Professional Legislative Drafters in The Netherlands

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Professional Legislative Drafters in The Netherlands

1. Becoming a legislative lawyer I: university
2. Becoming a legislative lawyer II: the Academy for Legislation
3. Working as a legislative lawyer: ongoing education, organisation and coordination
4. Assessment
Means of coordination

1. Incremental (via e-mail, telephone or face to face);
2. In fixed structures like weekly meetings;
3. In an ad hoc intra or interdepartmental committee of legislative lawyers;
4. In standing intra or interdepartmental committees of legislative lawyers.
Safeguarding Quality of legislation: procedures, standards & policies in the Netherlands
Safeguarding quality

• I. Procedures
  • Review by (semi-) independent authorities (judges, councils of state, etc.)
  • Ex ante controls (RIA, etc.)
  • Review of delegated legislation (call back, preliminary scrutiny)

• II. Content: legislative quality
Content: legislative quality

• What is legislative (or regulatory) quality?

• Legislative quality is a relative concept: depends on the functions you attribute to legislation
Functions of legislation

• Constitutional (basis and framework for government action – rule of law)
• Instrumental (instrument to achieve goals)
• Political (trade off mechanism interests)
• Bureaucratic (framework operation bureaucracy)
• Democratic (a channel for public participation)
• Symbolic (authoritative aura – legitimacy)
Legislative quality & quality criteria in the Netherlands

• The Dutch approach: quality criteria as a basis for an overall legislative policy
• 1990 *Legislation in Perspective* (Dutch policy on the lasting improvement of legislative quality)
• 6 sets of quality criteria
Dutch Drafting Directives

- Part of an overall legislative quality policy
- Dutch Drafting Directives 1992 (‘Recommendations for regulations’)
  - Approx. 347 Guidelines (actually some 50 more)
  - Implementation of the quality criteria of Legislation in perspective
  - Lots of model clauses, examples, illustrations
  - Dynamic and evolving document
  - Experiences and best practices incorporated
- Binding upon civil servants working in ministerial departments, not on parliament
Organization

• Legislative drafting by *specialists* – professional legislative drafters - in ministerial departments
• Policy makers hand over (discuss) their ideas/policies to (with) professional draftsmen
  • teams, teaming up, dialogue and interaction as best practice – remains difficult – different rationalities
• Most departments have centralized drafting units
Learning how to draft?

• Until recent (NL) Legislative drafting is
  • A talent and skill
  • Skills can only be acquired in practice
  • Taught by experience and patronage
  • This attitude has changed over the Last decade

• Review Committee 2000

• Legislative science/studies as an inspiration for legislative drafting
(Post-initial) Training

- Academy for Legislation
  - Recruitment and training (7-15 per year)
  - Apprenticeship (modeled after the Italian ISLE)
  - Inspired by Academic courses in legislative drafting
- Knowledge centers and departmental protocols
- Dutch Drafting directives
Further efforts

• Information technology
  • Legis (new IT-supported architecture legislative procedure)
  • Electronic promulgation & codification

• Learning form experience
  • Monitoring and evaluation
Academic Training

• **Not a mandatory** course in Academic curricula of Law Schools

• **Optional courses** in MA-programmes (Amsterdam, Leiden, Rotterdam – Tilburg in Public administration)

Dutch Drafting courses

• Training on the job still the main method of transfer of knowledge and experience (apprenticeships)
• Encouraging exchange & ‘Esprit de corps’
  • Approx. 750 draftsmen
  • Journal for Legislative Issues (1987)
  • Dutch Association of Legislation and Legislative Policies (1992)
  • Bi-annual ‘Day of legislation’ (2015 - upcoming)
International help

• International Association of Legislation (IAL) –
  • http://www.ial-online.org/

• Journals:
  • *The Theory and Practice of Legislation* (Hart) http://www.hartjournals.co.uk/tpl/
  • *The Loophole* (CALC)