Instructions for Law Drafting

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A. Introduction

This paper offers some instructions for good legislation. To draft laws could be taught and learned, similar to make good administrative work and prepare good court decisions. In the long process from giving the first impulse for drafting a law until the law's implementation and evaluation of its quality, there are a lot of different state organs, organizations, and persons involved: parliament, ministers, professional drafters in ministries, executive offices. They approach law-drafting, of course, from different perspectives. The politician wants to reach a special political goal, the draftsman intends to write a perfect piece of law and members of a parliamentary committee need to compromise, in content and form of the draft. In this far-reaching and widespread field of decision making this paper addresses two groups of persons: politicians and officials, who initiate legislation and legislative drafters who have to formulate the draft, before it is submitted to parliament. Usually little attention is given to a rational, qualified first step, to choose the goal of a new law and give instructions to the drafter. The impulse for new legislation should no longer be the pure political will, to push a draft through parliament. Careful considerations of the intent, the tools, effects and side-effects of the draft should be taken into account instead. The first addressee of this paper is the political decision taker. On the other hand, it has to be stressed that law drafting is a very technical matter and requires expert legal skills. Therefore a special training for drafters should be provided to ensure laws of good quality. The trained draftsmen may be found in ministries or parliament or special draft-service-units. For these training activities this paper may serve as a first handout. It has been produced for law-drafters in Croatia, but, of course, could be used in any parliamentary system.

Some first information on law-drafting is presented in three sections:

- Section B deals with concept and categories of norms in the constitutional and legal context of the state. This basic knowledge must be mastered by everybody, who is dealing with legislation : the legislator and the drafter.
- Section C deals with the policy backgrounds of new legislation and the legislative process from impulse for law drafting to publication of the law and (possible) amendment. These are the strategy and tactics of legislation and need to be fully understood by legislators and drafters.

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- Finally this paper gives information in section D on the methodology and technics of legislation: contents, structure, language, wording of the draft, cross references, transitional provisions etc. This is material for the drafter after having received instructions for his work.[1]

B. The Law in Constitutional and Legal Context

I. The Norm and Categories of Norms

1. The Norm

A legal norm is a binding order of a state of a general and abstract nature. It is different from social or moral norms; it is mandatory; it is general as it is binding virtually on everybody, not a single person; and it has an abstract content, not an order on a single issue or fact. The legal norm is the classical tool of the legislature (parliament) to maintain social order and to regulate human behaviour. Other units of the state may release their own regulation. It is different from the administrative act, which is the classical instrument of the executive/administration to take decisions. An administrative act is any decision or other measure taken by a public authority to regulate unilaterally a single case. It is directed at an individual party and has a direct external effect. So the administrative act, in contrast to a norm, is an individual concrete order. Statutory law is defined as the written law as opposed to oral or customary law.
Legislative functions are:

- The stabilization of people's behaviour;
- The protection of individual rights;
- The steering of social development;
- Giving legal effects to a State's policies;
- The creation of legal structures;
- The control of public affairs.

2. Hierarchies of Laws and Regulations

The hierarchy of legal instruments in Croatia is the following.

- The constitution is the supreme law of the Republic of Croatia. All laws and decisions by State institutions must be in strict conformity with the Constitution (Art. 5). If a legal rule conflicts with the constitution, it shall have no legal effect. The Constitutional Court has the competence to declare legal rules unconstitutional (Art. 128).

[1] For further reading: U. Karpen, Gesetzgebungslehre – neu evaluiert/Legistics – Freshly Evaluated (2006); I. Breutz, Handbook on Legislation and Law Drafting (2006); M. Cutts, Clarifying Euro Law (2001); Council of Europe, Principles and Methods of Preparing Legal Rules (1983); Bundesamt für Justiz, Gesetzgebungsleitfaden, Leitfaden für die Ausarbeitung von Erlassen des Bundes (2007).

- International treaties (Conventions etc.) are agreements between a State and another State (bilateral), between several States (multilateral) (like European Union) or between a State and another subject of international law (like the United Nations). According to Art. 140 of the Croatian Constitution they shall be above law in terms of legal effects. The European Union releases guidelines for member state parliaments' legislation and ordinances, which are directly binding on member states' citizens.
- Organic laws (Art. 82) require special majority vote and precede acts of statutory law.
- (Statutory) Laws are legal provisions made by parliament (Arts. 80, 82).
- Decrees (Art. 87) are norms of delegated legislation as enacted by government on the basis of a statutory law authorization.
- Autonomous bodies, like bodies of local or regional self-government or universities, regulate their affairs by statutes in the frame of the law (Arts. 135, 67).
- One rank below ordinary law are administrative circulars regarding mostly internal affairs of the government or a department thereof.

II. The Constitutional Basis of Legislation

1. Democratic Legislation and Separation of Powers

Croatia is a democracy. All powers derive from the people and belong to the people as a community of free and equal citizens (Art. 1). The government in Croatia is bound by the rule of law, namely its separation of powers principle (Art. 4). All three powers are bound by the Constitution. The legislature has the power to make laws. The executive has the power to implement the law and in the framework of law to regulate on issues of common welfare. The judiciary has the power to finally interpret the laws and decide on legal disputes. Each of the three branches of democratic government has to make use of its competences to the best effect. The legislator has to set general and abstract norms; it is not his responsibility to decide on single cases. The administrator is not restricted to implement laws; it is his mandate to use his best knowledge, flexibility, creativity and discretion to decide on individual cases with the best effect for the people. Court decisions may in fact have this effect or give general guidance, but it is the judiciary's mandate to decide on cases only.

That there are three separate powers is meant to avoid abuse of power. Reciprocal control shall create a balance of power, which finally protects the freedom of the individual. Separation of powers establishes a system of checks and balances. This system is designed to ensure that no branch of government is trespassing its powers. The system, however, is working only, if the powers cooperate effectively.

2. Constitutional Key Principles of Legislation

Democracy, rule of law, and protection of human rights form the key principles for good regulation:

- Necessity. Before putting a new policy into effect, the public authorities have to assess, whether or not it is necessary to introduce new regulations in order to do this.
- Proportionality. Any regulation must strike a balance between the advantages it provides and the constraints it imposes.
- Transparency and participation. The more people know in advance, which regulation is planned, the better effects and side-effects can be achieved and the easier is implementation of the law.
- Accountability. Everybody must be in a position to clearly identify the units and people who decide on legislation.
- Accessibility. In a democracy everybody must know the law and where to find it.
- Simplicity. One should make any regulation as simple to use and to understand as possible, but not too simple.
- Consistency. Every regulation must be coherent and consistent with other laws in the legal system.
- Legality. Any legal act must be in the frame of constitution and law, namely authorized by a parliamentary law, if delegated legislation.
- Stability. The law should be drafted in a manner that it is not immediately subject to changes and amendments.
- No Retroactivity. Under rule of law and individual freedoms the law must be predictable and not retroactive, unless it is only beneficiary (Art. 89, para. 4).

C. Policy Background, Legislative Process and Drafting

I. Policy Background of New Legislation

1. Legislative Impulse and Policy Development

The legislative impulse can derive from a number of sources. Ideas can and do spring from

- Political parties and politicians,
- Request by parliament or representatives,
- The executive branch,
- The need to react to certain urgent needs by government,
- The need of implementing a certain policy by government,
- Coalition agreements of parties supporting government,

- Suggestions from parts of civil society, namely from groups who work with legal provisions, like business associations, trade unions, consumer associations, ecologist groups a.s.o.,
- Suggestions made by scientists or research institutions,
- Court rulings, namely decisions of the Constitutional Court,
- Implementation of international obligations,
- The media,
- And others.

Before starting the writing of a draft, it is important to determine the objective of the proposed legislation. It is the responsibility of politicians to understand clearly what the problem is, what, therefore, the goal of legislation should be to solve the problem and which tools are available to reach that goal. The better this preliminary work has been done, the easier is the work of the drafter, because he knows exactly what the policy is and what politicians want him to do. Any legal act drafting initiative shall be preceded by research into the political, social, economic, financial, legal, cultural, psychological situation of the field of regulation. The ineffectiveness of former regulation should be examined or non-existence of legal acts in the field that requires regulation must be ascertained. Today no piece of legislation meets European and international standards, if it is not based on comparative studies. The goal must be to add to a unified European law, taking into account, of course, the legal heritage and special needs of Croatian legislation. This applies to the jurisprudence and legal doctrine on the issue. The guidelines for the legislative act to be prepared shall be based on constitutional provisions, constitutional jurisprudence and international conventions and treaties to which Croatia is a party.

2. Policy Checklist

Identification of the issue, objectives of legislation and tools to be applied may be developed by using the following checklist.

- Who is calling for action and what is the issue you want to address?
- Which specific problem is to be solved by the proposed legislation?
- What reasons are given?
- What is the content of the legislative impulse?
- How does this look like if compared with the present position as to the facts and the law?
- Which facts are subject to the need of regulation?
- Which facts have to be investigated? Which parallel facts are known?
- What difficulties, obstacles, resistance or conflicts occur in the area of regulation and what are the causes?
- Who is affected and how many actual cases are requiring a solution?
- What external factors are influencing people's behaviour?

  - Do people understand and acknowledge that there is an issue?
  - Do they understand and acknowledge their contribution?
  - Do they understand and accept the government's objectives?
  - Do they understand and accept the way you want them to behave?
  - Are they capable of behaving that way?
  - What economic, cultural, social or psychological factors are involved?
  - Can the government or other bodies adequately monitor the solution?
- Then formulate the legislative goal.
- Are they prescriptions by the impulse generator, the jurisdiction?
- Are there alternative goals?
- If yes, are the alternative goals compatible with the legislative goal?
- Is there a discrepancy with the current policy?
- Are there tools to ensure that the goal can be reached?

3. Prospective Evaluation: Efficacy, Effectiveness, Efficiency of the Law

Evaluation is the analysis and assessment of the effect of legislation. Nowadays, in most democratic countries, evaluation of legislation plays a significant role in the legislative process. Evaluation takes place before the enactment of a law (prospective – ex-ante – evaluation) and after implementation (retrospective – ex post – evaluation). Evaluation also should take place of all steps of the legislative process, from drafting to discussing the draft in parliament and its committees (concurrent evaluation).

Prospective evaluation in detail is the responsibility of the drafters, be it in ministries or parliament. Three criteria for good legislation are, however, so important, that they must be applied in the policy-designing process as well, namely efficacy, effectiveness and efficiency:

- Efficacy means the extent to which legislative action achieves its goal. In view of this criterion it is obvious that the goal must be clearly defined. The efficacy of the seat-belt requirement is proven, if use of seat-belts is reducing the number of accidents with lethal consequences or severe injuries. It seems that it does.
- Effectiveness means the extent to which the observative attitudes and behaviours of the addressees of legislation correspond to the behaviour prescribed by the law. It is well known that different societies react differently to the order to fasten seat-belts.
- Efficiency means the relation between 'costs' and 'benefits' of legislative action, i.e. cost-effectiveness. 'Costs' are meant in a broad sense, not just financial costs. The requirement of seat-belt-fastening is efficient, if there are no significantly cheaper alternatives to reach the same goal.

4. Drafting Instructions

It might be necessary and helpful to give drafting instructions to the drafter or drafting team, when government or a politician have developed the policy for the law. Drafting instructions should be considered, in particular, when the law or amendments to be made are legally complex, require complex drafting or when the legislative has a limited time frame to implement a policy. Many of the steps in preparing drafting instructions are the same as preparing a draft of a bill. The process cannot begin until one has developed a clear, detailed policy. From this policy, once can develop either the draft or a set of drafting instructions that will make it possible for the work to begin.

Some guidelines:

- Start with a clear, detailed policy. Set out the main themes (rules) of the policy.
- Set out ideas logically – which sometimes means in chronological order or according to the sequence of events.
- Begin with the general, then move to the particular.
- State the most important first, the least important last.
- Set out the general rule clearly before moving on to the exceptions.
- Ensure that, for each element of the policy the following questions have been answered: Who? When? Where? How?
- Note that the reasons for legislation belong to the legislative intent, not to the text of the law itself.
- Keep the instructions simple – use short, uncomplicated phrases.

II. Legislative Process and Drafting

1. The Legislative Process

The important steps of the legislative process are set out below. It should be mentioned, that the constitution regulates only some of them. Details are to be found in the Standing Rules of Parliament (Art. 79, para. 3) and the Rules of Procedure of Government (Art. 113).

1) The impulse is given, the policy developed.
2) The bill is drafted, either in government or parliament.
3) The draft is initiated into parliament, either by government (Art. 112) (in most cases) or by a representative or parliamentary group (Art. 84).
4) Committee reference. The President of Parliament usually refers the bill to one or more committees for review.
5) The committee considers the bill. Then the committee reports the draft to the floor.
6) The parliament discusses the draft and may return it to the committee for amendments.

7) Then the draft is given a second and third reading on the floor.
8) The bill passes when approved by a majority of votes (Art. 80), if not otherwise regulated by the constitution (Art. 81).
9) The draft is then sent to the President for signature and promulgation (Art. 88).
10) Upon the signature the bill becomes a law and must be published in the Law Gazette (*Narodne Novine*).
11) The law then is implemented. If needed, amendments are initiated and go to Parliament. The legislative process has come full circle.

2. The Drafting Process

Prior to starting with details of the drafting, the existing information about the policy of that planned law is communicated to political parties, civil organisations, the media and the citizens. Full transparency is not only a democratic requirement, but usually adds to the quality of the project and signals, where obstacles for implementing the law may be expected. The legislative authorities and those that have the right to initiate legislation should carefully listen and observe these possibly relevant voices.

The work of drafting is done in the ministry, which is competent in the matter, or in parliament, dependent of which authority is initiating the draft. Usually the authority creates a working group that will include experts and specialists of all public authorities, which have responsibilities in the area. Scientists, practitioners and other interested individuals and entities may participate.

To assess the quality of the project, a legal, economic, financial, technical-scientific, linguistic, ecological and other expertise shall be applied, given the type of social relations to be regulated.

- The legal expertise shall help to coordinate the draft with the provisions of Constitution and existing laws.
- The economic expertise intends to coordinate the draft with the effective economic law and highlight the positive and negative aspects of the draft that will safeguard the reform.
- The financial expertise intends to help to coordinate the draft with the effective financial legislation and assess the costs of implementation.
- The scientific expertise shall be made by scientific and higher education institutions, by experts, including people from abroad, and shall help to update the regulation, adjust regulations of the corresponding sphere of social relations, create the scientific framework for adoption of the legal act.
- The linguistic expertise intends to ensure the improvement of the language of the law, structure of the phrase and applied terminology.
- The ecological expertise intends to help to coordinate the draft with the effective ecological legislation, protect human health and the environment.

In addition, the working group may hold hearings which are open to the public.

3. Checklist for the Drafter

Thus all involved in the consultative process leading towards regulation should ask not only themselves but each other whether the measure is necessary and likely to be effective and whether it is comprehensible.

To start with, the following questions in particular need to be considered. Some European governments make them mandatory to be answered by all administrators.

1) Is action at all necessary?
2) What are the alternatives?
3) Is action required at national level?
4) Is a new law needed?
5) Is immediate action required?
6) Does the scope of the provision need to be as wide as intended?
7) Can the length of the period for which it is to remain in force be limited?
8) Is the provision unbureaucratic and understandable?
9) Is the provision practicable?
10) Is there an acceptable cost-benefit relationship?

These basic questions are applied everywhere. In recent years, the methods of evaluation (Regulatory Impact Assessment, RIA) have become more specialized. More detailed evaluation has to apply the following five criteria of good regulation:

- Level of regulation. Is it necessary to have a national piece of law or is it sufficient to regulate on the matter at a lower level, e.g. regional or local (subsidiary principle)? And, more importantly, is it necessary to legislate at all or could the issue be solved by society or individuals (liberal principle, protecting individual freedoms)?
- Procedure of legislation. Following the constitutional track, ordinarily or hasty, first versions of a law or amending law, sunset-legislation, consolidation.
- Formal quality: language, definitions, structure, cross-referencing, readability, transparency.
- Costs: financial burden for economy, citizens, administration, bureaucracy, e-government, organisation of administrative bodies, one-stop shops.

To make a thorough ex ante-evaluation, one may use the following check-list:

- Who is affected when and where?
- What are the future needs, costs and consequences?
- What has the analysis of the problem shown?
- How can the legislative goal be reached without a new law? (including, for example, measures to ensure the effective application of existing provisions, public relations work, working arrangements, investments, incentives,

encouragement of support for self-help of a kind that can reasonably be expected of those concerned; clarification by courts).
- How high are the costs likely to be for those for whom the provision is intended, or for other persons affected?
- Can those for whom the provision is intended be reasonably expected to bear the additional costs?
- How high are the extra costs and expenditure likely to be for the Government, regions and local authorities?
- What possibilities are there to cover the extra costs?
- What instruments are most favourable if one gives special consideration to the following criteria:
  - demands and burdens on the private citizen and industry;
  - public costs (state, counties, local authorities etc.);
  - effect on existing norms and proposed programs;
  - side-effects, consequences.

To answer these questions prospective evaluations usually rely on
- practical tests;
- demonstration programs;
- simultations;
- forecasting;
- expert interviews;
- review of literature;
- expert and stakeholders discussions.

4. Drafting Amendments

When the drafting process has been finished, the draft is presented to the authority, which initiates it in parliament. If this is the government, usually it will decide on the initiative in collegiate session. If the draft is adopted by Parliament, it is submitted to the President. Presidential approval makes the draft a law. After the law has been implemented, it is very important that parliament monitors the application of its product. There are various institutions which will assess the implementation, efficacy, effectiveness and efficiency of the law.
- The courts decide on cases and may find that the law is unclear, not just, overlooking important facets of the matter.
- Lawyers consult clients and prepare law suits.
- Administrators may find it difficult to apply the law.
- Observers may find that people do not abide by the law.
- Business may find that the law is costly.
- University teachers in explaining the law may find deficiencies.
- The media may report of scandals which could not be prevented by law.

It is important that ministries collect this information and rethink possibilities to improve the law. Deputees should share information from petitioners and voters in their constituencies with colleagues and government.

A retrospective evaluation (RIA) on a regular basis is desirable. Such an ex post-evaluation should in particular be carried out when general reviews of existing legislation take place. The time when ex post-evaluation should take place may be decided on when the new regulation is being prepared and can, under appropriate circumstances, be included in the legal text. This may, for example, be particularly appropriate where there is considerable uncertainty about the risks being addressed by the regulation. In other circumstances, the appropriate time for an ex post-evaluation may be decided upon later. It is, in any case, essential that the time of evaluation is to be chosen so that the effects of the regulation can be measured, or new information about the circumstances of the regulation can be incorporated in the review. When a regulation has been in force for a while it should also be possible to measure any changes in the behaviour of those affected by the regulation.

Questions for ex ante-evaluation have been mentioned before. Typical questions for an ex post-evaluation are (in addition):

- Have the goals been achieved with the current provisions?
- Which side effects have appeared and are these considerable?
- To what extent have burdens and relief developed?
- Has the provision proven itself as practicable and will it be observed and obeyed?
- Does a need for repeal or amendment exist?
- Degree of goal attainment.
- Cost development.
- Cost-benefit effects.
- Acceptability of the provision.
- Practicability and subsidiary impacts.

The result of a retrospective evaluation may be

- to abrogate the law,
- to amend the first version of the law,
- to republish the law, because it is unclear after many amendments.

An amendment is the addition, deletion or modification of the original law. Since living conditions and politics change rapidly today, amending laws in modern states by far outnumber original laws. Sometimes amendments are following each other in a hectic manner, so that citizens, administrators and judges have difficulties to find the law which is in force.

An important instrument for securing retrospective evaluation on a regular basis is sunset-legislation. The law says itself that it will expire at a given date, as enacted, unless parliament prolongs its effectiveness (Art. 87, para. 3). A similar effect derives from a provision of the law that government has to report in two,

three or more years time (or every two years) on the implementation of the law. Then Parliament can decide whether to tolerate deficiencies as reported or to amend the law.

D. Methodology and Techniques of Legislation

I. Concept and Intent of the Law, General Instructions for Drafting

1. Concept of the Law

The drafter or the drafting team take notice of the policy-making results of the draft. If needed, additional research should be conducted. The concept should consider the following aspects:

- What is the normative content of the new law: Granting of rights? Abolition of rights or obligations? Governing behaviour? Containing incentives? Conferring jurisdiction?
- Who is the addressee of the law: Everybody? Citizens? Certain individual or legal persons? Authorities? Courts? Business? Enterprises? Associations?
- What is the objective of the new law: Subsidy? Procedure? Distribution of tasks?
- Is the new law self-executing or just a normative framework that leaves execution to other bodies?

These criteria are closely connected with the question whether the new law should be detailed or general. If the law deals with encroachments on civil rights, the legislator himself must be very detailed; in other cases he may leave details for the executive by delegated legislation.

2. Intent of the Law

When initiated in parliament, the law must be introduced by a legislative intent. This part of the draft explains the motivation of the law, its setting in the policy of government; it lists the research results and steps of the drafting process, gives arguments for the articles of the law as an instrument for later interpretation.

3. General Instructions as to Structure, Form and Style of the Draft

Any law must meet certain essential demands:

- It must be clear, precise, coherent and as simple as possible. The language used by the legislator is simply the vehicle which carries the will of parliament and rules produced by him.
- In fact, every legal norm depends upon the global problem of wording, which demands a suitable terminology, an adequate sentence structure, a logical order of ideas and a coherent structure of expression.

- Language and style of drafting cannot be standardized. They depend on the text type (constitution, statutory law, sub-legal provisions etc.), on the subject, the addressees.
- In drafting a law one has to keep in mind that the text is a vehicle of communication. It should be readable, avoid unnecessary words and try to be not too technical.
- Sequences should be logical. The general should precede the particular, the main principles should precede administrative details, the permanent should be drafted before the temporary and the more important should be written before the less important.
- A further relevant point for the design of a draft is that distinct and different matters should not be combined in one law. This avoids confusion.
- The composition of the draft is a permanent and dynamic learning process. Usually the completion of the first version of the draft marks the beginning of the next round.
- Cross-reference is a tool to shorten the text of the draft and to make the structure visible. It makes it, however, more difficult to read the text in a coherent manner.

II. Structure of the Draft and the Text

1. Structure of the Draft

The drafter has to keep in mind that law drafting follows a special method and is a technical matter. A drafter should know how a draft in general is structured and then apply this to his draft. The content of the draft bill must be presented in a well organized and systematized manner.

As a rule, the draft shall contain the following parts:

- Title
- Preambule
- Introductory provision
- Articles covering general provisions and detailed subject matter provisions
- Penalties
- Transitional and final provisions
- Annexes.

This structure is, of course, not mandatory. The draft may miss one or more parts, but usually include the title and the introductory provision.

The title of the draft must be short and clearly describe the object of the regulation. The title is the identifying element of the draft. It should be descriptive, summarizing the matter in one or two words.

The preambule of the legal act, if there is any, shall evoke the final results, which Parliament had in mind upon approval of the law, contain the rationale of the law and the social, political, economic, cultural or other motivation. Constitutions

usually are introduced by preambules. The preambule in most states is part of the law and useful for interpretation. Pieces of European law are also introduced by preambules.

Very often, although not mandatory, introductory provisions set the legal ground for issuing the law and indicate the category thereof. Introductory provisions are generally drafted for pieces of delegated legislation.

General provisions determine the object, scope and area of regulation; they give the orientation for the whole law and explain and define certain notions and concepts. They often – namely in constitutions – are worded in the form of general principles (like rule-of-law, due process, social state, etc.). In codes and other comprehensive pieces of law, general provisions have a structural meaning and give an overview of parts, sections etc. of the law.

Subject matter provisions represent the regulatory framework of the law: rules, rights and obligations, consequences of violation of norms. In general, material law precedes procedural law. Provisions dealing with sanctions are drafted at the end of the law. The provisions must be drafted in logical order, based on legal analysis, nature of institutions, and their relations, and – finally – on the scientific hierarchy of norms.

The chapter 'penalties', if applicable, includes penalties and other sanctions in case of infringement of the law.

Transitional and concluding provisions of the draft may cover the following: ways and data of enactment and enforcement of the law; compliance of new regulations with former ones; provisional or temporary preservation of old provisions; binding character of authorities in charge of execution of the law. Often there may be a concluding provision which stipulates that "any provisions contrary to the law are abrogated" and another one that "this law is declared to be in force with immediate effect" or other data.

Annexes of the law shall contain schemes, plans, numerical and statistical information, organizational structures, drawings, tables and other details. The Annex is part of the legal act and this binding law.

2. Structure of the Text

All draft laws must follow a certain structure and a certain order of provisions. There are many options to arrange and number a law. Each State develops its own standards. Parts, chapters, sections, subsections, subdivisions and items may be arranged as follows:

Part A (heading)
Chapter I (heading)
Article 18 (heading)
(1) paragraph
sentences 1, 2, 3 ...

or

Part I (heading)
Chapter I (heading)
Section 1
1.1. subsection
1.2. subsection
(a) subdivision
(b) ...
(i) items
(ii) ...

An article is the key structural element of a law, has an integrated nature and includes one or more directly related provisions which are subject to the same idea. In general, an article has a heading. Articles should be short to provide for good orientation of the reader. An article should not be longer than 3 or 4 paragraphs, a paragraph should not contain more than 3 sentences. A sentence should express one legal idea.

III. Language and Wording

1. Legal Language

The draft must be written in legal language. It is the technical, scientific language of law. It must be precise. On the other hand, the law must be comprehensive for possibly anybody, if it is addressed to the public, at least to the community of experts in the given field. The drafter has to find the balance between these two styles of wording. The phrases and the wording in general shall be written following the requirements of correct and easy understanding of the text by any interested person. As a rule, each idea shall be expressed by a single phrase. The style should ensure maximum understanding, precision and concision to exclude any ambiguity. The used terminology shall be constant and uniform, both in the draft and other laws. The same term shall be used if its repetition excludes any ambiguities. If paragraphs of the law or longer phrases need to be repeated, cross-referencing may be used; if this leads to difficulties in understanding the text, repetition may be preferable. Definitions add to clarity of the law. Definitions may be collected in the introductory part of the law. A definition section is used when terms need defining or when it is desirable to substitute a single word or a long phrase that has to be used many times. Neologisms and regionalisms can be used if they are broadly applied. Ambiguous words, expressions or idioms shall be avoided. Legal tautologies shall be excluded. The rules of orthography and punctuation shall be taken into consideration.

2. Principles of Clarity and Precision

To meet the aim of clarity, brevity, precision, coherence, consistence, simplicity and certainty, the following drafting rules should be considered:

- use words with a precise legal meaning;

- do not use unnecessary legalese or redundant legal phrases;
- do not use slang, abbreviations or acronyms;
- keep sentences as brief as possible by limiting them to a single thought;
- keep new statutory sections as brief as possible;
- use sections divisions to break down lengthy statutes into understandable units;
- use a list to describe multiple duties or actions;
- use "shall" only to impose a duty to act;
- use "may" to grant discretion or authority to act;
- use present tense;
- use the active voice;
- avoid using pronouns;
- when amending existing law use the most current version;
- avoid using brackets and footnotes;
- do not underline words in the text but use italic letters;
- the written size of the title of the law or regulation must be bigger than that of the chapters, parts or subparts;
- be consistent;
- arrange words carefully;
- tabulate to simplify;
- use precise language;
- be coherent;
- be clear, certain, simple and brief.

IV. Special Laws and Provisions

1. Amendments

Laws which regulate a subject in a comprehensive way for the first time, first versions of a law, and original versions are the minority of laws in modern societies. Rapidly changing situations in society, technology and others induce reactions of government which lead to the amendment and repairing of bills. In addition, there are other special sorts of laws which require attention.

Most common are amendments to laws that are in force. Amendments are additions, deletions or modifications of a law or other measures proposed by the legislator. The design of amendments depends on which technique is followed. The amending law may amend the principal law directly by deletions, substitutions and insertions. Examples are:

- page 3, lines 4, 7, 8 and 11, strike "director";
- line 12, after the first "the" insert "deputy";

- lines 14, 19 and 32, strike "director".

For all practical purposes an amending law of this type loses its separate identity or enactment. It is not understandable in itself and makes sense only as part of the principal law as amended.

The new law may, however, repeal or replace the old – consolidating new provisions and re-enact unamended old provisions. Then the new text is understandable as a unit.

Finally, the new law may stand separately on enactment but may be expressed to be construed and perhaps cited as one with the law it amends. Often there are political as well as technical considerations relevant for the choice of which technique is to be adopted in a particular case. The provisions of the amending law shall refer to the same object of regulation as the old one. In general, the amendment has the same legal force as the law as amended. The amendment must use the same terminology and structure as the amended law. Where only one article of a legal act is amended, the title of the amendment shall expressly mention the article and the law subject to be amended.

2. Abrogation, Repeated Publication, Consolidation of Law

A law may abrogate or invalidate another law. This may be an instrument to delete outdated law, to exclude parallelisms in legislation, to remove discrepancies and ambiguities. The legal act may be abrogated fully or partly. In general, abrogation must be expressly stated and shall in chronological order list all provisions subject to abrogation. Where a previously amended law is being abrogated, these amending laws must be abrogated as well. The abrogation may be accompanied by the adoption of a new subject regulation.

In cases of unclear regulation of a matter, namely if a principal law has been amended more often, a repeated publication or new adoption of the law may be advisable. Since it is an important obligation of legislator and executive to keep legislation "under control", to regularly re-examine the body of law, repeated adoption of laws or republication are useful instruments of consolidation.

Measures of electronic information handling (e-government) enable deputees and administrators to screen the body of law completely.

Sunset provisions in law support re-examination of efficacy, effectiveness and efficiency of the law. The formulation 'This law shall expire on Oct 1, 2009' gives the legislator a chance to decide, whether he should invalidate that law automatically or prolong its validity. This tool is used as well when the legislature wants the law to be effective for a certain period of time only, e.g. a tax law or a law granting subventions. Art. 87, para. 3 of the Croatian Constitution reads as follows:

> Decrees passed on the basis of statutory authority shall cease to be valid after the expiry of the period of one year from the date when such authority was granted, unless otherwise decided by the Croatian Parliament.

3. Budget, Appropriation Laws

The budget is a table of monetary sums, income and expenses of state or other entities. It is adopted with a small initiating text as a law. Appropriations from the budget are usually made by law as well, unless the executive power is entitled to spend money. In general, an appropriation bill should contain the following details:

- the amount of money,
- the source,
- a fiscal year of applicability,
- the recipient,
- the purpose.

Supplemental appropriations are for support and maintenance of an existing agency for an ongoing and previously funded program.

4. Special Provisions and Clauses in Draft Laws

A law must say when it takes effect and it should do so in a clear and understandable way. Citizens affected by the law should know when the law is effective. Article 89 of the Croatian Constitution reads as follows: "A law shall come into force at the earliest on the eighth day after its publication, unless otherwise specified by law for exceptionally justified reasons."

To state an exception to existing law, the drafter may introduce a clause like 'notwithstanding any other law', 'notwithstanding any provision to the contrary' etc. Whenever possible, the drafter should find those laws that conflict with the new law and refer to them specifically or bring them in conformity with the new provision. An accumulation of 'notwithstanding' clauses can result in a series of overlapping laws superseding each other.

Penalty provisions, civil and criminal, need to be drafted with great care, since they infringe constitutional civil rights and freedoms of the individual.

A saving clause preserves rights and duties that have already matured and proceedings that have already begun. Since a repeal could otherwise destroy obligations, the saving clause must be tailored to the needs of a particular case.

When a new law takes effect, it is not always possible to implement these provisions immediately. Transitional provisions allow the new provisions to be phased in. Designate transitional provisions usually are written as a separate section, placed just be fore the effective date section.

E. Finally

When the law has been drafted, it is submitted by the government to the parliament. If parliament adopts the law it is published and implemented. Each law may suffer from deficiencies, errors, incomplete provisions, gaps, etc. They are detected in implementing the law by administrators, lawyers, courts and

individuals affected by the law. Retrospective evaluation may check efficacy, effectiveness and efficiency of the law on a regular basis. This check may finally lead to an amendment and thus the law returns to parliament after having been full circle.

Drafting and legislating must be done as precisely and carefully as possible, making use of all scientific instruments of legistics. Neither the politician nor the drafter nor finally the deputee must, however, forget what the Founding Fathers of the US-American Constitution, in drafting the text, said: "Let us be guided by experience, because reason might mislead us!"