

Raad  
vanState



**Seminar organized by the Council of State of  
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and ACA-Europe**

***“Better Regulation”***

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**Answers to questionnaire: Slovakia**



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## **ACA Europe Questionnaire Better regulation**

### **Better regulation**

The legislature, the national administration and the judiciary are dependent on each other to function well. The democratic constitutional state functions better if the various branches of state power learn from one another. Good judgments also depend on good legislation. The legislative authority can improve the quality of legislation if it is aware of the practical experiences of judges and their advisory bodies in implementing and enforcing the law, and of any shortcomings. These experiences can be incorporated into the legislative process through various mechanisms thus engendering a feedback loop, enabling practical experiences to contribute to the quality of legislation. Quality here means juridical/legal quality as well as whether the legislation is sound, effective and enforceable. The Member States have developed different mechanisms for this.

Whether legislation is sound and effective is a theme commanding attention at national and European level. The present European Commission announced that the Better Regulation programme would be a policy objective when it entered office in 2014, containing as it does an extensive package of reforms to streamline EU decision-making and make it more transparent, and to improve the quality of new legislation. Instruments such as impact assessments and policy evaluations are intended to play a vital role in the effective and efficient implementation of EU policy. Impact assessment involves the systematic prior analysis of various policy options and the accompanying costs and benefits, including the mapping of the administrative burden. The aim is to arrive at reasonable, realistic regulations that can be properly implemented and enforced. Public consultation will also be used in evaluating existing legislation.

Wider public consultation is being or has been introduced as part of the effort to ensure that legislation is more open and transparent. Any citizen or interested party is entitled to give feedback and make suggestions during a period of eight weeks after the Commission has approved a proposal; these are then included in the legislative debate in the European Parliament and the Council. It turns out that these consultations are used notably by private stakeholders, including lobby groups.

### **National input mechanisms**

Different instruments or mechanisms exist at national level (formal and regulated as well as informal) for allowing input, solicited or unsolicited, to be given on future and existing legislation by legal institutions and independent advisory bodies (both advisors on legislation and bodies that advise on the quality of legislation based on their position or expertise). Examples that spring to mind are instruments used prior to legislation being drafted ('consultation') and those used in response to existing legislation ('feedback'). On 11 December 2015 an ACA seminar in Brussel discussed consultation *prior* to drafting as an example of the first category, which above all focuses on the usefulness of and need for the proposed legislation and the technical aspects. No clear picture is available of other input mechanisms in the phase of legislative drafting, or in the subsequent phase of implementation and enforcement.

In light of the European Commission's Better Regulation programme, such a survey would be desirable, and for the ACA extremely interesting. Hence on 15 May 2017 an ACA seminar is being planned on the subject of Better Regulation. By way of preparing for the seminar we are asking you to complete this questionnaire so we can find out more about existing forms of consultation and feedback in the context of experiences with case law and advisory opinions.

## **ACA ‘better regulation’ questionnaire**

The questionnaire will be used to produce an overview of the various formal and informal input mechanisms in the Member States. What instruments for consultation and feedback do independent advisors and the courts use, irrespective of the individual way these functions are organized in the various Member States, and which ones are adopted by the national legislator?

Independent advisors are advisors or advisory bodies who, based on their position or expertise, give advice, solicited or unsolicited, about the quality of legislation. This may involve legal expertise in general or with respect to a particular legal specialism or area of interest. This therefore also includes Councils of State insofar as they advise on legislation. The courts are courts or advisory bodies comprising judges who give advice, solicited or unsolicited, about the quality of legislation in the form of a judgment or otherwise.

The focus of the questionnaire is on the quality of legislation, and how both independent advisors and the courts can contribute to it. Legislation is defined as generally binding regulations. This is not just a matter of verifying the juridical quality of the legislation (for example constitutional or technical legal scrutiny), but also of assessing whether it is sound, effective and enforceable. Hence the questionnaire expressly does not limit itself to the institutional tasks of those ACA members with a dual function as a Council of State, and goes further than the matters discussed at the ACA seminar in Brussels on 11 December 2015. It also examines the other formal and informal mechanisms used by independent advisors and the courts for input about the quality of legislation, for example through an annual report or publications.

The questionnaire distinguishes between two phases.

The first phase is the legislative drafting stage, when consultation takes place. Input is given through the normal advisory process. However, it would be interesting to know more about the different ways in which advisors and courts are or have been involved at this stage. The main aim is to give an overview of the formal and informal instruments currently used in the Member States.

The second phase covers feedback after the legislation has come into force and some practical experience of it has been gained. Again, the priority is to take stock of the formal and informal instruments currently used by advisors and the courts in the various Member States to provide feedback about their experiences.

The findings may spark a discussion about the need for improved or new input mechanisms to enhance the quality of legislation.

Please give as many concrete examples as you can when answering the questions.

The questionnaire comprises the following questions:

### **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?

Yes, it is regulated:

a) by Act No. 757/2004 Coll. on courts.

Important provisions:

In particular, Collegium of the Supreme Court shall discuss the Supreme Court's draft report on the application of laws and other generally binding regulations, and the initiatives for new legal regulation.

Plenary of the Supreme Court shall discuss reports on the application of laws and other generally binding regulations and provide the Minister of Justice of the Slovak Republic with suggestions for new legal regulation.

b) by Act No. 400/2015 Coll. on the creation of legal regulations and on Collection of Laws of the Slovak Republic.

Important provision:

Prior to the drafting of legislation, the submitter shall publish a pre-information about the draft proposal for the new legislation on the web-portal to inform the public and the bodies of public administration. In the pre-information, the submitter shall briefly specify the fundamental objectives and principles of the draft proposal, assess its current state and specify the estimated start date for the consultation process.

If so:

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

Occasionally, in particular when the Collegium of the Supreme Court identifies the problematic issues of the legal practice.

- 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?

With regard to the mechanism pursuant to Act No. 757/2004 Coll. on courts – the initiative for the amendment goes to the Minister of Justice. As regards the Act No. 400/2015 Coll. on the creation of legal regulations – the feedback can go directly to the submitter.

- 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?

This occurs mostly on a case-by-case basis, especially when the application of laws and regulations is threatened with serious difficulties.

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

- e. Certainty, clarity, enforceability, public interest protection and protection of human rights

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

As amended by the Act No. 400/2015 Coll. on the creation of legal regulations, the procedure is public. All comments and the given feedback is therefore being published. Although the reports on application of the regulations are not classified, the courts are not obliged to publish them. They are available on request.

If not:

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

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

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?  
We are not aware of any risks. The courts would appreciate the ability to have a bigger influence on the drafting of legislation.
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?

If a judge gives his opinion individually, he might form his own legal opinion on the legal regulation and could be regarded as biased in the case of a later ruling.

## **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?

If so:

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

Yes, it is regulated.

by Act No. 400/2015 Coll. on the creation of legal regulations and on Collection of Laws of the Slovak Republic.

Important provision:

Prior to the drafting of legislation, the submitter shall publish a pre-information about the draft proposal for the new legislation on the web-portal to inform the public and the bodies of public administration. In the pre-information, the submitter shall briefly specify the fundamental objectives and principles of the draft proposal, assess its current state and specify the estimated start date for the consultation process.

- 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?

It is different in each sector, according to the number of advisory bodies operating in the public administration, to the content of legal regulation and to the possible interference with the rights and legal status of the advisory bodies.

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

Certainty, clarity, enforceability, public interest protection and protection of human rights

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

As amended by the Act No. 400/2015 Coll. on the creation of legal regulations, the procedure is public. All comments and the given feedback are therefore being published.

If not:

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

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

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?

We are not aware of such risks.

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?

We are not aware of such risks.

### 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?

Prior to some draft bills, a so called legislative intent is drafted and approved. The legislative intent is being drafted either in the case of laws with an estimated major impact on economic and financial sector (e.g. the State budget is taken into account), or if the government so decides and the legislative intent becomes a binding basis for the preparation of the draft bill. The legislative intent approved by the government of the Slovak Republic represents a **binding basis for the preparation of the draft bill** and should therefore be developed **to address all basic, factual issues, and to enable the technical interpretation (in §§) of the already agreed content.**

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?

Yes, during the legislative drafting, participation of the Supreme Court in the consultation process is obligatory.

If so:

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

All proposals for the new legal regulation are being submitted to the Supreme Court to give comments.

- 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.

- 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?

Since the courts (not only the Supreme Court, although their status in the process itself is different) have ability to comment on the draft bills, it is not possible to use other measures with regard to the legislative procedure.

- d. What aspects of the quality of the legislation are specifically addressed and can you give an example??
- e. Certainty, clarity, enforceability, public interest protection and protection of human rights
- f. 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?  
Firstly, the Court itself takes administrative measures (change of the Court's working schedule). In the next step usually follows the drafting of the proposal for the change of legislation. The Legislator is willing to help the Court with the increase of workload, however, the changes themselves are lengthy, also with regard to the process for the approval of proposals for the change of legislation and the legislative procedure itself.
- g. To what extent is the given feedback public?  
The whole legislative process after the proposal for the change of legislation has been submitted is public.
- h. If feedback is given (solely) by judgment by the court, how is this done (for example obiter dictum, prospective ruling)?

It can be part of the reasons of the decision.

The Supreme Court issues the opinions and decisions of the Supreme Court published in the Collection of opinions of the Supreme Court and decisions of lower courts of the Slovak Republic, which is ordinarily issued ten times a year. The decisions published in the Collection are not generally binding, but are instructive for the courts in similar matters.

If not:

- i. Do you think such feedback mechanisms for the courts would be desirable, and in what form?
  - j. What is the basis (for example, constitutional, statutory or unwritten law) for the existing mechanisms?
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?  
We are not aware of any risks.
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?  
We are not aware of any risks.

## **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?  
Advisory bodies may take part in the so called Consultation process in developing of the legislative procedure.
- If so:
- a. Are the advisory bodies consulted structurally or incidentally in this phase, and in what way?

Consultation process is public and principally everyone can comment the draft of legislation. Persons concerned to the proposal should be initiative in this phase.

- 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?

It's completely different. Occasionally they are very active, If the proposal concerns the area of their activities. Every advisory bodies usually employees professionals on legislative matters.

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

Certainty, clarity, enforceability, public interest protection and protection of human rights

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

All consultation process after publication of the draft of the bill is public including remarks to the draft

If not:

- e. Do you think feedback mechanisms for advisory bodies at this stage would be desirable, and in what form?
- f. What is the basis (for example, constitutional, statutory or unwritten law) for the existing mechanisms?

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?

There is a risk that their remarks will be ignored, because the advisory bodies have lower status in the Consultation process as compared with the ministries for example.

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?

We don't have information to reply this question.

### **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?

Consultation process is enough. It's public and open for everyone.

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