

*Legislative methodology
&
General legislative policy*

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Jakarta, 25-29 January 2010

Legislative theory or legisprudence

The study of the phenomenon legislation from a theoretical and a practical perspective comprises in any case:

- legislative methodology
- Legislative procedure
- Legislative technique

Legislative methodology

Legislative methodology deals with the content of legislation; it proposes a methodical way of elaborating normative contents and develops practical tools facilitating the different steps or phases of this methodical approach.

Legislative procedure

Legislative procedure: the the process of elaborating, enacting and implementing legislation, and the various kinds of rules that are applicable

Legislative technique

Legislative technique: the formal aspects of legislation, with the different types of normative acts, with their formal structure, etc.

Methodical approach – Steps (1)

- 1) the analysis and definition of the problem that is supposed to be solved by legislative action;
- 2) the determination or clarification of the goals of legislation;
- 3) the examination of legal instruments or means that can be used to solve the problem and the choice of such instruments (based - among other things - upon a prospective evaluation of their possible effects);

Methodical approach – Steps (2)

- 4) the drafting of the normative content;
- 5) the formal enactment;
- 6) the implementation;
- 7) the retrospective evaluation;
- 8) if necessary or opportune, the adaptation of legislation according to the results of the retrospective evaluation.

Instruction 7 of the Directives (1)

Before deciding to introduce a regulation, the following steps shall be taken:

a. knowledge of the relevant facts and circumstances shall be acquired;

b. the objectives being aimed at shall be defined in the most specific accurate terms possible;

Instruction 7 of the Directives (2)

c. it shall be investigated whether the objectives selected can be achieved using the capacity for self- regulation in the sector(s) concerned or whether government intervention is required;

Instruction 7 of the Directives (3)

d. if government s necessary, it shall be investigated whether the objectives in view could be achieved by amending or making better use of existing instruments, or, if this proves impossible, what other options are available;

e. the various options shall be compared and considered with care

Instruction 8 of the Directives

In determining what form government intervention to achieve an objective should take, account shall be taken where possible of the capacity of the sector or sectors concerned for self-regulation.

Instruction 9 of the Directives

- *In comparing various possible of government intervention aimed at achieving an objective, account shall be taken in any event of the following:*
- *a. the extent to which a regulation can be expected to help achieve the objective in question;*
- *b. the side effects of a regulation;*
- *c. the costs of a regulation to the government on the one hand and to individuals, companies and institutions on the other hand.*

Instructions 10 – 18 of the Directives

Also the other instructions of para. 2.1 of the Directives give some materials for a legislative methodology, such as about the durability of a regulation (instr. 10), the enforceability (instr. 11), the need to restrict conflicts (instr. 12), the costs (instr. 13), the proportionality of disadvantages (instr. 15) and about the norms as regards administrative powers (instr. 17).

General legislative policy

General legislative policy comprises the general principles and standards for the realisation of legislation and gives a frame of references to those who are involved in the legislative work.

General legislative policy - aim

The aim of general legislative police is to bring about lasting improvement in the quality of the legislation and with that, the quality of government and government policy.

General legislative policy aims to a great extent also at less and simpler legislation.

General legislative policy *- different perspectives -*

From the end of the 1970s there is a permanent attention for general legislative police, the quality of legislation and deregulation, but alternately from different perspectives:

- the economic and financial perspective
- the institutional and societal perspective

General legislative policy

- Policy papers -

- 1990 - Legislation in Perspective
- 2000 - Quality of Legislative Policy
- 2004 - A practical Legal System
- 2008 - Trust in Legislation

United Kingdom

In the UK the theme of legislative policy is currently “the quest for better regulation”.

The framework for action now includes principles, regulatory impact assessments, simplification plans, and post-implementation reviews.

UK – Principles of good regulation

Principles of good regulation:

- proportionality
- accountability
- consistency
- transparency
- targeting

Regulatory Impact Assessment

The role of RIA is to provide a detailed and systematic appraisal of the potential impacts of a new regulation in order to assess whether the regulation is likely to achieve the desired objectives.

The central purpose of RIA is to ensure that regulation will be welfare-enhancing from the societal viewpoint

Impact assessments - UK

Regulatory Impact Assessments have for many years been a key tool in helping improve the quality of regulation and reduce unnecessary burdens on business.

UK Impact Assessments - Outline (1)

- Summary: Intervention & Options
 - What is the problem under consideration?
Why is government intervention necessary?
 - What are the policy objectives and the intended effects?
 - What policy options have been considered?
 - When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

UK Impact Assessments - Outline (2)

- Summary: Analysis & Evidence
 - Average annual costs
 - Average annual benefits
 - Key assumptions, sensitivities and risks
- Evidence Base
- Specific Impact Tests

Regulatory impact assessments - EU

- The European Commission introduced an impact assessment system in 2002.
- Impact Assessment (IA) is a process aimed at structuring and supporting the development of policies.
- Impact assessments are necessary for the most important Commission initiatives.

EC Impact Assessment Guidelines

Key Analytical steps:

1. Identifying the problem
2. Define the objectives
3. Develop main policy options
4. Analyse the impacts of the options
5. Compare the options
6. Outline policy monitoring and evaluation

Integral Assessment Framework (The Netherlands)

In the meantime an interdepartmental working party, chaired by the Ministry of Justice, has developed an Integral assessment framework for policy-making and legislation.

It comprises all steps of the process of policy development, and

it brings together all instructions and norms for good quality policy and legislation

EU, OECD and UK websites on better regulation and regulation reform

- http://ec.europa.eu/governance/better_regulation/index_en.htm
- http://ec.europa.eu/governance/impact/index_en.htm
- http://www.oecd.org/topic/0,3373,en_2649_37421_1_1_1_1_37421,00.html
- <http://www.berr.gov.uk/whatwedo/bre/index.html>