

Ministerie van Economische Zaken

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Date

Re: Possibilities for innovation through future-oriented legislation and
regulation

Our reference
AEP / 15079841

Attachment(s)
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Dear President,

During the most recent discussions concerning the budget of the Ministry of Economic Affairs, I spoke with the House of Representatives about the future orientation of legislation and regulation in relationship to technological developments and new revenue models. At that time, I undertook to review, with respect to specific cases, whether legislation and regulation was superfluous, restrictive or insufficient as a result of those developments and, if so, how that should be dealt with.¹

In this letter, also on behalf of the Minister of Security and Justice and the Minister of Interior Affairs and Kingdom Relations, I shall discuss the approach adopted by the government with respect to this subject. I shall also discuss the motion Van Tongeren², which called for a labour-market review into the sharing economy, and the commitments that were made to Member of Parliament Van Tongeren with respect to the sharing economy.

Increased demand for innovation

It is the government's intention to improve the structural growth capacity of the Netherlands. The process of renewal and innovation has a major contribution to make here: obsolete technologies, knowledge, paradigms and revenue models make way for newer and more productive findings, developments and discoveries. That leads to new revenue models and new products and services. The plethora of new developments due to the Internet and smart devices such as smartphones over the past few years is a case in point. Innovation is necessary not only to increase our prosperity, but also to devise solutions for social challenges, such as improving the sustainability of domestic production and energy supplies and being able to continue to provide care to our (ageing) population.

The process of innovation requires ambitious entrepreneurs who are given the opportunity to implement new technologies and revenue models. Those entrepreneurs require high-quality personnel, good (digital) infrastructure, access

¹ Proceedings II 2014-2015, meeting number 15

² Parliamentary House, Session year 2014-2015, 34000-XIII, no. 39

to capital and, first and foremost, the freedom to be able to do business innovatively. Those are issues that the government is committed to and is taking steps to facilitate through measures including investments in education, research, innovation and financing.

It is the responsibility of the entrepreneurs themselves to start the process of innovation. The companies that have been named as 'National Icons' illustrate this principle clearly. One of those companies, for example, is contributing to the security of future global food production through innovative potato growing. The Bioneedle, which provides a more efficient way to vaccinate children and reduce disease, is another example. Those two examples illustrate the good starting position of the Netherlands in the area of innovation, which is reflected in our standings on various ranking lists. The Netherlands ranks fifth in the Global Innovation Index and, according to the Network Readiness Index of the World Economic Forum, stands as the fourth digital economy in the world.

At the same time, the government sees challenges ahead if we are to retain that good position. The tempo of innovation is accelerating, along with the introduction of new technologies. A time span of 75 years passed before the telephone, invented in 1878, had 100 million users globally. The mobile telephone, which was invented a century later, had 100 million users after only 16 years. The Internet reached that number within 7 years of being made available to the public and the Apple app store had 100 million users after only 2 years. If entrepreneurs want to remain competitive, they are going to have to go along with the increasing rate of innovation and adapt to the evolving environment.

It is reasonable for entrepreneurs to expect the government to play a part here, especially with respect to the flexibility of legislation and regulation and adapting rules to changing economic and social conditions. Legislation and regulation can be important drivers for innovation, such as by setting maximum requirements for power consumption for devices. Rules can also have a retarding or impeding effect on innovation, however, and they can be rendered obsolete by technological and social developments. That is due to the fact that legislation and regulation is often oriented towards existing processes, while innovative products and services introduce new ways of doing things. The commercial introduction of the self-driving car, for example, will require different rules than we have now. If we do not actively seek out possibilities for responding to those developments, regulation can act as a brake on innovation and renewal.

The position of the government is that it is important for legislation and regulations to provide sufficient space for innovation and entrepreneurship, including the public interests and values that must be protected by regulation. That requires the government to think about how the rules can be made more flexible and future-oriented in response to the changing economic and social dynamic. In addition to eliminating and amending rules, that could also mean that new rules are needed to ensure that innovation and new revenue models are introduced in a controlled fashion. The government is taking its cue with regard to

those developments from the proposed Environmental Act that is now going through passage in parliament. That act bundles 26 laws, 60 general administrative measures and 60 ministerial regulations concerning the environment into a single, coherent, legal framework. That framework focuses on space for development and protection of quality in the physical living environment.

In this letter, the government explores in more detail how legislation can be made more future-oriented. This approach comprises two parts. In the first place, reviews are conducted on the basis of current modernisation issues to determine where legislation is an impediment or new rules are called for. The challenge here is in formulating rules that both give room for innovation and new technological developments while creating a level playing field for new and existing players and safeguarding the public interests such as safety and quality. In the second place, reviews are conducted into how legislation and regulation can be made structurally more future-oriented to make it possible to respond quickly and adequately to changing circumstances. Here, too, it is important to safeguard public interests and values as well as facilitating new developments that contribute to our prosperity and welfare. The following two sections explore the elaboration of those two lines in more detail.

1. Current modernisation issues

The way that the government wants to eliminate specific impediments to innovation are shown below for several current modernisation issues. The focus is on technological innovation. In view of the rapid developments in this area, it is probable that this is precisely the point at which the context within which legislation and regulation come into being will change rapidly. A distinction is made between several categories: the rise of digital platforms that facilitate new forms of consumption, such as the sharing economy, the economic potential of data, smart devices and stimulating new revenue models. At the same time, we shall examine the case list submitted by D66 following the budget debates for the Ministry.³ The complete list and explanations are presented in the annex. This approach is also in line with the motion of Member of Parliament De Liefde, who had previously asked for attention for the modernisation of legislation and regulation in the fields of telecommunication, media, privacy and intellectual property rights.⁴

2.1 The rise of digital platforms

The rise of the sharing economy and digital platforms such as Snappcar, Airbnb and Shareyourmeal (in the Netherlands, 'Thuisafgehaald') is increasingly leading to changes in how we consume. Digital platforms make it possible for consumers to share and evaluate products and services with one another. One of the benefits is that existing goods and services are used better. The rise of platforms also results in tensions, such as in the area of market structure and the relationship

³ Proceedings II 2014-2015, meeting number 15

⁴ Parliamentary Documents, session year 2013-2014, 33750 XIII, no. 18.

with existing providers. In view of the economic potential of those developments, the government has a role in facilitating the innovation and exploring how to deal with associated risks.

In that context, the State Secretary for Infrastructure and the Environment announced a plan to work towards developing a system for the *taxi sector* in which regulation is aimed more at the purpose of the service, leaving the decisions about how to achieve that purpose in the hands of the market.⁵ The proposal is to eliminate or change a number of requirements in the short term, which would make it possible to offer pricing via an app rather than having to use the taximeter. Those measures would make it easier for new providers of taxi services to enter the market.

With respect to *private-party residential rentals to tourists*, the Minister of Housing and the Civil Service and I are investigating how the rise of digital platforms such as Airbnb and Wimdu can be managed best. The underlying philosophy is that innovation is to be facilitated and excesses, such as disturbances to neighbours and unwanted sub-letting, are dealt with. We are also looking at existing solutions, such as the rules for private party holiday rentals of the municipality of Amsterdam. The House of Representatives will be informed of the progress by the end of the year.

The examples shown above illustrate the fact that digital platforms do not always fit within existing frameworks and have an impact on the market structure and the supervision in various sectors. For that reason, I am having a *study* done to develop a comprehensive analysis framework for issues *concerning digital platforms*. That should make it possible for the government to better utilise the opportunities presented by the platforms and to deal with the associated risks better. I expect to be able to inform the House of Representatives about the results before the end of the year.

2.2 The economic potential of data

Information technology is developing very rapidly and the economy is becoming increasingly data-driven through developments such as the Internet of Things and the use of mobile networks. The quickly growing stream of data, often referred to as big data, can be used increasingly well for new applications, such as better treatment procedures in health care and more efficient logistics processes. Issues that arise in this area include 'what unutilised data is still available?', 'who owns the data?', and 'under what conditions can we share it?' Answers to those questions will usually be found in places where economic benefits can be obtained, such as within a company or a business sector.

Part of that 'big data' consists of personal information, information that can identify people, either directly or indirectly. Processing that data impinges on the privacy of individuals, which is why it falls under legal regulations. Many

⁵ Parliamentary Documents II 2014/15, 31 521, no. 88.

companies feel that the rules are complex, which inhibits them from taking advantage of the opportunities that innovative use of data offers.

To offer business practical information about how to deal with the legal frameworks in the area of privacy, I shall be setting up a '*Big Data and privacy*' expert group. It is important that the relationship between protecting personal information and the possibilities for the use of data for the development of innovative, data-driven products and services be made more clear. We hope to be able to send the results to the House of Representatives before the end of the year.

2.3 Smart devices

As a result of advances in IT technologies, more and more smart devices, such as drones and self-driving cars, are coming onto the market. Those devices are characterised by the fact that they introduce new functions and applications in areas where no technological solutions existed in the past. To manage those developments adequately, existing legislation and regulation will have to be amended; in some cases, new regulations will be needed.

In collaboration with the Minister of Security and Justice and the State Secretary of Infrastructure and the Environment, I sent a letter to the House of Representatives at the beginning of the year stating that more space is being created for the use of *drones*.⁶ There is a great deal of potential for the public and commercial use of drones (unmanned aerial vehicles). Regulations for the professional use of drones will take effect on 1 July 2015. Those regulations offer opportunities for companies and government; at the same time, care must be taken to strike a good balance between the public interests, such as safety, security and privacy. I shall also be operationalising the commercial applications for drones for the agro domain, as well. That review will be completed early in 2016.

In view of the potential of *self-driving cars*, the government has taken the position of ensuring that the Netherlands is in the forefront with the developments of that sector. That will be done by measures including creating possibilities in legislation and regulation. Since early 2015, it has been possible to start large-scale tests to explore what the future legal framework necessary for the development of the self-driving car should look like.⁷

In the area of *intellectual property* (IP), I shall be entering into dialogue with the relevant parties about the impact of technological developments, such as 3D printing, on the future orientation of the current IP system. The developments in that area are proceeding rapidly, making it important to think about the possible consequences early.

⁶ Parliamentary document 30 806, no. 28.

⁷ Parliamentary document 31 305, no. 212.

2.4 Stimulating new revenue models

With the rise of new technologies, businesses can develop new revenue models that can offer added value to consumers through the delivery of better products and services, usually at lower prices. Legislation and regulation are sometimes obstacles to implementing those new concepts. In several specific areas, the government wants to give entrepreneurs with new ideas some room to manoeuvre.

During the evaluation of the *Licensing and Catering Act* in 2016, the government will examine whether it is possible to remove existing obstacles to combining retail and foodservice, including mixed forms where establishments also want to serve alcohol. The interests of public health, public order, and safety and security will be the guiding principles.

A uniform regulatory framework at the European level is important to enable the scalability of innovations and to give new revenue models a chance of success. On 6 May, 2015, the European Commission presented a *digital internal market strategy*, which the government has previously informed the House of Representatives about.⁸ From the perspective of future-orientation of regulations, the government wants especially to take steps to modernise *intellectual property rights* by including a more flexible and future-oriented system of exceptions and limitations. The government will also take steps to harmonise the tariffs for physical and digital media, including *e-books*, to give digital and physical media an equal chance. There are gains to be had in the area of *cross-border electronic trade* by harmonising some of the rules in the area of consumer protection and contract law further and simplifying them. It is important to the government that the Commission is going to be dealing with these matters in the short term and the government intends to place these items on the agenda and to make progress in them during the Netherlands Presidency.

Experience in the four categories discussed above has shown that renewing regulations in a variety of areas is current, affects multiple sectors, and often concerns adapting existing processes and procedures to new innovations and revenue models. Solutions can be found, for example, in adjusting regulations for an entire sector, such as the taxi sector, for example, and creating tailored regulations such as the municipality of Amsterdam is doing with private-party holiday rentals. In addition, it is important to think about the innovations of the future and respond from the perspective of regulations in a timely and adequate way, as is now being done with self-driving cars and drones. In complex legislation, such as in the area of privacy, it is also important to be clear to users about how much room there is for innovation.

2.5 Continued efforts to eliminate impediments to innovation

⁸ Parliamentary Documents II (2014-2015), 22112, no. GZ.

The government believes that it is very important to identify new technological developments early and to think about the possibilities for responding to those developments in regulation. I am making myself accountable with respect to the role that the State can play, including eliminating impediments in policy and in legislation and regulation. I therefore find it very important that entrepreneurs are able to report any impediments that they encounter with technological innovations and new revenue models and that they can do so in specific and clear ways.

There are already a number of initiatives and points of contact that are focused on eliminating impediments that entrepreneurs experience, such as Space in Rules, Startup Delta, the bespoke approach to regulatory burdens, and the City Agenda. In addition, I want to ensure that the Regulation Reporting Point, the general point of contact for businesspeople who encounter an impediment in legislation and regulation are positioned better to be able to inventory those impediments. Finding the reporting point on the Entrepreneurs' Plaza and the intake procedure for selecting the impediments needing attention will be made easier. In addition, through cooperation with a variety of stakeholders, including the Association of Dutch Municipalities, more attention will be devoted to the large-scale identification and elimination of impediments that entrepreneurs encounter.

2. Towards a structural approach to future-oriented legislation and regulation

In addition to making an assessment per dossier about how innovation can be facilitated, it is also important to make legislation and regulation future-oriented in a structural way. With that goal in mind, the Minister of Security and Justice, the Minister of the Interior and Kingdom Relations, and I shall be developing an approach together. I am therefore sending you this letter on behalf of those two ministers, as well. Several subjects that are discussed in this joint approach include the possibilities for creating room in regulation for innovation, ensuring an open regulatory process with participation from stakeholders, deriving lessons from the implementation of legislation better, and working towards a more efficient and more effective legislative process. Several elements related to creating room for innovation in regulations will be discussed in more detail below and in the text boxes.

In the first place, protecting public interests and managing inherent risks in a different way are important aspects of regulations that provide room for innovation.⁹ Innovating entrepreneurs and citizen

Reputation mechanism

The purpose of regulation is to safeguard specific public interests. If those interests are sufficiently protected in the natural course of events, legislation is not necessary. In some cases, the reputation mechanism has been more effective than regulation as a result of digitalisation. Digitalisation can ensure that customers can make a better judgment about the product or service they purchase, leading to opportunities to reduce regulations. Those are issues that were discussed in the policy letter that the Bureau for Economic Policy Analysis intends to release before the summer about how the government can deal with breakthrough technologies and how legislation and regulation can respond better to those technological changes.

⁹ See, further, the National Action Plan for Regulated Occupations (Parliamentary documents II 2014/2015, 24 036, no. 409).

initiatives involve risks and operate outside the well-travelled normal routes. The purpose of regulations is to protect public interests and values and to manage or eliminate social risks; sometimes, however, regulations restrict opportunities for innovation and the possibilities for innovative entrepreneurs and citizen initiatives. The challenge is to find a good balance in regulation between giving space and safeguarding the public interests and values such as quality, safety and security. That is why it is important to answer the right questions when preparing regulations: Why are rules needed? Which rules can help to prevent incidents in the future? Which rules can make a positive contribution, taking all of the consequences into consideration? By making too many or excessively restrictive rules, social risks may be limited, but so will opportunities for innovation and possibilities for innovative entrepreneurs and citizen initiatives. At the same time, it is important to ensure that reducing rules does not lead to simply moving the rules to another area or level or to increasing the number of rules elsewhere.

If the decision is taken to create rules, it is important to look into the possibilities and desirability for rules to include room for innovation. It is difficult for the government to determine what future innovations will look like; it can create room in legislation and regulation to be able to respond to any innovations that arise, however. To that end, different instruments are available, such as *goal-based regulation*. Goal-based regulation ensures that regulations include clearly defined goals and addresses the stakeholders impacted by the regulations. The manner of achieving those objectives is left open. Regulation is not going to be more detailed than necessary for the effective safeguarding of the public interests and the responsibility for adequate compliance is left more to the discretion of the company or the professional. If it is possible to anchor the protection of the public interest adequately in this way, then this will be the most efficient way of structuring regulations and some (innovative) possibilities will not be excluded *a priori*. The maximum level of fine particle emissions, for example, can be captured easily in legislation. The safety of a nuclear power station is less suitable for goal-based regulation. Another example is that the State Secretary for Infrastructure and the Environment is planning to formulate the regulations concerning the taxi sector in a more goal-based fashion. On the other hand, goal-based regulation is not desirable if it is difficult to objectify or measure the objectives or if the increased regulatory burden and uncertainty (the degree to which it is certain that an alternative would meet the legal requirements) are not offset by the increase in room to innovate. *Technology-neutral regulation* is an example of goal-based regulation; it ensures that regulations continue to be effective in the face of innovative technologies that become available in the future.

The *Right to Challenge* (RTC), also known as the *equivalence principle*, is another instrument that promotes innovation. That is a type of regulation in which *one* way of achieving the objectives is described and formalised in regulation at the outset. In accordance with the principles of RTC, stakeholders are allowed to implement an equivalent alternative if it results in achieving the stated objective. The principle is being applied, for example, in the Construction Decree 2012. If a construction plan deviates from the standards in place, the permit is granted anyway if the applicant can show that the alternative solution is at least equivalent to the requirements set. In that event, the accepted alternatives are published so that others can also take advantage of them. In that way, room is created for different regimes while retaining security for those who do not want to expend energy in developing an alternative. The latter could be desirable if specific technical or other rules are wanted. When applying this principle, several conditions need to be met: a transparent and comprehensive assessment framework; the alternative must not result in moving the safeguarding of the public interests to another level; and the room that is created for innovation in compliance, product and process innovations, and freedom of choice is commensurate with the regulatory burdens and the technical expertise that companies need to have. On the government side, that means the capacity, expertise and willingness to evaluate equivalence in specific instances.

New revenue models and the level playing field

Current regulations are based on the public interests defined in the past and the risks that the government of the day defined as undesirable. Current regulation is often up to date, but, in some cases, the rise of new players leads to discussion of the degree to which the regulations still adequately and effectively safeguard public interests and the degree to which the playing field is level. For the government, a level playing field means a market in which the same rules apply for comparable parties. One of the conditions in that respect is that regulatory authorities deal with identical situations in identical ways, and that existing rules are enforced. If rules are violated, even when innovative techniques are involved, the level playing field can be disrupted and public interests can be threatened. If that happens, the regulatory authority has to respond to safeguard the level playing field. Safeguarding the level playing field does not mean that the rules can never change and that goal-based regulations, Right to Challenge, and experimental provisions can no longer be developed. If all parties are able to invoke those provisions and if the review framework is clear, then one can say that there is a level playing field and room can be created for modernisation.

In addition, the possibility is created to include experimental provisions in legislation and regulation to be able to deviate from regulations for the purpose of one or more experiments. That makes it possible to respond to new developments. For this purpose, an adequate review framework is necessary for both determining which experiments are being carried out and for assessing when they have been completed, have been extended or made permanently possible. Assessing experiments makes it possible to gain experience with the effective regulation of new developments where there is uncertainty about how they will work in practice. That will lead over the long term to the most appropriate legislation and regulations. There have already been several examples of successful experimental legislation, such as the Crisis and Recovery Act. In addition, the State Secretary for Education, Culture and Science has announced a

'low-regulation schools' experiment in which schools with demonstrably good quality are given room to deviate from regulations with the aim of improving quality or effectiveness. The aim of that experiment is to see whether giving that kind of room leads to innovation.¹⁰ And the Minister of the Interior and Kingdom Relations is working on a "Municipalities Experiments Act" which would allow several specific municipalities to experiment with alternative regulations for a pre-determined period of time.¹¹ Experimental assessments can be used when there is a great deal of uncertainty about the future and the question of whether regulations are necessary and feasible, and if so, which regulations. That means that innovative solutions will not be excluded *a priori*, but they will not be automatically approved either. The question of whether the benefits of applying experimental assessments in legislation and regulation offset the increased risks and the infringements that this can make to *inter alia* the principle of equality is a serious one that should be given due consideration. A deviant legal regime is, by definition, temporary in nature, until implementation proves to be desirable following evaluation.

The government will investigate the three instruments referred to above in more detail, along with the other aforementioned elements for future-oriented legislation and regulation. The House of Representatives will be informed of the progress by letter by the end of the year. In that letter, additional guidance will be provided with respect to cases where those instruments can be applied, the considerations that apply to specific instances, and how those instruments can be implemented. The role of the regulatory authorities will also be discussed. The position of the regulatory authority will partly determine how much space is allowed for innovative services and products. I also want explore how the existing review framework for legislation and regulation, including the Integral Review Framework, the Business Effect Review, the Directive for Regulations, and any model provisions can be applied in this area. The government believes that a broader application of the three instruments referred to can have positive effects on the future-orientation of regulations.

To conclude, defining the room for innovation in legislation and regulation better is essential. Experience teaches that many of the impediments experienced can be removed simply by explaining legislation and regulation better. The commitment that I made (during the General Government-Business Consultations session on business financing and regulatory burdens on 1 April 2015) to give the application of help with regulations an additional push fits within this approach.¹²

3. Conclusion

With this letter, I have met my commitment to review a number of current modernisation issues and to indicate how the government intends to work on the structural improvement of the future-orientation of legislation and regulation. In

¹⁰ Reducing the regulatory burden, Education, Culture and Science, House of Representatives 2014-2015, 29 515, no. 357.

¹¹ Local Democracy Agenda, annex to House of Representatives 2014-2015, 34 000, VII no. 36.

¹² <http://www.parlementairemonitor.nl/9353000/1/j9vvi5epmj1ey0/vjt1f12d86wv>. (Dutch language only)

view of the increasing tempo of innovation, this issue will remain topical for the foreseeable future. Offering room for renewal and innovation will require a different approach in practice. It will need to be an approach that favours future-oriented legislation and regulation by reasoning less from the perspective of risks and vested interests and devotes more attention to the opportunities provided by new technological developments without prejudice to public interests and values. That makes it possible for us to take the lead in providing room for new innovations and allowing us to offer consumers and entrepreneurs the opportunity to profit from new revenue models.

In the further elaboration of these plans, I shall also be looking at embedding these principles in the normal regulatory burden policy. In this way, I want to ensure that, in addition to reducing the direct costs of regulations, the government makes the rules more future oriented in response to a changing economic and social dynamic. In addition, making structural improvements to the future orientation of legislation is also an important part of the legislative quality policy and the policy for an open government and citizen participation.

I am following with interest the "Better Regulation" agenda of European Commissioner Timmermans, which also devotes attention to dealing with innovation-blocking legislation and regulation and the future orientation of regulations in general, including in the area of innovation. Conditions favourable to innovation, including future-oriented legislation and regulation, ensure that the innovative business community, both larger companies and SMEs, continue to set up in the Netherlands and in Europe and are able to develop further. I shall therefore be raising the cases and instruments discussed in this letter at the European level.

(signed) H.G.J. Kamp
Minister of Economic Affairs

Annex

The letter already discussed the changes that have been initiated with respect to the various current modernisation questions. A more detailed discussion of all of the cases and the dilemmas that apply to them with respect to drafting more future-oriented legislation and regulation is set out below.

1. The rise of digital platforms

The taxi market

The new developments in the taxi market are primarily related to apps such as Uber, Taxify, and Yeller. Those apps match the demand for taxi services to the available supply in an easy way, creating the possibility of making service provision more transparent.

The fact that UberPop does not comply with many of the rules in place means that UberPop in particular is encountering difficulties under the current legislation.

As a result of those developments and the evaluation of the Consumer Transport Act 2000, the State Secretary for Infrastructure and the Environment has proposed abolishing or amending some of the requirements in the short term. That would create room for new initiatives and innovations while reducing the administrative burden due to regulations. The proposals include: removing the examination of professional competence from the operating permit requirements; abolishing the requirement for taxi drivers to have a physical copy of the taxi permit in the vehicle; creating the possibility for digital alternatives for the rate card that is required by law to be present in the vehicle; to allow the mandatory trip receipt to be provided digitally; and to replace the obligation of using a taxi meter with the option of having fixed prices for taxi transport, e.g. via an app. Studies are also under way to determine whether, and if so, in what form, the taxi meter and the Taxi On-board Computer are desirable and necessary in the future.

Another study is looking at how the government can stimulate further innovation. In consultation with the provinces and municipalities, a study will start before the summer of 2015 into possible improvements in the taxi and public transport regulations in situations where it is not longer possible to make door-to-door trips profitable using normal public transport options. Room for experimentation is being created specifically for those situations. The results of those kinds of experiments will have predictive value and may contribute to a less regulated market in the future.

Private party home rental to tourists

The introduction of digital platforms such as Airbnb and Wimdu has lowered the threshold for private parties to rent their homes to tourists on a short-term basis substantially. As a result, a significant increase in the supply of tourist accommodation by private parties has been seen, which fits in with the broader trend of the rise of the 'sharing economy'. The increase in private party rentals to tourists via digital platforms offers opportunities for both sellers and tourists. In addition, the greater and more diverse tourism offering increases the

attractiveness of the Netherlands, which could lead to an impulse to the hospitality economy. The government wholeheartedly supports these developments.

Nevertheless, the rise of digital platforms can also lead to problems. Rentals can lead to problems for neighbours. And house owners may object to their properties being sub-let. Problems can arise in particular in the affordable public housing sector because it could cause upward pressure on affordability of rental homes for people with low incomes. Legislation and regulation are not always designed to respond to the situation where private parties are renting their homes to tourists, which can lead to uncertainty about how regulations are to be complied with. That can, in turn, lead to a situation in which professional parties take advantage of that uncertainty and rent residential homes to tourists on a structural basis, thereby evading the regulations that apply to the traditional hotel sector.

These excesses are leading to tensions between the possibilities for innovation and the public interests that require protection, such as safety, security and the position of third parties. Over time, those tensions could prove to be an obstacle to the further development of private party rentals to tourists. It is therefore important to facilitate innovation and to safeguard against excesses. With respect to private-party residential rentals to tourists, the Minister of Housing and the Civil Service and I are investigating how the rise of digital platforms such as Airbnb and Wimdu can be managed best. We will also examine whether legislation and regulations should be amended. Their explorations will include discussions with a number of stakeholders. The House of Representatives will receive more information on this subject by the end of the year.

Comprehensive analysis framework for digital platforms

Digital platforms are developing very quickly and are playing increasingly important parts in society. As the taxi and rental market cases set out above illustrate, those platforms present both opportunities and challenges. The developments associated with digital platforms lead to the question of whether the government's policy instruments are able to keep up with the speed of the digital developments. To answer that question, I have started an examination of the role that the platforms play in the 'internet value web'.¹³ The purpose of that examination is to develop a comprehensive analysis framework for issues related to digital platforms. That should make it possible for the government to utilise the opportunities that are offered by the platforms and to respond better to the potential risks. I expect to be able to inform the House of Representatives about the results before the end of the year.

During my normal consultation with the Authority for Consumers & Markets (ACM), pursuant to my undertaking to Member of Parliament Van Tongeren during the budget debates for the Ministry¹⁴, I called for more attention for the possible

¹³ Parliamentary Documents II 2014/15, 26 643, no. 345.

¹⁴ Proceedings II 2014-2015, meeting number 15

consequences of dominant positions of digital platforms in the sharing economy. The ACM has informed me that it is following the rise of digital platforms closely and that it is devoting attention to potential anti-competition aspects. I am also having the ACM get involved with the study of the rise of digital platforms, which this aspect is also part of. I have learned from the Dutch Association of Insurers that the sharing economy also has their attention. To give individual insurance companies more insight into the risks of the sharing economy, including how those risks can be insured, the Association of Insurers has released a position paper. Increasingly, more policies are coming into being to provide coverage for risks in the sharing economy.

In addition, during the budget debates for the Ministry, a motion from MP Van Tongeren was adopted that called on the government to carry out a labour-market review into the sharing economy, perhaps by asking the Social Economic Council to include it in the study into the circular economy that had already been requested.¹⁵ In response to that motion, I indicated that, pursuant to the Van Ojik motion,¹⁶ the government was going to send a letter to the House discussing the potential impact of new technologies on the labour market. That letter was sent to the House at the end of 2014.¹⁷ I also indicated in response to the Van Tongeren motion, that I would be pleased to leave it to the Social Economic Council to decide whether and, if so, how, they wished to bring this subject into their study of the circular economy which was already in progress. MP Van Tongeren has indicated that he was satisfied with this explanation of the motion. I therefore informed the Social Economic Council of the exchange in this regard between me and the House.

2. The economic potential of data

The IT developments and the Internet are creating a rapidly growing stream of data. That data, often referred to as big data, can be analysed and used increasingly well for new applications, such as better treatment procedures in health care and more efficient logistics processes. One of the issues that this leads to is whether the collection and processing of all that data does not or will not lead to the undesirable distribution of personal data. When new applications arise, the public wants to be able to trust that their privacy is respected and that they will not be discriminated against on the basis of their personal information. The law offers protection in this regard, but is not set up to deal with all forms of data use. That can undermine the trust that the public has and deter companies from taking advantage of the opportunities provided by the innovative use of data. It is the view of the government that it is important that the relationship between protecting personal information and the possibilities for the use of data for the development of innovative, data-driver products and services be made more clear. I have therefore set up a 'Big data and privacy' expert group,¹⁸ with

¹⁵ House of Representatives, Session year 2014-2015, 34000-XIII, no. 39

¹⁶ House of Representatives, Session year 2013-2014, 27406, no. 212

¹⁷ House of Representatives, Session year 2014-2015, 29544, no. 581

¹⁸ Parliamentary Documents, session year 2014-2015, 32761, no. 78.

representatives from science, business and civil society. Proceeding on the basis of a number of cases from the private sector, the expert group will investigate where tensions have arisen with legal boundaries and how that can be turned into practical and applicable knowledge for businesses in the form of things to do and to not do. In doing so, an attempt will be made to anticipate the provisions of the new General Data Protection Regulation, which is currently being negotiated in Brussels. We hope to be able to send the results of the expert group to the House of Representatives before the end of the year.

3. Smart devices

Drones

Over the past several years, drones (unmanned aerial vehicles) have developed rapidly and have become available for an increasingly wide public. Drones can be used for a wide range of applications, giving them great potential for commercial use, such as inspecting crops and wind turbines and for broadcast media. Security services also see great potential in the use of drones. There was a lack of a legal framework that is able to cope with the increasing use of drones, however. The Minister of Security and Justice, the State Secretary for Infrastructure and the Environment, and I therefore sent a letter to the House at the beginning of March concerning the need to develop specific policy with respect to drones, with safety and security, economic opportunities and privacy being key aspects. One of the six principles is that the government wants to facilitate innovative developments for business and knowledge institutions, for example by creating room for test and exercise locations. A more detailed elaboration will follow later this year.

The government's intention is to amend the regulation in such a way in the short term that more room for the professional use of drones will be created. Less complex rules will apply to the use of lighter drones than for heavier drones. Our intention is to bring national regulations in line as much as possible with the process of developing regulations at the European level, which is only expected to result in concrete regulations in 2017. That will create a level playing field for Dutch industry with respect to other European players.

In addition, several different policy reviews are being started, including in the agricultural area, to operationalise the commercial use of drones further. That review will be completed early in 2016.

The self-driving car

By making it possible to have self-driving cars on the public thoroughfares, the Netherlands wants to respond to innovative developments that help to improve the flow of traffic in the short and long term, and help to improve road safety and fuel efficiency. In the distant future, self-driving cars may have an even greater social impact. They may include using travel time differently, improving the quantity and quality of mobility for senior citizens or people with handicaps,

different use of urban space because cars will be able to park themselves, and changes to the mobility system.

In view of the potential of self-driving cars, the government has taken the position of ensuring that the Netherlands is in the forefront with the developments of that sector. That will be done by measures including creating possibilities in legislation and regulation. It has been possible to start large-scale tests since early 2015. The National Traffic Authority is authorised to issue exemptions on a case-by-case basis, making it possible for the government to stay abreast of the technological developments. This procedure has been adopted because there are as yet no assessment criteria or implementing legislation. Over the longer term, additional changes will be necessary in regulations, digital and other infrastructure, driving competence requirements and possibly in the area of liability.

A future-oriented framework for intellectual property rights

Intellectual property rights (IP rights) are very important for businesses in strengthening their competitiveness. Companies are able to benefit from innovation better if they use IP rights. Current technological developments, such as e-commerce and 3D printing, have impacts on traditional production and distribution models, and therefore also on intellectual property aspects. Information is immediately available at all times and places and consumers are keen to use the new and easily accessible new services, both legal and illegal. Those developments can have consequences for the substance, the use and the enforcement of IP rights. For commercial and non-commercial users, it is not always clear whether, and if so, which intellectual property rights may apply to new ways of doing things (e.g. 3D printing). At the same time, it is difficult for an IP-rights holder to identify those who (often without permission) make use of the protected innovations, all the more so because product and service providers in the Internet economy often operate in different markets simultaneously and are minimally bound to physical boundaries, or not at all.

It is not clear as yet whether these developments could lead to impediments for the use of the IP system or whether the current IP regulations are potentially impediments to the further growth of markets where such innovations are very important. The developments in those sectors are moving quickly, however; it is therefore important to consider at an early stage what the consequences for the IP system as a whole could be. By entering into dialogue with relevant stakeholders, I am currently orienting myself with respect to the impact of technological developments and the future-orientation of the current IP system. It is extremely important that the system remains accessible to innovative companies, that it offers legal certainty, is transparent and takes due regard for the balance of social interests. Following this orientation with stakeholders, the results will be shared with them and I shall use them for developing a more precise standpoint.

Medical technology

Innovative medical technologies, such as 3D printing of skull or hip implants, have the potential to improve the quality of care and to reduce health care costs. Prior to being admitted to the European and other markets, the potential risks and the medical benefits of such technologies must be inspected carefully. Care that has not yet been proven effective must also go through a review process in the Netherlands before being eligible for coverage by the health insurance system.

In principle, the Dutch regulations for medical care offer sufficient room for coverage of applications of such new medical technologies. The Dutch regulations specify that a treatment is eligible for coverage if a patient reasonably requires the treatment, if the treatment is one that medical specialists would offer, and if it is up to the current standards of science and practice or, in the event that such conditions are not met, by what is considered responsible and adequate care and services in the applicable professional area. If a given treatment or medical technology satisfies those conditions, the regulations allow for coverage of the treatment under the health care system. The burden of proof with respect to the treatment lies with the innovative provider.

It is important for the patient that responsible and adequate care be sought out carefully at all stages of the treatment. At the same time, it is possible for promising, innovative care to be made available on an accelerated basis by means of the 'conditional permission' instrument.

After receiving the report and recommendations concerning medical aids from Actal (the Dutch Advisory Board on Regulatory Burden), The Minister of Health, Welfare and Sports will investigate whether any unjustified impediments are caused by this process and, if so, to consider how they can be dealt with.

4. Stimulating new revenue models

New retail concepts

Municipalities want to offer space to entrepreneurs who are responding to the need for new retail concepts, including combinations of hotel and catering service, retail trading, culture, and services. Municipalities are encouraging these developments because, in addition to new employment, they also contribute to the diversity and the quality of life of cities in general and inner cities in particular. The possibilities for new combinations may be limited by both local rules and national legal frameworks. Combinations that involve serving alcohol, for example, are limited by the provisions of the Licensing and Catering Act.

In the Retail Agenda¹⁹, the government has indicated that it wants to join with local parties to explore the possibilities that exist for combining functions within the existing legal frameworks, including the Licensing and Catering Act and environmental law. We shall also be joining with local parties to make an

¹⁹ House of Representatives, Session year 2014-2015, 27 838, no. 13

inventory of the impediments that exist for retail trade and hotel and catering service combinations that do not fit within the current frameworks.

During the evaluation of the Licensing and Catering Act in 2016, the government will examine whether it is possible to remove existing obstacles to combining retail and foodservice, including mixed forms where establishments also want to serve alcohol. The interests of public health, public order, and safety and security will be the guiding principles.

Insects as raw materials for animal feed

The use of insects as raw material for animal feed (and for human consumption) offers interesting possibilities for innovation and new revenue possibilities for Dutch entrepreneurs. The high protein content of insects makes them a sustainable new source of proteins.

The use of animal proteins, including insects, in animal feed is currently not permitted due to food safety and animal welfare regulations. That is primarily due to the BSE crisis, in which animal proteins in animal feed proved to create a risk of the development of serious diseases. In addition, the applicable legislation and regulations were drafted before insects were seriously considered as new sources of protein. The risks of using insects in this way are not yet known well enough. Legislation and regulations do not yet appear to be aligned with the increasing wish to use insects as raw materials for animal feed.

It would be necessary to amend European rules if insects were to be permitted to be used in animal feed. The Dutch response in this area is being developed now. The Green Deal Insects for Feed, Food and Pharmaceuticals has been started in anticipation of this development²⁰. In consultation with businesses, a review is underway to determine what future changes in legislation and regulation that would be needed should look like and which legislation and regulations are appropriate for breeding insects.

The European digital internal market

A uniform regulatory framework at the European level is important to enable the scalability of innovations and to give new revenue models a chance of success. An oft-heard complaint of innovating entrepreneurs is that they are faced with different regulatory frameworks that their innovations must comply with. On 6 May 2015, the European Commission presented a digital internal market strategy which is intended to create the optimal conditions for a digital internal European market. Several of those measures are specifically focused on the future-orientation of regulations, such as making them suitable for digital technologies, such as streaming videos.

²⁰

http://www.ondernemendgroen.nl/greendeals/Pages/Green_Deal_Insecten_voor_Feed_Food_en_Farma_97.aspx
(Dutch language only)

Modernising copyright

In 2014, Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use was promulgated. That directive simplified the issue of multi-territorial licences by collective management organisations for online use of music within the European Union. As a result, new innovative online services can also offer musical works across borders. The directive takes effect in April 2016. The legislative proposal for implementing that directive is currently under consideration by the Council of State.

New technological developments do not stop at the border. The Dutch position in Brussels has therefore always been to amend copyright in line with the developments in the digital age. The Netherlands is therefore pleased that, in its digital internal market strategy, the Commission recently announced that it would present proposals for modernising copyright at the end of 2015. The Netherlands has been calling for some time for a more flexible and future-oriented system of exceptions and limitations. In such a system, a good balance must be struck between the justified interests of rights-holders on the one hand, and users on the other hand.

Identical tariffs for physical and digital media

The increasing digitalisation of the economy also offers opportunities for media. Examples include e-books and digital newspapers. The reduced VAT tariff for physical media gives them a cost advantage over digital media that is hard to justify given the nature of the product. The government clarified its position in this matter in a recent letter to the House.²¹ The government is opposed to the distinction in VAT rates that currently applies to physical and digital media. Expanding the possibilities to apply the same VAT rate would require changes to European VAT legislation, however. The government is pleased to see that this subject is already on the EU agenda. In its announcement about the Digital Single Market, the Commission indicated that it would be reviewing the VAT treatments of physical and digital media. The government will continue to insist on amending the VAT directive on this point.

Opportunities for eCommerce

The government supports the position that online access to goods and services throughout Europe should be improved. There are gains to be had in the area of cross-border electronic trade by harmonising some of the rules in the area of consumer protection and contract law and simplifying them. With respect to this area, the government believes that it is important to offer a high degree of consumer protection, without restricting innovation and creating unnecessary burdens for dealers.

²¹ House of Representatives, Session year 2014-2015, 34 002, no. 93

Room for innovations through innovation-oriented purchasing

A complaint that is heard from time to time is that the procurement rules offer insufficient room for purchasing innovations. An evaluation of the Procurement Act 2012 shows that the act does offer sufficient room, but that the room that is available is not always made use of. In fact, it is the purchasing departments themselves that make the judgment of whether to purchase innovative products or services. Several initiatives are in place to encourage them to conduct their procurements in an innovation-oriented way. For example, I am currently running the "Innovation Procurement is Urgent" programme, which offers expertise, instruments and a network to purchasing departments. Purchasing departments can also consult with PIANOo, the centre of expertise for procurement, for information about how to apply innovation-oriented procurement principles. In addition, the new European directive on concession contracts, which must be implemented by Q4 of 2016 in the Public Sector Procurement Act 2012, contains a new procedure for purchasing innovations: the innovation partnership. That procedure makes it possible for a purchasing department that has a new requirement that is not currently available in the market to collaborate with one or more entrepreneurs on developing a new product and to purchase it after the development has been completed. The innovation partnership procedure offers innovative companies more opportunities to develop their ideas and create usable solutions.

The Market and Government Act

The aim of the Market and Government Act is to create equal competitive values between governments and business. The principle of this act is that governments may carry out economic activities, but that they must comply with several rules of conduct such as charging total costs. Governments may make an exception to this principle if the economic activity is being done in the general interest, for example rental of a sports hall or access to a municipal car park. Those are economic activities that a municipality may carry out and the municipality can assign a value to the public interest that is greater than the importance of equal competition values for market parties. In such an event, the government can issue a general public interest decree which grants an exception to the application of the rules of conduct to the economic activity. I am aware that there are indications that governments regularly use this exception. I shall return to this issue in the response to the evaluation of the Market and Government Act which I shall be sending to the House in Q3.

Fixed Book Price Act

Innovations in the book market also raise questions about the fixed book price, which has been in effect in the Netherlands since 1923 and has been part of the Fixed Book Price Act since 2005. In her letter of 6 February 2015, the Minister of Education, Culture and Science (OCW) informed the House about the results of the second evaluation of the Fixed Book Price Act. The evaluation showed that a number of market developments, such as the increase in the digital sale of books and new online services and revenue models are driving the debate about the utility, the necessity and the operation of the Fixed Book Price Act. The rise of e-

books, which are not subject to the fixed book price, is also contributing to this discussion. Between 2009 and 2013, the number of e-books sold rose from 110,000 to 1.7 million. More than 40% of the available titles are also now available as e-books. In her letter of 6 February 2015, the Minister of OCW stated that, given the importance of ensuring a diverse and broad offering of books, she would be continuing the Fixed Book Price Act for the next four years. After two years, the Minister of OCW will inform the House about, *inter alia*, the state of affairs concerning digitalisation and its relationship to the operation of the act. The Fixed Book Price Act will be evaluated again in 2019.

Postal services

There have been significant changes in the behaviour and requirements of users of postal services in recent years. As a result of the rise of electronic alternatives such as email, traditional postal traffic has become less important as a means of communication and the reduction in the demand for postal services has seen postal volumes declining. The structural volume reduction has put pressure on the financial viability of universal postal delivery (UPD), which refers to the obligation to ensure high quality, affordable and accessible basic postal services for citizens and low-volume business users. On 26 May 2015, the Senate passed the bill to modernise the UPD and make it more flexible, including measures to ensure the continued profitable conduct of UPD and thereby also the continuity of a high quality, affordable and accessible basic postal service that meets the current wishes of citizens and low-volume business users. The requirements concerning the post office locations and letterboxes have been modified so that the costs of UPD can be reduced and future rate increases can be kept low. The periodic evaluation of the UPD is also enshrined in legislation. During that periodic evaluation, attention will be given to expectations concerning the future postal volumes and developments and specific measures could be necessary to ensure the continuity of UPD.