Legislative processes in transition

COMPARATIVE STUDY OF THE LEGISLATIVE PROCESSES IN FINLAND, SLOVENIA AND THE UNITED KINGDOM AS A SOURCE OF INSPIRATION FOR ENHANCING THE EFFICIENCY OF THE DUTCH LEGISLATIVE PROCESS

Universiteit Leiden

Wim Voermans, Hans-Martien ten Napel (eds.),
Michal Diamant, Marga Groothuis, Bernard Steunenberg, Reijer Passchier and
Stefan Pack

Leiden University, Section of Constitutional and Administrative Law and the Institute of Public Administration

Leiden, The Hague 2012

Table of Contents

1. Introduction

Under the influence of various factors the legislative process in many EU jurisdictions has come under increasing pressure in recent years. In our complex societies a significant degree of state intervention takes place in the form of legislation. In combination with the perceived need to quickly adapt to changing circumstances, while guaranteeing the necessary high quality of the process (which runs certain risks when the pace of the legislative process increases), this has formed an incentive to look critically at our legislative procedure. Additional factors, including the shorter life-cycle of legislation, improved technical possibilities and the crucial role of the media in the political and societal debate, brought the following questions even more urgently to the fore: can the legislative process be accelerated, and perhaps even more importantly: can it be improved?

One other impetus for these questions to arise relates to what a report by the Dutch Council for Public Administration on trust in democracy (2010) has called the horizontalized society.[1] In a recent speech that was inspired by this report, chairman Jacques Wallage of the Council put it this way: 'In a society where citizens do not lean anymore on representative democracy alone, but in essence want to represent themselves, it is not easy to bridge the gap between that horizontal world of internet, media and public opinion on one side and the vertical world of the state, the city, the judiciary on the other.'[2] The legislature could well be added to this list of vertical worlds. One of the major changes the Council for Public Administration advocated in order to bridge the gap between citizens and the constitutional and political system was to create more room for the citizen in the process of policy making: 'In essence that means that the process of policymaking is as important as the product.'[3] In the framework of this study the process of policy making might well be substituted by legislative process.

- In the Netherlands, since January 2011 a taskforce for faster legislation has been active within the framework of the Interdepartmental Commission for Constitutional Affairs with repect to Legislative Policy (ICCW), as a result of the policy aims and objectives of the current caretaker government Rutte. This taskforce looks at the question which measures have been taken and are currently being taken to accelerate the legislative process (and how consistent these measures are), and develops proposals for further measures concerning both the internal and external phases of the procedure with respect to process and support. The present study was commissioned by the WODC (the research centre of the Dutch Ministry of Security and Justice) at the request of the Section of Legislative Quality of the Ministry of Security & Justice as an input for the Interdepartmental Commission on Legislation (ICCW).

---

[1] Raad voor het openbaar bestuur, *Vertrouwen op democratie* (februari 2010), p. 36.
[2] http://www.rfv.nl/default.aspx?skin=Rob&inc=detail&nieuws_id=1158&type=actueel, p. 1.
[3] Ibid., p. 4.

The main research question of the current study is then whether the efficiency of the Dutch legislative procedure for parliamentary acts indeed constitutes a problem, in particular if we compare it to the achievements of legislative processes in several other European countries and, if that turns out to be the case, whether lessons can be learned from those legislative processes and practices abroad with respect to pace and duration of the legislative process, phases and actors, transparency and the role of ICT.

Efficiency is obviously a feature which is difficult to study if left unoperationalised.[4] One thing that can be noted though, is that efficiency has to do with 'optimalisation'. That is also the angle through which the efficiency of the legislative procedure for parliamentary acts will be looked at in this study; 'can it be improved?'

This question is still difficult to answer, however, in so far as a criterion is missing by which we can assess the achievements of the legislative procedure for parliamentary acts, even if we compare the Dutch legislative procedure and processes to experiences abroad. What constitutes the optimal mix of speed and quality (i.e. the highest possible degree of efficiency) is in fact impossible to determine.

However, what we are able to determine is:
a. how the achievements of the legislative processes in the Netherlands and other Member States of the European Union compares[5] with respect to pace and duration, phases and actors, transparency and the use of ICT, and
b. how the achievements of the process, according to those involved in the process, are being influenced by the procedure itself, and the organization of the process which derives from that.

Against this background we looked at the legislative procedure for parliamentary acts in the Netherlands and in other countries – in particular the phase of the preparation and adoption of parliamentary acts – and focused on the following relevant (sub)themes:

> a. pace and duration: including political prioritization, planning, regulatory budgets and types of legislation;
> b. phases and actors: interdepartmental cooperation, Parliament, executive agencies and third parties, coherence;
> c. transparency: in the different phases, the role of ICT in this, citizens' initiatives;
> d. ICT: its role in the legislative process in general.

---

[4] See for a (partial) attempt at operationalization: Koen J. Muylle, 'Improving the Effectiveness of Parliamentary Legislative Procedures', *Statute Law Review* 24 (2003), pp. 169-186, at pp. 170-173.
[5] In this study we make use of the so-called 'functional method' of comparative legal research, which means that we will not stop at the question which procedures (and practices and processes which flow from that) are followed in the countries to be compared, but that we also look at the goals and functions of those procedures, in order to arrive at a form of objective comparability and to be able to draw conclusions on that ground. See Zie Konrad Zweigert and Hein Kötz, Introduction to comparative law, Oxford, Clarendon Press, 1998.

In the following chapters, we will first of all briefly sketch how the selection of the countries involved has taken place. Next, there will be three country chapters on Finland, Slovenia and the United Kingdom respectively. For these countries a desk study has been combined with around 10-15 face-to-face interviews with actors involved in the legislative processes of each of the three selected countries (more than 30 interviews in total). The interviews have been conducted with the help of a standardized questionnaire (see appendix 1). All three chapters consist of a brief description of the constitutional and political system and again in particular the legislative process, followed by sections on pace and duration, phases and actors, transparency and the role of ICT in the legislative process respectively, and highlight several features which are of particular interest in the framework of this study. Next, a comparative chapter will look at the various themes for the three countries together. The study finishes off with a conclusion, in which the main findings will be presented.

The study was supervised by a commission of experts, and an independent academic chair. The study benefitted greatly from their expert views and comments and we – the research group – would like to thank the commission for that. The Commission consisted of:

Chairman:

Prof. dr. G.J. Veerman
Professor of Maastricht University/ Ministry of Security and Justice - Research Centre (WODC)

Members:

Mrs E.C. van Ginkel LLM
Ministry of Security and Justice - Research Centre (WODC)

Mr. S.H.K. Blok LLM
Ministry of Finance

Mr. O. Poerbodipoero LLM
Ministry of Security and Justice – Section for Legislation and Legislative Quality

Dr. N.A. Florijn
Academy for Legislation

2. The selection of the countries

The main part of this report considers the jurisdictions of Finland, Slovenia and the United Kingdom. We looked closely at the legislative systems of these countries in order to seek inspiration for enhancing the efficiency of the Dutch legislative process. For each country, we carried out an extensive desktop study and conducted several interviews with key persons employed in the public administration sector. Before going into the results of this research, it might be interesting to know why and how we selected Finland, Slovenia and the United Kingdom, and why we did not pick other countries. This chapter will shed light on the method we used to select the three countries and what our main arguments were to drop certain others. It should be noted that the selection of the countries is not only interesting because of the method that was used, but the selection process also generated a lot of valuable information on innovations and debates concerning the legislative processes in other countries. This chapter will also summarize some of our findings in that respect.

Method of selection: quick scan

The starting point for this research, the initial demarcation, was given by the assignment to study three countries, all of them Member States of the European Union. In order to select three countries, a quick scan of all 27 Member States of the EU had to be conducted. The possibility of missing interesting innovations and debates had to be excluded as much as possible. For each country, the team checked scientific and academic sources, governmental websites, NGO websites, newspapers, etcetera; searching for information on the state of the legislative process. Afterwards, the usefulness of the information obtained was assessed by studying the material more closely. The main question in the quick scan phase was: can we find evidence of recent debate in a certain country, or if innovations were implemented, in order to improve the speed and efficiency of the legislative process? i.e. How likely is it that a study of the legislative process of this particular country can be used as a source of inspiration for enhancing the efficiency of the Dutch legislative process?

The quick scan was carried out in different stages. Firstly, a full 'longlist' was made, at the second stage a shortlist, and lastly three countries were selected on the basis of the picture that was obtained. Below, each step that was made during the quick scan is discussed in more detail. In addition, the considerations for dropping or retaining certain countries are stated briefly.

Composition of the 'longlist'

During the first stage of the quick scan, the team only checked the mere availability of information in order to make a 'longlist'. In different search engines catchwords like 'legislative process', 'legislation', 'legislative', 'efficiency legislative process' were used in combination with each of the 27 countries' designation. On the basis of the initial scan, the team decided to drop Belgium, Bulgaria, Cyprus, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Slovakia, Spain and the Czech

Republic. For these countries, the team found insufficient usable information in order to make a fair assessment of their value for this research. The remaining countries were granted a place on the 'longlist'. Although we did find enough and usable information on Belgium we found that – in view of the systems features – it fell a little short to be listed as one of the interesting countries to be involved in the shortlist study.

Composition of the shortlist

In the next phase of the quick scan, the assimilated information was studied in greater depth. Instead of catchwords, the team now operationalised the main research questions into different subquestions. The purpose of this phase was to assess whether it seemed likely that extensive research of a particular country would provide interesting answers to one or more of the following questions:

1. Is pace and duration a topic of discussion in this country and are efforts made to accelerate the legislative process?
2. What is the role of political prioritization policy in (the duration of) the legislative process? What is the influence of the existence of certain form(s) of the discontinuity principle, i.e. the automatic expiration of parliamentary documents?
3. What is the role of planning in different phases of the process?
4. What is the role of setting time limits in different phases of the process?
5. How is the coherence between phases and actors within the (internal and external) legislative process set up? Is this coherence an issue as such and which (potential or planned) improvements have been implemented or are anticipated?
6. What is the role of transparency and openness – i.e. the possibility to actually be able to have input into the legislative process – in (the discussion about) the legislative process, for instance to avoid experts being consulted in several stages of the process?
7. What is the role of differentiation in types of legislation, or type of legislative project in the legislative process? (Is there just one procedure for all types, or do special – for instance, fast track – procedures for specific types of legislation exist?)
8. What is the relationship with parliament, executive agencies and other third parties during the departmental preparation phase?
9. What is the role of experimental provisions?
10. What is the role of ICT in the legislative process and how is its potential used?

The result of this assessment was summarized in the following table. In case a country gave reason for further research on a particular issue, based on our desk research, the box in the scheme was numbered, according to the numbers of the questions above. More numbers in the table (and thus less blanc cells) for a specific country means that there are more aspects present motivating further research into the national legislative process.

Scoring of the aspects embedded in the research questions													
Question	**Den**	**Ger**	**Est**	**Fin**	**Fra**	**Gre**	**Hun**	**Ire**	**Aus**	**Por**	**Slo**	**UK**	**Swe**
1		1										1	1	
2													2	
3	3				3	3			3	3	3	3	
4												4	
5	5	5		5	5	5		5	5	5	5	5	5
6	6	6	6	6	6		6	6	6	6	6	6	6
7					7	7						7	
8	8			8							8	8	8
9													
10	10	10	10	10	10	10		10	10	10	10		10
Total Score	5	4	2	4	5	4	2	3	4	4	6	8	4

This, for the most part, quantitative inventory of the information on the countries gives of course only an indication of their value for this research. In addition, an assessment of the expected quality of the answers was necessary in order to generate a shortlist. On the basis of this evaluation, five countries were dropped: Germany, Estonia, Greece, Hungary and Ireland. Germany was dropped because the country seemed to lack innovations in the legislative process that would be interesting for this research. Estonia was not selected because evidence for innovations was only found in the field of ICT, which in that country is mainly used in order to improve transparency and consultation. Greece and Hungary were taken off the list because the quality of the information obtained was insufficient. And lastly, Ireland was dropped because the gap between the country's ambitions and the reality of its legislative process seemed to be too wide. This discrepancy would make valuable comparative research quite difficult.

The countries that made the shortlist were: Denmark, Finland, France, Austria, Portugal, Slovenia, Sweden and the United Kingdom. Denmark because, since the 1980's, the improvement of regulation and the legislative process has been high on the agenda. The country plans and coordinates its legislative process in a very interesting way. Every year, the Government presents a detailed and public *Law Programme* to Parliament, with a time schedule for the ministries attached to it. Finland was kept on the list for the reason that the country has experience with innovations in the legislative process, which are totally new elsewhere. Finland is a front-runner in many respects. France obtained its place on the shortlist mainly due to the rather unique possibility for the legislator to differentiate in types of legislation. The team also found traces of discussion on the efficiency of the legislative process. Austria survived elimination from the shortlist because the country has a lot of negative and positive experience with ICT. The country deployed ICT projects for inter alia coordination and cooperation in the civil service, transparency and openness and for drafting laws (the *E-Law* project). Portugal was retained, because the team had the impression that the country uses ICT for a

number of purposes. Slovenia also makes extensive use of ICT, but that's not all. The country was kept on the list mainly because of its many recent and impressive reforms in several fields of the legislative branch. On the basis of the quick scan Slovenia seemed a remarkably progressive and modern country with regard to the organization of their public administration. Sweden was kept on the shortlist for the reason that the country achieved many concrete results with recent innovations in the legislative process. Interesting features are the openness of the process and the many quality checks which are built into it. Quite recently, Sweden installed the *Better Regulation Council*, an independent institution which advises the government on all kinds of legislative matters and takes care of the exchange of best practices between ministries. Lastly, the United Kingdom made the list for the reason that so many issues are a topic of concern in the country's legislative process.

The Selection of Three Countries

The process described above left the team of researchers with the following shortlist:

1. Denmark
2. Finland
3. France
4. Austria
5. Portugal
6. Slovenia
7. Sweden
8. United Kingdom

The next step was to select three countries for extensive research. This was mainly done by discussing the information that was obtained and studied with the Advisory Council. Which extensive country studies were expected to render the most inspiration for enhancing the efficiency of the Dutch legislative process? Below we will describe the most important considerations for choosing Finland, Slovenia and the United Kingdom for our extensive research. Before that we will focus on the most important reasons for dropping Denmark, France, Austria, Portugal and Sweden from our selection.

Denmark and Sweden, though front-runners in innovating the legislative process, did not make the cut. This was mainly due to the Quasi Autonomous Governmental Organizations (Quango's) these countries work with. These quango's play a role in the preparation of legislation and make Sweden and Denmark more or less incomparable as regards the inception and enactment of legislation. France was dropped because the research team, as well as most members of the Advisory Council, did not find France 'a shining example' for the Netherlands. Also problems with the comparability of the country were expected, since France has unique legal mandating constructions built into its constitution. Austria was not retained because although the country seems to have a lot of potential, the realization of the plans lacks success. Lastly, Portugal was dropped because the country only shows ambition

regarding ICT and this research is about more than that. Furthermore, the team expected that Portugal still has a long way to go in improving its legislation process.

Finland was selected because the team and the Advisory Council had the impression that this country has one of the best organized and modern legislative branches in Europe. Many interesting issues, topics and innovations were found during the quick scan phase of this research. Slovenia was chosen because of the interesting and effective reforms the country conducted in recent years. The country is very ambitious with regard to the use of ICT, transparency, the speed of law-making and the planning of the process. The United Kingdom was selected as the country rating very high on the issues at hand relevant to this study.

Indepth research of selected countries and Interviews

The selection process led to three countries for indepth research: Finland, Slovenia and the United Kingdom. The legislative processesses in these countries were studied in depth, using the material from the desktop study as a stepping stone. In order to get a better picture interviews (on the basis of a standardized questionnaire – see appendix 1) were held with keypersons in the selected countries. For each country a dozen interviews on average were held with Members of Parliament, civil servants (mostly with bill managing responsibilities) from ministries and with representatives from media and/or academia. All this to be able to get a grip on the reality (discissions and developments) of the legislative process in the country under study. The results of the indepth study are presented in the next three chapters, In each chapter a paragraph titled 'experiences' represents the core of the findings as a result from the interviews.

3. Finland

3.1. The legislative process[6]

According to article 3 of the Finnish constitution, the Parliament (*Eduskunta* in Finnish and *Riksdag* in Swedish) exercises the legislative powers. However, most Bills originate from the Government. A specific proposal for regulation usually comes from the responsible ministry executing the Government Program.

The working of the Finnish legislative and executive branch must be seen in light of the proportional electoral system and the consensual political culture.[7] No party has ever gained an absolute majority in the Finnish Parliament, which means that coalitions are always to be formed.[8] After a new Government is installed it submits its program to the Parliament.[9] Notable in this respect is the quite monistic relation between Government and Parliament: coalition discipline is usually maintained and governments stay in office for the entire electoral period of four years.[10]

In practice the Government Program is the driving force behind the legislative process, the ministries and the Parliament plan their work accordingly. Swift execution of the Governmental Program is encouraged by the rule laid down in article 49(1) of the Constitution, also known as the discontinuity principle: after new parliamentary elections, all unfinished legislative projects automatically expire.[11]

Legislative volume

The following table (1) sets out the volume of different sorts of regulations introduced in Finland between 2001 and 2008. It gives an indication of the proportion between laws and subordinate regulations. The number of subordinate regulations contains decrees issued by the president, the government and ministries. The table also mentions the amount of new regulations in terms of numbers of pages, because in Finland the instrument of amendment is used quite often. The mere number of new laws and subordinate regulations is therefore insufficient to indicate the volume of newly produced legislation each year.[12]

---

[6] See: H. van den Brandhof *The Republic of Finland*, in: L. Prakke en C. Kortmann (Eds) *Constitutional Law of 15 EU Member States*, Kluwer Deventer 2004. See also the website of the Ministry of Justice: http://www.om.fi/en/Etusivu/Parempisaantely/LawdraftinginFinland/Lawdraftingprocess.

[7] Lijphart considers Finland as having one of the most consensus modelled political systems, compared to the thirty-six other democracies he reviewed.
See: A. Lijphart *Patterns of Democracy*, Yale University Press 1999, p. 116 and 138.

[8] T. Raunio and T. Tiilikainen *Finland in the European Union*, Frank Cass Publishers: London 2003, p. 44

[9] Raunio and Tiilikainen 2003, p. 74.

[10] Raunio and Tiilikainen 2003, p. 75. See for a more critical view also: Raunio 2004.

[11] See on the discontinuity principle in the Member States of the EU: J.A. van Schagen, L.F.M. Besselink and H.R.B.M. Kummeling, *De valbijl in het wetgevingsproces*, Den Haag: Ministerie van Justitie 1996. Finland is handled on page 51.

[12] The graph is copied from the OECD Better Regulation report.

Volume of regulations introduced 2001-08

Year	Laws	Subordinate regulations	Pages
2001	590	978	4376
2002	546	825	5634
2003	589	805	4622
2004	619	818	4139
2005	521	766	5523
2006	528	932	4467
2007	656	854	5789
2008	428	727	3604

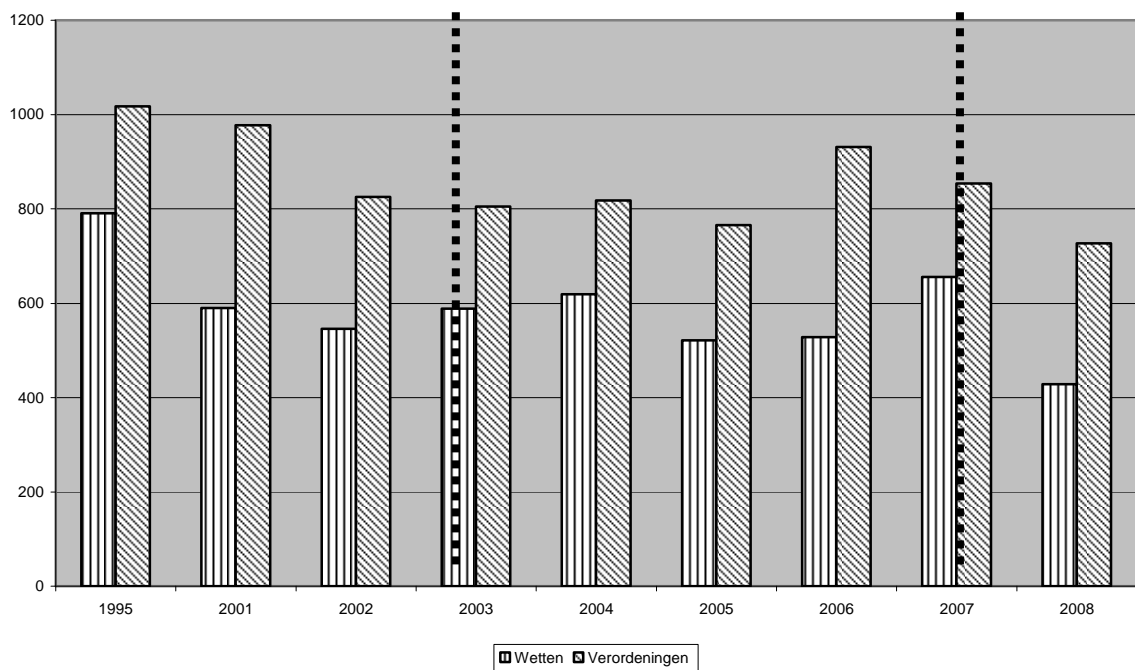*Source*: Finnish Ministry of Justice.

Table 1 The production of Acts and regulations in Finland 1995-2008[13]

The legislative process

Finland does not have a fixed law-making process or one possible formal track. Depending on the nature of the project a draft Bill imposes a certain route. The 'ideal' sequence is described in the following paragraphs. However, if for instance a

---

[13] P.O. de Jong and S.E. Zijlstra et al., *Wikken, wegen en (toch) wetgeven* (Balancing, weighing and (still) legislating), The Hague 2009, p. 138. The dotted lines represent the points in time of general elections.

certain legislative project needs a higher pace, certain phases may be skipped or shortened.

Departmental preparation

The legislative process begins with a preliminary preparation. This phase contains an assessment of the need for the project in the first place, the writing of the terms of reference and the choice of the organizational forms. The Government may appoint a preparatory body depending on the particular project. This preparatory body may be an (broad-based) inter-departmental working group or a commission containing civil servants as well as experts from outside.

The next phase is that of the principal preparation, in which the proposed legislation and its reasons are being drafted. During the drafting process an impact assessment for the proposed legislation is made.[14] Consultation is done within the preparatory working group, by requesting the stakeholders to give comments, by hearings or by on-line discussions, dependent on the situation and the target group.[15]

In the continued preparation phase, the drafting of the law will be completed. The draft Bill now contains an executive summary, general and detailed reasons and the proposed legislation. At this stage the proposals are being translated into Swedish, Finland's second official language.

Next, the draft Bills will be checked by the Unit of Legislative Inspection at the Ministry of Justice. The unit inspects the draft Bill inter alia on its technical structure, consistency, conformity with legal principles and other provisions.[16]

After necessary revisions, the draft Bill is presented to the Government by the responsible minister. The Government considers the proposal whereupon it may submit the proposal to the Parliament. The Prime Ministers Office enables the Parliament to plan its work by preparing, twice a year, a list of draft Bills to be submitted to the Parliament in the period following.

Bills in the Parliament

The parliamentary phase consists of three different elements.[17] First, the preliminary debate in plenary session. Second, the detailed review in one of the standing Committees. Third, the decision on the approval of the Bill in a plenary session.

The working methods of the Finnish Parliament deserve to be explained in some more detail.[18] Finland has a monocameral system: the Parliament consists of one

---

[14] See: Impact Assessment in Legislative Drafting - Guidelines, Ministry of Justice Finland publication 2008:4: http://www.om.fi/en/Etusivu/Parempisaantely/Vaikutustenarviointi.

[15] See: Consultation in Legislative Drafting: Guidelines, The decision of Government plenary session 10 March 2010: http://www.om.fi/en/Etusivu/Parempisaantely/Kuuleminen.

[16] See: Bill Drafting Instructions, Ministry of Justice publication 2006-3:
http://www.om.fi/en/Etusivu/Parempisaantely/Saadosvalmisteluohjeet.

[17] See also the website of the Committees of the Eduskunta:
 http://web.eduskunta.fi/Resource.phx/parliament/committees/index.htx.

[18] Arter calls the Finnish parliament a 'working parliament', as apposed to a 'debating parliament', because the committee system reflects the structure of the government departments, committee work is higher valued than plenary work and the members focus their work rather on detailed scrutiny than on debates on the floor. Quoted in: Raunio and Tiilikainen 2003, p. 76.

chamber. The Finnish Parliament has an extensive committee system.[19] In the Committees the proposed legislation is reviewed, usually beginning by hearing the law drafters themselves. Committees hear other experts and stakeholders as well. After a Bill is reviewed and perhaps amended by a Committee, the plenary session generally approves it.[20]

Final steps

Following the approval by the Parliament, the Bill is sent back to the Government. The Bill now has to be presented to the President for final approval. According to article 77 of the constitution, the President has a veto which enables him to suspend a proposal. However, in practice this power of the Head of State has nearly been abolished.[21]

The final steps of the legislation making process are the publication of the Bill in the Statute Book, the publication in the electronic database of Finnish legislation (FinLex[22]) and the entry into force.

Monitoring

The proponent ministry is responsible for monitoring the effects of the legislation after its entry into force.

3.2 Innovation and discussions

In Finland, the better regulation policy plays a significant role.[23] The case of Finland was selected for this research, because a quick-scan of the legislative processes of all EU Member States revealed that the country is a frontrunner in many respects.[24] The Finnish legislator has experience with innovations which are totally new or absent in other countries. However, of course, as in every system, there is still much room for improvement. New innovations are being implemented and discussions about the functioning of the legislative process continue to be held.

This section addresses the innovations and discussions concerning the Finnish legislative process. First, some challenges concerning regulatory quality and the subsequent 'better regulations' policies will be discussed. Second, the relation

---

[19] Article 35 of the Constitution even obliges three standing committees, one of these being the Constitutional Law Committee.

[20] Van den Brandhof 2004, p. 213.

[21] , P. Pesonen and O. Riihinen *Dynamic Finland The Political System and the Welfare State*, Finnish Literature Society Helsinki 2002, p. 168-169.

[22] The database of Finnish Legislation: http://www.finlex.fi/en/

[23] OECD, Better Regulation in Europe: Finland, OECD 2010. The OECD Public Governance and Territorial Development Directorate reviewed the better regulation policy of Finland in 2003 and 2010. Although this research is strictly speaking not about better regulation, the most recent report of the OECD contains valuable background information on the innovations and discussions concerning the Finnish legislative process.
http://www.oecd-ilibrary.org/governance/better-regulation-in-europe-finland-2010_9789264085626-en;jsessionid=7hk3n42dd8ke1.delta.

[24] See also chapter 2 of this report.

between politics and the civil service regarding the legislative process will be handled, and more in particular the functioning of the Government Programs and the Parliamentary Committees. The third topic of this section will be the attempts to make the legislative process more transparent, as well as facilitating consultation of stakeholders and involving citizens effectively. The final topic will be the use of ICT in the legislative process itself. Finland has several interesting projects concerning this topic.

Regulatory quality

While Finland's policy for Better Regulation has evolved significantly in the past fifteen years, challenges remain.[25] In Finland's legislative branch, the main issues are the quality of legislation and the constant growth in the volume and detail of regulation. In order to address these subjects, Finland has several better regulation policies and projects. We will elaborate on the most interesting ones for the purpose of this report.

The Finnish Ministry of Justice takes a leading role in promoting better regulation. The former Minister of Justice saw better regulation as one of her priorities. Although the political attention mitigated somewhat, the Director General is still much in favour of the projects. The Ministry even has a special civil servant for developing, coordinating and promoting better regulation projects.

The Ministry of Justice mainly promotes the development of predictable and systematic procedures for making regulation. The aim is to enable better planning of the process, improve administrative procedures for the management of rule-making and procedures to secure the legal quality of regulations. In practice these goals are pursued by training law drafters, by making and promoting the use of guidelines and by oversight by the Unit for Legislative Inspection which checks in principle all legislation.

The Ministry of Justice made inter alia guidelines and instructions on Bill drafting, on conducting impact assessments, on consultation and on the role of European law and treaties in legislation making. For instance the 'Bill Drafting Instructions' contains instructions on how to draft a law and its reasons.[26] Recently, the Ministry has drawn up an ideal model for legislative drafting as well as strengthened its efforts to link regulatory policy more closely to the strategies and planning of activities of the Government as a whole.

Politics and civil service

A second interesting feature of the Finnish legislative process is the relationship between the Government and the civil servants, in particular the law drafters, on the one hand, and the Parliamentary Committees on the other hand.

First the role of the Government. As was already said, Finland has quite a stable political system; as a general rule Governments last their whole period. All respondents pin-point the importance of this fact for the planning of the legislative

---

[25] See: OECD 2010, p. 14-15,
[26] The Guideliness can be found on internet, some are translated in English, see: http://www.om.fi/en/Etusivu/Parempisaantely/Saadosvalmisteluohjeet

process. Ministries can work according to the Government Program and meanwhile they can count on the expected four years to plan their work. They also know that after these four years the draft Bill will be guillotined due to the discontinuity principle. This motivates the law drafters as well as the Parliament to finish the work before the new elections.

Second, the role of Parliamentary Committees. After the preparatory work of civil servants the proposal comes into the Parliament, in particular into the Committees. The working methods of the Committees have interesting features. One of the first things a Committee does in reviewing proposed legislation is hearing the law-drafters themselves. Furthermore, the Committees also hear other experts and stakeholders. After discussing the technical characteristics of the law, the Committee discusses political matters. Committee meetings are closed for the public, but the minutes are published afterwards. There is discussion in Finland on the (lack off) transparency of the committee system.

Transparency and consultation

The Finnish public sector is generally considered to be quite transparent. In 2005 the country adopted a Code of Consultation, which was progressively updated in 2010.[27] The new code aims to support greater transparency in making legislation and even specifies minimum time limits (6-8 weeks, with an extension during the general holiday season) for the consultation period. The discussions and innovations in this area of the legislative process concern mainly the use of ICT. Finland is one of Europe's frontrunners in using e-government and e-democracy to improve the transparency of the legislative process, making consultation more effective and involving citizens.

At present, the Finnish administration runs three important websites which have the specific purpose to make the legislative process more transparent and improve consultation. These three websites will be discussed in this piece. Apart from this, virtually every Finnish public institution has a very informative website, in many occasions also an English version is on-line.[28]

As to transparency and consultation, the first interesting portal to discuss is the Government Project Register (HARE).[29] HARE is a shared service of the Parliament and the ministries. The website provides information on all kinds of projects undertaken by the public sector. It allows the Finnish public to follow legislative projects in all different stages of the process and find related documents. The HARE portal is very informative, but austere in its appearance. HARE seems to be made perhaps for the - professional - user, who desires specific information about particular government activities.

Finland also has two related websites with a more accessible appearance. They have an attractive interface and seem to be more suited to the demands of a more general public. The first website that will be discussed is otakantaa.fi, the portal

---

[27] For the Consultation Guidelines and the Code see:
http://www.om.fi/en/Etusivu/Parempisaantely/Kuuleminen
[28] See for instance those of the government(valtioneuvosto.fi/etusivu/en.jsp) the parliament (web.eduskunta.fi/Resource.phx/parliament/index.htx) and the ministry of justice (www.om.fi/en/).
[29] See: www.hare.vn.fi (only in Finnish)

which collects information from citizens. The second is kansanvalta.fi, which has the purpose to inform the people.

As early as in 1999 Finland introduced otakantaa.fi.[30]This is an online discussion forum at which stakeholders, or just anyone, have the possibility to react on proposed governmental plans and draft legislation. On the website the proposed legislation or other plans are published, usually together with a number of direct questions to the public on the issue. This method gives ministries the opportunity to steer the consultation process somewhat and to collect specific and usable information. As to the interdepartmental coordination of the website, otakantaa.fi is administered by the Ministry of Justice Democracy Unit, but every ministry may use its possibilities.

Related to otakantaa.fi is kansanvalta.fi, 'the democracy data bank'.[31] The website is used by the Government and departments to inform the public about a number of topics, varying from specific legislation projects to general information about the functioning of the public sector. On kansanvalta.fi citizens can find for instance information on fundamental rights, democracy, political parties etcetera. The website explains inter alia in what manners a citizen can participate in the decision-making process. Furthermore, information about current issues can be found on the web portal. Notably, in a number of occasions the information is published with the contact details of the concerned civil servants.

In the near future these two websites will be replaced by a new one. As a follow-up of otakantaa.fi and kansanvalta.fi, Finland has started a project for creating an interactive e-participation environment. This website will contain many new possibilities, including tools to plan participatory actions, start deliberative discussions, undertake several kinds of online consultation on the drafting of laws (including 'wiki'-drafting), questionnaires, polls, statements and monitoring the work of representatives. The new system will also facilitate the possibility for a citizen's initiative, which was introduced in Finland this year.[32] This new e-participation project has a different working philosophy in comparison to earlier e-participation tools. Whereas otakantaa.fi and kansanvalta.fi were more static websites to which people have to come to themselves, the new e-participation methods will be more assertive to find the citizens or stakeholders themselves. For instance, part of the project is making use of Facebook in the legislative process, in order to inform and consult people on a platform where they already are. The project is led by the Unit for Democracy, Language Affairs and Fundamental Rights of the Ministry of Justice.[33]

In Finland, there is much debate, philosophical as well as more practical, about what these new e-government, e-democracy and e-participation tools will mean for the future of the public administration.[34]

---

[30] See: www.otakantaa.fi *Ota kantaa* means in English 'have your say' or 'take a stand'.

[31] See: www.kansanvalta.fi.*Kansanvalta* is Finnish for 'democracy'.

32 See: www.medborgarinitiativ.fi In the future the website will also facilitate a service for collecting (electronic) signatures.

[33] The research team interviewed a civil servant from this unit, see the paragraph 'experiences' and the appendix.

[34] See paragraph 3 'experiences' for our impressions.

ICT in the legislative process

As we have seen in the previous paragraphs there is an ongoing debate on the use of ICT throughout the legislative process. Finland has adopted a progressive attitude towards the use of ICT within the legislative process. This holds particulary true for the use of ICT in the parliamentary phase of the legislative process.

The most significant projects the Parliament has undertaken are the so called RASKE projects; the standardization of document structures by using SGML (Standard Generalized Markup Language) and XML (Extensible Markup Language).[35] This system entails that documents are produced, presented, archived, distributed, communicated and presented in a standard and application-independent form. The main benefits of the SGML implementation are long-term accessibility of information in documents, more efficient inter-organizational collaboration, more openness, improved services on internet, semiautomatic consolidation of legal documents and remarkable savings in printing costs (70-80%).[36] The system also strengthened the collaboration between the Parliament and the Ministries.[37] It is likely that this project will have a sequel and that the document management system of the Parliament will be improved even more.

Although the above described e-democracy projects have their influence within the legislative process, the ministries seem to be a little bit more conservative in using the possibilities ICT might offer for internal purposes. The OECD rapport concluded that there seems to be 'a certain disconnection between Better Regulation and broader ICT programmers'.[38] Of course law-drafters use Microsoft Office products, e-mail, etcetera, but there is no special ICT system used in Finland for drafting legislation.

3.3 Experiences

Length of the process, pace and time management

Almost all respondents indicated that *duration* of the legislation process is neither a concern, nor a subject of political or public debate in Finland. The focus of the

---

[35] See for a detailed explanation of XML and SGML and the possibilities of these systems: A. Salminen *Building Digital Government by XML*, HICSS '05 Proceedings of the Proceedings of the 38th Annual Hawaii International Conference on System Sciences (HICSS'05), Track 5, Volume 05, http://dl.acm.org/citation.cfm?id=1042436.1042944; A. Salminen, M. Lehtovaara and K. Kauppinen, *Standardization of Digital Legislative Documents,* HICSS '96 Proceedings of the 29th Hawaii International Conference on System Sciences Volume 5: Digital Documents, p. 72-81, http://dl.acm.org/citation.cfm?id=798644.

[36] O. Mustajärvi, *e-Governance: Structured documents in the Finnish Parliament*, The Parliament of Finland 2011,
http://www.ictparliament.org/attachements/Mustajarvi-ECPRD-Athens-SGML-XML.pdf;
Salminen 2006 par. 5; Salminen and Tompa *Communicating with XML*, Springer 2011, p. 198..

[37] Salminen, Lehtovaara and Kauppinen 1996, par. 7.

[38] OECD 2010, p. 49.

debate in Finland, they argued, is rather on the quality of the legislation process. As one respondent from the Ministry of Justice formulated: "Our concern in Finland is not how to speed up the legislation process, but how to improve the quality of this process [..] and the quality of the laws that are prepared."

This does not mean that duration, and time management aimed at controlling duration, are not seen as important aspects of the legislation process. To the contrary: time management is seen by many respondents as an important condition for enacting laws. They pointed at three factors which are important in this context: 1) the constitutional 'discontinuity principle', 2) the role of the Government program and 3) the degree of complexity of the (draft) Bill. Each of these factors is addressed below.

Several respondents emphasized, *first*, the 'key role' of article 49(1) of the Constitution in this context: this provision prescribes that "Consideration of matters unfinished in one parliamentary session continues in the following parliamentary session, unless parliamentary elections have been held in the meantime." This means that Bills automatically expire after parliamentary elections, i.e. - in practice - four years after a government enters office.[39] As one respondent indicated, governments in Finland rarely 'fall' (lose support of a majority in parliament): since 1980 only once a government fell, and thus did not complete its four years period. This means that the actors in the legislative process – Ministers and Members of Parliament - assume that there will be a four years period, as a maximum, to prepare, consider and enact a Bill. The main goal for a government is to get a (draft) Bill "prepared, considered and adopted" within the four years period. In practice, many respondents explained, this means that there will be a "peak" of Bills submitted to Parliament by the Government in the second year, and in the first half of the third year, of the government period (because of 'preparation time', only a few Bills are submitted in year one). Several respondents, especially from Parliament, also indicated that in the third and fourth year there will be "pressure" on the Members of Parliaments, and especially of the Members of Parliament in the Committees, to consider a large number of, often complex, Bills. Four respondents stressed that, as a result of such pressure, sometimes there is a "lack of time" to consider a Bill thoroughly and thus, in the wording of one of the respondents, a 'risk of lower quality of the legislative process'.

Second, several respondents emphasized the importance of the *Government Program*, which is presented to Parliament soon after the formation of the government. This program indicates inter alia which proposals for Bills (draft Bills) shall be prepared by the Government within its four years government period and which (draft) Bills get the highest priority (or medium or lower priority).

Third, many respondents also mentioned the 'degree of complexity' as an important factor which influences the pace of the preparation of a Bill: the more complex the (draft) Bill is (in terms of, inter alia, complexity of the subject matter, legal complexity, policy complexity, number and variety of stakeholders involved) the more time it takes in practice to prepare the Bill and to consider it in Parliament.

---

[39] One respondent explained that under the Finnish the Constitution (interpretation of art. 49) a Bill can, after expiration, be resubmitted to Parliament by the new government as a 'new Bill' with the same content as the 'old' Bill, but he added that in practice this only occurs in exceptional cases (e.g. in case of Bills in the field of foreign policy and international relations).

As several respondents explained, these three factors – the discontinuity principle, the 'priority position' of a (draft) Bill in the Government program and the degree of complexity of the Bill - together determine to a large extent the duration of the legislative process for a Bill, or a "set of Bills".

While the "four years period" was mentioned by nearly all respondents as a maximum for a Bill, they estimated, when asked, the "average duration" for the legislative process for a Bill *on average* as "two years" or "two to three years", counting from the drafting of a memorandum for a Bill at the department (starting point) until and including the voting on the Bill and adoption in the Plenary Session of Parliament. Several respondents emphasized, however, that in exceptional cases the duration of the legislative process of a Bill can be much shorter, that is "a year" or "in very exceptional circumstances even less than two months". Four respondents mentioned as examples in which the duration of the process can be very short "changing one rate of a tariff in an existing tax law", "Bills that implements EU directives" and "Bills aimed at repairing an error, or an unintended hole, in a recently adopted act, when there is urgency to repair the error in order to prevent financial consequences for the state". In such cases, two respondents explained, part of the preparation process within the ministry, and parts of the coordination processes between the ministries, as well as consultation, is skipped in order to speed up the preparation process. One respondent also mentioned this practice but emphasized that "the result of this practice is usually not satisfactory".

When asked which factors contribute to the speed of the legislation process in Finland, a vast majority of the respondents emphasized the importance of standard working processes. The *Bill Drafting Instructions* were mentioned by several of them in this context. Other factors mentioned by several respondents were:

1) The fact that Finland is a small country, where many actors in the legislative process, both from the side of the Ministries and from the side of Parliament, know each other very well and can easily, often in informal circuits, approach each other to discuss problems and find solutions;

2) The widespread, even standard, practice that the senior civil servant who drafted a Bill is asked to come to the Parliamentary Committee to answer questions of a technical nature, thus offering opportunities to resolve 'technical problems' in Bills in an efficient way;

3) The fact that each minister has at least two, and often three or four, personal *political advisors* who play an important role in the legislative process by actively listing possible political, legal or technical problems of Bills, contacting key actors both within ministries (interdepartmental contacts) and within the Parliament (Heads of Committees, Members of Parliament) and thus proactively trying to prevent and solve problems in the legislative process for a particular Bill. Several respondents explained that the political advisors are the 'bridges' between the different actors in the legislative process: they focus on 'politically sensitive aspects' of Bills, facilitate formal and informal contacts between the stakeholders (ministers, Bill drafters and Members of Parliamentary Commissions of different political groups) and formulate proposals which could lead to problem solving. Furthermore, the respondents explained that all actors in the legislative process can approach the political advisors at any stage with the aim of informing them about possible political or technical 'problems' or 'challenges' with regard to a (an element of a) Bill. The

political advisors are thus well informed (they get information, warnings etc. from all sides). This enables the political advisors to play their role as 'behind-the-scenes mediators' in the legislative process.

4) The qualifications of the individual civil servants who draft the laws. Six respondents stressed that "individual qualities" "training" and "experience" of civil servants are important factors for the legal and technical quality of Bills and may also have an indirect impact on the duration of the legislative process. The Finnish government, and especially the Minister of Justice, invests in the training of law drafters, both at junior and senior level;

5) Impact assessments and developments towards post-implementation assessment: six respondents argued that post-implementation impact assessment, which is a relatively new practice in Finland, enables the actors in the legislative process, both ministers and Members of Parliament, to draw lessons from post-implementation assessment with the aim of making the legislative process more effective in the future. They also argued that ante-impact assessments, combined with consultation of a wide circle of stakeholders, take time and seem to slow down the legislative process in the early stage, but are often beneficial, and lead to "better results" at a later stage, because potential problems and unintended and undesired affects of the Bill are discovered at an early stage and can timely be dealt with.

Political prioritization

As indicated above, the Finnish legislative system is based on a 'four years period'. The *four years Government Program[40]*, which is always drafted and agreed upon by the coalition parties at the beginning of a four years government period (soon after the parliamentary elections), is a key feature for prioritization within the legislative process. Many respondents emphasized the central role of the Government Program in the legislative process. Several of them indicated that they could not imagine working without such a program. Some respondents also pointed at the *Government Strategy Program[41]*, which is decided upon in the first year of government and which elaborates the Government Program in more detail and adds "time schedules" for the Bills and 'bundles of Bills' which have been granted a high degree of priority.

Several respondents explained that the *degree of prioritization* (high, medium, low) that is given to a particular Bill in the Government Program, determines how much "capacity of law drafters" is given to the drafting of the Bill, which "track" is followed in the process of inter-departmental coordination: a fast track of a slower track. They also indicated that, after submission of the Bill to Parliament, there may sometimes be a (formal or informal) request from the minister, the personal advisor of the minister or a senior civil servant, to the chairman of the Parliamentary Committee, for "reconsideration as soon as possible".

Many respondents emphasized the importance of the tradition of *informal contacts* between representatives of the ministry, or the cabinet of the prime ministry, on the

---

40 See for instance: Programme of the Finnish Government, 22 June 2011
http://valtioneuvosto.fi/hallitus/hallitusohjelma/en.jsp
[41] See for instance: strategic plan for the implementation of the Government Programme, 5 October 2011
http://valtioneuvosto.fi/toiminta/hallitusohjelman-seuranta/en.jsp

one hand, and members of parliaments, the chairman and clerks of the parliamentary committees on the other hand: they explained that these informal contacts facilitate the time management of the legislative process for individual Bills, and for broader legislative programs (bundles of Bills).

Two respondents from Parliament stressed that each Parliamentary Committee will determine its own agenda, but will, in doing so, take into account requests from the minister or civil servants (often: law drafter) for prioritization.

A few respondents furthermore argued that there is a trend towards "too much law-making" and a trend to perceiving law-making as a "solution for everything" in Finland. In their view the efficiency of the legislative process in Finland could be improved if alternatives to law-making would be considered more often. This would in their view lead to "more capacity" for the actors in the legislative process, both within the ministries and within Parliament, to focus on a smaller number of (draft) Bills.

Coordination and coherence within the legislative process

- *Interdepartmental cooperation*

As to interdepartmental cooperation, the respondents pointed at "challenges" and "problems" but also at several "good initiatives" for improving this cooperation.

According to some respondents, a main challenge in the Finnish legislative system is the high degree of "independence" for each minister, and each ministry. They described ministries as "pipes" or "pillars" that stand next to each other and do not yet cooperate and coordinate as much as needed. They argued that, while on paper there are important and ambitious initiatives to improve the interdepartmental coordination, such as the Better Regulation Program, these initiatives are often not, or only partly, implemented in practice. When asked what could be causes of this lack of implementation, several respondents indicated that in their view a "lack of support at the political level" for these programs, and especially for the Better Regulation Program was the main cause. They argued that a program like the Better Regulation Program can only really work in practice, if there is enough capacity, among civil servants, to develop and implement this program, and enough support from the ministers for the program. While in their view the Better Regulation Program is promising in theory, it has, in the words of one respondent, "not yet enough gained enough support from the ministers".

In the view of other respondents the Better Regulation Program is too ambitious and entails too many activities, to be effective. In their view, the program does not leave enough space for the individual law drafters to act in ways which are practical and necessary for their policy fields. As a result, one of the respondents argued, elements of the Better Regulation program and other initiatives to improve the coordination and coherence in the law making process, are often "put aside" or "ignored".

Several respondents indicated, independently from each other, that programs such as the Better Regulation Program could work, and lead to a higher efficiency of the law making process, if 1) the program would gain more support from the ministers and from the "top levels of the ministries", 2) more capacity (in terms of financial means, man power and time) was created to implement the program and 3) more

training was given to the actors involved in the legislative process, especially the junior and senior law drafters, on how to work according to the program. One of these respondents emphasized in this context that "law drafters need more than lawyers' skills".

One respondent, with a decades' long experience in legislation both in practice and in academic work, argued that the ministries in Finland "are not pillars standing next to each other any more". He emphasized that much has changed in recent years. In his view interdepartmental working groups and similar channels work much better, and gain a higher level of efficiency, than they used to do in the past.

Two respondents argued that, while the Better Regulation Program has not yet been implemented at a large scale, elements of it already become "common practice" and lead to a higher coordination between the ministries. As examples they mentioned the *meeting of the secretaries-general and directors-general on priority of legislation* and the *interdepartmental-working groups for law makers*.

Several respondents pointed at the central role of the *Unit of Legislative Inspection* of the Ministry of Justice for controlling laws on, inter alia, accordance with inter alia the *Bill Drafting Instructions*. In their view, adherence to these instructions leads to more efficiency of the legislation process. They also emphasized the importance of training law drafters from all ministries in using these instructions and in developing law making skills more generally. They indicated in this context that "sufficient financial means" are a condition for organizing these training programs.

One respondent argued that there should also remain enough space and flexibility for law drafters to choose for practical solutions if, for example, an amendment to an Act needs to be made in a very short period of time (e.g. in tax law). In the words of this respondent: "Guidance to law drafters is positive, but too much guidance can be ineffective in some cases".

- *Interaction between representatives of the Ministries and Parliamentary Committees*

Many respondents pointed at the important position of Parliamentary Committees in the Finnish legislative process.[42] Several of them indicated that the Chairman of the Committee has a leading role in the process of considering the Bill: his or task is to seek a majority vote. In practice, several observers remarked, consensus or a decision supported by as large a majority as possible is sought.

Nearly all respondents emphasized the importance of the practice in the Committees to organize hearings. For each Bill a hearing is organized; this is a standard practice. According to the respondents, these hearings contribute highly to efficiency of the legislative process, by bringing together experts and stakeholders from all parts of society. Since each Committee (e.g. Finance Committee, Agriculture Committee, etc.,) is composed of Members of Parliaments from all political groups in Parliament, the hearing in the Committee offers a forum for each political group to interrogate experts and stakeholders and to be informed by them on a wide range of aspects of the Bill.

---

[42] See for a description of this role section 1 of this chapter.

Several respondents also emphasized the importance of hearing the senior civil servant who has drafted the Bill (also indicated as: law drafter). This practice is generally perceived by the respondents as a very important feature in the Finnish legislative process: each Committee hearing begins by hearing the law drafter from the ministry. He or she will give a short repose on the legal and policy aspects of the Bill and will answer questions from the Members of the Committee. This hearing of the law drafter takes place in the presence of other invited experts and stakeholders, who will later in the hearing be invited to speak and answer questions. According to many respondents, this setting creates a lively ambiance for in-depth discussion among experts and stakeholders in the presence of, and in interaction with, the Committee Members.

When asked whether the law drafter can speak freely and openly in the Committee hearing, all respondents answered in the affirmative. One respondent explained that both the law drafter from the Ministry and the Committee Members differentiate between 'legal and technical aspects of the Bill' and 'political aspects of the Bill'. This respondent indicated that a law drafter may, and often will, speak freely and openly on legal and technical aspects, explain which alternatives have been considered when drafting the Bill, elaborate on aspects of EU law, etcetera. As to political aspects of a Bill, the law drafter will be "more careful".

If a Bill, or an element in a Bill, is politically sensitive, the Chair of the Committee, supported by the Committee Clerks will, prior to the hearing, discuss the politically sensitive elements of the Bill with Committee Members from all political groups, often individually and collectively. Next, the Committee Chair will contact either the Minister responsible for the Bill, or one of the political advisors of the Minister, or the law drafter, in order to inform him about the "political issues at stake" and discuss whether and how these issues could be solved.

There are no formal procedures, rules or limitations for such contacts between the Parliamentary Committee and the Ministry. Many respondents emphasized that there is a long tradition in the Finnish legislative system of open, informal contacts between Ministries and Parliamentary Committees, and of close connections between them. In the words of one respondent: "This culture of open, informal contacts between Ministries and Parliamentary Committees highly facilitates 'problem solving' and 'finding solutions' in the legislative process."

When asked how the practice of hearing the law drafter in the Parliamentary Committees related to the 'political responsibility of the minister', several respondents replied that they saw no negative consequences for the political responsibility for the ministers. They emphasized that this practice is part of a wider, longstanding, tradition in Finland of 'informal contacts' and 'consensus building' between the actors in the legislative process. Two respondents further explained that law drafters, and more generally civil servants, are expected to be 'politically sensitive': they inform, in their role of (legal) experts, the Parliamentary Committee about the 'legal, policy and technical aspects of the Bill', but will generally not answer questions of a highly political nature without first conferring with their minister. Members of Parliamentary Committees will be inclined to discuss politically highly sensitive aspects of a Bill directly with the minister, either prior to the hearing (often through the political advisor), or after the hearing, or both. The focus of the

hearing of the law drafter in the Parliamentary Committee will generally be on the – often complex – legal and technical aspects of the Bill.

Consultation

Many respondents indicated that there is a widespread belief among Finnish civil servants in solid consultation procedures, in order to make the legislative process more efficient and more effective. In their view this belief in consultation is part of a wider 'consensus culture' in Finland. They pointed at two *codes of consultation,* which have been adopted in Finland in recent years (first version in 2005, updated in 2010). This code of consultation was qualified by one of the respondents as 'progressive'.

Not all respondents were positive about the *practice* of consultation in the Finnish legislative system. One respondent stressed that consultation is not always organized in a sufficiently systematic way. Furthermore he argued that in some parts of the Finnish ministries there is not enough attention for the code of consultation. Other respondents also indicated that in practice there would sometimes be less willingness to organize a round of consultation when there is time pressure.

Several respondents made a distinction between on the one hand 'traditional forms of consultation', whereby individual stakeholders are invited by the ministry to give their view on the draft Bill, and 'newer forms of consultation' whereby the draft Bill is published on the Internet and 'everyone' is invited to participate in the round of consultation. Both forms of consultation exist in Finland. One respondent argued that in the 'traditional form of consultation' sometimes "stakeholders are forgotten". Several respondents indicated that 'internet consultation' has become more widespread in recent years.

Internet consultation in the legislative process is in Finland part of a wider and long time tradition of e-democracy. E-democracy applications such as Otakantaa.fi and Kansanvalta.fi were launched more than a decade ago (1999)[43] and have been used by citizens and organizations from many parts of society since then.

Two respondents indicated that Finland is at present taking a "next step" in e-democracy, with a completely renewed version of Otakantaa.fi. The new version of this website will be launched in the course of this year (2012) by the Finnish Ministry of Justice. The goal of this website is to enable and enhance dialog and interaction between citizens, politicians and public servants and to improve e-participation possibilities – at a national and at a local level. The website offers various `toolboxes' for citizens, NGOs, businesses, government agencies and municipalities that are easy too use (and have been tested in several pilots in the past year). These toolboxes contain tools for planning of participatory actions, deliberative discussions, questionnaires, polls, statements, tools for citizens' initiatives (at national or local level) and tools for monitoring the work of members of parliament, members of municipality councils and other representatives. There are also tools that can be used for online consultation for drafting of laws, including tools for real-time online collaboration and online drafting, and for submission of comments and statements on draft texts.

---

[43] A description of these e-democracy projects can be found in section 3 of this chapter.

The respondent who demonstrated the new version of Otakantaa.fi to the interview team explained that a key feature of this website is "the principle of active doing – not just being informed". The website aims to enable citizens, NGOs and businesses to participate smoothly and actively in decision-making processes and legislation projects. For government agencies and their civil servants, the website aims to offer opportunities for "more transparency and more inclusion in the decision making process", "more satisfied stakeholders" and "better decisions".

This respondent furthermore explained that the Ministry of Justice, more specifically the Unit for Democracy, Language Affairs and Fundamental Rights of this ministry, is the central co-coordinator for and the driving force behind Otakantaa.fi. The Ministry aims to create a *central platform* which all other ministries and other government agencies, at both the national and the local level, can use for purposes of e-participation. The Ministry of Justice closely cooperates with other ministries and with NGOs in order to make the new national e-participation website as 'user-friendly' as possible, for citizens, NGOs, businesses and for civil servants.

This respondent also explained that a new Finnish Act, the Initiative Act, which entered into force in the beginning of 2012, grants citizens and groups of citizens the right to take the initiative for a new Bill. The new version of Otakantaa.fi will, from the end of 2012, enable citizens or groups of citizens to collect the required numbers of 50.000 signatures for their initiative online.

There was much variation among the respondents with regard to their expectations of the new e-democracy and internet consultation tools. While some respondents indicated to expect much from the more revolutionary developments in them, other respondents were critical or expressed doubts about the impact of such tools.

Two respondents strongly doubted whether these e-democracy projects have, or will have a significant impact on the Finnish legislative process. They explained that they were not sure whether there is, or will be, a widespread willingness among civil servants to use the e-consultation tools. They indicated that much will depend on the information that will be delivered by these tools (the 'output' of e-consultation in individual cases): if this output is perceived by civil servants, in particular law drafters, as 'useful', it is more likely that there will be increasing support for, and use of, e-consultation in the coming years.

One respondent stressed that it is very important for e-democracy, and e-consultation in the legislative process in particular, "to go to the places on internet where the people already are". He explained that there is a risk that many citizens, who would potentially wish to participate in forms of e-consultation, will not find the official consultation websites. He argued that the challenge for actors in the legislative process will be to connect to the internet platforms where citizens already are on a daily basis, in particular social media such as Facebook.

Transparency

Many respondents indicated that 'transparency' is generally seen as an important feature of the Finnish legislative process. Several respondents emphasized that there is debate about the degree of transparency of the work of the Parliamentary Committees, and especially the perceived "lack of transparency" or "limited

transparency" of the hearings of the Committees. At present these hearings are not open to the public: only invited persons can attend.

A respondent from the media was critical about the present practice, whereby meetings and hearings on Bills are closed to the public and the media. She explained that "it is difficult for journalists to find out what happens in the Committees". She argued that this closedness of the hearings constitutes a limitation to press freedom, more specifically the free gathering of the news. She indicated to be in favour of openness of the meetings and hearings of the committees, in the sense that "every one", including journalists, would be able to either attend the hearing itself or watch it on internet (live stream or in recorded form). This view was shared by about half of the respondents.

Other respondents indicated that they were in favour of keeping the closed character of the committee meetings, and especially the committee hearings. Three of them argued that the closedness of the hearings is essential for the quality of the process and for the "consensus component" of it.

Three respondents indicated that plans are developed within Parliament aimed at making hearings in parliamentary committees more open. One possibility which is currently under consideration is making a video recording of (some or all hearings) and broadcasting live stream images of the hearing on the parliamentary website. This was done – by means of a *pilot* - for a small number of hearings in the past year. The respondents stressed, however, that this is a pilot. The practice of 'closed hearings' prevails at present.

Several respondents pointed at the contradiction between the openness of the plenary sessions of Parliament on the other hand, and the closed character of the committee meetings and committee hearings, on the other hand. While, in the wording of one of the respondents, in the open plenary sessions "the Members of Parliament often act in response to the whim of the day" and "are highly aware of the presence of the media and the public", the meetings and hearings in the Committees are often more "oriented to consensus building and problem solving".

As to the transparency of the work of the ministries in the legislative process, two respondents argued that the ministries could be more open than they are at present. While several respondents pointed in this context at the practice of public hearings organized by ministries as part of the consultation procedures, others argued that the Finnish public might want to know more about what civil servants do in the process of preparing a proposal for a Bill.

One respondent argued that transparency of the work of the civil servants in the legislative process is also beneficial for 'internal purposes': in his experience such transparency improves the inter-departmental exchange of information and thus the interdepartmental coordination and cooperation.

Role of Information and Communication Technology (ICT)

A vast majority of the respondents indicated that Information and Communication Technology (ICT) plays an important role in the legislative process in Finland. In the words of one of the respondents: "The legislative process cannot work any more without the use of ICT." Several respondents stressed the importance of ICT for making a wide range of goals: *1)* for making the legislative process more transparent

for the public (inter alia by publishing all parliamentary documents online), *2)* for enabling interactive (e-)consultation with a general public, *3)* for purposes of communication (inter alia use of e-mail and other electronic forms of communication in intra- and interdepartmental relations, for contacts between civil servants and chair, members and clerks of the parliamentary committees), *4)* for purposes of sharing knowledge on technical aspects of the legislative process and on legal aspects (inter alia Digital Bill Drafting Instructions) and *5)* for purposes of increasing the accessibility of documentation systems in the legislative process (inter alia the use of specially devised iPads and electronic working tables by Members of Parliamentary Committees).

One respondent indicated that Finnish Members of Parliament are very eager to use ICT to increase openness of the legislative process and for purposes of e-participation. In the view of another respondent, however, there is still some conservatism in the Parliament, and especially in the management of the Parliament, with regard to using ICT. In his view ICT could be used, much more than is already done at present, to make the legislative process more smooth, to further improve the digital infrastructure for document handling, to improve the planning of the legislative process, to make this process more coherent and to embark on "totally new opportunities" for e-participation.

One respondent emphasized the importance of the digital system for the standardization of legislative documents, SGML/XML. While this system has worked very well for Parliament in the past decade, it is not yet widely used by the ministries.[44] In the view of this respondent a more wide-spread use of this system, especially by the ministries, could make the Finnish legislative process more efficient, coherent and open.

This respondent also emphasized the importance of the RASKE projects, which in his words, "changed the whole system" and have been very successful in Parliament and in the Ministry of Finance where it has also been implemented.

As to the use of ICT by law drafters and legal specialists at the ministries, one respondent indicated that traditional software, such as MS Word, is generally perceived as "sufficient". There are no plans to develop "real knowledge-systems" for law drafters, but the Unit of Legislative Inspection of the Ministry of Justice does have the ambition to develop an online and interactive portal for law drafters in the near future.

3.4 Observations

In Finland the interview team encountered a very professional civil service. Key words to describe the atmosphere in the legislation are modern, informal, pragmatic and academic. Civil servants are used to thinking independently.

One of the most remarkable features of the Finnish legislative process is the informal relation between the civil servants of the ministries and parliamentary committees. The value of this characteristic of the Finnish legislative process is generally recognized. Respondents simply cannot imagine the system without this possibility.

---

[44] Until now, one Ministry, the Ministry of Finance, has joined the SGML/XML project.

Respondents see no negative consequences of this feature with respect to the political responsibility of the ministers.

Related to this feature is the working of Finnish Parliament with its elaborate parliamentary committee system. Much of the legislative work is done in these Committees. A striking fact is the limited transparency of Committee meetings. At present there is debate in Finland with regard to this closeness. While some value the importance of this feature for the proper functioning of the legislative system, others are critical about it.

Another important feature of the Finnish legislative system is the Governmental Program, the document which describes the key elements of the Bills to be prepared during the four years of the government period. The Government Program also prescribes the degree of priority for these Bills. The Government Program is widely seen as a core element in the Finnish legislative process and as a feature which highly contributes to the effectiveness of this process. The Program owes its status to a great extent to the stability of the Finnish political system.

Related to the working of the Governmental Program is the effect of the discontinuity principle. After parliamentary elections Bills that have not been passed automatically expire. Civil servants and politicians work hard to finish their projects within four years.

The Finnish legislator is very active in the field of ICT. In particular the Parliament takes a leading role in using ICT for the legislative process. Especially interesting is the system for the standardization of legislative documents, SGML/XML. While this system has been very successful for Parliament, it has not yet been widely used by the ministries. The overall observation is, however, that SGML/XML highly contributes to the effectiveness of the legislation process in Finland.

Finally, Finland is very ambitious in using ICT for consultation and participation. The country has much experience with for instance otokantaa.fi. Finland has developed more advanced e-democracy systems, which seem to be quite promising.

Annex 3.1 List of respondents Finland

Ministry of Justice
- Mr Pekka Nurmi, Director General, Law Drafting Department
- Ms Maija Salo, Ministerial Adviser, Law Drafting Department, Better Regulation
- Mr Riku Ahola, Counsellor of Legislation, Law Drafting Department, Unit for Legislative Inspection
- Ms Laura Ahokas, Project Manager, Unit for Democracy, Language Affairs and Fundamental Rights

The Finnish Parliament
- Mr Olli Mustajärvi, Doctor of Science, Head of ICT Development, Administrative Department, Information Management Office
- Mr Timo Tuovinen, Deputy Secretary General
- Ms Marja Ekroos, Committee Counsel, Environment Committee
- Mr Harri Sintonen, Committee Counsel, Social Affairs and Health Committee

Media
Ms Teija Sutinen, Journalist, Political news desk, Helsingin Sanomat

The National Research Institute of Legal Policy
- Mr Jyrki Tala, Doctor of Laws, General Research Unit
- Ms Kati Rantala, Doctor of Political Science, Director of General Research Unit

Ministry of Finance
- Ms Merja Sandell, Governmental Counsellor, Tax Department
- Mr Jyri Inha, Doctor of Laws, Legislative Counsellor

4. Slovenia

4.1 The legislative process

The Constitution[45]

The Constitution[46] of the independent state of Slovenia was established in 1991, introducing a parliamentary system operating under confidence rule. Its Parliament (*National Assembly*) has 90 members and ensures, as representative body and highest legislature, majority support for the government. An interesting feature is that two seats are assigned to representatives of the Hungarian and Italian national communities (official minorities) who are elected separately.

Besides the Parliament, Slovenia has a *National Council*, which fulfils an additional representative role. The council comprises 40 members who are elected indirectly on the basis of, among other things, economic, social, professional and local interests. The Council has functional and territorial representatives.[47] From a constitutional point of view, the Council is viewed as a special body that exists and operates alongside the Parliament.[48] It is not authorized to adopt acts, but the Council can submit a legislative proposal, veto a Bill and call a binding referendum which can lead to legislation being blocked. In Slovenia this is labelled as an 'incomplete' two chamber system.

The *President* holds the position of head of state and has limited power. His role, however, is of importance at times of conflict or urgency. He also has a role to play in certain procedures, for example calling parliamentary elections, the election of a prime minister and the nomination of members for the Constitutional Court. The President is only the head of state in name, as it is the Government that holds the actual executive authority for decisions taken by the Parliament. The Government (also: Council of Ministers) comprises the Prime Minister and ministers, many of whom generally take charge of a ministry. They are individually responsible for their particular ministry and jointly responsible for the work of the Government but are accountable to the National Assembly (article 110 of the Constitution.)
The Prime Minister is elected by the Parliament on the proposal of the President. As a rule the Prime Minister is elected by a majority vote of all deputies in a secret ballot. The relationship between the Government and the Parliament is regulated in the *Rules of Procedure of the National Assembly* underlining Parliament's independence. In the legislative process this is expressed in clear parliamentary 'ownership' of legislative proposals from the Government: the moment a draft has

---

[45] Information in this section is partly derived from Kortmann, Fleuren and Voermans, *Constitutional Law of 10 EU Member States. The 2004 Enlargement.* Kluwer, 2006: Alphen aan den Rijn, chapter X.

[46] For an English version of the Slovenian Constitution see: http://www.up-rs.si/up-rs/uprs-eng.nsf/dokumentiweb/063E5907BE5B679CC1256FB20037658C?OpenDocument.

[47] For details on the composition of the Council see http://www.ds-rs.si/en/?q=about_NC.

[48] Kortmann et al. does not consider the Council as a second chamber and refers to the system in Slovenia as a unicameral system; the Government Communication Office refers to a bicameral system. (http://www.slovenia.si/en/slovenia/state/parliament-the-national-assembly/).

been submitted the Government can no longer withdraw or change the proposal except through the introduction of amendments.

On the basis of *The Government of the Republic of Slovenia Act*[49] the *Office of Legislation*[50] was created with the obligation of advising on all legislative proposals. This involves Government legislative proposals and proposals which reach the Parliament via other routes. The Office of Legislation focuses on (1) the legitimacy of the proposal, (2) whether a proposal is in accordance with the Constitution, other laws and treaties and (3) the quality of the drafting work to ensure that "…adopted acts are clear and precise and comply with the rules as to form." The advice is not binding, but is made public and receives close attention in the media.

In Slovenia Acts ('*zakoni*') are the general instruments in the national legal order.[51] Acts are adopted by the Parliament according to the procedures contained in article 89 of the Constitution (elaborated on in article 121 up to 141 of the Rules of Procedure of the National Assembly). Acts are published in the Official Gazette, known as *OJ RS,* and usually enter into force on the 15th day after publication unless otherwise stated.

In the next section we will discuss the regular legislative process and two shortened procedures that are applied in Slovenia. In addition to these procedures there are also other decision-making procedures such as the budget procedure to determine the budget, a procedure for the ratification of international conventions, procedures to establish resolutions, declarations and decrees of Parliament (particularly those concerned with the organisation of Parliament and government property).

The legislative process

-   *Official preparation of Government Bills*

The preparation of Government Bills usually starts with the inclusion of an initiative in the annual work programme of the Government.[52] The preparations are carried out in a digital information system – known as the IPP-system (IT supported drafting of legislation project) – which includes all documents that are related to a Bill. Paper documents are no longer used. The IPP system has been in operation since April 2010.

---

[49] To consult via: http://www.gsv.gov.si/en/legislation/.
[50] This is the *Government Office of Legislation*. See http://www.svz.gov.si/en/. This advisory body is sometimes also referred to as *Office for Legislation*, see for example the above-mentioned own website.
[51] Hauser Global Law School Program, Globalex
http://www.nyulawglobal.org/globalex/Slovenia.htm#_3.1.3._Laws.
[52] For further explanation on the work programme of the Government see section: *"Prioritizing legislative proposals"*.

Four different stages are involved in the preparation of a Bill.[53]

At the *first stage* (the internal stage within the ministry) the responsible ministry (*line ministry)* coordinates with various departments, including a unit of legislative draftsmen, to draw up an initial document which contains basic information regarding the regulation that is being created, including its goals and intentions. This first stage therefore concerns the development and preparation of a first-draft of a legislative proposal. This document can be published on the *e-Democracy portal* where it is available for public inspection.

During the *second stage* (the interdepartmental stage) the line ministry discusses the draft with other units within the administration and collects their comments. Other competent ministries or governmental offices may be consulted, but must include the Office of Legislation, the Ministry of Finance and the Ministry of Justice and Public Administration. The document may also be sent to other interest groups. The line ministry collects the various reactions and if necessary draws up an amended Bill. This 'working material' is usually not published on the *e-Democracy portal.* In practice the second stage is often skipped, therefore most of the coordination occurs in the third phase.

The *third stage* involves external consultation: the 'drafting regulation' phase. The Bill is now sent to all ministries and governmental offices. It is also published externally on the *e-Democracy portal* so that interest groups and citizens can respond to the plans over a period of 30 to 60 days. The ministry indicates how long the consultation period will be open for each proposal.

If the Office of Legislation gives a negative advice, the ministry is required to amend the Bill and the Office of Legislation must once again, within five working days, give advice on the Bill in question. In this case, a new consultation period is initiated.

At the *fourth stage* the Bill, together with a report regarding the public consultation, is sent via the IPP system to the Government via the Secretariat-General of the Government (the 'Office of the Secretariat-General' is the supporting secretariat of the Government and ensures the compliance of the Government and the Parliament to the Rules of Procedure of the Government and of the National Assembly). Even though the Secretariat-General uses a different information system (the "Government Information System") than the ministries (who use the IPP system), this does not to lead to any significant problems. During this phase, it is again possible to react to the Bill via the *e-Democracy portal*. The comments are considered by the ministry if the ministries still have time available to do this.

After the Secretariat-General has assessed the document on formal conditions (completeness and sufficient information) and content (a limited check), it is forwarded to the preliminary portals of the Government: working bodies appointed by the Government (Committee for State Order and Public Affairs, Committee for

---

[53] Derived from: 'IT supported decision making procedure project', Maja Carni Pretnar and Andraz Pernar, 2011 (http://administracionelectronica.gob.es/recursos/pae_000006717.pdf).

Economy and Committee for Administrative Affairs and Appointments). These working bodies pass judgement on the Bill, which can lead to amendments in the document. In addition, the commentary from these bodies is passed on to the line ministry via the IPP system. Once back on the agenda, the Bill is discussed by the Government.

All documents related to a Bill are available digitally on the Government's Information System. The Government shall carry out its work and decide matters within its responsibility at the regular and correspondence sessions of the Government. The Prime Minister and the ministers shall participate and make decisions at regular sessions directly (articles 19-22 Rules of Procedure of the Government). The members of the Government shall participate and make decisions at correspondence sessions by conveying messages (e.g. via e-mail, or text-messages via mobile phone) through the information technology and telecommunications services within the information system designed to support the decision-making procedures of the Government (articles 23-28 Rules of Procedure of the Government). The system also makes it possible for members of the Government to issue an explanation of vote in which a decision to the vote in favour of or against a Bill is substantiated.

Following the endorsement of the Government, the Bill is put to Parliament which again uses its own information/tracking system to monitor the status of documents and the various amendments.

- *Parliamentary stage*

At the parliamentary stage, the legislative process is drafted according to a tight annual schedule (*work programme of the National Assembly*), stating which sessions occur at what time. Extra sessions are also scheduled for cases taking longer than expected. Strict time limits are set for discussions during the plenary sessions. All schedules are drawn up by the Presidium (*the Council of the President of the National Assembly*) which comprises the President and the Vice-President, the chairmen of the political parties and the representatives of the Hungarian and Italian minorities in the Parliament. Parliament has its own ICT system – separate from the IPP system and the Government ICT system used during discussions in the Council of Ministers– which supports the Bill through the parliamentary phase.

A *Bill* is submitted by the Government, (a member of) Parliament, but may also be submitted by the National Council or at least 5,000 voters. In the majority of cases proposals come from the Government. A Bill brought through a citizen's initiative has yet to be submitted.

When the Government submits a Bill to the Parliament it loses ownership of the Bill. The Government can therefore no longer influence the content of the Bill when it enters the parliamentary stage. The Government can make amendments to the Bill but only when the Government itself did not submit the Bill to Parliament.

The customary procedure consists of three readings, as well as the possibility of a preliminary reading - before tabling the Bill. The proposer of the law may propose that a preliminary reading will be held within a standing committee. This preliminary reading is an option that has not yet been put into practice.

The customary procedure starts with a *first reading* in which the Bill is presented to Parliament. The first reading is optional and is carried out if 10 or more deputies request a debate. A period of 15 days is set for this. At this stage, no amendments can be tabled. The discussion during this reading only serves to determine if the Bill will be submitted to Parliament for a subsequent reading. The decision is taken on a majority vote. If the proposed legislation is defeated, the procedure is terminated.

In the *second reading* Bills are first discussed in parliamentary standing committees, having been assigned by the Presidium. The committees are generally a reflection of the sphere of activity of the ministries. In the standing committee amendments to Bills are adopted by majority vote. Amendments may be brought by a representative, a group of representatives (i.e. political parties) or certain working groups or the Government if they did not submit the Bill themselves. The discussion (and the corresponding vote) in the committee results in an amended Bill i.e. an integrated version in which all amendments have been processed. This is then submitted to the plenary meeting of Parliament.

When discussing a Bill, a committee can organize a public hearing to hear the vision of interest groups and others. Experts in the subject matter of the Bill may also be invited to participate. The hearings of the committees are public.

At subsequent stages amendments can only be tabled in areas that have been amended by the committee. Besides this, the person who submitted the Bill is not allowed to put forward any amendments in the light of the amendments: this entails that at this stage the Government can no longer amend the Bill.

The second reading is concluded with a plenary debate in which the integrated Bill is discussed. Amendments are now only possible if they come from a group of deputies (i.e. a political party), ten deputies or the Government (if they did not submit the Bill). The debate results in a vote on the various new amendments (to previous amendments) - the other articles may no longer be addressed - and eventually on the amended Bill.

At this stage, at the suggestion of the committee, Parliament can decide that the Bill should not be considered further and therefore rejects it. The procedure then comes to an end. It is also possible that Parliament decides to have the third reading (i.e. the final vote on the Bill) at the same session: this is possible if less than one tenth of the articles of the Bill have been amended.

The *third reading* consists of a discussion and vote on the complete Bill in which all amendments have been incorporated. The third reading is intended, above all, to assess the cohesion of the entire Bill including the amendments. The discussion of

individual amended articles is exceptional. Amendments may only be proposed by the submitter of the Bill or the Government if it was not the submitter. If conflict exists between articles in the Bill, the standing committee or the Government can submit a so-called harmonization amendment. This amendment is exclusively related to the contradictory parts which were introduced during the second reading. A vote is taken on the final Bill, whether it was adjusted or not. A majority of votes is required in order to pass a Bill.

Consolidation

Following any amendment to a law, the Legislative and Legal Service of the Parliament will prepare an *unofficial* consolidated text of the Bill (article 153 (1) Rules of Procedure of the National Assembly) which is made available online on the website of Parliament.

If the Bill has been passed by Parliament, the Legislative and Legal Service of Parliament prepares an *official* consolidated version. This version is passed by Parliament without further debate and is then published in the Official Gazette and made available online on the website of Parliament (article 153 (2, 3 and 4) Rules of Procedure of the National Assembly).

Duration of parliamentary stage

The regular procedure normally takes two to three months. This relatively short period of time is largely the result of applying strict deadlines to the parliamentary debate. The various parties, for example, have 20 to 90 minutes speaking time at the plenary hearing of Bills, depending on their share of seats. Each party or deputy must indicate in advance if they will make use of the available speaking time. The amendments proposed are normally voted on in the evening of the same day. The ultimate duration of the legislative process in Parliament is mainly determined by the time necessary to discuss the Bill in the standing committees.

Special legislative procedures

In special cases, it is possible to deviate from the three readings. Slovenia has an urgent procedure in the event of extreme circumstances (e.g. in the interests of national security, defence or a natural disaster) where the state has to act fast. The urgent procedure may only be proposed by the Government, providing there are specifically grounded reasons for such. The Council of the President of the National Assembly then decides on the institution of the urgent procedure.

In addition, there is a shortened procedure which is allowed if a legislative amendment only involves minor adjustments, adjustments arising from obligations on the basis of European Law, a law that is repealed or articles deleted, or when amendments are necessary as a result of rulings by the Constitutional Court. The shortened procedure may only be proposed by the proposer of the law, while the Council of the President of the National Assembly decides on its application.

If a Bill is dealt with according to the urgent procedure it is put on the agenda of the very next plenary session in Parliament. It is also put on the agenda of the standing committee for an urgent debate. In the case of a shortened procedure, the Bill is dealt with within two months.

Special legislative procedures for the transposition of European Law

Article 21(7) of *The Government of the Republic of Slovenia Act* comprehends a regulation through which many European directives can be transposed by ordinance. This regards approximately 80% of the European regulations. Other European regulations require transposition by law, because these regulations concern the rights and obligations of citizens, touch upon procedural rights or concern the jurisdiction of the official bodies. Publication is required before these measures enter into force.

As already mentioned, adjustments arising from obligations on the basis of European Law can be passed through Parliament using the shortened procedure.

Duration of special legislative procedures

Both special procedures achieve their speed by combining the second and third reading in the same session of Parliament. After the standing committee has discussed and amended the Bill, the amendments to the Bill are ascertained and a vote is taken on the amended Bill in the first subsequent (and same) plenary session of Parliament. This acceleration means that as a rule a Bill can then be passed within a few days to a week.

Role of the National Council, the option of a referendum and effect

When a Bill has been passed, it is promulgated by the head of state within eight days at the most. During this period the Bill is also submitted to the National Council. With a majority vote, the Council can pronounce a *suspending veto* on a Bill within 7 days after the vote in Parliament. In such a case, a new vote is required in Parliament. The members of Parliament can pass the Bill in the next session with an absolute majority of votes (minimum 46 votes). In the regular procedure in Parliament, not only is a majority of votes required, but also 50% of the members have to be present at the vote. Once again, strict deadlines are applied so that the delay in time caused by a veto is relatively limited.

In addition, in Slovenia the option exists to hold a referendum. After Parliament has passed a Bill, a minority of one third of Parliamentary members (30 deputies out of a total of 90) can demand a referendum. So the remarkable situation exists that a minority within Parliament can call for a referendum on a Bill that was supported by a majority of the deputies.

It is also possible that a referendum is called for by a majority in the National Council or 40,000 voters. In the latter case, a multi-stage procedure is applied: an initial

request for a referendum can be made by 2,500 voters and a period of 35 days is then available to gather the required 40,000 signatures.

Obviously, a request for a referendum delays a legislative procedure by a few months, assuming that there is eventually still enough support for the Bill. There is no restriction on the scope of a call for a referendum, though the referendum must have no consequences that are deemed unconstitutional. This latter point is at the discretion of the Constitutional Court of Slovenia.

The option to hold a referendum has been put to the test relatively often up till now, with 4 referenda in the past year. If a Bill is rejected in a referendum, a 'cooling down' period of 1 year applies during which the Government may not draft a new Bill on the same subject.

Once adopted, whether or not after consultation with voters in a referendum, publication of the Bill follows in the Official Gazette. On the 15th day following publication, the Act becomes effective unless a different date was stipulated in the Act.

Prioritizing legislative proposals

Besides the various tracking systems with regard to the progress of legislation, the Government has an annual work programme. The Government work programme shall list the proposals for laws and other acts which the Government will submit to the National Assembly. For each act a brief statement shall be included as to why it is necessary. Detailed instructions for the preparation of the programme shall be given by the Secretary-General, who is also responsible for ensuring that the programme is adopted in good time. In this programme a plan is drawn up as far as possible of expected initiatives, partly in the light of European obligations (i.e. the transposition of European Law).

The Government shall adopt a Government work programme for the following year by the end of December of the current year and submit it to the National Assembly. The Government shall adopt a report on the work of the Government for the previous year in which the Government lists the tasks that have been carried out which were set out in the Government work programme and submits it to the National Assembly.

This work programme forms the basis for an appraisal upon which possible legislative proposals will be accepted or not. A rule of thumb is that the number of parliamentary sessions amounts to around 10 per year and in each session 12 to 15 Bills can be processed. This gives a total of 120 - 150 Bills each year. Extraordinary parliamentary sessions can be held and the parliamentary agenda allows for these. So if unexpected events occur, extra Bills can be processed.

In this way, the Government's annual planning is closely linked to the planning of the Parliament. Moreover, as it provides information about expected legislative

proposals and is published on the *e-Democracy portal*, the planning sends out an initial signal to society about new legislation that is in the making.

Swift execution of the work programme of the Government is encouraged by the rule laid down in article 154 of the Rules of Procedure of the National Assembly, also known as the discontinuity principle: when the term of the Parliament expires all legislative procedures are terminated, except those initiated by the National Council or 5,000 voters.

Role of ICT

As we have seen ICT plays an important role throughout the legislative process in Slovenia. Currently three important supporting ICT systems are operational with regard to the legislative process. These are at the departemental phase:

1. The IPP system that functions within the ministries as a virtual environment in which different versions of the proposals and the reactions to these proposals are filed. This system also functions as a tracking system with which the deadlines are monitored. Within this tracking system a multi-stage structure is operated in which hierarchical lower units have the responsibility, within the line ministry, to observe the deadlines within the time frame which is set for the preparation of the Bill.
2. The Government Information System which offers support for the monitoring of the Bill and the consideration of the Bill in the Governmental phase.

And at the parliamentary phase:

3. The ICT system of the Parliament, which supports the Bill through the parliamentary phase. This system is a tool for the support (different documents are filed within the system) and monitoring of the deadlines.

The IPP system that functions within the ministries is linked with the *e-Democracy Portal* through which the public is informed on legislative proposals and give their input on these proposals. Moreover the system offers the citizens to subscribe to the website and receive information through e-mail about the progress of the Bill and the publication of a new version of the Bill.

The Government Information System, used by the Secretariat-General and the Government is connected (though not integrated) to the IPP system and offers to a large extend the same functions as the IPP system. A Bill is sent via the IPP system to the Government Information System. The Government can then in turn, sent a Bill via the IPP system to the *e-Democracy portal* to keep interest groups and citizens informed about the situation of the Bill, including the text if the Bill.

The ICT system of the Parliament is not connected to the IPP system. Documents which are under consideration with the Parliament are published on the website of the Parliament.

With the use of these different ICT systems the use of paper is almost fully replaced. The regular communication and exchange of documents takes place within these ICT systems.

Evaluation

The tight schedule in the form of working plans and strict deadlines for the preparation of Government legislative proposals and their review in the Parliament, make Slovenia a well-oiled 'law factory'. In a relatively short space of time, legislative proposals can pass through the entire legislative cycle - usually taking just a few months. And in the case of the extraordinary legislative procedure for urgent matters or limited (often technical) amendments, the time frame is reduced to a very short period of just a week.

The number of Acts that were passed during the past few years on the basis of this procedure is given in Table 2 (taken from the annual report of the Parliament). The table shows that the regular legislative procedure accounted for 40% of the total legislation in the recent past. The shortened procedure was also used intensively resulting in a total of 37% of the total Acts passed. The urgent procedure was applied in 22% of the total Acts.

Type of procedure	2009	2010	2011	Total 2009-11	
- Regular procedure	33	60	48	141	40%
- Urgent procedure	32	28	18	78	22%
- Shortened procedure	47	33	51	131	37%
Total	**112**	**121**	**117**	**350**	**100%**

Table 2 Number of Acts passed using the various procedures in de period 2009-11.

4.2 Innovation and discussions

Slovenia has a very dynamic legislation on access to public information and has taken advantage of the application of modern ICT technology as a tool to actively disseminate public information and engage with citizens. While progress is significant, a number of challenges remain, particularly in the field of public participation and decision making. These range from capacity building (human, skill, financial) at organizational level to meet legal obligations to ensuring more structured consultation with citizens and civil society organizations.[54]

During Slovenia's accession to the EU, the political focus was on incorporating necessary regulation as quickly as possible. The administration has now acknowledged that in the past the speed with which regulations were adopted was the key measure of efficiency, the challenge for the future is to change this culture oriented to "speed" and to ensure that government is open and inclusive and that

---

[54] OECD, p. 49.

the design of regulation has taken into consideration the interests of affected parties.[55]

Policy on regulatory reform: improving the quality of legislation through consultation, transparency and coherence

In order to improve the legislative process, Slovenia adopted the Resolution on legislative regulation, and was passed by Parliament in 2009. The Resolution lays down different standards concerning the preparation of regulations with regard to consultation, transparency and coherence. This resolution is not legally binding but entails guidelines that function as internal standards.

With regard to the Resolution on legislative regulation the Rules of Procedure of the Government (OJ RS, No. 43/01, 23/02 – corrigendum, 54/03, 103/03, 114/04, 26/06, 21/07, 32/10 en 73/10) were amended and a joint instruction was adopted: Instruction no. 10 (004000-4/2008/28 of May 26th 2010).

Instruction no. 10[56] sets conditions for the covering letter and underlying material corresponding to a Bill. For example, a Bill must contain information with regard to various matters including:
- the financial consequences of the Bill (including an account of the related budget items that are affected by the implementation) and an indication of how the extra expenditure or decrease in income will be compensated;
- how public consultation was carried out, the visions that were put forward and the way in which these visions were dealt with in the proposal;
- the way the inter-ministerial coordination was carried out including the main points of discussion;
- the way in which other Member States in the European Union handled the same issues and how this is reflected in Parliamentary Acts and legislation. This involves a comparative analysis of at least three Member States to be applied to legislative proposals that did not arise from European obligations (transposition regulations) and thus concern national issues; and
- an 'impact assessment' paying attention to the administrative burden, the environment, the national economy, social consequences, 'development planning', and the way in which the implementation of the Act will be handled (including terms of presentation, communication, training and how the implementation will be monitored).

Since the Resolution came into effect a legislative proposal must be submitted with (an outline of) the subordinated laws that will become effective on the basis of the proposal. This entails that delegation clauses which give the Government or a minister the possibility to set further regulations, also have to be filled in at the moment the Bill is discussed and have to be submitted to the Parliament. The Secretariat-General of the Government, but also the supporting services of the

---

[55] OECD, p. 68.
[56] See: http://www.gsv.gov.si/en/legislation/ .

Parliament check whether these conditions have been met. If this is not the case, it can lead to a proposal not being accepted for processing.

If a Bill is passed under application of the urgent procedure or the shortened procedure an exception is made to some provisions the Resolution.

4.3 Experiences

Pace and duration

- *Departmental phase*

The respondents believe that the speed of the legislative procedure (from the inception until the official publication of the Bill) amounts mostly to the political priorities, but also to the motivation and the expertise of the civil servants at the ministries. The IPP system used within the ministries however facilitates the civil servants with a great tool to monitor the coordination, and the time limits within the law drafting phase.

Every ministry has an IPP coordinator which gathers all the proposals on which comments can be made, distributes them to the right persons within the ministry and sets time limits for proposing comments, all within the IPP system. Everyone within the ministry can access this information. Once a deadline has passed, the drafting ministry may continue the preparatory process, remarking who has provided input and who has not. This way respondents feel that there is mutual monitoring between the colleagues, which helps to monitor the time limits in the departmental phase.

IPP also further structured internal discussions supporting the distribution of drafts to the various units that need to be consulted.

- *Parliamentary phase*

According to respondents the efficiency of the legislative process in the parliamentary phase is mainly the result of the strict time limits, laid down in the annual work programme of the Parliament and the detailed planning's for the individual sessions, and the organization of work between the standing committee and the plenary session.

- *Quality of legislation*

Almost all respondents acknowledge that the use of the urgent procedure, which has been increased during the financial crisis, and the relative high speed of the regular legislative process, has a downside in that it can lessen the quality of the legislation. This is expressed by the fact that afterwards a relative high number of 'repair' laws are adopted to amend the already adopted laws (see table 2). Moreover several respondents indicate that it sometimes occurs that several rounds of legislative proposals are necessary until they are satisfied with the quality of the law.

Phases and actors

- *Interdepartmental cooperation*

The interdepartmental cooperation is streamlined within the IPP system. The respondents indicate that although paper is eliminated from the process, not all interdepartmental and departmental communication is done via the electronic system. If there is disagreement within a ministry or between different ministries about a Bill, they will try to solve the problem on the level of the General Directors of the involved ministries. It is also possible to organize deliberations between the members of the Government. If this does not lead to a solution, the particular subject will be put on the agenda of the Government, where the problem will first be discussed in the working bodies of the Government.

The three phases in which a Bill is prepared are in principle separate phases. According to respondents it occurs that a Bill is going through the steps of the same phase for a second time until all the stakeholders are content and ready to send it to the Governmental level.

- *Coherence*

Due to the IPP system the process of legislative procedure is unified: the coordination is unified, the drafting of the legislation is unified and the publication of the legislation is unified. The unification process is also stimulated by the implementation of the Resolution on legislative regulation. In order to gain more coherence between the different departments the Government is facilitating training for civil servants in order to educate them on the way an act has to be developed and implemented and on the guidelines that are laid down in the Resolution on legislative regulation.
Some respondents argue that more training of civil servants is needed in order to bring more coherence and to rightly execute the rules laid down in the Resolution. On the other hand they also emphasize that there is a lack of capacity (people) within the ministries to execute all the rules properly. Therefore some respondents like to see that the Secretariat-General monitors these rules more strictly, especially since the Resolution cannot be legally challenged.

Transparency

The respondents express that in Slovenia the concept of transparency is found to be very important. This is especially visible through the obligation for the ministry to submit a Bill to Parliament with (an outline of) the subordinated laws that will become effective on the basis of the proposal and the obligation that Bills have to be accompanied by a consolidated version.

- *Departmental phase*

During the second (and third) phase of the legislative drafting the comments made by the ministries on the Bill can only be viewed by the line ministries to which the comment is addressed, unless a ministry or governmental office is especially authorized. In the future they would like to make the system more open and to allow for all ministries that commented on the Bill to view the comments of other stakeholders, including other ministries.

- *Parliamentary phase*

Respondents are not yet able to tell whether the rule that the proposal has to be accompanied by all subordinated laws which will be affected by the proposed law is contributing to the quality or speed of the process, because this rule has only been in effect for approximately a year. This rule strives towards completeness and transparency in the process. This rule will enable Parliament to have a better insight in how the legislative act will be executed in practice, what institutions will be involved, and what the concrete effect of the Bill will be. The introduction of this rule has also lead to a discussion in Slovenia about letting down administrative barriers, e.g. how to shorten the procedure and how to bring procedures closer to the citizens.

- *Consultation*

The respondents emphasize that Slovenia has a strong tradition on consultation. Although the ministries are obligated to consult the public through the e-*Democracy portal*, the consultation process, during the second stage of the departmental Bill drafting phase, which is still quite often performed in a fairly 'traditional' way, this means that in different areas, for example in the environmental area, the ministries have certain 'standard' stakeholders that are always consulted.

The process of consultation is valued in Slovenia and the respondents believe it is of great importance to take all (serious) comments of stakeholders, other interest groups and citizens into due consideration.

When a comment is posted on the *e-Democracy portal*, the comment is automatically sent to the line ministry, which is responsible for the proposal. The right person(s) within that ministry receives an email with a direct link to the comment and have the obligation to respond to all comments that are posted on the *e-Democracy portal*, within 15 days. Respondents confirm that this obligation takes up a lot of their time, even though a response will mainly be a procedural one e.g. "we will take your comment into consideration". However the line ministry is still obliged to react to the content of the comment: this is done in the summary report accompanying the proposal.

In order to create more discussion and dialogue respondents indicate that they are currently trying to make the *e-Democracy portal* more open and to allow for all

public commentators to see the comments of others. This will save the civil servants time because they can now respond to multiple comments at the same time that are related to each other. This also allows the ministries to give more qualitative and substantive answers to comments from the public. Respondents also express the hope that this will trigger other public participants to give more (substantive) comments.

The documents accompanying the Bill into the parliamentary phase include a summary report of citizens' comments on the proposal. This report should be published on the *e-Democracy portal*. In practice this is not always the case but it is always published on the websites of the line ministries.

The respondents experience is that not all ministries provide the same level of detail in their reports. This feature is not monitored by the Secretariat-General, since it only performs a formal check whether a report is submitted. However, respondents believe that publication contributes to the overall quality of the ministry's reports.

The legislative proposal also has to be accompanied by a comparative analysis of at least three different EU countries and how these countries deal with that particular problem. One of the reasons to perform this obligatory comparative analysis is the fact that they strive for comparable solutions that have already been proven to be effective. This is found to be more attractive than finding solutions of their own which can possibly conflict with other (neighbouring) countries.

Respondents strongly believe that the consultation process and the fact that the ministries have to take all the comments into account does not speed up the process but it will help to clarify issues and it will therefore improve the quality of the law. It creates more understanding with the public and eventually will lead to fewer problems implementing a law. Respondents also believe that ministries feel obligated to take the comments into due consideration because they are well aware of the fact that they need the support of the public when the law is executed.

- *Citizens' initiatives*

The use of a legislative referendum has been extraordinary high in the past year in Slovenia (a total of four). Some of the respondents claim that this might be due to the fact that the trade unions in Slovenia are strong and thus influential. Respondents argue that the use of the legislative referendum can weaken the role of the Parliament. Above all it is hard to perform real structural reforms. Just recently Parliament established a Commission on Constitutional matters which will evaluate the use of the referendum. The Commission is also discussing the initiative to abolish the National Council.

With regard to e-government they are currently, since 2010, experimenting with other (informal) forms of citizens' participation. The website "I suggest the government"[57] offers the possibility to bring forward ideas about new legislation.

---

[57] www.predlagam.vladi.si

The users of the website can vote on the ideas brought forward on the website. If the idea can count on certain support (50% of the votes of which a minimum of 5% registered users) the ministry is obliged to give a reasoned answer and feedback to the idea. According to respondents this website is used a lot by interested public.

Role of ICT

Since 2000 paper is eliminated within the legislative process in Slovenia. All documents about the Bill and the Bill itself are going through the different phases of the legislative process via different electronic systems. The IPP system has been introduced for various reasons, including making official documents more easily available to officials in the ministries. The use of ICT is no longer a subject of discussion in Slovenia. The existing systems are further optimized, including improving transparency including the process of consultation, linking the different systems used during the departmental, government and parliamentary discussion of the Bill, and making these systems more user friendly. The respondents working within the the departemental and governmental stages of the legislative process are very positive about the use of ICT.

-    *Advantages*

The respondents mentioned different advantages, benefits and/or added value that are accompanied with the use the IPP system during the departemental phase of the legislative process (including the use of the *e-Democracy portal*):
- clarity about the situation and the phase a proposal is in and thus the input that is still necessary;
- lessen the time that is spent on drafting legislation and on coordination due to the unification of the system;
- the deadlines which are set within the systems are helpful with guarding the progress of the Bill and prevents unwanted deceleration;
- the system offers flexibility if necessary;
- the electronic system allows you to access the information everywhere;
- with a link to the public domain (e-Democracy portal) transparency is created;
- all documents are easily accessible for the public through the e-Democracy portal: all documents are (as far as possible) published in one portal;
- the public can easily be consulted and give their comments on legislative proposals;
- the possibility to provide answers to comments and give feedback;
- more cost-effective for the government as well as the public.

-    *Improvements*

Although all respondents are positive about the use of ICT in the whole legislative process, they do see improvements for the future, as mentioned before. One improvement in particular is to make one unified system, and thus connect all three electronic systems (the IPP system, the ICT system of the Government and the ICT

system of the Parliament), and to connect this unified system to the *e-Democracy portal.* This will make it possible to consult all Bills under consideration in one place, irrespective of the phase the Bill is in.

- *Recommendations*

In order to make the legislative process fully electronic, including the possibility for public consultation on Bills, the respondents emphasize that it is advisable to at least:
- invest in training of civil servants;
- eliminate *all* use of paper in the whole of the process;
- reach political agreement:
  o the project needs to be marketed, otherwise the public will not utilize this tool;
  o all the people that are using the system have to know the rules and abide by them;
- make the system as user friendly as possible.

4.4 Observations

Strict time limits lead to politically discussed and fixed planning within the line ministries, the Government and the Parliament. This also entails political pressure and prioritization with regard to the legislative procedure. In this respect the work programme of the Government and the Parliament are of great importance.

Due to the strict time limits, the regular legislative procedure within Parliament is concluded in a time frame of approximately two to three months. The length of the parliamentary phase is mainly determined by the time the standing committee needs to discuss the Bill.

Although the speed of the legislative procedure is high, it does not seem to be always beneficial to the quality of legislation. It often occurs that 'repair' laws have to be drafted to amend recently adopted laws. This could be a result of the speed of the process (and the limited possibility of reflection), or the limited capacity and qualitative expertise with legislative drafting within the line ministries.

It is striking that if a Bill is submitted to the Parliament the Government loses the ownership of the Bill.

The principle of demarcation has effect within the whole legislative procedure: the Bill will not go to the next phase if the previous phase is not completed. It is possible to go through the same phase for a second or third time. The ICT system facilitates this process.

Slovenia is dedicated to a high degree of transparency and to extensive possibilities for citizen initiatives in the whole legislative process. These include the different possibilities for citizen initiatives (formal and informal), e-comments, and the possibility for a binding legislative referendum.

Through the *e-Democracy Portal* the public has access to the proposals in the different phases of the legislative procedure and give comments on these documents. The ministry has the obligation to respond to these comments, and in respect to a Bill, reflect on these comments. These reflections have to accompany the Bill.

Bills with delegation provisions have to be accompanied with (an outline of the) subordinate laws, in order to facilitate the Parliament with a better insight on how the legislative act will be executed.

After the Bill has been discussed in the standing committee and amendments have been tabled, the discussion on the Bill is channelled. It is only possible to discuss the tabled amendments or table amendments to already tabled amendments. In this phase it is not possible to call the whole Bill into question.

The time limits within the whole legislative procedure, from the departmental drafting phase until the publication in the Official Gazette, are being registered and monitored within a traceable ICT system.

The introduction of e-documents in the whole legislative process – in the ICT systems of the ministries (IPP system), the Government and the Parliament and the *e-Democracy portal* – have the unintentional effect that the procedures can be better traced, internally as well as externally by the public. Documents are accompanied by information regarding the phase the Bill is in. Furthermore, documents can easily be found and accessed, and they are bound to time limits.

The introduction of ICT allows the members of the Government to participate and make decisions at correspondence sessions by conveying messages (e.g. via e-mail, or text-messages via the mobile phone) through the information technology and telecommunications services within the information system designed to support the decision-making procedures of the Government.

Annex 4.1 List of respondents Slovenia

Office of Legislation
- Ms. Jožica Velišček, Secretary, Public Information Officer (former Secretary-General of National Assembly for 12 years)
- Ms. mag. Gordana Lalić, Secretary, Head of Division for non-commercial fields
- Ms. Marjana Glušič, Secretary, Division for Constitutional System, Public International Law, Justice and Home Affairs
- Ms. Eva Ban, Secretary, Division for Constitutional System, Public International Law, Justice and Home Affairs
- Mr. Damjan Tušar, Secretary, Head of Division for Constitutional System, Public International Law, Justice and Home Affairs
- Ms. Katja Božič, Secretary, Head of Division for Agriculture, Environment and Spatial Planning

Ministry of Justice and Public Administration
- Ms. Maja Čarni Pretnar LL.M, Senior Advisor, Directorate for e-Government and Administrative Processes
- Ms. Mateja Prešern LL.M, Secretary, Directorate for Administrative Processes
- Mr. Andraž Pernar, Senior Adviser, IT and e-Service Directorate

Secretariat-General of the Government of the Republic of Slovenia
- Ms. Barbara Peternelj, Secretary General of the Government Secretariat-General
- Mr. Zlatko Jakiša, Head of Division for Cooperation with the National Assembly and for European and International Cooperation

National Assembly
- Mr. Samo Bevk, Chair of the Commission for the Rules of Procedure of the National Assembly
- Ms. Maja Briski, Secretary, National Assembly

University of Ljubljana, Faculty of Social Sciences
- Dr. Drago Zajc, associate professor for the department of Policy Analyses and Public Administration, Centre for Political Sciences. Expert in the modern parliamentary system, including the development of party coalitions and the formation of government, and the role of national parliaments in the EU.

University of Ljubljana, Faculty of Law
- Prof. dr. Albin Igličar, professor of Constitutional law. Expert in Sociology of Law Law making and Law drafting.

5. United Kingdom

5.1 The legislative process

The legal system of the UK is usually referred to as a common law jurisdiction, which means that substantial parts of the law are developed in case law rather than through legislation. The character of the UK legal system, Malleson and Moules note, has changed over the years however; the bulk of UK law nowadays is covered by (primary[58] or secondary[59]) legislation.[60]

Legislative volume and planning

On average some 45 Acts are passed by the UK Parliament annually. In comparison to other jurisdictions[61] this is a quite modest number. Between 1992 and 2004 the average volume even decreased (from approximately 55 to about 40 Acts yearly).[62] This trend is still on-going, cutting the volume back between 25 and 30 on average per year between 2004 and 2010.[63] There is here however, more legislation, than meets the eye here. Per year some 2,200 acts of delegated legislation are enacted, the so called 'statutory instruments' (see paragraph 5.3). The relatively modest amount of UK primary legislation passed per year is the result of timetabling restraints set on Parliament. The UK Parliament works – 'conducts its business' - on the basis of a sessional, tight schedule. A parliamentary session normally last about a year,[64] cutting up the mandate of a government in four sessions between general elections for the House of Commons. Draft primary legislation – so called Bills – are dealt with within one parliamentary session. If a Bill is not passed within a session, it falls automatically, although nowadays it is possible to make it subject to a carry-over motion.[65] In the UK the time allowed to debate a Bill is, thus, confined to the duration of one parliamentary session and therefore restricted to the debating capacity of the Houses of Parliament within one of these sessions. This of course has a limiting effect as regards the volume of legislation passed. Appearances are

---

[58] Primary legislation refers to Acts passed by the UK Parliament. Acts like these are referred to as 'statutory acts'.

[59] Secondary legislation, or delegated legislation, is passed by the government or ministers on the basis of powers delegated in primary legislation. In the UK they are commonly referred to as 'statutory instruments'.

[60] Kate Malleson and Richard Moules The Legal System, Fourth Edition, Core Texts Series, Chapter 5, The Legislative Process, Oxford University Press 2010, p. 49-56.

[61] E.g. the Netherlands, [p.m.] Alle regels tellen (All rules count), The Hague 2006, p. [...] figure 3.

[62] See the first report of the Select Committee on Modernisation of the House of Commons, The Legislative Process, First Report of Session 2005-06, HC 1097, p. 7.

[63] House of Lords, House of Lords Library Note, LLN 2011/028, September 2011, p. 3, table 1.

[64] The last session 2010-2012 lasted for nearly two years. Normally a session ends in Fall (by the End of October or the beginning of November).

[65] A Bill which does not receive Royal Assent by the end of a parliamentary session would normally have to start again in the following session to become law. A carry-over motion, approved by the House of Commons, allows a Bill that has not received Royal Assent to resume its progress in the following session without having to start from the beginning. Only when a Bill has been scrutinized in depth within one House a carry-over motion is to be considered.

somewhat deceptive however. Although the total amount of primary legislation seems to have fallen over the years, their aggregate volume – in page numbers – has risen substantially.[66]
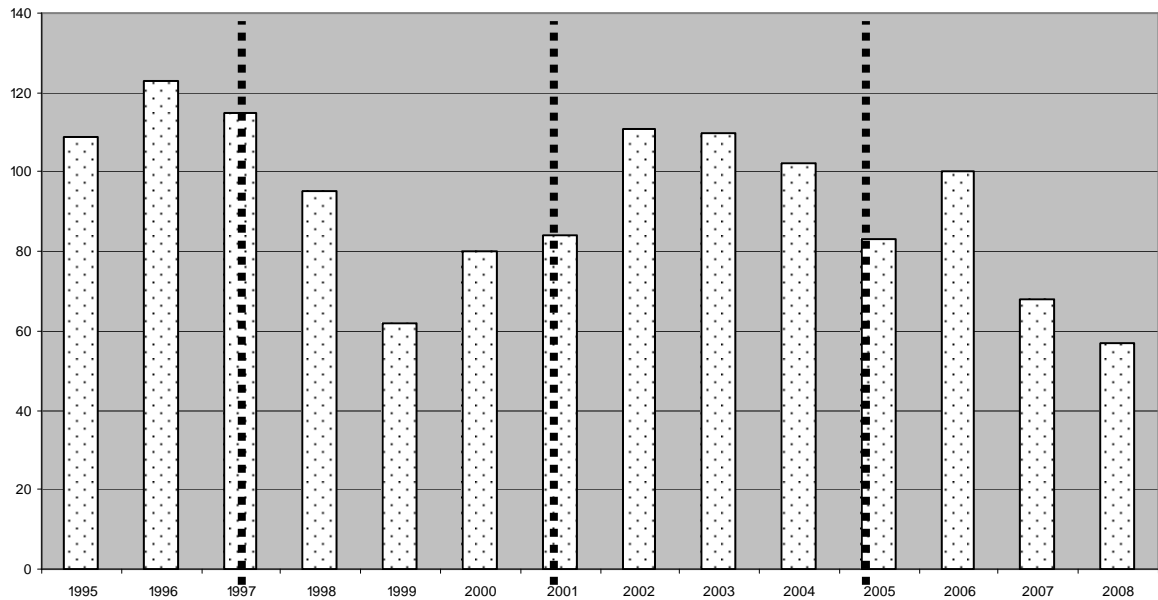

Table 3 Legislative production 1995-2008 (Acts and Primary Orders in Council)[67]
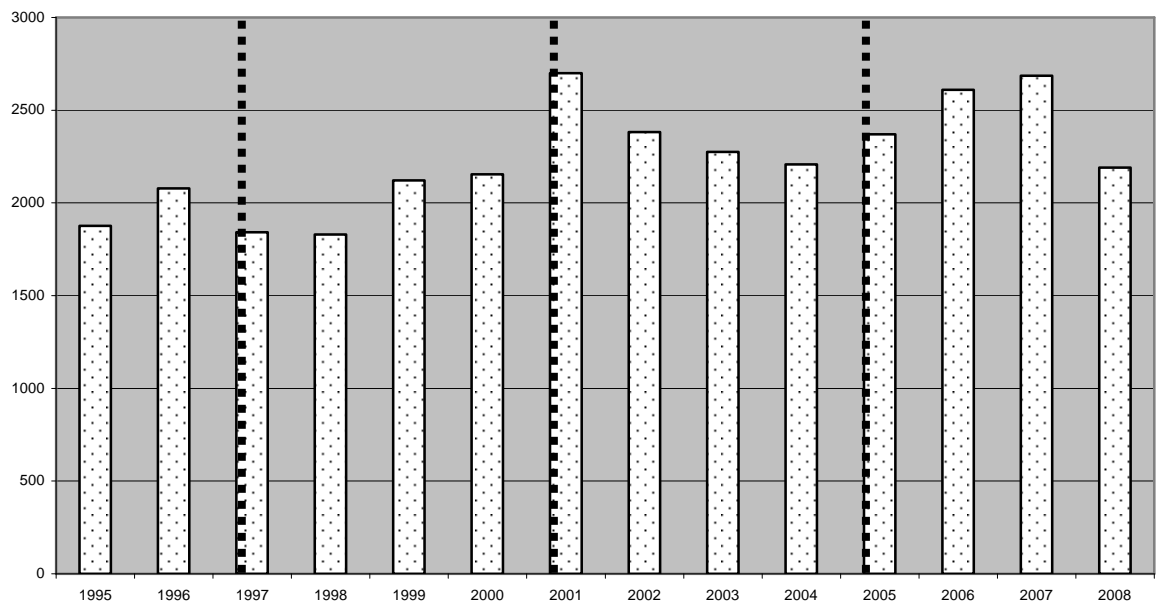

Table 4 Legislative production UK 1995-2008 Secondary legislation – Statutory instruments[68]

---

[66] Select Committee on Modernisation of the House of Commons 2005, p. 7 and , House of Lords Library Note 2011, p. 3, table one. The records show that that the length of Bills has nearly tripled over the last 20 years.
[67] Lifted from De Jong & Zijlstra 2009, p. 82. The data themselves were collected from www.statutelaw.gov.uk. The dotted lines represent the points in time of general elections.
[68] De Jong & Zijlstra 2009, p. 82. The dotted lines represent the points in time of general elections.

These innate time restrictions require strategic planning from the government in order to deliver the legislation needed to achieve the political and policy goals (set out in the cabinet plan) in time and on target. For this the UK government uses an elaborate system of legislative programming. At the heart of this system is the sessional Legislative Programme of the Government which sets out which Bills will be tabled before Parliament in the upcoming session. This Programme is negotiated between the various ministerial departments and the Legislation Committee of the House of Commons via the system of bids.

> *The system of bids*[69]
>
> Departments must bid for a slot in the legislative programme for any Bills they wish to introduce. Normally this will be through the annual bidding round when the Leader of the House of Commons, as Chair of Legislation Committee, invites Cabinet colleagues to submit bids for Bills for the following session of Parliament. Bids must be made by letter to the Chair of Legislation Committee and accompanied by a bid template. The Legislation Committee will assess bids on their political priority and state of readiness and then advise Cabinet on the contents of the programme. The programme will be reviewed in preparation for publication of the Draft Legislative Programme, and again in the run up to the Queen's Speech, in the light of any emerging bids and progress in preparing those Bills already in the programme. Late bids must have a very strong case, as other Bills are likely to have to be dropped to accommodate them.

Because the Government has a working majority in the House of Commons, the planning of the passage through that House of a Bill for the upcoming session can be fixed in detail. Such detailed planning is more difficult in the House of Lords where the Government most of the time does not have a working majority. This gives the House of Lords the theoretical power to frustrate the government's Legislative Programme. Although sometimes this does seem to happen, the House of Lords on the whole tends to adopt a cooperative and loyal attitude when it concerns the government planning of the 'businesses'.

There are some side effects of this way of planning. As a result of the strong competition for parliamentary time it is common for legislation put forward by members of Parliament (a Private Member's Bill) to fail to reach the statute books for lack of time.[70] The time pressure and competition for 'slots' also makes it very hard for more technical Bills – like the ones prepared for by the Law Commission (see section 3) – that do not add to the political capital of the cabinet, to make it onto the Legislative Programme. And third, the Fixed Term Parliament Act (passed in 2011), increases the time pressure still. This Act fixes the term of Parliament by setting the date of the next election at 7 May 2015, with subsequent general

---

[69] This section is lifted from the website of the Cabinet Office
http://umbr4.cabinetoffice.gov.uk/making-legislation-guide/summary_of_stages.aspx
[70] Malleson & Moules 2010.

elections to take place at five year intervals.[71] Up until 2011 the government had some room to manoeuvre in deciding when general elections would be held. It could – with an eye on the polls – try to pinpoint the election date at a favourable moment. With the Fixed Term Act this is no longer possible. This bears upon the Legislative Programme as well; with a fixed term, and more or less fixed sessions, some of the flexibility of the system is lost. It is harder for the government to attain all of the legislative goals within the allotted time. This in turn draws upon the position of the House of Lords as well, because the time constraints and rigorous planning of the House of Commons agenda creates spill over effects for the House of Lords (see sections 2 and 3).

Typically the whole process of passing a Bill through both Houses of Parliament takes up about a year. However there are procedures in place that allow speeding up the legislative process. The emergency procedure for instance allows for a fast track passage of a Bill through both Houses. The procedure is reserved for emergencies like counter-terrorism legislation, legislation in response to economic collapse, urgent changes to criminal law and such.[72] Under this procedure Emergency Bills in the past have gone through all its stages in a matter of days with little debate and scrutiny.[73]

The procedure for Money Bills – used to set the budget in the UK – also differs from the regular procedure and expedites the passage of the Bill through the Houses.[74] Money Bills always start in the House of Commons and must receive Royal Assent (the final stamp of approval of a Bill that has passed through both Houses) no later than a month after being introduced in the House of Lords, even if the Lords has not passed them. The procedure cuts other corners as well. The Lords cannot amend Money Bills, there is no specialized budget committee and Private Members cannot initiate financial legislation.[75]

---

[71] Section 2 of the Act also provides for two ways in which a general election can be held before the end of this five year period:

"- If the House of Commons resolves "That this House has no confidence in Her Majesty's Government", an early general election is held, unless the House of Commons resolves "That this House has confidence in Her Majesty's Government". This second resolution must be made within fourteen days of the first.

- If the House of Commons, with the support of two-thirds of its members, resolves "That there shall be an early parliamentary general election."

[72] On the use of the emergency procedure see House of Lords, Select Committee on the Constitution, Fast-track Legislation: Constitutional Implications and Safeguards, 15th Report of Session 2008-09, HL Paper 116-I.

[73] E.g. the Terrorism and Conspiracy Bill of 1998.

[74] See for an interesting comparative study on the role of Parliaments in setting the budget Riccardo Pelizzo, Rick Stapenhurst and David Olson (eds.), The Role of Parliaments in the Budget Process, World Bank, Washington 2005.

[75] This is for more than 300 years the reserve of the Government. In 1706 the Commons resolved 'That this House will receive no Petition for any sum of Money relating to public Service, but what is recommended from the Crown.' Quoted in G. Reid, The Politics of Financial Control: The Role of the House of Commons. Hutchinson University Library, London 1966, p. 36.

The legislative process

The bulk of UK primary legislation is prepared for within the ministerial departments. Although Private Members of Parliament do have the right to table Bills on their own accord (so called Private Member Bills[76]) the chances of success are – due to the circumstances discussed above – minimal.

Governmental legislative initiatives are triggered by the cabinet plan,[77] incidents, findings of special commissions (e.g. the Reform of the House of Commons Select Committee, or the Law Commission[78]) or legal obligations (e.g. the obligation to implement treaties or EU legislation).

The Whitehall stage

Once the government has decided it wants to pursue legislation the process of preparation of a Bill begins. Depending on the content and circumstances the preparation may involve different steps and more or less time. A typical feature of the British system is the control of the timetable and coordination between the different departments. The cabinet's Legislation Committee of the government (and the Cabinet office which administers the Committee) is the nucleus of this system. In principle ministers are not allowed to make a public commitment to legislate unless or until this has been agreed by the Legislation Committee. If the government - after a process of prioritization (see former section on bids) – decides to legislate on a particular issue, this will normally be made as part of the Draft Legislative Programme or the Queen's Speech. This does not mean that ministers or departments are totally barred from any preparatory activity. They can consult on and throw up ideas for legislation as long as they do not publicly commit themselves. Once a slot in the legislative programme has been secured departmental preparation kicks off in earnest. It is considered good practice to set up a so called Bill team. A Bill team consists of a Bill manager and appropriately trained staff. It is the Bill manager's responsibility to produce and monitor progress against a delivery plan, coordinate all work on the Bill, and provide regular updates to Ministers, officials involved in work on the Bill, Departmental Lawyers and Legislation Secretariat

Consultation

If the government wants to pursue primary legislation on a certain issue it will consult on its plans. How long this will take and the effect it has depends on the state of elaboration of the policy (did the Cabinet or a minister already make up their minds?), the complexity of the subject matter, and the importance or urgency of the matter. There are different forms of consultation: informal ones seeking the views of interested parties or key players, and more formalized ones like the Green Paper and

---

[76] Private Member Bills must not be confused with Private Bills, e.g. Bills that only affect a local area or institution such as a company.

[77] Malleson and Moules note that surprisingly few departemental legislative initiatives seem to be the direct result of plans set out in the manifesto of political parties. Malleson and Moules 2010.

[78] The Law Commission is a permanent independent body created by the Law Commissions Act 1965. It is set up to keep the law under review and to recommend reform where it is needed.

White Paper consultation procedure. In the Green Paper procedure a consultation document (Green Paper) is produced by the Government which sets out in general terms what the Government is seeking to do and asks for views. The aim of this document is to allow people both inside and outside Parliament to debate the subject and give the department feedback on its suggestions. Once these views are in and considered, the government may produce a White Paper, detailing the policy proposal and decisions that will underpin the legislation aimed for. White Papers normally involve consultation as well. The stages are not enshrined in formal rules, neither are white papers mandatory. This allows for flexibility. Sometimes the consultation stage integrates the Green and White Paper into one single document. A recent[79] innovation is that a department draws up and circulates a draft Bill before it is formally laid before Parliament (so called pre-legislative scrutiny). Pre-legislative scrutiny aims to connect with the public by involving outside bodies and individuals in the legislative process, scrutinizing a Bill early on in order to be able to change it and produce a better law, and to create consensus so the Bill will pass through the Houses of Parliament more smoothly.[80] To that end draft Bills are sometimes scrutinized by parliamentary committees prior to the moment of formal introduction in Parliament.[81]

Tests on impacts

When departments want to propose legislation affecting businesses, charities or voluntary bodies they need to prepare a Regulatory Impact Assessment which assesses the benefits and burdens. They are kept for Members by the libraries of the House of Commons and the House of Lords and are often available on the website of the relevant Government department. Impact tests are not a single moment assessment; they are updated throughout the legislative process.

The drafting stage

Once the department decides an issue is ripe for legislation it passes its policy plans to a dedicated drafting office, the so-called Office of Parliamentary Counsel. The Parliamentary Counsel consists of civil servants who are experts in legislative drafting. They do the actually drafting of a Bill and meet regularly with the department responsible for the Bill to ensure the wording accurately reflects what is proposed.

The Westminster stage

If the draft is completed the Government can introduce the Bill in one of the Houses of Parliament. Some Bills (e.g. Money Bills) need to be introduced in the House of

---

[79] It started with a recommendation in the report of the Rippon Commisson, recommending that when there is no great urgency for a Bill, it might be published in draft in a Green Paper. Report of the Hansard Society Commission on the Legislative Process, Making Law, Hansard Society 1992.
[80] House of Commons Select Committee on the Modernisation of the House of Commons, The Legislative Process, First Report of Session 2005-06, p. 11.
[81] See also Malleson and Moules 2010.

Commons first, but for most Bills the Government has the choice to either introduce it in the Commons or the Lords first. The choice might depend on the subject matter, the political priorities, majorities (the Government has no working majority in the House of Lords) and the workload and stock in the Houses. Although there is a choice, as well as a certain need to balance the workload in time between Houses so that not all Bills are introduced simultaneously in the Commons, most Bills do start in the Commons.[82]

In order to be given time in Parliament, a Bill must be approved by the Parliamentary Business and Legislation Committee and, subsequently, by the Future Business Commission of the Houses of Parliament, the authority charged with the planning of the timetable of Parliament. This Cabinet Committee – in which the leaders of the Houses, the Chief Whips and relevant Ministers partake (consisting on average of 16 members) – is a linking pin between the Government and the Houses of Parliament. The Committee considers the Government's parliamentary business and implementation of its legislative programme. Through the mediation of this Committee time is allotted on the timetable for one of the Houses of Parliament and subsequently the Bill is introduced.

All Bills must be passed by both the House of Commons and the House of Lords. They must agree on an identical text. Both Houses of Parliament have the power to amend a Bill. In theory it would therefore be possible that Bills travel back and forth endlessly between the Commons and Lords in case they fail to reach an agreement. Different constitutional mechanisms have been put in place to be able to short cut some of the problems related to this. The Parliament Act of 1911 removed the power to veto a Bill from the House of Lords. Instead, the Lords could only delay a Bill up to two years. The Parliament Act of 1949 reduced this delaying power for Commons Bills (i.e. Bills introduced in the House of Commons) to one year. If a Commons Bill is not passed by the Lords within a year the House of Commons itself can reintroduce it in the following session and pass it without the consent of the House of Lords. The Parliament Acts also create a different regime for Money Bills (as we have discussed above). Another mechanism is the Salisbury Convention ensuring that Government Bills can get through the Lords even when the Government does not have a majority in the Lords if the subject matter of the Bill is or was included in an election manifesto.

---

[82] Bills can also introduced first in the House of Lords. This may have political reasons but is also done for reason of spreading and balancing the workload of both Houses. If all Bills were introduced in the Commons at the beginning of the session it would mean the Commons was over-worked and the House of Lords under-worked at the beginning of the session, with the position reversed at the end of the session. This helps explain why some Bills start in the Lords, so as to keep both Houses occupied with an appropriate amount of business throughout the session.

Stages in the Westminster Legislative process

A Bill introduced in the House of Commons passes through the following stages:

Process in the House of Commons

First reading

This is a formal stage without any debate on the content. The Bill is formally 'laid' before the House (meaning that its title is read out) and is ordered to be printed.

Second reading

At this stage there is a debate between the Government minister(s) and the House on the general gist of the Bill (not the details). The minister sets out the policy of the Bill and a debate is held in the House on its merits (i.e. the principles of the Bill). It is rare for there to be a vote on the Bill at this stage or for a Government Bill to be defeated.

Committee stage

The detailed scrutiny of a Bill takes place in a standing committee (when considering a public Bill called a 'Public Bill Committee' nowadays), which, contrary to what the name suggests, is specially drawn up for each Bill. The purpose of the committee is not to consider the desirability of the Bill in principle, since that has already been approved by the House during the Second Reading, but to scrutinise the workability of the detailed clauses.[83]
The members of the committee are in proportion to the representation of each party in the House overall, so that the Government will almost always have a majority. During the committee stage amendments can be put forward. Interest groups and stakeholders lobby committee members during this stage. Due to the composition of the committees, which mirror the relations in the House, opposition amendments are adopted seldom, though still it does happen from time to time.

Report stage

Once the committee has agreed a draft Bill it goes back to the House. The Government may reject the changes carried out at committee stage or, indeed, make further changes.[84] One controversial development in recent years has been the growing tendency of the Government to make significant changes to a Bill at this stage.

---

[83] Malleson and Moules 2010, p. 52.
[84] Malleson and Moules 2010, p. 52.

Third reading

The final stage is another formality, where the Bill is confirmed and is now ready to be passed to the House of Lords. No changes can be made to the content of the Bill at this stage.[85]

Process in the House of Lords

The formal stages in the Lords are more or less similar to those of the Commons, apart from the fact that the Committee stage is usually carried out in the House as a whole rather than by a committee, and this stage is less tightly controlled, with unrestricted debate allowed on amendments. In addition, changes can be made at the third reading stage. However, the culture of the Lords is rather different because there is less Government control of the process.[86] The party system which is enforced through the Whips is weakened by the presence of cross-benchers who do not belong to any party and other Lords such as the Law Lords who may contribute to debate on Bills affecting the legal system.[87] However, the capacity of the Lords to affect legislation is also limited. It can delay the passage of most Bills for a year, but will only do so in rare cases.

Royal Assent

This is the final stage in the legislative process whereby the Queen signs the Act of Parliament. It may come into force immediately or at a future stage, as stipulated in the Act. [88]

5.2 Innovation and discussions

UK Parliament in reform

The UK legislative process is one of the oldest in the world and has been and still is a role model for other jurisdictions. A lot of countries in the world in and outside the Commonwealth have adopted the Westminster model of Parliament and its legislative process. Although the process is ages old in the last two decades there have been many innovations and reforms to the process in order to bring it up to date and make it more balanced, transparent and expedient. The House of Commons over the last 7 years has had two very active Select Committees, one on the modernisation of the House (2006-2008) and one the reform of the House, whose recommendations have been of consequence. Very recently, in May 2012, the coalition sparked the debate on the reform of the House of Lords in the 2012 Queen's speech by pledging to "reform the composition" of the Lords so that "most

---

[85] Malleson and Moules 2010, p. 52.
[86] Malleson and Moules 2010, p. 52.
[87] Malleson and Moules 2010, p. 52-53.
[88] Malleson and Moules 2010, p. 54.

members" are elected in future.[89] The issue is controversial. On the one hand there is criticism on the overall impact the House of Lords has in the legislative process which does not pair with its democratic legitimization. A more assertive House of Lords with its own democratic mandate might better balance the work of the Houses and improve the legislative process. On the other hand a more or less democratic mandate for the House of Lords risks a competitive mandate of both Houses and a possibly complicated relation between the two.[90] In August 2012 the coalition cabinet withdrew this Bill in view of the parliamentary resistance to it.

Riding the waves of the topical debate on the reform of the legislative process in the UK, especially Parliament's role in it, the Hansard society – a renowned political research and education charity in the UK – conducted a comparative study into the position of Parliaments in four jurisdictions (Chile, UK, Canada and Australia). In its 2011 report *Parliament 2020, Visioning the Future of Parliament*, the Hansard Society holds that modern Parliaments are facing changed attitudes of the public and participants as regards the external communication of legislatures and their internal processes.[91] ICT, the report believes, creates an opportunity to bring Parliament back centre stage within the legislative process and restore its function as the public forum for debate on legislation. ICT can modernise the process (all legislative documentation available on line, accompanied by easy-to-understand explanations), improve the access to information (codified versions, readable and reusable versions of legislation), enhance public engagement in the process (e.g. e-consultation, use of social media and political literacy education,) and more effective use of new technology for more effective and efficient production of legislation.[92]

Pre-legislative scrutiny

According to the House of Commons Select Committee on Modernisation of the House of Commons (SCMHC), pre-legislative scrutiny of draft Bills, is one of the most successful parliamentary innovations of the last fifteen years. In 2006 the Committee recommended that it should become more widespread, giving outside bodies and individuals a chance to have their say before a Bill is introduced and improving the quality of the Bills that are presented to Parliament.[93]

---

[89] See BBC press release of 9 May 2012, 'Queen's Speech: Battle begins over House of Lords reform', http://www.bbc.co.uk/news/uk-politics-18003318

[90] Joint Committee on the Draft House of Lords Reform Bill, Rebuilding the House, First Report Session 2008-09, 12 November 2009. It was debated on 23 April 2012 in the Commons. The Joint Committee recommends that the reformed House of Lords is to be elected; 80% of members should be elected and 20% nominated (this decision should be made subject to a national referendum). The size of the House should be 450 and members should serve for 15 year non-renewable terms. At present (30 April 2012) the report and the findings of the Joint Committee are debated in the Lords.

[91] Freddy Fallon, Beccy Allen and Andy Williamson, Parliament 2020, Visioning the Future of Parliament, Hansard Society, London 2011, p. 35.

[92] Fallon, Allen & Williamson 2011, p. 31-32.

[93] Select Committee on Modernisation of the House of Commons 2006, p. 11 and recommendation 8 on p. 46.

Checks and balances in the legislative process, time constraints

There is an ongoing debate in the UK on the time constraints and time pressure in the legislative process. The way the process is set up at present does promote efficiency and expedience on the one hand, but risks comprising on sufficient scrutiny on the other hand. In the eyes of some authors it lacks sufficient checks as well.[94] Due to the strong government control over the legislative process, allowing the party elected to implement its manifesto, it is very hard for backbench MP's, especially those in the opposition, to influence Bills. Especially in the House of Commons their views and voice risk getting lost, which may negatively affect the quality of a Bill and the motivation of MPs to 'invest' in scrutiny. In 2009 the House of Commons Reform Committee (HCRC 2009) made recommendations to improve this. It called for a reform of the current system for scheduling business in the House. The Committee recommended a system where backbench business is organised by a Backbench Business Committee, responsible for all business which is not strictly Ministerial. That Committee would then join with the representatives of the Government and opposition in a House Business Committee which would be obliged to come up with a draft agenda for the week ahead, working through consensus, with the Chairman of Ways and Means (the Deputy Speaker) in the chair.[95] The committee was created on 15 June 2010 through the adoption of a new standing order soon after the 2010 general election.

The time pressure on the scrutiny of Bills due to the time constraints of the timetable of the Houses is only increased by the Fixed Term Parliament Act, as we have noted above. Combined with the trend that Bills sometimes seem to be more or less 'rushed' through the House of Commons and the decline in attention to scrutiny in the Commons, the Lords are more or less forced in a position of 'corrective scrutiny'. This position is not really welcomed by the Lords because of their feeble democratic mandate. The development in the relative positions of the Houses in the legislative process draws on the discussion of the reform of – especially – the House of Lords. At present the coalition government is committed to reform the House of Lords in a by in and large elected and downsized upper chamber, which was a controversial issue until the government decided to no longer pursue the Bill in August 2012. Malleson and Moules observe that on the one hand, supporters of the creation of an elected second chamber argue that the current arrangements are undemocratic and limit the effectiveness of a bi-cameral Parliament. On the other hand, defenders of an appointed House of Lords claim that it's less partisan culture and more loosely structured procedures, combined with the wide-ranging expertise of its members, creates a highly effective scrutinising chamber which can improve the quality of legislation passed.[96]

Time pressure and the finality of deadlines at the end of Parliaments – or parliamentary sessions – also results in the phenomenon which is referred to as 'the

---

[94] Malleson and Moules 2010.
[95] Select Committee Reform of the House of Commons, Rebuilding the House, First Report Session 2008-2009, recommendations 17 and 18.
[96] Malleson and Moules 2010.

wash-up'. It is the practice whereby in the few days between the calling of a general election and the dissolution of Parliament – or just before a new session – outstanding Bills are rushed through the Commons and the Lords on the basis of deals made privately between the Government and the opposition party (parties). This practice has been criticized by many authors, but at the same time is more or less endemic to the present system.[97]

A more technical method of handling time pressure is the use of the so-called carry-over-motion. At the end of each parliamentary session all pending Bills that not have been passed in both Houses fall. The Government could until recently only revive them by reintroducing them in one of the Houses and start all over again. The method of carry-over allows for the continued debate on a Bill in a next parliamentary session in the event a Bill was not passed in the previous. Both Houses need to agree on a motion to this effect and the merits of a Bill should already be debated in at least one of the Houses. This innovation started on 29 October 2002 when the House of Commons introduced carry-over on an experimental basis until the end of the 2001 Parliament. In the House of Lords, an ad hoc procedure, following recommendations from the House of Lords Procedure Committee, was agreed on 24 July 2002.

Another way to deal with time pressure in the legislative process is the use of fast-track legislation under emergence procedures. Fast-track legislation has been used from time to time over the last decade in the UK and met with some criticism. In 2009 the House of Lords Select Committee on the Constitution looked into the practice of fast-track legislation. The Committee understands the rationale for fast-track legislation but recommends self-constraint due to problems related to this type of legislation (e.g. constrained parliamentary scrutiny, the executive dominance in the procedure, and the inclusion of non-urgent matters).[98] In its response the Government acknowledged the need for self-restraint but did not adopt the Committee's recommendations for more principled framework of operation.[99]

In sum Malleson and Moules, overlooking the different reforms of Parliament's position in the UK legislative process, believe there is still a long way to go in modernising the way the law is made in Parliament to strike a better balance between scrutiny and the efficient use of its time.[100]
Brazier, Kalitowski and Rosenblatt – in their 2007 discussion paper 'Law in the Making' published by the Hansard Society – take a little more optimistic view. They observe that on the one hand, there is the widespread perception, shared by large sections of the media, a substantial proportion of the public and many academics and politicians, that government dominates Parliament to an excessive and

---

[97] Ruth Fox and Matt Korris, Reform of the Wash-up: Managing the Legislative Tidal Wave at the End of a Parliament, Parliamentary Affairs, vol. 63, no.3, 2010, Hansard Society, p. 558-569.
[98] House of Lords Select Committee on the Constitution, Fast-track Legislation: Constitutional Implications and Safeguards, 15th Report of Session 2008–09, 7 July 2009, HL Paper 116–I.
[99] Government Response to Fast-track Legislation: Constitutional Implications and Safeguards - Constitution Committee, 2nd Report of Session 2009-10, 7 December 2009, HL Paper 11.
[100] Malleson and Moules 2010.

unacceptable degree and also consistently ignores the views of the public. Moreover, it is maintained that this sorry state of affairs is getting worse.

On the other hand, they conclude that recent evidence points to a number of countervailing trends that have increased the effectiveness of Parliament and have improved communication between the Government and those it governs. These varied features include the growing propensity for members of the governing party to vote against their party (leading to substantial rebellions and sometimes defeats), the step-change in assertiveness of the House of Lords, numerous improvements to Parliament's scrutiny functions and procedures (such as pre-legislative scrutiny, consideration of draft Bills and select committee reform), as well as a series of innovations in how the Government consults with the public.[101]

Technical issues, maintenance and Law Commission

Malleson and Moules note that one of the knock-on effects of the constant shortage of time available for legislation is that there is a reluctance to make time for repealing redundant legislation and passing Consolidating Acts which draw together different pieces of law on the same subject.[102] A recent change to the Standing Orders of the House of Lords relating to Public Business as a result of the new Law Commission Act 2008-09 (a follow up on the 1965 Act) has improved the situation somewhat.

Committee reform

In 2006 the committee system in the House of Commons was reformed, again on the recommendation of the SCMHC. There has been much criticism on the standing committees. The Hansard Society noted that standing committees: 'fail to deliver genuine and analytical scrutiny of [Bills], their political functions are neutered, dominated almost exclusively by government ..., they fail to engage with the public and the media (in contrast to select committees) and they do not adequately utilise the evidence of experts or interested parties'.

The SCMHC in 2006 recommended that standing committees — a term which, to the extent that it implies anything about what they are, is positively misleading — of the House of Commons should be re-named 'Public Bill Committees' in respect of Bills and 'Delegated Legislation Committees' in respect of statutory instruments. The standing committee stage itself could be improved as well, the Select Committee believed. This was to be done by increasing the notice period for amendments — giving members more time to prepare for debates — and members should have the opportunity to table brief explanations of their amendments and more actively invite outsiders to give evidence or put their views forward. These recommendations were adopted.

---

[101] Alex Brazier, Susanna Kalitowski and Gemma Rosenblatt, Law in the Making; A discussion paper, Hansard Society, London 2007, p. 40.
[102] Malleson and Moules 2010.

Legislative and Regulatory Reform Act 2006

The Legislative and Regulatory Reform Act 2006 (LRRA 2006) replaces the Act of 2001 under the same title. The LLRA 2006 does not really change the UK legislative process as such but principally provides instruments to remove or reduce burdens resulting from legislation and promote regulatory principles, like simplification. Part 1 of the Bill gives power to reform legislation. It permits a Government minister to make statutory instruments (ministerial orders) to reform legislation that is perceived to be outdated, unnecessary or over-complicated. The powers are very wide ranging. It gives ministers the power to make changes even to Acts of Parliament. The Act has been criticised for this.[103]

Format of amendments

The SCRHC in 2006 felt that the format of amendments also was up for modernisation as well. Amendments are often difficult to understand because they represent only parts of text that should be read into a Bill. The Select Committee felt that there was a strong case for showing the amendments in the reprinted version of the Bill through a simple system, for example, by showing deleted words struck through and inserted words in bold. There are a number of technical considerations to be taken into account including whether or not such a document could be generated wholly or substantially automatically and whether any additional printing costs would be likely to be incurred. The Select Committee recommended for the Houses to undertake a feasibility study of showing the changes made to Bills amended in committees. It might be possible to do this by means of an online version of the Bill.[104]

Use of ICT

The use of ICT in the British legislative process is not very wide spread. We did not find any evidence of dedicated ICT-(drafting)systems in use in the departmental phase. The parliamentary phase – too – is still largely paper and print based, and there is no electronic voting in the Houses. There is however a very useful and transparent legislative calendar and tracking system in place. ICT is used predominantly to communicate with the general public and interested parties and to consult (electronic consultation). The SCRHC in 2006 did feel however improvements were possible and that ICT should be used to for better results in the process of passage of a Bill in the Houses. It recommended that the House of Commons should undertake a pilot study involving a single standing committee on a Bill in which laptop computers are made available in the committee room with internet access. As far as we know there was no follow up on this pilot.

---

[103] Journalist Daniel Finkelstein called it the "Bill to End All Bills", Daniel Finkelstein, How I woke up to a nightmare plot to steal centuries of law and liberty, The Times, 15 February 2006.
[104] SCRHC 2006, p. 39.

5.3 Experiences

Setup and operation of the legislative process

Although most of the respondents seem quite satisfied with the setup and operation of the UK legislative process, a few points of attention were highlighted. First of all some of the respondents felt that – even though most Bills are concluded within a year – overall the UK legislative process is somewhat cumbersome and overly time consuming. Perceptions differ however. Some feel that the bottlenecks within the legislative process are endemic to the ping-pong way in which Bills travel between the Houses before they can be approved on both ends. Others feel that the process itself is not the cause of the bottlenecks, but rather the result of overambitious legislative programmes on the part of the Government. Speed is not a goal in itself, some believe. Giving in to the need of speed would possibly compromise the quality of the scrutiny in Parliament. Of course, bill managers always hope to speed up the process still, but at what price? As it stands some of the respondents (across the board) feel that the legislative calendar is somewhat overstrained. This results in phenomena like longer Bills with more provisions (taking more time to scrutinize), omnibus Bills (Bills in which heterogeneous subject matter is wielded together in order to save on 'slot' time) and undue pressure on all actors involved.

The time pressure on the process also has a negative impact on more technical projects, like the reforms of the Law Commission. Securing a slot for a Bill with quite technical – but necessary – law reforms often proves to be an uphill battle and even when provided a slot they risk to be put at the bottom of the pile in Parliament. A change to the standing order of the Lords has accommodated the work of the Law Commission somewhat but their work and position remain vulnerable in a time pressured and highly politicized process.

The general feeling shared by almost all of the respondents is that recent reforms as regards the Parliamentary business are not really speeding up the legislative process as such. The practice of circulating drafts for pre-legislative scrutiny and discussing them with Parliament even before the formal introduction in Parliament is appreciated from the perspective of transparency and public engagement, but it does – in the eyes of the respondents – on the whole not save time. There is healthy scepticism shared between the respondents as regards the added value of pre-legislative scrutiny.

The introduction of Public Bill Committees is generally considered to be a good innovation, especially the way these committees organise public evidence sessions. This is different to consultation: it is a transparent way of engaging the public prior to parliamentary scrutiny and it adds to the assertiveness of Parliament. It goes further than sheer transparency. The time pressure on the process, though, makes it sometimes difficult to digest all the evidence taken.

Some criticism was voiced on impact tests. At this moment all legislative proposals must be cleared by the Regulatory Reform Committee prior to introduction in

Parliament. At present the Committee has a backlog of nearly six weeks which slows down the legislative process considerably. Some of the respondents feel it is not run very efficiently. Keeping the impact assessments up to date during the passage of a Bill in Parliament is a considerable strain on the departments as well. But Parliament scrutiny covers impact assessments as well so ministers must be prepared.

The big issue as regards the organisation of the UK legislative process is of course the pending reform of the House of Lords. Most of the respondents, during the interviews, took a very neutral position on the reforms but this may have been caused by the fact that our visit preceded the Queen's Speech (with the announcement of the committal to reform) only two weeks.

Some of the respondents feel that there is a need for a better balance in the scrutiny of the two Houses. Because of the control the Government can exert over the working majority in the House of Commons (e.g. via the whip-system and the guillotine, to stop the debate) Bills are sometimes passed without due scrutiny. This forces the hand of the Lords who do scrutinize Bills carefully and in detail. A more or less corrective role is trusted upon them. On the other hand the debate in the Lords and the managements of its self-regulated timetable – out of government control – has serious downsides as well. The debate and scrutiny sometimes lacks focus and thus takes too long. The self-regulatory time management of the Lords also makes it vulnerable to delaying tactics (e.g. filibustering).

The respondents are on the whole critical on how the Commons scrutinizes Bills, although some observe a shift of focus. Some public scrutiny nowadays seems to have shifted for a part to interest groups working outside Parliament.

Length of the process, pace and time management

The passage of a run of the mill Bill through both Houses of Parliament on average takes up to a year. Money Bills take less time, because they are subject to a different procedure. They must be introduced in the Commons first, as we noted above, and they cannot be amended by the Lords. Under emergency procedures legislation can even be passed even quicker; even in a matter of days. Most of the respondents feel that it should only be used with restriction, and that there is always the risk that it may compromise the quality of the resulting Act. Different respondents pointed at the Dangerous Dog Act as an example of an ill-considered fast-tracked act that resulted in a lot of legal problems that could have been prevented when duly scrutinized.

Although the respondents found it difficult to assess the total time devoted to a legislative project with precision, rough estimates varied between one and a half and two years (two to three years for major pieces of legislation). After a Bill is passed, it takes 25 days after the Royal Assent before an Act can enter into force. The agreement on common commencement dates does not seem to interfere with the legislative planning and delivery of the departments, neither did it seem to be a big part of life.

The carry-over motion is appreciated by most of the respondents as an effective mechanism to deal with the rigours of the sessional system of parliamentary debate on a Bill.

Devolution sometimes slows down the legislative process as well. For the passage of a Bill that extends to Scottish law a Legislative Consent Motion (or a Sewel Motion) – expressing the consent of the Scottish Parliament – is needed. Securing such a motion of course takes time.

Statutory instruments (delegated legislation) can, of course, be processed with much greater speed than primary legislation. The speed with which they can be enacted depends on the procedures they are subject to.[105] If primary legislation has delegated powers to enact delegated legislation to the government under the proviso of parliamentary control, the enactment of such instruments will take longer than the instrument that can be enacted without parliamentary supervision. About 2,200 delegated instruments yearly are enacted without any form of parliamentary control. Some delegated instruments (statutory instruments) are subject to the *negative resolution procedure* (about 1,100 a year). This means that a draft of an instrument like this:

a. either has to be 'laid' before Parliament *prior* to enactment and that it can only be 'made' (enacted) once 40 days (excluding any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days) have passed unless either House passes a resolution (a so- called prayer) disapproving (and effectively annulling) it,
b. or that the Instrument is 'laid' before Parliament *after* it is made (but before it comes into force), but will be revoked if either House passes a resolution annulling it within 40 days.

Some instruments are subject to the *affirmative resolution procedure* (some 200 per year). This means that these instruments cannot come into effect until both Houses have approved the draft statutory instrument.
The Delegated Powers and Regulatory Reform Committee and the Merits of Statutory Instruments Committee of the House of Lords exercise some control over these instruments.

Political prioritization
The Legislative Business and Legislation Committee is a powerful body which yields a lot of influence within the departments and the House of Commons. It is however, as we have seen, less effective when it comes down to the management of the business of the House of Lords. The Committee is in charge of the legislative programme of the government. This way of managing the timetable makes it possible to introduce between 20 up to 30 Bills in Parliament.[106] The Legislative Business and Legislation Committee decides, on the basis of the annual programme, which Bills will be

---

[105] Statutory Instruments are governed by the Statutory Instruments Act 1946.
[106] The present Legislative Programme 2012-2013 announced in the Queen's speech of May 2012 projects 20 Bills. The programme of 2010 listed 22 Bills.

introduced in what House and when. The legislative programme is not set in stone. During the course of a session, priorities may change and the programme may be adapted accordingly.

One of the respondents remarked that there will always be tension between the needs for careful consideration and scrutiny of legislation and the needs of politics. Priorities are always, and must always be, set politically.

Coordination between departments

Government business is coordinated by the prime minister who has a strong position in the British parliamentary system. Even, or especially, under the coalition the cabinet system functions well, some of the respondents feel. Coordination between the different departments is supervised by the Cabinet Office and the work of the Legislative Business and Legislation Committee provides for forms of cooperation as well. The fact that more than one department is involved in the preparation and passage of a Bill is not considered to complicate the time management although more than three involved departments obviously prove to be somewhat more time consuming. Interdepartmental Bill teams are getting more common.

The participation of more than one department can work to the benefit of all of the involved. It may thus prove to be easier to make a joint bid and secure a time slot with the Legislative Business and Legislation Committee. The Committee does however keep a close eye on deals – the subject matter of the 'joint' Bills must be adjoining. Although omnibus Bills are becoming more common and are generally perceived as a good thing, 'Christmas treeing' (i.e. composing Bills that take on board a multitude of non-related subjects) should be avoided according to most of the respondents.

Consultation

Most of the respondents stress the need for effective consultation as a means to engage the public in the legislative process. It is made a standard part of the development of a policy by departments in the UK. There is an on-going drive by the Government to increase the transparency and thereby the public participation on the legislative process.

Many consultations are announced and conducted using websites and forms of electronic consultation. Although departments tend to be very proactive and outreaching the response of the general public is – on average – quite low. It is mostly stakeholders and interest groups that respond and submit their views. Consultation is widespread and frequent, so much so that some consultation *fatigue* is beginning to show.

The standard consultation time is 12 weeks, which can be shortened though generally that is frowned upon.

A relatively new development is the possibility of the electronic petition. The Downing Street 10's website invites the public to hand in petitions. If a petition is backed by 1, 00,000 signatories the subject matter of it will be debated in Parliament (i.e. the Government will 'buy' time for it in the Commons). Petitions can be made in electronic form (e-petitions).

Transparency

The British Government is actively trying to improve the overall transparency of the legislative process. All Bills and Acts are published on the internet, as well as other relevant documentation. Attempts are made to consolidate the statute book in cooperation with private firms (legislation.gov.uk). There is however no integrated database that allows the public to consult the consolidated texts. Neither is there a system or process to establish the authenticity of consolidated texts.

A lot of effort is put into the structure of the information on the websites of the Government and Parliament. The Government publishes legislative calendars which allow the public to keep track of Bills and the stage of passage through the Houses. The public is informed early on and in detail. For instance, the Queen's Speech contains a specified list of Bills the Government will introduce in Parliament in the upcoming session.
Information on legislative initiatives and pending Bills is published as proactively as possible and in language as plain as possible. The House of Commons is using social media for getting messages across.

Some of the respondents regretted the absence of a lobby register. It is not always clear how interest groups and stakeholders lobby MP's.
Pilots in plain English drafting are underway as well, in attempt to increase the public's understanding of a Bill.
Some of the respondents are critical on the way amendments are drafted. They are very difficult to read and to understand by laymen. It would be a good idea to have consolidated versions that show what the effect of an amendment is to the amended text.

ICT

Although the UK government and Westminster Parliament try to work as transparently as they can, the use of ICT within the process itself is still very modest. There is no uniform or dedicated drafting system in use during the departmental phase. The previous Government experimented with 'inter-leaving' (a process whereby the Bill's clauses are put in the left column and the Explanatory Notes next to them in the right column). This however raised difficulties in terms of printing: it resulted in long blank pages because of long explanation of clauses.
In Parliament there is no electronic voting or uniform electronic system for passing on information. The UK legislative system is still largely print and paper based. This is also the result of adherence to traditions according to many of the respondents.
In the House of Lords – as well as in the House of Commons – physical meetings and voting procedures are appreciated because it promotes personal contact and thereby improves relations (not only between Lords but also between Lords and members of the Government.

5.4 Observations

The UK legislative process is one of the longest standing in the world. In this respect the many reforms of the last two decades are quite remarkable. The UK seems to be updating its legislative process to the needs of the times. It has innovated the way in which Parliament debates Bills. Moreover, it has – to summarize – empowered Parliament to make it an authoritative forum for debate on legislation. Even the contemplated reform on the House of Lords tries to contribute to that.

The most striking feature of the legislative process is the system of legislative programming and time management. This makes the British legislative process very efficient and expedient. The constraints of programming and the system of sessional debates on Bills make for a rigorous planning system on the basis of political priorities. Efficiency and expedience come at a price though. Sometimes careful scrutiny in the House of Commons is compromised by it, and there is a general feeling that time pressure has effects on the quality of the end result.

To solve these problems some solutions already have been put into place. Carry-over motions make it possible to extend the parliamentary debate on a Bill into the next session, and more realistic planning takes away pressure too.

Overall the respondents are satisfied with the legislative process. There is some criticism as regards the efficiency of pre-legislative scrutiny and the procedure for impact assessment tests.

The Government and Parliament are committed to improve the overall engagement of the public in the legislative process. There is – as a rule – wide consultation on policies that may develop into legislation, stakeholders and interest groups are welcomed to reflect their views throughout the process. And recent attempts are made to invite the public in agenda-setting by the e-petitioning system the Government has put in place.

The promotion of transparency is also an interesting and recent development. The UK has high quality websites and databases through which the public and stakeholders are pro-actively informed on plans for and pending legislation. The public is made aware of legislative initiatives early on and it can monitor the passage of the Bill. Pilots are being conducted to improve the public understanding of the sometimes complex legal wording of legislation.

The UK is not in the vanguard in the use of ICT when it comes down to the preparation of legislation and actual scrutiny and debate proper on Bills. Here a certain adherence to tradition seems to prevail.

Annex 5.1 List of respondents UK

Ministry of Justice
Respondent A. and, (who preferred to be anonymous) and
Ann Nixon, Parliamentary Clerk at Ministry of Justice (streamlining information between the Department and Parliament)

Cabinet Office
Adam Pile, Economic and Domestic Affairs Secretariat (Legislation) at the Cabinet Office

House of Lords
Lord Philip Norton of Louth, Professor of Government

House of Lords, Committee Office
Stuart Stoner, House of Lords, Clerk to the European Union Sub-Committee (A) on Economic and Financial Affairs and International Trade

House of Lords, Public Bill Office
-Simon Burton, Head Public Bill Office/Clerk of Legislation
-Kate Lawrence, Deputy Head of Office

Office of the Parliamentary Counsel
Douglas Hall, Jessica de Mounteney, Andrew Scott – drafting legislation

Home Office
Charles Goldie, Bill Manager

Law Commission
Tamara Goriely, team manager for the Commercial and Common Law team

**6.	In comparison**

**6.1	General remarks**

Before we start to compare the results from the case studies of the three jurisdictions involved in the in-depth study, it should first of all be pointed out that the usual caveat applies: how comparable with the Netherlands are the three countries involved to begin with? Finland, for example, has a monocameral system, and the Finnish Parliament is a 'working parliament' rather than a 'debating parliament' as in the Dutch case. The Constitution of the independent state of Slovenia was established only in 1991, and once a proposal has been tabled in Parliament the government loses the ownership of the Bill. In the U.K., even though in practice most Bills start in the Commons, for most Bills the Government has the choice to either introduce them in the Commons or Lords first.

Political cultures differ significantly as well. Thus, Finland is one of the most consensus modeled political systems, with as a result an inclusive legislative process, whereas the UK is the prototype of a majoritarian democracy. The Netherlands used to be a consensus democracy, but appears to be gradually developing traits of a majoritarian political culture.[107]

Furthermore, concerns about the relationship between efficiency and quality of the legislative process constitute a red thread through the report. Thus, in the case of Finland, the country was selected for this research because a quick-scan of the legislative processes of all EU Member States revealed that it is a frontrunner in many respects. At the same time, the main concern of the OECD report on Better Regulation in Finland, which admittedly investigates the country from a slightly different angle, is precisely the quality of Finnish legislation. Also, several respondents thought the lack of time to consider a Bill thoroughly constituted a risk in terms of the overall quality of the legislative process.

In Slovenia, the use of the emergency procedure, which has been increased during the financial crisis, and the relatively high speed of the regular legislative process, has as was noted in chapter 4 an obvious downside in that it can lessen the quality of the legislation. This is expressed by the fact that afterwards a relative high number of 'repair' laws are adopted to amend the already adopted laws. Moreover several respondents indicate that it sometimes occurs that several rounds of legislative proposals are necessary until they are satisfied with the quality of the law.

In the U.K., there are equally some side effects of the way the legislative process is planned. As a result of the strong competition for parliamentary time it is common for Private Member's Bills to fail to reach the statute books due to lack of time. The time pressure and competition for 'slots' also makes it very hard for more technical Bills to make it onto the Legislative Programme. The legislative calendar as a whole is somewhat overstrained, with phenomena like longer Bills with more provisions, omnibus Bills and undue pressure on all actors involved as a result.

---

[107] Cf. R.B. Andeweg and J.J.A. Thomassen, *Van Afspiegelen naar Afrekenen? De Toekomst van de Nederlandse Democratie*, Leiden University Press, 2011.

The latter point serves as a reminder that, even if a particular instrument should be considered to lend itself for import into the Netherlands, the possible implications should be looked at carefully. Improvement of the legislative process can hardly be achieved by making concessions with respect to its quality. The possible tension between the speed of the legislative process and quality will also manifest itself in some of what follows below.

Finally, in 2010 the Hansard Society published a report entitled *Parliament 2020: Visioning the Future Parliament*. This report contains the following recommendations:

- modernise an institution that is steeped in tradition but sometimes constrained by its own history and culture;
- provide information in more understandable and usable formats;
- harness the potential of new technologies; and
- better engage the public, particularly about how they can influence the legislative
- process.'[108]

In our view, although these recommendations were primarily formulated in the British context, the previous chapters have demonstrated that all three jurisdicitions studied have during the last decade or so already witnessed developments in these general direction. Some of the more striking developments will be recapitulated here in a comparative manner.

6.2   Length of legislative process

Estimates of the average duration for the legislative procedure in Finland hold that it is two to three years, counting from the drafting of a memorandum for a Bill at the department (starting point) until and including the voting on the Bill and adoption in the Plenary Session of Parliament. In exceptional cases the duration of the legislative process of a Bill can be much shorter, i.e. a year or in exceptional circumstances even less than two months.

In Slovenia, the regular procedure normally takes two to three months. This relatively short period of time is largely the result of applying strict deadlines to the parliamentary debate. By using special legislative procedures, a Bill can be passed within a few days to a week. The accelerated procedure has been used intensively resulting in a total of 37% of the total Acts passed. The emergency procedure was applied in 22% of the total Acts.

For the U.K., estimates of the total time devoted to a legislative project vary between one and a half and two years (two to three years for major pieces of legislation). Typically the whole process of passing a Bill through both Houses of Parliament takes up to a year. However there are procedures in place that allow to

---

[108] Beccy Allen and Andy Williamson, *Parliament 2020: Visioning the Future Parliament. Report on the UK Parliament Focus Groups*, Hansard Society, 2010, p. 27.

speed up the legislative process, which can make Bills go through all their stages in a matter of days with little debate and scrutiny.

6.3 Inspiration to be drawn from legislative processes and practices abroad

Pace and duration: including political prioritization, planning, regulatory budgets and types of legislation

- Time restrictions

Article 49(1) of the Finnish Constitution contains the discontinuity principle. The article is interpreted in such a way that a Bill can, after expiration, be resubmitted to Parliament by the new government as a 'new Bill' with the same content as the 'old' Bill, but in practice this only occurs in exceptional cases.

A similar discontinuity principle is laid down in article 154 of the Rules of Procedure of the Slovenian National Assembly: when the term of the National Assembly expires all legislative procedures are terminated, except those initiated by the National Council or 5,000 voters.

In the U.K., Bills are dealt with within one parliamentary session which lasts about a year. If a Bill is not passed within a session, it falls automatically, although nowadays it is possible to make it subject to a carry-over motion. The Fixed Term Parliament Act passed in 2011, increases the time pressure still. Time pressure and the finality of deadlines at the end of Parliamentary sessions also result in the phenomenons which are referred to as 'the wash-up' and the carry-over-motion respectively.

- Political priorization

In Finland the Government Program is the driving force behind the legislative process. This program, which is presented to Parliament soon after the formation of the government, indicates inter alia which draft Bills shall be prepared by the Government within its four years government period and which (draft) Bills get the highest priority (or medium or lower priority). Furthermore, the Government Strategy Program, which is decided upon in the first year of government, elaborates the Government Program in more detail and adds time schedules for the Bills and 'bundles of Bills' which have been granted a high degree of priority. Finally, the Prime Minister's Office enables the Parliament to plan its work by preparing, twice a year, a list of draft Bills to be submitted to the Parliament in the period following. The degree of prioritization (high, medium, low) that is given to a particular Bill in the Government Program, determines how much capacity of law drafters is given to the drafting of the Bill, which 'track' is followed in the process of inter-departmental coordination: a fast track or a slower track.

Similarly, the preparation of Government Bills in Slovenia usually starts with the inclusion of an initiative in the annual work programme of the Government. At the parliamentary stage, the legislative process is drafted according to a tight annual schedule, stating which sessions occur at what time. In this way, the Government's annual planning is closely linked to the planning of the National Assembly.

The innate time restrictions in the U.K. require strategic planning from the government as well, in order to deliver the legislation needed to achieve the political and policy goals in time and on target. For this the UK government uses an elaborate system of legislative programming. At the heart of this system is the sessional Legislative Programme of the government which sets out which Bills will be tabled before Parliament in the upcoming session. This Programme is negotiated between the various ministerial departments and the legislation Committee of the House of Commons via the system of bids.

- Fast-track legislation

Finland does not have a fixed law-making process or one possible formal track. Depending on the nature of the project a draft Bill imposes a certain route. If for instance a certain legislative project needs a higher pace, certain phases may be skipped or shortened.

In Slovenia, in special cases it is equally possible to deviate from the usual three readings. Slovenia has an emergency procedure in the event of extreme circumstances where the state has to act fast. In addition, there is an accelerated procedure which is allowed if a legislative amendment only involves minor adjustments, adjustments arising from obligations on the basis of European Law, a law that is repealed or articles deleted, or when amendments are necessary as a result of rulings by the Constitutional Court.

In the U.K. there are procedures in place that allow to speed up the legislative process as well. The emergency procedure for instance allows for a fast track passage of a Bill through both Houses. Under this procedure Emergency Bills in the past have gone through all its stages in a matter of days with little debate and scrutiny. The procedure for money Bills – used to set the budget in the UK – also differs from the regular procedure and expedites the passage of the Bill through the Houses. Fast-track legislation has been used from time to time over the last decade in the UK and met with some criticism. In 2009 the House of Lords Select Committee on the Constitution looked critically into the practice of Fast-track legislation. In its response the government acknowledged the need for self-restraint, but did not adopt the Committees recommendations for a more principled framework of operation.

- Standard working processes and training

When asked which factors contribute to the speed of the legislation process in Finland, a vast majority of the respondents emphasized the importance of standard working processes. The Bill Drafting Instructions were mentioned by several of them in this context. In addition, the Finnish government, and especially the minister of Justice, invests in training law drafters, both at junior and senior level.

In order to gain more coherence between the different departments, the Slovenian Government is equally facilitating training for civil servants in order to educate them on the way an act has to be developed and implemented and on the guidelines that are laid down in the Resolution on legislative regulation.

- A stable political system

Furthermore, Finland has quite a stable political system, possibly because of its consensual nature; as a general rule Governments last their whole period. All interviewees pin-pointed the importance of this fact for the planning of the legislative process. With the new fixed-term parliament Bill in place, more or less the same holds true for the U.K.[109]

- Alternatives to law-making

A few Finnish interviewees finally argued that there is a trend towards "too much law-making" and a trend to perceiving law-making as a "solution for everything" in Finland. In their view the efficiency of the legislative process in Finland could be improved if alternatives to law-making would be considered more often. This would in their view lead to "more capacity" for the actors in the legislative process, both within the ministries and within Parliament, to focus on a smaller number of (draft) Bills.

Phases and actors: interdepartmental cooperation, Parliament, executive agencies and third parties, coherence

- Identifying especially important actors

In Finland, with its 'working parliament', the role of Parliamentary Committees stands out. For example, one of the first things a Committee does in reviewing proposed legislation is hearing the law-drafters themselves. This practice is generally perceived as a very important feature in the Finnish legislative process. Furthermore, the Committees also hear other experts and stakeholders. Committee meetings are closed to the public. Consequently, there is debate about the degree of transparence of the work of the Parliamentary Committees, and especially the perceived "lack of transparence" or "limited transparence" of the hearings of the Committees. Yet, this lack of transparence appears to have an important function as well: while, in the wording of one of the respondents, in the open plenary sessions "the Members of Parliament often act in response to the whim of the day" and "are highly aware of the presence of the media and the public", the meetings and hearings in the Committees are often more "oriented to consensus building and problem solving". This holds true more generally as well: the Chairman of the Committee has a leading role in the process of considering the Bill and his or task is to seek a majority vote. In practice, however, consensus or a decision supported by a majority as large as possible is sought.

In Slovenia, the Secretariat-General (the 'Office of the Secretariat-General') as the supporting secretariat of the Council of Ministers ensures the compliance of the Government and the National Assembly to the Rules of Procedure. It is also responsible for the planning and monitors the progress of the work programme's

---

[109] As is well-known, the Dutch political system appears to become less stable, with the fifth general election coming up in ten years time.

implementation. In Parliament, there exists a division of work between the standing committee and the plenary session.

In the U.K. the Legislation Committee of the government (and the Cabinet office which administers the Committee) is the nucleus of the system. In Parliament, the Legislative Business and Legislation Committee is a powerful body which yields a lot of influence within the departments and the House of Commons. It is however less effective when it comes down to the management of the business of the House of Lords. The Committee is in charge of the Legislative programme of the government. In 2006 the Committee system in the House of Commons was reformed, on the recommendation of the House of Commons Select Committee on Modernisation of the House of Commons (SCMHC). The primary issue as regards the organisation of the UK legislative process is currently the pending reform of the House of Lords.

- *Consultation*

There is a widespread belief among Finnish civil servants in solid consultation procedures, in order to make the legislative process more efficient and more effective. In their view this belief in consultation is part of a wider 'consensus culture' in Finland. They pointed at two codes of consultation, which have been adopted in Finland in recent years (first version in 2005, updated in 2010). Also, ante-impact assessments, combined with consultation of a wide circle of stakeholders, take time and seem to slow down the legislative process in the early stage in Finland, but are often beneficial, and lead to "better results" at a later stage, because potential problems and unintended and undesired effects of the Bill are discovered at an early stage and can be timely dealt with. Still, not all respondents were positive about the *practice* of consultation in the Finnish legislative system.

The Slovenian administration has now acknowledged that where in the past the speed with which regulations were adopted was the key measure of efficiency, the challenge for the future is to change this culture oriented to "speed" and to ensure that government is open and inclusive and that the design of regulation has taken into consideration the interests of affected parties. In order to improve the legislative process, Slovenia in 2009 adopted the Resolution on legislative regulation, laying down different standards regarding the preparation of regulation with regard to consultation, transparency and coherence.

In the U.K., there exist different forms of consultation: informal ones seeking the views of interested parties or key players and more formalized ones, like the Green Paper and White Paper consultation procedure. A recent innovation is the so-called pre-legislative scrutiny. According to the SCMHC, which recommended that it should become more widespread in 2006, pre-legislative scrutiny constitutes one of the most successful Parliamentary innovations of the last fifteen years.

Transparency: in the different phases, the role of ICT in this, citizens' initiatives

Finland is one of Europe's frontrunners in using e-government and e-democracy to improve the transparency of the legislative process, making consultation more effective and involving citizens. Thus, the Government Project Register (HARE) allows the Finnish public to follow legislative projects in all different stages of the process.

As early as in 1999 Finland introduced otakantaa.fi, an online discussion forum where stakeholders or just anyone can react on proposed governmental plans and draft legislation. Kansanvalta.fi is used by the Government and departments to communicate with the public about a number of topics, varying from specific legislation projects to general information about the functioning of the public sector. As a follow-up of otakantaa.fi and kansanvalta.fi, Finland has started a project for creating an interactive e-participation environment. The new system will also facilitate the possibility for a citizen's initiative, which was introduced in Finland this year.

In Slovenia the option exists to hold a referendum, after Parliament has passed a Bill. Obviously, a request for a referendum delays a legislative procedure by a few months, assuming that there is eventually still enough support for the Bill. Possibly in part because a minority of only one third of Parliamentary members can demand a referendum, the use of this instrument has been relatively high in the past year (a total of four).

The role of ICT: role in the legislative process in general

Finland is characterized by a progressive attitude towards the use of ICT within the legislative process, especially in the parliamentary phase. The most significant projects the Parliament has undertaken are the so called RASKE projects; the standardization of document structures by using SGML (Standard Generalized Markup Language) and XML (Extensible Markup Language). While the latter two systems have worked very well for Parliament in the past decade, they are not yet widely used by the ministries, however.

In Slovenia, the preparations of Government Bills are carried out in a government digital information system - known as the IPP-system (IT supported drafting of legislation project) – which includes all documents that are related to a Bill. Paper documents are no longer used. The IPP system has been in operation since April 2010. The system used within the ministries facilitates the civil servants with a great tool to monitor the coordination, and the time limits within the law drafting phase.

The use of ICT in the British legislative process is not very wide spread. In the House of Lords in particular physical meetings and voting procedures are appreciated because it promotes personal contact and thereby improves relations (not only between Lords but also between Lords and members of the government.

7.   Conclusions

7.1   Main research question

The main research question of the current study has been whether the efficiency of the Dutch legislative procedure for Parliamentary Acts indeed constitutes a problem, in particular if we compare it to the achievements of legislative processes in several other European countries and, if that turns out to be the case, whether lessons can be learned from those legislative processes and practices abroad with respect to pace and duration of the legislative process, phases and actors, transparency and the role of ICT?

To see how the Dutch legislative process compares and rates in relation to other countries we decided to look into four tell-tale elements of legislative processes that are interesting from, predominantly, a Dutch point of view. This method is, of course, biased to a certain extent. We took the focus of Dutch discussion and topical points of interest and used them as a sort of a yardstick for comparison with other jurisdictions. However, although the outlook may be a bit biased in itself, this does not mean that the method used or the outcome itself cannot be interesting.

The four relevant (sub)themes we looked into were,

> a. pace and duration: including political prioritization, planning, regulatory budgets and types of legislation;
> b. phases and actors: interdepartmental cooperation, Parliament, executive agencies and third parties, coherence;
> c. transparency: in the different phases, the role of ICT in this, citizens' initiatives;
> d. ICT: its role in the legislative process in general.

Taking these four elements as a lens to search for interesting countries for comparison, we started with a quick scan study of 12 jurisdictions. The quick scan study offered an insight in different features and discussions related to the efficiency of legislative processes in a range of EU member states and provided a stepping stone for the selection of three countries for more detailed case studies. The countries chosen were Finland, Slovenia and the UK because they rated best on the four elements we thought interesting and tell-tale from an efficiency point of view.

The countries selected for in-depth analysis were studied using primary documentary sources as well as interviews held with key actors involved in the legislative process. In chapter 6 of this study the results of the quick scan and the in depth case studies were compared. The pivotal question of this study, however, still needs to be answered and that is: what can we learn from the results? In other words: what to conclude?

In order to be able to do that, we first need to know more about the Dutch legislative process itself to find out what could be worthwhile lessons. We will deal with the process very briefly, just to have a general idea.

7.2   The Dutch legislative process in a nutshell

Articles 81-88 of the Dutch Constitution lay down the constitutional regime for the Dutch legislative process leading up to an Act of Parliament. According to article 81 the States-General and the government (the Queen and cabinet) share the legislative power. This power is vested in a bi-institutional cooperation leading up to acts of parliament. Acts of parliament are at the near top of the hierarchy of Dutch legislation – ranking just below the Constitution.

The legislative process: preparation of a proposal

Most proposals for acts of parliament are prepared by the government, typically within a ministerial department. A lot of effort is put into the preparation. Due to the fact that the Netherlands does not have a strong hierarchy within government (the prime minister is more or less a primus inter pares – his ministers) and due to an engrained culture of consensus, a lot of negotiation and coordination between departments is necessary. This is, of course, time consuming. Stakeholders and interested parties are mostly consulted during this phase of preparation. It is typical for the Dutch system that public consultation is not only conducted with stakeholders, interested parties and the general public, but also with semi-public bodies, put in place to enable consultation and negotiation of stakeholders. A prime example is the so-called Social Economical Council, a very influential council with representatives of the government, employers organisations and labour unions on the board, which is consulted on economical and social issues. Informal lobbying is becoming more frequent over the last decades in the Netherlands. The preparation of a proposal starts with in-house-plans within a ministry. Sometimes a policy plan announcing legislation - called a legislative memo - is circulated and discussed with the houses of Parliament. A memo like this is not mandatory and in recent years their use seems to be in decline. Green papers do not exist as such.

Once a draft is finished in a ministry it has to be discussed in the council of ministers (i.e. the cabinet ministers) before it can be handed over to the Council of State and after that – as a Bill – can be tabled before Parliament. Before a draft is allowed on the agenda of the Dutch council of ministers it has to pass all kinds of quality checks. There are all-embracing quality checks (the so-called WKB-toets) – operated by the Ministry of Justice – and tests as regards different kinds of possible effects of a draft executed by different departments (tests on budgetary effects, business effects, administrative burden, societal and environmental effects, etc.). If a draft surpasses a threshold of administrative burden (red tape) there is a special procedure – the draft then will be scrutinized by a special semi-independent watchdog, the commission on the review of administrative burden (Actal).

Sometimes departments resort to publicizing a draft piece of legislation (voorontwerp) in the consultation phase in order to get the views of the public, stake holders and interested parties. Sometimes a draft like this is even published on the internet (e-consulting). On the whole this practice is still an exception to the general practice whereby legislative proposals are polished through and through and submitted to the council of ministers in order to - after clearance - subsequently introduce them as a Bill in parliament.

The legislative proposals submitted to the Council of Ministers are more or less handled and debated in order of appearance. There is no well-established system of planning of legislative proposals nor a strong system of political prioritization (although the Bills due for the upcoming year are announced in the finance Bills at the beginning of a parliamentary session and the cabinet programme does list the legislative programme).
Members of the House of Representatives (Tweede Kamer) do have a right to initiate legislation themselves as well, but they do not use it very extensively.

Triggers for legislation

Proposals for new legislation are triggered by different factors. They may be prompted by ad hoc problems or requests, and an ensuing (felt) need to come up with new legislation or modifications to already existing legislation. A second driver for new initiatives is the need to implement international legislation – especially European Union legislation. EU legislation cast in the form of EU Directives obliges EU Member States to change their domestic legislation to achieve the result required by the EC Directive. The bulk of new legislative proposals, however, stems from the cabinet programme. Typically the term for Dutch governments is four years although in the last decade cabinets only last 2-3 years. There is no discontinuity principle in place. The stock of Bills left over from the previous session can be dealt with by a newly elected parliament, although sometimes, for lack of interest, the new parliament leaves a pending Bill untouched on the shelves for years.

Coalition democracy and legislative programme

The Netherlands do have a sort of fixed term Parliament. A parliament has a term for four years. At the end of the term the government dissolves the House of Representatives in term (meaning that the decision will be effective from the moment the new house is appointed). After the so-called Second Chamber of the Dutch Parliament is resolved new elections are held. The Netherlands have a multiparty system and the system of proportional representation makes for a fragmented representation of different political groups in Parliament after elections. The hallmark of the Dutch political system is that it is a coalition democracy. Until recently, after the elections the Queen used to consult party leaders, the chairmen of both Houses of Parliament and the vice-president of the Council of State. On this basis the Queen appointed an 'informateur' (informer) to assess which coalition is most likely to get a solid majority for a programme in the House of Representatives. If the information phase is concluded successfully the Queen appointed a

'formateur', in most cases the designate prime minister who upon his appointment assembled a team of Ministers and junior ministers. Starting in 2012, the initiative in this procedure will no longer be taken by the Queen, but by the House of Representatives itself.

The final result of the negotiations between the parties which enter the coalition is usually enshrined in the new cabinet's mission statement, a so-called "coalition agreement". This agreement between the participating parties in the coalition outlines the policies of the new government for the next four years.

Tabling a Bill in Parliament and Parliamentary scrutiny

Once a draft has cleared all of the various impact assessments (see above) it is channelled through different portals (consisting of high ranking civil servants) of subcommittees of the council of ministers. After this, a draft is discussed in the council of ministers and – in the case of a favourable outcome – submitted to the Council of State. The Council needs to be consulted on drafts for Acts of Parliament and draft decrees of government, so stipulates article 73 of the Dutch Constitution. The Council of State makes comments on the draft and advises the government what to do. The advice comes in different categories ranking from 'no comments, can be tabled right away,' up to 'draft seriously flawed, strongly recommended not to table). Upon the comments and advice of the Council of State the department first responsible for the draft, drafts a reaction which is (together with the comments of the Council) discussed in the council of ministers. The council of ministers may then decide to table the Bill (the new status of the draft or proposal) with Parliament, notably the House of Representatives. The Bill is directed to a relevant Committee by the chair of the house and debated there. Members of the House of Representatives can table amendments. After the committee has concluded its scrutiny with a report the Bill is debated in the plenary. When the House adopts the Bill it is sent to the Senate (Eerste Kamer). The senate discusses the Bill in its committees as well and in the plenary afterward. Senators in the Netherlands cannot amend a Bill. The Senate can only adopt or reject the Bill.

After a Bill passes the senate the Bill needs to be ratified by the government (article 87 Dutch Constitution) and after an extra contraseign it is promulgated by the Minister of Justice. Promulgation is constitutive before any Act can enter into force.

Statutory instruments

A lot of legislation in the Netherlands is not held in acts of parliament but in delegated legislation or – internationally so-called – statutory instruments. When adopting an Act of Parliament the parliamentary legislator can delegate the power to elaborate the details of a complex legislative to government or even to an individual minister. In deciding what kind of subject matter is best left to government (with extra safeguards and scrutiny of the Council of State) or to an individual minister (no special safeguards) the Dutch use the notion of the 'Primacy of the legislator' meaning that an Act of Parliament should enshrine (as a sort of parliamentary reserve) the essential and constituting parts of a legislative complex and only administrative details and minor subject matter can be left over to ministers.

Statutory instruments make for nearly 75% of all Dutch legislation at the national level of government. Contrary to acts of parliament these latter instruments can be appealed and reviewed by judges and courts.

Features of the Dutch legislative process

The Dutch legislative process is sometimes perceived as sluggish and cumbersome. On average the passage of a Bill through the houses of parliament takes about a year days (2006-2007).[110] This is an average though. If need be a Bill can be processed in a few months. There are examples of even quicker operation. This average figure however only relates to the parliamentary phase of the process. On the whole a run of the mill Bill will take two years or more on average. Deducting the time the Council of State takes for its review (1-2 months), this means that the departmental preparation and consultation is quite timeconsuming as well. The quick follow up of elections over the last decade of course is not helping to speed up the process either. Statutory instruments can be elaborated and enacted with greater speed than parliamentary acts. Ministerial regulations can be elaborated in a matter of days (although they can only be used – under the rule of the primacy of the legislature – for the elaboration of politically non-controversial details). Orders in Council (Algemene maatregelen van bestuur) take longer because the Council of State needs to be consulted on them and they need to be debated in the council of ministers as well.

The use of ICT is not over abundant in the Dutch legislative system. Although the Dutch departments use ICT, a typical hall mark of Dutch politics is that different departments use different systems that are not always compatible with systems of other departments, that of the Council of State or that of the government. In a recent project called *Legis*, significant steps are made towards a more integrated ICT approach in the Dutch legislative system.

7.3   Inspiration?

Are there any lessons to be learned from this study for the Dutch legislature? Arguably this is in itself a more or less political question that we – as researchers – cannot answer. If however we mirror the Dutch legislative process into that of other legislatures in various European countries, some elements – that may serve as a source of inspiration - stand out.

The first observation then, is, that if we look at the overall efficiency of the Dutch legislative procedure in terms of the pace and duration of the process for parliamentary acts, and compare that to the achievements of legislative processes in other European countries, the somewhat gloomy perception of a lengthy and cumbersome legislative process cannot really be substantiated. In Finland the process takes between two and three years, in the UK on average two. Only

---

[110] A recent Master's Thesis mentions an average of 380 days for the parliamentary phase during the time periode of 1994-2010. See Caroline van Zon, *Wetmatigheden. Een onderzoek naar de doorlooptijd van wetsvoorstellen in de parlementaire fase gedruende de periode Kok I-Balkenende IV* (Utrecht, 2011).

Slovenia, therefore, stands out. Yet, the length of the legislative process there is so short, and with the help of special procedures in many cases even extremely short, that this raises the question whether in the Netherlands the price paid for it in terms of democratic accountability would not be too high.

Secondly, although the Netherlands have put a lot of effort into streamlining and speeding up the legislative process over the last decades, with tangible results (e.g. the mean average of the parliamentary process was cut down to two to three months) still a lot of time is consumed by coordination and negotiation in the run up to the parliamentary part of the procedure. If the Netherlands want to cut down on handling time, this part of the process may be fruit bearing. Unlike other jurisdictions in this study the Netherlands do not use formalized systems of political prioritization, planning, and formalized and strict systems of regulatory budgets. The prioritization and planning systems in countries like the UK seem to be driving forces speeding up the process. This makes them, in theory, interesting for the Dutch legislature. On the other hand we must not forget that the planning and prioritization systems we found in the research are not stand-alone features of a system. For the most part they are a result of the typical way the whole legislative process functions. Mostly they are the by-product of the discontinuity principle. This does not mean that they cannot be used as stand-alone mechanisms, but simply that they were not primarily conceived of as autonomous efficiency methods. The planning and prioritization methods in other jurisdictions certainly provide food for thought for the Dutch legislature, we feel.

The Netherlands did give the introduction of the discontinuity principle some thought a while ago. It was felt however that discontinuity would not necessarily reduce the length of the legislative process.[111] According to one handbook, such proposals tend to ignore the fact that legislation is an inherently political process, which will always be characterized by a certain unpredictability.[112] The question is whether this can fully be maintained, as political prioritization and planning clearly play a role in all of the three countries looked at in this study. Still, it may not prove easy to change the prevailing culture in the Netherlands in this respect.

Thirdly, in contrast to the UK and Slovenia (and more or less Finland) the Dutch legislative process lacks a formalized fast track procedure. One could argue there is no urgent need for that either. Bills can be dealt with very quickly if need be. Sometimes small loopholes in the system are used to speed up the process. In 2002 the Minister of Justice enacted an Order in Council as a sort of a Law Decree and tabled an identical Bill at the same time. The Order in Council was a sort of interim remedy until the moment the Bill became a statute. On the other hand, one can argue, the Dutch legislative process does use a one-size-fits-all approach that is not always helpful and efficient. We think therefore that fast track procedures and dedicated procedures (like dedicated procedures for finance Bills, or a dedicated

---

[111] Cf. Jan van Schagen, 'The Principle of Discontinuity and the Efficiency of the Legislative Process', *The Journal of Legislative Studies* 3 (1997), pp. 115-125.

[112] P.P.T. Bovend'Eert and H.R.B.M. Kummeling, Het Nederlandse parlement, Kluwer, Deventer, 2010, p. 208.

procedure for the implementation and/or transposition of EU law) can be inspirational for the Dutch legislature.

Drawing inspiration from other jurisdictions on the plane of transparency might be perceived as more or less begging the question from a Dutch point of view. According to the 2012 United Nations E-government Survey rankings, the Republic of Korea is the world leader (0.9283) followed by the Netherlands (0.9125), the United Kingdom (0.8960) and Denmark (0.8889), with the United States, Canada, France, Norway, Singapore and Sweden close behind. Within Europe, the Netherlands made substantial gains, advancing to the top position.[113] On the other hand the current study shows that, although the Netherlands do have a transparent system, compared to other countries, during the legislative process it is hard for those not directly involved as actors to keep track of a Bill and secondly that the phase of the departmental preparation is not all that transparent in itself. The engagement of stakeholders, interested parties and the general public is 'on invitation' rather than open to their own initiatives. On the other hand, in May 2006 a form of citizens' initiative was introduced, in the sense that – under certain restrictions – 40,000 people can make an attempt to have a particular subject-matter tabled in Parliament.

A fourth inspirational observation can therefore be that the transparency of the legislative process, with or without the help of ICT, can be improved. In Slovenia and Finland ICT appears to be more or less engrained in the legislative process, whereas in the UK and in the Netherlands it is more or less used as a tool, but not as a means to innovate the legislative process.

Other jurisdictions have – as a fifth observation – used ICT as drivers for change and innovation of the legislative process. The use of ICT in Slovenia and Finland is not only used as a facilitating technique but it is used as a time-management tool, indeed as a disciplining mechanism, as well. Because all the actors are connected to a system that allows to monitor the progress of a proposal/Bill it is easier to pinpoint and address bottlenecks, to impose and uphold deadlines and define responsibilities. ICT has also affected expectations as regards the transparency of the legislative process. The possibilities of ICT have prompted discussions on opening up the legislative process in ways that were unfathomable before. It has raised questions as to the format of amendments and accessibility and readability of legislative texts and the need to provide citizens' summaries of complicated legal texts. Worthwhile to consider maybe for the Dutch legislature, we feel.

Finally, a common thread in the study (and a possible source of inspiration as such) appears to be a development which has been labeled the 'growing assertiveness' of parliaments. In a lot of modern European parliaments a trend seems to have emerged whereby parliament is no longer satisfied with second-hand consultation (via the government) but seems to be more and more inclined to consult themselves by way of organizing evidence sessions or a hearing. This is complemented with a tendency to take a more hands-on approach to legislation and become a 'working'

---

[113] United Nations, *E-Government Survey 2012. E-Government for the People*, United Nations, New York, 2012, pp. 4, 29.

parliament. What is interesting to see is that this growing assertiveness does not seem to compromise the overall efficiency of the legislative process in the countries involved in this study. The time devoted to parliamentary debate and scrutiny on legislation rathermore seems to have decreased over the last decades. If one wants to save time in the legislative process as a whole, one could better look for improvements in the departmental preparation of Bills. Parliaments did cut back on handling time over the last decades and increased their grip on consultation. This suggests some level of redundancy of consultation if both Parliament and government consult on the same issue. On the other hand the study shows that the coordination between departments and institutions during the departmental preparation stage does show some promise of increased efficiency in the countries under study.

This trend of growing parliamentary assertiveness does not seem to have taken a firm foothold within the Dutch Parliament as yet (if we compare it to other countries) but it is relevant for the Netherlands we believe.
Parliament here has itself just finished a process of self-reflection, which has clearly not led to fundamental changes leading towards a 'working parliament' in the sense of an increased role for parliamentary committees. Several constitutional lawyers insist that Parliament would be better off that way.[114] Even if one or two country studies in this report confirm that this might indeed be true purely from the angle of the legislative task (and not for parliamentary business as a whole) this does not mean that the Dutch Parliament for that very reason has to follow suit. It remains as a matter of principle up to Parliament itself to decide. However, parliament did introduce certain new elements such as the formulation of a research agenda of its own each year, which could perhaps be elaborated a bit further in order to strengthen its position in the legislative process.

In the Introduction to this study reference was made to a 2010 report by the Dutch Council for Public Administration on trust in democracy. The report stresses the need for the still vertically organized political institutions to connect in new ways to the citizens. The present study reveals that in the field of legislation in all three countries studied significant steps have already been taken in this direction, which could indeed well act as a source of inspiration for enhancing the efficiency of the Dutch legislative process.

---

[114] P.P.T. Bovend'Eert and J.L.W. Broeksteeg, 'Vertrouwen in het parlement? Kanttekeningen bij een parlementaire zelfreflectie', *Tijdschrift voor Constitutioneel recht*, nr. 1 (January 2010), pp. 24-50.

Appendix 1 Questionnaire

Information about the respondent:

Name:

Function:

Address/telephone/email (attach business card):

Structure and organisation of the legislative process

Do you feel the <u>legislative process leading up to the adoption of Parliamentary Acts is organized and structured</u> effectively in your country?

What is <u>your (your organisation's) role</u> in the legislative process?

Pace and duration

I – Discussion

How <u>long does the legislative process</u> take on average? (from initiative to act)
If you do not know precisely, what would you estimate? Do you know of (scientific) reports?
Are there any initiatives to speed up the process?
Would you welcome such initiatives?

Do you perceive the <u>duration</u> of the legislative process to be a problem?
Do others?
Is the duration of the legislative process a topic of discussion?
What is the expected outcome of the discussion?
Are there any reports available? Could you give references?

Is <u>acceleration</u> by means of increasing the efficiency of and support during the legislative process a topic of discussion?
In what fields? (in politics, within the administration or among scholars)
What is your position in this debate?
What is the expected outcome of the discussion?
Are there any reports available? Could you give references?

What <u>elements</u> determine the pace of the legislative process? (procedures, organization, number of actors, etc.)
Which element do you conceive to be the most important? Is there a leading element in the process?
Which element(s) do you conceive to be problematic?
Are one or more elements a topic of discussion?
Are there any reports available? Could you give references?

II – Results

Have <u>concrete efforts</u> been made to accelerate the legislative process in the last (two) decade(s)?
What kind of efforts?
Which elements or at which phases of the legislative process?
Were these efforts successful?
Were there also unsuccessful efforts that you know of?
Why did they fail?
Are there any reports available? Could you give references?

Political prioritization

What is the role of a <u>political prioritization policy</u> in the legislative process?
How does this prioritization policy work?
What are your experiences with these policies?
Does political prioritization have any influence on the duration of the legislative process?

What is the influence of the existence of certain form(s) of the <u>discontinuity principle</u>, i.e.
the automatic expiration of parliamentary documents (e.g. by a 'guillotine motion')?
How does this discontinuity principle work?
What are your experiences with the discontinuity principle?
Does this principle accelerate the legislative process?
Does it influence the quality of the legislative outcome?

Planning

Are there <u>time limits</u> set for different phases of the process?
For which phases?
What are your experiences with setting time limits?
What role do time limits play? Do they speed up the process?

How are the different phases of the legislative process <u>planned</u>?
By which institution or institutions?
What role do pace and duration play while planning the legislative process?

Regulatory budgets

Are <u>regulatory budgets used</u>?
Are there limitations in time or capacity for legislative projects?
How are they organized?
What are your experiences with regulatory budgets?

Phases and actors

I – Interdepartmental cooperation

Please describe the organisation of (interdepartmental) management and
cooperation in the <u>departmental preparation of legislation</u>.

Would you say these elements of organisation are started <u>in due time</u> during the
process?

How many and what kind of <u>actors</u> are involved in the departmental preparation of
legislation?

Are there significant <u>differences</u> here between departments?
How are these differences dealt with?
Are they regarded as a problem in the legislative process?

What is the role of (the number of) <u>actors</u> in reaching agreement on legislation?
Do you think there are too many actors? Or too few?
Would it save time to have fewer departments?
Would fewer departments mean less need for coordination?

II – Parliament, executive agencies and third parties

Please describe the relationship with parliament, executive agencies and other third
parties during the <u>departmental preparation phase</u>.
How is parliament involved? When is it involved? What role does it play?
How are executive agencies involved? When? What role do they have?
How are third parties involved? Which third parties? When are they involved? What
role do they have?

How are these relationships organized? How do the different groups communicate with each other?

How would you characterise these relationships and the way they are organized? (for instance as 'cooperative model' or as 'conflict model')

Are they efficiently and effectively organized? Do they represent different groups in society effectively? What does this mean for the legitimacy of the legislation process?

How are citizens involved in the legislative process? Do they have sufficient influence? Is the influence of citizens hindered by the traditional consultation process?

Do you know of any discussion on these topics in your country?

Please describe the relation with executive agencies, interest groups and/or other third parties during the <u>parliamentary phase</u> of legislative proposals.

How are executive agencies involved in this phase?

How are interest groups and/or third parties involved?

How are these relationships organized? How do the different groups communicate?

How would you characterise these relationships? Are they efficiently and effectively organized?

Do <u>problems</u> arise here and how are they addressed?

Are there recent discussions about cooperation between parliament, executive agencies and third parties? What are they mainly about?

What was the outcome of these discussions? Were measures taken?

III – Coherence

How is the <u>coordination and chorence between phases and actors</u> within the (internal and external) legislative process set up?

How is this coherence reached?

Who coordinates the communication between different actors in the legislation process?

Do you consider (a lack of) coherence a problem in the legislation process of your country?

Is this coordination <u>problematized</u>, i.e. how is it functioning?

Which (potential or planned) <u>improvements</u> are implemented or anticipated?

What is your opinion of these improvements? Were they successful?

Types of legislation

What is the role of <u>differentiation</u> in types of legislation, or type of legislative project in the legislative process? (of parliamentary acts)

Is there just one procedure for all types, or do special – for instance, fast track – procedures for specific types of legislation exist?
On the basis of what features are distinctions made when choosing a procedure?
Do these different processes have different speeds?

Transparency

What is the role of <u>transparency and openness</u> in the legislative process?
What are the possibilities to actually have input in the legislative process?
How is it avoided that the same experts are consulted at several stages of the process?

What role does <u>ICT</u> have in these transparency issues?
How is ICT used to promote external communication?
How is ICT used to support expert consultation?
How is ICT used to support public/citizens' consultation?
Is there any other consultation of, or communication with, other stakeholders supported by ICT?

In which way is transparency upheld and promoted during the <u>preparation of legislation</u> (including consultation)?

And during the <u>parliamentary debate</u>?

Are there opportunities for <u>citizens' initiatives</u>?
a. How often are citizens' initiatives received?
b. What is their influence on policies/legislation making?

ICT

What is the role of <u>ICT</u> in the legislative process and how is its potential used?
In which phases of the process?
How does ICT contribute to the speed of the legislative process?
What are your experiences with ICT in the legislative process?

In the Netherlands, an IT legislation editor and a progress programme are being developed to <u>support</u> the legislative process. To what extent is there such a development in your country?
What types of ICT support is in place?
What kind of software is used?
Are there recent innovations? What kind of innovations?

To what extent are <u>opportunities</u> in this area exploited?

Are there any current ICT projects to improve the legislative process?
Do you think all ICT opportunities are sufficiently exploited?

Solutions in the law making process

What <u>other solutions</u> – that have not been covered in the themes above – could you mention regarding the efficiency of the legislative process?

Do you know of any <u>unsuccessful</u> projects which were intended to improve the legislative process?

Are there any <u>other issues</u> which have not been discussed but deserve special attention?

Can you provide any other <u>reports</u> or <u>references</u> which might be relevant for this research?

Appendix II Tables

Finland

Volume of regulations introduced 2001-08

Year	Laws	Subordinate regulations	Pages
2001	590	978	4376
2002	546	825	5634
2003	589	805	4622
2004	619	818	4139
2005	521	766	5523
2006	528	932	4467
2007	656	854	5789
2008	428	727	3604

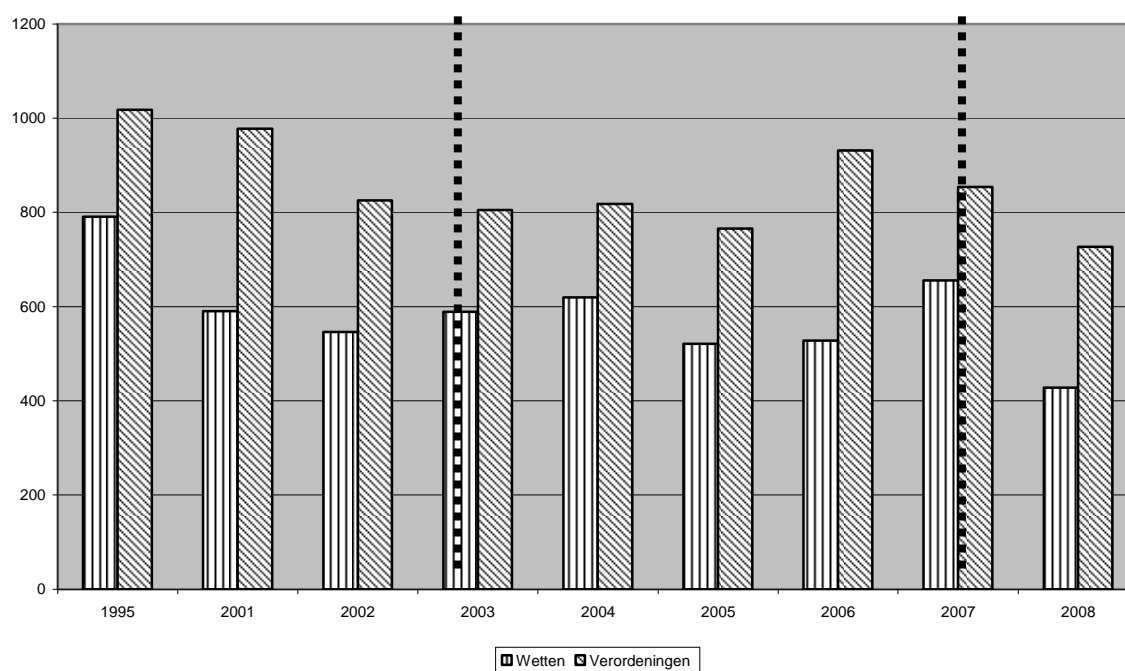*Source*: Finnish Ministry of Justice.

Table 1 The production of Acts and regulations in Finland 1995-2008[115]

---

[115] De Jong & Zijlstra 2009, p. 138.

Slovenia

Type of procedure	2009	2010	2011	Total 2009-11	
- Regular procedure	33	60	48	141	40%
- Urgent procedure	32	28	18	78	22%
- Shortened procedure	47	33	51	131	37%
Total	**112**	**121**	**117**	**350**	**100%**

Table 2 Number of Acts passed using the various procedures in de period 2009-11.
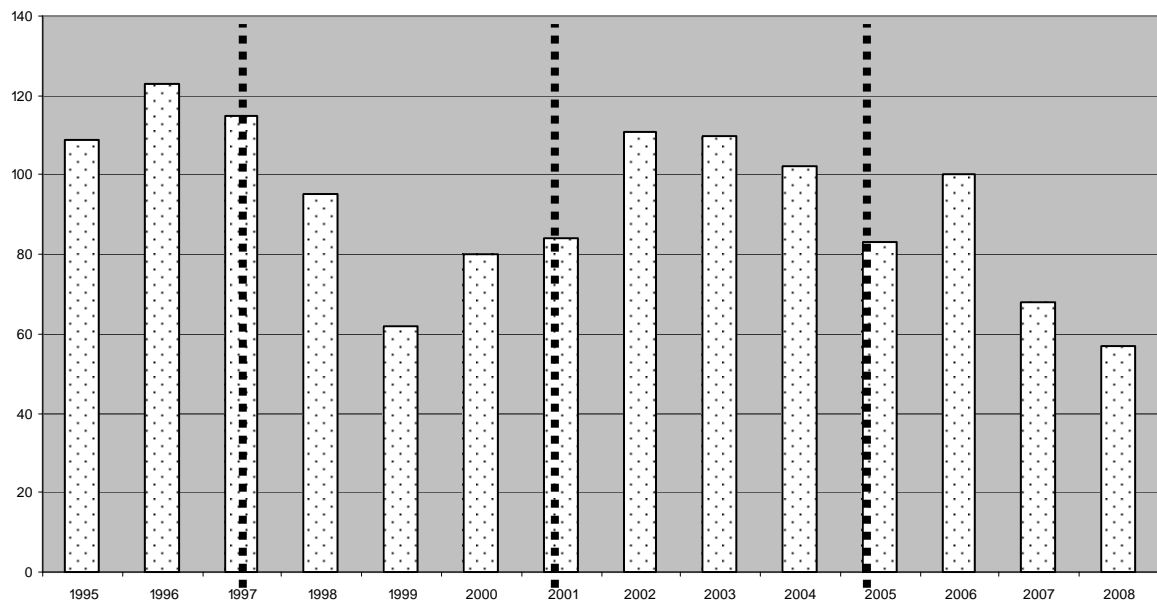
United Kingdom

Table 3 Legislative production 1995-2008 (Acts and Primary Orders in Council)[116]

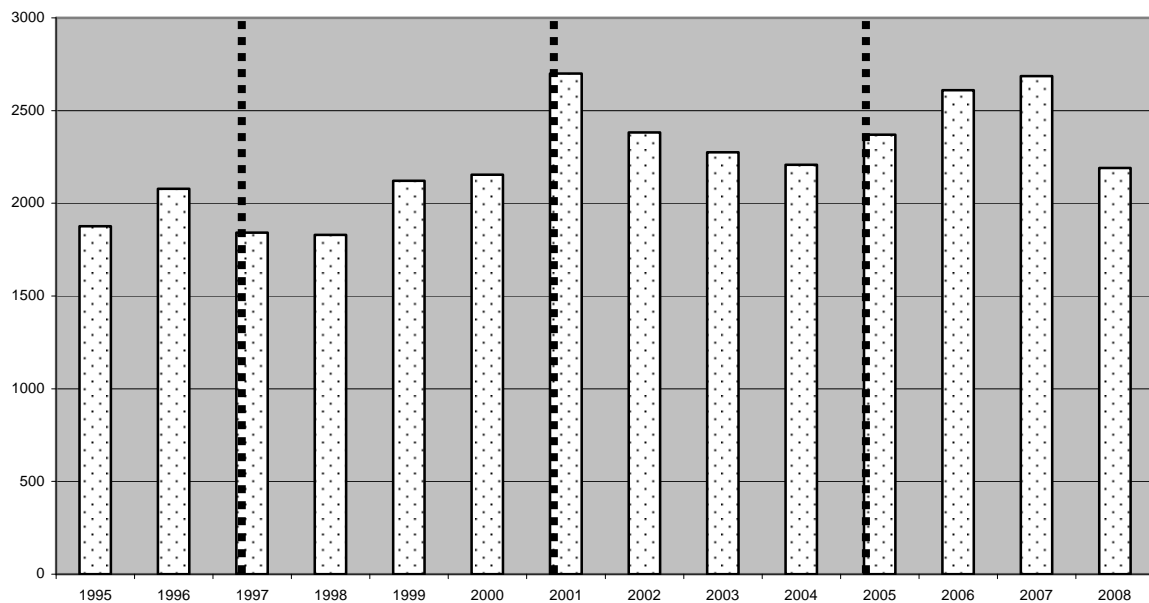[116] De Jong & Zijlstra 2009, p. 82. The data themselves were collected from www.statutelaw.gov.uk.

Table 4 Legislative production UK 1995-2008 Secondary legislation – Statutory instruments[117]

---

[117] De Jong & Zijlstra 2009, p. 82.

Appendix III Dutch Summary

Efficiency van het wetgevingsproces in focus

Door verschillende oorzaken is het prestatievermogen van het Nederlandse wetgevingsprocedure de afgelopen jaren onder druk te komen staan. In onze complexe samenleving wordt veel overheidsturing gevat in de vorm van wetgeving. Dat, tezamen genomen met de noodzaak snel aan te kunnen passen aan veranderde omstandigheden, onder waarborging van hoge kwaliteit (want die kan juist bij een hoger wetgevingstempo onder druk te komen staan) is de laatste jaren aanleiding geweest kritisch te kijken naar onze wetgevingsprocessen. Bijkomende factoren als kortere levenscycli van wetten, verbeterde technische mogelijkheden, deden nog nadrukkelijker vragen: kan het sneller, maar vooral ook, kan het beter? Naar die vraag is op verschillende manieren gekeken.

Nieuw is de discussie over de verbetering van de prestaties van het wetgevingsproces eigenlijk niet. In Nederland is het belang van duur en tempo van het wetgevingsproces al langere tijd onderwerp van discussie. Ze kwam begin jaren negentig op, gedeeltelijk ook geïnspireerd door de vraag of de Nederlandse wetsprocedure wel voldoende was afgestemd op een snelle omzetting van EG/EU-richtlijnen. Sindsdien is de vraag naar de prestaties van het wetgevingsproces (hier verstaan als het formele wetgevingsproces zoals vastgelegd in de artt. 81-88 Gw) op verschillende manieren in verschillende onderzoeken en het beleid bezien. Daarbij is de afgelopen 20 jaar gekeken naar de doorlooptijd van de wetsprocedure, de wijze waarop ICT wordt gebruikt of zou moeten worden gebruikt om de prestaties van het wetgevingsproces te verbeteren, snelheidsbevorderende strategieën en instrumenten (versnelling omzetting EG/EU richtlijnen, valbijlprocedure, etc.), verbeteren van de organisatie van het proces (betere afstemming en coördinatie van de meest betrokken actoren binnen het proces) en overige kwaliteitsverbeteringen (verbeteren transparantie van het wetgevingsproces, internetconsultatie, impact assessment, etc.).

In een aantal gevallen hebben discussies, onderzoek en beleid al geleid tot structurele aanpassingen in het wetgevingsproces, zoals bijvoorbeeld het gebruik van een startnotitie bij aanvang van een wetgevingstraject en de afschaffing van de tweede schriftelijke ronde bij de behandeling in de Tweede Kamer. Andere aanbevelingen behoeven echter nog nadere uitwerking of onderzoek, zoals met betrekking tot prioritering en planning, het werken in (dossier)teams, afspraken met het parlement over het aantal te behandelen voorstellen en een toename van regelgeving via amvb's.
Er lopen ook projecten die primair bedoeld zijn om de kwaliteit van wetgeving te vergroten, maar ook de efficiency van het wetgevingsproces kunnen vergroten, zoals de ontwikkeling van het integraal afwegingskader (IAK) en consultatie door middel van internet.
Verder is men aan de hand van onderzoek aan het nagaan welke maatregelen tot versnelling en vereenvoudiging van wetgevingsprocedures leiden. In een rapport over experimentele wetgeving van Veerman en Bulut (2010) wordt een ruimer

gebruik van experimenteerbepalingen met een beperkte werking in de tijd bepleit, met name om sneller te reageren op maatschappelijke wensen. Eveneens in 2010 is een rapport verschenen van de TU Delft en de Universiteit Leiden dat het huidige, formele wetgevingsproces beschrijft om als basis te dienen voor de stroomlijning van ICT processen.

Vergelijkend onderzoek naar de efficiency van wetgevingsprocessen als bron van inspiratie voor Nederland

In de ICCW is sinds januari 2011 – als uitvloeisel van de beleidsdoelstellingen van het kabinet – een werkgroep 'sneller wetgeven' ingesteld die zich ten doel heeft gesteld te kijken naar de vraag welke versnellingsmaatregelen zijn en worden genomen (en de samenhang daartussen), welke voorstellen tot versnellingsmaatregelen in de interne en externe fasen van het wetgevingsproces (inclusief de procedure en de ondersteuning ervan) kunnen worden gedaan.

Om zich daarop voor te bereiden heeft de werkgroep een aantal oriënterende gesprekken gevoerd over de vraag of en welke prestatieproblemen (in de startnotitie 'versnellingsprobleem' genoemd) de Nederlandse wetsprocedure kent, en of het wel werkelijk een (groot) probleem betreft, dan wel percepties. Het voorliggende onderzoek is verricht in opdracht van het WODC en op verzoek van de Afdeling Wetgevingskwaliteitsbeleid van Directie Wetgeving van het Ministerie van Veiligheid en Justitie.

In dit onderzoek wordt gekeken hoe het prestatievermogen (in termen van efficiency) van het Nederlandse wetgevingsproces zich verhoudt tot dat van andere landen. Die vergelijking met andere landen kan ook een mogelijke bron van inspiratie zijn voor eventuele hervorming van het Nederlandse wetgevingsproces.

Het onderzoek heeft daarom de volgende *probleemstelling*:
Vormt de efficiency van het Nederlandse formele wetgevingsproces – in de zin van tempo, afstemming, techniekbenutting en transparantie van het proces – een probleem, met name als we haar vergelijken met de prestaties van parlementaire wetgevingsprocessen in andere West-Europese landen en, als dat zo is, zijn lessen te putten uit buitenlandse wetgevingsprocessen en praktijken waar het betreft de prioritering, sturing en samenwerking/samenspel (zowel intern als extern) binnen het proces?

Operationalisering van de probleemstelling: onderzoeksvragen

Efficiency is een eigenschap die notoir lastig is te onderzoeken. Vrij vertaald naar het Nederlands betekent het 'doelmatigheid', hetgeen niet veel verder brengt. Van Dale's Groot Woordenboek van de Nederlandse taal geeft met de omschrijving van het begrip 'efficiëntie' wat meer handvatten: 'het verkrijgen van het grootst

101

mogelijke effect of resultaat met of uit een gegeven kracht, middel of toestand.' Met andere woorden efficiency heeft ook van doen met 'optimalisatie'. Dat is ook de wijze waarop in dit onderzoek zal worden gekeken naar de efficiency van het formele wetgevingsproces: 'kan het beter?' en dan met name op het terrein van het tempo van dat proces, de afstemming met interne en externe factoren, techniekbenutting en de transparantie waaronder begrepen de 'openheid' van dat proces (o.a. de mogelijkheden en kansen om inbreng te hebben).[118]

Ook die vraag is weer lastig te beantwoorden omdat een maatstaf waarlangs we de prestaties van het formele wetgevingsproces kunnen leggen in feite ontbreekt, zelfs als we de prestaties, hier begrepen als de 'performance' op het terrein van tempo/duur, afstemming, techniekbenutting[119] en transparantie/openheid van de Nederlandse formele wetsprocedure, en de processen die zich op grond daarvan afspelen, vergelijken met buitenlandse processen. Wat dé optimale mix van snelheid en kwaliteit is (i.e. de hoogst mogelijke efficiency), is in wezen niet vast te stellen. Wat we wel kunnen proberen vast te stellen is:

a. hoe de prestaties – begrepen in termen van tempo/duur, afstemming, techniekbenutting en transparantie/openheid – van wetgevingsprocessen in Nederland en vergelijkbare landen in West-Europa zich tot elkaar verhouden[120], en

b. hoe de prestatie van het proces, volgens betrokkenen bij dat proces, wordt beïnvloed door de procedure zelf, de organisatie van het proces dat eruit voortvloeit, of gebruik van technieken.

Tegen die achtergrond bekijken we het formele wetgevingsproces in Nederland en in andere landen – met name de fase van de voorbereiding en vaststelling van formele wetten[121] – en richten daarbij – in het verlengde van de startnotitie – de aandacht op de volgende daarbij relevante thema's:

- Efficiencyproblemen in termen van tempo/duur, samenhang, techniekbenutting en transparantie/openheid van het formele wetgevingsproces en percepties daarover;
- Politieke prioritering al dan niet met valbijl;

---

[118] Zie hierover W. Voermans, R. Van Wijk en W. Fokkema, *Free the Legislative Process of its Paper Chains: IT-inspired Redesign of The Legislative Procedure*, proceeding CALC-conference, Hyderabad India, 2011. Zie ook http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1855595

[119] Hierbij valt met name te denken aan IT-technieken.

[120] We hanteren in het onderzoek de 'functionele methode' van rechtsvergelijkend onderzoek, dat wil zeggen dat we niet stoppen bij de vraag welke procedures (en daarmee samenhangende praktijken en processen) in de te vergelijken landen geldt, maar dat we ook kijken naar de doelen en functies van die procedures, om op die manier tot een vorm van objectieve vergelijkbaarheid te komen en op basis daarvan uitspraken te kunnen doen. Zie Konrad Zweigert and Hein Kötz, *Introduction to comparative law*, Oxford, Clarendon Press, 1998.

[121] Dit proces omvat, in het kort, de volgende fasen: de (inter)departementale voorbereiding, behandeling door de ministerraad, advisering door de Raad van State, behandeling door de Staten-Generaal en de bekendmaking en inwerkingtreding.

- Planning van het proces (hieronder ook de vraag of er 'regelgevingsbudgetten' bestaan – dat wil zeggen capaciteitsgrenzen aan wetgevingsprojecten);
- Termijnstelling binnen het proces;
- Ambtelijke organisatie: sturing en interdepartementale coördinatie en samenwerking (wordt er gewerkt met dossierteams bijvoorbeeld?);
- De rol en benutting van Informatie- en communicatietechnologie en ICT-systemen (dit in aanvulling op de startnotitie)
- Transparantie en openheid van het proces;
- Differentiatie binnen het wetgevingsproces;
- Relatie met het parlement, uitvoeringsorganisaties, andere derden;
- Toepassing experimenteerbepalingen.

Als eerder gezegd beperkt het onderzoek zich tot procedures en processen die betrekking hebben op wat wij in Nederland wetten in formele zin noemen (Parliamentary Acts). We kijken daarbij in de vergelijking zowel naar het wetgevingsproces, alsmede naar de discussie daaromtrent en maatregelen die daarop zijn genomen (het moet daarmee dan tevens duidelijk worden voor welk probleem deze maatregelen een oplossing vormden).

Op basis van dit al zullen in het rechtsvergelijkend onderzoek in de verschillende fasen van het wetgevingsproces de volgende vragen aan de orde komen:

1. Hoe ziet kort samengevat de organisatie van het wetgevingsproces eruit in de geselecteerde landen?
2. Is *tempo en duur* van de wetgevingsprocedure een onderwerp van discussie in de geselecteerde landen en wordt er gewerkt aan versnelling van het proces?
   a. Is *versnelling* door middel van de verhoging van efficiency van het proces en de ondersteuning een onderwerp van discussie aldaar in de politiek, het bestuur en de wetenschap?
   b. Wordt de *lengte* van de wetgevingsprocedure als probleem opgevat, en zo ja, door wie en waarom?
   c. Hoe snel verloopt de wetgevingsprocedure?
   d. Welke *elementen* (procedure, organisatie, aantal actoren, etc.) zijn bepalend voor deze snelheid van de wetgevingsprocedure?
3. Welke rol speelt politieke *prioritering* in de (lengte van de) wetgevingsprocedure, al dan niet met valbijlconstructie?
4. Wat is de rol van *planning* en het stellen van *termijnen* in de verschillende fasen van het proces?
5. Wordt er gewerkt met *regelgevingsbudgetten*? Dat wil zeggen zijn er beperkingen in tijd of capaciteit voor wetgevingsprojecten en hoe is daaraan vorm gegeven? *
6. Hoe wordt vorm gegeven aan de *samenhang* van fasen en actoren binnen het wetgevingsproces (intern en extern)? Wordt die samenhang geproblematiseerd en welke (mogelijke of beoogde) verbetering is daarin aangebracht of voorzien?

a. Hoe is de (interdepartementale) sturing en samenwerking bij de *departementale voorbereiding* van wetgeving georganiseerd en wordt daar – naar het oordeel van betrokkenen – vroeg genoeg mee begonnen?

b. Welke verschillende, en welke hoeveelheid wetgevingsactoren zijn in de te onderzoeken landen bij de *departementale voorbereiding van wetgeving* betrokken? Zijn er hier grote onderlinge verschillen en welke rol spelen de (aantallen) actoren bij het overeenstemming bereiken over wetgeving (scheelt het bijv. in de tijd om minder departementen te hebben, en dus minder te hoeven afstemmen)?

c. Hoe is de relatie met het parlement, uitvoeringsorganisaties en andere derden vormgegeven tijdens de departementale voorbereidingsfase en is die, voor zover daarover iets kan worden gezegd, efficiënter ingestoken dan bij ons?

d. Hoe is de relatie met uitvoeringsorganisaties, belangengroepen en/of andere derden vormgegeven *tijdens de parlementaire behandeling* van wetsvoorstellen/initiatievoorstellen vormgegeven? Rijzen hier problemen en hoe worden die aangepakt? *

7. Welke rol speelt *differentiatie* van typen wetgeving, of type wetgevingsproject in de wetgevingsprocedure? (Is er maar een procedure voor alle onderwerpen, of zijn er speciale – bijvoorbeeld fast track – procedures voor bepaalde onderwerpen?)

8. Welke rol speelt *transparantie* en *openheid* (hier begrepen als de mogelijkheden om daadwerkelijk inbreng te kunnen hebben in het wetgevingsproces) in de (discussie over de) wetgevingsprocedure, bijv. om te voorkomen dat deskundigen in verschillende fasen dubbel worden geconsulteerd? Welke rol speelt ICT daarbij?

a. Op welke wijze wordt de transparantie bewaakt en behartigt tijdens de voorbereiding van wetgeving (inclusief consultatie) en tijdens de parlementaire behandeling? *

b. Bestaan er mogelijkheden tot volksinitiatieven? *

9. Welke rol speelt *ICT* in het wetgevingsproces en hoe worden de mogelijkheden daarvan *benut*?

a. In Nederland wordt ter ondersteuning van het proces een IT-wetgevingseditor en voortgangsprogramma ontwikkeld. Hoever is men daarmee in de geselecteerde landen? Welke vormen van ICT-ondersteuning kennen we in die landen?

b. Hoe worden de mogelijkheden die er zijn benut? *

10. Welke *overige oplossingen*, die niet zijn vervat onder de thema's, maar toch zijn opgevallen tijdens het onderzoek, zijn er gevonden om efficiency van het wetgevingsproces te verhogen? *

Het onderzoek

Samengevat hebben we in het onderzoek vier relevante (sub)thema's onderzocht, te weten

a. procedurestappen en doorlooptijden: inclusief politieke prioritering, planning, regelgevingsbudgetten en types wetgeving;
b. fases en betrokkenen: interdepartementale samenwerking, parlement, uitvoerende diensten en derden, coherentie;
c. transparantie: in verschillende fases, de rol van ICT hierin, burgerinitiatieven;
d. ICT: de rol hiervan in het wetgevingsproces in het algemeen.

Getrapte onderzoeksmethode

Aan de hand van deze vier elementen voerden we een quick scan uit voor twaalf landen, op zoek naar interessante landen om te vergelijken. De quick scan studie gaf inzicht in verschillende kenmerken en discussies die raakten aan de efficiency van wetgevingsprocessen in verschillende EU-lidstaten. De quick scan resulteerde in een selectie van drie landen die zich leenden voor gedetailleerder onderzoek. De gekozen landen zijn Finland, Slovenië en het Verenigd Koninkrijk, omdat zij op bovenstaande vier (sub)thema's het meest interessant waren.

Deze landen zijn in het tweede gedeelte van het onderzoek nader onderzocht en aan de hand van literatuuronderzoek en interviews met behulp van een gestandaardiseerde vragenlijst nader onderzocht. Dat leverde de volgende uitkomsten en observaties op.

Uitkomsten en observaties

Als we het Nederlandse wetgevingsproces spiegelen aan dat van andere processen in verschillende Europese landen, dan springen er een aantal elementen uit die wellicht als bron van inspiratie kunnen dienen.

De eerste observatie is dat als we de algemene efficiency van de Nederlandse wetgevingsprocedure in termen van tempo en duur van het proces waarmee formele wetten tot stand komen vergelijken met dat van andere Europese landen, de sombere perceptie van een traag en omslachtig wetgevingsproces niet echt wordt bevestigd. In Finland duurt het proces twee tot drie jaar, in het Verenigd Koninkrijk gemiddeld twee. Alleen Slovenië onderscheidt zich, maar de duur van het wetgevingsproces is daar zo kort (en kan door middel van speciale procedures in veel gevallen zelfs extreem kort zijn) dat het de vraag oproept of in Nederland de prijs die hiervoor betaald zou worden in termen van democratische verantwoording niet *te* hoog zou zijn.

Ten tweede kan worden opgemerkt dat hoewel Nederland de afgelopen decennia veel moeite heeft gedaan om het wetgevingsproces te versnellen – overigens met merkbaar resultaat: de gemiddelde duur van de parlementaire fase is met twee tot drie maanden verkort – de coördinatie en onderhandelingen in aanloop naar de parlementaire fase nog steeds relatief veel tijd kosten. Als de behandeltijd van wetsvoorstellen omlaag moet, lijkt het daarom mogelijk vooral in de aanloopfase tijd te winnen. In tegenstelling tot andere rechtsstelsels in deze studie maakt Nederland geen gebruik van formele systemen van politieke prioritering, planning en

geformaliseerde en strikte systemen van regelgevingbudgetten. De prioritering en planningssystematiek lijken in landen als het Verenigd Koninkrijk de drijvende kracht achter het versnellen van het wetgevingsproces. Dit maakt hen (in theorie) interessant voor de Nederlandse wetgeving. Aan de andere kant moeten we niet vergeten dat het plannen en prioriteren geen op zichzelf staande middelen zijn: zij zijn doorgaans het resultaat van de kenmerken van een heel wetgevingsproces. Veelal zijn ze het bijproduct van een valbijlprocedure. Dat betekent niet dat ze nooit als losstaande mechanismen kunnen functioneren, maar simpelweg dat ze niet primair in het leven zijn geroepen als zelfstandige efficiency-methoden. Het plannen en prioriteren van wetsvoorstellen in andere rechtssystemen geeft naar ons idee in ieder geval stof tot nadenken.

In Nederland werd enige tijd geleden nagedacht over het invoeren van een valbijlprocedure. De heersende opvatting was echter dat de valbijlprocedure niet direct zou hoeven leiden tot een minder lang wetgevingsproces.[122] Volgens een handboek willen voorstellen daartoe nog wel eens aan de politieke aard van het wetgevingsproces voorbij gaan, terwijl het politieke proces altijd gekarakteriseerd zal zijn door een zekere mate van onvoorspelbaarheid.[123] De vraag is of hierin nog wel kan worden volhard, nu politieke prioritering en planning duidelijk een rol spelen in alle drie de landen die in deze studie zijn onderzocht. Het zal echter niet makkelijk zijn de heersende opvatting in Nederland op dit punt te veranderen.

Ten derde kan worden opgemerkt dat Nederland, in tegenstelling tot het Verenigd Koninkrijk, Slovenië en tot op zekere hoogte Finland, een formele versnelde wetgevingsprocedure mist. Nu kan worden gesteld dat hieraan geen dringende behoefte bestaat. Wetsvoorstellen kunnen snel worden behandeld als dat nodig is. Soms worden kleine mazen in de wet gebruikt om het proces te versnellen. In 2002 stelde de Minister van Justitie een zelfstandige algemene maatregel van bestuur vast en legde de Tweede Kamer tegelijkertijd een identiek wetsvoorstel voor. De algemene maatregel van bestuur was een tussenoplossing totdat het wetsvoorstel kracht van wet zou verkrijgen. Aan de andere kant kan worden betoogd dat het Nederlandse wetgevingsproces een 'one-size-fits-all' aanpak kent die niet altijd bevorderlijk en efficiënt uitpakt. Wij denken dan ook dat versnelde en bijzondere procedures (zoals voor financiële wetgeving of de implementatie/omzetting van Europese wetgeving) een bron van inspiratie vormen voor de Nederlandse wetgever.

Het ontlenen van inspiratie van andere rechtsstelsels op het vlak van transparantie vraagt om inzicht in de huidige Nederlandse situatie. Volgens de *E-government Survey Rankings 2012* van de Verenigde Naties voert de Republiek Korea de wereldranglijst aan (0,9283) gevolgd door Nederland (0,9125), het Verenigd Koninkrijk (0,8960) en Denemarken (0,8889), op de voet gevolgd door de Verenigde Staten, Canada, Frankrijk, Noorwegen, Singapore en Zweden. Binnen Europa heeft

---

[122] Vgl. Jan van Schagen, 'The principle of Discontinuity and the Efficiency of the Legislative Process', *The Journal of Legislative Studies* 3 (1997), pp. 115-125.

[123] P.P.T. Bovend'Eert en H.R.B.M. Kummeling, *Het Nederlandse parlement*, Kluwer, Deventer, 2010, p. 208.

Nederland substantiële vooruitgang geboekt, resulterend in de toppositie.[124] Aan de andere kant wijst deze studie uit dat het in Nederland, ondanks het kennelijk relatief transparante systeem, in vergelijking met andere landen moeilijk is voor niet direct betrokkenen een wetsvoorstel te volgen en dat met name de departementale voorbereiding helemaal niet zo transparant is. De betrokkenheid van belanghebbenden en het publiek is meer op basis van uitnodiging dan op eigen initiatief. Aan de andere kant werd in mei 2006 een vorm van burgerinitiatief geïntroduceerd, in die zin dat (met inachtneming van bepaalde restricties) 40.000 burgers kunnen pogen een bepaald onderwerp in het parlement geagendeerd te krijgen.

Een vierde inspirerende observatie kan daarom zijn dat de transparantie van het wetgevingsproces, zo nodig met gebruik van ICT, verbeterd kan worden. In Slovenië en Finland lijkt het gebruik van ICT in het wetgevingsproces heel gewoon te zijn, terwijl ICT in het Verenigd Koninkrijk en Nederland weliswaar als hulpmiddel wordt gebruikt, maar niet als middel om het wetgevingsproces te innoveren.

Andere rechtsstelsels hebben, ten vijfde, ICT ook meer in het algemeen gebruikt als aangrijpingspunt voor verandering en innovatie van het wetgevingsproces. Zo wordt in Slovenië en Finland ICT niet alleen gebruikt als ondersteunende techniek, maar als *time-management tool*. Doordat alle betrokkenen zijn verbonden met een systeem dat het mogelijk maakt de voortgang van een wetsontwerp of wetsvoorstel te monitoren, is het gemakkelijker om de bottlenecks te vinden, deadlines te hanteren en verantwoordelijkheden vast te stellen. ICT heeft ook de verwachtingen ten aanzien van transparantie van het wetgevingsproces beïnvloed. De mogelijkheden van ICT hebben tot discussies geleid over het openen van het wetgevingsproces op manieren die voorheen niet voor te stellen waren. Het deed ook vragen oprijzen als het *format* van amendementen en de toegankelijkheid en leesbaarheid van wetsteksten en de noodzaak om burgers te voorzien van samenvattingen van gecompliceerde tekstgedeelten. De moeite waard om te overwegen voor de Nederlandse wetgever, menen wij.

Tenslotte lijkt een rode draad (en tevens inspiratiebron) in deze studie een ontwikkeling te zijn die de 'groeiende assertiviteit' van parlementen wordt genoemd. In veel moderne Europese parlementen lijkt een trend waarneembaar waarin een parlement niet langer genoegen neemt met indirecte consultatie (via de regering) maar meer en meer geneigd is zich rechtstreeks te informeren door middel van bewijs- of hoorzittingen. Dit wordt nog versterkt door de neiging om meer gewicht toe te kennen aan de wetgevende taak en bijvoorbeeld een 'working parliament' te worden. Deze trend lijkt vooralsnog geen voet aan de grond te krijgen in het Nederlandse parlement, maar is volgens ons wel van belang voor Nederland.
Het Nederlandse parlement heeft onlangs een proces van zelfreflectie doorgemaakt, dat duidelijk niet heeft geleid tot fundamentele wijzigingen in de richting van een dergelijk 'working parliament' met een grotere rol voor parlementaire commissies. Verschillende staatsrechtbeoefenaren betogen dat het parlement zo beter af zou

---

[124] Verenigde Naties, *E-Government Survey 2012. E-Government for the People*, United Nations, New York, 2012, pp. 4, 29.

zijn.[125] Zelfs als een of twee landenstudies in dit onderzoek bevestigen dat dit inderdaad waar zou kunnen zijn met betrekking tot de wetgevende taak, blijft dit principieel een aangelegenheid van het parlement zelf om te beslissen. Het parlement introduceerde echter wel een aantal nieuwe elementen, zoals het opstellen van een eigen jaarlijkse onderzoeksagenda. Wellicht zouden deze kunnen worden uitgebouwd teneinde de positie van het parlement in het wetgevingsproces te verstevigen.

In de inleiding van dit onderzoek werd gerefereerd aan een rapport uit 2010 van de Raad voor het openbaar bestuur over vertrouwen in democratie. Het rapport benadrukte de noodzaak voor verticaal georganiseerde politieke instituties om op nieuwe manieren met de burger in contact te treden. Dit onderzoek laat zien dat op het gebied van wetgeving in alle drie de onderzochte landen reeds forse stappen zijn gezet in deze richting, die met recht kunnen fungeren als bron van inspiratie om de efficiency van het Nederlandse wetgevingsproces verder te versterken.

---

[125] P.P.T. Bovend'Eert en J.L.W. Broeksteeg, 'Vertrouwen in het parlement? Kanttekeningen bij een parlementaire zelfreflectie', *Tijdschrift voor Constitutioneel recht*, nr. 1 (januari 2010), pp. 24-50.

Appendix IV English summary

1. Introduction

Under the influence of various factors the legislative process in many EU jurisdictions has come under increasing pressure in recent years. In our complex societies a significant degree of state intervention takes place in the form of legislation. In combination with the perceived need to quickly adapt to changing circumstances, while guaranteeing the necessary high quality of the process (which runs certain risks when the pace of the legislative process increases), this has formed an incentive to look critically at our legislative procedure. Additional factors, including the shorter life-cycle of legislation, improved technical possibilities and the crucial role of the media in the political and societal debate, brought the following questions even more urgently to the fore: can the legislative process be accelerated, and perhaps even more importantly: can it be improved?

One other impetus for these questions to arise relates to what a report by the Dutch Council for Public Administration on trust in democracy (2010) has called the horizontalized society.[126] In a recent speech that was inspired by this report, chairman Jacques Wallage of the Council put it this way: 'In a society where citizens do not lean anymore on representative democracy alone, but in essence want to represent themselves, it is not easy to bridge the gap between that horizontal world of internet, media and public opinion on one side and the vertical world of the state, the city, the judiciary on the other.'[127] The legislature could well be added to this list of vertical worlds. One of the major changes the Council for Public Administration advocated in order to bridge the gap between citizens and the constitutional and political system was to create more room for the citizen in the process of policy making: 'In essence that means that the process of policymaking is as important as the product.'[128] In the framework of this study the process of policy making might well be substituted by legislative process.

- In the Netherlands, since January 2011 a taskforce for faster legislation has been active within the framework of the Interdepartmental Commission for Constitutional Affairs with repect to Legislative Policy (ICCW), as a result of the policy aims and objectives of the current caretaker government Rutte. This taskforce looks at the question which measures have been taken and are currently being taken to accelerate the legislative process (and how consistent these measures are), and develops proposals for further measures concerning both the internal and external phases of the procedure with respect to process and support. The present study was commissioned by the WODC (the research centre of the Dutch Ministry of Security and Justice) at the request of the Section of Legislative Quality of the Ministry of Security &

---

[126] Raad voor het openbaar bestuur, *Vertrouwen op democratie* (februari 2010), p. 36.
[127] http://www.rfv.nl/default.aspx?skin=Rob&inc=detail&nieuws_id=1158&type=actueel, p. 1.
[128] Ibid., p. 4.

Justice as an input for the Interdepartmental Commission on Legislation (ICCW).

The main research question of the current study is then whether the efficiency of the Dutch legislative procedure for parliamentary acts indeed constitutes a problem, in particular if we compare it to the achievements of legislative processes in several other European countries and, if that turns out to be the case, whether lessons can be learned from those legislative processes and practices abroad with respect to pace and duration of the legislative process, phases and actors, transparency and the role of ICT.

Efficiency is obviously a feature which is difficult to study if left unoperationalised.[129] One thing that can be noted though, is that efficiency has to do with 'optimalisation'. That is also the angle through which the efficiency of the legislative procedure for parliamentary acts will be looked at in this study; 'can it be improved?'
This question is still difficult to answer, however, in so far as a criterion is missing by which we can assess the achievements of the legislative procedure for parliamentary acts, even if we compare the Dutch legislative procedure and processes to experiences abroad. What constitutes the optimal mix of speed and quality (i.e. the highest possible degree of efficiency) is in fact impossible to determine.

However, what we are able to determine is:
a. how the achievements of the legislative processes in the Netherlands and other Member States of the European Union compares[130] with respect to pace and duration, phases and actors, transparency and the use of ICT, and
b. how the achievements of the process, according to those involved in the process, are being influenced by the procedure itself, and the organization of the process which derives from that.

Against this background we looked at the legislative procedure for parliamentary acts in the Netherlands and in other countries – in particular the phase of the preparation and adoption of parliamentary acts – and focused on the following relevant (sub)themes:

> a. pace and duration: including political prioritization, planning, regulatory budgets and types of legislation;
> b. phases and actors: interdepartmental cooperation, Parliament, executive agencies and third parties, coherence;

---

[129] See for a (partial) attempt at operationalization: Koen J. Muylle, 'Improving the Effectiveness of Parliamentary Legislative Procedures', *Statute Law Review* 24 (2003), pp. 169-186, at pp. 170-173.
[130] In this study we make use of the so-called 'functional method' of comparative legal research, which means that we will not stop at the question which procedures (and practices and processes which flow from that) are followed in the countries to be compared, but that we also look at the goals and functions of those procedures, in order to arrive at a form of objective comparability and to be able to draw conclusions on that ground. See Zie Konrad Zweigert and Hein Kötz, Introduction to comparative law, Oxford, Clarendon Press, 1998.

c. transparency: in the different phases, the role of ICT in this, citizens' initiatives;

d. ICT: its role in the legislative process in general.

2. Outcome and conclusions

Taking these four elements as a lens to search for interesting countries for comparison, we started with a quick scan study of 12 jurisdictions. The quick scan study offered an insight in different features and discussions related to the efficiency of legislative processes in a range of EU member states and provided a stepping stone for the selection of three countries for more detailed case studies. The countries chosen were Finland, Slovenia and the UK because they rated best on the four elements we thought interesting and tell-tale from an efficiency point of view. These countries were researched on the basis of a detailed survey (see appendix II) that served as a basis for interviews with key persons in these countries.

Are there any lessons to be learned from Finland, Slovenia and the UK for the Dutch legislature? Arguably this is in itself a more or less political question that we – as researchers – cannot answer. If however we mirror the Dutch legislative process into that of other legislatures in various European countries, some elements – that may serve as a source of inspiration - stand out.

The first observation then, is, that if we look at the overall efficiency of the Dutch legislative procedure in terms of the pace and duration of the process for parliamentary acts, and compare that to the achievements of legislative processes in other European countries, the somewhat gloomy perception of a lengthy and cumbersome legislative process cannot really be substantiated. In Finland the process takes between two and three years, in the UK on average two. Only Slovenia, therefore, stands out. Yet, the length of the legislative process there is so short, and with the help of special procedures in many cases even extremely short, that this raises the question whether in the Netherlands the price paid for it in terms of democratic accountability would not be too high.

Secondly, although the Netherlands have put a lot of effort into streamlining and speeding up the legislative process over the last decades, with tangible results (e.g. the mean average of the parliamentary process was cut down to two to three months) still a lot of time is consumed by coordination and negotiation in the run up to the parliamentary part of the procedure. If the Netherlands want to cut down on handling time, this part of the process may be fruit bearing. Unlike other jurisdictions in this study the Netherlands do not use formalized systems of political prioritization, planning, and formalized and strict systems of regulatory budgets. The prioritization and planning systems in countries like the UK seem to be driving forces speeding up the process. This makes them, in theory, interesting for the Dutch legislature. On the other hand we must not forget that the planning and prioritization systems we found in the research are not stand-alone features of a system. For the most part they are a result of the typical way the whole legislative process functions. Mostly they are the

by-product of the discontinuity principle. This does not mean that they cannot be used as stand-alone mechanisms, but simply that they were not primarily conceived of as autonomous efficiency methods. The planning and prioritization methods in other jurisdictions certainly provide food for thought for the Dutch legislature, we feel.

The Netherlands did give the introduction of the discontinuity principle some thought a while ago. It was felt however that discontinuity would not necessarily reduce the length of the legislative process.[131] According to one handbook, such proposals tend to ignore the fact that legislation is an inherently political process, which will always be characterized by a certain unpredictability.[132] The question is whether this can fully be maintained, as political prioritization and planning clearly play a role in all of the three countries looked at in this study. Still, it may not prove easy to change the prevailing culture in the Netherlands in this respect.

Thirdly, in contrast to the UK and Slovenia (and more or less Finland) the Dutch legislative process lacks a formalized fast track procedure. One could argue there is no urgent need for that either. Bills can be dealt with very quickly if need be. Sometimes small loopholes in the system are used to speed up the process. In 2002 the Minister of Justice enacted an Order in Council as a sort of a Law Decree and tabled an identical Bill at the same time. The Order in Council was a sort of interim remedy until the moment the Bill became a statute. On the other hand, one can argue, the Dutch legislative process does use a one-size-fits-all approach that is not always helpful and efficient. We think therefore that fast track procedures and dedicated procedures (like dedicated procedures for finance Bills, or a dedicated procedure for the implementation and/or transposition of EU law) can be inspirational for the Dutch legislature.

Drawing inspiration from other jurisdictions on the plane of transparency might be perceived as more or less begging the question from a Dutch point of view. According to the 2012 United Nations E-government Survey rankings, the Republic of Korea is the world leader (0.9283) followed by the Netherlands (0.9125), the United Kingdom (0.8960) and Denmark (0.8889), with the United States, Canada, France, Norway, Singapore and Sweden close behind. Within Europe, the Netherlands made substantial gains, advancing to the top position.[133] On the other hand the current study shows that, although the Netherlands do have a transparent system, compared to other countries, during the legislative process it is hard for those not directly involved as actors to keep track of a Bill and secondly that the phase of the departmental preparation is not all that transparent in itself. The engagement of stakeholders, interested parties and the general public is 'on invitation' rather than open to their own initiatives. On the other hand, in May 2006 a form of citizens' initiative was introduced, in the sense that – under certain restrictions – 40,000

---

[131] Cf. Jan van Schagen, 'The Principle of Discontinuity and the Efficiency of the Legislative Process', *The Journal of Legislative Studies* 3 (1997), pp. 115-125.

[132] P.P.T. Bovend'Eert and H.R.B.M. Kummeling, Het Nederlandse parlement, Kluwer, Deventer, 2010, p. 208.

[133] United Nations, *E-Government Survey 2012. E-Government for the People*, United Nations, New York, 2012, pp. 4, 29.

people can make an attempt to have a particular subject-matter tabled in Parliament.

A fourth inspirational observation can therefore be that the transparency of the legislative process, with or without the help of ICT, can be improved. In Slovenia and Finland ICT appears to be more or less engrained in the legislative process, whereas in the UK and in the Netherlands it is more or less used as a tool, but not as a means to innovate the legislative process.

Other jurisdictions have – as a fifth observation – used ICT as drivers for change and innovation of the legislative process. The use of ICT in Slovenia and Finland is not only used as a facilitating technique but it is used as a time-management tool, indeed as a disciplining mechanism, as well. Because all the actors are connected to a system that allows to monitor the progress of a proposal/Bill it is easier to pinpoint and address bottlenecks, to impose and uphold deadlines and define responsibilities. ICT has also affected expectations as regards the transparency of the legislative process. The possibilities of ICT have prompted discussions on opening up the legislative process in ways that were unfathomable before. It has raised questions as to the format of amendments and accessibility and readability of legislative texts and the need to provide citizens' summaries of complicated legal texts. Worthwhile to consider maybe for the Dutch legislature, we feel.

Finally, a common thread in the study (and a possible source of inspiration as such) appears to be a development which has been labeled the 'growing assertiveness' of parliaments. In a lot of modern European parliaments a trend seems to have emerged whereby parliament is no longer satisfied with second-hand consultation (via the government) but seems to be more and more inclined to consult themselves by way of organizing evidence sessions or a hearing. This is complemented with a tendency to take a more hands-on approach to legislation and become a 'working' parliament. What is interesting to see is that this growing assertiveness does not seem to compromise the overall efficiency of the legislative process in the countries involved in this study. The time devoted to parliamentary debate and scrutiny on legislation rathermore seems to have decreased over the last decades. If one wants to save time in the legislative process as a whole, one could better look for improvements in the departmental preparation of Bills. Parliaments did cut back on handling time over the last decades and increased their grip on consultation. This suggests some level of redundancy of consultation if both Parliament and government consult on the same issue. On the other hand the study shows that the coordination between departments and institutions during the departmental preparation stage does show some promise of increased efficiency in the countries under study.

This trend of growing parliamentary assertiveness does not seem to have taken a firm foothold within the Dutch Parliament as yet (if we compare it to other countries) but it is relevant for the Netherlands we believe.

Parliament here has itself just finished a process of self-reflection, which has clearly not led to fundamental changes leading towards a 'working parliament' in the sense of an increased role for parliamentary committees. Several constitutional lawyers

insist that Parliament would be better off that way.[134] Even if one or two country studies in this report confirm that this might indeed be true purely from the angle of the legislative task (and not for parliamentary business as a whole) this does not mean that the Dutch Parliament for that very reason has to follow suit. It remains as a matter of principle up to Parliament itself to decide. However, parliament did introduce certain new elements such as the formulation of a research agenda of its own each year, which could perhaps be elaborated a bit further in order to strengthen its position in the legislative process.

A 2010 report by the Dutch Council for Public Administration reports on trust in democracy. The report stresses the need for the still vertically organized political institutions to connect in new ways to the citizens. The present study reveals that in the field of legislation in all three countries studied significant steps have already been taken in this direction, which could indeed well act as a source of inspiration for enhancing the efficiency of the Dutch legislative process.

---

[134] P.P.T. Bovend'Eert and J.L.W. Broeksteeg, 'Vertrouwen in het parlement? Kanttekeningen bij een parlementaire zelfreflectie', *Tijdschrift voor Constitutioneel recht*, nr. 1 (January 2010), pp. 24-50.