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# THE POSSIBILITIES AND LIMITATIONS OF USING INTELLIGENT TOOLS FOR DRAFTING LEGISLATION

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1. I have been asked to speak at this sixth international JURIX conference on its first sub theme, "Intelligent tools for drafting legislation", drawing on both my own experience and government policy in the field. I will explore the possibilities and limitations of using intelligent and semi-intelligent computer systems and other information technology-based tools for drafting bills. The process I am concerned with is the preparation of new legislation. My frame of reference is the whole complex of factors and players that determines the nature of this process.

2. Before examining my subject in more detail, let me make one brief observation. I have chosen the words "intelligent and semi-intelligent computer systems" for a purpose: that is, to keep my own terminology as general and neutral-sounding as possible. Given my lack of expertise, I will not go into the technological details of these systems. Whether they are semi-intelligent word-processing programs, legal databases, knowledge base systems, expert systems, or combinations of the above - I will leave that to the many experts here today.

3. Let me deal first with the broader context of my subject: how to rationalise the preparation and formulation of new legislation. In the past few years, there has been an undeniable increase in concern about the quality of legislation, both of the drafting process and of the end product. Politicians, civil servants, and academics have all devoted more and more attention to raising the quality of legislation and improving its effectiveness. In this connection, let me refer you to three documents. First: a policy plan drawn up by the Lubbers-Kok government, entitled "Zicht op wetgeving" (legislation in perspective), which is concerned with the future development and implementation of general legislative policy. The goal of this plan is to ensure the constitutionality of government policy and improve its administrative quality (Proceedings of parliament II, 1990/91, 22 008, nos. 1-2). Secondly, there is the new "Aanwijzingen voor de regelgeving" (Recommendations for Regulations), which entered into effect on 1 January 1993. And thirdly, I would refer you to the recent advisory report of the Dutch Committee on the Review of legislative projects.

In my dissertation, I dealt extensively with the growing stream of publications on legislation from both practitioners and academics (Eijlander 1993, p.1-3). Given the desire of the practitioners to produce high-quality legislation as quickly as possible, it is logical for them to explore new ways of achieving this goal. One such way is to use (knowledge-based) information technology.

4. The new Recommendations for Regulations (Eijlander and Voermans 1993) were drawn up by the Prime Minister in consultation with the Cabinet. They are a kind of in-house rule book to which ministers and their civil servants are compelled to adhere. The Recommendations cover three aspects of legislation: legislative technicalities (the wording, structure, and layout of bills); legislative procedure (preparation at ministerial level, advice from the Council of State, and the passage of bills through Parliament); and substantive of legislation and legislative policy (the use of regulation, methodological concerns, and model provisions for certain issues).

To enable us to draft high-quality legislation, the Recommendations now contain more guidelines on legislative method and methodological issues than their more technical predecessors used to contain. (Eijlander and Voermans 1993, p. 175). They cover both

methods concerning the logical issues preparation of new legislation at policy level and methodological issues concerning pattern and structure of a bill. If such a systematic approach to the drafting of legislation is to make progress in the future, then the use of knowledge-based high-tech solutions will be highly desirable. I will revert to this point later.

**5.** One of the fundamental questions facing us today is: what is the difference between the drafting of legislation and other decision processes such as the issuing of administrative decisions or orders or the handing down of judicial decisions? The answer to this question is crucial to determining how computer technology can be used in drafting legislation. Like it is, incidentally, already used to support the issuing of administrative decisions or orders (Franken et al, 1993) and the support of handing down of judicial decisions.

I can see one or two obvious differences between drafting legislation on the one hand, and the issuing of administrative decisions or judicial decisions the other hand. First of all, in legal terms, administrative orders and judicial decisions are individualised; they determine the law in specific circumstances and with regard to specific persons or groups of persons. Bills, on the other hand - with one or two exceptions - are measures that apply to everyone and can be invoked repeatedly. The legal differences between the two types of measure are reflected in the processes whereby they come about. Orders and decisions relate to individual cases, and are taken by applying general rules. Generally speaking, the discretionary powers available to the politicians and civil servants who draft bills are much wider than those available to the administrators and judges who issue orders and hand down decisions. In other words, the factors and players involved in the formulation of bills are numerous, and their impact is usually difficult to forecast.

**6.** In my recent dissertation (Eijlander 1993, p. 3), I wrote that in practice, drafting a bill involves far more than the mere formulating a statute containing generally binding rules. Social, administrative, and political factors also determine the course and outcome of the legislative process. These factors include: the policy goals of ministers, coalition agreements, parliamentary opinion, the advice of interested parties, public support for the bill, and opinion at ministerial and inter ministerial level. The list could easily go on. In fact, the preparation and formulation of each and every bill constitute a unique process. The civil servant engaged in drafting a bill (legislator), needs to be able, *inter alia*, to draft bills that are acceptable given the interplay of aspirations, interests, and standpoints. This is no easy task, as I am sure you can imagine.

**7.** What significance does all this have for the possibilities and limitations of using intelligent tools for drafting legislation? Let me first say something about the limitations. A civil servant who drafts legislation cannot simply be replaced by an intelligent or knowledge-based computer system. This is not a particularly bold or controversial thing to say, so let me go a step further: I consider it inconceivable that computer technology - in particular knowledge-based computer systems - will take over any of the civil servant's core activities. The drafting of legislation contains too many unpredictable variables, which makes it impossible for intelligent computer systems to formulate usable statutory provisions themselves.

That is the bad news - at least for those who would like to see computer technology widen its scope in the legislative field.

Nevertheless, I do see real scope for the use of computer technology, including intelligent or knowledge - based systems, for certain tasks in the process of drafting legislation. Computer systems can support the drafting work of the civil servant. They are tools. And I believe that these tools can make a practical contribution to the rationalisation of the legislative process. In fact, they are already doing so, and I fully expect their use to

increase. I will elaborate on this point later, and present a summary of the various support functions that computer systems can fulfil in drafting legislation.

**8.** In what respects can computer technology, and especially knowledge-based systems, support and lighten the load of civil servants engaged in drafting legislation? Let me distinguish four functions that computer technology can perform in this field.

- A. Computer technology can make it easier to access and apply established knowledge and scholarship in the legislative field. This in turn can make it easier to apply tried-and-tested working methods. Computer-based semi-intelligent legislative systems can offer user-friendly support for implementing some of the Recommendations for Regulations mentioned above. I am thinking, for example, of the steps that have to be followed when preparing a bill, points to focus on when considering or including certain types of provision, and the implementation of model provisions.
- B. Computer technology - possibly in the form of custom-built computer systems - can make a major contribution to improving communication and information exchange between players in the legislative process, thereby making the drafting process more transparent and easier to monitor. I am thinking here not only of communication between the civil servants who draft legislation and the legislators and top civil servants, but also of the exchange of documents between ministries and the Council of State and ministries and both Houses of Parliament. It may even be possible to develop an all-purpose evaluation system for legislation along these lines.
- C. Computer technology can make relevant data and information more easily accessible. This applies particularly to provisions already in force, case law, the proceedings of parliament, and background literature. Civil servants drafting legislation can call up this information on screen, and store it or print it out as they wish. This benefits both the quality and speed of legislative work.
- D. Task-oriented computer technology - especially in the form of knowledge-based systems - can make it possible to check for consistency, both in and between individual pieces of legislation. This in turn can make it easier to appraise the potential impact of proposed legislation. Obviously, if we can check the internal legal and logical consistency of a bill (Overhoff and Molenaar, 1991)<sup>1</sup> or its potential financial impact on the public or the budget, then we will be able to identify any inconsistencies, uncertainties, or unwanted potential effects in good time. This is bound to benefit the quality of the end product.

**9.** Among those drafting legislation, there is an increasing amount of interest in the use of computer technology for one or more of the purposes I have just outlined in section 8. There are various systems in existence - some already in use, some still being developed, and some just being implemented. Let me mention four of them: ExpertiSZe (at the Ministry of Social Affairs); the Government Legislation Databank (coordinated by the Ministries of Home Affairs and Justice); the Legislation Drafting Bank (OBW, at the Ministry of Education and Science); and the Legislative Design and Advisory System (LEDA, built at Tilburg University for the Ministry of Justice).

**10.** Let me give you a short outline of what I believe these four systems are for. ExpertiSZe is intended mainly to calculate the financial and economic impact of different legislative options on social security, as well as checking for internal consistency. It is therefore amongst other aspects concerned with such questions as: if we fix the benefit percentage at X, what does this mean for group Y, and is it in line with general policy? ExpertiSZe's function is therefore of the type mentioned in subsection D above.<sup>2</sup>

The Government Legislation Databank - project, will consist of a corpus of all Dutch legislation, which will be regularly updated and available in electronic form. Its main purpose is to support the work of civil servants engaged in drafting legislation. But it can also be used for other purposes, such as the exchange of information between players in the legislative process. Its functions are therefore of the types mentioned in subsections B and C above.

The Legislation Drafting Bank (OBW) and the Legislative Design and Advisory System (LEDA) are quite similar in intent. Both systems aim to present structured information on methods, areas of concern, and other aspects of legislation. Their functions are of the types mentioned in subsections A, B, and C above. Both systems also provide the impetus for a more systematic and thorough approach to drafting legislation.

However, there are also differences between them. As well as technical differences, there is the fact that the OBW is tailored for use in education legislation, whereas the LEDA has a more general scope. With the support of the Central Science Policy and Development Department at the Ministry of Justice, the LEDA project staff are currently looking into how they can integrate the new Recommendations for Regulations onto a knowledge based system and present them in a systematic and userfriendly way. For a more detailed description of the LEDA project, I refer to the contributions of Wim Voermans and Egon Verharen during this conference.

**11.** Let me conclude by summing up my main points.

- I. In practice, the pressure to produce high-quality legislation as rapidly as possible is constantly present. There is an increasing awareness that the use of computer technology can contribute to achieving this goal. Its use falls within the wider context of rationalising the drafting of legislation.
- II. The possibilities and limitations of using computer technology to draft bills are different from those that apply in the preparation of individual legal instruments such as judicial decisions and administrative orders. The parameters and margin involved in preparing and drafting a bill are generally much wider than those involved in issuing an order or handing down a judicial decision. The factors and players involved in the formulation of bills are numerous, and their impact is usually difficult to forecast.
- III. Computer technology cannot take over the core activities of the civil servant engaged in the drafting of legislation. What it can do is support those activities. I have distinguished four types of support function:
  - facilitating the accessibility and applicability of established knowledge and scholarship in the legislative field;
  - promoting communications and information exchange among players in the legislative process;
  - making relevant data and information more easily accessible;
  - examining bills for consistency and effects, such as their financial impact.
- IV. Various computer systems have been developed - and some are still being developed - to support the drafting of legislation at central government level. These systems all fulfil one or more of the functions I have distinguished. I fully expect the use of computer technology in the legislative field to grow within the foreseeable future.

#### **About the Author**

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### Notes

1. In this connection, I would refer to the method of representing statutory provisions schematically developed by Overhoff and Molenaar in their dissertation.
2. For more details on ExpertiSZe, see [Wassink 1992].

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