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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

CONCEPT

FOR A NEW LAW ON STATUTORY INSTRUMENTS OF BULGARIA*

* Translation provided by the Ministry of Justice.

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I. Necessity to adopt a new LSI:

The Law on Statutory Instruments currently in force came into force after the adoption of the Constitution in 1971 (promulgated in the State Gazette, issue 27 dated 03.04.1973) with the aim of improving the process of drafting, promulgation and implementation of statutory instruments. He law, although subsequently amended on several occasions, was not substantially modified in substance.

The most significant amendments of LSI were enacted in 2007 (promulgated SG, issue 46 dated 12.06.2007). These resulted from the necessity to ensure conditions for the incorporation of the requirements and implementation of the legislative instruments of the European Union (EU) in the Republic of Bulgaria and to modernize statutory regulations with regards to the drafting and adoption of statutory instruments in accordance with the 1991 Constitution of the Republic of Bulgaria.

With regard to the accession of the Republic of Bulgaria to the EU, the amendments to LSI and Decree no. 883 on the implementation of the Law on Statutory Acts (DILSI) were necessitated by the binding effect of European legislation on EU Member States. This bears to the direct applicability of EU Regulations and other harmonisation issues, including legal and technical matters.

The main premises of the legislation on the drafting, promulgation, implementation and interpretation of statutory instruments have been envisaged in the Constitution of the Republic of Bulgaria, the LSI and the DILSI , the Law on the State Gazette, the Law on the Constitutional Court, the Law on Local Self-Governance and Local Administration and the regulations which set out the rules on the organisation and activities of the National Assembly and the Council of Ministers.

The state of the law drafting process and the quality of statutory instruments have been the subject of a number of analyses and evaluations. A number of these identify shortcomings in the legislative framework currently in force with regards to the process of drawing up and implementation of statutory instruments in Bulgaria.

These are some of the propsoals and recommendations made within project Strategic Planning and Coordination furnded under the PHARE Progranmme of the European Union, which was completed in 2004. Tne beneficiary of the project was Directorate Coordination of EU Matters

and International Financial Institutions of the Administration of the Council of Ministers. Within the course of the project Belgian, French and Bulgarian experts drafted three Manuals, and in particular an Impact Assessment Manual, a Strategic Planning, Policy Development and Public Consultations Manual and a Manual on the Implementation, Monitoring and Evaluation of Policies and Legislation.

The need for better regulation improved legislation is one of the reasons underlying the adoption of the *Better Regulation Programme 2008-2010*. It emphasizes that a number of studies and research documents of international organisations, inter alia the World Bank and the Organisation for Economic Cooperation and Development also clearly underline the necessity of improving the regulatory framework in Bulgaria.

The implementation of the Better Regulation Programme aims to create a favourable environment for a more efficient regulatory policy to the conducted in Bulgaria in the context of the Lisbon Strategy of the EU, the National Reform Programme (2007-2009), the Strategy for Promotion of Investments (2005-2010) and the National Strategy for Promotion of Small and Medium-Sized Enterprises (2007-2013).

Some of the major problems relating to the drawing up and adoption of statutory instruments are:

Generally inadequate quality of legislation:

1. The quality of statutory instruments currently in force should be evaluated as generally inadequate. Fast-adopted laws require inescapable changes. This necessity accounts for the number of laws proposed for amendment and supplementation predominantly over the past two years. According to unofficial statistics the number of laws currently in force, excluding the Law on the Budget and the Law on Amnesty, are over 250.

2. A large majority of the draft laws proposed for adoption over the past few years remain unsubstantiated. In a number of instances the substantiation of the necessity is so brief and formalist that can be viewed as generally non-existent.

3. The lack of a conceptual approach to the regulation of a certain range of social relations is in principle a major weakness of law creation.

4. Draft laws are often unclear, there is a lack of coordination with the provisions contained in other laws within the Bulgarian legal system, there is an element of declarativeness – lack of statutory contents, descriptions instead of behavioural rules, superfluous provisions against, concurrently, legislative voids.

5. In certain cases, in order to speed up the adoption of a law, it frequently includes general and consensus provisions, whilst actual implementation is ensured by the promulgation of numerous bylaws**.**

Weaknesses at the phase of drawing up of draft laws:

1. No long-term planning of public policies. A number of **strategies** are being developed and adopted, which impose deadlines and obligations for changes to statutory instruments to be enacted without adequate substantiation of the need why and, equally looking at what problems the new regulation addresses. According to unofficial statistics over 150 strategies have been adopted.

2. The legislative programmes of the Council of Ministers and of individual ministries are drawn up on a purely formal basis without conducting a prior in-depth analysis of the necessity for the adoption of the respective statutory instrument. Frequently, drafts are submitted which are not included in the legislative programmes. On the other hand, the programmes themselves put the respective administrations under pressure to draw up amendments and supplementations to existing legislative framework, against no evidence as to the necessity of doing so.

3. Concerning the drawing up of the draft laws, preliminary studies are not consistently conducted with the required degree of in-depth consideration and the scope of those stufies is not suffiently broad with respect to the eixting regulatory framework, the practice relating to its implementation, the regulation of similar social relations, the provisions laid down in international and EU law in the respective area, the legislation of other countries, the scope and manner of systematization of legislation. **This leads to adopting statutory instruments which do not address actual needs**.

4. The change of statutory regulation is not preceded by an analysis of the enforcement of the laws and an evaluation of their efficiency. This gives rise to arbitrary, unnecessary and sometimes chaotic and contradictory amendments and supplements to applicable legislation – a fact, which not does not facilitate implementation but deepens existing problems. The insufficient consideration of draft laws creates a need to swiftly revise even recently adopted laws which seriously impedes the work of the law enforcement bodies and creates an unstable legal regime.

5. Lack of legal regulation for preliminary impact evaluation (IE) of statutory instruments. Only a financial justification with regards to the necessary budgetary funding for the implementation of the respective statutory instrument is drafted.

Non-compliance with higher-ranking statutory instruments in force:

1. In certain instances drafts proposed contain anti-constitutional provisions and draft statutory instruments do not comply with applicable international legislation the Republic of Bulgaria is a party to. There is no obligation for a public body to carry out a preliminary expert assessment in order to examine potential conflicts with the provisions laid down in the Constitution and compliance with international laws in force.

2. Broken hierarchy of statutory instruments in terms of procedural rules and guidelines adopted and promulgated with regards to aiding law implementation – sometimes these extend the regulatory scope of the law.

3. The practice of the Supreme Administrative Court demonstrates that a considerable number of cases exist where **bylaws are promulgated in contravention with the law** whilst the path to have these repealed by the competent court is protracted in time.

Problems relating to the compliance with EU legislation:

1. The statutory basis regulating the organisation and coordination of EU-related matters in the process of drafting of legislative instruments of the EU takes place solely at the level of secondary legislation (see DCM no. 85/2007).

2. There are cases of unjustified incorporation of EU Regulations into internal statutory instruments, which come into immediate force after the accession of the Republic of Bulgaria to the EU.

3. In certain instances Directives are transposed into internal legislation without taking into consideration Bulgarian legislative techniques and established legal terminology.

4. **EU law itself is not always correctly transposed into national legislation**. Certain contradictions in terms between certain draft laws and EU legislative instruments with regards to the motives asserting the need for transposition have been established.

Problems relating to preliminary public consultations:

1. Lack of statutory regulation of the process of preliminary public consultations of draft laws and of impact evaluation. Consultations take place at different levels **but there is no comprehensive systematic approach to consultations with the general public**. Where consultations with non-governmental organisations are conducted these normally involve NGOs selected and invited to participate in a ramndom manner. The deadlines set for the expression of opinions are usually short which precludes any serious and in-depth examination and formulation of responsible opinions. This type of consultation is not sufficiently able to guarantee that the interests and opinions of all stakeholders who may be affected by the respective regulation will be taken into account. There are social groups which have not been covered by formal structures but which need to be drawn as participants in the consultation process.

2. There are insufficient guarantees that the opinions expressed at the stage of drafting of the statutory instrument within the framework of public consultations will be taken into account. This renders the process of consultations meaningless as the author of the draft is able to arbitrarily eliminate certain opinions.

3. The information society imposes a need to modernize the legislative process – electronic versions of the draft statutory instruments and the files thereto as well as the consultation process itself.

Problems relating the adoption of the laws by the National Assembly:

1. A serious problem has been established with regards to the adoption of laws, arising from the provisions set out in Article 71 of the Rules on the Organisation and the Activity of the National Assembly (ROANA), which allows for draft statutory instruments to be voted chapter by chapter, section by section or paragraph by paragraph at second reading. This allows for important provisions to be voted without going into detail with regard to their contents and without any serious deliberation. An impression is being created that a single article often intentionally contains a great number of paragraphs and sub-paragraphs so that their detailed discussion can be avoided. In accordance with the provisions set out in ROANA after adoption at first reading the proposals – in terms of number and contents – must not exceed, limit or modify the will already declared with regards to the subject, the scope and the principles of the respective legislative provision, although this requirement is often violated.

2. There are also many cases where even though a law has passed through all required procedures in accordance with LSI , after its submission to the National Assembly it is fundamentally changed. Thus, the coordination and evaluation impact carried out are rendered purposeless.

Lack of feedback from the legislative process and law enforcement activities:

1. The feedback from the legislative process and law enforcement activities which would inform lawmakers of the evaluation of practitioners and of their recommendations is insiufficient.

2. Article 17 of LSI and Article 53-55 of the Implementing Reguation thereto provides for a verification of the results of the implementation of statutory acts but no deadlines have been set or a methodology developed.

Implementation problems:

The establishment of a great number of bodies tasked with the implementation of laws, often having undefined, non-separated or duplicated powers has been established.

Legal and technical weaknesses:

1. The legal and technical work on the drawing up of draft laws is not of a sufficiently high standard. The rules and procedures related to the drafting of statutory instruments are not applied accurately and in their entirety.

2. The approach followed with regard to the amendment of a number of laws by introducing changes to the transitory and final provisions of a single law where those changes are outside the subject matter of regulation of the law itself is incorrect.

The lawmaking problems enlisted above point to the conclusion that many and important changes are necessary and that these cannot be achieved solely by amending and supplementing the existing LSI . In order to successfully implement that reform it is necessary to simultaneously:

- Adopt a new Law on Statutory Instruments and respective implementing regulations;
- Adopt administrative measures, ensuring a sufficient degree of preparation of the administration for the implementation of the new LSI.

II. SCOPE OF REGULATION OF THE NEW LSI:

The new LSI should regulate societal relations with regards to the planning of draft legislation and the drawing up of statutory instruments (conducting preliminary impact assessments, public consultations, drafting expert legal opinions), including the promulgation and interpretation of statutory instruments.

The provisions of the currently enforceable LSI and DILSI in respect of the planning and development of statutory instruments and the formulation of the provisions contained therein should be incorporated in the new LSI.

III. STRUCTURE AND CONTENTS OF THE NEW LSI:

1. General provisions:

- objective;
- subject matter of regulation;
- legal regulation principles/definitions:
    - Necessity
    - Justifiability
    - Planning
    - Stability
    - Legality
    - Coherence
    - Openness
    - Accessibility
    - Simplicity
    - Accountability

- bodies, which adopt/issue statutory instruments.

2. Types of statutory instruments:

- an inventory of the types of statutory instruments;
- ranking and classification of the types of statutory instruments.

3. Planning of statutory instruments:

- Reinstatement of the planning of draft laws as an element of the procedure for the drawing up and adoption of laws;

- LSI to lay down provisions related to the adoption of the Legislative Programme of the Council of Ministers (CM). That Programme should contain information on the name of the draft law, the main provisions and the responsible unit of each respective body in charge of drawing up the draft;

- the programme i publicly announced, providing a sufficient time period prior to the submission of the draft for discussion and adoption. It is recommended the programme is updated every 6 months;

- Inclusion of draft laws in the programme is done on the grounds of a motivated proposal, drafted after an ex-ante partial IE carried out.

The substantiated proposal for the planning of draft laws should contain:

- an analysis of statutory instruments in force;
- necessity of adopting a new draft law;
- goals and subject matter of the draft law planned;
- an analysis of the consequences of not adopting the planned law;
- ly down an obligation for the public accessibility of proposals related to the planning of darft laws;
- introduce and obligation binding on other bodies empowered to adopt/issue statutory instruments with respect to the drafting of their own programmes concerning their lawmaking activities;
- adopt an Annual Programme for the Participation of the Republic of Bulgaria in the EU decision-making process.

4. Drawing up of draft statutory instruments:

The new draft LSI should contain relevant provisions of the currently enforceable LSI and DILSI in respect of the development of draft statutory instruments and create new provisions concerning the ex-ante IE, public consultations of draft statutory instruments, the coordination procedure, the legal expert opinions of the Minister of Justice and the legislative power and the drafting of framework positions on draft statutory instruments of the EU.

Body responsible for the development of the draft law:

The responsibility for the development of draft laws planned by the Council of Ministers is delegated to the respective minister or the head of another body.

Author of the darft law
The author of the law is the body which developed that draft law.

Ex-ante IE of draft codes and laws:

The drawing up of a code or a law is preceded by an ex-ante IE as an element of the justification of the necessity to adopt the statutory instrument. The IE allows for an assessment of the social, economic and financial impact of the draft as well as the possible consequences and side effects of its implementation. The adoption of special provisions regulating the development of statutory instruments whereby EU legislation is transposed in national legislation is foreseen.

IE definition:

IE is an opinion on the social, economic and financial impact of the draft law and an estimate of the potential consequences of its implementation.

Two types of IEs should be provided for – partial and full.

Ex-ante partial IE is conducted with respect to a proposal on the planning of a statutory regulation – prior to including the draft law into the legislative programme of the respective body. The ax-ante IE allows the party, which has drawn up the draft, to make an approximate assessment of the social, economic and financial impact of the draft and estimate the potential consequences of implementation. The ex-ante IE The ex-ante IE outlines the areas in which additional information needs to be gathered and an in-depth analysis carried out.

A full ex-ante IE is conducted with respect to a draft law or a code which has already been drawn up. It contains summarised results from the consultations with the stakeholders and the final expert opinion of the lawmaker on the social, economic and financial impact of the draft and the potential consequences of its implementation. It is relevant to the post-ante evaluation of the results of enforcement of statutory instruments.

The main conclusions of the IE are incorporated in the motives to the draft law.

Body conducting the IE:

Impact evaluations may be conducted by the body which initiated the development of a draft law. For the purpose of that evaluation the ervices of external experts may be used.

Scope of application of the IE:

A mandatory ex-ante IE is carried out solely with respect to draft laws and codes, respectively regulatory acts of municipal councils (rules of procedure, regulations) on the gollowing grounds:

The obligation for an IE to be conducted is introduced for the first time by law and therefore should be applied with respect to a smaller volume of statutory instruments,andin particular those which regulate enduring societal relations. This imposes a necessity not to apply this mechanism with respect to bylaws at this stage. Thus a blockage of the work of the administration can be avoided.

Proposal: To exclude draft budget laws from the scope of the general ex-ante IE as foreseen in §6 of the currently enforceable LSI.

With reference to the above exception a provision must be incorporated in the Law on the State Budget where the document materials accompanying the law contain an IE of the new policies foreseen in the draft law on the budget. That evaluation is be subject to control by

the structure of the Council of Ministers in change of conducting IEs with respect to all draft statutory instruments of the executive power.

The main premises with respect to conducting IEs may be laid down in the LSI and the methodology for conducting ex-ante IEs can be laid down in a separate bylaw:

Sample main premises to be included in the methodology for conducting ex-ante IEs:

- comparison between the advantages and disadvantages of alternative approaches to achieve the goals of the draft law, including an evaluation of the consequences of non-regulation;

- cost benefit ratio of the specific draft law in the mid and long-term;

- evaluation of the expected impact on the distribution of incomes and on the economic and social behaviour of the natural and legal persons affected by the draft law;

- evaluation of the costs of physical and legal persons in order to comply with the requirements laid down in the new draft law and its implementation;

- evaluation of the risks associated with the implementation of the law.

- drawing up a compliance table in respect of national statutory instruments and the statutory acts of the EU whose application in Bulgaria is mandatory. The compliance table must be drafted in accordance with an approved template (Decree no. 85 dated 2007 of the Council of Ministers) and updated in a timely manner with the textx contained in the new draft statuitory instrument, including all changes made to those texts until thei final adoption.

Specific features of the statutory instruments regulating the introduction and calculation of fees:

- use, announcement and publication and of the fee calculation methodology;
- mandatory detailed financial justification concerning the impact of the new fees on the economic sector during the examination of the draft instrument by the respective body competent to adopt a decision concerning drafts statutory instruments related to the introduction of fees;

Control over the ex-ante IE of draft codes or laws of the executive power:

The verification of whether ex-ante IEs has been carried out and whether that complies with statutory requirements laid down to be conducted by a structure within the Council of Ministers.The proposal takes into account the currently existing administrative structure “Strategic Planning and Management” to MC. Therefore, this solution would be the easiest to implement after the adoption of the new LSI . This will require strengthening of the capacity of the administrative structure.

Public discussions of draft statutory instruments and IEs:

Regulation of the requirements and time frames for public discussions of the draft statutory instruments and ex-ante IEs to take place. Draft statutory instruments and IEs are announced publicly, allowing sufficient time for all stakeholders submit their opinions. The adoption is a special procedure for public discussions of statutory instruments transposing EU law in Bulgarian legislation is foreseen.

Public discussions take place at two stages:

- **At the stage of planning a new statutory instrument or introducing amendments to an existing and enforceable one** – the planning proposal is announced publicly via the respective legislative programme and the party proposing it determines a time period of no less than 30 days for comments on the proposal to be submitted. Hearing or round tables may be organised.

- **At the stage of development of the statutory instrument** – the text of the draft together with accompanying documents are announced publicly and the party submitting the draft determined a time period of no less than 1 moth for proposals to be submitted.

Within public discussions, the principle of written correspondence is adopted – comments, notes and proposals are received, which should be expressed in writing and signed by the respective natural person or organisation whose position is defended. The party submitting the draft files all proposals and comments received.
The party proposing the draft makes an assessment as to the necessity of organising discussions, round tables and additional research.

Publicity of opinions expressed: publication on the webpage of the respective body drawing up the draft statutory instrument and on the general consultation website of MC – www.strategy.bg of the draft statutory instrument and the IE conducted.

Only non-anonymous positions are taken into consideration.

The body which organises the public consultation has an obligation to examine the opinions and positions of the participants in the public consultation and where those are found to be in compliance with the relevant requirements notify the respective articipants of the adoption or the reasons for the rejection of submitted proposals.

- Consultation procedure:

The consultation procedure covers draft laws and bylaws subject to approval or adoption by CM. The draft statutory instrument, accompanied by the necessary annexes, is sent to all ministers for the purpose of coordination **in due legal form** within the times period determined by law. For the purpose of coordination, the draft statutory instruments related to the transpotition and enforcement of EU law are sent to Directorate Coordination of EU Matters and International Financial Institutions of the Administration of the Council of Ministers and to the respective working group of the Council on EU Affairs.

The party proposing the draft may additionally hold consultation procedures with the bodies having powers within the scope of the draft statutory instrument or ones relating to its enforcement. The consultation procedure is in writing and all stakeholders submit opinions within a certain time period.

The body responsible for the control of the quality of draft laws developed by the executive power and draft bylaws issued or adopted by bodies of the executive power (legal expert opinion) is the Minister of Justice.

This proposal is based in the centenary tradition where the Minister of Justice acting via the Council on Legislation, which has always played a key role and has had central significance within the process of adopting legislation, drafts a final opinion on draft laws and bylaws issued or adopted by bodies of the executive power. That tradition was discontinued in the past 8 yearsthe LSI must set out the powers of the minister of justice to draft expert legal opinions of the draft codes and laws of the bodies of the executive power and the draft bylaws issued or

adopted by bodies of the executive power where that opinion is drawn up by Directorate Council on Legislation.

Following public consultations and a coordination procedure the draft laws and bylaws approved or issued by the Council of Ministers are sent to the Minister of Justice for an expert legal opinion to be drafted.

The expert legal opinion assesses:

- the compliance of the draft with the provisions laid down in the Constitution;
- the compliance of the draft law with the international agreements incrporared in national legislation in accordance with Article 5(4) of the Constitution;
- the compliance with the Convention on the Protection of Human Righst and Fundamental Freedoms;
- the general contents of the draft law;
- the legal and technical aspects of the draft law;
- the compliance with national legislation, the hierarchy of statutory instruments and the practice of the Constitutional Court;

Siilarly, the Minister of Justice may draft expert legal opinions on draft bylaws issued by individual ministers.

The expert legal opinion is annexed to the draft statutory instrument before its submission to the Council of Ministers and forms an element of the dossier.

Proposal:

Draft budget laws are not subject to the procedure for drafting expert legal opinions.

Where a negative expert legal opinion is drawn up in respect of a draft statutory instrument approved or adopted by CM, the body submitting the statutory instrument may, by means of a reasoned opinion, submit it for consideration by the Counicl of Ministers. Where a negative opinion is drawn up in respect of a draft startutory instrument adopted by a minister, the relavant minister chooses whether to submit the draft at their own discretion. The expert legal opinion forms an element of the procedure of adoption, approval or issuance of statutory instruments and of the dossier of draft statutory instruments. The effect of the expert legal opinion is that of holding a consultation and the opinion is not binding on the competent body in respect of the adoption, approval or issuance of the statutory instrument.

For the purpose of exercising the new power vested in the minister of justice in respect of issuing expert legal opinions on all draft statutory instruments of the bodies of the executive power, where the Minister acts via Directorate Council on Legislation, the number of staff working for that directorate and their remuneration may be proposed for the purpose of recruiting highly-qualified legal experts.

For the purpose of issuing expert legal opinions on he compliance with EU law within the procedure of the adoption or enforcement of EU law, draft statutory instruments are sent to Directorate Coordination of EU Affairs and International Financial Institutions of the Administration of the Council of Ministers and the respective working group to the Council on EU Affairs.

Where the draft statutory instrument relates to the application of EU law, the opinions of Directorate Coordination of EU Affairs and International Financial Institutions of the Administration of the Council of Ministers and the respective working group to the Council on EU Affairs are annexed to the dossier.

Statutory instrument dossiers:

Each statutory instrument has dossier to which all attending documents envisaged in the draft LSI are annexed.

Dossiers are public.

Where the information contained in the documents accompanying draft statutory instrumenbts is of an official or public nature, access to that information is ensured in accordance with the procedure laid down in Article 13 of the Law on Access to Public Information.

Regulation of the terms and conditions for the drafting of framework positions on EU legislation:

- Regulate the main provisions relating to the drawing up and adoption of framework positions in LSI , where the detailed regulations are set out in a separate bylaw, and in particular DCM no. 85/2007 currently in force.

- Set out rules in the law concerning the evaluation of the impact of EU draft statutory instruments, which require framework positions to be developed. The detailed regulation of the types of impact evaluations, their scope, content and the drafting procedure should be regulated in a bylaw.

IEs are drafted by the leading institution and are submitted to the working group on the coordination mechanism for the drafting of the respective position. The position, accompanied by the IE, is submitted to the European Affairs Council.

A special procedure will be laid down in respect of public consultations and the publication of framework positions:

5. Composition of the statutory instruments:

Incorporation of the regulation set out in Decree no. 883 on the Implementation of LSI.

6. Formulation of the provisions of statutory instruments:

- Incorporation of the provisions of LSI and Decree no. 883 on implementation.

7. Verification, promulgation and announcement of statutory instruments:

Concerning the verification and promulgation of statutory instruments the current provisions laid down in the LSI and the Law on the State Gazette will remain in force.

Announcement of statutory instruments:

- Impose an obligation on the body issuing/adopting the statutory instrument for publication in Internet.
- Set up and maintain a database for free public access to the current texts of all statutory instruments in force. The updated electronic version of statutory instruments subject to a requirement for promulgation are maintained by the State Gazette, Article 1 paragraph 3 of the Law on the State Gazette makes provisions for the maintenance of a webpage upon terms ensuring universal free access to that webpage.

8. Binding effect of statutory instruments:

Systematize the binding effect of statutory instruments in terms of time and place.

9. Implementation and interpretation of statutory instruments:

The new draft Law on Statutory Instruments will regulate in detail matters related to the interpretation and enforcement of statutory instruments, taking account of the practice of the Constitutional Court.

10. Study of the results of the enforcement of statutory instruments

- All statutory instruments contain a reference to the body responsible for enforcement and implementation.

- Define ex-post evaluation, determine its cope and contents, body responsible for the evaluation, time period and announcement.

- The results of the enfrcement of laws are evaluated by the relevant minister to whom functional competence for the enforcement of the statutory instrument is delegated. In the case of laws and codes the implementation of which has not been exclusively delegated to a single body or in case many bodies are involved in their implementation and enforcement of those instruments the assessment of the governance of societal relations within shall be delated to the body responsible for the respective sector and where responsible ministers are more than one, the ex-post evaluation shall be carried out jointly by the responsible competent ministries.

- With regards to statutory instruments adopted by municipal councils the evaluation is carried out by the mayor of the municipalities and with respect to the statutory instruments of other bodies having powers to issue/adopt statutory instruments the ex-post impact evaluation is carried out by the respective body which has issued/adopted the instrument.

Ex-post impact evaluations of the results are public and are discussed serve as grounds for amendments to statutory instruments.

Ex-post impact evaluations include:

- a conclusion as to whether the statutory instrument has achieved its goal;
- an analysis of unexpected (side) effects of implementation;
- analysis of the difficulties which delay or obstruct implementation;
- findings as to the costs and benefits of implementation;
- proposals to repeal, prolong the validty, amend or supplement the statutory instrument.

12. Administrative structures responsible for the drawing up of draft statutory instruments of the executive power:
The legal directorates at ministries and at the CM and Directorate “Council on Legislation” to the Ministry of Justice.

13. Bodies responsible for the control of the quality of draft laws of the executive power (legal expert opinion): the minister of justice

The proposal made is based on the well established centennial tradition where the minister of justice, via the Council of Legislation, which has always played a central role and has been of material importance to the lawmaking process, drafts a final opinion on draft laws. For this purpose the supra-institutional nature of the functions of the Council on Legislation to the Ministry of Justice must be taken into account. This necessitates regulation of the competence

of the minister of justice with respect to carrying out legal expert analysis of draft laws and codes of the executive power, which is conducted by Directorate “Council on Legislation”.

At the same time it is necessary to foresee the adoption of a new bylaw, which regulates the organisation of work of Directorate “Council on Legislation” and of the individual experts working for the directorate in detail.

Following a mandatory public discussion and a consultation procedure, draft laws are sent to the minister of justice for the purpose of a legal expert analysis.
The legal expert analysis contains an opinion on:

- need to adopt the draft law;
- the compliance of the law with the Constitution;
- the compliance of the draft law with international treaties and EU law;
- where necessary, compliance with the European Convention on Human Rights;
- a general characteristic of the contents of the law;
- legal and technical formatting of the law;
- specific notes with regards to the compliance with national legislation, compliance with the hierarchy of statutory instruments, the practice of the Constitutional Court, the legal and technical rules on the drawing up of the draft law.

The legal expert opinion of the minister of justice is drawn up following the submission of the opinions from ministers, the Legal Directorate to the CM and the Advisory Council on Legislation to the NA (where the Advisory Council submits an opinion on draft statutory acts of the executive power within the consultation procedure and not after the latter have been submitted to the NA as previously) and is binding on the party proposing the draft law. It is annexed to the draft law before its submission to the Council of Ministers and makes up an element of the dossier.

Where the result of the legal expert analysis is positive, the minister of justice co-signs the draft law and is conjoined as a party submitting the draft law together with the minister in charge of the respective ministry which developed the draft law.

The Council of Ministers does not accept draft laws for the purpose of deliberation unless these have been co-signed by the minister of justice.

Using analogous criteria the legal expert analysis is conducted with respect to draft bylaws developed by the CM or by individual ministries. Ad hoc, the responsibility for the legal expert analysis is borne by the respective Legal Directorates at the ministries or at the CM. The Legal Directorate to the Council of Ministers is responsible for the legal expert analysis of draft bylaws.

In connection to conducting legal expert analyses on draft laws and bylaws it is necessary to foresee two additional functions: methodological guidance of the legal directorates of individual ministries and consultations with other bodies which have powers to issue statutory instruments. These functions may be vested in the Legal Directorate to the CM with respect to draft bylaws and to the Council of Legislation to the Ministry of Justice with respect to draft laws.

14. Body monitoring and reporting on the enforcement of LSI:

Currently no body has been tasked with responsibility to the overall implementation of LSI. This function should be assigned to the Minister of Justice who monitors the implementation of LSI and conducts ex-post IEs of the results of the enforcement of that law.

The Law on Statutory Instruments will lay down the general requirements for the drafting of draft laws by the Council of Ministers and Members of Parliament. The concept for a new Law on Statutory Instruments does not envisage the inclusion of provisions there in (neither in the main body of the text nor in the final provisions) that require an amendment or supplementation of DILSI, and in particular provisions in respect of the rules and procedure regulating the rights of Members of Parliament to exercise the legal initiative vested in their office or those layting down the rules of the legislative process. In accordance with Article 73 of the Constitution of the Republic of Bulgaria the National Assembly functions in accordance with the provisions laid down in the Constitutions and the Rules of procedure adopted by that body. This approach is further in line with the practice of the Constitutional Court:

Concerning the legislative initiative:

The right to legislative initiative is unconditional. The regulation of the legislative initiative in Article 87(1) of the Constitution does not envisage imposing additional requirements and no such requirements may be introduced by law for the purpose of obstructing the exercise of that right in practice (Decision no. 2 dated 30 March 2000 of the Constitutional Court of the Republic of Bulgaria on constitutional case no. 2/2000, promulgated SG, issue 29 dated 2000, Decision no. 13 of the Constitutional Court of the Republic of Bulgaria on constitutional case no. 7/97, promulgated SG, issue 89 dated 1997, Decision no. 4 dated 17 May 1995 of the Constitutional Court of the Republic of Bulgaria on constitutional case no. 2/5, promulgated SG, issue 62 dated 1995, recast SG, issue 65/1995).

Concerning the exercise of legislative power via the legislative process:

The National Assembly exercises sovereign and independent legislative powers by adopting, amending, supplementing and revoking laws. Those powers stem from the provisions laid down in Articles 1(1), 62 and 84(1) in accordance with which the form of government in Bulgaria is a parliamentary republic. He rules and procedure regulating the legislative process are laid down in the Rules on the Organisation and activities of the National Assembly. The Rules on the organisation and activities of the National Assembly are not a law but a special type of statutory instrument of a high ranking, which embodies the sovereign right of the particular legislature nd its internal autonomy which is controlled by that body itself (Decision no. 4 dated 24 September 2002 of the Constitutional Court of the Republic of Bulgaria on constitutional case no. 14/2002, promulgated SG, issue 93 dated 20002, Decision no. 3 of the Constitutional dated 14 August 2007 of the Court of the Republic of Bulgaria on constitutional case no. 8/2007, promulgated SG, issue 68 dated 2007).

The decision for laws to pass two readings for the purpose of adoption which take place in the freamwork of separate sittings of the Parliament (Article 88(1) of the Constitution) derived from the necessity to put guarantees in place, which safeguard the right of Members of Parliament to make amendments to the initially proposed texts of laws. The practice of the Constitutional Court categorically affirms the right for changes to be made to draft laws between the two readings of the National Assembly. Thus, in its motives to Decision no. 14 dated 2001 on constitutional case no. 7 dated 2001, the Constitutional Court had adopted that “the Constitution does not restrict the possibilities available to the legislator to amend or supplement draft laws between readings” and that “it is perfectly natural and legally

compliant vis-à-vis the provisions laid down in the Constitution for submitted draft laws to be amended and supplemented in the course of their deliberation" (Decision no. 6 dated 19 April 2007 of the Constitutional Court on constitutional case no. 3 dated 2007, promulgated SG 35 dated 2007).

I, the undersigned, Vencislava Mishlyakova certify the truthfulness of the translation made by me from Bulgarian into English of the enclosed document. The translation consists of 15 pages.

Sworn translator:
Vencislava Mishlyakova