

LEGISLATIVE DRAFTING

With “legislative drafting” we refer to the set of techniques we use to edit and to refine the quality of the text of a legislation to finally adopt a clear and easily understandable document. The State is a great producer of legislative vocabulary. It should be emphasized that laws, by their nature, must be general and abstract in order to be able to adapt to all possible concrete cases.

Furthermore, the laws do not necessarily have to be written with a specific language nor should they be written with the technical language of law. However, it should be emphasized that generality and abstraction must not be confused with vagueness or even ambiguity. Lawmakers in every nation have the task of subjecting drafting and writing rules to the same laws in order to ensure their understanding and for a more effective implementation. This is precisely the most important function of Legal Drafting: to produce clear rules.

Although Italy did not provide for specific legislative standards on the quality of language and legislative techniques, it has faced the problem on several occasions:

- a) the law of 27 July 2000, n. 212 (statute of taxpayers' rights) which codified a series of Drafting rules that specifically concern tax matters, particularly sensitive from the point of view of relations between the State and citizens, but which can be applied to every law;
- b) the rules that have initiated the process of simplification and reduction of legislation and have established specific rules on the clarity of the regulatory texts (this is the Decree Law of 22 December 2008, No. 200 and of the Law of 18 June 2009, No. 69);
- c) the decree law 9 February 2012, n. 5, converted with the law 4 April 2012, n. 35, which contains measures to reduce administrative burdens, which entail, inter alia, reinforcing the principles of transparency and efficiency of administrative action.

The problem of Drafting was raised for the first time with the Giannini Report of 1979.

The Giannini Report in fact mentioned the lack of clarity of the rules, their overabundance and the lack of coordination between the laws (with consequent legal uncertainty), among the main causes of inefficiency of the public administration. On the basis of this analysis, the Barettoni Arleri Commission was set up in 1980 to address the problem concerning "simplification of procedures and the feasibility and applicability of laws as well as the preparation of the resulting regulatory frameworks". From the concluding report of the Barettoni Arleri Commission various proposals emerged to remove the highlighted problems of legislative design. Although the Commission's proposals were not immediately implemented, they stimulated a broad debate on the quality of standardization. And it is precisely in the context of this debate that the need to codify the rules of normative drafting arose in Italy.

The first significant step in this sense was registered in the regional context. In 1984 Tuscany drew up a first methodological document concerning "suggestions for the drafting of normative texts": this is the act that underlies the subsequent experience of the interregional manual of normative drafting. At national level, in 1986 a joint Circular of the Presidents of the Chambers and of the President of the Council of Ministers was adopted concerning "rules and recommendations on the technical formulation of legislative texts". This Circular was followed by the Circular of the President of the Council of Ministers of 2 May 2001 for the legislative acts of government competence (legislative and regulatory) concerning the "guide to the drafting of normative texts".

With regard to State Drafting, it is also appropriate to mention the provisions of Law no. 212 of 2000 on "provisions on the status of taxpayers' rights". Regional normative drafting is constituted by the interregional manual containing "rules and suggestions for the drafting of normative texts" developed in the Interregional Legislative Observatory (OLI). Below we report two Portals related to normative drafting where Italian, European and international resources are collected in regards to legislative techniques.

SOURCES:

<http://www.tecnichenormative.it>

http://www.qualitanormazione.gov.it/uploads/download/file/128/pcm_dagl_drafting_11-01-13.pdf

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