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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMENTS**

**ON LEGISLATIVE INITIATIVE  
IN EUROPE**

by

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## **I. Preliminary remarks**

1. The Georgian authorities have asked for a study on “Legislative initiative in Europe”.
2. The following survey takes into account only the right to initiate laws at the federal level, not at the regional level where the relevant regulations might considerably differ, e.g. in the cantons in Switzerland. The analysis also excludes referenda on proposals elaborated by the Parliament, but includes the popular form of legislative initiative, i.e. the competence of the people to suggest new legislative projects that have to be dealt with in the relevant legislative organs. It thus concentrates on the analysis of the constitutionally defined power to propose bills to be discussed and adopted in Parliament.

## **II. Principle of the separation of powers**

3. According to the principle of separation of powers the executive, legislative and judicial function of the State should not be in the same hands. A purist approach of this principle would require not allowing anybody but the legislative body to initiate the adoption of new laws. Whereas this restriction is observed in the constitutional law of the United States, most European States grant the right to legislative initiative to the executive power as well. On the contrary, the judicial power is generally excluded from the legislative process from the very beginning. Only in exceptional cases special high courts such as the Supreme Court or the Constitutional Court are allowed to initiate new laws.
4. Although the general conception of the right to legislative initiative is similar in most European countries, the regulations differ in some important aspects.

## **III. Regulation on the constitutional level**

5. As a rule, the right to legislative initiative is conclusively regulated within the Constitution itself. At least the decisive factors – who has the right to legislative initiative, which procedure has to be observed – are determined by the Constitution.<sup>1</sup> Regulations of details might be delegated to other levels of regulation. For example, the Swiss Constitution states that every canton has the right to submit initiatives to the Federal Parliament, but does not determine who is responsible within the Cantons; this is left to the cantonal legislation. Even if the constitutional regulation seems to be comprehensive, the statutes of the Parliament or other laws or ordinances can contain additional clarifications. Thus, Article 76 of the German Grundgesetz determines that bills are introduced in the Bundestag “from the floor of the Bundestag (literally: “aus der Mitte des Bundestages”). This rather vague expression is explained in the by-laws of the Bundestag; according to the relevant provision bills have to be signed by a parliamentary group or five percent of the members of the Bundestag.

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<sup>1</sup> The Italian Constitution can be seen as an exception in this regard, as it allows for an assignment of the legislative initiative to organs and bodies not fixed in the Constitution by constitutional law.

#### **IV. Legislative initiative of the executive power**

6. In European countries, as a rule, the Government is entitled to introduce bills in Parliament;<sup>2</sup> in special cases, such as in Poland for budgetary and other financially important laws, the Government can even have an exclusive right to legislative initiative. Whereas generally the relevant regulation does not specify who is responsible within the Government, the French Constitution confers this power directly to the Prime Minister. The Norwegian Constitution states that a bill shall be proposed by the government through a Member of the Council of State.

7. Statistically, in the majority of European countries most bills are elaborated in the ministries as they have the man power and the expertise to prepare them.<sup>3</sup>

8. In many countries the President has also the right to introduce bills in Parliament. Whereas in some countries this right applies generally<sup>4</sup>, in others it is restricted to specific cases. For example, in Estonia, the President has the right to initiate laws only for amendments of the Constitution. In Georgia, the right of the President is restricted to "exclusive cases". But draft laws submitted by the President have to be discussed in Parliament with priority.

#### **V. Legislative initiative of the legislative power**

9. Bills can also be introduced by the members of the Parliament. The different systems vary in accordance with the structure of the Parliament (one or two chambers). Furthermore there are different prescriptions as to the number of the members of Parliament who have to support a certain project.

##### *A. Special regulations for systems with two chambers*

10. In systems with two chambers as a rule the members of the first chamber and either the second chamber as a whole or the members of the second chamber are entitled to introduce bills. Thus the German Grundgesetz, the Spanish Constitution and the Polish Constitution name the second chambers without giving any further details. In the Russian Federation and in Italy each member of the second chamber has the right to legislative initiative.

11. As far as second chambers are representative bodies of the different regions or regional parts of the country, the idea behind granting the right to legislative initiative to the second chamber is to allow for regional interests to be adequately represented in the federal legislation.

##### *B. Numerical support for legislative initiatives*

12. In many European countries each Member of Parliament can introduce a bill.<sup>5</sup> The Latvian Constitution assigns this right to Committees of the Parliament or to not less than five members. The regulation of the Grundgesetz requiring that laws are introduced "from the floor of Parliament" and the more specific regulations have already been mentioned; here, as a rule, a bill must be supported by at least 5 % of the parliamentarians. Higher quotas can be required

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<sup>2</sup> Cf. e.g. the regulations in Germany, Poland, Russia, Spain, France, Italy, Lithuania, Estonia, Latvia, Norway, Georgia, Armenia

<sup>3</sup> Haller, Kölz, Allgemeines Staatsrecht, 3rd edition, Basel, Geneve Munich 2004, p. 255.

<sup>4</sup> Poland, Russia, Lithuania, Latvia, Azerbaijan, Hungary.

<sup>5</sup> Cf. the explicit regulation in Switzerland, Italy, Norway, Georgia, Hungary, Estonia, and Czech Republic.

for initiatives to amendments of the Constitution.<sup>6</sup> Such a restriction might make sense, if otherwise the Parliament is flooded with bills of low quality and is blocked in its work.

13. Restrictions can also apply only to specific laws. Thus, e.g. in France, private members bills are inadmissible if their adoption would have the effect of reducing public revenue or of creating or increasing an item of public expenditure.

14. Some constitutions specify explicitly that parliamentary groups and parliamentary committees also have the right to legislative initiative<sup>7</sup>.

## **VI. Legislative initiative of the judicial power**

15. Exceptionally and under narrow circumstances, courts can also be entitled to introduce bills in Parliament. Thus e.g. the Russian Constitution explicitly states that the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Court of Arbitration of the Russian Federation have the right of legislative initiative within their jurisdiction. In Azerbaijan the same right is granted to the Supreme Court.

16. These regulations show that courts are seen to be especially apt to find out lacunae or inadequate regulations in the existing legislation on the judiciary and to propose new regulations in the field they are specialised in. In other countries courts have a large discretionary power to refine the legal basis on which they operate.

17. Without giving a special right of legislative initiative to the courts, constitutional courts' decisions declaring laws unconstitutional might be seen as an "indirect" form of legislative initiative. The German Constitutional Court e.g. can admonish the legislator to replace unconstitutional regulations within a certain period of time.<sup>8</sup>

## **VII. Legislative initiative of constituent parts of a federation and autonomous entities**

18. In federative States as well as in States with autonomous unities, as a rule, it is not only the second chamber as the representative body of the regional subunits of the State that is given the right to legislative initiative on the federal level. This applied e.g. to Switzerland. According to the Russian Federation the legislative bodies of the subjects can introduce bills. The regulation in the Spanish Constitution is still more detailed. The Assemblies of the Autonomous Communities can request the government to adopt a bill or send a proposal of a law to the House of Representatives. According to the Constitution of Georgia the higher representative bodies of the autonomous Republic of Abkhazia and of the autonomous Republic of Ajara have the right of legislative initiative. The same is true for the Ali Majlis of Nakhichevan Autonomous Republic in Azerbaijan.

19. These regulations can be understood to strengthen the status of the regions or of the autonomous entities within the country, as they have a direct means of bringing their ideas to the legislative body on the federal level.

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<sup>6</sup> In Estonia, e.g. the support of one fifth of the members of Parliament is required for amendments to the Constitution.

<sup>7</sup> Cf. e.g. Switzerland and Estonia.

<sup>8</sup> Cf. Schlaich, Koriath, *Das Bundesverfassungsgericht. Stellung, Verfahren, Entscheidungen*, 7th edition, Munich 2007, p. 238.

## **VIII. Legislative Initiative of Citizens**

20. Last but not least in some countries the citizens themselves have the right to introduce bills in Parliament. As a rule, it is made clear that this is only a citizens' right. The relevant regulations therefore refer to the citizens having the right to vote. Only the Spanish Constitution is not explicit in this respect; it defines 500.000 valid signatures as precondition for the exercise of the popular initiative for the presentation of proposals of law, but states that an organic law shall regulate the forms and requirements. The number of citizens required varies between 50.000 (Lithuania, Italy, Hungary) and 100.000 (Poland). In Latvia one-tenth of the electorate is required.

21. It is possible to exclude certain areas of legislation. Thus for example the Spanish Constitution states that popular initiative is not applicable to organic laws, taxation, international affairs, and prerogative of pardon.

22. In some countries the citizens are requested to submit a draft law or, as is explicitly stated in the Italian Constitution, "a bill drafted in articles".

23. Legislative initiative of Citizens can be seen as an element of direct democracy. To a certain extent it includes the citizens in the legislative process. Unlike in referenda the citizens are not only asked to consent to or disagree with a bill elaborated by Parliament, but to bring forward their own ideas.

## **XI. Procedural requirements**

24. Constitution-makers seem reluctant to regulate the details of the introduction of bills in Parliament. As a rule, only exceptionally special rules as to time-frames or procedural requirements are contained in the Constitution.

### *A. Co-operation*

25. In the majority of countries those granted the right of legislative initiative are not required to co-operate with or to get the consent of other bodies. One example of a special procedure is provided for by the German Grundgesetz. Whenever a law does not come "from the floor of the Bundestag", i.e. either from the Government or from the second chamber, an opinion of the relevant other body is required. For these opinions certain time-limits are set. They are longer for changes of the Constitution as well as for laws leading to the transfer of power to a supranational or international organisation.

26. In Russia special rules apply only for special bills. Thus a resolution of the Government is necessary for legislative acts relevant for the budget.

27. As a rule the right to legislative initiative is only important for the kick-off of a discussion on a new law. As soon as the bill is being discussed in Parliament those who have started the process do not have any specific rights any more. An exception to this rule might be seen in the case of Azerbaijan where amendments of laws are only possible with the consent of the body which used the right of legislative initiative. According to the Polish Constitution the sponsor of a law may withdraw a bill in the course of legislative proceedings in the Sejm until the conclusion of the second reading.

### *B. Special requirements*

28. Special requirements can be foreseen for laws bringing about financial burdens for the State. Thus, it can be necessary for those initiating a new law to indicate the financial consequences of its implementation (cf. the regulation in the Polish Constitution).

**X. Conclusion**

29. The analysis shows that the right to legislative initiative is a decisive element in the determination of the respective roles of the different State organs in the democratic process. The aim of a broad participation in the legislative process has to be balanced against its efficiency.