

ASSESSMENT OF PROPOSED REGULATION

Explanatory Notes

Step-by-Step Plan

Quick Scan

Manuals

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Notes on the assessment of the effects of proposed legislation

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1. Introduction

Besides having the intended effects, legislation frequently has side-effects. Therefore, it is advisable to take a decision on proposed legislation only after all effects have been properly identified. The Proposed Legislation Desk, operated jointly by the Ministry of Economic Affairs, the Ministry of Housing, Spatial Planning and the Environment and the Ministry of Justice, oversees and checks this process. Uniformity is the number-one consideration when making the possible effects transparent. For this purpose, the Proposed Legislation Desk has developed a fixed structure and makes tools available in the form of the Business Impact Assessment (BIA), the Environmental Assessment (EA), the Practicability & Enforceability assessment (P&E) and the Cost Benefit Analysis (CBA). *Note: As a CBA will not very often be necessary and as it requires specific technical skills, this brochure contains no manual for a CBA.*

- the Business Impact Assessment shows the effects of proposed legislation for the business community.
- the Environmental Assessment identifies the intended and unintended effects on the environment.
- the Practicability & Enforceability assessment was devised to facilitate

identification of the effects of proposed legislation for the implementing authorities and enforcement agencies.

- the Cost Benefit Analysis clarifies the financial consequences of new legislation for the community.

The outcomes of the assessments must ensure improvement of the quality of decision-making through early identification of the potential effects of legislation. The process for conducting these assessments is embedded in the Instructions for legislation (instruction 256).

The BIA, EA, P&E and CBA are subject to certain rules:

- the initiating ministry is responsible for choosing instruments and identifying the effects of proposed legislation. It is sometimes advisable or even mandatory to enlist the services of external experts for this purpose;
- the quality and objectivity of the presentation of the effects must be assured by using reliable sources and clearly stating the sources;
- the process must be initiated as soon as the intention to frame legislation becomes known. An early assessment of the effects provides opportunities for reconsidering the policy and avoids delays later in the legislative process.

2. New structure

The Dutch Cabinet approved the new structure for assessing the effects of legislation in October 2002. Adherence to the structure has been mandatory since 1st March 2003. The new structure consists of two phases. Validation of the choice of instruments takes place in

phase 1. The Proposed Legislation Desk acts as a front office for this purpose. The Ministry of Justice performs this function in phase 2 during performance and review of the impact analysis.

Phase 1: Quick Scan

Phase 1 centres on the validation of the choice of instruments. The initiating Ministry must perform a Quick Scan¹ to examine whether the proposed law or order in council (or the amendment thereof) is desirable and necessary in order to fulfil the intention of the proposed policy. A Quick Scan also addresses whether substantial consequences are likely for the business community, the environment or practicability and enforceability, or whether it is necessary to conduct a Cost Benefit Analysis. The ministry produces in the Quick Scan a proposal for the assessments to be carried out and the questions the assessments must answer. The Proposed Legislation Desk must check whether the choice of instruments has been validated satisfactorily and whether the proposal put forward by the ministry for a BIA, EA, P&E or CBA enjoys common support. The Proposed Legislation Desk and the initiating ministry set down the agreed arrangements in writing.

The Quick Scan does not need to be carried out if it is established beforehand that the proposed legislation meets one of the following conditions:

- no scope exists for choosing alternative instruments;
- no substantial effects are likely to occur for the business community, the environment, practicability & enforceability and no substantial social costs and benefits are attached to the proposed legislation that could necessitate a CBA;
- the legislation is mandatory under EU regulations.

This circumstance that the Quick Scan does not need to be performed for these categories of proposed legislation does not mean that the validation of the choice of instruments and the presentation of the effects can be skipped. This obligation continues to exist regardless of the Quick Scan.

The ministry responsible must determine whether proposed legislation falls outside the Quick Scan. Like all proposed legislation, the proposal must upon completion of the inter-departmental preparations be submitted to the Ministry of Justice for the legislative test. If it transpires at this stage that different instruments would have been better or that the proposal does after all have substantial effects, agreement can be reached after consultation with the ministry concerned to conduct a BIA, EA or P&E as yet.

¹ The outcomes of Quick Scans can yield input for the kick-off memorandum that will be discussed with the ministers and that will mark the start of a legislative project at various ministries.

Phase 2: BIA, EA, P&E, CBA

The various assessments are performed in phase 2. The initiating ministry can - and in some cases must, because it has a legal requirement to do so - enlist external expertise or support in performing these tests. For example, Statistics Netherlands for the business impact, the National Institute for Public Health and the Environment in case of environmental impact, the Law Enforcement Expertise Centre or the Council for the Judiciary for the burden on the judiciary as part of the assessment of practicability and enforceability.

On completion the proposed legislation together with the explanatory memorandum must be submitted to the Ministry of Justice to be subjected to the legislative test. The Ministry of Justice must commission a review of the impact assessments from the Ministry of Economic Affairs (BIA), the Ministry of Housing, Spatial Planning and the Environment (EA) or internally at the Ministry of Justice (P&E). If it is not simple to identify the effects in the explanatory memorandum accompanying the draft legislation, talks will be held with the responsible ministry. The outcome of these talks will always be recorded in writing. The final part of the review of the proposed legislation - both for the legislative test and for the performed impact assessments- is a legislation report produced by the Ministry of Justice that states approval or disapproval. If agreement cannot be reached, the responsible ministry must add the report to the documents for the Cabinet sub-committee and Cabinet.

3. Step-by-step plan

There is a prescribed step-by-step plan that includes milestones for the process of assessing proposed legislation. If the

specified deadlines are not met, the Proposed Legislation Desk or the Ministry of Justice must agree a feasible deadline with the responsible ministry.

4. Actal

If proposed legislation impacts on administrative burdens, it must also be submitted to Actal, the independent advisory council that examines administrative burdens.

Administrative burdens are one of the subjects requiring attention when examining the effects of proposed legislation for the business community. The administrative burdens attached to the legislation must generally be quantified when performing a BIA. Actal will use these figures as a basis for its recommendation. Aside from the procedure described above (the exemptions to the general rule that a Quick Scan has to be performed), Actal also checks ministerial regulations and legislation mandatory under EU law.

5. Further information

Contact the Proposed Legislation Desk if you want more information about the impact assessment, new structure and, Quick Scan. The secretariat is located at the Ministry of Economic Affairs.

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E-mail: meldpunt-vr@minez.nl

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STEP-BY-STEP PLAN FOR ASSESSING PROPOSED LEGISLATION

Phase 1: Validating the choice of instrument

	What?	Who?	When?	How?
1	Identify proposed legislation (acts and orders in council)	Ministry responsible	As soon as the proposed legislation is known.	Budgets in policy memorandums and legislative programmes.
2	Perform Quick Scan	Ministry responsible		Quick scan, questionnaires for BIA, EA and P&E
3	Send Quick Scan to Proposed Legislation Desk	Ministry responsible		By e-mail, including policy memorandums
4	Proposed Legislation Desk examines the Quick Scan	Proposed Legislation Desk	Two weeks after receipt.	Is there agreement on the conclusions contained in the Quick Scan?
5	Which BIA, EA and P&E questions will be answered and will there be a CBA?	Proposed Legislation Desk and the ministry responsible		Make written record of the agreed arrangements.

Conclusion from phase 1: are there likely to be substantial effects?

Yes: perform assessment(s), see phase 2. **No:** do not perform any of the impact assessments, work out the proposed legislation in detail and send it to the Ministry of Justice for the legislative test.

Phase 2: Performance of impact analysis

What?	Who?	When?	How?
1 Perform the proposed assessment(s) and answer the questions.	Ministry responsible	In parallel with further elaboration of the proposed legislation.	Refer to manuals for BIA, EA, P&E included in this leaflet. If applicable, perform CBA.
2 Submit proposed legislation to the Ministry of Justice for the legislative test.	Ministry responsible	Four weeks before submission to the Cabinet sub-committee or Cabinet	Completed questionnaires for BIA, EA, P&E and if applicable, outcomes of CBA.
3 Review the performed assessment(s) and perform the legislative test.	Ministry of Justice / Proposed Legislation Desk	{ Within three weeks after receiving the proposed legislation.	The Ministry of Justice will set down the outcomes of the reviews and result of the legislative test in a legislation report
4 Send the legislative test report to the ministry responsible.	Ministry of Justice		Legislation report will be e-mailed to the ministry responsible.
5 Submit proposed legislation to the Cabinet sub-committee or the Cabinet.	Ministry responsible	Reserved date	Only if not approved: add legislative report and accompanying documents to the submission form.

Quick Scan of Proposed Legislation

Title:

Contact person:

1.	Policy area and objective
	<p>Policy area:</p> <p>Reason and objective:</p> <p>Describe the reason for the proposed legislation and the goal it must achieve.</p>
2.	Proposal for legislation
	<p>Contents:</p> <p>Briefly describe the new legislation.</p> <p>Planning:</p> <p>When will the Cabinet discuss it? What is the planned date of introduction of the proposed legislation?</p>
3.	Necessity
	<p>Describe the necessity for legislation and set it against the alternative instruments.</p>
4.	Considerations
	<p>Assessment of the proposal (selected instrument versus alternative instruments) in terms of:</p> <p>Effectiveness</p> <p>Efficiency</p> <p>Proportionality</p> <p>Subsidiarity</p>
5.	Expected effects of the proposal
	<p>Are there likely to be substantial effects for the business community? If so, in which industries?</p> <p>Are there likely to be substantial effects for the environment? If so, for what parts of the environment?</p> <p>Are there likely to be substantial effects for the implementation authorities and enforcement agencies, including the judiciary? If so, for which bodies?</p> <p>Are there likely to be substantial effects that are financially quantifiable?</p>
6.	Conclusions
	<p>Assessments to be performed:</p> <ol style="list-style-type: none">1. BIA2. EA3. P&E4. CBA

NOTES ON THE QUICK SCAN

The Quick Scan takes place in phase 1 of assessing the potential effects of proposed legislation. The responsible ministry must perform a Quick Scan as soon as the legislation has been framed and its outlines are clear.

The following matters must be addressed:

- the choice of legislation to solve a problem;
- the instruments used in the legislation (for example, general rules, licences, financial incentives).

The completed Quick Scan is sent to the Proposed Legislation Desk by e-mail. The Quick Scan will form the basis for agreeing arrangements about the assessments that must be conducted in phase 2.

There is no need for a Quick Scan if:

- it has been established that no scope exists for alternative instruments;
- no substantial effects are likely (positive or negative) for the business community, the environment, practicability and enforceability and no substantial social costs and benefits are likely to occur;
- the legislation is mandatory under EU law.

The separate sections

Sections 1 and 2 of the Quick Scan are an introduction. They spell out the objective of the policy and set out the proposed legislation. Sections 3, 4 and 5 are the heart of the Quick Scan. The ministry must explain in these sections why it has opted for legislation. The reason why the legislation has been structured in the presented way must also be made clear. Additionally, the impact the legislation is likely to have in the presented form must be explained. Section 6 must be used to set out conclusions. The ministry must state in this section which test questions must be answered in the notes accompanying the proposed legislation.

Further information about the sections of the Quick Scan is provided below.

Section 1/Policy area and objective

Section 1 should contain details of the policy area (for example, transport, environment, social security, safety, health care or welfare). More importantly, the reason for the proposed legislation must be explained and the envisaged goal must be defined. Describe the reason clearly, concisely and as concretely as possible (this will often be a certain problem) and what the proposed legislation ("proposal") must achieve. This definition will form the basis for answering the questions in sections 3 and 4.

Section 2/Proposal for legislation

The second section concerns the proposal itself. First of all, state as explicitly as possible, insofar as feasible at this stage, what the content of the proposal is. Be sure to explain the structure and indicate which changes exist compared with present legislation. This section also asks you to state which instruments you intend to use (like a licensing system, general rules or subsidies). You must indicate the time at which the proposal is scheduled to be discussed by the Cabinet sub-committee and the Cabinet. Discussion of the proposal by the Cabinet marks the end of the assessment procedure and is thus an important milestone. You do not yet need to fill in a precise date, but you must indicate a month or a quarter. Finally, you must state when the proposal should be put into operation.

Section 3/Necessity

Section 3 is about the necessity of legislation. This is where you should explain why you did not choose other ways of achieving the objective that you defined in section 1. In particular, this section deals with the question of why the objective is unachievable using alternatives like self-regulation within an industry, a voluntary agreement or a public information programme. Also address the 'zero option' in your considerations: is it an option to do nothing or is intervening in one way or another really necessary? Legislation is sometimes mandatory: the Dutch Constitution or EU law may require the establishment of legislation. Similarly, an Act of Parliament may require an order in council. In these cases, you can suffice when filling in this

section with a reference to the obligation concerned. In all other cases, you must explain why legislation is the way to solve a problem.

Section 4/Considerations

Once it has been established that legislation is necessary to achieve the objective defined in section 1, you must address the content of the legislation. You should further examine the chosen instruments (like a licensing system, general rules or financial incentives). Your analysis must answer the following questions:

- effectiveness: to what extent will the instrument contribute to achieving the objective?
- efficiency: is the objective also achievable with fewer means?
- proportionality: are the means in proportion to the goal?
- subsidiarity: has the right level of legislation been chosen? In other words, leave to others what can be left to them.

This analysis must repeatedly set the chosen instrument against the logical alternatives. For example, you can weigh up a licensing system against the alternative of general rules. In the same way, you can look at prescriptions or prohibitions versus financial incentives. It is advisable to examine the administrative burdens involved in opting for a certain instrument. To avoid misunderstanding, this section is not the place to give reasons for the necessity of making legislation (this takes place in section 3). The purpose of section 4 is to justify the content of the legislation.

Section 5/Likely effects

This section deals with the possible effects of the proposal for the business community, environment and practicability and enforceability. You should state whether substantial positive and/or negative effects are likely to occur in these fields. A CBA is a logical course of action if a proposal has predominantly financially quantifiable social effects, while the nature and scale of those effects are unclear.

Section 6/Conclusions

You should state here, based on the answers in section 5, which questions of the BIA, EA and P&E will be answered in the explanatory memorandum accompanying the proposal. If a reason exists for conducting a CBA, you should state it in this section. The analysis performed for the questions in section 5 may show that none of the assessments needs to be carried out. If this is the case, you must provide a validated explanation.

MANUAL FOR THE BUSINESS IMPACT ASSESSMENT (BIA)

Matters to address when assessing the impact of proposed legislation on the business community

Proposed Legislation Desk

April 2003

Business Impact Assessment (BIA)

Besides intended effects, legislation frequently has side-effects. By identifying them properly beforehand, it is possible to reach a well-considered decision about the proposed legislation. The BIA is a means to this end.

1. INTRODUCTION

1.1. What is business impact?

The business impact indicates the intended and unintended effects of proposed legislation for the business community, like market mechanism effects and socio-economic effects.

1.2. Background to the BIA manual

The manual provides ministries with guidance in answering eight questions when checking and identifying the effects of proposed legislation for the business community in the Netherlands. The questionnaire forms part of three related ex ante assessments for proposed legislation. Besides the BIA, there is the Environmental Assessment (EA) and the Practicability & Enforceability Assessment (P&E).

The Instructions for legislation (instruction 256, version 1995) refers to the three assessments mentioned above.

The questionnaires ensure that the same matters are addressed in a similar way to the fullest extent possible when legislation is proposed. This enables the Cabinet and Parliament to obtain a systematic insight into the expected effects and side-effects of proposed legislation. For each of the questions, the explanatory notes explain the importance of the matter that requires attention, make suggestions for answering the questions, explain the terms that play a role and state (where possible) relevant information sources (appendix).

1.3. Proposed Legislation Desk

For assistance and further information about the ins and outs of the BIA, you can contact the Proposed Legislation Desk.

2. GENERAL INFORMATION

2.1. What exactly is the BIA?

The BIA clearly identifies the effects that proposed government legislation will have on the business community. These are the intended effects and also any foreseeable unintended effects that might occur. In a first instance, the BIA is for proposals for new laws, orders in council and amendments to them. Additionally, other policy proposals, like plans and policy memorandums, can be checked for their impact on business.

Definition of intended and unintended effects is a mandatory part of the explanatory memorandum accompanying proposed legislation that will impact on business. These descriptions are obviously only meaningful if there are likely to be substantial consequences for the business community.

2.2. Why do we need a BIA?

The primary purpose of legislation is to generate planned, positive effects in society. In many cases, however, legislation is accompanied by side-effects of a scale and nature seldom clear beforehand. These include such matters as the costs or benefits for the business community, market mechanisms, employment opportunities and also environmental matters and the practicability and enforceability of the legislation. If ministries fail to identify such effects properly, legislation may over time unintentionally undermine the principal objectives of policy.

Therefore, for a balanced opinion-forming and decision-making process, it is necessary and thus mandatory to provide an insight (refer to the Instructions for legislation) into both the intended and unintended effects. This is the only way to form an opinion about proportionality, i.e. the relationship between costs and benefits. The BIA is a tool for outlining in the explanatory memorandum to

proposed legislation the nature and scale of the effects for the business community.

2.3. Which legislation should be assessed?

The BIA obviously only plays role in the case of proposed legislation that will have substantial effects or side-effects on business. This concerns proposed legislation at national level (new laws, orders in council and proposed amendments to them, with the exception of budgetary laws and private members' bills:

- that has a national policy scope (legislation that in terms of standardization and implementation ensues directly from agreed international obligations are not subject to the assessment) and
- that has not yet been discussed in the Cabinet or Cabinet sub-committee.

Dossiers dealing with tax-raising, contributions, fees, levies and similar need to be assessed only if they involve a structural change (not if they concern merely a tariff change). If proposed legislation undergoes significant change after being discussed by the Cabinet (for example, in response to recommendations from the Council of State or questions tabled in the Lower House of Parliament) it may be necessary to perform a further assessment.

2.4. When should the assessment be performed?

The BIA must be performed as early as possible, immediately after the Quick Scan. The outcomes of the assessment are most valuable precisely in the phases in which it is still possible to alter modalities. The Quick Scan (phase 1 of the new test structure) will answer the question of whether legislation is the right policy instrument and zoom in on the fields in which effects and side-effects are likely to occur. The chief consideration in this phase is to validate the choice of instruments: the initiating ministry must examine whether the proposed law or order in council (or amendments to existing legislation) is desirable and necessary in order to fulfil the envisaged policy. Another matter that must be

addressed is whether substantial effects are likely to occur for the business community. The ministry must then put forward a proposal regarding whether or not to perform the BIA and, if it is to be performed, which questions it must answer. The Proposed Legislation Desk will examine whether the choice of instruments has been sufficiently validated and whether or not it can support the ministry's proposal for performance or non-performance of a BIA. The outcome will be set down in a document agreed by the Proposed Legislation Desk and the ministry. This will mark the transition to the actual assessment phase (phase 2 of the new structure).

In the meantime, the legislative process will continue to move ahead. You will get questions about the effects of the legislation either as a result of inter-ministerial talks or from the Cabinet or the Council of State. It is easier to answer the questions and to overcome any opposition among stakeholders in society and political circles if you make allowance for these questions right from the start. It can avoid serious delays to the process.

2.5. How should the assessment be performed?

An important goal of performing the assessment is to improve the quality of legislation and make a contribution to balanced decision-making by the Cabinet and Parliament by means of the information provided by the ministries about such matters as the business impact. The more onerous the likely effects for the business community, the more stringent requirements the test will need to meet. Generally speaking, the costs and benefits of the effort required to perform the assessment must be in proportion with each other. In other words, the usefulness of having more information must not be outweighed by the effort that it takes to obtain the information. In some cases, it can be beneficial to enlist the services of an external firm to help answer the questions.

Quantification of the answers is extremely important because it avoids differences of interpretation. The degree to which quantification is possible will depend on the availability of data. Certain elements of the questions are suitable for precise answers

(especially questions that provide a picture of the present situation). Questions about the situation after the proposed legislation takes effect are subject to greater uncertainty (behavioural reactions play a role). The assumptions upon which estimations are made must be stated clearly with a reference to the source. The latter naturally also applies to "hard" data.

Transparency will be increased by reserving a separate paragraph in the explanatory memorandum for a description of the impact on the business community.

2.6. Roles

The initiating ministry is responsible for the quality of the proposed legislation. It is also responsible for ensuring that the effects and side-effects of the legislation are transparent by means of a Quick Scan and possibly performance of the BIA (and/or EA and P&E). The ministry responsible must then submit to the Ministry of Justice for the legislative test of the proposed legislation, accompanied by the explanatory memorandum that includes the outcomes of the assessment(s). The Ministry of Justice will forward the BIA and/or EA for review to the Ministry of Economic Affairs or the Ministry of Housing, Spatial Planning and the Environment. The Ministry of Justice will review the P&E itself. The final part of the examination of the proposed legislation - both for the legislative test and for the performed assessments - is a legislative report produced by the Ministry of Justice that states approval or disapproval. If agreement is not reached, the initiating ministry must enclose this report with the documents submitted to the Cabinet sub-committee or the Cabinet. Besides, each ministry in Cabinet obviously also has its own policy responsibility for assessing the substantive merits of the proposed legislation. In many cases, this criticism will result in a recommendation to the minister concerned for discussion in the Cabinet.

2.7. Services provided by the Proposed Legislation Desk

It will not always be easy to identify the effects and side-effects of proposed legislation. With this in

mind, the Ministry of Economic Affairs, the Ministry of Housing, Spatial Planning and the Environment and the Ministry of Justice provide assistance in the form of information about the assessments and, where necessary, by providing support in dealing with specific problems concerning the gathering of information. If you have questions about the BIA and the EA, you can contact the joint secretariat of the Proposed Legislation Desk (appendix). In performing the P&E the Ministry of Justice offers help by the Law Enforcement Expertise Centre, the Enforcement Department and if consequences for the judiciary are involved also by the Strategic Judicial Procedure Department and the Council for the Judiciary. More information about this support can be found in the manual for the Practicability & Enforceability Assessment (P&E).

3. BIA QUESTIONNAIRE

1. For which categories of companies could the proposed legislation have a business impact?
2. How many companies will actually be confronted with the proposed legislation?
3. What are the most probable nature and scale of the costs and benefits of the proposed legislation for the companies concerned?
4. How do the costs and benefits of the proposed legislation square up to the strength of the part of the business community concerned?
5. What is the current situation regarding legislation in the policy field concerned in countries that for the business community in the Netherlands are the most relevant competitor countries? (Foreign test).
6. Does the proposed legislation contain any rules that will cause a situation where:
 - more requirements or more stringent requirements than apply under a EU Directive will occur in respect of access to and pursuit of a profession or business?
 - a greater burden will be imposed on companies in performing certain activities than the one that occurs under an EU Directive? If so, what is the reason for imposing such a burden?
7. How will the proposed legislation affect market mechanisms?
8. What are the socio-economic effects of the proposed legislation (in terms of employment opportunities, wage costs and similar)?

4. NOTES TO THE BIA QUESTIONNAIRE

Purpose of the questionnaire

The questionnaire was designed to identify the business impact of proposed legislation. Use of the questionnaire will be most beneficial at an early stage of preparing legislation. The list will prove useful at the time when you need to weigh up

against each other the alternatives for the legislation.

Which questions do and do not require an answer?

It is up to the responsible ministry to indicate precisely which BIA questions must be answered in the case of legislation with substantial effects or side-effects for the business community. These questions will arise via the Quick scan. The ministry must put forward a proposal that is reviewed by the Proposed Legislation Desk; the final agreement on this proposal will be laid down in writing.

Quantification

The contribution made to balanced decision-making by the Cabinet and Parliament will increase if the provided information is quantified. This is possible in some but by no means all cases. The aim should be to indicate the approximate scale to provide an insight into the effects for companies. The desired degree of quantification also depends on the nature, severity and scope of the proposed legislation and on the availability of data. You should examine from case to case the possibilities that exist for quantifying the business impact, if necessary in consultation with the Proposed Legislation Desk.

4.1. QUESTION 1: CATEGORIES OF COMPANIES

For which categories of companies could the proposed legislation have a business impact?

Importance of this question

To assess the proportionality of the effects of the proposed legislation, it is important to know the sectors of the business community where the effects will occur. In practice, more sectors are often affected than seem to be the case at first sight. So you should thoroughly analyse the situations in which the proposed legislation will kick in and the sectors that will be affected.

How to answer the question

To identify the affected categories of companies, you can use the Standard Company Categorization (SBI, version 1993) of Statistics Netherlands (CBS). This categorization is used in most sources of information about companies. The SBI code consists of at least two and at most five digits, depending on the level of aggregation.

Information sources (appendix)

Information about the SBI is obtainable from the central database of Statistics Netherlands (www.cbs.nl/Standaarden).

4.2. QUESTION 2: AFFECTED COMPANIES

How many companies will actually be confronted with the proposed legislation?

Importance of this question

It is entirely conceivable that not all companies in a certain sector will actually be affected by the proposed legislation, but only companies with certain specific features. To obtain an impression of the scope of the legislation, you need to indicate the number of affected companies and characterize them.

How to answer the question

Characterization of the affected companies

Companies are often categorized by size in terms of number of employees. Small enterprises are those with 0-9 employees, medium-sized enterprises are those with 10-99 employees and large enterprises are those with 100 or more employees. In certain cases, it may be meaningful to divide up the affected companies according to their legal form, region or business specialization.

Definition of "company" and "establishment"

Statistics Netherlands defines a company as a more or less independently operating unit in terms of decisions regarding production process and product sales in the market. The proposed legislation may have an effect at the level of an establishment. An establishment is defined as a separately located

area, site or complex of areas or sites that the company uses for performance of its activities. In the case of franchising, the franchisee is considered an independent company.

Information sources (appendix)

You can view relevant statistical information in the central "Statline" database on the website of Statistics Netherlands (www.cbs.nl).

Further information about companies is frequently obtainable from trade associations. You can find all trade associations in the Netherlands in Pyttersen's *Nederlandse Almanak*, published by Bohn Stafleu Van Loghum (updated annually).

To obtain data about agricultural companies, you can use the website of the Agricultural Economics Research Institute (www.lei.nl).

4.3. QUESTION 3: COSTS AND BENEFITS (Appendix)

What are the most probable nature and scale of the costs and benefits of the proposed legislation for the companies concerned?

Importance of this question

This question is pivotal to the BIA because it provides an insight into the impact on the business community.

How to answer the question

The answer to this question must reveal the degree to which the favourable and less favourable effects of the proposed legislation will impact on the business community. In contrast with a cost benefit analysis, the quantification of costs and benefits in this instance involves providing indications and approximate scales. It is definitely not only about giving precise figures in euros. The *nature* of the costs and benefits, as determined from the answers to questions a to e below, is at least equally important in providing an insight into these effects.

Question 3 is subdivided into five separate sub-questions:

- a) The structural or non-recurring nature of the effects;
- b) The breakdown according to financial effects and the effects of observing the legislation;
- c) The validation and error margins of the costs and benefits;
- d) The evenness of distribution of the effects between categories of companies;
- e) The effects in terms of the scale of the administrative expenses.

re a): structural versus non-recurring

Non-recurring costs will occur if, for example, an accounting system must be modified (once-only), external advice must be obtained (once-only) or computer software must be modified. Structural costs are costs that recur each year.

re b): types of costs and benefits (appendix)

As mentioned earlier, costs and benefits fall into the following categories:

- financial effects: financial rights or obligations for the business community towards the government and implementing organizations;
- observance effects: costs and benefits associated with observance of the proposed legislation.

re c): validation and error margins of costs and benefits

It is pointless to present figures that other people are unable to verify. Validation is important for the interpretation, assessment and verification of data. We know from experience that for countless reasons it is not simple to estimate costs and benefits and that considerable uncertainty exists. For example, the scale of the effects can depend greatly on how parties like municipal and provincial authorities apply legislation in practice. You can avoid a lot of unnecessary discussions between the parties involved by reaching the greatest possible consensus beforehand about:

- the working method to be followed;
- the assumptions to be made;

- the information sources to be used.

re d): evenness in the distribution of the effects

Costs and benefits of proposed legislation are seldom distributed evenly across all the companies affected. They differ drastically between and also within the different categories of companies. This may be because of circumstances like the size or location of the companies, or the nature of the production process and production method. If there are any indications that the business impact for certain individual companies or certain categories of companies deviate significantly from the average, you must state in the explanatory memorandum as accurately as possible the companies (or categories) to which this applies, the degree to which and why.

re e): effects for the administrative burdens

Administrative burdens are costs that a company must incur to meet information obligations under laws and regulations introduced by the government. This concerns obligations like completing questionnaires, satisfying reporting obligations, extra accounting for tax purposes (not the taxes and levies themselves, because they fall under "financial effects").

Administrative burdens can stem *directly* from legislation introduced by central government but also occur *indirectly* (for example, if government tasks are delegated to lower authorities). Besides identifying the impact on companies' administrative burdens, you must give separate consideration to the necessity and proportionality of extra administrative burdens. Among other things, you can determine whether the required information (if it increases administrative burdens) is possibly obtainable via other, existing channels and to what extent imposition of the administrative obligations is compatible with data and systems that companies already use.

Since 1st May 2000, Actal makes a check on whether the administrative burdens associated with new legislation have been properly quantified and whether the possibilities for less burdensome alternatives have been sufficiently examined and considered.

Information sources (appendix)

Information about costs and benefits of proposed legislation is not generally available in existing databases. Some investigation and research will usually be necessary to obtain the data you need. Many trade associations can provide valuable information. Various research organizations have experience in calculating the costs and benefits of policy proposals and in conducting fast, indicative telephone surveys among companies for the purpose of estimating the impact of new legislation. The Proposed Legislation Desk can provide information about this matter. The information you need may also be available by talking to a few of the affected companies, target groups and/or other ministries.

4.4. QUESTION 4: BEARING POWER

How do the costs and benefits of the proposed legislation square up to the bearing power of the part of the business community concerned?

Importance of this question

This question is about such matters as to what extent the business community can absorb the costs ensuing from the proposed legislation or bear the loss of revenues that occurs because certain products may no longer be sold. Also here providing indications and approximate scales can suffice but you should put the figures into the right perspective. For a small company, an extra cost item of, say, EUR 25,000 is far more burdensome than it would be for a multinational. It is not easy to determine unambiguously the bearing power of companies, particularly because bearing power is a compound concept determined by numerous factors of a diverse nature. Key variables to which costs are related are a company's size, market situation and resilience.

How to answer the question

Size

Key indicators for the size of a company or category of companies are the usual economic quantities like gross production (or sales), added value, wage

costs, employment opportunities and investments. The type of costs involved in a particular case is one of the factors that determines which of these key indicators is the most logical in a certain situation. If personnel costs are concerned, for example, you will obtain the best insight by making a relationship with the gross added value and the wage bill. Presenting the costs per employee can also yield a useful insight. In contrast, if extra investments are involved, you will find it useful to relate them to the total investments of the part of the business community concerned.

Market situation

The market situation (and developments taking place in the market!) of the part of the business community concerned can also provide an important indication of bearing power. You can provide a picture of the market situation by giving qualitative and quantitative information. A frequently used indicator is the intensity of competition (do not overlook competition from other sectors).

Resilience

There are two important indicators for resilience: the return being achieved and solvency (i.e. the ratio between equity capital and borrowed capital).

The higher these indicators are, the easier it will generally be for the companies to absorb cost increases without directly jeopardizing their continuity. As major differences can occur between individual companies as regards returns and solvency, you should devote special attention to providing a representative picture. Similarly, the reference period you use must be representative; an exceptionally good or bad year says nothing so in that case you should take a multi-year average.

Information sources (appendix)

General data concerning gross production (sales), gross added value, operating income and investments is available from CBS (production statistics). Many trade associations can also provide valuable up-to-date information.

4.5. QUESTION 5: FOREIGN TEST

What is the current situation regarding legislation in the policy field concerned in countries that for the business community in the Netherlands are the most relevant competitor countries?

Importance of this question

The growing international convergence of economic activities (globalization) means the economic consequences of differences in legislation between countries become noticeable more quickly and more intensively. This applies to a relatively large degree in a small, open economy like the Netherlands. Conversely, if foreign competitors are confronted by similar legislation and ensuing effects, the position of the Dutch business community will not be burdened to a greater extent, relatively speaking. The Foreign test is relevant not only to proposed legislation that applies to companies that export a lot, but also to proposed legislation that covers a situation where the Dutch business community experiences competition in the domestic market from foreign competitors. To assess the necessity and proportionality of proposed legislation, you also need to know whether in the field of business concerned the competitor foreign countries:

- have legislation in the same field and what it implies;
- are preparing legislation and what it will look like, insofar as it is possible to say;
- the authorities use alternatives to legislation and, if so, which alternatives.

How to answer the question

It is impossible to provide a picture of the relevant legislation in all countries. You need only make a selection of the countries from which the Dutch business community concerned experiences the heaviest competition (either in the export market, or in the domestic market). This may be a single country, but there could also be three or four. This question is not about the consequences for the competitive position of Dutch companies in relation to companies in other countries. This matter is dealt with in question 8, socio-economic consequences.

Rather, you will generally need a qualitative comparison of legislation.

Information sources

You can obtain information about legislation and proposed legislation in foreign countries by approaching embassies and organizations that have an international platform or foreign sister organizations, like international trade associations and employers' associations. Also use contacts with EU Council and Commission working groups.

4.6. QUESTION 6: EU ASPECTS

Which rules in the proposed legislation will cause a situation where:

- a. more requirements or more stringent requirements than apply under a EU Directive will occur in respect of access to and pursuit of a profession or business?**
- b. a greater burden will be imposed on companies in performing certain activities than the one that occurs under an EU Directive?**

If so, what is the reason for imposing such a burden?

Importance of this question

This question concerns implementing legislation. Implementing legislation sometimes imposes more requirements or more stringent requirements on manufacturers and service providers than the EU Directive concerned prescribes, or national rules sometimes differ from them. The following situations may then arise:

- the national legislation imposes more requirements or more stringent requirements on the country's own manufacturers and service providers than the EU Directive does. Directives sometimes provide an explicit basis for this, although this is not always necessarily the case. This category also includes earlier

implementation than the time specified in the EU Directive;

- a certain field is regulated by EU Directives, and there are additionally national rules in the same field.

How to answer the question

The aim is to provide a picture of the rules in the proposed legislation that go beyond or differ from the EU rules applicable to the field of activity concerned, and the reasons for such a situation. The effects of these decisions, which will result in costs and benefits for the business community, are covered under the answers to questions 3, 4 and 7.

Information sources

For more general information about framing autonomous national legislation or implementing provisions in accordance with EU law, refer to the document entitled "101 practical questions about implementing EU decisions" and the "EU Checklist" contained in Part 2 of the "Tools for making legislation" series (Sdu, 1998).

4.7. QUESTION 7: MARKET MECHANISMS

How will the proposed legislation affect market functioning?

Importance of this question

Like private rules, public rules can greatly impact on market processes, either because they obstruct or limit competition or because the costs incurred by the business community to observe the rules are steep. Conversely, there is legislation aimed specifically at promoting open competition. Legislation can affect market functioning in three ways:

- a. By imposing conditions for entering the market. These conditions may include licensing requirements, reliability requirements, capital

requirements, mandatory affiliation to a certain organization or a ban on certain types of companies selling certain products.

- b. By imposing conditions regarding the behaviour of companies. Examples are making a certain production method mandatory or banning the use of certain raw materials. Rules of this kind limit the freedom of movement and flexibility of companies and by consequence the innovative capability of the Dutch business community. Similarly, legislation can reduce transparency and result in switching costs. This could occur through regulations that make it impossible or more difficult to switch to another supplier. This category also includes legislation aimed at pulling down existing monopolies (like exclusive rights granted earlier). Sometimes, the only way to do this is by imposing certain regulations on established market players.
- c. By imposing conditions that result in a change to the market structure. For example, legislation could lead to a situation where only large companies are able to meet the defined requirements (or, conversely, imposes more stringent requirements on large companies than on small ones), by prescribing tough minimum requirements for product quality and by introducing (or ending) a licensing obligation.

How to answer the question

In most cases you will be able to answer this question in a qualitative sense. You will need to devote attention to alternatives that limit market functioning to a lesser degree. This will give you an insight into the extent to which interventions in market mechanisms through the proposed legislation are necessary to achieve the intended goal.

To allow proper assessment of the effects, it is useful also to provide information about market conditions. For example, how many companies operate in the relevant parts of the business community, how many of them will be affected by the legislation or are likely to benefit from it, how many new market entrants are expected? A comparison with the situation in other countries can

also be enlightening. In certain cases, the legislation may have specific effects or side-effects for foreign companies.

Where legislation impacts on self-regulation mechanisms that are to be created in the market (like standards or certification systems), the picture will only be complete if you also indicate the effects of these private arrangements. This will give the authorities pointers for ensuring that the market does not regulate more than is necessary, by explicitly indicating the limits within which self-regulation may take place. Unnecessary or disproportionate limitation of market functioning will then be avoided.

4.8. QUESTION 8: SOCIO-ECONOMIC EFFECTS

What are the socio-economic effects of the proposed legislation?

Importance of this question

The direct or indirect consequences for matters such as employment opportunities and wage costs form an important category of effects/side-effects of legislation. If proposed legislation will produce positive or negative socio-economic effects, you will need to provide an insight into them in order to assess the proportionality of the legislation. "Socio-economic effects" in this context means the consequences for matters like employment opportunities, wage costs, imports and exports.

How to answer the question

To what degree of detail and quantification you need to identify the socio-economic consequences will depend greatly on the scope and severity of the proposed legislation. In many cases, you can suffice with a qualitative description of the effects and an explanation of the assumptions underlying them. A thoroughly validated quantification will be necessary only if you expect fairly considerable socio-economic effects.

Short, medium and long terms

There may be a need when describing socio-economic effects to make a distinction between the short term (one to two years ahead), the medium term (three to seven years) and the long-term (eight years or longer). This is because legislation that produces competitive disadvantages in the short term - for example, because Dutch legislation is more stringent than legislation in other countries - can produce competitive advantages in the longer term. The opposite is also conceivable: legislation that will only produce competitive disadvantages in the long term. This may be because the proposed legislation applies to categories of companies that do not currently experience foreign competition, but will do so in due course because of the increasing internationalization of the marketplace.

Information sources

You can obtain information about the present socio-economic indicators in the general database of Statistics Netherlands (www.cbs.nl/Statline) and that from trade associations.

APPENDIX to the BIA: Categorization of costs and benefits

a) Financial effects

Costs

- taxes
- duties; fees
- compensation payable
- charges
- other financial expenses

Benefits

- grants
- fiscal benefits
- capital transfers
- transfer of income
- other financial revenues

b) Effects of observing legislation

Costs

- capital expenses: depreciation, interest charges and capital destruction
- savings (on personnel, energy or materials costs)
- personnel costs (excluding administration)
- operational costs for matters like
 - operation, supervision and maintenance,
 - overhead costs for initiating,
 - overseeing, checking and co-ordinating
- costs of internal research
- administrative burdens
- energy expenses
- costs of raw materials and additives
- costs of contracting out work:
 - payments for services rendered by third parties
- loss-of-income expenses (lost net potential profits caused by proposed legislation)
- other costs of observing legislation (insurance, accommodation, soil cleansing and similar).

Benefits

- income from sale of residual products and by-products
- other benefits of observance or savings

**MANUAL FOR THE ENVIRONMENTAL
ASSESSMENT (EA)**

Matters to address when assessing the impact of
proposed legislation on the environment

Environmental Assessment (EA)

Besides intended effects, legislation frequently has side-effects. By identifying them properly beforehand, it is possible to reach a well-considered decision about the proposed legislation. The EA is a means to this end.

1. INTRODUCTION

1.1. What is environmental impact?

Environmental impact consists of the intended and unintended effects of legislation on energy usage, mobility, use of raw materials and the way stocks of raw materials are treated. It also includes the effects for waste streams, emissions into the air/soil/surface water and the use of available physical space.

1.2. Background to the EA manual

The manual provides ministries with information that will help to answer the questions for testing the impact of proposed legislation on the environment. The questionnaire forms part of three related ex ante assessments of proposed legislation: besides the EA, there is the Business Impact Assessment (BIA) and the Practicability & Enforceability assessment (P&E).

The Instructions for legislation (Instruction 256) refer to the assessments mentioned above.

The questionnaires ensure that the same matters are addressed in a similar way to the fullest extent possible when legislation is proposed. This enables the Cabinet and Parliament to obtain a systematic insight into the expected effects and side-effects of proposed legislation. For each of the questions, the explanatory notes explain the importance of the matter that requires attention, make suggestions for answering the questions, explain the terms that play a role and state (where possible) relevant information sources (appendix).

1.3. Proposed Legislation Desk

For assistance and further information about the ins and outs of the EA, you can contact the Proposed Legislation Desk.

2. GENERAL INFORMATION

2.1. What exactly is the EA?

The EA clearly identifies the effects that proposed government legislation will have on the environment. These are the intended effects and also any foreseeable unintended effects that might occur. In a first instance, the EA is for proposals for new laws, orders in council and amendments to them. Additionally, other policy proposals, like plans and policy memorandums, can be checked for their impact on the environment.

Definition of intended and unintended effects is a mandatory part of the explanatory memorandum accompanying proposed legislation that will impact on the environment. These descriptions are obviously only meaningful if there are likely to be substantial consequences for the environment.

2.2. Why do we need an EA?

The primary purpose of legislation is to generate planned, positive effects in society. In many cases, however, legislation is accompanied by side-effects of a scale and nature seldom clear beforehand. These include such matters as energy consumption, mobility, emissions into the air/soil/surface water and also effects on the business society and the practicability and enforceability of the legislation. If the responsible ministries fail to identify such effects properly, legislation may over time unintentionally undermine the principal objectives of policy.

Therefore, for a balanced opinion-forming and decision-making process, it is necessary to have an insight into both the intended and unintended effects. This is the only way to form an opinion about proportionality.

The EA is a tool for outlining the nature and scale of the intended and unintended impact on the environment of proposed legislation.

2.3. Which legislation should be assessed?

You do not need to conduct an environmental assessment for every piece of proposed legislation. As mentioned above, the EA only plays a role when there is proposed legislation that will have substantial consequences for the environment. An EA is required only for proposed legislation at national level:

- that has a national policy scope (legislation that in terms of standardization and implementation ensues directly from agreed international obligations are not subject to the assessment) and
- that has not yet been discussed in the Cabinet or Cabinet sub-committee.

This concerns Acts of parliament and orders in council and amendments to them. Budgetary laws and private members' bills are not subject to an EA. Dossiers dealing with tax-raising, contributions, fees, levies and similar do not need to be checked if they involve only an adjustment of tariffs.

If proposed legislation undergoes significant change after being discussed by the Cabinet (for example, in response to recommendations from the Council of State or questions tabled in the Lower House of Parliament) it may be necessary to perform a further assessment.

2.4. When should the assessment be performed?

The outcomes of the assessment are most valuable precisely in the phases in which it is still possible to alter modalities. The Quick Scan (phase 1 of the new assessment structure) will answer the question of whether legislation is the right policy instrument and zoom in on the fields in which effects and side-effects are likely to occur. The chief consideration in this phase is to validate the choice of instruments: the initiating ministry must examine whether the

proposed law or order in council (or amendments to existing legislation) is desirable and necessary in order to fulfil the envisaged policy. Another matter that must be addressed is whether substantial effects are likely to occur as regards the environment. The ministry must then put forward a proposal regarding whether or not to perform the EA and, if it is performed, which questions it must answer. The Proposed Legislation Desk will examine whether the choice of instruments has been sufficiently validated and whether or not it supports the ministry's proposal for performance or non-performance of an EA. The outcome will be set down in a document agreed by the Proposed Legislation Desk and the ministry. This will mark the transition to the actual assessment phase (phase 2 of the new structure). It is important to perform the EA as early as possible, immediately after the Quick Scan.

In the meantime, the legislative process will continue to move ahead. You may get questions about the effects of the legislation either as a result of inter-ministerial talks or from the Cabinet, the Council of State or Parliament. It is easier to answer the questions and to overcome any opposition among stakeholders in society and political circles if you make allowance for these questions right from the start. It can avoid serious delays to the process.

2.5. How should the assessment be performed?

An important goal of performing the EA, BIA and P&E is to improve the quality of legislation and make a contribution to balanced decision-making by the Cabinet and Parliament. The information provided by the responsible ministries must promote this situation. Depending on the severity and nature of the proposed legislation, you will have to answer EA questions. It will not always be necessary to deal with questions exhaustively. In some cases, a superficial check on the environmental impact will be sufficient. You should concentrate primarily on indications or approximate scales of the main categories of environmental effects that are likely to occur. A comprehensive analysis of the effects is not a requirement in these instances. The costs and benefits of the effort

required to perform the assessment must be in proportion with each other. In other words, the usefulness of having more information must not be outweighed by the effort that it takes to obtain the information. The greater the likely impact on the environment, the more stringent the requirements you apply to the assessment must be. In some cases, it can be beneficial to enlist the services of an external firm to help answer the questions.

Quantification of the answers is extremely important because it avoids differences of interpretation. The degree to which quantification is possible will depend on the availability of data. Certain elements of the questions are suitable for precise answers (especially questions that provide a picture of the present situation). Questions about the situation after the proposed legislation takes effect are subject to greater uncertainty (behavioural reactions play a role). The assumptions upon which estimations are made must be stated clearly with a reference to the source. The latter naturally also applies to "hard" data.

Transparency will be increased by reserving a separate paragraph in the explanatory memorandum for a description of the impact on the environment.

2.6. Roles

The initiating ministry is responsible for the quality of the proposed legislation. It is also responsible for ensuring that the effects and side-effects of the legislation are transparent by means of a Quick Scan and possibly performance of the EA (and/or BIA and P&E).

The ministry must then submit to the Ministry of Justice for the legislative test the proposed legislation, accompanied by the explanatory memorandum that includes the outcomes of the assessment(s). The Ministry of Justice will forward the EA and/or BIA for examination to the Ministry of Economic Affairs or the Ministry of Housing, Spatial Planning and the Environment. The Ministry of Justice will examine the P&E itself. The final part of the examination of the proposed legislation - both for the legislative test and for criticism of performed

assessments - is a legislative report produced by the Ministry of Justice that states approval or disapproval. If agreement is not reached, the initiating ministry must enclose this report with the documents submitted to the Cabinet sub-committee or the Cabinet.

Besides, each ministry in Cabinet obviously also has its own policy responsibility for assessing the substantive merits of the proposed legislation. In many cases, this assessment will result in a recommendation to the minister concerned for discussion in the Cabinet.

2.7. Services provided by the Proposed Legislation Desk

It will not always be easy to identify the effects and side-effects of proposed legislation. With this in mind, the Ministry of Economic Affairs, the Ministry of Housing, Spatial Planning and the Environment and the Ministry of Justice provide assistance in the form of information about the assessments and, where necessary, by providing support in dealing with specific problems concerning the gathering of information.

If you have questions about the EA and the BIA, you can contact the joint secretariat of the Proposed Legislation Desk that is located at the Ministry of Economic Affairs and staffed by civil servants of the Ministry of Economic Affairs and the Ministry of Housing, Spatial Planning and the Environment in close consultation with the Ministry of Justice. If consequences for the judiciary are involved the Ministry of Justice offers support in performing the P&E by the Law Enforcement Expertise Centre, the Enforcement Department and also through the Strategic Judicial Procedure Department and the Council for the Judiciary. More information about this support can be found in the manual for the Practicability & Enforceability Assessment.

3. EA QUESTIONNAIRE

The effects and side-effects of the proposed legislation must be assessed using a questionnaire. The EA questionnaire uses the following four

questions to check the environmental effects of proposed legislation.

1. What are the consequences of the proposed legislation for energy usage and mobility?
2. What are the consequences of the proposed legislation for the consumption and management of stocks of raw materials?
3. What are the consequences of the proposed legislation for waste streams and for emissions into the air, soil and surface water?
4. What are the consequences of the proposed legislation for the use of the available physical space?

(note: the environmental subjects of noise, smell and external safety are dealt with as part of the available physical space).

4. NOTES TO THE EA QUESTIONNAIRE (summarizing the most important matters)

Purpose of the questionnaire

The questionnaire was designed to identify the environmental impact of proposed legislation. Use of the questionnaire will be most beneficial at an early stage of preparing legislation. The list will prove useful at the time when you need to weigh up against each other the alternatives to legislation.

Which questions do and do not require an answer?

It is up to the responsible ministry to indicate precisely which EA questions must be answered in the case of legislation with substantial effects or side-effects for the environment. These questions will arise via the Quick Scan. The ministry must put forward a proposal that is reviewed by the Proposed

Legislation Desk; the final agreement on this proposal will be laid down in writing.

Quantification

The contribution made to balanced decision-making by the Cabinet and Parliament will increase if the provided information is quantified. This is possible in some but by no means all cases. The aim should be to indicate the approximate scale to provide an insight into the effects for the environment. The desired degree of quantification also depends on the nature, severity and scope of the proposed legislation and on the availability of data. You should examine from case to case the possibilities that exist for quantifying the environmental impact, if necessary in consultation with the Proposed Legislation Desk.

4.1. QUESTION 1: ENERGY USAGE AND MOBILITY

What are the consequences of the proposed legislation for energy usage and mobility?

Importance of this question

The use of fossil fuels causes emissions of gases like carbon dioxide (CO₂), methane (CH₄) and nitrous oxide (N₂O) and acidifying substances like sulphur dioxide and nitrogen oxide. For information concerning emissions of these acidifying substances you should refer to question 3 (air). Carbon dioxide is one of the most important causes of the greenhouse effect. The Government's energy policy is designed to reduce emissions of this greenhouse gas. The use of energy is reducing stocks of fossil fuels. The government has set targets for reducing emissions of carbon dioxide, methane and nitrous oxide and acidifying substances. This is achievable by improving energy efficiency and by increasing the proportion of renewable energy sources in the total usage of energy.

How to answer the question

Your answer to this question must provide indications and approximate scales of effects. When providing information about the effects of proposed legislation on energy consumption, it is important to state the most important energy carriers and which categories of consumers use them. Emissions into the air of substances that are related to energy consumption, with the exception of carbon dioxide, have been detailed under the item on air (Question 3). When identifying the effects and side-effects of proposed legislation on the consumption of energy, you should bear in mind that a relationship exists between the different parts of environmental policy.

Information sources

Information about energy consumption is obtainable from Novem, Statistics Netherlands (CBS), the Centre for Energy Saving and Clean Technology (CE), the Ministry of Housing, Spatial Planning and the Environment, the Ministry of Economic Affairs and the Netherlands Centre for Energy Research (ECN).

What are the consequences of the proposed legislation for mobility?

Importance of this question

Society would be unable to function without traffic and transport. The volume of road traffic has more than doubled since the 1960s/1970s. The use of energy and the burden on the environment caused by traffic and transport have increased in step with this growth. Moreover, there has been an increase in the proportion of relatively environment-unfriendly road traffic. In the interests of the environment and mobility, the government has decided to curb the growth of private use of motor vehicles as much as possible. One of the goals is to reduce the number of kilometres travelled by car. Government policy is also seeking to bring about a shift from relatively environment-unfriendly means of transport to more environment-friendly means of transport.

How to answer the question

Besides making a qualitative estimate, you should endeavour to make quantitative pronouncements about the effects and side-effects of proposed legislation on mobility. Make an estimate of the percentage-wise increase or decrease of the number of covered kilometres relative to a reference year. Your next step should be a sub-division according to the form of mobility. This will make clear whether there will be effects for a shift from environment-unfriendly to more environment-friendly forms of mobility. When identifying the effects and side-effects of proposed legislation on mobility, you should bear in mind that the way space is used in the Netherlands can have a great influence on mobility. Finally, you should make allowance when identifying the effects and side-effects of proposed legislation for the consequences for driving behaviour and purchasing behaviour.

Information sources

A lot of relevant knowledge is available at the Ministry of Transport, Public Works and Water Management about all matters related to traffic and transport. Specific knowledge of the environmental impact of vehicles and traffic is obtainable from the Directorate General of Environmental Management at the Ministry of Housing, Spatial Planning and the Environment. You can also contact the Centre for Energy Saving and Clean Technology and Statistics Netherlands (CBS) for statistical information. The provincial and municipal authorities are important contacts for additional information about the way policy is implemented in the Netherlands.

4.2. QUESTION 2: RAW MATERIALS

What are the consequences of the proposed legislation for the consumption and management of stocks of raw materials?

Importance of this question

The principal stocks of raw materials in the Netherlands fall into the unrenovable and renewable categories. Government policy is to make economical use of raw materials and to ensure that consumption of renewable raw

materials is such that it allows stocks to recover and remain available in the future.

The question of raw materials is related to the matters requiring attention with regard to energy consumption and waste streams. For example, energy is needed to extract and transport raw materials, causing increases in emissions of carbon dioxide. This represents an extra burden on the storage capacity of the atmosphere. The relationship with waste streams stems from the re-use of waste. Re-use can reduce the need to extract new primary raw materials. The importance of these raw materials becomes clear when you realize that production and consumption would be impossible without these materials. Besides the question of the environment, it is of great economic importance to use raw materials in a sustainable way.

How to answer the question

When answering this question, you can confine details of Dutch unrenovable primary raw materials to gravel, sand, silver sand, embankment sand, clay and limestone.

In addition to making a qualitative estimate, it is possible to make quantitative pronouncements. In the latter case, you should make an estimate of the percentage-wise increase or decrease of the volume of the aforementioned consumed raw materials relative to a reference period.

Information sources

Information about surface minerals is obtainable from Statistics Netherlands (CBS). Other sources to contact include the Ministry of Housing, Spatial Planning and the Environment, the Directorate General for Environmental Management, the Netherlands Institute for Applied Geo-Sciences TNO (TNO-NITG) and the Public Works Department.

4.3. QUESTION 3: WASTE STREAMS, AIR, SOIL AND SURFACE WATER

a) What are the consequences of the proposed legislation for waste streams?

Importance of this question

The volume of waste substances has increased continuously over the past 50 years. Waste streams occur during the extraction and processing of raw materials, in production processes, after consumption and in processes designed to reduce emissions into the air or water. These waste streams are extremely varied in terms of their composition and thus cause a variety of different problems. The problems concern the creation of emissions into water, soil and air, the space required for processing, the costs incurred for proper processing and the loss of raw materials. Residual elements of waste can be diffusely spread or concentrated in the environment. Space is taken up by the dumping of waste. Besides the growth of waste substances that occurs year on year, disused dumping sites and contaminated industrial sites go on polluting surface water for many years.

How to answer the question

To identify the consequences of proposed legislation for waste streams, you should provide indications or approximate scales of the effects. Firstly, you should make an estimate of whether the volume of waste is increasing or decreasing relative to a reference year. You can also indicate which target groups and sources are involved and which types of waste streams they cause. Besides the quantity and types of waste substances, you need to make an estimate of whether proposed legislation will effect the way waste is processed. The government's policy on waste substances is designed to prevent as far as possible the creation of new streams of waste. If this is not possible, the next preference is re-use of waste. The government considers dumping, discharging and incinerating waste to be the least desirable solution. If proposed legislation allows the volume of waste streams to increase, you should endeavour to indicate in qualitative terms whether this will also cause more waste to be incinerated, dumped or discharged.

Information sources

For more information you can contact Statistics Netherlands, the Directorate General of Environmental Management, the National Institute for Public Health and Environmental Hygiene, the Waste Substances and Emissions Laboratory (RIVM/LAE) and the Consultative Platform for Waste.

b) What are the consequences of proposed legislation for emissions into the air?

Importance of this question

Emissions into the air impact greatly on the environment and thus on people. You only need to think of the problems associated with the damage to the ozone layer, the effects of acidification on forests, heaths and moors and on cultural properties, archives, buildings, materials and the warming-up of the Earth. Ecosystems are being impaired and biodiversity reduced. There are also harmful effects on people's health through circumstances like tropospheric ozone, summer smog and the accumulation of toxic substances in the food supply chain. The Environmental Protection Act and other environmental laws provide a legal framework for combating air pollution. These laws are based on avoiding air pollution or, if that is not possible, reducing it as much as possible. There is sometimes an international dimension to air pollution. Certain substances emitted in the Netherlands can cause effects in other countries. The opposite also occurs.

How to answer the question

When identifying the consequences of proposed legislation for emissions into the air, you should provide indications and approximate scales of the effects. One way of doing this is to make an estimate of the percentage-wise reduction compared with a reference year. In the section headed "Terminology", you should define and explain such a reference year for each individual substance or groups of substances.

Information sources

Information about industrial air pollution is obtainable from the Ministry of Housing, Spatial Planning and the Environment (a.o. from the Inspectorate), the National Institute for Public Health and the Environment (RIVM), the RIVM Laboratory for Waste Substances and Emissions (RIVM/LAE) and the RIVM Laboratory for Air Research (RIVM/LLO), Statistics Netherlands, the Ministry of Agriculture, Nature Management and Fisheries, the Agricultural Economics Research Institute /Department of Agricultural Research (LEI-DLO), and the Netherlands Energy Research Centre (ECN).

c) What are the consequences of the proposed legislation for emissions into soil?

Importance of this question

Emissions of polluting substances into the soil impact directly on the environment. If the substances find their way into soil, they affect life in and on the soil. Soil pollution also has an indirect impact, for example if polluting substances are flushed out into ground water and surface water. Besides the impact on the environment, soil pollution has consequences for people. The cases of soil pollution in residential districts have helped make the public and politicians aware of the scale of the problem. To limit the negative effects on ecology, human health and the economy, the government has decided to put in place measures to protect the soil. Everything possible must be done to prevent, limit or reverse changes in soil. These are changes that reduce or threaten the functional properties of soil for humans, plants and animals.

How to answer the question

Prevention and cleaning up

Government policy is to prevent soil pollution and clean up soil already polluted by environmentally-harmful substances. When answering the question of which consequences the proposed legislation will have for emissions into soil, you should pay particular attention to whether the legislation will result in new cases of soil pollution. You should

provide indications of the effects when presenting the consequences of proposed legislation for emissions into the soil. You need give only a general assessment of whether the proposed legislation will contribute to creation of new soil pollution. It is not easy to quantify possible effects on soil because the increase or decrease of soil pollution is impossible to express in percentages relative to a chosen reference year. Therefore, you need only state the emissions, sources and types of polluting substances.

Information sources

For more information you can contact the National Institute for Public Health and the environment (RIVM), the Laboratory for Waste Substances and Emissions (RIVM/LAE), the Ministry of Housing, Spatial Planning and the Environment, Statistics Netherlands, the Ministry of Agriculture, Nature Management and Fisheries and Agricultural Economics Research Institute /Department of Agricultural Research (LEI-DLO).

d) What are the consequences of the proposed legislation for emissions into surface water?

Importance of this question

The present problems with the quality of surface water are caused by emissions of toxic substances such as heavy metals and pesticides. Good quality surface water is essential for the ecosystems in the water, but equally for people. Besides the direct impact on surface water quality, emissions impair the quality of water beds and the sludge that remains after treatment of the waste water. It is almost impossible to re-use this sludge as fertilizer in agriculture. Similarly, various types of polluting substances are increasingly harming sea water. The Surface Waters Pollution Act and the Environmental Protection Act are the most important laws enabling action to be taken against the pollution of fresh surface waters. The environmental aspects of water fall under the responsibility of the Ministry of Transport, Public

Works and Water Management and the Ministry of Housing, Spatial Planning and the Environment.

How to answer the question

You should give indications and approximate scales of the effects when identifying the consequences of proposed legislation for emissions into surface water. For example, you should make an estimate of the percentage-wise reduction relative to a reference year. It is important to know which substances (or types of substances) contribute to the pollution and which sources cause it. Emissions of substances into the air and soil can ultimately find their way into surface water. For information about emissions into the air and soil, also refer to sub-questions 3 b (air) and 3 c (soil).

Information sources

More information is obtainable at the Ministry of Housing, Spatial Planning and the Environment, at departments including the Directorate General of Environmental Management and the Inspectorate, at the National Institute for Public Health and the Environment (RIVM) and the National Institute for Integral Fresh Water Management and Waste Water Treatment (RIZA).

4.4. QUESTION 4: AVAILABLE PHYSICAL SPACE

What are the consequences of the proposed legislation for use of the available physical space?

Importance of this question

Space is a scarce commodity in the Netherlands. The country is densely populated, highly urbanized and has a highly developed economy. Increasingly, there is a battle for space. Space is needed for

housing, working, recreation, infrastructure and similar. It is also needed for nature, open areas, quiet and groundwater protection. Spatial planning is the means used to get these rival claims for space into balance in an environmentally-responsible way. The government is pursuing sustainable quality of life. In some cases, legislation or proposed legislation has substantial consequences for the available physical space. This concerns particularly legislation that stipulates which activities may be carried out in a certain area.

How to answer the question

You should give indications and approximate scales of the effects when identifying the consequences of proposed legislation for the use of available space. It is not simple to quantify the possible effects for the use of available space. This is because there are no reference years against which to measure certain quantifiable changes. When answering the question of whether the proposed legislation has consequences for physical space, you should first check whether the legislation is likely to cause a change in spatial behaviour. Bear in mind that proposed legislation influences spatial behaviour because it alters the choices that can be made. Certain forms of spatial behaviour become either more attractive or less attractive. It is sufficient to indicate whether the choices and thus the nature of the activities in a certain area will change because of the proposed legislation.

Information sources

Further information about laws concerning the use of space is obtainable from the Ministry of Housing, Spatial Planning and the Environment (National Spatial Planning Agency and the Directorate General of Environmental Management) and the Ministry of Agriculture, Nature Management and Fisheries.

**MANUAL FOR THE PRACTICABILITY AND
ENFORCEABILITY ASSESSMENT (P&E)**

Matters to address when assessing the impact of
proposed legislation on practicability and
enforceability

1. Introduction

1.1. Practicability and Enforceability assessment: what and why?

Laws and regulations based upon them must be workable for everybody who has anything to do with them. This means members of the public who must observe the rules and also organizations within the civil service that must carry out and enforce the rules. An occurrence like the firework disaster in Enschede shows that poor observance of rules and deficient enforcement of them can result in major damage for the public and the authorities alike. It is important to address the matters that influence the workability of laws, namely their practicability and enforceability, at an early stage of the preparation of legislation. At that time, there will still be an opportunity to alter the policy or choose alternative instruments. Unwanted effects and unintended side-effects that unexpectedly take up practicability and enforcement capacity will be avoided if this approach is adopted. To identify the effects of legislation, a structure and instruments have been developed that are not confined to matters of practicability and enforceability but also embrace business and environmental impacts. These instruments are called the Business Impact Assessment (BIA), Environmental Assessment (EA) and Practicability and Enforceability assessment (P&E). The structure within which these assessments are used is a collaborative framework embracing the Ministry of Economic Affairs, the Ministry of Housing, Spatial Planning and the Environment and the Ministry of Justice, plus the Proposed Legislation Desk. The effects of proposed legislation are measured in two phases. The first is the stage at which policy proposals leading to legislation are subjected to a quick scan that justifies the choice of instruments (i.e. why is legislation being chosen and why a specific instrument within legislation?) and arrangements are agreed for the impact tests that will be carried out. The second phase involves reviewing the performed assessments and presenting the impact in the explanatory memorandum accompanying the legislation.

This manual deals specifically with assessing the impact of legislation in respect of its practicability and enforceability. For this purpose the P&E is available, comprising a number of questions in the enforcement and implementation field. The answers to these questions must lead to quantified information about the intended effects and side-effects of the legislation for authorities charged with implementation and enforcement. This may be departments of the ministry primarily responsible for the legislation, but also the police, Public Prosecutor's Office and judiciary.

1.2. Structure of the manual

Chapter 2 of this manual contains general information about the P&E. The chapter deals with such matters as which legislation should be tested, when and how, what the impact test involves, what support the Ministry of Justice can offer and in which cases the ministry should be consulted. Chapter 3 follows on with the P&E itself: the questions about the practicability and enforceability, accompanied by explanatory notes to assist the answering of the questions. Chapter 4 closes by providing an overview of the departments of the Ministry of Justice and other organizations that can be contacted for help in answering the questions.

2. GENERAL INFORMATION ABOUT THE P&E

2.1. What is the P&E?

The P&E is an instrument for identifying the intended and unintended effects of proposed legislation for organizations involved in implementing the legislation (including the judiciary). The P&E, as part of the legislative process for certain legislation, is embedded in the Instructions for legislation (instruction 256).

Obtaining a greater insight into effects makes it possible to improve the quality of legislation. Moreover, a good picture of the effects (and thus of the good and less good aspects of a piece of legislation) can promote a balanced decision-making process.

The effects of proposed legislation must be described based on a number of questions. This is

a mandatory part of the explanatory memorandum accompanying the proposed law or regulation based on subjects selected by means of a quick scan (refer to 2.3). Effects may be described in a separate section of the explanatory memorandum but may also be attached to that as an appendix.

2.2. What is meant by the effects on practicability and enforceability?

The effects of legislation on the practicability and enforceability are defined as the consequences noticeable to implementing organizations and members of the public and companies in observing or carrying out the new legislation. This can be expressed in the opinions of the implementing organizations about the proposed legislation. Enforceability also means the expected extra enforcement effort that will need to be made if the legislation appears unlikely to be observed spontaneously. Practicability effects further cover the consequences for the burden upon the judiciary. When measuring these effects, it is necessary to formulate the consequences of new legislation as clearly as possible to allow their consideration as part of the decision-making process on the proposed legislation by the Cabinet and Parliament.

2.3. When should the P&E be performed?

The P&E must be performed for proposed legislation at national level (Acts of Parliament, orders in council and amendments to them, with the exception of budgetary laws and private members' bills) if the legislation:

- has substantial effects or side-effects for implementing or enforcement authorities;
- has a national policy scope (legislation that in terms of standardization and implementation ensues directly from agreed international obligations are not subject to the test) and
- has not yet been discussed in the Cabinet or Cabinet sub-committee (it may sometimes be necessary to test proposed legislation if it undergoes significant change after being discussed by the Cabinet (for example, in response to recommendations from the Council of State or questions tabled in the Lower House of Parliament)).

The P&E must be carried out for proposed legislation selected through a quick scan. If there is a policy proposal that will be carried out through legislation, it is up to the ministry with primary responsibility to perform the quick scan, thereby addressing the necessity of legislation and the alternatives that exist to introducing legislation, weighed up against the criteria of effectiveness, efficiency, proportionality and subsidiarity. The ministry's quick scan must also put forward a proposal for the impact assessments that need to be carried out (BIA, EA and/or P&E).

The outcome of the quick scan must be forwarded to the Proposed Legislation Desk (see appendix 3 for the address). The Proposed Legislation Desk will make sure that the scan reaches the dossier owner at the Ministry of Justice, Legislative Quality Policy Section, for an assessment of the practicability & enforceability aspects.

The final part of this assessment is an agreement reached between the ministry and the Proposed Legislation Desk about the questions that need to be answered in the three assessments in the follow-up to the framing of the legislation. (for more information see the general explanatory notes and the Step-by-step plan. The P&E must subsequently be carried out as part of the elaboration of the proposed legislation, in consultation with the legislative lawyer and policy employee. In many cases, the information necessary for this purpose will be present in the policy documents. If this is not the case, you can obtain support from the Ministry of Justice for performing the assessment (for more information refer to chapter 3).

The test does not need to delay the legislative process. In point of fact, it is a logical part of framing legislation and producing the accompanying explanatory notes. Provided that all relevant matters have been identified in this phase, it will be possible to avoid or to answer easily any questions that arise in inter-departmental consultations or from the Cabinet, Council of State or Parliament.

2.4. How should the P&E be performed?

The objective is for the P&E to yield as much quantitative data as possible about the effects and side-effects of proposed legislation. These data

may come from implementing and enforcement authorities concerning such matters as utilization of capacity, from Statistics Netherlands about the size of the sector in which the legislation will apply, or from the Council for the Judiciary about the effects for the judiciary (for more information refer to chapter 3 of this manual).

2.5. Examination of the performed P&E

On account of the Minister of Justice having primary responsibility for testing legislation for its constitutional and administrative quality, all bills and proposed orders in council must be sent to the legislative Department (Legislative Quality Policy Section, WKB) of the Ministry of Justice for examination.² As part of the legislative test, various aspects of the proposed legislation will be examined. For example, the Ministry of Justice will look at whether the requirements of fairness, proportionality, simplicity, clarity and accessibility have been met and also the legal and legislative requirements.

WKB will co-ordinate examination of the performed Business Impact Assessment, Environmental Assessment and Practicability & Enforceability assessment. As soon as the proposed piece of legislation has been submitted to WKB, this department will forward it to the dossier owners at the Proposed Legislation Desk for an examination of the BIA and EA and to the departments concerned within the Ministry of Justice for an examination of the P&E. The ministry that framed the proposed legislation will receive from the Proposed Legislation Desk and the assessor at WKB any comments they have about the presentation of the effects in the explanatory memorandum. The procedure for the legislative test conducted by WKB and the review of the BIA, EA and P&E ends with a legislative report drawn up by WKB. This legislative reports states whether agreement has been reached in the legislative test and assessments. If this is not the case, the ministry concerned will have to send the legislative report to the Cabinet accompanied by the proposed

legislation. The legislative report will contain a summary of the point of dispute. This will enable the assessment and testing procedure to be concluded in a clear fashion and any points of dispute will be made transparent ahead of political decision-making.

3. P&E: QUESTIONS

3.1. Questions

The effects and side-effects of proposed legislation must be assessed by means of the following four questions.

1. Which target group(s) will be confronted by the effects of the proposed legislation and how large are those groups?
2. What effects will the proposed legislation have in terms of the staffing required for enforcement and the need for enforcement?
Devote attention in the explanatory notes to:
 - a. Expected degree of spontaneous observance of the legislation;
 - b. Aspects related to the scale of and possibilities for controls;
 - c. Aspects related to the scale of and possibilities for penalties.
3. Which organizations will implement and enforce the proposed legislation? What is their opinion of the practicability and enforceability and associated costs?
4. What will be the consequences for the burden on the judiciary (courts and the Public Prosecutor's Office)?
Devote attention in the explanatory memorandum to:
 - a. The structural or non-recurring nature of the effects;
 - b. The expected number of charges that will be brought (criminal law), decisions, objections and appeals against which appeal is possible (administrative law) and summonses and petitions (civil law);
 - c. Possible effects for subsidized legal aid;

² See instruction 254 of the Instructions for legislation

- d. Elements of the proposed legislation that influence the complexity of a court case;
- e. Validation of the effects.

3.2. Notes to the questions

Question 1: Target groups

Which target group(s) will be confronted by the effects of the proposed legislation and how large are those groups?

Importance of this question

Knowledge of the target group is essential because:

- it is necessary to make a proper problem analysis and helps in finding solutions that enjoy sufficient support;
- it makes it possible to obtain an insight into the possibilities (and impossibilities) of implementing and enforcing the proposed legislation;
- it makes it possible to measure the degree of observance (periodically).

Knowledge of the target group is also important in order to answer the other questions in the P&E.

Background information

A substantial body of Dutch legislation contains standards that government, public and firms must observe in their dealings with each other in society. These are legal provisions in highly diverse areas and of a greatly differentiated nature. The question to be answered is this: who does this particular law cover?

The target group may consist of potential offenders, or of people who do not need to observe the prescribed standards but do experience "inconvenience" because of them. It is important to obtain a picture of the potential offenders and to recognize that they come in all shapes and sizes. Ultimately, the text of the proposed regulation determines who these potential offenders are. It could be "everybody" but equally a specific group defined in greater detail.

Three categories of target groups are distinguishable:

- closed target groups: all of the potential offenders are known, as is the case with parties who receive grants;
- semi-open target groups: most of the potential offenders are known because, for example, they must hold a licence. The "grey circuit" will not be known: these are people who carry out activities without holding a licence to do so (like illegal waste processing companies);
- open target groups: everybody could be a potential offender.

How to answer the question

Describe the target group of the proposed legislation and indicate as far as possible the size of the group. State the sources of this information wherever it is possible to do so. The sources may be implementing and enforcing authorities, trade associations, Statistics Netherlands, etc.

Question 2: Observance and enforcement

What effects will the proposed legislation have in terms of the staffing required for enforcement and the need for enforcement?

Importance of this question

The staffing required and need for enforcement depend in large measure on the expected degree of observance of the proposed legislation. If a large measure of spontaneous observance is expected, the success of the policy pursued by means of the legislation will be great and the staffing required for enforcement can be limited.

Background information

A number of factors determine the degree of observance of legislation. These factors have been included in an instrument that is usable for estimating observance of the proposed legislation. It is called the Table of Eleven (see the checklist in appendix 1). The table refers to these factors as 'dimensions for observance'. A distinction has been made between the following three clusters:

- Dimensions for spontaneous observance. How would the target group behave without government controls or penalties? Elements that play a role in this regard are social control,

acceptance of the policy and the target groups respect for authority.

- Control dimensions. What influence will government control exert? The "probability of apprehension" is a difficult concept: not only the likelihood of a control is important, but also the likelihood of an offence being observed during a control.
- Penalty dimensions. What effect does the threat of a penalty have on observance behaviour? Not every observed offence results in a penalty, and the severity of the penalties also plays a role.

When analysing observance using the Table of Eleven, you can obtain support from the Law Enforcement Expertise Centre at the Ministry of Justice. A detailed brochure is obtainable from the centre about the Table of Eleven. The centre can also provide an electronic version of the Table of Eleven that further simplifies the analysis of observance. You can find the address in appendix 3.

How to answer the question

It is advisable to include a separate section on enforcement in the explanatory notes in order to devote attention to:

- enforcement structure. Give a clear description of the enforcement structure that shows:
 - who is responsible for supervision, control and investigation;
 - what their powers are or where they can be found;
 - which penalties are possible.
- spontaneous observance. Indicate to what extent the target group will automatically observe or violate the rules. Validate this statement by stating the main reasons why the target group will or will not observe the rules. Use for this purpose the Table of Eleven checklist, dimensions 1-5.
- effectiveness of enforcement. Use dimensions 6-11 of the Table of Eleven to indicate the strengths and weaknesses of enforcement.
- indication of degree of observance. Give the most reliable possible indication of the likely degree of observance of the legislation. Bear in mind that:

- the higher the degree of spontaneous observance, the lower will be the need for enforcement (and vice versa);
 - every reason for observing or not observing legislation can in principle be found in the Table of Eleven;
 - the subjective probability of apprehension and not the actual probability is decisive for observance of legislation;
 - enforcement of symbolic legislation is doomed to fail;
 - the degree of observance is often difficult to indicate, but an approximate estimate of the degree of observance will provide an impression of the extent to which the policy is deemed successful and for that reason may not be omitted.
- consequences for the enforcement apparatus: will extra money or extra people be necessary? How do the findings on this matter square up with the opinion of the implementing and enforcement authorities (see question 3)?

Here again, it is advisable to quantify the data to the fullest extent possible, and to state the sources of the data.

Considerable confusion tends to exist in practice about terms like enforcement, observance and enforceability. But it is important for these terms to be interpreted in a uniform way.

"*Observance*" concerns the behaviour of the target group.

"*Target group*" is the group of people or organizations (companies, institutions) that must observe the rules. These may be licensing or notification rules but also "any person who..." (also refer to question 1).

"*Enforcement*" means activities undertaken by the authorities to bring about or impose a certain degree of observance (i.e. what actually happens).

"*Enforceability*" is a value judgement of the degree in which enforcement will be achieved or is achievable.

Question 3: Opinions of implementing and enforcement authorities

Which organizations will implement and enforce the proposed legislation? What is their opinion of the practicability and enforceability and associated costs?

Importance of this question

A proper insight into the possibilities for implementing and enforcing the proposed legislation is indispensable in enabling actual implementation and enforcement. This makes it important to conduct a careful analysis of the implementers and enforcers involved in proposed legislation and to enable them to make their opinions known. This covers not only the possibilities and impossibilities they mention with regard to the implementation and enforcement of the legislation, but also their opinions about the costs that are involved.

Background information

Many ministries have built a standard time into their procedures for preparing legislation for consulting with their own implementing and enforcement authorities regarding the aspects referred to above. This is referred to as an implementation test. The information obtained as part of the implementation test can form a basis for answering this question. If the police or the Public Prosecutor's Office is designated as the enforcement authorities, it will be logical to involve the Ministry of Justice (Enforcement Department) and the Ministry of Home Affairs and Kingdom Relations (Police Department) in answering this question. The addresses are stated in Appendix 3.

How to answer the question

The answer to this question will consist of presentation of the comments made by the implementing and enforcement authorities, with an explained response as to why the government will or will not act upon those comments.

Question 4: Burden on the judiciary

What will be the consequences for the burden on the judiciary (courts and the Public Prosecutor's Office)?

Importance of this question

The sustained pressure on the administration of law necessitates devoting permanent attention to the consequences of new legislation for the judiciary. The situation must be avoided that new policy is designed that devotes insufficient attention to:

- the ability to effectuate legal protection (procedures for objections and disputes);
- law enforcement (criminal proceedings and administrative law proceedings).

If an increase in the workload is unavoidable for the implementation of the proposed policy, it will be necessary to make explicit arrangements with the Ministry of Justice about how it will be financed. It will also be necessary to examine within which time frame the required enlargement of staffing is achievable.

Background information

You will need the following data to answer the question of whether a bill will cause an extra workload for the judiciary:

- Non-recurring versus structural effects. You need to examine whether the likely effects for the judiciary will change over time. Are there non-recurring or structural effects? Are extra conflicts likely to occur in the initial period? Will there be a phased assembly of a control apparatus (and by consequence a phased growth in the number of cases)?
- The expected number of charges to be brought (criminal law), decisions, objections and appeals that are capable of appeal (administrative law) and summonses and petitions (civil law). You must create a basis for an *ex ante* evaluation by estimating the number of cases before the courts. This will not generally be an isolated piece of information, but will form part of the information pertaining to the entire chain. The number of appeals lodged with the administrative courts can be related to the number of decisions and number of objections capable of being appealed. The number of charges brought can usually be related to the control efforts. The number of civil proceedings is related to the size of the target group and any earlier avenues of recourse (like rent tribunals).

- Elements of the proposed legislation that influence the complexity of a court case. When determining the load upon the judiciary, you need to look not only at the expected number of cases, but also at the likely changes that will occur in the seriousness of cases.
- Potential effects for subsidized legal aid. You should check whether the bill might lead to conflicts whereby subsidized legal aid is likely to be granted (does the target group fall into a low income category?).
- Validation of the effects. It is essential to explain presented data to allow assessment of the reliability of the building blocks you have put forward.

The Ministry itself will be able to generate some of this information. However, it will not be possible in many cases to calculate the real effects for the Public Prosecutor's Office and the courts. To identify the effects for the courts, the proposed legislation will have to be submitted to the Council for the Judiciary, which has been entrusted with managing the organization of the judiciary. The Council has a statutory advisory role in this matter, as laid down in Section 95 of the Judicial Organization Act. Appendix 2 contains the procedure that must be followed to obtain advice from the Council. This advice will generally have to be provided in the phase in which other advice is obtained or consultations with external parties about the proposed legislation.

If proposed legislation has consequences for the legal system as such (for example, in the case of a switch from enforcement under criminal law to enforcement under administrative law, in designating a court with sole jurisdiction), you will need to consult at this stage with the department of Strategy for Judicial Procedure of the Ministry of Justice. This department has teams for civil, administrative and criminal law that will be able to examine the consequences of the legislation for the legal system (the addresses are stated in Appendix 3).

The results of these consultations must be set down in the explanatory notes to the proposed legislation.

To identify the effects for the Public Prosecutor's Office - again in the phase of obtaining advice on and consulting about the proposed legislation - the Law Enforcement Department of the Ministry of Justice must be contacted. In most cases, this will take place by means of talks between the Law Enforcement Department, Public Prosecutor's Office and the ministry concerned. The addresses can be found in appendix 3.

How to answer the question

When answering the question about the effects for the judiciary, the explanatory notes should contain as much quantified data as possible. It is also necessary to provide an insight into the financial consequences and the way in which they will be covered.

Appendix 1

Table of Eleven checklist

Dimensions for spontaneous observance

1. Knowledge of rules

(i) Familiarization with and clarity of legislation among the target group

a. Familiarization

- Does the target group know the rules?
- Is the legislation too extensive?
- Do people have to make a big effort to familiarize themselves with the rules?

b. Clarity

- Are there any doubts or could doubts arise about the applicability of the rules?
- Are the rules too vague or too complicated for the target group: do people understand what the rules mean?
- Is the target group wrongly expected to have a certain expertise (technical or legal) in order to understand the rules?

2. Cost/benefit

The tangible and intangible advantages and disadvantages of violating or observing the rules

a. Financial/economic

- Disadvantages of observance: is a lot of effort required (administratively, physically) to observe the rules?
- Advantages of offence: does the offence have advantages for the person involved that are expressible in time or money?
- Offence threshold: are there certain physical circumstances that make offence difficult?
- Advantages for observance: are there specific advantages attached to observing the rules, like financial incentives?

b. Intangible

- Does observing or violating the rules produce any other advantages or disadvantages in society?

3. Level of acceptance

(a) The degree to which the target group generally accepts the policy and legislation

- Does the target group think the policy is fair?
- Does the target group agree with the basic principles of the policy or do different views exist about it?
- Can the target group make a contribution towards the policy in such terms as self-regulation?
- Are the intentions of lawmakers clear and have they been properly formulated and are there any loopholes in the law?

4. Loyalty and obedience of the target group

The degree of willingness among the target group to comply automatically with rules imposed by the government, with what the law says

- Does the target group generally properly observe the rules?
- Does this target group usually do what the government lays down?
- Does the target group have certain customs that conflict with the prevailing rules?
- Does the target group have certain expectations of the government?

5. Informal control

The probability of the behaviour of the target group being discovered other than through government control.

a. Informal probability of detection

- Do people in the environment quickly notice if somebody violates a rule?
- Does the environment generally reject the offence?
- Is there a close relationship between members of the target group?
- Do any informal control structures exist?

b. Informal sanctions

- If other people reject the offence, will they attempt to correct it in one way or another (ranging from comments to physical violence)?

- Will the target group react negatively to offences by imposing social sanctions, like ejection from the group or a loss of face or status?
- Do other informal sanctions exist that people can impose upon each other?

Control dimensions

6. Informal report probability

(b) The probability that an offence will be detected other than through government control.

- Is the target group inclined to report observed offences to the authorities?
- Does the target group generally know to which government agency observed offences can be reported?
- Have measures been taken to increase the accessibility of the government agency (tip-off line)?

7. Control probability

(c) The likelihood of being subject to control

Make a distinction between physical and administrative controls:

- How great is the control probability objectively speaking (density of control)?
- How great does the target group think this probability is?
- What is the main factor determining the subjective control probability?

8. Detection probability

(d) The probability of the authorities detecting the offence if controls take place

a. In the case of administrative control:

- Is the administrative control watertight, are all data checked?
- How difficult is it to observe offences: do inspectors need to be experts (financial or otherwise) in order to detect fraud?
- Are travel documents, travel tickets or other documents easy to forge?

- Can the work of inspectors be made difficult by the circumstance that there are no official models or specimen forms?

b. In the case of physical control:

- Are offences easy or difficult to detect by inspectors?
- What is the nature and quality of the method of control/investigation?
- Are offences difficult or perhaps easy to detect because they are tied to places and times?

9. Selectivity

(e) The (increased) probability of control and detection as a result of targeting the firms, people, actions or areas to be checked

- Are relatively more offenders detected during selective controls than during random controls?
- Do offenders have the idea that they are always checked more often than persons who observe the rules?

Sanction dimensions

10. Sanction probability

(f) Probability of a sanction being imposed if the offence has been detected through control and investigation

- How great is the probability of a person being sanctioned after an observed offence, or being subject to informal correction?
- How great does the target group estimate this probability to be?
- Is an offence easy to prove?
- Do offenders believe they have a good chance of being acquitted?

11. Sanction severity

(g) The severity and type of sanction linked to the offence and the associated advantages of imposing sanctions

a. Formal severity of sanctions

- Does the target group know what sanction they can expect if they commit an offence?
- Does the target group think the sanction is severe?
- Does the sanction make allowance for the financial strength of the offender?
- How fast is the sanction imposed ('tit-for-tat' policy)?

b. Immaterial costs

- Are people more worried about having a record (in the case of enforcement under criminal law) than about the actual sanction?
- Does the imposition of the sanction have any additional disadvantages for the person involved?

Appendix 2

Procedure for obtaining advice from the Council for the Judiciary

Under Section 95 of the Judicial Organization Act, the Council for the Judiciary advises the government and parliament on general regulations and on the policy central government should pursue in respect of the administration of justice. The recommendations are formulated after consultation with the courts.

The following procedure applies to obtaining advice from the Council about bills:

1. Formal consultation

The official request for advice must be submitted in writing to the Council. The standard term for obtaining advice is two months. If a shorter period is required, it is possible to request an urgent recommendation. If an urgent recommendation is needed, this should be stated clearly in the request. In that case, it is recommendable, because of the mandatory consultation of the courts and related internal advisory procedure at the Council, to involve the Council informally at the earliest possible stage in the legislative process (see below at 3). At the same time the written request is sent in, the regulation must be submitted electronically to the co-ordinator for legislative advice (the address is stated in appendix 3). Simultaneous electronic transmission guarantees that the internal procedure for obtaining advice (including consultation of the conference of presiding judges and the engaging of advisers) can start immediately and allow the advice to be obtained within the prescribed period of two months. Within a week of electronic transmission of the document, the ministry will be informed of whether the courts will be consulted with or without a discussion in the conference of presiding judges. The civil servant dealing with the request will be informed of this matter. If it is not possible to provide advice within two months, the Council will inform the minister concerned as soon as possible in writing and explain the reasons why it is not possible.

2. The advice

The advice of the Council will contain a passage about the administrative costs, workload and effects for "the chain". This passage can be used as a basis for calculating the financial consequences of the regulation. The administrative costs and the financial validation of the regulation must be included in the explanatory notes.

3. Informal consultation during the preliminary process. In the preliminary process (i.e. preceding the formal request for advice), you can involve the Council informally in the framing of the regulation. This can be done in two ways:

- a. Through participation of a representative of the Council in a civil service preparatory group or sounding-board group;
- b. Through the informal electronic transmission of a draft of the regulation to the Council, provided that the draft is more or less the definitive text. You can telephone the co-ordinator to discuss the possibility of informal consultation of the Council and how it can best be arranged. The question of whether it is desirable to involve the Council informally in the preliminary process will depend largely on the extent to which the bill has consequences for the courts and whether an urgent recommendation will be requested.

4. Follow-up

The advice provided by the Council must be incorporated in the explanatory memorandum like the recommendations made by other advisory bodies and consulted organizations.

5. Guidance and implementation

If the regulation has immediate consequences for the courts, you should inform the Council of the submission of the regulation to the Upper House of Parliament or to the Queen. This is necessary with a view to providing timely guidance to the courts, or taking other measures for the purpose of implementing the bill. The Council will state in its advice what action needs to be taken. The Council will be informed of submission to the Upper House by means of an e-mail message sent to the legislative advice co-ordinator.

Appendix 3

Addresses

Proposed Legislation Desk

c/o Ministry of Economic Affairs

Telephone: 070 - 379 75 39

Focal Point for Quick Scan and BIA/EA:

Telephone: 070 - 379 6886

E-mail: meldpunt-vr@minez.nl

CBS (Statistics Netherlands)

Telephone: 070 - 337 38 00 (Voorburg)

Fax: 070 - 387 74 29

(idem)

Telephone: 045 - 570 60 00 (Heerlen)

Fax: 045 - 570 74 40

CBS info service (telephone help line)

Telephone: 045 - 570 70 70

Fax: 045 - 570 62 88

E-mail: infoservice@cbs.nl

CBS on the Internet

www.cbs.nl (including the search engine 'StatLine')

www.cbs.nl/standaarden

(SBI classifications)

Novem Sittard:

Telephone: 046 - 420 22 02

Fax: 046 - 452 82 60

E-mail: info@novem.nl

Novem Utrecht:

Telephone: 030 - 239 34 93

Fax: 030 - 231 64 91

E-mail: info@novem.nl

CE (Centre for Energy Saving and Clean Technology)

Telephone: 015 - 215 01 50

Fax: 015 - 215 01 51

E-mail: ce@ce.nl

www.ce.nl

ECN) (Netherlands Energy Research Centre)

Telephone: 0224 - 564949

Fax: 0224 - 564480

E-mail: info@ecn.nl

www.ecn.nl

TNO-NITG ((Netherlands Institute for Applied Geosciences)

Telephone: 030 - 256 42 56

Fax: 030 - 256 44 75

E-mail: info@nitg.tno.nl

EZ (Ministry of Economic Affairs)

Bezuidenhoutseweg 30

PO Box 20101

2500 EC The Hague

Telephone: 070 - 379 89 11

www.minez.nl

LVN (Ministry of Agriculture, Nature Management and Food Quality)

Bezuidenhoutseweg 73

PO Box 20401

2500 EK The Hague

Telephone: 070 - 378 68 68

Fax: 070 - 379 78 06

www.minlnv.nl

VROM (Ministry of Housing, Spatial Planning and the Environment)

Rijnstraat 8

PO Box 20951

2500 EZ The Hague

Telephone: 070 - 339 39 39

www.vrom.nl

V&W (Ministry of Transport and Water Management)

Department of Public Works

Telephone: 070 - 351 80 81

Fax: 070 - 351 83 35

www.rijkswaterstaat.nl

AOO (Waste Consultative Platform)

Telephone: 030 - 234 88 00
fax. 030 - 234 22 60
E-mail: secretariaat@aoo.nl
website: www.aoo.nl

RIVM (National Institute for Public Health and the Environment)

PO Box 1
3720 BA Bilthoven
Telephone: 030 - 274 91 11
Fax: 030 - 274 29 71
E-mail: info@rivm.nl

LEI/DLO (Agricultural Economics Research Institute)

Burgemeester Patijnlaan 19
2585 BE The Hague
Telephone: 070 - 335 83 30
Fax: 070 - 361 56 24
informatie@lei.wag-ur.nl

RIZA (:

Telephone: 0320 - 29 84 11
Fax: 0320 - 24 92 18
www.riza.nl

ACTAL

(Advisory body for checking administrative burdens)

Telephone: 070 - 310 86 66
Fax: 070 - 310 86 79
E-mail: info@actal.nl

Ministry of Justice

Schedeldoekshaven 100
PO Box 20301
2500 EH The Hague

Legislation Department, Legislative Quality Policy
mr. Mariette Lokin

Telephone: 070 - 370 69 55
Fax: 070 - 370 75 29
E-mail: m.lokin@minjus.nl

mr. K.H. Sanders

Telephone: 070 - 370 48 22
Fax: 070 - 370 75 29
E-mail: k.h.sanders@minjus.nl

Enforcement Department

Cluster Ordeningswetgeving
mr. J. Swank
Telephone: 070 - 370 71 37
E-mail: j.swank@minjus.nl

Department of Strategy for Judicial procedure
Civil Law Team

mr. Th.J. van Laar
Telephone: 070 -370 75 42
E-mail: th.j.van.laar@minjus.nl

Administration and Judicial Organization Team

mr. J.C. Boonstra
Telephone: 070 -370 90 47
E-mail: j.c.boonstra@minjus.nl

Criminal Law Team

mr. J.W. van Wetten
Telephone.: 070 - 370 72 41
Fax: 070 - 370 75 96
E-mail: j.w.van.wetten@minjus.nl

Law Enforcement Expertise Centre

mr. J.L.M. Boek
Telephone: 070 - 370 73 27
E-mail: j.boek@minjus.nl

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drs. R.M.M. Vossen
Telephone: 070 - 370 77 72
E-mail: r.vossen@minjus.nl

Account Manager for Legislation and Policy

mr. W. Speller
Telephone: 070 - 370 64 27
E-mail: w.speller@minjus.nl

General e-mail address

erh@minjus.nl

Council for the Judiciary

PO Box 90613
2509 LP The Hague
Legislative Advice Co-ordinator
dr. E. Bauw
Telephone: 070 - 361 97 51
Fax: 070 - 361 97 15
E-mail: e.bauw@rvdr.drp.minjus.nl