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Answers to questionnaire: Finland



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Part 1: Input mechanisms *prior* to the drafting of legislation

A) Input from the courts

1. Are there any general mechanisms in your Member State for the courts, and more specifically the highest courts, to provide solicited or unsolicited input or advice in the phase before legislation is drafted?

A general comment on the questions: There is no clear borderline in Finland between the stages prior to drafting and after the legislation has been drafted. An example: Already a committee or a working group set by a ministry or by the whole cabinet may ask various bodies, experts and stakeholders, also e.g. the Supreme Administrative Court (below SAC), to assess a preliminary draft, and after the final proposal of the committee has been submitted to the ministry, a wide range of stakeholders and experts are usually heard by the ministry. Whether there has been a prior committee or not, the ministry may also hear a wide range of experts and stakeholders on its intended-to-be-final proposal to the cabinet, but, also at this stage, amendments are often made due to the then feedback. And finally, after the bill has been introduced in the parliament, also the select committee (at stake) of the parliament, having heard expert and stakeholder opinions, may propose amendments to the bill, and that also quite often takes place. Normally the amendments by a select committee are finally accepted as such by the plenary session of the parliament, and only at the end you may speak of a really final draft.

There is no comprehensive mechanism. It is nevertheless common in the practice that the ministry in charge for a legislative project provides, among others, the Supreme Court and/or the SAC with an opportunity to comment the draft bill at stake. If not asked, the court may express its opinion on its own motion, but this is not quite usual. Normally, the SAC concentrates on procedural questions and other questions relevant to the judiciary, resource aspects included, as well as on constitutional items and legislative cohesion.

It is also possible, although not habitual, that individual judges are appointed as members of ministerial law drafting committees, either representing the court or as experts in a personal capacity.

After a bill has been introduced in the parliament, the responsible select committee often invites the SAC to express its opinion, either in writing only or also by inviting a representative of the SAC, in practice one of the justices, to attend the meeting of the committee.

Pursuant to Section 99 of the Constitution Act, the SAC and the Supreme Court may submit proposals to the Government for the initiation of legislative action. This takes place rather seldom in practice, by the SAC less than once a year.

If so:

- a. Are the courts consulted structurally or incidentally at this stage, and in what way? Is case law for example consulted?

*See above. There have been some ministerial drafts where the opinion of the SAC has not been asked for, although it would have been needed. It is possible that the SAC is not at all informed on the finished draft and is hence also unable to give an opinion on its on motion.
- Case law may, when needed, be referred to, in the opinion statements of the SCA.*

- b. Does feedback from the courts go directly to the legislator or indirectly to advisory bodies which can then decide to pass this on to the legislator?

See above.

- c. To what extent do the courts themselves take the initiative to directly or indirectly advise the legislator or draw attention to the quality of legislation, for example by means of unsolicited advice, a response to a public consultation, or a contribution on that subject to the annual report?

See above. The annual report is not used for these purposes.

- d. What aspects of the quality of the legislation are specifically addressed and can you give an example?

Systemic problems regarding the legislation in a larger context, procedural questions (In Finland, details of administrative judicial procedure are often regulated by special laws, constitutional questions, fundamental and human rights, EU law, possible new need for court resources.

- e. To what extent is the given input public?

All.

If not:

- f. Do you think input mechanisms for the courts would be desirable at this stage, and in what form?

The present situation is satisfactory. However, there are cases where the evidently useful hearing of the SAC has been omitted. Otherwise, a more comprehensive and deep-going approach would require more resources than we now can afford. There is too often a very short time for giving the answers. The cabinet hurry also makes that the input is not always properly analysed and taken into account. In more than only few cases the ministerial haste to decide on the final bill has resulted in problems in the parliamentary select committee, or, in the worst case, finally in the application of the act in force.

- g. What is the basis (for example, constitutional, statutory or unwritten law) for the existing mechanisms?

Regarding ministries and the cabinet, mainly habitual administrative practice and guidelines on law-drafting by the Ministry of Justice.

2. Are there objections or risks attached to the formal consultation of the courts at the stage before legislation is drafted? If so, what are they? How can they be resolved?

In principle, a very strong standpoint on (especially substantive) law-to-be, and in particular on a controversial one, could later on result in partiality (incapacity) of the judge at stake, but this is more theory than practice, especially because the courts avoid taking such standpoints in their opinions.

3. Are there objections or risks attached to giving unsolicited advice at the stage of the drafting of legislation, for example by means of an unsolicited opinion, an annual report or publication? If so, what are they? How can they be resolved?

No observations.

B) Input from advisory bodies

4. Are there any general mechanisms in your Member State for advisory bodies to give solicited or unsolicited input or advice at the stage before legislation is drafted?

In the Finnish practice, no formal borderline between (formally recognized) advisory bodies and others exists. The same hearing mechanisms generally regard all.

At large, the mechanisms for the hearing of other stakeholders (other authorities, various associations, municipalities, regions etc.) are same than those for courts. It is also possible that some lower courts are heard. At committee or ministerial stage, special weight is in practice given to the opinions of the Ministry of Justice, usually written by the Law Drafting Department of that Ministry, although even this is not obligatory or comprehensive.

An independent Council of Regulatory Impact Analysis was established at the Prime Minister's Office in December 2015. The Council may issue statements on law proposals and on their regulatory impact assessments. The Council aims at improving the quality of bill drafting and, in particular, the impact assessment of government proposals. It also aims to develop the overall bill drafting process including the scheduling and planning of government proposals and bill drafting. In April 2016, the Government appointed the Council for its first term of office running from 15 April 2016 to 14 April 2019. The government plenary session appoints a chairperson and a maximum of eight members to the Council of Regulatory Impact Analysis. The Council then elects two vice-chairpersons from among its members. The term of the Council is three years and its membership appointments are based on personal expertise. While serving as members of the Council, the persons may not represent any stakeholder organisation but they may be employed by such organisations.

The Council has no formal status in legislative procedures. The role of the Council in practice remains to be seen. It still seems to be specifying its role.

If so:

- a. Are the advisory bodies consulted structurally or incidentally at this stage, and in what way?

Mainly on an ad hoc basis.

- b. To what extent do the advisory bodies themselves take the initiative to advise the legislator or draw attention to the quality of legislation, for example by means of unsolicited advice, a response to a public consultation, a publication or a contribution on that subject to the annual report?

Difficult to assess generally. The Chancellor of Justice has recently criticized the quality level of cabinet legislative proposals for insufficient attention on constitutional aspects, especially regarding fundamental rights and obligations.

- c. What aspects of the quality of legislation are specifically addressed and can you give an example?

See b above.

- d. To what extent is the given input public?

At least mainly public.

If not:

- e. Do you think such input mechanisms for advisory bodies at this stage would be desirable, and in what form?

No particular needs.

- f. What is the basis (for example, constitutional, statutory or unwritten law) for the existing mechanisms?

Regarding ministries and the cabinet, mainly habitual practice and guidelines on law-drafting by the Ministry of Justice.

5. Are there objections or risks attached to the formal consultation of advisory bodies at the stage before legislation is drafted? If so, what are they? How can they be resolved?

To maintain a good practice, a balance between various stakeholders and a sufficient representation should be targeted.

6. Are there objections or risks attached to advisory bodies giving unsolicited advice on the drafting of legislation, for example by means of an unsolicited opinion, a publication or a contribution on the subject in the annual report? If so, what are they? How can they be resolved?

No observations.

C) General

7. Are there any general or specific input mechanisms in your Member State (except for those for the courts and advisory bodies) at the stage before legislation is drafted, for example public consultation via the internet or otherwise?

See B 4 above. – Open access websites for free comments have been used at the initial stage of some law drafting projects.

8. Have you any additional or other remarks about input mechanisms before legislation is drafted?

Part 2: Input mechanisms *after* legislation has been drafted

A) Feedback from courts

9. Are there any formal or informal feedback mechanisms in your Member State for the courts, and more specifically the highest courts, to provide solicited or unsolicited input or advice *after* legislation has been drafted and some experience has been gained with implementation and enforcement?

See 1 A above. There is no clear borderline in Finland between prior to drafting and after the legislation has been drafted.

If so:

- a. Are the courts consulted structurally or incidentally at this stage, and in what way? Is case law for example consulted?

See Part 1, 1 A 1.

- b. Does feedback from the courts go directly to the legislator or indirectly to advisory bodies which can then decide to pass on the feedback to the legislator?

Directly, if asked.

Pursuant to Section 77 of the Constitution Act, an Act adopted by the parliament shall be submitted to the president of the republic for confirmation. The president shall decide on the confirmation within three months of the submission of the Act. The President may obtain a statement on the Act from the Supreme Court or the Supreme Administrative Court. In practice, this only takes place in exceptional situations.

- c. To what extent do the courts themselves take the initiative to directly or indirectly advise the legislator or draw attention to the quality of legislation, of the lack of it, for example by means of unsolicited advice, a response in a public consultation, or a contribution on that subject to the annual report?

If "legislator" means ministry or cabinet, comments on the own motion of the SAC are possible. Regarding the parliament (in practice: the select committees), opinions are expressed only when asked.

- d. What aspects of the quality of the legislation are specifically addressed and can you give an example??

See Part I, A 1 d and B 4 b above.

- e. What is the reply if a problem arises in the practical implementation of the legislation that results in an acute increase in the workload of the (highest) court?

Negotiations with the Ministry of Justice on resources. Also the parliament may be informed, if heard for this or more general items.

- f. To what extent is the given feedback public?

Generally public.

- g. If feedback is given (solely) by judgment by the court, how is this done (for example obiter dictum, prospective ruling)?

At times through published rulings (outcomes and/or reasoning).

If not:

- h. Do you think such feedback mechanisms for the courts would be desirable, and in what form?

Hard to say.

- i. What is the basis (for example, constitutional, statutory or unwritten law) for the existing mechanisms?

A combination, but largely the habitual practice.

10. Are there objections or risks attached to the formal consultation of courts at the stage after legislation has been drafted? If so, what are they? How can they be resolved?

See Part 1, 1 A 2.

11. Are there objections or risks attached to drawing the attention of the legislator, unsolicited, to shortcomings in the quality of legislation, including its soundness and implementability, for example by means of an annual report or publication? If so, what are they? How can they be resolved?

No observations.

B) Feedback from advisory bodies

12. Are there any formal or informal feedback mechanisms in your Member State for the advisory bodies to provide solicited or unsolicited input or advice *after* legislation has been drafted and some experience has been gained with implementation and enforcement?

See 1 A above. There is no clear borderline in Finland between prior to drafting and after the legislation has been drafted.

If so:

- a. Are the advisory bodies consulted structurally or incidentally in this phase, and in what way?

See Part 1, 1 A 1.

- b. To what extent do the advisory bodies themselves take the initiative to advise the legislator or draw attention to the quality of legislation, or the lack of it, for example by means of unsolicited advice, a publication or a contribution on that subject to the annual report?

If “legislator” means ministry or cabinet, comments on the own motion of the body at stake are possible. Regarding the parliament (in practice: the select committees), opinions are expressed only when asked.

- c. What aspects of the quality of legislation are specifically addressed and can you give an example?

See Part I, B 4 b above.

- d. To what extent is the given feedback public?
At least mainly public.

If not:

- e. Do you think feedback mechanisms for advisory bodies at this stage would be desirable, and in what form?

Perhaps.

- f. What is the basis (for example, constitutional, statutory or unwritten law) for the existing mechanisms?

As regards the selection of the bodies to be heard, partly: habitual practice, and partly: ad hoc discretion.

13. Are there objections or risks attached to formal feedback from advisory bodies at the stage after legislation has been drafted? If so, what are they? How can they be resolved?

No observations.

14. Are there objections or risks attached to advisory bodies giving unsolicited advice on the quality of legislation, including its soundness and implementability, for example by means of an annual report or publication? If so, what are they? How can they be resolved?

No observations.

C) General

15. Are there any general or specific input mechanisms in your Member State (except for those for the courts and advisory bodies) at the stage after legislation has been drafted, for example public consultation via the internet or otherwise?

No general mechanisms. The parliamentary select committees often hear a large variety of various groups and stakeholders.

16. Have you any additional or other remarks about feedback mechanisms after legislation has been drafted?

No.