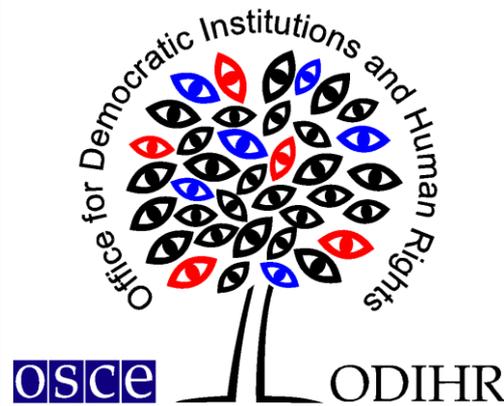


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PRELIMINARY ASSESSMENT OF THE LEGISLATIVE PROCESS IN THE KYRGYZ REPUBLIC

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INTRODUCTION

BACKGROUND

1. By letter of 12 April 2013, the OSCE Centre in Bishkek asked the OSCE/ODIHR to conduct a preliminary assessment of the legal framework governing the legislative process in the Kyrgyz Republic (hereinafter referred to as the “Preliminary Assessment”). This request was based on prior discussions between the OSCE Centre in Bishkek and the OSCE/ODIHR on the desirability and benefits of performing an assessment of the law-making process in the Kyrgyz Republic.
2. This Preliminary Assessment is based on an analysis of the existing legal framework governing the law-making process in the Kyrgyz Republic. Its purpose is to analyse whether the current law-making process corresponds to key standards and OSCE commitments on democratic law-making, as part of the combined efforts of the OSCE Centre in Bishkek and the OSCE/ODIHR to provide assistance towards strengthening and improving this process.
3. One possible outcome of this Preliminary Assessment could be the initiation of a wider, more comprehensive full-scale assessment of the law-making process and practices in the Kyrgyz Republic, in accordance with the OSCE/ODIHR’s established methodology¹. Such a full-scale assessment would require an official request from the Kyrgyz authorities, and would involve discussions with representatives of the Kyrgyz government and legislature, as well as with practitioners and scholars familiar with the Kyrgyz legislative practice. The purpose of such an assessment would be to provide an illustration of the practice in the process of law-making in the Kyrgyz Republic and precise practical recommendations on improving its efficiency and transparency.

SCOPE OF THE PRELIMINARY ASSESSMENT

4. This Preliminary Assessment describes the current constitutional, legal and organizational framework governing the law-making process in the Kyrgyz Republic and analyses some particularly critical aspects. It should not be viewed as a full-fledged ODIHR assessment, but rather as a starting point in providing assistance to strengthening and improving the legislative process in the Kyrgyz Republic by identifying possible weaknesses in this process and suggesting ways in which they might be addressed. The Preliminary Assessment is based on an analysis of the Constitution, relevant domestic legislation and legal documents and is thus based mainly on legal texts, not on particular knowledge or experience of the Kyrgyz legislative practice, nor on interviews with stakeholders. However, this analysis may already reveal how certain procedures are implemented and how key principles are

¹ ODIHR’s methodology is described in Annex 2

applied.

5. Additionally, practical issues and possible challenges to the law-making process may be raised in the Preliminary Assessment, but are not covered in depth, as this would transcend the scope of this assessment. Assumptions of possible risks and challenges will stem from international experiences, rather than from direct practical experience in the Kyrgyz Republic.
6. The Preliminary Assessment presents a detailed description of the current constitutional, legal and organizational framework of the legislative process in the Kyrgyz Republic. It is, however, limited in scope as not all Kyrgyz laws and secondary legislation were taken into account, but only a selection of those laws that were considered relevant for the purposes of this assessment.
7. The Preliminary Assessment is based on unofficial English translations of the relevant legislation and documents; errors from translation may consequently result. It is also possible that amendments of key laws that were introduced after April 2013 have not yet been taken into account in the English translations of such laws.
8. In view of the above, the OSCE/ODIHR would like to emphasize that this Preliminary Assessment is without prejudice to any description, analysis or written and oral recommendations and comments to the related legislation and legislative process that the OSCE/ODIHR may have the opportunity to make in the future.

MATERIALS ANALYSED

9. The Preliminary Assessment is based on non-official English translations of the following legal texts:
 - Constitution of the Kyrgyz Republic of June 27, 2010 (hereinafter, “the Constitution”)
 - Law of the Kyrgyz Republic on Normative Legal Acts of April 20, 2009 (hereinafter, the “Law on Normative Legal Acts”)
 - Law of the Kyrgyz Republic on the Government of the Kyrgyz Republic of June 18, 2012 (hereinafter, the “Law on Government”)
 - Rules of Procedure of the Government of the Kyrgyz Republic of January 26, 2011 (hereinafter, the “Rules of Procedure of the Government”)
 - Rules of Procedure on Legal Drafting by the Government of the Kyrgyz Republic of October 24, 2012 (hereinafter, the “Rules of Procedure on Legal Drafting”)
 - Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic of October 14, 2011 (hereinafter, the “Rules of Procedure of the Jogorku Kenesh”)

- Law of the Kyrgyz Republic on a Referendum in the Kyrgyz Republic of October 23, 2007
- Guidelines on Legal Drafting approved by resolution of the Jogorku Kenesh of June 8, 2006 (hereinafter, the “Guidelines on Legal Drafting”).
- Methodology for Regulatory Impact Assessment of Normative Legal Acts on Businesses, approved by Resolution No 603 of the Government of the Kyrgyz Republic of December 20, 2007 (hereinafter, the “Regulatory Impact Assessment Methodology”).

EXECUTIVE SUMMARY

10. In terms of the ways in which the findings and recommendations made in this report might be taken forward, the Preliminary Assessment’s approach is firmly based on the consideration that any reform should be conceived by the Kyrgyz authorities, rather than handed down by the international community, and should be embarked upon only after a full process of consultation; only in this way can there be any confidence that the reforms will fit the specificities of the local legislative and political cultures. For this reason, the Preliminary Assessment does not make specific recommendations for reform, but rather identifies areas where progress may be sought.
11. The normative framework governing the law-making process in the Kyrgyz Republic appears to be clear and consistent; there are no obvious inconsistencies between the various texts or what might be described as major gaps. There are a number of issues, however, which the Kyrgyz authorities may wish to consider and which might be examined further in the course of a full legislative assessment:
12. ***Principles of law-making activity.*** A notable feature of the normative framework governing the law-making process in the Kyrgyz Republic is that it sets out a series of principles of law-making, namely compliance with the rights, freedoms and lawful interests of citizens and legal persons; legality; validity; appropriateness; equity; and publicity (Article 3, Law on Normative Legal Acts). The Kyrgyz authorities may wish to consider explaining more fully what those principles mean, particularly for the benefit of those involved in the process of preparing laws, and how they are meant to be secured. One of the ways in which this might be done is through the preparation of a manual or handbook on legislative drafting or, more fully, on the preparation of laws, which could enhance and replace the (somewhat outdated) 2006 Guidelines on Legal Drafting. This could be a constructive exercise, especially if the manual is adopted in the form of a document that is binding on law drafters; among other things, this would, enable them to avoid a number of repetitive provisions in various legal acts.

13. With regard to the Government's Rules of Procedure on Legal Drafting, it is not clear what kinds of responsibilities are qualified as the "personal responsibility" of law drafters (pars 20 and 44 of the Rules of Procedure on Legal Drafting); perhaps it would be advisable to establish individual administrative responsibility, e.g. under the Administrative Code or the Labour Code.
14. ***The machinery of legislative planning.*** A common weakness of the machinery of legislative planning in many countries is that not enough time is allowed for the preparation of proposals of sufficient quality and for their scrutiny both within the government and by the legislature. Whether or not this is a problem in Kyrgyzstan does not directly follow from the materials examined, but the frequency with which laws are amended, together with reports on the lack of proper implementation of laws, could indicate that it is a problem in Kyrgyzstan as in other countries. The Kyrgyz authorities may wish to consider therefore how well the machinery of legislative planning is working and in particular whether sufficient time is allowed for the preparation of laws of an appropriate quality and for their effective scrutiny by the Jogorku Kenesh.
15. ***A manual on legislative drafting.*** The 2006 Guidelines on Legal Drafting do not appear to have been revised in light of the most recent version of the Law on Normative Legal Acts of 2009. Thus they do not, for example, include the principles of law-making activity, provided for in Article 3 of the Law on Normative Legal Acts. As well as revising the Guidelines in light of the most recent version of the Law on Normative Legal Acts, including the principles outlined therein, consideration might be given to converting the Guidelines into a manual on legislative drafting, or handbook on the preparation of laws, of the kind which is now common in many countries. Such a manual would set out the basic rules of lawmaking, and would offer or include practical examples and illustrations. This would enable those involved in the preparation of proposals to see more readily, and clearly, what is required in order to prepare laws of an established standard of quality.
16. ***Regulatory impact analysis.*** The Kyrgyz authorities may wish to give consideration to the timing of regulatory impact analysis, i.e. whether, if it is to be effective and meaningful, it should not take place before the decision to legislate has been taken. So far, it appears that impact assessment is conducted only for draft regulations related to business activity (Law on Normative Acts, Article 19; Rules of Procedure of the Jogorku Kenesh, Article 47 par 1 subpar 5 and Article 51 par 7 subpar 7; see also , Rules of Procedure of the Government, Article 114). The Kyrgyz authorities may wish to consider the possibility of widening the list of cases where a regulatory impact assessment is required; they may also wish to consider making the quantification of administrative burdens a mandatory component of regulatory impact assessments.
17. The current legislation does not provide for the possibility of rejecting a draft law

during the legislative process, in cases where such a draft is not accompanied by a properly articulated assessment of anticipated regulatory impacts. Only one legal provision states that the legal act shall be declined in case no justification based on regulatory impact assessment is provided (Article 19 pars 2 and 3 of the Law on Normative Acts). If regulatory impact assessment is to influence the preparation of laws, some sanction would need to follow from a failure to carry out the process properly. Nor does there appear to be a mechanism for checking the quality of prepared impact assessments. Such a mechanism could, for instance, take the form of a process of ex-post evaluation – a periodic review of existing legislation, which would enable the relevant ministries, such as the Ministry of Economy, Ministry of Finance and Ministry of Justice, to check the actual impact of the legislation against its estimated impact, as well as the extent to which legislation is more generally achieving its intended purposes. A lack of impact assessments for final versions of draft laws may present a challenge in this respect: although translating a policy into a legislative document should be a technical issue and should therefore not involve additional changes in impact, the situation may occur that the final draft law differs substantially from the initial one. In such cases, impact assessments should be revisited, taking into consideration revised provisions.

18. **Public participation.** Public discussion or consultation on legislative proposals is expected to take place after a draft law has been prepared. This is a valuable feature of the Kyrgyz legislative process, and is in accordance with OSCE/ODHIR standards. At the same time, the Kyrgyz authorities may wish to consider consulting the public at an earlier stage as well, and in particular before the main lines of policy have been settled. Furthermore, regulatory impact assessments can be enhanced by introducing mandatory consultations with respective stakeholders. The Kyrgyz authorities may also wish to consider the possibility of setting up a unified electronic portal through which public consultations can be held online, with a tool that would allow the tracking of comments received on the draft law in question and the inclusion of feedback from the law drafters.
19. **Improving the quality of legislation.** The importance of improving the quality of legislation is amply recognized in the normative framework governing the law-making process in the Kyrgyz Republic. Thus the Government is required to take measures for “improving the legislation” (Law on Government, Article 10 par 21), while the Ministry of Justice is responsible for “improving the quality of draft laws drafted by ministries and agencies” (Rules of Procedure on Legal Drafting, par 3 subpar 3). A full comprehensive legislative assessment would provide an opportunity to take stock of the steps that have been taken to improve the quality of legislation in the Kyrgyz Republic, to compare current practice with international best practice, and to consider what further steps might be taken, e.g. by way of the development of a manual or handbook on legislative drafting (see above, par 15).
20. **Judicial control.** The Kyrgyz authorities may wish to consider the possibility of establishing a procedure for determining the constitutionality of a draft law which

has been adopted but not yet promulgated. Thus, the Kyrgyz authorities may consider vesting the President with a right to refer the draft law, before signing it, to the Constitutional Chamber of the Supreme Court for adjudication upon its compliance with the Constitution, in case of doubt. Where the Constitutional Chamber of the Supreme Court rules that an adopted draft law is in line with the Constitution, the President should be required to sign the law as stipulated by Article 81 of the Constitution.

THEMATIC ANALYSIS

INTRODUCTION

21. This Preliminary Assessment outlines a condensed version of the legislative process in the Kyrgyz Republic, embedded in the constitutional order. It focuses on norms that determine the functioning of the legislative process and attempts to provide a brief overview of the rules defining the legislative process as a whole.
22. The Preliminary Assessment is based on written law only. The question of whether the law is applied in practice and if so, in which manner, will need to be dealt with in a separate, practical analysis. Possible discrepancies between the law and its implementation will then need to be further explored, in particular in relation to how they affect the many positive aspects of the legislative process in the Kyrgyz Republic as established in law. One prominent example of this relates to the rule of law, which is explicitly guaranteed by the Kyrgyz Constitution (Article 1 par 1) and is specified in many important principles found in other reviewed laws (hierarchy of norms, non-retroactivity of laws, limitations on delegating legislative power, official publication, judicial review etc.).
23. In several countries the assistance of international agencies has been enlisted to carry out assessments of particular aspects of the legislative process. The OSCE/ODIHR is not aware of such assessments having been carried out in the Kyrgyz Republic. A weakness of such assessments, in the OSCE/ODIHR's experience, may be that they focus on particular aspects of the law-making process, for example, the technical drafting of the legislation, or the part played by parliamentary committees in the process, without regard to where they fit into the law making process as a whole. The OSCE/ODIHR is therefore of the view that rather than tackle problems encountered in law making individually, there is much to be gained from a comprehensive assessment aimed at improving the law making process and ensuring good quality and enforceable legislation in all fields of law making activity, and not just, for example, in the field of law making relating to business.
24. The following remarks highlight areas which may be particularly interesting for or deserving of further analysis. These are areas that are sensitive in any democratic process, and where the law appears to sometimes lack clarity, along with other areas

that may be of general interest for further study. The ensuing remarks are neither strictly distinct from one another nor exhaustive; indeed, it is possible that additional questions will arise during a practical analysis of the legislative process in the Kyrgyz Republic.

OVERVIEW OF THE PROCEDURES AND INSTRUMENTS WHEREBY LEGISLATION IS PREPARED, DRAFTED, ADOPTED AND PUBLISHED

25. The following paragraphs provide an overview of the law-making process in the Kyrgyz Republic. The normative framework within which law-making takes place is outlined in more detail under Annex 1.

PRINCIPLES OF LAW-MAKING

26. A potentially extremely valuable feature of the normative framework governing the law-making process in the Kyrgyz Republic is that it lays down a series of principles of law-making activity – compliance or compatibility with the rights, freedoms and lawful interests of citizens and legal persons; legality; validity; appropriateness; equity; and publicity (Law on Normative Legal Acts, Article 3). The meaning of some of these principles is readily apparent, e.g. laws should be compliant with the rights, freedoms and lawful interests of citizens and legal persons, which are set out in the Constitution, though that is not necessarily true of all of them, e.g. appropriateness or equity. Consideration could, therefore, be given to providing a fuller explanation or definition of what is meant by those principles, so that all persons and bodies involved in the law-making process can more readily understand the standards to which laws are expected to conform. Moreover, consideration might also be given to outlining the extent and the effectiveness of the checks by which these principles are meant to be secured. There are various checks built into the law-making process by which at least some of these principles may be secured (e.g. the fact that all draft laws shall be checked for their compliance with the Constitution), but it is not clear whether the checks in place extend to all of them.

THE LEGISLATIVE INITIATIVE

27. Under the Constitution the right of legislative initiative belongs to the Government and to deputies of the Jogorku Kenesh; there is also a right of popular initiative, which may be exercised by 10,000 voters (Constitution, Article 79). A higher threshold of 300,000 voters is set for amendments to chapters 3-8 of the Constitution (Constitution, Article 114 par 2, Law on Public Legislative Initiative, Article 1 par 2. This provision will enter into force only on 1 September 2020.
28. The Government exercises its right of legislative initiative through the development of draft laws and their submission to the Jogorku Kenesh (Law on Government, Article 31 par 2). As in other states, it is assumed that most laws are in practice initiated by the Government. The Government's role in the legislative process is reinforced by its possession of the financial initiative. Article 80 par 3 of the

Constitution states that “[d]raft laws that provide for increased expenditures to be covered from the state budget may be adopted by the Jogorku Kenesh after the Government has determined the source of funding”. The Law on Normative Legal Acts and the Law on Government are more explicit. The former provides that normative legal acts that require funding from the national budget “shall not be adopted until a source of funding is defined” (Article 26 par 1); while the later provides that “draft laws pertaining to an increase in spending covered from the State Budget or reduction of budget revenues shall be adopted by the Jogorku Kenesh only after the Government defines a funding source” (Article 31 par 4). The Government is thus cast in the role of a check against financial profligacy or irresponsibility on the part of the Jogorku Kenesh in cases when the legislative initiative comes from MPs, for example.

THE PLANNING AND MANAGEMENT OF THE LEGISLATIVE PROGRAMME

29. In addition to the preparation of individual drafts, the Government is responsible for the planning and management of the legislative programme as a whole. One of the strengths of the law-making process in the Kyrgyz Republic is that law-making is treated as a collective activity, which engages the responsibility of the whole government rather than being left to the uncoordinated efforts of individual ministries and state committees. The Law on Normative Legal Acts requires the Government to “elaborate and approve” an annual law-making agenda or programme (Law on Normative Legal Acts, Article 18 par 1). The Rules of Procedure of the Government likewise require the Government to plan its “legislative drafting activity” (Rules of Procedure of the Government, par 27). “Legislative drafting” is used here in the broad sense of the preparation of laws rather than the narrow technical sense of the conversion of policy into law. In elaborating its law-making or legislative drafting agenda, the Government is required to take account of addresses and statements made by the President, proposals made by deputies of the Jogorku Kenesh, by stakeholder agencies, academic institutions, and representatives of civil society (Law on Normative Legal Acts, Article 18 par 2). The agenda or plan is drawn up by the Ministry of Justice on the basis, among other things, of the programme of activities of the Government, instructions of the President or Prime Minister, recommendations of the Jogorku Kenesh, and proposals from ministries and committees, and is then submitted to the Government by November 25 each year (Rules of Procedure of the Government pars 109 -112; Rules of Procedure on Legal Drafting by the Government, par 13). Detailed rules on the preparation of the legal drafting agenda are contained in the Rules of Procedure on Legal Drafting by the Government (pars 9-14).
30. Normative legal acts may be drafted “over and above” the law-making agenda (Law on Normative Legal Acts, Article 18 par 3). This would allow the preparation of laws in response to emergencies or other unforeseen circumstances. “Unscheduled” draft laws may be drafted following instructions by the President or the Government, the latter on the recommendation of the Jogorku Kenesh, or at the initiative of a

ministry or agency (Rules of Procedure on Legal Drafting, par 28).

31. The Rules of Procedure on Legal Drafting by the Government also require ministries and agencies to draw up their own internal legal drafting agendas, presumably in the light of the Government's agenda, which must be sent to the Ministry of Justice; ministries and agencies must also report on a quarterly basis to the Ministry of Justice on progress in the implementation of their agendas (Rules of Procedure on Legal Drafting, pars 15, 17 and 19). The Ministry of Justice thus plays the key role in monitoring implementation of the Government's legislative agenda.
32. A common weakness of the machinery of legislative planning in many countries is that insufficient time is allowed for the preparation of proposals and for their scrutiny both within the government and by the legislature. The draft agenda prepared by the Ministry of Justice covers the timetable for preparing draft laws up to and including their approval by the Government and submission to the Jogorku Kenesh (Rules of Procedure on Legal Drafting by the Government, par 12). It does not appear to cover the time required for their consideration by the Jogorku Kenesh. There is a risk that more draft laws are prepared than there is time available to consider them, in which case scarce resources are wasted by preparing draft laws which are then not processed. Another concern is that the time available for the consideration of such laws is severely limited, to the detriment of increased public participation in the process, more effective scrutiny and, ultimately, "better" legislation. It is possible that, when determining the legislative programme, the time required for parliamentary consideration is taken into account, but this is not clear from the wording of the law. In any case, the Kyrgyz authorities may wish to consider explicitly widening the range of factors to be taken into account when planning the legislative programme to include the time required for the effective parliamentary scrutiny of measures.

THE PREPARATION OF INDIVIDUAL MEASURES

33. The task of drafting laws, i.e. the preparation of "individual measures", is undertaken by the ministries and agencies, using the working group method, and coordinated by the Ministry of Justice (Rules of Procedure on Legal Drafting by the Government, pars 3.3, 3.4 and 23). The Ministry is also responsible for "improving the quality of draft laws drafted by [other] ministries and agencies" (Rules of Procedure on Legal Drafting by the Government, par 3.3).
34. The Law on Normative Legal Acts sets out rules governing the drafting of normative legal acts (Articles 11-17). Guidelines on Legal Drafting were approved by resolution of the Jogorku Kenesh in 2006. The Guidelines, which are described as having been developed "in compliance with the Law on Normative Legal Acts", do not appear to have been revised in light of the most recent version of the Law on Normative Legal Acts. As well as revising the Guidelines, the Kyrgyz authorities may wish to consider, as part of their efforts to improve the quality of legislation,

changing the format of the Guidelines so that, next to setting out the rules, they also include practical examples. Their scope might also be expanded to include the principles of law-making set out in the Law on Normative Legal Acts. This would enable those involved in drafting laws in ministries and agencies to see more easily what is required. Recast in this form, the Guidelines would essentially become a Manual on Legislative Drafting.

35. The Kyrgyz authorities may also wish to revisit the issue of “personal responsibility” of law drafters laid down in Articles 20 and 44 of the Rules of Procedure for Legal Drafting – it is not clear what kinds of responsibilities are referred to, more specifically what the consequences are where this responsibility is not properly carried out: for example will law drafters in those cases be deprived of their salaries, or will they have to pay a fine? Perhaps it would be advisable to introduce an administrative responsibility or responsibility under the Labour Code, as these appear to be obligations which are directly connected with duties performed by civil servants in the administration office.

REGULATORY IMPACT ASSESSMENT

36. The Law on Normative Legal Acts provides that drafts of normative legal acts “regulating entrepreneurship” must be analysed for regulatory impact in compliance with the methodology approved by the Government (Law on Normative Legal Acts, Article 19 par 1). The timing of a regulatory impact assessment is of crucial importance: if it is conducted only at the stage of a draft normative legal act, i.e. after the decision to legislate has already been taken, then it is arguably too late to conduct such an assessment. Indeed, it should be noted, in relation to the regulatory impact assessment process, that legislation or a law may not in fact always be the most appropriate response to the issue that gave rise to consideration of the need for legislation in the first place; it may sometimes be better to revise state policy, or to do nothing. As has been mentioned, the Law on Normative Legal Acts does not offer any explanation of the principles that are intended to govern law-making in the Kyrgyz Republic, but this is on its face an important aspect or dimension of the principle of “appropriateness” of legislation (Law on Normative Legal Acts, Article 3). The Law on Normative Legal Acts also provides that the drafter of the act is responsible for carrying out the assessment, and that drafts which are not accompanied by a justification prepared on the basis of the assessment will not be approved (Article 19 pars 2 and 3).
37. Regulatory impact assessment is an important tool to ensure high quality of regulation throughout the entire cycle of policy making, beginning from problem analysis and designing the assumptions of a legal act and ending with evaluation and monitoring. It aims at assisting policy makers in adopting efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option. Where relevant, the costs of regulation should not exceed their benefits, and alternatives should also be examined.

38. Impact assessments also contribute to the process of administrative simplification: it helps the authorities to ensure that administrative burdens stemming from newly adopted regulations will not outweigh the current burden and the calculation of administrative burdens can render significant assistance in that.²
39. The Kyrgyz authorities may consider the possibility of revising the current methodology for regulatory impact assessment of normative legal acts to expand its application not only to laws affecting businesses but also other laws. The unified guidelines for conducting regulatory impact assessments may include the following elements: problem analysis with a brief description of the issue; an outline of the purpose of intervention; addressees and stakeholders of the intervention; the justification of intervention along with risk assessment; a brief description of the available intervention (or non-intervention) options, while weighting their justification, effect and feasibility; the impacts for citizens (including the impact on both men and women), businesses, the government and the environment; cost and benefit analysis.

SCIENTIFIC EXPERTISE

40. Regulatory frameworks can be put into two broad categories. First, those that are best carried out when the policy options are considered. Second, those that should be applied to the legislative draft that gives effect to that option³.
41. The Law on Normative Legal Acts provides that certain draft normative legal acts are subject to “scientific expertise” or verification (Law on Normative Legal Acts, Article 20). The laws which are subject to scientific expertise are laws relating to: the enforcement of constitutional rights, freedoms and obligations of citizens; the legal status of public associations; the mass media; the national budget; the tax system; environmental safety; the struggle against crime; and new forms of regulation of entrepreneurship (Law on Normative Legal Acts, Article 20 par 1). The scientific expertise to which they may be subjected includes legal, human rights,

² SIGMA Recommendations for Poland, OECD, 2006, see <http://www.mg.gov.pl/NR/rdonlyres/9A6DB1C7-95ED-4404-AE79-D1FCE0678A13/28746/sigma.pdf>. SIGMA is a joint initiative of the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD), principally financed by the EU. SIGMA was initially launched in 1992 by the OECD and the European Commission's PHARE Programme to support 5 Central European countries in their public administration reforms. In parallel with the expansion of the Stabilisation and Association Process, SIGMA support has subsequently been extended to other countries.

³ “Law Drafting and Regulatory Management in Central and Eastern Europe”, Sigma papers: no. 18: checks in respect of policy options include general regulatory checks, checks on administrative requirements, costs and economic impact checks, efficiency checks, practicability checks, and implementation checks; checks of legislative drafts include checks for constitutional and legal compliance, checks for approximation to EU law, checks for compliance with international treaties, implementation checks, checks as to secondary law-making powers, and checks on legal form, clarity and comprehensibility. SIGMA Papers are a series of specialised reports that are focused on particular issues in governance and management, such as expenditure control, administrative oversight, interministerial co-ordination, public procurement and public service management, see at http://www.oecd-ilibrary.org/governance/sigma-papers_20786581.

gender, environmental, and anti-corruption expertise, depending on what the law is about (Law on Normative Legal Acts, Article 20 par 1).

42. The objectives or purposes of verification, which must be carried out by experts who were not directly involved in drafting the law, include: assessing the quality, justification and expedience of the draft, and its compliance with the requirements of “the law-making technique”; assessing its compliance with the Constitution, constitutional laws⁴, laws and international commitments of the Kyrgyz Republic; assessing its potential effectiveness; and identifying and assessing its “negative impacts”, including its negative social, economic, scientific, technical and environmental impacts (Law on Normative Legal Acts, Article 20 pars 2 and 3). These are critical checks and, as has been mentioned, an important part of the process of ensuring that laws do indeed conform to the standards expected. It is vital therefore that they work effectively. Moreover, it is necessary to keep in mind that such checks should not be of a formalistic character and are undertaken in a systematic way.

INTERNAL CONSULTATION AND ENDORSEMENT

43. The Law on Normative Legal Acts provides that before submission to the “President or Government”, draft laws must be approximated with the Ministry of Justice and, if draft laws are expected to decrease or increase public expenditures, the Ministry of Finance and any other public authorities whose competence is involved or affected (Law on Normative Legal Acts, Article 21). In this context, it is noted that the Law on Normative Legal Acts was adopted before the current Constitution. The reference to the submission to the President is presumably therefore no longer applicable, since as a result of the new Constitution, the Kyrgyz Republic is a parliamentary representative republic, whereby the President is head of state and the Prime Minister of Kyrgyzstan is head of government. A draft law requires endorsement by at least half of the members of the Government before being submitted to the Government Office (Rules of Procedure of the Government, par 70). There are extensive rules governing the submission and consideration of draft acts by the Government (Rules of Procedure of the Government, pars 64-101).

PUBLIC CONSULTATION

44. The Constitution guarantees citizens the right to “participate in the discussion and adoption of laws” (Constitution, Article 52 par 1 subpar 1). The right itself is not explained further in the Constitution, but one means by which citizens may be enabled to participate in the discussion and adoption of laws is through the process of public discussion or consultation. The Law on Normative Legal Acts provides that draft laws that “directly involve interests of citizens and legal entities” or “regulate entrepreneurship” must be “offered for public discussion” by publishing them on the

⁴ For more details, see below, Annex 1 par 15

official site of the law-making body or in the mass media if the law-making body does not have an official site (Law on Normative Legal Acts, Article 22 par 1; see also the Rules of Procedure of the Government, par 92, in which “entrepreneurship” is translated as “business activity”). Next to the text of the draft law, the information published must include a statement of its rationale, a list of persons and organisations that participated in its drafting, and a forecast of its potential social, economic, legal and other impacts (Law on Normative Legal Acts, Article 22 par 3). The consultation period must last for at least one month (Law on Normative Legal Acts, Article 23). The results must be published and reasons given for the inclusion or non-inclusion of points made in the final draft of the law (Law on Normative Legal Acts, Article 22 par 2). The Law on Government also requires the Government to conduct public consultations on draft laws and other normative legal acts pertaining to human and civil rights and freedoms by posting them on the Government’s official website before submitting them to the Jogorku Kenesh (Law on Government, Article 40 par 2 subpar 2).

45. Both the Law on Normative Legal Acts and the Law on Government envisage public discussion taking place on the basis of a draft law. A benefit of public consultation in this form is that it is often only at this stage that citizens and affected persons can begin to properly understand or fully appreciate what is being proposed. At the same time, there may be merit in having public consultation at an earlier stage in the legislative process when the Government’s proposals have crystallized sufficiently to make consultation meaningful, but the policy has yet to be fully worked out and translated into a draft law. The Kyrgyz authorities may therefore wish to consider extending the practice of public discussion in appropriate cases to include consultation on the main issues of policy raised by a legislative project *before* the drafting of a detailed proposal has begun. Such consultation could usefully be combined with the process of regulatory impact assessment (above, pars 36-39). Further, since the draft law during its elaboration can undergo significant changes, conducting consultations over the finalized version of the draft law at a later stage may prove to be important as well.
46. The timely publication of both general and detailed information about new draft laws is likely to foster greater opportunities for consultation by the public, lobbying groups, political organisations and parties, as well as civil society generally. A proper consultation process promotes both transparency and accountability of the law-making process, improves awareness and understanding of the policies pursued and encourages public ownership of these policies, thereby increasing public commitment to them.
47. The Kyrgyz authorities may wish to consider the possibility of publishing all draft laws exposed to public consultation on one website in order to streamline discussions. The inclusion of stakeholders willing to provide comments should be facilitated by informing them promptly of the fact that consultations are being held; it would also be helpful if such information could be found in one place instead of

stakeholders being obliged to search for it on a variety of government websites: this makes the process burdensome and may discourage some stakeholders from engaging in it. It would be helpful to have clearly defined procedures in place, which are known and regularly followed. A feedback mechanism is also important: if the results of consultations are not acknowledged, the risk of “consultation fatigue” is quite high.

THE PARLIAMENTARY STAGES OF THE LEGISLATIVE PROCESS

48. The parliamentary stages of the legislative process normally involve three readings (Constitution, Article 80 par 4), with the preparation for each reading being undertaken by a committee of the Jogorku Kenesh (Constitution, Article 76 par 4). The latter is an important feature of the legislative process in the Kyrgyz Republic, and signifies that the Jogorku Kenesh has the benefit of prior consideration of draft laws by the responsible committee at each stage of the legislative process. Laws amending the constitution, constitutional laws and laws changing the state borders may be subject to a fourth reading (Constitution, Article 80 par 5; Rules of Procedure of the Jogorku Kenesh, Articles 54 par 1 and 55 par 4). Such laws also require a two-thirds majority of the total vote in order to be adopted, i.e. 80 out of the total of 120 deputies (Constitution, Article 80 par 5). Other laws are adopted by a majority of deputies, with at least 50 of the 120 deputies voting in favour (Constitution, Article 80 par 4).

Supporting documentation

49. A draft law submitted for consideration must be accompanied by various documents, including a statement of its rationale (which must among other things cover its aims and objectives, possible effects, the results of public discussion, and sources of funding), any consequential legislation (i.e. legislation stemming from the one that has been adopted or is to be adopted either as a new law or as an amendment to the existing law) and, in the case of draft laws aimed at business regulation, an analysis of the draft law’s “regulatory influence” (Rules of Procedure of the Jogorku Kenesh, Article 47; see also Rules of Procedure of the Government, par 114).

Registration and verification

50. Once submitted, a draft law is registered and sent to the Jogorku Kenesh’s legal service, which checks that the supporting documentation is in place; it is also checked for its compliance with “national security principles” (Rules of Procedure of the Jogorku Kenesh, Article 48 par 1). The checks carried out by the legal service also extend to the draft law’s compliance with “the legal drafting technique” (Rules of Procedure of the Jogorku Kenesh, Article 49). A draft law which does not comply with the requirements is returned to its drafter (Rules of Procedure of the Jogorku Kenesh, Article 49).
51. Government draft laws are then sent to the responsible committee and to the “expert

service” for “special expertise” (JK Rules of Procedure, Article 48 par 3). Draft laws introduced by deputies and by way of public initiative are sent to the Government (Rules of Procedure of the Jogorku Kenesh, Article 48 par 4), which has the right to express its opinion on them; its opinion must be disseminated and published during their consideration (Law on Government, Article 31 pars 6 and 7). They are also sent to the President (Rules of Procedure of the Jogorku Kenesh, Article 48 par 4).

52. The expert service is responsible for legal, human rights, gender, environmental and anti-corruption expertise (Rules of Procedure of the Jogorku Kenesh, Article 50 par 1). A separate linguistic service carries out a comparative and editorial examination of the texts of draft laws in the state (Kyrgyz) and official (Russian) languages to establish their authenticity and internal consistency (Rules of Procedure of the Jogorku Kenesh, Article 50 par 2). In case of discrepancies between the text of the Constitution and other legal acts of the Kyrgyz Republic in the state language and their text in the official language, the text in the state language shall prevail as the original text (Law on Normative Legal Acts, Article 6 par 3).
53. Again, these are all vital checks in ensuring that laws are of the requisite standard and it is therefore essential that they are carried out effectively.

First reading

54. The first reading stage is devoted to discussion of the concept, aims and objectives, structure, relevance, expediency and constitutionality of the draft law (Rules of Procedure of the Jogorku Kenesh, Article 56 par 1). Discussion may be article by article, rather than of the draft law as a whole, which if correct is unusual – the more common legislative practice is for the first reading stage to be devoted to discussion of the draft law as a whole rather than of its individual provisions. Amendments are not permitted at this stage and the draft law is either approved in principle or rejected in its entirety (Rules of Procedure of the Jogorku Kenesh, Article 56 pars 3 and 4).
55. The first reading is preceded by a preliminary examination in the responsible committee which must conduct an examination of the draft law - normally within 30 days of its receipt - and submit a report to the Jogorku Kenesh, which shall include a recommendation on whether the draft law should be approved or rejected (Rules of Procedure of the Jogorku Kenesh, Article 51 pars 1 and 6). It is open to factions, deputies, the Government and representatives of civil society to send “written comments and proposals”, i.e. amendments, to the responsible committee at this stage (Rules of Procedure of the Jogorku Kenesh, Article 51 par 2; see also Article 154 (openness and transparency in the legislative activity of the Jogorku Kenesh)).

Second reading

56. The second reading stage is an amending stage, with preparation again being undertaken by the responsible committee: Article 57 par 1 of the Rules of Procedure of the Jogorku Kenesh states that the second reading is devoted to the consideration

of articles in connection with which amendments have been submitted to the committee “during the first reading”, but Article 52 par 1 simply requires amendments to be submitted by a date specified by the Jogorku Kenesh, which must be no more than 10 working days after the first reading (Rules of Procedure of the Jogorku Kenesh, Article 56 par 5). Amendments are submitted to the Jogorku Kenesh’s expert service as well as the responsible committee (Rules of Procedure of the Jogorku Kenesh, Article 52 par 1). The expert service submits its opinion on the proposed amendments to the responsible committee (Rules of Procedure of the Jogorku Kenesh, Article 52 par 2). Amendments are considered by the responsible committee, which may approve or reject them; approved amendments are included in the draft law prepared for the second reading (Rules of Procedure of the Jogorku Kenesh, Article 52 par 6).

57. Conducting public consultations on draft laws pending consideration in the Jogorku Kenesh does not appear to be mandatory: Articles 19 and 154 of the Rules of Procedure of the Jogorku Kenesh provide that committees may invite civil society for discussion of draft laws, without specifying in what cases such consultations must take place.
58. The draft law is then considered by the Jogorku Kenesh at the plenary session. If there are no objections to any of the amendments approved by the committee, the amendments are voted on *en bloc* (Rules of Procedure of the Jogorku Kenesh, Article 57 par 4). If there are objections to some but not all of the approved amendments, those to which there are no objections are voted on before those to which there are objections are considered (Rules of Procedure of the Jogorku Kenesh, Article 57 par 5). The responsible committee’s recommendation on an amendment to which objection is taken is then debated first. If that is approved, no further discussion takes place. If it is not approved, the proposer’s amendment is then considered. If that is approved, no further discussion takes place. If neither is approved, the original version of the draft law passed at first reading stands (Rules of Procedure of the Jogorku Kenesh, Article 57 par 6). Once all the amendments have been considered, the draft law as a whole is then approved or rejected (Rules of Procedure of the Jogorku Kenesh, Article 57 par 8).
59. Amendments are to be distinguished from “new proposals”, which are new amendments, rather than amendments proposed to provisions already contained in the draft law. If new proposals are introduced in the course of the second reading, the draft law is returned to the responsible committee for reconsideration (Rules of Procedure of the Jogorku Kenesh, Article 57 par 7).

Third reading

60. At the third reading, the Jogorku Kenesh decides whether to approve or reject the final text of the draft law, after its editing by the responsible committee: in preparation for the third reading, the draft law is returned to the responsible

committee, which prepares the final text with the assistance of the Jogorku Kenesh Office (Rules of Procedure of the Jogorku Kenesh, Article 53). The Jogorku Kenesh then receives a report from the responsible committee's representative of its consideration in committee, together with an account of the approved amendments, after which it decides whether to approve or to reject the final edited text of the draft law (JK Rules of Procedure, Article 58 par 5). No amendment or discussion of the draft law or its separate elements is allowed at this stage (Rules of Procedure of the Jogorku Kenesh, Article 58 pars 2 and 3).

Return to second reading

61. Where grammatical, editorial or technical errors affecting a draft law's content are uncovered, its third reading may be postponed by a vote of the Jogorku Kenesh and the draft law returned to the second reading procedure to allow these to be corrected (Rules of Procedure of the Jogorku Kenesh, Article 59 par 1).

Fourth reading

62. As already noted, laws amending the constitution, constitutional laws, and laws amending state borders may be subject to a fourth reading. The fourth reading is confined to consideration of only those parts of the draft law which were subject to technical or editorial amendments during its third reading; a draft law which is not approved at fourth reading stands rejected (Rules of Procedure of the Jogorku Kenesh, Article 60 pars 1 and 2).

URGENT DRAFT LAWS

63. Under the Constitution, it is open to the Government to define draft laws as "urgent": a draft law which is defined as urgent must be considered by the Jogorku Kenesh "as a matter of priority" (Constitution, Article 80 par 2). The Rules of Procedure of the Government state that the Government shall "if necessary" submit to the Jogorku Kenesh "a list of draft laws ... defined as urgent and requiring priority consideration" (Rules of Procedure of the Government, par 113). Whether this simply means that they must be considered as a matter of priority according to the normal procedure or whether the procedure is accelerated is not altogether clear. Article 43 par 6 of the Rules of Procedure of the Jogorku Kenesh, which states that draft laws defined by the Committee as urgent shall be put on the agenda for a sitting (regular sittings are held on Wednesdays and Thursdays) subject to the existence of the appropriate committee report and considered as a priority, suggests that the normal procedure continues to apply. In this case, the absence of an emergency procedure whereby a law can, if necessary, complete the parliamentary stages of the legislative process within the space of a single day may be a weakness of the current legislative procedures. Were an emergency or accelerated procedure to be introduced, however, safeguards would need to be included against the possibility of its abuse - excessive use of emergency legislative procedures being one of the most common abuses of the legislative process in other countries.

THE PRESIDENTIAL VETO

64. In order to be published and come into force laws must be signed, normally by the President. Under the Constitution, it is open to the President to withhold his/her consent from a law which has been adopted by the Jogorku Kenesh, other than the laws on the budget and on taxes, by not signing the law and returning it to the Jogorku Kenesh with his/her objections for re-examination (Constitution, Article 81 par 2). Before deciding whether to sign a law, the President must seek the opinion of the Government “on drafts of international treaties and laws, adopted by the Jogorku Kenesh and submitted to him for signing” (Law on Government, Article 30 par 2).
65. Where the President objects to a law, the Jogorku Kenesh - the English translation of the Rules of Procedure of the Jogorku Kenesh says “responsible committee” but presumably, the decision is that of the Jogorku Kenesh on the recommendation of the responsible committee - has three choices open to it:
- it may agree with the President’s objections, in which case the law is revised accordingly and returned to the President for signature; if the President’s objection is that the law is “inexpedient”, the law fails (Rules of Procedure of the Jogorku Kenesh, Article 62 par 2 subpar 1 and par 3);
 - it may form a “conciliatory group” to elaborate a “co-ordinated” version of the law (JK Rules of Procedure, Article 62 par 2 subpar 3), in which case the finally agreed version of the law must then be passed by the Jogorku Kenesh by the requisite majority (Rules of Procedure of the Jogorku Kenesh, Article 62 par 2 subpar 3 and Article 63 par 7); or
 - it may “override” the President’s veto by passing the earlier approved version of the law by a two thirds majority of deputies; i.e. 80 deputies, in which case the law is returned to the President for signature (Rules of Procedure of the Jogorku Kenesh, Article 62 par 2 subpar 2 and Article 62 par 4). If the President still fails to sign the law, it is then signed by the Toraga (Speaker) of the Jogorku Kenesh (Constitution, Article 81 par3; Rules of Procedure of the Jogorku Kenesh, Article 62 par 5).
66. In the final analysis, therefore, the Jogorku Kenesh can insist on its version of the law. If the Jogorku Kenesh fails to take a decision, the law is considered to be rejected by the Jogorku Kenesh (Rules of Procedure of the Jogorku Kenesh, Article 62 par 7).

REGISTRATION, PUBLICATION AND ENTRY INTO FORCE

67. The Constitution provides that laws and other regulatory legal acts must be published as a condition of their coming into force (Constitution, Article 6 par 4; the stipulation is repeated in the Law on Normative Legal Acts, Article 30 par 1). Under the Law on Normative Legal Acts, laws must also be registered by the Presidential

Administration in the State Registry of Normative Legal Acts in order to have legal effect (Law on Normative Legal Acts, Articles 27-28). The official publication of laws and other normative legal acts is governed by Article 29 of the Law on Normative Legal Acts. In the absence of a provision in the law itself, a law comes into force 10 days after its official publication (Constitution, Article 82; Law on Normative Legal Acts: Article 30 par 2). Laws and other regulatory acts which establish new obligations or “aggravate responsibility” cannot have retroactive effect (Constitution, Article 6 par 5).

68. Despite the fact that issuing official journals in electronic form is envisaged by law (Article 29 of the Law on Normative Acts), which may imply that the Government encourages the optimization of the decision making process by using electronic signatures (Article 24 of Rules of Procedure of the Government), it is not clear whether the obligation of issuing official journals in electronic form is really in place and whether electronic versions will be considered as an official source of law as well.

ANNEX 1: OVERVIEW OF THE PROCEDURES AND INSTRUMENTS WHEREBY LEGISLATION IS PREPARED, DRAFTED AND ADOPTED

1. The normative framework within which law-making is carried out in the Kyrgyz Republic is provided by: the Constitution of the Kyrgyz Republic of June 27, 2010; the Law of the Kyrgyz Republic on Normative Legal Acts of April 20, 2009; the Law of the Kyrgyz Republic on the Government of the Kyrgyz Republic of June 18, 2012; the Rules of Procedure of the Government of the Kyrgyz Republic of January 26, 2011; the Rules of Procedure on Legal Drafting by the Government of the Kyrgyz Republic of October 24, 2012; the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic of October 14, 2011; and the Guidelines on Legal Drafting approved by resolution of the Jogorku Kenesh of June 8, 2006. This Annex provides a brief overview of the first two of these instruments - the Constitution and the Law on Normative Legal Acts. The other instruments are discussed at appropriate points in the outline of the law-making process in the Kyrgyz Republic, both in the Annex and in the actual report.

THE CONSTITUTION

2. The Constitution of the Kyrgyz Republic has “supreme legal force” (Article 6 par 1) and provides the basis for the adoption of “constitutional laws, laws and other regulatory legal acts” (Article 6 par 2; “other regulatory legal acts” presumably refer to “normative legal acts”). The system of government established by the Constitution is a parliamentary system in which the Government is formed by and accountable to the Jogorku Kenesh – the Parliament of the Kyrgyz Republic. However, the label “parliamentary” hardly denotes a uniform structure of government. “At best, it identifies a basic criterion that many systems satisfy. The criterion can be stated thus: a collective executive is accountable to an elected legislative chamber. This accountability is expressed through expressions of “confidence” by the chamber. Should this confidence be withdrawn (by what is usually called a “vote of no confidence”) a (written or unwritten) rule prescribes that the executive (i.e. the Prime Minister and major cabinet ministers) must resign. Nothing else is required to join the club of parliamentary governments.”⁵ Nevertheless it is clear from an analysis of the normative framework that the law-making power under the Constitution belongs to the Jogorku Kenesh and that the Government is the principal initiator of legislation.

The President

3. The President is the head of State and directly elected for a term of six years (Constitution, Article 61 par 1). He/she may not be re-elected (Constitution, Article 61 par 2). He/she is required to suspend his/her membership of political parties for his/her term of office and to cease participation in their activities (Constitution,

⁵ Baranger and Murray, in Tushnet, Fleiner and Saunders (eds), *Routledge Handbook of Constitutional Law* (2013)

Article 61 par 3). The President's powers under the Constitution are limited. The President calls elections; signs and promulgates laws; participates in the appointment of various office holders, either by nominating them for election by the Jogorku Kenesh or by appointing them with the consent of the Jogorku Kenesh; represents the Kyrgyz Republic inside and outside the country; and negotiates and signs international treaties, the latter with the consent of the Prime Minister (Constitution, Article 64; Article 89 par 3 states that the Prime Minister "shall conduct negotiations and sign international treaties").

The Jogorku Kenesh

4. The Jogorku Kenesh - the Parliament of the Kyrgyz Republic - is "the highest representative body exercising legislative power and oversight functions within the limits of its competence" (Constitution, Article 70 par 1). It consists of 120 deputies elected for a five year term on the basis of proportional representation (art 70.2). The Constitution sets a ceiling of 65 on the number of "mandates" a single political party may win at an election (Constitution, Article 70 par 2).
5. The Jogorku Kenesh is responsible for the formation of the government under the Constitution. Besides its role in the formation of a government, and sustaining it in office, its functions include: the adoption of laws, the ratification of international treaties; the approval of the budget; the approval of the Government's programme of activity; the approval of motions of confidence and of no confidence in the Government; the election and dismissal of a wide range of office holders, in some cases acting on the nomination of the President; the declaration of states of emergency; and decisions on matters of war and peace (Constitution, Article 74).
6. The work of the Jogorku Kenesh is carried out through committees as well as in plenary sessions (Constitution, Article 76 par 1). Committees prepare and conduct preliminary review of issues referred to the competence of the Jogorku Kenesh and oversee the implementation of the laws and resolutions adopted by the Jogorku Kenesh (Constitution, Article 76 par 2). Laws and regulatory acts of the Jogorku Kenesh are adopted after a preliminary review of their drafts by the relevant committees of the Jogorku Kenesh (Constitution, Article 76 par 3). Further, the chairpersons of the Committee on Budget and the Committee on Law-Enforcement are representatives of the opposition (Constitution, Article 76 par 1).
7. The Jogorku Kenesh may dissolve itself by decision of a two-thirds majority of the total number of deputies, i.e. 80 deputies (Constitution, Article 78 par 2). In the event of the Jogorku Kenesh dissolving itself, an early election is called (Constitution, Article 78 par 3).

The Government

8. The Government is "the highest body of executive power in the Kyrgyz Republic" (Constitution, Article 83 par 2). The Prime Minister is the head of the Government.

Next to the Prime Minister, the Government consists of vice-prime ministers, ministers and chairpersons of state committees (Constitution, Article 83 par 3).

9. The formation of a Government follows the Jogorku Kenesh's approval of proposals for the "programme, structure and composition of the Government" submitted by a candidate for Prime Minister (Article 84 pars 1-4). If approval is secured, the President must issue a decree on the appointment of the Prime Minister and other members of the Government (Article 84 par 5). If approval is not secured, an early election must be called (Article 84 par 6). It should be noted that the President appoints and dismisses from office the members of the Government in charge of state agencies dealing with the issues of defense and national security, as well as their deputies, without the approval of the Jogorku Kenesh (Constitution, Article 64, par 4, subpar 2).
10. The Government is "responsible and accountable" to the Jogorku Kenesh within the limits stipulated in the Constitution (Article 85 par 1). If the Jogorku Kenesh passes a motion of no confidence in the Government, the President may either dismiss the government or, in effect, ask the Jogorku Kenesh to reconsider (Article 85 par 6). If the Jogorku Kenesh repeatedly expresses no confidence in the Government within three months of the first motion of no confidence, the President must dismiss the Government (85 par 7). The Constitution is silent on what happens if the Government is dismissed, but presumably either a new Government would be formed or an early election called.
11. The Government's responsibilities are defined in Article 88 of the Constitution. They include the implementation of the Constitution and laws; the implementation of the domestic and foreign policy of the state, taking measures to ensure law and order, the rights and freedoms of citizens, protecting public order and combating crime, the preparation of the budget and its submission to the Jogorku Kenesh, and ensuring interaction with the civil society (Article 88 par 1).
12. The Government has the right of legislative initiative under the Constitution (Article 79). Deputies of the Jogorku Kenesh and citizens also have the right of legislative initiative; in the case of the latter, this is exercised by way of the right of popular initiative. The Government exercises its right of legislative initiative through the development of draft laws and their submission to the Jogorku Kenesh (Law on Government, Article 31 par 2).

The Supreme Court

13. The Supreme Court is the "highest body of judicial power" in the Kyrgyz Republic (Article 96 par 1 of the Constitution). A Constitutional Chamber of the Supreme Court is responsible for "constitutional oversight" (Article 97 par 1). It has the power to rule on the constitutionality of laws and other regulatory acts, as well as of international treaties to which the Kyrgyz Republic is a party, which have not yet entered in to force (Article 97 par 6). It is also required to "conclude on" draft laws

on changes to the Constitution (Article 97 par 6). The Constitution provides that everyone has the right to challenge the constitutionality of a law or other regulatory legal act which he or she believes to violate rights and freedoms recognized in the Constitution (Article 97 par 7).

THE LAW ON NORMATIVE LEGAL ACTS

14. The Law on Normative Legal Acts is a key element of the overall framework within which law-making takes place in the Kyrgyz Republic. As well as laying down a number of principles of law-making (Article 3), the Law defines the various types of normative legal acts (Article 4), and the relationship between them, i.e. the hierarchy of normative legal acts (Article 6). It also lays down requirements as to the form and structure of normative legal acts (Articles 11-16), and sets out procedures for drafting, adopting and publishing laws, and rules for their enforcement, interpretation and the resolution of conflicts between laws.

The hierarchy of laws

15. The Law on Normative Legal Acts sets out the following hierarchy of normative legal acts: the Constitution, constitutional laws, codes, and laws (Article 6.1; the hierarchy also includes decrees, resolutions and other normative legal acts, which do not form part of this assessment). The Constitution has “the highest legal effect and embodies fundamental principles and norms of legal regulation of major social relations”; it also provides the “legal basis for adopting laws and other normative legal effects” (Article 4.1; see also Articles 6.1 and 6.2 of the Constitution). A “constitutional law” is a normative legal act adopted by the Jogorku Kenesh “as prescribed by, and on issues stipulated in, the Constitution” (Article 4); the organisation and procedures of the Government, for example, are defined by a constitutional law (Article 88.2 of the Constitution). A “code” is a normative legal act adopted by the Jogorku Kenesh “ensuring systemic regulation of social relations of similar nature” (Article 4). A “law”, finally, is a normative legal act adopted by the Jogorku Kenesh “regulating vital social relations in a respective field” (Article 4).
16. The essential principle on which the hierarchy is based is that an act may not “contradict” an act that has “higher legal effect” (Article 6 par 2). A law cannot therefore contradict a code, a constitutional law or the Constitution; a code cannot contradict a constitutional law or the Constitution; and a constitutional law cannot contradict the Constitution. In the event of a contradiction or conflict between normative legal acts, acts with “higher legal effect” prevail over those with lower legal effect (Article 32 par 1). The Constitution thus prevails over constitutional laws, codes and laws; constitutional laws over codes and laws; and codes over laws. Where the conflict is between acts that have the same legal effect, the act that is more specific to the matter in question takes precedence (Article 32.3).

The interpretation of laws

17. Mention may also be made of the “official interpretation” or “clarification” of laws which is treated as a matter for the law maker – in the case of laws, the Jogorku Kenesh – rather than the courts. In the case of the Constitution, its interpretation is a matter for the Constitutional Chamber of the Supreme Court (the Constitution, Article 97 pars 6-10). Official interpretation of all normative legal acts, except for the Constitution, shall be given by the lawmaking entity that adopted the normative legal act (Law on Normative Legal Acts, Article 31 par 2). This means effectively that the law maker has two opportunities to define what the law means –the first being when the law is laid down, and the second when concrete questions of interpretation arise.

Signing of law, presidential veto and veto override

18. Within 14 days of the date when the Jogorku Kenesh adopts a law, it is sent to the President for signing (Constitution, Article 81 par 1). Within one month of receiving an adopted law, the President shall either sign it, or refuse to sign.
19. The President can decline the adopted law by providing his objections to it within one month. However, laws on national budget and national taxes are an exception: the President cannot object and is required to sign these laws within one month (Constitution, Article 81).
20. The Jogorku Kenesh may either agree with the President’s objections and pass the law in a new version that incorporates these objections or disagree with the President and override the presidential veto by re-adopting a law in the original version by at least two-thirds of the total vote. In this case, the President is required to sign this law. If the President fails to sign the law within 14 days, the Toraga shall sign it within the following 10 days.

Publication and enactment of a law

21. Publication of a law is a mandatory condition for it to take effect (Constitution, Article 6 par 4 and Law on Normative Legal Acts, Article 29.). Laws passed by the Jogorku Kenesh and signed by the President or the Toraga must be published within 10 days of their signing (Constitution, Article 6 par 4 and Law on Normative Legal Acts, Article 29 par 2). A passed law enters into force 10 days after its official publication.
22. Enactment of a law may be delayed by either the law itself, if it contains a provision that sets a later date of entry into force, or by a separate law providing for a later date of entry into force, that is applicable either to the whole adopted law or only to some of its provisions. In the latter case, prior to publication, the law setting out the date of entry into force must accompany the respective draft law, be passed by the Jogorku Kenesh, and then signed by the President or the Toraga.

ANNEX 2 THE BASIS FOR OSCE/ODIHR'S LAWMAKING REFORM ASSISTANCE ACTIVITIES

Scrutiny of individual laws often reveals deep-seated weaknesses in a country's law-making system. Laws adopted with the best intentions in response to pressing social needs may prove inefficient or ineffective because of underlying deficiencies in the system of preparing legislation itself. Frequently, political priority considerations prevail over any other considerations while enacting legislation on substantive issues. The most effective way of rectifying the situation is to address the underlying causes. Often, little work is done in terms of finding methods for rationalizing legislative procedures, whilst considerable resources are devoted to the building or strengthening of institutions involved in law-making. The most comprehensive attempt to take stock of law drafting practices in selected countries and to point out crucial issues to be considered when creating or reviewing regulations on law drafting was conducted under the SIGMA programme⁶, a joint initiative of the European Union and the Organization for Economic Co-operation and Development.

A successful law-making process includes the following components: a proper policy discussion and analysis; an impact assessment of the proposed legislation (including possible budgetary effects); a legislative agenda and timetables; the application of clear and standardized drafting techniques; wide circulation of the drafts to all those who may be affected by the proposed legislation; and mechanisms to monitor the efficiency and implementation of legislation in real life on a regular and permanent basis. Further, an effective and efficient lawmaking system requires a certain degree of inclusiveness and transparency within the government and the parliament. This includes providing meaningful opportunities for the public, including minority groups, to contribute to the process of preparing draft proposals and to the quality of the supporting analysis, including the regulatory impact assessment and gender impact assessment, which involves the adaptation of policies and practices to make sure that any discriminatory effects on men and women are eliminated. Proposed legislation should be comprehensible and clear so that parties can easily understand their rights and obligations. The efficiency of the legislation in real life should be monitored on a permanent basis.

While reviewing a number of legal drafts pertaining to some OSCE participating States, ODIHR came to the conclusion that some of the stages of the legislative process which are outlined above are either missing, not properly regulated or not implemented. Further, limited attention is paid to ensuring the preconditions for effective implementation of legislation, such as the capacity of the administrative infrastructure, the availability of human or financial resources, etc. There is also insufficient exposure to methodologies that may help minimize the risks of impractical laws, such as broad consultations with stakeholders outside parliament and government so as to increase the probability that the adopted legislation yields consensus and is, thereby, properly implemented. Further, particular attention is given to the concept of "legislative transparency", which is

⁶ SIGMA – Support for Improvement in Governance and Management in Central and Eastern Europe, <http://www.sigmaweb.org/>.

specifically referred to in two key OSCE documents⁷, and to take into consideration recommendations or special interests manifested in discussions during the OSCE Supplementary Human Dimension Meeting in November 2008, and identified in the assessment reports on various domestic lawmaking processes that ODIHR has been producing since 2006. Among these recommendations, it is worth recalling the following⁸:

- a) The preparation of legislative proposals needs to be based on an effective policy making process and sufficient time should be allowed for their preparation; it should be recognised that elaboration of policy and law drafting are distinct processes, and that law drafting should follow from policy formation, rather than serve as a substitute for it;
- b) Public consultation should be an indispensable element of legislative process. A clear and well-articulated strategy on promoting the development of civil society to ensure that their input in policy development and law-making is given proper consideration shall be in place: such a strategy can ensure better quality, more widely accepted legislation and more effective implementation of the legislation adopted;
- c) An effective system of legislative verification should be in place to embrace operational features of the legislation as well as questions of legal compliance and to ensure the proper legal wording, clarity and comprehensibility of the draft law; impact assessment, an important and valuable tool in both policy development and in drafting legislation to implement state policy, should be planned and implemented properly and needs to become compulsory, at least in cases involving complex legislation, or laws that have a severe impact on large parts of the population;
- d) The required secondary legislation should be introduced in a timely manner to ensure the effective implementation of primary legislation;
- e) Effective and efficient parliamentary oversight of the implementation of legislation should be ensured;
- f) Governments should monitor the implementation of adopted laws, assess their impact and publicly report on their findings, formulating specific recommendations for amendments, where necessary; mechanisms for monitoring the implementation of legislation and its effects should become an

⁷ *Among those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings are (...) legislation, adopted at the end of a public procedure, and regulations that will be published, that being the conditions of their applicability. Those texts will be accessible to everyone;*” (paragraph 5.8, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990). *“Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives”* (paragraph 18.1, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991).

⁸ These recommendations are extracted from the original documents.

inherent part of the legislative procedure, based on an analysis of existing practices.

Following an official request from a OSCE participating State, ODIHR, in close co-ordination with the national authorities, may conduct a full-fledged comprehensive assessment of the country's legislative system and assist the authorities in designing a comprehensive legislative reform roadmap. This work features three main aspects:

1. the assessment is comprehensive, covering the entirety of the process by which legislation is prepared, drafted, assessed, discussed, consulted, adopted, published, communicated, and evaluated;
2. the assessment describes the current law-making system both on paper and in practice;
3. the assessment will provide a sufficiently detailed account in order to support credible recommendations for reform tailored to the particular needs of the country.

The purpose of such assessment is to collect, synthesize and analyze information with sufficient objectivity and detail to support credible recommendations for reform in the area in question. Information for the assessment is collected through semi-structured field interviews with pre-identified interlocutors, as well as through compiling relevant domestic legislation and regulations. The information gathered through field interviews and the collection of domestic laws and regulations is then analyzed in the light of generally accepted international standards in relation to legislation.

Frequently, the comprehensive assessment is preceded by a preliminary assessment that presents a quite detailed description of the current constitutional, legal, infra-legal and organisational framework of the legislative process in the country. Such assessment analyses some particularly critical aspects of the legislative process and formulates recommendations for possible improvements. The purpose of the preliminary report is to provide a description and systematic account of the legislative process in the country and offer an analysis of identified vulnerabilities in the law-making process and the way in which they may be addressed. The preliminary report does not reveal how procedures are used in practice, as it focuses on the legislative framework regulating the lawmaking process.

The comprehensive assessment reviews both legal and practical aspects of the law-making process and is expected to act as a catalyst for reform. The recommendations contained in the assessment report are to serve as a working basis for conducting thematic workshops that provide a forum for discussing the recommendations and developing more specific recommendations. The topics of the workshops are jointly identified by ODIHR and the national authorities. The workshops aim at creating a platform for inclusive discussions among key national stakeholders, including non-governmental organizations, on methods that may be employed to make the law-making process more efficient, transparent, accessible, inclusive and accountable. The recommendations, stemming from the assessment and the thematic workshops are then put together in the form of a reform package and

officially submitted to the State authorities for approval and adoption.