

GUIDANCE NOTES ON THE INSTRUCTIONS FOR OFFICIAL STUDIES

INSTRUCTIONS FOR THE PREPARATION
OF CENTRAL GOVERNMENT MEASURES
(OFFICIAL STUDIES)

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Introduction

The guidance notes on the *Instructions for Official Studies of Central Government Measures* (“*Instructions for Official Studies*”) are intended for use in studies of central government measures. The purpose of the guidance notes is to promote good quality in the basis for making decisions on central government measures. It is important for central government measures to be well founded and carefully considered. This implies that a good basis for decision-making shall be established *prior* to making a decision as to which measure should be implemented.

The guidance notes are intended to enhance understanding of the requirements under the Instructions for Official Studies, and make recommendations on how such requirements can be complied with. The contents of the guidance notes are not binding in the same manner as the Instructions for Official Studies, but can serve to supplement and elucidate the contents of the Instructions.

The guidance notes replace the previous guidance notes of March 2016. Most amendments since the previous version are minor clarifications of a pedagogical or editorial nature.¹

The Instructions for Official Studies govern a broad range of central government measures, both small and large. The requirements under the Instructions for Official Studies apply, subject to certain exceptions, to all central government measures with effects beyond internal operations. We here provide guidance on which central government measures fall within the scope of the Instructions, and which are exempted. Furthermore, we provide guidance on what a study shall encompass, at a minimum, and how to determine a suitable level of ambition for the study.

An important principle is that the requirements as to the comprehensiveness and thoroughness of the study will increase with the scope of the measure. This implies that less extensive measures can be subjected to simpler and briefer studies than major measures. The guidance notes provide knowledge on how minor measures should be studied. If the study concerns measures that may have major effects, we refer, in addition, to the expertise offered by the Norwegian Government Agency for Financial Management (DFØ) and to sectoral guidance notes.

Which societal problem does one intend to resolve? Which alternative measures may resolve such problem and bring about the desired state of affairs? What are the expected positive and negative effect of the various measures, and for whom? These are some of the questions that good (advance) studies are intended to shed light on through systematic comparison and assessment of the effects of alternative measures.

We also provide guidance on how the consultation process should be structured. Involving everyone affected by the measure, as well as coordinating views expressed by affected government bodies, is of key importance for ensuring a good quality study. Providing affected parties with an opportunity for presenting their views and submitting input into the study is important for the realisation of democratic rights when government policy is being formulated.

¹ Modifications to the guidance on Questions 3, 4 and 5 under Chapter 2.1.2 are amendments of a particularly substantive nature. In addition, amendments have been made in relation to state-owned enterprises in Chapters 1.2.1 and 1.2.2

The thoroughness and extensiveness of the consultation process should be reasonably attuned to the comprehensiveness of the measure.

The minimum requirements as to the contents of a study shall *always* apply when examining measures falling within the scope of the Instructions for Official Studies. Whether the procedural requirements apply must be examined on a case-by-case basis.

The Ministry of Finance has delegated responsibility for administration of the Instructions and the guidance notes to DFØ. The Ministry of Justice and Public Security is responsible for providing guidance on laws and regulations. The Ministry of Foreign Affairs is responsible for providing guidance on the provisions relating to EEA and Schengen matters.

The guidance notes are intended as a guide to conducting studies. We also refer to other regulations and other guidance notes that may partly be of relevance and use in conducting studies, and partly be binding within their fields.

References and links to sectoral guidance notes, guidelines and other documents of relevance when performing studies, shall be kept as updated as possible. A systematic list of related regulations and guidance notes is posted on the DFØ website (www.dfo.no). We request that new documents be reported to DFØ on an ongoing basis and made available via www.regjeringen.no.

Readership guide

Managerial personnel in central government bodies and others with responsibility for studying central government measures in ministries and subordinate agencies should read [Chapter 1, *Object, Scope and Responsibility*](#). The said chapter provides guidance on the object of the Instructions, on which central government measures fall within the scope of the Instructions, and on who is responsible for compliance with the requirements applicable under the Instructions. Furthermore, that chapter provides guidance on when the Instructions may be derogated from, and on who may make the decision to derogate from these. Chapter 1 also provides guidance on who has administrative responsibility for the Instructions and their guidance notes, including whom those carrying out studies may contact if they are in need of guidance on the Instructions.

[Chapter 2, *Requirements as to the Contents of the Basis for Decision-Making*](#), will be useful to read for those who are going to carry out studies of central government measures. It provides guidance on what are the minimum requirements applicable to studies of central government measures. Moreover, it provides guidance on which criteria to apply in determining a suitable level of ambition for the study. Finally, it provides guidance on when it is required to perform a cost-benefit analysis, and in which cases one may, as an alternative, carry out a simplified analysis.

Those carrying out the study may, for example, represent one government body, or several government bodies may be involved in the study. The study may also be carried out externally by, for example, a government-appointed committee or a consultancy firm, appointed by a government body to conduct a study.

An external party may also carry out the study in collaboration with the responsible government body.

[Chapter 3, *Early Involvement, Presentation and Consultation*](#), is useful reading both for those responsible for the study, and for those charged with carrying out the study. Chapter 3 provides guidance on how those affected shall be involved at an early stage of the study process, on how the study shall be presented before consultation, and on how the actual consultation shall be implemented.

It will be useful for managerial personnel in central government bodies to have a general overview of Chapter 2 and Chapter 3.

For those studying proposed laws and regulations, [Chapter 4, *Laws and Regulations*](#), largely refers to more comprehensive guidance in the guidance notes on legislative technique and the drafting of legislation from the Ministry of Justice and Public Security.

For those responsible for studies of EEA and Schengen matters, [Chapter 5, *EEA and Schengen matters*](#), is useful reading, in addition to Chapters 2 and 3. Chapter 5 provides, *inter alia*, guidance on how to participate in the early phase of the drafting of EU regulatory provisions, on how the Norwegian position is coordinated between ministries in special committees, and on how the basis for decision-making is documented in EEA memorandums.

1. Object, Scope and Responsibility

This chapter provides guidance on the object of the Instructions and on which measures fall within the scope of the Instructions. Furthermore, it provides guidance on who is responsible for compliance with the Instructions, and on who can make the decision to derogate from the provisions in the Instructions. Finally, the chapter provides guidance on who is responsible for administering the Instructions and the guidance notes.

This chapter is of relevance to managerial personnel in central government bodies and others charged with studying central government measures.

1.1 Object

Section 1-1 of the Instructions for Official Studies

The object of the Instructions is to establish a sound basis for making decisions on central government measures by

- identifying alternative measures
- studying and assessing the effects of relevant measures
- involving those affected by the measure, at an early stage of the study process
- coordinating between affected government bodies

It is a further object for Norway's participation in the EEA and Schengen collaborations to be managed in an integrated and effective manner.

1.1.1 What is the object of the Instructions for Official Studies?

The object of the Instructions for Official Studies is to establish a sound basis for making decisions on central government measures. It is important for central government measures to be well founded and carefully considered. This implies that a sound basis for decision-making shall be established *prior* to implementation of any measures.

Good (advance) studies shall describe the societal problem one is looking to solve, and formulate objectives for what one is seeking to achieve. Alternative measures of relevance shall be identified, and expected effects of the measures shall be studied and assessed. The study shall conclude with a reasoned recommendation as to which measure(s) is/are, all in all, best for society. [Chapter 2](#) provides guidance on the requirements as to the contents of the study.

The Instructions stipulate that any parties expected to be affected by the measure shall be involved. Gathering input from individuals, private and public sector businesses, government bodies, organisations and other affected groups is intended to enhance the quality of the basis for decision-making. In order to ensure that relevant input has a real impact on the contents of the study, affected parties should be involved at an early stage of the study process.

The Instructions require the involvement of affected ministries as early as possible in the study process. Other affected parties shall be involved at an early stage to the extent appropriate (cf. Section 3-1 of the Instructions).

The Instructions also require coordination of input and feedback between affected government bodies. Coordination implies that relevant ministries, subordinate agencies, as well as regional and local government bodies, shall be involved at an early stage of the study phase. Coordination may, for example, be necessary to handle societal problems that necessitate measures across various sectors. Coordination is in such cases necessary to establish a joint understanding of the problem and to ensure that the study takes all sectors into account. [Chapter 3](#) provides guidance on the procedural requirements applicable to a study.

Studies shall be available to the general public to the extent compatible with the nature of the matter and applicable provisions of the Freedom of Information Act.

A significant portion of Norwegian legislation is based on EEA-relevant legislation or Schengen legislation enacted by the EU. The Sejersted Committee (Norwegian Official Report NOU 2012:2, *Outside and Inside*) conducted a systematic review of the significance of the EEA Agreement and other agreements with the EU for Norwegian legislation. In 2011, about 600 statutes were in force in Norway, about 30 percent of which included some element of EU/EEA provisions.

Norway is able to contribute to the formulation of policies and regulatory provisions in the EU through participation in expert groups, committees and EU agencies. Norwegian participation shall take place in an integrated and effective manner. This involves, inter alia, early participation in important matters, a sound basis for decision-making and good coordination between ministries. This is facilitated by the Instructions for Official Studies.

1.2 Scope

Section 1-2 of the Instructions for Official Studies

The Instructions govern preparation of the basis for decision-making on central government measures, when carried out by, or at the behest of, central government bodies.

The Instructions also govern involvement with EEA and Schengen legislation, from the identification of new EU initiatives and the formulation of Norwegian positions to inclusion in the EEA Agreement or the Schengen Agreement and their incorporation into Norwegian legislation.

The Instructions for Official Studies do not govern the conclusion of other international treaties.

The Instructions are not applicable when special rules are laid down in laws or regulations, or

1.2.1 What is the scope of the Instructions for Official Studies?

The Instructions for Official Studies govern preparation of the basis for decision-making on central government measures.

The Instructions thus govern a broad range of central government measures, both small and large. The requirements under the Instructions for Official Studies apply, as a general rule, to all central government measures with effects beyond internal operations.

The scope of the Instructions has not been expanded, but is now defined more precisely. It is outlined below which central government measures are exempted from the Instructions.

The Instructions are applicable both when new central government measures are to be studied, and when studying major changes to existing measures. [Chapter 2.1](#) provides more details on the categorisation of measures (under [Question 2: Which measures are relevant?](#)).

It follows from the Instructions that these govern studies conducted by central government bodies, i.e. ministries and subordinate agencies. Furthermore, the Instructions govern studies conducted by a government-appointed committee. The Instructions are also applicable in cases where all or part of the study is conducted by independent legal entities, for example private research institutions, consultancy firms or companies in which central government holds ownership interests, at the behest of ministries or subordinate agencies. In such cases, applicable requirements shall be incorporated into the commissioning document. See [Chapter 1.3](#), which provides guidance on who is responsible for ensuring compliance with the requirements under the Instructions.

The requirements in the Instructions for Official Studies are applicable even if it has already been decided at the political level to implement measures, including specific measures. It follows from Section 2-1 of the Instructions that it is important to clarify effects of potential alternatives before implementing politically adopted measures. The threshold for derogating from the Instructions should be high, and there should be weighty grounds for derogation (see Chapter 1.4.1). For matters to be circulated for consultation, any derogation shall be disclosed in the consultation paper.

As far as compliance with petition resolutions of the Storting is concerned, the Instructions will also apply to studies conducted in such context, but the Instructions need to be applied within the scope defined by the Storting. This clarification implies that the study requirements occasioned by petition resolutions of the Storting need to be considered on a case-by-case basis. It is the responsibility of the relevant ministry to assess such requirements. The ministry must in that regard pay heed to the duty of the cabinet minister and the Government to provide the Storting with all information necessary for the proceedings on the matters its submits, as well as the prohibition against submitting incorrect or misleading information to the Storting or its bodies, cf. Article 82 of the Constitution.

Furthermore, the Instructions apply irrespective of whether it is envisaged that the measure will be funded within the ordinary budget allocation of the agency or through a budget increase.

The requirements as to contents will always apply, whilst the procedural requirements must be considered on a case-by-case basis. Relevant examples are outlined below.

It follows from Section 3-1 of the Instructions that affected ministries shall be involved as early as possible in the study process, whilst other affected parties shall be involved to the extent appropriate. Whether other procedural requirements apply will depend, inter alia, on the scale of the measure, and will need to be considered for each study.

One may, for example, refrain from conducting consultation for small-scale measures (cf. Section 3-3 of the Instructions). A small-scale measure may, for example, be an awareness campaign initiated by the Norwegian Food Safety Authority to influence a small target group, which campaign is not particularly expensive, in order to, for example, achieve improved animal welfare (cf. [Chapter 2.2](#)). In such case, the minimum requirements as to the contents of a study are applicable (cf. Section 2-1 of the Instructions), whilst consultation is not required.

Another example is proposed initiatives and other input for the fiscal budget, including proposals for central government savings. The requirements as to contents also apply to budget proposals that are not available to the general public, although the consultation requirements under the Instructions are not applicable. The Ministry of Finance prepares annual budget documents setting out detailed guidelines for the budget process. See [Chapter 3.3](#) for additional guidance on which matters may be exempted from consultation.

Any project with a budget in excess of NOK 750 million is encompassed by the Ministry of Finance quality assurance scheme (QS scheme), cf. Section 5.3.8 of the Regulations on Financial Management in Central Government. Projects falling within the scope of the QS scheme are subject to special requirements with regard to the thoroughness of the study, which meet the requirements under the Instructions for Official Studies and include additional requirements on external quality assurance of the study. In the early phase, the ministry/government body in charge is required to prepare a choice of concept report (CCR), which shall form the basis for quality assurance. This shall include, inter alia, a cost-benefit analysis in accordance with the applicable circular from the Ministry of Finance. The CCR shall be quality assured under the Ministry of Finance's framework agreement on external quality assurance. Separate guidance notes have been prepared for the QS scheme. The scheme encompasses all central government investment projects in excess of NOK 750 million, with the exception of SDFI, as well as state-owned enterprises and state-owned limited companies with responsibility for their own investments, for example Avinor AS and the health enterprises.

It follows from the Instructions that these also govern involvement with EEA and Schengen legislation, from the identification of new EU initiatives and the formulation of Norwegian positions to inclusion in the EEA Agreement and their incorporation into Norwegian legislation.

Where relevant, government bodies shall also consider whether any obligations under the WTO regulations need to be complied with upon the introduction of new provisions and measures. Such obligations may be both substantive and procedural in nature.

1.2.2 What falls outside the scope of the Instructions for Official Studies?

A description of which measures are exempted from the Instructions for Official Studies is provided below. Even if a measure falls outside the scope of the Instructions, the requirements under the Instructions for Official Studies can be considered a good benchmark for involvement and for studying measures.

It follows from the Instructions that these are not applicable to the conclusion of international treaties. It may nonetheless be of interest to conduct advance studies of the effects of various likely outcomes of the negotiations.

It is also stipulated in the Instructions that these are not applicable when special rules are laid down in laws or regulations, or pursuant to laws or regulations. Examples of special rules are sectoral procedural rules, such as for example the impact assessment provisions under the Planning and Building Act.

The Instructions are not, for example, applicable to administrative decisions pursuant to Section 2 of the Public Administration Act. However, this does not prevent sectoral guidance notes from requiring administrative decisions with major economic effects to be carefully studied.

In the event of conflict between special rules and the Instructions for Official Studies, ordinary principles of legal interpretation shall apply. This implies that requirements laid down in the form of laws or regulations shall take precedence over the requirements in the Instructions for Official Studies.

Furthermore, the Instructions for Official Studies are not applicable to studies conducted by separate legal entities, such as state-owned enterprises, companies established by special statute, health enterprises, limited companies owned in full or in part by central government and foundations. However, in the event that such separate legal entities study measures at the behest of the sectoral ministry, the ministry shall in the commissioning document require the company to comply with the Instructions for Official Studies (cf. Chapter 1.2.1).

Moreover, the Instructions are not applicable to measures without any effect beyond internal operations. The Instructions will not, for example, apply to minor reorganisations or to the replacement of an internal ICT system that affects internal operations only. Provisions under the Regulations on Financial Management nonetheless require efficient use of resources and a sound basis for decision-making. Besides which the Instructions will, as mentioned above, serve as a good benchmark for studying all types of measures.

1.2.3 The relationship to the Provisions on Financial Management in Central Government

The object of the Instructions for Official Studies and the object of the Provisions on Financial Management in Central Government are well matched. It is important to have a sound basis for decision-making, cf. Section 1-1 of the Instructions, in order to ensure, inter alia, that central government funds are used effectively, cf. the object stipulated in Section 1 of the Regulations on Financial Management in Central Government and the requirements in Section 4 c.

Both sets of rules have the status of internal central government rules. A difference between the two sets of rules is that these address different phases of central government measures. Whilst the Instructions for Official Studies are focused on preparation of the basis for deciding on measures, the main emphasis in the Provisions on Financial Management is on the implementation of the budget decision of the Storting, including accounting, reporting and evaluation. However, in some respects the Provisions on Financial Management also stipulate specific requirements on the contents of the basis for decision-making, including, inter alia, requirements as to the description of central government subventions in appropriation proposals submitted to the Storting. By meeting the requirements under the Instructions for Official Studies in these respects, one also establishes a firm foundation for meeting the requirements under the Provisions on Financial Management.

1.3 Responsibility for studies

Section 1-3 of the Instructions for Official Studies

The government body with responsibility for conducting the study shall ensure that the provisions of the Instructions are complied with. If the study is to be carried out by a government-appointed committee, necessary requirements shall be incorporated into its terms of reference.

The ministries have overarching responsibility for the quality of the basis for decision-making

1.3.1 Who is responsible for the study?

It follows from the Instructions for Official Studies that the government body with responsibility for conducting the study shall ensure that the provisions of these Instructions are complied with.

When several government sectors and government bodies are involved, the main responsibility for compliance with the Instructions lies with the government body initiating a study. However, each participating government body has independent responsibility for compliance with the requirements under the Instructions as far as contributions in its sector are concerned.

It follows from the Instructions that sectoral ministries have overarching responsibility for the quality of the basis for decision-making within the scope of the Instructions. This implies that if a subordinate agency carries out the study on behalf of a ministry, such agency is responsible for complying with the provisions of the Instructions. Ultimate responsibility for ensuring that the study is of good quality lies with the sectoral ministry.

The appointing ministry is responsible for ensuring that committees appointed to perform official studies comply with the Instructions. It follows from the Instructions that necessary requirements shall be incorporated into the terms of reference of such committees. This implies that the appointing ministry shall impose such requirements on the committee as are necessary to ensure compliance with the Instructions.

Necessary requirements shall, correspondingly, be stipulated in the commissioning document when private parties (for example research institutions or consultancy firms) carry out a study at the behest of central government bodies. It follows from Section 1-3 of the Instructions that commissioning bodies are responsible for verifying whether the study is of good quality and in conformity with the requirements applicable under the Instructions.

It should be noted that the requirement in Section 14 of the Regulations on Financial Management in Central Government implies that ministries and agencies shall have systems and procedures featuring inherent internal controls. The purpose is to ensure compliance with applicable laws and regulations, which also requires one to ensure compliance with the Instructions for Official Studies.

1.4 Derogation from the Instructions

Section 1-4 of the Instructions for Official Studies

The provisions of the Instructions may only be derogated from if necessitated by special circumstances. Such decision shall be made by the official in charge of the responsible government body. Such decision shall be made in writing, shall be reasoned and shall be included in the case file.

It follows from the Instructions for Official Studies that the provisions of the Instructions may only be derogated from if necessitated by special circumstances. The threshold for derogating from the Instructions should be high, and there should be weighty grounds.

One example of derogation from the Instructions is to deviate from the minimum requirements in Section 2-1 of the Instructions as to the contents of the study. Another example is to deviate from the minimum deadline for consultation under Section 3-3 of the Instructions. A third example is to organise a less comprehensive consultative round than is implied by the requirements in Section 3-3 of the Instructions. This is of course not an exhaustive list of examples of potential derogations.

Refraining from consultation in accordance with the exemptions laid down in Section 3-3 of the Instructions does *not* represent a derogation from the Instructions.

It follows, furthermore, from the Instructions that the official in charge of the responsible government body, i.e. the government body responsible for the study (cf. Section 1-3 of the Instructions), shall make the decision to derogate from the Instructions. In a ministry, this will be the cabinet minister or the permanent secretary, and in a subordinate agency it will be the head of such agency – which is normally its managing director – also in agencies with a board of directors.

In cases where a subordinate agency is responsible for the study, the sectoral ministry should, as the body responsible for quality assurance (cf. Section 1-3 of the Instructions), be informed whenever it is decided to derogate from the Instructions.

It is important for the decision to derogate from the Instructions to be transparent and verifiable. It follows from the Instructions that such decision shall be made in writing, shall be reasoned and shall be included in the case file for the study. For matters to be circulated for consultation, any decision to derogate from the Instructions shall be clearly explained or disclosed in the consultation paper.

1.5. Responsibility for the Instructions

Section 1-5 of the Instructions for Official Studies

The Ministry of Finance is responsible for the administration of the Instructions for Official Studies. The Ministry is also responsible for providing guidance on its provisions.

The Ministry of Justice and Public Security is responsible for providing guidance on those provisions of the Instructions for Official Studies that relate to laws and regulations.

The Ministry of Foreign Affairs is responsible for providing guidance on those provisions of the Instructions for Official Studies that relate to FFA and Schengen matters

1.5.1 DFØ is responsible for providing guidance on these Instructions

The Ministry of Finance has delegated responsibility for the administration of the Instructions for Official Studies and for providing guidance on its provisions to the Norwegian Government Agency for Financial Management (DFØ).

The Ministry of Finance is responsible for the principles and the requirements for the preparation of economic analyses and other economic studies of central government measures, cf. [Circular R-109](#). DFØ is responsible for providing guidance on the said circular.

The Norwegian Government Agency for Financial Management provides competence-building measures in relation to requirements as to contents ([Chapter 2](#)), and on scope and procedural requirements ([Chapters 1 and 3](#)).

The Ministry of Justice and Public Security is responsible for providing guidance on those provisions of the Instructions that relate to laws and regulations, i.e. [Chapter 4](#).

The Ministry of Foreign Affairs is responsible for providing guidance on those provisions of the Instructions that relate to EEA and Schengen matters, i.e. [Chapter 5](#) and other chapters addressing matters of this type.

1.5.2 Who can answer questions?

Any questions concerning the provisions of the Instructions may be directed to the following bodies:

- For questions relating to Chapters 1 to 3, please contact [DFØ](#).
- For questions relating to Chapter 4, please contact the [Ministry of Justice and Public Security](#).
- For questions relating to Chapter 5, as well as other chapters addressing EEA and Schengen matters, please contact the [Ministry of Foreign Affairs](#).
- For questions relating to international obligations, please contact the sectoral ministry in charge. For questions relating to trade policy, please contact the Ministry of Foreign Affairs.

2. Requirements as to the Contents of the Basis for Decision-Making

This chapter provides guidance on the requirements applicable under the Instructions as to the contents of the basis for decision-making. It starts out with guidance on how to meet the minimum requirements applicable to a study. The guidance in [Chapter 2.1](#) will suffice for small-scale measures. For large-scale measures, one should either carry out a simplified analysis or a cost-benefit analysis in line with the DFØ guidance materials.

[Chapter 2.2](#) provides guidance on the thoroughness and comprehensiveness of the study. More specifically, guidance is provided on the criteria to be used in assessing comprehensiveness and thoroughness, on how to determine a suitable level of ambition for a study, and on when the performance of a cost-benefit analysis is required.

This chapter is relevant for those who are going to carry out a study of central government measures. It will be useful for managerial personnel in central government bodies to have a general overview of the requirements as to contents.

2.1 The minimum requirements applicable to studies

Section 2-1 of the Instructions for Official Studies

A study shall answer the following questions:

1. What is the problem, and what do we want to achieve?
2. Which measures are relevant?
3. Which fundamental questions are raised by the measures?
4. What are the positive and negative effects of the measures, how permanent are these, and who will be affected?
5. Which measure is recommended, and why?
6. What are the prerequisites for successful implementation?

The study shall encompass effects for individuals, private and public sector businesses, central, regional and local government bodies, as well as other affected parties.

2.1.1 What are the minimum requirements applicable to studies?

It follows from Section 2-1 of the Instructions that Questions 1 to 6 shall *always* be answered when studying central government measures. Hence, these six questions define the minimum requirements applicable to all studies. This can be made very simple, or more comprehensive and thorough, depending on the scale of the measure.

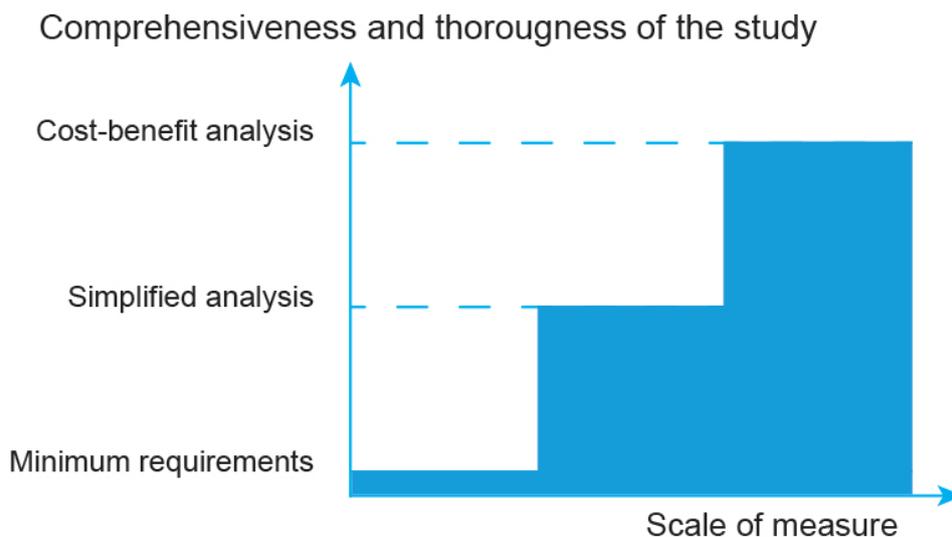
An important principle is that the requirements as to thoroughness and comprehensiveness increase with the scale of the measure, cf. Section 2-2 of the Instructions. This implies that small-scale measures may be subjected to simpler and less elaborate studies than large-scale measures.

When measures increase in scale, the six questions also need to be answered more comprehensively.

Chart 2.1 illustrates that the six questions can be answered very simply and briefly when studying small-scale measures, and it will suffice to read the guidance in this chapter. By small-scale measures are meant measures expected to have minor effects on small groups in society (cf. guidance in [Chapter 2.2](#)). Studies of small measures that meet the minimum requirements are referred to as minimum analyses.

The requirements as to comprehensiveness and thoroughness will be stricter for large-scale measures. This implies that the six questions need to be answered more comprehensively, and either a simplified analysis or a cost-benefit analysis will be required. See the [DFØ guidance notes on economic analyses](#) and other competence-building resources for guidance on these forms of analysis. [Section 2.2](#) provides guidance on how to determine a suitable level of ambition for a study.

Chart 2.1



«The stairway of studies»: Illustration of how the comprehensiveness and thoroughness of studies depend on the scale of the measure.

Norway's international obligations shall be examined and described in the study if relevant. These include obligations resulting from, for example, trade, environment and climate treaties, as well as accession to other international treaties (including the WTO regulations). More than one of these questions may be of relevance to international obligations.

The questions are also to be answered for legislation which are under development in the EU, and which we assume will be introduced in Norway. These are normally answered in the form of EEA and Schengen memorandums, in conformity with the relevant templates. Where appropriate, one

may to the extent feasible use EU studies, supplemented by information on any specific effects for Norway. If the implications of the legislation are far-reaching for Norway, one should, for example, consider the introduction of compensating measures to avert undesirable effects. How comprehensively and thoroughly ministries should study such matters depends on what freedom of action we have when implementing said legislation in Norwegian law.

One may, for example, need to study a legislative act offering national choices more thoroughly than a regulation we are obliged to incorporate into Norwegian law «word by word», and which does not have far-reaching effects. Generally speaking, one is required to answer the questions in studies at all stages of the process that involve decision-making, but for certain legislative acts it will not be necessary to answer all questions until the legislation has been enacted by the EU. Such an exemption may, for example, apply to supplementary provisions of a highly technical nature, which are not of major importance to Norwegian parties. Another example is represented by legislative acts subjected to the EFTA expedited procedure. For such legislative acts, one will usually be able to provide very brief answers to the six questions and to consider such answers to have been provided in the EEA memorandum.² See also [Chapter 2.1.2](#) and [Chapter 2.2](#).

2.1.2 How to answer the six questions?

Below is guidance on how the six questions can be answered to meet the minimum requirements in Section 2-1 of the Instructions. The questions have not been listed in a random order, but adhere to a structure in which the next question is based on the previous question. Answering what are the effects of the measures, under Question 3, does, for example, require one to first have identified all relevant measures under Question 2. In practise, one will to some extent jump back and forth between the various questions as and when one gathers more knowledge and information.

Whether the study shall include an explicit listing of questions and answers, or whether the questions shall be answered as part of an integrated text, will vary depending on the nature of the measure and what study format is the most suitable. It is nonetheless a requirement that adequate answers to the questions are included in the text.

Question 1: What is the problem, and what do we want to achieve?

What is the problem?

We shall initiate the study by describing what is the problem. A good description of the problem is of decisive importance for ensuring that the study will result in a sound basis for deciding on the choice of measure. The problem description outlines which unsolved problems suggest that the public sector should take relevant measures. It is important to communicate the scope of the problem, how serious it is, and who is affected by the problem. It may be useful, in order to provide a good indication of the scope of the problem, to provide some rough estimates with regard to key factors.

The problem description must include both current problems and expected future developments. This is called the base case, and is the benchmark for assessing effects of the measures (under

² See case information template for EEA memoranda.

Question 4: What are the positive and negative effects of the measures, how permanent are these, and who will be affected?). Necessary future operating and maintenance costs shall be included in the base case. Only adopted measures, including laws and regulations, which have either been entered into effect or received appropriations from the Storting should be included on top of this. It is not sufficient for a measure to, for example, have been proposed in a report to the Storting (for example the National Transport Plan).

Furthermore, we should examine the causes of the problems that have arisen, for example whether a problem results from weaknesses in existing measures, and what these are. This often makes it easier to assess which measures will best contribute to solving the problem.

Objectives – What do we want to achieve?

The next stage of the study is to formulate objectives, i.e. to describe a future state one would like to achieve. The objectives must be defined with reference to the problems one would want to solve through potential measures in this field. There is a risk of ending up with measures that make little contribution to solving the problems if there is not a clear link between the objectives and the problem description.

Objectives should be formulated both for society as a whole and for the target group(s) whose situation one would like to change. In other words, objectives that express the following:

- What is the desired situation for society?
- What is the desired situation for the target group(s)?

Clear and verifiable objectives are important both to facilitate evaluation of measures in retrospect and to derive relevant measures (see next question).

In some situations, objectives have already been politically determined. One must nonetheless, in order to meet the minimum requirements, answer the other questions on the basis of such objectives.

In EEA and Schengen matters, one will normally be able to find the problem and the objective described in EU studies, roadmaps or the preamble to the legislative act. It will normally suffice to outline this briefly in the EEA/Schengen memorandum.

Question 2: Which measures are relevant?

Under Question 2, we shall study measures that are held to be relevant for realising the objective and solving the problems that have been identified. One will in many cases already have envisaged a specific measure that may solve the problems one is faced with. There may be other measures which are more suitable for solving the problems and which are of more value to society, or which are preferred on grounds of principle. It is therefore important not to lock oneself into one measure too early, but to allow oneself to think «outside the box».

There may be different types and combinations of measures that merit consideration. Measures may fall within the following categories:

- regulation, for example making specific actions mandatory or prohibited

- financial policy tools, for example taxes or subventions
- pedagogical policy tools, for example guidance and information
- organisational policy tools, for example centralisation/ decentralisation
- public provision of products and services, for example infrastructure and health services
- public procurement, for example ICT services and office equipment

Consider alternative measures which entail the use of different types of policy tools (regulations, financial, pedagogical). Also consider different varieties and structures for any regulations or other measures. It may in many cases be appropriate to use combinations of policy tools or to implement multiple measures simultaneously in order to solve a problem and achieve the desired effect.

When taking the study forward, it is only necessary to include those measures that are considered relevant for realising the objectives and solving identified problems. The study should document the reason why any measures have been omitted. The reason may, for example, be that such measure is in violation of international obligations, or that it is problematic from the perspective of principles or values (see next questions).

In some situations, political decisions on measures have already been made. In order to comply with the minimum requirements, the study must nonetheless specify which *other measures* may also be relevant, in addition to answering the other outstanding questions.

The measures shall be described in as much detail as necessary to enable the expected effects of such measures to be identified and described (see [Question 4: What are the positive and negative effects of the measures, how permanent are these, and who will be affected?](#)).

In EEA and Schengen matters, the measure will normally be defined by the EU regulatory framework, but Question 2 is relevant in formulating a preliminary position when such regulatory framework is under development in the EU, and when the regulatory framework offers choices as far as national implementation is concerned. It will normally suffice to outline this briefly in the EEA/Schengen memorandum.

Question 3: Which fundamental questions are raised by the measures?

Under Question 3, we are required to consider whether the measures held to be relevant for study may raise fundamental questions. An assessment of fundamental questions implies that one must establish whether the formulation of measures is subject to absolute limitations that must not be exceeded. Furthermore, one must shed light on how the measure impacts, both positively and negatively, on key societal values or fundamental considerations.

Fundamental questions may for example relate to personal data protection and personal integrity, due process, questions of conscience/faith, questions of equal opportunities/discrimination, or measures affecting, in particular, indigenous populations or minorities.

If a measure has effects that come into conflict with one or more principles, the study may have to conclude that such measure cannot be implemented, irrespective of how beneficial it might otherwise be. Limitations on the formulation of measures will often emanate from the human rights obligations Norway has assumed through international treaties. Consequently, a study of fundamental questions will often comprise a systematic review of such obligations, through which one clarifies the scope of said obligations and what freedom of action is available. In some cases,

there may be an element of mutual tension between different human rights obligations, which will need to be clarified and traded off in a balanced and integrated manner.

Fundamental questions are not limited to those violating our human rights obligations, or statutory rights. Even if measures fall within the legal scope of government measures, it may be important to bring out how these impact, both positively and negatively, on key societal values or fundamental considerations. These can include effects that are difficult to assess and balance against other effects under Question 4, for example the effect of a measure on minority rights or on vulnerable individuals. Independent analysis of such effects or considerations is needed in these cases. Fundamental assessments relating to, for example, due process, equal treatment or individual self-determination can be described as part of such an analysis. It is important to avoid any special ideological stance in descriptions and assessments of key societal values and fundamental considerations. These have to be based on values that are widely shared in society, preferably as laid down in documents endorsed by the Storting.

All fundamental questions need to be presented and examined in a systematic, balanced and integrated manner. In some cases, different principles may come into conflict with each other, and it is important for the study to clarify this.

It follows from Section 2-2 of the Instructions that Question 3 shall be examined thoroughly for any measures raising important fundamental questions (see [Chapter 2.2](#)).

It is also important to be conscious of this question in EEA and Schengen matters. The question will also constitute the background to the conclusion as to whether the EU regulatory framework is EEA/Schengen relevant and acceptable. This question is answered in the EEA/ Schengen memorandum.

Question 4: What are the positive and negative effects of the measures, how permanent are these, and who will be affected?

Under Question 4, the study is required to describe expected effects for all those affected. This includes both positive and negative effects.

It follows from the Instructions that the study shall include effects for individuals, private and public sector businesses, central, regional and local government bodies, as well as other affected parties.

In order to determine all relevant effects of the measures under examination, we should start out by identifying individuals or groups in society that are expected to be affected by these. Examples of affected parties are individuals or population groups, the agency implementing the measure, other affected government bodies, as well as businesses, organisations and others directly or indirectly benefitting from, or inconvenienced by, such measure. Both intended and unintended effects shall be taken into consideration.

The positive effects or benefits³ of a measure are effects perceived as an advantage by affected parties. These may, for example, be improved services for families with young children, saved lives,

³ Such benefits may also be referred to as positive effects, advantages or gains.

fewer workplace injuries, reduced pollution, time savings, improved availability of information for users, reduced crime or simpler reporting for businesses.

The negative effects or costs are effects perceived as a disadvantage by affected parties, for example reduced availability of kindergartens, increased risk of accidents, loss of natural habitats or increased time devoted to reporting to government bodies.

Costs may also take the form of budgetary implications resulting from the measure. Examples of typical costs are investment and operating costs associated with an investment measure or supervision and enforcement costs associated with a set of regulations.

How the effects of the measure are distributed across various groups in society is termed distributional effects. As an example, a road project whose positive effects outweigh the negative effects in aggregate, may entail especially negative effects for those who live in its vicinity. Important distributional effects should be described in a separate analysis and we should assess whether there are measures that will compensate affected groups.

If a measure affects or gives rise to reporting obligations imposed by government bodies on businesses, reference is made to Section 8 of the Regulations under the Register of Reporting Obligations Act, from which it follows that the Register of Reporting Obligations may order those conducting a study to gather estimates of applicable burdens from businesses.

Sectoral guidance notes tend to provide more detailed guidance on which effects should be studied within the relevant sector, and on which method is best suited. See also guidance in [Chapter 3.2](#), which provides examples of effects where different sectoral ministries are to be involved.

Under Question 4, we are also required to describe how permanent the effects are. This implies that one is to describe the effects for the entire period during which the measure in question is expected to have any effect. The effects should be quantified and valued in Norwegian kroner if information on this is readily available, and should be specified in annual quantities for the period during which these are expected to occur. Rough estimates, intervals or examples are often better than no estimates, and can often increase the quality of the basis for decision-making. A description of how effects are expected to evolve over time should be provided, also when these are not quantified. It also follows from Section 9 of the Regulations on Financial Management in Central Government that planning in both a one-year and a multi-year perspective is required.

If a measure has budget implications for central government, it will be necessary to estimate such implications as part of the study. The level of precision needs to be tailored to the scale of the measure, and how far the study has progressed. As far as any budget proposals submitted to the Government are concerned, reference is made to the circular from the Ministry of Finance on the materials for budget conferences (the main budget document).

When describing and, if applicable, quantifying and valuing the effects, one should draw on available knowledge to document such effects. It may suffice, in an early phase of a study, to make use of available knowledge and information, and then to gather additional data in a subsequent phase (cf. the guidance in [Chapter 2.2](#)).

The study should also describe which effects are associated with uncertainty. The assessment of uncertainty may be phrased either qualitatively or quantitatively. We should also consider whether measures can be taken to reduce uncertainty.

Once Question 4 has been answered, we have a good indication of how many are affected, and to what extent. We have thereby established a basis for examining what level of ambition is suitable for the study, cf. the guidance in [Chapter 2.2](#).

In EEA and Schengen matters, the question is answered in the EEA/Schengen memorandum.

Question 5: Which measure is recommended, and why?

Under Question 5, we are called upon to recommend measures and give reasons for such recommendation. The study shall, in other words, result in a conclusion specifying which measure is recommended or, alternatively, a recommendation to the effect that no measure should be implemented. It may in some cases be relevant to recommend combinations of various measures.

This implies that one shall, in respect of each measure, balance the total positive effects of such measure against the total negative effects of that same measure. All effects shall be taken into consideration in performing such assessment, irrespective of whether such effects are addressed qualitatively or quantitatively. One should, as a main rule, recommend the measure deemed to provide the highest overall positive effects relative to its overall negative effects for society.

If one is of the view that all measures being studied offer overall positive effects that are outweighed by their overall negative effects, the recommendation should be that none of the measures ought to be implemented.

Fundamental considerations may influence assessments by ruling out certain measures, [cf. Question 3](#).

In some cases the realisation of objectives may vary between measures, and/or the effects of measures may be highly uncertain. Such considerations may influence recommendations on measures.

If it is challenging to compare, assess and balance the effects on a technical basis, this should be reflected in a more cautious recommendation, or in no recommendation being made. Such can be the case in situations involving fundamental considerations, significant distributional effects or uncertainty as to the scope and valuation of key effects.

Distributional effects:

If the recommended measure entails significant negative effects for certain groups, the study shall provide specific information on this. It is important to communicate such distributional effects to decision makers, but these shall not change the technical recommendation on the ranking of measures.

Fundamental considerations:

If potential measures can have an impact on key societal values or fundamental considerations, both positively and negatively, a separate analysis of this should be provided under Question 3. For those charged with making the decision, it is important to be provided with a balanced, systematic and integrated description and assessment of such effects and considerations as well.

Trade-offs and recommendations:

If distributional effects and fundamental considerations are not important, and it is feasible to assess and trade other effects off against each other, a technical recommendation shall be made with regard to measures. If such considerations and effects are important and may be invoked as arguments against a potential measure, one may refrain from making any technical recommendation. Such effects and considerations shall in any event be highlighted and assessed in order to provide the decision maker with a basis for assessing whether said effects and considerations should affect the decisions with regard to measures.

Whether a recommendation could and should be made in such situations may depend on who is studying the measure. Civil servants in ministries may in many cases be able to make technical recommendations based on the values and principles laid down in previous documents endorsed by the Storting. Technical recommendations from directorates, etc., may be based on the values underpinning their activities. A committee that has broad representation and has been appointed to perform an official study will, generally speaking, be able to make recommendations based on an overall trade-off between all types of effects and considerations.

It follows from the Instructions that we need to present the basis for the recommendation, as well as which trade-offs have been involved. We should also outline all assumptions underpinning the study.

For EEA and Schengen matters, one answers the question in the EEA/ Schengen memorandum by concluding as to whether the EU regulatory framework is EEA/Schengen-relevant and acceptable.

Question 6: What are the prerequisites for successful implementation?

The study shall explain key prerequisites for ensuring that the measure is a success. These may, inter alia, relate to control, organisation and responsibility, as well as information flows and technical solutions. Most measures will need certain key prerequisites to be in place in order for the benefits (gains) to be realised.

Information for those affected by a new set of regulations or a new public service may, for example, be a key prerequisite for ensuring that such measure is a success. Other examples of prerequisites that need to be in place in order for the objectives of a measure to be realised may be reorganisations, coordination of ICT systems, or training initiatives. For additional guidance on this issue, see the [DFØ technical webpages on the realisation of gains](#), as well as www.prosjektveiviseren.no.

In EEA and Schengen matters, this question is answered in the EEA/Schengen memorandum.

Where can I obtain guidance on conducting the study?

DFØ has administrative responsibility for the Instructions for Official Studies and provides competence-building measures for ministries and subordinate agencies on how to conduct minimum analyses, simplified analyses and economic analyses.

The [DFØ guidance notes on economic analyses](#) provide guidance on how to study measures with major effects. The guidance notes are also a relevant reference source for the conduct of simplified analyses and minimum analyses. Read more about the DFØ competence-building resources on our website, www.dfo.no.

Other bodies that may provide guidance:

The Better Regulation Council may provide information and general guidance on laws and regulations of particular relevance to the business sector. When preparing EEA-relevant legislation that may be of major importance to the Norwegian business sector, ministries may request assistance from the Better Regulation Council in examining the impact assessments accompanying proposals from the European Union. Additional information on the Better Regulation Council is available on its website www.regelradet.no.

The Digitalisation Council provides an assessment of digitalisation projects in all project phases (for projects between NOK 10 and 750 million). Additional information on the Digitalisation Council is available on the website of the Agency for Public Management and eGovernment ([Difi](#)).

2.1.3 Evaluation

The study should also include an assessment as to when and how recommended measures should be evaluated. In order to establish whether a measure is successful, such measure needs to be evaluated after it has been put into practice. The requirement for evaluation is laid down in Section 16 of the Regulations on Financial Management in Central Government. The study should, to the extent feasible, document the current situation prior to implementation of a measure, thus enabling assessment of the effects of such measure when it is being evaluated. See www.evalueringportal.no for guidance on evaluations.

Which method is best suited for evaluating central government measures depends, inter alia, on the nature, scope and complexity of such measures. The use of knowledge-based design in structuring new measures should be expanded wherever relevant, including the testing of new measures prior to full implementation through the use of randomised controlled trials.⁴

⁴ The method *Randomised controlled trials (RCT)* involves dividing a given population (individuals, businesses, etc.) into at least one measure group, which is subjected to a given measure (which may vary between different measure groups), and at least one control group, which is not subjected to any measure. The groups to be compared should be as identical as possible with regard to anything that may influence the outcome of the measure. Ideally speaking, the difference

Information from experiments and controlled trials can be used to develop measures in such a way as to generate, to a greater extent, the desired response from the target group. One such example is a collaboration between the tax authorities and the Norwegian School of Economics, which examined how differences in the wording of letters to taxpayers might increase the likelihood that these correctly report income from abroad. Effective use of such methods requires the reforms to be implemented in such a manner as to enable effects to be measured in retrospect.

2.2 Comprehensiveness and thoroughness

Section 2-2 of the Instructions for Official Studies

The study shall be as comprehensive and thorough as required. Such assessment shall be based on whether a measure raises important fundamental questions, how significant the effects of such measure are expected to be, and the time available.

If the measure raises fundamental questions, the study shall discuss these in a balanced, systematic and integrated manner.

When studying measures expected to involve major benefits or costs, including major central government budget implications, an analysis shall be performed in accordance with the current circular on cost-benefit analysis. Such analyses shall include a base case.

Studies of EU legislation which are under development in the EU, and which are to be incorporated into the EEA Agreement or the Schengen Agreement and implemented in Norwegian law, shall be tailored to the procedures, deadlines and requirements resulting from the EEA and Schengen collaborations, cf. Chapter 5.

2.2.1 What is meant by the proportionality requirement?

It follows from Section 2-2 of the Instructions for Official Studies that the study shall be as comprehensive and thorough as required to achieve a sound basis for decision-making. Such assessment shall be based on whether a measure raises important fundamental questions, how significant the effects of such measure are expected to be, and the time available.

These are the three *main criteria* for assessing how thoroughly the six questions shall be answered, thus defining the proportionality requirement. The following guidance is provided on how the main criteria should be interpreted:

between the groups should only be that one of them is subjected to a measure, whilst the other one is not. This is achieved by allocating the population across the groups on a purely random basis (randomisation). By comparing differences between the measure groups and the control group, one can draw conclusions with regard to how various measures have worked. However, carrying out such trials can be challenging. It needs to be examined whether, *inter alia*, ethical considerations, legal rights and issues relating to equal treatment may prevent this type of trials from being conducted in real life situations.

Important fundamental questions require more thorough studies

If relevant measures raise important fundamental questions, it is necessary to conduct a more thorough and comprehensive study. This implies that such study shall answer Question 3 under Section 2-1 of the Instructions thoroughly. It follows from the Instructions that fundamental questions shall be discussed in a balanced, systematic and integrated manner.

The more significant the effects are expected to be, the more thorough the study shall be

The more significant the effects of the measure are expected to be, the more thorough and comprehensive the study shall be. One may assess whether the measure has major effects by considering how many are affected, to what extent these are affected, and the magnitude of the budgetary implications of such measure. Below can be found guidance on how to determine a suitable level of ambition for a study, as well as which cases require the performance of a cost-benefit analysis.

Tight deadlines may necessitate less thorough studies

It is important to allocate adequate time for thorough studies. In some cases, tight deadlines limit how thorough studies can be. By tight deadlines are meant events or deadlines outside the control of the agency that limit the scope for advance studies of the measure. This applies, for example, to many EEA matters, which are subject to external deadlines. One can also envisage cases in which immediate or swift implementation is required to avert potentially serious outcomes with regard to life, health and the environment.

As far as EU legislation is concerned, the study shall be as comprehensive and thorough as necessary, given Norway's opportunities for influencing such legislation. Provisions of a technical nature may, for example, be subjected to a very brief study. For legislative acts with more far-reaching effects, and/or presenting us with national choices, it will normally be necessary to conduct a more thorough study.

Supplementary criteria

There may also be other considerations indicative of a need for a more thorough and comprehensive study.

These are the *supplementary criteria* that it may be useful to take into consideration:

1) Access to relevant knowledge

All available, relevant knowledge should be used in the study. This includes, for example, data enabling effects of the measure to be quantified and valued. One will also in many cases achieve a lot by drawing on reasonableness considerations, related data sets or experience from other

countries. In cases where new research is necessary to gather relevant knowledge, such research should only be initiated if its costs are assumed to be in reasonable proportion to its benefits.

2) The degree of complexity of the problem and the measure More thorough analyses may be necessary to adequately study complex problems and to assess which measures are best suited for solving the problem.

3) The magnitude of the investment There should be a reasonable relationship between the magnitude of the investment and the thoroughness of the study. Measures with budgetary implications shall be presented to the Ministry of Finance (cf. Section 3-2 of the Instructions). Investments in excess of NOK 750 million are encompassed by the Ministry of Finance quality assurance scheme (the QA scheme).

4) The degree of uncertainty associated with future effects If there is a high degree of uncertainty associated with the effects of a measure, it may be necessary to devote more resources to assessing the uncertainty associated with such measure, and to consider which risk-reducing initiatives may be called for.

5) The degree of irreversibility When a measure entails irreversible effects, it may be necessary to study such effects more thoroughly. By irreversible effects are meant, for example, interventions in nature that may be detrimental to the environment in a manner that cannot be remedied in retrospect. Another example is investments with no alternative use.

6) Whether the measure is controversial and contested If a measure is expected to be controversial and the subject of a divergence of opinion in the population, a more thorough study may be needed. This consideration may be related to fundamental questions (see above).

7) Which phase of the study process

Questions 1–6 shall be answered before any measures are implemented. The later is the stage of the study process, the more thorough should be the study. This implies that one may in an early phase of a study, for example in a pilot study, draw on available knowledge and information. More complete and precise data may be gathered in a later phase of the study.

2.2.2 How to determine a suitable level of ambition for a study?

It is important to determine a suitable level of thoroughness of the study, i.e. how much resources shall be devoted to the study. We here provide guidance on assessing how thorough the study should be.

The level of ambition should be considered at an early stage of the study process and be verifiable, thus enabling affected groups to express their views and relevant government bodies to be involved in the study at an early stage. [Chapter 3](#) provides guidance on how to facilitate this through early involvement.

In order to determine a suitable level of ambition for a study, one should start by answering the six questions at a general level, and make some preliminary assessments on the basis of such questions. Once the first four questions have been answered, one will normally have a good indication as to how significant the effects of the measure might be. One will also have a good indication as to whether the measure raises fundamental questions.

New knowledge surfacing during the conduct of a study may also serve to make it necessary for you to review the level of ambition for such study.

If, for example, such (rough) assessment shows that the measure affects few people and to a limited extent, there is not necessarily any need for examining the six questions in any great detail beyond what has already been done. For small-scale measures it will suffice to examine the questions at a simple level and provide a brief answer for each question (see guidance in [Chapter 2.1](#)).

The larger is the scale of the measure, the more thoroughly shall be answered the six questions defining the minimum requirement. This may often involve quantifying and valuing a number of the effects and preparing more precise and robust estimates ([Question 4:](#) in Chapter 2.1). In cases where quantification and valuation is not possible or appropriate, one should focus on various forms of qualitative methods and analyses. If, for example, the measure affects many people and to a large extent, such measure is held to entail major effects. Below is provided additional guidance as to when there is a requirement for cost-benefit analysis, and in which cases a simplified analysis may be considered as an alternative.

It is also important to consider the supplementary criteria under the proportionality requirement (cf. Chapter [2.2.1](#)). The first supplementary criterion is that all relevant knowledge which is available should be used in the study. This implies that one should include quantification and valuation of all key aspects and effects in a minimum analysis when such information is readily available. Rough estimates, intervals or examples are often better than no estimates, and can often increase the quality of the basis for decision-making. Quantification in physical units (for example time, number of people affected, etc.) provide a clearer illustration of the scale of the problem and the effects of the measure, in cases in which the valuation of effects is not appropriate. It is important to document which sources have been used to ensure verifiability. If a measure has central government budgetary implications, the study shall always estimate the magnitude of such budgetary implications (cf. the main budget document from the Ministry of Finance).

All seven supplementary criteria should be considered for purposes of determining a suitable level of ambition for a study. For example, a measure which is not large in scale may nonetheless be intended to solve a complex problem, and there may be a high level of uncertainty. These factors suggest that the six questions should be answered more thoroughly in order to establish a sound basis for decision-making.

2.2.3 When is it required to perform a cost-benefit analysis?

It follows from Section 2-2 of the Instructions that an analysis in accordance with [Circular R-109](#) shall be performed when studying measures that are expected to give rise to *major* benefits or costs, including major central government budgetary implications. Economic analyses shall include a specified base case.

The [DFØ guidance notes on economic analyses](#) are the cross-sectoral central government guidance notes on economic analyses. These provide guidance and recommendations on how the requirements in said circular can be met. The guidance notes are also a relevant reference source for the conduct of simplified analyses and minimum analyses.

It follows from the circular that there are three main types of economic analyses. A *cost-benefit analysis* involves valuation of all positive and negative effects of a measure to the extent possible and appropriate. It will in many cases be difficult to put a value on all effects, especially the benefits. Consequently, the alternative is often to perform a *cost-effect analysis*. Such an analysis examines all benefits qualitatively, whilst costs are valued in Norwegian kroner.

In cases where the benefits of the measures are identical, one may opt for a third type of analysis called *cost-effectiveness analysis*. A cost-effectiveness analysis only requires valuation of the costs of the measures, thus identifying the most cost-effective measure.

It is important in a cost-benefit analysis to highlight effects without a price tag, i.e. effects to which no monetary value has been attributed, to the same extent as effects with a price tag. It follows from [Circular R-109](#) that effects can often be described quantitatively. If quantification (in physical amounts) and valuation (in Norwegian kroner) is not possible or appropriate, the study should instead seek to provide the best feasible qualitative description.

The [DFØ guidance notes on economic analyses](#) provide guidance on methods for the quantification and valuation of effects, in addition to guidance on qualitative methods. Various sectoral guidance notes on the performance of studies may be useful for obtaining more detailed explanations and guidelines on sector-specific considerations.

In order to assess whether the measure entails major benefits or costs, one needs to determine how many are affected by the measure, and to what extent these are affected (cf. [Question 4: What are the positive and negative effects of the measures, how permanent are these, and who will be affected?](#) in [Section 2.1](#)).

Chart 2.2

Illustration of when the performance of a cost-benefit analysis is required under the Instructions.

How they are affected	The number affected	
	Few	Many
To a small extent	The minimum requirements (six questions)	Cost-benefit analysis necessary?
To a large extent	Cost-benefit analysis necessary?	Cost-benefit analysis required

It follows from Chart 2.2 that meeting the minimum requirement under the Instructions is sufficient for measures that only affect a small number of individuals, organisations, industry groups or other groups, with these only being affected to a limited extent. An example would be an amendment to regulations that only affects a small group in society, with such amendment only having marginal effects on such group.

In cases where a measure affects many and to a large extent, such measure will entail major benefits or costs, and it follows from the Instructions that it is necessary to perform a cost-benefit analysis.

Whether the measure affects «many», and «to a large extent», needs to be assessed on a discretionary basis and for each study. A measure may affect few or many groups in society, and the size of these groups may vary. Examples of different groups are users of a public good, consumers, businesses, retired persons, children and people living in specific geographical areas. The level of impact on those affected should, to the extent possible, be based on properly documented effects.

In cases where there is doubt as to whether the measure would have major effects, it will be useful to consider the supplementary criteria discussed above in [Chapter 2.2](#).

An example of a measure obviously having major effects is when a proposed regulatory amendment is expected to affect the entire population (or major groups in society), with each of us being affected to a large extent.

It follows, furthermore, from the Instructions that a cost-benefit analysis is required if the measure has major central government budgetary implications. This requirement applies irrespective of whether such measure affects few or many in society. Typical examples of measures with major budgetary implications are large investments or reforms.

Investments in excess of NOK 750 million fall within the scope of the Ministry of Finance quality assurance scheme (the QA scheme). Economic analyses should also be performed for investment measures with a budget well below the threshold value for QA projects.

It *may*, moreover, be necessary to perform a cost-benefit analysis for measures that either affect a few to a large extent or many to a small extent. One may, in such scenarios, hold the expected

effects to be major for society, in which case the performance of a cost-benefit analysis will be required. Alternatively, it is in these scenarios recommended to perform a simplified analysis in accordance with the DFØ guidance notes on cost-benefit analysis.

An example of when major effects may arise is if it is anticipated that a proposed regulatory amendment will affect the entire population (or major groups in society), but the actual regulatory measure is not perceived to be significant for individual inhabitants. The overall effects for society may in such cases be considered major.

Another example of when the overall effects can be considered major is if it is anticipated that a proposed regulatory amendment will entail large restructuring costs for a small group of private businesses.

3. Early Involvement, Presentation and Consultation

This chapter provides guidance on the procedural requirements under the Instructions. First, guidance is provided on how to meet the requirements for early involvement of all those affected by the measure. Thereafter, guidance is provided on which matters shall be presented for consultation, and which ministries these should be presented to. Finally, guidance is provided on how consultation should be conducted, what should be the deadline for submitting consultative comments, and in which cases consultation may be omitted.

This chapter is of relevance to those who are responsible for a study, as well as for those who are going to carry out the study. For managerial personnel in central government bodies, it will be useful to have a general overview of the procedural requirements.

3.1 Early involvement

Section 3-1 of the Instructions for Official Studies

Affected ministries shall be involved in the study process as early as possible. Others affected by the measure shall be involved early to the extent appropriate.

When new EEA and Schengen-relevant policies and new legislation are planned and developed in the EU, the ministry in charge shall involve other affected ministries in this effort, cf. Chapter 5.

Before a government-appointed committee embarks on a study, its draft terms of reference shall be presented to affected ministries.

3.1.1 How to bring about early involvement?

It follows from the Instructions that affected ministries shall be involved in the study process as early as possible. Others affected by the measure shall be involved early to the extent appropriate.

Early involvement of those affected by the measure will generate useful input, in an early phase of a study, which will increase the quality of the basis for decision-making. It is easier to incorporate input from a consultation held at an early stage than from a later consultation (cf. Section 3-3 of the Instructions). The government body in charge of the study should involve affected government bodies via the respective sectoral ministries. By affected government bodies is meant central, regional and local government bodies. By others affected by the measure is meant individuals or groups in society, private and public sector businesses, organisations and other affected groups that have been identified.

The deadline for submitting comments should be at least two weeks when involving affected ministries, unless otherwise agreed between the ministries. The same applies when involving other affected parties.

When involving affected parties, it may be useful to present these with a (rough) provisional assessment for the six questions which define the minimum requirement applicable to any study (cf. [Chapter 2.2](#)). By involving affected parties at an early stage of the study process, input from these can contribute to, inter alia, the description of the problem, alternative solutions and the effects of measures. One may thereby enhance the quality and legitimacy of the remainder of the process, as well as of those measures that are eventually studied. Consequently, it should be determined, at an early stage, which government bodies and other affected parties ought to be involved in the study process.

Before embarking on major legislative efforts or other legislative efforts that may raise structural legislative issues, the matter shall be presented to the Ministry of Justice and Public Security, cf. Section 4-2 of the Instructions.

If it is anticipated that a measure will give rise to a new reporting obligation or a change to existing reporting obligations on the part of businesses, the Register of Reporting Obligations shall be contacted for assistance with the structuring of the reporting obligation and for assessment of the scope for coordination, cf. Section 13 of the Regulations under the Register of Reporting Obligations Act.

Early involvement may be required under applicable laws and regulations. Requirements for early involvement are, for example, laid down in the Planning and Building Act, in the Petroleum Act and in the Environmental Information Act. In cases relating to state aid, the early involvement of the Ministry of Trade, Industry and Fisheries is of importance to ensure appropriate processes.

In order to ensure broad involvement, we should consider forms of consultation that facilitate input from all parties that are interested in submitting input. Ministries may post provisional assessments on www.regjeringen.no, whilst subordinate agencies may use their own websites.

As a supplement to the round of digital or written presentations, one should also consider posting the provisional assessment on social media and/or holding consultation meetings.

Ordinary consultation meetings require a physical presence in one specific place at a time. One might consider supplementing these by videoconferences to ensure broad participation in consultation meetings. This would in principle enable anyone to participate in such meetings.

Broad involvement is of key importance to ensuring that diversity is reflected in the study, thus enabling the best conclusions to be drawn in the end. Special-interest organisations may, for example, be in possession of specific technical expertise that may be useful, even if these organisations are not directly affected by the measure.

At times, civil society (inhabitants, organisations and businesses) will propose measures such as regulatory amendments, etc., without solicitation. Such initiatives are typically termed lobbying, and are often valuable from the perspective of democratic considerations, as well as to ensure high-quality decision-making processes. It is, at the same time, important to have transparency with regard to such input, and for that input to be registered in the file accompanying the study.

A consultative round held before the study has been completed will not replace ordinary consultation (cf. [Chapter 3.3](#)). However, the subsequent consultative round can be made more efficient, since affected parties have already been familiarised with the issues and have also had the opportunity to express their views.

3.1.2 How to organise the study and, if applicable, appoint a committee

Performance of the study can be organised in various ways. When studying small-scale measures, it will often suffice for a case officer at the government body in charge to carry out the study. Other potential ways of organising the study may include:

- internal working group, potentially supplemented by external reference group (for example from other ministries, subordinate agencies, research centres, user organisations, etc.)
- inter-ministerial working group, potentially supplemented by external working group
- study conducted by a research institute, consultancy firm, etc.
- committee appointed to perform an official study
- special committee for EEA or Schengen matters

It follows from the Instructions that before a government-appointed committee embarks on a study, its draft terms of reference shall be presented to affected ministries. It shall be specified in the terms of reference that the study to be performed shall be in conformity with the requirements in the Instructions (cf. Section 1-3 of the Instructions).

In those cases where a committee is appointed, information is provided in the [guidance notes on central government committee procedures](#).

Committees appointed to perform important official studies shall be appointed by the King in Council.

3.1.3 Deliberation of the matter in a meeting of the Government

At this stage, it needs to be considered whether the matter is so important as to merit presentation to the Government. As far as [meetings of the Government](#) are concerned, see Chapter 2.2 on matters that always require the Government to decide whether to proceed, as well as Chapter 2.3 on the appointment of committees to conduct official studies.

Memorandums to the Government shall not normally be submitted as a substitute for involving affected ministries at an early stage. Before any memorandum is submitted to the Government, affected ministries should be involved, and one should have achieved the highest possible degree of coordination.

3.1.4 Central government consultation schemes

In certain fields, central government has agreed a consultation scheme. As far as matters affecting local and regional government are concerned, see the [guidance notes on consultation schemes](#).

In matters that may directly affect Sami interests, central government bodies are obliged to consult the Sami Parliament and, if applicable, other affected Sami interest groups, cf. [the procedures for consultations between central government bodies and the Sami Parliament](#). The purpose of consultations is to seek agreement on proposed measures and decisions. The [guidance notes on consultations between central government bodies and the Sami Parliament and, if applicable, other affected Sami interest groups](#), provide guidance on the implementation of the consultation procedures. The Ministry of Local Government and Modernisation should, as the coordinating ministry for Sami affairs, be informed of any matters that may directly affect Sami interests.

3.2 Presentation prior to consultation

Section 3-2 of the Instructions for Official Studies

The ministry in charge shall present all proposed measures with major effects to affected ministries. Proposed laws and regulations shall always be presented to affected ministries. Presentation shall take place before the proposal is circulated for consultation. The presentation requirement does not apply to green papers (Norwegian Official Reports (NOU)).

Measures with major central government budgetary implications shall be presented to the Ministry of Finance. Measures with major effects for local or regional government shall be presented to the Ministry of Local Government and Modernisation. Measures with major effects for the business sector shall be presented to the Ministry of Trade, Industry and Fisheries.

Draft reports to the Storting and propositions outlining proposed decisions of the Storting shall be presented to affected ministries before such drafts are submitted to the Government. Draft reports to the Storting and propositions outlining proposed decisions of the Storting with major effects for local or regional government shall be presented to the Ministry of Local Government and Modernisation for comments.

Presentation pursuant to this section shall neither apply to budget propositions, nor to reports to the Storting that are submitted as a matter of standard procedure and for information. Such documents shall nonetheless be presented to the Ministry of Finance.

The deadline for submitting comments shall be no less than three weeks, unless otherwise agreed between the ministries

3.2.1 Foreleggelse for departementene

It follows from the Instructions for Official Studies that the ministry in charge shall present all proposals with major effects to affected ministries. Proposed laws and regulations shall always be presented to affected ministries. The presentation requirement does not apply to completed green papers (Norwegian Official Reports (NOU)).

It further follows from the Instructions that presentation of the proposal shall take place before it is circulated for consultation. This implies that the sectoral ministry shall present the study to the affected ministries – prior to the matter being circulated for consultation – in cases where the

measure has major effects within the areas of responsibility of other ministries, or where it affects these to a major extent in other ways.

As far as the presentation of laws and regulations is concerned, the materiality requirement under the Instructions is not applicable. However, there will also in these cases be a lower threshold for when a ministry is held to be affected by the proposed laws or regulations.

The deadline for submitting comments is, according to the Instructions, no less than three weeks unless otherwise agreed between the ministries.

The Instructions further stipulate that the study shall be presented to the Ministry of Finance when measures have major budgetary implications. See the annual main budget document from the Ministry of Finance for further details on this. The [guidance notes on central government budget preparation](#) provide an introduction to the Government's preparation of a new fiscal budget.

Measures with major effects for local or regional government shall be presented to the Ministry of Local Government and Modernisation. Measures with major effects for the business sector, including competition conditions, shall be presented to the Ministry of Trade, Industry and Fisheries.

Other examples of required presentations to ministries are as follows:

- If measures being studied will entail major administrative or organisational effects within the central government administration, the matter shall be presented to the Ministry of Local Government and Modernisation and the Ministry of Finance.
- If measures being studied will entail major effects for the environment, the matter shall be presented to the Ministry of Climate and Environment.
- If measures being studied will entail major economic effects, the matter shall be presented to the Ministry of Finance.
- If measures being studied will have major public security effects, the matter shall be presented to the Ministry of Justice and Public Security. For detailed handling and division of responsibilities, see the public security instructions of 2017.
- If the measure being studied will entail major effects for the life and health of the population or the distribution of health across the population, the matter shall be presented to the Ministry of Health and Care Services.
- If measures being studied will entail major effects for the construction sector, the matter shall be presented to the Ministry of Local Government and Modernisation.
- If measures being studied will entail major effects for rural areas, the matter shall be presented to the Ministry of Local Government and Modernisation.
- If measures being studied will entail major effects in terms of data protection, the matter shall be presented to the Ministry of Local Government and Modernisation.
- If measures being studied will entail major effects in terms of equal opportunities, cf. Section 1 of the Equality and Anti-Discrimination Act, the matter shall be presented to the Ministry of Children and Equality.
- If measures being studied will entail major effects in terms of human rights, the matter shall be presented to the Ministry of Justice and Public Security.

- Measures that will entail effects in Svalbard, Jan Mayen or the Norwegian dependencies in Antarctica shall be presented to the Ministry of Justice and Public Security, cf. the polar committee instructions.
- Matters raising specific questions of EEA relevance shall be presented to the Ministry of Foreign Affairs. See guidance in [Chapter 5](#).
- If a measure to be studied may entail major effects for Sami interests or national minorities, the matter shall be presented to the Ministry of Local Government and Modernisation.

Coordination and presentation of EEA/Schengen matters takes place in accordance with rules in [Chapter 5](#).

The above list of affected government bodies is not exhaustive. There may also be a duty to present matters to other ministries as the result of specific regulations.

3.2.2 Reports and propositions

It follows from the Instructions for Official Studies that draft reports to the Storting and propositions outlining proposed decisions of the Storting shall be presented to affected ministries before such drafts are submitted to the Government. The Ministry of Finance will always be affected.

As far as concerns reports to the Storting and propositions outlining proposed decisions of the Storting with major effects for local or regional government, these shall be presented to the Ministry of Local Government and Modernisation for comments. Furthermore, it follows from the Instructions that such duty of presentation applies neither to budget propositions, nor to reports to the Storting that are submitted as a matter of standard procedure and for information. Such documents shall nonetheless be presented to the Ministry of Finance.

It follows from the Instructions that the deadline for submitting comments shall normally be three weeks, unless otherwise agreed between the ministries.

Draft propositions and reports to the Storting shall be structured in accordance with Chapter 3 of the guidelines on [meetings of the Council of State](#). See also the Government Security and Service Organisation (DSS) guidance notes on the drafting of green papers (Norwegian Official Reports (NOU)), propositions and reports. Sectoral ministries shall themselves determine whether draft propositions and reports to the Storting should be presented to subordinate agencies. As far as the Government's deliberation of draft propositions and reports is concerned, reference is made to the guidelines on [meetings of the Government](#), Items 2.4, 2.5 and 2.6.

3.3 Circulation for consultation

Section 3-3 of the Instructions for Official Studies

Green papers, proposed laws and regulations, as well as proposed measures with major effects shall normally be circulated for consultation. Such consultations shall be open to input from anyone. The deadline for submitting consultative comments shall be tailored to the scale and importance of the measure. The deadline for submitting consultative comments shall normally be three months, and no less than six weeks.

Circulation for consultation may be omitted if it

- would not be practicable;
- might complicate implementation of the measure; or
- must be considered obviously unnecessary

A decision to omit circulation for consultation shall be made by the official in charge of the responsible government body. Such decision shall be made in writing, shall be reasoned and shall be included in the case file.

If the consultative comments or other factors result in major amendments to the proposal, the revised proposal shall be circulated for consultation anew.

Proposed measures that are subject to a duty of confidentiality under the Freedom of Information Act shall not be circulated for consultation.

When the European Commission has proposed new legislation that may be of major importance to Norway, the responsible government body shall ensure that such proposal is made available to the general public without undue delay. Affected parties shall normally be consulted before a Norwegian position is established in the matter. Proposals on the implementation of enacted EEA and Schengen legislation in Norway shall be circulated for consultation:

- if the legislation has not been circulated for consultation at the proposal stage
- if the legislation has undergone major amendments since being circulated for consultation at the proposal stage
- if implementation offers scope for choice

The deadline for submitting consultative comments in EEA and Schengen matters shall be tailored to the time available, and may be less than six weeks.

3.3.1 What shall be circulated for consultation, and how shall consultation be conducted?

It follows from the Instructions for Official Studies that green papers, proposed laws and regulations, as well as proposed measures with major effects shall normally be circulated for consultation. The latter implies that minor measures are exempted from being thus circulated. The exemptions from general consultation are described in more detail below (cf. Chapter [3.3.6](#)).

The Public Administration Act requires government bodies to shed as much light as feasible on matters before decisions are made. Consultation is used as a tool to enable inhabitants,

organisations and businesses to express their views on various proposals to government bodies, but also to empower them to monitor what government bodies are doing and how these are performing their duties.

A consultation paper may present proposed measures based on previous studies, conducted internally or externally. It is important for the consultation paper to clearly express how such studies have been handled and evaluated as a basis for the proposals presented in the consultation paper. It should be made clear how alternative proposals are evaluated, or have previously been evaluated, and why the consultation paper attaches the most weight to a specific way of solving the challenges.

Drafts for new or amended regulations are governed by the provisions in Section 37 of the Public Administration Act, which regulate how to solicit consultative comments in such cases. As far as proposed laws and regulations of particular relevance to the business sector are concerned, the Better Regulation Council shall be informed of the consultation pursuant to Section 4-3 of the Instructions (cf. guidance in [Chapter 4](#)).

It furthermore follows from the Instructions that the consultations shall be open to input from anyone. This implies that one shall, when the study has been completed, enable anyone interested in submitting input to do so.

In order to ensure broad involvement, ministries should post consultation documents on www.regjeringen.no, and subordinate agencies should use their own websites.

Affected ministries, private organisations and other affected parties should normally be made aware of the consultation via e-mail. The sectoral ministry receiving information on the consultative round is responsible for making affected subordinate agencies and other affected government bodies aware of the consultation. The consultation documents may be forwarded as an attachment, or it may be specified that the consultation documents have been posted on www.regjeringen.no or on the website of the subordinate agency.

One should also, as a supplement to the digital or written consultative round, consider posting the study on social media and/or holding consultation meetings (cf. [Chapter 3.1](#)).

It can also be advantageous to complete a broad-based consultative round in an early phase of a study. An early consultative round may, as previously mentioned, improve the effectiveness of, although not replace, a subsequent consultative round held when the study has been completed.

Norway's obligations under the WTO treaties

It follows from Norway's obligations under the WTO treaties on technical barriers to trade, sanitary and phytosanitary matters that WTO member states shall be afforded an opportunity to comment on amendments to regulations falling within the scope of said treaties, before these can be incorporated into national regulations. Government agencies studying proposals for such amendments to laws and regulations may contact the Ministry of Foreign Affairs for additional information.

3.3.2 What shall be the deadline for submitting consultative comments?

It follows from the Instructions for Official Studies that the deadline for submitting consultative comments shall be tailored to the scale and importance of the measure. The deadline for submitting consultative comments shall normally be three months, and no less than six weeks.

The requirement that the deadline shall be considered in view of the scale and importance of the measure (proportionality) may be used to fix a deadline of between six weeks and three months. The more parties are affected by the proposal, the more parties should be encouraged to participate in the consultation. When fixing the deadline for submitting consultative comments, one needs to take into consideration that the bodies invited to submit consultative comments are organised in different ways, and that these may have different procedures for dealing with consultations. Some of these have, for example, procedures for addressing consultations in collegiate bodies that do not meet frequently. One may also fix a *longer* deadline than three months for measures that are held to be important and comprehensive.

It is only for EEA matters that the Instructions are allowing for the deadline to be fixed at less than six weeks. In other matters, a shorter deadline will represent a derogation from the Instructions (cf. guidance in [Chapter 1.4](#)). In such cases one should consider alternative forms of consultation, for example consultation meetings, in addition to written consultation.

3.3.3 On consultation in Norway on proposals for new EU legislation

Affected parties shall normally be consulted before a Norwegian position is established in the matter. Ministries shall fix a deadline for submitting consultative comments that enables a provisional Norwegian position to be established as soon as possible and no later than three months after the European Commission has submitted a proposal. The deadline for submitting consultative comments must facilitate effective Norwegian participation in the drafting of regulations, but should normally be no less than three weeks. Consultation may take place in parallel with the formulation of a provisional Norwegian position. Circulation for consultation may be omitted if it is considered obviously unnecessary, or if it would not be practicable.

Ministries should also circulate relevant green papers and white papers from the European Commission for consultation in Norway. If one is aware of other ongoing regulatory processes in the EU that affect key Norwegian interests, without any formal documents necessarily having been issued by EU, the ministry should consider inviting affected parties to submit their views and assessments. This is in order to facilitate early and good involvement.

How to conduct the consultation is outlined above. One may also invite members of permanent reference groups, for example the local government sector, the two sides of industry, trade associations and consumer organisations, to participate in expanded meetings of special committees if deemed appropriate.

3.3.4 On EEA consultation on Norwegian regulatory provisions

Consultation on technical provisions

Draft technical provisions prepared by central government bodies shall, under the EEA Consultation Act, be notified to the EFTA Surveillance Authority (ESA). See [guidance notes on the Act relating to European Notification Obligations for Technical Provisions \(the EEA Consultation Act\)](#).

The notification obligation does not apply to regulatory provisions that exclusively implement EU provisions. If the regulatory provisions include national adaptations, such provisions must nonetheless be notified pursuant to the EEA Consultation Act.

The notification shall be submitted on a designated form (see link in the guidance notes), together with the draft regulatory provisions in Norwegian and English. Please send the notification by e-mail to the Ministry of Trade, Industry and Fisheries for forwarding to the ESA (tbt.notifications@nfd.dep.no).

A three-month standstill period commences on the date on which the notification is received by the ESA. The provisions circulated for consultation cannot be enacted until the standstill period has expired. If technical provisions have not been notified in accordance with the statutory requirements, or are enacted before the standstill period has expired, such provisions cannot, as a general rule, be applied or invoked.

Consultation on requirements applicable to service providers

Regulatory provisions imposing requirements on established service providers and/or temporary service provision from other EEA states, shall be notified to the ESA pursuant to Chapter VI of the EEA Consultation Act. For guidance, see [Notification pursuant to Chapter 6 of the EEA Consultation Act – Notification obligation for requirements applicable to service providers](#).

Please send the notification by using the Internal Market Information system (IMI). All notifications shall include the proposed requirements in Norwegian and English. The Ministry of Trade, Industry and Fisheries is the national IMI coordinator, and may be contacted with any questions relating to the notification process (IMI@nfd.dep.no).

The ESA shall assess, within three months, whether the regulatory provisions are in conformity with the rules under the Services Directive, but this does not prevent such regulatory provisions from entering into effect during this period.

3.3.5 When is a new consultative round required?

It follows from the Instructions for Official Studies that if the consultative comments or other factors result in major amendments to the proposal, the revised proposal shall be circulated for consultation anew. If the bodies invited to submit consultative comments have previously been invited to comment on the matter, it will in most cases suffice to circulate for consultation those parts of the study that have been amended, under reference to the original consultation.

The deadline for submitting consultative comments shall also be between six weeks and three months for the new consultation, based on an assessment of the importance and comprehensiveness of the measure.

3.3.6 When can consultation be omitted, and by whom?

Documents or information in a matter that is held to be subject to a duty of confidentiality under the Freedom of Information Act shall not be circulated for consultation, cf. Section 3-3, Sub-section 5, of the Instructions. As far as central government budget matters are concerned, Section 22 of the Freedom of Information Act stipulates that the entire case document may be exempted from consultation.

It furthermore follows from the Instructions that circulation for consultation may be omitted if it would not be practicable, if consultation might complicate implementation of the measure, or if it is considered obviously unnecessary. These exemptions are illustrated by the following examples:

- Consultation may, for example, be impracticable in cases where one is faced with tight deadlines. There may, for example, be a need for measures requiring swift implementation to avert serious outcomes with regard to life, health and the environment.
- Consultation might in some cases complicate implementation of the measure. Consultation of amended tax rules, etc., may, for example, result in companies and individuals being afforded an opportunity to make adaptations that undermine the effect of the measure.
- Cases in which consultation can be considered obviously unnecessary may be measures on which the Storting has adopted detailed resolutions that render a separate consultative round unnecessary.
- Structural and linguistic amendments to the regulatory framework shall normally be circulated for consultation. However, if the amendments are limited to minor details that entail no technical change, such consultation may be obviously unnecessary.

It follows from the Instructions that a decision to omit circulation for consultation shall be made by the official in charge of the responsible government body, in accordance with the exemptions under Section 3-3 of the Instructions. This implies that the decision shall also be made by the official in charge of the responsible government body even if an exemption in accordance with Section 3-3, Sub-section 2, of the Instructions is not held to constitute a derogation from the Instructions (cf. Section 1-4 of the Instructions). It furthermore follows from the Instructions that the decision to omit circulation for consultation shall be made in writing, shall be reasoned and shall be included in the case file. Moreover, sectoral ministries' draft propositions and reports to the Storting shall not be circulated for consultation (cf. Section 3-2 of the Instructions).

EEA and Schengen matters

If one omits circulation for consultation in EEA and Schengen matters in accordance with the exemption provision in Section 3-3 of the Instructions for Official Studies, this is neither deemed to constitute a derogation from the Instructions, nor does it require a separate decision.

Examples of cases in which one may omit circulation for consultation:

- EEA/Schengen matters with tight external deadlines or measures requiring swift implementation to avert serious outcomes with regard to life, health and the environment. In such cases one should consider whether to circulate for consultation with a shorter deadline, or holding consultation meetings, etc.

- When EEA and Schengen legislation to be implemented in Norwegian law has already been circulated for consultation prior to such legislation being incorporated into the EEA Agreement. If there are no major amendments to the proposal, it is not required to circulate it for consultation when Norway is to implement such legislation. It may nonetheless be circulated for consultation anew even if there are no major amendments since the proposal was last circulated for consultation, if this is useful for Norwegian implementation. See also additional details on early involvement in [Chapter 3.1](#), on participation in [Chapter 5.2](#), on Norwegian interests and positions in [Chapter 5.4](#) and on incorporation and implementation in [Chapter 5.5](#).

4. Laws and Regulations

This chapter sets out a number of provisions that are specific to the preparation of laws and regulations, including, inter alia, the submission of consultation proposals to the Better Regulation Council and technical legislative review of legislative proposals in the Legislation Department. The provisions in Chapter 4 supplement the provisions in the other chapters as far as the preparation of laws and regulations is concerned.

Chapter 4 of the Instructions for Official Studies

4-1 Drafting of proposed laws and regulations

Proposed laws and regulations shall be drafted in accordance with the [guidance notes on legislative technique and the drafting of legislation](#) issued by the Ministry of Justice and Public Security.

4-2 Presentation to the Ministry of Justice and Public Security

Prior to embarking on major legislative efforts or other legislative efforts that may raise structural legislative issues, the matter shall be presented to the Ministry of Justice and Public Security.

4-3 The Better Regulation Council

When proposed laws and regulations of particular relevance to the business sector are circulated for consultation, cf. Section 3-3, the Better Regulation Council shall be informed of such consultation.

The responsible government body shall make the comments of the Better Regulation Council available to the general public without undue delay.

4-4 Presentation to affected ministries

Finalised draft propositions to the Storting setting out proposed legislative enactments, shall be presented to affected ministries prior to such draft being submitted to the Government. Draft propositions to the Storting setting out proposed legislative enactments with major effects on local or regional government, shall be presented to the Ministry of Local Government and Modernisation for comments.

The deadline for submitting comments shall be no less than three weeks unless otherwise agreed between the ministries.

4-5 Technical legislative review

Finalised draft legislative propositions shall be presented to the Legislation Department of the Ministry of Justice and Public Security for technical legislative review. This does not apply to proposed tax legislation.

The technical legislative review shall normally be conducted simultaneously with the presentation of draft propositions to ministries pursuant to Section 4-4, and subject to the same deadline, unless otherwise agreed with the Legislation Department.

4-6 Effective date of laws and regulations

Laws and regulations of importance to private and public sector businesses shall normally enter into

4. Laws and Regulations

This shall not apply to the implementation of EEA and Schengen legislation, or regulations implied by other international treaties, if the deadline for implementing such legislation and regulations necessitates the stipulation of a different effective date as far as such legislation and regulations are concerned.

4-7 Publishing regulations, bringing legislation into effect and assenting to legislative enactments

On the same date as a regulation is enacted or affirmed, such regulation shall be forwarded to the Norwegian Legal Gazette, c/o Lovdata Foundation, for publication, cf. Sections 38 and 39 of the Public Administration Act of 10 February 1967.

Decisions on bringing legislation into effect and assenting to legislative enactments shall, on the same date, be forwarded to the Norwegian Legal Gazette, c/o Lovdata Foundation, for publication.

4.1 Drafting of proposed laws and regulations

Proposed laws and regulations shall be drafted in accordance with the [guidance notes on legislative technique and the drafting of legislation](#) issued by the Ministry of Justice and Public Security, cf. Section 4-1 of the Instructions.

4.2 Presentation to the Ministry of Justice and Public Security

Prior to embarking on major legislative efforts that may raise structural legislative issues, the matter shall be presented to the Ministry of Justice and Public Security, cf. Section 4-2 of the Instructions.

4.3 The Better Regulation Council

It follows from Section 4-3 of the Instructions that when proposed laws and regulations of particular relevance to the business sector are circulated for consultation, cf. Section 3-3 of the Instructions, the Better Regulation Council shall be informed of such consultation. The responsible government body shall make the comments of the Better Regulation Council available to the general public without undue delay.

The Better Regulation Council is charged with examining the design of proposals for new or amended regulatory provisions, in the form of both laws and regulations, of particular relevance to the business sector. The Council shall determine whether studies have been conducted in conformity with the requirements stipulated in the Instructions for Official Studies, and whether the effects on the business sector have been adequately examined. The Council may consider whether new or amended regulatory provisions have been designed in such a way as to realise their objectives at a relatively low cost to the business sector. Furthermore, the Council is charged with monitoring technical developments and practices within the fields of regulation and

regulatory simplification, as well as providing information and general guidance to promote effective regulation. The website of the Better Regulation Council (www.regelradet.no) features useful information on studying regulatory proposals of relevance to the business sector.

By proposals of *particular relevance to the business sector* are meant proposals that affect the operating conditions of the business sector and other relevant matters. These will often relate to compliance costs in the broader sense, such as administrative costs, reporting obligations, adaptation costs, follow-up costs and training costs.

The Better Regulation Council issues advisory written comments in consultative rounds, but the Council is at liberty to choose which matters to issue comments on. Proposals are submitted to the Council for its deliberation upon being circulated for consultation. The procedural rules of the Council stipulate that the Council has a shorter deadline for submitting comments than other bodies invited to submit consultative comments. Its deadline is half of the announced deadline for submitting consultative comments, although no less than three weeks. The tight deadline means that it is important for the Better Regulation Council to be informed of relevant proposals upon these being circulated for consultation.

When preparing EEA-relevant legislation that may be of major importance to the Norwegian business sector, the Council shall assist the ministry in charge, if thus requested, in examining the impact assessments accompanying proposals from the European Union. If the Better Regulation Council is involved in EEA-related matters, the Council shall comply with the deadlines and procedures established for EEA processes. Reference is also made to the procedural rules for the Better Regulation Council.

4.4 Technical legislative review

It follows from Section 4-5 of the Instructions that finalised draft legislative propositions shall be presented to the Legislation Department of the Ministry of Justice and Public Security for technical legislative review. This does not apply to proposed tax legislation.

By «finalised draft» is meant that drafting of the entire proposition has been completed, thus implying, for example, that the section on the main contents of the proposition, as well as any special legislative comments and transitional provisions in the draft legislation, have been included, and that the proposition has undergone a final edit with regard to, for example, the numbering of chapters and, as far as legislative amendments are concerned, the use of italics in the draft legislation. A draft which is subsequently to be translated into a different Norwegian language variant is not a finalised draft. When a draft proposition is to be presented to the Ministry of Justice and Public Security pursuant to Section 4-4 and to the Legislation Department for technical legislative review pursuant to Section 4-5, the sectoral ministry shall forward the draft proposition in two dispatches: one for the Ministry of Justice and Public Security and one for the Legislation Department. Internal administrative procedures in the Ministry of Justice and Public Security differ between the two submissions.

4.5 Publishing of regulations

It follows from Section 4-7 of the Instructions that decisions on bringing legislation into effect and assenting to legislative enactments shall be forwarded to the Norwegian Legal Gazette, c/o Lovdata Foundation, for publication on that same date. It is established practice to also publish decisions on the delegation of authority, cf. the [guidelines on meetings of the Council of State](#).

5. EEA and Schengen matters

This chapter provides, inter alia, guidance on how to participate in the early phase of the drafting of EU legislation, on how the Norwegian position is coordinated between ministries in special committees, and on how to document the basis for decision-making in EEA memorandums and Schengen memorandums. Chapter 5 is of relevance to those involved in EEA and Schengen matters, along with Chapters 2 and 3.

5.1 Division of responsibilities in EEA and Schengen matters

Section 5-1 of the Instructions for Official Studies

Ministries shall ensure that matters are prepared, that affected parties are consulted, that Norwegian positions are formulated and promoted, and that decisions made by the EEA bodies are implemented nationally.

Subordinate agencies are increasingly involved in EU regulatory processes, in expert groups, committees and EU agencies. In order to contribute to the Norwegian public administration attending, as a whole, to Norwegian interests in an appropriate and effective manner, ministries should formulate what they expect from subordinate agencies in relation to EEA and Schengen processes. This may, inter alia, take place through the general governance dialogue ministries engage in with agencies, mandate letters, strategies for the relevant policy areas, as well as the involvement of subordinate bodies in special committees.

Ministries shall ensure that subordinate agencies give the necessary priority to the EEA and Schengen collaborations. Norwegian local and regional government bodies are actively involved in European processes. Whenever these are assumed to be affected, they should be consulted as early as possible, and be involved to the extent possible.

5.2 Participation

Section 5-2 of the Instructions for Official Studies

Ministries and their subordinate agencies shall, within their areas of responsibility, as early as possible identify any processes which are under preparation in the EU, and which are of material importance to Norway. Norwegian assessments and views shall then be transmitted into EU policy and regulatory development processes.

In order to influence EU policy and regulatory development processes, Norway needs to contribute and participate wherever we have an opportunity to do so. Such involvement normally takes the form of participation in EU expert groups and committees, EU agencies, EFTA working groups, as

well as the provisions of contributions to the European Commission, the European Parliament and EU Member States. In important matters, one should consider presenting the views on new legislation in collaboration with the other EEA EFTA States by means of joint EEA EFTA Comments.

The mandates and roles of Norwegian participants should be clarified prior to their participation in committees and expert groups, for example whether they are appointed to participate in their capacity of technical expert, or whether they represent the ministry/agency.

When subordinate agencies participate in the drafting of legislation, these shall be in close contact with the ministry in charge in order to achieve a coordinated Norwegian interest and position. One should develop good procedures for identifying matters of major importance at an early stage, thus ensuring that such matters are given attention at the appropriate level in the public administration.

5.3 Coordination of responsibilities

Section 5-3 of the Instructions for Official Studies

General, administrative and horizontal EEA issues shall be coordinated in the Coordination Committee for EEA matters. Ministries shall ensure that EEA matters in their respective areas of responsibility are normally deliberated by the special committees. Schengen matters shall be coordinated in the Coordination Committee for Justice and Home Affairs and in the appurtenant special committee.

Ultimate responsibility for EEA and Schengen matters lies at the political level of ministries, and follow-up of such matters shall be based on a defined strategy. All important EEA and Schengen matters shall be considered by the Government. The Government's Standing Committee on Europe has a coordinating role at the political level. General, administrative and horizontal EEA issues shall be coordinated at a high civil service level in the Coordination Committee for EEA matters. Ministries shall ensure that EEA matters in their respective areas of responsibility are normally deliberated by the special committees. Schengen matters shall be coordinated at a high civil service level in the Coordination Committee for Justice and Home Affairs and in the appurtenant special committee.

It is important to ensure strategic and early coordination of Norwegian positions in European matters. Good public administration and a sound public administrative culture requires the EU/EEA aspect to be fully integrated into the strategic and ongoing processes of ministries and subordinate agencies. The EU/EEA strategies of ministries should define clear objectives for this policy area, and describe how such objectives can be realised. This is important to ensure that the sectoral ministry in charge, along with affected ministries and subordinate agencies, share a joint understanding of objectives, prioritisations and Norwegian interests. Ministries are also expected to have good internal procedures, thus enabling the public administration to follow up, in a systematic manner, the challenges and opportunities presented by cooperation with the EU.

The EU/EEA involvement of various ministries differs in scope and complexity, and the strategy of individual ministries should reflect such differences. These are some of the elements ministries should consider including in their strategy:

- key strategic objectives and prioritisations
- organisational structures and procedures for EEA work within the ministry's area of responsibility
- how to participate and contribute in a good and effective manner to EU policy and regulatory development
- transparency, information and involvement
- accumulation of expertise and knowledge
- follow-up of EEA and Schengen obligations
- use of national experts

5.4 Norwegian interests and positions

Section 5-4 of the Instructions for Official Studies

When new EEA- and Schengen-relevant policies and legislation are planned and developed in the EU, matters that may be of major importance to Norwegian interests shall be identified, assessed and coordinated as early as possible.

When the European Commission has proposed legislation that may be of major significance, the ministry in charge shall ensure that a provisional Norwegian position is established as soon as possible and normally no later than three months after the publication of the proposal. If the matter requires deliberation by the Government, such deliberation shall take place within the said deadline.

The Norwegian position shall be evolved and adjusted as needed in step with the EU decision-making process.

The ministry in charge shall involve other affected ministries in these processes in an expedient manner. Reference is made to the specific examination and consultation requirements applicable when a Norwegian position is to be established: see Chapters 2 and 3

Clear positions in an early phase of the development of new legislation will enable the Government to participate in, and contribute to, EU policy and regulatory development, and can also provide important political guidance for Norwegian representatives in preparatory expert groups and committees. The formulation of a Norwegian position should commence as soon as one has become aware of policy and regulatory processes in the EU that may be of major significance to Norway.

What shall be considered matters of «major significance» needs to be determined in each individual case, but these are typically matters that require amendments to legislation or have major financial or administrative effects, as well as matters requiring amendments to regulations that are held to significantly curtail Norwegian room for manoeuvre.

EU processes in an early phase can be identified in, inter alia, the European Commission's working schedule, roadmaps, working papers, impact assessments, legislative act revision clauses, green papers, white papers and reports, as well as through participation in EU agencies, expert groups and committees. The Norwegian Mission to the EU and the EFTA Secretariat are key points of contact.

It is important to involve affected parties. Chapter [3.3.3](#) lays down supplementary provisions on consultation in Norway on proposals for new EU legislation.

In order to contribute in an effective manner, a provisional Norwegian position shall be established well ahead of the commencement of the actual EU processes. It is therefore important to clarify the expected time schedule for the processes in the EU. In particularly complex matters, or if thus permitted by the EU's own time schedule, it may be permissible to exceed the three-month deadline for establishing a provisional Norwegian position.

The provisional position must include a general Norwegian standpoint on the matter. The position should also include more specific Norwegian views on the main elements of the proposal. A preliminary clarification of EEA and Schengen relevancy should take place whilst it is still feasible for Norway to contribute to the EU decision-making process. The Norwegian position can be adjusted over time when the EU proposal is evolved and potential effects for Norway are further clarified. After the European Commission has published a proposal, the ministry in charge needs to pay special attention to any amendment proposals from the Council of the European Union and the European Parliament, thus enabling the Norwegian position to evolve and make it relevant to any new wording under deliberation.

Norwegian provisional positions and Norwegian positions shall be based on the basis for decision-making outlined in [Chapter 2](#) (the six questions).

5.4.1 Special Committee for EEA Matters

The [special committees](#) facilitate good coordination between ministries in regulatory matters. The ministry in charge shall ensure that light is shed on all aspects of the matter. Affected ministries shall contribute to this.

Managerial and secretarial responsibility for each committee lies with the ministry with overall administrative responsibility for the policy area addressed by the relevant special committee. The Office of the Prime Minister, the Ministry of Foreign Affairs and the Ministry of Finance are entitled to attend all committees. Other ministries are invited to attend when affected by the matters under deliberation. The ministry in charge may use written proceedings for matters assumed not to be of major significance to other ministries, or if merited on other grounds. If the ministry in charge believes that a matter is obviously not of relevance to other ministries, it is not required to present such matter in the special committee. This may, inter alia, apply to matters falling within the scope of the EFTA expedited procedure.

The special committee is an important forum for sharing information and discussing matters that are in an early phase in the EU, thus enabling participation to be coordinated between ministries in an appropriate manner. The ministry in charge shall normally use the special committee to clarify

the provisional Norwegian position when the European Commission has issued a proposal for new EU legislation.

The ministry in charge shall normally also use the special committee to discuss the Norwegian position after the legislation has been enacted by the EU.

5.4.2 Special Committee for Justice and Home Affairs

The special committee shall contribute to the coordination of matters relating to Schengen legislation, between ministries. The committee comprises representatives from the Ministry of Justice and Public Security and the Ministry of Foreign Affairs. The Norwegian Mission to the EU may attend, represented by a Councillor for Justice and/or Councillor for Migration. Other ministries and subordinate agencies may be invited to attend when needed. Managerial and secretarial responsibility lies with the Ministry of Justice and Public Security. The Office of the Prime Minister and the Ministry of Finance are entitled to attend.

The deliberations of the special committee shall ensure that the matter is fully assessed. Those attending its meeting shall share information on matters which are in the pipeline, have been published or are under deliberation within the EU system, and which may affect Norway's relations with the EU. This applies, in particular, to draft legislative acts which recently have been, or soon are expected to be, submitted for discussion in the Mixed Committee, as well as issues relating to notification and implementation in Norway of enacted legislative acts.

The committee shall, based on the preparations in the ministry in charge, seek to tailor Norwegian positions. A proposal for a Norwegian position shall be prepared for each matter and form the basis for the discussions in the special committee.

5.5 Incorporation and implementation of legislation

Section 5-5 of the Instructions for Official Studies

The ministry in charge shall ensure that EU legislation of EEA relevance are incorporated into the EEA Agreement in an effective manner. This process shall commence as early as possible in order to facilitate simultaneous implementation, to the extent possible, of new legislation in the EU states and the EEA/EFTA, and in conformity with the deadline jointly determined by the EEA and EFTA states. Norway shall contribute to the EEA Committee normally being able to make a decision on incorporation of new legislation into the EEA Agreement within six months of such legislation being enacted by the EU.

The preparation of any amendments to laws or regulations required for the implementation of EEA legislation shall commence well ahead of any decision in the EEA Committee on incorporation into the EEA Agreement.

In matters where the study identifies special issues of a legal, institutional or technical nature, these shall be clarified as early as possible. The ministry in charge shall ensure that affected ministries and the Ministry of Foreign Affairs are involved at an early stage to ensure effective coordination. Matters raising special issues of EEA relevance shall be presented to the Ministry of Foreign Affairs for comments at an early stage.

Matters within the areas of justice and home affairs shall be deliberated in accordance with the above provisions and shall adhere to the procedures and deadlines laid down in the context of Schengen collaboration.

5.5.1 From EU legislation to EEA legislation

Key elements of the process of incorporating new EU legislation into the EEA Agreement are the assessment of EEA relevance and the assessment as to whether there is a need for – and if so, the drafting of – any adaptation wording to be included in the decision of the EEA Committee. The EFTA Secretariat can provide guidance to ministries on individual matters and on the general interpretation of the EEA Agreement. Ministries may also consult the Ministry of Foreign Affairs. A desire for adaptation must be balanced against the desire for effective implementation of an identical regulatory framework, both substantively and in terms of timing, throughout the EEA.

The EEA EFTA States have [joint procedures](#) relating to the incorporation of EU legislative acts into the EEA Agreement. Legislative acts normally adhere to either of two different procedures.

1. The expedited procedure (fast track) is adhered to for legislative acts which do not raise special issues relating to EEA incorporation, which require no adaptation wording, and which are not subject to any constitutional requirements. The EEA EFTA States have decided that numerous categories of legislative acts fall within the scope of this procedure.
2. The standard procedure is adhered to for legislative acts not falling within the scope of the expedited procedure.

Established deadlines shall be observed under both procedures to ensure that the legislation is incorporated into the EEA Agreement in a timely manner. The deadlines are structured so as to normally enable the EEA Committee to make a decision to incorporate new EU legislation into the EEA Agreement within six months of such legislation having entered into effect in the EU.

In addition to the two procedures outlined above, the previously established simplified procedure remains in place, which procedure applies to, inter alia, certain matters within the fields of food and aviation.

Assessment of EEA relevance

The ministry in charge shall assess, in consultation with other affected ministries, whether new EU legislation is EEA relevant, and whether it is acceptable to incorporate these into the EEA Agreement. A legislative act is EEA relevant if it falls within the substantive and geographical scope of the EEA Agreement, as defined in the EEA Agreement's main text, annexes and protocols.⁵ Matters raising special issues of EEA relevance shall be presented to the Ministry of Foreign Affairs for comment in order to ensure a consistent Norwegian approach. It is important for such presentation to take place at an early stage, thus enabling preliminary clarification of EEA relevance whilst it is still feasible for Norway to participate in the EU decision-making process.

In case of disagreement between the ministries, or if the conclusion is uncertain, the matter shall be clarified politically at an early stage. In such cases the basis for decision-making shall describe any precedent implications and outline the political and financial effects of incorporation or non-incorporation.

Decisions on the incorporation of legislative acts into the EEA Agreement

A decision in the EEA Committee to incorporate new legislation into the EEA Agreement will enter into effect on the date stipulated by the Committee itself. It will usually enter into effect for Norway one day after the decision of the EEA Committee, unless the effective date of the legislative act in the EU is later or a different date has been specifically stipulated. If the consent of the Storting is required, Norway has a deadline of six months for obtaining such consent (Article 103 of the EEA Agreement).

Implementation in Norwegian law

The deadline for implementation of the decisions of the EEA Committee in Norwegian law must be complied with. In order to meet Norway's obligations under the EEA Agreement, the government body in charge must normally prepare any amendments to laws or regulations well ahead of the EEA Committee making a decision to incorporate an EU legislative act, thus enabling the necessary procedures and consultations to be completed in time. In order to support Nordic mobility, competitiveness and trade, the ministries should on an ongoing basis consider Nordic coordination of the implementation of EU/EEA regulations whenever relevant. Preparation of laws

⁵ Reference is made to the discussion on the assessment of EEA relevance in [Chapter 5.3.1 of Report No. 5 \(2012-2013\) to the Storting](#).

or regulations shall take place in accordance with the Instructions for Official Studies. The provisions shall be published in the Norwegian Legal Gazette. Once the decision of the EEA Committee has been implemented in Norwegian law, notice to such effect shall be given to the EFTA Surveillance Authority (ESA).

5.6 EEA and Schengen memorandums

Section 5-6 of the Instructions for Official Studies

EEA memorandums shall be prepared for all EEA-relevant legislative acts enacted by the EU, and normally also for proposals for new EEA-relevant EU legislative acts. Memorandums shall, in the same manner, be prepared for Schengen- and Dublin-relevant

The EEA memorandum database contributes to ensuring that ministries and other affected parties have access to updated information on the regulatory processes, from the EU initiative phase until the legislative acts are incorporated into the EEA Agreement and, ultimately, implemented in Norwegian law. The Schengen memorandums play a corresponding role for Schengen- and Dublin-relevant legislative acts.

The EEA memorandums shall be created as early as possible. These contain information on the substance of the matter, as well as answers to Questions 1–6 in [Chapter 2](#) on requirements as to the contents of the basis for decision-making. The EEA memorandums also provide information on the Norwegian assessment of EU measures and the Norwegian position/provisional position. The information in a EEA memorandum may be brief or more comprehensive, depending on the nature of the matter, cf. [Chapter 2](#). The discussion of matters processed under the EFTA expedited procedure will, for example, normally be very brief.

More information on when and how EEA memorandums shall be drafted is available on the [Government website](#). The EEA memorandums are available to central government bodies from the EEA memorandum database, www.eosnotat.no. The Schengen memorandums are available to central government bodies from the Schengen memorandum database: www.schengen-notat.no.

The EEA memorandums also serve as the Government's information to the Storting and other stakeholders on EU legislation to be implemented in Norwegian law. Public versions of the memorandums are available via [searches in the EEA memorandum database](#).

5.7 Proceedings between Norway and the EFTA Surveillance Authority (infringement proceedings) and submissions in other proceedings before the EFTA Court and the European Court of Justice

Section 5-7 of the Instructions for Official Studies

The EEA Law Committee shall consider Norwegian infringement proceedings and submissions in other proceedings before the EFTA Court and the European Court of Justice. This shall not apply if the ministry in charge and the Ministry of Foreign Affairs believe that it is obviously unnecessary for the Committee to address the matter.

If proceedings pending before the Norwegian courts are referred to the EFTA Court and the State is a party to such proceedings, with the Office of the Attorney General serving as counsel, a meeting of the EEA Law Committee shall be held if deemed necessary by the ministry in charge, the Ministry of Foreign Affairs or the Office of the Attorney General.

5.7.1 Proceedings between Norway and the ESA (infringement proceedings)

Letter of formal notice

The ministry in charge drafts replies to letters of formal notice. Replies shall be drafted in consultation with the Ministry of Foreign Affairs if the matter raises issues of particular importance for Norway's EEA obligations, and potentially with other affected ministries and the Office of the Attorney General under the auspices of the EEA Law Committee.

Reasoned opinion

If the ESA follows up in the form of a reasoned opinion, the matter shall be considered by the EEA Law Committee. The ministry in charge shall draft a reply in consultation with the Ministry of Foreign Affairs, and potentially with other affected ministries and the Office of the Attorney General.

Proceedings before the EFTA Court

If the ESA brings proceedings before the EFTA Court, the Ministry of Foreign Affairs and the Office of the Attorney General shall draft submissions in collaboration with the ministry in charge and potentially with other affected ministries after the EEA Law Committee has determined the main substance of such submissions. The Ministry of Foreign Affairs and the Office of the Attorney General shall be appointed as agents (counsel) in such proceedings. Specific observations concerning deliberation by the Government:

It needs to be considered whether the Norwegian position should be cleared with the Government in all of the abovementioned stages of treaty infringement proceedings. See the guidelines from the Office of the Prime Minister on meetings of the Government.

Referral in civil proceedings to which the State is a party

If proceedings pending before the Norwegian courts are referred to the EFTA Court and the State is a party to such proceedings, written submissions before the EFTA Court shall always be prepared on behalf of the State in its capacity of party to said proceedings. In civil proceedings in which the Office of the Attorney General is serving as counsel, a meeting of the EEA Law Committee shall be held if deemed necessary by the ministry in charge, the Ministry of Foreign Affairs or the Office of the Attorney General. The Office of the Attorney General shall be appointed as agent in such proceedings.

Norwegian submissions in other proceedings before the EFTA Court and in proceedings before the European Court of Justice

Norway ought to make submissions in other proceedings before the EFTA Court and in proceedings referred to the European Court of Justice on matters held to be of importance to Norwegian interests. Submissions shall be drafted by the Ministry of Foreign Affairs and the Office of the Attorney General in collaboration with the sectoral ministry in charge and potentially with other affected ministries after the main substance of such submissions has been determined by the EEA Law Committee. The Ministry of Foreign Affairs and the Office of the Attorney General shall be appointed as agents (counsel) in such proceedings. If submissions in the proceedings are deemed to be of importance to Norway, the main features of such submission shall be presented to the Government in a government memorandum.

Appendix

Instructions for the Preparation of Central Government Measures (“Instructions for Official Studies”)

Adopted by Royal Decree of 19 February 2016 in accordance with the general authorisation to issue instructions.⁶

Chapter 1 Object, Scope and Responsibility

1-1: Object

The object of the Instructions is to establish a sound basis for making decisions on central government measures by

- identifying alternative measures
- studying and assessing the effects of relevant measures
- involving those affected by the measure, at an early stage of the study process
- coordinating between affected government bodies

It is a further object for Norway’s participation in the EEA and Schengen collaborations to be managed in an integrated and effective manner.

1-2: Scope

The Instructions govern preparation of the basis for decision-making on central government measures, when carried out by, or at the behest of, central government bodies.

The Instructions also govern involvement with EEA and Schengen legislation, from the identification of new EU initiatives and the formulation of Norwegian positions to inclusion in the EEA Agreement or the Schengen Agreement and their incorporation into Norwegian legislation.

The Instructions for Official Studies do not govern the conclusion of other international treaties.

The Instructions are not applicable when special rules are laid down in laws or regulations, or pursuant to laws or regulations.

⁶ The Instructions are also available on www.regjeringen.no.

1-3: Responsibility for studies

The government body with responsibility for conducting the study shall ensure that the provisions of the Instructions are complied with. If the study is to be carried out by a government-appointed committee, necessary requirements shall be incorporated into its terms of reference.

The ministries have overarching responsibility for the quality of the basis for decision-making within their own sector.

1-4: Derogation from the Instructions

The provisions of the Instructions may only be derogated from if necessitated by special circumstances. Such decision shall be made by the official in charge of the responsible government body. Such decision shall be made in writing, shall be reasoned and shall be included in the case file.

1-5: Responsibility for the Instructions

The Ministry of Finance is responsible for the administration of the Instructions for Official Studies. The Ministry is also responsible for providing guidance on its provisions.

The Ministry of Justice and Public Security is responsible for providing guidance on those provisions of the Instructions for Official Studies that relate to laws and regulations.

The Ministry of Foreign Affairs is responsible for providing guidance on those provisions of the Instructions for Official Studies that relate to EEA and Schengen matters.

Chapter 2 Requirements as to the Contents of the Basis for Decision-Making

2-1: The minimum requirements applicable to studies

A study shall answer the following questions:

- What is the problem, and what do we want to achieve?
- Which measures are relevant?
- Which fundamental questions are raised by the measures?
- What are the positive and negative effects of the measures, how permanent are these, and who will be affected?
- Which measure is recommended, and why?
- What are the prerequisites for successful implementation?

The study shall encompass effects for individuals, private and public sector businesses, central, regional and local government bodies, as well as other affected parties.

2-2: Comprehensiveness and thoroughness

The study shall be as comprehensive and thorough as required. Such assessment shall be based on whether a measure raises important fundamental questions, how significant the effects of such measure are expected to be, and the time available.

If the measure raises fundamental questions, the study shall discuss these in a balanced, systematic and integrated manner.

When studying measures expected to involve major benefits or costs, including major central government budget implications, an analysis shall be performed in accordance with the current circular on cost-benefit analysis. Such analyses shall include a base case.

Studies of EU legislation which are under development in the EU, and which are to be incorporated into the EEA Agreement or the Schengen Agreement and implemented in Norwegian law, shall be tailored to the procedures, deadlines and requirements resulting from the EEA and Schengen collaborations, cf. Chapter 5.

Chapter 3 Early Involvement, Presentation and Consultation

3-1: Early involvement

Affected ministries shall be involved in the study process as early as possible. Others affected by the measure shall be involved early to the extent appropriate.

When new EEA and Schengen-relevant policies and new legislation are planned and developed in the EU, the ministry in charge shall involve other affected ministries in this effort, cf. Chapter 5.

Before a government-appointed committee embarks on a study, its draft terms of reference shall be presented to affected ministries.

3-2: Presentation to affected ministries

The ministry in charge shall present all proposed measures with major effects to affected ministries. Proposed laws and regulations shall always be presented to affected ministries. Presentation shall take place before the proposal is circulated for consultation. The presentation requirement does not apply to green papers (Norwegian Official Reports (NOU)).

Measures with major central government budgetary implications shall be presented to the Ministry of Finance. Measures with major effects for local or regional government shall be presented to the Ministry of Local Government and Modernisation. Measures with major effects for the business sector shall be presented to the Ministry of Trade, Industry and Fisheries.

Draft reports to the Storting and propositions outlining proposed decisions of the Storting shall be presented to affected ministries before such drafts are submitted to the Government. Draft reports to the Storting and propositions outlining proposed decisions of the Storting with major effects for local or regional government shall be presented to the Ministry of Local Government and Modernisation for comments.

Presentation pursuant to this section shall neither apply to budget propositions, nor to reports to the Storting that are submitted as a matter of standard procedure and for information. Such documents shall nonetheless be presented to the Ministry of Finance.

The deadline for submitting comments shall be no less than three weeks, unless otherwise agreed between the ministries.

3-3: Circulation for consultation

Green papers, proposed laws and regulations, as well as proposed measures with major effects shall normally be circulated for consultation. Such consultations shall be open to input from anyone. The deadline for submitting consultative comments shall be tailored to the scale and

importance of the measure. The deadline for submitting consultative comments shall normally be three months, and no less than six weeks.

Circulation for consultation may be omitted if it

- would not be practicable;
- might complicate implementation of the measure; or
- must be considered obviously unnecessary

A decision to omit circulation for consultation shall be made by the official in charge of the responsible government body. Such decision shall be made in writing, shall be reasoned and shall be included in the case file.

If the consultative comments or other factors result in major amendments to the proposal, the revised proposal shall be circulated for consultation anew.

Proposed measures that are subject to a duty of confidentiality under the Freedom of Information Act shall not be circulated for consultation.

When the European Commission has proposed new legislation that may be of major importance to Norway, the responsible government body shall ensure that such proposal is made available to the general public without undue delay. Affected parties shall normally be consulted before a Norwegian position is established in the matter. Proposals on the implementation of enacted EEA and Schengen legislation in Norway shall be circulated for consultation:

- if the legislation has not been circulated for consultation at the proposal stage
- if the legislation has undergone major amendments since being circulated for consultation at the proposal stage
- if implementation offers scope for choice

The deadline for submitting consultative comments in EEA and Schengen matters shall be tailored to the time available, and may be less than six weeks.

Chapter 4 Laws and Regulations

4-1: Drafting of proposed laws and regulations

Proposed laws and regulations shall be drafted in accordance with the guidance notes on legislative technique and the drafting of legislation issued by the Ministry of Justice and Public Security.

4-2: Presentation to the Ministry of Justice and Public Security

Prior to embarking on major legislative efforts or other legislative efforts that may raise structural legislative issues, the matter shall be presented to the Ministry of Justice and Public Security.

4-3: The Better Regulation Council

When proposed laws and regulations of particular relevance to the business sector are circulated for consultation, cf. Section 3-3, the Better Regulation Council shall be informed of such consultation.

The responsible government body shall make the comments of the Better Regulation Council available to the general public without undue delay.

4-4: Presentation to affected ministries

Finalised draft propositions to the Storting setting out proposed legislative enactments, shall be presented to affected ministries prior to such draft being submitted to the Government. Draft propositions to the Storting setting out proposed legislative enactments with major effects on local or regional government, shall be presented to the Ministry of Local Government and Modernisation for comments.

The deadline for submitting comments shall be no less than three weeks unless otherwise agreed between the ministries.

4-5: Technical legislative review

Finalised draft legislative propositions shall be presented to the Legislation Department of the Ministry of Justice and Public Security for technical legislative review. This does not apply to proposed tax legislation.

The technical legislative review shall normally be conducted simultaneously with the presentation of draft propositions to ministries pursuant to Section 4-4, and subject to the same deadline, unless otherwise agreed with the Legislation Department.

4-6: Effective date of laws and regulations

Laws and regulations of importance to private and public sector businesses shall normally enter into effect on the first day of a new calendar year.

This shall not apply to the implementation of EEA and Schengen legislation, or regulations implied by other international treaties, if the deadline for implementing such legislation and regulations necessitate the stipulation of a different effective date as far as such legislation and regulations are concerned.

4-7: Publishing regulations, bringing legislation into effect and assenting to legislative enactments

On the same date as a regulation is enacted or affirmed, such regulation shall be forwarded to the Norwegian Legal Gazette, c/o Lovdata Foundation, for publication, cf. Sections 38 and 39 of the Public Administration Act of 10 February 1967.

Decisions on bringing legislation into effect and assenting to legislative enactments shall, on the same date, be forwarded to the Norwegian Legal Gazette, c/o Lovdata Foundation, for publication.

Chapter 5 EEA and Schengen legislation

5-1: Division of responsibilities in EEA and Schengen matters

Ministries shall ensure that matters are prepared, that affected parties are consulted, that Norwegian positions are formulated and promoted, and that decisions made by the EEA bodies are implemented nationally.

5-2: Participation

Ministries and their subordinate agencies shall, within their areas of responsibility, as early as possible identify any processes which are under preparation in the EU, and which are of material importance to Norway. Norwegian assessments and views shall then be transmitted into EU policy and regulatory development processes.

5-3: Coordination of responsibilities

General, administrative and horizontal EEA issues shall be coordinated in the Coordination Committee for EEA matters. Ministries shall ensure that EEA matters in their respective areas of responsibility are normally deliberated by the special committees. Schengen matters shall be coordinated in the Coordination Committee for Justice and Home Affairs and in the appurtenant special committee.

5-4: Norwegian interests and positions

When new EEA- and Schengen-relevant policies and legislation are planned and developed in the EU, matters that may be of major importance to Norwegian interests shall be identified, assessed and coordinated as early as possible.

When the European Commission has proposed legislation that may be of major significance, the ministry in charge shall ensure that a provisional Norwegian position is established as soon as possible and normally no later than three months after the publication of the proposal. If the matter requires deliberation by the Government, such deliberation shall take place within the said deadline.

The Norwegian position shall be evolved and adjusted as needed in step with the EU decision-making process.

The ministry in charge shall involve other affected ministries in these processes in an expedient manner. Reference is made to the specific examination and consultation requirements applicable when a Norwegian position is to be established; see Chapters 2 and 3.

5-5: Incorporation and implementation of legislation

The ministry in charge shall ensure that EU legislation of EEA relevance are incorporated into the EEA Agreement in an effective manner. This process shall commence as early as possible in order to facilitate simultaneous implementation, to the extent possible, of new legislation in the EU states and the EEA/EFTA, and in conformity with the deadline jointly determined by the EEA and EFTA states. Norway shall contribute to the EEA Committee normally being able to make a decision on incorporation of new legislation into the EEA Agreement within six months of such legislation being enacted by the EU.

The preparation of any amendments to laws or regulations required for the implementation of EEA legislation shall commence well ahead of any decision in the EEA Committee on incorporation into the EEA Agreement.

In matters where the study identifies special issues of a legal, institutional or technical nature, these shall be clarified as early as possible. The ministry in charge shall ensure that affected ministries and the Ministry of Foreign Affairs are involved at an early stage to ensure effective coordination. Matters raising special issues of EEA relevance shall be presented to the Ministry of Foreign Affairs for comments at an early stage.

Matters within the areas of justice and home affairs shall be deliberated in accordance with the above provisions and shall adhere to the procedures and deadlines laid down in the context of Schengen collaboration.

5-6: EEA and Schengen memorandums

EEA memorandums shall be prepared for all EEA-relevant legislative acts enacted by the EU, and normally also for proposals for new EEA-relevant EU legislative acts. Memorandums shall, in the same manner, be prepared for Schengen- and Dublin-relevant legislative acts.

5-7: Proceedings between Norway and the EFTA Surveillance Authority (infringement proceedings) and submissions in other proceedings before the EFTA Court and the European Court of Justice

The EEA Law Committee shall consider Norwegian infringement proceedings and submissions in other proceedings before the EFTA Court and the European Court of Justice. This shall not apply if the ministry in charge and the Ministry of Foreign Affairs believe that it is obviously unnecessary for the Committee to address the matter.

If proceedings pending before the Norwegian courts are referred to the EFTA Court and the State is a party to such proceedings, with the Office of the Attorney General serving as counsel, a meeting of the EEA Law Committee shall be held if deemed necessary by the ministry in charge, the Ministry of Foreign Affairs or the Office of the Attorney General.

Chapter 6 Effective date

These Instructions shall enter into effect on 1 March 2016. The Instructions of 18 February 2000 No. 108 concerning consequence assessment, submissions and review procedures in connection with official studies, regulations, propositions and reports to the Storting shall be repealed with effect from the same date.