Panel: The quality of legislation:
Considerations of improved legislative methods for parliamentary deliberation
in an international perspective

Attempts for Reform in the German Bundestag

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I.
The working group of the Speakers and Presidents of the Parliaments of the EU-member countries on the quality of legislation

The working group on the quality of legislation has been active for the past three years. Until the Lisbon Conference of the Speakers and Presidents of the Parliaments of the EU-member countries of May 21 through 22, 1999, the Working Group focused on an analysis of the complexity of legislation and its consequences for the role of EU-parliaments. The Working Group will submit the final version of a memorandum urging for certain measures to be taken in this field by Parliaments to the Rome Conference of the Speakers and Presidents of the Parliaments of the EU-member countries (which will take place September 22 through 24, 2000) together with the report on its activities drafted by the President of the Finnish Parliament, Mrs. Riitta Uosukainen. This year’s two meetings of the Working Group in Cogne and Florence, Italy, were hosted by the President of the Italian lower chamber, Camera dei Diputati, Mr. Luciano Violante. Incidentally, during the September conference in Rome, an exchange of views will be taking place between the members of the conference and the Presidents an Speakers of the parliaments of the MERCOSUR member states.

One goal of the Working group is to tackle the consequences of a situation in which legal instruments, particularly under the supranational legislative of the EU, have become more and more complex, owing to the expanding, overlapping body of national law, Community legislation, and regulations adopted by autonomous and local bodies and independent authorities. As the (draft) memorandum states it: „This has reduced our understanding of the law and decreased transparency, allowed technocratic criteria to gain the upper hand, fragmented government, widened divergence between the objectives of legislative measures and their actual implementation, undermined the role of elected assemblies and diminished the responsibility of public authorities. These developments have fueled anti-parliamentary sentiment and growing dissatisfaction with politics.“

In addition, the deregulatory movement common to all market economies as a result of accelerating globalization has further enhanced the necessity for an adequate but flexible legislation which sets the necessary framework for economic activities without obstructing the positive momentum of market forces. This is expressed by the statement contained in the memorandum saying that „the quality of the regulatory system is one of the factors affecting the competitiveness of the European Union vis-à-vis other major economic systems“.

The concern of the Working Group is: „The role of overall political representation, peculiar to Parliaments, should be better preserved, focused and strengthened in order to safeguard the people’s sovereignty and face the new challenges to democracy stemming from the most recent developments in law making“. 
Guidelines for the work of the Working Group were established, being the following:

- **Identify common institutional objectives for the cooperation between national parliaments and the European Parliament within the EU**
- **Promote parliamentary instruments for controlling the quality of legislative texts in the European and the national context**
- **Compare experiences for improving the quality of parliamentary debates and proceedings in terms of results and better relations with citizens**
- **Implement a strategy for information that will support these objectives.**

The basic assumption of the Working Group is that Parliaments, and, especially in the given context, national parliaments in cooperation with the European Parliament, can define methods to make legislation clearer, simpler and more accessible. The objective is to achieve something named „friendly laws“. The term „friendly“ contains the aforementioned criteria, but goes beyond by adding that the legal effects of „friendly laws“ are predictable and their benefits are higher than their costs.

On the level of the European Union, the EULEGIS project is an example of an initiative to reorganize and simplify Community law and to develop information and research resources on Community and national law.

The Working Group is aware of the fact that in many Parliaments, the legislative process has been strengthened with instruments aiming at enhancing the transparency of the drafting and pre- and post-legislative impact evaluation. So far, in most EU-member countries, impact evaluation is primarily being done by the executive branch. The Group underlines that parliamentary scrutiny can serve as a stimulus for Government to conduct this kind of evaluation in an effective manner.

The essential elements of any evaluation are - at least in the eyes of the Working Group:

- assessing the real need for new legislation and demonstrating that the simplest legislative and linguistic approach has been taken
- evaluating the final effects of new laws on the citizens, including possible conflicts and interference between different policies and levels of government
- ex-post assessing the results of measures that have already been enacted as the basis for every future legislative initiative.

As far as the access to relevant information is concerned, the Working Group underlines the essential relevance of fact finding activities and involvement of external experts, while at the same time rightly stating that it is as much necessary to develop intelligent, targeted filters to sort through the enormous volume and avoid information overload. To my mind, this is not only crucial, but the real challenge for parliaments. All the information is at reach, but to make it accessible in practice does not afford a shift in power between the executive branch and parliament or new regulations, but rather the building up of good analytical capacities in Parliaments that can handle the awesome burdens of the information society.

The Working Group consequently calls for:
cooperation between institutions and between EU-member state parliaments on the informal, non-bureaucratic exchange of key information in their possession. An essential element is the organization of their respective websites to permit the exchange of information on issues of common interest.

- the contribution of independent research institutes (the Working Group has chosen the European University Institute of Florence in Fiesole, Italy, as partner institute) with skill in drafting accurate and up-to-date scientific reports on the relevant issues; maintaining active contacts with the bodies of the EU and other international organizations (UN agencies, the OECD, The World Bank, the IMF, etc.) to tap their information resources on European and world issues and for comparative analysis across countries; it thinks that it is necessary to make better use of the information resources existing within international organizations, which could enhance their services to member states.

- sufficiently well-equipped internal structures to maintain complex relations with external experts. To strengthen such structures, it would - according to the group - be advisable to exchange experience and information with counterparts in the other parliaments. This exchange could include internships for officials at parliaments in other countries.

The latter is - as a side remark - practice between the German Bundestag and the French Assemblée Nationale.

Finally, the Working Group has been invited - and accepted to - report on its activities at the European Law Conference, to be held in Stockholm, Sweden, on June 10 through 12, 2001 in the framework of the Swedish Presidency of the European Union.

II. The legislative process in Germany

Constitutional practice in the Federal Republic of Germany has led to a clear separation being made between the drafting phase of legislation, the "initiative phase", and the deliberation phase of legislation; this separation is not required under constitutional law. The right to initiate legislation is held by the Federal Government, the Bundesrat (Federal Council), and a number of deputies in the Bundestag (Parliament) corresponding to the number of deputies required to form a parliamentary party group. In reality, however, in the vast majority of cases draft legislation leading to laws is drawn up in the ministries.

Parliamentary deliberation begins only after a draft bill has been drawn up and submitted. The entire phase prior to that occurs outside the parliamentary deliberation. The implementation phase, i.e. the phase that begins after the law goes into effect and is of interest with regard to monitoring the process of executing the law, concerns parliament primarily indirectly in its monitoring of executive government activities. In the process of deliberating legislation, though, parliament considers implementation prognoses that are made in an attempt to anticipate implementation problems (legislation impact assessment).
1. Initiative phase

In the current legislative term approximately 40% of the draft bills put forward thus far have been initiated by the Federal Government, 15% by the Bundesrat, a parliamentary body composed of representatives of State governments (which means that the original draft bills are submitted in the Bundesrat by the state governments), and 46% by the party groups in the Bundestag; of which nearly 18% are submitted by the governing party groups (whose drafts are almost always conceived and worded in the ministries as well).

Thus, the major part of the work of drafting legislation is carried out by the executive government; on the one hand, this is because it initiates most of the draft legislation that is important and has prospects of being successful (62% of the bills passed are proposed by the Government, 26% are initiatives put forward by the party groups in parliament, and nearly all of them are submitted by or together with the party groups in the governing coalition); on the other hand, this is because a considerable part of the bills proposed by the party groups were originally drawn up by the Federal Government or, in the case of draft legislation proposed by the opposition party groups, by state governments.

a) Ideally, - and according to the internal rules governing procedures within the Federal Government and its ministries - the procedure in the initiative phase (i.e. as far as it is being carried out by the Federal Government) should be as follows:

First of all the responsible working unit in the ministry (usually a „Referat“ - a division which is in charge of a specified area of legislation) has to establish whether or not a law is needed. For this there is a list of assessment questions (the so-called "Blue Assessment Questions" which were integrated into the Joint Rules of Procedure for the Federal Ministries (Part II). After an assessment of the initial situation has been carried out a statement has to be submitted to the Head of the Ministry in question requesting a decision on whether the bill should be initiated or not. After the decision is taken the Federal Chancellery has to be informed. Then contact is established with all authorities able to make the necessary contributions, e.g. agencies under ministerial jurisdiction, various sections of the ministry in question, various sections of other ministries, the academic community, and with state and local governments. Under certain conditions (Sections 61 and 62 of the Joint Rules of Procedure of the Federal Ministries, Part I) a commission is to be formed as well. Also, experts can be asked to give their opinions in reports.

The initial draft of the bill of the working unit („Referentenentwurf“) is drawn up on the basis of the information gathered this way. After the initial draft has been completed other relevant ministerial sections are involved and asked if they have any requests for amendments. This leads what is called a ministerial draft (Section 28 paragraph 1 of the Joint Rules of Procedure of the Federal Ministries, Part II). After this the other federal ministries are involved and, if necessary, members of parliament are notified (Section 70 of the Joint Rules of Procedure of the Federal Ministries, Part I, Section 23 paragraph 2 and Section 27, paragraph 1 of the Joint Rules of Procedure of the Federal Ministries, Part II). After assessment of the amendment proposals a final text is agreed on and the ministerial draft bill is completed.

The relevant state ministries are then informed of the draft bill, as are the relevant local authority associations, expert organizations and expert associations, as well as the party
groups and relevant members of parliament. Amendment proposals resulting from this are used to produce a revised ministerial draft. This once again has to be agreed on with the other ministries.

When this coordination process has been completed and all amendment proposals have been taken into account in the text of the draft legislation, then a so-called legal formality assessment is carried out by the Federal Ministry of Justice (Section 38, Joint Rules of Procedure of the Federal Government, Part II), i.e. a cross validation with all other provisions of law, and the Society for the German Language must be involved (Section 37 of the Joint Rules of Procedure of the Federal Government, Part II). After its ideas have been worked into the text the draft bill is "ready for the cabinet".

A cabinet proposal accompanied by a substantial amount of information on the results of the procedure described thus far is then decided on by the Federal Government. The cabinet draft is sent to the Bundesrat (Federal Council).

Under Section 40 paragraph 5 of the Joint Rules of Procedure of the Federal Ministries, Part II, each bill is to be preceded by an overview - a so-called „initial page“ (most probably consisting of several pages) with the following outline structure:

1. Objective
2. Solution
3. Alternatives
4. Costs for public budgets
   4.1 budget expenditure without implementation expenses
   4.2 implementation expenses
5. Other costs (costs for the economy, costs for social security systems)

b) This relatively detailed description, by no means, fails to recognize that these procedures are not always followed in practice. It can make it clear, however, on the basis of examples, how different kinds of expertise can be brought into the process of drafting legislation. In connection with the initial assessment to determine whether or not a bill is required, the question in particular needs to be raised whether the purpose of the bill can be attained by lower-level regulations or simply by means of administrative action.

In connection with major legislative projects aimed at systematizing and codifying large numbers of rules, regulations, and judicial laws it often occurs that an academic commission is created in the assessment phase whose members should also include experienced practitioners.

The obligation of the Federal Government to include in the reasons given for the legislation references the budget effects of the bill and also to describe its effects on the overall equilibrium of the economy, on price trends, etc. is being expanded more and more in the direction of a comprehensive impact assessment. One example is a so-called „bureaucracy clause“. It means that the impact of the proposed legislation on small and medium sized enterprises in terms of additional paperwork has to be estimated as well.

Under Section 7 paragraph 2 of the Federal Budget Rules appropriate cost-effectiveness studies are to be carried out for all measures with financial effects. Under paragraph 3 a
cost accounting system is to be introduced in the appropriate areas. In connection with determining the cost impacts of legislation the Federal Ministry of the Interior formulated guidelines together with the Interior Ministry of the State of Baden-Württemberg to assist in the process of determining the impact of legislation on costs. The impact of legislation is understood to be the effects of a law in the overall area of application as well as on the societal and individual levels. They include intended and unintended consequences of a financial and non-financial nature.

It is doubtful, however, whether the consequences of the implementation of legislation can be clearly calculated. On the one hand, this is connected with the circumstance that individual factors regularly have to be weighted in connection with making prognoses and that on the other hand, these factors have a political component. In addition, statistics, if any, are often difficult to use in this work, since they are not always compiled at the same time as the facts that have to be determined. Outdated statistics are more than useless, they can very well lead into a wrong direction. Individual case studies, on the other hand, would require a considerable amount of time to complete.

2. Deliberation phase

The deliberation phase in parliament is divided up into three "readings". The first reading provides an opportunity for a general debate, followed by referral to a committee in charge and several advisory committees. The recommendation with which discussions on the committee were concluded as well as an accompanying report are discussed in the second reading. Mostly, the recommendation is an amended version of the original draft. The vote in the plenary is on the recommendation, not on the original text. Each member of parliament has an opportunity to request amendments to committee recommendations. The third reading, which generally follows immediately after the second reading, provides an opportunity for a comprehensive presentation of views on the legislation. It ends with the final vote on the bill.

The central part of the parliamentary deliberation phase is committee deliberations. Committee meetings are not public. However, they are reported on by the Press Office of the German Bundestag. Every major draft bill is subjected to a public hearing held by experts and non-governmental organizations. In fact, the right of a minority in a committee to impose a public hearing including a specified number of experts chosen by them on the majority constitutes one of the most important minority rights. The relevant committee can also request reports from the Office of Technology Impact Assessment or from experts.

III. The reform discussion

There is an ongoing debate, like in most democratic countries, about a reform of the system of legislation. Three reasons for reform are given:

- Legal provisions are too technically worded, most people do not understand them
• The number of existing legal provisions is too high, too detailed, with many contradictions and overlapping regulations in the system

• Legislation takes too long, is effective, not adjusted to the speed and the complexity of modern society.

Parliamentary democracy being relatively new first try in 1848, retry in 1918, and finally success in 1949 - the German Parliament has tried to come to grips with the autonomy of bureaucracy, courts and local government. At the same time, our social security system and welfare mechanisms have created new bureaucracies, and environmental issues added to the load of regulatory measures. The result was an ever growing number of laws and regulations. In view of the ever rising flood of legislation - currently there are 4,874 Federal Acts and legal ordinances with more than 84,900 individual provisions - a strict scrutiny of every proposed legal provision, in particular as regards its necessity, seems of vital importance.

The flood of legislation is rising. Whereas "only" 612 Bills were tabled in the tenth legislative period, the number of Bills presented in the twelfth legislative period was as high as 895.

In the 13th legislative term which ended in fall 1998 the Bundestag passed 565 acts of law out of which 402 had been introduced by the Federal Government, 38 by the Bundesrat (having been introduced there by a state ministry), and 102 by groups of deputies. 1013 bills had been tabled, 449 by the Federal Government, 235 by the Federal states and 329 by groups of deputies. At the same time, the number of EU-texts submitted to the Bundestag amounted up to 2734.

According to information derived from the JURIS database, current (as of the end of the 13th legislative period) Federal legislation consists of 1,928 Acts and 2,946 legal ordinances, totaling more than 84,900 individual provisions all told.

In Germany, there is little discussion about a reform of the deliberation phase. There are complaints about too little real work being done in the committees due to the fact that the most important decisions are pre-shaped by negotiations which take place outside of the committees, between the political parties and Members of Government, or with State Governments, as well as in informal circles made up of Government representatives and those of the Employers’ and the Workers’ federations. Another criticism is about the sometimes lengthy parliamentary phase. But it is well known that this is caused by the informal negotiations just mentioned, and the German Constitution offers sufficient instruments for the Government to speed up legislation if it is necessary.

Reform considerations thus focus on the initiative phase and - growingly - on the implementation phase.

Reform considerations regarding the initiative phase are orientated towards assessing more often than before the possibility of a "zero option" (i.e. no bill) as well involving advisory council experts and non-governmental organizations in the decision-making processes to a greater extent so far.
In July 1995, the „Lean State Advisory Council“, an institution independent of the administration intended to accompany and complement measures to be taken by the Federal Government, was set up by the former Federal Government of Christian Democrats and Free Democrats under the leadership of Chancellor Kohl. In 1998, the Council proposed the following changes to the legislative process (see also Nothelle, La reforma del estado en Alemania, in: Revista del CLAD, 11/1998, p. 79):

„In order to reduce the number of laws, to improve their quality, to make them more transparent for the public and also to be in a better position to assess their cost-provoking effect, the Lean State Advisory Council has called for a qualified obligation for the state legislature to justify and demonstrate the necessity of statutes. Those drawing up legislation have to give a substantiated demonstration of why a specific proposed legal provision is necessary. With every legal amendment proposed an examination will have to be carried out as to whether other legal provisions will become dispensable as a result. In addition, it should be considered in general to impose a time limit on legislation.

The "Blue Assessment Questions" are to be reviewed taking into account the checklist, and they are to be incorporated into the Joint Rules of Procedure (Gemeinsame Geschäftsordnung) of the Federal Ministries. To ensure compliance with these requirements an inspection office for statutes, similar to the one in Bavaria, should be set up and endowed with the power to suspend proposed legal provisions of ministries, if their necessity has not been proven in a satisfying way.

High priority will also be given to a constant assessment of the consequences of legislation. This is necessary not only with regard to the cost incurred by the public sector but also with regard to industry.

Accordingly, the Advisory Council has called on the Federal Government to only table draft legislation the benefits of which are proportionate to the cost incurred.“

In detail, the Advisory Council had considered the following:

„Since in the system of "open state functions" there are no concrete criteria for determining which functions are to be performed by the state, formal criteria are required in order to justify the state assuming and continuing to exercise responsibilities, accompanied by measures related to competence (justification of functions and the like). Such criteria must comprise a qualified obligation for the state legislator to justify and demonstrate the necessity of its functions. It is also a question here of being subject to scrutiny, and where necessary to sanctions. This means in detail that the checklist below must be adhered to for proposed legal provisions (at Federal level), subject to the further condition that in cases where such prerequisites cannot be adhered to, or where adherence cannot be proved, a proposed legal provision is on principle not to be continued."
A special problem: Examination of need in the Federal system

A constitutional social state should broaden out by means of the organizational form of decentralization and deconcentration. From a constitutional point of view, the constitutional social state is to be seen as the principle of the social Federal state, which means that it distributes the responsibilities of the social state among the Federation and the Länder. This occurs along the precise lines of detailed provisions contained in the Basic Law (Grundgesetz) concerning responsibilities. There is an awareness, however, that our Federal state has become top heavy as regards legislation. This very idea is one of the Joint Constitutional Commission's central concerns for reform, and of the amendments which it has drawn up, particularly concerning Article 72 of the Basic Law (concurrent legislative power of the Federation, competence to enact framework legislation). This "requirement" provision in favor of the Federation, which at the time was largely devoid of content, has been tightened up in line with the principle of necessity. This should now be implemented by means of an active decentralization policy. This means that the Federation must play an active role in the area of its own proposed legal provisions, as well as in scrutinizing previous proposed legislative provisions. The basic principle of increased decentralization, i.e. assignment and transfer of competencies to the Länder, must be initiated with vigor.

Consistent assessment of the consequences of legislation

What has been missing to date is a consistent assessment of the legal consequences. What usually happens is that the question of possible alternatives under legislation policy, and/or of cost, is simply answered with "none", with no substantiation whatever. There is no substantiated demonstration for instance of the effects of the implementation of a statute on the administrative systems of the Länder and of the local authorities. There is no substantiated evaluation of the expected personnel and materials costs. In particular, there are no substantiated demonstrations with regard to the general social policy effects of a statute. In the case of proposed legal provisions where the time required is available, their effect should be extrapolated by means of management business games and tests.

Those drawing up legislation should substantiate why the proposed legal provision is necessary at all, what conceivable alternatives exist (in particular in the form of private activity), why, for instance in the light of Article 72 para. 2 of the Basic Law it is the Federation, and not the Länder, which needs to act, and why action needs to be taken immediately. However, what must primarily be demonstrated in detail is whether the specific scope of the provision needs to be as wide as intended, or whether organizational or procedural scope could be created for the Länder or the local authorities to execute the statute (in particular also by means of provisions on experimentation and opening).

Above all else, it is necessary to scrutinize more seriously than previously whether the provision is comprehensible to its users, and especially to the citizen. The "Blue Assessment Questions" prepared by the Federation, as well
as the corresponding lists of questions prepared by the Länder, point in the right direction. What is still missing, however, is assessments of the consequences of statutes for society as a whole.

One should naturally also examine the existing statute books in accordance with the above criteria. Realistically, this scrutiny should however be limited to those cases where it proves to be necessary. This means that each Ministry which proposes a legal amendment must at the same time, and in the context of the amendment, also examine whether the statute which it wishes to amend contains provisions which have become indispensable, or which could be simplified. When the draft amendment is submitted, information should be provided regarding the scope and the result of this wider scrutiny.

**Time-limiting of provisions**

Greater consideration should be given to ways of limiting the period in which a legal provision is in force. In a spirit of extended experimentation, provisions should on principle be examined as to whether it is possible to justify a time-limited "experimental provision". Parliament should also avail itself more frequently of its scope to impose a time-limit on legislation from the outset. This applies at least in cases where it is recognizable that the provision has been brought about because of circumstances applying in a particular time or situation, even though such statutes should be avoided wherever possible. Once a certain time has passed, Parliament should however certainly be forced to examine whether a need remains for the provision in question. At the same time, the decision on extending the statute affords an institutionalized opportunity to examine whether the statute has shown weaknesses or the like in its execution to date which could be "eradicated" when the decision is taken on extension.

**Transparency of the evaluation of need**

What is important in order to achieve greater adherence to checklists and the questions which they contain, however they may be worded, is first of all that the results of the scrutiny should be transparent to the legislative bodies and to the public. The previous situation was that the Assessment questions were addressed only to the person in charge of drawing up the draft, and only consisted of internal self-control. In order to achieve effective control, those drawing up the provisions must provide the results of their deliberations on the Assessment questions in writing. The Bavarian checklist serves as a model here in that it asks for the necessary information in simplified form where prescribed answers are ticked off. The "Blue Assessment Questions" should be revised accordingly.

Accountability with regard to the answering of the Assessment questions must however not only entail accountability within a Ministry or within the Government. It must also be created with regard to the legislative bodies Federal Parliament and Federal Council. This essentially means that the answers to the Assessment questions must be communicated to the legislative
bodies, for instance in connection with the general justification of the proposed legal provision. This affords the opportunity for the legislative bodies to arrive at their own assessment of the answers to the Assessment questions. From an editorial point of view, this could be realized for instance by means of an introductory or closing paragraph in the general grounds for the statute. At the same time, such a procedure would also ensure accountability with regard to the general public. The previous procedure of simply answering 'none' to the question of possible alternatives, or of cost, in the introduction to a statute, has shown itself to be an unsuitable deregulation instrument.

**Institutionalized control of provisions**

There is however one more step which needs to be taken. Mere accountability in answering the Assessment questions is not enough on its own. Particularly as early as prior to the deliberations in Parliament, it is necessary for filters to be installed within the Government, preventing insufficiently well-founded proposed legal provisions being introduced in Parliament's deliberations from the outset. As an organizational preventive measure to ensure that the "Blue Assessment Questions" are adhered to, one could establish a kind of inspection office for statutes, for instance under the supervision of the Federal Chancellery, which, in addition to the Ministry in overall charge of the proposed legal provision, should include the Federal Ministry of the Interior, as the headquarters of the administration, the Federal Ministry of Justice with regard to the examination of the legality of the statute, as well as the Federal Ministry of Finance with regard to finance policy and budget policy aspects, and the Federal Ministry of Economics with regard to economic policy aspects. This body should be responsible for revoking the preparedness of proposed legal provisions to be tabled before Cabinet in cases where their grounds are unsubstantiated, and for referring them back to the Ministry in overall charge for improvements. When requested to so do, this inspection office for statutes should also be accessible to Parliament in examining draft proposed legal provisions tabled by Members of Parliament.

**Requests by the Advisory Council**

The Advisory Council calls on the Federal Government to include the "Blue Assessment Questions" in the Joint Rules of Procedure (Gemeinsame Geschäftsordnung) of the Federal Ministries, to re-word them in order to make them practicable (yes/no answers in accordance with the Bavarian model), as well as to add to them a general, socio-political assessment of the consequences of provisions.

The results of scrutiny should not remain only within the Ministries or the Government, but must become accountable. This means in particular that they should be made available to the legislative bodies and to the public. The answers to the Assessment questions could for instance be submitted in the context of the general grounds for the provision.

Unsubstantiated answers to the Assessment questions may not go
unsanctioned. The Advisory Council therefore proposes that the Federal Government establish institutionalized control of provisions where the Federal Chancellery would be in charge, with consultation of the Ministers of the Interior, Justice, Finance and Economics, and of the Ministry in overall charge. This body would also examine each proposed legal provision from a point of view of deregulation. Shortcomings in the answers to the Assessment questions should for instance lead to provisions no longer being considered ready for Cabinet, and hence to their being referred back to the Ministry in overall charge for improvements. Where requested to do so, this examining body should also be made available to scrutinize proposed legal provisions tabled from the midst of the German Federal Parliament.

The Advisory Council calls on the Federal Government to place the individual Ministries under an obligation in their rules of procedure in cases where they propose legal amendments to also carry out an examination for substantiation of whether provisions of the statute which is to be amended have become dispensable, or whether they could be simplified. The Advisory Council is confident that this could lead to institutionalized streamlining of the present statute books.

Proposed legal provisions linked to considerations of time or of situations should be avoided on principle, or at least time-limited. Parliament would thus be under an obligation to effect periodical scrutiny of the success and the effect of its legislation. The legal provision could only be extended if both the success to date and the continued need for it were to be proven."

The question has been discussed on numerous occasions as to whether the so-called Blue Assessment Questions which the executive government applies to draft legislation can also be a standard for committee consultations. In 1985 the German Bundestag Committee on the Scrutiny of Elections, Immunity and Rules of Procedure welcomed these Blue Assessment Questions as guidelines to assist members of parliament in their consultations on draft legislation on the various committees. Discussion of the draft of a Guideline for Assessing the Necessity, Practicability, Effectiveness, and Clarity of Draft Legislation on the Committees of the German Bundestag was never completed and as a result the draft has never been approved.

In parliament the parliamentary right to ask questions, commissions of inquiry, investigating committees, hearings, legislative tests, or management game scenarios can be used for purposes of legislation impact assessment. Traditional impact assessment functions are given in the duties of the Budget Committee, which is responsible for deliberations on stability legislation, budget legislation, and fiscal legislation, in the activities of the Committee on Science, Research, Technology and Technology Impact Assessment, which can carry out technology assessment analyses and assessments. Another way of including third party assessments and evaluations is that the committees can include in their consultations EU-related assessment papers presented in preparation for EU legislative projects.

Worth mentioning in the 13th Legislative Term are, for instance, the technology impact assessment reports and the management game scenario of the Committee on Regional Planning, Building and Urban Development with regard to the 1996 Building and Regional
Planning Act. A further means with which legislative government can impose a certain amount of quality control is by attaching time limits to legislation, as it has been proposed by the Advisory Council, among others. There are various alternatives here, for instance the alternative that the legislation can be repealed after a specified period of time, the alternative that there is a need for the legislation to be confirmed after a specified period of time, or the alternative that the legislation expires after a set date.

There is also the option of inserting so-called "experimental clauses" in legislation, which makes it possible to deviate from individual provisions of the law to a certain, narrowly defined extent for a specified period of time. In the case of delegated legislation, i.e. the large area in which the Federal Government legislates on the basis of specific authority delegated by parliament, numerous control mechanisms of this kind have already been introduced. There are regulations, which parliament can repeal after a certain period of time has elapsed, and there are regulations that require confirmation. On the one hand, there are complaints about the large numbers of legal provisions in delegated legislation; on the other hand, there is also the need for Parliament to concentrate more strongly on general principles and to leave the matter of details up to the Federal Government.

The primary option available to Parliament for monitoring the success of legislation continues to be the traditional way of requiring the Federal Government to produce reports on the implementation of legislation. Accordingly, more and more often committee recommendations on draft legislation are being connected with a request to the German Bundestag to approve the imposing of a report requirement on the Federal Government in the relevant plenary session.

Another „traditional“ - yet painsome - way of structuring and modernizing existing legal provisions is by codification. As long as it serves the purpose of reducing redundant regulations, consolidate wording, making information on legal provisions more easily accessible, and of reducing interference between different sets of provisions, this is very helpful. On the other hand, it opens debate for new regulatory measures, sometimes creating more complex regulatory systems and more bureaucracy that what had existed before.

All these proposals and possibilities as well as their advantages and disadvantages have been reconsidered again and again in the past decades. The principle obstacle to their implementation is not a lack of initial good will or of imagination, but the reality of the parliamentary political environment. The need for compromises between a multitude of actors, the time pressure caused by the highly condensed political agenda which is amplified by the necessity to respond to forthcoming elections, and the limited amount of drafting capacities in comparison with the growingly complex technological society prevent anything that is good from a theoretical point of view from being put into practice.

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**The Author**

Andreas Nothelle (46), an expert in constitutional law, started his career in the Administration of the German Parliament in 1985 after having spent some time at Bonn University as a research assistant for Constitutional and administrative law. He has served in different positions - among others as Personal Assistant to the former President of the Bundestag, Dr. Annemarie Renger, as Secretary („Clerk“) of the Sub-Committee on Disarmament and Arms Control, and as Head of the Secretariat of the Committee on Labor and Social Affairs (the Committee with the highest amount of legislation in the German Parliament). Since March 1999 he heads the Interparliamentary Affairs Division. Alongside with his principal duties Nothelle has been an expert in bilateral and multilateral programs of interparliamentary cooperation, training and administrative reform. Santo Domingo will be the fifth CLAD Conference in which he participated (special conference on Parliamentary Assistance in Sao Paulo and four regular conferences).

Nothelle is member of the (Federal) Party Council of the Social Democratic Party of Germany and has held several political post in the largest German State, North-Rhine-Westphalia, prior
to his moving to Berlin in the course of the transfer of the German Parliament to that city. Nothelle is married and father of four children.

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