## Contents

| Aci  | кпоч  | ledge                                   | ments   | ix      |
|------|---|---|---|---------|
| Inti | rodu  | ction                                   |   | X       |
| 1    | The 'mechanics' of effective legislation    |   |   | 1       |
|      | 1   | 00 10 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 |   |         |
|      | 2   |   | y principles to guide lawmaking?                                      |         |
|      | 3   |   | icacy, effectiveness or efficiency?                                   |         |
|      | 4 The fundamental elements of effectiveness |   |   | 9<br>12 |
|      |   | 4.1                                     | Purpose of legislation: the benchmark of effectiveness                | 13      |
|      |   | 4.2                                     | Content of legislation: the 'heart' of effectiveness                  | 14      |
|      |   | 4.3                                     | Overarching structure or superstructure: the context of effectiveness | 15      |
|      |   | 4.4                                     |   | 15      |
|      |   | 4.5                                     |   | 16      |
|      | 5   |   | clusion: the lawmaker as the 'designer' of effective                  |         |
|      |   |   | s and the effectiveness test as a thinking process                    | 16      |
| 2    | Le  | Legislation and its purpose             |   |         |
|      | 1   |   | urpose in the life cycle of legislation                               |         |
|      | 2   | Cha                                     | llenges for lawmakers   | 18      |
|      |   | 2.1                                     | The unclear boundaries between reasons, justification and goals       | 18      |
|      |   | 2.2                                     |   | 20      |
|      |   | 2.3                                     |   | 22      |
|      |   | 2.4                                     |   | 25      |
|      |   | 2.5                                     | Too much information on objectives                                    | 30      |
|      | 3   |   | pose and objectives in effective lawmaking                            | 33      |
|      | 5   | 3.1                                     | Objectives need to be the starting point in lawmaking                 | 34      |
|      |   | 3.2                                     | Specific, measurable and well-formulated objectives                   | 35      |

|   |    | 3.3  | Objectives as benchmarks  | 36  |  |  |
|---|----|--|---|-----|--|--|
|   |    | 3.4  | Traceable objectives  | 37  |  |  |
|   | 4  | Con  | clusions: purpose as a benchmark for effectiveness                      | 39  |  |  |
| 3 | Th | The content of legislation   |   |     |  |  |
|   | 1  | Lawmaking challenges when designing the content of                 |   | 4.0 |  |  |
|   |    |  | slation   | 40  |  |  |
|   |    | 1.1  | 2   | 41  |  |  |
|   |    | 1.2  |   | 45  |  |  |
|   |    | 1.3  | Communicating the law   | 48  |  |  |
|   | 2  |  | ctive legislative mechanics   | 51  |  |  |
|   |    | 2.1  | 3   | 52  |  |  |
|   |    | 2.2  |   | 53  |  |  |
|   |    | 2.3  | Choices informed by evidence but selected on the basis of effectiveness | 54  |  |  |
|   |    | 2.4  |   | 57  |  |  |
|   |    | 2.5  |   | 58  |  |  |
|   |    | 2.6  | Clear messages for clear communication                                  | 59  |  |  |
|   |    | 2.7  | Experimentation   | 60  |  |  |
|   | 3  |  | clusions: the importance of legislative design                          | 61  |  |  |
|   |    | egislation and its context 6                                       |   |     |  |  |
| 4 |    | 8  |   |     |  |  |
|   | 1  |  | y context matters   | 64  |  |  |
|   | 2  |  | erstructure and the transmission of legislative messages                | 66  |  |  |
|   |    | 2.1  | 5   | 67  |  |  |
|   |    |  | 'Diffuse' messages  | 69  |  |  |
|   |    | 2.3  |   | 71  |  |  |
|   |    | 2.4  | 'Patchwork' messages  | 74  |  |  |
|   | 2  | 2.5  | Delivery options and their implications                                 | 78  |  |  |
|   | 3  |  | vering the message effectively  | 79  |  |  |
|   |    | 3.1  | Informed choices on superstructure                                      | 79  |  |  |
|   |    | 3.2  | Accessibility   | 80  |  |  |
|   |    | 3.3  | Coherence   | 81  |  |  |
|   | Л  | 3.4<br>Can   | Consider how the changes will be appraised clusion                      | 82  |  |  |
|   | 4  | Con  | Clusion   | 83  |  |  |
| 5 | Th | he implementation of the law: results, impact and effectiveness 84 |   |     |  |  |

| Continue | 443 |
|----------|-----|
| Contents | VII |

|   |  |  | Coments  | VI         |
|---|--|--|--|------------|
|   | 1 Legislation, results and lawmaking               |  | 84   |            |
|   | 2  |  | llenges for lawmakers  | 85         |
|   |  | 2.1  | What kind of results does legislation produce?   | 85         |
|   |  | 2.2  | How can results be anticipated and measured?   | 87         |
|   |  | 2.3  | •  | 89         |
|   |  | 2.4  | Horizontal questions: when, how and who will record and measure results?                   | 98         |
|   | 3  | Res  | ults in effective lawmaking  | 101        |
|   |  | 3.1  | Clearly defined results  | 101        |
|   |  | 3.2  | Anticipating implementation  | 102        |
|   |  | 3.3  | A clear monitoring, review and evaluation framework  | 103        |
|   |  | 3.4  | Clear and specific monitoring, review and evaluation clauses                               | 104        |
|   | 4  | Con  | clusions   | 107        |
| _ | Which tools for effective lawmaking?               |  |  |            |
| 6 |  | Which tools for effective lawmaking?           |  |            |
|   | 1  |  |  | 108        |
|   | 2  | 2  |  | 109        |
|   | 3  |  | loser look at the contemporary lawmaking toolkit at the perspective of effective lawmaking | 112        |
|   |  | 3.1  | Impact assessment  | 112        |
|   |  | 3.2  | Consultation   | 116        |
|   |  | 3.3  | So, does the toolkit contribute to lawmaking?  | 118        |
|   | 4 Adding 'effectiveness lenses' to existing tools: |  | ling 'effectiveness lenses' to existing tools: the   | 119        |
|   |  | 4.1  | The effectiveness test   | 120        |
|   |  | 4.2  | The structure and elements of the 'effectiveness test'                                     | 121        |
|   |  | 4.3  | 'Testing' the effectiveness test: three case studies                                       | 124        |
|   |  | 4.4  | Usefulness, relevance, advantages and limitations  | 127        |
|   | 5  |  | clusions   | 128        |
| 7 | To   | ai alati                                       | ivo foilure  | 129        |
| 1 | 1  | Legislative failure  1 Failure and legislation |  |            |
|   | 1  | 1.1  | Understanding failure  | 129<br>130 |
|   |  | 1.1  | A typology of legislative failure  | 131        |
|   |  | 1.3  | The timing and actors of a diagnosis of failure  | 131        |
|   | 2  |  |  | 137        |
|   | 4  | 2 Responding to failure                        |  | 13/        |

|     |       | 2.1   | Amendments: a panacea or a curse?                                       | 137 |
|-----|-------|---|---|-----|
|     |       | 2.2   | Simplification  | 139 |
|     |       | 2.3   | Codification  | 140 |
|     |       | 2.4   | Law reform - looking at the whole picture                               | 141 |
|     |       | 2.5   | Effectiveness of the responses  | 143 |
|     | 3     | Anticipating and avoiding future failure      |   | 143 |
|     |       | 3.1   | Strategic approach to the diagnosis and analysis of legislative failure | 144 |
|     |       | 3.2   | Strengthen the 'immune' system of the legal order                       | 146 |
|     |       | 3.3   | Learn from failure  | 147 |
|     |       | 3.4   | Invest in effective lawmaking   | 149 |
|     | 4     | Con   | clusion   | 149 |
| 8   | Or    | On lawmakers, lawmaking and effectiveness     |   |     |
|     | 1     | So what about effectiveness?                  |   |     |
|     | 2     | Lawmaking in practice: top down or bottom up? |   |     |
|     | 3     |   |   | 156 |
|     |       | 3.1   | The intuitive lawmaker  | 157 |
|     |       | 3.2   | The reflective lawmaker   | 157 |
|     |       | 3.3   | The lawmaker that 'muddles through'                                     | 158 |
|     | 4     | Cog   | nitive biases in lawmaking?   | 158 |
|     |       | 4.1   | Legislative styles, drafting conventions and regulatory culture         | 159 |
|     |       | 4.2   | Path dependence, habitual action and legislative 'patterns'             | 160 |
|     |       | 4.3   | Borrowed, imported and supranational rules                              | 162 |
|     | 5     |   | ective lawmaking  | 163 |
| Bił | oliog | raphy   |   | 164 |
|     |       | 1 3   |   | 101 |
| Inc | ex    |   |   | 191 |