



EUROPEAN COMMISSION

LEGAL SERVICE  
Legal Revisers Group

**SUMMARY REPORT ON THE SEMINAR ON  
QUALITY OF LEGISLATION: LEGISLATIVE DRAFTING IN SPAIN  
Brussels, 9 June 2006**

**Claire-Françoise Durand, Deputy Director-General of the Commission Legal Service**, introduced the seminar by examining what makes for quality of legislation and what is covered by Better Regulation. After setting out the various aspects and basic principles she concluded that drafting legislation is an art. Those involved throughout the process must all be imbued with the importance of contributing to a finished product that 'speaks' to those to whom it is addressed.

**Professor Miquel Martín Casals, Universitat de Girona, President of the Legislative Drafting Study Group (GRETEL)**, traced the history of legislative drafting in Spain over the last twenty-years. The foundations for the modern Spanish approach to drafting were laid down in the 1980s by a group of academics in GRETEL, who drew inspiration in part from practice in Europe and elsewhere. The government took account of that work when it drew up its own Guidelines for legislative drafting in 1991 and 2005.

Improving the technical and linguistic quality of legislation is recognised as a basic element of good governance. One central government department is designated to ensure that the Guidelines are applied. The Constitutional Court stressed in a 1990 judgement that foreseeability of legislation is a component of the constitutional requirement of legal certainty.

Under the Guidelines all legislative acts have a standard structure and each component is subject to specific rules. A basic principle is that laws are addressed to the ordinary citizen. They should therefore be clearly drafted in accessible language, avoiding terminology that is over-technical, foreign or abstruse. Sentence structures should be clear and simple.

GRETEL also advocates the use of checklists which serve to structure the drafting process and contribute to the quality of the acts adopted.

Increasing attention is being paid to evaluating the impact of legislation and to consultation of those concerned by possible new measures.

**Dr Emilio Jiménez Aparicio, former Director General of the Legal Services and Abogado del Estado**, looked at legislative drafting tools and the lawmaking procedure in Spain. He stressed the importance of all those involved in the legislative process taking the drafting of laws seriously. It is only comparatively recently that a more scientific approach has been taken to legislative drafting in Spain.

It is essential for the early drafts to be good because it becomes increasingly difficult as the draft passes through the legislative process to make changes to improve its technical quality and in the final stages the emphasis is often on results rather than technical quality.

The Spanish system of drafting legislation is a decentralised one with the first drafts being produced by each Government ministry. The staff of those ministries are experts in the technical field concerned but may not be experts in legislative drafting. The Guidelines for legislative drafting should be applied from the outset by each ministry.

Thereafter the Directorate-General of the Government Secretariat checks on conformity with the Guidelines. Particular attention is also paid to compliance with all the language rules in the official style manual.

To ensure that the principle of collegiality of government decision-making is respected, draft legislation prepared by one ministry is circulated to all the other ministries for consultation. A committee chaired by the Deputy Prime Minister resolves any technical problems arising in this procedure. Speed is of the essence and electronic transmission of texts and a degree of flexibility contribute to making the system work smoothly.

The draft legislation is then submitted to Parliament where it is handled by a committee meeting in private. It is first considered by the Congress and then by the Senate. After parliamentary approval, the legislation is finalised by the Government, which cannot, however, make any further changes. One paper copy is then produced for signature by the King and another for the purposes of publication.

The final step is the archiving of the final text, although in some cases a procedure for correcting errors may be necessary.

**Dr Francisco Caamaño Domínguez, Secretary of State for relations with the Congress and Senate and Professor of Constitutional Law**, examined the link between the quality of legislative acts and governance

Spain is fully conscious of the need to improve its laws and find solutions to pathological problems such as legislative inflation, the increasing compartmentalisation of sectors of law and ever more numerous provisions on criminal or administrative penalties. Too often, laws are adopted to show citizens that the government is doing something about a problem rather than actually to remedy the problem.

Improving the quality of laws is a political objective and a specific aim of the present Government, one which has the support of all the political groups.

Examples of past practices which posed problems and are being addressed are: recourse to annual ‘omnibus laws’ grouping together in a single act large numbers of disparate provisions; and over-use of emergency legislation to afford quick solutions.

One idea currently being studied is the possibility of grouping together in a single act all the measures that will be required for the transposition of EU obligations in the course of one year. That act could be structured in sections, each corresponding to one area of EU activity, in order to help give citizens an overview of the operation of the system.

Modern society is characterised by different layers — international, European, national and regional — of interacting legal systems. To make it possible for rules to operate in such a structure, they must be reduced to basic principles, distilled to their essence.

In our multicultural world we must seek consensus, which is always how the best rules are made. To this end, the legislative process must be transparent and well explained, ensuring maximum public support. Laws must be framed in clear and accessible language and well structured to serve as a channel of communication with the citizen. In this way they can contribute to cohesion and extension of shared democratic values. Strict application of the Guidelines for legislative drafting is therefore imperative.

**Bevis Clarke-Smith, Head of the Commission Legal Revisers Group**, thanked the speakers for their stimulating presentations and the numerous participants from far and near for their keen interest in this important topic.