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Better Regulation in the EU and The Netherlands A Comparison of Impact Assessment Systems

IN-DEPTH ANALYSIS FOR THE AFCO COMMITTEE

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DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

CONSTITUTIONAL AFFAIRS

Better Regulation in the EU and The Netherlands: A Comparison of Impact Assessment Systems

IN-DEPTH ANALYSIS

Abstract

EU and Dutch Better Regulation agendas have converged in recent years in terms of input (impact assessment systems) and output (quantitative targets). This study presents a organisational analysis of both IA systems and comes to the conclusion that although progress has been made. However, there still is considerable work to be done in managing the interdependence of both systems in terms of methodologies and carrying out IAs between the national and EU level.

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LIST OF ABBREVIATIONS

Actal	Adviescollege Toetsing Regeldruk, EN: Dutch Advisory Board on Regulatory Burden
AZ	Ministerie van Algemene Zaken, EN: Ministry of General Affairs
BR	Better Regulation
BZK	Ministerie van Binnenlandse Zaken & Koninkrijkrelaties, EN: Ministry of the Interior and Kingdom Relations
DG	Directorate General
EU	European Union
EZ	Ministerie van Economische Zaken, EN: Ministry of Economic Affairs
FTE	Full-Time Equivalent
I&M	Ministerie van Infrastructuur & Milieu, EN: Ministry of Infrastructure and the Environment
IA	Impact Assessment
IAB	Impact Assessment Board
IAK	Integraal Afwegingskader, EN: Integrated Assessment Framework
IASG	Impact Assessment Steering Group
ISC	Inter-service Consultation
MEP	Member of the European Parliament
RSB	Regulatory Scrutiny Board
REFIT	Regulatory Fitness and Performance
SG	Secretariat-General
V&J	Ministerie van Veiligheid & Justitie, EN: Ministry of Security and Justice

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1. INTRODUCTION

1.1. Introduction

A comparison between Dutch and the Commission's Impact Assessment system is relevant with a view to understanding the importance of the **interdependence** between national and European IA systems. As it stands, IA systems in the EU (at national and at EU level) are designed and discussed as systems that are independent from each other whereas both are mutually interdependent. This comparison is therefore a case study with a wider relevance in view of moving toward interconnected national and European IA systems. In addition, the comparison leads to lessons regarding the strengths and weaknesses of both systems. Effective, efficient and transparent policy processes with adequate consultations contribute to the understanding of, and the trust in, the rules. This analysis presents an **organisational analysis** of the IA systems in the Commission, The Netherlands and addresses the management of the interdependence between the two systems.

Regulatory quality standards have travelled far over the past 20 years in The Netherlands (with the emphasis on **output** steering via quantitative targets) as well as in the EU (with the emphasis op **input** steering via integrated impact assessments). The Commission's IA system has developed in several complementary directions and has resulted in the integrated impact assessment system, which is highly regarded internationally (Radaelli, 2010; European Court of Auditors, 2010). The Netherlands (output) and the Commission (input) Better Regulation (BR) mechanisms have seen great accomplishments, although there is still considerable room for improvement (Schout & Sleifer, 2014). From 2007 onwards, The Netherlands has attributed considerable time and effort to develop its own impact integrated assessment system (*integraaal afwegingskader* IAK – integrated assessment framework), whereas the Commission picked up quantitative targets through the *Action Programme for Reducing Administrative Burdens* (Commission, 2007).

Both systems are still in flux and have their relative strengths. They both combine a quantitative (output or 'macro') approach related to the stock of rules and regulatory burdens, as well as a qualitative (input or 'micro') approach assessing the policy needs and alternative options. After the investments of both the Commission and The Netherlands, the time seems ripe to compare the two regulatory systems and draw lessons for both parties.

This briefing note briefly compares the EU and Dutch impact assessment mechanisms (micro level). The second section presents the framework for the administrative analysis of the Dutch and EU IA-systems. We assess the organisational designs according to four organisational design variables (Leadership, procedures, staff and democratic control). These four variables are mutually reinforcing. The subsequent sections (3-6) address these design criteria. The last section continues with a summary of the main findings and offers suggestions for an assessment system in which national and European IAs operate in parallel to enhance exchange of information and to increase ownership for the overall methodology instead of working with separate and incompatible systems. Although the EP is working on its IA system, this comparison focuses on the Commission system in relation to the Dutch system.

For this research we made use of the literature and of 13 interviews in both The Hague and Brussels. Within the limitations of this briefing note we were only able to make some initial estimates of the capacities and qualities of both systems – and of the interaction between the national and EU IA systems. Therefore, the findings here must be considered as input for debate on ways to strengthens the EU multilevel ambitions for better regulation.

2. ORGANISATIONAL DESIGN OF BETTER REGULATION

2.1.   The Legitimacy of Better Regulation

BR agendas increase of the legitimacy of governance via reliable systems of evidence provision and by offering a system of hierarchical as well as democratic control (Schout & Sleifer, 2014). Legitimacy is used here as the belief people, industry and other relevant actors have in the actions and rules of government (based on Weber, 1968). People must have confidence in the systems that government have in place to take technical decisions. The concept of legitimacy has been used in various ways, but we focus on Scharpf's (1999) distinction between input legitimacy (government *by* the people) and output legitimacy (government *for* the people). The distinction helps to operationalise legitimacy in terms of underlying legitimising mechanisms defined by Curtin (2005) as "those arrangements made for securing conformity between the values of a delegating body and those to whom powers are delegated". These mechanisms offer politicians instruments to monitor how the government machinery translates different types of objectives into effective and trustworthy policies (Schout & Mijs, 2015). Input legitimacy provides a framework of tasks and decision-making rules and is comprised of i.a. work planning, the use of expertise, hierarchical control of technocratic processes, and public access to decision-making. Input legitimacy defines when and how to proceed in the policy process, who is involved, and how transparent the policy process is so that the responsible ministers can actual be held accountable for the processes (and hence the outcomes).

Output legitimacy includes the setting of targets by the political level and that independent expert bodies have to implement or safeguard. An example of setting a (macro-)target was a reduction of administrative burdens on business from EU legislation by 25% via the Action Programme for Reducing Administrative Burdens (Commission, 2007) subsequently followed by the REFIT programme (Commission, 2013). The Dutch focus on output (macro-control), from 1994 onwards, has contributed to a culture of awareness of the costs of regulation (Bockel, van & Sleifer, 2013), has created ownership for the objectives (the net reduction target), and produced tools for steering policy processes (World Bank, 2007). The elaborate procedures of the Commission's IA system typically follow the logic of input legitimacy and control. Both input (micro) and output (macro) tools define the success of the BR agenda.

2.2.   Analysing Policy Processes

New strategies require new organisational structures (Chandler, 1962) in order to change administrative behaviour. Structural changes following major policy changes are not new in EU policy as can be seen from food safety (Buonanno et al., 2001) and environmental policy (Jordan & Schout, 2006). It needs to be acknowledged that organisations have their (in)formal institutional practices and patterns (North, 1990) but organisational design also plays a role in safeguarding organisational objectives such as 'better regulation' or 'deregulation'.

To structure this study we use a conceptual framework to compare the European (read: Commission[1]) and Dutch IA-systems. Considering the huge number of variables that

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[1] The *Interinstitutional Agreement 'Better Law-making'*, 2003/C 321/01 binds together the Commission, Council and EP. However, in practice the Council has postponed this agreement, whilst the EP is actively engaging in impact assessments – although the attention of the EP predominantly went out to their own regulation agenda

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influence administrative behaviour (Mintzberg, 1989), we limit ourselves to four key criteria[2] to compare the Dutch and the Commission policy preparation processes.[3] The focus of our analysis is on deregulation as part of the broader integrated impact assessment (IA) systems. The criteria are:

1. **Leadership.** Theoretically, an organisation which is not institutionalised might be abolished at any time. According to Selznick (1957) an institution is an organisation that over time has become more than just an instrument in the hands of its owner, policy maker or politician. In other words, an organisation has to prove itself and acquire a specific added value to demaracate its position so that in turn it will not become 'expendable'. One of the corner stone of institutionalisation is the formation of values (objectives, methods and role in the community) in an organisation. Leadership should define and embody the mission and role of an organisation (Selznick, 1957).

   We analyse leadership according to the phrase 'authority' as presented by the sociologist Max Weber (1968). He divides authority into procedural power ('rational-legal authority') and into individual or organisation power ('charismatic authority'). <u>Procedural</u> power consists of i.a.:

   a. *Power to intervene.* Possibilities to intervene as a supervisor (rules and procedures). To accomplish this, the supervisor requires means, mission and staff.

   b. *Politico-administrative support.* Political embedding of the mandate in e.g. political priorities/work programmes.

   c. *Job description.* The job description might be light i.e. primarily based on years of experience in the policy field, or make high demands such as proven scientific independence (professor, years of experience in policy advice, scientific publications in peer-reviewed journals, experience in formal advisory bodies), visibility in the public debate etc. The leader needs to have the training and public visibility to intervene.

   Together these procedures help to strengthen the <u>charisma</u> of the leader. The core of the organisational embedding of the position is to select a weighty candidate (if desired) and to provide the final candidate with the status that fits the demanding appointment procedure. The appointment criteria help to accentuate characteristics such as an 'independent status and independent mind for analysis', but also to underline the status of the position. Leadership is important because policy, policy control, and policy interaction between administrators and with politicians is, in the end, people's work. The personal characteristics of a leader are essential for the degree in which an organisation may 'institutionalise'. Leadership is necessary at all the above-mentioned levels of government (national & European, central & in the network between national and EU).

2. **Procedures**. Procedures control the scale and scope of experts' influence in decision-making and thereby impacts the quality of the process (Olsen, 1996). Procedures in the policy process encompass i.a. the instructions for choosing the policy instruments (and according to which criteria), the content of the IA-system (which factors are being considered), the transparency (who, when, what, availability of the website, public complaint procedures), timing of subsequent policy

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(see : European Parliamentary Research Service, 2014). Therefore IA is still foremost in the hands of the Commission.
[2] See Annex I for the conceptual framework based on Jordan & Schout, (2006).
[3] See Annex II for an overview the EU and Dutch policy prepration processes.

steps, and the application of IA's to different policy phases. Procedures also determine the timing (early coordination or at the end of the process), the ease of information exchange (active – obligation to inform others; passive – others must engage in order to be kept in the loop), the width of quality control, and evaluation (sunset clauses, 3 year evaluations etc.).

3. **Staff**. Procedures must be supported by means of sufficient staff at inter- and intra-DG level. The capacity (people and budget lines available) determines the degree of success. Collectively, staff must be able to combine methodological knowledge and sectoral knowledge in order to implement horizontal objectives. In addition, the communication between the centre and decentral level within DG's/Ministries are of importance to anchor these objectives. Also the seniority of the staff involved has to be defined to ensure that IAs are embedded at strategic level in the Ministry/DG. Staff (eg consultants) can also be external depending on how the budget for IAs is organised.

4. **Democratic control.** IA-systems remain an "aid to policymaking/decision-making and not a substitute for it" (Commission, 2009). Democratic control over the policy preparation process lies with politicians. Therefore, it is important to map the political push. Is better regulation part of the priorities of the Council, the Commission, and the European Parliament? Is it part of work planning and is it specified in strategic policy documents? Without political momentum, any organisational structure is doomed to fail. The success of horizontal objectives is partially dependent on the extent to which political decision-making weighs in these objectives.

All these factors in the design of an organisation influence the quality to execute its tasks and responsibilities. This conceptual framework is applied to the European and Dutch IA-systems. In this analysis, we assess central (under the president of the Commission or under the Prime minister, in an independent agency, etc.) and decentral (within Ministries/DGs) components of the design of IA systems (see table 1).

Table 1. Multilevel control of IA-systems

	European Commission	**The Netherlands**
Central level	Secretariat-General under the President of the Commission	Interministerial level and independent external supervision by 'Actal'
Decentral level	Organisational design IA in Directorates-General	Organisational design IAK in Ministries

Both systems are comprised of multiple components and layers (inter- and intra DG/ministry). The relative power of both systems is determined by the degree of complementary between the different factors.

At the moment the Commission is reforming the system. The plans of Commission President Jean-Claude Juncker and Vice-President Frans Timmermans, i.a. responsible for Better Regulation, are still too fresh to assess. They appear to invest heavily on better regulation, both on input and output, however statements on a more 'political' Commission might contradict the analytical objectives of any IA system. The impact of the changes can be researched only after a period of time according to the four variables above.

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3. LEADERSHIP

3.1. Commission

Within the Commission, leadership of the impact assessment (IA) at the central level is organised under Commission president Juncker. He positioned the better regulation agenda as a prioritiy with First Vice-President Timmermans. In the hierarchical control there is a central role for the secretariat-general (SecGen). The SecGen provides administrative support to the President of the Commission and to the Vice-Presidents without portfolios.

In practice leadership lies predominantly lies with the 'Impact Assessment Board' (IAB), who tests the quality of (nearly) all Commission impact assessments (Commission, 2009). The deputy secretary-general of the Commission chairs the IAB (Commission, 2006). This makes the IAB a very senior position and this underlines the central position and seriousness of the IA system. The authority of the deputy secretary-general ensures procedural leadership in the form of clear hierarchical control. Moreover, the role of the new Commission's first vice-president, as guardian of better regulation, also ensures procedural authority. The first VP has access to decision-making at early stage (planning and draft-roadmaps) and is equipped with veto power. In the preliminary stages both new initiatives (approx. 10% of EU policy) as well as the existing 'catalogue' (approx. 90% of EU policy) are hierarchically reviewed by the Commissioner, relevant vice-president and the first vice-president for final approval. In addition, the IAB guarantees continuous and cross-sectoral scrutiny. This elaborate hierarchic control secures the attention for horizontal objectives, although some regard it as a cumbersome process (Kafsack, 2015; Lefebvre, 2015).

In addition, seniority of the IAB is supported by eight members at director level. Membership of the IAB is a part time position coinciding with their primary responsibilities as policy directors. Besides that, the internal candidates are neither assessed on the basis of a proven academic track record nor on their independent mind for analysis. In terms of external credibility, there is also room to strengthen the position of IAB members. Despite the considerable procedural power elaborated in the IA procedures, there is room for improvement in the job description of senior management of the system (procedural authority).

'Independence' is one of the key characteristics as described in the Rules of Procedure (Commission, 2006). However since the creation of the IAB, independence has remained a point of discussion (RegWatchEurope, 2014). In part, the new better regulation agenda (Commission, 2015A) foresees a reforming of the IAB into the 'Regulatory Scrutiny Board' (RSB) (Commission, 2015B) that will consist of seven full-time positions; a chairperson, three Commission administrators (Director level), and three external members. This would improve the procedural power of the RSB, because the Board is becoming more independent from the Commission, but the procedural leadership ('job description') of the chair remains underdeveloped. It is prone to risk because it is possible to intentionally attribute less weight to the next chair of the RSB and, as a consequence, of the RSB's influence. Hence, job requirements can be refined. Besides that, the guidelines state that a positive opinion of the RSB will be 'necessary' before advancement to the coordination process, 'Inter-Service Consultation' (ISC), followed by adoption by the College of Commissioners (Commission, 2015C). This would also strengthen procedural power.

As regards individual leadership capacities ('charisma') the previous IAB president, deputy secretary-general Alexander Italianer, provided the IAB with authority and status. He

proved to be a knowledgeable chair that was on top of his files, with convincing judgment ability. Of all the impact assessments proposals in the first four years, approximately 1/3 was rejected ('resubmission'), 1/3 was adopted, and 1/3 was to be revised ('proceed, making recommended improvements') (Commission, 2011). This underlines the authority of the procedure and of its well-accepted leadership. Former Commission president Barroso has expanded the role and capacity of the SecGen and his commitment provided the IAB with a good starting point. The combination of the individual values of Italianer (aimed at upholding integrated objectives, his focus on substantiation of arguments, and commitment to considering policy alternatives) and his thorough approach contributed to the success of the early years of the IAB. The current president (deputy SG Marianne Klingbeil) is also regarded as an authority in the area of integrated impact assessments and as a guardian of horizontal objectives in the *ex ante* process.

At the decentral, the authority falls under the responsibility of the designated director(-general). He or she must defend the policy proposal in front of the IAB (in case of an oral procedure). Because of the IAB, there is a firm hierarchical review process in place. As a consequence, directors, with their authority based on in-depth knowledge and experience in their respective policy area, generally loyally implement the impact assessment procedure. It remains to be seen whether the new RSB, which is placed more at a distance of the Commission, will maintain this status.

3.2. The Netherlands

The Dutch integrated assessment framework - *integraal afwegingskader* (IAK) - contains 18 different obligatory quality requirements as opposed to the former quagmire of 110 different requirements (Kamerstukken II, 2010/11). The leadership of the IAK is placed with the Ministry of Security and Justice (V&J), however this predominantly concerns the design of the IAK. The control on the application of the quality requirements is divided across a multitude of quality control institutions. This makes the leadership of the IAK unclear. There is a lack of specific involvement of a coordinating organ, such as the Prime Minister's Ministry of General Affairs (AZ) to secure sector-independence, quality and the integration of horizontal objectives. The hierarchical embedment is weak.

The IAK also lacks procedural leadership because of the absence of a broad control framework – there is no integrated IAB-type of organ, which controls on the basis of independence, reputation, education, and experience. For example, the Ministry of the Interior (BZK), the Ministry of Economic Affairs (EZ) and the independent external Dutch Advisory Board on Regulatory Burden 'Actal' monitor regulatory burdens. EZ (the effects on business) & Interior (effects on citizens) have procedural power to apply horizontal, deregulation objectives to policy. However on the basis of policy agenda's and interviews we may conclude that they have limited politico-administrative support to intervene.[4] Support is limited to the attainment of the output target of the Cabinet-wide € 2,5 billion net reduction of regulatory burdens (Regeerakkoord, 2012).

The leadership of Actal on regulatory burden requires further study yet the picture that arises from interviews and evaluations (KplusV, 2010) is that there is a tension between the procedural positioning of Actal as and advisory body and its limited individual legitimacy (Weber's charisma). The substantive knowledge and external placing contributes to the independence of Actal, however, Actal has limited authority because it does not have a well-recognised 'face' and because it is not directly linked to an influential minister (or the influential minister refrains from using his political clout). Therefore, it has limited visibility

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[4] The policy agenda's for 2014 of both ministries, but also that of V&J (http://rijksbegroting.nl/2014) show steering and control directed to output. The input methodology has very limited priority.

throughout the policy development process. Moreover, Actal is mostly concerned with deregulation and can hardly be regarded as a monitor of horizontal integrated objectives.

Apart from the hierarchical, administrative chain, the Council of State also scrutinises the quality requirements. The Council of State focuses on the legal quality and has hardly attention for other horizontal issues (Raad van State, 2013). The Council of State's leadership is highly regarded, because of its knowledge and experience, independent stature, eminent leadership and enforced political weight over the last years. However, it has a lack of procedural power to intervene, for it is but an advisory council. Therefore, they have less political weight than the IAB in case of horizontal objectives.

At decentral/ministerial level the quality of leadership and ownership of the IAK, and more specifically regulatory burden, is fluctuating (Actal, 2015). As interviewees indicated, a director-general has more interest in executing government policy for which he is directly responsible. He/She lacks the incentives to implement the IAK in the ministry, partially because it is not a political priority (see below). Several interviewees state that directors of non-coordinating ministries scantily focus on horizontal objectives.

In essence, the design of the Commission IA system offers points for reflection to The Netherlands.

4. PROCEDURES

4.1. Commission

The Commission IA-system provides a clear overview and integrates multiple objectives, methodologies and procedures (Commission, 2009). It operates on the basis of publicly accessible guidelines that define the timing, width of policy goals, choice of instruments, the assessment of alternatives, size, consultations etc. The IA contains different sectoral – integrated – objectives such as proportionality, gender and regional consequences. The Commission has taken considerable steps to process potential impacts of policy in the impact assessments. This leads up to a powerful instrument, which is standardised on the basis of rules and defined tasks with clear hierarchical control via the IAB and Commission president.

The specific time line for policy proposals makes the process predictable and accessible. The Commission Work Programme specifally mentions the policy proposals. The agenda-setting and problem definition in the Commission work programme is open, without predetermined solutions. The open approach has a positive effect on the quantity and quality of evidence gathering and analysis and in turn on the quality of regulation as a whole (Houppermans, 2011). Timing is coupled to several checks and balances (within the Commission via internal coordination structures and in relation to target groups via hearings, consultations and roadmaps) that envision timely involvement of all stakeholders.

The transparency of Commission decision-making has improved considerably with the publicly available and timely announcements of impact assessments, opinions from the IAB, and a central website. The system of guidelines, work programmes, roadmaps, impact assessments, consultation, and IAB opinions is publicly available. These procedures contribute to the high degree of transparency. The Commission still tinkers with the degree and timing of public communication. For instance, the draft-roadmaps are neither open to the public nor to the other institutions. Besides that, there is an ongoing debate in Brussels on the visibility of the Commissions' considerations on a particular proposal. Frequently, critique consists of the Commission who overrides input from external experts with the mere phrase '*noted'*. This contributes to the persistent – but almost unavoidable feeling given the amount of feedback the Commission receives - that the IAs are characterized as a 'box-ticking' exercise.

In recent years the Commission has put extra effort in the application of the IA-system on the policy cycle from policy preparation to policy revision. Despite critique, the IA is regarded as a system that forces administrators to systematically pay a considerable amount of attention to the monitoring and evaluation of policy goals and the final policy.

At the decentral level the IA mechanisms foresees in inter-DG coordination via the Impact Assessment Steering Group (IASG). The lead-administrator is required to convene an IASG for every policy initiative. The IASG is composed of the sectoral lead-administrator, a representative from the DG's own IA support unit, a coordinator from the SecGen, and somebody from related DGs (Commission, 2009). The route towards the College passes via the IAB and the Inter-Service Consultation (ISC). On the whole it is a transparent procedure where the lead DG is expected to actively engage other related DGs. The Commission IA mechanism is regularly evaluated and adapted – and is generally well regarded (see Schout and Sleifer, 2014 for a review).

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4.2 The Netherlands

With the entry into force of the IAK, The Netherlands has booked considerable progress regarding the streamlining of the multitude of procedures and requirements. The IAK is publicly available online, encompasses different objectives, and extensive guidelines i.a. on how to calculate different types of impacts. The quality control mechanisms for the different parts of the IAK are clearly defined.

Interviews state that the content of the IAK questions is adequate. However, the order/timing of questions leads to doubts about the integration of horizontal objectives. According to the IAK the impact of a proposal (question 7) is calculated only after the choice of the best instrument (question 6). It appears as if the horizontal consequences of policy are unable to influence the choice for a particular instrument and subsequently that alternatives are not seriously considered. In this way, attention for different, integrated goals is put under pressure.

The timing of the process is partially the result of the Dutch administrative culture. The Dutch workprogramme ('*regeeraakkoord*') approaches policy problems in a closed fashion by already formalising solutions. The *regeerakkoord* already decides on *what type* of policy should follow instead of *whether* there should follow policy. This reduces the room for considerations. Control on horizontal objectives takes place at a late stage in the preparations between officials, the administrative '*voorportaal*' (comparable to EU's Inter-Service Conslutation – but the Commission consultations are pro-active in terms of coordination). The reactive nature makes it difficult to steer horizontal objectives (compare the approval of draft-roadmaps by the first vice-president of the Commission). Late access to the process (in combination wit a shortage of means and staff; see beneath) is responsible for the mixed results of regarding quality control.

The procedures for regulatory burdens give some interesting leads for better regulation. The Dutch system, partially under leadership of Actal, is in an advanced stage of calculating impacts. The monitoring and control of regulatory burden is helped with the use of 'factsheets'. Ministries send a factsheet of a policy proposal to the coordinating ministries (EZ and BZK) containing the calculated impact on the Cabinet-wide net burden reduction target of 2,5 billion euro. These factsheets stimulate ownership in the ministries. However, there still are concerns over the implementation of factsheets in all ministries, and critics point at the timing of these factsheets as being too late to influence the proposal (Actal, 2015).

The transparency of the system rests on two main pillars: accessibility of information and processing external input. As regards the accessibility of information, The Netherlands is working towards centralisation of information via websites with an online legislative calendar ('*wetgevingskalender*'), internet consultation, an internal tool for interdepartmental information sharing, and a digital quality control tool ('*toetsloket*'). These measures contribute to the transparency of the IAK and to the public's access to decision-making. It demands a considerable amount of work to form an overview of all the measures, which is detrimental to the accessibility of a communication tool. The online legislative calendar offers a bird's eye view on, and the coordination of, the policy process. However, the calendar displays the actual proposal only in a late stage, which limits the possibilities for external input. The *toetsloket* is a step in the right direction of more overview and central coordination, but at the moment not all ministries are connected to it.

The processing of external input provides a paradoxical image. On the one hand side interviews create the impression that Dutch administrators actively search for evidence to improve their proposal. On the other hand side interviews sketch difficulties to cope with

critical opinons.[5] In this, internet consultation provides for an interesting case. Internet consultation takes place on the basis of a proposal that is already quite elaborated and in which many (implicit) choices have already been made. The impact of internet consultations on the final policy appears to be limited. Besides that, as in the case of the Commission, the processing of external input is opaque. Furthermore, there is no publication scheduled between the draft proposal and the submission to the Dutch parliament. In case of rejection by the parliament, the final proposal will not see daylight. Hence, it is unclear on what basis a proposal is rejected. It remains unclear whether or how administrators weigh different objectives. Therefore, the IAK principally functions as an instrument that generates information for the administrator instead of an instrument that steers decision-making and transparency.

Interviewees claim that the structural application of the IAK must be improved. The separate quality requirements are mandatory, but the application of the IAK as a whole is not. Therefore the IAK is unable to impose structures and procedures in the same fashion as the Commission's integrated IA-system (Meuwese, 2012). Moreover, the IAK mechanism mainly adheres to the *ex ante* phase of the policy cycle. The IAK has provisions for monitoring and evaluation, but it is hardly applied to the full policy cycle, which includes evaluation and revision of policy.

At the decentral level the lead ministry is in charge. In the current structure of the process, the Dutch tradition of ministerial autonomy competes with the hierarchical control of the mechanism. The Dutch Prime Minister is the so-called 'primus inter pares' and as a rule refrains from actively steering ministers. Despite the legislative calendar, ministries are still dependent on the lead ministry for their involvement in the early phases of policy preparation. The approach towards inter-ministerial coordination differs per ministry. For example the Ministry of Infrastructure and the Environment, partly due to a lack of capacity, choses to only monitor policies in other ministries only in a passive way.

In first instance the supervision on the IAK as well as the quality control takes place in each ministry. Within the ministry, a legal policy advisor reviews the application of the IAK. Since the review is done by an individual lawyer, quality will vary. Besides that, the legal advisor lacks the procedural power to steer the proposal beyond legal matters. Within many ministries there is an additional internal quality control system. This system however focuses on the review process of the Council of State. Therefore, the internal quality control on potential impacts of horizontal objectives is all but secured.

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[5] Interviews 1,9,11,12.

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5. STAFF

5.1. Commission

At the central level, the IA structure is (firmly) vested within the secretariat-general of the Commission. There is a special directorate for horizontal steering with i.a. three units for; 1. Impact assessments 2. Evaluation and REFIT 3. Work Programme & Stakeholder Consultation. Within the impact assessment unit there is a total of 13 administrators who support the IAB and at the same time work together on the methodology of the system. The personnel policy of the Commission, where administrators rotate between the centre and the DGs and back, creates methodological as well as sectoral knowledge. In almost every DGs there is an IA support unit. These administrators are permanently involved in IA's and fulfull an active role at medior or senior level. Besides that, administrators are trained on how to process an IA and how to set up an effective consultation process.

Communication within the Commisison takes place permanently at different levels. Besides horizontal steering within the SG, the SG also has an integrating role at dossier level. They participate in the IASG and on big inititiatives they have the lead (and the authority). The SG supports this integrating role via two policy coordination directorates.

5.2. The Netherlands

The Netherlands maintains a decentral model. The central level foresees in a relatively small number of full-time equivalents (FTE) to steer the mechanism. The responsibility for the methodology of the IAK-system adheres to the Ministry of Security & Justice (V&J). In addition there are temporary task forces, such as the ones in charge of the *toetsloket* and the online legislative calendar. Once again the incorporation of horizontal objectives is well reflected through the case of regulatory burdens. The methodology on deregulation is attributed to DG Enterprise & Innovation of the Ministry of Economic Affairs and more specifically to the 'Unit for the Reduction of Regulatory Costs' as part of the Directorate 'Regulatory Reform & ICT Policy', where 5 FTE scrutinise policy proposals. In addition, besides and beyond scrutinising, tasks range from developing methodology to contributing to project teams. Every ministry has at least one regulatory burdens coordinator at junior or medior level (Actal, 2015).[6] Interviews show that regulatory burden coordinators are passively used within the ministry and they often have to search for dossiers.[7] The unit for the Reduction of Regulatory Costs coordinates the work of the administrators. Its capacity is substandard and not senior enough to actively steer on deregulation at the expense of the quality of control. Officially, Actal, the independent watchdog, is also aligned to the DG Enterprise & Innovation, although they operate independently. In the past Actal reviewed individual dossiers on how administrative burden checks were performed. In recent years, the 13 administrators[8], do system checks on the assessment of regulatory burden in policy-making.

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[6] The norm is 1 FTE per ministry with outliers such as the Ministry of Education, Culture and Science with 6 FTE.
[7] Interviews 1, 9, 14.
[8] http://www.actal.nl/over-actal/secretariaat-2/

6. DEMOCRATIC CONTROL

6.1. EU

Within the Commission the IA is an essential part of the adoption process by the 'political' College of Commissioners (Juncker, 2014; Commission, 2015). As mentioned above, the president together with the (first) vice-president is directly responsible for the better regulation methodology and its application. The College regards the IA as an accountability instrument towards the Council and EP. All three institutions are responsible for their own impact assessment (Interinstituional Agreement on Better Law-making, 2003). Recently, the EP is building its own IA capacity with the Ex-ante Impact Assessment Unit where 15 administrators make 'appraisals' of Commissions IAs, provide substitute or complementary IAs, or carry out IAs on one or more specific substantive amendments (European Parliament, 2014). It develops its own evidence gathering and analysis capacity i.a. via external consultancy reports. On the side of the Council, it has introduced a kick-off meeting of the negotiations with a broad discussion on the basis of the Commission IA.

Interviews provide an image that both the Council, as well as the EP, hardly takes the IA into consideration when tabling amendments. These post-IA amendments allegedly are root causes of many unforeseen impacts and IAs on amendments are rarely carried out. There is an ongoing discussion on the actualisation of IAs during the negotiations in case of far-reaching amendments. The better regulation communication highlights these issues and will take it on board for the interinstitutional agreement (Commission, 2015A).

6.2. The Netherlands

Regulatory burden appears high on the Dutch political agenda via output targets, but burden reduction via the IA system generates less attention (Regeerakkoord, 2012). In the past the Minister of Justice Ernst Hirsch Ballin made the IA-system one of his priorities and as result the IAK was introduced. Nowadays there is a lack of a directly responsible minister for the entire system, or at least someone who takes up the responsibility. The absence of a directly responsible minister makes steering and controls an arduous task. Decision-making takes place in the administrative '*voorportalen*' (type of ISC) en subsequently in the pre-Council and Council of Ministers. In practice, in these later stages few adjustments take place for reasons of i.a. ministerial autonomy, lack of central coordination of horzitontal objectives etc. It demonstrates the laborious relationship between horizontal objectives and new policies.

As is the case in Brussels, the Dutch Parliament (*Tweede Kamer*) adopts amendments that often lead to additional regulatory burdens. Within the Dutch Parliament only the Committee for Economic Affairs occasionally pays (limited) attention to regulatory burdens. Besides that, sometimes there are discussions about regulatory burdens in the Dutch Senate (*Eerst Kamer*). However, the *Eerste Kamer* only has the power to adopt or reject, not to amend.

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7. CONCLUSION

The **Dutch and the EU systems operate independently** from each other and they have been **designed without adequate attention for their mutual interdependence**. The interdependence between both the national and the EU system – and the importance of the management of this interdependence – is insufficiently on the radar screen of lawmakers. Any EU IA system, irrespective how good it is, will be hard to operationalise without input (data and information) from the member states (that is where the ownership for policies has to reside and that is the level where costs and benefits materialise). Ownership from national civil servants for EU IAs will be facilitated if methodologies are similar and if the information can be exchanged between both levels of government. Hence, it is important to work towards comparable national and EU methodologies so that information can be exchanged within comparable systems. Moreover, ownership for the quality of EU legislation requires that member states be involved in the EU IAs (to provide input but also to get the integrated thinking incorporated in national policies and in the preparations of EU negotiations (Schout, 2009; Schout & Jordan, 2008)). Building on the comparison between the Dutch and the EU case, we can conclude that better interconnection of IA methodologies and of carrying out IAs is a precondition for successful European IAs. **Considerable work still needs to be done in managing the interdependence in terms of methodologies and carrying out IAs between the national and EU level.** If there is no proper integrated assessment nationally, than 'integrated thinking' at EU level is hard to expect.

In terms of senior level ownership and leadership, both the EU and the Netherlands have deficiencies. The <u>Dutch</u> system suffers from dispersed ownership (if everyone is responsible, than no one is responsible). Moreover, **the independence of senior quality control is underdeveloped in The Netherlands**. As a result the systematic application of the Dutch IA leaves much room for improvement, as does the integration of horizontal objectives in the IA. The weaknesses at the Dutch level also affect the way in which Dutch policy makers are involved in, and work with, the integrated impact assessments of the Commission. At <u>EU</u> level (at least within the Commission), senior level leadership was reasonably well established under Barroso (although the independence could have been better as also concluded in the various evaluations) and contributed to its success. **The new Commission Juncker may run the risk of politicisation.** Firstly, because of its self-proclaimed increased political profile and corresponding political decision-making. Secondly, senior quality control via the IAB may lose its influence by replacing the IAB at a distance from the Commission. Besides that, senior quality control via the Commissioners and vice-presidents appears to develop at the expense of the speed of the policy process. Hence, **senior level leadership in the Commission has always been a strong point but with the more political profile of the Juncker Commission, the nature of the IA system may change.**

In terms of procedures, the <u>**Dutch procedures are less developed compared to the**</u> Commission system in terms of hierarchical control, transparency and of timing of the different IA steps. Besides, the IA is only applied to the *ex ante* phase in The Netherlands and **ex post evaluation and monitoring is poorly developed**. To have an integrated system requires connecting all actors and stakeholders (including the parliament) in **one (digital) location and within a single senior (political) quality control mechanism**. Although the <u>Commission</u> system is more centralized and better organised via the Secretariat General and under the President, some questions concerning transparency and timing of public communication remain. **The Commission needs to better connect the information of the different institutions (particularly of the member states- that is**

where the effects are in practice). The procedures could emphasise to involve national IA organisations or build more on national information. Especially concerning monitoring and evaluation this involvement of national organisations seems a promising avenue. As it stands, the Commission system is 'Brussels based and Brussels owned'.

The capacity (i.e. staffing) and means for an IA also influence the results. **It is difficult in The Netherlands to coordinate and steer the IA processes because, in general, the coordination of the IAs starts late – only during the quality control phase because there is no adequate capacity at central (and no senior) level to guide, coordinate and monitor the IAs.** In the Commission, the SG fulfils the supervisory task early on in the process. The staffing in the Commission also combines both sectoral (through two policy coordination Directorates) and methodological (through 13 officials in the Impact Assessment unit) knowledge early on in the process.

Democratic (political) control of Dutch IAs lacks the political push from a responsible minister. In addition, Dutch parliamentarians show little interest in IAs so that there is also **little political stimulus coming from Parliament** for integrated impact assessments. The ability to update IAs during the political negotiating phase may prove a step in the right direction towards more awareness and/or ownership at both the Dutch and the European level. Political control in the Commission is guaranteed by the location of the SecGen under the Commission president and the strong involvement of the new first vice-president.

The application of the analysis leads to the conclusion that **the Commission system is better designed.** The four criteria show that the Dutch system (generally regarded as one of the best systems in the member states) suffers from weaknesses in particularly senior leadership and commitment, from integrated methodologies, and from central political and administrative support. **Moreover, the Dutch system is not well suited for an easy interaction with the Commission IA system**. To better serve Commission IAs with information, and to allow earlier and integrated assessments of new Commission proposals, the Dutch case indicates that further steps to improve the EU (and national) impact assessments should be taken at the national level.

Therefore, **the real policy challenge concerns the questions: how to upgrade national IA systems and how to better connect the national and the Commission (or EU) IA systems?** Generalising from the Dutch case, in terms of IAs, **Commission and member states are still far away from a European IA system**.

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ANNEX I – ANALYTICAL FRAMEWORK

Criteria	Level of government	Operationalisation criteria
1. Leadership	Central	*Procedureal Power*
		Charismatic Authority
	Decentral	*Procedural Power*
		Charismatic Authority
2. Procedures	Central	*Weigth instrument*
		Content IA
		Timing
		Transparency
		Information Exchange
		Application on policy cycle
	Decentral	*Weigth instrument*
		Content IA
		Timing
		Transparency
		Information Exchange
		Application on policy cycle
3. Staf	Central	*Capacity*
		Communicaiton
	Decentral	*Capacity*
		Communication
4. Democratic Control	Central	*Political Push*
		Interinstitutional
	Decentral	*Political Push*
		Interinstitutional

Table 2. Analytical framework based on Jordan & Schout (2006).

ANNEX II – POLICY PREPARATION PROCESS

Preparation
- Commission work programme
- Impact Assessment Steering Group
- Evidence gathering and analysis:

Execution
- Process IA on the basis of the evidence

Quality control
- Impact Assessment Board (IAB)
- European Parliament

Decision-making
- Inter-service Consultation (ISC)
- Adoption College of Commissioners
- Codecision: EP and Council

Evaluation and Revision
- Monitoring & evaluation
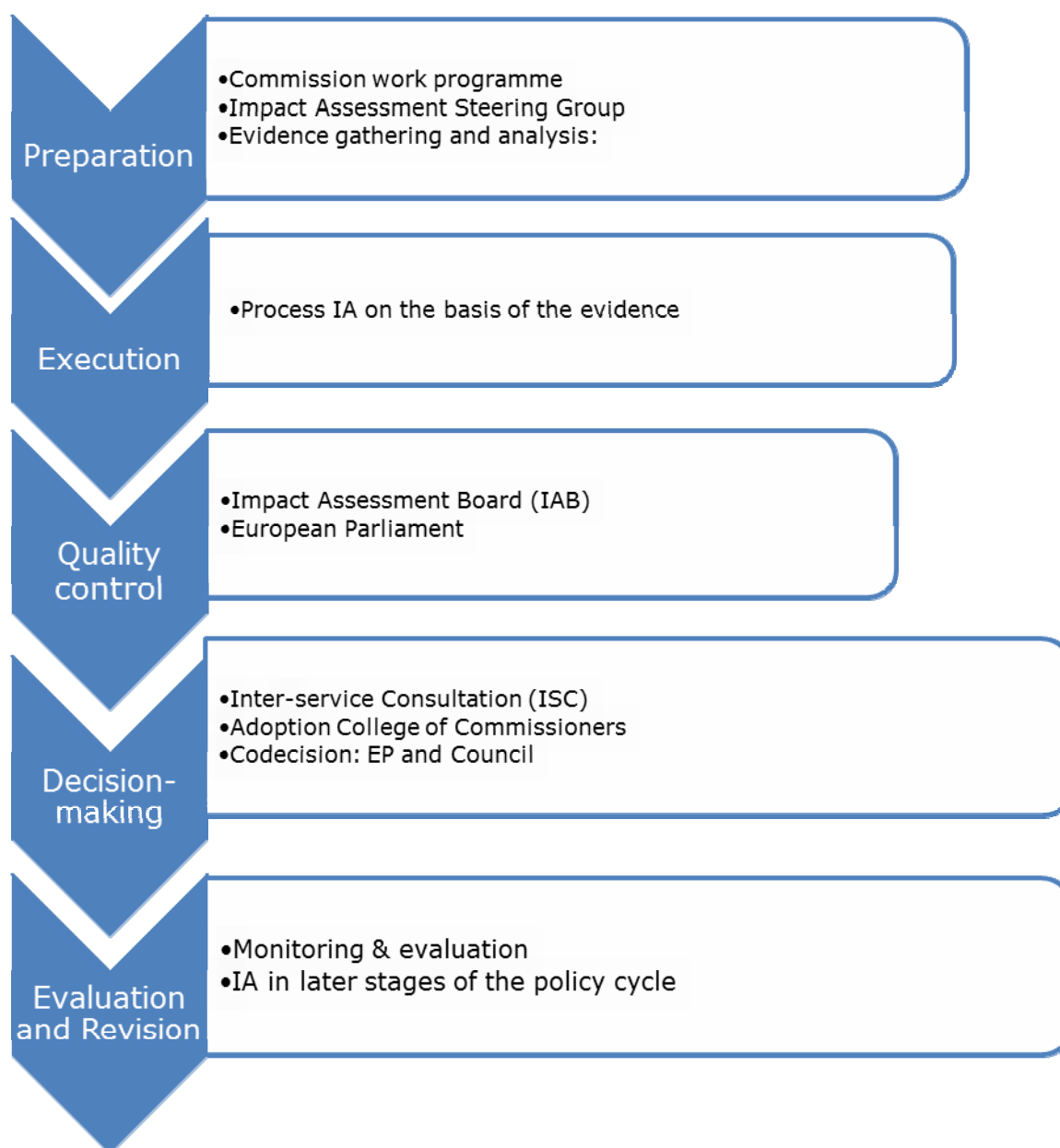- IA in later stages of the policy cycle

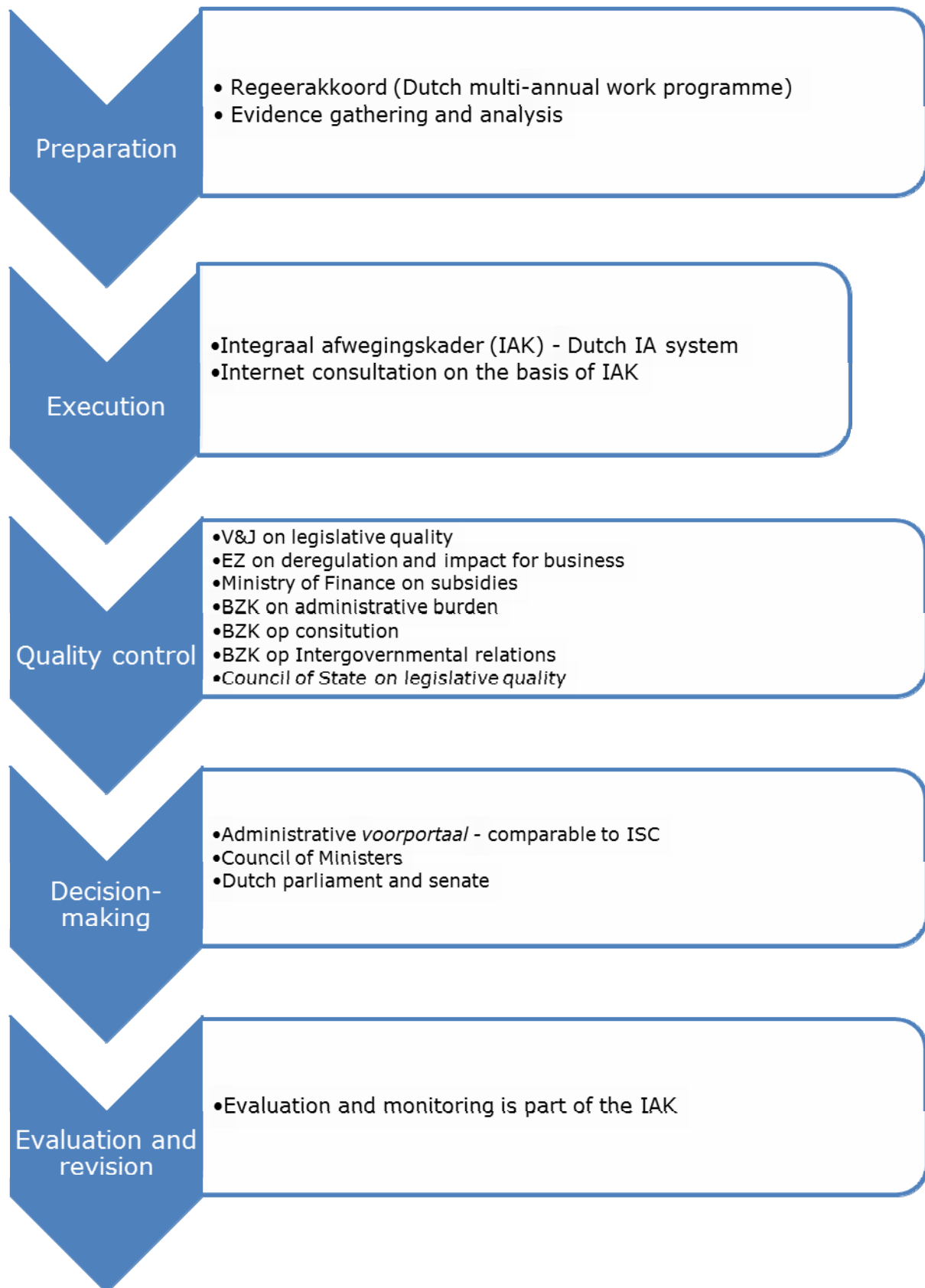**Figure 1. Commission policy preparation process.**

Figure 2. Dutch policy preparation process.

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