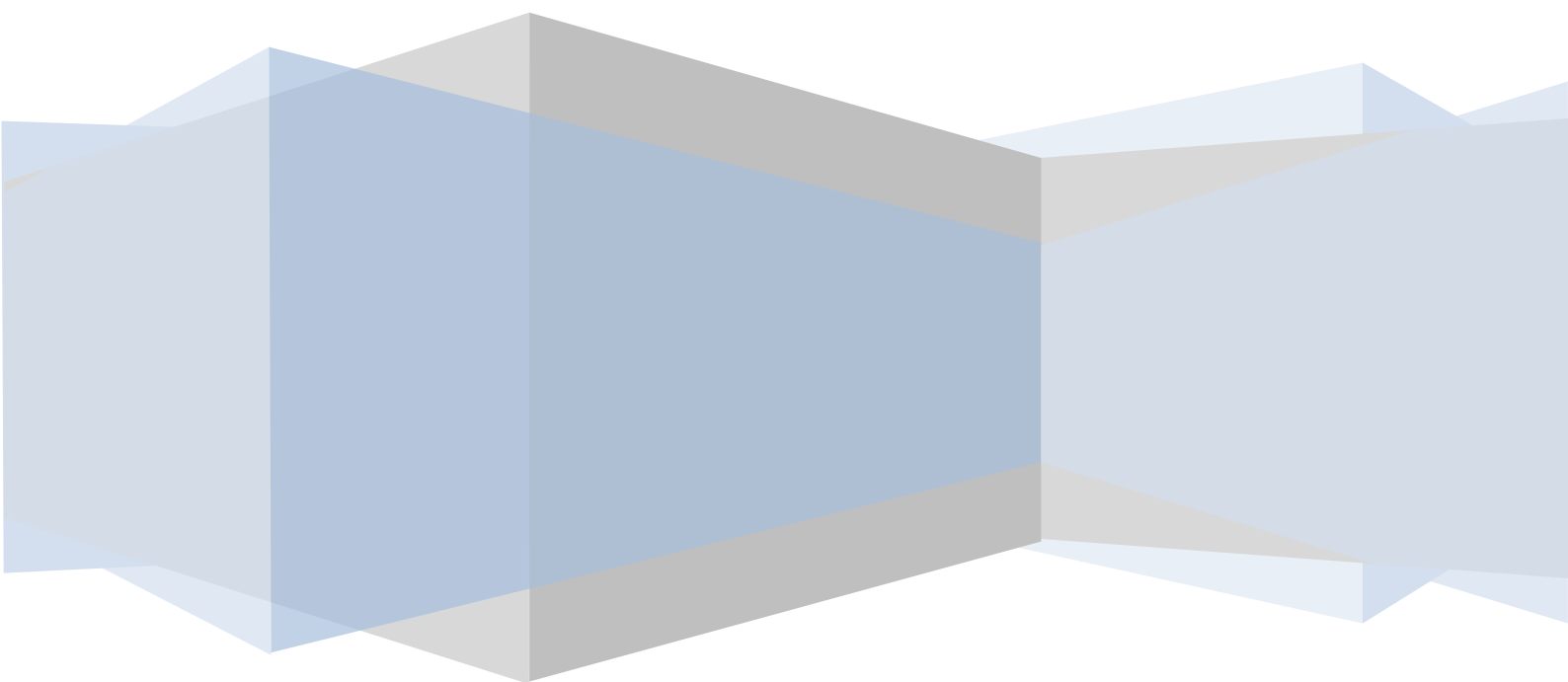


# MANUAL on Secondary Legislation

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## FOREWARD

The objective of this manual is to be used as a practical tool and to help in better understanding, drafting, implementing and monitoring of secondary legislation. It is primarily intended for the staff of state authorities and other bodies and institutions performing normative activities, who are directly involved in the above mentioned processes. However, due to simplicity of the style and content, the manual could also be used by any person who has an interest to learn more about secondary legislation.

This manual is developed within the framework of activities and commitments of the OSCE Spillover Monitor Mission in Skopje, which are aimed at improvement of the legislative process and implementation of legislation as a foundation of democratic governance and the rule of law. These activities focus on providing support to the reform efforts by the competent authorities and institutions in the country towards advancement of the quality, effectiveness, inclusiveness and transparency of primary and secondary legislation.

In this respect, the manual is developed as a response to the needs identified by the country's authorities with the view to improve the current conditions which were, inter alia, noted in the OSCE/ODIHR Assessment on the Law Making and Regulatory Management.<sup>1</sup>

Several methodological approaches and methods were applied in the preparation of this manual, such as research and analysis, base-line survey and interviews and consultations with representatives of relevant state authorities and institutions. During the first phase of the work on this manual, a comprehensive and thorough analysis was carried about the existing legal and institutional framework in the country as well as a comparative analysis of the European Union legislation and the legislation of some member states (Germany, Slovenia, France, Croatia and Czech Republic). The analysis also included the reports produced by relevant international actors, and further a subject of observations were the practices and standards established in this area.

Very important source of information about the legal framework and national practices were the interviews and direct consultations with representatives of competent bodies and institutions held during the assessment mission and the base-line survey. At the end, an

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<sup>1</sup> OSCE/ODIHR Assessment Report on the Law Making and Regulatory Management in the Former Yugoslav Republic of Macedonia). Source: [www.oecd.org/dataoecd/42/21/1823473.pdf](http://www.oecd.org/dataoecd/42/21/1823473.pdf)

isolation session was held, where their comments on the working version of the manual were of great importance for further improvement of the quality and accuracy of the manual. This methodological approach ensured enrichment of the manual, but also strength the sense of ownership and acceptance by those to whom it is intended.

The authors hope this manual will not only be used by the people who are involved in drafting and implementing secondary legislation, but also be used in the training and professional advancement of young law graduates. Moreover, the manual should give a new impetus and encourage further discussion and deeper analysis about certain issues concerning secondary legislation and the principle of rule of law.

On this occasion, the authors would like to thank many interlocutors for the time they devoted to meet and for their substantial contribution, and especially to Darko Pavlovski and other members of the internal working group responsible for the survey as well as to the members of the Board on for Enhancement of the Lawmaking Process (BELMAP).

Finally, the authors extend a special gratitude to the OSCE Spillover Monitor Mission to Skopje for the entire support in the development and publication of this manual.

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## EXECUTIVE SUMMARY

The Manual elaborates the key aspects and issues concerning secondary legislation, which are actually interrelated in a circular process and are typical for all public policy instruments. It departs from the notion and distinctive features of secondary legislation, the requirement for an explicit legal basis and authorization to enacted secondary legislation as well as the scope of regulation and the bodies and institutions that are competent to adopt secondary legislation.

Furthermore, the manual details all phases and steps to be undertaken in the process of drafting and adoption of secondary legislation. A particular emphasis is given on how to ensure public participation and involvement in this process, and the different modalities of participation and consultation with interested and concerned parties, the public at large and the media. Due to their importance, a separate section is devoted to drafting and nomotechnical rules. The manual also focuses on monitoring and ex post evaluation of the implementation of secondary legislation. The approximation with the European Union law is another important aspect which deserves a particular attention. It is worth mention that all these issues are treated according to the current legislation of the Republic of Macedonia, but also in light of the rules and standards which have been developed and accepted in practice.

With the view to improve the state of affairs and current practices, recommendations are offered throughout the text of the manual. These recommendations are primarily founded on the legal solutions and opportunities that already exist, and therefore they stress and reiterate the importance of full adherence and use thereof. On the other hand, some of the recommendations offer new options which are inspired by the comparative experiences and the best practices and standard in this area developed in the European Union.,

## 1. GENERAL REMARKS

- NOTION OF SECONDARY LEGISLATION
- LEGAL FRAMEWORK FOR ADOPTION OF SECONDARY LEGISLATION
- LEGAL BASIS, AUTHORIZATION AND SCOPE OF ORGANIZATION
- TYPES OF CLASSIFICATION OF SECONDARY LEGISLATION

At present, the modern democratic societies function in a very dynamic and global surrounding, that leads towards a significant increase of the legislative and normative activity. This kind of extensive regulatory activity primarily stems from the need and socially accepted standards for respect of individual rights and freedoms, the principles of separation of powers and the rule of law as well as the requirements for limitation of the authority of the state. This means that the limitations of the intervention of the state and the bodies with public authority, through the act of adoption of general legal acts such as the laws and other regulations, are as important as are the limitations for direct intervention in the realization of the individual rights and freedoms through the adoption of individual legal acts and the realizations of the state functions.

On the other hand, the legislator, quite often motivated by political or pragmatic reasons, gives away and transfers its original and legitimate authorization for policy creation and adoption of laws and regulations primarily to the executive bodies. For the purposes of implementation of policies and laws, the executive branch adopts secondary legislation. At the same time, the number of other autonomous bodies and organizations, who have regulatory competences and that adopt this kind of acts, is continuously increasing.

Secondary legislation, in legal theory and practice, are marked with several different terms and as a result of which characteristic of theirs, such as general legal acts, has a decisive importance. Hence, the term secondary legislation is widely spread and that term is used with the aim to distinguish these acts from the primary legislation which includes the laws as primary sources of law. Moreover, the term delegated legislation is also used, which stresses the fact that the authorization for their adoption is not original, but that it is

subtracted and transmitted by the bearer of legislative power to the governmental and other regulatory bodies and institutions.

Starting from the basic aim for which secondary legislation is adopted, that is comprised of ensuring the implementation and execution of laws, these acts are also called implementing legislation.

With the aim of having greater clarity and consistency the terms secondary legislation and regulations are used in this manual.

### **1.1 Notion of secondary legislation**

Secondary legislation are abstract legal acts that have general legal effects (*erga omnes*) towards an unspecified number of individuals and entities for unlimited period of time, which govern public issues, behind which there is a power of coercion and are immediately under the laws in the hierarchy of legal norms. In fact, with the secondary legislation statutory provisions are further elaborated and the immediate execution of the laws is ensured.

The basic aim of the secondary legislation is to decrease the burden and the obligation of the legislator from adoption of too extensive and detailed laws, which in fact is necessary for their execution by the administration and the courts. The secondary legislation is not only important but is usually necessary as well.

Put in the terminology of the European Union, the secondary legislation allows for the arrangement of the non - essential elements of the primary legislation.

„ A legislative act may delegate to the (European) Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The objects, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.“<sup>2</sup>

### **1.2 Legal framework for adoption of secondary legislation**

The legal framework that regulates the secondary legislation in the Republic of Macedonia is comprised of:

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<sup>2</sup> In accordance to Article 290, paragraph 1 of the Lisbon Treaty – consolidated version (Official Journal of the EU, C 115/47, 9/5/2008). Source:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF>

- ✚ **The Constitution of the Republic of Macedonia<sup>3</sup>** - in which the foundation values of the constitutional order are determined, such as the separation of powers and the competencies of the legislative, executive and judicial branch, the principles of state of law and the rule of law, the constitutionality and legality, the hierarchy of legal acts, the obligation for publication of laws and other regulations, the prohibition for their retroactivity and the power for adoption of secondary legislation by the executive branch.
- ✚ **The Law on the Assembly of the Republic of Macedonia<sup>4</sup> and the Rulebook for the work of the Assembly of the Republic of Macedonia<sup>5</sup>** – contain relevant provisions for the relations between the Government and the Assembly of the Republic of Macedonia in the legislative process.
- ✚ **The Law on the Government of the Republic of Macedonia<sup>6</sup>** – which regulates the organization, the manner of work and the competencies of the Government of the Republic of Macedonia, as well as the types of secondary legislation that it adopts within the frame of its competencies.
- ✚ **The Law on Organization and Work of the State Administrative Bodies (ZORODU)<sup>7</sup>** – which regulates the organization, the competencies and the work of state administration bodies/These bodies are established in different areas and sectors of importance for the performance of state functions and due to effective realization of the rights and duties of the citizens and legal entities, as well as the types of secondary legislation they adopt.
- ✚ **The Rulebook for the work of the Government of the Republic of Macedonia<sup>8</sup>** – that regulates the internal organization and the manner of work of the Government and its working bodies and the manner of drafting, reviewing and adoption of the secondary legislation in particular, as well as other issues that are of importance for the work of the Government.

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<sup>3</sup> Official Gazette of the Republic of Macedonia No. 52/1991, 1/92, 31/99, 91/01, 84/03, 107/2005 and 3/09.

<sup>4</sup> Official Gazette of the Republic of Macedonia No. 104/09.

<sup>5</sup> Official Gazette of the Republic of Macedonia No. 130/10 – consolidated version.

<sup>6</sup> Official Gazette of the Republic of Macedonia No. 59/00, 12/03, 55/05, 57/06, 115/07, 19/08, 82/08 and 10/10.

<sup>7</sup> Official Gazette of the Republic of Macedonia No. 58/00, 59/00 and 82/08.

<sup>8</sup> Official Gazette of the Republic of Macedonia No. 36/08 – consolidated version and additional amendments published in Official Gazette of the Republic of Macedonia No. 51/08, 86/08, 144/08, 42/09, 62/09, 141/09, 162/09, and 40/10.



- ✚ **The Law on the Local-self Government**<sup>9</sup> - that regulates the competencies of the municipalities, the organization and the manner of work of their bodies, the participation of citizens in the decision-making, the possession of property, the adoption of a statute and other acts and other issues of local relevance.
- ✚ **The substantive laws in which the legal grounds for adoption of secondary legislation are contained** – there is a number of laws which govern a particular area wherein the legal basis for adoption of secondary legislation is prescribed.
- ✚ **The legal framework for drafting and adoption of secondary legislation on the part of the independent regulatory bodies** and the autonomous organizations and institutions which are not hierarchically subordinated to the Government, is comprised of the laws that regulate the area they cover, such as for example, higher education, personal data protection, electronic communications and many other areas.

### 1.3 Legal basis for adoption of secondary legislation

The Government as the bearer of the executive power in the legislative process, in the largest number of cases appears as the proposer of the laws and other regulations, in a manner in which it significantly influences the creation of legislation and policies. This process strengthens the position and the power of the executive branch, and it further stresses the need of the existence of clear constitution and legal guarantees as well as limitations of its competencies and powers. Therefore, the democratic legitimacy of the Government and the state administrative bodies to adopt secondary legislation and other regulations derives from, but at the same time, it is limited by the requirement for **a clear legal basis and authorization** for adoption of secondary legislation. These must be envisioned by the law, i.e. with the primary legislation.

The Assembly of the Republic of Macedonia, as the bearer of the legislative power, has the exclusive right to regulate certain issues and areas, such is the case with the following areas: 1) the rights and freedoms of each individual and the citizens and the rights and obligations of legal entities; 2) the competencies of the state administrative bodies; and 3) determination of criminal and other punishable offences.<sup>10</sup> The exclusivity in these spheres is contained in the fact that the legislator could not give away or transfer this authorization to the other state administrative bodies.

<sup>9</sup> Official Gazette of the Republic of Macedonia No. 5/02.

<sup>10</sup> Article 61 of ZORODU.

Moreover, in these two areas, the interventions of the executive branch are quite limited. Hence, it could not prescribe new ones, it could not decrease or expand the individual rights and freedoms, nor it could suspend or derogate them.

With the secondary legislation that it is empowered to adopt the details for their realization are only further regulated. The previously mentioned also relates to the regulation of the competencies of the state administrative bodies, which are exclusively reserved as a legal matter, while the organizational and technical details for their realization are made more precise with the secondary legislation.<sup>11</sup>

### 1.3.1 Authorization for adoption of secondary legislation

Apart from the legal basis, a crucial requirement in view of the adoption of secondary legislation always is the clear authorization or power envisaged by the law. The legislator delegates and determines the frame for further normative activities by prescribing **the content, the aim and the scope of the authorization** for adoption of secondary legislation.

Most often, the scope of this authorization is determined in a narrow manner, primarily to avoid possible surpassing, but it is still necessary to leave a certain degree of flexibility of the regulation of secondary legislation. On the other hand, the authorization for adoption of secondary legislation should neither be too broad nor too general. Thus, it is not always easy to find the proper balance between these two legitimate requirements.

From a comparative point of view, countries with long-lasting democratic and legal tradition regulate differently the authorization for adoption of secondary legislation. Hence, in the French Republic, the executive branch is provided with a general and extensive authorization for adoption of secondary legislation (*règlements*). In the United Kingdom, there is no clear distinction between the primary legislation (statutory law) and the delegated legislation (statutory instruments). In the USA, although the so-called “doctrine of non-delegation” prevails, still the President and its administration adopt numerous regulations.

A very characteristic example is the German one, where the basis and the limits of the authorization for adoption of secondary legislation (*rechtsverordnungen*) are envisaged in the Federal Constitution and it relates to the Federal Government and the Government of each state (*Länder*). Namely, the Constitution<sup>12</sup> clearly stipulates that the content, the aim

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<sup>11</sup> For example, such is the provision that prescribes that the organization and the manner of work of the Government is prescribed by the law, which is contained in Article 89, line 6 of the Constitution of the Republic of Macedonia.

<sup>12</sup> Article 80, paragraph 1 of the German Constitution from 1949 with the amendments. Source:

and the scope of the authorization are regulated by law and that each secondary legislative act should contain a reference to the legal basis according to which it is adopted. Concurrently, it provides for the municipalities to regulate issues of local significance with their acts, within the limits prescribed by the law.<sup>13</sup>

In accordance with the democratic principles, the Constitution of the Republic of Macedonia also contains provisions empowering the Government and the units of local-self government to adopt secondary legislation.<sup>14</sup> Apart from the constitutional provisions, the Government, the ministries and the state administration bodies, draw on the legal competence and the basis for adoption of the secondary legislation from Article 35 of the Law on the Government and Article 55 of the Law on the Organization and Work of the State Administrative Bodies.<sup>15</sup>

It should be bear in mind that these constitutional and statutory provisions does not provide the Government, ministries and state administration bodies with a general legal authorization to adopt secondary legislation. For the adoption of secondary legislation it is necessary to have an explicit legal ground prescribed by the substantive law governing a given subject area. Also, the legal authorization for adoption of secondary legislation by the independent regulatory bodies has to be envisaged by a special law which regulates the subject area or subject matter.

### **1.3.2 Scope of regulation of secondary legislation**

The scope of regulation of secondary legislation is decisively determined in Article 61 of the Law on the Organization and Work of the State Administrative Bodies, which prescribes that with the acts adopted by these bodies, no rights and obligations could be regulated for citizens and other legal entities, nor could they prescribe competence to other bodies.<sup>16</sup>

This means that the determination of rights and obligations of physical and legal persons and the competencies of the state administrative bodies represents exclusively a matter to be govern by primary legislation, while the manner and their immediate realization is subject to more detailed normative regulation by secondary legislation.

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<http://www.constitution.org/cons/germany.txt>

<sup>13</sup> Article 28 paragraph 2, Ibid.

<sup>14</sup> Article 91, line 5 and 6, Article 115 and Amendment XVIII, paragraph 1 of the Constitution of the Republic of Macedonia.

<sup>15</sup> Official Gazette of the Republic of Macedonia No. 58/00, 59/00 and 82/08.

<sup>16</sup> Ibid.

**Recommendation:** The proposer of the law should, even in the early phase of preparation of the text of the draft law, decide which issues would be regulated by the law and which issues would be left out and under which conditions would they be subject to further regulation by secondary legislation. Furthermore, there is a need for clear and precise determination of the legal basis, the authorization and the scope of regulation of secondary legislation. In this regard, it is essential that in parallel to the draft law, thesis for secondary legislation are prepared where explanation would be provided as to the subject of regulation by the secondary legislation and the reason why it is governed with secondary and not with primary legislation.

#### 1.4 Types and classification of secondary legislation

A wide spectrum of secondary legislation acts exists, which are not always clearly distinguished and it is not easy to include them in one comprehensive and consistent classification.<sup>17</sup> In accordance with European standards, when the type of secondary legislation act is determined, the following criteria are considered as points of departure:

- The body that adopts them: the Government, the state administrative bodies, the independent regulatory bodies and other independent bodies and institutions;<sup>18</sup>
- Legal nature of the act: general and abstract act vis-à-vis single and concrete act;
- Legal effect of the act: an act that has general effect vis-à-vis the citizens and the other legal entities (*erga omnes*) and an act which produces effects only with regard to the state administration or certain person, i.e. an act that has an individual effect (*inter partes*);
- Depending on the authorization for adoption, a difference is made between acts that are adopted on the basis of a clear and concrete statutory authorization and acts that are adopted on the basis of a wider and general statutory authorization provided to the bodies of the executive branch and the administration, as well as to the units of the local self-government and the independent regulatory bodies;
- The acts are distinguished also on the basis of the subject of regulation

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<sup>17</sup> This weakness is identified in the Report of OSCE/ODIHR for the process of adoption of laws and the regulatory management from 2007, revised in 2008, pg. 7.

<sup>18</sup> See more Section II from this manual.

In the classification of the types of secondary legislation the primary point of departure is the body that adopts them and the legal effect they have. Hence, in the group of **general acts with general effect** the following are included: ordinance, decrees, rulebook, orders, guidelines, plans, programmes, principal attitudes and directions, methodologies, tariffs, by-laws and others. This list is not exhaustive; it leaves space for adoption of other types of acts for enforcement of the laws and other regulations.<sup>19</sup> BY-LAWS !!!

From these general acts, the **internal acts which have individual effect** are differentiated as are those that regulate the organizational and procedural issues, which relate exclusively to the management and the work of the ministry or to any other body of the state administration or an independent institution, such as: conclusions, directions and attitudes, mandatory instructions, or rules of procedure for the working time and rulebooks for the work of the internal working group or commission.<sup>20</sup> The decisions which are taken to appoint or dismiss management personnel and to decide for separate issues envisaged by the law and another regulation, are also included here.

**Recommendation:** In the process of drafting and adoption of secondary legislation, it is necessary to conduct proper, clear and essential distinction of the types of secondary acts on the basis of the mentioned criteria. In that sense, it is particularly important, even in the early phase of preparation, to evaluate and determine whether a given secondary act is concrete or general in its essence and whether it produces individual or general effect for all citizens and entities, something upon which the obligation for its publication would depend on.

With the purpose to facilitate the use of this manual by practitioners, the **Annex 1 of this manual contains a table of secondary legislation**, where they are categorized according to the competent body for adoption, their publication and legal effect and subject of regulation.

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<sup>19</sup> The types of secondary legislation which are adopted by the Government and the ministries are regulated in the following provisions: Article 10, 35 and 36 from the Law on the Government of the Republic of Macedonia; Article 55, 56 and 60 from ZORODU and Article 111 and 112 from the Rulebook of the Government.

<sup>20</sup> For example: The Rules of Procedure for the Performing of the Works of the Training Center of the Bureau for Public Security in the Ministry of Internal Affairs.

## 2. INSTITUTIONAL FRAMEWORK AND ADOPTION PROCEDURE

- BODIES AND INSTITUTIONS AUTHORIZED TO ADOPT SECONDARY LEGISLATION
- PREPARATION AND ADOPTION PROCEDURE
- PARTICIPATION AND CONSULTATIONS WITH THE CONCERNED PARTIES AND THE PUBLIC
- MONITORING OF THE QUALITY AND THE IMPLEMENTATION OF SECONDARY LEGISLATION
- EX POST EVALUATION OF THE IMPLEMENTATION OF SECONDARY LEGISLATION

In global, regional and national frameworks, we are witnesses of the intensive normative activity and of a constant growth of not only the number and the types of normative acts, as instruments which regulate the relationships between the subjects of the law and the policies are created and implemented, but also of the bodies and institutions which adopt them. This state of play and intention is also the case for the Republic of Macedonia, which is largely conditioned by the complexity and the dynamics of the relations in the divergent spheres of the social life.

### 2.1 Bodies and institutions authorized to adopt secondary legislation

The authorization for adoption and limitation of the scope of regulation by the secondary legislation could be prescribed by constitution or by law, on the part of the competent bodies and institutions.<sup>21</sup> In the Republic of Macedonia, there is a large number of bodies and institutions which have the authorization and are included in the process for drafting and adoption of the secondary legislation, such as:

<sup>21</sup> Such a provision is contained in Article 80, paragraph 1 from the Constitution of the Federal Republic of Germany.

- 🚩 **The Government of the Republic of Macedonia**, as the bearer of the executive power, regulates the implementation policy of the laws and the other regulations and it monitors their execution and it adopts several types of secondary legislation.<sup>22</sup>
- 🚩 **The state administrative bodies**, of which the ministries are a part, other bodies of the state administration and administrative organizations. The ministries are established for the performance of the functions of the state administration and are grouped in areas for one or more similar administrative sectors. The other state administrative bodies are founded as autonomous bodies of the state administration (directorates, archive, agencies and commissions) or bodies within the ministries (inspectorate, bureau, service, inspectorate or the port authority), according to the type of the organization and the degree of autonomy.<sup>23</sup> An example of autonomous state administration body is the State Bureau for Statistics, and an example of bodies within the ministries is the Public Procurements Bureau.
- 🚩 **The local self-government units**, the councils and the bodies of municipalities and the City of Skopje are authorized to adopt a statute and other regulations, which regulate the issues related to their organization and performance.<sup>24</sup>
- 🚩 **Autonomous and independent state bodies** such are agencies, directorates and commissions, whose composition or general manager is elected or appointed by the Assembly of the Republic of Macedonia (for example, Directorate for Protection of Personal Data, State Commission for Prevention of Corruption, etc.).
- 🚩 **Independent regulatory bodies**, such are agencies and commissions, whose composition or general manager is elected or appointed by the Assembly of the Republic of Macedonia (for example, Postal Agency, Agency for Electronic Communications, Broadcasting Council, National Bank of the Republic of Macedonia, etc.).
- 🚩 **The University and** the autonomous institutions of higher education adopt a statute as a basic act and rules of procedure, within the frame of the academic autonomy that they enjoy and the right to management.<sup>25</sup> **Is There only ONE univ in mac??**

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<sup>22</sup> Article 10, 35 and 36 from the Law on the Government of the Republic of Macedonia.

<sup>23</sup> Article 13, point (1), (2), (9) and (10) from ZORODU.

<sup>24</sup> Article 91, line 5 and 6, Article 115 and Amendment XVIII, paragraph 1 of the Constitution of the Republic of Macedonia and Article 7 from the Law on Local Self-Government.

<sup>25</sup> In accordance to Article 9 of the Law on Higher Education (Official Gazette of the Republic of Macedonia No. 35/2008, 103/2008; 26/2009; 83/2009; 99/2009 and 115/2010).

- 🚦 **Professional associations and organizations which perform public authorizations**, such as the Bar Association and the Notary chamber, the Chamber of Enforcement Agents/Bailiffs, etc., whose authorization to adopt such acts is envisaged by the laws which have established them.

## 2.2 Preparation and adoption of secondary legislation

The process of preparation and adoption, including also the monitoring and the evaluation of the implementation of the secondary legislation, to a large extent, collides with the process which is into force for the laws as the sources of the primary legislation, and it includes the following important steps:

- ▶ Preparatory activities
- ▶ Drafting and adoption of secondary legislation
- ▶ Participation and consultation of the concerned parties, the public and the media
- ▶ Publishing of secondary legislation
- ▶ Monitoring of the implementation of secondary legislation
- ▶ Ex post evaluation of the implementation of secondary legislation
- ▶ Revision of secondary legislation

### 2.2.1 Preparatory activities

In the preparatory phase of drafting secondary legislation several key activities need to be undertaken, such as: 1) it is necessary to make checks and to clearly determine the legal basis, the authorization for adoption and limitation of the scope and the subject of regulation of the secondary legislation; 2) to perform the preliminary „ex-ante“ evaluation of the influence and the effects of the secondary legislation which should be adopted; 3) to research, to check and to review the European Union law if the secondary legislation allows for transposition of the norms entailed in the general legal act of the EU; 4) to assess the relations and implications on other regulations and 5) to develop thesis for secondary legislation.

**Check of the legal basis, the authorization and the scope** – it is necessary to perform several checks and to determine or to recognize the legal basis that is in power and the authorization for adoption of the secondary legislation. Concomitantly, the subject of regulation of the secondary act should be clearly and unambiguously determined and



formulated. For example, if the law envisages that the secondary legislation determines the manner, the form and the content, it means that only these three elements would be regulated and it cannot be expended possibly to a fourth or other supplementary element, for example, to regulate the conditions.<sup>26</sup>

**Recommendation:** In the preparation of the secondary legislation, the general legal framework and the limitations should always be taken into account that they could neither regulate the rights and duties of the citizens and the legal persons, nor they could prescribe competence to other bodies or proscribe punishable offences.<sup>27</sup> The essence of the secondary legislation is to ensure execution of the laws, and in that manner, to ensure the realization of the individual rights and freedoms and the performance of competencies. For these reasons, the preparation and adoption of the secondary legislation is of key importance to collide in terms of time with the adoption of the basic law.

**Regulatory Impact Assessment (RIA)** – is envisaged as a legal obligation only in the preparation of the draft laws which are not adopted in the urgent procedure and in the frames of the government procedure.<sup>28</sup> In view of the secondary legislation, this kind of obligation for conducting ex ante regulatory impact assessment is not envisaged. Hence, it should be stressed here that the ministries and the bodies of the state administration, still have a legal obligation, together with the draft law to prepare and to submit to the Government, the thesis for secondary legislation.

**Recommendation:** The RIA instrument is recommended to be expended in the area of secondary legislation, i.e. the ex ante regulatory impact assessment which is implemented in view of the draft piece of primary legislation, in parallel and concomitantly, to include the secondary legislation which are adopted with the view to its execution.<sup>29</sup>

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<sup>26</sup> For example, the provisions from Article 17(2), 20(1), 29(4), 36(5) and 37(6) from the Law on Free Legal Aid (Official Gazette of the Republic of Macedonia No. 161/09).

<sup>27</sup> Article 61 from ZORODU.

<sup>28</sup> Article 65(3) of the Rulebook of the Government of the Republic of Macedonia.

<sup>29</sup> The Comparative experiences demonstrate this kind of approach towards the secondary legislature. For example, in the Republic of Slovenia a preliminary assessment is made on the impact that the secondary legislation could trigger over the performance of the public administration and the courts. In the Czech Republic, at the same time, the secondary legislation are subject to regulatory impact assessment, and this assessment could be little or wide in its scope or the same is regulated with the General rules for regulatory impact assessment (Government Decision, 877/2007). See comparative overview – Annex 3 of this manual.

The ex ante or perspective assessment is implemented in line with the Methodology for regulatory impact assessment and the Methodology for policy analysis and coordination. In short, it should be taken into account whether there is a real need for legislative or normative intervention i.e. adoption of a new law or secondary acts, in order to determine the aims and effects which are to be achieved, to determine the financial implications for the state and the private entities, the consequences over the economic and the social system, the environment and the impact over the process of approximation with the *acquis communautaire* of the European Union.

**Screening on the European Union Acquis** – through this preparatory activity the European Union *acquis communautaire* that is enforced is screened, examined and reviewed and it is determined whether the general act would be transposed through the primarily and the secondarily legislation, i.e. through the law and the secondary act.<sup>30</sup>

**Assessing the implications and relations with other regulations** - through this activity, the impact and relations of the secondary legislation at stake with other regulations should be assessed with the view to ensure consistency.

**Development of thesis for secondary legislation** – Based on all preparatory activities mentioned above, thesis for the secondary legislation ought to be developed where the reasons for adoption of the secondary legislation, its content and scope of regulation will be elaborated. It should be underlined that, the ministries and the bodies of the state administration, have a legal obligation, together with the draft law to prepare and to submit to the Government, the thesis for secondary legislation. In case these thesis i.e. arguments for the secondary legislation are not submitted, the consideration of the proposed law is postponed.<sup>31</sup>

**Recommendation:** The thesis for secondary legislation should regularly be developed. They should be prepared concomitantly with the draft law where the specific legal basis and authorization for their enactment is stipulated. The thesis should be further used as an instrument for ex ante assessment of the impact of secondary legislation as well as a point of departure for ex post evaluation of their implementation.

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<sup>30</sup> Please see Par IV from the Manual for this issue.

<sup>31</sup> Article 65(4) and (5), *Ibid.*

**Recommendation:** Having regard to the legal nature of secondary legislation and its function to enable the enforcement and implementation of primary legislation, it is of paramount importance the drafting and adoption of secondary legislation to coincide in time with the adoption of the principal substantive law.

## **2.2.2 Drafting of secondary legislation**

The procedure for drafting and adoption of secondary legislation is differentiated in accordance to which body adopts them, i.e. whether they are adopted by “state” or “non-state” bodies and institutions and what is the legal action that they produce. This manual is focused on the drafting and adoption of secondary legislation on the part of the Government, the ministries and the state administrative bodies. At the same time, a comparison is made and certain specifics and characteristics are taken into consideration of the procedure and the rules which are implemented by the independent regulatory bodies and institutions.<sup>32</sup>

In general, the procedure for drafting and adoption of the secondary legislation is more flexible and less formalized in comparison to the legislative procedure. There are no special rules and standards in view of the procedure, the phases and the manner of drafting of the secondary legislation. In practice, for these issues the procedural and nomotechnical rules are implemented that are enforced for the laws.

### **2.2.2.1 Procedure in the ministries and the state administrative bodies**

The draft of the secondary legislation is prepared by the line ministry or another state administrative body, for which an internal working group is recommended and most often formed. In certain cases and when it is a matter for which more ministries are competent, a cross -sector working group could be formed in which all the concerned ministries and bodies are represented and at the same time a coordinator is selected.<sup>33</sup>

In case when the secondary legislation which are adopted upon a previously provided opinion or in accordance with another ministry or state administrative body are in question, consultations and mutual alignments are made. In case when no agreement could be reached, the ministries are obliged to inform the Government on the conflicting issue and to

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<sup>32</sup> One of the sources of data for the procedure for drafting of secondary legislation is the survey conducted on the part of the office of the OSCE Monitoring mission to Skopje and the series of talks realized in the period of the assessment mission in August 2010.

<sup>33</sup> Article 99 from the Rulebook on the Work of the Government.

act according to the guideline that would be provided by the Government.<sup>34</sup>

In the preparation of the text of the draft secondary legislation act, as a rule, the services/units responsible for normative activity and persons who work or have worked on the primary law from which the basis for the adoption of the secondary legislation is drawn, should be involved. It is recommended that the process for drafting of primary and secondary legislation is undertaken in parallel and at the same time, on a manner on which the danger of non-implementation of laws due to the inexistence or delay of the secondary legislation is avoided.<sup>35</sup>

Secondary legislation is in the competence of the ministries and the other bodies of the state administration are subject to cross--sector coordination and opinion of the Legislative Secretariat and the Secretariat of European Affairs. Finally, they are adopted or signed by the minister or the director of the autonomous body of the state administration.

#### **2.2.2.2 Procedure in the Government of the Republic of Macedonia**

When there is a case of a secondary legislation which is adopted by the Government of the Republic of Macedonia, the procedure is more complex and formalized. In particular, this is in view of the questions for delivery, alignment and action with the materials that are subject to consideration and adoption of the Government Session.<sup>36</sup>

The materials which are prepared by the proposers – the line ministries, including the drafts legislation, are delivered in electronic form to the General Secretariat of the Government of the Republic of Macedonia, which is in charge of the cross-sector coordination. The draft laws, the other regulations and acts are delivered with a supporting letter and a memorandum, in which short and clear information on the content of the materials is provided. Together with the draft laws and the secondary legislation, inter alia, the form for regulatory impact assessment (RIA), the opinions and information on the performed consultations and cross-sector coordination, the corresponding table and the declaration on the approximation of the regulations with the European Union *acquis communautaire* are submitted.<sup>37</sup>

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<sup>34</sup> Article 59 from the Law on the organization and the work of the bodies of the state administration.

<sup>35</sup> In the legislative rules of the Government of the Czech Republic it is prescribed that the secondary legislation is prepared in a timely manner, so that they could enter into force on the same day when the provisions of the law to whose implementation the secondary act is related to, enters into force. Please see Comparative overview – Annex 3 from this handbook.

<sup>36</sup> Article 63, 64, 65, 66, 76, 78 and 79 from the Rulebook on the Work of the Government.

<sup>37</sup> Article 76 (1) and Article 77, *Ibid.*

**Cross-sector coordination** – Prior to reviewing the working bodies of the Government, the proposals of the secondary legislation are sent to all the competent and concerned ministries and the state bodies depending on the nature of the material that is subject to consideration, with the aim of performing the necessary consultations and the approximation of the proposed acts.<sup>38</sup> The proposals of the secondary legislation and the other acts are, inter alia, mandatory submitted to the Ministry of Finance due to the fiscal implications which are to be incurred, to the Legislative Secretariat that is responsible for reviewing of their alignment with the internal legal order, the ratified international agreements and with the EU *acquis*, as well as to the Secretariat for European Affairs when the secondary legislation is used for approximation to the European Union *acquis*. Each of these bodies, in the framework of their competencies, submits an opinion that is presented together with the draft of the secondary legislation. In case when, beside the consultations, there is no *rapprochement* (drawing closer) of attitudes, the draft would be withdrawn and no hearing would be held.

**Consideration by the working bodies of the Government** – Prior to the review of the proposals of secondary legislation at the Government session, they are considered by the General Collegium within the Government which is composed of state secretaries of the ministries and by other working bodies.<sup>39</sup> The proposer is mandatorily present and he/she explains the material, while the conclusions and the attitudes are adopted with a majority of votes.

**Screening of the legality of the proposals of the secondary legislation** – The Legislative Secretariat, as an expert service of the Government, has a special role and it is responsible for ensuring the consistency of the legal order and for providing of expert opinions on the alignment of the laws and other regulations with the Constitution of the Republic of Macedonia, with the international agreements ratified in line with the Constitution of the Republic of Macedonia and with the European Union *acquis*.<sup>40</sup> The Legislative Secretariat provides expert opinion, which is not compulsory for the proposer. Should the proposer and the Legislative Secretariat have difference in opinion; efforts will be made for conciliation and coordination.

**Adoption and signature** – The draft law, i.e. another draft regulation or another act, at the

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<sup>38</sup> Article 67, 68, 69 and 70, Ibid.

<sup>39</sup> These working bodies could be permanent and occasional. In the permanent commission the following are included – the Commission for political system, the Commission for economic system and the Commission for human resources and sustainable development. Apart from the working bodies, councils, boards and working groups could be formed (Article 26 and 27, Ibid).

<sup>40</sup> Article 40 from the Law on the Government of the Republic of Macedonia.

Government session, as a rule, are considered in principle, and then on the basis of their content. The secondary legislation, as well as the other acts that are in the competence of the Government are adopted with a conclusion.<sup>41</sup> The regulations and the other acts, including the secondary legislation is signed by the President of the Government or the deputy President of the Government who chaired the Government session to which they are adopted.<sup>42</sup>

### 2.2.2.3 Procedure in the independent regulatory bodies

The procedure for drafting and adoption of the secondary legislation on the part of the independent regulatory institutions and bodies is simpler, but in its essence it is similar to the procedure of the ministries. Namely, in the frame of the body which is authorized to prepare the draft secondary legislation a working group is formed. In the preparation of the draft secondary act the legal basis and the frame of the subject for regulation of the secondary act, which is usually contained in the general law, is used as the point of departure.

**Recommendation:** It is recommended that the text of the draft of the secondary act, depending on the subject to regulation, should be considered and consulted with the concerned parties and the public at large. Following the phase of consultation, the final solutions of the text of the draft law are being prepared, and then the adoption and the signature follows on the part of the competent body as the Director, the Management Board, the Council, the Senate, etc.<sup>43</sup>

The secondary legislation which is adopted by the independent regulatory institutions and bodies are not subject to screening and verification of their internal and external legal consistency. The Legislative Secretariat, as an expert service of the Government, does not have competencies to provide opinions on the secondary legislation which is adopted by these bodies, but it still provides informal advice and assistance when requested

**Recommendation:** It is necessary to find a systematic and institutional solution that would ensure screening of the quality and consistency of secondary legislation adopted in very important areas covered by the independent regulatory bodies.

<sup>41</sup> Article 92 and 95 from the Rulebook on the Work of the Government.

<sup>42</sup> Article 11 from the Law on the Government of the Republic of Macedonia and Article 113 from ZORODU.

<sup>43</sup> For example, such kind of competence is in the possession of the Broadcasting Council in accordance to the Law on the Broadcasting Activity (Official Gazette of the Republic of Macedonia No. 100/2005, 19/2007, 103/2008 and 6/2010).

## 2.3 Participation and consultations with the concerned parties, the public and media

The incorporation and the participation of the parties concerned and the public, even in the earliest phase of the preparation of the laws and the other regulations, represents a democratic value and it contributes towards the transparency, the public and the accountability in the work of the state bodies. At the same time, this significantly contributes also towards the improvement of the quality of the legislature and the readiness of the citizens and the other subjects to respect and enforcement in the future.

In the Republic of Macedonia, there is a legal framework which provides for inclusiveness and participation of the concerned parties, the expert and the general public in the legislative process and in the creation of the general policies.<sup>44</sup> In that sense, in the process of preparation of the laws and the other regulations, there are several different types through which participation and consultation with the citizens and the other concerned parties is ensured, i.e.: 1) public announcement of the type, the content and the deadlines for adoption of the laws and the other regulations and the providing of opinions and comments; 2) the organizing of public tribunes and 3) gathering an opinion from the concerned citizens' associations and other legal persons, etc.<sup>45</sup>

All the proposals for adoption of laws, the drafts and the proposals of laws, should be published by the competent ministry on their internet website and in **the single electronic registry for regulations (ENER)**, unless in the case when laws are adopted in an urgent procedure. In this registry, all the concerned parties should submit an opinion, remarks and propositions related to the published proposals within 10 days from the day of the publication. The competent ministry should prepare a report for the received opinions in which the reasons are outlines according to which the provided remarks and propositions are not accepted. The report is published on the internet website of the ministry and the single electronic registry for regulations, where they are kept as reference material along with the draft law for the time period of one year.<sup>46</sup>

As opposed to the publication of the draft laws in the single electronic registry, the practice of publication of drafts of the secondary legislation is differently applied by the ministries and

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<sup>44</sup> Apart from the legal provisions or those from the rulebook for the work of the Government, a Strategy for cooperation with the civil society sector is adopted, with an Action Plan for implementation 2007-2011, with the aim of establishing an institutional obligation for cherishing the quality relations of cooperation with the civil society sector. Source: [http://ecnl.org.hu/dindocuments/101\\_Strategy%20and%20Action%20Plan%20\(macedonian\).pdf](http://ecnl.org.hu/dindocuments/101_Strategy%20and%20Action%20Plan%20(macedonian).pdf)

<sup>45</sup> Article 10 from ZORODU.

<sup>46</sup> Article 71 from the Rulebook on the Work of the Government.

the state administrative bodies, inter alia, also due to the fact that there is no clear legal obligation.

**Recommendation:** It is recommended that the thesis and the drafts of the secondary legislation are published at the same time and along with the laws, in such a manner so that publicity is ensured and so that they could obtain timely comments for the improvement of their essence and contents. At the same time, it is recommended that the obligation for the electronic publication of the draft laws should be extended to include the proposals of the secondary legislation, as well.

The other type of participation of the concerned parties and the public is through the incorporation in public tribunes, debates and round tables organized particularly at that end. Concomitantly, there is also a possibility for them to immediately take part in the debate on the draft laws and the regulations in the working bodies of the Government. Namely, the President of the working body, on a proposal by the proposer of the material or on its own initiative, is able to call upon the representatives from the concerned parties, the organizations, the citizen's associations, the trade unions, the chambers, as well as academics and experts, with the aim of providing opinions and consultations on the issues that are subject to consideration.<sup>47</sup>

This legal frame, however, is not sufficiently used in practice. In most cases, it is very rare that the interested and concerned parties and even rarely the representatives of the civil society, the media and the wider public are included mainly due to the legal-technical nature of the secondary legislation and the time limitations on their preparation.

**Recommendation:** It is recommended that the principles of publicity, transparency, inclusiveness are diligently respected and not only formally and legally and to use their values in the adoption of the regulations.<sup>48</sup> The interested and concerned parties, civil society representatives and the public at large should be involved in all stages i.e. drafting and adoption, implementation and monitoring and evaluation of the secondary legislation. In particular, it is recommended that in this process **the media** are used and included as an ally

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<sup>47</sup> Article 48, Ibid.

<sup>48</sup> A particular area which is distinguished with a high degree of inclusivity and participation of the public is the area of environment, within which a decree of the Government is adopted for the participation of the public in the preparation of the regulations and other acts, as well as the plans and programmes in the area of the environment (Official Gazette of the Republic of Macedonia No. 147/08).



who could ensure constructive criticism, but also support for the preparation, the consultation and the adoption of the primary and the secondary legislation. With the assistance of the media, a critical mass could be animated and created in the public opinion that would support the need for adoption, would ensure a forum for discussion and exchange of attitudes and opinions and finally it would contribute towards the creation of an appropriate surrounding for their acceptance and implementation.

**Good practice:** Quite an inspirational example is the Czech Republic, where a well developed system of consultations with the public in the process of preparation of the acts of the Government exists, for which a separate document with directions and minimal standards for participation of the public is adopted. In the document, four levels of participation are detailed out: partnership, consultations, commenting and exchange of information. The participation of the public starts in a very early phase, i.e. in the phase of regulatory impact assessment (RIA). In the case of implementation of the so-called wide RIA, a special publication appears on the website of the Government, related to the process of consultations with the public. In terms of the secondary legislation, such a wide RIA is dearly implemented. Instead, direct consultations with certain subjects are performed which have expertise in the given area.<sup>49</sup>

## 2.4 Publication of secondary legislation

An important element of the legal security and the rule of law is the constitutional guarantee that all the laws and regulation are published before they enter into force and before they produce legal action. The basic aim of the publishing is that the citizens and the other legal entities have substantial time (*vacatio legis*) to inform themselves with the provisions of the general legal act and the rights and obligations that stem for them, as well as time to undertake the necessary organizational and technical preparations for the implementation of the secondary legislation.

A publication order for secondary legislation is issued to the ministries and the state administrative bodies by the Secretariat for legislation, while such kind of warrant is issued by the General Secretariat of the Government for those that are adopted by the Government of the Republic of Macedonia, after their consistency is ensured.<sup>50</sup>

<sup>49</sup> Please see Comparative overview - Annex 3 in the manual (General rules for regulatory impact assessment, Decision of the Government of the Czech Republic 877/2007).

<sup>50</sup> Article 5 from the Law on the Publication of the Laws and other Regulations and Acts in the Official Gazette of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 56/99).

The secondary legislation are published in the „Official Gazette of the Republic of Macedonia” or in another official medium (for example, in the medium of the units of the local self-government<sup>51</sup>) or in another appropriate manner (on the internet webpage of the regulatory body). Most often, they enter into force in eight days or on the day of their publication.<sup>52</sup>

The obligation for publication of the secondary legislation depends on the type of their legal effect. In that sense, in article 114 from the Rulebook for the Work of the Government a difference is made between the secondary legislation that is mandatorily published and those which are not published as a rule, but which the Government could decide to publish. In the first category the decrees, the decisions and the guidelines of the Government are included, while the decisions, which have an action *inter partes*, are published in cases when the Government decides so. At the same time, certain programmes and conclusions of the Government could also be published.<sup>53</sup>

**Recommendation:** The basic rule is that all the general legal acts which have *erga omnes* effect ought to be published in the Official Gazette of the Republic of Macedonia. The internal legal acts which are used to regulate organizational and procedural issues within the bodies that adopt them are published internally. Still, the differentiation between these acts is not always easy, and therefore, when there is a dilemma, the secondary legislation should be published in the Official Gazette in order to strengthen the legal certainty.

## 2.5 Monitoring of the quality and the implementation of secondary legislation

In each Parliamentary democracy that rests on the principles of separation of power and the rule of law, the implementation of the laws and the other regulations falls within the area of executive and judicial branch. This does not mean that the legislative branch should be completely exempted and distanced from the issues related to the implementation of the laws and the other regulations. On the contrary, the work of the legislator should not be diminished only to voting and adoption of laws, but should also be directed towards monitoring and evaluation of the faith of their product: whether and to which extent the law is implemented and whether it realizes the goal for which it is adopted.

In the Republic of Macedonia, there is a legal and institutional frame for the monitoring of the quality and the implementation of the regulations, while the emphasis is placed upon the

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<sup>51</sup> Article 21, paragraph 4 from the Law on the Local self-Government.

<sup>52</sup> For more on this issue, please see Section IV of this manual.

<sup>53</sup> See Annex 1 – Classification of secondary legislation.

constitutional-legal revision, the parliamentary supervision, the supervision on the part of the Government and inspection supervision.<sup>54</sup> Still, it should be stressed here that the monitoring is a wider term than the supervision and the control. The monitoring signifies a systematic and methodological collection and analysis of data from different sources and it also signifies the incorporation and the participation of the different concerned parties in this continuous and cyclical process.<sup>55</sup>

### **2.5.1 Parliamentary supervision**

The Parliamentary supervision over the implementation of the regulations is carried out through different mechanisms on the part of the Assembly of the Republic of Macedonia, such as the supervisory debates, the parliamentary questions, the consideration and the adoption of the submitted reports on the part of the independent institutions and bodies whose top management is elected and appointed by the Assembly.<sup>56</sup> However, none of these mechanisms of parliamentary control does not refer to and does not include the implementation of the secondary legislation, which represents a greater systemic flaw that should be surmounted.

The quality based, timely and appropriate secondary legislation is of key importance for the implementation of the laws. The legislator has a legitimate right and interest to monitor the implementation of the laws that it creates, and thus, to monitor the secondary legislation which are of key importance for their implementation. Therefore, the secondary legislation is called implementing legislature. The parliamentary interest for the secondary legislation should exist not only in the phase of the ex post assessment of their implementation, but also in the first phase from the procedure for adoption of the laws, which prescribe the basis and the competencies for adoption of secondary legislation.

### **2.5.2 Supervision by the Government**

The Government determines the policy of implementation of the laws and the other regulations and it monitors their execution. The Government is responsible for undertaking measures for which it is authorized and it proposes to the Assembly to undertake appropriate measures when it will evaluate that the laws and the other regulations are not executed.<sup>57</sup> With the aim of execution of the laws and the other regulations, the Government

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<sup>54</sup> Law on Inspection Supervision (Official Gazette of the Republic of Macedonia No.50/10, which would enter into force as of January 1, 2011).

<sup>55</sup> Please see graphical overview on page 24 of this Manual

<sup>56</sup> Article 20-23 from the Law on the Assembly of the Republic of Macedonia.

<sup>57</sup> Article 5 and 9 from the Law on the Government of the Republic of Macedonia.

established directions and attitudes and it adopts different types of secondary legislation.

The Government performs supervision over the work of the ministries and over the work of the other state administrative bodies. In the process of performing of the supervisory function, the Government has the following competencies: to held back the enforcement of a regulation that is adopted by a minister, to point out or to propose to the minister to amend or withdraw the regulation in a given time period, to terminate or annul a regulation or another act of the ministries, the state administrative bodies and the administrative organizations who is not in line with the Constitution, the law or any other regulation. At the same time, the Government has the right to terminate or to annul a regulation or another act of the council or any other body of the units of the local self-government and the City of Skopje from the designated competence.<sup>58</sup>

### **2.5.3 Inspection supervision**

The ministries and the state administrative bodies, within the frames of their competencies, perform inspection supervision, that entails supervision over the execution and the implementation of the laws and the other regulation on the part of the state bodies, the public enterprises, the commercial associations, the institutions, the natural and legal persons, as well as supervision over the legality of their work. To that end, inspectorates should be formed within the ministries, as it is the case with the State Administrative Inspectorate and other. The procedure of the inspection supervision is initiated and is performed ex officio, according to the rules of the administrative procedure.<sup>59</sup>

The supervision over the legality of the regulations that are adopted by the Units of the Local self-Government and the City of Skopje is performed by the Ministry for Local Self-Government, while the supervision over the performance is done by the state administrative bodies. The supervision over the delegated competencies to the Local self-Government is performed by the body whose competencies are delegated.<sup>60</sup>

## **2.6 Ex post evaluation of the implementation of secondary legislation**

Following the adoption and the entry into force of the regulations, including also the secondary legislation, it is very important to follow their implementation in a regular and systematic manner and to perform an “ex post” evaluation. The retrospective or „ex post” “evaluation of the legislation is a relatively new concept, which has been gradually

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<sup>58</sup> Article 32 and 34, Ibid.

<sup>59</sup> Article 42-46 from ZORODU.

<sup>60</sup> Article 38 and 38-a from ZORODU.

developed and accepted as a significant instrument in the process of policy creation and realization. In the Republic of Macedonia, unlike the established system and the methodology for estimation of the regulatory impact assessment, there is no functional system for ex post evaluation of its implementation.

The ex post evaluation, is primarily related to the effects and the changes that take part as a result of the norms contained in the regulations and it focuses on answering the question whether the goals to whose end the regulations were adopted are realized. The characteristic questions that are subject to consideration are as follows: whether the regulations are available and accepted, whether the provisions have showed to be implementable and whether they are respected, what are the side effects and whether they are significant in their scope and nature, whether there is a need of their terminating, amending or addending, etc.

### 2.6.1 Criteria for evaluation

Apart from the quality of the regulations, for which more is said in Section III of this Manual, the subject of analysis and evaluation through the matrix of the ex post evaluation of the implementation of secondary legislation are the following three criteria:

**Efficacy** – marks whether and to what extent the general legal act achieves the aim for which it was adopted. In the sense of these criteria, it is primarily important that the aim of the act is clearly outlined and established. For example, the efficacy of the regulation on the use of the safety belts is proven when the number of injuries and victims in car accidents decreases due to their use, which represents its basic aim.

**Effectiveness** – indicates the extent to which the behaviour and the attitudes of the individuals and entities to which the regulation is referred correspond with the behaviour envisaged by the secondary legislation. In the example above, different societies and cultures react in different manners, to a greater or a smaller extent; accept the use of safety belts.

**Efficiency** – means whether the „benefits“ from the regulation justify the “costs” incurred, which are understood in a wider and not only in financial sense, such as institutional capacities and resources pay-off. In the provided example, the norm for the use of safety belts is efficient if there are no other more economic alternative ways for achieving the aim.

**Recommendation:** It is recommended here, that the indicators and the parameters for monitoring and evaluation of the effects for implementation of the secondary legislation are determined at the earliest possible convenience, i.e. even in the stage of preparation of the theses of the secondary legislation and in the stage of performing an „ex - ante“ regulatory impact assessment. Moreover, it is recommended that the process of monitoring and ex post evaluation of the secondary legislation should be open, transparent and inclusive and to use a variety of data sources.

Apart from the institution that adopts the act – the Government, the ministries and the state administrative bodies or the regulatory bodies – the process of monitoring should include the Assembly of the Republic of Macedonia; the Constitutional Court of the Republic of Macedonia that protects the constitutionality and legality; the regular courts that act and decide, and thus implement and monitor the implementation of the laws and the other regulations in concrete cases; the specialized bodies such as the State Audit Office, which is responsible for auditing of the regularity and successfulness; a large number of bodies and institutions which follow, directly implement or are concerned by the secondary legislation as well as the non-governmental organizations and the public.<sup>61</sup>

**Recommendation:** It is recommended that ex post evaluation of the implementation of the regulations is performed regularly. Henceforth, it is clear that the scope and the issues that would be subject to evaluation, the time frame, the methodology and the subjects which would be included in the evaluation should be determined from the outset. The time when the revision of the regulation is planned, i.e. when it amendments and addenda are prepared seems to be the most convenient time for conduction such an assessment. In view of the assessment of the secondary legislation, it is recommended that it is performed in parallel to the retrospective evaluation of the law and to, *inter alia*, focus on the realization of the goals, the normative effects, the social changes and the changes in the individual behaviour of the entities which came to existence as their consequences.

## 2.6.2 Revision of secondary legislation

Finally, on the basis of the acquired information of the ex post evaluation, the future normative measures are most often determined, i.e., it is decided whether the secondary legislation could be terminated or derogated, whether the regulation should be subject to amending or addending or should it be consolidated and a consolidated text to be prepared

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<sup>61</sup> Please see graphic overview on pg. 29 of this Manual.

in order to make its enforcement easier. The revision could also signify amending or introducing of a new regulatory instrument in the given area.

In this context, a particular attention should be paid to **constitutional – judicial revision** of secondary legislation. The Constitutional Court of the Republic of Macedonia protects the constitutionality and the legality and it decides, inter alia, on the alignment of the secondary legislation and the other regulations to the Constitution and to the law.<sup>62</sup> The estimation of the court is done *in abstracto*, which means that it is done independent and not related to whether the contested secondary act has triggered damages on a certain concrete right of the entities to which it is referred. Hence, the court takes into consideration whether the principles of the separation of power are violated. Namely, the Constitutional Court determined whether the contested secondary act has a valid legal basis, whether the competence for adoption of secondary legislation and the limitation on the scope and the subject of regulation envisaged by the law are exceeded and whether the contested secondary act enters into an area that is exclusively reserved for the legislator.

The constitutional-judicial review of the secondary legislation is, in fact, two-folded:

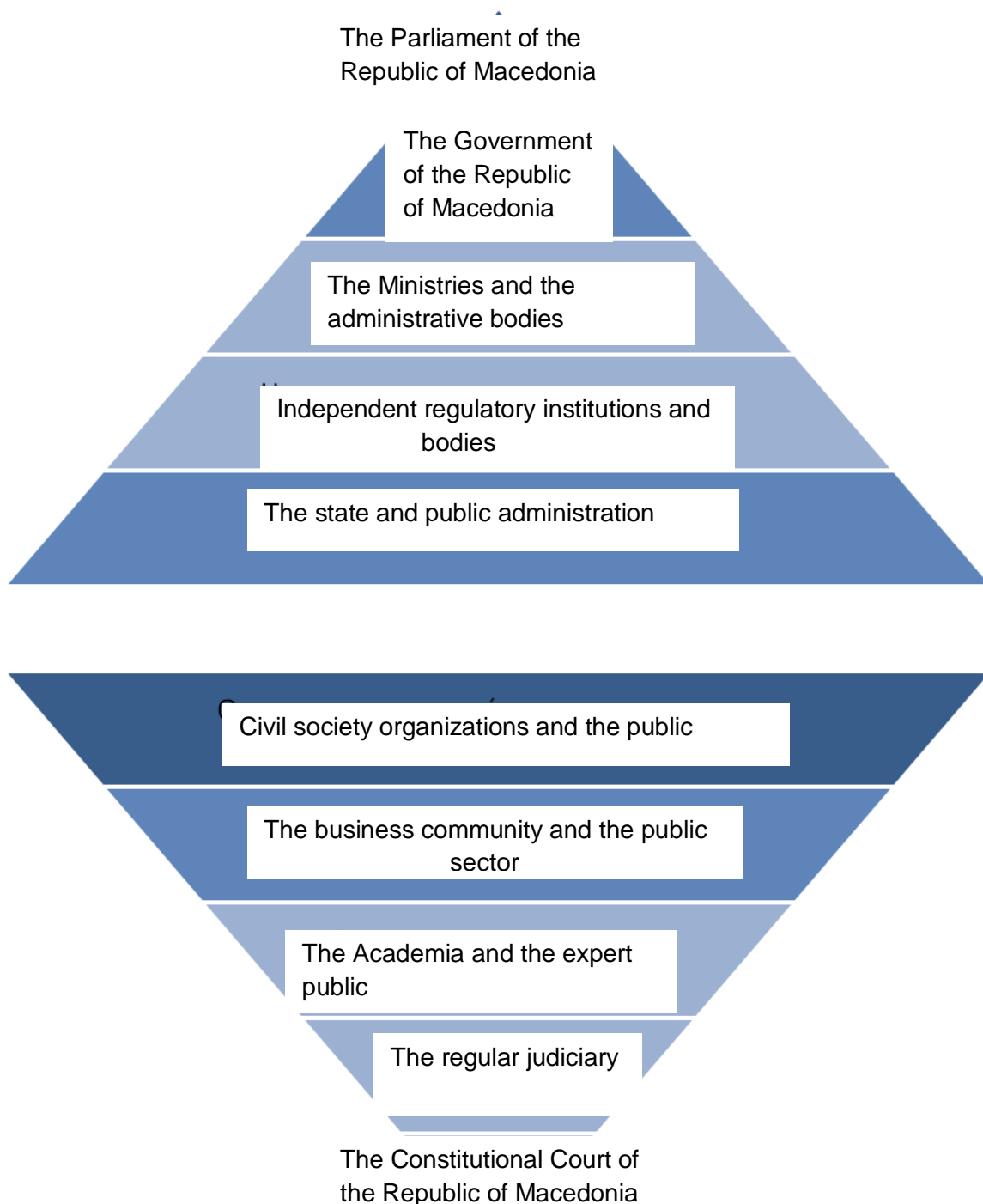
- 1) Review/assessment of the constitutionality of the basis of the secondary legislative act contained in the law, in view of the fact that even in the envisioning of the basis of the laws a violation of the principles and the separation of powers as well as the rule of law could be incurred.
- 2) Review/assessment of the constitutionality and the legality of the secondary legislative act with regard to the procedure for its adoption and the content.

It is particularly important to mention that the constitutional-legal review of the secondary legislative acts is conveyed over the general legal (secondary) acts which have *erga omnes* action and which regulate in an abstract manner the legal relations, as opposed to the individual act which have *inter partes* action and for which constitutional-judicial control is generally envisaged. In that sense, the differentiation between the individual (*inter partes*) and the general (*erga omnes*) acts is not always established in a simple manner. From the practice of the Constitutional Court it stems that in the determination of the legal character of the act, the Court is not guided exclusively by formal criteria (title, legal basis, publication in the Official Gazette, etc.) On the contrary, the Constitutional Court enters into the essence of the act – the subject matter and the manner of regulating – and on the basis of such a comprehensive and deep analysis, it assesses whether the contested act is general or

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<sup>62</sup> Article 108 and 110 from the Constitution of the Republic of Macedonia.

individual and accordingly, whether the Court is authorized to assess its constitutionality i.e. legality.



Graphic overview of the entities in the process of monitoring and ex post evaluation of regulations



### 3. NOMOTECHNIC RULES

- **STRUCTURE AND COMPOSITE PARTS OF THE SECONDARY LEGISLATION**
- **QUALITY OF THE SECONDARY LEGISLATION**
- **AMENDMENTS AND ADDENDA**
- **REFERENCING AND USE OF REFERENCES**

The respect of the basic rights and freedoms of humans and citizens and the principle of rule of law as foundational values of the constitutional order in the Republic of Macedonia,<sup>63</sup> include, inter alia, the request for legal certainty, stability and consistency of the legal order. In essence, this means that the laws and other regulations should be clear, simple, understandable and predictable for the citizens and for those entities to which they are related to and to be consistent. The approximation of the legislation of the Republic of Macedonia towards the European Union law includes additional elements in the process of drafting and adoption of the regulations and in the ensuring of their quality.

**Each regulation, including the secondary legislation, should satisfy the following basic criteria for quality:<sup>64</sup>**

- ✓ To have a valid legal basis
- ✓ To be adopted on the part of an authorized body and in accordance to prescribed procedure
- ✓ To have an appropriate legal and logical structure
- ✓ To be properly prepared in a nomotechnical manner
- ✓ To have internal and external consistency

<sup>63</sup> Article 8 from the Constitution of the Republic of Macedonia.




<sup>64</sup> These criteria stem from Article 6 from the European Convention on Human Rights and are developed through the jurisprudence of the European Court of Human Rights.

- ✓ To be written on a clear, unambiguous and comprehensible style
- ✓ To be accessible
- ✓ To be predictable for the entities to whom it is referred
- ✓ To be enforceable

In this section of the Manual, the focus of attention is placed precisely on the rules and techniques for drafting and writing of the secondary legislation. Therefore, the nomotechnical rules for drafting of the secondary legislation that are outlined in this Manual represent a sublimation of the rules that stem from the long experience and expertise which is this area is possessed by the Legislative Secretariat of the Government of the Republic of Macedonia, which have been put together in the Manual on the nomotechnical rules.<sup>65</sup>


### 3.1 Structure and integral parts of the secondary legislation

In the legal theory and practice, different points of view and attitudes may be encountered in view of the defining of the structure and the integral parts or components of the general legal acts. According to the predominant point of view, the structure of the legal regulations, including the secondary legislation, is composed of the following parts:

-  **Introductory section** – which includes the legal basis (the legal basis and the authorization for adoption of the act), the title and the general provisions.
-  **Middle or central section** – comprised of the main normative provisions of the regulation.
-  **Concluding section** – comprised of the transitional and concluding provisions, such as the date and the signature.

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<sup>65</sup> Rules of procedure on nomotechnic rules, issued with a financial support of the Government of Federal Republic of Germany through the Project of the German Association for technical support „Technical support for the process of approximation of the legislation with the European Union“ (GTZ), 2007.

 **Annexes** – which detail the technical aspects of the regulations and most often they contain tables and graphs.<sup>66</sup>

This structure is commonly applicable to those secondary legislation acts that are frequently used such as ordinances, rulebooks and decisions. Other regulatory instruments such as programmes, plans, methodologies and strategies not always have such internal structure.

### 3.1.1 Introductory section

In the introductory section, the regulation contains the basic information which are used to identify the regulation within the legal order, and which make its enforcement easier. This section does not envisage normative rules, hence, it only has an indirect normative value. This section is comprised of the legal basis, the title of the regulation and the general provisions, such as the provision on the subject of regulation, the definitions of expressions and other elements.

#### 3.1.1.1 Legal basis (Preamble)

Having in mind the legal nature and their position in the hierarchy of the legal norms, the secondary legislation could not produce any legal action without a valid legal basis. Henceforth, in the legal basis, the secondary legislation calls upon **the legal basis**, through pointing out to the article from the law and its publication in the Official Gazette of the Republic of Macedonia. The text of the secondary legislation act starts with a standard formulation: “Based on Article .... of the Law on .... (Official Gazette of the Republic of Macedonia, No....)”

Apart from the legal basis, another important issue that should be pointed out in the introductory part is **the authorization and the procedure for the adoption of the secondary legislation**. In our legal system, the adoption of secondary legislation is allowed only on the basis of a clear legal authorization for each case separately.<sup>67</sup> In the legal

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<sup>66</sup> In the nomotechniques, other ways for determining of the structure of the regulations that are dependent as well on the legal tradition, are known. For this issue, see more: Rules of Procedure for nomotechnical rules, Legislative Secretariat of the Government of the Republic of Macedonia, 2007; Unique rules for the drafting of legal regulation in the institutions of Bosnia and Herzegovina, adopted on the part of the Parliamentary Assembly of Bosnia and Herzegovina on January 12, 2005 and Nomotechnical directions of the Service for Legislature of the Government of the Republic of Slovenia, 2004.

<sup>67</sup> In accordance to Article 55 from ZORODU: „the Minister, i.e. the Director of the autonomous state administrative body could adopt a secondary legislative act, when he/she is authorized to do so by the law.“

designation of the authorization for adoption of the secondary legislation, the body should be determined (ministry, agency, directorate, etc.) that is responsible for adoption of the secondary legislation along with the making of the procedure more precise and determining the timeframe for its adoption, which should be as real and as objective as possible. Thus, in the legal basis it is stated that “This Manual is adopted by the Minister for Environment, upon obtaining an approval from the Minister of Health”.

### **3.1.1.2 Title**

The title signifies the name of the secondary legislation and it is written in the middle, right next to the legal basis. It enables the identification and the referencing of the regulation within the legal order. Therefore, the title should represent the content of the secondary act and it should be formulated as clear and as precise as possible. It is written with a capital letter and it always starts with information on the type of the secondary legislation, like: Decree on..., Rules of Procedure on ....

### **3.1.1.3 Subject of regulation**

Right next to the title of the secondary act, an article which determined the subject of the regulation and the aim of the norm is found. Such a provision should be clear, short and to point out the main issues which are regulated with the secondary legislation, without unnecessary burden or numbering of all that is included in the same. This provision makes the enforcement and the referencing of the secondary legislation easier.

### **3.1.1.4 Other elements in the introductory section**

In the introductory section of the secondary legislation, the following elements could also be found:

Overview of the content of the regulation, which is not typical for our legal system, it is used as a useful tool for the legislative and the normative practice in the European countries, i.e. in the case when the text of the regulation is a composite part of a large number of articles, chapters and parts.

A provision or an article in which the meaning of the expressions that are used in the regulation is defined, particularly in the case when the expressions are expert or have a double or different meaning from the meaning that they have in the colloquial language.<sup>68</sup>

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<sup>68</sup> An example of the secondary legislative act in which the part on definition of expressions and terms is contained is the Rules of Procedure for the technical and organizational measures for ensuring of secrecy and protection of the processing of personal data, adopted by the Directorate for Protection of

This provision should be contained in one article, with the introduction of special paragraphs for every separate expression or term. It is generally expressed in the following manner „Separate expressions, used in this rules of procedure (or another regulation) have the following meaning...”

A provision about the goal of the secondary legislation, whereby the reasons and objectives of the regulation at stake are stated.

### **3.1.2 Middle or central part**

The middle section is the most important part of the secondary legislative act and it allows for the realization of the aim for which the regulation is essentially adopted. This section contains general legal norms i.e. general and abstract rules which regulate a certain relationship or order or prohibit certain behaviour. Having in mind the legal nature, this section is comprised of provisions which provide for the immediate enforcement of the secondary legislative act.

In view of the regulation and formulation of the provisions of the central section of the secondary legislation, the limitation of the scope of regulation according to which it is not allowed to confer rights and obligations on the citizens and the other legal entities as well as the prohibition to prescribe competencies to other bodies, should always be kept in mind.<sup>69</sup> At the same time, in accordance to the constitutionally granted principle on legality in the determination of the criminal acts and misdemeanours, the secondary legislation is also not allowed to envisage criminal or misdemeanour provisions.<sup>70</sup>

### **3.1.3 Concluding section**

In the concluding section of the secondary legislation the transitional and the concluding provisions are contained along with the dating and the signature.

#### **3.1.3.1 Transitional provisions**

The secondary act could contain, but it is not obliged to contain, transitional provisions. This type of provision is usually necessary when it is a question of an area that was previously legally regulated. These provisions determine the issues related to the transition from one to another legal state or legal regime.

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Personal Data (Official Gazette of the Republic of Macedonia No.38/09).

<sup>69</sup> Article 61 from ZORODU.

<sup>70</sup> Article 14 from the Constitution of the Republic of Macedonia.

In principle, the continued implementation of the existing secondary legislation up until the adoption of the new secondary legislation should be determined with the transitional provisions of the new law. This is of particular importance for the significance of the secondary legislation, which obtain new legal basis according to this, and because they lose the same with the termination of the enforcement of the previous law. On the other hand, the termination of enforcement of secondary legislation whose enforcement is continued with the new law, should be regulated with the new secondary legislative act, which replaces the previous regulations.

The transitional provisions should always contain all the previous regulations clearly and in a standardized manner which stop or continue to be enforced, with the listing of the titles and the publications in the Official Gazette. From a point of view of consistency of the legal order and legal certainty of the citizens, their lump sum enumeration is not allowed. For example, all regulations, adopted on the basis of the Law on....”

In case it is an issue of a secondary legislative act which transposes the European Union acquis (regulation, directives and decisions), it should be envisioned in the transitional provisions that all or part of the provisions of the secondary legislative act would be enforced “up until or starting from the accession of the Republic of Macedonia in the membership of the European Union.”<sup>71</sup>

### **3.1.3.2 Concluding provisions**

With the concluding provisions the publication and the entry into force of the secondary legislation is established and in certain cases the termination of their validity and the starting of the implementation is also stipulated. These provisions, although related to the future time and the consequences which would come to the surface in the future, are always expressed in the present time.

### **3.1.3.3 Provisions for entry into effect and implementation of the regulation**

The provision for entry into effect is a mandatory element of the text of each regulation and this is always the last provision (article) of the regulation. As they are general legal acts which produce legal effect *erga omnes*, the secondary legislation are mandatorily published before they enter into force.<sup>72</sup> The secondary legislative act enters into force after being

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<sup>71</sup> On the issue of approximation with the European Union acquis, please see Section IV of the Manual.

<sup>72</sup> Article 52 from the Constitution of the Republic of Macedonia.

published in the “Official Gazette of the Republic of Macedonia” or in another official journal (for example, in the journal of the local self-government units) or in any other appropriate manner (the internet website of the regulatory body).

The period from the publication to the entry into force (*vacatio legis*) which usually lasts for eight days, is necessary not only for the purpose of acquainting the public with the new regulation, but also due to undertaking the various preparatory activities and measures, such as organizational changes, establishment of new bodies or institutions, transfer or employees and finances, etc.

The provision for entry into force of the secondary legislation, as it is the case with the laws, is standardized and it reads „This decree/this Rules of Procedure enters into force on the eight day/the next day/with the day of publication in the „Official Gazette of the Republic of Macedonia“.

At the same time, these provisions could be used to envisage that the implementation of the secondary legislation is not in collision in terms of time with its entry into force. Nevertheless, this is more the case with the laws than with the secondary legislation and such kind of practice should be avoided because they are adopted precisely with the aim of ensuring and providing for the enforcement of laws.

There are two basic ways in which the start of implementation of the regulations is determined, i.e.: 1) direct determination of the day, the month and the year of commencement of the implementation of the regulations, for example: “This law enters into force on the eight day from the day of publication in the „Official Gazette of the Republic of Macedonia“, and it would start to be implemented as of January 1, 2011“; and 2) indirect determination of the delayed or conditioned implementation of the regulation, which is related to the origination of a certain event, circumstances or action. For example, „The provisions of this Rules of Procedure shall be implemented one year after the entry into force of the Law on....“

#### **3.1.3.4 Provisions for termination of effect and implementation of the regulations**

The regulations are generally adopted for an indefinite period, but there are also such kind of regulations which have previously a limited time of effect. This kind of regulations are, for example, the regulations that are adopted in times of emergency, strictly purposeful regulation such as those for conduction of census of the population on every four years time period or the so called sunset regulations, whose effect is terminated unless it continues upon the expiry of the deadline.

The most common manner of termination of the effect of the regulations is when they cease to exist by way of another regulation with **direct derogation**. In that sense, the termination of the regulation could be complete or partial, i.e. the subsequent regulation could terminate all or only parts of the provisions or parts of a certain regulation. In this sense, the horizontal rule according to which the regulation could be terminated and its enforcement could be stopped only by a regulation of the same or hierarchically lower rank, should be specifically stressed here.

There are several ways according to which the termination of the effect of the regulation is determined in a nomotechnical way by direct derogation: 1) it is stipulated that with the entry into force of the new regulation the previous regulation has no longer effect; 2) the termination of the effect is specifically determined in days, months and years and 3) indirect stipulation of the termination of effect is related to a certain event, circumstance or action.

### **3.2 Structural components of the regulation and their internal interrelation**

The secondary legislation should be clear, simple, understandable, logical and enforceable in its entirety. To that end, it is necessary to precisely and clearly define the basic integral parts and structural components of the regulation and for them to be internally arranged and interconnected in a logical and functional system.

#### **3.2.1 Article**

The structure of the regulations, including that of the secondary legislation, consists of articles. The article represents a basic structural component of the secondary legislation that expresses one legal rule and possibly its exceptions.

The article can have one or more paragraphs i.e. sentences which represent logically connected thoughts. In that sense, too long formulations and use of unnecessarily sentences should be avoided in the articles.

In the nomotechniques, there is a rule according to which every sentence that represents a new thought should be regulated in a separate paragraph unless it is not autonomous. Each “new” and autonomous thought, and if it expresses a separate legal rule in particular, should be regulated into a new article.

In addition to the denomination “article” there is always enumeration with Arabic numbers. There are exceptions to this rule for certain regulatory instruments, such as decisions, programmes, etc., where the basic structural components units could be marked only with numbers (instead of article 1, article 3, etc., only I, II or 1, 2, etc. is marked).



With the purpose of having a better overview, it is recommended that the use of titles which are usually placed above (or below) the denomination of the article. The titles of the articles should be as short as possible, and at the same time they should reflect the essence of the content of the given article. It should be stressed that the titles and the articles do not represent a composite part of the normative segment of the regulation, but that they make the comprehension easier and thus the enforcement of the provisions from the regulation.

### 3.2.2 Smaller structural components

The article could also be divided into smaller structural components, such as **paragraphs, points and lines**. The paragraph represents one logical whole, which is generally expressed with only one sentence or thought, but it could also be comprised from one or two sentences. The paragraph is particularly used to determine exceptions and special conditions, different or additional regulations vis-à-vis the previous paragraph from a certain article.

As a rule, all the paragraphs in the article should be marked with an ordinal number in brackets at the beginning of the text of the paragraph. The exception to this rule is when the article has only one paragraph. Such kind of denoting of the paragraphs leads towards greater overview and easier usage, and at the same time it makes the proper citations, the amendments, the referencing and the drafting of consolidated texts much easier.

Certain paragraphs could also contain further divisions of the form to points and lines. The points are marked with Arabic numbers or with small letters with closed brackets or without brackets: for example: a), b)... or: a., b.,...or: 1), 2),...or 1., 2., ... The lines could be composite parts to a paragraph or to a point. Lines are marked with a hyphen: "-".

### 3.2.3 Greater structural components

With the aim of having greater overview and easier use of the immense regulations, there is a technique used in nomotechniques of content-based and logical unification and connection of the provisions and article in greater structural components. Here we have primarily **the parts** which are marked by Section one/First section or General/Special section. Furthermore, inside the sections unification of the provisions and the articles is done in **heads, chapters, units, subunits and divisions**. It is recommended that the joining of articles in greater and wider logical wholes and structural sections is used as a technique also for the wider secondary legislative acts.

**Recommendation:** Starting from the delineated structure and the composite parts, it could be concluded that the secondary legislation are formulated in such a way so that they include the legal basis for its adoption in the introductory section or in the legal basis, then the central normative sections follows that is formulated into articles or in points marked with Romanic or Arabic numbers. In that manner, the articles could be composed of paragraphs, points and lines, and the points could be composed of lines. The secondary legislative act always ends with a provision for its entry into force and implementation. In certain cases, the secondary legislative act contains also transitional provisions which regulate the transfer from one to another legal regime.

### 3.3 Language and style of expression in the regulations

Apart from the structure and the internal interconnection of the regulations, the language and style of expression have a significant importance and they contribute towards their quality and implementation. The language and the style of expression should ensure clarity, precision, comprehension and predictability of the secondary legislation, which represents one of the foundations of the legal certainty and the legal state.

The language and the style of expression that is used in the secondary legislation are identical to the ones that are used in the laws. The nomotechnical expression is based upon the general colloquial language. This signifies that the biggest part of the words and expressions which are used in the regulation have the same meaning as they have in the general colloquial language. Nevertheless, there are also such words and expressions which are not used in the general colloquial language or they have a completely different, divergent meaning of the one they have in the general colloquial language.

There are also special expert expressions which are characteristic of the area of law or the legal terminology. Expert expressions from other areas of other disciplines are also used in the expressions, which could be either domestic or foreign. The use of foreign words is permissible, especially when there is no appropriate expression in the Macedonian language, which could allow for the sufficient and proper expression of their meaning.

#### 3.3.1 Grammar rules

In accordance with our nomotechnical practice, in the formulation of the norms i.e. the provisions of the laws and of the secondary legislation, it is as a rule and mandatorily, to use **active verbs in present tense**. The present tense is used even for the formulation of the provisions which are related to the future events (for example: “the persons, which would

have 65 years of age in 2015...”). As a rule, **simple verbal forms** are used. Furthermore, the use of expressions such as “must”, and “is obliged”, cannot be used because secondary legislation cannot impose new obligations for individuals and legal entities. Instead, the term “should” is used commonly.

The expressing in the regulations is done in one grammatical gender, most often in male gender, with which it is considered that both genders are included. The nouns and adjectives are used in one whole, unless when it should be expressed in plural.

Other more characteristic rules relate to the writing of dates, numbers and monetary amounts. With regards to the dates, the one digit numbers are written without a zero before the number and the months are expressed with words, for example “This decree shall be implemented as of 1 January 2011.” The number from one to ten is written with words and from the number 11 onwards, they are marked with Arabian numbers. The monetary amounts are written with numbers, after which the currency is stipulated and its equivalent value, for example: 100 denars or 100 Euros in Denars equivalent value. The conjunctions “and” for cumulative and “or” for alternative numbering are used for the numbering and when there is a need to include both situations “and/or” is used.

### **3.3.2 Normative expression**

The legal and obligatory character of the regulations particularly has an impact over the linguistic expression in the regulation. That means that the style of expression and the formulation of the text of the provisions in the regulations is normative and abstract and not narrative i.e. descriptive. Formulations that have no normative character should be avoided such as, for example, declarative statements. This type of style of expression is due to the fact that the secondary legislation prescribes or prohibits (in the form of an order or prohibition) a certain behaviour of the entities to which they are related to. In order to be able to implement the act or the norm, the entities should comprehend the same, and thus results the request for clarity, comprehension and lack of ambiguity of the normative expression. At the same time, the use of the rule of “five rows” is recommended in order to avoid a long and not understandable normative text which is difficult to use.

In the expression of the regulations same and generally accepted standard expressions are used often. This contributes towards clarity, economy and stability of regulations. Hence, same standard expressions are used continuously i.e. sentences for determining the beginning and the end of enforcement of regulations, for the text in the amendments and addenda, for the determining of the meaning of the expressions, etc. are used.

In the process of normative expression, the chosen method of standardization should be particularly taken into account that could be closed or standardized when the norm encompasses all the cases to which it is referred and opened or exemplary when only a certain typical situation or case is regulated even though it refers to other similar mentioned cases.

Finally, the quality of the secondary legislative act depends on its internal and external consistency. The external consistency is related to the interrelation and the alignment with the hierarchically higher acts (the basic law or the higher secondary legislative act). The internal consistency marks the content-based and the logical interrelation of the articles and the other structural units of the same regulation into a single logical and subsequent whole. That signifies that the basic principles should precede the detailed norms, the general should precede the particular, the permanent should precede the temporary, and that which is less important should follow after that which is considered to be more important.

#### **The language and style in the regulations should be:**

- ▶ **clear and simple** – words and expressions with the same meaning as in the general colloquial language should be used in order for it to be comprehensible for the persons to whom the regulation is referred, the use of jargon should be avoided, the Latin words and useless foreign or expert and technical words;
- ▶ **consistent** – the use of the words and the expressions should be consistent primarily through the entire text of the secondary legislative act and, at the same time, the alignment with the language that is used in the higher legal acts and the use of more words with a same meaning should be avoided;
- ▶ **precise** – precise words and terms should be used with which a certain behaviour of the legal entities is unambiguously ordered or prohibited, also the use of insufficiently determined or unclear expressions, such as: as a rule, immediately or without postponement, should be avoided;
- ▶ **necessary** – each word in the regulation should be used as a result of a certain reason i.e. due to its meaning, long sentences and phrases should be avoided, and repetition and use of more words than those that are necessary should be avoided, due to the fact that the economy and stability of the regulation is evaded.

Often times, one characteristic such as precision is achieved on the account of another characteristic such as clarity, hence it is always recommended that the text of the draft of the secondary legislative act to be read and checked several times with the aim of finding the most convenient balance between these qualitative characteristics of the regulation.

### **3.4 Amendment and addenda of the secondary legislation**

In the present conditions, in view of the dynamics of the political, the economic and the societal surrounding and living, the number of amended regulations substantially surpasses the original legal text and other regulations. The number of amendments and addenda and the lack of their systematization are not in line with the principles of economy, clarity and consistency of the legal order and it leads towards the deepening of the legal insecurity. Hence, it is recommended to use special caution in the approach towards revision of the regulations.

The decision to move towards amendments and addenda of a certain regulation depend on the ex ante evaluation of the necessity and the usefulness of such amendments and on the degree of the changed circumstances and situations. In all cases when the scope of the amendment is almost one third or more of the regulation, it is recommended to move towards the adoption of a new regulation. In all cases when a new law is adopted, it is necessary to adopt a new secondary legislative act, in parallel.

The amendments and addenda should be guided by one of the following basic rules:

- ✓ Use of standardized expressions – it all starts in such a way that the title of the secondary legislative act that is amended is listed, and then it is put in brackets “The Official Gazette of the Republic of Macedonia” and the number where the text of the secondary legislative act is published and all its amendments and addenda are chronologically listed and than its first amendment, i.e. addendum is mentioned.
- ✓ In the process of formulation of the amendments and addenda a rule is enforced according to which the article, the paragraph, the point or the line with which the amendment is made is primarily mentioned and then follows the amendment text;
- ✓ The text of the amendment is expressed with the following words: “is erased, is amended with the words, is added, is amended as follows” which is then followed by the mentioning of the new section or “integral text” of that section of the secondary legislative act;

- ✓ In case greater or numerous amendments are to be made in the text of a certain paragraph or article, it is more convenient to determine a completely new integral text of the designated paragraph or article;
- ✓ Each article that should be amended, is, as a rule, amended with a special (autonomous) article of the amendment and each separate amendment or addending appears as a separate paragraph of that article;
- ✓ More articles which are placed one next to the other, could be erased with one article of the amendment or when a same type of amendment is made;
- ✓ If the article, i.e. the paragraph is comprised of more points and it has new point/s included among the existing one, in that case, the numbering of the points is moved. In order not to move the existing points, it is better that the new points are marked with numbers or letters, for example: 3-a, 3-b, 3-c, or 3-1, 3-2, 3-3;

Example of an amendment: „in the Rules of Procedure...., article 5, paragraph 2, the word..... is erased/and is replaced with the words...”

Example of addendum: „ In the Bylaw...., following article 5, paragraph 1 new paragraph 2 and 3 are added and they read as follows...”

**Recommendation:** In case when due to the large number of amendments and addenda, the text of the secondary legislative act becomes difficult to use, an approach towards adoption of the new act should be made instead of amending and/or addending the existing one. In that case, and for the sake of articulacy of regulations, their comprehension and clarity, it is recommended that a consolidated text of the secondary legislative act is prepared which should be, along with the amendments and addenda, mandatorily published.

### 3.5 Referring and use of references in the regulations

The referencing and the use of references are techniques of nomotechniques which lead to avoiding of the repetition of long expressions and terms and it contributes towards the economy, stability and consistency of the regulation.

The referencing should be carefully used due to the fact that it points to another legal source. When the secondary legislative act calls upon on another regulation, law in the most cases, then such kind of regulation or its separate provisions became a composite part of the secondary legislative act. The regulation which the secondary legislative act is

referencing should be easily accessible. Moreover, it should be taken into account that the referencing does not disturb the logical whole of the secondary legislative act. The referencing should be used to make the text simpler and not to repeat the contents of the provisions which the secondary legislative act is referencing. Apart from referencing external laws and regulations, the referencing is possible also inside the frames of the existing regulation.

The referencing should respect the hierarchy of the legal acts. The referencing in the regulations should be related to a regulation from the same rank, as a rule, or in the case of secondary legislative act, referencing could also be made to a regulation of a higher rank, as well.

In special cases, the law could reference also the generally accepted principles from the international law and from the international agreements.

There are two forms of referencing: open and closed. In view of **the closed** referencing, the articles and the provisions are cited in detail and the publication of the law and the secondary legislation in an official journal or in other official medium. In the case of the open referencing, the referencing is more descriptive and more flexible, without listing of the title and the publication of the law in an official journal, the area or the subject matter that it is regulated is determined, for example “....in line with the law/the regulations which regulate the protection of personal data.”

In case when in the secondary legislative act there is a need of referencing of the same law for several times, than the first referencing has to be complete, while the subsequent referencing could be shortened. The use of circular references should be avoided (referencing of a legal act or article, which in itself point towards the primary provisions) and serial references (referencing of the provision which in itself points towards another provision).

### **3.5.1 Citing in the text of laws and regulations**

The citing of the publication of the laws and the regulations in the „Official Gazette of the Republic of Macedonia“ is done in a chronological manner, starting from the first publication of the law, after which the subsequent amendments are chronologically listed. In that case, the publication of the law and the regulation is always listed at the beginning (in the first provision) in case of amendment or addenda, in terms of termination of the entire or part of the regulations, as well as in case of referencing or use of references.

In the case of referencing in the regulations, the numbers of the published decisions by the Constitutional Court of the Republic of Macedonia (with which certain provisions of the law of the secondary legislative act are abolished) are not listed, the authentic interpretations of the law, the published corrigenda of the text, consolidated texts of the regulation, etc. No referencing should be made to consolidated texts. The citing of the text of the regulation is performed according to the following rules: “in article 1 of this law” “in paragraph 1 of this article” “in article 1, paragraph (a), line a) of this article.” The use of the words “in the previous article/paragraph,” “in the next article/paragraph” should be avoided due to the fact that the sense of these words could be lost in the process of making amendments or addenda of the secondary legislative act.

### **Example of Good Practices at the European Union level**

A very good example of guidelines for legislation drafting could be found in the European Union acquis, which is used as the foundation towards which the Republic of Macedonia is acceding and harmonizing its internal legal system.

Namely, the Council of the European Union adopted a Resolution on the Quality of Drafting of Community Legislation in 1993.<sup>73</sup> On the basis of this resolution, an Inter-institutional Agreement was achieved on 22 December, 1998 with regard to the joint directions for the quality of drafting Community legislation<sup>74</sup>, and afterwards an Inter-institutional Agreement was achieved on 16 December, 2003 on better law-making.<sup>75</sup>

These directions, which do not have any legal and obligatory character, are, at a later stage, developed and transposed in a manual accepted by all the institutions which have legislative competence in the European Union, i.e. on the part of the Council of the European Union, the European Parliament and the European Commission..<sup>76</sup>

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<sup>73</sup> Published in the Official Journal of the European Union, C 166, 17/06/1993 P. 0001 – 0001 (Council Resolution of 8 June 1993 on the quality of drafting of Community legislation, Official Journal C 166, 17/06/1993 P. 0001 – 0001).

<sup>74</sup> Published in the Official Journal of the European Union C 073, 17/03/1999 P. 0001 – 0004 (Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation, Official Journal C 073, 17/03/1999 P. 0001 – 0004).

<sup>75</sup> Published in the Official Journal of the European Union C 321, 31/12/2003 P. 0001 – 0005 (Interinstitutional agreement on better law-making, Official Journal C 321, 31/12/2003 P. 0001 – 0005).

<sup>76</sup> Joint Practical Guide for Persons Involved in the Drafting of Legislation within Community Institutions, <http://eur-lex.europa.eu/en/techleg/index.htm>



In the directions, the need of strengthening of the legal services of the institutions, including the legal experts and the editors, is stressed with the aim of improving the quality of the drafting of the Community legislation.

The main aim of these directions is that the legislature (the primary and the secondary) of the Community is as clear as possible, simpler, more concise and comprehensible for the public and the entities to which it is directed. The previously mentioned is a precondition for proper and aligned implementation of the legislature in the member states.

✚ For that aim, the general legal acts should possess the following qualities:

- ✚ To have a standardized structure (articles, chapters, sections and units).
- ✚ To have internal and external consistency – the provisions contained in the different types of legal acts should be mutually aligned.
- ✚ To determine the rights and duties of the entities to which they are referred in a clear manner.
- ✚ To take into account the entities to which they refer to, in the process of drafting.
- ✚ To avoid provisions which do not have normative character, such as wishes, declarations and political statements.
- ✚ To avoid inconsistency of the text and repetition of the provisions from the existing legislature.
- ✚ The act which is used to amend another legal act should not contain autonomous material provisions, it should be rather comprised of provisions which are directly incorporated into the act which is amended.
- ✚ Finally, the date of entry into force and the transitional provisions must be clearly envisaged.

### **A Practical Dilemma**

In the practice, problems appear when the secondary legislation acts do not have or they lose the legal basis. This usually happens when the new law is derogating the law on the

basis of which it is adopted and in the meantime no new secondary legislation is adopted for its implementation. These positions could disable the citizens to realize their rights and freedoms conferred by the law.

Without a formal – legal and content - based legal basis, the secondary legislative act is unlawful and it runs counter to the Constitutions. However, the absence of an enforceable legal basis does not have as a consequence the automatic termination of the enforcement of the secondary legislative act or sections of its provisions.

One of the possible solutions is to determine further implement the existing secondary legislative act until the adoption of the new secondary legislation, in the transitional provisions. This is of particular importance for the significance of the secondary legislation, which gain new and necessary legal basis with the previously mentioned, which would be lost when the existing law ceases to be in force.

Furthermore, in case when the old (the existing) law ceases to be in force as a whole and its usage is terminated, if it is deemed necessary, the use of the existing secondary legislative acts that have been implemented up to date should be extended until the adoption of the new ones. Depending on the circumstances, this continuation of the implementation could relate to the whole or certain parts or provisions of the secondary legislative act, which should be clearly stated. Finally, the termination of enforcement of the secondary legislation, whose implementation is extended by the new law, is stipulated with the new secondary legislative act which replaced the existing regulations.


## 4. APPROXIMATION TO THE EUROPEAN UNION ACQUIS

- SOURCES AND PRINCIPLES OF THE EU ACQUIS
- TRANSPOSITION PROCEDURE
- INTER-INSTITUTIONAL COOPERATION AND COORDINATION

The political and strategic determination of the Republic of Macedonia for integration in the European Union has a great impact over the production of laws and secondary legislation in the country, from both qualitative and quantitative point of view. A very important precondition and a challenge on the road towards European Union integration, apart from the fulfilment of the Copenhagen political and economic criteria, also is the approximation of the national legislature to the European Union legislature, i.e. to the *acquis communautaire*.

At present, this process takes place in parallel in all member states due to the continuous and dynamic development of European law and the deepening of the integration of the European Union. Nevertheless, this process is far greater and more complex for the candidate countries whose strategic aim and determination is to become part of the European Union, as it is the case with the Republic of Macedonia.<sup>77</sup>

With the aim of directing and coordinating this extremely important process in a comprehensive and profound manner, several instruments are adopted in the Republic of Macedonia such as:

-  **National Programme for the Adoption of the European Union Acquis (NPAA)** – a document according to which the legislative and the normative activities undertaken by the Government, the competent ministries and other competent bodies and institutions are planned, in the direction of the approximation of the national legislature to the European Union acquis. Apart from the normative, the NPAA also envisages measures directed towards the strengthening of the institutional capacities and ensuring of the

<sup>77</sup> The obligation for approximation to the EU law is included in article 68 of the Stabilization and Association Agreement (Law on ratification of the Protocol for the Stabilization and Association Agreement between the Republic of Macedonia on the one side and the European Communities and its member states on the other side... (Official Gazette of the Republic of Macedonia No. 46/05).

necessary human and financial resources for realization of the outlined short-term and medium-term goals.<sup>78</sup>

- ✚ **Methodology for harmonization of the laws and technical regulations with those of the European Union** – a document adopted by the Government of the Republic of Macedonia in 2000.
- ✚ **Special mechanisms envisaged with the provisions of the Rulebook on the Work of the Assembly and the Rulebook on the Work of the Government** as main bearers of the legislative activity, which are aimed exclusively for more successful approximation of the national regulations to the European Union acquis, such as the correspondent tables and the statement of approximation to the EU acquis.<sup>79</sup>
- ✚ **Decision of the Government** concerning the form of accompanying letter and memoranda, the content and the form of the correspondent tables and the statement of approximation of the national legislation with the EU legislation.<sup>80</sup>
- ✚ **Decision of the Government** for introducing a sign of the EU legislation and of the secondary legislation that is **aligned to the EU legislation**.<sup>81</sup>

In the process of approximation different approaches and instruments of transposition of the European Union acquis to the national legal systems of the member states or the candidate countries are used, which primarily depend on the type and the action of the legal act of the European Union which is subject to transpose. Therefore in this manual the sources and the principals of the European Union law are explained in brief.

## 4.2 What is *acquis communautaire*?

*Acquis communautaire* is a generic term which represents the legal system of the European Union, which contains all the legal rules, the common values and the achievements acquired from the establishment of the Communities, primarily starting from the founding agreements,

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<sup>78</sup> The National Programme for the Adoption of the European Union Acquis (NPAA) was adopted for the first time in 2007 and since then it is revised and adopted by the Government on annual basis. In the NPAA (2010 revision), the normative section includes annual planning which includes adoption of 102 laws and 374 secondary legislation. Source

<http://www.sep.gov.mk/content/Dokumenti/MK/NPAA%20Revizija%202010%20-%20Narativen%20del.pdf>

<sup>79</sup> Article 77, 78 and 79 of the Rulebook on the Work of the Government and the decisions contained in their contents, the form and the manner of completion (Official Gazette of the Republic of Macedonia No. 30/07, 133/07 and 92/10).

<sup>80</sup> Official Gazette of the Republic of Macedonia No. 30/07, 133/07 and 92/10.

<sup>81</sup> Official Gazette of the Republic of Macedonia No. 38/2010.

the legal acts which are related to the institutions of the European Union and the jurisprudence of the European Court of Justice. It is estimated that the body of legal rules of the European Union is composed of over 30.000 legal acts, 10.000 judgments and over 4.000 international agreements, which testifies for its scope and complexity.

#### 4.2.1 Sources of law in the EU

Depending on their legal power and action, among the sources of EU law, a distinction is made between the following types of sources:<sup>82</sup>

- ✚ **Primarily or basic sources of EU law** – the provisions and the principles contained in the founding agreements of the Communities and the Accession Agreements of the new member states.
- ✚ **Secondary sources of EU law** include the unilateral legal acts and rules which are adopted by the EU institutions, such as: 1) **regulations** which are of general applicability, obligatory and have direct effect in all member states, 2) **directives** which are obligatory in view of the result that is to be achieved, while the manner and the form is to be decided by the member states; and 3) **decisions** which are obligatory in their entirety for the entities to which they are referred to and multilateral acts, such as the international agreements.<sup>83</sup>
- ✚ **Additional sources of EU law include the jurisprudence** of the European Court of Justice and the First instance court, the international law and the general legal principles.

There are acts on the EU level which do not have legal and obligatory nature and are considered to be **soft law**. The communications, recommendations and opinions fall into this category as well as the opinions adopted by the institutions of the European Union, “white and green books,” political declarations, resolutions, press releases, action plans, conclusions from summits, etc.

#### 4.2.2 Basic principles of the European Union law

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<sup>82</sup> Source used:

[http://europa.eu/legislation\\_summaries/institutional\\_affairs/decisionmaking\\_process/114534\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/114534_en.htm)

<sup>83</sup> The types of secondary legal acts are regulated by Article 249 of the Treaty on the European Union, which is amended by Article 233 of the Lisbon Treaty, which left out the other instruments arising from the three pillars, as they were: framework decisions, principles and general guidelines, common strategies, common positions, joint actions.

The basic principles of the European Union law are the following: 1) **autonomy** of the legal order, that is independent from the legal systems of the member states; 2) **supremacy** signifies superiority or primacy of the EU law over the national legal systems of the member states, i.e. the legal order is supranational; 3) **direct applicability** means that the provisions are enforced and that no intervention by the bodies of the member states is necessary for their implementation and 4) **direct effect** signifies that the natural and legal persons could directly call upon the rights and duties that stem from the EU legal acts. With the exception of directives, all the legal acts of the EU are directly applicable.

### 4.3 Transposition procedure for the EU law

Approximation with the European Union acquis makes the process of adoption of new legislature and the amending and adding of existing legislature more complex as well as it introduces additional requirements. In order to provide assistance, this manual details out the transposition procedure and it is explained through the following most important steps and points of view:

- 1) Preparatory activities
- 2) Decision on the kind of the regulation that would be used for performing of the transposition
- 3) Transposition rules
- 4) Referencing of the EU legal act
- 5) Preparation of supporting documents

#### 4.3.1 Preparatory activities

Within the framework of the preliminary activities, it is necessary to undertake a deep check and review of the importance of the regulations of the EU due to the fact that EU law is quite often subject to amendments and it is constantly extended and upgraded. The preparations include collecting, reviewing and analysis of all the relevant legal acts of the EU which should be transposed (regulations, directives, decisions, etc. and their codification and updated versions) and their translations into Macedonian language from the database maintained by the Secretariat for European affairs. It is recommended to use the original text of the legal act in one of the twenty-three official languages of the European Union.

In addition, the existing national legislature is compared to the EU legal act in order to determine whether the subject matter is already regulated, completely or partially, it is evaluated whether the manner of regulation and the goals of the national legal norm match those of the EU legal norm or it is a subject matter which has not been regulated at all and it is necessary to adopt a new national act. In this phase, an assessment is also performed to establish whether the subject matter in question is covered by the Stabilization and Association Agreement and whether it is necessary to additionally regulate the matter if it is included in the Agreement.

Finally, an assessment of the priorities and the measures contained in the National Programme for the Adoption of the EU Acquis is made along with an assessment of the annual Programme on the work on the Government in the calendar year, where the quarters and the phases in which the plans for adoption of certain laws and secondary legislation are envisaged.

#### 4.3.2 Decision on the type of regulation that would be used for transposition

The decision on the type of regulation that would be used for performing of the transposition is influenced by the type and the legal character of the legal act of the EU which is subject to transposition as well as the character and the tidiness of the subject matter. In such a way, when it is a question of an area that is not regulated at all, it is recommended that a new law is adopted. If the subject matter is already partially regulated, it is most convenient to perform amendments and addenda of the existing laws, or it may be sufficient to only adopt secondary legislation.

Recommendation: The criterion which has a decisive role in determining whether the provisions of a certain general legal act of the EU should be the **subject of regulation**. Should they envision certain rights and obligations or new competencies for the state administrative bodies, such as for performing of the supervisory function, then they should be transposed in primary legislation, not in secondary legislation.

The first evaluation with regard to whether and what types of secondary acts should be adopted for the purposes of transposition of the legal act of the EU, should be made in parallel, with the drafting of the proposed law that is subject to approximation with the European act.

**Recommendation:** Starting from the legal nature and the scope of the regulation of the secondary legislation, it is recommended that they are used as appropriate instruments of transposition and approximation of the national legislature to the European Union acquis. They are particularly useful instruments in case when it is an issue of very technical and detailed rules envisaged by the EU directives.

#### 4.3.3 Transposition rules

There are certain rules that are specific to the transposition of EU legal acts in the national legal order. The basic rule is that the only secondary sources of EU law are subject of transposition. Further, provisions of the EU law which are directly applicable should not be transposed. Such are the provisions of the regulations and the decisions. However, in certain circumstances the application of the regulations is impossible without the adoption of national legal acts, such as for example, acts that stipulate the competent authority for acting upon supervision or sanctions for noncompliance with the provisions of the regulations are determined. It should be taken into account that before accession, all the European Union legal acts should be transposed. Prior to accession, the provisions should be transposed in the same manner as the directives.

In the process of the transposing, attention should be paid to the systematic approach to avoid double regulation when the Republic of Macedonia would perceptively become a member of the European Union. Namely, in the legal norms, whose provisions transpose the regulations, a provision should be incorporated that they will enter into force upon accession of the Republic of Macedonia to the European Union. Due to the fact that directives are not directly applicable, their provisions should always be transposed into the legal order of the member state to be able to be implemented. When provisions of the directive are transposed, for example, according to which an obligation of preparing reports, delivering information, opinions and assessments to the competent EU bodies or provisions for mutual cooperation are envisaged, the national legal norm should specify the competent authorities, the manner and the procedure of enforcement of the obligation.

There are three main approaches to the transposition of directives. The basic approach is transposing the essence of the directive into the national legal order in accordance with the national nomotechniques and in scope that provides a full implementation of the directives. The second approach consists in rewriting of certain parts of the text of the directive (regulation) in the national legal act. This method is permissible and appropriate in the cases where there are technical and very detailed provisions, such as lists, tables, formulas, etc.



The third approach, which is used as an exception, is by instruction (placing a reference) to the technical supplements of the directives.

**Recommendation:** The basic principle for drafting proposals of laws and other regulations which are used for transposition of EU legislation into the national legislation is to apply the basic nomotechnical rules of the national legal order, while at the same time taking in account the specificity of the structure and the specific terminology of the EU law and the consistency of the European and the national legal system. The provisions of the transposed acts should be clear, simple for understanding, unambiguous and easily applicable in practice for all entities to which they relate.<sup>84</sup>

#### 4.3.4 Referring to the European Union legal act

A clear reference to the directive or the provisions of the EU legal act which is transposed in the national legal order should be placed in the national legal act. Hence, the title of the EU legal act is stated which should be identical to the title of the verified national language version, which is followed by an information for its publication in the Official Journal of the European Union, together with the short title of the act.

The short title of the EU legal act consists of: type of the legal act (regulation, directive, decision), year of adoption of the legal act, number of the act, abbreviation of the Community which adopted the act (EEC, EC, EUROATOM). For example: Regulation 998/2002/EC and Directive 2001/32/EC (Observe the difference in the order of the year of adoption and the number of the act).

#### 4.3.5 Preparation of supporting documents

The proposals of laws, other regulations and acts with which approximation is made, are marked with the European Union flag and are considered as a priority on the Government and Parliamentary sessions and it is necessary to submit data about the original acts of the European Union with full name and number. The proposers submit accompanying letter and memorandum, which, *inter alia*, contain number of the material according to the National Programme for the Adoption of the acquis (EPP number) and they are accompanied by: 1) correspondent tables and 2) statement of approximation with the European Union acquis.<sup>85</sup> The content and the form of the correspondent table and of the statement of approximation

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<sup>84</sup> For the nomotechnical rules, the language and the style of expression in the regulations in detail, please see Section III of this manual.

<sup>85</sup> Article 76 (1) and 77 Rulebook on the Work of the Government.

of the regulations with the European Union acquis are prescribed by the Government by a decision.<sup>86</sup>

#### 4.3.5.1 Correspondent tables

The correspondent tables are primarily used and prepared by the competent ministry and the Government as tools in the process of transposing the EU legislation and in the process of drafting new legislation or amendments to the existing one. The correspondent tables are available and are prepared in two invertible forms:

**1) Form MKD-EU** –the provisions of the draft national norms are used as points of departure and the appropriate legal acts of the EU are listed (regulation, directive, decision) which are transposed with it in the national legal order. This correspondent table is completed when the text of the draft regulations is drafted by the authorized proposer.

**2) Form EU-MKD** - the provisions of the EU legal act (regulation, directive, decision) are used as a starting point and the provisions of the relevant national legal acts where they are transposed are listed. This table shows which EU legal act is transposed in which national regulation, in which article, whether the transposition is complete or partial and which are the reasons according to which the transposition is not completely performed. It is prepared after the text of the draft law or the secondary legislative act is completed and it is sent to Government procedure.

#### 4.3.5.1 Statement of approximation of the regulation to the European Union acquis

The statement of approximation of the draft of the national regulation with the European Union acquis is an instrument which is used to evaluate the degree to which the transposition brings about approximation with the legal act of the European Union, that could be complete, partial or impartial approximation. This kind of statement is completed for the new regulations as well as for the amendments and addenda to the regulations in which the transposition of the European Union legal acts is performed. Also, in the statement of approximation it is indicated which source of translation has been used: MK1, MK2, MK3 or MK4.

The statement of approximation contains sections with data on the proposal of the national regulation, on the harmonization of the proposal of the regulation to the Stabilization and Association Agreement, on the harmonization with the sources of EU law, on the translation

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<sup>86</sup> Official Gazette of the Republic of Macedonia No. 30/07, 133/07 and 92/10.

of the sources of EU law and the legal act, on the acquired professional assistance and opinions in the drafting of the proposed regulation, as well as date and signature by the head of the competent sector and by the Minister too.

#### **4.4 Interinstitutional cooperation and coordination**

The transposing of an EU legal act often requires normative measures and interventions in many areas and departments which are covered by the different ministries, state administration bodies or other bodies and institutions. Therefore, in the process of approximation of the national legislature to the EU law it is necessary to establish and develop an inter-institutional cooperation and close coordination between the institution that proposes and the institution that adopts the act and all other relevant bodies and institutions.

This mutual coordination and cooperation should be established even in the earliest stages of preparation of the theses and the proposal of the norm. In this sense, the authorized proposer submits the proposal of the law or the regulation with the accompanying documents simultaneously to the General Secretariat, the Ministry of Finance, the Legislative Secretariat and the Secretariat for European Affairs.

The cross-sector coordination and cooperation is primary concern of the General Secretariat of the Government of the Republic of Macedonia. The Ministry of Finance considers and provides an opinion on the proposal of the regulation in view of its financial implications. The Secretariat for European Affairs evaluates the completeness of the correspondents tables, the statement and the documentation from a formal-legal point of view, while the Legislative Secretariat makes substantial assessment and provides an opinion about the degree of approximation of the proposed national legal act with the EU legal act, with the international agreements and the national legal order.<sup>87</sup>

Due to the importance of European integration, these legislative instruments on the compliance with the European Union acquis should be available and in their preparation the highest legislative institution, all concerned parties, the public and the media should be consulted. The transparency and inclusiveness of this process represents a guarantee and a key factor on which the success, the quality and the dynamics of the approximation of the Republic of Macedonia to the European Union depends.

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<sup>87</sup> Article 40 of the Law on the Government of the Republic of Macedonia.

- 1. Classification of secondary legislation**
- 2. Graphic presentation of the procedure for drafting, adoption and monitoring of secondary legislation**
- 3. Practical nomotechnical example**

## SECONDARY LEGISLATION CLASSIFICATION

	Type of secondary legislation	Competent body	Legal effect	Publication	Subject of regulation
1.	<b>Ordinance</b>	The Government of the Republic of Macedonia	erga omnes	Mandatorily published in the Official Gazette	Issues in the competence of the Assembly, in case when there is no possibility of its assembling at a state of war and emergency
2.	<b>Regulation</b>	The Government of the Republic of Macedonia	erga omnes	Mandatorily published in the Official Gazette	It regulated the enforcement of laws, establishes the principles for the internal organization of the ministries and the other state administrative bodies and another relations
3.	<b>Decision</b>	The Government of the Republic of Macedonia or other bodies	erga omnes	Mandatorily published in the Official Gazette	It refers to specific issues and measures for enforcement of the laws, it establishes professional and other services for the Government, as well as shared services for the Government, the Ministries and the other bodies of the state administration

4.	<b>Rulebook</b>	The Ministries, the state administrative bodies and the independent regulatory bodies	erga omnes	Mandatorily published in the Official Gazette, except if it is a case of an internal act	Certain provisions of the laws and other regulations are established and developed for their execution
5.	<b>Order</b>	The Ministries, the state administrative bodies and the independent regulatory bodies	erga omnes	Mandatorily published in the Official Gazette	It orders or prohibits the action in a certain situation which has general importance in the execution of the laws and other regulations
6.	<b>Instruction</b>	The Government of the Republic of Macedonia, the Ministries, the state administrative bodies and the independent regulatory bodies	erga omnes	Mandatorily published	It prescribes the manner of work of the Ministries, the state administrative bodies and the independent regulatory bodies, it prescribes the manner of acting in the execution of certain provisions of the laws and other regulations
<b>GENERAL LEGAL ACTS</b>					

7.	By-law	Councils of local self-government units and the City of Skopje, university and independent organizations which perform public competences	erga omnes	Published in the appropriate official journal or by other means	Issues related to an organization, the manner of work and the realization of the basic function are regulated.
<b>OTHER REGULATORY INSTRUMENTS</b>					
8.	<b>Plan</b>	The Government of the Republic of Macedonia, the Ministries, the state administrative bodies and the independent regulatory bodies	erga omnes	Published if it is decided by the body that adopts it	The issues of importance to the execution of the laws are determined and detailed as well as other regulations for which deadlines and dynamics needs to be outlined
9.	<b>Programme</b>	The Government of the Republic of Macedonia, the Ministries, the state administrative bodies and and the independent regulatory bodies	erga omnes	Published if it is decided by the body that adopts it	The issues of importance to the execution of the laws are determined and detailed as well as other regulations for which deadlines and dynamics needs to be outlined
10.	<b>Methodology</b>	The Government of the Republic of Macedonia, the Ministries, the state administrative bodies and the independent regulatory bodies	erga omnes	Published if it is decided by the body that adopts it	The manner of acting of the Ministries and the state administrative bodies in a specific area of their jurisdiction is regulated and aligned

<b>Tariffs, including Decisions on Price Lists and Tariffs</b>	The Ministries, the state administrative bodies and the independent regulatory bodies	erga omnes	It is published	The fees for compensations are determined for certain services provided by the public companies or the organizations that perform public authorizations, as well as the amounts of awards for performing certain tasks in accordance with law
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**OTHER ACTS WHICH ARE NOT SECONDARY LEGISLATION**

<b>12.</b>	<b>Conclusion</b>	The Government of the Republic of Macedonia	inter partes	Generally it is not published but it is possible if it is decided by the body that adopts it	Views and opinions are taken on issues that are subject to consideration at the Government session, including on the proposals of laws and other regulations; issues related to the internal organization and the relations with the Government are decided; tasks of the Ministries and the state administrative bodies and tasks of the Government services are determined
<b>13.</b>	<b>Principle Positions and Guidelines</b>	The Government of the Republic of Macedonia	inter partes	Not published	The manner of work of the Ministries, the other bodies of the state administration and the administrative organizations in the execution of laws and other regulations is determined; the deadlines for the adoption of acts for which those authorities are empowered are determined and submitting of reports on certain issues, etc.
<b>14.</b>	<b>Mandatory Instructions</b>	The Ministries, the state administrative bodies	erga omnes	Not published	Refer to the manner of execution of the matters which are entrusted to public companies and other legal and natural persons as public competencies as well as the Units of the local self-governments and the City of Skopje



<b>15.</b>	<b>Internal acts like:</b> Rulebooks, Rules of Procedure, Decisions	The Ministries, the state administrative bodies and the independent regulatory bodies	inter partes	Not published	Organizational and procedural issues are regulated, which are exclusively related to management, performance and action of the bodies that adopt them
<b>16.</b>	<b>Internal Organization Act</b>	The Government of the Republic of Macedonia, the Ministries, the state administrative bodies and the independent regulatory bodies	inter partes	Not published	The internal organizational setting and the basic structure of the bodies that adopt them, is regulated
<b>17.</b>	<b>Jobs Description Act</b>	The Government of the Republic of Macedonia, the Ministries, the state administrative bodies and the independent regulatory bodies	inter partes	Not published	The titles and the number of working positions into the internal organizational structure are regulated and the description and the scope of working position is determined

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**Graphic overview of the procedure for drafting, adoption and monitoring of secondary legislation**