

REGULATIONS

ON CONSULTATIONS IN LEGISLATIVE DRAFTING

(“Official Gazette of BiH”, no. 81/06 and 80/14 – unofficial consolidated version)

This unofficial consolidated version contains the text of the Regulations on Consultations in Legislative Drafting (“Official Gazette of BiH”, no. 81/06) and Regulations on Amendments to the Regulations on Consultations in Legislative Drafting (“Official Gazette of BiH”, no. 80/14).

Unofficial consolidated version can be used only for internal purposes and cannot be used for official purposes.

Article 1.

(Statement of purpose)

These regulations establish procedures for consultation with the public and organizations to be followed by all ministries and other institutions of Bosnia and Herzegovina (hereinafter: institutions) when drafting legislation.

Article 2.

(Definitions)

For the purpose of these regulations:

- a) ‘Public’ means the general public;
- b) ‘Organizations’ means legal persons that are not affiliated with the government and informal civil initiatives.

Article 3

(Maintain list)

- (1) Each institution shall maintain, update and post on the website a list of organizations and individuals interested in its legislative activities.
- (2) Each institution shall add to the list the names of individuals or organizations that request in writing to be added to the list.

Article 4

(Consultation coordinators)

- (1) Each institution shall designate a consultation coordinator who shall be responsible for coordination of all consultation obligations performed by the institution, including the minimum consultation requirements of article 6. and certification requirements of article 24. of these regulations.
- (2) Each institution may designate an official involved in the drafting of a particular legislation to be responsible for carrying out the consultations required by these regulations.

Article 5

(Publishing of planned legislative activities)

When an institution creates a list of planned legislative activities as part of its annual work program, it shall place the list on its website. The institution shall indicate which of the legislation on the list may have significant public impact in accordance with article 8 of these regulations.

Article 6

(Minimum consultation obligations for preliminary draft legislation)

- (1) Each institution shall comply with the minimum consultation obligations for preliminary draft legislation.
- (2) Once the text of preliminary draft legislation has been finalized, the minimum consultation obligations of each institution are as follows:
 - a) Post the preliminary draft legislation on the website, which shall include a means to submit comments via the internet; and
 - b) Solicit comments by notifying those on the institution's consultation list and provide them with information how they may obtain a copy.
- (3) The deadline for submission of comments shall be at least 15 days.
- (4) Minimum obligations in terms of consultations shall not apply to:
 - a) Amendments to correct spelling or other grammatical errors; and
 - b) Legislation codifying or otherwise consolidating or reorganizing or moving provisions to different sections of the legislation without substantive changes.

Article 7

(Reason for legislation)

- (1) Along with the public invitation to submit comments in accordance with these regulations, the institution shall post on its website the Statement of purpose of the legal regulation.
- (2) The Statement referred to in paragraph (1) of this article shall particularly contain the list of issues that are, according to the opinion of legislative drafter, of particular importance to the legislation that is being prepared and consultation process, as well as to the target groups that are particularly affected by the legislation.

Article 8

(Legislation with significant public impact)

When deciding which legislation will be drafted, each institution shall assess whether a piece of legislation has significant public impact by applying criteria stated in articles 9 through 13 of these regulations. In addition to the minimum consultation obligations of article 6. of these regulations, significant public impact legislation shall be subject to enhanced consultation obligations as regulated in articles 15. through 23. of these regulations.

Article 9

(Legislation effecting a change of legal status)

Legislation that changes the legal status of persons with regard to any rights or privileges has a significant public impact, such as:

- a) legislation limiting or extending eligibility for government benefits;
- b) legislation affecting voting rights;
- c) legislation affecting rights of citizenship and residency rights of foreigners in BiH;
- d) legislation affecting access to the courts; and
- e) legislation altering legal principles that have been relied upon in the past.

Article 10
(Legislation effecting a change in economic status)

Legislation that has an impact on the economic status of persons, including that with modest affect on large numbers of persons and that with substantial affect on a limited number of persons, may have a significant public impact, such as:

- a) amendments to tax and customs legislation;
- b) amendments related to the level of government benefit or subsidy payments;
- c) amendments to the rules governing legislative and executive government contracts;
- d) amendments to the general contract legislation;
- e) amendments to the legislation affecting labor relations;
- f) amendments to the legislation affecting fiscal and economic policies; or
- g) amendments to the legislation affecting ownership of property.

Article 11
(Conforming to international standards)

Legislation that must be enacted to satisfy international obligations of the state or to conform to international standards may have a significant public impact, such as:

- a) legislation harmonized with *acquis*; or
- b) legislation to comply with or implement international treaty and convention obligations.

Article 12
(Legislation affecting the environment)

Legislation that affects the environment, including the quality of water and air, and that imposes or reduces obligations regarding use of land and other natural resources, may have a significant public impact, such as:

- a) legislation that restricts emissions of pollutants (gas and alike) into the environment;
- b) legislation that imposes damages or penalties for environmental degradation;
- c) legislation that restricts land use for environmental reasons; or
- d) legislation that creates waivers or exceptions to environmental legislation.

Article 13
(Other criteria)

In considering the scope of public impact, institutions may take into account a variety of other criteria, such as

- a) whether the legislation is a novelty;
- b) whether the legislation is a refinement of legislation;
- c) whether the legislation is an adaptation to technological changes;
- d) whether the changes are compelled by judicial decisions invalidating the previous legislation;
- e) the number of people affected by the change nationally, regionally or locally; or
- f) the financial impact nationally or regionally, or by economic sector.

Article 14
(Legislation without significant public impact)

Certain kinds of legislation can be presumed not to have substantial public impact, unless circumstances indicate otherwise, and are only subject to the minimum consultation obligations of article 6.

Article 15
(Consultation for legislation with significant public impact)

When an institution determines that its draft legislation may have a significant public impact, it shall carry out broader consultation than defined in article 6. of these regulations in accordance with the procedure regulated in articles 16 through 18. The institution shall decide who should be consulted and determine the form of consultation.

Article 16
(Organizations and individuals to be consulted)

The institution shall consider which organizations and individuals, in addition to those on the list referred to in article 3, paragraph (1) of the regulations, are most likely to be interested in or affected by the legislation and who would most likely provide valuable comments, and solicit their views. The organizations and individuals include, for example:

- a) experts, including those from the academic and research community, as well as from foreign countries;
- b) media;
- c) government bodies;
- d) the legal community, including practicing lawyers, prosecutors, judges and their professional associations.

Article 17
(Forms of consultation)

Institution shall decide on the form of consultation in drafting legislation that has significant impact on the public, which is most likely to provide relevant guidelines for legislative drafting. Those forms of consultations particularly include:

- a) notice or publication of the pre-draft legislation in print media;
- b) information or publication of the pre-draft legislation in radio and television;
- c) direct distribution of the pre-draft legislation to organizations and individuals;
- d) public meetings or round tables with selected organizations and individuals.

Article 18
(Appropriate procedure)

Each institution shall determine the appropriate form of consultation, taking into account:

- a) time constraints on adoption of legislation;
- b) the capacity of organizations and individuals to consult; and
- c) the novelty or technical complexity of the subject matter of the draft legislation.

Article 19
(Budget for consultation)

Each institution shall budget for the consultation obligations in accordance with these regulations.

Article 20
(Timing for consultation)

The institution may conduct consultations at any stage of the preparation of the text of the legislation, but shall allow sufficient time to complete the consultation prior to submission of the draft legislation to the Council of Ministers of Bosnia and Herzegovina (hereinafter: Council of Ministers).

Article 21
(Written comments)

When the form of consultation provides for written comments, the institution shall allow a period of at least thirty days for organizations and individuals to submit written comments for legislation.

Article 22
(Oral comments)

The institution shall record comments by audio or other means and prepare a summary of such comments when the form of consultation provides for comments to be presented orally.

Article 23
(Use of comments)

- (1) Comments, whether submitted orally or in writing, shall be taken into consideration by the institution in preparing its legislative proposal to the Council of Ministers.
- (2) Comments may be grouped and summarized to the extent they are redundant.
- (3) Institution may decide to accept or reject any comment, but it shall prepare written report about such decision, which shall be an integral part of explanatory memorandum.

Article 24
(Certification upon submission of legislation to the Council of Ministers)

- (1) When draft legislation is submitted to the Council of Ministers for adoption, the institution shall:
 - a) certify that the minimum consultation obligations were met;
 - b) certify whether or not the legislation may have significant public impact and provide the rationale for its determination;
 - c) provide the rationale for the decision on the selected form of consultation and describe the consultation that it conducted; and
 - d) certify that the institution has acted on comments received pursuant to this process and provide the required report in article 23 (3).

Article 25
(Public availability of certification)

Institution shall post on the website the Statement referred to in article 24 of these regulations and draft legislation submitted to the Council of Ministers, whose explanatory memorandum contains, among others, report on consultations on the pre-draft legislation.

Article 26
(Waivers)

(1) In exceptional circumstances, the head of an institution may waive the consultation obligations of the institution, if the head finds that one or more of the following reasons requires the waiver:

- a) emergency circumstances in order to protect health and safety of people and property or due to the need to adopt budget;
- b) unanticipated international obligations; or
- c) judicial invalidation of all or part of legislation.

(2) The head of the institution invoking such a waiver shall provide the Council of Ministers with the reasons for the waiver in detail.

Article 27
(Forwarding the proposed legislation to the Parliamentary Assembly)

When forwarding proposed legislation to the Parliamentary Assembly of Bosnia and Herzegovina for adoption, the Council of Minister shall attach the certification required in article 24. or the approved waiver required in article 26. of these regulations.

Article 28
(Satisfaction of consultation agreements)

An institution may enter into agreements with organizations and individuals to provide for consultation in accordance with these regulations.

Article 29
(Refusal to place on session agenda)

The Council of Ministers shall refuse to place draft legislation on its agenda when the institution fails to provide the required Statement, referred to in article 24 of these regulations, or waiver from conducting consultations, in accordance with article 26, paragraph (2) of these regulations, by the head of the institution. In that case, the General Secretary of the Council of Ministers shall return the draft legislation to the institution to comply with these regulations designating the deadline for conducting consultations in accordance with the regulations.

Article 30
(Entry into force)

These regulations shall enter into force eight days after their publication in the Official Gazette of Bosnia and Herzegovina.