



**UiO** : **Institutt for offentlig rett**  
Det juridiske fakultet

# The Norwegian approach to ex ante and ex post evaluation of legislation

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27. september 2016

Visit from the Korea Legislation Research Institute

# Overview

- The expressed need for evaluation
- The relevant instruments
- The regulatory process: Law Commissions
- Two examples of evaluation
- Some concluding reflections

# The Parliament on evaluation

«The Committee notes that today there is not any systematic review or assessment of adopted laws. The opportunities available to adopt time-limited legislation or to undertake systematic assessments of whether the intentions are achieved, is not tested in practice.

The Committee recommend that further work is undertaken aimed at establishing mechanisms to ensure that the Parliament is given feedback on whether adopted laws function as intended. The Committee requests that the need for research on the effects of laws is considered.»

Innst. S. nr. 252 (2004-2005) p. 33.

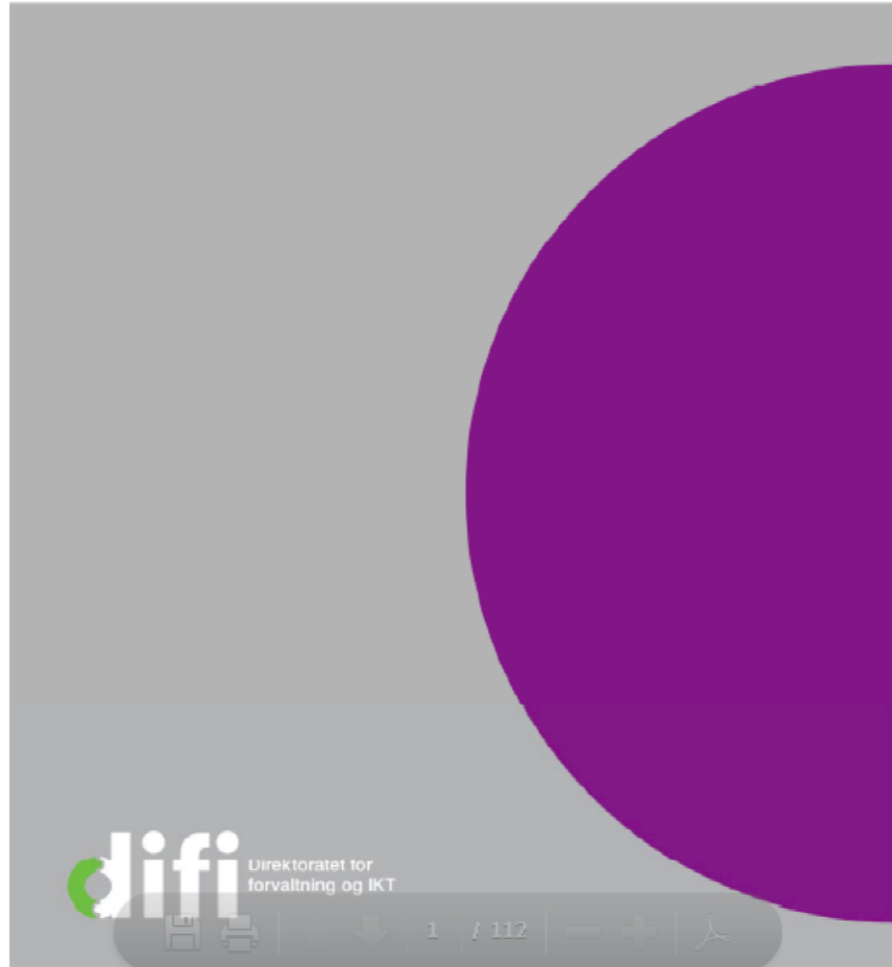
# The government on evaluation

«The administration must have good and systematic knowledge the effects of regulations and if laws and regulations that are already enacted are good tools to promote the stated purposes and aims, ref. the requirement to evaluate in the Regulations on financial management in central government. The current knowledge production is weak, spread out and unsystematic. There are no larger research community that particularly study the use of regulation systematically.»

Report to the Storting on Governance (2009)

## Graves det dypt nok?

Om utredningsarbeidet i departementene

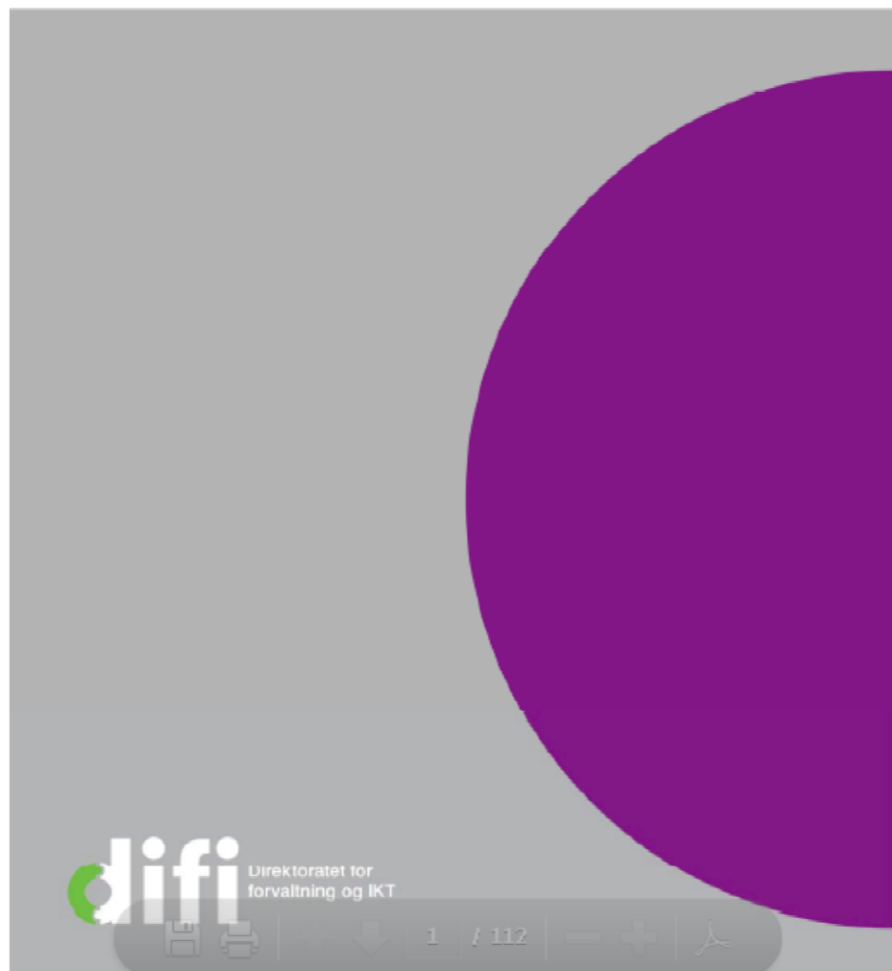


The Norwegian Agency for Public Management and eGovernment (Difi):

«Do we dig deep enough?- On regulatory impact assessment in the ministries»

## Graves det dypt nok?

Om utredningsarbeidet i departementene



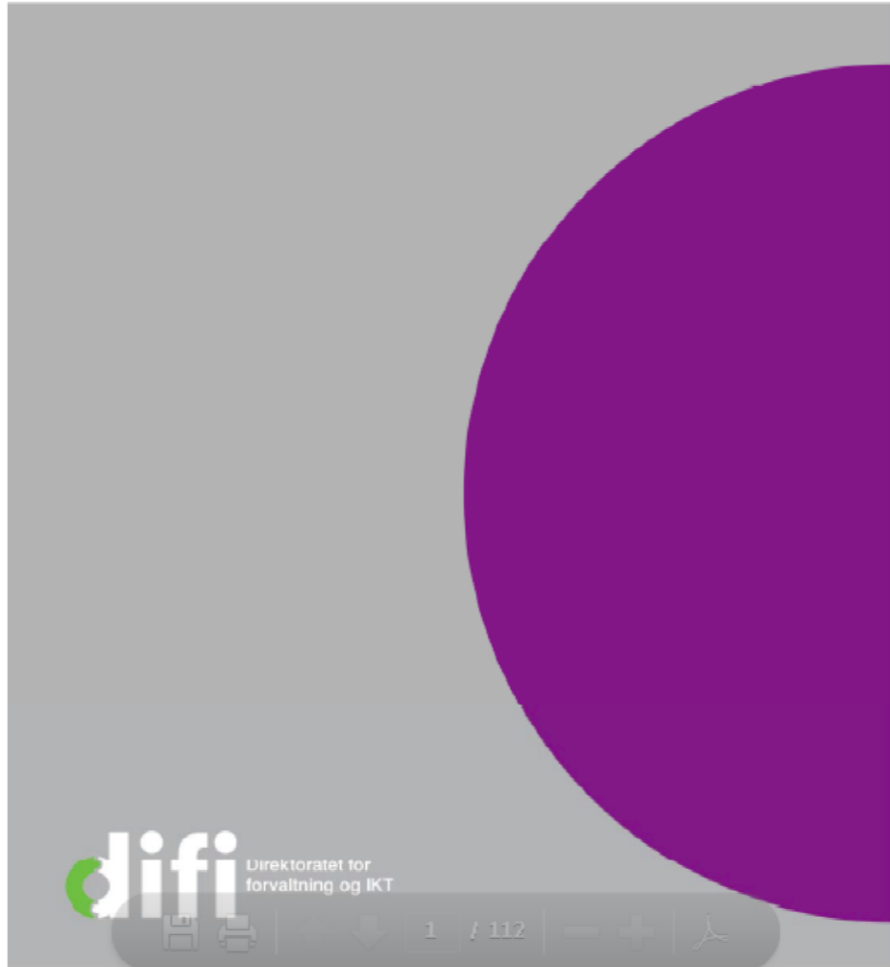
The Norwegian Agency  
for Public Management  
and eGovernment (Difi):

# NO

Same conclusion:  
Performance Audit  
by The Office of the  
Auditor General  
2012

## Graves det dypt nok?

Om utredningsarbeidet i departementene



## The Norwegian Agency for Public Management and eGovernment (Difi):

- To few impacts assessments have been conducted
- Consequences are not quantified
- Alternatives are not presented
- Time-pressure

# Difficult

«It is not possible to calculate the cost. The cost will entirely depend on how the law will be implemented, and how strict [the requirements] in practice will be.»

Proposition, Product Control Act, Prop. nr. 51  
(1974-75) p. 81.

-



# Difficult

«Measures under the Product Control Act will be implemented following an assessment of the various effects of the measure, if possible, made using a cost-benefit analysis. **Such an analysis will often be very difficult, and only have limited value.** Quantification of the costs [...] is usually much simpler than the quantification of benefits or benefits of intervention. The major cost factors arising from the law is mentioned above. **An analysis of benefits will for a large part to get the character of a more general description of possible cost savings and benefits that are not easily quantified economical.»**

Proposition, Product Control Act, Prop. nr. 51 (1974-75) p. 82.

# EVALUATION



# Duty to evaluate

Section 16 Evaluations, «Regulations on financial management and central government»

All agencies shall ensure that evaluations are performed to obtain information on efficiency, achievement of objectives and results within the agency's entire area of responsibility and activities or within parts thereof. The evaluations shall focus on the appropriateness of for instance ownership, organisation and instruments, including grant schemes. The frequency and scope of the evaluations shall be based on the agency's distinctive characteristics, its risk profile and its significance.

# Duty to evaluate

Norwegian Parliament:

Continuous assessment and evaluation of regulation (secondary legislation)

Innst. O. nr. 77 (2000-2001)

In addition several separate request for evaluation of particular laws.

# Major instruments

- *Evaluation of laws and other regulations*, (Ministry of Justice and Directorate for Economic Governance, 2009)
- Instructions and Guidance for Official Studies (2016)
- Circular and Guidance – Cost-Benefit Analysis, Ministry of Finance, 2014
- (Guidance – Evaluations in General, Ministry of Finance, 2005)
- (Guidance – Strategic and systematic use of evaluation in governance, Directorate for Economic Governance DFØ, 2011)

Veileder

## Evaluering av lover

Med tilsvarende anvendelse på forskrifter og andre rettsregler

# Guidance on evaluation of laws

- 2009
- A Practitioner's guide
- Main emphasis on quantitative methods
- Questionnaire as an important tool

# What is evaluation

Guidelines «Evaluation of Legislation» p. 3

«An evaluation of regulations is a systematic data collection, analysis and evaluation of regulations with a view to design, goal realization, effects and/or development and application»

# What is evaluation

- Evaluation shall assess the value or suitability of something in addition to describing the current conditions.
- Utilize systematic and verifiable method
- Should be conducted by an evaluator with certain distance to object of evaluation

Guidelines «Evaluation of Legislation» p. 4



# Evaluation – different terms

- Regulatory Impact Assessment
- Cost-benefit analysis
- Performance Audit
- Ex post evaluation
- Ex ante evaluation

Knowledge-management in the Norwegian legal system

# Minimum requirements

## **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?

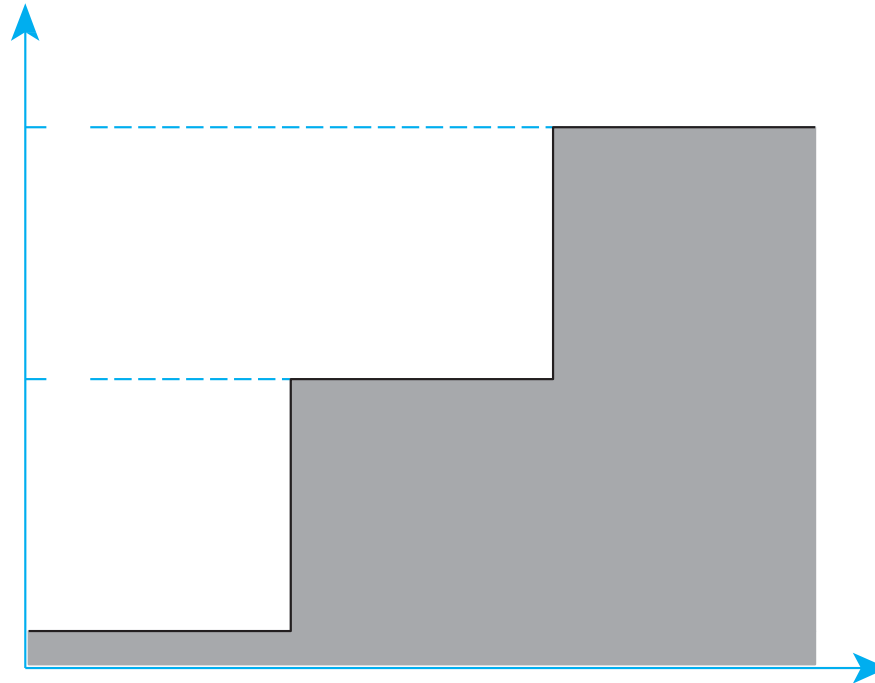
The study shall encompass effects for individuals, private and public sector businesses, central, regional and local government bodies, as well as other affected parties.

Comprehensiveness and thoroughness  
of the study

Cost-Benefit Analysis

Simplified Analysis

Minimum Requirements

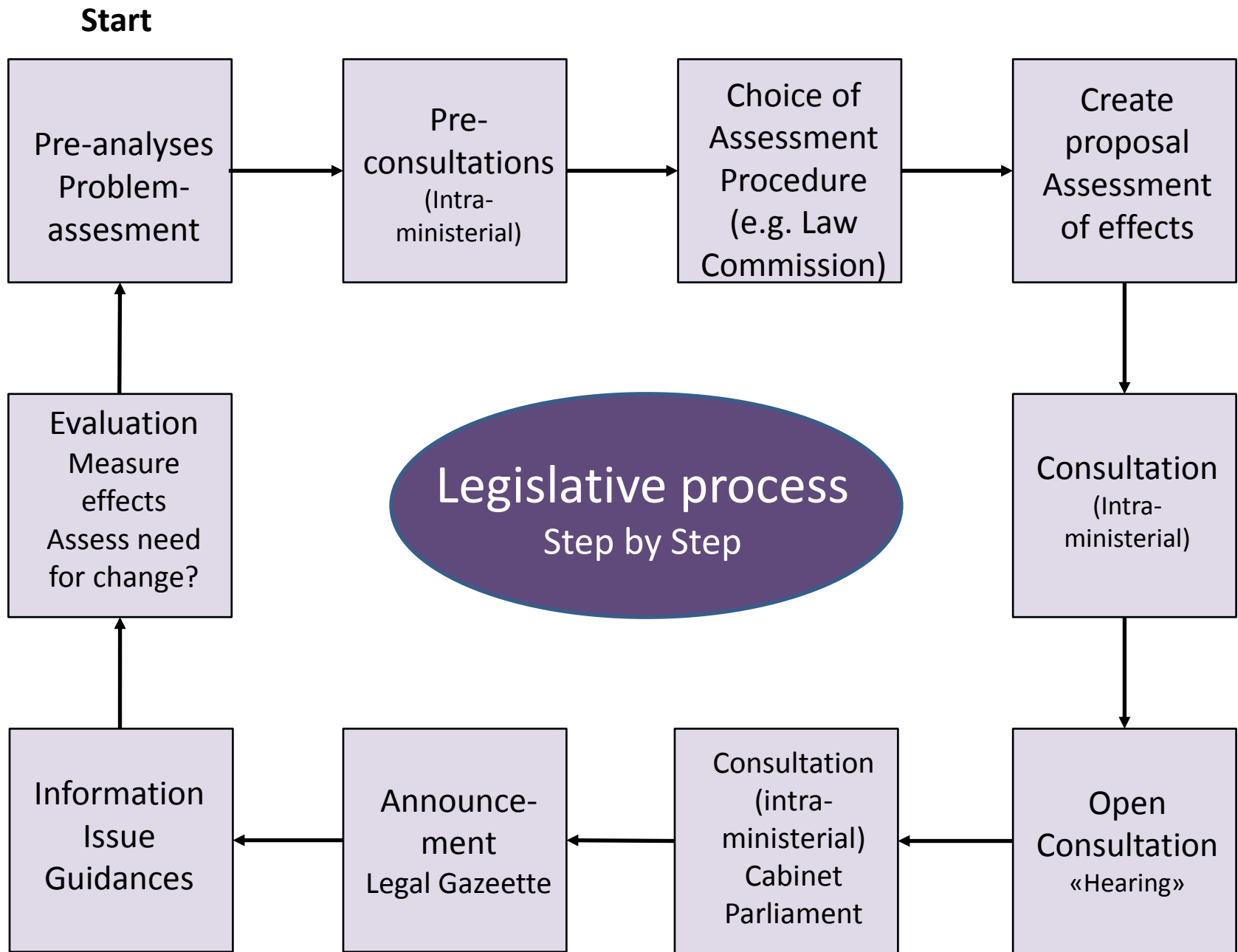


Scale of the measure

# An example of ambition

«A regulatory measures may affect several sectors, groups and geographical areas. For example, a comprehensive emissions regulation affect an entire industry, or many different sources of emissions across sectors, and those affected may be geographically spread across large parts of the country. **When you identify costs associated with for example a proposed regulation, you should pay special attention to identify all cost effects resulting from the regulations.»**

# LAW COMMISSIONS



# Choice of legislative process

«Which method to be chosen will depend partly on the extent and complexity of the legislative work to be performed as well as the available timescales. **Especially for more comprehensive legislative projects it will be appropriate to appoint a law committee with representatives from different disciplines and interest groups.»**

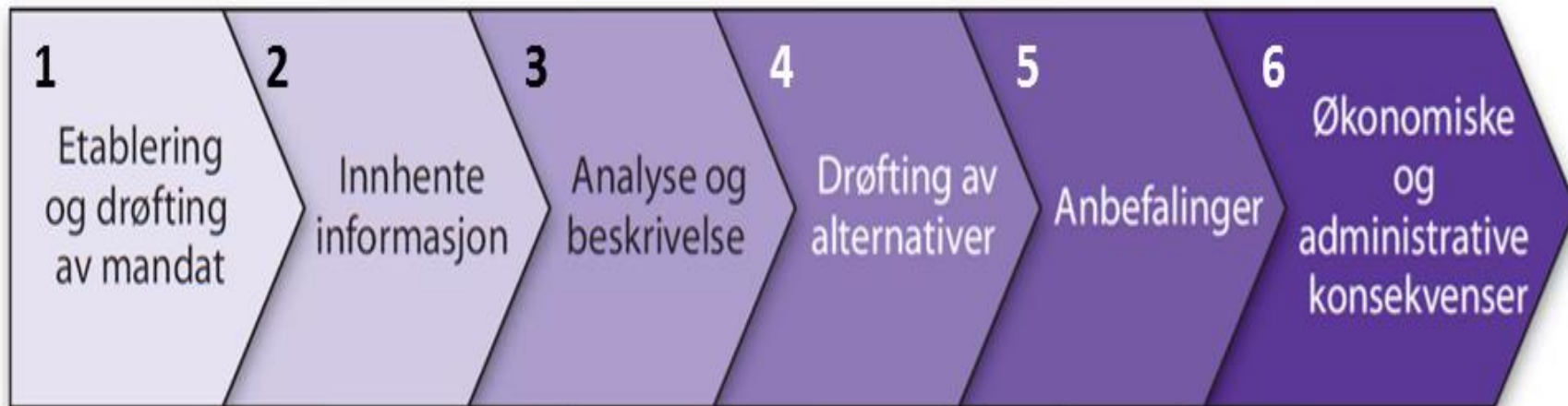
Guidance in Legislative Practice, Ministry of Justice (2000) p. 29.

# Law Commissions

- Cornerstone of the deliberative consensus-oriented and open Norwegian legislative style
- Political process is «extraordinary deliberative»
- Political outcomes are «highly rationalistic»
- «Politics at work» rather than «politics as game»

Arter, David: *Democracy in Scandinavia: consensual, majoritarian or mixed?* (2006)  
Christensen, Tom and Peters, Guy: *Structure, culture, and governance: a comparison of Norway and the United States* (1999)





↑  
Drafting and  
discussing  
the mandat

↑  
Gather  
information

↑  
Analyses and  
description

↑  
Discussing  
alternatives

↑  
Give  
recommendation

↑  
Impact  
assessment

Different fases in public studies  
FAD (2007) s. 10

# Three examples of composition

- Ship-safety act
- Fishery-resources act
- Kindergarten act

# Marine Resources Act 2008

NOU 2005: 10

- members of the law commission -

- Chief Public Prosecutor of one of the most important fishery-district (chair)
- Professor of economy
- Professor of Aquatic Biology
- Special advisor in the Ministry of Fisheries
- High Standing Diplomat, expert on the law of the sea
- CEO Fishery Industry Organisation
- Deputy Director General, Ministry of Environment
- Head, Fisherman's association
- Representative, The Sami Parliament
- Senior Advisor, Ministry of Fisheries

# Ship Safety Act 2007

NOU 2005: 14

- members of the law commission -

- Professor of Law
- CEO The Norwegian Association for Sea Officers
- Lawyer, The Norwegian Association for Seamen
- Liner CEO, Ship-owners Association
- Fisherman
- Advisor, Marine Insurance Association
- Legal director, International Certification Body
- Legal advisor, Sea Directorate
- Advisor, Ministry of the Environment
- Deputy General Director, Ministry of Labour
- Advisor, Ministry of Commerce
- CEO, Safety Consultancy

# Proposal for a new kindergarten act

## - NOU 2012:1 -

County Governor (former minister, Labour party)

Professor of economics (former minister, Conservative Party)

Legal Advisor, County Governor

Director General, Directorate for Information and management

Associate professor economics (Socialist Party)

Director General, A Local Municipality

Researcher, political scientist

Professor of Pedagogy

Legal Advisor

Political Advisor, Teachers Association

Director General, Private Kindergarten Association

Department Director, Labour Union

Secretariat: 6 lawyers, social scientist and teachers

# NOU 2012:1

- Cabinet decision, 25 June 2010, NOU submitted 15 June 2012.
- 15 Commission meetings – typically over two days
- Separate meetings and sightseeing at 11 kindergartens in every part of the country and every form of organisation
- Separate meetings with 17 municipalities
- Meetings with Swedish and Danish counterparts (government, municipalities and associations)
- The secretariat had meetings with Sami Parliament, several researchers

# Horizontal legislation

– Ongoing revision of the Administrative Procedure Act –

- Professor of Law
- Deputy Director General, Ministry of Regions (lawyer)
- Lawyer, commercial law firm
- Deputy County Governor (lawyer)
- Lawyer, Commercial law firm
- Vice President, University (political scientist)
- Deputy director, Taxation Directorate (economist)
- Former Attorney General for Civil Affairs
- Deputy director, Ombudsman (lawyer)

# The Composition of «NOU»

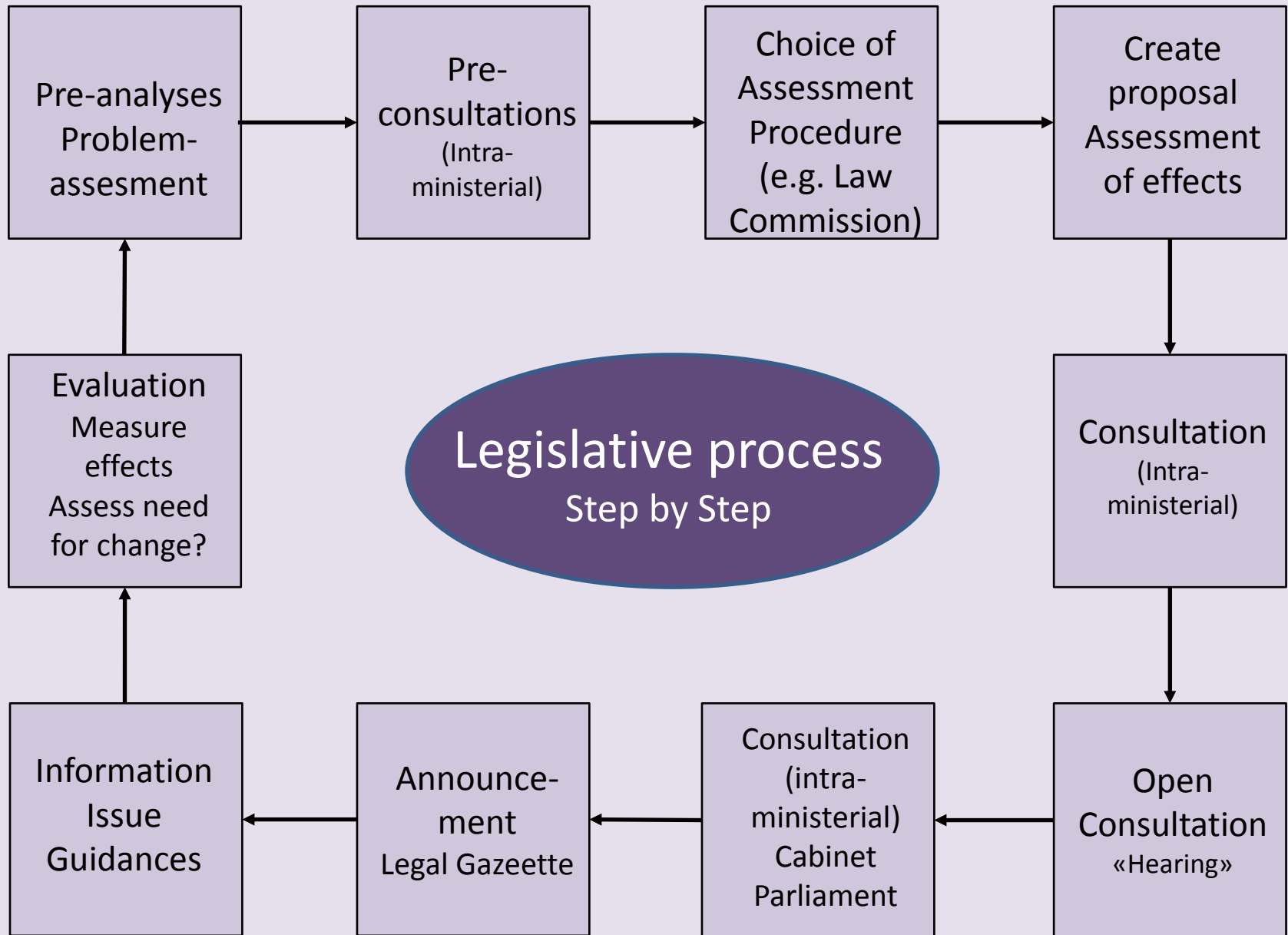
- Legal analysis of current regulation («gjeldende rett», «geltendes Recht»)
- Analysis of the effects of current legislation (Problem analysis)
- Comparative legal analysis
- Assessment of the need for regulation
- The proposal and explanatory remarks
- Assessment of economic, administrative and other effects of the proposal
- Emphasis on the *legal* analysis and the proposal



# Characteristics

- Pragmatic fact-finding (ex ante evaluation)
- Close connection between fact-finding and proposals for changes – invites some realism
- «Agree» on the facts
- More *implicit* than explicit ex post and ex ante legislation
- Deliberation and expert judgement

## Start



## Innsyn i forvaltningen – Kompetanse, etterspørsel og makt

Evaluerer av offentleglova




# EVALUATION OF FREEDOM OF INFORMATION ACT

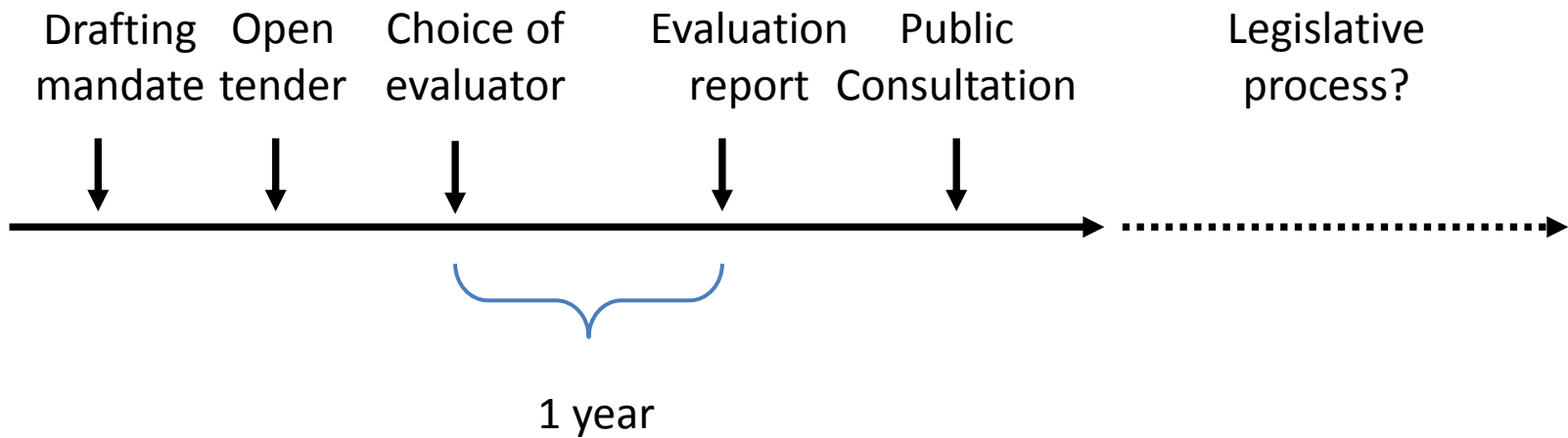
# Process

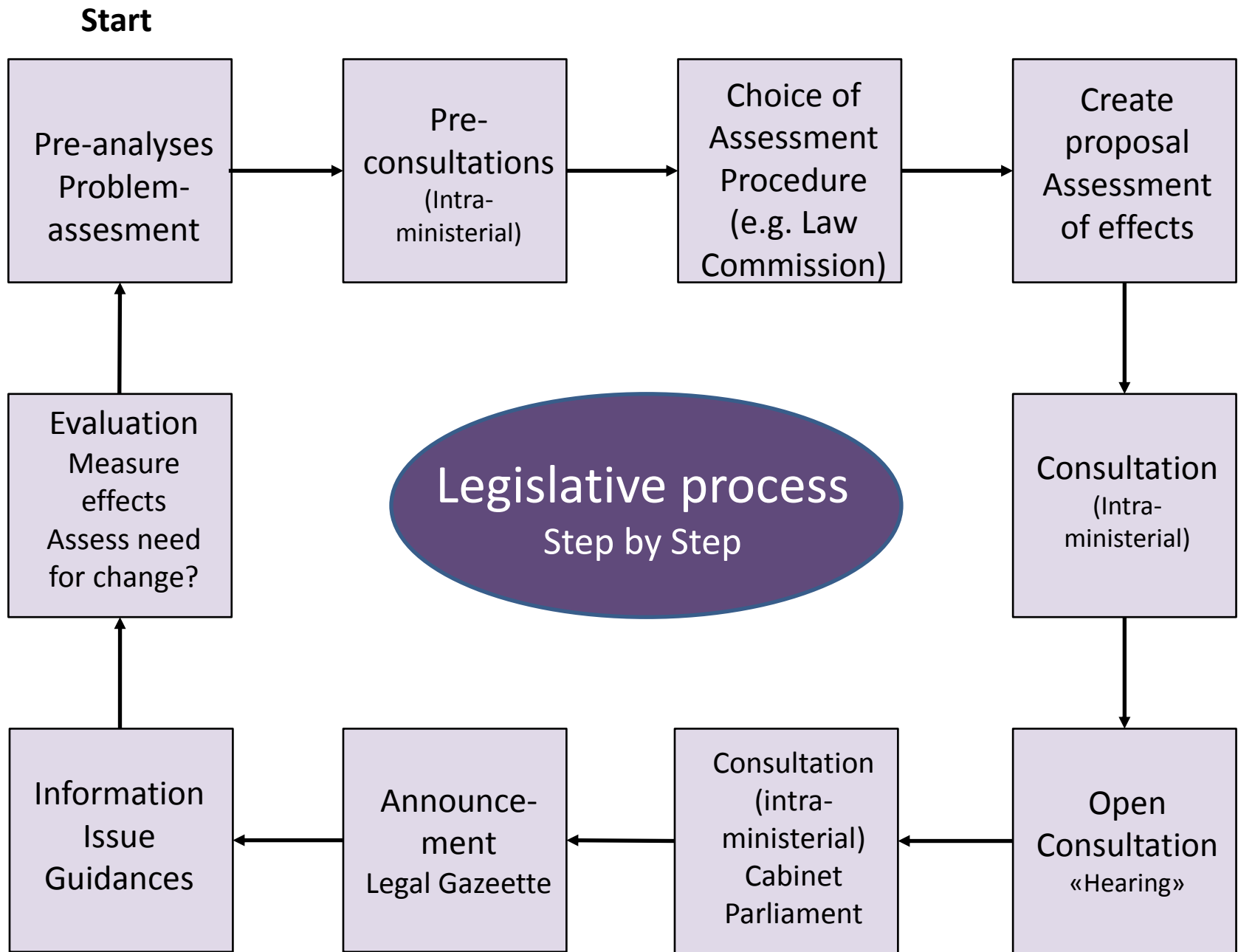
- Open tender
- Winner: Consultancy Firm (lawyers, political scientists and economists)
- Timeframe: Dec. 2014 – Dec. 105
- Limited mandate:
  - Questions of implementation
- Concentrated on intermediate goals
  - Quantitative
    - e.g. How many times access is given to documents
  - Qualitative
    - e.g. How burdensome does civil servants find it to comply with the regulations

# Method

- Explorative interviews
  - Qualitative interviews
    - With public servants
- 
- Most important
- Document studies
  - Register data
  - Resource and cost-estimates

# Timeline





# Evaluering av plan- og bygningsloven (EVAPLAN 2008)

Fungerer plandelen av loven fra 2008 etter intensjonene?



Best practice?

## EVALUATION OF PLANNING AND BUILDING CODE



# Evaluation of Planning and building code

- Evaluation of the Planning and Building Code
- Financed by the Norwegian Research Council
- Project-period: 2014-2018
- 17 project-workers: Professors and PhDs: political scientists, lawyers, architects, engineers
- Mainly from Norwegian Institute for Urban and Regional Research and Norwegian University of Life Sciences

# International review-group:

- German professor – law
  - Danish professor – law
  - Danish professor – planning
  - Swedish professor – planning
  - Swedish professor – political science
- 
- In addition a international research cooperation.

# Reference Group

Several Public and Private Building Companies

Oslo Planning Department

Chief of Planning in the Associations of Local Governments

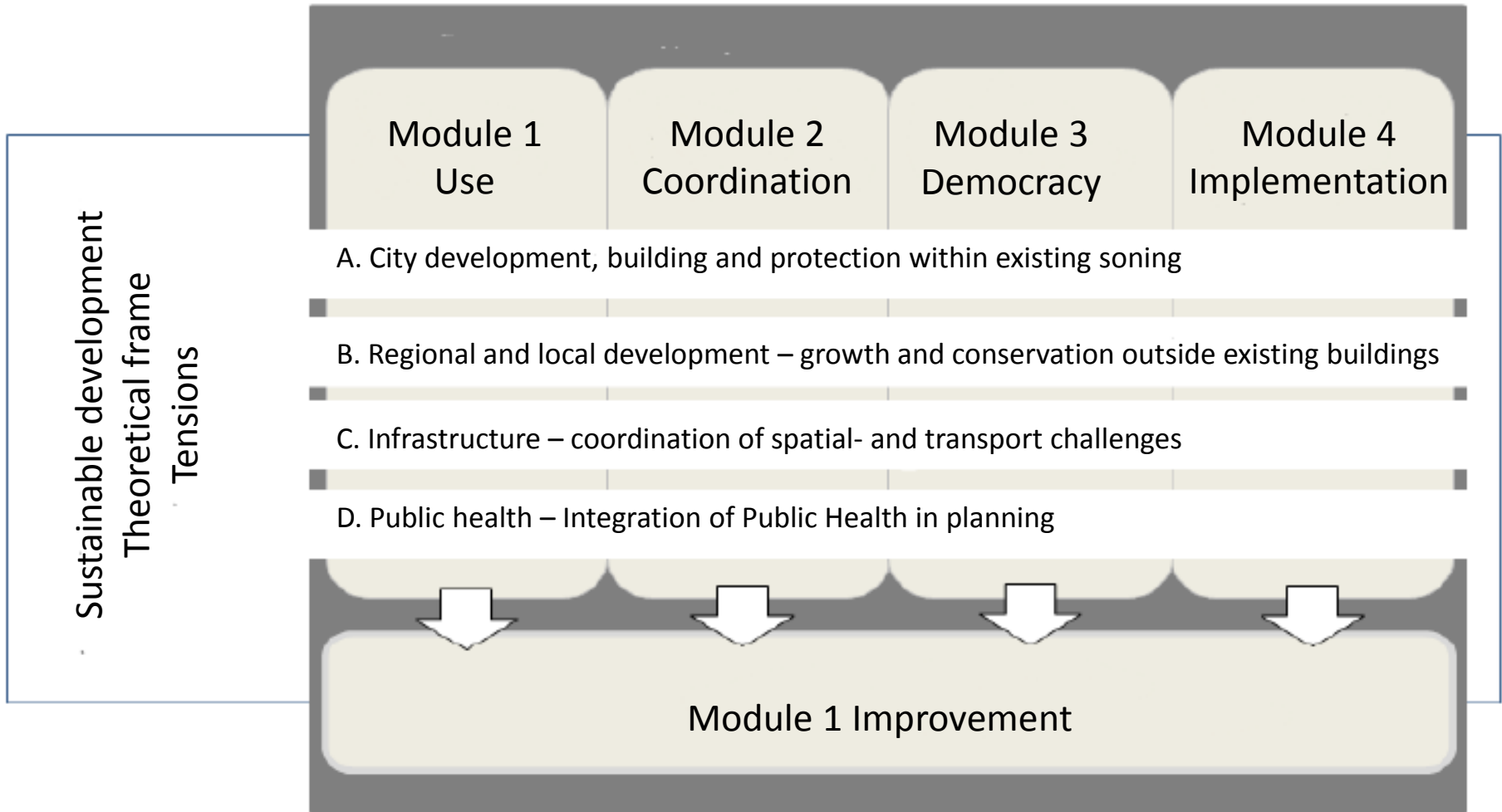
Head of Public Health, County Governor

County Governor

Private Housing Interest Group

Norwegian Environmental Organisation

# Methodological framework

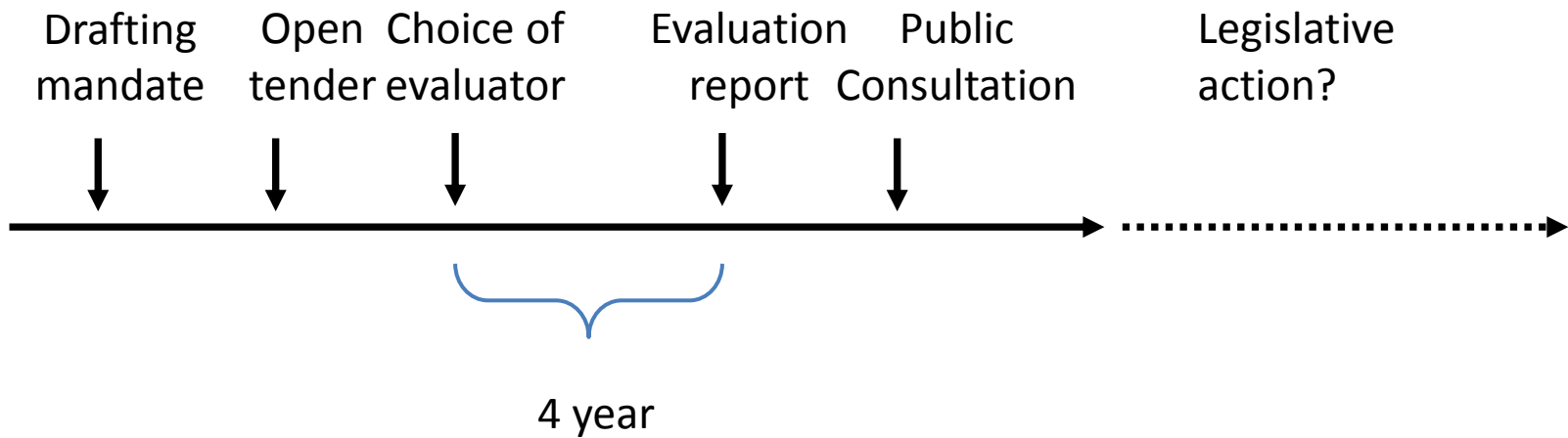


Translated from presentation from the project-group (2015)

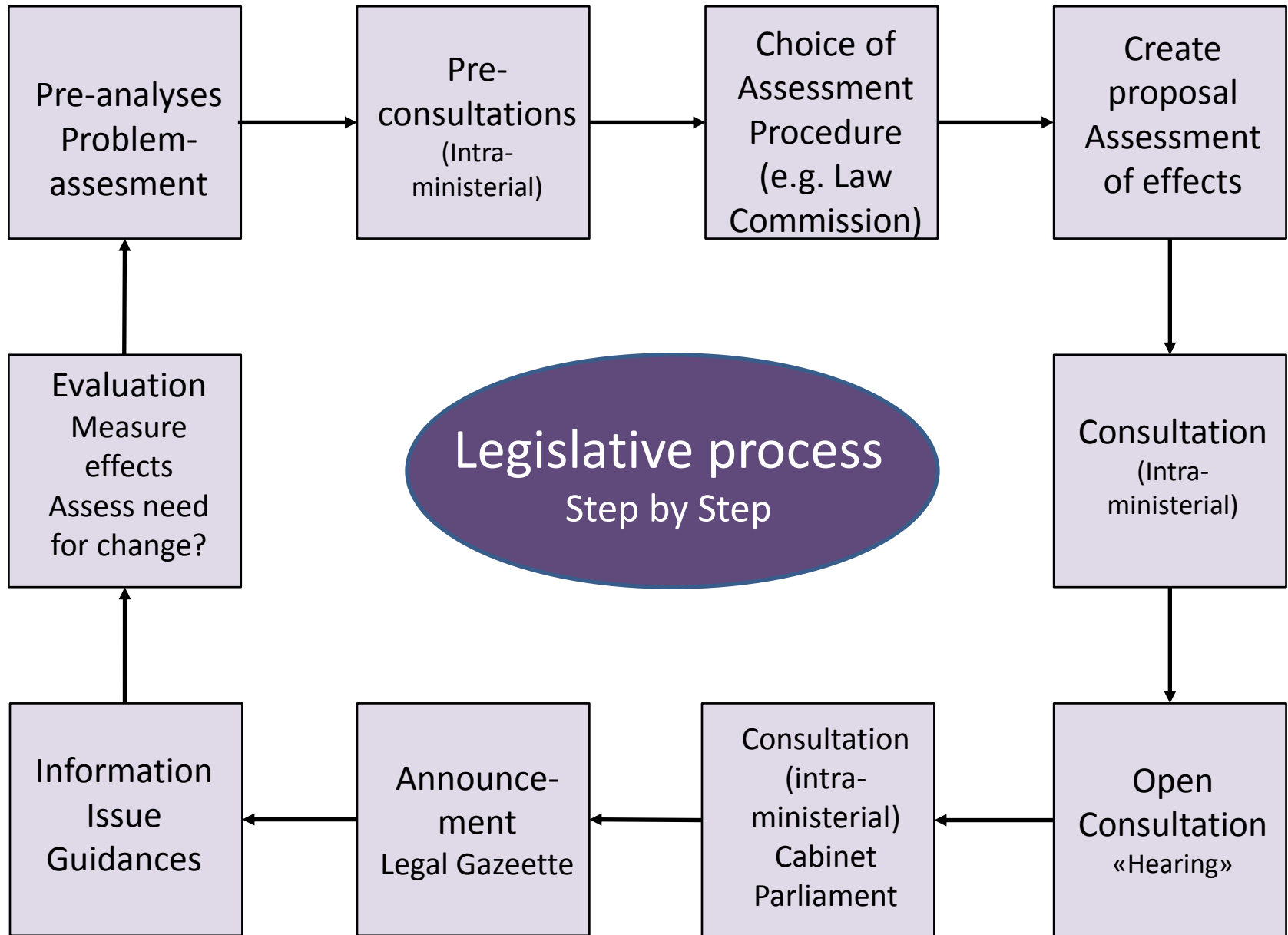
# Methods

- Document studies
  - Field studies
  - Interviews
  - Statistics
  - Comparative legal studies
  - Other comparative studies
- 
- Compare with a law commission

# Timeline



## Start



# Examples last years

- Implementation evaluation, Evaluation of the Freedom of Information Act (2015)
- Evaluation of a specific provision, Evaluation of the prohibition on purchasing of sex, Criminal Act § 316 (2014)
- Reform-evaluation, evaluation of the civil procedure act (2013)
- Seemingly a huge increase last 5 years



# Methods

- Interviews
- Questionnaire
- Document studies
- Statistics
- Legal analysis
- (Ethnography)
- (Economic theory)

# Evaluator

- Consultancy Firms
- Research programs
- Researchers
- Working Group in the Ministries
- Office of the General Auditor (Administrative Performance Audit)

## Database for evalueringer

Søk etter evalueringer og annet portalinnhold

Se også

[Sektor](#) [Utfører](#) [Oppdragsgiver](#) [Type](#) [Datagrunnlag](#)



### Kalender



29.09.2016 10:00

[Evalueringskonferansen 2016](#)

06.10.2016 11:00

[Hvordan bruke evalueringer for...](#)



[Følg oss på Twitter](#)

### Aktuelt

21.9.2016

[Kjøn av Beredskap og industrivern](#) [Ristand og](#)

## Veileder: Strategisk og systematisk bruk av evaluering i styringen

Forankre og integrere



Planlegge og gjennomføre



Formidle og bruke



Database and internett-page  
with evaluation in public  
policy

# Some challenges

- How does this development fit with the regulatory process?
- How do we ensure that long term effects and effects that are not easily quantifiable or observable are considered?
- Very often the data is based on interviews and questionnaires – is this necessarily better than deliberation in expert and representative groups?
- Some point to the danger to the integrity of facts – political pressure

# Looking ahead

- Mix between
  - Implementation evaluation
  - Public Performance Audit
  - Large Research Projects
  - Law Commissions
- Need for continuous research
- Need for a stable and resourceful research centre for legislative research

# **SOME OTHER REFLECTIONS**

# Legislative technique – challenge for evaluation

- Short and open-ended
- Purpose-oriented and pragmatic
- Pragmatic interpretation style
- Extensive use of delegated authority
- Strong elements of cooperation and negotiation in development and implementation

Example:

Regulation Forum – Oil and gas-sector

Cooperative Arrangement – Fishery sector

Rank	Country	Index
1	UK	3.14
2	Belgium	1.90
3	Neth	1.87
4	Lux	1.63
5	Spain	1.50
6	Ireland	1.48
7	Austria	1.18
8	Italy	1.00
9	Germany	0.90
10	Portugal	0.82
11	Finland	0.65
12	France	0.65
13	Sweden	0.58
14	Denmark	0.52
15	Norway	0.35

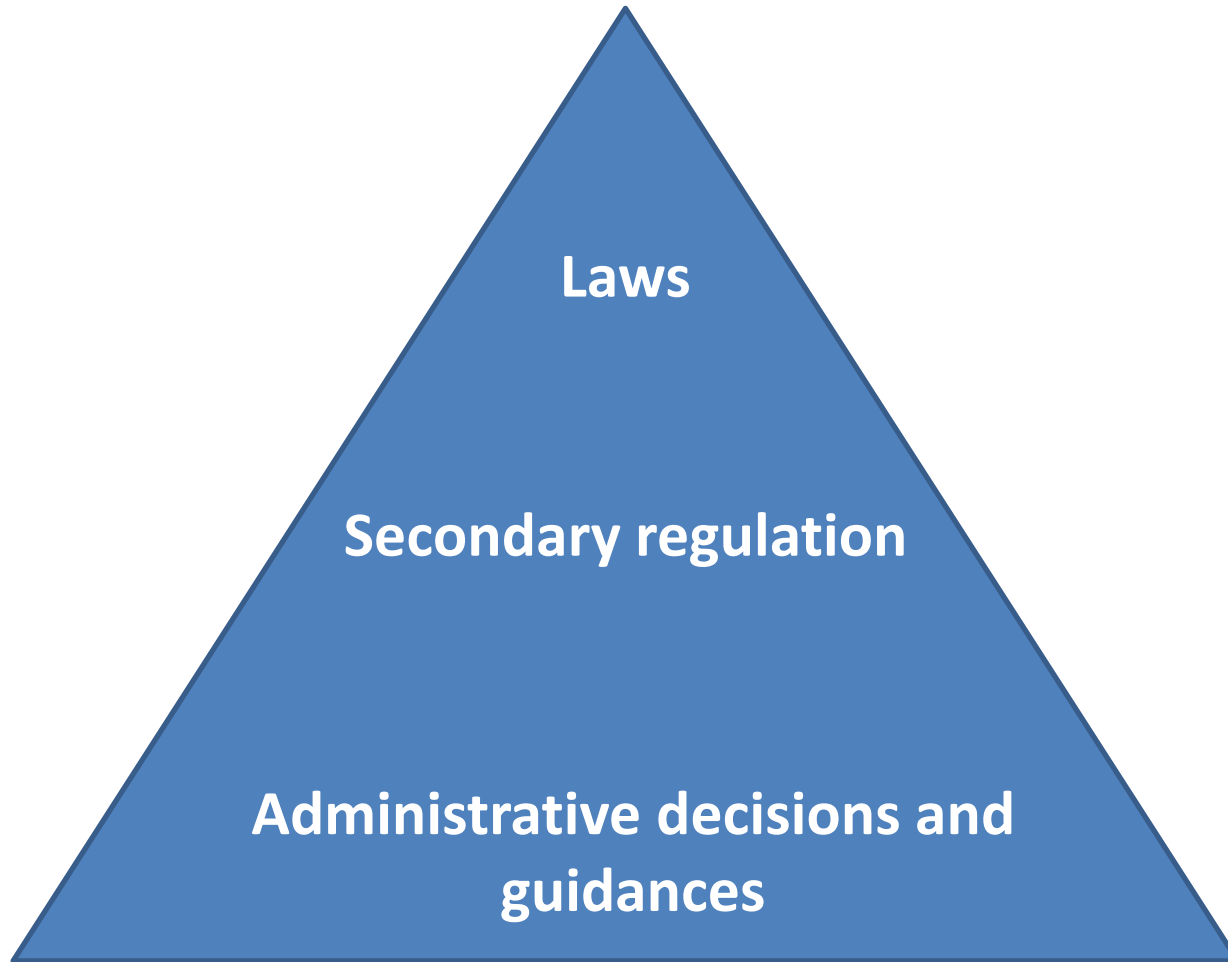
## Statutory Sppecificity Index

Norwegian regulation is less specific than many other regulatory systems

Cooter, Robert D. and Ginsburg, Tom  
*Leximetrics: Why the same laws are longer in some countries than others* (2003),  
 U Illinois Law & Economics Research Pape



# Structure and importance



# Regulation Forum

Chair: Directorate of Oil

Different governmental bodies: e.g. Ministry of Labour, Directorates of Health, Environment and Sea Affairs

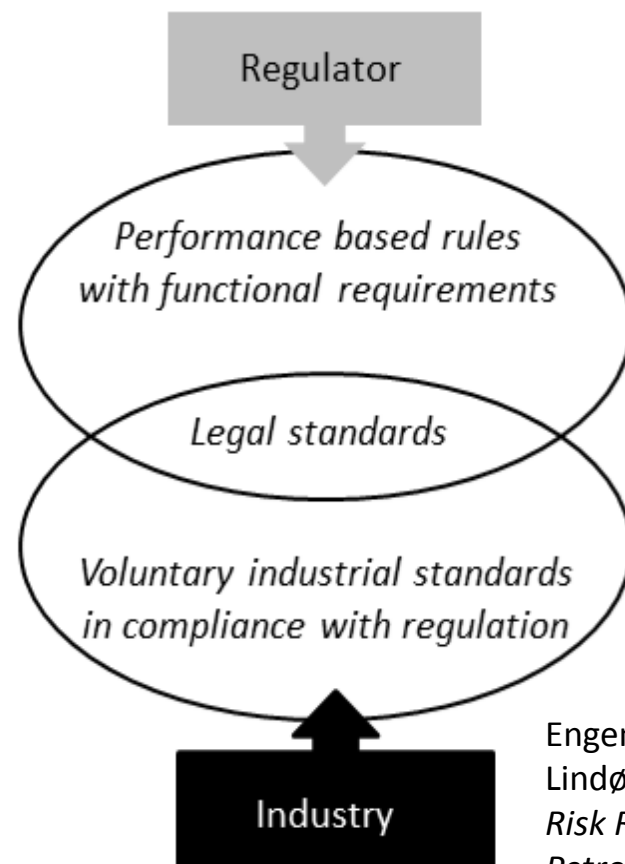
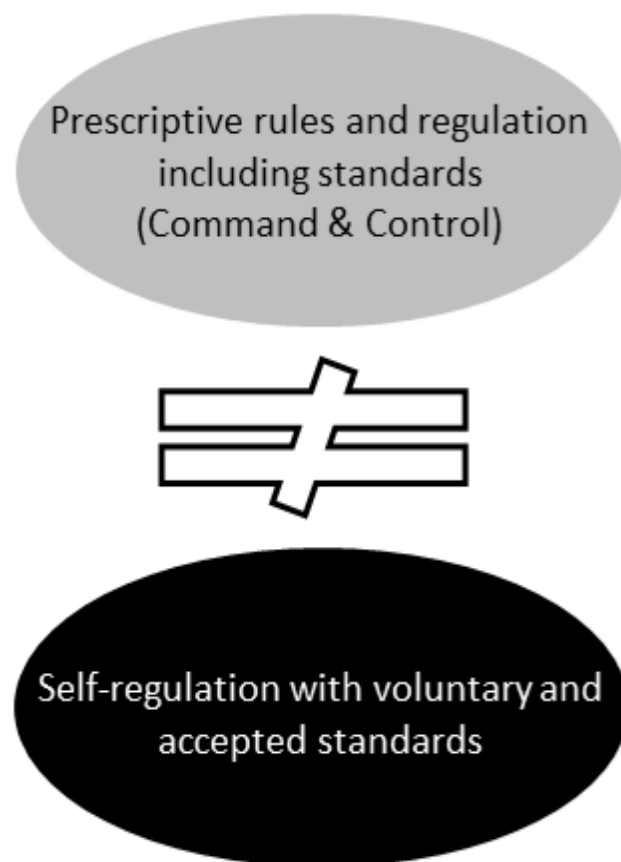
Industry organisations from Oil-gas-exploration, shipping and general

Labour Unions, general and specific from the sector

# Purpose

- Continuous assessment of regulations
- Proposal for changes
- Cooperation on development of regulations
- Development of guidance
- Information exchange
- Implementation of international rules
- Etc.

- Extensive use of standards (performance and functions)
- Facilitates interaction between industry-standards and regulatory-standards



Engen, Ole Andreas  
Lindøe, Preben,  
*Risk Regulation in the  
Petroleum Industry:  
the Nordic Model  
revisited* (2015)

# Another perspective

- Possible to adjust as we go along
- Inherent trial and error in the Norwegian system – reflexive elements on a low level
- Recognition that it is hard to assess the effects
- Pragmatism, flexibility and reflexivity

Macro  
- evaluations



Major system reviews – long timespan  
– broad long-term goals

Micro-  
- evaluations

Single provision – short timespan –  
clearly defined short-term goals

# EEA Review Committee

1. Examine the political, constitutional and administrative effects of the EEA Agreements.

2. Examine consequences of the agreements for all of the most important areas of Norwegian society that are affected to any degree.

3. Recommendations for changes within the framework of the existing form of association.



# EEA Review Committee

900 pages

Committee consisting of  
economists, lawyers,  
political scientist.

Extensive secretariat

Several research reports

2 year review





# Power and democracy

## NOU 2003:19

- Many topics relevant to legislation and the legal system
- «Judicialization» - Legal system is empowered on expense of democracy
- 50 books, 77 report
- 1997-2003
- Synthesis: NOU 2003:19
- Extensive debate – still alive

