English summary report ‘Legislative processes in transition’: a comparative study of the legislative processes in Finland, Slovenia and the United Kingdom as a source of inspiration for enhancing the efficiency of the Dutch legislative process

1. Introduction

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

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

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

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¹ Raad voor het openbaar bestuur, Vertrouwen op democratie (februari 2010), p. 36.
³ Ibid., p. 4.
the request of the Section of Legislative Quality of the Ministry of Security & Justice as an input for the Interdepartmental Commission on Legislation (ICCW).

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

Efficiency is obviously a feature which is difficult to study if left unoperationalised.\(^4\) One thing that can be noted though, is that efficiency has to do with ‘optimalisation’. That is also the angle through which the efficiency of the legislative procedure for parliamentary acts will be looked at in this study; ‘can it be improved?’ This question is still difficult to answer, however, in so far as a criterion is missing by which we can assess the achievements of the legislative procedure for parliamentary acts, even if we compare the Dutch legislative procedure and processes to experiences abroad. What constitutes the optimal mix of speed and quality (i.e. the highest possible degree of efficiency) is in fact impossible to determine.

However, what we are able to determine is:

a. how the achievements of the legislative processes in the Netherlands and other Member States of the European Union compares\(^5\) with respect to pace and duration, phases and actors, transparency and the use of ICT, and
b. how the achievements of the process, according to those involved in the process, are being influenced by the procedure itself, and the organization of the process which derives from that.

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

a. pace and duration: including political prioritization, planning, regulatory budgets and types of legislation;


\(^5\) In this study we make use of the so-called ‘functional method’ of comparative legal research, which means that we will not stop at the question which procedures (and practices and processes which flow from that) are followed in the countries to be compared, but that we also look at the goals and functions of those procedures, in order to arrive at a form of objective comparability and to be able to draw conclusions on that ground. See Zie Konrad Zweigert and Hein Kötz, *Introduction to comparative law*, Oxford, Clarendon Press, 1998.
b. phases and actors: interdepartmental cooperation, Parliament, executive agencies and third parties, coherence;
c. transparency: in the different phases, the role of ICT in this, citizens’ initiatives;
d. ICT: its role in the legislative process in general.

2. Outcome and conclusions

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

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

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

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

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

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

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

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open to their own initiatives. On the other hand, in May 2006 a form of citizens’ initiative was introduced, in the sense that – under certain restrictions – 40,000 people can make an attempt to have a particular subject-matter tabled in Parliament.

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

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

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

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

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

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