



SIGMA

**Support for Improvement in Governance
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LEGISLATIVE DRAFTING IN LATVIA

Workshop

"Different Approaches to Legislative Drafting in the EU Member States"

Tbilisi, Georgia

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Conference Paper

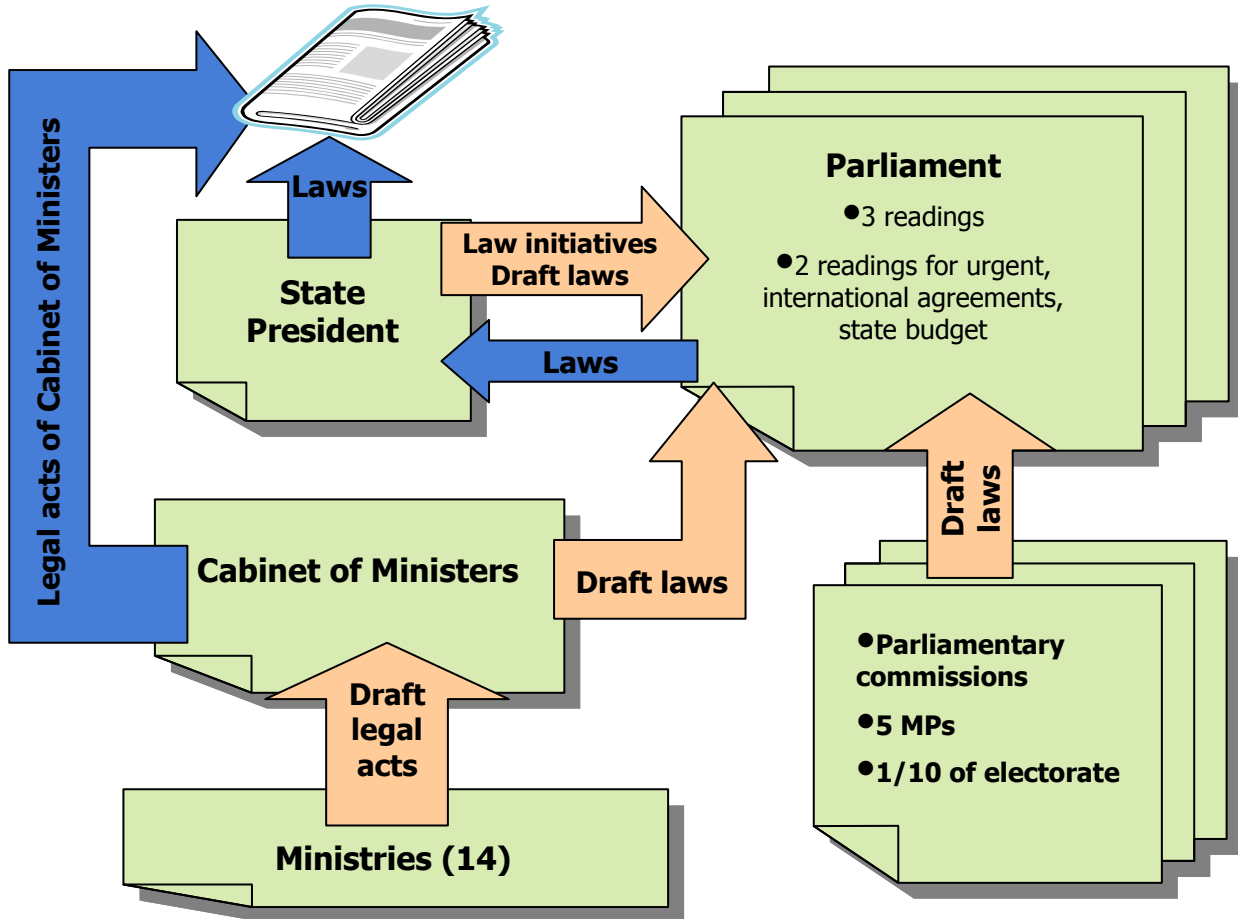
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Legislative Drafting in Latvia

I. Legislative system



II. System of regulatory enactments

According to the Article 15 of the Law on Administrative Procedures (2004), hierarchy of the legal force of external regulatory enactments is as follows:

- 1) the Constitution (*Satversme*);
- 2) laws;
- 3) Cabinet regulations;
- 4) binding regulations of local governments.

The legal norms of international law regardless of their source are applied in accordance with their place in the hierarchy of legal force of external regulatory enactments. The legal norms of the European Union (Community) are applied in accordance with their place in the hierarchy of legal force of external regulatory enactments. In applying the legal norms of the European Union (Community), institutions and courts take into account European Court of Justice case law. General principles of law are applied if the relevant issue is not governed by an external regulatory enactment, as well as in order to interpret regulatory enactments.

According to the Article 31 of the Law on Structure of the Cabinet of Ministers (2008), the Cabinet of Ministers is delegated to issue external regulatory enactments – regulations – only in the following cases:

- 1) if the law definitely delegates the Cabinet of Ministers to do so. The delegating norm provides for framework of the envisaged regulation (delegated legislation);
- 2) in order to approve international agreement or its draft, to denounce an international agreement or suspend its legal force, unless the Constitution or a law states otherwise;
- 3) if it is necessary for enforcement of EU regulatory enactments and if the relative issue is not regulated by a law. Such regulations may not restrict human rights of individuals.

Delegating law provision has to be referred to in the Cabinet regulation. A draft Cabinet regulation has to be accompanied by a statement of necessity for such regulation and regulatory impact assessment.

III. Institutions involved in development of legislative drafting rules

Legislative drafting is done by line ministries. Inter-ministerial work groups are set up for drafting of cross-sector regulation, complicated regulation or policy planning.

The two main institutions traditionally responsible for development of legal drafting techniques, legislative drafting quality within the public administration are the Ministry of Justice and the State Chancellery (Legal Department).

Ministry of Justice

Regulation No.243 of the Cabinet of Ministers of April 29, 2003 "Statutes of the Ministry of Justice"

The Ministry of Justice is one of the main "business partners" of the State Chancellery in development of legal drafting techniques. According to the Statutes of the Ministry of Justice, the Ministry:

- 1) coordinates and monitors transposition of the Community legislation;
- 2) provides methodological advice to other state institutions in legal drafting issues;
- 3) systemizes and codifies regulatory enactments, enters adopted regulatory enactments into the Informative System of Regulatory Enactments (NAIS).

State Chancellery

Regulation No.263 of the Cabinet of Ministers of May 20, 2003 "Statutes of the State Chancellery"

The State Chancellery is responsible for ensuring legitimate, motivated, efficient, transparent and continuous decision-making process of the Cabinet of Ministers and work of the Prime Minister. According to the Statutes of the State Chancellery, the State Chancellery:

- 1) carries out legal analysis of all draft policy papers and draft regulatory enactments proposed to the Government for consideration, advises the Prime Minister on maturity of the draft;

2) coordinates cooperation of state institutions in order to ensure observance of legal drafting and state language rules, usage of uniform and precise legal terminology;

3) ensures legal and linguistic finalization of all draft regulatory enactments adopted by the Government, including draft laws considered and initiated by the Government to the Parliament.

The Legal Department in cooperation with the Legal Acts' Editorial Department is responsible for finalization and endorsement with the line Ministry of the final text of all draft regulatory enactments before including them into the agenda of the Government meeting (see Appendix).

In order to ensure uniform legal drafting rules, standards, and solutions the Legal Department chairs an inter-institutional cooperation of legal services of the line ministries and independent state institutions. The cooperation is realized through organizing meetings of heads of the aforementioned legal services. The meetings are recorded in minutes of the meeting that comprise a set of decisions observed by the state institutions in legal drafting and interpretation or application of legal provisions. Minutes of these meetings are available on-line.

Legal Office of the Parliament

Rules of Procedure of the *Saeima* (Parliament)

According to the Rules of Procedure of the *Saeima*, the Legal Office provides legal advice to the Parliamentary commissions, Members of Parliament on draft laws and proposals for draft laws as regards legislative drafting techniques and codification. The Legal Office has elaborated Methodology for drafting laws for the Parliamentarians.

Draft laws may be tracked on-line in the website of the *Saeima*. Information – draft law, proposed amendments to the drafts, transcript of sessions are available in all stages of readings on-line. The sessions of the *Saeima* are broadcasted on-line in real-time (video and audio format).

IV. Tools of legislative drafting

Regulation of the Cabinet of Ministers of February 3, 2009 No.108 "Rules on Elaboration of Draft Normative Acts"

According to the Article 95 of the Law on Structure of Public Administration (2003) stating that the Cabinet of Ministers regulates the most essential rules of legislative drafting techniques that are observed by public administration institutions, independent state institutions and local-governments bodies in drafting normative acts.

The Rules on Elaboration of Draft Normative Acts were elaborated by specialists of the State Chancellery and the Ministry of Justice in order to ensure uniformity in drafting normative acts. The Rules provide for principle (imperative) legislative drafting technique requirements applicable in elaborating:

- ✓ laws
- ✓ normative acts of the Cabinet of Ministers (regulations, instructions, recommendations)
- ✓ normative acts of independent state institutions (in a limit scope)
- ✓ regulations of local governments
- ✓ internal normative acts of public administration institutions

The Rules provide neither examples, nor legislative drafting techniques in cases where alternative solutions may be applied. Sections of the Rules:

- ✓ General requirements
- ✓ Law drafting techniques:
 - title
 - structuring of text
 - definitions and abbreviations
 - formulation of delegations to the Cabinet of Ministers, independent state institutions, local governments and public administration institutions to issue normative acts
 - references to other regulation
 - amendment techniques
 - provisions on legal force
- ✓ Regulations of the Cabinet of Ministers
 - title
 - legal basis
 - structuring of text
 - definitions and abbreviations
 - formulation of delegation to local governments and public administration institutions to issue normative acts
 - references
 - amending techniques
 - provisions on legal force
- ✓ References to EU legislation
- ✓ References to standards
- ✓ Regulations of local governments
- ✓ Internal normative acts of the Cabinet of Ministers, independent state institutions

Handbook for Drafting of Normative Acts (2002)

Handbook is an informal tool for legislative drafters, providing information on principles applied in public law, theoretical and practical issues of drafting techniques with examples illustrating how to do and how not to do, language style and grammar of normative acts. Handbook as compared to the Rules on Elaboration of Draft Normative Acts is recommendatory. The Handbook includes the following parts:

- A. General rules and specifics of the language of normative texts
- B. Rules of elaboration of laws, regulations of the Cabinet of Ministers, instructions and recommendations of the Cabinet of Ministers
- C. Grammar and stylistics of texts of normative acts

The aim of setting standards of legislative drafting is to ensure legitimacy, but also implicit understanding of legal provisions by addressees, and implicit understanding and uniform application of the legal provisions by the State institutions. A regulatory enactment is drafted based on legal ethics, principles of morality and justice. Legislative drafting techniques are necessary in order to prevent adoption of regulatory enactments colliding with legal system, ignoring interests of the society.

Instruction No.4 of the Cabinet of Ministers of 18 September, 2001 "Preparation of Annotation for Draft Normative Acts"

The Instruction provides for the annotation format and instructions for completing the annotation. Annotation is elaborated by Ministry and contains information on the necessity for new regulation or changes and impact of the draft normative act on:

- economy, administrative procedures, social sphere, environment;
- the State budget and budgets of local governments;
- international commitments, including EU legislation, concordance table;
- national legal system, other amendments required, delegated legislation
- consultation with non-governmental sector
- how the new regulation will be implemented, new institutions established, protection of individual's rights

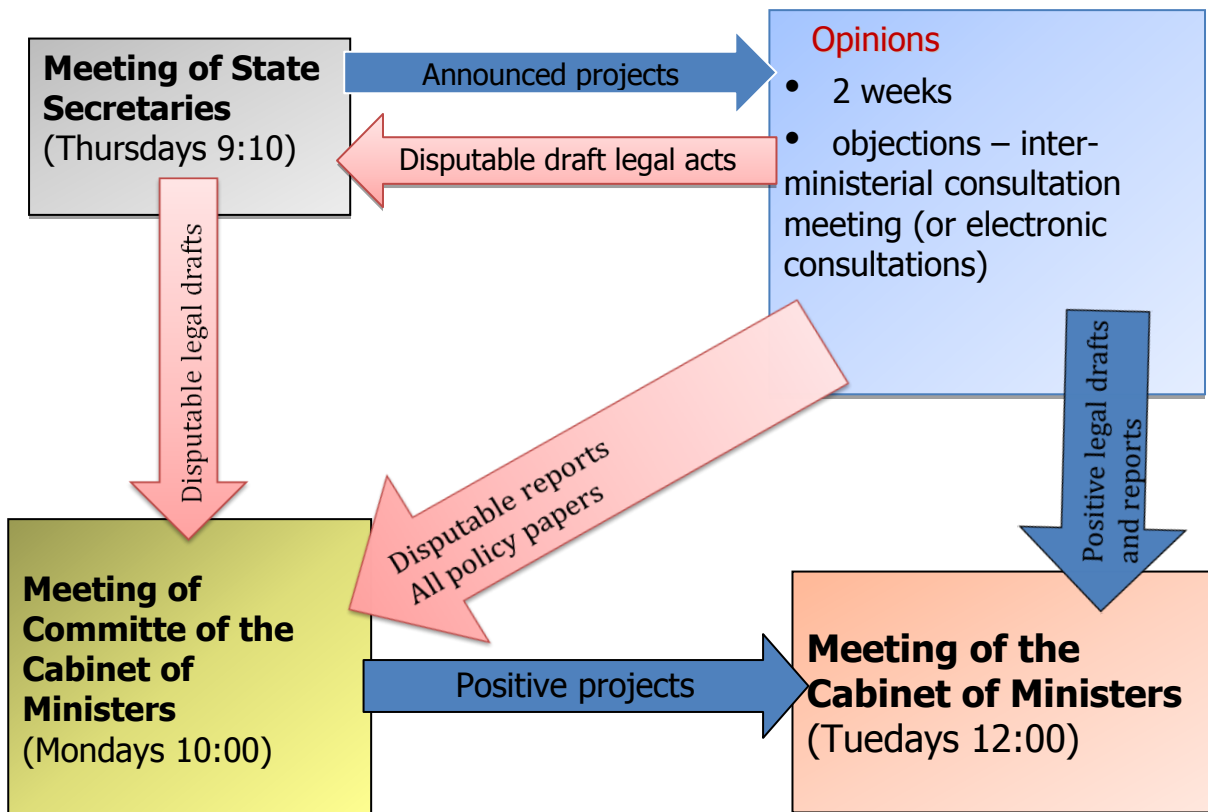
Annotation accompanies all draft laws, draft legal acts of the Cabinet of Ministers. Opinion by other Ministries, institutions and organizations is provided on draft normative act and its annotation.

Regulation No.300 of the Cabinet of Ministers of April 7, 2009 "Rules of Procedure of the Cabinet of Ministers"

The Rules of Procedure (available also on the Government website in English (web address: <http://www.mk.gov.lv/en/mk/darbibu-reglamentejosie-dokumenti/kartibas-rullis/>) is the core instrument besides Rules of Legal Drafting Techniques. The Rules of Procedure regulate:

- documents (and their enclosures) that are considered by the Cabinet of Ministers
- requirements for consultations and procedures, including mandatory opinions, consultations with NGOs
- preparation and organization of meetings of State Secretaries, Committee of the Cabinet of Ministers, and Cabinet of Ministers
- when and how the Legal Department is examining drafts initiated to the Cabinet of Ministers
- procedure for attending Government meetings including by non-public administration
- monitoring implementation of tasks given in laws and in the legal acts of the Cabinet of Ministers

Road map of a draft policy paper and a draft regulatory enactment from drafter to adoption / consideration by the Cabinet of Ministers:



A concept paper may be elaborated and adopted prior to drafting a complicated regulation (e.g. Administrative Procedure Law, Commercial Code) or if solutions for prospective regulation may be optional. The concept paper provides for information on necessity to enforce new regulation, outline of the new regulation (contents), impact on budgets, institutions responsible for and schedule of drafting of the regulation, proposed solutions. Concept paper is a policy planning paper subject to the Rules of Procedure of the Cabinet of Ministers – consultations, adoption by the Government.

Circulation of draft legislation and policy papers from the drafter in the line Ministry to the sitting of the Cabinet of Ministers is ensured by use of information systems and partly in paper form. Currently the State Chancellery is initiating amendments to the Rules of Procedure in order to introduce paperless process. Agenda of a meeting of the Cabinet of Ministers is prepared electronically – in e-portfolio. E-portfolio is an internet-based authorized information system with several levels of access. Also the agenda for public is available on the internet website of the Government on the day of the meeting. Draft regulatory enactments may be tracked on-line in the aforementioned information systems.

According to the Rules of Procedure line ministries are obliged to consult with the Ministry of Finance (fiscal impact) and Ministry of Justice (legitimacy) on all draft regulatory enactments, policy papers and informative notices before initiating to the Cabinet of Ministers. Other ministries, state institutions, local-governments and non-governmental organizations are consulted according to their competence.

All adopted regulatory enactments are published in the Informative System of Regulatory Enactments (NAIS) – an informal data base of all normative acts and case law, and the official gazette "*Latvijas Vēstnesis*". NAIS contains also consolidated versions of all legislation. The official gazette provides also electronic version including consolidated texts but not for all regulatory enactments.

V. Approaches of other selected countries and organizations:

Estonia

- Handbook on Legal Drafting
- Technical Rules for Drafts of Legislation of General Application Government of the Republic Regulation No.279 of 28 September 1999
- E-Law – web-based draft coordination information system
- Legislation is published in the State Gazette electronically
- ESTELEX, IBS Legal Acts Database
- English translations of the Estonian legislation is available on www.legaltext.ee

Romania

- LAW No.24 of March 27, 2000 (*republished*) On norms concerning the legislative technique to be used for drafting normative acts

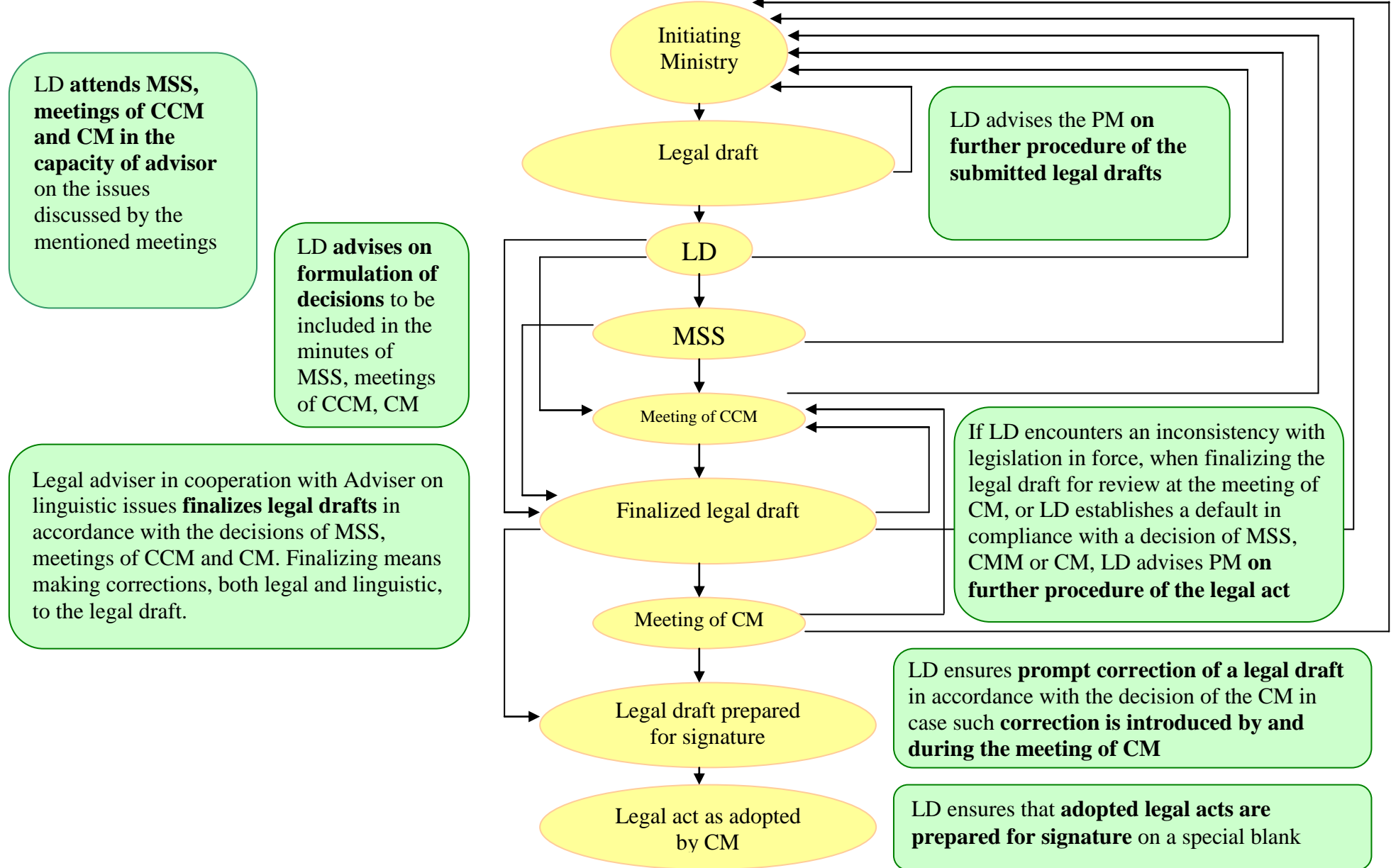
Bosnia and Herzegovina

- Manual for Drafting Legislation (2006)
- Unified Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina (2005)

EU institutions

- Joint Practical Guide for the Drafting of Community Legislation (2003)

FUNCTIONS OF LEGAL DEPARTMENT WITHIN THE PROCESSING OF DOCUMENTS FOR THE CABINET OF MINISTERS AS PROVIDED BY RULES AND REGULATIONS



PM – Prime Minister; LD – Legal Department
 MSS – Meeting of State Secretaries
 CCM – Committee of the Cabinet of Ministers, CM – Cabinet of Ministers
 Legal drafts – draft legal acts, draft policy documents