

Bosna i Hercegovina
MINISTARSTVO PRAVDE



Босна и Херцеговина
МИНИСТАРСТВО ПРАВДЕ

***REPORT ON THE IMPLEMENTATION OF THE
UNIFORM RULES FOR LEGISLATIVE
DRAFTING IN THE INSTITUTIONS OF
BOSNIA AND HERZEGOVINA***

Sarajevo, March 2014

TABLE OF CONTENTS

LIST OF ABBREVIATIONS USED IN THE REPORT	<i>Error! Bookmark not defined.</i>
EXECUTIVE SUMMARY	4
1. INTRODUCTION	5
2. IMPORTANCE OF IMPLEMENTING THE UNIFORM RULES	6
3. METHODOLOGY OF THE REPORT DEVELOPMENT	6
4. ESTABLISHMENT OF THE SYSTEM FOR LEGISLATIVE DRAFTING	7
4.1 Legal framework for legislative drafting	7
4.2 Normative-legal activities	7
4.3 Required human resources	8
4.4 Information technologies	8
5.1 Planning of normative-legal activities	9
5.2 Legislative drafting	9
5.2.1 Verification of regulation system compliance	9
5.2.1.1 Verification of nomotechnique and style of regulation	10
5.2.1.2 Verification of linguistic equality of regulation	10
5.2.1.3 Verification of the compliance of regulation with legal system	11
5.2.1.4 Verification of the compliance of regulation with EU legislation	12
5.2.1.5 Assessment of regulation's impact on the budget	13
5.2.2 Impact of regulation	13
5.2.2.1 Analysis of regulation's impact	13
5.2.2.2 Consultations with other institutions	14
5.2.2.3 Consultations outside the government system	14
5.2.2.4 Introducing detail analysis of regulation's impact	15
5.3 Adoption of regulation	16
5.3.1 Consideration of regulation by collegium of an institution	16
5.3.2 Consideration of regulation by the Council of Ministers of BiH	16
5.3.3 Consideration of regulation by the Parliamentary Assembly of BiH	16
5.4 By-laws	17
5.5 Access to regulations	17
5.5.1 Official publishing	18
5.5.2 Unofficial collections of regulations	18
6. PROPOSAL OF MEASURES FOR OVERCOMING THE PROBLEMS	19

LIST OF ABBREVIATIONS USED IN THE REPORT

<i>BiH</i>	<i>Bosnia and Herzegovina</i>
<i>DEI</i>	<i>Directorate for European Integration</i>
<i>EU</i>	<i>European Union</i>
<i>Uniform Rules</i>	<i>Uniform Rules for Legislative Drafting in the Institutions of BiH</i>
<i>CSO</i>	<i>Civil Society Organizations</i>
<i>Rules of consultations</i>	<i>Rules of consultations in legislative drafting</i>
<i>RIA</i>	<i>Regulatory Impact Assessment</i>
<i>Legislative Office</i>	<i>Legislative Office of the Council of Ministers of BiH</i>
<i>USAID - JSDP</i>	<i>United States Agency for International Development – Justice Sector Development Project</i>

EXECUTIVE SUMMARY

Parliamentary Assembly of BiH adopted at the end of January 2005, the Uniform Rules, prepared by the working group of the Parliamentary Assembly of BiH, and based on the previous activities within the Council of Ministers of BiH and the Presidency of BiH.

The manner in which a regulation is drafted is, inter alia, an indicator of its quality. A regulation that follows a logical structure and is written in clear and open style is easier to understand and apply. Poorly drafted legislation leads to mistakes in interpretation, possible litigation and a need for amendments to correct the initial oversights. All that eventually results in higher costs and it negatively affects the legal security of citizens and credibility of the legislator. While the substantive content of a law matters, a proper format is almost as important.

By adopting the Uniform Rules, legal framework has been established and system for legislative drafting at the state level has been introduced, similar to the one in the EU and its member states.

This report addresses the following issues:

1) Establishment of the system for legislative drafting:

- Legal framework for legislative drafting;*
- Organizational framework for legislative drafting;*
- Required human resources for carrying out normative-legal activities;*
- Importance of information technologies for quality legislative drafting;*

2) Implementation of the system for legislative drafting:

- Review of regulation system compliance (nomotechnique and style, linguistic equality, harmonization with BiH legal system, harmonization with EU legislation, impact of a proposed regulation on the budget);*
- Impact of regulation (analysis of regulation's impact, consultations with other institutions, consultations outside the government system, introducing a detail analysis of regulation);*
- Adoption of regulation (consideration of regulation by an expert collegium of an institution of BiH, consideration of regulation by the Council of Ministers of BiH, consideration of regulation by the Parliamentary Assembly of BiH);*
- By-laws;*
- Access to regulations (official publishing, unofficial collections of regulations);*

3) Proposal of measures for overcoming the problems that have appeared in the establishment of the system and implementation of the Uniform Rules in the institutions of BiH.

1. INTRODUCTION

Regulations are tools for promoting economic and legal system of a country. They are designed to solve or prevent problems for the benefit of its citizens. Regulations have a key role in supporting community values, protecting people's rights and determining their responsibilities. Regulations bring order to the lives of people, help settle disagreements, provide penalties, protect rights of an individuals and groups and promote welfare.

Regulations cannot exist in isolation, but are always part of a legal system and they are applied and adjudicated through administrative and courts procedures. Therefore, regulations must properly relate to each other, taking into account applicable legal requirements and institutional arrangements. Good regulations are fair, understandable, accessible and enforceable. Regulations that follow a logical structure and are written in clear, user-friendly language are easier to understand and apply. Poorly drafted regulations lead to mistakes in implementation, possible litigation and a need for amendments to correct initial oversights, ultimately resulting in higher costs. Furthermore, they create uncertainty for citizens and negatively impact the credibility of the legislator. If the role of a legal system in a society is to maintain order, allow planning and provide predictability, then regulations should be drafted accordingly.

The legal system of BiH is complicated because of the country's complex governmental structure that has its origins in the Dayton Peace Agreement of 1995, which annexed the BiH Constitution and referenced to 15 international agreements. In addition, Annex 10 of the Dayton Agreement established the Office of the High Representative granting it wide-ranging powers to enact and repeal legislation. Harmonizing national legislation with EU legislation places additional strain on the legislative process. The influence of foreign experts and the imposition of their own versions of legislative drafting have contributed to a lack of uniformity in drafting practices, resulting in inconsistencies.

In June 2002, the Council of Ministers of BiH and the BiH Presidency adopted a joint Declaration on Improving the Quality of Regulation, and tasked a working group with developing a set of uniform rules that would guide the process of legislative drafting. This Working group developed a comprehensive document that sets out rules and procedures governing the legislative drafting by all BiH institutions, entitled "Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina"¹. These rules were also designed to be consistent with relevant practices in the EU. In January 2005 these rules were adopted by the Parliamentary Assembly of BiH.

In accordance with its competencies prescribed by the Article 13 paragraph (1) item 11) and Article 16 of the Law on Ministries and Other Bodies of Administration of BiH², Ministry of Justice of BiH provides, through this report, an overview of the establishment and implementation of the system for legislative drafting at the state level, indicating the most important problems in the implementation of the Uniform Rules, as well as proposal of measures for overcoming those problems.

The aim of the report is to inform institutions of BiH, Council of Ministers of BiH, Parliamentary Assembly of BiH and general public in BiH, on the implementation of the Uniform Rules in the institutions of BiH.

Report has been submitted for consideration and adoption to the Council of Ministers of BiH and Parliamentary Assembly of BiH.

Results of the report will be used for the improvement of Uniform Rules, as well as for monitoring and evaluation of its implementation in the institutions of BiH over the following period.

¹ Published in the "Official Gazette of BiH", No 11/05.

² Published in the "Official Gazette of BiH", No 5/03, 42/03, 26/04, 42/04, 45/06, 88/07 and 103/09.

2. IMPORTANCE OF IMPLEMENTING THE UNIFORM RULES

The manner in which a regulation is drafted is, inter alia, an indicator of its quality. A regulation that follows a logical structure and is written in clear and open style is easier to understand and apply. Poorly drafted legislation leads to mistakes in interpretation, possible litigation and a need for amendments to correct the initial oversights. All that eventually results in higher costs and it negatively affects the legal security of citizens and credibility of the legislator. While the substantive content of a law matters, a proper format is almost as important.

Huge social changes, from single-party to multi-party system, from war to peace, from simple structure of government to multi-layered government and from planned to market economy, have led to the increase in normative-legal activities and set the priorities.

In normative-legal sense, beginning of harmonization of domestic legislation with the EU legislation, influence of the foreign experts and powers of the High Representative for BiH, presented the additional burden during legislative drafting, and led to their inconsistencies. In such circumstances, aiming to overcome the existing normative-legal inconsistencies as soon as possible, the Uniform Rules have been adopted, which determine formal criteria for quality legislative drafting in the institutions of BiH³.

3. METHODOLOGY OF THE REPORT DEVELOPMENT

This report is developed on the basis of findings and recommendations of the Systematic overview of the public administration in BiH⁴; presentations at the Symposium “Application of the Uniform Rules for Legislative Drafting in the Institutions of BiH”; and report on four symposiums organized by the Constitutional-Legal Commission of the Parliamentary Assembly of BiH, from September 2010⁵ and Annex 1: Analysis of the Uniform Rules for Legislative Drafting in the Institutions of BiH from the document „Improving the process of consultations with the interested public at the state level“, developed by the members of CBGI project team, in consultations with the members of the project team of the Ministry of Justice of BiH⁶.

Draft report was delivered to public consultations, and received comments were appropriately included in the final report.

³ Manual for Legislative Drafting, Technical requirements and style, Sarajevo, February 2006, financed by USAID-JSDP.

⁴ Developed by Public Administration Reform Coordinator's Office.

⁵ Symposiums were held in cooperation with the OSCE Mission to BiH – Department for Parliamentary Support and Monitoring and USAID Parliamentary Strengthening Project in BiH.

⁶ Mr.sci. Goran Žeravčić, PhD Dragan Golubović, mr.sci. Selma Džihanović-Gratz and mr.iur. Niko Grubešić.

4. ESTABLISHMENT OF THE SYSTEM FOR LEGISLATIVE DRAFTING

4.1 Legal framework for legislative drafting

By adopting the Uniform Rules, legal framework has been established and system for legislative drafting at the state level has been introduced, similar to the one in the EU and its member states.

Uniform Rules contain 83 Articles systematized in five parts:

- 1) First part prescribes that Uniform Rules govern drafting of all kinds of regulations⁷ and apply to all institutions of BiH, while other levels of government in BiH can apply them voluntarily.*
- 2) Second part includes: structure of regulation⁸, form of regulation⁹, style of regulation¹⁰, modification and confirmation of regulation¹¹.*
- 3) Third part prescribes the uniform technique of drafting explanation of regulation which contains: constitutional and legal basis for the introduction of the regulation, reasons for introduction of the regulation and explanation of the policy opted for, harmonization of regulation with European legislation, mechanisms of implementation and manner of ensuring observance of regulation, explanation of financial resources for implementation of regulation and of financial effects of regulation, description of consultations conducted in the process of drafting the regulation and schedule of potential revision of the introduced regulation.*
- 4) Fourth part regulates performing of normative-legal tasks in the institutions of BiH and contains: procedure of drafting regulation and ensuring identical versions of regulation in BiH official languages.*
- 5) Fifth part contains final provisions and obligation of the institutions of BiH to implement prescribed measures within six months from the date of entry into force of the Uniform Rules.*

All the above mentioned emphasize the need for improving the Uniform Rules that do not make distinction between specificities of laws and by-laws and do not deal with the detail analysis of regulation's impact.

4.2 Normative-legal activities

In the Anglo-Saxon legal tradition, policy making and legislative drafting are separated personally and organizationally. Central units draft legislation on the basis of detail instructions of the institutions competent for policy making. In Continental Europe these roles are usually personally and organizationally merged in the same organizational unit. Main advantage of merging these two roles is that adopted policies can be revised during legislative drafting, which enables greater degree of certainty and practicality in the final text of regulation.

System of legislative drafting in BiH fits in the legal tradition of Continental Europe, where the roles of policy making and legislative drafting are merged, with the important role of the Legislative Office, which is different from the role of the central units for legislative drafting in the Anglo-Saxon legal tradition¹².

Legislative Office, apart from the final control of the results of drafting regulation, should supervise, support and assist the institutions of BiH in their normative-legal activities¹³. Considering the existing state of the human resources, it is not realistic to expect from the Legislative Office to overtake those additional roles soon.

⁷ Under the Uniform Rules the term regulation includes: constitution, agreement, law, rules of procedure, decision, instruction, rulebook and other legal acts.

⁸ Includes the introductory part, main body and final part, as well as annexes.

⁹ Includes the section, chapter, part and article, which divides further into paragraphs, points and lines.

¹⁰ Includes the terminology, references, quotations, abbreviations and grammar.

¹¹ Includes the modifications and amendments, refined texts, rectification of regulation and confirmation of decisions made by the High Representative in BiH.

¹² This derives from the fact that in ministries and other institutions of BiH work greater number of civil servant who are not lawyers.

¹³ This trend can also be noted in the Legislative Office of the Government of the Republic of Slovenia.

All the above mentioned reasons emphasize the need for establishing organizational units in the ministries that have greater amount of normative-legal activities or working positions specialized for normative-legal activities in ministries and other institutions of BiH.

Also, founders of inter-ministerial working groups, established for the purpose of drafting regulation falling under the jurisdiction of several ministries, as well as founders of other working groups for legislative drafting, should provide professional and technical support, including the rules for decision-making, taking minutes and reporting on work.

4.3 Required human resources

BiH ministries are facing with the insufficient number of legal experts for legislative drafting¹⁴. But even when there is a professional staff specialized for legislative drafting, they are often not trained to draft legislation in accordance with the methodology prescribed by the Uniform Rules and new techniques of legislative drafting, such as harmonization with the EU legislation or assessment of regulation's impact, which are essential in order to respond adequately to the challenges brought by BiH accession to EU.

Ministries and other institutions of BiH often do not have financial resources necessary for hiring of staff and organizing trainings on legislative drafting, so they depend on trainings organized by donors, in the framework of projects implemented in certain institutions of BiH, which do not correspond to the needs in this area.

Due to the lack of capacities, ministries and other institutions of BiH often have to engage external experts for drafting certain regulations. For the needs of those engagements, there are no criteria for the selection of appropriate experts, criteria for governing their work and criteria for determining compensation for the work.

4.4 Information technologies

Information technologies, with well-trained staff, can significantly contribute to the improvement of legislation quality¹⁵. Most of the civil servants at the state level have a computer which is networked and is a part of e-Government system, which enables transfer and exchange of documents between institutions in the electronic form¹⁶.

On web sites of most of the institutions of BiH there are databases of legislation relevant for the work of the institution, and significant number of civil servants have access to the electronic database of regulations published in the „Official Gazette of BiH“.

There is a need to develop software for legislative drafting which enables simple application of the Uniform Rules in terms of the form of regulation's text and direct providing of titles to the articles in accordance with the matter they regulate and on basis of which they are recognized in the text of regulation, which makes their search easier.

In the procedure of harmonization of BiH legislation with the EU legislation, there is a need to develop electronic database of regulations that would enable connection between the existing ones, and which can additionally include court decisions, opinions, explanations and professional literature¹⁷.

¹⁴ In the Systematic overview of the public administration in BiH it is mentioned that BiH ministries have the average number of five lawyers working on those matters.

¹⁵ Experience of Italy shows that after introducing information technologies in legislative drafting the legislation quality has increased.

¹⁶ Experience of Slovenia shows that higher efficiency and effectiveness is achieved by electronic transfer and exchange of documents.

¹⁷ Slovenia has established in the process of accession to EU the Internet register of all applicable regulations (<http://zakonodaja.gov.si>).

5. IMPLEMENTATION OF THE SYSTEM FOR LEGISLATIVE DRAFTING

5.1 Planning of normative-legal activities

Initiative for enacting a regulation is mainly given by the ministries and other institutions of BiH, by including the regulation in its program of work, and later on in programs of work of the Council of Ministers of BiH and both Houses of the Parliamentary Assembly of BiH.

Initiative for enacting a regulation contains: competent institution, general objectives and deadline for drafting regulation.

Initiative for enacting a regulation should be preceded by an analysis of situation in certain area and need of enacting the regulation, which is not regular practice and it often creates problems in enacting the regulation and its application later on.

In order to improve the situation and offer appropriate basis for drafting good regulation, Uniform Rules prescribe that program of work of an institution of BiH should also contain the explanation of special objectives of the regulation concerned.

Regarding the need of planning normative-legal activities, consultations should be improved, in order to early identify potential contentious issues. Besides preparatory meeting for giving suggestions, proposed program of work can be posted on the web site of the Council of Ministers of BiH, which would provide an opportunity to all institutions of BiH to give their remarks, suggestions and proposals¹⁸.

5.2 Legislative drafting

Legislative process in BiH includes the following phases:

- 1) preparation of theses for drafting regulation;*
- 2) approval of theses for drafting regulation;*
- 3) preparation of preliminary draft;*
- 4) process of consultations;*
- 5) preparation of draft;*
- 6) approval of draft;*
- 7) obtaining the necessary opinions;*
- 8) submitting draft to the Council of Ministers of BiH;*
- 9) adoption of the proposal of regulation at the session of the Council of Ministers of BiH;*
- 10) adoption of the proposal of regulation in the Parliamentary Assembly of BiH;*
- 11) publication of the adopted regulation in the "Official Gazette of BiH".*

Naturally, enacting of by-laws and other acts follows slightly different and shorter procedure.

5.2.1 Verification of regulation system compliance

In accordance with the provisions of the Rules of Procedure of the Council of Ministers of BiH¹⁹ the drafter is obliged to obtain opinions of the relevant ministries and other institutions of BiH on the draft of regulation. Competent ministries and other institutions of BiH are obliged to provide opinions within the prescribed deadline, and when it comes to the urgent issues, opinions are provided immediately.

¹⁸ In Slovenia, program of the Government is posted on the web site before its adoption. This practical measure has the effect to extend the period of consultations outside the preparatory meetings, so that other ministries have an opportunity to deliver to the proponents their remarks, suggestions and proposals for harmonization of programs of work.

¹⁹ Published in the „Official Gazette of BiH“, No 22/03.

If a draft of regulation submitted to the Council of Ministers of BiH is not prepared in accordance with these provisions, i.e. if one or more of these verifications are not made, the Rules of Procedure of the Council of Ministers of BiH prescribe that the Secretary General of the Council of Ministers of BiH will return to the proponent such materials and set the deadline to the proponent to supplement it.

Rules of Procedure of the Council of Ministers of BiH does not prescribe procedure in the case when the opinion of a competent body is negative, and drafter does not want to change its view. However, when it comes to disagreement of a drafter with the opinion of a certain body, the drafter can submit its opinion with the explanation and statement to the Council of Ministers of BiH. In such cases final decision is made by the Council of Ministers of BiH, but the question is on what basis the validity of any of the conflicting opinions in the individual case is judged.

Therefore, the Rules of Procedure of the Council of Ministers of BiH should regulate in detail the situation when the opinion of the competent body is negative, and drafter of a regulation does not want to change its view.

5.2.1.1 Verification of nomotechnique and style of regulation

Basic verification of a draft of regulation relates to the standard form, structure and style, including compliance with the nomotechnical rules related to: division of text of a regulation into sections, chapters and parts, and their division into articles, which divides further into paragraphs, points and lines, usage of standard formulation for modifications and amendments of regulation, quotations and similar, and grammar requirements: usage of appropriate genders, words in singular or plural, verbs; consistent usage of terms in the text of regulation, clarity and readability etc.

Legislative Office needs to adopt verification methodology that will cover those issues.

5.2.1.2 Verification of linguistic equality of regulation

Besides verification of nomotechnique and style of regulation, there is also grammar and syntax verification which is very important in the procedure of legislative drafting in BiH, considering that regulations must be made in the three official languages of BiH. Since each of the language versions of regulation is considered authentic, it is necessary to ensure identical versions of the text as the precondition of legal security.

Uniform Rules oblige all proponents of regulations to provide for one or more professional proofreaders to ensure linguistic equality in the process of their consideration and decision-making. Final linguistic verification of all adopted regulations, prior to their official publishing, is performed by the Expert Service of the House of Peoples of the Parliamentary Assembly of BiH.

Uniform Rules provide for the establishment of the Commission for Linguistic Policy in BiH legislation, to which the Expert Service of the House of Peoples of the Parliamentary Assembly of BiH serves as the Secretariat. This Commission comprises of six distinguished lawyers, as well as six linguistic experts nominated by the House of Peoples of the Parliamentary Assembly of BiH. Members of the Commission represent the three constituent peoples, with equal number of representatives of each profession. Commission for Linguistic Policy in BiH legislation meets at least once a year in order to compile and update tri-lingual official lexicon of terms used in regulations, decide about dictionaries and grammatical rules to be used in the forthcoming year, and decide on complaints concerning the linguistic accuracy and correctness and whether terms used in regulations that are in force are identical.

There is a need for additional hiring of professional proofreaders and establishing the Commission for Linguistic Policy in BiH legislation, with all necessary conditions for its work.

5.2.1.3 Verification of the compliance of regulation with legal system

a) When it comes to the standard verification of the constitutional basis and compliance with the legal system of BiH, drafter of a regulation usually limits its references only to the constitutional and legal basis for enacting certain regulation, without providing detail explanation regarding the mutual relation of individual provisions of regulation with the Constitution of BiH, applicable legislation and general principles of the legal system.

On its side, Legislative Office is trying to provide more substantial opinion through detail analysis. However, mechanisms for such verification are mainly limited to personal knowledge of complex legal system in the country by the Legislative Office staff, who in that procedure use the register of regulations published in the „Official Gazette of BiH“.

Many other more substantial sources of law, such as case law of the constitutional courts or electronic database of applicable regulations could be very useful, in order to identify possible conflict between regulations, but they are still not fully available.

b) According to the Rules of Procedure of the Council of Ministers of BiH, Ministry of Human Rights and Refugees is responsible for verification of compliance of regulation with regulations on exercising civil rights and freedoms and fundamental freedoms of the international humanitarian law.

Although this verification carried out by the Ministry of Human Rights and Refugees of BiH is presently not so detailed, certain useful mechanisms, starting from the creation of an electronic database that would contain case law of the Human Rights Chamber of BiH, could be made available for this purpose and thus significantly improve this verification.

c) Rules of Procedure of the Council of Ministers of BiH also require from the drafter of regulation to carry out verification in terms of compliance of regulation with the international law, and with the procedure of initiating, concluding and enforcement of international agreements. Ministry of Foreign Affairs of BiH is responsible for carrying out that verification, and is obliged to provide its opinion about it. First verification is specialized part of general verification of compliance with the legal system, considering that over the postwar period provisions of the international law became the integral part of the national legal order. Latter verification has more procedural character and it is regulated by the Law on Procedure of Concluding and Enforcement of International Agreements. This verification is contained in the explanation of regulation prepared by the drafter of regulation, where it is only stated that this verification is carried out and that the regulation is harmonized with the international obligations.

It seems that procedure of this verification is greatly generalized, because there is no special methodology or mechanisms, such as database, used for this purpose.

d) Ministry of Justice of BiH is responsible for verification in terms of criminal provisions and compliance with the established criteria regarding the organization and operation of the administrative bodies, especially in terms of rulebooks on internal organization and systematization of working positions of the administrative bodies.

These verifications provide the opportunity for carrying out two additional verifications related to both the sanctions for violations and sanctions for criminal offences, as well as verifications related to the general and special administrative procedures.

Ministry of Justice of BiH should be given the responsibility to carry out verifications also in terms of justification to introduce criminal offences, outside the Criminal Code of BiH and punishments prescribed by the Criminal Code of BiH and special laws that determine criminal offences, as well as special administrative procedures in certain areas of administrative decision-making, which deviate from the Law on Administrative Procedure of BiH.

5.2.1.4 Verification of the compliance of regulation with EU legislation

Council of Ministers of BiH has adopted the Decision on procedures in the process of harmonization of BiH legislation with EU legislation²⁰, which requires from every institution of BiH to harmonize BiH legislation with the EU legislation, about which they made a comparative overview and deliver it to DEI for verification. Decision on the establishment of working groups for harmonization of existing legislation with the EU legislation has also been adopted, which stipulates the manner of establishing the working group, their composition, competence and methodology of work, and provides provision of technical assistance to the working groups by DEI. Representatives of the Entities and, if necessary, representative of Brcko District, are included in the work of the working groups. The mentioned decision has not been applied in practice, and therefore DEI is preparing uniform methodology in this regard.

DEI has access to TAIEX Progress Editor Software²¹, which is specifically designed for monitoring the progress in the process of harmonization of BiH legislation with the EU legislation. First step that needs to be taken in order to start using this software is to create system of unique index of national legislation on the basis of CELEX codification system. Since coordination in this matter has not been established in practice, DEI intends to repeat training of the responsible officers.

We would like to note that the Council of Ministers of BiH adopted, at the session held on July 21, 2009, the conclusion on introducing the label "E" on drafts or proposals of regulations which relates to the compliance with priorities defined by the Program of harmonization priorities in legislative activities for the implementation of European Partnership and Interim Agreement for 2009.

Council of Ministers of BiH also adopted, at the session held on August 19, 2010, conclusion that DEI should develop by the end of January 2011 the Integration Program²², in consultation with the competent institutions at all levels of government in BiH. That conclusion has not yet been implemented.

Republic of Croatia has given to BiH its translations of about two thirds of the secondary EU legislation, which require professional, legal and linguistic verification.

Council of Ministers of BiH, at the session held on July 27, 2010, obliged by the conclusion all institutions of BiH to deliver request for translated documents to DEI in accordance with the priorities of legislative activities and to harmonize, in cooperation with DEI, professional terminology contained in the translations given by the Republic of Croatia.

Even though BiH has started the procedure of voluntary harmonization with the EU legislation, prior to signing the Stabilization and Association Agreement with the EU, many key issues have remained only partially resolved, including the selection of harmonization methodology, as well as lack of staff for the implementation.

There is a need to train the staff who work on legislative drafting at the state level, not only on harmonization methodology but also on certain general matters of the EU legal system, as well as on the specific contents of the EU legislation under their jurisdiction.

DEI has the key role in the process of harmonization of legislation in BiH with the EU legislation, and it needs to strengthen its capacities to carry out the mentioned role.

²⁰ Published in the „Official Gazette of BiH“, No 44/03.

²¹ It is consisted of the EU law, national legislation, relation of EU legislation with national legislation and relation with the translations of national legislation. Through this database, European Commission monitors the harmonization of national legislation of a beneficiary country, on the basis of which it makes progress report.

²² Planning document consolidates the Action Plan for implementation of priorities of the European Partnership with BiH, Program of measures for implementation of the Interim Agreement/Stabilization and Association Agreement, and Program of priorities of legislation harmonization. It is adopted by the governments of potential-candidate countries and associate members of the EU and it elaborates objectives and tasks in approaching the EU in detail. It determines the plan of meeting the Copenhagen and Madrid criteria for the membership in the EU and plan of harmonization of national legislation with the EU legislation and includes detailed elaborated policies, reforms and measures for their implementation, as well as budget projection for the implementation of planned activities and measures.

5.2.1.5 Assessment of regulation's impact on the budget

This requirement for now is fairly minimal. It mainly relates to the assessment of budget impact of regulation of one level of government and only for the current year. There is a lack of prescribed requirements regarding the assessment of the financial impact that would cover longer period, i.e. several years or some more complex manners of performing financial assessment. However, the manner in which these assessments are carried out in practice is not satisfactory. In most of the cases, complete assessment is presented in the form of short statement within the explanation of regulation. Giving of such statement does not mean that the attempt to determine the financial impact of regulation was actually made and determined. Even when that is the case, it is not rare that drafters of regulations admit that they did not have the possibility to carry out the appropriate assessment.

There are several objective reasons for this situation. First of all, drafting of legislation is generally considered as lawyer's job, so that financial experts are rarely included in working groups, and lawyers do not work in cooperation with financial experts in their institutions. Besides that, very often difficulties arise from the poor coordination with other institutions and levels of government.

As well as most other verifications, results of verification of regulation's impact on the budget would be much better if there is developed methodology applied by all drafters of regulations.

5.2.2 Impact of regulation

Uniform Rules stipulate that explanation of regulation should contain clarification of economic burden that regulation imposes on the business activities. The issue related to the ability of regulations to achieve the desired results without negative effects remains the central issue of legislative drafting. Looking at the new EU member states, it is obvious that interest for adequate answers is increasing as soon as we start to note the results of efforts in terms of joining the EU. Considering the size of changes to the legal system that this process requires, the limit of derogation which is left to every country in the implementation of EU directives becomes very important, by increasing the interest of countries to find out whether the same results can be achieved with lower cost and avoiding other losses.

The lack of human resources in the institutions of BiH is most visible when it comes to the assessment of regulation's impact on the financial, environment, social and economic situation, i.e. assessment on the basis of which it is determined whether prepared regulation can achieve its objectives.

5.2.2.1 Analysis of regulation's impact

Mechanisms available to the proponents of laws at the state level to respond to issues of assessment of regulation's impact on the environment are not sufficiently used. In most cases, this assessment is carried out through the simple personal insight. Looking at the practice of other countries, it is obvious that more sophisticated techniques are used for the assessment of regulation's impact, which can be divided in two categories:

- 1) First category of techniques in the framework of analysis of regulation's impact provides simple analysis of impact: it is mainly limited to the use of consultations, through which proponents of regulations ask for opinion of other institutions or private organizations, i.e. natural persons, about the possible consequences of the draft regulation, as well as about the possibility of appearance of negative effects in certain areas;*
- 2) Second category of techniques in the framework of RIA provides detail analysis of regulation, and it is mainly comprised of the mechanisms characteristic for social researches. In general, the data are more detail than the ones obtained through simple consultations. Even the most developed EU countries do not carry out detail analysis of every individual regulation, but only of those regulations that are expected to carry out considerable economic, social and other consequences.*

5.2.2.2 Consultations with other institutions

Introduction of system of more extensive consultations with the institutions of BiH and with lower levels of government in BiH presents the simplest way to improve assessment of possible impact of certain regulation, as it was made in many countries, newly associated member states of the EU. Legal basis for more extensive consultations at the state level is contained in the Article 18 of the Law on Administration²³.

The system can be developed from the existing practice, in a way that several ministries or other institutions would be asked for the opinion about the extent to which certain regulation is in accordance with certain legal instruments and obligations.

5.2.2.3 Consultations outside the government system

In 2006, Council of Ministers of BiH adopted the Rules of Consultations in Legislative Drafting²⁴.

Along with the development of this report the Ministry of Justice of BiH developed special report related to the implementation of Rules of Consultations.

Adoption of the Rules of Consultations and signing of the Agreement on cooperation between the Council of Ministers of BiH and NGO Sector in BiH has created legal and institutional framework for cooperation of citizens and CSO with public authorities at the state level in the procedure of developing, designing and implementing public policies.

It can be concluded from the data collected for the purpose of that report that Rules of Consultations are partially implemented in most ministries, as well as in other institutions of BiH, and in those ministries in which Rules of Consultations are implemented, their implementation is usually formal, but not substantial.

Implementation of the Rules of Consultations is marked by a series of problems, which can be divided into two groups.

The first group of problems is related to the establishment and functioning of the instruments for implementation of the Rules of Consultations, where key issues are the following:

- 1) Most of the institutions of BiH have not fulfilled their obligations concerning the establishment and functioning of the instruments for implementation of the Rules of Consultations, nor have they planned it in their strategic plans or work programs.*
- 2) Commitment of the institutions of BiH to the implementation of Rules of Consultations is not sufficiently expressed. The main reason for such situation is the lack of staff in most of the institutions of BiH, but also the lack of will to implement those Rules. With the re-allocation of the existing staff, and more efficient planning and coordination within the institution, those shortcomings could be overcome in the short term, but it will not necessarily affect the degree of implementation of Rules of Consultations without the change in the attitude towards the implementation.*
- 3) Lack of knowledge of civil servants, interested individuals and CSO about consultations in the procedure of developing, designing and monitoring the implementation of public policies.*
- 4) Lack of promoting Rules of Consultations among civil servants, citizens and CSO.*

The second group of problems is related to the content of the conducted consultations, where key issues are the following:

²³ Published in the „Official Gazette of BiH“, No 32/02 and 102/09.

²⁴ Published in the „Official Gazette of BiH“, No 81/06

- 1) *Most of the institutions of BiH do not implement obligations related to consultations on legislation, through various forms of consultations adjusted to the specific circumstances and needs, and they are usually conducted formally. There is no methodology for collecting comments from the interested individuals and CSO, so the received comments are mostly of poor quality and therefore useless.*
- 2) *Except the Ministry of Justice of BiH, no other institution of BiH has developed internal procedures for the implementation of Rules of Consultations.*
- 3) *None of the institutions of BiH have concluded agreement on consultations with CSO and individuals.*
- 4) *Council of Ministers of BiH has not ever refused to place a regulation on the agenda of the session of the Council of Ministers of BiH, for not conducting consultations during drafting of that regulation.*
- 5) *Rules of Consultations, in accordance with the Uniform Rules for Legislative Drafting in the Institutions of BiH, regulate consultations in the stage of preparing the pre-draft of a regulation, and not in the early stage of making public policies.*

5.2.2.4 Introducing detail analysis of regulation's impact

In the framework of the EU project „Development of central bodies of governments/CoM BiH“, Ministry of Justice of BiH has started at the end of 2012, in cooperation with the institutions of BiH, developing the Decision on the process of preparation, impact assessment and selection of policy when drafting a regulation. This document is the result of joint commitment of the institutions of BiH to the uniform methodology that will be used in legislative drafting. Previous practice of regulatory impact assessment (RIA) was presented in the form of explanation of regulation, which proved to be insufficient. The results of such practice were regulations that were 1) unenforceable, 2) frequently modified and amended and 3) whose objectives were not accomplished in most of the cases. Decision on the process of preparation, impact assessment and selection of policy when drafting a regulation stipulates in detail the process of preparation, impact assessment and selection of policies when drafting a regulation in the institutions of BiH. This Decision prescribes two types of regulation's impact assessment: 1) preliminary assessment of the regulation's impact, which is developed in the framework of the Theses for drafting regulation, as the first step in the process of legislative drafting and 2) detail analysis of regulation's impact assessment, which is made after the preliminary assessment of the regulation's impact, for the regulations that could have a significant impact on the financial, economic, environmental and social issues.

Organizational unit or staff of an institution of BiH drafting a regulation is responsible for making regulation's impact assessment. Legislative Office controls the quality of regulation's impact assessment from the procedural and legal aspect, on the basis of delivered draft of regulation and impact assessment made by the drafter, while the Ministry of Finance and Treasury controls the quality of regulation's impact assessment regarding the financial aspect, and DEI regarding the compliance of BiH regulation with the EU legislation. General Secretariat controls the quality of procedure, i.e. degree to which it complies with the decision's provisions, without examining the content of the document.

Preliminary draft of the decision is currently in the process of public consultations and, after obtaining the necessary opinions, it will be submitted to the Council of Ministers for consideration and adoption.

Decision on the process of preparation, impact assessment and selection of policy when drafting a regulation is an important tool in the system of legislative drafting in the institutions of BiH, whose purpose is to draft quality regulations that will be enforceable and accomplish the objectives for which they were adopted.

The aim of the impact assessment is consideration of proposals of possible non-normative solutions and creation of higher number of possible normative solutions before starting the legislative drafting, with the aim of selecting an optimal solution, which achieves economy and objective of regulation, and which will require certain amendments to the Uniform Rules.

5.3 Adoption of regulation

5.3.1 Consideration of regulation by collegium of an institution

At the state level, drafts of regulations are usually checked by expert collegium of the competent ministry before they are accepted as completed. This control should not only provide confirmation that the above mentioned verifications are conducted, but also confirmation that draft regulation corresponds to the objectives of policy whose selection preceded its drafting.

However, this is far from the actual practice, considering that drafter of a regulation practically has great impact not only on legal solutions contained in the draft regulation, but also on the selection of the basic policy objectives contained in it. This means that the person who has drafted a regulation, in the situation where there were no clearly defined policy objectives, was forced to determine them himself/herself and to assess on its own whether the selected solutions are acceptable.

In accordance with the above mentioned, expert collegium of the ministry or some other managerial officer of the ministry who is responsible for the final verification and evaluation of draft regulation within the ministry, if not directly involved in its drafting procedure, has small chances for quality verification of draft regulation, and because of that the internal control is rarely effective.

5.3.2 Consideration of regulation by the Council of Ministers of BiH

The situation is very much alike even when the drafter submits the draft regulation to the Council of Ministers of BiH, having in mind the way in which the legislative projects are included in the annual program of work of the Council of Ministers of BiH, so that strategic objectives of regulations, which should be verified, are far from clear.

After obtaining all necessary opinions, and before considering and deciding on the draft regulation at the session of the Council of Ministers of BiH, the draft regulation has to be verified by the commissions of the Council of Ministers of BiH, responsible for consideration of those issues of regulations that fall under their jurisdiction.

After submitting the draft regulation to the General Secretariat of the Council of Ministers of BiH, lawyers and other experts, who participated in the drafting procedure of the proposed regulation, are not involved in the further procedure, because rules that define procedure of decision making stipulate that draft regulation is presented by the Minister or Deputy Minister in all subsequent phases of consideration²⁵.

5.3.3 Consideration of regulation by the Parliamentary Assembly of BiH

In principle, mechanisms of verification applied by the Parliamentary Assembly of BiH do not differ from the ones applied by the Council of Ministers of BiH. Those verifications in some way provide control over the work of administrative bodies of BiH and the Council of Ministers of BiH, although their main value relates to the initiation of laws and amendments to the laws in the Parliamentary Assembly of BiH.

Parliamentary procedure at the state level does not make any distinction between legislative initiatives of the Council of Ministers of BiH and those initiated by the members of the Parliament, i.e. delegates. Therefore, similar controls and methodologies should be applied in the parliamentary procedure that would facilitate enforcement of their verification. Each draft regulation has to be accompanied by the explanation of the proposed regulation. Thus, regulations and amendments proposed by MPs, i.e. delegates, should be the subject of the same analysis that is applied when proponent of a regulation is the Council of Ministers of BiH.

²⁵ In Brcko District of BiH, civil servants who prepared the draft regulation are present during its consideration by the Government and Assembly of Brcko District of BiH, which is also the case in several EU counties, including the Republic of Slovenia.

However, parliamentary professional services have not been adequately staffed yet to provide sufficient assistance to MPs, i.e. delegates, in terms of drafting of legislation and amendments to the proposed or existing regulations. Therefore, drafts of regulations and amendments initiated by MPs, i.e. delegates, in the parliamentary procedure, usually skip over the complete system of legislative drafting and are usually of poor quality. It is completely understandable that if higher level of regulations quality within the Parliamentary Assembly of BiH is to be achieved, Parliamentary Assembly of BiH must have its own experienced staff, which is the usual practice in parliaments across Europe.

In order to ensure that regulations initiated by MPs, i.e. delegates, are prepared in accordance with the quality standards that are characteristic in the complete system of legislative drafting, it is necessary to strengthen Legislative-Legal Sector of the Parliamentary Assembly of BiH.

5.4 By-laws

At the state level, due attention is not paid to the quality of by-laws. Their importance will come into the light in the context of BiH accession to the EU. Uniform Rules treat the enactment of by-laws in the same way as laws, which is not realistic.

As a consequence of the above mentioned, certain adjustments have appeared in the practice, which leads to the weakening of quality, in the sense that explanations are incomplete and opinions are often not obtained. This is very problematic, given that the content of by-laws can often be very important. In practice, drafting of by-laws in parallel with the text of law is very rare. According to that, it is very often that decisions that determine regulating of certain matter by by-law do not provide opportunity of adjustability to the familiar political choice, but serve to delay such determination.

The issue of control over the by-laws is left to the evaluation of the Legislative Office that gives its opinion before submitting the by-law to the Council of Ministers of BiH for consideration and adoption. When it comes to the by-laws issued by the Ministers, they are usually are not subjected to any control.

Verification of by-laws within the collegium of the institution that prepares them is not the best solution, because the only effective control is to assign work on the draft of by-law to the same persons who worked on drafting of the law. Having in mind the insufficient number of persons trained for drafting of regulations in most of the institutions, this appears as necessary, because in that way harmonization of laws and by-laws is ensured.

Problem specific for by-laws at the state level is their publishing. At present, a lot of by-laws, such as Rulebook on internal organization and numerous internal rules, are not published in the "Official Gazette of BiH", and there is no request for the establishment of single register that would provide access to the texts of the by-laws.

However, the need is evident and most ministries and other institutions of BiH already keep the internal registers of by-laws related to the activities under their jurisdiction.

5.5 Access to regulations

Publication and distribution of regulations in order to inform general public and to ensure their enforcement present one of the important functions of the administrative bodies.

Unfortunately, while the need for easier and faster access to regulations is constantly increasing, it seems that level of services is significantly decreasing. Although the previous system provided wide availability of complete collections of regulations, such as laws and by-laws, currently in BiH there is a relative lack of these activities.

This problem is partially result of the lack of resources, but the fact remains that some services of public administration could be more active in issuing collections of regulations with comments, review of court and administrative practice and templates.

5.5.1 Official publishing

At the state level, Expert Service of the House of Peoples of BiH has been entrusted by the Law on Official Gazette of BiH²⁶ the task of preparing of all regulations, regardless of whether they are adopted by the Parliamentary Assembly of BiH or some other authority, and their forwarding to the “Official Gazette of BiH” for publishing.

Considering that this Expert Service has insufficient number of employees, there are difficulties in providing timely services to the state institutions in that regard.

Great practical problem is also the access to official gazettes, especially if you want to get a regulation of other levels of government in BiH.

Public company “Official Gazette of BiH“ has established and manages the web site that contains regulations of BiH, Federation of BiH and Canton Sarajevo. In order to have access to texts of regulations for the previous period, access fee has to be paid, which is not in the spirit of good European practice, while through the advanced browsing system it is possible to perform free search of regulations’ indexes.

Citizens and all interested parties can access the regulations under the jurisdiction of the state level on the web-site of the Parliamentary Assembly of BiH. It is possible to search the laws that are in the procedure, adopted, rejected, withdrawn, suspended and frozen in the period from 1996 to date.

Activities on the development of the internet portal e-BiH are initiated in the framework of public administration reform project, which will enable the citizens, business community and public institutions access to the laws and by-laws, through the category Laws and by-laws, according to the institution, sector or topic.

Despite the fact that many regulations at the state level have been significantly amended several times after their entry into force, there are only few examples of published revised texts of such regulation. In order to clarify the status of regulation in force, it is very important that institutions at the state level engage more actively in preparation and publication of official revised texts of regulations.

Therefore, there should be prescribed an obligation that every regulation that was amended three times has to be published in the form of revised text.

5.5.2 Unofficial collections of regulations

The practice of unofficial publishing of collections of regulations at the state level almost does not exist²⁷. When the legislation should not only be in force, but also familiar to the general and professional public, it is recommended that competent institutions of BiH take more active approach to issuing of collections of regulations, both in printed form and through web sites and electronic databases of regulations.

In order to provide easier access to the applicable regulations, it is recommended that all ministries and other institutions of BiH, which carry out extensive normative-legal activities, plan in their budget resources for publication of collections of regulations under their jurisdiction. Texts of those regulations should be available through the Internet.

²⁶ Published in the “Official Gazette of BiH, No 1/97 and 9/04.

²⁷ As positive example can be pointed out the collection of regulations, expert opinions and court decisions „Implementation of regulations on the execution of criminal sanctions, detention and other measures in Bosnia and Herzegovina“, authors Vildana Vranj and Mustafa Bisić, published by “Privredna štampa“ d.o.o. Sarajevo, 2009.

6. PROPOSAL OF MEASURES FOR OVERCOMING THE PROBLEMS

In order to overcome the problems identified in the implementation of the Uniform Rules, Council of Ministers of BiH, at ___ session, held on ____ 2014, adopted the following:

CONCLUSIONS

- 1) Report on the Implementation of the Uniform Rules for Legislative Drafting in the Institutions of BiH, developed by the Ministry of Justice of BiH, is adopted and referred to the Parliamentary Assembly of BiH for consideration and adoption;*
- 2) Uniform Rules, although provide good framework for quality drafting of regulations, need to be additionally improved, and the Ministry of Justice of BiH is tasked to that;*
- 3) Ministry of Justice of BiH is tasked to refer the prepared Decision on the process of preparation, impact assessment and selection of policy when drafting a regulation, as well as the prepared decision which aims to improve planning of normative-legal activities, including proposing of amendments to the Rules of Consultations, to the Council of Ministers for consideration;*
- 4) Ministries and other institutions of BiH are tasked to start establishing specialized units for normative-legal activities in the ministries that have larger amount of those activities, while other ministries and other institutions of BiH should have specialized staff that would pass the necessary training;*
- 5) Competent institutions of BiH are tasked to develop software for legislative drafting, which is specialized version of Word program, use of electronic system for formal submission of drafts of regulations, explanations and opinions, as well as searchable database of legislation, including court decisions, literature and legal sources of the EU;*
- 6) Ministry of Justice of BiH is tasked to annually submit to the Council of Ministers of BiH and Parliamentary Assembly of BiH report on the implementation of the Uniform Rules, which will also contain report on the implementation of the previous conclusions of the Council of Ministers of BiH and Parliamentary Assembly of BiH.*