



## Capacity Building Seminar

### REVIEW OF THE EXISTING LEGISLATION

#### Background note

11-12 MARCH 2009

Cairo, Egypt



Ministry of State for  
Administrative Development



# **The Review of Existing Legislation**

## **Background note**

**CAPACITY BUILDING SEMINAR ON THE “REVIEW OF THE EXISTING LEGISLATION”**

**Good Governance for Development (GfD) in Arab Countries Initiative**

**11 & 12 March 2009, Cairo, Egypt**

*SIGMA (a joint initiative of the OECD and the European Union, principally financed by the EU) will publish later this year (2009) a policy paper on the subject of European approaches to improving access to and managing the stock of legislation.*

*The paper will be available at [www.sigmaweb.org](http://www.sigmaweb.org) For further information please contact*

[Edward.donelan@oecd.org](mailto:Edward.donelan@oecd.org)

### **General**

This paper explains what is meant by the stock of legislation, the issues associated with its management, why it is important to manage it and the different policies, institutions and tools used to ensure its accessibility, transparency and simplicity. It shows how different approaches have been adopted at different times for different purposes.

A number of tasks need to be undertaken to manage the stock of legislation in any entity or country. These are: to identify the stock of legislation, to store it electronically, to review the whole of the stock to eliminate duplications and confusion caused by excessive amendments and finally to put in place institutional arrangements to maintain the stock in a well managed format.

The paper concludes that the management of the stock of legislation is as important as the management of the flow of new legislation as a means of maintaining the quality of legislation and in turn the quality of democracy and the functioning of the rule of law.

### **Conclusions**

The paper draws certain conclusions. These may change lightly in the light of comments to be made by experts to whom the paper has been circulated. However, the first conclusion is that all countries face the challenge of managing the stock of legislation. Countries that have recently adopted, and those who plan to adopt, the community *acquis* face similar problems. Three lessons may be learned from the experience of the Institutions of the European Union and different countries in Europe.

The first lesson is that it is necessary to identify all of the stock of legislation in any particular country. Secondly, the stock should then be stored electronically, with a view to its management. The task of storing the legislation electronically should take account of the ultimate use to which the stock will be put and should also take account of the production of new legislation, i.e., the management of the 'flow' of new legislation. Prior to, or immediately following, the storage of the stock of legislation, the stock should be reviewed to identify legislation in need of repeal or repeal and re-enactment in a more comprehensible format.

Finally, once these tasks have been undertaken, the stock should be maintained up to date by regular reviews. These reviews may be undertaken from a number of perspectives: from the point of view of accessibility, clarity and relevance to contemporary needs, i.e., reviews of form or from the point of view of the business environment or the maintenance of social norms or from the point of view of their effectiveness in the protection of the environment, i.e., reviews of substance.

The second conclusion is that a policy on managing the stock of legislation needs to be tailored, formulated and implemented in accordance with the needs, institutional arrangements and budgetary situation in each country. However, for most countries there should be a trusted and well respected body created or conferred with the responsibility to make sure the stock is accessible and coherent whether as a result of regular codifications, consolidations or revisions.<sup>1</sup> That body should also have the role of identifying legislation in need of amendment, repeal or reform. The body should include among its tasks the task of reviewing court decisions where criticisms were made of aspects concerned with the form of legislation. The body should make an annual report to parliament identifying problems with formal aspects of legislation. The body should be empowered to bring forward legislation to parliament which would be submitted on a non-partisan basis purely to correct aspects of form or to permit the enactment of consolidated texts.

There is a need for a close link with parliament if this route is adopted. The alternative is that the parliament takes responsibility for this role. Parliaments could ensure that once legislation is enacted it remains coherent and accessible. Parliaments could also exercise a similar role over secondary legislation. The third conclusion is that there are advantages and disadvantages for most of the tools. For example, the advantages of codification are that: users need consult only one single authentic text, and in the case of c the '*acquis communautaire*' (all the binding legal acts adopted by the European institutions) its volume may be reduced.<sup>2</sup> The disadvantages are that it is increasingly difficult to confine all relevant texts in one

---

<sup>1</sup> For example, the *Conseil d'Etat* in Belgium, France and Italy or the Law Commission in the UK.

<sup>2</sup> An example of a codified Act based on a previously consolidated text is Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste.

code. Environment law, for example, includes aspects of fiscal law, criminal law, planning laws and so on.

### ***Advantages and disadvantages of consolidation***

The advantage of consolidation is that once laws that have amended each other on subsequent occasions they may be read as a coherent whole. The disadvantages are that it requires parliamentary time and if the procedures are not flexible enough minor corrections cannot be incorporated into the text and it is often necessary to enact legislation in advance of the consolidation to bring about adaptations of policy. The weakness of the European Union approach, for example, is that there is a lack of trust between the Institutions so the consolidation and codification process cannot correct even the most obvious of errors.

### ***Statute law revision or reform***

Statute law revision in its purest sense is the repeal of spent and unused laws. It is an exercise that should be undertaken every decade with a view to republication of statutes revised. However, it is a time consuming and costly exercise. The more recent approach, adopted in candidate and potential EU candidate countries is to revise all laws relevant to business with a view to their reform to make them more business friendly. Once this process has been undertaken for business laws it may be extended to other laws, i.e., those affecting the citizen in their daily lives. Examples of this may be found in Croatia, Serbia, the Former Yugoslav Republic of Macedonia and may also be found in Moldova.<sup>3</sup>

### ***A combination of approaches***

The final conclusion may be that the ideal approach is a policy initiative to bring a number of these initiatives together into one coherent policy.

This kind of work does not always produce results that are tangible politically. As a result there is a challenge of political sustainability. There are financial costs involved in this type of work. However, there are opportunity costs in terms of not attending to other work while this work is undertaken. The benefits are clear in terms of reduced uncertainty, clarity, accessibility and time saved in consulting texts but these costs are not usually assessed by countries so the work may not get done.

---

<sup>3</sup> This approach is not confined to Europe. Some of Europe's neighbours are also engaged in similar exercises. Egypt, for example, is undertaking an ambitious programme of statute law Reform.

## **Particular**

### **The paper will cover the following areas:**

1. Introduction
  - 1.1. Why is there a problem with managing the stock of legislation?
  2. Why manage the stock of legislation?
    - 2.1. Political reasons to manage the stock of legislation
    - 2.2. Legal reasons to manage the stock of legislation
    - 2.3. Doctrine
    - 2.4. Economic reasons to manage the stock of legislation
3. What policies are in place to manage the stock of legislation in Europe?
  - 3.1. Accessibility of legislation
  - 3.2. Other means of access
  - 3.3. Five key issues
  4. Policy activities that bring about improvements in the management of the stock of legislation
    - 4.2. The perception that there are too many laws
      - 4.1. Audits
      - 4.2. Traditions as regards: codification, consolidation, reprints and statute law revision
      - 4.3. Law Reforms Generally
      - 4.4. Managing the stock of legislation - institutional arrangements
5. Conclusions

Appendix 1: Overview of the stock of legislation measures in the EU, candidate and potential candidate countries

Appendix 2: Results of the Guillotine in six countries

*Glossary*