

Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation

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INTERINSTITUTIONAL AGREEMENT of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (1999/C 73/01)

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Declaration No 39 on the quality of the drafting of Community legislation adopted on 2 October 1997 by the Intergovernmental Conference and annexed to the Final Act of the Treaty of Amsterdam,

Whereas:

(1) clear, simple and precise drafting of Community legislative acts is essential if they are to be transparent and readily understandable by the public and economic operators. It is also a prerequisite for the proper implementation and uniform application of Community legislation in the Member States;

(2) according to the case-law of the Court of Justice, the principle of legal certainty, which is part of the Community legal order, requires that Community legislation must be clear and precise and its application foreseeable by individuals. That requirement must be observed all the more strictly in the case of an act liable to have financial consequences and imposing obligations on individuals in order that those concerned may know precisely the extent of the obligations which it imposes on them;

(3) guidelines on the quality of drafting of Community legislation should therefore be adopted by common accord. These guidelines are intended as a guide for the Community institutions when they adopt legislative acts, and for those in the Community institutions who are involved in formulating and drafting such acts, whether at the stage of the initial text or that of the various amendments made to it in the course of the legislative procedure;

(4) these guidelines should be accompanied by measures to make sure that they are applied properly, with each institution adopting the relevant measures for its own use;

(5) the role played by the institutions' legal services, including their legal/linguistic experts, in improving the quality of drafting of Community legislative acts should be strengthened;

(6) these guidelines complement the efforts being made by the institutions to make Community legislation more accessible and easier to understand, particularly by means of the official codification of legislative acts, recasting and simplification of existing texts;

(7) these guidelines are to be regarded as instruments for internal use by the institutions. They are not legally binding,

ADOPT THESE GUIDELINES BY COMMON ACCORD:

General principles

1. Community legislative acts shall be drafted clearly, simply and precisely.
2. The drafting of Community acts shall be appropriate to the type of act concerned and, in particular, to whether or not it is binding (Regulation, Directive, Decision, recommendation or other act).
3. The drafting of acts shall take account of the persons to whom they are intended to apply, with a view to enabling them to identify their rights and obligations unambiguously, and of the persons responsible for putting the acts into effect.

4. Provisions of acts shall be concise and their content should be as homogeneous as possible. Overly long articles and sentences, unnecessarily convoluted wording and excessive use of abbreviations should be avoided.
5. Throughout the process leading to their adoption, draft acts shall be framed in terms and sentence structures which respect the multilingual nature of Community legislation; concepts or terminology specific to any one national legal system are to be used with care.
6. The terminology used in a given act shall be consistent both internally and with acts already in force, especially in the same field.

Identical concepts shall be expressed in the same terms, as far as possible without departing from their meaning in ordinary, legal or technical language.

Different parts of the act

7. All Community acts of general application shall be drafted according to a standard structure (title - preamble - enacting terms - annexes, where necessary).
8. The title of an act shall give as succinct and full an indication as possible of the subject matter which does not mislead the reader as to the content of the enacting terms. Where appropriate, the full title of the act may be followed by a short title.
9. The purpose of the citations is to set out the legal basis of the act and the main steps in the procedure leading to its adoption.
10. The purpose of the recitals is to set out concise reasons for the chief provisions of the enacting terms, without reproducing or paraphrasing them. They shall not contain normative provisions or political exhortations.
11. Each recital shall be numbered.
12. The enacting terms of a binding act shall not include provisions of a non-normative nature, such as wishes or political declarations, or those which repeat or paraphrase passages or articles from the Treaties or those which restate legal provisions already in force.

Acts shall not include provisions which enunciate the content of other articles or repeat the title of the act.

13. Where appropriate, an article shall be included at the beginning of the enacting terms to define the subject matter and scope of the act.
14. Where the terms used in the act are not unambiguous, they should be defined together in a single article at the beginning of the act. The definitions shall not contain autonomous normative provisions.
15. As far as possible, the enacting terms shall have a standard structure (subject matter and scope - definitions - rights and obligations - provisions conferring implementing powers - procedural provisions - implementing measures - transitional and final provisions).

The enacting terms shall be subdivided into articles and, depending on their length and complexity, titles, chapters and sections. When an article contains a list, each item on the list should be identified by a number or a letter rather than an indent.

Internal and external references

16. References to other acts should be kept to a minimum. References shall indicate precisely the act or provision to which they refer. Circular references (references to an act or an article which itself refers back to the initial provision) and serial references (references to a provision which itself refers to another provision) shall also be avoided.
17. A reference made in the enacting terms of a binding act to a non-binding act shall not have the effect of making the latter binding. Should the drafters wish to render binding the whole or part of the content of the non-binding act, its terms should as far as possible be set forth as part of the binding act.

Amending acts

18. Every amendment of an act shall be clearly expressed. Amendments shall take the form of a text to be inserted in the act to be amended. Preference shall be given to replacing whole provisions (articles or subdivisions of articles) rather than inserting or deleting individual sentences, phrases or words.

An amending act shall not contain autonomous substantive provisions which are not inserted in the act to be amended.

19. An act not primarily intended to amend another act may set out, at the end, amendments of other acts which are a consequence of changes which it introduces. Where the consequential amendments are substantial, a separate amending act should be adopted.

Final provisions, repeals and annexes

20. Provisions laying down dates, time limits, exceptions, derogations and extensions, transitional provisions (in particular those relating to the effects of the act on existing situations) and final provisions (entry into force, deadline for transposition and temporal application of the act) shall be drawn up in precise terms.

Provisions on deadlines for the transposition and application of acts shall specify a date expressed as day/month/year. In the case of Directives, those deadlines shall be expressed in such a way as to guarantee an adequate period for transposition.

21. Obsolete act and provisions shall be expressly repealed. The adoption of a new act should result in the express repeal of any act or provision rendered inapplicable or redundant by virtue of the new act.

22. Technical aspects of the act shall be contained in the annexes, to which individual reference shall be made in the enacting terms of the act and which shall not embody any new right or obligation not set forth in the enacting terms.

Annexes shall be drawn up in accordance with a standardised format,

HEREBY AGREE ON THE FOLLOWING IMPLEMENTING MEASURES:

The institutions shall take such measures relating to their internal organisation as they deem necessary in order to ensure that these guidelines are properly applied.

In particular, the institutions:

- (a) shall instruct their legal services to draw up, within one year after the publication of these guidelines, a joint practical guide for persons involved in the drafting of legislation;
- (b) shall organise their respective internal procedures in such a way that their legal services, including their legal/linguistic experts, may, each for their own institution, make drafting suggestions in good time, with a view to applying these guidelines;
- (c) shall foster the creation of drafting units within those bodies or departments within the institutions which are involved in the legislative process;
- (d) shall ensure that their officials and other servants receive training in legal drafting, making them aware in particular of the effects of multilingualism on drafting quality;
- (e) shall promote cooperation with the Member States with a view to improving understanding of the particular considerations to be taken into account when drafting texts;
- (f) shall encourage the development and improvement of information technology tools for assisting legal drafting;
- (g) shall foster collaboration between their respective departments responsible for ensuring the quality of drafting;
- (h) shall instruct their respective legal services to draw up periodically, each for the institution to which it belongs, a report on the measures taken in pursuance of points (a) to (g).

Done at Brussels, 22 December 1998.

For the European Parliament

The President

For the Council of the European Union

The President

For the Commission of the European Communities

The President

Declaration by the European Parliament

The European Parliament considers that Community legislative acts must be self-explanatory and that the institutions and/or Member States must not adopt explanatory statements.

No provision is made for the adoption of explanatory statements in the Treaties and it is incompatible with the nature of Community law.

Council Statements

Like the European Parliament, the Council is of the opinion that legislative acts should be comprehensible in themselves. Recourse to statements interpreting legal acts should therefore be avoided where possible and the content of possible statements should, as appropriate, be included in the text of the act.

It should however be noted that insofar as they do not contradict the legislative act concerned and they are made public (as provided for in Article 151(3) of the EC Treaty as it will be amended by the Amsterdam Treaty), such interpretative statements adopted by the Community legislator are compatible with Community law.

The Council finds it desirable that the general principles of good drafting which may be drawn from the 'Common guidelines on the quality of drafting of Community legislation' serve, where appropriate, as an inspiration for the drafting of acts adopted pursuant to Titles V and VI and of the Treaty on European Union.

The Council considers that, in order that the transparency of the Community decision-making process may be improved, it would be desirable for the Commission to provide in future for the statements of reasons accompanying its legislative proposals to be widely circulated to the public by the most appropriate means (for example, publication in the 'C' series of the Official Journal of the European Communities, electronic distribution, or other).

The Council takes the view that, in addition to the adoption by the legislator of official codification of legislative acts, the Office for Official Publications of the European Communities should, with a view to improving access to Community legislation when the latter has been subject to frequent or substantial amendments, intensify its work of informally consolidating legislative acts and should improve the advertising of the availability of these texts. It would also be useful to examine with the other institutions the appropriateness of possible measures aimed at facilitating a more structured use of the recasting technique which combines the codification and the modifications of an act in a single legislative text.