The form of the Law, the task of transposition, and European legitimacy. Review of Helen Xanthaki, *Legislative Drafting for the EU. Transposition Techniques as a Roadmap for Better Legislation and a Sustainable EU**

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Resumen
Helen Xanthaki examina en *Legislative Drafting for the EU: Transposition Techniques as a Roadmap for Better Legislation and a Sustainable EU* el papel de la redacción legislativa y de las técnicas de transposición en la calidad y eficacia del Derecho de la Unión Europea. A partir de una concepción que integra claridad, precisión y ausencia de ambigüedad como condiciones de la efectividad normativa, la autora propone entender el *drafting* no solo como una práctica técnica, sino como un elemento estructural del funcionamiento regulatorio europeo y de su sostenibilidad política. Su análisis articula una relación entre calidad legislativa, cumplimiento del Derecho y confianza ciudadana que sitúa la 'forma de la norma' en el centro de la reflexión sobre legitimidad institucional. Desde este planteamiento, la obra permite reabrir el debate sobre la 'legibilidad' de la ley y su impacto en la cultura de la

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legalidad, en un contexto marcado por tensiones entre complejidad normativa, déficits de comunicación y desafección institucional. La experiencia española en la transposición de directivas –y, en particular, las dificultades observadas en la incorporación de la normativa sobre protección de denunciantes– ilustra los problemas que acompañan la recepción del Derecho de la Unión y refuerza la relevancia de las cuestiones planteadas por la autora. En este marco, el libro ofrece una base fértil para interrogar los alcances y límites de la técnica legislativa como instrumento de legitimación democrática.

Palabras clave
Calidad legislativa, transposición normativa, legitimidad democrática.

Abstract
In Legislative Drafting for the EU: Transposition Techniques as a Roadmap for Better Legislation and a Sustainable EU, Helen Xanthaki examines the role of legislative drafting and transposition techniques in shaping the quality and effectiveness of European Union law. By linking clarity, precision and unambiguity to legislative effectiveness, the author presents drafting not merely as a technical exercise, but as a structural component of regulatory performance and the political sustainability of the European project. Her analysis establishes a connection between legislative quality, legal compliance and citizens' trust, placing the form of the law at the centre of contemporary debates on institutional legitimacy. From this perspective, the book reopens broader discussions on the 'legibility' of law and its implications for the culture of legality, particularly in a context characterised by increasing regulatory complexity, communication deficits and institutional disaffection. The Spanish experience with the transposition of EU directives –notably the challenges surrounding the implementation of whistleblower protection rules– illustrates the practical tensions inherent in the reception of EU law and underscores the relevance of the author's claims. Within this framework, the book provides a fertile ground for questioning both the potential and the limits of legislative drafting as a tool for democratic legitimation.

Keywords
Legislative quality; legal transposition; democratic legitimacy.

SUMMARY. 1. *It is time for the EU to talk to its citizens. Directly*. 2. Xanthaki's argument. 3. Revisiting the task of transposition. 4. Transposition in practice: Between method, urgency, and State capacity. 5. Once again: Can legislation speak directly to the citizen?

1. *It is time for the EU to talk to its citizens. Directly*

«*It is time for the EU to talk to its citizens. Directly*» (Xanthaki, 2024, p. 24). With this suggestive and provocative statement, Professor Helen Xanthaki places at the centre of her recent book a concern that transcends legislative technique and its commonly termed minimalist dimension, turning instead to the task of how European norms are drafted and examining the kind of relationship they establish with those who are called upon to comply with them. Through her work, we are presented with a volume which, across its extensive *fabric* (368 pages), both theoretical and practical, elevates legislative *crafting* as an internal thread of the normative process– one capable of

extending into broader layers associated with the legitimacy, trust, and sustainability of the European project.

This approach acquires particular significance when considered in light of the recent context of the application of European Union law. In recent years, the European Commission has intensified infringement proceedings against Member States for delays or deficiencies in the transposition of directives, and Spain has not been immune to this trend. Beyond their legal consequences, these developments reveal a persistent difficulty, namely, that of coherently, comprehensibly, and effectively integrating European norms into national legal orders. It is not, therefore, merely an issue of compliance, but rather a tension inherent in the way in which European Union law is incorporated, interpreted, and, ultimately, understood[1].

In this regard, even if only briefly, it is useful to recall a couple of short textual excerpts in order to situate the discussion and clarify what is meant when referring to European directives and their transposition. On the one hand, following Martínez López-Muñiz, European directives are understood as:

> rules of result which, as the Treaty expressly states, must leave to the Member States the choice of form and means for their achievement. They thus regulate and impose a normative outcome to be ensured, but must do so by limiting themselves to determining what is deemed necessary for the objective or purpose defined by the Treaty when conferring the relevant competence, without descending into further detail and without seeking to harmonise national legal orders beyond what is strictly required by that purpose, always in accordance with the principles of subsidiarity and proportionality (TEU, Art. 5). It must be possible for each State to guarantee the final, purposive normative outcome by integrating it into its domestic legal order in the most appropriate manner, without altering it beyond what is strictly necessary (Martínez López-Muñíz, 2017, p. 17)[2]

On the other hand, according to Valle-Inclán Rodríguez de Miñón:

> [the] transposing measure must contribute to the realisation of the principle of legal certainty and avoid the enactment of legislation that is confusing, obscure, incomplete, or unlawful, by virtue of contravening the EU legal order. The primary aim of this process is to achieve convergence between the laws or policies of the Member States that directly affect the establishment of the common market. In this context, the directive appears as a result-oriented norm which does not provide specific guidance on the formal or substantive elements of the process through which each Member State is to achieve the intended objective. (Valle-Inclán Rodríguez De Miñón, 2024, p. 247)[3]

In the latter work, it is further emphasized that of the:

> of the legislative acts adopted by the Congress and the Senate over the past five years, 51 implement European regulations or transpose directives, while a further 81 contain references to recommendations, programmes, or EU initiatives. In 2023, 72% of the laws adopted in Spain had a European origin. Of the 25 laws enacted, seven were adopted in order to implement EU regulations or to comply with the obligation to transpose European directives into the Spanish legal order. In 2022, the percentage of laws with European influence was 57%; in 2021, 51%; in 2020, 50%; and in 2019, 42%. (Valle-Inclán Rodríguez De Miñón, 2024, p. 248)[4]

As stated in the explanatory memorandum to Royal Decree-Law 7/2021 of 27 April, on the transposition of European Union directives in the areas of competition,

[1] On this point, I have worked in Arenas Arias (2023).
[2] Adapted translations from the text originally written in Spanish.
[3] Adapted translations from the text originally written in Spanish.
[4] Adapted translations from the text originally written in Spanish.

anti-money laundering, credit institutions, telecommunications, tax measures, the prevention and remediation of environmental damage, the posting of workers in the provision of transnational services, and consumer protection, we are faced with a complex procedure. «The timely transposition of European Union directives currently constitutes one of the priority objectives established by the European Council. The European Commission submits periodic reports to the Competitiveness Council, to which significant political value is attached insofar as they serve to measure the effectiveness and credibility of the Member States in the implementation of the internal market».

It is precisely at the intersection between obligations of result, national margins of discretion, and an increasing demand for compliance that Xanthaki's book acquires its full significance and calls for attention. It is at this point that transposition emerges as a key component in the architecture of both the theory and practice of European legislation. From this perspective, it is therefore appropriate to introduce the author and to reconstruct her argument in some detail.

On the author and her work. Helen Xanthaki's academic trajectory allows for a more precise understanding of the scope of her approach. A Professor of Law at University College London and for many years affiliated with the Sir William Dale Centre for Legislative Studies, she has played a particularly significant role in consolidating legislation as an autonomous field of study within the European and Commonwealth contexts. This is complemented by her work as President of the International Association of Legislation (IAL), from which she has contributed to shaping an epistemic and professional community devoted to the analysis of legislative quality and law-making processes.

More specifically, her work has developed consistently around the relationship between legislative technique and the effectiveness of law. Both her theoretical contributions and her practical activities –particularly in the training of drafters and in processes of legislative reform in different countries– have revolved around a common concern: how a political decision is translated into a norm capable of producing effects across diverse legal contexts. Foundational works such as *Thornton's Legislative Drafting* (2013), a key reference for professional practice, and *Drafting Legislation: Art and Technology of Rules and Regulation* (2014) have contributed to structuring this field from a perspective that combines methodological analysis with institutional experience.

Xanthaki's work also clearly fits within the recent development of legisprudence as a field that seeks to recover law-making as a central object of legal theory. In contrast to a tradition which, as Oliver Lalana (2019) recalls, has tended to focus on the interpretation, systematisation, and application of already existing law –thus relegating its creation to the background– this approach proposes redirecting attention towards the conditions of rationality, quality, and legitimacy of legislation itself. In this shift, legislation is no longer understood as a mere outcome of politics –something prior to and/or external to law– but rather as a legally structured practice, open to evaluation and critique on normative grounds. Within our context, it suffices to mention, among others, Virgilio Zapatero (2009), Gema Marcilla (2005), and the aforementioned Oliver Lalana (2019; 2022; 2024), as contributors to the consolidation of this field, equipping it with conceptual tools to analyse legislation as a proper and sound normative process.

Against this background, this article offers a critical reading of *Legislative Drafting for the EU* by Helen Xanthaki, albeit from a perspective that does not strictly belong to the author's own legal field, but is nonetheless shaped by professional

experience in law-making and by an academic concern with the language of the law– and with law as mediated through language. The starting point is a simple intuition– one that, I would argue, has far-reaching implications. In contexts of increasing regulatory complexity, the way in which norms are articulated, translated, and communicated not only shapes their effectiveness, but also the very conditions of their public intelligibility and, consequently, their legitimacy.

Xanthaki's proposal repositions drafting at the very heart of the normative performance, so to speak, of the European Union. However, this paper argues that such a proposal acquires its full meaning only when situated within what I take to be, if I have understood her argument correctly, a broader problem: the distance between institutions and citizens that arises when law becomes opaque, technically overloaded, or communicatively inaccessible.

This concern with the intelligibility of European Union law finds support in empirical evidence regarding the way in which European institutions communicate their action. Some studies have shown that the institutional language of the European Commission displays significantly higher levels of complexity than that of national executives, reproducing markedly technocratic discursive patterns that hinder accessibility for the general public. To the extent that institutional messages require a high cognitive effort or are perceived as distant from the usual registers of political communication, their capacity to structure public debate and to sustain credible institutional narratives in contexts of increasing polarisation is diminished. From this perspective, Xanthaki's thesis may also be read as a response– albeit not explicitly formulated in these terms– to a problem of discursive mediation, in which the form of legal language directly affects the possibility of articulating relationships of trust between institutions and citizens[5].

This issue can be examined in light of concrete experiences of transposition in the Member States, where tensions between European requirements, techniques of legislative articulation, and national contexts become particularly visible. The case of the Whistleblowing Directive, to take just one example, provides a paradigmatic illustration of these frictions, insofar as it highlights how transposition constitutes a space in which the degree of a norm's comprehensibility, coherence, and acceptability is, to a large extent, determined– and contested.

In sum, this article, from a modest standpoint, aligns with the view that legislative drafting operates as a mediating device between political decision-making and the social reception of law, with direct implications for institutional trust and the culture of legality. At the same time, it cautions against attributing excessive explanatory power to drafting, suggesting that its contributions must be situated within a broader constellation of political, communicative, and institutional conditions. The aim is not, therefore, to reduce the legitimacy of law to its linguistic form, but to show that, in contexts of discursive fragmentation and competition over the meaning of political facts and realities, that form becomes a decisive terrain of contestation.

[5] Christian Rauh (2023), drawing on a quantitative analysis of nearly 45,000 European Commission press releases compared with more than 90,000 issued by national governments (the United Kingdom and Ireland), concludes that the Commission's communication is systematically less clear and more cognitively demanding, often approximating the registers of academic prose. In a convergent vein, Christoph Meyer (1999) identifies a «structural and long-standing communication deficit» within the Commission, highlighting its tendency to address political elites and to employ technocratic language that hampers public understanding and weakens citizen support for European integration.

2. Xanthaki's argument

From its opening pages, Xanthaki's argumentative architecture is structured around demonstrating how legislative drafting constitutes an internal dimension of the law-making process, one that is intrinsically linked to a first-order political problem– namely, the fragility of the relationship between the Union and its citizens.

The Eurobarometer data she introduces– with the contrast between the low levels of trust recorded in 2017 and their partial recovery in more recent measurements– serve as an index of a structural instability that calls for a reconsideration of which instruments are effectively at stake when European legitimacy is invoked. Within this framework, the «norm» is not merely a regulatory form, but one of the sites where this relationship is constituted, eroded, or potentially reconfigured.

European Union law– and in particular its legislative formulation– constitutes the most immediate medium through which such interlocution may take place. Law thus ceases to be a technical artefact addressed to specialised operators and is instead conceived as an enunciative device directed at a plurality of addressees whose relationship to the text cannot be taken for granted. At this point, legislative drafting becomes a matter of political intelligibility. This shift rests on a strictly instrumental understanding of legislation. Xanthaki situates law-making within the pursuit of broad regulatory objectives– «benevolent policy super-goals» (p. 2)– and emphasises that such aims are realised through concrete regulatory choices. Hence her assertion that legislation is nothing more than an instrument: «legislation is simply a tool for regulation» (p. 2). Far from diminishing the status of law, this formulation embeds it within a chain of mediations in which its value is measured by its capacity to produce effects. The analytical focus thus shifts from formal correctness to normative performance.

That normative performance, however, cannot be understood independently of the conditions under which the normative message is received. In one of the most insistent passages at the beginning of the book, Xanthaki advances a deceptively simple claim: communication is decisive. If addressees do not understand the content of a norm, they cannot internalise or apply it; and without such internalisation, regulatory effectiveness is compromised. The sequence she outlines– accessible communication, understanding, application– positions linguistic clarity as the keystone of the functioning of law. Accordingly, the requirement of accessibility does not merely amount to a stylistic criterion, but extends to the very sustainability of the Union as a «union of States and peoples» (p. 3).

This emphasis calls for a reconsideration of the place traditionally assigned to transposition. Under the classical model, Member States acted as intermediaries tasked with translating the European normative message into their respective national contexts. Xanthaki invokes this idea only to immediately call it into question. The evolution of European Union law– particularly through the doctrines of direct applicability and direct effect– has eroded this mediating framework. In certain areas, EU law no longer requires interpretation or reformulation in order to reach its addressees; rather, it presents itself as a normative discourse that addresses them directly. The implications are twofold. On the one hand, the scope for State mediation is reduced; on the other, the responsibility borne by the European legislator in shaping that message is correspondingly intensified.

However, this weakening of the mediated model does not eliminate the centrality of transposition, but rather reconfigures it. Xanthaki insists that the drafting

of national implementing measures remains «crucial for the success of the EU regulatory package as a whole», and does so by introducing a significant notion, that of national legislators as «co-legislators». This category points to a form of co-responsibility in which the effectiveness of European Union law depends on its capacity to be rearticulated within specific legal, political, and cultural contexts. The so-called «nationalisation» (p. 25) of European law thus emerges as a condition of its operability.

The difficulty of this task manifests itself across several dimensions that the author identifies with precision. On the one hand, the dynamic nature of the EU acquis means that the endpoint of transposition is not fixed. The normative framework is in constant flux, shifting the parameters within which the national legislator must operate. On the other hand, the legal concepts employed in European instruments are not easily transferable to domestic legal orders, insofar as they carry specific connotations that do not necessarily align with national categories. Transposition thus emerges as an exercise in continuous adjustment, involving not only legal techniques but also interpretative decisions of structural significance. In this context, the author turns to a methodological systematisation aimed at bringing order to a particularly complex practice. The reference to the five stages of drafting– from understanding the proposal to verifying the text– functions as an attempt to break down a process that, in practice, tends to unfold in a fragmented and, at times, disjointed manner.

The problem is exacerbated when transposition turns into an exercise in literal reproduction. The absence of clarity as to the objectives pursued, combined with the pressure to comply with deadlines and formal requirements, encourages what the author describes as a form of mechanical copying of the European text. In this shift, an understanding of the normative purpose gives way to formal fidelity, with a corresponding impoverishment of the outcome. Legislative technique is thus reduced to an exercise in textual transfer that loses sight of its function.

Faced with this set of tensions, Xanthaki proposes a reconstruction of drafting that integrates values, method, and practical judgment. The pyramid that organises the principles of legislative drafting– from the accessibility of language to regulatory effectiveness– should not be read as a rigid hierarchy, but rather as a guiding structure that allows the various demands at stake to be situated in relation to one another. At its base, elements such as clarity, precision, and the absence of ambiguity function as operational conditions of normative effectiveness. At its apex, regulatory effectiveness appears as the ultimate criterion that lends coherence to the whole.

This articulation does not eliminate the prudential dimension of drafting. Xanthaki emphasises that legislative drafting cannot be reduced either to theoretical knowledge or to a technique applied automatically. It requires an exercise of situated judgment– a form of phronesis– capable of weighing the various elements at stake in specific contexts.

3. Revisiting the task of transposition

Returning to a *Voz de Cultura de la Legalidad (Voices on Lawfulness)*– «Directivas comunitarias»– published in this same journal, it is apposite to recall a brief passage from that text to address the task of transposition:

> The directive is the harmonising instrument *par excellence* of the domestic legislation of the Member States, insofar as, far from replacing their legislative power, it depends upon it in order to establish harmonised legislation among the different Member States. Two elements thus emerge that explain the nature of the directive: first, the objective

> of harmonising the various national legal systems– that is, the achievement of a common result set by the EU, albeit through different normative mechanisms employed by the States; second, this instrument entails respect for the legislative competences of the Member States. We are thus faced with a measure that: (a) does not, in principle, have general application because, unlike regulations– which are addressed to all (Member States and individuals)– directives are addressed to one, to some, or to all Member States; (b) imposes an obligation of result, leaving to the Member States the choice of form and means. In this respect, it does not have direct applicability like regulations, but rather requires a domestic normative act (transposition) in order to achieve the objective set out in the directive; (c) requires Member States to choose the form they consider most appropriate for transposition, to interpret correctly the objective pursued by the directive, and to do so within the prescribed time limits, without delay and without allowing addressees to distort, circumvent, or misrepresent the obligations of result laid down therein. (Martínez Caballero, 2021, p. 336)[6]

From this perspective, transposition cannot be understood as a mere exercise in transfer. Xanthaki's warning is decisive here: «This is not a matter of translation, the drafter is not just a scribe» (Xanthaki, 2024, p. 43). The drafter's activity, rather, necessarily entails a set of interpretative and constructive decisions: delimiting the scope of the European objective, selecting the appropriate normative instruments, and articulating them coherently within the domestic legal system. It is not, as is repeatedly emphasised, a matter of reproducing a pre-existing content, but of giving it legal form under specific conditions. The first critical moment in this process is that of understanding the normative mandate. The «result» required by the directive does not present itself as a univocal instruction, but as a demand that must be reconstructed. This involves identifying the problem that the European norm seeks to address and confronting it with its configuration in the national context. Such an operation requires distinguishing relevant elements, determining functional equivalents, and, where necessary, introducing adjustments that allow the European mandate to be integrated into an already existing system. A further layer of complexity arises from the coexistence of two normative frameworks. Xanthaki captures this as «the parallel presence of two contexts, namely the EU and the national one» (Xanthaki, 2024, p. 51). Transposition thus unfolds within a space of dual reference: that of the European legal order, which sets objectives and structures, and that of the national legal order, which conditions their reception.

Transposition therefore requires a prior assessment of the appropriateness of legislative intervention, which cannot be taken for granted. This assessment is also linked to a broader consideration of the effects of legislation. Each normative intervention shapes the scope of action available to its addressees and alters the balance of the legal system. Where transposition takes the form of an accumulation of normative provisions lacking sufficient justification, the result may be not only ineffective, but also counterproductive in terms of clarity and applicability.

4. Transposition in practice: Between method, urgency, and State capacity

In the abstract, Xanthaki's proposal is compelling. Sound transposition requires a proper understanding of the regulatory objective, the ability to distinguish what must be preserved from what may be adapted, a resistance to the ease of mimetic reproduction, and the reconstruction of the European mandate in terms compatible with the domestic legal order.

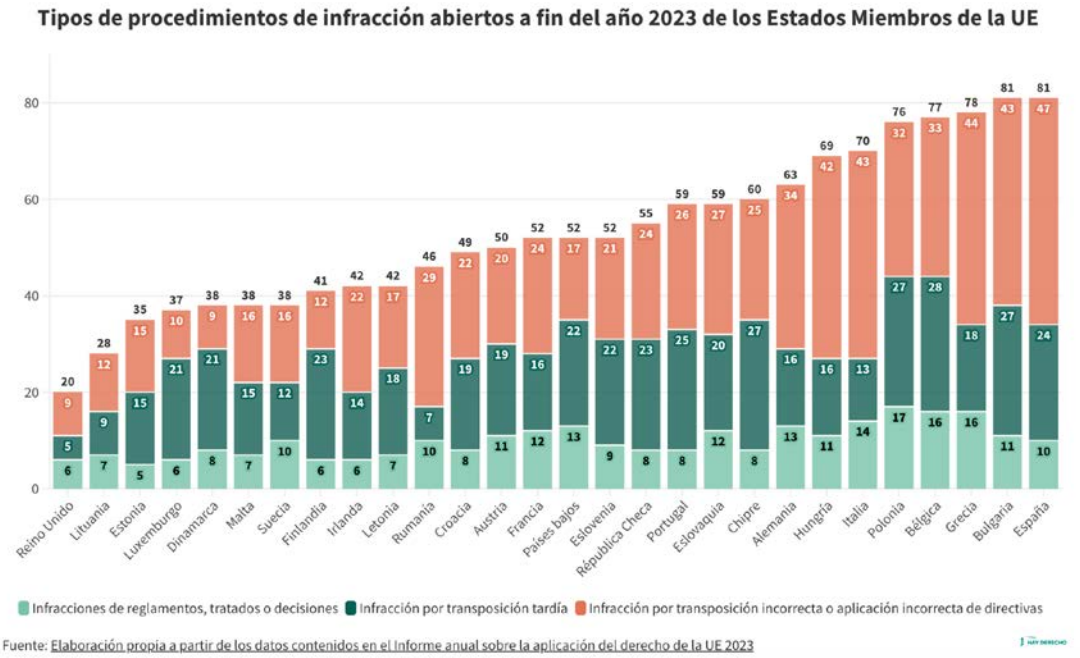
Yet, in a country such as Spain, this methodological demand runs up against more troubling realities. Transposition takes place within an administrative and

[6] Adapted translations from the text originally written in Spanish.

legislative culture that often operates under pressure, with deficits in planning, uneven coordination, and limited resources. At this point, the issue ceases to be simply how a sound implementing measure ought to be drafted and instead becomes a more uncomfortable question: whether the material conditions of the system allow for the kind of transposition that theory prescribes.

José Luis Martínez López-Muñiz articulated a critique that retains a striking degree of force in capturing this issue. In his view, Spain tends to incorporate the content of directives verbatim, «sin el más leve ejercicio crítico» regarding their purpose, the normative result pursued, the pre-existing configuration of the legal order, and the level at which changes ought to be introduced; accordingly, he warned against the «simple y acrítico 'corta y pega'» (2017, p. 18) as a technique of incorporation. This observation is significant because it diagnoses a methodological pathology and points to a deeper problem: the abandonment of any serious reflection on the relationship between the result required by the directive and the concrete architecture of domestic law.

That diagnosis becomes even more tangible when contrasted with recent compliance practice. The graph on infringement proceedings open at the end of 2023, drawn from the report on the rule of law in 2024 prepared by the Fundación Hay Derecho, places Spain at the most problematic end of the comparative spectrum, with 81 proceedings pending. Of these, 47 relate to incorrect transposition or misapplication of directives, 24 to late transposition, and 10 to infringements concerning regulations, treaties, or decisions. The composition of the data is as revealing as its overall volume. This is not merely a question of delay; it points, above all, to a pattern of defective incorporation. Put differently, the Spanish problem lies not only in arriving late, but in arriving poorly. This, in turn, compels us to understand transposition not simply as a more or less burdensome European obligation, but as a site where deeper weaknesses in the domestic legislative process become visible– namely, improvisation, haste, fragmentation, and persistent difficulties in translating an obligation of result into a coherent normative solution.



Fuente: Informe Estado de Derecho de la Fundación Hay Derecho, 2024.

The field of whistleblower protection aptly illustrates the tension between the methodological demands of transposition and the real conditions under which compliance takes place. As early as 2020, Javier Sierra Rodríguez warned that Directive 2019/1937 required Spain to construct something more than a discrete legislative measure. It called, rather, for a comprehensive system of internal and external reporting channels, a protective regime for whistleblowers, and a clear institutional allocation of competent authorities. The difficulty, however, was considerable. Spain lacked a general national framework for whistleblower protection, faced significant territorial fragmentation, and approached transposition with uneven regional experiences, differing levels of protection, and a cultural backdrop that remained largely unfavourable to whistleblowers, who are still often perceived as 'informants' rather than as guarantors of public integrity (Sierra, 2020, p. 65 ff.). In such a context, transposition could not be confined to reproducing the directive; it had to stitch together institutional components, close regulatory gaps, and do so without exacerbating existing fragmentation.

In light of the foregoing, Xanthaki's proposal invites a friendly objection– or perhaps a modest qualification. Her insistence on methodology, on the clarity of instructions, on contextual analysis, and on the careful structuring of legislative texts remains, in my view, entirely sound; the difficulty is that, in a case such as Spain, these preconditions are not always in place when transposition is set in motion. Shortened political cycles, the recurrent use of emergency instruments, the complexity of the distribution of competences, and limited administrative capacity often turn the incorporation of EU law into a race against time. Under such conditions, the gap between a carefully conceived transposition and one carried out defensively widens considerably. The Spanish case therefore suggests an additional point: better drafting techniques are not sufficient unless they are accompanied by the basic conditions of state capacity required to sustain them.

A further caution may be added, particularly apposite in an era of accelerated translations, defective semantic harmonisations, and an increasing reliance on automated text-processing tools. Some of the problems of contemporary transposition no longer stem solely from the traditional 'copy-and-paste' approach, but also from the illusion that terminological equivalence suffices to produce legal equivalence. Yet the Spanish experience repeatedly shows that the issue does not lie merely in finding equivalent words, but in preserving systemic coherence, conceptual integrity, and institutional fit. In a field as sensitive as whistleblower protection– where administrative procedure, labour guarantees, investigative powers, data protection, sanctions, and institutional integrity channels intersect– a flawed translation of the normative purpose or a poorly structured internal articulation of the text may undermine the directive's protective promise even where formal compliance appears to have been achieved. Read from the standpoint of practice, the lesson may be this. Xanthaki is right to call for more method, greater clarity, and a stronger awareness of outcomes; but a case such as Spain shows that, alongside these demands, there is also a need for a less complacent account of the political and administrative conditions without which sound transposition remains, all too often, a well-formulated aspiration poorly realised.

5. Once again: Can legislation speak directly to the citizen?

If one takes seriously the ambition that runs through Xanthaki's work– namely, that the European Union might «speak directly to its citizens» through its legislation– it is worth pausing to consider the actual conditions under which such a dialogue would take place. The idea is, at first sight, difficult to contest. Normative intelligibility appears as a precondition for compliance, and compliance, in turn, as a condition of legitimacy.

Yet, when transposed to the effective functioning of the European legal system, this aspiration calls for qualification. Not because it is mistaken, but because it may prove insufficient to describe– and explain– what occurs in practice.

The problem is not new. For decades, a significant strand of legal scholarship has insisted that access to the law and its intelligibility form part of the very core of the rule of law. The requirement of clarity is not exhausted as a technical criterion; it extends to fundamental democratic values: publicity, foreseeability, and the guidance of conduct. In this sense, the idea that citizens have a right to understand the norms that bind them becomes a condition of possibility for legal compliance in non-coercive contexts.

The problematic shift arises, however, when this requirement is transformed into an overly demanding expectation: that the law, simply by being better drafted, can be directly understood by its ultimate addressees. It is at this point that critical scholarship– and in particularly the objections raised against the Plain Language Movement– introduces a warning that is difficult to ignore. Plain language enhances intelligibility, but it does not eliminate the inherent complexity of normative systems. Put succinctly, it makes the law more accessible, but not necessarily comprehensible to all. This distinction allows for a more precise assessment of the scope of Xanthaki's proposal. Her insistence on clarity, precision, and the absence of ambiguity as conditions of normative effectiveness is entirely defensible within a 'minimalist' conception of legislative rationality, focused on the optimisation of means. At that level, legislation is understood primarily as an act of communication, and its success depends on the quality of the message it conveys. A law that is not understood does, indeed, fail as an instrument for guiding conduct.

That same conception, however, reaches its limits when confronted with the actual structure of the law's addressees. Not all norms are addressed– nor can they be– to the general public. A significant portion of the legal order operates through mediated addressees: professionals, specialised operators, and institutional intermediaries. In such cases, intelligibility is not measured by the immediate comprehension of the average citizen, but by the system's capacity to translate, interpret, and apply normative content in a coherent manner[7].

The historical experience to which Lon Fuller (1964) alluded in his well-known allegory of King Rex is, in this respect, particularly instructive. The attempt to produce norms fully accessible to all citizens ultimately undermined both the internal coherence of the system and the courts' ability to apply them consistently. The lesson is not that clarity is undesirable, but that it cannot be pursued in isolation from other structural requirements of law, such as systematicity, stability, and foreseeability. When these dimensions are neglected, clarity may become a form of simplification that weakens, rather than reinforces, the rationality of the legal system.

But let us not lose sight of our main line of inquiry and return to the practice of transposition. The claim that the Union can address citizens directly through its legislation appears to sit uneasily with the very design of the directive, which presupposes mediation, adaptation, and normative reconstruction at the national level. To seek to eliminate or minimise that intermediate space is, to some extent, to overlook the operating logic of European Union law.

This is compounded by an empirical point that should not be overlooked. The transposition deficit in Spain– at around 1.3%, compared with an EU average of 0.7%–

[7] In this regard, the work of Calsamiglia (1993) is indispensable.

the volume of proceedings for late or incorrect transposition, and the recurrence of condemnations by the Court of Justice all suggest that the problem does not lie exclusively at the final stage of the process. The accumulation of delays, the recurrent use of emergency instruments such as the decree-law, and the difficulties of coordination across territorial levels together create a scenario in which transposition appears as a structurally strained undertaking.

From this perspective, Xanthaki's proposal takes on a different significance. Rather than offering a direct solution to the problem of communication between the Union and its citizens, it highlights the importance of an intermediate link that often remains overlooked. The quality of transposition shapes not only normative effectiveness, but also the way in which law is perceived, interpreted, and applied at the national level. At the same time, attributing to legislative technique the capacity, on its own, to bridge the gap between institutions and citizens may ultimately be overstated.

The point, therefore, is not to deny the relevance of plain language, but to place it in proper perspective. As an instrument, it is indispensable for enhancing intelligibility and facilitating the application of law. As a comprehensive solution to problems of legitimacy or trust, however, it reveals clear limits. Law can– and should– be clearer, but this does not mean that it can substitute for the political, institutional, and communicative conditions that make an effective relationship between normative authority and its addressees possible.

At this point, Xanthaki's thesis may be read less as a definitive claim than as an analytical provocation. It compels us to reconsider the role of legislative drafting in the functioning of the European legal system, while also inviting reflection on the extent to which it is reasonable to expect that law, even in its most refined form, can assume functions that exceed its own nature. Between the aspiration to direct communication and the actual complexity of law, transposition remains the site where this tension becomes visible– and where largely determined.

In sum, *Legislative Drafting for the EU* is a work of considerable depth, written with intellectual ambition, methodological rigour, and an exceptional command of European legislation and the challenges of its practical implementation. The book not only offers a demanding reflection on legislative drafting and transposition, but also addresses other relevant dimensions– such as compliance verification, law-making in the context of EU enlargement, and the challenges arising from processes such as the United Kingdom's withdrawal– which, for reasons of focus, have not been examined in detail in this commentary. This does not reflect a lack of interest, but rather a deliberate choice to concentrate on those aspects that could be treated with greater care. From this perspective, Xanthaki restores to the theory of legislation an object that has too often been underestimated: the concrete ways in which norms are constructed, circulate, and come– or fail– to produce the effects they promise. In short, this is a work destined to become a reference point for those concerned with legislative quality, the transposition of European Union law, and, more broadly, the relationship between legislative technique, institutional capacity, and democratic legitimacy. Even where it raises doubts or calls for qualification, the book displays its greatest virtue: that of compelling us to think more rigorously.

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