



DEFINING EFFECTIVE URBAN LEGISLATION

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STARTING POINT

Law is a 'technique' to guide human behaviour.

The volume of legislation, their piecemeal structure, their complexity, overlaps, level of detail, frequent amendments can make legislation **hard to understand, hard to apply** and **difficult to comply with**

This has an impact on

- economic activity
- creates burdens for businesses, communities and citizens
- obstructs good governance
- undermines the rule of law.

WHAT IS A 'GOOD' LAW?

We know what 'bad' laws are...

= unclear or ambiguous, complex, unclear, unaccessible, difficult to understand, unenforced, burdensome, leave gaps in protection...

Good legislation is not easy to define.

Values that determine quality: efficacy, effectiveness, efficiency and simplicity

Effectiveness is the primary expression of legislative quality.

WHAT IS AN EFFECTIVE LAW ?

Effectiveness is...

the capacity of the law to bring results (to **'do the job it is intended to do'**)

It has two dimensions:

- **Prospective:** expresses the extent to which legislation is **conducive** to the desired regulatory effects = *can a law achieve the desired results?*
- **Real:** the extent to which the attitudes and behaviors of target populations **correspond** to those prescribed by the legislator = *has a law achieved the desired results?*

Can effectiveness of legislation be made tangible and measured?

EFFECTIVENESS IS NOT AN ABSTRACT CONCEPT

Effectiveness is usually considered an abstract concept. However, **it is not!**

It is an element of every legislative text

The potential of a text to be effective is determined, to a significant extent, by four (fundamental) elements of legislation

External factors are also very important but the legislative text itself is the foundation of effectiveness

THE FUNDAMENTAL ELEMENTS OF EFFECTIVENESS

The effectiveness of a specific law is determined by :

- Its interaction with other related instruments (Constitution, related laws etc)
- the purpose of legislation
- the substantive content of legislation (rules, enforcement mechanisms & construction)
- the real life results of legislation

WHY THESE ELEMENTS?

Each of these elements has a distinct importance for effectiveness

- Purpose sets the benchmark : *what?*
- Substantive content and construction determine the means: *how?*
- Results show *what has been achieved?*
- The relation to other law affects the potential to achieve the expected results

ELEMENT 1: PURPOSE

All legislation has a purpose

Purpose is important for drafting legislation, for interpretation but also for its effectiveness – reflects the policy behind the law

For purpose to serve as a benchmark for effectiveness it needs to provide **substantive information** and it needs to be **clear and objective**

- If purpose is too narrow, it is not useful for effectiveness
- If it is too broad, it is misleading for effectiveness
- If it is purely procedural or informative it does not support effectiveness

ELEMENT 2: SUBSTANTIVE CONTENT AND CONSTRUCTION

Legislation comes as a 'solution' to a problem. This solution is expressed through:

- choice of legislative techniques (reparative, prohibitive, regulatory, distributional etc)
- Enforcement mechanisms
- Construction (e.g. definitions, structure, use of language etc)

The 'rationale' of the solution, its coherence and its responsiveness to the features of the regulated problem are crucial for effectiveness

ELEMENT 2: LEGISLATIVE TECHNIQUES, ENFORCEMENT & CONSTRUCTION

Legislative techniques and enforcement mechanisms promote effectiveness only if they are **responsive to the problem addressed through legislation and its local intricacies.**

In practice, sources of ineffectiveness include:

- Insufficient analysis of the situation/problem
- Insufficient understanding of the realities on the ground
- Internal tensions in the legal order
- Influence of supranational legislation
- Lack of consistency in legislative choices - ambivalent choices
- Complex solutions

ELEMENT 3: RESULTS OF LEGISLATION

When a law is enacted it is no longer a **conceptual exercise**: it is expected to **achieve results**

‘Implementation’ is a complex game relying on mechanisms, actors and funds

Law as a vision and law in reality often differ substantially:

- Changes in facts, diversion of resources, deflection of goals, resistance etc.

Information on the results of legislation is provided

- Through post-legislative scrutiny - evaluation
- Through **specific requirements in every legislative text** (review clauses)

ELEMENT 4: INTERACTION OF LEGISLATION WITH OTHER INSTRUMENTS

This element examines how an Act fits into the existing legal framework

Often the inconsistencies or clashes with other instruments hinder the achievement of the objectives of the Act

THE EFFECTIVENESS TEST

The **effectiveness test** is a **logical exercise** that views legislation as a continuum rather than separate and unrelated phases of policy design, drafting, implementation and evaluation

The effectiveness test examines how the purpose, the substantive content, the construction and the results of the law are aligned and consistent

In the drafting of legislation, the effectiveness test examines

- the existence of a clear purpose that sets a benchmark for what the law aims to achieve
- a clear and consistent substantive content responsive to the purpose of the law (and the regulated problem)
- Consistent construction and
- Sufficient results data

CONCLUSION: A DEFINITION OF EFFECTIVE URBAN LEGISLATION

Effective urban legislation is:

- backed by a clear urban policy
- has a clear purpose - sets a benchmark for what the law aims to achieve
- Has a content that responds to the regulated problem – takes into account the available evidence, including existing situation, resources, capacity and views of stakeholders
- Has a clear and enabling structure
- is presented in a clear way, understandable to the end user
- It is easy to comply with
- It incorporates sufficient mechanisms to monitor implementation and measure results and effects in real life
- It is compatible with other legal instruments that regulate related fields