
Panel 81 – Common legal drafting rules for Portuguese-speaking countries and regions

Current State of the Project and Methodological Approach

**The ICON – S 2018 Conference
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Summary

- 1. Methodological approach followed**
- 2. Results achieved**
- 3. Contributions?**

Scope

1. The study of better regulation encompasses
 - a) The study of the system of legal sources
 - b) “Material” rules for legislation drafting
 - c) “Formal” rules for legislation drafting and
 - d) Legislative impact assessment

2. Our main objective is related to formal legislation drafting, which envisages the definition and implementation of rules and good practices regarding the drafting of legislation

Scope

1. At stake: finding common techniques of drafting and systematising legislation in order to allow citizens and companies to better understand their rights and duties in Portuguese speaking countries and regions

- The recent example of legislation of different traditions in Timor-Leste, namely the portuguese-based and the UNTAETs produced

2. Criteria, standards and common rules for legislation drafting in countries and regions where Portuguese is an official language will improve conditions for their citizens and residents to act, as well as for companies to invest

- For example, if the architecture of legal drafts is identical, interpreters will more easily know where to find the rules they are looking for

Scope

Building on:

1. A common language
2. A specific family of legislation
3. Constitutional and legal frameworks which have important similarities

Looking for:

1. Simplification of legislation
2. Better understood legislation
3. Cutting red tape

In all cases, nationally and in the Lusophone area

The assembling of different groups

1. First, a “Lisbon Team” of scholars and specialists in legal drafting
2. Second, a team of specialists from all the lusophone countries and regions
3. A high profile team of international consultants

Proceedings in general

1. The status of the legal drafting rules in each of the legal orders was studied and common standards, differences, and innovations were identified
2. The project evolves through different phases:
 - A) A general approach where simplicity and clarity of legislation, the construction of legal provisions or the use of our common language is in focus
 - B) A second phase, centered in the architecture and the systematics of legal acts
 - C) A third phase, regarding legal reforms, legislative consolidation, simplification programs and other strategies available

Phase 1

Systematisation, collection and publicity of relevant data for the research project

1st step: identification and collection of laws, guidelines and doctrine on better legislation drafting in all legal systems of the countries and regions within the scope of the study – Done

2nd step: drafting and publishing of an academic article on the evolution of how legislation drafting has been addressed in Portuguese-speaking countries and regions and brief comparison of the different solutions – Almost done. It will be published on <http://www.e-publica.pt/> (an online academic publication)

3rd step: identification of the issues on legislation drafting where there is a higher potential for defining criteria, standards and rules, considering each legal system – Done

Phase 2

Further development of the methodology and procedures of the research project

4th step: first meeting with the research consultants takes place, in order to collect suggestions on methodology and procedures regarding the next steps of the research project – Done

5th step: identification and division of three main blocks of themes of better legislation drafting , to be studied in three different moments/phases, which will be addressed in each of the three plenary meetings of the research team – Done

1st block: General approach

- Simplicity and clarity
- Titles of legislation itself and of articles
- Articles
- Marks, including the use of **bold**, *italic*, “quotation marks” and other «quotation marks», CAPITAL and regular letters
- Punctuation, including the use of (), [] and –
- Uniform use of language and concepts, the use of foreign languages and verbal forms

1st block: General approach

- Technical and scientific concepts and formulas
- Acronyms and abbreviations
- Numerals
- Changes to legal texts and the inclusion of new articles
- Repealing legislation, the cases of special legislation
- Preambles, explanatory memoranda and equivalent texts

2nd block: architecture and systematics of legal acts

- Organization and systematic organization of a legal act
- Articles, numbering, paragraphing and sub-paragraphing
- Remissive solutions
- Formulary mentions
- Subject, scope and definitions
- Specificities of punitive, tax and procedural norms
- Complementary, transitional and final provisions
- Attachments

3rd block: Legal reforms and legislative restructuring

- Formulary laws and formulas
- Model laws and framework laws
- Consolidation and compilation
- Simplification
- Republishing legislation amended
- Legislative planning
- Universal and free access to legal and regulatory texts and accessible communication about them

Phase 3

Dissemination of the data obtained up to this stage of the research project

6th step: writing of a book on the national and regional rules on legislation drafting in force in the Portuguese-speaking countries and regions – Along with the 2nd step, it has been decided instead, for the time being, to republish the Portuguese book “Legística”, a comprehensive manual already in use in diferente countries and regions

Phase 4

Definition of criteria, standards and common rules on better legislation drafting

7th step: drafting of proposals regarding the definition of criteria, standards and common rules on legislation drafting for the first block of issues to be addressed and adopted in the first plenary meeting of the research team – Done

8th step: definition of the criteria, standards and common rules on legislation drafting for the first block of aspects analysed, on the first plenary meeting of the research team – Done

Phase 4

Definition of criteria, standards and common rules on better legislation drafting

9th step: drafting of proposals regarding the definition of criteria, standards and common rules on legislation drafting for the second block of issues to be addressed and adopted in the second plenary meeting of the research team – Under preparation

10th step: definition of the criteria, standards and common rules on legislation drafting for the second block of issues analysed, on the second plenary meeting of the research team – Under preparation, the meeting will take in Macao

Phase 4

Definition of criteria, standards and common rules on better legislation drafting

11th step: possible second meeting with the research consultants, in order to discuss suggestions regarding possible corrections or elements to take into consideration at the last plenary meeting of the research team – 2019

12nd step: drafting of proposals regarding the definition of criteria, standards and common rules on legislation drafting for the third block of issues to be addressed and adopted in the third plenary meeting of the research team – 2019

13th step: definition of the criteria, standards and common rules on legislation drafting for the third block of issues analysed, on the third plenary meeting of the research team – 2019

Phase 5

Final phase

14th step: writing and publishing of a book on the criteria, standards and common rules for legislation drafting in Portuguese-speaking countries and regions, which may be used for several objectives, namely within the Community of Portuguese Speaking Countries – [2019/2020](#)

15th step: writing and publishing of a text which will assist in the implementation of the common rules on legislation drafting, which may play the role of a “reference book regarding the legislation drafting in the Lusophone space” – [2019/2020](#)

Results

1. Ultimately and primarily, the definition of criteria, standards and common rules on legislation drafting within the Portuguese-speaking countries and regions.
2. The results already achieved and mentioned form part of this path. The same goes for other projects and results that we are achieving or looking forward to, namely:
 - a. Annual post-graduate course on “better legislation drafting and science of legislation”, already taking place, under the responsibility of the Institute of Legal and Political Sciences of the Lisbon School of Law, that we look forward to connect with similar activities in other Portuguese-speaking countries and regions

Results

- b. Report with the criteria, standards and common rules on legislation drafting, which may be used for several objectives
- c. Writing of an article/book, which will assist in the implementation of the common rules on legislation drafting aimed to play the role of a “reference book regarding the legislation drafting in the Lusophone space”

Results

- d. Writing of a preliminary scientific article on the evolution of legislation drafting rules in Portuguese-speaking countries and regions and a brief comparison of the legislation in force regarding that matter
- e. Courses/conferences/training on legislation drafting may take place, provided by the research team in the countries/regions where the plenary meetings of the research team are held
- f. At the end of the research project an evaluation will take place regarding the possibility of creating a “Legislation Observatory of Portuguese-Speaking countries and regions”, taking advantage of the know-how of the experts in the several legal systems involved

Any contributions?



Thank you!

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