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Modern Parliaments and Legislative Quality

Professor Helen Xanthaki, UCL

Dean, PGLaws, University of London

Senior Associate Research Fellow, Sir William Dale Centre, IALS

President, International Association for Legislation

Turkish General Assembly

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Why bother with quality?



- New states are forced to pass *ad hoc* laws as a means of creating the infrastructure of the new territory
 - Priority is with the economy and investment
 - Ad hoc consultancies are the norm due to lack of capacity
- Mature legal systems view legislation as a tool for regulation
 - As the state solidifies constitutionality and legality, arises the need for the observation of prohibitions introduced by law
 - And the state seeks to ensure that regulation is implemented
 - Priority is with the citizen as final main actor of regulation
 - Legislation is used as a solution of last resort
 - Quality of legislation becomes a priority: laws are passed to guarantee regulatory results



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The topic



- Let's identify a concrete procedure of parliamentary scrutiny of draft legislation to award Parliaments effective weapons to contribute to legislative quality.
- Let's use the European Parliament and the UK as case studies to identify such a process.
- But what is the ultimate source of legislative quality, which Parliaments strive for?
- I advocate that effectiveness of legislation constitutes legislative quality, and that effectiveness must be at the forefront of pre-legislative scrutiny.



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What are the criteria of leg. quality used by the EP? The Smart Regulation Agenda



- **The October 2010 Commission Communication re-defines the goals of leg. quality in the EU [Smart Regulation Agenda]**
 1. **Simplification of EU law**
 - Via reduction of administrative burdens
 2. **Evaluation of law effectiveness + efficiency ex ante**
 - via fitness checks on key areas [environment etc.]
 - via strategic general policy evaluations
 3. **Selection of “the best possible” legislation**
 - through Impact Assessment
 4. **Improvement of implementation record**
 - via post legislative scrutiny, SOLVIT, and EU Pilot
 5. **Achieving clearer and accessible legislation**
 - via simple language, consolidation, recasting, and e-access



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What criteria of leg. quality are used in the UK Parliament?



- In May 2013 the UK's HoC Political and Constitutional Reform Committee reported on “Ensuring standards in the quality of legislation”.
- Richard Heaton: pre-legislative scrutiny of draft Bills (in Committee before the Bill is finalised) is “one of the best ways of improving legislation and ensuring that it meets the quality standards that Parliament and the public are entitled to expect”.
- But not all bills are suitable for pre-legislative scrutiny
- Still only a minority of bills are published in draft and fewer are discussed in Committee
- A Code of Legislative Standards is currently drafted.



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But, ultimately, what is legislative quality?



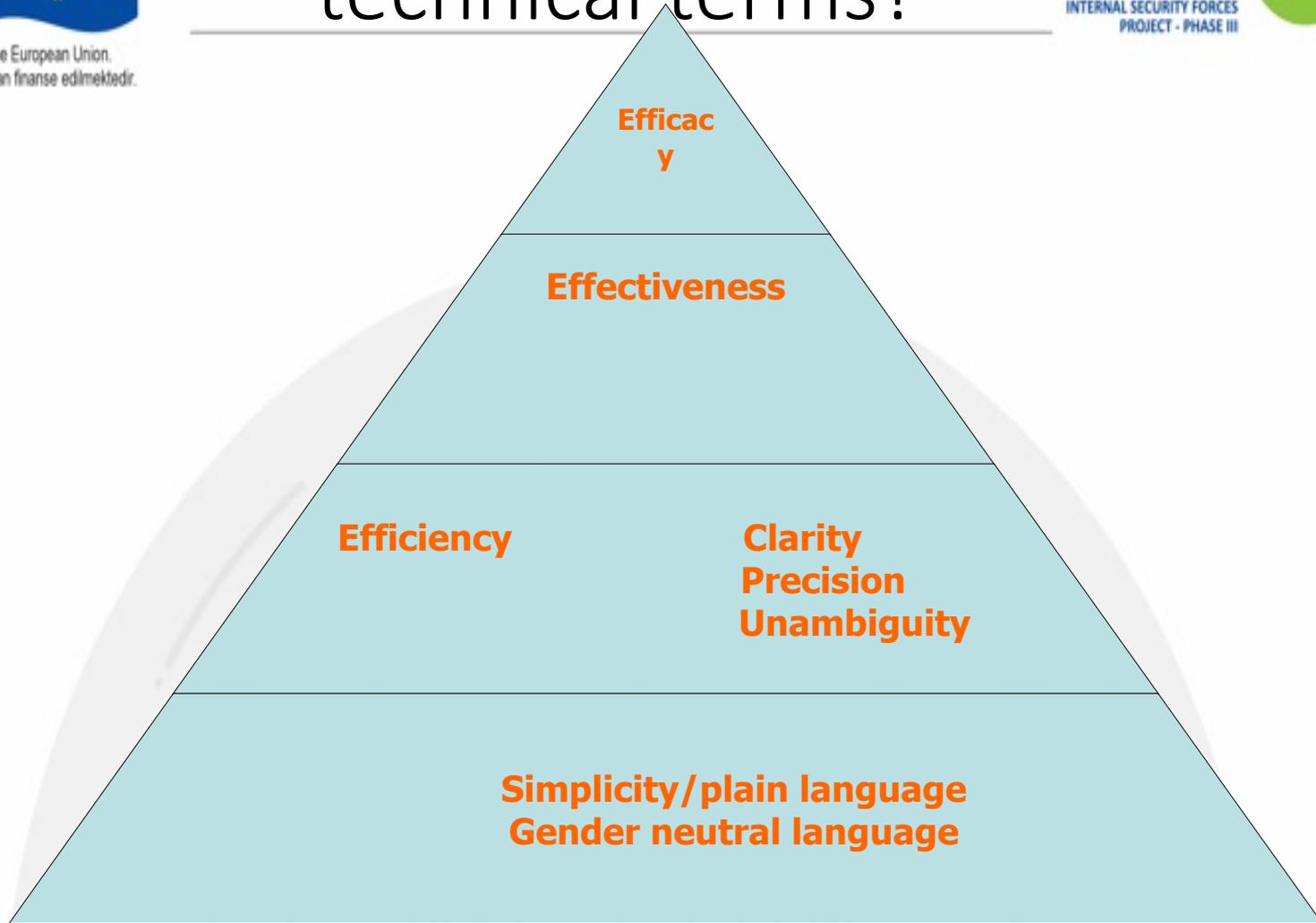
- Since legislation is a tool for regulation, the definition of legislative quality can only be result-driven
 - Governments are elected to govern on the basis of their electoral mandate
 - Governing involves regulation of fields of activity
 - Regulation is achieved via, amongst others, legislation
 - And legislative drafting is a means of achieving regulation
- Thus, legislation of good quality is legislation that produces the types, extent, and level of regulation required by the government
- In other words, legislation of good quality is synonymous to effective legislation, namely legislation that is capable of leading to efficacy of regulation





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What is leg. quality in technical terms?



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A checklist for Parliaments



Preliminary provisions

- Title: short, accurate, to the point, differentiating
- Preamble: only for legal basis and legislative steps
- Enacting clause: according to house style
- Commencement: clear date
- Objectives provision: measurable criteria of post legislative scrutiny

Substantive provisions

- **Wording: Clarity, Precision, Unambiguity**
- **Content: Within the scope of the constitution /law/legislation; Objectives achievable via means foreseen ; Post-legislative scrutiny cycle / sunset clause**

Final provisions

- Savings and transitional
- Repeals
- Consequential amendments (annex?)
- Annexes [definitions]



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Parliaments must defend legislative quality



- There is a direct link between quality of legislation with certainty in the law, and ultimately the rule of law and human rights
- Demanding that citizens comply with bad laws knowingly can be viewed as a form of entrapment of citizens
- Is it not within the mandate of Parliaments to defend the rights of citizens for clear, precise, and unambiguous legislation as a means of achieving effective regulation?



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Quality for ISF laws

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- **When drafting**
 - Identify the concrete policy goals and express them in the objectives clause
 - Ask for quantitative criteria for scrutiny of effectiveness and set a time
 - Identify the main law reform mechanisms and express them in a separate provision
 - Identify the legislative audiences
 - Citizens
 - ISF staff
 - Lawyers and judges
 - Identify the regulatory messages that answer questions for each group
 - Structure the legislative text accordingly
 - Ensure that you place the new text smoothly within the statute book
- **When scrutinising pre and post**
 - Are the identified goals correct and full?
 - Can they be met via the policy choices? Within the set period of time?
 - Does the text speak plainly to the audience of each provision?
 - Does the text fall smoothly within the legal system (constitution, law, legal practice?)

