

Summary

Legislation and reality. Findings from legislative evaluations

Background and objective

Policy receives its legal formulation in laws. There are almost 1,800 laws in effect in the Netherlands. Laws are designed to steer the conduct of actors in society, such as citizens, businesses and government organisations, in a particular desired direction. This is possible through the use of interventions such as communication and persuasion, financial incentives such as grants and subsidies, or the threat of sanctions. Laws accordingly contain interventions designed to direct behaviour. A second important function of legislation is to provide safeguards: this might include the protection of handicapped workers, or safeguarding the proportionate consideration of interests by local government bodies.

The fact that a law has come into operation does not, of course, mean that it also actually works. The law itself does nothing, after all, but must be 'acted upon' in society by citizens, institutions and businesses. If a law is to be effective, therefore, a number of conditions must be fulfilled. Just consider the amount of knowledge that has to be passed on, and the application of resources and manpower required for implementation. The effect of legislation upon society is a complex and time-consuming process. A law only works if those whom it is designed to affect know about it, want to use it and are also in a position to do so.

The interventions contained in a law are not chosen on a whim, but are based on a (more or less explicit) justification by the legislator as to how the implementing bodies, citizens and businesses will respond to them. The legislator accordingly contemplates that the interventions will set specific processes in train. We call these processes 'mechanisms'. Many interventions are thus founded on the assumption that, when choosing between different potential courses of conduct, people will make a cost-benefit analysis. This, for example, is why the legislator expects that the imposition of sanctions and levies will deter undesirable conduct and that subsidies will promote desirable conduct. Another mechanism is that the legislator / policy makers can 'reach' citizens and businesses more effectively if municipal authorities have a supervisory role in the implementation of the policy. Whether or not the intended mechanisms are actually activated depends on the *context* in which the interventions 'hit home'. By 'context', we mean all of the environmental factors surrounding a law that might influence the progress of procedures and the achievement of objectives. Thus we could imagine that major businesses with a large annual turnover and fixed long-term plans would react less strongly to a small innovation grant or a minor administrative penalty than businesses of a more limited size.

In recent decades, greater attention has been devoted to the efficiency and suitability of laws. Many laws nowadays contain an evaluation provision,

for example. Greater attention has also been paid to the judicial quality of legislation. This tendency towards learning and being answerable has resulted in a veritable flood of legislative evaluations. These have generated a great deal of knowledge. At the same time, however, there is a threat of information overload and a lack of overview. One of the possibilities for countering this phenomenon is to undertake *synthesis* research. Synthesis involves the systematic investigation of findings from policy or academic research based on pre-specified criteria. By assembling the contents of legislative evaluations, we can rationalise the knowledge previously amassed and also answer *new knowledge issues* (with a universal application).

This report contains an account of a synthesis investigation into legislative evaluations. We have not confined ourselves simply to efficacy here, but have also investigated the 'how'. We focused, on the one hand, on mechanisms that have to be 'activated' by laws and, on the other hand, to the *contextual* conditions in which this happens or does not happen. We have also charted some legal aspects of the evaluative investigations, such as the extent to which a law is compatible with other laws and regulations (external consistency).

Formulation of the problem

This is the formulation of the problem for the present synthesis: *What do the evaluations of Dutch laws which were completed between 1998 and 2005 teach us, in a formal sense, about the nature and results of legislative evaluations, and what do they teach us about the nature and results of laws?*

This formulation of the problem is answered on the basis of the following sub-questions.

- How have Dutch ministries set up the evaluation of legislation?
- What is the situation with the *methodological quality* of the legislative evaluations?
- How can we classify those laws that have been evaluated in terms of the nature of the interventions?
- What expectations can we formulate regarding the effectiveness of legislation?
- What do the evaluation reports teach us about how laws achieve their objectives and about the processes activated along with statutory interventions?
- Which contextual factors have had an influence on the mechanisms and objective attainment of legislation?

Laws generally contain not just one but several interventions. We aim to gain an understanding of (a) the types of statutory intervention and (b) the mechanisms that have to be activated with these interventions. The same types of interventions – such as deregulation, subsidies or

penalties – are often used in several laws and across entire policy areas. Not only the interventions but also the processes (*mechanisms*) they are designed to activate will be comparable. The current question is how far the same intended mechanisms recur across laws and policy areas, how far these actually manifest themselves in practice and under which *contextual* conditions this happens or does not happen.

Approach

Taking stock: legislative evaluations and the 'legislative evaluation function'

A total of 127 legislative evaluations were collected on the basis of interviews with key informants in the ministries and also partly on the basis of a national data base of evaluation titles. The key informants were also asked questions on the form that the evaluation of legislation took within their own ministries and how these were dealt with in practice (the 'evaluation function').

Limitations

Only complete *ex post* (final) evaluations of entire laws completed in the period between 1998 and 2005 were included in this synthesis. Interim and other types of (partial) evaluations were disregarded. Scanning through the 127 titles using this criterion ultimately provided us with 75 usable reports.

Selection based on quality of methodology

In order to be included in this synthesis, the legislative evaluations had to meet minimum methodological requirements of validity and reliability. We finally found 59 of the 75 reports which were of sufficient methodological quality for further synthesis. This amounts to 46% of the 127 original titles.

Synthesis

We mapped out not only the attainment of objectives but also the processes (mechanisms) that occurred between intervention and objective in those of the legislative evaluations that appeared to be sufficiently valid and reliable. The mechanisms envisaged by the law were thus confronted with the processes perceived in practice. We also looked into whether there were contextual factors that had exercised an influence on actual events.

The legislative evaluation function

How have Dutch ministries set up the evaluation of legislation? In some ministries, the evaluation of legislation is formulated in terms of set procedures for outsourcing the work to a (semi-autonomous) research institute or a university department. These policies occur most frequently

in 'policy-rich' ministries such as Health Welfare & Sport (VWS), Justice, Transport, Public Works and Water Management (V&W) and Housing, Spatial Planning & the Environment (VROM). The average period between a law coming into effect and its evaluation (between 1998 and 2005) was four years and six months. Some of our contacts commented that 'evaluations have to be done ever more quickly'. If we compare the average for the first half of the investigation period (1998-2001) with the second half (2002-2005) then we can indeed see a difference: previously it was five years and more recently three years and eight months.

The outsourcing of legislative evaluation research to research bureaus or universities has become common practice (85%). Furthermore, all of the ministries make extensive use of steering committees with external experts, both for internal and outsourced research. We could not establish whether there was a difference in quality between internal and outsourced evaluation research. It was apparent that the more time that elapsed between the law coming into operation and its evaluation, the more reliable and valid the evaluation was. Virtually all of the *ex post* legislative evaluations we looked into appeared to be primarily empirical and socio-scientific in nature. In more than half of the 59 legislative evaluations which met our condition of adequate methodology, there was a complete absence of any legal analysis. Insofar as there *was* any such analysis, this almost always concerned '*external consistency*': the extent to which a law coincided with adjacent legislation and regulations, at national and international levels.

The number of legislative evaluations appeared to coincide with the extent to which a ministry's policy was converted into formal legislation. The Ministries of Social Affairs and Employment (SZW), Home Affairs (BZK), Justice and Health, Welfare & Sport (VWS) look after not only the most formal of laws, but also produced the largest number of legislative evaluations in the period from 1998 to 2005. Exceptions to this rule were the Ministries of Transport, Public Works and Water Management (V&W) and Finance, which govern relatively large numbers of laws but which have fairly few evaluations. Only at Economic Affairs (EZ) did we find a relatively large number of evaluations in relation to the number of formal laws. The extent to which laws are covered by evaluations accordingly varies from one ministry to another. There is no clear general line apparent as to when a law will be evaluated and when it will not. More than 70% of the 59 legislative evaluations we looked at appeared to be a statutory requirement. Other direct indications for a legislative evaluation include political controversy, importance and European legislation.

Outcome or process?

At least 60% of the legislative evaluations are entirely or partially evaluations of *objective attainment*. The key issue is how far particular legislative objectives are achieved. Nearly two-thirds of these evaluations also

include a partial reconstruction of the implementation and/or other practical processes, such as changes to attitudes or behaviour within the target group. They accordingly amount to a combination of evaluations of objective attainment and (partial) process evaluations. One tenth of the reports contained an evaluation of purely the process. We found no investigations into *effectiveness* in the strict sense among the legislative evaluations. This type of investigation looks into how far the degree of objective attainment that is discovered can also actually be *attributed* to the law in question. This requires research of an experimental nature including the use of control groups.

The nature of interventions in laws

Administrative, financial or judicial interventions

Three types of interventions can be distinguished in the laws we studied:

- Interventions aimed at implementation institutions (*administrative instruments*). An example is the instruction to municipalities to implement a central law, or incentives towards collaboration among partners in a chain, such as municipalities, schools or hospitals.
- *Judicial interventions*, which we interpret narrowly as enforceable rights, obligations and prohibitions affecting standard groups. The enforcement may occur through sanctions, such as fines or prison sentences, or else via claims through the civil court.
- *Financial interventions*, which are used to attach consequences to behaviour via subsidies or levies.

Administrative instruments were applied, to a greater or lesser extent, in more than three-quarters of the laws we evaluated, sometimes combined with judicial interventions in the form of enforceable prohibitions or orders and licensing systems. Enforceable rights, obligations and prohibitions are generally aimed not at implementing bodies but at citizens and/or businesses. These judicial interventions are predominant in 13% of the laws we evaluated. Subsidies or levies are the most significant interventions in the remaining proportion of the laws (10%). Finally, communication as a form of intervention does not appear in actual sections of laws, and only occurs in five of the legislative evaluations. It is nevertheless likely that a great deal of use is made of covering communication in order to familiarise the standard target groups with administrative, judicial and financial interventions.

Standard target groups

Who are the articles of a law aimed at? These standard target groups may first of all be (groups of) citizens or else businesses. Secondly, (sections of) laws may offer direction to implementing bodies such as schools, hospitals and ‘cooperating partners’ involved in enforcement, whether by means

of delegation of instructions, adjustment of the implementation or supervision.

Implementing bodies were far and away the most significant standard target groups for the laws we evaluated. They were addressed in about 80% of the laws, while about 40% of the laws were *exclusively* aimed at implementing bodies. 43% of the laws addressed not only implementing bodies but also citizens or businesses. This might involve 'social partners' (employees, employers) in combination with administrative bodies such as the social services or Employee Insurance Implementation Agency (UWV). Remaining 17% of the laws we evaluated were directed only at citizens or businesses.

Judicial interventions (enforcement and sanctions) appear to be most often aimed at citizens and/or businesses and not at implementing bodies or 'chain partners'. One exception to this is the legislation operated by the Ministry of Health, Welfare & Sport, at least if we regard doctors and hospitals as 'implementing bodies'. These standard target groups are often subjected to judicial direction, for example where matters involve public health or fundamental human rights.

Objectives and how they are achieved

As regards the extent to which the set objectives are achieved, the majority of the legislative evaluations regarded as sound in methodological terms (41 out of 59) provide a *mixed opinion*. These cases might state, for example, that 'a development in the desired direction' has been observed for the target indicators, or it is considered that some sub-objectives have been achieved. Eleven of the reports gave a positive impression regarding the extent to which objectives had been achieved. According to the researchers, the laws helped to achieve the formulated objectives to a significant extent in these cases. The reverse was the case for six other laws: the degree of achievement of objectives was regarded as small in these cases.

Attainment of objectives according to the type of intervention

This synthesis is unable to confirm clearly whether the type of intervention in a law makes a difference to the attainment of its objectives. The 18 laws whose interventions are confined to administrative ones are those which are found most frequently in the category of high attainment of objectives. These laws relate to a range of policy areas: education, home affairs and justice, transport, public works and waterways, agriculture and economic affairs. These laws provide direction to implementing bodies such as schools, the police, municipalities and the National Road Transport Agency [*Rijksdienst voor het Wegverkeer (RDW)*] for the exercise of their implementation, supervisory or enforcement duties or for decision making at a local level.

27 laws contained administrative as well as judicial interventions. The administrative interventions are generally aimed at implementing bodies, while the judicial interventions are targeted at citizens or businesses. These laws have only resulted in an average achievement of their objectives.

The eight laws containing exclusively judicial interventions are mostly aimed at citizens and businesses. The achievement of objectives by these laws was average. The only law with exclusively financial interventions is the Promotion of Research and Development Promotion Act [*Wet bevordering speur- en ontwikkelingswerk*], which is intended to encourage businesses towards innovation by means of a financial incentive. The law appears to have achieved its objectives in part. The remaining five laws contained judicial interventions in addition to financial ones. This is generally designed to compel compliance and to counteract abuse of the financial regulations. In these, the legislator is aiming at a diverse range of target groups: care institutions (financial incentives), citizens (grants and levies) and businesses (levies). The achievement of objectives by these laws was average.

Attainment of objectives according to target groups

The standard target group for a law makes a difference to the extent to which objectives are achieved. Objective attainment appears to be average if citizens or businesses are directly governed by a law. If implementing bodies are governed in addition to citizens or businesses, the objective attainment of laws appears to be rather lower. This may be to do with the filter formed by the implementing bodies against the interventions which ultimately touch citizens and businesses. The achievement of objectives is at its highest if the standard target group is confined to implementing bodies.

Attainment of objectives according to levels of ambition and elapse of time

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. There also appears to be a link between the *level of ambition* of a law and extent of objective attainment noted in the reports: objective attainment diminishes as the impact on the conduct of the standard target group demanded by the law increases. This link is not as clear as the link with the elapse of time.

Mechanisms in legislation and practice

A law often contains not one but several interventions, and these can work out differently in practice. By focusing on a law as a whole, the interven-

ing processes remain a black box. In what follows, therefore, the object of analysis is not a law but the processes contemplated by statutory interventions. We refer to these as ‘mechanisms’ in this synthesis. We discerned a total of eleven types of intended ‘mechanisms’ (or chains of events), recurring in several laws, in the 59 legislative evaluations we looked into. Six of these could be classified as *institutional* mechanisms. These are self-regulation, checks & balances, integral approach, local or regional leadership, organisational deregulation and regulatory retrenchment. In addition to these institutional mechanisms, we also discovered four *social mechanisms*. These were direct interventions aimed at the conduct of citizens and businesses, such as school students, employers, potential criminals, insurers and newly arrived immigrants. The mechanisms are legal enforcement, protection of a legal position, financial incentives and communication/persuasion.

But few of the legislative evaluations contained an explicit reconstruction of both the intended mechanisms and the actual processes. Most of the researchers placed the emphasis on *factual* events and processes in light of the law. This involved an exploration of *implementation* in no less than two-thirds of the legislative evaluations. This covered the actual granting of powers, the allocation of financial and personnel resources, the development and implementation of protocols and the delimitation of new roles for implementing bodies.

Institutional mechanisms

Implementing bodies, as opposed to citizens and businesses, have the responsibility of a public duty in realising administrative processes, such as the self-regulation of schools and healthcare institutions, additional ‘checks and balances’ in municipal administration and the deregulation of former government services. These institutional mechanisms have to be activated with administrative interventions such as framework regulation, providing instruction to or directing the implementing bodies. Social objectives, such as a safer society, are, at best, indirectly served by this. To what extent does practice coincide with the intended institutional mechanisms? Opinion is predominantly positive in relation to the incorporation or privatisation of organisations such as Sanquin bloedbanken and Staatsbosbeheer. Good progress has been made towards target indicators such as increased efficiency, transparency and legitimacy. The bottlenecks are relatively minor. Opinions are also (provisionally) positive in relation to the mechanism of ‘checks and balances’. Local and regional administrations are challenged to a greater extent on several fronts. This does not detract from the existence of some significant bottlenecks, however. Thus some elements of the checks and balances are ‘hammered home’, with local political representatives concentrating too much on checking details and too little on checking principles.

There are signs of developments that could on balance be described as positive with some other institutional mechanisms, namely the allocation of a coordinating role to municipalities, the promotion of an integral approach (by universities, for example) and the achievement of economies and transparency. These processes appear to be developing in the right direction. The results are still predominantly to be found in the output sphere, however, and tell us little about the relationship between mechanisms and attaining objectives.

Social mechanisms

Social mechanisms involve direct interventions aimed at the conduct of citizens and businesses. There is, for example, an expectation that businesses will regard a statutory subsidy as a financial incentive to undertake additional research & development activities. Efforts are also being made in relation to law enforcement linking up prohibitions and obligations with licensing systems and with administrative, penal and civil law sanctions. These interventions are expected to result in increased costs being anticipated by citizens and businesses for any breaches of the law, so that they will tend to improve their observance of the prohibitions and obligations.

To what extent does practice coincide with the intended social mechanisms? There is substantial awareness and acceptance of the mechanism of law-enforcement and the 'output' (in the form of financial sanctions and fines) is on the increase. There is nonetheless an awareness backlog among implementing bodies, coordination problems and inconsistencies as well as an absence of a proactive prosecution policy. In practice, sanctions are rarely imposed and the objective chances of checks and detection are also fairly small. Despite all this, reported levels of compliance are surprisingly high in general. It is quite likely that the *subjective* chance of being caught, as perceived by citizens, plays a significant part here. This might well be higher than the objective chance of being caught.

Factors beyond the law itself can also form a significant driving force for compliant behaviour. One example is the Carriage of Dangerous Goods Act (*Wet vervoer gevaarlijke stoffen [Wvgs]*). This law required little in the way of enforcement because the provisions were already being met as a result of stiff competition in the sector. Contextual incentives (in this case the market) have activated mechanisms beyond the scope of the law, which in this case has resulted in compliance. This means that there are mechanisms at work apart from those contemplated by the law.

We are unable to comment about the other social mechanisms, in view of the limited findings in the evaluations.

The 11th and final mechanism, namely public-private accord, should be regarded as a *hybrid form* between institutional and social. It might, for example, include the envisaged collaboration between municipalities and

social partners in promoting the reintegration of workers who are subject to employment handicaps. A great deal of output has been achieved in terms of collaboration and accord, but we shall have to wait to see whether or not this has resulted in the achievement of objectives.

General yields and bottlenecks

We can repeatedly recognise a number of general yields across the entire range of mechanisms. We can list these in order of the frequency with which they occur in the reports.

- A reasonable to large degree of acceptance of statutory texts by standard target groups.
- The terminology of the statutory text is regarded as clear.
- There had been a large number of implementation activities, such as the translation of rules into implementation frameworks and the development of procedures at decentralised levels.
- The law has apparently operated as a crowbar or lever for change.

In addition to these yields, a number of *bottlenecks* recur repeatedly.

- A lack of clarity concerning the allocation of roles or the limitation of duties among implementing bodies as contemplated by the law.
- A lack of capacity for implementation and enforcement of the legislation, principally at local levels.
- Increased administrative burdens resulting from the law (or legislative amendment).
- Insufficient knowledge among those concerned of the contents of the law.
- Too little customised work or flexibility, rigid enforcement.
- The interests of clients or citizens are still far from central to the working methods of

The influence of context

The results of institutional and social mechanisms do not appear to be universally valid, but dependent on environmental factors (context). The variation among the regions, municipalities and organisations is significant and sometimes even overwhelming. The factors influencing the operation of legislation appear to be many and varied. They can be divided into macro, meso and micro levels.

Macro context

- Social and economic developments (deregulation, economic situation).
- Adjacent primary and subordinate legislation, policy.
- Complexity of the problem area.
- European Union.

Meso context

- Competition, market forces.
- Organisation culture/administration culture.
- Issues of scale/mergers.
- Short-term problems (e.g. overload).
- Social relationships.

Micro context

- Sensitivity to costs & benefits.
- Type of standard target group.
- Starting level (e.g. of students, immigrants embarking on integration).

Many contextual factors influence several types of mechanisms. We list the most important of these here.

At the macro level, there is a view that EU legislation and regulations have a ‘complicating’ influence on the operation of mechanisms. Secondly, the nature of the problem area to be addressed is a macro factor. The directive powers of the legislator decrease as the complexity and incomprehensibility of the problem to be addressed increase.

At the meso level, the ‘organisational or administrative culture’ plays a part first of all. The conclusion we can reach is that more is achieved as the administrative culture coincides more closely with the statutory instruments and objectives. Secondly, the scale of the implementing bodies and businesses which are to be governed by laws is an influential factor. The larger an institution or business is, the greater capacity it will have to implement the law or comply with that in some other way. Thirdly, bodies with more experience in the sphere of the intended mechanism will tend to be better at implementing the law.

At the micro level, determining factors for the operation of the mechanism include the characteristics of individuals who form part of the target group. Thus ‘major’ criminals do not respond well to legislation on confiscation because they are in a better position to offset any losses (and these losses are relatively minor as far as they are concerned).

Some other contextual factors exert no clear positive or negative influence. Mergers, for example, on the one hand delay the work of client governing bodies, while at the same time offering opportunities for an improved composition of those bodies.

Finally, the failure of an intended mechanism to manifest itself need not mean that a law has failed to achieve its objectives. Contextual incentives may activate completely different mechanisms which are ultimately responsible for achieving the objectives. These might include market incentives which encourage businesses to abide by environmental or safety standards.

Conclusion

This synthesis is the first to offer an overview of the interventions, target groups and objectives of laws. It also maps out, in conjunction with contextual conditions, the processes ('mechanisms') involved between interventions and objectives. This throws some light not only on the question of whether laws are doing their job, but also how and in which circumstances.

This research underlines the fact that legislators and researchers could pay further attention to the question of how a law should result in the intended objectives, and also the question of why it is ultimately successful in doing so or not.