

NORDIC LEGISLATIVE CO-OPERATION

PROGRAMME AND PRINCIPLES FOR NORDIC LEGISLATIVE CO-OPERATION (2002-2005)

I Introduction

Nordic legislative co-operation, first and foremost in the judicial sector, is based on a long, wide tradition dating back more than a hundred years. The legislative co-operation is now expressly rooted in the Nordic Co-operation Agreement of 1962 (the Helsinki Agreement).

The Helsinki Agreement stipulates that citizens in other Nordic countries must, as a general rule, be put on an equal footing with the individual country's own citizens in connection with the drafting of Acts and other legal rules in a Nordic country. Furthermore, the Nordic countries are to endeavour to achieve the greatest possible uniformity of law in the area of private law, promote uniformity of law in the legislation on criminal acts, offences and penal sanctions and aim to co-ordinate other legislation where this is expedient.

Through their legislative co-operation, the Nordic countries try to promote fundamental joint principles in Nordic legislation in accordance with a Nordic community of values. Another objective of Nordic legislative co-operation is to promote uniformity of law that facilitates the connections between the inhabitants in the Nordic countries. Under their legislative co-operation, the Nordic countries seek to ensure uniform implementation in the Nordic countries of EU/EEA legislative acts and other international obligations in the judicial sector.

The Nordic Council of Ministers, which consists of the Nordic Ministers of Justice, is responsible for the legislative co-operation in the judicial sector. The co-operation is based on a *co-operation programme*, which lays down the overall priorities and the administrative framework for the co-operation. The co-operation programme is filled in by the Ministers of Justice's annual priorities laid down in an *action plan*. The co-operation programme and the action programme are followed up by the Nordic Committee of Senior Officials for Legislative Issues.

II Basic Principles for the Nordic Legislative Co-operation

The Nordic legislative co-operation is to consolidate the democratic decision-making processes in the Nordic countries and promote due process protection for those who live and reside in the Nordic countries. Through co-operation on the contents and wording of the codes, the legislation is to be made more accessible to the inhabitants. Common historical traditions and values facilitate the work to promote uniformity of law that can strengthen communication, solidarity and unity in the Nordic countries. At

the same time, there is room for different solutions where there are actual differences, different views on values or a need to gain new experience.

1 Nordic Utility

The Nordic legislative co-operation is to attach importance to the principle of “Nordic utility”. As a general rule, the co-operation is therefore only to comprise areas in which a Nordic utility value can be achieved.

In the evaluation of whether an activity meets the requirement for “Nordic utility”, importance is attached to the following:

- that it is an activity that would otherwise be carried on under national auspices where demonstrable positive effects can be achieved for the inhabitants in the Nordic countries through joint Nordic solutions
- that it is an activity that shows and develops Nordic cohesion
- that it is an activity that improves Nordic competence and competitiveness.

The requirement for “Nordic utility” does not necessarily mean that the co-operation is to result in uniformity of law in the Nordic countries. Clear and extensive co-operation schemes may in themselves be of “Nordic utility”. The legislative co-operation consists partly in an exchange of knowledge and factual information, for example about existing legislation and Bills in the Nordic countries, for the use of the other countries, which may individually have limited resources available for the legislative work.

2 Uniformity of Law

The aim of the objective of uniformity of law is that the Nordic countries are continuously to work to establish uniform legislation.

However, uniformity of law does not necessarily mean that the rules are to be identical in detail. Nordic uniformity of law also entails the establishment of a uniform legislative structure and agreement on the fundamental principles that apply in an area of law.

The extent of, need for and nature of the Nordic legislative co-operation may vary in different areas of law. In private law, it has traditionally been possible to achieve extensive Nordic uniformity of law, which should be continued and developed further. There is an increasing need for Nordic cohesion within criminal law and law enforcement. In areas in which uniformity of law cannot be expected – for example because of differences in moral values or the institutional framework – exchange of information and experience may be expedient.

3 Concretisation of the Objective

In all Nordic legislative co-operation, it must be made concrete which objective the co-operation aims to achieve. It should, in particular, be clear whether the objective is problem solving, maintenance and development of Nordic uniformity of law or whether it is limited to more general co-ordination through mutual exchange of information between the Nordic countries.

The form of and participation in the co-operation are to be organised in such a way that the specific objectives are met optimally.

III Nordic Legislative Co-operation and Development of International Law

Nordic legislative co-operation must today be seen in the light of the development of international law. Through the EU/EEA and the fundamental principles laid down in the European Convention on Human Rights, an extensive joint code is established for large parts of Europe. There is also an increasingly wide development of international or global rules in fields that were previously reserved for national legislation.

The Nordic legislative co-operation is to provide effective contributions to the development of rules in the EU/EEA and in other international forums. Nordic co-operation during the preparation of new international codes is to contribute to improving the quality of new rules. Nordic uniformity of law may increase the influence of Nordic legal values in Europe. Well-functioning judicial co-operation in the Nordic countries will strengthen the co-operation in Europe. Nordic legislative co-operation is to ensure that new EU/EEA codes and new international commitments that the Nordic countries undertake are incorporated into the Nordic countries' legislation effectively.

IV Co-operation in the Judicial Sector outside the Legislative Co-operation

In addition to the Nordic legislative co-operation, Nordic co-operation comprises the whole judicial sector, including the police and the prosecution service, with crime prevention and policy on crime. At the administrative level, liaison meetings are held between the Nordic countries' judicial administrations, the Directors of Public Prosecution in the Nordic countries and the Prison and Probation Departments.

V Organisational and Economic Framework

1 Organisation of the Co-operation

The Ministers of Justice has the overall responsibility for the co-operation in the judicial sector. To fill in the details in the overall co-operation

programme, they adopt an annual action plan, which states measures of special priority for the coming year. At their annual meeting, the Ministers of Justice also discuss current political issues of a joint Nordic nature, including with a view to entering into Nordic co-operation in order to preserve Nordic uniformity of law and find joint Nordic solutions to specific problems.

The Committee of Senior Officials for Legislative Issues consists of senior officials who are responsible for the legislative work in each of the Nordic countries' Ministries of Justice. The Committee of Senior Officials is responsible for following up on the Ministers of Justice's initiatives, including follow-up on the adopted action plan. The Committee is responsible for appointing working groups and taking the initiative for projects and joint Nordic co-operation, and it prepares the annual meeting of the Ministers of Justice.

The Committee of Senior Officials is responsible for ensuring that the Nordic legislative co-operation takes place in accordance with the Council of Ministers' decisions and that it generally functions satisfactorily. The Committee regularly discusses which subjects it may be expedient to discuss within the framework of Nordic legislative co-operation and ensures that there are Nordic contact persons.

Working groups may be set up, in accordance with requirements, to perform tasks under the legislative co-operation. The *formal* working groups are set up by the Committee of Senior Officials on the basis of the Ministers of Justice's decision, and they work under the Nordic Council of Ministers. The task of the working groups is to conduct discussions, prepare reports, hold seminars, etc. in accordance with their mandate. The working groups may receive financing of specific projects in accordance with requirements.

The Committee of Senior Officials for Legislative Issues and the working groups co-operate, as required, with the Council of Ministers' other committees of senior officials and the working groups set up under these committees. The Committee of Senior Officials for Legislative Affairs may appoint members of such cross-sectoral working groups.

In addition to the formal working groups under the Council of Ministers, the Nordic Ministers of Justice have set up other working groups of a more permanent nature. These *informal* working groups work independently of the Council of Ministers and receive instructions directly from the Ministers of Justice and report back to each individual country.

2 Exchange of Information about National Legislative Measures

Twice a year, the Committee of Senior Officials conducts a review of the Nordic Ministries of Justice's legislative programmes. One of the purposes of this review is to limit the risk of a country having come so far in its plans for new legislation – without the other Nordic countries having been informed – that the possibility of Nordic co-operation is reduced.

The Committee of Senior Officials handles routine exchanges of reports on Acts, Propositions, etc. and sets up co-operation between the specific administrative authorities regarding application of law.

3 Distribution of Project Funds

Within the framework of the annual budgets, the Committee of Senior Officials may provide support for the implementation of conferences, seminars, research or studies of political or legal importance in the judicial sector.

As a general rule, the financing is aimed at activities that have as their purpose to implement or contribute to the implementation of the Ministers of Justice's annual priorities in the action plan and the implementation of the Presidency programme for the present year and previous years. Support may also be granted for other measures within the current Nordic legislative co-operation.

4 Integration of Equality Considerations

In the organisation of the Nordic legislative co-operation in the judicial sector, it will be ensured, where possible, and in accordance with the co-operation Ministers' guidelines for equality between the sexes, that both sexes are represented by at least 40% on committees and working groups. Importance will be attached to handling equality considerations in connection with the allocation of project funds and commencement of initiatives in the judicial sector.

VI Reporting and Evaluation

Formal working groups under the Committee of Senior Officials must submit an annual report on the results achieved, including a situation report on the implementation of the action plan and initiatives for joint Nordic measures.

The reporting takes place on the Council of Ministers' form for situation reports and is part of the preparation of the judicial sector's annual reporting of commenced and implemented measures. To the extent necessary, the results of the work are presented to the annual meeting of the Ministers of Justice.

The implementation of the co-operation programme is evaluated before the end of the programme period with a view to the preparation of the next co-operation programme.

ACTION PLAN WITH PRIORITIES FOR NORDIC LEGISLATIVE CO-OPERATION IN THE JUDICIAL SECTOR 2002-2003

1 Introduction

In connection with the overall co-operation programme for Nordic legislative co-operation in the judicial sector, the Ministers of Justice adopt an annual action plan with specific priorities, which is to form the basis of the co-operation for the coming year. The Committee of Senior Officials for Legislative Affairs is responsible for implementing the action plan and reporting to the Ministers of Justice about special initiatives that have been taken and results that have been achieved.

The plan of action comprises both prioritised areas and the current legislative co-operation between the Ministries of Justice. Areas that have been special priority areas will often subsequently become part of the current co-operation. The current co-operation makes it easier to take up new issues as they arise. Special initiatives and activities are directed at the areas of priority, often with projects financed via the budget of the Council of Ministers.

2 Special Priority Areas and Projects 2002-2003

The Nordic Ministers of Justice attach importance to continuing and strengthening, as required, the co-operation on measures aimed at fighting

- child and youth crime
- sexual abuse of children
- trafficking in women
- organised crime, including money laundering
- crime with racist or Nazi elements.

The report from the working group on the prevention and fighting of youth crime will be followed up with initiatives for exchange of information about and, if required, an evaluation of national measures in the area. The Criminal Law Task Force's report from June 2001 on the fight against child pornography on the Internet will form the basis of an evaluation of joint Nordic measures to fight sexual abuse of children, in particular the dissemination of child pornography on the Internet. It will be evaluated how the final report from the Working Group against Racist and Nazi Crime is to be followed up.

The aim is to implement the following special projects:

- 1 The aggrieved party's (the victim's) position in the criminal procedure

There is a report, "Kontradiksjon og verdighet", written by Anne Robberstad Dr. of Laws (Norway), on the aggrieved party's position in the

criminal procedure, which is governed differently in the Nordic countries. The report also highlights weak points and strong points of the different systems. The report is to provide a basis for a Nordic seminar aimed at an evaluation of continued Nordic co-operation on law reform.

Budget: DKK 150,000

Schedule: 2002-2003

2 Penalty Levels in the Nordic Countries

The sentences imposed in individual cases give rise to criticism by the general public at regular intervals. The aim is to conduct a study of the penalties for selected crimes such as homicide, maltreatment, sexual abuse, theft and drugs-related crimes. The issue of alternative sanctions is also to be evaluated. If the study shows that the countries have different penalties for similar crimes, it may be of interest to examine the reasons for this. To begin with, a preliminary project has been commenced. Based on the findings of the preliminary project, a decision will be made on any further follow-up.

Budget: DKK 150,000

Schedule: 2001-2003

3 Terrorism

The aim is to have a joint Nordic evaluation of how international obligations to take antiterrorist measures have been implemented in the Nordic countries' legislation, including, if possible, a definition of what constitutes terrorism. The work will be performed in a separate working group. The plan is also to hold a seminar.

Budget: Not fixed so far

Schedule: 2002-2003

4 The Legal Position of Freedom of Speech

The position of freedom of speech in relation to other fundamental values (for example protection of privacy and protection against racial discrimination) and seen in the light of new media forms raises new legal issues or may provide a new angle on old issues. The aim is to hold an inter-Nordic seminar to discuss these issues and provide a basis for exchange of experience.

Budget: Not fixed so far

Schedule: 2002-2003

5 Nordic Family Law

A study to examine the practical disadvantages of differences in family legislation in the Nordic countries was commenced in 1998. The results of the extensive study are expected to be published in the summer of 2002 in the form of three separate books on marriage legislation, parents and children and succession and administration of estates respectively.

The Nordic Family Law Task Force will be involved in the follow-up based on the study. The task force will be asked to evaluate the need to initiate Nordic co-operation in the areas covered by the study.

Budget: DKK 100,000

Schedule: 2001-2002

6 Legislative Policy

The role of the Nordic co-operation in legislative policy should be evaluated in relation to the objectives in the Helsinki Agreement, which will be 40 years old in 2002. The evaluation and proposals for any improvements in the co-ordination of legislative policy will be discussed at an inter-Nordic seminar with subsequent publication of a book. The seminar will be held in Finland in September 2002.

An initiative will also be taken for an evaluation of the national legislature's freedom of action, including in relation to international courts of law. Matters of interest include an examination of the restrictions that are imposed on the legislatures as a result of the European Court of Justice and the EFTA Court as well as the European Court of Human Rights. The European criticism that has been directed at the use of travaux préparatoires in Nordic legislative technique (which is more extensive than in many other EU Member States) is included in the evaluation. The aim is to hold a seminar in Norway.

Budget: DKK 150,000 (for the seminar in Finland)

Schedule: 2002-2003

7 Nordic Extradition Acts

Work will be commenced on a revision of the Nordic Acts on extradition in criminal cases seen in the light of the EU's framework decision. It will subsequently be decided whether the work is to be financed by the individual countries or via the budget of the Council of Ministers.

3 The Current Co-operation

1 Preparation of Legislation

The traditional current legislative co-operation takes place partly as informal co-operation between the Ministries at senior official or civil servant level, partly in specially set up working groups. In some cases, a specialist area comes under different Ministries in the Nordic countries so that different Ministries are involved in the work. A large part of the legislative co-operation concerns private law (including family law, the law of torts, company law, consumer law and transport law). In recent years, co-operation on criminal law and criminal procedure has played an increasingly important role.

When a country considers new legislation in an area that traditionally forms part of Nordic legislative co-operation, it should inform the other countries about the plans and take an initiative for a further discussion and any co-ordination, either through the Committee of Senior Officials or by direct informal contact.

Guidelines have been prepared for ensuring that the Nordic legislative co-operation is evaluated during the drafting of the legislation in the individual country. In connection with Nordic consultation, it must be ensured that the country in question benefits from a Nordic perspective in its drafting of the legislation in question and that the other countries are informed and are given an opportunity, if required, to influence the legislative work, depending on the nature and type of the legislation in question.

2 EU/EEA Issues

The co-operation on EU/EEA issues is an important part of the Nordic legislative co-operation, seeing that an increasingly large part of new legislation stems from the EU/EEA.

Priority has been given to co-operation on and joint analysis of proposed and adopted legislative acts in the EU/EEA at as early a stage as possible in the decision-making process in the EU. The most important initiatives for EU/EEA legislative acts are reviewed every six months for an evaluation of the need for Nordic consultation during the drafting of the legislative acts in the EU bodies or in connection with the incorporation of adopted legislative acts into national legislation. The review takes place with support from a schematic summary of EU/EEA legislative acts that are being dealt with in the Nordic Ministries of Justice with a statement of status and Nordic contact persons.

3 Co-operation in Other International Forums

The work in other international forums, for example the Council of Europe and the UN, also exerts an influence on the legislative work. Part of the Nordic legislative co-operation concerns the promotion of Nordic contact, discussion and, as required, co-ordination at senior official and civil servant level as well as at political level in connection with such international negotiations.

4 Co-operation with the Baltic States

In recent years, the Nordic and Baltic Ministers of Justice have held a meeting every second year. The next meeting is scheduled to be held in 2003. In order to prepare the meetings and plan the Nordic-Baltic co-operation, a special working group has been set up at senior official level.

The overall objective for the co-operation with the Baltic States is to support the development of democracy, promote due process of law and promote a mutual understanding of the national legal systems. The specific co-operation between the Nordic countries and the Baltic States has focused on assistance to build up institutions and fight crime (including the development of a good legal system, crime prevention, the fight against organised crime and the fight against trafficking in women).

There are also other forums for co-operation between the Nordic countries and the Baltic States in the judicial sector. Special mention should be made of the co-operation in the Baltic Sea Task Force, which comprises police co-operation and matters relating to prosecution functions, customs and border control, and which also includes other countries that are contiguous to the Baltic Sea. Promotion of contact between Nordic and Baltic participants at meetings in other international forums, for example the Council of Europe, is another example of such co-operation.

4 Working Groups

The work in both the formal and the informal working groups will continue and will, among other activities, be based on the above tasks and assignments.

The following formal working groups have currently been set up:

- The Nordic-Baltic Working Group for Nordic-Baltic Co-operation (current mandate)
- The Working Group against Racist and Nazi Crime (final report in the autumn of 2002)
- The Working Group on Research into European Integration Law (mandate until 31 December 2002)

as well as the following informal working groups:

- The Family Law Task Force
- The Criminal Law Task Force.