LAW EVALUATION AND BETTER REGULATION: THE ROLE FOR PARLIAMENTS

Joint meeting of the OECD and the Scrutiny Committee on Law Implementation of the French Senate

5 December 2013 (9am to 1pm)

The Recommendation of the Council on Regulatory Policy and Governance is clear: “Ensuring the quality of the regulatory structure is a dynamic and permanent role of governments and Parliaments”. As the institutions responsible for approving legislation, parliaments can exercise oversight and control over the application of better regulation principles for new and amended regulation. Through the public debate of proposed bills and amendments, they can help foster a transparent dialogue on the opportunities and challenges offered by new and amended regulation. Through the control they exercise on public expenditures and government performance, they can help monitor the effectiveness and efficiency of regulation.

OECD surveys of regulatory management show a progressive move towards strengthening the role of parliaments in improving regulatory quality. In 2008, 15 jurisdictions (14 OECD member countries and the EU) had a parliamentary committee or other parliamentary body responsible for regulatory policy or reform against 11 in 2005 (see Figure). In seven cases, this committee or body conducts periodic reviews of the quality of proposed legislation. In eight cases, it conducts quality reviews of subordinate legislation. In five cases, the review process is guided by specific criteria. In six the committee or body regularly reports on progress on regulatory policy and reform across government. Consultation is also often an integral part of the legislative process. For example, in New Zealand, Parliament invites public submissions on almost all bills and these are considered by a select committee before it makes recommendations.

The role of parliaments in regulatory policy

Source: OECD (2009).
The arrangements adopted to institutionalise parliamentary oversight vary across OECD member countries. In most countries, a parliamentary committee exercises regulatory oversight. For example, in Canada, a Standing Committee for the Scrutiny of Regulations reviews government regulations and statutory instruments. New Zealand and Poland have established review committees to examine regulations and investigate complaints. In the Netherlands, the Joint Committee on Economic Affairs and Finance reviews progress toward implementing a Regulatory Reform Programme. The development of specialist evaluation units established to support parliamentarians in overseeing the quality of regulation in a number of countries (see Box for selected examples).

**Parliamentary Evaluation and Analysis Units**

**Chile**: The Department of Law Evaluation was established in December 2010 and operates within the Chamber of Deputies’ administration. The Department examines selected laws, studying how the law has operated on its implementation; whether it has achieved its goals and been effective, or if it has become obsolete as a result of the changes in society. Seven criteria are used to select a law for examination: political neutrality, general applicability of the law, public exposure, methodological feasibility, temporary feasibility, technical feasibility and application time.

**European Union**: The Ex Ante Impact Assessment Unit of the European Parliament was established in early 2012 and is now part of the new Directorate General for Parliamentary Research Services. The main roles of the Unit are:

- Screening of road-maps accompanying the Commission's Work Programme.
- Appraisal of Commission impact assessments.
- Impact assessment on substantive amendments being considered by the Parliament.
- Complementary or substitute impact assessment
- Briefing notes or studies analysing all or part of a Commission impact assessment.

The Unit for Ex Post Impact Assessment, established in September 2013, supports parliamentary committees and other bodies of the European Parliament by:

- Monitoring the Commission's work with due regard for the transposition and implementation, impact, application and effectiveness of European legislation;
- Following-up and analysing the various types of study and reports produced by the Commission and by any other competent body or institution in the afore-mentioned context;
- Assisting Parliament's committees in drawing up implementation reports, activity reports and monitoring reports on existing EU legislation, policies and programmes, by providing a European implementation assessment report;
- Producing research papers on the implementation, impact or effectiveness of existing EU legislation at the request of Parliament's committees or governing bodies.

**Sweden**: the Evaluation and Research Secretariat, established in 2002, is a specialist function within the Committee Services Division of the Swedish Parliament, The Riksdag, supporting the committees in their ex post evaluation. The Secretariat consists of ten positions: one head of secretariat, five senior evaluators, three senior research officers and one clerical officer four senior evaluators, three senior research officers and one clerical officer. The Secretariat works closely to support parliamentary committee in their evaluation functions and undertakes the following tasks:
Parliamentary Evaluation and Analysis Units (cont.)

- Helping the committees to prepare, implement and conclude follow-up and evaluation projects, research projects and technology assessments.

- Locating and appointing researchers and external expertise to carry out projects.

- Preparing background materials for evaluation and research projects at the request of the committees.

- Requesting up-to-date reports from government and government agencies on the operation and effects of laws.

- Contributing to the structuring, implementation and final quality control of projects.

- Assisting the committee secretariats in their planning and implementation of seminars and other activities in connection with evaluation and research.

- Contributing to the general development of the committees’ evaluation and research activities.

Special funds have been earmarked for researchers and other experts that can carry out background materials for the committees’ follow-up and evaluation activities, as well as research overviews and technology assessments.

**Switzerland:** Under the Federal Constitution, the Federal Assembly must see that the effectiveness of the measures taken by the Confederation is evaluated. Control Committees are mandated by the Federal Assembly to exercise oversight of the Federal government and administration. The Parliamentary Control of the Administration (PCA) was established in 1991 to support Parliament’s monitoring activities through scientific assessments and evaluate the concepts, implementation and the impact of the measures taken by the federal authorities. The PCA deals directly with all federal authorities and public agencies and may request from them all relevant information. Committees, with the assistance of PCA, focus on verifying that:

- the activities of the federal authorities comply with the constitution and legislation (legality control)

- the measures taken by the state are appropriate (control of appropriateness)

- the measures taken by the state bear fruit (efficiency control)

**United Kingdom:** The Scrutiny Unit was established in 2002 as part of the Committee Office in the House of Commons to provide specialist expertise to select committees on financial matters and legislative scrutiny. The Unit has a staff of around 25 including lawyers, accountants, and an economist as well as a cadre of procedural experts and policy analysts. All staff abide by political impartiality requirements. The Unit supports committees scrutinising draft bills. It also supports all evidence-taking functions of those Committees giving detailed examination to substantive Bills as part of the legislative process. Since 2008 the Unit has also assisted select committees in implementing a new system of post-legislative scrutiny. Under this system Ministries are required, normally three to five years after the passage of an Act, to submit a memorandum to the relevant Commons departmental select committee providing a preliminary assessment of how the Act has worked out in practice. The select committee may then decide to conduct a fuller post-legislative inquiry into the Act.

Issues for discussion

- What lessons have been learnt from the experience of countries on the role of parliaments in promoting and overseeing regulatory quality, evaluating the quality of legislation and supporting effective public engagement?
- What are the tools that have proven useful in supporting parliamentary processes and bodies in their regulatory policy tasks?
- What are the untapped opportunities in this area for France?

References


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