

# PARLEMENTAIRE BETROKKENHEID BIJ GEDELEGEERDE REGELGEVING

Onderzoek naar het voorkomen van voor- en nahangprocedures in wetgeving en de parlementaire praktijk

*ENGLISH SUMMARY*

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## ENGLISH SUMMARY

The national government bases its actions on national legislation, or ‘formal laws’, that are jointly established by the government and the States General – together, the ‘formal legislator’. According to the principle of legislative primacy, the scope and structural elements of regulatory regimes must always be included in the text of the formal law itself. The formal legislature may choose to delegate further rule-making authority to the government or ministers, allowing rule-making on certain matters through a general administrative order (‘GAO’) or ministerial regulation. Delegation is often used to accelerate the rule-making process, to allow for flexible responses to societal developments or to reduce the burden on the formal legislative procedure.

Although the States General are not involved in the adoption of delegated rule-making, some level of parliamentary influence on the content of lower regulations is desirable in certain specific instances. To this end, formal laws can require preliminary or subsequent consultation procedures, whereby a (draft) lower-level regulation must be submitted for parliamentary review. However, the Guidelines for Regulation (the ‘Guidelines’) prescribe restraint in such review: parliamentary involvement in delegated legislation must remain an exception and must fit within four established models.

Despite this recommended restraint, previous research has indicated that parliamentary involvement in delegated rule-making occurs with some regularity.<sup>1</sup> Moreover, the four models set out in the Guidelines are not always followed. The precise extent of this phenomenon is not known. This is the reason for this study. Further, both Houses of the States General would like to be able to receive the advice from the Advisory Division of the Council of State before engaging in a preliminary parliamentary consultation procedure. The study lays the groundwork for a possible amendment to the Guidelines for Regulation. This research is guided by three questions:

1. How often and for what reasons are provisions on parliamentary involvement in delegated legislation included into formal laws?
2. How many (regulatory) decisions and regulations were subjected to a preliminary or subsequent consultation procedure during the period 2020-2024, and what did the States General (in particular the House of Representatives) “do” with these procedures?
3. In the context of the introduction and use of parliamentary involvement in delegated rule-making, can practices be identified that are relevant to further consideration of the Guidelines on this point?

For this study, a systematic inventory was made of all applicable legal provisions that enable parliamentary involvement in delegated legislation.<sup>2</sup> A total of 569 legal bases for parliamentary involvement in delegated legislation were found. In most cases, this involved ‘controlled delegation’, whereby a general administrative order or a ministerial regulation is submitted to parliament for inspection during a legally specified period before such regulation is adopted or enters into force. Of the 569 legal bases, 296 were proposed by the government, and 273 were introduced on the initiative of the House of Representatives. In 266 cases, specific reasons were given as to why a form of parliamentary involvement was desirable, for example to provide an additional safeguard in situations where it was possible, on an experimental basis, to deviate

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<sup>1</sup> See H.M.A. Borman, *Voor- en nahangprocedures in de praktijk* (masterscriptie Amsterdam VU), 2017; L.C. Groen, S.A.J. Munneke, ‘Lagere regels onder parlementaire controle. Een andere kijk op het primaat van de wetgever’, *RegelMaat* 2023, nr. 3.

<sup>2</sup> The research was based on legislation that was in effect from 1 July 2025 to 31 December 31 2025.

from a formal law by means of a general administrative order.<sup>3</sup> In the other cases, the explanation provided was general or non-existent. It was also noted that the models in the Guidelines were often not followed, particularly with regard to the time limits set therein and the types of (draft) decisions and regulations submitted to the House(s).

On the basis of the identified legal provisions, a total of 618 (draft) decisions and regulations were sent to parliament in the period 2020-2024 in the context of parliamentary involvement in delegated legislation. In most cases, these were general administrative orders within the framework of 'controlled delegation'. In many cases, the House of Representatives took note of the (draft) decisions and regulations without taking further action (369 times); in other cases, written questions were submitted, or they were included in a debate.

The following findings may be relevant for further consideration of the Guidelines for Regulation:

Although the Guidelines prescribe that parliamentary involvement in delegated legislation should be exercised with restraint, the study shows that this restraint is difficult to assess in practice. There are many legal bases for parliamentary involvement in delegated legislation, but since it is unknown just how many legal provisions in Dutch formal laws allow for delegation of rule-making authority, it is also unknown what percentage this represents of all delegated rule-making. The number of general administrative orders that are submitted for parliamentary involvement each year is relatively high compared to the number of general administrative orders that are enacted each year (between 40 to 50% of GAOs; for other (draft) decisions and regulations, this percentage is lower). However, as the preliminary or subsequent consultation procedure is not always carried out in the same year as the year in which the general administrative orders are enacted, these numbers are not necessarily directly correlated. Moreover, not only quantitative but also qualitative data determine whether there is restraint. Ultimately, it is primarily the content of the lower-level regulation that determines whether there were valid reasons for parliamentary involvement in its creation. However, the data on this does not necessarily show the extent to which initiators act on the basis of the principles of the Guidelines when incorporating legal bases in formal law. Members of Parliament also use their own less technical terminology and, like the government, sometimes apply procedures creatively, which leads to considerable variety. In practice, pre- and post-implementation procedures seem to be used mainly when a subject is of great political relevance. The distinction made by Members of Parliament between light and heavy procedures for parliamentary involvement in delegated rule-making does not appear to determine whether these procedures are used more actively. Members of Parliament mainly use the procedures as an additional means of control, although the variety makes it difficult for them to maintain oversight.

Both Houses want to receive advice from the Advisory Division of the Council of State earlier in the process of preliminary consultation of GAOs, and the Advisory Division is prepared to comply with this request. Not all GAOs require advice prior to the preliminary consultation procedure, but clear criteria for determining when this is necessary will be difficult to establish. At the same time, the Advisory Division rightly warns that shifting the timing advice of the Advisory Division complicates the distinction between formal laws and general administrative orders. Further regulation therefore seems appropriate, for example by laying down in the Guidelines or in statutory provisions the extent to which prior consultation is mandatory for new or amended

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<sup>3</sup> e.g. art. 4.16a lid 3 Wet basisregistratie personen.

orders in council. In this way, the distinction between formal laws and general administrative orders will be maintained, while still allowing scope for the advisory moment to be brought forward structurally in certain cases.

Finally, the study identifies a number of issues with the models described in the Guidelines. For example, 'conditional delegation' is described in the Guidelines as a subsequent consultation procedure, whereas in practice, it often occurs as a preliminary consultation procedure. Also, there appears to be several variants of 'controlled delegation' in use. It is suggested that simplification or revision of the preliminary and subsequent consultation procedures may be desirable in order to make parliamentary control more effective.