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Seminars on the quality of legislation

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EUROPEAN COMMISSION

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Legal Revisers Group

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Note

Subject: Seminars on the quality of legislation

At the Amsterdam Intergovernmental Conference in 1997 the heads of State and government adopted Declaration No 39 on the quality of the drafting of Community legislation. They noted that “the quality of the drafting of Community legislation is crucial if it is to be properly implemented by the competent national authorities and better understood by the public and in business circles”. Accordingly they called on the institutions to “establish by common accord guidelines for improving the quality of the drafting of Community legislation ... and [to take] the internal organisational measures they deem necessary to ensure that these guidelines are properly applied”.

In compliance with Declaration No 39 the European Parliament, the Council and the Commission signed the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3.1999, p. 1). That agreement calls on the institutions to take the necessary internal organisational measures to ensure that the guidelines are properly applied and, in particular, states that the institutions:

“(d) shall ensure that their officials and other servants receive training in legal drafting, making them aware in particular of the effects of multilingualism on drafting quality;

(e) shall promote cooperation with the Member States with a view to improving understanding of the particular considerations to be taken into account when drafting texts; ...

(g) shall foster collaboration between their respective departments responsible for ensuring the quality of drafting”.

In order to implement practical measures (d), (e) and (g), the Legal Revisers Group in the Commission Legal Service is organising a series of seminars on the theme of quality of legislation. The theme is interpreted broadly but the common feature of all seminars is the bringing together of experts from the Member States, other countries and the European institutions to speak on aspects of national and Community legislation, including multilingualism, to an audience closely involved with or concerned by legislation drawn from the European institutions and beyond.

At the first seminar in September 2002 Mr Giuliano Marengo, Deputy Director-General of the Commission Legal Service, pointed out that the Interinstitutional Agreement of 1998 expressly called for cooperation with the Member States on matters such as drafting. He stressed that the seminar was an example of such cooperation which was to be followed by other seminars with representatives of other Member States.

Also at that seminar Mr Bevis Clarke-Smith, Head of the Commission Legal Revisers Group, welcomed the exchange of ideas as a means of contributing to the realisation that the problems we face also confront others and that we can learn from their experience. He noted that the concern for the quality of legislation is already shared by many throughout the European institutions but stressed the commitment to raise awareness of the importance of well-drafted legislation amongst all those involved in the legislative process.

To give its seminars the Group calls on outside experts to speak in particular on:

- National approaches to drafting quality;
- What national rules on legislative drafting exist and how they are applied;
- Training in legislative drafting;
- Problems caused by transposition and application of Community acts;
- Practical examples of drafting problems and solutions.

The seminars take different forms as shown by the attached list. Some are technical and addressed to an audience of specialists. Others are more general and accessible to a wider audience. Most last half a day but some may simply be lunchtime lectures. They all serve to raise the profile of drafting issues at every level. Summary reports on the individual events are available from the address below.

The list of those who express an interest and who actually attend the various seminars is kept and updated. It is growing all the time and is in itself a valuable tool in building up a network of persons interested in legislative quality. The largest single group of participants is from the Commission, with most of the sectoral Directorate-Generals now represented. Large contingents also come from the European Parliament and the Council. Other European institutions and bodies represented in smaller numbers include the Court of Justice, the European Economic and Social Committee, the Committee of the Regions, the Court of Auditors, the European Central Bank and the European Patent Office. Other participants include national drafters, staff of permanent representations and missions to the EU, academics and representatives of lawyers' associations.

The next event will be lectures by three eminent speakers from Spain on:

Friday, 9 June 2006.

More details of that event will be given in due course. Further seminars are in preparation. Preliminary contacts have been made with speakers from Finland, Ireland and Switzerland.

The seminars yield immediate practical benefits for all the participants who are directly involved in the legislative process. They also confirm the institutions' determination to push forward the dynamic process set in motion by Declaration 39 adopted by the Amsterdam Intergovernmental Conference. They may ultimately make a contribution to changing the legislative culture, as called for by certain Member States and referred to by the European Parliament in its resolution of 29 November 2001 on the White Paper on European Governance. Such a change in culture is a central element in the Better Regulation programme pursued by the Commission, the other institutions and the Member States.

For more information on the Legal Revisers' work contact:
Juristes-Reviseurs@cec.eu.int

List of seminars on the quality of legislation organised by the Commission Legal Revisers Group

1. Quality of legislation: The Swedish view (27 September 2002)

Mr Gustaf Sandström, Judge of the Supreme Administrative Court in Sweden and Member of the Council on Legislation, gave his view on Community legislation from his experiences as a judge hearing many cases involving Community legislation, as chairman of a Council Working group, as reviser of draft acts in the Swedish Council on Legislation and as a drafter of legislation in the Ministry of Finance.

Mrs Barbro Ehrenberg-Sundin, Senior Adviser in the Division for Legal and Linguistic Draft Revision at the Swedish Ministry of Justice and a member of the Working Party on Clear Language, spoke on the Swedish legislative process and the role of her Division in that process as well as in offering linguistic support to staff in the Community institutions and to Swedish officials in Community working groups. She also reported on Sweden's views on the Community's efforts to improve its legislation and explained what the Plain Swedish Group does.

Participants: 120.

Duration: 3.5 hours

2. La qualité de la législation: l'expérience canadienne (23 October 2002)

Mr André Labelle, head of the Jurilinguists Service in the Canadian Ministry of Justice, spoke on the legislative drafting process in Canada, in particular codrafting legislation in two languages, and steps to improve the quality of drafting.

Participants: 80.

Duration: 3.5 hours

3. How to interpret legislation which is equally authentic in twenty languages (20 October 2003)

Advocate General Francis Jacobs of the European Court of Justice (ECJ) spoke of the ECJ's approach to interpreting Community legislation. He analysed the particular features of that legislation, which is multilingual and the product of a complex negotiation process, and described how the ECJ's methods of interpretation address the difficulties that arise.

Participants: 250.

Duration: 1.5 hours

4. Quality of EC legislation and ways to improve it (25 November 2003)

Professor Dr Wim Voermans, professor in constitutional and administrative law at the University of Leiden, spoke in English on "Quality of EC legislation and ways to improve it". He looked at the standards for good legislation and the problems resulting from bad legislation and considered remedial measures taken in the Netherlands and in Europe, focusing in particular on training.

Mr. Willem Konijnenbelt, President of section at the Raad van State and professor at the University of Amsterdam, spoke in French on “What is legislative quality about: universal standards for good legislation”. He analysed the formal and substantive criteria for the quality of legislation, drawing in part on research in the Netherlands but also on materials from other countries.

Participants: 106.

Duration: 3.5 hours

5. The application of Community law: Challenges facing a common-law system (2 July 2004)

Ms Anne Lambert, UK Deputy Permanent Representative, put improving the quality of Community legislation in the context of efforts to promote Better Regulation and introduced the four Presidencies’ Joint Initiative on Regulatory Reform.

Mr Philip Bovey, Legal Director at the Department of Trade and Industry, considered whether it is more difficult for a common-law system to apply Community law. Drawing on a report produced for the UK Foreign Office in 2003, he compared the approach to legislative drafting in the UK with the way Community legislation is drafted and looked at different approaches to implementing Community directives.

Lady Justice Arden, of the Court of Appeal, considered the English courts’ approach to interpreting domestic and European legislation and its evolution. Citing problems caused by poor drafting, she stressed the importance of producing a clear text that does not need to be litigated.

Participants: 289.

Duration: 3.5 hours

6. Quality of legislation: Estonian perspectives (11 October 2005)

Dr Julia Laffranque, Judge of the Supreme Court, spoke of Estonia’s experiences as a Member State in transposing, applying and interpreting Community law. She stressed the importance of good legislation and mentioned some of the problems encountered by Estonian courts in interpreting Community legislation.

Ms Karmen Vilms, Head of the Legislative Drafting Bureau in the Ministry of Justice, explained how Estonia makes sure that its legislation is of good quality. She mentioned in particular the cooperative nature of the process, involving close consultation of all interested circles and work by lawyers and linguists under the coordination of the Ministry of Justice. The involvement of linguists in the process underlines the importance attached to language matters.

Mr Aare Kasemets, adviser at the Environment Ministry, traced the development of the concern for better regulation back to the 1970s.

Participants: 251.

Duration: 3.5 hours