

The Role of the Legislative and Legal Service of the Parliament in the Legislative Procedure

**Contribution of the Legislative and
Legal Service to Better Regulation**



Contribution of the LLS to Better Regulation

1. Why does the LLS scrutinise the draft laws?

- ◆ Historical background
- ◆ Independance of the Parliament
- ◆ Parliament needs its own office for such purpose



Contribution of the LLS to Better Regulation

2. Which are the LLS duties within the legislative procedure?

- ◆ Opinions on the draft laws, other acts and amendments
- ◆ Harmonising amendment
- ◆ Final text of the law (the original text of the law)
- ◆ Official and unofficial consolidated texts of laws



Contribution of the LLS to Better Regulation

2. Which are the LLS duties within the legislative procedure?

a) Opinions on the draft laws, other acts and amendments

- ◆ According to the Article 27 of the Rules of Procedure LLS delivers opinions on the conformity of draft laws, other acts and amendments with the Constitution and the legal system, as well as on legislative and technical aspects of drafts.
- ◆ Upon the request of deputy groups LLS delivers opinions on the first proposal of draft law.

Contribution of the LLS to Better Regulation

2.a Opinions on the draft laws, other acts and amendments

What does the scrutiny encompass?

- ◆ Constitutionality and compatibility with the international law
- ◆ Compatibility with the EU law
- ◆ Compatibility with the legal system
- ◆ Legislative and technical aspects of drafts
- ◆ Statement of reasons



Contribution of the LLS to Better Regulation

2.a Opinions on the draft laws, other acts and amendments

What does the scrutiny encompass?

1. Constitutionality and compatibility with the international law

- ◆ Compatibility with general constitutional principles
- ◆ Does it affect basic rights?
- ◆ Protection of legitimate expectations
- ◆ Protection of vested rights



Contribution of the LLS to Better Regulation

2.a Opinions on the draft laws, other acts and amendments

What does the scrutiny encompass?

1. ...

2. Compatibility with the EU law

- Statement on compatibility with EU law
- Limited scrutiny (not enough time available, specialized knowledge required)



Contribution of the LLS to Better Regulation

2.a Opinions on the draft laws, other acts and amendments

What does the scrutiny encompass?

1. ...

2. ...

3. Compatibility with the legal system

- ◆ Relationship with other laws, especially with framework legislation (die Rahmengesetze)



Contribution of the LLS to Better Regulation

2.a Opinions on the draft laws, other acts and amendments

What does the scrutiny encompass?

1. ...
2. ...
3. ...

4. Legislative and technical aspects of drafts

- ◆ Compliance with formal drafting requirements
- ◆ Clear, concise, unambiguous and comprehensible formulations: Rudolf von Ihering: *"The Legislator has to think as philosopher and speak as a peasant."*
- ◆ Consistency within the draft
- ◆ Definition of terms in use
- ◆ Clear references to other provisions

Contribution of the LLS to Better Regulation

2.a Opinions on the draft laws, other acts and amendments

What does the scrutiny encompass?

1. ...
2. ...
3. ...
4. ...

5. Statement of reasons

- ◆ According to the Article 115 of Rules of Procedure the statement of reasons explains the contents and purpose of individual articles of the draft law as well as the consequences and interrelations of the solutions contained therein.
- ◆ Very poor statements of reasons



Contribution of the LLS to Better Regulation

2.a Opinions on the draft laws, other acts and amendments

What does the scrutiny encompass?

When is the LLS entitled to deliver its opinion?

- ◆ legislative procedure (new Rules of Procedure in 2002): Parliament is the holder of the draft law.
- ◆ the role of the Government is reduced - Government is not allowed to table amendments to its own draft laws
- ◆ good intention, bad outcome – laws are not better, transfer of responsibility for a better regulation from the Government to the Parliament

Contribution of the LLS to Better Regulation

2. Which are the LLS duties within the legislative procedure?

a) ...

b) Harmonising amendment

- ◆ If the LSS establishes before the final vote on the draft law that with the adoption of amendments individual provisions of the draft law would be mutually inconsistent or inconsistent with other laws, it draws the attention of the chairperson to such fact. In the event of such, the chairperson allocates to the proposer time to prepare the harmonising amendment.



Contribution of the LLS to Better Regulation

2. Which are the LLS duties within the legislative procedure?

a) ...

b) ...

c) Final text of the law

- ◆ According to the Article 141 of the Rules of Procedure the LLS prepares the final text of the law (the original text of the law).
- ◆ Competences of the LLS
- ◆ Substantial corrections are strictly prohibited
- ◆ Recommendation: Reservations
- ◆ Role of a linguist



Contribution of the LLS to Better Regulation

2. Which are the LLS duties within the legislative procedure?

- a) ...
- b) ...
- c) ...

d) Official and unofficial consolidated texts of laws

- ◆ Purpose
- ◆ History
 - 1945 - 1993 - if so provided by the amendments to a law
 - 1993 - 2002 - no official consolidated texts
 - 2002 - July 2007 - following any amendment to a law
 - July 2007 - official and unofficial consolidated texts of laws

Contribution of the LLS to Better Regulation

Which are the LLS duties within the legislative procedure?

- a) ...
- b) ...
- c) ...

d) Official and unofficial consolidated texts of laws

◆ Unofficial consolidated texts

- following any amendment to a law
- published on the official web site of the Parliament
- working instrument

◆ Official consolidated texts

- on the basis of a decision of the Parliament
- published in the Official Gazette
- valid law

Contribution of the LLS to Better Regulation

3. What instruments are available?

- ◆ Mentorship of older and experienced colleagues
- ◆ Legal drafting guidelines - The basis for creation of legal regulations (Government Office for Legislation in 2004)
- ◆ In preparation: Handbook on how to create legal regulations



Contribution of the LLS to Better Regulation

4. Conclusion

◆ Requirements for Better Regulation

- ◆ Evaluation of the state of affairs and reasons for adopting/amending the law – *"The laws are to be amended with a trembling hand."*
- ◆ Planning (goals, principles, main solutions; time-limit - enough time for preparation and scrutiny)
- ◆ Cooperation of legal reviser already at an early stage
- ◆ Developement of nomotechnics as legal science
- ◆ More training in legislative drafting

