



**PRIORITISATION OF LEGISLATIVE  
OPPORTUNITIES:  
EXPERIENCE IN PARLIAMENTS OF  
EU MEMBER STATES**

## ***Introduction***

A busy Parliament faces many competing demands for legislation. If unsustainable log-jams are to be avoided, some prioritisation and some prioritising of legislative opportunities are necessary. This paper gives examples of how legislative opportunities are prioritised in several of the national Parliaments of EU member States. It looks both at ways in which government-sponsored legislation is prioritised, and at mechanisms for prioritising legislation proposed by ordinary Deputies or Committees. Formal and informal mechanisms (rules, memorandums of understanding, custom and practice) are discussed. The paper does not set out the full legislative procedure in the countries mentioned but instead tries to focus on notable features that should be of interest to Ukrainian Deputies. Drawing on these, the paper sets out the possible approaches to prioritisation of legislation, and concludes by making some suggestions for reform in the Rada of Ukraine.

### *Practices in a variety of countries*

In **Denmark**, the overwhelming majority of the legislation introduced, and an even greater majority of the legislation passed, is government legislation. All Danish Deputies have the right to introduce legislation, but party loyalty in Denmark is strong and the small quantity of non-Government legislation introduced is normally introduced on behalf of Opposition political parties. In one recent year 222 out of 226 Government Bills were passed, while only 15 non-Government Bills were introduced, just two of which were passed. This situation arises from the pragmatic realisation that the Government (usually a coalition) controls the majority in the Folketing, and, perhaps more importantly, that it is only Government that has the resources necessary to draft coherent and comprehensive legislation. Instead of proposing legislation, the Opposition normally choose to introduce a draft parliamentary resolution. This typically involves a call for the Government to amend the law in a certain area. If there is a majority in the Chamber for a draft parliamentary resolution, the Government will normally introduce a Bill proper that amends the law as proposed. From the point of view of the Opposition, it is far easier to draw up a proposal for parliamentary resolution than to prepare a Bill. Denmark has an efficient planning system so that the legislative work of the Chamber is coordinated with Committee work.

In **Finland**, most successful legislation originates with the Government. Governments are almost invariably stable coalitions and this means that they can ensure that their agreed legislative programmes are enacted. The process inside Government before Bills are introduced is exhaustive. At the preliminary preparation phase, the need for the legislation is assessed. If it is decided that the legislation is necessary, terms of reference are written and the Government often appoints either a broadly-based inter-departmental working group or a commission containing civil servants and outside experts to draft the Bill. An impact assessment is made

with the advice of stakeholders. The draft is then checked by the Unit of Legislative Inspection at the Ministry of Justice. This unit inspects the technical structure of the Bill, and its consistency and conformity with legal principles. The responsible Minister then presents the Bill to his or her colleagues inside Government. If they are content, the Bill is sent to Parliament. To help schedule parliamentary business, the Government sends to Parliament twice a year a list of its proposed draft legislation for the period ahead. Ordinary Finnish Deputies can propose draft legislation, but most draft legislation introduced in this way is intended more as a means of making a political statement rather than of proposing legislative change. Most of these ordinary Deputy Bills do not emerge from the Committees to which they are referred – Committees are not obliged to report on Bills from ordinary Deputies whereas they must report on Government Bills.

In **France**, the Constitution specifically gives the Government responsibility for the conduct of public policy. This has meant that, though Deputies and Senators have the right to introduce legislation, in practice most legislation that proceeds through Parliament is government-initiated. Inside Government, discussions about draft legislation are conducted between Ministries under the supervision of the Prime Minister, with the Council of Ministers having the final decision on whether to introduce a Bill. This decision is based on the Government's judgement on the balance between its priorities and the parliamentary time available. Inside the Chamber of Deputies, two weeks out of every four are given to Government legislative business, with the agenda for these weeks controlled entirely by the Government according to their priorities. One week in four is given over to legislative proposals that do not come from the Government – the proposals that are to be debated in this week are selected by the Conference of Presidents, a body made up of the President and Vice-Presidents of the House, the Chairs of the permanent Committees and the Chairs of the Political Groups. In effect, the draft non-government Laws that are judged by senior Deputies as most important, whether because they attract most support or because they deal with pressing issues, are the ones chosen for debate. Sometimes the Government will help promote a non-Government legislative proposal because it can be a quicker means of achieving its objective. In all legislative business, whoever is the initiator, the Government has various means by which it can control procedure by, for example, consolidating votes, by taking over responsibility for the voting of a legislative text, or by ensuring that parliamentary amendments are inadmissible.

In **Germany**, there is a meticulous system inside the Federal Government that decides on the Government's legislative priorities. There are historical and constitutional factors that limit the power of the Government within the Bundestag, but there is an acceptance that the Government has most experience of the implementation of legislation and that it is the best position to know where new statutory provisions are needed in practice. This means that, in practice, if not in theory, Government-initiated legislation dominates the Agenda of the Bundestag. However, opposition groups are also able to put forward their own legislative proposals and to have them voted upon (this is a right given to any political group or to a group of Deputies amounting to at least five per cent of the membership of the Bundestag). The fact

that Opposition groups (or groups of Deputies) do not overuse their rights to introduce legislation is a manifestation of the balance between Government and Opposition that is a fundamental characteristic of the consensus model of politics favoured in Germany.

In **Italy**, all Members of the Chamber of Deputies may introduce legislation. Very many Bills are introduced for purely symbolic reasons or to demonstrate political activity either by individual Deputies or political groups. Almost all Bills are assigned by an essentially bureaucratic process to one of the permanent Committees, but this is where the majority simply vanish, with no further progress on them being made. The Committees are, in effect, informal filters. Where Bills do make progress, there is a system of timetabling for Bills, with political groups allowed to select amendments to be put to the vote depending on the group's size. This is regarded as a successful mechanism for forcing the Chamber to concentrate on those aspects of Bills and of proposed amendments that are of greatest political importance. There is a special Legislative Committee, composed equally of members of the majority and opposition parties, which assesses the quality of legislative texts to see if they are homogenous, simple, clear and appropriate to their purpose, as well as their effectiveness in simplifying and reorganizing the legislation in force.

In **the Netherlands**, there is an elaborate process of consultation before Government legislation is introduced. Early drafts of the legislation may be published, as well as Green Papers and White Papers. There are interdepartmental checks, and much emphasis on compliance with quality protocols. There is an all-embracing quality check – operated by the Ministry of Justice – and checks on the different possible effects of the draft are conducted by the different Departments concerned. These include assessment of the draft's budgetary effects, its effects on business, its likely administrative burden, and its societal and environmental effects. If a draft is regarded as running the risk of causing excessive administrative burdens, there is a special procedure under which the draft is scrutinised by a special semi-independent watchdog, the Commission on the Review of Administrative Burdens. When these checks are completed, the draft proceeds through a network of intergovernmental subcommittees where disagreements between Departments are resolved. The responsible Minister must then submit the Bill to the independent Council of State which has the power to recommend that the flaws in the draft mean that it should not proceed. The draft Bill together with the Council of State's report (and the sponsoring Minister's response to that report) is submitted to the Council of Ministers, who decide whether to proceed with introducing the Bill to Parliament. Ordinary Deputies may also introduce Bills but they do not make great use of this right.

In **Poland**, about a third of legislative initiatives in the Sejm come from ordinary Deputies (these must be from groups of at least 15 Deputies), about a fifth of legislative initiatives come from Committees, and just under a half come from the Council of Ministers (the rest come from the President or the Senate or citizen initiatives). The Marshal of the Sejm (Speaker) is able to reject draft Bills that do not follow proper form. If there is doubt as to whether the Bill is consistent with Polish or EU law, or is badly drafted, the Marshal may refer the Bill to the Legislative Committee for its opinion, after consulting the Presidium. If the Legislative Committee finds

against the Bill (by at least a three-fifths majority at a meeting when at least half of the Committee members are present), the Marshal is not required to initiate the proceedings in respect of that Bill. Legislative procedure in the Sejm can be somewhat chaotic. Problems are caused by the quantity of legislation; by the absence of any expert participation in the drafting of non-Government legislation; by the poor system of management of the progress of Bills, and by the limitations on the Government's power to influence progress. The Government does, however, have the power to designate certain Bills as urgent, and these then have a fast-track procedure.

Though **Scotland** is a sub-national Parliament, it has extensive legislative powers. In the Parliament, a Non-Government Bills Unit is available to support any Member wishing to take forward an ordinary Member's Bill. The Unit assists with policy development, by summarising consultation responses, by helping with drafting of a Bill and by preparing briefing and generally giving procedural advice. Members invariably use this service and there is an expectation that the introduction of legislation should be taken seriously – and therefore infrequently. At present, for example, just six Members' Bills are proceeding through the Scottish Parliament.

In **Slovenia**, the great majority of Bills originate with the Government, though ordinary Deputies may propose legislation, as may citizens' groups of at least 5000 people. An interesting feature in Slovenia is the independent Office of Legislation. All Bills, whatever their origin, must be submitted to this Office. It decides whether they comply with the law, the constitution and relevant treaties, and whether their drafting is clear and precise. The Office's decisions are not formally binding, but they are made public.

In **Spain**, the legal system is hierarchical. Organic Laws (basically those dealing with fundamental rights and constitutional matters) require an absolute majority in Congress, while ordinary Laws require a simple majority. Extraordinary and urgent matters can be covered by Decrees which are ratified retrospectively by Congress. These Laws invariably originate from the Government. Fifteen ordinary Deputies acting together are theoretically free to introduce legislative proposals, but, in practice, they act through their political groups, and it is these groups that decide what to promote. A draft law that is not sponsored by the Government must meet a number of tests: it must be accompanied by a Statement of Motives and sufficient information from its sponsors for its constitutionality to be decided. Then it is sent to the Government who decide whether or not it complies with procedural requirements or involves public expenditure. The Government can effectively kill the draft at this point. If it does not do so, the draft is referred to Plenary for a vote. Only if this is passed does the draft legislation proceed to Committee. Some important laws do make progress by this method, especially in areas of conscience – there is at present a non-Government law dealing with dignified dying before Congress. It is much more common for ordinary Deputies or Opposition political groups to put forward "non-law drafts" – these are non-binding draft resolutions which urge the Government to take action in a particular field. It is also possible for legislation to follow an initiative signed by 50,000 citizens, though it has been rare for these initiatives to be debated and very few have become law.

In the **United Kingdom**, government business takes priority by rule in the House of Commons, and by practice in the House of Lords. The British electoral system almost always results in the Government having a majority in the elected House of Commons, and therefore having control of the legislative agenda. Competing claims for government legislation come from different Ministries, and proposals are submitted to a Committee of the Cabinet that is chaired by a senior Minister without departmental responsibilities. This Committee decides, based on the parliamentary time available and the Government's political priorities, which Bills will be mentioned in the annual work programme announced by the Head of State at the beginning of each parliamentary year. In the House of Commons, there is a system of programming for Bills that restricts time available for debate, with many parts of Bills not able to be debated at all. The fact that Government supporters constitute over half the Deputies means that the vast majority of government-initiated Bills are passed without amendment. Convention, backed up by constitutional law, prevents the unelected House of Lords from resisting the Commons on legislation. However, the Government's apparent power to introduce legislation and to get it passed without amendment is constrained by the acceptance that the Opposition has rights to oppose the Government and to have their opinions aired. There are opportunities for Bills to be introduced by ordinary Deputies that are theoretically unlimited, but very few of these are debated, let alone passed. This is because the Government has control over the timetable and over party discipline, and thus has the means of ensuring that only the non-Government Bills of which it approves are passed. There is a system of ballots that means that six Deputies each year (out of over 500 backbenchers) at least have the opportunity to have their Bill fully debated. Ordinary Deputies still find their legislative opportunities valuable, but they are better seen as opportunities for lobbying or for publicity rather than for legislation. No Bill is allowed to be introduced unless it complies with various requirements. The decision whether or not the Bill does comply is taken by House officials.

### ***Approaches to prioritisation***

Prioritising may be based on formal rules or on accepted compromises. In every case, it reflects the parliamentary and wider political culture of the country concerned. But there are some universal principles that can be deduced.

In almost all countries mentioned, there is a broad acceptance that it is only the Government that has access to the resources necessary to prepare effective legislation, and that priority should therefore be given to Government-sponsored legislation. In many countries, this means that ordinary Deputies restrain themselves from introducing legislation – they deny themselves the rights that they have in theory. This self-denial may be supplemented by numerical thresholds for the introduction of non-Government legislation (for example, in Germany); by

systems of balloting (for example, in the United Kingdom); by choices made by senior Deputies (as in France), or by giving resources to just a few non-Government Bills (as in Scotland). Non-Government Deputies do, however, need mechanisms for presenting their ideas to Parliament: this may be through non-legislative methods as in Denmark or Spain, or through the presentation of what is nominally draft legislation but, in reality, is an opportunity to use an ostensible legislative vehicle as a demonstration of activism (as in Finland, Italy or the United Kingdom).

In the case of Government-sponsored legislation, there are three questions that a Government should always ask itself: is legislation either the only or the best solution? Is legislation in the area a priority over legislation in other areas? Are funding and other resources available for effective implementation of the legislation? If the answers to any of those questions is negative, then legislation is unlikely to be the best way forward. Countries with effective legislative systems have elaborate systems of checks and balances within the Government machine to ensure that the legislation that is introduced to Parliament has been well thought-through, that it reflects the political priorities of the Government, that it will have sufficient time to pass through Parliament, and that it has been well-drafted. Finland, Germany, the Netherlands and the United Kingdom have particularly effective intra-governmental systems for making these choices.

Efficient Parliaments ensure that there are firm and rapid checks on draft legislative proposals with those that are not compliant not being allowed to proceed or not even allowed to be introduced. These tests are impartially administered by either a body like the Netherlands's Council of State, or by the Speaker, or a special parliamentary Committee or parliamentary officials, or by agencies established specifically for the purpose, like Slovenia's Office for Legislation, or even, as in Spain, by the Government. These tests establish whether the legislation is constitutionally compliant and whether it complies with the Parliament's own rules in terms of its form or its details.

Many Parliaments also operate timetabling rules or other mechanisms to limit debate that ensure that legislative business is conducted expeditiously and without obstruction. Though Governments with majority parliamentary support should expect Parliaments to pass the legislation they propose, the Opposition parties must have time and resources to oppose effectively those parts of a Government's legislative agenda with which they disagree. Setting specific time aside for non-Government business (as in France) is also common.

### ***Suggestions for the Verkhovna Rada of Ukraine***

- The Cabinet of Ministers should be encouraged to refine its internal processes so that any legislation that is introduced by the Cabinet of Ministers to the Rada has been well-drafted, and is part of an achievable yearly work programme agreed with the Rada
- All legislation proposed to be introduced into the Rada should be subject to pre-registration vetting to ensure that it complies with all constitutional, legal and parliamentary requirements
- This vetting should be conducted impartially by a body trusted by all Deputies
- Ideally, the VRU should move to a situation where an empowered, competent and trusted Secretariat is responsible for making these compliance checks and of deciding (perhaps subject to appeal to the Speaker or the competent Committee) whether draft laws should be allowed to be registered
- All Deputies have a constitutional right to propose legislation, but they have no constitutional right to expect progress on the legislation they introduce. Because of this, they should exercise self-restraint in proposing legislation
- A system of balloting to select the ordinary Deputies' Bills for detailed consideration should be introduced
- Specific times in plenary should be allocated to ordinary Deputies' business, which should not primarily be legislative business
- Mechanisms for ordinary Deputies to promote their ideas through non-legislative means should be improved
- Committees should be highly selective in making any progress with the overwhelming majority of non-Government legislation. If a Committee decides that a draft legislative proposal should not proceed, that should be the end of the matter
- The recommendations of the European Parliament's Needs Assessment Mission on the threshold necessary for adoption of laws (a simple majority in most cases) should be adopted

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