

Chapter 1. Implementing a better legislation policy

This chapter serves as the basis to understand the significance of legislative drafting manuals on implementing a sound legislation and regulatory policy. It introduces the concept of legislative quality and its relevance in pursuit of good regulation and governance. Based on the evidence across the OECD and MENA countries, the chapter then examines how legislative drafting manuals can help promote legislative quality. The chapter lays out the characteristics of good legislative drafting manuals; and concludes that legislative drafting instructions have proven effective in fostering the quality of legislation; however, effective implementation is essential to fully reap their benefits.

Functions of legislation and importance of legislative quality

The 2012 OECD Recommendations of the Council on Regulatory Policy and Governance defines regulatory policy as “the process by which government, when identifying a policy objective, decides whether to use regulation as a policy instrument, and proceeds to draft and adopt a regulation through evidence-based decision-making” (OECD, 2012). This definition places legislation under the umbrella of a broader regulatory policy; and demonstrates the nexus between quality legislation and good regulation. Within this framework, the significance of quality legislation is twofold:

- First, legislation, as a mean whereby law is expressed, enables alignment with constitutional principles of legality, effectiveness and intelligibility; and constitutes the basis of government action (Voermans, 2009). Thus, legislative quality assists the implementation of rule of law, fosters legislation’s ability to express the law and comply with the constitution.
- Second, legislation, as a regulatory instrument, serves as a mean to achieve desired regulatory results and policy outcomes (Xanthaki, 2015). Hence, legislative quality increases the capacity of legislation to deliver the intended regulatory and policy objectives.

The 2015 OECD Regulatory Policy Outlook recognises regulatory policy as one of the key levers available to governments alongside tax and spending to achieve government-wide priorities such as social welfare, environmental protection and inclusive economic growth. In governments’ attempt to realise their agenda and policy goals, legislation could be used as one of the policy means available to execute government policy (Xanthaki, 2014). High quality legislation facilitates the delivery of the intended policy objectives in a cost justified, cost effective and consistent manner; and contributes to effective and efficient regulatory systems, which serve the public interest and contribute to well-functioning markets and societies.

Although the principles of clarity, precision, conciseness and coherence provide a common framework of features displayed by “good legislation”, the indicators to measure the quality of legislation differ according to (i) the approach taken to define legislation and (ii) country contexts (see Box 1.1 and Box 1.2). Legislative quality is closely associated with the principles of legality, effectiveness and intelligibility when it is primarily considered as a mean through which law is expressed (Karpen and Xanthaki, 2017) In other words, “good legislation” is based on a constitutional power to legislate (principle of legality); to be enacted (principle of effectiveness); and to provide legal certainty (principle of intelligibility).

Box 1.1. The 2012 OECD Recommendation of the Council on Regulatory Policy and Governance

- Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.
- Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.
- Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.
- Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.
- Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.
- Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice.
- Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
- Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
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- As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.
- Where appropriate promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.
- Foster the development of regulatory management capacity and performance at sub-national levels of government.
- In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

Source: OECD (2012) Recommendations of the Council on Regulatory Policy and Governance, <https://www.oecd.org/governance/regulatory-policy/49990817.pdf>

Box 1.2. Legislative quality

The United Kingdom

The ‘good law’ initiative has been launched by the UK government in 2013. It aims to make legislation more accessible and understandable for UK citizens. The good law initiative intends everyone interested in the making and publishing of law to come together with a shared objective of making legislation work well for the users to build a shared accountability for the quality of law.

The Office of the Parliamentary Counsel (OPC) is a group of government lawyers who specialise in drafting legislation in the UK. They work closely with departments to translate policy into clear, effective and readable law; and promote ‘good law’.

The Office of the Parliamentary Counsel defines the principles of good law as follows:

- necessary;
- clear;
- coherent;
- effective; and
- accessible.

In order to produce good laws, the Office of the Parliamentary Counsel is working towards fostering greater openness about how laws are drafted and debated to help avoid unnecessary confusion and litigation. The Counsel is also working with government

policy teams about alternatives to legislation; and with the online publishers of legislation to know what drafting techniques make the user's experience better.

Source: UK Government (2015) The Office of the Parliamentary Counsel, <https://www.gov.uk/guidance/good-law>

UK Government (2018) The Office of the Parliamentary Counsel: drafting guidance, <https://www.gov.uk/government/publications/drafting-bills-for-parliament>

Link between legislative and regulatory quality

The indicators to measure legislative quality closely intertwine with those of regulatory quality when legislation is primarily used in its capacity as an instrument to achieve regulatory aims (Xanthaki, 2015). This approach places legislative quality under the framework of regulatory quality and entails that legislation complies with the standards of good regulation. OECD (2015) underlines that good regulation:

- serve clearly identified policy goals, and are effective in achieving those goals;
- are clear, simple, and practical for users;
- have a sound legal and empirical basis,
- are consistent with other regulations and policies;
- produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
- are implemented in a fair, transparent and proportionate way;
- minimise costs and market distortions;
- promote innovation through market incentives and goal-based approaches; and
- are compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Under this framework, the principles of efficacy, effectiveness, clarity, precision, consistency, transparency, open government, cost-efficiency, legality and efficiency determine regulatory quality, and, hence, legislative quality. The principle of efficacy refers to the extent to which regulatory aims of legislation are met; and whether legislation delivers the intended policy goals (Xanthaki, 2014). Efficacy is essential to ensure that regulation which is cast in form of legislation achieves the government-wide objectives which it is set to address; and demonstrates the quality of legislation and regulatory environment. Effectiveness encompasses implementation, enforcement, impact, and compliance; and ensures that good legislation is capable of producing conditions necessary to achieve desired regulatory aims (Teubner, 1987). The principles of open government and transparency enable legislation to serve the public interest and to be informed by the legitimate needs of those interested in and affected by regulation (OECD, 2012). The criterion of cost-efficiency ensures that any proposed legislation achieves its objectives at minimum cost and administrative burden (OECD, 2012).

Regardless of the approach taken to measure legislative quality, good drafting techniques and procedures are essential to ensure the quality of legislation and regulation. In particular, the way legislation is drafted and the legislative drafting procedure is organised play a crucial role in creating clarity, precision, conciseness and coherence; and in fostering

transparency and accountability. Good legislation requires to be cast in a manner, which most effectively achieves the intended outcomes. Poorly drafted legislation introduces loopholes into the law; undermines legal clarity, certainty and predictability; and may lead the legislation to not achieve its objectives; or to achieve them expensively (OECD, 2011a) Therefore, legislative drafting techniques and procedures are important determinants of legislative quality and may have a direct impact on the implementation of the rule of law.

The 2012 OECD Recommendation calls for a clear government policy identifying how open and balanced public consultation on the development of rules will take place. It also underlines that regulatory and legislative texts should be drafted using plain language; and should provide clear guidance on compliance with regulations to make sure that all stakeholders understand their rights and obligations. Likewise, the 2009 OECD Regional Charter for Regulatory Quality emphasises that “law-drafting procedures should be managed efficiently, to reduce delays that create uncertainty and confusion, as when implementation decrees are needed to make laws effective” (OECD, 2009).

The role of legislative drafting manuals

Legislative drafting instructions could take different forms, varying from basic lists of drafting conventions to drafting manuals. Across the OECD, many countries have adopted legislative drafting manuals to enable transparency, effectiveness, legality and accountability in law making, comply with the principles of regulatory quality, and thus facilitate the implementation of the rule of law. Legislative drafting manuals provide uniform standards and ensure that drafting techniques and procedures are consistent, transparent and coherent across the government.

Legislative drafting manuals can contribute to legislative quality in various ways. First, legislative drafting manuals enhance the quality of legislation in its capacity as a method of harmonising drafting techniques and styles across administrative boundaries. In this regard, legislative drafting manuals provide a set of common principles and standards and foster coherence, consistency and collaboration across different public institutions and bodies. A legislative drafting manual that provides clear drafting instructions also contributes to legislation’s ability to express law in a uniform, homogenous, clear, precise and predictable manner. Under this framework, manuals enable uniform quality in legislation, which is essential to uphold constitutional principles and ensure that citizens and businesses can identify their rights and obligations and the courts can enforce them. Therefore, legislative drafting manuals can help implement legal norms and strengthen the rule of law, accountability and transparency.

Second, legislative drafting manuals can serve as an instrument to place good legislation under the umbrella of regulatory governance and to link legislation to the intended policy objectives. In this capacity, legislative drafting manuals acknowledge that legislation may act as a legal expression of regulatory choices, which aims to produce desired regulatory and policy outcomes. Thus, legislative drafting manuals forge a conceptual link between legislation, regulation and policy, and enable legal drafters across all levels of public administration to take desired policy objectives of legislation into account throughout the legislative drafting process. This allows legal drafters to grasp the potential policy impact of proposed legislation. Legislative drafting manuals also provide a common framework on the way legislation across administrative boundaries should be composed to achieve their objectives in most effective and efficient manner. Under this framework, legislative drafting manuals foster the principles of efficacy and effectiveness through ensuring that regulation cast in the form of legislation delivers the intended policy goals.

Third, legislative drafting manuals can serve as a framework on which the scrutiny of legislation can be based (see Box 1.3). Scrutiny of legislation assesses whether a particular piece of legislation is effective for accomplishing the ends for which it is or will be created. Legislative scrutiny helps prevent duplication or conflict of legislation and can be considered as an exercise of legislative quality control. Legislative drafting manuals, as a mean for legislative scrutiny, provide guidance on how to examine whether new provisions proposed by new legislation are consistent with the existing legal system; and contribute to obtain better outcomes from legislation.

Box 1.3. Germany

Germany has adopted *the Manual for Drafting Legislation* as a set of guiding principles for legislative drafting. The first edition of the guide was published in 1999 and it has been revised twice since then. The current version of the Manual has been released in 2008 as the third edition.

The Manual has been designed to provide a uniform framework of standards, which the federal ministries can apply when drafting legislation and on which the scrutiny of legislation can also be based in order to examine whether new provisions are consistent with the current legal system. The Manual also aims to ensure that legal provisions are well structured and worded so that their meaning is clear and easy to understand; and that it is available to reach citizens, businesses and legal practitioners.

German Manual for Drafting Legislation contains various checklist questions and good practice examples; and provides a comprehensive guideline for all those involved in the drafting and scrutiny of legislation across federal ministries. Drafting instructions are based on legal requirements as well as on practical legislative experience based on the feedback deriving from the use of the Manual everyday legislative work.

German Manual also creates a link between good legislation and regulation by underlining that it aims to contribute to creating legally consistent and comprehensible regulations.

Source: The Federal Ministry of Justice, Germany (2008) *The Manual for Drafting Legislation*, https://www.bmjv.de/SharedDocs/Downloads/DE/Themen/RechtsdurchsetzungUndBuerokratieabbau/HanbuchDerRechtsfoermlichkeit_eng.pdf?__blob=publicationFile&v=4

Good practices

Evidence across the OECD and MENA countries demonstrates that the content and purpose of legislative drafting manuals may vary across different jurisdictions (see Box 1.4, Box 1.5, Box 1.6 and Box 1.7). As this could be due to the different approaches taken by the authors of the manuals, one of main differences also derives from the fact that legislative drafting process is organised in a different manner in common law and civil law systems. In civil law countries, policy formulation and legislative drafting are closely linked. The same officials who develop the policy are also involved in the drafting of the necessary legislation. Once the legislation is drafted, it is then reviewed by officials in other Ministries such as those in Justice who are generally concerned with ensuring that the legislation achieves its purpose in a constitutional manner.

In common law system, policy-making and legislative drafting are separated. Once a political decision is made to enact legislation, officials in the Executive Branch of

Government prepare a policy paper setting out the problem, alternative solutions, and the final decision as to which policy will be adopted. The policy paper is then sent to legislative drafting specialists who compose the legal text (Karpen and Xanthaki, 2017). Due to these differences, legislative drafting manuals in specific jurisdictions are likely to differ in terms of content and purpose as they are tailored to the context of their legislative systems. Hence, the criteria to define “a good legislative drafting manual” depend on the jurisdiction in question to a large extent.

Box 1.4. The Palestinian Authority

The Palestinian Authority has adopted a legislative drafting manual in 2013 to promote coherent and consistent legislative techniques across legal departments.

This manual is based on previous manuals of the Palestinian Authority (PA). The first manual, which is mainly concerned with drafting of primary legislation, was published in 2000. The second manual focusing on the policy development and drafting of secondary legislation was published in 2004. These manuals reflect the co-operative work undertaken by the Government of the Palestinian Authority, the Palestinian Legislative Council and the Palestinian academic community.

In 2010, the OECD conducted an assessment of the legislative drafting manuals of the Palestinian Authority and provided advisory and technical support for a consolidated and improved manual. In light of the *OECD Practitioners’ Guide* on public consultation in the rule making, the Palestinian Authority has created a committee for public consultation, coordinated by the President’s Office and chaired by the Ministry of Justice and has drafted their own guide on public consultation.

The guide was reviewed and quality checked by OECD peers from Norway, UK, Sweden and Turkey during 2011-2013. The Guide has been tested and used by the General Personnel Council (GPC) during the preparation of a consultation plan on the draft Code of Conduct. The results of this pilot project were reported to the committee and fed in the final PA Guide on public consultation.

A separate committee was established for the legislative drafting manual and chaired by the Council of Minister. This committee has met with the committee for the consultation guide on a regular basis to prepare a new manual, which follows the principles of the PA Guide on public consultation. A new legislative drafting manual was developed with a participatory approach involving the engagement of diverse stakeholders. The new manual was endorsed in 2013 by the Cabinet. A series of capacity building activities for both internal and external stakeholders was organised by the OECD to operationalise the new legislative drafting manual and the consultation guide of the Palestinian Authority.

The 2013 manual focuses on the preparation of drafting instructions; the structure and elements of a law; the principles of drafting style; the drafting of specific provisions such as amendments and penal provisions; and reviews of the completed draft. They also include advice on the preparation of notes submitted with the draft law as well as a methodology to evaluate the impact of draft legislation.

Source: OECD (2011) Legislative Drafting Manuals of the Palestinian Authority, <https://www.oecd.org/mena/governance/50402734.pdf>

OECD (2011) Regulatory Consultation in the Palestinian Authority: A Practitioners’ Guide for Engaging Stakeholders in Democratic Deliberation

Box 1.5. Switzerland

In 2019, Switzerland has adopted the fourth edition of its legislative drafting guide, *Guide de legislation*. The Swiss Manual defines legislative acts as the expression and legal fulfilment of political decisions; and aspires to provide practical guidelines to legislative drafters.

The Swiss Manual targets all parties involved in the drafting of legislative acts within the federal administration; and aims to guide the development of the federal legislation. In particular, the Manual intends to serve as collective memory of legislative practice in the federal administration to facilitate the transmission of acquired experience.

The structure of the Manual is based on a division of the legislative process into various stages: analysis of problems, definition of objectives, examination and choice of instruments of action, analysis of the normative environment, structuring and formulation; and execution.

It focuses on following aspects:

- Fundamental Rights and International Law
- Sharing of powers between the confederation and the cantons
- Choice of the form of the legislative act
- Legality and delegation
- Composition of the legislative act and choice of the instruments of the actions of the State
- Writing

Ultimately, the Swiss Manual aims to contribute to improve the quality of legislation, which in turn allows for better enforcement and more accurate translation of the will of the legislator.

Source: The Federal Office of Justice, Switzerland (2019) *Legislative guide*
<https://www.bj.admin.ch/dam/data/bj/staat/legistik/hauptinstrumente/gleitf-d.pdf>

Box 1.6. The Netherlands

The Dutch government has introduced a number of policies and tools to improve the overall legislative quality. One of the key measures was the adoption of a general legislative policy, which consists of a set of measures; and aims at creating lasting improvements to legislative system by setting legislative quality criteria.

In 1992, the Netherlands adopted “Instructions for Legislation” (*Draaiboek voor de wetgeving*) which set the basis of legislative drafting instructions applicable for legal departments across the public administration. “Instructions for Legislation” is a comprehensive handbook on legislative techniques, styles and substantive legislative issues. It comprises an extensive set of drafting guidelines accompanied by several examples, explanations, illustrations, model clauses. Instructions are amended regularly and available electronically.

In addition, the Netherlands has also adopted “Drafting Directives” (*Aanwijzingen voor de Regelgeving*) which was issued by the Ministry of Justice. These Directives provide a detailed description of all procedures for the Council of Ministers, the Council of State and the Parliament leading to the approval of a Bill.

The Dutch government has established the Dutch Academy of Legislation to provide a comprehensive training programme for all state officials in charge of legislative drafting to ensure effective application of Instructions and Directives.

Source: Dutch Government (2017) *Aanwijzingen voor de Regelgeving*; <https://www.kcwj.nl/kennisbank/aanwijzingen-voor-de-regelgeving-0> Dutch Government (2017) *Draaiboek voor de wetgeving*; <http://wetten.overheid.nl/BWBR0005730/2011-05-11> Wim Voermans (2009) *Different Approaches to Legislative Drafting in the EU Member States*, <http://www.sigmaweb.org/publicationsdocuments/44577810.pdf>

Box 1.7. The European Union

The European Union has developed “*The Joint Practical Guide*” as a platform of general drafting principles. The first edition of the Guide was published in 2000; and has proven to be a valuable tool. It has been updated once since then and the second edition was published in 2013. The Guide is publicly available in 24 official languages of the EU.

The Joint Practical Guide is intended for everyone involved in legislative drafting across the EU. It creates the basis of common standards for the EU in the field of legislative drafting as well as for the legislative drafting workshops, trainings and courses provided to EU officials. The principles set out in the guide are the point of reference on legislative drafting for the three EU institutions: the European Parliament, the Council and the Commission.

The Guide aims to ensure that the Acts of the European Union are drawn up in an intelligible and consistent manner so that citizens and businesses can identify their rights and obligations and the courts can enforce them. Ultimately, the legislative drafting guide of the EU aspires to assure that the EU legislation is better understood and correctly implemented.

The content of Joint Practical Guide of the EU is very generalised and standardised due to the diversity of the jurisdictions in its member states. In this respect, the EU Manual offers a unique example as it takes account of diverse legislative systems including common law and civil law countries; and provides a common framework on the uniform legislative drafting standards.

The Joint Practical Guide suggests that the drafting of a legal act must be:

- clear, easy to understand and unambiguous;
- simple and concise, avoiding unnecessary elements;
- precise, leaving no uncertainty in the mind of the reader.

Following the adoption of the legislative drafting guide of the European Union, the “*Joint Practical Guide of the European Parliament, the Council and the Commission*”, an interinstitutional group on the quality of drafting was set up to be responsible for keeping the guide updated. The Guide urges the legal drafters of the European Parliament, the Council and the Commission to use the guide and to contribute to it with their comments by sending them to the interinstitutional group on the quality of drafting.

Source: European Union (2013) “Joint Practical Guide of the European Parliament, the Council and the Commission” <https://eur-lex.europa.eu/content/techleg/EN-legislative-drafting-guide.pdf>

Characteristics of good legislative drafting manuals

Despite the lack of uniform criteria applicable to all jurisdictions to define “a good legislative drafting manual”, there are some guiding principles, which could enhance the effectiveness of legislative drafting manuals. First, legislative drafting manuals, which are fine-tuned to the regulatory framework of specific jurisdiction, best serve to the needs and context of the jurisdiction in question and help legislation deliver the intended policy goals. This entails that legislative drafting manuals should be based on a sound analysis of:

- the target audience of the manual and what answers they are looking for;
- the specific purpose of the manual; and
- the level of legal background and awareness of the legal terminology the target audience of the manual has.

In other words, legislative drafting manuals, which are most effective to contribute to legislative and regulatory quality, build on an empirical analysis of target audience and their needs; and are tailored to the regulatory framework of specific jurisdictions. For instance, in common law systems, drafting specialists primarily compose legislation. In this case, a good legislative drafting manual could still be technical as the target audience of the manual has advanced level of expertise in legal drafting and terminology. In civil law systems, however, experts in the certain policy field primarily draft legislation. Therefore, a good legislative drafting manual in civil law countries is expected to be neither too long nor technical but rather short, simple and precise while providing explanations and introducing main principles of drafting step-by-step.

The legislative drafting manual of the UK provides a good example as it was prepared on the basis of an empirical analysis which assessed effectiveness and clarity of legislative techniques through an online survey and face-to-face user testing (see Box 1.8). The study compared various techniques and styles of drafting and analysed the feedback deriving from all respondents to the survey who are actively engaged with legislation. The findings of the survey and the study have paved the way for an updated legislative drafting guidance, which is tailored to particular needs of the UK legislative system and regulatory framework.

Box 1.8. The United Kingdom

The Office of the Parliamentary Counsel (OPC) is the central drafting office composing most of the United Kingdom's primary legislation and some secondary legislation. The Office of the Parliamentary Counsel and the National Archives carried out a study in 2014 to: (i) understand more about what it is like to be a reader of legislation; and (ii) to assess whether some drafting techniques are more helpful for readers than others.

The rationale behind the assessment derives from the desire and necessity to establish objective standards for better legislation. For instance, the experience of the Office of the Parliamentary Counsel demonstrates that principle of clarity is based on the drafter's own judgement. Furthermore, the principle of effectiveness cannot be ensured without knowing who is using the legislation and for which purpose. Hence, the study was designed to find empirical answers to these questions and to establish objective standards on effective legislative drafting techniques.

The study was conducted by an *online survey* on legislation.gov.uk comparing small scale drafting techniques and by *face-to-face user testing* designed to compare other drafting techniques. The participants involved diverse parties who actively use legislation including members of parliament, ministers, policy officials, bill managers, parliamentary officials, lobby groups, judges, government lawyers and private lawyers.

The findings of the study have demonstrated the difficulties readers of legislation face and led to improvements on the way in which UK legislation is presented online, as well as significant changes to the UK's legislative drafting guidance.

The key findings point out that:

- Users want to understand ‘why’ the legislation has been passed rather than just ‘what’ it does to the law.
- Users want explanatory notes to be more practical, to contain examples about how the law is to be applied in the real world.
- Users want more legal context about the intent or purpose of the legislation.
- Users use the explanatory notes to Acts on an ongoing basis, not only when the Act is first passed.
- Users want practical information that explains any amendments to existing legislation, or new regulations that may be passed as a result.

On the basis of these results, a new Legislative Drafting Guidance has been introduced in 2017. In order to reflect the changing needs of legal drafters, the Guidance has been updated on July 2018. The Guidance stresses that guiding principles are tailored to particular needs of the UK legislative system and regulatory framework and contains guidance on how to draft bills, including:

- guidance on writing clearly;
- specific wording to use in certain circumstances;
- drafting techniques;
- guidelines on drafting repeals and amendments; and
- information about subordinate legislation.

Source: UK Government (2018) The Office of the Parliamentary Counsel, <https://www.gov.uk/government/publications/drafting-bills-for-parliament>
 UK Government (2014) The Office of the Parliamentary Counsel and the National Archives, “What works best for the reader? A study on drafting and presenting legislation: the Loophole” [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/326937/Loophole - 2014-2_2014-05-09 -What works best for the reader.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/326937/Loophole_-_2014-2_2014-05-09_-_What_works_best_for_the_reader.pdf)

Second, the OECD experience demonstrates that good legislative drafting manuals are developed with a participatory approach involving consultations with different entities and stakeholders across the government and seen as living documents, which are updated on a regular basis. This enables manuals to adapt to the changes in the legal and regulatory environment as well as to the changing needs of legislative drafters (see Box 1.6 and 1.9).

Third, good legislative drafting manuals present their strategy and purpose upfront; and introduce guiding principles in a clearly delineated manner so that legislative drafters know what to prioritise; and when to make exceptions (Xanthaki, 2015) (see Box 1.9). Prioritisation of principles should be outlined in a way that enhances the effectiveness of legislation and fosters legislative quality. This reflects the dynamic nature of law making, enables legislative drafting manuals to serve as guiding principles, and prevents them from becoming too rigid. In this respect, it is crucial to ensure that legislative drafting manuals assist legal drafters by providing guidance, practical advice and examples throughout the legislative drafting and policy processes. In other words, good legislative drafting manuals should act as a catalyst to the work of legal drafters and should not be burdensome.

Box 1.9. France

The French legislative guide presents set of rules, principles, methods and modalities to accompany regulators and public officials through all stages of preparing legal norms (i.e. conception, elaboration and drafting). The guide helps answer procedural, formal, and substantive questions for drafters to consider when drafting a text, starting from the conception of the norm, to its elaboration, and drafting. It also specifies the procedures that need to be followed for the elaboration and transposition of European and international texts into national legislation. In particular, the guide focuses on following aspects:

1. **Conception:** In the conception phase, the legislative guide walks the legislator through the process to answer certain preliminary questions such as the necessity of the proposed norm, whether it responds to a legal obligation, or is a mean to achieve certain policy goals, and what would be the appropriate type of norm to serve its purpose.

The conception phase is essential to assess the objectives and justifications of the proposed legislation as it analyses and evaluates the usefulness and effectiveness of the normative text. This phase also allows to compare norm alternative solutions, thus, prevents the accumulation of unnecessary legislations and legal uncertainty.

It is worthwhile to stress that one of the distinctive features of the French legislative guide derives from its practicality. In particular, *Le Guide de Légistique* provides step-by-step guidance on each administrative process. For instance, the guide specifies with whom, when and under which circumstances to organise stakeholder consultations as well as which formal procedures to follow, what to discuss, and desired outcomes. Furthermore, the guide lays out a framework for the form and content of the impact assessments and stipulates each step of specific procedures to be followed.

2. **Elaboration:** In this phase, the legislative guide specifies the roles of different institutions concerned with the process, according to the type of norm in question. The guide also sets specific instructions tailored for each type of legal norm guiding the legal drafters from the phase of prior consultation to the publication of the final text.
3. **Drafting:** The guide sets a framework for drafting the legal texts by specifying the rules on the preparation of explanatory memorandums to the parliament (explaining the meaning and scope of the provisions), the language that is advised to be used (styles, vocabulary, and syntax), and how to introduce modifications, insertions, annexes, and references to the existing laws at later stages.

Overall, the detailed and practical nature of the French legislative guide provides a uniform framework as well as a solid coordination structure for legislative procedures, which, in turn, enables a sustainable and coherent approach to regulatory policy.

It is also important to underline that the French legislative guide is designed to be a living document in order to adapt to new developments including fast technological

advancement, as well as to the changing needs of its users. The French legislative guide has so far undergone several updates since the publication of its first edition in 2005. The second edition of the guide was published in 2007 and the third and most current edition was released in 2017.

In addition, the electronic version of the legislative guide is constantly updated to take account of latest legislative, regulatory and jurisprudential reforms. It is also important to stress that France has established a formal process for updating the legislative guide. There is an institutionalised joint team, comprised of the participants from the Council of State and of the General Secretariat of the Government (SGG), dedicated to updating the guide.

In order to facilitate an effective application of the guide, the General Secretariat of the Government regularly organise trainings targeted to central and local authorities. These trainings help legislators and policy makers understand how to best apply the guide in their day-to-day legislative practice. Furthermore, the methodology and modules of trainings are constantly revised to adapt to the needs of legal drafters and changing regulatory policy environment.

Furthermore, *Le Guide de Légistique* is part of a broader ecosystem of better regulation and legislation policy. It is supported by the application of Regulatory Impact Analysis (RIA) as well as transparent open-government policies in order for citizens and businesses to identify their rights and obligations easily.

The French legislative guide is available online as part of an institutionalised one-stop-shop government website which allows for rapid and effective dissemination of legislative and regulatory texts, as well as court rulings, collective labour agreements, standards issued by European institutions, international treaties and agreements to which France is a party.

Source: Government of France (2018), Guide de Légistique - Édition 2017 <https://www.legifrance.gouv.fr/Droit-francais/Guide-de-legistique2>; and information provided during a meeting with the General Secretariat of the Government (SGG) in September 2018

It is also worthwhile to underline that legal drafters need to be informed on how to best use legislative drafting manuals in their daily work. This requires a coherent approach and operational strategy across legal departments in public administration providing legal drafters with an understanding of the significance and purpose of the application of the manual on enhancing effectiveness and quality of legislation and regulation (see Chapter 2.).

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