

# Common legislative drafting rules for Portuguese-Speaking countries and regions: identification of the existing situation

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Panel 81: Common legal drafting rules for Portuguese-Speaking countries and regions

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# Summary

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- 1. Legislative drafting in PT speaking countries and regions**
  - 2. Similarities and differences**
  - 3. Why searching for common standards?**
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# 1. Legislative drafting in PT speaking countries and regions

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- **Angola: Decreto Presidencial 251/12, of 27 December**
    - ✓ Legislative drafting rules for legislation approved by the Government
  - **Brazil/”Brasil”**: **Lei Complementar 95, of 26 February 1998, amended by Lei Complementar 107, of 26 April 2001**
    - ✓ Legislative drafting rules, rules for amendments and legislative consolidation
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- **Cabo Verde: Decreto-Lei 6/2005, of 24 January**
    - ✓ Legislative drafting rules for legislation approved by the Government
  - **Macao/”Macau”**
    - ✓ The “Assembleia Legislativa” has guidelines for legislative drafting: “Regras de Legística formal a observar na elaboração dos actos legislativos da Assembleia Legislativa”/Legislative drafting rules for the approval of laws of the Legislative Assembly
    - ✓ There is a handbook for legislative drafting: “Manual de Legística Formal” (José Miguel Figueiredo/António Manuel Abrantes, CREDDM, 2015)
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- **Portugal: Resolução do Conselho de Ministros 90-B/2015, of 9 November**
    - ✓ Legislative drafting rules for laws approved by the Government
      - Since 2004 new governments have been approving this very same act repeatedly
      - The act of 2015 is referred to the previous Government
      - Government in charge has not approved legislative drafting rules: it aims to approve common drafting rules for the Parliament, the Government and for the Autonomous Regions of Azores and Madeira
      - But the rules set by Resolução do Conselho de Ministros 90-B/2015, of 9 November are still being used
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- ✓ Handbook widely used: “Legística – Perspectivas sobre a concepção e redacção de actos normativos (David Duarte, Alexandre Sousa Pinheiro, Miguel Romão e Tiago Duarte), Almedina, Coimbra, Ministério da Justiça, Gabinete de Política Legislativa e Planeamento, 2002”
    - In general, Angola, Cabo Verde, Guinea-Bissau/”Guiné-Bissau”, Macao/”Macau”, Mozambique/”Moçambique”, São Tomé e Príncipe, Timor-Leste follow these standards
    - Acts approved by PT governments since 2004 aimed to also follow these standards
  - ✓ Portuguese Parliament approved guidelines: “Regras de legística a observar na elaboração de actos normativos da Assembleia da República”
    - These guidelines also follow the standards set by “Legística...” handbook
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- **S. Tomé e Príncipe: Lei 9/2008, of 24/9**
    - ✓ Legislative drafting rules for texts approved by the National Assembly, President of the Republic, Government, Regional Assembly and Regional Government
  
  - **Timor-Leste: Despacho 1/SECM/2007, published in the Jornal da República, Série II, of 14/9/2007**
    - ✓ Legislative drafting rules for legislation approved by the Government
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## Conclusions:

- Angola, Brazil/“Brasil”, Cabo-Verde, São-Tomé e Príncipe and Timor-Leste have published regulations on legislative drafting
    - ✓ Brazil and São-Tomé e Príncipe: regulations for acts of parliaments, presidents of the republic and governments
    - ✓ Angola, Cabo-Verde and Timor-Leste: regulations for legislation approved by governments
  - Macao: guidelines and handbook on legislative drafting
  - Portugal already had published regulations; currently has guidelines and a handbook on legislative drafting
  - Guinea-Bissau and Mozambique do not have regulations on legislative drafting or handbooks
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## 2. Similarities and differences

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- In general, regulations of Portuguese-Speaking countries address similar problems and issues

**Ex1:** How to identify the types of legislation

**Ex2:** How to separate in different parts the provisions of a law

**Ex3:** How to amend and repeal legislation

**Ex4:** Clarity and simplification of legislation

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- Regulations or handbooks of Angola, Cabo-Verde, Macao, Portugal, São Tomé e Príncipe and Timor-Leste are very close
- Although there are no regulations approved or handbooks, common practises in Guinea-Bissau and Mozambique also follow this pattern

**Ex1:** The designation for paragraphing and numbering is the same: “*artigos, números, alíneas e subalíneas*”. Similar criteria is used to identify and separate what to include in each of them.

**Ex2:** Similar rules for the use of capital letters

**Ex3:** Similar rules for the type of rules to include in “final provisions” / “*disposições finais e transitórias*” chapters

- Regulation in Brazil has some differences but they do not prejudice efforts to achieve common standards

**Ex1:** There is no “summary”/”*summary*” of a piece of legislation but an “*ementa*”, whose purpose is also to briefly identify the object of the legislation

**Ex2:** On what concerns numbering, the division is also in articles but then these are divided in “*parágrafos, incisos, alíneas e itens*” (not in “*números, alíneas e subalíneas*”)

**Ex3:** Brazilian regulation accepts the use of the future tense

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# 3. Why searching for common standards?

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### 3. Why common standards?

- Common practices and same legal roots create the perfect ground for common rules and standards
  - Simplification and improving access to legislation for more than 250 million of Portuguese native speakers
  - Legislation in Portuguese-speaking countries becomes closer and easier to be understood by everyone
  - Reduction of red tape for businesses in Portuguese-speaking countries
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## **The purpose of the research: setting common rules and standards for legislative drafting in Portuguese-speaking countries**

- **The scope includes:**

- ✓ Legislative drafting rules
- ✓ Specific issues concerning better regulation and law making

- **It does not target:**

- ✓ Standards and common grammatical rules for Portuguese language
  - ✓ Issues regarding type of legislative acts in different countries
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**Obrigado!**

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