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Contents

1. Introduction

This paper analyses the role of crime risk assessment in the Belgian legislative procedure. Only federal legislation will be examined; the legislation of the Communities and the Regions will be disregarded.[1]

We shall start by analyzing the federal legislative procedure (infra, II). We shall then examine whether and to what extent crime risk assessment is taken into account within this legislative procedure. As will be shown, up until now this has not been done in any sort of institutionalized way (infra, III). However, it should not be inferred from this that the federal legislator completely ignores crime risk assessment. The introduction and monitoring of legislation concerning trade in human beings on the one hand and games of chance and casinos on the other demonstrates that the federal legislator is all too aware of the potential abuse of legislation by criminal organizations (infra, IV).

2. The federal legislative procedure in Belgium

2.1. The initiative to bring legislation into effect

Article 36 Gec.G.W., stipulates that federal legislative authority is jointly exercised by the King, the Chamber of Representatives and the Senate. This means that a bill or a legislative proposal[2] must first be adopted by the Legislative Chambers before it receives the Royal Assent.[3] Article 75 Gec.G.W., adds that each of the three branches of the federal legislature has the right to introduce federal legislation. The King, the members of the Chamber of Representatives and the members of the Senate can therefore, in principle, take the initiative to put legislation to the vote.[4]

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[1] Belgium is made up of three Communities – the Flemish Community, the French Community and the German-speaking Community – and three Regions – the Flemish Region, the Walloon Region and the Brussels Capital Region. See Articles 2 and 3 of the *Gecoördineerde Grondwet* [Coordinated Constitution] (hereinafter abbreviated to Gec.G.W.).

[2] A legislative proposal is legislation introduced by one or more members of Parliament in one of the Chambers. As soon as one Chamber has adopted the proposal it becomes a bill. If the initiative comes from the government, however, it is called a bill once the King has signed it (J. VANDE LANOTTE, *Inleiding tot het publiek recht Deel 2. Overzicht van het publiek recht*, Bruges, Die Keure, 1997, no. 766, note 1343).

[3] A. ALEN, *Handboek van het Belgisch staatsrecht*, Deurne, Kluwer, 1995, no. 194.

[4] In the case of matters that come under the unicameral system, the Senate is not part of the legislature, however (infra, II.2.1.). The senators therefore do not have the right to introduce legislation concerning these matters (J. VANDE LANOTTE, *o.c.*, no. 824).

2.1.1. Legislation introduced by the King

In practice most legislative initiatives come from the King. In effect this means the government. Its legislative initiatives are called Bills. Before a bill is presented to Parliament it has already gone through various preparatory stages.[5]

The competent Minister draws up a draft bill, usually in collaboration with officials in his ministry. This draft is discussed in the Cabinet and is then sent to the Legislation Department of the Council of State for advice.[6]

The advice issued by the Council of State, which is not binding, is confined to an examination of the legal/technical and linguistic aspects of the draft bill. For instance, the text is checked for technical faults – such as overlaps, gaps or ambiguities – and whether it is internally consistent. The Council of State also examines the draft bill for compatibility with the Constitution, international treaties and universal legal principles.[7] The Council of State may not, however, give its opinion on the desirability of the proposed text.[8]

The advice of the Council of State may lead to the draft bill being amended. If so, the draft bill is usually discussed again in the Cabinet. It is then presented to the King to be signed. Once signed, the draft bill becomes a bill. The federal government will then submit the bill to the Chamber.[9]

The bill is then referred to the appropriate parliamentary committee, which usually discusses it in depth and, if necessary, introduces amendments. The competent committee convenes in the presence of the technically competent Minister, who is assisted by Cabinet staff or by officials in his department. The committee is also authorized to hold hearings with senior representatives in the field, academics or other experts.[10] After the

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[5] See A. ALEN, *o.c.*, no. 195; P. DELNOY, "Belgium" in U. KARPEN (ed.), *Legislation in European Countries. Proceedings of a Conference in Bad Homburg/Germany (Dec. 11-13, 1991)*, Baden-Baden, Nomos Verlagsgesellschaft, 1996, (74) 81.

[6] A. ALEN, *o.c.*, no. 195.

[7] Draft implementation decrees are also examined for compatibility with legislative instruments.

[8] J. VANDE LANOTTE, *o.c.*, no. 1171.

[9] A bill approving a treaty, however, is submitted to the Senate. It should also be mentioned that a bill that comes under the full bicameral system (infra, II.2.2.) may be submitted to either the Chamber or the Senate, at the discretion of the federal government (A. ALEN, *o.c.*, no. 195).

[10] This option is becoming more and more popular. See F. LEURQUIN-DE VISSCHER, "Pertinence et praticabilité des procédures d'évaluation des lois en droit belge" in B.

bill has been voted on in committee it proceeds to the plenary session of the Chamber. The bill is then debated and finally put to the vote.[11]

2.1.2. Legislation introduced by Deputies or Senators

The legislative initiative of one or more members of the Chamber of Representatives or the Senate is called a legislative proposal. Each legislative proposal should be considered by the Chamber to which it is submitted. This means that the plenary session of the Chamber in question should decide whether the proposal is to be debated or not.[12]

The advice of the Legislation Department of the Council of State is not, in principle, required for legislative proposals, as opposed to the procedure for bills.

A legislative proposal is first discussed in the appropriate committee of the Chamber of Representatives or the Senate. Once the committee has approved the legislative proposal it proceeds to the plenary session, where it is debated and then put to the vote. As soon as a legislative proposal has been approved in one Chamber it becomes a bill.[13]

2.2. Division of competence between the Chamber of Representatives and the Senate

Prior to 1993, Belgium had a full bicameral system. The Chamber of Representatives and the Senate were equal partners in the legislative process and therefore had the same competence. As a result, a law could only be adopted when the Chamber and the Senate agreed on the same text. This classic bicameral system meant that bringing legislation into effect was a time-consuming process, and also involved a certain amount of work being duplicated.[14] During the constitutional revision of 1993, which explicitly defined Belgium as a federal State[15], the bicameral system was therefore

JADOT and F. OST (ed.), *Elaborer la loi aujourd'hui, mission impossible ?* Brussels, Publications des Facultés universitaires Saint-Louis, 1999, (229) 230-231.

[11] A. ALEN, *o.c.*, no. 195-196; J. VANDE LANOTTE, *o.c.*, no. 825-828. See also R. DEBOUTTE and A. VANDER STICHELE, "L'élaboration de la loi au niveau des commissions parlementaires", in B. JADOT and F. OST, *Elaborer la loi aujourd'hui, mission impossible?* Brussels, Publications des Facultés universitaires Saint-Louis, 1999, 125-138.

[12] J. VANDE LANOTTE, *o.c.*, no. 830.

[13] See A. ALEN, *o.c.*, no. 195-196; *ibid.*, no. 830.

[14] J. VANDE LANOTTE, *o.c.*, no. 745 and 747.

[15] Article 1 Gec.G.W.

fundamentally reformed. The subject matter of a bill or legislative proposal that has been approved by one of the two Legislative Chambers now determines the passage of that bill or legislative proposal through Parliament. Here a distinction must be made between unicameral matters, full bicameral matters and partial bicameral matters.[16]

2.2.1. Unicameral matters

With regard to unicameral matters legislative authority is jointly exercised by the King and the Chamber. In accordance with Article 74 Gec.G.W., this system applies to the introduction of legislation in four areas.[17] In these areas the Senate therefore no longer plays a part in the legislative procedure.[18]

2.2.2. Full bicameral matters

With regard to full bicameral matters the Chamber and the Senate have equal powers. This means that a law that falls within the scope of this system cannot be given Royal Assent until both Chambers have approved the same text. In accordance with Article 77 Gec.G.W., this system, which is actually a continuation of the former bicameral system, is applicable to legislation on ten subjects.[19]

2.2.3. Partial bicameral matters

All matters that are not provided for in Articles 74 and 77 Gec.G.W., quoted above are treated as partial bicameral matters. When introducing legislation that comes under this system the main emphasis is on the Chamber of Representatives, while the Senate functions as the reflection assembly. This function implies that the Senate can amend legislation introduced, can debate proposed statutory provisions and, if necessary, make amendments to these, but that the Chamber has the final say.[20]

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[16] A. ALEN, *o.c.*, no. 199.

[17] The areas in question cover legislation concerning the granting of naturalization, the civil and penal responsibilities of the King's Ministers, the State budgets and accounts, and the establishment of the army quotas.

[18] A. ALEN, *o.c.*, no. 194 and 200.

[19] These include legislation relating to the revision of the Constitution; laws that affect the foundations of the Belgian State and the relationship between the federal government, the Communities and the Regions; laws relating to the approval of international treaties; and laws concerning the organization of courts and tribunals See *ibid.*, no. 201; J. VANDE LANOTTE, *o.c.*, no. 761.

[20] J. VANDE LANOTTE, *o.c.*, no. 751 and 763.

With regard to the procedure for bringing legislation into effect - in those areas that fall within the scope of the optional bicameral system - a distinction needs to be made between the case where the Chamber is the first to debate a bill or legislative proposal (II.2.3.1.) and the case where the Senate is the first to take any action (II.2.3.2.).

2.2.3.1. The right of evocation of the Senate

When a Chamber deputy or the King exercises the right to introduce legislation relating to a partial bicameral matter, the Chamber is the first to examine the legislative proposal or bill in accordance with the procedure outlined above. If the Chamber adopts the legislative proposal or bill, it is then sent to the Senate. At the request of at least fifteen senators the Senate can examine the bill.[21] If the Senate exercises this 'right of evocation', it then has sixty days either to decide against amendment of the bill, reject it in its entirety or amend it.[22] This right of evocation is basically intended to improve the quality of the legislation.[23]

In the event that the Senate decides not to amend the evoked bill or rejects it in its entirety, the Chamber will present it to the King to receive the Royal Assent. If, however, the Senate amends the evoked bill, it will then send the bill back to the Chamber.[24]

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[21] In accordance with Article 78 Gec.G.W., this request should be made within fifteen days of the bill being received.

[22] Article 78 Gec.G.W.; J. VANDE LANOTTE, *o.c.*, no. 766.

[23] Bill establishing a procedure for the evaluation of legislation. Proposal to set up a Legislative Evaluation unit within the offices of the Senate. Proposal to set up a Legislation Department at the Senate. Report on behalf of the Institutional Affairs Committee, issued by Mr Caluwé, *Parlementaire Stukken* [Parliamentary Documents] (hereinafter abbreviated to Parl.St.] Senate 1998-99, no. 1-955/3, 68.

[24] J. VANDE LANOTTE, *o.c.*, no. 766. In the latter case a distinction must be made, in accordance with Articles 78 and 79 Gec.G.W., between two possible options. The first option is that the Chamber accepts or rejects all or some of the amendments introduced by the Senate. In this case it will present the bill to the King to receive the Royal Assent. The second option is that the Chamber itself accepts new amendments to the bill. In this case the bill is sent back to the Senate. If the Senate subsequently adopts the bill, it is presented to the King to receive the Royal Assent. If, however, the Senate introduces new amendments, the bill is sent back to the Chamber. The Chamber will make a final decision on the bill and present it to the King to receive the Royal Assent (J. VANDE LANOTTE, *o.c.*, no. 766 and 769).

2.2.3.2. The right of the Senate to introduce legislation

The Senate has the right to introduce legislation concerning bicameral matters. Bills that are adopted in the Senate by virtue of this right are sent to the Chamber in accordance with Article 81 Gec.G.W.

The Chamber can then either adopt the bill and present it to the King to receive the Royal Assent, or reject the bill. Both decisions are final, so that in these cases the bill cannot be sent back to the Senate. If, however, the Chamber decides to introduce amendments, the bill is submitted once again to the Senate.[25]

2.3. Royal Assent, promulgation and publication of the Act

Once the bill has been debated and approved in the Chamber and, if necessary, in the Senate, it is presented to the King to receive the Royal Assent. This assent means that the King, as part of the legislature, declares himself in agreement with the bill presented by the Chamber(s). The Royal Assent is followed by promulgation, whereby the King, as head of the executive power, confirms the existence of the Act and orders that it shall be implemented. Following promulgation the bill formally becomes an Act. This Act does not become binding, however, until the tenth day following its publication in the *Belgisch Staatsblad* [B.S., Belgian Law Gazette], unless another period is specified in the Act itself or unless the King is empowered under the Act to determine the date on which it comes into force.[26]

3. Crime risk assessment in the federal legislative procedure

3.1. The discussion in legal doctrine

To date crime risk assessment in the context of the introduction of legislation as such has not been a popular theme in legal doctrine. In the past few

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[25] In the latter case a distinction must be made between two possible situations. The first situation is that the Senate does not introduce amendments to the bill, and it is then presented to the King to receive the Royal Assent. The second situation is that the Senate does amend the bill. In that case the bill will be sent back to the Chamber. The Chamber will then either reject the bill in its entirety or present it, amended or otherwise, to the King to receive the Royal Assent. (*ibid.*, no. 767 and 769).

[26] See Article 4 of the Law of 31 May 1961, concerning linguistic usage in legislative matters, the drafting, publication and entry into force of Acts and bye-laws; J. VANDE LANOTTE, *o.c.*, no. 832-834.

years, however, there has been growing interest in the phenomenon of legislation as such and in the legislative process in a broader sense.[27]

It is laid down that it is the duty of the legislator to ensure that laws come into effect and hence effectively enforced. In the light of this, the development of a method for evaluating legislation is considered necessary. Such a method should make it possible to assess the effectiveness and efficiency of the legislation.[28] It should also make it possible to test the consequences of implementing a statutory regulation against the objectives underlying the regulation.[29] These aims can only be achieved if the legislator has an organization that perpetually carries out research on legislative evaluation in a professional and interdisciplinary manner.[30]

Up to now, however, there is no specific organization in Belgium that is charged with this kind of legislative evaluation. Moreover, the question as to which body could or should be assigned this task is not clearly answered in legal doctrine. On the one hand a proposal has been put forward to set up a committee for federal and other legislation within the Ministry of Justice.[31] On the other hand there is support for the argument that the evaluation of legislation cannot really be entrusted to a body within the executive power, but should be handed over to the legislature. According to the latter

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[27] A. ADAMS, "Wetgeving en beleid: pleidooi voor een heroverweging van de rol van het parlement in het wetgevingsproces en een systeem van wetsevaluatie", *Rechtskundig Weekblad* 1992-93, (1041) 1041. Legal doctrine has long shown an interest in the formal legist aspects of legislation – such as linguistic usage, style, structure, etc. See P. DELNOY, "Pour une nouvelle génération de légistes", *Journal des Tribunaux* 1979, 653-655; P. DELNOY, "Pour un (ou plusieurs) corps de légistes ?" in B. JADOT and F. OST (ed.), *Elaborer la loi aujourd'hui, mission impossible ?* Brussels, Publications des Facultés universitaires Saint-Louis, 1999, (197) 198-203.

[28] See for example A. ADAMS, *l.c.*, 1047-1049.

[29] H. COREMANS and M. VAN DAMME, *Beginselen van wetgevingstechniek en behoorlijke regelgeving*, Bruges, Die Keure, 1994, no. 126.

[30] See A. ADAMS, *l.c.*, 1050.

[31] J. GIJSSELS, "Een Comité voor Wetgeving", *Vlaams Jurist Vandaag* 1997, afl. 1/2, (6) 6; VLAAMSE JURISTENVERENIGING, "Uitnodiging en inleiding tot het maatschappelijk debat over recht en gerecht", *Vlaams Jurist Vandaag*, 1996, afl. 8, (1) 1. There used to be a Legislation Council within the Ministry of Justice. This Council was established by Royal Decree on 3 December 1911, and comprised lawyers who assisted the government and the Parliament in drafting bills and legislative proposals. However, the establishment of the Legislation Department within the Council of State resulted in the abolition of the Legislation Council by decree of the Regent on 28 August 1948 (see legislative proposal to establish a Legislation Council, *Parl.St.* Chamber 1996-97, no. 1071/1, 6-7).

viewpoint, the Chamber, the Senate and/or the King, as head of the legislature, would thus be called upon to perform this task.[32]

There is more consensus on the content and scope of legislative evaluation. It is pointed out, in particular, that the evaluation of legislation should be both prospective and retrospective. Prospective or *ex ante* evaluation means that the effects of proposed legislation are assessed beforehand, while retrospective or *ex post* evaluation is aimed at examining the effects of existing legislation.[33]

3.2. The political debate

The quality of legislation has also been attracting more attention in the political arena in recent years.[34]

For example, it was proposed in a legislative proposal of 10 June 1997, to set up a Legislation Council within the Chamber. This Council would be responsible for drafting legislative proposals, and would do so on the basis of the main points and objectives adopted by the Chamber in preliminary

[32] F. LEURQUIN-DE VISSCHER, *l.c.*, 241.

[33] See M. ADAMS and K. VAN AEKEN, *Evaluatie van wetgeving element van een wetgevingsbeleid. Nota voor the Senaatscommissie voor de Institutionele Aangelegenheden*. This policy document is published as an appendix to the Bill establishing a procedure for the evaluation of legislation. Proposal to set up a Legislative Evaluation unit within the offices of the Senate. Proposal to set up a Legislation Department at the Senate. Report on behalf of the Institutional Affairs Committee, issued by Mr Caluwé, *Parl. St.* Senate 1998-99, no. 1-955/3, 98-114.

[34] Besides the initiatives discussed here, two more legislative proposals should be mentioned for the sake of completeness. Firstly, the legislative proposal of 7 May 1992, which provided for a three-yearly evaluation of existing legislation and regulations by the Council of State (Legislative proposal to establish a three-yearly legislative evaluation, *Parl.St.* Chamber 1991-92 Buitengewone Zitting [Special Session] (hereinafter abbreviated to B.Z.), no. 439/1). This legislative evaluation was supposed to provide a summary of the legal standards that are wholly or partly superseded or that cause problems in the area of implementation, interpretation or application. This legislative proposal was never approved, however. Secondly, the legislative proposal of 25 April 1990, which was re-submitted on 25 May 1992 (Legislative proposal to insert Article 65*bis* and to amend Article 66 of the Rules of Procedure of the Chamber of Representatives, *Parl. St.* Chamber 1989-90, no. 1164/1 and 1991-92 B.Z. no. 481/1). This legislative proposal was intended to adapt existing legislation, in a regular and systematic manner, to any changes in the social and institutional context. It, too, was never approved, however. For an analysis of both legislative proposals, see the report prepared on behalf of the sub-committee of the Constitutional Revision Committee, charged with examining legislative proposals to introduce periodical legislative evaluation, *Parl.St.* Chamber 1991-92 B.Z., no. 439/2.

debates on such proposals. Furthermore, the Council would evaluate existing legislation and report its findings to the Chamber.[35] Going one step further, the Council would be able to formulate proposals, on its own initiative or at the request of the Chamber, to improve, supplement, simplify and codify existing legislation.[36] This legislative proposal has not yet been adopted.[37]

Of more importance is the bill establishing a procedure for the evaluation of legislation, which was approved by the Senate on 21 January 1999.[38]

Under the provisions of this bill the Senate, as the reflection assembly, is responsible for evaluating the existing federal legislation and reports annually on its activities in this area. This legislative evaluation will have to be carried out on the basis of two annual reports, one prepared by the *college van procureurs-generaal* [Board of Attorneys General] and the Attorney General to the Court of Cassation, and the other by the Council of State. These annual reports contain a summary of the federal legal standards that have caused problems for the courts and tribunals as well as for the Council of State in the past judicial year in terms of their application or interpretation. The intended legislative evaluation should result in the modification of statutory provisions that are wholly or partly contradictory or that have become obsolete. Another aim of the evaluation is that where the imple-

[35] This evaluation would take place on the basis of reports from the judiciary. A supplementary legislative proposal of 22 July 1997, provided for the presiding President of the Court of Cassation annually submitting a report to the Legislation Council on laws that have proved to be "deficient or otherwise inadequate" (Article 2 Legislative proposal on the assistance of the Court of Cassation with the legislative evaluation, *Parl.St.* Chamber 1996-97, no. 1151/1).

[36] Article 3 Legislative proposal to set up a Legislation Council, *Parl.St.* Chamber 1996-97, no. 1071/1.

[37] A legislative proposal of 10 October 1997, which aimed to set up a legislative technique department within the Chamber, was not approved either. The purpose of this department was to assist Chamber deputies with drafting legislative proposals. Staff in this department were supposed to ensure that the legislation was of a high quality, and also that it was consistent, accurate, clear and read well (single Article of Legislative proposal to insert in the Rules of Procedure of the Chamber of Representatives Article 65*bis* concerning the establishment of a "legislative technique department", *Parl.St.* Chamber 1996-97, no. 1098/1).

[38] Bill establishing a procedure for the evaluation of legislation, adopted in plenary session and sent to the Chamber of Representatives, *Parl.St.* Senate 1998-99, no. 1-955/5.

mentation, interpretation or application of certain legislation creates difficulties, this legislation should be amended.[39]

With a view to implementing this legislative evaluation the Senate's Institutional Affairs Committee approved a legislative proposal on 14 January 1999, to set up a Legislative Evaluation Department .[40] This department, which will comprise lawyers and other specialists, will be responsible for preparing the legislative evaluation outlined above.[41]

The whole procedure for evaluating legislation is not yet in effect, since the Chamber still has to pronounce on the bill approved by the Senate on 21 January 1999.[42] It should also be emphasized, on the one hand, that the procedure will be limited to an examination of the purely legal problems that occur when a certain piece of legislation is implemented and, on the other hand, that it is only intended to be an *ex post* evaluation of existing legislation.[43] The latter point does not mean, however, that there is no interest in the political arena in prospective evaluation of legislation.

The intention, therefore, is that the Senate's Legislative Evaluation Department mentioned earlier will also be responsible for the preparation of

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[39] Bill establishing a procedure for the evaluation of legislation, adopted by the Institutional Affairs Committee, *Parl.St.* Senate 1998-99, no. 1-955/4.

[40] As a result, a similar proposal to set up a Legislation Department at the Senate (*Parl.St.* Senate 1997-98, no. 1-839/1) was dropped. See Bill establishing a procedure for the evaluation of legislation. Proposal to set up a Legislative Evaluation unit within the offices of the Senate. Proposal to set up a Legislation Department at the Senate. Report on behalf of the Institutional Affairs Committee, issued by Mr Caluwé, *Parl.St.* Senate 1998-99, no. 1-955/3, 90.

[41] Proposal to set up a Legislative Evaluation unit within the offices of the Senate, adopted by the Institutional Affairs Committee, *Parl.St.* Senate 1998-99, no. 1-643/7. Besides having recourse to the Legislative Evaluation Department the Senate, with a view to preparing for the legislative evaluation, can, if necessary, consult external experts and/or instruct them to carry out studies. Moreover, there is nothing to stop the Senate from consulting the administrative organs that are involved in the implementation of legislation (Bill establishing a procedure for the evaluation of legislation. *Memorie van toelichting* [Explanatory Memorandum], *Parl.St.* Senate, 1997-98, no. 1-955/1, 5).

[42] See Article 2 of the Bill lifting the nullity of some bills (no. 0187/001) (II), *Parl.St.* Chamber 1999-2000, no. 0187/001. A number of amendments, mainly of a linguistic nature, have already been proposed in the Chamber. See Bill establishing a procedure for the evaluation of legislation, *Parl.St.* Chamber 1998-99, no. 1950/2.

[43] B. JADOT and F. OST, "Introduction générale" in B. JADOT and F. OST (ed.), *Elaborer la loi aujourd'hui, mission impossible?* Brussels, Publications des Facultés universitaires Saint-Louis, 1999, (7) 9.

the evaluation of bills and legislative proposals.[44] With this in mind, the proposed legislation will be assessed against a number of important quality criteria.[45] In the context of this paper three criteria are of particular importance. Firstly, the criterion of a clear purpose. This criterion requires that in the legislative process there is a clear understanding of the objective to be achieved. This assumes that the actual circumstances to which the legal requirement relates are clearly identified. The desired changes should then be specified, as well as details of how those changes can be brought about. Another important criterion concerns the practicability or the enforceability of the legislation. This implies that guarantees should be given that in practice the law will be (or will be able to be) put into effect. To this end, the question of whether the judicial and administrative system will be capable of implementing the statutory regulation properly will have to be taken into account. The third criterion is that of effectiveness and efficiency. This concerns the question of whether the draft legislation will be able to achieve its objective. Effectiveness should be linked to efficiency or expediency, however. Thus another requirement is that the legislation should be designed in such a way that maximum results can be achieved with the minimum of resources.[46]

On the other hand, prospective evaluation of legislation is attracting increasing attention in government circles. For instance, the general policy plan of the Ministry of Justice for the financial year 2000 holds out the prospect of the introduction of a system of *ex ante* evaluation. One specific idea is to have the author of a legislative proposal or bill complete a questionnaire. This questionnaire would contain elements that make it possible to improve the quality of legislation and would also have a bearing on the effectiveness and efficiency of the proposed legislation.[47]

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[44] Proposal to set up a Legislative Evaluation unit within the offices of the Senate, adopted by the Institutional Affairs Committee, *Parl.St.* Senate 1998-99, no.1-643/7.

[45] There are nine criteria: legal certainty, equality before the law, the principle of individual administration of justice, subsidiarity, a clear purpose, the principle of necessity, practicability, effectiveness and efficiency, and proportionality (see Proposal to set up a Legislative Evaluation unit within the offices of the Senate, adopted by the Institutional Affairs Committee, *Parl.St.* Senate 1998-99, no. 1-643/7).

[46] Proposal to set up a Legislative Evaluation unit within the offices of the Senate, *Parl.St.* Senate 1996-97, no. 1-643/1, 5-9.

[47] Draft general expenditure budget for the financial year 2000. General policy lines of the Ministry of Justice for the financial year 2000, *Parl.St.* Chamber 1999-2000, no. 0198/013, 46. The previous government had already promised a similar questionnaire. It also decided to appoint an editing committee and a commission, which would be re-

3.3. The present scope for crime risk assessment

The fact that there is not yet any institutionalized procedure for crime risk assessment under Belgian law does not mean that legislators do not already have some scope, in the course of the legislative process, for taking into account the risks of legislation being abused by criminal organizations.

In the first place, it should be mentioned that the Chamber and the Senate each have the right to hold an inquiry in accordance with Article 56 Gec.G.W. According to the Law of 3 May 1880, which was fundamentally amended by the Law of 30 June 1996, this right is exercised by the Legislative Chamber as such or by a committee of inquiry appointed by its members. In recent years the right to hold an inquiry has been increasingly used, particularly with a view to formulating preparatory policy-making recommendations.[48] The problems of the trade in human beings, which are discussed later in this paper[49], demonstrate that parliamentary committees of inquiry can make a significant contribution to the evaluation of legislation, albeit invariably on an *ad hoc* basis.[50]

Secondly, the *college van procureurs-generaal* [Board of Attorneys General], as head of the Public Prosecutor's Office, plays an important part in the evaluation of legislation, given that its task is to inform and advise the Minister of Justice, either officially or at his request, on all matters related to the work of the Public Prosecutor's Office.[51] The Board can notify the Minister of Justice of any problems that arise in the application of certain legislation. This regulation also gives the Minister of Justice the option of asking the Board's advice when new legislation is being prepared. Fur-

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sponsible for adapting and developing the legislative technique handbook. This initiative eventually resulted in a circular drawn up by the Council of State, *Wetgevingstechniek. Aanbevelingen en formules* [Legislative technique. Recommendations and formulas], the latest version of which is dated 1 March 1999. In this circular, rules and formulas are developed that aim to introduce more unity and coherence into legislative technique (Bill establishing a procedure for the evaluation of legislation. Proposal to set up a Legislative Evaluation unit within the offices of the Senate. Proposal to set up a Legislation Department at the Senate. Report on behalf of the Institutional Affairs Committee, issued by Mr Caluwé, *Parl.St.* Senate 1998-99, no. 1-955/3, 24-28).

[48] A. ALEN, *o.c.*, no. 192. See also K. DESCHOUWER, "Onderzoekscommissies en de politiek" in C. FIJNAUT, L. HUYSE and R. VERSTRAETEN (ed.), *Parlementaire onderzoekscommissies. Mogelijkheden, grenzen en risico's*, Leuven, Van Halewyck, 1998, (11) 29-31.

[49] Infra, IV.1.

[50] F. LEURQUIN-DE VISSCHER, *l.c.*, 231-232.

[51] Article 143*bis* §3 of the Judicial Code.

thermore, it should be mentioned that the Board reports annually on its activities to the Minister of Justice and that its report is also submitted to Parliament.[52] The report points out problems that occur in the application of certain legislation. The Minister of Justice and/or Parliament can then take the initiative to amend the legislation if necessary.

4. Capita selecta

The present lack of any institutionalized procedure for crime risk assessment in the introduction and evaluation of federal legislation does not alter the fact that the federal legislator is all too aware of the potential abuse of legislation by criminal organizations. This statement will be illustrated by means of two examples of recent legislation, namely the Trade in Human Beings Act of 13 April 1995, and the Games of Chance and Casinos Act of 7 May 1999.

Both of these Acts will be discussed along the same lines. First their content will be examined and then their introduction and retrospective evaluation will be analyzed. The details of this general framework will be somewhat different for the two Acts. Whereas the Games of Chance and Casinos Act of 7 May 1999 is, in itself, already an example of crime risk assessment, the Trade in Human Beings Act of 13 April 1995, is a conventional piece of criminal legislation. The latter is, however, one of a whole range of measures aimed at crime risk assessment.

4.1. Trade in human beings

4.1.1. The Law of 13 April 1995

In the early 1990s, there was growing interest both in the media and in Parliament for the threat posed by the internationally organized trade in human beings. This culminated in the Trade in Human Beings and Child Pornography Act of 13 April 1995.[53] This Act introduced the concept of 'trade in human beings' into Belgian legislation and made it a crime *sui generis* punishable under Articles 379 and 380*bis* of the Penal Code and under Article 77*bis* of the Aliens Act. This made up for the shortcomings of the existing legislation. For instance, there was an increase in penalty if the crime

[52] Article 143*bis* §7 of the Judicial Code.

[53] Trade in Human Beings and Child Pornography Act of 13 April 1995, *B.S.* 25 April 1995.

of trading in human beings was committed within the context of an association, criminal or otherwise (new Article 381*bis* of the Penal Code). The Law of 13 April 1995, also introduced a system of monitoring and evaluation of the fight against the trade in human beings.

In the next few sections the introduction of the Law of 13 April 1995, will be analyzed, and the system of monitoring and evaluation discussed. We shall also examine how much attention is devoted within this regulatory framework *sensu lato* to prospective and/or retroactive legislative evaluation with a view to crime risk assessment.

4.1.2. The introduction of the legislation

4.1.2.1. The parliamentary committee of inquiry on trade in human beings

The Law of 13 April 1995, is a direct consequence of the work of the 'parliamentary committee of inquiry charged with the inquiry into a structural policy with a view to the punishment and eradication of trade in human beings', which was set up on 23 December 1992, under the auspices of the Justice Committee of the Chamber of Representatives. This committee of inquiry was appointed in response to the social consternation aroused by the book '*Ze zijn zo lief, meneer*' ['They're so sweet, sir'] written by the journalist Chris De Stoop.[54] In his book De Stoop exposed the issue of the trade in women, and also the link between that trade and enforced prostitution, organized crime and corruption. He postulated that the existing legislation and policy initiatives were completely inadequate to combat these forms of crime.

The committee of inquiry began its task by defining the phenomenon of trade in human beings. Although the committee never explicitly used the term 'organized crime', it clearly placed trade in human beings within that context.[55]

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[54] C. DE STOOP, *Ze zijn zo lief, meneer. Over vrouwenhandel, meisjesballetten en de bende van de miljardair*, Kritak, Leuven, 1992, 284 p.

[55] For instance, the committee describes the "international nature" of the trade in human beings, mentions the "international and organized networks for trade in women", talks about the "Eastern European criminal organizations that focus on the trade in women in Belgium" and about the "environment of crime" within which it is all set up. See Report of the parliamentary inquiry into a structural policy with a view to the punishment and eradication of trade in human beings, *Parl.St.* Chamber 1991-92 B.Z., no. 673/7, 6 and 14-15.

Having examined the existing statutory instruments available, the committee felt that these were not in fact sufficient to combat trade in human beings, as defined by the committee, in an efficient and effective manner. In the area of international law the Convention of New York of 21 March 1950, on the prevention of trade in human beings and of the exploitation of the prostitution of others was the main instrument for tackling trade in human beings.[56] The committee found, however, that the Belgian legislator had not yet taken any sufficiently coherent or structured measures to implement this international agreement.[57] The most important provisions for combating trade in human beings in national legislation were in the first place the former Articles 379, 380, 380*bis*, 380*ter* and 380*quater* of the Penal Code, which concerned the punishment of the exploitation of prostitution. According to the committee, however, the element of 'trade' in women was substantially lost in the former interpretation of these Articles of the Penal Code. Furthermore, in the committee's view, the condition prescribed by law that the trade must take place "with a view to prostitution or vice" was interpreted too strictly in case law, with the result that certain forms of trade in women could not be punished.[58] It also felt that the context in which trade in human beings takes place had drastically changed since the aforementioned Articles in the Penal Code had come into effect.[59] Another important provision was Article 77 of the Aliens Act[60], which provided for the punishment of persons who render help or assistance to aliens entering or residing in the country illegally. Even this provision failed to

[56] *United Nations Treaty Series,* 1951, D. 96, no. 1342, 271-316. The treaty was approved by the Belgian legislator in the Law of 6 May 1965, *B.S.* 13 August 1965.

[57] Report of the parliamentary inquiry into a structural policy with a view to the punishment and eradication of trade in human beings, *Parl.St.* Chamber 1991-92 B.Z., no. 673/7, 17.

[58] Article 380*bis*, paragraph 2, of the Penal Code curbs trade in adults and minors with a view to prostitution or vice. The committee argued that courts and tribunals give "a more general interpretation" (by which it meant a 'narrow interpretation') to this provision. Although the Court of Cassation leaves some scope regarding the terms prostitution or vice, generally speaking the lesser courts argue that trade in women, for the purpose of enforced striptease or cabaret services, does not come within this category (*ibid.*, 17).

[59] "Whereas it mainly used to be a question of curbing the "white slave trade", nowadays we are dealing with a reverse movement in an almost completely changed international context." (*ibid.*, 88).

[60] The Aliens (Access, Residence, Settlement and Removal) Act of 15 December 1980, *B.S.* 31 December 1980.

combat trade in human beings properly in the committee's view, however, since certain forms of this activity, where use was made of legal documents, were not covered by this Article. The committee therefore considered it necessary to introduce legislation that recognized trade in human beings as a specific crime and where emphasis was placed on the *de facto* lack of freedom of the victims.[61]

These conclusions led to the legislative proposal on the prevention of trade in human beings[62], which formed the basis for the aforementioned Law of 13 April 1995. In the description of its tasks the committee had also explicitly stated, however, that the inquiry "will mainly focus on the structural aspects of the trade in human beings and on the networks that organize this trade".[63] It therefore not only prepared a proposal to amend criminal legislation, but also formulated a whole range of recommendations and proposals with a view to establishing a proper approach to the phenomenon of trade in human beings and its causes.[64] Within the context of this paper the proposals that aim to tackle trade in human beings preventively are of particular importance. The intended measures can be divided into two categories.

The first category concerns judicial and criminal policy. One of the points the committee made here was that both the police and the Public Prosecutor's Office should pay more attention to preparatory financial investigation as part of their investigations into networks of trade in human beings. According to the committee, this is because trade in human beings often goes hand in hand with fiscal or other forms of fraud and with money laundering.[65] The committee also thought that the prostitution trade should primarily be tackled using the weapon of social legislation. There should be more scope for "combating trade in human beings, which is often difficult to prove, by looking for evidence of flagrant violation of social legislation - evidence that

[61] Report of the parliamentary inquiry into a structural policy with a view to the punishment and eradication of trade in human beings, *Parl.St.* Chamber 1991-92 B.Z., no. 673/7, 88.

[62] Legislative proposal on the prevention of trade in human beings, introduced by Mr Vande Lanotte, *Parl.St.* Chamber 1993-94, no. 1381/1-93-94, 2787.

[63] Report of the parliamentary inquiry into a structural policy with a view to the punishment and eradication of trade in human beings, *Parl.St.* Chamber 1991-92 B.Z., no. 673/7, 7.

[64] *Ibid.*, 7.

[65] *Ibid.*, 92.

is relatively easy to obtain".[66] According to the committee, this meant that the inspectorates of the Ministry of Employment and Labour should systematically monitor compliance with social legislation in the world of prostitution. In this way it would be possible "to use strong-arm tactics against all kinds of shady individuals or companies that provide an ideal marketplace for the trade in women".[67] Finally, the committee thought that a global approach to the problem of the trade in human beings should also be adopted via a systematic reorganization of the property market (hotels, brothels and cafés) where the trade in women and prostitution is centred.[68]

The second category of preventive measures concerns measures of an administrative nature. For instance, the committee advocated better coordination between the issue of residence permits and that of work permits, and hence for more collaboration between the various competent authorities.[69] Following on from this, the committee pointed to the need to drastically reduce both the number of documents and the ease with which they could be forged. These measures should make it considerably easier to combat the trade in human beings.[70] The various authorities should also work together more to monitor the employment of foreign workers so that any abuses can be tackled more effectively.[71]

4.1.2.2. The reaction of the government

The report by the committee of inquiry not only resulted in the aforementioned amendment of criminal legislation, but also prompted the govern-

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[66] An administrative approach, including administrative sanctions, also has the advantage that swift and efficient action can be taken. It seems to be common practice for the criminal milieu not to wait for the outcome of a criminal prosecution, but simply to move their operations elsewhere and thus elude any form of punishment (*ibid.* 19-20).

[67] *Ibid.*, 93.

[68] The committee called the huge profits that are made hiring 'shop windows' to prostitutes "a form of pimping" and proposed tackling the underlying networks of 'pimps' through measures such as administrative confiscation of property (*ibid.*, 94).

[69] In this context more systematic checks when issuing visas and transit visas are required so that a clearer link can be created between the issue of the visa and its use (*ibid.*, 99).

[70] *Ibid.*, 96.

[71] The committee pointed out the vulnerability of systems such as au pairs, marriages of convenience or adoption, and argued that stricter checks on the effective application of the existing regulations would be more important than introducing additional regulations (*ibid.*, 96).

ment to pursue a more specific policy, especially in the area of the prevention of trade in human beings. The preventive measures formulated by the committee of inquiry formed the logical starting point of this policy.

One measure that was introduced was the option of seconding tax officials to the Public Prosecutor's Office. These officials were supposed to assist the Public Prosecutors in conducting the financial analyses recommended by the committee.[72] In addition, with a view to ensuring better compliance with social legislation and the prevention of abuse in this area, a protocol was signed by the competent ministers on 30 July 1993, to improve the collaboration between the various social inspectorates and to coordinate their checks in all kinds of economic sectors.[73]

The preventive measures of an administrative nature that the committee proposed were also implemented to some extent. The government did acknowledge that "the networks conveniently used the gaps in the regulations concerning access to Belgian territory and concerning work permits".[74] In the light of this they therefore took action to ensure better harmonization of the residence and labour regulations. With the help of the Minister of Employment and Labour various amendments to Acts were put through and a cooperation agreement was worked out with the Regions for "coordination of policy on residence permits and on standards relating to the employment of foreign workers".[75] In addition, measures were taken with a view to reducing both the number of documents and the ease with which they could be forged.[76] One final important point is that the government emphasized the need for systematic investigation of organized trade in human beings. This investigation was entrusted to the Aliens Affairs Department and the Central Bureau of Investigations of the *Gendarmerie*.[77]

4.1.3. The retrospective evaluation of the legislation

In its report the Trade in Human Beings Committee proposed not only an amendment of criminal and other legislation and a series of preventive measures, but also emphasized the need for continuity in the policy to

[72] Trade in human beings – Reply from the government 12 July 1994, *Parl.St.* Chamber 1991-92, no. 673/9, 56.
[73] *Ibid.*, 58.
[74] *Ibid.*, 47.
[75] *Ibid.*, 62.
[76] *Ibid.*, 50, 63-64.
[77] *Ibid.*, 50, 63-68.

combat trade in human beings.[78] In the light of this the committee considered it necessary that the legislation and the other measures taken to combat trade in human beings should be evaluated systematically. The purpose of this evaluation should be to ensure that existing legislation takes account of the issue of trade in human beings in all its different modes and forms, and that criminal organizations are prevented from abusing the regulations.[79]

With this in mind the government was required to report annually to Parliament on the policy designed to combat trade in human beings.[80] Although this obligation was incorporated into Article 12 of the Law of 13 April 1995, to date the government has submitted just two reports.[81]

Secondly, an institutional framework was created by Royal Decree of 16 June 1995[82], in implementation of the Law of 13 April 1995, within which

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[78] The committee felt that the trade in human beings was a structural and therefore a permanent problem, arising from the contrast between North and South: "As long as the causes are not eradicated, the phenomenon will remain. It is clear to all concerned that these causes, especially the inequality between rich and poor, will not disappear in the foreseeable future". The committee drew the following conclusion from this for the policy: "For evaluating the phenomenon of the trade in human beings this is the most important conclusion: combating the causes of this phenomenon will take many years' work". See Report of the parliamentary inquiry into a structural policy with a view to the punishment and eradication of trade in human beings, *Parl.St.* Chamber 1991-92 B.Z., no. 673/7, 15 and 83.

[79] *Ibid.*, 102-105.

[80] *Ibid.*, 102-103.

[81] The first government report to Parliament was presented in October 1996, while the second did not appear until March 1999 and related to the year 1998. No reports for the years 1997 and 1999 have been submitted as yet. The competent minister justified this omission by pointing out that quality should always take precedence over quantity. (See *Questions and Answers* Chamber, 1998-1999, 8 March 1999 (*Question* no. 2067 LANO)). The government reports also highlighted the importance of a preventive approach to trade in human beings. For instance, the government stated that "eliminating the factors that offer traffickers in illicit workers the opportunity to expand their networks" is a policy priority. The government also announced that it would be using the following 'lines of force of future government policy': prevention of abuse of the asylum application procedure, a reworking of the policy of removing illegal immigrants who are actively involved in the prostitution trade, and tackling the problem of marriages of convenience. See Report of the government on the prevention of the trade in human beings and the application of the Laws of 13 April 1995 (year 1998), *Parl. St.* 1999-2000, no. 0310/001, 8 and 43-44.

[82] Royal Decree of 16 June 1995, concerning the mandate and competence of the Belgian Federal Center for Equal Opportunities and Opposition to Racism (CEOOR) in the field of combating international trade in human beings, and implementing Art. 11,

the policy on combating trade in human beings was to be evaluated. As a first step an Interdepartmental Coordination Unit was set up to combat international trade in human beings. This unit is made up among others of representatives from the various competent ministries, the Public Prosecutor's Office, the State police and the relevant inspectorates. They meet at least twice a year and are responsible for exchanging information with a view to dismantling and eliminating the activities of the traffickers and their networks; evaluating the results of the fight against the trade in human beings; and providing assistance with proposals and recommendations concerning policy to combat trade in human beings. The unit must also furnish the Belgian Federal Centre for Equal Opportunities and Opposition to Racism (CEOOR) with the necessary information. In accordance with the Royal Decree of 16 June 1995, the CEOOR is responsible for permanently stimulating, coordinating and evaluating the policy to combat international trade in human beings. It produces an independent, public evaluation report on this policy annually[83], which is of course also submitted to the government. Besides writing these reports, one of the main tasks of the CEOOR is to prepare policy on combating trade in human beings. In its most recent report, for example, the CEOOR highlighted two major policy priorities. The first was that the asylum application procedure should be re-examined, since it was now being abused by traffickers in human beings to allow foreigners to stay in Belgium and work. Secondly, the CEOOR advised stricter and systematic control of the sectors most at risk to trade in human beings in order to improve the organization and controllability of these sectors.[84] The actual policy on combating international trade in human beings is, however, determined by the Interministerial Conference on Migration Policy.[85]

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§5, of the Trade in Human Beings and Child Pornography Act of 13 April 1995, *B.S.* 14 July 1995.

[83] These reports advocate devoting more attention to the preventive aspects of combating trade in human beings. For example, the main conclusion of the 1998 evaluation report is as follows: "Efforts must be made to eliminate the factors that help the organizers to develop their networks of trade in human beings and traffic in human beings". Based on this conclusion, the CEOOR makes some policy recommendations. See BELGIAN FEDERAL CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *Strijd tegen de mensenhandel: Meer samenwerking, ondersteuning en engagement. Evaluatierapport over de evolutie en de resultaten van de bestrijding van de internationale mensenhandel.* Brussels, CEOOR, 2.

[84] *Ibid.*, 2, 33-36 and 40-46.

[85] See Articles 1, 2, 3, 5, 7 and 9 of the Royal Decree of 16 June 1995.

Thirdly, it should be mentioned that the Chamber appointed a Special Committee on Trade in Human Beings on 14 November 1996. This committee has the task of updating the recommendations of the original committee of inquiry and, where necessary, formulating proposals with a view to adapting legislation further. To this end, this special committee will examine in depth the aforementioned annual reports produced by both the government and the CEOOR.[86]

Finally, liaison magistrates are appointed in every judicial district and at every Attorney General's office with special responsibility for trade in human beings. They prepare a report every year, which includes proposals to the *college van procureurs-generaal* [Board of Attorneys General] to help combat the trade in human beings.[87] The Board incorporates these recommendations into its annual report; a separate chapter of this report is always devoted to the investigation and prosecution of traffickers in human beings.[88] Following on from this, a working group was set up in 1998, in an attempt to better coordinate the problem of trade in human beings. This working group is made up of representatives from the Ministry of Justice, the Criminal Policy Department of the Ministry of Justice, the Trade in Human Beings Unit, the *Gendarmerie*, the Judicial Police and the Board of Attorneys General.[89]

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[86] Discussion of the reports on trade in human beings. Report on behalf of the Special Committee, published by Messrs Didier Reynders and Daniël Vanpoucke, *Parl. St.* Chamber 1997-98, no. 1399/1, 2-3; BELGIAN FEDERAL CENTRE FOR EQUAL OPPORTUNITIES AND OPPOSITION TO RACISM, *o.c.*, 9.

[87] MINISTER OF JUSTICE, *Richtlijn van 31 mei 1999 houdende het opsporings- en vervolgingsbeleid betreffende mensenhandel en kinderpornografie* [Guideline of 31 May 1999 concerning investigation and prosecution policy on trade in human beings and child pornography], unpublished.

[88] The Board of Procurators General provides the Minister of Justice with an annual evaluation of the guideline concerning the investigation and prosecution of trade in human beings (See MINISTER OF JUSTICE, *Richtlijn van 31 mei 1999 houdende het opsporings- en vervolgingsbeleid betreffende mensenhandel en kinderpornografie,* unpublished). In addition to the inclusion of the theme of trade in human beings in the annual report, within the Board of Attorneys General the Attorney General of Liège, as a member of the Board, is specifically charged with monitoring the problems associated with the trade in human beings.

[89] COLLEGE VAN PROCUREURS-GENERAAL, *Jaarverslag 1998*, unpublished, 86.

4.2. Games of chance and casinos

4.2.1. The Games of Chance, Gaming Establishments and Protection of Gamblers Act of 7 May 1999

The gaming sector was long controlled by the Gaming Act of 24 October 1902.[90] This Act imposed an absolute ban on games of chance[91] and gaming establishments and was characterized by a purely repressive and punitive approach to the phenomenon.[92] Almost a century later the legislator enacted the Games of Chance, Gaming Establishments and Protection of Gamblers Act of 7 May 1999.[93] This Act[94] repealed the Law of 24 October 1902 and at the same time put emphasis on a more preventive, administrative control of the gaming sector and gaming establishments, including casinos. The penal approach is now regarded only as a secondary method.[95] The preventive and administrative approach involves restricting the number of casinos and introducing a licensing system for gaming establishments.

4.2.1.1. Restricting the number of casinos

As mentioned, the preventive and administrative approach to gaming establishments primarily manifests itself in the tight restrictions on setting up Class I gaming establishments, i.e. casinos[96]: they may only be opened in

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[90] *B.S.* 22 and 23 December 1902.

[91] Article 1 of this Act specified that the King could draw up a list of gambling machines whose use was still permitted under the conditions prescribed in the Act. Such a list was compiled in 1975 (Royal Decree of 13 January 1975 concerning the list of gambling machines whose use is permitted, *B.S.* 14 January 1975).

[92] See also the former Article 305 of the Penal Code, repealed by Article 73 of the Games of Chance, Gaming Establishments and Protection of Gamblers Act of 7 May 1999 (*B.S.* 30 December 1999) and Article 557, 3°, of the Penal Code. For a discussion of this Article and of the Law of 24 October 1902, see L. ARNOU, 'De strafbepalingen omtrent het kansspel. Overzicht van wetgeving en rechtspraak 1970-1993' in *Om deze redenen. Liber Amicorum Armand Vandeplas*, Ghent, Mys & Breesch, 1994, 1-48; A. DE NAUW, *Inleiding tot het bijzonder strafrecht*, Antwerp, Kluwer, 1998, no. 100-106.

[93] *B.S.* 30 December 1999. The entry into force of the Act will – according to Article 78 – be provided for by Royal Decree. The provisions in relation to the gaming commission, however, came into effect on 30 December 1999.

[94] For a discussion, see F. GOOSSENS, 'Nieuwe wet op de kansspelen', *Tijdschrift voor Wetgeving* 2000, afl. 1, I/17-I/19.

[95] Article 63-70 of the Law of 7 May 1999.

[96] Defined in Article 28 of the Act as: "establishments in which automatic and other games of chance permitted by the King are operated, and socio-cultural activities such as shows, exhibitions, congresses and catering activities are organized".

the nine municipalities stipulated in the Act. Moreover, only one casino may be operated in each of these municipalities.[97]

4.2.1.2. The licensing system

Another aspect of the preventive and administrative approach is a licensing system, which aims to control the problems of games of chance[98] and gaming establishments[99]. The underlying principle is that it is prohibited to operate – in any form, in any place and in any direct or indirect manner whatsoever – one or more games of chance or gaming establishments, unless these are permitted under the Law of 7 May 1999.[100] Gaming establishments may therefore only be operated if the games of chance concerned are permitted under the Act and if a license has been granted by the gaming commission.[101]

This commission plays a key role in the licensing system. It was set up under the auspices of the Ministry of Justice and comprises a Chairman-magistrate and representatives of the Ministers of Justice, Finance, Economic Affairs, Home Affairs and Health.[102] Its tasks are multifarious. In the first place, provided the statutory conditions have been met, it grants licenses – for a specific period of time – for Class I gaming establishments or casinos, Class II gaming establishments or slot machine arcades, Class III gaming establishments or drinking-houses, the exercise of professional activities in Class I or II gaming establishments and, finally, the sale, hire, lease, delivery, provision, import, export and production of games of

[97] Article 29 of the Law of 7 May 1999. The number of class II gaming establishments or slot machine arcades is also limited by the Act (Article 34).

[98] Defined in Article 2 of the Law of 7 May 1999 as: "any game or wager, in which a bet placed of whatever kind results in either the loss of that bet by at least one of the players or betters, or a gain of whatever kind for at least one of the players, betters or organizers of the game or wager, and in which chance is a secondary element in the course of the game, the designation of the winner or the determination of the amount of gain".

[99] Defined in Article 2 of the Law of 7 May 1999 as: "the buildings or places where one or more games of chance are operated". According to the same Article 'operate' means: "initiating or maintaining, installing or preserving one or more games of chance or gaming establishments".

[100] Article 4, paragraph 1, and Article 7 of the Law of 7 May 1999.

[101] Article 4, paragraph 2, of the Law of 7 May 1999.

[102] For the composition, tasks and authorities of the gaming commission, see Article 9-24 of the Law of 9 May 1999. See in particular Article 4, 9 and 10, §1 and §2, of the Law of 7 May 1999.

chance, as well as services relating to maintaining, repairing and fitting out games of chance. The licensing system therefore encompasses the establishments themselves as well as the staff and suppliers. The gaming commission is also authorized, based on a reasoned decision, to issue a warning, suspend or withdraw the license for a specific period and impose a temporary or permanent ban on operating one or more games of chance, if the establishment in question fails to comply with the law.[103] The commission can also receive complaints and must report any criminal offences it comes across to the Public Prosecutor.[104] If it discovers evidence of fiscal fraud or the preparation of fiscal fraud, the Minister of Finance must also be notified.[105]

4.2.2. The introduction of the legislation

The new legislation on games of chance and gaming establishments did not come into effect as a result of legal doctrine.[106] A few important policy initiatives on combating organized crime did, however, play a significant part in the discussion concerning how to deal with the gaming sector and the gaming establishments.

For example, the government's action plan against organized crime, published in June 1996, stated that the casino sector was particularly susceptible to the practice of laundering the proceeds from organized crime. The government also noted that there was no statutory framework for the activities of the casinos and that such a framework, which would include anti-money laundering measures, must be developed. The government further stated that, generally speaking, to effectively combat this form of crime more preventive measures were needed, hence adaptation of administrative law. The granting of operating licenses in certain economic sectors

[103] Article 21, 2°, of the Law of 7 May 1999.
[104] Article 15, §2, of the Law of 7 May 1999.
[105] Article 18 of the Law of 7 May 1999.
[106] As in case law, this is limited to interpretation of earlier legislation and mainly focuses on the fiscal aspects. In the recent doctoral thesis by Stessens, in which the preventive approach to money laundering – linked with organized crime – is discussed, the gaming sector is not identified as a problem area (G. STESSENS, *De nationale en internationale bestrijding van het witwassen. Onderzoek naar een meer effectieve bestrijding van de profijtgerichte criminaliteit*, Antwerp, Intersentia, 1997, 652p.).

was pointed out as an example.[107] Besides the government's action plan of June 1996, two types of annual reports should be mentioned.

First of all, there are the annual reports for Belgium on organized crime. These reports are prepared by the *Gendarmerie*, in collaboration with the Public Prosecutor's Office, the other police agencies and the national intelligence service. The following comment was made in the 1998 report: "The gaming sector is often presented, both in Belgium and abroad, as an effective channel for criminal organizations to launder proceeds from illegal activities. There is frequent speculation about the involvement of criminal groups in Belgian casinos, even in official publications. Bearing in mind the realistic prospects of being able to launder the proceeds from crime in casinos and the information we have on the subject at the moment, these allegations cannot be confirmed with any certainty, however".[108] This report also placed emphasis on a more administrative, preventive approach to organized crime, under whose sphere of influence games of chance were included.[109] As an example of such an approach, the report referred to the possibility of controlling certain economic sectors via licensing systems.[110]

Secondly, there are the annual reports of the Board of Attorneys General. In its 1997 report the Board clearly states that the aforementioned Law of 24 October 1902, was completely obsolete and was not a suitable instrument for countering the practice of using games of chance to launder the proceeds from other crimes. The re-regulation of the gaming sector and the casinos was therefore presented as one of the priority goals for 1998.[111] In its 1998 report, however, the Board once again pointed out that the Law of 1902 was completely obsolete and dysfunctional.[112]

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[107] X., *Actieplan van de regering tegen de georganiseerde criminaliteit,* unpublished, June 1996, 5, 8 and 13-14.

[108] X., *Jaarrapport 1998 over de georganiseerde criminaliteit van 1997,* unpublished, 1998, 82-83.

[109] It should be mentioned however that quantitative research does not absolutely prove that there is a problem of organized crime in relation to games of chance.

[110] X., *Jaarrapport 1998 over de georganiseerde criminaliteit van 1997,* unpublished, 1998, 99-100.

[111] COLLEGE VAN PROCUREURS-GENERAAL, *Jaarverslag 1997,* unpublished, 38-39.

[112] COLLEGE VAN PROCUREURS-GENERAAL, *Jaarverslag 1998,* unpublished, 96-98. It is worth pointing out that, although the fight against financial, economic and fiscal crime is included in the priority objectives for 1999, casinos are not specifically mentioned in connection with these forms of crime. This is in line with the wording of the government's action plan against economic, financial and fiscal

These policy documents clearly left their mark on the passage of the Law of 7 May 1999 through Parliament. The legislation was introduced by Senator Weyts, who presented a legislative proposal on gaming on 23 September 1996. By his own account, he had consulted specialists in the Ministries of Finance and Justice on the matter.[113] In the Explanatory Memorandum to his proposal Weyts, echoing the Board of Attorneys General, indicated that his legislative proposal was prompted by the conclusion that the Law of 24 October 1902 was out of date.[114] He also stated that "it is no secret that the casino world, with or without the knowledge of the casino managers, is potentially a favoured target for illicit practices, such as the laundering of 'dirty' money. The primary objective of the most progressive legislation and regulations is to eliminate organized crime from the gaming world".[115] Without explicitly using this word, Weyts – who, in principle, proceeded on the assumption that games of chance are prohibited unless permission is granted – proposed a preventive approach to the problem of games of chance:

1 each activity connected with games of chance must be licensed;

2 the issue of a license must be based on thorough investigation, which must guarantee the integrity of the legal entity, natural persons and resources (cash and goods) concerned;

3 potential staff must be vetted; and

4 all gaming equipment must be examined before it is put on the market.[116]

The government introduced an amendment to this legislative proposal that actually amounted to a completely new text. The amendment was adopted and the text served as the basis for the debate in Parliament. The government's amendment was based on a study by the Criminal Policy Department of the Ministry of Justice[117], dated April 1996, about games of chance and the psycho-social aspects of gambling, and also on the findings of a working group of representatives from the Ministry of Justice, the

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crime (July 1997), in which new legislation on casinos is not considered a priority point of action.

[113] Legislative proposal on gaming, *Parl. St.* Senate 1998-99, no. 1-419/17, 1.

[114] Legislative proposal on gaming, *Parl. St.* Senate 1995-96, no. 1-419/1, 1.

[115] *Ibid.*, 2-3.

[116] *Ibid.*, 2-3.

[117] A policy-support unit under the auspices of the Ministry of Justice.

Criminal Policy Department, the Board of Attorneys General, the Judicial Police and the Ministries of Economic Affairs and Finance, plus a researcher from the University of Liège.[118] The government also began making enquiries in the sector concerned, the Communities and the Regions, and among burgomasters and all kinds of committees that had in the past witnessed the problems associated with games of chance at close quarters.[119] The government's proposal did not deviate from that of Senator Weyts, in that they shared the same underlying principle. This was that the aim of the legalization of gaming establishments, such as casinos, and the development of a general statutory framework for games of chance is to organize a sound system of checks on all gaming activities and to identify, prevent and combat possible undesirable side effects (gambling addiction, money laundering, crime, financial and fiscal fraud) in an efficient manner.

Once the government's amendment had been adopted,[120] the debate turned to the number of casinos. As indicated earlier, the municipalities where a casino may be established and the number of casinos are subject to restrictions. During the preparatory stage these restrictions were justified by referring to recent studies – not specified in any further detail – which allegedly prove that gaming establishments are a potential hotbed of crime.[121] Representatives from Ladbrokes and Shandwick, as well as burgomasters of cities where casinos are located, were heard.[122] The Senate's Finance and Economic Affairs Committee also spoke to former gambling addicts, social workers, self-help groups, providers of games of chance and the Ministers of Finance, Justice and Health.[123] Despite the insistence of Deputy Eerdekens, no hearings were held with the Minister of Finance, a senior official at the Special Tax Inspectorate, the chair of the Senate's committee of inquiry on organized crime or with the Board of Attorneys

[118] Legislative proposal on gaming, *Parl. St.* Senate 1997-98, no. 1-419/4, 23.
[119] Legislative proposal on gaming, *Parl. St.* Senate 1998-99, no. 1-419/17, 22.
[120] Whereupon the debate in Parliament mainly shifted to the problems of addiction and the strategy in this area. Judging by the preparatory work, this relied partly on studies by the Criminal Policy Department and a draft resolution originating from the Social Affairs Committee (Legislative proposal on gaming, *Parl. St.* Senate 1998-99, no. 1-419/17, 33-35 and 104). The debate eventually resulted in the Articles 54-62 of the Law of 7 May 1999.
[121] Legislative proposal on gaming, *Parl. St.* Senate 1998-99, no. 1-419/17, 121-122.
[122] Legislative proposal on gaming, *Parl. St.* Senate 1998-99, no. 1-419/17, 35-39.
[123] Legislative proposal on gaming, *Parl. St.* Chamber 1998-99, no. 1795/8, 3 and Parliamentary Proceedings Senate 27 October 1998, 6244.

General[124], even though all of these people were expert witnesses on the subject of organized crime. The text of the government's amendment was sent to the Attorney General of Liège, who, within the aforementioned Board, is charged with monitoring the problems associated with casinos. She responded to this with a short letter.[125]

4.2.3. The retrospective evaluation of the legislation

The Law of 7 May 1999, will be evaluated retrospectively in two ways. Firstly, each annual report of the Board of Attorneys General will devote attention to the gaming sector and hence to the effectiveness and efficiency of the Law of 7 May 1999. The aforementioned gaming commission also has an important part to play in this respect,[126] in that it has to report annually on its activities to Parliament and to the Ministers of Economic Affairs, Home Affairs, Finance, Justice and Health. It also has to monitor application of and compliance with the Act and, at the request of the Ministers concerned or of Parliament, issue advice about legislative or regulatory initiatives concerning matters referred to in the Law of 7 May 1999.

5. Conclusion

In the past few years the quality and the evaluation of federal legislation has become the focus of attention. Despite various proposals and plans, there is not yet any institutionalized procedure for crime risk assessment. The introduction and the retrospective evaluation of legislation concerning trade in human beings on the one hand and games of chance and casinos on the other demonstrates, however, that the federal legislator is all too aware of the potential abuse of legislation by criminal organizations. These two case studies are merely intended as an example. There are other examples that could have been mentioned as well, such as legislation concerning the strategy on illegal contracting or the battle against the use of hormones in the meat industry.

The experience gained from studying these two cases could, in our view, be put to good use in developing and refining the existing proposals regarding the evaluation of legislation. In this respect crime risk assessment

[124] Legislative proposal on gaming, *Parl. St.* Chamber 1998-99, no. 1795/8, 8-9.
[125] Legislative proposal on gaming, *Parl. St.* Chamber 1998-99, no. 1795/8, 10 and 12.
[126] See Art. 16, Art. 20, paragraph 1, and Art. 20, paragraph 2, of the Law of 7 May 1999.

deserves to receive more attention than is the case at present. The question then arises as to what specific form this risk assessment should take, while the opportunities for using it systematically should also be explored. Another crucial question is who should be responsible for crime risk assessment. Should it be a department within the Ministry of Justice and/or should Parliament be involved? The two cases studied in this paper do not provide an answer to this question. Further research is required, which is outside the scope of this paper. This does not alter the fact, however, that it is essential, in our view, that the body given responsibility for crime risk assessment will have to maintain systematic and streamlined contact with the departments responsible for implementation and enforcement of legislation. This is because the form crime risk assessment takes will have to be partly determined by the experience that bodies such as the police, the inspectorates, the Public Prosecutor's Office and the judiciary have gained with the legislation in question.