

# Guide to Developing Secondary Legislation in Egyptian Legislating Bodies (Guide II)

2022

## Guide to Developing Secondary Legislation in Egyptian Legislating Bodies (Guide II)

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# Prefaces

## 1.1.1 Statement of ERRADA Executive Director

I am delighted to announce the release of another publication by ERRADA (Egyptian Regulatory Reform and Development Activity): *Guide to Developing Secondary Legislation in Egyptian Legislating Bodies (Guide II)*, elaborated in collaboration with the SIGMA Programme as a hands-on tool to draft legislation, as well as to study its impact. This effort builds on a prior collaboration, which resulted in the publication of the *Guide to Good Administrative Procedures for Egypt (Guide I)*, published in 2019.

Guide II is a reflection of our high ambitions to get ahead of the game through reforming the ways we design, implement and evaluate our legislation. The Guide manifests our plan for growth and sets out four objectives for the Arab Republic of Egypt's approach to regulatory reform: set strategic foresight for supporting sustainability; modernise our approach by unlock cutting-edge technologies; ease burdens and cut red tape; and boost competition and investment.

In challenging times such as these, it is more important than ever to legislate as effectively and efficiently as possible for moving towards better regulation. Luckily, Guide II offers the perfect opportunity to act quickly and nimbly and to join forces with all government regulatory bodies and ministries/entities for high-quality/better law making to support Egypt in the best way.

The Guide is based on extensive technical experiences and best practices to assist in the enhancement of regulatory quality, the enforcement of the rule of law, the proper implementation of political decisions, and the creation of predictability in the Government of Egypt's policies that aim to increase administrative efficiency and good governance.

ERRADA has taken significant steps towards reforming Egypt's legislative and regulatory framework with the goal of improving policy making, stimulating businesses and encouraging investment, and this project is only the beginning of much more rigorous efforts to accomplish ERRADA's objectives.

Now is the time to think boldly of a broader improvement in the national legislative and regulatory framework to foster private-sector development, safeguard the environment, decrease disparities while promoting competitiveness, and encourage new sectors. When strong rules are required to achieve the best outcomes, we will act decisively to put them in place and push to enforce them vigorously.

Dr. Heba Shahein  
Executive Director, ERRADA



### 1.1.2 Statement of the Minister of Planning and Economic Development

Out of the government's commitment to ensure a quality life for the Egyptian people, Egypt launched its first-ever Sustainable Development Strategy: Egypt Vision 2030 (SDS) in February 2016, believing that sustainable development is the guarantee for growth, development and prosperity for future generations. The SDS is aligned with the 17 Sustainable Development Goals, as well as the African Agenda 2063, and acts as the governing framework for all development programmes and projects that will be implemented until 2030. In order to hasten the process of the implementation of these goals, the strategy identifies a group of key enablers, one of which is creating a conducive legislative and regulatory environment.

Regulations are an important tool for preserving and advancing public interests. There is a real risk, however, particularly in a time of profound and rapid change in economic and social conditions, such as the coronavirus (COVID-19) pandemic, rapid technological progress and a changing geopolitical landscape, that regulations can become an obstacle to achieving the very economic and social well-being for which they are intended. A fundamental objective of regulatory reform is to improve the efficiency of national economies and their ability to adapt to change and remain competitive. Reform that sharpens competitive pressures provides powerful incentives for firms to become more efficient, innovative and competitive. Regulatory reform is also of fundamental importance to attracting and stimulating both foreign and domestic investment.

The Government of Egypt has a continuing responsibility to review its regulations and regulatory structures and processes to ensure that they promote efficiently and effectively the economic and social well-being of its citizens. Therefore, the Ministry of Planning and Economic Development (MPED) is delighted to announce that the Egyptian Regulatory Reform and Development Activity (ERRADA), in partnership with the SIGMA Programme – a joint initiative of the OECD and the European Union (EU), principally financed by the EU – are now launching the ***Guide to Developing Secondary Legislation in Egyptian Legislating Bodies (Guide II)***. This Guide not only intends to establish principles of good regulation but also to create effective and credible mechanisms within the government for managing and co-ordinating regulation and its reform, and to avoid overlapping or duplicative responsibilities among regulatory authorities and levels of government. This should develop the Government of Egypt's capacity for and familiarity with a broad range of new policy tools that can improve policy effectiveness and reduce costs while promoting innovation and sustainable development.

H.E. Hala El Said

Minister of Planning and Economic Development

### 1.1.3 Statement of SIGMA

The present Guide is a result of a fruitful co-operation between ERRADA and the SIGMA Programme, a joint initiative of the OECD and the EU, principally financed by the EU.

Evidence-based, transparent and inclusive law making is vital to the good functioning of societies, competitiveness of economies and prosperity of citizens. Legislation has an enormous effect on everyday life, people's rights and livelihoods, and businesses and the way they can operate. SIGMA's activities in Egypt since 2016 have aimed to promote a common understanding of what constitutes good administration behaviour and to help public bodies provide good and efficient service for citizens and businesses.

SIGMA's fruitful collaboration with ERRADA resulted in the *Guide to Good Administrative Procedures for Egypt (Guide I)* in 2019, a hands-on working tool that leads its user step-by-step through the chain of administrative decisions to be taken in individual cases. In this way, the Guide promotes legally compliant, predictable, effective, efficient, citizen-oriented and business-friendly procedures and services.

Even the best-quality procedural administrative standards, however, cannot lead to high-quality administrative decisions if the applicable substantive legal provisions are of inferior quality. Therefore, this *Guide to Developing Secondary Legislation in Egyptian Legislating Bodies (Guide II)* complements and details the general principles in Guide I.

SIGMA wishes to thank ERRADA for the collaboration of the past years and is looking forward to continuing to support legislative improvement and administrative simplification in Egypt.

Dr. Gregor Virant  
Head of SIGMA Programme

Nick Thijs  
SIGMA Senior Advisor  
Country Manager for Egypt

# 1 PART ONE – Rationale of the Guide to Developing Secondary Legislation in Egyptian Legislating Bodies (Guide II)

## 1.1 Introduction to the Guide

In December 2019, members of ERRADA and the SIGMA Programme started a joint project with the goal of contributing to good secondary legislation through elaborating a practical *Guide to Developing Secondary Legislation in Egyptian Legislating Bodies (Guide II)*.

This project follows an earlier project phase carried out in 2015-2019, during which, among other results, the *Guide to Good Administrative Procedures for Egypt (Guide I)* (<https://beta.errada.gov.eg/instrument/guide-to-good-administrative-procedures-for-egypt-edition-may-2019>) was developed.

As to the project methodology, the ERRADA/SIGMA team chose for both Guides a similar empirical/analytical bottom-up approach, starting with analysing (mapping) in detail the practical steps and the regulatory framework of the current practice in Egyptian administrative authorities, in order to lay a sound, reality-based ground for the preparation of a hands-on tool for the use of administrative practitioners working on the subject matter at both the operational and managerial levels.

However, after the extensive fact-finding analysis of legislative practices in various Egyptian ministries and other executive branch authorities, the COVID-19 pandemic forced a fundamental shift in the way the joint ERRADA/SIGMA team had to work. For elaboration of Guide I, the team members met in Cairo for 12 working phases of one week each. However, COVID-19 restrictions no longer permitted physical meetings. Instead, teamwork relied heavily on web-based communication (weekly/bi-weekly video meetings), which, as it turned out, made spontaneous, creative work much more difficult, especially when it came to elaborating the final text version of Guide II.

Despite the adverse circumstances, it was possible to submit in December 2020 a detailed concept paper on Guide II to ERRADA management for visualising and approving the ideas for the design and content of Guide II.

The present Guide II forms the implementation of the concept. It is intended to be a practical methodological tool for the development of secondary legislation that corresponds to the current state of good international legislative practice in terms of regulatory content and form. The Guide addresses both the political decision-making level (e.g. ministers, deputy ministers, secretary of state, counsellor to the minister) and the technical/scientific operational level (e.g. economists, natural scientists, social scientists, engineers or lawyers) in the ministries and other legislative bodies. Common use wants to lead to a uniformly good quality of secondary legislation that achieves the desired policy objectives, anticipates undesirable side effects through careful regulatory impact assessment (RIA), avoids overregulation and is drafted in simple, clear and understandable language.

The Guide comprises four core parts.

**PART ONE** introduces the rationale of the *Guide to Developing Secondary Legislation in Egyptian Legislating Bodies (Guide II)* and explains its methodological approach.

**PART TWO** provides the hands-on tools for practitioners who are assigned to draft and adopt secondary legislation. This part addresses the top policy-making level of a body, as well as internal and external experts for the conduct of *ex ante* evaluation of concept and draft texts of secondary legislation (including RIA), legal drafting specialists and administrative staff. With reference to these tasks, interactive modules with underpinning implementation steps lead through several phases of the legislating process undertaken by different hierarchical staff levels and by various work groups, respectively.

**PART THREE** provides a detailed explanation of the theory and good practice in adopting secondary legislation. In this way, Guide II is intended to work in both directions: as a technical reference manual, as well as a practical guideline for the daily work of practitioners.

**PART FOUR** provides an overview of specific tools and instruments for complex legislative projects.

The joint project on Guide II presented here was led by Mr. Nick Thijs, SIGMA Senior Advisor, and Dr. Samir Ghareeb as the ERRADA Co-ordinator of the co-operation. The conceptual and textual realisation was developed by SIGMA experts Mr. Wolfgang Rusch and Mr. Lothar Hahn, with substantial input from members of the ERRADA team and from the Industrial Development Authority (IDA) and General Authority for Investments (GAFI).

## 1.2 Why should a good regulatory system be in place?

1 The political success of a government stands and falls with the quality of the legislation. The best political concepts, aimed at issues such as creating an education system fit for the future, providing social security, protecting the environment, combating the unemployment rate, generating sustainable economic growth or ensuring law and order, will fail if the state lacks the necessary regulatory instruments to realise those concepts in everyday life.

2 Reliable, fair, open, accountable and efficient governance means proper implementation of political decisions through good-quality legal rules. In this way, the public interest is effectively and efficiently pursued, and the rights and interests of the citizens are respected. Furthermore, good legislation creates predictability of state actions, enhances political legitimacy and promotes democratic governance.

Predictability is important for government in order to ensure that its decisions will be implemented. It is also important for citizens who are thereby able to know their rights and obligations, act accordingly and know what to expect from public authorities when engaging in their activities.

Fair treatment of citizens' interests through proper legislation shapes favourable conditions for the acceptance of government policies by those affected, as well as by the general public.

Good legislation fosters trust in institutions, a vital precondition for low compliance<sup>1</sup> costs, social peace and political stability.

3 By contrast, the lack of such conditions results in weak state institutions and, in the end, the low capacity of a society to promote its well-being. Delays, inefficiency, partiality, arbitrariness, corruption, nepotism, patronage and other forms of maladministration as a result of bad legislation lead to citizens' resentment, resistance and protest against the state and its institutions; they undermine the legitimacy basis of the government and can, in a worst-case scenario, lead to a failing state.

This is important at the international level as well. A well-performing state invites the respect and acceptance of other states and supranational organisations. Cross-border co-operation needs to be based on clear and predictable rules and efficient domestic institutions. These conditions promote the political and economic position of a country on the global markets.

A country's legal, administrative and court systems form the most important part of its institutional infrastructure. Their importance for the development of the economy is universally acknowledged. They constitute the basis for the operation of the market and encourage the most dynamic parts of society to contribute to its general welfare. Economic success requires good legislation that allows individuals to engage in productive and innovative activities, look for opportunities and take up challenges. Foreign investors assess risk chiefly by the criteria of the predictability and stability of the political and institutional environment. It is the state's primary role to define and enforce respect for the rules, ensuring predictability for economic activities.

4 Where such prerequisites are missing, transaction costs for market participants are high and constitute counter-incentives for productive economic initiatives. Economic agents tend to adopt opportunistic behaviour, concentrating their activities on less productive investments, e.g. projects with little fixed capital and short payback periods. Bad legislation yields the field to partiality and corruption. In these conditions, the courts will be unable to play their role in guaranteeing the rule of law. Such conditions obstruct the economic initiatives of domestic or foreign potential investors, with a negative impact on unemployment and a potential negative impact on political stability.

### 1.3 Criteria of good-quality legislation

5 Three important criteria of a qualified law are *efficacy*, *effectiveness* and *efficiency*<sup>2</sup> (the "3 E's"). A piece of legislation has a high level of *efficacy* if, when implemented, it comes closest to the

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<sup>1</sup> See OECD definition at [www.oecd.org/gov/regulatory-policy/compliance-costs.htm](http://www.oecd.org/gov/regulatory-policy/compliance-costs.htm).

<sup>2</sup> Ulrich Karpen (2007), "Folgenabschätzung für Gesetze und Richterrecht", in *Folgenabschätzung im Arbeitsrecht*, Volker Rieble (ed.), ZAAR Verlag, Munich, pp. 13-36 (22).

legislator's intent.<sup>3</sup> A piece of legislation is *effective*<sup>4</sup> if it is implemented, executed and obeyed by as many addressees as possible. Third, *efficiency*<sup>5</sup> is economic rationality, a positive cost-result (input-output) relation. The regulation is efficient if the result is accomplished with lower costs and resources than other legislative or non-legislative measures.

6

Constitutional principles (the rule of law) related to the regulatory content of good-quality legislation include:

- Necessity. Before putting a new policy into effect, public authorities have to assess whether or not it is necessary to introduce new regulations in order to achieve the intended results.
- Proportionality. Any regulation must strike a balance between the advantages it provides and the constraints it imposes.
- Transparency and participation. The more people know in advance which regulation is planned, the better the effects and side effects can be evaluated and the easier it is to implement the law.
- Accountability. Everybody must be in a position to identify clearly the units and people deciding on legislation.
- Accessibility. In a democracy, everybody must know the law and where to find it.
- Simplicity Any regulation should be as simple to use and to understand as possible..
- Consistency. Every regulation must be coherent and consistent with other laws in the legal system.
- Legality. Any legal act must be within the frame of the Constitution and the law, namely authorisation if delegated legislation.
- Stability. The law should be drafted in a manner that it is not immediately subject to changes and amendments.
- No retroactivity.<sup>6</sup> Under the rule of law, in order to protect individual rights and freedoms, the law must be predictable and not retroactive, unless it is beneficial.

Other quality aspects related to the form of legal texts regard style, structure, plain language, clarity, precision, avoidance of contradictions, readability, comprehensibility, etc.

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<sup>3</sup> OECD (2010), *Why Is Administrative Simplification So Complicated?: Looking beyond 2010*, Cutting Red Tape, OECD Publishing, Paris, <https://doi.org/10.1787/9789264089754-en>, p. 98.

<sup>4</sup> Alexandre Flückinger (2009), "Effectiveness: a new Constitutional Principle", in *Legislação*, No. 32, Instituto Nacional de Administração, Algés, Portugal, p. 183. The principle of effectivity is as a duty of the state laid down in Article 170 of the Swiss Constitution and Article 24 I of the French Constitution (with Constitutional Law of 23.7.2008).

<sup>5</sup> Ewald Wiederin, IPE I, (No. 1) § 7, Rn. 97 refers to the constitutional litigation.

<sup>6</sup> Principally, executive regulations cannot be retroactive; exceptions are tax-based regulations and penal law.

#### 1.4 How could the Guide contribute to developing good secondary legislation?

- 7 Developing legislation can be taught and learned, similar to making good administrative work and preparing good court decisions. This insight is one of the major achievements of the Science of Legislation (Legisprudence, Legistics, Legistique), which researches the complex process of legislating and undertakes teaching of the matter in order to improve practical legislative work. Legistics looks into the process, from the legislative impulse to the decision-making process, implementation of the law, evaluation of the effects of the law and possible amendments as the starting point of a new regulation cycle.
- 8 This Guide aims to provide an instrument that allows putting into practice the universal principles of creating good legislation, as defined by the Science of Legislation, towards developing secondary legislation in Egypt. In this way, it follows the methodological example of many other countries in Europe and other continents with legislation aids, “cookbooks”, guidelines and checklists. For example, the Swiss guide for the drafting of federal decrees, published in 1995 by the Federal Department of Justice (latest edition of 2019), runs to over 500 pages. The EU Koopmanns Working Group worked out guidelines for European legislation and legislation in the member states, and guidelines for the European Commission, the Council of Ministers and the European Parliament ([https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox\\_en](https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en)).
- 9 This Guide is tailored to Egypt’s situation and needs. It is meant to be a comprehensive document that will have various target groups involved in the legislating process conducted with the legislating bodies. Therefore, parts of the Guide are made so that they could be used as modules for specific groups involved in the legislative process. The Guide is a systematic document for professionals; its structure follows the chronological sequence of actions of a legislating process. Last, it is meant to be a living document – a nucleus that will grow thanks to feedback from its users on their experience working with it in their everyday legislative practice.

#### 1.5 Scope of the Guide resulting from the definition of secondary legislation

- 10 At present, modern democratic societies are experiencing a significant increase in legislative and normative activity. They are thus responding to a rapidly growing dynamic of social processes, characterised by high complexity, instability of state of affairs believed to be secure, and a permanent and an extreme pace of change. The dynamics are partly triggered and reinforced by technological innovations of revolutionary dimensions and unprecedented diversity. To steer these developments for the common benefit and, at the same time, to respect and protect the socially accepted and expected standards of individual rights and freedoms, general legal acts, such as laws and other regulations, are required – enacted by parliament in compliance with the principles of separation of powers and the rule of law.
- Parliaments, however, motivated by political or pragmatic reasons, quite often give away their legitimate competence for policy creation and adoption of laws and regulations to the executive branch, whose original task is to implement the policies developed and adopted by parliament. However, more and more, the government and its ministries authorised by parliamentary act adopt secondary legislation. At the same time, the number of other autonomous bodies and

organisations that are in possession of regulatory competences and adopt this kind of regulation is continuously increasing.

11 Secondary legislation, in legal theory and in practice, is marked with different terms, depending on which of their characteristics is intended to be determined. Hence, the term “secondary legislation” is used to distinguish these acts from primary legislation, hereafter also referred to as “law”. The term “delegated legislation” is also used to stress the fact that the authorisation for adoption is not original but subtracted and transmitted by the bearer of legislative power (i.e. parliament) to government and other regulatory bodies and institutions. Starting from the basic aim for which such legislation is adopted – that is comprised of ensuring the implementation and execution of laws – these acts are also called “implementing legislation”.

12 Despite variable terminology, the basic characteristic of regulations issued by the executive branch is that they provide general and abstract norms. In this respect, they have exactly the same function and purpose as primary legislation, which is why they are often described as “laws in the substantive sense”, as opposed to laws enacted by parliament, which are called “laws in both the formal and substantive sense”. Thus, according to the wording, it is usually not possible to distinguish whether it is a legal sentence of a parliamentary law or secondary legislation.

The same is true as to the relevance in the social and economic reality of the state. Both types of legal norms have the same status in terms of their regulatory and legally binding effect vis-à-vis the individual and the general public. One can even say that secondary legislation usually has a more direct and intensive effect on the private or business sphere of the individual and society as a whole than an act of parliament.

With the aim of clarity and consistency in this Guide, only the term **secondary legislation** is used, both to designate a single piece of legislation and, in a general sense, for legislation set by the executive branch.

13 In Egypt, the hierarchy of the legal frame within which secondary legislation is situated can be outlined as follows:

1. The Constitution is the supreme law of the Arab Republic of Egypt.
2. International treaties (conventions, etc.) are agreements between a state and another state (bilateral) or between several states (multilateral) (Article 93 of the Constitution: international treaties shall bind the state and have the force of law).
3. Laws are legal provisions enacted by parliament (Article 101 of the Constitution).
4. Decrees of a legislative nature (Articles 156 and 190 of the Constitution).
5. Three types of **secondary legislation** issued by the executive branch:
  - **Executive regulation** (Article 170 of the Constitution)
  - **Organisational regulation** (Article 171 of the Constitution)
  - **Control regulation** (Article 172 of the Constitution).
6. Autonomous bodies (Article 215 of the Constitution) and local administrative units (governorates, cities and villages; Article 175 of the Constitution) regulate their affairs by **normative acts** in the frame of the law.

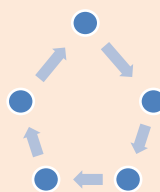


14 The most important application of this Guide is the **issuance of an executive regulation**, which is of utmost relevance for the legislating practice in ministries and other executive bodies. For an executive regulation to be legally effective, the Constitution requires that an executive body must be specifically authorised through parliamentary law to adopt it.

Furthermore, most of the principles, rules, recommendations and information provided in the Guide are valid and applicable to primary legislation. This is a logical consequence of the commonality between laws and secondary legislation, as explained above.

## 1.6 Scope of the Guide resulting from the definition of the legislating process

15 The cycle of a professional legislating process will be presented in nine stages:

Nine stages of the legislating process		
1	Initiation	
2	Concept development, phase 1 (draft)	
3	Impact assessment, phase 1 (concept)	
4	Concept development, phase 2 (final)	
5	Drafting legal text, phase 1	
6	Impact assessment, phase 2 (legal text)	
7	Drafting legal text, phase 2 (review)	
8	Enactment	
9	Ex post evaluation	

Each stage of this legislative cycle will be detailed in subsequent sections..

## 1.7 Methodological approach of the Guide

16 This Guide deals with a pretty complex and multi-faceted subject: the development of conceptually well-thought-out and designed secondary legislation that represents the day-to-day guidance of public service personnel's work. The Guide is thus organised into a hierarchy that follows a concept from general to detail in order to make the many facets of the work ahead more transparent, comprehensible and user friendly.

- Visualised structure of the Guide

The Guide provides graphical schematics to visualise the concept and how to commence working with a focused approach while outlining where to find detailed descriptions of the reasoning and requirements of each task, whenever necessary.

- Hands-on tools guiding involved practitioners (including top decision makers, technical advisors, legal drafters and administrative staff) in detailed *Steps* through the process of a legislative project.

For every step of a legal project, there is dedicated methodology and, especially when it comes to assessment of impacts, a complete toolbox for checking the various legal, economic and social facets that a project may encounter.

- Different angles to specific solutions

The Guide is structured in such a way that the various addressees involved in the process (top decision makers, technical advisors, drafters and administrative staff) may look at their scope of interest and contribution from different angles, such as:

- Workflow overview in the *Tasks versus Responsibility* table in **section 2.2.1**
- Responsibility-/person-oriented in the individualised *Modules* in PART TWO
- Technical content and references in detailed and chronological *Tasks* in PART THREE
- Legislative principles and guidelines for drafting good legislation in **section 3.7**
- Target group- and process-related ***Modules*** in ***Steps***

Individuals involved are not required to learn or work through all of the requirements and prerequisites of the complete development process but are able to concentrate on their individual responsibility in the (sometimes distributed) segments of the process. In this way, Modules group different **Tasks** along responsibilities and provide guidance through (sometimes iterative or recurring) **Steps** of workflow.

- ***Templates***

*Templates* ensure that each step of a Module in PART TWO is completed and well documented regarding decisions taken in the process. The list of templates and underpinning documents represents the “history file” of the project.

- **Checklists** for decision making

Whenever possible, ***Steps*** in these Modules provide checklists to help memorise the line of red font within a *Step* through measures to be applied to accomplish each requirement and job in the sub-process.

For subsequent releases, consider setting up an electronic structure/tool that maps the whole process and indicates the repository of the outputs of each step, be they documented in checklists, templates or attached reports.

- **Hyperlinks**

Hyperlinks would be the result of such electronic documentation, providing quick links from a ***Task*** or ***Step*** to the details.

Hyperlinks are expected to be provided with a forthcoming electronic version of the document to jump, whenever more information is sought, from the general **Steps** of the Modules to the relevant detailed explanations of the underpinning **Task** or **Principle** of legal drafting, as applicable.

In addition, links from **Tasks** to **Principles** of legal drafting could be provided, where appropriate.

## 2 PART TWO – How is the legislating body to go through the nine stages of the legislative process?

1 PART TWO forms the centrepiece of this Guide. It is intended to be tailored to the concrete needs of the work of practitioners directly involved in the legislative process of a body of the executive branch, be it the Office of the Prime Minister (OPM), a ministry or any other state authority with the competence to enact secondary legislation (hereafter the “legislating body”).

2 PART TWO is limited to the instructional presentation of mainly technical aspects of the work. The meaning, aim and purpose of the individual steps should be apparent from the instructions themselves. For the user of the Guide, for deeper substantiation of the content and function of both the single work step and the entire module, reference is made to corresponding in-depth explanation in PART THREE. For this purpose, the margin numbers ("M#") to the left of the text facilitate cross-references and allow quick access to relevant paragraphs that provide explanations on specific questions. Nevertheless, the user is advised to take the clarification of a detailed question as an opportunity to study also the wider context of a specific reference. This would contribute to a profound understanding of both the detailed question and the entire legislating procedure.

### 2.1 Introduction to the concept of secondary legislation

3 Primarily, it is the constitutional competence of parliament to adopt legislation in the form of general and abstract legal norms (hereafter also called “primary legislation”, “formal laws” or simply “laws”).

However, the legislator quite often gives away its original and legitimate competence for adoption of general and abstract regulations by authorising bodies of the executive branch of the state, the government and other state bodies to act as legislating bodies adopting secondary legislation.

Secondary legislation also sets general and abstract legal norms and, as such, does not differ from primary legislation, which is why secondary legislation is also described as laws in material meaning. The difference is that the competence for their adoption is not original but subtracted and transmitted by the bearer of legislative power (parliament) to institutions of the executive power.

From a constitutional perspective, the executive power cannot take legislating action by virtue of its own constitutional competence but only in compliance with the following constitutional law principles:

- Secondary legislation requires a Mandate of the legislature through an authorising law that explicitly empowers an executive body to issue secondary legislation for the purpose of implementing the authorising law.
- Secondary legislation must observe the citation requirement, i.e. must mention in its text the authorising law and its exact provision from which it derives the authority to govern the matter by general and abstract regulation.

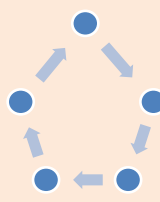
- The authorising law specifies with sufficient definitiveness the content, purpose and extent of the authorisation.

If the authorising provision states, "The Ministry ... **may** regulate details by secondary legislation", it is at the discretion of the ministry whether or not to adopt secondary legislation. In the following, this type of discretion is called "decision-making discretion". In a second decision-making step, the legislative body has margin to choose what and how to regulate; in other words, it has "selection discretion" with regard to the choice of possible regulatory measures (see [PART THREE, section 3.1](#) M# 8).

If the authorising provision states, "The Ministry ... **shall/must** regulate details by secondary legislation", there is no scope for decision-making discretion as to whether or not to do so, but as a rule, the selection discretion remains (see [PART THREE, section 3.1](#) M# 10).

## 2.2 The process of developing secondary legislation – More than writing down a legal text

As mentioned in PART ONE<sup>7</sup> and explained in detail in PART THREE,<sup>8</sup> a professionally conducted legislative process is more than a one-person activity aimed at (quickly) writing a legal text. To develop a legal norm of good quality – and only from good-quality secondary legislation can it be expected that citizens and civil servants will observe and apply it – usually requires a more complex procedure comprising nine stages.

Nine stages of the legislating process		
1	Initiation	
2	Concept development, phase 1 (draft)	
3	Impact assessment, phase 1 (concept)	
4	Concept development, phase 2 (final)	
5	Drafting legal text, phase 1	
6	Impact assessment, phase 2 (legal text)	
7	Drafting legal text, phase 2 (review)	
8	Enactment	
9	Ex post evaluation	

<sup>7</sup> See PART ONE, M# 7-9.

<sup>8</sup> cf. PART THREE, section 3.2.

It should be emphasised that Stages 2 to 6 should be understood as an iterative problem-solving cycle within which individual stages may be repeated. The same is true for the overall legislative process if evaluation of the implementation of the enacted secondary legislation (*ex post* evaluation) reveals any shortcomings and recommends review and change of the legislation.

#### 2.2.1 Responsibilities and tasks related to the nine stages

The individual stages are closely interlinked. They are not to be understood as separate, independent work activities, although carried out by various officials or groups. The activities include the following responsibilities and tasks.

Responsibilities throughout the legislative process		
Nine stages of the process		Responsibilities of legislating body
1	Initiation	<u>Policy making</u> Identifying legislative impulses; taking basic policy decisions; issuing the Mandate to Develop Secondary Legislation
2	Concept development, phase 1 (draft)	<u>Policy development 1</u> Conducting problem analysis; setting objectives; finding solutions; issuing the Draft Concept Document
3	Impact assessment, phase 1 (concept)	<u>Research</u> Conducting professional studies on impacts of the <u>concept</u> based on facts, data and prognoses (including RIA); issuing the Initial Assessment Report
4	Concept development, phase 2 (final)	<u>Policy development 2</u> Reviewing the Draft Concept Document in light of the Initial Assessment Report; consulting with stakeholders; conducting legal review of the concept; if necessary, modifying to a Final Concept Document, including instructions for drafting legal text
5	Drafting legal text, phase 1	<u>Transformation to legal text 1</u> Conceptualising the legal text; formulating the complete text
6	Impact assessment, phase 2 (draft legal text)	<u>Research</u> Conducting professional studies on impacts of the <u>proposed legal text</u> based on facts, data and prognoses (including RIA); compiling the Final Assessment Report
7	Drafting legal text, phase 2 (review)	<u>Transformation to legal text 2</u> Reviewing draft version(s) versus results of assessment (maybe in contact with the Head of Assessment); approving the final legal text (through the Head of Project); submitting for final endorsement
8	Enactment	<u>Completion of the legislating process</u> Conducting final control of the draft legal text; gaining signature; initiating publishing procedure

9	<i>Ex post</i> evaluation	<u>Research</u> Monitoring implementation of enacted secondary legislation; conducting data collection; conducting assessment; maybe proposing an amendment process (reiteration of Stages 1-8)
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5 The variety of responsibilities shows that, nowadays, the development of secondary legislation is not just a matter for lawyers or experienced administrative practitioners but also brings together:

- A working team composed of staff from various sectors of the legislating body, supplemented, if necessary, by external resources representing different spheres of expertise and operating according to a co-ordinated and controlled division of labour.

Depending on the subject matter to be regulated, such a working team should comprise, in addition to the necessary legal and administrative expertise, disciplines such as the economy, natural sciences, social sciences, psychology, health sciences, engineering and digital sciences.

6 The various responsibilities and tasks of the individual stages require not only correspondingly varying professional qualifications acquired through education and experience but also assignment to various hierarchical levels within the institutional set-up of the legislative body, starting with the top position, be it the prime minister, minister or head, director or president of an agency.

7

Institutional set-up of the legislating process			
Nine stages of the process		Actors	Project management and control
1	Initiation	<u>Head of Legislation</u> Top position (e.g. prime minister, minister, head of an agency)	<u>Head of Legislation</u>
2	Concept development, phase 1 (draft)	<u>Head of Project</u> Senior official (e.g. deputy minister; counsellor to minister; Head of Strategic Planning; Head of Legal Support) plus team (including external resources)	<u>Head of Project</u>
3	Impact assessment, phase 1 (concept)	<u>Head of Assessment</u> Technical expert, scientific researcher plus team (including external resources)	
4	Concept development, phase 2 (final)	<u>Head of Project</u> plus team	
5	Drafting legal text, phase 1	<u>Head of Legal Drafting</u> Legal expert (e.g. Head of Legislative Support Unit) plus team	

6	Impact assessment, phase 2 (legal text)	<u>Head of Assessment</u> plus team	
7	Drafting legal text, phase 2 (review)	<u>Head of Legal Drafting</u> plus team	
8	Enactment	<u>Head of Legislation</u> plus team	<u>Head of Legislation</u>
9	<i>Ex post</i> evaluation	<u>Head of Project</u> plus team	<u>Head of Project</u>

9 From the foregoing, the following overall view of the process emerges.

Legislative process at a glance				
Nine stages of the process		Responsibilities of legislating body	Actors	Project management and control
1	Initiation	<u>Policy making</u> Identifying legislative impulses; taking basic policy decisions; issuing the Mandate to Develop Secondary Legislation	<u>Head of Legislation</u> Top position (e.g. prime minister, minister, head of an agency) plus team	<u>Head of Legislation</u>
2	Concept development, phase 1 (draft)	<u>Policy development 1</u> Problem analysis; setting objectives; finding solutions; issuing the Draft Concept Document	<u>Head of Project</u> Senior official (e.g. deputy minister; counsellor to minister; Head of Strategic Planning; Head of Legal Support) plus team (including external resources)	<u>Head of Project</u> plus team
3	Impact assessment, phase 1 (concept)	<u>Research</u> Professional studies on impacts of the <u>concept</u> based on facts, data and prognoses (including RIA); issuing the Initial Assessment Report	<u>Head of Assessment</u> Technical expert, scientific researcher plus team (including external resources)	
4	Concept development, phase 2 (final)	<u>Policy development 2</u> Review of the Draft Concept Document in light of the Initial Assessment Report; consultation with stakeholders; legal review of the concept; if necessary, modifying the concept towards the Final Concept Document; instructions for drafting the legal text	<u>Head of Project</u> plus team	
5	Drafting legal text, phase 1	<u>Transformation to legal text 1</u> Conceptualising of the legal text; formulating of the complete text	<u>Head of Legal Drafting</u> Legal expert (e.g. Head of Legislative Support Unit) plus team	
6	Impact assessment, phase 2 (legal text)	<u>Research</u> Professional studies on impacts of the <u>proposed legal text</u> based on facts, data and prognoses	<u>Head of Assessment</u> Technical expert, scientific researcher plus team	



		(including RIA); compiling the Final Assessment Report	(including external resources)	
7	Drafting legal text, phase 2 (review)	<u>Transformation to legal text 2</u> Review of draft version(s) (maybe in contact with the Head of Assessment); approval of the final legal text; submission for final endorsement	<u>Head of Legal Drafting</u> plus team <u>Head of Project</u> plus team	
8	Enactment	<u>Completion of the legislating process</u> Final control of the draft legal text; signature; initiation of the publishing procedure	<u>Head of Legislation</u> plus team	<u>Head of Legislation</u>
9	<i>Ex post</i> evaluation	<u>Research</u> Monitoring of implementation of enacted secondary legislation; data collection; assessment; maybe proposal for amendment process (reiteration of Stages 1-8)	<u>Head of Project</u> plus team	<u>Head of Project</u>

### 2.2.2 Important key terms used at Stages 2 and 4 of the legislating process

10 The individual steps of Stages 2 and 4 of the legislative process conceptionally deal with a dedicated vocabulary comprising activities, such as:

- PROBLEM analysis
- OBJECTIVES
- INDICATORS
- OPTIONS for mitigation
- SOLUTIONS and MEASURES for implementation.

A clear differentiation between these activities and their underpinning logic is imperative for clear and systematic progress through the legislative process and a good-quality outcome.

#### *Problem analysis*

11 Problem analysis starts with a precise and realistic description of a concrete situation that is seen as a problem for which the implementation of newly developed or amended secondary legislation could provide a solution. Problem analysis further requires an unprejudiced investigation of the causes, why the situation is as it is and the effects the problem triggers, and the identification of the organisations and individuals (stakeholders) affected by the problem, *without jumping to any premature conclusions*.

#### *Objectives*

12 Objectives, identified after assessment of the problem analysis, describe the situation that should be reached over a certain time with the help of implementing secondary legislation or, alternatively, with non-regulatory measures. A distinction is usually made between general or

global (strategic/political) objectives and specific (technical/detailed) objectives. At this phase of the legislative process, there is no reflection on how to achieve such objectives.

#### *Indicators*

- 13 The definition of indicators is important to allow, after a certain time, a transparent assessment of the (degree of) achievement of the objectives set for the legislative process. They must be clear and measurable to enable an objective *ex post* evaluation of the adopted secondary legislation.

#### *Options*

- 14 This Guide shows that there is usually more than one (regulatory/non-regulatory) option to improve a situation or solve a problem. However, this is only possible in a professional manner AFTER a problem has been clearly analysed and the objectives to be achieved have been defined.

#### *Solutions and measures*

- 15 The solutions selected among the options, and the underpinning measures for implementation, should be the best choice for achieving the targets stipulated in the objectives.

Following the logical steps above is the assured way to a well-structured and reason-based legislative process.

### 2.3 How should the legislating process be organised?

- 1 This section explains how the working process within the nine stages could be organised. In the development of a piece of secondary legislation, regarding the management and supervision of the entire process, the beginning of the section proposes and recommends the establishment of the position of a Head of Project. Three examples of an organisational set-up are then presented, depending on the complexity or scope of the legislative process.

#### 2.3.1 Overall management: Head of Project

- 2 The leadership position in the legislating body responsible for the overall management of legislation development projects is designed to bring together experience and expertise and to ensure continuity of legislative work, regardless of the organisational form chosen for the project (see section 2.1.2). The Head of Project would ideally combine policy-making experience with a sound legal background. In the case of a ministry, the Head of Project would typically be an incumbent at the senior management level, i.e. the level immediately below the minister and reporting directly to him/her. In many cases, this would be a counsellor to the minister or, if the new organisational structure according to Prime Minister's Decree 1146/2018 of 2018 is implemented, preferably the Head of Strategic Planning or the Head of Legal Support Department. In the case of any other public institution or agency, it would be expected to be the vice president, deputy executive director, head of policy affairs or head of the legal department (see table under PART THREE, [section 3.2](#)).

Besides the aforementioned functions and competences, the Head of Project must enjoy the support of a central secretariat in order to delegate certain communications, filing and other administrative support tasks, including any financial proceedings (e.g. contracting external expertise) in the context of project development and implementation.

### 2.3.2 Four elements of process organisation

3 Considering typical set-ups applicable to public institutions, the form of organisation of legislation development projects could comprise the following four elements:

- Permanent Legislation Development Team
- Legislation Development Committee, assembled on a case-by-case basis
- Independent Impact Assessment Team
- Legal Drafting Team.

For elements 2 and 3, the engaging support from outside the public sector might be considered.

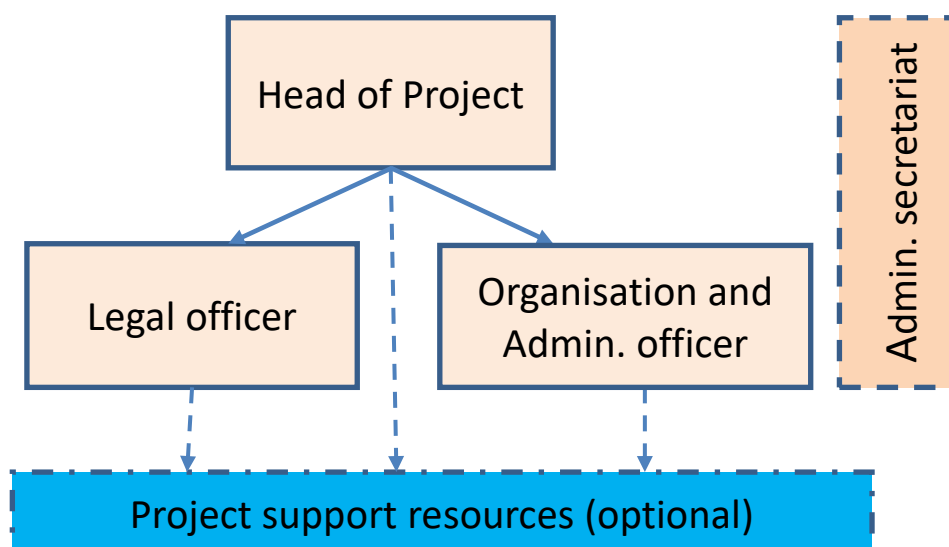
#### *Basic case: Permanent Legislation Development Team*

4 A Permanent Legislation Development Team should be established in ministries and other legislating bodies and consist of at least two permanent staff, a legal expert and an expert on organisation and administrative procedures, working under the leadership of the Head of Project and assisted by administrative support staff. This team should be able to handle a larger part of the legislative projects, namely those that are not very extensive and not very complex in terms of technical content.

In simpler cases, the range of tasks of the Permanent Legislation Development Team should cover:

- Development of the draft legislative concept and the Final Concept Document, the latter under consideration of the Assessment Report submitted by the independent assessment unit (Stages 2 and 4)
- Drafting the legal text (Stages 5 and 7), unless this is assigned to a specialised Legal Drafting Team (see [section 2.3.2.2](#) M# 10).
- *Ex post* evaluation of implementation of adopted legislation (Stage 9).

### 5 **Permanent Legislation Development Team**



In cases of particularly demanding projects in terms of complexity of content, quantitative scope or time constraints, a division-of-labour approach is recommended such that the legal text is drafted not by the Permanent Legislation Development Team but by a specialised Legal Drafting Team (see [section 2.3.2.4](#) M# 24).

Besides the aforementioned tasks, functions and competences, the Permanent Legislation Development Team is responsible for the technical administrative handling of all legislative projects, i.e. those which it does not handle with its own staff (see the next section). This requires the support of a central secretariat in order to delegate certain communications, filing and other administrative support tasks, including any financial proceedings (e.g. contracting external expertise) in the context of project development and implementation.

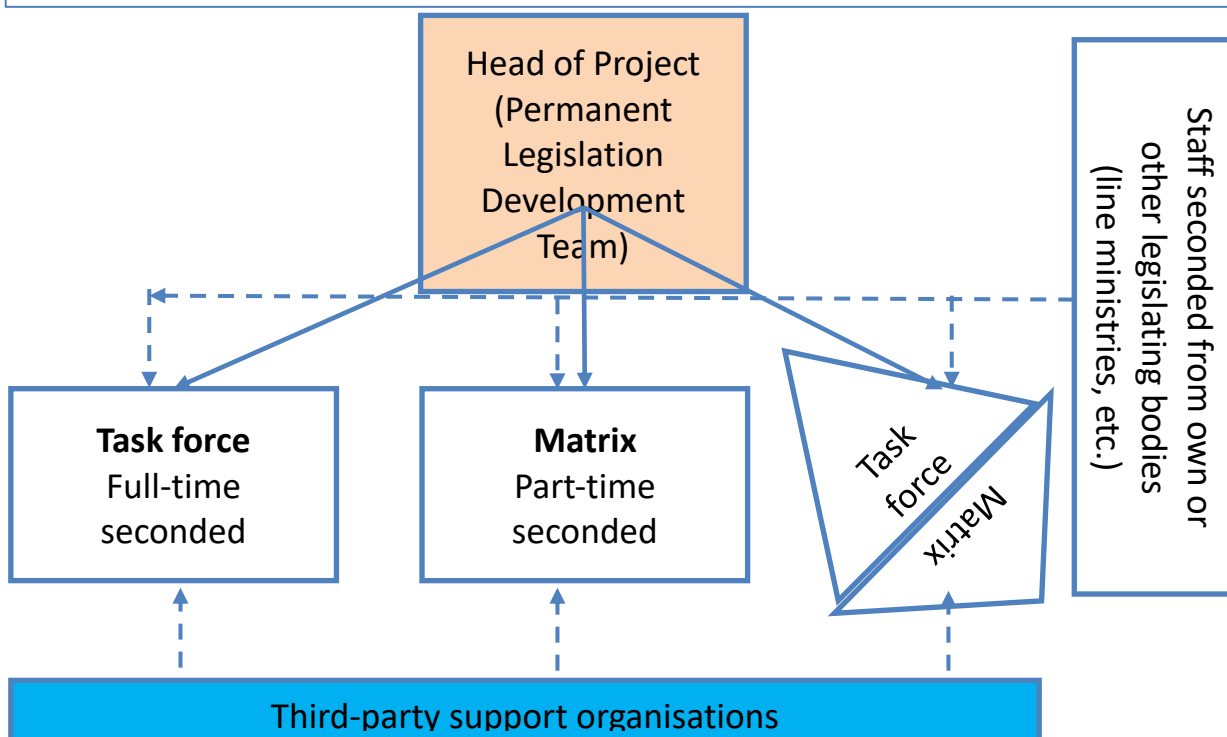
#### *Specific cases: Legislation Development Committee*

In cases of particularly demanding projects in terms of complexity of content, quantitative scope or time constraints, not only the work of drafting the legal text should be given to a specialised Legal Drafting Team (see [section 2.3.2.4](#) M# 24). In such cases, the Permanent Legislation Development Team could be expanded by experts recruited for a particular project, either from other departments of the legislative body or from external resources. Expansion of the permanent team is recommended for large and complex legal development projects. Integration of third-party external expertise (coming from non-state administrations, consultancies, universities, non-governmental organisations [NGOs], etc.) will need different contractual agreements, if certain clearly defined tasks are not fully outsourced to such organisations.

Three forms of expansion of the Permanent Legislation Development Team into a Legislation Development Committee could be considered:

- Task force: additional persons are fully delegated to the project.
- Matrix structure: additional persons are delegated to the project in a time-sharing scheme and retain part of their capacity within their original institution.
- Mixed structure (combination of task force and matrix): both fully delegated and part-time assigned staff join the committee.

#### **Legislation Development Committee alternatives for complex legislative projects**



11 Besides selection of the best-fit individuals from the same or other public or private institutions, for the task force model, it will be necessary to arrange assignment agreements with the original management or employer of the delegated persons, as they are fully and for a longer period of time assigned to the project and subordinated to the project management. The task force model combines physical presence of staff with tight management supervision. However, reintegration of staff after the successful completion of a legal development project may cause problems if their work or position was assigned to another employee.

Different than full delegation to a task force, the selected skills and team members of a matrix structure are assigned to the project in a time-sharing model, which will work best in a “democratic” co-operation culture. This means that the Head of Project again needs to agree with the original employee and line management of the required staff as to the extent the individual is assigned to the project (be it the subjects to work on or the percentage of work time assigned) in a way that his/her workload is balanced between traditional and project demands. Personnel generally remain subordinated to their line managers and at their original workplaces while participating in co-ordination meetings whenever necessary.

While this model may cause less reintegration problems, it is more likely that conflicts arise between the tasks and priorities of the traditional function and institution and the requirements of the legal development project. The double subordination – generally and traditionally to the original line manager and technically to the project management on project tasks – can be a source of personal conflicts. Thus, the better the scope of work for assigned staff is defined and outlined, the fewer complications may occur. This also applies to third-party support or outsourced tasks.

12 The most common case for averagely complex projects is a mixed structure. A project is comprised of the Permanent Legislation Development Team, a number of co-opted full-time staff fully assigned to the task and a number of part-time satellite staff seconded for specific expertise and requirements. This model provides the advantage of tight management on the project mainstream and flexible options for external assistance on very specific technical questions. The latter staff remain subordinated to their line managers (as in the matrix model) and therefore open to the potential problems of double subordination.

Third-party support and outsourced tasks may be added as needed and described above.

#### *Independent Impact Assessment Team*

13 What has to be stressed is that RIA needs a firm legal anchoring and high-level political support, and it must be overseen by a structure dedicated to better regulation and assisted by clear advice, guidelines and training of actors. Options include:

- Legislation on the Mandate and details of RIA in the Constitution
- Regulation on RIA in a statutory law
- Regulation on RIA in the Rules of Procedure and Standing Orders of parliament and the executive
- Regulation on RIA in detail in circulars and organisational regulations of a ministry.

14

RIA could take place close to the decision maker, i.e. evaluation of a draft regulation within a ministry or any another legislating body. However, RIA should take advantage of independence and critical distance. This could mean including external expertise and the perspective of vested interests, to allow participation of the addressees of regulation. Independent RIA could also be under the authority of autonomous bodies at a distance from government and parliament (e.g. NGOs).

An internal government model would mean establishing RIA units in the OPM or the Ministry of Justice or in the ministry responsible for the subject of the draft legislation. According to the external model, one would install a special institution for RIA, similar to the office for data protection, the competition authority or the independent audit office.

Who are the right persons for RIA?

1. Experts' input: rationality of the facts. Organisations are frames in which persons work. Projects need qualified persons with certain capacities and skills in the field of the draft law and in RIA techniques. The experts' input is the rationality of the facts. Expertise may come from within the constitutional powers (parliament/government, civil servants, deputies) and from outside (professors, experts with more practical skills, lawyers, judges [who know the problems of implementing a law], representatives of vested interests, the public).

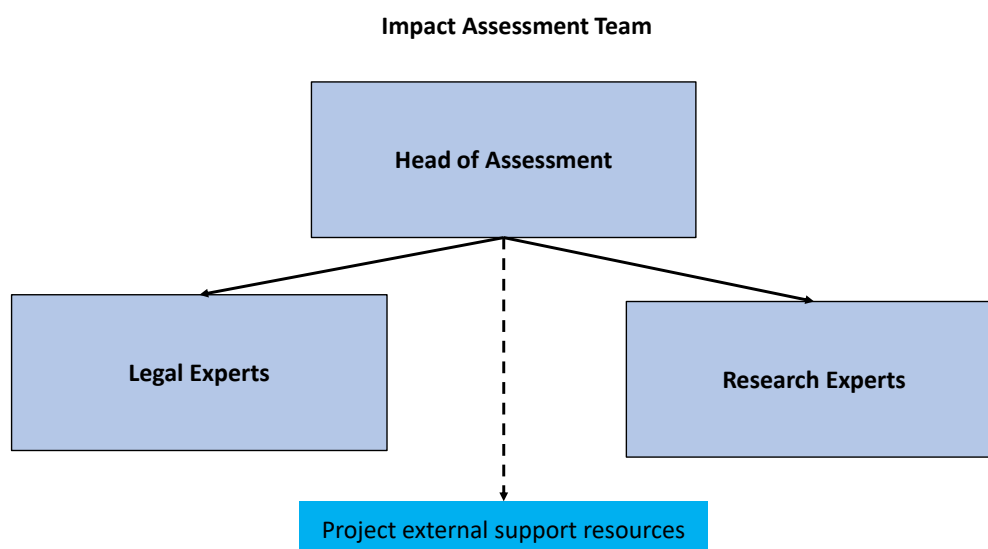
2. Politicians' input: political rationality. A sound RIA necessitates participation by politicians, as the law needs to be adopted and implemented. This requires majorities and persuasive power, which political rationality differs from expertise in the matter.

3. "Triangle Alliance of RIA". The most convincing model of co-operation of persons with various skills is a "Triangle Alliance of RIA": 132 Politics Parliament/Government Inside innovators in External experts with government/parliament evaluation skills.

Establishing an Impact Assessment Team that operates independently of the Head of Project's influence is highly recommended. The purpose of impact assessment (for details, see the introduction to [Module III, section 2.6](#)) is to assess, from a neutral and objective point of view, the impact of the concept designed under the Head of Project's responsibility and – in a second step – its implementation through the legislative text, which is also done under the direction of the Head of Project. The neutrality and impartiality of the people involved in the assessment stage is best guaranteed if they are not hierarchically and subject-wise subordinated to the Head of Project.

The Guide suggests the following team set-up:

19



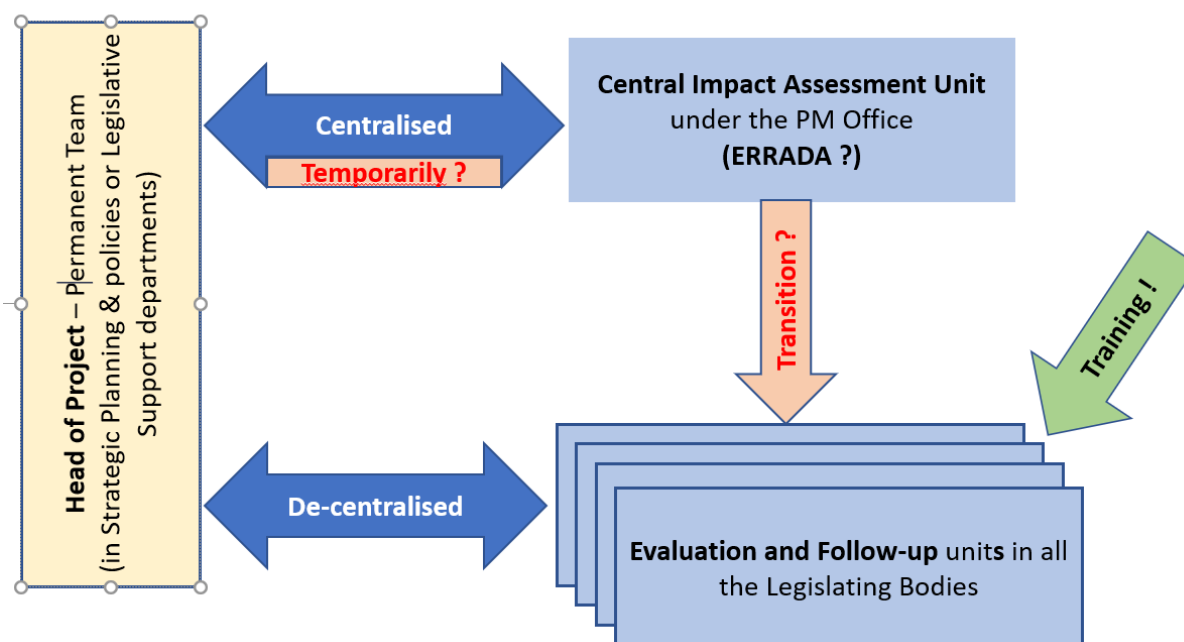
20

Two forms of institutional set-up would contribute to the required independence:

- Centralised system: establishment of a separate specialised unit, e.g. under the prime minister's responsibility (ERRADA?)
- Decentralised system: establishment of a separate unit within the legislating body, e.g. a unit affiliated to an evaluation and follow-up unit, if the new organisational structure according to the Prime Minister's Decree 1146/2018 of 2018 is implemented.

21

### Options for Organisation of Impact Assessment



22

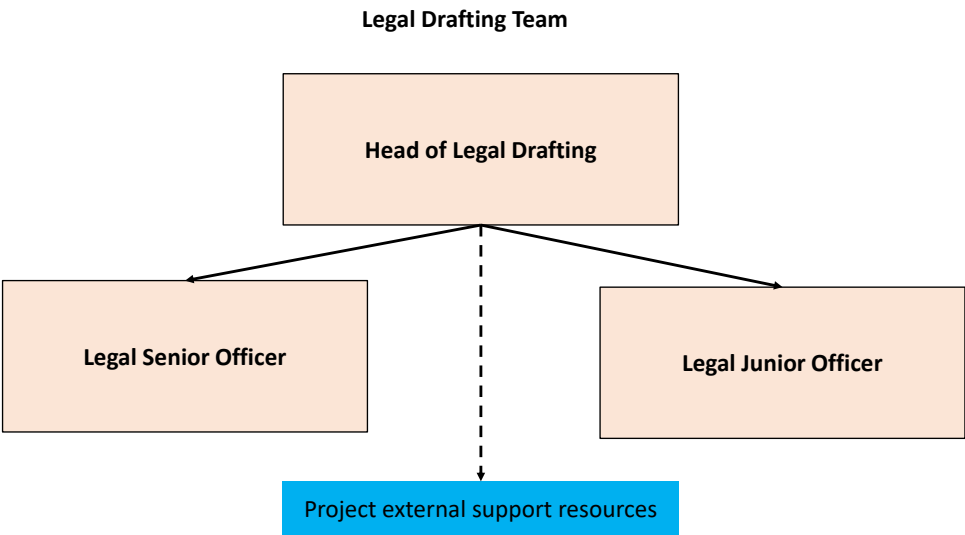
A centralised system, i.e. one that is outsourced from the organisational structure of the respective legislative body, has advantages. Not only does it best guarantee the independence

from the influence of the Head of Project that is necessary for the neutrality of the assessors, it also allows that only one body and its staff has to go to the effort of familiarisation with new and admittedly demanding subject matter (e.g. RIA, technical and ecological expertise). Achieving a uniform standard of quality in impact assessment would be much more difficult if it required setting up an assessment unit in numerous legislating bodies and training the necessary staff. If, in a long-term perspective, the decentralised model is preferred, then the centralised unit – while fulfilling its task of impact assessments – could also transfer methodology, knowledge and skills to assessment units to be established in ministries and other legislating bodies.

*Legal Drafting Team*

In cases that, due to complexity of content, quantitative scope or time constraints, are not dealt with by the Permanent Legislation Development Unit, a special group must be set up for the transformation of the concept into regulatory text. The work of this unit is to formulate, by means of legislative technique, a set of rules that intends to put the final concept of the legislative project into practice, i.e. that, if fully and purposefully applied, bring about the solutions to the problems elaborated by the concept.

The Guide suggests the following team set-up:



It is important to emphasise that the basis for the drafting work must always be the Final Concept Document, in particular its drafting instructions. Furthermore, a close and permanent contact and exchange between legal drafters and the Head of Project is strongly recommended to ensure the consistency of the regulatory instruments chosen by the legal drafters with the objectives and solutions of the concept.

Transforming the concept into legal text is first the task of genuine experts with a solid legal background and experience in drafting legal texts. However, as comprehensibility of legal texts is a fundamental precondition of their proper implementation, and legal specialists are not always well versed in linguistic issues, it can be useful to have legal draft texts checked for style and wording by language specialists. This is of particular relevance to ensure understanding among the enforcing administration and especially if the projected secondary legislation is also



to be addressed to international investors and therefore intended to be translated into a foreign language.

- 27 If the piece of secondary legislation deals with little-known and specialised technical/scientific material, or in other particularly demanding cases, the Legal Drafting Unit should also rely on assistance from external sources.

### *External support*

- 28 As mentioned in the models above, external support can be added to each of the three elements of process organisation. This section addresses some basic technical and contractual requirements for involving expertise from other organisations, be it another ministry or an organisation outside the government, such as academia, an NGO or a consultancy business. Such assistance will not always be free of charge (probably never, in the case of technical, engineering or legal consultancies outside the government). The required budget should have been estimated in the initiation stage (see the terms of reference template below, M# 29).

For the definition of content and outputs, it is necessary to develop concise terms of reference that describe the scope of work and related schedule. The following terms of reference template (M# 29) might be of practical help.

29

Specific terms of reference on external support for drafting secondary legislation		
Name of the institution	Assigned responsible officer	File/archive ID
Ministry of/authority, etc.	Dr. Samir, Head of Project	2021-Regul-4711
Name of the project	Simplification of licensing for SMEs	
1. BACKGROUND		
2. DESCRIPTION OF THE ASSIGNMENT <ul style="list-style-type: none"><li>• Global objective</li><li>• Specific objective(s)</li><li>• Requested services</li><li>• Required outputs/deliverables</li></ul> 3. EXPERTS' PROFILE or EXPERTISE REQUIRED <ul style="list-style-type: none"><li>• Number of requested experts per category and number of man-days per expert or per category</li><li>• Profile per expert or expertise required:<ul style="list-style-type: none"><li>- Category and duration of equivalent experience</li><li>- Education</li><li>- Experience</li><li>- Language skills</li></ul></li></ul> Minimum required skills must be clearly identified.		5. REPORTING <ul style="list-style-type: none"><li>• Content</li><li>• Language</li><li>• Submission/comments timing</li><li>• Number of report(s) copies</li></ul> 6. ADMINISTRATIVE INFORMATION <ul style="list-style-type: none"><li>• Interviews, if necessary indicating for which experts/position</li><li>• When in the interest of the project, possible limits to subcontracting</li><li>• Language of the specific contract</li><li>• Request for a succinct methodology when needed</li><li>• Team members – permanent presence required or only for briefing or debriefing</li><li>• Other authorised items foreseen under “reimbursable”</li></ul>
4. LOCATION AND DURATION		

<ul style="list-style-type: none"> <li>• Starting period</li> <li>• Foreseen finishing period or duration</li> <li>• Planning, including the period for notification for placement of staff</li> <li>• Location(s) of assignment</li> </ul>	<ul style="list-style-type: none"> <li>• Conditionality for intermediary payments, if foreseen</li> <li>• Other</li> </ul>
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30 The example above shows the key questions to be answered and requirements to be formulated. Many can be taken directly from Template 1 and the following templates, such as the project objectives. Outputs and deliverables will vary, depending on the subject being outsourced to an external party, e.g. an environmental assessment will have different characteristics than an economic impact assessment. The same is true for experts and their required profiles. The language issue will be important, especially if international comparative studies or evaluations are in the scope of a required expertise. It is also necessary to mention any specific methodology that should be applied, e.g. that the standard cost model (SCM) is obligatory for economic evaluations.

31 More operational parameters may define the timeline of the required assistance and any milestones that may document the progress of a study. In many cases, such milestones may also define the remuneration steps and interim payments. As discussed in the project organisation alternatives above, the location and placement of experts may vary, from strict presence within the project team to remote operation in the contractor's permanent or home office. It is also necessary to clarify at the beginning of external assignment the definition of additional allowable expenses (compensation for travel, materials, etc.).

### *Consultation with stakeholders*

32 Consultation has several purposes:

1. Gathering input for the development of a concept document (see [section 3.5.2.5](#))
2. Consulting on a draft concept with internal and, when necessary, external stakeholders
3. Reviewing a Legal Draft Proposal with stakeholders to test acceptability and implementation details.

Thus, besides receiving inputs, consultation is also about communicating government intentions for changing or improving policies and the motivation behind these intentions. If performed well, consultation fosters understanding and thus acceptance of policies, which in turn results in better and more effective implementation.

33 The aim of consultation is to bring the administration and stakeholders together to discuss the problems in detail, discuss options to address them and assess what kinds of benefits versus new burdens and costs could ensue. Determining the problem definition, defining objectives and options, identifying and assessing impacts, comparing the various options, and determining the implementation plan and other segments of a concept document or Legal Draft Proposal through internal and public consultations will improve its quality and acceptance.

34 *Internal consultation*

Internal consultation refers to consultation within the administration. This process covers, among other activities, discussions as part of the preparation of a concept document, participation in working groups, and the process of prior consultation before a proposal is submitted for inclusion in the government session for discussion and adoption.<sup>9</sup> The institutions and organisations responsible for the implementation of existing rules and/or of future requirements deriving from the concept document are of particular importance. They must always be consulted.

### Public consultation

Public consultation fosters the exchange of information, views and data, which can then feed into government decision making.<sup>10</sup> Paired with effective communication, it enables the active participation of citizens, companies, civil society organisations (CSOs), business representatives and development partners in policy development.

Identification of stakeholders is addressed in [section 2.5.1.4](#) in the project development process. The three core stakeholder groups to be considered are:

- Stakeholders affected by the policy
- Stakeholders implementing the policy
- Stakeholders with a stated interest in the policy.

For optimal gains, the consultation activities need to be prepared with care and planned well. An important fact is that stakeholders are usually a very diverse group of people and organisations. Various types of stakeholders need to be contacted differently to make their participation in the consultation process as easy as possible. This means that consultation activities have to adapt to the resources of the stakeholders being consulted. They have to be communicated with properly, and messages have to be tailored to the target audience. The administration also needs to respect the time and effort that stakeholders invest in public consultation by showing that these are valued and treated accordingly.

Groups that should be considered for communication and consultation activities:

- Citizens, individuals
- CSOs representing citizens' interests and specific groups
- Trade unions, in cases where citizens are affected as workers
- Companies (domestic and multinational)
- Small and medium-sized enterprises (SMEs)
- Chambers of commerce
- Organisations representing business interests

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<sup>9</sup> General rules on internal consultation exist in (the rule book of) government procedures.

<sup>10</sup> A ministry website is usually instrumental for publishing new draft regulations and collecting opinions; duration may vary based on complexity.

- Organisations representing professions and crafts
- Public authorities at the national, regional and local levels (internal consultation)
- Agencies, inspectors (internal consultation)
- Universities, schools
- Research institutes, think tanks
- International organisations.

A detailed approach for the organisation of stakeholder consultation measures is further explained in [section 3.6.3](#) and incorporates seven specific tools to cover complex project requirements.

### 2.3.3 The modular structure of PART TWO of this Guide

39 Responsibilities and tasks of the overall legislating team can be divided into five work areas, whose functions are nevertheless closely intertwined:

- Top political leadership and final decision making
- Problem analysis and concept design (plus operational management)
- Assessment of the impacts of the legislative concept (including RIA)
- Drafting of the legal text
- Administrative support to each of the above areas.

40 The structure of PART TWO corresponds to these five areas. For each area, tasks and activities of the organisational units and persons involved are grouped into a coherent module:

- |             |  |
|-------------|--|
| Module I:   | Responsibilities of the top decision-making level – Head of Legislation – Stages 1 and 8   |
| Module II:  | Responsibilities of the conceptual and operative leadership level – Head of Project and team – Stages 2, 4 and 9 and managerial tasks for Stages 3, 4, 6 and 7 |
| Module III: | Responsibilities of technical/scientific researchers/experts for <i>ex ante</i> evaluation – Head of Assessment and team – Stages 3 and 6                      |
| Module IV:  | Responsibilities of legal drafters – Head of Legal Drafting and team – Stages 5 and 7  |
| Module V:   | Responsibilities of administrative support – Head of Administration and team – crosscutting function   |

Modules in relation to the nine stages at a glance			
Modules	Actors	Stages of the process	Responsibilities
Module I	<u>Head of Legislation</u> Top position (e.g. prime minister, minister, head of an agency) plus team	<u>Stage 1</u> Initiation	<u>Policy making</u> Identifying legislative impulses; taking basic policy decisions; issuing the Mandate to Develop Secondary Legislation
		<u>Stage 8</u> Enactment	<u>Completion of the process</u> Final control of the draft legal text; signature; initiation of the publishing procedure
Module II	<u>Head of Project</u> Senior official (e.g. deputy minister; counsellor to minister; Head of Strategic Planning; Head of Legal Support) plus team (including external resources)	<u>Stage 2</u> Concept development, phase 1	<u>Policy development 1</u> Problem analysis; setting objectives; finding solutions; issuing the Draft Concept Document
		<u>Stage 4</u> Concept development, phase 2	<u>Policy development 2</u> Review of the Draft Concept Document in light of the Initial Assessment Report; consultation with stakeholders; legal review of the concept; if necessary, modifying the concept towards the Final Concept Document; instructions for legal drafting
		<u>Stage 9</u> <i>Ex post</i> evaluation	<u>Research</u> Monitoring of implementation of enacted secondary legislation; data collection; assessment; maybe proposal for amendment process (reiteration of Stages 1-8)
Module III	<u>Head of Assessment</u> Technical expert, scientific researcher plus team (including external resources)	<u>Stage 3</u> Impact assessment, phase 1	<u>Research</u> Professional studies on impacts of the <u>concept</u> based on facts, data and prognoses (including RIA); issuing the Initial Assessment Report
		<u>Stage 6</u> Impact assessment, phase 2	<u>Research</u> Professional studies on impacts of the <u>proposed legal text</u> based on facts, data and prognoses (including RIA); compiling the Final Assessment Report
Module IV	<u>Head of Legal Drafting</u> Legal expert (e.g. Head of Legislative Support Unit) plus team	<u>Stage 5</u> Drafting legal text, phase 1	<u>Transformation to legal text 1</u> Conceptualising of the legal text; formulating of the complete text
		<u>Stage 7</u> Drafting legal text, phase 2	<u>Transformation to legal text 2</u> Review of draft version(s) (maybe in contact with the Head of Assessment); approval of final legal text; submission for final endorsement
Module V	<u>Head of Administration</u>	<u>Crosscutting</u>	<u>Administrative support</u>

The purpose of this module approach is to facilitate the use of this Guide in everyday practice. A team member will be in the position to focus on using only the module relevant for him/her and should not have to struggle through long passages of text before reaching the sections where his/her actual contribution to the overall process is described and explained. Various types of

checklists and templates also serve to simplify and accelerate the work. The modules have been designed partly for the analytical and partly for the documentary part of the work and will ensure that all facts and criteria relevant to a work stage are completely covered, promptly identified and fully considered, and that work outputs and resulting decisions are consistently documented.

#### 2.3.4 The function of templates and how to use them in the law-making process

42 The Guide provides templates for each stage of the legislative process (see the list of stages in Section Two M# 3). They compose and guide the content of the work in the individual (personalised) modules, and they represent – together with checklists, tables and explanatory texts – the hands-on instruments of the toolbox. All these tools – the templates in particular – are intended to simplify and streamline the practical operations and workflow in the legislative process.

The functions and intended benefits of a template is fourfold.

43 First, the template has an instructional function. The blank form ensures that no essential contribution to the legislative process is omitted, as it shows, in systematic order, the essential and necessary steps to be taken from the beginning to the end of a stage.

44 Second, it encourages those responsible to adhere to their concentration and decision-making functions:

- To concentrate on the essentials of every step of the work and not to avoid the necessary decisions but undertake them clearly and unambiguously
- To enter and document the results of the decision-making process briefly and precisely in the corresponding field(s) of the form.

The end of most of the templates also contains concise instructions for the next or all subsequent stations.

45 Third is a documentation and transfer function. Templates form the core of the legislative record that should be created for each legislative project and in which the work process and results of each stage of the course should be documented, ideally as an electronic document. The legislative file, passed hand-to-hand through all stages of the legislative process, transfers the approach, content and results of the work of previous stations to subsequent stations, forming the starting point and content basis for the continuation of the work.

46 A template consisting of one or two pages cannot fully reflect the work done for a complex impact assessment stage, for example. It might be possible for very simple and straightforward projects. As a rule, templates have to be supplemented through more detailed reports on preliminary assumptions, underpinning data and facts, framework conditions, arguments and deliberation processes in order to justify objectively the brief results set down in the templates. In those cases, the template is meant to function as a cover sheet for the respective section of the legislative report, summarising at a glance the most relevant information necessary for the continuation of the work.

## 2.4 Module I Responsibilities of the top decision-making level – Head of Legislation

1 Module I outlines the activities of the most senior decision-making level in a legislating body, such as the prime minister, minister, secretary of state, governor or head of an agency. He/she participates at least twice in the overall legislative process: at its beginning, with Stage 1: Initiation of the legislating process; and at its conclusion, with Stage 8: Enactment of the piece of secondary legislation.<sup>11</sup>

Top management can intervene at any stage of the process, either on its own initiative or in response to a request submitted by a subordinated level.

At this point, the legislation process starts with Stage 1: Policy making.

### 2.4.1 Stage 1 of the legislating process: Initiation

The initiation of the legislating process usually falls within the competence of the head of the legislative body (Head of Legislation).

2 It is not always the prime minister or minister who personally undertakes the concrete initiating actions. The initiator denotes not an individual but a function in the legislative process. This function is to be exercised at the highest level of the legislating body. In practice, it is left to the body's organisational structure to determine who performs the specific activities associated with the initiation of a secondary legislation development process. The minister may personally initiate the process by giving a verbal order – e.g. in a staff meeting – and the minister's office is entrusted with the execution, while the minister endorses the results with a signature. It is also quite common that the impetus comes from the staff of the minister's office and that the minister adopts with a signature an elaborated proposal. Last, one or more persons from the minister's office can be authorised to conduct the initiation – from start to completion, including the power of signature – either on a case-by-case basis or in general. The decisive factor is that the legislative procedure is initiated at the highest institutional level of the legislating body due to its political relevance.

3 The act of initiating is not only a formality. It sets the groundwork of the whole process in terms of both policy content and project management and consists of three steps of work:

- Considering legislative impulses
- Taking a decision

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1 <sup>11</sup> Task 9 in PART ONE, [section 1.6](#) M# 15.

- Implementing the decision by issuing the Mandate.

4

Template 1<sup>12</sup> is a tool for progressing through the initiation stage. Descriptions and explanation related to the content to be inserted into the fields of the template can be found by three checklists that follow in the sections after the template. They provide the most relevant issues and facts to be considered for systematic and objective decision making on the initiation of a legislative process.

A glance at the template orients users of this Guide as to the structure and content of the work on the initiation of the legislating process. That is why it is placed before the explanatory text on the activities to be carried out during Stage 1. Before making entries in the template fields, users should have familiarised themselves with the contents of sections [2.4.1.1](#) to 2.4.1.3 and scrolled through the checklists point by point.

Checklists do not purport to be complete. It has to be decided in each case whether there are further points to be considered that are not included in the list.

The template is not only to be seen as a decision-making facilitator. It also serves to transfer the results of Stage 1 to subsequent stages, particularly to the next stage, at which the legislative concept is being drafted under the leadership and responsibility of the Head of Project.<sup>13</sup>

Last, the completed Template 1 should be used as the main cover sheet for the legislative record, which is passed hand-to-hand through all stages of the legislative process.

5

<b>Development of secondary legislation – Initiation of the legislating process and issuance of the implementing Mandate</b> <b>Template 1</b> <b>Head of Legislation</b> (prime minister, minister, head of an agency. See <a href="#">section 2.2.1</a> M# 7)			
<i>Name of the institution</i>	<i>Assigned responsible officer</i>	<i>File/archive ID</i>	<i>Start of project</i>
OPM, ministry of/agency for, etc. See <a href="#">section 2.2.1</a> M# 7.	Name of appointed Head of Project and his/her position in the process. See <a href="#">sections 2.3.1</a> M# 2 and <a href="#">2.2.1</a> M# 7.	Numbers and letters according to the filing system of the ministry	dd/mm/yy
<i>Name of the project</i>	Minister decides on the denomination of the project; usually, the name of the project anticipates the name of the piece of		

<sup>12</sup> For the general function of templates for the work process, see [section 2.3.4](#) M# 42-46.

<sup>13</sup> See section [2.3.1](#) M# 2.



	secondary legislation to be developed, which in turn will refer to the name of the authorising law.	
<b>Authorising law and provision</b>	Law Nno. ??? on “Title”; exact reference to relevant article(s) ???; See also <a href="#">section 2.4.1.1</a> M# 7.	
<b>Obligation or decision-making discretion</b>	See <a href="#">sections 3.1</a> M# 9, 10. See also <a href="#">sections 2.4.1.2</a> M# 10 and <a href="#">3.3.1.1</a> M# 19, 20.	
<b>Type of secondary legislation</b>	As a rule, executive regulation. See <a href="#">section 3.1</a> M# 11 and especially M# 12.	
<b>Source of additional contextual impulse</b>	See <a href="#">section 2.4.1.1</a> M# 8. See <a href="#">section 3.4.1.2</a> M# 15.	
<b>Problem to be addressed</b>		
Designating a problem is optional. It is only obligatory in Stage 2 for problem analysis, but indication with a few words can be useful, especially in cases of discretionary initiation. See <a href="#">sections 2.4.1.2</a> M# 10 and <a href="#">3.3.2</a> M# 22, 23.		
<b>General policy goals/country programmes</b>		
See <a href="#">section 3.3.2</a> M# 22.		
<b>Preferred option(s) for implementation</b>		
See <a href="#">section 3.3.2</a> M# 22.		
<b>Options and impacts to be avoided (social impacts/taxes...)</b>		
See <a href="#">section 3.3.2</a> M# 22.		
<b>Office responsible</b>	<b>In-house resources assigned (optional)</b>	<b>External resources assigned</b>
Appointment of Head of Project and team. See <a href="#">sections 2.3.1</a> M# 2 and <a href="#">2.3.2.1</a> M# 4.	Legislation Development Committee (see <a href="#">section 2.3.2.2</a> M# 9-12)/assessment team (see <a href="#">section 2.3.2.3</a> M# 13-18); drafting team (see <a href="#">section 2.3.2.4</a> M# 23-27).	See <a href="#">section 2.3.2.5</a> M# 28, 29.

<i>Detailed assessment expected</i>	<i>Special budget assigned</i>	<i>Schedule/deadline</i>
Optional for the Head of Legislation if it is of high political relevance to be decided by the top level. As a rule, the decision of whether a detailed assessment will be needed and included in the concept document is a task of the Head of Project. See <a href="#">section 3.4.6</a> M# 76.	Optional for the Head of Legislation if it is of high political relevance to be decided by the top level. As a rule, extra project-related budget planning to include in the concept document is a task of the Head of Project. See <a href="#">section 3.4.5</a> M# 75.	Optional for the Head of Legislation if it is of high political relevance to be decided by the top level. As a rule, setting a realistic schedule is a task of the Head of Project. See <a href="#">section 3.4.5</a> M# 73.
<i>Date of issuing</i>	<i>Name of Head of Legislating Body</i>	<i>Signature</i>

### Explanation of Template 1

#### *Initiator's checklist for the legislative impulse<sup>14</sup>*

6 The impulse for developing secondary legislation can come from a variety of sources. The list below distinguishes between the legal impulse from authorising law and additional impulses. In most cases, in addition to the legal situation, there will also be one or more policy-related impulses as to why and with what content secondary legislation should be enacted. It depends on the decision maker's openness to the diversity of impulses whether the secondary legislation proposed will respond to the reality of the problems to be tackled.

- 7
- Authorising law
    - Does a law exist that authorises the legislating body to adopt secondary legislation for the implementation of the law (the authorising law may either state the obligation or the permission to adopt secondary legislation)?<sup>15</sup>
      - Consequences if YES:
        - The initiator proceeds to "Additional contextual impulses" (below).
      - Consequences if NO:
        - The initiator stops the process: "No secondary legislation without authorising law".<sup>16</sup>

<sup>14</sup> See PART THREE, [section 3.3.1](#) M# 18.

<sup>15</sup> See PART THREE, [section 3.3.1.1](#) M# 19, 20.

<sup>16</sup> See PART THREE, [section 3.1](#) M# 6.

- To be considered: political initiative for adoption of new legislation or amendment of existing primary legislation.

8

- Additional contextual impulses

Did one or more of the following facts trigger an additional impulse for a legislative process?<sup>17</sup>

- Developments in society
- The economy or the environment suddenly perceived as a problem by certain groups of stakeholders
- Difficulties in the implementation of existing law identified by administrative authorities
- Critical media reports
- Results of scientific studies and evaluations
- Decisions of the Supreme Constitutional Court or the Court of Cassation
- Further development of higher-ranking law
- The need of government to implement a certain policy, in particular the need to react to certain urgent needs
- Request by parliament or representatives
- Suggestions from parts of civil society, in particular from groups who work with legal provisions, such as business associations, trade unions, consumer associations or ecologist groups.
- Impulses from higher-ranking international law (bilateral or multilateral treaties)
- Any other relevant impulse.

#### *Initiator's checklist for taking the top policy decision*

9

In response to the legislating impulses received, the initiator is to take the following basic policy decisions as to why and with what content secondary legislation shall be adopted:

- Does the authorising law state the obligation to adopt secondary legislation?
  - Consequences if NO:
    - The initiator proceeds to “The authorising law allows adoption of secondary legislation” (below).
  - Consequences if YES:
    - The initiator must take the decision to start the process of developing secondary legislation. There is no scope for choosing between the conduct of a legislative

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<sup>17</sup> See PART THREE, [section 3.3.1.2](#) M# 21.

procedure or a non-legislative option. In other words, the initiator has no decision-making discretion.

- The initiator proceeds to “Setting a policy guideline” (below).

10

- Does the authorising law allow (state the permission of) adoption of secondary legislation?
  - Legal consequence: as to the decision of whether or not to adopt a legislative solution, there is, as a rule, scope to choose between conducting a legislative procedure or opting for a non-legislative option. In other words, the initiator is granted decision-making discretion.
    - In this case, the decision-making options of the Head of Legislation may be:
      - “A legislative solution is hereby ordered.”
      - “A legislative solution is preferable.”
      - “A legislative solution is to be considered.”
      - “A legislative solution is to be avoided.”
    - The initiator may determine that, if opted for, the legislative solution should be done either by amending an existing secondary regulation or by issuing a new one.
    - It is also possible that the initiator makes no specification, i.e. the initiator delegates the exercise of the decision-making discretion completely to the level of policy analysis and concept design.<sup>18</sup>

11

- Setting a policy guideline

As to the regulatory content of the planned secondary legislation, the legislating body is granted selection discretion.<sup>19</sup> That usually means that the levels of the legislating body that are mandated to develop secondary legislation are in the position to select from several possible solutions those that are considered the most appropriate. However, it is not uncommon for the initiator to provide a general policy guideline at this stage that predetermines, to a certain extent, the regulatory content of the future legislative solution and in this way narrows the scope of the selection discretion of further stages of the legislating process.

If the initiator wants to predetermine a general policy guideline, one or more of the following decisions may be taken:

- The initiator refers to the observance of general policy goals, e.g.:
  - Medium- or long-term programmes of the country
  - Strategy of the government
  - Plans and schemes of the legislating body.

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<sup>18</sup> cf. PART TWO, [section 2.5](#) M# 2.

<sup>19</sup> cf. PART THREE, [section 3.3.2](#) M# 24, 25.

- The initiator determines, in a general way, some aspects regarding the regulatory content of the future legislation, such as:
  - Preferable options
  - Avoidable options.

*Initiator's checklist for the issuance of the Mandate to conduct a  
legislating process*

The initiation of the legislating process is to be concluded by issuing the implementing Mandate. The Mandate shall include the following content:

- WHAT? – Minimum specifications
  - Type of secondary legislation planned (e.g. executive regulation)
  - Provisional title of the intended piece of legislation
  - Reference to the authorising law
  - Is adoption obligatory or is decision-making discretion granted?
- WHO? – Responsibility for the legislating project
  - Department or office in the legislating body in charge of problem analysis and concept design, and managing the project
  - Person designated Head of Problem Analysis and Concept Design
  - Involvement of special expertise and skills, e.g.:
    - In-house resources from other departments
    - External resources from other ministries or government bodies, scientific institutes, or national or international consultancy services.

- WHEN? – Setting a realistic time horizon

All too often, the quality of legislation suffers from the fact that an unrealistically time frame was set for the preparation of the draft. Usually, the most important and hence often most urgent legislative projects also deal with the most complex issues. Especially in these cases, special attention must be paid to setting a realistic, sufficient time frame for the legislative process. Under no circumstances should it happen that an overly lengthy political decision-making process subsequently be compensated for by an unrealistically tight time frame to develop the legislation. The quality of the result often falls by the wayside simply for lack of time, which can have drastic consequences, especially in the case of important legislative projects. The well-known principle must also apply in this area: quality matters more than speed.

The Mandate may also include:

- WHY? – Policy statement
  - Policy goal in general

- Reference to country programmes, government plans, strategic goals of the legislative body, budget restrictions
- If necessary or appropriate, additional, more detailed instructions about:
  - Reference to one or more aspects from the list of relevant impulses<sup>20</sup>
  - Preferable or avoidable solutions with a view to direct effects and possible indirect regulatory impacts
  - Budget restrictions or grants with respect to the project costs.

19

The Mandate may be issued either through a written document – preferably as a template and in electronic form<sup>21</sup> – or verbally vis-à-vis the Head of Problem Analysis and Concept Design. In the latter case, the addressee fills in Template 1 on behalf of the initiator and in accordance with his/her verbal directive, which is to be presented to the initiator for official endorsement (signature).

After completing Stage 7: Transformation to legal text, the process continues with Stage 8: Completion of the legislating process.

#### 2.4.2 Stage 8: Enactment of the draft secondary legislation

21

After the legislative process initiated by the Head of Legislation (minister, head of an agency, etc.) has passed through all procedural stages up to the elaborated text of the secondary legislation – possibly in combination with or even instead of a non-legislative solution – the completion of the process falls back to the direct area of responsibility of the initiator. Stage 8 consists of the following steps to be prepared, initiated and implemented by the office of the Head of Legislation (minister, head of authority, etc.):

- Final control of the regulatory content legal text

Even if it can be assumed that the Head of Legislation was continuously kept informed about the course of the procedure and the content of the key decisions, a final check should take place at this stage with regard to: 1) the convergence of the content of the regulation with the political guidelines; and 2) its legal compatibility. For this, consultation with one or more other government bodies (ministries, prime minister) might be legally required or at least politically opportune, depending on the content of the project.

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<sup>20</sup> cf. PART THREE, section [3.3.1.](#)

<sup>21</sup> cf. Template 1, PART TWO, section [2.4.1](#) M# 5.

- Decision on the involvement of the State Council for legal review according to Article 190 of the Constitution of the Arab Republic of Egypt and Law No. 47/1972 on the State Council, Article 63 for constitutional review of the draft legal text
- Council of Ministers' approval of the draft legal text in cases issued by the prime minister
- Preparation of the original document of the piece of legislation in due form, and submission for the signature of the Head of Legislation (and other government bodies, if legally required)
- Signature

By signing the text of the deed containing the text of the secondary legislation, the Head of Legislation executes the act of enactment.

- Announcement of the signed secondary legislation within the public administration, i.e. to all other government bodies and all administrative authorities in the country for whose work a knowledge of the contents of the secondary legislation is relevant
- Initiation and control of the official publishing procedure

The Head of Legislation's final duties are to: 1) submit the secondary legislation to the responsible body connected with the order to publish the legal text formally; and 2) to verify whether and on which day the text of the secondary legislation was officially published.

- The executive regulation entering into force on the second day following publishing, unless otherwise regulated by the regulation or authorising law
- External dissemination of the main policy content of the legal ordinance to specific target groups or the general public through the use of appropriate instruments (website, electronic and print media, etc.).

Module I and thus the entire project are completed.

## 2.5 Module II Responsibilities of the conceptual and operative leadership levels – Head of Project and team

1 Module II covers the responsibilities, tasks and work steps of the policy development area within the overall legislative process. They take place in Stage 2 (phase 1), Stage 4 (phase 2) and Stage 9 of the process (see [section 2.2](#): The process of developing secondary legislation M# 1-3).

2 The work in Stage 2 is about drafting the legislative concept, which forms the basis for the regulatory content of the planned secondary legislation. The development of a draft concept follows three successive steps:

- Analysing the problems to be addressed by the planned piece of secondary legislation
- Defining the general and specific objectives to be pursued by the measure

- Determining the problem-solving means and ways to achieve the objectives.

3 The way through Stage 2 (phase 1) is guided below by sections [2.5.1](#) to [2.5.6](#) and ends with the submission of a Draft Concept Document for further processing in Stage 3 (see [section 2.6](#) of Module III: Responsibilities of the group of experts and researchers for *ex ante* and *ex post* evaluation of secondary legislation). During Stage 3, the concept will be subjected to an assessment of the reasonably predictable impacts (i.e. the expected adverse side effects) that would accompany the implementation of the concept.

The second phase of policy development in Stage 4 comes into play in response to the results of impact assessment in Stage 3. The main activities in Stage 4 are:

- Review and, if necessary, revision of the draft concept, if the expected adverse impacts appear unjustified in view of the intended objectives (section 5.7)
- Examination of the concept's legal compatibility with constitutional principles and the overall legal order
- Consultation with (internal) experts and stakeholders
- Submission of a Final Concept Document for further consideration by the Legal Drafting Team, which transforms the concept into the text of a legal regulation.

4 As explained in section [2.3.1](#), concept development is policy making, a category of work usually reserved for the hierarchical level of senior management. This Guide proposes for the task of concept development the establishment of the position Head of Project (see section [2.3.1](#)) who, in addition to the substantive work on the concept, should be entrusted with the overall management of the legislative process (task assignment, co-ordination, supervision). Due to the importance of the tasks and the required supervisory and decision-making competence, an official of the rank of a deputy minister, deputy head of another legislating authority (such as the IDA or GAFI), counsellor to the minister, Head of Strategic Planning and Policies Unit or Head of Legislative Support Unit would be eligible for this position. The Head of Project should report directly to the Head of Legislation,<sup>22</sup> the latter being the top-level decision maker of the legislating body (e.g. the minister). As explained in [section 2.3.2.1](#) M# 5, the Head of Project can rely on the Permanent Legislation Development Team consisting of at least two permanent staff for his/her area of responsibility.

5 Last, the *ex post* evaluation of secondary regulation (Stage 9 of the overall legislating process. See [section 2.5.9](#)) could also be assigned to the area of policy development. This solution is reasonable, as the policy developers of the legislative process can also be expected to have the necessary expertise and experience to monitor and evaluate the application of the secondary legislation in practice, as well as the decision-making authority within the legislative body to

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<sup>22</sup> See [section 2.3.1](#) M# 2.



decide whether the enacted regulation needs to be repealed or amended or continues to apply unchanged.

At this point, the legislation process continues with  
Stage 2: Policy development.

#### 2.5.1 Problem analysis<sup>23</sup>

6 Only when the concrete situation identified as a problem has been analysed precisely is it possible to sound out the need for action and select the appropriate instruments for addressing the problem. Problem analysis is therefore the basis for all subsequent steps. It ensures that the problematic situation is adequately clarified before measures are initiated.

7 The problem analysis should lead to a problem description ([section 2.5.1.1](#) M# 14) that provides answers to the following basic questions:

- What is the main problem?
- What is causing the problem?
- What are the effects of the problem?
- Which stakeholders are affected?
- How should situations of greater complexity be analysed?

The main problem identifies what is going on. The causes of the problem describe why the problem exists. The effects of the problem indicate what the consequences are. In many cases, the problem description should also provide information about stakeholders (see [section 2.5.1.4](#)) in the public and business sectors that could be affected by the problem and its possible legislative solution. The reference to stakeholders can set the course for their later participation in the (public) consultation stage.

Last, special analytical effort is indicated in cases of greater complexity ([section 2.5.1.5](#)).

8 Template 2<sup>24</sup> provides a first orientation as to the structure and content of the work on problem analysis and a systematic guide through this part of Stage 2. When completed, it will also reflect, in brief, the relevant results of the analytical process and transfer them to the subsequent procedural steps in the legislative process, in particular to the next sections dealing with the objectives of the legislative solution and the Draft Concept Document.

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<sup>23</sup> cf. detailed explanation in PART THREE, [section 3.4.1](#) M# 8.

<sup>24</sup> For the general function of templates for the work process, see [section 2.3.4](#) M# 42–46.

The template is placed before the explanatory text on the activities to be carried out to underline that, before making entries in template fields, familiarity with [sections 2.5.1.1](#) to 2.5.1.6 and the checklists therein is expected.

Checklists do not purport to be complete. In each case, the user needs to decide whether there are further points to be considered that are not included in the lists.

<b>Development of secondary legislation – Problem analysis</b> <b>Template 2</b> <b>Head of Project</b>			
<i>Name of the institution</i>	<i>Assigned responsible officer</i>	<i>File/archive ID</i>	<i>Start of concept development, phase 1, step 1</i>
OPM, ministry of/agency for, etc. See <a href="#">section 2.2.1</a> M# 7.	Name of appointed Head of Project and his/her position in the legislating body. See <a href="#">sections 2.3.1</a> M# 2 and <a href="#">2.2.1</a> M# 7.	Numbers and letters according to the filing system of the ministry	dd/mm/yy
<i>Name of the project</i>	To be taken from Template 1		
<i>Problem designated in Template 1</i>	To be taken from Template 1		
<b>Details of problem analysis</b> For introduction, see PART THREE, <a href="#">section 3.4.1</a> M# 8			
<i>The main problem and its nature</i> See <a href="#">sections 3.4.1.1</a> M# 9-13 and <a href="#">2.5.1.1</a> M# 10-14.	Narrative; selected from the checklist in PART TWO, <a href="#">section 2.5.1.1</a> M# 10-14:		
<i>Existing policy and legal framework</i> See <a href="#">sections 3.4.1.1</a> M# 14 and <a href="#">2.5.1.1</a> M# 15.	Narrative; selected from the checklist in PART TWO, <a href="#">section 2.5.1.1</a> M# 15:		
<i>Causes of the problem(s)</i> See <a href="#">sections 3.4.1.2</a> M# 15 and <a href="#">2.5.1.2</a> M#16.	Narrative; selected from the checklist in PART TWO, section 2.5.1.2 M# 13:		
<i>Effects of the problem</i> See <a href="#">sections 3.4.1.3</a> M# 16 and <a href="#">2.5.1.3</a> M# 17.	Narrative; selected from the checklist in PART TWO, section 2.5.1.3 M# 14:		

<b>Stakeholders linked to the problem</b> See <a href="#">sections 3.4.1.4 M# 17</a> and <a href="#">2.5.1.4 M# 18</a>			
<i>Name of the stakeholder</i>	<i>Cause(s) to which the stakeholder is linked</i>	<i>Effect(s) to which the stakeholder is linked</i>	<i>How the stakeholder is linked to cause(s) or effect(s)</i>
1.			
2.			
3.			
Etc.			
<b>Complex problems – detailed analysis</b> See <a href="#">sections 2.5.1.5 M# 17</a> and <a href="#">3.4.1.5, M# 18-34</a> .	Tick: <input type="radio"/> Not applicable or <input type="radio"/> See annexed report		
<b>Supporting annexes</b>	Title of attachment:		
<b>Date of issuing</b>	<b>Name of Head of Project</b>	<b>Signature</b>	

## Explanation of Template 2

*What is the [main problem](#)?<sup>25</sup>*

Definition of the problems will be done by the following work steps, some of which are carried out in parallel and some in sequence.

### Step 1: Point of departure

Does a Mandate for the development of secondary legislation exist (see section 2.3.6: Initiation of the legislating process)?

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<sup>25</sup> See detailed explanation in PART THREE, section [3.4.1.1](#) M# 10-14.

## Step 2: Analysis of the Mandate

- Does a completed Template 1 exist?
- Does the Mandate determine special process-related modalities for the conduct of the problem analysis, e.g. reference to special sources of information or optional or obligatory involvement of in-house or external expertise?
- Does the wording, meaning or purpose of the authorising law referred to in the Mandate directly or indirectly indicate one or more problems to be addressed by secondary legislation?
- Does the Mandate already contain indications of certain problems to be considered in the problem analysis?

12

## Step 3: Denomination of the main problem

Now the main problem is to be identified. Statement of the main problem will summarise the reason for, and thus indicate the framework for, the upcoming legislative or non-legislative activities in one sentence or just a few words. In most cases, the Mandate, in connection with the authorising law referred to therein, already brings the main problem to the forefront. In addition, it may be that a problem has been the subject of public discourse for some time and is considered urgent and in need of solution in parts of society or in general.

13

Examples of typical keyworded problems	
<ul style="list-style-type: none"><li>• High number of insolvencies of start-ups (SMEs)</li><li>• High climate-damaging carbon dioxide (CO<sub>2</sub>) emissions in urban areas</li><li>• Increase in infections by a certain virus with an effect on mortality</li><li>• Under-representation of women in chief executive officer (CEO) positions</li><li>• Shortage of teachers in primary schools</li><li>• Shortage of doctors in rural areas</li><li>• Deteriorating water quality in rural/urban areas</li><li>• Increase in road deaths in the last three years</li><li>• High unemployment rate among young graduates.</li></ul>	

14

#### Step 4: Description of the nature of the problem

- What is the nature of the problem?
  - Legal
  - Economic
  - Societal
  - Ecological
  - Technological.
- How does it manifest itself?
- What is the severity of the problem?
- Is the problem of a temporary or permanent nature?

#### Step 5: Description of existing policy and legal framework

15

The next step is to ask:

- Does a (government/ministry) policy in the area of the main problem exist?
- Is there a legal framework in place?
- Which institutions at the state, regional and local levels are responsible for implementation?
- What is the institutions' role in this?
- What measures have been taken so far by municipalities, by governorates, on the part of the government and at the international level?
- Why have they not been sufficiently effective?
- Have the measures already been evaluated?
- What findings have emerged?

Such a description of the status quo provides the information needed to assess options in relation to existing measures and avoids the perpetuation of failures, duplication and the overlapping of activities. It forms the basis for assessing in later stages how the regulatory and non-regulatory options considered in the concept document would interlink with existing policies and legal requirements.

#### *What is causing the problem(s)?*

16

With the following list of questions, the attempt is made to find out why the problem exists.

- What is the cause of the problem?
- What are the reasons for its development?

It is always helpful to categorise and structure the causes:

- Legal and regulatory shortcomings

- Market shortcomings
- Societal issues
- Ecological issues
- Technological issues
- Etc.

If the cause is connected to people's behaviour:

- What external factors are influencing people's behaviour?
- Do people understand and acknowledge that there is an issue?
- Do they understand and acknowledge their contribution?
- Do they understand and accept the government's objectives?
- Do they understand and accept the way you want them to behave?
- Are they capable of behaving that way?
- What economic, cultural, social or psychological factors on the people's part are involved?

#### *What are the effects of the problem?*

17

Undesirable or negative effects turn an actual situation into a problem. One could say, a problem is the difference between an actual and a target state. Thus, it is the effects of a problem that are to be mitigated or, better yet, completely prevented by a legislative solution.

- What effects are triggered by the main problem?
- What is the nature of the effect?
  - Legal
  - Technical
  - Economic
  - Social
  - Ecological
  - Sanitary.
- For which effects is empirical evidence available?
- Which effects are only suspected or for which is the empirical evidence disputed?
- What are the framework conditions in society, the economy, the environment, etc.? In what way and to what intensity would other subject areas be affected?
- How does civil society (general public, business sector, interested parties) assess the problem?
- Dynamics: is a development of the effects discernible (periodic manifestations, regularities, increasing risks)?

- What would happen without intervention?
- How severe are the effects with respect to both quality and quantity?

### *Identification of stakeholders linked to the problem*

18

The identification of stakeholders follows directly from the identified causes, effects and involved government organisations.

The overview below presents a practical way to identify the involved stakeholders. Knowing which stakeholders are affected by the problem is useful, as it helps in developing the analysis for the concept document. Stakeholders identified should be directly consulted, and/or their participation in public consultation should be promoted.

Examples of stakeholders linked to the problem			
Name of the stakeholder	Cause(s) to which the stakeholder is linked	Effect(s) to which the stakeholder is linked	How the stakeholder is linked to cause(s) or effect(s)
Name of the government institution	Lack of quality regarding the inspection of companies		Does not implement the existing rules due to lack of staff training
Name of external stakeholder		Competition is distorted	Companies that follow the rules have higher costs than those that break the law. Those that break the law have a price advantage.
Holders and drivers of automobiles	Participation in road traffic	Increasing risk of involvement in traffic accidents	Without safety belts, it has been proven that the likelihood of being seriously injured or killed in a road traffic accident is significantly higher.

### *Analysis of complex problems*

19

Many projects represent a straightforward and easily identified problem. For those simpler cases, the problem analysis may be carried out as explained in sections 2.5.1.1 to 2.5.1.4. In special cases, however, it will be necessary to invest more time and resources to identify the sources,



characteristics and impacts. For more complex cases, a general review and problem identification should be performed concerning:

- Legal and regulatory shortcomings
- Market shortcomings
- Societal issues.

The necessary tools for the conduct of such in-depth analysis are provided in PART THREE, [section 3.4.1.5](#) M# 18-34. Facets described therein may, in complex cases, require outsourcing the task of problem identification, or at least involving expertise from outside the legislating body.

#### 2.5.2 Objectives for the solution of problems identified<sup>26</sup>

21 The purpose of the preceding problem analysis was to bring to the surface the issues that need to be addressed with the help of either secondary legislation or non-regulatory instruments. Before entering into the development of concrete solution measures, however, it is necessary to describe what should take the place of the situation that has been identified as problematic. In other words, overall government policy goals and existing strategies and general objectives must be considered, and specific objectives defined. Last, indicators have to be drawn up from which it will be possible to ascertain whether and to what extent the goals will have been achieved.

Template 3<sup>27</sup> outlines the work steps for this part of Stage 2, facilitating a systematic approach to design and explaining the targets and indicators to measure successful implementation. It allows the results of the work to be presented in brief, although in most cases, this does not obviate the need for a more detailed justification in the form of a report. The template is therefore another building block that proves the logic and reasoning for the development of a Draft Concept Document.

Explanation and examples for filling in the fields can be found at the end of the template.

22

Development of secondary legislation – Objectives of the project			
Template 3			
Head of Project			
<i>Name of the institution</i>	<i>Assigned responsible officer</i>	<i>File/archive ID</i>	<i>Start of concept development, phase 1, step 2</i>
OPM, ministry of/agency for, etc. See <a href="#">section 2.2.1</a> M# 7.	Name of appointed Head of Project and his/her position in	Numbers and letters according To the filing	dd/mm/yy

<sup>26</sup> See detailed explanation in PART THREE, [section 3.4.2](#) M# 39-48.

<sup>27</sup> For the general function of templates for the work process, see [section 2.3.4](#) M# 42-46.

	the legislating body. See sections 2.3.1 M# 2 and M# 7.	system of the ministry	
<b>Name of the project</b>	To be taken from Template 1		
<b>Main problem and its nature, designated in Template 2</b> See sections 3.4.1.1 M# 9-13 and 2.5.1.1 M# 10-14.	To be taken from Template 2; for the other elements of problem analysis, references to Template 2		
<b>Policy goal</b> (if applicable) See section 3.3.2 M# 22.	As defined in strategic/policy documents		
<b>General objective</b> See sections 2.5.2 M# 23 and 3.4.2 M# 39, 41, 45.	As defined in strategies and worked out in activity plans		
<b>Specific objectives</b> See sections 2.5.2 M# 23 and 3.4.2 M# 41, 45.	As especially defined at Stage 2 of the legislating process for the concept document		
<b>Draft indicators</b> See end of section 2.5.2 before M# 23 and section 3.4.2 M# 43.	Indicate expected measurable achievements of the specific objectives.		
<b>Remarks (optional)</b>			
Narrative ...			
<b>Supporting annexes</b>	Title of attachments:		
<b>Date of issuing</b>	<b>Name of Head of Project</b>	<b>Signature</b>	

### Explanation of Template 3

23 Besides overarching policy goals, which need to be respected, there are three main pillars of this component:

**General objective.** This defines the mid- and longer-term targets. Usually, such a strategic general objective exists – developed and set by parliament, government, a line ministry or the legislative body as part of a longer-term plan. It defines specific expectations that will allow a particular institution to achieve the broader mission or fulfil their vision. The general objective is achieved by fulfilling the specific objectives.

**Specific objectives.** The general objective should now be divided into smaller specific, logically interlinked parts. These specific objectives aim to remove one or more causes of the problem or to address the effects that result from a problem – or a combination of the two. Specific objectives link directly to the issues that the government seeks to solve. They are more short term than the general objective and usually result in concrete activities. Specific objectives are set in the course of the legislating body's concrete legislating project.

**Draft indicators.** Indicators should be identified at this stage in order to set targets for the successful achievement of goals. While this may not be too easy or may be a bit vague at this stage, the detailed concept analysis later on must identify concrete target indicators for measurable success, especially to allow transparent *ex post* evaluations.

24

In order to define realistic and tangible parameters, the following checklist helps formulate targets along the **S.M.A.R.T.** classification for general and specific objectives.

- **Specific**
  - Whenever possible, the definitions of objectives must be precise and concrete and should NOT leave room for interpretation.
- **Measurable**
  - Goals and objectives must be described based on very clear targets. That means setting clear *indicators* for expected changes. This particularly applies to specific objectives.
- **Achievable**
  - The goals and objectives must be achievable. It does not add value to plan too much and then be unable to deliver on the promises. Objectives need to be set in a realistic manner. This means that they also have to be based on the available human and budget resources.
- **Relevant**
  - Goals and objectives have to be linked directly to the problem definition. The aim is either to remove the problem by eliminating its causes or to address the effects that the problem caused.
- **Time-bound**
  - Goals and objectives have to be implemented within a reasonable time. This links back to making sure that they are achievable. Deadlines also have to be set in such a way that the achieved results can be evaluated.

25

Example case related to objectives and indicators: Road safety	
Steps of the development process	<u>Assumed</u> results based on a <u>fictional case</u>

<p><b>Policy goal</b></p> <p>Predetermined in strategic/policy documents and needs to be kept as is</p>	<ul style="list-style-type: none"> <li>• <i>Government programme on development of transport infrastructure for trade and industry</i></li> </ul>
<p><b>Strategic or general objective</b></p> <p>Predetermined in strategies and worked out in activity plans and, as a rule, needs to be kept as is</p>	<ul style="list-style-type: none"> <li>• <i>2021 joint strategy paper of the Ministry of Transport and the Ministry of Trade and Industry on Improvement of Security in Road Traffic</i></li> </ul>
<p><b>Specific objectives</b></p> <p>To be set in the concept document based on the problem definition and addressing causes and effects of the problem</p>	<p><i>Specific objectives:</i></p> <ul style="list-style-type: none"> <li>• <i>Reduce the number of traffic accidents</i></li> <li>• <i>Reduce traffic accidents with serious injuries and fatalities</i></li> <li>• <i>Protect, in particular, children up to age 12 from serious injury or death in car accidents</i></li> <li>• <i>Reduce costs and ease the burden on the health system and traffic police caused by car accidents.</i></li> </ul>
<p><b>Draft indicators</b></p> <p>Vaguely defined at this stage; setting quantifiable indicators is left to the Final Concept Document after the assessment stage</p>	<ul style="list-style-type: none"> <li>• <i>Traffic police reports on the number and severity of car accidents</i></li> <li>• <i>Statistics on health insurance and car insurance</i></li> <li>• <i>Statistics on costs to the public health system caused by car accidents</i></li> <li>• <i>Studies on the behaviour of road users (drivers and passengers).</i></li> </ul>

### 2.5.3 Development of suitable solutions to achieve defined objectives<sup>28</sup>

When problems are analysed<sup>29</sup> and objectives are defined,<sup>30</sup> the next step is to find suitable solutions to achieve the objectives.

26

Development of secondary legislation – Development and selection of potential solutions			
Template 4			
Head of Project			
<i>Name of the institution</i>	<i>Assigned responsible officer</i>	<i>File/archive ID</i>	<i>Start of concept development, phase 1, step 3</i>
OPM, ministry of/agency for, etc. See <a href="#">section 2.2.1</a> M# 7.	Name of appointed Head of Project and his/her position in the legislating body. See <a href="#">sections 2.3.1</a> M# 2 and <a href="#">2.2.1</a> M# 7.	Numbers and letters according to the filing system of the ministry	dd/mm/yy
<i>Name of the project</i>	To be taken from Template 1		
<i>Main problem and its nature, designated in Template 2</i> See <a href="#">sections 3.4.1.1</a> M# 9-13 and <a href="#">2.5.1.1</a> M# 10-14.	To be taken from Template 2; for the other elements of problem analysis, references to Template 2		
<i>General objective</i> See <a href="#">sections 2.5.2</a> M# 23 and <a href="#">3.4.2</a> M# 39, 41, 45.	As defined in strategies and worked out in activity plans		
<i>Option 1 (e.g. no action)</i> See <a href="#">section 3.4.3.3</a> M# 64-69.	Description of option 1 with reference to specific objective(s), applicability and fulfilment of indicator(s)  <i>Sample for NO action: the number of serious and fatal injuries in traffic accidents is expected to rise by 5-10% per annum (p.a.), depending on the increase of traffic in densely populated areas.</i>		

<sup>28</sup> See also PART THREE, [section 3.4.3](#) M# 49, 58.

<sup>29</sup> See PART TWO, [section 2.5.1](#).

<sup>30</sup> See PART TWO, [section 2.5.2](#).

<b>Option 2 (e.g. legislative option)</b> See <a href="#">section 3.4.3.3</a> M# 64-69.	Indicate expected <b>measurable</b> achievements of the specific objectives. <i>Sample for legislative action: traffic law for obligatory mounting of safety belts in cars as of production year 1967. Rule for obligatory application of safety belts for all passengers while driving. Penalty regulations for not abiding by the above.</i>
<b>Legal review of option 2</b>	Light review of the option regarding conflicts with constitutional or other regulations in the field of the legislative project <i>No conflicts to be expected</i>
<b>Obvious impacts of option 2</b>	Quick review of the option regarding obvious and eye-catching negative impacts <i>New investments required for car operators</i>
<b>Implementation plan for option 2</b>	To be developed as an attachment in line with layout stipulated in <a href="#">section 3.4.4</a> ; highlights may be mentioned herein <i>Sample: educate traffic police in enforcement, and develop information campaign for drivers and passengers</i>
<b>Option 3 (e.g. non-legislative option)</b> See <a href="#">section 3.4.3.3</a> M# 64-69.	Indicate expected <b>measurable</b> achievements of the specific objectives. - <i>Bilateral agreement with insurance companies to:</i> <ul style="list-style-type: none"> <li>• <i>Raise insurance policies by 50% for cars without safety belts</i></li> <li>• <i>Not cover injuries of passengers who were not belted if safety belts were available in the car</i></li> <li>• <i>Contribute half of the 50% policy increase to the national health budget.</i></li> </ul> - <i>Development of public awareness campaign</i>
<b>Legal review of option 3</b>	Light review of the option regarding conflicts with constitutional or other regulations in the field of the legislative project <i>No conflicts to be expected</i>
<b>Obvious impacts of option 3</b>	Quick review of the option regarding obvious and eye-catching negative impacts <i>New administrative burdens for insurance companies</i>
<b>Implementation plan for option 3</b>	To be developed as an attachment in line with layout stipulated in <a href="#">section 3.4.4</a> ; highlights may be mentioned herein
<b>Solution(s) selected</b> See <a href="#">section 3.4.3.3</a> M# 64-69.	Reasoning of the decision for selected option, also considering the criteria as listed in <a href="#">section 3.4.3.3</a> <i>Sample for safety belt case:</i>

	<p><i>Decision: a combination of option 3 supported by option 2, i.e. rule for obligatory use of safety belts and enforcement by police applying fines in the case of non-compliance</i></p> <p><i>Reasoning: option 3 is expected to have a higher effectiveness due to recurring insurance costs for the car owner and risk of non-coverage of injuries for the individual. Public awareness of such consequences will be higher than for just the risk of a fine. However, enforcement on the road can still only be supervised by police.</i></p>	
<b>Obvious impacts of selected solutions</b>	<p>Before the effects of individual solutions are carried forward to this level, it is necessary to check if the combination of options leads to additional impacts.</p> <p><i>New investments for car operators</i></p> <p><i>New administrative burdens for insurance companies</i></p>	
<b>Implementation plan for selected solutions</b>	<p>Review and harmonisation of implementation plans will probably be required if a combination of options is selected; otherwise, the schedule of a single option is valid.</p> <p><i>Combination of the above implementation plans, with focus on timely co-ordination with insurance companies and a vacancy regulation regarding the deadline for availability of safety belts in automobiles</i></p>	
<b>Remarks (optional)</b>		
Narrative ...		
<b>Supporting annexes</b>	Title of attachments:	
<b>Date of issuing</b>	<b>Name of Head of Project</b>	<b>Signature</b>

#### Explanation of Template 4

27 This section on options for suitable solutions deals with possibilities to achieve the defined objectives. Usually, the solution consists of multiple measures that have to be developed and undertaken in order to address the problem by removing its causes or curing its effects – or a combination of the two.

As a rule, the search for suitable measures to achieve the objectives is carried out in three thoroughly worked-out steps:

- Create an inventory of possible options for solutions
- Analyse the options
- Select the most adequate solutions.

The following sections will describe ways and means to develop a decision-making path for the selection of best-fit solutions.

### *Options*

28 Even in straightforward legislative projects, at least three options should be dealt with in each inventory of possible solutions:

- No change option, to show the current situation of the policy issue and its continuation if changes do not happen
- Legislative option, to improve the implementation and enforcement of existing regulation or to develop new regulations
- Non-legislative option, an adequate yet effective alternative to legislative means (e.g. incentives, communication, economic) to resolve the identified problems.

A detailed description of how to evaluate potential options for solutions – especially for more complex cases – is provided in [3.4.1.5](#), which also includes an analytical part for the identification of typical options in the case of legal- and regulatory-related problems (M# 20) or market-related problems (M# 28).

29 A systematic approach to the search for solutions should prevent the subsequent drafting of secondary legislation from being hastily limited to an inappropriate regulation without having evaluated alternative solutions. It should ensure that the great potential of state measures is considered and that new solutions are examined and, if necessary, applied. What is needed are consensus-oriented solutions that are not only in the public interest but also contribute to the realisation of individual rights and the interests of citizens and business entities.

The search for possible solutions presupposes a thorough knowledge of the problem, the defined goals and, if applicable, the existing approaches to solutions in other states and in similarly situated issues. However, the search for solutions is also a creative process (including the use of creativity techniques, such as brainstorming) from which new approaches may emerge.

30 The following considerations can help in the search for possible suitable solutions:

- What is the underlying logic of the problem at hand? How can the state influence the relevant actors so that positive change can be achieved?
- What solutions or concrete regulations exist in comparable countries for the problem or situation at hand (result of a legal comparison)?
- Are there similar problems in other areas? What solutions have been found there?
- Are there certain solution approaches or strategies that are particularly suitable for the problem at hand? Examples include: market strategies (e.g. creation of functioning markets); private law strategies (e.g. creation of additional legal rights); prohibition and punishment strategies; education strategies (e.g. role model function of the state, creation of labels or information campaigns); and partnership strategies (co-operation between the state and the private sector).



- When looking for solutions, it is important to note that tailored solutions are usually created for specific problems.

#### *Legal review of options*

31 A detailed and comprehensive legal review of the options has not occurred at this point. That is done at a later stage, based on the Legal Draft Proposal (see [section 2.5.6](#)). In the context of selecting suitable possible solutions, options should be filtered out for which it can be expected that *prima facie*, based on a cursory legal examination, they are NOT compatible with

- The Constitution
- The principles of the rule of law
- International treaties
- Existing primary or secondary legislation.

However, in cases where incompatibility with existing primary or secondary legislation is likely, amendment of the existing legislation might also be considered as part of the measures connected to the implementation plan.

#### *Obvious impacts of options*

32 The process of evaluating options and selecting solutions should include an estimation of obvious potential positive and negative consequences of each option. The typical areas to be considered are:

- Economic impacts
- Social impacts
- Environmental impacts
- Crosscutting impacts
- Budget impacts.

For a realistic, rational approach, some of the methodological instruments developed for impact assessment may be applied (Stages 3 and 6. See the introduction to RIA in PART TWO, [section 2.6.1](#)).

33 Of course, this is not the procedural step in which impact assessment should be anticipated. However, some options that obviously appear to be unsuitable from the perspective of some assessment methods, such as an SME test the SCM, cost-benefit analysis (CBA) or cost-effectiveness analysis (CEA) (see [sections 2.6.2.2-2.6.2.8](#)) should be ruled out here, although the methods may only be applied approximatively.

In this way, options could be filtered out due to undesirable side effects that appear obvious from the beginning.

Where obvious impacts do not have to be excluded from the outset, preliminary information on such impacts is nevertheless useful when deciding whether and to what degree (RIA Light or RIA Complete) impact assessment should be carried out ([section-2.6.1](#) M# 7-10).



### *Implementation plan per option*

34 Quite often, well-developed legislative solutions do not have the expected effects when it comes to the practical application of the secondary regulation. In order to avoid unexpected difficulties and obstacles during implementation, it is therefore necessary to include a concise plan for its implementation in the concept document. Only in this way is it possible to assess the impact of the concept in practice in advance (see [section 2.5.4.1.1](#)).

A detailed layout for such an implementation plan and schedule is provided in [section 3.4.4](#), with further explanation of the underpinning considerations leading to the identification of institutional, human, budget and other resources for implementation.

However, already at this point in the decision-making process on options, consideration should be given to the implementation of each of the options to be listed. It is not yet a detailed implementation plan that is recommended here but a rough overview of implementation requirements in terms of resources, time and other framework conditions (e.g. legal conditions). When selecting the most suitable options, those with potential major implementation problems can be sorted out from the outset.

### *Solution: Selection of best-fit options*

35 As mentioned, at the end of the process of identifying and analysing possible options, at least **the three options** (no change, legislative and non-legislative) should always be analysed in each Draft Concept Document and the most suitable solutions selected for the concept. Many cases may be complementary and lead to a package of measures to be applied in the concept, for example:

- Solutions that complement or reinforce each other in their effects are combined into solution packages. These can also be solutions that can be put in chronological order (e.g. milder measures at the beginning, stronger ones in case they are not sufficiently effective).
- Solutions or packages that exclude each other from alternatives that can then be combined with each other.
- Solutions that can be designed differently and can be grouped into partial alternatives.

36 Selection of the most suitable solutions is made based on their effectiveness in solving the problem and achieving the determined objectives.

However, selection criteria beyond effectiveness may result from legal implications, concerns about adverse side effects assessed, and implementation problems. Certain options can usually be eliminated, e.g. because they:

- Are disproportionate (i.e. other suitable solutions are available that are less costly for the state or result in lower burdens on the business sector)
- Appear to be ineffective
- Pose difficult legal problems (e.g. incompatibility with other solutions that have already been adopted or cause amendments to other laws)

- Face difficulty in reaching (political or public) consensus.

37 [Sections 3.4.3](#) and [3.4.3.3](#) provide detailed recommendations for how to approach the evaluation of options towards recommendable solutions. Evaluation must be guided by realistic ideas about how the solutions will play out in reality. Results will be required for contribution to the alternatives suggested in the Draft Concept Document. Part of the concept could be whether amendments to existing legislation or adoption of secondary legislation is preferable (discretion).

Last but not least with respect to the selection of the best option, always draw major attention to the no change or the non-legislative option as alternative measures. This is to avoid opting for unnecessary legislative solutions that would not only require a lot of time, effort and costs to develop, implement and apply but also contribute to the widely lamented phenomenon of a flood of laws or overregulation (for the latter, see PART THREE, [section 3.4.3.4](#)).

38 Alternatives to a new legislative measure that need to be reviewed:

- Measures to ensure the effective application of existing provisions
- Public relations work
- Working arrangements
- New investments
- Incentives (subsidies)
- Encouragement of self-support that can reasonably be expected from and managed by those concerned
- Clarification by courts.

Not a non-legislative solution but a variant of permanent regulation that can also counteract flood of legislation is the temporary validity of secondary legislation. A time-limited regulation can be considered when:

- Problems occur only temporarily
- Problems can be permanently solved by other appropriate measures after a certain period of time
- It is uncertain from the outset what effect the measures will have, in order to gain initial experience
- A consensual solution (e.g. with another ministry, a certain business association or another interest group in civil society) has not yet been found
- The legislating body is obliged by the authorising law, is mandated by political guidelines or has determined on its own initiative to carry out an *ex post* evaluation before the expiry of the deadline and, depending on the result, to amend the regulation, or extend its period of validity. Internationally, this type of regulation is known as a "sunset legislation".

#### 2.5.4 [Concept document](#)

39 A concept document reflects the entire conceptual policy development work carried out within the legislative project. It presents all results of the work processes, substantiated with brief but plausible rationale for the results. The concept document may reference data, facts, assessments and reasonings, which are set out in the annexes to individual templates.

The language of the document should be objective, functional and precise. As the concept document is a text of quite official character that is also to be communicated outside the legislative body (e.g. to stakeholders and external experts), it should refrain from using special in-house terminology or abbreviations.

40 This Guide distinguishes between two approaches in preparing this document:

- Three-step approach in regular cases: 1) Draft Concept Document; 2) review of draft(s) after impact assessment; and 3) Final Concept Document
- Exceptionally, in straightforward cases: single concept document.

The single concept document forms the adopted and final version upon which the development of the legal draft text, follow-up implementation activities and *ex post* evaluation will be based. The three-step concept document is subject to impact assessment and, depending on the outcome of the assessment, might be more or less modified before it becomes the Final Concept Document.

Which approach to choose is decided by the Head of Project and must be documented and reasoned in the concept document. The exceptional single concept document approach is justified in cases when it is *prima facie* evident that the intended secondary legislation cannot bring about any undesirable side effects, rendering impact assessment superfluous.

#### *Two or more documents in regular and complex cases*

41 In regular and complex cases, the three-step approach applies and includes impact assessment (e.g. applying either RIA Light or RIA Complete) between the draft and final document. The decision for these steps is taken and documented in the initial concept, as shown below.

The starting point is drafting a first version of the concept document that presents, as explained above, the relevant results of the work process on the legislative project to date and their brief reasoning. Four further elements need to be added that, at this stage of the process, have not been the subject of the work on the concept. One is to add a plan for the implementation of the developed solution measures (in most cases, these will consist of the application of the legal regulation). It also still has to be decided—whether to carry out a separate impact assessment and, if so, with what intensity. Last, the draft document should also provide some recommendations for the immediately subsequent impact assessment (Stage 4) and following transformation to legal text (Stage 5)”.

#### 2.5.4.1.1 Implementation plan for overall concept

42 An implementation plan is a tool that illustrates in detail the work required to implement selected solution(s) and to achieve the policy goals and objectives. It lists activities, outputs and timelines in order to implement the solutions.

A detailed layout for such an implementation plan and schedule is provided [in section 3.4.4](#), with further explanation of the underpinning considerations leading to the identification of institutional, human, budget and other resources for implementation.

As to the determination of the starting point of the implementation of the solutions, consider that drafting the proposal for the legal text, consulting on the proposal with stakeholders and having the proposal adopted by the government usually takes half a year or more.

#### 2.5.4.1.2 Decision on the necessity of impact assessment and recommendations to the assessment team

43 Based on the pre-evaluation during the search for options and potential solutions, the Head of Project has to document in the initial concept a decision on the need and complexity level of a RIA phase (for the distinction between RIA Light and RIA Complete, see [section 2.6.1](#) M# 7-10). There are three levels of complexity:

- RIA Complete

44 In a complex case, when one or more preferred solutions are suspected of causing relevant impacts, an in-depth (RIA) assessment is indicated, as well as the review of the concept document in response to the findings (information, data, identified problems) of the technical assessment team.

- RIA Light

RIA Light has been defined for the assessment of less complex cases that do not cause severe impacts. It provides for a flexible methodology with modifications that allow the selection, with a view to the concrete case, of those instruments from the entire RIA toolkit whose use is possible, suitable, necessary and proportional to the anticipate costs, benefits and effectiveness of a solution, as well as, for example, SME-related questions. RIA Light also leads to a review of the Draft Concept Document.

- Exceptionally: no RIA

45 In straightforward cases where the selected solution(s) did not indicate any potential impacts, the project may pass on with a single concept document towards stakeholder consultation ([section 2.5.6.3](#)) or development of the Legal Draft Proposal text ([section 2.5.6.6](#)).

A typical straightforward case could be, for example, the development of an executive regulation amending one or two articles of existing regulation without substantively changing the regulatory content, such that no additional impact is to be expected from the new regulation. However, this only applies if the existing secondary legislation had already been subjected to RIA and therefore the entirety of impacts was considered when it was enacted, and no new impacts came to light in the course of implementation.

Hence, a careful assessment of the individual case is always required before the Head of Project may decide to proceed to transformation of the concept to legal text without RIA.

#### 2.5.4.1.3 Recommendations for the conduct of impact assessment

46 Apart from the exceptional cases where no separate impact assessment is to be carried out, the concept document should provide information, guidance or instructions on the following matters:

- Appointment of a Head of Assessment and the composition of an assessment team, unless there is a separate specialised group outside the legislative body or a permanent

group within the legislative body (see [section 2.3.2.3](#) M# 21 on centralised system and decentralised system, respectively)

- Recommendation to call in external experts with a specialisation in an area of particular relevance to the legislative project
- Decision on RIA Light or RIA Complete and reasoning
- Reference to all findings during the concept development phase related to obvious and not-so-obvious impacts that had already become apparent
- Framework of a (special) budget available for carrying out impact assessment
- Other technical and organisational aspects, in particular those concerning co-operation and communication between the Head of Project and the Head of Assessment
- Proposal and agreement on the time frame for carrying out the assessment, if necessary setting a specific deadline for the submission of the Assessment Report.

#### 2.5.4.1.4 Recommendation for drafting the legal text

47 The concept document should comprise some general guidelines for the transformation of the concept to legal text. Drafting instructions should be considered, particularly when the secondary legislation or amendments to be made are legally complex and require complex drafting or when the legislative process has a limited time frame to implement a policy. Guidelines or recommendations addressed to the Head of Legal Drafting may deal with topics and question, such as:

- Reference to the authorising law and its regulatory purpose
- New legislation or amendment of existing legislation?
- Which existing primary and secondary legislation is to be taken into consideration and, if necessary, adapted or repealed?
- Should prohibitions be issued or strict obligations be imposed, or should recommendations be given with room for decision making by the addressee of the norm?
- Should breaches of obligations and infringement of prohibitions stated in the legislation be sanctioned, and if so, which kind of sanctions (e.g. custodial sentences, heavy fines) should be included or avoided?
- Draft sunset legislation: a piece of secondary legislation that expires after a given period of time (five years), unless the legislator extends the time limit at the end of the period.

#### 2.5.4.1.5 The structure of a concept document

48 From the above, the following cover sheet (Template 5) now provides some formalities and core statements of the concept document at a glance. Following Template 5, there is a standardised table of contents for the narrative part.

Development of secondary legislation – Initial concept document			
Template 5			
Head of Project			
<i>Name of the institution</i>	<i>Assigned responsible officer</i>	<i>File/archive ID</i>	<i>Start of concept development, phase 1, step 3</i>
OPM, ministry Of/agency for, etc. See <a href="#">section 2.2.1</a> M# 7.	Name of appointed Head of Project and his/her position in the legislating body. See <a href="#">sections 2.3.1</a> M# 2 and <a href="#">2.2.1</a> M# 7.	Numbers and letters according to the filing system of the ministry	dd/mm/yy
<i>Name of the project</i>	To be taken from Template 1		
<i>Project group</i>	List of representatives of organisations that are involved in the project <i>Format: name/contacts (tel./e-mail)/organisation</i>		
<i>Initiative and provision</i>	Authorising law or international treaty, government decision... Provision No. ??? on “Title”; exact reference to relevant article(s) ??? See also <a href="#">section 2.4.1.1</a> M# 7. Strategic priority: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
<i>Main problem and its nature, designated in Template 2</i> See <a href="#">sections 3.4.1.1</a> M# 9-13 and <a href="#">2.5.1.1</a> M# 10-14.	To be taken from Template 2; for the other elements of problem analysis, references to Template 2		
<i>General objective</i> See <a href="#">sections 2.5.2</a> M# 23 and <a href="#">3.4.2</a> M# 39, 41, 45.	As defined in strategies and worked out in activity plans		
<i>Solution proposed</i>	<i>Sample for safety belt case:</i> <u>- <i>Bilateral agreement</i> with insurance companies to:</u> <ul style="list-style-type: none"> <li>• <i>Raise insurance policies by 50% for cars without safety belts</i></li> <li>• <i>Not cover injuries of passengers who were not belted if safety belts were available in the car</i></li> <li>• <i>Contribute half of the 50% policy increase to the national health budget.</i></li> </ul>		



	<p>- <i>Development of public awareness campaign</i></p> <p><i>Complemented by:</i></p> <p><u>- <i>Amending the traffic law for:</i></u></p> <ul style="list-style-type: none"> <li>• <i>Obligatory mounting of safety belts in cars as of production year 1967</i></li> <li>• <i>Rule for obligatory application of safety belts for all passengers while driving</i></li> <li>• <i>Penalty regulations for not abiding by the above.</i></li> </ul>
<b><i>Implementation plan for proposed solution</i></b>	<p>Short highlights of implementation schedule (short and medium term) with reference to an attachment to this concept, i.e. full implementation plan</p> <p><i>E.g.: integrated implementation plan for a.m. solution, with focus on timely co-ordination with insurance companies and a vacancy regulation regarding the deadline for availability of safety belts in automobiles... etc.</i></p>
	<p><b><u><i>Estimated obvious impacts of proposed solution</i></u></b></p> <p><i>Samples according to the safety belt case</i></p>
<i>Economic impacts</i>	<p>State the most important impacts in this category. If there are no relevant impacts, state "No relevant impacts expected in this category".</p> <p><i>No relevant impacts expected in this category</i></p>
<i>Social impacts</i>	<p>State the most important impacts in this category. If there are no relevant impacts, state "No relevant impacts expected in this category".</p> <p><i>New investments for individual car holders required</i></p>
<i>Environmental impacts</i>	<p>State the most important impacts in this category. If there are no relevant impacts, state "No relevant impacts expected in this category".</p> <p><i>No relevant impacts expected in this category</i></p>
<i>Crosscutting impacts</i>	<p>State the most important impacts in this category. If there are no relevant impacts, state "No relevant impacts expected in this category".</p> <p><i>No relevant impacts expected in this category</i></p>

<b>Budget impacts</b>	<p>State the impact to the budget. If the proposed option is covered by the current budget ceiling, state “Implemented under current budget ceiling”.</p> <p><i>Only positive impacts on state – especially health – budget expected; amount still to be estimated. Public awareness campaign costs marginal compared to expected income.</i></p>
<b>Administrative burdens for companies</b>	<p>If no administrative burdens for companies are feasible, state “Does not apply”. Otherwise, list the expected total decrease or increase in administrative burdens.</p> <p><i>New administrative burdens for insurance companies vis-à-vis higher income from raised insurance policy rates</i></p>
<b>Impact assessment required?</b>	<p>Indicate whether RIA is required and to what extent:</p> <p><input type="checkbox"/> NO RIA</p> <p><input checked="" type="checkbox"/> RIA Light</p> <p><input type="checkbox"/> RIA Complete</p>
<b>Instruction for assessment</b>	<p>If RIA was selected, state specifically desired tasks for the assessment.</p> <p><i>Evaluation and estimation of expected income from insurance policies over time for insurance companies and state budget</i></p>
<b>SME test</b>	<p>Indicate whether the SME test is to be applied. If not, state why. If so, indicate the main topics to be addressed.</p> <p><i>SME test required, as additional costs for company vehicles are to be evaluated</i></p>
<b>Estimated resources for next stages of the project</b>	<p>Indicate the following parameters for the fulfilment of the project:</p> <p><i>Time frame foreseen</i></p> <p><i>Human resources</i></p> <p><i>Extra costs for external support.</i></p>
<b>Remarks (optional)</b>	
Narrative ...	
<b>Supporting annexes</b>	Title of attachments:

<b><i>Next step</i></b>	Indicate the next station to which the document will be addressed. <i>Internal (RIA) department or external assessment, etc.</i>	
<b><i>Date of issuing</i></b>	<b><i>Name of Head of Project</i></b>	<b><i>Signature</i></b>

49

The cover sheet (Template 5) provides core information on the project at a glance and leads to the narrative part of the of the concept document. Below is the intended structure of the document in the form of a table of contents. The material and substance of the text can basically be compiled from the previously developed and collected steps of the whole legislative process as a summary. However, the Head of Project should add rationale for decisions taken in the course of the process and the managerial and political directions intended. This is necessary, as the document has to serve in subsequent stages of the process as the main source of information for internal and especially external (assessment team, experts, stakeholders, etc.) parties.

<b>Table of contents of a concept document</b>	
1. Introduction	
• Composition of the project team, including external resources	
2. Summary of the concept	
3. Mandate to conduct a legislating process	
4. Problem analysis	
4.1. Problem, causes, effects	
4.2. Reasoning	
5. Objectives	
5.1. Strategic goals, general and specific objectives	
5.2. Reasoning	
6. Solutions to achieve objectives	
6.1. Options and selected solutions	

6.2. Reasoning
7. Implementation plan and schedule
8. Relevance of <i>ex ante</i> evaluation of impacts of solution measures
8.1. RIA Light
8.2. RIA Complete – in complex cases
8.3. Separate impact assessment measures exceptionally dispensable
9. Instructions to assessment team
10. Instructions to drafters of the legal text
11. Concluding remarks

This table of contents is applicable to any initial Draft Concept Document, including the single draft document (see the following section on straightforward cases). As to the content of the Final Concept Document, to be written after Stage 3: Impact assessment, phase 1, there are some variances to note (see section 2.4.6.3 and Template 7).

#### *A single concept document in straightforward cases*

50 In simpler and straightforward cases (see [section 2.5.4.1.3](#) M# 48), i.e. when the NO option for RIA has been selected, the initial draft may already represent the Final Concept Document, in which case the Head of Project may proceed to the transformation of the concept to legal text.

This transformation work, i.e. the work of drafting the text of the secondary legislation, may be done by the legal expert who should be part of the, at minimum, three-person team of the Head of Project (see [section 2.3.1](#) M# 2). In such cases, consultation with external (non-governmental) stakeholders may also not be deemed necessary, and the project can proceed directly towards development of the legal draft (as of [section 2.7](#)).

### 2.5.5 Supervision of impact assessment

51 Supervision of impact assessment is part of the managerial duties of the Head of Project and team. The task especially requires alert communication with the Impact Assessment Team for instant answers to any questions and inquiries stipulated.

#### *Initiation of impact assessment*

52 Once the need for a detailed evaluation through impact assessment is determined, the Head of Project, following the decisions laid down in the Draft Concept Document, will compile the required team of internal and external capacities. The assignment of tasks and obligations in this process can be assisted by the methodology described in [section 2.3.2.5](#) for external support. This needs to be supplemented by directives that specify the task of the assessment team, considering the following principles:

- PURPOSE: the evaluation serves one purpose – making informed decisions on policies and regulations. In turn, this helps improve the quality of policies and their underpinning legislation.
- FOCUS: it is most often not possible to analyse everything in depth. It would require too much time, person hours and budget. Therefore, a practical decision needs to be made about what to analyse and how.
- PROPORTIONALITY: the principle of proportionality provides the framework for such practical decisions. The basic logic is that an analysis must provide sufficient added value for the Final Concept Document compared to the effort needed to perform the analysis.
- JUSTIFICATION: efforts invested in the assessment need to be judged against whether the efforts needed to conduct the analysis are justified. This approach helps determine the depth of analysis that should be conducted for the development of a Final Concept Document.

#### *Communication with the Impact Assessment Team*

The expert team working on the assessment will have to review not only the Draft Concept Document but also, if deeper involvement with individual issues makes it necessary, consult on the complete project file, starting with the definition of problems and objectives, in order to understand the endeavour, from initial thoughts through the concept of options and solutions suggested. In this way, the need to clarify details or assumptions will arise, requiring the availability and alert feedback of the core development team and the Head of Project.

At the end of the communication process, the assessment team will deliver the Assessment Report to the Head of Project (for layout, see [3.5.3](#) M# 12).

At this point, the process switches to Stage 3: Impact assessment, phase 1.

After it is conducted, the process returns here to  
Stage 4: Concept development, phase 2.

53

#### 2.5.6 Review of the Draft Concept Document, phase 2

If the review of the Draft Concept Document against the Assessment Report has led to revision, the modified version will represent the Final Concept Document, which after legal review and eventual stakeholder consultation will serve as the basis for the development of the text for the Legal Draft Proposal (see [section 2.5.6.5](#)).

##### *Review in light of the Assessment Report*

54

Impact assessment has the purpose of being a neutral technical review of the concept to identify any and all side effects of implementation that may have a (mainly negative) impact. Such impacts are listed and explained in a dedicated Assessment Report (see [section 3.5.3](#) M# 12). Once this report addressing problems in the concept is available, the Head of Concept, with support from his/her team, has to review the facts and data for general validity and plausibility. Once the information is confirmed, the Head of Project has to balance the documented risks against the grade of achievability of the original objectives (in case he/she is consulted by the minister or head of an institution). Results of such strategic review and political preference can be:

- Cancellation of the entire project – in the case of overriding adverse impacts
- No change – in the case the impacts are negligible or the political targets prevail; in this case, the initial concept represents the Final Concept Document at this stage
- Adaptation and amendment of the concept to mitigate risks and impacts, resulting in an updated concept document.

Any changes in the concept may require changing the implementation plan(s) and the instructions for legal drafting. Before the concept reaches the final stage, it still has to undergo the next step of legal assessment.

##### *Examination of compatibility with legal principles*

55

Any new or amended secondary legislation must fit into the existing legal framework. Therefore, its future content, as determined by the concept, is now to be checked for conformity with higher-ranking law and coherence with the legal system. Actually, legal framework conditions must have been constantly considered as the project progressed, and the concept adapted accordingly. That is why the continuous involvement of the legal expert of the Permanent Legislation Development Team is necessary. At this point, however, before the work on the concept document is completed, a comprehensive legal review and evaluation of the overall concept is required.

In straightforward cases, this legal review might be carried out by the legal expert in the Head of Project's team. In more complex cases, it is recommended to involve a different legal department

within the legislating body, optionally to include external legal expertise from academia or the bar.

56

The concept as a whole, as well as the solutions developed in it, are now to be judged against the following legal principles and rules:

- Does the legislative body have the legislative jurisdiction on the subject matter?
- Does a law (primary legislation) authorise the executive branch of the state power to enact secondary legislation on the subject matter?
- Do the wording, meaning and purpose of both the authorising law and the relevant authorising provision(s) in this law cover the objectives and regulatory solutions of the concept? The purpose of this examination point is to avoid a frequently committed mistake, namely to exceed the scope set by the authorising law with the regulatory content of the secondary legislation. For example, the wording of the law allows a regulation on the use of safety belts in automobiles, while the legal regulation also includes trucks.
- Do the regulatory solutions affect the constitutionally guaranteed Human Rights and Freedoms (see Preamble and Articles 5, 93 and 206 of the Constitution of the Arab Republic of Egypt)?
- If the regulatory solutions impose obligations or other legal disadvantages on individuals (natural or legal persons), are they compatible with the principle of proportionality, i.e.:
  - Are they suitable to achieve the objectives of the solution?
  - Are they necessary, or is there a less burdensome means of achieving the objective sought?
  - Is the solution adequate, i.e. do the disadvantages to the individual caused by the solutions not outweigh the advantages to the community?
- Is the concept compatible with the principle of the rule of law, especially with the requirement of legal certainty and the prohibition of retroactivity?
- Is the concept compatible with international treaties and conventions concluded and signed by the Arab Republic of Egypt?

A legal opinion will be prepared and the report submitted for the concept document, commenting on each of these issues with clear justifications.

#### *Consultation with stakeholders*

57

Consultation with stakeholders was introduced in [section 2.3.2.6](#) M# 32-38. The applicable details of the methodology can be found in [section 3.6.3](#) M# 3-6. The target groups for consultation were identified in the problem analysis and possibly confirmed or even extended by the impact assessment. These groups will need to be addressed for consultation, while review of the concept with foreseen and responsible implementation agencies is obligatory.

Consultations are organised by the Permanent Legislation Development Team under the co-ordination of the Head of Project.

58 In straightforward cases, expenses for the conduct of consultation with stakeholders might be disproportionate. However, internal consultation with public authorities (e.g. ministries) involved in the implementation are obligatory.

### *Recommendations for legal drafting*

The Final Concept Document will include clear instructions for the (group of) legal drafter(s).

59 When the step that follows the adoption of the Final Concept Document is to draft a piece of secondary legislation, the analysis that has been conducted is the basis for legal drafting. In order to simplify the work of the team that will develop the Legal Draft Proposal, the summary of the analysis needs to show also the framework for the legal text. How this framework looks depends on the topic analysed in the concept.

### *Regulatory shortcomings*

60 The overview can be a very specific list of articles in secondary legislation that need to be changed. This is likely to be the case when the concept document addresses specific existing regulatory shortcomings and the conclusion is to improve the existing legal framework. This can also be the case when the aim is to reduce administrative burdens. Specific legal changes are often sufficient to achieve a substantial burden reduction.

### *New regulations*

61 When a new secondary legislation is going to be developed, the framework could be of a more general nature. The analysis and conclusions of the Final Concept Document could set the principles for the legal text in terms of what should be covered. It could also indicate which principles need to be reflected in the secondary legislation.

The analysis conducted and presented based on a SCM, SME test and regulatory comparative check usually provide straightforward information on how the regulatory text should be drafted.

It is important to note that the foundation for Legal Draft Proposals should be as complete as possible. However, it should not be assumed that the analysis and recommendations of a Final Concept Document will always give a complete picture of how the secondary legislation has to be developed. After all, during public consultation on the Draft Concept Document, new issues might arise. What matters is that these new issues should be set against the original analysis. When this results in a deviation from the conclusions of the Final Concept Document, an updated concept document needs to be submitted together with the Legal Draft Proposal when it is finally presented to the government for adoption.

The concept document has to be updated and submitted for government approval when the changes regarding the expected impacts are substantial. This is especially the case if the impact on the budget has changed or when different stakeholders will be affected by the decisions than initially expected.



*Adoption of the updated concept document and submission to the  
Head of Legal Drafting*

Depending on the findings of the assessment process and consequent review of potential obstacles emerging from legal review and stakeholder consultation, the Head of Project prepares a Final Concept Document for upcoming steps of the project.

62

Development of secondary legislation – Final Concept Document			
Template 7			
Head of Project			
<i>Name of the institution</i>	<i>Assigned responsible officer</i>	<i>File/archive ID</i>	<i>Start of concept development, phase 1, step 3</i>
OPM, ministry of/agency for, etc. See <a href="#">section 2.2.1</a> M# 7.	Name of appointed Head of Project and his/her position in the legislating body. See <a href="#">sections 2.3.1</a> M# 2 and <a href="#">2.2.1</a> M# 7.	Numbers and letters according to the filing system of the ministry	dd/mm/yy
<i>Name of the project</i>	To be taken from Template 1		
<i>Project group</i>	List of representatives of organisations that are involved in the project <i>Format: name/contacts (tel./e-mail)/organisation</i>		
<i>Initiative and provision</i>	Authorising law or international treaty, government decision... Provision No. ??? on “Title”; exact reference to relevant article(s) ??? See also <a href="#">section 2.4.1.1</a> M# 7. Strategic priority: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
<i>Main problem and its nature, designated in Template 2</i> See <a href="#">sections 3.4.1.1</a> M# 9-13 and <a href="#">2.5.1.1</a> M# 10-14.	To be taken from Template 2; for the other elements of problem analysis, references to Template 2		
<i>General objective</i> See <a href="#">sections 2.5.2</a> M# 23 and <a href="#">3.4.2</a> M# 39, 41, 45.	As defined in strategies and worked out in activity plans		
<i>Solution proposed</i>	<i>Sample for safety belt case:</i> <i>- <u>Bilateral agreement</u> with insurance companies to:</i>		

	<ul style="list-style-type: none"> <li>• <i>Raise insurance policies by 50% for cars without safety belts</i></li> <li>• <i>Not cover injuries of passengers who were not belted if safety belts were available in the car</i></li> <li>• <i>Contribute half of the 50% policy increase to the national health budget.</i></li> </ul> <p><i>- Development of public awareness campaign</i></p> <p><i>Complemented by:</i></p> <p><i>- Amending the traffic law for:</i></p> <ul style="list-style-type: none"> <li>• <i>Obligatory mounting of safety belts in cars as of production year 1967</i></li> <li>• <i>Rule for obligatory application of safety belts for all passengers while driving</i></li> <li>• <i>Penalty regulations for not abiding by the above.</i></li> </ul>
<b><i>Implementation plan for proposed solution</i></b>	<p>Short highlights of implementation schedule (short and medium term) with reference to an attachment to this concept, i.e. full implementation plan</p> <p><i>E.g.: integrated implementation plan for a.m. solution, with focus on timely co-ordination with insurance companies and a vacancy regulation regarding the deadline for availability of safety belts in automobiles... etc.</i></p>
	<p><b><u>Identified factual impacts of proposed solution</u></b></p> <p><i>Samples according to the safety belt case</i></p>
<i>Economic impacts</i>	<p>State the most important impacts in this category. If there are no relevant impacts, state "No relevant impacts expected in this category".</p> <p><i>No relevant impacts expected in this category</i></p>
<i>Social impacts</i>	<p>State the most important impacts in this category. If there are no relevant impacts, state "No relevant impacts expected in this category".</p> <p><i>New investments for individual car holders required</i></p>
<i>Environmental impacts</i>	<p>State the most important impacts in this category. If there are no relevant impacts, state "No relevant impacts expected in this category".</p> <p><i>No relevant impacts expected in this category</i></p>

<b>Crosscutting impacts</b>	<p>State the most important impacts in this category. If there are no relevant impacts, state “No relevant impacts expected in this category”.</p> <p><i>Distinct from above estimation of obvious impacts, assessment team identified need for information campaign of insurance companies to be harmonised and co-ordinated with public awareness campaign, which will cause investment/costs on either side</i></p>
<b>Budget impacts</b>	<p>State the impact to the budget. If the proposed option is covered by the current budget ceiling, state “Implemented under current budget ceiling”.</p> <p><i>Only positive impacts on state – especially health – budget expected; amount still to be estimated. Public awareness campaign costs marginal compared to expected income.</i></p>
<b>Administrative burdens for companies</b>	<p>If no administrative burdens for companies are feasible, state “Does not apply”. Otherwise, list the expected total decrease or increase in administrative burdens.</p> <p><i>New administrative burdens for insurance companies vis-à-vis higher income from raised insurance policy rates</i></p>
<b>Impact assessment</b>	<p>Indicate whether RIA has been carried out and to what extent.</p> <p><input type="checkbox"/> NO RIA      <input checked="" type="checkbox"/> RIA Light      <input type="checkbox"/> Full RIA</p>
<b>SME test</b>	<p>Indicate whether the SME test was applied.</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p>
<b>Legal review</b>	<p>Indicate whether compatibility of the concept with the Constitution, legal framework and international treaties was confirmed.</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p>
<b>Recommendations for legal drafting</b>	<p>Indicate whether recommendations were developed and provided.</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p>
<b>Ex post evaluation</b>	<p>Indicate whether an ex post evaluation is foreseen.</p> <p><input checked="" type="checkbox"/> YES – by dd/mm/yy      <input type="checkbox"/> NO</p>
<b>Estimated resources for next stages of the project</b>	<p>Indicate the following parameters for the fulfilment of the project:</p> <p><i>Time frame foreseen until adoption of secondary legislation</i></p> <p><i>Human resources for external support to legal drafting</i></p> <p><i>Extra costs for stakeholder consultation.</i></p>

<b>Remarks (optional)</b>		
Narrative ...		
<b>Supporting annexes</b>	Title of attachments:	
<b>Next step</b>	Indicate the next station to which the document will be addressed. <i>Stakeholder consultation and/or legal drafting</i>	
<b>Date of issuing</b>	<b>Name of Head of Project</b>	<b>Signature</b>

63

The narrative part is updated according to results drawn from the second impact assessment.

<b>Table of contents of a Final Concept Document</b>	
1. Introduction	<ul style="list-style-type: none"> <li>• Composition of the project team, including external resources</li> </ul>
2. Mandate to conduct a legislating process	
3. Problem analysis	
3.1. Problem, causes, effects	
3.2. Reasoning	
4. Objectives	
4.1. Strategic goals, general and specific objectives	
4.2. Reasoning	
5. Solutions to achieve objectives	
5.1. Options and selected solutions	
5.2. Reasoning	
6. Implementation plan and schedule, split into:	
6.1. Activities to be developed within the first year after adoption	
6.2. Activities to be developed within two to five years after adoption	
7. Result of <i>ex ante</i> evaluation of impacts of solution measures	
Where not applicable, state “No relevant impacts expected in this category”.	
7.1. Economic impacts	

- |  |
|--|
| 7.2. Social impacts  |
| 7.3. Environmental impacts   |
| 7.4. Crosscutting impacts  |
| 7.5. Budget impacts  |
| 7.6. Administrative burdens for companies  |
| 7.7. Results from SME test   |
| 7.8. Results from consultations  |
| 8. Compatibility with the Constitution, legal framework and international treaties |
| 9. Recommendations to drafters of the legal text                                   |
| 10. Conclusive remarks   |

### *Submission of the Final Concept Document to the Head of Legal Drafting*

64 The Final Concept Document forms the basis for the work to be done in Stage 5: Drafting legal text, phase 1.

In straightforward cases, the drafting of the legal text may be carried out by the legal expert of the Permanent Legislation Development Team, who has witnessed the development of the legislative project to this advanced stage.

In regular cases, particularly those of higher complexity, the concept document is submitted to the Head of Legal Drafting and a recruited team of legal drafters.

65 For the introduction of the Legal Drafting Team to its work, it is recommended that a launch meeting be held, organised by the Head of Project, with support from the legal expert.

The agenda for this meeting should foresee the following activities:

- Option to involve external legal specialists for the drafting process
- General introduction to the project: problems, objectives and selected solution(s)
- Interdependency with other laws or regulations
- Concerns explained in the legal review chapter of the concept document regarding the legal compatibility of the concept with constitutional principles or the sub-constitutional legal framework
- Regulatory preferences regarding topics, e.g.:
  - Refrain from strict prohibitions
  - In the case of obligations, allow options for action
  - In the case of sanctions, exclude prison sentences
  - Exclude administrative burdens to SMEs.
- Preparation of the draft as sunset legislation (the piece of secondary legislation expires after a given period, e.g. five years)

- Jointly determined deadline for submission of the Legal Draft Proposal.

At this point, the project moves to Stage 5: Transformation to legal text, phase 1; Stage 6: Impact assessment, phase 2; and Stage 7: Transformation to legal text, phase 2.

#### 2.5.7 Oversight of Stages 5 to 7

66 In straightforward cases, the formulation of the text of the secondary legislation (to be done in Stages 5 and 7) may be carried out mainly by the legal expert in the office of the Permanent Legislation Development Team.

In more complex cases, the work of drafting the regulatory text in both stages should be assigned to the Head of Legal Drafting plus team. Depending on the organisation of the legislative body, this could be located in a Legislative Support Unit, optionally supported by external resources.

In the case the legal drafting was assigned to the Head of Legal Drafting and team, the Head of Project and his/her legal expert will stay in regular contact with the drafting team in order to co-ordinate the process and answer any questions that arise from the concept or newly identified crosscutting problems with other regulations.

67 A similar scenario applies to Stage 6: Impact assessment, phase 2 in relation to assessing the details of the regulatory text. Straightforward cases could be carried out by the Permanent Legislation Development Team; more complex cases require the involvement of the specialised technical and scientific expertise of the assessment team (see [section 2.5.6](#)). It is now the role and function of the Head of Project to set up the assessment team for the second assessment stage; to initiate, accompany and evaluate its work; and to submit the Final Assessment Report together with further instructions to the Legal Drafting Team for consideration and, if necessary, revision.

#### 2.5.8 Approval of the draft text and submission to the Head of Legislation for final endorsement

68 The drafting process may result in various legal drafts that are reviewed by the Head of Project and the drafter(s). Once the version has reached a stage where all technical and legal requirements have been covered, the Head of Project will consult on this Legal Draft Proposal with the Head of Legislation (e.g. minister). If not rejected for additional amendments, the version will be submitted to the Head of Legislation for final endorsement.

At this point, the project enters Stage 8: Enactment.

### 2.5.9 *Ex post* evaluation

69 Retrospective evaluation on a regular basis is desirable. In particular, it should be carried out when general reviews of existing legislation take place. When an *ex post* evaluation should take place may be decided when the new regulation is being prepared and can, under appropriate circumstances, be included in the legal text.

For example, *ex post* evaluation is particularly appropriate where *ex ante* RIA has shown considerable uncertainty about the risks being addressed by the regulation. In other circumstances, the appropriate time for an *ex post* evaluation may be decided later. In any case, it is essential that the time of the evaluation be chosen so that the effects of the regulation can be measured or new information about the circumstances of the regulation can be incorporated into the review. When a regulation has been in force for a while, it should also be possible to measure any changes in the behaviour of those affected by the regulation.

70 Questions for an *ex ante* evaluation have been mentioned (see [section 2.6.1](#)). The essential difference is that *ex ante* RIA has to operate with “expected” facts, “assumed” side effects and “estimated” numbers, while *ex post* evaluation deals mainly with empirical data and proven facts. Additional typical questions for an *ex post* evaluation are:

- Have the goals been achieved with the current provisions?
- Which side effects have appeared, and are these considerable?
- To what extent have burdens and relief developed?
- Has the provision proven itself practicable, and was it accepted, observed and obeyed?
- Is there a need for repeal or amendment?
- What is the degree of goal attainment?
- What is the practicability, and what are the subsidiary impacts?

71 The implementation plan (see [section 3.4.4](#)) can also be used as a core checklist for *ex post* evaluation of implementation, reusing the main tools for data collection, consultation and RIA as were applied in the *ex ante* assessment. The result of a retrospective evaluation may be to:

- Abrogate the law
- Amend the first version of the law
- Republish the law, because it is unclear after many amendments.

72 An amendment is the addition, deletion or modification of the original law. Since living conditions and politics change rapidly, amending laws far exceeds legislating original laws in modern states. Sometimes, amendments follow each other in a hectic manner such that citizens, administrators and judges have difficulties finding the legislation in force.

73 An important and easily applicable instrument for securing retrospective evaluation on a regular basis is sunset legislation. The secondary legislation stipulates that it will expire at a given date as enacted, unless the legislating body (ministry) prolongs its effectiveness. A similar effect derives from a provision of the legislation that the legislating ministry or a centralised evaluation institution has to report in two, three or more years’ time (or every two years) on the

implementation of the law. The responsible legislating body can then decide whether to tolerate reported deficiencies or to amend the law.

74

It is recommended that the initiation of *ex post* evaluation falls within the Head of Project's scope of responsibilities. He/she is in charge of proposing, on the basis of *ex post* evaluation, that the existing legal regulation be repealed, amended or replaced by a new legal regulation. The proposal, which may also include non-legislative measures either in combination with or instead of norm-based solutions, is to be submitted to the Head of Legislation, who decides whether to initiate a new legislative procedure, starting again with Stage 1: Initiation and ending with Stage 9: *Ex post* evaluation.

Module II is completed.



## 2.6 Module III Responsibilities of the group of experts and researchers for *ex ante* and *ex post* evaluation of secondary legislation – Head of Assessment and team

- 1 The implementation of legislative solutions presented in the concept document results, in the positive case, in the achievement of the set strategic goal and the general and specific objectives. However, when it comes to the application of the adopted provisions of secondary legislation in individual cases, as a rule, unintended negative side effects accompany the desired success. Therefore, in order to adopt good-quality secondary legislation, both possible impacts – the intended positive and unintended negative effects – must be well considered and weighed against each other. This political consideration requires a preceding rational, analytical process to identify and describe such impacts in terms of their qualitative and quantitative relevance. This process is called impact assessment.
- 2 Module III addresses the Head of Assessment and team of experts and researchers. It describes the responsibilities, tasks and work steps connected to the assessment of impacts of the legislative solutions developed in Stages 2 and 4 of the overall legislative process and transformed to the text of the piece of secondary legislation drafted in stages 5 and 7.  
  
Similar to the scope of activities covered by Module II (see the introduction to [section 2.5](#) M# 1-5), the tasks of the Head of Assessment and team also take place in two stages – Stages 3 and 6 – but with different objects of assessment.
- 3
  - In Stage 3, the object of the impact analysis is the political concept drafted by the Head of Project and team in Stage 2 and presented in the Draft Concept Document. The aim and purpose of impact assessment here is to avoid that the implementation of the concept might be associated with financial, economic, societal, environmental or other side effects that would not be justified by its benefits sought.
- 4 An independent Impact Assessment Team (for its composition, see [section 2.3.2.3](#)) is tasked to analyse in detail the proposed legislative concept as it was laid down in the Draft Concept Document. During the assessment work, when questions arise about the concept document (e.g. regarding the completeness of the problem analysis, the definition of the objectives or the feasibility of the proposed solutions), the assessment team should use the foreseen communication channels between the Head of Assessment and the Head of Project to ensure that the assessment team correctly perceived the concept before writing down the results of its work in the Assessment Report. It should be emphasised that the purpose of the Assessment Report is NOT to justify the political concept or comment on whether or not to implement the solutions in view of the impacts. The target result of impact assessment is rather to provide an evidence-based prognosis of economic data and facts, individual human behaviour and social and ecological developments, drawn from an objective, neutral perspective.
- 5 The political balancing of the expected benefits of the conceptualised legislative solution and the estimated adverse effects documented in the Assessment Report is to be done in the next stage (Stage 4) by the Head of Project and team (see [section 2.5.6.1](#) M# 56). It falls

within their responsibility to use the prognosis for reviewing the initial Draft Concept Document and decide on whether or not negative impacts could be accepted and, if necessary, to modify the policy, which is then reflected in the Final Concept Document.

- 6
- In Stage 6, the Head of Assessment and team repeat the analysis but for a different assessment object. In this stage, it is the Legal Draft Proposal of the secondary legislation elaborated during Stage 5 that is under scrutiny in order to find and assess possible adverse side effects caused by the application of the provisions of the Legal Draft Proposal. The methodological instruments, however, are the same as in Stage 3.

#### 2.6.1 Introduction to the process of impact assessment and its two variants: RIA Light and RIA Complete

- 7
- The aim of impact assessment is to identify and describe any negative effects or impacts that have some probability of being unavoidable and undesirable that may be triggered by the implementation and application of a legislative measure.

This Guide categorises impacts according to their content:

- Economic impacts
- Social impacts
- Environmental impacts
- Crosscutting impacts
- Budget impacts.

Subcategories of each area are provided in the following section in order to structure the assessment process.

For the assessment of impacts, the International Legislation Science has developed a methodological toolkit called a regulatory impact assessment (RIA), which contains a variety of instruments. Some are only valid for certain scenarios or purposes; others are relatively complex, and their application implies an elaborate analysis process.

- 8
- The Guide therefore distinguishes between RIA Light and RIA Complete, thus considering that applying the full programme of a rather elaborate and time-consuming RIA Complete is not in reasonable proportion to the expected results in every case. By RIA Light, the Guide does not mean a predesigned alternative that is firmly composed of certain sub-elements of a RIA Complete process, i.e. that two clearly defined RIA variants are available for an impact assessment process. Rather, the Guide understands RIA Light as a flexible methodology that adopts various modifications.

The RIA Light methodology has two perspectives. On the one hand, it allows the selection of those instruments from the entire RIA toolkit whose use is possible, suitable, necessary and proportional, with a view to the concrete case. On the other hand, it also allows the selected tool to be used with different degrees of depth of research, depending on the extent to which it is possible and adequate in the concrete case.

It follows that, at an early stage of any procedure – namely in Step 4 – the Impact Assessment Team has to decide on the selection of appropriate assessment steps (see also [section 3.5.2](#)) and the depth of their use. In most cases, the concept document provides a point of reference for this decision, since as a rule, the document is foreseen to make a statement about whether or not modification based on impact assessment is to be expected. However, the concept document statement should not be understood as a final determination on the matter. If the document recommends conducting impact assessment, the purpose is procedural, since the likelihood of conducting a given variant of RIA informs the timing and resource requirements of the further subsequent legislative process. This recommendation is not intended to prejudge the Impact Assessment Team. The assessment team has final responsibility to decide on the modification and depth of its RIA approach.

10 The starting point for the assessment team's decision is always RIA Complete. For the purpose of this Guide, this comprises the following sequence of 12 examination steps:

- Step 1: Categorising  
Draw up an initial list of possible impacts structured into the five main categories and their subcategories (see PART THREE, [section 3.5.2.1](#)).
- Step 2: SME check  
Due to the political priority and economic relevance of SMEs, carry out the SME check (see PART THREE, [section 3.5.2.2](#)).
- Step 3: Implementation plan  
Review the implementation plan for the proposed concept with regard to the resources required for implementation and application of the secondary legislation (see PART THREE, [section 3.5.2.3](#)).
- Step 4: Importance  
Estimate the importance of the listed impacts, and make a preliminary decision on the depth and breadth of impact assessment to be carried out for each, given its importance. At this point, it is appropriate to make a preliminary decision as to which assessment route should be chosen, RIA Light or RIA Complete (see PART THREE, [section 3.5.2.4](#)).
- Step 5: Data and facts  
Define and carry out the process of gathering data, facts, common knowledge and reasoned expert opinions (internal or external) that could be expected to be relevant to the description of the impacts (see PART THREE, [section 3.5.2.5](#)).
- Step 6: Standard cost model  
Measure the efficiency of the implementation of secondary legislation by applying the SCM to quantify administrative costs that can be incurred by businesses, individual citizens and public-sector bodies (see PART THREE, [section 3.5.2.6](#)).
- Step 7: Cost-effectiveness  
Analyse the effectiveness of the legislative solutions, and contrast them with the implementation costs to the state budget (CEA) (see PART THREE, [section 3.5.2.7](#)).
- Step 8: Cost-benefit  
If benefits of the proposed solutions can be determined in monetary terms, compare

their monetary value with the implementation costs to the state budget (CBA) (see PART THREE, [section 3.5.2.8](#)).

- Step 9: Comparative  
Undertake a comparative study to find out how other legislative bodies in Egypt or other countries with comparable contexts have addressed the same or similar subject matter (regulatory comparative check) (see PART THREE, [section 3.5.2.9](#)).
- Step 10: Multi-criteria  
In special cases, particularly when costs and benefits cannot be expressed in monetary figures, a variety of other non-quantitative criteria can be used to compare the advantages of solutions with the disadvantages associated with their implementation (multi-criteria analysis [MCA]) (see PART THREE, [section 3.5.2.10](#)).
- Step 11: Necessity  
Examine whether non-legislative solutions could be as effective or at least similarly effective to achieve the set general and specific objectives (analysis of the necessity of legislative solutions) (see PART THREE, [section 3.5.2.11](#)).
- Step 12: Report  
Elaborate the Assessment Report, and submit it to the Head of Project (see PART THREE, ).

The next sections explain the above steps of RIA Complete in detail. The following chapter deals with the application of RIA Light, i.e. in those cases where it is impossible or unnecessary in practice to use RIA Complete because of the content of the secondary legislation or for other reasons not caused by the concept of the project.

#### 2.6.2 The RIA Complete process

- 11 The implementation of RIA Complete requires a considerable investment of time, human resources and expert knowledge in order to collect and analyse economic, sociological, technical or natural scientific data and facts with scientific accuracy. Such an effort, however, is undoubtedly essential when large-scale, complex legislative projects with far-reaching consequences for society, the economy and the environment are on the agenda. In an increasingly complex world, legislation can only fulfil its intended purpose if not only its desired consequences but also the undesired side effects are anticipated and avoided as far as possible. Identifying and considering the undesirable impacts is simply a must.
- 12 A perpetual challenge is to obtain facts, data and opinions that allow a serious assessment and prediction of a future situation. In general, prospective evaluations usually rely on:
- Practical tests
  - Simulations
  - Forecasting of acknowledged research institutes
  - Expert interviews
  - Review of statistics and literature
  - Expert and stakeholder discussions.

### *Step 1 – Detailed categorisation of expected impacts*

13

At the beginning of the RIA process, the Head of Assessment and team need to explore the whole context in which the secondary legislation could have an impact. All possible negative side effects that, although not intended, are likely to be caused during implementation of the concept proposed for the adoption of legislation must be gathered. The structured list below is a tool that creates the substantive basis for all further steps in the process, in the following respects:

- It helps ensure that the collection of impacts is as complete as possible. The categories and sub-areas, when used as a checklist, lead the user's research attention into numerous fields that could easily be overlooked in a sweeping glance at the whole.
- The categories and sub-areas can indicate whether the Head of Assessment should seek external expertise for the assessment work on certain identified impacts. Some sub-areas could require specialist knowledge or skills not represented in the assessment team or legislative body. Such external resources might already have been needed for the earlier phase of gathering possible impacts in certain areas.
- The categorisation of impacts leads to the right sources and methods by which evidence on quantitative and qualitative relevance of impacts can be obtained later (in Step 4: Data and facts), with the possible further consequence that, for Step 4, employment of external resources might be advisable.
- The categories make an important contribution to the use of correct technical language and a clear structure in the Assessment Report.

The following list of categories and sub-areas is provisional and, in specific cases, might benefit from further detail:

- Economic impacts (PART FOUR, [Tool 1](#)), for example on:
  - Businesses
  - Employees
  - Economic growth
  - Foreign Direct Investments (FDI).
- Social impacts (PART FOUR, [Tool 2](#) and [Tool 6](#)), for example on:
  - Poverty
  - Education
  - Health
  - Social position of subgroups within society
  - Pensions.
- Environmental impacts (PART FOUR, [Tool 3](#)), for example on:

- CO<sub>2</sub> emissions
- Air quality
- Pollution
- Waste levels
- Water quality.
- Crosscutting impacts, for example on:
  - Rights of citizens (PART FOUR, [Tool 4](#))
  - Gender equality (PART FOUR, [Tool 5](#))
  - Youth opportunities (PART FOUR, [Tool 7](#))
  - SMEs (for identification of special impacts on SMEs, see section 2.6.2.2 M# 15)
  - Ethnic minorities.
- Impacts on the state budget as far as they are not caused by the realisation of the implementation. The implementation costs will be dealt with in the following section.

14 With a view to groups and areas concerned, impacts affect not only the direct addressees of a regulation. Other individuals or companies and society as a whole may be indirectly affected by the implementation of secondary legislation. Possible damaging ecological consequences must also be considered, especially those with implications for climate change. Last, the state may incur costs in developing and applying legislative measures. The collective term "stakeholders" is commonly used for the above five categories of impacts.

SMEs represent a special group of stakeholders. The particularities of their inclusion in the impact assessment process is dealt with in Step 2 below.

### *Step 2 – SME check*

15 Egypt has identified the particular need to support the development and growth of the SME sector, which forms the backbone of the economy in most countries.

Due to their small size and low staffing, SMEs usually face much higher costs of regulation compared to large companies. Therefore, any impact assessment should pay particular attention to the question of whether or not SMEs will be affected and, if so, how their particular situation, interests and needs could be compromised by a negative side effect of the secondary legislation in question.

How to consider the specific situation of SMEs in relation to legislation is reflected in the following ten goals. This list is commonly regarded as an effective set of recommendations for the purpose of implementing modern, SME-friendly policy and legislation.

1. Create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded.
2. Ensure that honest entrepreneurs who have faced bankruptcy can quickly get a second chance.
3. Design rules that SMEs can comply with easily.

4. Make public administrations responsive to the needs of SMEs.
5. Adapt public policy tools, including public procurement procedures, to SME capabilities.
6. Facilitate SMEs' access to finance.
7. Promote a positive legal and business environment for SMEs, and apply legislation to SMEs only if really necessary.
8. Support skills upgrading in SMEs and all forms of innovation.
9. Enable SMEs to turn environmental challenges into opportunities.
10. Encourage and support SMEs to benefit from the growth of markets.

This set of recommendations addresses the special interests of SMEs, whose promotion is one of the goals of good public economic policy.

17

For legislation, this results in the following three questions, which must be considered in an impact assessment process and for which consultation with representative stakeholders or regional authorities (e.g. governorates) is an appropriate source of information:

- Are SMEs among the group of direct addressees of the planned secondary legislation, or could SMEs, although not directly addressed, be indirectly affected by the legislative solutions proposed in the concept document?

The identification of affected SMEs may be related to lines of business, trades or geographic areas.

- What is the nature of the impacts that affect SMEs with particular intensity?
- Are these particular impacts unavoidable, and does the concept contain measures to mitigate the disadvantages?
- Mitigating solutions could be:
  - Full or partial exemption from legal obligations based on company size
  - Full or partial exemption from legal obligations based on the risk that a company causes or represents
  - Longer deadlines to comply with legal requirements
  - Reduced or adjusted fees based on company size
  - Simplified reporting obligations (complexity, as well as number of reports p.a.)
  - Specific information campaigns or user guides, training and dedicated help desks
  - Simplified inspections (complexity, as well as longer intervals)
  - Special information strategy in the implementation plan (next section).

18

If the SME check, which has to be carried out at this very early stage of any impact assessment process, shows that SMEs are particularly affected, the specificity of SMEs must always be considered in the assessment of all subsequent steps.

### *Step 3 – Assessment of the implementation plan*

19 The implementation plan is one of the obligatory components of a concept document, as explained in sections [2.5.3.4](#) and [3.4.4](#). It covers not only the implementation of the enacted secondary legislation by applying its provisions in individual cases but also the entirety of preparatory measures required for this.

20 The implementation plan must be considered by the assessment team in terms of its effectiveness, time schedule and costs. Costs are, on the one hand, those incurred by the state in implementing the concept through the case-by-case application of secondary legislation. In this respect, they are somewhat comparable to the impacts dealt with in the previous section. On the other hand, costs caused by the implementation of preparatory measures to enable implementation of the legislation must also be estimated.

21 The whole range of costs is clearly delineated by the implementation plan, which suggests that they be assessed here in the context of the implementation plan. This step of the assessment should not only reflect the pure cost side of the plan but also its effectiveness. As well, the practicality of the implementation schedule should be carefully examined. All three areas should be considered in the subsequent consideration processes.

22 Costs should be distinguished between those for setting up the organisational infrastructure and the permanent operating costs incurred during the application of the secondary legislation.

Set-up costs can range from the small cost of purchasing office supplies or the new computer software needed for additional activities up to the investment required to create a new agency, with its own building, fleet of vehicles, information technology (IT) equipment, etc. (see further examples in PART THREE, [section 3.5.2.3](#)).

When the application of secondary legislation entails new activities for an authority, operational costs are also always annually recurring, unless it results in the elimination of equally high costs for existing activities. The new costs can consist of additional consumption of material or energy and of additional personnel costs in the medium term, for example in cumulation with other new tasks.

In this phase of the assessment process, it is important to identify and list only the cost-generating measures as such. Their qualitative and quantitative specification through data and facts should – as with the impacts – take place in Step 4.

23 The implementation plan must also be examined with a view to its effectiveness. This means assessing whether the infrastructure proposed for the application of secondary legislation is suitable and sufficient to achieve the set goal of the enacted secondary legislation.

If the check has identified SMEs as particularly affected, the assessment of effectiveness must also cover their interests and needs.

24 Last, the Head of Assessment and team should check that the time frame and milestones in the concept document for the implementation of the concept is realistic. Frequently, the duration of an implementation phase is underestimated. Periods of three to five years are not uncommon to



prepare the implementation and to ensure that the application of the new regulations has become routine.

#### *Step 4 – Importance of impacts and depth of analysis*

25 As briefly mentioned (see [section 2.6.1](#) M# 7-10), the Head of Assessment and team decide at this point of the assessment process which of the following steps should be included in the work programme in order to avoid unnecessarily conducting RIA Complete, with its quite considerable requirements of personnel, financial resources and time.

To ensure that an impact analysis is done efficiently, a threshold needs to be set (time and resources) for the invested assessment efforts, considering the importance of each impact. Naturally, concepts that address societal issues will have a longer list of important impacts compared to the analysis of basic economic data.

26 The importance of impacts can be determined based on the following factors:

- Number of organisations, companies and individuals affected by the impact
- Expected costs of the impact
- Effects of the impacts on achieving the strategic goals of the government, national programmes
- Categorisation of the impacts (e.g. causing serious environmental damages, emitting climate-damaging gases, aggravating the labour market situation for young people)
- Labour market situation for young people
- Crosscutting effects.

The importance of the impact also should guide the way in which it is analysed. Data collection efforts should be prioritised for impacts that are expected to be important. Consultation and discussions with affected stakeholders might be necessary in this context.

27 Determining significance with quantitative indicators must not be the only approach. In most cases, it should be supplemented by a qualitative approach (e.g. assessment of a serious threat to the life and health of a small number of people or the impact on child labour).

As a result of the importance assessment, it should be determined for each identified impact which of the assessment steps and tools described below should be carried out. RIA Complete is used if all assessment steps appear to be relevant for at least one of the impacts.

28 For other impacts, according to the RIA Light approach, a list should be made of the RIA Complete steps that should be applied, sorting the assessment priorities, including:

- How deeply should the analysis assess any details?
- What means should be used to obtain information and data?
- What types of data (qualitative, quantitative, statistical, projected prognosis, etc.) should be collected?
- What form of presentation should be used?

29 In this way, impacts can be sorted by priority and by required preparatory steps to assess facts for developing analytical opinion and statements. The results of this analysis should be listed in a table for supporting the subsequent steps of assessment.

<i>Impact (importance, sequenced high to low)</i>	<i>Data source</i>	<i>Means of collection</i>	<i>Type of data presentation</i>
Impact 1: high	Stakeholder	Consultation	Report with underpinning data
Impact 2: low	Statistics office	Web-based research	Data tables
Impact 3...			

[Section 2.6.2.4](#): Data and facts advances in detail how to complete the above table.

30 It should be emphasised that this importance analysis is only a preliminary methodological filter. In the course of the further steps of the procedure, it may turn out that steps originally planned are not possible or necessary, or that additional steps prove to be necessary.

- What is the current situation?

This question allows critical examination of the plausibility of problem analysis of the concept document and its factual basis.

- What situation does the application of secondary legislation intend to create?

The answer to this question should describe what the legislator wants to solve (see above problem analysis, [section 2.5.1](#)); what the legislator expects to achieve (see above objectives and proposed measures for solution, [section 2.5.2](#)); and how likely achievement is.

- What are the unintended but likely impacts, i.e. the negative side effects?

The purpose of Step 4 is to provide the rational basis for answering these questions, primarily through data and facts but also through experience and opinion.

31 Major effort is needed to substantiate the whole process with credible evidence. Whenever possible, scientifically acknowledged, valid data (quantitative criteria) must be gathered and presented. Facts that cannot be expressed quantitatively have to be proven by other means, unless they are generally known and accepted. Sometimes, particularly for prognoses, assumptions must be made that can only be based on the experience of independent and impartial experts and their (scientifically validated) opinions. In these cases, special attention should be paid to ensuring that assumptions are well reasoned and not too vague or interest driven.

32

Rarely will it be necessary or possible for the assessment team to conduct scientific research and find out facts and figures, unless there is no other way of gaining knowledge about the particularly serious impacts of a concept and the means and possibilities for this work are available to the assessment team. Usually, the team will resort to generally accessible sources to obtain the relevant information, e.g.:

- Public administration records
- Stakeholders directly affected by a problem or impact
- Public consultation in the case of new global and social impacts
- Central statistics offices ([www.capmas.gov.eg/](http://www.capmas.gov.eg/))
- CSOs and NGOs
- Reports of other countries on similar topics.

33

The characteristics of data will depend on the subject matter. While statistics will mainly provide numeric and tabular information, reports usually contain more narrative and qualitative statements.

#### *Step 5 – Data collection*

Analysing a concept is about recognising the problem and assessing suggested solutions as to its causes and effects. This tool presents a range of possibilities for gathering concept data. By no means do these specific tools provide a complete overview of data collection possibilities. Concept development and analysis are important and complex tasks. The information that helps develop a concept document can be found in various places.

Major effort is needed to substantiate the whole process with credible evidence. Whenever possible, scientifically acknowledged, valid data (quantitative criteria) must be gathered and presented. Facts that cannot be expressed quantitatively have to be proven by other means, unless they are generally known and accepted. Sometimes, particularly for prognoses, assumptions must be made that can only be based on the experience of independent and impartial experts and their (scientifically validated) opinions. In these cases, special attention should be paid to ensuring that assumptions are well reasoned and not too vague or interest driven.

The characteristics of data will depend on the subject matter. While statistics will mainly provide numeric and tabular information, reports usually contain more narrative and qualitative statements.

Data collection takes place during the entire process of developing the concept document. This is due to the nature of concept analysis. This analysis leads to insight, insight leads to questions, questions lead to research, and research leads to answers. Concept documents deal with very different topics. There is no single recipe for data collection that can be applied to all concept documents. There are several approaches that can be helpful. These are presented in the overview below.

<i>Data collection approach</i>	<i>Explanation</i>
Consultation	<p>The quality of policy analysis and assessment benefits from the input of experts, stakeholders and people who are affected by a problem, specialists who have worked on specific issues and many others.</p> <p>Involving such groups in the analysis for a concept document provides a shortcut to useful information. Stakeholders can provide information, including on:</p> <ul style="list-style-type: none"> <li>• Problems, causes and effects</li> <li>• Existing reports and other information sources</li> <li>• Feedback on expected impacts and how to assess them</li> <li>• Any other issue that could be relevant for the analysis.</li> </ul> <p>Consultation plays a crucial role in policy analysis. It is described in more detail in the section on stakeholder consultation.</p>
Data collection programme	<p>Data can often be gathered within a reasonable amount of time. This is important and effective work, since it provides a much better picture of the situation and will often show in a straightforward way what kind of issues exist. As a consequence, the data that is collected for a concept document often directly leads to insights into possible options to address the identified problem.</p> <p>A data collection programme can often be combined with specifically focused (individual) and public consultations. Stakeholders can provide reports, analysis and other relevant input.</p>
Central Agency for Public Mobilization and Statistics ( <a href="http://www.capmas.gov.eg/">www.capmas.gov.eg/</a> )	<p>The Central Agency for Public Mobilization and Statistics collects and publishes a wide range of statistics that can be used for strategic development. These statistics, for example, describe the situation of economic sectors or provide an overview of the existing transport infrastructure. When statistics are collected, they can be very useful, particularly for further assessing the problem definition and objectives and identifying options.</p>
Reports etc. developed by government bodies	<p>The administration is a collection of organisations. Contacting those that seem relevant to the issues for which the concept document is made can be a quick way to get useful data, reports and other information.</p>

<i>Data collection approach</i>	<i>Explanation</i>
CSOs	Egypt enjoys a diverse community of CSOs. Contacting those that seem relevant for the particular concept document can be a quick way to gather useful data, reports and other information.
Reports etc. developed by other countries and international organisations	<p>A lot of policy information exists. Organisations that are used to analysing the expected effects of policies and legislation through impact assessment (or conduct evaluations of effects that actually materialised) normally publish their reports online. The EU, Germany and the United Kingdom are three examples of where relevant information could be found. They also provide reports in foreign languages that members of the project group for developing a Final Concept Document might speak.</p> <p><u>Important note:</u> impact assessments, evaluations and other reports by <u>international organisations and other countries</u> are developed with respect to their specific political and legal environment. This means that the information from such reports has to be double-checked and critically assessed for their relevance to Egypt.</p>

### *Step 6 – Standard cost model*

34 Secondary legislation often obliges its addressees, be they companies, individuals or sometimes also administrative authorities, to take a certain action that imposes considerable costs on the actor. If the fulfilment of obligations consists of providing information to a public authority or other actors, it is referred to as administrative costs. Provision of information is here defined in a broader sense that includes all activities related to labelling, reporting, registration, monitoring, research, assessment and quality control that are necessary to generate and provide the information requested by a regulation.

35 The SCM is the internationally used impact assessment instrument to quantify the administrative costs.

For identifying the source of additional burdens, it is important to distinguish between two categories of administrative costs:

- Business-as-usual costs are incurred when information that is essential to the functioning of a business is collected and processed. This information would also be maintained in the absence of a legal obligation. For example, companies would usually collect information on the number of employees and their wages or salaries.
- Administrative burdens are incurred when information is only collected because there is a legal obligation. Companies need to collect and share information with tax authorities. They

must make sure that their systems for paying salaries also provide information on “source income tax” and other tax or social security-related issues. In addition, companies must inform staff about taxes withheld as income tax. Companies only do this because they are legally obliged.

36 For the impact assessment process, only the administrative burdens are subject to review. The process is explained in detail in PART THREE, [section 3.5.2](#).

The assessment methods provided in the table of [section 3.5.2.8](#) towards efficiency of measures provides eight steps to review measures and impacts, including options for simplification of connected obligations, in preparation for the final calculation.

The parameters involved in the monetary SCM calculation, as described in [section 3.5.2.6](#), are:

- Hourly wage (average)<sup>31</sup>
- Time needed to complete the information obligation
- Number of companies that must complete the information obligation
- Frequency at which the information obligation must be completed.

37 **Assessment of administrative activities**

Wage/hour ( <b>t</b> )	Time ( <b>h</b> )	Sample ( <b>n</b> )	Frequency ( <b>f</b> )
USD 10 (United States dollar)	2.5 h	1 000 companies	4 x p.a. (quarterly)
Cost of administrative activity Price ( <b>P</b> ) = t x h = 10 x 2.5 = USD 25		Annual administrative activity Quantity ( <b>Q</b> ) = 1 000 x 4 = 4.000	
Total administrative activity burden = <b>P x Q</b> 25 x 4.000 = USD 100.000			

What is valid for businesses will also concern public administration, when it comes to dealing with the consequent additional information inflow and resulting activities on the government’s side.

### *Step 7 – Cost-effectiveness analysis*

38 Both CEA and CBA – the latter dealt with in the next section – are evaluation methods that allow the advantages and disadvantages of several options for legislative solutions to be compared.

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<sup>31</sup> Information Decision Support Centre, affiliated to the cabinet; Central Agency for Public Mobilization and Statistics, affiliated to the presidency. SME-relevant data may be obtained from the Alexandria Business Association (<https://aba-eg.org/>).

Such comparison should already have been made provisionally by the Head of Project and team in Stage 2 in order to exclude options considered obviously unsuitable (see PART TWO, [section 2.5.3.3](#) and PART THREE, [section 3.5.2.7](#)). Nevertheless, the final comparative analysis of several options available for selection is to take place during this Stage 3 of the legislative process, where the draft concept is assessed thoroughly by the independent assessment team. Even if only one option is up for assessment, depending on the situation of the case, CEA, CBA or both may be sensible and helpful in finding out whether an expense is justified in view of the expected result.

For the purpose of comparative CEA, “costs” covers:

- Administrative costs of individuals and businesses (as defined in [section 2.6.2.5](#) M# 35)
- Monetary/financial and non-material/non-material impacts on individuals and businesses (as described in [section 2.6.2.1](#))
- Set-up and recurring operational costs of the public sector (as defined in [section 2.6.2.3](#)).

A complete list of those costs should be compared to the effectiveness of a proposed solution.

Here, effectiveness is a more technical/functional criteria (in contrast to the more qualitative connotation of “benefit” dealt with in the next section). Effectiveness relates to the level to which a solution achieves the defined objective. A measure is 100% effective<sup>32</sup> when it functions as intended, in other words, if it is implemented, enforced and obeyed by almost all addressees.

A sample calculation in [section 3.6.2.7](#) visualises how different solutions in a straightforward case can be assessed cost-wise to produce a representative and transparent mathematical comparison.

The comparison of costs and effectiveness should be carried out not only for the solutions that the Head of Project and team selected as preferable for the concept document. The assessment team should also consider options discarded in the course of the concept development. This is necessary because, as a rule, it is only the assessment team in Stage 3 that can work with the more precise figures or numbers on which assumptions and prognoses are to be based.

The result of CEA is to be included in the Assessment Report as a fact-based presentation of costs and effectiveness. It will form a basis for the Head of Project and team to weigh the disadvantages and advantages of the solutions they proposed and to draw conclusions for a Final Concept Document.

#### *Step 8 – Cost-benefit analysis*

CBA can be seen as an instrument complementary to CEA (explained above), applicable for expressing both the significant costs and the benefits of a regulatory or non-regulatory measure.

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<sup>32</sup> Alexandre Flückinger (2009), “Effectiveness: a new Constitutional Principle”, in *Legislação*, No. 32, Instituto Nacional de Administração, Algés, Portugal, p. 183. The principle of effectivity is as a duty of the state laid down in Article 170 of the Swiss Constitution and Article 24 I of the French Constitution (with Constitutional Law of 23.7.2008).

For the determination of costs (for details and tools to calculate, see also PART THREE, [section 3.5.2.8](#)), the same applies as for CEA, i.e. “costs” covers:

- Administrative costs of individuals and businesses (as defined in [section 2.6.2.5](#))
- Monetary/financial and non-material impacts on individuals and businesses (as described in [section 2.6.2.1](#))
- Set-up and recurring operational costs of the public sector (as defined in [section 2.6.2.3](#)).

The difference between the two methods is indicated by the value-based meaning of "benefit", here understood in a broader sense as the sought-after monetary and non-monetary advantages. The value of a target state is measured by a comparison with the no change situation, whereby the change can consist either in the enactment of new regulations or in the amendment of existing secondary legislation.

44 It is always useful to underpin the value of a benefit with statistics, economic data and other categories of numbers. However, the description of benefits may not solely be based on quantifiable indicators. Benefits for society, the environment or the rule of law, for example, cannot always be exhaustively expressed in numbers; their existence and substantiation must then be completed by precise description in words.

The result of CBA presented in the Assessment Report will also be used by the Head of Project and team to weigh the disadvantages and advantages of the solutions supported by numbers, facts and opinions, and to draw conclusions for a Final Concept Document.

#### *Step 9 – Regulatory comparative check*

45 It is not always easy to set legal standards and requirements. When they are too demanding and too complex, they might miss their goal completely. When they are too soft, they might not (fully) reach the intended goals either.

The regulatory comparative check helps with setting standards that are comparable with those set by other legislative bodies (ministries, administrative agencies) in Egypt. Other countries – in the region or whose legislative solutions in certain areas are acknowledged to be particularly successful and effective – could also serve as suitable sources of information. It is always advisable to study their experiences in the relevant area. Even if the Head of Project and team have already used such a comparative approach in the course of the concept development, it might be worthwhile for the assessment team to examine the results of other Egyptian authorities or other countries.

1 The overview below shows the steps that should be executed for the regulatory comparative check and how the collected data should be used.

<i>Steps of the regulatory comparative check</i>	<i>Explanation</i>
Step 1	Identify the issues for which to analyse how <u>Egyptian bodies</u> or <u>other countries</u> dealt with them.



Step 2	Select the Egyptian bodies and the countries of the region for the comparison. If necessary, the comparison can be extended to countries outside the region, when these seem to be more relevant for the analysis. This selection should, of course, be linked to the language skills of those working on the regulatory comparative check or the translation capacities available.
Step 3	Search the Internet for relevant documentation: laws, sub-legal acts, forms, procedures, etc.
Step 4	Analyse and summarise the main issues in a table comparing the selected countries.
Step 5	For more information, contact the ministries and other government organisations in Egypt and/or other selected countries.
Step 6	Discuss the analysis in the assessment team. Decide on the line to take.
Step 7	Include in the Assessment Report a short, substantive reference to the approaches found to be useful examples, and provide the sources (URLs).

2

### *Step 10 – Multi-criteria analysis*

MCA is an additional method of assessment to be considered if any of the following situations arise after the Head of Assessment and team have gone through Steps 1 to 9:

- No step of the assessment process could lead to clear preferences.
- Validity of the data used for the assessment is not verifiable (for example, the source of information is doubtful).
- The selected solution and other options dealt with in the concept document were analysed, and the quantitative data, on the basis of which options were discarded or selected, does not differ significantly.
- Costs or benefits of a solution or option affect certain groups disproportionately.
- The nature of the subject matter to be regulated is such that no quantitative data is available, or available data is based on uncertain assumptions at best. This is very often the case for the description of the benefits of a solution or option but is also not rare with regard to impacts and costs.
- Reliable quantitative data for the description of benefits, impacts or costs could not be determined with the available resources (time, personnel, budget).
- The situation and cases to be evaluated are very complex and therefore a sound impact assessment would need further endorsement.
- The subject matter of the regulation is associated with major risks to the country, society, the environment or climate protection, or is of the highest political importance for other reasons.

- 3 If one of these situations exists, it is appropriate to consult another control instrument for the final impact assessment (i.e. MCA). The goal and purpose of MCA is to enable an overall view of all identified advantages and disadvantages of a legislative project and to undertake a final balancing. In this context, however, political and presumably also subjective considerations might play a role. Therefore, users of this method of analysis should be aware that there is a risk of leaving the path of objectivity and rationality.

4 The application of MCA consists of the following sequence of actions:

Action 1: benefits

- Draw up a list of all benefits of the proposed solutions and discarded options. Describe for each benefit:
  - The value by quantitative criteria, if data is available; differentiate between factual data and data based on assumptions
  - The value by non-quantitative facts, criteria, reasons, opinions
  - The grade of effectiveness.

5 Action 2: impacts

- Draw up a list of solutions and discarded options, and connect to each solution/option/group of options) the likely disadvantages identified in previous steps of the assessment process:
  - The particular quantifiable and non-quantifiable impacts on SMEs
  - The quantifiable and non-quantifiable impacts on individuals, businesses, society as a whole and the environment
  - The quantifiable administrative costs
  - The actions needed for implementation and their quantifiable and non-quantifiable implementation costs.

6 Action 3: comparison

- Compare benefits and disadvantages by weighting both on a scale of 1 to 10, and provide also a verbal reasoning for this in the Assessment Report.

<i>STEP 1 – Validation of benefits</i>			
<b>Option/Solution 1</b>			
Benefit 1	Quantitative values	Non-quantitative values	Benefit value 1-10
Benefit 2...	Quantitative values	Non-quantitative values	Benefit value 1-10
<b>Option/Solution 2...</b>			
Benefit 1	Quantitative values	Non-quantitative values	Benefit value 1-10
Benefit 2...	Quantitative values	Non-quantitative values	Benefit value 1-10
<i>STEP 2 – Validation of impacts and costs</i>			
<b>Option/Solution 1</b>			

SME impacts	Quantitative level	Non-quantitative level	Impact level 1-10
General impacts	Quantitative level	Non-quantitative level	Impact level 1-10
Administrative costs	Quantitative level		Impact level 1-10
Implementation costs	Quantitative level	Non-quantitative level	Impact level 1-10
<b>Option/Solution 2....</b>			
SME impacts	Quantitative level	Non-quantitative level	Impact level 1-10
General impacts	Quantitative level	Non-quantitative level	Impact level 1-10
Administrative costs	Quantitative level		Impact level 1-10
Implementation costs	Quantitative level	Non-quantitative level	Impact level 1-10
<b>STEP 3 – Comparative summary</b>			
Option 1	Total benefit #A	$\frac{\text{Total impact} = \#B}{4}$	Result #A-B
Option 2	Total benefit #A	$\frac{\text{Total impact} = \#B}{4}$	Result #A-B

MCA is usually a quite challenging method that should be opted for if its effort is really in reasonable proportion to the required gain in knowledge.

#### *Step 11 – Necessity of a legislative solution and alternative measures*

7

Concept development includes consideration of the no change or the non-legislative option from the beginning (see [section 2.5.3.1](#)). This is to avoid opting for unnecessary legislative solutions that will require a lot of time, effort and costs to develop, implement and apply.

At the assessment stage, the necessity of a legislative solution must also be re-examined. The question is whether and how the goal of the measure can be achieved without enacting new secondary legislation or amending existing legislation.

Alternatives to a new legislative measure that need to be reviewed:

- Measures to ensure the effective application of existing provisions
- Public relations work
- Working arrangements
- New investments
- Incentives (subsidies)
- Encouragement of self-support that can reasonably be expected from and managed by those concerned
- Clarification by courts.

8 Not a non-legislative solution but a variant of permanent regulation that can also counteract flood of legislation is the temporary validity of secondary legislation. A time-limited regulation can be considered when:

- Problems occur only temporarily
- Problems can be permanently solved by other appropriate measures after a certain period of time
- It is uncertain from the outset what effect the measures will have, in order to gain initial experience
- A consensual solution (e.g. with another ministry, a certain business association or another interest group in civil society) has not yet been found
- The legislating body is obliged by the authorising law, is mandated by political guidelines or has determined on its own initiative to carry out an *ex post* evaluation before the expiry of the deadline and, depending on the result, to amend the regulation, or extend its period of validity. Internationally, this type of regulation is known as a "sunset legislation".

Any new alternative identified, as well as any existing considerations in the concept, are to be listed and recommended for review in the Assessment Report (see also section 3.6.2).

#### 2.6.3 The Assessment Report does not recommend but inform

9 For the structure and content of the Assessment Report, what applies above to impact assessment as a whole ([section 2.6](#) M# 1-3) must also apply to the structure and content of the Assessment Report. The purpose of the Assessment Report is NOT to justify the political concept or comment on whether or not to implement the solutions in view of the impacts. The target result of the Assessment Report is to provide evidence-based information related to both the present and future state in relevant areas (e.g. the economy and finance, individual human behaviour, society and the environment) from an objective, neutral perspective. This is one reason why the professional (i.e. organisational and intellectual) independence of the assessment team is so important. The other reason is that this contributes to the credibility of the team and its performance. The only strength of the assessment team lies in the objective persuasiveness of the information identified and presented. This is its Mandate.

10 Weighing of the data, facts, prognoses or opinions presented lies with the Head of Project (in charge of concept development), and the final political decision-making authority lies with the Head of Legislation (e.g. the minister). The Assessment Report must adhere to a strict dichotomy of presentation: one side describes the objectives and their expected benefits in case of realisation; the other side describes the consequences associated with realisation. There is no place in an Assessment Report for a political assessment of the relationship between the two sides, e.g. that the (often non-material) benefits outweigh the expected disadvantages (often of monetary nature) or that, for other overriding reasons, particularly bad disadvantages should simply be accepted.

The report should not recommend but inform.

**Table of contents of the  
Assessment Report on the concept document (Assessment Report I)**

**OR**

**Assessment Report on the Legal Draft Proposal (Assessment Report II)**

1. Introduction
  - Legislating body
  - Name of the project
  - Authorising law
  - Composition of the assessment team, including external resources
2. Summary of the assessment
3. Categories of impacts, including special affectedness of SMEs
4. Assessment of the implementation plan
  - Institutional set-up
  - Effectiveness of measures
  - Costs (versus budget, if applicable)
5. Decision on RIA Light or RIA Complete
6. Sources of data, facts, experiences and opinions
7. Application and outcome of the analytical instruments related to all legislative solutions and options discarded
  - 7.1. Selected legislative solution I
    - 7.1.1. SCM (if carried out)
    - 7.1.2. Application and outcome of CEA (if carried out)
    - 7.1.3. Application and outcome of CBA (if carried out)
    - 7.1.4. Application and outcome of the regulatory comparative check (if carried out)
    - 7.1.5. Application and outcome of MCA (if carried out)
  - 7.2. Selected legislative solution II (if applicable)
    - 7.2.1. Analytical instrument (if carried out)

7.2.2. Analytical instrument (if carried out)
7.2.3. Etc.
7.3. Selected legislative solution III (if applicable)
7.3.1. Etc.
7.4. Discarded option I (if applicable)
7.4.1. Analytical instrument (if carried out)
7.4.2. Analytical instrument (if carried out)
7.4.3. Etc.
7.5. Discarded option II (if applicable)
7.5.1. Etc.
7.6. Discarded option III (if applicable)
8. Necessity of legislative solutions
8.1. Alternative measures
8.2. Time limit (sunset regulation)?
9. Signature of Head of Assessment

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Development of secondary legislation – Regulatory impact assessment			
Templates 6 and 8			
Head of Assessment Team			
<i>Name of the institution</i>	<i>Assigned responsible officer</i>	<i>File/archive ID</i>	<i>Start of impact assessment, phase 3, step 1</i>
OPM, ministry of/agency for, etc. See <a href="#">section 2.2.1</a> M# 7.	Name of appointed Head of Project and his/her position in the legislating body. See <a href="#">sections 2.3.1</a> M# 2 and <a href="#">2.2.1</a> M# 7.	Numbers and letters according to the filing system of the ministry	dd/mm/yy
<i>Name of the project</i>	To be taken from Template 1		
<i>Type of assessment</i>	Assessment of concept or assessment of Legal Draft Proposal		

<b>Project group</b>	<p>List of representatives of organisations that are involved in the assessment</p> <p><i>Format: name/contacts (tel./e-mail)/organisation</i></p>
<b>Initiative and provision</b>	<p>Authorising law or international treaty, government decision...</p> <p>Provision No. ??? on “Title”; exact reference to relevant article(s) ???</p> <p>See also <a href="#">section 2.4.1.1</a> M# 7.</p> <p>Strategic priority: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p>
<b>Main problem and its nature, designated in Template 2</b> See <a href="#">sections 3.4.1.1</a> M# 9-13 and <a href="#">2.5.1.1</a> M# 10-14.	<p>To be taken from Template 2; for the other elements of problem analysis, references to Template 2</p>
<b>General objective</b> See <a href="#">sections 2.5.2</a> M# 23 and <a href="#">3.4.2</a> M# 39, 41, 45.	<p>As defined in strategies and worked out in activity plans</p>
<b>Solution proposed</b>	<p><i>Sample for safety belt case:</i></p> <p><i>- <u>Bilateral agreement</u> with insurance companies to:</i></p> <ul style="list-style-type: none"> <li><i>• Raise insurance policies by 50% for cars without safety belts</i></li> <li><i>• Not cover injuries of passengers who were not belted if safety belts were available in the car</i></li> <li><i>• Contribute half of the 50% policy increase to the national health budget.</i></li> </ul> <p><i>- Development of public awareness campaign</i></p> <p><i>Complemented by:</i></p> <p><i>- <u>Amending the traffic law for:</u></i></p> <ul style="list-style-type: none"> <li><i>• Obligatory mounting of safety belts in cars as of production year 1967</i></li> <li><i>• Rule for obligatory application of safety belts for all passengers while driving</i></li> <li><i>• Penalty regulations for not abiding by the above.</i></li> </ul>
<b>Implementation plan for proposed solution</b>	<p>Short highlights of implementation schedule (short and medium term) with reference to an attachment to this concept, i.e. full implementation plan</p>



	<i>E.g.: integrated implementation plan for a.m. solution, with focus on timely co-ordination with insurance companies and a vacancy regulation regarding the deadline for availability of safety belts in automobiles... etc.</i>
<b>Importance of identified impacts for depth of assessment</b>	
<i>Economic impacts</i>	<p>State the most important subcategories in this chapter and their level of impact. If there are indeed no relevant impacts, state “No relevant impacts expected in this category”.</p> <p><i>No relevant impacts expected in this category</i></p> <p><input type="checkbox"/> LOW      <input type="checkbox"/> MID      <input type="checkbox"/> HIGH</p>
<i>Social impacts</i>	<p>State the most important subcategories in this chapter and their level of impact. If there are indeed no relevant impacts, state “No relevant impacts expected in this category”.</p> <p><i>New investments for individual car holders and especially for companies working in personal transport sector required</i></p> <p><input type="checkbox"/> LOW      <input checked="" type="checkbox"/> MID      <input type="checkbox"/> HIGH</p>
<i>Environmental impacts</i>	<p>State the most important subcategories in this chapter and their level of impact. If there are indeed no relevant impacts, state “No relevant impacts expected in this category”.</p> <p><i>No relevant impacts expected in this category</i></p> <p><input type="checkbox"/> LOW      <input type="checkbox"/> MID      <input type="checkbox"/> HIGH</p>
<i>Crosscutting impacts</i>	<p>State the most important subcategories in this chapter and their level of impact. If there are indeed no relevant impacts, state “No relevant impacts expected in this category”.</p> <p><i>Information campaign of insurance companies needs to be reviewed vis-à-vis public awareness campaign, including costs on either side</i></p>
<i>Budget impacts</i>	<p>State the most important subcategories in this chapter and their level of impact. If there are indeed no relevant impacts, state “No relevant impacts expected in this category”.</p> <p><i>Mainly positive impacts on state – especially health – budget expected; amount still to be assessed and valued</i></p> <p><input type="checkbox"/> LOW      <input checked="" type="checkbox"/> MID      <input type="checkbox"/> HIGH</p>

<i>Administrative burdens for companies</i>	<p>State the most important subcategories in this chapter and their level of impact. If there are no relevant impacts, state “No relevant impacts expected in this category”.</p> <p><i>New administrative burdens for insurance companies with clients, plus reporting to MoHealth and state budget</i></p> <p><input type="checkbox"/> LOW      <input type="checkbox"/> MID      <input checked="" type="checkbox"/> HIGH</p>
<b>Assessment summary</b>	
<i>Assessment of implementation plan</i>	<p>Does the assessed implementation plan require changes?</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p><i>Time frame foreseen until adoption of secondary legislation not realistic; human resources for introduction of concept underestimated</i></p>
<i>Level of impact assessment</i>	<p>Indicate to which extent RIA has been carried out.</p> <p><input checked="" type="checkbox"/> RIA Light      <input type="checkbox"/> Full RIA</p>
<i>SME test</i>	<p>Indicate whether the SME test was applied.</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p>
<i>Standard cost model (SCM)</i>	<p>Indicate whether the SCM was applied and its core result.</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p><i>Administrative activity burden: USD 100.000</i></p>
<i>Cost-effectiveness analysis (CEA)</i>	<p>Indicate whether CEA was applied and its core result.</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p><i>Costs: ca. USD 50 million total investment versus minimum reduction of 12% of fatal or serious accidents p.a.</i></p>
<i>Cost-benefit analysis (CBA)</i>	<p>Indicate whether CBA was applied and its core result.</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p><i>Costs: ca. USD 50 million total investment versus ca. USD 750 million in health and pension budget savings p.a.</i></p>
<i>Multi-criteria analysis (MCA)</i>	<p>Indicate whether MCA was applied and its core result.</p> <p><input type="checkbox"/> YES      <input checked="" type="checkbox"/> NO</p> <p><i>n/a</i></p>

<b><i>Necessity of a legislative solution</i></b>	Indicate whether a legislative solution is justified. <input checked="checked" type="checkbox"/> YES <input type="checkbox"/> NO <i>Without control of new regime by traffic law and police, concept will not be effective</i>	
<b><i>Remarks (optional)</i></b>		
Narrative remarks...		
<b><i>Supporting annexes</i></b>	Title of attachments: <i>Assessment Report, Data Collection Report, calculations and results of applied examination tests, reviewed Project Plan</i>	
<b><i>Next step</i></b>	Indicate the next station to which the document will be addressed. <i>Return to Head of Project for review of change requests</i>	
<b><i>Date of issuing</i></b>	<b><i>Name of Head of Assessment Team</i></b>	<b><i>Signature</i></b>

#### 2.6.4 Delivery of Assessment Report to the Head of Project

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Once the assessment is complete and the Assessment Report plus underpinning documentation is ready, the Head of Assessment may submit the report to the Head of Project. A request for an explanatory meeting must be enclosed with the submission. This meeting should be mandatory to allow understanding of the concerns raised in the context of the evaluation, with data provided as proof for the identified shortcomings.

This ensures that the Head of Project and team can successfully turn any obstacles identified into amendments to existing or alternative solutions before: 1) instructions to legal drafting can be designed with an adapted and Final Concept Document; or 2) amendments to a Legal Draft Proposal can be decided.

**At this point, the project moves to Stage 4: Concept development, phase 2 (various stages).**

#### 2.6.5 Assessment of a Legal Draft Proposal on regulatory impacts in Stage 6

14

In Stage 3 of the legislative process, impact assessment was carried out with respect to the concept as laid down in the concept document. However, a concept is necessarily somewhat general and usually leaves room for the legal drafter to implement various legislative options. Now, when a concrete draft of the regulatory text is available, it must be examined again to see whether and how the translation of the concept into the words and sentences of a regulatory text could have a negative impact when they are applied in practice. Very often, only on the basis

of examining the concrete text is it possible, for example, to quantify the likely costs that a company may incur as a result of a reporting obligation imposed by the secondary legislation.

15 The methods and criteria of RIA are the same as those used in Stage 3 but now applied to each concrete regulatory detail of the legislative text.

In addition to the examination of the economic, social, environmental, crosscutting and budget impacts (see [section 2.5](#) M# 5) of the regulatory content of the draft text, Stage 6 should also include a legal check of the draft, provided there is legal expertise in the assessment team. The legal review should be carried out on the basis of principles and criteria explained above (see [section 2.6.3](#)), and the result included in the second Assessment Report.

#### 2.6.6 Second Regulatory and Business Impact Assessment Report (Assessment Report II)

16 The layout for the Assessment Report is proposed by this table of contents.

<p style="text-align: center;"><b>Table of contents of the Assessment Report on the Concept Document (Assessment Report I) OR Assessment Report on the Legal Draft Proposal (Assessment Report II)</b></p>	
1. Introduction	
• Legislating Body	
• Name of the Project	
• Authorising Law	
• Composition of the Assessment Team including external resources	
2. Summary of the Assessment	
3. Categories of Impacts including special affectedness of SMEs	
4. Assessment of the Implementation Plan	
• Institutional set-up	
• Effectiveness of measures	
• Costs (versus Budget – if applicable)	
5. Decision on “RIA complete” or “RIA light”	
6. Sources of data, facts, experiences, opinions	

7. Application and outcome of the analytical instruments related to all legislative solutions and options discarded
  - 7.1. Selected legislative solution I
    - 7.1.1. Standard Cost Model (if carried out)
    - 7.1.2. Application and outcome of the Cost-Effectiveness Analysis (if carried out)
    - 7.1.3. Application and outcome of the Cost-Benefit Analysis (if carried out)
    - 7.1.4. Application and outcome of the regulatory comparative check (if carried out)
    - 7.1.5. Application and outcome of the regulatory comparative check (if carried out)
    - 7.1.6. Application and outcome of the Multi-Criteria Analysis (if carried out)
  - 7.2. Selected legislative solution II (if applicable)
    - 7.2.1. Analytical instrument (if carried out)
    - 7.2.2. Analytical instrument (if carried out)
    - 7.2.3. etc.
  - 7.3. Selected legislative solution III (if applicable)
    - 7.3.1. etc.
  - 7.4. Discarded option I (if applicable)
    - 7.4.1. Analytical instrument (if carried out)
    - 7.4.2. Analytical instrument (if carried out)
    - 7.4.3. etc.
  - 7.5. Discarded option II (if applicable)
    - 7.5.1. etc.
  - 7.6. Discarded option III (if applicable)
8. Necessity of legislative solutions
  - 8.1. Alternative measures
  - 8.2. Legal Assessment (in case of 2<sup>nd</sup> Assessment Report)
    - 8.2.1. Proportionality
    - 8.2.2. Fundamental principles (efficacy, effectiveness, efficiency)
    - 8.2.3. Structure and quality of language
  - 8.3. Time limit (sunset – regulation)?

9. Signature of Head of Assessment

2.6.7 [Delivery of Assessment Report II to the Head of Legal Drafting](#)

17

This ensures that the Head of Legal Drafting and team can successfully turn any obstacles identified into amendments to the draft before the final version is submitted to the Head of Legislation for enactment activities.

Module III is completed.

## 2.7 Module IV Responsibilities of legal drafters – Head of Legal Drafting and team

Module IV covers Stages 5 and 7 of the legislating process, where the content of the Final Concept Document is translated into the text of secondary legislation. All the preceding work – impulse for drafting secondary legislation; problem analysis and finding possible solutions; assessment of expected impacts caused by the solutions; and elaboration of the Final Concept Document – lay the groundwork for the legal drafters' upcoming challenging task.

This work first requires genuine specialists with a solid legal background and practical experience in legal drafting. In most ministries and other legislating bodies, such sound expertise already exists. Thus, everyday cases of legal drafting (e.g. updating some provisions of an existing regulation) will usually be dealt with by permanent in-house capacity. Sometimes, however, the complexity of the content of the case, quantitative scope of work or time constraints – the latter is well known to be one of the regular phenomena of any legislative project – make it more appropriate to establish an ad hoc specialist group for the transformation of the concept into the text of secondary legislation.

In addition, it can be useful to have legal draft texts checked for style and wording by language specialists, since comprehensibility of legal texts is a fundamental precondition of their proper implementation, and legal specialists are not always well versed in linguistic issues. This is of particular relevance to ensure understanding among the enforcing administration and especially if the projected secondary legislation is also to be addressed to international investors and therefore intended to be translated into a foreign language.

If the piece of secondary legislation deals with little-known and specialised technical/scientific material, or in other particularly demanding cases, the Legal Drafting Unit should also rely on assistance from external legal, economic, financial, technical/scientific, linguistic, ecological and other expert opinion, given the type of social relations to be regulated.

- Legal opinion helps co-ordinate the draft with the provisions of the Constitution and existing laws.
- Economic opinion helps co-ordinate the draft with the effective economic legislation and highlight the positive and negative aspects of the draft that will safeguard the reform.
- Financial opinion helps co-ordinate the draft with the effective financial legislation and assess the costs of implementation.
- Scientific opinion, provided by (international) scientific and higher education institutions or individual experts, helps update the regulation, sample regulation of corresponding spheres of social relations and create the scientific framework for adoption of the legal act.
- Linguistic opinion helps improve the language, phrasing and applied terminology of the law.

### 2.7.1 The work of the Legal Drafting Team based on the rule of law

As seen above (e.g. [sections 2.4.1](#), [2.5.3.2](#) and [2.5.4.1.4](#)), legal aspects were already dealt with for the conceptual part of the legislative process. However, they were not at the forefront during the development of the concept paper. One reason for this methodological approach was to prevent possible legal concerns from hastily narrowing the horizon for thinking about practical

solutions during the conceptual phase. The intention is to have a concept development perspective that focuses on practical ways and measures that are necessary and likely to be suitable for achieving the problem solutions. During this period only, those options should be left out of further consideration, for which legal reasons obviously demand this at first sight.

5 Now, for the legal drafting, in-depth consideration of genuine legal issues is required. The motivation of legal drafters should be directed to enabling the implementation of the concept instead of raising legal obstacles too soon. However, enabling must never mean circumventing or even disregarding legal regulations. Legal drafters must principally dedicate their legal proficiency, experience and creativity to developing legally solutions that are fully compatibility with the entire legal order of the Egyptian state, which means first and foremost in strict accordance with the principle of the rule of law (Articles 1 and 94 of the Constitution of the Arab Republic of Egypt).

6 There are libraries of definitions and descriptions of the concepts of the rule of law. For this Guide, it seems appropriate to follow a UN definition:

The “rule of law” refers to a principle of governance, in which all persons, institutions and entities, public or private, including the state, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights, norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, fairness in application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. (DOC UN S/2004/616 No. 6)

All the important prerequisites for good legislation are derived from this definition. In other words, they are sub-elements of the rule of law principle.

8 As explained in the introductory part of this Guide ([section 1.4](#) M# 7), the International Science of Legislation (Legistics) developed a methodological toolbox for law drafters, to fulfil the rule of law-based requirements for elaborating good legislation. The objective and purpose of this Guide is to adapt this toolbox to the Egyptian context.

9 In the following explanation of the rule of law, prerequisites will be structured with respect to three topics:

- Area of competence of issuing secondary legislation
- General legal requirements related to the regulatory content of a piece of secondary legislation
- Instructions for the technique of drafting the legal text of good secondary legislation.

10 The general content-related principles and requirements for good legislation are explained in the next two steps before, in the third step, the methodological and technical instruments of the toolbox of Legistics are specified.



### 2.7.2 The scope of competence for the issuance of the secondary legislation

With a view to the scope of competence for the secondary legislation, three issues are in question:

- 11
- Question 1: is there a law (primary legislation adopted by parliament) that authorises the executive branch of the state power to enact secondary legislation on the given subject matter?

Any secondary legislation requires for its validity the authorisation expressed by primary legislation, i.e. by a law. The legislative competence of the executive power is a delegated competence granted by the legislative power (parliament). This follows from the principle of the separation of powers, on which the constitutional system of the Arab Republic of Egypt is based.

- 12
- Question 2: does the acting legislative body have the legislative jurisdiction on the subject matter?

The substantive jurisdiction of the legislative body often derives directly from the authorising law by mandating or allowing a specific ministry or authority to issue secondary legislation. If the jurisdiction is not specifically stipulated as generally granted to the state, the executive power or the government, the competence of a specific authority is determined according to the general rules of the constitutional order – if necessary, specified by the distribution of responsibilities and functions of the government.

In both cases of lack of competence of the acting legislative body, the complete secondary legislation is unlawful. The secondary legislation as a whole is unlawful and invalid.

- 13
- Question 3: do the wording, meaning and purpose of both the authorising law in general and the relevant authorising provision(s) in this law cover the intended scope of the secondary legislation, as well as the regulatory content of each provision?

The purpose of this examination point is to avoid a frequently committed mistake, namely that the regulatory content of the secondary legislation exceeds the scope set by the authorising law (for example, the wording of the law allows regulation on driving passenger cars, and the regulation also regulates the driving of trucks). Exceeding the scope of authorisation renders the secondary legislation – at least partially – unlawful and thus also the individual case decision of an administrative organ based on the unlawful part.

### 2.7.3 General legal requirements related to the regulatory content of a piece of secondary legislation

- 14
- The requirements set out below for the regulatory content of secondary legislation are more than well-intentioned recommendations to create a piece of legislation of good quality. Rather, they are legally binding constitutional standards that have arisen from the rule of law and whose violation can lead to a legally defective and thus appealable decision in an individual case.

A list of such requirements includes first and foremost the principle of proportionality and, interlinked with this, three essential elements: efficacy, effectiveness and efficiency. Other criteria are also relevant, such as clarity, precision, avoidance of contradictions, brevity, readability, consistency, simplicity, certainty, predictability and the comprehensibility of the legal text.

### *The principle of proportionality*

15 If the regulatory solutions impose obligations or other legal burdens on individuals (citizens or legal persons), whether they are compatible with the principle of proportionality must be examined.

The principle of proportionality is a universally acknowledged requirement directly derived from the rule of law (Articles 1 and 94 of the Constitution of the Arab Republic of Egypt) that binds any activity of a constitutional state (see detailed explanation in the *Guide to Good Administrative Procedures for Egypt (Guide I)*, published in 2019 by ERRADA and the SIGMA Programme).<sup>33</sup>

16 The principle binds any Egyptian state organ and is applicable to any state action – be it done as a legislator or as a body of the executive power – for which the law grants discretion and which may restrict an individual’s right or a legitimate interest of a citizen or a company. The principle is of highest relevance for discretionary decisions, because it limits, as a general rule, the space for any discretionary decision of the state power.

The principle of proportionality of administration comprises three distinct elements. An action can be seen as in alignment with the principle only if the requirements of all three are met. The requirements of these elements must be examined in a specific order: suitability, necessity and adequacy.

17

- Suitability

An action or decision is suitable if it can lead to the purpose for which the action is taken. It is not necessary that the most suitable action is taken. To meet the requirements of the principle of proportionality, it is sufficient that the action is a possible step towards achieving its aim or purpose. It is unlawful, however, to choose an action that is unsuitable at all.

Applying this criterion to the road safety case introduced above (see section 3.5 M# 3), it can be concluded that wearing safety belts while riding in a moving vehicle leads to a reduction of accidents with lethal or severely injuring consequences.

18

- Necessity

The criterion of necessity should have already been discussed twice in the course of the legislative process but then either as a matter of political expediency (see section [3.4.3.4](#)) or in the context of RIA with a view to the cost-benefit ratio (see [section 3.5.2.11](#)). Nevertheless, the point must be raised again here, this time by way of a balancing of legal interests. It is now decided whether a restriction of individual rights is necessary due to a higher-valued legal interest (e.g. protection of the health of road users).

The sub-principle of necessity of an action is met if there is no other action which, on the one hand, is suitable in the same way but, on the other hand, is less onerous to the affected party. If the public body has two or more options to achieve a specific purpose to the same extent, it must

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<sup>33</sup> Guide I, PART TWO, section 4, p. 13.

choose the option which has the least impact on the rights or legal interests of the affected bearer of rights.

With a view to the road safety case, experience has shown that a general call to wear safety belts voluntarily when driving has had little effect. For the purpose of sustainably protecting citizens against serious car accidents, a general obligation to wear safety belts is required.

19      • Adequacy

The principle of proportionality requires a comparison and balance between the goals or aims of an action and the onerous impact on affected individuals. The importance of the affected or involved rights or interests and the rights or public interests to be achieved must be considered properly, if the authorising law left space to choose two or more options.

In the road safety case, the protection of the health and lives of numerous people justifies the relatively low burden of an obligation to wear safety belts while driving a car. Disadvantages to individuals caused by the obligation do not outweigh advantages to the community.

*The fundamental principles of efficacy, effectiveness and efficiency*

20      Three important criteria for the substantive quality of secondary legislation are *efficacy*, *effectiveness* and *efficiency*.<sup>34</sup> This section will show how these principles, which at first glance might appear quite theoretical and abstract, are to be understood. For this, they will be applied to the road safety case introduced above (see section 3.5 M# 3).

21      Efficacy

For the assessment of future efficacy, ask:

- To what extent could a single provision or the secondary legislation as a whole achieve the objectives for which it was adopted?

A piece of legislation has a high level of efficacy if, when implemented, it comes closest to the legislator's intent.<sup>35</sup> Concerning this criterion, it is primarily important that the objectives established in the concept document were clearly understood. In the road safety case (section 3.4 M# 3), the strategic goal assumed was "improvement of security in road traffic", and the two main specific objectives assumed were to "reduce the number of traffic accidents" and to "reduce traffic accidents with serious injuries and fatalities". Experiences in many countries have proven that a legally prescribed duty to wear safety belts while in a moving vehicle has led to a reduction of accidents with lethal or severely injuring consequences.

22      Effectiveness

For the assessment of future effectiveness, ask:

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<sup>34</sup> Ulrich Karpen (2007), "Folgenabschätzung für Gesetze und Richterrecht", in *Folgenabschätzung im Arbeitsrecht*, Volker Rieble (ed.), ZAAR Verlag, Munich, pp. 13-36 (22).

<sup>35</sup> OECD (2010), *Why Is Administrative Simplification So Complicated?: Looking beyond 2010*, Cutting Red Tape, OECD Publishing, Paris, p. 98, <https://doi.org/10.1787/9789264089754-en>.

- Does the behaviour and attitudes of the addressees to which the regulation is referred correspond with the behaviour envisaged by the secondary legislation?

If the secondary legislation is implemented, executed and obeyed, do we obtain the intended behaviour? In this context, the readability and comprehensibility of the regulatory text is of crucial importance. Law drafters must always keep in mind that addressees of secondary legislation are not necessarily public administration professionals who might be used to and able to understand legally complicated texts. Secondary legislation is usually addressed to ordinary citizens who are confronted with a rule either as private individuals or in their professional and economic lives.

23 However, it is not enough that citizens can understand the wording of a rule. When addressees of secondary legislation are intended to behave in a certain way, good legal text must also be drafted in such a way that it can convince its addressees. It is simply a matter of fact that most people dislike rules, as they are perceived to restrict free development. Confusing, unclear, complicated text annoys and can never convince an addressee that a rule is reasonable.

The legal drafters' effort must therefore be to ensure that everyone whose compliance is sought can agree to the content of the regulation or can at least accept its necessity and plausibility, even if he/she does not like it. A rule that cannot be comprehended as meaningful cannot engender the trust that, in the end, it is good to respect the rule. The more complicated and confusing a legal text, the higher the likelihood of non-compliance. Who would respect a rule that does not make sense to them?

For example, a simply and clearly formulated rule imposing the legal duty to fasten safety belts is plausible, and there are good reasons to assume that it will be complied with by most drivers, although it is well known that different countries and societies respond in different manners, i.e. accept to a greater or a lesser extent the use of safety belts. However, as a whole, it seems to work.

24 Efficiency<sup>36</sup>

For the assessment of future efficiency, ask:

- To what extent do the benefits from the regulation justify the costs?

25 Costs are to be understood in a broader sense that includes not only financial aspects, such as institutional capacities and resources pay-off, but also social or ecological impacts. The application of this quality criterion implies an evaluation of alternatives. More efficient alternatives deserve preference over more costly ones. In the road safety case, the regulation is efficient if the result to "reduce the number of severe traffic casualties" is achieved cheaper than with other measures (for instance, with better road building or increased railway transport of cars). This seems to be the case in the road safety example. This does not exclude, however, alternative (legal) actions, such that more input – such as on road building, speed limits and railway transport – leads to a more effective, more significant reduction of severe accidents.

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<sup>36</sup> Ewald Wiederin, IPE I, (No. 1) § 7, Rn. 97 refers to the constitutional litigation.

26 As to efficiency, legal drafters should anticipate basically the same content consideration standards here as they will apply in the next step assessing the impacts of the elaborated wording of the secondary legislation (see, in particular, the connection to the SCM as one of the RIA instruments, [section 2.6.2.5](#)).

### *Other legal requirements*

#### 27 Consistency

Every regulation must be coherent and consistent with other laws in the overall legal system of Egypt. It must also be compatible with international treaties and conventions concluded and signed by the Arab Republic of Egypt.

#### 28 Legal certainty and predictability

The regulatory content must be clear and free of contradictions, so that both the applicant (administrative practitioner) and the addressee (citizen or business operator) will be able to predict what legal consequences can be expected from each individual regulation. The rule of law's requirement of foreseeability and predictability also includes the prohibition of retroactivity. As a rule, legislation may only impose obligations or other burdens on citizens for the future; the restriction of retroactivity protects the addressee against unforeseen retroactive effects.

#### 29 Stability

The law should be drafted in a manner that it is not immediately subject to changes and amendments.

### 2.7.4 *Concept of the legislation*

30 The first step of legal drafters' work is to take notice of the policy-making results for the draft, in other words, to thoroughly study the Final Concept Document, particularly its instructions for legal drafting. If needed, additional research should be conducted. The Final Concept Document will provide, in the best case, clear answers to – or will at least allow conclusion of – the following basic questions, which drafters must clarify before starting work on concrete provisions:

- Is legislative action necessary at all?
  - Is action required at the national level, or can the problem be solved at the regional level?
  - Is new legislation required?
  - Is immediate action required?
  - What are the alternatives?
- What is the objective and purpose of the new secondary legislation?
  - Allowing subsidies
  - Regulating procedures
  - Distributing tasks

- Protecting legal rights or economic interests.
- What is the normative content of the new secondary legislation?
  - Granting rights
  - Abolishing rights
  - Imposing obligations
  - Governing behaviour
  - Providing incentives
  - Conferring jurisdiction.
- Who is the addressee of the secondary legislation?
  - Everybody
  - Larger group of individual citizens or legal persons (companies)
  - Specialised group of individuals or legal persons
  - Addressees in the business sector
  - Addressees in urban or rural areas
  - Professional associations
  - Administrative authorities
  - Courts.
- At the level of the entire piece of secondary legislation, as well as of single provisions:
  - Is the scope of the legislation/provision as wide as intended?
  - Can the length of the period it remains in force be limited?
  - Is the provision unbureaucratic and understandable?
  - Is the provision practicable?
  - Is there an acceptable cost-benefit relationship?
- Is the new legislation/provision self-executing, or is it a normative framework that requires execution through other bodies for implementation?
- How can impacts identified through impact assessment be avoided or at least mitigated?

These criteria are closely connected with the question of whether the new legislation should be detailed or general. If the secondary legislation deals with encroachments on civil rights, the legislator must be very detailed; in other cases, he/she may leave details to the executive power's discretion.

#### 31      2.7.5    General instructions on the structure, form and style of the text

- Only when the drafter knows what he/she wants to write will he/she be able to write it clearly and concisely.

- Clear content and good use of language go hand in hand.

### *The legal language*

- 32 The academic discipline of linguistics assesses the comprehensibility of a text using the dimensions of simplicity, brevity, conciseness, structure and organisation. These dimensions can also be applied to the language of legislation. For the problem of wording legal norms, three aspects are important: choice of suitable words, clear sentence structure and text structure reflecting a logical order of ideas.
- 33 The language used in regulatory texts must be correct and, as much as possible, understandable to everyone. Those entrusted with the task of drafting legislation need to find the right balance between the purpose of the legislation and language that is as easy to understand and as precise and technical as possible, given the subject matter to be regulated. Those affected by a particular regulation must be in a position to understand what the legal situation is without needing to seek legal advice and to act accordingly. Courts should be able to issue a decision based on the regulation. It should be possible to determine the limits of administrative action based on the content, purpose and extent of the regulation. There is thus a close link to the (content-related) constitutional principle of legal certainty (see also [section 3.7.2.3](#)); only legal texts written in clear legal language can create legal clarity. Legislation that can only be understood “based on a subtle knowledge of the subject, exceptional methodological skills and a certain passion for intellectual problem-solving”<sup>37</sup> does not meet these requirements.
- 34 Who is meant by “everyone” depends on the group of people on whom the legislation confers obligations or rights. Legislation that addresses an extensive target group (and thus, in fact, “everyone”), such as an executive regulation regarding a general obligation for drivers to wear safety belts, should be understandable to anyone of average intelligence. By contrast, in the case of legislation that addresses a limited target group, “everyone” will primarily refer to those working in a specific legal field (e.g. commercial people, irrigation specialists or psychiatrists). In such cases, the legislature can assume that addressees of the legislation have the necessary specialist know-how. Laypersons should at least be able to understand the general meaning of the purpose of the law.
- 35 The language of legislation is a subset of legalese, or legal jargon. A formalised and standardised mode of expression is characteristic of any type of jargon. It is what professionals use to converse in their own field of expertise – the language of specialists for specialists. When read by non-specialists, legal terminology loses its direct link to specialist legal thinking and its relation to the professional systematics. Laypersons are unable to understand readily the terminology or the intended message.

One specific feature of legal jargon is that it uses terms that, formally speaking, are identical to those used in everyday language but which have a different meaning in a legal context.

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<sup>37</sup> Austrian Constitutional Court in an order of 6 September 2006, file No. XI R 26/04.

When regulating matters in a specialist field, care will sometimes also have to be taken in using the specialist terminology of that field. Specialist terminology should only be used where no general paraphrases are available or where such paraphrases would disproportionately increase the length of an individual provision. For example, regulations concerning food ingredients or manufacturing procedures can use the language of the food manufacturers that need to abide by the regulations.

37 To avoid regulatory text that is misleading or incomprehensible to laypersons, the peculiarities of technical language must be kept in mind when drafting secondary legislation. Definitions can be included when words have a different meaning than when they are used in everyday language or when they have been coined by the legislature. By contrast, no definition need be included when using a term that has already been coined (and used in other legislation). This avoids superfluous and confusing repetition. A term already in use in legal contexts should not be ascribed a different meaning if there is no reason to do so; coining a new term would be the better option.

38 Precision and clarity are particularly important in legal texts. Expressing legal matters precisely and clearly so that they can be understood by the general public requires a great deal of textual work, which takes time and effort. It requires finding the right words, right sentences, and right balance between precision and comprehensibility.

39 The following generally applicable rules will help in writing texts that readers find easy to understand:

- What do you want to say?

Write down keywords or draw a sketch to illustrate which interrelationships need to be clarified and which factual conditions will lead to which legal consequences. Write the first draft and read it again with a critical eye.

- Is there a better way of saying something?

In drafting a legal text, keep in mind that it is a vehicle of communication. It should be readable. Try not to be too technical. Check word choice and sentence structure.

- Be brief

Use short sentences. Each idea should be expressed by a single phrase. Avoid unnecessary words and delete filler words. If paragraphs or longer phrases of the legislation need to be repeated, cross-referencing may be used; if this leads to difficulties in understanding the text, repetition may be preferable.

- Be consistent

Terminology should be constant and uniform, both within the draft and in relation to other pieces of legislation. The same term should consistently be used to refer to the same matter within a piece of legislation or legal area. Synonyms might enrich a literary text or ceremonial speech, but they are inappropriate in legal texts.

- Be clear, precise, coherent and as simple as possible



The writing style should ensure maximum understanding, precision and concision, to exclude any ambiguity. The language used by the legal drafter is simply the vehicle that carries the will of the legislative body.

Definitions add to clarity of legislation. Definitions may be collected in the introductory part of the legal text. A definitions section is used when terms need defining or when it is desirable to substitute a single word or a long phrase that is used many times. Neologisms and regionalisms can be used if they are broadly applied. Ambiguous words, expressions or idioms should be avoided. Redundant legal phrases, slang, and abbreviations or acronyms should be excluded.

- Be logical

The general should precede the particular, the main principles should precede administrative details, the permanent should be drafted before the temporary, and the more important should be written before the less important.

- Be self-critical

The composition of the draft is a permanent and dynamic learning process. Usually, the completion of the first version of the draft marks the beginning of the next round.

### *Structure of the draft*

40 The content of the draft secondary legislation must be presented in a well-organised and systematised manner. For this, the drafter has to keep in mind that legal drafting follows a special method and is a technical matter. He/she should know how a draft is generally structured and apply this to the draft.

41 As a rule, the draft contains the following parts:

- Title
- Preamble
- Introductory provision
- Articles covering general provisions and detailed subject matter provisions
- Penalties (rarely included in secondary legislation)
- Transitional and final provisions
- Annexes.

42 The title of the draft must be short and clearly describe the object of the regulation. The title is the identifying element of the draft. It should be descriptive, summarising the matter in one or two words.

43 The preamble of the legal act, if there is any, may contain the rationale of the piece of legislation; the social, political, economic, cultural or other motivation; and its setting in the policy of the government or ministry. The preamble is also useful for the interpretation of the regulatory content of the provisions and the meaning of the legal terms used in the text.

44

Introductory provisions set the legal ground, i.e. the authorisation for issuing the secondary legislation, and indicate the category thereof.

45 General provisions determine the object, scope and area of regulation; they give orientation for the whole piece of legislation and explain and define certain notions and concepts. As in constitutions, they are often worded using general legal terms (e.g. the rule of law, due process or social state). In comprehensive pieces of secondary legislation, general provisions have a structural meaning and give an overview of parts and sections of the text.

46 Subject matter provisions represent the regulatory framework of the piece of legislation: rules, rights and obligations, and consequences of violation of norms. In general, material law precedes procedural law. Provisions dealing with sanctions are drafted at the end of the law. The provisions must be drafted in logical order based on: 1) legal analysis; 2) the nature of institutions and their interrelations; and 3) the scientific hierarchy of norms.

47 The chapter “Penalties”, if applicable, includes penalties and other sanctions in case of infringement of the law.

48 Transitional and concluding provisions of the draft may cover the following: ways and data of enactment and enforcement of the piece of legislation; compliance of new regulations with former ones; provisional or temporary preservation of old provisions; and binding character of authorities in charge of execution of the legislation. Often, there may be a concluding provision that stipulates that “This piece of legislation is declared to be in force with immediate effect” or other data.

49 Annexes of the piece of legislation should contain schemes, plans, numerical and statistical information, organisational structures, drawings, tables and other details. The annex is part of the legal act and thus binding law.

#### *Numbered outline of the text*

50 All draft pieces of legislation must follow a certain structure and a certain order of provisions. Use sections and divisions to break down lengthy secondary legislation into understandable units. There are many options to arrange and number a legal text. Each state develops its own standards. Parts, chapters, sections, subsections, subdivisions and items may be arranged as follows:

Part A (heading)

Chapter I (heading)

Article 18 (heading)

1. Paragraph

sentences 1, 2, 3 ...

or

Part I (heading)

Chapter I (heading)

Section 1

1.1. subsection

1.2. subsection

- a. subdivision
- b. ...
  - i. items
  - ii. ...

51 An article is the key structural element of a piece of legislation, has an integrated nature and includes one or more directly related provisions that are subject to the same idea. In general, an article has a heading. Articles should be short to provide for good orientation of the reader. An article should not be longer than three or four paragraphs; a paragraph should not contain more than three sentences. A sentence should express one legal idea.

#### 2.7.6 Completion of the draft legal text and submission to the Head of Assessment for Assessment, phase 2

52 Since legal drafters have the results of the previous initial assessment of the concept, it can be expected that they have already taken these into account in their work in order to mitigate or avoid possible undesirable side effects caused by the concept and to not trigger further additional impacts through concrete regulations.

Nevertheless, care must be taken to ensure that the first complete draft of the legislative text is submitted to the Head of Assessment for carrying out phase 2 of RIA.

At this point, the project moves to Stage 6: Impact assessment, phase 2 on the draft legal text.

#### 2.7.7 Stage 6 of the legislating project: review of the draft legal text on the basis of Assessment Report II

53 The Head of Legal Drafting, with support from his/her team, has to review the draft legal text in accordance with the facts and data provided in the Assessment Report II. If legal drafters have reasonable doubts about the validity and plausibility of the assessment results, or if, despite valid data of relevance, law drafters conclude that the draft text is to be retained for legal or nomotechnical reasons, it is advisable, in politically sensitive cases, to consult the Head of Project and ask for a final decision.

#### 2.7.8 Catching up on stakeholder participation

54 In the event that an internal and external discussion on the concept document with affected stakeholders has not taken place (see section 3.7.3), the Head of Project now needs to organise stakeholder consultation on the draft legal text, which might have required modification in response to the Assessment Report II. Relevant stakeholder objections could and should again lead to a final change of the presented text version.

#### 2.7.9 Submission of the final draft legal text to the Head of Project for delivery to the Head of Legislation

55 Once the Legal Drafting Team has impartially considered the facts and findings presented in the Assessment Report II, which might have required the involvement of the Head of Project to

resolve divergences with the Assessment Report II (see [section 3.9.1](#)), and furthermore reflected the outcome of caught-up stakeholder participation (see [section 3.9.2](#)), the Head of Legal Drafting now concludes phase 7 with the completion of the final text version (modified again, if necessary) and submits it to the Head of Project. After final approval, the Head of Project delivers the draft ready for enactment to the Head of Legislation (minister, head of authority, etc.).

Module IV is completed.

56      2.8    **Module V Responsibilities of administrative support – Head of Administration and team**

The Administrative Support Unit (or secretariat, in general terms) is expected to support the legislative development project through the various steps with the following measures:

- Procurement services
- Contracting services
- Payment services
- Interministerial/ministerial communication
- Events and venues
- Communication with third parties
- Archiving.

57      While in simpler and straightforward cases, the tasks of the secretariat will mainly focus on the later stages of the project, such as contacting (mainly internal) stakeholders and supporting the publishing process of a final endorsed regulation, more complex projects will need support almost immediately after the start of analytical work.

58      The initial tasks of the secretariat for complex projects will mainly deal with procurement and contracting and follow the development path through to enactment and publishing:

- Publishing of terms of reference (see [section 2.3.2.5](#)) for external experts or other providers
- Identifying and communicating with expert candidates and applicants
- Supporting the selection process, timing of interviews, filing of selection protocols, etc.
- Preparing contracts<sup>38</sup> for experts or other service providers by reworking their terms of reference in line with existing standards (house style)
- Receiving invoices and checking validity with the Head of Project
- Assigning payments after endorsement (four eyes principle) by the Head of Project
- Supporting the organisation of stakeholder consultation (meeting venues, participants lists, general logistics, etc. See [section 3.6.3](#))
- When necessary, arranging high-level internal meetings for management assessment (e.g. if more than one ministry is involved or affected by a legislative project) of various stages and outputs of projects, especially for reviewing the Final Concept Document or endorsing a Legal Draft Proposal
- Publishing of endorsed legal acts and regulations, including related payments
- Maintaining an archive of project documentation
- Legislative archive (history of legal projects).

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<sup>38</sup> Contracting is regulated in Law 182/2018 and applies to external consultation contracts.

- 59 The above list documents the obvious interventions and co-operation of the secretariat for and during a legislative project on various administrative and organisational matters, allowing the Permanent Legislation Development Team to concentrate on the strategic, technical and legal matters of the project content. It also documents the administrative work the project team will encounter besides the technical tasks of analysis, reviews, reasoning, assessments and decisions undertaken in the course of project development.

### 3 PART THREE – Theory and good practice in adopting secondary legislation: Materials for the work of legislating bodies

1

PART THREE of the Guide provides a systematic collection of materials on the theory and practice of planning, developing, formulating and monitoring secondary legislation. It details the chronological process to be followed by ministries and other authorities of the executive power of the state (legislating bodies) when enacting secondary legislation. Its content reflects, in necessary brevity, the current state of knowledge recognised as a standard of good practice in OECD and EU countries.

2

PART THREE is complementary to PART TWO and expands on the content of each step of the legislating process, as guided by PART TWO. Whenever a practitioner involved in the legislating process has questions about why and for what purpose a step is useful or necessary, he/she will find in PART TWO a specific reference to PART THREE that may help to understand the relevance of a concrete procedural step for the overall goal of his/her work, which is to develop secondary legislation that meets the standard of good practice in policy making through prudent law making.

3

Thus, for the daily work, targeted use of PART THREE is sufficient if and to the extent that this appears necessary or useful for a better understanding of the practical work. Nevertheless, those professionally involved in legislative work should, in principle and by way of introduction, have familiarised themselves with the entire content of PART THREE in order to understand the overall context of the procedure and the relevance of their contribution to the final outcome.

1

#### 3.1 Introduction to the legal concept of secondary legislation

At present, modern societies function in a very dynamic and global environment, which leads to a significant increase of legislative and normative activity. Primarily, it is the constitutional competence of parliament to adopt legislation in the form of general and abstract legal norms (primary legislation, formal laws or simply laws).

However, the legislator quite often gives away their original and legitimate competence for adoption of general and abstract regulations by authorising bodies of the executive branch of the state, the government and other state bodies in order to act as legislating bodies adopting secondary legislation.

2

Secondary legislation also sets general and abstract legal norms and, as such, does not differ from primary legislation, which is why secondary legislation is also described as laws in material meaning. The difference is that the competence for their adoption is not original but subtracted and transmitted by the bearer of legislative power (parliament) to institutions of the executive power. That is why, for secondary legislation, delegated legislation is also used.

3

The reason for the delegation of legislative powers is primarily that the legislature is not itself able to regulate all questions of detail that arise but also that the executive branch, through specialised ministries and ministerial bodies, has a greater proximity to the respective subject

areas. Secondary legislation thus forms the executive branch's options for actions, which are made available by the legislature, i.e. parliament.

Secondary legislation is immediately under the formal laws in the hierarchy of legal norms. With them, the legal provisions of the primary legislation are further arranged, complemented and made more precise, so that the immediate execution and implementation of the laws is ensured.

Giving the executive branch the power to enact general abstract norms actually means breaking the principle of the separation of powers. It follows that, without empowerment through the legislative branch, the executive branch is not authorised to adopt secondary legislation. From a constitutional perspective, the executive power cannot take legislating action by virtue of its own constitutional competence but only in compliance with the following threefold delegation filter:

- Secondary legislation requires a Mandate of the legislature through an authorising law that explicitly empowers an executive body to issue secondary legislation for the purpose of implementing the authorising law.
- Secondary legislation must observe the citation requirement, i.e. must mention in its text the authorising law from which it derives the authority to govern the matter by general and abstract regulation.
- The authorising law specifies with sufficient definitiveness the content, purpose and extent of the authorisation.

It particularly follows from the third requirement that the authorising law should not grant blanket power of authorisation, i.e. the delegated competence for adoption of secondary legislation should not be too broad. On the other hand, the scope of authorised competence is usually not determined in too narrow a manner but leaves a certain degree of political discretion to the legislating body.

As far as the scope of this legislating discretion is concerned, a distinction is to be made between two cases, depending on the regulatory content of the authorising law.

Case 1: the authorising law allows regulating details by secondary legislation. The wording of such authorising provision could read, "For details, the competent ministry may adopt an executive regulation" or "The competent ministry shall examine whether details of implementation need to be governed by executive regulation". Moreover, in further provisions, the law usually sets the frame for the content, purpose and scope of competence of the authorisation. In such a case, there are two steps of discretionary decisions. First, the legislating body has to exercise its discretion on whether or not to adopt secondary legislation. This discretion is also called decision-making discretion. In a second stage, the authority decides on what and how, meaning on the content of the planned secondary legislation. As far as the second stage is concerned, there are usually various legislative options to choose from to achieve a specific goal (see [section 3.2](#): General Concept – political directives for the legislating process), and the legislating body is granted the competence to select the solution it considers most appropriate. In other words, it has the right to exercise selection discretion. Selection discretion is never completely free. The range of possible legislative solutions from which the legislating body may choose is limited by



the content of the authorising law, as expressed through its wording, purpose and spirit. Last, for such discretionary decision, the legal principle of proportionality of the regulation is of fundamental relevance (see details in [section 2.5.3](#) on selecting the appropriate solution the law grants).

Case 2: the authorising law states that details of its implementation “must” (“shall”) be regulated by secondary legislation. In this case, the body of the executive power is legally bound to issue secondary legislation and thus has no decision-making discretion to decide the question of whether or not. However, it retains selection discretion to choose the suitable and necessary content of the regulation.

In Egypt, executive regulations adopted in accordance with Article 170 of the Constitution form the largest and essential part of secondary legislation. With respect to their complexity, volume and strictness of rules – particularly in terms of their impact on legal, economic and societal reality – they are often of higher relevance than primary legislation.

As described above ([section 1.5](#)), this Guide was prepared for and is directly applicable to the process of drafting and adopting executive regulations in accordance with Article 170 of the Constitution. However, all of the principles explained in PART THREE, and most of its practical procedural steps, also apply – at least *mutatis mutandis* – to any other secondary legislation stipulated in Articles 171 and 172 of the Constitution, as well as to normative acts issued by autonomous bodies (Article 215 of the Constitution) and local administrative units (governorates, cities and villages, Article 175 of the Constitution).

### 3.2 The process of developing secondary legislation and its institutional and organisational set-up

As mentioned in PART ONE,<sup>39</sup> a professionally conducted legislative process is more than a one-person activity aimed at (quickly) writing a legal text. To develop a legal norm of good quality – and only from good-quality secondary legislation can it be expected that citizens and civil servants will observe and apply it – usually requires a more complex procedure comprising nine stages. Stages 2 to 6 should be understood as an iterative problem-solving cycle within which individual stages may be repeated. The same is true for the overall legislative process, if *ex post* evaluation of the implementation of enacted secondary legislation reveals any shortcomings and recommends review and a change of the legislation.

This section leads users through the phases of a well-structured legislating process.

Legislative process at a glance				
Nine stages of the process		Responsibilities of legislating body	Actors	Project management and control
1	Initiation	<u>Policy making</u> Identifying legislative impulses; taking basic policy decisions; issuing the	<u>Head of Legislation</u>	<u>Head of Legislation</u>

<sup>39</sup> See PART ONE, [section 1.6](#).

		Mandate to Develop Secondary Legislation	Top position (e.g. prime minister, minister, head of an agency) plus team	
2	Concept development, phase 1 (draft)	<u>Policy development 1</u> Problem analysis; setting objectives; finding solutions; issuing the Draft Concept Document	<u>Head of Project</u> Senior official (e.g. deputy minister; counsellor to minister; Head of Strategic Planning; Head of Legal Support) plus team (including external resources)	<u>Head of Project</u> plus team
3	Impact assessment, phase 1 (concept)	<u>Research</u> Professional studies on impacts of the <u>concept</u> based on facts, data and prognoses (including RIA); issuing the Initial Assessment Report	<u>Head of Assessment</u> Technical expert, scientific researcher plus team (including external resources)	
4	Concept development, phase 2 (final)	<u>Policy development 2</u> Review of the Draft Concept Document in light of the Initial Assessment Report; consultation with stakeholders; legal review of the concept; if necessary, modifying the concept towards the Final Concept Document; instructions for drafting the legal text	<u>Head of Project</u> plus team	
5	Drafting legal text, phase 1	<u>Transformation to legal text 1</u> Conceptualising of the legal text; formulating of the complete text	<u>Head of Legal Drafting</u> Legal expert (e.g. Head of Legislative Support Unit) plus team	
6	Impact assessment, phase 2 (legal text)	<u>Research</u> Professional studies on impacts of the <u>proposed legal text</u> based on facts, data and prognoses (including RIA); compiling the Final Assessment Report	<u>Head of Assessment</u> Technical expert, scientific researcher plus team (including external resources)	
7	Drafting legal text, phase 2 (review)	<u>Transformation to legal text 2</u> Review of draft version(s) (maybe in contact with the Head of Assessment); approval of the final legal text; submission for final endorsement	<u>Head of Legal Drafting</u> plus team <u>Head of Project</u> plus team	
8	Enactment	<u>Completion of the legislating process</u> Final control of the draft legal text; signature; initiation of the publishing procedure	<u>Head of Legislation</u> plus team	<u>Head of Legislation</u>
9	Ex post evaluation	<u>Research</u> Monitoring of implementation of enacted secondary legislation; data collection; assessment; maybe proposal for amendment process (reiteration of Stages 1-8)	<u>Head of Project</u> plus team	<u>Head of Project</u>

14 The stages are closely interlinked. They are not to be understood as separate, independent work activities, although carried out by various officials or groups.


#### Institutional set-up within the legislating body

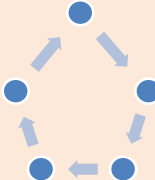
The variety of responsibilities shows that, nowadays, the development of secondary legislation is not just a matter for lawyers or experienced administrative practitioners but also brings together:

- A working team composed of staff from various sectors of the legislating body, supplemented, if necessary, by external resources representing different spheres of expertise and operating according to a co-ordinated and controlled division of labour.

Depending on the subject matter to be regulated, such a working team should comprise, in addition to the necessary legal and administrative expertise, disciplines such as the economy, natural sciences, social sciences, psychology, health sciences, engineering and digital sciences.

### 15 3.3 Stage 1 of the legislating process – Initiation of the legislating process



Stage in the legislating process		
1	Initiation	
2	Concept development, phase 1 (draft)	
3	Impact assessment, phase 1 (concept)	
4	Concept development, phase 2 (final)	
5	Drafting legal text, phase 1	
6	Impact assessment, phase 2 (legal text)	
7	Drafting legal text, phase 2 (review)	
8	Enactment	
9	Ex post evaluation	

17 The initiative to start the process of drafting and adopting a piece of secondary legislation falls within the political responsibility of the top-level decision maker of a legislating body. As a rule, it is the prime minister, minister, secretary of state, or head of an agency who takes the initial steps that lead to the adoption of an executive regulation. He/she is the initiator of legislation.

The initiating stage comprises three phases:

- Considering legislative impulses

- Taking a decision
- Implementing the decision by issuing the Mandate.

18 It is not always the prime minister or minister who undertakes these actions.

The initiator denotes not an individual but a function in the legislative process. This function is to be exercised at the highest level of the legislating body. It is left to the body's organisational structure to determine who performs the specific activities associated with the initiation of a secondary legislation development process. The minister may personally initiate the process by giving a verbal order – e.g. in a staff meeting – and the minister's office is entrusted with the execution, while the minister endorses the results with a signature. It is also quite common that the impetus comes from the staff of the minister's office and that the minister adopts with a signature an elaborated proposal for decision that comes from there. Last, one or more persons from the minister's office can be authorised to conduct the initiation – from start to completion, including the power of signature – either on a case-by-case basis or in general. The decisive factor is that the legislative procedure is initiated at the highest institutional level of the legislating body due to its political relevance.

### 3.3.1 The legislative impulse

19 The initiation of a legislating process is triggered by an impulse for taking legislative action. The most frequent impulse is set by primary legislation. In many cases, however, there will be additional political reasons in the broadest sense as to why and with what content secondary legislation should be enacted. It is therefore necessary to analyse the whole variety of impulses. Only a broad openness by the legislator ensures the development of legislation that responds to the reality of the problems of the society and feeds these problems into the legislative process in a systemic manner.

#### *Impulse through primary legislation*

20 One type of legal impulse could be given through a strict legal order stipulated by a law, which directly establishes the legal obligation to develop secondary legislation for the purpose of governing details of the implementation of this law. A variant of such strict impulse can also come from a provision of a law, which connects the obligatory issuance of secondary legislation to the occurrence of certain facts. Once those facts have occurred in the meantime or will occur in the foreseeable future, secondary legislation must be adopted. In both cases, the issuance of secondary legislation is obligatory. The legislative body does not have the decision-making discretion to decide on the whether or not of adopting secondary legislation<sup>40</sup> but is bound by the law to do so. However, in most of the cases, the authorising law, when legally binding the legislative body with respect to the whether or not decision, still leaves room to decide the content, i.e. the what and how of the regulation. Normally, there are several options for how a

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<sup>40</sup> cf. [section 3.1](#) M# 7.

subject matter can be regulated. For this situation, the legislating body is granted selection discretion,<sup>41</sup> i.e. the legislating body may select from several suitable and necessary options the appropriate legislative means for implementing the authorising law.

- 21 Another type of impulse is provided by laws that allow for their implementation the enactment of secondary legislation. In these cases, the legislating body is authorised to exercise both decision-making and selection discretion, but both scopes of discretion are usually confined by the wording and meaning of the authorising law and its purpose and spirit.

### *Political impulses*

- 22 In addition to an impulse given by a law, there are usually also additional aspects that could trigger the initiative to commence a legislative procedure. Those mainly political aspects can be:

- Developments in society
- The economy or the environment being suddenly perceived as a problem by certain groups of stakeholders
- Difficulties in the implementation of existing law identified by administrative authorities
- Critical media reports
- Results of scientific studies and evaluations
- Decisions of the Supreme Constitutional Court or the Court of Cassation
- Further development of higher-ranking law
- The need of implementing a certain policy by government, in particular the need to react to certain urgent needs
- Request by parliament or representatives
- Suggestions from parts of civil society, in particular from groups who work with legal provisions, such as business associations, trade unions, consumer associations or ecologist groups.
- Increasingly important, impulses from higher-ranking international law (bilateral or multilateral treaties).

### 3.3.2 Top policy decision

- 23 In the second stage of initiating the legislating process, the initiator has to respond to the impulse(s) received by taking a policy decision. In a first step, as explained above,<sup>42</sup> he/she decides on the question of whether or not a piece of secondary legislation will be developed. This decision requires distinguishing between a legal impulse imposing the binding obligation to adopt secondary legislation for the implementation of an authorising law – in this case, the initiator has

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<sup>41</sup> cf. [section 3.1](#) M# 9.

<sup>42</sup> See [section 3.1](#) M# 9, 10.

no discretion – and a law that grants decision-making discretion, i.e. allows opting for either legislative action or a non-legislative instrument to solve a certain problem.

Not always but frequently, the policy decision connected to the initiating phase also includes a very general determination of the regulatory content. In other words, the decision also touches on the what and how of a legislative solution, if the initiator considers a policy guideline about the content of the regulation necessary and helpful for the further stages of the legislative development process. Such a statement could be set by a very short reference to preferable or avoidable options, done in response to one or more of the impulses listed above. Moreover, general policy goals – e.g. medium- or long-term programmes/plans of the country, government or legislative body, if relevant for the subject matter, as well as budget restrictions – must always be stated at the very beginning of the legislative process.

24 However, the initiating process is not the phase for detailed problem analysis or development of the general concept of the legislative solution. Those processes, as described in section 3.4 and subsequent sections, should not be anticipated at this stage. The decision to initiate a legislative process should be largely outcome neutral and leave room for the results of a professional, rational/analytical development process. At most, irrevocable political principles and indispensable constraints may flow into the content and should be mentioned in the formulation of the decision.

25 It follows that the initiating step would lead to the wording of one of the following examples of policy decisions triggering the legislating process.

*Type 1: Law states mandatory issuance of secondary legislation (no decision-making discretion, but selection discretion)*

*Example of a decision:*

*"An executive regulation shall be issued in accordance with Law No. Y, Article X."*

*Alternatively:*

*"Amendment to the Executive Regulation (title, number, reference to authorising law) shall be issued in accordance with Law No. Y, Article X."*

*Example of a possible addition for both:*

*"For the content of the regulation, the state budget and the five-year plan of the government, as well as the programme of the Ministry for the Promotion of Small and Medium-sized Enterprises, shall be taken into account."*

*Type 2: Law permits issuance of secondary legislation (decision-making and selection discretion)*

*Example of a decision:*

*"An executive regulation shall be issued in line with Law No. Y, Article X."*

*Alternatively:*

*"The issuance of an executive regulation shall be proposed in line with Law No. Y, Article X."*

*Alternatively:*

*"Amendment to the Executive Regulation (title, number, reference to authorising law) shall be issued/proposed in accordance with Law No. Y, Article X."*

*Examples of possible additions for the three alternatives:*

*"Experiences in the past have shown that non-legislative means could not contribute to solving the problem."*

*Or*

*"Non-legislative solutions shall be preferable as far as similarly effective. In any case, extra costs for SMEs need to be avoided."*

### 3.3.3 Mandate to conduct a legislating project

26

The issuance of a Mandate to conduct a legislating project completes the phase of initiating the process and transfers the responsibility to the next stage of the legislating process, which is the analysis of the problem(s) to be tackled by secondary legislation and the design of a concept for problem solution. These tasks are also of genuinely policy-making character and should fall in the sphere of responsibility of positions that report directly to the top-level decision maker. Therefore, the Head of Project and addressee of the Mandate should be, for example, a deputy

minister, counsellor to the minister, Head of Strategic Planning and Policies Unit or Head of Legislative Support Unit.

27 The Mandate could be issued either through a written document – preferably in electronic form – or verbally. Its text should, in the shortest possible form (see Template 1),<sup>43</sup> prescribe the following topics determining the cornerstones of the endeavour:

- WHAT? – Minimum specifications
  - Type of secondary legislation planned (e.g. executive regulation)
  - Provisional title of the intended piece of legislation
  - Reference to the authorising law
  - Is adoption obligatory or is decision-making discretion granted?
- 28 • WHO? – Responsibility for the legislating project
  - Department or office in the legislating body in charge of problem analysis and concept design and managing the project
  - Person designated Head of Problem Analysis and Concept Design
  - Involvement of special expertise and skills, e.g.:
    - In-house resources from other departments
    - External resources from other ministries or government bodies, scientific institutes, or national or international consultancy services.

30 • WHEN? – Setting a realistic time horizon

As to the time frame, all too often, the quality of legislation suffers from the fact that an unrealistically time frame was set for the preparation of the draft. Usually, the most important and hence often most urgent legislative projects also deal with the most complex issues. Especially in these cases, special attention must be paid to setting a realistic, sufficient time frame for the legislative process. Under no circumstances should it happen that an overly lengthy political decision-making process be subsequently compensated for by an unrealistically tight time frame to develop the legislation. The quality of the result often falls by the wayside simply for lack of time, which can have drastic consequences, especially in the case of important legislative projects. The well-known principle must also apply in this area: quality matters more than speed.

The Mandate may also include:

- 31
- WHY? – Policy statement
    - Policy goal in general

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<sup>43</sup> See PART TWO, [section 2.4.1](#) M# 5.



- Reference to country programmes, government plans, strategic goals of the legislative body, budget restrictions
- If necessary or appropriate, additional, more detailed instructions about:
  - Reference to one or more aspects from the list of relevant impulses<sup>44</sup>
  - Preferable or avoidable solutions with a view to direct effects and possible indirect regulatory impacts
  - Budget restrictions or grants with respect to the project costs.

32

- HOW? – Written document

The written document containing the Mandate should not be longer than one page. Ideally, it should be predesigned as a template<sup>45</sup> that ensures easy handling, quick reading and standardised content. Such a template not only serves as a carrier of information from the initiator of the process (dealt with in section 3.3) to the next stage, where the general concept of legislative action is developed (see [section 3.4](#)). It should also be used as a cover sheet for a legislative project record documenting the results of all stages of the procedure that passes from hand to hand during the legislative process.

33

- Verbal order – special requirements

In practice, Mandates to start a legislative process are very often verbally communicated, be it that the minister gives instruction in a staff meeting to the person entrusted to be the Head of Project or that the decision on the necessity of a legislative measure has been decided by a political decision-making body (e.g. in a cabinet meeting), and the minister passes the decision on orally to the competent unit or person within his/her ministry. In such cases, it should be the task of the direct addressee of the verbal order to put it in writing by filling in the above-mentioned template, which is to be presented to the initiator for official endorsement (signature).

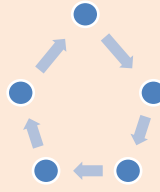
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<sup>44</sup> cf. PART THREE, section [3.3.1](#).

<sup>45</sup> cf. Template 1, PART TWO, section 2.2.1 M# 8.

1

### 3.4 Stage 2 of the legislating process – Development of a legislative concept

Stage in the legislating process		
1	Initiation	
2	Concept development, phase 1 (draft)	
3	Impact assessment, phase 1 (concept)	
4	Concept development, phase 2 (final)	
5	Drafting legal text, phase 1	
6	Impact assessment, phase 2 (legal text)	
7	Drafting legal text, phase 2 (review)	
8	Enactment	
9	Ex post evaluation	

At this stage of the overall process, it is the responsibility of the legislating body to ensure that the development of secondary legislation is based on thorough conceptual analysis and planning. The policy-making level of the legislating body, that is to say the Head of Project, has to understand clearly:

- What the problem is that needs to be regulated in a new or different way than before
- What the general and specific objectives of legislation should be to solve the problem
- What tools are available to achieve the objectives.

2

The better this preliminary work has been accomplished (i.e. the more exactly the legal drafters therefore know what the policy is and what policy makers want them to do), the easier their work is. Any legal text drafting activity must be preceded by research into the political, social, economic, financial, legal, cultural and psychological context of the field of regulation. The ineffectiveness of former regulation should be examined or the nonexistence of legal acts in the field that requires regulation must be identified.

A concept for problem solving through legislation needs to be developed and laid down in the concept document comprising seven core elements:

- Problem analysis: causes and effects that triggered the initiative
- General objective: wider effect of the measures
- Specific objective: focal effect to be achieved
- Purpose and indicators: definition of targets and means for verification

- Inventory of possible options
- Selection from the inventory of options
  - Consideration of obvious impacts
  - Legal review.
- Draft implementation plan.

The following table provides an overview of the application of the core elements of the policy development undertaken in Stage 2 and again after the first phases of impact assessment in Stage 4 (see the overview of the legislating process in PART TWO, [section 2.2.1](#) M# 9 and PART THREE, [section 3.2](#) M# 14).

Example case related to the development of a legislative concept: Road safety	
Steps of the development process	<u>Assumed</u> results based on a <u>fictional case</u>
<b>Problem analysis</b>	<ul style="list-style-type: none"> <li>• <i>Main problem:</i> <ul style="list-style-type: none"> <li>○ <i>Significant increase of fatal car accidents in the past three years</i></li> <li>○ <i>Disproportionate death rates among children and adolescents.</i></li> </ul> </li> <li>• <i>Existing legal framework:</i> <ul style="list-style-type: none"> <li>○ <i>No regulation on the subject matter in the road traffic law</i></li> </ul> </li> <li>• <i>Causes:</i> <ul style="list-style-type: none"> <li>○ <i>Most severe head and chest injuries in frontal collisions</i></li> <li>○ <i>No restraint systems in cars</i></li> <li>○ <i>No fastening of safety belts in cars equipped with safety belts.</i></li> </ul> </li> <li>• <i>Effects:</i> <ul style="list-style-type: none"> <li>○ <i>Overload of the healthcare system</i></li> <li>○ <i>Increased personnel costs in logistics companies.</i></li> </ul> </li> <li>• <i>Stakeholders:</i> <ul style="list-style-type: none"> <li>○ <i>Ministry of Trade and Industry</i></li> <li>○ <i>Ministry of Health</i></li> <li>○ <i>Logistics enterprises</i></li> <li>○ <i>Child and youth passengers.</i></li> </ul> </li> </ul>
<b>Policy goal</b> Predetermined in strategic/policy documents and needs to be kept as is	<ul style="list-style-type: none"> <li>• <i>Government programme on development of transport infrastructure for trade and industry</i></li> </ul>
<b>Strategic or general objective</b> Predetermined in strategies and worked out in activity plans and, as a rule, needs to be kept as is	<ul style="list-style-type: none"> <li>• <i>2021 joint strategy paper of the Ministry of Transport and the Ministry of Trade and Industry on Improvement of Security in Road Traffic</i></li> </ul>

<p><b>Specific objectives</b></p> <p>To be set in the concept document based on the problem definition and addressing causes and effects of the problem</p>	<p><i>Specific objectives:</i></p> <ul style="list-style-type: none"> <li>• <i>Reduce the number of traffic accidents</i></li> <li>• <i>Reduce traffic accidents with serious injuries and fatalities</i></li> <li>• <i>Protect, in particular, children up to age 12 from serious injury or death in car accidents</i></li> <li>• <i>Reduce costs and ease the burden on the health system and traffic police caused by car accidents.</i></li> </ul>
<p><b>Draft indicators</b></p> <p>Vaguely defined at this stage; setting quantifiable indicators is left to the Final Concept Document after the assessment stage</p>	<ul style="list-style-type: none"> <li>• <i>Traffic police reports on the number and severity of car accidents</i></li> <li>• <i>Statistics on health insurance and car insurance</i></li> <li>• <i>Statistics on costs to the public health system caused by car accidents</i></li> <li>• <i>Studies on the behaviour of road users (drivers and passengers).</i></li> </ul>
<p><b>Inventory of possible solutions (options)</b></p>	<ol style="list-style-type: none"> <li>1. <i>Public information campaign about the effectiveness of the use of safety belts (non-regulatory solution)</i></li> <li>2. <i>Immediate import ban on cars without safety belts</i></li> <li>3. <i>Legal obligation for car dealers to sell only cars equipped with safety belts from the beginning of next year</i></li> <li>4. <i>Cash bonus to car dealers for every car sold with safety belts before the end of the year</i></li> <li>5. <i>Legal obligation for car owners to retrofit their cars with safety belts by the end of the year, with sanctions for non-compliance</i></li> <li>6. <i>Legal obligation for drivers to wear safety belts while driving, with sanctions for non-compliance</i></li> <li>7. <i>Regulation that passengers not wearing a safety belt during an accident are not insured (regulatory or non-regulatory option)</i></li> <li>8. <i>Agreement between the ministry and insurance companies about higher insurance policy rates for owners of cars without safety belts (non-regulatory).</i></li> </ol>
<p><b>Legal review of options</b></p>	<p><i>To be completed</i></p>

<b><i>Consideration of obvious impacts</i></b>	<ul style="list-style-type: none"> <li>○ Economic impacts</li> <li>○ Social impacts</li> <li>○ Environmental impacts</li> <li>○ Crosscutting impacts</li> <li>○ Budget impacts.</li> </ul> <p><i>Select one to two examples.</i></p>
<b><i>Implementation plan</i></b>	<i>To be completed</i>
<b><i>Resulting selection of options</i></b>	<i>Concept selects a combination of options 1, 6 and 7.</i>

4 Development of the concept on how to solve a problem through secondary legislation is genuine policy making and therefore should fall within the competence of the legislative body's senior management level, which reports directly to the Head of Legislation (in other words, the top level of the body represented by the prime minister or minister or any other head of the legislating body). Due to the policy-making relevance of this stage of the process, the Head of Project should be, for example, a deputy minister, counsellor to the minister, Head of Strategic Planning and Policies Unit or Head of Legislative Support Unit. He/she is the addressee of the head of legislation's Mandate and bears the leading responsibility for developing secondary legislation.<sup>46</sup>

- 5 What are the function of the concept and its relevance for the quality of secondary legislation?
- The concept reacts to a problem impulse, wherever it originates, with a problem analysis, first asking simple questions, such as "What is the matter?", "Why is government action requested?", "Where is the problem?", "How can it be solved?". However, a thorough diagnosis requires a more detailed analysis of the problem, considering facts, reasons, evolution, data, statistics and surveys of actors and stakeholders. The problem analysis should follow a political checklist, such as proposed below (see [section 3.4.1](#)), covering areas such as legal and regulatory shortcomings, market shortcomings and societal issues.
  - After having analysed the problem, the legislative body's policy-making level must determine which legal situation should be achieved or at least strived for to resolve the identified problem(s). This is done by formulating general and specific objectives for the legislative solution (see [section 3.4.2](#)), taking care that such objectives are always in line with the medium- and long-term planning perspectives of a government programme. Objectives should be operationalised, i.e. in addition to the definition of the objective,

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<sup>46</sup> cf. [section 3.3.3](#) #M 26.

there must be a specification of the purposes to be achieved by the attainment of the objective, as well as a definition of the qualitative and quantitative indicators by which the attainment of the objective will be measured.

- An inventory of possible measures, also called “options” for tackling the problem is then to be drawn up.
- Options must be reviewed – not only for their technical feasibility but also for their compatibility with the legal order and be subjected to an initial consideration of the potential impacts of the measures, insofar as they are obvious.
- At the end, one measure or combination of options will be selected.
- The work on the concept should result in a political directive, formulated in a concept document in Stage 2 (dealt with in [section 3.4.5](#)) and later in Stage 4 (see [section 3.6](#)). It concisely summarises all relevant aspects of the concept development process and provides a plan and schedule for the implementation of the secondary legislation.
- **Two** concept documents are generated in regular cases.
  - The first phase of concept development leads to a Draft Concept Document, which will be the subject of the subsequent assessment of impacts (dealt with in [section 3.5](#)). During the assessment phase, the intended effects and possible unintended side effects of the secondary legislation are to be examined and compared with the benefits expected from the objectives of the regulation.<sup>47</sup> The Draft Concept Document should also contain methodological recommendations for how to conduct the assessment.
  - Following the assessment phase, the Draft Concept Document is reviewed in light of the Assessment Report and further subjected to an examination of its compatibility with constitutional legal principles, such as the rule of law and proportionality (dealt with in [section 3.6](#)).
  - Stakeholders from the public and the private/business sectors (see section [3.4.1.4](#)) shall have the opportunity articulate views, interests, concerns or problems connected to the draft concept.
  - Consideration of all the data, facts, assessments and opinions contributed to the draft concept will, in most cases, lead to its revision, resulting in the production of a Final Concept Document, which will now also contain methodological instructions for drafting the legal text that can be adopted ([section 3.8](#)).
  - The Final Concept Document forms the substantive basis of the regulation, as it will later be transformed into the final text of the secondary legislation (dealt with in [section 3.7](#)).
- Exceptionally, **one** concept document is generated in straightforward cases.

6

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<sup>47</sup> See [section 3.4.2](#).

In a ministry's legislative practice, there will occasionally be cases that either do not allow or do not require the expenditure of human resources and time connected to the conduct of impact assessment. These include:

- Situations (such as imminent or past natural disasters or pandemics) where the protection of life, health or highest-priority assets requires the immediate issuance of a secondary legislation measure
- Cases where the initial consideration of obvious impacts showed with certainty that no or only extremely minor adverse side effects are to be expected from the regulation (e.g. formal amendments of existing secondary legislation)
- Cases where, after carefully weighing all the technical or legal reasons, only one regulation comes into question, and the purpose of the desired regulation is of such high priority that all expected adverse side effects are of secondary relevance.

The decision as to whether impact assessment cannot or should not be carried out in a specific case has to be taken at the highest level, i.e. by the Head of Legislation or, if by the Head of Project, at least after consultation with the Head of Legislation.

In this way, concept documents determine the political course of the whole legislating process. As the guide rails, it is also vital that they fit into the overall government programme: its main factors and developments to be avoided. Detailed legislative work will start only after the check of the past and the future situation.

7 The individual steps of the problem-solving cycle are presented in a linear sequence in sections 3.4 and 3.5-3.8. However, it is often an iterative process. For example, during goal definition, it becomes apparent that the problem definition is not yet sufficiently meaningful and needs to be supplemented, or during RIA, it turns out that the goal definition still has shortcomings and that the goals need to be redefined more comprehensively and precisely. In other words, in the course of the overall concept, the first draft concept often requires modification or elaboration to become the final, detailed concept.

#### 8 3.4.1 Problem analysis

In the broadest sense, the purpose of secondary legislation is to change for the better a concrete situation in the state and society that has turned out to be problematic and in need of a solution. As a consequence, the analysis and definition of the problem is very important in order subsequently to explore correctly the exact need for action and to select the appropriate instruments. It is therefore the basis for all subsequent steps. It ensures that the situation is sufficiently clarified before measures are initiated. Sound analysis is also a necessary prerequisite to ensure compliance with the principle of subsidiarity.<sup>48</sup> For these reasons, a comprehensive,

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<sup>48</sup> Three aspects of subsidiarity. In all demands for state action, the principle of subsidiarity of state action must be observed: the state should only take on those tasks that private parties (families, business, etc.) cannot fulfil. The central power of the state should only act to the extent that it can perform a task better than the municipalities and the governorates. In addition, the state can act not only in a legislative capacity, but also informally (discussions with important actors, pronouncements, information, etc.). See also section 3.5.



Careful and balanced problem analysis is important, and it is worthwhile and justified at this early stage to invest considerable time in this process. A good problem analysis will make it easier to develop a transparent concept document. The steps needed to complete the concept document tend to follow logically from the problem definition. A problem definition is good when it is based on profound arguments and provides clear answers to those who read it. A systematic explanation of the problem(s) should address the following basic questions:

- What is the main problem?
- What is causing the problem?
- What are the effects of the problem?
- Which stakeholders are affected?
- How should situations of greater complexity be analysed?

The Head of Project (if appropriate, with the support of his/her assigned staff) carries out the analysis of the problem and its dynamics on the basis of his/her expertise. Sometimes, it makes sense to involve other government bodies/ministries, other departments of the body affected by the situation or external experts for their opinion.

It is essential to work out the problem definition at the start of the preparation of the concept document. However, the first version of the problem definition is most often not the final one. While the work progresses, the problem definition might have to be changed. This is perfectly normal, since developing the concept document improves insight into the issues that are being dealt with. Insight leads to understanding, understanding leads to improvements, and improvements lead to changes. This is the result of good analysis and use of evidence.

### *What is the main problem?*

9

Definition of the problems will be done by the following work steps, some of which are carried out in parallel and some in sequence.

10

#### Step 1: Point of departure

A Mandate for the development of secondary legislation exists (see [section 3.3](#): Initiation of the legislating process), and modalities for further processing have been determined.

11

#### Step 2: Analysis of the Mandate

The Mandate resulting from the initiation phase usually mentions certain problems and demands more or less concretely formulated remedies. In many cases, the content of the Mandate must be checked for the underlying objectives derived from the wording, meaning and purpose of the authorising law, as well as for consistency with the proposed thrust of the measures, and its content must be deepened.

Sometimes, the ordering Mandate is too one-sided and focused on certain proposed solutions, excludes other solutions or is very general.

Occasionally, reasons are given for government action that are not fully in line with the authorising legislation, not well thought out or do not correspond to the intentions of the authorities.

#### 12 Step 3: Denomination of the main problem

Now the main problem is to be identified. Statement of the main problem will summarise the reason for, and thus indicate the framework for, the upcoming legislative or non-legislative activities in one sentence or just a few words. In most cases, the Mandate, in connection with the authorising law referred to therein, already brings the main problem to the forefront. In addition, it may be that a problem has been the subject of public discourse for some time and is considered urgent and in need of solution in parts of society or in general.

#### 14 Step 4: Description of the nature of the problem

- What is the nature of the problem (legal, technological, economic, societal, ecological, etc.)?
- Which specific problem is to be solved by the proposed legislation?
- How does it manifest itself?
- What is the severity of the problem?
- Is the problem of a temporary or permanent nature?

#### 15 Step 5: Description of existing policy and legal framework

The next step is to ask:

- Does a (government/ministry) policy in the area of the main problem exist?
- Is there a legal framework in place?
- Which institutions at the state, regional and local levels are responsible for implementation?
- What is the institutions' role in this?
- What measures have been taken so far by municipalities, by governorates, on the part of the government and at the international level?
- Why have they not been sufficiently effective?
- Have the measures already been evaluated?
- What findings have emerged?

Such a description of the status quo provides the information needed to assess options in relation to existing measures and avoids the perpetuation of failures, duplication and the overlapping of activities. It forms the basis for assessing in later stages how the regulatory and non-regulatory options considered in the concept document would interlink with existing policies and legal requirements.

### *What is causing the problem(s)?*

17 Through the following list of questions, the attempt is made to find out why the problem exists.

- What is the cause of the problem?
- What are the reasons for its development?

It is always helpful to categorise and structure the causes:

- Legal and regulatory shortcomings
- Market shortcomings
- Societal issues
- Ecological issues
- Technological issues
- Etc.

If the cause is connected to people's behaviour:

- What external factors are influencing people's behaviour?
- Do people understand and acknowledge that there is an issue?
- Do they understand and acknowledge their contribution?
- Do they understand and accept the government's objectives?
- Do they understand and accept the way you want them to behave?
- Are they capable of behaving that way?
- What economic, cultural, social or psychological factors on the people's part are involved?

### *What are the effects of the problem?*

18 Undesirable or negative effects turn an actual situation into a problem. One could say, a problem is the difference between an actual and a target state. Thus, it is the effects of a problem that are to be mitigated or, better yet, completely prevented by a legislative solution.

- What effects are triggered by the main problem?
- What is the nature of the effect?
  - Legal
  - Technical
  - Economic
  - Social
  - Ecological
  - Sanitary.
- For which effects is empirical evidence available?

- Which effects are only suspected or for which is the empirical evidence disputed?
- What are the framework conditions in society, the economy, the environment, etc.? In what way and to what intensity would other subject areas be affected?
- How does civil society (general public, business sector, interested parties) assess the problem?
- Dynamics: is a development of the effects discernible (periodic manifestations, regularities, increasing risks)?
- What would happen without intervention?
- How severe are the effects with respect to both quality and quantity?

#### *Identification of stakeholders linked to the problem*

19 The identification of stakeholders follows directly from the identified causes, effects and involved government organisations.

A practical way to identify the involved stakeholders is presented in PART TWO, [section 2.5.1.4](#). Knowing which stakeholders are affected by the problem is useful, as it helps in developing the analysis for the concept document. Stakeholders singled out should be directly consulted, and/or their participation in public consultation should be promoted.

#### *Analysis of complex problems*

20 In many cases, it might be straightforward to identify and describe the problem. Very often, however, the reasons causing a problem may not be immediately transparent. In such cases, it will be necessary to invest more time in problem analysis in order to be able to define realistic objectives or design correct measures to reach the desired objectives. It is important to show the different angles from which a serious problem analysis would lead to identifying the problem and its potential causes and effects.

This section may be used for both in-depth initial problem analysis for rather complex cases and reassessment of Draft Concept Documents when their analysis seems in need of review before the development of an advanced concept document or Final Concept Document.

A general review and problem identification should be performed concerning:

- Legal and regulatory shortcomings
- Market shortcomings
- Societal issues.

The facets described below may, in complex cases, require outsourcing the task of problem identification, or at least involving expertise from outside the legislating body.

#### 3.4.1.1.1 Legal and regulatory shortcomings

22 Legal and regulatory shortcomings occur when there are already rules in place, but these rules do not function well. When the problem is caused by a legal or regulatory shortcoming, solving the problem means adjusting the legal and regulatory framework. To come up with the best solution, the type of shortcoming needs to be assessed properly. The list below comprises the most common types of legal and regulatory shortcomings and some of their potential effects.

- Rules are not implemented

23 When a problem exists because rules are not implemented properly, measures to improve implementation have to be defined. This can mean that rules have to be simplified or that they might have to be abolished when they cannot be implemented at all. In other cases, additional efforts (budget) might have to be defined or other measures taken to ensure that the rules are implemented.

- Rules are not complete

24 When the problem exists because rules are incomplete, the actual gap needs to be defined and corrected. This might be the case when:

- During the drafting of secondary legislation and executive regulations, something may have been overlooked or forgotten.
- Society changes, and new opportunities and demands arise. Regulations can become incomplete because of these changes and new opportunities (e.g. social media).
- There might be no rules in place in some policy areas. To regulate new business activities, for example in the IT sector, rules need to be developed from scratch (e.g. data protection measures).
- Aligning legislation with international regulations (e.g. of the World Trade Organization [WTO]) also can show that legislation needs to be adjusted so that it complies with such rules.

- Rules are conflicting

25 Laws and sub-legal acts may unfortunately be drafted in such a way that they conflict. This may surface in court when laws are set against each other or during the implementation phase of a regulation. There may even be conflicting provisions within legal acts. Conflicting rules create legal uncertainty. They cause confusion, impede the functioning of institutions and can block individuals and companies from enjoying their rights fully.

When the problem is caused by conflicting rules, these conflicts have to be identified and removed.

- Rules for state institutions are out of date

26 Over time, the tasks that public institutions fulfil can change. For example, agencies might have been set up to achieve a certain goal, and when the goal is reached, they are not needed anymore. Responsibilities of two institutions might overlap, and the legislation that governs them has to be adapted. Ministries might be abolished or merged based on political priorities. Costs might be saved by merging two institutions that fulfil complementary tasks.

At the same time, new government institutions might have to be established to fulfil new tasks or improve the way in which legislation is implemented and executed. New ministries might be created to cover the political priorities of the government.

When a problem exists because public administration needs to be reformed or reorganised, the reasons for this have to be analysed and justified, including benefits and costs.

27      • Rules imply unnecessary burdens

Legislation and sub-legal acts set requirements with which companies and citizens have to comply in many forms: permits, licences, minimum standards, environmental norms and many more.

These requirements can be, or become over time, unnecessarily burdensome. For example, legislation might demand that certain information is provided in paper form, while an electronic format of the same information exists. One company might have to apply for several permits for the same business activity, such as opening a restaurant or registering a trade. When the burdens caused by legislation are unjustified, they impose an unnecessary cost on society. These burdens can have very negative impacts, such as restricting competition or demotivating people from starting or registering a new business.

In such cases, burdens need to be simplified or even abolished to reduce or eliminate the burdens.

28      • Rules are no longer necessary

Legislative and sub-legal acts can lose their relevance. This can happen because other legislation slowly replaces elements that these acts dealt with. Societal and political priorities might change. The transposition of international regulations might render existing legislative and sub-legal acts unnecessary. What applies to acts in general also applies to certain parts of legislative and sub-legal acts. When a problem exists because of unnecessary regulations, those rules need to be abolished.

29      Options for mitigating legal and regulatory shortcomings are provided below (section 3.4.3.1.1).

30      [3.4.1.1.2 Market shortcomings](#)

• Prices do not reflect the real costs to society

Producing or consuming certain products implies certain costs. Sometimes, the real costs to society are not reflected in the price of a product. This leads to situations where the negative effects for society can be very high due to wrong incentives caused by wrong pricing.

For example, smoking is proven to be very unhealthy not only for the person who smokes but also for others who breathe in the smoke. Smoking harms everyone, but children especially are at great risk, particularly when in confined spaces, such as cars and houses. Smoking and breathing in cigarette smoke cause many diseases, which have costs. However, the costs are not reflected in the price of cigarettes.

Throwing away garbage in the countryside and on the street is another example. For individuals, it has no cost. Yet, the garbage spoils the countryside and cities and often has to be cleaned up by the state.

When prices do not reflect the actual cost, corrective measures including taking products off the market; obliging companies to adjust production processes (e.g. installing filters to prevent air pollution); and imposing taxes and fines to increase prices so that they reflect actual costs. However, in solving a problem like this, it is very important to assess whether alternative options exist and whether people can afford to switch to other products.

31

- Lack of public goods

Goods and services provided by the government are public goods, especially when the private sector cannot provide them.

Education, social benefits, unemployment benefits and other instances where the state supports individuals are public goods. The state needs to organise them to ensure social mobility, prevent poverty and unlock other benefits for society that the private sector cannot. National defence, police forces, emergency care and disaster prevention are also public goods. They have to be organised by the state to ensure that everyone benefits from them.

When the problem is caused by the lack of a public good, it is necessary to assess whether it is possible to reserve the necessary resources to provide it. Alternatively, subsidies can provide incentives for private companies to provide certain public goods.

32

- Lack of market incentives

As a rule, the private sector and companies invest to make a profit. When the investment is too high or the risk of failure is too great, such investments will be rejected, and positive developments may suffer.

As an example, introducing new farming methods can be very expensive, especially for small farms. Government subsidies could lower the costs of new methods or technology. The burden on the state budget would be justified when these result, for example, in much better harvests or a significant reduction in the use of pesticides. For another instance, construction of a new highway will only be attractive to a private investor if the expected pay toll and volume of traffic provide an adequate return.

Lack of market incentives is closely related to the problem of lack of public goods. The difference is that public goods cannot provide a profit and therefore will not attract business investment.

33

- Lack of competition

Market competition has several effects, but it usually leads to lower prices for goods and services. Competition also supports investment in innovation and leads to a better quality of goods and services. The mobile phone and communications sector is an obvious example. If competition is low or does not exist, prices are higher than necessary and often controlled by monopolies or cartels. Since consumers have no alternative choices, improving a service is less of a priority, and investments and innovation will be low.

When the problem is caused by lack of competition, the market needs to be analysed to see whether the setting of prices has to be controlled, which must be done with utmost care. Lack of competition can also be caused by a legal or regulatory shortcoming (overregulation). Regulation that is very complex and unnecessarily expensive to comply with will prevent companies from entering the market (see also unnecessary burdens in section 3.4.1.5.1: Legal and regulatory shortcomings).

- 34
- Lack of information

It may be that the market does not function in an orderly way because not everyone has the same level of information or knows the rules that apply. When people do not know their rights, they have a clear disadvantage.

Companies often know the rights of consumers, but consumers do not necessarily know the rights that they deserve. For instance, an airline might not inform passengers that they are entitled to free meals or a free hotel stay when a flight is cancelled or severely delayed. When passengers do not know their rights, they will not claim them.

The solution to the problem lies in ensuring that everyone gets the essential information. Examples of promoting equal access to information:

- Information on the energy consumption of consumer goods, such as fridges
- Flyers showing consumers' rights
- Information campaigns organised by the government.

Options for mitigating economic shortcomings are provided in PART THREE, section 2.4.1.4.

35

#### 3.4.1.1.3 Societal shortcomings

Societal shortcomings often have a multitude of causes. These can be a combination of legal and regulatory shortcomings, market shortcomings and others. Given the complexity of societal issues, no specific causes of a problem have been identified nor specific solutions formulated.

Identifying solutions to societal problems needs to be a careful process. The problem is likely to be very significant. Developing a solution should also be done with care. This means developing a proper and detailed overview of the problem, its causes and its effects. This will avoid potential difficulties and new problems later on.

36 Societal issues are policy issues, such as:

- Lack of gender equality
- Discrimination
- Corruption
- Children abandoning secondary school
- Persistently high youth unemployment
- Property rights



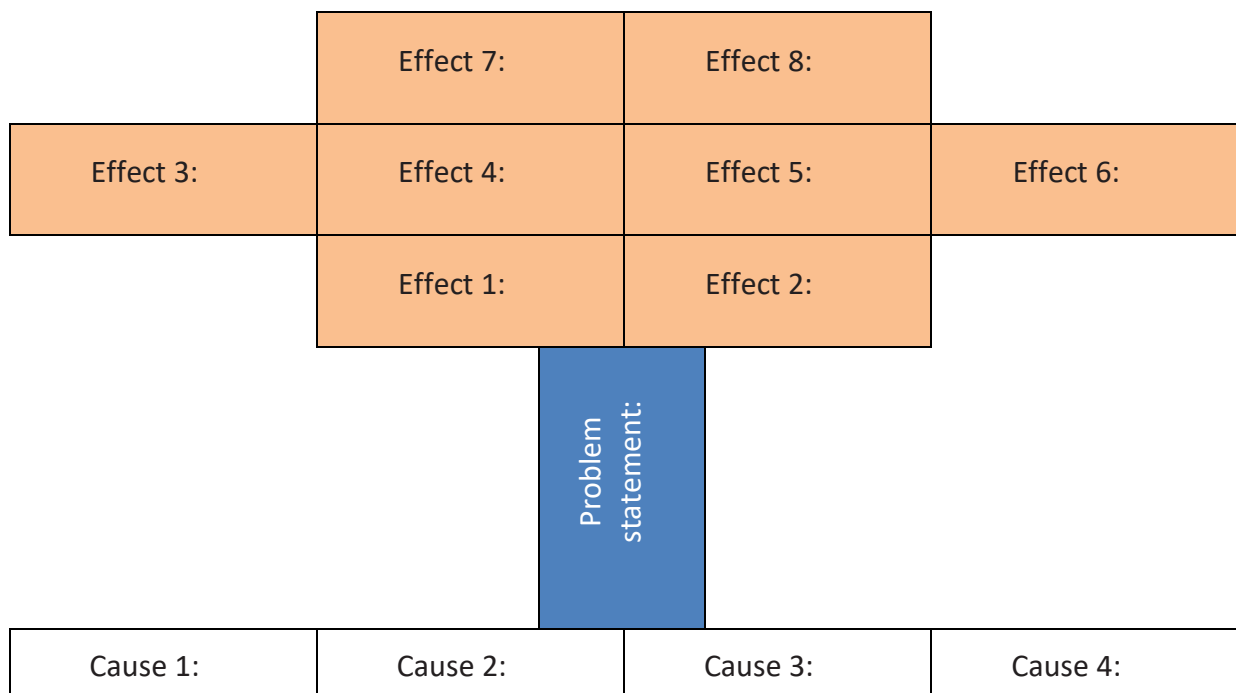
- Etc.

These topics are highly complex and, when addressed, they need to be analysed in depth and with great care. This means reserving the necessary time to ensure that the problem, its causes and its effects are properly identified.

### *Result of the problem analysis*

37 The problem description – comprising problem, causes and effects – should be written down (Template 2. See PART TWO, [section 2.4.1](#) M# 5). It forms the basis for the chapter "Initial situation" in the concept document, as well as for the subsequent definition of objectives and for the search for solutions. Here, the legislative process could also be discontinued if it can be assumed that society, the economy or the governorates and municipality can deal with the problem themselves within a reasonable period of time. Other measures of a non-legislative nature (real acts, changes in practice, etc.) or contractual arrangements could also be envisaged.

38 Where necessary, the problem description should be supplemented with a graphic illustration, such as the following **problem tree**:



39 The benefits of the **problem tree** are manifold. First of all, it provides a useful presentation of the problem definition and helps make the problem definition specific. It is easy to understand and streamlines the presentation of the problem, its causes and its effects. As such, the problem tree is a useful tool to discuss the problem definition. This in turn helps develop good solutions for tackling the origins and negative effects of a problem.

Through the identification of causes and effects, the problem tree helps with the identification of relevant stakeholders: those that are negatively affected by the problem, those that cause or contribute to the problem and those that need to be involved in solving the problem.

By splitting the problem into different causes and effects, the problem tree shows what kind of information would be useful in the analysis for the concept document. The problem tree can also help prioritise the work to be done for the concept document. Some causes and effects will be more important than others. The analysis for the concept document could focus on these in particular.

40

While the problem tree makes it easier to present a problem, it is important to keep an open mind about it. It is good to keep the problem tree as a reference that can be improved as the analysis for the concept document progresses. Defining the problem works best when it is an open process involving experts from relevant organisations through targeted consultation. It is even possible to organise public consultation for a problem definition to get input from stakeholders very early in the process. An open mind and the involvement of stakeholders are useful, since it is not always possible to identify all causes and effects from the start. It can also be that the main problem that is identified at first needs to be adapted because discussions and analysis show that it was not the best one. Such changes show the strength of the analytical work. Consulting stakeholders also helps identify the most important causes of a problem and therefore helps set the priorities of the analysis for the concept document and the ways to tackle the problem.

41

#### 3.4.2 Definition of objectives and indicators

The problem description makes clear what problem, causes and effects need to be addressed. The section that follows the problem definition in the concept document is on setting and formulating the general objective and the specific objective(s).

Objective formulation has four functions:

- It provides the direction for the subsequent search for solutions.
- It is the criterion for the evaluation of alternative solutions.
- It is significant for the subsequent interpretation of the enactment.
- It provides a reference for later evaluation of the effectiveness of the secondary legislation.

In the context of objective formulation, it is determined which situation should be achieved or at least strived for. Objectives show in detail what the government aims to achieve. They provide the information needed to understand the reason behind the development of a concept document. The objectives are the foundation of the measures proposed in the concept document for changing existing policies or introducing new ones. Goals and objectives need to be linked directly to the identified problem. They have to provide a description of the intended future situation in which the problem is effectively solved. Goals and objectives also have to show the role and position of the concept document within the government's or ministry's priorities when a concept document follows directly from such priorities.

The formulation of the objective should be solution neutral, i.e. should not be based on a fixed idea for a solution. This increases the chance that ideas emerge in the search for a solution that would otherwise already have been ruled out; all reasonable solutions should be considered.

Control criteria are to be defined against which the developed solution variants are to be measured (operationalisation of the objectives; quantitative and qualitative goals).

42 In case, the government has set policy goals in a range of general policy planning documents, such as the government programme, a National Development Strategy, a declaration of medium-term priorities, an economic reform programme and other (sectoral or cross-sectoral) strategies. The concept documents should respect the high-level policy goals. The link between a specific concept document and the government's goals should be presented in a transparent way.

43 **General objective.** This is the strategic, long-term goal, which later helps break down existing general policy goals from a broader vision into more specific plans and projects. It sets the factors for success and is designed to be measurable and specific and to provide a real breakdown of the mission statement/purpose that can be used by management within the administration to guide decision making. Strategic objectives are usually developed as part of a longer-term plan, and they define specific expectations that allow a particular institution to achieve its broader mission or fulfil its vision.

44 **Specific objectives.** The general objective should be divided into smaller specific parts that are logically interlinked. These are the specific objectives. They are more short term than strategic objectives and usually result in concrete activities. The strategic objective is achieved by fulfilment of all specific objectives.

45 **Draft indicators.** Indicators should be identified at this stage in order to identify successful achievement of goals. While this may not be too easy at the stage of a first Draft Concept Document, the detailed concept analysis later on must identify concrete target indicators for measurable success, especially for *ex post* evaluations.

46 The goals and objectives presented in the concept document have to be set in the S.M.A.R.T. way. This particularly applies to the specific objectives defined in the concept document. Since general objectives (i.e. policy goals) are often set before a concept document is developed, they should not later be changed.

What applies to the policy goals can also apply to the strategic objectives. Unless there is a clear need to revise these (e.g. based on a detailed impact analysis), they should be kept as they were issued.

Specific objectives need to receive detailed attention in a concept document. In the scope of secondary legislation, they are about solving the problem and turning the policy goals and strategic objectives into reality through concrete policy measures via, for example, amending existing legislation, enforcing new legislation or decrees or changing the organisational structure of administration.

47 **Design of objectives through S.M.A.R.T. classification**

Potentially, details cannot be formulated at the start of the design process, but they must be concrete in the final concept design, after the technical impact assessment has evaluated all relevant parameters of a case, and they must be in line with the S.M.A.R.T. classification for goals and general and specific objectives.

- **Specific**
  - Whenever possible, the definitions of objectives must be precise and concrete and should NOT leave room for interpretation.
- **Measurable**
  - Goals and objectives must be described based on very clear targets. That means setting clear *indicators* for the expected changes. This particularly applies to specific objectives.
- **Achievable**
  - The goals and objectives must be achievable. It does not add value to plan too much and then be unable to deliver on the promises. Objectives need to be set in a realistic manner. This means that they also have to be based on the available human and budget resources.
- **Relevant**
  - Goals and objectives have to be linked directly to the problem definition. The aim is either to remove the problem by eliminating its causes or to address the effects that the problem caused.
- **Time-bound**
  - Goals and objectives have to be implemented within a reasonable time. This links back to making sure that they are achievable. Deadlines also have to be set in such a way that the achieved results can be evaluated.

48 The goal and objectives need to be explained in detail in the concept document. The easiest way to do this is to present them in a table, as shown below. The layout shows (generally ruling) policy goals, strategic objectives and specific objectives that have been formulated and the document from which they originate. The presentation of the goal and objectives is meant to show the logic and reasoning behind the development of a concept document. If the concept document does not follow from a supervisory general government strategy document, the overview below can address only the specific objectives.

Table format for presenting the origin of policy goals, strategic objectives and specific objectives

Objective type	Origin
<p><i>Policy goal</i>, if applicable</p> <p>Defined in strategic/policy documents and needs to be kept as is</p>	<ul style="list-style-type: none"> <li>- Government programme</li> <li>- National Development Strategy</li> <li>- Declaration of medium-term priorities</li> <li>- Economic reform programme</li> <li>- (Sectoral or cross-sectoral) strategies</li> <li>- High-level assembly and government documents</li> </ul>

Objective type	Origin
<p><i>Strategic or general objective</i></p> <p>Defined in strategies and worked out in activity plans and need to be kept as is, unless there is a clear reason to amend it</p>	<ul style="list-style-type: none"> <li>- Improvement of security in private traffic</li> <li>- Regulations for implementation of the law on leasing, industrial licencing or SME</li> <li>- Decree for establishing a public office</li> <li>- Etc.</li> </ul>
<p><i>Specific objectives</i></p> <p>To be set in the concept document based on the problem definition and address the causes and effects of the problem</p>	<p>Specific objectives aim either to remove one or more causes of the problem or to address the effects that result from a problem – or a combination of the two.</p> <p>Specific objectives link directly to the issues that the government aims to solve (e.g. obligatory use of safety belts in private automobiles).</p> <p>Specific objectives show expected improvements that the government wants to achieve (e.g. reduction of fatal traffic accidents by 10% p.a.).</p>

50 To summarise, the problem definition shows the issues that could be addressed in a new Legal Draft Proposal. The policy goal and strategic objectives show what the government and the senior management aim to achieve. They also indicate the place of the concept document within the entire policy framework. The specific objectives, in particular, show the concrete targets intended to be reached.

### 51 3.4.3 Search for suitable solutions to achieve the objectives

This section on options for suitable solutions deals with possibilities that exist to achieve the defined objectives. The type of problem, its causes and its effects<sup>49</sup> provide the framework for the options that can be used to address a problem effectively.

Usually – and always in complex legislative projects – the solution consists of a package of measures that have to be developed and undertaken in order to address the problem by removing the causes, by addressing its effects or by a combination of the two.

52 In complex legislative projects, the search for suitable solutions is carried out in three thoroughly worked-out steps:

- Create an inventory of possible solutions
- Analyse the solutions

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<sup>49</sup> See [section 3.4.1](#) M# 15, 16.

- Select the most adequate solutions.

### *Inventory of possible solutions*

- 53 The search for solutions starts with creating an inventory of possible solutions that are suitable for overcoming the problems analysed or the objectives defined. Various forms of formal and informal state actions must be examined, along with non-action.
- A systematic approach to the search for solutions should prevent the subsequent drafting of secondary legislation from being hastily limited to an inappropriate regulation. It should ensure that the great potential of state measures is considered and that new solutions are examined and, if necessary, applied. What is needed are consensus-oriented solutions that are in the public interest but also contribute to the realisation of the individual rights and interests of citizens and businesses.
- 54 The search for possible solutions presupposes a thorough knowledge of the problem and the defined objectives<sup>50</sup> and, if applicable, of existing approaches to solutions in other states and in similarly situated issues. However, the search for solution options is also a creative process (including the use of creativity techniques, such as brainstorming) from which new approaches may emerge.
- The type of problem, its causes and its effects usually provide a framework for the options that can be used to address a problem effectively. Sometimes, the number of options to solve a problem can look very limited. For example, when the problem is caused by a legal or regulatory shortcoming, changing the law might appear to be the most useful option. However, such decisions have to be taken with care. Even when the path seems to be clear, other options could deliver better results.
- 55 At least three options should be dealt with in each inventory of possible solutions:
- No change option, to show the current situation of the policy issue and its continuation if changes do not happen
  - Legislative option, to improve the implementation and enforcement of existing regulation or to develop new regulations
  - Non-legislative option, an adequate yet effective alternative to legislative means (e.g. incentives, communication, economic) to resolve the identified problems.
- 56 The status quo no change option can often be developed based on a summary of the problem definition. This option serves as a comparison for the other options. It describes the situation if no changes were made.
- 57 When the concept document addresses issues with existing rules, the option to improve the implementation and enforcement of these rules has to be assessed. Analysing this option serves several purposes and is useful beyond the option itself. Insight into the way existing rules are implemented helps define the possible solutions to a problem, since it shows very clearly where

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<sup>50</sup> See [section 3.4.2.](#)

responsibilities lie. When the option to improve the implementation and enforcement of existing rules does not add sufficient value for the comparison of options in the concept document, it can be replaced by a more viable option. This choice needs to be explained in the concept document.

The third option will depend on the nature of the topic that is analysed in the concept document. This depends on the actual shortcomings and needs to be a proper alternative to the other options that are analysed.

The third option should consider possibilities to address a problem without using legislation. Such options are often available and can be implemented relatively quickly, since no legal changes are needed.

The following considerations can help in finding more specified suitable solutions:

- What is the underlying logic of the problem at hand? How can the state influence the relevant actors so that positive change can be achieved?
- What solutions or concrete regulations exist in comparable countries for the problem or situation at hand (result of a legal comparison)?
- Are there similar problems in other areas? What solutions have been found there?
- Are there certain solution approaches or strategies that are particularly suitable for the problem at hand? Examples include: market strategies (e.g. creation of functioning markets); private law strategies (e.g. creation of additional legal rights); prohibition and punishment strategies; education strategies (e.g. role model function of the state, creation of labels or information campaigns); and partnership strategies (co-operation between the state and the private sector).
- When looking for solutions, it is important to note that tailored solutions are usually created for specific problems.

The two tables below provide examples of specific possible options that correspond to specific problems listed in PART THREE, [section 3.4.1](#) dealing with the identification of problems.

#### 3.4.3.1.1 Options for mitigation of legal or regulatory shortcomings

The table below suggests solutions to the different problem characteristics related to legal and regulatory shortcomings. The overview is meant to guide the identification of options. It is not an exhaustive list.

<i>Type of legal and regulatory shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation and link to problem causes</i>
Rules are not implemented properly	Improve implementation of existing rules	<p>This option has to be analysed in every concept document that covers shortcomings with existing rules. Analysing the actual implementation of these rules provides essential information on how to tackle the problem that has blocked proper implementation. The analysis has to explain:</p> <ol style="list-style-type: none"> <li>1. What is regulated by the law/sub-legal act?</li> </ol>

<i>Type of legal and regulatory shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation and link to problem causes</i>
		<ol style="list-style-type: none"> <li>2. What are the obligations deriving from the law/sub-legal act?</li> <li>3. Which organisations are involved in the implementation of the law/sub-legalact?</li> <li>4. Are their tasks properly defined?</li> <li>5. Is it possible to perform the tasks properly?</li> </ol> <p>For example, the implementation of rules might show shortcomings because the institutions that are supposed to implement them do not know or understand their obligations. This can apply to both government institutions and stakeholders (business community, civil society, citizens). The option to solve this kind of problem is to make sure that everyone properly understands what they are expected to do. An information campaign is an option to solve such a shortcoming.</p>
	Abolish rules	<p>When rules are so complex or costly that they cannot be implemented, they could be abolished.</p> <p>This removes the obligation for the administration to implement them, cleans up the regulatory framework and makes sure that the government is not held legally responsible anymore for rules that it cannot implement in the first place. It also makes the legal framework clearer for citizens and companies.</p> <p>An alternative to abolishing rules would be officially to postpone their implementation or the implementation of certain regulatory provisions.</p>
	Reserve sufficient budget for implementation	<p>The lack of proper implementation of rules might be the result of a lack of necessary resources for the organisation(s) that are tasked with the implementation. In such cases, reserving the necessary budget is an option to solve the problem.</p>



<i>Type of legal and regulatory shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation and link to problem causes</i>
Rules are conflicting	Solve contradictions and adjust all relevant legislation	<p>Rules set in different pieces of legislation or sub-legal acts can contradict each other. There can also be conflicting provisions within the same legal act. Such contradictions cause confusion and legal uncertainty. Therefore, they need to be properly addressed and harmonised. Definitions used in legislation and the requirements that legislation sets have to be properly defined.</p> <p>Addressing this issue means properly explaining what the contradictions are, which laws and sub-legal acts are affected and what problems are caused by the contradiction.</p> <p>A clear explanation should set out how the various contradictions will be addressed, which changes need to be made to which laws and sub-legal acts, and who is responsible for the implementation of the improved legislation.</p>
Rules are incomplete	Amend existing law or secondary legislation	<p>When shortcomings in the current regulatory framework are the cause of the problem, the existing rules might have to be updated. Rules can be incomplete in three main ways:</p> <ol style="list-style-type: none"> <li>1. They allow activities that should not be allowed.</li> <li>2. They do not allow activities that should be allowed.</li> <li>3. They have set requirements, but these do not cover all relevant issues.</li> </ol> <p>The problem has to provide evidence that the fact that rules are incomplete is the cause of the problem. There are four aspects that have to be met when analysing this option:</p> <ol style="list-style-type: none"> <li>1. These shortcomings have to be clearly explained.</li> <li>2. The concept document needs to show that other, non-regulatory options will not be successful.</li> <li>3. The costs to the budget for implementation of the amended law must be analysed (see Costing for concept documents).</li> <li>4. The costs of implementation for the business community have to be determined (see Standard cost model).</li> </ol>
	Draft a new regulation	When shortcomings in the current regulatory framework are the cause of the problem, drafting a

<i>Type of legal and regulatory shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation and link to problem causes</i>
		<p>new regulation can be an option to solve a problem. However, it is an option that should be treated with care.</p> <p>There are six aspects that have to be met when analysing this option:</p> <ol style="list-style-type: none"> <li>1. The problem clearly has to show that the absence of laws or sub-legal acts is the cause of the problem.</li> <li>2. The shortcoming has to be clearly explained.</li> <li>3. The analysis must show that the problem cannot be solved by adapting the existing legal framework.</li> <li>4. The concept document needs to show that other, non-regulatory options will not be successful.</li> <li>5. The costs to the budget for implementation of the new rules must be analysed (see Costing for Final Concept Documents).</li> <li>6. The costs of implementation for the business community have to be determined (see Standard cost model).</li> </ol>

<i>Type of legal and regulatory shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation and link to problem causes</i>
	Establish voluntary rules and standards (self-regulation)	<p>When rules are incomplete, legislation may not be the best way to tackle the problem. An alternative option is to discuss with stakeholders the cause the problem and see whether they are willing to set voluntary standards and procedures to solve the causes of the problem.</p> <p>This option can work when the counterpart is trustworthy and has an interest in solving the problem, e.g. a financial interest, an interest related to the image of a sector or another interest. The group that has to work with the self-imposed rules should be small. This makes it possible to check whether the rules are actually followed.</p> <p>Voluntary rules and standards can be agreed with conditions. For example, when the problem is not solved or when the self-imposed rules are not properly implemented, legislation could still be developed in the future.</p> <p>The important benefit of self-regulation is that ownership lies with those that design the rules. The administration can limit its role to checking whether the rules work in practice. The administration can also steer the content of self-regulation through documents that are not legally binding, such as guidance notes and proposals on what should be achieved through self-regulation.</p>
	Develop co-regulation	<p>Co-regulation is a mix between legislation and self-regulation. The rules are set in legislation and sub-legal acts, but the implementation and enforcement is done by the business sector being regulated.</p> <p>This option is stronger than self-regulation. If the rules are not implemented, they can be legally enforced. However, since enforcement is left to the industry, ownership still lies with those that have to apply the rules.</p> <p>As with self-regulation, the number of stakeholders that have to implement the rules should be small. This makes it possible to check whether the rules are actually implemented.</p>

<i>Type of legal and regulatory shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation and link to problem causes</i>
Rules regulating state institutions are out of date	Amend the legal basis of institutions to make them function better	It is possible that the legal basis of an institution does not allow certain responsibilities that should be performed, forces a government institution to implement rules in an inefficient way or provides an unclear Mandate for the institution. In these cases, the existing legal framework has to be updated so that the institution can execute its tasks effectively and efficiently.
	Establish new institutions	For the implementation of legislation (international, WTO, etc. treaties) or the implementation of a political priority, new institutions might have to be established. This has to be explained well, and the institution should be designed in line with the tasks that it is expected to perform. An important aspect to consider is whether the institution should be permanent or limited in time linked to its performance. The latter option is preferable, since it places a clear expectation on what an institution is to achieve.
	Ensure sufficient budget for the execution tasks	Organisations might have difficulties in functioning properly because the tasks that they are expected to perform demand more human and budget resources than are available. In such situations, the gap between tasks executed and tasks that have to be executed has to be significant. The option should assess whether the problem is lack of staff and budget or a misallocation of existing resources. Organisations can also be ineffective due to bad management or needlessly complex work arrangements.
	Abolish unnecessary organisations	An organisation that is not necessary anymore should be abolished. The implications for staff, such as respecting work contracts, need to be considered and dealt with in accordance with the regulation in force.
	Merge organisations into one	Institutions can also be or become inefficient. This says nothing about the usefulness of the tasks that are performed, which might still be necessary and appreciated. However, inefficiencies demand budget resources that could be spent more effectively. A ratio between staff working on the actual tasks of the

<i>Type of legal and regulatory shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation and link to problem causes</i>
		organisation and the number of people involved in ensuring that an institution exists can be a good indicator of inefficiencies. When institutions are merged (for example, because they perform tasks that are similar or overlapping on the level of activities), they can combine tasks, such as human resource management and financial administration. They can share and make better use of office space, cars and others items. Larger institutions can also have a <u>stronger position</u> to negotiate lower prices for goods and services.
Rules cause unnecessary burdens	Adjust existing rules to reduce burdens	<p>Requirements for companies to apply for licenses and permits, file taxes and undertake other exchanges of information with the administration can be needlessly costly. When rules are designed in an inefficient way, they will impose unnecessary costs. New technologies and insights should be applied to the implementation of rules to ensure that compliance is easier. The benefits of making rules more efficient can be assessed by applying the SCM.</p> <p>Next to requirements for information, legislation sets requirements for how companies have to conduct their business activities. These can involve investments into reducing emissions, upgrading technology, changing production processes and other activities that directly impact work processes. These costs can be justified when their benefits outweigh the costs. However, the costs for complying with legislation also have to be kept as low as possible.</p>
	Merge existing laws and sub-legal acts and the obligations they set out	Individual pieces of legislation might look useful and appropriate; however, when their effect on society is considered, they can cause unnecessary burdens. For example, five government organisations might demand justifiable permits for certain business activities. Yet, as all these permit requirements have to be fulfilled by individual companies, merging the permits would increase efficiency, reduce costs and potentially save budget resources.
	Abolish rules	Rules need to have added value. When the costs to society of rules (e.g. costs to the budget,

<i>Type of legal and regulatory shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation and link to problem causes</i>
		implementation costs for companies and citizens) are higher than the benefits, and when improving them does not provide added value either, the rules should be abolished.
Rules are not necessary anymore	Abolish rules	When there is general agreement that rules are not necessary anymore, they should be abolished.

#### 3.4.3.1.1 Options for mitigation of market shortcomings

The table below suggests solutions to the different problem characteristics related to market shortcomings. The overview is meant to guide the identification of options. It is not an exhaustive list.

63

<i>Type of market shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation</i>
Prices do not reflect the real costs to society	Impose requirements that change the price of goods or services	Economic incentives comprehend a wide range of possibilities that can be used to influence the functioning of the economy. Instead of altering an entire pieces of legislation, changes can be very small and only cover one or a few article(s). Imposing taxes, such as value-added tax (VAT), changes the costs of certain products and services. When costs increase, sales are likely to go down; fewer people are able to afford goods and services that have higher costs. Fines for unwanted behaviour, such as littering and throwing garbage away in public places, make that behaviour more expensive. When the chances of getting caught are also very high, many people will stop the unwanted behaviour.
	Restrict use of goods	Certain goods, such as chemicals, can be very harmful. However, their harm can be reduced with proper equipment (such as protective clothing) and education on how to use them safely. The use of such goods can be restricted by requiring companies to apply these goods under specific conditions and to make sure that such goods are not sold to consumers who lack the equipment or training.
	Ban goods that	Goods might cause such harm that they should not be

<i>Type of market shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation</i>
	cause excessive harm	sold at all, especially when there is a good alternative that can be used in their place. The effects of such bans should be analysed.
Lack of public goods or services	Define actual need and budget cost of providing these goods or services	When it is clear that the market does not provide a certain good, and the problem definition shows that this has very negative effects, the state has the option of covering the costs of providing the public good or service.
Lack of market incentives	Provide economic incentives	Reducing taxes, such as VAT, changes the costs of certain products and services. When costs are lowered, sales are likely to rise; more people are able to afford goods and services that have lower costs. Subsidies enable companies and citizens to make use of a possibility without obliging everyone to comply with certain rules. Changes to the tax code, such as increased deduction of costs related to investment, can convince companies to invest in factories, etc. Allowing individuals to deduct education costs could convince them to learn new skills and expand their knowledge.
	Set conditions on government expenditure	The government reinvests a sizeable portion of tax revenue into society. This expenditure can be linked to specific conditions. For example, procurement procedures for certain goods could contain conditions that products have to be in line with specific environmental standards and much more, e.g. the purchase of diesel fuel might require that a certain percentage be biodiesel.
Lack of competition	Impose clear rules for dominant firms to protect consumers	The provision of certain goods and services can be so costly that there will be no competition. Supplying water is a good example. It does not make sense to build two or even more water connections for a house. When there is a natural monopoly or when only a few companies dominate the market, how they set prices might have to be regulated. For example, a ceiling on price increases could be imposed to avoid excessive changes.

<i>Type of market shortcoming</i>	<i>Options that can be considered</i>	<i>Explanation</i>
Lack of competition <sup>51</sup> as a legal or regulatory shortcoming	Adjust regulatory framework	Legislation can impose needless restrictions on competition. This happens, for example, when there are certification and education requirements for certain professions that are needlessly restricting. A heart surgeon needs to comply with strong professional requirements because of the responsibilities of the position. Other professions, such as cooks or tour guides, have very different risk levels. They should be regulated in line with the risks associated with the profession.
Unequal levels of information	Ensure equal levels of information and education	Lack of information can be an important reason why rules do not work or do not work properly. Improving people's knowledge and ensuring that they have access to all relevant information can be a straightforward way of addressing problems associated with people not claiming their rights. Information and education campaigns can also be relevant when new policies and legislation are being implemented.

### *Analysing the inventory of options*

64 How options should be analysed depends on the nature of the problem and the goals and objectives.

Based on a summary examination, certain solutions can usually be eliminated, e.g. because they are disproportionate (meaning other suitable solutions are available that result in lower burdens on the private sector); appear to be ineffective; are obviously too expensive; pose legal difficulties (incompatibility with other solutions already adopted, the need to amend other laws, etc.); or pose difficulties in reaching consensus.

65 The analysis may lead to further development of the solution approaches as follows:

- Solutions that complement or reinforce each other in their effects are combined into solution packages. These can also be solutions that can be put in chronological order (e.g. milder measures at the beginning, stronger ones in case they are not sufficiently effective).

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<sup>51</sup> Competition assessment toolkit ([www.oecd.org/daf/competition/45544507.pdf](http://www.oecd.org/daf/competition/45544507.pdf)).



- Solutions or packages that exclude each other from alternatives that can then be combined with each other.
- Solutions that can be designed differently and can be grouped into partial alternatives.

### *Evaluation and selection of solution variants*

66 Now, the solutions that are in principle suitable are evaluated in terms of their contribution to achieving the objectives. This implies a legal review, as well as a view to the likely impacts of the various options. In other words, the Head of Project and team are recommended to undertake a legal review of all options and a first consideration of the possible impacts of the measures, insofar as they are already obvious in the concept phase.

The criteria relevant for the evaluation of the solutions are determined based on the formulation of the objectives (PART THREE, [section 3.4.2](#)). Care must be taken to ensure that all factors relevant for the general and specific objectives are taken into consideration. The following checklist provides a non-exhaustive list of factors generally relevant for the evaluation of each of the solution variants:

67 General criteria:

- Effectiveness of the regulatory measure
- Efficiency (is the cost-benefit ratio reasonable?)
- Suitability for implementation
- Political acceptability in civil society in general and in the business community in particular.

68 Framework conditions:

- Necessity of the measure
- Proportionality
- Impact on the fundamental citizen rights guaranteed in the Constitution of the Arab Republic of Egypt
- Costs to the state
- State personnel requirements
- Administrative burden of state bodies.

69 Concerns from the business community:

- The lowest possible administrative burden on the economy
- Particular burden for SMEs
- Least restriction of entrepreneurial freedom possible

70 Societal issues (positive and negative side effects):

- Strengthening social integration
- Improving public health and safety

- Strengthening solidarity among and between generations
- Protecting the environment, particularly regarding the impact on climate change
- Considering equality between women and men. In this way, positive and negative side effects of the alternative solutions can be determined.

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Evaluation of the alternative solutions (prospective evaluation) should be based on experience (e.g. personal experience, accountability reports, evaluations) with the field of intervention, intended instruments, enforcement bodies and addressees concerned. By systematically comparing the functioning of solutions, their advantages and disadvantages also come to light.

The evaluation of options must not be influenced by ideal ideas about the suitability and effectiveness of solutions but must be guided by realistic ideas about how solutions will prove themselves in reality. For a realistic, rational approach, some of the methodological instruments developed for impact assessment (Stages 3 and 6. See the introduction to RIA in PART TWO, [section 2.6.1](#)) may be applied. Of course, this is not the procedural step in which impact assessment should be anticipated. However, some solution options should already be ruled out here that, from the perspective of some assessment methods, such as an SME check, the SCM, CBA or CEA (see sections [3.5.2.2](#), [3.5.2.6](#) and [3.5.2.7](#) and PART TWO, sections [2.6.2.2](#), [2.6.2.5](#) and [2.6.2.6](#)), appear to be clearly unsuitable, without these methods having to be applied according to the rules of the art.

#### *Necessity of a legislative solution and alternative measures*

72

As this Guide shows, developing good secondary legislation is a time-consuming process in which the legislative body, e.g. the ministry, has to invest considerable human, time and budget resources. In addition, the implementation of secondary legislation in legal and economic practice, as well as its application in individual cases, can entail remarkable financial and non-material expenses. These burdens affect both the state and citizens, businesses, society as a whole or the environment. Last, it can be observed that, in many countries, the (primarily economic) sciences and civil society in general are complaining about an increasing density of regulation, even a flood of legislation, and see this as a serious problem for the prosperity and innovation of the national economy.

Therefore, always draw major attention to the question of necessity of a legislative solution. At this stage of the concept development process at the latest, the no change or the non-legislative option must be taken into consideration as alternative measures. This is to avoid opting for unnecessary legislative solutions that would not only require a lot of time, effort and costs to develop, implement and apply but also contribute to the widely lamented phenomenon of a flood of laws or overregulation.

Alternatives to a new legislative measure that need to be reviewed:

- Measures to ensure the effective application of existing provisions
- Public relations work
- Working arrangements
- New investments
- Incentives (subsidies)

- Encouragement of self-support that can reasonably be expected from and managed by those concerned
- Clarification by courts.

Not a non-legislative solution but a variant of permanent regulation that can also counteract flood of legislation is the temporary validity of secondary legislation. A time-limited regulation can be considered when:

- Problems occur only temporarily
- Problems can be permanently solved by other appropriate measures after a certain period of time
- It is uncertain from the outset what effect the measures will have, in order to gain initial experience
- A consensual solution (e.g. with another ministry, a certain business association or another interest group in civil society) has not yet been found
- The legislating body is obliged by the authorising law, is mandated by political guidelines or has determined on its own initiative to carry out an *ex post* evaluation before the expiry of the deadline and, depending on the result, to amend the regulation, or extend its period of validity. Internationally, this type of regulation is known as a "sunset legislation".

#### *Result of the search of solutions – refinement of individual solutions*

Based on the results of the initial evaluation, promising solutions can be refined and improved, or new, better combinations of solutions can be created. Sub-variants can also be created. Last, a decision is made as to which solutions should be further processed into the initial draft concept.

#### 3.4.4 Implementation plan for each option

An implementation plan is a tool that illustrates in detail the work required to implement options and to achieve the policy goals and objectives. It lists activities, outputs and timelines in order to implement the options.

The problem definition shows the causes and the effects of the problem that is identified. The options indicate the possible solutions to tackle the drivers or indicate the negative causes. The options need to be designed to work in practice. If they remain on paper, the situation will not change. Each option, including no change, is the basis for work that needs to be done by the administration, companies, civil society and citizens.

The relation between the options and activities needs to be logical. For example, a service cannot be provided without creating the organisational arrangements for providing the service. Benefits cannot be paid to certain citizens unless there is a department tasked with making the payments. This department needs to have the right amount of staff and IT infrastructure.

Such work demands resources. This can be work time that civil servants need to invest in training; budget that needs to be reserved for procuring materials; activities that companies

need to undertake to comply with new legislation; and time that citizens need to spend on complying with regulations.

*Example 1*

**Option:** trained inspectors to improve implementation of existing rules

Activities: develop a training programme and certification of future inspectors; reserve budget for implementation of the programme; identify trainers; train future inspectors; ensure certification of inspectors

*Example 2*

**Option:** information campaign to address the problem

Activities: develop a communications plan; plan the budget for an information campaign; procure services; launch the campaign; monitor the campaign activities; evaluate the effect of the information campaign

*Example 3*

**Option:** amended by-law to address a regulatory shortcoming

Activities: draft the amendments to the by-law; consult relevant ministries and stakeholders during the development of the amendments; submit the draft amendments for interministerial consultation; submit the draft amendments for public consultation; submit the draft amendments, with all relevant supporting documents, for adoption by the responsible government body; ensure that the implementing organisations have sufficient time, human and budget resources to implement the amendments; inform citizens/companies/organisations about the changes

Concept documents are the basis for developing new and amending existing regulations and many other measures that the government approves. The implementation activities that follow from a concept document take time. For example, drafting the proposal for a new regulation, consulting on it with stakeholders and having it adopted by the government can take half a year or more. Preparing for the application of a new regulation by training inspectors, informing citizens and companies and procuring/developing the relevant materials/services will add several months at least. Only once all these activities are finalised can the new regime apply in practice.

Implementing a policy needs to be based on medium-term planning. An implementation plan should therefore cover a period of three to five years. This period is needed to ensure that capacities are developed and organisations and people are informed. This time is also necessary to integrate a new policy into the policy framework and to ensure that its

implementation becomes a standard process. The overview below provides a template for an implementation plan.

<i>Implementation plan</i>								
<i>General objective</i>								
	Output, activities, year, responsible organisation/department							
<i>Specific objective 1</i>	Option 1.1	Name of option						
			Year 1	Year 2	Year 3	Year 4	Year 5	Responsible organisation /department
		Activity 1.1.1	Actions and resources					
		Activity 1.1.2		Actions and resources				
		Activity 1.1.3						
	Option 1.2	Name of option						
			Year 1	Year 2	Year 3	Year 4	Year 5	Responsible organisation /department
		Activity 1.2.1						
		Activity 1.2.2						
<i>Specific objective 2</i>	Option 2.1	Etc.						
	Option 2.2	Etc.						

<i>Specific objective No. ...</i>	<b>Option No.1</b>	Etc.						
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### 73 3.4.5 Draft Concept Document

The steps of the problem-solving cycle not only enable the systematic finding of a suitable solution but also provide an important basis for a Draft Concept Document (see detailed Template 5 in [section 2.5.4.1.5](#)). If possible, its written text should be drafted in such a way that it can be integrated into the Assessment Report (see [section 3.5.3](#)).

74 The issuance of a standardised concept document is an important stage between the definition of the most important normative contents, as determined by the decision on the promising solutions, and the formulation of the legal text. The concept document has three functions:

- Assessment tool. The normative content of the concept document is the subject of an initial impact assessment (the next stage of the overall legislative process).
- Legislative methodological tool. The concept forms a structured basis for the drafting of the legal text.
- Management tool for the Head of Project. The concept document enables the Head of Project to set the course in terms of content and legislation and to make fundamental managerial decisions. It should thus indicate the resources required for the subsequent stages of the legislative project (e.g. human resources and budget costs for external support to impact analysis) and set the realistic time frame that allows achieving the required quality throughout the development process.

75 In a simple, straightforward project with obvious expected impacts of negligible or unavoidable relevance, the (draft, being the final) concept document may consist of Template 4 and already form the starting point for developing a Legal Draft Proposal.

76 As a rule, however, Template 4 should be used as the cover sheet of an elaborated Draft Concept Document that comprises the following chapters:

1. Mandate of the Head of Legislation (PART THREE, [section 3.3](#) /PART TWO, [section 2.3.1](#))
2. Problem analysis (summary plus Template 2 – PART THREE, [section 3.4.1](#)/PART TWO, [section 2.5.1](#) M# 9)
3. Defined objectives (summary plus Template 3 – PART THREE [section 3.4.2](#)/PART TWO, [section 2.5.2](#) M# 22)
4. Suitable solutions (PART THREE, [section 3.4.3](#)/Template 4 – PART TWO, [section 2.5.3](#)); detailed report on:
  - a. Inventory of possible solutions
  - b. Analysis of options
  - c. Evaluation and selection of options
  - d. Refinement of preferred options.

5. Instructions for drafting legal text
6. Managerial details for the overall process:
  - a. Time frame for upcoming stages
  - b. Costs of the legislative project (budget, extra costs)
  - c. External support
  - d. Composition of teams for the following stages
  - e. Miscellaneous.

A Final Concept Document layout – after completed impact assessment and for a more complex project – is presented in [section 3.5.3](#).

#### 3.4.6 Initiation of an (*ex ante*) impact assessment

77

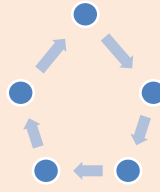
The Draft Concept Document (see explanation and layout in [section 2.5.4](#)) forms the material basis for the (*ex ante*) assessment of the concept. It needs to be supplemented by directives that specify the task of the technical evaluating team. In the case of a more complex endeavour, the evaluation team should be instructed to consider the following thoughts:

- The evaluation serves a purpose: supporting conclusive, final and informed decisions on policies and regulations. In turn, this helps improve the quality of policies and underpinning legislation.
- It is most often not possible to analyse everything in depth. It would require too much time, person hours and budget. Therefore, a practical decision needs to be made about what to analyse and how deep.
- The principle of proportionality provides the framework for such practical decisions. The basic logic is that an analysis must provide sufficient added value for the Final Concept Document compared to the effort needed to perform the analysis.
- Efforts invested in the assessment need to be judged against whether the efforts needed to conduct the analysis are justified. This approach helps determine the depth of analysis that should be conducted for the development of a Final Concept Document.

Whenever possible, the concept document should consider the aforementioned parameters and required resources before delegating a detailed impact assessment internally or outsourcing the task.

The expert team working on the assessment will have to review not only the Draft Concept Document but also, if deeper involvement with individual issues makes it necessary, consult on the complete project file, starting with the definition of problems and objectives, in order to understand the endeavour, from initial thoughts through the concept of options and solutions suggested. In this way, the need to clarify details or assumptions will arise, requiring the availability and alert feedback of the core development team and the Head of Project.

### 3.5 Stage 3 of the legislating process – Impact assessment, phase 1

Stage in the legislating process		
1	Initiation	
2	Concept development, phase 1 (draft)	
3	Impact assessment, phase 1 (concept)	
4	Concept development, phase 2 (final)	
5	Drafting legal text, phase 1	
6	Impact assessment, phase 2 (legal text)	
7	Drafting legal text, phase 2 (review)	
8	Enactment	
9	Ex post evaluation	

1

The implementation of the identified options leads to various impacts on stakeholders and society. This section helps identify potential impacts, with focus on RIA, and shows how they should be analysed.

RIA goals and the measures of rational evaluation are transparency, accountability, enforceability, technical quality, simplicity, clarity, capacity building, necessity, efficacy, effectiveness, efficiency, consistency, subsidiarity, proportionality, continuous learning and so on.

The tools and methods presented are mainly dedicated to the review of readily developed legislative concepts. However, the Guide stipulates the consideration of (negative) impacts during the design phase. Thus, the wording of various tools and assessment methods may refer to both the development and the assessment of a concept or the Legal Draft Proposal.

This important part of the Guide addresses three categories of assessment of legal projects, especially for more complex cases.

- *Ex ante* assessment: feasibility assessment of an advanced concept document

Once an evaluation team has been composed and charged with analysing the planned legal project in depth, it will read and analyse the Draft Concept Document and supporting attachments from the problem analysis and design a process in detail. Whenever questions arise from the concept (e.g. starting with the problem analysis), they should immediately be clarified through the foreseen communication channels before further steps and options are evaluated.



- Concurrent assessment: impact assessment for a Legal Draft Proposal before it is processed for final acceptance

Whenever the text of a draft Legal Draft Proposal is available or presented, it should (again) be assessed in the described systematic manner, only the individual assessment steps are not directed at the concept document but at the advanced Legal Draft Proposal. In this context, the expressions need to be switched and the focus put on the extent of adoption of the findings of initial RIA and especially on the quality and efficacy of concept transposition to legal formulations.

- *Ex post* evaluation

This section also serves the purpose of evaluating the effectiveness and experienced *de facto* impacts of enacted legislation, whenever necessary or planned. The starting point for an *ex post* evaluation may also be a problem analysis, followed by the steps of impact assessment listed in this and following sections (up to [section 3.5.3: Assessment Report](#)). Further details on *ex post* evaluation are dealt with in [section 3.11](#).

### 3.5.1 Introduction to the process, including RIA Light and RIA Complete

2

The implementation of legislative solutions presented in the concept document results, in the positive case, in the achievement of the set strategic goal and the general and specific objectives. However, when it comes to the application of the adopted provisions of secondary legislation in individual cases, as a rule, unintended negative side effects accompany the desired success. Therefore, in order to adopt good-quality secondary legislation, both possible impacts – the intended positive and unintended negative effects – must be well considered and weighed against each other. This political consideration requires a preceding rational, analytical process to identify and describe such impacts in terms of their qualitative and quantitative relevance. This process is called impact assessment and, in the following chapters, mainly addresses the assessment of concept documents.

First, it is necessary to structure the approach for assessing a Final Concept Document or Legal Draft Proposal by tackling the different aspects of impact and prepare the overall approach for the review.

- Analyse the five potential impact categories:
  - Economic impacts
  - Social impacts
  - Environmental impacts
  - Crosscutting impacts
  - Budget impacts.
- Identify the issues to be analysed within these impact categories.
- Define the data collection process.
- Use the principle of proportionality to determine the depth of impact analysis.

- Assess application of appropriate standards and the possibilities for implementation of measures.
- Assess the implementation plan, including the output-activity logic for various stipulated solutions addressing the policy problem.
- Assess the costs for implementation of the options based on the implementation plan.
- Apply the rules of the Ministry of Finance when the costing shows that the budget ceiling of an institution/ministry is exceeded.

When it is clear how the concept is addressing the problems and specific objectives, the assessment for a forthcoming Final Concept Document goes into details by analysing options of what is expected to happen in the future. As the measures and activities required to implement these options will be different, they will demand different budgets and human resources.

Another aspect to consider is the quality of results. Facets to be considered are:

- **Effectiveness:** the level of achievement of the defined goals. A measure is 100% effective when a goal is fully reached.
- **Efficiency:** the way in which goals are reached. This is about reaching the goals without wasting budget, natural and human resources (since these are limited).
- **Expected impacts:** (besides the positive changes expected) the associated expenses incurred if the government decides to turn an option into the concrete steps to implement and enforce it.

When effectiveness, efficiency and expected impacts are combined, it is possible to determine whether an objective can be reached with reasonable budget and human resources and with sufficient positive impacts and acceptable negative impacts.

3

### *RIA LIGHT*

The above introductory analysis provides a first impression of the extent and complexity of a professional RIA. During the design phase of this Guide, the authors and involved counterparts spent extensive time discussing the extent of RIA application to mainstream cases, as well as the reality in the public sector regarding common knowledge of the subject. In this context, RIA Light was created, which should define a general denominator for a flexible mainstream assessment methodology.

The RIA Light methodology has two perspectives. On the one hand, it allows the selection of those instruments from the entire RIA toolkit whose use is possible, suitable, necessary and proportional, with a view to the concrete case. On the other hand, it also allows the selected tool to be used with different degrees of depth of research, depending on the extent to which it is possible and adequate in the concrete case of application.

The following chapters explain how the importance of impacts and the depth of analysis can best be determined, what possibilities exist for data collection and how a concept can best be reviewed. These mainstream tools provide support for structuring the analysis towards a Final Concept Document.

The starting point for the assessment team's decision is always RIA Complete. For the purpose of this Guide, this comprises the following sequence of 12 examination steps:

- **Step 1: Categorising**  
Draw up an initial list of possible impacts structured into the five main categories and their subcategories.
- **Step 2: SME check**  
Due to the political priority and economic relevance of SMEs, carry out the SME check.
- **Step 3: Implementation plan**  
Review the implementation plan for the proposed concept with regard to the resources required for implementation.
- **Step 4: Importance**  
Estimate the importance of the listed impacts, and make a preliminary decision on the depth and breadth of impact assessment to be carried out for each, given its importance. At this point, it is appropriate to make a preliminary decision as to which assessment route should be chosen, RIA Light or RIA Complete.
- **Step 5: Data and facts**  
Define and carry out the process of gathering data, facts, common knowledge and reasoned expert opinions (internal or external) that could be expected to be relevant to the description of the impacts.
- **Step 6: Standard cost model**  
Measure the efficiency of the implementation of secondary legislation by applying the SCM to quantify administrative costs that can be incurred by businesses, individual citizens and public-sector bodies.
- **Step 7: Cost-effectiveness**  
Analyse the effectiveness of the legislative solutions, and contrast them with the implementation costs to the state budget (CEA).
- **Step 8: Cost-benefit**  
If benefits of the proposed solutions can be determined in monetary terms, compare their monetary value with the implementation costs to the state budget (CBA).
- **Step 9: Comparative**  
Undertake a comparative study to find out how other legislative bodies in Egypt or other countries with comparable contexts have addressed the same or similar subject matter (regulatory comparative check).
- **Step 10: Multi-criteria**  
In special cases, particularly when costs and benefits cannot be expressed in monetary figures, a variety of other non-quantitative criteria can be used to compare the advantages of solutions with the disadvantages associated with their implementation (MCA).
- **Step 11: Necessity**  
Examine whether non-legislative solutions could be as effective or at least similarly

effective to achieve the set general and specific objectives (analysis of the necessity of legislative solutions).

- Step 12: Report  
Elaborate the Assessment Report, and submit it to the Head of Project.

The next sections explain the above steps of RIA Complete in detail. The following chapter deals with the application of RIA Light, i.e. in those cases where it is impossible or unnecessary in practice to use RIA Complete because of the content of the secondary legislation or for other reasons not caused by the concept of the project.

### 3.5.2 RIA Complete

5 For really complex cases, it might be necessary to perform an in-depth assessment, which considers the full range of RIA options and facets. The impact categories and tools to be applied in such cases are shown in the overview below and can be found in PART FOUR. The tools listed below can be used to identify the expected general impacts and determine certain impacts in more detail. These should be examined for each option to which they apply.

Section	Relevant tools
1. Economic impacts	<a href="#">TOOL 1</a> : Identification of economic impacts
2. Social impacts	<a href="#">TOOL 2</a> : Identification of social impacts
3. Environmental impacts	<a href="#">TOOL 3</a> : Identification of environmental impacts
4. Crosscutting impacts	<a href="#">TOOL 4</a> : Impacts on fundamental rights
	<a href="#">TOOL 5</a> : Gender impact assessment
	<a href="#">TOOL 6</a> : Social equity analysis
	<a href="#">TOOL 7</a> : Youth impact assessment
5. Budget impacts	<a href="#">TOOL 8</a> : Costing for concept documents
	<a href="#">TOOL 9</a> : Complying with budget impact assessment

#### Step 1 – Detailed categorisation of expected impacts

1 At the beginning of the RIA process, the Head of Assessment and team need to explore the whole context in which the secondary legislation could have an impact. All possible negative side effects that, although not intended, are likely to be caused during implementation of the concept proposed for the adoption of legislation must be gathered. Government interventions need to be put in a wide context that takes into account all possible effects government actions may have. This entails analysing the five core potential impact categories.

- Economic impacts (PART FOUR, [Tool 1](#)), for example on:
  - Businesses
  - Employees
  - Economic growth
  - FDI.
- Social impacts (PART FOUR, [Tool 2](#) and [Tool 6](#)), for example on:
  - Poverty
  - Education
  - Health
  - Social position of subgroups within society
  - Pensions.
- Environmental impacts (PART FOUR, [Tool 3](#)), for example on:
  - CO<sub>2</sub> emissions
  - Air quality
  - Pollution
  - Waste levels
  - Water quality.
- Crosscutting impacts, for example on:
  - Rights of citizens (PART FOUR, [Tool 4](#))
  - Gender equality (PART FOUR, [Tool 5](#))
  - Youth opportunities (PART FOUR, [Tool 7](#))
  - SME-related impacts (for identification of special impacts on SMEs, see section 2.6.2.2 M# 15)
  - Ethnic minorities.
- State budget impacts:
  - Costing for concept documents (Part FOUR, [Tool 8](#))
  - Budget impact assessment (Part FOUR, [Tool 9](#)).

The categories for the impacts are very broad and the impact in these categories can be positive or negative. This flexibility guarantees that the options suggested in a Final Concept Document consider all types of impacts that the implementation of these options can have.

Which issues should be analysed within the impact categories depends on:

- The problem, its causes and its effects

- The options available or chosen to tackle the problem effectively.

This Guide utilises checklists and questions that are useful to determine whether an impact is expected to occur. If so, the importance and effects of the impact should be assessed.

This approach helps select the impacts that should be analysed in detail, while others can be kept on a more general level. A checklist always lists a range of potential impacts. More than one of these can be relevant for the final concept. When just one impact is expected to be relevant, it may be of high importance and thus needs to be analysed in depth.

### *Step 2 – SME check*

3

SMEs are the backbone of most economies. Since they are small and employ few people, SMEs face much higher regulation costs compared to large companies. Most of the administrative fees are identical for both categories. Additionally, SMEs often have to work with external specialists, such as accountants and lawyers, whereas large companies have specialists in finance or legal departments. Most SMEs lack the economy of scale to employ financial and legal specialists directly.

The legal definition of SMEs includes:

- Microenterprise (up to 9 employees)
- Small enterprise (10 to 49 employees)
- Medium-sized enterprise (50 to 249 employees).

Companies with 250 or more employees are considered large companies.

The goal of the SME test is to make legislation, administrative rules and procedures SME friendly. These have to be easy to understand and easy to apply. To achieve this goal, the situation of SMEs must be analysed for the Final Concept Document or Legal Draft Proposal.

The ten goals of modern SME-friendly policies and legislation are to:

1. Create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded.
2. Ensure that honest entrepreneurs who have faced bankruptcy can quickly get a second chance.
3. Design rules that SMEs can comply with easily.
4. Make public administrations responsive to the needs of SMEs.
5. Adapt public policy tools, including public procurement procedures, to SME capabilities.
6. Facilitate SMEs' access to finance.
7. Promote a positive legal and business environment for SMEs, and apply legislation to SMEs only if really necessary.
8. Support skills upgrading in SMEs and all forms of innovation.
9. Enable SMEs to turn environmental challenges into opportunities.
10. Encourage and support SMEs to benefit from the growth of markets.

The SME test is a mix of analysis and consultation that improves insight into the challenges and opportunities SMEs face. This filter enables the development of legislation that is attuned to the needs and specifics of SMEs. The test is executed in five steps, as listed in the overview below.

<i>Steps in the SME test</i>	<i>Explanation</i>
1. Consulting SME stakeholders	When the concept document deals with issues relevant to SMEs, they should be consulted directly. This should be done in addition to any other public consultation. Consultations could include interviews, round table discussions, focus group meetings or hearings. SMEs should be engaged in these consultation activities to the greatest extent possible. Alternatively, consultation could be directed at organisations that represent SMEs, e.g. the Alexandria Business Association ( <a href="https://aba-eg.org">https://aba-eg.org</a> ) and the Egyptian Micro, Small and Medium Enterprises Development Agency ( <a href="http://www.msmeda.org.eg/">www.msmeda.org.eg/</a> ).
2. Identifying affected SMEs	Consultation helps determine more precisely which SMEs and which business sectors could be affected. This enables important information gathering, such as the number of SMEs, the number of staff they employ, their role in business supply chains, the value of their sales to consumers, and more.
3. Measuring the impact on SMEs	<p>The costs related to complying with legal requirements is the most relevant parameter. These costs, in comparative proportional terms, are always much higher for SMEs than for large companies. This reduces the possibilities for SMEs to compete, which in turn hinders economic growth and blocks the creation of jobs.</p> <p>Costs typically arise from the obligation to pay fees or duties, adapt work processes, purchase new equipment, train staff and other investments. Administrative burdens are assessed based on SCM methodology, explained in section 3.5.2.6.</p> <p>The costs of identified impacts on SMEs should be compared with those on large enterprises. Comparing costs based on company size – e.g. on general revenue or, better, per employee – shows the relative costs and makes it easy to compare the effects on companies of different sizes.</p>
4. Setting SME-friendly policies	In many cases, it is not appropriate to impose one-size-fits-all legal requirements on both SMEs and large companies. Such solutions typically entail much higher costs for SMEs, which often are not justified. Only when SMEs and large companies are in the same situation (for example, when they deal with the same amount of hazardous substances or when risks to workers are identical) should the rules be equal for both.

<i>Steps in the SME test</i>	<i>Explanation</i>
	<p>The aim of the SME test is to harmonise regulations with the needs and specific situation of SMEs. When new requirements are necessary, they should be introduced. However, the introduction should be done in a SME-friendly way.</p> <p>There are many possibilities to design legislation and sub-legal acts in line with the needs of SMEs. Some of the options are:</p> <ol style="list-style-type: none"> <li>1. Full or partial exemption from legal obligations based on company size</li> <li>2. Full or partial exemption from legal obligations based on the risk that a company causes</li> <li>3. Longer deadlines to comply with legal requirements</li> <li>4. Reduced or adjusted fees based on company size</li> <li>5. Simplified reporting obligations (complexity, as well as number of reports p.a.)</li> <li>6. Specific information campaigns or user guides, training and dedicated help desks</li> <li>7. Simplified inspections (complexity, as well as longer intervals).</li> </ol>
5. Defining how SMEs will be informed about the new measures	<p>Developing SME-friendly policies needs to be effectively communicated to those that are affected by such policies. Existing SMEs need to be informed about the measures that are meant to benefit them. In addition, people who might be willing to start businesses or move their business activity from the informal to the formal sector need to be made aware of the improved conditions under which they can operate.</p> <p>The implementation plan needs to address the issue of informing the relevant target groups. This can be done through information campaigns, leaflets, conferences, social media, etc. and needs to be addressed to the target groups (lines of business/trades) that are specifically relevant.</p>

### *Step 3 – Assessment of the implementation plan*

4

Besides all the technical checks to be performed on the project, the plausibility of the underpinning implementation plan(s) needs to be assessed. This requires a review of each option and its activities considered in the concept regarding:

- Effectivity of actions vis-à-vis fulfilment of objectives
- Realistic implementation schedule
- Realistic and efficient resource requirements.

The whole range of costs is clearly delineated by the implementation plan, which suggests that they be assessed here in the context of the implementation plan. This step of the assessment



should not only reflect the pure cost side of the plan but also its effectiveness. As well, the practicality of the implementation schedule should be carefully examined. All three areas should be considered in the subsequent consideration processes.

1 Costs should be distinguished between those for setting up the organisational infrastructure and the permanent operating costs incurred during the application of the secondary legislation.

Set-up costs can range from the small cost of purchasing office supplies or the new computer software needed for additional activities up to the investment required to create a new agency, with its own building, fleet of vehicles, IT equipment, etc.

When the application of secondary legislation entails new activities for an authority, operational costs are also always annually recurring, unless it results in the elimination of equally high costs for existing activities. The new costs can consist of additional consumption of material or energy and of additional personnel costs in the medium term, for example in cumulation with other new tasks.

In this phase of the assessment process, it is important to identify and list only the cost-generating measures. The qualitative and quantitative specification through data and facts should – as with the impacts – take place in Step 4.

1 The implementation plan must also be examined with a view to its effectiveness. This means assessing whether the infrastructure proposed for the application of secondary legislation is suitable and sufficient to achieve the set goal of the enacted secondary legislation.

1 Last, the Head of Assessment and team should check that the time frame and milestones in the concept document for the implementation of the concept is realistic. Frequently, the duration of an implementation phase is underestimated. Periods of three to five years are not uncommon to prepare the implementation and to ensure that the application of the new regulations has become routine.

Any reason for concern about plausibility and suitability of the implementation plan needs to be documented in the Assessment Report.

#### *Step 4 – Importance of impacts and depth of analysis*

3 To ensure that an analysis is done efficiently, a limit needs to be set that considers the importance of each impact. In practice, this means that, for concepts that address topics of a problem that is limited in scope, analysis can be concise. Naturally, concept documents that address societal issues will have a longer list of important impacts. The nature of the expected impacts and their importance determines the time and effort needed to complete the analysis. This needs to be considered when planning the development of recommendations of a Final Concept Document or Legal Draft Proposal.

The importance of impacts is determined based on the following factors:

- Number of organisations, companies and individuals affected by the impact
- Expected costs of the impact
- Effects of the impacts on achieving the strategic goals of the government, national programmes

- Categorisation of the impacts (e.g. causing serious environmental damages, emitting climate-damaging gases, aggravating the labour market situation for young people)
- Labour market situation for young people
- Crosscutting effects.

The importance of the impact also should guide the way in which it is analysed. Data collection efforts should be prioritised for impacts that are expected to be important. These impacts should also be consulted on while the Final Concept Document is reviewed, for example through consultation and discussions with affected stakeholders. Two factors – number of affected natural or legal persons AND cost-benefit – together determine the importance of impacts. The four combinations of the two define the preferred level of analysis for the impacts, as shown in the overview below.

<i>Importance of impacts</i>		<i>Preferred level or depth of assessment</i>
High number of affected organisations, companies and individuals	High expected benefit or cost of the impact	Impacts need to be analysed in depth and supported by (targeted) consultation and data collection.
High number of affected organisations, companies and individuals	Low expected benefit or cost of the impact	Impacts need to be presented in qualitative terms and supported by targeted consultation. Present data when it is easy to obtain.
Low number of affected organisations, companies and individuals	High expected benefit or cost of the impact	Impacts need to be analysed in depth and supported by (targeted) consultation and data.
Low number of affected organisations, companies and individuals	Low expected benefit or cost of the impact	Impacts can be presented in qualitative terms. Only present data when it is easy to obtain.

For other impacts, according to the RIA Light approach, a list should be made of the RIA Complete steps that should be applied, sorting the assessment priorities, including:

- How deeply should the analysis assess any details?
- What means should be used to obtain information and data?

- What types of data (qualitative, quantitative, statistical, projected prognosis, etc.) should be collected?
- What form of presentation should be used?

The section below on data collection details how to complete the above table.

It should be emphasised that this importance analysis should only be a preliminary methodological filter. In the course of the further steps of the procedure, it may turn out that steps originally planned are not possible or necessary or that additional steps are necessary.

#### *Step 5 – Data collection*

4

Analysing a concept is about recognising the problem and assessing suggested solutions as to its causes and effects. This tool presents a range of possibilities for gathering concept data. By no means do these specific tools provide a complete overview of data collection possibilities. Concept development and analysis are important and complex tasks. The information that helps develop a concept document can be found in various places.

Major effort is needed to substantiate the whole process with credible evidence. Whenever possible, scientifically acknowledged, valid data (quantitative criteria) must be gathered and presented. Facts that cannot be expressed quantitatively have to be proven by other means, unless they are generally known and accepted. Sometimes, particularly for prognoses, assumptions must be made that can only be based on the experience of independent and impartial experts and their (scientifically validated) opinions. In these cases, special attention should be paid to ensuring that assumptions are well reasoned and not too vague or interest driven.

The characteristics of data will depend on the subject matter. While statistics will mainly provide numeric and tabular information, reports usually contain more narrative and qualitative statements.

Data collection takes place during the entire process of developing the concept document. This is due to the nature of concept analysis. This analysis leads to insight, insight leads to questions, questions lead to research, and research leads to answers. Concept documents deal with very different topics. There is no single recipe for data collection that can be applied to all concept documents. There are several approaches that can be helpful. These are presented in the overview below.

<i>Data collection approach</i>	<i>Explanation</i>
Consultation	<p>The quality of policy analysis and assessment benefits from the input of experts, stakeholders and people who are affected by a problem, specialists who have worked on specific issues and many others.</p> <p>Involving such groups in the analysis for a concept document provides a shortcut to useful information. Stakeholders can provide information, including on:</p>

<i>Data collection approach</i>	<i>Explanation</i>
	<ul style="list-style-type: none"> <li>• Problems, causes and effects</li> <li>• Existing reports and other information sources</li> <li>• Feedback on expected impacts and how to assess them</li> <li>• Any other issue that could be relevant for the analysis.</li> </ul> <p>Consultation plays a crucial role in policy analysis. It is described in more detail in the section on stakeholder consultation.</p>
Data collection programme	<p>Data can often be gathered within a reasonable amount of time. This is important and effective work, since it provides a much better picture of the situation and will often show in a straightforward way what kind of issues exist. As a consequence, the data that is collected for a concept document often directly leads to insights into possible options to better address the identified problem.</p> <p>A data collection programme can often be combined with specifically focused (individual) and public consultations. Stakeholders can provide reports, analysis and other relevant input.</p>
Central Agency for Public Mobilization and Statistics ( <a href="http://www.capmas.gov.eg/">www.capmas.gov.eg/</a> )	<p>The Central Agency for Public Mobilization and Statistics collects and publishes a wide range of statistics that can be used for strategic development. These statistics, for example, describe the situation of economic sectors or provide an overview of the existing transport infrastructure. When statistics are collected, they can be very useful, particularly for further assessing the problem definition and objectives and identifying options.</p>
Reports etc. developed by government bodies	<p>The administration is a collection of organisations. Contacting those that seem relevant to the issues for which the concept document is made can be a quick way to get useful data, reports and other information.</p>
CSOs	<p>Egypt enjoys a diverse community of CSOs. Contacting those that seem relevant for the particular concept document can be a quick way to gather useful data, reports and other information.</p>
Reports etc. developed by other countries and international organisations	<p>A lot of policy information exists. Organisations that are used to analysing the expected effects of policies and legislation through impact assessment (or conduct evaluations of effects that actually materialised) normally publish their reports online. The EU, Germany and the United Kingdom are three examples of where relevant information could be</p>

<i>Data collection approach</i>	<i>Explanation</i>
	<p>found. They also provide reports in foreign languages that members of the project group for developing a Final Concept Document might speak.</p> <p><u>Important note:</u> impact assessments, evaluations and other reports by <u>international organisations and other countries</u> are developed with respect to their specific political and legal environment. This means that the information from such reports has to be double-checked and critically assessed for their relevance to Egypt.</p>

### *Step 6 – Standard cost model*

5 Legislation and its regulations usually impose various actions on companies, e.g. reporting on various financial issues, complying with zoning rules for building houses, and many more.

A specific subset of legal obligations is referred to as administrative costs. These are the costs that are caused because legal requirements demand that companies submit information to a public authority or share this information with others. Since the SCM calculates the costs of legal requirements, it only needs to be used for the options dealing with the requirements for businesses related to administrative costs that include either drafting a new or amending an existing piece of legislation, regulation, decree or legal requirement.

Administrative costs are information obligations with which companies are obliged to comply.

Under the SCM, the provision of information based on official regulatory obligations is defined very broadly. The concept addresses all activities, such as labelling, reporting, registration, monitoring, research, assessment and quality control, that are necessary to provide the information.

The managing of information is defined in two ways. Some information has to be actively reported to public authorities or private parties. Other information can be archived, so that it is available, e.g. for inspection, or can be submitted upon request. Both types of information fall under the definition of administrative costs.

Administrative costs are designated as recurring or one-off. Applying for a permit, for example, can be a recurring cost, since a permit may have to be renewed after a number of years. Investing in training or other activities to ensure that staff understand new legal requirements is an example of a one-off cost.

Internationally, the SCM<sup>52</sup> is mainly used for determining the administrative costs for companies. However, it can also be used to calculate administrative costs for citizens and public authorities. Eventually, the application of the SCM can be broadened. The SCM is a specific tool for policy

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<sup>52</sup> *Standard Cost Model Manual* ([www.oecd.org/regreform/regulatory-policy/34227698.pdf](http://www.oecd.org/regreform/regulatory-policy/34227698.pdf)).

development by civil servants. Information sources and capacities need to be developed to ensure the proper application of the SCM.

Administrative costs are split into two components:

- Business-as-usual costs are incurred when information that is essential to the functioning of a business is collected and processed. This information would also be maintained in the absence of a legal obligation. For example, companies would usually collect information on the number of employees and their wages or salaries.
- Administrative burdens are incurred when information is only collected because there is a legal obligation. Companies need to collect and share information with tax authorities. They must make sure that their systems for paying salaries also provide information on “source income tax” and other tax or social security-related issues. In addition, companies must inform staff about taxes withheld as income tax. Companies only do this because they are legally obliged.

Consequently, the SCM will be obligatory for concept documents that deal with or result in administrative burdens for companies.

#### 3.5.2.1.1 Standard cost model to measure efficiency

The SCM helps measure the efficiency of the implementation of legislation. It does not judge a legal requirement, as such. A typical example is companies that are legally obliged to collect information, since they must pay taxes. The fact that the information is needed is obvious. The SCM takes the need for information for granted. However, the SCM assesses the efficiency of the process and the detailed requirements with which companies must comply when they provide information. The SCM *de facto* assesses the quality of implementation of legal requirements and provides information on how to make the implementation more efficient.

##### *Preparation for calculating administrative burdens*

Administrative burdens are an important factor when deciding how legal requirements should be drafted. The overview below shows the steps that need to be completed in order to make SCM calculations.

<i>Steps in the calculation process</i>	<i>Explanation</i>
1. Gather all relevant information	Collect the latest version of the law(s) or sub-legal act(s) that are dealt with in the concept document. Collect the templates and other documents linked to the implementation of the legal requirements.
2. Identify all information obligations	Have the <i>Standard Cost Model Manual</i> at hand.
3. Make the first SCM calculation	Screen the law(s) or sub-legal act(s) on information obligations. List them in a separate Excel document for making SCM calculations.

<i>Steps in the calculation process</i>	<i>Explanation</i>
4. Contact ERRADA for further support	Get in touch with the ERRADA <sup>53</sup> about completing SCM calculations. The secretariat can help with the collection of statistics on the number of companies, setting of wage levels and the other SCM factors.
5. Consult with business organisations and individual businesses	This step is essential when completing SCM calculations. It is necessary to validate the data of SCM calculations.
6. Define detailed options for the legislation	ERRADA can assist with this process as well and can work on this and the following steps.
7. Choose the least burdensome option for new information obligations	With SCM data at hand, choose the least burdensome option for businesses that allows reaching the specific objectives.
8. Check whether existing information obligations can be simplified	When the concept covers the option to change legislation, check whether it is possible to simplify existing information obligations. Do this even when the problem definition did not cover administrative burdens as a cause or effect of the problem. The SCM allows improving the efficiency of legal requirements. Every opportunity to lower administrative burdens should be used.

#### 3.5.2.1.2 SCM calculation method

Administrative costs and burdens may be determined when a concept document is being developed or else is obligatory in the scope of the assessment of a concept. The SCM works with four key variables:

- Hourly wage (average)
- Time needed to complete the information obligation
- Number of companies that must complete the information obligation
- Frequency at which the information obligation must be completed.

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<sup>53</sup> In a centralised assessment regime (RIA) ([www.errada.gov.eg/](http://www.errada.gov.eg/)), ERRADA would be a focal candidate to take this obligation.

The variables<sup>54</sup> *hourly wage* and *time needed* have to be estimated. The *Standard Cost Model Manual* details how the wage level is determined with standardised values. The time needed to fulfil obligation relies on common sense evaluation, when necessary through interviews with experienced stakeholders. A concept document also needs to set the framework for these two variables by identifying ways to collect and transfer the information that will keep the administrative burden as low as possible.

The *number of companies* that must complete the information obligation is defined by law. The analysis for the concept should evaluate and clearly define which companies have to comply, e.g. based on various categories defined by the company register.

The *frequency* at which information has to be provided is also defined by regulation. Thus, the concept document should analyse the optimal frequency, wherein the benefits of the information provision are weighed against the administrative burdens. The frequency also depends on the mix of measures that are available to steer the activities of companies. It is important to note that higher administrative burdens for companies and citizens most often also result in higher costs for the implementation of policies – including for the government. After all, the information generated and provided by companies needs to be processed and stored by the administration. Generally, the smaller the company, the less frequent its reporting obligations should be.

The table below shows how the SCM combines the four variables and how they originate from a regulation or other sub-legal act.

Regulation (Secondary legal and sub-legal acts)			
Identification of reporting obligations			
Assessment of administrative activities			
Wage/hour ( <b>t</b> ) USD 10	Time ( <b>h</b> ) 2.5 h	Sample ( <b>n</b> ) 1.000 companies	Frequency ( <b>f</b> ) 4 x p.a. (quarterly)
Cost of the administrative activity Price ( <b>P</b> ) = $t \times h = 10 \times 2.5 = \text{USD } 25$		Annual administrative activity Quantity ( <b>Q</b> ) = $1.000 \times 4 = 4.000$	
Total administrative activity burden = <b>P x Q</b> 25 x 4.000 = USD 100.000			

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<sup>54</sup> Information Decision Support Centre, affiliated to the cabinet; Central Agency for Public Mobilization and Statistics, affiliated to the presidency. SME-relevant data may be obtained from the Alexandria Business Association (<https://aba-eg.org/>).



What is valid for businesses will also concern public administration, when it comes to dealing with the consequent additional information inflow and resulting activities.

*Example: Options for grading measures and related reporting obligations*

Building a chemical processing plant takes several years. It also can take a year or two before the plant is operating at full capacity. Testing new equipment, working out supply chains in detail and other factors mean that a plant also needs time before it is fully in use. If a company gets a five-year permit, there is a risk that the permit is not renewed, and no investments will be made, no jobs will be created, and the state will not see increased income from taxes.

Providing a permit for 20 years or more provides a basic guarantee to a company that it can build and expand its business over time. Inspections enable the administration to keep track of what happens in the chemical plant and whether legal requirements are being followed. If not, the company can receive a fine. When the company causes severe risks, its operations can be shut down. Inspections thus provide a guarantee that risks are kept low and that companies follow the legal requirements.

Permits and inspections can work well together. The SCM provides insight into the costs of complying with both information obligations. This is useful for the analysis for a concept document and helps with setting proper criteria for both.

*Example: Permit and inspection*

The government can make use of a set of tools that affects the activities and behaviour of companies. By demanding a permit for certain business activities, the number of companies performing them can be limited to those that follow strict professional standards. For example, a chemical processing plant needs to have a permit to make sure that the company takes the necessary measures to prevent disasters and has well-trained employees.

How often this permit needs to be renewed is an important factor in investment decisions. It is important for a company to know that its permit will be valid for a long time so that investments will be profitable over time. Yet, a permit provides information at specific points, for example every 5, 10 or 20 years. During the years between permit applications, the administration can use inspections to ensure that companies comply with legal requirements and that risks are kept low.

Combining permits with inspections gives the administration a powerful set of tools. They can work very well together when they are adjusted to each other and consider the needs of companies and their investments. The opposite is also true: permits with short durations and excessive inspections deter companies from starting business activities. For high-risk activities, this can be justified, but for many other business activities, it only leads to a loss of economic growth and a lack of jobs. An important factor in this context is the proportionality of burdens imposed on SMEs versus large companies (see details in SME check).

### Step 7 – Cost-effectiveness analysis

CEA compares the options based on the costs needed to achieve the intended result. These results can be benefits that are sometimes hard to quantify in monetary terms. This applies, for example, to such benefits as increased life expectancy, improved quality of education and reduced pollution. CEA shows the value for money an option delivers.

For CEA, the intended result has to be clear and easily comparable. The approach requires a detailed understanding of the costs necessary to implement actions and how the activities that are financed will achieve the required result.

6

For the purpose of comparative CEA, “costs” covers:

- Administrative costs of individuals and businesses (as defined in [section 2.6.2.5](#) M# 35)
- Monetary/financial and non-material impacts on individuals and businesses (as described in [section 2.6.2.1](#))
- Set-up and recurring operational costs of the public sector (as defined in [section 2.6.2.3](#)).

CEA works best when there is one main target that should be reached and when this target is clear. As such, the target should be supported politically and endorsed by all affected stakeholders. When the expected target is achieved, a lot of additional benefits can also come from it. These do not need to be added to CEA but should always be presented in the analysis for the concept document.

CEA can also be performed by setting a fixed maximum budget<sup>55</sup> for reaching general or specific objectives. That budget must be realistic and therefore within the budget ceiling of a ministry, unless the government agreed to make additional budget available.

The overview below shows a fictitious example of CEA. This way of presenting information can be used in concept documents.

<i>Overall target: decrease primary school drop-out</i>			
Cost-benefit	Option 1: no change	Option 2: adjust school curriculum	Option 3: increase school inspections and visits to parents
Expected decrease in drop-out rates based on analysis	0	50% on average per school	12% on average per school

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<sup>55</sup> The Plan and Budget Committee in parliament may approve special implementation budgets; without budget – where necessary – a new regulation cannot become effective.

<i>Overall target: decrease primary school drop-out</i>			
Changes needed	-	One additional part-time teacher and one additional support staff per school	One school inspector per school
Cost	-	USD 8.000 per school per year	USD 5.000 per school per year
Total extra costs based on 1 000 schools		USD 8 million per year	USD 5 million per year
Result	No change	EUR 160.000 (euro) per percentage drop (USD 8 million/50%)	EUR 417.000 per percentage drop (USD 5 million/12%)

The example shows the relation between the costs and the value for money. However, it does not automatically follow that the most cost-effective option – in this simplified case, option 2 – is the one that can be implemented best.

The final factor that needs to be considered is the actual available budget. The total costs for all schools still have to be within the budget that is actually available for decreasing school drop-out rates. This is a decision that needs to be addressed in the concept document and relates to [section 3.5.2.3](#): Assessment of implementation plan, [Tool 8](#): Costing for concept documents and potentially [Tool 9](#): Complying with budget impact assessment.

<i>Step</i>	<i>Explanation</i>
1. Identify the result that needs to be achieved	CEA is a method of comparing various options that intend to achieve a specific result. This must be the same for each option, otherwise the comparison cannot be made properly. This result can often be related to eliminating the very problem or its most important drivers or effects. The result that needs to be achieved can be broadly formulated, for example reducing lead levels in a river by at least 50% within five years. This target can be achieved through various means, such as legislation on pollution levels caused by factories and mines, subsidies or tax incentives to install equipment that prevents pollution, relocating industry, closing factories and mines, or other options.

<i>Step</i>	<i>Explanation</i>
2. List the options	Assess the options to achieve the result. They should always include the no change option and, if the options refer to improving the existing regulatory framework, the option to improve implementation of the existing legal framework.
3. Determine the actions needed for implementation	<p>The options will usually differ in how they need to be implemented. For each option, section 3.4.4: Implementation plan needs to be used to develop a detailed overview of the activities necessary to make an option work in practice. For CEA, a summary of the implementation plan can be used in the comparative table.</p> <p>CEA needs to consider the activities that have to be developed by all affected organisations: ministries, municipalities, agencies, companies, citizens, etc. The logic of the implementation plan can be applied to organisations that are not part of the administration. Companies and citizens are meant to comply with policies and legislation. This means that they will have to change the way they do things, as does the administration.</p>
4. Determine the costs to society	<p>The implementation plan provides the basis to determine the costs for each option. <a href="#">Tool 8</a>: Costing for concept documents provides the guidance for this.</p> <p>The measures that have to be implemented and carried out by companies, citizens, municipalities and other organisations also need to be costed. This provides a complete picture of the total costs to society, which are linked to the implementation of an option. Section 3.5.2.6 provides a practical method to determine <u>the costs that follow</u> from the implementation of regulations. Additional methods for defining the costs will probably also have to be used. However, the logic behind the SCM provides a useful approach.</p>
5. Compare costs, and choose the best option	<p>The final step in CEA is comparing the options and choosing the one that is:</p> <ol style="list-style-type: none"> <li>1. Most cost effective</li> <li>2. Fits within the budget.</li> </ol> <p>This can be either the budget ceiling of a ministry or the additional budget allocated by the government or donors for achieving the result.</p>

#### *Step 8 – Cost-benefit analysis*

CBA compares the options by calculating the monetary value of the costs and benefits. It builds on the possibilities of expressing the significant benefits and costs in monetary terms. This approach requires substantial amounts of data and is therefore more demanding than CEA. CBA is useful when one of the options presented in the concept document introduces completely new programmes or legal requirements. CBA provides information on the actual added value of new initiatives. Consequently, the basis point for measuring or calculations is always the status quo, i.e. the no change option.

The main advantage of CBA is to provide a useful comparison between very different kinds of impacts of the options. It can also be used for comparing options that would contribute to reaching two or more targets.

There are two types of CBA analysis:

- **Full CBA:** all relevant costs and benefits are monetised
- **Partial CBA:** applied only when the most significant costs and most significant benefits can be expressed in monetary values.

CBA is very useful when the concept document addresses the possibility of starting a completely new intervention. CBA shows the added value of new interventions as “net benefits” and therefore provides insight to assess whether interventions are worthwhile. The final factor that needs to be considered is the actual available budget, which relates to [section 3.5.2.3: Assessment of implementation plan](#), [Tool 8: Costing for concept documents](#) and potentially Tool 9: Complying with budget impact assessment.

Step	Explanation
1. List the options and all benefits and costs	CBA lists the options that were identified during the analysis for the concept document, with all relevant benefits and costs. The options will always include the no change option and, if the options refer to improving the existing regulatory framework, the option to improve implementation of the status quo. The approach behind CBA is straightforward. The expected costs are deducted from the expected benefits. Those that matter need to be identified and listed in the CBA overview.
2. Determine the value of the benefits	The benefits are the justification for policies and legislation. Government action has to improve the situation of people, companies and society. CBA only adds value when the relevant benefits can be assessed properly in monetary terms. This enables the data to be presented in a partial CBA. Unfortunately, it is not always straightforward to express the benefits in monetary terms. Economic benefits often are the easiest to determine, since a lot of research and experience exists. Environmental benefits can be assessed when, for example, the costs of pollution can be determined and, as a result, the monetary benefits from reduced pollution can be set against the

Step	Explanation
	<p>investments needed to reach the pollution reduction.</p> <p>For CBA, the benefits regularly need to be assessed on a case-by-case basis, with clear assumptions supporting them. It can be very valuable to use the process of public consultation to find out more about the benefits or the reasonable assumptions that can be used or to verify the data that has been collected for the concept document.</p> <p>Important: if during this step, the relevant benefits cannot be easily determined in monetary terms, it is probably more useful to select another tool for comparing the options in the concept document. In such cases, CEA is likely to be more appropriate. If CEA is not possible either, MCA needs to be developed.</p>
3. Assess the actions required for implementation	<p>The implementation plan provides the basis to determine the costs for each option. <a href="#">Tool 8</a>: Costing for concept documents provides the guidance for this.</p> <p>The actions that have to be performed by companies, citizens, municipalities and other organisations also need to be costed. This provides a complete picture of the total costs to society, which are related to the implementation of an option. <a href="#">Section 3.5.2.6</a> provides a practical method to determine the costs that follow from the implementation of legislation. Additional methods of defining the costs will probably also have to be used. The logic behind the SCM provides a useful approach.</p>
4. Determine the costs to society	<p>The options will differ in how they need to be implemented. For each option, <a href="#">section 3.5.2.4</a>: Assessment of implementation plan can be used to develop a detailed overview of the activities necessary to make an option work in practice. The Multi Criteria Analysis, a summary of the implementation plan can be developed for the comparative table.</p> <p>MCA needs to consider the (new) activities that have to be developed by all affected organisations: ministries, governorates, municipalities, agencies, companies, citizens, etc. The logic of the implementation plan can also be applied to organisations that are not part of the administration, such as companies and citizens.</p>
5. Compare costs and rate the best option	<p>The final step in CBA is comparing and choosing the option that:</p> <ol style="list-style-type: none"> <li>1. Yields the most net benefit</li> <li>2. Fits within the budget.</li> </ol> <p>This can be either the budget ceiling of a ministry or the additional budget allocated by the government or donors for achieving the result.</p>

The best solution provides maximal benefit, while remaining within the budget.

### *Step 9 – Regulatory comparative check*

8 It is not always easy to set legal standards and requirements. When they are too demanding and too complex, they might miss their goal completely. When they are too soft, they might not (fully) reach the intended goals either.

The regulatory comparative check helps with setting standards that are comparable with those set by other legislative bodies (ministries, administrative agencies) in Egypt. Other countries – in the region or whose legislative solutions in certain areas are acknowledged to be particularly successful and effective – could also serve as suitable sources of information. It is always advisable to study their experiences in the relevant area. Even if the Head of Project and team have already used such a comparative approach in the course of concept development, it might be worthwhile for the assessment team to examine the results of other Egyptian authorities or other countries.

1 The overview below shows the steps that should be executed for the regulatory comparative check and how the collected data should be used.

<i>Steps of the regulatory comparative check</i>	<i>Explanation</i>
Step 1	Identify the issues for which to analyse how <u>Egyptian bodies</u> or <u>other countries</u> dealt with them.
Step 2	Select the Egyptian bodies and the countries of the region for the comparison. If necessary, the comparison can be extended to countries outside the region, when these seem to be more relevant for the analysis. This selection should, of course, be linked to the language skills of those working on the regulatory comparative check or the translation capacities available.
Step 3	Search the Internet for relevant documentation: laws, sub-legal acts, forms, procedures, etc.
Step 4	Analyse and summarise the main issues in a table comparing the selected countries.
Step 5	For more information, contact the ministries and other government organisations in Egypt and/or other selected countries.
Step 6	Discuss the analysis in the assessment team. Decide on the line to take.
Step 7	Include in the Assessment Report a short, substantive reference to the approaches found to be useful examples, and provide the sources (URLs).

## Step 10 – Multi-criteria analysis

2

So far, several comparison tools were used to summarise and present data for the concept document. These tools all try to identify the best-fit option that will be further developed and actually implemented.

The prerequisites that need to be fulfilled in order to apply these comparison tools vary. The most important determinant is whether the relevant benefits and costs can be presented through concrete statistics, figures and numbers (also referred to as quantitative terms). The topic or solution presented in the concept document, the data that is available and other conditions (time available, political guidance, etc.) define, to a great extent, the best type of comparison tool to use. The comparison tools and their most useful application are repeated in the overview below.

- CEA compares the costs needed to achieve a specific result. It assesses options based on the value for money that they provide.
- CBA compares the options through calculating the monetary value of the costs and benefits. It assesses options based on the net benefits.
- MCA is a default tool that should only be applied when CEA and CBA cannot be applied or did not deliver satisfactory results. It needs to be handled with great care. It is used to compare options that cannot be quantified or easily compared.

MCA is usually a challenging method for analysing and assessing legislating options and solutions. MCA is applied when a policy aims to achieve multiple results or very differing results, while the main benefits and costs cannot be expressed in monetary terms. It can also be useful when the costs or benefits of options affect certain groups disproportionately.

However, MCA is complex, since decisions that are prepared based on this approach will be hard to pin down and can be very subjective and, as a consequence, can be very political or manipulative as well.

The final factor that needs to be considered is the actual available budget, which relates to [section 3.5.2.3](#): Assessment of implementation plan, [Tool 8](#): Costing for concept documents and potentially Tool 9: Complying with budget impact assessment.

Step	Explanation
1. List the options and all benefits and costs	Review the potential options to achieve the result. These options will be identified during the analysis for the concept document. They will always include the no change option and, if the options refer to improving the existing regulatory framework, the option to improve implementation of the status quo. In addition to the options, the related costs and benefits need to be listed.



Step	Explanation
2. Determine the value of the benefits that can be monetised	<p>The benefits are the targets of policies and legislation. Government action has to improve the situation of people, companies and society. MCA is used because the most important benefits cannot be quantified. Yet, when some benefits can still be expressed in monetary terms, this should still be done.</p> <p>There are no specific tools to determine the value of the benefits. Mostly, it is harder to express the benefits in monetary terms than to determine the costs. The benefits often need to be assessed on a case-by-case basis, with clear assumptions supporting them. It can be very valuable to undertake public consultation to find out more about the potential benefits and reasonable assumptions, which can be used to verify the data collected for the concept document.</p>
3. Provide additional available data on non-quantifiable benefits	<p>An explanation needs to be provided for the benefits that cannot be expressed in monetary terms. Where possible, useful data should be added to the comparison table, for example data on the number of positively affected citizens.</p>
4. Determine the actions needed for implementation	<p>The options will differ in how they need to be implemented. For each option, the <a href="#">section 3.5.2.3</a>: Assessment of implementation plan can be used to develop a detailed overview of the activities necessary to make an option work in practice. For MCA, a summary of the implementation plan can be developed for the comparison table.</p> <p>MCA needs to consider the activities that have to be developed by all affected organisations: ministries, municipalities, agencies, companies, citizens, etc. The logic of the implementation plan can be applied to organisations that are not part of the administration, such as companies and citizens.</p>
5. Determine the costs to society	<p>The implementation plan provides the basis to determine the costs for each option. <a href="#">Tool 8</a>: Costing for concept documents provides the guidance for this.</p> <p>The actions that have to be performed by companies, citizens, municipalities and other organisations also need to be costed. This provides a complete picture of the total costs to society, which are related to the implementation of an option. <a href="#">Section 3.5.2.6</a> provides a practical method to determine the costs that follow from the implementation of legislation. Additional methods of defining the costs will probably also have to be used. The logic behind the SCM provides a useful approach.</p>

<i>Step</i>	<i>Explanation</i>
6. Provide additional available data on non-quantifiable costs	An explanation needs to be provided for the societal costs that cannot be expressed in monetary terms. Where possible, useful data should be added in the comparison table.
7. Compare options, and choose the most appropriate	The final step in MCA is comparing the options and choosing the one deemed the best way forward. The choice needs to rely on professional judgement and consultation, as MCA does not provide easy comparison like CEA or CBA. In addition, the best option needs to fit within the financial resources defined by the budget ceiling of a ministry. Alternatively, additional budget needs to be allocated by the Ministry of Finance or provided by donors.

The goal and purpose of MCA is to enable an overall view of all the identified advantages and disadvantages of a legislative project and to undertake a final balancing. The following table may be useful to organise a comparative analysis using the mixed quality of data collected according to the above MCA steps.

<i>STEP 1 – Validation of benefits</i>			
<b>Option/Solution 1</b>			
Benefit 1	Quantitative values	Non-quantitative values	Benefit value 1-10
Benefit 2...	Quantitative values	Non-quantitative values	Benefit value 1-10
<b>Option/Solution 2...</b>			
Benefit 1	Quantitative values	Non-quantitative values	Benefit value 1-10
Benefit 2...	Quantitative values	Non-quantitative values	Benefit value 1-10
<i>STEP 2 – Validation of impacts and costs</i>			
<b>Option/Solution 1</b>			
SME impacts	Quantitative level	Non-quantitative level	Impact level 1-10
General impacts	Quantitative level	Non-quantitative level	Impact level 1-10
Admin. Costs	Quantitative level		Impact level 1-10
Implem. Costs	Quantitative level	Non-quantitative level	Impact level 1-10
<b>Option/Solution 2....</b>			
SME impacts	Quantitative level	Non-quantitative level	Impact level 1-10
General impacts	Quantitative level	Non-quantitative level	Impact level 1-10

Admin. Costs	Quantitative level		Impact level 1-10
Implem. Costs	Quantitative level	Non-quantitative level	Impact level 1-10
<i>STEP 3 – Comparative summary</i>			
Option 1	Total benefit #A	<u>Total impact</u> = #B 4	Result #A-B
Option 2	Total benefit #A	<u>Total impact</u> = #B 4	Result #A-B

### *Step 11 – Necessity of a legislative solution*

3

At the beginning of the assessment phase, and particularly at the end, when the impacts of a legislative solution were evaluated, questions related to the necessity of a legislative solution need to be raised.

- Is it necessary to have a piece of national law, or is it sufficient to regulate the matter at a lower level, e.g. regional or local (subsidiarity principle)?
- More important, is it necessary to legislate at all, or could the issue be solved by society or individuals (liberal principle, protecting individual freedoms)?

How can the legislative goal be reached without new secondary legislation?

Alternatives to a new legislative measure that need to be reviewed:

- Measures to ensure the effective application of existing provisions
- Public relations work
- Working arrangements
- New investments
- Incentives (subsidies)
- Encouragement of self-support that can reasonably be expected from and managed by those concerned
- Clarification by courts.

The examination of alternatives<sup>56</sup> includes an assessment of their impact as well, e.g. business climate, legal, economic, financial, technical/scientific, ecological and other implications, which will be documented in the Assessment Report ([section 3.5.3](#)).

#### *Example: Regulatory limits versus non-legislative measures*

Car producers have foreseen the mounting of safety belts as of 1967. Thus, a firm regulation could only oblige owners of cars produced as of 1967 to abide by a regulation.

<sup>56</sup> SIGMA (year) *Introduction to Law Drafting*, OECD Publishing, Paris, p. 17

In countries where third-party and passenger car insurance is obligatory, insurance companies could increase the cost of an annual policy for cars without safety belts by a percentage, which would make the mounting and use of safety belts economical and convincing. Furthermore, accident compensation payments to non-belted passengers could be much less than for belted persons. This is actually a regulated standard throughout Europe, where non-belted passengers are being fined, especially in the case of passenger children or pets.

### 3.5.3 Step 12 – Regulatory and Business Impact Assessment Report

4 The layout for the Assessment Report is proposed by this table of contents.

<p style="text-align: center;"><b>Table of Content of the Assessment Report on the Concept Document (Assessment Report I) OR Assessment Report on the Legal Draft Proposal (Assessment Report II)</b></p> <p>10. Introduction</p> <ul style="list-style-type: none"><li>• Legislating Body</li><li>• Name of the Project</li><li>• Authorising Law</li><li>• Composition of the Assessment Team including external resources</li></ul> <p>11. Summary of the Assessment</p> <p>12. Categories of Impacts including special affectedness of SMEs</p> <p>13. Assessment of the Implementation Plan</p> <ul style="list-style-type: none"><li>• Institutional set-up</li><li>• Effectiveness of measures</li><li>• Costs (versus Budget – if applicable)</li></ul> <p>14. Decision on “RIA complete” or “RIA light”</p> <p>15. Sources of data, facts, experiences, opinions</p> <p>16. Application and outcome of the analytical instruments related to all legislative solutions and options discarded</p> <p>16.1. Selected legislative solution I</p> <p>16.1.1. Standard Cost Model (if carried out)</p> <p>16.1.2. Application and outcome of the Cost-Effectiveness Analysis (if carried out)</p> <p>16.1.3. Application and outcome of the Cost-Benefit Analysis (if carried out)</p> <p>16.1.4. Application and outcome of the regulatory comparative check (if carried out)</p> <p>16.1.5. Application and outcome of the regulatory comparative check (if carried out)</p> <p>16.1.6. Application and outcome of the Multi-Criteria Analysis (if carried out)</p>
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16.2.	Selected legislative solution II (if applicable)
16.2.1.	Analytical instrument (if carried out)
16.2.2.	Analytical instrument (if carried out)
16.2.3.	etc.
16.3.	Selected legislative solution III (if applicable)
16.3.1.	etc.
16.4.	Discarded option I (if applicable)
16.4.1.	Analytical instrument (if carried out)
16.4.2.	Analytical instrument (if carried out)
16.4.3.	etc.
16.5.	Discarded option II (if applicable)
16.5.1.	etc.
16.6.	Discarded option III (if applicable)
17.	Necessity of legislative solutions
17.1.	Alternative measures
17.2.	Time limit (sunset – regulation)?
18.	Signature of Head of Assessment

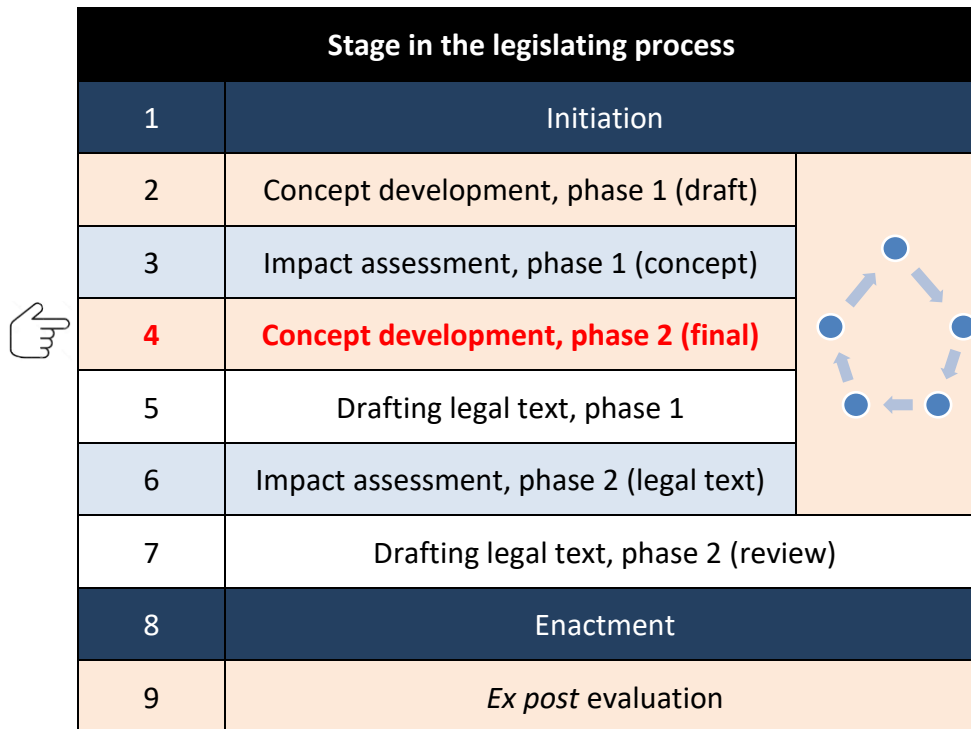
### 3.5.4 Delivery of Assessment Report to the Head of Project

5

Once the assessment is complete and the Assessment Report plus underpinning documentation is ready, the Head of Assessment may submit the report to the Head of Project. A request for an explanatory meeting must be enclosed with the submission. This meeting should be mandatory to allow understanding of the concerns raised in the context of the evaluation, with data provided as proof for the identified shortcomings.

This ensures that the Head of Project and team can successfully turn any obstacles identified into amendments to existing or alternative solutions before: 1) instructions to legal drafting can be designed with an adapted and Final Concept Document; or 2) amendments to a Legal Draft Proposal can be decided.

### 3.6 Stage 4 of the legislating process – Review of the Draft Concept Document, phase 2



#### 1 3.6.1 Review of the basis of Assessment Report

Once this report addressing problems in the concept is available, the Head of Concept, with support from his/her team, has to review the facts and data for general validity and plausibility. Documented risks have to be balanced against the benefits of the objectives and their achievability – and, if politically advisable, also consulted on with the Head of Legislation (e.g. minister). Results of such strategic review and political preference can be:

- Cancellation of the entire project – in the case of overriding adverse impacts.
- No change – in the case the impacts are negligible or the political targets prevail. In this case, the initial concept represents the Final Concept Document at this stage.
- Adaptation and amendment of the concept to mitigate risks and impacts, resulting in an updated concept document.

Any changes in the concept may require changing the implementation plan(s) and the instructions for legal drafting. Before the concept reaches the final stage, it still has to undergo the next step of legal assessment.

#### Legal review

- 2 Any new or amended secondary legislation must fit into the existing legal framework. Therefore, its future content, as determined by the concept, is now to be checked for conformity with higher-ranking law and coherence with the legal system. Actually, legal framework conditions must have been constantly considered as the project progressed, and the concept adapted

accordingly. That is why the continuous involvement of the legal expert of the Permanent Legislation Development Team is necessary. At this point, however, before the work on the concept document is completed, a comprehensive legal review and evaluation of the overall concept is required.

In straightforward cases, this legal review might be carried out by the legal expert in the Head of Project's team. In more complex cases, it is recommended to involve a different legal department within the legislating body, optionally to include external legal expertise from academia or the bar.

3 The concept as a whole, as well as the solutions developed in it, are now to be judged against the following legal principles and rules:

- Does the legislative body have the legislative jurisdiction on the subject matter?
- Does a law (primary legislation) authorise the executive branch of the state power to enact secondary legislation on the subject matter?
- Do the wording, meaning and purpose of both the authorising law and the relevant authorising provision(s) in this law cover the objectives and regulatory solutions of the concept? The purpose of this examination point is to avoid a frequently committed mistake, namely to exceed the scope set by the authorising law with the regulatory content of the secondary legislation. For example, the wording of the law allows a regulation on the use of safety belts in automobiles, while the legal regulation also includes trucks.
- Do the regulatory solutions affect the constitutionally guaranteed Human Rights and Freedoms (see Preamble and Articles 5, 93 and 206 of the Constitution of the Arab Republic of Egypt)?
- If the regulatory solutions impose obligations or other legal disadvantages on individuals (natural or legal persons), are they compatible with the principle of proportionality, i.e.
  - Are they suitable to achieve the objectives of the solution?
  - Are they necessary, or is there a less burdensome means of achieving the objective sought?
  - Is the solution adequate, i.e. do the disadvantages to the individual caused by the solutions not outweigh the advantages to the community?
- Is the concept compatible with the principle of the rule of law, especially with the requirement of legal certainty and the prohibition of retroactivity?
- Is the concept compatible with international treaties and conventions concluded and signed by the Arab Republic of Egypt?

A legal opinion will be prepared and the report submitted for the concept document, commenting on each of these issues with clear justifications.

### 3.6.2 Discussion of the reviewed concept document with concerned stakeholders

4 The purpose of consultation is gathering input for a concept document or reviewing a Legal Draft Proposal, but it is also about communicating government intentions for changing or improving



policies and the motivation behind these intentions. If performed well, consultation fosters understanding and thus acceptance of policies, which in turn results in better and more effective implementation.

- 1 The aim of consultation is to bring the administration and stakeholders together to discuss the problems in detail, discuss options to address them and assess what kinds of benefits versus new burdens and costs could ensue. Determining the problem definition, defining objectives and options, identifying and assessing impacts, comparing the various options, and determining the implementation plan and other aspects of a concept document or Legal Draft Proposal through internal and public consultations will improve its quality and acceptance.

In the case that working groups, such as the Permanent Legislation Development Team, are supported by an additional task force, they are responsible for involving important stakeholders from within and beyond the administration in the development of a concept document or Legal Draft Proposal. This practice is a targeted consultation in which a specific group of stakeholders is asked to share knowledge and expertise.

Important: a working group that involves a diverse group of (administrative or public) organisations is not expected to function as a substitute for public consultation.

## 2 *Internal consultation*

Internal consultation refers to the consultation within the administration.<sup>57</sup> This process covers, among other activities, discussions as part of the preparation of a concept document, participation in working groups, and the process of prior consultation before a proposal is submitted for inclusion in the government session for discussion and adoption.<sup>58</sup> The institutions and organisations responsible for the implementation of existing rules and/or of future requirements deriving from the concept document are of particular importance. They must always be consulted.

## 3 *Public consultation*

Public consultation fosters the exchange of information, views and data, which can then feed into government decision making.<sup>59</sup> Paired with effective communication, it enables the active participation of citizens, companies, CSOs, business representatives and development partners in policy development.

The purpose of wider public communication is to make stakeholders aware of public consultation and to share government intentions with the wider public. Communication and consultation are very useful means for collecting data, verifying information, gaining new insights and presenting and explaining policies and decisions for general acceptance and successful implementation.

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<sup>57</sup> General rules on internal consultation exist in (the rule book of) government procedures.

<sup>58</sup> General rules on internal consultation exist in (the rule book of) government procedures.

<sup>59</sup> A ministry website is usually instrumental for publishing new draft regulations and collecting opinions; duration may vary based on complexity.

There are many potential benefits from stakeholder consultation. For optimal gains, consultation activities need to be prepared with care and planned well. This is mainly due to the fact that stakeholder consultation covers all activities in which people from outside the administration are asked to provide comments, ideas, suggestions, data, etc. on the issues that are relevant for the legislative project. Another important reason is that stakeholders are actually a very diverse group of people and organisations. Various stakeholders need to be contacted differently to make their participation in the consultation process as easy as possible.

This also means that consultation activities have to adapt to the resources of the stakeholders being consulted. They have to be communicated with properly, and messages have to be tailored to the target audience. More importantly, the administration needs to respect the time and effort that stakeholders invest in public consultation by showing that these efforts are valued and treated accordingly.

The following consultation activities are recommended for each legislative project:

- 1) Organisation of a stakeholder meeting during the early phase of developing the concept document
- 2) Online publication of public consultation on the Final Concept Document through a website of the responsible institution; for them to be useful, they need to be communicated effectively to all relevant stakeholders
- 3) Review of the Legal Draft Proposal with directly involved stakeholders or their representative (business/social) organisations.

- 4 For structuring and planning effective consultation activities for a concept document and Legal Draft Proposals, the following practical tools are applicable:

Tool 10: Adhering to the minimum standards for consultation

Tool 11: Identifying stakeholders

Tool 12: Selecting consultation methods

Tool 13: Communication during the development of a concept document

Tool 14: Planning the communication for a concept document/Legal Draft Proposal

Tool 15: Planning the communication and consultation for a concept document

Tool 16: Example of a communication and consultation plan.

### 3.6.3 Conclusions and recommendations in the Final Concept Document

- 5 When the conclusion of the concept document is to develop new secondary legislation or to amend existing rules, the intended framework for future legislation needs to be made explicit. This means that the actual legal measures that need to be developed in order to implement the preferred option need to be presented in a practical overview. This overview will be the start of the process of drafting the legislation and ensures the link between the problem analysis, conducted for the concept document, its goal and objectives and the legal drafting process.

### *Key information for the summary of the Final Concept Document*

- Problem definition
- Objectives
- Preferred option
- Type of comparative analysis
- Expected positive impacts
- Expected negative impacts
- Expected costs and budget impacts
- Summary of consultation process
- Main steps of implementation/enforcement plan.

When the conclusion of the concept document is to draft a new law or amend a law, it might mean that eventually other laws will also have to be brought in line with the new legal requirements. Such laws have to be listed in the Final Concept Document. When this is done, the concept provides the basis for all required legal changes that will follow the implementation of the decisions that the Final Concept Document presents.

### *Recommendations for legal drafting*

6 The Final Concept Document will include clear instructions for the (group of) legal drafter(s).

1 When the step that follows the adoption of the Final Concept Document is to draft a piece of secondary legislation, the analysis that has been conducted is the basis for legal drafting. In order to simplify the work of the team that will develop the Legal Draft Proposal, the summary of the analysis needs to show also the framework for the legal text. How this framework looks depends on the topic analysed in the concept.

#### *Regulatory shortcomings*

2 The overview can be a very specific list of articles in secondary legislation that need to be changed. This is likely to be the case when the concept document addresses specific existing regulatory shortcomings, and the conclusion is to improve the existing legal framework. This can also be the case when the aim is to reduce administrative burdens. Specific legal changes are often sufficient to achieve a substantial burden reduction.

#### *New regulations*

3 When a new secondary legislation is going to be developed, the framework could be of a more general nature. The analysis and conclusions of the Final Concept Document could set the principles for the legal text in terms of what should be covered. It could also indicate which principles need to be reflected in the secondary legislation.

The analysis conducted and presented based on a SCM, SME test and regulatory comparative check usually provide straightforward information on how the regulatory text should be drafted.

It is important to note that the foundation for Legal Draft Proposals should be as complete as possible. However, it should not be assumed that the analysis and recommendations of a Final Concept Document will always give a complete picture of how the secondary legislation has to be developed. After all, during public consultation on the Draft Concept Document, new issues might arise. What matters is that these new issues should be compared against the original analysis. When this results in a deviation from the conclusions of the Final Concept Document, an updated concept document needs to be submitted, together with the Legal Draft Proposal when it is finally presented to the government for adoption.

The concept document has to be updated and submitted for government approval when the changes regarding the expected impacts are substantial. This is especially the case if the impact on the budget has changed or when different stakeholders will be affected by the decisions than initially expected.

### *Layout for a Final Concept Document for adoption*

#### **Table of contents of a Final Concept Document**

1. Introduction
  - Composition of the project team, including external resources
2. Mandate to conduct a legislating process
3. Problem analysis
  - 3.1. Problem, causes, effects
  - 3.2. Reasoning
4. Objectives
  - 4.1. Strategic goals, general and specific objectives
  - 4.2. Reasoning
5. Solutions to achieve objectives
  - 5.1. Options and selected solutions
  - 5.2. Reasoning
6. Implementation plan and schedule, split into:
  - 6.1. Activities to be developed within the first year after adoption
  - 6.2. Activities to be developed within two to five years after adoption
7. Result of *ex ante* evaluation of impacts of solution measures
 

Where not applicable, state “No relevant impacts expected in this category”.

  - 7.1. Economic impacts
  - 7.2. Social impacts
  - 7.3. Environmental impacts

- 7.4. Crosscutting impacts
- 7.5. Budget impacts
- 7.6. Administrative burdens for companies
- 7.7. Results from SME test
- 7.8. Results from consultations
- 8. Compatibility with the Constitution, legal framework and international treaties
- 9. Recommendations to drafters of the legal text
- 10. Conclusive remarks

4 *Submission of the Final Concept Document to the Head of Legal Drafting*

5 The Final Concept Document forms the basis for the work to be done in Stage 5: Drafting legal text, phase 1.

In straightforward cases, the drafting of the legal text may be carried out by the legal expert of the Permanent Legislation Development Team, who has witnessed the development of the legislative project to this advanced stage.

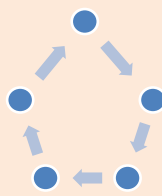
In regular cases, particularly those of higher complexity, the concept document is submitted to the Head of Legal Drafting and a recruited team of legal drafters.

6 For the introduction of the Legal Drafting Team to its work, it is recommended that a launch meeting be held, organised by the Head of Project, with support from the legal expert.

The agenda for this meeting should foresee the following activities:

- Option to involve external legal specialists for the drafting process
- General introduction to the project: problems, objectives and selected solution(s)
- Interdependency with other laws or regulations
- Concerns explained in the legal review chapter of the concept document regarding the legal compatibility of the concept with constitutional principles or the sub-constitutional legal framework
- Regulatory preferences regarding topics, e.g.:
  - Refrain from strict prohibitions
  - In the case of obligations, allow options for action
  - In the case of sanctions, exclude prison sentences
  - Exclusion of administrative burdens to SMEs.
- Preparing the draft as sunset regulation (the piece of secondary legislation expires after a given period of time, e.g. five years)
- Jointly determined deadline for submission of the Legal Draft Proposal.

### 3.7 Stage 5 of the legislating process – Drafting the text of the planned piece of secondary legislation

Stage in the legislating process		
1	Initiation	
2	Concept development, phase 1 (draft)	
3	Impact assessment, phase 1 (concept)	
4	Concept development, phase 2 (final)	
5	<b>Drafting legal text, phase 1</b>	
6	Impact assessment, phase 2 (legal text)	
7	Drafting legal text, phase 2 (review)	
8	Enactment	
9	Ex post evaluation	

1 At Stage 5, the content of the Final Concept Document is translated into the text of secondary legislation. This work requires genuine specialists with a solid legal background and practical experience in legal drafting. All the preceding four stages of the legislating process – impulse for drafting secondary legislation; problem analysis and finding possible solutions; assessment of expected impacts caused by the solutions; and elaboration of the Final Concept Document – lay the groundwork for the legal drafters' upcoming challenging task.

As seen above (e.g. sections [3.4.1.1](#), [3.4.1.2](#), [3.4.1.5.1](#), [3.4.3.4](#), [3.5.2.11](#) and [3.7.2](#)), legal aspects were already dealt with for the conceptual part of the legislative process. However, they were not at the forefront during the development of the concept paper. One reason for this methodological approach was to prevent possible legal concerns from hastily narrowing the horizon for thinking about practical solutions during the conceptual phase. The intention is to have a concept development perspective that focuses on practical ways and measures that are necessary and likely to be suitable for achieving the problem solutions. During this period only, those options should be left out of further consideration, for which legal reasons obviously demand this at first sight.

2 Now, for the legal drafting, in-depth consideration of genuine legal issues is required. The motivation of legal drafters should be directed to enabling the implementation of the concept instead of raising legal obstacles too soon. However, enabling must never mean circumventing or even disregarding legal regulations. Law drafters must principally dedicate their legal proficiency, experience and creativity to developing legally solutions that are fully compatibility with the entire legal order of the Egyptian state, which means first and foremost in strict

accordance with the principle of the rule of law (Articles 1 and 94 of the Constitution of the Arab Republic of Egypt).

3 There are libraries of definitions and descriptions of the concepts of the rule of law. For this Guide, it seems appropriate to follow a UN definition:

The “rule of law” refers to a principle of governance, in which all persons, institutions and entities, public or private, including the state, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights, norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, fairness in application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. (DOC UN S/2004/616 No. 6)

All the important prerequisites for good legislation are derived from this definition. In other words, they are sub-elements of the rule of law principle.

5 In the following area, explanation of the rule of law prerequisites will be structured with respect to three topics:

- Area of competence of issuing secondary legislation
- General legal requirements related to the regulatory content of a piece of secondary legislation
- Instructions for the technique of drafting the legal text of good secondary legislation.

6 Questions of legislative competence, as well as the fundamental legality of the measure, should already have been discussed in the earlier stages of the legislative process, when the concept was developed (see [section 3.4](#)) and its impact assessed (see [section 3.5](#)). However, the comprehensive and final examination should be a matter for the legal drafters. This is necessary, on the one hand, because the legal questions must now be asked at a different level of concreteness, namely at the level of the future text of the regulation, which means that the object of the legal examination is now different. Moreover, now in Stage 5, legal specialists are involved from whom a more thorough and detailed legal examination can be expected.

As explained in the introductory part of this Guide ([section 1.4](#) M# 7), the International Science of Legislation Legistics developed a methodological toolbox for law drafters, to fulfil the rule of law-based requirements for elaborating good legislation. The objective and purpose of this Guide is to adapt this toolbox to the Egyptian context.

The Science of Legistics deals with both the regulatory content of the text and also with its formal quality related to style, structure, language, use of references and other aspects of nomotechniques. Formal quality refers to the content of the draft. It shapes it and is influenced by it. The form and content of a piece of legislation are in a dialectic tension: they directly condition each other.

The general content-related principles and requirements for good legislation are explained in the next two steps, before, in the third step, the methodological and technical instruments of the toolbox of Legistics are specified.

### 3.7.1 The scope of competence for the issuance of the secondary legislation

7 With a view to the scope of competence for the secondary legislation, three issues are in question:

- 8
- Question 1: is there a law (primary legislation adopted by parliament) that authorises the executive branch of the state power to enact secondary legislation on the given subject matter?

Any secondary legislation requires for its validity the authorisation expressed by primary legislation, i.e. by a law. The legislative competence of the executive power is a delegated competence granted by the legislative power (parliament). This follows from the principle of the separation of powers, on which the constitutional system of the Arab Republic of Egypt is based.

- 9
- Question 2: does the acting legislative body have the legislative jurisdiction on the subject matter?

The substantive jurisdiction of the legislative body often derives directly from the authorising law by mandating or allowing a specific ministry or authority to issue secondary legislation. If the jurisdiction is not specifically stipulated as generally granted to the state, the executive power or the government, the competence of a specific authority is determined according to the general rules of the constitutional order – if necessary, specified by the distribution of responsibilities and functions of the government.

In both cases of lack of competence of the acting legislative body, the complete secondary legislation is unlawful. The secondary legislation as a whole is unlawful and invalid.

- 10
- Question 3: do the wording, meaning and purpose of both the authorising law in general and the relevant authorising provision(s) in this law cover the intended scope of the secondary legislation, as well as the regulatory content of each provision?

The purpose of this examination point is to avoid a frequently committed mistake, namely that the regulatory content of the secondary legislation exceeds the scope set by the authorising law (for example, the wording of the law allows regulation on driving passenger cars, and the regulation also regulates the driving of trucks). Exceeding the scope of authorisation renders the secondary legislation – at least partially – unlawful and thus also the individual case decision of an administrative organ based on the unlawful part.

### 3.7.2 General legal requirements related to the regulatory content of a piece of secondary legislation

11 The requirements set out below for the regulatory content of secondary legislation are more than well-intentioned recommendations to create a piece of legislation of good quality. Rather, they are legally binding constitutional standards that have arisen from the rule of law and whose violation can lead to a legally defective and thus appealable decision in an individual case.

A list of such requirements includes first and foremost the principle of proportionality and, interlinked with this, three essential elements: efficacy, effectiveness and efficiency. Other criteria are also relevant, such as clarity, precision, avoidance of contradictions, brevity, readability, consistency, simplicity, certainty, predictability and the comprehensibility of the legal text.



### *The principle of proportionality*

12 If the regulatory solutions impose obligations or other legal burdens on individuals (citizens or legal persons), whether they are compatible with the principle of proportionality must be examined.

The principle of proportionality is a universally acknowledged requirement directly derived from the rule of law (Articles 1 and 94 of the Constitution of the Arab Republic of Egypt) that binds any activity of a constitutional state (see detailed explanation in the *Guide to Good Administrative Procedures for Egypt (Guide I)*, published in 2019 by ERRADA and the joint SIGMA Programme of the EU and the OECD).<sup>60</sup>

13 The principle binds any Egyptian state organ and is applicable to any state action – be it done as a legislator or as a body of the executive power – for which the law grants discretion and which may restrict an individual’s right or a legitimate interest of a citizen or a company. The principle is of highest relevance for discretionary decisions, because it limits, as a general rule, the space for any discretionary decision of the state power.

The principle of proportionality of administration comprises three distinct elements. An action can be seen in alignment with the principle only if the requirements of all three are met. The requirements of these elements must be examined in a specific order: suitability, necessity and adequacy.

14

- Suitability

An action or decision is suitable if it can lead to the purpose for which the action is taken. It is not necessary that the most suitable action is taken. To meet the requirements of the principle of proportionality, it is sufficient that the action is a possible step towards achieving its aim or purpose. It is unlawful, however, to choose an action that is unsuitable at all.

Applying this criterion to the road safety case introduced above (see section 3.5 M# 3), it can be concluded that wearing safety belts in a moving vehicle leads to a reduction of accidents with lethal or severely injuring consequences.

15

- Necessity

The criterion of necessity should have already been discussed twice in the course of the legislative process but then either as a matter of political expediency (see section [3.4.3.4](#)) or in the context of RIA with a view to the cost-benefit ratio (see [section 3.5.2.11](#)). Nevertheless, the point must be raised again here, this time by way of a balancing of legal interests. It is now decided whether a restriction of individual rights is necessary due to a higher-valued legal interest (e.g. protection of the health of road users).

The sub-principle of necessity of an action is met if there is no other action which, on the one hand, is suitable in the same way but, on the other hand, is less onerous to the affected party. If the public body has two or more options to achieve a specific purpose to the same extent, it must

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<sup>60</sup> Guide I, PART TWO, section 4, p. 13.

choose the option which has the least impact on the rights or legal interests of the affected bearer of rights.

With a view to the road safety case, experience has shown that a general call to wear safety belts voluntarily when driving has had little effect. For the purpose of sustainably protecting citizens again serious car accidents, a general obligation to wear safety belts is required.

16      • Adequacy

The principle of proportionality requires a comparison and balance between the goals or aims of an action and the onerous impact on affected individuals. The importance of the affected or involved rights or interests and the rights or public interests to be achieved must be considered properly, if the authorising law left space to choose two or more options.

In the road safety case, the protection of the health and lives of numerous people justifies the relatively low burden of an obligation to wear safety belts while driving a car. Disadvantages to individuals caused by the obligation do not outweigh advantages to the community.

*The fundamental principles of efficacy, effectiveness and efficiency*

Three important criteria for the substantive quality of secondary legislation are *efficacy*, *effectiveness* and *efficiency*.<sup>61</sup> This section will show how these principles, which at first glance might appear quite theoretical and abstract, are to be understood. For this, they will be applied to the road safety case introduced above (see section 3.5 M# 3).

17      • Efficacy

A piece of legislation has a high level of efficacy if, when implemented, it comes closest to the legislator's intent.<sup>62</sup> Concerning this criterion, it is primarily important that the objectives established in the concept document were clearly understood. In the road safety case (section 3.4 M# 3), the strategic goal assumed was "improvement of security in road traffic", and the two main specific objectives assumed were to "reduce the number of traffic accidents" and to "reduce traffic accidents with serious injuries and fatalities". Experiences in many countries have proven that a legally prescribed duty to wear safety belts while in an automobile has led to a reduction of accidents with lethal or severely injuring consequences.

18      • Effectiveness

Effectiveness denotes the degree to which the behaviour and attitudes of the addressees of the regulation corresponds with the behaviour envisaged by the secondary legislation, i.e. if it is implemented, executed and obeyed by as many addressees as possible. In this context, the readability and comprehensibility of the regulatory text is of crucial importance. Law drafters must always keep in mind that addressees of secondary legislation are not necessarily public

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<sup>61</sup> Ulrich Karpen (2007), "Folgenabschätzung für Gesetze und Richterrecht", in *Folgenabschätzung im Arbeitsrecht*, Volker Rieble (ed.), ZAAR Verlag, Munich, pp. 13-36 (22).

<sup>62</sup> OECD (2010), *Why Is Administrative Simplification So Complicated?: Looking beyond 2010*, Cutting Red Tape, OECD Publishing, Paris, p. 98, <https://doi.org/10.1787/9789264089754-en>.

administration professionals who might be used to and able to understand legally complicated texts. Secondary legislation is usually addressed to ordinary citizens who are confronted with a rule either as private individuals or in their professional and economic lives.

However, it is not enough that citizens can understand the wording of a rule. When addressees of secondary legislation are intended to behave in a certain way, good legal text must also be drafted in such a way that it can convince its addressees. It is simply a matter of fact that most people dislike rules, they are perceived to restrict free development. Confusing, unclear, complicated text annoys and can never convince an addressee that a rule is reasonable.

The law drafters' must therefore to ensure that everyone whose compliance is sought can agree to the content of the regulation or can at least accept its necessity and plausibility, even if he/she does not like it. A rule that cannot be perceived as meaningful cannot engender the trust that, in the end, it is good to respect the rule. The more complicated and confusing a legal text, the higher the likelihood of non-compliance. Who would respect a rule that does not make sense to them?

For example, a simply and clearly formulated rule imposing the legal duty to fasten safety belts is plausible, and there are good reasons to assume that it will be complied with by most drivers, although it is well known that different countries and societies respond in different manners, i.e. accept to a greater or a lesser extent the use of safety belts. However, as a whole, it seems to work.

- Efficiency<sup>63</sup>

Efficiency entails whether the benefits from the regulation justify the costs, which are understood in a broader sense than simply financial aspects, such as institutional capacities and resources pay-off.

The application of this quality criterion implies an evaluation of alternatives. More efficient alternatives deserve preference over more costly ones. In the road safety case, the regulation is efficient if the result to "reduce the number of severe traffic casualties" is achieved cheaper than with other measures (for instance, with better road building or increased railway transport of cars). This seems to be the case in the road safety example. This does not exclude, however, alternative (legal) actions, such that more input – such as on road building, speed limits and railway transport – leads to a more effective, more significant reduction of severe accidents.

As to efficiency, legal drafters should anticipate basically the same content consideration standards here as they will apply in the next step assessing the impacts of the elaborated wording of the secondary legislation (see, in particular, the connection to the SCM as one of the RIA instruments, [section 2.6.2.5](#)).

### *Other legal requirements*

- Consistency

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<sup>63</sup> Ewald Wiederin, IPE I, (No. 1) § 7, Rn. 97 refers to the constitutional litigation.

Every regulation must be coherent and consistent with other laws in the overall legal system of Egypt. It must also be compatible with international treaties and conventions concluded and signed by the Arab Republic of Egypt.

- 3
- Legal certainty and predictability

The regulatory content must be clear and free of contradictions, so that both the applicant (administrative practitioner) and the addressee (citizen or business operator) will be able to predict what legal consequences can be expected from each individual regulation. The rule of law's requirement of foreseeability and predictability also includes the prohibition of retroactivity. As a rule, legislation may only impose obligations or other burdens on citizens for the future; the restriction of retroactivity protects the addressee against unforeseen retroactive effects.

- 4
- Stability

The law should be drafted in a manner that it is not immediately subject to changes and amendments.

### 3.7.3 Concept of the legislation

- 5
- The drafters or the drafting team take notice of the policy-making results for the draft. If needed, additional research should be conducted. The concept should consider the following aspects:

- Normative content of the new secondary legislation: granting rights; abolishing rights; imposing obligations; governing behaviour; providing incentives; conferring jurisdiction
- Addressee of the legislation: everybody; citizens; certain individual or legal persons; authorities; courts; business; enterprises; associations
- Objective of the new legislation: subsidy; procedure; distributing tasks; protecting legal rights or economic interests
- Whether the new legislation/provision is self-executing or a normative framework that leaves execution to other bodies.

These criteria are closely connected with the question of whether the new legislation should be detailed or general. If the secondary legislation deals with encroachments on civil rights, the legislator must be very detailed; in other cases, he/she may leave details to the executive power's discretion.

- 6
- ### 3.7.4 General instructions on the structure, form and style of the text

- Only when the drafter knows what he/she wants to write will he/she be able to write it clearly and concisely.
- Clear content and good use of language go hand in hand.

### *The legal language*

- 7 The academic discipline of linguistics assesses the comprehensibility of a text using the dimensions of simplicity, brevity, conciseness, structure and organisation. These dimensions can also be applied to the language of legislation. For the problem of wording legal norms, three aspects are important: choice of suitable words, clear sentence structure and text structure reflecting a logical order of ideas.
- 8 The language used in regulatory texts must be correct and, as far as possible, understandable to everyone. Those entrusted with the task of drafting legislation need to find the right balance between the purpose of the legislation and language that is as easy to understand and as precise and technical as possible. Those affected by a particular regulation must be in a position to understand what the legal situation is without needing to seek legal advice and to act accordingly. Courts should be able to issue a decision based on the regulation. It should be possible to determine the limits of administrative action based on the content, purpose and extent of the regulation. There is thus a close link to the (content-related) constitutional principle of legal certainty (see also [section 3.7.2.3](#)); only legal texts written in clear legal language can create legal clarity. Legislation that can only be understood “based on a subtle knowledge of the subject, exceptional methodological skills and a certain passion for intellectual problem-solving”<sup>64</sup> does not meet these requirements.
- 9 Who is meant by “everyone” depends on the group of people on whom the legislation confers obligations or rights. Legislation that addresses an extensive target group (and thus, in fact, “everyone”), such as an executive regulation regarding a general obligation for drivers to wear safety belts, should be understandable to anyone of average intelligence. By contrast, in the case of legislation that addresses a limited target group, “everyone” will primarily refer to those working in a specific legal field (e.g. commercial people, irrigation specialists or psychiatrists). In such cases, the legislature can assume that addressees of the legislation have the necessary specialist know-how. Laypersons should at least be able to understand the general meaning of the purpose of the law.
- 10 The language of legislation is a subset of legalese, or legal jargon. A formalised and standardised mode of expression is characteristic of any type of jargon. It is what professionals use to converse in their own field of expertise – the language of specialists for specialists. When read by non-specialists, legal terminology loses its direct link to specialist legal thinking and its relation to the professional systematics. Laypersons are unable to understand readily the terminology or the intended message.
- One specific feature of legal jargon is that it uses terms that, formally speaking, are identical to those used in everyday language but which have a different meaning in a legal context.
- 11 When regulating matters in a specialist field, care will sometimes also have to be taken in using the specialist terminology of that field. Specialist terminology should only be used where no general paraphrases are available or where such paraphrases would disproportionately increase the length of an individual provision. For example, regulations concerning food ingredients or

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<sup>64</sup> Austrian Constitutional Court in an order of 6 September 2006, file No. XI R 26/04.

manufacturing procedures can use the language of the food manufacturers that need to abide by the regulations.

12 To avoid regulatory text that is misleading or incomprehensible to laypersons, the peculiarities of technical language must be kept in mind when drafting secondary legislation. Definitions can be included when words have a different meaning than when they are used in everyday language or when they have been coined by the legislature. By contrast, no definition need be included when using a term that has already been coined (and used in other legislation). This avoids superfluous and confusing repetition. A term already in use in legal contexts should not be ascribed a different meaning if there is no reason to do so; coining a new term would be the better option.

13 Precision and clarity are particularly important in legal texts. Expressing legal matters precisely and clearly so that they can be understood by the general public requires a great deal of textual work, which takes time and effort. It requires finding the right words, right sentences, and right balance between precision and comprehensibility.

14 The following generally applicable rules will help in writing texts that readers find easy to understand:

- What do you want to say?

Write down keywords or draw a sketch to illustrate which interrelationships need to be clarified and which factual conditions will lead to which legal consequences. Write the first draft and read it again with a critical eye.

- Is there a better way of saying something?

In drafting a legal text, keep in mind that it is a vehicle of communication. It should be readable. Try not to be too technical. Check word choice and sentence structure.

- Be brief

Use short sentences. Each idea should be expressed by a single phrase. Avoid unnecessary words and delete filler words. If paragraphs or longer phrases of the legislation need to be repeated, cross-referencing may be used; if this leads to difficulties in understanding the text, repetition may be preferable.

- Be consistent

Terminology should be constant and uniform, both within the draft and in relation to other pieces of legislation. The same term should consistently be used to refer to the same matter within a piece of legislation or legal area. Synonyms might enrich a literary text or ceremonial speech, but they are inappropriate in legal texts.

- Be clear, precise, coherent and as simple as possible

The writing style should ensure maximum understanding, precision and concision, to exclude any ambiguity. The language used by the legal drafter is simply the vehicle that carries the will of the legislative body.

Definitions add to clarity of legislation. Definitions may be collected in the introductory part of the legal text. A definitions section is used when terms need defining or when it is desirable to

substitute a single word or a long phrase that is used many times. Neologisms and regionalisms can be used if they are broadly applied. Ambiguous words, expressions or idioms should be avoided. Redundant legal phrases, slang, and abbreviations or acronyms should be excluded.

- Be logical

The general should precede the particular, the main principles should precede administrative details, the permanent should be drafted before the temporary, and the more important should be written before the less important.

- Be self-critical

The composition of the draft is a permanent and dynamic learning process. Usually, the completion of the first version of the draft marks the beginning of the next round.

### *Structure of the draft*

15 The content of the draft secondary legislation must be presented in a well-organised and systematised manner. For this, the drafter has to keep in mind that legal drafting follows a special method and is a technical matter. He/she should know how a draft is generally structured and apply this to the draft.

17 As a rule, the draft contains the following parts:

- Title
- Preamble
- Introductory provision
- Articles covering general provisions and detailed subject matter provisions
- Penalties (rarely included in secondary legislation)
- Transitional and final provisions
- Annexes.

This structure is not mandatory. The draft may miss one or more parts, usually excepting the title and the introductory provision.

18 The title of the draft must be short and clearly describe the object of the regulation. The title is the identifying element of the draft. It should be descriptive, summarising the matter in one or two words.

1 The preamble of the legal act, if there is any, may contain the rationale of the piece of legislation; the social, political, economic, cultural or other motivation; and its setting in the policy of the government or ministry. The preamble is also useful for the interpretation of the regulatory content of the provisions and the meaning of the legal terms used in the text.

2 Introductory provisions set the legal ground, i.e. the authorisation for issuing the secondary legislation, and indicate the category thereof.

3 General provisions determine the object, scope and area of regulation; they give orientation for the whole piece of legislation and explain and define certain notions and concepts. As in

constitutions, they are often worded using general legal terms (e.g. the rule of law, due process or social state). In comprehensive pieces of secondary legislation, general provisions have a structural meaning and give an overview of parts and sections of the text.

Subject matter provisions represent the regulatory framework of the piece of legislation: rules, rights and obligations, and consequences of violation of norms. In general, material law precedes procedural law. Provisions dealing with sanctions are drafted at the end of the law. The provisions must be drafted in logical order based on: 1) legal analysis; 2) the nature of institutions and their interrelations; and 3) the scientific hierarchy of norms.

The chapter “Penalties”, if applicable, includes penalties and other sanctions in case of infringement of the law.

Transitional and concluding provisions of the draft may cover the following: ways and data of enactment and enforcement of the piece of legislation; compliance of new regulations with former ones; provisional or temporary preservation of old provisions; and binding character of authorities in charge of execution of the legislation. Often, there may be a concluding provision that stipulates that “This piece of legislation is declared to be in force with immediate effect” or other data.

Annexes of the piece of legislation should contain schemes, plans, numerical and statistical information, organisational structures, drawings, tables and other details. The annex is part of the legal act and thus binding law.

#### *Numbered outline of the text*

All draft pieces of legislation must follow a certain structure and a certain order of provisions. Use sections and divisions to break down lengthy secondary legislation into understandable units. There are many options to arrange and number a legal text. Each state develops its own standards. Parts, chapters, sections, subsections, subdivisions and items may be arranged as follows:

Part A (heading)

Chapter I (heading)

Article 18 (heading)

1. Paragraph

sentences 1, 2, 3 ...

or

Part I (heading)

Chapter I (heading)

Section 1

1.1. subsection

1.2. subsection

a. subdivision

b. ...

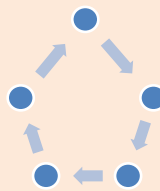
i. items

ii. ...



- 1 An article is the key structural element of a piece of legislation, has an integrated nature and includes one or more directly related provisions that are subject to the same idea. In general, an article has a heading. Articles should be short to provide for good orientation of the reader. An article should not be longer than three or four paragraphs; a paragraph should not contain more than three sentences. A sentence should express one legal idea.

### 3.8 Stage 6 of the legislating process – Impact assessment, phase 2 on the draft legal text

Stage in the legislating process		
1	Initiation	
2	Concept development, phase 1 (draft)	
3	Impact assessment, phase 1 (concept)	
4	Concept development, phase 2 (final)	
5	Drafting legal text, phase 1	
6	Impact assessment, phase 2 (legal text)	
7	Drafting legal text, phase 2 (review)	
8	Enactment	
9	Ex post evaluation	

#### 3.8.1 Impact assessment and legal review of the draft

1 In Stage 3 of the legislative process, impact assessment was carried out with respect to the concept as laid down in the concept document. However, a concept is necessarily somewhat general and usually leaves room for the legal drafter to implement various legislative options. Now, when a concrete draft of the regulatory text is available, it must be examined again to see whether and how the translation of the concept into the words and sentences of a regulatory text could have a negative impact when it is applied in practice. Very often, only on the basis of examining the concrete text is it possible, for example, to quantify the likely costs that a company may incur as a result of a reporting obligation imposed by the secondary legislation.

1 The methods and criteria of RIA are the same as those used in Stage 3 but now applied to each concrete regulatory detail of the legislative text.

In addition to the examination of the economic, social, environmental, crosscutting and budget impacts (see [section 3.6.1](#)) of the regulatory content of the draft text, Stage 6 should also include a legal check of the draft, provided there is legal expertise in the assessment team. The legal review should be carried out on the basis of principles and criteria explained above (see [section 3.8](#)), and the result included in the second Assessment Report.

#### 3.8.2 Second Regulatory and Business Impact Assessment Report (Assessment Report II)

2 The layout for the Assessment Report is proposed by this table of contents.

**Table of Content  
of the  
Assessment Report on the Concept Document (Assessment Report I)  
OR  
Assessment Report on the Legal Draft Proposal (Assessment Report II)**

1. Introduction
  - Legislating Body
  - Name of the Project
  - Authorising Law
  - Composition of the Assessment Team including external resources
2. Summary of the Assessment
3. Categories of Impacts including special affectedness of SMEs
4. Assessment of the Implementation Plan
  - Institutional set-up
  - Effectiveness of measures
  - Costs (versus Budget – if applicable)
5. Decision on “RIA complete” or “RIA light”
6. Sources of data, facts, experiences, opinions
7. Application and outcome of the analytical instruments related to all legislative solutions and options discarded
  - 7.1. Selected legislative solution I
    - 7.1.1. Standard Cost Model (if carried out)
    - 7.1.2. Application and outcome of the Cost-Effectiveness Analysis (if carried out)
    - 7.1.3. Application and outcome of the Cost-Benefit Analysis (if carried out)
    - 7.1.4. Application and outcome of the regulatory comparative check (if carried out)
    - 7.1.5. Application and outcome of the regulatory comparative check (if carried out)
    - 7.1.6. Application and outcome of the Multi-Criteria Analysis (if carried out)
  - 7.2. Selected legislative solution II (if applicable)
    - 7.2.1. Analytical instrument (if carried out)

7.2.2.	Analytical instrument (if carried out)
7.2.3.	etc.
7.3.	Selected legislative solution III (if applicable)
7.3.1.	etc.
7.4.	Discarded option I (if applicable)
7.4.1.	Analytical instrument (if carried out)
7.4.2.	Analytical instrument (if carried out)
7.4.3.	etc.
7.5.	Discarded option II (if applicable)
7.5.1.	etc.
7.6.	Discarded option III (if applicable)
8.	Necessity of legislative solutions
8.1.	Alternative measures
8.2.	Legal Assessment (in case of 2 <sup>nd</sup> Assessment Report)
8.2.1.	Proportionality
8.2.2.	Fundamental principles (efficacy, effectiveness, efficiency)
8.2.3.	Structure and quality of language
8.3.	Time limit (sunset – regulation)?
9.	Signature of Head of Assessment

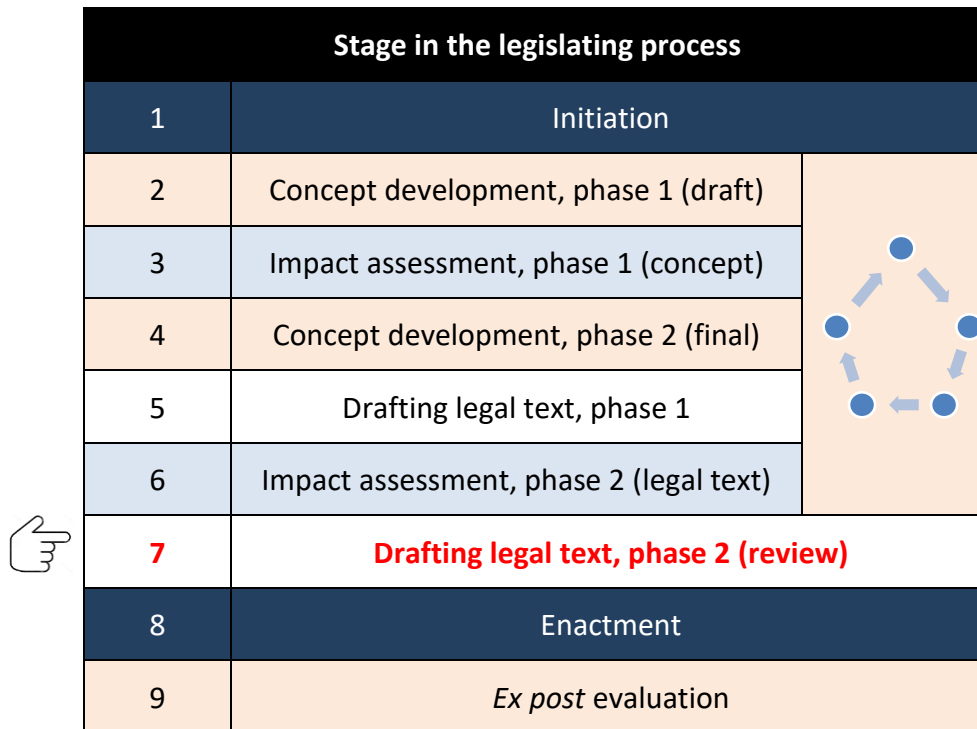
### 3.8.3 Delivery of Assessment Report II to the Head of Legal Drafting

3

Once the assessment is complete and the Assessment Report II plus underpinning documentation is ready, the Head of Assessment may submit the report to the Head of Legal Drafting for review of the draft legal text in light of the assessment. A request for an explanatory meeting must be enclosed with the submission. This meeting should be mandatory to allow understanding of the concerns raised in the context of the evaluation, with underpinning data provided as proof for the identified shortcomings.

This ensures that the Head of Legal Drafting and team can successfully turn any obstacles identified into amendments to the draft before the final version is submitted to the Head of Legislation for enactment activities.

### 3.9 Stage 7 of the legislating process – Review of draft legal text, phase 2



#### 3.9.1 Review of the draft legal text on the basis of Assessment Report II

The Head of Legal Drafting, with support from his/her team, has to review the draft legal text in accordance with the facts and data provided in the Assessment Report II. If legal drafters have reasonable doubts about the validity and plausibility of the assessment results, or if, despite valid data of relevance, law drafters conclude that the draft text is to be retained for legal or nomotechnical reasons, it is advisable, in politically sensitive cases, to consult the Head of Project and ask for a final decision.

#### 3.9.2 Catching up on stakeholder participation

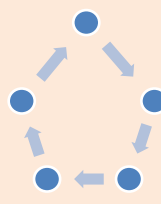

- 4 In the event that an internal and external discussion on the concept document with affected stakeholders has not taken place (see [section 3.6.3](#)), the Head of Project now needs to organise stakeholder consultation on the draft legal text, which might have required modification in response to the Assessment Report II. Relevant stakeholder objections could and should again lead to a final change of the presented text version.

#### 3.9.3 Submission of the final draft legal text to the Head of Project for delivery to the Head of Legislation

- 5 Once the Legal Drafting Team has impartially considered the facts and findings presented in the Assessment Report II, which might have required the involvement of the Head of Project to resolve divergences with the Assessment Report II (see [section 3.9.1](#)), and furthermore reflected the outcome of caught-up stakeholder participation (see [section 3.9.2](#)), the Head of Legal

Drafting now concludes phase 7 with the completion of the final text version (modified again, if necessary) and submits it to the Head of Project. After final approval, the Head of Project delivers the draft ready for enactment to the Head of Legislation (minister, head of authority, etc.).

### 3.10 Stage 8 of the legislating process – Enactment

Stage in the legislating process		
1	Initiation	
2	Concept development, phase 1 (draft)	
3	Impact assessment, phase 1 (concept)	
4	Concept development, phase 2 (final)	
5	Drafting legal text, phase 1	
6	Impact assessment, phase 2 (legal text)	
7	Drafting legal text, phase 2 (review)	
	8	Enactment
9	Ex post evaluation	

- 1 After the legislative process initiated by the Head of Legislation (minister, head of an agency, etc.) has passed through all procedural stages up to the elaborated text of the secondary legislation – possibly in combination with or even instead of a non-legislative solution – the completion of the process falls back to the direct area of responsibility of the initiator.

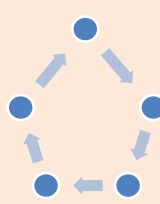
Stage 8 consists of the following steps to be prepared, initiated and implemented by the office of the Head of Legislation (minister, head of authority, etc.):


- Final control of the regulatory content legal text
 

Even if it can be assumed that the Head of Legislation was continuously kept informed about the course of the procedure and the content of the key decisions, a final check should take place at this stage with regard to: 1) the convergence of the content of the regulation with the political guidelines; and 2) its legal compatibility. For this, consultation with one or more other government bodies (ministries, prime minister) might be legally required or at least politically opportune, depending on the content of the project.
- Decision on the involvement of the State Council for legal review according to Article 190 of the Constitution of the Arab Republic of Egypt and Law No. 47/1972 on the State Council, Article 63 for constitutional review of the draft legal text
- Council of Ministers' approval of the draft legal text in cases issued by the prime minister

- Preparation of the original document of the piece of legislation in due form, and submission for the signature of the Head of Legislation (and other government bodies, if legally required)
- Signature  
By signing the text of the deed containing the text of the secondary legislation, the Head of Legislation executes the act of enactment.
- Announcement of the signed secondary legislation within the public administration, i.e. to all other government bodies and all administrative authorities in the country for whose work a knowledge of the contents of the secondary legislation is relevant
- Initiation and control of the official publishing procedure  
The Head of Legislation's final duties are to: 1) submit the secondary legislation to the responsible body connected with the order to publish the legal text formally; and 2) to verify whether and on which day the text of the secondary legislation was officially published.
- The executive regulation entering into force on the second day following publishing, unless otherwise regulated by the regulation or authorising law
- External dissemination of the main policy content of the legal ordinance to specific target groups or the general public through appropriate instruments (website, electronic and print media, etc.).

### 3.11 Stage 9 of the legislating process – *Ex post* evaluation of secondary legislation

Stage in the legislating process		
1	Initiation	
2	Concept development, phase 1 (draft)	
3	Impact assessment, phase 1 (concept)	
4	Concept development, phase 2 (final)	
5	Drafting legal text, phase 1	
6	Impact assessment, phase 2 (legal text)	
7	Drafting legal text, phase 2 (review)	
8	Enactment	
9	<i>Ex post evaluation</i>	



1 After the secondary legislation has been implemented, it is very important that the legislating body (ministry) monitors application of its product. There are various institutions that will provide feedback on the implementation, efficacy, effectiveness and efficiency of secondary legislation.

- The courts decide on cases and may find that the law is unclear, unjust or overlooks important facets of the matter.
- Lawyers consult clients and prepare lawsuits.
- Administrators may find that it difficult to apply the legislation.
- Observers may find that people do not abide by the legislation.
- Businesses may find that the law is costly.
- University teachers, in explaining the law, may find deficiencies.
- The media may report scandals that could not be prevented by the law.

It is important that ministries attentively collect all this information and rethink possibilities to improve the legislation.

2 In addition, a more systematic and institutionalised *ex post* evaluation has become quite an important element in legislative practice in many countries in the last four decades. The form of institutionalisation can be distinguished between procedural measures and organisational measures. Procedural measures are, for example, clauses in the piece of legislation that obligate retrospective evaluations and the production of periodic reports. Organisational measures concern the creation of institutions, organs, units, etc. – independent or as departments and sub-organs within institutions.

3 Systematic *ex post* evaluations can be defined as targeted and time-limited investigations aimed to identify the implementation and effects of government action, measure them if possible and assess the extent to which they contribute to the achievement of the goals and the common good.

*Ex post* evaluations serve the purposes of:

- Giving an account of government action
- Identifying starting points for improvement and triggering learning processes
- Gaining knowledge for the design and adaptation of government measures and their planning
- Generally expanding knowledge about government measures and the prerequisites for the success of government action.

Therefore, retrospective evaluation on a regular basis is desirable. In particular, it should be carried out when general reviews of existing legislation take place. When an *ex post* evaluation should take place may be decided when the new regulation is being prepared and can, under appropriate circumstances, be included in the legal text.



For example, *ex post* evaluation is particularly appropriate where *ex ante* RIA has shown considerable uncertainty about the risks being addressed by the regulation. In other circumstances, the appropriate time for an *ex post* evaluation may be decided later. In any case, it is essential that the time of the evaluation be chosen so that the effects of the regulation can be measured or new information about the circumstances of the regulation can be incorporated into the review. When a regulation has been in force for a while, it should also be possible to measure any changes in the behaviour of those affected by the regulation.

4 Questions for an *ex ante* evaluation have been mentioned (see [section 3.6.1](#)). The essential difference is that *ex ante* RIA has to operate with “expected” facts, “assumed” side effects and “estimated” numbers, while *ex post* evaluation deals mainly with empirical data and proven facts. Additional typical questions for an *ex post* evaluation are:

- Have the goals been achieved with the current provisions?
- Which side effects have appeared, and are these considerable?
- To what extent have burdens and relief developed?
- Has the provision proven itself practicable, and was it accepted, observed and obeyed?
- Is there a need for repeal or amendment?
- What is the degree of goal attainment?
- What is the practicability, and what are the subsidiary impacts?

5 The implementation plan (see [section 3.5.4](#)) can also be used as a core checklist for *ex post* evaluation of implementation, reusing the main tools for data collection, consultation and RIA as were applied in the *ex ante* assessment. The result of a retrospective evaluation may be to:

- Abrogate the law
- Amend the first version of the law
- Republish the law, because it is unclear after many amendments.

6 An amendment is the addition, deletion or modification of the original law. Since living conditions and politics change rapidly, amending laws far exceeds legislating original laws in modern states. Sometimes, amendments follow each other in a hectic manner such that citizens, administrators and judges have difficulties finding the legislation in force.

7 An important and easily applicable instrument for securing retrospective evaluation on a regular basis is sunset legislation. The secondary legislation stipulates that it will expire at a given date as enacted, unless the legislating body (ministry) prolongs its effectiveness. A similar effect derives from a provision of the legislation that the legislating ministry or a centralised evaluation institution has to report in two, three or more years’ time (or every two years) on the implementation of the law. The responsible legislating body can then decide whether to tolerate reported deficiencies or to amend the law.

8 It is recommended that the initiation of *ex post* evaluation falls within the Head of Project’s scope of responsibilities. He/she is in charge of proposing, on the basis of *ex post* evaluation, that the existing legal regulation be repealed, amended or replaced by a new legal regulation. The

proposal, which may also include non-legislative measures either in combination with or instead of norm-based solutions, is to be submitted to the Head of Legislation, who decides whether to initiate a new legislative procedure, starting again with Stage 1: Initiation and ending with Stage 9: *Ex post* evaluation.

## 4 PART FOUR – Tools

### 4.1 TOOL 1 – Economic impacts

An option will have important economic impacts when it directly affects the way in which businesses should work. Economic development results from businesses being established, investments being made, and jobs being created. Therefore, the main questions are whether the option directly affects the possibilities to conduct business, affects the activities of businesses or has impacts on their employees.

If the answer is NO, the option is not expected to have important economic impacts.

If the answer is YES, there will surely be economic impacts. The checklist below lists the main economic impact categories that assist with determining the expected impacts. It is likely that there will be several questions to which the answer is YES. All of these need to be analysed. How detailed the analysis needs to be can be decided based on the importance of the impact. Section 3.5.2.4 sets out how the importance of impacts can be identified.

<i>Economic impact category</i>	<i>Key impact</i>	<i>Is this impact expected to occur?</i>	
		Yes	No
Jobs	Will the number of available jobs increase?		
	Will the number of available jobs decrease?		
	Will there be an effect on the level of payment?		
	Will there be an effect on the ease of finding a job?		
Conducting business	Will there be an effect on access to finance for businesses?		
	Will certain products be removed from the market?		
	Will certain products be allowed on the market?		
	Will businesses have to be closed down?		
	Will new businesses be created?		
Administrative burdens	Will businesses have to comply with new information obligations?	If YES, apply...	

	Are information obligations for businesses simplified?	SCM	
Trade	Are the current import flows expected to change?		
	Are the current export flows expected to change?		
Transport	Will there be an effect on how passengers or goods are transported?		
	Will there be a change in time needed to transport passengers or goods?		
Investment	Are companies expected to invest in new activities?		
	Are companies expected to cancel or postpone investments?		
	Will investments by the diaspora increase?		
	Will investments by the diaspora decrease?		
	Will FDI increase?		
	Will FDI decrease?		
Competitiveness	Will the price of business inputs, such as electricity, increase?		
	Will the price of business inputs, such as electricity, decrease?		
	Are innovation or research likely to be promoted?		
	Are innovation or research likely to be hindered?		
SME impacts	Are affected companies mainly SMEs?	If YES, apply SME test	
Prices and competition	Will the number of goods and services available for businesses or consumers increase?		

	Will the number of goods and services available for businesses or consumers decrease?		
	Will the prices of existing goods and services increase?		
	Will the prices of existing goods and services decrease?		
Regional economic impacts	Will a specific business sector be affected?		
	Is this sector concentrated in a certain region?		
Overall economic development	Will future economic growth be affected?		
	Could there be an effect on the inflation rate?		

## 4.2 TOOL 2 – Social impacts

The category of social impacts is very diverse. It is most likely that an option will have social impacts.

The checklist below lists the main social impact categories that assist with determining the expected impacts. It is likely that there will be several questions to which the answer is YES. All of these need to be analysed. How detailed the analysis needs to be can be decided based on the importance of the impact. [Section 3.5.2.4](#) sets out how the importance of impacts can be identified.

<i>Social inclusion    Key impact</i>		<i>Is this impact expected to occur?</i>	
		Yes	No
Jobs	Will the number of available jobs increase?		
	Will the number of available jobs decrease?		
	Are jobs in a specific business sector affected?		
	Will there be an effect on the level of payment?		
Regional social impacts	Are the social impacts concentrated in a certain region or specific cities?		

<i>Social inclusion</i>	<i>Key impact</i>	<i>Is this impact expected to occur?</i>	
Working conditions	Are the rights of workers affected?		
	Are standards for working under dangerous conditions introduced or abolished?		
	Will there be an effect on how the social dialogue between employees and employers takes place?		
Social inclusion	Will there be an impact on poverty?		
	Is access to social protection schemes affected?		
	Will the price of basic goods and services change?		
	Will there be an impact on the financing or organisation of social protection schemes?		
Education	Will there be an effect on primary education?		
	Will there be an effect on secondary education?		
	Will there be an effect on tertiary education?		
	Will there be an effect on vocational education and training (VET)?		
	Will there be an effect on the education of workers and life-long learning?		
	Will there be an effect on the organisation or structure of the education system?		
	Will there be an impact on academic freedom and self-governance?		
Culture	Does the option affect cultural diversity?		
	Does the option affect the funding of cultural organisations?		
	Does the option influence opportunities for people to enjoy cultural activities or participate in them?		
	Does the option affect the preservation of cultural heritage?		

<i>Social inclusion</i>	<i>Key impact</i>	<i>Is this impact expected to occur?</i>	
Governance	Does the option affect citizens' ability to participate in the democratic process?		
	Is every person treated equally?		
	Will the public be better informed about certain issues?		
	Does the option affect the way political parties operate?		
	Will there be an impact on civil society?		
Public health and safety	Will there be an effect on the life of people, such as life expectancy or mortality rates?		
	Will there be an effect on the quality of food?		
	Will health risk due to harmful substances increase or decrease?		
	Will there be health effects due to changes in noise levels or the quality of air, water or soil?		
	Will there be health effects due to changes in the use of energy?		
	Will there be health effects due to changes in waste disposal?		
	Will there be an effect on the lifestyle of people, such as take up of sports, diet changes or changes in the use of tobacco or alcohol?		
	Are there specific groups that face much higher risks than others (determined by such factors as age, gender, disability, social group or region)?		
Crime and security	Are the chances that criminals get caught affected?		
	Is the potential gain from crime affected?		
	Is there an effect on corruption levels?		
	Is the capacity of law enforcement affected?		

<i>Social inclusion</i>	<i>Key impact</i>	<i>Is this impact expected to occur?</i>	
	Is there an effect on the rights and security of victims of crime?		

### 4.3 TOOL 3 – Environmental impacts

Environmental impacts are most often linked to economic and social impacts. The overview below provides the leading questions for identifying the environmental impacts that matter.

<i>Environmental impact category</i>	<i>Key impact</i>	<i>Is this impact expected to occur?</i>	
		Yes	No
Climate and sustainable environment	Will there be an effect on the emission of greenhouse gases (CO <sub>2</sub> , methane, etc.)?		
	Will fuel consumption be affected?		
	Will the mix of resources that are used for energy production change?		
	Will there be a change in price for environmentally-friendly products?		
Air quality	Will there be an effect on the emission of air pollutants?		
Water quality	Does the option affect the quality of fresh water?		
	Does the option affect the quality of groundwater?		
	Does the option affect drinking water resources?		
Soil quality and land use	Will there be an effect on the quality of soil (related to acidification, contamination, use of pesticides or herbicides)?		
	Will there be an effect on soil erosion?		



<i>Environmental impact category</i>	<i>Key impact</i>	<i>Is this impact expected to occur?</i>	
	Will soil be lost (through construction, etc.)?		
	Will soil be gained (through decontamination, etc.)?		
	Will there be a change in land use (e.g. from forest to agricultural or urban use)?		
Waste and recycling	Will the amount of waste that is generated change?		
	Will the ways in which waste is treated change?		
	Will there be an effect on the recycling possibilities for waste?		
Use of resources	Will the use of renewable resources (fish stocks, hydropower, solar power, etc.) be affected?		
	Will the use of resources that are not renewable (groundwater, minerals, coal, etc.) be affected?		
Scale of environmental risks	Will there be an effect on the chances of risks (fires, explosions, accidents, etc.)?		
	Will there be an effect on readiness when natural disasters occur?		
	Will the protection of society against natural disasters be affected?		
Biodiversity, flora and fauna	Will there be an effect on protected or endangered species or their habitat?		
	Will the size of or connections between nature zones be affected?		
	Will there be an effect on the number of species in a given area?		
Animal welfare	Will there be an effect on the treatment of animals?		

<i>Environmental impact category</i>	<i>Key impact</i>	<i>Is this impact expected to occur?</i>	
	Will there be an effect on the health of animals?		
	Will there be an effect on the quality and safety of animal feed?		

#### 4.4 TOOL 4 – Impacts on fundamental rights

Fundamental rights form the basic legal protection for the political, social and procedural rights of individuals and legal entities. In general, fundamental rights are absolute rights that cannot be changed and should be guaranteed, promoted and strengthened to the greatest extent possible. Limitations to fundamental rights have to be dealt with carefully and be duly justified before enacted.

<i>Fundamental rights impact category</i>	<i>Key impact</i>	<i>Is this impact expected to occur?</i>	
		Yes	No
Dignity	Does the option affect the dignity of humans, their right to life or the integrity of the person?		
Freedom	Does the option affect the right to liberty of individuals?		
	Does the option affect a person's right to privacy?		
	Does the option affect the right to marry or start a family?		
	Does the option affect the legal, economic or social protection of individuals or the family?		
	Does the option affect freedom of thought, conscience or religion?		
	Does the option affect freedom of expression?		
	Does the option affect freedom of assembly or association?		

<i>Fundamental rights impact category</i>	<i>Key impact</i>	<i>Is this impact expected to occur?</i>	
		Yes	No
Personal data	Does the option involve the processing of personal data?		
	Is the individual's right to access, rectification and objection guaranteed?		
	Is the way in which personal data is processed clear and well protected?		
Asylum	Does the option affect right of asylum?		
Property rights	Will property rights be affected?		
	Does the option affect the freedom to conduct business?		
Equal treatment	Does the option safeguard the principle of equality before the law?		
	Is there a chance that certain groups would suffer discrimination directly or indirectly (e.g. based on sex, race, colour, ethnicity, minority status, political or any other opinion, age, sexual orientation)?		
	Does the option affect the rights of people with a disability?		
Children's rights	Does the option affect the rights of children?		
Good administration	Will administrative procedures become more burdensome?		
	Is the way in which the administration takes decisions affected (transparency, procedural time, right of access to a file, etc.)?		
	For criminal law and envisioned sanctions, are the rights of the accused affected?		
	Is access to justice affected?		

#### 4.5 TOOL 5 – Gender impact assessment

Gender impact assessment is the process of comparing and assessing the current situation and trend – in line with gender-relevant criteria – with the expected development resulting from the introduction of a proposed policy. Gender impact assessment is the estimation of the effects (positive, negative or neutral) of any policy or activity implemented on specific subjects in terms of gender equality.

Gender equality principles and mainstreaming need to be applied at all stages of the analysis, planning, budgeting and implementation of policies and legislation by public and private entities. All public institutions (legislative, executive, judicial and beyond) need to ensure that fundamental elements of gender equality are included in the design and implementation of policies and legal frameworks. This includes concepts, processes, systems and instruments. This therefore also implies that gender impact assessment, as an instrument for conducting gender analysis, be an integral part of policy development and of the process of developing concept documents.

Egypt's Constitution, ratified in January 2014, views gender equality as “a fundamental value for the democratic development of the society and for that to be achieved, equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life ought to be provided.” Also, the Constitution has accorded constitutional rank to the provisions of the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW)<sup>65</sup>, to which Egypt is a signatory member. However, the exemption of any part of the CEDAW that runs counter to Islamic law remains.

As the country's fundamental law, the Constitution is an essential precondition for the implementation of the gender equality principle.

##### *Effective gender mainstreaming*

A project is designated effective gender mainstreaming (EGM) if the project outcome is not gender equality or women's empowerment, but project outputs are directly designed to improve women's access to social services or economic and financial resources and opportunities, to improve basic rural and urban infrastructure or to enhance the voices and rights that contribute to gender equality and women's empowerment.

The EGM category can be applied to virtually all sectors of operations, contingent on meeting the following requirements:

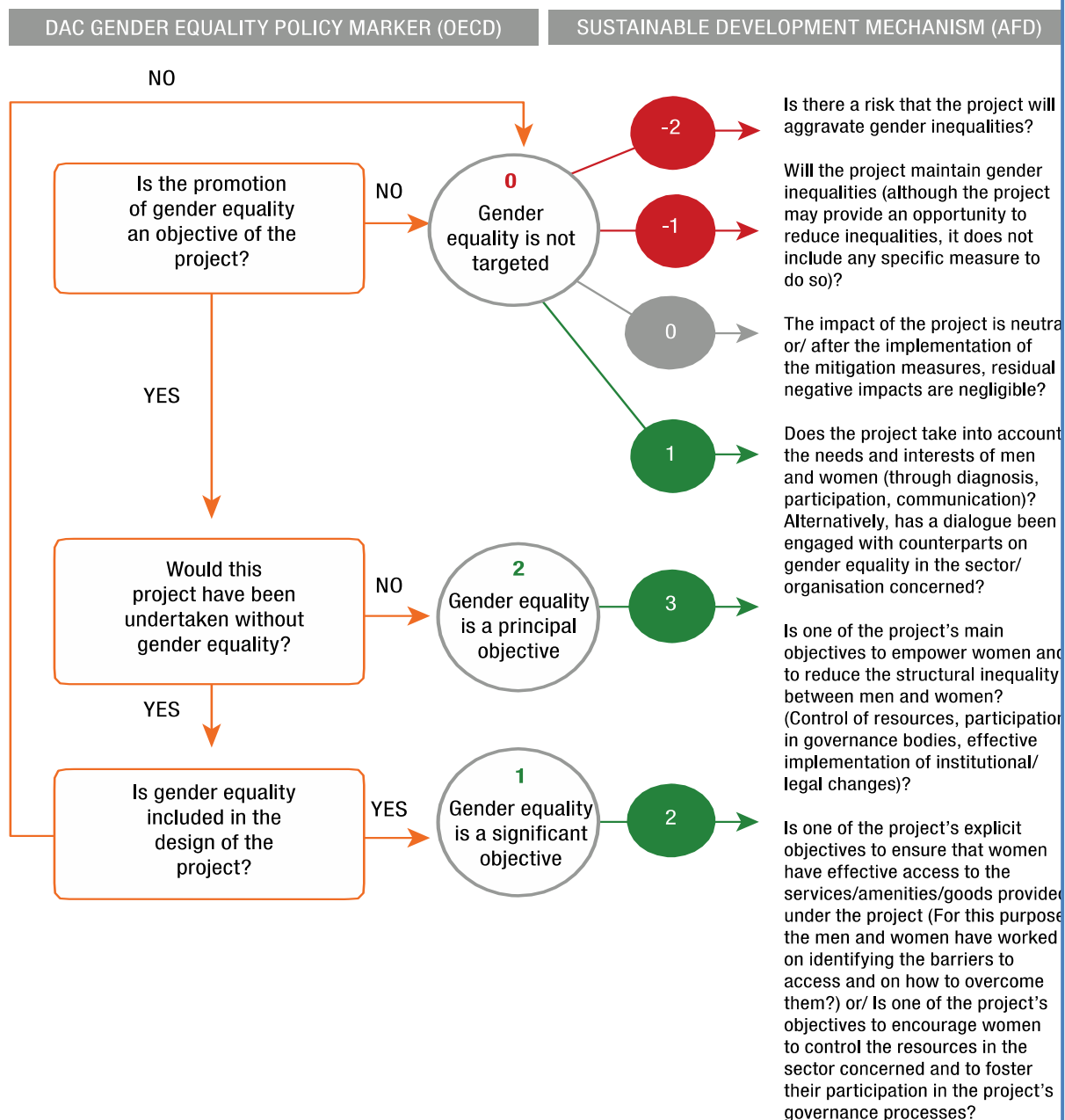
1. The social analysis conducted during project preparation included careful consideration of gender issues, highlighting both constraints and opportunities.

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<sup>65</sup> UN Women (1979), *Convention on the Elimination of All Forms of Discrimination against Women* UN Women, New York, [www.un.org/womenwatch/daw/cedaw/](http://www.un.org/womenwatch/daw/cedaw/).

2. Specific gender design features are included in the majority of project outputs or components to facilitate and ensure women's participation and access to project benefits. Most outputs and components should have at least three gender design features and targets.
3. Gender targets and performance and monitoring indicators are included in the project.
4. The text discusses how the project will contribute to improving women's access to or benefits from the project – at a minimum, in the poverty and social subsection under the due diligence section.
5. The policy matrix includes a covenant or condition to support implementation of EGM.

## Harmonisation between the OECD-DAC Gender Equality Policy Marker and the Gender Equality Dimension of the AFD's Sustainable Development Mechanism



Source: French Development Agency

Gender impact assessment stages	Explanation
Stage 1	<p>Assess and describe the current situation.</p> <ul style="list-style-type: none"> <li>• Collect any available gender disaggregated statistics, facts and information addressed by the proposed objectives or regulation.</li> <li>• Analyse the status and roles of men and women using qualitative and quantitative measurement (e.g. low-income group), and identify whether there is a gender dimension.</li> <li>• Analyse norms and values that may influence gender segregation and division of labour.</li> <li>• Expand the legal analysis conducted for the problem definition, and assess whether proposed legal measures are discriminatory or (<i>ex post</i>) whether the existing legal framework insufficiently supports gender equality or is insufficiently implemented.</li> <li>• Consult with women and men who are potentially affected by the implementation of policy objectives.</li> <li>• Consult with the responsible officers in the line ministries, municipalities and public institutions and with the project group.</li> <li>• If needed, seek and engage the services of experts outside public institutions.</li> </ul>
Stage 2	<p>Assess and describe the potential impacts of the proposed policy.</p> <ul style="list-style-type: none"> <li>• Analyse future trends and potential developments without planned interventions.</li> <li>• Assess trends in men's and women's positions independently of the effects of any proposed policy.</li> <li>• Assess the potential impacts on men and women and gender relations.</li> <li>• Identify who would be directly targeted or indirectly affected (which groups of men and women in particular)</li> <li>• Assess participation, resources and rights.</li> <li>• Identify the difference between existing and expected future gender impacts.</li> </ul> <p>Based on that assessment, identify which measures are more relevant in order to achieve the desired result.</p>

<i>Gender impact assessment stages</i>	<i>Explanation</i>
<i>Stage 3</i>	<p>Adjust objective(s).</p> <ul style="list-style-type: none"> <li>• Decide whether, based on the findings from Stages 1 and 2, the following changes need to be made: <ol style="list-style-type: none"> <li>1. Redefine the problem definition.</li> <li>2. Adjust the objectives of the proposed policies.</li> <li>3. Reconsider and determine which measures can actively promote gender equality and have a positive impact on both men and women.</li> </ol> </li> <li>• Recognise that some policies may have no specific commitment to gender equality but may otherwise have a very positive or negative effect/side effect.</li> <li>• Discuss the changes based on the assessment conducted with the project group for the concept document.</li> <li>• Discuss the changes through specific consultation with relevant stakeholders.</li> </ul>
<i>Stage 4</i>	Select the measures to be applied for adopting policies that actively promote gender equality, and determine whether specific policy approaches or actions are needed to ensure that specific groups of men and women benefit from the proposed policy intervention.
<i>Stage 5</i>	Identify what actions must be taken by all public institutions involved to ensure progress, given that there is a shortfall in knowledge of gender issues at all levels of policy making. Integrate such actions into the implementation plan for options (see <a href="#">section 3.5.2.3</a> ).
<i>Stage 6</i>	If analysis in Stages 1 and 2 indicates that the policy is gender neutral, state this clearly in the concept document.
<i>Stage 7</i>	If the policy proposed in the concept document is linked to gender issues, highlight this, and make sure that, during public consultation, representatives in line ministries (of all sectors affected by the proposed policy) and other relevant entities outside the public institutions are closely involved in the public consultation process, so that their contributions are duly considered.

#### 4.6 TOOL 6 – Social equity analysis

Social equity signifies the unbiased access, procedural fairness and equal quality of the provision of public goods and services for all citizens.



Social equity analysis (SEA) is a mandatory tool applied by project group members to concept documents. The social equity quick check (see below) should always be performed in order to decide whether to conduct more detailed SEA.

SEA means granting equal justice and fairness to policies that have a social dimension. It mirrors the implementation of public policies with the perspective of citizens. The target is to ensure that all people in society have the same status with regard to civic rights and are able to enjoy access to public goods and services equally. This particularly includes groups that can be considered disadvantaged compared to others. At the same time, some groups will find it easier to shoulder certain obligations than others. Policies might be implemented much more effectively and efficiently for some groups. Other groups, however, might not be reached by the policies, which results in inequality, unfairness and injustice. In this case, the desired policy outcome is not achieved.

It is essential to note that policy shortcomings can often be traced back to improper analysis and consultation during concept development. This may create negative discourse and instability among various societal groups.

**Unbiased access:** every person should have equal access to goods and services that are provided publicly; no individuals or groups of people should be limited in their access to these public goods and services as a result of government actions or because of their disadvantageous conditions. In fact, based on their needs, they should be provided with additional opportunities to access these goods and services.

**Procedural fairness:** ensure fair and just procedures so that decision makers and public authorities, after identifying the needs of affected parties, reach a correct decision.

**Equal outcomes of the provision of public goods and services:** procedures are upheld, deadlines are always respected, and decisions apply unequivocally for everyone.

#### *Social equity quick check*

SEA needs to be discussed by every project group that develops a detailed concept document. Whether a detailed analysis is needed depends on the issues the document deals with and the conclusions the project group draws from internal discussions and consultation with external stakeholders. As a rule, SEA is very likely to be relevant when the topic of the concept document is linked to the living conditions of people, influences their social status or determines factors of social mobility. SEA is especially relevant with regard to the following dimensions: material living conditions, productive activities, health, education, leisure and social interactions, economic stability, physical safety, governance and basic rights, and living environment.

- **Material living conditions:** ability to shoulder living costs, given income levels, consumption, housing and basic necessities (water, electricity, heating, Internet

availability and access)

- Productive activities: availability of jobs and their quality (work hours, wages, safety at work)
- Health: access to and quality of health care; mortality
- Education: access to and quality of education (kindergartens, elementary and high schools, VET, higher education, life-long learning)
- Leisure and social interactions: participation in activities related to arts, culture and sports
- Economic stability: resilience to economic misfortunes
- Physical safety: probability of becoming a crime victim; safety risks
- Governance and basic rights: non-discrimination; participation in public and political life (political parties, unions)
- Living environment: protection from air, water and noise pollution; non-exposure to risk from disasters.

When the problem definition, objectives and options of the concept document appear to have a direct or indirect impact on these dimensions, SEA should be conducted rigorously. In particular, experts from among the administration and external stakeholders should be consulted. Naturally, SEA will not be relevant for every concept document, especially if concept documents deal with the restructuring of the internal organisation of public bodies. However, when changing internal processes are related to service delivery, then SEA is still applicable.

Service delivery refers to the processes used to deliver public services to citizens and companies. Such services include:

- Social benefits
- Education
- Licenses and permits
- Water
- Heating and electricity
- Housing
- Etc.

Effective and efficient service delivery is based on the principles, standards, policies and constraints that are used to guide the design, development, deployment and operation of services delivered by the government. The overall aims must be to offer consistent and high-quality services, ensure a consistent service experience for all users and adjust services to specific groups when necessary to deliver the service effectively.

### *Conducting social equity analysis*

When applying SEA, the following aspects should be determined:

1. Future benefits and obligations being considered under the policy options of the concept document
2. Groups affected by the proposed actions, their specific characteristics and needs, as well as dividers between them.

Identifying these aspects is essential to assess their interrelation and determine the expected group-specific impacts.

Benefits of policies include all goods and services provided to people by public institutions. Benefits are expected to improve citizens' lives. Obligations, on the other hand, include people's responsibilities to public institutions. These are inherently linked to the benefits that policies provide, since individuals must perform certain activities in order to enjoy the benefits provided by public institutions. Benefits, obligations and their impacts must be analysed for all proposed policy options.

Is it important to keep in mind that, while laws and policies may not explicitly exclude certain groups, their implementation might do so in fact. Groups have different capacities to fulfil the required obligations. Differences might be quite straightforward, such as those between a family consisting of a widowed woman with a part-time job supporting five children and a family consisting of a married couple, both employed, supporting two children. In the school example used in this tool, the same obligations for each family will be harder to deal with for a low-earning family compared to a high-earning family. SEA aims to uncover these differences so that they may be addressed effectively.

#### *Determining needs and dividers*

In the process of identifying affected groups, their needs must be determined as well. A need refers to an issue that specifically relates to a particular group. Needs can differ from one group to another. They can be determined based on the affected group's experience with existing policy or its expectations for the proposed options. It should be noted that the needs identified from desk research and those from the consultation process (self-identified needs of groups) may differ and contradict each other. A careful assessment is therefore essential to determine the real needs of groups as accurately as possible.

#### *Guiding questions to identify needs and dividers*

- Are there indications that certain groups are disadvantaged compared to others?
- Is the existing legal framework non-discriminatory?
- Has a group experienced any issues with procedural fairness?
- Has a group experienced difficulty in accessing benefits?
- Was a group overburdened by the demands for applying to an implemented policy and therefore could not enjoy its benefits?
- Has a group experienced a different level of demands regarding obligations or quality of benefits?
- Are people from a group disadvantaged for the unique reason that they belong to that group?
- Is a group disadvantaged because of the lack of non-material/material resources?
- Has the policy affected relations between groups because it favours one group over another?
- Do members of a group feel particularly differently than those of another group?

Does a group find the proposed policy an improvement to the current situation? If not, why?

Additionally, essential dividers between affected groups – such as ideological, ethnic or cultural differences and shortage of basic necessities – should be determined. Dividers can potentially lead to the different experience or treatment of groups. This in turn might lead to (feelings of) exclusion and other tensions, which are the driving factors of social instability.

<i>Example: Affected groups and their needs in primary education</i>		
<i>Benefits provided</i>	<i>Groups</i>	<i>Needs</i>
Mandatory regular education according to government curricula provided free for children  Priced extracurricular non-mandatory education  School books and other materials provided free for children up to the fifth grade	Children (grades 1-9)	Regular education, extracurricular education, meals, school books and other materials
	Low-income parents/custodians with more than two children (grades 1-5)	Money to cover meals, transport and extracurricular education
	High-income parents with one or two children (grades 1-5)	No specific needs
	Low-income parents with more than two children (grades 6-9)	Money to cover meals, transport, school books and other materials, and extracurricular education
	High-income parents with one or two children (grades 6-9)	No specific needs

SEA supplies information on whether it is justified to provide certain groups with additional possibilities to actually enjoy the benefits that government policies are meant to provide. When groups are not able to fulfil the obligations that government policies directly or indirectly impose, the policies will not reach their intended outcome of equality. In the above example, having the majority of children from wealthier families educated and limiting the education chances of children from low-income families establishes a permanent divider between the groups. At the same time, providing a service, such as a school bus, especially benefits families with less financial means but also makes life for all families easier. Providing such a service for all is also likely to increase the willingness to support it.

### *Assessing the impact of proposed options on affected groups*

When the benefits and obligations for every proposed option and the affected groups are identified, the next step is to assess the actual expected impacts.

Based on the guiding questions listed in the checklist below, mitigating actions can be taken to reduce negative impacts. These can address the specific needs of groups and must be used to update and improve the identified options.

#### *Checklist: Impacts of benefits and obligations*

- Do the proposed benefits and obligations of every option meet the needs of affected groups?
- Do the proposed benefits and obligations amplify or reduce dividers between affected groups?
- Do the proposed benefits and obligations reduce current inequalities?
- Do the proposed benefits and obligations make living conditions of affected groups better or worse?
- Do the proposed benefits and obligations positively or negatively affect groups that do not have particular identified needs?

SEA can, for example, provide the insights needed to amend a law to:

- Provide differential treatment to a particular group with the aim of enhancing equity
- Organise training of officials to adjust implementing practices that resulted in de facto inequality
- Promote inclusion of a group by providing specific support
- Foresee activities to promote interconnection among groups (language, religion, culture, trade, school, common infrastructure)
- Include other measures to mitigate existing or potential future situations that lead to situations in which groups are not able to enjoy the benefits of government policies.

#### *Example: Mitigating actions for policy on primary education*

<i>Groups disadvantaged</i>	<i>Mitigating actions</i>
Low-income parents/custodians with more than two children (grades 1-5)	Subsidies for parents, free meals, free school bus, extracurricular education transformed into regular free education

Low-income parents/custodians with more than two children (grades 6-9)	Subsidies for parents, free meals, free school bus, free books and other materials, extracurricular education transformed into regular free education
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Mitigating actions have to be prioritised based on:

- Cost of implementation
- Magnitude of impact(s) on groups/sub-groups
- Risk of exacerbating existing or creating new tensions
- Relation to the government's strategic objectives and policies.

<i>Summary assessment of options and impacts (on needs and dividers)</i>						
	<i>Benefits</i>	<i>Obligations</i>	<i>Groups affected</i>	<i>Positive impacts</i>	<i>Negative impacts</i>	<i>Mitigating actions</i>
Option 1						(not applicable, i.e. status quo)
Option 2						
Option 3						

Findings from the table above should be presented in the form of a narrative report in Chapter 4 of the concept document. The report should elaborate the positive and negative impacts on affected groups of the benefits and obligations of every option proposed. Mitigating actions, if relevant, need to be integrated into Chapter 3 of the concept document as adjustments to proposed options.

<i>Template: Social equity analysis checklist</i>	
<input type="checkbox"/>	Analyse the concept document again, particularly the sections on the problem definition, objectives, options and expected impacts.
<input type="checkbox"/>	Identify which groups are expected to enjoy which benefits. Focus on the goods and services provided, for example subsidies, pensions, social assistance, education services, healthcare services and dispute resolution.
<input type="checkbox"/>	Identify the obligations with which various groups must comply. Focus on responsibilities, for example time needed (and at what time of the day), payment of contributions or taxes, need for utilities and transport requirements.
<input type="checkbox"/>	List identified benefits and obligations for every option proposed.

<input type="checkbox"/>	Search for specific groups mentioned in the problem definition, specific objectives and specific options proposed. Based on the guiding questions for SEA, identify whether a group or sub-group was affected differently than other groups. Assess whether this is still the case and, if yes, identify needs and dividers.
<input type="checkbox"/>	Engage in internal consultation with implementing bodies/officers at both the central and local levels.
<input type="checkbox"/>	Conduct consultation with stakeholders, especially with affected groups and CSOs working in the sector related to the topic covered in the concept document.
<input type="checkbox"/>	List the groups affected, their needs and dividers between them based on the table for presenting SEA in a concept document.
<input type="checkbox"/>	Discuss the findings from SEA at a meeting of the project group for the concept document. If relevant, invite stakeholders and other public bodies to discuss these findings at that meeting.

#### 4.7 TOOL 7 – Youth impact assessment

Youth is usually the largest age group of the population. Young people play a key role in the future of the society and the country. It is essential to set conditions that enable the youth of today to develop successful lives. Their socio-economic opportunities need to be boosted in order to unleash and benefit from their potential.

Incomplete and ineffective policies can create unintended and additional difficulties. Any chance missed for youth produces immediate negative effects. However, the eventual consequences for individuals and society might only show up much later. For example, chances for employment are undermined by a lack of or low quality of education. The education level that youth can reach in the next five years has a severe impact on chances later in life. Insufficient education might lead to unemployment. Unemployment brings poverty. Being poor, with no health insurance, makes it harder to address health problems. Missed opportunities for youth today mean that more might work in the grey or black economy as adults. In the worst case, a certain percentage turns to crime, is subject to exploitation or emigrates illegally. Inappropriate policies risk disadvantaging the current youth generation. The effect will be felt in the future through missed opportunities or lowered prospects for economic, civic and political development. These may in turn have very high direct and indirect costs to society.

Government actions aimed to support youth mostly produce the desired effects after five to ten years. Considering this, policy proposals should aim to identify immediate and eventual effects for young people and society. The purpose is to develop good policies that single out and mitigate negative effects as much as possible. Such policies improve young people's chances to lead independent lives and prosper.

- Youth impact assessment (YIA) quick check:

Whether YIA is relevant for a concept document depends on the issue that it addresses. YIA is relevant only for policies that affect the dimensions of youth's future success. This success is connected, in particular, with education and skills, employment, health, civic participation and security.

The measures considered under the proposed options need to be checked in detail for whether they relate to any of the dimensions that determine youth's future success.

#### Aspects of future success dimensions

<i>Education and skills</i>	<i>Employment</i>	<i>Health</i>
<ul style="list-style-type: none"> <li>• Access to education</li> <li>• Quality of education</li> <li>• Extracurricular education</li> <li>• VET concepts</li> <li>• Life-long learning</li> </ul>	<ul style="list-style-type: none"> <li>• Access to employment</li> <li>• Quality of jobs</li> <li>• Entrepreneurship opportunities</li> <li>• Job training</li> <li>• Apprenticeship/internship</li> </ul>	<ul style="list-style-type: none"> <li>• Prevention of diseases</li> <li>• Youth-friendly health facilities</li> <li>• Sexual and reproductive health</li> <li>• Substance abuse (drugs, alcohol, cigarettes, etc.)</li> </ul>

<i>Civic participation</i>	<i>Security</i>
<ul style="list-style-type: none"> <li>• Associations</li> <li>• Political engagement</li> <li>• Volunteering</li> <li>• Co-operation among youth of different backgrounds</li> <li>• Youth participation in government decision making</li> <li>• Cultural, sport and recreational activities</li> </ul>	<ul style="list-style-type: none"> <li>• Crime prevention</li> <li>• Traffic safety</li> <li>• Environment protection</li> </ul>

The project group for the concept document should discuss the relation of the proposed options with aspects listed in the table above. To strengthen the analysis, youth representatives, youth experts and policy experts from the respective dimensions should be consulted. These experts should include professionals from both the administration and external stakeholders.

When the project group concludes that youth dimensions will be affected, YIA should be conducted. The analysis should focus on the future success dimensions that the working group considers to be affected.

- Example of measures affecting aspects of youth's future success dimensions

A policy proposal on the reorganisation of the health system foresees measures for renovating existing and constructing new health facilities. The proposal undoubtedly affects the youth



dimension of health and all its aspects. To assess the impact, it should be determined whether the policy foresees the establishment of, for instance, youth-friendly health facilities, particularly in schools.

Youth-friendly health facilities are those tailored to meet the needs of young people. They should be equitable, accessible, acceptable, appropriate and effective. For example, a youth-friendly reproductive health service should be accessible geographically and financially, include trained providers and protect confidentiality and privacy.

- Assessing the impact of proposed policies on youth

When the quick check shows that YIA is necessary, the context of affected dimensions needs to be analysed. The analysis should cover three features: existing conditions, views and needs, and future effects.

#### Guiding questions for youth impact assessment

Existing conditions in the affected dimension	Views and needs regarding proposed measures	Immediate and eventual effects of proposed measures
<ul style="list-style-type: none"> <li>• What is the opinion of youth on the present situation?</li> <li>• Does youth face any difficulties?</li> <li>• If yes, what are these difficulties?</li> <li>• Are there good examples and best practices that can be used?</li> <li>• Is a particular youth group more disadvantaged than others?</li> <li>• If yes, for what reason?</li> </ul>	<ul style="list-style-type: none"> <li>• What are the views of youth on the proposal?</li> <li>• What are the specific needs of youth (transport to school, more sports facilities, etc.)?</li> <li>• Is the proposal going to change the present situation?</li> <li>• Are anticipated changes positive or negative?</li> <li>• How could the proposal be improved, according to youth or experts?</li> </ul>	<ul style="list-style-type: none"> <li>• What are the positive or negative immediate and eventual effects on youth?</li> <li>• What are the positive or negative immediate and eventual effects on society?</li> </ul>

Relevant and reliable information needs to be collected to analyse the youth-specific context and to answer questions, such as those presented above.

Desk research will often provide a substantial amount of relevant information. This information can be used to further define the problem definition, objectives and options. Information relevant for YIA can come from various sources: government and other reports, news articles, press statements, online discussions, etc. Desk research should be complemented by internal consultation and targeted consultation involving youth and/or relevant experts. This means singling out young people for communication activities for the concept document and for the consultation process. The messages and communication channels need to be carefully selected to ensure effective consultation.

Ensure a proper communication and consultation process for YIA.

1. Consult internally<sup>66</sup> with relevant institutions: directorates for education, culture, youth, sports and health within municipalities; ministries responsible for culture, youth and sports, particularly the youth department; Ministry of Education, Science and Technology; Ministry of Labour and Social Welfare; Ministry of Health; Ministry of Internal Affairs; Ministry of Justice; Ministry of Environment and Spatial Planning; and the OPM.
2. Inform youth about the proposed policy, its measures and objectives. Consider conducting youth-specific communication campaigns. Use all relevant channels to convey relevant messages, particularly social media. Inform the target audience in an appropriate way that makes it easy to understand the information and the relevance of youth involvement.
3. Consult youth and youth associations. Assess the best setting and location for consultation, since official meetings might not yield the desired results. Discuss the consultation process and specific activities in advance with key persons.
4. Ensure communication<sup>67</sup> with youth groups that are not easily reached, e.g. youth with disabilities, living in rural areas or belonging to minorities.
5. Consult with NGOs and development partners working on issues related to economic development, education, employment, health, environment, security, justice and politics. Aim to obtain their opinion about the existing situation, youth views and needs, and the immediate and eventual effects on youth and society. Relevant organisations could include an international organisation implementing a project in the field of education, a think tank analysing factors relevant to Egypt's economic development, or a grassroots organisation looking into the driving factors of youth unemployment.

It is very important to keep in mind that youth is not a homogenous group. Due to their different characteristics, youth groups will experience different impacts. Youth groups can differ along

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<sup>66</sup> No general rules on internal consultation exist in (the rule book of) government procedures.

<sup>67</sup> A relevant ministry website is usually instrumental for publishing new draft regulations and collecting opinions; duration may vary based on the complexity of the subject.

gender, ethnic, urban/rural, disability and other characteristics. When this is the case, using [Tool 6](#) – Social equity analysis should be considered to ensure equal outcomes for all youth groups.

After desk research and consultation, the final step is to assess the impacts of the measures proposed in the concept document. The working group should specifically assess:

- The impact of measures on the existing conditions of youth
- Whether measures consider and meet youth views and needs
- The effects of measures on young people and society.

#### Example of assessing the impact of youth-friendly health services

<i>Measure</i>	<i>Impact</i>
Establishment of youth-friendly reproductive health facilities	Existing conditions: no such facilities exist. Youth currently receive services from general providers that are not geared to youth's specific needs. ⇒ The impact of the measure is therefore positive.
	Views and needs: youth affected by the proposal are of the view that youth-friendly health services are needed and positive for their reproductive health. Healthcare and youth experts share these views. ⇒ The views and needs of youth are therefore met.
	Effects on youth: ⇒ Immediate – protection of reproductive health, prevention of transmitted diseases, prevention of early pregnancy ⇒ Eventual – increase in chances for leading an independent life and for employment, social inclusion.  Effects on society: ⇒ Immediate – increase in immediate medical care costs, fewer transmitted diseases ⇒ Eventual – decrease in general healthcare and social assistance costs, fewer abandoned children and distressed families, higher tax revenues.

The proposed measures and assessment results should be listed in the table below. If the impact is negative, the working group should develop mitigating actions in the form of recommendations for adjustment of the proposed options. Depending on the topic, such actions may include the establishment of centres for extracurricular education, campaigns against substance abuse or the installation of security cameras in schools. The table should be elaborated in the concept development options (in the anticipated impacts in [section 3.4.1](#) and the mitigating actions in [section 3.4.3.1.1](#)).

## Youth impact assessment overview

	<i>Measures</i>	<i>Impact on existing conditions</i>	<i>Are youth views and needs addressed?</i>	<i>Effects on youth and society</i>	<i>Mitigating actions</i>
Option 1 (status quo)					No policy changes foreseen
Option 2					
Option 3					

## Performing youth impact assessment

<input type="checkbox"/>	Analyse the concept document again, particularly the sections on the problem definition, objectives, options and expected impacts.
<input type="checkbox"/>	Identify measures foreseen by the options.
<input type="checkbox"/>	Assess whether these measures affect youth's future success dimensions, and identify how these dimensions are affected.
<input type="checkbox"/>	Analyse the context of the future success dimensions that are affected. Analyse the existing conditions of young people, youth views and needs, and the immediate and eventual effects for youth and society.
<input type="checkbox"/>	Obtain information from desk research and consultation.
<input type="checkbox"/>	Structure the impact of proposed measures on youth using the guiding questions and YIA overview. If the impact is negative, develop mitigating actions in the form of recommendations for policy adjustment.
<input type="checkbox"/>	List the findings in the concept document.

### 4.8 TOOL 8 – Costing options and measures of concept documents

The implementation plan in [section 3.4.4](#) is key to determine the implementation costs of the decisions presented in the concept document. The plan provides the overview of outputs and the activities needed to achieve them. The costs of individual activities can be assessed by estimating the human resources and budget needed. Adding up the costs of all activities for one output provides the cost of that output. Since the implementation plan

lists the activities and shows who is responsible for their implementation, costing means estimating the effort needed to ensure that the activities can be performed.

Costs to the budget are worthwhile when they are needed to address a very significant problem. It is also worthwhile to implement an option when the expected costs are low, and the foreseen benefits are high. The outputs and activities provide the basis for determining the costs that will occur when an option is implemented. These are solely the costs to the Egyptian budget. Other costs, such as those for companies and citizens, are calculated with different tools.

1. Human resources (salaries and wages)
2. Procurement of services (goods and services)
3. Procurement of goods (goods and services)
4. Direct support to beneficiaries (subsidies and transfers)
5. Investments in equipment (capital expenditures)
6. Investments in infrastructure (capital expenditures).

Assessing the future costs of implementation of policy options is an important factor in deciding which option to choose. It also helps with reassessing the practical feasibility of options, the deadlines that are set for implementation and the potential bottlenecks. A detailed costing of options improves the quality of the analysis for a concept document. It provides essential insight into the funding needs of the organisations involved in the implementation of measures. The overview below shows the steps necessary to perform a proper costing of policy options.

<i>Costing of policy options in the Final Concept Document</i>	
<i>Step</i>	<i>Description</i>
Step 1: Define outputs and time frame for delivery	The implementation plan already provides this information. If such a plan was not made, the outputs need to be stated clearly, together with the time frame in which they need to be delivered.
Step 2: Define activities	Activities are required to ensure that the outputs are delivered. These activities need to be clearly listed. If made, the implementation plan already provides this information.
Step 3: Identify required resources	<p>For each activity, resources are required. They need to be clearly identified. At this stage, the distinction has to be made between the use of existing resources and new resources.</p> <p>For example, in order to develop a law, existing human resources within a line ministry will often be sufficient. Yet,</p>

<i>Costing of policy options in the Final Concept Document</i>	
<i>Step</i>	<i>Description</i>
	in order to implement the law, additional resources might be necessary. This can be additional staff but also vehicles and other materials. If these are not yet provided, new costs will be created. These costs will have to be covered by the budget to ensure that implementation is not hindered.
Step 4: Contact budget department for finalisation of costing	Each budget department has specialists that are used to costing policies. They are familiar with the detailed costing methodology. They can also build on previous experience with policy costing. Important: even when a representative of the budget department is part of the project group for the concept document, plan costing of the options in a separate meeting.
Step 5: Finalise costs per activity	Policy costing is based on the process developed by the Ministry of Finance. Different kinds of costs, e.g. those for human resources or equipment, are labelled with different codes. This makes it easier to analyse the costing figures. When the concept document is adopted, the codes allow easier integration of the costing figures into the budget process.
Step 6: Add up costs	When the costing form for concept documents is used, the total costs will be automatically calculated. If the form is not used, ensure that the costs for all activities and outputs are added up properly. This is essential for the next step.
Step 7: Identify and add up savings	Next to additional activities being started and new costs emerging, there can be possibilities to cease certain activities or to simplify them. This will lead to a reduction in costs for implementing policies. These cost reductions have to be considered when assessing future budget needs. They will determine whether additional budget is necessary or whether a shift of budget or a shift of activities would be sufficient to implement the options that are analysed in the concept document.
Step 8: Determine whether budget impact assessment is needed	Concept documents are the basis for new policy actions of the government. The implementation of the option that is eventually chosen needs to be planned well, so that the expected benefits will materialise. In practice, this means that, if there is no (sufficient) budget reserved for implementing a policy, the intended

<i>Costing of policy options in the Final Concept Document</i>	
<i>Step</i>	<i>Description</i>
	<p>improvements will not be realised. If this happens, a lot of work will have been done in vain. Expectations that a situation will improve would be shattered.</p> <p>Based on the costing and savings figures that result from the calculation, it is possible to determine whether the total costs fall within the available budget of a ministry. Each ministry has so-called budget ceilings. If the costs needed for implementation stays below the budget ceiling, the next step would be to allocate the necessary budget so that it is clear that the funds are available when implementation starts. It may be that there is not enough budget available for the implementation of the decisions that follow from a concept document. In that case, the Ministry of Finance needs to be informed, and negotiations on budget reallocation need to be held. In practice, this comes down to working together with the budget department.</p>
Step 9: Add costing numbers to the implementation plan	<p>If budget impact assessment is not required, the costing figures and information on the budget lines in which the costs have been integrated need to be added to the concept document. The cost per output and activity can be added to the implementation plan. Alternatively, the total costs can be added in the costing section, and the Excel file for the costing of the concept document can be attached to the concept document as an annex.</p>

#### 4.9 TOOL 9 – Budget impacts

Budget impact assessment is necessary when substantial efforts are required to ensure the realisation of the commitments that follow from the concept document. In case the budget ceiling is exceeded, new funding sources have to be identified. This can be achieved by looking for saving options, e.g. reducing the budget for another activity, apportioning additional future budget from one ministry to another, ensuring direct budget support from development partners or borrowing additional funds. All of these options need to be approved by the government. It does provide the possibility of designing policies with consequences if a ministry goes beyond its budget ceiling. However, since such a development affects the future plans of the government, a decision needs to be properly prepared.

A ministry's budget department has access to the information needed for budget impact assessment. It has experience with the standards that need to be applied to the budgeting

process. It also leads all negotiations with the Ministry of Finance.<sup>68</sup> Of course, this needs to happen in close co-operation with the department that initiated the development of the concept document and is responsible for the implementation of all commitments that follow from it.

Budget impact assessment is based on the same outputs and activities as the costing that has been developed under the [Tool 8](#): Costing for concept documents. However, if the cost ceiling of a ministry is exceeded, the funding sources still need to be identified. This needs to be based on the available budget, the actual expenditures per ministry and the projections for the mid-term budget.

#### 4.10 TOOL 10 – Minimum standards for consultation

The purpose of consultation is gathering input for a concept document, but it is also about communicating government intentions for changing or improving policies and the motivation behind these intentions. If performed well, consultation fosters understanding and thus acceptance of policies, which in turn results in better and more effective implementation.

Two types of consultation have to be conducted when a concept document is developed: internal consultation and public consultation.

Internal consultation refers to consultation within the administration. This process covers, among other activities, discussions as part of the preparation of a concept document, participation in working groups, and the process of prior consultation before a proposal is submitted for inclusion in the government session for discussion and adoption.<sup>69</sup> The institutions and organisations responsible for the implementation of existing rules and/or of future requirements deriving from the concept document are of particular importance. They should always be consulted.

When consulting stakeholders, four principles guide the process, as presented in the table below. They are relevant, since stakeholder consultation is about motivating people and organisations to work with the administration and submit their views. This takes time and demands government resources. Equally important is that it takes stakeholders' time and effort as well.

It is essential to realise that others will have to set aside daily work to participate in the consultation. This will not be an issue for some organisations, such as professional NGOs (e.g. chambers of commerce and organisations that work in specific fields [human rights, the rule of law, anticorruption, media, etc.]). Such organisations can rely on highly professional staff whose job it is to participate in consultations. This makes it more likely that they can participate in a consultation. However, the effort that such organisations need to make – for example, in the form of research, analysis and discussion with other organisations – places a demand on their time and budget.

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<sup>68</sup> Decree/decision of the Ministry of Finance required for allowing an extra (supplementary) budget allocation upon official request of the legislating body, if extra costs caused by implementing a secondary legislation cannot be covered by its own revenues or funds provided by the existing budget.

<sup>69</sup> General rules on internal consultation exist in (the rule book of) government procedures.



It is also essential to realise that most CSOs and companies do not have extensive capacities or specialised staff, such as lawyers and economists, who earn a part of their salary by contributing during stakeholder consultation for government policies. In fact, the vast majority of companies are SMEs that will have to choose between running their businesses and contributing to a consultation. Approximately one-third of CSOs operate thanks to volunteers, and they operate without employees or funding. Of those that have employees, two-thirds operate with up to four employees. It is essential to keep in mind that when CSOs participate in a consultation, their volunteers and employees might actually be giving up their free time. When individual citizens participate in a consultation, they are investing their leisure time. Consultation activities have to adapt to the resources of the stakeholders being consulted. More importantly, the administration needs to acknowledge the time and effort that stakeholders invest in public consultation by showing that these efforts are valued and treated accordingly.

<i>Consultation principle</i>	<i>Explanation and suggestions</i>
1. Aim for maximum participation	<p>Consultation adds value when many stakeholders can participate. This means that they need to have sufficient time and information about the relevant issues and the purpose of the consultation. There is always a wide choice of consultation techniques and activities that can be applied. This depends on the topic and needs to be tailored to the specific situation of stakeholders.</p> <p>How a consultation is planned and conducted determine, to a great extent, its success. As a rule, the better a consultation is adjusted to stakeholders' specific circumstances, the more useful and eye-opening it will be. A consultation also needs to be properly communicated and supported by a concise and clear explanation of its importance. This enables stakeholders to understand the consultation quickly, and they will not miss out on important consultations.</p> <p>Example: consultation activities for a highly complex policy proposal on bank resolution and recovery need to make sure that those consulted are involved and well informed. Banks will probably face no difficulties when they analyse a concept document on this issue with the aim of providing a consultation response.</p> <p>Just sending the Draft Concept Document for comments will not be an effective way to involve consumer organisations, SME representatives and other relevant organisations in the consultation. These organisations are unlikely to have detailed regulatory expertise in banking and financial services. To involve these organisations, it is essential to adapt to their</p>

<i>Consultation principle</i>	<i>Explanation and suggestions</i>
	<p>circumstances. This can mean organising a two-day workshop on the content of the concept document. During this workshop, the most relevant parts of the concept document can be discussed in more detail, and stakeholders can better understand on which issues they should focus their attention.</p>
2. Always be transparent and provide feedback	<p>The effort that it takes to participate in the consultation process need to be respected. This means communicating openly with stakeholders about their contributions and how they have been considered. This also means providing feedback to stakeholders on their suggestions after the written online public consultation.</p>
3. Always make sure that consultation adds value	<p>It takes time and effort to organise a consultation. Stakeholders invest a lot of time in participating in a consultation organised by the administration. It adds no value when the consultation takes place too late or when the consultation deals with aspects that have already been decided, for example when a policy has already been developed.</p> <p>The earlier consultation starts, the more value it adds. An early start allows everyone to work with the consultation, discuss issues in detail, collect data and develop a clear overview of the issues that matter. Consultation can and should be organised as a part of the process of developing the concept document. Consultation should not be regarded as a one-off activity while a concept document is developed.</p>
4. Always make sure that consultation activities strengthen each other	<p>Consultation includes a broad range of activities. There are many possibilities for consulting stakeholders. A detailed overview is presented in Tool 12: Consultation methods.</p> <p>Consultation works best when it aims to develop a dialogue with stakeholders. A good dialogue is based on a regular exchange of views. Consultation activities should therefore promote such an exchange.</p>

### *Minimum standards for public consultation for concept documents*

Standards explained hereafter apply to a range of decision-making processes and documents that are developed within line ministries and requirements that apply specially to developing concept documents and Legal Draft Proposals in the scope of a legislative project.

The Head of Project, who is responsible for the development of a concept document, is also responsible for organising the consultation activities and the implementation of the consultation plan.

However, this does not mean that one person has to conduct all consultation activities. The official responsible for consultation should get the support of the wider project team to make consultation a success.

Each ministry should have a dedicated public consultation co-ordinator responsible for providing advice on how to implement consultation effectively. In particular, this person can provide support with the organisation of the written online public consultation through the official consultation website, e.g. [www.consultation.gov.eg](http://www.consultation.gov.eg).

The minimum standards for public consultation should foresee two obligatory consultation activities: public meetings and written online public consultation. While these are indispensable, the reference to minimum standards and the concept suggest that a range of stakeholder consultation techniques and activities should be applied. These need to be adjusted to the relevant target groups.

#### Publishing a concept document on the online public consultation platform

After the interministerial consultation, the proposing body should organise a written online public consultation with the aim of requesting comments on the content of the concept document. This online public consultation has to be organised through [www.consultation.gov.eg](http://www.consultation.gov.eg).

When the concept document is ready for public consultation, the Public Consultation Co-ordinator of the ministry/Head of Project can upload the documentation to the online public consultation platform. If it is available in English, it should be published in both languages.

An explanation accompanying the concept document must be published as well. It must present the reasons behind the public consultation, the main issues addressed in the concept document and the contact details of relevant persons. If possible, especially publish such introductory explanation in English as well.

At the end of the public consultation process, a report must be published on how the comments from stakeholders were considered. This report must list practical information about the consultation process and show the reasons for (partially) accepting or not accepting the suggestions brought forward by stakeholders. This report must be published on the public consultation website.

It is recommended that the outcome of a consultation is communicated directly to the participating stakeholders. Depending on the issues raised during the public consultation and the importance of the discussion, the outcome could be communicated to the general public as well.

The minimum standards also set out the requirements to be followed when the public and other consultation meetings are organised. These requirements are presented in the overview below.

The proposing body is always responsible for organising consultation activities when developing concept documents.

During the drafting of a concept document, it is essential to engage the public and interested parties directly. At the least, a public meeting needs to be organised for the stakeholders and individuals that have expressed interest in being involved in the topic that the concept document addresses. The invitation needs to be sent to the organisations and individuals that have registered through the consultation website. In addition, the public meeting needs to be open to all other interested parties and therefore needs to be published by the ministry.

The public meeting announcement should be e-mailed to the stakeholders and individuals that have expressed interest in being part of the public consultation on the online platform and are registered on the platform. Other methods of announcing the meeting need to be applied as well, such as announcing the meeting on the online consultation platform and via civil society partners, social media, television, etc.

Stakeholders may initially only be asked to confirm their participation for logistical reasons. No stakeholder or individual may be excluded from the public meeting, and registration may not be required. An attendance list and notes of the public meeting must be published.

Information about the public meeting and all materials and available data have to be equally accessible to everyone: the public, stakeholder representatives, working groups and all other organisations and individuals that might be interested in being involved in the drafting of the concept document.

The minimum standards on public consultation regulate the following practical aspects regarding the organisation of public meetings:

1. The meeting must be announced at least seven calendar days in advance.
2. If it exists, the invitation should include the analysis that has been conducted for the initial concept document, e.g. sharing the draft of the problem definition.
3. The invitation should provide the information, documents, etc. that the project group is using for developing the concept document.
4. The invitation must include the time and place of the public meeting.
5. The invitation should state clearly who is responsible for the organisation of the public meeting and is therefore the contact person for the organisation of the meeting.
6. The representatives from the public authority that organises the meeting should lead the meeting and take notes.
7. The official notes of the meeting should be published within seven business days of the public meeting. These notes must reflect the discussion that took place, contain the

main conclusions and provide a summary of the meeting. These notes must e-mailed to participants.

These aspects apply to the organisation of the public meeting and other consultation meetings.

#### 4.11 TOOL 11 – Identification of stakeholders

The usefulness and success of communication and consultation organised for a concept document depends on the identification of the stakeholders and relevant target audiences. The basic rule is to communicate and consult broadly and transparently.

In most cases, identifying the stakeholders that matter most is straightforward. The problem definition, especially when it is organised based on the problem tree, lists the problem, its causes and its effects. Organisations and people affected by these causes and effects should always be consulted. This can be done directly or indirectly through their representative organisations.

**The three core stakeholder groups:**

1. Stakeholders affected by the policy
2. Stakeholders implementing the policy
3. Stakeholders with a stated interest in the policy.

**Recommendation:** a wide variety of stakeholders may have registered on the online consultation platform once it is established. These stakeholders also indicated the policy areas in which they are interested. The relevant authority manages this platform and can provide an overview of stakeholders that might be interested in a specific concept document.

The three stakeholder groups vary per policy area and per specific topic. They therefore vary for each concept document. The broad groups that should be involved in consultation are listed in the overview below. A useful first step to identify stakeholders would be to review the list of stakeholders that have registered on the online consultation platform and have indicated interest in the policy proposals of certain ministries.

Groups that should be considered for communication and consultation activities:

- Citizens, individuals
- CSOs representing citizens' interests and specific groups
- Trade unions, in case citizens are affected as workers
- Companies (domestic and multinational)
- SMEs
- Chambers of commerce
- Organisations representing business interests
- Organisations representing professions and crafts
- Public authorities at the national, regional and local levels (internal consultation)

- Agencies and inspections (internal consultation)
- Universities, schools
- Research institutes, think tanks
- Internal and external experts
- International organisations
- Donor organisations.

#### 4.12 TOOL 12 – Consultation methods

Consultation covers all activities in which stakeholders are asked to provide opinions, ideas, information etc. on issues that are raised by the government. Consultation is about communicating with stakeholders through targeted consultation activities and written online public consultation. A wide range of activities can be developed in order to consult.

Two *global consultation* activities are obligatory for every concept document:

1. Organisation of a public meeting early in the development process of the concept document to initiate the public consultation process
2. Written online public consultation organised through the official consultation website after the prior consultation with all relevant state administration bodies.

The online consultation should take place through the publication of the Draft Concept Document and the supporting consultation document on the website. Every person and every organisation interested in the issues then has the opportunity to upload their views.

However, before written online public consultation takes place, the proposing institution needs to organise additional consultation activities to ensure that important issues are addressed properly.

*Targeted consultations* are those activities in which specific stakeholders are interviewed or invited for discussions. Such consultations are useful for discussing issues in depth and for allowing more focused interactions or dialogue. They are also essential for involving in the consultation process individuals and organisations that do not have the time and resources to react to documents published by the administration.

#### Reaching out to grassroots organisations and individual citizens

There are numerous occasions where CSOs have campaigned to advocate changes to policies and laws. They can provide expertise by participating in working groups for concept documents.

Since grassroots organisations are close to their communities, consulting them and individual citizens can be highly relevant when a concept document is developed. This is especially the case when impacts are likely to occur in a specific region or town.

Reaching out to grassroots organisations and individual citizens can be very difficult, since they are not always organised in a conventional manner (e.g. an NGO) and probably do not have a website either. However, many grassroots organisations and individuals organise themselves through linking to local networks of NGOs or social networks, such as Facebook

and LinkedIn. A search of these and other social platforms using relevant keywords and geographical indications can provide an overview of relevant grassroots organisations and individual citizens. A discussion on the issues addressed in the concept document will quickly show whether it is relevant to involve the identified groups and individuals.

Consultation activities also include the organisation of meetings, conferences, hearings or other events. Depending on the role that the consultation plays, these events can be widely announced and open to everyone interested. They can also include meetings to which a specific group of stakeholders is invited. In addition, interviews, surveys and opinion polls can provide useful insight, as described below.

Public pulse opinions polls are targeted polls of focus groups that provide first-hand evidence of the perceptions and opinions of the public on the development issues. Public pulse covers four standard areas:

1. Political and institutional stability
2. Economic and social stability
3. Interethnic relations
4. Public and personal security.

For consultation to be effective, various consultation tools need to be combined, and the administration needs to ensure that regular interactions with stakeholders take place. Consultation starts already with phoning stakeholders and asking them whether they think an issue is of importance to them. Most often, consultation is relatively easy to organise. The three main requirements that need to be met are that there is sufficient time to consult, it is clear what the consultation is about, and stakeholder replies are properly analysed.

#### 4.13 TOOL 13 – Communication during the development of a concept document

Communication is essential for developing and implementing policies. Government communication<sup>70</sup> involves more than appointing a spokesman who will answer journalists' questions, delivering a press release or holding a press conference. It is an instrument of the government during the entire policy development process. It needs to be considered at each step in this process.

Effective communication with the public helps establish co-operation with citizens to design the government programme, understand the real needs of citizens, and develop and implement policies that fit their needs. Moreover, effective communication makes government decision making more transparent and increases accountability.

##### Two main functions of communication in society

Communication is a process through which organisations emerge and evolve. It is the basic process through which individuals, groups and organisations relate to each other. Communication is essential in every decision-making process and is especially relevant for policy development.

The two main functions of communication are providing information and persuading people to change the way they are used to working or behaving:

1. Information consists of facts, figures and data arranged for specific purposes. This can be statistics, reports, discussions, examples and any other types of data that explain the issues to be communicated.
2. Persuasion builds on this information and on the way in which it is communicated. Persuasion is meant to change or influence attitudes or behaviour. This can be best achieved by using the best arguments to convince others and win them over.

The government's overall aim should be to improve the lives of people. It collects taxes and duties. It spends these in line with political priorities. The government's decisions affect everyone. Therefore, everyone has the right to know what the government is doing, how its decisions will affect their lives, and what their rights, opportunities and obligations are or will be.

Effective communication serves the government's overall aim to develop and improve the country. For communication to be effective, it needs to be planned, co-ordinated and conducted by responsible people who know how to convey the government's message in a timely and appropriate manner. A co-ordinated approach to communication by the government enables effective communication with external audiences during the policy development process. Good internal communication contributes to government employees feeling involved and motivated to perform their duties efficiently. It also contributes to the better functioning of the government in day-to-day activities.

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<sup>70</sup> The OPM, ministries and government bodies have their own communication mechanisms.



### *Contribution of communication to policy development*

Government communication involves many activities, for example:

- Providing information to the public
- Explaining certain policies, in particular government priorities
- Raising citizens' awareness of the policy effects
- Enabling interaction and two-way communication between the government and the public.

Communicating policies during the process in which they are developed means:

- Involving the public in future decisions
- Communicating the government's decisions
- Helping solve problems
- Creating more understanding
- Leaving room for fewer questions
- Reducing misunderstandings
- Explaining why certain suggestions were not taken forward
- Gaining more support
- Helping the preparation, adoption and implementation of policies.

Communicating policies can be achieved through various means of communication, such as awareness campaigns, public discussions or roundtables with target groups (civil society, teachers, doctors, business community, media, etc.), creation of specific platforms for communication with the public, information sessions, press conferences, use of websites and social networks, and publications that reflect the views of the prime minister or ministers, etc.

Since public consultation is meant to promote the active participation of citizens, companies, CSOs, business representatives and development partners in policy development, communicating regularly during this process is very important. It enables the administration to inform the public more effectively about its consultation activities and provides the information that the public needs to participate actively in these consultation activities.

### Principles for good communication

<b><i>Communication principle</i></b>	<b><i>Explanation</i></b>	<b><i>Impact on concept document development</i></b>
Open	In communication with citizens, it is important for the government to be open, clear and accessible.	Informing citizens about the new policy in the early stages of policy development
Outreaching	The government should ensure that its communication activities	Reaching out to as many citizens as possible in

<b>Communication principle</b>	<b>Explanation</b>	<b>Impact on concept document development</b>
	reach all citizens.	different parts of the country during the policy development process
Inclusive	The government should ensure the involvement of people affected by certain policies and accept relevant input, in order to increase public confidence in the government's decisions.	Taking into consideration suggestions of citizens regarding a certain policy; developing consultation activities that enable a wide range of citizens to be involved
Active	It is the responsibility of the government to communicate and to initiate communication activities and to do so in a timely manner, in order to inform citizens about their rights, obligations and opportunities.	Taking a proactive approach to reach out to the public during the policy development process, in order to engage citizens
Coherent	Government communication should be reasonable and co-ordinated and be perceived as such.	Integrating government priorities into the policy development process, planning communication activities well in advance, ensuring that relevant government bodies are involved in these communication activities, and ensuring that messages and events are aligned

### *Communication structure of the government*

The government communication service consists of civil servants and political advisors. They are responsible for ensuring the effective and clear communication of the policies and activities of public institutions to target groups and stakeholders.

The public communication office within the OPM<sup>71</sup> probably plans and co-ordinates government communications, ensures that the government spokesperson and the prime minister are briefed on the key issues and activities of the government, informs the public about the work and decisions of the government through the development of media relations, plans the

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<sup>71</sup> The OPM, ministries and government bodies have their own communication mechanisms.

development of media and publicity campaigns, is responsible for updating the website, and provides regular reports from local and international media for the prime minister, government spokesperson and the ministries.

Public communication offices in the ministries offer professional support to the minister, ministry spokesperson and the ministry by offering advice on the most effective ways to present policies; prepare, maintain and implement the communication plan based on the work plan of the ministry; co-operate with the ministry spokesperson in organising press conferences and interviews; draft and issue press releases, statements, reports and other publications to the public; update the information on the official ministry website; ensure access to the information that is communicated; and provide a daily report of the media coverage of the minister and the ministry regarding the policies and activities that fall under their responsibility.

#### Characteristics of efficiency in policy communication

<i>Characteristics of efficiency in communication</i>	<i>Explanation and suggestions</i>
1. Identifying the relevant audience for specific issues	In the process of policy making, time is valuable. The clear definition of the audience and the issue to be communicated saves both the government and the public time. It is also important to clarify the relevance of the information for the audience to ensure that the target group invests sufficient time to absorb the message.
2. Clarifying the role of the audience	Policy communication is more than just presenting information. It also needs to take into account the possibilities and responsibilities of the audience. In order for policy communication to have a positive impact, the role of the audience needs to be properly clarified (for example, clarify whether the audience is citizens, field experts, civil society representatives, business community representatives, government officials or other). The message needs to take these roles into account.
3. Using the right communication tool	A range of tools can be used to communicate policies (press release, media conference, interviews, online publication, interactive communication through social networks, debate with the audience, information session, etc.). The chosen communication tool(s), language, document type and style must support the intended purpose of the communication activity and fit the expectations of the target audience.

<i>Characteristics of efficiency in communication</i>	<i>Explanation and suggestions</i>
4. Enlisting appropriate design	In order to encourage participation in the policy-making process, it is important that the documents are well structured and that the content is clear and comprehensible.

#### 4.14 TOOL 14 – Communication for a concept document/Legal Draft Proposal

Effective and useful communication begins with good planning of all communication activities. Communication is needed continuously during the process of drafting a concept document. It links directly with the public consultation process, which enables active participation of the public and companies in policy development. All communication activities should be planned in a timely way, and should include:

- ✓ Key message(s) for the foreseen policy
- ✓ Key objective of communication
- ✓ Identification of stakeholder groups (those affected by policy change, other partner groups that assist the institution in the implementation)
- ✓ Specific objectives for each interest group
- ✓ Communication activities, timing of their execution and responsibilities for their implementation
- ✓ Selected means of communication
- ✓ Achievement indicators
- ✓ Budget required for implementation of communication activities.

##### Steps for communication during the process of developing a concept document

Step	Explanation
Step 1	Involving the communications officer in consultations regarding the planning the concept document
Step 2	Involving the communications officer in the project group for drafting the concept document
Step 3	<p>Preparing the communication plan at the beginning of the concept document development process, in addition to the preparation of the consultation plan. Communication of the public consultation process will be supported through:</p> <ul style="list-style-type: none"><li>• Developing appropriate messages related to the purpose of the policy in order to make it more comprehensible to the main target groups and the media</li><li>• Organising press conferences/informing journalists at the beginning of the consultation process to present draft documents</li><li>• Explaining the methods and opportunities of consultation so that citizens, CSOs and other stakeholders are involved in the process</li><li>• Increasing media coverage of public debates/public meetings on concept documents and disseminating recorded comments derived from these discussions through social networks and other communication channels</li><li>• Presenting reports on the results of public consultation to the media and the general public.</li></ul>

<i>Step</i>	<i>Explanation</i>
Step 4	Analysing how communication activities can support the aims that the government wants to achieve; integrating these into the implementation plan (see also section 3.4.4: Implementation plan for each option)
Step 5	For the adoption of the concept document or Legal Draft Proposal, preparing a press release for the media and the public regarding the government's decision on the document and further steps planned
Step 6	Realising communication activities based on the implementation plan after adoption by the government

#### 4.15 TOOL 15 – Communication and consultation for a concept document

Effective and useful communication and consultation starts with good planning of all relevant activities. Communication and consultation are not a one-off activity. They constitute a dynamic, ongoing process that occurs during the development of a concept document or Legal Draft Proposal. All communication and consultation activities need to be reflected in the communication and consultation plan. This plan needs to include:

- ✓ The aims of communication activities and the target groups
- ✓ The aims of consultation activities and the target groups
- ✓ The link between the problem definition and the consultation activities
- ✓ The preparation of all documents that will be presented to an audience outside the administration
- ✓ The preparation of consultation documents that will be used in addition to the Draft Concept Document
- ✓ The consultation activities that will be organised and how they will be communicated
- ✓ All relevant stakeholder groups for targeted consultation activities
- ✓ For stakeholders that are not specialised in responding to government consultations, actions to ensure that they will be likely to respond
- ✓ The time and resources required to carry out the consultation activities
- ✓ The person(s) responsible for the implementation of the communication and consultation plan
- ✓ The people responsible for each individual activity.

A communication and consultation plan is always specific to the legal project for which it is made. It needs to be developed at the very start, and it must be discussed during the first meeting of the project group for the concept document.

[Schematic overview for a communication and consultation process for a concept document](#)

<i>Step</i>	<i>Explanation</i>
Step 1	Develop the first draft of the communication and consultation plan for the concept document
Step 2	Discuss the communication and consultation plan during the first meeting of the project group for the concept document in order to agree on: <ul style="list-style-type: none"> <li>○ The stakeholders</li> <li>○ The planned communication activities</li> <li>○ The planned consultation activities</li> <li>○ The work distribution for the consultation work</li> <li>○ The senior management and political involvement in the communication and consultation activities.</li> </ul>
Step 3	In the case it is relevant for the development of the concept document, communicate the start of its development through a press release.
Step 4	Organise the public meeting with the parties who expressed interest in developing the concept document. This meeting needs to be widely communicated. In the case the development of the concept document is a priority for the government, consideration should be given to involving the minister directly in major communication and consultation activities.
Step 5	Organise targeted consultations and publicly accessible consultation activities, including: <ul style="list-style-type: none"> <li>○ Implementation of the activities agreed in the consultation plan</li> <li>○ Overview of how these activities will be communicated</li> <li>○ Report on the implementation of consultation activities during meetings of the project group.</li> </ul>
Step 6	Conduct the written online public consultation through the consultation website.
Step 7	Analyse the written consultation responses.
Step 8	Draft the report of the written online public consultation based on the methodology and format set in the minimum standards for public consultation.
Step 9	Publish the report of the written online public consultation.
Step 10	Integrate the summary of relevant consultation recommendations into the concept document. Communicate the main findings from the consultation to participants and potentially interested organisations/individuals.
Step 11	Communicate the adoption of the concept document or Legal Draft Proposal based on the implementation plan. Adoption of a concept document always needs to be accompanied by a press release.

#### 4.16 TOOL 16 – Example of a communication and consultation plan

A plan for structuring communication and consultation provides an overview of activities that are to be developed in order to improve the quality of a concept document. The table below shows the different aspects that could be addressed in the plan.

The plan needs to cover both communication and consultation activities, since the two are closely related. Communication activities are relevant to show that the government has started work on a relevant topic and that it is implementing its priorities. Consultation is relevant to engage with stakeholders and to ensure their provision of useful input for the concept.

For each communication activity that is conducted for a concept document, it is essential to keep in mind that stakeholders will also receive the information. Furthermore, when a consultation activity is organised, it is essential to keep in mind that these activities need to be properly communicated and fit into the wider communication approach of a ministry and the government.

##### Example of a communication and consultation plan

The consultation process aims to:

- Improve the problem definition through targeted consultation
- Discuss potential impacts with affected stakeholders
- Obtain new suggestions and proposals from stakeholders.

<i>Main aim</i>	<i>Target group</i>	<i>Activity</i>	<i>Communication/ announcement</i>	<i>Indicative timing</i>	<i>Budget needs</i>	<i>Responsible person</i>
Inform the public and interested parties about the start of the work	Public and interested parties	Press release	Press release	January	None	Name of person
Raise awareness about the concept document	Public and interested parties	TV and radio interview with the minister	TV and radio interview	February	None	Name of person
First discussion with stakeholders	Interested parties	Public meeting	Press release, publication on consultation website, e-mail invitation	March	None	Name of person
Discuss the problem definition and options	Municipalities that implement the law	Meetings with relevant staff in eight selected municipalities	Official letter to the municipalities followed up with phone calls	March-April	None, but a car needs to be reserved	Name of person



<i>Main aim</i>	<i>Target group</i>	<i>Activity</i>	<i>Communication/ announcement</i>	<i>Indicative timing</i>	<i>Budget needs</i>	<i>Responsible person</i>
Discuss the problem definition and impacts of the possible options to improve the situation	Families that receive social payments	Meetings with three families in the eight municipalities	Invitation to participate in the consultation published in the eight municipalities	April-June	None, but a car needs to be reserved	Name of person
Discuss the problem definition and the impacts of possible options to improve the situation	NGOs	Meetings with social NGOs in the eight municipalities	Invitation to participate sent by e-mail followed up with phone calls	April-June	None, but a car needs to be reserved	Name of person
Etc.	Etc.	Etc.	Etc.	Etc.	Etc.	Etc.
Written online public consultation	All stakeholders	Publish consultation on public consultation website	Press release, e-mail to stakeholders in database	September	None	Name of person
Open forum	All stakeholders	Present findings from the consultation process	Press release, mail to stakeholders in database, personal invitation to consultation participants	October	USD 1 500 for conference room, lunch and transport of people to Cairo	Name of person
Etc.	Etc.	Etc.	Etc.	Etc.	Etc.	Etc.