

EUROPEAN UNION



# Joint Practical Guide

**of the European Parliament,  
the Council and the Commission  
for persons involved  
in the drafting  
of European Union legislation**

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the Council and the Commission  
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**EUROPEAN UNION**

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## PREFACE TO THE SECOND EDITION

For more than 10 years, the Joint Practical Guide has proven to be a valuable tool in ensuring that the legal acts drawn up by the European Parliament, the Council and the Commission are drafted clearly and precisely. The principles set out in the guide are the point of reference for matters of legislative drafting for the three institutions.

However, since the first edition of the guide was published in 2000, numerous changes have taken place in what is now Union law. It was necessary to consolidate the partial updates which were already available online and the adaptations introduced by the Lisbon Treaty <sup>(1)</sup> into a new edition.

This edition has also been simplified in certain respects and takes account of the most recent changes. Further developments are also expected; when the time comes, they will have to be integrated into the text of the guide by the Think-tank on Legislative Technique <sup>(2)</sup>, which will be responsible for ensuring it is kept up to date.

The Joint Practical Guide is a platform of general drafting principles. Each institution uses the guide alongside other instruments which contain specific standard formulations and more detailed practical rules.

May the guide, as adapted and updated, continue to contribute to the quality of legal acts of the Union.

Brussels, 11 July 2013

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[1] For the purposes of this edition, the wording of the common guidelines adopted by the Inter-institutional Agreement of 1998 (see preface to the first edition), which introduce the subdivisions of the guide, has been adapted in certain respects to take account of those developments.

[2] The Think-tank was created in 2010 to facilitate cooperation between the three institutions on matters of legislative drafting.

## PREFACE TO THE FIRST EDITION

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 <sup>(3)</sup>. 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 <sup>(4)</sup>.

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, the Commission's Manual on Legislative Drafting, the *Interinstitutional style guide* published by the Publications Office of the European Union or the models in LegisWrite. 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.

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<sup>(3)</sup> 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 January 1996.

<sup>(4)</sup> 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].

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, which will keep the guide updated.

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.

Brussels, 16 March 2000

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# General principles

Guidelines 1 to 6

## 1

**LEGAL ACTS OF THE UNION SHALL BE DRAFTED CLEARLY, SIMPLY AND PRECISELY (\*).**

- 1.1.** The drafting of a legal act must be:
- > **clear**, easy to understand and unambiguous;
  - > **simple** and concise, avoiding unnecessary elements;
  - > **precise**, leaving no uncertainty in the mind of the reader.
- 1.2.** This common sense principle is also an expression of general principles of law, such as:
- > the equality of citizens before the law, in the sense that the law should be accessible to and comprehensible for everyone;
  - > 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 legal acts of the Union, which must fit into a system which is complex, multicultural and multilingual (see Guideline 5).
- 1.2.2.** The aim in applying this principle is twofold: first, to render acts more comprehensible; second, to avoid disputes resulting from poor drafting.
- 1.3.** Provisions that are not drafted clearly may be interpreted restrictively by the Court of Justice of the European Union. If that happens, the result will be the opposite of what was intended by the incorporation into the text of ambiguous wording intended to resolve problems in negotiating the provision <sup>(5)</sup>.
- 1.4.** It is acknowledged that the requirement that a text be both simple and precise may create a conflict. 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, whilst remaining sufficiently easy to understand. That balance may vary depending on the addressees of the provision (see Guideline 3).

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[\*] In this edition of the Joint Practical Guide, the wording of this Guideline has been adapted to take account of the changes introduced by the Lisbon Treaty.

<sup>(5)</sup> See Case C-6/98 *ARD v Pro Sieben* (1999) ECR I-7599.

*Example of a text which did not achieve this balance:*

'A compulsory [product] labelling system shall be introduced and shall be compulsory 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. In order to be able to express the legislative intention in simple terms, the drafter should try to break it down into simple concepts. Whenever possible, everyday language should be used. Where necessary, clarity of expression should take precedence over considerations 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 complies with 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 UNION 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 legal acts each have their own standard presentation and standard formulations (see Guideline 15).
- 2.2. The drafting style should take account of the type of act.
  - 2.2.1. Since regulations are directly applicable 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 ...'

(\*) In this edition of the Joint Practical Guide, the wording of this Guideline has been adapted to take account of the changes introduced by the Lisbon Treaty.

**2.2.2. Directives are addressed to the Member States.**

*Example:*

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

Furthermore, they are drafted in a less detailed manner in order to leave Member States sufficient discretion when transposing them. If the enacting terms are too detailed and do not leave such discretion, the appropriate instrument is a regulation, rather than a directive.

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

*Example:*

'[The Member State] may receive financial assistance from the Union 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 have no binding force.**

*Example:*

'It is recommended that Member States ...'

**2.3. The manner in which an act is drafted should also take account of whether 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, other languages, such as French, use 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, imperative forms, or a structure or presentation too close to that of a binding act, must not be used.**

## 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 legal acts, ranging from the general public to specialists in particular fields. Each category is entitled to expect to be able to understand the language used.
- 3.2.** Taking into account the different categories of addressees may result in adjustments to both the statement of reasons and the enacting terms of those acts.
- 3.3.** Ease of transposition of acts also depends on it.
- 3.4.** In addition to the addressees, acts may require intervention by national authorities at different levels, for example, by civil servants, scientists and judges. The language of the act should take account of the fact 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 shall be established by and shall be 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 interpretation problems.
- 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 what is stated to be covered by the act or 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 include provisions of a permanent nature.
- 4.3.** Acts should also be consistent with other Union acts.
  - 4.3.1.** In particular, overlaps and contradictions with respect to other acts within a given field must be avoided.
  - 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 and, insofar as they comprise more than one sentence, articles must group together a number of ideas having a logical link between them. Texts must be broken down into easily assimilated subdivisions (see table in Guideline 15) following the progression of the reasoning, since an excessively compact block of text is both hard on the eye and hard for the mind to take in. This must not, however, result in sentences being broken up unnaturally and excessively.

#### **4.5. The structure of each article must be as simple as possible.**

**4.5.1.** It is neither necessary for interpretation, nor desirable in the interest of clarity, for a single article to cover all the rules relating to a particular aspect. It is often better to deal with them 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, of which there are often many, will also be difficult to incorporate 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,
- 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 to make the effort to summarise content which results in 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 abbreviations should be familiar to them or their meaning clearly explained the first time they are used (for example: 'the European Central Bank (ECB)'; 'the European supervisory authorities (the ESAs)').

**5**

**THROUGHOUT THE PROCESS LEADING TO THEIR ADOPTION, DRAFT ACTS SHALL BE FRAMED IN TERMS AND SENTENCE STRUCTURES WHICH RESPECT THE MULTILINGUAL NATURE OF UNION LEGISLATION; CONCEPTS OR TERMINOLOGY SPECIFIC TO ANY ONE NATIONAL LEGAL SYSTEM ARE TO BE USED WITH CARE (\*).**

- 5.1.** The person drafting an act of general application must always be aware that the text has to satisfy the requirements of Council Regulation No 1, which requires that such acts be adopted in all the official languages. 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 complete mistranslations in one or more of the other Union 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.'

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(\*) In this edition of the Joint Practical Guide, the wording of this Guideline has been adapted to take account of the changes introduced by the Lisbon Treaty.

*In such a case, it would be better to avoid using a list and to present the text as follows:*

'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. Shortened or elliptical turns of phrase should 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.'

*Better drafting:*

'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 or prohibitions or withdrawal from the market.'

- 5.2.2. Overly complicated sentences, comprising several phrases, subordinate clauses or parentheses (interpolated clauses) should also 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.'

*Better drafting:*

'All parties to the agreement shall 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 elements of the sentence must be clear. There should be no doubt, for example, as to whether an adjective relates to a single noun or to several.

*Example of drafting to be avoided:*

'... public parks and hospitals ...'

*Better drafting:*

'... public parks and public hospitals ...'

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

- 5.3.** In addition, the use of expressions and phrases — in particular legal terms — that are too specific to a particular language or national legal system will increase the risk of translation problems.

The following two points, in particular, must be borne in mind by drafters.

- 5.3.1.** Certain expressions which are quite common in the language in which the text is drafted may not necessarily have an equivalent in other Union languages. In those languages, they can therefore only be translated using circumlocutions and approximations, which result in semantic divergences between the various language versions. Expressions which are too specific to a particular language should therefore be avoided, as far as possible.

- 5.3.2.** As regards legal terminology, terms which are too closely linked to a particular national legal system 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' and '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 Union law and of its terminology, acts should be perceived by those called on to apply or interpret them in each Member State (officials, judges, lawyers, etc.) not as translations in a negative sense but as texts which conform to a certain legislative style. Texts peppered with borrowed words, literal translations or jargon which is hard to understand are the source of much of the criticism of Union law, and result in it being regarded as alien.
- 5.5.** Finally, two essentially practical comments must be made concerning the relationship between the original text and translations of it.
- 5.5.1.** First, drafters must ensure that translators can immediately identify the sources drawn on in the original text. If a passage in the original text is based on existing wording (for example in a treaty, directive, regulation, etc.) that must be clear from the text or indicated separately, where necessary by appropriate electronic means. There is a risk that any hidden quotations which do not mention their source will be translated freely in one or more languages, even though the author specifically intended to use the same wording as an existing provision.
- 5.5.2.** Second, drafters should 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 — 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 text, 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 legal act, it must be consistent. A distinction can be drawn between formal consistency, which concerns only questions of terminology, and substantive consistency in a broader sense, which concerns 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 the provisions of related acts, in particular to implementing acts and to all other acts in the same field. 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 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 into parts, titles, chapters and sections (see table in Guideline 15), and may be accompanied by annexes.

Specific Guidelines deal with the respective parts of the standard structure.

## 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 wording used in the title to indicate the main subject matter of the act, makes it possible to determine who is (and is not) concerned by the act. It must give as clear an indication as possible of the content of the act. Rather than encumbering the title with extraneous information, drafters should use key words characteristic of the various fields of Union law (it

(\*) In this edition of the Joint Practical Guide, the wording of this Guideline has been adapted to take account of the changes introduced by the Lisbon Treaty.

is useful, in that context, to refer to the analytical structure of the 'Directory of European Union legislation in force' which is available in EUR-Lex, the Union law database).

Drafters must therefore consider what information should appear in the title in order to prompt a reader who is directly concerned (for example, not every farmer, but every apple producer) to read the act in question.

- 8.2.** The title of the act must be different from the titles of other acts in force (but see point 8.3).
- 8.3.** The title of an act amending earlier acts is a special case. The title is incomplete unless it refers by number to all the acts amended. 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 sequential reference number and title of the act to be amended or its sequential reference number and the specific purpose of the amendment is mentioned (see points 18.9 and 18.10). 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 (see point 19.3).

### Short title

- 8.4.** A short title for an act is less useful in Union law — where acts are identified by a combination of letters and numbers (for example '(EU) 2015/35') — 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 (EC) No 1234/2007 = 'Single CMO Regulation'). Despite the fact that it may seem a simple solution, referring to acts by a short title creates risks for the accuracy and coherence of legal acts of the Union. This method should therefore only be used in specific cases where it significantly aids the reader's understanding.
- 8.5.** The creation of a short title when an act is adopted by adding it after the title of the act should be avoided, since it only renders the title more cumbersome, without actually resolving the question of whether or not the short title should be used, either in the act which created it or in subsequent acts.

While the risks outlined in point 8.4 must always be borne in mind, it is possible to refer to an act by using a short title in order to make it easier to understand the act in which the reference is made. In this case, the short title chosen will have to appear in brackets in the body of the text of the act in which the reference is made, like any other abbreviation.

**To summarise:****8.6. The full title of an act comprises:**

- (1) an indication of the type of act (regulation, directive, decision, where appropriate 'implementing' or 'delegated');
- (2) the abbreviation or acronym of the field concerned (EU, CFSP or Euratom), the year and the sequential reference number of the act <sup>(6)</sup>;
- (3) the name of the institution or institutions which adopted the act;
- (4) the date of signature (for acts adopted by ordinary legislative procedure, the budget and budgetary decisions adopted by the European Parliament and the Council) or the date of adoption, as appropriate;
- (5) the title proper, namely 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, namely the provision which confers competence to adopt the act in question;
- > the proposals, initiatives, recommendations, requests or opinions provided for by the treaties (procedural acts not provided for by the treaties are mentioned in one of the final recitals <sup>(7)</sup>; in legislative acts citations are added regarding the transmission of the draft legislative act to national parliaments and the legislative procedure followed (the ordinary legislative procedure or a special legislative procedure).

Drafters should check that items cited are actually citations and that it would not be better to mention them in another part of the act (see points 9.13 and 9.14).

<sup>(6)</sup> With certain exceptions, all documents published in the L series of the Official Journal from 1 January 2015 are numbered consecutively as follows, regardless of the type of act (regulation, directive, decision or other): (domain) YYYY/N. The numbering given to acts published before that date remains unchanged.

<sup>(7)</sup> However, for opinions in the context of a committee procedure, see point 10.18.

## 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 on the Functioning of the European Union',

'Having regard to the Treaty on European Union'

*or*

'Having regard to the Treaty establishing the European Atomic Energy Community'.

If more than one treaty is to be referred to, they should be cited on separate lines in the following order: Treaty on European Union, Treaty on the Functioning of the European Union, Treaty establishing the European Atomic Energy Community.

- 9.4.** If the direct legal basis of the act is a treaty provision, the general citation of the treaty is accompanied by the words 'and in particular', followed by the relevant article <sup>[8]</sup>.

*Example:*

'Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43 thereof,'

- 9.5.** If, by contrast, the direct legal basis of the act is to be found in secondary legislation <sup>[9]</sup>, the act concerned is cited in a second citation, with the relevant article, preceded by the words 'and in particular'.

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<sup>[8]</sup> Where an act is based on a provision of an Act of Accession, the formulation used is: 'Having regard to the Act of Accession of ..., and in particular Article ... thereof' or '..., and in particular Article ... of Protocol No ... thereto.'

<sup>[9]</sup> 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 Official Journal reference (series, number, date and page).

*Example:*

'Having regard to the Treaty on the Functioning of the European Union, Having regard to Regulation (EU) No 1026/2012 of the European Parliament and of the Council of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing ( ), and in particular Article 4(1)(c) thereof,

( ) OJ L 316, 14.11.2012, p. 34.'

- 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 294 and 218 TFEU) do not constitute legal bases (however, see point 9.7).
- 9.7.** International agreements concluded in accordance with the procedure set out in Article 218 TFEU are special cases.

*Example:*

'Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(6)(a) 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 <sup>(10)</sup>, rather than the entire article, that is cited.

For instance, in adopting detailed rules governing tariff quotas for products subject to market organisation, it is Article 144(1) of Council Regulation (EC) No 1234/2007 which will be cited.

<sup>(10)</sup> 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.

## Procedural acts

- 9.10.** Citations concerning preparatory acts provided for by the treaties and, in particular, opinions delivered by the European Parliament, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions must be followed by a footnote reference, the footnote showing the edition of the Official Journal in which the act was published (for example: OJ C 17, 22.1.1996, p. 430). If the act has not yet been published, the date of the act should be mentioned.

*Example:*

'( ) Opinion of 1 April 1996 (not yet published in the Official Journal).'

- 9.11.** In the case of the ordinary legislative procedure or a special legislative procedure, the citation concerning transmission of the draft legislative act to the national parliaments is as follows:

'After transmission of the draft legislative act to the national parliaments'.

**The citation referring to the legislative procedure is drafted as follows:**

'Acting in accordance with the ordinary legislative procedure'

*or*

'Acting in accordance with a special legislative procedure'.

**In the context of the ordinary legislative procedure, where it is necessary to refer the matter to the Conciliation Committee and the conciliation has been successful, the citation is drafted as follows:**

'Acting in accordance with the ordinary legislative procedure in the light of the joint text approved by the Conciliation Committee on ....'

**The citation referring to the legislative procedure is followed by a footnote indicating all the steps in the procedure.**

- 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 132(3) TFEU (legal basis) refers to the procedure laid down in Article 129(4) TFEU. The procedure should be mentioned in a citation similar to that used for the ordinary legislative procedure or a special legislative procedure:

'Acting in accordance with the procedure laid down in Article 129(4) of the Treaty'.

### 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. Any reference to the content of provisions other than the legal basis which is necessary for a proper understanding of the enacting terms or in order to check their lawfulness should appear in the recitals. More general references may be made, for background information, in the explanatory memorandum.
- 9.14.** The general institutional provisions of the TFEU (for example, Articles 238 and 288), 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, consultations which are not provided for by the treaties) is normally made towards the end of the recitals using formulations such as 'the [name of the body] delivered an opinion ...', 'the [name of the body] was consulted ...'.

**In contrast, the following are found at the end of the citations 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'.*

## 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 its adoption; 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 being confused 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 <sup>(11)</sup>, to give the parties to a dispute the opportunity to defend their interests and to enable the Court of Justice of the European Union to exercise its power of review.
- 10.3.** If it is necessary to recall the historical context of the act, the facts should be set out in chronological order. The reasoning in relation to the specific provisions of the act should, as far as possible, follow the order of those provisions.

Ideally, the statement of reasons for an act 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.

<sup>(11)</sup> See Case 24/62 *Germany v Commission* (1963) ECR 63.

- 10.4.** It is not possible to be more precise about the content of a statement of reasons for a legal act of the Union. It is impossible to reduce to a uniform 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 subject-matter 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 <sup>[12]</sup>.
- 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, subject to certain exceptions; for example, it is usual to state the reasons for using Article 352 TFEU in a final recital, which reads as follows:

‘The Treaty does not provide, for the adoption of [this Decision] [...], powers other than those under Article 352 thereof.’

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<sup>[12]</sup> See Case 230/78 *Eridania v Minister of Agriculture and Forestry* (1979) ECR 2749 and Case 73/74 *Papiers Peints de Belgique v Commission* (1975) ECR 1491.

- 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 type of Union act is appropriate, it may be useful to give the reasons why the particular type of act has been chosen. If, in a given case, for instance, it would be possible to legislate by means of a directly applicable regulation, the recitals may explain why it is preferable only to adopt a directive, which must be transposed into national law. Drafters must also bear in mind 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** acts, the statement of reasons should seek to expound the general philosophy of the act rather than to give all the reasons for each specific provision. However, specific reasons will be given for a number of individual provisions, either because of their importance or because they are not inherent in that general philosophy.
- 10.10.** In **implementing** acts, the reasons stated will necessarily be more specific, though an effort should always be made to be concise.
- 10.11.** However, the reasons stated for acts of general application 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 provisions 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 and to indicate the general situation which led to adoption of the act and the general objectives which it is intended to achieve <sup>[13]</sup>.

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<sup>[13]</sup> 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.
- 10.13.** That is particularly true for acts which refuse an application. Detailed reasons must also be given in 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 CONCERNING THE SUBSIDIARITY AND PROPORTIONALITY OF THE ACT**

- 10.15.** For the principles of subsidiarity and proportionality, 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 varies from one case to another but, in general, it follows the structure in point 10.15.4. However, it is important to remember the distinction made in Article 5 TEU between areas which fall within the exclusive competence of the Union and those which do not.

- 10.15.3.** In areas which fall within the exclusive competence of the Union, all that Article 5(4) TEU requires is compliance with the principle of proportionality. In that case, the recital only contains a reference to proportionality and is worded as follows:

*'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 ... (specify the type of act) does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.'*

- 10.15.4.** Where the Union does not have exclusive competence, the recital will contain references both to subsidiarity *stricto sensu* and to proportionality, as set out below:

*'Since the objectives of this ... (specify the type of act) ... (if appropriate, specify the objectives) cannot be sufficiently achieved by the Member States ... (give reasons) but can rather, by reason of ... (specify the scale or effects of the action), be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this ... (specify the type of act) does not go beyond what is necessary in order to achieve those objectives.'*

- 10.15.5.** The models above must be completed and developed on a case-by-case basis as indicated in brackets, in order to provide a real statement of reasons. It is possible to diverge from them, provided that the need for action at Union level and, as the case may be, the proportionality of the action is evident from the recitals.

### Recitals relating to delegation of powers and implementing powers

- 10.16.** Basic acts that provide for the adoption of delegated acts by the Commission must contain a specific recital that refers to Article 290 TFEU. For the drafting of that recital, as well as the corresponding provisions, the European Parliament, the Council and the Commission have undertaken to refer, insofar as possible, to the standard formulations that those institutions have established together.
- 10.17.** Basic acts that provide for the adoption of implementing acts by the Commission (Article 291 TFEU) must contain a specific recital that refers, where applicable, to Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers <sup>[14]</sup>.

### Reference to consultations

- 10.18.** The consultations provided for in Regulation (EU) No 182/2011 are referred to in the preambles to the implementing acts adopted by the Commission.

Consultation of a committee in the context of the examination procedure (Article 5 of the Regulation) always produces legal effects. The fact that a committee has been consulted is not referred to in a citation, but in the final recital.

*Example:*

'(...) The measures provided for in this decision are in accordance with the opinion of the [name of the committee],'

In contrast, consultation of a committee in the context of the advisory procedure (Article 4 of the Regulation) is mentioned in the final citation, which is worded as follows:

'After consulting the [name of the committee],'

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[14] OJ L 55, 28.2.2011, p. 13.

## 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.

It applies not only to legal acts of general application, but also to all acts of the institutions drafted in solemn form (title, preamble, enacting terms).

- 11.2.** The presentation is as follows:

‘Whereas:

(1) ...

(2) ....’.

NB: Each recital starts with a capital letter and ends with a full stop, except the last recital, which ends with a comma.

- 11.3.** A sole recital is not numbered.

12

**THE ENACTING TERMS OF A BINDING ACT SHALL NOT INCLUDE PROVISIONS OF A NON-NORMATIVE NATURE, SUCH AS WISHES OR POLITICAL DECLARATIONS, OR THOSE WHICH REPEAT OR PARAPHRASE PASSAGES OR ARTICLES FROM THE TREATIES OR THOSE WHICH RESTATE LEGAL PROVISIONS ALREADY IN FORCE.**

**ACTS SHALL NOT INCLUDE PROVISIONS WHICH ENUNCIATE THE CONTENT OF OTHER ARTICLES OR REPEAT THE TITLE OF THE ACT.**

### **Provisions of a non-normative nature in binding acts**

- 12.1.** Binding acts should lay down rules, and include provisions setting out the information (for example: the scope and the definitions) necessary to understand and apply those rules correctly. Anything else is superfluous: desires, intentions and declarations do not belong in the enacting terms of a binding act.

*The following is an example, from a regulation, of the kind of 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 Union, as well as other public authorities at national level should, without prejudice to Union 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.** The inclusion of such provisions is pointless and leads to legal uncertainty. Let us take the example of an act based on Article 46 TFEU, which is duly referred to in the citations. It is pointless to draft a paragraph which repeats Article 45(1), according to which 'Freedom of movement for workers shall be secured within the Union'. Drafters must indicate how they intend 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 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 should, as far as possible, be avoided, since the articles in question contain all the necessary information concerning their implementation. Furthermore, such a structure can create confusion as to the 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 where it is not possible to avoid using words that form 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 description of the parameters of the text.

## 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 its 'scope' refers to the categories of situations of fact or of law and the persons to which it applies.
- 13.2.** A first article, defining the subject matter and scope, is common in international agreements and is also often found in Union acts. Whether or not it is useful should be decided 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, in the interests of brevity, was not included in the title but which makes it possible to determine, from the outset, who 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 a vehicle does in any event fall within the defined scope. In 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 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 km/h, 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 ...' with the sentence ending with the word '[vehicle]'. This solution is normally to be preferred, especially if the act does not have an article establishing other definitions. 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.

A term which has been defined should be used with the same 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 submitted by ... any person with an interest in the safety of the ship ... unless the Member State concerned deems the ... complaint to be manifestly unfounded; the identity of the person lodging ... 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 an autonomous normative provision.

- 14.3.** The normative provision must appear alongside the other binding provisions. In our example, the drafter could insert this sentence 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 ...') and adding a second subparagraph with the sentence 'The identity of the person ...'.
- 14.4.** The requirement that definitions must not contain autonomous normative provisions is more than a mere formality. If such provisions are included in the definitions, there is a danger that, since all the normative provisions 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 DELEGATING POWERS AND CONFERRING IMPLEMENTING POWERS — PROCEDURAL PROVISIONS — MEASURES RELATING TO IMPLEMENTATION — TRANSITIONAL AND FINAL PROVISIONS).**

**THE ENACTING TERMS SHALL BE SUBDIVIDED INTO ARTICLES AND, DEPENDING ON THEIR LENGTH AND COMPLEXITY, INTO 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.** Many of the textual components of the standard structure of the enacting terms comply with relatively strict rules of presentation. That is the case for the following components:

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(\*) In this edition of the Joint Practical Guide, the wording of this Guideline has been adapted to take account of the changes introduced by the Lisbon Treaty.

- (1) the subject matter and scope (see Guideline 13);
- (2) the definitions (see Guideline 14);
- (3) the provisions relating to delegated acts and implementing acts;
- (4) the measures relating to implementation. The provisions concerning the detailed rules and dates for the transposition, by Member States, of a directive, follow an established format. Other provisions, for example those concerning penalties to be provided for at national level or legal remedies to be ensured, also have a standard form;
- (5) transitional and final provisions. This category covers:
  - > 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 some 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 components — the rights and obligations and procedural provisions, other than those concerning delegated acts and implementing acts — 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.** Where an article contains a list, care must be taken to ensure that each of its elements is coordinated and relates directly 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 checks in order to ensure:

- consistency between purchases and deliveries,  
They shall conduct the inspection in particular by reference to processing coefficients provided for by Union law, 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 Union law.'

*In such a case, it would be better to avoid using a list and to present the text as follows:*

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

They shall conduct the inspection in particular by reference to coefficients provided for by Union law, 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 Union law.'

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

Designation	Symbol	Method of reference	Comments
<b>I. Higher subdivisions</b>			These subdivisions 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 individually) 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	
<b>II. Basic unit</b>			Basic units may or may not have a title
– Article	Sole Article or Article 1, 2	{in the} Sole Article {in} Article 1, 2	Continuous numbering (even where there are higher subdivisions)
or			
– Point	I, II (or A, B) or I. (or A. or 1.)	{in} point I, II (A, B)  {in} point I (A or 1)	Used in certain recommendations, resolutions, declarations and statements
<b>III. Lower subdivisions</b>			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, second paragraph	Non-independent element of an article
– Subparagraph	None	{in} the first, second 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, in the second 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 a Union act or an act from another source.

**16.1.1.** Example of an internal reference:

*Provision referring to an annex to the same act*

'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:

*Provision referring to another act*

'... (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 ...'

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

**16.3.** Particular care must be taken with external references. In particular, the act to which reference is made should be sufficiently clear and accessible to the public.

## Principle

- 16.4.** A reference should only be used if:
- > it simplifies the text, by not repeating the content of the provision referred to;
  - > it does not make the provision more difficult to understand; and
  - > the act referred to has been published or is sufficiently accessible to the public.
- 16.5.** References should also be used sparingly in the interests of transparency. It should be possible to read and understand an act without consulting other acts. However, provisions of primary law should not be reproduced in secondary legislation simply to make the act more readable (see point 12.2).
- 16.6.** Before deciding whether it is appropriate to make a reference, the consequences of any subsequent amendments to the act to which reference is to be made should be considered.

## Comprehensibility

- 16.7.** A reference should be worded in such a way that the key element of the provision to which reference is 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 countries ...’

## Clarity

- 16.8.** The facts in, or legal consequences of, a provision to which reference is made should be specified.
- 16.8.1.** References made merely by citing another provision in brackets must be avoided.
- 16.8.2.** Certain provisions state that a rule applies by analogy or, more correctly, ‘mutatis mutandis’. This technique should only be used where it would be disproportionate to reproduce the rule referred to and adapt it. It is important to state as precisely as possible how the rule referred to applies.

- 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 made. Such references can generally be avoided by better defining the scope. Furthermore, it is unnecessary to use this formulation to refer to higher-ranking provisions, which apply in any event.

*Example:*

**Example of drafting to be avoided:**

‘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’,

**Better drafting:**

‘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 of the act to which reference is made must be given either in full, with the publication source, or in a short form — in particular if the reference is in the title of the act in which the reference is made or if the 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 the act referred to was adopted by the institution adopting the act in which the reference is made (however, where several acts are referred to and they were adopted by different institutions, the institutions are always mentioned, even where some of them are the same as the institution(s) adopting the act in which the reference is made);
- > the date is omitted, unless the reference is to an act which has no official serial number or publication number;
- > words which would render the title of the act in which the reference is made unnecessarily cumbersome, or could lead to confusion, such as ‘and amending ...’ or ‘and repealing ...’ are also left out, as are indications which may follow the title, such as ‘codification’, ‘recast’, etc.;
- > no reference is made to the edition of the Official Journal in which the act referred to was published.

**16.10.2. In citations, which have a solemn character, the full title of the act <sup>[15]</sup> is cited in the body of the text. 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 footnote indicating the edition of the Official Journal in which the act was published. There is no such footnote in the case of the treaties and other basic acts (for example Acts of Accession and the ACP–EU Partnership Agreement).**

*Example:*

‘Having regard to Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative ( ), and in particular ...

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( ) OJ L 65, 11.3.2011, p. 1.’

**16.10.3. In the rest of the act (recitals, articles and annexes), a simplified method of reference <sup>[16]</sup> is used:**

- > **an act to which reference is made for the first time (even if it has already been mentioned in the title) and which has not already been cited in the citations is referred to by its number and by the name of the institution which adopted it, accompanied by a footnote containing its full title <sup>[17]</sup> and the edition of the Official Journal in which it was published;**
- > **where the full title and publication reference of an act has already been indicated in the citations or elsewhere in the text it is only referred to by number.**

*Example:*

*First reference:*

‘Regulation (EU) No 211/2011 of the European Parliament and of the Council ( )

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( ) Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative [OJ L 65, 11.3.2011, p. 1].’

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[15] From 1 July 2013, the reference to the full title includes all the words in the title, such as ‘and amending’ or ‘and repealing’, but not other indications which may follow the title, such as ‘codification’, ‘recast’, etc.

[16] Simplified method of reference introduced on 1 July 2013.

[17] From 1 July 2013, the reference to the full title includes all the words in the title, such as ‘and amending’ or ‘and repealing’, but not other indications which may follow the title, such as ‘codification’, ‘recast’, etc.

*Subsequent references:*

'Regulation (EU) No 211/2011'

Certain exceptions to this rule may be necessary, in particular in the case of annexes comprising forms or other documents which may be used in isolation, where it may be necessary to repeat the full title and the publication reference of an act which has already been cited.

- 16.10.4.** It is good legislative practice to mention in the recitals the acts to which reference will subsequently be made in the act. This makes it possible to put the acts in context as necessary and to explain why they are referred to.
- 16.10.5.** 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. Potential problems resulting from amendment or repeal of the act to which reference is made must also be avoided.

**Dynamic references**

- 16.11.** A reference is dynamic if the provision cited is always understood to be the provision as amended.
- 16.12.** References in the enacting terms of Union acts are, in general, dynamic.

If the act cited is amended, the reference is understood to be to the act as amended. If the act is replaced, the reference is understood as referring to the new act. If the act is repealed and not replaced, any lacunae will have to be filled 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 act.

- 16.13.** It is, however, important to be aware that dynamic references may lead to difficulties when construing the legal act concerned, in that the content of the provision making the reference is not predetermined, but varies depending on subsequent amendments to the provision referred to.

## Static references

**16.14.** 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.'

**16.15.** Where the provision referred to in a static reference is amended or repealed, the provision referring to it may also need to be amended.

**16.16.** References to legal acts of the Union are dynamic references, unless otherwise stated. As regards references to legal acts other than those of the Union, it is advisable to state explicitly whether the reference is dynamic or static.

## Adaptation of references

**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 of drafting to be avoided:*

‘In the following provisions, the words “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 Union 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 OUT AS PART OF THE BINDING ACT.**

- 17.1.** The first sentence of this guideline is merely a statement of fact. For example: if a decision is adopted as a result of a resolution, the decision is the binding act and the resolution remains a political act, with no legal binding force.
- 17.2.** The second sentence of this guideline applies, in particular, to technical standards, which are often drawn up by standardisation bodies or the like. It is often too onerous to reproduce in full a lengthy, non-binding act. This is commonly true, for example, of the description of laboratory tests to be conducted. In such cases, only the act in question is 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 that it is the intention of the legislator to make the standard referred to compulsory.

- 17.3.** It is possible to freeze the reference to the version of the provision in force at the time the binding act was adopted, by indicating the number and the date (or year) of the non-binding act to which reference is made, or by the use of formulations such as 'in the version of ...' (see also Guideline 16, 'static references, 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 should 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 effected by a formal amendment, that is to say, a textual amendment, to the act itself <sup>[18]</sup>. The text of the amendment must therefore be inserted into the text to be amended.

*Example:*

*Article 1*

Regulation ... is amended as follows:

- (1) in Article 13, paragraph 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 ...".

(\*) See comment in point 18.13.5.

[18] Derogations constitute an exception to this rule: see point 18.15.

- 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 be filled subsequently by other provisions, except when the content is identical to the text previously deleted.

### **No autonomous substantive provisions**

- 18.3.** Amending acts must not contain new substantive provisions which are autonomous in relation to the act to be amended. Since the sole legal effect of the new act is to amend the old one, it exhausts its effects upon entry into force. Only the basic act as amended is left in existence and continues to govern the whole matter.
- 18.4.** This approach simplifies the codification of legislative texts considerably, since the presence of autonomous provisions within a body of amending provisions leads to a complicated legal situation.

### **No amendment of amending acts**

- 18.5.** Since an amending act must not contain any autonomous substantive provisions and exhausts its effects by making amendments to another act, amending acts must not be amended. If further amendments are necessary, the basic act as previously amended must again be amended.

*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 is a decision which amends a decision [1999/357/CFSP] which, in turn, amended another decision [1999/319/CFSP].

The title of Decision 1999/424/CFSP should already have indicated that Decision 1999/357/CFSP 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.

### Nature of the amending act

- 18.6.** In general, it is preferable for an amending act to be of the same type as the act to be amended. In particular, it is not recommended to amend a regulation by a directive.
- 18.6.1.** However, certain provisions of primary law 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.
- 18.6.2.** In addition, the act to be amended may have provided for amendment by another type of act.

### Amendments to annexes

- 18.7.** Amendments to annexes containing technical passages are normally made in an 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 ..., are amended in accordance with the Annex to this Regulation.’

In this case, the annex to the amending act must include introductory formulations which clearly identify the scope of the amendments:

‘ANNEX

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. ...”

However, a simple amendment to an annex may be made directly in the enacting terms of the act:

Example:

‘Article ...

Regulation ... is amended as follows:

- (1) ... ;

- (2) the title of Annex I is replaced by the following:

“...”

## Updating of references

- 18.8.** 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 reference is intended to be to the provision as amended, nothing need be done in the case of a dynamic reference. In the case of a static reference, a consequential amendment will be necessary.

## Titles of amending acts

- 18.9.** The title of an amending act must mention the number of the act being amended and indicate either the title of the act or the purpose of the amendment.

*Example:*

*Act to be amended:*

‘Council Regulation ... of ... on improving the efficiency of agricultural structures’

*Amending act:*

- either (title of the act to be amended): ‘Council Regulation ... of ... amending Regulation ... on improving the efficiency of agricultural structures’;
- or (indication of the purpose of the amendment): ‘Council Regulation ... of ... amending Regulation ... as regards the size of agricultural holdings’.

- 18.10.** If an amending act is adopted by a different institution to the one that adopted the act to be amended, the title of the amending act must indicate the name of the institution which adopted the act to be amended (for more information, see point 16.10.1).

*Example:*

‘Commission Regulation ... amending the Annex to Council Regulation ... as regards ...’

## Drafting an amending act

- 18.11.** The recitals to an amending act have to fulfil the same requirements as the recitals to an autonomous act (see Guidelines 10 and 11). However, they have a special purpose in that they are intended only to explain the reasons for the changes made by the amending act: they therefore do not need to repeat the reasons for the act to be amended.

**18.12.** It is not good legislative practice to amend the recitals of the act to be amended. Those recitals set out, in a coherent manner, the reasons for the act at the time it was adopted in its original form. Only by means of codification or recast can the initial reasoning and the reasons for the successive amendments be consolidated coherently, with the necessary adaptations.

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

**18.13.1.** In the interests of clarity and in view of the problems of translation into all official languages, 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, with the exception of dates and figures.

**18.13.2.** In the case of multiple amendments, an introductory formulation should be used.

*Example:*

'Regulation ... is amended as follows:

...'

**18.13.3.** 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 ... 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

...':

(\*) See comment in point 18.13.5.

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

**18.13.5.** The various types of amendment (replacement, insertion, addition, deletion) are made using standard wording.

*Example:*

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

...'

'the following Article Xa (\*) is inserted:

...'

'in Article Y, the following paragraph X (\*) is added:

...'

'in Article Z, paragraph 3 is deleted'

(\*) The introductory wording may or may not include the number of the subdivision to be inserted or added. In the case of complicated amendments, the indication of the number and, if necessary, other information on the exact location where a new passage is to be inserted may facilitate the analysis of the amending act and future consolidation.

**18.13.6.** 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

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

**18.15.** It is possible, however, that, for reasons of urgency or for other practical reasons and for 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 ..., applications may be made after ...'.

- 18.15.1.** As a general rule, and in particular for reasons of transparency, it is preferable to avoid substantive amendments of this kind. When substantive amendment is used, the basic act remains unchanged and the new provisions derogate from it in such a way that the old text, which remains in force, coexists with the new text, which deactivates some of the old text's provisions, alters their scope or adds to them.
- 18.15.2.** Where 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 significant, 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.** Sometimes an act with autonomous provisions alters the legal context of a given field to such an extent that other acts governing other areas within the same field need to be amended. To the extent that the amendment is only secondary to the main scope of the act, the juxtaposition of autonomous and amending provisions in the same act 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, by stating the sequential reference number of the act to be amended (see point 8.3).

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.

- 19.4.** If the preponderance of amending provisions means that an act that is not primarily intended to be an amending act effectively becomes one, it should be split into two separate acts, for the reasons set out in points 18.3 and 18.4.



# **Final provisions, repeals and annexes**

**Guidelines 20, 21 and 22**

## 20

**PROVISIONS LAYING DOWN DATES, TIME LIMITS, EXCEPTIONS, DEROGATIONS AND EXTENSIONS, TRANSITIONAL PROVISIONS (IN PARTICULAR THOSE RELATING TO THE EFFECTS OF THE ACT ON EXISTING SITUATIONS) AND FINAL PROVISIONS (ENTRY INTO FORCE, DEADLINE FOR TRANSPOSITION AND TEMPORAL APPLICATION OF THE ACT) SHALL BE DRAWN UP IN PRECISE TERMS.**

**PROVISIONS ON DEADLINES FOR THE TRANSPOSITION AND APPLICATION OF ACTS SHALL SPECIFY A DATE EXPRESSED AS DAY/MONTH/YEAR. IN THE CASE OF DIRECTIVES, THOSE DEADLINES SHALL BE EXPRESSED IN SUCH A WAY AS TO GUARANTEE AN ADEQUATE PERIOD FOR TRANSPOSITION.**

**20.1.** In legal acts of the Union, a distinction is made, depending on the characteristics of the act, between the date of entry into force and the date from which provisions are to have effect. Furthermore, the date of application of the act may be different from the date of entry into force or the date from which provisions are to take effect.

**A. ENTRY INTO FORCE**

**20.2.** Legislative acts, within the meaning of Article 289(3) TFEU, enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication (see the third subparagraph of Article 297(1) TFEU). The same is true of certain non-legislative acts (see the second subparagraph of Article 297(2) TFEU), i.e. those adopted in the form of regulations, directives which are addressed to all Member States and decisions which do not specify to whom they are addressed.

**(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.** Entry into force cannot be earlier than the date of publication.
- 20.3.2.** Entry into force 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 urgency considerations which justify entry into force prior to the twentieth day following that of 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 that of 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 must be justified by an overriding need — for example, to avoid a legal vacuum 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 (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 edition of the Official Journal in which the act is published is actually made available to the public in all the languages at the Publications Office.

**(c) Urgent measures**

- 20.6.** The daily and weekly regulations by which the Commission fixes the import duties (and/or the additional duties 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 is therefore the practice for these periodic regulations to enter into force on the day of their publication, or on the following working day.

**B. TAKING EFFECT**

- 20.8.** Directives other than those which are addressed to all Member States and decisions which specify to whom they are addressed do not have a date of entry into force but take effect on **notification** to the addressees (third subparagraph of Article 297(2) TFEU).

**C. DATE OF APPLICATION**

**(a) Retroactive application of regulations**

- 20.9.** Exceptionally, and subject to the requirements of legal certainty, a regulation may have retroactive effect. The words 'It shall apply from ...' are then added in a paragraph after the paragraph on entry into force.
- 20.10.** To give retroactive effect to provisions, terms such as 'for the period from ... to ...', 'from ... to ...' (in the case of tariff quota regulations, for example) or the words 'with effect from ...' are often used in articles other than the final article.

**(b) Deferred application of regulations**

- 20.11.** A distinction is sometimes made between the entry into force of a regulation and the application of the arrangements introduced by it, which may be deferred. The purpose of the distinction may be to enable the new bodies provided for in the regulation to be set up immediately and to enable the Commission to adopt implementing measures in respect of which those new bodies have to be consulted.

- 20.12.** 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 twentieth day following that of its publication in the *Official Journal of the European Union*.

Article ... 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.'

**(c) Implementation of directives**

- 20.13.** 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, 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. They shall immediately inform the Commission thereof.'

- 20.14.** 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, the date from which national provisions are to apply should be specified.

*Example:*

'By ... Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those provisions from ...'

**D. END OF PERIOD OF APPLICATION OR VALIDITY**

- 20.15.** Among the final provisions, an article may specify when the act ceases to apply or to be valid.

**E. IMPLEMENTATION OF NON-BINDING ACTS**

- 20.16.** Acts which have no binding force, such as recommendations, do not have a date of taking effect or application; the addressees may be requested to give effect to them by a certain date.

**F. RULES RELATING TO CALCULATION OF PERIODS**

**(a) Indication of the beginning of periods**

- 20.17.** Save as otherwise expressly provided, a period begins at 00.00 hours on the date indicated <sup>[19]</sup>. The expressions most commonly used to indicate the beginning of a period are:
- > from ... (until/to) ...;
  - > with effect from ...;
  - > shall take effect on ...;
  - > shall have effect from ...;
  - > shall enter into force on ... .

[<sup>19</sup>] 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).

(b) **Indication of the end of periods**

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

- > until/to ...;
- > shall apply until the entry into force of ..., or ..., whichever is the earlier;
- > at the latest;
- > (from ...) until/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 legislator considers that previous acts or provisions should no longer be applied because 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 simply come to an end.

**21.2.** The express repeal of provisions of earlier acts implies that no other provision is repealed, which reduces the risk of uncertainty as to whether rules which previously applied will continue to do so.

## 22

**TECHNICAL ASPECTS OF THE ACT SHALL BE CONTAINED IN THE ANNEXES, TO WHICH INDIVIDUAL REFERENCE SHALL BE MADE IN THE ENACTING TERMS OF THE ACT AND WHICH SHALL NOT EMBODY ANY NEW RIGHT OR OBLIGATION NOT SET OUT IN THE ENACTING TERMS.**

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

**A. ANNEXES IN THE STRICT SENSE**

- 22.1.** Annexes in the strict sense are used to present material separately from the body of the enacting terms, because it is voluminous or technical or both. Examples of such material 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, etc.
- 22.2.** Where there are practical obstacles to incorporating technical rules or data in the 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.** An annex is by its very nature an integral part of the act, and there is, therefore, no need to state this 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 nonetheless 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**

- 22.6.** An act may have attached (and not 'annexed') to it other pre-existing legal acts which it thereby generally endorses. 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'.

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