

Not all scrutiny is equal: how parliaments vary in scrutinising the implementation of legislation

Parliaments can contribute to more accountable governance, not just by questioning government ministers in the chamber, but also by monitoring the implementation and impact of the laws they pass. This [post-legislative scrutiny](#) can be divided into four categories: passive, informal, formal and independent forms. Comparatively, parliaments vary according to the extent to which they carry out post-legislative scrutiny. **Franklin De Vrieze** discusses these variations and argues that to be effective parliaments should both look at the implementation of legislation, its impact and at unintended consequences of some laws. At the time of the Covid-19 crisis, good-quality scrutiny of policies and legislation in all areas, including legislation on public health and government's response to Covid-19, has become all the more important.



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Parliaments have a [responsibility to monitor](#) the extent to which the laws they have passed are implemented as intended and have the expected impact. As a result, post-legislative scrutiny is emerging as a key function of [parliamentary](#) oversight in many countries around the world. However, and despite its importance for the rule of law, it is still not uncommon for the process of reviewing the implementation of legislation to be overlooked. In several countries, there is a risk that laws are passed but not applied, that secondary legislation is not adopted, or that there is insufficient information to assess the actual state of a law's implementation and its effects.

As parliaments start to pay more attention to implementation and begin to create procedures to oversee it, [three main benefits](#) can be identified from the process of post-legislative scrutiny. Firstly, it strengthens democratic governance: legislation adopted by parliament should be implemented and applied in accordance to the principles of legality and legal certainty. Secondly, it allows the identification of potentially adverse effects of new legislation and the opportunity to act to remedy these. Thirdly, it enables legislators to learn from experience of what works and what does not and how effective implementation is in meeting objectives, with an eye to making better legislation in future and reducing the need for corrective action.

How post-legislative scrutiny can improve a law's effectiveness

Post-legislative scrutiny contributes towards [creating and improving results-oriented laws](#). An interesting, recent example occurred in Georgia's parliament. Three years ago, the parliament enacted legislation to abolish import taxes for electric vehicles entering the country. However, when the parliamentary Environment Committee conducted a post-legislative inquiry into the application of the law this year, it discovered that the law had overlooked the question of what to do with the electric waste and the batteries of the imported cars. The law had simply shifted the environmental burden to another sector, in an unintended consequence. This inquiry enabled the committee to highlight these shortcomings in the legislation and propose amendments to overcome the unintended effects of the lack of safe storage or recovery of the electric waste.

Types of scrutiny

The Westminster Foundation for Democracy has developed an [assessment framework](#) for parliamentary structures and capacity and outputs in conducting these forms of post-legislative scrutiny, and categorised it into four types.

Parliaments that are *passive scrutinisers* have few parliamentary structures, low capacity and few procedures for analysing impact of legislation. They limit their role to the assessment of the scrutiny performed by the government and external agencies and produce few of their own post-legislative scrutiny reports. The German Bundestag, for example, is a passive scrutiniser. Its engagement in ex-post impact assessment is mostly carried out through governmental scrutiny or evaluation of ex-post assessments done by either the Federal Statistical Office or the National Regulatory Reform Council (NKR), or by reviewing information from the Court of Auditors and the Federal Commissioner for Economic Efficiency. The Bundestag has very limited administrative capacity assigned to activities that scrutinise legislation once it has passed. The post-legislative review of the work of government can be compared to the Monitoring and Evaluation process for parliamentary work rather than conducting their own parliamentary impact assessment of legislation.

Parliaments that are *informal scrutinisers* also have few parliamentary structures and procedures, but they are stronger in terms of their own parliamentary outputs on post-legislative scrutiny – like the Italian Parliament, for example. The Italian Chamber of Deputies publishes an annual report on parliamentary oversight, which includes information from an administrative review of the enactment of legislation. The Italian Senate, through its Office for Impact Assessment, publishes documents assessing the impact of adopted legislation and specific reports on the ex-ante and ex-post evaluation of public policies. Still, it is difficult to evaluate the extent to which its research and documentation strengthens the capacity of parliament to scrutinise the government, as the political follow-up to the reports by MPs is often incomplete or limited.

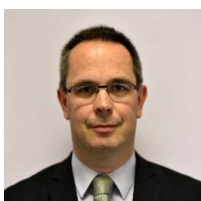
Meanwhile, parliaments that are *formal scrutinisers* have more developed structures and procedures on post-legislative scrutiny but are still weak in terms of follow up. Sweden's parliament falls into this category. Beyond access to governmental documents and reports, parliamentary committees in the Riksdag have developed their own evaluation and research capacities, complemented by interaction with other administrative units of parliament and cooperation with the National Audit Office in Sweden. As part of its post-legislative scrutiny work it produces committee reports which are the point of reference for follow up discussions with the government.

Finally, parliaments that are *independent scrutinisers* are strong in terms of structures and procedures as well as in terms of outputs and follow up. The UK Parliament is an example of an independent scrutiniser. The post-legislative scrutiny procedure starts with the UK government departments conducting a 'preliminary assessment' on the implementation of each law, three to five years after its enactment. As a relatively 'light touch' assessment, it facilitates parliamentarians making an informed judgement as to whether a fuller assessment by the relevant House of Commons committee, or by a House of Lords ad hoc committee, is worthwhile. The House of Lords Liaison Committee appoints at least one ad hoc committee per session to undertake post-legislative scrutiny on a subject chosen by it. The House of Commons' select committees and House of Lords' ad hoc committees have established procedures and resources for gathering information, calling for written evidence and conducting scrutiny of passed legislation. These [institutionalised scrutiny procedures in Westminster](#), which include both legal and impact assessments, result in specific post-legislative scrutiny reports. The UK government is then required to provide a written [response to the findings and recommendations](#) within two months of publication of a committee's post-legislative report. At this initial response, up to 40% of the committee's recommendations are fully or partially accepted, though over time more recommendations find government acceptance.

Different parliaments put more emphasis on one or the other of the two dimensions of post-legislative scrutiny. Either they favour evaluating the technical enactment and entrance into force of a piece of legislation or they emphasise evaluating its relationship with the intended policy outcomes and its impact. [Truly effective post-legislative scrutiny needs both](#). To the extent that parliaments seek to carry out both dimensions, post-legislative scrutiny can lead to continual improvement of the law itself as well as better policy implementation. It therefore can contribute to the increased [effectiveness of governance](#) and to better accountability.

This article gives the views of the author, and not the position of Democratic Audit. It draws on the Westminster Foundation for Democracy's recent report '[Post-Legislative Scrutiny in Europe: How oversight of the implementation of legislation by parliaments in Europe is getting stronger](#)'

About the author



Franklin De Vrieze is the Westminster Foundation for Democracy's Senior Governance Adviser and the author of the 2020 report '[Post-Legislative Scrutiny in Europe: How oversight of the implementation of legislation by parliaments in Europe is getting stronger](#)'. He contributes to the curriculum of the upcoming [Certified Course on Post-Legislative Scrutiny](#), co-organised with the Institute of Advanced Legal Studies of the University of London. He tweets [@FranklinDVrieze](#).

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