
TABLE OF CONTENTS

<i>Preface</i>	v
<i>List of Contributors</i>	xv
1. Introduction	1
<i>Ulrich Karpen</i>	
1.1. What This Book Intends	1
1.2. Legislation and Legisprudence	2
1.2.1. Laws and Other Regulations	2
1.2.2. Legisprudence	3
1.2.3. Good Governance, Better Regulation, Better Legislation	3
1.2.4. Comparative Legisprudence as a Tool of 'Better Legislation'	4
1.3. Process of Legislation	5
1.3.1. Competences, Organisation and Procedure of Legislation	5
1.3.2. Legislation in Multi-level Systems	6
1.3.3. Organisation of Legislation and Separation of Powers	7
1.3.4. Legislation in the Regulatory Cycle	9
1.4. Policy Making, Targets and Instruments of Legislation, Evaluation	10
1.4.1. Policy Making	10
1.4.2. Targets of Legislation	11
1.4.3. Instruments of Legislation	11
1.4.4. Evaluation	11
1.5. Techniques	13
1.5.1. Law Drafting	13
1.5.2. Structure, Language, References	13
1.5.3. Special Categories of Laws	14
1.5.4. Guidelines and Manuals for Law Making	15
1.6. Some Trends of Legislation and Legisprudence	15
Further Reading	16
2. Legislation and Regulation	17
<i>Wim JM Voermans</i>	
2.1. Legislation and Regulation	17
2.1.1. The Difference Between Legislation and Regulation	19
2.2. Normative and Positive Theories of Regulation	20
2.3. Functions of Legislation as Yardsticks for Notions of 'Good' Legislation	23
2.3.1. Legislative Functions	23
2.3.2. Requirements and Demands on Legislation in Constitutional Democracies	24

2.4.	The Regulatory State and Its Consequences.....	26
2.5.	Regulation: From a Solution to a Problem.....	27
2.6.	Conclusion.....	29
2.6.1.	Assessing the Effect of Better Law Making and Better Regulation Policies.....	30
2.6.2.	The True Test of Values Involved in Better Regulation and Better Law Making.....	31
	Further Reading.....	32
3.	Legislative Process.....	33
	<i>Tímea Drinóczy</i>	
3.1.	Introduction.....	33
3.2.	Regulation and Organisation.....	35
3.2.1.	Basic Rules of the Legislative Process.....	35
3.2.2.	Constitutional Context and the Status of Parliament and Government in the Legislative Process.....	36
3.2.2.1.	Parliament.....	36
3.2.2.2.	Government.....	37
3.2.2.3.	On the Loss of the Legislative Character.....	38
3.3.	Legal Measures, Other Bodies and Participants Taking Part in Legislative Processes.....	39
3.3.1.	Legal Measures.....	39
3.3.2.	Other Actors and the Legislative Process.....	41
3.4.	Legislative Process.....	44
3.4.1.	Preparatory Stage or Pre-parliamentary Stage.....	44
3.4.2.	Legislation in Legislative Bodies.....	46
3.4.3.	Post-parliamentary Stage and Constitutional Review.....	47
3.5.	Summary of the Legislative Process, Trends and Challenges.....	48
	Further Reading.....	51
4.	Management of Legislation.....	53
	<i>Patricia Popelier</i>	
4.1.	Introduction.....	53
4.2.	Aspects of Regulatory Management.....	56
4.2.1.	Culture.....	56
4.2.2.	Structures.....	59
4.2.3.	Processes.....	64
4.2.4.	Instruments.....	65
4.2.5.	Competences.....	66
4.3.	Regulatory Management in Multi-tiered Legal Systems.....	68
4.3.1.	Regulatory Management in EU Member States.....	68
4.3.2.	Regulatory Management in Multi-tiered EU Member States.....	69
4.4.	Conclusion.....	71
	Further Reading.....	72

5. Participation.....	73
<i>Felix Uhlmann and Christoph Konrath</i>	
5.1. Definition and Delimitations.....	73
5.2. Functions of Participation.....	76
5.2.1. Information and Transparency.....	76
5.2.2. Legitimacy.....	77
5.2.3. Political Feasibility.....	78
5.2.4. Fact Finding.....	79
5.2.5. Implementation and Practicability.....	80
5.2.6. Legislative Quality.....	81
5.3. Limits.....	81
5.4. Forms of Participation.....	82
5.4.1. Consultation on the Timeline of the Legislative Process.....	83
5.4.2. Authorship and Responsibilities.....	85
5.4.3. Objects of Consultation.....	85
5.4.4. Participants.....	87
5.4.5. Format.....	88
5.4.6. Deadlines.....	90
5.4.7. Assessment of Feedback and Use of Results.....	91
5.4.8. Consultation and Parliamentary Procedures.....	92
5.5. Regulation on Consultation.....	93
5.5.1. National Constitutions and Laws.....	93
5.5.2. National Ordinances, Manuals and Practice.....	94
Further Reading.....	95
6. Goals and Measures of Legislation: Evaluation.....	97
<i>Mauro Zamboni</i>	
6.1. Introduction.....	97
6.2. What a Legislative Goal is Not.....	98
6.3. Structuring the Legislative Goal.....	99
6.4. The Function(s) of the Legislation and Its Goals.....	102
6.5. Locating the Legislative Goals.....	105
6.6. Conclusion.....	107
Further Reading.....	107
7. Legislative Drafting Techniques/Formal Legistics.....	109
<i>Jean-Pierre Duprat and Helen Xanthaki</i>	
7.1. Structure and Systematics as Elements of Quality of Law in Context.....	109
7.1.1. The Hold on Formal Legistics and Legal Certainty.....	110
7.1.1.1. A Main Interest in Economic and Social Effects of Regulation.....	110
7.1.1.2. Accessibility to Law and Democratic Prerequisite.....	110
7.1.1.3. Formal Legistics and the 'Legislative Cycle'.....	111
7.1.2. Historical Point of View: The Various Dimensions Afforded to Formal Legistics.....	111

7.1.3.	Systematisation and Inner Structure of Statutes	113
7.1.3.1.	Enhancement of Codification and Repealing Statutes to Simplify Law	113
7.1.3.2.	Formal Systematisation of Statutes.....	114
7.2.	The Standardised Elements of Legal Texts: Between Logic and Historical Legacy	116
7.2.1.	The Title of Statutes	116
7.2.1.1.	The Practice of a Short Title: Information and Citation	116
7.2.1.2.	The Short Title as the Dominant Continental Practice	117
7.2.2.	The Decreased Usage of the Preamble and Its Modern Substitutes.....	118
7.2.3.	The Search for Clear Presentation of Provision: Numbering and Heading of Divisions and Subdivisions	119
7.2.3.1.	Continuous Numbering of Sections and Differentiation from Other Divisions of the Statute	119
7.2.3.2.	Headings, Understandability for Users and Consistency of Drafting.....	120
7.2.3.3.	Transitional Provisions and Legal Certainty	121
7.3.	Cross-references	121
7.4.	Amendments.....	122
7.5.	Transposition of European Guidelines	123
7.6.	Innovation: A Glimpse Into the Future	124
	Further Reading	127
8.	Legislative Language and Style	129
	<i>Mario Hernández Ramos and Volker Heydt</i>	
8.1.	Characteristics of Normative Language.....	129
8.1.1.	Clarity	130
8.1.2.	Conciseness	132
8.2.	Legal Definitions	133
8.2.1.	Functions.....	134
8.2.2.	Rules.....	134
8.3.	Techniques in Normative Language.....	135
8.3.1.	Legal Lexicon.....	136
8.3.2.	Non-legal Lexicon	136
8.4.	Style of Legislation.....	137
8.4.1.	Design of the Legal Order and Access to the Law	137
8.4.2.	Structure and Style of the Individual Piece of Legislation.....	138
8.4.3.	Linguistic Aspects.....	139
8.5.	Common Law and Civil Law Approaches to Legislation.....	140
	Further Reading	142
9.	Legislative Drafting.....	145
	<i>Stefan Höfler, Markus Nussbaumer and Helen Xanthaki</i>	
9.1.	Introduction.....	145

9.2.	The Drafting Process and Its Stages	146
9.2.1.	Planning.....	147
9.2.2.	Composing.....	149
9.2.3.	Revising	150
9.2.4.	Editing	152
9.2.5.	Conclusions.....	152
9.3.	Organisational Models and Their Actors.....	153
9.3.1.	Decentralisation	153
9.3.2.	Centralisation.....	155
9.3.3.	Examples.....	156
9.3.3.1.	United Kingdom	156
9.3.3.2.	Switzerland.....	157
9.3.3.3.	Conclusions.....	158
9.4.	Models of Multilingual Legislative Drafting.....	159
9.4.1.	Co-drafting.....	159
9.4.2.	Co-revision.....	160
9.4.3.	Co-editing.....	161
9.4.4.	Conclusions.....	161
9.5.	Summary	161
	Further Reading.....	163
10.	Publication	165
	<i>Karl Irresberger and Anna Jasiak</i>	
10.1.	Publication as a Basic Requirement of Legislation.....	165
10.2.	Publication Methods.....	167
10.2.1.	Paper Publication.....	167
10.2.2.	Electronic Publication	170
10.2.3.	Publication Requirements in Case of Legislation by Reference.....	174
10.2.4.	Deposit for Public Inspection Instead of Official Publication.....	177
10.2.5.	Extraordinary Publication	177
10.3.	Legal Effect; <i>Vacatio Legis</i>	178
10.4.	Publication Defects and Corrections	179
10.5.	Consolidation and Codification.....	180
10.5.1.	Codification and Consolidation at the National Level	180
10.5.2.	Consolidation and Codification in the EU.....	183
10.6.	Conclusions	184
	Further Reading.....	184
11.	Regulatory Evaluation Ex Ante and Ex Post: Best Practice, Guidance and Methods	187
	<i>Stephan Naundorf and Claudio M. Radaelli</i>	
11.1.	Introduction and Definitions	187
11.2.	An Overview.....	190
11.3.	Problem Definition	194
11.3.1.	Common Myths About Problems Are Hard to Dispel.....	195
11.4.	Setting the Criteria	195

11.5.	Measuring the Baseline.....	196
11.6.	The Formulation of Options.....	197
11.7.	Data Gathering	201
11.8.	Organising Consultation.....	202
11.9.	The Analysis of Options	204
11.10.	Reporting and Communication.....	208
11.11.	Quality Assurance.....	209
11.12.	Effectiveness	211
	Further Reading.....	211
12.	Maintenance of Rules	215
	<i>Maria De Benedetto</i>	
12.1	Which Maintenance for Which Rules?	215
	12.1.1. What Is Meant by the Reference to Rules?.....	216
12.2.	Maintenance of Rules: Purposes and Object.....	216
12.3.	Historical Roots of Maintenance of Rules.....	220
12.4.	How Maintenance Is Changing.....	221
	12.4.1. Reasons for Change	221
	12.4.2. Maintenance and Quality of Rules	222
	12.4.3. Kinds of Maintenance (Compilation, Consolidation, Revision, Reform).....	224
12.5.	The Modern Legislator Walks on Two Legs: Law Making and Law Maintenance.....	226
	Further Reading.....	227
13.	EU Legislation	229
	<i>William Robinson</i>	
13.1.	Introduction.....	229
	13.1.1. Origins.....	229
	13.1.2. Present Position	230
	13.1.3. A New Legal Order	231
	13.1.4. General Principles.....	231
13.2.	Types of Legal Acts.....	233
	13.2.1. General	233
	13.2.2. Regulations.....	233
	13.2.3. Directives.....	234
	13.2.4. Decisions	235
	13.2.5. Recommendations	235
	13.2.6. Opinions.....	236
	13.2.7. Interinstitutional Agreements	236
	13.2.8. Legislative and Non-legislative Procedure.....	236
	13.2.9. Delegated and Implementing Acts.....	237
	13.2.9.1. Delegated Acts	237
	13.2.9.2. Implementing Acts.....	237
13.3.	Legislative Procedure.....	238
	13.3.1. General	238

13.3.2.	Commission Proposal	239
13.3.3.	European Parliament.....	240
13.3.4.	Council.....	240
13.3.5.	Trilogues.....	241
13.3.6.	Role of the Commission in the Codecision Procedure.....	241
13.4.	Languages.....	241
13.5.	Accessibility.....	242
13.6.	Drafting Process and Drafting Rules	243
13.6.1.	Drafting Process.....	243
13.6.2.	Drafting Rules.....	244
13.6.3.	Rules on Legal-linguistic Revision.....	245
13.7.	Structure and Style	246
13.7.1.	Structure	246
13.7.2.	Drafting Style.....	247
13.8.	Role of the CJEU and Interpretation of EU Law	248
13.8.1.	General.....	248
13.8.2.	Actions for Annulment.....	249
13.8.3.	References for Preliminary Rulings	249
13.8.4.	Infringement Proceedings.....	249
13.8.5.	Interpretation of EU Law.....	249
13.9.	Quality of EU Legislation.....	250
13.9.1.	Calls for Improvement and Response of the EU Institutions	250
13.9.2.	Governance Initiative	251
13.9.3.	Agreement on Better Law Making 2003	251
13.9.4.	Smart Regulation.....	252
13.9.5.	REFIT	252
13.9.6.	Better Regulation Package 2015.....	253
13.9.7.	Agreement on Better Law Making 2016.....	253
13.10.	Condensing and Updating the Statute Book.....	253
13.10.1.	Amendment	253
13.10.2.	Corrigenda	253
13.10.3.	Consolidation	254
13.10.4.	Codification	254
13.10.5.	Recasting	254
13.10.6.	Repeal.....	255
13.11.	Final Words	255
	Further Reading.....	255
14.	Legislative Training.....	257
	<i>Marta Tavares de Almeida and Chris Moll</i>	
14.1.	Specialised Legislative Training for Legislative Production.....	257
14.1.1.	The Importance of Specialised Legislative Training for the Quality of Legislation	257
14.1.2.	Development of Legislative Training Programmes at European Level.....	258

14.1.3.	Academic and Professional Legislative Training.....	259
14.1.4.	Training Activities by International and National Associations	259
14.1.5.	The Two Stages of Law Preparation	260
14.1.6.	Law Preparation in Common Law and Civil Law Jurisdictions	260
14.1.7.	EU Legislation: Law Making and Training	262
14.1.8.	Regulatory Management Training.....	263
14.2.	Legislative Training Programmes at European Level	264
14.2.1.	Origin and Aims.....	264
14.2.2.	The Organisation of Training in Member States.....	266
14.2.3.	Training Activities Programme Design.....	269
14.2.4.	Training Activities Target Audiences	271
14.3.	Summary	272
	Further Reading.....	273
15.	Emerging Trends in Legislation in Europe	275
	<i>Helen Xanthaki</i>	
15.1.	The EU's Regulatory Framework for Legislative Quality.....	275
15.2.	The Post-Lisbon Smart Regulation Initiative	278
15.3.	Legislative Quality in the Future: Blue-sky Initiatives or a Realistic Way Forward?.....	284
15.3.1.	The Layered Approach to Structure	289
15.3.2.	Legislative Image: Presentation, Layout, Pictures.....	291
15.3.3.	The Statute Book or the Body of Legislation as a Whole: Quantity and Beyond.....	292
15.3.4.	The Theoretical Umbrella: Phronetic Legislative Drafting	294
15.4.	Conclusions	296
	<i>Index</i>	297