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CENTER FOR LEGAL EXAMINATION AND
LEGISLATIVE INITIATIVES

RULES

FOR DRAFTING OF DOCUMENT JUSTIFYING THE NECESSITY OF ADOPTING A NORMATIVE LEGAL ACT

(Guideline on drafting Explanatory notes)

2024

**RULES
FOR DRAFTING OF DOCUMENT JUSTIFYING THE NECESSITY OF ADOPTING A
NORMATIVE LEGAL ACT**

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Approved by the resolution of the
Supervisory Board of the Center for Legal
Examination and Legislative Initiatives
No. MŞ/1-001 dated January 19, 2024.

RULES

for Drafting of Document Justifying the Necessity of Adopting a Normative Legal Act

1. General provisions

1.1. These **Rules** have been drafted pursuant to the requirements of the Constitutional Law of the Republic of Azerbaijan 'On Normative Legal Acts' (hereinafter referred to as the "**Constitutional Law**"), with the view of ensuring a unified approach in rulemaking activities and enhancing the quality of such activities.

1.2. Document justifying the Necessity of adopting a normative legal act (hereinafter referred to as the "**justification document**") is a document reflecting the objectives and necessity of preparing draft of a normative legal act, aimed at enhancing the quality through anticipating the possible consequences of its adoption.

1.3. The provisions of these Rules are applied to drafting of a justification document by the Center for Legal Examination and Legislative Initiatives or reviewing a justification document drafted by other entities.

1.4. It shall not be required to draft justification document in accordance with these Rules for drafts aimed at ensuring the conformity of a draft normative legal act as well as for drafts of a technical nature, including those that involve only nominal or numerical amendments to any normative legal act.

2. Materials used for drafting of a justification document

2.1. For drafting a justification document, materials (data) obtained from the following sources may be used while complying with the requirements of the applicable legislation¹:

2.1.1. Normative legal acts of the Republic of Azerbaijan and foreign countries, along with justification documents on such acts (including legal policy papers, explanatory memoranda and adopting releases), as well as official comments, scientific-practical commentaries and articles;

¹ In certain circumstances, procurement and utilization of information or materials from certain sources are regulated by specific legislation. In such cases, the acquisition and utilization of information or materials from those sources must comply with the requirements of the relevant legislation.

2.1.2. international treaties, documents and protocols prepared during their formulation and deliberation (*travaux préparatoires*), along with explanatory notes thereto, scientific-practical commentaries and articles;

2.1.3. precedents of the European Court of Human Rights, guides on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and general comments of the United Nations Human Rights Committee.

2.1.4. materials of the Republic of Azerbaijan, foreign and international judicial practice and acts of state bodies (institutions), including administrative acts;

2.1.5. materials preserved in the National Archives Fund, archives of foreign countries and international organizations;

2.1.6. state information resources;

2.1.7. statistical data and materials;

2.1.8. proposals pertaining to the draft normative legal acts placed in the “e-Government Information System” and the “Licenses and Permits” portal;

2.1.9. findings derived from monitoring of the normative legal framework and assessment of the impact of legal regulation;

2.1.10. model rules, guidelines, reports, papers, recommendations, and other analogous materials formulated by domestic and international organizations;

2.1.11. published scientific research papers and studies, teaching aids, materials from scientific-practical conferences and other event-related materials;

2.1.12. opinions and reviews by scholars, experts, and examiners;

2.1.13. information related to activities of domestic and foreign state bodies (institutions) as well as of international organizations published or submitted by them, including reports and other materials on outcomes of research, analysis, monitoring and generalizations undertaken by them;

2.1.14. findings of Internet information resources, as well as sociological surveys;

2.1.15. other materials (data) deemed necessary for drafting of a normative legal act and acquired in accordance with legislation.

2.2. In the justification document precise references to the materials used in its drafting shall be contained. While such references being sufficient for facile identification of applicable material and its corresponding structural element, as a rule reflect the following information :

2.2.1. type of material (law, resolution, article, report, methodological manual, review etc.);

2.2.2. precise title of the material in Azerbaijani language (if the material is in a foreign language, its title in an original language shall be also indicated in parentheses);

2.2.3. name of the author of the material or the institution that prepared (endorsed) it;

2.2.4. material's number;

2.2.5. date of publication;

2.2.6. means of publication (book, journal, website, etc.);

2.2.7. page or structural element number;

2.2.8. any other data deemed necessary for the precise identification of the material and its structural element.

2.3. Materials² used for drafting of a justification document, but obtainable from open sources (extracts from or copies of such materials) shall be appended to the justification document.

3. General structure of the justification document

3.1. The justification document shall be drafted at the stage of drafting of a normative legal act while being composed of the following sections:

3.1.1. purposes of drafting a normative legal act and subject of legal regulation for structural elements introducing amendments to the existing legal regulation (hereinafter referred to as the “**purpose and subject section**”);

3.1.2. analysis of the legislation of the Republic of Azerbaijan and its enforcement practice, legislation of foreign states, materials published in the media and appeals of individuals and legal entities regarding the subject of legal regulation of the draft normative legal act (hereinafter referred to as the “**analysis section**”);

3.1.3. forecasting the probable consequences of adoption of the normative legal act (hereinafter referred to as the “**forecasting section**”);

3.1.4. the list of resolutions of the Cabinet of Ministers of the Republic of Azerbaijan and normative legal acts (their structural elements) of central executive authorities that should be repealed, amended, as well as drafted due to adoption of the normative legal act (hereinafter referred to as the “**list of affected normative legal acts**”);

3.2. The structural elements of a justification document shall be drafted in a compact comprehensive, simple and clear format without prejudice to the integrity of their content and precise expression of their nature.

3.3. The justification document is drafted in consideration of the “Model Structure of the Document of Justifying the Necessity of Adopting a Normative Legal Act” appended to these Rules.

4. Purpose and subject section

4.1. Purpose and subject section of the justification document shall contain the the following information:

4.1.1. **legal basis** for drafting (for instance, making of references to the task in the content of the relevant legal act that requires or recommends the drafting);

² For instance, responses to given inquiries, outcomes of conducted public surveys, reviews by involved experts or specialists, reports on assessment of various impacts of the draft, and so forth.

4.1.2. **general purposes** of the draft (constitutional basis of the draft, for what purpose it has been drafted, in what area it aims to regulate social relations and other similar information);

4.1.3. substantiating the selection of the type of normative legal act intended for the draft;

4.1.4. the subject of the draft, including information about what specific public relations, what institutions or other components of these relations (hereinafter referred to as the **problem**) it is aimed at regulating within the scope of the draft, as well as:

4.1.4.1. a separate description of each problem to be addressed by the draft;

4.1.4.2. a brief overview of materials³ supporting the existence of the problem, including the studies conducted on the problem (if any);

4.1.5. in cases where the institution considers it necessary, brief information about the history of the problem (historical roots of each problem to be addressed by the draft, circumstances that led to its occurrence, the path of its development, legal and other measures taken towards its solution, reasons and indicators of ineffectiveness of these measures, etc.);

4.1.6. justification⁴ for the impossibility of alternative regulation to the state regulation to for resolving the problem, including:

4.1.6.1. ineffectiveness of solving the problem through education;

4.1.6.2. ineffectiveness of implementing self-regulation and co-regulation mechanisms;

4.1.6.3. ineffectiveness of regulation through incentive or disincentive economic instruments⁵;

4.1.7. detailed information on each significant change proposed to the legal acts in force to solve the problem as well as separate description, essence and necessity of all new concepts, subjects (for instance, newly established state bodies, institutions etc.), legal institutions, functions and mechanisms that are intended to be included in the legislation by the draft⁶.

4.1.8. Precise references to the materials used during the drafting (for instance, model legislative norms)⁷.

³ Such materials shall have precise references.

⁴ To evaluate the effectiveness of alternative regulatory methods, the recommendations and positions provided in the "Alternatives to Traditional Regulation" report of the OECD organization (<https://www.oecd.org/gov/regulatory-policy/42245468.pdf>) can be used.

⁵ The term "market-based instruments" is also widely used in practice.

⁶ Names of new legal institutions, concepts, types of subjects, or mechanisms taken from the experience of foreign countries or documents of international organizations in the original language, or the source language should also be mentioned.

⁷ Such references shall be provided in accordance with the requirements of clause 2.2 of these Rules.

5. Analysis section

5.1. The analysis section of the justification document shall contain the following information:

5.1.1. Analysis of the legislation of the Republic of Azerbaijan and experience in its application, including:

5.1.1.1. the exact range of in force normative legal acts regulating the relevant problem and making of precise references to all relevant structural elements of each normative legal act;

5.1.1.2. justification for the shortcomings of each⁸ legal norm separately proposed to be changed in the legal regulation (deficiencies, gaps and contradictions in the legal regulation, uncertainty of legal norms, explanation and evidence of ineffectiveness of the existing legal regulation);

5.1.1.3. information about the experience of applying the relevant legislation in force regarding the problem:

(a) precedents of the European Court of Human Rights⁹;

(b) judicial materials, acts of state bodies (institutions), including administrative acts¹⁰;

5.1.2. analysis of the legislation of foreign countries, including:

5.1.2.1. names (list) of foreign countries¹¹ whose legislation has been analyzed in view of the draft;

5.1.2.2. the exact name¹² and number of relevant structural elements (articles, clauses etc.) of the relevant normative legal acts of each foreign state whose legislation has been analyzed;

5.1.2.3. information about the experience of applying the relevant legislation of foreign countries related to the problem;

5.1.2.4. legislation¹³ of the specific foreign country used as a basis for the drafting and explanation of reasons for it;

5.1.3. analysis of published media materials, including:

5.1.3.1. references to the materials published and (or) broadcasted by media subjects related to the problem;

⁸ If it is considering several legal norms are to be amended with the same (similar) content, the shortcomings of those norms can be identified in general.

⁹ In each referenced precedent must briefly and clearly explain how the law applies with regard to the problem and provide a precise reference to the relevant part of the precedent.

¹⁰ By indicating the number and date of each judicial act or other act referred to, it should be briefly and clearly explained what the law's enforcement is in relation to the relevant problem in that act, as well as the relevant part of that act should be given a precise reference.

¹¹ It is recommended to analyze the legislation of at least three foreign countries.

¹² Including their names in the original language or source language should be mentioned in brackets.

¹³ If the legislative act of foreign countries is used in drafting the normative legal act, the name of the legislative act of foreign country used, the number and text of the relevant structural element must be indicated for each structural element of the draft.

5.1.3.2. brief and clear analysis of the related parts of each referenced material in relation to the relevant problem;

5.1.4. analysis of applications of individuals and legal entities as well as the dates of placing the draft normative legal act in the “e-Government Information System” and the “Licenses and Permits” portal and the number of received proposals;

5.1.5. Actions¹⁴ taken in accordance with the Law of the Republic of Azerbaijan "On Public Participation" (if any).

6. Forecasting section

6.1. The forecast section of the justification document contains information on assessment¹⁵ of the following probable *significant* positive and negative impacts of the relevant draft in case of its adoption:

6.1.1. impact of the draft on human rights and freedoms;

6.1.2. social impact of the draft¹⁶

6.1.3. economic impact of the draft¹⁷¹⁸;

6.1.4. environmental impact of the draft¹⁹;

6.1.5. any other direct or indirect impact of the draft considered significant.

6.2. If the probable impact is considered significant²⁰, a separate assessment report may be prepared for each such impact as an attachment to the justification document. An

¹⁴ When public discussions and hearings are implemented on drafts of legal acts consideration of Articles 1.0.4 and 1.0.5 of the "Law on Public Participation," it is intended to present its results

¹⁵ The recommendations and perspectives provided for in the 2020 “Regulatory Impact Assessment” guide of the OECD organization (https://www.oecd-ilibrary.org/governance/regulatory-impact-assessment_7a9638cb-en) can be used to organize and conduct such assessment activities.

¹⁶ **Social Impact Assessment** - is carried out in terms of demographics, social security of the population, provision of labor rights, provision of education and health services and (or) other social impact criteria considered relevant for the draft.

¹⁷ **The economic impact assessment** - is carried out in terms of development of entrepreneurial activity, favorable competitive environment, increase in the volume of the country's gross domestic product, creation of new workplaces, taxation and (or) other economic impact criteria considered relevant for the draft.

¹⁸ While drafting the normative legal acts related to licenses and permits, an assessment of economic impact should also be carried out on the basis of the "Rules on Regulatory Impact Assessment" approved by the resolution of the Cabinet of Ministers of the Republic of Azerbaijan, dated November 2, 2016, No. 432.

¹⁹ **Environmental impact assessment** - is carried out in terms of environmental impact criteria specified in Article 4.9 of the Law No. 1175-VQ dated June 12, 2018 of the Republic of Azerbaijan "On Environmental Impact Assessment".

²⁰ Whether the draft has any "significant" impact is determined through a *preliminary assessment* based on logical analysis and decision-making by the state body (institution) that prepared the draft or the relevant state bodies (institutions) involved in the approval of the draft. It should be specially emphasized that the "*Preliminary assessment*" does not mean an expert assessment of probable impact and it includes only an assessment of the "significance" of the probable impact as a result of logical thinking (logical analysis and decision-making) by the relevant authority (institution).

internal or independent expert (professional) specialized in relevant field may be involved in preparation of the impact assessment report.

6.3. If the probable impact is not considered significant, an appropriate note shall be made in the justification document, indicating the reasons for it.

6.4. The forecasting section of the justification document shall also provide information about main measures to be implemented by state bodies (institutions) or local self-government bodies for the application (implementation) of the draft.

7. The list of affected normative legal acts

7.1. In the section on the list of affected normative legal acts, the list of normative legal acts (their structural elements) to be repealed, amended and drafted due to adoption of the normative legal act shall be included in the following order:

7.1.1. the list of resolutions of the Cabinet of Ministers (their structural elements);

7.1.2. the list of normative legal acts of the central executive authorities (their structural elements).

7.2. The list of affected normative legal acts shall be drawn up based on the proposals of relevant structural divisions of the state body (institution) which has drafted the act. This list can be finalized in course of approval of the draft with the relevant state bodies (institutions).

Model structure of document justifying the necessity of adopting a normative legal act

Section 1. Purpose and subject

- 1.1. Legal basis of drafting.
- 1.2. General purposes of the draft
- 1.3. Substantiating the selection of the type of normative legal act intended for the draft.
- 1.4. The subject of the draft.
- 1.5. History of the problem.
- 1.6. Substantiating the impossibility of alternative regulation to the state regulation:
 - 1.6.1. ineffectiveness of solving the problem through education;
 - 1.6.2. ineffectiveness of implementing self-regulation and co-regulation mechanisms;
 - 1.6.3. ineffectiveness of regulation through economic instruments.
- 1.7. Information on the main proposed amendments.

Section 2. Analysis

- 2.1. Analysis of the legislation of the Republic of Azerbaijan and experience in its application:
 - 2.1.1. the range of legal acts in force regulating the relevant problem and relevant structural elements of those acts;
 - 2.1.2. justifying the defects of each legal norm, which is proposed to be amended in the legal regulation;
 - 2.1.3. information about experience in applying the relevant legislation in force regarding the problem:
 - 2.1.3.1. precedents of the European Court of Human Rights;
 - 2.1.3.2. judicial materials;
 - 2.1.3.3. acts of state bodies (institutions), including administrative acts.
- 2.2. Analysis of the legislation of foreign countries:
 - 2.2.1. information on foreign countries whose legislation has been analyzed and their legal acts;
 - 2.2.2. information on experience in applying the relevant legislation of foreign countries related to the problem;

2.2.3. legislation of the specific foreign country used as a basis for drafting and explanation of reasons for it.

2.3. Analysis of materials published and (or) broadcasted by the media:

2.3.1. references to the materials published and (or) broadcasted by media subjects related to the problem;

2.3.2. analysis of relevant parts of each referenced material in relation to the relevant problem.

2.4. Analysis of applications of individuals and legal entities.

2.5. Actions taken in accordance with the Law "On Public Participation".

Section 3. Forecasting

3.1. Impact of the draft on human rights and freedoms.

3.2. Social impact of the draft.

3.3. Economic impact of the draft.

3.4. Environmental impact of the draft.

3.5. Any other direct or indirect impact of the draft that is considered significant.

3.6. The main measures to be implemented by state bodies (institutions) for the application (implementation) of the draft.

Section 4. The list of affected normative acts

4.1. The list of resolutions of the Cabinet of Ministers (their structural elements):

4.1.1. resolutions to be repealed;

4.1.2. resolutions to be amended;

4.1.3. resolutions to be drafted.

4.2. The list of resolutions of central executive authorities (their structural elements):

4.2.1. resolutions to be repealed;

4.2.2. resolutions to be amended;

4.2.3. resolutions to be drafted.