CEPA Legal Approximation Handbook

A practical guide for law and policy makers

The content of these Guidelines does not reflect the official opinion of the European Union. Responsibility for the information and views expressed in the Guidelines lie entirely with the authors.

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Content

Abbreviations

BAT	Best Available Techniques
CEPA	Comprehensive and Enhanced Partnership Agreement between the European Union, the European Atomic Energy Community and their Member States of the one part and of the Republic of Armenia, of the other part
CJEU	Court of Justice of the European Union
EBPM	Evidence Based Policy Making
EC	European Communities
ECSC	European Coal and Steel Community
EEC	European Economic Community
EIA	Environmental Impact Assessment
ELD	Environmental Liability Directive
EU	European Union
IED	Industrial Emissions Directive
MS	Member States (of the EU)
OECD	Organization for Economic Co-operation and Development
PCA	Partnership and Cooperation Agreement
RIA	Regulatory Impact Assessment
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
ToC	Table of Concordance (also called Table of Conformity or Consistency)
WG	Working Group

Introduction

This Handbook has been developed in order to assist Armenian policy and lawmakers in the implementation of the EU-Armenian Comprehensive and Enhanced Partnership Agreement (CEPA), and in particular, the approximation of Armenian legislation to European Union (EU) law.

Legal approximation to EU law cannot be done quickly. It requires sound planning and very good knowledge of EU law, its origins, aims and main principles. This handbook provides insights, explains approximation challenges and provides practical information and advice in relation to the special requirements for law and policy makers under CEPA.

This handbook is to be considered a representation of collective EU expert experience and best practice. It is not intended to lay down new binding legal norms; nor does it extend to matters of *legal drafting techniques*. The latter has been addressed in another handbook[1].

This Handbook may be supplemented by circulars and recommendations issued by competent Armenian authorities on specific aspects of legal approximation under CEPA. The Ministry of Justice, in coordination with other authorities, will regularly review the Handbook and this may result in the publication of amendments to the Handbook and subsequent revised versions.

1 The Comprehensive and Enhanced Partnership Agreement (CEPA)

Relations between the European Union (EU) and Armenia are based on the EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA), which was signed on the 24th November 2017. CEPA provides a legally binding framework for Armenia and the EU to work together in several areas of mutual interest, in particular in political, economic and a number of sectoral fields.

The application of CEPA provisionally began on 1 June 2018 and will enter into full force once it has been ratified by all parties including all EU Member States.

One of the most important requirements imposed by CEPA is approximation of certain Armenian legislation with EU law (the so-called *EU-acquis*). In this respect, CEPA goes well beyond its predecessor, the Partnership and Cooperation Agreement (PCA) between the EU and Armenia of 1996, making CEPA legally much stronger than the former PCA as shown in the box below.

According to Article 370 CEPA, Armenia is obliged, (unlike the PCA) to ***"carry out gradual approximation of its legislation to EU law"****.*
Both the EU and Armenia "shall ***ensure that the objectives set out in this Agreement are attained****" (see Article 377 CEPA).*
Article 379 CEPA requires both parties to take ***"appropriate measures in case of non-fulfilment of obligations"****.*

Eight of the CEPA Annexes (Annex I-VII and Annex XII) stipulate **precise commitments**, outlining exactly what is to be implemented, in which legal area and by which date (see Illustration 3, below). Meanwhile, Article 385 CEPA states that either party may provisionally apply the Agreement completely or in part, in accordance with their respective internal procedures and

legislations. Accordingly, in July 2018, an inter-agency commission was established by the Prime Minister of Armenia, to coordinate measures, ensuring the Agreement's implementation. The commission is led by the Deputy Prime Minister of Armenia. A detailed roadmap on the provisional implementation of Armenia's approximation commitments was approved by the Prime Minister.

2 EU policy and legislation

Before addressing "legal approximation", it is essential to understand the basic mechanics of EU law development i.e. the **institutions of the EU**, their functions and law making competences and the **legal instruments** of EU law.

2.1 EU primary law: From ECSC to the Lisbon Treaties

The origins of the European Union date back to the 1950s when the European Coal and Steel Community (ECSC) was founded in 1952 by 6 European countries, followed by the Treaty establishing the European Economic Community (EEC) and the Treaty establishing the European Atomic Energy Community (Euratom) in 1958.

The focus of the European Economic Communities was on the creation of a single market with free movement of labour, services, goods and capital between Member States (MS).

The ECSC and EEC were amended numerous times and later merged into the European Communities (EC), to be eventually replaced by the "**Lisbon Treaties**" formally establishing the European Union (EU) as of the 1st December 2009. Since the 1950s, many more EU countries have joined the EU (formerly the EC). As of today, the EU has 27 member states. The legal competences and policies of the EC and later the EU have been extended over the years, as is shown below (Chapter 2.3).

The two Lisbon Treaties, which make up EU primary law, are the "Treaty on European Union (TEU)" and the "Treaty on the Functioning of the European Union (TFEU)".

2.1.1 TEU

The Treaty on European Union (TEU) is a relatively short Legal Act (it has just 55 Articles) and forms a kind of mini-Constitution for the European Union. It sets out the values and aims of the EU including Article 4 (3), which lays down a foundational principle for the EU legal order: the principle of loyal co-operation. It stipulates that Member States shall take all appropriate measures to ensure fulfilment of obligations stemming from EU law; they shall facilitate achievement of EU tasks and refrain from taking measures that could jeopardize those.

Article 5 TEU is the key provision in relation to the EU's decision-making and its different categories of competence. It states that:

- The EU has only competences which have been granted to it by the Member States (→ **principle of conferral**);
- The EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States themselves (**→ principle of subsidiarity**);
- The content and form of legal action of the EU shall not exceed what is necessary to achieve the objectives of the Treaties (→ **principle of proportionality**). This is a specific legal safeguard against the unlimited use of legislative and administrative powers.

Example 1:

Example of principal of conferral:

The EU Commission wanted to adopt a Framework ***Decision*** *on the protection of the environment through criminal law, which would have been binding for all EU Member States. However, the EU does not have the legal competence to regulate criminal law in detail in the Member States and the Decision would have gone beyond the legal powers attributed to the EU by the Treaty. This is why "only" a Directive (Directive 2008/99/EC) was adopted on the same issue, giving much more transposition flexibility to the Member States and thus remaining in line with EU legal competences.*

Example on subsidiarity:

The EU Commission wanted to regulate "soil protection" at EU level. Some Member States refused, arguing that, unlike water and air protection addressed by EU law, soil is no transboundary environmental media and hence should not be addressed by EU law at all but only by individual Member States.

Example on proportionality:

The EU has adopted a Directive on consumer protection with regards indication of product prices offered to consumers (Directive 98/6/EC) which is included in the CEPA Annexes. However, the Directive sets out only basic minimum standards to achieving its overall goal, which is, to improve consumer information and to facilitate the comparison of prices.

Member States who want to protect consumers may do more: they are explicitly allowed to adopt or maintain more favourable national provisions with regards consumer information and comparison of prices (see Article 10 of that Directive).

2.1.2 TFEU

The Treaty on the Functioning of the European Union (TFEU) is the fundamental legal foundation for the everyday work of the EU. It has 358 Articles, contains detailed rules on the EU institutional set-up of the EU, and comprises of dozens of provisions constituting the legal bases for adoption of EU secondary legislation. These provisions determine the scope of competence, identifies institutions empowered to act and the decision-making procedures that should be followed by the EU institutions.

2.2 EU institutions

The EU consists of five main institutions (plus a number of additional institutions and legal bodies):

The **European Council** determines the general political direction, goals and priorities of the EU, but it has no law-making responsibilities. It consists of its President, the Heads of the EU Member States (Prime Ministers/Presidents), the President of the EU Commission, and the high representative for foreign and external policy.

Often the Council is confused with the Council of Europe based in Strasbourg, which has 47 Member States (including Armenia) and is another legal entity of international law but not of EU law.

The **European Commission** is the central body of the EU: it has sole legal initiative competence and monitors the proper implementation and enforcement of EU law by the Member States. The Commission is divided into 33 General Directorates (DGs). Legislation is prepared, taking into account legal advice of some 800 existing expert groups in all policy areas.

The **Council** consists of one representative per Member State who meet in 10 different configurations according to EU policy sectors. The Council adopts legislation together with the European

Parliament, predominantly by "qualified majority". A qualified majority is achieved if at least 15 Council members, representing at least 65% of EU population, are in support of the Legal Act in question. The blocking minority for Legal Acts is 35% or at least 4 Member States. On matters such as taxation or social security, the voting of the Council must be unanimous.

The **European Parliament** is heavily involved in law making but has no legal initiative. It consists of 751 MPs (after Brexit, 705 MPs) and 24 working languages. It is elected by the population of the EU every 5 years.

The **Court of Justice** of the European Union (CJEU) ensures that EU law is observed by the EU institutions and the EU Member States. It gives legally binding interpretations of EU law provisions at the request of EU Member State courts through "preliminary rulings" and therefore contributes to a better understanding and uniform application of EU law.

Note:

A similar interpretation function of the CJEU is foreseen by CEPA: In the case of a dispute of the interpretation of EU law in the areas of postal services, electronic communication networks, financial services or transport services, the arbitration panel established under CEPA, shall request a legally binding ruling from the CJEU. (See Article 342 CEPA).

2.3 EU law making competences

The EU legal competences depend on the area of law. The competences are divided into three main groups, listed in Articles 3 and 4 of the TFEU.

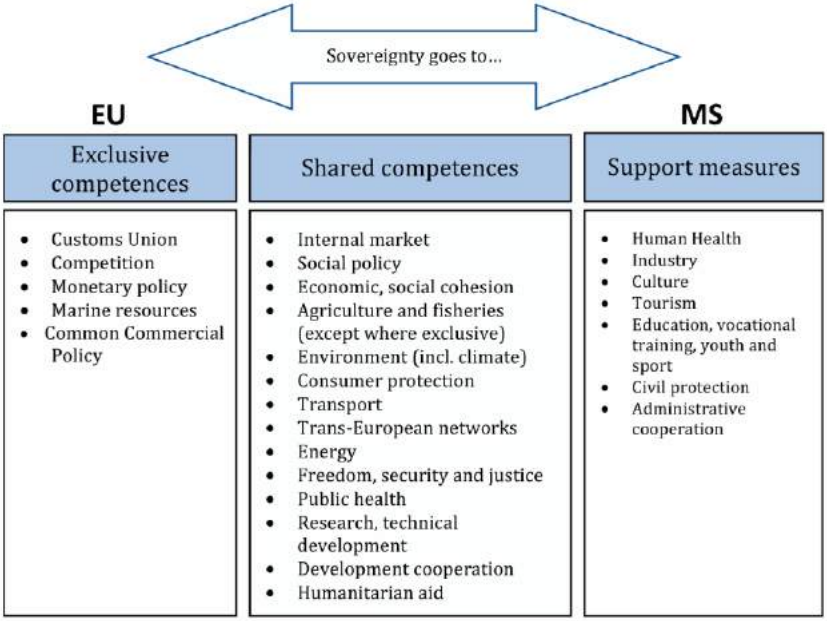
These are:

- Exclusive competence,

- Shared competence,
- Supporting competence.

The main difference between these categories of competences is the scope of power awarded, from the broadest (Exclusive competences), reserved for the EU, to very limited power (Supporting competences).

Illustration 1 – Law making competences between EU and its Member States



The EU is a unique international organisation, which is underpinned by its own legal order: It has extensive powers to legislate but they are limited. This means, it can only legislate in areas where it has a competence to do so.

In some instances, EU Legal Acts are very detailed and designed for the creation of a complete set of rules. In other cases, EU *acquis* is

broad-spectrum, regulating only selected aspects of a matter in question, leaving the disparity to be filled by the domestic legislator.

In the European Union itself, EU law operates as a "supranational" legal order, meaning that it is a hybrid between public international law and federal law, creating rights and obligations not only for the states but also for individuals.

From the point of view of the Armenian lawmaker, however, CEPA, the EU legislation, and its annexes must be treated as part of public international law, meaning that any legal instrument listed in the Annexes of CEPA must be converted into Armenian legislation, in order to become effective.

2.4 EU legislation instruments

Legal approximation according to CEPA, covers selected portions of EU secondary legislation listed in the CEPA Annexes. In order to proceed with successful approximation efforts, it is crucial not only to be familiar with the substance of EU secondary legislation, but also to understand the difference between instruments of EU secondary legislation and how they affect national law.

The legal instruments or types of EU secondary legislation are determined in Article 288 TFEU. They include:

- Regulations,
- Directives,
- Decisions.

It should be emphasized that there is no hierarchical relationship between these three types of EU secondary legislation. That is, Regulations do not prevail over Directives and Decisions are not subordinate to Directives. The difference between the three types of instruments is as follows:

2.5 Regulations

Regulations are directly applicable and legally binding in the national legal orders of EU Member States upon their entry into force. This means that they are not transposed into domestic laws. However, some regulations require the designation or establishment of authorities or bodies responsible for their implementation. Regulations are the most direct form of EU law; as soon as they are passed, they have binding legal force throughout every Member State, like national laws.

Note

In CEPA, there are more than 90 listed Regulations to be approximated. The majority of these Regulations are in the field of energy cooperation and relate to either eco-design of products/devices (32 Regulations) or energy labelling requirements for electric devices (19 Regulations). These Regulations mainly contain technical product standards, which should be directly incorporated into Armenian legislation.

2.6 Directives

Directives as a harmonisation tool are not directly applicable to the EU Member States. They depict rules and objectives to be achieved by all Member States whilst leaving to each State, substantial scope as to the manner in which the issues are to be regulated. Directives are therefore binding to EU Member States with regards "the results to be achieved". Member States must implement Directives, i.e. transpose them and establish administrative and enforcement capacities.

Some Directives are more general, setting only minimum requirements whilst others are more detailed, outlining maximum harmonisation without leaving much scope for national

interpretation. Each Member State takes the actions, which it considers appropriate and feasible in its own unique legal, economic and political circumstances.

The majority of Legal Acts listed in the CEPA Annexes are Directives (more than 140) and their approximation will be the major challenge for Armenia, given the flexibility that this legal instrument provides for drafting/amending national legislation.

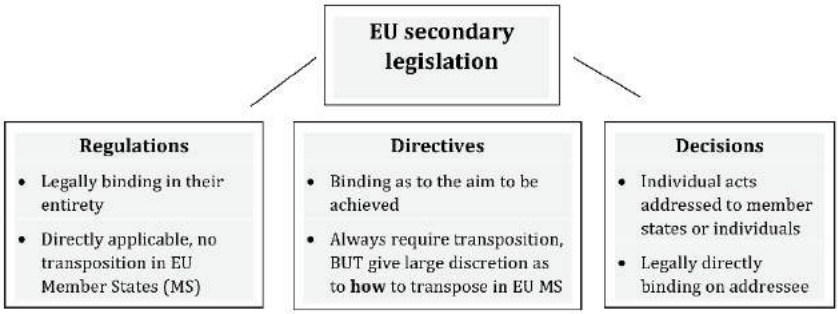
In chapter 4.1, below, some practical advice and examples are given as to how different parts of a Directive should/could be approximated.

2.7 Decisions

Decisions are binding in their entirety to those to whom they are addressed. Often Decisions are not widely applicable, but rather are addressed to one or more specific Member States. Usually they require that the addressee take legal and administrative measures for implementation.

CEPA lists only 4 decisions which are to be approximated by Armenia.

Illustration 2 - Secondary legislation of the European Union



3 Introduction to legal approximation

One of the major aims of CEPA is "to support the efforts of the Republic of Armenia to develop its economic potential via international cooperation, including through the **approximation of its legislation to the EU *acquis*** referred to hereinafter" (see Article 1 (g) CEPA).

3.1 Approximation areas

Seven sub-chapters of CEPA end with a clause stating, "The Republic of Armenia shall carry out approximation of its legislation to the Acts of the European Union and international instruments referred to in Annex XYZ".

Title V of CEPA addresses 23 areas of EU policy as being relevant for cooperation between Armenia and the EU. However, only seven of these policy areas end with a legal clause stating, "**The Republic of Armenia shall carry out approximation of its legislation to the Acts of the European Union and international instruments referred to in Annex [...]**".

These areas are shown below, in illustration 3.

Illustration 3: Breakdowns of Armenia's approximation commitments by legal areas.

Area (No of Annex)	Directives	Regulations/ Decisions
Transport (I)	48	26
Energy Cooperation (II)	17	60
Environment (III)	22	2
Climate Action (IV)	1	5
Information Society (V)	6	3
Consumer Protection (VI)	14	3
Employment, Social Policy, Equal Opportunities (VII)	44	0

Note: Approximation efforts shall focus on but are not limited to the areas and legal instruments listed in Title V and Annexes I – VII of CEPA. There are several additional legal approximation provisions in some areas of Titles IV and V of CEPA, as shown below:

• **On "Economic Cooperation":** *The Republic of Armenia shall take further steps [...] to **gradually approximate** its economic and financial regulations and policies to those of the EU, as appropriate. (Article 22 CEPA)*
• **On "Statistics":** ***Gradual approximation** of the legislation of the Republic of Armenia to the EU acquis in statistics shall be carried out in accordance with the annually updated Statistical Requirements Compendium as produced by Eurostat. (Article 35 CEPA)*
• **On "Technical Barriers of Trade":** *The Parties shall endeavour to establish and maintain a process through which **gradual approximation** of the technical regulations, standards and conformity assessment procedures of the Republic of Armenia to those of the EU can be achieved. (Article 130 CEPA)*
• **On "Postal Services", Electronic Communication Networks" and on "Transport Services":** *The Parties recognize the importance of **gradual approximation** of the legislation of the Republic of Armenia to that of the EU (Articles 169, 180 and 192 CEPA)*
• **On "Company Law and Corporate Law", "Accounting and Auditing":** *The Parties recognise the importance of an effective set of rules and practices in the areas of company law and corporate governance, as well as in accounting and auditing, in a functioning market economy with a predictable and transparent business environment, and underline the importance of **promoting regulatory convergence** in those fields (Article 60 CEPA)*

• **On "Agricultural and Rural Development" :** *The Parties shall cooperate to promote agricultural and rural development, in particular through* ***progressive convergence of policies and legislation*** *(Article 70 CEPA)*
• **On "Education and Training":** *The Parties shall collaborate in the field of education and training to intensify cooperation and policy dialogue with a* ***view to approximating the education and training systems*** *in the Republic of Armenia with policies and practices of the European Union (Article 93 CEPA)*
• **On "Higher Education":** ***Promoting convergence*** *and coordinated reforms in higher education in line with the European Union Agenda for Higher Education and the European Higher Education Area (Bologna Process) (Article 94 CEPA);*
• **On "Dual-Use Goods":** *The Parties shall exchange information and good practices with regard to export controls on dual use goods with a view* ***to promoting the convergence*** *of the export controls of the European Union and of the Republic of Armenia. Article 117 CEPA)*

3.2 What is the "EU acquis"?

The EU *acquis* is the short form of the "*Acquis*[2] *Communautaire* of the European Union and consists of the accumulated legislation which make up the legal system of the EU, namely:

- EU primary legislation (TFEU and TEU, as the legal basis of EU law),
- EU secondary legislation (Directives, Regulations, Decisions),
- Court decisions of the CJEU, and
- International treaties concluded by the EU.

3.3 Legal approximation

What does "**legal approximation**" actually mean?

Approximation can be best understood as "achieving compatibility of Armenian legislation with EU law" in those areas, which are mentioned in CEPA and listed in CEPA Annexes. Alternative terms for "approximation" are "to align Armenian legislation with EU law" or "to bring Armenian legislation into consistency with EU law".

Generally speaking, "approximation" means less than "transposition" of EU law as to be done by EU Member States. Transposition in the EU requires EU Member States to bring their national legislation into full conformity with EU law (Directives). Considering the critical importance of the approximation activities in strengthening relations between the EU and Armenia and in helping to move forward the reform agenda in Armenia, the Armenian lawmaker should endeavour to reach the highest level of compatibility of national and EU law. This Handbook shall assist the lawmaker in this process.

Technically speaking, "legal approximation" means not only "planning and preparation of legislation" and subsequent "Adoption of the new or amended Armenian legislation" but also its "**implementation**" and "**enforcement**".

Implementation means, "to put legislation into practical effect" and enforcement means "to ensure observance of a piece of legislation" through appropriate measures taken by the authorities/civil servants in charge of implementation. In the EU, implementation and enforcement of EU law are within the competence of the Member States. Standard implementation measures include, for instance, the issuing of individual decisions (Administrative Acts) by competent authorities, such as licenses, permits or other authorisations, or the execution of a plan or programme.

Enforcement can be broadly defined as "all approaches of the competent authorities to encourage or compel others to comply with existing legislation" (e.g. monitoring, routine inspections, warnings, administrative fines, criminal penalties, withdrawal of authorisations etc.)

CEPA makes clear that successful approximation is more than the drafting and adoption of new legislation: Rather, successful approximation also "includes aspects of implementation and enforcement" (Article 372 (2) CEPA). This means that, parallel to the drafting of legislation, **all necessary steps** must be taken to ensure that sufficient administrative and institutional capacities are in place in Armenia so that all new legislation can be implemented and enforced in daily practice by the competent bodies.

This also includes awareness raising and the training of staff who are to implement the new legislation. In particular, the preparation of information materials, such as guidance documents or detailed Explanatory Notes to a new piece of Armenian legislation, are considered very useful in understanding new legal requirements and hence contribute to better implementation (see below, chapter 9.7).

When developing national policy and the legal approach underpinning new provisions of Armenian legislation, particular attention should be given to the aspects of implementation and enforcement. It makes little sense to draft ambitious and accurate provisions in line with EU law if there are neither the financial nor the human resources available to implement the new legislation into daily practice.

It should be noted that implementation and enforcement measures of new legislation are to be monitored by the EU under CEPA in order to assess the approximation progress made in Armenia (see Article 372 CEPA).

3.4 Gradual approximation

According to Article 370 CEPA, Armenia shall carry out "gradual approximation" of its legislation to EU law as referred to in the Annexes, based on commitments identified in this Agreement, and in accordance with the provisions of those Annexes.

Approximation is a long-lasting step-by-step process. According to the timelines set out in CEPA Annexes, it will require between 2 and 8 years, beginning from the date of CEPA's provisional application, i.e. 1 June 2018. However, one should bear in mind that the timelines set in CEPA are largely very ambitious and additional criteria should be taken into account when planning the approximation schedule per Directive / Regulation (→ see below, chapter 9.1).

- **Practical advice**

Gradual approximation should depend on the complexity of the topic addressed by a Directive and the corresponding current legal situation:

1 If there is legislation in Armenia in place, which already addresses most of the aspects under a given Directive, that legislation should be checked for legal gaps and amended accordingly in one undertaking. In such cases, the time required for achieving approximation should be limited.

2 Most Armenian legislation however, needs to be newly drafted or substantially revised so that new pieces of legislation (and repeals of existing Legal Acts) may be required. In such situation there are basically **two potential approaches**:

(a) The "all-in-one-go approach": This is where all relevant aspects of a Directive are tackled and incorporated in one (or more) piece(s) of legislation. Such an approach is advisable if a Directive is not too long and complex, so that all its aspects can be addressed straightaway.

(b) The "umbrella approach": This is when a Directive is either relatively complex or requires a number of detailed implementing rules (such as permitting or licensing procedures, public participation etc.). In such cases, it is advisable from the outset, to draft a "framework law" in which major aspects and benchmarks are regulated. For subsequent detail, legal mandates are given to the relevant competent body to adopt secondary legal instruments in due course. This allows for a "gradual" approximation process, which is also in line with CEPA requirements.

4 Approximation Advice

The underlying key question is *how* to approximate national legislation to EU Directives and Regulations. Of course, this question cannot be answered simply and in a uniform way as each piece of secondary EU legislation is different and needs its own specific approach. In addition, a single Directive could be approximated by one or several domestic Legal Acts. It is also possible that several provisions of a national Legal Act legally address one provision or one aspect of a Directive.

However, some general advice can be given on how to make any approximation task easier.

4.1 Practical advice on legal approximation of Directives

Approximation is not (merely) the reproduction of the words of a Directive into national law. Armenian legislation should not repeat the content of an EU Directive word for word or completely follow its legal and technical structure. Usually, Directives consist of the following parts:

- Preambles,
- General provisions (which often assemble the legal purpose and overall goal of a Directive and scope of application, definitions and principles),
- Substantive parts (rights, obligations, procedures, etc.),
- Final provisions (reporting, transition clauses, entry into force, etc.), and
- Technical Annexes.

4.1.1 Preamble

The provisions of a Preamble are used to summarize the approach, and provide reasons for the Directive and part of its content, so that the national lawmaker can better understand its background. Like in Armenia, a preamble has no direct normative effect. As Article 13 of the Law on Regulatory Legal Acts states:

"*A regulatory Legal Act may contain a preamble which defines the objectives of and reasons for the adoption of the Legal Act. The preamble shall not be stated as a separate article, shall not be numbered and shall not be divided into articles (points). The preamble shall not prescribe regulatory provisions.*"

Preambles of EU Directives are not supposed to be transposed into national law but rather, should provide useful background information on the content of a Directive.

To Note: The Preambles of many Directives have become considerably longer in recent years. This is mainly because of the extension of the EU, with more Member States participating in the law making process and asking for more background details in the Preambles.

Decisions from the CJEU sometimes refer to indents in Preambles when it interprets single clauses of the main regulatory body of a Directive "*in the light of its preamble*".

4.1.2 General provisions

General provisions are crucial for the proper application of a Directive and its approximation, particularly for definitions and the scope of application.

Definitions in Armenian law should follow the text of definitions set out in a Directive as much as possible, in order to avoid confusion. However, this does not mean that the terms from a Directive should simply be copied. New definitions should primarily take into account the terminology used in Armenia and introduce new terms only in such a way that they can be well understood.

Example 2

Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) defines what is considered a "natural habitat". In Germany, though, the term "habitat" is not used in national legislation; the respective term is "living space" (Lebensraum). As long as this term has the same legal meaning as the defined term "habitat", this will cause no compliance problems.

Be aware that sometimes Definitions in one Directive refer to a term defined in another Directive by means of reference, which means that both Directives have to be read carefully and taken into account (for details, see below, chapter 4.1.6).

The **scope of application** of a Directive must be taken into account when drafting national legislation. This does not mean that the scope of application of a national law must be identical to the scope of an

EU Directive but it should be properly understood why the scope of application of a Directive is limited when approximating it.

Example 3

The Environmental Liability Directive (ELD) 2004/35/CE applies only to certain types of environmental damage (water, nature, soil related). For instance, it does not apply to air damage (because such damage is diffuse) and not to damages caused by natural phenomenon (because nobody can be held legally responsible).

Often, Directives introduce **completely new terms and concepts**, which may not yet exist in Armenian language or legislation or they have a completely different meaning. Firstly, the Armenian lawmaker must fully understand these terms and concepts and then incorporate them carefully and appropriately into the domestic legal system. Often this is done by definitions and additional principles in the general part of a law. In addition, Explanatory Notes and practical guidance for law enforcers may need to be drafted (→ see below, chapter 9.7).

Example(s) 4

*(a) The approach taken by the Industrial Emission Directive (IED), which is one of the cornerstones of European environmental legislation is on the issuing of "**Integrated Permits**" based on the use of "**best available technologies" (BAT)**, which are often set in **BAT documents** (so-called BREFs) that ensure the achievement of "**Emission Limit Values (ELV)** within specific industrial sectors.*

*(b) Environmental liability under the Environmental Liability Directive (ELD) shall lead to the rehabilitation of environmental damage either through **"primary", "complementary" or "compensatory remediation" measures.***

Before any approximation, the lawmaker must become familiar with the meaning of all these terms and their practical application and then decide if and how to integrate them into Armenian legislation.

4.1.3 Provisions granting rights and obligations (substantive clauses)

The cornerstone of Directives are those provisions, which grant rights and obligations to persons and authorities. Such clauses must be approximated very carefully, so that under Armenian law the addressees have a clear and accurate indication of their rights and obligations as derived from the Directive. In other words, where a provision of a Directive is intended to create rights and obligations for individuals, the legal position needs to be sufficiently precise and clear so that people can determine the full extent of their rights and properly understand their obligations.

On principle, provisions of Armenian legislation, granting rights and/or obligations shall determine **who** is supposed to do **what**, **when** and **how** in accordance with the requirements of the respective EU Directive

Example 5

The Directive on Industrial Emissions (IED) requires that no installation or combustion plant, waste incineration plant or waste co-incineration plant be operated without a permit (Article 4 IED). It is up to Armenia to regulate which authority shall issue such permits and how the procedure is organized according to national law.

However, the Directive sets out a number of minimum requirements on the permit issues and procedures, which need to be upheld by national law:

- The permit may only be issued, if the installation complies with the (technical) requirements of the IED (Article 5 (1) IED)

- The permit application must contain a minimum set of information as outlined in Article 12 IED

- The public concerned must be assured early and effective opportunity to participate in the permitting procedure (Article 24 (1) IED)

- Conditions must be issued as part of the permit, which comply with the requirements set out in Article 14 IED

- The conditions and procedures for the granting of permits are fully coordinated where more than one competent authority or operator is involved (Article 5 (2) IED)

- The content of the permitting decision must be made available to the public (Article 24 (2) IED)

The preferred method of approximation of a Directive's substantive clause is **"reformulation"**, retaining those parts of a national law which work well in daily practice as well as the structure of the national legal system and legal terminology. This provides the means to exclude irrelevant or overly ambitious parts of a Directive and incorporate other parts at one's own discretion pursuant to the national legal order.

This kind of approximation also allows different wording to be used compared to the Directive – as long as the objectives and legal benchmarks set out in the Directive are met. This technique is used most frequently as it allows for legal drafting in accordance with national legal terminology and contributes to the preservation of national legal traditions and drafting techniques.

In particular, new terms and concepts of EU legislation cannot be approximated by simply copying them into domestic legislation, as in all likelihood, it will no longer make sense in the context of national legislation, nor would it be possible to implement them – they may even contradict existing national rules.

4.1.4 Final provisions

Directives provide a set of final provisions, which are only partly relevant to EU Member States (such as specific transposition requirements, reporting to the EU Commission, transitional provisions, entry into force).

It is up to the Armenian lawmaker to introduce its own final provisions, especially related to entry into force and potential national transition clauses for the application and enforcement of single provision clauses of a law.

For instance, the application of Best Available Techniques (BAT) for existing industries often requires enormous investments by the operator of old industrial facilities. In such cases, a reasonable transition period for the application of BAT standards may be set by approximated Armenian legislation.

When approximating Directives, due attention should be paid to adequate sanctioning provisions, which should be properly regulated in order to ensure correct enforcement of new rules. As explained above, enforcement of EU law is solely in the competence of the EU Member States but many Directives require that the Member States have functioning sanction mechanisms established under national law.

Example(s) 6

(a) Article 8 of Directive 98/6/EC (Consumer Protection) states: Member States shall lay down ***penalties for infringements*** *of national provisions adopted in application of this Directive, and shall take all necessary measures to ensure that these are enforced. These* ***penalties must be effective, proportionate and dissuasive****.*

(b) Article 36 of Directive 2008/98/EC (Waste Directive) states: Member States shall ***take the necessary measures to prohibit*** *the abandonment, dumping or uncontrolled management of waste, including littering. Members States shall lay down provisions on the* ***penalties applicable to infringements*** *of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. The* ***penalties shall be effective, proportionate and dissuasive****.*

4.1.5 Technical Annexes

Many Directives (and Regulations) contain long technical Annexes, which are an integral part of the respective Legal Act. For instance, the IED has eight technical Annexes, which are relevant for legal approximation – these Annexes make up more than 50% of the length of the Directive.

Practical advice: When the Annexes contain technical lists, standards and other parameters, it is advisable simply to copy them into Armenian legislation. However, there are also Annexes, which contain lengthy narrative (for instance, Annex II of the ELD, which explains the meaning of remediation of various environmental media.) In such cases, the Armenian lawmaker must decide how to convert (parts of or whole) Annexes into the national legal system. For instance, it can be achieved via secondary instructions or even through guidelines.

The use of Annexes has proved to be a very useful and common tool in EU law but also in Member states legislation as it keeps legislation readable. This means that technical components are not incorporated into main bodies of a law (which would make it less readable) and on the other side kept close to the main body of the law to which it directly relates.

4.1.6 Take into account other related Directives

The majority of EU Directives are not "stand-alone" Directives, meaning that they require the proper reading and understanding of other Directives mentioned within them.

Example 7

The Environmental Liability Directive (Directive 2004/35/CE) defines water damage as "any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7)."

It means that the Armenian lawmaker must first understand the terms defined in Directive 2000/60/EC (Water Directive). Secondly, he must then either link the definition of "water damage" in national law to those terms defined in national water code or law or include clauses on water status / potential directly in the future domestic legislation on environmental liability.

Practical advice: Read the Directive that is to be approximated, and note other Legal Acts (mainly Directives) which are mentioned in that Act and then examine to what extent it is relevant for the approximation process.

4.1.7 Mandatory / optional provisions for approximation

EU Directives usually contain a mixture of mandatory and optional clauses for transposition. Mandatory clauses are often formulated that the Member State as addressee **"shall"** do something or there are mandatory requirements set out by a Directive (also expressed as "shall" or "must be" etc.).

Optional clauses are mostly written as, "The Member State **"may"** do this/ that". In addition, there are mandatory clauses, which make implementation subject to **"appropriateness", "proportionality" or "adequacy".**

"May" clauses are quite often used in the Preamble of a Directive, which states what a Member State may legally do, but must not.

As good practice for legal approximation, the Armenian lawmaker should first focus on mandatory clauses and their incorporation into Armenian legislation, and then on clauses, which are subject to "adequacy" etc. and finally decide what to do about optional policies.

Sometimes the responsibility, to clarify certain terms individually and according to their national legal system, is explicitly passed to the Member States (see example below).

Wherever Armenia is required to approximate its legislation to EU law, it is supposed to respond in a manner comparable with an EU Member State, meaning that it has to align its national legislation to EU law.

Example(s) 8

(a) Environmental Liability Directive (ELD)

Member States shall designate the competent authority (ies) responsible for fulfilling the duties provided for in this Directive (Article 11 (1) ELD)

Member States shall ensure that the competent authority may empower or require third parties to carry out the necessary preventive or remedial measures (Article 11 (3) ELD)

Member States may establish national rules covering cost allocation in cases of multiple party causation (preamble, indent 22)

Member States may provide for flat-rate calculation of administrative, legal, enforcement and other general costs to be recovered (preamble, indent 19)

Member States may decide not to apply paragraphs 1 and 4 of Article 12 (Article 12 (5) IED.

What constitutes a 'sufficient interest' and 'impairment of a right' shall be determined by the Member States.

- - -

(b) Directive 1998/6 on consumer protection in the indication of the prices of products offered to consumers

The selling price and the unit price shall be indicated for all products. (Article 3(1))

For products sold in bulk, only the unit price must be indicated. (Article 3(3))

The selling price and the unit price must be unambiguous, easily identifiable and clearly legible. (Article 4)

*Member States **may decide** not to apply paragraph 1 to – products supplied in the course of the provision of a service, – sales by auction and sales of works of art and antiques. (Article 3 (2))*

4.1.8 Repeal of inconsistent domestic law

The issue of potentially inconsistent legislation is mentioned in several CEPA provisions (see Art. 200, 206, 330). However, checking for "inconsistency of Armenian legislation with EU law" as such is not explicitly required by CEPA.

Nevertheless, if proper approximation is to be achieved, consistency with existing national legislation must be ensured. One of the lawmaker's key tasks is to withdraw provisions of domestic law or abolish domestic practices that are inconsistent with the rules set out by a

Directive. The identification and revision of potentially inconsistent existing domestic legislation is a major challenge in the law making process; it requires from the outset, a "legal package" approach, in which all potentially affected Legal Acts of domestic legislation are screened and later amended in accordance with the new provisions.

Example 9

The provisions of the IED concern air pollution, water pollution, waste management, and energy efficiency of large industrial installations. Once a new system for permitting and control of such installations is legally introduced, based on the requirements of the IED, all related aspects in existing Armenian legislation on air, water, waste, and energy efficiency must also be reviewed and potentially amended to make them legally consistent.

4.1.9 Approximation of several Directives in one national Legal Act

Although it is up to Armenia to determine the number of national Legal Acts transposing one or more Directives, good practice indicates that in areas where several Directives are to be adopted, it may be appropriate to have one single national Legal Act, which provides for the well-structured and logical transposition of several EU Directives.

Example 10

In the field of Nature Protection, CEPA delivers two Directives to be approximated: the Directive 2009/147/EC on the conservation of wild birds (Birds Directive) and the Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive). In many Member States, the provision of both Directives are regulated in just one national "Law on Nature Protection" – sometimes with additional bylaws on lists of birds, fauna and flora species.

4.1.10 Approximation through references to EU law?

Approximation by reference to EU law should be strictly avoided as it causes legal and practical problems. No country can realistically expect its own citizens to examine and know the legislation of a supranational organisation like the EU, especially if it is not in the Armenian language. Moreover, Armenia is not a Member of the EU and EU law is not international law like multi-national treaties to which Armenia is a Party but it is foreign law and hence cannot apply directly.

Therefore, all elements of a Directive/Regulation that will apply in Armenia in the future must be incorporated into Armenian legislation. This also applies to Annexes of Directives (and Regulations) which are often very long, as shown above.

4.2 How to approximate Regulations?

As seen above, Regulations are not supposed to be transposed into domestic legislation by EU Member States, as they are directly applicable, like national law. However, in CEPA there are more than 90 Regulations listed to be approximated by Armenia. How can they be approximated?

The majority of the Regulations are in the field of energy cooperation and address either the eco-design of products/devices (32 Regulations) or energy labelling requirements for electric devices (19 Regulations). These Regulations mainly contain technical product standards, which should be directly incorporated into Armenian legislation.

Legal drafters should analyse an EU regulation in a manner similar to the analysis of Directives (mentioned above). Definitions and other provisions included in the regulations should be incorporated into Armenian legislation. The wording should be as close as possible to that of the EU regulation.

5 Dynamic approximation

The EU *acquis* is not a static collection of legislation; Directives and Regulations are constantly amended or repealed according to new technical developments, legal needs and experience gained on its application. In other words, EU legislation has a dynamic character and requires continuous updating, as does that of the corresponding national legislation.

As a result, Article 371 CEPA requires the Partnership Council, which has been established by Armenia and the EU, to periodically revise and update the Annexes to CEPA to reflect the evolution of EU law (so-called "dynamic approximation").

However, what shall be done, if a Directive has been amended or even repealed and the CEPA Annex refers to the outdated European Legal Act?

Example(s) 11

(a) Energy Efficiency Directive 2012/27/EU was amended by Directive 2018/2002 (which sets out new energy saving targets).

(b) Waste Framework Directive 2008/98/EC was amended by Directive 2018/851 (with reference to extended producer responsibility, plastic waste management and new waste minimisation targets).

(c) Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels was repealed through Directive (EU) 2016/802.

Recommendation: As for the amended Directives in the energy and waste sector, it is advisable, to review the amended/new provisions (often new Articles with an "a", "b", "c") and assess if these can be adopted into Armenian legislation – if not, the lawmaker may still refer to the original text of the Directive as given in CEPA Annex.

As for the new sulphur content Directive, however, it makes no legal sense to approximate Armenian legislation to a Legal Act, which no longer exists in the EU; the lawmaker should refer to the new Directive 2016/802, even prior to updates the Partnership Council may make to the CEPA Annex.

Generally, it is advisable to pay attention to the latest version of an EU Legal Act, in order to approximate Armenian legislation as accurately as possible to existing EU legislation. Therefore, it is advisable to first check as to whether there is a new version of a Directive/Regulation listed in CEPA before starting the approximation process.

5.1 Change of EU secondary legislation

EU secondary legislation is very dynamic, meaning that it is constantly reviewed and amended by the European lawmaker according to new technical developments, legal needs and experience gained on its application. There are several varieties and mechanisms of EU legislation change, which are explained below, as they are relevant to understand the characteristic of "dynamic approximation".

5.1.1 Repeal

If a Directive or Regulation is no longer needed, they are "repealed", i.e. abolished. Often, secondary legislation is repealed through new Legal Acts, in particular if higher standards are to be set or if so many new aspects are to be regulated, a mere modification of the Legal Act in question would be insufficient.

Example(s) 12

(a) Directive 2012/27/EU *on energy efficiency repealed former Directives 2004/8/EC and 2006/32/EC because all substantive provisions of those two Directives were strengthened though the new one.*

(b) Directive 2012/18/EU *on the control of major-accident hazards involving dangerous substances (commonly known as Seveso III Directive) repealed former Council Directive 96/82/EC ("Seveso II") because the level of protection with regard to the prevention of major industrial accidents was strengthened.*

(Both Directives are part of CEPA)

5.1.2 Amendment

The most common form of modification of EU secondary legislation, like in national legal systems is the simple amendment of a Legal Act, meaning that single provisions are modified, redrafted, or added through new Directives. Many Directives in CEPA are Directives, which amend other Directives, and this is indicated already in the respective titles of the Directive.

Example(s) 13

(a) Directive 2012/27/EU on energy efficiency not only replaces, as seen above, 2 other Directives but also ***amends*** *Directives 2009/125/EC and 2010/30/EU, meaning that these two Directives remain in force but in a modified form.*

(b) Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market ***amends*** *Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC.*

The approximation challenge is, that it is not only the amending Directive that must be read and understood, but also the Directives to which it refers, i.e. which have been amended as they are closely related to that Directive. Bear in mind that since the adoption of CEPA, several Directives may also have been amended and these amendments have **not yet been** mentioned in CEPA (see example in box).

Example 14

Since CEPA entered into force, Directive 2012/27/EU on energy efficiency has been amended again through Directive (EU) 2018/2002 and through Regulation (EU) 2018/1999.

Often there are either "codified", "recast" or "consolidated" versions of Directives (or Regulations). Below is a brief explanation as to the legal meaning of these terms.

5.1.3 Codification

Codification is the bringing together of a Legislative Act and all its amendments in a single new Act through legislative process. The new Act replaces the Act being codified. It combines the original Act and the successive amendments without any further substantive changes. Codification should contribute to further legal clarity.

Example 15

Directive 2011/92/EU on Environmental Impact Assessment (EIA) is a codified version of the original EIA Directive 85/337/EEC, which had been substantially amended several times.

5.1.4 Recast

Recasting brings together a Legislative Act and all its amendments in a single new Act through legislative process, but unlike codification, recasting involves additional substantive changes during preparation of the recast text.

Example 16

Industrial Emission Directive 2010/75/EU (IED) is a horizontal recast of the Integrated Pollution Prevention and Control (IPPC) Directive and six other Directives and their old and new amendments into one new Legal Act – all seven Directives have been repealed by the new IED.

5.2 Consolidation

Consolidation of a Directive means combining the provisions of a Directive and all subsequent amendments in one single text to make it more transparent and reader-friendly, but a consolidation itself **does not amend** a Directive. It creates a purely declaratory version of the Legislation in force but not a new Legal Act.

Example 17

EIA Directive (2011/92/EU) was substantially amended through Directive 2014/52/EU. In order to improve readability, the EU Commission published an informal consolidated version of the new EIA Directive as it stands, which includes all amendments in the original text.

If the lawmaker decides to approximate Armenian legislation to the **existing version** of an EU Legal Act, the question is how to find this Act most easily. This is illustrated in the box below on the example of the Environmental Impact Assessment (EIA) Directive 2011/92/EU.

Example 18

The starting point to finding the latest version of a Directive should always be the website:

<https://eur-lex.europa.eu>

On that website, you can put into the search function parts of the title or simply the reference number of the Legal Act you are searching for, e.g. "2011/92/EU".

The results of the search will lead you to the website, which indicates the latest version of the Act in question, here the "consolidated" version of the Directive dating 15.05.2014. When you click on the link, you find the full text of the Directive as it is in force today.

The text of the consolidated version on the website not only shows the entire up-to-date EIA Directive but it also shows on the left side which parts are derived from the "original" Directive indicated with "B" and new portions, indicated as "M1".

6 Public Policy making

Legal approximation is not an isolated process. It takes place within existing policy legal frameworks. Government is tasked with organizing and managing policy sectors and within those policy sectors, to perform their functions and deliver services. Government organizes various public entities such as ministries, agencies, institutions etc. in order to perform these functions and deliver services. The Government makes policy decisions on how to organize and perform the functions and decides which organization should deliver the policy framework for a particular sector. The policy framework is the combination of Government priorities, strategies, decisions, established practices and actual activities of various organizations. Ministries, and within the

ministry, specific departments, and in some cases, Government agencies, are tasked with the management and organization of their assigned policy sector and thus to maintain and develop the policy framework of their assigned policy sector. Such policy sectors are regulated by the laws, regulations, and decisions.

In parallel, a legal approximation process takes place. In Armenia, this is based on CEPA and the corresponding CEPA Roadmap.

Here, the definition and elements of legal approximation (in the broader sense) are once again outlined:

1 To adopt or change national laws, rules, and procedures so that the requirements of the relevant EU law are incorporated into the national legal system (Approximation / Harmonization / Transposition).

2 To ensure the setup of institutions and budgets necessary to carry out the laws and regulations (Implementation or Practical Application)

3 To provide the necessary controls and penalties to ensure that the law is being complied with fully and properly (Enforcement).

6.1 No legal approximation without prior Public Policy formulation

It is important to underline the link between the legal approximation and public policy formulation. Firstly, legal approximation is a part of the legal drafting process; usually the same procedures and requirements apply for all legislation (except if there are specific, additional provisions) for the drafts, which are EU related. While, the process of legislation, if part, or the means, of the implementations of the public policies. On the other hand, implementation of public policies, via the enforcement/application of legislation usually requires financing.

Planning of the state budget is a lengthy process in all EU member states and as in Armenia; medium-term budget planning principles are applied. In addition, sectoral strategies and action plans are in position and annual or multiannual legislative plans in place. In the EU Member States, there are normally constitutional provisions, that no law can be adopted without financial provisions for its implementation. (it is of course possible to adopt the law with no financial provisions for its implementation, but in that case, proper transitional periods should be established or a period of entering into force of the law shall be anticipated for when the budgetary provisions will be available).

In order to assess the budget and other outcomes associated with the law being approximated with the EU requirements, ex-ante evaluations are conducted (in Armenia, these are called Regulatory Impact Assessments, RIA), where the financial impact of state and municipal budgets are assessed (see below, chapter 7). Planning and prioritization of the legal approximation is of utmost importance. In this respect, linkage with the national policy and sector policies priorities and plans shall be insured.

Noting the above, the following principles and attributes are relevant to the legal approximation in Armenia:

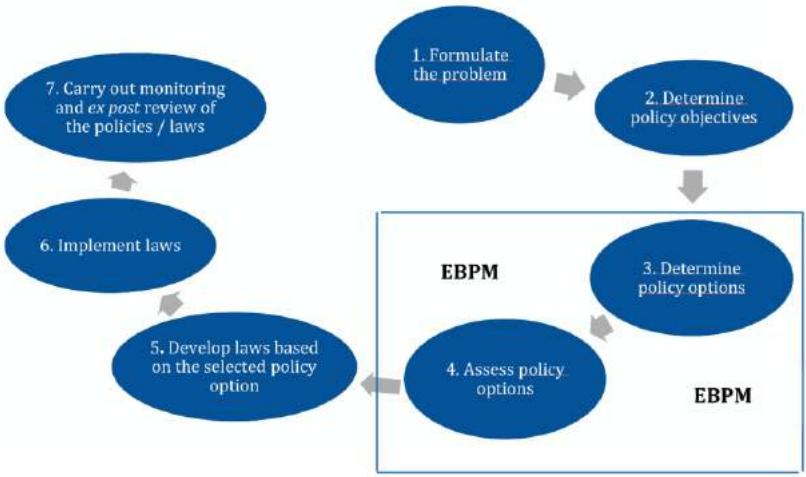
- Approximation and its planning shall be part of the public policy development and implementation
- The public policy planning and therefore also the legal approximation, shall be linked to the Budget, taking into account the Medium Term Budget Planning and priorities
- On the one hand, approximation should be linked with the overall strategy of the country, as well as the sectorial strategies and actions plans, on the other hand, sectoral strategies and action plans may have clear plans for legal approximation. By definition, the CEPA roadmap is the main planning and monitoring tool for CEPA implementation
- Legal approximation is to be linked with sectorial strategies

- RIA, especially the budgetary implications of the draft legislation shall be assessed
- Planning and prioritization of the legal approximation is of utmost importance (noting also policy priorities and budgetary resources available)

6.2 Evidence based public policy-making

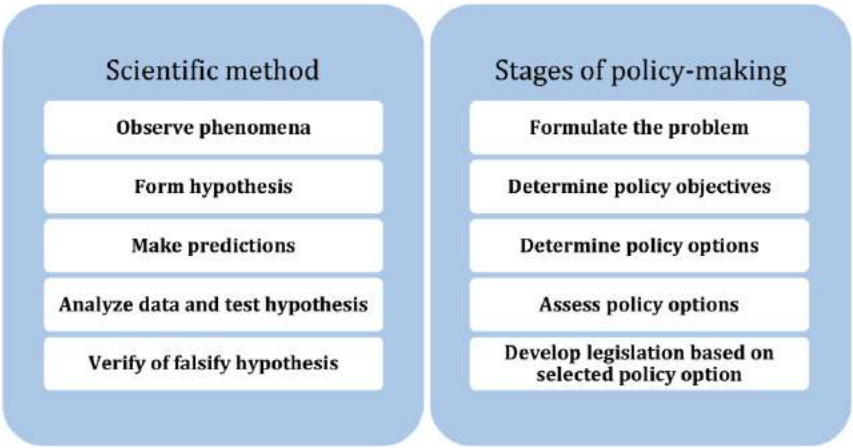
There is broad agreement that policy makers should make their decisions after weighing the facts and reconciling the different opinions that exist in the society. The process of embedding informed judgement into the policy-making cycle is called evidence-based policymaking (EBPM). The latter allows for the analytical assessment of both positive and negative impacts of legislation as well as of the alternative non-regulatory interventions offered for the solution of problems, on natural and legal entities, their groups, as well as the Republic of Armenia and separate communities.

Illustration 4 From problem to solution



The methodology of evidence-based decision-making has been perfected over the course of many years within the scientific community, particularly in the field of clinical medicine with the testing of efficient and non-efficient treatment methods. Subsequently, the methodology was adapted for policymaking. The objective of EBPM is to assess the positive and negative economic, budgetary, health, environmental, etc. impact and subsequently proposing the most efficient option of problem resolution as a result of the reconciliation of these impacts.

Illustration 5 Scientific method and policy-development stages



6.3 Stages of Public Policy planning

There are usually the following steps/sequence in public policy planning.

1 Analysis of the situation,

2 Identification of problems and possible solutions,

3 Initial impact assessment and forecasting; what will happen in the case of doing nothing,

4 Preparation and approval of the policy planning document; deciding on the policy implementation instrument drafting provisions for legal framework (legal approximation),

5 Decision on the allocation of financial resources; adopting the legal framework,

6 Policy implementation and monitoring,

7 Impact assessment of the results achieved by the policy.

The above steps in public policy planning, demonstrate that legal drafting is only a part of step number 4. However, the challenge is that CEPA already provides the list of the EU legislation with which Armenian laws are to be approximated. Therefore, national sector policies play a crucial role. In addition, Armenia still has options within the legal approximation process: approximation techniques, priorities, sequence, and choice of legal instruments.

These options are to be utilised as necessary. Moreover, decision makers' key stakeholders as well as line ministry civil servants who deal with legal approximation in practice should be made aware of such options.

6.4 Conclusion

The approximation with EU law under CEPA will have a significant impact on the function and service delivery from the perspective of "in what manner and to what extent and by which entities". In other words, the requirement of approximation with the EU legislation, and especially its enforcement, will have a very significant impact on the policy frameworks related to the sectors listed in the CEPA.

Government will have to define how to organize and manage such sectors in order to perform functions and deliver public services in accordance with the requirements of the legislation arising from the EU acquis. It is for this reason that legal approximation should ideally be accomplished within the context of a wider review of the policy

framework of that particular policy sector. This will allow Government to formulate an integrated and coherent policy framework for the sector, based both on the requirements of the EU acquis and on necessary supporting measures and policies, which enable change in the policy sector and implementation of laws approximated with the EU law.

This updated policy framework will be, where needed, codified in the new legal framework that reflects both legal approximation needs as well as the legal and regulatory needs for Government to perform functions and services effectively in line with the updated policy framework.

7 Regulatory Impact Assessment

Regulatory Impact Assessment (RIA) is a means to assess the potential expenditures, consequences and side effects arising after the implementation of Legal Acts, a means for the Government to reduce expenditure and risks to the business environment and the public at large, by choosing the most efficient solution to the problem.

Main objectives of the RIA are:

- Assist the drafter of the regulatory framework and subsequently the decision makers in the decision-making process to identify opportunities to address the problem and identify the consequences of regulatory framework, in particular, possible negative side effects of regulation that could jeopardize the goal of the regulation from a long term perspective,
- Inform other public administration bodies as well as politicians about the drafter's conclusions regarding the need for regulatory framework and its impacts,

- Inform stakeholders as well as the public of the drafter's conclusions regarding the need for regulatory framework and its impacts.

7.1 RIA abroad

According to international best practice, countries often base policymaking and implementation within a given field on RIA because it is the most efficient and comprehensive component of EBPM. According to OECD, RIA is a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives.

RIA has been implemented in the USA since 1978 for inflation impact assessment. RIA became a well-known tool in the 1980s and has been utilised in more than 50 countries. In the EU, RIA is included in the "Better regulation: guidelines and toolbox".

The introduction of the RIA system is necessary for efficient, high quality and transparent decision-making based on fact and analysis, as well as for increasing the accountability of the country's decision-makers. RIA determines the impact of these decisions on the overall economy and its different branches in advance, in the medium and in the long term[3]. The absence of RIA contributes to the increased risk of corruption and arbitrary implementation of Legal Acts in certain areas in politics, which constitute a significant obstacle for businesses[4].

7.2 RIA in Armenia

The requirement for RIA implementation in the Republic of Armenia is stipulated by Article 5 of the RA Law on Regulatory Legal Acts. According to this law, RIA is the analytic approach to assessing changes that arise because of the adoption of the Legal Act[5]. The manner, timeline, and cases of applying RIA as stipulated by RA Law

on Regulatory Legal Acts as well as the requirements to the opinion issued as a result of RIA have not been defined yet[6]. In September 2019, the Government of Armenia (GOA) approved the concept of RIA introduction and the Action plan thereof[7].

There is a plan to introduce the decentralized model of RIA in Armenia. It assumes that agencies responsible for the development of policies or Legal Acts will organize regulatory impact assessment collaborations, in regards to sectorial impacts, with the state agency responsible in the given sector, and that RIA quality control will be conducted by the RIA department[8] in the Office of the Prime Minister of the Republic of Armenia. The RIA department also has the following functions[9]:

- Development of RIA methodology, including development of questionnaires for the purpose of RIA type filtering and defining the methodology for implementing different types of RIA,
- Provide professional, informative and technical assistance to the Government in relation to RIA issues,
- Provide RIA-related opinions, analytical and informative materials and recommendations, including establishing key performance indicators regarding the efficiency of the RIA system and creation of annual reports.

Draft laws and draft Government decisions will be subject to RIA (see Illustration 6, below, for details). Draft laws on the budget, decisions on declaring martial law or a state of emergency, draft regulatory Legal Acts eliminating the consequences of force majeure or emergencies and draft regulatory Legal Acts envisaging technical changes will not be subject to RIA.

Illustration 6 RIA framework in Armenia by types of regulatory Legal Acts

The decisions adopted by the Central bank, the State Commission for the Protection of Economic Competition, Public Services Regulatory Commission, and other autonomous and independent agencies and their heads will also be excluded from the RIA system. At the same time, discussions are under way regarding the necessity to include the decisions adopted by the members of the GOA - the Prime Minister, deputy Prime Ministers and particularly Ministers, in the RIA system.

7.3 Regulatory impact and regulatory domain

At this stage of introduction of the RIAs decentralized system, it is planned to observe the sectors mentioned below from the viewpoint of impact assessment:

- Impacts on the business environment and competition,
- Impacts on public finance,
- Impacts on the social sector,
- Impacts on public health,
- Impacts on the environment.[10]

At the same time, it is planned to implement RIA in several sectors subject to legislative control. In this sense, it is important to differentiate between the two concepts of "regulatory domain" and "types of sectorial regulatory impact" (see the examples below and Illustration 7).

Example 19

Negative environmental impact as a result of tax relief in mining industry (which can result in re-opening of mines of low profitability) or negative environmental impact as a result of support to branches of agriculture (which can result in increase in consumption of water resources and chemical fertilizers which can have negative environmental consequences).

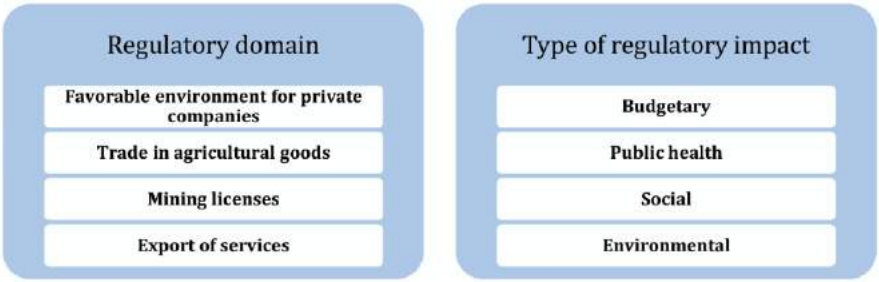
In this example, ***regulatory domain is tax relief and fiscal support legislation****, and the* ***type of regulatory impact is environmental****.*

Example 20

Tougher environmental legislation (for example, establishing more stringent licensing requirements) can result in positive impact in public health and, at the same time, a possible decrease in budget revenue (tax revenue).

In this example, ***regulatory domain is environmental legislation****, and the* ***type of regulatory impact is public health and budgetary****.*

Illustration 7 Regulatory domain vs type of regulatory impact



7.4 Types of RIA

Filtering (selection of) which type of RIA is to be employed, will be determined using template questionnaires. Following analysis of the results of the questionnaires, completed by state agencies, a decision will be made on the need for RIA and subsequently on the type of RIA needed.

- **Simplified RIA**: based on the calculations of increase or decrease of administrative burden with the application of the standard cost model[11].
- **Advanced RIA**: based on advanced qualitative and quantitative assessment of the identified impacts (with the application of the cost-benefit analysis method[12]), comparative study of international practices, recommendation of alternative options (if not done before), etc.
- **Absence of need for RIA**[13].

7.5 Ex-ante RIA and ex-post RIA

There are two different types of RIA. Firstly, ex-ante or an initial assessment of regulatory effects that are relevant to the preparation of a new draft Legislative Act. Secondly, an ex-post impact assessment of the regulation, which is already in force.

In Armenia, the ex-ante RIA system will be introduced which assumes RIA of regulatory Legal Acts before they are adopted. At the same time, several countries have ex-post RIA that assumes RIA of existing Legal Acts and repealing or amending the Acts based on RIA results. Armenia has experience of ex-post RIA of Legal Acts, too: in 2011-2018 the National Centre for Legislative Regulation foundation[14] of the staff of the GOA implemented assessment of positive or negative impact of the existing Legal Acts, mostly applying the "Regulatory Guillotine" methodology[15].

8 Public consultations

Public consultations are an important element of policymaking and ensure the participation of a wide range of beneficiaries in the process of reforms in the country. Public consultations promote transparency of public administration and increase the level of accountability. Public consultations are also a good opportunity to collect data and check its accuracy. Accordingly, public consultations are an integral part of the RIA process, especially in the case of advanced RIA.

According to the RA Law on Regulatory Legal Acts, Legislative Acts are subject to public consultations except for draft laws on ratification of (or joining) international treaties[16]. Draft normative decisions of the GOA developed by public administration agencies are subject to mandatory public consultations in the manner prescribed by the GOA, except for draft decisions of the GOA on declaring martial law or a state of emergency[17].

Illustration 8 Requirements to Public consultations[18]

Organizer	▪ The Agency or Cabinet member that has the power to adopt the Act
Participants and their rights	▪ Any natural or legal entity can make proposals online or in hard copy to the agency organizing the public consultation
Sponsor	▪ Agency organizing the public consultation ▪ In case of a cabinet member, allocations from the state budget in the given year for the maintenance of the respective Ministry, as well as other sources not prohibited by the law
Duration	▪ At least 15 days
Publication platform - website	▪ www.e-draft.am - common website for publication of draft Legal Acts, managed by the RA Ministry of Justice ▪ Official website of the agency organizing the public consultation
Ways of organizing	▪ Public consultations ▪ Public hearings ▪ Public polls
Ways of organization	▪ Public consultations can be organized in different provinces or communities ▪ Public hearings can be held through meetings with sectorial specialists or

	beneficiaries, as well as discussions with means of telecommunication ▪ Public polls can be conducted in written or oral form
Possibility of delegation	▪ The agency organizing the public consultations can delegate the organization of the public consultations through public hearings and public polls to other persons.
Summary of results	▪ The results of the public consultations and the draft regulatory Legal Acts amended based on these results are also published

9 Law making advice

Implementation of the legal approximation by public administration bodies should be an integral part of the law-making process. In the Republic of Armenia, the law-making process is regulated by; the "Law on Normative Legal Acts" adopted on 21 March 2018, the "Rules of Procedure of the National Assembly", "Procedure Code" and the "Rules of Document Workflow of the Government of the Republic of Armenia" and a number of other Legal Acts.

The law-making process consists of the following stages:

1 Elaboration of the Legal Act concept (which includes the understanding of the EU Legal Act to be approximated, undertaking necessary legal research and in the best case scenario, legal gap/needs assessment and the setting up of a drafting working group as described in chapters 9.2 - 9.5),

2 Drafting of the Legal Act,

3 Submission of the draft to the Prime Minister's Office,

4 Alignment of the draft with a number of public administration bodies,

5 Submission of drafts related to the scope of activities of other bodies provided for by the Constitution to the heads of the bodies mentioned for an opinion,

6 Organization of public discussions and impact assessment of the regulation in cases established by law,

7 Submission of the draft to the RA Ministry of Justice for state legal expertise,

8 Obtaining opinions from the relevant state bodies in cases stipulated by the legislation,

9 Submission of the draft to the Government of the Republic of Armenia,

10 Submission of the draft by the Government of the Republic of Armenia to the RA National Assembly and adoption of the law by the National Assembly,

11 Submission of the law adopted by the National Assembly to the President of the Republic of Armenia, signing and publication of the law.

The Table of Concordance (for details see Chapter 9.6 and Annex 2 for the suggested template form) will be considered the main method of documentation of the approximation process. It is advisable to discuss the inclusion of the ToC in the justification of the adoption of the draft Legal Acts, which will be developed / amended / supplemented as a result of approximation. It is recommended that the data in the ToC be summarized through the completion of the form for legislative approximation (See Annex 3 for the standard form).

The Table of Concordance and the legislative approximation form should be filled in *after* drafting the concept of a newly adopted Legal Act or Legal Act subjected to amendments / supplements but *before* the development of the draft Legal Act. It is also advisable to carry out an assessment of the quality of legal approximation of an already approximated Legal Act *during* or *in parallel* with the process of state legal expertise.

It is not realistic to assume that the EU Legal Acts subject to approximation will be fully available in Armenian. That is why the involvement of professionals in the public administration system with sound knowledge of English is one of the most important guarantees for the success of the approximation process. However, EU Legal Acts establishing comprehensive sector regulation norms should be available in Armenian. In this regard, it is important to develop the skills and capacity of the "Translation Centre of the Ministry of Justice of the Republic of Armenia".

Below additional advice and recommendations are provided on the law making process, based on years of law making experience in EU Member States, candidate countries and countries of economic transition.

None of the advice given below is mandatory but serves as examples of "best practice".

9.1 Approximation Work Plan

Naturally, not all Directives / Decisions / Regulations can be approximated by the respective Armenian lawmaker at the same time. The Governmental "approximation roadmap" is not very detailed by topic/sector and the timeframes set are based only on those provided by CEPA Annexes. However, many of the timelines seem too ambitious and their achievement, unrealistic. It is therefore highly recommended to develop more accurate approximation work-plans

per sector, which prioritise legal approximation efforts according to a set of additional prioritisation criteria, such as:

- Work Plan of competent ministry (as far as it is in place),
- Complexity of a topic/EU Legal Act,
- Urgency of legislation for Armenia,
- Capacity of ministry staff available for legal drafting activities,
- Legal gaps/needs analysis (if in place or if feasible, see chapter 9.4 below),
- Estimated input of external experts needed for legal drafting activities,
- Information on potential funding available from international donors.

All these aspects should be thoroughly considered when preparing a more detailed sectorial approximation work plan. In the work plan, the human (expert) resources and time needed for preparatory work should be assessed including the period needed for familiarisation with EU legislation and search of useful documents, (See chapter 9.2), consultations with other authorities and stakeholders, (see chapter 8) and preparation of additional documents like ToCs and Explanatory Notes (see chapters 9.6 and 9.7).

Ultimately, a concrete and realistic schedule should be developed per piece of legislation/topic including interim stages and indicators such as submission of drafts to Cabinet of Ministers or Parliament or public hearings or Regulatory Impact Assessment stages.

9.2 Understanding EU law

Before starting any legal drafting, lawmakers need to understand the legal challenge from the EU Directive/Regulation in question. This implies that a properly translated legal text is available in Armenian

language or the person dealing with the Legal Act understands it in an EU language. To fully comprehend a Legal Act listed in CEPA, the lawmakers should first read the preamble of the Directive/Regulation and collect all useful information available, in particular from the EU Commission. As outlined above, the latest version of a Legal Act is always available:

- http://eur-lex.europa.eu/advanced-search-form.html

On the same website, preparatory documents for legislation can also easily be found, providing good topical background on the development of legislation.

In order to assemble basic information on specific EU policies and legislation in a given sector, there are a number of other recommendable websites. To Note: EU law is not a purpose in itself, but rather a tool/instrument used to achieve something.

The recommended websites include, for instance:

- http://ec.europa.eu/policies/

On this website, all EU policies are sorted by topic and can be searched accordingly. However, the titles of policies and of legislation do not always correlate at first glance. For instance, in the EU, there are two Directives on nature protection. (See also in CEPA, Annex III) but in "policies", this topic falls under "urban environment" and partly also under "marine environment". The policy papers available, help understanding the motivation behind EU legislation in a given field, simpler.

On CEPA-related legislation this website is highly recommendable:

- http://europa.eu/legislation_summaries/index_en.htm

This site is probably the most useful in order to gain a quick yet comprehensive overview into benchmarks and the background of all relevant pieces of legislation per sector. It serves as a perfect starting

point for understanding benchmarks of Directives to be approximated.

It may also be worth consulting the websites of the EU Commission, i.e. those Directorates that are in charge of a specific topic. Often topics are new and complex and the rules not easy to understand. In such cases, it is worth noting that many supportive papers at EU level exist. The starting point for this is the website:

- https://ec.europa.eu/info/index_en

In addition, each Directorate of the EU Commission often publishes additional guidance on new pieces of legislation, which help in understanding and properly implementing the Directives.

Example 21

The implementation of the Directive on Environmental Liability is a challenge for many Member States. This is why DG Environment has published a set of guiding documents, studies, reports and training materials at: https://ec.europa.eu/environment/legal/liability/

As explained above, the Court of Justice of the European Union (CJEU) often interprets Directives in so-called preliminary rulings. Their website is:

- http://curia.europa.eu/

The case search function can be used to search thematic jurisprudence in many Member State languages. <http://curia.europa.eu/juris/recherche.jsf?language=en> (for cases in English)

9.3 Other countries / research

It is also recommended that legislation and informative documents from selected EU Member States be checked (if published in a

suitable language). Of course, no legislation should be copied from an EU Member State as legal systems are not identical and solutions cannot always be the same. However, legislation of another country can provide an indication as to who could regulate a certain aspect. In the box below:

Example 22 (Legislation from EU Member States in English language)

Legislation from Finland:
http://www.finlex.fi/en/laki/kaannokset/

This database contains more than 500 full-text translations of Finnish Acts and decrees into English language

Legislation from Estonia:
https://www.riigiteataja.ee/en/

This database contains consolidated texts of Estonian legislation in English (more than 1800 laws and regulations)

Legislation from Latvia:

https://vvc.gov.lv/index.php?route=common/home

This database contains some 350 national laws and by-laws in English language

Additional topical information may be found, provided by other EU Member States who often publish useful guides and manuals for practitioners.

9.4 Legal Gap/Needs Assessment

It is highly advisable to undertake an initial basic legal gap assessment of existing Armenian legislation, in the field that shall be approximated, in order to identify legal needs. Within such an

assessment, it can be determined whether domestic Legal Acts only need amendments or if they should be repealed by new legislation in order to align them to EU law.

Such gap assessment could be undertaken in **simple tabular format** (as shown below), comparing benchmarks/key elements of a Directive with existing national legislation. The advantage of such a gap assessment also known as "initial conformity assessment", is that it provides for an accurate understanding of the needs and legal starting point. EU funded legal approximation projects in a given area, usually commence with a legal gap and needs analysis.

Illustration 9 Table on simplified gap assessment (conformity assessment) with EU legislation

Text of provision from EU law to be approximated	Legal purpose	National provision (Article only), if any	Approximation assessment	comment

9.5 Law making (approximation) working group

A key issue for "good law making" is utilising the participatory approach. From the very beginning of the law making process, the Ministry in charge should establish an internal law-making working group (WG) which shall serve for approximation purposes. The primary goal of such a WG is to discuss and agree policy/legal approaches on controversial matters and to review draft provisions drafted by the person in charge of legal drafting.

It is recommended that 4-8 persons, with multidisciplinary background, education and experience, actively participate in a WG. If suitable, external experts, specialists, NGO, private sector representatives etc. could also participate (or at a later stage). Optionally, the WG could be extended at certain points, to present interim results to other line Ministries/stakeholders. Existing and

future implementation competences should be considered and all domestic institutions should be properly included into the law making process in due course.

Law-making WG meetings should be institutionalised and be thoroughly prepared by the chairperson and participants. All WG members should actively contribute to the work and not just attend as "listener". A WG should set itself a realistic schedule (targets, milestones, and timelines). Internal voting mechanisms may be helpful to avoid endless discussions. In the box below, some elements of an effective law making WG approach are outlined:

Recommendation for Approximation Working Group (WG)

Overall purpose: jointly develop and agree on policy/legal text of a Legal Act to be approximated (have voting procedures in place or work with square brackets on controversial aspects)

WG composition: target oriented, no more than 8 persons, multidisciplinary, widen WG (NGO, private sector, external experts) if necessary for success

WG chairperson: A chairperson should briefly summarize meetings results, invite with agenda for next meeting and moderate discussions

Schedule: meet regularly for min. 2-3 hrs (in best case; institutionalize the WG), define clear topics, follow an overall schedule for WG from the outset and set interim targets and milestones

WG tasks: Each WG member to contribute actively to the progress of the group, avoiding passive participation – but taking responsibility! Allocate minor „homework assignments", to be completed by each member, by the following meeting (e.g. report on situation in specific sub-area, or overview on legislation in one sub-area, questions, conceptual ideas, pros /cons.....)

9.6 Table of Concordance (ToC)

The "Table of Concordance" (also known as Tables of Conformity or Compliance, ToC) is a tool, employed especially in new EU Member States, which assess the proper harmonisation of national legislation with EU law. Often, the EU Commission will assess the conformity of Member States legislation with EU law by means of the ToC.

The use of ToC is considered a very helpful document in assessing the compliance of drafted domestic legislation with the EU Directive to be approximated. This is also the case for Armenia. A well-prepared ToC will also allow for the early identification of EU legal compliance problems that can then be discussed at higher decision-making levels.

Be aware that when provisions in national legislation are approximated in several interrelated pieces of legislation, all of these are to be carefully addressed in the ToC.

There are no standardised ToC templates used within the EU. However, most only differ in terms of the number of columns used and information incorporated within. An example of a ToC is provided in Annex 2.

When completing a ToC, the readability should be ensured (for instance, repeat heading rows on each page) and the ToC must contain sufficient and accurate information.

To Note: A ToC is only a schematic assessment on compliance; it does not remark on the quality of a national piece of legislation, its coherence with other Legal Acts (integration into overall legal system), or its implementation so that it just remains a potential tool for approximation assessment.

9.6.1 Further advantages of the use of ToC

The ToC also facilitates scrutiny of implementation, planning and reporting. A legal drafter responsible for a draft Legal Act can complete the ToC progressively from the outset of the legislative work, ideally even at the stage of planning law approximation (See chapter 9.4).

As an EU Legal Act can be implemented in many domestic Acts, a ToC annexed to a draft Legal Act should specify each. (Those already adopted and those planned). After the adoption of all implementing Acts, the responsible line ministry should prepare one final version of the ToC, to be stored by a designated authority for planning future legislative works and for reporting purposes. The updated ToC is the basic mechanism, demonstrating the level of conformity of domestic legislation to EU law.

9.6.2 Practical advice on the content of a ToC

Based on various legal approximation guidance from other EU Member States, the following can be summarised for use in Armenia:

- Clearly identify the objectives of the Directive, while considering implications for other national goals and the impact on precise normative provisions in the law in force,
- Clearly identify the exceptions and derogations, the scope of which must be interpreted strictly,
- Identify possible options for transposition/approximation,
- Identify and list all provisions of national law relating to the area concerned, which may cover an extended field,
- Assess the degree of compatibility of these rules of national law with the Directive:

- provisions directly contrary to a benchmark of an EU Directive,
- compatible provisions but requiring margin adjustment,
- obligations already satisfied by national law.

The ToC requirements should be introduced gradually in parallel with the introduction of RIA obligations, as well as quality improvement and the setting of clearer requirements for the draft legislation Explanatory Notes (see below).

9.7 Explanatory Notes

When drafting legislation it is highly recommended to prepare (alongside or at a later stage) detailed Explanatory Notes (Article-by-Article or completely for the entire draft), and / or guidance documents for any new / amended Armenian law, which is approximated to EU law. In some countries, these documents are called "Annotations" (e.g. in Latvia) or "Explanatory Memorandums".

9.7.1 Requirements as to Explanatory Notes in Armenia:

Part 5 of Article 6 of the Law on Regulatory Acts, provides a general description and a wage definitions of what an Explanatory note is. That is, *"The definition of the area or problem subject to regulation, the existing situation (where applicable), purposes of regulation, expected outcome, justifiability of the regulatory nature of the Act shall be stated in the justification attached to the regulatory Legal Act being submitted for expert examination"*.

The Constitutional Law of the Republic of Armenia "Rules of Procedures of the National Assembly" has no specific provisions that Explanatory Notes be submitted to the National Assembly, nor the exact content of any explanatory notes. However, part 1 of Article 67

states that the draft law shall be submitted to the National Assembly by an official letter, and the form of the official letter, as well as attached documents, be established by the Work of Procedure.

9.7.2 Advantages of Explanatory Notes

Explanatory Notes should be utilised by the implementers of new legislation as well as decision makers; Members of Government, Members of Parliament, Experts as well as to some extent, the public. The National Assembly should therefore also receive such Explanatory Notes; thereby obtaining additional information on the overall law and preferably each legal clause within a law to support the uniform application of rules.

Explanatory Notes should address the following questions:

- What is the purpose of the law?
- What is the law's potential impact on the development of society and the economy of the country?
- What is the law's potential impact on state and municipal budgets?
- What is the law's potential impact on the system of legal norms in force?
- How does the law conform to international obligations?
- Is the law EU related? If so, with which EU legislation is it aiming to be approximated?
- What experts have been consulted during the preparation of the draft law?
- Were public consultations conducted and what was the outcome?
- How will the law be enforced? Is there a need to establish a new institution?

It is crucial that the information in the Explanatory Note is presented so that the person is able to read it, understand the nature of the problem and the proposed solution, even in cases with objectively complex issues. Decision makers; Ministers and Members of Parliament cannot be experts in every field, so the information/language used in the Explanatory Notes must be professional but also sufficiently explain sector-specific terms.

Such Explanatory Notes (often provided in EU Commission Guides) may eventually become **lengthy legal commentaries,** helping to implement new legislation more effectively and in a consistent and uniform manner.

The Explanatory Notes should be non-legally binding and as practical as possible. Such Explanatory Notes can be attached to the draft law submitted to the Government endorsement, along with the justification for adoption of the law, statement on required changes in other Legal Acts, opinion on expert examination, protocol on public consultations and other mandatory documents annexed to draft laws according to the procedures approved by the Government.

A good example for such notes/guidance at EU level would be e.g. the Guidance of the EU Commission on Rulings of the CJEU on the Directive on environmental assessment of plans, programmes and projects (which is also part of CEPA):

http://ec.europa.eu/environment/eia/pdf/EIA_rulings_web.pdf

9.7.3 Example from Latvia and Recommendation for Armenia

In Latvia, Annotation has gradually been transformed into the Initial/Preliminary (EX-ANTE) Impact assessment.

The purpose of the preliminary impact assessment (Annotation) of a draft Legislative Act is to determine the effects created by the legal draft. The draft's initial impact assessment is to be carried out in

accordance with the following principles: timeliness, comprehensiveness, proportionality, objectivity, evidence-based decision-making, cost-benefit and following a systematic approach.

The purpose of the annotation is to inform decision-makers and stakeholders of the consequences and implications of the legal draft. The annotation should reflect the results of the legislation's initial impact assessment and should include information on public participation in the drafting of the Legal Act and the results of that involvement.

There is an annotation template adopted by the Government whereby the cabinet of ministers follow obligatory instructions as to how to complete the Annotation, with detailed guidance as to the requirements for each chapter. Consequently, every drafter of Legal Acts follows identical instructions, creating a unified approach and methodology for the analysis of impacts/consequences.

The procedure, competences of the public bodies and detailed guidance on how to draft/complete the Annotation, is regulated by the Instruction of the Cabinet of Ministers "Procedure for the Initial Impact Assessment of a Legislative Draft", which includes detailed methodological instructions/guidelines on the following subjects:

- Initial impact assessment guideline,
- Cost evaluation model(s),
- SME impact test,
- Business process for service delivery,
- Reduction of the administrative burden.

It is highly recommended that Armenia gradually introduce requirements and a suitable system for Explanatory Notes:

- A unified template to be adopted/introduced,
- Methodological guidelines to be developed,

- An option to link the Explanatory Notes with the RIA to be explored,
- It be made mandatory, that for all legal drafts, Explanatory Notes be provided, or at least for those submitted to the National Assembly,
- Necessary amendments be made to the Law on Regulatory Legal Acts, adopted on 21 March 2018, and perhaps also to the Rules of Procedure of the National Assembly (with regards mandatory requirement to provide Explanatory Notes to the draft legislation submitted to the National Assembly),
- When draft law is to be approximated with EU law, Explanatory Notes are to be provided, containing all relevant information; including the corresponding EU law, indicating relevant articles as needed, relevance with CEPA requirements and the CEPA roadmap reference could also be included. In this way, it is clearly outlined how the law relates to CEPA and details of the EU law are useful for the other main stakeholders,
- It is also advisable to provide information in the text of the draft (either in the end provisions or in the footnotes) as to the EU law with which the draft is being approximated,
- The Explanatory Notes system shall be synchronised with the Tables of Concordance (if these are introduced).

The template from Latvia for "Annotation" as was used until the EU accession can be found in the Annex. This template is also relevant for Armenia.

Annexes

Annex 1 Part of Annotation in the current version (as of 2017) relating to compliance with EU law:

Date, number and title of the relevant EU legislation	**To be completed if the project transposes or implements more than one EU Legal Act**		
A	B	C	D
Article number of the relevant EU Act (listing each item of the Act - Article, Part, Paragraph, Sub-paragraph)	The project unit that transposes or implements each of the EU Legal Acts listed in column A of this table, or the Act in which the relevant EU legislative unit is transposed or implemented.	Information on whether the pieces of EU legislation referred to in column A of this table are transposed or implemented in full or in part. In the event of a partial transposition or implementation of a given piece of EU legislation, the relevant explanation shall be provided as well as an indication of when and how the complete piece of the EU Legislative Act will be	Information on whether the project items listed in column B of this table go beyond the requirements of the EU legislative item listed in column A of this table. If the project contains stricter requirements than the relevant EU legislation, justification and proportionality shall be indicated. Identifies possible alternatives (including non-regulatory alternatives) - in which cases stricter

Date, number and title of the relevant EU legislation	To be completed if the project transposes or implements more than one EU Legal Act		
		transposed or implemented. Identify the body responsible for the full implementation of these obligations.	requirements than those set out in the relevant EU legislation could be avoided.
How has the "rights to choose the alternatives" provided by EU law for a Member State to transpose certain provisions of EU law been used? Why?			

Annex 2: Sample Table of Concordance

EU Regulation/Directive to be approximated _____

EU Regulation/Directive		RA legislation			Alignment*	Notes
Number [19]	Provision [20]	Name of the RA normative Legal Act	Number [21]	Provision		
Part, title, chapter, section of the EU Regulation or Directive						

* Rate the alignment .

- **Complete alignment:** The provision of the RA legislation does not contradict the current EU provision
- **Partial alignment:** There is some content divergence between the EU and RA provisions or the application of the relevant provision of RA legislation has been delayed
- **Contradiction**: The provision of the RA legislation contradicts the EU provision
- **Not established**: There is no relevant EU provision in the RA legislation
- **Not applicable:** The relevant EU provisions are applicable only to the EU Member States or establish rights/obligations for certain natural or legal persons or in the meaning of these provisions, there are reservations in the EU-RA Comprehensive and Enhanced Partnership Agreement or declarative norm that do not stipulate mandatory rules of conduct

Annex 3: Sample Form of Legislative Approximation

N _____

_____20_____.

SUMMARY OF LEGISLATION APPROXIMATION

The Summary is the main output document of the working group engaged in legislation approximation and is to be completed after the development of the Approximation Table for each EU Legal Act. The main purpose of the Summary is to provide systematic information to persons responsible for the development of RA legislation in the context of approximation.

1. Person completing the form

Name (s) of the Public Administration body (bodies)	
Division	
Name, surname	
Position	

2. **Name of EU Legal Act**

3. **Relevant Legal Acts of the Republic of Armenia**

4. **Is there a need for EU Legal Act approximation?**

Yes	
No	

5. **If there is a need for Approximation, what kind of legal technique should be used?**

Make amendments and/or supplements	
Develop new Legal Act	

5.1 **Public Administration body (bodies) responsible for drafting a new Legal Act or developing amendments/supplements**

5.2 What will the EU Legal Act approximation require?

State body restructuring	
Establishment of a new state body	
No amendments are required	

5.3 If there is a need to adopt a new Legal Act, then indicate the type (s)

5.4 If there is a need to make amendments and/or supplements, then in what Legal Act (s)?

5.5

Article, paragraph, subparagraph, point, part and/or sentence of the EU Legal Act	New, amended or supplemented RA Legal Act	The text of new, amended or supplemented RA Legal Act

[1] Methodische Anleitung zur Entwicklung von Rechtsakten, Yerevan 2012. The handbook needs to be updated in order to be aligned to the new Law on Regulatory Acts of 21 March 2018

[2] The term "acquis" is French and means "that which has been acquired or obtained".

[3] Paragraph 7 of Annex 1 of Decision N 1323-Լ of the RA Government dated 26 September 2019

[4] Annex 1 of protocol decision N 51 of the RA Government session dated 29 December 2011

[5] Article 2 of the RA Law on Regulatory Legal Acts

[6] Part 3 of Article 5 of the RA Law on Regulatory Legal Acts: "The Government shall prescribe the manner, timeline, and cases of applying regulatory impact assessment by sectors, as well as the requirements to the opinion given as a result of RIA"

[7] Decision N 1323-Լ of the RA Government dated 26 September 2019 "On approving the concept of introduction of the decentralized system of regulatory impact assessment and the Action plan thereof"

[8] Based on the "National Centre for Legislative Regulation" the RIA department was established in the RA Government by the decision N 667-Լ of the RA Government dated 1 June 2019

[9] Decision N 667-L of the RA Prime Minister dated 1 June 2019

[10] Paragraph 31 of Annex 1 of Decision N 1323-Լ of the RA Government dated 26 September 2019

[11] For more details, see www.oecd.org/regreform/regulatory-policy/34227698.pdf

[12] For more details, see documents.worldbank.org/curated/en/110261468767097509/pdf/multi-page.pdf

[13] Paragraphs 34-37 of Annex 1 of the Decision N 1323-Լ of the Government of RA dated 26 September 2019

[14] As a result of reorganization of this foundation, the RIA department in the RA Government was established in 2019,

[15] For more details, see regulatoryreform.com/regulatory-guillotine/

[16] Article 3 of the RA Law on Regulatory Legal Acts

[17] Decision N 1146-N of the RA Government dated 10 October 2018 also prescribes that draft internal Legal Acts of the RA Government and draft internal Legal Acts to be adopted by the members of the Government are also subject to public consultations at the initiative of the drafting or adopting agency, with the exception of the acts containing confidential information. According to the same decision, drafts of individual decisions of the RA Government are subject to public consultations based on the recommendation of the RA Prime Minister.

[18] Decision N 1146-N of the RA Government "On prescribing the manner of organizing and holding public consultations and on repealing the Decision N 296-N of the RA Government dated 25 March 2010" dated 10 October 2018