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**THE PARTICIPATION OF SOCIAL
AND ECONOMIC
ORGANIZATIONS IN THE
LEGISLATIVE PROCESS IN
POLAND**

Final Report

U.S. Agency for International Development

Prepared by: Development Alternatives, Inc. (DAI)

**Sponsored by: Private Enterprise Development
Support Project III
Contract No. PCE-0026-Q-00-3031-00
Delivery Order No. 34
Prime Contractor: Coopers & Lybrand, L.L.P.**

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Furthermore, we would like to highlight our primary reference on European and North American parliamentary systems, an eminent book by the International Human Rights Law Group entitled In The Public Eye, edited by Edwin Rekosh.

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¹ The opinions and recommendations presented in this report were not part of the consultant's terms of reference and therefore do not necessarily reflect the views of the Delegation of the European Commission in Poland.

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Preface

The catalyst for this study was the reaction to a previous GEMINI publication entitled The Art of Lobbying in Poland.² The level and caliber of response from both public and private sector audiences clearly indicated an interest in and commitment to the concept of lobbying in Poland. Forums held in the Sejm, Senate, and with numerous social and economic organizations identified two key areas of concern. First was the need for regulation, or at least an internal code of discipline, by which all professional lobbyists must abide. Second was the need to improve the enabling environment for lobbying. This can be more simply stated as *access*: access to information regarding current and future legislative initiatives and access to the legislators and policy-makers. This study focuses on the second concern.

As a result of discussion forums regarding the above mentioned issues, in November 1995, a task force on lobbying was created in the Senate under the Studies and Analyses Bureau. Membership in this unique body includes Members of Parliament, Senate Chancellery staff, representatives of nongovernmental organizations (NGOs), private lobbying companies, and the PEDS Project.

Throughout Poland, on a national as well as regional level, more and more organizations are publicly expressing their views. The range of issues being addressed as well as the institutional capacity to articulate these needs and interests is growing rapidly. However, the general public's influence on policy-making remains, in most cases, marginal; not because of a lack of will by the decision-makers, but rather because of inadequate legislative procedures regarding access. This makes it extremely difficult to effectively access and respond to legislative initiatives in a timely manner.

This study - covering legislative procedures and public participation in five Western nations -is intended to provide a comparative basis to evaluate the principles and practices used to create policy in democratic societies. It is the authors' hope that it will initiate discussion and provide valuable input for those government officials and Members of Parliament seeking to create a more transparent and conducive environment for increased public-private sector interaction and participation of the public in Poland's legislative process. The authors also hope it will be useful to social and economic organizations in their efforts to influence public policy.

² *The Art of Lobbying in Poland* (ISBN 83-904677-0-4 Warsaw: United States Agency for International Development and Development Alternatives, Inc. - GEMINI Small Business Project, September 1995).

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Introduction

The network of links that bind governing institutions to the general public in a democratic state have often been called "civil society", a term popularized by Vaclav Havel, President of the Czech Republic. Definitions of the term vary but most commonly refer to nongovernmental organizations including various groups of citizens, not-for-profit organizations, nongovernmental organizations (NGOs), interest groups, charities and sometimes the media. NGOs fill the void between the state and its citizens but also motivate and provide a platform for citizens to take an interest in public affairs.

In older democracies, the civil society activates citizens and contributes to the dissemination and understanding of information. More specifically, the existence of a free press and citizen groups helps ensure that information about legislative initiatives can be properly accessed and digested by the general public. While it is true that most citizens take little interest in the day-to-day mechanics of parliamentary and government practices, the ultimate responsibility for creating a conducive legal, procedural and administrative framework encouraging the public to participate in the policy-making process lies with the government.

It is also up to the governing bodies to guarantee wide access to information and decision-makers that is crucial to the smooth and sustainable functioning of a democracy. Access is especially important to ensure elected representatives (and governments) are genuinely accountable to their constituents. For citizens to make informed political choices based on the activities undertaken by their elected representatives, the legislative process must have a high degree of transparency.

The development of a market economy has required the introduction of new legal acts and related enforcement regulations. Due to the scope and pace of Poland's reform, many laws were enacted or amended relatively quickly, making it impossible to avoid some deficiencies and inconsistencies in the legal system. To guarantee the highest possible applicability and consistency of state policy, it is necessary to develop and adopt mechanisms and procedures that guarantee broad-based consultation of citizens and citizens' organizations in the law-making process. It is also important to mention that gaining public support for proposed legislation contributes to the society's eventual acceptance and obedience of the law.

This study provides a brief overview of the legislative process in selected countries as well as an analysis of the legislative process and institutional structure in Poland. The report's main objectives are (i) to describe the formal and informal mechanisms used by social and economic organizations to participate in and influence the legislative process, (ii) to clearly demonstrate that open and transparent legislative procedures are conditions *sine qua non* for a representative democracy, and (iii) to present a set of recommendations based on the findings and conclusions which are both applicable and achievable within the Polish context. Additional requirements were that the recommendations had limited cost implications to the national budget and were realizable in the short term. The report's primary audiences are Members of Parliament, government officials, and

others involved with and responsible for the creation of a secure, stable, credible and well-respected legal framework.

This document concentrates only on the legislative process with regard to new or existing parliamentary acts (statutes) and does not attempt to simultaneously address the process of drafting and/or enforcing regulations, which usually takes place at the ministerial level. Although the authors clearly recognize the importance of the regulatory process, differences in structure, purpose and complexity warrant a separate assessment. It should also be noted that while the need for and importance of consultative practices are applicable to all representative citizens groups, we have based much of our analysis on the interests of economic entities, and in particular, on the small and medium size enterprise sector.

There are three main sections to this report. Part I focuses on relevant legislative procedures in five selected Western nations (Great Britain, France, Germany, The Netherlands and the United States). These chapters begin with an overview of the state structure and a brief description of the legislative process. The last two subsections, *Access to Information* and *Access to Decision-Makers* are the most relevant and important topics relating to the final set of recommendations and conclusions of the report. As previously stated, a substantial portion of the material in this section of the study came from the International Human Rights Law Group book, In the Public Eye.

Part II of the report is a description of the legislative system currently in place in Poland. In this section one can observe the role of constitutional provisions as well as the fundamental mechanisms and rules for participation of the public in the legislative process. For more detailed information on the intricacies of Poland's legislative process as well as the institutional structure, we recommend the reader to consult The Art of Lobbying in Poland,³ published by the GEMINI Project in September 1995. This publication also describes various tools and techniques used by lobbyists worldwide to assist them in influencing outcomes of the policy-making process.

Part III is comprised of the conclusions and recommendations of the Senate's Lobbying Task Force, whose primary objective is to improve current internal parliamentary and government procedures to effectively increase the openness of the legislative process. This, in turn, will allow for a legitimate and controlled increase in the participation and influence of social and economic organizations in policy development. We realize, however, that this analysis and set of recommendations can only serve as a beginning, not an end, to such an initiative.

³ See footnote No 2.

Part I

The State Structure

and

Participation of Nongovernmental Organizations

in the Legislative Process

in

Five Selected Western Countries

Great Britain

In any comparative study of European legislatures, the Parliament of Great Britain must take a primary position. It provided the model for a system of government that has been widely adopted by other nations. Paradoxically however, there are many parliaments today with greater influence than the English prototype. Great Britain's legislative process is also among the most transparent, despite the fact that legal guarantees of the right to information are minimal and many other aspects of government activity remain opaque.

Great Britain is unique among Western democracies in its lack of a codified constitution. Instead, in the British context, "constitution" refers to a number of principles and conventions, written and unwritten, that have evolved over the years. The Magna Carta, for instance, which established individual liberties for English subjects in 1215, proved to be the inspiration for several modern constitutions. Yet, many of the fundamental British legal principles, including those guaranteeing individual rights, are provided by the Common Law, developed over time through court rulings based on precedent.

In Great Britain, there is little formal separation of powers between the executive and legislative branches. Supported by the majority party in Parliament, the Prime Minister and Cabinet are able to control the legislative process. However, the Cabinet often has to defend its policies in public debate, a tradition which is an essential element of the British system of governance.

I. An Overview of the Parliamentary Structure

The British Parliament is located in London and consists of the Queen, as the Head of State, and a bicameral legislature. The lower House of Parliament, the House of Commons, consists of 651 Members elected from single-seat constituencies based on the population throughout the United Kingdom. They are elected by a majority vote for a five-year term or until the Prime Minister calls new elections.

The upper House of Parliament, the House of Lords, consists of 1,193 Lords of four different types, all of whom sit for life terms. Included in the House of Lords, among others, are 777 hereditary peers; 390 life peers who are selected by the Prime Minister and appointed by the Queen; and 26 archbishops and bishops who achieve their positions based on seniority in the Church of England. However, not all the Lords actively participate. In 1992 only 766 Lords took part in the business of the House, and average daily attendance was 337.⁴ The House of Lords was stripped of most of its powers by the Parliament Act of 1911 and now functions primarily to revise or, occasionally, delay legislation.

⁴ "The UK Parliamentary System" in C.K. Jain, ed., Triumph of Democracy (New Delhi: CBS Publishers and Distributors, 1993).

Parliamentary Institutions

The British Houses of Parliament do not have steering committees, or presidiums, as do many other parliaments. The presiding officer of the House of Commons, called the Speaker, is considered to be impartial and, once named, must resign from any party affiliation. The Speaker is selected after every general election along with three Deputy Speakers who are nominated by the government and confirmed by the House. The position of the Lord Chancellor in the House of Lords is similar to that of the Speaker in the House of Commons. Unlike the Speaker, however, the Lord Chancellor does not renounce party affiliation.

The most important committees in the British legislative process are those of the House of Commons, which review drafts after the second plenary reading and prepare a report for the plenum. Although they are called "standing" committees, they are not permanent and are established only to consider particular legislation. These committees consist of about 18 members each, though they may include as many as 50.

Generally less influential than most Western parliaments, committees in the British parliamentary system are usually limited to considering technical amendments to a draft. The broad principles which govern the committee's deliberations are typically based on those having been accepted in the first reading. A draft's progress through committee is dominated by the government, just as it is in the plenary.

The House of Commons also has departmental committees which review and investigate the administration and effectiveness of policy. These committees each have less than 16 members. The House of Lords does not have such committees but can establish select committees to investigate a particular matter.

II. Legislative Process

The legislative process often begins before a draft reaches the Parliament. The government may draw up an initial "Green Paper," which is used to inform the public and gauge support for a particular draft through consultations and popular comment. A Green Paper is usually followed by a "White Paper" which is a firmer indication of the government's legislative proposal.

The consultation process following the production of either a Green or White paper is of key importance to anyone wishing to influence the final outcome of legislation. Experience has shown that it is far better to attempt to influence policy before it becomes enshrined in a bill than to try to amend it subsequently.

Most bills are sponsored by the government, although some may be initiated by a Member of Parliament (albeit with special procedures and permission from the relevant House). Private Members' bills generally have less chance of success, however, because they cannot count on

government support and due to the fact that government bills are always given priority. According to one scholar, "all important legislation is government legislation and, with very few exceptions, goes through without substantial amendment."⁵ Indeed, approximately 70 percent of all government bills are approved without a formally counted vote.⁶

Both Houses of Parliament have very similar processes for consideration of a bill. The "First Reading" is simply a reading of the bill, without debate, designed to familiarize Parliamentarians and the public with its contents. The bill is printed and distributed so Members may prepare themselves for the second reading, at which debate is allowed. The second reading provides an opportunity for those wishing to influence the final content of the bill, or simply oppose it, to target Members, Ministers, and other decision-makers likely to be sympathetic to their cause.

Following the second reading, the bill is sent to a standing committee in the House of Commons, where it is debated in detail, clause by clause. Committee members are chosen on the basis of interest or knowledge in the area and by party approval. Committees reflect the membership of the House of Commons and therefore always reflect the government majority. This ensures that while the technicalities of a legislative proposal can be amended, the principles included in the draft and supported by the government are not overturned by the committee. This stage can last from a few weeks to several months depending on the complexity of the bill. The committee stage provides the best opportunity for those wishing to support, oppose or otherwise influence the bill.

After the committee stage, the bill returns to the House of Commons for further debate. This is known as the "Report Stage" and provides further opportunity for amendment. This usually lasts for one or two days and is followed by a third reading, which is typically a three hour debate where no substantive amendments are made.

Following the third reading and on the same day, the bill is sent to the House of Lords, where it undergoes similar treatment. This House is known for its detailed, thorough and more measured deliberations. In fact, there is often a greater chance of an extensive debate on a complex issue taking place in the House of Lords than in the House of Commons.

Once a bill has completed all the stages in the House of Lords, it is returned to the House of Commons for consideration of the "Lord's amendments." The House of Commons then debates any amendments made to the bill during its passage through the House of Lords. Drafts may be sent back and forth a number of times, but a compromise between the Houses is usually forthcoming at some point. The House of Lords may only delay, rather than defeat, legislation.

⁵ Quoted from Bernard Crick in Gerhard Loewenberg, Comparing Legislatures (Lanham, MD: University Press of America, 1979).

⁶ Philip Norton, "Opposition to Government," in Michael Ryle and Peter Richards, eds., The Commons Under Scrutiny (London: Routledge, 1988), pp. 101-102.

Once a bill has completed all the parliamentary stages, it is sent to the Queen where it receives "Royal Assent" before being printed as an Act of Parliament.

In terms of timing, there are no hard and fast rules for how long a bill takes to go through the process. The speed of progression depends on the length and complexity of the bill and whether or not it is controversial.

III. Access to Information

Constitutional Guarantees

Since Britain's "constitution" is unwritten, there are no written guarantees of the right to information; nor have the courts found such a right to exist, although the courts often refer to the principles of freedom of speech and freedom of the press. While these rights are accepted as integral to the British system, they are not accorded the status that other (written) constitutions give them.⁷ The openness of the British Parliament is due mostly to a long-standing tradition of democracy and transparency.

Openness of Plenary Sessions

The sessions of both Houses of Parliament are open to the public, except for very rare occasions when they are closed to consider such issues as national security. The last time a plenary session was closed was during World War II.⁸

The British Parliament's sessions are extensively covered by all forms of media. All major newspapers have "lobby correspondents" whose job it is to develop contacts so that more detailed and complete knowledge on legislation being considered is obtained.

Proceedings of both Houses are also broadcast on television and radio. Video recordings are made by an independent company appointed by the House of Commons Broadcasting Unit, and the pictures are made available to other approved broadcasters for use in news and current affairs programs.

⁷ Andrew Nicol and Caroline Bowman, "Press Law in the United Kingdom," in Sandy Coliver, ed., Press Law and Practice (London: Article 19, 1993), p. 167. [hereinafter "Nicol and Bowman"]

⁸ Nicol and Bowman, p. 185.

Transparency of Committees

The public may attend meetings of standing and select committees. The House of Commons Standing Orders state that "strangers shall be admitted to a standing committee unless the committee otherwise orders."⁹ In practice, committees are rarely closed. If considered particularly newsworthy, committee meetings are covered by the print media, and seating areas are designated for the press. Finally, committee reports are available from Her Majesty's Stationary Office (HMSO).

Each committee maintains a circulation list of institutions and organizations from which it seeks comments but anyone can send written testimony to a committee inquiry. This can also lead to a request to provide oral testimony at a committee meeting.

Information Services in the Parliament

Both Houses of Parliament have information offices which answer questions from the public and publish information on the Parliament. The Parliament libraries serve the Members of both Houses, but are not open to the public. The House of Commons Library has a specialized research service for Parliamentarians which is staffed by about 30 researchers. Her Majesty's Stationary Office (HMSO) is the most important parliamentary publishing house and publishes (for sale) draft laws, statutes and verbatim reports.

Publication of Parliamentary Records and Draft Acts (Bills)

Verbatim accounts of all plenary proceedings are published daily in an official report, called the *Hansard*. The *Hansard* can be purchased from Her Majesty's Stationary Office (HMSO), bookstores and libraries. The House of Commons also publishes the *Weekly Information Bulletin*, a summary of activities in Parliament, which is available by subscription from HMSO.

As previously mentioned, initial versions of draft acts are also available before the legislative process begins, as Green and White Papers. These are available from HMSO and some libraries. Draft acts are published at least three different times for each House at different stages of the legislative process and are available for sale with the cost depending on the length of the bill.

IV. Access to Decision-Makers

Green and White Papers

Green Papers are published for the express purpose of consultation. Accordingly, at the end of the document, the name and address of the government official responsible for correspondence is

⁹ House of Commons Standing Orders of 1991, art. 89(2).

included. The deadline for comments, usually three months, is also noted. White Papers set out government policy on an issue as an indication of intent to legislate. They are presented to Parliament by the Minister responsible and are public documents, available from libraries which contain official publications. They can also be bought from HMSO.

Contact with Government Departments

Consultation can take place at various stages in the policy development process. From the point of view of interest groups, the most effective way to minimize surprises and influence policy is through early contact with government officials in the relevant departments. From the vantage point of policy makers (and drafters), interest groups can offer expertise, experience and information. Informal contact, by letter, telephone or personal contact, often develops into formal consultation involving participation in departmental working parties or committees.

The British policy-making process is highly compartmentalized. Departments are divided into divisions which are subdivided into branches. To identify the relevant section and officials, general reference sources such as *The Civil Service Yearbook* or *Dods Parliamentary Companion* (both published annually) are available.

Contact with Members of Parliament

Aside from contact at the governmental level, Parliamentarian-constituent contact is also a vital and accepted component of the British legislative process. Members of the House of Commons hold regular "surgeries," or meetings, with their constituents that allow for direct input on various matters. Although these Members rarely meet single constituents outside of the surgeries, large groups can exert more influence and are often able to arrange meetings.

For further reference, Members of the House of Commons list their areas of interest or expertise, including Select Committee membership, in various publicly available publications such as the above mentioned *Dods Parliamentary Companion*. Another useful way to identify parliamentary allies is through what are called "All Party Groups" which organize around particular subject areas.

The House of Lords is in many ways more receptive to interest groups than the House of Commons. Time is less constrained and House of Lords Members, called *Peers*, are relatively free from party constraints and entirely free from electoral considerations. Like Members of the lower House, Peers investigate topics in Select Committees, join All Party Groups, and list their interests in various publications.

The Small Business Community

Due to the diverse nature of the sector, there are a number of groups representing small business interests at the national policy-making level. However, such representation is significantly hampered

by the uncoordinated character of the actions undertaken by organizations, which, as a result, is damaging for the entire sector. Further, this lack of coordination is also apparent within organizations. The Confederation of British Industry (CBI), for example, is centrally well organized but cannot issue binding directives on its members. The Chamber of Commerce, on the other hand, is strong locally but lacks central organization.

While government response to the sector has been criticized, it appears that recently the government has become more interested in promoting the development of an authoritative voice for small businesses.¹⁰ From the government's point of view, the existence of a representative and well organized umbrella group makes the consultation process considerably easier and more effective.

In 1991, the Department of Employment recognized eight organizations representing the small business community: The Association of British Chambers of Commerce, the Confederation of British Industry, the National Federation of Self-Employed and Small Businesses, the Forum of Private Businesses, the Institute of Directors, the Association of Independent Businesses, the Union of Independent Companies and Trade Associations.

¹⁰ The British government is now providing funding for the internal restructuring of the Association of British Chambers of Commerce.

France

France has developed along distinctive lines, balancing a powerful and sophisticated bureaucracy with a fundamental commitment to democratic rule. Tradition and law combine to make the parliamentary process largely transparent. In France, a key role is played by the President, elected to a seven year term, who controls all government activities. The French Constitution¹¹ limits the law-making powers of the Parliament, leaving authority to the executive in this area.

I. An Overview of the Parliamentary Structure

The French Parliament is bicameral. The Members or Deputies of the lower Chamber, called the National Assembly, are directly elected by majority vote from 577 one-member constituencies and serve a term of five years, unless the President dissolves the Assembly before then.

The upper Chamber, or Senate, has not been a permanent fixture of French democracy. It was revived in 1958 in an effort to provide a counterbalance to the power of the lower Chamber. Senators are elected by indirect vote for a term of nine years by a collegium composed of regional representatives and delegates of municipal councils. There are 322 Senators, one third of whom are up for election every three years.

Although the Parliament retains strong legislative powers and is ultimately responsible for approving the budget, the French Constitution places technical limits on parliamentary procedure and substantive limits on law-making, mostly in the interest of restraining the Parliament's authority or its temptation to "interfere" in the workings of the government. For example:

With regard to procedure:

- the two regular sessions of Parliament (spring and fall) are limited to 80 days and 90 days respectively (Article 28); extraordinary sessions are limited to only 12 days (Article 29);
- the number of permanent committees is explicitly limited to six in each Chamber (Article 43); and
- bills proposed or endorsed by the government, in an order or priority determined by the government, take precedence over all other parliamentary matters (Article 48).

¹¹ The French Constitution was promulgated on 4 October 1958 [hereinafter "Constitution"].

With regard to substance:

- the domain of law, while broad, remains limited in order to prevent the legislature from "regulating" (Articles 34, 37);¹²
- the Parliament is prohibited from introducing any law or amendment that would change the balance between public financial resources and expenditures (Article 40); and
- the government may force either Chamber to vote on a bill while excluding any amendments which it does not accept (Article 44) - or even adopt a law without a vote (Article 49(3)).¹³

Parliamentary Institutions

There is a common pattern to the leadership of the two Chambers. Each is composed of a president and a secretariat that includes six vice-presidents. The secretariat administers work within the Chamber as well as its staff. In addition, it is responsible for ruling on questions of cumulated functions¹⁴, parliamentary immunity, and compliance with Article 40 of the Constitution (regarding legislation that affects public revenue or expenditures).

The president of each Chamber presides over its debates and represents the Chamber publicly. In addition, each president appoints three of the nine members of the Constitutional Council.¹⁵ The president of the Senate serves as interim president during the absence of the President of the Republic.

¹² There are issues that fall under the exclusive competence of the parliament such as determining fundamental liberties, penal procedures, and electoral laws, laying down the general principles and the framework of laws relating to key areas including local government, education, property rights, trade union law, social security and finance. Any area, that is not specified, is left to the competence of the government based on the Art. 37 of the Constitution.

¹³ This particularly intrusive procedure is intended to permit the government to assert control over a proposal that has lost its coherence in the amendment process. It has been used relatively rarely since late 1960s. "Droit constitutionnel et institutions politiques," *Document d'études* no 1.12, July 1986, La Documentation Française, s. 23.

¹⁴ One of the unique aspects of French system is the combination of elected posts in a single representative. For instance, in June 1994, 289 deputies to the National Assembly were also mayors.

¹⁵ The remaining three members are appointed by the President of the Republic. All nine members serve a nine year term.

In addition to the secretariat, there is a Conference of Presidents (*Conference des Presidents*) in each Chamber, composed of the president, vice presidents and chairmen of the parliamentary committees. In the National Assembly, the conference also includes the chairs of parliamentary groups, as well as the *rapporteur* of the Committee of Economic Affairs and Finance. Its main task involves relations with the government and, in particular, setting the parliamentary agenda. In practice, weekly meetings of the Conference are attended by a government official who presents the so-called priority agenda which includes the sequence of governmental drafts to be considered as well as the parliamentary proposals which have been accepted by government. Interest groups, anxious to ensure that their concerns are raised on the floor of the National Assembly, brief the relevant administrators within the Conference of Presidents and seek meetings with senior Parliamentarians.

By arbitrarily limiting the number of committees to six in the Constitution of 1958, the drafters sought to diminish the control of interest groups, avoid permanent power bases that competed with the ministries and restrain the role of the committees in drafting laws.¹⁶ Each committee has its own secretariat and a small staff. Every Parliamentarian serves on one permanent committee, the exact composition of which corresponds to the political representation in the Chamber. The jurisdiction of each varies according to the Chamber and the personality of the chairman. In addition to these permanent committees, temporary committees are occasionally set up, at the request of the government or one of the Chambers, to review bills that fall outside the jurisdiction of a single committee or concern problems of particular political salience. There are also investigatory committees established for the purpose of acquiring information on certain issues which are to be considered by a Chamber, and control committees created to investigate the administrative and financial activity of public service providers and state-owned enterprises.

Each Chamber of Parliament also contains parliamentary groups which are established by and correspond largely, although not entirely, to political parties. It is in these group meetings that the most vibrant debate is said to occur. The work of the parliamentary groups has been especially important when a party's majority has been slim or divided, as has often been the case in the recent past.

Parliamentary groups examine the general political situation, the texts of bills that will be discussed and the questions to be asked of the government at the "Questions Session." Sometimes group meetings are conducted like hearings, with specialists invited to discuss particular subjects. While permissible, individual amendments are now increasingly rare since these groups act as a kind of filter.

¹⁶ See J.P. Camby and P. Servent, Le travail parlementaire sous la cinquieme Republique (Paris: Montchrestien, 1994), p. 64. [hereinafter "Camby and Servent"]

II. Legislative Process

Both the Constitution and the Rules of Procedure provide Parliamentarians with the right of legislative initiative. However, a characteristic feature of the French legislative procedure is that the government has the preeminent right of legislative initiative and dominates at every stage of the law-making process. The executive branch benefits not only from its constitutional privileges, but also from its access to better staffing and diverse institutions to assist in drafting. In fact, in recent years, over 90% of the adopted or amended laws have been initiated by the Prime Minister.

It must be noted that the process of transforming a bill into an Act varies depending on whether the text originated in the government or in Parliament. For government bills, drafts originate from the relevant ministries. Upon completion of the government's review, which sometimes involves a lengthy inter-ministerial process, drafts are submitted (mandatory) by the Prime Minister's Office to the Council of State (*Conseil d'Etat*). The Council of State is the most important consultative body and is comprised of 209 high ranking civil servants. The Council is called upon by the government to examine legislative bills and governmental decrees and to issue a legal opinion. The advice of the Council of State is not legally binding and is not released to the public or even to the Parliament. After receiving the opinion of the Council of State, the draft is formally adopted by the government and submitted to the Parliament by the relevant minister.

Apart from being reviewed by the Council of State, all bills of a social or economic nature must be submitted to the Social Economic Council (*Conseil Economique et Social*) abbreviated herein as SEC. With regard to other drafts and legislative proposals by Parliament, the government has discretionary power to consult them with the SEC. The advice of the SEC, although in this case communicated to both government and Parliament, is not binding.

As for parliamentary bills, also called *propositions*, Members of the National Assembly and Senators may submit them during legislative sessions. They are put on the Parliament's agenda, but government bills have priority, which in practice means that propositions are rarely ever discussed.

According to the Constitution, all bills submitted and put on the agenda must be reviewed by a parliamentary committee. In most cases, the committee chairman appoints a *rapporteur* who prepares a report which includes recommendations. The report either proposes to adopt the bills without any changes, make amendments to the bill, or to reject it entirely. For bills involving more than one ministry, several committees may be called upon to work on the same text.

Rapporteurs are key figures in the Parliament's examination of the law. They are free to consult whomever they deem useful during the drafting of their reports. Generally, they make contact with the administration as well as with persons, interest groups and business associations which are directly concerned by the issues at stake. Hearings are organized by the committees to allow representatives of special and public interest groups to testify. Although hearings are by no means mandatory, they are part of parliamentary tradition.

Finally, it should be noted that any Parliamentarian is entitled to table an amendment provided that they do so within four days of the text being officially submitted to Parliament. These amendments will subsequently be examined by the relevant committee *rappporteur*. Nevertheless the government retains the right to veto all amendments tabled outside the parliamentary committees.

After the committee's report is completed, the bill is brought for debate before the plenary session of the Chamber in which it was introduced. Typically, the debate begins with the statement of the government followed by a reading of the committee report(s). Bills must be adopted by majority votes in both Chambers of Parliament. If there are discrepancies after two readings a joint commission of the National Assembly and Senate is established to try to reconcile any differences. However, if the two Chambers are still unable to agree, the law may be passed by an absolute majority of the National Assembly.

Once adopted, the bill does not become law until signed by the President. Before promulgation, it may be referred to the Constitutional Council for constitutional review at the request of the President, Prime Minister, 60 Deputies of the National Assembly or 60 Senators. Finally, the President of the Republic has the right to send bills back to Parliament for reconsideration. In this case, the process of reviewing a draft starts from the beginning.

III. Access to Information

Constitutional Guarantees

Under the Constitution, plenary sessions of the Senate and National Assembly are public, and the proceedings are published in the Official Journal (*Journal Officiel*).¹⁷ Closed sessions are permitted at the request of the Prime Minister or one-tenth of the Chamber but, in fact, rarely occur.

Openness of Plenary Sessions

The general public is required to have an invitation from their parliamentary representative in order to attend a plenary session of the National Assembly. The number of available seats is limited, with sections reserved for the press and foreign guests.

In the Senate, there are two levels of visitors' galleries containing a total of about 500 seats in the plenary Chamber. Although many are reserved for government representatives, guests of the Senate, diplomats and others, it is relatively easy to obtain entrance.

Both Chambers have reached out in recent years to expand their facilities for radio and television. National Assembly sessions have been broadcast by cable television since 1993. The Senate has

¹⁷ Constitution, art. 33.

plans to follow suit.¹⁸ Understandably, it is the "question period" which attracts the most attention, both from the media and the Parliamentarians themselves.

Transparency of Committees

Committee debates are, in principle, closed to the public, although other Parliamentarians and ministers may attend. Until recently, public access was limited to a press release at the end of each meeting, summarizing the discussion and any votes that were taken. In 1990, the internal regulations were revised in order to permit the committees, at their own discretion, to open sessions to the public. However, except for a few highly publicized sessions, the introduced changes did not affect parliamentary practice.

In 1994, the rules were again revised, this time in an explicit effort to raise the stature and visibility of the committees and thus reduce the load on the plenary sessions. The authors of the revisions perceived that the lack of publicity for committees caused many Members of Parliament to take their fights to the floor.¹⁹ Because of the reform, committees are now required to publish detailed summary minutes of their meetings with particular reference to the comments of speakers.²⁰

Members of the relevant committees, in particular the *rapporteurs*, are the target of interest group pressure where bills under consideration may affect an organization's operations. The work of these committees has enjoyed a higher profile in recent years as an increased number of public hearings have been organized.

Information Services in the Parliament

The National Assembly alone employs 1,200 staff, working in different departments, who provide legal and administrative assistance to the Chamber. These include but are not limited to the departments of plenary meetings, verbatim records, committees, and parliamentary information.

Each Chamber has a library and an information service to provide information internally, to Members of Parliament and externally, to the press and general public. Substantial amounts of information are also available from computer databases which are accessible via modem.

¹⁸ Camby and Servent, p. 72.

¹⁹ According to the official history of the 1994 reform, "[M]any statements are made in open session and not in commission essentially in order to benefit from a wider distribution by way of the *Journal Officiel* or the television." La réforme du règlement de l'assemblée nationale, travaux préparatoires, 1994, p. 54.

²⁰ Ibid.

Publication of Parliamentary Records and Draft Acts

As a general rule, almost all documentation examined by the two parliamentary chambers must be made available to the public. This includes all bills as well as reports of parliamentary committees or advice by the Social Economic Council.

Transcripts of the plenary sessions are prepared immediately and become available to the Speakers. After modifications proposed by the Speakers, the text is forwarded to the printers each day and published in the Official Journal, which appears within three days.

In addition to the Official Journal, there are a number of publications that provide either immediate information or long-term analysis. Both Chambers publish a Summary Bulletin (*Bulletin Sommaire*) and an Analytic Report (*Compte Rendu Analytique*).

Draft bills, whether originating in the government or Parliament, are published and distributed within approximately one week following their presentation to the secretariat of the Parliament.

IV. Access to Decision-Makers

The French institutional system provides a number of opportunities for interest groups to exert pressure at various stages of the legislative process. The four primary points of access and influence are the government's Secretary General, the Interministerial Committee, the advisory bodies (i.e. the Council of State and the Social Economic Council), and Members of Parliament.

Meetings of the Council of Ministers are organized by the Secretary General who, besides organizing ongoing government proceedings, also provides substantive assistance to the ministers. Hence, strong links with the Secretary General officials are essential to raise business and interest group concerns at the level of the Council of Ministers.

A key stage in the decision-making process occurs at Interministerial Committee meetings, which are chaired by the Prime Minister and attended by a limited number of ministers and high ranking civil servants. These meetings are convened to discuss specific issues and therefore represent an opportunity for industry and other groups to ensure that their problems and expectations are heard at the highest levels. The civil servants within the relevant ministerial departments who attend these meetings are the focus of attention for business and interest groups trying to influence the legislative framework.

Industry representatives also often look to the members of the Council of State regarding particular legislative amendments or the legal validity of existing laws. These well used channels of communication allow the members of the Council to grasp the problems faced by nationalized and private industry.

The Social Economic Council is the only official consultative institution with private sector representation. The SEC is comprised of 163 members designated by economic and social organizations and 68 members designated by the government. As previously mentioned, although the advice of the SEC is not binding, it does represent an effective forum for raising and discussing the concerns of industry and social organizations.

Besides the rule which provides for mandatory consultation by the SEC on certain bills, three elements reinforce the role played by this body. First, the government may formally appoint SEC members for specific missions or consult them informally. Second, SEC members may be requested to testify before parliamentary committees or to directly express the opinion of the SEC before either Chamber of Parliament. Third, and perhaps most importantly, the Council may, in certain cases, draw the government's attention to its own legislative initiatives.

In contrast to the party discipline which applies in the United Kingdom, Members of the French legislature are notoriously independent minded. It is, therefore, relatively easier to convince them to support a particular cause. Public and special interest groups may also be consulted, in particular by Deputies, Senators and their staffs. Parliamentary committees may contact and discuss with members of the public which are directly concerned with the issues at stake. The information gathered often appears in the reports submitted to the Parliament.

While opportunities exist, one should not overestimate the importance of the interaction between the public and the parliamentary committees for two reasons. First, the conclusions of the committees are not binding on Parliament. Second, pursuant to a ruling by the Constitutional Council in 1985, a report does not always need to be submitted to Parliament before a vote is taken. The only requirement set forth by the Constitution was that a project or proposition has to be referred to a parliamentary committee.

Two of the most active organizations representing the private sector are the National Confederation of French Employers (*Confederation Nationale de Patronnat Francais*) and the General Confederation of Small and Medium Size Enterprises (*Confederation Generale des Petites et Moyannes Enterprises*). The National Confederation of Employers is a powerful organization financed from fees paid by its members and embraces all industry sectors. Both organizations are recognized by the government which means that they are entitled to participate in "tripartite" negotiations with public authorities and trade unions as well as to sign agreements.

The Federal Republic of Germany

The German legislature uses a parliamentary system similar to Great Britain's, with some structures borrowed from the United States and other federally structured governments. Cabinet members come from the governing coalition parties. The Chancellor, elected by the Bundestag, is usually the chair of the majority party. A relatively weak President, acting as Head of State for matters of international relations, is elected to a five year term at a convention comprised of Bundestag Members and an equal number of representatives from the Laender parliaments. The Chancellor and Cabinet are powerful initiators of policy, and the entire legislative process is dominated by the government [executive branch].

I. An Overview of the Parliamentary Structure

The German Parliament is a bicameral legislature consisting of the directly elected Federal Parliament (Bundestag) and the Federal Council (Bundesrat). The Bundesrat is a separate constitutional body intended to represent the interests of the 16 federated states of Germany (called the *Laender*).

The Bundestag consists of 672 Representatives or Deputies elected to four year terms. In accordance with the German Federal Republic Constitution,²¹ it is the most influential body in determining the policy principles of the State and its organs as well as supervising the executive activities of the government. The Constitution does not specify the number of Deputies in the Federal Parliament; their number is determined by electoral law. The number of Deputies increased significantly when Germany reunited.

The Bundesrat enables the Laender governments to participate in legislative and administrative functions at the national level, acting as a counterweight to federal executive and legislative power. Its main function, derived from its veto power over legislation concerning the Laender, was originally intended to have a relatively minor role. Yet, the Bundesrat's influence has expanded over the years as its approval has been required for an increasing volume of legislation.

The Bundesrat has 68 Members who are appointed by their Laender governments. The number of votes assigned to each Laender depends on its population size. Since the Bundesrat is not directly elected, it does not have a specific legislative term. Rather, it is a "permanent body", with its membership changing as Laender elections take place. As a result, local elections can have nationwide political significance.

²¹ The Basic Law, promulgated 23 May 1949, as amended 31 August 1990 and 23 September 1990. [hereinafter "Basic Law"]

Parliamentary Institutions

Many of the Bundestag's administrative tasks are carried out by the Presidium, consisting of a president and vice-presidents. The president manages the works and deliberations of the Bundestag. The Council of Elders, a Bundestag steering committee,²² serves as an important advisory body to the Bundestag's president. The composition of the Council is proportional to each party's overall representation.

The Council of Elders prepares a yearly program for the Bundestag, as well as each week's agenda which is then subject to plenary approval. The agenda is finalized three days before each plenary meeting, and can be accessed by Parliamentarians and staff through an internal computer database. The agendas are delivered to journalists at the press center, and any interested person can consult them via videotext.

The number of standing committees of the Bundestag can vary between 15 and 25. Committee representation reflects the political balance in the Bundestag, and members are appointed - and replaced at will - by the political parties. The areas of competence roughly correspond to those of the federal ministries. Although the committees have significant influence on the outcome of a bill, their lack of a large independent staff often results in the government ministry which initiated the bill, shepherding it through the committee stage. Still, committees frequently on their own initiative, call on outside specialists as well as government officials to provide relevant information.

Investigatory committees, usually consisting of 11 members, are often used by the opposition to control the government. They are formed on an ad hoc basis, generally in order to bring governmental or administrative deficiencies to the attention of the general public. A parliamentary minority of one quarter of the Deputies may request the formation of an investigatory committee and determine its area of inquiry. The committees usually hear evidence in public hearings.²³ The Bundestag can also set up special committees to consider specific matters, such as comprehensive reform projects, and may establish study committees comprised of Members of Parliament as well as outside scholars and practitioners.

The structure of the Bundesrat is similar to that of the Bundestag. The Presidium consists of a president and three vice-presidents, and is primarily responsible for internal matters which do not require a plenary decision. A Permanent Advisory Council, comprised of one minister or other official from each Laender, advises the Presidium. It generally works closely with the federal Cabinet. The Bundesrat's Secretariat prepares the plenary agenda and issues a press release detailing the agenda's highlights two to three days before each meeting. The Bundesrat has 17 permanent committees, each one corresponding to a different ministerial area of responsibility.

²² The Council of Elders consists of the Bundestag's Presidium (president and vice presidents) and 23 members.

²³ Basic Law, art. 44(1).

A Permanent Mediation Committee, comprised of 32 members from both Houses, is charged with reaching a compromise when the Bundestag and the Bundesrat take conflicting positions on legislation. It has two chairs, one from each House, who preside alternately. This Committee meets only when requested by either House or by the Cabinet, and all its proceedings are strictly confidential.

II. Legislative Process

The federal government, the Bundesrat and a Bundestag Group (called a *Fraktion*), or at least five percent of Bundestag Members have the right to initiate legislation. As a practical matter, however, most of the drafting is done by the government and the committees regardless of who initiated a bill. Although the government drafts the majority of legislation, the impetus for government bills frequently comes from Parliamentarians or outside interest groups. As will be further discussed, established interest groups, such as business or labor, often collaborate closely with the government in the drafting process.

Four distinct stages can be specified in the German legislative process:

- initiation of the legislation
- revisions by the Bundestag
- revisions by the Bundesrat
- signing and promulgation by the President

Bills initiated by the government must first pass through the Bundesrat for an assessment before being sent to the Bundestag. Likewise, bills originating in the Bundesrat go to the government first, where they are assessed - often in consultation with interest groups and experts - before proceeding to the Bundestag.

Once bills reach the Bundestag, an initial discussion is held among the Bundestag groups (*Fraktionen*) before a formal first reading takes place at a plenary session. The draft bill is then referred to the relevant committee or committees for consideration by Parliamentarians, government experts, and civil servants. These discussions are the real nucleus of parliamentary work. They are supported by a number of working groups, made up of experts coming from within the political factions, which often present contradictory views. The end result of these negotiations usually leads to a revision of the draft.

A report is then prepared by the committee and the bill returns to the Bundestag for its second reading. A general discussion precedes an article-by-article review, followed by a final vote held at the third reading. If passed, the bill is then forwarded to the President for promulgation.

In some cases, it is not necessary to get the consent of the Bundesrat. On bills requiring its consent, the Bundesrat must take a position within six weeks of the Bundestag's decision. If a bill is rejected, the Bundestag can override the Bundesrat's veto by a two-thirds majority vote.

When there is a disagreement over legislation, the Bundestag, the Bundesrat and the federal government seek the counsel of the Mediation Committee, which may make proposals, but has no decision-making powers. For legislation which does not require its consent, the Bundesrat may nonetheless submit an objection within two weeks of the conclusion of the mediation procedure. However, in practice, the Bundesrat rarely raises such objections.

The final stage of the legislative process is the signing of the Act by the President. The Act also needs to be signed by the Chancellor and the relevant minister. The President is not empowered to veto legislative acts but may inquire as to their consistency with the Constitution.

III. Access to Information

Constitutional Guarantees

The German Constitution, known as the Basic Law, guarantees freedom of expression and freedom of the press.²⁴ The Federal Constitutional Court has interpreted this article broadly to include the public's right to receive information of "legitimate public interest."²⁵ In addition, the Constitution specifically protects reporting about public parliamentary proceedings: "True and accurate reports on the public meetings of the Bundestag and of its committees shall not give rise to any liability."²⁶

Although the Constitution does not provide many explicit guarantees, German scholars have argued that parliamentary transparency is nonetheless a cardinal principle of constitutional significance.²⁷ The Constitution does guarantee that debates of the Bundestag and meetings of the Bundesrat are open to the public. This has been interpreted to extend only to plenary sessions, unless a committee is making a decision for which the Parliament as a whole is accountable. The Constitution also requires that enacted statutes be printed in the *Federal Law Gazette*.²⁸

²⁴ Basic Law, art. 5.

²⁵ Ulrich Karpen, "Freedom of the Press in Germany", in Sandra Coliver, ed., Press Law and Practice (London: Article 19, 1993), p. 73. [hereinafter "Karpen"]

²⁶ Basic Law, art. 42(3); Karpen, p. 91.

²⁷ Basic Law, arts. 42 and 52.

²⁸ Basic Law, art. 82.

Openness of Plenary Sessions

An impressive effort has been made in recent years to make the Bundestag more accessible to the public. The building itself, inaugurated in October 1992 and constructed primarily of glass, supposedly functions as a "symbol of a parliament which is itself transparent and open."²⁹ Although plenary sessions are guaranteed open by the Constitution, in principle, one tenth of the representatives or the government may request a closed meeting, subject to approval by a two-thirds majority vote held in closed session. A closed meeting, however, has never been requested.

The public galleries in the Bundestag plenary chamber accommodate about 365 members of the public, 30 diplomats and 100 journalists. In addition, debates may be viewed on monitors placed throughout the Bundestag building. Members of the public who wish to attend plenary meetings must schedule visits in advance through the visitors' office or register when they arrive for the seats which may be available. Excerpts from plenary sessions are broadcast regularly by independent television stations, usually when the issues are of particular interest to the public.

Like the Bundestag, Bundesrat meetings are also guaranteed open by the Constitution. An absolute majority vote is required to close a meeting and it has been many years since a session was closed to the public. Now, potentially secret matters are discussed in the committees. There are about 150 seats for visitors to the Bundesrat plenary chamber. They must register in advance at the visitors' office to receive a pass needed for entrance.

Transparency of Committees

The Rules of Procedure of both the Bundestag and Bundesrat stipulate that committee meetings, with the exception of investigatory committees, are not open to the public.³⁰ It is commonly thought that public attendance would interfere with efficiency and restrict candid debate at committee meetings. On the other hand, scholars point out that closed-door decision-making by committees undermines public accountability. Mechanisms to provide greater access to and openness of the committees is currently under discussion.

Information Services in the Parliament

Each House has its own Office of Public Information, which distributes official brochures and other publications, and the *Bundensanzeiger-Verlagsgesellschaft*, a publishing house, which prints draft laws and statutes. Visitors' Offices provide the public with basic information about the two Houses. Both Chambers also have libraries that are open to the public.

²⁹ Im Plenarsaal ("In the Plenary Hall") (Bonn: Bundestag Public Relations Office, 1993).

³⁰ Rules of Procedure of the German Bundesrat, effective 1 October 1966, art. 37(2), Rules of Procedure for the German Bundestag, published on 2 July 1980, as amended 12 November 1990, art. 69(1).

The Bundestag's Press Center has its own press agency which distributes a number of publications to those interested. It provides summaries of draft laws, voting results by party and brief descriptions of other activities. In addition, over 50 separate press offices within the Press Center distribute daily bulletins to journalists, Parliamentarians and the public. These often include press reviews and summaries of draft laws discussed in committees. Finally, most established interest groups have offices in Bonn that are able to obtain information which is ordinarily difficult for the general public to access.

Publication of Parliamentary Records and Draft Acts

The Bundestag's Rules of Procedure require that a stenographic record be kept of each plenary sitting, and that these minutes be distributed to its Deputies.³¹ The verbatim records of the Bundestag are available for purchase on the day following each session.

There are also several publications which report on the proceedings of the Bundestag. The Bundestag Report (*Bundestagsreport*), published ten times a year, contains interviews with Parliamentarians, background information and news about committee decisions and activities. The Day in the Bundestag (*Die Heute im Bundestag*) is published daily by the Press Center, which distributes 2600 copies to the media, interest groups and interested members of the public. It contains summaries of some committee reports, legislation and parliamentary activity. Finally, a summary of activities called The Week in the Bundestag (*Die Woche im Bundestag*), is published weekly by the Press Center. All three publications are available through subscription or at university libraries. Although information regarding the Bundesrat is more limited, public access to its records is generally comparable to that of the Bundestag.

Draft acts are distributed to members of the media through the press centers and may be purchased at the *Bundensanzeiger-Verlagsgesellschaft* publishing house. In addition, a survey of printed materials related to draft legislation called *Gesta* is distributed to libraries on a bi-weekly basis.

IV. Access to Decision-Makers

In Germany, there are no specific laws or regulations that require consulting draft legislation with nongovernmental organizations. In actuality however, it is rare when a draft is not submitted to such a procedure. The Constitution provides all entities (individuals, firms, legal persons, etc.) the right of free speech and recognition of their interests. This provision is interpreted broadly, which is also confirmed by the well practiced custom of consulting draft legislation with society. Legislators work on the assumption that in order to maximize the public's understanding as well as applicability of the draft, input must be solicited from the entities most affected by the issue. Hence, there is a perceived need to obtain opinions, comments and suggestions at the beginning of the legislative

³¹ Rules of Procedure for the German Bundestag, art. 116.

process. Once in the committee stage, the draft is forwarded not only to the biggest and most powerful organizations but also to regional and local groups. This practice of consultation is seen as essential to ensure the public's acceptance and, ultimately, obedience of the final legislation.

The basis for the above actions can be also found in the Bundestag's internal Rules of Procedure. Articles 69 and 70 of these rules stipulate that the committees must hold a public hearing that includes experts in the relevant fields, interested community organizations and institutions, and other individuals who, in the committee's opinion, may provide valuable information. Committees are entitled to request from these persons and institutions, certain materials and studies in order to acquire as extensive an understanding as possible of the issue being considered. Requests by the committees are binding on these entities.

Once the period of discussion is completed, the parliamentary committee is required to submit a report to the chairman in which it presents the proposed amendments to the draft act as well as the findings and conclusions of the consultation process. The report is also the mechanism which informs those participating as to whether their recommendations were incorporated. The committee is not obliged, however, to respond to specific opinions or comments.

Another methodology used by interest groups is to table parliamentary questions through the support of an interested Parliamentarian. Such questions should yield further detailed information about the position of the government regarding a specific issue. It also provides an opportunity to draw the government's attention to the concerns of Parliamentarians and industry.

The German economy is strongly represented by approximately one thousand organizations of various forms, sizes and sectors. There are organizations of entrepreneurs, employees, professional groups, municipal bodies, consumers and so on. Additionally, there is a system of economic self-government with mandatory membership. However, this has not limited the emergence of numerous voluntary organizations.

The leading institutions representing the business community are as follows: The National German Chamber of Industry and Trade, Federal Union of German Industry, and the Central Union of Crafts. These organizations regularly issue opinions on legal acts regarding the economy and on the economic and financial policies of the government, as well as hold meetings with leading representatives of the government and political parties. German economic organizations are established as a critical source of input which each party, government and Parliament takes into account. There are other institutions, such as consumer and employers organizations, farmers and food producers unions, and numerous professional associations who also play a regular and influential role in the legislative process.

The Netherlands

The form of government in the Netherlands today is a constitutional monarchy based on a parliamentary system. Perhaps its most outstanding feature is the important role played by the monarch - since 1980, Queen Beatrix - as the Head of State. The monarch has the power to appoint and dismiss government ministers,³² ratify all bills passed by the Dutch Parliament,³³ and dissolve either Chamber of Parliament.³⁴ The Parliament forms the legislature with the Monarch and ministers. The Monarch and ministers (the Crown) form the executive.

I. An Overview of the Parliamentary Structure

The Dutch Parliament, known as the States General (*Staten-Generaal*) is a bicameral legislature consisting of a First Chamber (*Eerst Kamer*) and a Second Chamber (*Tweede Kamer*). The First Chamber is comprised of 75 Representatives indirectly elected by 12 Provincial Parliaments every four years. The Second Chamber has 150 Members or Deputies elected every four years through direct proportional elections from 19 voting districts.

Constitutional provisions require Deputies to be professionally independent. They are not allowed to combine their seat in the Parliament with other important functions in the state (for instance, the position of a minister, member of the Council of State or a judge in the Supreme Court).

The States General has three ways of checking the power of the executive:

- The right to set the budget. It determines the annual budget in conjunction with the government.
- The right of inquiry with regard to all information and specific cases which it considers relevant.
- The right of interpellation: it may question ministers about present or future government policy.

The Second Chamber has two additional rights: The right to amend bills and the right to propose legislation.

³² The Constitution of the Kingdom of the Netherlands, adopted 1987, art. 43. [hereinafter "Constitution"]

³³ *Ibid.*, art. 87.

³⁴ *Ibid.*, art. 64.

Because of the collaborative nature of the government and the States General during the development and consideration of legislation, there are two additional bodies - the Council of Ministers and the Council of State - that are important to the legislative process. The Council of Ministers, also called the Cabinet, consists of all the government's ministers and is chaired by the Prime Minister.³⁵ This entity carries the main burden of governing the state and is the first to consider proposed legislation before it reaches the States General.

Cabinet ministers may attend and participate in parliamentary meetings and are considered collectively responsible for the results of the debate.³⁶ The parliamentary system in the Netherlands has been criticized since the government possesses a very specific power with regard to the States General. More specifically, it can turn any negative vote from the Parliament into a vote of no confidence and dissolve the legislature. As a result, the government is able to force through some issues which might not ordinarily pass because Parliamentarians would otherwise face dissolution.³⁷ On the other hand, the Second Chamber can similarly dismiss a minister or the entire government through a vote of no confidence.

The Council of State is the highest advisory body in the country. The Council plays an advisory role to the government and its views, by law, must be sought on every proposed piece of legislation.³⁸ All opinions of the Council are in principal public. The Queen officially chairs the Council of State and appoints as many as 28 members, who serve until the age of 70.

Parliamentary Institutions

The leadership committee in the First Chamber is called the Collegium of Seniors and consists of the Chamber's president, two vice-presidents, and leaders of parliamentary fractions. In the Second Chamber, the leadership committee is called the Presidium and also consists of the Chamber's president, two vice-presidents, and leaders of parliamentary fractions.

Committees play an important role in parliamentary work. In principle, there is a permanent committee for each ministry of the government. So-called general committees may be established to handle certain issues or bills that involve the jurisdiction of more than one permanent committee and they cease to exist once the assigned task is fulfilled. Most committees meet every other week and consist of 25 members. Membership in the committees reflects the proportionate strengths of the political parties in the plenary.

³⁵ Currently there are 16 ministries in the Netherlands.

³⁶ Peter Taylor, World Government (New York: Oxford University Press, 1994), p. 119.

³⁷ JPA Grutters, "The Case for a Directly Elected Prime Minister in the Netherlands," in Arendt Liphart, ed., Parliamentary vs. Presidential Government (New York: Oxford University Press, 1992), p. 191.

³⁸ Constitution, art. 73.

II. Legislative Process

Although rather complicated, the Dutch legislative process is seen as a shared duty between the Parliament and the government.³⁹ Also the development of a bill involves close cooperation between the legislative and executive branches. According to the Constitution, the government (the monarch, ministries, and secretaries of state) and the Second Chamber of the Parliament have the right of legislative initiative. However, in practice, the vast majority of initiatives come from the government.

A bill proposed by the government, along with a justification (also called an explanatory memorandum), is first submitted for examination and approval by the Council of Ministers. If approved, it is then sent to the Queen for signature who forwards it to the Council of State. If the advice of the Council of State leads to significant amendments, the bill is again discussed in the Council of Ministers. The advice of the Council of State is important but not binding, yet the minister responsible has to provide clear motives for not acting upon the comments and recommendations presented by the Council of State.

Next, the bill and explanatory memorandum is sent to the Second Chamber. The comments by the Council of State are made public. Drafts originating in the Second Chamber also need to be reviewed by the Council of Ministers and the Council of State. Once submitted to the Second Chamber, the bill is sent to a committee where an initial "provisional report" is produced. The initiating minister responds to the report with a "memorandum of reply," which may or may not accept the committee's proposed changes. The committee then produces a final report and the bill is forwarded for plenary debate. Here, all articles (including amendments) are analyzed and voted on. During these meetings amendments can be proposed by all Deputies as long as they are not contrary to the general idea of the legal act and its assumptions.

After passage through the Second Chamber, the bill is sent to the First Chamber where a similar process takes place: the draft is considered by a committee and then forwarded for plenary debate. As it does not have the right to amend or initiate a bill, the First Chamber can only approve or reject the bill.

Finally, the passed bill is signed by the Queen and countersigned by the appropriate minister, the latter bearing ultimate responsibility for the initiative. At any point in the process, a minister may withdraw a proposed bill or threaten to resign if it is not passed by the Parliament. Once promulgated by the Crown, it is published in the Statute Book (*Staatsblad*). The bill is then put into effect 20 days after publication, unless the bill states otherwise.

³⁹ Parliament in the Netherlands (The Hague: Second Chamber Information Office, 1978), p. 28.

III. Access to Information

Constitutional Guarantees

The Dutch Constitution provides a strong guarantee for the public's right to information: "In the exercise of their duties, government bodies shall observe the right of public access to information in accordance with the rules to be prescribed by the Act of Parliament."⁴⁰ Thus, the Netherlands is "one of the few countries to constitutionally enshrine the government's duty to make information available to the public."⁴¹

On 1 May 1980, the Act on Publicity of Government (*Openbaarheid van Bestuur*) came into force. This law describes the legislative framework of the *active* and *passive* duty of the national, regional and local governments to provide information to the public. Active refers to the government's own initiative. In this case, it must make information public as soon as it is considered of importance for democratic governing. Passive duty refers to outside parties requesting information from the government. Here again, the government is obliged to provide the requested information unless the data is still being processed or is incomplete as this could lead to incorrect opinions or conclusions. According to this act, it is mandatory that important analyses of the Council of State and other advisory commissions be made public. Provisions in the act also include exceptions for issues concerning state security, foreign affairs, etc.

The above guarantees of access are intended to apply to information in the possession of the government, but they could be interpreted to cover the States General as well. The Chambers' rules of procedure explicitly define regulations regarding transparency. In addition, the plenary sessions of both Chambers of the Parliament are guaranteed open to the public by the Constitution.⁴²

Openness of Plenary Sessions

Although the Constitution guarantees open plenary sessions, the president of the Chamber or one-tenth of the Members may move to close a session to the public, at which point a majority vote of the Chamber decides whether the public is to be excluded. Nevertheless, closed sessions are very rare.

The Second Chamber's plenary hall is equipped with a public gallery, which accommodates 230 people, and a section reserved for guests of Members. The First Chamber has 50 seats available to the public.

⁴⁰ Francine van Lenthe and Ineke Boerefi, "Press Law in the Netherlands," in Press Law and Practice (London: Article 19, 1993), p. 109. [hereinafter "van Lenthe and Boerefi"]; Constitution, art. 110.

⁴¹ Van Lenthe and Boerefi, p. 99.

⁴² Constitution, art. 66.

Television coverage of the Second Chamber is extensive. The Chamber cooperates with the National Broadcasting Foundation (NBF) to appoint a producer who is responsible for providing coverage of the plenary sessions. The NBF is also legally required to provide a daily summary of the proceedings in both Chambers.

Transparency of Committees

Committee meetings within the States General are presumed open to the public, but closed sessions are held when discussing matters concerning individuals, procedural issues or when the committee so decides. In addition, committees sometimes hold special hearings where "those groups and individuals who would be affected by the legislation at stake can air their views."⁴³ Such meetings are an important means of public participation in the legislative process and are becoming increasingly common.

Information Services in the Parliament

An Information Office, divided into three departments, handles administrative and other various responsibilities for the Second Chamber. Its Press and Information Department produces daily bulletins and press reports and provides the public with basic information regarding plenary and committee meetings. The Reception Department is responsible for managing the legislature's visitors and distributing admission tickets. The third department, Publications and Projects, provides leaflets, brochures and other information (audiovisual material, exhibits, etc.) to the press and public units. The Second Chamber also has a library, a photocopy center and a department responsible for printing all the Chamber's reports. The First Chamber also has an Information Office, but its operations are more limited.

Publication of Parliamentary Records and Draft Acts

Most of the documents generated by the Parliament are readily available to the public. All that is said in the plenary sessions of both Chambers is recorded in a verbatim report, called the *Handelingen*. These reports are available to the press and to interested members of the public immediately following the session and then are officially published after about one week. Calls to session for special public hearings are published in the official gazette *Staatsblad*, along with all acts,⁴⁴ general administrative orders and other decrees.

⁴³ Second Chamber Rules of Procedure, art. 29. Often, there are too many applicants, and the committee selects a limited number of groups or individuals.

⁴⁴ An act can only come into force after it has been published in the *Staatsblad*.

The Act on the Council of State stipulates that draft bills under consideration by the Council of State are not made public until the Council has given its input and advice on the legislation. Nevertheless, the Council often decides to publicize the documents earlier.⁴⁵ In practice, draft laws are accessible by the public as soon as they are introduced in Parliament.

IV. Access to Decision-Makers

One must keep in mind that the Dutch economy can be characterized as a cooperative economy in which the role of social partners (employers and employee organizations) in government policy is strongly acknowledged. The possibilities to influence government policies are therefore relatively high.

In general the government tries to inform the public as much as possible of its plans. All notes to Parliament, new bills, and policy ideas are made public by the government through press releases, periodicals of the ministries, speeches of the ministers and civil servants, etc.

As early as the bill preparation stage, civil servants are in regular contact with the relevant interest groups, external advisory bodies, and experts. To sound out the opinions of the business community, preliminary drafts are sometimes designed and sent directly by the ministries to the above mentioned groups and institutions.

Increasingly, the government is preparing "notes to the Parliament" describing their policy plans and positions for the near future. These notes to the Parliament are also made public in a variety of ways. Additionally they can be ordered at the ministry, or if they are very voluminous, at the state publisher. There is no law requiring these notes to be prepared but they have proven to be a good instrument to obtain information on how the public, interest groups, experts and Parliament are likely to react to various policy proposals. On one hand, knowing this information beforehand gives an indication to the government whether they are working in the right (or wrong) direction which subsequently improves the chances that the draft will be passed in Parliament. On the other, the advantage of these notes is that Parliament, interest groups, advisory boards and experts become aware of the policy schedule at an early stage and can therefore participate in discussion and react to proposals during this more open-minded period of idea formulation.

Besides the opportunity to influence drafts before they are submitted to the Second Chamber, various communities are able to air their opinions during open hearings held by parliamentary committees. Committees invite all interested parties to apply to the Chamber to attend the meetings, and sometimes may even address invitations to specific groups or individuals.

⁴⁵ Constitution, art. 25(a); van Lenthe and Boerefi, p. 111.

With respect to the nongovernmental sector, there are a wide range and variety of trade, industrial and advisory organizations representing segments of society in the Netherlands. The leading institutions representing the business community are as follows:

The Publiekrechtelijke Bedrijfsorganisatie (PBO)

PBO refers to a particular Dutch organizational structure by industry. It implies the cooperation of employers and employees within specific branches of industry and sectors of the economy. Practicing a certain profession or pursuing a certain trade in a sector where a PBO body exists makes one subject to the rules of that particular PBO body.

Two types of bodies can be distinguished within the PBO: commodity boards and industrial boards. The commodity boards are vertically integrated and comprise all enterprises involved in production and trade (from the raw materials stage to retail sales). Industrial boards are established for enterprises conducting similar types of activities. Members of the boards are representatives nominated by organizations of employers' and employees in the respective industries and trades. Usually distribution of seats between them is equal. Although the boards are established by law, they are nongovernment organizations entirely financed by Dutch industry.

These bodies are granted, by the "Industrial Organization Act," the authority to make certain decisions within their branch of industry (for example in the field of quality indications on products or services, labor conditions, etc.). At the request of the government, these boards offer advice on issues relevant to their members. Additionally, they react on their own initiative to new policy measures of the government.

When comparing the PBO to similar organizations operating in other countries, the Dutch commodity and industrial boards have a unique competence and position which guarantees them significant input into the law-making process in consulting draft legislation. At the moment, the PBO system is being thoroughly evaluated and analyzed. The ongoing discussion concerns whether there is a need to extend the organization to sectors where it has not yet been established. There is general agreement that all employers and employees should have the opportunity to take part in discussions and policies aimed at solving social and economic problems.

The Social and Economic Council or Sociaal-Economische Raad (SER)

The Social and Economic Council is the head organ of the statutory industrial organizational structure (PBO) and the most important advisory body to the government on social and economic matters. The SER can be described as a 45-member government advisory body with fifteen members representing employers' organizations, fifteen representing employees' organizations and the other fifteen as independent experts appointed by the Crown (the Queen and the government).

The SER serves as a platform for consultation, since in addition to its advisory duties, the Council is also responsible for ensuring healthy economic activity and promoting the interests of economic

entities as well as Dutch society as a whole. The SER is granted administrative authority and is entitled to impose its own regulations.

At the same time, the Council gives advice concerning national and international social-economic policy. The main task of employers, employees and independent experts working together in the SER is to prepare reports for the government. Their recommendations voice the opinion of organized industry. It is worth noting that the advisory workload of the Council has been systematically increasing on an annual basis. About 300 opinions are published each year; about 30 concern the most important facets of government policy. This occurs mostly by the request of ministers and sometimes by the initiative of the Council itself. In the past, ministers were obligated to ask the SER for advice on all important social and economic affairs. However, this requirement by law was abolished in 1994 due to its effect of slowing down the legislative process.

Although instituted by law, the SER is not a governing body. It is independent of the government in all financial respects. The SER is financed by Dutch industry, via a mandatory tax paid annually by the Chambers of Commerce and Manufacturing. Research in the context of industrial development problems is partially subsidized by the Ministry of Social Affairs and the Ministry of Economic Affairs.

Dutch Council for Small and Medium-sized Enterprises (RMK)

Another important organization in the field of SMEs is the Dutch Council for Small and Medium-sized Enterprises. The RMK is totally independent of the government. Although the government does not ask this Council for advice, it publishes its reaction to new bills. The RMK also initiates its own proposals and ideas which are also made public. The government is not obliged to take the advice or position of the RMK into account.

The RMK carries out much of its own research as well as uses the work and conclusions of other organizations. Final positions of the RMK are often formulated in special committees where representatives of government ministries and other SME organizations often take part. The primary target audiences of the RMK are the government, Parliamentarians of both the First and Second Chamber, other SME-related organizations and the press.

The United States

The United States of America has a unique presidential system where the President functions as the Head of State, Chief of the government, and Commander in Chief of the Army and the Navy. An especially significant feature is the strong separation of powers between the executive, legislative and judicial branches of government, featuring an exceptionally strong legislature.⁴⁶ Unlike most European Parliaments, the United States Congress, aided by a strong committee system, performs almost all legislative tasks, including drafting most legislation. Despite limited constitutional guarantees of transparency and access to information, the United States has developed a strong tradition of open governance as evidenced by the much-used Freedom of Information Act, open meeting laws and highly transparent legislative practices.

The United States Constitution,⁴⁷ when adopted, was innovative in a number of respects, most notably by its Bill of Rights and the creation of a unique federation. The division of responsibility between Congress and the state legislatures may be the United States' most defining characteristic as a system of government.

I. An Overview of the Congressional Structure

The legislature of the United States, called the Congress, is bicameral and consists of the Senate and the House of Representatives. Members of both are directly elected by the populace. The Senate is comprised of 100 Senators, two from each state, irrespective of population or area. The term of office is six years with one-third of the total membership being elected every second year. The House of Representatives consists of 435 Representatives, elected every two years from single-member districts within the 50 states which constitute the federation, apportioned as to their populations.

Congressional Institutions

The Houses of the U.S. Congress do not have steering committees, as do many parliaments. Most of the leadership decisions in both Houses are decided within party meetings, or caucuses. The real power in the House of Representatives is the Rules Committee which issues a rule for each bill determining procedural matters such as how amendments are to be made and the time allotted for debate. The chair of this committee is usually a close political ally of the Speaker.

⁴⁶ David M. Olson, Democratic Legislature Institutions (New York: M.E. Sharpe, 1994), p. 2. [hereinafter "Olson"]

⁴⁷ The U.S. Constitution was adopted in 1787 followed by several amendments [hereinafter "Constitution"]

The power in the Senate lies primarily with the majority party leader, who has the greatest say in scheduling legislation. Additionally, the ability of individual Senators to delay a bill gives all members some degree of influence over the consideration of draft legislation.

The Vice President of the United States is officially the president of the Senate, although he rarely acts as the presiding officer. More commonly, this role is assumed by the president *pro-tempore*, usually the Senator from the majority party with the longest tenure.

Congressional committees are a large factor in the legislature's autonomy from the executive. The committees enable Congress to both initiate policy proposals independently and to counter those of the executive.⁴⁸ Committees may also establish subcommittees. The work of subcommittees allows Senators and Representatives to visibly focus on particular issues as the enacted bill is often associated with their name.

The selection of standing committee members and their chairs is confirmed during plenary sessions, although the nominations are made by the party caucuses. Standing committees of both Houses are required to establish regular meeting days, although additional meetings can be convened if necessary. Senate and House committees are required to publicly announce, at least one week in advance, the date and subject of every meeting.⁴⁹

Two of the more unique and creative institutions found within the U.S. Congress are the House and Senate Small Business Committees. The Senate Small Business Committee, established in 1950s as a temporary committee, obtained the status of a standing committee in 1981. Comprised of 21 Senators, this was seen as a clear indication of the Senate's recognition that small business is a critical component of a dynamic and growing economy. In turn, the Small Business Committee of the House of Representatives, established in 1953, was given permanent status in 1974. In a form similar to the Senate, it represents small business before Congress. It is made up of 45 Representatives and has the following five primary subcommittees:

- SBA Legislation and the General Economy⁵⁰
- Regulation, Business Opportunities and Technology
- Procurement, Taxation and Tourism
- Minority Enterprise, Finance and Urban Development
- Development of Rural Enterprises, Exports and the Environment

⁴⁸ Ibid., p. 143.

⁴⁹ Standing Rules of the Senate, revised 18 March 1992, Rule XXVI (4a). [hereinafter "Senate Rules"]

⁵⁰ SBA stands for the Small Business Administration, an executive branch agency of the U.S. government.

Establishment of these committees provide a visible and credible political commitment to the growth and expansion of small business. They are also, not surprisingly, a key source for small business-related legislative initiatives.

II. Legislative Process

Although proposals for legislation originate from many sources (including the President of the United States, interest groups, academics and other private citizens), technically, only a Member of Congress may initiate a bill. Bills originating with the President or a government official are introduced by a Member of Congress. Legislation may be initiated in either House, but bills concerning revenue or appropriations must begin in the House of Representatives. Once introduced, each bill has three separate readings, although the first reading consists of only a proforma entry of the bill into the official record.

In the House of Representatives, after the first reading, a bill is initially sent to a standing committee, which decides whether further work should be undertaken or if the draft should be rejected. If the vote is in favor of the bill, the committee sends it to the appropriate subcommittee(s). Subcommittees issue their own bulletins and have their own press secretaries which ensures transparency and that complete information about their work is publicly available. It is quite common for subcommittees to hold public hearings and solicit the testimony of experts before proceeding to a "mark-up," a session to revise the language of the original bill. Hearings are an effective mechanism to present and discuss the purposes and expected outcomes of a proposed bill. In addition, they serve as a way to gauge the public's perception of the draft and the chances of obtaining the needed level of support.

In practice, the subcommittee announces the subject and timing of the hearings, allowing all interested individuals and organizations to present their comments and opinions. In most cases, there is constant communication between the subcommittee members and the relevant interest groups. Input can be submitted either in written form (letters, studies, and analyses), in private meetings with Congressmen, or by verbal testimony during the hearings.

The last stage within a subcommittee is a vote on whether to forward the revised bill to the full committee. Hearings, debate and another mark-up vote can be held in the full committee before the bill, and a written "report" detailing the committee's opinion, including dissenting views and an explanation of the changes made to the bill, is "reported out" to the House for a plenary floor debate. The most important drafts are first discussed by the Plenary Committee, open to all Members. After voting on the amendments, the Committee submits the full proposal to the House. According to this procedure, it is usual for only the amendments, not the full draft, to be discussed during the plenary session. After this, the third reading takes place and the bill is voted on.

The Senate procedures resemble but are far more simple than those in the House. The two most significant differences are (i) there is no time limit and (ii) there is the possibility of introducing significant changes to the draft during the plenary session.

When both Houses have passed their own differing versions of a law, it is sent to a Conference Committee, usually comprised of members from the committees which considered the bill in each House. The Conference Committee attempts to reconcile the two versions. If successful, the Committee's report will generally be passed by both Houses as the final version of the bill. A lack of consensus in the Conference Committee causes a stalemate which will ultimately block passage of the bill.

A bill passed by both Houses is sent to the President who has three choices. First, to sign it promptly, whereupon it becomes law. Second, to veto the bill (i.e. return it to Congress stating the objections without a signature of approval). In this case, Congress may override the veto with a two-thirds vote in each House. The bill would then become law. Third, the President may hold it without taking any action. In this case, it becomes law after 10 days (excluding Sundays) without the President's signature if Congress is in session. If Congress adjourns which prevents the President from returning the bill, it does not become law (this is called a "pocket veto").

III. Access to Information

Constitutional Guarantees

The U.S. Constitution's First Amendment, although explicitly guaranteeing only the freedoms of speech, assembly, petition and association, has been "interpreted as implicitly guaranteeing the right to receive information and ideas."⁵¹ Although they do not apply to the President, Vice President or Congress, the Freedom of Information Act and the Sunshine Act both require government [executive branch] disclosure of information. The Freedom of Information Act establishes the public's right of access to government records and places the burden of proof on government officials for withholding information. The subsequently passed Sunshine Act provides that all government meetings must be open to the public, with exceptions based on rules similar to those found in the Freedom of Information Act. In addition, many states have open meeting laws, requiring openness on the part of the state and local legislative bodies. The Congress, despite the lack of legal regulations, has also made a clear commitment to transparency.

Hence, despite a political system that favors openness, there are few explicit guarantees of transparency in the U.S. Constitution and, unlike most European constitutions, it does not guarantee

⁵¹ See L. Tribe, American Constitutional Law, 2nd ed., 1988, pp. 944-955.

open plenary sessions. The document does, however, contain the unusual stipulation that a journal of proceedings of both Houses be published.⁵²

Openness of Plenary Sessions

Even without a constitutional mandate, however, sessions and meetings of the United States Congress are exceptionally transparent. Senate rules provide that plenary sessions of the Senate be open.⁵³ The vast majority of the House of Representatives meetings are also open to the public. Although both have the option to close sessions, this is a rare occurrence.

The public galleries in both Houses of Congress almost completely encircle the debate floor. Gallery passes can be obtained from almost any Member's office, which is merely a formality.

Media coverage of Congress is extensive. Regular television broadcasts by the non-profit Cable Satellite Public Affairs Network (C-SPAN) began in 1979 for the House and 1986 for the Senate. It now operates two 24-hour television channels which provide live coverage of every congressional plenary proceeding and many committee meetings. Plenary schedules and agendas are listed at the beginning of each day and are also reproduced in newspapers.

Transparency of Committees

Committee meetings in both Houses are guaranteed open by each Houses's Rules of Procedure, except for the Ethics and Intelligence Committees.

Designed for open committee sessions, the large meeting rooms are arranged more to accommodate public viewing than to facilitate debate among committee members. Despite this, when there is an extremely interesting meeting, seating for the public is allocated on a first-come, first-served basis. In such cases, priority is given to the media.

Information Services in the Congress

Members of Congress also rely on the Congressional Research Service (CRS) to provide current information on topics under discussion. CRS develops briefs on national and foreign policy issues and provides Members and their staffs quick access to what is often highly technical information.

Each House of Congress has its own library, although they are for the exclusive use of its Members. There is, in addition, the Library of Congress, which is open to the public and purports to be the largest library in the world. A full collection of legislative documents and publications are available.

⁵² Constitution, art. 1, sec. 5.

⁵³ Senate Rules, Rule XXXI(2).

The Document Rooms of the two Houses of Congress and the Government Printing Office (GPO) provide an extensive array of information to the public, much of which is provided immediately and free of charge. The GPO provides congressional documents for a charge through its main office or one of many offices throughout the United States. The GPO also offers most documents free of charge through public on-line databases.

In addition, both Houses have press centers to serve the needs of the media. An important role is played by the Bill Status Office which provides updates about the status of all legislation currently under consideration in Congress.

Publication of Congressional Records and Draft Acts

Included in the Constitution are provisions which require the publishing of a journal containing the proceedings and the voting results, by name, for both Houses. The Rules of Procedure of both Houses also require that committees keep and publish a similar record.⁵⁴ Nearly every document generated by the United States Congress is available to the public in a timely manner. Most can be obtained free of charge directly from Members or committees as long as supplies last. Other sources, such as the above mentioned GPO, commercial and public on-line services, and libraries also provide access to nearly every document and piece of information regarding the workings of Congress.

The *Congressional Record* is the official publication of Congress. It contains verbatim records, titles of bills and resolutions, petitions, memorials, presidential messages and the results of every recorded vote. Although Senators are allowed to edit the written record of their comments before publication, the House instituted a rule change in early 1995 restricting all corrections to grammatical or technical ones.⁵⁵ The *Congressional Record* may be obtained in the Congress' book store, in most libraries, purchased by yearly subscription, or through the GPO the day after each session for one dollar per copy. It is also available free of charge through GPO on-line services.

There are many other publications which provide timely and accurate information about different aspects of the legislative process. Congressional Quarterly (CQ), a private publishing company, publishes the daily *Congressional Monitor*, containing the latest stories, news and schedules of all Congressional meetings. CQ also publishes the *Congressional Scanner*, which reports on the status of bills and the *Faxreport* which contains last minute news, schedule changes and floor activity summaries from morning sessions and is faxed to subscribers every afternoon. *Roll Call* and *The*

⁵⁴ Senate Rules, Rule XVI(b); and Rules of the House of Representatives, revised on January 5, 1993, Rule XI(2e1).

⁵⁵ "GOP, to its Own Great Delight Enacts House Rules Changes," Congressional Quarterly, 7 January 1995, p. 15.

Hill are free bi-weekly newspapers dedicated solely to coverage of Congress; they often contain schedules, statistics, documents, summaries and critical analysis. All of these materials can be found in many libraries, or may be purchased by subscription.

Lastly, although on-line databases have existed for some time, an initiative developed by the current Congress is a World Wide Web site on the Internet called "Thomas" (named after Thomas Jefferson). "Thomas" contains full texts of passed legislation, committee and plenary schedules, visitor information, and full texts of the *Congressional Record* and the Congressional Research Service's *Bill Digest*,⁵⁶ containing summaries and chronologies of legislation.

Draft legislation is published at many different stages of the legislative process. It can be obtained from the Senate and House Document Rooms, as soon as it is officially introduced in Congress.

IV. Access to Decision-Makers

In the U.S., there are many opportunities to influence the passage of legislation, beginning before the bill is introduced and continuing through the subcommittee and committee hearing stages. Once the bill has gone to the House or Senate, interest groups can still petition Members of Congress, requesting Members to listen to and support their position. During the final debate before the full House or Senate, interest groups are sometimes able to lobby for amendments to improve the bill. However, at all times, they have access to their Senators or Representatives (depending on which House is considering the bill) and can ask them to vote in accordance with the opinions expressed by their members. In fact, the ubiquitous group of interest and lobby groups are often referred to as the "Third House" of Congress.

One of the most distinguishing characteristics of the American system is the involvement of social and economic organizations and individual experts in the committee and subcommittee stages. Although not mandated by law, it is common practice for legislators to request testimony from a variety of interest groups. Furthermore, efforts are made to have all sides of the issue fairly and comprehensively represented. Indeed, it is widely recognized that through the process of competing interests, interest groups and lobbying organizations often provide considerable technical information and original research on legislation which helps give Congress and the public a far clearer picture of the problems and of the true meaning of certain proposals.

Throughout the United States, there are a wide and growing cadre of social and economic associations, organized differently and offering different combinations of services. Organizations committed solely to lobbying and organizations with no interest in government relations are equally rare. Most U.S. representative social and business organizations provide a combination of services

⁵⁶ "Hill Unveils Its Own Superhighway," The Washington Post, 6 January 1995.

that meet a variety of member demands. Although there are literally tens of thousands of such organizations, only a few of the better known, representing the interests of small business, are discussed herein.

The National Federation of Independent Business (NFIB)

The National Federation of Independent Businesses, being the largest national organization of this type, represents over 600,000 small business owners at both state and federal levels. It is the only small business organization completely focused on lobbying and active in all fifty state capitals and in Washington, D.C. The NFIB is financed by membership dues, paid by business owners, which cover the costs of monitoring congressional activity and efforts to influence business-related legislation at the state and national level.

In order to obtain information about the expectations of its membership, the NFIB regularly (every two months) issues a questionnaire requesting members to indicate their level of concern and priority on five selected issues. The NFIB also annually provides its membership with information explaining how each Member of Congress voted on bills relevant to the business sector. In the U.S., informing a Congressman's constituency in this manner has a direct impact on that individual's chances for reelection and therefore has become one of the best methods to influence legislative outcomes.

National Small Business United (NSBU)

National Small Business United is a non-profit organization headquartered in Washington, D.C. and serves as an umbrella organization representing the interests of the small business members of a number of local, state and regional organizations. As opposed to the NFIB, the NSBU does not poll its members to establish priorities but rather relies on a strong management and committee structure. Representing over 60,000 small enterprises, officers and other members of constituent organizations come to Washington to participate in a series of briefings for Members of Congress. After the formal briefings, private and more personal meetings are held to reinforce the image of small business with individual Senators and Representatives from their geographic areas. As the NSBU is well-organized, knowledgeable and respected, the Washington briefing sessions are well attended by legislators and serve as an effective tool for highlighting the general interests of the small business community.

The Small Business Legislative Conference (SBLC)

The Small Business Legislative Conference is another umbrella organization created by approximately 30 industry associations in the mid-1970s. Today, there are over 100 constituent associations, each of which has a substantial proportion of small business members. Because the active members of the organization are trade association executives, the issues selected by the SBLC are often industry related.

The Chamber of Commerce

In the U.S., the Chamber of Commerce is organized in three tiers. At the local level, individual chambers are chartered in many cities and towns. Each chamber acts individually to represent the interest of local business members to local governments. In small or medium-sized cities, almost all the members of the chamber are small businesses. Each state also has a state-wide Chamber of Commerce, organized to represent business interests before the state legislature and state government. The state chamber is supported by funds provided by the local chambers. Finally, at the national level, there is the U.S. Chamber of Commerce, also supported by dues payments.

The U.S. Chamber of Commerce represents business interests in the broadest sense, attempting to serve the needs of all sectors and sub-sectors across a wide spectrum of relevant issues, national and international.

Experts employed by the Chamber provide information, opinions and analyses related to a variety of areas important for the Chamber's business and political activities. In addition to lobbying, the Chamber provides numerous services and publications for its members. For example, all members obtain two monthly publications: *Nation's Business* and *The Business Advocate*. These publications provide information on federal laws and regulations influencing business activity, economic trends and forecasts as well as potential business opportunities. Both magazines also publish questionnaires to poll the readers. Information obtained from these questionnaires is then used to inform and advise Members of Congress and government officials about members' concerns.

With respect to small business, there is, within the Chamber, a Small Business Center. This is a principle source of information for entrepreneurs about development initiatives targeting small business and for Congress, the Administration, media and others who are interested in the problems and opportunities facing small and medium-size enterprises.

Part II

The State Structure

and

Participation of Social and Economic Organizations

in the Legislative Process

in

in the Republic of Poland

I. An Overview of the State Structure⁵⁷

The Parliament

The Parliament of the Republic of Poland is a bicameral legislature consisting of two Houses, the Sejm and Senate, each having a four-year term. The Sejm consists of 460 Deputies or Members and the Senate of 100 Senators. The primary role of the Parliament, in accordance with the principle of division of power between the executive, legislative and judicial branches, is to create laws, called legislative acts, and to determine the fundamental principles and practices of the State's legal framework. Although legislative functions are jointly fulfilled by the Sejm and Senate, the Sejm has a priority status. The "Small Constitution"⁵⁸ assigns to the Sejm the right to pass legislative acts, and while the Senate may adopt, reject, or amend these acts, the Sejm always has the final word.

The bodies of the Sejm are: the Speaker of the Sejm, Presidium of the Sejm, Caucus of Seniors and the Sejm Committees. The Speaker of the Sejm, along with being the internally elected leader of the Sejm, also fits into the organizational structure as a one-person administrative entity. His tasks are, *inter alia*, representing the Sejm, moderating Sejm discussions, leading the works of the Presidium of the Sejm (including heading the Presidium), moderating the discussions of the Caucus of Seniors and appointing and dismissing the Chief of the Sejm Chancellery.

The Presidium of the Sejm (consisting of the Speaker and Vice Speakers) guides the Sejm's work by establishing work plans after consultations with the Caucus of Seniors. It supervises the work of the Sejm and its organs, calls meetings, develops the agenda, passes it to the Sejm for approval and begins the procedures required to initiate legislation.

The heads of Clubs together with members of the Presidium constitute the Caucus of Seniors. The main task of the Caucus of Seniors is ensuring cooperation between the clubs and providing assistance to the Presidium in planning and organizing the work of the Sejm.

A great deal of parliamentary activity falls under the responsibility of the committees. There are two types: permanent committees, of which there are 24, and extraordinary or *ad hoc* committees, which are established on a temporary basis to address specific issues.

Members of the Sejm may establish Clubs which are organized according to political party membership. Another form of organization, called Circles, is less formal and based on issues of

⁵⁷ For a detailed description of the structure and jurisdiction of the Polish government, see The Art of Lobbying in Poland (ISBN 83-904677-0-4), 1995.

⁵⁸ Constitutional Act of 17 October 1992 ("Small Constitution"), entered into force 8 December 1992. [hereinafter "Small Constitution"]

interest to particular Deputies. The Rules of Procedure in the Sejm⁵⁹ provide that a club must be established by at least 15 Members and a Circle by at least 3 Members. As in the Sejm, Senators may also establish Clubs which are organized according to political party membership.

The administrative bodies of the Senate are: the Speaker of the Senate, Presidium of the Senate, Caucus of Seniors and the Senate committees. The Speaker of the Senate, along with being the internally elected leader of the Senate, also fits into the organizational structure as a one-person administrative entity. His duties include representing the Senate, presiding and moderating its sessions, supervising the Senate committees, appointing and dismissing the Chief of the Chancellery of the Senate, as well as calling the Senate's Presidium and Caucus of Seniors meetings, heading their sessions and managing their work.

The Presidium of the Senate consists of the Speaker and Vice Speakers. This is the leading body of the Senate. Its tasks include preparing the Senate work plan and daily agenda (after consultation with the Caucus of Seniors), issuing calls to meetings, submitting issues for consideration to the committees, and organizing external advice to the Senate (eg. appointing and dismissing advisors to the Senate in agreement with the Heads of the committees).

Also similar to the Sejm, the Caucus of Seniors consists of the Presidium and Senators representing clubs with at least 7 Senators. The Caucus gives its opinions on the work plan and on procedural matters, and on all issues presented to it by the Presidium or the parliamentary clubs' representatives. The Caucus of Seniors ensures cooperation between the parliamentary clubs in all matters related to the activities and work schedule of the Senate. Senate committees are established to examine matters on their own initiative or as directed by the Senate, the Speaker or the Presidium. Again, reflective of the structure in the Sejm, there are 13 permanent committees as well as extraordinary or *ad hoc* committees which are established on a temporary basis to address specific issues.

The work of Sejm Members and Senators is supported by the Sejm and Senate Chancelleries. The main bureaus in the Chancellery of the Sejm are as follows: the Legislative Bureau, Inter-Parliamentary Relations Bureau, Bureau of Studies and Research, Sejm Publishing House, Deputies Service Bureau, and the Sejm Committees Bureau. The Chancellery of the Senate includes: the Presidium Bureau, Senate Works Bureau, Legislative Bureau, Studies and Analyses Bureau, and the Bureau of Information.

The President of the Republic of Poland

The President, the highest ranking representative of Poland, is entrusted by the Small Constitution with the duty to watch over the security and sovereignty of the State and to watch over its territorial integrity. A presidential term lasts five years.

⁵⁹ The Rules of Procedure of the Sejm of the Republic of Poland, 30 July 1992, as amended, (Monitor Polski 1993, no. 13, item 89). [hereinafter "Sejm Rules of Procedure"]

The executive organizational body of the President is the Chancellery of the President. The President determines its rules and regulations and appoints and dismisses the Chief of the Chancellery. The structure of the Chancellery consists of bureaus and divisions reflecting the responsibilities of the President.

The President is not directly involved in the legislative branch and although he does not have the authority to enact legislation independently, he does sign and order the promulgation of an Act. Within the context of this document, his most important powers are that of legislative initiative and the possibility of requesting the Constitutional Tribunal to check if an act conforms with the Constitution.

The Government

The other pillar of executive power in Poland is the Council of Ministers. The provisions of the "Small Constitution" appoint the government as the organizational unit responsible for overall State policy, both domestic and foreign, with the exception of those circumstances where the Constitution and other laws dictate otherwise.

The Council of Ministers consists of the Prime Minister (President of the Council of Ministers), Deputy Prime Ministers (Vice Presidents of the Council of Ministers), Ministers and chairmen of governmental committees and commissions of the rank of Principal State Administrative Units. The Council of Ministers works collectively, led by the Prime Minister, and manages the government's overall policy. The Prime Minister calls the meetings and prepares the agenda, with the members of government being notified at least three days in advance. During meetings, the Council reviews drafts of normative acts, other governmental documents, and examines issues proposed by members of government. The Secretary of the Council of Ministers is responsible for coordinating and organizing the work of the government.

II. Legislative Process

The Right of Legislative Initiative

Drafts of laws, according to the Small Constitution, may originate from a wide variety of forums including the scientific, business and legal communities, trade unions, and even from individuals. To be formally considered by Parliament; however, they have to be officially submitted. The right to officially submit a draft for parliamentary debate is called the right of legislative initiative which only belongs to the President, the Council of Ministers, the Senate as a whole, groups of at least 15 Sejm Deputies, and to Sejm committees.

Representatives of different communities and institutions, by creating their own legislative proposals, may seek the support of Parliamentarians or other authorized entities. The effort to develop a draft does not guarantee the initiative will be considered by Parliament. However, all

involved in the legislative process recognize the value and technical merit of outside input. Further, laws derived in this manner are more likely to have full public support and a higher level of obedience.

Government Drafts

The submittal of legislative drafts to the Sejm by the Council of Ministers is preceded by preparatory work in the respective ministries, interministerial consultations, consultations with individual experts and with the Prime Minister's advisory body called the Legislative Council. In certain cases, communities and social circles affected by the draft such as trade unions and organizations of employers are also consulted.

Discrepancies that arise during consultations are resolved in interministerial conferences organized by the drafting body. Following these discussions, the new draft with justification attached and a protocol of discrepancies (if any) is submitted to the advisory committees of the Council of Ministers for approval. Currently, these are the Economic Committee (KERM) and the Social and Policy Committee (KSPRM). In situations where within the relevant committee, a consensus cannot be reached, the committee chairman proposes a final opinion and solution and submits it to the Council of Ministers for adoption.

Before being deliberated by the Council of Ministers, the draft is reviewed, at the relevant ministry's request, by the Legal Commission of the Council of Ministers' Office. The Legal Commission assesses its conformity with existing laws, its legal consistency and internal coherence. The Commission, as the primary technical drafter, also examines the draft with respect to format and language correctness. It is at this time, therefore, when a draft acquires its proper legal form before submission to the government.

Following the Prime Minister's motion or the motion of the body submitting a draft, the Legislative Council [as opposed to the Legal Commission] also examines the draft. In particular, recommendations of the Legislative Council take into account the compatibility of the draft with the Constitution, with existing laws, and with European Union legal standards. The Legislative Council may also assess drafts without being requested to do so, according to rules and procedures determined in separate regulations.

Consideration by the Council of Ministers

Government drafts are submitted by the relevant body for consideration by the Council of Ministers through the Secretary of the Council. The Secretary conveys the submitted drafts to the members of the Council and to permanent participants of the Council's sessions.⁶⁰

⁶⁰ Proposals should be submitted no less than seven days before the scheduled date of the Council's session, but, in certain cases, this time limit can be reduced.

The Council of Ministers makes decisions on drafts and other issues by consensus if at least half of its members are in attendance. If an agreement cannot be reached, decisions are made through open vote by a normal majority. In the case of a tie, the vote of the session moderator is decisive. Secret ballots may also be requested.

Once approved by the government, drafts are signed by the Prime Minister or the authorized Deputy Prime Minister and officially submitted to the Speaker of the Sejm. In certain justified cases, the Council may mark its drafts as urgent. This makes the Sejm procedures considerably shorter.

Drafts submitted to the Sejm must include a detailed justification which has to meet certain criteria.⁶¹ The justification should include the results of public consultations or discussions together with information about the alternatives and opinions suggested.

Sejm Drafts

While the "Small Constitution" grants Sejm Deputies the right of legislative initiative, certain restrictions apply. Deputies' drafts can only be submitted by a Sejm committee or by a group of at least 15 Deputies. When submitted in written form to the Speaker of the Sejm, the legislative draft includes the name of the Deputy authorized to represent it in the Sejm. The draft is then considered according to the ordinary legislative procedure as described below.

When preparing their drafts, Deputies, Sejm committees, and the Presidium of the Sejm may use the services provided by the bureaus of the Sejm Chancellery. Generally speaking, these bureaus assess the necessity of drafts and their potential consequences. The Legislative Bureau, for example, examines drafts from the formal and legal perspective (i.e. checks for inconsistencies and determines the most applicable form). The Bureau of Studies and Research evaluates drafts based on their substance as well as economic and social impact.

Senate Drafts

According to Art. 15, paragraph 1 of the Small Constitution, the Senate also has the right to initiate legislation. Drafts initiated by the Senate must first be discussed in a plenary session.

The Senate, as a whole, initiates legislation either as the result of a debate where the need for such an initiative is decided or as the result of a motion submitted by a committee or by a group of 10 Senators. In the former case, the Presidium assigns the initiative to the relevant committee(s). During the latter, the motion is submitted along with the draft and its justification to the Senate's Presidium, requesting it to undertake the initiative.

⁶¹ The justification should include certain elements, such as: an explanation of the purpose and need for creating the act, a description of the current status of the issue to be regulated, identifying sources of financing required for implementation of the proposal if the draft would burden the state budget, and a description of the expected social, financial and legal outcomes.

Once accepted, the Presidium forwards the draft to the Committee of Legislative Initiatives and Works, as well as to the other relevant committees for consideration. If their opinion is to reject the draft, a report justifying their position is presented to the Presidium. If, however, the committees' opinion on initiating the legislation is favorable, the Presidium presents the draft for debate at the next Senate plenary session.

When the Senate votes to support a particular draft, the Speaker of the Senate officially initiates the legislative process by providing the Speaker of the Sejm with a resolution on the issue and simultaneously informs the Prime Minister of this action.

Parliamentary Procedures

All drafts are subject to formal assessment by the Sejm's Presidium. The Presidium either accepts it or returns it to the initiator if the draft does not conform to specific criteria. If the Sejm Presidium has any doubts about the legal consistency of the draft, it may seek the opinion of the Sejm Legislative Committee. In order to denounce a draft, a 3/5 majority vote in the Committee is required.

The initiating entity of a draft is entitled to withdraw the draft at any time during the legislative process up until the conclusion of the first reading. This provision is necessary since it protects the initiator from having to support a draft that has been radically modified by the Sejm. However, the weak side of this provision is that in most cases, major amendments are incorporated after this stage. Hence, after the first reading, the initiator loses control over the draft and is unable to withdraw it even if it takes a form which contradicts its original premise and/or purpose. Alternatively, a draft is considered withdrawn when the number of supporting Deputies drops below the required 15.

The first reading of the draft usually takes place in a committee meeting. This rule does not apply to certain drafts such as proposals to alter the Constitution, budget and tax laws which undergo their first reading during a plenary session of the Sejm. When the first reading of a draft takes place at a plenary session, assuming the Sejm does not resolve at this stage to reject the draft, it is subsequently forwarded to the relevant committee(s) for further work.

When the first reading takes place in committee⁶², all Deputies are informed of the date of the committee session. This makes it possible for any Deputy to participate and to submit written comments to the studied draft or proposed amendments. The first reading also includes a justification of the draft by the initiator, questions posed by Deputies, replies by the initiator, and a debate concerning general principles of the draft.

⁶² The first reading takes place not sooner than on the seventh day following delivery of the printed draft to the Deputies.

Committees which are entrusted by the Sejm to work on the draft, work collectively and have the right to ask other Sejm committees to comment on all or parts of the draft. In order to undertake more detailed study, committees are also entitled to establish subcommittees. The work of the committees is concluded with a joint and final report which presents their position on the draft. The committees make one of the following recommendations:

- adopt the draft with no changes;
- adopt a revised draft with proposed amendments incorporated; or
- reject the draft in its entirety.

Opinions and recommended changes that were rejected by the committees are included in the report at the request of their authors.

If the draft was not rejected by the Sejm, the second reading is always scheduled during a Sejm plenary session. This reading cannot take place earlier than seven days after submittal of the committees' report to the Deputies, unless the Sejm votes otherwise. The second reading includes a presentation of the committees' report on the draft to the Sejm, open debate, and any amendments proposed on the floor. If further amendments are proposed during the second reading, the draft is sent back to the committee(s). Having studied the proposed modifications, they are then obliged to provide the Sejm with an additional report approving or rejecting the amendments.

The third reading includes the submittal of an additional committee report or presentation by the reporting Deputy, a discussion and justification of amendments and recommendations generated during the second reading, and finally a vote on the draft. The third reading may take place immediately following the second reading assuming the draft was accepted without changes. In most cases, laws are passed by a majority vote with the attendance of at least half of the total number of Deputies (under certain circumstances, the Small Constitution provides otherwise).

In certain cases, as defined in the Sejm's Rules of Procedure and in the Small Constitution, the legislative procedure described above may be shortened. More specifically, in justified cases, the Sejm can shorten the process with regard to draft acts and resolutions by omitting certain stages and by altering the deadlines for certain actions.

The Small Constitution and the Sejm's Rules of Procedure provide for one more extraordinary legislative procedure to accelerate the process. This procedure, called the "quick legislative path," is applied for so-called "urgent" drafts. This provision states that only the Council of Ministers can classify a draft as urgent.⁶³

⁶³ While the Council of Ministers has the exclusive right to use this special procedure, the law does not provide guidelines nor a rationale defining when a draft qualifies as "urgent". Small Constitution, art. 16(1).

A draft passed by the Sejm is sent by the Sejm's Speaker to the Senate. In a similar fashion to the Sejm, the Speaker of the Senate forwards the draft to the relevant Senate committee(s). The committee(s) must consider it within a period not to exceed two weeks and prepare a draft Resolution recommending one of the following actions:

- adopt the draft with no amendments;
- adopt the draft with amendments as described in the Resolution⁶⁴; or
- reject the draft in its entirety.

The Senate has 30 days to accept one of the options above. However, if the Senate fails to issue an appropriate decision within 30 days of receiving the draft from the Sejm, the law is considered passed in the form it was submitted.

A Senate Resolution rejecting the draft or proposing amendments is forwarded by the Sejm's Presidium to the same committee(s) which studied the draft before being adopted by the Sejm for consideration. Sessions where the Senate's Resolution is deliberated are attended by a reporting Senator who represents the Senate's findings. Following a thorough review and discussion, the Sejm committee(s) present their report to the Sejm which recommends to approve the Senate's amendments, either in full, in part, or to reject them entirely.

Adoption or refusal of the Senate's proposal is decided in a single voting session. To defeat a Senate Resolution, whether it calls for amendments or for a complete rejection of the draft, the Sejm has to vote against it by an absolute majority. Otherwise, it is considered as accepted.⁶⁵

Presidential Participation in the Legislative Process

The last two stages of the legislative process are the signing of the act by the President and its promulgation. Art. 18, item 1 of the Small Constitution states that "an act, adopted by the Sejm and the Senate, is then submitted by the Speaker of the Sejm to the President for signing." The President does not have to immediately sign the law. On the contrary, the Constitution gives him up to 30 days after the draft act is submitted to sign and order its promulgation in the Journal of Laws (*Dziennik Ustaw RP*). During this period, the President reviews the draft, its justification and the various counter arguments proposed. The President may veto the draft and send it back to the Sejm for reconsideration giving reasons thereof. This is called a presidential legislative veto. This type of veto is also called a "suspending veto," because the Sejm may override it and repass the act by a two-thirds majority vote. Of course, the Sejm may decide to recognize the veto and amend the act in accordance with the President's recommendations. However, when a veto is overridden by the

⁶⁴ Amendments imposing a burden on the State budget must indicate the source of financing required for implementation.

⁶⁵ This solution is intended to simplify the legislative procedures and to eliminate a so-called "legislative tie."

Sejm, the President must sign the act within seven days. The promulgation of the act is executed by the Prime Minister since publishing the Journal of Laws is one of his responsibilities.

Before signing an act, the President is entitled to turn it over to the Constitutional Tribunal for examination of its consistency with the Constitution. Referring the act to the Tribunal results in a suspension of the deadline for signature. If the Tribunal proclaims that the law is consistent with the Constitution, the President is obligated to sign it. If the Tribunal decides that the act is contrary to the Constitution, it revokes the act in its entirety and the legislative process ends.

III. Access to Information

Constitutional Guarantees

With regard to the guarantee of individual rights, Chapter 8 of the Constitution of 1952 is still in effect. It contains no guarantee of the right to information. The Small Constitution provides only that "the debates of the Sejm shall be open to the public" and that secret sessions can be authorized by an absolute majority "should this be in the interests of the State."⁶⁶

The Constitution does, however, guarantee citizens freedom of speech and freedom of association in order to take an active part in political, social, and economic life. Additionally, the Constitution provides for citizens to participate in discussions over key issues concerning the development of the country and have a right to put forward motions.⁶⁷ To ensure these fundamental rights are implemented, more specific procedures are required. One such example requiring further and more proactive support from the authorities is access to information and the opportunity for citizens and societal groups to actively participate in the law-making process.

Openness of Plenary Sessions

Each Chamber's rules for holding open plenary sessions are well formulated and comprehensive. They define the public nature of the sessions, specifically calling for participation by the general public and requiring that information about plenary sessions be publicized in advance. As stated in the Sejm Rules of Procedure, "Sittings of the Sejm shall be open to the public. The public nature of sittings in the Sejm shall be particularly ensured by: (1) prior information to the general public on the sittings of the Sejm; (2) enabling the press, radio and television to report on sittings of the Sejm; (3) enabling the public, subject to regulations made by the Speaker of the Sejm, to watch the

⁶⁶ Small Constitution, art. 12(1).

⁶⁷ Constitution of the Republic of Poland, adopted on 22 July 1952, art. 86.

sittings from the gallery in the chamber."⁶⁸ However, while the agendas of both Chambers are theoretically publicly available, they can only be obtained from a limited number of sources and are not reproduced in a nationally distributed periodical nor published in great quantity.

Sejm sessions can be closed only "if the good of the State is at stake"⁶⁹ upon the motion by the Presidium or at least 30 Deputies. This has only occurred twice since 1991. Senate sessions can be closed only "if the good of the State is at stake"⁷⁰ upon the motion of at least 10 Senators but this has never happened.

Although Sejm regulations specifically require a gallery for the public, the Senate regulations provide only for "enabling the public to follow the sessions of the Senate,"⁷¹ without mentioning public galleries. Indeed, while the Sejm has a sizable gallery consisting of 291 seats for special guests, press and the general public, the Senate only provides a small 25 seat sitting area for the press. Members of the public who wish to attend a Sejm session must schedule their visit in advance and obtain a pass allowing them to enter the plenary chamber. In the Senate, visitors have to provide identification and obtain a pass from the Admissions Office.

Plenary sessions of both Chambers are broadcast on closed-circuit television throughout the parliamentary buildings, including the press center. Between 1990-1994, public television broadcasted many of the debates on Channel 2 although there was no formal requirement to do so. Today, coverage on both radio and television has decreased substantially. While such coverage helps inform and assist the public in forming their opinions on current initiatives being discussed in Parliament, the timing of these broadcasts, during working hours, is such that relatively few people can watch them on a regular basis. Hence, the primary medium through which the public learns about parliamentary activities is the press, which is often noted for incompleteness, inconsistency and personal bias.

Transparency of Committees

Committees are closed to the public. Sejm regulations provide that, with the chairman's consent, sessions may be open to the media.⁷² In practice, committees are presumptively open to the media, except for certain meetings of national significance such as defence, foreign policy, and internal

⁶⁸ Sejm Rules of Procedure, art. 98(1).

⁶⁹ Small Constitution, art. 12(1); Sejm Rules of Procedure, art. 98(2).

⁷⁰ The Rules of Procedure of the Senate, 23 November 1990, as amended, Monitor Polski No 20, item 198, art. 33(3), [hereinafter "Senate Rules of Procedure"]

⁷¹ Senate Rules of Procedure, art. 33(2).

⁷² Sejm Rules of Procedure, art. 80(5).

affairs. A bulletin board at the entrance to the Sejm Information Bureau displays which committees are meeting each day and where the meetings are being held. In addition, any Sejm Deputy may attend a committee meeting and the chair or the deputy chair of a committee may invite "representatives of social and professional organizations as well as committee experts"⁷³ to take part in a debate.

In the Senate, the media can attend committee meetings with the consent of the chairman.⁷⁴ As in the Sejm, Senate committees are presumptively open to the media except for certain matters of national importance. Sejm Members and members of the government can attend committee meetings, and the Senate rules also provide that the chairs "may invite experts and other persons to participate in the sessions."⁷⁵

Sejm regulations require that minutes - providing a detailed record of the proceedings and the full texts of all presentations and other written material - be kept for each committee meeting.⁷⁶ The rules do not, however, contain any provision for making the minutes publicly available. On the other hand, a bulletin of each session is available about two or three weeks after each meeting. Senate regulations make no mention of minutes, referring only to the "generally available, unofficial account of the course of the Senate session and the sessions of the Senate committee,"⁷⁷ which is produced by the Press Unit of the Senate Information Bureau.

Publication of Parliamentary Records

The Sejm has three different types of verbatim records for its plenary sessions. Unofficial transcripts are available in the Press Center immediately after a debate for journalists to read or photocopy. In addition, the *Sejm Diary* - an unofficial account of the Sejm session, published by the Sejm Publishing House, is available within 24 hours containing transcripts as well as the texts of bills and voting records aggregated and by name. The official verbatim record is published usually within two weeks of the debate in a form entitled *Verbatim Record of the Meeting of the Sejm of the Republic of Poland*. The *Diary* and the official verbatim records are sent to university libraries, ministries and parliamentary offices. They are not available by subscription but the media, private firms and public organizations can purchase these publications in a kiosk located in the Sejm.

⁷³ Sejm Rules of Procedure, art. 80(3).

⁷⁴ Senate Rules of Procedure, art. 53(2).

⁷⁵ Senate Rules of Procedure, art. 53(3).

⁷⁶ Sejm Rules of Procedure, art. 92(1) and (2).

⁷⁷ Senate Rules of Procedure, art. 36.

The Information Bureau (Press Center) of the Sejm is the unit responsible for preparing and distributing to the media all necessary communiqués, statements and information about the work of the Sejm and its organs. The Information Bureau also has a publishing section which edits and disseminates the *Sejm Chronicle* and the *Sejm Committees Bulletin*.

The *Sejm Chronicle* contains information on the works of the Sejm, including issues discussed in plenary sessions, summaries of addresses by individual Deputies and information on the work of the committees. Furthermore it publishes parliamentary club materials, briefings on works of the Senate (with an abbreviated version in English) and information about foreign visitors in Parliament. The *Chronicle* is a free-of-charge weekly available from the Information Bureau of the Sejm Chancellery. Copies are also given to the media and to the Sejm Library where they can be read or photocopied.

The *Sejm Committees Bulletin* contains detailed information on the work of the committees and is published depending on the workload in the committees. The *Bulletin* is distributed to ministries and Deputies and is also available in the Sejm Library, where copies can be ordered. It is not available free-of-charge but may be received through subscription.

Another publication, the *Sejm Review*, is a publication of the Sejm Publishing House. It is a publication of a more editorial nature than those previously described. It contains scientific and legal analyses, opinions, comments on Constitutional Tribunal verdicts, and lists of specific issues raised by Deputies. The *Review* is a quarterly publication and can be purchased at the Sejm Bookstore, from a kiosk in the Sejm or by subscription.

In summary, although information on the work of the Sejm and its organs is systematically prepared and is theoretically publicly available, the reality is that this information is difficult to obtain, especially for those residing outside the city of Warsaw. It should also be pointed out that these publications cover data, events and proceedings which have already taken place (i.e. *post factum*). To date, there is no regular and accurate public information vehicle focusing on future works of the parliamentary committees or plenary sessions.

As far as information on the Senate's proceedings is concerned, the ultimate responsibility lies within the Senate's Information Bureau, analogous to the corresponding bureau in the Sejm. The Bureau coordinates the exchange of information within the Chancellery, informs the media, prepares information about works of the Senate and its organs and publishes the *Senate Diary* and the *Verbatim Report*. Furthermore, the Bureau conducts educational activities concerning constitutionally specified tasks of the Senate, edits and technically prepares the printing of publications, and provides computer services to the Chancellery of the Senate.

The *Senate Diary*, prepared by the Press Unit, is published every two weeks. It includes a chronicle of works and events in the Senate, briefings on meetings, information on resolutions of the Senate's Presidium, proceedings of the committees, information about the participation of Senate representatives in official celebrations, and information about official visits to the Senate. The

Diary, which parallels the *Sejm Chronicle*, is distributed to libraries⁷⁸ and is available in the Senate's Chancellery free of charge.

The Senate also issues verbatim records in two forms: an unofficial version which is available to the press the next day and an official version. The *Verbatim Report* is an official record of the Senate's debate, prepared by the Verbatim Record Editing Unit and published approximately 6 weeks after the Chamber's meeting. The *Report* is publicly available at the Sejm Library and is also disseminated to libraries throughout the country according to an official circulation list. All Deputies and Senators are entitled to obtain one copy of the *Report* for their own purposes.

Further, the Chancellery of the Senate, through its bureaux, issues a number of internal publications that are available at the Sejm Library, including the *Foreign Press Review*, *Polish Press Signals*, *Review of the Central Press*, and the *Press about the Senate*. This year the first issue of a new publication, by the Senator Services Bureau, entitled *Bulletin - Complaints, Opinions, Proposals* was circulated. The *Bulletin* included analyses of problems brought up in letters sent to the Senate. The future objectives of this bulletin are to represent the most frequently expressed concerns of citizens and their proposed solutions to the problems raised. Based on public input, general conclusions will then be elaborated indicating specific areas requiring new legal regulations.

At the present time, the Senate does not produce a publication similar to the Sejm's *Committees Bulletin* which focuses on information about committee meetings.

The Sejm Library has been in place for almost 75 years and is part of the Chancellery of the Sejm. It collects, prepares and renders a number of publications including domestic and foreign official and scientific publications in the fields of law, parliamentary democracy and related areas. The library is primarily for the use of Deputies and Senators. However, the general public is allowed access when Parliament is not in session.

Access to Draft Acts

Parliamentary drafts are generally distributed through the Sejm Information Bureau. Drafts are photocopied and provided to interested journalists. Members of the public seeking drafts must go to the Sejm Library where they can obtain copies. The Senate Information Bureau also distributes copies of drafts and Senate proposals, mostly to Senators and Senate staff, but also occasionally to the press. Access to governmental drafts is much less formal. In this case, interested parties must build their circle of contacts with the appropriate ministries and even then, can only sometimes obtain copies of drafts prior to their submission to Parliament.

⁷⁸ The Law on Libraries, 9 April 1968 (Dz.U. No 12, item 63) obligates copies be sent to 12 designated libraries, selected pursuant to the Ordinance of the Minister of Culture and the Arts (Monitor Polski No 34 of 1968, item 234).

IV. Consulting Draft Acts and Access to Decision-Makers

Legislative Guarantees

The legal mechanisms impacting the public's participation in the legislative process are as follows:

- Act on Trade Unions
- Act on Employer Organizations
- Council of Ministers Resolution on the Tripartite Commission
- Act on Chambers of Commerce
- Act on Craftsmanship
- Act on Associations
- Act on Referendums
- Act on Obligations and Rights of Sejm Deputies and Senators
- Rules of Procedures of the Sejm and Senate

Act on Trade Unions⁷⁹

An important element regarding the participation of different entities in the law-making process is the activity of trade unions. According to the Act on Trade Unions, federations of local and regional trade unions and trade unions which nationally represent particular industries have the right and responsibility to provide their opinions on draft legislation falling within the jurisdiction of their activity. State authorities provide trade unions with copies of relevant drafts and a deadline for submitting their opinion. In cases when the trade union's motion is fully or partially rejected, the responsible authority must provide the trade union with a written justification of their decision. In this case, trade unions have the right to present their position during the session of the relevant Sejm or Senate committee.

Act on Employer Organizations⁸⁰

The primary purpose of employer organizations is protecting the rights and advocating the interests of their members with trade unions and State authorities. According to the Act, federations and confederations of employers' organizations have the right to comment on legislative drafts within the scope of their statutory responsibilities. The Act guarantees that the relevant authorities provide employers' organizations with the same rights and access as those granted to trade unions.

⁷⁹ The Act on Trade Unions, 23 May 1991, (Dz. U. No 55, item 234) with subsequent changes.

⁸⁰ The Act on Employers' Organizations, 23 May 1991, (Dz.U. 55, item 235).

Council of Ministers Resolution on the Tripartite Commission⁸¹

The legislated entity that the government is obligated to consult with is what is called the Tripartite Social and Economic Commission (*Trojstronna Komisja d/s Społeczno-Gospodarczych*). This Commission was established by the Council of Ministers as a method to reach consensus on social and economic legislative initiatives. Members of the Commission include the government, the Polish Confederation of Employers and selected trade unions. The Commission operates on the basis of mutual agreement between the three parties involved. While Commission members do receive and comment upon all drafts and policies within their jurisdiction, their role is as a high level industrial sounding board for the government to hear the opinions of employer and employee organizations.

Act on Chambers of Commerce⁸²

Within the Polish legal system, chambers of commerce are granted a special position regarding participation in the legislative process. The Act defines a chamber as an organization of economic self government [an independent organization of economic entities] which represents the economic interests of its members before the State authorities. Additionally, it provides chambers with the right to comment on proposals concerning the economy as well as the right to participate in the drafting process. Chambers of commerce are also entitled to evaluate and comment on the implementation and functioning of existing laws and regulations concerning economic activity.

Act on Craftsmanship⁸³

Individuals who carry out business activities may be considered craftsmen under certain conditions. According to the Act, craftsmanship is broadly defined as any manufacturing entity conducting economic activity and employing up to 15 individuals. The Act also specifies certain types of activities that are not considered crafts, including trade, catering, transportation, and services provided by free-lancers. Craftsmen should have documents certifying their skills in the form of diplomas, intern certificates and in other ways as defined by separate provisions.

Organizations of self government are guilds, craft cooperatives, craft chambers, the Association of Polish Crafts and units established by these organizations. These organizations are created at the initiative of their members and membership is voluntary. The Act on Craftsmanship furnishes the Association of Polish Crafts with a right to nationally represent the broad interests of all crafts in

⁸¹ The Resolution of the Council of Ministers on the Social and Economic Commission, dated 15 February 1994.

⁸² The Act on Chambers of Commerce, 30 May 1989, (Dz.U. 35, item 195) with subsequent changes.

⁸³ Act on Craftsmanship, 22 March 1989 (Dz.U. No 17, item 92).

Poland and abroad, while the other organizations are only entitled to represent the interests of their members domestically.

Act on Associations⁸⁴

Another guarantee for citizens participation in public affairs is the right to associate. This principle is ensured by a number of acts including the Act on Associations. In the preamble it states that in order to guarantee equal rights to actively participate in public affairs and express oneself, regardless of one's beliefs, a right to confederate in associations is granted.

Further on in the Act, it stipulates that at least 15 individuals may establish an association, determining in its statute adopted goals and means for their implementation. It also provides that associations are authorized to voice their opinion on public issues. Recently the number of associations has greatly increased as has their visible participation and influence in public affairs.

Act on Referendums⁸⁵

Although rarely used,⁸⁶ the Act on Referendums provides a mechanism which engages the participation of citizens on a nation wide basis. In a referendum, citizens are asked to express their opinion by voting for or against a particular legal proposal. This is an instrument of limited value as citizens are not allowed to make comments or suggestions which influence the proposal's content. Theoretically, referendums are only used for issues of special importance to the nation such as the Concordat, Mass Privatization Program or the Constitution. The law also places a variety of procedural constraints on the organs initiating the referendum. Other reasons constraining its widespread use are the cost, time and administrative requirements that are set out in the act.

A referendum can be ordered by two entities: the Sejm, by a resolution passed with an absolute majority, with at least half of the Deputies present at the session, or by the President, after approval by a Senate resolution, with an absolute majority, with at least half of the Senators present. The Sejm may decide on issuing a referendum either on its own initiative, by a motion of the Senate or the Council of Ministers, or by a group of 500,000 citizens.

The results of a referendum are binding if at least half of the citizens entitled to vote participate. Once declared valid by the Supreme Court, the law requires the results to be published in the Journal of Laws. Thereafter, the relevant State organs have 60 days to issue acts, regulations and other decisions necessary to enforce the results of the referendum.

⁸⁴ Act on Associations, 7 April 1987, (Dz.U. 1989, No 20 of 1989, item 104) with subsequent changes.

⁸⁵ The Act on Referendums, 29 June 1995, (Dz.U. No 99, item 487).

⁸⁶ Since the end of World War II, there have been only three referendums. The last referendum issued was on 18 February 1996 but due to limited public participation, the voting results were inconclusive.

Act on Obligations and Rights of Sejm Deputies and Senators⁸⁷

According to the Act on Obligations and Rights of the Sejm Deputies and Senators, Parliamentarians are required to solicit the opinions and motions of their constituency and to study and consider them in their work. They are also required to explain to their constituency the goals of State policy and newly adopted Acts and resolutions. Members of Parliament, when taking into account the opinion of their voters, are entitled to request the Presidium of their chamber to refer a particular issue for consideration on the floor or in committee. However, the fate of motions submitted to Parliamentarians depend entirely on the Members of Parliament themselves as there is no requirement that their actions be representative of the statements presented to them by their constituency. In other words, the constituency has relatively little influence on their elected representatives.

Rules of Procedure of the Sejm and Senate

Another relevant issue in this context is the way that a motion (initiative, letter, or protest) sent to Parliament is received and addressed. To service the committee structure, the Sejm and Senate Rules of Procedure created a specialized administrative apparatus. Every person, institution or organization has the right to send to the Parliament their opinions and comments regarding its activities. If motions are addressed to individual Deputies or Senators, they are delivered directly to the addressee. When motions are sent to the Chancelleries, they are received by the respective correspondence bureau and registered in a ledger for unofficial correspondence. According to internally established procedures, the correspondence section answers unofficial letters by informing the author that the letter will be passed to the relevant organ for consideration. This means that the correspondence bureau selects which of the incoming letters are sent (or not sent) to the relevant office or committee. If it is decided that they are not to be forwarded, they are archived. Letters which are forwarded to a committee are received by the committee secretariat. Further procedures are not regulated. In practice, the fate of a letter depends on the head of the committee who may either inform the members about its contents, present it to the committee's forum, or simply not proceed and archive it.

Social and Economic Organizations

Throughout Poland one can observe the dynamic growth of trade and professional organizations. A number of these groups, operating on the national, regional and sometimes local level, are (i) becoming more and more interested in public affairs and (ii) undertaking increasingly effective activities to represent the interests of their members. Their capability to analyze and define their needs, and in particular to articulate those needs, is growing. However, their ability is limited by procedural and institutional constraints.

⁸⁷ The Act on Obligations and Rights of Sejm Deputies and Senators, 31 July 1985, (Dz.U. No 18 of 1991, item 79) with subsequent changes.

In Poland, in contrast to many other countries, there are not a large number of organizations whose publicized position on certain issues is considered and recognized as representative. The most visible and active private sector organizations that seem to have the greatest impact on the authorities include but are not limited to the Business Centre Club, National Chamber of Commerce, Polish Federation of Independent Entrepreneurs, and Association of Polish Crafts. Many of these groups establish local branches and create a network which allows for the transmission of critical information about pending legislation and other policy decisions while at the same time provides a feedback mechanism to stay current with the most immediate needs of their constituency. The organizations that have no regional structure fulfill these functions through direct contact with their members.

At the same time, the public sector is also becoming more interested in the problems and issues facing the private sector. A significant step in meeting the need for more cooperation and coordination was the establishment of the Polish Foundation for Promotion and Development of Small and Medium Enterprises, within which representatives of ministries work together with representatives of the private sector in creating an effective platform for dialogue contributing to development of entrepreneurship in Poland.

There is a growing awareness among interest groups operating in Poland of the need to create more and better representation before members of government and Parliament. However, activists are generally of the opinion that, in addition to the need for better collaboration amongst interest groups with similar objectives, institutional improvements also need to be made in the areas of access to information and procedures which allow and indeed encourage the input of society in the policy-making process.

Part III

Conclusions and Recommendations

**Proposed by the Lobbying Task Force
under the Studies and Analyses Bureau
of the Senate Chancellery**

Conclusions

In all the Western countries studied and presented, individuals and institutions interested in a particular issue or draft have the opportunity to systematically express their thoughts and opinions and influence the outcome of the legislative process. This cooperative relationship is achieved through government and Parliament's proactive solicitation of ideas and comments from all representative sectors of society.

Three characteristics define the circumstances which allow this to successfully occur. First, interest groups, representative organizations and the general public are given *notice*. In other words, they are informed about an initiative with enough advance notice to conduct the requisite amount of research and analysis to evaluate a proposal and to form a representative position. Second, they are given an opportunity to *comment*. By this, we refer to the appropriate communication channels which effectively allow interest groups to express their comments and suggestions to those involved in the drafting and decision making processes. Third, there is typically an obligation for the policy-making apparatus to provide *rationale*. This means that the government and Parliament must not only take comments received into consideration but also, as part of their justification, include a rationale for their final decisions.

Therefore, two of the most important components of such a process are (i) access to information and (ii) access to the policy-makers. Without these, all efforts to efficiently and effectively involve the general public in the legislative process will be severely constrained.

Although the basic tenets of a democratic legal system are firmly rooted in Poland, there are several procedural areas regarding the above defined concept of access that need to be more fully and firmly established. One of the most effective and easiest ways to remedy this is by providing broader access to information about legislative works underway. For example, although there is a regulation in place requiring the Parliament to establish a legislative schedule, it is not generally available to the public. Similarly, there is also a provision within the Rules of Procedure of the Council of Ministers that requires the government to develop a similar document which includes a schedule of the planned legislative works. However, this schedule is not made public which therefore makes it difficult for interest groups and organizations to know what government legislative initiatives are being or will soon be discussed (by ministries, the KERM, KSPRM or Council of Ministers) to say nothing of having enough time to prepare and submit a well justified and representative position.

Currently, the primary mechanism by which the public is informed about specific legal drafts is the media. Although Polish TV broadcasts parliamentary sessions, the timing (usually before noon) is such that few people are able to regularly watch them. Furthermore, published or presented information by the media is often incomplete and/or erroneous. Information that does not clearly or comprehensively describe the idea, concept or implications of the proposal often leads to an adverse or otherwise inaccurate public reaction. Finally, such scant coverage exacerbates the potential for the journalist's personal interpretation to have a disproportionate effect on public

opinion. Empirical evidence and observation of the West indicates that the possibility to study a detailed justification of a given draft facilitates public acceptance as well as minimizes unnecessary criticism and discontent caused by misinterpretation.

Another widely recognized difference between the current Polish and Western systems is the depth and breadth of information made available to the general public on government and parliamentary activities. In all the Western countries studied, whether through bulletins, journals or computer databases, at libraries or by subscription, a constant stream of readily available information is provided. Some of the more critical areas identified as lacking or otherwise difficult to access in Poland include but are not limited to information on plenary session schedules, committee reports, legal drafts, results (by name) of parliamentary voting, and government initiatives prior to reaching Parliament.

The process of public-private sector cooperation and collaboration in the legislative process, however, goes beyond the provision of information. It also involves an obligation to solicit and consider comments, opinions and suggestions put forward. The point here is not to expand the administrative apparatus but rather, to create efficient mechanisms which (i) enable input from social and economic organizations and (ii) incorporate a requirement or standard practice for such input to be comprehensively assessed. It is obvious that no one wants or expects replies to be individually addressed to all submissions. However, as evident in other Western countries, the process of consultation serves many purposes. First, it demonstrates the legislator's good intentions to develop the best possible solution. Second, it publicizes the public's opinion to a proposal and therefore forces the authors to articulate their arguments in response to concerns and suggestions. Finally, the broader discussion in itself provides those affected by the draft with the possibility to better understand and comply with its contents in the future.

Currently, Polish law allows for, but does not require, the consultation of parliamentary drafts with different communities. Sejm committees are free to use such expertise and may request information from selected institutions and individuals. Following an invitation from a committee chairman or presidium, recognized professionals in the relevant field and/or representatives of social and economic organizations may participate in sessions of the committees. However, the option to consult with outside expertise is not widely utilized in Poland and even when exercised, there are no procedural traditions in place to guarantee broad-based representation of the sectors to be affected by the issue under consideration.

Motions or suggestions submitted to Parliament by individual citizens, organizations or communities are disseminated according to the internal rules of the Sejm or Senate Chancellery. For example, the destiny of letters that are addressed to the Sejm and not to a specific individual depends on the decision of the relevant section of the Chancellery. Furthermore, those comments and opinions that are not deemed valid or appropriate are subsequently filed and never considered by a parliamentary body.

The situation is quite similar in the case of government drafts. It is at the government's discretion whether to ask for the opinion of experts, outside groups, or interested organizations. There is, however, a legal obligation to consult drafts with the previously described Tripartite Commission (comprised of government, employers and trade unions) but this is limited to issues which fall within the Commission's jurisdiction. Other drafts, covering areas outside of the Commission's scope, do not have a mandatory nor traditional practice of such consultations.

The other institutional mechanism for consultation is the Legislative Council which acts as an advisor to the Prime Minister. This advisory entity issues opinions which are not binding on governmental decisions or actions. The sole purpose of a review by this body of legal professionals is to verify a) a draft's compliance to the Constitution, b) its consistency with the legal system and c) its compatibility with European Union legal standards.

The preceding review of foreign solutions clearly shows that even when there are no specific laws or regulations in place, certain customs and informal procedures do exist to ensure the possibility for broad public consultation of legislative drafts. In some countries (France and The Netherlands), outside advisory bodies, comprised of a variety of organizations and independent experts, are established which consult drafts upon the request of the government or Parliament. Other countries, such as Great Britain and Germany, which have no constitutional provisions requiring transparent procedures or obligations on the authorities to consult with the public, have nonetheless thoroughly incorporated such practices into their system.

One of the most interesting and unique aspects of the U.S. system is the vital role of public hearings and public participation in congressional committee work. The general purpose of these hearings is to present the objectives and discuss the expected impact and implications of a particular draft. These hearings are attended not only by representatives of major organizations and institutions but also by concerned citizens and citizen groups, all of whom have an equal opportunity to express their perspective. This has proven to be a successful method of exposing the arguments in favor of and against a particular proposal, diffusing concerns and discontent based on real and perceived shortcomings, and, in the end, gaining public acceptance and support for the planned solution.

The principles and practices described above illustrate the well recognized rule of equal representation on both sides of the policy dialogue. The participation of experts ensures that an objective and professional approach is taken when evaluating the merits of a particular draft. In the Western countries reviewed, it is widely recognized that parliamentary transparency, the competition of ideas and well researched input from social and economic organizations lead to a more effective policy environment.

Recommendations

A. Legislative Process within the Government

The recommendations below are focused on procedural changes which will efficiently and effectively open the legislative process to encourage and facilitate the public's input in policy decisions. For reasons of clarity, we have tried to make the suggestions in the chronological order of the legislative process.

1. The first recommendation, modelled after internal regulations of the Parliament, is to require the government to publish its "legislative schedule." This schedule should be made publicly available as a means of informing nongovernmental organizations and interest groups of the timing and priority of the issues under consideration.

Implementation: The only change this would require is an amendment to the Rules of Procedure in the Council of Ministers.

Although a precise determination of the timing and costs involved are beyond the scope of this study, we do not anticipate this to be of significant consequence. One of the possibilities is to publish the schedule in the monthly Government Review (*Przegląd Rządowy*) issued by the Governmental Press Office.

2. The second recommendation is that information about governmental legislative drafts be published in a generally available periodical (journals, bulletins or newspapers) in such a manner as to publicly solicit comments and opinions from interested individuals and organizations. The timing of such a process would need to be defined for drafts since they undergo constant modification. It would seem reasonable to make the same draft which is circulated for final interministerial consideration, prior to being submitted to the advisory committees of the Council of Ministers (the KERM and KSPRM), publicly available.

Implementation: The announcement, including a brief description of the initiative, should contain the following:

- the title of the draft act;
- a brief description of the objectives, key provisions, expected outcomes and parties affected by the proposal;
- information on where copies of the draft can be obtained;

- the mailing address of the designated ministry department responsible for receiving comments; and
- the deadline for submission (should not be shorter than 14 days).

The selected publication should be easily accessible on a nation-wide basis. The experience of many countries suggests that, in addition to copies issued to libraries or other public institutions, legislative drafts can be made available for sale or by subscription. Although it will depend on the length of the particular document, prices should not be at a level which restricts public access and should approximate costs.

3. The third recommendation is that the comments received should be included in the justification to the draft. After the submission deadline, the relevant ministry should analyze all comments received and, where appropriate, incorporate them into the draft. Furthermore, the justification supporting a particular draft should include a discussion of the relevant comments obtained and an explanation why they were or were not considered. Finally, we recommend that these comments be attached to the draft and justification when finally sent to the advisory committees of the Council of Ministers. Following the review stage, the collection of public comments received should be returned and maintained by the relevant ministry for reference and as part of the official record.

Implementation: This recommendation simply requires modifications to the following:

- Resolution of the Council of Ministers concerning Rules of Procedure for the Council of Ministers;
- interior Rules of Procedure within ministries; and
- specific decisions issued by individual ministers regulating procedures to draft, consult and promulgate normative acts.

B. Legislative Process within the Parliament

The parliamentary recommendations herein have been made in a similar fashion to those relating to government procedures, namely, more public opportunity to make comments on legislative initiatives.

1. The first recommendation is for the designated committee or subcommittee to publicly announce its work on a draft and to be receptive to public comment. Committees should place an announcement in a widely accessible publication (a journal, bulletin or newspaper) which states the issue and indicates where a copy of the full text can be obtained. This recommendation is applicable

to all drafts, including government drafts as at this point in the process, it is likely that governmental drafts have gone through considerable modification since its early days at a ministry.

Implementation: The announcement should include a brief description of the initiative containing the following:

- the title of the draft act;
- brief information about the objectives, key provisions, expected outcomes and parties affected by the proposal;
- information on where copies of the draft can be obtained;
- the mailing address of the administrative office of the designated committee responsible for receiving comments; and
- the deadline for submission (should not be shorter than 14 days).

The costs of such an announcement will depend on the frequency and the publication selected. We believe that the publication(s) should meet a basic criterion of nation-wide availability. Additionally, as demonstrated by the experience of other countries, legislative drafts could be available for sale or by subscription. Although it will depend on the length of the particular document, prices should not be at a level which restrict public access and should approximate costs.

2. The second recommendation is that received comments should be discussed in the committee's report. After the submission deadline the relevant committee should analyze the comments received and, where appropriate, incorporate them into the draft before submission for plenary debate. This recommendation resembles the suggested modification to the government procedure. In its report on a particular draft, the committee should also include a discussion of all the relevant comments obtained. Following the submission of a draft for plenary debate, the collection of public comments received should be maintained by the relevant committee for reference and as part of the official record.

Implementation: This recommendation only requires amending the Rules of Procedure for the Sejm and Senate.

3. The third recommendation is for the Senate and/or Sejm Chancelleries to publish a monthly journal covering parliamentary and government legislative activities. The primary audiences of the journal would be Parliamentarians, members of government and nongovernmental organizations as well as institutions and individuals interested in various aspects of the legislative process. Whether available for sale or for free, the most important point is that the journal is published in sufficient

volume so that it is easily available to all those who wish to play an active role in the development of public policy.

Example subject areas that the journal might include are as follows:

- the legislative schedules of both Houses of Parliament
- information about drafts being considered by parliamentary committees
- announcements placed by parliamentary committees (as previously recommended)
- discussions and debates regarding drafts under consideration
- the legislative schedule and works of the government
- announcements placed by relevant ministries regarding drafts (as previously recommended)

Implementation: This recommendation requires an ordinance issued by the Chief of the Senate and/or Sejm Chancelleries.

C. Institutional Support for Small and Medium Size Enterprise Interests in the Legislative Process

While not the focus of this study, a shared characteristic in all older democracies as a key ingredient to a stable, secure and globally competitive economy is a strong small and medium size enterprise (SME) sector. Hence, legislative initiatives which affect the regulation of business activity must be especially well analyzed and consulted with relevant industry representatives.

Today, approximately 2 million small businesses in Poland employ about 60% of the labor force, generate over 50% of GNP, and are a significant source of budgetary revenues. Moreover, by creating new jobs, this sector efficiently contributes to the reduction of unemployment, thus alleviating the negative social effects of liquidation and the ongoing restructuring of state-owned enterprises.

As stated in the government policy document entitled Small and Medium Size Enterprises in the National Economy, "One of the greatest successes of the Polish transformation in its initial stage was the dynamic growth of entrepreneurship which led to the creation of the small and medium size enterprise (SME) sector...Active government policy which supports the development of SMEs is an important element of the State's strategy to create social welfare and increased employment, aiming at providing conducive political, legal, and economic conditions to stimulate the proper development of this group of enterprises." Other considerations such as technology transfer, skills training and integration with the European Union also support the need to more closely monitor, support and interact with this sector.

The one institutional recommendation is to create Parliamentary Entrepreneurship Committees. While it is evident that some European frameworks do not provide for such committees, we believe

the American practice of having congressional small business committees is most appropriate and applicable to the Polish legal system. The primary objective of these committees is to fill the gap in the legislative process with regard to the representation of private entrepreneurship in Poland. Hence, we recommend that permanent Entrepreneurship Committees be established in the Sejm and Senate. A reasonable and perhaps more suitable alternative would be to create permanent subcommittees (for example, under the Sejm Economic System and Industry Committee). Another point to consider is the fact that this option would not require amending the existing Rules of Procedure in the Sejm or Senate.

The primary roles of these committees would be to:

- a) review and comment upon draft legislation affecting the growth and competitiveness of SMEs, and
- b) monitor the implementation of state-funded programs aimed at serving the needs of the sector.

Although not a tangible nor measurable function, another key ingredient to the committees' success will be raising the general level of awareness and understanding of small business needs and interests among other Members of Parliament.

Implementation: The above recommendation requires changes to the Sejm and Senate Rules of Procedure to include these committees among the list of permanent committees operating in both Houses. Additionally, a detailed scope of work would need to be appropriately drafted and attached as an appendix to these Rules.

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