

## EDITORIAL

# Introduction

*Franklin De Vrieze\**

Over the last couple of years, more parliaments have stepped up to the challenge to start monitoring the implementation of the laws they have passed. Despite perceptions that assessing law implementation is not an exciting issue, Members of Parliament start to advocate that they need the tools to assess the extent to which legislation is implemented as intended and has the expected effects.

As parliaments put a large part of their human and financial resources into the process of debating and adopting legislation, it is not uncommon for the review of the implementation of legislation to be overlooked. Implementation is a complex matter, and several incidents can affect its course, including changes in the facts on the ground, diversion of resources, deflection of goals, resistance from stakeholders and changes in the legal framework of related policy fields. Implementation of legislation and policies may also be undermined by power asymmetries, exclusion, state capture and clientelism.

As identified by the Westminster Foundation for Democracy,<sup>1</sup> implementation of legislation depends on the clarity of the legislative text, its compatibility with other laws, constitution, international obligations, available resources (human, financial) to implement the law, availability of secondary legislation, and the accessibility of legislation to those overseeing its enforcement.

Despite these challenges there are four overarching reasons why parliaments should prioritize the monitoring and evaluation of the implementation of legislation: (1) to ensure that the requirements of democratic governance and the need to implement legislation in accordance with the principles of legality and legal certainty are being met; (2) to enable the adverse effects of new legislation to be apprehended more timely and readily; (3) to improve the focus on implementation and delivery of policy aims; and (4) to identify and disseminate good practice so that lessons may be drawn from the successes and failures revealed by this scrutiny work.

Therefore, post-legislative scrutiny, or ex-post evaluation of legislation, is an important instrument for increasing government accountability and is part of the oversight role of parliament.

As post-legislative scrutiny is a broad concept, it is recognized that it might mean different things to different parliaments and stakeholders. In a narrow interpretation, post-legislative scrutiny looks at the enactment of the law,

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1 F. De Vrieze and V. Hasson, *Comparative Study on Post-Legislative Scrutiny*, London, WFD, 2017, p. 56.

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whether the legal provisions of the law have been brought into force, how courts have interpreted the law and how legal practitioners and citizens have used the law. In a broader sense, post-legislative scrutiny looks at the impact of legislation, namely whether the policy objectives of the law have been met and how effectively. These are two dimensions of post-legislative scrutiny: (1) to evaluate the technical entry into force and the enactment of a piece of legislation; (2) to evaluate its relationship with intended policy outcomes and the impact. To the extent that parliaments seek to carry out both dimensions, post-legislative scrutiny contributes to improving the law itself and people's well-being.<sup>2</sup> Post-legislative scrutiny thus contributes to good governance, including achieving the sustainable development goals.

On 10 July 2018, the Institute for Advanced Legal Studies of the University of London and the Westminster Foundation for Democracy organized an academic seminar on post-legislative scrutiny. Up to 200 participants from 37 countries debated the rationale, procedures, structures and outcomes of parliaments conducting post-legislative scrutiny around the globe. Twenty research papers were presented and debated on. The current Special Issue of the *European Journal on Law Reform* brings together some of these papers.

Analyzing emerging practices of post-legislative scrutiny in different countries and political systems, it is recognized that very often the government and executive agencies are responsible for implementation of legislation and service delivery to citizens; and hence parliament often relies to a large extent on government information to assess the implementation of legislation. However, it is also noted that a diversification of data sources, such as from civil society organizations, international organizations and independent oversight institutions, contributes considerably to parliament's ability to conduct post-legislative scrutiny. The challenges of the design of laws can also affect the implementation of legislation in an early phase. Therefore, review clauses in bills can ensure that a proper impact evaluation of legislation will be planned. To understand the implementation and impact of legislation, it is useful to review secondary or delegated legislation at the same time as reviewing the primary act.

Through its country programmes around the world, the Westminster Foundation for Democracy is increasing public awareness of the importance of assessing the implementation of legislation, is supporting parliaments in pilot projects on post-legislative scrutiny and encouraging the integration of gender analysis and post-legislative scrutiny.

During the seminar the 'London Declaration on Post-Legislative Scrutiny' was presented (annex to the Special Issue). The document is offered for endorsement to parliaments worldwide as well as research institutions and other institutional stakeholders in the implementation of legislation in a wide range of countries. While maintaining a 'pledge bank', WFD supports signatories by providing policy advice and technical assistance.

2 F. De Vrieze, *Principles for Post-Legislative Scrutiny by Parliament*, London, WFD, 2018, p. 13.