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OPINION ON THE LAW OF ARMENIA ON REGULATORY LEGAL ACTS

ARMENIA

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Based on an unofficial English translation of the Law.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Law on Regulatory Legal Acts of Armenia (hereinafter "Law") regulates the whole process of developing, drafting, consulting and discussing, scrutinizing, amending, adopting and publishing of regulatory legal acts, as well as assessing their effect, a subject matter that in many other countries is regulated by documents not having the force of law. The Law incorporates recommendations made in the ODIHR Assessment of the Legislative Process in the Republic of Armenia of 2014,[1] as well as during the subsequent workshops with relevant stakeholders. At the same time, the Law provides room for improvements with respect to elements that are over-detailed, such as legal drafting, and short time limitations and processes of public consultations and regulatory impact assessments.

More specifically, and in addition to what is stated above, ODIHR makes the following key recommendations in order to enhance the Law and to ensure its full compliance with international human rights and democratic governance standards and recommendations and OSCE human dimension commitments:

A. to state in the Law that public consultations and regulatory impact assessments as a rule apply to draft laws that are of high importance or impact on the population (irrespective of initiator) rather than limiting the application of these requirements to legislative initiatives of the Government only; [paras. 22 and 54]

B. to reflect clearly in Article 2 of the Law the hierarchy of legal and regulatory acts, along with more specifics on the individual types of legal acts, which bodies are authorized to pass them, the generality and application of the laws and their scope; [para. 29]

C. regarding public consultations:

1. to introduce a distinction between laws that effect on different stakeholder groups or individuals on the one hand, and laws that merely contain amendments to the *status quo*, or that have no significant impact or consequence for individuals or certain bodies or entities, in which latter case, public consultations may not be necessary; [para. 38]

2. to outline criteria where the public discussion may be omitted, while introducing an obligation to provide detailed justification of the need for accelerated law-making; [para. 50]

1 See OSCE/ODIHR Assessment of the Legislative Process in the Republic of Armenia.

D. regarding regulatory impact assessment and expert examination:

1. to provide, in Chapter 3, general statements to ensure that draft laws prepared by deputies or factions of the National Assembly undergo a regulatory impact assessment; [paras. 55-56]

2. to consider limiting regulatory impact assessments to laws that are of high importance or impact to the population, as a whole or in part; [para. 54]

3. to reconsider the implementation of regulatory impact assessments in situations where laws are envisaged or proposed by non-governmental actors with a view to have them conduct their own legislative impact assessments, or to seek outside support and amend Article 5.2 accordingly; [para. 56]

4. to review existing time-limits including the current 15 day time period set out in Article 4(2) and Article 6(6) of the Law for the expert examination of the drafts, and to replace it with a longer, more reasonable, time period that will allow more in-depth scrutiny; [paras. 40 and 58]

E. regarding legislative technique:

1. to review the manner of providing legislative drafting guidance to those engaging in drafting legislation, both in terms of whether such guidance should be located in a law or in a drafting manual, and in terms of what type of guidance would help ensure that legislation is easy to understand, clear and concise in terms of language, structure and contents; [paras. 16-17 and 65-70]

2. to introduce improvements to legislative technique, enhance the capacity of legislative drafters and clarify the role of the different actors, involved in the drafting process; [para. 75] and

F. to amend Article 25 by adding a clear obligation of responsible bodies to keep legislation up to date on the unified website. [para. 83].

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing legislation to assess their compliance with

international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 12 September 2019, the Chair of the Standing Committee on State and Legal Affairs on behalf of the National Assembly of the Republic of Armenia invited the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") to prepare an up-to-date assessment of the law-making process in the Republic of Armenia. It also requested to review the National Assembly's Rules of Procedure and the Law on Regulatory Legal Acts (hereinafter "the Law").
2. On 27 September 2019, the ODIHR responded to this request, confirming the Office's readiness to prepare, among other, the legal opinion on the compliance of the Law with international human rights and democratic governance standards and OSCE human dimension commitments.[2]
3. This Opinion was prepared in response to the above request. The ODIHR conducted this assessment as part of its mandate to assist OSCE participating States in the implementation of key OSCE commitments in the human dimension.[3]

II. SCOPE OF REVIEW

4. The Opinion covers only provisions of the Law submitted for review. Thus, limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the legislative process in Armenia. It must further be read together with ODIHR's Opinion on the Rules of Procedure of the National Assembly of Armenia[4] as well as the upcoming assessment report of the legislative process of Armenia.[5]
5. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the Law. The ensuing recommendations are based on international standards, norms and parliamentary and constitutional practices as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate the adoption of any specific country model; it rather focuses on providing clear information about applicable international standards, while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution, since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

2 CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE*, 3 October 1991, para. 18.1.
3 Especially, CSCE/OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 3 October 1991, para. 18.1, which requires legislation to be adopted "*as the result of an open process reflecting the will of the people, either directly or through their elected representatives*". OSCE participating States have also committed to ensure that legislation will be "*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*" (1990 Copenhagen Document, para. 5.8).
4 Upcoming, that will be available at <https://legislationline.org/legalreviews?q=lang%3Aen%2Csort%3Apublication_date%2Ccountry%3A3%2Cpage%3A1%2Ctype_main%3A44>.
5 The report will be available at <https://legislationline.org/assessments>.

6. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW")[6] and the 2004 OSCE Action Plan for the Promotion of Gender Equality[7] and commitments to mainstream a gender perspective into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity[8] perspective.[9]

7. This Opinion is based on an unofficial English translation of the Law commissioned by ODIHR, which is annexed to this document. Errors from translation may result. The Opinion is also available in Armenian. In case of discrepancies, the English version shall prevail.

8. In view of the above, ODIHR would like to make mention that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective legal acts or related legislation pertaining to the legal and institutional framework regulating the legislative process in Armenia in the future.

III. ANALYSIS AND RECOMMENDATIONS

1. Relevant International and Regional Standards and OSCE Commitments

9. As noted, the Opinion has been prepared in light of international human rights and democratic governance standards and recommendations as well as OSCE human dimension commitments. It is therefore worth recalling that UN Human Rights Committee in its General Comment No. 25 (1996) noted that the right to participate in public affairs, voting rights and the right of equal access to public service as reflected in Article 25 of the International Covenant on Civil and Political Rights (ICCPR)[10] requires that *"[c]itizens also take part in the conduct of public affairs by exerting influence through public debate*".[11] The OSCE commitments require legislation to be adopted "*as the result of an open process reflecting the will of the people, either directly or through their elected representatives*" and that legislation is "*adopted at the end of a public procedure*".[12] Further, the Rule of Law Checklist adopted in 2016 by the Venice Commission provides that the process for enacting laws should be transparent, accountable, inclusive and democratic.[13]

10. OSCE participating States also specifically committed to ensure equal opportunity for the participation of women in political and public life, respect for the right of persons

6 See the UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Armenia acceded to the Convention on 13 September 1993.
7 See the OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
8 For the purpose of this Opinion, a guiding definition of "diversity" encompasses both "workplace diversity" (i.e., fair representation in the National Assembly and other public bodies and staff of the different groups of society within a setting that recognizes, respects and reasonably accommodates differences, thereby promoting full realization of the potential of all its members and employees) as well as respect for and promotion of diversity in its procedures and practices, and in the outcomes of the Assembly and other public bodies' work. This does not preclude other diversity considerations, as contextually appropriate and possible, to be taken into account by the Assembly and other public bodies when reforming their working environment and work procedures, and more generally when performing all their functions.
9 See the OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
10 UN International Covenant on Civil and Political Rights (hereinafter "ICCPR"), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Republic of Armenia acceded to the ICCPR on 23 June 1993.
11 UN Human Rights Committee, *General Comment No. 25*, 1996, para. 8.
12 OSCE, Moscow Document of 1991, para. 18.1 and CSCE Copenhagen Document (1990).
13 Council of Europe, European Commission for Democracy through Law (Venice Commission), *Rule of Law Checklist*, p. 22 (under Section A, Chapter 6).

belonging to national minorities to effective participation in public affairs, to take special measures to enhance the participation of Roma and Sinti, especially of Roma and Sinti women, in public and political life and to "*take steps to ensure the equal opportunity of [persons with disabilities] to participate fully in the life of their society [and] to promote the appropriate participation of such persons in decision-making in fields concerning them*". The *Ljubljana Guidelines on Integration of Diverse Societies* (2012) of the OSCE High Commissioner on National Minorities (HCNM) note that *"[d]iversity is a feature of all contemporary societies and of the groups that comprise them*" and recommend that the legislative and policy framework should allow for the recognition that individual identities may be multiple, multi-layered, contextual and dynamic.

11. A number of other documents of a non-binding nature elaborated in various international and regional *fora* are useful as they provide more practical guidance and examples of practices to enhance the gender- and diversity-sensitiveness of parliaments,[14] such as for example, the Inter-Parliamentary Union (IPU) 2017 Plan of Action for Gender-sensitive Parliaments.[15]

2. BACKGROUND AND GENERAL COMMENTS

12. The Law on Regulatory Legal Acts was passed in March 2018 and replaced the 2002 Law on Legal Acts. It has since undergone amendments in June 2018, June 2019, January and April 2020, as well as on 19 April 2021. The Law has a wide scope, in that it "*regulates relations pertaining to the public discussion, regulatory impact assessment, expert examination, promulgation, entry into force, effect of, amendment, supplement to and termination of a legal act*", as well as to the application, interpretation, and clarification of norms in legal acts in cases of contradictions and legislative gaps, and the rules of legislative technique (Article 1.1 of the Law).

13. Generally, the very existence of the Law is positive, as it regulates a subject matter, which in many other countries is regulated by convention, practice, unwritten rules and understandings, case law and non-official documents not having the force of law. In Armenia, the aspects of the law-making practice mentioned are gathered together in one place, and thus made easier to find, as well as being imbued with the authority of law, which should ensure greater legal certainty.

14. The Law further provides a basis for what may be called "*legislative due process*" – it is designed to ensure proper consultation, deliberation, debate and rationality in law-making. Regulating issues such as public consultations and regulatory impact assessment in a law is beneficial for ensuring an obligatory nature of these tools and techniques, as well as their usage in practice. However, these legal provisions will not suffice *per se*, and will need to be supplemented with relevant guidelines with examples and checklists that will assist key stakeholders and decision-makers in applying them in practice.

14 See for example ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities*, 2019, including a checklist with further detailed guidance on pp. 110-117; Inter-Parliamentary Union (IPU), *Parliament and Democracy in the Twenty-First Century: a Guide to Good Practice*, 2006; IPU and UNDP, *Diversity In Parliament: Listening To The Voices Of Minorities And Indigenous Peoples*, 2010. See for further reading, e.g., regarding the diversity-sensitiveness of the UK House of Commons, Professor Sarah Childs, *Report – The Good Parliament* (2015). See also, IPU, *Plan of Action for Gender-sensitive Parliaments* (2012 & 2017).

15 IPU, *Plan of Action for Gender-sensitive Parliaments* (2012), pp. 8-9, which defines a gender-sensitive parliament as *"… a parliament that responds to the needs and interests of both men and women in its composition, structures, operations, methods and work. Gender-sensitive parliaments remove the barriers to women's full participation and offer a positive example or model to society at large. They ensure that their operations and resources are used effectively towards promoting gender equality. […] A gender-sensitive parliament is therefore a modern parliament; one that addresses and reflects the equality demands of a modern society. Ultimately, it is a parliament that is more efficient, effective and legitimate"*.

15. It is thus welcome that Articles 4(6) and 5(3) of the Law state that additional procedures on public consultations and on the criteria and procedure for regulatory impact assessments will be provided by the Government. Such guidance should include detailed information on when these tools are required, what they aim to achieve, and how they may be applied. **Ideally, such guidance should be provided to all parts of the executive, to ensure that the approach to both tools is the same. The National Assembly could consider developing similar guidelines with respect to both draft laws that are developed within the National Assembly, and those submitted to it.**

16. With respect to the provisions on legislative technique (Chapter 4 of the Law), it may be true that officials are more likely to follow a law on formal legistics than informal guidance. Nevertheless, given that laws are usually quite broad and at the same time not always very flexible or adaptable to new situations, it is doubtful whether laws on legislative technique will in fact guarantee a better quality legislation. Indeed, strict rules on drafting tend to ossify the development of the skills of individual drafters and force automatic compliance with drafting rules, which are not always appropriate in all circumstances. Furthermore, the automatic application of strict rules on drafting can sometimes result in poor quality legislation.

17. **The legal drafter may consider removing Chapter 4 from the Law, and instead incorporate these and other rules on legislative technique in a unified drafting manual, supplemented with examples and other forms of more detailed, hands-on guidance.** A legal provision in the Law could introduce an obligation on the Government to prepare and keep updated such a legislative drafting manual. There should also be an obligation upon those preparing legislation (including deputies of the National Assembly) to have regard to that manual. Such a manual should apply to all types of regulatory acts, with a similarly broad application as Chapter 4 of the Law, which, according to Article 1.2 of the Law, extends to individual and internal legal acts as well. The consequences of non-compliance with these rules could in turn be addressed in the Law (e.g. rejecting or sending back the draft to the relevant body to revise the draft law). An option in this respect could be to have a body either within the government or the National Assembly or preferably both but working together to review and ensure compliance and consistency in the drafting process.

18. While preparing its 2014 Assessment on the Legislative Process in Armenia (hereinafter "the 2014 Assessment"), ODIHR was informed about a governmental legislative manual that had been prepared in 2012, although not all legal drafters appeared to take it into account when preparing draft laws and similar documents. At the time, ODIHR noted that if all legal drafters would adhere to the manual when preparing laws, this would help ensure a more consistent quality of legislation overall.[16] **Ideally, to save time and effort, the 2012 manual could be reviewed and perhaps, if considered useful, serve as a basis for a future legal drafting manual.**

19. According to Article 1.3 of the Law, Chapters 2 and 3, dealing with public consultations and regulatory impact assessment respectively, extend neither to legislative initiatives prepared by deputies or factions of the National Assembly, nor to draft laws submitted upon a popular initiative made up of at least 50 000 citizens with voting rights (Article 109.6 of the Constitution). **While the wording of both chapters consequently addresses only draft laws prepared by the Government, it may be useful to expand the scope of these chapters, so that they also apply to non-governmental legal drafters, at least those from within the National Assembly.**

16 OSCE/ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, para. 54.

20. In particular, Article 3.1 of the Law specifies that all primary laws are subject to public discussion (except for draft laws on ratification or accession to an international treaty), while Article 3.2 states that for other regulatory acts, this is a matter for the discretion of the body developing or adopting the act. When read together with Article 1.3, this would appear to apply to only governmental draft laws.

21. Such limitation, however, creates a system in which draft laws prepared by the Government must comply with stricter requirements than those authored by parliamentary deputies or factions. This leads to not only severe qualitative differences of legislation in terms of public acceptance and practicability, but also creates a system of double standards in law-making. Such different standards of legislation also undermine the very purpose of Article 3(1), as Government officials could easily circumvent the requirements for government draft laws by asking deputies or factions to submit draft laws that they want to remove from public scrutiny.

22. **Instead of limiting the application of Article 3(1) to the Government, it would be preferable if general statements as to when public consultations should apply to draft laws. Relevant guidance on how such consultations may be done in practice could then be drafted with more specific checklists, recommendations and examples that could be tailor-made for the Government and for the National Assembly respectively**.

23. Similar considerations apply with regard to Chapter 3, at least insofar as it deals with regulatory impact assessments. Also here, a common approach should be adopted, to ensure that draft laws prepared by deputies or factions of the National Assembly undergo a regulatory impact assessment.

RECOMMENDATION A.

To state in the Law that public consultations and regulatory impact assessments as a rule apply to draft laws that are of high importance or impact on the population (irrespective of initiator) rather than limiting the application of these requirements to legislative initiatives of the Government only.

3. MAIN CONCEPTS OF THE LAW

24. Article 2 of the Law defines the different kinds of regulatory acts. Regulatory legal acts are defined as "*written legal acts […], which contain […] mandatory rules of conduct for an uncertain number of persons*", regardless of whether they are passed by "*the people of the Republic of Armenia*", i.e. the National Assembly or the people via referendum, or by bodies or officials provided for in the Constitution (para. 1 (1)).

25. Article 2.1 (2) defines legislative acts as acts adopted by the National Assembly, namely the Constitution, constitutional laws and laws. Secondary regulatory legal acts, on the other hand, are regulatory legal acts adopted by bodies provided for by the Constitution in cases where they are authorized to do so by law, based on the Constitution and laws, and for the purpose of implementing laws (Article 2.1 (3)).

26. Further, Article 2.1 (4) defines a code as a "*law which consolidates all or main norms of a whole branch of law or a separate part thereof, regulating homogenous public relations*". It is noted that the term "law" is not defined in Article 2 – it would thus be more accurate to speak of a code as a particular kind of "a regulatory legal act".

27. It is noticeable that the current Law, as opposed to the previous Law on Legal Acts of 2002, lists the different types of normative acts but does not clarify the normative hierarchy of laws. A normative hierarchy stipulates establishing which laws take precedence over others.

28. According to Article 5(1) of the Armenian Constitution, the Constitution has supreme legal force. Article 5(2) further states that "[l]aws shall conform to the constitutional laws, and sub-legislative normative legal acts shall conform to the constitutional laws and laws". Constitutional laws, as defined in Article 103.2, require a three-fifths majority of the total number of deputies to be adopted (as opposed to regular laws, which are passed by simple majority).

29. It is noted that Chapter 2 of the previously applicable 2002 Law on Legal Acts contained provisions describing, among others, the Constitution and laws, along with information on the bodies that pass them, the manner in which they are passed, and their status within the hierarchy of laws, though at times in an overly detailed and lengthy manner. **It would be useful, when implementing the general rules set out in Article 5 of the Constitution, to reflect more clearly the hierarchy of legal and regulatory acts in the Law, along with more specifics on which bodies are authorized to pass each individual type of legal acts and respective procedure, the generality and application of the laws and their scope**.

30. Article 2.1 (9) of the Law defines a regulatory impact assessment as an "*analysis of changes possible as a result of the adoption of a regulatory legal act*", and with respect to draft laws on the state budget, "*information presented by the Budget Message of the Government*". This is a vague definition that does not take into consideration the full potential and complexity of regulatory impact assessments. Rather, regulatory impact assessment is "*a systematic, comparative appraisal of how proposed primary and / or secondary legislation might affect stakeholders, society, economic sectors and the environment*"[17] or possible other areas (see section 5 below).

31. As stated in the 2014 Assessment, regulatory impact assessments are an important tool to ensure good quality legislation throughout the entire cycle of policy-making, starting with a proper in-depth problem analysis and ending with the evaluation and monitoring of enacted legislation.[18] After reviewing different options, evidence-based techniques are then applied to select and justify the best option to resolve the identified problems. In this light, it might be more efficient and cost-effective to conduct impact assessments early on at the time of discussing policy options,[19] before beginning with the drafting process. In cases where drafting is the first step, rather than a general open-ended policy discussion, then the chosen policy may well be wrong, leading to potentially ineffective regulatory measures.[20] Furthermore, drafting a law before engaging in the regulatory impact assessment process creates a bureaucratic and political momentum focused on enacting a law, which means that non-legislative solutions will habitually be discarded

17 See Stephan Naundorf and Claudio Radaelli, *Regulatory Evaluation Ex Ante and Ex Post: Best Practice, Guidance and Methods*, in Legislation in Europe, 2017

18 ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, para. 47.

19 Organization for Economic Co-operation and Development (OECD): *Recommendation of the Council on Regulatory Policy and Governance*, 2012, Recommendation I.4.

20 See also ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, para. 47.

from the outset; conducting regulatory impact assessment after the decision to legislate has been made will also reduce the effectiveness of such tool.

32. **It is thus advisable to expand the general definition of regulatory impact assessment set out in Article 2.1 (9) to reflect its nature as an open-ended policy discussion on different possible solutions to ongoing challenges or problems, while also not discounting non-legal responses.** The above considerations may be of assistance in this respect. This process can (and ideally should) already begin before a draft law has been prepared and **should also involve an *ex post* evaluation of legislation, to see how it is being implemented in practice**.

33. The second part of the definition under Article 2.1 (9) should be adapted accordingly; as it stands, it is unnecessarily vague, as the mere fact that information is included in the budget message of the Government does not automatically mean that it constitutes a regulatory impact assessment.

RECOMMENDATION B.

To reflect clearly in Article 2 of the Law the hierarchy of legal and regulatory acts, along with more specifics on the individual types of legal acts, which bodies are authorized to pass them, the generality and application of the laws and their scope.

4. PUBLIC CONSULTATIONS

34. Public discussions of legislation are governed by Chapter 2 of the Law.[21] According to Article 3.1, draft legislative acts shall be subject to public discussion, except for draft laws on ratification of or accession to an international treaty. Other draft regulatory legal acts may undergo public discussions at the initiative of the body developing or adopting the draft.

35. The definition of public discussion under Article 2.1 (10) of the Law describes the nature and purpose of public discussion quite well, while remaining sufficiently concise. Thus, public discussion is described as a process for raising public awareness of draft regulatory acts, as well as for revealing public opinion, receiving comments and recommendations on draft regulatory acts and summing them up, for the purpose of ensuring the participation of society in the law-making process, as well as the transparency and accountability of the process. This definition encompasses a proper sense of engagement with and participation of the public in the process of making legislation. At the same time, though this may be a matter of translation, it may be more appropriate to use the term 'consultation' rather than 'discussion', since consultation implies a greater involvement of and impact of the public voice, which goes beyond mere discussions.

36. The need to consult on draft laws and policies derives from the overall need for transparency and good governance in public institutions, but also allows individuals and the wider public to participate in public affairs.

21 The procedure for organizing and holding public discussions is set out in Decree N 1146, 10 October 2018

37. Consultations is one of the means of interacting with the public (in addition to information-sharing and participation, which implies greater involvement), and involves interacting with interested or affected groups, to collect information that will facilitate the preparation of quality legislation.[22] Consultations, especially if they start at an early stage of the policy and legislative process, may contribute to gather other points of view, and help the legal drafters prepare a law that will ideally take into consideration the (possibly conflicting) interests of different stakeholders.[23] Meaningful consultations that are properly organized and conducted are important as they help avoid potential gaps in the proposed regulation. Such gaps are a real danger if stakeholders' legitimate interests are overlooked or not assessed in a consistent way.[24] This also includes ensuring that women and men have equal opportunities to make their views known on draft laws (as they may be affected differently), as well as minority and other groups.

38. The wording of Article 3 seems to imply that all government draft laws (insofar as they are primary laws) must undergo public discussions and that the latter are limited to governmental draft laws only. Given the efforts that go, or should go, into conducting such consultations, it may be worthwhile **to introduce some sort of distinction here between laws that have effects on different stakeholder groups or individuals, and laws that merely contain minor amendments to the *status quo*. In the case of the latter, or if there is no significant impact or consequence for individuals or certain bodies or entities, public consultations may not be necessary**.

39. Article 4 contains certain requirements for public 'discussions'. Paragraph 2 specifies that public discussions must be held for a period of at least 15 days. While it is generally welcome that Article 4 contains a minimum time requirement for public consultations, this minimum may not be sufficient to allow for in-depth and meaningful consultations, especially regarding lengthy or complex pieces of legislation. Indeed, in a 2017 comparison of different minimum consultation periods across Europe, these minimum periods ranged from 30 days to 12 weeks. For European Union countries, the average lays between eight and twelve weeks.[25]

40. In its 2014 Assessment, ODIHR had generally expressed concern regarding the tight deadlines governing the law-making process, both at the governmental, i.e. pre-parliamentary, and at parliamentary stages, which were considered detrimental to increased public input, and therefore to more effective scrutiny of draft legislation.[26] Bearing in mind that traditionally, the rate and frequency at which new laws are adopted has been quite high in Armenia,[27] allowing for more time for the preparation of draft laws in general, and for public consultations in particular, may lead to more effective consultations, and thus to better quality legislation. It is recommended **to review the current 15 days' time period set out in Article 4 para. 2, with a view to allowing more detailed scrutiny of draft laws and more meaningful consultations**.

41. Articles 4.3 and 4.4 stipulate that public discussions shall be held by "promulgating" (presumably this implies some sort of publication) the draft regulatory act and the justification for its adoption, while at the same time submitting these documents to interested bodies; the results of holding public discussions and the draft regulatory act elaborated based on consultations must likewise be published. These are important

22 OECD: *Background Document on Public Consultations*, 2006, p. 1.
23 OECD: *Background Document on Public Consultations*, 2006, p. 2. See also ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, para. 27.
24 ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, par 27.
25 Felix Uhlmann and Christoph Konrath: 'Participation', *Legislation in Europe: A Comprehensive Guide for Scholars and Practitioners* (Hart 2017).
26 ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, para. 39.
27 ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, para. 18.

considerations when organizing consultations, for which transparency is one of the main prerequisites.

42. In addition to requiring the publication of all relevant documents and materials pertaining to a draft law undergoing consultations, **it is important that the consultation system include some sort of feedback mechanism**. This will provide information to those participating in the consultations on which comments were taken into account when revising the draft law, and which were not (and why not).[28] Such a system will enhance transparency and trust in the process, and will encourage different stakeholders, including civil society, to participate in future consultation events.

43. Summaries of consultations held on individual draft laws and their outcomes should also be part of the accompanying documentation submitted to the National Assembly along with the draft law – Article 65 of the Rules of Procedure of the National Assembly (hereinafter "Rules of Procedure") should be expanded accordingly. While it is welcome that Article 4 para. 5 states that the Government may return a draft law that has not undergone public consultations to the competent submitting body, the National Assembly should also have this possibility. Currently, Article 65 para. 2 (1) states that the Chairperson of the National Assembly may reject submitted draft laws for formal reasons – this should likewise be possible if they are not accompanied by a proper summary of public consultations, their results, and how these have factored into the draft law at hand.

44. According to Article 4.6, the procedure for organizing and holding public discussions shall be prescribed by the Government. This is positive, as it is important that the quite basic provisions found in Chapter 2 are supplemented with additional guidance on different ways of consulting with counterparts, and which ways are likely to be most productive in which circumstances. Moreover, such guidance should provide practical advice on how to conduct proper outreach to ensure that all relevant counterparts are aware of the consultation, including groups promoting women's rights, persons with disabilities, minority groups, and others (as merely posting draft legislation online will rarely be effective by itself). To ensure the inclusiveness of public consultations, the legal drafters should also diversify the structures, methods, mechanisms, tools and types of public consultations, to reach out to a wider audience, and not limit them to the use of online tools, in order not to exclude certain persons or groups.[29] Suggestions on how to facilitate and enhance stakeholder responses by asking specific, pointed questions would also be useful in this context, as would templates indicating what feedback should look like, and where it should be sent.

45. On a general note, to ensure positive results, it may be useful to conduct public consultations early on, even before a draft law is in place, to assess various different policy solutions for their practical usefulness and implementability.[30] Consultations should, especially where draft laws are complex or controversial, ideally take place at various stages of the legislative process, as a draft policy evolves into a draft law, and as this draft law undergoes various amendments and additions. Since numerous draft laws change quite substantially during the course of the legislative process, it is essential that all versions of the draft law are shared with relevant stakeholders and interest groups, to ensure that new additions that aim to resolve one matter do not end up creating new

28 See e.g., ODIHR *Recommendations on Enhancing the Participation of Associations in Public Decision-making Processes* (2015), para. 16.
29 *Ibid.* para. 10 (2015 ODIHR Recommendations).
30 See similar recommendations in *ODIHR Assessment of the Legislative Process in the Republic of Armenia*, October 2014, para. 30.

difficulties. These types of insights should also factor into the Government's procedure and further guidance.

46. Finally, parliaments usually involve stakeholders and the wider public by holding public hearings to debate different aspects of draft legislation; in the Rules of Procedure, parliamentary hearings are governed by Article 125, with further detail provided in XXI of the Work (Operational) Procedures of the National Assembly. However, the National Assembly may also decide to conduct other forms of public consultation – it may thus also be worthwhile **for the National Assembly to prepare some form of internal guidance on holding public consultations that would also centre on transparency, timeliness, outreach to all stakeholders, summarizing input received, and providing feedback to counterparts**.

47. The most recent amendments to the Law introduced on 19 April 2021,[31] *inter alia*, regulate the public discussion of draft government decisions on declaring martial law or state of emergency and related draft legal acts. In particular, Article 27.1(1) provides that the aforementioned draft decisions of the Government, as well as [*inter alia*] the regulatory legal acts conditioned by martial law and state of emergency "*are not subject to mandatory expert examination and public discussion*." Moreover, such legal acts – upon initiatives of the bodies drafting or adopting such legal acts – "*can be submitted for public discussion within the time-limits defined by these bodies*".

48. Overall, states of emergency imply a situation marked by the need for quick reactions to live-endangering circumstances, which may be due to a pandemic, a natural disaster, an extensive economic crisis, or to a war or armed conflict, or large-scale simultaneous terrorist attacks. At the outset, when states of emergency are called out, announcements should be made on how the particular situation will impact the usual law-making process. While different forms of accelerated law-making, skipping some elements of a normal legislative cycle, may at times be necessary, exceptions to rules on public consultations should be kept to a minimum.

49. Generally, most significant laws, e.g. constitutional amendments or laws on finance or budgetary matters, or at least laws that affect the lives of individuals should undergo public consultations. Notably, the potentially negative impact of hurried laws and decrees on men and women, or on certain groups should be borne in mind during policy discussions at the highest levels. Despite the urgency of certain decisions, care should be taken to involve experts and civil society, including minority, gender and other diverse groups, as much as possible in decision-making.

50. Bearing the above in mind, it would be desirable to reflect in the Law that public consultations can only be curtailed or dispensed with in cases where this is absolutely necessary, and such cases need to be justified properly. **In this regard, it is recommended to outline in the Law clear criteria, where the public discussion might not be necessary and indicate that the government or other bodies with legislative initiative shall be held to justify the need for accelerated law-making in detail, explicitly mentioning the reasons why skipping the public discussion of a bill would be permissible**. Furthermore, when public consultations or regulatory impact assessment is dropped due to the urgency, it would be crucial to evaluate impact of the legislation at earliest possibility. Parliamentary rules of procedure shall also provide the parliament with the option of rejecting the request to apply the expedited procedure where the necessary criteria are not met (additional guidance and recommendations regarding

31 The Law on Making Amendments and Supplements in the Law on Regulatory Legal Acts, adopted by the National Assembly of Armenia on 19 April 2021 [ՀՕ-175-Ն].

emergency and other fast-track legislative proceedings will also be provided in the upcoming assessment report of the legislative process of Armenia[32]).

RECOMMENDATION C.

To introduce a distinction between laws that effect on different stakeholder groups or individuals on the one hand, and laws that merely contain amendments to the *status quo*, or that have no significant impact or consequence for individuals or certain bodies or entities, in which latter case, public consultations may not be necessary.

To outline criteria where the public discussion may be omitted, while introducing an obligation to provide detailed justification of the need for accelerated law-making.

5. Regulatory Impact Assessment and Expert Examination of Draft Laws

51. The criteria and process for conducting regulatory impact assessments and expert examinations of draft laws are outlined in Chapter 3 of the Law (see paragraphs 28-31).

52. The Organization for Economic Co-operation and Development (hereinafter "OECD") has described regulatory impact assessment as both a tool and a process designed to help inform political decision-makers on whether and how to regulate to achieve public policy goals.[33] The main purpose of such a tool/process is to find the best solution for an identified problem or challenge, by comparing the different potentially positive or negative impacts of different solutions, in order to then take an informed decision on the solution that brings the most advantages, while suffering the least disadvantages. Rule of law and human rights, including gender and diversity impact assessments, are also important elements of regulatory impact assessments (RIA) to identify at an early stage whether certain draft policies and laws violate rule of law principles and human rights of certain groups or of the wider population, and will thereby avoid problems later on, e.g. the legislation being overturned by courts. Generally, while it is recognized that RIA cannot always focus on all aspects of a draft law or policy, those conducting RIA should try to adopt a holistic approach, covering those main fields that will likely be most affected.

53. The OECD has also stated that it might be more efficient and cost-effective to conduct impact assessments early on,[34] before the process of drafting an actual law has even begun, and to consider the option to not regulate or in fact repeal existing regulations. As stated earlier (see paras. 31-32 *supra*), starting out with the drafting process, without conducting a previous policy-making process that would allow a comparison of several different policies, may lead to a situation where the chosen policy may not be the correct one, and thus to potentially ineffective regulatory measures.[35] **The relevant decision-makers may thus consider applying regulatory impact assessment at an early stage,**

32 The report will be available at <https://legislationline.org/assessments>.
33 OECD: *Better Regulation Practices Across the European Union*, 2019, Chapter 3: Regulatory Impact Assessment Across the European Union. See also OECD: *Recommendation of the Council on Regulatory Policy and Governance*, 2012, Annex, 4.1.
34 OECD: *Recommendation of the Council on Regulatory Policy and Governance*, I. 4.
35 See also ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, para. 47.

before a draft law has been formulated (perhaps as a result of *ex post* evaluation of adopted legislation); the wording of Article 5.1 should then be adapted accordingly.

54. Article 5.1 implies that all governmental draft laws shall undergo a regulatory impact assessment. Compared to other countries, this is somewhat unusual, and may not be the best use of relevant capacities or time. The 2014 Legislative Assessment noted that this broad application of regulatory impact assessment could be one of the reasons why this tool was frequently not applied in practice. ODIHR consequently recommended that regulatory impact assessments only be applied to draft laws of high importance, in particular those having significant impact on fundamental rights (including the equal rights of women and men, rights of persons with disabilities, and of minority or other groups), and those regulating specific aspects of a draft law.[36] It is recommended to reassess this matter, and **to consider limiting regulatory impact assessments to laws that are of high importance or impact on the population, as a whole or in part.** This could help ensure that regulatory impact assessments are only applied when necessary, and may enhance the depth and quality of such assessments.

55. According to Article 5.2, it appears that draft laws prepared by deputies or factions of the National Assembly, or by popular initiative (at least 50.000 according to Article 109 of the Constitution), shall, once they have been submitted to the National Assembly, be subjected to regulatory impact assessment, following the respective decision of the Government or Prime Minister. Presumably, in such cases, it would be the Government that prepares a regulatory impact assessment.

56. **If draft laws are envisaged or proposed by non-governmental actors, it may be worthwhile for these actors to conduct their own legislative impact assessments, or to seek outside support**. It should not be up to the Government to decide whether non-governmental draft laws undergo regulatory impact assessments in general or not – this should either be regulated in the Rules of Procedure, or decided by the authors of the draft law on a case by case basis. In any event, the Government may always decide to conduct its own internal regulatory impact assessment of such legislation, which it could then present during deliberations before the National Assembly. **It is therefore recommended to amend Article 5.2 accordingly**.

57. According to Article 6, every draft legislative act and secondary regulatory legal act, together with its justification, should be forwarded to the Ministry of Justice for legal expert examination (to assess the compliance of the draft regulatory legal act with the Constitution and this Law) to be conducted by the Agency for Expert Examination of Legal Acts (hereinafter "Agency") under the Ministry of Justice. The Agency then has 15 working days to review the draft law or by-law; where draft regulatory legal acts are more voluminous or complicated, this time limit may be extended for another 10 working days. Should the Agency not submit its opinion within the time limit, or not ask for an extension, then the draft law or by-law may be adopted (presumably only at the governmental level) without such expert opinion.

58. This provision is generally positive, as it ensures that all draft laws and by-laws prepared within the Government will undergo a legal expert examination, which will no doubt improve the quality of the draft law/by-law. At the same time, the time periods set out in Article 6(6) appear to be quite short, and it is doubtful that 15 working days, or even 25 working days will be sufficient to allow for a proper in-depth examination of draft laws, particularly if the Armenian law-making process remains as fast-paced as it has been in

36 See also ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, para. 48.

the past.[37] Especially in cases where numerous draft laws or by-laws are sent to the Ministry of Justice at the same time, the existing time lines are really short. **It is recommended to expand the time limits to at least 30 working days, which could be extended in case of lengthy or complex draft laws or by-laws, depending on the Ministry of Justice's availability and capacity**. It is also crucial to ensure that Ministry is provided with sufficient, well-qualified and trained personnel to meet this obligation. Further, the provision could reflect consequences where relevant bodies have failed to conduct a regulatory impact assessment or where insufficient justifications are provided (e.g. rejecting or returning the draft to address inadequacies).

59. Moreover, it may be worthwhile to reconsider Article 6.7, which allows draft laws or by-laws to proceed without an expert opinion should the Agency not meet the required deadline. Such an approach places undue pressure on the Ministry of Justice and could possibly lead to substantial qualitative differences of governmental draft laws or by-laws, depending on the capacity and availability of the staff of the Agency.

60. It is important to ensure consistent quality of governmental draft laws and by-laws, while avoiding unnecessary delays in cases where the Agency does not provide its opinions within the requisite time. Rather than retaining strict deadlines, it may be useful for those bodies responsible for drafting legislation to communicate with the Ministry of Justice on a regular basis, so that plans and time schedules for planned and pending draft legislation can be adjusted in time and to both bodies' satisfaction.

61. Additionally, the Ministry's expert opinion should also be attached to the draft legislative act when it is submitted to the National Assembly. While this may already be the case in practice, it is noted that this type of expert opinion is not mentioned in paragraph 25 of the Work Procedures of the National Assembly describing the materials appended to draft laws submitted to the National Assembly. This provision merely mentions that the rationale for a draft law shall include "*existing problems, proposed regulations and expected results, as well as, at discretion of the author, the names of people who prepared the drafts, and information about the concepts, legal acts and other references that have served as grounds for elaboration thereof*".

62. It is thus recommended to include mention of the Ministry's/Agency's opinion in paragraph 25 of the Work (Operational) Procedures, and to also include a reference to the obligation to submit such information to the National Assembly in Article 6 of the Law. Having access to the Ministry's opinion would be of great value to the National Assembly, as it would provide the deputies with a proper framework for assessing and scrutinising the draft law.

63. Article 8 stipulates that expert examination of draft secondary regulatory legal acts is likewise mandatory. Paragraph 1 of this provision specifies that once the shortcomings identified by the Ministry of Justice have been identified, the competent body shall adopt the draft secondary regulatory legal act and forward it for official promulgation. This provision does not, however, include any procedure for checking whether the Ministry of Justice is content that the shortcomings have been eliminated. **It is recommended to introduce such a procedure.**

64. Finally, according to Article 27.1(1) of the Law, draft decisions of the Government, as well as [inter alia] the regulatory legal acts conditioned by martial law and state of emergency are not subject to mandatory expert examination. It should be recalled again, that exceptions to regular law-making procedures in urgent cases need to be kept to a

37 ODIHR Assessment of the Legislative Process in the Republic of Armenia, para. 39.

minimum. Even though the legal examination aimed at determining the compliance of the draft regulatory legal act with the Constitution and this Law (Article 6) could be skipped in cases of public emergency, it is important that these options are not abused, and that decisions to use urgent procedures are properly justified. Where parliaments adopt emergency procedures without proper cause or fast-track highly complex and important legislation, this runs counter to good governance and democracy standards (additional guidance and recommendations regarding emergency and other fast-track legislative proceedings will also be provided in the upcoming assessment report of the legislative process of Armenia[38]).

RECOMMENDATION D.

To provide in Chapter 3 general statements to ensure that draft laws prepared by deputies or factions of the National Assembly undergo a regulatory impact assessment.

To consider limiting regulatory impact assessments to laws that are of high importance or impact to the population, as a whole or in part.

To reconsider the implementation of regulatory impact assessments in situations where laws are envisaged or proposed by non-governmental actors with a view to have them conduct their own legislative impact assessments, or to seek outside support and amend Article 5.2 accordingly.

To review existing time-limits including the current 15 day time period set out in Articles 4(2) and 6(6) of the Law for the expert examination of the drafts, and to replace it with a longer, more reasonable, time period that will allow more in-depth scrutiny.

6. LEGISLATIVE TECHNIQUE

65. Chapter 4 of the Law contains rules of legislative technique. It is reiterated at this point that a law may well be a too inflexible and general instrument to provide sufficient guidance on legislative drafting and techniques. For this reason, and as stated above (see paragraphs 16-17 *supra*), **it is recommended to remove the rules set out in Chapter 4 and incorporate them in a unified drafting manual**.

66. At the same time, the wording of some of the provisions set out in Chapter 4 could also be improved, regardless of whether such provisions are transferred to a drafting manual, or whether they remain in Chapter 4.

67. While Chapter 4 encompasses some basic requirements on the structure, language and contents of legislation, the Law in general does not contain any detail on what are called (in French) *legistique formelle*, translated into English as formal legistics, meaning legislative drafting techniques.[39] This concept covers, among others, the use of "Plain Language"[40], i.e. a collection of stylistic techniques aimed at making legislation more

38 The report will be available at <https://legislationline.org/assessments>.

39 In the book Legislation in Europe, Karpen and Xanthaki devote three separate chapters to this subject: Legislative Drafting Techniques / Formal Legistics, Legislative Language and Style, and Legislative Drafting.

40 See for example: Robert Eagleson, *Writing in Plain English* (Commonwealth of Australia 1990); Joseph Kimble, 'Answering the Critics of Plain Language' (1994) 5 The Scribes Journal of Legal Writing 51; Richard Thomas, 'Plain English and the Law' [1985] Statute Law

intelligible to users, for example by using short words, short sentences, effective division of concepts, and keeping relating concepts close together. Moreover, formal legistics also comprise ideas on effectiveness, clarity, precision, unambiguity, legal certainty, and conciseness of legislation, among others.

68. In particular, and most importantly, formal legistics provide guidance on how best to convey a legal message, how to write legislation so that it does what it is meant to do, and how to make the language easy for users to understand. Formal legistics can be limited to the overarching principles set out in the previous paragraph or can include detailed rules on how to comply with those principles.[41]

69. Such principles may also include the need to rationalize legislation and ensure that it is arranged in a logical fashion, remove inconsistencies, overlaps and obsolete provisions, and ensure consistency throughout in terms of language, style and structure.[42] Chapter 4 of the Law touches very briefly on these principles, for example by stating (in Article 15) that if new or polysemantic terms are used, they should be defined in a uniform and unambiguous way, or by recommending in Article 17 to avoid circular cross references. Although these individual provisions are a positive step, they are very limited and only touch on a few basic points on formal legistics.

70. Overall, **it is recommended to review the manner of providing legislative drafting guidance to those engaging in drafting legislation, both in terms of whether such guidance should be located in a law or in a drafting manual, and in terms of what type of guidance would help ensure that legislation is easy to understand, clear and concise in terms of language, structure and contents.** Given that Armenian legislation is traditionally overly dense and detailed,[43] such considerations could prove useful in future legislative efforts.

71. Finally, it should be noted that, in the 2014 Assessment, ODIHR had addressed the option of creating a single, centralized drafting agency that would elaborate new draft laws. ODIHR had noted at the time that this approach had advantages and disadvantages, which would need to be weighed before taking a decision. A centralized drafting system helps ensure consistency and greater expertise in the application of standards, as well as greater efficiency in the use of limited drafting resources. Moreover, this approach helps ensure a more independent assessment of the merits of certain policies.

72. At the same time, this also means that the drafters are less involved at the stage of policy formation, and may thus not be so familiar with the motivations behind certain policy decisions. With such a scenario, there is a risk that legal drafters could become a closed cadre of professionals that perpetuate their own practices with little influence from the outside.[44] **This could, however, be prevented by ensuring close communication**

Review 139; Anthony Watson-Brown, 'Defining "Plain English" as an Aid to Legal Drafting' (2009) 30 Statute Law Review 85; Ruth Sullivan, 'Some Implications of Plain Language Drafting' (2001) 22 Statute Law Review 145; Edwin Tanner, 'Legislating to Communicate: Trends in Drafting Commonwealth Legislation' (2002) 24 Sydney Law Review 529; Mark Turnbull, 'Clear Legislative Drafting: New Approaches in Australia' (1990) 11 Statute Law Review 161. See further information on the website of Plain Language Association International at <https://plainlanguagenetwork.org>.

41 For example, Article 26 of the Bulgarian Law on Normative Acts contains the following provision at the level of high principle: "*The development of a draft of a normative act is done in compliance with the principles of necessity, validity, predictability, openness, coherence, subsidiarity, proportionality and stability.*" In Moldova, Article 4 states that *"[t]he following principles shall be complied with when drafting, adopting and applying legal acts: a) reasonability, coherence, consistency, and correlation of competing norms; b) continuity, stability and predictability of norms of law; c) transparency, publicity and accessibility.*" In the United Kingdom, such principles are not set out in legislation, but by government lawyers (the Parliamentary Counsel Office) in their statement on what is Good Law, which is legislation that is necessary, clear, coherent, effective, and accessible.

42 In New Zealand, the Legislation Act 2012 addresses the goal of high quality legislation as follows: "*to make New Zealand statute law more accessible, readable, and easier to understand by facilitating the progressive and systematic revision of the New Zealand statute book so that i) statute law is rationalised and arranged more logically; (ii) inconsistencies and overlaps are removed; (iii) obsolete and redundant provisions are repealed; (iv) expression, style, and format are modernised and made consistent."*

43 See *ODIHR Assessment of the Legislative Process in the Republic of Armenia*, October 2014, par 12 (summary of key issues of concern).

44 See *ODIHR Assessment of the Legislative Process in the Republic of Armenia*, October 2014, par 12 (summary of key issues of concern).

between the drafters and the respective policymakers, or by forming mixed drafting teams.

73. The question of such a centralised legislative agency appears to have been debated since then, and in 2016, a Centre for Legislation Development and Legal Research (hereinafter "the Centre") was created, which is a legal entity under the Ministry of Justice of Armenia (different from the Agency for Expert Examination of Legal Acts mentioned above). The main goals of the Centre are, among others, to support the development of regulatory policy, develop concept papers on how to develop legislation, draw up annual plans for drafting legal acts, but also to prepare, "*in case of drafting of legal acts, the concept papers thereof*".[45]

74. The tasks of the Centre thus appear to include preparing concept papers on specific legal acts and drafting specific legislation. However, it is not obvious how this work is conducted in practice, nor how it fits in with the drafting that is being done within the individual ministries and other executive bodies. The role of the Centre, and in particular its role in drafting legislation needs to be clarified, and in particular whether the drafting of laws should be centralized, at least to a certain degree, or not. **It may also be useful to introduce information on the Centre's role in drafting legislation in both the Law, and in a legislative drafting manual, should such a manual be prepared and used in future**.[46]

75. In any event, and in addition to the work of the Centre, it is advised for each individual Ministry to develop and formalize its in-house expertise in preparing legislation. This could **include establishing, at a formal or informal level, centres of drafting expertise within ministries**. More generally, it is recommended **to introduce improvements to technique, enhance the capacity of legislative drafters and clarify the role of the different actors involved in the drafting process**.

76. When reviewing individual provisions under Chapter 4, it is noted that Article 12 states that, among others, titles of regulatory legal acts shall correspond to the contents. In addition to this, it is important that titles are not too lengthy and non-contentious, meaning politically neutral. **Article 12 should be supplemented accordingly**.

77. Article 13 on the structure of a regulatory act is quite lengthy, as it contains both information on the structure of the act and information on transitional provisions. It may be worthwhile **to consider splitting this provision into two, with the parts on transitional provisions set out in a separate article**.

78. Article 17 deals with the use of references in regulatory legal acts. Thus, paragraph 6 states that references to parts of other laws shall indicate the respective article specifically. This is a welcome inclusion but should be supplemented by adding that it should also not be sufficient to refer to "other laws of the Republic of Armenia" or to simply state that specific issues are set out "in law". Rather, **the names of laws should be mentioned, to enhance legality and foreseeability of each law**. If a manual is drafted, this would be one case where examples could be included on how to, and how not to, draft such references.

45 See the description of the Centre for Legislation Development and Legal Research, as well as its goals and activities, on the website of the Ministry of Justice of Armenia: <http://www.moj.am/en/structures/view/structure/37>.

46 See, e.g. the Legislation Act 2012 of New Zealand, which puts the Parliamentary Counsel Office on a statutory basis. This means that the office responsible for drafting government legislation is established and regulated by law.

RECOMMENDATION E.

To review the manner of providing legislative drafting guidance to those engaging in drafting legislation, both in terms of whether such guidance should be located in a law or in a drafting manual, and in terms of what type of guidance would help ensure that legislation is easy to understand, clear and concise in terms of language, structure and contents.

To introduce improvements to legislative technique, enhance the capacity of legislative drafters and clarify the role of the different actors, involved in the drafting process.

7. Entry Into Force and Effects of Adopted Legislation

79. Chapter 5 concerns the entry into force of regulatory legal acts, promulgation, record registration and maintenance thereof, as well as fulfilment of the requirements of regulatory legal acts. According to Article 23, regulatory legal acts shall enter into force within the time limits prescribed therein, but no earlier than the day following the day of promulgation (unless the applicable law specifies that the regulatory legal act shall enter into force immediately after promulgation).

80. Setting such an early date of entry into force as the default rule could be problematic, as this would not give individuals or legal entities affected by the respective law sufficient time to become aware of the legal changes. **Rather, as a standard rule, there should be a longer time-frame between promulgation and coming into force of the law should be provided. This rule would then still be subject to the exceptions, for example for urgent laws.[47] Therefore, it is recommended to amend Article 23 accordingly.**

81. Article 25 deals with the official promulgation of regulatory legal acts, while Article 26 speaks of the registration and maintenance of such acts. The Ministry of Justice is required to promulgate all regulatory legal acts on the unified website for promulgated regulatory legal acts maintained by the Ministry under Article 25. At the same time, Article 26 states that the body adopting a regulatory legal act is responsible for its internal registration and maintenance. Since Article 26 speaks of "*internal registration and maintenance*" of laws, it is assumed that the registration and maintenance mentioned here only apply to the internal registers and website of the respective body, while the Ministry of Justice maintains the version of the law on ARLIS, i.e. the Armenian unified online database of legislation. **It would, however, be good to clarify this**.

82. Also, while Article 25 speaks of online publication of legislation, this should not be the only means of publishing laws and making them accessible. **Offline options should also be available, and the law should specify this as well**.

83. Further, there is no clear obligation to keep legislation up to date on the unified website in Article 25. For example, if a law is amended, there is no obligation to update the website so that the version on the website is of the consolidated law as amended. While paragraph 3 speaks of "*the official incorporation of regulatory legal acts*", it is not clear whether this also implies keeping legislation updated. **Citizens need to know the original version of a law, the law in its current state, and the law at each interim**

47 See also Venice Commission, *Rule of Law Checklist*, p. 22 (under section A, chapter 6).

point in time when it was amended. Such obligation should be included in Article 25.

84. Chapter 6 outlines the effect of regulatory legal acts "in time and space" and the validity period of a regulatory legal act. Article 29 deals with the territoriality of laws, and states that laws extend to the whole territory of Armenia, unless prescribed otherwise in the law, or if it follows from the essence of the law that it extends only to a certain territory. It is unclear, however, whether the wording of Article 29 also allows for extra-territorial effects of legislation.

> **RECOMMENDATION F.**
>
> To amend Article 25 by adding a clear obligation of responsible bodies to keep legislation up to date on the unified website.

8. Other Aspects of Legislative Procedures

85. Chapter 7 involves the calculation of time limits in regulatory legal acts. According to Article 31, these shall be calculated in years, months, days and hours. **With respect to the calculation of days, it would be helpful to add in Article 31 that the laws should always specify the number of days in working days.**

86. Article 32 details the procedure for performing actions on the last day of the time limit. Article 32.2 states that where a time limit applies to an organization or state body, that time limit expires "*at the hour when relevant operations are terminated in that body or organization under the rules prescribed*." This creates uncertainty, as the usual times within that body or organization may not be clear to everybody. **It is recommended, therefore, to clarify the meaning of Article 32.2.**

87. The procedure for making amendments and supplements to regulatory legal acts, their suspension and termination is governed by Chapter 8 of the Law. According to Article 34, amendments or supplements to the regulatory legal acts may be made only by the body that adopted the regulatory legal act, or its successor. It is assumed that this relates to the body that was responsible for drafting the law, not necessarily the one that was responsible for adopting it, as this would essentially mean that only the National Assembly is allowed to amend or supplement primary laws. **This provision should be amended to render its meaning clearer.**

88. Article 35 deals with the suspension of a regulatory legal act. Based on its wording, there is the risk that Article 35 could be construed so that any law-making body could suspend any law. **It is recommended to revise Article 35 so that it is clear that only the body which adopted a law (or its successor or a body vested with relevant powers (for instance, the Constitutional Court or common courts with relevant competence) may, at the request of the requesting party or on its own initiative, suspend a legal act or provision, the constitutionality or legality of which is challenged; in the case of primary laws, this would be the National Assembly, and for secondary legislation, this would be the relevant ministry or other executive body. The same considerations apply with respect to Article 36.5 on the termination of a regulatory legal act and Article 37.1 on repealing a regulatory legal act, which are, however, formulated in a clearer manner.**

89. Chapter 9 concerns the application of norms of legal acts in cases of legal contradictions (legal collisions) and legislative gaps. Article 39 outlines the use of analogies of law and statute in cases where there are legal gaps. The analogy of law described in Article 39 para. 2 allows "*principles of a given branch of law or general principles of law*" corresponding to the essence of the given situation, to be applied in such circumstances, if there is no specific law or statute that can be applied accordingly. This is quite general and provides little guidance on how this may be done in practice. **Moreover, Article 39 does not specify how to avoid extensive over-interpretation of certain principles. It is advisable to add more specific language to avoid such cases.**

90. Chapter 11 of the Law is about the official clarification of regulatory acts, which is a process aimed at clarifying the meaning of provisions in regulatory legal acts, in cases where this is necessary due to their lack of clarity, ambiguity, or where such provisions hinder the proper implementation of the law (Article 42.1). The body of the state administration applying the respective act may provide such clarifications, and the Government shall issue a decision outlining the list of bodies of the state administration system entitled to provide an official clarification on the acts indicated therein.

While generally, it is not unusual for citizens or entities applying a law to ask the public administration for advice on how to implement new or unclear legislation, these kinds of official clarification are somewhat different. It should generally be noted that it is not up to a Ministry or the Government to decide how a law should be applied – if there are competing interpretations, this matter should be decided by a court. Moreover, this process of 'clarifying' the law usurps the function of making it. If there is some confusion over the meaning of the law, then it is for the legislature to rectify that confusion by revising that law.

9. FINAL COMMENTS

91. Any future amendments to the Law should involve relevant stakeholders involved in the legislative process, including the Government and its line ministries (particularly the Ministry of Justice), the National Assembly, and also civil society.

92. Given the important role that the Law plays with respect to laws and the regulatory process in general, an in-depth regulatory impact assessment is essential, which should contain a proper problem analysis, using evidence-based techniques to identify the best efficient and effective regulatory option, in compliance with the principles stated under Sub-Section III.5 *supra*.[48] In the event that such an impact assessment has not yet been conducted, future legal drafters are encouraged to undertake such an in-depth review, to identify existing problems, and adapt proposed solutions accordingly.[49]

93. In future reform efforts, it is essential that all relevant counterparts are consulted in a meaningful manner on different aspects of the Law, in accordance with the guidance provided under Sub-Section III.4 *supra*. Consultations on legislation and policies, in order to be effective, need to be inclusive and to provide sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.[50] Time limits should not be too short, and

48 ODIHR Assessment of the Legislative Process in the Republic of Armenia, October 2014, paras. 47-48
49 Available at <http://www.osce.org/fr/odihr/elections/14310>.
50 See e.g., *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

should be extended as necessary, taking into account, inter alia, the nature, complexity and size of the proposed draft act and supporting data/information.[51] To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process,[52] meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings). Public consultations constitute a means of open and democratic governance; they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.[53] Discussions held in this manner that allow for an open and inclusive debate will increase all stakeholders' understanding of the various factors involved and enhance confidence in the adopted legislation. Ultimately, this also tends to improve the implementation of laws once adopted.

94. In light of the above, **the relevant decision-makers are therefore encouraged to ensure that the Law, and possible future draft amendments, are subject to further inclusive, extensive and effective consultations, according to the principles stated above, at all stages of the law-making process**.

[END OF TEXT]

51 See e.g., *ODIHR, Opinion on the Draft Law of Ukraine "On Public Consultations"*, 1 September 2016, paras. 40-41.
52 See e.g., *ODIHR, Guidelines on the Protection of Human Rights Defenders* (2014), Section II, Sub-Section G on the Right to participate in public affairs.
53 *Ibid*.