



RADA FOR EUROPE

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How can Parliamentary Committees be made more effective?

Examples of good international practice and recommendations for the Verkhovna Rada of Ukraine

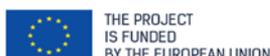
Introduction

Committees are the most important working bodies in a parliament. It is not that public sittings are less important, but their function is different: to give publicity to debates over decisions and to take final decisions in a ceremonial manner. This is not to say that parliamentary committees do not play a political role, but their interventions take place at a preliminary stage, except in some specific circumstances (legislation in committee, when it is constitutionally possible, or in some particular aspects of parliamentary enquiries or oversight powers).

In fact, historically the establishment of committees was **a pragmatic answer** to an evident need: to gather members of parliament in smaller groups in order to enable more efficient work. They also give more time to parliament to prepare its answers to government initiatives.

The creation of committees has been a general tendency in parliaments, whatever the political system may be (they can be found in presidential, parliamentary or any other systems) and is always pragmatic (the ways they were established have varied as a result of different historical experiences). They appeared in the most advanced democracies at the beginning of the 19th century (and sometimes before¹) **and were enshrined one century after** in different forms and at different levels in the hierarchy

¹ For example, it is possible to find select ad hoc committees in the English Parliament since the end of the 16th century as well as in the French Etats-généraux (but unlike the English parliament they were not a permanent institution in France). In the United States the first legislative committees were created in 1789 to elaborate the rules of procedure of each chamber.



of norms (rules of procedure or less or even Constitutions). Nevertheless, the “*mother*” of parliamentary democracy, in England, was always perceived to have reservations regarding the development of committee powers. **It was believed that preparatory work had to be open to every member and that power belonged to the house as a whole, as the representative of the people.** Therefore, even today “*the Committee of the Whole House*” sits during the sitting time of the house but not under the presidency of the Speaker (but of the “Chairman of Ways and Means”).

Another aspect of the creation of committees was **their diversification, in form, statutes and competences.** The form can be **permanent or temporary**, but we have to take care to avoid misinterpretations of wording. Therefore we should consider the *Westminster* experience or the continental one (particularly the French). In the United Kingdom, there continues to be reluctance to acknowledge the importance of committees in the field of legislation, so the committees that deal with legislation are specialized (a committee for every bill) and temporary. Nevertheless, they are called “*standing committees*”! On the continent, the opposite is the case: the legislative committees are generally permanent (except if the parliament decides to create a “*special committee*” for particular reasons (due to complexity, diversity of matters, political reasons, and so on)).

Greater importance has been given in recent years to the field of **supervision and oversight of governance and administration**, and committees are considered one of the best tools to fulfil these functions. Because work on legislation and oversight work appeared to be very close to each other, the same standing committee could be competent in both aspects. However, beyond the traditional committees specialized in finance, a new trend can be noticed towards the creation of **specialized oversight committees.** Therefore, the United Kingdom has seen the development of “*select committees*”, which are traditionally permanent and powerful, while on the continent there are more and more temporary specialized committees, of which **committees of enquiry** are the most typical.

Mention also has to be made of two other categories of committees: **management committees** for the business of the houses in general or in particular fields (such as the status of MPs), in order to make decisions more collectively oriented; and **joint or mixed committees**, often required by constitutions, in situations where the parliament is divided into two chambers.

This overview shows the importance and diversity of committees in the parliamentary system.

They are important for two reasons:

- Ensuring **parliamentary work is effective** at moving towards information, reflection, open discussion and decision making, and
- Ensuring the **collective nature of parliamentary work.** In this sense, committee work is a good opportunity to open space for the opposition and ensure a better balance in relation to executive power.

1. The Status of Committees in Parliament

(Constitution, Law, Rules of Procedure)

The practical proliferation of committees was an incentive to rationalize their organization. In fact, for a long period there was **not much formality** to their creation: a simple resolution of the assembly was sufficient, and the internal organization of the chambers was considered **relevant to their discretionary power**.

The process of development of committees was, in general, the same in all parliaments, and **very pragmatic**: it started from the creation of a committee for a special bill and then, instead of creating a new committee, the tendency was to send new bills about closely-related subjects to the existing committees, which became, de facto, “*specialized*” committees. This was also a way to maintain competences and experiences. Therefore it is clear that this process led to committees acquiring more specificity, noticeably regarding political groups, **as they give the opportunity to all members, whatever their origins, to discuss concrete proposals**. This opportunity was made less problematic because, in general, the meetings of the committees **were not open to the public**.

Through Committees, a second perception of Parliament was introduced: not only representation and expression of opinions but also the concrete elaboration of law and, more recently, institutional oversight over government. This “*double nature*” of parliament was perfectly illustrated by this sentence from Woodrow Wilson, former president of the United States when he was an academic: “*It is not far from the truth to say that Congress in session is Congress on public exhibition, whilst Congress in its committee rooms is Congress at work*”.²

These evolutions naturally lead to **the formalization of their existence through not only standing orders and legislation but also Constitution**. Like the Ukrainian Constitution, the new constitutions, for example of Central and Eastern Europe countries contain, at the least, **references to their existence**: If Slovakia’s Constitution makes only indirect reference (Article 87(1): *Draft laws may be introduced by the Committees of the National Council of the Slovak Republic, Members of Parliament and the Government of the Slovak Republic*), while Article 69 of Lithuania leaves to the law the question of *legislative procedure*, and Article 76 did the same for the “*Statute*” on questions concerning the structures and procedures of the *Seimas*.

Several constitutions devote special articles to the **organization and powers of Committees**: Bulgaria (Article 79), Estonia (Article 71), Hungary (Articles 21 and 25), Latvia (Article 25), and the Czech Republic (Article 31). Some constitutions set out one or two rules of procedure (in Poland it is impossible to put an amendment to vote in the plenary if it has not been presented previously in committee (Article 15(4)); it is impossible for a minister to be a member of a committee in the Czech Republic (Article 32) but it is possible to enter a Committee and be obliged to answer a summons and

² “*Congressional Government*”, 1889

answer questions (Article 38). In Romania, which has a bicameral parliament, the Constitution only mentions the “*parity commission*” between the two chambers.

Thus, even if committees are now considered as constitutional objects, it is not possible to establish any rule in this field except that committees have **benefited in recent years from the tendency to constitutionalize**.

The only commonalities it is possible to highlight concern **committees of enquiry**, despite the fact that they are, usually if not always, **temporary**. This is perfectly understandable as parliamentary committees of enquiry **have a direct impact on the balance of powers**, either regarding government (the obligation to answer any questions and produce any documents concerned) but also concerning citizens: the obligation to defer to a summons and the duty to contribute to identifying the truth. See, for example, Article 45 of the German Federal Constitution.

Some committees with specific importance are also referred to in constitutional law. For example, in Austria, the *Standing Joint Committee* under Section 9 of the *Finance Constitution Act*, is composed of Members of both the National and Federal Councils. It plays an important role regarding fiscal federalism, mediating in conflicts between the Federal Government and Provincial Diets on the admissibility of new provincial or local taxes and rates. The importance given to the *European Affairs Committees* are also noteworthy (France, Article 88(4); Germany³ Article 45).

In this context, the French Constitution appears a little bit unusual as it is inspired by the desire **to limit the influence of committees: this was the main reason why they are mentioned at this level**. There was no recognition of parliamentary committees of enquiry (apart from in sub-constitutional norms but in a very limited and progressive way) until the 2008 revision. The number of standing committees was limited to six in 1958 (at the inauguration of the Fifth Republic) then enlarged slightly to eight in 2008. It was also necessary to wait for the 2008 revision to find direct mention of enquiry (and more generally supervisory) powers of parliament in the Constitution.

There is, at last, a specific reason to constitutionalize the question of committees: **the desire, more and more under consideration in various parliaments, to create opportunities to adopt law at committee level**. An example was set by Italy, followed by Spain and, to some extent, France.⁴

The real status of committees, the way in which they take part in the legislative process, their number and structure, are relevant either to standing orders or laws (the standing

³ For Germany, we can also see *Article 41 for the scrutiny of elections; 45(a) Foreign affairs and Defence Committee; Article 45(c) Petitions Committee; Article 95 §2 For election of judges; Article 94 §1 Committee of Delegates; and Article 77 Mediation Committee*.

⁴ However, the recent proposals for constitutional reform introduced by the Government in that direction are facing considerable opposition.

This map also demonstrates that, even when considering the relationship between parliamentary seats and population size, different European countries **have not adopted the same scale**: for example, in the United Kingdom there are three times as many parliamentarians as in Ukraine, and double the figure for France.⁷ The population of Greece is five times smaller than the population of Ukraine but the Greek parliament is two thirds the size of Ukraine's *Verkhovna Rada*... In this matter, **national considerations and traditions** have very great importance, so it would probably be **futile to try to find a real “model”**, rather than trends and reference points.

2 - Number, increase and diversity of Committees and other working bodies

With 29 committees, the Ukrainian parliament is **in the upper half of the sample**. We can see that the average is around 15 to 20 standing committees. The lack of proportionality can partially be explained by the fact that, whatever the number of parliamentarians, they have to cope with roughly **the same functions**: organization, legislation and oversight, and **the usefulness of working bodies is a largely shared experience**. This is also obvious in bicameral parliaments: while in Belgium, the Senate has less than half the number of standing committees of the Chamber of Representatives, and in Germany the Bundesrat has “only” 17 committees compared to 23 in the Bundestag, the two chambers have the same number of committees in France (8), Italy (14) and Switzerland (9), and there are more committees in the “*first chamber*” (in fact equivalent to a Senate) in the Netherlands than in the second (14 versus 8). The same is the case in Spain (20 and 19) and in the United States Congress (21 to 20).

The reasons for the **tendency to increase the number of standing committees** probably include the following factors:

- **The increasing diversity of public interest**, which requires more and more expertise, and increasing will among parliamentarians to cope with all the aspects of modern societies in a systematic way (including, for example, the questions of gender or transparency);
- The fact that the number of committees cannot be considered without taking into account **the seeking of compromise** between various political groupings and personalities;
- **The importance given to oversight**, which encourages the creation of as many committees as there are branches within government. The Polish parliament alludes to this by speaking in its official presentation of “*branch committees*” and “*non-branch committees*”.

⁷ A current draft reform is proposing to reduce, at least by one third, the number of members of both the National Assembly and the Senate

If the development of standing committees – both in the legislative and oversight fields – is a typical phenomenon of recent decades, **it cannot encompass the diversification of working bodies inside parliaments.**

In addition to the standing committees, other forms of diversification can be seen, including **special temporary committees** in parliamentary systems that remain reluctant to increase the number of standing committees in the legislative field (including the United Kingdom and countries most influenced by its model, though they are, without doubt, more and more a minority). The need for special committees **could be also a consequence of the increased number of categories of standing committees**: the parameters of competence are more and more difficult to draw and, often, creating a special (temporary) committee for a very controversial question may be the only solution to prevent conflicts between two committees. So, another tendency is **to multiply the number of “sub-committees”** to stress one or another aspect of the competence of the standing committee, or to create a preparatory phase within the committee work itself. This could be, in some cases, a way to engage some non-members from other committees. Moreover, many “*working groups*” may be established, whether officially⁸ or not, for different purposes, including in efforts to bypass the limitation of the number of committees

The oversight mission of parliaments which is becoming more important⁹ demonstrates the growing priority given to Government in the elaboration of draft laws, the necessity for responding to anxieties in public opinion and to the pressure of opposition, and to justify retaining the option of creating **temporary committees in charge of evaluation, oversight or enquiries**. Sometimes these bodies could be replaced or complemented by **more informal bodies, such as information missions or working groups**.

Finally – though this enumeration **cannot be exhaustive** – a large part of *the day-to-day* life of parliaments **leads to the necessity to establish other permanent bodies** responsible, for example, for discussing practices and how to respond to new situations and problems, or for examining the difficult question of immunity or parliamentary ethics. This is not to speak of consultation, management or audit committees in charge of internal affairs at the parliamentary chambers.

Thus the landscape of working bodies inside parliaments appears as a kind of a moving mosaic. The diverse picture of national experiences in the table below shows that in every country, it is not possible to speak generally of “*committees*”. The word covers **a lot of different structures** and we must be very careful in our understanding. This is why in many parliaments, the word “*committee*” is often replaced by another word, intended to designate more precise activities, including “commissions”, “missions”, “offices”, “delegations”, “select committees”, “joint” or “mixed” and so on.

3 -The debate around the number of Committees and limiting it

⁸ By weaker juridical instruments (a decision of the board of the house instead of rules of procedure or resolution).

⁹ This continuing evolution is the reason why it is sometimes difficult to find precise information.



This proliferation itself is **a manifestation of the vitality of parliamentary assemblies**, and their imagination and ability to adapt themselves to the evolution of societies in a world of communication and of complexity of interests.

Rules of procedure are, of course, necessary to manage so many people together with their own personalities and diverse – sometimes opposed – ideas and convictions. However, the tradition in parliament is necessarily and philosophically a **non-formalistic and pragmatic one**. This is the reason why such evolutions have been possible. ***De facto* a few number of “rules of procedure” or “statutes” incorporate, for example, a list of committees with precise competences, except for some of them** (we can find examples of this in parliaments as diverse as France, Hungary, Romania, and so on). In fact, **the general rule seems to be to adapt the specific division into committees at the beginning of each legislature. Thus, the number of committees is only true “at a given time”**.

The National Assembly of Hungary is very representative of this kind of uncertainty. The National Assembly formed 14 standing committees at its constituent sitting for the 1990–1994 election cycle, and there were 18 standing committees in operation when the term ended. The number of standing committees working after the 1994–1998 sitting stood at 17, and ultimately grew to 19. The 1998–2002 cycle witnessed 22 standing committees engaged in parliamentary business, with a record set at 25 standing committees operating in between 2002 and 2006. Parliament then developed a simpler and less costly system of 18 standing committees between 2006 and 2010. Finally, the 2010–2014 parliament saw 20 standing committees in place, with the number falling to 14 in 2014–2018.

Of course this periodical updating does not necessarily modify the basic architecture of the standing committee system, as some committees are in any case essential: budget, foreign policy, defence, justice, culture, social policy and health. By way of contrast, it should be noted that in the United Kingdom’s House of Commons, the number of “standing committees” (in fact ad hoc committees for legislation) traditionally remains at seven.

Table– Overview of the situation in the countries of Council of Europe and other references

	Standing committees	Others	Others	Members	Open sessions	Broadcast	Staff	Functions
Austria								
<i>National Council</i>	Expert committees	Committees with specific remits	Investigation Committees Subcommittees					
<i>Federal Council</i>	Expert committees	Committees for specific parliamentary tasks			No (except for the Expert Committee on European Affairs)			
Belgium								
<i>Chamber of representatives</i>	11	15 specific 2 temporary	2 Subcommittees Working groups	17				
<i>Senate</i>	5			20				
Bulgaria	17							
Czech Republic								
<i>Chamber of deputies</i>	19 Committees 4 Commissions (More specific than Committees may also be temporary)	57 Subcommittees 9 Commissions of Oversight 1 Commission of Enquiry			Yes for Committees (except Steering Committee and Mandate and Immunity Committee) No for sub committees			
<i>Senate</i>	9 Committees 6 Commissions							
Denmark (Folketinget)	25						Each committee has 1 or 2 secretaries (academics) but	Organizing and advising (including to the members)

							the main staff are unified in an important "Committee Secretariat"	
<i>Senate</i>								
Estonia <i>(Riigikogu)</i>	11	Select Committees Investigatory Committees	Study Committees					
Finland <i>(Eduskunta)</i>	15 sector committees	1 Grand Committee (mainly European Union)			No under Constitution, Section 50(2), though, a Committee may open a meeting to the public when gathering information for preparation of a matter		Each committee is assisted by a Committee Counsel a deputy, a secretary and one assistant.	Organizing and advising
France								
<i>Assemblée Nationale</i>	8 (the Constitutional maximum) European Affairs	Temporary Committees: Special (legislative) Enquiries Mixed (delegation of the two assemblies)	Commission on Immunities 4 Delegations (permanent) Evaluation and Oversight Committee Informational Missions Working Groups	72 maximum (1/8 of the assembly)	<i>Decided by committee (not often)</i>		Staff for each committee (10 to 30 persons). At least 5 senior officials	Organizing and advising

			Parliamentary Office of Scientific and Technological Choices (common) Clearance Accounts Commission (internal)					
<i>Sénat</i>	8 (Constitutional maximum)	Temporary Committees : Special (legislative) Enquiries Mixed (delegation of the two assemblies)	7 Delegations (permanent) Informational Missions Working Groups Parliamentary Office of Scientific and Technological Choices (common) Clearance Accounts Commission (internal)	Between 49 and 51	<i>Decided by committee (exceptional)</i>		Staff for each committee (8 to 25 persons). At least 5 senior officials	Organizing and advising Two special departments are specially dedicated to supporting Committees and other delegations with an identified staff (from 3 to 10)
Germany								
<i>Bundestag</i>	23				No but some exceptions (by decision of the committee)		Each committee has a "Committee Office", one Committee Secretary and a	Organizing and advising on procedural questions (legal advice to parliamentary



							“desk officer”, sometimes more	groups or ministry in charge)
<i>Bundesrat</i>	16				No (but some exceptions)		Yes, but shared (between two or three)	Organizing and advising on procedural or formal matters
Greece	6 and 4 Special Standing Committees	10 Special Permanent Committees Investigatory Committee	Committees on Internal Parliamentary Affairs					
Hungary	14	Committee on Legislation Committee on Nationalities (Law on the National Assembly Article 7(a) and 7(b))	Ad hoc Committees Committee of Enquiry Each committee has the duty to constitute a subcommittee to oversee the implementation of laws	6 to 15	Yes (since April 2012) but a closed sitting can be ordered			
Ireland (<i>Houses of the Oireachtas</i>)	8 (established by standing orders)	15 Special, Joint and Select			Yes in general but each committee can decide to hold a private session		1 committee clerk per committee and a Committee secretariat (2 to 3)	Organizing and advising on procedural matters. For parliamentarians there is the <i>Office of the parliamentary</i>

								<i>legal adviser (OPLA)</i>
Italia								
<i>Camera dei deputati</i>	14	Committee on Legislation Special Committees (ad hoc) Committees of Enquiry, Committees for policy-setting, oversight and control, (8, for example to oversee immigration)	Joint Committees Advisory Committees established by law to examine specific Government legislative instruments Committees appointed by the President (to authorize prosecution, selection, rules of procedure)				Committees department Studies and documentation Department	
<i>Senato</i>	14	Special committees (ad hoc) Committees of Enquiry	Joint Committees Committee on the Library and Historical Archives					
Latvia	16 and 14 subcommittees							
Lithuania	15	Subcommittees Commissions (temporary)		Between 7 and 17 (mandatory). 5 per sub-committee				
Luxembourg <i>(Chambre des députés)</i>	4 Standing Orders Committees	Special Committee Sub Committees	Working Group Conference of Standing Committees		No but exceptionally at the request of the committee	Exceptional	Each committee (at least one assistant)	Organizing and advising

	17 Standing Legislative Committees							
Netherlands								
<i>1st chamber of the States General (Senate)</i>	14			Around 20			Clerk and scientific + assistants 4 to 9	
<i>2nd chamber of the States General (House of Representatives)</i>	8	3 organisation of the house	Petitions Intelligence and Security Service Oversight Committee of Enquiry Evaluation Committee	3 to 25				
Poland								
<i>Sejm</i>	Branch Committees	Non-branch committees, the terms of reference of which involve Sejm functions that are unrelated to any administrative structure, e.g. the Deputies' Ethics Committee;	Extraordinary Committees Investigatory Committees					
<i>Senate</i>	16	Special Committees	Subcommittees					
Portugal	12 and 2 Subcommittees	3 Ad hoc (2 Enquiry)			Yes (Article 110 of the Rules of Procedure)	Yes (board responsible for the parliamentary channel)	each committee	Assistance recognized in Constitution (art.181)

Romania								
Chamber of deputies	21	Special Committees	Enquiry		Yes except decisions of the Committee			
<i>Senate</i>	24	Special Committees	Enquiry					
Slovakia National assembly	Committees	Commissions (ad hoc)						
Slovenia								
<i>National Assembly</i>	24							
<i>National Council</i>								
Spain (Congress of Deputies)	19 legislative committees complemented by subcommittees	Constitution Article 76(1): possibility of appointing investigatory committees 9 non-legislative Committees	6 Permanent Joint Committees (between the two chambers) Committees of study (SO)					
<i>(Senado)</i>	20	7 non-legislative Committees	Specific: Committee petitions, rules of procedure, nominations, incompatibilities, appeal,	27, except for Committee for Autonomous Communities (54)				
Sweden (Riksdag)	15	Committee on European affairs	Possibility of Joint Committees		No, except limited exceptions (European business, hearings)		Each Committee (5 to 10 personnel) + Evaluation and Research Secretariat	Organizing and advising. Drafting reports

							recruitment from "merit system"	
United Kingdom (House of Commons) (House of Lords)	Standing (ad hoc) for legislation (7 in the last parliament)	Permanent Select Committees to scrutinize the work of government departments: 18 "departmental" and 5 "cross-cutting", providing overviews of particular issues or monitoring internal House of Commons Matters: Modernization, Procedures, Selection, Standards and Privileges, Administration, Finance and Services	Committee of the Whole House "Legislative committees", generally joint between two houses (Consolidation Bills, Committee to Rewrite Tax Law, Human Rights, Statutory Instruments). Regulatory reform committees.	16 to 50 (in practice 16 and 30) for standing committees 11 to 14 for selects	No, except on behalf of the committee but only during information period		Every committee has a Clerk (but only on procedural matters) supplemented when necessary by specialist advisers + Select committee media and information service & Committee Office divided in three parts & Public Bill Office. Importance of Office of the Parliamentary Council OPC (Government)	Organizing and advising on procedural questions 30 investigatory committees supported by 160 staff in the committee office
Outside European Union								
Iceland (Altinghi)	8				No, except in specific cases decided by committees		One Committee Secretariat coordinating one or two Committee Secretaries for each committee.	Organizing and advising (including parliamentarians)

							Document Secretariat	
Norway (The Storting)	12						Each committee and 11 staff in Constitutional Department and 1 International Department	Organizing and advising (to some extent for parliamentarians)
Switzerland								
<i>Conseil National</i>	9	3 Supervisory Committees (Finance, Management (permanent) Committee of Enquiry (temporary))	Joint Committees: Management Committees act jointly and may delegate powers to 7 subcommittees (one by federal departments or institutions). Possibility of working groups				Each Committee or Joint Committee is assisted by a "parliamentary supervision department on administration" (evaluation committee)	
<i>Conseil des Etats</i>	9	3 Supervisory Committees (Finance, Management (permanent) Committee of Enquiry (temporary))	Other joint committees: judiciary, immunity, drafting, mercy committee					
European Parliament	20			25 to 73				
Oversea references								
United States of America								

<i>Senate</i>	21	4 Joint Committees	Special committees					
<i>House of representatives</i>	20	More than 150 subcommittees	Specific Committees					
Canada								
<i>House of Commons</i>	23	2 Joint Committees 1 special Joint Committee	2 special Committees 1 Liaison Committee					
<i>Senate</i>	20		3 subcommittees					



Every parliament is conscious of the consequences of overly liberal management of committees:

Three arguments are generally advanced against this:

- **If delimitation is too complex**, there are challenges in determining jurisdiction, and risks of unnecessary discussions and delays, not to mention the costs in staff organization and finances,
- Committees can be **too small to fairly represent the diversity** of the parliamentary representation and to ensure there are sufficient members to participate in debates.
- **The potential weakness of a parliament vis à vis the government.** It is interesting to note that this argument **could be used in both directions**: The first, possibly majority – view is that too great a number of standing committees **leads to the constitution of “silos” and prevent the establishment of a common point of view**: *“In practice, Congress functions not as a unified institution, but as a collection of semi-autonomous committees that seldom act in unison.”*¹⁰
- The other view is that too many committees (particularly in parallel to ministries) leads to **a risk of governmental instability**, with every committee chair dreaming of being the future minister, and could increase the influence of interest groups. This was one of the main arguments for introducing constitutional reform in France in 1958.¹¹ The 19¹² Standing Committees then in each house were limited to six, and the practice was initiated of examining draft legislation by sending it to special and temporary committees.¹³ The practical effect was very different to what was expected: since then the French Standing Committees have become very strong, competent, and influential bodies, and special committees are only set up in exceptional circumstances. It is also the case that **aligning committees with ministerial departments is not without risk for Parliament**, if the existing practices and customs do not ensure **a real culture of independence** towards administrations, as is the case, for example, in a parliament like Germany (known as a *“working parliament”* which develop a permanent dialogue between committees and the executive branches).

France was not the only country to be preoccupied by the number of committees. Periodically, the *House of Commons* in London and the *United States Congress* try to reflect on this issue and sometimes take radical decisions. Two permanent select committees were set up in the UK parliament in 1997 on *“Modernization of the House*

¹⁰ George B. Galloway, *History of the House of Representatives of the Congress of the United States* (New York: Thomas Y. Crowell, 1961), pp. 99–100.

¹¹ This inconvenience had already been denounced during the first French Revolution

¹² These included, for example, *the Committee on Beverages* and *the Committee on the Merchant navy and fisheries*.

¹³ Subcommittees were also forbidden



of Commons” and on “Procedure”. In the United States, *the Legislative Reorganization Act of 1946* reduced the number of House committees from 48 to 19 and the number of Senate committees from 33¹⁴ to 15. The jurisdictions of all the committees **were codified in their respective chambers**, which helped to consolidate or eliminate many existing committees and minimize jurisdictional conflicts. A second reform occurred in 1993 through *the Joint Committee on the Organization of Congress*, a temporary committee established to conduct a historical analysis of the committee system and propose a policy. This led to¹⁵ **a limitation on the number of subcommittees in the House** (five per committee, with some exceptions) but not in the Senate. Therefore, the number of committees and subcommittees in the United States Congress is still close to 200 (but as a “pure” presidential system the United States Constitution gives a prominent role to its legislature in elaborating policies and legislation).

This example shows that **in parliamentary matters an authoritarian method governing committee organization is far from efficient**. Therefore we find **few examples of such formal limitations**.¹⁶ The rule could always be bypassed (even in a country like France despite the constitutional oversight of the “*Règlement*”). Therefore, there are currently very few parliaments in which lists of Committees are written in the rules of procedure or legislation (though this could be the best way to prevent some excesses).

The very best option is probably to work collectively to prevent extreme situations and develop **a common and balanced understanding**. Then attention has to be focused **on the procedure and practices of collaboration and articulation between the existing bodies**.

3 Nomination, functions and powers of parliamentary committees

1 - Committees, factions and chambers:

The main characteristic of parliament is its location at the **crossroads between politics and institutions**. Houses of parliament are essentially rooted in the electoral process, and their main task is to represent the people and give legitimacy to government, at least in a parliamentary system. This system is shared by almost all European countries (with some nuances or exceptions in countries that chose to create mixed systems, noticeably with directly elected presidents (such as, for example, Austria, Finland, France, Poland and Portugal). However, direct election is not sufficient to create either a presidential system or a powerful president. The nature of a political regime is the result of habits but, primarily, of the Constitution.

Whatever the system may be, **internal organization of the parliament is essential and focused around three main functions: representation, legislation and**

¹⁴ 66 in 1906!

¹⁵ This is the limit of a too strong “*limitation*”.

¹⁶ See nevertheless article 19 of the Belgian Senate « *règlement* » which limit the number to 5



oversight. In a pure parliamentary system – also called “*representative*” – the representation function results in the transformation of the political will of each citizen into a “*general*” body able to decide for the common good (mainly through a set of common rules). This was the origin of **non-imperative mandate principle**, which still governs theoretically and, often constitutionally, parliamentarians’ behaviour.

Parliamentarians are collectively responsible for the delegation of sovereignty from the people, and each parliamentarian is responsible for an indivisible part of this sovereignty. That individual must use it for the best of the nation and must remain free to adjust opinions to new circumstances. **These native conceptions explain that political parties did not exist at the beginning of parliamentary democracy.** The “*people*” was a collection of individuals. Political parties appeared later to “*help*” or to “*channel*” the expression of citizens, in order to propose a programme of government and ensure governmental stability.

The choice of electoral system was – and remains from this perspective – of very dramatic importance: meaning that the debate between proportionality and majoritarian systems largely amounts to a choice between a representative “*mirror*” of the society and an attempt to achieve clarity and efficiency of government. Proportional representation generally necessitates negotiating a coalition between parties. This can take time and introduce uncertainty. As of today the factions, as representative bodies of the parties, finally assume the representation of the people in parliament and the role of individuals are proportionally reduced, so **creation of any other body, including committees, cannot be made without their consent.** But these committees **have a very specific role, quite different of those of political factions.**

Committees, indeed, **have to be representative of the assembly as a whole because they are institutional bodies.** Institutional considerations are more important than political ones and all the perspectives should be represented.

The **history of procedures for nominating committees is indicative of the evolution of ideas regarding democracy in parliament.** For example, in France, despite the existence of “*factions*”, throughout the 19th century committees were not nominated taking into consideration these parties. Houses were divided into “*bureaux*” (“*offices*”) of equal size (44 deputies and 30 senators) **composed through drawing lots** in order to ensure **complete neutrality of choice.** Every bureau examined draft legislation, then sent delegates to a temporary legislative “*special committee*” (like in the United Kingdom) taking into account the expertise of members in the field under review. This system lasted **until 1910 when it was decided to create committees that proportionally represented the factions.** In the meantime, France’s Parliament had decided to replace special committees by real standing (i.e. permanent) committees in 1902. The United Kingdom, as often is the case, followed a reverse path to France: permanent committees were abandoned at the beginning of the 19th century in order to prevent too great influence of the Crown (they created *the committee of the whole house*). They only decided on the present system of special legislative committees in 1882 and they have not changed it since.

Whatever the type of committee, permanent or temporary, legislative or select (oversight) committee or committee of enquiry, **proportional representation of party groups or factions is now the normal way that committees are put together in every country. Every Committee must be an image of the whole house.** Sometimes, a special meeting is organized between faction leaders to resolve specific issues, but the parliamentary group itself generally decides the members. In that decision the faction takes into account the competences of their members, if not always their preferences, and the composition of committees is adopted by consensus. Sometimes, the task is mandated to a special committee: for instance in the United Kingdom the “*Committee of Selection*”, composed of the different parties, appoints members directly to standing committees.¹⁷

The question of **chairing** committees could be discussed at this moment but, generally, the chairs are not distributed in accordance with the proportionality of the whole assembly. Given the importance of the committees’ role, the preference is **usually given to the majority members (or members of the governing coalition).**¹⁸ But there are some exceptions, particularly in second chambers (where the question of majority is normally less acute than in the lower houses), or for symbolic reasons. For example, in 2008, the French President (!) has proposed that the chair of the Finance Committee be given to the opposition in the two houses (this has the case since like in England for the *Committee of Public Accounts*).

Two other considerations are important:

- Preserving the effectiveness of the system and preventing **absenteeism**: generally a *parliamentarian cannot belong to more than one committee*, or sometimes two (and the Speaker cannot be a member of any).
- **The term of the committee could be the session or the legislature**, or may be more. In fact, the result is often the same. Even when committees have to be renewed every year (in the United Kingdom the select (permanent) committees are sometimes called “*sessional committees*”). The tendency is to transform the vote into a formality – so many parliaments prefer renewal by the legislature. **The forming of a new parliament can be an opportunity to revise the organization of committees, sometimes for political reasons.** It is also possible to choose stability when listing committees and their jurisdictions in the rules of procedures or other instruments.

In any case, **stability of the membership and quality of legislation could be a strong argument in favour of the independence of committees.**

2- Functions and powers:

¹⁷ But the names of the members of the “*Select Committees*” have to be approved by the House.

¹⁸ At least two examples can be found in French parliamentary history of when committee votes precipitated the fall of governments (1922 and 1925).

As previously stated, it is **difficult to clearly separate functions in day-to-day parliamentary life**. Even if the distinction between legislation and oversight appears to be very clear, in practice the two functions are closely linked. In fact **parliamentary work is a circle**: to make good legislation you have to be more and more informed of the realities, which often require some degree of investigation. And after a vote on a bill, another type of reality begins: a good law is a law effectively implemented in the spirit intended by the legislators. **Therefore the oversight of the implementation of legislation should be one of the main tasks of committees** (as well as to prevent duplication and useless complexity¹⁹). Thus, “*hearings*” in committee (public or not) could be a good way to deal at the same time with legislative and oversight functions, as well as visits “*on the ground*” to examine certain situations or the working of public services. **Parliamentary committees work with realities and have to search at every moment for compromise and take into account practical considerations.**

Nevertheless the philosophy of legislation and the philosophy of oversight should be distinguished,(?) they constitute **the two main faces of Committee working and functions.**

1 - Legislative scrutiny:

The first task expected from parliamentary committees is scrutiny of legislation. This is in fact **preparatory work** as the committees **are not responsible for the final decision**, which is the responsibility of the plenary. Nevertheless, experience shows that committee work can have significant influence on the final decision and amendments adopted by the House. Committees have to examine drafts and gather all the information needed **to clarify the intentions** of the drafters (government or *parliamentarians* themselves), **and evaluate the impact of the proposals on existing norms and society, as well as civic life.** The committee stage is **a moment of technical and professional review. The way in which the committee work is articulated with the plenary work is nevertheless essential**, and it can be different on the basis of national experiences and traditions.

As often there are differences between the *Westminster*-inspired parliaments and those who chose a continental version (generally speaking based on the French model). The Westminster model introduced **a three readings format** while the French model has **two readings only** (sometimes one, such as for budgetary matters or in the case of emergency procedures). Not all the “*three readings parliaments*” adopted the system of the “*Committee of the Whole House*” but have in common the conducting of a first reading at the whole house level: generally committees do not take the floor before the second reading (though they can be asked to prepare). The second reading is the moment of detailed overview of the text, collection of critical information by any

¹⁹ Evaluation of implementation is a regular (six-monthly) and collective task of the French Senate’s committees since 1972. In Hungary, every Standing Committee is required to form a sub-committee to monitor deregulation processes, enforcement of laws and the impact of those laws on society and the economy.

means required and preparation of opinions. **This is a way to clearly put into practice the priorities of the plenary.** While many parliaments do not hesitate to consider Committees “*subordinate*²⁰, in reality, **their work is essential, the place where the final opinion of the house is constructed.** They play a role in selection (especially in houses, like in Ukraine, where parliamentarians’ initiatives are numerous) and of **coordination of opinions and amendments. Most parliaments reconcile the British “third reading model” with the existence of permanent and specialized committees with precise jurisdictions.** The first reading has the advantage of sensitizing the house to the challenges included in the draft legislation and defining some political and basic orientations. **It is impossible for the committees not to take into account this first reflections on the texts.**

The importance of committees is more obvious in the two readings system, because the committees are the first to be charged with reviewing the draft legislation, and so can play a very important role in determining the final opinion. They are really **the structuring bodies of the plenary debate.** In the debate the committee (**through the parliamentarians responsible for the report** in the French-inspired model) plays a role equal to that of the minister representing the government.

The **powers of committees regarding draft legislation** is, of course, crucial: can they only review it or can they amend it? Does the committee submit a text they have revised to the plenary debate or the original text? This is, of course, a key question, particularly in cases where the government did the drafting, This can have consequences for the balance of the debate. Generally speaking, the traditional parliamentary conception is that the reference text for the debate and amendments is **the text issued as a result of the deliberation of committee.** There are few exceptions to this rule, with the main one the French situation between 1958 and 2008, when the basic text for the debate had to be the government’s original text. Therefore parliamentarians or fractions or committees who disagree with such or such article had to elaborate amendments and ensure majorities for them.

The second point is **the role of the committee regarding amendments** that were not issued by the committee itself. The regular rule is that an amendment cannot be discussed in the plenary without advice from a committee: that is to say without having been presented and discussed first in the competent committee.

Whatever the system, **the general rule is that every draft law has to be provided to a committee (standing or special),** and what is expected is that the committee “*reports*” to the house. Many rules of procedure mention the report as a mandatory step in the legislative process, if not a condition to open the second reading.

In any case, committees, with the support of their staff, play an important role in pursuing the modern objective of “*quality of legislation*”, through the respect for procedures (preventing, for example, new expenses) or the form of the law (correctness regarding legal formulations and other considerations).

²⁰ Thus, on the website of the first chamber of Polish Parliament, Committees are introduced as “*auxiliary bodies*” of the *Sejm*

The system of pre-deliberation by committees has some critics, precisely because of its efficiency, especially in the countries where it is the most developed. The plenary could appear to be a repetition as it is generally possible to again present amendments that were not endorsed by committees (this is especially true in France where the “*right of amendment*” is strongly constitutionally protected). As a result, many attempts have been made to reduce the length of the debates in plenary and one of these is **the attempt to institute “legislation in committee”**, that is to say consider, in some circumstances and conditions, a vote in committee as equivalent to a vote in plenary. The most significant experience has taken place in Italy (“*leggine*”). Two shortened procedures to adopt laws were established under Article 72 of the Constitution. They cannot be used for constitutional and electoral matters, delegation of legislative power to government, ratification of treaties or budgetary matters. The research into and vote on a text can be entirely delegated to a committee (“*commissioni in sede deliberante*”). All the members of the house can propose amendments, and the procedure is the same as in public settings. A second option gives the right to a committee to write a text that is introduced in the plenary but without the possibility of amendment “*commissioni in sede redigente*”. The final vote is made in the form of simple declarations. The Government, 10 per cent of the members or a fifth of the committee members can ask for the draft legislation to be returned to regular procedure in the plenary. After a two-year period of experimentation, a comparable system was introduced in the rules of procedure of the French Senate and was determined by the Constitutional Council to be in conformity with the Constitution.

2 - Parliamentary oversight of the executive and administration

Parliamentary oversight of government is the direct consequence of governmental accountability to parliament but the concept of government accountability has progressively been transformed. It is now very unusual for parliament, in constitutional form, to vote to dismiss a government (because of the fundamental link between a parliamentary majority received in the polls and a government’s existence and, as a consequence, the importance of political parties). Therefore, such a spectacular procedure is no longer characteristic of parliamentary oversight of government. **Preference has been given to a more diversified range of tools in plenary (different kinds of questions and debates), as well as in committees, and oversight has become day-to-day supervision.** Moreover, the growing importance of government in making legislative initiatives has significantly transformed the image of parliaments “*elaborating the law*” (if we consider the number of laws adopted, for every parliamentary initiative, at best, there are at least four or five government initiatives). **Therefore parliament “reacts” more than it “proposes”** and the way in which it plays its role has progressively changed. **Legislation is scrutiny and approval of government initiatives, and the right of amendment has become much more effective than the right to make legislative initiatives.** Therefore the “*oversight*” function may be more characteristic of parliamentary work than the legislative (initiative) function. Finally, evolution during the twentieth century,



with state intervention in the economy and social policies, and the development of subordinate administrations and governmental agencies, has increased the need for oversight, especially ensuring that the will of parliament is really considered.

In this new institutional landscape, committees have become better and better adapted to this day-to day-oversight of executive activity.

Initially, oversight *appeared* to require some exceptional and, in some way, spectacular measures. This is the reason why every parliament developed the possibility to create temporary committees especially dedicated to enquiries on the existence or functioning of public services. *De facto*, the above comparative table shows that such possibilities exist everywhere. It is interesting first to examine in what proportion they differ from existing standing committees: they usually have to work very quickly and use all possible means to find evidence: **to this end they do not act in a very different way to the judiciary**. Therefore, the first question was to define a limit between parliamentary enquiries and justice system procedures. Some countries prevent the creation of parliamentary inquiries when the judicial system is already tackling the matter, but the limits are often not so easy to draw. **We thus face a case of concrete separation of powers**. The solution is to be found more in the wisdom and self-limitation of the actors than in public arguments, and also in cooperation when enquiries reveal infractions that are grave enough to be transmitted to the judiciary. In this exercise, parliamentarians have to define **a specific procedure that will protect both presumption of innocence and the integrity of the persons they call in front of them**. Through its power of enquiry, parliament enters a field that can be very different from institutional or administrative oversight. This is the reason why powers of enquiry have to be specially defined not only by rules of procedure but by law and, sometimes, the Constitution, as explained in paragraph I above. Committees of Enquiry have special rights regarding communication of public documents and oversight over governmental agencies. Given the special nature of Committees of Enquiry and their importance regarding government, proposing and creating them often require parliamentary majorities. Sometimes a gentlemen's agreement or legal instruments can create reserved rights for the political opposition to initiate enquiry processes on a regular temporary basis.

Another important question in this aspect is **whether or not the hearings will be public** (which will be considered later in general). In fact the question is: what would be the best solution to get at the truth: is it confidentiality or publicity? Confidentiality has the great advantage of protecting sources of information and giving them confidence. However, public hearings – as in the U.S. Congress for example – transform parliamentary procedures into a kind of a show, sometimes as much for the personal publicity of the members of the committee as for getting at the truth: it may be good for the audiences of parliamentary television channels or the internet, but it is not necessary good for democracy. **Sometimes, as will be seen in the following chapter, parliaments use a mid-way solution: in camera sessions could be the principle but in some circumstances, the committee itself could decide that public hearing is required. The modern tendency is to inverse the rule: public hearings have become the rule and closed sessions require a decision by the committee.**



In addition to this spectacular and exceptional method, perhaps the most effective means of parliamentary supervision is **oversight of finances**. Consent to taxes (“*no taxation without representation*”) was the first justification for parliamentary oversight, and this continues, noticeably through the **screening of governmental proposals** (it is a constant of parliamentary tradition that houses cannot propose new expenses without appropriate compensation), **debates on ministerial budgets**, and **tracking expenses**: three issues in which finance committees play a very special role. Thus, **financial debates and finance committees are slightly different from other debates and committees**. In the United Kingdom, financial scrutiny takes place in the full house under the presidency of the *Chairman of Ways and Means*, and then the major measures are sent to the Committee of the Whole House and the others to the *Standing Committees on the Finance Bill*. In France, the Finance Committee has a prominent and coordinating role in scrutinizing the “*Law on Finances*”. The *Social Affairs Committee* can scrutinize the “*Law for the Financing of Social Security*” and all the other committees can give advice on matters in their competence. Thus scrutiny of the budget can lead to more than 100 reports (half of which are “*special reports*” from the Finance Committee and the others “*advice reports*” from the other committees). Every “*rapporteur*” of the Finance Committee – designated at the beginning of the legislature according to the political composition of the house (every member is responsible for a special report) has special powers, **essentially analogous to the powers of the rapporteurs from committees of enquiry**. These powers are granted to prepare an annual report, but are in fact **permanent** and could be used **afterwards to follow the execution of the budget**. Therefore this organization is a very strong and permanent body acting throughout the year.

Other permanent committees regularly scrutinize governmental initiatives. Thus the special permanent *committees* in the United Kingdom are distinct from the standing “*legislative*” committees. This example was followed in many European parliaments: “*specific committees*” in Belgium’s House of Representatives, “*Commissions of oversight*” in the first chamber of Czech Parliament, “*non-legislative committees*” in the two chambers of the Spanish *Cortes Generales*, “*select committees*” in Estonia and Ireland, “*evaluation and control committees*” in French national assembly, and “*Committees for policy setting, oversight and controls*” in the *Camera dei Deputati* in Italy. The Swiss experience is very interesting because financial oversight is a joint competence of the two chambers, which nominate two “*oversight committees*”: one for finance and one for management. The latter can delegate its powers to seven subcommittees (one by “*federal department and institutions*”)

The tendency is also to create **specialized oversight committees** by law, especially regarding *intelligence and security services* (France, the Netherlands and Poland) or *armed forces* (Austria and Germany)

Finally a more recent and remarkable evolution is to give standing committees the possibility²¹ of having the same powers as committees of enquiry (this power can be

²¹ They naturally have the power, even without a written authorization, to ask to a minister to come and answer their questions. This is one of the practical consequences of the principle of ministerial responsibility.

given for example in France by each house for specific purposes). This is confirmation of the impossibility of absolutely distinguishing legislative scrutiny from oversight functions but also that **oversight must be a fundamental and continuous parliamentary preoccupation in a modern parliament**. This objective may have consequences for the organization of the committees themselves.

3 - The Establishment and Cooperation of Committees

1- Organization of Committees

Establishment of committees is generally considered to be an **internal question**. This is one of the key questions of parliamentary autonomy. Therefore, the members of each committee should elect the chair themselves. The same is true for board members – deputy chairs and secretaries – and for some particular members (in France, the “*general rapporteur on the budget*” inside the Finance Committee, who is a member of the political majority). **However, this election has to take place in the general framework of the House and to take into account the existing composition of the parliamentary groups**. Allocating the chairing of a committee follows an agreement among the parliamentary groups but, formally, a vote by the members of each committee (generally in a closed sitting) is mandatory,²² and a general vote in the plenary is seen as ratification. In the United Kingdom and in other countries following the *Westminster* model, the chairs are nominated by the “*Speaker*” from a list presented by the “*Speakers’s Pannel of Chairmen*” Committee (chaired by the *Chairperson of the Ways and Means*) taking into account the political nuances of the House. The composition of the board must also take into account the composition of political forces, as the committee’s composition must accord with the composition of the whole house. This is a condition for efficiency and for the confidence of every parliamentarian.

Immediately upon being elected, the Chair generally has a **very great power to set the agenda of the committee** (in the framework of the general agenda of the house and taking into account the days devoted to committee meetings²³). Generally one day a week (Wednesday in France, Tuesday and Thursday in the United Kingdom) is devoted to committees (the European Parliament’s model of committee weeks has been experimented with in some parliaments but does not seem very satisfactory. Attendance is less important than in plenary weeks, and parliamentarians prefer to remain close to their constituencies).

In fact, one of the biggest problems faced by many parliaments is **conciliation** between the agendas of committees and plenaries, and **coordination** between committees themselves. Given the difficulties inherent to evaluating and gathering

²² In some cases, a special agenda is set for the vote in order to ensure that the vote is in conformity with the choices of the parliamentary groups. The votes do not take place at the same time in every committee and the “*chain*” of votes can only continue if the agreement was followed in the previous committee.

²³ In the United Kingdom Tuesday and Thursday, but also any day when house is sitting

data from every parliament, we will focus on three main cases, through the English, French and German situations.

2 - The question of coordination

The work of committees is in some cases as intense as – if not more intense than – plenary work. This depends in practice on the traditions and organization of parliaments: plenary sittings in England for example, which is considered mainly as “*an oversight parliament*”, are very limited (the budgetary debates last for four or five days), but standing committees may meet 200 times a year. In France, which is considered a “*legislative parliament*” (if not a “*speaking parliament*”), the first reading of the budget can last, according to the Constitution (Article 47) up to 40 days for the National Assembly and 15 days for the Senate. However, as committee work requires as much time as plenary, the French agenda is overburdened. The average number of sittings of standing committees is around 500 a year (1,000 including all sorts of committees). In Germany, the work of committees is essential because it is the place for close cooperation between Bundestag and the executive (this is considered as one of the main characteristics of the German parliamentary system, sometimes qualified as “*Gremienparliamentarismus*”²⁴).

Questions of overlapping jurisdictions are too difficult to solve informally and thus require some special organization. In Germany this is one of the tasks of the *Presidium* of the Bundestag. In France a committee called “*Conference des presidents*”²⁵ meets every week, in which every chair of a committees or parliamentary group, as well as deputy chairs of the whole house, meet with the minister *in charge of relations with the parliament*, and tables the parliamentary agenda for every week, within the framework of a provisional programme for three weeks.²⁶ Despite this, in some cases it is impossible to prevent simultaneity between committee and plenary sittings.²⁷

The need for cooperation is a direct consequence of the number of committees, as the more committees there are, the more that coordination is necessary. Precise rules have to be adopted to determine **the primary committee in charge of a draft.** The house could authorize other interested committees to scrutinise the draft, but only as advisory committees: their proposals have to be submitted to the lead committee, like those initiated either by the parliamentary groups or by the members. In the United Kingdom and Germany **the allocation of drafts between the committees** is decided after the first reading. This is the task in Berlin of the *Council of Elders*. In France,

²⁴ “*Committee parliamentarianism*”

²⁵ It is interesting to note that a “*working group of standing committees*” does exist in Luxembourg.

²⁶ The 2008 reform gave better visibility to the parliament’s intention to establish for the whole year to come a division of time between governmental weeks (two), an oversight week and an initiative week, taking place every four weeks with precise days and hours for question time and for each parliamentary group (including minority groups as well as opposition groups)

²⁷ In the British parliament, committees on non-governmental bills can sit every day when the house is sitting. In France it is not unusual for committees to also sit on Tuesday afternoons or on Thursday mornings.

²⁷

attribution to a committee is decided by the *Chair of the House* (on behalf of the “*Bureau*”) immediately after its being deposited by the government (this task is easier because of the limited number of standing committees). Other committees can ask to participate in preparations for the debate but the number is limited to two. In case of conflict the decision is taken by the *Conference of Presidents*.

3– Committee work, assistance and transparency

Opening the committee phase is the responsibility of the committee chair, assisted by the committee clerk, equivalent to the chair of the house assisted by the secretary general or the Clerk of the house in the plenary. Generally, the procedure is less formal (except in the United Kingdom). The rules of procedure only play the role of **subsidiarity rules** to be consulted in case of uncertainty. However, **the practice is inspired by the practice in the plenary**, both for organizing the debate and for votes or the question of quorum. It is possible nevertheless to highlight some particularities.

In the United Kingdom the planning of the sitting is the responsibility of a *programming sub-committee*.

In France the first and major act is the designation of a “*rapporteur*”, a *parliamentarian* (generally from the majority) who will be in charge of conducting investigations, meeting and discussing with the drafters. The aim is to gather all the information needed to understand the draft and its consequences. It is the duty of the rapporteur to propose modifications to the committee. The rapporteur is assisted by one member of the committee staff and plays a real institutional role. During the preparations, the chair can organize, at the rapporteur’s request, hearings with the competent minister and every person able to contribute to the information needed by the committee.

In Germany, as in many continental parliaments, the role of preparation and instruction is given to a subcommittee. The staff members assist the committee members to document and write the draft conclusions. Working in subcommittees is an important part of the work of Germany’s parliament. Every year, the meetings of the subcommittees take up between a fifth and a third of the committee meeting time. This leads, perhaps, to a more collective elaboration of committee recommendations and analysis than in the French system. In France, nevertheless, every member can participate in the elaboration of the committee’s positions from the presentation of the rapporteur. Then, when the report and the new text are adopted following the deliberation, the committee in charge of the discussion can examine the “*external*” amendments (from the *parliamentarians*, the groups, the advisory committees and the government itself) and make recommendations for each of them for the plenary.

Therefore, the institutional “*input*” of standing committees is very important in France and Germany. The system is very different in England where the chair plays a formal but decisive role in selecting and grouping amendments for the vote. The Chair is more



powerful than other committee members because he/she can classify some amendments as irrelevant, in the same way as the Speaker in the plenary. The role of the Chair then is essentially “*technical*”, so the work of the staff remains formal and procedural, without providing assistance to the committee members (as can be the case in Germany²⁸ and especially France, where the “*institutional*”²⁹ culture is stronger).

A major difference between the United Kingdom and Germany, on the one hand, and France, on the other, is that ministers, as parliamentarians, can be members of the committees (in the United Kingdom there is at least one minister on each committee). This has significant consequences for perceptions of the relationship between government and parliament.

The parliamentary tradition is to utilize staffers attached to the parliamentary institution to assist committee members with their work. The link can vary by the level of technicality and education and the parliamentary traditions³⁰ but the intensity of the assistance varies with national experiences, given that the staffers (permanent staffers of the house) only have the role of technical adviser on procedures. In some cases the responsibility can be larger and the member of the staff can act as a team member under the direction of the rapporteur. Staffers can be attached to every committee (at least one as can be seen in the table above) or put at its disposal according to the work by a dedicated department. It is in some way dependent on the number of committees. In any case, to perform their assistance functions, staffers are placed under the functional authority of the committee’s Chair.

The independence of civil servants, and ethical frameworks, are essential for committee staff (as well as for plenary staff). It is not necessary that every staff member of a committee is officially a civil servant working for parliament (sometimes expertise from outside or academia is welcome and necessary) but a core of them is required in order **to facilitate relations between the various institutional bodies inside the house and to ensure non-partisan behaviour.** This is one of the main conditions for **maintaining a clear difference between the roles of parliamentary groups and committees.** Having independent staff also allows them to provide **reliable technical advice to the various members of the committees and ensures a working climate that can, in some way, overcome the distinction between majority and opposition.** Nothing in any case is possible without the personal integrity and conscientiousness of the committee chair.

The last word before concluding is to stress the importance of the public or non-public deliberations of committees. As was said previously there is a tendency to be as transparent as possible in public meetings and preparatory work. Even a longstanding tradition such as that of the United Kingdom appears to be compatible

²⁸ The real assistance to the members is given when it exists to the personal staffers or, at least, the members of the staff of the faction the member belongs to.

²⁹ In the French Senate, for example, the senators’ personal or faction assistants cannot enter the committee room when it is not in session.

³⁰ It is possible on this point to refer to the previous report provided in the framework of Parliamentary Assembly of the Council of Europe assistance.



with open debates by standing committees but it is in a country with a long tradition of bipartisan culture in which the opposition has to consider itself to be tomorrow's majority and not to search for compromises. On the continent in which (with some exceptions) the division of forces is slightly different, noticeably because of the (quasi) generalization of proportional representation, transparency may favour the affirmation of differences. That is more appropriately the role of the plenary. Given this experience, it may be that, sometimes, an honest discussion in a confidential setting could be better for the common good than the indefinite reaffirmation of political contests.

4 Considerations and proposals for the Verkhovna Rada of Ukraine

1 – Overview of the existing rules and remarks on Ukrainian legislation

1 - *The importance of the committees for the members of the Verkhovna Rada*

Thanks to a *USAID* survey we have an opportunity to learn of perceptions of the importance of Committees among members of the Verkhovna Rada. What is particularly remarkable is the level of this perceived importance. According to the *ninth* survey (2016), the committees appear to be the most important place to discuss draft laws (50 per cent) and the most effective institution for formulating public policies (86 per cent). Moreover, to the question: “*which factors influence voting decisions*”, “*committee recommendation*” is at the same level (21 per cent) as “*faction position*” (21 per cent) and “*opinion of constituents*” (20 per cent). **Comparison with preceding surveys shows that opinion is consolidating at a rather high level regarding the importance of committees – while opinion of constituency shows a small decrease, and the influence of factions is decreasing in perceived importance.** The survey also shows that *parliamentarians* are perfectly aware of what should be expected from Committee work: **analysing draft bills and identifying their potential positive and negative effects (45 per cent³¹), and providing individual deputies with opportunities to have their views aired (43 per cent).** What is even more important is the importance of Committees to be open to the communications of interest groups and, **in a growing proportion of cases, as provider “of a place for the general interest to be heard” (34 per cent) and to build political consensus.** For the moment, concern “*to reduce the number of alternative proposals*” remains rather low (this was one of the problems identified by the EP-VRU Needs Assessment Mission, the ‘Cox mission’) but **the function of oversight of the executive branch (particularly the importance of committee hearings) was also strongly identified as one of the main tasks of committees.** The survey revealed a high level of satisfaction about the number of Committees (28) and the division of their jurisdictions,.

³¹ We quote only the “*routinely*” percentages of satisfaction. In fact the results are much more positive (92.9 per cent) when we add the answers to the question are the tasks “*often*” performed.

It is difficult to draw many conclusions from such limited results but this is a very **encouraging overview**. It is still not clear **if this importance given to committees is the result of a still-weak politicization of parliament (as consequence of the mixed electoral law and a too-short democratic experience), limitations in the expertise of ministries and executive agencies, or the perception of what a “working parliament” could be for the future.**

2 - The legislative and regulatory framework

The importance of parliamentary committees in the Ukrainian system appears through the level of normative consecration. The founding principles are in the Constitution itself, and specifically in Article 89: this Article gives a framework for the implementation of laws governing committees. Apparently two laws of this kind are supposed to exist but the present text is based on analysis of only one (said to be the more general: Law 116/95 “On Committees of the Verkhovna Rada” of 4 April 1995)³². This Law is divided in eight sections of unequal importance: General Provisions, Functions (legislative drafting, organizing, oversight), Rights and Obligations, Senior Officials, Structure of Committees, Organization of Activities, Support for Activities, Responsibility for Non-compliance with the Requirements of this Law, and Final Provisions. A second law apparently addresses temporary committees and committees of enquiry. A third law, “*On the Status of a People’s Deputy of Ukraine*” defines the rights of deputies to participate in bodies of the Verkhovna Rada. The most operational and clear rules, in my view, are the rules of procedure of the Verkhovna Rada, including Chapter 16 (Formation of Verkhovna Rada Committees); Chapter 17 (Creation of temporary special and temporary investigatory Commissions of the Verkhovna Rada); Section IV Legislative procedure, Articles 93, 96 and 97; Chapter 20 Second reading of draft laws; and Chapter 27 Adoption of the state budget of Ukraine and supervision of its implementation, among others. Finally, these texts are complemented by resolutions on the creation of committees and the resolution on their size (not analysed in this document).

The Law on Committees appears to be a little bit confused, repetitive and complicated, especially Chapter 3 – the longest – about rights and obligations of the committees, particularly concerning organizing and supervisory functions.

Certain questions may be stressed in particular:

- The procedure for dismissing a committee member and its possible implications for the validity of that person’s own mandate as parliamentarian (Article 7(6))

³² Apparently the second one (on temporary enquiry committees) has been not elaborated yet.

- The conception regarding the competences of oversight and control of the Verkhovna Rada and, thus, its committees: are concerned not only with government and state bodies but also local self-governed bodies, companies, institutions and organizations, and their officials. The spectrum is apparently much larger than the public sector and includes parts of civil society and private property (*to be confirmed*). In any case the consequences of the principle of separation of powers are not examined in a sufficiently attentive way. Parliamentary oversight is apparently confused with a general political overview of all the activities of Ukrainian society, and parliament can substitute its own point of view to the legal institutions in charge of administrative or legal (even juridical) oversight. Meanwhile, the roles and responsibilities of the executive branch of government and the autonomy of local self-government bodies appear underestimated.

This is probably the consequence of the existence of several characteristic elements of a presidential regime (power of nomination or advice on nomination given to parliament and its committees). This specific power (exceptional in its scope for a parliamentary regime) also explains the confusion in the description of “*organizational powers*” and, at least partially, **insufficient clarity concerning the distinction between legislative and oversight functions**

- **The redaction of the law made any distinction between committees and encourage every of them to take initiative which can lead further than their own competencies³³.** Some procedures appears very burdensome and are probably a source of confusion: so hearings in plenary,³⁴ and the right apparently given to every committee to systematically designate rapporteurs to present their points of view in plenary even in circumstances in which the main role should be taken by political factions rather than committees (such as discussion on the responsibility of government). On the contrary, the procedure for drafting of legislation is insufficiently precise (at any moment the notion of “*amendment*” is evoked and described).

2 - Factors that can influence the effectiveness of parliamentary committees **(summary and final remarks of the report)**

After this overview, we propose some approaches which could enhance the effectiveness of parliamentary committees, based on different parliamentary experiences:

1 - Consideration of committees’ importance and specificity in relation to parliamentary factions: institutional (need to be composed in conformity with the diversity of the whole house), **and working behaviour** (a place where technicality is sometimes as important, or even more important, than party affiliation);

³³ Example the relation with the accounting chamber which can be in any case open to all the committees indifferently.

³⁴ A most efficient procedure could have been the organization of public hearings by a committee alone, open to the other members or jointly organized.

2 - The need for stability and specialization: priority given to standing committees (without distinction between legislation and oversight), except for financial matters which require a standing and specialized committee with a coordination role. This is also relevant with regard to quality of legislation (through a strong “*law committee*” and/or a “drafting assistance department” in the House apparatus);

3 - Attempts to find a compromise between the number of parliamentary members, the strength of the committees and the number of committees. Developing powerful committees with wide scopes, assisted by subcommittees, could be better than having too many committees, as the former approach would encourage a “*synthetic and political*” vision of Parliament able to effectively engage with government, rather than a “*crumbled*” parliament subordinate to governmental agencies and too open to sectorial influences.³⁵

³⁵ If we set aside the main functions: budget, foreign affairs, national security and defence (the last two can even be combined as in the French Senate), legal policy and justice, health, economic policy, and culture (a total of 6 or 7); the specific ones which deal with the organization of the Rada and statute of parliamentarians (rules of procedure, legislative support for law enforcement, freedom of speech – which could be joint (1 or 3) and those with a special and transversal purpose: informatization and communication, prevention of corruption, environmental policy, regional policy and self-government, and European integration (5), we arrive at 15. It would be interesting to examine objectively how they could be reshaped in order to gather the competences of the remaining 14 which deal with specific and/or often-concurrent competences (for example taxation and the budget) and could be reconstituted either as subcommittees or as specific committees like the “*Ad Hoc Supervisory Panel of the Verkhovna Rada of Ukraine on Privatization*” (more dedicated to oversight than to legislation).

Committee on Construction, Urban Development, Housing and Communal Services

Committee on Budget

Committee on State Building, Regional Policy and Local Self-Government

Committee on Environmental Policy, Nature Resources Utilization and Elimination of the Consequences of Chernobyl Catastrophe

Committee on Economic Policy

Committee on European Integration

Committee on Legislative Support of Law Enforcement

Committee on Corruption Prevention and Counteraction

Committee on Foreign Affairs

Committee for Informatization and Communications

Committee on Culture and Spirituality

Committee on Science and Education

Committee on National Security and Defence

Committee on Public Health

Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety

Committee on Taxation and Customs Policy

Committee on Human Rights, National Minorities and Interethnic Relations

Committee on Legal Policy and Justice

Committee on Industrial Policy and Entrepreneurship

Committee on Rules of Parliamentary Procedure and Support to Work of The Verkhovna Rada of Ukraine

Committee on Freedom of Speech and Information Policy

Committee on Family Matters, Youth Policy, Sports and Tourism

Committee on Social Policy, Employment and Pension Provision



4 - There is a need for **instruments of coordination and association of committees in the general management of the house**: The agenda-setting conference should not be the monopoly of parliamentary factions and must privilege effective working over political postures. A clear distinction should be made for each draft, committee leader and subordinate and advisory committee (limited). It may be useful, in addition, to establish an informal conference of committees.

5 - Besides respect for balance of political affiliations, **great discretion in internal organization should be left to the chairs and their boards**

6 – Encourage the committees to be places of synthesis between the different drafts in order to simplify the plenary agenda around the main questions

7 – Ensure attention is given to professional assistance by, at least, a dedicated civil servant belonging to the committee board, managed by the secretary general but placed under the functional authority of the chair of the committee.

8 – Prevent the creation of “*little parliaments*” and feudalities.

9 – Concentrate the main rules in the Rules of Procedure in order to maintain general oversight and enshrine in law the right to request any document from the state authorities (the question of local self-government authorities has to be reserved) and the possibility to conduct enquiries within governmental agencies and obtain any administrative documents, on receiving permission from the plenary.

Committee on Affairs of Veterans, Combatants, ATO Participants and Disabled People

Committee on Transport

Committee on Financial Policy and Banking

Ad Hoc Supervisory Panel of the Verkhovna Rada of Ukraine on Privatization

People's Deputies who do not work in any Committee

