QUALITY DRAFTING–THE CASE OF HUNGARY

Tímea Drinóczi*

Abstract

Proper legislation in a state of rule of law requires minimal rules on the drafting process. These rules of better regulation, among others, relate to the actual phrasing of a draft. More explicit political commitment towards better regulation leads to more extensive use of the elements of quality regulation, e.g., quality drafting. As for the required normative formulation of drafting rules, there can be two choices: detailed regulation for phrasing a draft could be laid down in a legal norm such as an Act or decree; or only main rules could be inserted in these measures, to be specified in a manual or guideline. Both have its advantages and disadvantages, and the state involved has to make its choice. At the end of 2009 the Hungarian minister of justice and law enforcement decided to issue a decree on drafting specifying the requirements of drafting, regarding phrasing and structuring. By summing up the main elements of the new Hungarian decree on drafting and putting it into a comparative perspective, the paper reveals failures the Hungarian legislature needs to face, on one hand, and on the other hand, offers "lessons" that may be learnt from the Hungarian example.

Keywords

better regulation, quality legislation, quality drafting, Hungarian decree on drafting, draftsmen, drafting process, phrasing a draft, structuring a draft

The present paper analyses the requirements of quality drafting, outlines its necessity and enumerates its content elements and preconditions from the aspect of better/quality regulation, legal certainty and the ongoing Hungarian developments on drafting. It is revealed that for achieving quality drafting three preconditions should be met: normatively formulated adequate content of drafting and its consistent application by professional draftsmen. It is examined how the Hungarian legislature realized these postulates and to what extent it has implemented it in practice. It is believed that the awareness and failures of the

* Tímea Drinóczi, PhD, is head of Department of Constitutional Law of the Faculty of Law, University of Pécs.

Hungarian legislature can be an example or point of reference for other legislatures seeking the best methods of achieving quality drafting.

A. QUALITY REGULATION AND QUALITY DRAFTING

Quality legislation may be considered as a systematized and further developed approach towards better regulation. It indicates the joint interpretation of the vertical (regulatory) and horizontal level of better regulation at national and EU level as well.[1] The horizontal scale of better regulation includes the areas of better regulation, such as simplification,[2] impact assessment[3] and consultation,[4] reduction of administrative costs/burdens,[5] quality drafting, access to laws,[6] and at EU level, the monitoring of the application of EC/EU law.[7]

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[1] See table 1 on areas of quality regulation and table 2 on relationship of the vertical and horizontal levels of quality regulation in annexes. Vertical and horizontal levels are necessarily interrelated.

[2] Simplification, impact assessment and consultation are considers as tools of better regulation by Donelan and de Pompignan in E Donelan and D de Pompignan, "Better regulation practices in new European member states. Context for Better Regulation", 1-2, http://www.reforma-regulacji.gov.pl/NR/rdonlyres/CC712740-2B9E-499F-825C-4078208515C/29749/Donelan_eng.pdf (last accessed on 2 September 2009). Simplification, either in legal or economic sense, aims at increasing the efficiency of law. For tools of simplification see: SCM Network, International Standard Cost Manual, Measuring and reducing administrative burdens for businesses, 48. http://www.administrative-burdens.com/default.asp?page=140 (last accessed on 2 September 2009), Administrative Burdens–Routes to Reduction, (UK, Better Regulation Executives, September 2006), 9. http://www.berr.gov.uk/files/file44369.pdf (last accessed on 2 September 2009).

[3] See more http://ec.europa.eu/governance/better_regulation/evaluation_en.htm (last accessed on 2 September 2009). G Konzendorf, "Gesetzesfolgenabschätzung (GFA) als Teil der Rechtsetzung" (1998) 117 Speyerer Arbeitshefte, 122; T Drinóczi and J Petrétei, Jogalkotástan (Legislation and drafting) (Budapest-Pécs, Dialóg Campus Kiadó, 2004), 361-62 and 412-15; Zs Kovácsy and K Orbán, A jogi szabályozás hatásvizsgálata (Regulatory impact assassement), (Budapest-Pécs, Dialóg Campus Kiadó, 2005).

[4] The consultation, as peculiar phenomena of political decision-making, aims at the formulation of a legal norm content based on the highest consensus possible. See Commission of the European Communities, Communication from the Commission on impact assessment, COM (2002) 276, 5 June 2002; Commission of the European Communities, Communication from the Commission–Action plan "Simplifying and improving the regulatory environment" COM (2002) 278 final, 5 June 2002; Commission of the European Communities, Communication from the Commission–Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission, COM (2002) 704 final, 11 December 2002.

[5] It may be seen as an element of simplification, but it is connected to impact assessment as well and has a more concrete aim: reduction of administrative burdens of businesses (and other actors of economic life), which infers an increase of GDP at macroeconomic level. See SCM Network, International Standard Cost Manual, J Torriti, "The Standard Cost Model: When'Better Regulation' Fights Against Red Tape", in S Weatherill (ed), *Better Regulation* (Oxford, Hart Publishing, 2007).

[6] It is a basic condition of law application and obedience to law.

[7] See L Senden, "The Member States and the Quality of European Legislation: Not Consumers, but Co-Actors", in C Moll (ed), *Proceedings of the 7th Congress of the European Association of Legislation 31st May, 1st June 2006* (The Hague, Nomos, 2006), 104. Original source: E M H Hirsch Ballin, "Reflections on Co-Actorship in the development of European Law-Making", in E M H Hirsch Ballin and L A J Senden, *Co-Actorship in the Development of European Law-Making. The*

The clear content and logical structure of a legal norm is a crucial criterion of the adequate application of norm, the legal obedience, and the realization of the will of the political decision-maker. This clearness and comprehensive structure is to be achieved by quality drafting. In this sense, quality drafting is considered as a basic requirement of better regulation, in terms of formulation and structuring. As it can be seen in annex 2, quality drafting, at regulatory level, has two joined sides. One is related to the preconditions of employment as draftsmen; the second is connected to the rules of drafting. It can be stated that quality drafting includes the appropriate application of drafting knowledge. The quality drafting knowledge enhances formal and content based rules on formulation of laws which aim at the standardization, harmonization and generalization of laws. In order to realize these aims, quality drafting comprises knowledge on structure of laws, the procedures of amendment, supplement, deregulation of laws, and their language and style. Laws structured and formulated in this way are clear, transparent, comprehensible, and precise their consequences are predictable, and befit to the requirements of norm clearness and enforcement. The comprehensibility of legislation in practice is a complex problem, as it depends on many factors, such as the degree of the direct connection with the subject of regulation, its context, or the individual cases for which it is applied.[8] The realization of the comprehensibility of legal parlance requires correct grammar, as well as clear and simple phrases. Simplicity generally means the use of short sentences and well-known phrases. The adequate structure of laws leads to comprehensibility as well. The norm–through its content, structure and formulation–has to guarantee legal certainty, which can be estimated as the "command" of the rule of law of computability, clearness and comprehensibility. Accordingly, those who are concerned with the legal regulation will be able to know the legal situation and conduct properly. Legal certainty does not prevail, if the laws' real meaning do not turn out, if the regulation is not clear, indecisive, capable of misinterpretation, leads to mistakes, or it is incoherent. So, if the obscurity achieves a certain level, this harms the principle of rule of law and the legal certainty, the requirements of technical rules of legislation and the idiomatical beauty.[9]

Quality of European Legislation and Its Implementation and Application in the National Legal Order (The Hague, TMC Asser Press, 2005), 9.

[8] There are several levels of comprehensibility depending on who deals with the measures.

[9] However, the legal certainty does not require the obligation of defining all concepts in each measure. H Hill, *Einführung in Die Gesetzgebungslehre* (Heidelberg, CF Müller Juristischer Verlag, 1982), 106; R Dreier, "Mißlungenen Gesetze", in U Diederichsen and R Dreier (eds), *Das mißglückte Gesetz. 8. Symposium der Kommission „Die Funktion des Gesetzes in Geschichte und Gegenwart* (Göttingen, Vandenhoeck and Ruprecht, 1997), 1.

B. LEGAL NATURE OF THE RULES ON DRAFTING

Everything mentioned above presumes that rules on drafting are satisfactorily developed, normatively formulated, and used in practice.[10] As for the satisfactorily developed content of the rules of drafting, comparative researches, adaptation of research results on legislation and best practices can be considered.

1. As for requirement concerning the normative formulation of rules on drafting, the necessity of normative regulation should be justified. It is obvious that rules on drafting can be determined normatively in a legal source and non-normatively in a guideline or manual for example. In my opinion this basic choice depends on the attitude of the legislation towards better regulation, on the one hand. On the other hand it depends on the constitutional provisions and relevant decisions of the constitutional court on sources of law and legal certainty, and other basic values determining the governmental system, such as the division of power. The non-normative rules on drafting may be used and are of advantage in a state having explicit better regulation commitment[11] and high level of awareness and understanding[12] towards the necessity of quality legislation, more precisely quality drafting. Without any doubt, there are some advantages of this regulatory method. One of them is the flexibility as deviation from rules, if necessary and justified, can be made without any complication. Other advantage is that the legal system is not overloaded by norms which are deemed to be generally applied by all means. A disadvantage, however, can be captured here: the legal consequence of non compliance is hardly tangible and as such is not in conformity with the principle of legal certainty.

2. There are countries however which are applying the tools of better regulation but have not understood entirely its values and benefits.[13] These are the countries with implicit commitments towards better regulation. These countries will not be able to change their attitude as long as a kind of cultural change[14] is not taking place at regulatory level.[15] Therefore, in "non-advanced" countries, the existence

[10] At EU level see: the interinstitutional common agreement on the quality of the community measures stylistics, or the Common Practical guide to drafting of community legislations, and in harmony with this the "Legislative drafting, a Commission Manual" 1999/C 73/01 (22 December 1998), and http://eur-lex.europa.eu/hu/techleg/pdf/2007_6655.pdf (last accessed on 15 August 2009). See also the Dutch guidelines http://wetten.overheid.nl/BWBR0005730/geldigheidsdatum_08-02-2010 (last accessed on 15 August 2009).

[11] See E Donelan and D de Pompignan, "Better Regulation Practices in New European Member States", supra, n 2, 1-2.

[12] Legal culture can be enumerated here as well.

[13] The reason might be the inadequate level of legal culture, a misunderstanding of law as instrument and a quite strong political commitment that may override professional considerations.

[14] See supra, n 13.

[15] It necessarily involves the necessity of raising awareness towards quality legislation. It can be done by teaching, education and training, quality management in legislation, measuring the quality of

of binding legal norm seems to be more adequate to achieve results predicted by better regulation. The advantage of regulation of drafting in a legally binding norm is the binding force itself which force the drafters to comply with the rules,[16] and this may result a greater personal commitment. It can lead to changing attitudes; the implicit commitment can change to a more explicit one. Among disadvantages one can pinpoint the possibility of the emergence of disorder in the division of powers when it is the executive power that issues the normative rule on drafting. These rules shall obviously be applied by the legislative power as well when drafting the laws debated by the plenary session as well as the committees. For avoiding this constitutionally sensitive problem, a careful choice of measures, in which the rules on drafting are formulated, is to be made. The norm on drafting can be issued either as a generally applicable legal norm or as an executive measure that is obligatory only in the respective organization. Evidently, the former shall be applied by the legislature as well, as that would oblige all relevant actors. Consequently, in this case there is no discrepancy between the legislative and executive power.[17] The abovementioned disadvantage (i.e., the hardly tangible legal consequence) of the non-normative rules on drafting cannot be defined here: non compliance as a main rule should have legal consequence as it is required by the legal certainty.

3. There can be two choices regarding the normative formulation: detailed regulation for the entire drafting process and phrasing a draft could be laid down in a legal norm such as an Act or decree; or only the main rules could be inserted in the Act or decree and specifications can be involved in a decree or a manual or guideline, respectively. The advantage of the latter is: it could lead to a more detailed and comprehensive measure that assists the work of legislative jurists. The advantage of the former (and disadvantage of the latter) is, being an Act, the "more normative binding force". If the drafting rules are regulated in an Act, a lower norm (governmental or ministerial decree) cannot be in contrary with them. If, however, these rules are in a decree, the rule of hierarchy does not apply. Should the rules on drafting be infringed, it is up to the constitutional court to decide if the infringement reaches a level of unconstitutionality. It is more possibly stated when the rules infringed are located in an Act. It, however, does

legislation and the publication of its results and the adequate measures taken in order to ameliorate the failures.

[16] By doing it, they learn. See supra, n 15 in this regard. The method of learning in this case is "learning by doing" and a kind of "learning on the job".

[17] It is also true that in practice if the executive/government supports an initiative emerged even from an MP it is the competent ministerial staff that prepares the draft or modification. From this perspective, the above mentioned constitutional problem does not occur and everything depends on the professional commitment of the executive towards better regulation. In this case the normative or non-normative nature of the rules on drafting makes no difference. If the driven force in legislation is the political orientation and not the professional considerations, the initiative of an MP will be supported on political grounds neither in the preparatory phase nor at the debate. In this case speaking about the quality of drafting makes no sense.

not mean that each infringement is declared unconstitutional. It depends on the tests developed by the constitutional judiciary in connection with legislation.
It seems that the normative formulation of the rules of drafting should have at least two, more preferably–but depending on the internal regulatory background of the state concerned–three levels: Act, decree, manual.[18]

4. The proper application of the rules of drafting depends on the awareness and professionalism of the draftsmen. Its preconditions are the commitment towards better regulation at political level and at the level of personal attitude of the draftsmen. Obviously, this is, on a large scale, influenced by the seriousness of the political commitment. The political commitment is demonstrated by the existence of the satisfactorily developed and normatively formulated rules of drafting and the legal preconditions required for being employed as draftsmen, and in addition, in the normatively regulated obligation of draftsmen to partake in drafting trainings.

The Hungarian legislator has, partly, understood these requirements and endeavours to shape the regulatory background accordingly. In the following this development and failure is examined and evaluated.

C. HUNGARIAN EXPERIENCE

1. In Hungary the Act on legislation (Act XI of 1987 on legislation)[19] gives authorization for the minister of justice to the development of rules concerning drafting. According to this authorization, in 1987, the minister of justice issued 12/1987. (XII. 29.) IM Decree of the Minister of Justice on drafting (hereinafter IM decree) and the 7001/1988. (IK. 11.) IM Directive of the Minister of Justice on drafting.[20] The IM decree until its deregulation[21] had to be considered as the Hungarian legislative guide. The content of the IM decree could not considered as a modern one representing the idea of quality drafting. It was due to the circumstances of its adoption, characterized by a kind of "resistance" towards the almost absolute normative power of the Presidential Council[22] of the socialist Hungarian state. The Act on legislation determines the areas of relations which

[18] The detailed regulation concerning drafting legislation can be found usually in the so-called "legislative guides", what are used in several countries (e.g. Austria, Germany, and European Union).
[19] The Act on Legislation, however, was annulled by the Constitutional Court on 14 December 2009 with the effect of 31 December 2010.
[20] The IM Directive detailed the regulations of the IM Decree.
[21] See Act No 82 of 2007 on the repeal of certain legislation and statutory provisions.
[22] This was the collective head of state, which, instead of the Parliament, normatively governed each sphere of life of the socialist Hungary by law-decrees. At that time, in reality, the Parliament had only a few sessions in a year and its legislative competence, in accordance with the socialist system, was restricted to the adoption of the budget. It is obviously an overstatement, but probably characterizes, in this respect, the phenomena of that era.

had to be regulated exclusively by an Act of Parliament, enumerates the laws and other legal means of state administration,[23] and has some highly vague rules on consultation and impact assessment, and drafting.[24]

In 2007, a formal simplification was took place in Hungary, meaning an extended deregulation. One of the "victims" of the deregulation was the IM decree. A lack arose, which due to the decisions of the Constitutional Court as well, had to be filled.

As constitutional requirement it was recorded by the Constitutional Court that legislation can take place only in accordance with the constitutional principle of legal certainty. The principle of legal certainty requires on the one hand that legislation itself, the modification and entering into force of laws is in a rational order. On the other hand, it demands that modifications be definite, unambiguous and transparent for the subjects as well as for the law application bodies.[25] Consequently establishing certain institutional framework is not the only responsibility of the state of rule of law. The efficiency of public power institutions, which is impossible without the rational balance of drafting and the preparation of the laws, is of the same importance."[26] This constitutional requirement, however, ought to be met not only by law preparation in a narrow sense but by the establishment of a universal code of behaviour in general. Besides the constitutional requirements imposed upon drafting the state of rule of law also has consequences regarding the act of preparation. The Constitutional Court pointed out that it is a constitutional requirement of legislation that drafting and modification of laws (deregulation, supplementation, modification etc.) has to be reasonable and clear.[27]

Between 2007 and 1 March 2010, these constitutional requirements and the customary law on drafting were the points of reference to the daily work of the draftsmen. This situation, which could not be characterized by any sense of better of quality regulation, is resolved by the new decree on drafting.[28]

2. By the end of November 2009 the Ministry of Justice and Law Enforcement (hereinafter IRM) drew up the IRM Draft decree on drafting (hereinafter "the

[23] Under the Act on legislation the group of other legal means of state administration can not establish rights and obligations to natural persons; they can only define the functioning of the issuing body, or the functioning or working of the subordinated bodies; and they can contain various guidelines.

[24] Even before the decision of the Hungarian Constitutional Court referred in footnote 12 the Act on legislation was referred to as obsolete and thus one of the Acts to be renewed (adopt a new one) by Hungarian legal literature. According to Art 7(2) of the Constitution, the adoption of the Act on legislation requires two-thirds majority in the Parliament, which means an extended consensus of the parliamentary majority and minority which, given the present situation dated back to 2006, could not be reached, though at professional level both sides agrees on its necessity. There was a bill on legislation before the Parliament prepared by the socialist-liberal government but was not even opened for debate.

[25] Decision of the Constitutional Court 8/2003. (III. 14.)

[26] Decision of the Constitutional Court 42/1995. (VI. 30.)

[27] Decision of the Constitutional Court 108/B/2000.

[28] The decree of the minister of justice and law enforcement is to be applied by 1 January 2010.

Draft Decree") and on 14 December 2009 the minister issued it under the denomination of "61/2009 (XII.14.) IRM rendelet a jogszabályszerkesztésről" (IRM decree on drafting).[29] Considering the past two decades' clear doctrinal concepts and results of jurisprudence and legal dogmatics dealing with codification; applying the constitutional theorem defined in constitutional legislative practice; and utilizing the experience accumulated in legislation since the transition of regime the IRM decree on drafting aims at a regulation which makes the decisive principles and rules of drafting traceable, furthermore provides clear guidance for the civil servants of any legislative body dealing with the preparation of laws. The regulation concerns the formulation of the right–with other words–rational codification methods, the enactment of established "best practices", concentrating expressly on the drafting process. Accordingly, the IRM decree on drafting defines the requirements of drafting, regarding phrasing and structuring."[30] According to its objectives the IRM decree on drafting contains the rules which are relevant to achieve a correct, systematic and structured way of creating laws considering the principles of the clarity of norm and the coherence of drafting. Compared to the IM decree–which was lacking a number of rules[31]–the IRM decree on drafting contains much more detailed provisions, and presumably will be able to fulfil the task it is designed for: to define the rules of drafting on the basis of the formal structure as well as the inner formulation of a draft.[32]

3. As for the formal structure of draft the IRM decree on drafting specifies denominations[33] and respective abbreviations. The latter means that a draft may specify the abbreviation by which it is referred to in other laws.[34] Taking into account the principles of uniformity and clarity as well as bearing in mind the requirement that certain provisions of the law are to be quoted, the IRM decree on drafting defines the structural items of a draft. According to it only codes can be segmented into books. Further segmentation is: part, chapter, sub-chapter, article ("§"), paragraph "()", point, sub-point. The smallest structural unit is the sub-point. As far as "part" is concerned there is a possibility to develop a higher level unit in the case where applying the lower level units does not provide a clear overview of the law. The structural units are to be numbered consecutively,

[29] Published in Magyar Közlöny 2009/182. (XII. 14.) with an effect from 1 March 2010.
[30] See the justification of the Draft decree.
[31] Listing a couple of examples one can mention the lack of rules concerning the layout, language, style, and the lack of stylistic formula concerning amendments. It even failed to regulate definitions and references.
[32] Drinóczi and Petrétei, *Jogalkotástan*, supra, n 3, 264.
[33] It is in contrast with the IRM decree, which has included provisions to indicate other legal means of state administration. Consequently, new regulations should be introduced to design other legal means of the government. But, it is also true, that supposedly, parts of those new rules would be in effect only until 31 December 2010 (See n 12). The new act on legislation presumably will not contain as many means of state administration as the Act on legislation contains now.
[34] Furthermore the IRM decree on drafting clearly defines the rules concerning abbreviation and reference.

or signed with the Latin alphabet. A draft is not allowed to contain unmarked structural units.

As for the logical structure, the draft shall start with the denomination, which is followed by the following normative parts: introductory part including the scope and circumstances of legislation, the reference to authorization, joint legislation etc; general provisions; special provisions; final provisions. Among final provisions, authorization clauses, provisions on putting into force, provision on the abbreviation of the legal norm, transitional provisions, provisions referring to the adequacy to the normative acts of the European Union, modifications, deregulatory provisions, and provision on non-putting into effect can be found. The sequence determined here is obligatory, cannot be changed. For example, an authorization clause cannot be elsewhere but in the final provisions. The IRM decree on drafting regulates in details the denomination and formulation and modification of the annex which cannot have normative content.[35]

4. The inner formulation of the draft concerns textuality, hence bearing in mind the principles of clarity, economy, expressive power, adequacy and consistency[36] the IRM decree on drafting specifies that a draft shall be formulated according to the rules of Hungarian language concisely and clearly in such way, that its provisions are clear and unambiguous.

By way of randomly selected examples: in the case of enumerations the IRM decree on drafting sets out a regulation on marking–respectively–the alternative or the joint connection between the elements in order to exclude ambiguity.[37] It also circumscribes the usage of certain conjunctions, and prohibits the ones which may jeopardize unambiguity.[38] The IRM decree on drafting aims at uniformity as it is indicated in the following example. One of the chapters is dedicated to define the denominations and abbreviations of the various EC/EU relevant contracts. After the IRM decree on drafting enters into force these contracts have to be referred to with the abbreviations defined by the IRM decree on drafting. As a further example, the regulations concerning reference are to be mentioned, as these facilitate not only the application of laws, but the future work of the draftsmen as well.[39] The IRM decree on drafting refers to flexible reference as its main principle. May the possibility of flexible reference be excluded; rigid

[35] In reality, annexes often have normative content, even if it is acknowledged to be in contrast with the common rules of drafting.

[36] See in this respect G C Thornton, *Legislative Drafting*, (London, Butterworths, 3rd edn, 1987), T Drinóczi and J Petrétei, Jogalkotástan, supra, n 3, 320-353.

[37] In law application, it is often problematic to differentiate the alternative and the joint connection concerning the elements of the enumeration when they are edited in a new row.

[38] The draftsmen may have utilized the suggestions of the legal literature in this regard. See A Tamás, *Legislatica. A jogalkotástan vázlata* (Outline of legislation and drafting) (Budapest, SzIT, 1999), 86; Drinóczi and Petrétei, *Jogalkotástan*, supra, n 3, 339.

[39] In practice several problems occurred due to the frequent and sometimes unnecessary usage of a general reference which led to an extensive and time consuming finding of the applicable law. By using technically correct and precise references it would be possible to avoid this superfluous search.

reference–the alleged act or the indication of its specific part–shall apply. General reference is applicable only if the law-maker aims at referring to future laws, a wide range of laws, a range of indefinable laws, or laws that are to be created under the authority of a law containing the reference. The IRM decree on drafting would facilitate its application by codifying and incorporating the stylistic patterns of drafts into an annex. The annex however, does not give detailed examples of correct editing and appropriate phrasing in case of each rule; it rather formulates the rules in an abstract way, giving only a mere sample. It raises a doubt whether it would help to draftsmen at all.

5. In favor of legal certainty, the IRM decree on drafting–in contrast to the former IM decree–deals with modification, deregulation, and formulation and structure of laws aiming at exclusively the modification or deregulation of laws. The IRM decree on drafting regulates the limits[40] and types of modification (text-changing,[41] re-regulation and supplementation) and their sequence in the modification.[42] The formulation, structure, reference-system of the modifying law has to be identical to that of the modified one. The IRM decree on drafting regulates the limits[43] and structure of the deregulation provisions: they should be formulated in one article. They cannot be inserted in one paragraph when they refer to different sources of law being at different hierarchical level, and when they come into effect in a different time. These rules obviously help the systematic and comprehensive application of law.

In each case, when the IRM decree on drafting regulates denominations, modifications deregulations, it does it in a very detailed way. It gives full particulars, even articles, endings/inflections, like this: The text-changing modification contains the following items in the following sequence (adapting into English grammar): a reference to the changing item with the inflection "in", article, text to be changed in quotation marks, the text "is changed", "by", article, new text in quotation marks. It seems to be quite detailed, which probably befits more in a manual than in a ministerial decree.

6. With its seven parts and more then hundred articles the IRM decree on drafting goes far beyond not only the vague and brief rules of the former IM decree but for instance the 22 points of the interinstitutional common agreement on the

[40] For example the denomination of a law cannot be modified. It may be a reaction to one of the bill on the modification of the Constitution which intended to modify the denomination of the Act XX of 1949 on the Constitution of the Republic of Hungary. The reason was that the Republic could not have a Constitution denominated as Act XX of 1949. However, during transition, along with the major part of its provisions, even the title of the Constitution was modified from "Constitution of Peoples' Republic of Hungary" to "Constitution of the Republic of Hungary". This modification, however, did not affect the number of the Constitution: it remained Act XX of 1949.

[41] In this case, the modification affects the structural item only partly.

[42] Re-regulation and supplementation and text-changing modification.

[43] For example the denomination of a structural item itself cannot be deregulated.

quality of community measures' stylistics as well.[44] It is true though, that community legislature has chosen another regulatory approach towards drafting, as the interinstitutional agreement, mentioned above, is fully explained in the Common Practical Guide to Law-making in Community Legislation.[45]

It was referred above, that there are at least two ways of applying the normative formulation of rules concerning drafting: comprehensive regulation regarding one specific source of law; or making framework law, which later can provide a base material for manuals and guidelines. The minister of justice and law enforcement has chosen the first version. Although making a framework law according to the rules of the Act on legislation[46] and incorporating the technical implementations (of which the IRM decree on drafting contains a large number)[47] in a drafting manual would just as well have been a fair option. With his choice the legislator demonstrated his commitment to quality regulation to a great extent, however, where there are no actual consequences of non-observing of the rules, it depends on the personal attitude of the draftsmen whether they are kept or not. It is questionable whether violating the rules included in this ministerial decree reaches the degree of violating legal certainty. Even though the IRM decree on drafting articulates professional expectations, and prescribes certain obligations regarding drafting; as a ministerial decree it can be provided only limited means. According to the Constitutional Court, violating the requirements of drafting is not considered such a severe error that would affect the validity of the law. In a case when the introductory part of a governmental decree did not include the exact reference to the iure proporio or delegato legislative competence the Constitutional Court demanded that this rule of the IM decree,[48]– as a legal norm deriving from a legal source of lower-level than the governmental decree–is not to be considered a requirement of validity, the infringement of which would bring forth the unconstitutionality of a governmental decree at a higher level. In addition, in the case of the governmental decree the government created its certain provisions on the basis of the relevant act and made a reference to this fact as well.[49]

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[44] 1999/C 73/01 (22 December 1998)

[45] The agreement even corresponds to the following work „Legislative drafting, a Commission Manual" which also contains extensive regulations. http://ec.europa.eu/governance/better_regulation/documents/legis_draft_comm_en.pdf, http://eur-lex.europa.eu /hu/techleg/pdf/2007_6655.pdf (last accessed on 15 August 2009).

[46] Art 62 of the Act on legislation authorizes the minister of justice to edit the rules of drafting.

[47] For instance: "the indication of the part ... contains the positive whole ordinal number–marked with Arabic number–of the part; the denomination of the unit type with capital letters, and the title of the part with a capital initial letter".

[48] The IM decree here refers to the IM decree on drafting in effect in the time of the ruling of the Constitutional Court, which required the reference to the origin of the legislative competence of the government.

[49] Decision of the Constitutional Court 64/2006. (XI. 24.)

D. INSTEAD OF SUMMARY–LESSONS LEARNT AND FAILURES

The third element of quality drafting referred to by point 2.4. was the proper application of drafting rules. In this regards the Hungarian legislature has to learn more. By examining and evaluating the situation of drafting in Hungary, a kind of learning capacity of legislative organ could be realized. There is a clear political will to apply new methods of preparing drafts, and this understanding manifests itself in the new IRM decree on drafting. As critical comments, the following can be established: the political commitment should be enhanced and deepen to other fields of better regulation as well; the legal source and/or method of the regulation on drafting could have been more carefully chosen; it should have been more befitted to the depth of regulation. Obviously, possibilities are restricted by the regulatory framework (Act on legislation), which, however, allows other interpretations. It would give opportunity to a two level regulation: a framework decree and manual. A better way would be a consensus based draft on legislation. It would stipulate the very framework of drafting, and then a ministerial decree would give detailed rules on it. If it would still be necessary, a manual could be worked out containing the concrete examples of the provisions of the Act or decree.

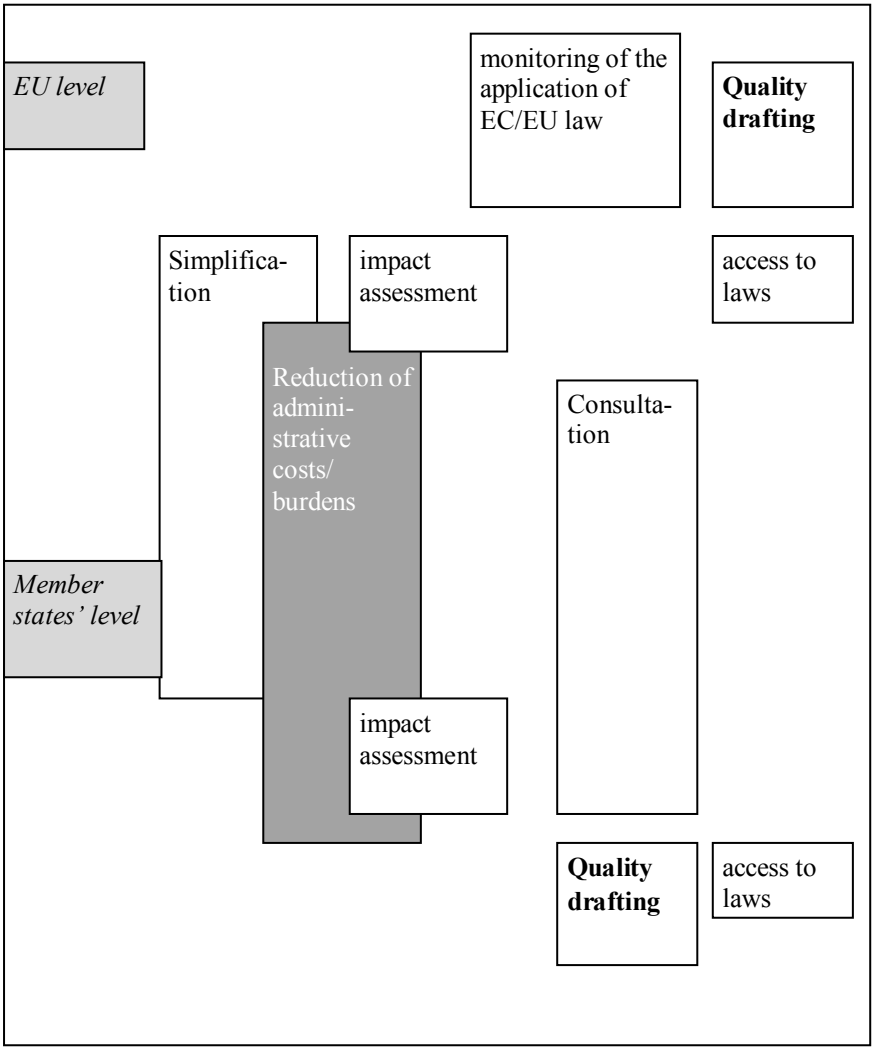
The IRM decree on drafting is, however, an undeniable result in this field of better regulation, which may raise the quality of legislative products. It cannot be, however, happening without the training of draftsmen. Requirements on legislative level may result a stronger "obedience" but without executing norms it may remain a mere political will. Education and training[50] of draftsmen and the legal regulations requiring it can be manifested in different ways and methods. Draftsmen may acquire new knowledge and skills by taking part in trainings and by sharing knowledge within their ministerial departments. The effectiveness of the education and training[51] is based on, on the one hand, the quality of the teaching material, the professionalism of instructors and, on the other hand, the personal devotion. The basic education and training on drafting as a requirement for employment and organization of trainings still needs to be determined by the Hungarian central administration. In Hungary the education of draftsmen is neither elaborated nor developed. The reason is that there is no regulation which determines the qualification requirements for the draftsmen. In the university curriculum, at undergraduate level the teaching of legislation and drafting is not emphasized, in some places they are not even among the mandatory subjects. Universities though have the possibility to organize different types of education

[50] In 2006, the congress of European Association of Legislation was concerning with the importance, quality, and necessity of learning, where several advices were born in connection with legislative trainings, L Mader, "Preface" in C Moll (ed), *Proceedings*, supra, n 16, 5.

[51] As academic teaching of legislation and training of draftsmen never could substitute the learning in practice, "learning by doing" and "training on job" are basic requirements.

and trainings to teach these subjects and skills.[52] This fact, however does not substitute an institutionalized training system.

Annex 1–areas of quality regulation



[52] These trainings are available in the University of Eötvös Lóránd (drafting training) and in the University of Pécs (local draftsmen training).

Annex 2–relationship of the vertical and horizontal levels of quality regulation

<table>
<tr><th>vertical/regulatory level</th><th colspan="3">Horizontal level–areas</th></tr>
<tr><td>constitution, basic law, founding treaties</td><td rowspan="10">Quality drafting

access to laws</td><td rowspan="9">consultation

simplification (deregulation)</td><td></td></tr>
<tr><td>act on legislation</td><td rowspan="10">impact assessment

reduction of administrative costs/burdens</td></tr>
<tr><td>rules of preparation of drafts</td></tr>
<tr><td>rules on impact assessment</td></tr>
<tr><td>rules on reduction of administrative costs/burdens</td></tr>
<tr><td>requirements for draftsmen</td></tr>
<tr><td>rules of drafting</td></tr>
<tr><td>legislation aiming at harmonization of laws, cooperation in legislation</td></tr>
<tr><td>procedures and rules in “international legislation”</td><td></td></tr>
</table>