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(VENICE COMMISSION)

OPINION

ON THE DRAFT LAW ON NORMATIVE ACTS OF BULGARIA

Adopted by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009)

on the basis of comments by

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I. Introduction

1. By letter dated 9 April 2009, Mr Petkov, Permanent Representative of Bulgaria to the Council of Europe, requested an expert opinion from the Venice Commission on the draft law on normative acts.

2. Mr Sergio Bartole, substitute member for Italy, and Mr Luzius Mader, Professor at the Institute of Advanced Studies in Public Administration (IDHEAP), Lausanne, Switzerland, as expert, were appointed rapporteurs and presented their observations (CDL(2009)116 and CDL(2009)117 respectively). The rapporteurs worked from an English version of the draft law on normative acts (CDL(2009)115).

3. The following opinion, drafted on the basis of the rapporteurs' observations, was adopted by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009).

II. Preliminary remarks

4. This opinion is a follow-up to the opinion on the concept paper for a new law on statutory instruments (CDL-AD(2009)018), adopted at the 78th plenary session of the Venice Commission. That opinion was based on comments by the same rapporteurs, who have had an opportunity to assess to what extent their observations have been taken into account in the present draft law.

III. General observations

5. This draft law deals with the preparation, adoption, issuance, promulgation, effects and application of normative acts.

6. Such legislation reflects a Bulgarian legal drafting tradition or culture and is common in several eastern European countries.

7. As previously pointed out by the Venice Commission, such an approach can be of significant practical worth insofar as it can "help give greater weight to the rules governing the drafting of legislation, provide a clearer overview of these rules and ensure greater consistency."[1].

8. The aim of the law on normative acts, therefore, is to ensure compliance with the principles of the rule of law and legal certainty, whose implementation also hinges on the way legislation is drafted.

9. It should be pointed out that although the law on normative acts deals with matters of constitutional importance, by its nature, it will have exactly the same hierarchical status as any other legislative instrument adopted by the Bulgarian parliament.

10. So while the primacy of constitutional rules over all laws passed by parliament means that these last will be deemed unconstitutional if they conflict with the Constitution, any legislation passed by parliament that fails to comply with the law on normative acts will not be able to be annulled on the ground that it is incompatible with the latter.

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[1] See CDL-AD(2009)018, paragraph 15.

11. In the case of regulations and other infra-legislative instruments, the situation is different as, in the hierarchy of rules, these rank below the law on normative acts. They must therefore comply with the law on normative acts and may be annulled if they are adopted in violation of its provisions.

A. Structure of the instrument

12. Generally speaking, the law has the same structure as the concept paper for a new law on statutory instruments[2] on which the Venice Commission has already commented[3].

13. The main difference is that this time, a separate chapter on acts of the European Union has been included.

14. In its opinion on the concept paper, the Commission recommended that the law on normative acts devote a specific chapter to acts of the European Union, since they were an important part of the country's legal landscape[4].

15. The Commission commends the authors of the draft for including a separate chapter on acts of the European Union.

16. From the point of view of the structure of the instrument, however, and since the law on normative acts is concerned mainly with domestic legislation, it is perhaps not a good idea to deal with matters relating to acts of the European Union almost at the beginning of the law.

17. It would be better if the chapter on acts of the European Union came after chapter 5, or even after chapter 7.

18. The sequence of the steps involved in preparing normative acts as outlined in Chapter 5 is perhaps not the most apt. According to the structure of the chapter, which sets out the order of the steps to be followed, the public hearing (Section III) takes place before the draft laws are examined by legal experts (Section IV).

19. It might be more advisable, however, to have the legal assessment first, so that the public is presented with a draft text whose compliance with domestic and international legal requirements has already been verified.

20. Also, while Bulgarian law is allowed to deal with the preparation and participation of Bulgarian state bodies in the process of adopting acts of the Union and their internal implementation by Bulgaria, there is nevertheless a distinction in competencies that needs to be borne in mind with respect to normative acts of the European Union, the adoption of which is a matter for the EU bodies.

21. It might be advisable therefore to amend the draft in order to ensure a clear separation between the activities of the government bodies and the Bulgarian parliament, on the one hand, and the activities of the EU bodies and Bulgarian state bodies participating in the European decision-making process on the other.

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[2] English and French version of the concept paper, see CDL (2009)001.

[3] See CDL-AD (2009)018.

[4] See CDL-AD(2009)018, paragraph 57.

B. Scope

22. In its opinion on the concept paper for a new law on statutory instruments of Bulgaria, the Venice Commission strongly recommended that the scope of this last be extended to include parliamentary authorities[5].

23. In the interests of consistency and completeness, parliamentary authorities should be required to have regard to the rules laid down in this law concerning the drafting, design and impact assessment, for example, of any bills tabled by members of parliament.

24. As a general rule, therefore, the law on normative acts should apply to all normative acts, irrespective of where they originate.

25. It should therefore be observed by the administration and the government when preparing normative acts, and also by parliament when preparing such acts.

26. In several respects, however, the current version of the draft suggests that the law has been written solely for government bodies.

27. For one thing, the provisions of the law are written in the light of the internal organisational structure of the government alone, its working methods and policy programme.

28. It is difficult to see, therefore, how these provisions, as they stand at present, could be extended to parliamentary authorities.

29. Secondly, the actual extent of paragraph 3.3 of the additional provisions, under which chapters 1 to 5 and chapter 7 would not apply to any superseding laws adopted by parliament, raises doubts about the scope of application of this draft law.

30. As previously noted by the Venice Commission, extending the rules governing preparation and drafting, as set out in the law on normative acts, to include parliamentary bills cannot be regarded as an encroachment on the independence of members of parliament, as the draft law is concerned only with technical aspects, it being left to members of parliament to deal with the political issues as they see fit.

31. Clearly, too, some standardisation of the rules on drafting by the executive and parliament would ensure a degree of uniformity in drafting and language that would greatly contribute to consistent interpretation of legislation.

32. Short of extending the scope of the present draft to include parliamentary bodies, there are a number of ways in which the Bulgarian authorities could achieve this.

33. They might, for instance, follow the example of Italy where, under the Constitution and in order to preserve the independence of parliament, the rules on the preparation and drafting of parliamentary bills are dealt with under specific "*regolamenti parlementari*". These specific regulations require parliamentary bodies to apply certain drafting rules.

[5] See CDL-AD(2009)018, paragraph 63.

34. Another option might be to create an internal legislative body similar to the government's legislation council, whose establishment is provided for in the present draft law.

35. The Venice Commission can only reiterate its concern that the rules laid down in this draft law be extended to include acts prepared by the legislature. Either via this draft law or through other instruments which would require and ensure compliance with the same rules on preparation and drafting for parliamentary bodies.

36. Lastly, it should be noted that many of the provisions in the draft law do not necessarily refer to all normative acts within the meaning of Article 8 of the draft, but first and foremost to acts that have the status of a formal law (laws and codes).

37. A clearer distinction could usefully be made here between rules that apply to all normative acts and those that apply only to formal laws, more especially in the case of chapter 5 of the present draft.

C. Statutory content

38. As pointed out by the Venice Commission in its previous opinion, "In accordance with an acknowledged principle, laws should contain provisions of an exclusively statutory nature, i.e. which create rights or obligations, set up bodies and define their duties and responsibilities or lay down their procedures"[6].

39. It must be pointed out, however, that this draft law contains provisions that vary considerably in terms of their statutory nature and scope.

40. Alongside certain provisions which should undoubtedly appear in a formal law, the draft contains others which, in view of their content, would be better introduced via a regulation (e.g. Article 54) or internal instructions, as they have no external statutory effect (e.g. Article 49).

41. Other provisions, again in view of their content, are more akin to good advice or recommendations than a legal norm (see for example Article 73.1) or are of a purely descriptive or explanatory nature (e.g. Articles 19 and 20, which summarise the relevant rules of the European Union on its various types of normative acts). In the case of these last, there is a question mark over whether legally speaking, i.e. in this context, from the standpoint of European law, they can properly be inserted in a national normative framework.

42. These purely descriptive or explanatory provisions are, it seems, aimed more at legal drafters and future authors of statutory instruments.

43. While, as the Venice Commission has pointed out, enacting a law on normative acts is "of clear practical benefit" and "can help give greater weight to the rules governing the drafting of legislation, provide a clearer overview of these rules and ensure greater consistency"[7], the enactment of such a law "should be viewed only as a partial contribution to the general aim of improving the quality of Bulgarian legislation"[8].

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[6] CDL-AD(2009)018, paragraph 48.

[7] See CDL-AD(2009)018, paragraph 15.

[8] CDL-AD(2009)018, paragraph 33.

44. By combining provisions which are of a purely statutory nature with non-statutory ones, the authors of the draft seem to have regarded this draft law as a legal-instrument-cum-guide to the design and drafting of legislation.

45. While there might be something to be said for the practicality of such an approach, unfortunately it undermines the quality of the legislation and cannot, in itself, be regarded as an example of sound legislative process.

46. The Venice Commission can only reiterate its earlier recommendation to ensure that the law on normative acts contain exclusively provisions of a purely statutory nature and that other instruments be used for any provisions which are not statutory in nature.

D. Amount of regulatory detail

47. In terms of the amount of regulatory detail, the draft contains numerous minor provisions for which a formal law is not necessarily the best vehicle.

48. One solution would be to offload these provisions into infra-legal norms. The amount of regulatory detail contained in the draft could therefore be reduced somewhat. Indeed, as the Commission has already pointed out, the administrative details could be addressed and included in an implementing decree[9].

49. Excessively detailed, secondary rules merely serve to obscure the main points of the draft law.

50. The Venice Commission recommends that the amount of regulatory detail in the draft be reduced somewhat.

E. Presentation

51. The clarity of the draft, and of normative acts in general, would be greatly improved if each article had a heading (above it or to the side), providing a basic indication of what it is about. A provision to this effect could be inserted in Chapter 7.

52. The Venice Commission recommends that the drafters give some thought to the way the draft, and normative acts in general, are presented, by requiring articles to have headings, indicating roughly what they are about.

IV. Specific observations

Chapter 1

This chapter deals with a number of general aspects of Bulgarian law-making.

53. Under Article 3.2, the authority to adopt a normative act cannot be transferred.

54. Laying down such a hard-and-fast rule seems somewhat excessive and at odds with the widely accepted idea that legislative powers can be delegated provided that certain conditions are met. Articles 11.3 and 12 would seem to endorse this notion, moreover.

[9] See on the amount of regulatory detail, CDL-AD(2009)018, paragraphs 51 to 53.

55. While it is true that the Constitution does not state that the legislative function may be delegated by parliament to the government, it does not prohibit it either.

56. The Commission would nevertheless recommend that the drafters reconsider the relevance of such a provision in this draft law and, if appropriate, introduce a rule that would allow the legislative function to be transferred.

57. Article 5.2 could be amended to include a reference to respect for the principle of equality, thereby helping to refine and clarify the reference made to the requirement concerning "the nature of the social relations governed by it".

58. Articles 5.1 et 5. 6 concern highly technical matters which could be dealt with in chapter 6 or 7.

59. It would be helpful, furthermore, to make a clearer distinction between the creation of a new normative act and amendments to existing ones. Such a distinction could be made early on, in chapter 1, but it is even more important in chapters 6 and 7.

60. It is difficult to see what purpose is served by Article 7. It stands to reason that the implementation of EU law at national level may require the enactment of national normative acts. To mention this particular fact in the introductory chapter seems unnecessary. The reference (in brackets, at the end of the article) to Article 17 appears to be incorrect, moreover.

Chapter 2

Chapter 2 specifies the different types of normative acts. Among other things, it identifies the different categories of acts according to where they stand in the hierarchy of rules.

61. As pointed out by the Venice Commission in its opinion on the concept paper for a new law on statutory instruments, the inclusion of a chapter on this subject is to be welcomed because "it will help ensure harmonised terminology and clarify where the different legislative acts fit into the hierarchy of rules"[10].

62. A close look at this chapter calls for a few additional comments.

63. Article 8 differentiates between codes and laws. It is difficult, however, to see what the significance of this distinction is, as, in the hierarchy of rules, the two types of normative act have equal rank.

64. The case for such a distinction is not helped, moreover, by the fact that the procedure for preparing, adopting and promulgating codes and ordinary laws appears to be the same. Particularly as further on in the draft, Article 10.2 states that the provisions which apply to laws also apply to codes.

65. Article 8.3 mentions several types of infra-legal normative instruments, with no clear indication as to what the difference is between them. For instance, it is difficult to tell from the wording what the difference is between "decrees", "rules" and "ordinances" and whether they all come under the heading "infra-legal" or refer to other categories of instruments.

[10] CDL-AD(2009)018, paragraph 47.

66. It is unclear here whether the term "*regulation*" refers to a particular type of normative act (see for example Article 15.2) or whether it is merely a synonym for a rule or regulation in the general sense, irrespective of the particular form used.

67. According to Article 8.3, moreover, "instructions" are also considered to be normative acts. This wording does not seem to be consistent with the definition of normative acts given in Article 2 of the draft.

68. From a legal theory perspective, too, instructions are normally rules of a purely internal nature and tend not to possess the general, abstract quality that is a feature of legal rules.

69. Lastly, Article 15, in describing the normative acts that may be adopted by the Municipal Council, seems to stray beyond the scope of the law. Chapters 4 and 5, at any rate, clearly do not apply to the preparation and adoption of normative acts by this Council.

70. The Commission invites the drafters to provide a clearer description of the infra-legislative level and to distinguish the infra-legal level from other types of instrument.

Chapter 3

According to its title, this chapter deals with acts of the European Union which have binding force.

71. The provisions of this chapter relate to matters within the purview of the European Union and really have no place in this draft law.

72. To this general observation may be added a few specific comments which will make it easier to understand the general assessment concerning the relevance of these provisions.

73. Articles 19 and 20 summarise the relevant rules of the European Union concerning its various types of normative acts. Neither of these articles has any prescriptive force, they merely explain and describe the *de jure* effect of European instruments in the domestic legal systems of EU member states.

74. A law is not the right place for such purely explanatory provisions. They would be better incorporated in a legal commentary.

75. Article 20 concerns the implementation, within Bulgaria, of normative acts of the European Union. Such implementation may require the preparation and adoption of Bulgarian normative acts to which the law on normative acts applies.

76. Generally speaking, the rules could be the same as for other Bulgarian normative acts. Should some specific rules be deemed necessary, these could be incorporated in the relevant chapters of the Bulgarian law on normative acts and in its implementing provisions.

77. Articles 22 to 24 concern the Bulgarian authorities' participation in the legislative process at European Union level. Here again, the necessary rules could be incorporated in the relevant chapters of the Bulgarian law on normative acts and in its implementing provisions.

78. To conclude, it may very well be that lawmakers feel a specific chapter on acts of the European Union is called for, not least because of the important ramifications that European legislation has for

Bulgarian legislation or the importance that the Bulgarian authorities attach to participation in the legislative process at European level, and also to the implementation of European legislation at national level.

79. The Commission would nevertheless recommend that any such chapter be placed elsewhere in the draft law and that, in that case, a clearer distinction be made between participation in the European legislative process and the implementation of European legislation at national level.

Chapter 4

This chapter deals with the planning of bills.

80. It would seem from the wording of this chapter that only bills and, secondarily, regulations prepared by the administration and the government, as part of its legislative programme, are covered here.

81. These provisions are of major importance for legislative activity and organising the government's work and relations between its various bodies.

82. Such provisions, however, could equally well be incorporated in a draft law on the structure and functioning of the government, were such a draft law to exist.

83. Furthermore, should the government be required to formally communicate its legislative programme to parliament, the Commission would recommend that specific mention also be made of this in this chapter.

84. Article 25.7 of this chapter provides for public consultation. It is hard to see what the value of this exercise might be, beyond the kind of consultation already provided for in Section III of Chapter 5.

85. The Commission recommends that the drafters avoid creating any confusion over such an important issue as public consultation.

86. Lastly, the possibility, referred to in Article 27, for a bill to be withdrawn from the Council of Ministers' legislative programme by the authority which proposed it seems odd as it suggests that a minister, for example, might decide to withdraw a bill that has been included in the Council of Ministers' legislative programme. Some clarification of the provision would be helpful.

Chapter 5

This chapter deals with the procedural and organisational aspects of preparatory legal drafting work carried out within the administration and at governmental level. It is divided into five sections: general provisions, impact assessment, public hearing, expert appraisal of draft normative acts by the Ministry of Justice and, lastly, the Legislation Council.

87. The provisions set out in Section I (General provisions) are, generally speaking, most welcome.

88. Only Article 29, as it stands, is of no real practical value, as it merely mentions a few general principles without defining them or providing pointers as to how they might be observed.

89. The procedure described in Article 31, whereby before a bill can be drawn up, a concept paper must be prepared, is an eminently sensible one as it ensures that the fundamental issues are addressed well before the other, mainly technical drafting, work begins.

90. The requirements laid down in Articles 32 and 33, whereby each bill must be accompanied by a report which clearly addresses a number of key questions, seem very useful and are likewise to be welcomed.

91. Also, by requiring that the aims and objectives of each bill be stated, the drafters have ensured that the discretionary powers of the administration and judges are that much more clearly defined. The rule of law and legal certainty will be the stronger for it.

92. It further appears from these provisions that producing a concept paper and a report is the responsibility of individual ministers, who also have a duty to consult the competent authorities and civil society. This division of tasks is eminently sensible, especially considering that the legislative programme has had to be approved beforehand by the Council of Ministers.

93. Lastly, Article 36.2, under which the documents accompanying the bill must be made public, is especially to be welcomed as such a requirement is apt to raise the standard of the preparatory work.

94. The purpose and scope of section II calling for an impact assessment (ex ante assessment of the effects of the legislation) are not very clear.

95. It is not very clear from the draft law under what circumstances a "standard" assessment would suffice and when a "full" assessment is called for.

96. Article 38.1 states that the authority which is responsible for drafting the bill must carry out the impact assessment. It is not clear here whether the responsible authority must carry out the assessment itself or whether it can enlist the services of an administrative entity, or even a private firm or specialist institute. The article should preferably be worded in such a way as to not preclude these last possibilities.

97. Under Article 39, it would appear that it is for the Council of Ministers to take decisions on bills which must undergo an impact assessment. This provision seems to imply that the impact assessment would cover economic aspects only. It should be noted, however, that a bill may have no economic impact, yet still have social, organisational or legislative implications.

98. The Commission accordingly recommends that the law provide for deliberation by the Council of Ministers only in cases where there is no need for this impact assessment.

99. The Commission invites the drafters to review the meaning and scope of section II.

100. Section III deals with consultation or public hearing and co-ordination. The Commission wishes to point out here that these provisions must be read, interpreted and applied in keeping with the principles of freedom of expression and freedom of assembly that are the cornerstone of any democratic system.

101. The Venice Commission commends the authors of the draft for having included such a section. In its previous opinions, it has had occasion to emphasise the importance of outside consultation and in particular public discussions on draft laws[11].

102. The Commission is also pleased to see that most of the recommendations made on this subject[12] in its opinion on the concept paper for a new law on normative acts seem to have been taken on board.

103. The 30-day time-limit stipulated in Article 42.3 still seems very short, however.

104. In its opinion on the concept paper, the Commission recommended extending this one-month time-limit because it felt it was too short[13]. The Commission reiterates its view that this period should be substantially lengthened.

105. To deal with consultation or public hearing (Articles 42 to 44) and internal administrative procedure (Article 45) all in the same article seems inappropriate, moreover.

106. The latter should be dealt with in a separate section in order to spell out the procedure for inter-ministerial exchanges both at the preparatory stage and at the stage immediately before the Council of Ministers makes a decision.

107. The Commission therefore invites the drafters to make a clearer distinction in the draft law between the provisions on consultation or public hearing and those dealing with internal administrative procedures.

108. The provisions on "legal expertise" (Section IV) and the Legislation Council (Section V) call for a few specific comments.

109. First of all, in terms of structure, it might be advisable to combine the two, i.e. section IV and section V, to form a single section. That would make for greater understanding of the relationship between the "*Legislation Council Directorate*" mentioned in Article 48.1 and the "*Legislation Council*" referred to in Article 52.

110. Also, it would be more logical if, in the list of the different components of the legal expertise, as set out in Article 47, points 1 and 5 were listed consecutively, since the aspects to which they refer are closely related.

111. On a more substantive note, scrutiny to ensure compliance with the European Convention on Human Rights, referred to in point 3, would normally be understood in point 2, which calls for checks to ensure compliance with international treaties that have been incorporated into domestic law.

112. While it is understandable that particular emphasis should be given to checks for compliance with the European Convention on Human Rights, owing to the importance of this instrument, equally explicit reference could be made to checks to ensure compliance with EU law, especially as Article 52 calls for the setting-up of a special section for this purpose.

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[11] See CDL-AD(2008)042, paragraph 28, CDL-AD(2009) 018, paragraph 19.

[12] See CDL-AD (2009)018, paragraphs 78 to 89.

[13] See CDL-AD(2009)018 , paragraph 83.

113. The current wording or translation of Article 50.1 of section V on the Legislation Council suggests that the latter has legislative powers (" *law-making…functions"*). Unless this is merely a translation issue, a distinction ought to be made between the preparation of normative acts and the notion of legislative competence, which is an entirely different matter from the capacity to draft.

114. Article 52.3, under which each section of the Legislation Council is to have at least as many staff as the materially competent administrative entity, seems to be extremely favourable to the Legislation Council which apparently only makes assessments, and is not responsible for drafting.

115. Such an arrangement would be more understandable if the Legislation Council were tasked with preparing draft normative acts on the basis of material information and legislative policy decisions issued by the competent minister. In that case, the Legislation Council would be more like a central drafting service, of the kind found in the UK, for example.

116. The provisions of Article 53.3 on the foreign languages that members of the Legislation Council are required to know, and of Article 54 on their pay, have no place in this draft law on normative acts and could be introduced via a regulation, for example.

Chapter 6

This chapter deals with the structure of normative acts and is apparently a reflection of Bulgarian legal drafting traditions and/or practices.

117. The chapter is rather long and detailed, containing certain rules which, while they may be of great practical use, are of questionable statutory value.

118. The chapter would gain in clarity if the provisions on new normative acts and those dealing with the amendment or repeal of existing normative acts were more clearly separated.

119. Articles 57 and 60-61 may prove useful here as they seem to require lawmakers wishing to amend or supplement a normative act to adopt specific provisions, which would prevent, for example, normative acts from being amended or supplemented tacitly.

120. Such a procedure is to be welcomed as it will help to avoid the kind of interpretation problems that tend to arise when lawmakers adopt successive and in some cases contradictory provisions without explicitly stating that existing legislation is being amended or supplemented.

121. While the desire to have specific provisions dealing with the amendment of normative acts may be laudable, the Commission nevertheless invites the authors to make a clearer distinction between measures that have to do with the amendment or repeal of existing normative acts and those that relate to new ones.

122. The Commission further draws the authors' attention to the fact that most of the rules in this chapter are not really of a statutory nature.

Chapter 7

This chapter deals with the formulation of provisions of normative acts.

123. It thus provides fairly detailed advice and/or recommendations on drafting.

124. Article 73 states, for example, that the provisions of normative acts must be formulated "briefly, precisely and clearly, in a logical sequence in the generally spoken Bulgarian language" and that "digressions from the generally spoken Bulgarian language shall be deemed acceptable only if required by the subject of the act".

125. Considering that all legislation is conditioned both by the particular nature of its subject-matter and by the requirements of legal practice, some digressions from this everyday language should be more widely permitted.

126. Still, as the authors rightly observe in Article 74, it is important that legal words or phrases be used in the same sense in all normative acts.

127. This requirement is particularly relevant today given the impact that EU instruments have on the laws of individual countries. Bulgarian lawmakers will have to conform to the language used by the European Union, and indeed the language used by the Council of Europe, and avoid introducing any new expressions and terms (or using any obsolete ones) that might conflict with the practice of these organisations.

128. Article 76 of the draft seems to require that any references within the same text or between texts be made explicitly. Presumably this rule requires not only an explicit reference but also that explicit mention be made of the provisions thus referred to, e.g. number of the article in question, date and number of the law in question.

129. More generally, as in the previous chapter, the Commission would like to point out that while these recommendations and advice on drafting are undoubtedly useful, a law on normative acts may not be the best place for them.

130. They would fit perfectly into a drafting handbook, as recommended, moreover, in the Venice Commission's previous opinion[14].

Chapter 8

This chapter deals with the authentification, promulgation and disclosure of normative acts.

131. Unless this is something specific to Bulgaria, "promulgation" in the State Gazette, as provided for in Article 82, would seem to mean publication.

132. Article 86.1, which provides for the entry into force of acts of the European Union, falls outside the competence of Bulgarian lawmakers and does not really fit in this draft. The same goes for Article 92.2. of the draft.

Chapter 9

This chapter deals with entry into force.

[14] See CDL-AD(2009)018, paragraphs 33-35, 36, 37, 39.

133. Article 92.2, providing for the entry into force of acts of the European Union, is inappropriate insofar as such matters are beyond the scope of the present draft law. This article, moreover, is declaratory rather than statutory in nature.

134. The second sentence of Article 93.3 seems to allow for the possibility that an implementing decree may have a date of entry into force different from that of the normative act, contrary to the principle that implementing acts must enter into force at the same time as the normative acts to which they refer.

135. Article 98, under which the Constitution, laws and by-laws apply throughout the country and municipal acts – throughout the relevant municipality, would seem to be stating the obvious and has no statutory value.

136. Articles 95 and 96, insofar as they relate to the effects of constitutional court decisions, repeat what the Constitution has to say on this subject. This is unnecessary, as Articles 151.2 and 3 contain the same measures.

137. The Venice Commission invites the drafters to revise the chapter on entry into force, leaving only statutory provisions and avoiding any purely declaratory or irrelevant provisions on this subject.

Chapter 10

This chapter describes the rules or legal doctrine relating to the interpretation of normative acts.

138. The rules on interpretation set out in this draft are in keeping with general legal doctrine which requires, for example, strict interpretation for penalties, exceptions, special rules and procedures.

139. The draft also allows the use of analogy in cases where there are gaps in the law. It further states that the statutory interpretation of an act shall apply only from the day of entry into force of the act interpreted. It is worth making it clear here that this interpretation will be valid only for the future.

140. While the rules laid down are in keeping with the general principles, therefore, there is nevertheless some doubt as to whether such a prescriptive formulation of legal methodology relating to interpretation is appropriate in a draft law.

141. The Venice Commission would recommend that the authors think again about whether this draft law is the right place for a chapter on legal doctrine concerning the interpretation of normative acts.

Chapter 11

This chapter deals with ex post assessments of the impact of legislation ("*impact assessment*").

142. The chapter highlights a very important aspect of legislative activity, ex post assessment being a key part of any methodical approach to preparing and implementing legislation.

143. The Venice Commission congratulates the authors on having included a chapter on this subject.

144. Given, however, the close link and the need for complementarity between ex ante (chapter 5, section II) and ex post assessments (chapter 11), it might be more sensible to combine all these provisions in a separate chapter on assessment of the impact of legislation (or impact studies).

145. The Venice Commission invites the authors to consider grouping ex ante and ex post assessments together in a single chapter on impact studies.

Conclusions

146. The Commission notes that the draft law on normative acts has, to some extent, taken account of its opinion on the concept paper on normative acts.

147. Certainly it represents a significant step towards meeting the requirements for high-quality legal drafting and, by the same token, towards enhancing the rule of law and legal certainty in Bulgaria.

148. The Commission nevertheless strongly recommends making a few amendments to the draft law, in the light of the specific comments made above, in order to achieve quality, consistency and efficiency in Bulgaria's regulatory environment.

149. Also, in view of Bulgaria's international commitments to the European Union, among others, particular attention should be given to the relationship between EU law and Bulgarian domestic law in order to avoid any conflicts.

150. The Venice Commission remains at the disposal of the Bulgarian authorities for any further assistance.