MANUAL
ON EXPLANATORY MEMORANDA

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Prepared by:
Sally Fleschner, USAID Parliamentary Strengthening Project in Bosnia and Herzegovina, Consultant
Niko Grubešić, Ministry of Justice of Bosnia and Herzegovina, Assistant Minister
Almedina Šabanović, Directorate for European Integration of the Council of Ministries of Bosnia and Herzegovina, Head of Unit - Division for Harmonization of the BiH Legal System with acquis communautaire

Proofreaders:
Lejla Nuhodžić, Bosnian language
Tamara Čapelj, Croat language
Aleksandra Aginčić, Serbian language

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MANUAL ON EXPLANATORY MEMORANDA
The challenges facing the drafters of legislation in Bosnia and Herzegovina (BiH) are unique, particularly regarding the harmonization of various laws, reconciliation of competences of different levels of government, and producing legislation that is clear and easily implemented.

In 2006 the BiH Ministry of Justice, with the assistance of the United States Agency for International Development, published the Manual for Legislative Drafting, based on the Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina, enacted in 2005, which were limited to the nomotechnics of legislative drafting. However, the preparation of legislation encompasses much more. The ineffectiveness of legislation can frequently be attributed to incomplete policy analysis, including inaccurate fiscal analysis, failure to conduct consultations and poor implementation planning, which can result in legislation that, although technically well-crafted, fails to address the underlying issues requiring legislative action.

This Manual on Explanatory Memoranda constitutes an introduction for interested readers to better practices of drafting explanatory memorandum, including policy analysis, financial assessments, consultations, EU harmonization, etc. By ensuring a broader understanding of the way to prepare legislation in BiH, it may also prove useful to all participants involved in the preparation and adoption of legislation. Members of the BiH Parliamentary Assembly and all who initiate legislative action will benefit from using this Manual as a resource. It is also intended for both drafters of legislation and for those responsible for conceptual development, those employed in policy analysis and those who implement policies through legislation, such as judiciary and executive authorities responsible for implementation of legislation.

The BiH authorities are keen to achieve progress in the European integration process and the proper legislative preparation will assist in furthering this goal. The BiH Ministry of Justice is committed to the improvement of legislation in BiH and hopes that the participants in the legislative process will find the principles set forth in this Manual helpful and useful in their work.

MINISTAR
Bariša Čolak
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Laws are tools for promoting economic and social order in a country. They are designed to solve or prevent problems for the benefit of its citizens. Laws have an important purpose in supporting community values, protecting citizens’ rights and determining their responsibilities. Laws bring order to people’s lives, help settle disputes, establish penalties, protect the rights of individuals and groups and promote welfare.

Laws do not exist in isolation. They are part of a legal framework and they are applied and adjudicated through judicial or administrative procedures. Therefore, laws must properly relate to each other, taking into account applicable legal requirements and institutional arrangements. Good laws are fair, understandable, accessible and enforceable. A law that follows a logical structure and is written in clear, user-friendly language is easier to understand and apply. Poorly drafted laws lead to mistakes in implementation, possible litigation and a need for amendments to correct previous oversights, which results 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, permit planning and ensure predictability, then laws should be drafted accordingly.

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

In June 2002, the BiH Council of Ministers and the BiH Presidency adopted a joint Declaration on Improving the Quality of Regulation, and tasked a small working group with developing a set of uniform rules that would guide the preparation of legislation. The working group developed a comprehensive document that set out detailed rules and procedures governing the preparation and drafting of legislation by all BiH institutions, entitled the Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina (Uniform Rules). These rules were designed to be consistent with relevant practices in the European Union. In January 2005 these rules were adopted by the BiH Parliamentary Assembly (PA). In the meantime, the Republika Srpska and the District of Brčko adopted similar legislative drafting rules.

The Uniform Rules contain 83 Articles divided into five sections:

a) The first section sets forth the scope and application of the Uniform Rules to all BiH institutions, while other levels of government in BiH may apply them voluntarily.

b) The second section covers the organization, structure, grammar and style, modification and confirmation of legislation.

1 Legislative terminology can cause confusion. The term “regulation” has different meanings in different contexts. For purposes of this Manual, the term legislation encompasses all levels of regulatory acts, the constitution, treaties, laws, by-laws, rules of procedures, decrees, rule books, instructions, orders, as well as conclusions, declarations, resolutions and amendments thereto, that have the force of authority by virtue of their promulgation by a parliamentary body or official institution of a state.

2 Published in the BiH Official Gazette, No. 11/05.

3 The Legislative Secretariat of the Government of Republika Srpska adopted similar rules in 2006 in the form of Legislative Drafting Methodology Instructions (RS Official Gazette, No. 13/06), while the relevant bodies of the Brčko District use the Decision on the Legislative Drafting Procedure from 2007. In the Federation of Bosnia and Herzegovina such drafting rules have not been adopted; instead the Uniform Rules are used occasionally.
c) The third section addresses the legislative process itself and the contents of explanatory memoranda that accompany draft legislation.

d) The fourth section regulates the procedures in performing legislative drafting tasks in the institutions of BiH.

e) The fifth section contains the final provisions.

The Uniform Rules attempt to facilitate the achievement of an integrated legal system that benefits the entire society. The Uniform Rules not only address nomotechnical legislative drafting techniques: structure, organization, style, grammar, etc., but they also set forth requirements governing the entire process in the preparation of legislation, as well as certain administrative provisions surrounding this process.

The goal of this Manual is to explain the additional requirements that are found in articles 58-67 of the Uniform Rules relating to explanatory memoranda so that a proponent can prepare legislation that is effective and affordable, and accomplishes its purpose because it has a proper foundation and can be implemented.

2. EXPLANATORY MEMORANDA

Articles 58 and 59 of the Uniform Rules provide that during the preparation of legislation in the BiH institutions, the proponent must append to the draft legislation an explanatory memorandum which is separate and not deemed part of the legislation being proposed.

Article 60 of the Uniform Rules lists the seven required (explanatory) components that must accompany all legislation submitted to the BiH Council of Ministers\(^4\) as follows:

\[
\text{Article 60} \\
\text{(Content of Explanation)}
\]

\begin{enumerate}
\item An explanatory memorandum includes:
\begin{enumerate}
\item the constitutional and legal basis for adoption of the legislation,
\item the reasons for adoption of the legislation and explanation of the chosen policy,
\item the legislation’s harmonization with European legislation,
\item implementation mechanisms and the manner of ensuring compliance.
\item an explanation of financial resources required for implementation and of the financial impact of the legislation,
\item a report on the consultations conducted during the process of drafting the legislation,
\item a schedule for review and potential revision of the introduced legislation.
\end{enumerate}
\end{enumerate}

(2) If it is assessed that the character of a given legislation does not require an explanation of some of the components from Paragraph (1) of this article, departures are permissible\(^5\). The institution responsible for adoption of the legislation may decide that the explanation is incomplete and demand additional clarifications from the drafter.

\(^4\) While these requirements are directed to state institutions, there is no reason why legislation introduced by a Member of the BiH Parliament should not also meet these requirements.

\(^5\) The Uniform Rules do not make exceptions for minor amendments to laws. Article 60, section (2), however, permits that the extent to which such legislation would require a comprehensive explanatory note should depend on the extent of its impact. See also, BiH Council of Ministers, Instruction on the Method of Drafting and the Procedures for Adopting Technical Regulations (BiH Official Gazette, No 35/06).
Special circumstances may obviate the need for one or more of the above-mentioned components of the explanatory memorandum, unless the institution responsible for adoption of the regulation specifically requires it. Each of these requirements are explained in detail in articles 61-67 of the Uniform Rules, which are discussed below in the text of the Manual.

Explanatory memoranda serve the purpose of providing the background and the record of the preparative procedure that results in the draft legislation. Explanatory memoranda need to be clear, precise and informative as they:

a) contribute to informed debate in the Parliament;
b) limit grounds for political disagreement;
c) set the parameters for political debate by showing which policy elements are pre-set by external commitments (e.g. EU harmonization);
d) indicate the likely outcome of discussions on constitutional attribution issues (e.g. precedents on Entity and State responsibilities);
e) explain how the interests of stakeholders were heard and accommodated;
f) assist ministries and other institutions in decision-making and implementation;
g) assist lawyers, and courts who implement regulations to interpret them correctly;
h) make legislation more accessible by helping people understand its effect on their rights and obligations; and
i) allow for informed public discussion.

It is important to understand that an explanatory memorandum is not an end in and of itself, but rather a tool that serves as a guide and reference point during the drafting process and subsequent legislative procedure in the Parliament.

Explanatory memoranda should reflect that draft legislation follows a logical progression, starting with (i) an analysis of a perceived social problem or need, through (ii) developing a policy designed to meet these needs, (iii) considering different options for finding solutions to the problem, (iv) testing the solution through risk/benefit analysis, (v) conducting financial impact analysis of solutions, (vi) carrying out consultations, (vii) developing an implementation plan, and (viii) designing a system for monitoring the legislation’s success and correcting observed shortcomings.

Enactment of legislation without following these steps can result in laws that are not implemented, lead to wasting of societal and financial resources, litigation, uncertainty for citizens and creation of a negative view of the credibility of the government. Foreign investors tend to avoid countries whose legal systems are unclear, unstable or whose laws cannot be applied fairly.

While the Uniform Rules do not specify when during the legislative process the different analyses and tasks should be performed under articles 60-67, they should be performed as early in the process as possible and certainly during the policy development stage. Thus, when a draft law is submitted to a responsible institution to review for approval and issuance of an opinion, the institution will be better equipped to conduct its review.

This Manual aims to expand the understanding of explanatory memoranda through discussion and an Appendix with checklists and worksheets to help improve the quality of legislation.
Article 61 (Constitutional and Legal Examination)

(1) The constitutional and legal basis for introducing legislation includes verification of the following:
   a) competence and jurisdictional basis for regulating the given subject matter and for adoption of legislation, and
   b) harmonization with existing legislation, including international treaties.

(2) If necessary, the constitutional and legal basis includes the harmonization of legislation with the binding legal principles, such as certainty, proportionality and equality before the law.

Article 61 of the Uniform Rules requires all drafters of legislation to cite the constitutional and legal basis for adopting the legislation and demonstrate how it is harmonized with existing legislation and international agreements. This is different from harmonization with European Union (EU) legislation, which has special technical requirements and that will be covered in a separate section of this Manual.

Laws must comply with constitutional principles and be consistent with existing legislation. In this regard, attention must be paid to the legal hierarchy of laws. Not all laws are created equal. In Bosnia and Herzegovina, like in any other country, legislation has a specific place in the hierarchy of regulatory acts of the government. A constitution is not the same as a statute, which is not the same as a rule or by-law (subsidiary legislation). Constitutions, statutes, and rules do not exist in isolation, but they combine to form the legal infrastructure of a country, each finding its place within the hierarchy of importance.

A constitution is the highest legal act of a country and can be adopted in different ways.

In some countries, a constitution is subject to referendum. An imposed constitution is a special kind of constitution imposed by a ruler. BiH is unique because its constitution is a result of a multilateral international treaty. Some countries, like the United Kingdom, do not have a written constitution. While some countries do not permit changes to their constitutions, most countries change their constitutions through the introduction of amendments.

The Constitution is the fundamental and superior law in Bosnia and Herzegovina under Article III.3.b. and defines the relationship of the three branches of government. Article IV.4.a. of the BiH Constitution charges the BiH Parliamentary Assembly to “enact legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution.” The BiH Parliamentary Assembly shall also:

   a) decide upon the sources and amounts of funding for the operation of the BiH Institutions and for meeting the international obligations of BiH - Article IV 4.b.;
   b) approve the budget for BiH Institutions -Article IV 4.c.;
   c) decide on the ratification of international treaties - Article IV 4.d.; and
   d) attend to such other matters as are necessary for the execution of its duties or as are assigned to it by mutual agreement of the Entities - Article IV 4.e.
**Hierarchy of laws**

Legal acts are either general legal acts introducing general legal norms, or individual acts that settle rights or duties mainly of physical and legal persons, such as decisions by courts or administrative bodies. Judicial and administrative acts are those adopted by courts and administrative bodies in specific cases.

Based on their legal importance, we can speak of higher and lower-ranked legal acts. The highest legal act is the Constitution along with international treaties, many of which are incorporated into the Constitution, followed by laws (primary legislation). Secondary or subsidiary legislation (rules or by-laws) are based on explicit authority set forth in the primary legislation. Further down the chain are decrees, rulebooks, instructions, rules of procedure and legal acts of an internal nature. Individual legal acts are the lowest ranking.

Different from general legal acts are the acts of political positioning and influence parliaments use to express their stance on specific external or internal matters, such as declarations, resolutions, recommendations, conclusions and guidelines.

The Constitution and laws are adopted by legislative bodies, or in some cases enacted through a special legislative procedure. Administrative and executive bodies enact subsidiary legislation, which are acts of lesser legal importance adopted to facilitate implementation of a primary legislative act, based on explicit authority set forth in the primary legislative act. Individual judicial and administrative acts are adopted by courts and administrative bodies, respectively.

**General principles for resolving regulatory conflicts**

The general principles for resolving conflicts between competing regulatory acts are the following:

a. a lower-ranking legal act may not contradict a higher-ranking legal act.

b. a legal act may be repealed or amended only by a legal act of an equal or higher legal force.

c. when there is a conflict between legal provisions of equal force, a more recent provision repeals or amends older provisions.

d. a more specific rule repeals or amends a general rule, regardless of the date of adoption.

There are no explicit international standards regarding the hierarchy between domestic laws and international treaties, unless such treaties are a constituent part of the country’s Constitution. Every country decides on its own how it will meet its domestic and international obligations. In the event of a conflict some countries consider international treaties as superseding domestic laws, while in other countries international treaties are ranked lower. In BiH, rights and liberties are protected in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols. The provisions of this Convention take precedence over all national legislation.

**General legal principles**

BiH follows the general legal principles derived from the legal traditions and practices of EU Member States. Because these principles are, for the most part developed, applied and interpreted by the European Court of Justice, they are also known as “unwritten law.” These principles constitute material elements of the rule of law and serve to overcome legal gaps, or issues not covered by law, and facilitate interpretation of legislation in a fair way when written sources of law fail to provide an appropriate answer or are considered contrary to justice. Some of the most frequently mentioned legal principles are:

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6 An exception exists for parliamentary rules of procedure, which have the rank of general legal acts.
Principle of non-discrimination. The principle of non-discrimination protects equality of all citizens in their rights and obligations by the explicit prohibition of direct or indirect discrimination based on nationality or other grounds such as gender, race, ethnic origin, religion or beliefs, disability, age or sexual orientation.

Principle of legal certainty. This principle requires that laws are accessible to everyone, and also that legislation should be published prior to its entry into force to allow citizens to plan and prepare for changing legal situations whose material elements include the principle of legal certainty.

Concept of vested rights. If a person receives a vested right under a legal norm, it should not be legislated away.

Concept of non-retroactivity. With few exceptions, a legal act cannot be applied retroactively, i.e. to the period before the date it entered into force.

Concept of legitimate expectations. To a certain extent, people rely on the law to achieve some specific results and such expectation must be protected.

Principle of proportionality. This principle obliges the authorities to maintain a degree of proportionality, meaning that the measures adopted do not exceed the limits of what is appropriate and necessary to attain the objectives legitimately pursued by the legislation in question.

Procedural rights. Procedural rights of due process which are sometimes as important as substantive rights in safeguarding a person’s interests, include the right to a fair trial, the right of comprehensible language, the right to be informed of the reasons upon which a decision is based, the right against double jeopardy, the right that a penalty may not be imposed unless it has a clear and unambiguous legal basis, etc.

Harmonization of legislation

Legislation must be in line with the hierarchy described according to certain principles. A proponent of a law cannot simply ignore a constitutional mandate or an international obligation. Each new law must be harmonized with international law, as well as with the procedures for initiating, signing and implementing international treaties. Each new law must be harmonized with the rules governing citizens’ rights and freedoms, as well as fundamental human freedoms. Harmonization also correlates each individual provision of a proposed law with the BiH Constitution and other existing legislation.

The Rules of Procedure of the BiH Council of Ministers also require harmonization of all new legislation with international law, given that international law constitutes an integral part of the national legal order.

Constitutional and legal statement

The constitutional and legal basis for a law should be stated in the Preamble. Typically, a state law will simply state that it obtains its authority from the BiH Constitution in article IV.4.a., but a reference should always be made to the relevant source of a higher legislative power. In preparing draft legislation, the proponent should research:

a. relevant sections of the BiH Constitution,

b. applicable international agreements, conventions and treaties,

c. relevant national laws,

d. commentaries and references,

e. decisions of the European Court on Human Rights, and

f. decisions of the BiH Constitutional Court.
In addition, the proponent must (i) conduct a comparative analysis of the subject matter with EU law and at the Entity and other levels of government, and (ii) determine how to address potential conflicts.

If inconsistencies are identified in the course of the drafting process, such inconsistencies must be resolved before proceeding any further.

The proponent should thoroughly research the authority for the institution proposing the law to regulate the relevant subject matter and include this authority in the explanatory memorandum. The proponent should also include references to relevant examples that confirm the validity of the proponent’s constitutional interpretation. These can include decisions of the BiH Constitutional Court, as well as laws already passed by the BiH Parliamentary Assembly. To track such examples, the proponent can make use of the Legal Guide, as well as academic literature.

Since most subject matter is regulated at the Entity level, the explanation should review that experience, even if by reference to material regulating Entity-level aspects. Previous State-level legislative history should also be summarized to show the main differences in the approach between the old legislation and the new.

**Review by government institutions**

In accordance with the provisions of the Rules of Procedure of the Council of Ministers of BiH, the drafter must obtain opinions of the line ministries and other BiH institutions on all draft legislation. If it is required of them, those institutions must provide an opinion within a prescribed timeframe. If a draft law is submitted to the BiH Council of Ministers without the required opinions, it will be returned to the proponent with a deadline to complete the documentation.

The Legislative Office of the BiH Council of Minister reviews proposed legislation against the Registry of Existing Legislation as published in the BiH Official Gazette. It has access to the case law of the Constitutional Courts and to the electronic database of existing legislation. The Legislative Office provides more substantial opinions based on a detailed analysis.

The BiH Ministry for Human Rights and Refugees is responsible for verifying compliance with existing legislation on respect for civil rights and fundamental freedoms as provided for under international humanitarian law.

The BiH Ministry of Finance reviews legislation for its budgetary and financial impact.

The BiH Ministry of Foreign Affairs is responsible for verifying that the draft is consistent with foreign affairs goals and with the procedures for initiating, concluding and enforcing international treaties.

The BiH Ministry of Justice is responsible for reviewing penal provisions of every law, and whether its provisions comply with established criteria pertaining to the structure and operation of administrative bodies, such as the rule books on internal organization and job classification.

The Directorate of European Integration (DEI) issues an opinion on the harmonization of the draft legislation with EU law.

A proponent of legislation is not restricted to seeking opinions just from the above-mentioned institutions. It is recommended that, as part of the consultative process, the proponent seek opinions from other relevant institutions regarding specific issues that may arise in an individual piece of legislation, such as gender rights, protection of personal information and other issues.

To the extent that the proponent’s explanatory memorandum for a law conflicts with an opinion rendered by another government institution, such conflicts are resolved by the BiH Council of Ministers.
Introduction

What is meant by “policy?” Public or legislative policy can be generally defined as a system of laws, regulatory measures, courses of action and funding priorities concerning a given topic, promulgated by a governmental entity or its representative to solve a social issue that affects a particular community or society in general. Policy is a broad term and can be social policy, environmental policy, economic policy, etc., and often is confused with strategy. It is impossible to clearly distinguish between the terms “policy” and “strategy” as they are commonly used. What one government calls an “economic planning strategy” another might call an “economic planning policy.” Simply stated, policy is what one wants to do and strategy is how it will be accomplished, although policy proposals generally contain strategies. All laws have policy objectives, whether they are explicitly stated or not. Policy objectives are the substance of every law, and the law is the vehicle for their attainment.

The need for solid policy analysis and well-drafted legislation is critical for any nation. Legislation that inadequately addresses policy concerns or is unclear can lead to multiple interpretations and conflicting outcomes, which can erode the public’s trust and its confidence in the government. Poor policy analysis and poor drafting lead to legal uncertainty and instability, and poor legislation requires courts – as the branch of the state most directly responsible for ensuring the uniformity of the application of law – to guess at the legislative intent and fashion ad hoc remedies that can undermine the notion of fairness and equality. Compounding the problem in BiH is the practice of the BiH Institutions to request authentic interpretations of specific statutes from the Parliament, and such interpretations are subsequently published in the Official Gazette. Competing or conflicting legal mandates and a general absence of legislative direction in key policy areas within the overall legal structure of the country undermine the rule of law.

Policy-making does not always receive the attention it deserves, nor is this process sufficiently monitored and evaluated. This is unfortunate, since insufficient attention to policy making is short-sighted, counterproductive, and likely to lead to negative consequences, both during and after the drafting process. Sound policy analysis and competent legislative drafting can mitigate the impact of this troublesome environment. If policy makers get it right, then policy implementers can get it right. Thus, taking time and devoting sufficient resources to develop and communicate policies and objectives before laws are drafted makes sense, because it significantly increases the chances that the given law will accomplish what it is supposed to and yield positive results for society. Also, laws that effectuate sound policies are easier to enforce and do not require frequent amendments. In sum, good policy analysis and competent legislative drafting play an integral role in ensuring the success of legal reform efforts and promoting the rule of law.

The role of government

Policy-making is the first step in the legislative drafting process and one of the most important. Laws must be designed from the start to solve or prevent problems by implementing policies in the form of norms. Policies may originate as projects developed by the government, but subsequently they usually assume a form of specific legal acts.

Most governments have established procedures to plan their policy and legislative output, normally on an annual basis. An annual plan usually consists of a list of laws to be prepared by each line ministry and the deadlines for submitting them to the government for adoption. Ministries
contribute to policy development in their areas of competence and resolve problems related to the implementation of existing public policies. Reliable lines of communication with constituents, experts and other ministries are crucial for all activities in this context.

Policy making in Bosnia and Herzegovina

Article 62 of the Uniform Rules provides the required elements of a legislative policy:

**Article 62**

*(Reasons for Introduction of the Legislation)*

(1) The reasons for introduction of legislation and explanation of the chosen policy must be based on clear evidence that a problem or situation existed and that the introduction of the legislation is justified, including in particular:

a) an analysis of the current state,

b) values guiding the drafter and the current policy of the given institution in their regard, and
c) the likelihood of benefits from the introduction of the legislation, based on that institution’s realistic assessment of effectiveness.

(2) Whenever possible, the policy reasons for the introduction of the legislation and explanation of the chosen policy should be based on evidence of the debate that had been conducted and about the alternate ways of regulating the matter in question, such as economic regulation, non-binding agreements, self-regulation, information dissemination and other non-normative methods of regulation.

The challenges facing legislative drafters in BiH are unique, particularly in harmonizing numerous laws and reconciling competing sources of legal authority. In BiH, ministries play a significant role in determining the legislative and policy agenda. Following the European legal tradition, policy making and legislative drafting in BiH are merged organizationally, meaning that ministries typically both develop policy and draft the resulting legislation. In so doing, not only are the ministries aware of developments in their respective areas of competence, but they can also change the adopted policy and draft legislation proposals during the drafting process. This permits a greater degree of certainty and practicality in the final text of the proposed law. Policy makers must also research and adapt not only with developments in EU law, which may constrain the policy options, but also with those at the Entity and other governmental levels in BiH.

Public policy is not necessarily set by the government; it may be presented also through documents from other sources, such as civil society organizations or special interest groups. However, this Manual was prepared on the basis of the Uniform Rules, and as such, it is focused on the legislative practices of the BiH Institutions. It should be borne in mind that, in practice, policy proposals are not academic exercises, but simply documents reflecting the agenda of their proponents. The proponent of a course of action should conduct a thorough analysis from the standpoint of public policy and arrive at a persuasive legislative policy proposal or policy paper that a competent governmental institution will adopt, thereby establishing the basis for the proposed legislation.  

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7 A statement of policy under article 62 should follow the analysis set forth in this section, regardless of whether the document is called a “statement of policy,” “policy proposal” or “policy paper.”

A policy proposal not only states the objectives to be achieved, but also addresses who will achieve them, and when and how they will be achieved (a strategy). It should reflect that the proponent has:

- a) selected and prioritized the applicable objectives,
- b) analyzed the problem that created the need for the policy,
- c) harmonized the policy with EU law,
- d) conducted consultations,
- e) found a policy solution that meets the objectives,
- f) identified alternative courses of action, including doing nothing,
- g) conducted a financial and regulatory impact analysis, and
- h) chosen a method for implementation.

Once the ministry adopts the policy and the legislation is drafted in accordance with the policy, the draft legislation should undergo further examination, such as financial impact analysis, consultations and implementation planning (see articles 64-66 of the Uniform Rules), although much will have been conducted previously because the solution that is under consideration must be tested during policy analysis. This work will be reflected in the explanatory memorandum accompanying the draft legislation when it is submitted to the BiH Council of Ministers and later to the BiH Parliamentary Assembly.

The next portion of this Manual contains a set of step-by-step instructions to guide policy makers through the process of producing a policy proposal or policy paper.

**Problem-solving approach to legislative policy development**

Legislative policy utilizes a systematic approach that provides a logical process for finding legislative solutions to social issues. An effective approach to policy development is the so-called “problem-solving approach.” It includes a methodology for identifying a social problem, analyzing the problem in terms of “problematic behaviors” (actions, inaction or omissions) of those involved with a view to finding solutions to change those behaviors to improve the social problem.\(^9\) Put simply, the legislative problem-solving approach is a way to explain problematic behavior in order to better understand the behavior and then begin proposing specific legislative policy responses to change this behavior. It should be noted that the term “problematic behavior” is not used in a pejorative sense, but it simply means that a community wants to change certain behaviors to solve a perceived problem to bring about a desired result.

**Threshold considerations**

Policy analysis starts by asking the following questions:

- a) Does a problem really exist?
- b) Can anything be done about it?
- c) Does the institution have the authority to analyze public policy?

If the answers to these questions are negative, then there is no point in doing a policy analysis.

In the process of defining the problem, the focus should be on the causes and not just the manifestations. It is important identify all those affected by the problem and the ways in which they are affected. Identification of cause and effect relationships is important in order to arrive at possible

\(^9\) This analysis seeks solutions to individual or group behavior, but would not necessarily have application to institutional relations or to subjects outside the legal system.
solutions and reject those that are inappropriate, given the nature of the problem. Sources of data that can facilitate problem definition and identification of cause and effect relationships can be found in various reports, publications, research results and statistical analysis, as well as insights of experts in specific areas.

In order to analyze the problem within the existing political framework, these additional questions need answering:

a) What are the current legal, social and economic contexts and consequences of this problem?
b) Is another law being prepared or is another legal solution under consideration?
c) What policy is currently being used in an effort to resolve the problem?
d) What are the different opinions concerning the problem and the approach currently being used?
e) In what ways has the current policy been successful or unsuccessful?
f) What is wrong with the existing approach?

Beware of pitfalls in public policy problem definition:

a) accepting a particular interest group’s definition of the problem,
b) looking for the easy way out,
c) thinking that any and all problems need a law or a public-sector solution,
d) confusing the need for short- versus long-term solutions, or
e) confusing the values of interest groups versus society as a whole.

A. Identify and describe the social problem

1. Describe the manifestation of the given social problem.

Legislative policy is designed to correct social problems. Therefore, drafting effective legislation requires the ability to precisely identify the social problem or issue to be addressed by the given legislation. Ask what the problem is that the policy maker seeks to solve and why it is a problem?

There are ways how not to state the problem, such as, “There is no legislation on [such and such topic].” An example of a better way to state the manifestation of a problem might be, “Rural farmers are unable to get their products to the market in a cost-effective way.”

In doing this you must distinguish between causes and manifestations. The example of the rural farmers is a manifestation. It is what you see as an effect of the problematic behavior. Later, you will seek to explain the causes.

2. Who is directly and indirectly affected by the problem?

It is important to identify persons and institutions that are affected by the social problem, even if they do not cause or contribute to the problem. These are the people who may be negatively affected by the problem, or who might be affected by a policy change.

Consider also how they are affected. Remember that you are not blaming the persons or institutions you are identifying. For example, it is not the farmer’s fault that he cannot get his products to the market.

It should be remembered that some legislation will be enacted to comply with EU requirements, even though a social problem does not exist.
3. Who is responsible? Identify who contributes to the problem.

Having described the manifestation of the problem and who is affected by it, then identify who is causing or contributing to the behavior. Ask who benefits from the existing state of affairs.

4. Identify the behavior that is causing the problem.

Next, look at the behaviors (actions, inactions or omissions) of such persons or institutions and determine how they contribute to or cause the problem? In other words, ask who is contributing to or causing the problem? How does what they are doing (or not doing) contribute to or cause the problem? Social problems are usually caused by more than one behavior. What is it that they are doing that results in the manifestation of the problem? If possible, state the problem as a specific action or omission on the part of those participating in the problem.

5. Analyze and explain the causes of the behavior and create explanations based on the causes of the behavior.

The next step is to analyze the conditions or behavior identified above that contribute to the social problem in order to create explanations about why they act or fail to act as they do. Seven factors help determine the causes of the behavior causing the problem. Each factor focuses on one aspect of behavior and asks questions that will lead to a better understanding of the problem and meaningful policy responses. Some of these factors may be irrelevant or have not impact on the problem. Ask yourself for each of the following factors whether they apply and if so, in what way.

a. Laws and rules. The problem may be exacerbated by laws and subordinate legislation that:
   a) are unclear, outdated or poorly drafted,
   b) permit or require the problematic behavior,
   c) do not address the causes of the problematic behavior,
   d) do not provide for accountability in their implementation,
   e) are not implemented, or
   f) permit corruption.

b. Opportunity. The term “opportunity” refers to the circumstances, chance or probability that a person has to engage in the behavior or to obey or disobey a law or regulation. Parking and traffic violations are good examples.

c. Capacity (or ability). The term “capacity” refers to the ability or inability that a person has to behave in a certain manner or to obey or disobey law. Capacity also includes anything that might hinder a person’s ability to participate or not participate in the behavior causing the problem. Some examples that address the “capacity” factor are: inability to obtain credit, lack of expertise (as in the preparation of court budgets), or lack of transportation (for example, the farmer who cannot get his produce to market).

d. Communication. The term “communication” refers to the effectiveness with which a law is communicated to the persons affected by it. If people do not know what a law permits, requires or prohibits, how can they be expected to obey it? This term also includes communication, or lack thereof, between governmental institutions and implementing agencies and how that may contribute to the problematic behavior.

e. Procedural obstacles. Ineffective bureaucratic procedures for making decisions, documenting work or other ways to impede compliance can cause social problems. This factor is
particularly important in the case of large institutions or complex organizations, where the decision-making process is not vested in a single individual. The BiH Pledge Registry for registering security interests in moveable property is an example of a solution to a bureaucratic problem.

f. Interest and incentive (or disincentive). The term “interest” refers to the incentive or motivation (both material, such as money, and non-material, such as personal power) for a person to engage in the behavior contributing to the problem. This includes a person’s perception of the personal risks and benefits of compliance or non-compliance with a law or regulation.

g. Beliefs and values. Beliefs and values are the attitudes that reflect how we look at the world and therefore shape our decisions. These include personal morality and the value system a person brings to any set of circumstances and affects how such person will behave under those circumstances.

**Summary of problematic behavior**

There may be multiple and overlapping explanations for problematic behavior. More often than not, one factor may interact with another factor to affect or contribute to the problem. For example, a rule affecting a person may require the person to do something that cannot be completed because the person lacks the capacity to do it. In this example, the “rule” factor has combined with the “capacity” factor to explain the behavior.

In summary, ask yourself:

a) What are the overt manifestations of the problem?

b) Where is it happening?

c) When is it happening?

d) Who is affected by the problem?

e) Whose behavior causes, contributes to, or permits the problem?

f) What is the behavior that causes, contributes to, or permits the problem?

Use the Policy Analysis Worksheet in the Appendix to analyze causes of the behavior creating the problem and to propose specific solutions. Keep in mind that every factor may not apply to every behavior and some items may overlap. Create hypotheses as to the causes based on the seven above-mentioned factors.

**B. Solutions**

Policy solutions are based on the explanations for the behaviors creating the problem and some are chosen because they will most likely improve the social problem. Everything a government decides to do and everything that it decides not to do is policy. Situational analyses, needs assessments, development of policy options and impact assessments are rational steps within the political decision-making process and are based on some form of evidence that indicates the probable effectiveness of government intervention. When seeking legislative solutions, remember that the best approach may be to combine elements of different potential solutions. Different tactics may be combined into a single solution, or multiple solutions may be combined into a general policy. For example, a policy to discourage smoking may include a law requiring health warnings on cigarette packs and a public education campaign to inform the public of the dangers of smoking.
As you assess the benefits and drawbacks to different policy solutions, consider the following:

a) Estimate expected outcomes, effects, and impacts of each policy alternative;
b) Ask whether there are constraints under EU law;
c) Ask whether the predicted outcomes meet the desired goals;
d) Decide whether some alternatives can be discarded;
e) Show strengths and weaknesses of each alternative; and
f) Describe the best and worst case scenario for each alternative.

Sometimes it is better to combine approaches to achieve incremental improvements over time, rather than tackling every aspect of a problem at once. Creativity and flexible thinking are in order when combining the best elements of different legislative solutions to develop an optimal approach.

1. Formulating solutions

The next step is to propose solutions for the causes of the problematic behavior you have just identified, and then combine the solutions into a policy that will address the social problem you originally identified. There are three general categories of solutions:

a. Direct measures. Direct measures address factors associated with interest or incentive. Direct measures include both punishments (a fine) and rewards (tax benefits) that encourage certain behavior. Direct measures seek to eliminate or reduce incentives to engage in the problematic behavior, or they try to increase the incentive to engage in the desired behavior. Laws permitting mediation and other enabling laws are examples of direct measures.

b. Indirect measures. Indirect measures address factors associated with opportunity, capacity, communication and process. Indirect measures aim to eliminate the opportunity or interest to engage in the behavior causing the problem, or to encourage or provide the opportunity to engage in the desired or preferred behavior. For example, eliminating excessive bureaucratic red tape is an indirect measure.

c. Educational measures. Educational measures are generally aimed at influencing beliefs, but may also deal with capacity in situations in which the capacity factor involves a lack of information or expertise. Educational measures can show the negative aspects of a belief and the positive aspects of a solution. They can include methods for informing those affected by the law, so that they are aware of what the law requires, permits or prohibits, and they can therefore conform their behavior accordingly. Public education can change attitudes and behavior, but may take a long time.

2. Explanations for the behavior causing the problem dictate potential solutions.

It is important to think of the analysis factors not only as the factors that affect or contribute to social behaviors, but also as the factors that new policy or law should focus on in order to change the behavior that causes the problem.

3. Where to look for solutions?

This section will discuss (i) where to look for solutions, (ii) what to consider when deciding how to implement the solution, (iii) the importance of elaborating several alternative solutions, (iv) how to test possible solutions for adequacy, including how to conduct impact assessments, and (v) implementation.
a. **Your own ideas**, based on logic and your experience, are the first place to look for solutions.

b. **International law and experience** — including both successes and failures — can be an important source for solutions. Particularly look to the EU and the experiences of nearby countries with similar legal and social systems. However, take care not to merely “transplant” laws from other countries, even if the legal and social systems are similar. The circumstances may differ in important respects, so what may have worked in one country may not work in another.

c. **Professional or academic literature** can also provide a good source of ideas for proposing solutions. This kind of literature may be obtained from a variety of sources, including publications in any language you understand and from any nation, as long as the subject of the articles or papers is relevant.

d. **Consultations** with experts and academics, stakeholders etc.

e. **Past experience.** Your own country’s past experience can also provide ideas for potential solutions. This is especially helpful within established governmental institutions with professional staff members who can advise newer decision-makers about past policy proposals that were tested and failed to yield expected results and about the reasons why they were ineffective. This might block attempts at “reinventing the wheel” and repeating past mistakes.

Beware that some solutions create other problems, as was the case, for instance, with the design of child-proof medicine bottles that were made too difficult for children to open, but such bottles were also too difficult for many elderly or arthritic people.

Once a selection of sound and viable solutions has been identified, they must be assessed and ranked for efficiency and effectiveness. Which potential solution (or combination of solutions) will work best? This may sound easy to figure out, but it is not always the case, as there are many variables which can affect results during policy implementation. As a rule, results are time-bound and it is not always possible to reach consensus. Political considerations often mitigate in favor of shorter-term results with rapid benefits and displaced or delayed costs. Finally, and perhaps most importantly, ideological predispositions color the analytical process and impede objectivity. As a result, it is not always possible to determine the results of policies in advance. Nonetheless, there are a number of valuable and viable techniques for determining whether proposed solutions are likely to be effective, and for selecting the best alternatives. The following questions can help prepare a checklist to rank potential solutions:

a) Which policy solution is most likely to change the problematic behavior?
b) How long will it take for each of the different policy solutions to yield results?
c) What is the time period each of the different policy solutions will incur financial costs?
d) Which of the alternative solutions eliminates all (or the key) causes of the problem?
e) Which policy solution can existing institutions implement most effectively?
f) What needs to be done to make sure that each policy solution is implementable?
g) Which policy solution is least likely to face political or administrative opposition?
h) Which policy solution is most likely to be accepted by stakeholders?
i) How will different policy solutions be viewed by the international community?

4. **Financial impact analysis**

It is advisable to perform a simplified cost-benefit analysis for each of the proposed solutions. This is the only way to identify which solution is most “efficient.” See Section 7 for a detailed discussion on financial impact analysis.
5. Harmonization with EU legislation

It may be that harmonization with EU legislation places external constraints on policy solutions. Thorough investigation of applicable EU law and developments in a given field should guide the policy analyst.

6. Consultations

Consultations during policy development are critical. Stakeholders are persons, groups, organizations or institutions having an interest in or affected by a certain policy. Formal stakeholders are all those who are involved in the process due to their constitutional and legal mandate and thus are both entitled and obligated to participate, such as government institutions or representatives of state and local administrative bodies. Informal stakeholders are those without a direct legal mandate or obligation to participate, but do so based on interest or rights. This group includes the media, nongovernmental organizations and other interest groups.

Ask who should be consulted during the preparation of the legislation and in what manner and at what stage of the preparation? Describe the main consultation activities and describe how consultations have affected the development of the policy at each stage as well as the final content. Drafts and comments can easily be communicated via the Internet to facilitate participation by stakeholders.

Consultations can serve another purpose. Extensive consultations often serve as a substitute for expert or social analysis that the policy makers cannot afford to perform. See Section 8 for a detailed discussion on how to conduct consultations.

7. Implementation

A policy proposal should include an implementation plan and must include a regulatory scheme for implementation. What laws or regulations must be amended, repealed or drafted to implement the policy? What institution or governmental body will implement and enforce the law? Some of the questions to ask include:

a) Is there sufficient capacity?
b) Will a new institution need to be created?
c) How will the new tasks be integrated into the activities of the institution?
d) How will management and existing employees respond to new tasks?
e) How will decisions be made?
f) What will be the relationship between existing and new employees?
g) What additional resources (financial, technical, or informational) will be required?
h) How will other institutions respond to the changes?

These questions are not exhaustive and the analysis set forth in Section 6 regarding implementation plans should be utilized in testing policy solutions.

9. Amending Legislation

The Uniform Rules do not differentiate between amending legislation and new legislation, but common sense dictates that the degree to which policy development or any other requirement under article 60 needs to be performed, would depend upon the nature and extent of the amendment and its impact.
C. Other policy considerations

1. Consider alternatives to legislation. It is important to consider alternatives to regulation. These include:

   a) conducting a general public information campaign to educate and warn people about the problem,

   b) providing specific information directly to consumers to allow them to look after their own interests, or

   c) promoting the development of a scheme of “self-regulation” within an industry or group, or encouraging sellers to provide all necessary information to consumers before they buy their goods.

2. Barriers

   Invariably there will be opposition to a policy. It would behoove the proponent of any legislative policy to address potential obstacles in the policy proposal and explain how they will be overcome.

3. Regulatory Impact Assessment (RIA)

   In many countries, a regulatory impact assessment (RIA) would be treated as a separate requirement for an explanatory memorandum, but the Uniform Rules incorporate this analysis as part of the policy explanation. Little guidance is provided to government institutions on assessing the impact of legislation. Extensive consultations are generally a simpler way to assess the impact of proposed legislation and whether it can achieve its objectives.

   The purpose of a RIA is to ensure that legislation is drafted only when the benefits outweigh its risks or are worth the costs. This must be the case if society as a whole will be better off upon adoption of the legislation in question. If it is not clear that this is the case, legislation may not be the answer. RIAs are broader than cost analyses, because they take into consideration environmental, health, social and many other monetary and non-monetary ways a policy can affect the public. A RIA will identify potential risks and take steps to mitigate adverse consequences. It will include strategies for quickly responding to changing circumstances.

   Risk/benefit considerations include:

   a) environmental impacts (climate change, water, air, natural resources);

   b) social impacts (human rights, health, consumer rights, education, culture);

   c) economic impact on the business sector;

   d) risk and uncertainty; and

   e) potential for corruption.

   After conducting a basic risk/benefit analysis of the various possibilities, you should choose the most effective solution that deals effectively with each of the causal factors you have identified. Look at the benefits of or policy initiative. Does it save money, time or lives?

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12 However, the PAR Reform Strategy envisions approval of a full RIA methodology in the coming years.
D. Conclusion

When a public policy is transformed into legislation, make sure that policy goals and objectives are clearly communicated to the drafters, preferably in writing, so that they have solid guidance and instructions concerning what the legislation is intended to do and how it is expected to do it. Ensure that the drafters have the technical skills, information, equipment, and resources required for converting policies into legal language that effectuates them and provide the drafters with sufficient time to carry out their work.

5. HARMONIZATION WITH EU LEGISLATION

Article 63
(Harmonization with EU legislation)

(1) When, existing legislation is modified or amended or new legislation is passed in order to harmonize legislation of BiH with that of the EU, the institution that prepares the draft legislation shall make efforts to prepare a review of the harmonization of the legislation with the EU acquis.

(2) The BiH institutions undertake the obligation from paragraph 1 of this article gradually and successively until such time when BiH, in the process of fulfilling its agreement with the EU, begins the mandatory harmonization of its legislation, when the overview of the harmonization of the EU acquis becomes mandatory for every institution in the full sense of the term.

EU legislation, or EU law, also known as EU acquis,\textsuperscript{13} constitutes one of the most fundamental legal and political principles of European Integration. The acquis encompasses the sum total of common legal and political rights, obligations and commitments of Member States and the EU accumulated since its establishment to this day. Formally, the acquis incorporates primary law (founding and revising treaties), international treaties, international common law, EU general legal principles and secondary law. Case law of the EU Court of Justice is an integral part of the EU law, as well as all negotiated, political and other commitments assumed by Member States.

Each country applying for the EU membership must possess the capability to assume membership obligations, i.e. to adopt the acquis in its entirety and, equally importantly, to implement it. In brief, the EU legal framework consists of:

a) primary legislation: founding treaties and treaties of accession of new members to the EU,

b) international agreements, international customary law and general legal principles of the EU,

c) secondary law,

d) case law of the EU Court, and

e) all negotiated, political and other commitments assumed by Member States.

\textsuperscript{13} The term acquis communautaire is of French origin and it is interpreted as the overall legal heritage of the Community. By entering into force of the Treaty of Lisbon (2009), the word “communautaire” meaning “of the Community” ceased to be used.
Secondary law or secondary sources of EU law are legal acts adopted by EU institutions in exercising the powers conferred on them by the Treaty on the Functioning of the EU (hereinafter: the Treaty) and includes the following:

- regulations,\(^\text{14}\)
- directives,
- decisions,
- recommendations, and
- opinions.

Regulations, directives and decisions are legally binding acts, whereas recommendations and opinions have no binding force. Recommendations and opinions, however, may have legal effects, particularly as instruments courts use for interpretation. All legally binding acts must clearly state the legal basis and reasons for their adoption, and they must refer to any proposals or opinions that must be obtained pursuant to the Treaty.

Regulations have general application and are obligatory in their entirety; they directly bind Member States, their authorities and courts, as well as all natural and legal persons, who must act in accordance with regulations in the same way as with national legislation.

Regulations must not be transposed into national legislation because it would jeopardize their uniform application or change their legal nature, which constitutes an infringement of EU law.

As of the day of accession, candidate countries must repeal all legal acts that contravene EU regulations, all acts obstructing their application, as well as acts transposing the provisions of EU regulations into national law because of their direct applicability to national legislation.

Directives are binding as to the results to be achieved, but leave the choice of form and method of their implementation to the Member States. This means that laws and other legislation that incorporate the content of directives into national law must be adopted. Directives do not repeal national provisions, but instead they serve as harmonization measures in the process of harmonization of the national legislation with the *acquis*.

Member States must ensure the full implementation of directives in the most effective way. This means that rights and obligations must be clearly and precisely prescribed by the national act transposing a given directive. The competent authorities of Member States must ensure its enforcement and legal protection.

Decisions are addressed specifically to a Member State, legal or physical person and are applicable in their entirety only to those whom they are addressed. If a decision is addressed to a Member State, such state must enact an appropriate legal act to implement the decision.

Recommendations and opinions are legally non-binding acts. Courts take recommendations into consideration when deciding specific cases, especially if they help in the interpretation of other national or EU legislation.

Approximation of legislation

Approximation means alignment of laws, regulations and administrative provisions of the Member States in order to regulate social relations in the same or similar way. Differences in national legislation of Member States are eliminated by unification, harmonization and coordination.

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\(^{14}\) Not to be confused with subsidiary legislation enacted by ministries or governmental bodies to implement laws.
Unification achieves a single uniform legal regime. In the areas where the EU has full competence, national legislation is replaced by EU law. Regulations are the main instruments used for unification.

Harmonization is the alignment of the legislation of the Member States with the goals set in the EU directives. This implies the obligation to transpose and incorporate appropriate provisions of the relevant directive into the national legislation.

Coordination derives from certain EU laws, which prescribe coordination of activities and exchange of information, as well as conclusion of treaties between Member States on specific issues.

The EU Member States harmonize their national legislation only with the directives, since regulations are directly applicable and binding in their entirety.

As with other potential candidate and candidate countries, when striving to meet the harmonization requirement, Bosnia and Herzegovina is required to harmonize its legislation, not only with the directives, but also with regulations and relevant decisions which have the force of a law. On the basis of its membership in the Council of Europe, and in order to meet pre-accession obligations, BiH must also harmonize its legislation with the acts of the Council of Europe.

Harmonization methods

Harmonization of law is achieved through negative and positive harmonization. Negative harmonization implies strictly prescribed bans contained in the Lisbon Treaty and other EU legal acts, such as bans on customs duties on imports and exports, abolishment of tariff and quantity trade restrictions, ban on abuse of monopoly power, and ban on discrimination on the basis of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Positive harmonization is harmonization by adopting and implementing harmonized legal acts or harmonization measures.

Maximum and minimum harmonization, along with the principle of mutual recognition, represent the most significant methods of legal harmonization. Maximum harmonization is a detailed and integrated regulation in a certain area (food, products dangerous to human life and health, cosmetics and pharmaceutical products, etc.). Minimum harmonization establishes a minimum for legal regulation, which permits Member States to prescribe stricter standards than standards prescribed by EU legislation (consumer protection legislation and environmental protection legislation). Implementation of the mutual recognition method means that one Member State recognizes the legislation of another Member State. Examples of mutual recognition are the area of free movement of goods, free movement of workers, etc.

Harmonization techniques

There are three main techniques for harmonization:

Literal transposition involves copying the EU provisions word for word into national legislation. This method is used in cases where the directive is very detailed and contains such technical provisions that the Member State is left with little room for discretion when implementing it through national legislation. This method ensures full and correct fulfillment of the imposed obligations; however, it may result in the use of terminology that is unknown and inappropriate in the national legal system.

Rewriting the text in compliance with national legal standards and nomotechnical rules means capturing the essence of the obligations arising from the directive. By using this method, the na-
tional legal system and legal language are preserved. Rewriting also allows for exclusion of irrelevant parts of the text and gives the Member State freedom to act in accordance with national law.

**References** are rarely used and applied only in cases where directives are very precise and related to technical issues. In such cases, the provisions of the directive may be added as an annex to the national act. This method is not recommended.

**Bosnia and Herzegovina - harmonization and accession**

The launch of a new Stabilization and Association Process (SAP) in May, 1999, represented an ambitious step forward in the relations between the EU and the Balkans. This would not only enable quicker progress towards European integration, but also reform societies through rule of law, further democratization and transition to a market economy. EU membership has become the driving motivation for all countries of the region, provided that the required criteria are met.

While the SAP defines the criteria to be met, it is important to emphasize that the flexibility of the process is reflected in the fact that every country can make the desired progress by choosing its own way towards future EU membership. The SAP leads to the signing of the Stabilization and Association Agreement (SAA), an international treaty concluded between a signatory country and the European Union and its Member States.

With the signing of the SAA in June 2008, BiH entered into a contractual relationship with the EU and assumed a number of obligations that must be met within set timeframes in order to attain candidate country status and initiate talks on the accession to the EU.

The provisions of article 70 of the SAA prescribe the obligation of harmonization of the existing and future legislation of Bosnia and Herzegovina with EU legislation. Harmonization begins on the day of the signing of the SAA and gradually extends to all elements of the acquis from the SAA by the end of the transition period of not more than six years from the date the SAA entered into force.

In 2011, the BiH Council of Ministers adopted the Decision on Instruments for Harmonization of the Legislation of Bosnia and Herzegovina with the European Union acquis. According to this Decision, proponents of draft legislation being harmonized with the EU law are required to draw up a Table of Concordance and a Statement on Harmonization and submit them together with draft legislation to the DEI for verification and confirmation of compliance.

This Decision clarifies the importance and the role of harmonization instruments. The requirement of completion of the Table of Concordance arises from its double role and importance in the entire legislative harmonization process. Above all, the Table of Concordance is the basis for evaluating the real degree of harmonization of the given legislation, for monitoring the process of harmonization of BiH legislation, and for laying of the foundations for establishment of the necessary database of harmonized regulations. In addition, the Table of Concordance has a special role in the future screening procedure, i.e. in the evaluation of compliance of national legislation with EU legislation that is carried out by the European Commission and the candidate country for EU membership. Evaluation of compliance is the basis for bilateral negotiations, and the assessment of fulfillment of the legal criterion for EU accession is given exactly on the basis of the Table of Concordance.

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15 In January 2013, the Agreement had not yet entered into force. Although all parties ratified the Agreement, the EU Council did not pass the decision on its entering into force since BiH has not yet met all set conditions (e.g. the requirement to implement the decision of the European Human Rights Court in Sejdić and Finci case).

16 Official Gazette BiH, No. 23/11; Institutions of BiH, FBiH and District Brčko implement this Decision, while institutions of RS implement the Decision on Procedure of Harmonization Republika Srpska Legislation with the European Union acquis and Council of Europe Legal Acts (RS Official Gazette, No. 46/11).

17 Samples of these documents can be found on the website of the Directorate for European Integration of Bosnia and Herzegovina at: http://www.dei.gov.ba.
cordance, which not only facilitates the procedure itself but also contributes to an increased level of preparedness of BiH institutions for the negotiation process.

The Statement on Harmonization is completed after providing the information for the Table of Concordance by stating the essential information of compliance of the legislation with all sources of EU law taken from the Table of Concordance. In addition to such information, the Statement contains the signature and seal of the proponent of the draft legislation and of the Assistant Director of the DEI, which serve to verify the accuracy of the declarations made in the Statement on Harmonization.

Lastly, harmonization instruments must contain the basic information for the explanatory memorandum required by article 60 (1) c) of the Uniform Rules, as follows:

a) Title of the EU legislation being transposed into the draft legislation;

b) Compliance of the draft legislation with the provisions of the SAA, the transition period for harmonization, the assessment of fulfillment of the requirement, and the reasons for partial fulfillment or non-fulfillment of the requirement established by the above mentioned provision of the Agreement; and

c) Degree of compliance of the draft legislation with primary, secondary and other sources of EU law, reasons for partial compliance or non-compliance and the timeframe for achieving full compliance.

The template forms for the Table of Concordance and Statement on Harmonization, together with instructions for their completion are found in the Appendix.

In accordance with the conclusion of the House of Peoples of the BiH Parliamentary Assembly of 15 July 2011, and the conclusion of the BiH Council of Ministers of 24 August 2011, proponents of legislation to be harmonized with the EU law are required to submit the harmonization instruments with the draft legislation to parliamentary procedure for consideration and adoption.18

**Directorate for European Integration**

The integration process of BiH towards EU membership as a whole and the activities of the institutions in the course of this process are coordinated and monitored by the Chairman of the BiH Council of Ministers with the professional and technical support of the Directorate for European Integration (DEI) which reports directly to the Chairman of the Council of Ministers. Organizationally, DEI was established as a permanent body of the BiH Council of Ministers, whose role, rights, obligations and competencies in the integration process are defined by the existing material and procedural regulations.19 The most important tasks of the DEI are as follows:

a) coordination of the activities in the harmonization of BiH legal system with EU law;

b) checking compliance of draft legislation being harmonized with EU legislation;

c) coordination and monitoring of implementation of the decisions adopted by institutions and administrative bodies of BiH, entities and Brcko District concerning all measures necessary in the European integration process;

d) participation in legal activities or drafting legislation and guidelines related to the activities undertaken in the European integration process;

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18 See https://www.parlament.ba/sadrzaj/plenarne_sjednice/dom_naroda/default.aspx?wsrid=34&wsid=293&langTag=bs-BA&pril=b

19 Article 23. Law on Council of Ministers of BiH (BiH Official Gazette, Nos. 30/03, 42/03, 81/06, 76/07, 81/07, 94/07 and 24/08), Article 18. Law on Ministries and other Administrative Bodies (BiH Official Gazette, Nos. 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09 and 103/09), Articles II and III of the Decision on Directorate for European Integration (BiH Official Gazette, No. 41/03), Articles 6.3., 12.a and 31.f. Book of the Rules of the Council of Ministers BiH (BiH Official Gazette, No. 22/03).
e) acting as the main operative partner of the EU institutions in the SAP;

f) establishment and maintenance of functional cooperation with ministries and other administrative bodies of BiH as well as with entity governments on the integration strategy and policy issues, legal harmonization and aid coordination.

As regards the internal structure of the DEI, the Division for Harmonization of the BiH Legal System with the *acquis* has been established as responsible for overall activities concerning legal harmonization.

### 6. IMPLEMENTATION

**Article 64**

*(Verification of implementation)*

1. The implementation mechanisms and the method of ensuring compliance with legislation relate to the implementation methods of laws and other legislation or acts, i.e. the instruments to enforce compliance by those persons affected by the legislation with its provisions.

2. The methods and strategies referred to in paragraph (1) of this article shall permit to establish the following:
   
a) measures and activities to be taken to ensure implementation and compliance with the legislation, and particularly provision of full administrative capacities for execution of tasks and meeting requirements,

b) administrative bodies authorized to implement the legislation and the deadlines for compliance, and

c) steps for avoiding potential conflicts and misunderstandings with those affected by the legislation.

For a law to be effective there must be a plan for how it will be implemented and enforced, including adopting regulations, timetables, costs, personnel etc. Anyone reading this Manual can certainly think of examples of laws that are not implemented (usually due to a lack of funding).

The ministry or other implementing body must have an adequate structure, procedures, and resources to implement the legislation. The proponent should conceive of an implementation plan during policy development and this plan can be amended later to reflect the final version of the draft legislation. This facilitates Parliament’s work during its deliberations and guides the government once the law is enacted. When conceiving an implementation plan, one approach would be to document the answers to the questions: WHO, WHAT, WHEN, HOW AND HOW MUCH.

The first task for the proponent of legislation is to choose an implementing body. Implementing bodies are usually governmental bodies, but may also include courts, public corporations and private sector organizations (hospitals, universities etc.). Wherever possible, it is better to assign implementing responsibilities to an existing government institution to avoid creating unnecessary and potentially overlapping bureaucracies. Ask which institution would best be able to implement and enforce the law.

If an existing institution is unable to implement the law, then the proponent may have to establish an entirely new administrative body and determine whether additional powers, funding, or personnel are needed.
If a new administrative body is established, the implementing provisions of the law must identify the body and define its position within the government structure and its mandate precisely to avoid any overlapping competences with other institutions.

In addition, the proponent must determine the costs (near, medium and long-term) of establishing a new administrative body and either allocate managerial and legal responsibility within the new body, as well as the internal structure, or provide that such issues will be resolved by secondary legislation. The qualifications and employment status of top managers must be defined.

Implementing plans should be clear, concise and consistent with the overall objective of a law. They should also define the timeframe for implementing both primary and secondary legislation and provide for interim arrangements. A better practice would be to draft both primary and secondary legislation at the same time to create an integrated regulatory scheme. Some of these matters may be included in the law itself, especially when the law is replacing or repealing an existing legal structure or regulatory regime.

Implementing provisions will be more or less specific depending on what the law aims to achieve. In some cases, implementing provisions may set forth detailed procedures for implementing a law, while others may delegate that task to another government institution. Implementing provisions may be nothing more than a delegation of power, or they may set out detailed requirements.

When drafting an implementation plan, several questions must be answered:

a) Is the subject matter of the draft law regulated by a previously promulgated rule or law?

b) If yes, what are the possible conflicts between the draft law and the provisions of existing legislation?

c) If conflicts between laws exist, can the proponent include in the draft law provisions that would prevent conflicts?

d) Is the draft law intended to modify or replace provisions of an existing law?

e) If the draft law is intended to repeal provisions of an existing law, does the draft contain the necessary repeal provisions?

f) If the draft law is intended to supplement or complement provisions of an existing law, is the draft law consistent in purpose with the existing provision of the law and does it, in fact, supplement or complement it?

g) Are the transition provisions written narrowly enough to impact only the subject matter of the given draft law and not inadvertently repeal, modify, nullify or conflict with provisions of other existing laws?

h) Is the implementing body overseeing the transition to the new law clearly identified and is its mandate clearly defined?

i) Is the new law expected to produce revenues? If so, how will they be used?

The cost of implementing a new law should be determined in advance as part of the financial impact analysis, which is discussed more fully in the next section. The proponent of a new law must consider what equipment, facilities, personnel, skills and informational access the implementing institution must have in order to develop rules and oversee the implementation. The proponent of the draft law must estimate the cost of developing new policies, making resource-allocation decisions, engaging in dispute resolution and addressing purely administrative matters.

Finally, an implementation plan should address how the law will be enforced? Which governmental bodies are responsible for doing what under the law? It is important to specify in detail what the implementing body must do and the conditions under which the governmental body
must, may and may not act. If the draft law does not specify a clear decision-making protocol, then find out which process the governmental body in question currently employs. Will there be criminal penalties and fines? Will there be incentives? Will public education take place? Will additional law enforcement personnel be required?

7. FINANCIAL IMPACT ANALYSIS

**Article 65**

*(Assessment of financial resources and benefits)*

1. The explanation of financial resources contains an estimate of required financial resources, sources and methods of raising resources for implementation of the legislation.

2. The proponent is required to present an estimate of expected costs and benefits of the introduction of the proposed legislation, as well as of possible alternatives to the introduction of the given legislation.

3. The financial estimate from paragraph (2) of this article should be made available in a format that is easily accessible for the administrative, executive and legislative bodies which will be making decisions.

4. The financial assessment of major legislation shall include the cost and benefit estimates of the major component of the legislation in order to differentiate justified from non-justified components.

5. If necessary, the financial assessment should also include:
   - all economic costs borne by companies, citizens and other levels of government responsible for the legislation’s implementation,
   - costs of selecting the policy and of administrative formalities,
   - administrative and fiscal costs of the legislation’s introduction, as well as non-regulatory alternatives, including enforcement costs.

6. In any case, the drafter should present a reasonable estimate that the costs of the introduction of the given legislation are justified by the corresponding benefits before the implementation of the legislation commences.

Financial impact analysis, or “costing,” should be conducted during the policy development phase when the proponent of a legislative policy is considering various solutions to a social problem. In order to determine the relative costs and benefits associated with possible policy solutions, ask (i) what would happen if there were no change in the current policy (that is, if you kept the “status quo”), and (ii) compare the costs and benefits associated with alternative policy solutions. Once a solution is selected, and the legislative policy selected, then the financial analysis will, for the most part, have been performed. Some legislation, such as enabling legislation will have few or merely indirect financial implications.

In order to determine which of the various possible solutions will be most effective, you must assess the costs of each of the possible solutions and choose the solution most likely to solve the problem in the most effective way. In a cost-benefit analysis it is important to consider both monetary and non-monetary costs and benefits for each solution. Costing of proposed legislation should not be confused with the risk/benefit analysis described in the discussion on policy
development, which is a more sophisticated form of analysis performed when evaluating different regulatory solutions.

The Uniform Rules mandate financial assessment, but there is no formal method for conducting it, other than the provisions in articles 68 and 69 requiring each ministry to establish a unit in charge of strategic planning and policy development for the purpose of preparing draft legislation, including the preparation of financial impact assessments.\textsuperscript{20} The Public Administration Reform strategy also seeks to address these issues.

Financial analysis can be complicated and expensive. Often proponents of laws do little or no financial assessment. For example, it is not uncommon to see a comment in an explanatory memorandum reflecting financial analysis as, “this law will cost money,” “the funds will come from the budget,” or, “no additional funds are required.” Such statements in support of proposed legislation are unacceptable.

One of the aims of this Manual is to describe ways in which to conduct simple cost analyses that will pave the way for more sophisticated assessments in later stages of the legislative process. Simply stated, cost considerations for a new regulation include:

1. **Capital expenditures.** What equipment is necessary and what is available? What is the useful lifetime of needed assets? Will equipment need to be purchased on an on-going basis? Will the institution need to upgrade old equipment or modernize/customize existing information management systems?

2. **Operational and maintenance costs.** Will existing facilities be sufficient? Identify exactly what additional space will be needed.

3. **Resources.** Does the implementing body have sufficient staff to carry out its responsibilities? What staff will be needed to implement this policy? What will this staff cost the institution (wages, benefits, office facilities, training)?
   a) identify the number of new staff necessary to implement and enforce the new law,
   b) identify the skills that the new or existing staff will need, and
   c) estimate the cost of training.

4. **Tax Implications.** Will the draft law increase or reduce tax revenue?

5. **New Revenue Streams.** Will the new law provide revenues, such as user fees, new taxes, donor contributions, or revenues derived from a new technology?

6. **What are the risks?** Identify risks and uncertainties and take steps to mitigate adverse consequences. Develop strategies for quickly responding to changing circumstances.

Will implementation entail high initial expenses which decrease over a prolonged time frame? Costs can be determined with some degree of accuracy by consulting current budget expenditures. Costs need to be calculated over a period of time, usually three to five years. What costs are associated with fully implementing a law’s provisions in the first year versus subsequent years? The size of the entitlement of a law may require forecasting over the long term. It should also be remembered that many cost-relevant issues are left to subsidiary legislation, which is developed later. Inventory the institution’s existing resources to identify all the resources available to carry out the law, and identify new resources (capital and staffing expenditures) necessary for implementation.

Use the “Financial Analysis Worksheet” in the Appendix as a guide in performing cost analyses.

\textsuperscript{20} The District of B\v{r}čko has developed comprehensive instructions on conducting financial analysis of proposed laws and may be a model in the future.
8. CONSULTATIONS

**Article 66**

*(Consultations among Institutions)*

(1) *Each time the process of introduction of legislation requires participation of more than one institution or levels of authority, the explanatory memorandum contains the overview of consultation conducted among the institutions.*

(2) *Drafters explain the mechanisms used in order to conduct the necessary consultation, including, depending on the individual case, horizontal and vertical coordination and cooperation among institutions and levels of authority.*

Consultations are critical for obtaining input for legislative initiatives. Stakeholders, government institutions and civil society organizations not only help the proponent improve the policy, but also can help in persuading a government institution to adopt a policy proposal. Proponents of legislation should meet, formally or informally, as the situation dictates, with parties who can either impede the adoption of a policy or who can be influential in supporting it, and begin lobbying for the policy. Such meetings can be followed by more formal conferences and public education measures so that the proponent can explain the basis for a legislative policy and present its benefits to garnish support of the respective government institution for its adoption. Comments received on policy proposals or draft legislation all serve to produce a better legislative outcome.

Consulting on legislative initiatives was not an unknown concept in BiH. The Former Yugoslavia had a tradition of public participation in drafting legislation called *Javna Rasprava*, but it was not formalized. Article 66 of the Uniform Rules for the first time established the requirement to carry out consultations, but it merely requires inter-institutional consultation. Article 75 of the Uniform Rules, however, very specifically requires ministry staff to consult, not only with other institutions and administrative units, but also with public bodies, private individuals represented by registered citizen associations and relevant international institutions.

The importance of inter-institutional consultation, both horizontally and vertically, in the planning and preparation of legislation cannot be over-emphasized. National, Entity and local efforts must be coordinated and also harmonized with EU requirements and developments. Finding mechanisms for resolving differences, such as requesting non-binding opinions is encouraged. Starting with good communication and cooperation early and continuing throughout the legislative process leads to a better result and reduces the need for amending legislation.

However informal the consultation obligations may be under articles 66 and 75 of the Uniform Rules, in 2006 the Council of Ministers adopted the Rules on Consultations in Legislative Drafting, which were comprehensive and far reaching, yet simple to follow. These rules established simple, step-by-step, procedures for consultations with the public and stakeholders on draft legislation, to a greater or lesser degree depending on the significance of the given legislation.

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21 BiH Official Gazette, No. 81/06

22 To better understand and implement the Consultation Rules more effectively, the BiH Ministry of Justice adopted the Rule Book for Implementation of Regulations for Preparation of Regulations in the BiH Ministry of Justice. It is accessible at the Internet site of the BiH Ministry of justice: http://www.mpr.gov.ba/aktuelnosti/propisi/konsultacije/Default.aspx?id=2444
The Consultation Rules provide that government institutions at the State level must keep a current list of stakeholders and other persons or institutions interested or affected by laws that fall under the competences of the given institution. The institution must conduct minimum consultations on all draft legislation. Minimum consultations consist of (i) posting the proposed law on the institution’s website with a method for submitting comments, and (ii) sending a copy of the proposed legislation to individuals and organizations on its stakeholder list and requesting comments.

Examples of legislation with insignificant public impact are amendments to correct spelling or other grammatical mistakes in the existing legislation, or legislation codifying or otherwise consolidating, reorganizing or shifting provisions to different sections of the same piece of legislation, without substantive changes.

If a draft legislation is of significant public impact, it is subject to enhanced consultations. Legislation is of significant public impact if it:

a) creates a change of legal status,
b) creates a change in economic status,
c) implies harmonization with international standards,
d) affects the environment, or
e) contains novel provisions.

For legislation of significant public impact, the institution in charge of drafting the legislation must solicit views from those organizations and individuals who are most likely to be interested in or affected by the legislation in question and who would most likely provide valuable comments. Such organizations and individuals include:

a) the general public and organizations,
b) experts, including the academic community, as well as from abroad,
c) the media,
d) governmental bodies,
e) legal community, including judges, prosecutors, practicing lawyers, and professional associations.

When identifying stakeholders, ask:

a) Who has participated thus far in the adoption of this or other relevant policies in the past?
b) Who is necessary for the realization of the policy objectives?
c) Who would be directly affected by this policy/legislation?
d) How will the policy/legislation affect special groups (women, youth, disabled, elderly, etc.)?
e) Who, in all probability, will actively oppose the policy/legislation?
f) Who will actively advocate for and support the policy/legislation?
g) Who can affect public opinion with regard to this policy/legislation?

Once the stakeholders have been identified, the proponent must decide on the most effective methods for reaching them and obtaining their comments. The methods for soliciting written and oral comments include:

a) notice or publication of draft legislation in print media,
b) informing and educating the public about draft legislation on radio and television,
c) notice and publication of the early draft of the legislation via the Internet,
d) direct distribution of draft legislation to organizations and individuals,
e) public meetings or roundtables with selected organizations and individuals,
f) involvement of experts,
g) involvement of representatives of organizations and associations, and
h) formation of working groups.

The Consultations Rules require comments to be submitted within 21 days of receiving the draft (30 days, if in writing). The competent institution must address the comments and either adopt them or reject them, and provide an explanation for the adoption or the rejection. The fact that comments must be recorded and addressed allows the institution to avoid mistakes and produce better quality drafts.

The institution proposing legislation must prepare a report describing the consultations conducted, the actions taken or not taken with regard to the comments received, and include it as part of the explanatory memorandum. If the institution submitting the draft legislation fails to include a report on its consultations, the Secretary-General of the BiH Council of Ministers may return the draft to the institution.

The steps set forth in the Consultation Rules have equal applicability earlier in the legislative process and good practices dictate that proponents of legislation follow them during the policy development phase as well.

9. MONITORING AND OVERSIGHT

Article 67
Revision of existing legislation

(1) In order to avoid the situations in which the legislation become outdated, inconsistent or poorly drafted, the BiH institutions shall establish systemic and periodical reviews of existing legislation.

(2) In the explanation that accompanies the draft legislation, drafters shall mention the time schedule of reviews of the legislation in the manner referred to in paragraph (1) of this Article.

(3) Drafters shall also mention the obligation of reporting and accountability.

(4) Drafters of legislation may reconsider the need to introduce the legislation even prior to the scheduled time referred to in paragraph (2) of this Article, if conditions change after the adoption of the legislation. In such a case, all necessary measures are taken to revise or annul existing legislation.

When legislation is implemented, it often produces unanticipated results or results that cost more or less than expected, or that are more or less effective than expected. Consequently, the final step in the problem-solving approach is to design a method to ensure that the implementing institution provides data and information sufficient to determine the real costs and effectiveness of the new law. This is achieved through monitoring and oversight.
Monitoring and oversight fulfills a number of purposes:

a) determines whether a law has, in fact, been implemented,

b) identifies problems with the law and possible solutions,

c) ensures compliance with legislative intent and assesses the implementer’s ability to manage and carry out legislative objectives,

d) evaluates institutional performance and investigate instances of poor administration, abuse, waste, corruption etc.,

e) reviews and determines financial priorities, and

f) ensures that public interest is served by the law.

Once a law is enacted, the implementing body or institution should meet their reporting and monitoring responsibilities to ensure that the law in question really meets its objectives, and if not, to take corrective action. Article 67 of the Uniform Rules does not provide for parliamentary oversight. This article requires the BiH institutions to review their laws periodically to determine whether they need to be amended. It further requires that drafters of legislation assume the reporting and accountability obligations. The rules of procedure of the BiH Parliamentary Assembly authorize committees to request information and reports from any government institution or government employee, with the caveat, however, that whenever one branch of the government is granted power over another branch, the basis for that power should be found in the Constitution.

Evaluating the effectiveness of enacted legislation in terms of meeting policy objectives and ensuring cost-effectiveness should be the role of the government, but it does not happen on a formal, systematic or accountable basis. In many countries parliaments are responsible for oversight through their parliamentary committees or research centers, but government institutions, civil society organizations, and even the media monitor the implementation of laws.

The BiH Parliamentary Assembly set an example of good practices in matters of oversight of implementation of legislation in the adoption of the Law on Copyright and the Law on Collective Protection of Copyright. At its 80th Session held on June 30, 2010, the BiH PA House of Representatives adopted a conclusion requiring the Institute for Intellectual property Rights to submit annual reports to the Constitutional and Legal Committee of the House of Representatives concerning the effects of these laws, so that the committee could consider and propose appropriate legal changes.

The Uniform Rules require ministries to include a monitoring and oversight plan in its explanatory memorandum. This serves as an incentive for them to carry out the plan, once the legislation is enacted. Additionally, if the proponent of the legislation anticipates that there will be a change requiring an amendment, it should disclose the anticipated change in the explanatory memorandum. For example, if the application of a convention or foreseen legislative initiative will require a change in the proposed law, or if a percentage of compliance with EU directives is expected to increase over a specified period of time or based on a contingency, such changes should be disclosed in the explanatory memorandum.

Regardless of which institution has primary oversight responsibility, by working together, parliamentary committees and ministries can evaluate the effectiveness of legislative programs, make recommendations and develop action plans to find solutions and implement recommendations. Everyone has the same goal: a well-managed and accountable government.
In evaluating the effectiveness of a new law, the following questions must be answered:

a) Has the law been implemented?
b) Is the law accomplishing the intended result?
c) Should the law be modified and, if so, how?
d) Are resources being used effectively and efficiently?
e) Have performance standards been developed?
f) Are program costs commensurate with benefits achieved?
g) Are there any unexpected negative effects?
h) Is the information furnished accurate?
i) Does the ministry conduct internal reviews and report on the law’s effectiveness?

In order to answer the above questions, the following tools are utilized:

a) statutory controls (a statute may include provisions for monitoring and review),
b) requests for information and periodic or annual status reports by parliamentary committees,
c) public hearings,
d) audits (financial, performance),
e) formation of working groups, including participation by international organizations, media (press releases, interviews, etc.),
f) internet (websites, on-line discussion to solicit input) and consultations (civil society and interested institutions),
g) administrative inspectorate (reporting requirements),
h) interviews with institutional staff, and
i) review of documents, studies, evaluations, key transactions, systems and controls.

Institutions may publish annual reports on the effectiveness of the legislation. An annual report may contain:

a) an assessment of the overall effectiveness of the institution in carrying out its duties during the period covered in the report and any recommendations for improvement,
b) statistical summaries, including numerical data, geographic distribution, timing etc.,
c) a comparison of the period covered in the report with material and statistics from prior years,
d) an assessment of the resources (personnel, materiel, financial, etc.) utilized or needed by the institution,
e) a detailed description of anything that interfered with the implementation of the legislation,
f) a record of complaints,
g) an assessment of the performance of the institution in executing its functions, including a brief description of any specific incidents, occasions, or circumstances which stand out for either positive or negative reasons, or
h) any notable successes or failures of the institution during the period covered in the report. For each failure identified, a statement should be provided about the contributing
circumstances and corrective measures taken, or to be taken, to deal with the immediate effect and to prevent recurrence. The checklists in the Appendix of this Manual contain questions to consider when preparing a monitoring plan.

10. CONCLUSION

This Manual is not intended to be an exhaustive overview of the various aspects of preparing legislation. There are numerous materials on the topics covered in this Manual and such materials are referenced in the relevant sections covering specific topics. The Manual contains simple step-by-step instructions to guide those preparing legislation through the process with the aim of improving the quality of legislation. The more thorough the explanation accompanying proposed regulation is, and the more information that is provided to those considering such legislation for adoption, will result, hopefully, in better decisions. The following Appendix includes checklists and worksheets to assist drafters in preparing legislation, but it should be noted that institutions should be encouraged to develop their own templates to meet the requirements for explanatory memoranda.
CHECKLISTS AND WORKSHEETS

General Considerations

1. Is a new law necessary at all, in light of existing laws and conditions, or would a different kind of solution be more appropriate?
2. Are the policies and goals of the new law consistent with existing law?
3. Is the subject matter of the draft law regulated by previously promulgated law?
4. If yes, what are the possible conflicts between the provisions of the draft law and existing legislation and how can they be harmonized?
5. Are the “WHO,” “WHAT,” “WHEN,” “HOW” and “HOW MUCH” questions answered?
6. Are the definitions and usage of legal terms in the new law consistent with existing laws and administrative practice?
7. If conflicts exist, how can the drafter resolve the conflicts in the draft law to prevent confusion and inconsistent laws?
8. Are all provisions in the new law that repeal or amend existing law drafted correctly?
9. Are all provisions concerning the timing and effective dates of the new law drafted so there are no contradictions or gaps that create uncertainty?
10. Will complications arise concerning interpretation, implementation, or adjudication of the new law?
11. Is the draft law nomotechnically correct?
12. If the draft law amends existing legislation, are the changes correctly stated so the text fits seamlessly with the legislation being amended?
13. If the draft law has penal provisions, are they clearly stated?
Checklist for the Constitutional and Legal Basis for Legislation

1. Are there any provisions in the Constitution that would control how the law or any specific portion of it must be drafted?
2. Does the institution proposing the legislation have the authority to regulate the relevant subject matter?
3. Are there any applicable international agreements, conventions or treaties that will control how the law is drafted?
4. Do any of the following specifically apply to the subject matter of the draft law:
   a) Universal Declaration of Human Rights?
   c) International Covenant on Civil and Political Rights and its Protocols?
   d) Convention on the Elimination of All Forms of Racial Discrimination?
   e) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment?
5. What laws are affected by the draft law? Has consistency been ensured?
6. Does the draft law comply with regulations of any international institutions with jurisdiction over the subject matter?
7. Is the subject matter of the draft law regulated by a previously promulgated law? If yes, what are the possible conflicts between the draft law and the provisions of existing legislation?
8. If conflicts exist, how can the proponent resolve the conflicts in the draft law to prevent perpetuating inconsistent laws?
9. Do any Constitutional Court decisions apply to the draft law and affect how it is drafted?
10. Does the draft law comply with international industrial, scientific or technical standards that would apply?
Checklist for the Policy Reasons for Introducing the Legislation

1. Has the societal objective been clearly articulated?
2. Has the societal problem been identified?
3. Are the manifestations of the problem properly described?
4. Are those affected by the problem identified?
5. Is who or what is causing the problem described?
6. Does the chosen policy address each of the factors identified as causing the problem?
7. Were different solutions considered?
8. Is the chosen solution reasonable?
9. Does the policy prescribe an appropriate regulatory scheme?
10. Does the draft law reflect the legislative policy?
11. Is the new law drafted to induce the desired behavior or eliminate or reduce the problem behavior?
12. Does the policy have an implementation plan?
13. Has the proponent addressed potential barriers?
Checklist for Harmonization with European Union Legislation

1. Is harmonization provided for by either of the:
   a) Stabilization and Association Agreement?
   b) Program for adoption of the acquis?

2. What are the relevant articles of the Treaty of the European Union and the Treaty on Functioning of the European Union that apply to the draft legislation, if any?

3. With respect to the relevant EU law:
   a) Identify type of EU law: a regulation, a directive, a decision or a non-binding legal act
   b) What are the purpose, scope, objective, definitions, terminology and substantive provisions of the EU law?
   c) Are there any decisions of the European Court that should be taken into consideration?
   d) Are there any relevant opinions of foreign and local experts to take into consideration?

4. Harmonization of draft legislation with EU law
   a) What parts of national acts already in force and of the draft legislation are fully compliant with EU law in the corresponding area?
   b) If the draft legislation is intended to amend existing regulations that are not harmonized with EU law, what must you do to achieve compliance?

5. Harmonization with a directive:
   a) To what extent is the existing national legislation in compliance with EU directives in the subject field?
   b) Which parts of the directive must be implemented?
   c) Is full compliance with EU directives possible or should it be partial? When might full compliance be achieved?
   d) Is there a plan to adopt other laws that would implement provisions of the EU directives not implemented by the draft legislation?

6. Other:
   a) Are there any provisions in existing law contrary to EU law that should be repealed?
   b) If an EU legal act provides for penalties, are the penalties in the draft law sufficiently consistent with the penalties in the relevant national acts?

7. Have you checked the compliance of the draft legislation with:
   a) the relevant articles of the Treaty;
   b) secondary EU legislation;
   c) the obligations of Bosnia and Herzegovina under the SAA;
   d) general principles of EU law;
   e) relevant decisions of the European Court?

8. Has the Table of Concordance been completed?

9. Is the Statement of Harmonization completed and signed?
10. Does the Explanatory Memorandum contain:
   a) title of the EU law being transposed
   b) compliance of draft legislation with the Stabilization and Association Agreement
   c) degree of compliance of the draft legislation with primary, secondary and other sources of EU law?
Table of Concordance

<table>
<thead>
<tr>
<th>TABLE OF CONCORDANCE</th>
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<tbody>
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<td>Date of completion:</td>
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1. Title of the EU legislation
   - CELEX number
   - Subject of the legislation
   - Objective of the legislation

2. Title of the draft/proposal legislation
   - Subject of the legislation
   - Objective of the legislation

3. Compliance with the primary sources of EU law
   - (indicate the title of the founding treaty)
   - (indicate the degree of compliance)

4. Compliance with the secondary source of EU law:
   - (indicate the degree of compliance)

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<tbody>
<tr>
<td>Provisions and requirements of EU legislation</td>
<td>Provisions of the draft legislation</td>
<td>Compliance between the draft legislation with the provisions of the EU legislation</td>
<td>Reasons for partial compliance or non-compliance</td>
<td>Deadline for achieving full compliance</td>
</tr>
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</table>

5. Compliance with other sources of EU law

**Instructions for completing the Table of Concordance:**

The proponent should provide for details in each row as follows:

1. **Title of the EU law**
   
   a) the full title of the EU law must be cited in one of the BiH languages and in English,
   
   b) CELEX number,
   
   c) the name of the EU institution(s) that adopted the act, its numerical designation, the issue number of the Official Journal (OJ) of the European Union in which it was published, and
   
   d) a brief statement of the subject and objective of the legislation.

2. **Title of the draft legislation.**
   
   a) the full title of the draft legislation, both in one of the BiH languages and in English, and
   
   b) a brief statement of the subject and objective of the legislation.
3. Compliance with primary sources of EU law.
   a) the name of the founding treaty,
   b) the title or Chapter of the founding treaty and the article number with which the draft legislation is being harmonized, and
   c) indicate the degree of compliance by using the terms full compliance, partial compliance, non-compliance or non-applicability.

4. Compliance with secondary sources of EU law.

   Break down the EU legislation into titles, sections, articles, paragraphs, items, intends, and state full text of each provision.

   a). Provisions of EU legislation:
   b). Provisions of draft legislation:
      a) Break down draft into titles, chapters, sections, articles, paragraphs, items, intends,
      b) Compare the provisions with the provisions of the EU legislation, and
      c) Compare the sense of a group of articles that constitute an integrated set with EU provisions as an integrated set.

   c). Compliance of the draft legislation with the provisions of EU legislation (full compliance, partial compliance, non-compliance, non-applicability).

   ‘Full compliance’ is when the draft legislation:
      i. incorporates all the provisions of EU legislation in question,
      ii. complies with all these provisions, and
      iii. is in accordance (not in contravention of) with these provisions.

   ‘Partial compliance’ is when the draft legislation:
      i. incorporates some provisions of EU legislation in question,
      ii. complies with some principles of these provisions, and
      iii. is in accordance (not in contravention of) with these provisions.

   ‘Non-compliance’ is when the draft legislation is in contravention of the provisions of EU legislation.

   An EU regulation is ‘non-applicable’ when it does not pose a requirement of harmonization (provisions which prescribe obligations of the Member States and EU institutions, exceptions, transitional and final provisions).

   d. Reasons for partial compliance or non-compliance
      • State the reasons regardless of whether they are of an economic, financial, social, or some other nature,
      • Reference must be made to a specific impact analysis, study or other document, rather than stating the reasons in general terms,
      • State the deadline within which full compliance is to be achieved, and
      • Justify the use of the term ‘inapplicable.”
e. Deadline for achieving full compliance. The deadline envisaged for full compliance by the relevant documents, such as the Stabilization and Association Agreement, the program on adoption of the *acquis* pursuant to the Agreement or other document, within which full compliance of the draft legislation with the *acquis* is envisaged.

If compliance is not achieved within this timeframe, state the reasons for missing the deadline.

5. **Compliance with other sources of EU law.**

The relevant case law of the ECJ, EU general legal principles, relevant international treaties and relevant international agreements should be listed in this part.
# Statement on Harmonization

<table>
<thead>
<tr>
<th>1.</th>
<th>Proponent of draft legislation</th>
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<tr>
<td>2.</td>
<td>Title of draft legislation</td>
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<td>3.</td>
<td>Degree of compliance of the draft legislation with the provisions of the Stabilization and Association Agreement</td>
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<tr>
<td>3.1</td>
<td>Relevant provision of the Agreement</td>
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<td>3.2</td>
<td>Transitional period for harmonization</td>
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<td>3.3</td>
<td>Assessment of fulfillment of the requirement from the stated provision of the Agreement</td>
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<td>3.4</td>
<td>Reasons for partial fulfillment or non-fulfillment of the requirement from the stated provision of the Agreement</td>
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<td>4.</td>
<td>Degree of compliance of the draft legislation with the EU acquis</td>
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<td>Primary sources of EU law</td>
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<td>4.2</td>
<td>Secondary sources of EU law</td>
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<td>Other sources of EU law</td>
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<tr>
<td>4.4</td>
<td>Reasons for partial compliance or non-compliance</td>
</tr>
<tr>
<td>4.5</td>
<td>Deadline for full compliance</td>
</tr>
<tr>
<td>5.</td>
<td>Was the translation of legal sources to one of the languages of BiH provided?</td>
</tr>
<tr>
<td>5.1</td>
<td>Has the draft legislation been translated into one of the official languages of the EU?</td>
</tr>
<tr>
<td>5.2</td>
<td>Participation of local and foreign consultants in the preparation of the draft legislation and their opinions.</td>
</tr>
</tbody>
</table>

**PROPOSENT**  
Date and seal

**ASSISTANT DIRECTOR OF DEI**  
Date and seal
Instructions for completing the Statement on Harmonization

1. Name of the proponent of the draft legislation.

2. The title of the draft legislation. The full title of the draft legislation, in one of the BiH official languages and in English.

3. Harmonization with the provisions of the SAA:
   3.1. state the SAA provision that concerns the normative part of the legislation; or, if the SAA does not contain such a provision, state this fact and do not complete items 3.3 and 3.4;
   3.2. if no specific deadline was set by the Agreement, state the general harmonization deadline – 6 years from the date when the Agreement enters into force;
   3.3. for meeting the requirements from the Agreement, enter the qualifications: “fully fulfilled,” “partially fulfilled” or “not fulfilled;”
   3.4. if the qualification is partial fulfillment or non-fulfillment, it is necessary to state the reasons (economic, financial, social and other).

4. Degree of compliance of the draft/proposal of the legislation with the acquis.
   4.1. Provisions of the primary sources of EU law with which the draft/proposal of the legislation has been harmonized and the degree of compliance of the draft/proposal of the legislation with these provisions.
   4.2. Provisions of the secondary sources of EU law with which the draft/proposal of the legislation has been harmonized and the degree of compliance of the draft/proposal of the legislation with these provisions.
   4.3. Other sources of EU law with which the draft/proposal of the legislation has been harmonized and the degree of compliance of the draft/proposal of the legislation with these sources.
   4.4. Reasons for partial compliance or non-compliance: if the draft legislation is only partially compatible with sources of EU law or is not compatible at all, the proponent must state the reason, whether it is a matter economic, financial, or social in nature, or some other reason. In doing so, reference must be made to a specific impact analysis, study or some other document, rather than simply stating the reason in general terms. If the proponent enters the designation ‘inapplicable,’ the use of this term must be justified.
   4.5. Deadline within which full compliance of the draft legislation with the acquis is foreseen.

   State the deadline foreseen by the SAA and the programme on adoption of the acquis in line with the Agreement, or some other document within which full compliance of the draft legislation with the acquis is envisaged.

   If the established deadline has expired and compliance was not achieved within this deadline, state the reasons for missing the deadline.

5. Have the aforementioned sources of EU law been translated into BiH official languages: Yes or No.

6. Has the draft/proposal of the legislation been translated into any official language of the EU: Yes or No.

7. Foreign and local consultants’ participation: if foreign consultants participated in the preparation of the draft/proposal of the legislation, enclose their opinions on the compliance of the provisions of the draft/proposal of the legislation with the acquis with the completed statement.
8. Signatures: The signature and seal of the processor/proponent verifies the Statement of Harmonization, and the assistant director of DEI, with his signature and seal endorses the Statement on Harmonization submitted by the proponent. If the competent authority has not completed the Statement on Harmonization satisfactorily, the Directorate for European Integration returns it to the sponsor for rectification.
Implementation checklist

1. Does the draft law contain implementing provisions?
2. Does the draft law set timeframes for its implementation?
3. Does the draft law contain provisions on subsidiary regulations with deadlines?
4. Are the transition provisions written narrowly enough to impact only the subject matter of the draft law and not inadvertently repeal, modify or conflict with existing legal provisions?
5. Is the implementing agency identified?
6. Has the proponent selected the implementing body most likely to ensure effective implementation?
7. Does the draft law define the competencies and the authority of the implementing body?
8. If competencies are transferred to another administrative body, does the draft law determine which competency or competencies will be transferred?
9. Does the draft law transfer a competency from one existing administrative body to another? If so, is the shift of competencies a better use of resources?
10. Does the draft law address a transfer of resources (personnel or otherwise) between these administrative bodies?
11. If a new administrative body is created, does the law define what type of body should be created, e.g. a ministry, a ministerial department, a regulatory body?
12. If a new administrative body is created by the draft law, where in the government structure will it be located and to whom will it report?
13. If a new administrative body is to be created, is the management structure of the new administrative body defined in the draft law?
14. Does the draft law identify who will appoint the management of the new administrative body and the rank of the official who will head this body?
15. Are there any conflicts between the new administrative body and any existing administrative bodies? If so, how are such conflicts addressed in the draft law?
16. If a new administrative body will be created, does the draft law specify the date and conditions for it to become operational?
Checklist for Financial Explanation

1. How will implementation and enforcement of the law be funded?
2. Are there sufficient funds to implement and enforce the law?
3. Can the government allocate sufficient resources to ensure effective implementation?
4. What are other potential sources of funding for the costs of implementation and enforcement of the law?
5. What information must be obtained to answer the funding question?
6. Who has the information?
7. How much will implementation of the law cost? Year one? Year two? Year three?
8. Are there initial (one-time) startup costs? If so, what are they?
9. Are there ongoing costs for the implementation and enforcement of the law? If so, what is the level of such costs in annual terms?
10. How can these amounts be measured (or estimated)?
11. Will the law generate revenue? If so,
   a) What is the nature of the revenue?
   b) How much revenue is likely to be generated?
   c) What is the time period it is expected that revenues will be generated?
12. How will revenues be used and by whom?
Checklist for Consultations on Draft Legislation

1. Does the institution keep a list of all relevant stakeholders?
2. Does the institution have a website with settings that permit submission of comments via the Internet?
3. Is the draft law of significant public impact? If so, in what way does it:
   a) change the legal status of persons,
   b) change the economic status of persons,
   c) cause changes to comply with international standards,
   d) affect the environment, or
   e) meet the other criteria component.
4. Is there a consultation plan? If so, what is it and who executes it?
5. Are the persons and institutions to be consulted identified? If so, who are they?
6. For each step in the consultation process, what are the ministry’s objectives with regard to the various stakeholders?
7. What do the relevant stakeholders need to know to participate effectively?
8. In turn, what is it exactly that different stakeholders contribute to the process?
9. What kind of follow-up communications are needed to keep the stakeholders informed?
10. Is there any expected controversy with respect to any provision of the draft law? If so, what should be done to prepare for it?
11. Has the manner of conducting consultations been determined?
12. Which consultation methods are appropriate to achieve the ministry’s objectives?
13. What special circumstances might affect the use of one or more methods?
14. Are all comments recorded?
15. Have the repetitive comments been consolidated?
16. Are reasons given for actions taken, or not taken on specific comments?
17. Is there a report on consultations?
Checklist for Monitoring and Oversight

1. Is there a need to establish a specialized body that would be in charge of the monitoring of the overall regulatory impact of the law proposed?

2. If yes, what would this body consist of, under which ministry would it operate and what would be its main duties and tasks?

3. Would the introduction of such a body require additional financial costs? If so, what would these costs be?

4. Which institution (or which sector within an institution) should be in charge of the coordination of monitoring and reporting on the legislative policy implementation?

5. What would be more useful: an internal or external/independent review?

6. Should the monitoring and evaluation of the impact be additionally regulated through implementing regulations?

7. If so, how is this to be done (rule book, instructions, guidelines or standardized forms)?

8. Does the draft law contain appropriate reporting provisions regarding the implementation and status of the regulation?

9. Is there a provision for amending the law at later stages, if necessary?

10. Does the draft law state how often and to whom reports must be submitted?

11. Does the draft law require any of the following information to be included in the report:

   - financial statement of expenses and revenues,
   - degree of compliance with regulatory intent,
   - statistical information,
   - record of complaints,
   - assessment of performance of implementing body, or
   - recommendations for improvements and corrective action (amendments).

12. Has any other method been identified for conducting monitoring and oversight? If so, what is it and who will conduct it?

13. Propose a mandatory form of reporting on the implementation and impact of the draft law, stating who should report to whom, what should be reported and how often?
## REVIEW AND SUMMARY OF LEGISLATION

### Title of Law:

### Summary of major provisions:

<table>
<thead>
<tr>
<th>Item</th>
<th>Is it there?</th>
<th>What's wrong with it?</th>
<th>How to correct?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal and Constitutional Basis</td>
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<tr>
<td>Policy Statement</td>
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<tr>
<td>Financial Impact Analysis</td>
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<tr>
<td>EU Harmonization Statement</td>
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<tr>
<td>Implementation Plan</td>
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<tr>
<td>Report of Consultations</td>
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<tr>
<td>Monitoring Plan and Reporting Provisions</td>
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<tr>
<td>Are there deadlines for adoption of bylaws</td>
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<tr>
<td>Repealing provisions</td>
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</tbody>
</table>
CHART FOR REVIEW OF DRAFT LEGISLATION

(Check Degree of Compliance)

<table>
<thead>
<tr>
<th>Criteria</th>
<th>25%</th>
<th>50%</th>
<th>75%</th>
<th>100%</th>
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</thead>
<tbody>
<tr>
<td>1. All necessary regulatory components are present and correct.</td>
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<tr>
<td>a. Preamble</td>
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<tr>
<td>b. Title</td>
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<tr>
<td>c. Statement of purpose</td>
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<tr>
<td>d. Definitions</td>
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<tr>
<td>e. Penal provisions</td>
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<tr>
<td>2a. The legislative policy is clearly stated in the explanatory memorandum.</td>
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<td>2b. The draft legislation reflects the policy stated in the explanatory memorandum.</td>
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<tr>
<td>3. The explanatory memorandum contains a detailed statement of how the implementation of the law will be funded.</td>
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<tr>
<td>4. The draft law clearly describes who, what, when and how.</td>
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<tr>
<td>a. Who is subject to the law</td>
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<td>b. What the law requires</td>
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<tr>
<td>c. When it must be done</td>
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<tr>
<td>d. How it must be done</td>
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<tr>
<td>5. The draft law observes the rules of grammar.</td>
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<tr>
<td>a. Present tense</td>
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<tr>
<td>b. Active voice</td>
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<tr>
<td>c. Singular nouns</td>
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<tr>
<td>d. Shall/may/ may not</td>
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<tr>
<td>6. The draft law is correctly structured into parts, chapters, articles, paragraphs.</td>
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<tr>
<td>7. The draft law uses correct citations and references.</td>
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<tr>
<td>8. The draft law uses implementing, transitional and final provisions effectively.</td>
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<tr>
<td>a. Implementing provisions</td>
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<tr>
<td>b. Transitional provisions</td>
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<tr>
<td>c. Final provisions</td>
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<tr>
<td>9. The draft law uses terms and language properly</td>
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<tr>
<td>a. Consistent terms</td>
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<tr>
<td>b. Necessary</td>
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</table>
# PROBLEM-SOLVING WORKSHEET FOR POLICY ANALYSIS

<table>
<thead>
<tr>
<th>Societal objective</th>
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<tbody>
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<table>
<thead>
<tr>
<th>The Problem</th>
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<table>
<thead>
<tr>
<th>How the Problem is Manifested (if different from the problem)</th>
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<thead>
<tr>
<th>Person or Institution affected by the problem</th>
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<tr>
<th>Person or institution causing the problem</th>
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<tr>
<th>Behavior causing the problem</th>
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<table>
<thead>
<tr>
<th>Analysis Factor:</th>
<th>EXPLANATION OF THE PROBLEM</th>
</tr>
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<tbody>
<tr>
<td>Laws/Rules</td>
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<tr>
<td>Opportunity</td>
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<tr>
<td>Capacity</td>
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<td>Communication</td>
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<tr>
<td>Process/Procedures</td>
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<tr>
<td>Interest or Incentives —material, financial —non-material</td>
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<tr>
<td>Beliefs</td>
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<tr>
<td>Analysis Factor</td>
<td>EFFECT OF POTENTIAL SOLUTION</td>
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<tr>
<td>Solution</td>
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<tr>
<td>Regulation</td>
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<tr>
<td>Non-regulation</td>
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<tr>
<td>Barriers</td>
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<tr>
<td>Costs</td>
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<tr>
<td>Impact of the solution</td>
<td></td>
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<tr>
<td>Implementation/Course of Action</td>
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<table>
<thead>
<tr>
<th>Advantages of the proposed solution</th>
<th>Disadvantages of the proposed solution</th>
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# FINANCIAL IMPACT ASSESSMENT

<table>
<thead>
<tr>
<th>Expenses</th>
<th>Year One</th>
<th>Year Two</th>
<th>Year Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages</td>
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<tr>
<td>Benefits</td>
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<tr>
<td>Training</td>
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<tr>
<td>Professional Fees</td>
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<tr>
<td>Capital expenses</td>
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<tr>
<td>Operations/maintenance</td>
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<tr>
<td>Utilities</td>
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<tr>
<td>Equipment</td>
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<tr>
<td>Printing</td>
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<td></td>
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<tr>
<td>Software and licenses</td>
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<tr>
<td>Office supplies</td>
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<tr>
<td>Office rent</td>
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<tr>
<td>Conferences and events</td>
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<td>Public information</td>
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<td>Legal</td>
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<td>Transportation</td>
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<tr>
<td>Other</td>
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<tr>
<td>Total</td>
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| Revenues                  |          |          |            |
| Fees                      |          |          |            |
| Donor contributions       |          |          |            |
| Fines                     |          |          |            |
| Taxes                     |          |          |            |
| Other                     |          |          |            |
| Total                     |          |          |            |

**Explanation:**

- Number of new employees at each salary level, including benefits and wages
- Explanation of estimate of use of current employees at each salary level
- Explanation of tax and other benefits
- Explanation of the nature of each source of revenue.