

Working Group IX

Working document 14

Working Group IX "Simplification"

Subject: “Intervention in favour of making EU legislation clearer”
- Paper by Mrs Lena Hjelm-Wallén and Mr Kenneth Kvist

Members of Working Group IX "Simplification" will find hereafter a paper by Mrs Lena Hjelm-Wallén, member, and Mr Kenneth Kvist, alternate member of the Convention.

Intervention in favour of making EU legislation clearer

We would like to submit the following for future work in the group.

The Convention has taken on the challenge of how to improve the democratic legitimacy, transparency and efficiency of the EU Institutions including questions on good administration. Since this group is responsible for the simplification of procedures and legal instruments, it is well worth considering what the group could do to enhance the quality of drafting of EU legislation. The annotated mandate of the Working Group (CONV 271/02) states that the Working Group should address the improvement of the quality of legislation.

Needless to say, many feel that there is a gap between the EU administration and the EU citizens. In order to change this, a number of efforts will be necessary. We believe that one important measure would be to ensure that the laws of the European Union are written in a manner that makes it possible for ordinary citizens to understand them, i.e. to ensure that EU laws are well-structured and clear. Improved quality regarding structure and style should also make it easier for those whose job it is to apply the law.

Such efforts to increase the quality of drafting are to be seen as complementary and supportive of other ways of improving the readability of the legal texts, such as consolidation and recasting of Community legislation, providing for the presentation of legal instruments in one single text. An interinstitutional agreement on recasting was agreed between the European Parliament, the Council of Ministers and the European Commission in 2001.¹

Commitments made so far

The quality of drafting of EU legislation has been an important issue expressed in a number of documents in the last ten years, most recently in the Commission's Action Plan "Simplifying and improving the regulatory environment" (COM(2002)278 final). One of many laudable statements in the Plan is: "By being written in a less complicated style, it (Community legislation) should be easier to implement for the Member States and operators concerned and easier for everyone to read and understand." However, the Action Plan lacks statements on concrete measures and actions to be taken by the institutions in order to guarantee the citizens right to clear and simple wording of EU legislation.

¹ Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, OJ C 77, 28 November 2001, pp 1-3.

Use of good practice

Many isolated efforts to improve the quality of drafting have been made in different Member States, among others in the United Kingdom and in Italy. In Sweden, these issues have been on the agenda for a long time, and within the Government Offices there is extensive experience to draw from. The Director-General for Legal Affairs of the Cabinet Office is responsible for “high quality in the legislation and the administration” and for seeing to it that “the language in Acts and other decisions is as clear and simple as possible” (Ordinance concerning the Duties of the Government Offices, 26 §). The aim is that the laws should be understandable for the ordinary citizen.

Since 1976, this task is fulfilled by linguists and lawyers, working as a team at the Division for Legal and Linguistic Draft Revision. No Government Bill (including Acts), Government Ordinance or Committee Terms of Reference can be sent to the printers without the division’s approval. The linguists also offer training sessions for legal drafters, write handbooks on clear writing and take part in the work of law commissions that are appointed by the Government to redraft legislation.

High-level support needed

It is a very difficult task to change the style of writing. Support from the highest level will be required in order to convince all those involved in legislative drafting about the urgency of such a change. It will above all require political support from the Member States and the European Parliament. It will also be of vital importance to get support from legal services within the institutions.

A statutory basis to promote clear legislation

We would like to propose that the group takes under consideration a statutory basis in the Treaty that laws must be drafted clearly.

The statutory basis in the Treaty would fit in well in the present article 253, where it is stated that Regulations, Directives and Decisions must be motivated. We would like to propose an amendment that conveys the need to write clearly, for instance “[Such] legal acts should be drafted clearly, simply and precisely with the aim of making them easy to understand for the citizens.”
