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van State



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“Better Regulation”

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Answers to questionnaire: Norway



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ACA Europe Questionnaire Better regulation – answers from Norway

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?

Drafting of bills are done in the following way in Norway:

A bill is introduced by the Government in the form of a Proposition. The proposition is the product of thorough preparatory work. In the case of a major item of legislation or an extensive revision of existing law, the Government generally appoints an expert committee or commission to study the matter. The commission submits a report including a draft bill to the relevant ministry.

The Ministry usually sends the report out for comments – these are so called hearings. In this way, all relevant government agencies, organizations, institutions and associations are given the opportunity to state their opinions. The courts and other advisory bodies may also provide input or advice at this stage of the drafting. When comments from the consultation round have been received, the Ministry prepares the proposition. This is first presented to the King in Council, and, if approved there, it is then sent to the Storting.

A Private Members' Bill is drafted by the representatives themselves, possibly with the assistance of the parliamentary party group staff or an external legal expert. A Private Members' Bill is formally presented by the member to the Storting at the beginning of a sitting, in the same way as a proposition from the Government.

As follows from the explanations above, the courts, advisory bodies etc. do not provide input or advice in the phase before legislation is drafted. The general mechanism is that such input and advice would be provided for after the first draft has been made.

If so:

...

If not:

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

The current system in Norway, with input after the first draft of new legislation has been made, seems to function quite well as it is. The input may be the same although it is coming at a later stage, and not seldom there are extensive changes made after the first draft of the bill. We do not doubt, however, that opening up for input mechanisms also before the first draft is made, may have its advantages.

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

The basis for drafting of bills in general, follows from constitutional law, see the constitution Sec. 76 and the following. The details of the mechanisms, as well as when it comes to regulations rather than statutes etc. follows from statutory and unwritten law. The Planning and Building Act of 2008 has for instance in Sec. 5-2 rules regarding consultation and public scrutiny.

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?

As the current system does not open up for input before the first draft of the new legislation is made, we do not have the experience to state our opinion on risks and objections at an earlier stage.

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?

N/A

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?

Advisory bodies and courts give input at the same stage in Norway. We refer to A) above for the questions here.

If so:

...

If not:

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

Please see our answer under A).

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

Please see our answer under A).

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?

N/A

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?

N/A

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?

No. Do note our comment on Private Members' Bill under part A) above, though.

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

No.

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?

In Norway, the courts generally speaking may not give their opinion on topics or on legislations in general outside the specific cases that are brought to them by the plaintiffs/appellants. The courts may though in a judgment/decision/order express their more general opinion about the relevant legislation in the case. See also our answer under question 12.

If so:

....

If not:

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

We are of the opinion that the current system seems to work quite well, but such feedback mechanisms that are known to us from other countries do no doubt also have their benefits.

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

The current mechanisms, or rather the lack of those, follows from constitutional and statutory law.

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?

N/A

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?

N/A

h. 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?

Generally speaking, advisory bodies, interest groups, scholars and others will often debate new legislation both before and after the implementation, and also when some experience has been gained. In addition, evaluations of legislation are often performed when sufficient time has passed to allow for experience to be gained. A new hearing will then take place and will open up for comments and feedback from amongst others advisory bodies. Other organisations, committees and others may also participate in the hearings. Although the system in theory opens up for also input from the courts, the courts normally do not state their general opinions, as follows from our answer under questions 9. Exceptions may be if the subject of the hearing is legislation concerning mainly the procedures before the courts rather than substantive law within a certain field of law.

If so:

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

See our answer above.

- 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?

N/A. The Supreme Court is not in a position to answer this question.

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

N/A

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

The outcome of hearings are in general public.

If not:

- e. ...

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?

In our opinion, there are few risks attached to formal feedback from advisory bodies on a general level.

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?

To our knowledge, there are few such risks attached.

i. 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?

We refer our answer under question 12.

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

No.