

II* The simplified examination procedure of the French Assemblée nationale

Communication by Mr Pierre HONTEBEYRIE, Secretary General of the Assemblée nationale, France. Brussels Session (April 1999)

Mr Pierre HONTEBEYRIE, Secretary General of the Assemblée nationale, France, said that his communication was of a different order to the excellent communication from Michael DAVIES. His concerned the simplified examination procedure and would thus examine modification to the Rules of Procedure recently introduced in the Assemblée nationale. The scope of his communication was somewhat restricted and unlike the discussion on the reform of the House of Lords did not bring into question the future existence of the Assemblée nationale.

Mr HONTEBEYRIE spoke as follows:

"One of the most recent changes to the Rules of the Assemblée nationale, adopted just about a year ago in March 1998, introduced a simplified procedure for the examination of bills in the plenary session.

It is not quite accurate to speak of it as an entirely new arrangement. In fact since 1991 there had been in the Rules of the Assemblée a simplified *adoption*¹ procedure, which had a similar aim but which had rarely been used.

In fact both these procedures were responses to the same concern: to lighten the orders of the day of the Assemblée by reducing the time devoted to the consideration of bills in plenary session, transferring debate from the plenary to committees. It is not, however, possible to do more than a modest modification of the Rules of the Assemblée. The Constitution requires that public and private members bills be voted on by the Assemblée in plenary session and states that the rules of the Assemblée, supervised by the Constitutional Court, cannot put aside constitutional provisions.

This new procedure came into force last Spring; it has therefore been in use for a year and enough time has therefore elapsed to draw some initial conclusions.

¹ This procedure was itself a replacement for shortened procedures for voting without debate and for curtailed debate, in force since 1969.

1. The simplified examination procedure is an extraordinary procedure and its operation is therefore subject to particular rules of which a typical one is the right of opposition to its use.

To be used, the simplified examination procedure must be explicitly requested.

This request can come from four distinct authorities: the Government, the President of the Assemblée, a President of a political group or a Chair of a committee. The request must be presented to the "Conférence des Présidents".

The bill — which can be either a government or a private members bill — cannot have been previously examined by the relevant committee. In fact when the committee is going to examine the bill, it must establish that the bill which it is examining will be the subject in the plenary session of an expedited debate. It must therefore be able to take up, if it considers it to be appropriate, any of the bill's provisions, in order to proceed to a particularly in-depth consideration of the bill.

The simplified examination procedure should not have the effect of denying a bill debate but, as has already been stated, of transferring that debate from the plenary to the committee.

With the exception of public bills concerning the ratification of treaties or international agreements, for which the initiative comes from the Chair of the Committee for Foreign Affairs, it is most often the President of the Assemblée himself who, at the weekly meeting of the Conférence des Présidents, asks that such and such a bill, when on the orders of the day, be examined according to the simplified examination procedure.

The same authorities who can ask for the use of the simplified examination procedure can also oppose it, with the exception of the President of the Assemblée. When there is provision for recourse to an extraordinary procedure there is as a general rule also a corresponding right to oppose it. There is in fact an acknowledged right for the opposition to obstruct any initiative which most frequently originates with the majority.

The opposition to the use of the procedure must be made known to the President of the Assemblée at the latest by 1800 hrs on the day before the day appointed for the debate. If there is such opposition, the relevant bill is discussed under the ordinary procedures.

The effects of the simplified procedure are evident in three areas: in general debate, in the right of amendment and in debate on the clauses of the bill.

2. The main purpose of the simplified adoption procedure was to reduce the time taken for debate in plenary session. It was therefore obvious that its most radical effects would be in this area.

The general debate is a part of the first stage of the examination of bills in the plenary session. It begins with a contribution from the Minister responsible for the bill and by the rapporteur or rapporteurs of the relevant committee(s). It continues with the general debate properly so called, in other words speeches from deputies, framed, if the case arises, by debate and putting of the question on procedural motions.²

Although the Rules only make it a possible function, the Conférence des Présidents tends to lay down the timetable for the general debate on bills. It is usually fixed for between two and four hours. By contrast, debate on procedural motions is one of the rare cases in which the length of speeches is not limited. The originator of the procedural motion can therefore continue for 30 minutes, one or two hours, or even more.

The simplified examination procedure, at this stage of general debate, has three consequences:

- the rapporteur's speech cannot exceed ten minutes;
 - time for the political groups is limited, for each of them, to five minutes;
 - finally, the tabling of procedural motions is no longer possible. In this instance there is the guarantee for the opposition groups that they are able to reject the simplified procedure. It is naturally opposition groups which table procedural motions. If they wish to preserve their rights in this area, they will need to oppose the use of the simplified examination procedure.
3. The second area in which the simplified examination procedure has an effect is the right of amendment.

The right of amendment is a recognised constitutional right. It is therefore exercised very frequently, despite certain constitutional, legal and procedural restrictions, the procedural restrictions relating essentially to the practicalities of its usage.

² There are three categories of procedural motion: the 'objection that a question is inadmissible' and the 'preliminary question' which are discussed and voted on before the general debate, and the 'motion for referral to committee', debated and voted on after the general debate. Only one motion per category can be selected.

Amongst such practicalities, the Rules of the *Assemblée nationale* state that amendments to the bill being debated can be tabled up to the beginning of the general debate, that is, either up until after the speech of the Minister and rapporteur, or, if the case arises, up until after the debate on the first two types of procedural motion.

When a bill is subject to the simplified examination procedure, however, this tabling period expires on the evening of the previous day, just as the period for opposing the procedure itself.

But the Government enjoys in this matter a privileged position. This time limit does not apply to the Government — no more than the time limit under the ordinary procedure.³ But if the Government decides to table an amendment after the deadline, the bill cannot be subject to the simplified examination procedure: it is removed from the orders of the day where it had been originally placed and cannot be put back there, at the initiative of the Government, earlier than for the next sitting (this could be on the same day). Debate then takes place according to the normal procedures — the simplified examination procedure falls and disappears.

This provision might seem complicated. In reality, it has a twofold objective. It protects both the rights of the Government and the rights of the *Assemblée*.

Experience has shown that the vast majority of bills examined are at the initiative of the Government. The authors of the Rules did not wish to deprive the Government of the ability to amend its bills as it wished. The Rules of the *Assemblée* therefore left the Government the ability to exercise its right of amendment within the time limits of ordinary procedure.

But those drafting the Rules of the *Assemblée nationale* did not want the Government to be tempted to use this procedure to table "heavy" amendments at the time of debate on the bill when that bill was being considered under a less formal procedure than usual and with the possible result that it would attract less attention than under normal procedure.

If the Government wants to be able to enjoy the full range of its prerogatives in the right of amendment, it knows that it must also renounce the simplified examination procedure.

³ With this qualification, that when the Government tables an amendment after the deadline, it re-opens, for the clause to which the amendment applies, the right of amendment for deputies also.

The Government, however, supports the procedure because of its effect on the orders of the day.

4. The third area in which the simplified examination procedure has had an impact is the debate on clauses and amendments. This must be distinguished from the exercise of the right of amendment which we have just considered.

As a general rule, debate on clauses and amendments takes place as follows.

Each clause is called successively; at this point every deputy who wants to can ask to speak for no more than five minutes.

This possibility no longer exists in the case of the simplified examination procedure. In this case only those clauses are called to which amendments have been tabled. The other clauses are not even put to the vote. But most importantly, even on those clauses to which amendments have been tabled, there is no longer the possibility of taking the floor to speak.

With regard to amendments, these, as in the ordinary procedure, are called one by one and provide a right to speak for the author of the amendment, the rapporteur of the committee, a Minister and a speaker opposed to the amendment. But the President of the sitting cannot in the case of simplified adoption procedure give the floor to a speaker to respond to the Government and to another speaker to respond to the Committee, something he can ordinarily do.

This is clearly a new element in the acceleration of debate, all the more important in that it is most frequently used during debate on amendments, when in the Assemblée it would usually be most difficult to control the time being taken.

5. There remains a final area in which, in contrast to the above account, the simplified examination procedure does not apply.

After the vote on each of the clauses and amendments, the President of the sitting can give the floor to one speaker per political group, for five minutes at the most, to explain the vote of his or her group. This opportunity is frequently used and experience shows that generally speaking when one representative of a group asks for the floor for an 'explanation of vote', the representatives of each of the other groups then ask for the floor as well.

At the moment the provisions in the rules concerning the simplified examination procedure do not make any reference to this stage of debate. In that it is an extraordinary procedure, the limitations it applies must be interpreted in a restricted manner. Where the text is silent it must therefore be

presumed that there is no obstacle to the development of an 'explanation of vote' stage, even in cases where, in the absence of any amendment, the simplified adoption procedure involves a general debate limited to speeches by one speaker from each group for a maximum of five minutes, immediately followed by one 'explanation of vote' organised in exactly the same way.

6. Results of the new procedure vary.

It is not easy to evaluate precisely the time saved. It is clear that the procedure has been used only for relatively minor bills be they on technical or political matters. Important bills have continued to be examined according to the normal procedure, in other words, most often in a time-consuming way.

It is nevertheless the case, thanks particularly to the involvement of the President of the Assemblée himself, that the Assemblée is becoming accustomed to this procedure for all bills other than those of the first importance, and in particular at different stages of their legislative progress.

There is, on the other hand, an area in which one can question whether the reform has truly achieved its objective. One of the objectives was to transfer debate from the plenary session — in order to lighten its workload — to a preliminary consideration in committee with the aim that the committees might dedicate more time to their preparatory work. But in this regard it is not clear that habits have really changed."

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Mr ALBA NAVARRO congratulated Mr HONTEBEYRIE on his communication which, whilst it considered a detailed issue, was relevant to problems encountered in all other parliaments.

Mr WINNIFRITH (United Kingdom) thanked Mr HONTEBEYRIE for his most interesting communication. The reform in the Assemblée nationale reminded him of that which the House of Commons had wished to introduce and which would be the subject of a communication from himself on Wednesday. Having emphasised the importance of guaranteeing a consensus for the simplified examination procedure, Mr WINNIFRITH mentioned two points which seemed to him to be particularly important. The first was that this procedure encouraged debate in committee even if this had not happened to the extent that had been wished. The second point was that the procedure resulted in the freeing up of time for debate in the Chamber. In this context, Mr WINNIFRITH wondered how the time thus made available had been used.

Mr HONTEBEYRIE confirmed the consensual goal of the reform, which could not be applied if opposed by a single group, however small it might be. He said that the minimum number to constitute a group in the *Assemblée nationale* was twenty members and said that even if the *Assemblée nationale* did not provide for a genuine status for the opposition it nevertheless provided a certain number of procedures which came close to such a status. Turning to the second point made by Mr WINNIFRITH, he also confirmed that the principal objective of the reform was to free up time in the plenary session. The reform thus resulted in two advantages, a quantitative advantage reducing the time of debate in the plenary, and a qualitative in the transfer of a part of this time to debate in committee. He was not persuaded that the reform had fully achieved its objectives. From the quantitative point of view, the *Assemblée nationale* frequently sat in plenary session. The Deputies had got into the habit of sitting on Tuesdays, Wednesdays and Thursdays and the Orders of the Day were often very full. Given that the French parliamentary system left the main initiative with the government, and that the government had a massive amount of bills it wished to see through parliament there was a tendency to try to get two litres into a one litre bottle. But the reduction in time for debate in the plenary session had been considered as an end in itself. With regard to debates in committee, members of the government had not really formed the habit of attending them.

Mr BECANE (France) thanked Mr HONTEBEYRIE for the clarity and sophistication of his exposition. With regard to the government's right of amendment, Mr BECANE asked what procedure was followed when a bill, removed from the Orders of the Day after the tabling of a government amendment after the time limit, returned to the Orders of the Day at a later sitting. He also asked at what stage of procedure the simplified examination procedure could be used and about the effects of the reform on the work of committees.

Mr HONTEBEYRIE said that an amendment presented by the government after the time limit had the effect of removing the bill from the Orders of the Day. He added that this eventuality had not yet taken place. If it were to happen, the government bill on the Orders of the Day would be considered according to the normal procedure at the earliest at the next sitting, the simplified examination procedure (S.E.P.) no longer being applied in such circumstances. The simplified examination procedure could be used at any stage of the bill's progress, at the first reading or even during the final shuttle of the bill between the two chambers. Experience had shown that with regard to the fifteen bills which had been subject to this procedure, ten had seen the procedure used at the first reading, the others at other stages of debate. With regard to debates in committee, the Government could be present in committee during the general debate as well as during debate on the particular articles since the reform of

1994. In reality the Government had rarely used this provision and for their part the committees had not really requested such attendance. The objective of the reform had been to transfer part of debate to committees, but having for a while annexed formally committee debates to debates in the plenary, which were published in the official journal, the experiment had not then been pursued.

Mr TROCCOLI (Italy) said he had been very interested in the discussion of this procedure and wanted to know whether there was any reservation of certain matters which could not be considered under the procedure or whether the simplified examination procedure could be applied to any matter. What lessons could be learnt from the experience of the *Assemblée nationale*. Was it, for example, useful to introduce reservations for private members' bills?

Mr HONTEBEYRIE reminded the Association that this procedure worked on the basis of consensus between the different groups and different bodies concerned. He confirmed that there was no reservation of matters and emphasised the particular usefulness of this procedure for bills of "secondary" importance. He was not convinced that the fixing of restricted areas for this procedure would constitute progress. He cited on this last point the case of a bill relating to the exploitation of mines which had seemed at first glance to have a very limited scope and for which the simplified examination procedure had been envisaged. This bill, having later on excited the interest of a number of Deputies elected from local authorities, for several regions were in fact affected, the use of the simplified examination procedure had been renounced. This example underlined the need to have a somewhat flexible and empirical use for the S.E.P. Furthermore, the introduction of a criterion relating to the subject of the bill in the rules of the *Assemblée nationale*, would, like any modification to the rules of the *Assemblée*, be subject to the oversight of the *Conseil constitutionnel*. It was not, therefore, certain that the *Conseil* would accept such a modification to the S.E.P.

Mr SANTARA (Mali) congratulated Mr HONTEBEYRIE on his communication and said he was very interested in a procedure which attempted to free up the time of deputies and departments. With regard to the objective of transferring part of debate to committees, he wanted to know if there was a constitutional provision which provided that bills had to be adopted in the plenary session. He also asked for more information on the nature of the enlarged Committee mentioned in his communication. Finally, having noted that since its introduction the President of the *Assemblée* had been the main initiator of the S.E.P. he wondered if that had any bearing on the conditions for the organisation of debate or the administration and organisation of the *Assemblée* and on the information for the President provided by the Secretary General.

Mr HONTEBEYRIE said that even if the procedure attempted to transfer part of debate from the plenary to committees every bill had to be voted on in the plenary session. In France, in contrast to Italy where committees could adopt "minor bills", committees could not vote on bills. The examination in the plenary session was indispensable. One of the reasons why committees could not vote on a government or a private members' bill was the fact that their work was conducted in camera. There was in France an unwritten principle according to which the plenary session took place in public, publicising the date of the debate being ensured by the publication of the minutes in the official journal, the presence of the media, and possibly the public, in the benches reserved for this purpose. To the extent that, without being of a secretive character, committee debates were not in public, it would be difficult to envisage the adoption of bills in committee. However, the Assemblée had introduced a provision in their rules which allowed committees to organise the publicising of their work in ways decided on by the committees' bureaux. This was particularly so as to get the nature of the committees' work known by the press. The enlarged Committee mentioned at the beginning of the communication was not a special committee. It was a permanent committee ordinarily charged with the examination of a government or private members' bill. The Committee was open to members of other committees. Mr HONTEBEYRIE explained that it was the Conference des Presidents, which met on Monday morning, which examined bills coming on to the Orders of the Day for the next three weeks. More concretely, colleagues of the Secretary General consulted their colleagues on the committees to establish the draft Orders of the Day and then every Monday the Secretary General met the Director of the Office of the President and proposed to him the introduction of the simplified examination procedure when it was judged necessary. The Director of the President's Office could also provide suggestions according to the wishes of the President. ~

Mr MYTTENAERE (Belgium) warmly thanked Mr HONTEBEYRIE for his communication. He had noted that the procedure could allow for the freeing up of time and the strengthening of the work of committees. In the Belgian House of Representatives the work of committees was public, that is to say it was open to the media and members of the public. He asked for what reason the initiative in the simplified examination procedure so frequently rested with the President of the Assemblée. What about the presidents of the political groups? He also asked in a hypothetical instance where a committee rejected a bill could the government return to the simplified examination procedure? He asked more detail on the presence of government in the work of committees, what members of the government were involved? Finally he said that the Belgian Parliament had tried to hold back the shuttle of bills between the two houses by abolishing the general debate when a bill was returned from the other chamber.

Mr HONTEBEYRIE said that with the exception of certain committees of inquiry the work of committees was not secret. The bureaux of the committees decided upon the process for publicising the work of committees. All the work of committees was minuted. Their reports, which were written documents, also ensured publicity for their work. The Rules of the Assemblée also provided that debate in the plenary session could not take place if the report of the committee had not been distributed. One of the explanations for the preponderance of the President's initiative in the application of this procedure was the fact that President Fabius had been the originator of the reform both in its first incarnation in 1991 and then again in 1998. He was therefore personally attached to it and introduced it as frequently as possible so that it might become part of parliamentary custom and life. Furthermore, the government avoided intervening in the internal organisation of parliamentary work. As for the presidents of the groups, they did not appear as yet to have integrated the use of this procedure into their habitual ways of thinking. The Government could be represented in the work of committees by a minister or by a junior minister. In the case of the rejection of a private members' bill by a committee the Assemblée would be called upon to vote on the principle of the passing of the articles. In the case of a positive vote, nothing hindered the use of the simplified examination procedure but that had never occurred. Finally, he welcomed, not without a touch of envy, the reform in the Belgian Parliament which had resulted in the abolition of the general debate during the passage of the bill between the two houses. By contrast, in French parliamentary procedure, procedural motions such as the general debate could again last for several hours on the return of the text at second reading.

Mr GEORGIEV (Bulgaria) asked what had been the consequences of the simplified examination procedure on the work of committees. He in particular wanted to know if the preparatory work had been improved and if committees were giving more time to public sessions.

Mr HONTEBEYRIE said that in conformity with the provision in the Rules each committee was master of its own work. Committees knew in advance the procedure which was to be used. They were therefore invited to give greater depth to their work. They did not always do so because this procedure was often applied to relatively unimportant bills. He recognised that it was in the development of the work of committees that the procedure had had the least effect.

Mr OUEDRAOGO (Burkina Faso) asked if this procedure could be applied in the case of the establishment of an ad hoc committee or special committee.

Mr HONTEBEYRIE said that it could although it should be noted that special committees were for the most part constituted for the examination of

bills of particular importance or for bills which related to matters within the competence of a number of committees. Even if it were legally possible therefore, in practice it was contrary to the spirit of the reform which applied to bills which were of secondary importance.

Mr ALBA NAVARRO again thanked Mr HONTEBEYRIE for his interesting communication.