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Answers to questionnaire: Hungary

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

A) Input from the courts

In Hungary, there are no general mechanisms for the courts, and more specifically for the supreme judicial forum, to provide solicited or unsolicited input or advice in the phase before legislation is drafted, but there are some specialised mechanisms for that purpose.

Since 2012, the entry into force of the Fundamental Law of Hungary, the country's new constitutional act, the central administration of the courts is to be performed by the President of the National Office for the Judiciary (NOJ). According to Act no. CLXI of 2011 on the Organisation and Administration of Courts, the President of the NOJ in his/her overall central administration responsibility, may introduce bills of legislation concerning the judicial system to the entity entitled to initiate legislation, shall provide an assessment of bills of legislation related to the judiciary – excluding municipal decrees – relying on an analysis of the opinions of the courts, obtained through the NOJ, and shall be invited to participate in that part of the meetings of the parliamentary committees when bills of legislation concerning the judicial system are debated. In practice, before providing an assessment, the President of the NOJ usually sends the bills of legislation relating to the judiciary to the President of the Curia of Hungary, the country's supreme judicial forum, hence, the latter is given the opportunity to indirectly participate in the process.

In addition, a professional judicial network operates at the Curia, which may provide advice and opinion for the President of the NOJ to contribute to the implementation of EU law before the latter provides the above mentioned assessment.

The President of the NOJ, in his/her overall central administration responsibility, shall order – at the request of the minister in charge of the judicial system – the collection of data at the courts required for the preparation of legislation; and shall provide information – at the request of the minister in charge of the judicial system – relating to the organisation and administration of the courts and on issues related to judicial practices to the extent necessary for legislation purposes, upon obtaining the opinions of the courts if deemed necessary.

At the Curia, jurisprudence-analysing working groups are responsible for examining the courts' case-law. These working groups sum up their opinion and findings in summary reports. If the relevant conditions are fulfilled, the head of the Curia's relevant department, relying on the findings of the summary report, may file a motion for launching a uniformity decision procedure, or may lodge a legislative initiative with the President of the NOJ through the President of the Curia.

When it comes to drafting a code of great importance, codification committees participate in the legislation. These committees are composed of political and legal experts, and may include some of the judges of the Curia. For example, in the last few years such codification committees have contributed to the drafting of the Code of Civil Procedure and the Code of Administrative Procedure.

According to Act no. CLXII of 2011 on the Legal Status and Remuneration of Judges, judges may be assigned to the competent ministry to take part in the preparation of legal regulations. Judges assigned to a ministry retain their judgeship status, however, they are not allowed to participate in the adjudication of cases.

Additional formal input mechanisms for the courts would not be desirable at this stage, because the functioning of the Hungarian State is based on the principle of the separation of powers, and there is no tradition of other mechanisms, even if a democratic and constitutional state would function better if the various branches of power could learn from one another. The above mentioned specialised mechanisms ensure proper participation for the judiciary in the legislation.

B) Input from the advisory bodies

In Hungary, there are no general mechanisms for advisory bodies to give solicited or unsolicited input or advice at the stage before legislation is drafted, because advisory bodies for that purpose do not exist.

Experts involved in such advisory bodies may guarantee an increased emphasis on professional aspects during the drafting of legislation. For the sake of enhancing professional aspects during the drafting phase, institutionalised forums should be established for the involvement of experts, and – if necessary – the participation of experts in the parliamentary procedure should also be ensured.

C) General

Act no. CXXX of 2010 on Legislating determines the basic requirements of legislation (e.g. assuring the professional content of pieces of legislation and their compliance with the legal system, *ex ante* impact assessment, the obligation to provide reasoning for the draft etc.). As regards social dialogue, local governments or other (state) organ(isation)s may give their opinion on an act of law only if they are expressly authorised by the Legislating Act to do so and only with regard to draft legislation in respect of their legal status or scope of duties.

Act no. CXXXI of 2010 on Public Consultation includes detailed rules about the above mentioned system. In accordance with the Act, draft legislation must be published – simultaneously with its submission for consultation to government organs – in such a way that, adjusted to the purpose and coming into effect of the draft, there is sufficient time available for the genuine evaluation of the draft and the presentation of opinions, and for the person in charge of the preparation of the legislation to assess the received opinions and proposals on the merits. Within the framework of the general consultation procedure, anybody may express his/her opinion about the draft and conception published with the aim of submission for social consultation through an e-mail address indicated on an official website. A confirmation must be sent about the receipt of opinions. During the direct consultation procedure, the minister in charge of drafting the legislation concludes strategic partnership agreements in particular with representatives of non-governmental organisations, churches, professional and scientific organisations, national minority self-governments, interest representation organisations, public bodies and higher educational institutions. The terms and conditions and the framework of co-operation shall be laid down in an agreement between the strategic partner and the minister that shall remain in force for a fixed term but no longer than the end of the Prime Minister's term of office. By means of such agreements, the minister may establish close co-operation with those organisations, which are prepared to engage in mutual collaboration and represent a wide range of social interests in drafting legislation, or carry out scientific activities in particular areas of law. The Act also lays down that the minister may also engage others – besides the strategic partners – in direct consultation on the

legislative draft concerned and, upon request, allow participation in commenting on the particular legislation. With regard to consultation with strategic partners and other organisations engaged in consultation, the Act provides that in the event of consultation with personal attendance, the parties shall be notified in writing of the time of the meeting in due time for preparation purposes. A summary shall be made public on the website of the ministry concerned. The summary shall contain the positions represented by the strategic partner and their rationale. It is also an essential rule that at the request of the parliamentary committee debating the proposed legislation, written comments made by the strategic partner in the course of direct consultation shall be made available.

In addition, Ministerial Decree no. 12/2016 MvM (of 29 April 2016) on Impact Assessment describes the rules of *ex ante* impact assessment (budgetary impact, administrative impact, other impacts).

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

A) Feedback from courts

There are no general formal or informal feedback mechanisms in Hungary for the courts, and more specially for the highest court, to provide solicited or unsolicited input or advice after legislation has been drafted and some experience has been gained with implementation and enforcement.

Nevertheless, there are specialised formal feedback mechanisms for the courts, and more specifically for the highest court to provide input after legislation.

Pursuant to Act no. CLXI of 2011 on the Organisation and Administration of Courts, the Curia shall perform jurisprudence-analyses of final decisions to examine and explore the courts' case-law. To that end, jurisprudence-analysing working groups are set up to examine the judicial practice of the courts. The topics of examination are defined on an annual basis, following a consultation with the departments of the Curia, by the President of the Curia. These working groups sum up their opinion and findings in summary reports. The Curia's competent department discusses the summary report and if it agrees with the report's content, the head of the working group publishes the report's conclusions on the website of the Curia. If the relevant conditions are fulfilled, relying on the findings of the summary report, the head of the Curia's relevant department may file a motion for opening a uniformity decision procedure or may lodge a legislative initiative with the President of the NOJ through the President of the Curia. These working groups may include not only judges, but other legal experts as well.

The President of the NOJ, in his/her overall central administration responsibility, shall order – at the request of the minister in charge of the judicial system – the collection of data at the courts for monitoring the enforcement of law.

There are some formal constitutional feedback mechanisms for the courts.

The Constitutional Court may, at the initiative of (among others) the President of the Curia, review the conformity of any legal regulation with the Fundamental Law.

If a judge, in the course of the adjudication of a concrete case, is required to apply a legal

regulation that he perceives to be contrary to the Fundamental Law or which has already been declared to be contrary to the Fundamental Law by the Constitutional Court, he has to suspend the judicial proceedings and submit a petition for declaring that the legal regulation or a provision thereof is contrary to the Fundamental Law, and/or the exclusion of the application of the legal regulation is contrary to the Fundamental Law.

Additional feedback mechanisms for the courts would not be desirable at this stage, since the above mentioned specialised mechanisms function well, and there is no tradition of other mechanisms.

B) Feedback from advisory bodies

There are no formal or informal feedback mechanisms in Hungary for the advisory bodies, and more specially for the highest court, to provide solicited or unsolicited input or advice after legislation has been drafted and some experience has been gained with implementation and enforcement, because advisory bodies for that purpose do not exist.

C) General

Ministerial Decree no. 12/2016 MvM (of 29 April 2016) on Impact Assessment describes the rules of not only *ex ante*, but *ex post* impact assessment as well. The rules on *ex ante* assessment also have to be applied in the case of *ex post* assessment, but there are no rules on quality control, transparency, consultation during the assessment process, and the publication of reports.

However, there are formal constitutional feedback mechanisms. A person or an organisation affected by a concrete case may submit a constitutional complaint to the Constitutional Court if, due to the application of a legal regulation contrary to the Fundamental Law in their judicial proceedings, their rights declared in the Fundamental Law were violated, and the possibilities for legal remedy have already been exhausted or no possibility for legal remedy is available.