

FINAL

Pursuant to article 17 of the Law on Council of Ministers of Bosnia and Herzegovina (BiH Official Gazette, no 30/03 and 42/03) and article 75.(2) of the Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina ('Official Gazette', no. 11/05), the Council of Ministers of Bosnia and Herzegovina, at its 128th session held on 7 September 2006, issued:

REGULATIONS ON CONSULTATIONS IN LEGISLATIVE DRAFTING

Article 1.

(Statement of purpose)

These regulations establish procedures for consultation with the public and organizations to be followed by all ministries and other institutions of Bosnia and Herzegovina (hereinafter: institutions) when drafting legislation.

Article 2.

(Definitions)

For the purpose of these regulations:

- a) 'Public' means the general public;
- b) 'Organizations' mean legal persons and groups of people that are not affiliated with the government.

Article 3

(Maintain list)

- (1) Each institution shall maintain a list of organizations and individuals interested in its legislative activities and shall make the list available to anyone requesting a copy in writing.
- (2) Each institution shall add to the list the names of individuals or organizations that request in writing to be added to the list.

Article 4

(Consultation coordinators)

(1) Each institution shall designate a consultation coordinator who shall be responsible for coordination of all consultation obligations performed by the institution, including the minimum consultation requirements of article 6. and certification requirements of article 24. of these regulations.

(2) Each institution may designate an official involved in the drafting of a particular legislation to be responsible for carrying out the consultations required by these regulations.

Article 5

(Publishing of planned legislative activities)

(1) When an institution creates a list of planned legislative activities as part of its annual work program, it shall place the list on its website. The institution shall indicate which of the legislation on the list may have significant public impact in accordance with article 8. of these regulations.

(2) Each institution shall provide a copy of the list of its planned legislative activities to those on its consultation list and to anyone requesting a copy in writing.

Article 6

(Minimum consultation obligations for preliminary draft legislation)

(1) Each institution shall comply with the minimum consultation obligations for preliminary draft legislation.

(2) Once the text of preliminary draft legislation has been finalized, the minimum consultation obligations of each institution are as follows:

a) Post the preliminary draft legislation on the institution's website, if it has one, which shall include a means to submit comments via the internet; and

b) Solicit comments by notifying those on the institution's consultation list and provide them with information how they may obtain a copy.

c) The deadline for submission of comments shall be at least 21 days.

Article 7

(Reason for legislation)

Each institution shall provide short reason for the legislation with each notice provided to an organization or an individual for comment pursuant to these regulations.

Article 8

(Legislation with significant public impact)

When deciding which legislation will be drafted, each institution shall assess whether a piece of legislation has significant public impact by applying criteria stated in articles 9 through 13 of these regulations. In addition to the minimum consultation obligations of article 6. of these regulations, significant public impact legislation shall be subject to enhanced consultation obligations as regulated in articles 15. through 23. of these regulations.

Article 9

(Legislation effecting a change of legal status)

Legislation that changes the legal status of persons with regard to any rights or privileges has a significant public impact, such as:

- a) criminal legislation and criminal procedure legislation,
- b) legislation limiting or extending eligibility for government benefits,
- c) legislation affecting voting rights,
- d) legislation affecting rights of citizenship and residency rights of foreigners in BiH,
- e) legislation affecting access to the courts, and
- f) legislation altering legal principles that have been relied upon in the past.

Article 10

(Legislation effecting a change in economic status)

Legislation that has an impact on the economic status of persons, including that with modest affect on large numbers of persons and that with substantial affect on a limited number of persons, may have a significant public impact, such as:

- a) amendments to tax and customs legislation,
- b) amendments related to the level of government benefit or subsidy payments,
- c) amendments to the rules governing legislative and executive government contracts,
- d) amendments to the general contract legislation,
- e) amendments to the legislation affecting labor relations,
- f) amendments to the legislation affecting fiscal and economic policies, or
- g) amendments to the legislation affecting ownership of property.

Article 11

(Conforming to international standards)

Legislation that must be enacted to satisfy international obligations of the state or to conform to international standards may have a significant public impact, such as:

- a) legislation harmonized with European directives, or
- b) legislation to comply with or implement international treaty and convention obligations

Article 12

(Legislation affecting the environment)

Legislation that affects the environment, including the quality of water and air, and that imposes or reduces obligations regarding use of land and other natural resources, may have a significant public impact, such as:

- a) legislation that restricts emissions of pollutants (gas and alike) into the environment,
- b) legislation that imposes damages or penalties for environmental degradation,

- c) legislation that restricts land use for environmental reasons, or
- d) legislation that creates waivers or exceptions to environmental legislation.

Article 13

(Other criteria)

In considering the scope of public impact, institutions may take into account a variety of other criteria, such as

- a) whether the legislation is a novelty;
- b) whether the legislation is a refinement of legislation;
- c) whether the legislation is an adaptation to technological changes;
- d) whether the changes are compelled by judicial decisions invalidating the previous legislation
- e) the number of people affected by the change nationally, regionally or locally; or
- f) the financial impact nationally or regionally, or by economic sector.

Article 14

(Legislation without significant public impact)

Certain kinds of legislation can be presumed not to have substantial public impact, unless circumstances indicate otherwise, and are only subject to the minimum consultation obligations of article 6., such as:

- a) amendments to correct spelling or other grammatical mistakes;
- b) legislation codifying or otherwise consolidating, reorganizing or moving provisions to different sections of the legislation without substantive change.

Article 15

(Consultation for legislation with significant public impact)

When an institution determines that its draft legislation may have a significant public impact, it shall carry out broader consultation than defined in article 6. of these regulations in accordance with the

procedure regulated in articles 16 through 18. The institution shall decide who should be consulted and determine the form of consultation.

Article 16

(Organizations and individuals to be consulted)

The institution shall consider which organizations and individuals are most likely to be interested in or affected by the legislation and who would most likely provide valuable comments, and solicit their views. The organizations and individuals include, for example:

- a) general public and organizations as defined in article 2,
- b) experts, including those from the academic and research community, as well as from foreign countries,
- c) media,
- d) government bodies,
- e) the legal community, including practicing lawyers, prosecutors, judges and their professional associations.

Article 17

(Forms of consultation)

The institution shall decide on the form of consultation that is most likely to provide relevant legislative drafting guidelines. The forms of consultation include soliciting written and oral comments through:

- a) notice or publication of draft legislation in print media,
- b) informing and educating about draft legislation in radio and television,
- c) notice and publication of draft legislation by internet,
- d) direct distribution of draft legislation to organizations and individuals,
- e) public meetings or roundtables with selected organizations and individuals,
- f) involvement of experts and representatives of organizations and individuals in a working group.

Article 18

(Appropriate procedure)

Each institution shall determine the appropriate form of consultation, taking into account:

- a) time constraints on adoption of legislation,
- b) the capacity of organizations and individuals to consult, and
- c) the novelty or technical complexity of the subject matter of the draft legislation.

Article 19

(Budget for consultation)

Each institution shall budget for the consultation obligations in accordance with these regulations.

Article 20

(Timing for consultation)

The institution may conduct consultations at any stage of the preparation of the text of the legislation, but shall allow sufficient time to complete the consultation prior to submission of the draft legislation to the Council of Ministers of Bosnia and Herzegovina (hereinafter: Council of Ministers).

Article 21

(Written comments)

When the form of consultation provides for written comments, the institution shall allow a period of at least thirty days for organizations and individuals to submit comments for legislation.

Article 22

(Oral comments)

The institution shall record comments by audio or other means and prepare a summary of such comments when the form of consultation provides for comments to be presented orally.

Article 23

(Use of comments)

(1) Comments, whether submitted orally or in writing, shall be taken into consideration by the institution in preparing its legislative proposal to the Council of Ministers.

(2) Comments may be grouped and summarized to the extent they are redundant.

(3) The institution may accept or reject any comments, and shall prepare a written report containing the reasons for its decisions regarding comments received. The report shall be part of the institution's certification to the Council of Ministers.

Article 24

(Certification upon submission of legislation to the Council of Ministers)

(1) When draft legislation is submitted to the Council of Ministers for adoption, the institution shall:

a) certify that the minimum consultation obligations were met;

b) certify whether or not the legislation may have significant public impact and provide the rationale for its determination;

c) provide the rationale for the decision on the selected form of consultation and describe the consultation that it conducted; and

d) certify that the institution has acted on comments received pursuant to this process and provide the required report in article 23. (3).

Article 25

(Public availability of certification)

Each institution shall make available the certification described in article 24. to anyone requesting a copy in writing.

Article 26

(Waivers)

(1) In exceptional circumstances, the head of an institution may waive the consultation obligations of the institution, if the head finds that one or more of the following reasons requires the waiver:

- a) emergency circumstances
- b) unanticipated international obligations, or
- c) judicial invalidation of all or part of legislation.

(2) The head of the institution invoking such a waiver shall provide the Council of Ministers with the reasons for the waiver in detail.

(3) The waiver will not exempt an institution from the minimum consultation obligations of these regulations.

Article 27

(Forwarding the proposed legislation to the Parliamentary Assembly)

When forwarding proposed legislation to the Parliamentary Assembly of Bosnia and Herzegovina for adoption, the Council of Minister shall attach the certification required in article 24. or the approved waiver required in article 26. of these regulations.

Article 28

(Satisfaction of consultation agreements)

An institution may enter into agreements with organizations and individuals to provide for consultation in accordance with these regulations.

Article 29

(Refusal to place on session agenda)

The Council of Ministers may refuse to place draft legislation on its agenda when the institution fails to provide the required certification or waiver by the head of the institution. In that event, the General Secretary of the Council of Ministers shall return the draft legislation to the institution to comply with these regulations designating the deadline for compliance.

Article 31

(Entry into force)

These regulations shall enter into force eight days after their publication in the Official Gazette of Bosnia and Herzegovina.

CM no: _____/06

Chair of the Council of Ministers

7 September 2006

Adnan Terzic

Sarajevo