Joint Practical Guide

of the European Parliament, the Council and the Commission

for persons involved in the drafting of legislation within the Community institutions

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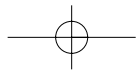

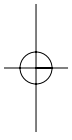

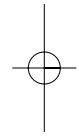

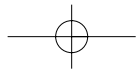

Preface

In order for Community legislation to be better understood and correctly implemented, it is essential to ensure that it is well drafted. Acts adopted by the Community institutions must be drawn up in an intelligible and consistent manner, in accordance with uniform principles of presentation and legislative drafting, so that citizens and economic operators can identify their rights and obligations and the courts can enforce them, and so that, where necessary, the Member States can correctly transpose those acts in due time.

Since the Edinburgh European Council in 1992, the need for better lawmaking — by clearer, simpler acts complying with principles of good legislative drafting — has been recognised at the highest political level. The Council and the Commission have both taken steps to meet that need ([1]). It was reaffirmed by Declaration No 39 on the quality of the drafting of Community legislation, annexed to the Final Act of the Amsterdam Treaty. As a result of that Declaration, the three institutions involved in the procedure for the adoption of Community acts, the European Parliament, the Council and the Commission, adopted common guidelines intended to improve the quality of drafting of Community legislation by the Interinstitutional Agreement of 22 December 1998 ([2]).

([1]) Council: Resolution of 8 June 1993 on the quality of drafting of Community legislation (OJ C 166, 17.6.1993, p.1).
Commission: General guidelines for legislative policy, document SEC(1995) 2255/7, 18.1.1996.

([2]) Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3.1999, p. 1).

This Guide has been drawn up by the three Legal Services pursuant to that Agreement to develop the content and explain the implications of those guidelines, by commenting on each guideline individually and illustrating them with examples. It is intended to be used by everyone who is involved in the drafting of the most common types of Community acts. Furthermore, it should serve as inspiration for any act of the institutions, whether within the framework of the Community Treaties or within that of the titles of the Treaty on European Union relating to the common foreign and security policy and police and judicial cooperation in criminal matters.

The Joint Practical Guide is to be used in conjunction with other more specific instruments, such as the Council's Manual of Precedents ([3]), the Commission's Manual on Legislative Drafting ([4]), the Interinstitutional style guide published by the Office for Official Publications of the European Communities ([5]) or the models in LegisWrite ([6]). In addition, it will always be useful and often indispensable to refer to the relevant provisions of the Treaties and the key basic acts in a specific field.

Staff of the three institutions are urged to use the Guide and to contribute to it with their comments. These may be sent at any time to the Interinstitutional Group on the quality of drafting ([7]), which will keep the Guide updated.

([3]) As last updated in July 2002.
([4]) As last updated in 1997.
([5]) http://publications.eu.int/code/en/en-000300.htm
([6]) Models drafted by the Commission in 1999.
([7]) Comments should be sent by e-mail to the Commission's Legal Revisers' Group (juristes-reviseurs@cec.eu.int), which will forward them.

The three Legal Services hope that the Guide will assist all those involved, in any way, in drafting legislative acts within the institutions. They will all be able to work towards the common goal of presenting to European citizens legislation which makes clear the objectives of the European Union and the means it deploys to attain them.

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Brussels, 16 March 2000

General principles

(Guidelines 1 to 6)

1 Community legislative acts shall be drafted clearly, simply and precisely.

1.1. The drafting of a legislative act must be:
- clear, easy to understand and unambiguous;
- simple, concise, containing no unnecessary elements;
- precise, leaving no uncertainty in the mind of the reader.

1.2. This common-sense principle is also the expression of general principles of law, such as:
- the equality of citizens before the law, in the sense that the law should be accessible and comprehensible for all;
- legal certainty, in that it should be possible to foresee how the law will be applied.

1.2.1. The principle is particularly important in respect of Community legislative acts, which must fit into a system which is not only complex, but also multicultural and multilingual (see Guideline 5).

1.2.2. The aim in applying this principle is twofold: first, to render Community legislation more comprehensible; second, to avoid disputes resulting from poor drafting.

1.3. Provisions that are not clear may be interpreted restrictively by the Community courts. If that happens, the result will be just the opposite of what was intended by the incorporation into the text of grey areas intended to resolve problems in negotiating the provision (see Case C-6/98 *ARD* v *Pro Sieben* [1999] ECR I-7599).

1.4. There may obviously be a conflict between the requirement of simplicity and that of precision. Simplification is often achieved at the expense of precision and vice versa. In practice, a balance must be struck so that the provision is as precise as possible, without becoming too difficult to understand. That balance may vary according to the addressees of the provision (see Guideline 3).

Example of a text which did not achieve this balance:

'A compulsory [product] labelling system shall be introduced and shall be obligatory in all Member States from 1 January 2000 onwards. However, this compulsory system shall not exclude the possibility for a Member State to decide to apply the system merely on an optional basis [in respect of the product] sold in that same Member State.'

1.4.1. The author should attempt to reduce the legislative intention to simple terms, in order to be able to express it simply. In so far as possible, everyday language should be used. Where necessary, clarity of expression should take precedence over felicity of style. For example, the use of synonyms and different expressions to convey the same idea should be avoided.

1.4.2. Drafting which is grammatically correct and respects the rules of punctuation makes it easier to understand the text properly in the drafting language as well as to translate it into the other languages (see Guideline 5).

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).

2.1. The various acts each have their own standard presentation and standard formulas (see Guideline 15). They are set out in detail in the Commission's Manual on Legislative Drafting, in the Council's Manual of Precedents and in LegisWrite.

2.2. The drafting style should take account of the type of act.

2.2.1. Since regulations have direct application and are binding in their entirety, their provisions should be drafted in such a way that the addressees have no doubts as to the rights and obligations resulting from them: references to intermediary national authorities should therefore be avoided, except where the act provides for complementary action by the Member States.

Example:

'Every company shall keep a register …'.

2.2.2. Directives (with some exceptions, in particular under the Euratom Treaty) are addressed to the Member States.

Example:

'Member States shall ensure that every company keeps a register …'.

Furthermore, they should be drafted in a less detailed manner in order to leave Member States sufficient discretion in their implementation. If the enacting terms are too detailed and do not leave such discretion, the appropriate instrument will be a regulation, rather than a directive.

2.2.3. Decisions should be drafted to take account of their addressees, but still essentially comply with the formal rules of presentation of acts of general application.

Example:

'[The Member State] may receive financial assistance from the Community relating to the outbreak of African swine fever which was confirmed on …'.

2.2.4. The language of recommendations must take account of the fact that their provisions are not mandatory.

Example:

'It is recommended that Member States …'.

2.3. The manner in which an act is drafted should also take account of whether or not the act is binding.

2.3.1. The choice of verb and tense varies between different types of act and the different languages, and also between the recitals and the enacting terms (see Guidelines 10 and 12).

2.3.2. In the enacting terms of binding acts, French uses the present tense, whilst English generally uses the auxiliary 'shall'. In both languages, the use of the future tense should be avoided wherever possible.

2.3.3. By contrast, in non-binding acts (such as recommendations and resolutions) (see Guideline 7), imperative forms must not be used, nor structures or presentation too close to those of binding acts.

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.

3.1. There are different categories of addressees of legislative acts, ranging from the population at large to specialists in specific fields. Each category is entitled to expect that legislation will use language that they can understand.

3.2. The fact that account is taken of the different categories of person to whom the acts are addressed results in differences in both the statement of reasons and the enacting terms of those acts.

3.3. Ease of transposition also depends on it.

3.4. In addition to the addressees, acts entail intervention by the national authority at different levels, for example, civil servants, scientists and judges. The language of the act should take account of that; texts may include technical requirements whose implementation falls to specialised officials in that field.

Example of targeted drafting:

'Article 3

Counterfeit Analysis Centre and counterfeit currency database

1. The Counterfeit Analysis Centre (CAC) and the counterfeit currency database (CCD) of the ESCB will be established by and run under the aegis of the ECB. The establishment of the CAC is intended to centralise the technical analysis of and data relating to the counterfeiting of euro banknotes issued by the ECB and the NCBs. All relevant technical and statistical data concerning the counterfeiting of euro banknotes shall be centrally stored in the CCD.

2. …

3. Subject to legal constraints, the NCBs shall provide the CAC with originals of new types of counterfeit euro banknotes in their possession, for the purposes of technical investigation and central classification. The preliminary assessment of whether a specific counterfeit belongs to a classified type or to a new category shall be carried out by the NCBs.'

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.

4.1. The characteristic of good legislative style is the succinct expression of the key ideas of the text. Illustrative clauses, intended to make the text clearer for the reader, may give rise to problems in interpretation.

4.2. The text should be internally consistent.

4.2.1. The scope must be respected throughout the act. Rights and obligations must not go beyond those stated to be covered by the act in question, nor extend to other fields.

4.2.2. Rights and obligations must be coherent and not contradictory.

4.2.3. A text that is essentially temporary must not comprise provisions of a permanent nature.

4.2.4. A basic act must not contain detailed provisions, which could be placed in an implementing measure.

4.3. Acts should also be consistent with regard to other acts of Community legislation.

4.3.1. In particular, it is necessary to avoid overlap and contradictions with respect to other acts within a given field.

4.3.2. Doubts as to the applicability of other acts must also be avoided (see also Guideline 21).

4.4. Sentences should express just one idea, whilst an article must group together a number of ideas having a logical link between them. The text must be split into easily assimilated subdivisions (see table in Guideline 15) following the progression of the reasoning, since an excessively compact block of text is hard for both the eye and the mind to take in. This must not, however, result in sentences being artificially and unduly broken up.

4.5. Each article should contain a single provision or rule. Its structure must be as simple as possible.

4.5.1. It is not necessary for interpretation, nor desirable in the interest of clarity, for a single article to cover an entire aspect of the rules laid down in an act. It would be far better to deal with that aspect in several articles grouped together in a single section (see Guideline 15).

4.5.2. Particularly in the initial stages of drafting an act, articles should not be too complex in structure. Drafts and proposals for acts will be subject to deliberations and negotiations throughout the adoption procedure which, in most cases, will result in further additions and refinements. Subsequent amendments of the act, which are often numerous, will also be difficult to insert if the articles are already overloaded.

Example of a text not complying with those principles:

'4. Member States may take measures to derogate from paragraph 2, in respect of a given information society service, if the following conditions are fulfilled:

(a) the measures shall be:

(i) necessary for one of the following reasons:

— public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons;

— the protection of public health;

— public security, including the safeguarding of national security and defence;

— the protection of consumers, including investors;

(ii) taken against a given information society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;

(iii) proportionate to those objectives;

(b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:

— asked the Member State referred to in paragraph 1 to take measures and the latter did not take measures, or they were inadequate;

— notified the Commission and the Member State referred to in paragraph 1 of its intention to take such measures.'

4.6. It is sometimes easier to draft complicated sentences than make the effort of synthesis necessary to achieve clear wording. However, this effort is essential in order to achieve a text which can be easily understood and translated.

4.7. The extent to which abbreviations should be used depends on the potential addressees. The abbreviation should be familiar to them or be clearly defined when first used (for example: 'European Central Bank, hereinafter "ECB"').

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.

5.1. A person drafting a Community act of general application must always be aware that his text must satisfy the requirements of Council Regulation No 1, which requires the use of all the official languages in legal acts. That entails additional requirements beyond those which apply to the drafting of a national legislative text.

5.2. First, the original text must be particularly simple, clear and direct, since any over-complexity or ambiguity, however slight, could result in inaccuracies, approximations or real mistranslations in one or more of the other Community languages.

Example of drafting to be avoided:

'The market prices of [product X] shall be the prices ex-factory, exclusive of national taxes and charges:

(a) of the fresh product packaged in blocks;

(b) raised by an amount of [EUR X] to take account of the transport costs necessary.'

Text to be preferred:

'The market prices of [product X] shall be the prices ex-factory of the fresh product packaged in blocks, exclusive of national taxes and charges.

Those prices shall be raised by an amount of [EUR X] to take account of the transport costs necessary.'

5.2.1. Elliptical turns of phrase or short cuts are to be avoided. It is a false economy to use them to convey a message so complex that an explanation is called for.

Example of drafting to be avoided:

'If products do not satisfy the requirements laid down in Article 5, the Member States shall take all necessary measures to restrict or prohibit the marketing of those products or to ensure they are withdrawn from the market, subject to penalties for the other eventuality decided on by the Member States.'

Text to be preferred:

'If products do not satisfy the requirements laid down in Article 5, the Member States shall take all necessary measures to restrict or prohibit the marketing of those products or to ensure they are withdrawn from the market.

Member States shall determine the penalties to be applied in the event of failure to comply with those restrictions, prohibitions or withdrawal from the market.'

5.2.2. Overly complicated sentences, comprising several phrases, subordinate clauses or parentheses (interpolated clauses) are also to be avoided.

Example of drafting to be avoided:

'All parties to the agreement must have access to the results of the work, subject to the understanding that research institutes have the possibility to reserve use of the results for subsequent research projects.'

Text to be preferred:

'All parties to the agreement must have access to the results of the work.

However, research institutes may reserve use of the results for subsequent research projects.'

5.2.3. The grammatical relationship between the different parts of the sentence must be clear. There should be no doubt, for example, as to whether an object relates to the verb in the main clause or to that in a subordinate clause.

Example of drafting to be avoided:

'… in order to understand and to be able correctly to apply these provisions …'.

5.2.4. Jargon, certain vogue words and Latin expressions used in a sense other than their generally accepted legal meaning are also to be avoided.

For example:

in French: *'une approche proactive'*, *'en synergie avec'*;

in English: 'proactive', 'integrated resource management system', 'quasi-abolition of central *ex-ante* visa controls';

'in fine' in the sense of 'in conclusion', *'a contrario'* in the sense of 'on the contrary'.

5.3. Second, the use of expressions and phrases — in particular, but not exclusively, legal terms — too specific to the author's own language or legal system, will increase the risk of translation problems.

Two points, in particular, must be borne in mind:

5.3.1. Certain expressions in one language — and in particular quite common ones such as the French *'sans préjudice'* — have no equivalent in other Community languages. In those languages, they can therefore only be translated using circumlocutions and approximations, which inevitably result in semantic divergences between the various language versions. Expressions which are too specific to one language should therefore be avoided as far as possible.

5.3.2. As regards actual legal terminology, terms which are too closely linked to national legal systems should be avoided.

Example:

The concept of *'faute'*, which is well known in French law, has no direct equivalent in other legal systems (in particular, English and German law); depending on the context, terms such as *'illégalité'*, *'manquement'* (in relation to an obligation), etc., which can easily be translated into other languages ('illegality', 'breach', etc.) should be used instead.

5.4. The aim is that, as far as possible, and taking account of the specific nature of Community law and its terminology, those called on to apply or interpret the act in each Member State (officials, judges, lawyers, etc.) must perceive it not as a 'translation' in a negative sense — but as a text which corresponds to a certain legislative style. Texts peppered with loan words, literal translations or jargon which are hard to understand are the

source of much of the criticism of Community legislation which is, as a result, regarded as alien.

5.5. Finally, two essentially practical comments must be made as to the relationship between the original text and translations of it.

5.5.1. First, the author must ensure that translators can immediately identify the sources drawn on in the original text. If a passage in the original text has been taken from an existing text (Treaty, directive, regulation, etc.) that must be clear from the text or indicated separately, where necessary by appropriate electronic means (see Guideline 6). There is a risk that any hidden citations without a reference to the source will be translated freely in one or more languages, even though the author specifically intended to use the authentic wording of an existing provision.

5.5.2. Second, the author must realise that comments from translators and, more generally, all departments which carry out a linguistic check of the text can be extremely useful. Such checks provide an opportunity to identify any errors and ambiguities in the original text, even after a lengthy gestation period and even — perhaps especially — when the drafting has been the subject of much discussion between a number of people. The problems encountered may then be brought to the attention of the author. In many cases, the best solution will be to alter the original, rather than the translation.

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.

6.1. In order to aid comprehension and interpretation of a legislative act, the text must be consistent. A distinction can be drawn between formal consistency, concerning only questions of terminology, and substantive consistency, in a broader sense, concerning the logic of the act as a whole.

Formal consistency

6.2. Consistency of terminology means that the same terms are to be used to express the same concepts and that identical terms must not be used to express different concepts. The aim is to leave no ambiguities, contradictions or doubts as to the meaning of a term. Any given term is therefore to be used in a uniform manner to refer to the same thing and another term must be chosen to express a different concept.

6.2.1. This applies not only to the provisions of a single act, including the annexes, but also to provisions of related acts, in particular implementing acts and all other acts in the same area. In general, terminology must be consistent with the legislation in force.

6.2.2. Words must be used in their ordinary sense. If a word has one meaning in everyday or technical language, but a different meaning in legal language, the phrase must be formulated in such a way as to avoid any ambiguity.

6.2.3. In the interests of precision and to avoid problems of interpretation, it may be necessary to define a term (see Guideline 14).

Substantive consistency

6.3. **Consistency of terminology must also be checked with regard to the content of the act itself. There must be no contradictions inherent in the act.**

6.4. **Definitions must be respected throughout the act. Defined terms must be used in a uniform manner and their content must not diverge from the definitions given.**

Different parts of the act

(Guidelines 7 to 15)

7

All Community acts of general application shall be drafted according to a standard structure (title — preamble — enacting terms — annexes, where necessary).

7.1. The 'title' comprises all the information in the heading of the act which serves to identify it. It may be followed by certain technical data (reference to the authentic language version, relevance for the EEA, serial number) which are inserted, where appropriate, between the title proper and the preamble.

7.2. 'Preamble' means everything between the title and the enacting terms of the act, namely the citations, the recitals and the solemn forms which precede and follow them.

7.3. The 'enacting terms' are the legislative part of the act. They are composed of articles, which may be grouped in titles, chapters and sections (see table in Guideline 15), and may be accompanied by annexes.

For the respective parts of the standard structure, see the Guidelines on the specific parts.

For models of standard acts, consult the models in the annex, taken from LegisWrite.

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.

8.1. The title proper, that is to say, the formula chosen to give, in the title, certain indications as to the main subject matter of the act must, in particular, make it possible to determine what is (or is not) concerned by the act. It must give as clear an indication as possible of the content of the act. Authors should not encumber the title with extraneous information, but, rather, use keywords characteristic of the different areas of Community

legislation (it is useful, in that context, to refer to the analytical structure of the Directory of Community legislation in force).

8.2. Authors should therefore consider what information must appear in the title in order for a reader directly concerned (for example, not every farmer, but every apple producer) to be prompted to read the act bearing that title.

Let us take, for example, the title 'Regulation … reimposing a definitive anti-dumping duty on imports of leather handbags originating in the People's Republic of China and sold for export to the Community by Gainth Industrial Ltd., Macia Company Ltd, Yen Sheng Factory Ltd, Dongguan All Be Right Leathern Products Co. Ltd and Panyu Simone Handbag Ltd and amending Council Regulation (EC) No 1567/97 in order to apply the individual duties determined for two exporters to related companies which have commenced manufacture of leather handbags'.

That title was amended to read as follows:

'Regulation … reimposing a definitive anti-dumping duty on imports of leather handbags originating in the People's Republic of China and sold for export to the Community by certain exporting producers and amending Regulation (EC) No 1567/97'.

8.3. The title of the act must be different from the titles of other acts in force (but see point 8.4).

8.4. Acts amending earlier acts are a special case. The title is incomplete unless it mentions all the acts amended, by number. Without such a reference, it is not possible to find all the amendments to a given act. If the sole purpose of the act in question is to amend another act, either the title and number of the act to be amended is mentioned, or its number and the purpose of the amendment. In contrast, if the act in question lays down autonomous provisions and consequently amends another act in a purely subsidiary manner, only the number of that act is given.

8.5. Another case which should be mentioned is that of the title of implementing acts, which refers to the basic act by number and title, in the case of general provisions, and by number and area concerned, in the case of specific provisions.

8.6. For individual acts, the title is followed, as appropriate, by reference to the authentic language or languages.

Short title

8.7. A short title for a legislative act is less useful in Community law — where acts are identified by a combination of numbers and letters (for example '1999/123/EC') — than in systems which do not have such a system of numbering. In certain cases, however, a short title has come to be used in practice (for example, Regulation (EEC) No 4064/89 = 'the Merger Regulation') and the author should consider, when drafting the act, whether such a title could be useful.

8.8. The following rules apply to a short title:

- it is created when the act is adopted, in anticipation of its future utility, in view of the importance of the act; it is not recommended where a number of related acts exist in the same field, when it could cause confusion;
- it does not replace use of the full title when the act is referred to for the first time in a later act;
- its use is not compulsory (the use of letters and numbers could be a more convenient and more certain means of reference, depending on the circumstances);
- if it is used, it is the only permitted abbreviation of the title of the act in question.

To summarise:

8.9. The full title of a legislative act comprises:

(1) an indication of the type of act;

(2) the abbreviation of the Community concerned, the number of the act and the year;

(3) the name of the institution or institutions which adopted the act;

(4) the date of adoption;

(5) a succinct indication of the subject matter.

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.

9.1. The citations, at the beginning of the preamble, indicate:

- the legal basis of the act, that is to say, the provision which confers competence to adopt the act in question;
- proposals, recommendations, initiatives, drafts, requests, opinions which must be obtained ([1]) and, where appropriate, the procedure followed (in particular: co-decision, cooperation);
- certain opinions and other non-mandatory procedural steps, in particular opinions of the European Parliament sought where consultation is not mandatory.

Check that items cited are actually citations and that they should not be mentioned in another part of the act (see points 9.13 and 9.14).

Presentation

9.2. Citations are largely standardised (in English, most commonly beginning with 'Having regard to').

Legal basis

9.3. The first citation is a general reference to the Treaty which constitutes the general basis for the action that is being taken.

The citation is drafted as follows: 'Having regard to the Treaty establishing the European Community …' or '… the European Atomic Energy Community …' or '… the Treaty on European Union'.

If more than one Treaty is to be referred to, they should be cited in the following order: EC, Euratom.

([1]) For opinions under the Comitology procedure, see point 10.17.1.

9.4. If the direct legal basis of the act is a Treaty provision, the general citation is accompanied by the words ', and in particular', followed by the relevant article ([2]).

Example:

'Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,'

9.5. If, by contrast, the direct legal basis of the act is to be found in secondary legislation ([3]), the particular act concerned is cited in a second citation, with the relevant article, preceded by the words ', and in particular'.

Example:

'Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals (*), and in particular Article 13(5) thereof,'

9.6. The legal basis should be clearly distinguished from provisions which determine the purpose, conditions and substantive aspects of the decisions to be taken. Purely procedural provisions (for example, Articles 251 and 300 of the EC Treaty) do not constitute legal bases.

For example, a regulation establishing a common organisation of an agricultural market must cite Article 37 of the EC Treaty, which gives the Council power to act by qualified majority on a proposal from the Commission after consulting the European Parliament, rather than Article 33, which defines the objectives of the common agricultural policy, or Article 34, which sets out the principles on which the common organisations are to be based.

9.7. International agreements concluded in accordance with the procedure set out in Article 300 of the EC Treaty and acts adopted pursuant to the relevant provisions of Title IV of the EC Treaty are special cases.

([2]) Where an act is based on a provision of an Act of Accession, the formula used is: 'Having regard to the Act of Accession of …, and in particular Article ... thereof' or '…, and in particular Article ... of Protocol ... thereto.'

([3]) The citation of the provision of secondary legislation is as follows: the citation sets out the full title, followed by a footnote reference; the footnote gives the OJ reference (series, number, date and page) and, where appropriate, an indication of the last amendment (number of the act, followed by its OJ reference).

Example:

'Having regard to the Treaty establishing the European Community, and in particular Article 37, in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,'

9.8. Where an act sets out in a series of articles the purpose of future decisions and indicates in another article the institution empowered to take those decisions, it is the latter article alone which is to be cited.

9.9. Similarly, where an act contains within one article a paragraph on the purpose of the measures and another giving power to act, it is only the latter paragraph ([4]), rather than the entire article, that is cited.

For instance, in adopting detailed rules governing tariff quotas for milk and milk products, it is Article 29(1) of Council Regulation (EC) No 1255/1999 which will be cited.

Procedural acts

9.10. Citations of preparatory acts and, in particular, Commission proposals and any amendments thereto, opinions delivered by the European Parliament, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions must also be followed by a footnote reference, the footnote showing the Official Journal in which the opinion was published (for example: OJ C 128, 9.6.1975, p. 11). If the opinion has not yet been published, the date on which it was delivered should be shown.

Example:

'(...) Opinion delivered on 10 April 1992 (not yet published in the Official Journal).'

9.11. The citation concerning the co-decision procedure is worded as follows:

'Acting in accordance with the procedure laid down in Article 251 of the Treaty,'

([4]) Where a paragraph contains two empowering provisions in separate subparagraphs, for example, one for the Council and one for the Commission, the appropriate subparagraph should be cited.

followed by a footnote setting out all the stages of the procedure. Where conciliation has been successful, the recital will read as follows:

'Acting in accordance with the procedure laid down in Article 251 of the Treaty in the light of the joint text approved on […] by the Conciliation Committee,'.

9.12. A procedural citation should be used for certain acts adopted on a legal basis which refers to an adoption procedure contained in another article of the Treaty. For example, Article 110(3) (legal basis) refers to the procedure laid down in Article 107(6). The latter article should be referred to in the same manner as Article 251.

References which do not constitute citations

9.13. When drafting citations, care should be taken to ensure that they refer to either the legal basis, or the procedure. If reference to the content of provisions other than the legal basis is necessary for a proper understanding of the enacting terms or with a view to checking their lawfulness, this should be made in the recitals. More general references could be made, for background information, in the explanatory memorandum.

9.14. The general institutional provisions of the EC Treaty (for example, Articles 205 and 249), which also apply to the act in question, must not be mentioned in the citations.

NB: Reference to certain preliminary steps (opinions of technical bodies, non-mandatory consultations) is normally made at the end of the citations using formulas such as 'Having regard to the opinion of …', 'After consulting …'.

Examples of such references at the end of the citations:

— in a Council decision adopting a research programme:

'Having regard to the opinion of the Scientific and Technical Research Committee (Crest)',

— in an internal agreement, or a decision of the Representatives of the Governments of the Member States meeting within the Council:

'After consulting the Commission', or

'By agreement with the Commission',

— in Commission acts adopted under the advisory committee procedure:

'After consulting the Advisory Committee on [name of committee]' ([5]),

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.

10.1. The 'recitals' are the part of the act which contains the statement of reasons for the act; they are placed between the citations and the enacting terms. The statement of reasons begins with the word 'Whereas:' and continues with numbered points (see Guideline 11) comprising one or more complete sentences. It uses non-mandatory language and must not be capable of confusion with the enacting terms.

10.2. Regulations, directives and decisions must state the reasons on which they are based. The purpose is to enable any person concerned to ascertain the circumstances in which the enacting institution exercised its powers as regards the act in question (see Case 24/62 *Germany* v *Commission* [1963] ECR 63), to give the parties to a dispute the opportunity to defend their interests and to enable the Community judicature to exercise its power of review.

10.3. If it is necessary to recall the historical context of the act, the facts are set out in chronological order. The reasoning in relation to the specific provisions of the act follows the order of those provisions.

Ideally, the statement of reasons should set out:

— a succinct statement of the relevant points of fact and of law; and

— the conclusion that it is therefore necessary or appropriate to adopt the measures set out in the enacting terms.

10.4. No more precise indication of the **content** of a statement of reasons for a Community legal act can be given. It is impossible to reduce to a uniform

([5]) In contrast, reference to consultation of the Management Committee or Regulatory Committee is made in the final recital (see point 10.17).

formula the reasoning for general and individual acts covering different fields or adopted in different circumstances.

Certain basic rules for the statement of reasons can, however, be laid down

10.5. The recitals should state concisely the reasons for the main provisions of the enacting terms of the act. Accordingly:

10.5.1. The recitals should constitute a **genuine statement of reasons;** they should not set out the legal bases (which must be in the citations) nor should they repeat the passage in the provision already cited as the legal basis which empowers the institution to act. Furthermore, recitals which do no more than state the purpose of the act or reproduce or even paraphrase its provisions without stating the reasons for them are superfluous or pointless.

10.5.2. Recitals which state that certain measures should be taken, without giving reasons for them, must not be included.

10.5.3. The statement of reasons should not consist, in whole or in part, merely of a reference to the reasons given for another act (see Case 230/78 *Eridania* v *Ministry of Agriculture and Forestry* [1979] ECR 2749 and Case 73/74 *Papiers Peints de Belgique* v *Commission* [1975] ECR 1514).

10.5.4. The recitals must relate to the enacting terms, and the order in which they appear must correspond as far as possible to that of the provisions for which they give the reasons.

10.6. Naturally, there is no need to give reasons for each individual provision. However, grounds must always be given for repealing an act or deleting a provision (see also point 10.14).

10.7. Any recital not serving to give the reasons for the enacting terms should be omitted, except in the following cases:

— with regard to Article 308 of the EC Treaty, where the wording to be used is as follows:

'The Treaty does not provide, for the adoption of [this Decision], powers other than those under Article 308,'

— where there may be a choice between different legal bases, for example: between Articles 37 and 94 or 95; between Articles 95 and 175; between Articles 26, 37 and 133 of the EC Treaty; in this case, the reasons for the choice of legal basis should be given.

10.8. Where a particular legal basis provides for recourse to legal acts without specifying the type ('The Council shall adopt the measures necessary …') and it is not clear from the content of the measure to be taken which of the Community legal acts is appropriate, the reasons why the particular act has been chosen should be given. If, in a given case, for instance, it would be possible to legislate by means of a directly applicable regulation, an explanation should be given of why it is preferable to adopt only a directive which must be transposed into national law. The author must also bear in mind the instructions of the Protocol annexed to the EC Treaty on the application of the principles of subsidiarity and proportionality.

The extent of the obligation to state reasons depends on the nature of the act or provision in question

(a) Acts of general application

10.9. In **basic** legislative acts, the statement of reasons should seek to expound the general philosophy of the act rather than give all the reasons for each specific provision. But specific reasons will be given for a number of individual provisions either because of their importance or because they are not inherent in the general philosophy.

10.10. In **implementing** acts, the reasons to be given will necessarily be more specific, though an effort should always be made to be concise.

10.11. However, the reasons given for such acts do not need to recount, much less to assess, the facts on the basis of which the act is adopted. In particular, a detailed statement of reasons (including calculations) for acts such as those setting import duties or agricultural refunds would be impracticable and it is enough simply to refer to the criteria and methods used in the calculations by indicating the general situation which led to adoption of the act, on the one hand, and the general objectives which it is intended to achieve, on the other (see Case 16/65 *Schwarze* v *Einfuhr-und Vorratsstelle für Getreide und Futtermittel* [1965] ECR 877).

(b) Individual acts

10.12. The reasons on which an individual act is based should be stated more precisely, particularly if it is refusing an application.

10.13. That is true, for example, of competition decisions, in which complicated situations of law and of fact must be described; since the decision must nevertheless remain clear, an effort should also be made to be concise.

(c) Special provisions

10.14. Particular care needs to be taken with the statement of reasons for certain provisions such as:

- derogations;
- departures from the general scheme of rules;
- exceptions to a general principle, such as retroactive provisions;
- those liable to be prejudicial to certain interested parties; and
- those which provide for entry into force on the day of publication.

(d) Statement of reasons for subsidiarity and proportionality of the act

10.15. For these principles, a specific statement of reasons should be given.

10.15.1. When exercising their legislative powers, the institutions have regard to the principle of subsidiarity and state how they are doing so in the explanatory memorandum and, more succinctly, in the recitals.

10.15.2. The text of the subsidiarity recital will vary from one case to another, but follows the structure in point 10.15.3. However, it is important to remember the distinction made in Article 5 of the EC Treaty between areas where the Community has exclusive powers and those where powers are shared ([6]).

10.15.3. In areas where the Community has exclusive powers, all that the third paragraph of Article 5 requires is compliance with the principle of proportionality. The recital will therefore contain in particular the following elements:

> 'In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of [specify the general objective] to lay down rules on [refer to the specific measures governed by the act in question]. This [name of the act] does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty'.

([6]) See, in this context, the legislative checklist annexed to the General Guidelines for legislative policy, adopted by the Commission on 18 January 1996 (SEC(1995) 2255/7).

10.15.4. Where the Community does not have exclusive powers, the recital will contain references both to subsidiarity *stricto sensu* and to proportionality, as set out in the following example:

'Since the objectives of the action to be taken [specify the objectives] cannot be sufficiently achieved by the Member States [give reasons] and can therefore, by reason of [specify the scale or effects of the action], be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this [name of the act] does not go beyond what is necessary in order to achieve those objectives'.

Comitology recital

10.16. In basic acts involving a committee procedure for the exercise of the Commission's implementing powers, a standard recital refers to Council Decision 1999/468/EC ([7]).

Reference to consultations

10.17. Council Decision 1999/468/EC lays down the procedures for the exercise of implementing powers conferred on the Commission. The consultations provided for in that Decision are referred to in the preambles to the acts adopted by the Commission in the exercise of those powers.

10.17.1. Consultation of a management committee (Article 4 of the Decision) or a regulatory committee (Article 5 of the Decision) always produces legal effects, which will vary according to the provisions of the basic act. The fact that a committee has been consulted is not referred to in a citation, but in the final recital. (For reference to consultation of an advisory committee, see point 9.14.)

10.17.2. The formula to be used differs accordingly.

Insertion of financial recitals in legislative acts

10.18. On 6 May 1999, the European Parliament, the Council and the Commission adopted an Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure ([8]), which replaces, with effect

([7]) OJ L 184, 17.7.1999, p. 23.
([8]) OJ C 172, 18.6.1999, p. 1.

from the same date, the Declaration by the European Parliament, the Council and the Commission of 6 March 1995 on the incorporation of financial provisions into legislative acts ([9]). Point 33 of the Agreement states that acts concerning multiannual programmes adopted under the co-decision procedure are to contain a provision in which the legislative authority lays down the financial framework for the programme for its entire duration. That provision is accompanied by the following standard-form recital:

'This [act] establishes a financial framework for the entire duration of the programme which is to be the principal point of reference for the budgetary authority, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure.'

10.19. In accordance with point 34 of the Interinstitutional Agreement, acts concerning multiannual programmes not subject to the co-decision procedure do not contain an 'amount deemed necessary'. Commission proposals therefore contain no financial provisions for acts other than those mentioned in point 10.18. If the Council wishes to include a financial reference, it will be taken as illustrating the will of the legislative authority and will not affect the powers of the budgetary authority as defined by the Treaty. This provision should be mentioned in all acts which include such a financial reference ([10]).

10.19.1. Accordingly, these acts contain the following recital:

'A financial reference amount, within the meaning of point 34 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure is inserted in this [act] for the entire duration of the programme, without the powers of the budgetary authority as defined by the Treaty being affected thereby.'

10.19.2. If there has been an agreement with the European Parliament on the financial reference amount under the conciliation procedure provided

([9]) OJ C 102, 4.4.1996, p. 4.

([10]) The corresponding provision in the enacting terms is worded as follows:
'The financial reference amount for the implementation of [the programme] for the period … shall be … .
Annual appropriations shall be authorised by the budgetary authority within the limit of the financial perspective.'

for by the Joint Declaration of 4 March 1975 ([11]), it will be treated as a reference amount within the meaning of point 10.18.

10.19.3. In that event, the recital set out below will be used in place of that in point 10.18 but the enacting terms will remain the same:

'The European Parliament and the Council, in accordance with the conciliation procedure provided for in the Joint Declaration of 4 March 1975 ..., have reached agreement on an amount which, for the entire duration of the programme, is to be the prime reference within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure.'

It is clear from the foregoing that there is scope for some standardisation in the statement of reasons. Formulas will be incorporated in LegisWrite which, with slight modifications, may serve as models.

11 Each recital shall be numbered.

11.1. This practice is justified by obvious considerations of clarity of legislation and ease of reference, both before and after adoption of the text.

11.2. For the same reasons, this practice is of universal application, that is to say, it applies not only to legislative acts of general application, but also to all acts of the institutions drafted in solemn form (title, preamble, enacting terms).

11.3. The presentation is as follows:

'Whereas:

(1) [Begin with a capital letter] …

(2) [Begin with a capital letter] …'.

11.4. A sole recital is not numbered.

([11]) OJ C 89, 22.4.1975, p. 1.

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.

Provisions of a non-normative nature in binding acts

12.1. Legislative acts should go straight to the point. Binding acts should lay down rules, including provisions setting out the information (for example: scope, definitions) necessary to understand and apply the act correctly. Anything else is superfluous: desires, intentions and declarations do not belong in the enacting terms of a binding act. There is a contradiction between 'desirable' and 'binding'.

Here is an example from a directive of a provision of a non-normative nature, which should be avoided:

'In order to encourage the use of eco-labelled products, the Commission and other institutions of the Community, as well as other public authorities at national level should, without prejudice to Community law, set an example when specifying their requirements for products.'

This provision clearly expresses a desire which imposes no obligation on its addressees. It therefore belongs not in a binding act but in a communication or recommendation, to accompany the act in question.

Provisions which reproduce or paraphrase passages or articles of the Treaties or other acts

12.2. This is a pointless and dangerous practice. Let us take the example of an act based on Article 40 of the EC Treaty, which is duly referred to in the citations. It is pointless to draft a paragraph which repeats Article 39(1),

according to which 'Freedom of movement for workers shall be secured within the Community'. The author must indicate how he intends to implement that provision, and not repeat it. Furthermore, such repetition is dangerous, since any departure from the original wording may give the impression that a different result was intended, and even give rise to a sort of presumption to that effect.

Provisions which merely enunciate the content of other articles

12.3. Such provisions are commonly worded as follows:

> 'With a view to establishing that system, the Council shall adopt the measures provided for in Articles 3, 4 and 5.'

They add nothing to the legislative text, since the articles in question themselves contain all the necessary information concerning their implementation. Furthermore, such a structure creates confusion as to the true legal basis for a future implementing measure: is it the article containing the reference, or the article to which reference is made?

Provisions which repeat the title of the act

12.4. Even when it is not possible to avoid using words forming part of the title of the act (for example, in the article which defines the subject matter and scope of the act), there must be some added value, with a more detailed definition of the parameters of the text. Otherwise, such provisions have no normative content and may, moreover, create confusion as to the rights and obligations established by 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.

13.1. The 'subject matter' is what the act deals with, whilst 'scope' refers to the categories of situations of fact or of law and the persons to which the act applies.

13.2. A first article, defining the subject matter and scope, is common in international agreements and is also often found in Community acts. Whether or not it is useful should be determined on a case-by-case basis.

13.3. It is certainly not useful if it merely paraphrases the title. In contrast, it may provide the reader with information which was not included in the title in the interests of brevity but enables him to determine, from the outset, whether or not he is concerned by the act. For precisely that reason, care must be taken not to mislead the reader.

For example, if such an article states that the act applies 'to vehicles having a maximum speed of 25 km/h or more', the act in question may certainly contain some provisions which apply only, for example, to vehicles having a maximum speed of 50 km/h, since such vehicles do in any event fall within the defined scope. By contrast, there must be no provision relating to a vehicle with a maximum speed of, for example, 20 km/h, since, having read the article on scope, the manufacturer or owner of such a vehicle might not read the remainder of the enacting terms.

13.4. Sometimes the distinction between scope and definition is not clear. In the following example, the definition given also states the scope of the act:

'Article 1 — For the purposes of this Directive, "vehicle" means any motor vehicle intended for use on the road, with or without bodywork, having at least four wheels and a maximum design speed exceeding 25 kilometres per hour, and its trailers, with the exception of vehicles which run on rails, agricultural or forestry machinery, and public-works vehicles.'

That article could just as easily read 'Article 1 — This Directive applies to any motor vehicle intended [remainder unchanged] …', with the sentence ending with the words 'hereinafter "vehicle" '. This solution is normally to be preferred. It makes it possible to state the scope more clearly and more directly.

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.

14.1. All terms should be given their meaning in everyday or specialised language. For the sake of legal clarity it may, however, be necessary for the act itself to define words it uses. That is, *inter alia*, true where a term has several meanings but must be understood in only one of them or if, for the purposes of the act, the meaning is to be limited or extended with respect to the normal meaning given to that term. The definition must not be contrary to the ordinary meaning of the term.

The defined term should be used with the specified meaning throughout the act.

14.2. The second sentence of the guideline describes a common drafting error.

14.2.1. An example of poor drafting:

> '(d) "complaint" means any information or report submitted by ... any person with an interest in the safety of the ship ... unless the Member State concerned deems the report or complaint to be manifestly unfounded; the identity of the person lodging the report or the complaint must not be revealed to the master or the owner of the ship concerned.'

14.2.2. The underlined part of the sentence is not a definition, but constitutes a separate rule.

14.3. The rule must be placed in the normative provisions. In our example, the author could insert it in the appropriate place in one of the other articles ('… If the Member State receives a complaint which it does not consider to be manifestly unfounded, … , it …'), adding a second subparagraph with the sentence 'The identity of the person …'.

14.4. The requirement that autonomous rules must not be included is not merely a matter of concern for logical rigour. If such elements are included in the definition, there is a danger that, since all the normative elements are not in the same place, the reader will overlook some when interpreting them.

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.

15.1. The following textual components of the standard structure of the enacting terms comply with relatively strict rules of presentation:

(1) the subject matter and scope (see Guideline 13);

(2) the definitions (see Guideline 14);

(3) the provisions conferring implementing powers. The provisions relating to 'committee procedures' follow the rules of presentation reflected in the LegisWrite models;

(4) implementing measures. The provisions concerning the detailed rules and dates for transposition of a directive by the Member States follow an established format (see LegisWrite). Other provisions, for example those concerning penalties to be provided for at national level, or legal remedies to be afforded, also have a standard form;

(5) transitional and final provisions. They cover:

— any repeal of earlier acts (see Guideline 21). If the date of repeal is not the same as the date of entry into force of the act to be adopted, that date should be clearly stated;

— rules for transition from the old system to the new. The language used and, above all, the dates mentioned must leave no doubt as to

the period during which all or part of the old rules continue to apply once the new system is in force;

— provisions amending earlier acts (see Guideline 18);

— the period during which the act is to apply (see Guideline 20).

15.2. The other elements — the rights and obligations and procedural provisions — constitute the truly normative part of the act, and their form depends on the objective of the act and the degree of complexity of the system provided for.

15.3. When an article contains a list, care must be taken to ensure that each element of the list is coordinated and directly related to the introductory words. To that end, it is preferable to avoid inserting autonomous sentences or subparagraphs in a list.

Example of drafting to be avoided:

'The competent authorities shall carry out controls in order to ensure:

— consistency between purchases and deliveries;

They shall conduct the inspection in particular by reference to Community processing coefficients, where they exist. In all other cases, inspection shall rely on the coefficients generally accepted by the industry concerned:

— the correct end use of the raw materials;

— compliance with Community provisions.'

Text to be preferred:

'The competent authorities shall carry out controls in order to ensure consistency between purchases and deliveries.

They shall conduct the inspection in particular by reference to Community coefficients, where they exist. In all other cases, inspection shall rely on the coefficients generally accepted by the industry concerned.

The controls shall also be intended to ensure the correct use of raw materials and compliance with Community provisions.'

15.4. **The structural subdivisions of the enacting terms of a legislative act are set out in the following table. Acts with a simple structure comprise articles and subdivisions of articles. The higher subdivisions of acts begin with chapters, divided, if necessary, into sections. Only when the text is extremely complex can chapters be grouped in titles which may, where necessary, be grouped in parts.**

Designation	Symbol	Method of reference	Comments
I. Higher divisions			These divisions may or may not have a title
— Part	Part I, II (or Part One, Part Two)	(in) Part I, II (or Part One, Part Two)	Used (together or singly) in certain long and highly structured texts
— Title	Title I, II	(in) Title I, II	
— Chapter	Chapter I, II (or 1, 2)	(in) Chapter I, II (or 1, 2)	
— Section	Section 1, 2	(in) Section 1, 2	
II. Basic unit			Basic units may or may not have a title
— Article	Sole Article or	(in the) Sole Article	Continuous numbering (even where there are higher divisions)
	Article 1, 2	(in) Article 1, 2	
or			
— Point	I, II (or A, B)	(in) point I, II (A, B)	Used in certain recommendations, resolutions, declarations and statements
	or I. (or A. or 1.)	(in) point I (A or 1)	
III. Subdivisions			Subdivisions do not have a title
— Paragraph (numbered)	1., 2.	(in) paragraph 1, 2	Independent subdivisions of an article
— Paragraph (unnumbered)	None	(in the) first paragraph	Non-independent element of an article
— Subparagraph	None	(in the) first subparagraph	Subdivision of a numbered paragraph
— Point	(a), (b) (1), (2) (i), (ii), (iii), (iv)	(in or at) (point) (a), (b) (in or at) (point) (1), (2) (in or at) (point) (i), (ii)	Generally preceded by an introductory phrase
— Indent	—	in the first indent	
— Sentence	none	in the first sentence	Followed by a full stop

Internal and external references

(Guidelines 16 and 17)

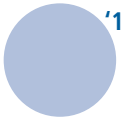
16

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.

Internal and external references

16.1. An internal reference refers to another provision of the same act. External references refer to another act, either in Community legislation or from another source.

16.1.1. Example of an internal reference:



'1. The hazards of a preparation for the environment shall be assessed by one or more of the following procedures:
(a) by a conventional method described in Annex III …'.

16.1.2. Example of an external reference:

'(b) by determining the hazardous properties of the preparation for the environment necessary for appropriate classification in accordance with the criteria set out in Annex VI to Directive 67/548/EEC.'.

16.2. Both internal and external references must be sufficiently precise to enable the reader easily to consult the act to which reference is made.

16.3. External references require extra care. In particular, the act to which reference is made should be sufficiently clear and accessible to the public.

Principle

16.4. Reference should be made to another act only if:

- it makes it possible to simplify the text, by not repeating the content of the provision referred to;
- the comprehensibility of the provision is not affected; and

- the act referred to has been published or is sufficiently accessible to the public.

16.5. Moderation is also called for in the use of references because of the principle of transparency. It should be possible to read and understand a legislative act without consulting other acts. However, the readability of a text should not result in the reproduction of provisions of primary law in secondary legislation (see point 12.2).

16.6. Before deciding whether it is appropriate to make a reference, it may be useful to consider the consequences of any subsequent amendments to the act to which reference is to be made.

Comprehensibility

16.7. A reference should be worded in such a way that the central element of the provision to which reference is to be made can be understood without consulting that provision.

Example:

Rather than: 'Article 15 applies to exports to countries … ,'

use: 'The control procedure laid down in Article 15 shall apply to exports to the countries … .'

Clarity

16.8. The elements of fact in, or legal consequences of, a provision to which reference is to be made should be specified.

16.8.1. References made merely by citing another provision in brackets must be avoided.

16.8.2. The same is true of references made with a view to analogous application (using words such as *'mutatis mutandis'*). It is preferable to state the purpose for which the reference is made, or not to make the reference at all.

16.9. The consequences of references introduced by the words 'without prejudice' are often far from clear. There may, *inter alia*, be contradictions between the act containing the reference, and the act to which reference is thus made. Such references can generally be avoided by better defining the scope. Furthermore, it is unnecessary to use this formula to refer to higher-ranking provisions, which apply in any event.

Example:

Rather than: 'Without prejudice to Directive 91/414/EEC, the articles on classification, packaging, labelling and safety data sheets of this Directive shall apply to plant protection products',

use: 'The articles of this Directive on … shall apply to plant protection products.'

Citation of the act to which reference is made

16.10. Where one act is to be referred to in another act, the title must be given either in full, with the publication source, or in a short form — in particular if the reference is in the title or if the other act has already been cited.

16.10.1. Where the title of an act is referred to in the title of another act:

- the name of the institution is not repeated if both acts are enacted by the same institution;
- the date is omitted, unless the reference is to an unpublished act which has no official serial number or publication number;
- no reference is made to the Official Journal in which it was published; and
- no mention is made of any amending acts.

The act referred to may be cited not by its full title but by a short form with a succinct description of the subject matter.

16.10.2. **In the citations the rule is that the full title should be given. In the case of directives or decisions to be notified which have been published, the publication number is inserted. The full title is followed by a superscript arabic numeral in parentheses referring to a footnote indicating the Official Journal in which the act was published. There is no such footnote in the case of the Treaties establishing the Communities and other well-known acts (for example: Accession Treaties, ACP–EEC Lomé Convention).**

If the act cited (regulation, directive, decision) has been amended, the footnote will include the words '[Act] as amended by …'; if there has been more than one amendment, '[Act] as last amended by …'. Reference to the most recent amending act enables the reader to retrace all the earlier amending acts which are not cited. The amending act is cited by its number and the abbreviation of the Community concerned; the enacting institution is specified only if it is not the same as the institution that adopted the amended act; the date and indication of subject matter are always omitted. The Official Journal reference is put in brackets.

Example:

( ) OJ L …, …, p. … Regulation as [last] amended by Regulation (EC) No …/1999 (OJ L …, …, p. …).

16.10.3. **Where acts are cited for the first time in the recitals, their full title is given, save where that is not necessary for a proper understanding of the text; subsequently, it is sufficient to refer to them by number. The rule for the citation of amending acts is set out in point 16.10.2.**

Example:

First reference: 'Commission Regulation (EC) No 3223/94 of 2 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ( )

( ) OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1498/98 (OJ L …, …, p. …)'.

Subsequent references: 'Regulation (EC) No 3223/94.'

16.10.4. **References to other acts in the enacting terms must be confined to those that are absolutely necessary. It should be possible for the reader to understand the enacting terms in isolation, without having to refer to other acts. The potential problems resulting from amendment or repeal of the act to which reference is made must also be avoided ([12]).**

16.10.5. **It is good legislative practice to mention in the recitals all acts to which reference will subsequently be made in the act. They are to be cited with Official Journal references and (last) amendments; as a result, in the articles, they can be referred to merely by their numbers.**

16.10.6. **Citations in the enacting terms are, as a general rule, dynamic references (see points 16.13 to 16.16) and amending acts are not mentioned.**

([12]) If the act cited is amended, the reference is taken to be to the act as amended. If the act is replaced, the reference is taken to be to the new act. If the act is repealed and not replaced, any lacunae will have to be supplied by means of interpretation. Where acts are recast or codified and articles are renumbered in the process, the changes must be set out in a correlation table annexed to the codified or recast text.

Static references

16.11. A static reference refers to a specific text as it stands on a specific date, by stating the title of the act and the source, and specifying, where appropriate, an amending act.

Examples:

'Articles XX of Regulation … (*) as amended by Regulation … (**).'

'1. For budgetary and own resources purposes ... the European system of integrated economic accounts in force within the meaning of Article 1(1) of Directive 89/130/EEC, Euratom and the legal acts relating thereto, in particular Regulations (EEC, Euratom) No 1552/89 and (EEC, Euratom) No 1553/89 and Decisions 94/728/EC, Euratom and 94/729/EC, shall be the ESA second edition while Decision 94/728/EC, Euratom remains in force.

2. For the purpose of the Member States' reports to the Commission under the excessive deficit procedure laid down in Regulation (EC) No 3605/93, the European system of integrated economic accounts shall be the ESA second edition until the 1 September 1999 reports.'

16.12. Where the provision referred to is amended or repealed, the provision referring to it must also be amended as necessary.

16.13. In the enacting terms of acts of Community law, static references are the exception, rather than the norm. In contrast, references to non-Community acts are, in principle, static.

Dynamic references

16.14. A reference is dynamic if a provision cited is always taken to be the provision with any amendments.

16.15. References in the enacting terms of acts of Community law are, in general, dynamic references.

16.16. Nevertheless, dynamic references may lead to the risk of a legislative act being indeterminate, in the sense that the content of the provision making the reference is not predetermined, but varies according to any subsequent amendments to the provision referred to.

Adaptation of a reference

16.17. It may be necessary for a reference to be adapted where:

- the provision referred to has been deleted and replaced by a new text;
- in the case of a static reference, the provision referred to has been amended;
- an amendment to the provision referred to has unintended repercussions on the provision in which the reference was made.

16.18. For a generalised adaptation, a simple correlation clause is sufficient.

16.18.1. In some cases, it may be appropriate to set out a correlation table in an annex.

Example:

'References to the repealed Directives shall be construed as references to this Directive and be read in accordance with the correlation table set out in Annex IX.'

16.18.2. Establishing the correlation to the new provision in textual form is not recommended.

Example:

'In the following provisions, the words "the last subparagraph of Article 2(4) and Article 3(1) of Regulation (EEC) No 441/69" are replaced by the words "Article 4(7) and Article 5(3) of Regulation (EEC) No 565/80":
— Regulation (EEC) No 776/78, second indent of Article 2,
— Regulation (EEC) No 109/80, second indent of Article 1.'

Circular references

16.19. A circular reference is a reference to another provision which itself refers back to the provision which referred to it. Such references are to be avoided.

Serial references

16.20. A serial reference is a reference to another provision, which itself refers to a third provision, and so on. In the interests of ease of understanding of Community acts, such references are to 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.

17.1. The first sentence is merely a statement of fact. For example, if a decision is adopted as a result of a resolution, the decision is the legislative act and the resolution remains a political act, with no legal binding force.

17.2. The second sentence applies, in particular, to the case of technical standards, which are often drawn up by standardisation bodies, or the like. It is often too onerous to reproduce a lengthy, non-binding act referred to as it stands. This is commonly true, for example, of the description of the conduct of laboratory tests. In such cases, the act in question is merely referred to.

Example:

'The tar, nicotine and carbon monoxide yields referred to in Article 3(1), (2) and (3), which must be indicated on cigarette packets, shall be measured on the basis of ISO methods 4387 for tar, 10315 for nicotine, and 8454 for carbon monoxide.

The accuracy of the indications on the packets shall be verified in accordance with ISO standard 8243.'

It is clear from the context here that the intention was to render compulsory the standard referred to.

17.3. It is possible to freeze the reference to the version of the provision in force at the time the act was adopted, by indicating the number and the date (or year) of the act to which reference is made, or by the use of formulas such as 'in the version of …' (see also points 16.11 to 16.16 concerning static references and dynamic references).

17.4. Nevertheless, if control is to be retained over the text of the non-binding act in question, it should be reproduced. If the non-binding act is not set out in full, it is often still useful to maintain the structure, with certain

points or passages left blank, if necessary with an explanation in a footnote. Likewise, if points or annexes are to be inserted, which did not exist in the act reproduced, they should be numbered '1a', '1b', and so forth. If a point or an annex is inserted before point 1 or Annex I, it will be point 0 or Annex 0.

Example:

'3a. EEC TYPE-APPROVAL (1)

A certificate conforming to that shown in Annex X shall be attached to the EEC type-approval certificate .

…

4. SYMBOL OF THE CORRECTED ABSORPTION COEFFICIENT

[4.1.]
[4.2.]
[4.3.]

4.4. To every vehicle conforming to a vehicle type approved under this Directive there shall be affixed, conspicuously and in a readily accessible place ...

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(1) The text of the annexes is similar to that of Regulation No 24 of the UN Economic Commission for Europe; in particular, where an item of Regulation No 24 has no counterpart in this Directive, its number is given in brackets as a token entry.'

Amending acts

(Guidelines 18 and 19)

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.

Principle of formal amendment

18.1. Partial amendment of an act is usually done by a formal amendment, that is to say, a textual amendment, to the act in question ([13]). The text of the amendment must therefore be inserted into the text to be amended.

Example:

'Article 1

Regulation (EC) No .../... is amended as follows:

1. Article 13(1) is replaced by the following:

"1. The statistical information required by the Intrastat system ..."

2. Article 23 is amended as follows:

(a) In paragraph 1, points (f) and (g) are deleted;

(b) Paragraph 2 is replaced by the following:

"2. Member States may prescribe that ..."

(c) The following paragraph 2a is inserted:

"2a. In the case of providers of statistical information ..."

(d) The following paragraph 4 is added:

"4. The Commission shall ensure publication in the Official Journal ...".'

([13]) Derogations constitute an exception to this rule (see point 18.14).

18.2. Articles, paragraphs or points must not be renumbered, because of the potential problems of references in other acts. Likewise, blanks left by the deletion of articles or other numbered parts of the text should not subsequently be filled by other provisions, except when the content is identical to the text previously deleted.

18.3. In the interests of clarity and in view of the problems of translation into all the official languages, it is recommended that amendments should not be made by inserting or deleting sections of text, other than dates or figures.

No autonomous substantive provisions

18.4. The amending act must not contain new substantive provisions which are autonomous in relation to the act being amended. Since the sole legal effect of the new act is to amend the old one, it exhausts its effects once it enters into force. Only the old act as amended is left in existence and continues to govern the whole of the matter.

18.5. This approach simplifies the codification of legislative texts considerably, since the presence of autonomous provisions within a body of amending provisions leads to a convoluted legal situation.

No amendment of amending acts

18.6. Since an amending act must not contain any autonomous substantive provisions, amending acts must not be amended. Amendments must always relate to the initial act.

Example:

Council Decision 1999/424/CFSP of 28 June 1999 amending Decision 1999/357/CFSP implementing Common Position 1999/318/CFSP concerning additional restrictive measures against the Federal Republic of Yugoslavia ([14]) is a decision which amends a decision (1999/357/CFSP) ([15]) which, in turn, amended another decision (1999/319/CFSP) ([16]).

The title of Decision 1999/424/CFSP should already have indicated that Decision 1999/357/CFSP had amended Decision 1999/319/CFSP. Problems also arise as regards the enacting terms of Decision 1999/424/CFSP. It would have been more appropriate to amend Decision 1999/319/CFSP directly.

([14]) OJ L 163, 29.6.1999, p. 86.
([15]) OJ L 140, 3.6.1999, p. 1.
([16]) OJ L 123, 13.5.1999, p. 3.

Nature of the amending act

18.7. In general, it is preferable for the amending act to be of the same type as the amended act. In particular, it is not recommended to amend a regulation by means of a directive.

18.7.1. However, certain provisions of primary legislation leave the choice of the type of act to the institutions, by granting them power to adopt 'measures' or by expressly mentioning several possible types of act.

Example:

Council Directive 80/217/EEC introducing Community measures for the control of classical swine fever ([17]) was amended by Council Regulation (EEC) No 3768/85 adapting, on account of the accession of Spain and Portugal, certain agricultural acts as regards the voting procedure of the Committees ([18]). Article 2(3) of the Treaty of Accession of Spain and Portugal provided that the institutions of the Communities could adopt, before accession, the measures referred to in Article 396 of the Act of Accession, and that those measures would enter into force subject to and on the date of entry into force of the Accession Treaty.

18.7.2. In addition, the act being amended may have provided for amendment to be made by another type of act.

Amendments to annexes

18.8. Further to the foregoing, amendments to annexes containing technical passages are normally made in the annex to the amending act. This rule may be departed from only when the amendment is a minor one.

Example:

'Annexes II, IV and VI to Regulation (EC) No ... are amended in accordance with the Annex to this Regulation.'

In this case, the amendments in the annex must include introductory formulas which clearly identify the scope of the amendments:

([17]) Council Directive 80/217/EEC of 22 January 1980 introducing Community measures for the control of classical swine fever (OJ L 47, 21.2.1980, p. 11).

([18]) Council Regulation (EEC) No 3768/85 of 20 December 1985 adapting, on account of the accession of Spain and Portugal, certain agricultural acts as regards the voting procedure of the Committees (OJ L 362, 31.12.1985, p. 8).

'Annexes II, IV and VI are amended as follows:

(1) In Annex II, point 2.2.5 is replaced by the following:

"2.2.5 ...".

A simple change will be worded as follows in the enacting terms of the act:

'(c) In the title of Annex I, the words "Dangerous products" are replaced by the words "Products in list 1".'

Updating of references

18.9. If an amendment is to be made to a provision mentioned in a reference, the consequences for the provision in which the reference is made must be considered. If the amendment is also intended to apply to the latter, nothing need be done in the case of a dynamic reference but in the case of a static reference, a consequential amendment will be necessary.

Title of an amending act

18.10. The title of the amending act must mention the number of the act being amended and either indicate the title of the act, or specify what is to be amended.

Example:

Act to be amended:

'Council Regulation (EC) No ... of ... on improving the efficiency of agricultural structures.'

Amending act:

'Council Regulation (EC) No ... of ... amending Regulation (EC) No … on improving the efficiency of agricultural structures.'

18.11. If the amending act is adopted by an institution other than the institution which adopted the basic act, the title must indicate the name of the former institution.

Example:

'Commission Regulation … amending the Annex to Council Regulation … as regards …'.

Drafting an amending act

18.12. Amendments are made in the form of text inserted into the act to be amended. Amendments must fit seamlessly into the basic text. In particular, the structure and terminology of the basic text must be maintained.

18.12.1. The replacement of complete units of text (an article or a subdivision of an article) is preferable to the insertion or deletion of sentences or of one or more terms (but see also point 18.3).

18.12.2. In the case of multiple amendments, an introductory formula should be used.

Example:

'Regulation … is amended as follows: …'.

18.12.3. Where several provisions of the same act are to be amended, all the amendments are combined in a single article, comprising an introductory phrase and points following the numerical order of the articles to be amended.

Example:

'Regulation (EC) No ... is amended as follows:

(1) Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. …;"

(b) The following paragraph 5 is added:

"5. … ."

(2) The following Article 7a is inserted:

"Article 7a
… ".'

18.12.4. If several acts are amended by a single amending act, the amendments to each act should be set out together in a separate article.

18.12.5. The various types of amendment (replacement, insertion, addition, deletion) are made in a normative manner, using the standard formulas (see the Council's Manual of Precedents, the Commission's Manual on

Legislative Drafting and LegisWrite).

Example:

'Article X of Regulation … is replaced by the following: …'

'The following Article Xa is inserted: …'

'In Article Y, the following paragraph …is added: …'

'In Article Z, paragraph 3 is deleted.'

and not:

'The name "…" may be replaced by the name "…".'

18.12.6. In view of the need to avoid autonomous substantive provisions, it is preferable for amendments relating to dates, time limits, exceptions, derogations, extensions and the temporal application of the act to be inserted into the act to be amended.

Substantive amendment

18.13. As indicated in point 18.1, where an act is to be amended, that should, as a general rule, be done by formal amendment.

18.14. It is possible, however, that for reasons of urgency or for practical reasons and the sake of simplicity, the drafter wishes to include in an act provisions which in fact constitute substantive amendments to another act. Such substantive amendments may concern the scope of the other act, derogations from its obligations, exceptions to the period of application of the act, and so forth.

Example:

'By way of derogation from Article ... of Regulation (EC) No ..., applications may be made after …'.

18.14.1. As a general rule, and in particular for reasons of transparency, it is preferable to avoid substantive amendments of that kind. In such cases, the other act remains unchanged and the new provisions derogate from it in such a way that the old text, which remains in force, exists alongside the new text, which disactivates some of its provisions, alters their scope or adds to them.

18.14.2. To the extent that a substantive amendment has a very limited scope, it is acceptable not to make a textual amendment of the corresponding act. However, if the amendments are important, a separate amending act must be adopted.

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.

19.1. An act with autonomous provisions may so alter the legal context of a given field as to make it necessary to amend other acts governing other areas within the same field. To the extent that the amendment remains altogether secondary to the main scope of the act, such a juxtaposition of these different elements does not fall within the prohibition set out in Guideline 18 on the inclusion of autonomous substantive provisions in amending acts.

19.2. In any event, the amendment must be a textual amendment in accordance with the rule set out in Guideline 18.

19.3. In order for the amendment to be apparent, it must be mentioned in the title of the act.

Example:

Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance directive)

19.4. If the preponderance of amending provisions causes the centre of gravity of the act to shift to the category of amending acts, it should be split into two separate acts, for the reasons set out in points 18.4 and 18.5.

Final provisions, repeals and annexes

(Guidelines 20, 21 and 22)

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.

20

20.1. In legislative acts, a distinction is made, according to the legal effects to be obtained, between the date of entry into force, the date from which provisions are to have effect, and the date of application.

Entry into force

20.2. Acts of general application enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

20.2.1. In principle, legislation must give those concerned sufficient time to adapt.

20.2.2. A distinction must be made between entry into force and application, which do not necessarily coincide. The date of application may be set after — or where retroactive application is duly justified — before entry into force.

(a) Date of entry into force

20.3. The entry into force of the act must be set at a specific date or a date determined by reference to the date of publication.

20.3.1. It cannot be in the past.

20.3.2. It must not be determined by reference to a date to be set by another act.

20.3.3. The entry into force of an act which forms the legal basis for another act cannot be made conditional on the entry into force of that other act.

20.3.4. No act may enter into force before the date set for the entry into force of the act on which it is based.

20.3.5. The entry into force of an act cannot be made conditional on the fulfilment of a condition of which the general public cannot have knowledge.

(b) Guidelines for determining the date of entry into force

20.4. There may be practical reasons and considerations of urgency which justify entry into force prior to the twentieth day after publication. It is primarily for regulations that such a need may arise. The following rules apply.

20.4.1. There must be grounds of urgency for entry into force on the third day following publication. In each case it is necessary to check that there is real urgency.

20.4.2. Entry into force on the day of publication must remain a real exception and be justified by an overriding need — to avoid a legal vacuum, for instance, or to forestall speculation — closely bound up with the nature of the act (see point 20.6). There must be a specific recital giving appropriate reasons for the urgency, except where the general practice is already well known to interested circles (for example, in the case of regulations fixing import duties or export refunds).

20.5. The date of publication of an act is the date on which the Official Journal in which the act is published is actually available in all the languages at the Publications Office.

(c) Urgent measures

20.6. The daily and weekly regulations in which the Commission fixes the import levies (and/or the additional levies in certain sectors of agriculture) and refunds applicable to trade with third countries have to be adopted as short a time as possible before they are applied, in particular to avoid speculation.

20.7. It has therefore been agreed that these periodic regulations are to enter into force on the day of their publication or on the next following working day.

(d) Retroactive application of regulations

20.8. Exceptionally, and subject to the requirements stemming from the principle of legal certainty, a regulation may have retroactive effect. The words 'It shall apply from …' are then added to the final article.

20.9. To give retroactive effect to provisions, terms such as 'for the period ... to …', 'from ... to …' (in the case of tariff quota regulations, for example) or the words 'with effect from ...' are often used in an article other than the final article.

(e) Deferred application of regulations

20.10. A distinction is sometimes drawn between the entry into force of a regulation and the application of the arrangements introduced by it, which is deferred. This is done, for example, in the case of regulations which set up common market organisations. The purpose of the distinction may be to enable the new bodies provided for in the regulation (for example, management committees) to be set up immediately and to enable the Commission to adopt implementing measures on which those new bodies have to be consulted.

20.11. Should it prove necessary to defer the application of part of a regulation until a date after its entry into force, the regulation must clearly specify the provisions concerned.

Example:

'Article ...

This Regulation shall enter into force on (the day/nth day following that of its publication in the *Official Journal of the European Union*).

It [or Article N] shall apply from ...'.

Formulations such as the following, which do not make it possible to determine the date from which the provision in question is to apply, must be avoided:

'This Article shall take effect:

(a) after an agreement has been concluded between the compensation bodies established or approved by the Member States relating to their functions and obligations and the procedures for reimbursement;

(b) from the date fixed by the Commission upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded;

and shall apply for the whole duration of that agreement.'

Date on which certain directives and decisions take effect

20.12. Directives and decisions are binding only on those to whom they are addressed. The concept of entry into force replaces the concept of the date of taking effect for directives and decisions adopted by the co-decision procedure and for directives addressed to all Member States.

20.13. However, other directives and other decisions are notified to those to whom they are addressed and they take effect upon such notification. The same applies to directives and decisions referred to in the second paragraph of Article 163 of the Euratom Treaty.

20.14. Decisions *sui generis* of the Communities do not normally contain any provision specifying when they take effect and may generally be considered to take effect on the date of their adoption.

20.15. Decisions of joint bodies set up by agreements (and, in exceptional cases, decisions *sui generis* of the Communities) contain provisions concerning their entry into force and, where appropriate, retroactive or deferred application.

Implementation of directives

20.16. A distinction must be made between the date of entry into force or taking effect, on the one hand, and the date of application, on the other (see point 20.3), in all cases where the addressees will need time to meet their obligations under the act. This is particularly true of directives. Provisions on implementation will be set out in an article preceding the article concerning the entry into force or, as appropriate, the addressees.

Example:

'Member States [shall take the necessary measures] [shall bring into force the laws, regulations and administrative provisions necessary] to comply with this Directive by … at the latest.'

20.17. In particular in the case of directives designed to ensure the free movement of goods, persons and services, in order to prevent the creation of new barriers by virtue of differences in the application of the Member States' provisions up to the end of the prescribed period for transposition, a date should be specified from which national provisions must apply.

Example:

'Member States shall adopt and publish, before ... the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions from …'.

Implementation of non-binding acts

20.18. Acts which have no binding force, such as EC and Euratom recommendations, do not bear a date of taking effect or application; addressees may be requested to give effect to them by a certain date.

Beginning of periods of validity

20.19. In the absence of express indications to the contrary, a period begins at 00.00 hours on the date indicated ([19]). The expressions most commonly used to indicate the beginning of a period are:

- from ... [to] ...
- with effect from ...
- shall take effect on ...
- shall have effect from ...
- shall enter into force on ...

([19]) See Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8. 6.1971, p. 1).

Indication of the end of periods of validity

20.20. The final provisions may also specify when the act ceases to apply or to be valid.

Save where expressly provided otherwise, a period ends at midnight on the date specified. The expressions most commonly used to indicate the end of periods are:

- until ...
- shall apply until the entry into force of ..., or …, whichever is the earlier
- … at the latest
- [from …] to ...
- shall expire on ...
- shall cease to apply on ...

21

OBSOLETE ACTS 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.

21.1. If, when adopting an act, the author considers that previous acts or provisions should no longer be applied, that is to say, that they have become obsolete, legal certainty requires them to be expressly repealed by the act. An act may be obsolete not only because it is directly incompatible with the new rules, but also, for example, as a result of an extension of the scope of the rules. In contrast, it is not necessary to repeal an act if the period of application specified therein has come to an end.

21.2. The express repeal of provisions of earlier acts implies that no other provision is repealed. There is therefore less risk of 'accidental' repeal.

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.

22

ANNEXES SHALL BE DRAWN UP IN ACCORDANCE WITH A STANDARDISED FORMAT.

A. Annexes in the strict sense and non-autonomous legal instruments annexed

22.1. Annexes in the strict sense are used as a means of presenting provisions or parts of provisions separately from the body of the enacting terms, in particular because of their technical nature. Examples might be: rules to be applied by customs officers, doctors or veterinarians (such as chemical analysis techniques, sampling methods, and forms to be used), lists of products, tables of figures, plans and drawings and so on.

22.2. Where there are practical obstacles to incorporating technical rules or data in the actual enacting terms, the recommended practice is to put them in an annex. There must always be a clear reference in the appropriate part of the enacting terms to the link between those provisions and the annex (using phrases such as 'listed in the Annex' or 'set out in Annex I').

22.3. Such an annex is by its very nature an integral part of the act, and there is accordingly no need for that to be stated in the provision referring to the annex.

22.4. The word 'ANNEX' must appear at the beginning of the annex, and there will often be no need for any other heading. If there is more than one annex, they should be numbered with roman numerals (I, II, III, etc.).

22.5. Although there are no specific rules governing the presentation of annexes, they must none the less have a uniform structure and be subdivided in such a way that the content is as clear as possible, in spite of its technical nature. Any appropriate system of numbering or subdivision may be used.

B. Legal acts attached to other acts or forming an integral part thereof

22.6. **In contrast, there may be attached (not 'annexed') to an act other legal acts pre-existing it which are generally approved by it. Examples of acts which may be set out in this way are rules of subordinate bodies and international agreements.**

22.6.1. **Such attached acts, in particular international agreements, may themselves have annexes.**

22.6.2. **Such acts are not preceded by the word 'ANNEX'.**

Annex

Models of standard acts

1. Regulation
2. Directive
3. Decision (Article 249 EC)
4. Decision (*sui generis*)
5. Recommendation

1. REGULATION

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of […]

on […]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article […] thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Having regard to the opinion of the Committee of the Regions ([3]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([4]),

Whereas:

(1) [Initial capital …].

(2) [Initial capital …],

HAVE ADOPTED THIS REGULATION:

Article I

[…]

Article […]

This Regulation shall enter into force on the […] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, […]

For the European Parliament	*For the Council*
The President	*The President*
[…]	*[…]*

([1]) OJ C […], […], p. […].
([2]) OJ C […], […], p. […].
([3]) OJ C […], […], p. […].
([4]) OJ C […], […], p. […].

2. DIRECTIVE

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of […]

on […]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article […] thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Having regard to the opinion of the Committee of the Regions ([3]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([4]),

Whereas:

(1) [Initial capital …].

(2) [Initial capital …],

HAVE ADOPTED THIS DIRECTIVE:

Article 1

[…]

Article […]

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by […] at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article […]

This Directive shall enter into force on the […] day following that of its publication in the *Official Journal of the European Union*.

([1]) OJ C […], […], p. […].
([2]) OJ C […], […], p. […].
([3]) OJ C […], […], p. […].
([4]) OJ C […], […], p. […].

Article […]

This Directive is addressed to the Member States.

Done at Brussels, […]

For the European Parliament	*For the Council*
The President	*The President*
[…]	*[…]*

3. DECISION (Article 249 EC)

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of […]

on […]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article […] thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Having regard to the opinion of the Committee of the Regions ([3]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([4]),

Whereas:

(1) [Initial capital …].

(2) [Initial capital …],

HAVE ADOPTED THIS DECISION:

Article 1

[…]

Article […]

This Decision shall enter into force on the […] day following that of its publication in the *Official Journal of the European Union*.

Article […]

This Decision is addressed to the Member States.

Done at Brussels, […]

For the European Parliament	*For the Council*
The President	*The President*
[…]	*[…]*

([1]) OJ C […], […], p. […].
([2]) OJ C […], […], p. […].
([3]) OJ C […], […], p. […].
([4]) OJ C […], […], p. […].

4. DECISION *(SUI GENERIS)*

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of […]

on […]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article […] thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Having regard to the opinion of the Committee of the Regions ([3]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([4]),

Whereas:

(1) [Initial capital …].

(2) [Initial capital …],

HAVE DECIDED AS FOLLOWS:

Article 1

[…]

Article […]

[…]

Done at Brussels, […]

For the European Parliament
The President
[…]

For the Council
The President
[…]

([1]) OJ C […], […], p. […].
([2]) OJ C […], […], p. […].
([3]) OJ C […], […], p. […].
([4]) OJ C […], […], p. […].

5. RECOMMENDATION

RECOMMENDATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on […]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article […] thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Having regard to the opinion of the Committee of the Regions ([3]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([4]),

Whereas:

(1) [Initial capital …].

(2) [Initial capital …],

HEREBY RECOMMEND:

[…]

Done at Brussels, […]

For the European Parliament	*For the Council*
The President	*The President*
[…]	*[…]*

([1]) OJ C […], […], p. […].
([2]) OJ C […], […], p. […].
([3]) OJ C […], […], p. […].
([4]) OJ C […], […], p. […].

List of reference documents

Reference texts

Joint Declaration of the European Parliament, the Council and the Commission on the institution of a conciliation procedure between the European Parliament and the Council (OJ C 89, 22.4.1975, p. 1)

Council Resolution of 8 June 1993 on the quality of drafting of Community legislation (OJ C 166, 17.6.1993, p. 1)

General guidelines for legislative policy, document SEC(1995) 2255/7, of 1 January 1996

Declaration No 39 on the quality of the drafting of Community legislation, annexed to the Final Act of the Treaty of Amsterdam

Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3.1999, p. 1)

Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure (OJ C 172, 18.6.1999, p. 1)

Manuals

Manual of Precedents for acts established within the Council of the European Union

Legislative Drafting — A Commission Manual

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Legislative acts

Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58)

Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1)

Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23)

Judgments of the Court of Justice of the European Communities

Case 24/62 *Germany* v *Commission* [1963] ECR 63

Case 73/74 *Groupement des fabricants de papiers peints de Belgique and others* v *Commission* [1975] ECR 1491

Case 230/78 *Eridania-Zuccherifici nazionali and Società Italiana per l'Industria degli Zuccheri* v *Minister of Agriculture and Forestry, Minister for Industry, Trade and Craft Trades, and Zuccherifici Meridionali* [1979] ECR 2749

Case C-6/98 *Arbeitsgemeinschaft Deutscher Rundfunkanstalten (ARD)* v *PRO Sieben Media* [1999] ECR I-7599

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European Communities

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