

Guidelines on Quality of EU Legislation and its Impact on Albania

Alfred Kellermann*

Simple is Better.

To regulate or not to regulate?

A. Basic Principles for Law Making

In the last few years the quality of legislation has become a favourite subject.¹ Within the European Union, an extensive debate has been and is still being conducted about increasing the efficiency in the regulatory system. The debate on and actions with regard to improving the quality of legislation take place under the headings of 'European Governance' and 'Better Lawmaking', and since a short while the slogan 'Simple is Better'.

'European governance' is defined by the Commission as the rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence. These five 'principles of good governance' are said to reinforce those of subsidiarity and proportionality. "Proposals must be prepared on the basis of an effective analysis of whether it is appropriate to intervene at EU level and whether regulatory intervention is needed."²

The 'Better lawmaking' aspects of the 'European governance' White Paper were worked out in a communication and in the document 'Simplifying and improving the regulatory environment – an action plan. Together with the efforts in the fields of consultation and regulatory impact assessment, the action plan envisages the EU legislature to produce better laws, resulting in a basic legislative framework which is simpler, more effective and better understood. In this respect, the main issues that have crystallized so far concern:

- 1) the selection of the appropriate regulatory level of legislation with the help of the *subsidiarity principle*;
- 2) the selection of the appropriate scope and content of legislation to deal with a specific issue with the help of the *proportionality principle*;

* Team Leader EU Project Strengthening the Ministry of European Integration in Tirana; Legal and Policy Advisor T.M.C Asser Institute, the Hague.

¹ See A. E. Kellermann *et al.* (Eds.), *Improving the Quality of Legislation in Europe* (1998). This publication contains contributions from the most expert lawyers, economists and other academics in Europe in this field.

² White Paper on European Governance, 2001, COM (2001) 428.

- 3) improving the quality of EU legislation, *inter alia* via *impact assessments*, notably identifying financial and administrative consequences of European legislation (with specific attention for the consequences for SMEs, small and medium size enterprises);
- 4) involvement of stakeholders and *public consultations* on proposed legislation;
- 5) *simplification* of legislation, including codification of the *acquis communautaire* in order to make it better accessible.

I. Subsidiarity

1. Introduction

The subsidiarity principle is applied to each new legislative proposal launched within the European Union in areas where either the EU and/or the Member States are allowed to take legislative steps (i.e. the so-called mixed competences).

The subsidiarity test is prescribed by Article 5 EC Treaty and is mentioned also in the preamble and Article 3 of the EU Treaty. Article 5 EC Treaty reads as follows:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

This provision aims at ensuring that decisions are taken as closely as possible to the citizen in accordance (preamble EU Treaty) or, in other words, to ensure that the European Union does not interfere unnecessarily with the economy of the Member States. The main reason that the subsidiarity principle was introduced in European Community law was at the instigation of the United Kingdom under Prime-Minister Margaret Thatcher. The aim was to counter ‘Brussels bureaucrats’ usurping too much power and introducing unnecessary legislation. It first featured only in the part dealing with European environmental legislation but later on was upgraded to a general principle for all policy areas. The exact meaning of the principle and its justiciability were extensively debated. In order to clarify the situation, in 1997, at the occasion of the adoption of the Treaty on European Union, the so-called Treaty of Amsterdam, the Protocol on the application of the principles of subsidiarity and proportionality was adopted. In this document, practical guidelines are laid down for the use of these two principles. Where subsidiarity is concerned, the document explains *inter alia* the following:

The subsidiarity principle applies to situations where the EU shares the competence to legislate with the Member States (i.e. the ‘mixed competences’). In areas where the EU has exclusive legislative competence the principle does not apply, as the question whether the matter should be left to the Member States does not arise here.

For any proposed piece of Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators. For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community. Still according to the Protocol, the following guidelines should be used in examining whether the abovementioned condition is fulfilled:

- the issue under consideration has trans-national aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.

2. Justiciability of the Subsidiarity Principle

The question whether or not conformance with the subsidiarity principle can be tested in by the European Court of Justice was the subject of an extensive academic debate in the European Union. The Protocol simply states that compliance with the principle of subsidiarity shall be reviewed in accordance with the rules laid down by the Treaty. Indeed, the ECJ has tested at several occasions whether the subsidiarity principle has been observed. When considering Community action the ECJ does carry out only a marginal review, since it concerns a matter of complex practical and political circumstances.

II. Proportionality

1. Introduction

Contrary to the subsidiarity principle, the proportionality principle applies both to legislation adopted under the exclusive competence of the EU and under the shared competence. The principle is laid down in Article 5 of the EC Treaty, last sentence:

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

More detailed explanations are offered in the Protocol on the application of the principles of subsidiarity and proportionality. It is pointed out there that the form of Community action shall be as simple as possible, consistent with a satisfactory

achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Furthermore, it is explained with regard to the nature and the extent of Community action that Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. The Protocol stresses that the Commission should, except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents; take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved; submit an annual report to the European Council, the European Parliament and the Council on the application of Article 6 of the Treaty (the provision in which the principles of subsidiarity and proportionality are laid down). Naturally, not only the Commission preparing the legislative proposal but also European Parliament and the Council are asked, as an integral part of the overall examination of Commission proposals, to consider their consistency with Article 3b of the Treaty. This concerns the original Commission proposal as well as amendments which the European Parliament and the Council envisage making to the proposal. In the course of the legislative procedures, the European Parliament is to be informed of the Council's position on the application of Article 6 of the Treaty, by way of a statement of the reasons which led the Council to adopt its common position. The Council shall inform the European Parliament of the reasons on the basis of which all or part of a Commission proposal is deemed to be inconsistent with Article 3b of the Treaty.

2. Justiciability of Proportionality Principle

The proportionality principle is first and foremost a tool for the legislator and those involved in the legislative process. Still, the justiciability of the proportionality principle is undisputed. The European Court of Justice often is asked to test whether a provision of Community law complies with the principle of proportionality. It does so by ascertaining whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it. However, where the Community legislature is seeking to regulate an economically complex situation, the ECJ has traditionally been reluctant to substitute its own assessment for that of the Community legislator. Only when the legislative choices appeared manifestly incorrect or if the resultant disadvantages for certain economic operators were wholly disproportionate to the advantages otherwise offered is the ECJ willing to judge that a violation of the proportionality principle took place.

III. Quality of Legislation and Impact Assessment

1. Introduction

In December 1998, the three institutions involved in the legislative process (the Commission, EP and the Council) adopted the Inter-institutional Agreement on common guidelines for the quality of drafting of Community legislation. In pursuance of this agreement, the three institutions have drawn up and published a Joint Practical Guide for persons involved in the drafting of legislation.

Following the invitation made by the European Council of Seville in June 2002, the EP, the Council and the Commission agreed on an Inter-Institutional Agreement on better lawmaking. The main objectives of the agreement are to improve the quality of Community legislation and its transposition into national law of the Member States. The agreement entrenches best practices. The main elements of the agreement include improved inter-institutional co-ordination and transparency, and a stable framework for 'soft law' instruments with the help of a common definition of co-regulation and self-regulation.

Already since quite some time, the Commission – the institution that drafts new proposals for new EU legislation – uses so-called impact assessments. The aims of the impact assessment process are to improve the quality of Commission proposals and to improve and simplify the regulatory environment. It should also help to ensure consistency between Community policies and contribute to sustainable development by assessing the economic, environmental and social impacts of policy proposals. It should lead to proposals that not only tackle the problem they aim to solve but also take into account side effects on other policy areas.

On 15 June 2005 the European Commission established a new, integrated, method for impact assessment in the so-called "Impact Assessment Guidelines" (SEC(2005)791). These guidelines replace the 2002 Guidelines and a Handbook for Impact assessment in the Commission.

This new form of Impact Assessment is an action envisaged under the 'Better Regulation Action Plan' and of the 'European Strategy for Sustainable Development'. It contributes to an effective and efficient Regulatory Environment and, with regard to the economic, social and environmental dimension of Sustainable Development, to a more coherent preparation of EU decision-making.

Impact Assessment is an aid to decision-making, not a substitute for political judgement. As to the policy choice, the final options (i.e. a draft proposal submitted for decision) will emerge through the Impact Assessment process. Sometimes the impact assessment may point towards a preferred basic approach and the optimal policy instrument early in the process. Subsequent analysis will then focus on improving the effectiveness of the proposal in terms of changes introduced to key design parameters or stringency levels. It may also identify accompanying measures to maximise positive and minimise negative impacts.

The reasons for the most preferred policy option is clearly outlined in the Impact Assessment Report. Alternative instruments that meet the same set of

policy objective(s) are considered at an early stage in the preparation of policy proposals. Regarding the choice of instruments, not only legal but also other types of policy instruments are considered. The assessment report will justify the chosen policy option, after having examined alternatives. In order to get a better idea on what an Impact Assessment encompasses, the main questions to be answered can be summarised as follows:

The main questions which should be answered in an Impact Assessment (Commission Communication) are:

- 1) What issue/problem is the policy/proposal expected to tackle?
 - * What is the issue/problem in a given policy area expressed in economic, social and environmental terms including unsustainable trends?
 - * What are the risks inherent in the initial situation?
 - * What is (are) the underlying driver(s)?
 - * What would happen under a “no policy change” scenario?
 - * Who is affected?
- 2) What main objective is the policy/proposal supposed to reach?
 - * What is the overall policy objective in terms of expected effects?
 - * Has account been taken of any previously established objectives?
- 3) What are the main policy options available to reach the objective?
 - * What is the basic approach to reach the objective?
 - * Which policy instruments have been considered?
 - * Which are the trade-offs associated with the proposed option?
 - * What “designs” and “stringency levels” have been considered?
 - * Which options have been discarded at an early stage?
 - * How is subsidiarity and proportionality taken into account?
- 4) What are the impacts – positive and negative ? expected from the different options identified?
 - * What are the selected options’ expected positive and negative impacts, particularly in terms of economic, social and environmental consequences, including impacts on management of risks? Are there potential conflicts and incoherence between economic, social and environmental impacts that may lead to trade-offs and related policy decisions?
 - * How large are the additional (“marginal”) effects that can be attributed to the policy proposal, i.e. those effects over and above the “no policy change” scenario? Description in qualitative and, where possible, also in quantitative and monetary terms.
 - * Are there especially severe impacts on a particular social group, economic sector (including size-class of enterprises) or region?
 - * Are there impacts outside the Union on the Candidate Countries and/or other countries (“external impacts”)?
 - * What are the impacts over time?
 - * What are the results of any scenario, risk or sensitivity analysis undertaken?
- 5) How to monitor and evaluate the results and impacts of the proposal after implementation?
 - * How will the policy be implemented?
 - * How will the policy be monitored?
 - * What are the arrangements for any ex-post evaluation of the policy?
- 6) Stakeholder consultation
 - * Which stakeholders were consulted, when in the process, and for what purpose?
 - * What were the results of the consultation?

Guidelines on Quality of EU Legislation and its Impact on Albania 189

- 7) Commission draft proposal and justification
- * What is the final policy choice and why?
 - * Why was a more/less ambitious option not chosen?
 - * Which are the trade-offs associated to the chosen option?
 - * In the case of poor data or knowledge at present, why is a decision to be taken now rather than be put off until better information is available?
 - * Have any accompanying measures to maximize positive and minimize negative impacts been taken?

2. Core principles

Three core principles always underpin the activities of the Commission departments whenever they collect and use expert advice within the scope outline above. The core principles tell the Commission to always: i) seek advice of an appropriately high quality, determined by the experts' excellence, independency and their pluralism (assembling a diversity of viewpoints, for instance minority views); ii) be open in seeking and acting on advice from experts; iii) ensure that its methods for collecting and using expert advice are effective and proportionate.

3. Guidelines

A set of 17 guidelines implement the abovementioned principles, grouped in 5 categories. The main points of these guidelines could be of use when setting out a strategy for improved use of expertise by for instance ministries and departments in Russia. They can be summarised as follows:

Guidelines on the use of expertise

Category 1. Planning ahead

- 1) An adequate level of in-house expertise is to be ensured.
- 2) Policy issues that require expert advice should be identified as early as possible.

Category 2. Preparing for the collection of expertise

- 3) The manner in which experts are involved (in-house, consultancy, expert group, conference, etc.) should be determined by the urgency, complexity and sensitivity of the policy issue.
- 4) Other departments liable to be interested in the policy issue should be invited to contribute.
- 5) Departments should first assess the extent to which their needs can be met by any existing mechanisms conforming to the core principles. Suitable mechanisms may also be found in other countries or international organisations.
- 6) The scope and objective of the experts' involvement, and the questions they will address, should be set out clearly.
- 7) A scoping exercise should determine the profile of expertise required. The nature of the issue in question should determine the optimum mix.

Category 3. Identifying and selecting experts

- 8) Departments should cast their nets as widely as possible in seeking appropriate expertise. As far as possible, fresh ideas and insight should be sought by including individuals outside the department's habitual circle of contacts.
- 9) Both mainstream and divergent views should be considered. However, it is important to distinguish proponents of theories that have been comprehensively discredited from those whose ideas appear to be supported by plausible evidence.

Category 4. Managing the involvement of experts

- 10) When using expertise, departments should maintain a record of the process including the terms of reference and the main contributions of different experts or groups of experts.
- 11) In consultation with the experts themselves, it is to be determined whether the assembled expertise covers the topics to be addressed and whether sufficient pertinent background information and data are available and ensure that there is a clear understanding of the tasks assigned.
- 12) Experts should declare immediately any direct or indirect interest in the issue at stake, as well as any relevant change in their circumstances after the work commences, in order to avoid conflicts of interest.

Category 5. Ensuring openness

- 13) The main documents associated with the use of expertise on a policy issue, and in particular the advice itself, should be made available to the public as quickly as possible, providing no exception to the right of access applies.
- 14) Departments should consider allowing the public to observe certain expert meetings, particularly on sensitive policy issues.
- 15) Departments should insist that experts clearly highlight the evidence (e.g. sources, references) upon which they base their advice, as well as any persisting uncertainty and divergent views.
- 16) Departments should consider how to promote an informed and structured debate between policy-makers, experts and interested parties (e.g. workshops, consensus conferences), particularly on sensitive issues.
- 17) Proposal should be accompanied by a description of the expert advice considered, and how the proposal takes this into account.

IV. Consolidation, Codification, Recasting and Simplification of Legislation

In order for legislation to be effective, it should be attuned to the problems posed and to technical and local conditions. By (re)writing legislation in a less complicated style, it becomes easier to implement and easier to read and to understand. Combined with efforts to improve legislative procedures as described above, action in the field of simplification of legislation can achieve saving time and reducing costs for companies and public authorities. The ultimate goal, as the Commission put it in its Action Plan “Simplifying and improving the regulatory environment”, is to “ensure a high level of legal certainty” and to “enable economic and social operators to be more dynamic”.

The Action Plan notes that within the EU, there are over 100.000 pages of legislation and that there is a need to reduce this volume on the one hand and to simplify this body of law on the other hand. It identifies four ways to improve European regulatory instruments: *consolidation, codification, recasting/redrafting and simplification*.

The first way to reduce and simplify regulation is through *consolidation*. *Consolidation* means grouping together in a single non-binding text the current provisions of a given regulatory instrument, which are spread between the first legal act and subsequent amending acts. Notably, ‘dead wood’ needs to be removed (legal texts that are obsolete and outdated), as this leads to a considerable reduction in the volume of legislation, without changing the legal status.

Guidelines on Quality of EU Legislation and its Impact on Albania 191

Codification means the adoption of a new legal instrument, which brings together, in a single text, but without changing the substance, previous instruments and their successive amendments, with the new instrument replacing the old ones and repealing it. By the end of 2003, of some 2,400 “families” of legal acts, 36 codified texts were proposed to the Legislator, replacing 354 pre-existing acts, i.e. a tenfold reduction.

The codification work has been greatly delayed due to the EU enlargement process.

The third way to simplify and reduce legislation is by *recasting / redrafting*. This means adopting a single legal act, which makes the required substantive changes, codifies them with provisions remaining unchanged from the previous act, and repeals the previous act.

The final instrument is *simplification*, i.e. to make the substance of a piece of regulation simpler and more appropriate to the users’ requirements.

Legislative acts which undergo codification, recasting or simplification must be submitted to the legislator for adoption as their structure and substance changes.

A major simplification *programme* was launched already in 2001. Later on, the Commission defined in its Communication “Updating and simplifying the Community acquis,”³ an new ambitious programme to ensure that Community legislation would become more clear, understandable, up-to-date and user-friendly.

Firstly, the development of prioritisation indicators on which the legislation will be screened on a case by case basis in order to identify and prioritize policy areas where the relevant legislation could be a candidate for simplification.

Secondly, based on these indicators, presenting an initial list of priority policy areas that have been selected in order to screen their potential for subsequent simplification initiatives.

Thirdly, the methodology and procedures that will be adopted to prepare the Commission’s simplification proposals and processes. As for the issues selected, it can be noted here that they include *inter alia* industrial products, marketing authorisations, agriculture, competition and contract law.

Examples of indicators for prioritisation on a case-by-case basis are the following

1) *Importance of a particular policy area*, assessed through two specific indicators:

- * The policy areas’ relative importance within the economy in terms of growth, competitiveness and jobs;
- * The weight a particular policy area represents in terms of its share of the law and how significantly its functioning is influenced by legislation (for example indicated by the number of legal acts) and the level of technical details included in the existing acts in force.

2) *Where there are indications of potential problems with existing legislation*, for instance from citizens and other stakeholders (expressed as complaints; the response to consultations; or where the legislation is difficult to understand and apply).

- * Where there are difficulties with legislation because of successive amendments, overlapping or

³ (COM(2003)71 final).

conflicting requirements and potential legal uncertainty resulting from inconsistent definitions or terminology.

- * Where experience has shown that administrative implementation and compliance costs appear disproportionate in relation to the benefits sought by the legislator and achieved; and/or the potential for legislative (and policy) simplification is considerable.
 - * Where there are potential major risks (fundamental rights, the environment, consumers, health or safety; industries or services, etc.) that are not satisfactorily targeted by existing legislation but which could be addressed in a simplification initiative rather than in a new legislative proposal.
- 3) *Where new political initiatives or evolving regulatory practices may justify legislative update and consequently an opportunity to simplify the legislation:*
- * Where the application of horizontal initiatives (sustainable development, environmental concerns; safety; fundamental rights, etc.) require updating and amendment in respect of a particular sector;
 - * Where the legislative approach may no longer be appropriate and could be replaced by more efficient, flexible and proportionate instruments (for example, framework directives, new approach directives or “softer” regulatory alternatives). In addition, evaluation of policies should be more systematically used to establish the possible need for simplification;
 - * Where new obligations (for example, resulting from international agreements) require updated legislation or changes to the legislative format chosen in order to exploit more effectively the potential synergies between overlapping regulatory regimes, or where legislation refers to international agreements and annexes such agreements to legal acts (such as international standards developed in accordance with the WTO ‘s TBT or SPS Agreements, by intergovernmental or other organisations like the Codex Alimentarius).

B. The Impact of EU Experiences on Good Quality Legislation on Albania’s Law Drafting Manual and Practice

In our contribution to law drafting in Albania we will mainly focus on the impact and implications of the EU law approximation process and its requirements for good quality legislation on the practice of Albanian legislative drafting. Moreover, we will also focus on the impact of the Council Resolution of the EU of 8 June 1993 on the quality of drafting of Community legislation⁴ and other International organizations like OECD and its Guidelines on the legislative drafting process.

⁴ COUNCIL RESOLUTION of 8 June 1993 on the quality of drafting of Community legislation (93/C 166/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community,

Having regard to the conclusions of the Presidency of the European Council meeting in Edinburgh on 11 and 12 December 1992 to the effect that practical steps should be taken to make Community legislation clearer and simpler,

Whereas guidelines should be adopted containing criteria against which the quality of drafting of Community legislation would have to be checked;

Whereas although such guidelines would be neither binding nor exhaustive they would aim to make Community legislation as clear, simple, concise and understandable as possible;

Guidelines on Quality of EU Legislation and its Impact on Albania 193

In assessing the need for legislation, and in complying with these constitutional and legislative requirements, the drafter may find the following OECD Reference Checklist⁵ of general questions to be helpful:

- 1) Is the problem correctly defined?
- 2) Is government action justified?
- 3) Is regulation the best form of government action?
- 4) Is there a legal basis for regulation?
- 5) What is the appropriate level (or levels) of government for this action?
- 6) Do the benefits of regulation justify the costs?
- 7) Is the distribution of effects across society transparent?
- 8) Is the regulation clear, consistent, comprehensible, and accessible to users?
- 9) Have all interested parties had the opportunity to present their views?
- 10) How will compliance be achieved?

The law drafter should review the entire existing legal framework in the given field and decide whether a new law, or alternatively an amendment to an existing law, is necessary. It must be established to what extent and in what way the proposed law would change the existing legislative scheme; what will be its consequences for different affected interests; and what will be its cost for both the public and

Whereas these guidelines are intended to serve as a reference for all bodies involved in the process of drawing up acts for the Council, not only in the Council itself but also in the Permanent Representatives Committee and particularly in the working parties; whereas the Council Legal Service is asked to use these guidelines to formulate drafting suggestions for the attention of the Council and its subsidiary bodies,

HAS ADOPTED THIS RESOLUTION:

The general objective of making Community legislation more accessible should be pursued, not only by making systematic use of consolidation but also by implementing the following guidelines as criteria against which Council texts should be checked as they are drafted:

- 1) the wording of the act should be clear, simple, concise and unambiguous; unnecessary abbreviations, 'Community jargon' and excessively long sentences should be avoided;
- 2) imprecise references to other texts should be avoided as should too many cross-references which make the text difficult to understand;
- 3) the various provisions of the acts should be consistent with each other; the same term should be used throughout to express a given concept;
- 4) the rights and obligations of those to whom the act is to apply should be clearly defined;
- 5) the act should be laid out according to the standard structure (chapters, sections, articles, paragraphs);
- 6) the preamble should justify the enacting provisions in simple terms;
- 7) provisions without legislative character should be avoided (wishes, political statements);
- 8) inconsistency with existing legislation should be avoided as should pointless repetition of existing provisions. Any amendment, extension or repeal of an act should be clearly set out;
- 9) an act amending an earlier act should not contain autonomous substantive provisions but only provisions to be directly incorporated into the act to be amended;
- 10) the date of entry into force of the act and any transitional provisions which might be necessary should be clearly stated.

⁵ Recommendation of the Council of the OECD on Improving the Quality of Government Regulation, of 9 March 1995, available on the OECD Internet site www.oecd.org.

the private sector. Steps should be taken to ensure that the interests that would be affected by the proposed law and its expected positive effects are balanced against any foreseeable negative effects. If, for example, a draft law is expected to entail great expenses for the public sector, citizens or businesses, or is expected to result in radical changes, careful consideration should be given to whether the expected positive effects are important enough to proceed with drafting the law.

The fundamental changes in the Albanian political and economic systems have been accompanied by a thorough legal reform aiming at creating a legal system in conformity with the requirements of democratic pluralism, rule of law and human rights.

The Albanian legal reform has required not only a complete revision of the existing legislation but also the introduction of a whole series of new legal domains and institutions that did not even exist under the former totalitarian regime.

Analysis of the legislation enacted to achieve this reform would show that many of its provisions did not fully achieve their objectives. The ineffectiveness of legislation and delegated legislation has been attributed, in part, to deficiencies in its preparation and drafting. Because of the financial constraints, the priority of the Albanian public administration in terms of human resources and finances has mostly been the implementation and enforcement activity, whereas the part of its work related to the law making receives, in practice, far less attention than would be necessary to ensure a higher quality of legislation.

Badly drafted legislation may not achieve its objective, or may achieve it expensively, or may lead to expensive litigation to resolve textual ambiguities. Further, such unsatisfactory implementation of legislation may also reduce its ready acceptance by citizens. Importantly, the legal vacuum created by the dismantling of the former legal system when coupled with inadequate enactment of new legal norms may disorientate the people, the courts and the public administration and thus undermine the rule of law.

Law drafting techniques and procedures thus play an important role in ensuring success of the legal reform. This has been recognised in Albanian legislation, furthering the relevant provisions of the Constitution, notably in the Rules of the Assembly of the Republic of Albania, approved by the Decision nr. 166, dated 16.12.2004, amended (“Rules of the Assembly”), Law No. 9000 of 30.01.2003 on the Organization and Functioning of the Council of Ministers, (“Law of the Council of Ministers”), the Council of Ministers Decision no.584 dated 28.8.2003 “On the approval of Rules of the Council of Ministers” amended by the Decision no. 201 dated 29.3.2006 “Some changes and amendments to the COM decision no. 584 dated 28.8.2003 “On the adoption of the Rules of the Council of Ministers”, (Rules of the Council of Ministers) and, in respect of its responsibilities in this field, Law No. 8678 of 2.11.2000 on the Organization and Functioning of the Ministry of Justice, amended with law no. 9112 dated 24.7.2003 (“Law of the Ministry of Justice”).

Within this context, the Albanian Government has undertaken several important initiatives in order to improve the quality of legislation, among which an important step has been the preparation and adoption of a *Law Drafting Manual*

Guidelines on Quality of EU Legislation and its Impact on Albania 195

including *A Guide to the Legislative Process in Albania*⁶ (hereinafter referred to as “Manual”).

The objective of this Manual is to facilitate consistency and uniformity of Albanian legislation and to guide and assist Albanian officials in the process of drafting, and adopting legislation. Depending on the nature of the particular principles and guidelines concerned, it targets both law drafters and civil servants responsible for the technical conception of the law texts and other state officials responsible for legislative planning and policy. The Manual should be of use to them and serve as a source and reference guide for improving and maintaining the high quality of legislation in Albania.

This Manual deals with some of the key questions that are relevant to maintaining the quality of legislation. It provides guidelines concerning law drafting techniques, the legal conditions and limitations applicable to legislative activity and the organisation of work related to law making, including institutional and procedural issues. However, it only addresses a limited number of questions, and often then only in general terms. It does not seek to be in any way an exhaustive treatise on all the issues which may arise in the course of law making.

The Manual is divided into four chapters.

Chapter I deals with the general principles of legislation, including the constitutional and legal framework of law drafting; the delegation of powers to legislate; the need and justification for legislative intervention and possible alternatives to it; the evaluation of the effects and impact of legislation; and codification.

Chapter II outlines the legislative procedure, including planning and organisation of the preliminary law drafting; internal and external consultation and the legislative response to its results; consideration of draft laws by the Council of Ministers and their submission to the Assembly; and the promulgation, publication and subsequent review of enacted legislation.

Chapter III considers legislative drafting techniques, including the structure of law texts; the system and order of legislative provisions and drafting style. It also sets out the principles relating to the preparation of explanatory memoranda to draft laws.

Chapter IV analyses the preparation of domestic legislation relating to international legal obligations, including: drafting legislation on the acceptance of international treaties; the implementation in national law of treaties binding on Albania; and the implications of the approximation of Albanian law with the *acquis communautaire*.

⁶ This Manual (initial version) was prepared in 2002-2003, in the framework of the Joint Programme between the Council of Europe and the European Commission for Albania, by a joint Working Group consisting of representatives of the Albanian Parliament, Cabinet of Ministers, Ministry of Justice, Faculty of Law of Tirana and the Council of Europe’s Secretariat, assisted by the independent expert Professor St. John BATES (United Kingdom). This Manual also takes into account the results of the bilateral seminar on “Evaluation of Legislation”, organised in the framework of the same programme by the Council of Europe and the Ministry of Justice of Albania in Tirana in 2001. This Manual has been updated in January-February 2006 with the assistance of EURALIUS (the European Assistance Mission to the Albanian Justice System). The process of updating this Manual will continue.

C. The Albanian Law Drafting Manual (excerpts)

Below follows some excerpts from the Manual.

Chapter I. General Principles of Legislation

1.1. Objectives of Legislation

The objective of each law should be to provide its users with as precise and comprehensive regulation and should contain a clear and accurate statement of obligations, rights and duties.

1.2. Constitutional Framework

1.2.1. Hierarchy of legal norms

The Constitution provides for the hierarchy, status and effect of legal norms. In particular, *Article 4* declares *the Constitution is supreme* within the Albanian legal system.

The Constitution is the highest law in the Republic of Albania. (Article 4.2)

Article 116 of the Constitution, reflects this hierarchy of legal norms by providing that:

- normative acts that are effective in the entire territory of the Republic of Albania are:
- a. Constitution;
 - b. ratified international agreements;
 - c. laws;
 - ç. normative acts of the Council of Ministers.

International agreements come after the Constitution in the ranking of norms and thus for they have an important place in our legal system. Article 122 emphasizes this idea by providing that international agreements, ratified by law, prevail over incompatible laws of Albania.

Article 118 provides that a law may specify that an organ has the competence to make delegated legislation on specified matters according to specified principles, but that organ cannot further delegate such competence. Otherwise, rules issued by the Council of Ministers, ministries and central state institutions, and orders of the Prime Minister, are only binding on subordinate administrative entities and may not serve as the basis for taking decisions that affect individuals and other subjects (Article 119).

1.2.2. Status of laws

Article 78 of the Constitution provides that the Assembly adopts laws by a majority of votes, in the presence of more than half of its members, except where the Constitution provides for a qualified majority.

Guidelines on Quality of EU Legislation and its Impact on Albania 197

One such case is Article 81 of the Constitution, which lists categories and issues of legislation that require the vote of three-fifths of all members of the Assembly to be adopted:

- a) the organisation and operation of the institutions provided for in the Constitution;
- b) citizenship;
- c) general and local elections;
- d) referenda;
- e) codes;
- f) state of emergency;
- g) the status of public functionaries;
- h) on amnesty;
- i) on administrative and state organization of the Republic”.

1.3. Justification for Legislative Intervention

1.3.1. Legislative initiative

1.3.3. Alternatives to legislation

It should be noted that several alternatives to legislation may be initiated without specific legal authority, such as:

- *Self-regulation*: certification and other forms of self-regulation may be an advantage both for the public and the business sector. The public sector would not need to apply extensive resources to exercise control and businesses would be relieved of a number of administrative burdens arising from public control;
- *Voluntary agreements* between the state and relevant groups (e.g. private companies, local governments, labour organisations), leaving it to the groups themselves to choose the preferred means. Such agreements would oblige the groups to realise the goals that have been agreed but leave them free to choose which means to apply in order to reach these goals. This may allow flexible planning of work in an individual company, thereby reducing its costs;
- *Information or public relations campaigns* to persuade people to change their behaviour in certain respects. This method tends to be most widely used in fields such as health, energy and traffic regulations;

In addition, certain objectives may be better achieved through creating economic incentives, such as introducing taxes and subsidies, to motivate citizens and businesses to behave in a desired way. In this case the market is used as an instrument of regulation, prompting citizens and businesses towards certain conduct by economic means;

1.3.4. Amending legislation

When it does prove necessary to amend an existing law, the question arises whether to achieve this by drafting an amendment or instead by drafting an entirely new law.

If the changes are minor and do not affect matters of principle it is generally advisable to draft the law as an amendment. The preparation of an amendment will be also less costly in resources as well as in time compared to the preparation of a completely new law.

A new law should be envisaged if the proposed changes involve establishing new principles in current legislation or would affect a large number of current legislative provisions.

1.4. Delegated Legislation

1.4.1. Need for delegated legislation

The main underlying principle of the Albanian constitutional and legal system is that all legislation is adopted by the Assembly. However, in certain instances the Assembly may delegate to the Government the duty to provide more detailed and technical regulations.

In accordance with Article 118 of the Constitution:

1. Subordinate legal acts are issued on the basis of and for implementation of the laws by the organs provided in the Constitution.
2. A law shall authorise the issuance of subordinate acts, designate the competent organ, the issues that are to be regulated, and the principles on the basis of which the sub-statutory acts are issued.
3. The organ authorized by law to issue subordinate acts as is specified in paragraph 2 of this Article may not delegate its power to another organ.

1.5. Evaluation of Legislation

A major element in the legislative process is determining the effectiveness of existing or proposed legislation. This covers not only financial impacts, required by the Constitution to be considered, but also other elements that will be discussed below. The evaluation of legislation can be done in different ways, but always based on some analysis. Recently a new concept has been developed, known as regulatory impact assessment (RIA), which summarises in an organised manner the necessary analytical steps for performing this evaluation.

1.5.1 Regulatory impact assessment (RIA)

Regulatory Impact Assessment (RIA) is an analytic method developed in recent years in many countries (Europe, USA, Canada). It is used for improving the quality of laws, in terms of efficiency, effectiveness and impact in the society after their approval. Applying the RIA method requires the drafters and policy makers to answer a list of questions as mentioned above during the legislative process and to develop an impact assessment of the costs and benefits of that law

Acknowledging that, it is still early for the Albanian institutions to apply RIA fully. For laws approximating EC Directives and other *acquis* impact assessment is not necessary, since these laws have to be implemented regardless of their costs as they are the obligations from the SAA and for EU accession necessary.

Guidelines on Quality of EU Legislation and its Impact on Albania 199

Evaluation of the effectiveness, enforceability and cost of legislation should be treated as an integral part of the law-making process.

Evaluation of legislation should be made both before and after the formal enactment of legislation. Two different perspectives, or types of evaluation, should therefore be distinguished: prospective (*ex ante*) and retrospective (*ex post*) evaluation.

Evaluation is concerned with the effects of legislation. Such effects can be considered from various perspectives and assessed according to a variety of criteria. The most frequently mentioned evaluation criteria are: effectiveness, efficacy and efficiency.

Effectiveness is the extent to which the observable attitudes and behaviour of the target population (individuals, enterprises, public officials in charge of the implementation or enforcement of legislation) correspond to, and are attributable to, the normative model, that is, the attitude and behaviour prescribed by the legislator

Efficacy is the extent to which legislative action achieves its objectives. This criterion has particular significance from a political perspective. It shows how important it is to define clearly the objectives of the decision to legislate.

Efficiency is the relationship between the “costs” and the “benefits” (in their broadest sense) of legislative action. Similarly, “benefits” can include all the direct and indirect effects of realising the objectives of the legislation. In short, evaluating the efficiency of legislation means balancing the extent to which its objectives are achieved against the costs, in the broadest sense, of their achieving them.

These three criteria (effectiveness, efficacy and efficiency) highlight some aspects of the effects of legislation; they emphasise aspects that are particularly important in the law-making process. However, of course, they do not exhaustively elucidate the complex causal relationships that are the social reality. They do not necessarily encompass all relevant effects of particular legislative action, which is sometimes described by the word *impact*.

There are also other related evaluation criteria that can be seen to assist those responsible for making, and advising on, strategic decisions in the preparation of legislation.

One of the more important of these is the *enforceability* of the legislation. Is the nature of a provision of the draft law such that it can be enforced? This may have a drafting aspect.

1.5.3. Cost of legislation

The direct financial cost of implementing legislation is a clear element in estimating the cost of legislation. Article 82 paragraph 1 of the Constitution specifies that a law must always be accompanied by a report that justifies the financial expenses for its implementation. This requirement is also specified in the Rules of Assembly, Article 68.

Article 25, paragraph 1 of the Law on the Council of Ministers provides that all draft laws submitted to the Council of Ministers for approval must be accompanied *inter alia* by an explanatory memorandum whose content is specified

in paragraph 2 of the article. For draft laws that have an economic and financial nature, the explanatory memorandum must include the expected financial impact arising from their implementation.

There are, of course, many costs of legislation. First, there is the cost to the public sector. Increased bureaucracy will have staffing and, therefore, financial implications. There may be other direct public sector costs, for example, if the legislation provides for grants for housing or small businesses.

1.5.4. Evaluation tools and methods

Evaluating the effects of legislation means, as a first step, developing sensible assumptions and hypotheses concerning the – potential or real – causal connections between legal norms and observable attitudes, behaviours and situations; and, as a second step, testing the validity of these assumptions by using all the relevant experience, information and knowledge that is available, or can be made available in time and with reasonable effort.

1.6. Codification

The traditional formal underlying concept of codification is that of *consolidation*, aimed at gathering together all statutory provisions in a given area, but not altering the substance of the provisions, or indeed their drafting, except to ensure that they are coherent as a collected text and reflect the existing hierarchy of legal norms.

Codification is accordingly an activity that aims at responding to the complexity of law by simplifying access to its norms. But legislative work does not stop when a code is published.

Chapter II. Legislative Procedure

2.1. Complexity of the legislative procedure

Laws result from a complex process of interaction and coordination of the various players involved in the legislative process. The quality of laws therefore greatly depends on the organisation of the legislative process and the co-operation among these players.

The process of preparing draft legislation may take a variety of forms and methods. Draft laws may be developed by the administration, by the ministers' offices, by the research centres of the political parties or sometimes by organisations outside government, such as universities or law offices.

When a government authority prepares a draft law, it must consult other relevant state authorities on the draft text. A draft law together with its explanatory memorandum must be sent to ministries and other institutions with an interest in it (Law on the Council of Ministers, Article 24, paragraph 1), and to the Ministry of Justice, which is required to give an opinion on the legality of its form and content (paragraph 2; and see further 2.4.2 below). Failure to comply with

these provisions may result in the Secretary General of the Council of Ministers returning the draft law to the promoting ministry for the required procedural action to be taken (paragraph 3).

Often, consultations extend to a wider circle of external interested parties. If the draft legislation is initially prepared by bodies such as commissions, inter-ministerial committees (Law on the Council of Ministers, Article 11) or expert working groups (Law on the Council of Ministers, Article 12), interested parties commonly have the opportunity to be represented to them. Such bodies can also invite relevant organisations or individual experts to present their views directly to them.

The legislative process itself generally involves the following stages:

1. Preliminary drafting;
2. Internal consultation among governmental authorities;
3. External consultation;
4. Discussion and approval by the Council of Ministers;
5. Parliamentary process;
6. Promulgation by the President and publication;
7. Follow-up to the implementation of the law.

The total preparatory work on legislation often takes place over quite a lengthy period. It is therefore expedient, as early as possible in the process of preparing legislation, to establish a timetable covering each phase of the task, up to the introduction of the draft law in the Assembly. The timetable serves to ensure that adequate time is allotted to the individual phases within the total period of time available. This has important implications for the quality of laws. Without a timetable, it is the common experience that the time made available in the preparation of legislation for the actual drafting of the legislation often proves to be insufficient.

2.2. Governmental Legislative Programme

The coherence of the legal system may be greatly facilitated by establishing short, medium and long-term legislative priorities by means of appropriate planning and programmes. Such programmes give an overview of the sequence of the legislative activity thus avoiding the situation that a particular law cannot be enforced because of the absence of some other enabling legislation.

Efficient law drafting requires a scrupulous planning of the legislative work at the governmental level. The principal planning tool for the legislative activity of the government is the annual legislative programme providing a structured presentation of the draft laws that the government intends to prepare and introduce during the given year. This programme is prepared in co-ordination with the legislative programme of the Assembly (Law on the Council of Ministers, Article 27/2).

The Prime Minister co-ordinates the process of the preparation of the annual analytical programme and of that of its subsequent submission to the Council of Ministers. See Chapter II of the Rules of the Council of Ministers.

2.3. Preliminary Drafting

A working group is established by order of the Prime Minister or act (a Decision) of the responsible minister. The instrument establishing the group that should contain the following elements:

- the terms of reference of the group and the period within which they are to be executed;
- the members of the working group, including specifying its president and vice-president;
- the reporting obligations and procedures for informing the general public;
- questions relating to copyright in the materials prepared by the working group;
- the requirements of professional confidentiality;
- the relationship between the working group and other organisations;
- the designation of a secretariat;
- the budget, in particular, credits for specific tasks and important expenditure items;
- the duty of the administration to provide information to the working group.

The working group may determine further details of its operation and organisation in its own internal regulations.

In addition to representatives from other ministries and state authorities with a direct interest, a working group may include as *members* (or, where permitted, co-opted members) politicians and experts, including foreign experts, on the matter in question. These experts may come from other authorities, universities or the judiciary, as well as from private organizations.

The secretariat of a working group should be provided by the ministry responsible for the legislative project, and it is normally assumed by the person in charge of the project. The secretariat functions include:

- maintaining a list of members of the working group (name, position, authority/organisation, profession, contact details);
- drafting and keeping the minutes of the working group's meetings and decisions;
- drafting working documents presenting, *inter alia*, the initial situation, advantages and disadvantages of various options, and other documents facilitating the proceedings of the working group;
- carrying out other tasks requested by the working group.

2.4. Internal Consultation

2.4.1. Consultation of other governmental departments

A ministry proposing a law must send the draft law and an explanatory statement about its object, purpose and content to other ministries and institutions with an

interest in it (Law on the Council of Ministers, Article 24, paragraph 1). Such bodies may request that this material be sent to them if they have an interest and have not been consulted by the promoting ministry.

The proposing ministry must also submit the draft law to the Ministry of Justice for it to give an opinion on the legality of its form and content (Law on the Council of Ministers, Article 24, paragraph 2; and see further 2.4.2 below). A draft law with economic or financial implications must also be submitted by the promoting ministry to the Ministry of Finance, or the Ministry of Economy, or both ministries (Rules of the Council of Ministers, chapter IV, paragraph 23).

Draft laws should also be sent to the Ministry of European Integration which will assess their compatibility with the *acquis communautaire*.

It should be noted that a draft law, submitted to the Council of Ministers which fails to comply with the provisions of the Law on the Council of Ministers may be returned by the Secretary General of the Council to the proposing ministry for the required action to be taken (Law on the Council of Ministers, Article 24, paragraph 3).

2.4.2. Opinion of the Ministry of Justice

Draft laws must be submitted, without any exception, to the Ministry of Justice for it to give an opinion on the legality of their form and content (Law on the Council of Ministers, Article 24, paragraph 2). This is one of the activities undertaken by the Directorate of Legislation and Legal Assistance in performance of the statutory duties of the Ministry (Law on the Ministry of Justice, Articles 6 and 10, paragraph 2). As the Ministry of Justice is often pressed for time in giving its opinion, the draft law should be submitted, in a sufficiently complete form for the evaluation to be made, well in advance of the meeting of the Council of Ministers at which it is expected to be discussed.

2.5. External Consultation

2.5.1. Purpose and Value

The preparation of legislation should not, in principle, be confined to state bodies. The legislative process should be transparent and should seek to allow for the consultation of external experts, interest groups, and non-governmental organisations, as well as of the civil society and the public in general.

External consultation allows for expression of the maximum range of legislative proposals from institutions and citizens. It provides political exposure of social issues and puts them on the agenda of the policy makers. Consultation is of particular utility in the evaluation of the effects of legislation, determining its real impact and possible side effects (on evaluation see 1.5). The involvement of interest groups with knowledge and experience in the relevant field will supply the drafters of the legislation with crucial information that may otherwise not be available.

In general, external consultation enables a broad range of persons and institutions to contribute to the preparation of legislation and provides an

opportunity to ascertain the views of those who are likely to be affected by the legislation. It should thus increase the opportunities for constructive dialogue and so improve the policy and the substance of the legislation.

External consultation also plays a role in maintaining the technical quality of legislation. Because of the increasing diversity of social and economic processes the corresponding legal regulatory framework is rapidly increasing in complexity. Those preparing legislation are faced with increasingly higher risks of error or miscalculation in the design of legal norms. Consultation of interested parties during the legislative process is one obvious way of remedying this.

Finally, external consultation in the legislative process facilitates the democratic scrutiny of the work of the executive by the Assembly. Analysis of the results of public consultations will provide the Assembly with an opportunity to understand better the issues raised by a legislative proposal.

As a final practical matter, *where consultation is undertaken, it should as far as possible be completed prior to the introduction of the draft law in the Assembly*. There are considerable drawbacks if time constraints make it necessary to undertake consultation later than this. For the consultation to have any real meaning the ministry will be faced with the difficult task of preparing its considered comments on the submissions within a very short period before the Assembly's first reading of the draft law. Similarly, there will be little time for the ministry to draft amendments, if it is decided to adopt some of the proposals resulting from the consultation.

2.5.2. Consulted Parties

It is naturally not possible to specify all the external parties who should be consulted on draft legislation. However, as a general rule, all those who are likely to be affected by the draft law at a practical level, or at a more general level in respect of its principles, should be consulted. In any event, it is better to consult too many rather than too few.

2.5.3. Transparency

Consultation is a key precondition for transparency in decision-making and, where undertaken, should itself be implemented in accordance with the highest transparency standards. Badly organised consultation may be counterproductive and inhibit the acceptance of legislation.

2.5.4. Timing

The timing of consultation should strike a reasonable balance between the need for adequate input and the need to progress decision-making. So, for instance, the complexity of a given proposal or the diversity of affected parties might well be good reasons for extending consultation periods.

2.5.5. Consultation documents

To increase the efficiency and usefulness of consultation, it should be based on a concrete text, preferably supported by an explanatory memorandum. On such a basis, specialists who are consulted can make well-informed specific comments.

However, a different approach is recommended where the consultation takes place before a draft legal text is available or where the consultation is directed to the general public. In such circumstances, it may be appropriate to make available an analysis of the various policy options, or an analysis offering a range of policy options but indicating a preferred policy, and seek comments. The consultation document should be as clear and concise as possible. It should also include a summary, in two pages at most, of the main questions on which views are sought.

2.5.6. Evaluation of comments

It is essential that there is a careful analysis of comments submitted in response to consultation exercises. The comments may prove to be valuable in improving a draft law, in particular if they relate to a legislative text.

2.5.7. Information technology

New information technology, in particular the expansion of the Internet, has opened up new avenues for consultation in the legislative process. Internet consultations are easily accessible and providing responses to consultation on the Internet is also more convenient and efficient than through the traditional media, thus encouraging more people to participate rather than just a narrow circle of experts.

Where necessary, the Internet also provides the government with the possibility of targeting those especially concerned by the initiative in question, in addition to a more general consultation. By allowing electronic interaction between citizens and the government and enhancing the opportunities for citizens to participate in the decision-making processes, information technology allows for greater transparency and better quality legislation.

2.6. Submission to the Council of Ministers

2.6.1. Government's Co-ordination Committee

Prior to a draft law's submission to a Council of Ministers meeting, it is submitted to the Prime Minister's Office (Secretary General of the Council of Ministers) that is in charge of checking whether the formal rules of procedure have been observed, such as internal and external consultation or whether documents accompanying the draft are complete. At the same time the Secretary General evaluates whether the draft law results from a consensus of the interested ministries. Finally he/she assesses whether the quality of the draft is satisfactory from the point of view of legislative techniques and legal terminology.

2.6.2. Council of Ministers Meetings

Draft laws are submitted to a Council of Ministers meeting for approval prior to their introduction (proposal) in Assembly. With a view to the discussion of the draft law at the Council of Ministers meeting, the minister forwards the draft law with the explanatory memorandum. (Law on the Council of Ministers, Articles 19 and 25).

2.7. Submission to the Assembly

The Government's organisation of the legislative work must take place within the overall framework and according to the considerations jointly developed by the Assembly and the Government. The Assembly should be given the time necessary to conduct a thorough reading of the submitted draft. Simultaneously, the observance of the submission time limits is also a precondition enabling the Assembly to organise the legislative work in an expedient manner.

The Assembly has established the procedure for the enactment of laws (Rules of Procedures of the Assembly, Articles 68-88).

2.8. Promulgation

The President of the Republic has the constitutional power and duty to promulgate the laws after receiving them from the Assembly.⁷

2.9. Publication

2.9.1. Role and effects of the official publication

According to Article 117 of the Constitution, the laws and the normative acts of the Council of Ministers (see also Law on the Council of Ministers, Article 29), ministers and other central state institutions acquire legal effect only after they are published in the Official Journal. Laws enter into force after 15 days have passed from their publication in the Official Journal (Constitution, Article 84/3). The State Publication Centre manages the Official Journal, which is under the authority of the Ministry of Justice (Law on the Ministry of Justice, Article 18).

2.9.2. Publication of international treaties

According to Article 117 of the Constitution, international agreements that are ratified by law are promulgated and published according to the procedures provided for laws.

⁷ Article 84 of the Constitution says:

1. The President of the Republic promulgates an approved law within 20 days from its submission.
2. A law is deemed promulgated if the President of the Republic does not exercise the rights provided for in paragraph 1 of this article or in paragraph 1 of article 85.

Guidelines on Quality of EU Legislation and its Impact on Albania 207

The texts of international treaties translated into Albanian, if the treaty has not been concluded in Albanian, must be published in the Official Journal. This requirement is mandatory for all international treaties ratified by the Assembly or signed and approved by the Council of Ministers only.

2.9.3. Organisation of the publication process

The Secretary General of the Assembly or of the Council of Ministers delivers, respectively, the texts of laws or of delegated legislation to be published in the Official Journal to the State Publication Centre (SPC).

To improve the efficiency of the official publications, the SPC should, at the same time, be provided with the relevant texts in electronic form. The use of electronic form of manuscripts would allow for the use of spell checkers and other more sophisticated software to help with validating the quality of texts.

With respect to voluminous legislative texts it is important that the Office of the President of the Republic, the Assembly and the Government establish a permanent co-operation with the SPC and, as the case may be, create *ad hoc* IT systems for special issues of the Official Journal.

2.9.4. Directory of legislation and index

To facilitate access to the laws published in the Official Journal, the SPC should produce yearly tables of publications, arranged in chronological order and according to a thematic classification.

A directory of all legislation in force would also be useful. Use should be made of indexation that will allow for attributing the legal acts to a particular legal domain (such as trade, agriculture, etc), attributing key words for search by subject and creating links between various acts, for example between an amending act and the basic act.

2.9.5. Use of IT in publication of law

Application of new information technology should be encouraged in order to facilitate access to law. Electronic dissemination provides easier access to law at a lower cost because the law in electronic form reaches a much broader audience than the traditional printed media. Putting information on-line opens the way to areas of law that were previously inaccessible. Electronic legal databases provide wide-ranging possibilities for access to consolidated texts, use of search engines, thesauruses and other technological means facilitating retrieval of legal texts. Information technology tools help better structuring of legal information databases, easier navigation to improve the retrieval of legal information and enable placing a particular piece of legislation within its context by the use of technological tools such as hypertext links.

A complete transition to electronic dissemination might, however, hinder access to law for those who cannot use, or have no access to, information technology. For this reason dissemination through printed media remains necessary.

2.10. Monitoring Laws

It is a central task of the Government and responsible ministers to monitor the effect of the legislation adopted in the field of its competence and to propose, where necessary, any necessary amendments. The minister must, among other things, ensure that laws fulfil their purpose, that the basis and practical need for them continues to exist, and that their objectives continue to be relevant in contemporary society. The minister should also monitor, on a regular basis, the technical quality of its legislation. This should include consideration of whether the legislative provisions are, in practice, ambiguous as a result of, for instance, a lack of clarity in the legislative text or its explanatory memorandum.

A ministry can gain such knowledge from a variety of sources. The best and most reliable retrospective evaluations use the different qualitative and quantitative methods and techniques familiar in the field of social sciences such as interviews, observation, text analysis, synchronic and diachronic statistical comparisons between target populations and populations not exposed to legal change. The organisation and more explicit contents of an evaluation depend on the character of the given legislation. The appropriate model for monitoring a law will vary from law to law, but the technique to be used in each law should be detailed in its explanatory memorandum. Each ministry should regularly consider means for initiating monitoring schemes.

Chapter III. Law Drafting Technique

Certain fundamental principles of law drafting always remain constant. One of them is that legislation should be consistent, coherent and clear. These requirements are best met by applying uniform drafting techniques that can provide clearly defined, consistent and predictable guidance for the structure and expression of legislation. See above Point 1 of the Council Resolution of 8 June on the Quality of drafting Community legislation.

All ten points of the Council Decision have more or less been taken over in the Albanian Guidelines for Legislative drafting.

The explanatory memorandum must contain:

- 1) a statement justifying the financial cost of the implementation of the law (Constitution, Article 82, paragraph 1; Law on the Council of Ministers, Article 25, paragraph 3 and the Rules of the Assembly, Article 68);
- 2) the objectives that are aimed at being reached and whether or not the draft law is related to the political programme of the Council of Ministers;
- 3) an argument why the objectives of the draft law cannot be achieved with existing legal instruments;
- 4) a summary of the content of the draft law;

- 5) its conformity with the Constitution and the harmonization with the legislation in force. The level of conformity of the draft act with international law binding on the Republic of Albania;
- 6) an explanation for taking account or not of the comments and opinions of ministries or other interested institutions.
- 7) the degree of approximation of the draft law with the *acquis communautaire* according to the instruments of approximation under 4.5.

For detailed information about the contents of explanatory memoranda on this point, see the Law on the Council of Ministers, Article 2, paragraph 2; and the Rules of the Council of Ministers, point 19 in Chapter III.

The explanatory memorandum should also indicate the compatibility of the draft law with European Union law.

An explanatory memorandum should be objective and transparent. If, for instance, consideration was given to other forms of regulation (including self-regulation) during the deliberations leading to the preparation of the legislation, it is good practice to explain this. The explanatory memorandum should be normally divided into general comments on the totality of the draft law and specific comments on its individual provisions.

Explanatory memoranda serve a variety of purposes. Their primary function is to inform the members of the Assembly and assist them in their parliamentary consideration of the draft law. Explanatory memoranda also perform an important function for the general public and, by extension, the media. Memoranda that set out their material in a complete and effective way enable public access to, and knowledge of, the proposed law.

After laws are enacted, their explanatory memoranda continue to have a significant role, in that they have an impact on the application of the law in practice. They remain a source of information to the public on the law, thus contributing to its effectiveness. Those who administer the law may turn to its explanatory memorandum to establish the object and intent of its provisions as an aid to administering them. Finally, and importantly, the courts may refer to the explanatory memorandum as an aid to interpreting a law. It follows that an obscure, ambiguous or superficial explanatory memorandum may result in legislation being applied and interpreted in ways different from what was intended.

These factors raise the question of the legal status of explanatory memoranda. In theory, the text of legislation should provide a solution to all the legal issues falling within its scope. The explanatory memorandum should therefore only provide background information and ancillary guidance on the legislation.

3.8.1. Background comments

In this introductory part of the memorandum, an account should be given of the overall objectives and principal reasons for the draft law as well as its relationship with the existing legislation, international law and European Union law in the

area concerned. Generally, the description should deal both with the legislative enactments and other applicable sources of law, including customs and public policy. This introduction should normally be brief, as it mainly serves to give the members of the Assembly, and others, a general overview of the draft law.

3.8.2. Comments on the relationship with international law

If a draft law requires to more extensive consideration of international law, in particular, the European Convention on Human Rights, an outline of that consideration should be included. If legislation necessary for the compliance with an international treaty is proposed, it should be stated explicitly in the memorandum to the draft law that the Assembly's enactment of the draft law means simultaneous consent to ratification. In this connection, if the Government intends to make reservations to either substantive or procedural provisions of the treaty, this should be stated; for example, whether prescribed dispute resolution procedures in the treaty are accepted. (See further chapter IV).

The memorandum should include information on the draft law's relationship to European Union law. If the draft law does not touch upon Community law related aspects, this should be mentioned. Where the draft law's purpose is to implement EU law, the explanatory memorandum should identify the type of EU act in question and describe its contents. The title of the EU act should also appear in the memorandum (including a reference to the Official Journal of the European Communities). If the draft law contains provisions that concern implementation of Community law and others that do not, the provisions in each category should be clearly identified. (See further 4.5).

3.8.5. Comments on impact evaluation

According to of the Constitution (Article 82):

1. The proposal of laws, when this is the case, must always be accompanied by a report that justifies the financial expenses for its implementation.
2. No non-governmental draft law that makes necessary an increase in the expenses of the state budget or diminishes income may be approved without taking the opinion of the Council of Ministers, which must be given within 30 days from the date of receiving the draft law.
3. If the Council of Ministers does not give an answer within the above term, the draft law passes for review according to the normal procedure."

This underpins the need for a statement of impact evaluation in the explanatory memorandum.

Chapter IV. International and European Union Law Implications For Law Drafting

4.1. International law

International law is an essential element of the Albanian legal order. International treaties have extensive effects on all activities of the state and influence decisively

the elaboration of the domestic legislation. International law has thus become as indispensable an instrument as domestic legislation for the realisation of the rule of law.

Albania is a party to numerous bilateral and multilateral treaties that are of importance in law making. Additionally, there are numerous non-binding international instruments that contain recommendations of potential relevance to the drafting of legislation.

4.1.1. Legally binding nature of treaties

The term “treaty” denotes any sovereign act by which two or more subjects of the international legal order demonstrate their mutual willingness to assume certain commitments. The status of a treaty does not depend on the nomenclature of its title; a treaty may also be variously designated as, for example, “Agreement”, “Accord” “Charter”, or “Convention”.

4.1.2. Other international law

Many other different types of instruments of international co-operation have been developed, such as “Joint Declarations of Intent”, “Memoranda of Understanding”, “Agreed Minutes”, “Codes of Conduct”. They are commonly political agreements without binding legal effect, unless the contrary is established by their terms or the declarations or practice of the parties to them. These instruments are often characterised as “soft law”. The recommendations of the Committee of Ministers of the Council of Europe are another example of “soft law”.

4.2. Status of International Law in the Domestic Legal Order

Article 122 of the Constitution provides:

1. Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. The amendment and repeal of laws approved by a majority of all members of the Assembly is done by the same majority for the purposes of the ratification of an international agreement.
2. An international agreement ratified by law has priority over the laws of the country that are incompatible with it.
3. The norms issued by an international organisation have priority, in case of conflict, over the law of the country when the direct application of the norms issued by the organisation is expressly contemplated in the agreement ratified by the Republic of Albania for participation therein.

The monist⁸ approach to the relationship between domestic and international law, embraced by Article 122 of the Constitution, allows for the unity of all legal

⁸ There are two theories of international law dealing with the relationship between the domestic and international law. The dualist theory maintains that there are two separate systems of law. This theory holds that international law and domestic law have different scopes of application and in

norms, both international and domestic. Accordingly, the ratification by Albania of an international treaty results in this treaty becoming automatically an integral part of the Albanian legal order, from the moment of its entry into force.

In addition, Article 122 provides for the supremacy of international treaties over domestic law, excluding, accordingly, the application of the rule of *lex posterior*. It also follows from Article 27 of the Vienna Convention on the Law of Treaties, 1969, that States parties to the Convention may not invoke the provisions of their domestic law to justify a non-fulfilment of the provisions of an international treaty. This general principle of the supremacy of international laws means that declaratory provisions in individual domestic laws stating the priority of international law should be avoided. As the general principle of the supremacy of the international law has constitutional authority, such legislative provisions are superfluous.

The official translation of international treaties is a function of the Directorate of International Judicial Cooperation of the Ministry of Justice (Law on the Ministry of Justice, Article 12).

4.3. Conclusion of International Treaties

4.3.1. Competent authorities

The preparation of domestic legislation and of international treaties are subject to quite distinct rules. In respect of domestic law, the state is the legislator; international treaties are, however, the result of negotiation and co-operation between several states or international organisations.

Article 121 of the Constitution provides:

1. The ratification and denunciation of international agreements by the Republic of Albania is done by law when they involve:
 - a. territory, peace, alliances, political and military issues;
 - b. human rights and freedoms, and obligations of citizens as provided in the Constitution;
 - c. membership of the Republic of Albania in international organisations;
 - ç. assumption of financial obligations by the Republic of Albania;
 - d. approval, amendment or repeal of laws.
2. The Assembly may, by a majority of all its members, ratify other international agreements that are not contemplated in paragraph 1 of this article.
3. The Prime Minister notifies the Assembly whenever the Council of Ministers signs an international agreement that is not ratified by law.
4. The principles and procedures for ratification and denunciation of international agreements are provided by law.

The Council of Ministers can conclude international treaties on its own, without parliamentary approval, when such competence has been granted to it by law or by an international treaty approved by the Assembly.

If the Assembly considers that a treaty concluded by the Council of Ministers in fact requires ratification by a law enacted by the Assembly, it can request that

case of conflict the domestic law prevails. The second theory the monist one, maintains that there is only one system of law and that international law prevails over national law.

the treaty is submitted to it for approval. If the Assembly does not approve the treaty as a result of this procedure, the Council of Ministers must denounce the treaty as soon as possible.

The Council of Ministers can conclude a treaty that it has negotiated on the basis of an express authorisation from the Assembly. This authorisation can be either in a domestic legislative act or in a treaty concluded by the Assembly. It is increasingly common for the Assembly to authorise the Council of Ministers to conclude treaties. Such authorisation sometimes also provides that the Council of Ministers is competent to conclude a treaty whose provisions derogate from domestic law.

4.3.2. Negotiation

Treaties are negotiated by the Council of Ministers and the competent ministries. The decision to open negotiations is taken by the Council of Ministers.

Although it participates in the determination of foreign policy, the Assembly does not intervene in the negotiation phase. The Council of Ministers is, however, obliged to inform and consult the Commission on Foreign Policy of the Assembly, which can bring to the attention of the Council of Ministers its opinion concerning the negotiating mandate.

4.3.3. Initialling of international treaties

Initialling a treaty is appending the initials of the negotiators at the bottom of each page or at the end of the treaty. This formality is carried out when the negotiators have agreed on the definitive text of the treaty but they have been given no authority to sign it, or when the provisions of the treaty substantially differ from their received instructions. Initialling is decided upon by the head of the national delegation. The purpose of initialling is to attest that the text corresponds to the outcome of the negotiations, and it is normally followed by signature.

4.3.4. Signature subject to ratification

Signature, subject to ratification, of a treaty is carried out on the basis of a mandate from the Council of Ministers that designates the official representative of Albania to sign the treaty. Signature subject to ratification merely attests the authenticity of the negotiated text without legally binding the signatory state.

Nevertheless, certain legal effects are attached to the signature; it does not commit the state to implement the treaty, but does mark its intention to become a party. According to Article 18 of the Vienna Convention on the Law of Treaties, signature entails the obligation not to defeat the object and purpose of a treaty prior to its entry into force, at least until the state has made its intention clear not to become a party to the treaty. It is generally accepted that an obligation of good faith to refrain from acts calculated to frustrate the object of the treaty attaches to a state that has signed a treaty subject to ratification.

Particularly as far as treaties with normative content are concerned, the signature may have a 'chilling effect' on existing Albanian legislation and

domestic practice which already conform to the standards of the treaty; subject to the qualifications mentioned, there should be no derogation from such legislation or practice after the treaty has been signed.

4.3.5. Definitive signature

Definitive signature is carried out by an authorised representative of the Council of Ministers and it has the same legal effect as ratification, which means that it expresses the consent of the state to be bound by the treaty. This manner of consent is only admissible when provided for in the treaty or in the mandate of the representative.

4.3.6. Ratification

In international law ratification demonstrates the definitive will of the state to be bound by the international treaty.

A distinction should be made between ratification as the internal procedure of approval by Assembly and ratification on the international plane, which is carried out by the deposit of the instrument of ratification. As a general principle, before depositing an instrument of ratification of a treaty, it is necessary for the state to have adopted all the laws allowing it to implement the provisions of the treaty. Ratification is not required if the Council of Ministers is empowered to conclude a treaty on the basis of a law or an international treaty.

4.4. Evaluation of the Compatibility of a Draft Law with International Law

Explanatory memoranda to draft laws submitted by the Council of Ministers to the Assembly must contain an analysis of the compatibility of the draft law with the international law obligations of Albania (Law on the Council of Ministers, Article 25, paragraph 2).

4.5. European Union Law

The policy objectives of the European Union (EU) that have been formalized in the *acquis communautaire* and other acts of the EU should be underlying constraints of both policy development and legislative drafting in Albania.

All stages of the legislative process, from policy development, to choice of instrument (statutory/sub-statutory legislation) to actual drafting of an act are subject to the process of integration of the *acquis communautaire* requirements into Albanian legislation.

Although no methodology on the compatibility of a proposed legislative measure with the *acquis communautaire* has been developed formally,⁹ drafters

⁹ The Ministry of European Integration (MOEI) is responsible for developing the methodological instruments of compatibility with the *acquis*. See Decision no. 580 of the Council of Ministers of 10.9.2004 "On the field of activity of the Ministry of European Integration," point (2)(c). As of the time that this Manual was prepared, the MOEI had prepared a draft Decision for the Council of Ministers on the approval of the instruments of the approximation of the domestic legislation with

of legislation should keep in mind some systematic considerations relevant to all the stages of the legislative process. That calls for a number of checks that all ministries should complete before and during the process of formalising policy in legislation in connection with their areas of competence.

4.5.1. Policy development in connection with approximation

The approximation of Albanian legislation with the *acquis communautaire* is a demanding and complex process. It requires not only that Albania build its regulatory framework in line with its requirements but also that the administrative structures and other conditions necessary for implementation of the *acquis communautaire* be assured. Thus, the approximation process goes beyond merely legislative drafting tasks and most importantly calls for special attention to the policy development stage so that informed decision can be taken and qualitative legal texts can be produced.

The responsibility for policy development and for completing the transposition tasks lies with the ministry responsible for drafting the legislative measure in accordance with its area of competence.¹⁰ The completion of these two tasks taken together will require the responsible ministry to engage in an exercise for the organisation of which some basic methodological considerations should be taken into account.

1. Identifying the problem that needs to be regulated and priority setting

The National Plan for the Approximation of Legislation and SAA¹¹ Implementation (NPAL) adopted by the Albanian government in the framework of the European Partnership is a comprehensive compilation of legislative and implementing measures that Albania aims to complete in order to fulfill its SAA commitments.¹²

This document should be the motor of policy formulation in each ministry. The NPAL follows the lines of the *acquis communautaire* as prioritised by the draft SAA.¹³ Thus, it identifies the policy problems in the framework of the stabilisation/association process and then frames legislative and implementing measures designed to address those problems in timetables. Therefore *NPAL is a tool for prioritising and monitoring policy development* for each ministry, which might find it appropriate to elaborate simple *tables of comparison* that keep track of priority measures under the NPAL and legislative plans and policy programs adopted by each ministry.

the *acquis communautaire*. Further developments in this area can be expected, and the draftsman should stay aware of them.

¹⁰ See Rules of the Council of Ministers, Chapter III, point (12); point (19)(ç)

¹¹ SAA is the abbreviation for Stabilisation and Association Agreement.

¹² See Council of Ministers Decision no. 317, of 13.05.2005.

¹³ As of the time this manual was prepared the SAA has been initialed by Albania and the EU.

2. Identifying the relevant *acquis communautaire*

Here it is necessary to identify the *acquis communautaire* relevant to the concrete problem identified in the first stage. Also, the ministries involved in this process should make sure that the updated and consolidated versions of the *acquis communautaire* acts are used. *TAIEX databases*,¹⁴ which are available to all the ministries or can be accessed through the MoEI, organise the *acquis communautaire* by sector. These databases can be of significant assistance at this step of the exercise. In addition, the ministries should follow the guidelines coming from the MoEI regardless of their form: instructions, opinions, publications or otherwise. For example, the *White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the European Union*,¹⁵ which has been translated and published by the MOEI, offers excellent guidance on the *acquis communautaire* relevant to a number of sectors such as financial services, competition policy, agriculture, transportation, industrial standards, environment, telecommunications and others.

3. Identifying the form of the legislative intervention

The purpose of this step is to determine whether legislative intervention is needed and if yes, how will the responsible ministry plan such intervention. In the first place, the ministry should determine whether the problem is regulated at all by the existing legislation. If yes, the ministry should compare whether the existing legislation totally complies with the *acquis communautaire*. If not, the ministry should determine what type of regulation (law, COM decision, amendments to the existing legislation or otherwise) it is going to adopt to transpose the requirements of the relevant *acquis communautaire*.

At this specific moment, the ministries might find it appropriate to apply for some TAIEX services such as technical assistance and advice on the transposition of the *acquis communautaire*.¹⁶ They might also find it useful to test their approach by using a checklist that combines checks of approximation with checks of compatibility with requirements of Albanian legal system. The *checklist* might include but is certainly not limited to questions such as

1. Is this a legislative measure that will set the general framework and main principles for a specific sector?
2. How will this measure fit in the national legal system?
3. Does this measure require the adoption of other more technical regulation?
4. Does this measure set procedures that might affect the system of administrative procedures?

¹⁴ This is an abbreviation for the Technical Assistance Information Exchange Office at the DG Enlargement of the European Commission.

¹⁵ This document, though targeted to prepare the countries of East Europe for future accession, has been designed in a way that can serve as a general reference for the use of all prospective EUMSs; see point 3.23.

¹⁶ For information on the procedures to be followed for this type of assistance please consult with MOEI structures and visit http://www.mie.gov.al/rmaterial.php?id=18&selected_menu=7.

5. Does this measure require setting up a supervisory and/or monitoring structure?

4. Study of the regulatory impact

Although full compliance with the *acquis communautaire* is desirable, in some cases it is not feasible for a number of reasons, most of which relate to administrative capacities and financial and human resources. These concerns might affect the sequence in which the approximation process is approached.

Accordingly, *regulatory impact studies* should include checks of regulatory assessment for purposes of approximation (this means for example an assessment of the practical capacities for implementing the legislative measure; and an assessment of the practical capacities for completing the activities, for ensuring the institutional arrangements and for enforcing sanctions as required by the *acquis communautaire*; an assessment of the extent to which the legislative measure meets the objectives of the *acquis communautaire* (see 1.5.1)

5. Production of a concept paper

As a final step of the policy formulation stage it is desirable that each ministry produce a *concept paper* which should be a comprehensive analysis of how this policy proposal incorporates the policy objectives of the *acquis communautaire*. Summarizing the findings of all the previous steps of the exercise will facilitate the task of drafting the legislative text. The concept paper should include: a clear definition of the problem and policy concepts; an analysis of the regulation of that problem by the *acquis communautaire*; an analysis of the degree of regulation of that problem matter by the legislation in force if applicable; an analysis of the need for legislative intervention; a clear statement of the legislative intent; a description of the regulatory effects of the proposed measure; an indication of how this measure will meet the *acquis communautaire* requirements, and an analysis of how this measure fits into the domestic legal system.

4.5.2. Drafting the legal text

The main concern of legislative drafting at this stage of the EU integration commitments of Albania should be that of transposing *acquis communautaire* requirements into the legal text. The responsibility for completing the transposition lies with the ministry responsible for drafting the act in accordance with its area of competence.

In drafting the text of legislation, the ministry should make a choice between a translation approach and a substantial alignment approach or a combination of the two, whichever is more suitable for purposes of upholding the regulatory thrust of the *acquis communautaire*. So, the drafters might find it appropriate to translate simply the text of the *acquis communautaire* (e.g. the text of the regulation, or parts of the directives that set out technical standards such as lists, tables and formulas). Alternatively, the drafters might find it appropriate to engage in a staged analysis of how to incorporate the *acquis communautaire* requirements in the

text of the proposed legislation. Accordingly, the objectives, the definitions, the substantial provisions (e.g. provisions on competent authorities, on institutional arrangements, reporting procedures), the transitional provisions of the *acquis communautaire* should be reflected in the text of the proposed legislation.

In addition, the drafters of the legislation when defining the structure of the act should keep in mind the legislative drafting techniques referred to in Chapter III of this Manual.

4.5.3 Compatibility assessment

The assessment of the compatibility of a proposed measure with the *acquis communautaire* is a two step process. First, the ministry proposing the legislative measure should analyse and make its own assessment of compatibility with the *acquis communautaire* and indicate this in the explanatory memorandum accompanying the draft. Compatibility assessment and indication thereof is compulsory, not conditional upon a demand from other public institutions, and it is applicable to all types of regulations incorporating the measure.¹⁷ In the second step, the MoEI certifies compatibility.¹⁸

Some considerations to be taken into account when ascertaining compatibility might be those that look into the general construction of the act. In this way, the objectives, the substantial requirements, and the anticipated results of the *acquis communautaire* can be compared and tested against the principles, the substantial provisions and the intended result of the draft law and indicated in a simple *table of comparison*. After this analysis has been completed, it is important that the law's explanatory memorandum indicate the degree of compatibility (that is, full or partial) and contain references to the applicable EU *acquis* and the case law of the European Court of Justice, if relevant.

The final and formal authority to review and certify compatibility rests with the MoEI, which is required to design the methodological instruments for purposes of such tasks. These instruments should keep track of the priority areas of the SAA negotiations and implementation.¹⁹

¹⁷ Rules of the Council of Ministers, point 19(d).

¹⁸ Rules of the Council of Ministers, point 25; COM decision no. 580 of 10 September 9.2004 "On the field of activity of the Ministry of European Integration, point 2(c).

¹⁹ COM Decision no. 580, point 2(c).