

2. Administrative Law

Policy Evaluation Act

Law No. 86, June 29, 2001 (Effective on April 1, 2002).

Background:

In 2001, the “Act on Evaluation of the Policies of Administrative Bodies” (Policy Evaluation Act) was passed in the National Diet. The Fundamental Law on the Reform of Central Ministries passed in 1998 expressly provided, as a fundamental line of reform of the central ministries, that “objective policy-evaluation function shall be reinforced from the citizens’ standpoint and taking into account changing social or economical situations inside and outside the country, and the results of the evaluation shall be properly reflected into policies”. In 1999, laws reorganizing the central ministries were passed. In 2001, the bill of policy evaluation as a bill provided by the Cabinet was provided to the National Diet and was passed, which was based the final report of the “Study Group for Legislating Policy Evaluation” established as a study group of the Chief of the Management and Coordination Agency.

Main Provisions:

“Law on Evaluation of Policies of Administrative Bodies” is composed of 5 chapters and 22 articles.

1. General Rules (Chap. 1: Arts. 1 to 4)

The aims of this Act are that, “by providing fundamental matters on evaluations of policies by administrative bodies”, “the objective and strict implementation of evaluating policies will be promoted, the reflection of those results to those policies planned, and information about the evaluation of those policies be announced officially”, which “will contribute to promoting more effective and efficient administration and the Government will realize accountability to the people about those activities” (art. 1).

“The administrative bodies”, the subjects of the evaluation of poli-

cies, are the following: (1) the Cabinet Office; (2) the Imperial Household Agency and bodies provided in the Law of Establishing the Cabinet Office art. 49, para. 1, and the National Police Agency; (3) each Agency; (4) the Fair Trade Commission and the Environmental Disputes Coordination Commission (art. 2). “Policies”, the objects of the evaluation of policies, are “the guidelines, devices and others like these concerning a series of administrative actions which, to reach certain administrative goals, administrative bodies project or design within those tasks and businesses” (art. 2, para. 2).

Each administrative body is bound to do the following “in time”: (1) “to grasp those policy-effects. . .” (grasp of policy-effects); (2) “on the basis of these, to evaluate their own policies in terms of necessity, efficiency, or effectiveness, and other necessary viewpoints depending on the characteristics of those policies” (policy evaluation); and (3) “to reflect the results of the evaluation of those policies properly” (reflection of evaluation to policies) (art. 3, para. 1). And, “in order to secure objective and strict implementation of policy evaluation”, each administrative body has the duties (1) “to use a rational technique suited to the characteristics of those policies and to grasp those [policy-effects] as quantitatively as they can; (2) to attempt to utilize knowledge of the learned and experienced (art. 3, para. 2).

The Government has a duty to effort “to utilize those result of policy-effects properly when it makes a budget plan, or projects or designs policies necessary to attempt to comprehensive promotion related with more than one administrative body (art. 4).

2. The Basic Guideline for Policy Evaluation (Chap. 2: Art. 5)

The Government is “bound to create a Basic Guideline for Policy Evaluation” “in order to promote policy evaluation designedly and steadily” (art. 5, para. 1). First, this Basic Guideline is supposed to provide the following matters as guidance for each “Basic Plan for Policy Evaluation” which each administrative body is supposed to make (para. 2): (1) basic guidelines for implementing policy evaluation; (2) basic matters about the viewpoint for policy evaluation; (3) basic matters about the grasp of policy-effects; (4) basic matters about implementing pre-evaluation; (5) basic matters about implement-

ing post-evaluation; (6) basic matters about utilizing knowledge of the learned and experienced; (7) basic matters about the reflection of the results of the policy evaluation in those policies; (8) basic matters about the official announcement of information on policy evaluation through the inter-net and other tools; (9) other important matters about the implementation of policy evaluation. Second, it is also supposed to provide “matters about necessary measures for the smooth and steady implementation of policy evaluation” (para. 3).

The Minister of Public Management, Home Affairs, Posts and Telecommunications (*hereinafter the Minister of PM) is “bound to hear the opinions of the Councils and others established by the National Government Organization Act, art. 8 — particularly the Council for Policy Evaluation and Evaluation for Independent Administrative Cooperation —, to make the Basic Guideline Plan, and to ask for Cabinet decision” (para. 4). And the Minister of PM is bound to announce this Basic Guideline officially without delay if a Cabinet decision is made (para. 5).

3. Policy Evaluation by Each Administrative Body (Chap. 3: Arts. 6 to 11)

[Making Basic Plans] The chief of each administrative body is “bound to make a Basic Plan for Policy Evaluation... about policies belonging to this body on the basis of the Basic Guidelines between every 3 and 5 years” (art. 6, para. 1). This Basic Plan is supposed to provide given matters (para. 2; omitted in this paper because these are alike to those of the Basic Guideline). Furthermore, it is supposed to provide as objects of post evaluation “policies related to the major administrative purposes those administrative bodies should realize in order to fulfill those tasks in response to social or economical situations and so on” (para. 3). And the Chief of each administrative body is bound to give notice to the Minister of PM and to announce this Basic Plan officially without delay if that is made.

[Making an Implementation Plan] Also, the chief of each administrative body is “bound to make the “Implementation Plan for Post Evaluation” every year” (art. 7, para. 1). These Implementation Plans are bound to given matters (para. 2). Note that the objects of post

evaluation enumerated include not only policies provided by the Basic Plan but also policies that are not accompanied with activities essential to obtain the aimed effects or which have not obtained the aimed effect in practice. And the Chief of each administrative body is bound to give notice to the Minister of PM and to announce this Basic Plan officially without delay if that is made (para. 3).

[Implementing Post-Evaluation] Each administrative body is “bound to implement post-evaluation according to the Basic Plan and the Implementing Plan” (art. 8).

[Implementing Pre-Evaluation]

Also, each administrative body is bound to implement pre-evaluation about the policies designated by Cabinet orders, whose purposes are to implement research and development, public works, and official development assistance, and other policies which fulfill the following necessary conditions (art. 9): (1) “that implementing a series of administrative acts according to that policy affects national life or society and economics to some degree or that many costs are expected to be necessary to obtain the aimed effects of that policy”; (2) that ways of pre-evaluation has been developed, such as a technique to grasp policy-effects necessary to preparatory evaluation.

[Making Evaluation Papers] The chief of each administrative body is bound to make an evaluation paper fulfilling the given matters — including matters of not only results but also processes —, if policy evaluation is implemented (art. 10). The chief of each administrative body is “bound to send the evaluation paper to the Ministry of PM speedily and to announce such papers and their summary officially”, if that paper is made (art. 10).

[Notice and Official Announcement of Reflection Situations concerning Reflection Policies] “The chief of each administrative body is bound to give notice to the Minister of PM and to announce situations concerning reflection of the results of policy evaluation to the policies” (art. 11).

4. Evaluation of Policy by the Ministry of PM (Chap. 4: Art. 12 to 18)

[Evaluation of Policy by the Ministry of PM] In this Act, “pol-

icy evaluation” refers to the evaluation of policies by each administrative body, “evaluation of policies” refers to the evaluation of policies by the Ministry of PM as the charging body. Such “evaluation of policies” has two types. The first type of evaluation is “of each policy which is common with more than one administrative body and so found to be necessary to evaluate in terms of the securing integrity of the whole government” or “of policies which are related with more than one administrative body and so found to be necessary to evaluate in terms of the comprehensive promotion of those policies (art. 12, para. 1). The second type of evaluation is “one when, in response to situations of implementation of policy evaluation, it is necessary to implement policy re-evaluation by that administrative body or when, in order to respond to changing social and economic situations properly, it is necessary to implement policy evaluation, but nevertheless it is found not to secure implementation of a policy evaluation, or one which is found to be necessary to co-evaluate with that administrative body when that body is required to do so”. These evaluations are supposed to be implemented in order to secure the implementation of the objective and strict policy evaluation of policies by that administrative body (para. 2). Both evaluations are “supposed to be implemented on the basis of grasped policy-effects, from the viewpoint of necessity, efficiency, and effectiveness, and other necessary viewpoints suited for the characteristics of that policy” (para. 3).

【The Plan for Evaluation of Policies】 “The Minister of PM is bound to make a Plan for the Evaluation for Policies for three fiscal years every fiscal year” (art. 13, para. 1). And the Minister of PM is bound to “announce this Plan officially without delay, when this Plan is made or changed” (para. 3).

【Implementing the Evaluation of Policies】 “The Ministry of PM is bound to the implement evaluation of policies according to the Plan (art. 14).

【Power of Investigation of the Ministry of PM】 When implementing the evaluation of Policies, the Ministry of PM is authorized with a power of investigation (art. 15), namely: to the chief of each administrative body, as far as necessary for the evaluation of policies, he/she is able to require the submission materials, to require explana-

tion, and to investigate actually; as to the businesses of independent administrative corporation, certain corporations having special status, and corporations recognized by the authorities, and as to businesses delegated by or assisted by the Nation, in relation to the evaluation of policies, he/she is able to investigate documents or actually (in this occasion, “those investigated cannot reject that investigation”); as to “legally trusted businesses of Local Public Entities provided by the Local Government Act, art. 2, para. 1, no. 1”, “to a necessary and minimal degree to realize the purposes of [the evaluation of policy], he/she is able to investigate documents or actually”. Furthermore, “if necessary for implementation”, the Minister of PM is “able to require public or private groups to cooperate as to submitting necessary materials”.

【Making Evaluation Papers】 The Minister of PM is bound to make the evaluation papers fulfilling given matters, and “speedily to send to chiefs of related administrative bodies this paper with necessary opinions and to announce this paper and that summary, and the contents of that opinion officially when an evaluation paper is made” (art. 16).

【Recommendation】 The Minister of PM, “if he/she finds it necessary on the basis of the results of [the evaluation of policies], is bound to recommend to the chiefs of the related administrative bodies to take necessary measures to reflect the results of that evaluation to policies, and to announce the contents of this recommendation officially”, and, if a recommendation is made, “is able to require those chiefs of administrative bodies to report the measures taken according to this recommendation”. Furthermore, the Minister of PM, if he/she finds it especially necessary to reflect the results of [the evaluation of policies] to the policies, is supposed to offer to the Prime Minister his/her opinion to take measures provided by the Cabinet -Law §6 — directing of supervision of administrative bodies — about the reflection of the results of the evaluation of policies to policies.

5. Miscellaneous Rules (Chap. 5: Art. 19 to 22)

The following provisions are given as miscellaneous rules: (1) Government is bound to make, submit and officially announce reports about the situation concerning the implementation of policy evaluation and the evaluation of policies, and the situation regarding the reflection of these result (art. 19); (2) the Government is bound to pro-

mote investigation, research and development about methods of policy evaluation and others, and to take necessary measures for securing men of talent as staff engaged in policy evaluation and others and enhancing the quality of those such staff (art. 20); (3) the Minister of PM is obliged to “take necessary measures concerning the promotion of the utilization of necessary information to implement policy evaluation between the administrative bodies in order to contribute to efficient and smooth implementation of policy evaluation and others” (art. 21); (4) The Prime Minister is obliged to “take necessary measures about the location of information in order to consult the convenience of those who will gather information about policy evaluation, including about results of policy evaluation and others” (art. 22).

Editorial Note:

The Policy Evaluation Act is a general law about policy evaluation introduced as a part of a series of administrative reforms. The purpose of this Act, as art. 1 provides, is to promote “effective and efficient administration” and for the Government to realize “accountability to the people”.

As for the former, usually policies in Japan, once they have gained financial support, were seldom reconsidered, and so there were the conditions where a useless policy or business could be repeated. Because it offers institutions for regularly reviewing policies even after financial support has been given, this Act may be expected to have some effect on remaining these situations. Especially, if the evaluation of the policy by the Ministry of PM works effectively, that expectation will grow. But, on the other hand, this Act has been pointed to have some problems even before it was passed. On the one hand, in order to evaluate policies and require reconsideration, it is not evaluation by each administrative organ that takes charge of those policies, but evaluation by the Ministry of PM and the third party organization that is needed. But the powers of the Ministry of PM are not so specific and not so strong, and third party organizations, except for the Council on Policy Evaluation and Evaluation of Independent Administrative Corporation, are not specified. As for the powers of the Ministry of PM, this Ministry is supposed not only to make the Basic Guideline but

also to implement “evaluation in order to secure integrity and comprehensiveness” and “evaluation in order to secure objective and strict implementation”. But it is unclear whether or not this Ministry has the position to guide and supervise each administrative body. Concerning the recommendation and offering of opinions, there are qualifications such as “if he/she finds necessary” or “if he/she finds especially necessary”. So it is doubtful that, in practice, the ministry of PM can implement critical evaluation. Though the status of the ministry of PM was elevated from an Agency to a Ministry in 2000, there is a history that that Agency had the power of administrative supervision, but it had become the mere shell of that power. As to third party organs, there is a duty to “attempt to utilize knowledge of the learned and experienced”, but this language is too restrictive. And, as stated above, the Act does little to specify third party organs.

The introduction of third party organizations should be carried out, because otherwise policy evaluation supposed to be implemented by each administrative body will become literal self-evaluation, so the effectiveness of the policy evaluation will be doubtful. As for the latter, it seems that opening information to the public is more thorough to a considerable degree. So it is unnecessary to comment on this point in this paper. At any rate, it can be said that the true value of the Policy Evaluation Act depends on its practical use. It is necessary to pay attention to the policy evaluation of the Policy Evaluation. Act.

3. Law of Property and Obligations

Middle Corporation Act

Law No. 49, June 15, 2001 (Effective as of January 1, 2002).

Background:

The Civil Code of Japan prescribes, in article 33, that “No corporation can come into existence otherwise than in accordance with the provisions of the present Code or of other laws”. On the one hand,