



Programme and principles for Nordic judicial co-operation

I Introduction

Nordic legislative co-operation, primarily within the framework of co-operation between the Ministers of Justice, is based on a tradition dating back more than a century. The co-operation is rooted in the Nordic Co-operation Agreement of 1962 (the Helsinki Agreement).

Legislative co-operation is a tool for the Nordic countries in their work to promote fundamental joint principles in Nordic legislation in accordance with a Nordic community of values.

The Helsinki Agreement stipulates that, when legislation and other legal rules are drafted in one of the Nordic countries, the citizens of the other Nordic countries should be placed on an equal footing with the citizens of the country in question. The Nordic countries should also seek to achieve the greatest possible uniformity of law in the area of private law, promote uniformity of law in legislation on criminal offences and penal sanctions, and endeavour to co-ordinate other legislation where expedient.

Legislative co-operation is further aimed at promoting the uniform implementation of EU/EEA law and other international obligations in the judicial sector in the Nordic countries.

Co-operation between the Ministers of Justice is based on a co-operation programme that lays down the overall priorities and administrative framework for the co-operation. The co-operation programme is supplemented by concrete initiatives and objectives in one-year Presidency programmes.

II Principles for Nordic legislative co-operation

1. Basic values

Nordic legislative co-operation is intended to strengthen the democratic decision-making processes in the Nordic countries and promote the due process of law for those who live and reside there. Co-operation on the content and wording of laws and rules is intended to make legislation more accessible to citizens. Shared historical traditions and values facilitate the work to promote uniformity of law that can strengthen communication and solidarity in the Nordic countries. There is also room for divergent solutions

where there are real differences, different value perceptions or a need to gain new experience.

2. Nordic utility

Nordic legislative co-operation should set great store by the principle of “Nordic utility”. Therefore, co-operation should basically cover areas where Nordic utility value can be achieved.

When an evaluation is made of whether an activity satisfies the “Nordic utility” requirement, importance is attached to the following:

- its being an activity that would otherwise take place at national level and where positive effects can be achieved for the citizens of the Nordic countries through joint Nordic solutions
- its being an activity that demonstrates and develops Nordic cohesion
- its being an activity that enhances Nordic competence and competitiveness, and in some cases
- its being an activity that contributes to facilitating the link between the Nordic countries

The “Nordic utility” requirement does not mean that co-operation necessarily has to be aimed at identical rules in the Nordic countries. Clearly defined and developed co-operation routines can also bring “Nordic utility”. Legislative co-operation is thus based partly on exchanging knowledge and factual information, including on existing legislation and draft legislation in the Nordic countries. Such information can be of great benefit in the legislative work of the other countries.

3. Uniformity of law

Legislative co-operation is aimed at Nordic uniformity of law. As mentioned above, this does not mean that rules necessarily have to be identical. Nordic uniformity of law also covers achieving a uniform structure in legislation and agreement on the fundamental principles in an area of law.

The scope of, need for and nature of Nordic legislative co-operation may vary in different areas of law. In private law it has traditionally been possible to a large extent to achieve very considerable Nordic uniformity of law. This co-operation should be continued and developed further. There is also a growing need for Nordic co-operation within criminal law and law enforcement. In areas where uniformity of law is not to be expected – if, for example, moral value perceptions or institutional frameworks are different – the exchange of information and experience may still be expedient.

4. Specifying the objective

The objective of all Nordic legislative co-operation must be made clear. It should be specified whether the objective is problem solving, the maintenance and development of Nordic uniformity of law or more general co-ordination through the exchange of information between the Nordic countries.

Co-operation should be organised with a view to achieving the set objectives in the best possible way.

III Organisational and financial framework for legislative co-operation

1. Organisation of co-operation

The Ministers of Justice have overall responsibility for co-operation. They discuss politically relevant matters of common Nordic interest or need at their annual meeting with a view to initiating Nordic co-operation aimed at maintaining or developing Nordic uniformity of law or otherwise finding joint Nordic solutions where expedient.

The Committee of Senior Officials for Legislative Issues is made up of senior officials with responsibility for legislative work in the Ministry of Justice in each of the Nordic countries. The Committee prepares and follows up on the annual meeting of the Ministers of Justice. It appoints working groups and initiates joint Nordic projects. The main elements of the annual Presidency programmes are discussed by the Committee well before they come into force.

Working groups can be appointed to perform special tasks as part of legislative co-operation. They are appointed by the Committee of Senior Officials on the basis of the decisions made by the Ministers of Justice and work under the Nordic Council of Ministers. Within their mandate the working groups normally have the task of discussing and possible drafting proposals to do with specific subjects, producing reports, holding seminars, etc. As and when necessary, working groups may receive funding for special projects.

The Committee of Senior Officials co-operates as and when necessary with the Nordic Council of Ministers' other committees of senior officials and the working groups appointed by them. The Committee of Senior Officials can appoint members to such cross-sectoral working groups.

The Nordic Ministers of Justice have also appointed a number of working groups of a more permanent nature. These working groups – principally the Nordic Family Law Expert Group, the Nordic Criminal Law Expert Group and a working group on the future of the EU – work independently of the Council of Ministers, receiving instructions directly from the Ministers of Justice and reporting back to each individual country.

2. Co-operation on legislation

Traditional ongoing legislative co-operation takes place partly in the form of informal co-operation between departments and ministries at senior office level and partly in separate working groups. When a matter comes under several specialist departments, all the departments affected are involved in the co-operation. A large part of legislative co-operation concerns the area of private law (e.g. family law, tort, company law, consumer law and transport law).

The Committee of Senior Officials is responsible for Nordic legislative co-operation taking place in accordance with the ministers' decisions, and the Committee examines the legislative programmes of the Nordic Ministers of Justice as and when necessary with a view to assessing whether they contain legislative initiatives that are of special relevance to Nordic co-operation.

If a country is considering introducing new legislation in an area that is traditionally covered by Nordic legislative co-operation, the other countries should be informed and the initiative should be taken for detailed discussion and possible co-ordination through the Committee of Senior Officials or

informal contacts. This ensures that the country in question can benefit from a Nordic perspective in its preparations and that the other countries are informed, possibly giving them the opportunity to undertake their own initiatives or influence the work, all depending on the nature of the matter.

The Committee of Senior Officials ensures that white papers and draft legislation are exchanged by the countries on an ongoing basis and then takes the initiative as and when necessary for co-operation between the relevant administrative authorities as far as the implementation of legislation is concerned.

3. Dialogue with the Nordic Council

The Nordic Ministers of Justice seek a dialogue with the Nordic Council on matters of common interest, including with regard to the preparation and revision of the co-operation programme and the preparation of the Presidency programmes.

4. Distribution of project funds

The Committee of Senior Officials has adopted special guidelines regarding how the project budget of the Council of Ministers is to be used. They supplement the overall guidelines adopted by the Nordic Co-operation Ministers. The Nordic Council of Ministers' standard terms and conditions for project contracts contain special provisions for project implementation, etc.

Generally speaking, the Ministers or the Committee of Senior Officials can decide within the annual budget framework to provide funding for conferences, seminars, research or studies of special relevance to the judicial sector.

The principle of "Nordic utility" is crucial in determining whether an activity can be funded under the auspices of the Nordic Council of Ministers. When it comes to funding, priority is given to activities that fall within the co-operation programme and the Presidency programmes of the current and previous years. Funding can also be given to other activities within ongoing Nordic legislative co-operation.

Following a concrete assessment, funding can also be granted for external projects if the "Nordic utility" criterion is considered met.

5. Integration of equality considerations

In the organisation of Nordic legislative co-operation in the judicial sector efforts are made, in line with the Co-operation Ministers' guidelines for equality between the sexes, to ensure that both sexes have at least 40% representation in working groups, etc. Equality considerations are also taken into account when considering applications for project funding.

IV Nordic legislative co-operation and international legislative developments

1. Background

Nordic legislative co-operation now also has to be seen in the context of international legislative developments. An extensive body of rules and regulations has been established for large parts of Europe through the EU/EEA and the fundamental principles of the European Convention on Human Rights. There is increasing internationalisation of rules and

regulations in a number of areas that used to be the preserve of national legislation.

Nordic legislative co-operation should make a major contribution to the development of rules and regulations in international forums. Nordic co-operation should contribute to raising the quality of new rules during the preparatory work for a new body of international legislation. In some cases, Nordic uniformity of law could increase the influence of Nordic legal values in Europe. Smooth-running legal co-operation in the Nordic region would generally be a strength for co-operation in Europe. Nordic legislative co-operation should be aimed at ensuring that new international obligations contracted by the Nordic countries are implemented effectively in the Nordic countries with a view to the continued development of Nordic uniformity of law.

2. Co-operation on EU/EEA issues

An increasing proportion of legislation is originating with the EU/EEA. Co-operation on EU/EEA issues is therefore an important part of Nordic legislative co-operation.

It is essential to co-operate on assessing the consequences of EU/EEA legislative acts at as early a stage as possible in the EU's decision-making process. The most important proposals for EU/EEA legislative acts are examined as and when necessary by the Committee of Senior officials with a view to establishing whether there is a basis for Nordic discussions with regard to the drafting of a legislative act or implementation of the act in national legislation.

There should also be general awareness of the possibility of pursuing a joint Nordic initiative for new EU/EEA legislative acts or amendments to existing EU/EEA legislative acts on the basis of Nordic experience and evaluations in certain areas.

In recent years there has been informal but important and effective legislative co-operation between the Nordic countries with the aim of promoting Nordic uniformity of law in the implementation of community legislative acts such as directives.

Co-operation relates principally to legislative acts that are to be implemented and complied with in all the Nordic countries, that is to say legislative acts that are covered by the EEA Agreement. But broad-based co-operation at the implementation stage can also be useful in the case of legislative acts that fall outside the scope of the EEA Agreement.

Legislative co-operation is often relevant when it comes to legislative acts that allow a certain freedom of action with regard to national legislation, e.g. directives. There is also co-operation on the national legislation needed to ensure that regulations function satisfactorily. In particular, there is co-operation in areas of law where the Nordic countries have a common legal tradition.

Co-operation can start in various ways. In community areas such as family and criminal law the initiative is usually taken by one of the existing Nordic working groups in the area in question. Co-operation can also start informally at senior official level, possibly on the initiative of the Nordic Committee of Senior Officials for Legislative Issues. The Nordic Council of Ministers does not contribute to the funding of these meetings at senior official level.

The same legislative solutions do not have to be chosen in all the Nordic countries. The most important thing is to agree on the construction of the community legislative acts in question.

3. Co-operation in other international forums

Nordic legislative co-operation includes the promotion of Nordic contacts, discussions and, as and when necessary, co-ordination at senior official level and the political level with regard to negotiations in other international forums such as the Council of Europe and the United Nations (UN).

Under the auspices of the Nordic Council of Ministers the Nordic countries also take part in other regional co-operation forums at senior official level such as the Baltic Sea Task Force on Organised Crime, which involves police co-operation, for example. This co-operation also includes other countries bordering the Baltic Sea.

V Co-operation in the judicial sector over and above legislative co-operation

Over and above Nordic legislative co-operation there is ongoing practical co-operation throughout the judicial sector. At administrative level contact meetings, for example, are held between the Nordic countries' court administrations, public prosecutors, the commissioners of police in the Nordic region and the prison service.

VI Co-operation with Estonia, Latvia and Lithuania

The Nordic Ministers of Justice meet with their colleagues from Estonia, Latvia and Lithuania once a year. A contact group has been appointed with the specific task of preparing these meetings. The chairmanship rotates between the countries, and the secretariat function is taken care of by the secretariat of the Nordic Council of Ministers.

Co-operation with the Baltic States used to focus on supporting democratic development in the Baltic States and promoting uniformity of law, but has developed into co-operation between eight equal partners (NB8) based on the understanding that continued and closer regional co-operation is important in an enlarged EU and in relation to third countries.

There is also co-operation on holding seminars for senior officials in the central administration and other authorities, as well as for court employees, etc.

Outside the framework of the Nordic Council of Ministers Nordic-Baltic meetings at senior official level are also held in Brussels with a view to clarifying the need and possibilities for agreeing attitudes to relevant EU legislative acts.

VII Reporting and evaluation

Working groups under the Committee of Senior Officials have to submit an annual report on the results achieved.

Reporting is done using the Council of Ministers' situation reporting form and is part of the drafting of the judicial sector's annual reporting on initiated and completed measures. The results of the work are presented to the Ministers of Justice at their annual meeting to the necessary extent.

This co-operation programme will apply until further notice, but should be evaluated and, if necessary, revised in 2009 at the latest.