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Evaluation of Legislation in the Netherlands : Past Development, Current Trends and Future Challenges*

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〈영문초록〉

This contribution seeks to describe the Dutch system of legislative evaluation and will highlight both the existing practice of ex post evaluation and the experiment with ex ante evaluation. The overall analysis is carried out with one specific objective: to foster the development of legislative evaluation within Korea. The argumentation is structured in four sections. First, attention is drawn to the varying political, administrative and cultural contexts in which the models of evaluation will function. Once the prominent contextual factors are determined, the topic is defined and delineated. Section 2 details the past developments of the system of legislative evaluation in the Netherlands up to the present day. Starting in the mid 1970s, the background, first steps and historical milestones are identified. The section ends with a description of the dominant practice of evaluation of legislation, which boils down to ex post evaluation. In the next section, new developments are presented. Special attention goes out to the current experiment with ex ante evaluation or the Integral Assessment Framework. The article concludes with a summary of recommendations, which provide answers to potential challenges.

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Ⅰ. Introduction

In many western democracies, the instrumental use of legislation has become the dominant steering mechanism to fulfill the wishes and desires of society.[1] Laws regulating housing, education, health care, technological innovation, migration, sustainable growth, security, family life and every other imaginable terrain of society have increased dramatically both in numbers and in complexity since the end of Word War II. The phrase "law is a desire projected into the future" captures this ambition brilliantly.[2] For more than half a century, however, concerns have been raised that such projection might become seriously flawed. Indeed, a growing awareness of the failures of legislation has reached the executive and legislative bodies of most western states.[3] There is ample empirical proof that many laws do not achieve their objectives. Some laws cause adverse side effects. Other laws are inefficient. Multiple laws are not on a par with the exigencies of the rule of law, violating basic guarantees such as the principle of equality. In turn, mechanisms have been developed to cope with these malfunctions.[4] The European Commission and the Organization for Economic Cooperation and Development[5] have been on the forefront of diffusing such mechanisms in Europe, labeling them as better regulation or more recently, smart regulation.[6] At the core of these legislative strategies is evaluation of legislation.[7] It falls apart into impact assessment

1) Aeken 2006, p.68; Tamanaha 2005, p.1.
2) Griffiths 2003, p.13.
3) See, among others: Aubert (1950) 1971; Moore 1973; Griffiths1975; Griffiths 2003; Aeken 2006; Schwitters 2008.
4) Aeken 2009, pp.205~7.
5) OECD 2005.
6) European Commission 2006 & 2010; OECD 2010.
7) Radaelli & Meuwese 2010, p.136.

on the one hand, and impact evaluation on the other hand. Impact assessment corresponds to the ex ante evaluation of legislation, whereas impact evaluation relates to ex post evaluation. Particularly the evaluation of legislation before (ex ante) the law has come into effect receives much attention at the EC and its member states. Yet much activity in the field has taken place outside of the EC sphere of influence. The Netherlands, for example, are traditionally known as a forerunner in the field of evaluation. Long before the EC was promoting better regulation, the Dutch had taken significant steps towards the increasing of the quality of legislation. As early as 1975, the Dutch lawmaker demanded the first systematic evaluation of legislation.[8)]

This article describes and analyzes the Dutch situation with regard to legislative evaluation. The final objective is to draw lessons for the Korean context. Clearly, the Netherlands are not Korea. We are well aware of the fact that a mere transplant of a legal system – and likewise, an evaluation policy – to another nation is bound to fail.[9)] Whereas the OECD better regulation strategies do adhere but little significance to differences in political, cultural and economic differences, we will first tentatively list a number of conditions which might obstruct or advance the implementation of evaluation of legislation in the law making processes (1.1). Once we have done so, we will delineate and define the topic of legislative evaluation (1.2). In the second section, we summarize the past developments which have lead to the current situation of evaluation of legislation in the Netherlands. Section 3 highlights key novelties. Section 4 concludes with a review of indications and recommendations that are considered best practices in the field of legislative evaluation research. They answer many of the practical questions and challenges that pop up when developing an evaluation policy.

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8) Winter, Scheltema & Herweijer 1990, p.10.

9) For an introduction into legal traditions, see Glen 2007.

1. Administrative and political context

Notwithstanding the minimal attention that is being paid to the contextual setting of evaluation strategies,[10] recent professional experiences in China, Korea and Turkey[11] have made clear that the concept of evaluation is intrinsically based upon a set of latent presumptions. More specifically, better regulation and associated strategies have been formulated in nations with a typical signature: Anglo-Saxon, representative democracies with a majoritarian government or presidential system, a large degree of governmental decentralization and an administration that is geared towards the public interest, with a strong justification culture and openness towards New Public Management.[12] It should come as no surprise that the first steps into the world of evaluation in Europe were inspired by US examples of program evaluation.[13]

I will confine the description of context to four factors deemed essential: the model of the administration; the level of decentralization of government the openness of the administration; the legal and judicial framework. From the viewpoint of the organization of the administration, two opposite models

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10) Noteworthy exceptions are Radaelli 2010; Pollitt & Bouckaert 2004: 41.

11) Discussions with participants at a number of international workshops in 2010 and 2011 made clear how divergent the institutional, historical and cultural conditions are with regard to the implementation of instruments of better regulation such as legislative evaluation and stakeholder consultation. These un-related workshops took place in Xi'An, China (*International workshop on ex post legislation evaluation*, NPC/ Shanxi Province/UNDP); The Hague, the Netherlands (*Consultation of stakeholdersin the Law Drafting Cycle*, EALL); Seoul, Korea (*Application and Development of Legislative Evaluation*, LERC) and Istanbul, Turkey (*Effective Participation of NGOs to the Legislative Process and Consultation: Searching for a Model*, Grand National Assembly/ EALL).

12) See, for a comprehensive discussion of New Public Management: Lane 2000.

13) One of the leading handbooks with regard to evaluation of governmental interventions specifically focuses on programs. See Rossi; Lipsey & Freeman 2004.

can be distinguished.[14] The German public administration corresponds strictly to the Rechtsstaat-model. The Anglo-Saxon administrations follow the Public Interest model. In a Rechtsstaat model, even minor changes in legislation or procedures require formal change in legal provisions. Its workings are all laid down in law as formal procedures. Civil servants are trained in law. Evaluation is certainly not a natural task of the administration. Conversely, the public interest model is typical for a performance and economics-oriented regulatory management. Civil servants have different backgrounds. The neo-liberal approach to public management (New Public Management) is very strong. Evaluation is a natural task of the administration, since its actions all have to be justified. This culture of justification relates to the general distrust of a government too powerful that is present in many of the Anglo-Saxon nations.

A second feature is the level of the centralization of government.[15] A highly centralized government has difficulties in adding evaluation to their tasks, since central government is more involved in delivery of detailed, service-specific output and less strategically concerned with policy impact. Indeed, decentralized governments have an advantage here, since they can leave the daily administration of regional entities to the local and regional governments, and occupy themselves with more strategic questions, such as the designing and evaluation of policy and legislation.

A third factor relates to the fact whether the administration has an open or closed nature.[16] Open bureaucracies, with a substantial culture of debate, a strong sense of accountability, informal ties and bottom-up responsibilities and a large autonomy, encourage the implementation of evaluation of legislation. Closed administrations, characterized by strong hierarchy, low sense of accountability and so on, are less welcoming to evaluative policies.

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14) Radaelli 2010, pp.25-29.
15) Radaelli 2010, pp.29-30.
16) Radaelli 2010, pp.31-35.

A last set of elements concerns the legal, judicial and legislative framework. This comprehensive set includes topics that range from the possibility of judicial review of legislation and support from the judiciary over the existence of legal provisions allowing for evaluation to the organization of the legislative process and the legal stipulations regarding the forms and procedures.

This summary is not exhaustive. It is plausible that, for instance, Confucian law as it was valid in the Yi-Dynasty[17] or specific aspects of globalization might exert some kind of influence on potential evaluation procedures, just as the level of economic growth or particular aspects of Korean culture. What follows from the wide contextual variety is that no universal evaluation model can be put forward. Rather, we suggest the 'tailoring' of evaluations and evaluation policy towards the context, needs and aspirations of individual governments and administrations.

2. Defining evaluation of legislation

Before we engage in defining evaluation of legislation, we need to delineate it from other forms of evaluation and in particular evaluation of policy. Insofar as legislation is a policy instrument, it is arguable that evaluation of legislation does not differ from evaluation of policy. Yet legislation is more than a mere vehicle to carry policy measures. The law protects values and morality. Under the rule of law it upholds basic rights and freedoms such as equality, freedom and predictability. Evaluation of legislation should thus address both the instrumental function (effectiveness) and the protective function (rule of law) of the law.[18] Arguably, evaluation of legislation is thus broader than evaluation of policy – evaluation with a judicial plus, some say.[19] This is proven by

17) KIM 2010, pp.4~7.

18) Winter 1996, p.34.

19) Winter & Klein Haarhuis 2007, p.621.

the fact that much attention in legislative evaluation goes out recently to the validity of the underlying policy theory of legislation.[20] Conversely, some argue that policy evaluation is the most encompassing of the two, since the former concerns equally non-legal instruments such as human resource restructuring, media campaigns and financial planning. Indeed, the policy maker possesses more instruments than just the law to achieve its goals. Whereas the definite answer remains unclear, we conclude by recommending that there should be a strong connection between policy and legislative evaluations[21] since legal instrumentalism is the dominant paradigm for the contemporary lawmaker.

We define evaluation of legislation as the systematic appraisal of features of legislation following an investigation that meets the minimal standards for scientific and legal research.[22] This approach covers as well *ex ante as ex post* evaluations. Both social-scientific and juridical methods can be used. The frame of reference of an evaluation consists of criteria which include effectiveness, implementation, legitimacy, coherence and more. Evaluation should not be reduced to a merely intuitive appraisal, nor to a purely political deregulation activity and neither to a purely legal or social-scientific consideration. Finally, evaluation should not be abridged to "cutting red tape", which refers to simplification of legislation and reduction of administrative burdens. The Standard Cost Model is a well-known application thereof. Such reduction to simplifying efforts and reducing administrative costs is a common threat to emerging evaluation cultures. Indeed, cutting red tape is much more preferable from a political stance since it provokes direct and popular effects. Moreover, cutting red tape and analogue forms such as the SCM allow for

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20) See the suggested ways to evaluate validity of program theory in Leeuw 2003.

21) On the relationship between law and policy in common law countries, see Miller & Barns 2004.

22) Adapted from the seminal definition in Aeken 2002, p.99.

a much easier integration into heavily formalized Rechtsstaat bureaucracies, since these do not interfere with actual lawmaking.

Ⅱ. Past developments leading to the current situation of evaluation of legislation in the Netherlands

1. Historical background

Elsewhere, we have argued extensively that the basic rationale for undertaking evaluations of legislation is the advent of a all-encompassing legal instrumentalism.[23] From 1860 on, the idea of "laissez-faire" has been traded in for a more active role of the state. The number of laws started to grow steadily. This steady growth accelerated from World War II on, on a par with the development of the welfare state. The horizontal and vertical expansion of governmental intervention – referring respectively to the increasing numbers of regulated domains and the intensity of regulation – has caused a tsunami of legislation. With the increasingly numerous laws emerged grave concerns regarding ineffectiveness, over regulation, complexity, and a democratic deficit. From the 1970s onwards, the crisis of the welfare state propelled the expression of budgetary concerns.

Existing mechanisms to safeguard the quality of legislation and to comment on faulty laws gradually did not suffice anymore. In the Netherlands, judges had always been capable of commenting on malfunctioning laws. The Court of Audit could investigate legality and economic performance. Legislative failures could be addressed by parliamentary questions. By the mid 1970s, the sheer number of laws and the increasing concerns had outgrown the control

23) Aeken 2002, pp.79-84 Aeken 2006, p.82.

mechanisms that were on hand. Slowly, the need for a new control system was recognized. Evaluation of legislation came into focus.

2. The first steps

The first law ever to be evaluated in the Netherlands was the Law on University Reform[24] (Wet Universitaire Bestuurshervorming) (1970). This law aimed at introducing a framework for participation of students and non-academic as well as scholarly staff in the universities' decision making. The evaluation was initiated by an evaluation clause, inscribed in the law itself (art. 56). The report was published in 1979 and obviously concerned an ex post evaluation. It was carried out by a commission composed of independent scholars. From the evaluation derived many insights which had an impact on the subsequent structuring of participation in universities up to the present day. In this sense, the results of an ex post evaluation directly fed the ex ante assessments of future legislation. The law to be evaluated next was the Law on Extended Access Rights to Governmental Information[25] (Wet Openbaarheid van Bestuur) from 1980. Again, the evaluation resulted from an evaluation clause.[26] Published in 1987, the evaluation put forward not less than 39 viewpoints and recommendations. Some of these inspired the proposition on a new law on extended access rights, once more closing the gap between ex post and ex ante evaluations. The Evaluation of the Law on General Provisions on Environmental Permits[27] (Wet Algemene Bepalingen Milieuhygiëne) was another seminal evaluation. As became customary, a periodic review was

24) Andriessen e.a. 1987, pp.74~76.

25) Winter 1996, pp.139~188.

26) "The Minister-President sends three years after implementation and consequently thereafter every five years, a report on the way the law is applied to Parliament." (art. 5)

27) Winter, Scheltema & Herweijer 1990, pp.137~150.

installed by means of an evaluation clause inscribed in the law, starting with an initial evaluation of the implementation after three years, to be followed by a profound evaluation every five years.

3. Further milestones which have shaped the current evaluation practice

To fully grasp the essence of the present evaluation practice in the Netherlands, a review of past milestones is presented. Soon after the first *ex post* evaluations became standard practice (see 2.2), the Geelhoed Commissie issued an influential report[28] (1984). Drawn from a neoliberal stance, the Commission advised on restricting state budgets and deregulating the economy, removing barriers for a free market. Corporatist elements of the Dutch administrative and legal culture were said to bear major responsibility for the complex and overbearing regulatory structure. The existing directives on legislation wereexpanded to a wide range of quality issues, not only limited to technical law-drafting.

In 1990, the governmental Commission Deetman deployed arguments for a systematic evaluation of every law, as the closing element in the legislative cycle. This cycle was said to contain four elements: preparation, parliamentary proceedings, implementation and evaluation.

Further attention for evaluation was laid down in the governmental report "Zicht op Wetgeving" (A View on Legislation) in 1991. It proposed a general framework to guide the development of new regulations and attributed an instrumental role to regular and systematic evaluation of legislation.[29] In addition, the existing directives on legislation were further revised.

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28) See the full report at Geelhoed 1984.

29) Voermans 2003, p.39.

Special attention was asked for the ex ante evaluation in 1992, when new instructions for legislation were issued.

With the launch of the Deregulation, Legislation and the Free Market-program (1994), the importance of freeing the market from barriers imposed by legislation was highlighted once more. Besides cutting red tape and deregulating, a general outlook on the quality of legislation was deemed necessary.

In 2003, attention was asked for a dimension of legislation which was previously often neglected: the implementation and enforcement of legislation. By introducing mandatory assessments in the governmental law drafting departments of the expected enforceability and implementation challenges of new laws, the government attempted to institutionalize a general awareness of these important aspects of legislation.

In the meantime, the number of ex post evaluations kept on increasing.[30] Whereas in the 1980s, an average of 40 legislative evaluations was conducted yearly, this number had increased in the 1990s to 140. Between 2000 and 2007, an estimated 750 evaluations took place this number, however, takes all kinds of evaluations into account, including policy evaluations.

The most recent milestone is the 2008 governmental report "Vertrouwen in Wetgeving" (Trust in Legislation). While comprehensively concerned with legislation, we pick two elements that we deem essential in this review: the installment of a "Clearing House of Legislative Evaluation" on the one hand, and the introduction of the "Integraal Afwegings Kader (IAK)" (Integral Assessment Framework). The Clearing House deals with ex post evaluations, while the IAK features an extensive ICT-based model of ex ante evaluation. Both novelties will be detailed in section 3.

30) Winter & Klein Haarhuis 2007, pp.620~623.

4. The current evaluation practice

The historical developments sketched above have crafted the shape and appearance of evaluation of legislation in the Netherlands at present. Two findings are particularly striking: the dominance of ex post evaluation over ex ante evaluation and the large number of ex post evaluations. Indeed, by adding periodic evaluation clauses to new legislation, the ever increasing number of laws produces a constant stream of five-yearly evaluations. This flood of legislative evaluations has caused concern that the quality of research is subpar, overview is lacking and coherence is non-existent.[31] The Government recently has acknowledged these problems, and has responded in the 2008 report Trust in Legislation (see section 3).

Despite these challenges, the Dutch system of legislative evaluation deserves a closer look, for this model allows for an in-depth ex post evaluation of legislation. In the following paragraphs we will accordingly describe the main features of the system of ex post evaluation in the Netherlands. In section 3, we will then focus on the novel system of ex ante assessments.

The following description of the nature and results of evaluations is based upon an empirical investigation of 127ex post valuations completed between 1998 and 2005.[32] As such, it offers a unique insight into the heart of ex post legislative evaluation studies. A first feature is the organization of evaluations. These are almost invariably set up by the ministry responsible for the law at stake. There is no uniform policy; some ministries have set procedures for outsourcing research activities to research institutes or university departments. These policies occur most frequently in 'policy-rich' ministries such as Health Welfare & Sport (VWS), Justice, Transport, Public Works and Water Management

31) Klein Haarhuis & Niemeijer 2008, p.34.

32) Klein Haarhuis & Niemeijer 2008, p.13, pp.45~54.

(V&W) and Housing, Spatial Planning &the Environment (VROM). Outsourcing to research bureaus or universities has become common practice in all departments; a mere 15% of evaluations is carried out in-house. Furthermore, all of the ministries rely extensively on external steering committees staffed with external experts. This occurs both in in-house and outsourced evaluation projects. Many evaluation clauses even spell out the procedures on project organization, staff and even remuneration.

Second, the frame of reference of evaluations bears great similarity to the principles of good legislation. This is not only true in the Dutch context, but is the case as well in the upcoming manual for ex post legislative evaluation in Dutch-speaking Belgium[33] (Belgium) or the European incentives. This connection is important from a legal point of view: it allows for the criteria to be upheld in drafting and evaluating legislation to become legally enforceable.[34] In particular, one or more of the following criteria are investigated in evaluations:

- Necessity
- Proportionality
- Effectiveness
- Efficiency
- Enforceable
- Rule of law (legitimate)
- Clarity and Accessibility
- Coherence
- Consulted and evidenced-based
- Up to date

33) Aeken; Peuter; Dooren & Hubeau 2011.

34) Popelier 1997.

In reality, however, the list of criteria that is actually applied is much more confined. The majority of evaluations concerns goal attainment: has the objective of the law been reached, disregarding the fact that this was due to that particular law? Effectiveness research in the strict sense – in which a causal connection between law and effects is established – occurs rarely.[35] Disappointingly, the methodological quality of the studied evaluations is subpar. Around 50% do not meet scientific standards. Implementation and enforcement issues feature very often in evaluations. Somewhat surprisingly, in more than half of the evaluations studied, there was a complete absence of any form of legal analysis. Insofar as there was any such legal analysis, this almost always concerned 'external consistency': the extent to which a law coincided with adjacent legislation and regulations, at national and international levels.

A third feature is the time that has lapsed between adoption and evaluation. Around 2000, this was five years on average. Around 2005, it looks as if this period has become shorter, being limited to a mere three years and eight months. Allowing sufficient time for the law to 'penetrate society'is an important prerequisite: The time that lapses between the adoption and evaluation of a law explains the degree of effectiveness to a substantial extent. Those evaluations which report a significant level of objective attainment were undertaken after a period of about seven years and eight months on average had elapsed, whereas the legislative evaluations finding limited objective attainment took place on average after just two years and four months.[36]

Apart from the evaluation commission installed for each particular evaluation, many actors are involved in evaluation. The National Court of Audit, various ministerial departments, multiple units and agencies, inspectorates and sometimes Parliament are actively involved. This necessitates coordination.

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35) For an in-depth analysis of the difference between goal attainment and effectiveness, see Mader 1985.

36) Klein Haarhuis & Niemeijer 2008, p.84.

Lastly, it is interesting to note what happens as a result of the evaluations. Ministerial staff and parliament are informed about the results. There is generally a considerable change in opinion among legal staff primarily responsible for the law and a moderate change of opinion among ministers and policy staff. A fundamental reconsideration of the philosophy on goals of the laws is rather rare. However, the evaluations do not leave the law untouched. They often lead to many changes in the instruments and implementation. In rare instances, the results have been an inspiration for legislative change.

Ⅲ. New developments

With the advent of the new millennium, a renewed interest in evaluation was born. This attention was brought along by various reasons. For starters, the increasing division between policy development by the administration and policy execution by relatively independent agencies demands more control and evaluation from the central government. In addition, rational, output-oriented governance and New Public Management are heavily promoted by the OECD and the European Commission. Next, there exists an increasing demand for accountability and transparency of government, provoked especially by the new pressure on public budgets due to the 2008 financial crisis. Finally, the ever increasing number of laws (+ 2 % yearly) demands caution, often so with regard to their impact on global economic competition.

In 2008, a key document was issued by the Government, labeled "Trust in Legislation. Integral Legislative Policy."[37] From this report derived two novelties. First, a "clearing house" for ex post legislative evaluation was

37) Vertrouwen in Wetgeving 2008.

established. This can be seen as an answer to the problem of a lack of overview and the never-ending stream of evaluations. Second, it introduced the Integral Balancing Framework (IAK), the Dutch answer to the ubiquitous Impact Assessment or ex ante evaluation. The repeated recognition of the importance of ex ante evaluations is significant indeed, for the restriction to ex post evaluation amounts to 'mopping the floor with the water running'. We will first discuss the essentials of the Clearing House. Subsequently, an overview is presented of the nuts and bolts of the IAK.

The mission statement of the clearing House on Legislative Evaluations could be summarized by means of the following objectives: it aims at a systematic analysis of the results of evaluation studies in order to get a grip on the numerous evaluations; it wishes to gain insight in the mechanisms that underpin effective laws in order to enhance and inspire future lawmaking; it endeavors the coordination of evaluation efforts and finally, it serves to diffuse knowledge concerning ex post evaluations. The rationale behind the Clearing House is splendid from a social-scientific point of view. The otherwise feared tsnunami of ex post evaluations can now be exploited to distill recurring characteristics of laws which indicate large compliance and overall effectiveness. In the future, the lawmaker might thus refer to a catalogue of useful legislative instruments which might enhance the success of concept laws. Of course, such experiment has a highly theoretical nature. In practice, it is not sure whether such general mechanisms will be discovered. This might explain the limited size of the Clearing House: at present the staff equals a mere 2.5 full time positions.[38)]

The IAK or Integral Assessment Framework is much more ambitious.[39)] Put

38) For a discussion of the mission statement of the Clearing House Wetsevaluatie: Veerman & Mulder 2010.

39) The following discussion of this topic is based on the governmental document Integraal Wetgevingsbeleid 2009.

into experimental use in 2010, it will receive a final evaluation in 2011, from which the decision will be derived whether to implement the system throughout the entire Dutch public administration. As for now, each ministry sees to the experimental application of two legislative or policy projects. At the time of writing, it was informally confirmed that green light is expected for a structural application. The IAK is conceived as an ICT-tool which will assist the legislative drafter throughout the full process of developing and justifying legislation and policy. A demo-version – in the public domain but only in Dutch - can be consulted on http://afweging.kc-wetgeving.nl/.

With the IAK, the Netherlands have formulated a potentially powerful alternative to the traditional system of Impact Assessment (IA). Some even label it "impact assessment plus or "IA+". IA is now promoted widely throughout Europe, especially by the EC and the OECD. But whereas IA is generally the abbreviation of *Regulatory* Impact Assessment, IAK expands the scope to the drafting of policy as well as legislation. In other words, IAK does not differentiate between impact analysis of policy or legislation. The development of legislation or policy follows a path of logical steps, which is roughly sketched in table 1. Only the first and second layer of topics and questions is displayed here, with the exception of 'instruments', where we opted to display also the third level, and for the first entry also the fourth level. The actual application counts up to six levels, with very specific questions posed at the deepest level.

Table 1. The procedural logic of IAK

Problem analysis

- What are the motives or causes?
- Who is involved
- Which are the problems?
- What are the objectives?
- Does the problems require an intervention by the government?

Selection of instruments

- Instruments:
  - *Support and knowledge*
    Governmental negotiations
    Taskforce
    Experiment
  - *Financial steering*
  - *Social steering*
  - *Self regulation*
  - *Steering of implementation (the only option for introducing actual legislation)*
  - *Division of tasks on local and provincial levels*
  - *Compliance and enforcement*
- Legitimacy
- Feasibility
- Efficiency

Assessment of effects

- Effects
- Citizens
- Companies
- Government
- Environment
- Evaluation

Other

- Reporting
- Amendments

IAK thus follows the structure that is common in Regulatory Impact Assessment: it departs from the problem formulation and identification of stakeholders and target groups; next, one or more interventions are proposed; accordingly, their effects are estimated. This should guarantee a balanced assessment of impacts of concept policy measures and legislation. By not differentiating between law and policy from the start, legislative drafters are involved sooner in the policymaking process, which should prevent the use of the format of a law too often. Accordingly, this should reduce the current regulatory pressure.[40] The IAK combines 110 existing assessments, manuals, tests, guidelines and directives which are more or less mandatory in the designing of regulation and policy. Another interesting feature is the ability to work together with a multitude of other legislative actors, civil servants, legislative drafters, policy designers and so on in one legislative or policy development project. Once a project file opened, it can be accessed by all whom have a professional interest in the topic. In this way, cooperation in and between various ministries, departments, agencies and other institutions is enhanced. All in all, IAK promises to be a valuable way of ex ante evaluation, in that it secures the best practices for evaluation in a cutting edge ICT-environment. These best practices – extended to both ex ante and ex post evaluations - are summed up in the following section.

IV. Challenges and Indications

Which insights can now be derived from the foregoing analysis and applied to the Korean context? Some preliminary notes are at place here. The views proposed in this section are predominantly but not exclusively based upon the Dutch experiences. Some of the indications are derived from recent work

40) For a discussion on regulatory pressure, see Van Gestel & Hertogh 2006.

on the manual for ex post evaluation of legislation[41] in addition, they contain standards which have been emerged as best practices in the international literature on the topic. We wish to stress that the proposed system of evaluation is more or less designed in a specific political, administrative and judicial environment (see section 1). As such, some elements might not be applicable in the Korean situation due to the cultural, political, administrative, judicial and other differences. Conversely, the lessons learnt do not exclusively touch upon Korea, but can be adapted to any foreign administration. Finally, the best practices are presented as short statements. For the underlying meaning and context, we refer to the previous sections. For further reading, we refer to the bibliography.

1. Aspire an integral evaluation.

Ex ante assessments and ex post evaluations complement each other.

Both social-scientific and judicial approaches are necessary.

Evaluation not only seeks to strengthen rational lawmaking but also contributes to legitimacy and democracy.

Involve government and civil society.

2. Evaluation is a core element of regulatory management.

Consider ex post evaluation as part of an upcoming ex ante evaluation.

Combine various instruments: evaluation, monitoring, reduction of administrative burdens, simplification, legislative agendas, consultation of stakeholders.

The Standard Cost Model is only one instrument among many other tools of better regulation. It can never replace the strategically im- portant legislative evaluations.

41) See again Aeken Peuter; Dooren & Hubeau 2011.

3. Coordinate the efforts of the various involved actors.

Audit/financial control Parliament/General Assembly Public adminstration and agencies, incl. enforcement agencies Courts Statistical Bureau of the State, Planning Agencies, …

4. Build an evaluation policy as a first step to institutionalization.

Develop an evaluation policy. Doing so strengthens the legal framework, secures budgets and political support, fosters training and diffusion of knowledge, and increases the quality of evaluations by introducing minimum methodological standards.

5. Elaborate and preserve good relationships between all parties involved.

Principal executive and governmental bodies

Evaluators and project teams

Stakeholders, target groups, civil society, corporate actors.

6. Adapt the scope and depth of evaluations.

Lightly when possible, heavy when necessary.

Use a proportional approach: the larger the problem/impact/cost/target groups… the more profound the evaluation has to be.

7. Safeguard the methodological quality of evaluations.

Select the evaluating instances with great care. Strive for a politically independent and interdisciplinarity, knowledgeable research team.

Adhere to the standards used in social-scientific research, e.g.: Formulate the problem precisely; develop a research design before collecting data; use a mix of quantitative and qualitative methods…

Introduce legislative evaluation in the curriculum of Law Schools

Create a platform to diffuse knowledge about evaluation.

Develop indicators that allow to monitor the variables that the law seeks to affect (like, monthly youth unemployment figures).

8. See to good timing.

- *Ex ante*

As soon as possible, long before the law has taken its final shape, so there is still time to reconsider the policy objectives and the instruments.

At a later stage, when implementation characteristics are known and enforcement agencies can be consulted.

- *Ex post*

Wait five to seven years before evaluating ex post. 2 or 3 years do not suffice if you want to study the effects. The time that lapses between the adoption and evaluation of a law explains the degree of effectiveness to a substantial extent. Laws need time to reach "cruise speed".

Implementation processes can be studied from day 1 after the law has come into effect.

9. Mirroring

Develop a stepwise plan for the ex post evaluation of legislation that mirrors the process for ex ante evaluation. In other words, ex post evaluation should commence where ex ante assessments start. In this sense, ex post evaluation should start with the studying of the implementation characteristics and end with the revision of the problem formulation. Ineffectiveness is often caused by deficient implementation, so this defect is addressed firstly. In addition, mirroring allows for a uniform approach to evaluation ex post and ex ante, which will subsequently increase their coherence.

10. Develop evaluation manuals and codes.

Aim at an online manual, which allows for addition of examples, new insights, alterations, but also facilitates its use by the legislative drafter and policy designer.

Uniform standards improve the quality of the resulting evaluations.

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〈국문초록〉

네덜란드의 입법평가 : 과거의 발전, 현재의 동향 및 미래에의 도전과제

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본 논문은 네덜란드의 입법평가 제도를, 특히 사후평가의 방식과 사전평가에 대한 실증사례에 초점을 맞추어 소개하는 것을 목적으로 한다. 이러한 전체적 분석은 한국 내에서 입법평가의 발전을 지원하기 위한 목적으로 수행되었다. 논문은 크게 네 부분으로 구성된다. 첫 번째 부분에서는 평가모델이 적용되는 다양한 정치적, 행정적, 문화적 상황에 대해 살펴본다. 일단 주요한 상황 요소가 결정되고 나면, 주제에 대한 정의가 이루어지고 방향이 설정될 것이다. 두 번째 부분에서는 네덜란드의 입법평가 제도의 과거부터 현재까지의 발전 경과를 살펴본다. 1970년대 중반부터 도입된 입법평가제도의 도입 배경, 초기 단계 및 성과 등을 역사적으로 분석하고, 사후평가에 해당하는 입법평가의 실제에 관해 함께 살펴볼 것이다. 세 번째 부분에서는 입법평가의 새로운 발전방향에 관하여 사전평가 또는 필수평가체계(Integral Assessment Framework)의 적용사례를 중심으로 고찰해본다. 마지막으로 본 논문은 입법평가의 장래의 도전과제에 대한 해답을 제공하는 몇가지 제언을 함으로써 끝을 맺고자 한다.