered relatively less well. The assessment is dealt with in the following sections in order to clarify these findings further. Section 4.3.2 deals briefly with IAK questions 1, 3 and 4, followed by

separate sections concerning IAK questions 2, 5, 6 and 7.

4.3.2 IAK questions 1, 3, 4 and 5 (Reason, problem, objective and intervention)

The four IAK questions which, relatively speaking, received the best responses relate, successively, to the cause (question 1), the problem (question 2), the objective (question 4) and the reason for government intervention (question 5).

The ATR believes several recurrent themes can be inferred from the assessment of these IAK responses. They may be relevant to the development of the IAK.



IAK question 1 is the question regarding the immediate cause. The instructions for this question make it clear that the specific cause must be named. Examples include the Coalition Agreement, a decision of a minister or secretary of state or an audit report. The instructions also state that the location of the source showing the immediate cause must be specified.

The ATR notes that many of the IAK documents which provide less clear insight for question 1 do not state the immediate cause, but rather start by describing the social problem when answering IAK question 1. In addition, there is often no mention of a source showing the immediate cause.

IAK question 3 is the question regarding the problem that requires a solution. The instructions accompanying this question make it clear that it is important that a description of the situation which has received a negative rating and where there is room for improvement is provided.

The IAK documents which provide no or only fairly poor insight in the responses to IAK question 3:

- Do not contain a substantive response to the question, only, for example, a reference, or
- Contain only a technical, legal or very general description of the problem

This was true of a minority of the IAK documents.

IAK question 4 is the question regarding the objective pursued by the proposal. The instructions specify that the policy objectives should be described and, where possible, should be worded using SMART (Specific, Measurable, Acceptable, Realistic and Time-related) terms. Most of the IAK documents which provide no or only fairly poor insight in the responses to IAK question 4 contain only a general description of the policy objectives without any further clarification. There are also instances where the responses lack content and instead focus on the process. For example, in some IAK documents where the implementation of European legislation was involved, "implementation of European legislation" was given as the response to IAK question 4 without any further detail being provided regarding the substantive policy objective.

IAK question 5 is the question regarding the justification of government intervention.

The instructions accompanying the question make it clear that the response should provide insight into: a. the public interest at issue; b. why intervention by the central government is necessary; and c. what will happen if nothing is done or the policy remains unchanged (zero option). The IAK documents which provide no or only fairly poor insight in the responses to IAK question 5 ignore the zero option (what will happen if the policy remains unchanged) and/or do not address why government intervention by the government is necessary.

4.3.3 IAK question 2. Who are the stakeholders?

IAK question 2 is one regarding the stakeholders involved in the proposal. The instructions for responses to IAK question 2 make it clear that there are at least three important aspects which must be covered in responses to this IAK question. They state that responses to IAK question 2 must specify:

1. Which groups, organisations, agencies, persons, etc. are affected by the proposal;
2. What their role is in drafting the proposal (e.g. coordinating, consultative or advisory); and
3. Why they are involved (e.g. their knowledge of the problem, involvement in implementation or enforcement, or as a representative of the target group).

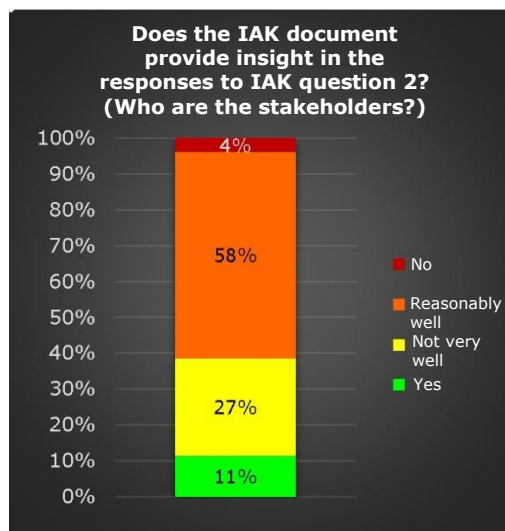
The ATR's assessment reveals that more than 60% of the IAK documents provides no or fairly poor insight into 'who the stakeholders are' as regards the proposal. The ATR notes that the responses to IAK question 2 in the IAK document often consist of a brief list of actors. In many IAK documents, no further details of the actors named are provided. As a result, it is not clear whether the actors referred to in the IAK document are those affected by the proposal or those who were actively consulted about the proposal (or whether both points are applicable).

The analysis shows that the responses to IAK question 2 are incomplete in more than 60% of the IAK documents.

Based on the document study and the interviews, it can be concluded that ministries give a literal (and narrow) interpretation to IAK question 2 and fail to address the sub-questions and/or aspects in the instructions.

Consequently, responses to IAK question 2 are often a concise response to the question "Which actors are involved in drafting the proposal?" The upshot is that two relevant aspects are omitted:

- a. Which parties are affected by the proposal?
- b. Why specific parties were consulted about the proposal.



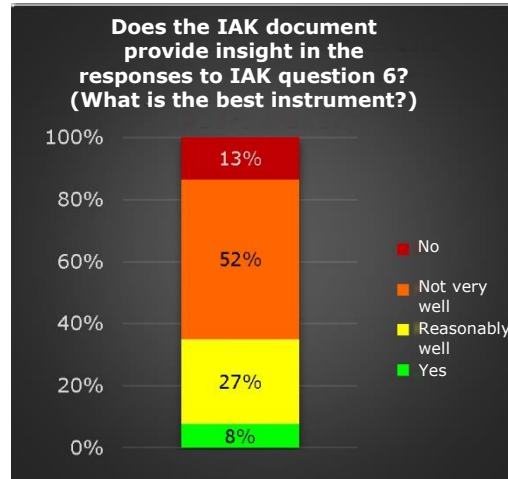
4.3.4 IAK question 6. What is the best instrument?

IAK question 6 is the question regarding the best instrument to use to solve the social problem or achieve the social objective. The instructions provided for responses to this IAK question for the IAK document contain three elements:

1. an explanatory note setting out which policy instrument or instruments could be used to achieve the objective;
2. why – after having weighed everything up – the instrument selected is the preferred one;

3. which considerations as regards effectiveness, fitness for purpose, legitimacy, practicability and enforceability were taken into account when the selection was made.

Nearly two thirds (65%) of the IAK documents provides no or only fairly poor insight into 'which is the best instrument'. The responses to IAK question 6 often comprise only a brief explanation of the policy instrument selected, followed by one or a few arguments setting out why that instrument was selected. Nor do they clarify whether any other instruments were considered, and if so which. Those IAK documents also provide barely any insight into the considerations as regards effectiveness, fitness for purpose, legitimacy, practicability and enforceability.



Like IAK question 2, IAK question 6 is given a limited interpretation. Specific aspects set out in the instructions are often ignored. The number of times the response given is: "legislation" (with no explanation or supporting information) is a case in point.

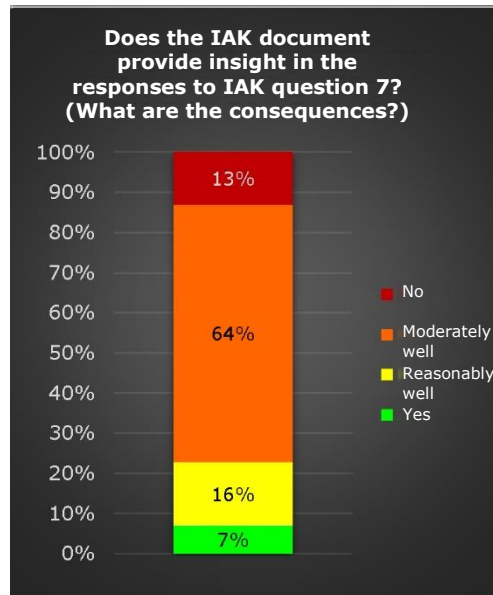
4.3.5 IAK question 7. What are the consequences?

IAK question 7 concerns the consequences of a proposal. According to the instructions, responses to this question should address a number of aspects. For instance, they must include a description of the consequences and spillovers of the proposal for, among others, citizens, businesses, the government and the environment.²⁸ Those consequences should be quantified as far as possible.

²⁸ The instructions for IAK question 7 read as follows: *Describe the consequences and spillovers of the proposal for citizens, businesses, the government and the environment. Examples of consequences for citizens and businesses include administrative burdens, supervisory burdens and compliance costs and, for businesses specifically, market impact and competitiveness as well. Budgetary implications for the national budget, implications for the ICT systems of the central government, local authorities, autonomous administrative bodies with public duties, etc., and the implications for objection and appeal proceedings, supervision, justice, legal assistance, etc. are among the consequences that could affect the government. Consequences should be quantified as far as possible (e.g. how many citizens are affected, what are the anticipated costs, etc.).*

More than three quarters (77%) of the IAK documents provides no or only fairly poor insight into the consequences of the proposal concerned. The descriptions are usually only general and qualitative. The majority of documents lacks:

- a. a quantitative explanation of the consequences, for example, how many citizens or businesses are affected and/or which costs the various parties can expect;
- b. a full explanation of the consequences, not only of the original proposal but all of any changes. Information concerning the consequences for some of the parties affected by the proposal is also absent.



The interviews with ministries revealed that they find providing responses to IAK question 7 difficult. The ministries explain this as follows:

- a. the large number of assessments and requirements involved with regard to IAK question 7;
- b. lack of clarity as to how exactly the requirements can or should be complied with;
- c. time constraints, making it difficult to identify the consequences clearly; and
- d. the disproportionality they see in the requirements and assessments.

Section 5.3 covers these aspects in greater detail.

4.4 Responses to IAK questions in the explanatory notes for proposed laws and regulations

In phase 1 of the study, the application and quality of the IAK document in the consultation process concerning proposed legislation was examined. This revealed that compliance with the procedural agreements and instruction for the responses to the IAK questions varies. The internet consultation and the IAK document are elements of the preparatory phase of legislation. During the interviews in phase 2 of the study, the ministries noted that in any event the responses to the seven IAK questions have to be fully addressed in the explanatory notes accompanying proposed regulations. The IAK document provided for the internet consultation process could be a summary of the responses to the seven IAK questions or be derived from their contents. This prompted the question of whether the quality of the responses to the seven questions in the IAK document is an indication of the quality of the responses to the seven IAK questions in the explanatory notes for regulations. This is why the ATR commissioned an additional external and independent study. The Panteia research agency selected 82 sample files (25%) of the 325 files containing an IAK document which the ATR examined in phase 1. The following aspects were examined for those samples:

- The quality of the description of the consequences of a proposal in the explanatory notes for the regulations (quality of responses to IAK question 7).
- How the quality of responses to IAK question 7 in the IAK document compared with the quality of responses to that question in the explanatory notes for the proposal concerned.

The two central conclusions from this in-depth study are as follows:

1. The quality of the description of the consequences in the explanatory notes to the proposal is better than that given in the IAK document in nearly half (48%) of the files.²⁹
2. In more than half (60%) of the proposals, the explanatory notes for the regulations provide no or only fairly poor insight into the consequences of the proposal.

²⁹ In approximately 40% of the files, the quality of the description of the consequences in the explanatory notes for regulations is roughly the same as that of the description in the IAK document. In approximately 12% of the proposals, the description of the consequences in the IAK document is better than in the explanatory notes for the regulations.

5. Impact of the IAK on proposed laws and regulations

Interviews were conducted with ministries during phase 2 of the study. The purpose of that phase was to test hypotheses and thus find explanations for the findings made in phase 1. The interviews produced findings along three lines.

5.1 Substantive importance of the IAK during the preparation of policy and legislation

Nearly all the those involved at ministries recognise the substantive importance of the IAK and the seven IAK questions to the development of policy and laws and regulations. Many of the parties involved state that the IAK and the IAK questions cause them to consider critically and reflect on the usefulness of and need for government intervention (including in the form of policy and laws and regulations) In this sense, according to the parties involved, the IAK has a positive and in part "disciplinary effect". Ministries also emphasise the importance of the *early deployment* of the IAK and the IAK questions. To exploit the added value to the full, it is important that the questions are used from the beginning of the legislative process (or the process resulting in policy). Many ministries have therefore also included the seven IAK questions in their initial memoranda. For many ministries, the initial memorandum is one of the first documents to be drawn up during the preparation or development of new policy or new legislation. The parties involved believe there is room in that early phase to assess critically whether legislation is necessary and useful, or whether the social problem concerned could or should be addressed in another way. The debate over which policy instruments could be used to address the problem in society can still be conducted relatively openly – and usually with enough time allowed – during this early phase. The above does not include measures which are specifically laid down in a political or other agreement, such as the Coalition Agreement, or which relate to a specific political aspirations of a minister or state secretary or the House of Representatives. According to the ministries, if such an agreement or ambition specifies the need for a measure in the form of an instrument, there is little or no room left for any alternative options. The IAK does little or nothing to change that.

Some ministries have developed initiatives to embed the IAK and the IAK questions more firmly in the ministerial preparation phase for laws and regulations. For instance, the Ministry of Education, Culture and Science recently launched an interdisciplinary introductory interview with as many relevant stakeholders as possible, even before the initial memorandum had been prepared. The core elements from the IAK and the seven IAK questions were also discussed during that interview.

Ministries also indicated during the study that the seven IAK questions are important not just at a single moment in the legislative process, but rather throughout the preparation process. This process begins with the initial memorandum (or the initial discussion) and ends with the political and administrative decision-making process. Ensuring that the questions are answered properly at an early stage can result in a sound IAK document being presented during the internet consultation process. It can also form the basis for the responses to the IAK questions in, for example, the presentation form used when submitting a proposal to be dealt with by a preparatory body and a ministerial sub-council. It can also be a building block for "a well-prepared document for the policy analysis and legal assessment of proposed legislation by the Council of State".³⁰

³⁰ www.kcwj.nl/kennisbank/integraal-afwegingskader-voor-beleid-en-regelgeving

In conclusion:

- Ministries recognise the substantive importance of the IAK and the seven IAK questions with regard to the preparation of laws and regulations and the qualitative supporting information provided in the process.
- The IAK and the responses to the seven IAK questions have a part to play in the entire preparation phase of laws and regulations. Incidents within that period (e.g. the internet consultation phase) should be viewed in the context of the entire preparation phase.

5.2 Different functions, in different phases, differently communicated

Section 2.3 explains that different sources indicate different objectives of the IAK document when it is used in the internet consultation process. However, the IAK document for the internet consultation is not an isolated concern but is part of the legislation preparation chain, so it is important to assess the responses to the seven IAK questions in a broader context. That context in part determines how the IAK and the IAK document is used and how the seven IAK questions pertaining to proposed legislation are answered.

The responses to the seven IAK during the various stages of the legislative process serve different functions. The KCWJ website is clear about this: each of the five phases in the preparation of laws and regulations has its own purpose. The ministries stated during the interviews that in the initial phase or phases the IAK questions mainly serve as internal 'critical test questions' and, later in the process, are used to account for the choices made.

The purpose of using the IAK for each policy or other phase according to the KCWJ website³¹

Phase 1: The beginning of a policy process or intention to legislate

Objective: to obtain insight into the scope of the task so that an initial memorandum can be drawn up.

Phase 2: Preparation of the explanatory notes to policy and legislation

Objective: To provide due justification for provisional insights and results and further ones.

Phase 3: Prior to the internet consultation process

Objective: To clarify for the participant in the consultation process what the document is about.

Phase 4: Presentation of documents to the cabinet's preparatory bodies

Objective: To make all relevant considerations in the proposal transparent and readily comprehensible.

Phase 5: Advice is given by the Council of State's Advisory Division

Objective: To present a well-prepared document so that the proposed legislation can be subjected to policy analysis and legal assessments by the Council of State's Advisory Division. The considerations to be taken into account in this assessment framework are very similar to those in the Integrated Impact Assessment Framework for Policy and Legislation.

In light of the foregoing, it is noteworthy that the wording of the IAK questions and the accompanying instructions is uniform. The instructions do not distinguish between phases in the legislative process. This is most evident in the comparison between the internet consultation process and the subsequent phase where the proposal is forwarded

³¹ <https://www.kcwj.nl/kennisbank/integraal-afwegingskader-voor-beleid-en-regelgeving>

to the preparatory body and the ministerial sub-council. The instructions for both phases are the same, even though the objectives of the phases differ significantly.

The foregoing is complicated by the fact that the significance, use and mandatory application of the IAK and the IAK questions is not unambiguously communicated everywhere. For instance, many web pages about the IAK emphasise the importance of the IAK from the beginning of the legislative process, stating that the IAK questions should be discussed at as an early a stage as possible in the preparation phase. However, the following is stated on the KCWJ's website: *"Every civil servant will come across the IAK when they send documents to a preparatory body using the presentation form provided for this. This form contains the seven IAK questions, from question 1 about the immediate cause, to question 7 about the consequences of the proposal."*³² Although after this passage it is stated that the questions could also be used at an earlier stage, they can also lead to confusion. The use of the IAK questions in the initial memorandum and the mandatory responses to the questions in the IAK document during the internet consultation process are not mentioned. This can create the impression that the questions only need to be answered at the end of the preparatory legislative phase (preparatory body).

There is also some confusion regarding the responses to the IAK questions in the IAK document during the internet consultation process. Some documents state that the responses to the IAK questions in the IAK document may make reference to specific passages in the explanatory notes to the regulation or may adopt such passages.³³ The reference to the explanatory notes, in particular, is hard to reconcile with the objective of providing participants in the internet consultation process with specific information about the content of the proposal. Providing responses which contain only references to the explanatory notes means the IAK document cannot be read on its own and obliges the participant in the consultation to indeed go through part of those explanatory notes.

In conclusion:

- The seven IAK questions perform a different function and role in the various stages involved in the preparation of laws and regulations.
- The details of and instructions for the seven IAK questions do not distinguish between the various stages involved in the preparation of laws and regulations.
- Instructions concerning the application of the seven IAK questions vary. Different sources describing the preparation of laws and regulations have their own instructions (as do the different stages).

5.3 Complying with IAK requirements under pressure

Ministries find compliance with the IAK and meeting all the accompanying "requirements and tests" a considerable challenge and sometimes a heavy administrative burden. They also question the workability and practicability of those requirements for policymakers and legislative draftsmen. They believe that the perceived burden is also one of the explanations for the varying quality of the responses to the IAK questions during the internet consultation process. Ministers find IAK question 7 (What are the consequences?) particularly time-consuming and burdensome. Several stakeholders believe that this creates the risk of it being impossible to meet all the requirements,

³² Ibidem.

³³ Letter to the House of Representatives dated 12 September 2013 regarding 'Modernisation of the government'. *Parliamentary papers II 2012/13, 29362, no. 224* (zoek.officielebekendmakingen.nl/kst-29362-224.html) or www.kcwj.nl/kennisbank/draaiboek-voor-de-regelgeving/hoofdstuk-2-formele-wetten-op-voorstel-van-de-regering-n-94.

which could have an impact on the quality of laws and regulations and the substantiation thereof. The in-depth study commissioned by ATR into the responses to IAK question 7 in the explanatory notes for legislation reveals that approximately 60% of the proposals examined provide no or only fairly poor insight into the consequences.

The following five aspects stand out as explaining the perceived burden associated with, among others, providing responses for IAK question 7:

1. *The sheer number and detail of the requirements set (excessively detailed)*

The stakeholders mention, in particular, *the number of requirements and tests* prescribed for IAK question 7 and the fact that several thematic requirements have also recently been added. The Capacity to Act test, the SME test and the 'Gender test'³⁴ are cited as examples of the latter category. Ministries feel that "tests are being piled upon tests". Moreover, those tests partially overlap, resulting in an excessively detailed IAK. Ministries recognise the substantive importance of the various thematic and other requirements, but complying with the sum total of these obligations is proving burdensome.³⁵

Use of 21 different quality requirements for the seven IAK questions³⁶

At the time of writing, 21 mandatory quality requirements are applicable to the seven IAK questions in the IAK. None is mutually exclusive. If a quality requirement is applicable to one of the seven questions, this does not mean that it will not also be applicable to another IAK question. On average, the requirements are applicable to nearly 2½ questions. The Business Impact Assessment including the regulatory burden assessment and the Capacity to Act test feature frequently, applying to five of the seven questions. Nor is there a limit on the number of quality requirements that can be set for each IAK question. Virtually all of the quality requirements (19 of the 21) are applicable to IAK question 7. Nor are the requirements mutually exclusive. Once the regulatory burden has been identified in the regulatory burden assessment, the same has to be done for the Business Impact Assessment and the SME test. Quality assurance varies from requirement to requirement and the assessment bodies are not mutually exclusive either. Once the regulatory burden identified has been approved by the Dutch Advisory Board on Regulatory Burden (ATR), this does not mean that approval will not need to be obtained from the Ministry of the Interior and Kingdom Relations or the Ministry of Economic Affairs and Climate Policy. Finally, the IAK is not mutually exclusive to quality requirements outside the IAK, such as those set for the internet consultation process, decision-making in the ministerial sub-council and cabinet, the drafting instructions for legislation and the Government Accounts Act.

³⁴ The 'Gender test' relates to the mandatory quality requirement *'Impact on gender equality'*. This requirement is intended to determine the nature and scale of the consequences of proposed policy and legislation for gender equality in the Netherlands. Source: <https://www.kcwj.nl/kennisbank/integraal-afwegingskader-beleid-en-regelgeving/verplichte-kwaliteitseisen/effecten-op-gendergelijkheid>

³⁵ See the ATR 2017, 2018 and 2019 annual reports for details regarding the identification of the consequences of the regulatory burden. However, these findings also apply to other consequences of proposed legislation. See, for example, the Letter to the House of Representatives dated 29 October 2020 on 'Emancipation Policy' containing a response to the motion of Özütok and others regarding the use of the gender quality requirement in the integrated assessment framework. *Parliamentary Papers 2020/21, 30420, no. 352* (www.tweedekamer.nl/kamerstuk-ken/brieven_regering/detail?id=2020Z20010&did=2020D42981 and www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2020Z22066&did=2020D47003).

³⁶ See the Annexes report appended to this opinion for details of the 21 mandatory quality requirements

2. Confusion over requirements set

In addition to the demanding quality requirements (number and content), many ministries note that it is not always clear how particular requirements relate to one another or how to implement them correctly. This also has to do with the fact that the relationship between the IAK, the drafting instructions for the regulations and the Explanatory Memorandum style guide is not always clear. For instance, the consequences in terms of regulatory burden feature in the drafting instructions for legislation (including in instruction 2.10), in the Business Impact Assessment, the Manual for Measuring Regulatory Costs and in the (non-mandatory) Explanatory Memorandum Style Guide. It is not always clear to policymakers how these documents and requirements compare with each other and how the mandatory quality requirements can be met efficiently.

An important detail here is that requirements and sources must be clear and consistent for policymakers. For instance, the *Manual for Measuring Regulatory Costs* states expressly that financial costs are not part of the regulatory burden (costs). The Explanatory Memorandum style guide, by contrast, states that the regulatory burden is also part of the financial consequences.³⁷ Such inconsistencies or ambiguities do nothing to improve the workability of mandatory quality requirements and the ability of policymakers to comply (efficiently and effectively) with them.

To illustrate aspects 1 and 2, the following box contains an overview of the requirements applicable to the description of the consequences of proposed legislation in terms of the regulatory burden. The box shows the abundance and scope of the provisions (applicable to a single topic) and, for some of them, the practical obstacles faced by policymakers and other staff when attempting to meet quality criteria. A detailed explanation is included in Annex 4 to this report.

1. Accumulation of information

Policymakers wishing to prepare an analysis of the regulatory burden impact of legislation and establishing which procedural requirements and quality aspects are applicable may find themselves confronted with the following seven sources containing requirements pertaining to the regulatory burden impact:

1. Drafting instructions for the legislator;
2. Manual for Measuring Regulatory Costs;
3. Business Impact Assessment (BET);
4. Guide for regulatory burden accounting and related legislative quality instruments;
5. Process diagram for regulatory burden account and related legislative quality instruments;
6. Guide for the SME test;
7. Explanatory Memorandum Style Guide.

This is compounded by the following complexities:

2. Missing information

The KCWJ is one of the sources of information about the IAK and the mandatory quality requirements. The information is incomplete or not provided in some areas. The failure to provide information about the way in which consequences for citizens, including the regulatory burden,

³⁷ The following is stated in the mandatory section 'Financial consequences' in the Explanatory Memorandum Style Guide: *What is the nature of the financial effects? Examples include regulatory burden, implementation costs (...)*.

can be identified is an example of missing information as regards the regulatory burden. For six months, the KCWJ web page concerning IAK question 7 has contained no substantive information on this point.³⁸ This web page merely mentions that the page is currently being updated by the Ministry of the Interior and Kingdom Relations and that anyone with questions may contact iak@kcwj.nl. The same applies to information about the Ministry of the Interior and Kingdom Relations as a "relevant assessment body" regarding administrative burdens for citizens and professionals.

3. Contradictory information

It is important that information about quality requirements, definitions and the way requirements can be met is unambiguous and consistent. As has already been stated in the main text, the Manual for Measuring Regulatory Costs and the Explanatory Memorandum Style Guide contain contradictory information about whether regulatory burden costs are part of the financial costs. Such contradictions do nothing to improve the workability of mandatory quality requirements for policymakers.

4. Unclear and incoherent information

A policymaker consulting the KCWJ about IAK question 7 will find the following: *"In addition to the intended consequences, policy, laws and regulations will often have side effects for various stakeholders. Through their ex ante identification, you will be able to make a considered decision regarding the proposed legislation. You may find the social cost- benefit analysis (SCBA) a useful tool."*³⁹

The following aspects make the reference to the SCBA here confusing:

- a. The "relevant mandatory quality requirements" are also mentioned on the web page covering IAK question 7. However, the SCBA does not appear there. The information provided at the beginning mentions the SCBA as the first instrument, but it does not appear to be a "relevant mandatory quality requirement" here.
- b. Clicking through, you reach the SCBA web page, which states that the SCBA is a "relevant mandatory quality requirement". The SCBA is also included in the list of mandatory quality requirements for, among others, IAK question 7. It is therefore unclear whether the SCBA is a mandatory quality requirement applicable to analyses of consequences.
- c. The web pages contain no information stating how the SCBA (and the cost categories within it) compare with other instruments used to analyse (among other things) the costs of legislation, such as the Business Impact Assessment and the Standard Costs Model (SKM).

5. Information which has to be described/accounted for twice

The details of the likely regulatory burden impact have to be included in several places and at several points in time, often in different formats. This can result in double the burden for policymakers. The consequences in terms of the regulatory burden have to be stated in the following places:

- a. The initial memorandum;
- b. The explanatory memorandum or explanatory note to the legislation;
- c. The mandatory separate IAK document for the internet consultation process;
- d. The preparatory body form (a)/Consequences in terms of the regulatory burden, section B;
- e. The preparatory body form (b) and/or Responses to IAK questions.

³⁸ www.kcwj.nl/kennisbank/integraal-afwegingskader-beleid-en-regelgeving/7-wat-zijn-de-gevolgen/71-gevolgen-voor

³⁹ www.kcwj.nl/kennisbank/integraal-afwegingskader-beleid-en-regelgeving/7-wat-zijn-de-gevolgen

Three aspects of proposed laws and regulations and requirements respecting them intersect in the different sources:

1. Substantive provisions: This has to do with 'what' should be elaborated upon in explanatory notes to legislation.
2. Process-related provisions: This has to do with 'how' requirements should be met, such as how a regulatory burden analysis or SME assessment should be elaborated upon or conducted.
3. Times: This has to do with 'when' particular requirements must be met or when particular assessments must be carried out.

3. Pressure of time

Laws and regulations are regularly created under great political pressure, and therefore often under time constraints. Some ministries have said that this time pressure makes compliance with all the quality requirements and going through all the assessment procedures a burdensome process. As a result, it is impossible to create legislation in accordance with the obligations and rules for every proposed piece of legislation or regulation.

4. Proportionality

Combined, the aforementioned three aspects mean that ministries regularly question the proportionality of the requirements. Is it necessary for a very short ministerial order to be subject to the same quality requirements and procedural rules as a comprehensive legislative bill? Is the need to meet all the quality requirements in every case proportionate to the added value generated? And is it feasible and practicable for policymakers to carry out every individual assessment? Although the quality requirements allow for a tailored approach in some areas and for exemptions from certain obligations (e.g. the SME test), the ministries are understandably confused in this regard.⁴⁰

5. Application of the IAK and its requirements to solutions resulting from agreements or political or other assurances

The interviews with legal assistants and policymakers show that providing responses to the IAK questions is not always a straightforward matter. This can be the case, for example, if the decision concerns not what must be addressed, but how it must be addressed and where a solution involving an instrument is laid down without a clear description of the objective and supporting information showing its usefulness and necessity. Such decisions involving instruments are sometimes taken within an agreement or coalition agreement, or laid down in an assurance given by a minister or state secretary to the House of Representatives. Civil servants find that in such situations there is little or no scope for a substantive consideration of alternative policy instruments. Applying the IAK to such agreements is a burdensome process because it is not possible to comply with all the findings in full or in a substantive way.

In conclusion:

- Ministries find meeting every IAK requirement for proposed laws and regulations very burdensome and a challenging task. As a consequence, compliance with the IAK requirements, and thus the required quality of laws and regulations and their substantiation comes under pressure.

⁴⁰ A tailored approach to these quality requirements could further proportionality. However, a tailored approach and exemption categories could result in new areas of confusion if it is unclear when a tailored approach is necessary and for which categories.

6. Conclusions

As a result of the study and the analyses performed the ATR has reached the following conclusions in respect of the IAK and the IAK document and the responses to IAK questions pertaining to proposed legislation:

1. Ministries recognise the substantive importance and usefulness of the IAK and the IAK questions.

They feel that the IAK requirements should be applied from the moment development of new legislation begins. Providing responses to IAK questions forces them to think critically and reflect on the usefulness of and need for government intervention. The IAK has a positive and in part "disciplinary effect" here.

2. The responses to the seven questions in the IAK document pertaining to consultations about proposed legislation vary sharply in quality:

- a. A quarter (25%) of the proposed legislation consulted through the internet consultation process is not accompanied by a separate IAK document containing responses to the seven IAK questions. This is relatively often the case where implementing regulations and proposals submitted by the Ministry of Finance are concerned. No explanation or reasons are given as to why the separate IAK document is missing in the cases where none is provided for the internet consultations.
- b. In cases (75%) where an IAK document was provided for internet consultations, that document provides:
 - in 26% of cases there is fairly poor to no insight into the content of the proposal in question;⁴¹
 - in 61% of cases no insight or fairly poor insight is provided into which target groups are affected by or involved in the creation of the proposal;
 - in 65% of cases no insight or fairly poor insight is provided into the alternative measures considered and the considerations on the basis of which a specific measure or amendment was selected; and
 - in 77% of cases no insight or fairly poor insight is provided into the anticipated consequences of the proposal.
- c. In roughly half of the files examined the explanatory notes to the proposed legislation provided clearer insight into the consequences of the proposal (IAK question 70) than the IAK document. However, in roughly half of the cases (60), this insight is still fairly poor to poor.

3. Compliance with the IAK requirements, including all the quality requirements and stipulations, is under pressure. The same therefore also applies to the quality of the supporting information provided for the proposed policy and legislation.

4. The study concludes that there are several reasons why the responses to the seven IAK questions (in the IAK document) fail to comply with the requirements and instructions. The main reasons are as follows:

- a. The IAK, and all the accompanying mandatory and other quality requirements,

⁴¹ Nearly half (44%) of the internet consultations the IAK document provides no or only fairly poor insight into what the proposal provides for. In 25% of those cases this is because of the absence of the IAK document itself and for the remaining cases owing to the incomplete responses provided for the IAK questions concerned.

is excessively detailed, is not readily accessible and does not provide clarity for every aspect. As a result, ministries find meeting every IAK requirement for proposed laws and regulations very burdensome and a challenging task.

- b. The seven IAK questions may well be short, but a great deal of knowledge and information is required if they are to be answered well and in accordance with the instructions. It is hardly likely that such knowledge would be in the possession of a single person. Furthermore, the information is not always immediately available or held within the ministry, but rather has to be gathered with the cooperation of various parties and disciplines.
- c. Compliance with the instructions is in part dependant on the way in which a ministry has organised the preliminary phase of the legislative process, the 'culture' within a ministry (as regards legislation as a policy instrument) and the extent to which the IAK document is viewed as an obligation imposed from the outside.
- d. The IAK and the IAK form can serve various purposes and functions. Those purposes are not explicitly stated and are often unclear to the parties involved at the ministries. Civil servants regularly regard and experience the IAK document as an obligation which mainly serves internal purposes. However, the IAK document primarily has an external function, which is to inform external stakeholders about the proposal.
- e. Pressure and pressure of time experienced by ministries hampers them in their ability to properly identify the consequences of proposed legislation.

Overview of the Annexes Report

Annex:

- 1. Format of the IAK document for the internet consultation process concerning proposed laws and regulations, including instructions for answering the seven IAK questions**
- 2. Overview of organisations (interviews taking place in study phase 2)**
- 3. Composition of the external sounding-board group**
- 4. Illustration of excessively detailed and ambiguous IAK requirements**
- 5. Overview of mandatory quality requirements in relation to the seven IAK questions**
- 6. Study approach and study justification**
- 7. Memorandum in response to an in-depth examination of the description of consequences in the IAK document and the explanatory notes to legislation**
- 8. Good examples of IAK documents and responses**
- 9. Examples of IAK documents providing no insight or fairly poor insight**