

Ulrich Karpen and Helen Xanthaki (Eds.): Legislation in Europe: A Country by County Guide

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In the context of globalisation and Europeanisation, accompanied by the emergence of complex – wicked – societal and economic problems, new realities of the digital world, and new normalities in times of crisis, the decision-making authorities at the national, supranational, and local levels have frequently been pressured to find viable solutions by using adequate instruments to overcome problems and challenges of the contemporary world. The traditional instruments of the state – regulation, legislation, rules, laws, etc. – remain a suitable solution to address numerous old and new problems. The rules and models for drafting legislation, for addressing the regulatory burden, or for involving stakeholders in the law drafting process, have been developed and disseminated throughout the world in the last decade. The regulatory reform, promoted and implemented in the last decades, has not been only about deregulation, but also about how to improve the quality of the law drafting process as well as the content of the laws, with many new instruments and practices embraced by various jurisdictions (e.g. RIA, public consultations, regulatory sandboxes, etc.). However, the legislative process and law-drafting have simultaneously developed in each country within specific political, legal, and administrative contexts over many centuries. They have influenced the process

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of law-making, the content of the law, the instruments of evaluating legislation, and ensured professionalism and expertise in a highly politicised process of law-making.

The importance of law-drafting and legislation for achieving economic and societal well-being, especially in the context of globalised (and Europeanised) world, cannot be denied. Furthermore, the legislative procedure includes different actors, branches and levels of government, as well as different measures and operative techniques, which requires a broad perspective in order to grasp subtle nuances and causal connections. Finally, the experts in law, public administration, public policy or political science, including specialists in legislation, law drafting and regulation, can hardly disregard a comparative view at the issues they explore or practise in their respective countries. Despite these arguments, the attempts to describe, analyse, compare, and evaluate the law-drafting and legislative process in different countries have been scarce.

The book *Legislation in Europe: A Country by Country Guide* is precisely a book that responds to the needs of academics and professionals in legal, policy, politics and administration studies (but not exclusively). This impressive volume published in 2020 by a renowned Hart Publishing and edited by leading legislation experts - professor Ulrich Karpen and professor Helen Xantakhi, contains a collection of 30 country chapters covering 27 EU member states, Norway, United Kingdom, and Switzerland as well as the European Union, offering a detailed description, analysis, and critical insights on the national legislation, legislative and drafting processes, and specific issues of legislation, such as training of legislation experts. The 31 comparative chapters including the introduction chapter written by editors (Legislation in European Countries, pp. 1-34) and the Postscript (pp. 541-542) spread over 542 pages of fascinating material. The book contains a short Preface, the Table of Contents (pp. ix-x, but to our regret, without a detailed table of contents which would list all subchapters), the List of Authors (pp. xi-xiv) with affiliations of 41 authors participating in the book, and Index (pp. 542-588). Each chapter contains several suggested readings.

The editors of this voluminous work are widely known academics and experts in legislation studies and legislative drafting. Dr Ulrich Karpen, Professor Emeritus of Constitutional and Administrative Law of the University of Hamburg, Germany, and a visiting professor at many international universities, is one of the leading scholars of legislation. He has authored and edited numerous important books and articles on the issue of legislation drafting and legislative and regulatory process, including earlier

volumes on legislation in European countries (e.g. he edited *Legislation in European Countries. Proceedings of a Conference in Bad Homburg/Germany (Dec 11-13, 1991)*, EAL, vol. 1, Baden-Baden, Nomos, 1996). Dr Helen Xhantaki is another leading legal scholar in legislation and the first UK professor of Law and Legislative Drafting at the University College London. Her academic and professional work is devoted primarily to legislation, including her service at the Sir William Dale Centre for Legislative Studies, a research centre at the Institute for the Advanced Legal Studies. She is President of the International Association for Legislation (IAL), and the author of *Thornton's Legislative Drafting* (5th edition, Bloomsbury, 2013), the leading manual for drafters, as well as of *Drafting Legislation: Art and Technology of Rules and Regulation* (2014, Hart Publishing), the main reference book in legislative studies.

It is important to note that the same editors have already prepared and published another anthological volume in the same field - *Legislation in Europe, A Comprehensive Guide for Scholars and Practitioners* (Oxford, 2017). This book offers an analysis of recent trends and issues in legislation process and drafting with emphasis on the European context. Chapters written by leading European legislative scholars examine the relationship between legislation and regulation (W. Voermans), legislative process (T.Drinoczi), management of legislation (P.Poppeller), participation in legislative process (F.Uhlmann and C.Konrath), evaluation and regulatory impact assessment (M.Zamboni; S. Naundorf and C. Radaelli), legislative drafting and techniques (J-P. Duprat and H. Xanthaki; S.Höfler, M. Mussbaumer and H. Xanthaki), language and style of legislation (M. Hernandez Ramos and V. Heydl), publication (K. Irrsberger and A. Jasiak), maintenance of rules (M. De Benedetto), EU legislation (W. Robinson) and legislative training (M. Tavares de Almeida and C. Moll). Together with its introduction (U. Karpen) and concluding chapter on emerging trends in legislation in Europe (H. Xanthaki) this book offers a rich material with theoretical concepts and comparative dimension, which made it a unique and praised analysis of jurisprudence in Europe.

Following the success of the first volume, the editors set to accomplish a rather demanding task – to describe, analyse, and critically examine the legislation and legislative drafting in 30 European countries and the European Union with the ultimate goal of contributing to better legislation. In order to accomplish this goal, as explained by the editors in the introductory chapter (p. 2), the country reports take into account several key standards of good legislation: they see the constitution as the institutional frame and the guiding principle of legislative action; they look at the law

as an instrument of governance and regulation; they do not disregard the importance of transparency and participation for the process of legislation; they have in mind the ultimate goal of the good, just and fair norm as a product of law-making; they take into account the choice of effective and proportional instruments of the law; they agree that the law must have a well-structured, clear and understandable form; they acknowledge that legisprudence has a practical dimension, and is intended not only for scholars and students, but also drafters.

The leading part, the issues analysed as well as the selection of countries – the EU Member States (27 plus the UK which left the EU only recently, during the preparation of the book), the EU itself and two non-members which are in many ways following the EU legal rules (EFTA countries Switzerland and Norway, also an EEA country) clearly show the European ambition of the book and the relevance of EU legal framework, the common trends and the legislation in the EU multilevel governance. Consequently, the issue of EU law is represented in all country chapters.

The chapters have been written by 41 leading scholars and practitioners with impressive affiliations and expertise in legislation. The authors include professors and researchers of constitutional law, administrative law and administrative science, legislation studies, and of comparative law and jurisprudence from leading European universities and research institutes (P. Popelier, Belgium; M. Belov, Bulgaria; I. Koprić, Croatia; R. Zbiral, Czech Republic; H. Krunke, Denmark; J. Ginter, R. Narits, Estonia; J. Tala, Finland; U. Karpen, Germany; T. Drinóczi, Hungary; M. Mousmouti, Greece; R. Cormacain, Ireland; M. De Benedetto, Italy; J. Malinauskaite and A. Pasvenskiene, Lithuania; I. Sammut, Malta; S .E. Zijlstra, Netherlands; J. C. Fløysvik Nordum, Norway; J. Sokołowski, Poland; J. T. Silveira, Portugal; E. Veress, Romania; M. Hodas, Slovakia; P. Kovač and K. Fabrizio, Slovenia; M. H. Ramos, Spain; C. Holm, Sweden; U. Felty and S. Höfler, Switzerland; H. Xanthaki and C. Stefanou, United Kingdom; W. Robinson, EU and UK). As a second group, the authors include top parliamentary or executive national officials involved in the process of law drafting or evaluation (K. Irresbergerand and C. K. Christoph, Austria; N. Ioannou, Cyprus; A. Kaseemets, Estonia; K. Gilberg, France; D. Rezevska, Latvia; V. Heydt, Luxembourg; E. Beenakker, Netherlands; J. Danelius, Sweden; W. Robinson). Some authors have experience in the subject as both practitioners and academics.

Each chapter presents a country case study, investigating the national legislative system and law making. Building on the concepts and trends identified in the first volume, each county chapter follows the same structure:

(1) the national constitutional environment and its connection with EU law; (2) the nature and types of legislation; (3) the legislative process; (4) the drafting process, (5) jurisprudence conventions and (6) the training of drafters. The country chapters mainly follow the same structure, although some apply different titles or merge some issues in joint chapters (sometimes departing from the initial idea), or introduce a specific subchapter if it is important for their respective country chapters (e.g. citizen participation in drafting or amending legislation, access to legislation, the impact of the EU, temporary legislation etc.). The introductory chapter written by editors provides a comparative analysis of these six issues under titles described below in italics with each subchapter.

The introductory part of some (but not all) chapters offers a framework – *the Law-making in the Constitutional State* – by summarizing the constitutional context, the structure, the fundamental rights, and the rule of law in the country. This part is of various length for each of the country chapters but mostly offers a valuable introduction into the issue of legislation (e.g. Malta, Croatia, the Netherlands or Poland).

In the first part – *The Law* – the chapters examine the various sources of law, mostly in hierarchical structure. They range from constitutional law and organic laws, to parliamentary statutes, to delegated laws and ordinances issued by the executive, and other sources of the law, such as budgets, regulations of autonomous bodies (local governments, universities, etc.), collective labour agreements, policy rules, guides, interpretation of laws, and other types of soft law, as well as the European law. The complexity of sources of law in the comparative perspective offers valuable information and a basis for analytical framework for interested scholars and practitioners, including insight on differences, accents and particularities of the respective national systems.

The second part of most of the country chapters – *The Legislative Process* – thoroughly examines the steps in the law-making procedure, from the initial impulse to the adoption and subsequent phases, such as implementation, monitoring and possible amendments. Each of the three conceptual phases – the preparatory phase in the government, the debate and adoption in the parliamentary phase, and the post-parliamentary phase is described and analysed with a view of the special categories of law (such treaties, budgets, etc.) as well as of the forms of direct democracy law making procedures (referenda, plebiscites).

The third part – *Values and Goals of Laws, Good Legislation and Evaluation* – focuses on the quality of drafting process and the quality of norms in

terms of good legislation and regulatory reform instruments as they have been advocated by international organisations (primarily the OECD) and especially by the European Union with its Better regulation policy and related sub-initiatives. The emphasis is on deregulation (simplification) policies, on linking the future law with the policy objectives and intended effects, on ex ante and ex post evaluations, including regulatory impact assessment, as well as on the role of legal assessment of constitutionality of laws by the constitutional courts and judicial reviews.

The fourth part – *Formal Legisprudence: Structure, Language, Techniques of Law-Drafting* – provides insight in the national approaches to law drafting at the operational level, such as the existence of the law-drafting rules and standards, main principles and techniques, and linguistic approaches concerned with the clarity of rules and legislation. The standards include, for example, the use of simple language, avoiding long sentences and repetitions, gender neutrality and inclusivity, etc.

The final, fifth part – *Teaching legislation* – addresses the issues of professionalism, expertise, and training for law-drafting and legislative procedure. Specialist education and training are a feature of common law system where drafting legislation and legislative procedure are seen as a distinctive expertise, while the civil law systems rely on the in-job training and the specialisation for the drafting and legislative procedure within a substantive field of the law. As quoted by the authors of the introductory chapter Karpen and Xanthaki, the civil law approach goes ad absurdum, with an underlying belief that anyone who has a law degree is capable of drafting legislation (p. 34).

The book *Legislation in Europe: A Country by Country Guide* represents an informative, well structured, and fully comprehensive comparative overview of the law-drafting and legislation framework, practices, and trends in European countries. It is an impressive and inspiring volume, which will easily find its place on the shelves of offices and university libraries, government institutions, consultancy firms, attorneys' offices, as well as on the desks of scholars, practitioners and students of law and related disciplines. It is simply a sort of a textbook for anyone researching and exploring law, legislation, and policy making. The comparative approach of this book is what makes its contribution unique. What remains is for the editors to consider preparing the next volume covering additional 30 countries.