Preparatory Documents of EC-law: their Classification in CELEX Database

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1. Introduction

CELEX, the database of European Union (EU) law, was initially conceived in the ’70s as an internal tool of documentation for the law of the European Communities. Nowadays, while still remaining a valuable tool for the EU staff, it is also used extra muros by national administrations, academic institutions and the private sector worldwide. CELEX, which is produced and managed by the Office for Official Publications of the European Communities, offers multilingual, full-text coverage of a wide range of legal acts in html format as well as links to the same acts in other formats (PDF, TIFF) as far as they are available outside the database itself. It is the EU-law database par excellence, as it does not only gives access to legal documents but also accompanies each documentary unit (more than 200 000) by legal information, presented in the form of searchable fields, such as date of adoption, publication reference, validity, subsequent amendments, to name only a few of them. Furthermore, its coverage is not restricted solely to (primary and secondary) EU legislation; it also includes case law and references to national legislation. It contains, finally, documents providing additional information, useful for a thorough understanding of EU law.

Among this latter type of additional information, the “preparatory documents” represent the numerically most important category. In this paper we address their classification in CELEX. After explaining how the term “preparatory” is used in the database (2), we proceed to the presentation (3) and the analysis (4) of the current structure of classification, before examining problems related to its modification (5). Finally, we attempt to evaluate classification as a search option from the user’s point of view (6).
2. Delimiting Preparatory Documents

Preparatory documents are considered as a valuable source for the understanding and even the interpretation of legal acts at national (constitutions) or international level (treaties). They are understood to denote all written preparatory work carried out by national or international bodies, leading to the adoption of a legal act. In CELEX, the term is used in both a more restrictive and a broader sense. More restrictive, as it does not cover the preparatory documents concerning acts of “constitutional” rank (founding treaties) but only those related to secondary legislation. Broader, because the database does not include documents corresponding to the various stages of the legislative or budgetary process but also various acts in which the institutions express an opinion on a question of general Community interest.

Most of the preparatory documents in CELEX belong to a specific sector. The eight sectors which are given below represent the first level of breakdown in the classification of acts:
- founding and accession treaties
- international agreements concluded with non-member States
- secondary legislation
- supplementary legislation (intergovernmental cooperation)
- preparatory documents
- case law
- references to national legal acts incorporating directives into the law of member States
- parliamentary questions

Three new sectors are under way:
- consolidated legislation
- acts of EFTA relevant for the European Communities
- a residual sector with not legally relevant documents published in the C series of the Official Journal of the European Communities.

Parliamentary questions, which could fall under the broad definition of preparatory documents, make up a separate sector. Preparatory acts, issued pursuant to intergovernmental procedures belong also to a separate sector (“supplementary legislation”). Thus, the following concern exclusively documents adopted within the legal framework of European Communities and not that of the European Union.

3. Current Structure

Within the sectors there is a further breakdown (according to one or two-letter codes). The criteria for this second level of classification are the au
tor, the nature or even the source (publication reference) of the acts. As far as the preparatory acts are concerned, most of them are included in a specific sector. Its structure is given below (under \(a\)). Several preparatory acts, though, are classified under residual categories of another sector (under \(b\)).

\(a\). The current structure of the sector “preparatory documents” has as follows:

<table>
<thead>
<tr>
<th>code</th>
<th>author</th>
<th>content</th>
</tr>
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<tbody>
<tr>
<td>ag</td>
<td>Counsii:</td>
<td>- common positions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- assents given under the European Coal and Steel Community (ECSC) treaty on loans or financial aid</td>
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<tr>
<td></td>
<td></td>
<td>- opinions on the convergence/ stability programmes of member States</td>
</tr>
<tr>
<td>ap</td>
<td>Parliament</td>
<td>resolutions forming part of a legislative procedure</td>
</tr>
<tr>
<td>ip</td>
<td>Parliament</td>
<td>own-initiative resolutions</td>
</tr>
<tr>
<td>bp</td>
<td>Parliament</td>
<td>resolutions concerning the budgetary procedure</td>
</tr>
<tr>
<td>pc</td>
<td>Commission</td>
<td>proposals for legislation published in the (internal) “COM” and “SEC” documents</td>
</tr>
<tr>
<td>dc</td>
<td>Commission</td>
<td>communications, reports and programmes published in “COM” and “SEC” documents</td>
</tr>
<tr>
<td>cc</td>
<td>Court of Auditors</td>
<td>opinions on proposals for legislation</td>
</tr>
<tr>
<td>ak</td>
<td>Consult. Committee</td>
<td>Opinions of the ECSC Consultative Committee</td>
</tr>
<tr>
<td>ac</td>
<td>ESC:</td>
<td>- opinions of the Economic and Social Committee forming part of the legislative process</td>
</tr>
<tr>
<td>ic</td>
<td>ESC</td>
<td>- own-initiative opinions of the ESC</td>
</tr>
<tr>
<td>ar</td>
<td>CoR</td>
<td>- opinions of the Committee of Regions forming part of the legislative process</td>
</tr>
<tr>
<td>ir</td>
<td>CoR</td>
<td>- own-initiative opinions of the CoR</td>
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\(b\). Other preparatory acts are classified under two residual codes in the secondary legislation sector: \(x\) and \(y\).

The former contains acts published in the L series (Legislation) of the Official Journal (OJ). It was initially conceived for “internal” acts (statutes, rules of procedure), as well as for recommendations and opinions, that is, acts, which - although not legally binding – cannot be treated as preparatory acts. A small number of preparatory acts (such as communications) are to be found here.

The latter contains acts published in the C series (Information and Notices) of the OJ. The main “authors” and the main types of acts under each author are given below:
- Commission: communications, notices and authorizations in the competition field, "information"s on various subjects.
- Council: resolutions, conclusions and declarations
- Court of Auditors: reports
- "Administrative Commission on Social security for Migrant workers": decisions
- ECSC Consultative Committee: resolutions
- Monetary Committee: reports on its activities (until 1981)
- European Central Bank: opinions and recommendations on legislative proposals
- European Monetary Institute: opinions on legislative proposals (until 1998)
- Ombudsman: reports

Some acts, (common declarations, interinstitutional agreements and modus vivendi) are issued jointly by several institutions. Several other Community bodies are represented here by one or two documents. Under this code we find also declarations and initiatives of member States.

4. ANALYSIS OF THE CURRENT STRUCTURE

It is interesting to start by examining the acts under the residual codes we referred to in 2.b above. In fact, this listing illustrates how unclear the border between legislative and non-legislative acts can be. Commission's communications, for instance, are not binding legislative texts, some of them, though, especially in the competition field, are, rightly, conceived as such by the economic operators. The same is true for most of the Council's acts included here: they certainly cannot be treated as texts lacking any legal value. The acts to which the term "preparatory" can be surely applied are reports as well as the opinions and recommendations of European Monetary Institute / European Central Bank, the latter forming part of the legislative process.

As for the specific sector "preparatory documents" (under 2.a above), a dichotomy is clear, depending on whether an act is part of the legislative process or not (a special code is there for the budgetary procedure). This is the case of acts, whose author is the Commission, the Parliament, the Economic and Social Committee, the Committee of Regions. This dichotomy could be extended in the future to cover also the Court of Auditors and the ECSC Consultative Committee, which are only represented in this sector with their acts related to the legislative process, while, as mentioned above, their other acts are included in Celex under the resid-
ual code y. A separate code could also be created for the preparatory acts of European Monetary Institute / European Central Bank. For the Council, the situation is more delicate. While there is no difficulty in classifying the legislative process related acts (common positions), it would be questionable to include its other acts in the “preparatory documents” sector, as their political importance differentiates them from a simple programme or report.

It should be pointed out that the classification in the “preparatory documents” sector does not follow that adopted in other Celex sectors. In them, a classification according to the designation of act is used (for example, “regulation”, “decision”, “directive” in the secondary law sector or “judgment”, “opinion of advocate general” for the case law sector). This cannot be the case for preparatory documents. There are too many different designations for acts, while the same designation is sometimes used for two different things. To name just an example, a question of classification had arisen with the Commission’s “communications” and “opinions” on the Council’s common positions and the Parliament’s amendments to the Council’s common positions respectively. It was clear that, although not labelled as “proposals”, they should be put together with them, as they are also part of the legislative process. Their classification among other communications or opinions would be inaccurate.

The methodology, therefore, for classifying preparatory acts is based on the author and the nature of the act (legislative process – related or not) and not on the designation of the act itself. The only problem that this method can entail is when an act is issued by more than one institution, but this can be easily resolved by establishing a separate code for this kind of acts. Finally, one exception to this rule should be mentioned. As far as Commission’s documents are concerned, they are classified in different sectors, depending on the source of publication: under secondary legislation’ sector for documents published in the Official Journal or under preparatory acts’ sector for those published in one of the (internal) “COM” or “SEC” documents. The reason for maintaining this is practical: “COM” and “SEC” are in great demand among internal users and a separate code for them just simplifies the search.

5. Changing the Classification

The most important problem at this second level of classification (“codes”) is due to the ever-changing nature of EC-law. New bodies are created, new procedures are established and new acts are adopted at a
rhythm that is more rapid than in national legal orders. Adding new types of acts in the database's nomenclature is now – after the recent (spring 2000) technical developments in Cefex – a relatively easy task. However one can not predict if a type of acts is there to stay for a long time or – even if it does – whether the number of these new documents that will be produced by EU bodies will be important enough to justify the creation of a specific category in Cefex.

Furthermore, adding new types needs sometimes to be accompanied by a restructuring of the classification, which, if carried out frequently, may result in:

- confusion for a part of the users (the majority of them are not lawyers) or at least frequent periods of adaptation, which risk to be conceived as a nuisance for them;

- a considerable workload. In fact, the code, used for the classification, forms part of the document number, which is the basis for the sophisticated system of links between acts. A changing in codes would entail (manual) intervention for an important part of the more than 200,000 documentary units contained in Cefex.

The above reasons explain why the team managing the EU-law database is very cautious about automatically keeping up with those changes in the nomenclature of acts that entail a restructuring of the classification. The method adopted until now was to include a new type of acts in the most closely related existing category acts (which made a future restructuring unavoidable) and, sporadically, to add new categories while leaving the old ones unchanged. If, after several years, the time is ripe for an exercise of restructuring, this should be carried out, as far as possible, in a pro-active way, and certainly not be repeated during a long period of time.

It should be, finally, stressed that, in the case of the EU-law database, as in most other cases involving organisation of an important mass of information, establishing or changing a classification means choosing between accuracy – that is, a structure closely following the EU legal order – and transparency – too much detailed information might result in users not being able to see the wood for the trees. It is a common place – but it ought to be repeated here – that the users' needs have a priority over the search of a "perfect" solution.

6. Classification as a Search Option

Classification is of course a matter with implications for those analysing
the documents to be loaded in the database. Errors in the analysis can be avoided only if its structure is crystal clear.

It is also a matter that concerns directly the users, as a logical organisation allows them to locate information more easily. In fact, search of documents can be based on classification, since Celex offers the option of hierarchical search for the various types of acts: The so-called “menu search” Celex interface (the general-public search interface, meeting the needs of a vast majority of users) allows searching in the five numerically more important types of preparatory acts, namely those issued by Commission, Council, Parliament, ESC and CoR. The “expert” interface (advanced users) makes it possible to use as a search criterion each one of the sectors and codes mentioned respectively in parts 2 and 3 of this paper. Nevertheless, even if the classification does not faithfully reflect the structure of the EU legal order at a certain point in time, users are offered a number of search options (such as search by words in the title of acts) which is an almost perfect substitute for hierarchical search.

Having said this, we should also point out that in a database of high added value like Celex, classification of information is not the most important problem. In fact, hierarchical search, although still important, is losing ground against “horizontal” search. This is especially true for the acts being part of the legislative process. Users are equally interested in having all Parliament’s resolutions under the same code as in having hyperlinks leading, from a Commission’s proposal, through the European Parliament’s opinion or that of the Economic and Social Committee, to the common position of the Council and to the act that is finally adopted. All the more so, since Celex offers the possibility of searching, for instance, all parliamentary resolutions, adopted in 1998 and dealing with bananas even without classification at all. Celex does actually provide information on other acts of the same legislative procedure. This is done both by hyperlinks to EU sites that list all interrelated documents and by hyperlinks pointing to this kind of documents, the latter being far from complete as far as “legislative” preparatory documents are concerned. It is, therefore, by further improving the system of links between various documentary units – rather than by attempting to exhaustively organise the mass of legal information – that the EU-law database could better meet the needs of its most demanding users.