

PRESENTATION AND REASONING INSTRUMENTS OF THE DRAFT NORMATIVE ACTS

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Abstract

The aim of this paper is to present an important activity in the law-making process which is reasoning of draft normative acts, fact that consists of an intellectual operation that presents the basic reasons of the new legal regulation, its configuration, the expected social effects and the costs required by the application of the new normative act. The paper makes a description of the presentation and reasoning instruments that need to accompany the draft normative acts that are to be adopted in the Romanian legal system: exposures of reasons, substantiation notes, submission reports and impact studies.

Keywords: law-making, law-making technique, exposure of reasons, substantiation note, submission report and impact study.

Introduction

Until the apparition of Law no. 24/2000, the reasoning necessity of the draft normative acts was regulated by the parliamentary regulations and by the Government decisions in this domain¹.

The Law no. 24/2000, republished² introduces an independent and general regulation regarding the reasoning of the normative acts, stating that the draft normative acts submitted for adoption must be accompanied, according to the dispositions of the article 6 paragraph (3), read in conjunction with the article 30 paragraph (1) from the republished Law no. 24/2000, by the following presentation and reasoning instruments:

- a) *exposures of reasons* – for draft laws and legislative proposals;
- b) *substantiation notes* – for ordinances and decisions Governmental³;
- c) *submission reports* – for the other normative acts.

d) *impact studies* – for draft laws of major importance and great complexity, for draft laws about which the Government assumes its responsibility, for the approval draft laws of the ordinances emitted by the Government under an enabling law and subjected to approval by the Parliament.⁴

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¹ According to the article 84 from *Regulamentul Camerei Deputaţilor* and to the article 66 paragraph (2) from *Regulamentul Senatului*, the draft laws submitted by Government and the legislative proposals submitted by deputies, senators or citizens must be accompanied by a statement of reasons and written in the required form for the draft laws. This prescribed provision is equally about the draft laws for the approval of an ordinance.

² Law no. 24/2000 *regarding the law-making technique rules for drafting normative acts* (republished in the Official Journal of Romania, Part I, no. 260/21 April 2010).

³ The ordinances that must be submitted to Parliament for approval, according to the enabling law, and the emergency ordinances are communicated to the Parliament accompanied by the statement of reasons for its approval draft law.

⁴ The exposures of reasons, the substantiation notes, the submission reports and the impact studies represent both presentation instruments, and also reasoning instruments for the new proposed regulations.

For the draft laws for which the Government assumes its responsibility, the reasoning documents accompanying these drafts are *the exposures of reasons* and, respectively, for the draft codes or other complex laws, submitted to the Parliament or, where appropriate, to the Government, to start the legislative procedure, *the report regarding the preliminary theses*.

The normative acts with impact on social, economic and environmental areas, on the general consolidated budget or on the legislation in force, are elaborated on the basis of some *public policy documents* approved by the Parliament or by the Government⁵.

The *public policy documents*⁶, defined and structured according to the dispositions of the Government Decision no. 870/2006 regarding the approval of the Strategy for improving the elaboration, coordination and planning system of the public policies for the public central administration⁷ and of the Government Decision no. 775/2005 for the approval of the Regulation regarding the elaboration, monitoring and evaluation procedures of the public policies for the central level⁸, are:

- a) *the strategy*;
- b) *the plan*;
- c) *the proposal of public policies*.

The documents of public policies are initiated, adopted and applied according to the dispositions of Law no. 90/2001 regarding the organization and the functioning of the Romanian Government and of the ministries⁹, with the subsequent amendments and supplementations¹⁰, of the

⁵ The Government defines the types and the structure of public policy documents.

⁶ *The public policy documents* are decision-making instruments through which the possible solutions to the public policy problems are identified, as they are defined in the Government Decision no. 870/2006 regarding the approval of the Strategy for improving the elaboration, coordination and planning system of the public policies for the public central administration.

The public policy documents include also information regarding the impact evaluation, the monitoring, the evaluation and the implementation measures of the identified solutions.

⁷ Government Decision no. 870/2006 regarding the approval of the Strategy for improving the elaboration, coordination and planning system of the public policies for the public central administration (published in the Official Journal of Romania, Part I, no. 637/24 July 2006).

⁸ Government Decision no. 775/2005 for the approval of the Regulation regarding the elaboration, monitoring and evaluation procedures of the public policies for the central level, (published in the Official Journal of Romania, Part I, no. 685/29 July 2005).

⁹ Law no. 90/2001 regarding the organization and the functioning of the Romanian Government and of the ministries (published in the Official Journal of Romania, Part I, no. 164/2 April 2001).

¹⁰ Law no. 90/2001 was completed and modified through the following acts: Law no. 161/2003 regarding some measures to ensure the transparency in the exercise of the public dignities, the public functions and in the business environment, and to prevent and punish the corruption (published in the Official Journal of Romania, Part I, no. 279/21 April 2003); The Emergency Ordinance of the Government no. 64/2003 to establish some measures regarding the establishment, the organization, the reorganization and the functioning of some structures from the units of the Government, of the ministries, and of some other special bodies of the central public administration and of some other public institutions (published in the Official Journal of Romania, Part I, no. 464/29 June 2003); Law no. 23/2004 for amending and supplementing of the Law no. 90/2001 regarding the organization and the functioning of the Romanian Government and of the ministries (published in the Official Journal of Romania, Part I, no. 187/3 March 2004); The Emergency Ordinance of the Government no. 11/2004 regarding the establishment of some reorganization measures in the central public administration (published in the Official Journal of Romania, Part I, no. 266/25 March 2004); Law no. 194/2004 regarding the approval of the Emergency Ordinance of the Government no. 64/2003 for the establishment of some measures regarding the establishment, the organization, the reorganization and the functioning of some structures from the units of the Government, of the ministries, and of some other special bodies of the central public administration and of some other public institutions (published in the Official Journal of Romania, Part I, no. 486/31 May 2004); The Emergency Ordinance of the Government no. 17/2005 for the establishment of some organizational measures for the public central administration (published in the Official Journal of Romania, Part I, no. 229/18 March 2005); Law no. 117/2005 for the completion of the article 19 from Law no. 90/2001 regarding the organization and the functioning of the Romanian Government and of the ministries (published in the Official Journal of Romania, Part I, no. 389/9 May 2005); The Emergency Ordinance of the Government no. 76/2005 for the amending of the article 26 paragraph (3) from Law no. 90/2001 regarding the organization and the functioning of the Romanian Government and of the ministries (published in the Official Journal of Romania, Part I, no. 618/15 July 2005); Law no. 250/2005 regarding the rejection of the Emergency Ordinance of the Government no. 76/2005 for the amending of the article 26 paragraph (3) from Law no. 90/2001 regarding the organization and the functioning of the Romanian Government and of the ministries (published in the Official Journal of Romania, Part I, no. 734/12 August 2005); Law

Government Decision no. 870/2006 regarding the approval of the Strategy for improving the elaboration, coordination and planning system of the public policies for the public central administration, of the Government Decision no. 775/2005 for the approval of the Regulation regarding the elaboration, monitoring and evaluation procedures of the public policies for the central level, with the subsequent amendments, and also of the Government Decision no. 561/2009 for the approval of the Regulation regarding, on the Government level, the elaboration, the approval and the presentation of the drafts for the public policies documents, of the draft normative acts, and of some other documents for adoption/approval¹¹.

Law no. 24/2000, by the legislative amendments aiming, in particular, the quality improvement of the legal standards, introduced dispositions that regulates the elaboration of the *impact studies* for draft laws of major importance and great complexity, for draft laws about which the Government assumes its responsibility, for the approval draft laws of the ordinances emitted by the Government under an enabling law and subjected to approval by the Parliament, and also *the preliminary evaluation of the draft normative acts' evaluation*, as an analysis method of the implications of some existent or proposed regulation¹².

These impact studies¹³ and preliminary evaluations represent an essential stage in the substantiation of a state's legislation, detailed procedures in this regard existing since the late 90s in the European Union¹⁴.

no. 250/2006 for the amending of the Law no. 90/2001 regarding the organization and the functioning of the Romanian Government and of the ministries (published in the Official Journal of Romania, Part I, no. 554/27 June 2006); The Emergency Ordinance of the Government no. 87/2007 for the amending of the Romanian citizenship Law no. 21/1991 (published in the Official Journal of Romania, Part I, no. 634/14 September 2007); The Emergency Ordinance of the Government no. 221/2008 for the establishment of some organizational measures for the public central administration (published in the Official Journal of Romania, Part I, no. 882/24 December 2008); The Emergency Ordinance of the Government no. 7/2009 regarding the abolition of the Prime-Minister Chancery and the establishment of some measures about the reorganization of the Government's working apparatus (published in the Official Journal of Romania, Part I, no. 145/9 March 2009); The Emergency Ordinance of the Government no. 24/2009 regarding the setting of some competences for the main credit coordinator of the Government's working apparatus (published in the Official Journal of Romania, Part I, no. 176/20 March 2009); Law no. 376/2009 for the amending of the article 26 from Law no. 90/2001 regarding the organization and the functioning of the Romanian Govern and of the Government's ministries (published in the Official Journal of Romania, Part I, no. 835/3 December 2009) and The Emergency Ordinance of the Government no. 2/2010 regarding some measures about the organization and the functioning of the Government's working apparatus and the amending of some normative acts (published in the Official Journal of Romania, Part I, no. 76/3 February 2010).

¹¹ Government Decision no. 561/2009 regarding the approval of the Regulation about the procedures, at Govern level, for the elaboration, submission and presentation of the draft public policies documents of the draft normative acts and of some other documents for adoption/approval (published in the Official Journal of Romania, Part I, no. 319/14 May 2009).

¹² Law no. 49/2007 for the amending and the supplementing of Law no. 24/2000 regarding the law-making technique rules for drafting normative acts (published in the Official Journal of Romania, Part I, no. 194/21.03.2007)

¹³ First reflections on the imperative of the impact studies had as a starting point the Mandelkern group's works, established by the European Commission, named so after the name of its leader - Dieudonné Mandelkern, who, on 13th of November 2001, published a report about the regulation of the quality (Better Regulation). Based on this report, the European Commission worked out a communication on the impact analysis, document which mentions that the applications of the impact studies were in the energetic field, in the environment protection field and in the chemic industry field. In this document, the European Commission insists on the necessity to undergo an impact analysis in order to achieve the communal objectives, namely the economic growth and the competitiveness. However, it is stated that the impact studies elaboration process has been a little modified from what the documents from 2002 were predicting, but the Commission kept the general approach, which consists in the necessity to realize a Road Map preliminary impact study and then an in-depth impact study. According to this document, all the Commission's proposals and the Commission's work program are analyzed in these impact studies, studies that aim to see which are the economic, environmental and social consequences of the envisaged measures (S. Popescu and V. Țăndăreanu, "Modificările aduse Legii nr. 24/2000 privind normele de tehnică legislativă pentru elaborarea actelor normative", in *Aspecte practice de tehnică și evidență și legislativă*, edited by S. Popescu,, C. Ciora and V. Țăndăreanu (Bucharest : "Monitorul Oficial" Publishing House, 2008), 96.

The impact study. The elaboration scope of the impact study is, according to the dispositions of the article 33 from the republished Law no. 24/2000, to estimate the costs and the benefits brought in economic and social field by the adoption of the draft law, and also to highlight the difficulties that might appear in the implementing process of the proposed regulations.

The impact study is usually made by the speciality structures of the central public administration, at the Government's request. For the legislative proposals initiated by the deputies or by the senators, the impact studies are prepared by line ministries, at the request of the parliamentary committees.

The impact study is referred to:

- a) the status quo existing at the time of the new regulation elaboration;
- b) the amendments proposed for the existing legislation;
- c) the objectives persuade by amending the existent legislation;
- d) the available means to achieve the proposed goals;
- e) the difficulties that might be encountered in applying the new dispositions;
- f) the assessment of the costs imposed by the adoption of the draft law and any budgetary savings generated by it, the reasons underlying this assessment and how to calculate the costs and the savings;
- g) the benefits derived by implementing the draft law, other than the economic ones;
- h) the comparative analysis of costs and benefits involved in the draft law, showing whether the benefits are justified by the costs.

The preliminary evaluation of the draft law impact, of the legislative proposals and of the other draft normative acts. This represents, according to the article 7 from the republished Law no. 24/2000, a set of activities and procedures with the purpose to ensure an adequate foundation for legislative initiatives. The preliminary evaluation of the impact assumes the identification and the analysis of the economic, social, environmental, legislative and budgetary effects produced by the proposed regulations.

This instrument represents, at the same time, a fundamental prerequisite for improving the legislation quality in each regulation field, being necessary to implement *the Strategy for improving the elaboration, coordination and planning system of the public policies for the public central administration*¹⁵.

Evaluation is also a monitoring and management instrument for the normative acts, which offers the possibility of improving the relations between the legislator and the society, the degree of cooperation and coordination between various public and private institutions and also the stability of the legal system¹⁶.

The necessity of a better substantiation of the legislation is reported by both public institutions and organizations in the intern field, and also by the reports from the last years elaborated by the recognized international bodies¹⁷.

¹⁴ *Ibidem*, 88-96.

¹⁵ Approved by Government Decision no. 870/2006.

¹⁶ S. Popescu and V. Tăndăreanu, *quoted work*, 98.

¹⁷ In *Raportul de monitorizare al Comisiei Europene din mai 2006*, in the chapter about "The public administration reform", it is mentioned the fact that the legislation is still transmitted to the Parliament without an evaluation of all the implications or of the necessary administrative capacities to implement it, being recommended the introduction of some measures to allow the facilitation to realize the impact analyses for the central public administration.

Also relevant from this point of view were the recommendations formulated in *Raportul Grupului Mandelkem*, whose content includes a set of concrete conclusions on the need for proper grounding of the proposed normative acts.

Specifically, the main problems identified in the drafting normative acts are:

- a) the improper grounding of the normative acts;
- b) the lack of preliminary evaluation of the impact regarding the proposed measures by the public policy or by the respective draft normative act;

Preliminary assessment of the impact of the draft normative acts is considered to be the foundation for the proposed legislative solutions and must be realized before the adoption of the normative acts.

The substantiation of the new regulation must take into account both the evaluation of the specific legislation in force impact at the time of the normative act draft elaboration, and the evaluation of the public policies impact that the draft normative act implement.

The preliminary evaluation of the impact is realised by the initiator of the draft normative act. In the case of some complex normative acts drafts, the impact evaluation can be performed under a services contract, by scientific research institutes, by universities, by companies or by non-governmental organizations, in accordance with legal provisions in force regarding the public acquisitions.

In order to prepare the preliminary impact of the legislative proposals initiated by the deputies and the senators, as well as those based on citizens initiative, the Parliament members can request to the Government the assurance of the access to the data and information necessary to accomplish it¹⁸.

The content of the presentation and reasoning instruments of the draft laws

The presentation and motivation instrument includes, according to the article 31 paragraph (1) from the republished Law no. 24/2000, the content of the impact evaluation of the normative acts, having the following sections:

a) *the reason for the issue of the normative act* – the requirements that need the normative intervention, with special reference to the inadequacies and inconsistencies of the regulations in force; the basic principles and the end of the proposed regulations, outlining the new elements; the results of the studies, of the research papers, of the statistical evaluations; references to the documents of public policies or to the normative act for whose implementation the respective draft is elaborated. For the emergency ordinances will be presented distinctly the objective elements of the extraordinary situation which imposes the immediate regulation, not being sufficient to use the emergency parliamentary procedure, and any consequences that might occur lest no legislative measures would be taken;

b) *the socio-economic impact* – the effects on the macroeconomic environment, on the business, social and environmental fields, including the evaluation of costs and benefits;

c) *the financial impact on the general consolidated budget, both in the short term, for the current year, and for long term (on 5 years), including information regarding the expenses and revenues;*

d) *the impact on legal system* – the implications of the new regulation on the legislation in force; the compatibility with the communal regulation in matter, their exact determination, and if necessary, further required harmonisation measures; decisions of the European Court of Justice and other relevant documents for the transposition or implementation of those legal provisions; implications for domestic legislation, the ratification or approval of some treaties or international agreements and the necessary adaptation measures; concern in the harmonization legislative matter;

e) *consultations undertaken for the drafting normative acts, the consulted organizations and experts, the essence of the received recommendations;*

f) *public information activities regarding the drafting and the implementation normative act;*

g) *implementation measures* - institutional and functional changes in the central and local administration.

c) normative acts that do not present detailed information regarding the involved costs of the respective measures promoting or of the necessary administrative capacities to implement;

d) legislative and institutional overlaps;

e) poor strategic approach in setting priorities.

¹⁸ The preliminary evaluation of the impact is not compulsory for the legislative initiatives of the deputies and senators, as well as those based on citizens' initiative.

We note that among the explanatory memorandum, the substantiation note, the approval report and the impact study, according to Law no. 24/2000, there are no differences in content, each of them will comply with the dispositions of the article 31 paragraph (1) of the law. As a consequence, all the 4 documents are presentation and reasoning papers of a normative act and their name varies depending on the normative act type they are about¹⁹.

Since for the ordinances and for the decisions of the Government, the substantiation note that is both the base of their adoption in Government, and of the presentation of the ordinances before the two Chambers of Parliament, professor I. Vida wonders whether it is necessary or not that an exposure of reasons should accompany the draft law for approval of ordinance, knowing that the answer to this question is, by law, affirmative. This legal solution - underlines I. Vida - is more than formal, since the draft law for the approval of the ordinance shall be made after its approval by the Government and it contains a single sentence: "The Government Ordinance no. ... from ... is approved, published in the Official Journal of Romania, Part I, no. ... from ...", not being necessary, in his opinion, of an exposure of reasons to justify this sentence. In this case, the reasoning of ordinance results from its introductory formula, which will state its ground, respectively the enabling law or the requirements of the article 115 paragraph (4) of the Romanian Constitution. In such cases, the exposure of reasons is void in the event that a first notified Chamber rejects the approving draft law of the ordinance and sends to the other Chamber a rejecting draft law of the ordinance, accompanied by an exposure of reasons for approval of the ordinance. Taking into account the previous facts, I. Vida opines that, *de lege ferenda*, it should be exclusively taken into consideration the option of accompanying the draft approval law of the substantiation note ordinance²⁰.

In the situation in which the proposed regulation is elaborated when executing a normative act, the reasoning should content, according to the article 31 paragraph (2) from the republished Law 24/2000 references to the document based on and in execution of which it is emitted.

The final form of the presentation and reasoning instruments for the draft normative acts must contain, according to the article 31 paragraph (3) of Law no. 24/2000²¹, references to the notification of the Legislative Council²² and, where appropriate, notification of the Supreme Defense Council, the Court of Auditors or the Economic and Social Council²³.

¹⁹ The *exposures of reasons* is a document accompanying a draft law; the *substantiation note* accompanies a Government decision or an ordinance; the *approval report* is required for other draft normative acts (orders, instructions etc) and the *impact study* is necessary for important and great complexity draft laws, for draft laws for which the Government assumes its responsibility, and also for the approval draft laws of the ordinances emitted by the Government under an enabling law submitted for approval to the Parliament.

²⁰ I. Vida, *Legistică formală (Introducere în tehnica și procedura legislativă)*, third edition (Bucharest: "Lumina Lex" Publishing House, 2006), 124.

²¹ This disposition [article 31 paragraph (3) of the republished Law no. 24/2000 is, according to professor I. Vida, impossible to be realized in practice, as the reasoning documents are elaborated at the same time with the draft by the drafting committee, commission that stops its activity at the draft elaborating date. The notification of these public authorities is previous to this date and cannot be operated in the exposures of reasons or in the substantiation note (*Ibidem*, 125).

²² The republished Law no. 24/2000: Article 10 – "(1) The notification of the Legislative Council is formulated and transmitted in writing. It can be: favourable, favourable with objections or proposals or negative.

(2) The favourable notifications which include objections or proposals and also the negative ones are motivated and may be accompanied by the documents or the information that supports them.

(3) The notification of the Legislative Council is a specialized notification and has a consultative character.

(4) The observations and the proposals of the Legislative Council regarding the compliance of the law-making technique rules will be considered in finalizing the draft normative act. Their non-acceptance must be motivated in the content of the presentation document of the draft or in an accompanying note."

²³ The republished Law no. 24/2000: Article 8 – "(1) In the cases provided Regulation, during the drafting normative acts the initiator should seek notification from the authorities concerned in their implementation, depending on the scope of the regulation.

According to the dispositions of the article 2 paragraph (1) from the Government Decision no. 1361/2006 *regarding the content of the presentation and reasoning instruments for the draft normative acts subjected for the approval of the Government*²⁴, with the subsequent amendments and supplementations²⁵; the presentation and reasoning instruments is compulsory²⁶ both for the draft laws proposed by the Government, for the ordinances drafts and for the emergency ordinances, and also for the decision drafts of the Government, with an impact on social, economic and environmental fields, on the general consolidated budget or on the legislation in force, and must be elaborated according with the following *structure*, including the next 8 sections²⁷:

I. Section 1 “The normative act title”.

II. Section 2 “The normative act issuance reason” – which will include:

1. The description of the present situation:

- a) presentation of the field by indicating the problems to solve through the draft normative act; for the problems regarding the main macroeconomic indicators and socio-economic it will be made a description of the business environment;
- b) presentation of the normative acts in force and of the fields insufficiently regulated or not regulated at all;
- c) conclusions of the studies, of the research papers, of the statistical evaluations;
- d) for the emergency ordinances it will be presented separately the objective elements of the extraordinary situation, whose regulation cannot be postponed, and also the consequences of the non-adoption of the draft normative act urgently;

(2) After their elaboration and completion of the notification procedure foreseen on paragraph (1), the draft laws, the legislative proposals and also the ordinances and the decisions with normative character of the Govern are compulsory subjected for approval of the Legislative Council.

(3) The notification procedure and the object of the notification of the Legislative Council are foreseen in its organic law and in its organization and operation Regulation.”

²⁴ Government Decision no. 1361/2006 *regarding the content of the presentation and reasoning instruments of the draft normative acts subjected for the Govern approval* (published in the Official Journal of Romania, Part I, no. 843/12 October 2006).

²⁵ Government Decision no. 219/2010 *for the amending and the supplementing the annex to Government Decision no. 1.361/2006 regarding the content of the presentation and reasoning instruments of the draft normative acts subjected for the Govern approval* (published in the Official Journal of Romania, Part I, no. 227/12 April 2010).

²⁶ Article 2 paragraph (2) from the Government Decision no. 1361/2006 stipulates that for the Government decision drafts with no impact on social, economic and environmental field, on the general consolidated budget or on the legislation in force, the presentation and reasoning instruments will be elaborated according to the provisions of the Law no. 24/2000 regarding the law-making technique rules for drafting normative acts, republished, without being mandatory the observance of the structure foreseen in the annex of the Government Decision no. 1361/2006.

For the Government decision drafts, presented at the preparatory meetings of the Government session, along with the presentation and reasoning instrument, elaborated according to the article 2 paragraph (2) from the Government Decision no. 1361/2006, any representative, as secretary of state, secretary-general or similar to these, from the ministries and other from public authorities may require the restoration of presentation and reasoning instrument of the draft, in accordance with the structure foreseen in the annex of the Government Decision no. 1361/2006, in the situation in which, at the meeting, it appears that it has an impact on social, economic and environmental fields, on the general consolidated budget and on the legislation in force. The draft normative act is then forward to preparatory work meeting of the Government session, accompanied by the presentation and reasoning instrument reformulated according to the annex.

²⁷ If the draft normative act does not refer to a given topic in a given section and in the provisions of this decision, then in that section it will be made clear that “the draft normative act does not address this subject”.

e) if the presentation and reasoning instruments is attached to the normative act elaborated according to Law no. 590/2003 regarding the treaties²⁸, the current section must include the information foreseen in article 23 of this law²⁹;

f) references to the relevant strategy document on which the draft normative act is based on.

2. *Expected changes*:

a) brief presentation of the scope and of the content of the draft normative act;

b) complete or partial resolution of the problems identified in section 2 point 1.

3. *Other information*³⁰

III. Section 3 “The socio-economic impact of the draft normative act” – which will include:

1. *The Macroeconomic impact*:

a) impact on volume production of goods and services;

b) impact on the prices level;

c) impact on the volume of imports and exports;

d) impact on the employment rate of labor and on the unemployment;

e) impact on the competitive environment.

2. *Impact on the business environment*:

a) direct and indirect expected benefits;

b) simplification of the administrative procedures;

c) direct and indirect costs of the economic operators.

²⁸ Law no. 590/2003 regarding the treaties (published in the Official Journal of Romania, Part I, no. 23/12 January 2004).

²⁹ Law no. 590/2003: Article 23 – “(1) The exposures of reasons accompanying the ratification, accession or acceptance draft law, respectively the substantiation note accompanying the approval, accession or acceptance draft decision of the Government for approval, acceptance or accession or the Government emergency ordinance draft of ratification, accession or acceptance shall include the following ones:

a) the need to conclude the treaty for the Romanian side;

b) conclusion of the treaty for the Romanian side;

c) history of negotiations;

d) for the bilateral signed treaties, subjected to ratification or approval - date and place of the signature, details of the signing person the for Romanian side;

e) in the case of multilateral treaties signed by the Romanian side, subjected to ratification or approval - date and place of adoption and / or opening for signature, date and place of signing by the Romanian side, indicating the signing person, the date of entry into force, if necessary;

f) in the case of multilateral treaties subjected to accession or acceptance - date and place of adoption and / or opening for signature, the date of entry into force, if necessary;

g) presentation of the relevant provisions of the treaty in the light of the interests of the Romanian party, the implications that the treaty has on the international legal obligations and other commitments previously undertaken by the Romanian side, namely regarding the intern legislation, including in terms of compatibility with the communal law, and also the necessary adaptation measures;

h) presentation of the provisions that are intended to ensure the coordination of the intern legislative framework with the provisions of the treaty which are referred to paragraphs (6) and (7) of the article 22;

i) presentation and reasoning of the reservations or of the declarations to the treaty, if any, contained in the ratification, approval, accession or acceptance draft normative act;

j) in the exceptional case foreseen in the article 19 paragraph (3) and in the article 21 paragraph (2), a thorough justification of the urgency of ratification, accession or acceptance by the Government emergency ordinance, reference to the affected public interest in the absence of the ratification, accession or acceptance, and also the obtaining of the express approval of the President of Romania.

(2) For the treaties signed at state level, to the exposures of reasons ratification draft law is attached, in copy, the memorandum for the signing approval”.

³⁰ Any other information about the content of the draft normative act, which are not required in the decision, but one wants them presented in the presentation and reasoning instrument, can be included under “Other information” rubric within each section.

3. *Social impact:*

- a) target demographic and social affected groups;
- b) direct or indirect effects, short or long term;
- c) impact on income levels, changes in the social and working environment;
- d) improvement, development, efficiency and quality of the network service;
- e) expected impact on short and long term after the adoption.

4. *Impact on the environment*³¹:

- a) impact on the use of the natural resource;
- b) impact on protected species, natural habitats, protected areas and landscapes;
- c) impact on the environmental quality, detailed on each of the environmental factors.

5. *Other information.*

IV. Section 4 “The financial impact on the general consolidated budget, both short term, for the current year, and long term (5 years)”³² – which will include:

1. *Changes in revenues, plus/minus, from which:*

- a) state budget, from it:
 - (i) profit tax;
 - (ii) income tax;
- b) local budgets:
 - (i) profit tax;
- c) social state security budget:
 - (i) insurance contributions.

2. *Changes of the budgetary expenditure, plus/minus, from which:*

- a) state budget, from it:
 - (i) personnel costs;
 - (ii) goods and services;
- b) local budgets:
 - (i) personnel costs;
 - (ii) goods and services;
- c) social state security budget:
 - (i) personnel costs;
 - (ii) goods and services.

3. *Financial impact, plus/minus, from which:*

- a) state budget;
- b) local budgets.

4. *Proposal to cover the increasing of the budgetary expenditure.*

5. *Proposals to offset the reduction of the revenues.*

6. *Detailed calculation regarding the amendments’ substantiation of the revenues and/or of the budgetary expenditure.*

7. *Other information.*

³¹ For the draft normative acts aiming the adoption of plans and programs, including of those co-financed by the European Union, or of some amendments of them, it is required to refer to the completion of the procedure of execution of an environmental evaluation provided by Government Decision no. 1.076/2004 *regarding the determination of the procedure of environmental evaluation execution for plans and programs* (published in the Official Journal of Romania, Part I, no. 707/5 August 2004).

³² Points 1, 2 and 3 of section 4 will be completed for all the component budgets of the general consolidated budget, as it is defined in Law no. 500/2002 regarding the public finances, with the subsequent amendments, where there are influences.

V. Section 5 “The effects of the draft normative act on the legislation in force”³³ – which will include:

1. Supplementary normative acts drafts:

a) normative acts that are modified as a consequence of the entry in force of the draft normative act;

b) normative acts that are repealed as a consequence of the entry in force of the draft normative act;

c) normative acts that follow to be elaborated for the implementations of the dispositions.

2. The compatibility of the draft normative act with the communal legislation in the matter:

a) the type, the title, the number and the date of the communal act whose requirements are implemented or transposed by the draft normative act;

b) the objectives of the communal act;

c) the degree of conformity of the normative act draft with the communal act in this field, indicating whether the provisions of these acts are totally or in part transposed; in case of the partial transposition, it will be specified the reason, the term and the way of the total transposition of the communal act;

d) the deadlines for the transposition or for the implementation of the concerned communal acts – the deadline for adopting the draft normative act and the justification of this term.

3. Decisions of the European Court of Justice and other documents (references to the legal doctrine) can be mentioned, indicating the Court's interpretations, relevant to the transposition or to the implementation of those legal provisions.

4. The conformity evaluation with the communal legislation:

a) normative acts and other communal documents; it is necessary to be indicated the number, the adoption and the publication date;

b) the conformity degree (complies/does not comply);

c) any comments.

5. Other normative acts and/or international committing documents, making reference to a certain agreement, resolution or international recommendation or to another document of some international organization:

a) the conformity degree of the draft normative act with the obligations arising from the normative act and/or the international document;

b) if the draft normative act complies with the commitments, it will be indicated the way in which the implementation of the draft normative act fulfils these commitments;

c) if the draft normative act partially complies with the commitments, the reason will be explained and it will be specified when and in what way a full compliance with the commitments is reached.

6. Other information.

VI. Section 6 “Consultations conducted to elaborate the draft normative act” – which will include:

*1. Information on the consultation process with nongovernmental organizations, research institutes and other involved bodies*³⁴:

a) consultations that took place;

b) names of the consulted experts;

c) amendments proposed by the consulted organizations;

d) amendments included in the draft normative act.

³³ The section will be completed for compliance also by the integrator chapter ministry.

³⁴ It will be indicated, in short, the recommendations received from the consulted organizations, indicating if these recommendations were taken into account and if the appropriate amendments were made to the draft normative act.

2. *Choice substantiation of the consulted organizations and of the way of working with these organizations which is related to the object of the draft normative act*

3. *Organised consultations with the public local administration's authorities*, in situation in which the draft normative act has as an object activities of these authorities, in the Government Decision no. 521/2005 conditions regarding the consultation procedure with the associative structures of public local administration authorities in elaborating the draft normative acts³⁵.

4. *Consultations within the inter-ministerial councils*, according to the provisions of the Government Decision no. 750/2005 regarding the constitution of the permanent inter-ministerial councils³⁶.

5. Taking into account the dispositions of the Law no. 24/2000 *regarding the law-making technique rules for drafting normative acts*, republished and the dispositions of the Government Decision no. 561/2009 for the approval of the Regulation regarding the procedures, at the Government level, for the elaboration, the notification and for the presentation of the public policies documents, of the normative acts drafts and also of some other documents, for adoption/approval, must be noted such as *information*³⁷ *regarding the necessity of the draft normative act's notification* by the following institutions:

- a) the Legislative Council;
- b) the National Defense Supreme Council;
- c) the Economic and Social Council;
- d) the Competition Council;
- e) the Court of Auditors.

6. *Other information.*

VII. Section 7 "Public information activities regarding the drafting and the implementation of the normative act" – which will include:

1. *The information of the civil society on the need to drafting normative act.*

2. *The information of the civil society on the eventual impact on the environment as a consequence of the draft normative act implementation, and also the effects on health and on the safety of the citizens or on the biological diversity.*

3. *Other information.*

VIII. Section 8 "Implementation measures" - which will include:

1. *Implementing measures of the draft normative act by the authorities of the central public and/or local administration* – the establishment of some new bodies or the competences' expanding of the existing institutions:

- a) institutions that are about to be found, reorganized or abolished;
- b) possibilities to obtain the wanted result, using the existing institutions (if this is possible, the reasons will be specified);

³⁵ Government Decision no. 521/2005 *regarding the consultation procedure of the associative structures of the local public administration's authorities in drafting normative acts* (published in the Official Journal of Romania, Part I, no. 529/22 June 2005).

³⁶ Government Decision no. 750/2005 *regarding the establishment of the permanent inter-ministerial councils* (published in the Official Journal of Romania, Part I, no. 676/28 July 2005), amended and supplemented by the Government Decision no. 13/2009 *regarding the establishment of the inter-ministerial Council "Council for promotion the information society in Romania"* (published in the Official Journal of Romania, Part I, no. 100/19 February 2009) and by the Government Decision no. 98/2010 *regarding the establishment of the inter-ministerial Council "The Council for the application of the state aid policy"* (published in the Official Journal of Romania, Part I, no. 108/17 February 2010).

³⁷ Detailed information is required only where there were significant objections to the mentioned institutions, which were not taken into account.

- c) the financing source of the institutions that are about to be found, and whether they can be financed on the basis of tax services;
- d) functions of the existing institutions that are about to be modified or extended;
- e) functions of the local public administration's authorities that will be modified or extended;
- f) the specification of whether the functions that must be modified or extended are about to be met by the authorities of the public central and/or local administration or by their structures;
- g) the specification of whether the implementation of the draft normative act may take place after its adoption or if a further period and a transition period is required for its implementation.

2. Other information.

The drafting and signing of the presentation and reasoning instruments

According to the dispositions of the article 32 paragraph (1) from the republished Law no. 24/2000, the reasoning documents are drawn up in an explanatory, clear style, using the terminology of the draft normative act they are representing.

Although in the content of the reasoning instruments are presented the basic ideas of the regulation, these must not represent a summary of the law, but to explain *ratio legis*³⁸.

The reasoning must be about the final form of the draft normative act; if along the way there have made some changes of the draft, as a result of the proposals and observations received from the advisory bodies, the initial reasoning should be properly reconsidered.

The exposures of reasons of the draft normative acts for which the legislative initiative is exercised by the Government, and also the exposures of reasons of the approval draft laws for some ordinance or emergency ordinances are signed, according to the article 34 of the republished Law no. 24/2000, by the prime minister after the adoption of the final form of the project in Government session.

The exposures of reasons of the legislative proposals made by deputies or senators are signed by the respective initiators.

If the legislative initiative is exercised by citizens, the exposures of reasons will be accompanied by the documents drafted according to the article 74 paragraph (1) from Constitution³⁹, republished⁴⁰, and also by the point of view of the Constitutional Court, established according to the provisions of the article 146 letter j) from Constitution⁴¹, Law no. 189/1999 regarding the exercitation of the legislative initiative by the citizen⁴², stating in article 3 paragraph (1) that the exposures of reasons that accompanies the legislative proposal must be signed by all the initiative committee's members, committee that must be composed from at least 10 citizen with the right to vote⁴³.

The substantiation notes of the ordinances and Government decisions drafts are signed by the minister or by the initiators ministers, and also by the ones who notified them.

³⁸ I. Mrejeru, *Tehnica legislativă* (Bucharest: Romanian Academy Publishing House, 1979), 164.

³⁹ Constitution of Romania, republished: Article 74 –“(1) The legislative initiative belongs to, where appropriate, the Government, the deputies, the senators, or to at least 100,000 citizens entitled to vote. Citizens who exercise their right to legislative initiative must come from at least a quarter of the country's counties and each of those counties, respectively in Bucharest, must be registered at least 5.000 signatures in support of this initiative”.

⁴⁰ Constitution of Romania (republished in the Official Journal of Romania, Part I, no. 767/31 October 2003).

⁴¹ Constitution of Romania, republished: Article 146 – “The Constitutional Court has the following attributions:

.....
j) verifies the execution of the conditions to exercise the legislative initiative by the citizens;

⁴² Law no. 189/1999 regarding the exercise of the legislative initiative by the citizens (republished in the Official Journal of Romania, Part I, no. 516/8 June 2004).

⁴³ The legislative proposal is elaborated by this committee in the required form for the draft laws.

The exposures of reasons of the laws and of the substantiation notes of the ordinances and Government decisions, elaborated by the initiator, are published together with the normative act in question in the Official Journal of Romania, Part I, or are featured on the Internet by the issuing authority⁴⁴.

If during the parliamentary debates the draft law or the legislative proposal has been changed in substance, the exposures of reasons will be remade, after the promulgation of the law, by the initiator, upon the notification of the general secretary of the Chamber of Deputies.

Conclusions

The presentation of the reasons that are on the basis of the adoption of a draft normative act represents an integrated part of the law-making process. The one who initiates a draft law must know that, through his actions, he will disturb the normative balance of the society or, more precisely, the right balance between the static and the dynamic of law. This legislative balance disorder is not without practical effect in terms of human existence, for the relations established between public authorities and citizens, and even for the human relationships, in general.

Therefore, the reasoning of the draft normative acts as an intellectual operation with the purpose to persuade the issuer of the normative act for the need of its adoption. It must present the reasons behind the new legal regulation, its configuration, the expected social impact and the costs involved in applying the new normative act.

The reasoning of the draft normative act plays a historical role too. Over the time, the reasoning will provide arguments for those who apply the law, for the understanding of the will of the legislator or of any other governing body issuing of the normative act.

References

- Ilariu Mrejeru, *Tehnica legislativă* (Bucharest: Romanian Academy Publishing House, 1979)
- Ioan Vida, *Legistică formală (Introducere în tehnica și procedura legislativă)*, third edition (Bucharest: "Lumina Lex" Publishing House, 2006);
- Sorin Popescu and Victoria Țândăreanu, "Modificările aduse Legii nr. 24/2000 privind normele de tehnică legislativă pentru elaborarea actelor normative", in *Aspecte practice de tehnică și evidență și legislativă*, edited by Sorin Popescu,, Cătălin Ciora and Victoria Țândăreanu (Bucharest : "Monitorul Oficial" Publishing House, 2008);
- Law no. 24/2000 *regarding the law-making technique rules for drafting normative acts* (republished in the Official Journal of Romania, Part I, no. 260/21 April 2010);
- Law no. 90/2001 *regarding the organization and the functioning of the Romanian Government and of the ministries* (published in the Official Journal of Romania, Part I, no. 164/2 April 2001);
- Law no. 590/2003 *regarding the treaties* (published in the Official Journal of Romania, Part I, no. 23/12 January 2004);
- Government Decision no. 1.076/2004 *regarding the determination of the procedure of environmental evaluation execution for plans and programs* (published in the Official Journal of Romania, Part I, no. 707/5 August 2004);
- Government Decision no. 521/2005 *regarding the consultation procedure of the associative structures of the local public administration's authorities in drafting normative acts* (published in the Official Journal of Romania, Part I, no. 529/22 June 2005);
- Government Decision no. 750/2005 *regarding the establishment of the permanent inter-ministerial councils* (published in the Official Journal of Romania, Part I, no. 676/28 July 2005);

⁴⁴ The promoted legislative solution is consistent with the principle of transparency, whereas those interested can use the Internet so that their information requirements are met.

- Government Decision no. 775/2005 *for the approval of the Regulation regarding the elaboration, monitoring and evaluation procedures of the public policies for the central level*, (published in the Official Journal of Romania, Part I, no. 685/29 July 2005);
- Government Decision no. 870/2006 *2006 regarding the approval of the Strategy for improving the elaboration, coordination and planning system of the public policies for the public central administration* (published in the Official Journal of Romania, Part I, no. 637/24 July 2006);
- Government Decision no. 1361/2006 *regarding the content of the presentation and reasoning instruments of the draft normative acts subjected for the Govern approval* (published in the Official Journal of Romania, Part I, no. 843/12 October 2006);
- Government Decision no. 561/2009 *regarding the approval of the Regulation about the procedures, at Govern level, for the elaboration, submission and presentation of the draft public policies documents of the draft normative acts and of some other documents for adoption/approval* (published in the Official Journal of Romania, Part I, no. 319/14 May 2009).