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LEGAL TECHNIQUES IN EU LEGISLATIVE DRAFTING: A MODEL FOR UKRAINE’S LAW-MAKING REFORM

Abstract

This article examines the European Union’s approach to legal act drafting through a system of principles, methods, and procedures that ensure the proper quality of legislation. It identifies key guidelines for drafting, including clarity and precision in the formulation of provisions, structural coherence of legal acts, adaptation of content to target audiences, and adherence to the principles of subsidiarity, proportionality, and legality. Particular focus is given to the legal techniques used to implement these principles in practice, such as necessity assessments, structural standards, codification, recasting, implementation monitoring, and multilevel legal and linguistic editing. Applying the EU approach to the Ukrainian context, the study overviews recent statutory reforms aimed at improving legislative drafting. The analysis shows that, while Ukrainian legislation has partially incorporated many EU legislative drafting concepts, their practical application depends on strengthening institutional capacity, enhancing expert support, and improving public participation mechanisms. The adoption of a uniform legislative drafting manual is proposed as a step toward harmonizing quality safeguards for enactments. The findings confirm the potential of EU standards to increase the efficiency and legitimacy of Ukraine’s national law-making process.

Key Words: *Legislative Drafting, Legislation Quality, Legal and Linguistic Expert Opinion, Impact Assessment, European Union, Harmonization of Laws, Regulatory Policies*

Introduction

The European Union (EU) possesses an extensive and sophisticated body of legislation that directly impacts the lives of citizens and the functioning of the EU Member States. The quality of legal acts is essential to the legal system efficacy. Vaguely worded or complex legal norms can hinder the proper application of the respective acts, lead to fragmented implementation or to inconsistent interpretation across different jurisdictions. As emphasized by the Council [of the European Communities], the principle of legal certainty requires that EU (Community at a time) legislation be “*as clear, simple, concise and understandable as possible*” (Preamble, para. two)¹. According to the EU Council and the Court of Justice of the European Union, *readily understandable* and *transparent* legislative acts are prerequisites for their “*proper implementation and uniform application among Member States*” (Preamble, (2))².

Within the EU, the critical importance of the legislative drafting also called ‘*drafting EU law*’ - the process of creating and articulating legal acts - has long been recognized. In the early 1990s, steps were taken to enhance legal techniques and improve quality of the EU (then Community) legal acts. The Council Resolution of 8 June 1993 set an overarching objective of making legislation

more accessible and introduced several criteria for draft legal acts’ quality assessment³. Then, in 1994, European Parliament, Council of the EU, and European Commission concluded Interinstitutional Agreement on accelerated working method for official codification of legislative texts⁴, followed by 1998 Interinstitutional Agreement on Common Guidelines for the Quality of Drafting of Community Legislation – a set of guidelines / a guide for all EU institutions engaged in lawmaking whether in editorial and/or formulating role (Preamble, para. 3)⁵. Those guidelines have since served as a compass for all actors engaged in the legislative drafting of the EU legislation and were subsequently reinforced by 2001 Interinstitutional Agreement on a more structured use of the recasting technique for legal acts⁶, 2007 Joint Declaration on practical arrangements for the codecision procedure⁷, 2011 Joint Political Declaration on explanatory documents⁸ and the latest supplement in the form of 2016 Interinstitutional Agreement on Better Law-Making⁹.

The relevance of this topic is underscored by the role of the legislation quality improvement: it is an integral part of the EU’s Better Regulation strategy, an initiative reinvigorated in late 2015¹⁰ with new agenda “Better regulation for better results” by

¹ Council of the European Union. *Council Resolution of 8 June 1993 on the Quality of Drafting of Community Legislation* (93/C 166/01), accessed April 10, 2025, <https://op.europa.eu/en/publication-detail/-/publication/290144bc-51a5-43db-b0d1-e8b2b38d11fd/language-en>.

² European Union. *Interinstitutional Agreement of 22 December 1998 on Common Guidelines for the Quality of Drafting of Community Legislation* (1999/C 73/01), accessed April 10, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_1999_073_R_0001_01.

³ *Council Resolution* (93/C 166/01).

⁴ Interinstitutional Agreement of 20 December 1994 Accelerated working method for official codification of legislative texts (96/C 102/02), accessed April 10, 2025, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A1996%3A102%3ATOC>

⁵ *Interinstitutional Agreement* (1999/C 73/01).

⁶ Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts (2002/C 77/01), accessed April 10, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2002.077.01.0001.01.ENG&toc=OJ%3AC%3A2002%3A077%3ATOC

⁷ Joint Declaration of 13 June 2007 on practical arrangements for the codecision procedure (2007/C 145/02), accessed April 10, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2007.145.01.0005.01.ENG&toc=OJ%3AC%3A2007%3A145%3ATOC

⁸ Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents (2011/C 369/02), accessed April 10, 2025, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.C_.2011.369.01.0014.01.ENG

⁹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (32016Q0512(01)), accessed April 10, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.123.01.0001.01.ENG

¹⁰ European Parliament. *Decision of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission* (2016/2005(ACI)), accessed April 10, 2025, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52016DP0081>

the Commission, which aims to ensure openness and transparency in decision-making, evidence-based policymaking, reduction of regulatory burden, and the provision of simple, comprehensible, and stable legal rules to citizens¹¹ and resulting in the most recent Commissions proposal on yet another Interinstitutional Agreement on better regulation¹². Hence, enhancing law-making is not merely a legal technique matter but a key factor in the success of the EU's entire law-making activity.

Context of the EU legislative drafting assumes a particularly important role for

Literature Review on the EU Law-Making

Academic studies and official EU documents trace the evolution of the approach to legislative drafting at the Union level. The first documented systemic step was the aforementioned Council Resolution (1993) which articulated ten core drafting objectives for all Community legal acts. The basic requirements included clarity, simplicity, conciseness, consistency, unambiguity, structural standardization, and focus¹³. This resolution marked the beginning of a comprehensive doctrine on legislative quality in the EU.

The 1998 Interinstitutional Agreement on Common Guidelines for the Quality of Drafting of Community Legislation, effective since March 1999, was a subsequent milestone. This agreement was the result of joint efforts by the three principal EU institutions, which emphasized in Preamble (1) - (2) that: (a) legislation must be understandable both to public and economic operators as a prerequisite for its effectiveness and (b) the principle of legal certainty demands clarity of legal norms and predictability of their application¹⁴. The Interinstitutional Agreement established twenty-two (22) harmonized

improving national legislative processes as Ukraine has been also dedicating resources to these issues. This is especially relevant in light of Ukraine's official candidate status and ongoing accession process to the European Union, which presupposes alignment of the national legal system with the EU *acquis* and regulatory standards. The recently adopted Law of Ukraine On Law-Making Activity № 3354-IX (2023) defines the principles of legislating, including the rule of law (in particular, legal certainty), democracy, proportionality, necessity, reasonableness, systematicity etc.

guidelines for the legislative drafting, consisting of: six (6) general principles; nine (9) provisions on specific parts - from structural components to numbering; three (3) on references and annexes; three (3) on amendment and repeals; and the remaining one (1) on final / transitional provisions. Although not binding, the provisions of the Interinstitutional Agreement included a number of practical steps, including a few tips on how the legal services can step up their active involvement in the legislative drafting.

Important reference is also the *Joint Practical Guide of the European Parliament, the Council, and the Commission for Persons Involved in the Drafting of European Union Legislation* (latest ed. 2015, first published in 2000), developed by the legal services of the three principal EU institutions in pursuit of 1998 Interinstitutional Agreement implementation¹⁵. The Joint Practical Guide provides detailed commentary on each principle and numerous practical examples of their application. It has become a primary resource for EU legislative drafters, complemented subsequently by other tools

¹¹ European Court of Auditors. *Law-Making in the European Union after Almost 20 Years of Better Regulation*. Luxembourg: European Court of Auditors, 2020. https://www.eca.europa.eu/lists/ecadocuments/rw20_02/rw_better_regulation_en.pdf.

¹² European Commission. *Communication from the Commission to the European Parliament and the Council: Proposal for an Interinstitutional Agreement on Better Regulation*, accessed April 10, 2025, <https://data.consilium.europa.eu/doc/document/ST-9121-2015-INIT/en/pdf>.

¹³ Council Resolution (1993).

¹⁴ Interinstitutional Agreement (1998).

¹⁵ European Commission. Legal service, *Joint practical guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation*, Luxembourg: Publications Office of the European Union, 2015, <https://data.europa.eu/doi/10.2880/5575>.

such as the Interinstitutional Style Guide¹⁶, the European Commission's *Better Regulation Guidelines*¹⁷ and the *Better Regulation Toolbox*¹⁸ etc.

Beyond official documents, Tonye Clinton Jaja's book *Legislative Drafting: An Introduction to Theories and Principles (2013)*¹⁹ has materially contributed to the theory of legislative drafting. The author that policymakers or other non-expert participants in the legislative process often lack the specialized knowledge and skills required for effective legislative drafting. *Jaja (2013)* calls for clear theoretical foundations in legal drafting, identifying efficacy as its principal goal. His book focuses not only on drafting techniques for normative texts but also on demonstrating the importance of a coherent regulatory framework in ensuring quality and consistency of legislation.

A valuable behavioural perspective is offered by Ellen Mastenbroek in *Guardians of EU Law? Analysing Roles and Behaviour of Dutch Legislative Drafters Involved in EU Compliance (2017)*²⁰. Mastenbroek investigates the role of national legislative drafters in ensuring alignment with EU law and highlights a recurring conflict between EU legal requirements and domestic political interests. Based on in-depth interviews with Dutch law drafters, she (the author) concludes that when reconciliation is not possible, political considerations often take precedence over strict compliance with the EU acquis. This underscores the importance of behavioural and institutional factors in legislative drafting practices, which in turn impact the implementation of EU law and, subsequently, the efficacy of the integration processes.

Another noteworthy contribution is Edwin Tanner's *Clear, Simple, and Precise Legislative Drafting: How Does a European Community Directive Fare?* (2006)²¹, which evaluates an attempt by Martin Cutts to rewrite Directive 88/378/EEC on toy safety, by using *plain language* principles. He argues that the archaic style of many EU directives, including Directive 2002/2/EC, often fails to meet the criteria of clarity and simplicity. Even after the European Commission introduced plain language guidelines, EU law texts retained complex legal jargon, undermining the accessibility of the laws to end users.

The academic works emphasize the multifaceted nature of legislative drafting in the EU, showing that the quality of the legislative texts depends not only on formal drafting guidelines but also on behavioural, cultural, and linguistic considerations. Importantly, academic consensus appears to be placing a causation link between the quality of law-making and the efficacy of the EU law through its comprehension by the public as well as ex post impact evaluation by the public. Authors stress that the EU's adopted standards - clarity, coherence and reasonable justification of norms - increase both predictability and legitimacy. For example, *Robinson (2011)*²², in describing the EU law-making process, highlights a key role of legal editors (Legal Revisers) and legal linguists (Lawyer-Linguists) in ensuring compliance with legislating techniques. At all stages of the review process, such editors and linguists verify whether a text is clear, has correct grammar, is appropriate as to the form-factor, and is linguistically compatible with the multilingual nature of the EU law.

A separate dimension of the academic writing is dedicated to the *Better Regulation*

¹⁶ *Interinstitutional Style Guide*. Date of last update: 15.4.2025. Luxembourg: Publications Office of the European Union, 2025, accessed April 10, 2025, <https://style-guide.europa.eu/en/news>

¹⁷ European Commission. *Better Regulation Guidelines*, accessed April 10, 2025, https://commission.europa.eu/document/download/d0bbd77f-bee5-4ee5-b5c4-6110c7605476_en?filename=swd2021_305_en.pdf

¹⁸ European Commission. *Better regulation toolbox*, accessed April 10, 2025, https://commission.europa.eu/law/law-making-process/better-regulation/better-regulation-guidelines-and-toolbox/better-regulation-toolbox_en

¹⁹ T. C. Jaja, *Legislative Drafting: An Introduction to Theories and Principles*. Nijmegen: Wolf Legal Publishers, 2012.

²⁰ E. Mastenbroek, "Guardians of EU Law? Analysing Roles and Behaviour of Dutch Legislative Drafters Involved in EU Compliance," *Journal of European Public Policy* 24, no. 9 (2017): 1289–1307, <https://doi.org/10.1080/13501763.2017.1314537>

²¹ Tanner Edwin, "Clear, Simple, and Precise Legislative Drafting: How Does a European Community Directive Fare?" *Statute Law Review* 27, no. 3 (2006): 150–175, <https://ssrn.com/abstract=1098704> or <http://dx.doi.org/10.1093/slr/hml007>

²² William Robinson, "Legislative Drafting in the EU: Recruitment, Training and Continuing Education of Those Involved in the Drafting Process," accessed April 10, 2025, <https://zakonodavstvo.gov.hr/UserDocsImages/arhiva/31%20110509%20WilliamRobinson%20EN.pdf>.

and *Better Law-Making* initiatives²³. In 2003, the three EU authorities entered into the Interinstitutional Agreement on Better Law-Making (2003/C 321/01)²⁴, which codified the initiative to standardize law-making practices in thirty-eight (38) sections. In 2010, it was reinforced by the Framework Agreement between the European Parliament and the Commission²⁵; by 2010, however, the European Commission, the main legal drafting body of the EU, had already introduced a well-established set of tools to improve the quality of legislation, including mandatory impact assessments, broad stakeholder consultations, implementation monitoring, recasting and codification, and evaluation/review procedures - reflected in the annual reports of the European Commission and verified by the European Court of Auditors. The monitoring and evaluation procedures were, however,

insufficiently or poorly framed. The 2016 Interinstitutional Agreement on Better Law-Making, concluded by the European Parliament, the Council, and the Commission, restated and detailed the commitment of the EU institutions to high-quality drafting, recasting, and codification, and the use of other modern legal drafting techniques - in over fifty (50) provisions of the main text and twenty-eight (28) provisions on delegated acts in the annex, the latter appended with seven (7) standardized clauses.

Thus, both academic and official sources agree that high-quality legislative drafting is an indispensable and foundational element of the efficacy of the law-making process. The sections below will articulate, drawing on the doctrine and EU practices, the principles and techniques for legislative drafting.

Objectives and Methodology

The primary goal of this study is an analysis of the guiding principles and legal techniques in legislative drafting by the EU institutions, which are embedded in the EU law-making process, and an assessment of their significance and potential adaptability to the Ukrainian context, identifying, where applicable, how these tools can enhance the effectiveness and quality of Ukraine's national legislative process.

We deployed a combination of methods to tackle the objectives of the study:

- dogmatic (formal) method to examine the content of the EU founding treaties, interinstitutional agreements, and official guidelines (manuals, handbooks) on the legislative drafting. Comprehensive research of the texts allows a systematic interpretation of the formal rules and norms *expressis verbis*;
- comparative method: juxtaposing EU standards against concepts incorporated in Ukrainian legislation,²⁶ particularly the Law of

Ukraine "On Law-Making Activity", to identify common principles, differences and areas for possible harmonization or adaptation;

- legal content analysis: a detailed examination of selected EU legislative provisions to illustrate application of certain principles or techniques: for example, the analysis of the model EU regulation structure, the use of preambles, the formulation of amendment provisions.

The research is based on primary legal instruments of the EU (Treaty on European Union (TEU), Treaty on the Functioning of the European Union (TFEU), in particular, provisions on the principles of subsidiarity and proportionality, and on the foundations of EU legislative drafting); the above-mentioned Interinstitutional Agreements, notably the 1998 and 2016 Agreements on Better Law-Making; we have also used secondary legislation: EU Guidelines and Handbooks, such as the Joint Practical Guide (2000), the

²³ *Idem*. See also Golberg E. "Better Regulation: European Union Style," *M-RCBG Associate Working Paper* № 98. Harvard Kennedy School (2018), <https://www.hks.harvard.edu/centers/mrcbg/publications/awp/awp98>.

²⁴ Interinstitutional agreement on better law-making (2003/C 321/01), *Official Journal* C 321, 31/12/2003 P. 0001 – 0005, accessed April 10, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2003.321.01.0001.01.ENG

²⁵ Framework Agreement On Relations Between the European Parliament and the European Commission (32010Q1120(01), accessed April 10, 2025, https://eur-lex.europa.eu/eli/agree_interinst/2010/1120/oj

²⁶ Zakon Ukrainy "Pro pravotvorchu diialnist" no. 3354-IX, vid 24 serpnia 2023 roku [Law of Ukraine "On Law-Making Activity" no. 3354-IX dated August 24, 2023], accessed April 10, 2025, <https://zakon.rada.gov.ua/laws/show/3354-20#Text>.

Commission's Better Regulation Guidelines (2021), and the Interinstitutional Style Guide, which has been in publication since 1997 and is currently available in all official EU languages. Academic literature, both European and Ukrainian, addressing the quality of legislation and legal drafting techniques, has been analysed to seek theoretical and empirical insights. With the research objectives in mind, we focused on EU institutional practices and

did not include a detailed comparison with other legal systems, except for a few relevant parallels with the Ukrainian legal framework.

This set of methods enabled a comprehensive scope of inquiry into the subject -from jurisprudential basics (principles), through implementation (legal techniques), and finally, to an assessment of their efficacy in legislative drafting.

Guiding Principles of Legislative Drafting in the European Union

Clarity, Simplicity, and Precision Principle

Among the basic requirements is the accessibility (ease of understanding) of EU legislative acts to the addressees. The 1998 *Interinstitutional Agreement* lays the first provision down as follows: “*Community legislative acts shall be drafted clearly, simply, and precisely*”. Similarly, the 1993 *Council Resolution* provided, in Section 1, that “*the wording of the act should be clear, simple, concise, and unambiguous; unnecessary abbreviations, ‘Community jargon’, and excessively long sentences should be avoided*”. This guidance reflects the overarching principle of legal certainty, whereby every member of the public subject to the law should be able to comprehend their rights and especially obligations, as well as anticipate the consequences of the application of the relevant legal provisions²⁷.

Legal Act Type Conformity Principle

Techniques for drafting legislation must align with the form and legal effect (hierarchy) of the instrument that is being composed. Pursuant to the *Interinstitutional Agreement*, “*the drafting of Community acts shall be appropriate to the type of act concerned and, in particular, to whether or not it is binding (Regulation, Directive, Decision, recommendation or other act)*”³⁰. That is, both the substance and writing style of legal texts have to vary according to the type of the legal act intended: Regulations and Directives typically employ the imperative voice and

Clarity is achieved by opting for an accessible vocabulary and grammatically appropriate structures. The EU lawyer-linguists perform final editing specifically to ensure that the text is “*grammatically correct and clear and precise*.”²⁸ Complex sentences with multiple coordinated or indirect clauses tend to be described as “*unnecessarily convoluted*” and “*overly long*”²⁹. The wording should, instead, appear as shorter sentences, avoiding passive voice and double negatives whenever possible. *Simplicity* implies the use of plain terms to explain complex legal concepts, accessible not only to legal professionals, but to any natural or legal entity - the intended recipients of the legislation - as long as this goal is achievable without compromising legal precision.

directly applicable provisions, whereas recommendations and opinions contain more of a descriptive and dispositive style. Each type of act also has distinct structure: for example, Directives usually include a provision on transposition deadlines and, in case of delegated legislation, the reference to the empowering primary act. Consistency of structure and style for each legal act type improves clarity and unambiguity, as such consistency helps users to immediately identify the nature and legal ramifications of the respective act. Legal revisers verify that the

²⁷ *Interinstitutional Agreement* (1998).

²⁸ Robinson, “Legislative Drafting in the EU”, 6.

²⁹ *Interinstitutional Agreement* (1998), sec. 4.

³⁰ *Ibidem*, sec. 2.

form and style of the draft text (of the act) correspond to intent of the act's binding or non-binding legal characterization; the Interinstitutional Agreement is particularly

helpful in establishing that references by binding act to non-binding do not make the provision of the latter mandatory and *vice versa*³¹.

Actor-Oriented Drafting

The EU institutions must draft legal provisions with awareness of the legal awareness of their intended actors - entitled entities, obligors, as well as the enforcing and adjudicating authorities. In the words of the 1998 Interinstitutional Agreement, “[t]he drafting of acts shall take account of the persons to whom they are intended to apply, with a view to enabling them to identify their rights and obligations unambiguously, and of the persons responsible for putting the acts into effect.”³². That is, EU lawmakers should ‘walk in the shoes’ of potential readers (private citizens, entrepreneurs, officers of national

competent authorities) and ensure that provisions are sufficiently clear to be understood by the target audience. This is especially challenging when imposing obligations, whether on private individuals or Member States, to avoid ambiguity about to whom the provisions are addressed and what is required - whereas ambiguity is the domain where EU diplomats thrive and the law withers. The 1993 Council Resolution (93/C 166/01) declares, accordingly, that “the rights and obligations of those to whom the act is to apply should be clearly defined”³³.

Conciseness Principle

The EU guidelines on the legislative drafting call for the avoidance of excessive wording. The 1998 Interinstitutional Agreement provides: “Provisions of acts shall be concise and their content should be as homogeneous as possible. Overly long articles and sentences, unnecessarily convoluted wording ... should be avoided”³⁴. This rephrases the first section of the 1993 Council Resolution, which warns against “excessively long sentences”³⁵. Both instruments, at the same time restrict, respectively, the “excessive use” and the “overuse” of abbreviations. These two legal techniques - short sentences and

spelled out glossary terms - together aim to enhance the readability of the legal text. Additionally, conciseness requires eliminating redundancy and avoiding the repetition or duplication of provisions already regulated elsewhere (preventing overregulation). Condensation does not entail compromising on substance; rather, it optimizes grammatical structure so that every word counts and nothing is wasted. Readers are more receptive to concise legal acts; such texts are also easier to translate across the EU's twenty-four (24) official languages and are less prone to internal inconsistencies.

Structural System Principle

A core legislative drafting principle is adherence to standardized structure: all legal acts of general application must follow a typical format, that is, title - preamble - enacting terms (which can be broken down into sections, chapters, articles) - annexes, where necessary³⁶. Such a framework facilitates both

the preparation and comprehension of legislation. For example, it is recommended that each act include, at the beginning, an article on the subject matter and scope of the act, as well as an article with a glossary of key

³¹ *Ibidem*, sec. 17.

³² *Ibidem*, sec. 3.

³³ Council Resolution (1993), sec. 4.

³⁴ Interinstitutional Agreement (1998), sec. 4.

³⁵ Council Resolution (1993), sec. 1.

³⁶ Interinstitutional Agreement (1998), sec. 7-9.

terms, if needed for clarity³⁷. The text should be structured in a logically consistent sequence: first, provisions bestowing rights and imposing obligations; second, provisions conferring authority and setting procedures; third, implementing measures; and finally, transitional and final provisions³⁸ - the structure should be adhered to “as far as

possible”. Numbering lists is preferred over indentation to avoid chunky, unstructured blocks of text³⁹. A logical structure enhances the coherence of the legal system: where similar issues are addressed similarly, the document becomes self-contained in the sense that it is manageable within the hierarchy and does not scatter key elements haphazardly.

Consistency and Coherence Principles

Another cornerstone principle of EU legislative drafting is the requirement of both internal consistency and systemic coherence. A legal act’s provisions must not contradict each other internally nor conflict with other effective EU law, or, in the Council Resolution wording: “*The various provisions of the act should be consistent; the same term should be used throughout to express a given concept*”⁴⁰. This uniformity of terminology is reiterated and expanded in the 1998 Interinstitutional Agreement: “[t]he terminology used in a given act shall be consistent both internally and with acts already in force, especially in the same field. Identical concepts shall be expressed in the same terms, as far as possible without departing from their meaning in ordinary, legal or technical language”⁴¹. Lawyer-linguists of the EU institutions are specifically tasked with ensuring that the terminology is

“consistent with other acts in the same field and within the act itself”⁴². If new legislation introduces concepts already defined in existing EU law, the same terms should be used with the same meaning. Consistency also applies to the rules on cross-references to other acts: any links must be as specific as possible and minimized to avoid “chains” of circular references⁴³ - similar phenomenon known in conflict of laws as *renvoi*, which is considered one of the most confusing aspects. Likewise, duplication, rephrasing, explanation of, or contradiction to provisions of existing legislation should be avoided⁴⁴ unless explicitly justified. If new regulation renders earlier legislation obsolete, it must expressly repeal the old act, in whole or in part⁴⁵, to prevent conflicts of law and, therefore, improve the clarity of the legal system.

Multilingualism and Equal Authenticity Principle

A distinct feature of the EU legislative drafting lies in the multilingual character of all EU legislation, which is published in twenty-four (24) official languages, each version is equally authentic. With the EU being flexible on membership, the languages of the legal systems in candidate member countries must also be considered: there are currently nine (9), but each may have more than one jurisdiction and/or language. Other languages to be considered are (a) EU neighbour countries aspiring for the membership in the Union, (b)

the jurisdictions involved in the alternative integration projects, such as EEA, EFTA, Energy Community, Association Agreements etc., as well as (c) counterparties under the free trade agreements with the EU and the infrastructure projects of common interest.

The 1998 provisions require that formulations must “*respect the multilingual nature of Community legislation*” and carefully apply terminology that is attributable to any single national legal system⁴⁶. In practice, this means that the initial text of the

³⁷ *Ibidem*, sec. 14-15.

³⁸ *Ibidem*, sec. 15.

³⁹ *Idem*.

⁴⁰ Council Resolution (1993), sec. 3.

⁴¹ Interinstitutional Agreement (1998), sec. 6

⁴² Robinson, “Legislative Drafting in the EU”, 6.

⁴³ Interinstitutional Agreement (1998), sec. 16.

⁴⁴ *Ibidem*, sec. 12; Council Resolution (1993), sec. 8.

⁴⁵ Interinstitutional Agreement (1998), sec. 21.

⁴⁶ Interinstitutional Agreement (1998), sec. 5.

legal act, typically in English (over 80%) or French, must be comprehensible and translatable into other languages without semantic loss⁴⁷. Legal terms specific to one Member State's system should be used cautiously and, where appropriate, defined or replaced with generally accepted concepts. The EU legislating process has developed a special intergovernmental language, characterized by a higher degree of neutrality and standardization, in order to minimize misinterpretation and mistranslation. Once the initial text in one of the EU official languages is finalized, it is translated into all other twenty-three languages, although the stages of involvement for lawyer-linguists may vary across the European Commission (the Directorate-General for Translation), the

European Parliament (Legislative Quality Unit of the Directorate for Legislative Acts in the Directorate-General for the Presidency), and the European Council (the General Secretariat). What they have in common, though, is that in every case, the text of each language version undergoes rigorous legal-linguistic review by teams of multilingual lawyer-linguists to ensure that the texts "*correspond in all the language versions*"⁴⁸. Equal authenticity is a key feature of the principle that prevents divergence in the law interpretations and applications across Member States while safeguarding the unity of EU law, including rare cases where one or more countries rescind their membership status.

Legal Exceptionalism (no Declaratory Policy) principle

EU legal act designers draw a clear distinction between rule-setting content and policy declarations or aspirations. The 1998 Interinstitutional Agreement prohibits including non-normative wording - such as wishes, enunciations, program statements, exhortations, statements interpreting legal acts, or explanatory statements⁴⁹ - into the standard structure of an act. If anywhere, political rationale and policy goals belongs in the preamble, which is a series of *recitals* and citations preceded normally by '*having regard to*' and '*whereas*' at the beginning of the text (act). The preamble explains the act's historical background, underlying policies, and objectives; it may outline priorities and principles but must not introduce binding provisions: "*the purpose of the recitals is to set out concise reasons for the chief provisions of the enacting terms, without reproducing or paraphrasing them.*" The wording of the preamble must contain neither normative provisions nor political statements⁵⁰. Legislation or its draft is structurally separating, therefore, the motives (preamble) from the operative provisions (articles, norms) so that explanatory or declarative content is

clearly - visually and logically - confined and juxtaposed. This separation reinforces both legal certainty (as the preamble is neither directly applicable nor binding, nor does it have autonomous interpretive value) and ease of comprehension, as it sets the scene for the reader before they proceed to the binding part of the act.

The principles listed above - accessibility, clarity, conciseness, consistency, legal exceptionalism, multilingualism, and structural standardization - form the core of EU legislative drafting techniques. Harmonized compliance is ensured at the institutional level: each of the three main bodies (the Commission, the Council, and the Parliament) has dedicated legal units responsible for overseeing the quality of draft legal texts. As noted, the European Commission's Legal Service has a team of legal revisers⁵¹ who review projects during the preparation stage in the Directorates-General and again after adoption. The Council's Legal Service and the Parliament's Legislative Quality Units (within the Directorate for Legislative Acts in the Directorate-General for the Presidency) each employ lawyer-linguists, who are involved

⁴⁷ Robinson, "Legislative Drafting in the EU", 2-3.

⁴⁸ *Ibidem*, 6.

⁴⁹ *Ibidem*, Declaration by the European Parliament; Council Statements.

⁵⁰ *Ibidem*, sec. 9-10.

⁵¹ Robinson, "Legislative Drafting in the EU", 2.

mostly at the end of the legislative process to proofread the text for adoption in all languages⁵². The experts use clear checklists covering: legality (appropriate legal basis of the act, authorization/delegation, no retroactive effect, respect for the fundamental principles of substantive EU law), compliance with formal requirements for text composition (proper type of act, structural components,

numbering, completeness), clarity, precise and concise glossary usage (consistently applied), wording free from internal contradictions or external conflicts (concurrency), grammatical coherence, etc. Only after such thorough control does an EU legal act take its final form and become eligible for formal adoption and official publication.

EU Legal Drafting Techniques

The legislative drafting principles outlined above are implemented at various stages of the EU law-making process through a set of legal techniques and procedures. These tools were devised to ensure higher quality and efficacy of legislating: from initiative planning to application by national competent authorities in the Member States. Below we analyse the key techniques:

Ex Ante Analysis: Assessing Necessity and Impact,

equivalent to the “necessity and justification” principle reflected in Law of Ukraine “On Law-Making Activity”⁵³ (‘Law-Making Act’ or ‘LMA’), is embedded in the EU law-making process through the mandatory preliminary justification of any initiatives. The European Commission, as the only body that can propose the EU legislation⁵⁴, conducts comprehensive research on the problem and evaluates possible solutions before introducing any proposal. A central tool in this process is Impact Assessment (“IA”), a detailed analysis of the likely economic, social, and environmental ramifications of the proposed legislative or regulatory instrument.

Implementing a Union-wide Better Regulation agenda, the Commission has established clear standards for IA, such as the publication of roadmaps and initial assessments to gather feedback⁵⁵. Broad consultations with stakeholders, including

Green Papers (idea debates), White Papers (proposal debates), public surveys, and a 12-week public feedback period, allow incorporation of views from businesses, civil society, and academia at an early stage of drafting⁵⁶. These procedures are used as planning tools, ensuring that future norms are evidence-based, well-justified, and goal-oriented. Typically, the act’s preamble or explanatory memorandum in the Commission’s proposal explicitly references or contains a section on the results of consultations and/or IA and/or expert views, thereby enhancing the proposal’s transparency and legitimacy. Moreover, this process is directly related to compliance with the proportionality and subsidiarity principles: assessment of whether EU-level action is necessary and proportionate to the policy challenge uses all relevant stakeholders as a sounding board.

Use of Citations and Recitals

in the preamble plays a technical role of the media for justification of the EU legal act. Preamble contains a structured set of “recitals” explaining the main reasons and objectives behind the enactment. Each recital (preceded by “Whereas...”) is aligned with a specific provision of the act’s normative section and gives the reader a clue for its intended application⁵⁷. This approach helps avoiding justifications or political statements in the binding part of the act⁵⁸. The preamble in an EU legal act is not a mere formality but an

⁵² *Ibidem*, 5-6.

⁵³ Zakon Ukrainy “Pro pravotvorchu diialnist”, Art. 3.1(5).

⁵⁴ TEU, Article 17.2.

⁵⁵ E. Golberg, “Better Regulation: European Union Style,” *M-RCBG Associate Working Paper no. 98*. Harvard Kennedy School, <https://www.hks.harvard.edu/centers/mrcbg/publications/awp/awp98>.

⁵⁶ *Idem*.

⁵⁷ Interinstitutional Agreement (1998), sec. 10.

⁵⁸ *Ibidem*, sec. 12.

important tool for interpretation. The Court of Justice of the EU often turns to recitals to clarify the legislator's intent. Each recital is numbered⁵⁹ and organized to reflect the flow of the chief provisions⁶⁰. This structured format encourages drafters to clearly rationalize and articulate the reasons for each mandatory provision, or most of them. As a result, the legal articles can be more concise and substance-focused, whereas all explanatory content, if any, is confined to the preamble. This technique, as noted earlier, exemplifies normative and methodological content structuring, thereby improving overall clarity and comprehensibility.

Scope and Glossary

Legal technique to enhance clarity and precision in the EU legal acts is to begin with specific provisions on the act's *subject matter and scope*, followed by a *definitions* article. The scope deals both with the principal relationships that the act governs and the matters falling outside the scope of the act⁶¹. The definitions article is always at the beginning of the act (it is needed more often than not), following the article on the scope, and it contains all key terms along with their legal interpretation, promoting legal certainty and reducing ambiguity as agreed by the EU institutions⁶². The 1998 Interinstitutional Agreement also advises that normative content (mandatory rules) must not be included in the article with definitions. In implementing technical standards and technical regulations, among other acts, glossaries help facilitate multilingual interpretation and implementation. When terms are already defined in other EU acts, it is recommended to cross-reference the act already in force rather than recast it or reproduce it verbatim. This supports terminological consistency and ease of transposition by national legislators and courts: there is only one determined definition not only in the act but in the relevant segment of legislation, and, whenever there is more than one definition, the act specifies which one should be used.

Amendment Technique

Significant share of the EU legislation, in its substantive part, amends existing acts, among them directives and regulations. Incorrect amendment techniques can lead to legal confusion. The 1998 Interinstitutional Agreement, therefore, employs precise technical rules for amending legislation: it requires that amendments be formulated "*clearly...in the form of text to be inserted in the act to be amended*"⁶³. The amending act explicitly identifies, this way, the parts to be altered - primarily, through restatement of the entire article, paragraph or section. Reducing textual amendments to full-provision replacements, repeals, and recasts thus avoids errors of fragmentation, as is often the case in Ukraine with insertions and omissions of words, sub-sentence clauses and sentences, instructions to change grammatical tense, etc. The underlying (incumbent) EU legal act can therefore be updated without ambiguity, excluding the practice of autonomous provisions in the amending acts⁶⁴ - 'that is, 'sham' amending, where a new act establishes a new rule without structural change to the pre-existing act but impacting, *de facto*, the substance of the incumbent rule. Such clarity in structural change is important, especially when a single amending act intends to modify multiple legal instruments: it must clearly delineate changes to *lex generalis* and *lex specialis*, to be followed by relevant amending acts to lower-level legal acts, where necessary. These practices preserve legal consistency and maintain the "single text" approach across the EU legal system.

Codification and Recasting

techniques are used to maintain legislative clarity and accessibility in the EU. Codification consolidates the original act and all subsequent amendments into a single legal text, without altering substantive content. The call for codification arises when a number of amendments accumulate into a few related pieces of legislation, so that users receive an updated, compact text, following a simplified and time-accelerated procedure that prohibits

⁵⁹ *Ibidem*, sec. 11.

⁶⁰ *Ibidem*, sec. 10.

⁶¹ *Ibidem*, sec. 13.

⁶² *Ibidem*, sec. 14.

⁶³ *Ibidem*, sec. 18.

⁶⁴ *Idem*.

changes to the substance; it is rather a specific form of incorporation.

Recasting is a modified technique - essentially codification combined with the introduction of new substantive provisions. The draft text of the recast (and the final version of the text) often lists the unchanged provisions, designating the correlation between their old and new numbering, e.g., 'Article 3-1 in the existing text will become Article 17 in the recast version'; newly modified provisions are also listed for convenience. The US equivalent of recasting would be a restatement, though it usually lacks a correlation table. This legal technique has convenient semiotics - it modernizes texts by merging numerous fragmented amendments that became effective at different points in time into one consolidated act, which resets application from day one. The 2016 Interinstitutional Agreement states that the use of recasting and codification reduces legislative complexity and enhances accessibility; therefore, the institutions are committed to these techniques as part of the Better Regulation project⁶⁵. Simplification and "health checks" of EU legal rules *en masse* are equally valuable exercises in transparency, because the EU has long been criticized for stereotypical overregulation, even where the burden originated from bulky national implementations rather than the primary Directives⁶⁶. Recast and codification techniques therefore, support legal certainty and accessibility, which are of paramount importance in a multilingual, multi-jurisdictional legal system.

Transitional Provisions, Entry into Force, and Monitoring of Application

of the EU legal acts are typically addressed in the *Final Provisions* at the end. Specific dates (day/month/year) for entry into force and application (e.g., an obligation may be imposed but no or only minimum penalties apply), and implementing obligations for Member States (e.g., in the case of an EU Directive) are provided to ensure clarity and increase precision, avoiding uncertainty⁶⁷.

Transitional provisions manage legal continuity, determining when and how the pre-existing legal facts, status(es) and circumstances rules will be, respectively, replaced, how the disputes and issues that emerged meanwhile will be resolved in the future, how long the old rules will may remain valid and which exemptions apply, if any - so that no legal grey areas or conflict of laws arise.

A growing number of acts include *review clauses*, a rather novel technique for Ukraine; such clause imposes an obligation on the European Commission to assess the impact of the act after a set period and submit a proposal on the changes necessary. This institutionalizes *ex post* evaluation within the law itself and aligns with the *continuous improvement principle* under the *Better Regulation* initiative⁶⁸ in the law-making cycle that currently consists of *planning - preparation - adoption - implementation - application - correction*⁶⁹. The EU institutions are also considering, in addition, an automatic lapse of legislation unless the authorized institution decides to extend it ("sunset clause")⁷⁰, repeatedly if needed. Review clause, in the Regulation, can look as follows: 'By [DD Month YYYY], the Commission shall review the impact of this [Regulation / Article / policy / exemption / etc.] and shall accompany that review, where appropriate, with a legislative proposal to amend [the part subject to review]'. Such a review clause not only encourages accountability at the Union, Member State, and economic entity levels, but it also helps with precision planning of the resources needed to measure and adjust the law and its enforcement, aspiring to the continuous modernization of the law and law-making.

Implementation Transparency

Although implementation can occur only after enactment, the EU integrates several measures into the legislative drafting process to enhance transposition and application of the respective legal act. One such measure is the *correlation table* (also prepared as *table of concordance*), which the Commission may

⁶⁵ Interinstitutional Agreement (2016), sec. 46; Golberg, "Better Regulation: European Union Style", 22 and 26.

⁶⁶ Golberg, "Better Regulation: European Union Style", 23.

⁶⁷ Interinstitutional Agreement (1998), sec. 20.

⁶⁸ Interinstitutional Agreement (2016), sec. 21 and 23.

⁶⁹ European Court of Auditors *Law-Making in the European Union* (2020), 29.

⁷⁰ Interinstitutional Agreement (2016), sec. 23.

require from the Member States to visualize approximation of each provision in the EU Directive or other legal act to the corresponding national legal action (measure). In 2011, the European Parliament, Council, and Commission jointly⁷¹, and, separately, the European Commission and the Member States jointly⁷² endorsed the use of such tables as ‘*clear and precise*’ explanation tools useful for ‘*unequivocal*’ oversight of the transposition on the heels of decision of the Court of Justice of the EU. Accordingly, EU legal acts include in the final provisions, from time to time, obligations of the Member States to report on the progress of implementation. This *transposition (implementation) transparency* technique streamlines determination of compliance with the scope and timing

required, thus reinforcing clarity and non-discriminatory interpretation of the obligations by / across Member States, including, where applicable, sanctions and penalties for breach.

To recap, we see that the legal techniques above span across the entire law-making cycle from planning stage (*ex-ante* assessment and stakeholders feedback), through a text composing (design of structure, grammar, proofreading and otherwise editing), transposition monitoring up to review (amendment, recast, codification). Their ultimate common purpose is to make EU legislation efficacious, consistent, and clear. Below, we examine the causation effects between the quality of legislative drafting as input and the efficiency of the legislative process and the application of laws as output.

Impact of Legislative Drafting on the EU Legislating Efficiency

The quality of legislative drafting impacts, directly and indirectly, the general efficiency of the EU’s law-making process and the adopted legal provisions’ efficacy. These impacts can be observed on several interrelated levels:

1. the success rate for adoption of a bill through the legislative process;
2. the quality of implementation by Member States;
3. the application and enforcement of the norms in practice, and
4. the public’s trust in the rule of law.

Accelerating and Facilitating the Decision-Making. Well-composed, clearly structured and articulated bills and other legislative proposals are more likely to move efficiently through the EU law-making institutions. When a text is comprehensible and coherent, less time is spent debating wording or resolving uncertainties. This is particularly important in the *ordinary legislative procedure* context, which requires reconciliation of the final text between the European Parliament

and the Council⁷³. A higher-quality Commission Proposal discourages the want of amendments by other institutions. Besides, clear wording reduces the number of variations in interpretations by other political actors, thus, fostering consensus. In opposite case, poorly composed or ambiguous text triggers extension in debates, a flood of amendments, and/or may even jeopardize the legislative initiative altogether. Therefore, sound legal techniques save institutional time and resources. Nonetheless, one should acknowledge that political compromise can sometimes come at the expense of textual precision. Scholars note that EU’s interinstitutional *trialogues* result in a deliberately “constructive ambiguity” to reconcile positions⁷⁴. Although this step expedites adoption, it creates risks at the legal application stage; balancing political flexibility and legal clarity remains an ongoing challenge of the EU legislative drafters.

Quality of Implementation by Member States

⁷¹ Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents. OJ C 369, 17.12.2011, p. 15.

⁷² Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents. OJ C 369, 17.12.2011, p. 14.

⁷³ “The Ordinary Legislative Procedure - step by step,” European Parliament, accessed April 10, 2025, <https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview>

⁷⁴ P. Leino-Sandberg, “Transparency and Trilogues: Real Legislative Work for Grown-Ups?” *European Journal of Risk Regulation* 14, Special Issue 2 (June 2023): 271–290, <https://doi.org/10.1017/err.2022.40>.

Precisely formulated EU legal acts are easier to transpose into the national legal systems. When a directive unequivocally determines rights and obligations, defines key terms, Member States have easier task of preparing corresponding statutory or regulatory changes to comply with the obligation. The “one word – one meaning”⁷⁵ principle helps avoid confusion in translation and transposition, because national legislatures benefit from the original version in their own language, ensuring better alignment, while citizens and economic operators benefit from legal certainty. On the other hand, vague or overly general wording may be transposed with variations across Member States that were uncalled for; such fragmentation undermines the unity of EU law. The 1998 Interinstitutional Agreement recites, therefore, that the quality of legislative drafting is “*a prerequisite for the proper implementation and uniform application of Community legislation in the Member States*”⁷⁶, which ensures fewer breaches and enforcement actions, including court cases.

Besides, clear text enables the so-called “accessible” implementation: national competent authorities and officers have better understanding of the changes required in domestic laws. Studies suggest more accurate and effective national transposition and implementation measures when national legal experts were involved in the composition of EU legal acts (‘fase ascendente’ / upstream phase) and then contributed at the domestic level to legislative drafting (‘fase discendente’ / downstream phase), thus creating a link between the phases⁷⁷ and bringing the diverse perspectives of 27 legal systems into Brussels offices. Transparency tools, such as correlation tables (tables of concordance), facilitate monitoring and verification, reinforcing the accountability of Member States and thus improving the efficacy of legal acts⁷⁸.

Application and Judicial Oversight

As end-users, citizens and economic operators measure the efficiency of the law by the ease of determining individual rights and

obligations and enforcing them. A well-worded legal act directly contributes to legal certainty: when requirements are clearly articulated, compliance is more likely, and enforcement becomes more straightforward. For example, if a Regulation lists product safety criteria, the economic operator can plan *de minimis compliance*, whereas the inspecting authority has unequivocal guidelines for verification - thereby reducing the number of disputes and court cases.

In a judicial process, once again, the quality of legislative drafting at the earlier stages of the legal mechanism significantly impacts judicial interpretation. National courts and the Court of Justice of the EU rely heavily on the legislative text and can apply the provisions confidently when they are clearly worded. Conversely, unarticulated or ambiguous rules result in preliminary ruling requests, delay case resolution, and increase legal fees. Judicial interpretation is inevitable, but sound legal techniques in composing the text reduce the burden on the judiciary to the minimum necessary. Well-structured preambles provide further support to judges in discerning the legislator’s intent and applying the provisions in accordance with their purpose. Hence, the predictability of judicial outcomes is significantly impacted by the quality of text composition: the less room for loose reasoning, the more authority and stability the application of legal rules has.

Public Trust and Legitimacy of the EU values

Public perception is another unavoidable aspect of the efficacy of laws. The EU has often been criticized for adopting complex and bureaucratic regulations that non-expert individuals can hardly comprehend; therefore, improving legislative drafting is key to enhancing public perception of the legitimacy of EU law. Legal acts, if worded in plain language, openly debated, and explained in preambles and preceding Commission proposals, foster public confidence in the rule of law. Citizens are less likely to be alienated and more likely to accept legislation “...transparent and readily understandable by

⁷⁵ Council Resolution (1993), sec. 3.

⁷⁶ Interinstitutional Agreement (1998), Preamble (1).

⁷⁷ R. Baratta, “Complexity of EU law in the domestic implementing process” in *The Theory and Practice of Legislation*, formerly

Legisprudence, ed. by W. Robinson, vol. 2, issue 3 (2014). Special Issue: European Union Legislation, 305, <https://u-pad.unimc.it/bitstream/11393/241751/1/Complexity%20of%20EU%20Law.pdf>.

⁷⁸ Golberg, “Better Regulation: European Union Style,” 94.

the public and economic operators”⁷⁹. This aligns with the *Better Regulation* objectives, which emphasize public integration at every phase of the policy cycle as part of a transparent legislative process⁸⁰. Technically, this is reflected in practices such as the publication of legislative proposals for public consultation, feedback on comments received, stakeholder input collection, and explanatory statements accompanying final decisions. In this way, legal drafting techniques contribute to the democracy and accountability pillars of the EU legislation’s legitimacy.

Feedback Mechanisms and Legal Adaptability

Legislation’s efficacy can also be assessed through the system’s ability to self-adjust and maintain relevance. Higher quality of the legislation drafting would comprise *ex-post* impact assessment, such as review clauses, sunset clauses and/or mandatory implementation reports - see *supra*. The monitoring and feedback drive an evaluation and improvement, safeguarding, thus, the legal norms from irrelevance and “oblivion”.

Correlations between Ukraine’s and the EU Legislative Drafting Techniques

General principles

In the last ten years, Ukraine has been making strides in implementing some of the legislative drafting principles used by the European Union. A milestone achievement was the adoption of the Law of Ukraine *On Law-Making Activity* in 2023, which established a comprehensive regulatory framework for the design of legal provisions. The Law determined the legal and organizational foundations for drafting legal acts, including the identified actors (can be used as citations), outlines the principles and procedures of law-making activity (can be used as recitals), and establishes formal rules for legislative drafting techniques. It is the first time that the statute declared as foundations: (a) rule of law (including legal certainty principle), (b) democracy, (c) proportionality,

The *evidence-based law-making* principle, also reflected in Ukraine’s legislation, requires that effective norms be regularly assessed; the result of assessment steers the new legislative initiatives away from the errors: instead of postponing the change until the negative issues accumulate (as often is the case in Ukraine), the legislative process in the EU is efficient due to regular and incremental review of the legal acts. The 2016 Interinstitutional Agreement obliges the Commission, Council, and Parliament to implement the *Better Regulation* framework through continuous monitoring, review, and simplification where possible⁸¹. This approach reflects a mature law-making culture, where legislative drafting technique is not limited to wording concerns but is, *per se*, a strategic tool for managing EU legislation *en masse* - ensuring more efficiency in preparation and adoption (as well as implementation and enforcement), fewer disputes with reduced adversity, and ultimately, greater efficacy in achieving the objectives of EU legislation.

(d) necessity and justification, and (e) systemic coherence. The Law also introduces new instruments aimed at aligning the Ukraine’s practice with the EU. Notably, the provisions of the Law mandate, before a text of the bill is composed, a *concept note* - a policy document analysing the current state of the relevant social relations and effective legal rules⁸². This, basically, mirrors the EU practice of *Green Papers* - preliminary policy justifications of new legislation initiative. Moreover, *Green Papers* and *White Papers* are now explicitly part of the list of analytical documents that may accompany key legislative proposals, reflecting, thus, a shift towards *evidence-based law-making*, wherein legislative decisions are made following a profound policy analysis with potential options for the solutions of the issues involved.

⁷⁹ Interinstitutional Agreement (1998), Preamble (1).

⁸⁰ Interinstitutional Agreement (2016), sec. 38; European Court of Auditors, *Law-Making in the European Union after Almost 20 Years of Better Regulation*, 4.

⁸¹ Interinstitutional Agreement (2016), Title VIII; Golberg “Better Regulation: European Union Style”, 22.

⁸² *Bila knyha zakonodavchoho protsesu (White Paper on the Legislating)*. Verkhovna Rada of Ukraine, 2023, <https://pravo.org.ua/wp-content/uploads/2024/04/Bila-knyga-zakonodavchoho-protsesu-1.pdf>.

Feedback by Stakeholders and Public

The Law places significant weight on public consultations: open discussion and its material elements are formalized as a required element of the law-making process. In practice, however, the role of public debate needs reinforcement: experts note that mandatory consultations are a general requirement for executive branch authorities, whereas legislative bills submitted by Members of the Verkhovna Rada (the legislature) often bypass this stage or reduce it to a mere formality⁸³. The Law *On Public Consultations* (№ 3841-IX, dated April 20, 2024) made a prominent news for the positive change in the situation: Law 3841 requires a centralized online public consultations portal to engage public in the policy-forming and the policy-making⁸⁴. Still under development, this portal is intended to serve as a hub for accessing current consultations and submitting proposals, while the Law 3841 will only become effective in 12 months after the martial law expires⁸⁵. Meanwhile, citizens can access information and leave their comments in the “Public Feedback” section on the official website and social accounts of the Verkhovna Rada, the committees and the Members of Verkhovna Rada⁸⁶. Hence, although the standards for transparency have been enacted, the real integration of public consultations into all legislative procedures remains a challenge.

Monitoring and Assessment Mechanisms

Ukrainian government and parliamentary structures have begun adopting other EU-inspired drafting tools, such as regulatory impact assessments and anti-corruption reviews, which are usual procedures now. Law 3841 (on consultations of the public) institutionalized the *legal*

monitoring notion - defined now as a systematic tracking of legal acts’ *realization*, and assessing their efficacy and efficiency. Previously, *ex-post* assessment was almost entirely missing,⁸⁷ in contrast with the EU practice; currently, monitoring of implementation (realization, application) is officially recognized as part of the law-making process⁸⁸. However, the legal scholars believe that Ukraine still lacks standardized methods and sufficient institutional capacity for systemic impact assessment of the laws in effect⁸⁹. Articulating the assessment techniques in details and formally adopting them will be critical for transformation of a legal monitoring into a routine efficient component of the legislating – in accordance with the EU-Ukraine Association Agreement⁹⁰ that requires implementation, by Ukraine, of the *ex-ante* and *ex-post* legal act’s impact assessment⁹¹ as a matter of priority when the EU-Ukraine Accession Agreement is already being negotiated.

Ukraine’s legal community is actively engaged in these developments. For example, the Research Service of the Verkhovna Rada, established in 2022, has published several analyses on the implementation of the new law on law-making and the harmonization of parliamentary procedures with European approaches. Legal scholars from leading research institutes - including the Koretsky Institute of State and Law and the National Academy of Sciences - have proposed amendments to the Rules of Procedure of Parliament and related legislation to align them with modern drafting principles.

Ukraine’s Expert and Institutional Capacity

Academic community and think-tanks, while actively addressing the improvement of the legislative drafting technique, have been

⁸³ *Bila knyha zakonodavchoho protsesu*, 2023, 13.

⁸⁴ *Zakon Ukrainy “Pro publichni konsultatsii”* (Law of Ukraine “On Consulting the Public”) no. 3841-IX dated June 20, 2024, accessed April 10, 2025, <https://zakon.rada.gov.ua/laws/show/en/3841-20>, Art. 14.

⁸⁵ *Ibidem*, Sec. 1 of Final and Transitional Provisions

⁸⁶ *Ibidem*, Sec. 2 of Final and Transitional Provisions.

⁸⁷ N.I. Atamanchuk, *Pravovyi monitorynh v Ukraini: suchasnyi stan ta perspektyvy podalshoho reformuvannia* (Legal monitoring in Ukraine: current status and prospect of further reform). Recommended for publication by the Scientific Council of the

Institute of Law-Making and Scientific Legal Expertise of the National Academy of Sciences of Ukraine, May 30, 2024, protocol № 5.

⁸⁸ *Zakon Ukrainy “Pro pravotvorochu diialnist”*, Article 67.

⁸⁹ O. V. Muza, “Aktualni pytannia zakonodavchoho rehuliuвання pravovoho monitorynhu v Ukraini.” *Aktualni problemy derzhavy i prava* 101 (2024): 134–139.

⁹⁰ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:22014A0529\(01\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:22014A0529(01)).

⁹¹ N.I. Atamanchuk, *Pravovyi monitorynh v Ukraini:*

emphasizing the need for involving highly qualified legal linguists and drafting technicians in the law-making process. Verkhovna Rada's Research Service made several papers in implementation of the Law On Law-Making Activity, including alignment of the Ukraine's and the EU practices in legislating⁹²; proposals have been made to amend Verkhovna Rada's Regulation (i.e., the statute on the legislative procedure⁹³) and the Verkhovna Rada's law on the committees⁹⁴, so that the processes can run in accordance with the new law-making principles. The proposals were also made by the National Academy of Sciences, e.g., V. M. Koretskyi Institute of State and Law published collective monograph⁹⁵, meanwhile Institute of Law-Making and Scientific Legal Expertise held a round-table discussion of the law-making statute⁹⁶, which proposed a set of improvements for the legislative drafting practices. Other monographs looked at the theoretical foundations of the legislative drafting techniques⁹⁷ and their pragmatic application⁹⁸, they accentuate on engagement of professional linguists, and legal technique specialists, propose to establish permanent expert advisory councils at the committees of the Verkhovna Rada of Ukraine consisting of the above experts as well as academics⁹⁹: such a mechanism would enable early-stage review of legislative bills to ensure such qualities as better clarity and higher preciseness before formal readings by the members of the Verkhovna Rada.

Challenges and Potential Responses

Ukraine's legislative drafting techniques have been converging with the EU guidance and guidelines, both in terms of form and substance (procedures). Principles of clarity, proportionality, and structural integrity had now been embedded in the Ukrainian legislation, while the efforts are underway to (a) strengthen a legal-linguistic expert reviews, (b) increase the public engagement and transparency of the legislating. Achieving full correspondence with all core EU practices requires that the reform in Ukraine is continued to (a) institutionalize expert support in legislating, (b) comply with public engagement standards', and (c) enable evidence-based decision-making across all stages of the legislating cycle. When these challenges are successfully addressed, it will improve the quality of national legislation and facilitate Ukraine's efficient integration into the supranational legal system of the European Union.

Despite notable progress, several issues hinder full correspondence between EU and Ukrainian legislative drafting techniques, among them:

(a) the need to back up the principles declared with the institutions and practices for clarity and proportionality;

(b) the need for a much more detailed restatement of methodological guidelines on drafting legal texts, borrowing from the EU's *Joint Practical Guide* and other instruments;

(c) the practice of evidence-based policy-making must be:

⁹² Research Service of Verkhovna Rada of Ukraine, "Shchodo predmeta rozrobljuvanoho proektu zakonodavchoho akta stosovno uzgodzhennia polozhen Rehlamentu VRU ta Zakonu "Pro komitety VRU" iz Zakonom «Pro pravotvorchu diialnist» [On the Scope of the Draft Legislation under Development: in the Matter of Reconciling Provisions of Verkhovna Rada Regulation with Law of Ukraine "On Law-Making Activity"]": *Analitychna zapyska (Analytical Note)*, July 2024, accessed April 10, 2025, https://research.rada.gov.ua/documents/analyticRSmaterialsDocs/prav_politic/analytical_notes-pravpol/75271.html.

⁹³ Pro Rehlament Verkhovnoi Rady Ukrainy : Zakon Ukrainy [Law of Ukraine "On Legislating Regulations"] no. 1861-VI dated February 10, 2010. *Verkhovna Rada Ukrainy*. Accessed April 10, 2025. <https://zakon.rada.gov.ua/go/1861-17>.

⁹⁴ "Pro komitety Verkhovnoi Rady Ukrainy": Zakon Ukrainy [Law of Ukraine "On Committees of the Verkhovna Rada of Ukraine"] no. 116/95-BP dated April 4, 1995, *Verkhovna Rada of Ukraine*, accessed April 10, 2025, <https://zakon.rada.gov.ua/go/116/95-%D0%B2%D1%80>

⁹⁵ N. M. Parkhomenko, ed. *Optymizatsiia pravotvorchoi diialnosti: teoretyko-pravovi zasady*: monohrafiia (Optimization of Law-Making

Activity: theoretical and legal foundations: monograph). (Kyiv: Yurinkom Inter, 2025).

⁹⁶ O.O. Kot, A.B. Hryniak and N.V. Milovska, ed. board *Zakon Ukrainy "Pro pravotvorchu diialnist" yak mekhanizm udoskonalennia pravotvorchoho protsesu v Ukraini* (Law of Ukraine "On Law-Making Activity" as a Ukraine's law-making process' improvement mechanism): zbirnyk materialiv naukovo-praktychnoho kruhloho stolu (Kyiv, April 12, 2024). (Kyiv: Instytut pravotvorchosti ta naukovo-pravovykh ekspertyz NAN Ukrainy, 2024).

⁹⁷ Yu. O. Buhayko, *Linhvistychna ekspertyza zakonoproektiv v Ukraini: teoretychnyi ta konstytuynopravovyi aspekty: monohrafiia* (Linguistic Expertise of Legislative Bills in Ukraine: theoretical and constitutional law aspects). (Kyiv: Alerta, 2023).

⁹⁸ O.O. Kot, A.B. Hryniak and N.V. Milovska, eds, *Pravovyi monitoring yak skladova pravotvorchoi ta pravozastosovchoi diialnosti* (Legal Monitoring as an element of law making and application activity): monohrafiia. (Kyiv: Alerta, 2023).

⁹⁹ *Bila knyha zakonodavchoho protsesu*, 13.

(I) extended to all legislative actors, including Members of the Verkhovna Rada (that is, beyond executive branch authorities).

(II) legislative actors must assess impact, thoroughly analyse issues, conduct consultations, and collect input from stakeholders;

(III) make the publication of concept notes and public consultations for all bills mandatory¹⁰⁰, as noted above;

(d) proofreading and editing legislative bills at the stage of committee review, sessions,

and hearings, with the participation of expert lawyer-linguists in the staff of the institutions - to avoid terminological ambiguity and conflicts (concurrence) of laws, and to improve clarity and consistency;

(e) the establishment of a functional legal monitoring system. Committees in the legislature, ministries, the Research Service of the Verkhovna Rada, etc., must conduct regular reassessments of the impact of enacted statutory law and initiate amendments or restatements based on empirical data and practical experience. Such an approach is a core element of EU legislative culture¹⁰¹.

Conclusions and Forecasts

The European Union has developed a mature and institutionalized framework for legislative drafting, based on fundamental principles such as clarity, coherence, legal precision, multilingual consistency, and adherence to subsidiarity and proportionality. These principles are enshrined in interinstitutional agreements and implemented through lawyer-linguists, legal services, and multi-stage quality control. Legal techniques include impact assessments, standardized structure and language, amendment mechanisms, and transitional provisions, all ensuring accessibility and legal certainty.

Ukraine has begun to adopt many of these elements through its Law on Law-Making Activity, with contributions from the Verkhovna Rada's Research Service and legal

academic institutions. Key priorities identified include codifying legislative drafting practices, introducing legal-linguistic review, and strengthening impact assessments and public consultations.

Nonetheless, implementation gaps remain: Ukraine must institutionalize quality control procedures, enhance legal editing practices, and improve consultation mechanisms by ensuring transparency, digital integration, and feedback standards. A unified rulebook for legislative drafting is also needed. Thus, EU legislative drafting serves as a benchmark for Ukraine's evolving regulatory culture, with substantial potential to enhance the quality and legitimacy of national law-making.

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**ТЕХНІКО-ЮРИДИЧНІ ПРИЙОМИ НОРМОПРОЄКТУВАННЯ В
ЄВРОПЕЙСЬКОМУ СОЮЗІ: МОДЕЛЬ ДЛЯ РЕФОРМУВАННЯ ЗАКОНОТВОРЕННЯ
В УКРАЇНІ**

Анотація

У статті досліджено техніко-юридичні прийоми нормопроєктування в Європейському Союзі як комплекс принципів, методів і процедур, спрямованих на забезпечення належної якості нормативно-правових актів. Виокремлено ключові орієнтири законодавчої техніки ЄС, зокрема вимоги чіткості та точності формулювання норм, структурної узгодженості змісту, врахування інтересів та потреб адресатів правового регулювання, а також дотримання принципів субсидіарності, пропорційності й законності. Особливу увагу приділено інструментам практичного втілення цих принципів: оцінці необхідності правового регулювання, застосуванню структурних стандартів, кодифікації та переформулюванню актів (recasting), моніторингу імплементації, а також багаторівневій юридико-лінгвістичній експертизі. З урахуванням українського контексту проаналізовано останні ініціативи щодо вдосконалення законодавчої техніки. Показано, що попри часткове впровадження європейських підходів, результативність їх реалізації в Україні залежить від посилення інституційної спроможності, розвитку експертної підтримки та ефективних механізмів публічної участі. Запропоновано запровадження уніфікованого керівництва з нормопроєктування як інструменту гармонізації стандартів якості правотворення. Отримані результати підтверджують потенціал стандартів ЄС для підвищення ефективності та легітимності національного законотворчого процесу України.

Ключові слова: законодавча техніка; якість законодавства; юридико-лінгвістична експертиза; оцінка впливу; Європейський Союз; гармонізація законодавства; регуляторна політика.

