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vanState



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Answers to questionnaire: Sweden



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The Supreme Administrative Court of Sweden

ACA Europe Better regulation

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

A) Input from the courts

1 a and b

When the Swedish government wants to introduce a new law, the Government appoints a government inquiry to investigate the issue at hand. A committee or an individual is tasked with investigating the conditions for the measures the Government wants to introduce. The framework for the assignment is set out in terms of reference. When the inquiry is complete the inquiry chair or committee drafts a report. The report is then sent for consultation (input or advice) to relevant government agencies, courts of first and second instance, organisations, municipalities and other stakeholders, which can submit responses. Government agencies including courts are obliged to answer to such a request for consultation, organisations and other stakeholders are not. Such a solicited input or response is sent directly to the Government.

Public authorities, companies, organisations, individuals etc. always have the option to give unsolicited input or advice on a report.

The two supreme courts are normally consulted only on such matters that concern them directly. Their opinion is expressed at a later stage, when a draft bill is then sent to the Council on Legislation.

The Council on Legislation scrutinizes draft bills which the Government intends to submit to Parliament. The draft bill is considered with regard to whether the proposed provisions are in conformity with the Constitution and international obligations and whether the law is consistent with the legal order in general. The Council also expresses its view as to the general quality of the provisions proposed. The Council consists of three justices of the Supreme Court and three justices of the Supreme Administrative Court. The Council gives its opinion in a public statement. Its views are however not binding on the Government or Parliament.

1 c

The Supreme Administrative Court has not taken initiative to directly or indirectly advise the legislator or draw attention to the quality of the legislation prior to the drafting of legislation. It may safely be assumed that other courts do not take such initiatives either.

1 d

When the Government sends a report for consultation all aspects of the report and proposed legislation can be commented on. However, when courts comment on reports the main focus is to scrutinize the legal aspects of the proposed legislation, for example on matters of clarity, precision and coherence.

1 e

The input is public immediately when sent to and received by the Government.

1 f

The general consultation procedure and the scrutiny by the Council on Legislation normally works well and we see no need to introduce other input mechanisms.

1 g

In the Constitution it is stated that in preparing Government business the necessary information and opinions shall be obtained from the public authorities concerned. Information and opinions shall be obtained from local authorities as necessary. Organisations and individuals shall also be given an opportunity to express an opinion as necessary (the Instrument of Government, chapter 7 art. 2).

The work of the Council on Legislation is also regulated in the Constitution (the Instrument of Government, chapter 8 art. 20-22).

2

It could of course be discussed whether a court which has given a favorable opinion on a certain piece of legislation within a formal consultation procedure later could be hesitant to set aside that same piece of legislation in a judicial review procedure. It is probably fair to say that in Sweden this would be regarded as a theoretical risk. Any judge assigned to a concrete case must be assumed to have the integrity to adjudicate without being bound by an earlier expression of opinion by the court before the law was adopted.

3

To give unsolicited advice would probably by most judges be considered to be an improper intervention in the legislative process and could risk compromising the dignity of the court.

B) Input from advisory bodies**4 a**

See above, question 1 a and b.

4 b

There are no data available to the Supreme Administrative Court on to what extent advisory bodies have taken such initiative.

4 c

As mentioned above, the Council on Legislation scrutinizes the legal aspects of the suggested legislation including all aspects of the quality of the legislation.

There are no restrictions on what aspects of the legislation advisory bodies are allowed to comment on. Therefore examples are incalculable.

4 d and f

See above, question 1 e and g.

5

No.

6

No.

C) General**7**

There is no consultation via the Internet; however as mentioned above public authorities, organisations etc. have the opportunity to give unsolicited input or advice on a report. Input is preferably sent to the Government via e-mail.

8

No.

Part 2: Input mechanisms *after* legislation has been drafted**A) Feedback from courts**

There are no formal feedback mechanisms for the courts, including the highest courts. However, as the Supreme Administrative Court interprets legislation in its rulings any difficulties concerning how to apply certain provisions will be described in the court's reasoning, sometimes – though rarely – in a statement *obiter dictum*.

Swedish courts have a responsibility to not apply provisions in conflict with the Constitution or other superior statutes as well as laws having been adopted with disregard for proper procedure. This form of judicial review of course has an immediate impact and necessitates revised legislation.

The Supreme Administrative Court can under certain circumstances examine whether a decision made by the Government is unlawful. This procedure is known as legal review. A prerequisite for legal review is that the decision involves an examination of the complainant's civil rights or obligations as referred to in Article 6.1 in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

B) Feedback from advisory bodies

12 a – f

Feedback on a more regular basis is provided by the Swedish National Audit Office (the Swedish supreme audit institution, SAI). It is an independent institution directly under Parliament. It conducts financial and performance audit, including inter alia compliance and efficiency.

Feedback may also be provided by different inspection authorities within various areas of public life, such as the Health and Social Care Inspectorate and the Swedish Schools Inspectorate. Their findings may include implementation and enforcement of legislation.

Finally, feedback may be provided in decisions in individual cases handed down by the Parliamentary Ombudsmen. The ombudsmen may approach the Government or the Parliament with recommendations when they discover legislation to be inadequate.

The input or advice of the National Audit Office (and the Parliamentary Ombudsmen) are of course solicited in the sense that their mission is to scrutinize the work of public authorities and at the same time unsolicited since they independently decide what to audit, how to conduct the audit and what conclusions to draw from the audit.

All reports and decisions by the aforementioned institutions are made public.

13

There are no formal consultations of advisory bodies after legislation has been drafted.

14

No.

C) General

15

No. The public is able to send in input on legislation to the Government, but there is not any specific input mechanisms via the Internet or otherwise.

16

No.