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Post-Legislative Scrutiny in Europe

How the oversight on implementation of legislation by
parliaments in Europe is getting stronger

Franklin De Vrieze

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London, 2020

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The French National Assembly in Paris
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Acronyms

CEC	Committee for evaluation and control (France)
CSO	Civil Society Organisation
DFID	Department for International Development (UK)
ECPR	European Consortium for Political Research
EU	European Union
FCO	Foreign and Commonwealth Office (UK)
LOLF	Loi Organique relative aux Lois de Finances (the budget law in France)
M & E	Monitoring and Evaluation
MEC	Evaluation and Control Mission (France)
MP	Member of Parliament
NKR	National Regulatory Reform Council (Germany)
OECD	Organisation for Economic Cooperation and Development
OTA	Office of Technology Assessment (Germany)
PCA	Parliamentary Control of the Administration (Switzerland)
PLS	Post-Legislative Scrutiny
RoP	Rules of Procedure
SEVAL	Swiss Evaluation Society
UK	United Kingdom of Great Britain and Northern Ireland
WFD	Westminster Foundation for Democracy

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Summary

As parliaments start to pay more attention to their responsibility to monitor the extent to which the laws they have passed are implemented as intended and have the expected impact, Post-Legislative Scrutiny (PLS) is emerging as a new dimension within the oversight role of parliament.

This paper analyses emerging structures, procedures and methodologies shaping parliaments' ability to conduct PLS. The practices in seven national parliaments in Europe -- Belgium, Germany, Italy, France, Sweden, Switzerland and the United Kingdom -- are analysed against four different categories of parliamentary approach to PLS, as they relate to the two main axes of analysis: the extent of parliamentary procedures and structures on PLS and the extent of parliamentary outputs on PLS. Parliaments as *passive scrutinisers* have few parliamentary structures, capacity and procedures for PLS analysis, limit their role solely to the assessment of the ex-post scrutiny performed by the government and external agencies and have few of their own parliamentary outputs on PLS in terms of their own reports and follow-up. Parliaments as *informal scrutinisers* still have few parliamentary structures and procedures but are stronger in terms of their own parliamentary outputs on PLS. Parliaments as *formal scrutinisers* have more developed structures and procedures on PLS but are still weak in terms of follow up. Parliaments as *independent scrutinisers* are strong in terms of structures and procedures as well as in terms of outputs and follow up. Sometimes, the practise of parliaments may combine characteristics of different categories.

The analysis of the case-studies indicates that the federal parliament of Belgium can be considered a passive scrutiniser in PLS. The federal parliament of Germany and the parliament of Italy can be considered informal scrutinisers. The national parliaments of Sweden and France be considered formal scrutinisers in PLS. The Westminster parliament in the UK and the federal parliament of Switzerland can be considered independent scrutinisers in PLS.

Finally, the paper highlights how different parliaments put more emphasis on one or the other of the two dimensions of PLS: (1) to evaluate the technical entrance into force and the enactment of a piece of legislation; (2) to evaluate its relationship with intended policy outcomes and the impact. To the extent that parliaments seek to carry out both dimensions, PLS facilitates continuously improvement of the law itself and policy implementation. PLS thus contributes to increased governance effectiveness and accountability.

1. Introduction

One of the roles of parliament is to create laws that meet the needs of the country's citizens. This is expressed through their choice of government and consolidated into law through a series of parliamentary proceedings that seek to review those needs and have them responded to appropriately. This represents the cornerstone of a parliament's democratic place in most countries. (UNDP & IPU, 2017).

However, it is also a parliament's role to evaluate whether the laws it has passed achieve their intended outcome(s). Post-Legislative Scrutiny (PLS) refers to the moment in which a parliament applies itself to this question: whether the laws of a country are producing expected outcomes, and if not, why not. (De Vrieze, F. & Hasson, V., 2017, p. 11).

As Lord Philip Norton recently stated: *"Post-Legislative Scrutiny may be seen as a public good. It is designed to ensure that measures of public policy deliver on what the representatives of the people voted for. It means assessing the consequences against the purposes identified when the measures were introduced."* (Norton, P., 2019).

Despite its importance for the respect of the rule of law, it is not uncommon that the process of reviewing the implementation of legislation be overlooked. In several countries, there is the risk that laws are voted for but not applied, that associated secondary legislation is not adopted, or that there is insufficient information to inform us on the actual state of a law's implementation and its effects. (De Vrieze, F., 2019a).

Implementation is a complex matter depending on the mobilisation of mechanisms, funds and different actors. Implementation does not happen automatically, and several incidents can affect its course including changes in facts on the ground, diversion of resources, deflection of goals, resistance from stakeholders and changes in the legal framework of related policy fields. (De Vrieze, F., 2018b, p. 4)

1.1. Rationale for Post-Legislative Scrutiny

The act of evaluating laws that a parliament has passed is known as PLS. The UK Law Commission outlined four main reasons for having more systematic PLS (The Law Commission, 2006): to see whether legislation is working out in practice, as intended; to contribute to better regulation (secondary legislation); to improve the focus on implementation and delivery of policy aims; to identify and disseminate good practise so that lessons may be drawn from the successes and failures revealed by this scrutiny work. In addition, one can mention the need to act preventively regarding potential adverse effects of new legislation on fundamental rights, as well as, for instance, on the environment or on economic and social welfare. (Fitsilis, F. & De Vrieze, F., 2019).

By reviewing government action or inaction, and by amending legislation of various kinds, a parliament takes measure of the extent to which the laws of a country are fit for purpose, as well as the extent to which a government is managing the effective implementation of its policies and abiding by statutory obligations. However, this link is not always formally recognised within the parliamentary system, and relevant information is not always captured, directed and responded to on that basis. (Norton, P., 2018).



Lord Norton of Louth
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The act of carrying out PLS can therefore be justified as a stand-alone activity that enables a parliament to self-monitor and evaluate, as well as reflect on the merits of its own democratic output and internal technical ability. Various parliaments, a variety of which are mentioned in this comparative study, are beginning to institutionalise PLS as a separate mechanism within parliament. (Norton, P., 2019).

There are two types of PLS. PLS can refer to a broad legislative review, the purpose of which is to evaluate whether and to what extent a piece of legislation has achieved its intended purpose and what is its impact. It can also refer to a narrower evaluation of how a piece of legislation is working in practice. This latter variant is more focused and a more purely legal and technical review.

In consequence, the act of PLS holds two distinct functions: (1) a monitoring function, as the application of legislation and especially the adoption of the necessary secondary legislation is assessed by parliament at identified moments (2) an evaluation function, as parliaments seek to ensure the normative aims of policies are reflected in the results and effects of legislation. (Kelly, R., & Everett, M., 2013).

1.2. Post-Legislative Scrutiny as a legislative enabler

The growing impetus for PLS coincides with the rationalisation of the law-making process, and a growing demand for the quality of legislation to be reviewed as well as procedures that can support parliaments to manage contemporary 'legislative complexity' (Heaton, R., 2013). Legislative evaluation is an effort to support this by institutionalising and systematising a moment of analysis and assessment focusing specifically on improving the quality of legislation passed. Such an act should improve a parliament's understanding of the causal relations between a law and its effects as the accuracy of assumptions underlying legislation are tested after its enactment. (Karpen, U. (2009, p. 219). PLS as a form of legislative evaluation is therefore a learning process that both contributes to a parliament's knowledge of the impacts of legislation but also its know-how in ensuring legislation meets the needs of relevant stakeholders. By implication, PLS may reduce ambiguity and distrust and allows the legislator to learn by doing. (De Vrieze, F., 2019b).

An overall justification for PLS can be expressed in terms of "a cyclical and iterative approach to governance". (Murphy, J. & Mishura, S., 2019, p. 23-24). That is, by following its implementation once parliament passes a law, it can determine whether government has properly and effectively carried out the intention of the law makers, and if some unintended consequences have arisen in implementation that mean the law should be adjusted, or in the case of more generalised implementation issues, that such consequences should be taken into account in consideration of other prospective legislation, as illustrated in the following figure.

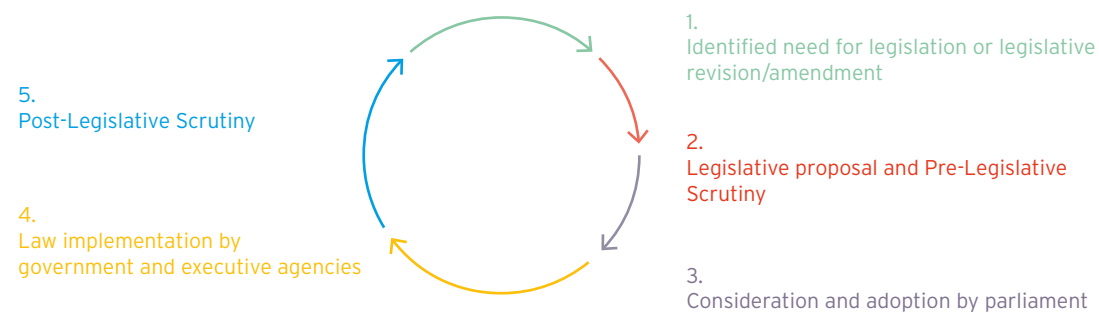


Figure 1: Post-Legislative Scrutiny as part of an end-to-end legislative process

The UK House of Lords' Constitution Committee, in its 2004 report, recommended that Post-Legislative Scrutiny should be a routine feature of parliamentary scrutiny. The Committee took a holistic view of the legislative process, encompassing not only the passage of a bill after introduction, but also pre and post-legislative scrutiny. (Norton, P, 2019).

The adoption of such an 'end-to-end' or 'full cycle' approach to the legislative process is further developed in the area of parliament and its role in the national budget process. (Murphy, J., 2019). It is by now quite generally understood that parliament should ideally have a role throughout the budget cycle; engaging the public in the pre-budget discussions phase, considering and adopting the budget, monitoring its implementation, and finally in conjunction with the supreme audit institution, auditing and evaluating the budget execution. PLS can be seen as a further extension of this responsabilisation of parliament at key stages in governance processes. (Murphy, J. & Mishura, S., 2019, p. 24)

1.3. Post-Legislative Scrutiny as a form of executive oversight

While PLS can take the form of a separate mechanism within parliament, the process of evaluation is also the by-product of a parliament carrying out effective executive oversight and effective law-making. By reviewing government action or inaction, and by amending legislation of various kinds, a parliament takes measure of the extent to which the laws of a country are fit for purpose as well as the extent to which a government is managing the effective implementation of its policies and abiding by statutory obligations.

However, the act of carrying out PLS on a primary basis is also one that extends beyond executive oversight, as an internal Monitoring & Evaluation system by which a parliament is also able to consider and reflect on the merits of its own democratic output and internal technical ability. Seen in this way, PLS also provides an approach that a parliament may take to its legislative role as one that is not only the maker of laws but also a country's legislative watchdog.

As there are different ways to locate PLS within the framework of parliament roles, one possible visualisation, reproduced below, locates PLS as part of oversight, but linking back into the legislative process. (Murphy, J. & Mishura, S., 2019, p. 29)

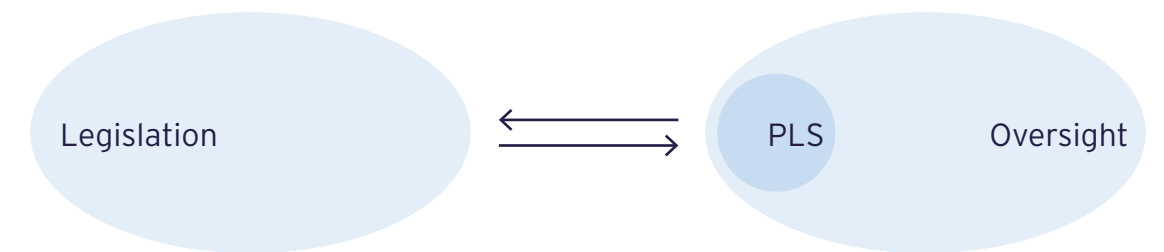


Figure 2: Situating Post-Legislative Scrutiny in relation to Legislation and Oversight

1.4. Limitations of Post-Legislative Scrutiny

The UK Law Commission made three cautionary comments about PLS, which highlight its limitations:

1. *Risk of replay of arguments:* PLS should concentrate on the outcomes of legislation. Unless self-discipline is exercised by the reviewing body, and those giving evidence to it, there is a danger of it degenerating into a mere replay of arguments advanced during the passage of the Bill. Reviews should be conducted in a constructive and future-oriented manner, with the aim of ensuring that errors are fully identified, and lessons are learnt. (De Vrieze, F. & Hasson, V., 2017, p. 13).
2. *Dependence on political will:* The evolution of a more systematic approach to PLS will depend on a combination of political will and political judgment. Parliament and government have a common interest in strengthening PLS, as it helps to provide clarity to policy and aims and helps to ensure that the considerable resources devoted to legislation are committed to good effect.
3. *Resource constraints:* PLS will place demands on resources and time available. Therefore, such evaluation procedures will be most justified if concerned with legislation of some significance, for example because they involve the state in substantial expenditure, or they have substantial social impact.

Evaluations of this kind carry a cost not only in time and expenditure, but because they typically depend upon the acquisition of information from outside government. Consultation with key stakeholders is generally necessary if relevant data is to be obtained and an accurate evaluation of effectiveness is to be made. In these circumstances, it is usually beyond the capacity of parliaments to conduct a systematic evaluation of *entire* legislative schemes. Nonetheless, the results of government evaluations can provide the basis upon which parliamentarians can question and hold to account those responsible for the policy and its implementation.

Some parliaments have entrusted sectorial oversight Committees to consider the operation of pieces of legislation. Other parliaments have created a special Committee on PLS. In any case, evaluations and evaluation reports aimed at contributing to accountability cannot be restricted to internal government use and must be placed in the public domain. (De Vrieze, F., 2019b). Finally, it is worth mentioning the importance of how the findings of PLS are used, either by introducing amendments to legislation, submitting parliamentary questions, introducing motions, sending a report to the Executive and requesting a response within a period of time, or as input for a position paper in preparation for a new law. (UK Cabinet Office, 2017).

2. Categorisation of parliaments regarding Post-Legislative Scrutiny

Parliaments in Europe undertake the challenge of PLS following different approaches and patterns. To explain how PLS progresses in parliament, the first contextual factor to be considered is the legal basis of this activity. On the one hand, in a minority of cases, PLS as a main task for parliament is based directly in the Constitution, such as in France, Sweden and Switzerland. In most cases, PLS in parliament finds a legal basis in the oversight role of parliament and its Rules of Procedure.

Apart from the legal basis, recent research at the LUISS Guido Carli University in Italy stipulates that the approach of PLS depends on four main variables. (Griglio, E. & Lupo, N., 2019).

- The first variable affects the parliament's internal organisation regarding PLS, i.e. the identification of the relevant (internal or external) units responsible for the preliminary fact-finding and analytical activity whose aim is to evaluate the effects of implementing a single piece of legislation or a selected public policy based on one or more laws. This variable shows two main options. One consists of engaging external independent institutions or agencies with specific knowledge and experience in the field of policy evaluation and impact assessment (for instance, in Germany). The alternative is establishing new administrative units in parliaments in order to develop an autonomous expertise on legislative impact assessments (for instance, in Italy and Switzerland).
- The second variable draws on the methods for identifying and selecting relevant pieces of legislation and/or policies to be scrutinised. The selection issue raises several alternative options. (De Vrieze, F., 2017, p. 12). The first affects the object of the scrutiny or evaluation, whether it is a single piece of legislation or all legislation relevant to a selected policy. The former hypothesis usually occurs when a review or sunset clause is set in the legislative act, tasking parliament to verify that the act is correctly implemented and that expected outcomes are fulfilled. The latter hypothesis is instead locating the object of PLS in the implementation of a selected policy through different acts. This approach is more consistent with the better regulation standards promoted by the OECD and by the EU. (Jancic, D. 2019, p. 137 - 158).
- The third variable identifies the scope of PLS, interpreted as a purely legal dimension or also comprising instances of impact assessment. In the latter case, different methodologies for evaluating the effectiveness and efficiency of the law may be applied. In the first instance, the review only covers the monitoring of law enactment. Its aim is to check whether the implied regulations or administrative instructions have been approved, whether all the legal provisions have been brought into force, and what judicial interpretations are provided by the courts. In the second instance, parliament's scrutiny comprises forms of ex-post policy evaluation and impact assessment.
- The fourth variable affects the outcomes of PLS, including its contribution to the legislative decision-making and its potential impact on the relationship of parliament with government. Broadly speaking, PLS unfolds through two different types of parliamentary tools: the fact-finding tools, aiming at seeking information, explanation and policy positions from the government, and the oversight tools directed at holding the government to account for the outcomes produced in the ex post stage.



Victoria Tower of Westminster Parliament in London
(c)House of Lords 2016, Roger Harris

Taking on board these four variables, this paper has selected seven national parliaments in Europe (Belgium, Germany, France, Italy, Sweden, Switzerland and the UK) with a view to analysing their capacity and structures in conducting PLS and the type of interaction with the government.

The parliaments of these countries have been selected based upon four criteria:

1. there exist relevant parliamentary practices in PLS for more than one decade;
2. there is enough written data and sources of information at hand;
3. they constitute the national parliament of a European country;
4. the elected national assembly is part of a bicameral parliamentary structure (except for Sweden).

We will analyse the functioning of these seven national parliaments through the typology of four categories of parliamentary approaches to PLS. For this typology, the relevant framework of Dr. Griglio has been considered. Comparing parliamentary practices in selected parliaments, Griglio identified three main parliamentary approaches to PLS: parliaments as passive, informal and formal scrutinisers. (Griglio, E., 2019, p. 118-136).

We have revisited and finetuned the framework and designed four categories of parliamentary approaches to PLS: passive scrutinisers, informal scrutinisers, formal scrutinisers and independent scrutinisers. These four categories are proposed because they relate to the two main axes of analysis: the extent of parliamentary procedures and structures on PLS and the extent of parliamentary outputs on PLS.

Parliaments as passive scrutinisers have few parliamentary structures, capacity and procedures for PLS analysis, and little of their own parliamentary outputs on PLS in terms of own reports and follow-up. Parliaments as informal scrutinisers still have few parliamentary structures and procedures but are stronger in terms of their own parliamentary outputs on PLS. Parliaments as formal scrutinisers have more developed structures and procedures on PLS but are still weak in terms of outputs and follow up. Parliaments as independent scrutinisers are strong in terms of structures and procedures as well as in terms of outputs and follow up.

The four categories are listed according to an incremental logic as to assess how much independence and capacity of judgement the parliament can express in the fulfilment of this function. The categorisation in four categories is clearer in terms of criteria and recognises better the complexity of parliamentary institutionalisation in the area of PLS.

It is worth mentioning that we are only looking at parliaments themselves, though most parliaments cooperate with other independent oversight institutions, sometimes called 'parliamentary officers' (in Westminster-type parliaments) or 'parliamentary agents' (such as the National Audit Office in Sweden) and these independent oversight institutions can produce a highly effective scrutiny, which is often of value for parliaments. (Murphy, J. & De Vrieze, F., forthcoming in 2020). However, the role of these independent oversight institutions in legislative scrutiny will not be covered in this paper.

The following are visualisation charts of the four categories along the two axes of analysis: the extent of parliamentary procedures and structures on PLS and the extent of parliamentary written outputs on PLS. The vertical axis refers to the parliamentary structures, from few to more structures and procedures. The horizontal axis refers to the parliamentary outputs, from little own parliamentary written outputs and follow up to more parliamentary outputs and follow up.

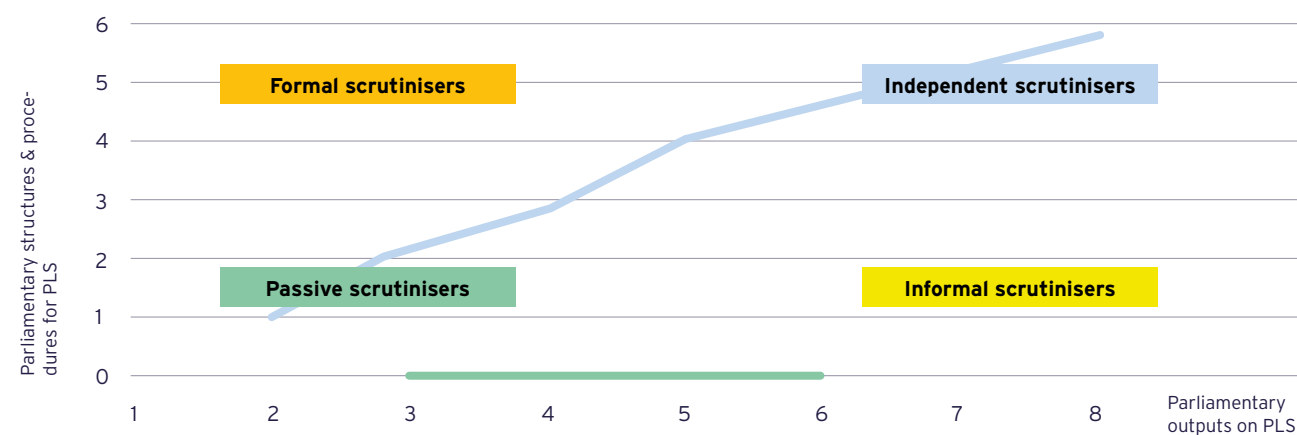


Figure 3: Visualization chart of the categorisation of parliamentary approaches to PLS

Parliamentary Procedures / Structures	Parliamentary Outputs on PLS	Category
Organised and institutionalised parliamentary structures, capacity and procedures for PLS analysis	Little own parliamentary outputs on PLS in terms of own reports and follow-up	Formal scrutinisers
Organised and institutionalised parliamentary structures, capacity and procedures for PLS analysis	More parliamentary outputs on PLS in terms of own parliamentary assessment reports, "procedimentalisation" of PLS reports and follow-up	Independent scrutinisers
Few parliamentary structures, capacity and procedures for PLS analysis	Little own parliamentary outputs on PLS in terms of own reports and follow-up	Passive scrutinisers
Few parliamentary structures, capacity and procedures for PLS analysis	More parliamentary outputs on PLS in terms of own parliamentary assessment reports, "procedimentalisation" of PLS reports and follow-up	Informal scrutinisers

Table 1: Overview table of the categorization of parliamentary approaches to PLS

Describing the four categories in further depth, the following characteristics can be identified. They are based on the indicators listed in the next figure.

2.1. Passive scrutinisers

In the 'basic' approach to PLS, parliaments limit their role to the assessment of the scrutiny conducted by either governmental bodies or external agencies. This 'passive' approach to PLS implies that the parliament does not directly engage in monitoring legislative implementation and in impact assessment on its own, as it relies on reports and evaluations produced by the government or independent agencies.

Since most countries lack a strong parliamentary tradition in respect of impact assessment, scrutinising external reports and evaluations is the easiest and most common way to engage in PLS. Due to the lack of parliamentary administrative capacity and procedures related to PLS, the PLS work is transparent in a limited way and not easily accessible to the public.

2.2. Informal scrutinisers

When parliaments decide to engage in a more proactive approach to PLS that goes beyond the mere assessment of the scrutiny activity of governmental bodies or external agencies, it requires assigning existing administrative parliamentary structures - such as research or evaluation units - to provide ex-post analysis of legislative implementation and impact assessment. The development of an internal scrutiny capacity offers parliaments autonomous resources in the fulfilment of the legislative scrutiny, additional to those offered by the government and other external structures.

Parliaments falling within this category are considered 'informal' scrutinisers insofar as the connection with the parliamentary procedures is non-systematic. This means that there are no identified or established criteria or triggers to select legislation for PLS review, but it is decided on an as-needed basis.

2.3. Formal scrutinisers

In this approach, the information gathering and analysis prior to PLS inquiries may not only be fulfilled by certain 'traditional' administrative structures - such as research and documentation units - but there is also the possibility to establish a newly dedicated PLS unit or legislative impact department, adding strength to the scrutiny capacity of parliament. PLS is thus vested in specific parliamentary administrative departments or units assigned to conduct PLS. In this approach there are specific procedures for identifying laws for PLS, and there is often an explicit legal basis to conduct PLS.

While formal scrutinisers engage both in formal monitoring of law enactment (legal dimension) and in substantial impact assessment, these two activities are often mixed and formal PLS (legal dimension) prevails over substantial impact assessment of legislation.

There is a limited follow-up to the PLS findings, and there are few, if any, formal procedures providing for a debate or voting on the report in committee or plenary. Often, there is no explicit requirement for the government to respond to the PLS conclusions of parliament, and the follow up with the government takes shape through a dialogue process. In the approach of formal scrutinisers, the PLS reports are accessible to the public.

2.4. Independent scrutinisers

In the most ‘advanced’ approach, parliaments address PLS in an independent and highly institutionalised manner. There are specific administrative structures and committees assigned to conduct PLS. Based on their own criteria, triggers and priorities, parliament and its committees decide independently which laws to select for PLS. Parliament has a more proactive approach in identifying sources of analysis. The PLS work is legally grounded, covering both legal and impact assessment.

The institutionalised PLS work results in specific PLS reports. Parliament puts in place a more organised follow-up to the PLS reports, including by requesting government response. The “procedimentalisation” of PLS reports is much stronger in independent scrutinisers, compared to formal scrutinisers. By “procedimentalisation”, I mean that PLS reports are supported by formal procedures providing a debate/voting of the report, for sure in committee, but potentially also in the plenary, thus granting maximum publicity to this activity.¹ Hence, in this category, PLS is fully transparent, the PLS reports are published online and thus accessible to the public.

To conclude this introduction, it is worth noting that Parliaments are not isolated actors in performing PLS. Parliament’s interaction with the government in PLS is of strategic importance.²

On the one hand, governments are co-actors of PLS. Parliaments may usually rely on them for information and data on legislative implementation. They are often bound to report on the effects of laws by explicit clauses included in legislation.³ Government or independent central authorities are preferred institutions for performing regulatory impact assessment. (Kouroutakis, A., 2017).

On the other hand, governments are often the addressees of the PLS by parliaments. The engagement of parliaments in the fulfilment of better regulation targets is driven by the standard scrutiny or oversight circuit aimed at making the executive accountable before the parliament. (Inter-Parliamentary Union, 2006).

Indicators for the categorisation of parliamentary approaches to PLS	
Passive scrutinisers	<ul style="list-style-type: none"> • Lack of parliamentary administrative capacity and procedures to conduct own PLS analysis. • Reliance on PLS information or reports from government or independent agencies, no own monitoring or impact assessment by parliament. • Parliament considers legal assessment only (no impact assessment). • Information on the PLS work is not easily accessible to the public.
Informal scrutinisers	<ul style="list-style-type: none"> • Ad hoc administrative parliamentary capacity for PLS activity, possibly through research units assigned with the additional task to conduct PLS. • Non-systematic connection with formal parliamentary procedures. • No identified or established criteria or triggers to select legislation for PLS review, but it is decided on an as-needed basis. • Parliament Committees may adopt conclusions or recommendations related to PLS.
Formal scrutinisers	<ul style="list-style-type: none"> • Vested in specific parliamentary administrative departments or units assigned to conduct PLS. • There are specific procedures for identifying laws for PLS. • Often there is an explicit legal basis to conduct PLS. • Formal PLS on the legal aspects of legislative enactment prevails over impact assessment. • Limited follow-up to the PLS findings and few procedures providing for a debate or voting on the report in committee or plenary. • There is no explicit requirement for the government to respond in writing to the PLS conclusions of parliament. • PLS reports are accessible to the public.
Independent scrutinisers	<ul style="list-style-type: none"> • There are specific administrative structures and committees assigned to conduct PLS. • Based on their own criteria, triggers and priorities, parliament and its committees decide independently which laws to select for PLS. • Parliament has a more proactive approach in identifying sources of analysis • The PLS work is legally grounded, covering both legal and impact assessment • The institutionalised PLS work results in specific PLS reports. • There is ‘procedimentalisation’ of reports, which means that parliament has put in place procedures for debating or adopting the PLS report and conclusions. • There is an established follow-up to the PLS reports, including by requesting a government response in writing. • PLS work is transparent, PLS reports are published online and thus accessible to the public.

Table 2: Indicators of categorization of parliamentary approaches to PLS

3. Case studies of Post-Legislative Scrutiny by parliaments in Europe

In this section we will analyse the PLS approach of seven national parliaments in Europe. Based upon the indicators of the categorisation outlined in the previous chapter, we will assess the parliamentary procedures, structures and outputs on PLS for each of the seven parliaments.

Specifically, we will analyse the administrative (Secretariat) and political (Committees) parliamentary structures and procedures for PLS, triggers for parliaments to engage in PLS, decision making to engage in PLS, transparency and availability to the public of the PLS work, and the required follow up by the government to the PLS reports of parliament. Based upon this analysis, we will place the parliaments within the categorisation framework according to the characteristics of the four above-mentioned approaches to PLS.



The Swedish Riksdag in Stockholm
©Melker Dahlstrand, Swedish parliament

3.1. Belgium

In 2007, the Belgian Federal Parliament created a parliamentary committee for the ex-post evaluation of legislation. The legal basis for the functioning of the Committee is the 2007 law on the Committee as well as the Rules of Procedure of the Committee itself.

The Committee was established as a joint parliamentary committee composed of 22 members: eleven Members of the Chambers of Representatives and 11 Members of the Senate.⁴ There are three 'triggers' for the Committee to examine a piece of legislation. (De Vrieze, F. & Hasson, V., 2017, p. 21-22).

Firstly, the Committee can receive a petition highlighting problems arising with the implementation of a specific law which has already been in force for a minimum of three years. These problems can be related to (A) the complexity of the text of the legislation, supposed gaps in legislation, lack of consistency in legislation, mistakes in legislation, un-clarity and lack of specificity of legislation and subsequent multiple interpretations emerging from the law, as well as the outdated or contradictory character of the law; (B) when the law is no longer considered appropriate in addressing issues for which it was intended (though this is a rather vague provision). Secondly, the rulings of the Court of Arbitrage/Constitutional Court on the application of specific legislation can have an impact on the system of Rule of Law, highlight specific issues. By consensus the Committee might propose amendments to the legislation in force.

Thirdly, the General Prosecutor submits an annual report to the Parliament, which amongst other things, highlights the problems related to the interpretation or enforcement of specific laws. The review of the rulings of the Court of Arbitrage/Constitutional Court and of the annual report of the General Prosecutor often touch upon the competencies of the Standing Committee on Justice and Home Affairs. The Committee for legislative evaluation will thus be cautious to address these issues themselves. Moreover, few members of the Committee for legislative evaluation have the specialised knowledge of the justice system that the members of the Standing Committees do. In practice, the Committee for legislative evaluation will thus focus on the first area, the petitions received from external stakeholders.

Petitions can be submitted by any Ministry, Department or official office in the country, individual citizens, legal persons, and other Members of Parliament. In practice, most petitions come from citizens complaining about specific aspects of a law. The 2007 Law establishing the Committee mentions that the Committee will give priority to petitions which address legislation related to the proper functioning of the system

of rule of law and legislation, the application of which causes too heavy an administrative burden on citizens or companies. The administration of parliament analyses the content of the subject matter complained about by the author of the petition and makes a report for the Committee, including a recommendation for possible review of legislation, other follow-up actions, and notification of the author of the petition. Based upon the analysis of the Committee, a review of legislation or amendments to the legislation can be proposed, but only if recommended by consensus by all members of the Committee. This requirement takes most sensitive political issues out of the equation; as consensus between ruling parties and opposition is required.

Internal staff guidelines related to the work of the Committee refer to documents as saved on the common server of the Chamber and Senate; review tables of the petitions and the follow-up conducted; an analytical file per petition; standard forms developed for petitions as foreseen in the legislation.



The federal Parliament of Belgium in Brussels
©Kamer van volksvertegenwoordigers

Some of the issues mentioned in the petitions are not federal competencies but belong to the competencies of the regions and communities in Belgium. In such case, the petitioner is notified of this, or the petition is forwarded to the parliament(s) of the regions and communities.

From time to time, legislation is adopted including an evaluation clause. This often happens for political reasons, to convince part of the ruling parties or opposition to support the approval of the legislation despite their reservations. Evaluation of legislation is sometimes foreseen when a substantial policy area is being reviewed, such as happened for the comprehensive review of criminal law. (Murphy, J. & Mishura, S., 2019, p. 31).

Finally, it is worth noting that, following the federal elections in 2014, no Committee on Evaluation of Legislation has been re-established, for two reasons.⁵ Firstly, the Chamber of Representatives no longer wishes to involve the Senate in the Committee. On 29 November 2018 it adopted amendments to the 2007 law accordingly, though the Senate still has to give its approval. Secondly, the Committee lacks a dedicated budget or additional human resources. There are no staff specialising in the evaluation of legislation other than legal technical evaluation. It remains to be seen if the Committee will be re-established in the future.

In view of the above information, the Belgian parliament is considered as being among the passive scrutinisers for PLS. There is clear reliance on PLS information or reports from government or independent agencies, without the own monitoring or impact assessment by parliament. Parliament has a clear focus on the legal assessment of legislation. There is limited parliamentary administrative capacity to conduct PLS work.

The German Bundestag in Berlin
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3.2. Germany

Due to the federal structure of Germany, the upper House - the *Bundesrat* - is assigned by the Basic Law⁶ formal rights both in the approval of regulations issued by the Federal Government or a Federal Minister and in the federal oversight of federal laws' execution by the *Länder*.

By contrast, the *Bundestag* conducts ex-post review of law enactment mostly resorting to the standard scrutiny or oversight mechanisms. Both formal (reporting duties, questioning, hearings) and informal channels (unofficial exchanges and contacts between members of parliaments and members of government or agencies) contribute to this goal. Ex-post reviews of executive rules by the Federal Parliament are thus a distinctive feature of the German system, whose practical effects are rather limited by the parliamentary structure of government. The ex-post review of executive rules is more a monitoring and evaluation (M&E) process for parliamentary work than a tool for oversight over the government.⁷

As for the broad dimension of PLS, impact assessment in Germany is primarily a responsibility of the government. Two independent bodies support the executive in performing this activity: the Federal Statistical Office and the National Regulatory Reform Council (NKR).⁸ RIA is provided by the ministries and the NKR controls and provides comments. The Court of Auditors and the Federal Commissioner for Economic Efficiency are also involved.

The *Bundestag's* engagement in ex-post impact assessment is therefore mostly carried out through governmental scrutiny⁹ or evaluation of ex-post assessments carried out by either the Federal Statistical Office or the NKR.¹⁰ On the one hand, impact assessment arguments are preferably dealt with in

parliamentary committees, which often engage in informal hearings of the responsible Minister. Moreover, MPs, either individually or through their parliamentary group, can address questions as well as interpellations to verify statements of government on ex-post impact assessment.

On the other hand, the *Bundestag* can resort to the NKR in its advisory capacity, based either on formal reporting duties to the *Bundestag* where provided by sunset or review clauses or on the standard rule on public hearings. Moreover, it is addressed the annual progress report on bureaucracy reduction and better regulation drafted by the Federal Government.

The strong reliance of the *Bundestag* on the ex-post activity carried out by the Federal Government and the NKR has apparently not prevented the parliamentary institution from starting an autonomous capacity in the field. In fact, three different bodies internal to the *Bundestag* have been able to develop some form of autonomous expertise in impact assessment: the Research Services, the Office of Technology Assessment (OTA)¹¹ and the Parliamentary Advisory Council on

Sustainable Development. None of them is specifically devoted to PLS, but they each offer instrumental contributions with a rather differentiated impact on the activity of parliament. They work upon request and collect information on PLS when asked to do so by MPs.

The activity of the Parliamentary Advisory Council on Sustainable Development should be carefully considered. Its opinions and impact assessment of Federal Government's sustainable policies are discussed and appraised in writing by the lead committee. This example of procedural outcome associated with the development of autonomous evaluation capacity in Parliament bridges the 'German' case towards patterns that are typical to the models of informal and formal scrutinisers. It confirms that the German case, although solidly anchored in the 'passive' scrutiny of government ex-post evaluations, experiences some significant trends towards autonomy of impact assessment in the *Bundestag*.

In view of the above information, the German federal parliament can be considered as being among the informal scruti-

nisers for PLS. The reasons are that, as there is preliminary reliance on government information on implementation and impact of legislation, there is limited ad hoc administrative parliamentary capacity for PLS activity while specific research units are assigned to contribute to PLS. The PLS review of the work of the government can be compared to the M&E process for parliamentary work rather than conducting their own parliamentary impact assessment of legislation. Still, there is a clear tendency to "upgrade" the Bundestag work on PLS towards a more autonomous activity.



Plenary hall of the Senate of Italy
©Senato d'Italia

On the other hand, the efforts of the last few years to structure an autonomous impact assessment capacity covering a broader scrutiny and extended to impact assessment led in 2016 to the establishment of a dedicated unit - 'Office for Impact Assessment'.¹² It is tasked with promoting studies, research, training programmes for the ex-ante and ex-post evaluation of public policies. (Griglio, E., & Boschi, M., 2019).

The Office for Impact Assessment is primarily tasked with research and documentation. Reports and documents are published on a dedicated website.¹³ There is no procedural outcome associated with this documentation. The reform of the Rules of Procedure of the Senate approved in December 2017 has deliberately decided to leave it to MPs to elaborate on specific evaluation outcomes resorting to the standard scrutiny and oversight tools.

For both Houses, it is extremely difficult to evaluate whether and to what extent the activity of research and documentation strengthens the capacity of parliament to scrutinise the government. Parliamentary bureaucracies engage in ongoing monitoring of reporting duties of the Government in the ex-post stage. However, the procedural and political follow-up are often poor.

In view of the above information, the Italian bicameral parliament is considered as being among the informal scrutinisers for PLS. On the one hand, the development of an internal scrutiny units offers both chambers of the Italian parliament autonomous resources in the fulfilment of the legislative scrutiny, additional to those offered by the government and other external structures. On the other hand, the connection with formal parliamentary procedures is non-systematic, as there are no provisions of formal proceedings at the political level, by MPs and Senators, addressing the government on its follow-up to the PLS findings and recommendations.

3.3. Italy

The case of Italy offers a significant example of PLS strongly rooted in the role of parliamentary administration. (Piccirilli, G. & Zuddas, P., 2012). Two ad hoc units have been established in each of the Houses in support for ex-post scrutiny. However, the 'administrative' approach to the legislative follow-up has different purposes, scopes and research/evaluation methodology in the lower and in the upper Houses, which results in asymmetric bicameralism.

In the lower House, the Chamber of Deputies, the Service for Parliamentary Oversight oversees evaluating the implemen-

tation of laws as well as monitoring reports requested from the government. The Service is expected to engage in a legal and narrow dimension of PLS, based on data provided by the government and by other institutions. It is tasked with formally monitoring the extent to which the government has respected its obligations in respect of implementation, as agreed during the parliamentary proceeding and set in statutory law. The outcomes of this 'administrative' scrutiny, originally included in the yearly Report on Legislation drafted by the Chamber of Deputies, are now published in the Report on Parliamentary Oversight that the House has released for the first time in

2017. These reports provide background information in order to reinforce the evaluation capacity of the House; however, they do not automatically trigger any procedural follow-up.

By contrast, in the upper House, the Senate of the Italian Republic, the 'administrative' approach to ex-post scrutiny combines both the narrow and the broad dimensions. On the one hand, the Service for the Quality of Regulations scrutinises the respect by the government for its reporting duties on impact assessment and monitors the adoption of implementing acts, as provided in statutory law.

3.4. Sweden

The role and competence of the Swedish Parliament in PLS are set in constitutional clauses, enacted in 2011, and which are implemented through statutory legislation and parliament's rules of procedure.

PLS in Sweden covers both formal and substantial verification of the implementation of the law and of the effects produced. It puts emphasis on the role of committees. The approach is that the committee that has dealt with a certain decision must be responsible for assessing whether and how the decision has been implemented. Beyond the access to governmental documents and reports, parliamentary committees have developed their own evaluation and research capacities, complemented by the interaction with other administrative units of the parliament and cooperation with the National Audit Office in Sweden.

The degree to which PLS scrutiny is performed by individual committees does vary a lot. Analysing PLS within the *Riksdag*, one Swedish political scientist (Premfors, R., 2015), identified three types of committees with regards to PLS activities, and the most active ones were only three out of 15 committees.¹⁴ While the institutionalisation of PLS in the Swedish Riksdag is growing, it is not evenly and perhaps not yet at the level it could be.¹⁵

As is the case in France, in Sweden there is also a close interaction of the evaluation of public policies with ex-post budgetary control. The committees in the Riksdag can choose to perform two types of scrutiny. On the one hand they engage in thematic in-depth evaluations, carrying out sectorial studies focused either on a specific policy area or on the implementation of one selected piece of legislation or financing. On the other hand, they initiate a more or less broad ongoing follow-up and evaluation during their consideration of their part of the annual budget bill. In terms of the outcomes of the scrutiny, PLS is carried out through a strong and continuous dialogue with the government, especially in regards to some



The Swedish Riksdag in Stockholm
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committees budget bill evaluation where groups of parliamentarians meet with the political leadership in individual ministries (often state secretaries) to discuss the results of the budget evaluation. In the sectorial studies, the outcomes of scrutiny in committee are documented in series of Reports (RFR-series)¹⁶ that are available to the government.

However, the Riksdag committee reports are not submitted to the plenary for debate and decision. But they remain part of the committees' body of knowledge and they can sometimes be used in a later stage to adopt Parliamentary committees and are allowed to adopt a formal position on the evaluation of government performance; this can be expressed in draft resolutions or proposals for decision, addressed to the Riksdag's chamber. PLS in the Riksdag can thus trigger

formal discussion of the outcomes of the evaluation process. Regarding the statistics of PLS reports, the response to the European Parliament survey indicated that in 2018 a total of 23 reports were published by the Swedish parliament.¹⁷

In view of the above information, the Swedish parliament is considered as being among the formal scrutinisers for PLS. Beyond the access to governmental documents and reports, parliamentary committees in the Riksdag have developed their own evaluation and research capacities, complemented by the interaction with other administrative units of the parliament and the cooperation with the National Audit Office in Sweden.

The PLS work results in Committee reports which are the point of reference for follow up discussions with the government.



The French National Assembly in Paris
©Assemblée Nationale

3.5. France

The competence of the French parliament regarding PLS is set in constitutional clauses resulting from the 2008 constitutional amendment.¹⁸ Constitutional provisions are implemented through statutory legislation and parliamentary rules of procedure. The scrutiny covers both formal and substantial verification of the implementation of the law and of the effects produced.

Both chambers of the French parliament are characterised by committees that assume both legislative and oversight roles; hence, also PLS. The thematic or standing committee that has dealt with a certain decision is responsible for assessing whether and how the decision has been implemented. Follow-up and evaluation have thus become a natural task for parliamentary committees that can rely on multiple sources of information and documentation.

Beyond the access to governmental documents and reports, parliamentary committees have developed their own evaluation and research capacities. This is complemented by the interaction with other administrative units of the parliament¹⁹ and the cooperation with the *Cour des comptes*²⁰ in France. Committees may rely on a large variety of oversight tools. French committees are particularly well suited in this regard as, beyond standard procedures (including questions and hearings), they have access to tools that specifically serve evaluation and inquiry purposes.

There is a close interaction between the evaluation of public policies and ex-post budgetary control. In the French National Assembly, each standing committee is responsible of following-up legislative acts that fall within its domain. However, according to the LOLF²¹, budgetary ex-post scrutiny is vested

in the Finance Committees of both Houses. For this purpose, in February 1999 the Finance Committee of the National Assembly created the so called 'Evaluation and Control Mission' (MEC)²² whose main task is to inquiry into the implementation of sectorial public policies.

On the organisational side, the French National Assembly has complemented ex-post scrutiny in standing committees by creating ad hoc bodies specifically responsible for the evaluation of public policies. This trend has seen rises and falls in the last two decades, moving from bicameral to unicameral arrangements that currently exist only in the Lower House, the National Assembly, where the Committee for evaluation and control (CEC) delivers cross-sectional evaluations.²³ As a matter of fact, the hard core of PLS still lies in standing committees.²⁴

In summary, the National Assembly has set up several mechanisms related to PLS. (Assemblée Nationale, 2014, p. 371-376). Firstly, there is the presentation before standing committees of implementation reports concerning laws which require the publication of rules of a regulatory nature. Secondly, there is the setting-up of temporary bodies (assessment and monitoring missions and commissions of inquiry) aimed at assessing the implementation of certain laws and public policies. The make-up of such missions can vary enormously. In practice, such missions are almost always made up of two MP's or more. In accordance with article 145 of the RoP, they must thus have one member of the opposition and must reflect the political distribution of the National Assembly. In cases where the fact-finding mission is set up by the Conference of Presidents, it includes nine members (a chair, four vice-chairs and four secretaries) to which must be added the position of

rapporteur, and the position of chair or of rapporteur must automatically belong to an MP from an opposition group. The work of such fact-finding missions can last for varying periods, often several months, during which the members carry out interviews and visits and is concluded by the filing of an information report.²⁵ Thirdly, there is the development of more permanent structures: the MEC (an assessment and monitoring mission in charge of evaluating the results of certain public policies each year) set up within the Finance Committee of the National Assembly and the MECSS (the Assessment and Monitoring Mission for Social Security Financing Laws) set up within the Social Affairs Committee of the National Assembly and the Senate; the Commission for the Assessment and Monitoring of Public Policies (CEC), as well the specific parliamentary delegations.²⁶

Regarding the procedural outcomes of the scrutiny, the yearly *Bilan* on law enforcement comprising scrutiny reports from all committees is submitted to the Conference of the Presidents, where an informal dialogue can be started with the government, represented by the Minister for Relationships with Parliament. However, this is an unofficial interaction whose focus is more on the fulfilment of formal implementing legal duties than on the evaluation of the economic, environmental, social impact of each piece of legislation.

For the French National Assembly, ex-post evaluation has led primarily to the reinforcement of fact-finding and inquiry tools, with no major procedural follow-up in the legislative-executive relationship. Findings are either used in the same way as other more 'traditional' parliamentary tools that support the interaction of the Houses of Parliament with government, or are debated in spontaneous forms, including the drafting of

letters addressed to the Prime Minister or to the concerned Minister and the start of unofficial dialogues with the government on the required implementing measures.²⁷ As far as the French Senate is concerned, the specific PLS function is by a '*Délégation*, a group of Senators charged with tasks of analysis and reflection. In the French Senate, the *Délégation of the Bureau*, carries out an assessment of the 'application of laws'; in other words, the extent to which government has enacted the dispositions necessary in order to put laws into application. On an annual basis, the chairperson of the *Délégation* presents a report developed through discussions with the seven parliamentary commissions and the Office of the Secretary General of the government, on the extent to which regulatory dispositions have been implemented. In the report dated March 31 2017, covering the previous year, it was noted for example, that "*The rate of publication of enabling texts has reached approximately 90%, in continual increase compared to the 80% of last year and the 65% of the session 2013-2014*"²⁸. In the report of March 31, 2018, the chairperson noted that while the percentage of enabling measures enacted by the government had increased again, there was often a delay in government responses to parliamentary questions regarding application of laws²⁹. The annual report on the implementation of the legislation is, in general, discussed with the government in a debate in the plenary chamber.³⁰

The allocation of responsibility for this work to a group of parliamentarians within the Senate represents an evolution and formalisation of a process which begun several decades ago, initially carried out by staff of the parliamentary secretariat who reported to the Bureau of the Senate on a biannual basis.

The French Senate *Délégation* reports for both 2017 and 2018 make clear that their work is carried out in conjunction with the sectoral committees, as well as the secretariat of the Prime Minister's Office, which itself maintains records of legislative implementation within the responsible ministries. Another interesting aspect of the PLS approach in the French Senate is that although it has been carried out consistently for the past several decades, it is not enshrined in the rules of procedure of the institution, but established through resolution of the Bureau and subject to revision as needed.

In view of the above information, parliament's role in PLS in France can be considered as belonging to the category of the "formal scrutinisers". Based on its own criteria and priorities, the French parliament decides which laws to select for PLS, though the formal monitoring of law enactment clearly prevails over impact assessment (as indicated in the '*Bilan*'). The institutionalized PLS work results in specific PLS reports. While the National Assembly and the Senate aim for follow-up to the findings and recommendations of the PLS reports, there is low degree of 'procedimentalisation', which means that PLS reports are rarely debated and voted on; and the interaction with the government on its follow up is mostly developed on informal grounds.

3.6. United Kingdom

The sixth parliament in this comparative analysis is the United Kingdom's Westminster Parliament, composed of the House of Commons and the House of Lords.

PLS is one of the core tasks of departmental (sectorial) select committees in the House of Commons.³¹ A good portion of the Select Committee's activities involves PLS work, even if Members do not explicitly describe it this way. (De Vrieze, F. & Hasson, V., 2017, p. 7).

In the last decade a more systematic approach has been taken by both the UK Government and UK Parliament. (UK Cabinet Office, 2017). Since 2008 government departments have been required to prepare and publish memoranda on the Acts passed by Parliament, within three to five years of the Act entering the statute books. (Kelly, R., & Everett, M., 2013). The government departments are charged with conducting a 'preliminary assessment', intended to be a relatively 'light touch' (unless they wish to go deeper) but of sufficient depth to allow an informed judgement as to whether a fuller assessment by the relevant House of Commons Committee, or by a House of Lords ad hoc committee, is worthwhile.³² These memoranda are presented to departmental select committees for additional scrutiny. With regards to the House of Lords, in 2012 the Liaison Committee promised to appoint at least one ad hoc committee per session to undertake PLS on a subject chosen by it.³³

Recent research by Caygill (2019) into the Westminster system of PLS identified that there are differences in how the two Houses select legislation to receive PLS. (Caygill, T., 2019). In the House of Commons, PLS is one of the core tasks of departmental select committees and as such it is at their discretion to determine when to undertake such scrutiny on a piece of legislation. In relation to the House of Commons there are a number of reasons why a committee may decide to undertake PLS and select the legislation that it does, including representations by stakeholders or sectors of industry, receipt of the memorandum by a Department on the implementation of a specific law, or when there is a reasonably high level of interest among the Members.

The Liaison Committee in the House of Lords is more proactive when it comes to PLS, than its House of Commons equivalent, as it formally recommends which committees are set up and what topics are examined. As such, the ad hoc committees themselves are set up to undertake scrutiny into a particular Act and have no choice over the matter once it has been created. In terms of the factors that the House of Lords Liaison Committee considers, one of the key elements that



The UK House of Commons in London
©UK Parliament, Roger Harris

it considers is whether the inquiry would "make the best use of the expertise of Members of the House of Lords". Indeed, one of the unique selling points of the second chamber is that it contains many people with expertise in different sectors, as such, when conducting PLS it can be very valuable to tap into such expertise. Lord Norton thus rightly stated that "in the House of Commons, PLS has been Committee-driven, whereas in the House of Lords it has been chamber-driven." (Norton, P., 2019).

Timing is also another important factor, in the sense that whether it is the right time to review the legislation. While the common expectation is that a memorandum is published three to five years after the Act has been adopted, one Clerk noted that "there is an optimal time for PLS and that is five to ten years after it has come into force".³⁴ The Cabinet Office Guidelines suggest indicates that it is open to the Department to propose to a Departmental Committee that a longer period is used for a particular Act, particularly so where there is a gap between the Act being passed and the provisions of the Act being 'brought into force'. However, there are Acts for which a shorter timescale than three years might be appropriate. Other criteria noted by clerks include that "the Act should be a major one that has reformed the law in a fairly substantial way and to avoid anything too politically controversial".

This is because the focus of PLS is more on the Act itself rather than looking at the underlying politics of the Act. Lord Norton's view is that "*in the House of Lords, the process of selection has been more self-contained and pro-active, the House opting for reviews that are deemed important, timely, play to the strengths of the House, and are not overly contentious politically. Whereas the Commons will examine an Act if it knows the Government is thinking of making changes to it, the Lords prefers not to engage in work it deems already underway. The House of Lords also avoids any inquiry it thinks the Commons is likely to undertake. As such, the work of the two Houses can be viewed as complementary, rather than competing with, or duplicating, the work of the other.*" (Norton, P., 2019).

Research by Caygill (2017) has highlighted the differences between the two Houses of Parliament regarding the output of their recommendations. In terms of the average number of PLS recommendations produced by each House for the sample of PLS reports analysed, the House of Lords on average produces 41 per report and the Commons, 19 per report. This is a reflection on the amount of time that the House of Lords can spend on each inquiry. (Caygill, T., 2017).

In terms of follow up to the PLS reports, the research showed that there were similarities between the two Houses on the

basis that their follow up leaves a lot to be desired. If committees in the House of Commons do follow up, then they often use convenient methods, such as written correspondence or annual oral evidence sessions, rather than undertaking a follow up inquiry. This makes sense due to the time and resource pressures on House of Commons committees. This is different to the House of Lords; the challenges ad hoc committees face there are procedural as the committee is dissolved after the publication of its report. While the Lords Liaison Committee does provide the only follow up likely in the Lords, it is limited to written follow up.

In view of the above information, the role of the UK Westminster Parliament in PLS can be considered as belonging to the category of the "independent scrutinisers". While the House of Commons select Committees and the House of Lords special PLS committees always consider the initial government memorandum regarding the law under review, the Committees have their established procedures and resources for gathering information and conducting PLS. The institutionalised PLS work, which includes both legal and impact assessment, results in specific PLS reports. The UK government is required to provide a written response to the findings and recommendations within two months of publication of the report.



The Swiss Federal Parliament in Bern
©Parlamentsdienste 3003 Bern

3.7. Switzerland

Switzerland is a front-runner in legislative and policy evaluation. Many actors in Switzerland are involved. Federal government departments are responsible for carrying out evaluations based on an annual evaluation strategy considering the priority areas determined by the Federal Council (government). (Bussmann, W., 2008, p. 499). The Federal Office of Justice is the body responsible for developing methodological principles related to law drafting and providing assistance for their application as well as being involved in legislative evaluation. (Horber, P. & Baud-Lavigne, M., 2019, p. 357). In the area of evaluation, it collaborates with the Swiss Evaluation Society (SEVAL). An evaluation network also exists within the federal administration. (De Vrieze, F. and Hasson, V., 2017, p. 37).

Switzerland is the first country to introduce an evaluation clause at the constitutional level: art.170 of the Swiss Constitution of 18 April 1999 calling the bi-cameral Federal Assembly to ensure that federal measures are evaluated regarding their effectiveness. The legal basis for PLS was further expanded by the law on the functioning of Federal Parliament (2003): “The organs of the Federal Assembly designated by law shall ensure that the measures taken by the Confederation are evaluated as to their effectiveness. To this end, they may: 1. Request the Federal Council to have impact assessments carried out; 2. Examine the impact assessments carried out on the instructions of the Federal Council; 3. Instruct impact

assessments to be carried out themselves” (art. 27). Two parliamentary committees – the Control Committees -- one for each of the two chambers of parliament, play a central role in evaluation.³⁵ To assist these two Oversight Committees, in 1991, the Federal Assembly set up the *Parliamentary Control of the Administration* (PCA), a specialised service that carries out evaluations on behalf of the Parliament.³⁶

As a Unit within the Parliamentary Service, the legal bases of the PCA are set out in the Parliament Act and the Parliamentary Administration Ordinance. They provide the PCA with substantial rights to information:

- a. the PCA deals directly with all federal authorities, public agencies and other bodies entrusted with tasks by the Confederation and may request from them all relevant documentation and information,
- b. the principle of professional confidentiality does not restrict the authorities' obligation to provide information,
- c. the PCA may call on the services of experts outside the federal administration, who are therefore granted the necessary rights. The independence of the Unit is also mentioned in the Ordinance. The recruitment and appointment of the head and staff of the Unit happens according to the parliamentary service recruitment rules.

The Unit was created at a time when there was public perception that the Ministries did not share information as required. Parliament wanted to strengthen its oversight role.

The evaluations are developed based upon a mandate received by the Oversight Committees. Since 2003 the other parliamentary committees can also ask the PCA for evaluations. In practice it is almost exclusively the Control Committees that used the expertise of the PCA.³⁷ The Unit cannot decide to conduct evaluations on its own. The Unit makes suggestions, but it is for Committees to decide what is followed-up on. The Unit has a list of criteria that must be fulfilled for it to suggest an evaluation. Main criterion are the presence of potential problems in the policy field of interest and a gap in the availability of information or analysis. Another criterion is the likelihood that the legal basis of the policy under investigation will not be changed in the next two or three years and, therefore, that the outcome of the research remains relevant when the study has been completed.

The Committees decide on the basis of short descriptions of the topics that fulfil the criteria. Once the Committees decide which topics will be researched, the Unit drafts a project outline of the research, including the methodology which will be applied; and which options (on content) can be developed in the study.³⁸

The Unit has a budget to hire experts and outsource part of the work. The Unit has five employees (FTE) and issues approximately three research reports per year. Committees need to bear in mind that the resources and time of the PCA

available are limited. There is a close link between policy evaluation and legislative evaluation. The Unit usually starts with the evaluation of a policy area, which might be affected by various laws, and verifies the legal basis of what the ministries are doing and whether the laws indeed have the desired effects.

The follow-up to evaluation reports are not conducted by the Unit itself. The Unit presents the findings to the Committee, and the Committee decides on the recommendations it can deduct from the research. The PCA does not interfere in the process of compiling the recommendations, since it is more of a political process. This contributes to the independence of the Unit. These recommendations of the Committees have usually been transformed into governmental ordinances, or into acts at the ministerial level, aimed at modifying the implementation process toward the direction suggested by parliamentary Committees. (Griglio, E. & Lupo, N., 2019).

The control committees of both Chambers intervene in the evaluation process in three subsequent stages. (Griglio, E. & Lupo, N., 2019). First, they order the PCA to carry out evaluations, giving notice to the Federal Council. Second, they provide a political follow-up to the PCA's evaluations by drawing relevant conclusions and formulating recommendations to the Federal Council. Third, the Control committees can also draft a motion, based on the PCA's evaluations, in order to submit an amendment request to the Federal Council. The submission of these recommendations and requests starts a dialogue between the Federal Council and the relevant control committee. After two years, control committees usually start a post-evaluation follow-up to assess the implementation of the recommendations submitted to the Federal Council. In view of the above information, the role of the Swiss federal parliament in PLS can be considered as belonging to the category of the “independent scrutinisers”. The institutionalised way of conducting PLS relies on specific administrative structures assigned to conduct PLS. Based on their own criteria, triggers and priorities, the Swiss parliament and its committees decide independently which laws or policy fields to select for PLS. The parliament has a more proactive approach to identifying sources of analysis. The PLS work is legally grounded, in the constitution and in law, covering both legal and impact assessments of legislation. The institutionalised PLS work results in specific PLS reports. Parliament puts in place a more organised follow-up to the PLS reports, with Committees drafting recommendations in the majority of cases. The recommendations are addressed to the Federal Council (government). Their transformation into governmental ordinances, or in acts at the ministerial level, ensures substantial results of the PLS work by the federal parliament of Switzerland.



Committee hearing in the UK House of Lords
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4. Conclusion

Although PLS can be considered an emerging sphere of action for parliaments in Europe, the above-mentioned case-studies demonstrate that this activity has been positively included in daily parliamentary practices, in different ways and according to different procedures. Whereas PLS is not among the traditional functions of representative assemblies, in the last decade the attempts to situate PLS among parliamentary tasks have significantly grown in number.

As PLS is considered part of the oversight function that parliaments exercise with respect to the executive, PLS can be structured as a parliamentary duty with the specific purpose of supporting parliament's engagement in impact assessment and ex post evaluation. The above-mentioned case-studies highlighted that parliaments' involvement in this sphere might be supported either by 'administrative' strategies, such as the strengthening of the documentation and evaluation capacity of parliaments or by 'political' strategies focused on the reinforcement of parliaments' influence on governments in the ex post stage.

Four models have subsequently been identified to describe the main approaches of parliaments regarding these mechanisms: a) passive scrutinisers; b) informal scrutinisers; c) formal scrutinisers; and d) independent scrutinisers. Passive scrutinisers mostly limit their role to the assessment of the scrutiny conducted by governmental bodies or external agencies. By contrast, informal and formal scrutinisers adopt more proactive approaches. Informal scrutinisers tend to rely on existing administrative parliamentary structures to analyse legislative implementation and impact assessment, while formal scrutinisers aim to structure a more systematic connection to formal parliamentary procedures. Independent scrutinisers address scrutiny in a highly institutionalised manner, grounding it on solid legal basis, formally vesting it in parliamentary structures and supporting it through specific procedures, including for follow-up to the reports and recommendations.

Whereas the involvement of parliaments in the ex-post stage of law making remains under-theorised, this publication provided an initial overview of the main rules, practices and trends on PLS in Europe, focusing on the experience of seven national parliaments in Europe: Belgium, Germany, France, Italy, Sweden, Switzerland and the UK. The approach to PLS in these countries can be classified according to four distinct categories, as indicated in the following chart. The chart also summarises which committees and which parliamentary staff play a role in PLS in each of the countries.

Based on the analysis of the case studies, we have concluded that the federal parliament of Belgium can be considered a passive scrutiniser in PLS, the federal parliament of Germany and the parliament of Italy can be considered informal scrutinisers, the parliaments of Sweden and France can be considered formal scrutinisers in PLS, and the parliaments of the UK and Switzerland can be considered independent scrutinisers in PLS.

Categories of parliamentary approach in PLS	Country case studies	Committees in PLS		Parliament staff in PLS		
		Role for Standing Committee	Role for special committee	Staff of Committees	Research Department	PLS Unit
Passive scrutinisers	Belgium		X	X		
Informal scrutinisers	Germany	X		X	X	
	Italy	X				X
Formal scrutinisers	Sweden	X			X	
	France	X		X		
Independent scrutinisers	UK	X	X	X		
	Switzerland	X				X

Table 3: Country case studies within the categorisation of parliamentary approaches to PLS

Analysing emerging practices of PLS in these countries, it is recognised that very often the government and executive agencies are responsible for implementation of legislation and service delivery to citizens; and hence parliament often relies to a large extent on government information to assess the implementation of legislation. However, it is also noted that a diversification of data sources, such as from CSOs, international organisations and independent oversight institutions, considerably contributes to parliament's ability to conduct PLS. The challenges of the design of laws can also affect the implementation of legislation in an early phase. Therefore, review clauses in bills can ensure that a proper impact evaluation of legislation will be planned.

As PLS is a broad concept, the case studies demonstrate that it might mean slightly different things to different parliaments and stakeholders. In a narrow interpretation, PLS looks at the enactment of the law, whether the legal provisions of the law have been brought into force, how courts have interpreted the law and how legal practitioners and citizens have used the law. In a broader sense, PLS looks at the impact of legislation; whether the intended policy objectives of the law have been met, as well as the degree of its efficiency.

The publication thus highlighted how different parliaments put more emphasis on one or the other of the two dimensions of PLS: firstly, to evaluate the technical entrance into force and the enactment of a piece of legislation; and secondly, to evaluate its relationship with intended policy outcomes and the impact. We therefore conclude that, to the extent that parliaments seek to carry out both dimensions, PLS facilitates continuously improvement of the law itself and policy implementation. PLS thus contributes to increased governance effectiveness and accountability.

Annex 1: Bibliography

- Assemblée Nationale. (2014). The National Assembly in the French Institutions (English translation), Published by Assemblée Nationale Service des affaires internationales et de défense. http://www.assemblee-nationale.fr/connaissance/fiches_synthese/septembre2012/national-assembly.pdf Accessed 10 October 2019.
- Benton, M. & Russell, M. (2013). Assessing the Impact of Parliamentary Oversight Committees: The Select Committees in the British House of Commons. *Parliamentary Affairs* 66 (4): 772-797.
- Bussmann, W. (2008). The Emergence of Evaluation in Switzerland, *Evaluation* 14(4): 499-506.
- Caygill, T. (2017). Post-Legislative Scrutiny: what recommendations are committees making, and are they being accepted? <http://blogs.lse.ac.uk/politicsandpolicy/post-legislative-scrutiny-strength-of-recommendations/> Accessed 10 October 2019.
- Caygill, T. (2019). A tale of two houses? Post-Legislative Scrutiny in the UK Parliament, *European Journal of Law Reform* 21 (2): 87-101.
- De Vrieze, F. & Hasson, V. (2017). Post-Legislative Scrutiny. Comparative study of practices of PLS in selected parliaments and the rationale for its place in democracy assistance. London, WFD.
- De Vrieze, F. (2017). Post-Legislative Scrutiny: Guide for Parliaments. <https://www.wfd.org/2018/07/23/a-guide-to-post-legislative-scrutiny/> Accessed 10 October 2019.
- De Vrieze, F. (2018a). Legislative scrutiny - Overview of legislative scrutiny practices in the UK, India, Indonesia and France. <https://www.wfd.org/2019/06/12/legislative-scrutiny-overview-of-legislative-scrutiny-practices-in-the-uk-india-indonesia-and-france/> Accessed 10 October 2019.
- De Vrieze, F. (2018b). Principles of Post-Legislative Scrutiny by Parliaments. <https://www.wfd.org/2018/07/23/principles-of-post-legislative-scrutiny/> Accessed 10 October 2019.
- De Vrieze, F. (2019a). Engaging parliaments on reviewing legislative impact. <https://parliamentsandlegislatures.wordpress.com/2019/05/08/parliaments-post-legislative-scrutiny/> Accessed 10 October 2019.
- De Vrieze, F. (2019b). Introduction to Post-Legislative Scrutiny, *European Journal of Law Reform* 21 (2): 84-86.
- Fitsilis, F. & De Vrieze, F. (2019). How Parliaments Monitor Sustainable Development Goals - A Ground for Application of Post Legislative Scrutiny, *paper presented at the Academic Seminar on Post-Legislative Scrutiny in Asia*, Westminster Foundation for Democracy, Yangon, June 2019.
- Griglio, E. & Lupo, N. (2019). Parliaments in Europe facing the Challenge of Post-Legislative Scrutiny: Comparing the French, Italian and Swiss Experiences - *paper presented at the Academic Conference on Post-Legislative Scrutiny in Asia*, Westminster Foundation for Democracy, Yangon, June 2019.
- Griglio, E. (2019). Post-Legislative Scrutiny as a form of executive oversight: tools and practices in Europe, *European Journal of Law Reform* 21 (2): 118-136.
- Griglio, E., & Boschi, M. (2019). How to structure Post-Legislative Scrutiny in Parliament: Insights from the Italian Senate, *Paper presented at the Expert Seminar on Legislative ex post Evaluation, Legislative Impact Assessment and PLS*, co-organised by the Centre for Legislative Studies of the University of Hull and by the Westminster foundation for Democracy, London - 26 April 2019.
- Heaton, R. (2013). When Laws Become Too Complex. A review into the causes of complex legislation, Office of the Parliamentary Counsel. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/187015/GoodLaw_report_8April_AP.pdf
- Horber, P. & Baud-Lavigne, M. (2019). Factors Contributing to the Strong Institutionalization of Policy Evaluation in Switzerland. In: Ladner, A. et. al. (Ed.) *Making the State Work Successfully*. Palgrave Macmillan. 355-372. See p. 357.
- House of Commons Liaison Committee (2019). The effectiveness and influence of the select committee system - Fourth Report of Session 2017-19. <https://publications.parliament.uk/pa/cm201719/cmselect/cmliain/1860/1860.pdf> Accessed 10 October 2019.
- Inter-Parliamentary Union (2006). Parliament and democracy in the twenty-first century: A guide to good practice. <https://www.ipu.org/resources/publications/handbooks/2016-07/parliament-and-democracy-in-twenty-first-century-guide-good-practice> Accessed 10 October 2019.
- Jacob, S., Speer, S., & Furubo, J.-E. (2015). The institutionalization of evaluation matters: updating the international atlas of evaluation 10 years later, *Evaluation* 21 (1): 6-31.
- Jancic, D. (2019). Better Regulation and Post-Legislative Scrutiny in the European Union, *European Journal of Law Reform* 21 (2): 137 - 158.
- Karpen, U. (2009). Good Governance through Transparent Application of the Rule of Law, *European Journal of Law Reform* 11 (2).
- Kelly, R., & Everett, M. (2013). Post-Legislative Scrutiny. House of Commons Library, SN/PC/05232. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05232> Accessed 10 October 2019.
- Kouroutakis, A. (2017). *The Constitutional Value of Sunset Clauses: An Historical and Normative Analysis* (New York, Routledge).
- Lodge, M. & Stirton, L. (2010). Accountability in the Regulatory State; in: Baldwin, R., Cave, M. and Lodge, M. (eds.). *The Oxford Handbook of Regulation*. Oxford Handbooks in Business and Management. Oxford University Press, Oxford, UK.
- Meunier, D. & Welde, M. (2017). Ex-post evaluations in Norway and France, *Elsevier*, *Transportation Research Procedia* 26: 144 -155.
- Miller, A. (2016). *PLS in New Zealand: Challenging the Status Quo*, Faculty of Law, Victoria University of Wellington, New Zealand.
- Murphy, J. & De Vrieze, F. (2020). Independent oversight institutions and parliament, Westminster Foundation for Democracy, (forthcoming in 2020) Manuscript in preparation.
- Murphy, J. & Mishura, S. (2019) Post-Legislative Scrutiny in non-Westminster parliaments: Opportunities, Challenges and Considerations, *European Journal of Law Reform* 21 (2).
- Murphy, J. (2019). Towards parliamentary full cycle engagement in the legislative process - innovations and challenges, *Paper for the WFD expert seminar on legislative impact assessments and Post-Legislative Scrutiny, London, 26 April 2019*
- Naundorf, S. & Radaelli, C. (2017). Regulatory Evaluation Ex Ante and Ex Post: Best Practice, Guidance and Methods, in Karpen and Xanthaki, 2017, pp. 187 ff.
- Norton, P. (2000). Reforming parliament in the United Kingdom: the report of the Commission to Strengthen Parliament. *The Journal of Legislative Studies*, 6: 1-14.
- Norton, P. (2013). *Parliament in British Politics*. 2nd ed. Basingstoke, Palgrave MacMillan.
- Norton, P. (2018). Opening Address at the Academic Seminar on Post-Legislative Scrutiny co-organized by the Westminster Foundation for Democracy Institute of Advanced Legal Studies, University of London, 10 July 2018.
- Norton, P. (2019). Post-Legislative Scrutiny in the UK Parliament: adding value, *The Journal of Legislative Studies*, <https://doi.org/10.1080/13572334.2019.1633778> Accessed 10 October 2019.
- Piccirilli, G. & Zuddas, P. (2012). Assisting Italian MPs in pre-legislative scrutiny: the role played by Chambers' counsellors and legislative advisors in enhancing the knowledge and skills development of Italian MPs: the assistance offered to an autonomous collection of information, *Parliamentary Affairs* 65, p. 1 ff.
- Popelier, P. (2011). Governance and Better Regulation: Dealing with the Legitimacy Paradox, *European Public Law* 17 (3)
- Premfors, R. (2015), *Riksdagen utvärderar*, (Stockholm: Förvaltningsakademien vid Södertörn högskola). <https://www.diva-portal.org/smash/get/diva2:862410/FULLTEXT01.pdf> Accessed 10 October 2019.
- Rufas Quintana, J.-L. & Anglmayer, I. (2019). Retrospective policy evaluation at the European Parliament, *European Journal of Law Reform* 21 (2): 200-209.
- Russell, M. & Benton, M. (2011). Selective Influence: The Policy Impact of House of Commons Select Committees. London, Constitution Unit. <https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/153.pdf> Accessed 10 October 2019.
- Russell, M. & Cowley, P. (2016). The Policy Power of the Westminster Parliament: The "Parliamentary State" and the Empirical Evidence. *Governance* 29 (1): 121-137.
- The Law Commission (2006). Post-Legislative Scrutiny, LAW COM No 302 http://www.lawcom.gov.uk/app/uploads/2015/03/lc302_Post-legislative_Scrutiny.pdf Accessed 10 October 2019.
- UK Cabinet Office (2017). Guide to Making Legislation, London, 352 p. <https://www.gov.uk/government/publications/guide-to-making-legislation> Accessed 10 October 2019.
- UNDP & IPU (2017). Global Parliamentary Report, New York and Geneva, <http://archive.ipu.org/pdf/publications/gpr2012-full-e.pdf> Accessed 10 October 2019.
- White, H. (2015). Select Committees under Scrutiny, London, Institute for Government. <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Under%20scrutiny%20final.pdf> Accessed 10 October 2019.
- Yamamoto, H. (2007). Tools for parliamentary oversight: A comparative study of 88 national parliaments, Geneva, IPU. <http://archive.ipu.org/PDF/publications/oversight08-e.pdf> Accessed 10 October 2019.

Annex 2: About the author

Franklin De Vrieze is the Senior Governance Adviser at the Westminster Foundation for Democracy (WFD) in London. He offers programme quality assurance and parliamentary technical advice to WFD country teams. He conducts research and develops implementation tools on new and innovative themes for parliamentary programming, such as Post-Legislative Scrutiny (ex-post evaluation of implementation of legislation), parliament's interaction with independent oversight institutions, and financial accountability in democratic governance, among others.

Franklin De Vrieze has worked on governance issues for 20 years. Prior to WFD, he has worked for the United Nations Development Programme (UNDP), Inter-Parliamentary Union (IPU), Organization for Security and Cooperation in Europe (OSCE), European Union (EU), Swiss Development Cooperation (SDC), National Democratic Institute (NDI) and other organizations. Franklin has led parliamentary identification, formulation and evaluation missions in the Western Balkans, East Europe, Southeast Asia, the Pacific, Middle East and North Africa (MENA) and the Caribbean.

He is the author of several academic articles and other professional publications on good governance, parliamentary strengthening and Post-Legislative Scrutiny.



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Endnotes

1. Lord Norton of Louth is a Member of the UK House of Lords, professor of Government and Director of the Centre of Legislative Studies at the University of Hull (UK). He is considered the “father of Post-Legislative Scrutiny in the UK Parliament”.
2. As Lord Norton rightly states: “Given that with pre- and post-legislative scrutiny, the power exercised is persuasive rather than coercive.” (Norton, P., 2019)
3. These two approaches rely on different areas of legislation studies (see Karpen, 2009, p. 62): the narrow dimension relates to legal analytics, legal methodology and legal technique; the broader dimension is supported by the research of effectiveness. (Naundorf, S. & Radaelli, C. 2017, pp. 187 ff).
4. In 2004, the UK Lords Constitution Committee stated: “Post-legislative review is similar to motherhood and apple pie in that everyone appears to be in favor of it; but neither Parliament nor the Government has yet committed the resources necessary to make systematic post-legislative review a reality: (Kelly, R., & Everett, M., 2013).
5. On better regulation as a strategy against the democratic deficits of traditional lawmaking, see Popelier, P, 2011. pp. 55 ff.
6. Author’s correspondence with Dr. Elena Griglio, Italian Senate, September 2019.
7. Government-parliament interaction is central to pre-legislative, legislative and post-legislative scrutiny, as outlined in this publication: De Vrieze, F., 2018a.
8. To ensure a legal requirement for impact assessments, parliaments resort to specific legislative techniques, such as the introduction of sunset or review clauses. See Kouroutakis, 2017.
9. <http://www.comitewetsevaluatie.be/indexN.html>
10. Author’s interview with Alberik Goris, Legal Department of the Chamber of Representatives of Belgium; March 2016, and correspondence in August 2019.
11. Art. 53 of the Constitution of the Federal Republic of Germany.
12. Author’s correspondence with Jochen Gukes, Parliamentary Support Programmes Coordinator, German Bundestag, in September 2019.
13. The role of the NKR is to ensure that all government legislative proposals are based on an ex-ante regulatory assessment.
14. There is no obligation for the Bundestag to carry out its own impact assessment, not even on legislative initiatives started by members of parliament.
15. Ex-post legislative regulatory impact assessment is conducted in Germany in three cases: 1/ when it is so provided by the explanatory memorandum for the bill (art. 44 of the Joint Rules of procedure of the Federal Ministries); 2/ when legislative proposals overcome certain thresholds of annual compliance costs (Decision of State Secretaries ‘Strategy for evaluation of new legislative proposals’, in The Federal Government, Better Regulation 2012: Reducing Regulatory Burden, Cutting Red Tape, Securing Dynamic Growth, Berlin, Federal Chancellery, 2013, p. 62); and 3/ when evaluation is provided by specific review or sunset clauses included in the legislative act. See M. Rani Sharma et al, ‘Expert report on the implementation of ex-post evaluations. Good practice and experience in other countries’, Berlin, NKR, 2013 (www.normenkontrollrat.bund.de).
16. The Office of Technology Assessment at the German Bundestag is an independent scientific institution created with the objective of advising the German Bundestag and its committees on matters relating to research and technology. <https://www.tab-beim-bundestag.de/en/about-tab/index.html>
17. The Bureau of the Italian Senate decided to establish the Impact Assessment Office, as reflected in the Decree of the President of the Senate dated 19 July 2016.
18. The first annual report of the Office for Impact Assessment of the Italian Senate mentioned that the Office has conducted 30 evaluations in the period 2017 - 2018. The report has been published at: http://www.senato.it/application/xmanager/projects/leg18/attachments/documento/files/000/029/081/A_year_of_assessment.pdf
19. The three (then) most active committees were, according to Premfors, the Committee on Agriculture, the Committee on Culture and the Committee on Transportation.
20. Author’s correspondence with Thomas Larue, Director of Secretariat, Riksdag’s Research and Evaluation Secretariat, August 2019.
21. See the series ‘Reports from the Riksdag’, <http://www.riksdagen.se/en/documents-and-laws/docs--laws/reports-from-the-riksdag/>
22. Author’s correspondence with Irmgard Anglmayer, European Parliament Research Service, August 2019.
23. The role attributed to Parliament in post-legislative scrutiny is deeply rooted in the French tradition, but only with the constitutional reform of 2008, the role of parliament in the evaluation of public policies was definitively recognised as a constitutional obligation. Art. 24 of the French constitution says that parliament “passes laws”, “monitors Government action” and “assesses public policies”.
24. In the case of France, the reference is to the Parliamentary Office for the Evaluation of Scientific and Technologic Options, a bicameral body established in 1983 that is responsible of assessing the impact of scientific and technologic reforms. See Assemblée Nationale, 2014.
25. See art. 47 of the French Constitution and art. 58.2. LOLF, allowing Finance committees to assign the Cour des comptes the task to carry out special inquiries on specific issues, to be concluded in eight months. Assemblée Nationale, ‘Les enquêtes demandées à la Cour des comptes (article 58-2° de la LOLF)’, 2011 (www.assemblee-nationale.fr/commissions/cfin_enquetes_Cour_comptes.asp).
26. LOLF stands for loi organique relative aux lois de finances, or the French budget law.
27. MEC is co-chaired by two members, one from majority and the other from opposition, and it is composed of 16 members, all belonging to the Finance committee, designed by parliamentary groups as to respect an equal representation of majority and opposition.
28. [http://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-finances/printemps-de-l-evaluation/edition-2019/\(block\)/55716](http://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-finances/printemps-de-l-evaluation/edition-2019/(block)/55716)
29. Author’s correspondence with Guillaume Renaudineau, French Senate, July 2019.
30. <http://www2.assemblee-nationale.fr/documents/liste/%28type%29/rapports-application-loi/%28legis%29/15>
31. Author’s correspondence with Marie Vigouroux, French National Assembly, September 2019.
32. Art. 60 LOLF calls the government to give, within two months, a formal written reply to Committee reports.
33. <http://www.senat.fr/rap/r16-677/r16-6770.html>.
34. <https://www.senat.fr/notice-rapport/2017/r17-510-notice.html>
35. Author’s correspondence with Guillaume Renaudineau, French Senate, July 2019.
36. In September 2019, the House of Commons Liaison Committee’s report on the effectiveness and influence of committees has revised the core tasks of Committees and included PLS as part of a broader policy task rather than a task on its own. See House of Commons Liaison Committee, 2019. On the other hand, the Liaison Committee of the House of Lords has recently reaffirmed its commitment to PLS.
37. Author’s correspondence with Mr. Crispin Poyser, UK House of Commons, July 2019.
38. House of Lords Liaison Committee. Review of select committee activity and proposals for new committee activity. March 2012. HL 279.
39. Tom Caygill’s interview with the Clerk of the House of Lords Liaison Committee, 2018.
40. The CdG are composed of 25 members at the National Council and 13 members at the Council of States. Members are elected for a four-year term with the possibility of renewing the mandate. The composition of the Committees and the selection of the Chair and Deputy Chair depend on the strength of the parliamentary groups established within each House. As far as possible, the official languages and regions of the country are also considered.
41. <http://www.parlament.ch/e/organe-mitglieder/kommissionen/parlamentarische-verwaltungskontrolle/Pages/default.aspx>
42. Author’s correspondence with Felix Strebel, PCA, September 2019.
43. Author’s interview with Simone Ledermann of PCA, March 2016.

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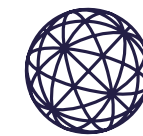
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