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Several *Acts* and One *Law* as an Impulse for Reviving *European (Framework) Laws**

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Abstract

The short titles of several recent EU regulations or proposals contain the words 'act' and 'law'. The latter reminds EU legal scholars, especially those using different EU languages, that the Treaty establishing a Constitution for Europe envisaged turning regulations into European laws, and directives into European framework laws. We propose to discuss their revival in terms of the so-called legislative acts, i.e., a category retained by the Lisbon Treaty, which otherwise avoids such a statist terminology, deeming it too sensitive. They are passed by the European Parliament, which is a directly elected body. A comparative look shows the difference in parliamentary statutes and instruments adopted by the executives of many nations in their languages with different nouns. This terminology also accommodates the recent preference for regulations, including dozens of them being transformed from directives. The two terms distinguished by a modifier reflect their relationship to each other.

Keywords

European Union; Secondary Law; Terminology; Multilingualism; Statutes.

Introduction

Act and *law* in the short titles of several adopted or proposed EU regulations may be a curiosity, but these nouns deserve our attention (Chapter 1). Differences in their translations into other EU languages (Chapter 2) have highlighted the variety of terms used in different languages to refer to legislative acts passed by parliaments. The Treaty establishing a Constitution for Europe envisaged renaming *regulations* and *directives* as *European (framework) laws* (Chapter 3). This reform of primary law failed. It is therefore useful to examine whether this change played any role and how it was understood by lawyers. At that time, there was a consensus.

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The recent crises have made it difficult to reform the founding treaties, including the terminology (Chapter 4). Its adoption requires developing arguments. We need to understand the language(s) of national laws in their hierarchy (Chapter 5) in order to evaluate the EU secondary and tertiary law in terms of terminology (Chapter 6). Arguing for the revival of *European (framework) laws* also requires considering the context (Chapter 7). Several other terminological aspects are then examined, including the modifier 'framework' which also accommodates the transformations of directives into regulations (Chapter 8). It may be feared that *(the) Constitution* is too sensitive, suggesting problems with the constitutionalizing of the European Union (Chapter 9). Yet a revived terminology would increase the legitimacy of EU policies even without its unlikely reconsideration.

While addressing the issue, the paper reiterates the role of language – the twenty-four languages of the multilingual European Union – in laying the foundations and in the development and understanding of its unique supranational law.

1 An Unnoticed yet Noteworthy Phenomenon

In the short titles of several recently adopted and proposed regulations, two words appear, *act* and *law* (in between the brackets and the latter with quotation marks). Examples of the former are the Cybersecurity Act[1] and the Data Governance Act[2]. These were followed by several proposals for the Digital Services Act[3], the Digital Markets Act[4], the Artificial Intelligence Act[5] and the Data Act[6]. An example of the latter is the 'European Climate Law'[7] (ECL) – with at least one inconclusive predecessor in the case of the 'Animal Health Law'[8] (AHL).

Long titles of statutes and treaties encourage users to use abbreviations and acronyms. They allow for quick reference in debates and practical citations in judgments and literature.

1 Regulation 2019/881 of the European Parliament and of the Council (…) on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification (…) (Cybersecurity Act).

2 Regulation 2022/868 of the European Parliament and of the Council (…) on European data governance (Data Governance Act).

3 Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) (…), 15/12/2020 COM (2020) 825 final 2020/0361(COD).

4 Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), 15/12/2020, COM (2020) 842 final 2020/0374 (COD).

5 Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), 21/4/2021, COM (2021) 206 final 2021/0106(COD).

6 Proposal for a Regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act). COM (2022) 68 final, 23/2/2022, 2022/0047(COD).

7 Regulation 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality (…) ("European Climate Law").

8 Regulation 2016/429 of the of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ("Animal Health Law").

Unsurprisingly, the spontaneity of authors causes divergence. That is why institutions and publishers create and promote guidelines. The ultimate solution is to make them official.

Countries use alphanumeric systems to classify legal documents. Their workable form often reduces the need for short names and abbreviations. In addition to printed gazettes, electronic information systems have gradually replaced them in practice. In some countries, governments are involved in this computerisation. This change has led to parallel computerised numbering and abbreviations. The European Union, too, has developed a system of numbering legal documents[9]. Its computerised version is the CELEX number[10], which was also retained when its legal database was opened to the worldwide public and renamed EUR-Lex.

The European Union, on the other hand, is hesitant to make acronyms and abbreviations official, arguing that numerical designations are sufficient. We assume that their multiple sets would be impractical, while their uniformity requires a sensitive choice between EU languages. It is not surprising that abbreviations arise spontaneously and imitate domestic practice. English abbreviations such as GDPR proliferate in other languages, confirming the dominance of this language in international discourse[11].

The establishing of short names by EU lawmakers is random. EU guidelines discourage from their use.[12] Unsurprisingly, short names for EU legal documents appear spontaneously in the international and domestic discourse. We agree with Vagelis Papakostantinou's support of this approach as beneficial to the general public's familiarity with EU standards[13].

Still, we focus on nouns in these short names. So let us complete their overview. There is already a tradition of using the word *codes* in short and full titles for important regulations: the Schengen Borders Code[14], the Visa Code[15] and the (Community/Union) Customs Code[16]. Surprisingly, directives have also introduced 'codes' for human[17] and vet-

9 For the recent rules, see European Commission, Interinstitutional Style Guide, 1.2.2, namely the change adopted since 2015 – Harmonising the numbering of EU legal acts.

10 For the recent standard, see Publications Office, How CELEX numbers are composed, version 2021_01 26. 1. https://eur-lexeuropa.eu/content/tools/HowCelexNumbersAreComposed.pdf [cit. 20. 6. 2021].

11 In the author's Czechia, contrary to the national-language abbreviations such as DSVO (Datenschutzvorordnung) in Germany or RODO (rozporządzenie o ochronie danych osobowych) in Poland.

12 Joint Practical Guide, 8.4–8.5, cited also by Papakonstantinou (below).

13 See PAPAKONSTANTINOU, V. The "act-ification" of EU law: the (long-overdue) move towards "eponymous". *EU Legislation* [online]. 26. 1. 2021, European Law Blog – News and comments on EU law.

14 Regulation 2016/399 of the European Parliament and of the Council (…) on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

15 Regulation (EC) 810/2009 of the European Parliament and of the Council (…) establishing the Community Code on Visas (Visa Code).

16 Regulation (EU) No 952/2013 of the European Parliament and of the Council (…) laying down the Union Customs Code (recast), Regulation (EC) No 450/2008 (…) laying down the Community Customs Code (Modernised CC), replacing Regulation (EEC) No 2913/92 (…) establishing the Community Customs Code.

17 Directive 2001/83/EC of the European Parliament and of the Council (…) on the Community code relating to medicinal products for human use.

erinary pharmaceuticals[18]. It may be argued that harmonised national laws have materialised them. Paradoxically, the EU lawmakers abandoned the term when transforming the second directive into a regulation, even though it provided a detailed unified framework that deserves the designation of code more.[19]

The founding treaties do not mention "codes". If we considered such terminological creativity suitable, this noun would raise no doubts. "Acts" officially denote secondary law[20]. However, "laws" are sensitive because their introduction in the supranational settings failed.

Various attitudes to these nouns, especially to "law", are thus possible: from rejecting them as illegitimate and criticising them as inappropriate, to recognizing them as feasible and embracing them as desirable. Nonetheless, inattention prevails as the phenomenon is quite sporadic. It is a pity because it indicates one problem of the EU law the solution of which failed: inadequate terminology.

This introductory chapter concludes with a practical observation. Directives mention Member States' laws because they harmonise them, but this reference is also common in regulations and decisions, either in general or in sectoral terms, sometimes already in their titles[21]. However, the existence of national laws in both senses, as explained later, is not controversial.

2 Considering the EU Multilingualism

The first chapter may have given the impression that language is a given fact. The opposite is true, as the European Union is multilingual. We cannot ignore other language versions of the nouns mentioned. Therefore, let us recapitulate the reality and principles of the EU's legal multilingualism.

The founding treaties list authentic languages[22]. The Language Regulation stipulates them for secondary law, parliamentary deliberations and administrative and judicial proceedings[23].

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18 Directive 2001/82/EC of the European Parliament and of the Council (…) on the Community code relating to veterinary medicinal products.

19 Regulation (EU) 2019/6 of the European Parliament and of the Council (…) on veterinary medicinal products (…). Perhaps, the drafters avoided "Code" because *codes* serve for the identification and tracking of pharmaceuticals.

20 Chapter 2 *Legal acts of the Union*, *adoption procedures and other provisions* and its Section 1 *The Legal Acts of the Union*, Art. 288 TFEU.

21 An example among many, the Directive 2014/40/EU of the European Parliament and of the Council (…) on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products (…).

22 Art. 55 (1) TEU: *"Treaty, drawn up in a single original in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic…"*

23 Regulation 1/58 determining the languages to be used by the European Economic Community, as amended after the enlargements adding new languages. Can we explain the misleading title – the EC has not existed since 2009, losing the adjective "economic" in 1993 – as inattention? The European Union may retain it for piety. The list of languages is the same as in the treaty cited above, with specific arrangements regarding several of them.

Silence about any hierarchy of languages implies their equality. This principle results in expectation of comparing all versions. Not surprisingly, this multilingualism is challenging. Even the Court of Justice, where judges and staff speak all EU languages, rarely mentions consulting several language versions. Translators usually choose the best words. A meaningful comparison requires a deep understanding of terms and consideration of nuances.

Observers identify English, French and German as *de facto* working languages[24]. Not surprisingly, these are the main foreign languages taught in European schools. The hierarchy of *major* and *minor* languages is reflected in one asymmetrical comparison – an Estonian lawyer examines the English version, not the other way around.

English dominates communication between businesspeople, professionals, scientists and tourists around the world. According to Abram de Swaan, English has become the first and (by definition) only hyper-central language[25]. The European Union is no exception, as English has become its main internal language. The only significant exception is French at the Court of Justice. It also dominates law-making. Translation figures show that it has become the dominant source language[26]. Brexit has not reversed this trend. On the contrary, its subsequent neutrality has become another argument for favouring it[27].

In this article, written for the international readership, the use of English terminology is a matter of course. However, a careful terminological check requires a comparison of equivalents.

Translating the word *act* itself seems intriguing. First of all, there is no uniformity in the cases listed. The translators are divided into three groups. The first group used their equivalents based primarily on the etymology derived from Latin[28]. The second group, however, insisted on regulation[29].And the third group resorted to the "word" discussed later[30].

The translation of *law* in "European Climate Law" deserves our utmost attention. We presume that the negotiations took place in English and English was the original for translations in the other languages. Many versions followed (German *Gesetz*, French *loi*, Bulgarian *закон*,

24 Among others, see M. Gazzola, Managing Multilingualism in the European Union: language policy evaluation for the European Parliament. *Language Policy* (2006) 393-417, 397.

25 SWAAN, A. de. *Words of the World: The Global Language System*. Polity, 2002.

26 For recent figures, see EUROPEAN COMMISSION. *Translation in figures*. 2022, p. 7, 2,541,294 of 2,767,078 pages were translated from English to other languages in 2021, thus exceeding 90% of all the source documents. If we consider documents originating in non-English-speaking countries, the documents resulting from the all-EU negotiations may be almost entirely in English.

27 BAAIJ, J. *Legal Integration and Language Diversity. Rethinking Translation in EU Lawmaking* (Oxford: Oxford University Press: 2018. DOI: https://doi.org/10.1093/oso/9780190680787.001.0001), see also KUŻELEWSKA, E. *Quo Vadis* English? The Post-Brexit Position of English as a Working Language of the EU. *International Journal of Semiotics and Law*. 2021, pp. 1417–1432. DOI: https://doi.org/10.1007/s11196-020-09782-x

28 Bulgarian акт, Czech *akt*, German *Rechtsakt*, Greek *πράξη*, Irish *an Gníomh*, Croatian *akt*, Latvian *akts*, Lithuanian *aktas*, Hungarian *jogszabály*, Maltese *l-att*, Polish *akt*, Slovak *akt*, Slovene *akt*, Swedish (-)*akten* in the Cybersecurity Act (above).

29 French *reglement*, Spanish *reglamento*, Danish *forordningen*, Dutch (-)*verordening*, Estonian *määrus*, Italian *regolamento*, Portuguese *regulamento*, Romanian *regulamentul*, Finish (-)*asetus*.

30 German Daten*gesetz*, Spanish *Ley* de Datos, Romanian *Legea* privind datele, perhaps Finnish data*säädös*.

Croatian *zakon*, Danish *lov*, Portuguese *lei*, Romanian *legea*, Dutch *wet*, Swedish *lag*, Finnish *laki*)[31]. However, other translators had a different opinion. They have resorted to various alternatives (Italian *normativa*, Spanish *legislativa*, Slovenian *pravila*[32]), including denoting law in its entirety (Polish *prawo*[33]) as the second meaning of the word 'law', which will be discussed later, creating descriptions (Czech *právní rámec*, Slovak *právný rámec*[34]), or preferred '(legal) act' (Latvian *akts*, Lithuanian *teises aktas*[35]). In contrast to various nouns in most versions, the remaining translators repeated the word regulation (Estonian *määrus*, Hungarian *rendelete*).[36] We should also be cautious about nuances in languages belonging to smaller language branches and families (Greek *νομοθέτημα*, Irish (Gaelic) *an dlí*, Maltese *il-liġi*).[37]

This fascinating divergence does not reflect linguistic constraints. Several translators dared to use the "word", but others sought alternatives. The preparatory documents do not indicate that this choice was debated by any circle, council or institution, let alone specific translations. We can only speculate whether translators discussed this phenomenon – within their language sections or among themselves. Comparing the approved text with the drafts suggests at least that several translators changed their minds.[38]

As mentioned above, the Animal Health Act preceded the ECL. Its translation was even less consistent. Seven versions contain the "word", but the translators into French and German avoided it[39]. The adjective "European" is missing, reminding us less of the failed terminology. Finally, this regulation has less political significance than the ECL. It has hardly been noticed by EU legal scholars.

The European Communities and the European Union were established or joined by *states/nations*. Terminologies thus primarily reflect national phenomena. The equivalents in EU terminology should have the same meanings. EU translation services have created

31 German Europäisches Klima*gesetz*, French *loi* européenne sur le climat, Bulgarian Европейски закон за климата, Croatian Europski *zakon* o klimi, Danish den europæiske klima*lov*, Portuguese *Lei* europeia em matéria de clima, Romanian *Legea* europeană a climei, Dutch Europese klimaat*wet*, Swedish, europeisk klimat*lag*, Finnish eurooppalainen ilmasto*laki*.

32 Italian *Normativa* europea sul clima, instead of *legge*, Spanish *Legislación* europea sobre el clima instead of *ley*, Slovenian evropska podnebna *pravila*, i.e. rules, instead of *zakon*.

33 Polish Europejskie *prawo* o klimacie, if the word stands for Recht or Droit. Nonetheless, the word stands also for some codifications, (generally *kodeks*: for example, kodeks ciwilny) such as Dz.U. 2017 Poz. 1566 *Ustawa* z dnia 20 lipca 2017 r. *Prawo wodne*, i.e. Gesetz Wasserrecht.

34 Czech evropský *právní rámec* pro klima, i.e. legal framework, and Slovak európsky *právny predpis* v oblasti klímy, i.e. legal act, avoiding *zákon* in both languages, an equivalent to *Gesetz/loi*.

35 Latvian Eiropas klimata *akts* and Lithuanian Europos klimato *teisės aktas*, with the adjective "legal".

36 Estonian: Euroopa kliima*määrus* stands for regulation, while *seadus* stands for *Gesetz/loi*, Hungarian európai klíma*rendelet*, if *rendelete* is regulation, while *törvény* is *Gesetz/loi*.

37 Irish *An Dlí* Aeráide Eorpach, and Greek "ευρωπαϊκό νομοθέτημα για το κλίμα. Νομοθέτημα builds on νόμος and translates as "legislative act". Maltese *il-liġi* resembles Italian *la legge*, which is not used here.

38 See the proposal COM (2020) 80 final 2020/0036(COD), 4/3/2020. Four translators abandoned "the word": Spanish *Ley* de Clima Europea, Estonian Euroopa Kliima*seadus*, Greek ευρωπαϊκός *νόμος* για το κλίμα and Italian *Legge* europea sul klima, while two used it, thus abandoning descriptions: Bulgarian Европейски *законодателен акт* за климата (legislative act), and Croatian *Europski propis o klimi* ("Vorschrift").

39 Danish dyresundheds*loven*, Greek *νόμος* για την υγεία των ζώων, Croatian *Zakon* o zdravlju životinja, Maltese *Liġi* dwar is-Saħħa tal-Annimali, Portuguese *Lei* da Saúde Animal, Romanian *Legea* privind sănătatea animală and Swedish djurhälso*lag*, but French *législation* sur la santé animale and German Tiergesundheits*recht*.

thesauri such as EuroVoc. Not surprisingly, the equivalents thus specified sometimes deviate from the original concept. An autonomous terminology[40] is an aspect of the autonomy of EU law[41].

The differentiation identified in the short title of ECL falls short of the desirable coherence. Nonetheless, the equivalents used in several other languages, including French *la loi* and German *das Gesetz*, resemble, even more than English, the terminology envisaged by the Treaty establishing a Constitution for Europe.

3 The Failed Statist Terminology Twenty Years Ago

The Treaty establishing a Constitution for Europe, signed in October 2004, switched to the statist terminology with the word *Constitution*. The consequence for secondary law was replacing regulations with *European laws* and directives with *European framework laws*[42]. The Constitutional Treaty also provided for non-legislative regulations and decisions[43].

The negative results of the referenda in France and the Netherlands stopped the project. The reform coincided with the EU's Eastern Enlargement and the fatigue associated with this event was understandable. Federalist tendencies regarding EU law also played a role. The Constitutional Treaty included an explicit provision on the primacy of the EU law.[44]

We should also consider the impact of the statist terminology. "Constitution" is a term associated with states, as it refers to their founding document[45]. It is not surprising that politicians, journalists, students and other discussants shorten it as 'Constitution', sometimes adding the prefix 'Euro-' or saying 'Constitutional Treaty', which we prefer as more accurate.

The official title "Treaty establishing a Constitution for Europe" sounded unusual. The equating of the Union with Europe could have been seen as megalomaniac. Yet the title

40 Among others, TAYLOR, S. The European Union and National Legal Languges: An Awkward Partnership? *Revue francaise de linguistique appliquée*, 2011, pp. 105–118. DOI: https://doi.org/10.3917/rfla.161.0105, addressing language peculiarities of English and French.

41 For recent reflections, see ECKES, Ch. The autonomy of the EU legal order. Collection of Reflection Essays on Opinion 1/17. *Europe and the World: A law review*. 2020, Vol. 4, no. 1. DOI: https://doi.org/10.14324/111.444.ewlj.2019.19, OBERG, M.-L. Autonomy of the EU Legal Order: A Concept in Need of Revision? *European Public Law*. 2020, pp. 705–740. DOI: https://doi.org/10.54648/EURO2020061

42 Article I-33: *"… A European law shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all Member States. A European framework law shall be a legislative act binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods."*

43 Article I-37(4): *"Union implementing acts shall take the form of European implementing regulations or European implementing decisions."*

44 Article I-6 *"The Constitution and law adopted by the institutions of the Union in exercising competences conferred on it shall have primacy over the law of the Member States"*, an analysis by KUMM, M., FERRERES COMELLA, V. The primacy clause of the constitutional treaty and the future of constitutional conflict in the European Union. *International Journal of Constitutional Law*. 2003, pp. 473–492. DOI: https://doi.org/10.1093/icon/moi029

45 Despite its use in the founding treaties of international organisations which do not strive for becoming federations: the International Labour Organisation (agreed upon in 1919, amended in 1922, coming into force in 1934) and the World Health Organisation (1946, 1948).

captured the change quite well. The Member States wanted a document referred to as a constitution to be issued by an international treaty. And this failed because of being the latter.

Fifteen years later, a meta-analysis of political scientists' observations was carried out examining whether the terminology contributed to the failure because people disliked an eventual federalization[46], and an analysis of legal scholars' reflections on its appropriateness was made.[47]

We do not identify any impact of the change on secondary law. Even EU law scholars barely remember that regulations were to be replaced by *European laws* and directives by *European framework laws*. Recent textbooks, commentaries, and monographs[48] mention it as a brief episode or ignore it altogether[49]. Even the most voluminous works only briefly outline the then reasons and problems[50].

As expected, the Constitutional Treaty provided for the continuity of the existing acts[51]. However, no provision expected a comprehensive renaming of the existing regulations and directives. Twenty years later, we could only speculate how this terminological reform would have been materialised. It would have been inconsistent to amend European (framework) laws without renaming the original ones. On the contrary, a revision would trigger substantial changes, often sensitive ones.

The Lisbon Treaty was an attempt to retain the substance of the Constitutional Treaty. Changes regarded as desirable for steering the enlarged European Union had priority. Indeed, the Lisbon Treaty reduced the challenging unanimity requirements in the Council and expanded the powers of the European Parliament.

Therefore, Member States – i.e., their politicians, advised by officials and experts – avoided any national symbols, including terminology[52]. Even the word "Reform" in the title, which sufficiently captures the essence, sounded risky. In the end, "Lisbon" has become an exclusive

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46 LAURSEN, F. *The rise and fall of the EU's constitutional treaty*. Leiden: Martinus Nijhoff Publishers, 2008. DOI: https://doi.org/10.1163/ej.9789004168060.i-560

47 BARBER, N. W., CAHILL, M., EKINS, R. *The rise and fall of the European constitution*. Oxford: Hart, 2008.

48 PIRISS, J. C. *The Lisbon Treaty*. Cambridge: Cambridge University Press, 2010, pp. 93–94. *"In contrast to the Lisbon Treaty under the European Constitution is should not have been the legislative procedure, but the denomination of the legal act as 'European law' or 'European framework law' which would have been decisive".*

49 KELLERBAUER, M., KLAMMERT, M., TOMKIN, J. (eds.). *EU Treaties and the Charter of Fundamental Rights. A commentary on Art. 288*. Oxford University Press, 2019, p. 1897. DOI: https://doi.org/10.1093/oso/9780198794561.001.0001, does not mention European (framework) laws.

50 CALLIES, C., RUFFERT, M. (eds.). *EUV AEUV mit Europäischer Grundrechtecharta. Kommentar*. 5. ed. München: C. H. Beck, 2016, pp. 2437–2438.

51 Art. IV-438(3): *"The acts of the institutions, bodies, offices and agencies adopted on the basis of the treaties and acts repealed by Art IV-437 shall remain in force. Their legal effects shall be preserved until those acts are repealed, annulled or amended in implementation of this Treaty…"*

52 BAST, J. New Categories of Acts After the Lisbon Reform: Dynamics of Parliamentarization in the EU. *Common Mkt. L. Rev.* 2012, pp. 885–927, p. 49. DOI: https://doi.org/10.54648/COLA2012034. *"However, when the political decision was made to save the substance of the failed Constitution by removing the language of constitutionalism, the concept of 'laws' almost naturally fell foul of the semantic demobilization."*, citing also CRAIG, P. *The Lisbon Treaty*. Oxford University Press, 2011. DOI: https://doi.org/10.1093/acprof:oso/9780199595013.001.0001

official designation[53]. Primacy was also recognized hesitantly. Member States confirmed this with a declaration[54] of a peculiar style: "Our in-house counsel reminds us about…"[55]

The Lisbon Treaty thus retained the terminology of secondary law that originated half a century ago. It did it in the Treaty on the Functioning of the European Union, which is the longer and more detailed one of the two treaties. According to its Article 288, there are five instruments, as the "founding fathers" called them: regulations, directives, decisions, recommendations, and opinions. The only change was the redefinition of decisions. The reform consisted mainly in stabilising the implementing and delegated acts.

Regulations, directives, and decisions adopted jointly by the European Parliament and the Council under the ordinary legislative procedure are *legislative acts*. This classification has retained some of the ambitions of the Constitutional Treaty[56].

References to legislative regulations, directives, or decisions can be made in official documents and academic papers. However, this is a complex vocabulary not accessible to the general public. It is not surprising that such a result has not aroused much enthusiasm.[57]

By the way, the categorisation was imperfect. Some acts did not fit the categories, and careful observers proposed labelling them "innominate" acts[58] while the EUR-Lex statistics classify them imprecisely as "other legislative".

4 The Recent Crises, Planned Reforms and Terminology of Secondary Law

There was a consensus when the *European (framework) laws* emerged at the Convention on the Future of Europe (2001–2003). Some EU legal scholars regarded the terminology a 'mild earthquake'[59]. Nevertheless, they welcomed it as a confirmation of the features

53 The full title: The Treaty of Lisbon amending the Treaty on the European Union and the Treaty Establishing the European Community.

54 Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon – Declarations concerning treaties, Declaration 17 concerning primacy.

55 See CALLIES, RUFFERT, 2016, op. cit., p. 489.

56 Art. 289 TFEU. Let us, however, consider other language versions, for example the German one: *Gesetzgebungsakte* are closer to *Europäischen (Rahmen)gesetze* than latinisation in other versions.

57 BEST, E. Legislative Procedures after Lisbon: Fewer, Simpler, Clearer? *Maastricht Journal of European and Comparative Law*. 2008, Vol. 15, no. 1, pp. 85 an. DOI: https://doi.org/10.1177/1023263X0701500109

58 SVOBODOVÁ, M. On the Concept of Legislative Acts in the European Union Law. *Charles University in Prague Faculty of Law Research Paper*. 2016, No. II/1. DOI: https://doi.org/10.2139/ssrn.2855190

59 HOFMANN, A. A Critical Analysis of the New Typology of Acts in the Draft Treaty Establishing a Constitution of Europe. *European Integration Online Papers*. 2003, no. 9, LENAERTS, K., DESOMER, M. Towards a Hierarchy of Legal Acts in the European Union? Simplification of Legal Instruments and Procedures. *European Law Journal*. 2005, p. 744. DOI: https://doi.org/10.1111/j.1468-0386.2005.00285.x

of secondary law as it has developed[60]. We have found no arguments against it. The consensus on this issue was tacit.

We should regret the retreat from the Lisbon Treaty under these conditions. The acts and law(s) in short titles of recently adopted and proposed regulations encourage us to consider the revival of this terminology as primary law is intended to be reformed.

Such a reform would undoubtedly be difficult. The "Lisbon" version of primary law – two inseparable treaties plus the Charter of Fundamental Rights, elevated to their prominent position – has been in force for thirteen years now. The hectic reforms of previous decades are now history. Unfortunately, this is not stability, but a stalemate brought about by crises.

The European project has always been accompanied by peculiar blues tunes[61]. However, in the last two decades, crises cumulated and escalated. Entire treatises of 'Euro-crises' appeared in the last decade[62]. They can only be listed[63] here: public (and private) indebtedness requiring bailouts and ultimately threatening the euro as a single currency, immigration causing strain on the asylum system, weak foreign and security policies, and a shattered rule of law in some member states with revolts against the European Union. With Brexit, one influential member state left the club. The COVID-19 pandemic triggered a temporary disintegration with the closure of borders, exposing the limits of solidarity. Dealing with the climate change will require long-term and unprecedented measures. Russia's aggression in Ukraine has forced pacifists to engage in military issues.

Unsurprisingly, these crises, the policies responding to them, and the relevant legislation are analysed in a number of articles. However, one generalisation may be made and may come in handy. Disagreements among nations and their elites mark these events and possible remedies. Supranational politics is unable to resolve these contradictions, which many countries struggle to resolve internally. The absence of European *demos* as a precondition for the federalization can be found in many reflections. People lack a single language – metaphorically and literally. The ensuing democratic deficit is the subject of recurrent debates among experts, philosophers, journalists, and politicians.

Supporters of further integration call for expanded competences, adjusted procedures, and reshaped institutions. In particular, they call for a reduction of unanimity, which is seen as an obstacle to decision-making. For them, *more Europe* continues to be a universal remedy. Others, however, oppose these changes. National and EU politicians can only pay

60 Among others ZILLER, J. Separation of powers in the European Union's intertwined system of government a treaty based analysis for the use of political scientists and constitutional lawyers. *Il Politico*. 2008, pp. 133–179, p. 144: *"There is hardly any doubt that it has been the European Convention's merit to start calling a spade a spade, and a law a law*. […] *The Treaty* […] *has therefore replaced the designations used since the Rome treaties, i.e. regulations and directives, by European laws and European framework laws."*

61 MARTINI, S. Standing before the second Lisbon decade. The Legal Discourse on the Future of European Integration. *Europa-Kollega Hamburg Discussion Paper*. 2020, Vol. 05, no. 2, citing WEILER, J. *The European Community in Change: Exit, Voice and Loyalty*. 1987, p. 18.

62 RIDDERVOLD, M., TRONDAL, J., NEWSOME, A. (eds.). *The Palgrave Handbook of EU Crises*. Palgrave MacMillan, 2021. DOI: https://doi.org/10.1007/978-3-030-51791-5

63 A similar list can be found in WEBBER, D. *European disintegration? The politics of crisis in the European Union*. London; New York: Red Globe Press, 2018.

occasional and limited attention during the ongoing crises. The European Commission has recognised this situation by outlining several divergent scenarios[64]. Citizens' involvement in the Conference on the Future of Europe has given rise to mixed feelings, including helplessness from and distrust to the existing institutions[65].

Another effort would be to reflect on the fundamentals of supranational law and consider their possible improvement – including terminology[66]. This reflection is a task for legal scholars and lawyers in practice. Politicians, journalists, and social scientists cannot replace them. Unsurprisingly, the Conference on the future of Europe did not even touch on legal instruments beyond mentioning the symbol-laden *Constitution*[67].

Such consideration would be challenging. A comparative view shows that legal systems are stable in terms of their basic features. German law, for example, has existed as a model since the 19th century, despite the profound political, economic, and social changes in Germany. Even the necessary reflection of Nazism did not alter the fundaments of German law. Similarly, some aspects of communist laws have persisted decades after the regime collapse, and their demise is not in sight[68]. European law also has its own methods of interpretation, specific education, and research, and we may perceive a particular integrationist ethos in it[69].

Arguing for a terminological reform of secondary law is not easy. The literature addressing the Treaty establishing a Constitution for Europe and its failure is not helpful, either. Indeed, there was a consensus about this terminology twenty years ago. Nobody campaigned for this issue after its defeat. Legal scholars did not write any treatises. In general, there is little interest in the EU law terminology.

5 National Laws, their Hierarchy and Related Terminology

Equating EU regulations and directives, i.e., legislative acts, with national laws requires understanding the notions of (a) *law*, *act*, *statute*, and *code*, from a comparative viewpoint.

German comparativist Uwe Kischel emphasizes in his treatise that "statutes" form a primary source of law in the Continental (civil) law countries. Their entirety even equals the law as a system[70]. Statutes in common law countries may have a different role. Undoubtedly,

64 White Paper on the Future of Europe. Reflections and scenarios for the EU27 (the United Kingdom excluded). *European Commission* [online]. 1. 3. 2017.

65 For an excellent first-time analysis of the features of the Conference, its reflection and criticism, see BLOKKER, P. Experimenting with European Democracy: Citizen-driven Treaty Change and the Conference on the Future of Europe. *VerfassungsBlog* [online]. 21. 6. 2022. Available at: https://verfassungsblog.de/experimenting-with-european-democracy/

66 See the author's reflection two years ago "Unfortunately, there is nadir for any terminological change." (KŘEPELKA, 2021, op. cit., p. 804).

67 Full-text search of the 336 pages-long *Report of the Final Outcome of the Conference on the Future of Europe* published on 9 May 2022 with keywords "Directive", "Regulation", "European law", and "European framework law". The EU Constitution will be mentioned below.

68 KISCHEL, U. *Rechtsvergleichung.* C. H. Beck, 2015, p. 571–594, explaining laws in *Osteuropa*, and the author's own experience.

69 KISCHEL, 2015, op. cit., pp. 956–962, distinguishing EU law romantics, sceptics and technicians.

70 See KISCHEL, 2015, op. cit., pp. 392.

many of them express policies as their Continental counterparts, but others regulate law based on customs and judgments. As sources of law, statutes exist besides rules distilled from judgments, deserving the designation "case law", which is controversial if used in the Continental jurisprudence.[71]

These statues have been dealt with extensively by Kischel[72]. Countries have constitutions, laws/acts/statutes adopted by parliaments, differentiated into subcategories in some countries, various instruments adopted by executive authorities, and by-laws adopted by local governments. It may be noted that depicting these three or four levels in a pyramid is a usual visualisation.

Comparing Kischel's German original and the English translation indicates a tricky translation of *(das) Gesetz*. The author and his translator preferred *statute* to *law* and *act*.[73] Their choice deserves attention because *law* prevails in English translations of the titles of statutes of non-English countries. The official long and short titles of British and American laws use the word *act*.

Zákon in the author's native Czech is an unequivocal equivalent to the German *das Gesetz* because the Czech (Czechoslovak) legal terminology followed the Austrian-German one at the time of the Habsburg monarchy. They correspond with the French word *loi* and its equivalents in other languages. Embracing a broad notion of statutes as *materielle Gesetze*, Kischel's treatise avoided translating terms for instruments specific to particular countries.

We also encounter another linguistic ambiguity. While writing about statutes in their entirety or as a phenomenon, statutory law is a good term. Nevertheless, this English expression has also another meaning. It denotes a legal system of particular countries, fields/disciplines, or a phenomenon worldwide. People mention Afghan or Zimbabwean law, differentiate civil, administrative and criminal law, explain specifics of EU law, and distinguish law from morals. Young people study law, while professors lecture on law. In other languages there exist other terms for this phenomenon: German *Recht*, French *droit*, Latin *ius* and Czech *právo*.[74] Perhaps the authors of the ECL original envisaged that and the above-mentioned Polish translation is the best one, while the French, German and other versions are erroneous.

Before starting to lament this ambiguity, it is good to consider the double meaning of these words in some languages as either a system or entitlement distinguished as *objektives* and *subjektives Recht* in German legal theory. English has an unequivocal term for the latter using the word *right*. One need not be a linguist to match it with German *Recht*. The centuries-long development has resulted in many terminological nuances like that.

71 See KISCHEL, U., HAMMEL, A. (translator) *Comparative Law*. Oxford University Press, 2019, p. 890. DOI: https://doi.org/10.1093/oso/9780198791355.001.0001, and compare it with the German original cited in the previous footnote.

72 KISCHEL, 2015, op. cit., pp. 395–298.

73 See KISCHEL, 2019, op. cit., pp. 364–367, namely his remark on translatability (367), confirmed also in a discussion with the author in Greifswald in June 2019.

74 FLETCHER, G. P. In Honour of "Ius" et "Lex". Some Thoughts on Speaking about Law. Lecture in honour of Leon Petrażycki Inauguration of "Ius et Lex". *Legal Magazine*. 2001. Available at: https://iusetlex.pl/pdf/fletcher.pdf [cit. 20. 6. 2021].

Let us complete this comparison with *codes*. Indeed, codification is an idea, method, and essence of the Continental law.[75] Its lawmakers generalise and systematise. Yet, countries differ in labelling particular statutes as codes. In some countries, they call all of them codes if they do not consider their entire statutory law as a single code. Other countries reserve the term for prominent statutes.

Hierarchies of statutes (in the broad sense mentioned above) exist in both civil and common law countries. Not surprisingly, the terminology reflects specific instruments and their national specificities. Their translation is therefore tricky. Remarkable differences exist even between countries that share the same language.[76]

Nonetheless, most national nomenclatures draw on distinct nouns: constitutions, statutes adopted by parliaments and regulations, decrees, and edicts adopted by the executive branch. The latter even gained a general label of *statutory instruments* in British terminology.[77] Local governments enact by-laws or ordinances. It may be expected that even lay people understand these categories, realise their hierarchy, and differentiate their legitimacy.

Mentioning (national) laws and regulations in the English version of the EU regulations and directives – in some cases also in their titles – indicates the knowledge of these differences. Other language versions resort to descriptions.[78]

Many languages use the "word" outside legalese. Several meanings may result from various semantic shifts.[79] Nonetheless, the following second meaning is hardly a coincidence. *Scientific laws* are *"Universal principles that describe the fundamental nature of something, the universal properties and the relationships between things or a description that purports to explain these principles and relationships,"*[80] similarly as *Naturgesetze* in German, *lois scientifiques* in French and similar terms in other languages.

Regarding "legal" laws, people perceive them as a legitimate expression of peoples' will by their representatives. These representatives *establish* rules, as the etymology of Latin *statutum*, its equivalent in German *das Gesetz* (also old English *gesetnes*) or Polish *ustawa* indicate.[81]

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75 This effort lies in the mindset of lawyers, law-makers and scholars from civil law countries. For recent collective reflection of *Kodifikationsgedanke*, see KOCH, A., ROSSI, M. (eds.). Kodifikation in Europa. *Ausburger Studien zum Internationalen Recht. Band 10*. Peter Lang, 2012. DOI: https://doi.org/10.3726/978-3-653-02085-4, and KISCHEL, 2015, op. cit., pp. 405–421.

76 *Verordnung* (VO) in Germany, Austria, and Switzerland. Parliamentary and judicial *Verordnungen* exist in Switzerland. We may note that *Bundesgesetze* can be subject of direct democracy.

77 It is delegated legislation with principles outlined in the Statutory Instruments Act (1846), empowering ministers and agencies, specifying parliamentary control, and enabling devolution.

78 Let us compare a typical formulation in the English version of Art. 40 Directive 2004/38/EC on the rights of the citizens of the Union and their family members to move and reside freely within the territory of the Member States: "Member States shall bring into force *the laws, regulations and administrative provisions*" with German: *Rechts- und Verwaltungsvorschriften*, French: *les dispositions législatives, réglementaires et administratives*, or Polish: *przepisy ustawodawcze, wykonawcze i administracyjne*.

79 Czech and Slovak use the noun *zákon* (avoided in both versions of the ECL) for the Old Testament and the New Testament. Theologians and linguists agree on its inappropriateness in both languages.

80 Exceptionally resorting to the article "Scientific law" in English Wikipedia.

81 (German) Mittelhochdeutsch *gesetze*, *gesetzede*, althochdeutsch *gisezzida*, eigentlich = Festsetzung, zu setzen, see at: http://www.duden.de [cit. 20. 6. 2021].

Based on a sound understanding of things, laws deserve this designation. Under these conditions, they are capable to oblige people, this being the origin of the Latin *lex*.[82] Laws should stabilise the society, as the archaic root of *zákon* in many Slavic languages indicates.[83]

We find the "word" in symbolic settings as in the legendary *Symonides epitaph*, among others, remembering Greeks who succumbed in the Battle of Thermopylae,[84] or in the Belgian anthem *Brabançonne*.[85] Perhaps, other nations also have famous quotations using the "word" in literature, theatre and film, as the Czechs have – "Se mnou přijde zákon!" ("The Law will come with me!") in the iconic parody of Western films entitled *Limonádový Joe* ("Lemonade Joe").[86]

On the contrary, regulations indicate authority, power, and dominance. Someone regulates others. Regulations should not be arbitrary, as its Latin etymology[87] suggests. Yet, the term denotes rules prescribed by the executive branch, including monarchs and authoritarians. The risk of arbitrariness is then apparent. Unsurprisingly, we can hardly imagine this word in a symbolic context, especially when people today do not applaud obedience. Similarly, this term in science hints at processes or mechanisms in which some phenomenon determines results.[88]

6 Comparing the Proposed and Existing Terminology

Kischel suggests that *transnational* legal systems also deserve a comparative perspective.[89] European law – including that of the Council of Europe, specifically the European Convention on Human Rights, which the European Court of Human Rights interprets – is Continental. Kischel showed – before the 2016 Brexit referendum – an understanding of British reluctance to EU law.[90] The reality seems to be more complex, touched upon in his reflections on the convergence of Anglo-American and Continental law and the inattention to secondary law the terminology of which we are discussing. Its insurmountable number and the need to take the related national laws into account may also play role.[91]

One may even perceive some indifference to secondary law. EU legal scholars focus on the founding treaties and the Convention as both European courts interpret them. This

82 See the KACZYŃSKA, E. The Indo-European origin of Latin lex. *Habis*. 2013, pp. 7–14.

83 Old Slavonic language *законъ* allegedly reflects order of things since the beginnings Původ slova zákon. *Český etymologický slovník online* [online]. Available at: http://www.ceso.cz [cit. 20. 6. 2021].

84 Old Greek *ὦ ξεῖν', ἀγγέλλειν Λακεδαιμονίοις ὅτι τῇδε κείμεθα, τοῖς κείνων πειθόμενοι νομίμοις*, French translation by LEGRAND, P.-E. *Étranger, va dire à Lacédémone que nous gisons ici par obéissance à ses lois*.

85 In its original French version: *"… Aura pour devise immortelle: Le Roi,* la Loi*, la Liberté!"*

86 For the plot, cast and reception, see Limonádový Joe aneb koňská opera. *Internet Movie Database* [online]. Available at: https://www.imdb.com/title/tt0058275/?ref_=nv_sr_srsg_0 [cit. 15. 10. 2022]. One may enjoy the quotation with English subtitles at: https://www.youtube.com/watch?v=Z7dqeHb8mrA

87 *Regula*: straight stick, bar, ruler, see https://www.etymonline.com/word/rule [cit. 20. 6. 2022].

88 For example, "Regulation of gene expression" as mechanisms for the production of RNA or proteins.

89 KISCHEL, 2015, op. cit., pp. 945.

90 KISCHEL, 2015, op. cit., pp. 960–961.

91 KISCHEL, 2015, op. cit., pp. 666–678 (convergence) and 968 (secondary law).

approach resembles that in the United States of America, where prominent scholars focus on federal constitutional law as interpreted by the Supreme Court.[92]

Perhaps, this indifference explains little interest in the terminology of the instruments. Additionally, the above explained double meaning of "law" in English may obscure the issue in prestigious scholarly literature written in this language.

However, regulations and directives are – in Kischel's approach – *EU statutes*, whether direct or indirect, despite all the specificities of the European Union and its law. Regulations, directives and (several) decisions[93], which are jointly adopted by the European Parliament as a directly elected body and the Council under the ordinary legislative procedure, are statutes in a narrower sense of the word.[94]

How can we explain the essence of these legislative regulations and directives to lay people? We could say that they are laws or framework laws. The terminology of the failed reform is their simplest explanation.

International treaties are the EU primary law. These treaties play an important role in shaping economic integration. Secondary law, on the other hand, consists of acts adopted by the EU institutions. The establishment of direct effect and primacy of EU law over national law was a kind of constitutionalisation.[95]

Despite the well-known specificities, there is a hierarchy in EU law as well as in national law. The distinction between *primary* and *secondary law* is well-known, but *tertiary law* can also be considered. Some scholars would hesitate with it. Nevertheless, this ordinal number seems acceptable in the end. Even the Commission occasionally mentions it.[96] *Tertiary law* has even made its way into textbooks as comprehensible.[97] There are mechanisms to restore consistency between the subordinate instruments and the superordinate ones.[98]

This makes EU law look more like national law than international law, made up of many treaties without a similar hierarchy. Moreover, the need to use adjectives (delegated and implementing as binding, legislative, non-legislative, etc.) to distinguish secondary and tertiary law makes the situation even more confusing. It would be preferable to distinguish them using nouns.

92 KISCHEL, 2015, op. cit., pp. 366-367.

93 Another study resulting from the project will examine these "normative" decisions and their recent frequent transformations into regulations, see (forthcoming) KŘEPELKA, F. *Demise of "Normative" Decisions? Retrospective Scrutiny of the Third Instrument Exemplified on the Reform of the EU Epidemic Law.*

94 KISCHEL, 2015, op. cit., pp. 397.

95 Among others, two decades ago when "Constitution" was discussed as a profound reform, PIRIS, J. C. Does the European Union have a constitution? Does it need one? *Harvard Jean Monnet Working Paper.* 2000, no. 5/00, p. 7–8.

96 See *Annual Report on Better Regulation: Completing the Better Regulation Agenda* COM(2017) 651 final, 6.

97 JÄGER, T. *Introduction to European Union Law. Foundations, Institutions, Enforcement, Internal Market Rules.* Wien: Facultas, 2021, p. 46.

98 Art. 263, 267, 277 TFEU, as explained in case law, commentaries, papers, monographs and textbooks.

Having concluded that European (framework) laws are an appropriate terminology for regulations and directives – legislative acts, we should also examine whether the existing terms are appropriate, comparing their original meanings with their current usage.

As already mentioned, the terminology of EU law drew on concepts derived from national law. Thus, the terminology of the original languages of the European Communities, French, German, Italian and Dutch, also deserves our attention.

It might be interesting to study what *Verodnung* / *regolamento* / *verordening* and *Richtlinie* / *direttiva* / *richtlijn* meant seven decades ago. However, the Treaty establishing the European Coal and Steel Community was *de facto* authentic in French.[99] In general, French was the language of diplomacy. We assume that it was the language of the negotiations, too.

Therefore, we pay special attention to the meanings not altered by the European integration. Thus, the notion of *règlement* in France at that time appears to be decisive. The French legal terminology sees it as a general concept. However, there were also specific connotations. In particular, the 1958 French constitution, which addressed ineffective parliamentary democracy, introduced *règlements autonomes* adopted by the executive branch.[100] *Règlements* are also in the titles of the French versions of documents of international organizations dealing with their internal affairs. Even the norms applied to the Member States are referred to as such when they are adopted by a simplified procedure rather than as an international treaty.[101]

Translating *règlement* was simple. Many equivalents served well, as many countries speeded up their law-making by sidelining parliaments. *Verordnungen*, namely those *mit Gesetzeskraft*, are an example of this phenomenon.

Directives – an identical word in English and French, differing only in pronunciation – and its equivalents in other EU languages refer to formulated orders, measures, directives, or instructions from heads of companies, public institutions and public administrations. We expect them to be understood differently by European nations. The "founding fathers" apparently chose this term as it was not used in law-making.[102]

For decades, regulations and directives have been developed through the interaction of the Commission as a supranational executive and national executives meeting in the Council.[103] The terminology was therefore adequate.

However, the situation has gradually changed. Many regulations and directives have evolved from technical frameworks and limited interventions in national legislation into genuine

99 See art. 100 TECCS expected one version of the treaty while being tacit on languages. Several commentators mention that French was the sole language, SOMSSICH, R. What Language for Europe? *ELTE Law Journal*. 2016, pp. 103–115, p. 104. Nonetheless, all four relevant language versions were published simultaneously in the same style (scanned in EUR-Lex) in the then emerging ECCS publication instruments.

100 Art. 37 *Constituion francaise du 4 octobre 1958* ("5th Republic").

101 *Le Règlement sanitaire international* (International Health Regulations) is a framework of the World Health Organisation for the cooperation in the field of contagious diseases. Indeed, some specifics regarding its adoption incite debates whether we can call it an international treaty.

102 Directive as an instrument appears for the first time in the Rome Treaty.

103 The TECCS contained dispersed provisions on règlements and décisions adopted by the ECCS. TEEC as adopted in Rome in 1957 established the above-mentioned canon of instruments.

codes dealing with politically significant issues. At the same time, the procedure for their adoption has changed. They were adopted by the European Commission and the Council, i.e., by supranational and national executive bodies. The growing powers of the elected body (since 1979) have reduced the perceived democratic deficit. The European Parliament now adopts regulations and directives – legislative acts - jointly with the Council, usually in the *ordinary legislative procedure*.[104]

As far as the regulations are concerned, their direct effect became quickly apparent.[105] Complex doctrines[106] emerged to address the deficient, delayed, or lacking implementation of the directives or their ambiguity.[107] Meanwhile, the directives became increasingly detailed. Textually, they now resemble regulations. The *margin of appreciation* for Member States has thus shrunk. Unfortunately, no mechanism has ensured their framework nature.[108]

Both complex doctrines, dealing with superficial implementation and legislative style, have brought directives closer to regulations. These trends have triggered the transformation of directives into regulations.[109] There are several reasons for their adoption. Mandatory transposition threatens to foster dissatisfaction and frustration. The general public might be unaware of the origins of the standards imposed on the EU by directives. They would better recognise regulation as a transnational product. Uniformity could make interpretation more efficient. Last but not least, regulations could speed up the resolution of problems, as transposition of directives takes years.[110]

It is true that prioritising regulations does not solve everything. There is a need for accompanying legislation regarding procedures, sanctions, and options. Predominant decentralised enforcement leads to divergent practices. Procedures for streamlining interpretation[111] only mitigate this problem.

104 Art. 294 TFEU.

105 *"Le règlement a une portée générale. Il est obligatoire dans tous ses elements et il eet directement applicable dans tout État membre."* The demand for confirming judgments results, citing Fratelli Variola S.p. A. gegen Amministrazione italiana delle Finanze (34–73), ECLI:EU:C:1974:101 (10 Oct. 1973) 10. 12. 1971 47–71 Politi S.A.S. proti Ministero delle Finanze, ECR 1971, 01039.

106 CALLIES, RUFFERT, 2016, op. cit., p. 2466, mention, at the end of their detailed commentary addressing directives, its "Ausufernde Rechtsdogmatik" ("overcomplicated doctrine").

107 The textbook cases are *Ratti* (148/78) EU:C:1979:110 (5. 4. 1979), *Marshall* (152/84) EU:C:1986:84, *Paola Faccini Dori vs. Recreb* (Case C-91/92) ECLI:EU:C:1994:292, *Kolpinghuis Nijmegen* (80/86) EU:C:1987:431 (8. 10. 1987), *Unilever Italia vs. Central Food* (Case C-443/98) ECLI:EU:C:2000:496, *31 von Colson and Kamann* (14/83) EU:C:1984:153 (10. 4. 1984), Marleasing (C-106/89) EU: C:1990:395 (13. 11. 1990).

108 A rarely mentioned judgment in *Enka BV vs. Inspecteur der Invoerrechten en Accijnzen Arnhem*, C-38/77, ECLI:EU:C:1977:190 (23. 11. 1977), for sporadic discussion, see ENGEL, A. *The Choice of Legal Basis for Acts of the European Union*. Cham: Springer 2018, pp. 51–77. DOI: https://doi.org/10.1007/978-3-030-00274-9. Unfortunately, the Court confirmed legality of detailed directives excluding any margin of appreciation.

109 At least, three dozen legal frameworks become uniform with transformations of directives into regulations, see KŘEPELKA, 2021, op. cit., p. 789, "the top ten" and remaining in footnote 46.

110 See KŘEPELKA, 2021, op. cit., Chapter 8 titled "No panacea, but an enhancement". Nonetheless, further debate about advantages and limits of regulations versus directives would be desirable, and we will deal with defenders of directives, such as WUNDERLICH, N., PICKARTZ, T. Hat die Richtlinie ausgedient? Zur Wahl der Handlungsform nach Art. 296 Abs. 1(6) AEUV. *Europarecht*. 2014, pp. 659–670. DOI: https://doi.org/10.5771/0531-2485-2014-6-659

111 Among others, The European Data Protection Board for GDPR.

These transformations of directives into regulations are continuing. An obstacle is usually the competence provisions that the directives prescribe, and inattention or reluctance, not infeasibility. In this light, it is desirable to emphasise the reason for the two main *legislative acts* that solve problems in the European Union. A renewed terminology would express this convergence better than two different nouns.

7 Campaigning for a Basic Terminology Reform

A comparative terminology analysis provides general arguments. However, consideration of the context would enable to identify potential objections and barriers.[112]

Some commentators would say that renaming regulations and directives as European (framework) laws would arouse suspicion. Others would argue that their frequent use in the EC/EU environment has changed the meanings of both terms. Adjectives denoting this supranational polity modify the substance, or the context allows it even without adjectives. Indeed, both terms now appear frequently in this context. Regulations and directives are thus different from any national homonyms. Another stream of opponents points to the persistent shortcomings of supranational democracy in the European Union, namely, the limited legitimacy of the European Parliament.[113] It could also be argued that frequently amended and fragmented acts do not deserve to be renamed European (framework) laws.

The recent developments are not favourable, either. Worldwide, countries have moved to emergency legislation passed by the executive during the COVID-19 pandemic. To the dismay of many, the pandemic law included 'regulations', 'decrees', 'orders' or 'measures' rather than law in general.[114] If dealing with the pandemic was a sprint, climate change will be a marathon. Declarations of climate emergency, including those made by the European Union, make this clear.[115] Similarly, a large-scale war in the vicinity expands the executive law-making.

The EU lawmakers introduce *acts* solely in one specific field of information technology. The word *law* is sporadic, being found exclusively in the ECL, while AHL is ambiguous. It would be easy to suppress this emerging practice that has gone unnoticed during recent events.

In addition, the "European Climate Law" is specific. It deals with the biggest global challenge today.[116] Accelerating the reduction of greenhouse gas emissions is politically

112 See Kischel's recommendation to consider *Rechtskontexte* instead of *Rechtskultur*; KISCHEL, 2015, op. cit., p. 238.

113 See RUSSACK, S. EU parliamentary democracy: how representative? *CEPS Policy Insights*. 2019, no. 07.

114 Papers can be found in, among others, HONDIUS, E., SANTOS SILVA, M., NICOLUSSI, A., CODERCH, P. S., WENDEHORTS, C., ZOLL, F. (eds.). *Coronavirus and the Law in Europe*. Intersentia, 2021. DOI: https://doi.org/10.1017/9781839701801. For the author's homeland Czechia, where the resort to administrative measures was excessive from a comparative view, see VIKARSKÁ, Z. Czechs and Balances – If the Epidemiological Situation Allows… *VerfBlog* [online]. 20. 5. 2020. Available at: https://verfassungsblog.de/czechs-and-balances-if-the-epidemiological-situation-allows/

115 The European Parliament resolution on the climate and environment emergency 2019/2930(RSP), 28. 11. 2019.

116 For an early analysis of the path towards ECL, see PÉREZ de las HERAS, B. European Climate Law(s): Assessing the Legal Path to Climate Neutrality. *Romanian Journal of European Affairs*. 2021, pp. 19–32.

important.[117] However, ECL is primarily a programmatic document, as it implies scrutiny of other EU measures.[118] It does not impose obligations on individuals. A directive could require the Member States to reduce emissions, as was previously the case with the promotion of renewable energy sources.[119] Yet this regulation supports individuals in the climate change litigation.[120] However, there is no indication that this is a reason for choosing this instrument.[121]

Regulations (or statutes at national level) can no doubt stipulate ambitious goals and imply scrutiny of legislative proposals. However, elevating ECL to a 'law of laws'[122] is problematic as it does not comply with the rule *lex posterior derogat legi priori*. The Member States should amend their founding treaties or conclude a specific treaty to establish this policy. There are examples that can be followed.[123] This would be an additional constitutionalisation.[124] Nevertheless, it would be useful if there were a willingness to consolidate these commitments. The ECL may be politically irrevocable, but implicit changes are possible.

However, this peculiarity does not preclude the existence of this recognised law and other *de facto* EU (framework) laws. We should therefore regret that the failure of the Constitutional Treaty stopped the renaming of the main regulations and directives, which are also the result of the presumed ordinary legislative procedure, as *European (framework) laws*. It would be desirable to acknowledge their nature, not to continue concealing it.[125]

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117 See Art. 2 (climate neutrality in 2050) and Art. 4 (intermediate Union climate targets) ECL.

118 Art. 6–8 ECL.

119 Directive 2009/28/EC of the European Parliament and of the Council (…) on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

120 The first affirmative judgment in the post-communist Central and Eastern European countries is the judgment of *Městský soud v Praze* (the City Court of Prague) of 15. 6. 2022. The first instance court of the Czech administrative judiciary held liable four ministries for inactivity. The preliminary summary indicates that the court considered ECL and the Paris Agreement as directly applicable, available at: https://www.klimazaloba.cz/en/ [cit. 20. 6. 2021].

121 See the explanatory memorandum: *"The objectives of the present proposal can best be pursued through a Regulation. This will ensure direct applicability of the provisions. Requirements are placed on Member States to contribute to achieving the long-term objective. Moreover, many of the provisions are directed to the Commission (assessment, reporting, recommendations, additional measures, review) and also to the European Environment Agency and could therefore not be implemented by national transposition. A legislative rather than a non-legislative approach is needed to anchor the long-term objective into EU law."*

122 The press release of the Council, 5. 5. 2021, available at European climate law: Council and Parliament reach provisional agreement – Consilium (europa.eu): the Portuguese Minister of Environment and Climate Action João Pedro Matos Fernandes stated: *"… The ECL is the law of laws that sets the frame for the EU's climate-related legislation for the 30 years to come…"*

123 *Treaty on Stability, Coordination and Governance in the Economic and Monetary Union*, enforcing the Stability and Growth Pact (2. 3. 2012) and being gradually ratified by most Member States. We should be sober about its real disciplining effect. On the contrary, *the European Climate Pact* is no international treaty among supranational and national institutions, but an initiative launched by the European Commission.

124 It is plausible to consider also the pre-ECL development in this way. For a thoughtful analysis, see SIKORA, A. *Constitutionalisation of Environmental Protection in EU Law*. Europa Law Publishing, 2020.

125 BEST, 2008, op. cit., p. 85: *"The renaming of the legislative acts could certainly be seen to have a political overtone – just as the original proposal to 'call a law a law' (emphasised), in addition to clarifying the hierarchy of norms, had been intended by many of those behind it to have a political impact."*

Let us take this opportunity to emphasise the multilingualism of the European Union. The "compressed" equivalents in the Constitutional Treaty[126] refer in most cases to acts adopted by parliaments, not to the law in its entirety, as in English: Bulgarian *европейския* (*рамков*) *закон*, Croatian *europski* (*okvirni*) *zakon*,[127] Czech *evropský* (*rámcový*) *zákon*, Danish *en europæisk* (*ramme*)*lov*, Dutch *de Europese* (*kader*)*wet*, Estonian *Euroopa* (*raam*)*seadus*, Finnish *eurooppa* (*puite*)*laki*, French *la loi*(*-cadre*) *européenne*, Irish (Gaelic) *an dlí* (*réime*) *Eorpach*,[128] German *das Europäische* (*Rahmen*)*G(g)esetz*, Greek *ο ευρωπαϊκός νόμος(-πλαίσιο)*, Hungarian *az európai* (*keret*) *törvény*, Italian *la legge* (*quadro*) *europea*, Latvian *eiro*(*ietvar*)*likums*, Lithuanian *europinis (pagrindu) istatymas,* Maltese *liġi* (*kwadru*) *Ewropea*, Polish *europejska ustawa* (*ramowa*),[129] Portuguese *a lei(-quadro) europeia*, Romanian *legea(-cadru) europeană*, Slovak *európsky* (*rámcový*) *zákon*, Slovenian *evropski* (*okvirni*) *zakon*, Spanish *la ley* (*marco*) *europea*, and Swedish *en europeisk (ram)lag*.

Embracing the statist terminology with caution towards the federalisation of the European Union may be confusing. An explanation is therefore desirable. Such a transformation of this unique supranational polity could include this terminological change. Frankly, this is speculation, as it is nowhere in sight.

However, it is not necessary to see statehood as a prerequisite for the introduction of statist terminology for legal instruments. Indeed, the EU institutions apply only part of the rules. The enforcement by Member State authorities is predominant but practice is decisive. The doctrine does not need to stress that regulations apply directly to individuals.[130] Paradoxically, this is clearer thanks to their definition in the founding treaty than the direct effect of the founding treaty itself.[131]

Lawyers could see the regulations as uniform laws applied in parallel in the Member States. Inspiration and transposition precede the involvement of international organisations. Uniform laws result from bilateral or multilateral cooperation. As far as directives are concerned, this argument is similarly persuasive. The Member States apply their national laws, while directives 'stay behind them' as *meta-laws*.

In addition, the representatives of the national executives in the Council and the representatives of the nations in the European Parliament jointly adopt the regulations, while the European Parliament can veto them. Despite any shortcomings of supranational democracy, it is the directly elected body that makes the decisions. There is no doubt that EU lawmakers should strive for adequate, comprehensive and lasting legislation.

126 Equivalents used for *European (framework) law* (the noun being underlined) in the other language versions of the Constitutional Treaty, were combined for saving space. Different capitalisation of nouns and adjectives, various ordering of modifiers "Europe(an)" and "framework", including compounds, and definite or indefinite articles, reflect the grammar and orthography.

127 Due to inaccessibility of the translation in Croatian version in Bosnian-Herzegovinian federal laws.

128 In the author's poor understanding, Irish *an dlí* emulates the double meaning of English "law".

129 With the altering position of the adjective "European" reflecting its positioning in Polish.

130 Judgments 47–71 *Politi S.A.S. vs. Ministero delle Finanze*, ECR 1971, 01039 (10 Dec. 1971) or *Fratelli Variola S.p. A. gegen Amministrazione italiana delle Finanze* (34–73), ECLI:EU:C:1974:101 (10 Oct. 1973).

131 Recurrent debates about the direct effect and primacy including textbook judgments van Gend en Loos, Costa v. ENEL and Internationale Handelsgesellschaft) especially when national courts are against it.

It should be noted that this terminology is not unheard-of. The authors of the Constitutional Treaty envisaged it twenty years ago and there was no opposition to it.[132] Therefore, its revival should not be shocking. Reiterating it at the beginning of the reform debate would be desirable to mobilise support for this technically uncomplicated but psychologically significant change before the now debated revision of the founding treaties.

Renaming (the existing and planned) legislation and directives as *European* (*framework*) *laws* would be an effort at standardisation from the comparative and linguistic point of view. Think of 'European General Data Protection Act' or 'European Framework Law on the Common System of Value Added Tax' as short and long names for important regulations and directives known to the general public or to a wide range of professionals.[133]

This chapter quotes a sentence containing *lex*, which is the Latin equivalent of "the word". Despite the fact that the Court of Justice cites it only sporadically,[134] the principle is a general one and the Latin phrase has become a universally known expression of this principle. At the same time, this Latin word is identified in the title of the EU law database EUR-Lex and its predecessor CELEX.[135] Have the European Communities and the European Union unconsciously admitted that they were enacting – for several decades – *leges*?

8 Additional Terminological Considerations

When discussing the secondary law provisions of the Treaty establishing a Constitution for Europe, the members of the Convention proposed several minor changes. Among other things, they suggested a special category of organic laws, proposed the adjective "EU" for (framework) laws, called for an emphasis on the framework nature of directives, and questioned the exclusion of non-legislative directives.[136]

However, the primary issue is the "word", which is examined in this article. *Statutes*, *acts* and *codes* may be an alternative to *laws* in English. However, the author's preferred "statute" does not match the prevailing practice, "act" is ambiguous, and the European Union reserves "code" for selected complex frameworks. The views of Anglicists and English and British/Irish lawyers would be valuable in this respect. Perhaps resorting to *European*

132 No participant in the Convention debates on the future of Europe regarding I-32 (summarised in Chapter 8) rejected the change or questioned its substance. We found no outright refusal in the scholarly literature.

133 Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and Council Directive 2006/112/EC (…) on the common system of value added tax, respectively.

134 Does the Court avoid it because of the sensitive noun? Or does it avoid Latin because it is not official? Latin phrases serve well in many jurisdictions and languages. Nonetheless, we should not make premature conclusions. Perhaps, there was little need to use the phrase.

135 CELEX originating in 1965 is generally deciphered as *Comunitatis Europeae Lex*. The EU institutions occasionally resort to Latin when multilingualism is not feasible.

136 See the archived web pages www.european-convention.europa.eu, Proposed amendments to the text of the Treaty Establishing a Constitution for Europe, Art. I-32 (finally I-33). For the contemporary assessment, see SENDEN, L. *The Quality of European Legislation and its Implementation and Application in the National Legal Order, General Report. Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, 19th colloquium. The Hague, 14-15 June*. 2004, pp. 28–29.

(framework) laws twenty years ago was an example of Euro-English[137] as a language variety[138] that also reflected the Continental law prevailing in Europe, which is different from common law in English-speaking countries.[139] For that matter, we wonder whether Brexit will weaken the insistence on British English.[140]

Opponents of the European Union sometimes claim that it does not equal to Europe. Its name or abbreviation – the *European Union* or *EU (framework) laws* – would be more accurate than using the word *European*. However, using many words is not desirable. European framework laws need three words – both in English and most other languages. Mentioning our continent is redundant in an internal setting. *Union (framework) laws* could be an alternative. It is similar to the adjective *federal* in the United States. Nonetheless, we hope that other European nations will not see this as misappropriation, and "European" thus will remain an acceptable adjective.

The approved terminology change would also correspond to the observed and adopted transformations of directives into regulations. In general, "framework" is a modifier. It denotes the mediating nature. It could disappear, like the directives themselves. Regulations, as *European* laws, contain provisions similar to directives, thus being partially the *framework* ones.[141]

In the languages of the countries where similar phenomena existed, there was a perfect linguistic equivalence: German *Rahmengesetze*[142] or Italian *leggi quadro/cornice*[143]. The past tense is not an error. These countries used framework laws in a limited way, and eventually stopped using them.

Regulations also need accompanying national legislation. They interact with each other, especially as far as boundary competences are concerned.[144] This tendency would allow

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137 For a general reflection two decades ago, see JENKINS, J., MODIANO, M., SEIDLHOFER, B.. Euro-English. *English Today*. 2001, pp. 4:13–19. DOI: https://doi.org/10.1017/S0266078401004023

138 We should take into consideration that English lacks an official regulator. It is poly-centric, and its international variants escape the control of English-speaking nations.

139 See ROBERTSON, C. EU Legal English: Common Law, Civil Law, or a New Genre. *European Review of Private Law*. 2012, pp. 1215–1240. DOI: https://doi.org/10.54648/ERPL2012077

140 See *English Style Guide. A handbook for authors and translators in the European Commission*. 8.ed. 2016, updated 2022. Available at: https://ec.europa.eu/info/sites/default/files/styleguide_english_dgt_en.pdf [cit. 20. 6. 2021]. Its update mentions Irish/British usage.

141 RÖSCH, F. *Zur Rechtsformenwahl des europäischen Gesetzgebers im Lichte des Verhältnismäßigkeitsgrundsatzes. Von der Richtlinie zur Verordnung. Exemplifiziert anhand des Lebensmittelrechts und des Pflanzenschutzmittelrechts*. Duncker & Humblot GmbH, 2013. DOI: https://doi.org/10.3790/978-3-428-53601-6. The author analyses Regulation 178/2002 laying down the general principles and requirements of food law (…). She critically assesses this choice, identifies directive-like provisions and suggests a split into a regulation and a directive.

142 Art. 75 *Grundgesetz* before *Federalismusreform* in 2005, an analysis can be found in STREPPEL, T. P. *Die Rahmenkompetenz. Voraussetsungen und Rechtsfolgen der Rahmengesetzgebung des Bundes*. Nomos Verlag, 2005.

143 In accordance with Art. 117 Costituzione della Republica Italiana, before the 2001 reform, the Republic adopted in the field of concurring law-making "principi fondamentali" for the laws adopted by regions.

144 An example is Regulation 536/2014 of the European Parliament and of the Council (…) on clinical trials on medicinal products for human use. There are significant interactions with the national laws, see (forthcoming) KŘEPELKA, F. *Clinical Trials of Medicinal Products: The Extent and Limits of one Uniform "European Law"*.

us to shift our attention from the lacking or superficial implementation of directives as slowly disappearing[145] *European framework laws* to feasible adaptations of regulations as *European laws* with *national laws* – as two interconnected *layers of law*.[146]

Finally, it would be desirable to reconsider the terminology of "tertiary law". The two instruments foreseen by the Constitutional Treaty – regulations and decisions – seem sufficient, as implementing and delegated directives are quite rare.[147] Different words, perhaps decrees or regulations, would distinguish these acts from the recent regulations. Yet their possible equivalents in other EU languages sound unusual. Fortunately, this distinction is unnecessary because *regulation* is feasible from the comparative point of view.

9 And the Constitution?

Given the above-mentioned features of EU law, the word *Constitution* in the title of the 2004 revised primary law was adequate and will remain so. More recently, the noun would be even more appropriate, as the European Union has its catalogue of fundamental rights and freedoms. We should therefore discuss whether it is a prerequisite for European (framework) laws.

This term is, unfortunately, controversial. The federalist political group Greens/EFA supports its renewal.[148] It has also been mentioned by some participants in the Conference on the Future of Europe.[149] Eurosceptics, however, would oppose it. Unsurprisingly, mainstream politicians are silent about the issue.

The legal argument for restraint is based on the foundations of EU law. The Member States have built a supranational structure through international treaties and will be changing it along with them for the foreseeable future. The forthcoming reform must rely on this instrument. Grammatically, 'Treaty' was an object and '(a) Constitution' was a (mere) modifier. Resurrection of this term is therefore unnecessary. Perhaps the best name for a future founding treaty is the simplest one, "Treaty on European Union". The adjectives "New," "Reformed," "Revised," or "Consolidated" to distinguish it from the previous versions could be unofficial.

The expected discussion invites us to reflect on the situation. The *Constitution* in the title of a possible future founding document hits the nerve: the *constitutionalisation*[150] of the

145 We are reluctant to adopt quantitative methods consisting of counting laws, treaties and others as "items", as they vary regarding their scope, importance and sensitivity. Nonetheless, we hypothesise a gradual retreat of directives has taken place since 2000. Undoubtedly, the European Union adopts most directives for an indefinite period, reducing thus opportunities for their enactment if there are no amendments or revisions.

146 For similarly hinting at regulations and their importance in national legal practice, see BRINK, T. van den. The Impact of EU Legislation on National Legal Systems: Towards a New Approach to EU – Member State Relations. *Cambridge Yearbook of European Legal Studies*. 2017, pp. 211–235. DOI: https://doi.org/10.1017/cel.2017.2

147 See *Legal acts – Statistics* in EUR-Lex. Several delegated directives amend unimportant parts of legislative directives, but see KRÁL, R. On the Practice of Amending or Supplementing EU Directives by EU Delegated Regulations. *European Law Review*. 2020, pp. 409–414. *Commission implementing directives* are sporadic.

148 Greens/EFA want to revive the EU Constitution | Speaking of Europe. 14 May 2021. [cit. 20.6. 2022].

149 See *Conference on the Future of Europe – Report on the Final Outcome*, 10 May 2022, Proposal 39, p. 7, and not approved by the plenary, proposal 35.

150 "Constitutionalisation" as a process clearly prevails over "Constitutionalism" as an arrangement.

European Union. This phenomenon has become a frequent topic among legal scholars and political scientists.[151] There are different views on its origins, development, scope, and specifics. There seems to be a consensus on its existence, but various experts view it differently.

Some criticisms may reflect dissatisfaction with specific provisions of the founding treaties or their interpretation. The expected opposition could be their echo in the wider political and social sphere. Among legal scholars, Dieter Grimm has conceptualised this criticism.[152]

Yet this constitutionalism is embraced by many EU legal scholars. Others, if being asked, would consider it an inherent feature of the supranational polity and its law. Many experts, politicians, journalists, and a significant number of Europeans regard it as the basis of the supranational liberal polity protecting them from populist challenges and external threats. The term expresses the legal aspect of the finality desired by many – the European Union as a federation.

This phenomenon deserves an intense discussion among lawyers as a contribution to a broader debate on the European Union. They cannot leave it to others but must explain it to people, because it is also a political issue.

It is not surprising that under these conditions we are far from having effective corrective measures. The de-constitutionalisation and re-politicisation of the European Union proposed by Dieter Grimm, Fritz Scharpf[153] and other proponents of the *over-constitutionalisation* thesis[154] suggest several reforms the success of which is difficult to predict.

Nevertheless, the instrument for such re-politicisation is evident. Any law-abiding polity expresses its policies with law-making. The transforming of regulations and directives – legislative acts – to European (framework) laws will be a recognition of their importance. The European Union would need a dose of *légicentrisme*[155] – both in substance and terminology.

The recent crises and dramas are politicising the European Union. In addition to detailed regulations that are not known outside professional circles, such as the 'Animal Health Act', there are also politically significant regulations, the 'European Climate Act' being undoubtedly one of them.

The COVID certificate, which certifies vaccination, testing and recovery, is an example of the European Union's appropriate legislative involvement, reflecting its helping role in the fight against the pandemic. It has facilitated mobility which the Member States restricted and

151 TUORI, K. *European Constitutionalism*. Cambridge University Press, 2015. DOI: https://doi.org/10.1017/CBO9781316091883, ISIKSEL, T. *Europe's Functional Constitution: A Theory of Constitutionalism Beyond the State*. Oxford University Press, 2016. DOI: https://doi.org/10.1093/acprof:oso/9780198759072.001.0001, expanding on previous generation. WEILER, J. H. H. *Do the new clothes have an Emperor?* Cambridge University Press, 1999, and HARTLEY, T. C. *Constitutional Problems of the European Union*. Oxford: Hart Publishing, 1999.

152 GRIMM, D. Democratic Costs of Constitutionalisation. *European Law Journal*. 2015, pp. 460–473. DOI: https://doi.org/10.1111/eulj.12139

153 SCHARPF, F. W. De-constitutionalisation and majority rule: A democratic vision for Europe. *European Law Journal*. 2017, pp. 315–334. DOI: https://doi.org/10.1111/eulj.12232

154 Namely, HÖPNER, M., SCHMIDT, S.. Can We Make the European Fundamental Freedoms Less Constraining? A Literature Review. *Cambridge Yearbook of European Legal Studies*. 2020, pp. 182–204. DOI: https://doi.org/10.1017/cel.2020.11

155 We can only mention here *légicentrisme* as a French legal doctrine. Firstly, we should distinguish it from *legalisme* as the rule of law and *legisme* as the philosophy school in ancient China. Art. 6 of the *Déclaration des Droits de l'Homme et du Citoyen de 1789* is a fertile soil, together with considering the constitution primarily a solemn proclamation. For rare reflections on that, see E. Ella, *Démocratie et légicentrisme* (Publibook 2019).

controlled to an unimaginable extent.[156] Moreover, it has provided them with a tool to favour the vaccinated persons in their home environment. Unsurprisingly, these policies have been controversial,[157] including possible assistance from the European Union. It is to be hoped that the legitimacy of this *legislative act* would be somewhat enhanced if it were established by the 'European Law on EU COVID Digital Certificate' (short title).[158] An overwhelming majority of MEPs supported this measure.[159] Yet, the noun *legitimacy* and the adjective *legitimate* in English and their equivalents in many other languages come from *lex*.[160]

Crises increase the current preference for regulations because of the need to react quickly. EU legislators do not need to express the view that directives are impractical.[161] The specific proposals of the European Health Union are also regulations.[162] Similarly, the expanding climate law is also increasingly resorting to this instrument.[163]

It may seem to the readers that this chapter repeats arguments already formulated. However, the mention of one recent EU 'law' reveals another problem of secondary law. Many laws (statutes) passed by national parliaments stipulate policies, some of which are quite controversial. Parliamentary elections can result in policy changes involving the repeal of the existing legislation or its amendment. Ordinary laws (statutes) also enjoy legitimacy because of their changeability.[164]

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156 Among others, THYM, D. Travel Bans in Europe: A Legal Appraisal (Part I) and (Part II). *EU Immigration and Asylum Law and Policy*. 2020. Available at: http://eumigrationlawblog.eu/travel-bans-in-europe-a-legal-appraisal-part-i/; http://eumigrationlawblog.eu/travel-bans-in-europe-a-legal-appraisal-part-ii/ [cit. 20. 6. 2021].

157 Accompanied by significant hesitation of national and international institutions. In particular, the Resolution of the Parliamentary Assembly of the Council of Europe 2361 (2021) COVID-19 vaccines: ethical, legal and practical considerations, 7.3.1, 7.3.2 fuelled the opposition to any advocacy of vaccination or privileging the vaccinated.

158 Regulation 2021/953 of the European Parliament and of the Council (…) on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates.

159 Final vote on 9/6/2021, 546 for, 93 against, 51 abstentions.

160 The term has several meanings as the compliance with laws and rules (also legality), fairness and acceptance by a particular society. In the past, in often identified "true" heirs to throne or generally children born in wedlock.

161 See recital 63 *"Given the urgency of the situation related to the COVID-19 Pandemic, this regulation should enter into force on the day of its publication in the Official Journal of the EU."*

162 Extending the mandates of the European Medicines Agency and the European Centre for Disease Prevention and Control reflects their establishment by regulations. The change is the Proposal for a Regulation of the European Parliament and of the Council on serious cross-border threats to health and repealing Decision 1082/2013/EU, 11/11/2020, COM/2020/727, and in the Proposal for a Regulation of the European Parliament and of the Council on the European Health Data Space, 22/5/2022 COM/2022/197 repealing Art. 14, Directive 2011/24/EU of the European Parliament and of the Council (…) on the application of patients' rights in cross-border healthcare.

163 See ECL, Regulation 2018/1999 of the European Parliament and of the Council on the Governance of the Energy Union and Climate Action (…), Regulation 2018/842 of the European Parliament and of the Council (…) on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement (…), or Regulation 2018/841 of the European Parliament and of the Council (…) on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework (…).

164 See GRIMM, D. *Europa ja – aber welches? Zur Verfassung der europäischen Demokratie*. C. H. Beck, 2016, pp. 101–120. DOI: https://doi.org/10.17104/9783406688706, identifying the tension between constitutionalism and democracy.

Even standard law-making by the European Parliament and the Council is quite demanding, but achieving this supermajority is desirable in a heterogeneous polity. However, this requirement also makes it difficult and often impossible to repeal them. Regulations and directives thus achieve a quasi-constitutional status. The COVID certificate is also legitimate because it exists for a limited period of time, and its renewal has necessitated a political re-evaluation.[165]

This unchangeability goes hand in hand with the fact that several regulations are considered to be the exclusive specification of the values laid down by the founding treaties as the Constitution of the European Union in all but name. An example is the General Data Protection Regulation, which is seen by some as a 'data bible'. Even the politicians involved in its adoption admit that it is excessive.[166]

Sceptics would say that European (framework) laws in place of regulations and directives threaten to reinforce these tendencies. In this context, one can only emphasise the genuine respect for subsidiarity and proportionality. EU politicians and officials should exercise EU powers wisely. However, this is another issue that has been addressed in academic monographs and articles and that resonates in Euro-politics.[167] Optimists may respond that an appropriate terminology could increase the awareness of the nature of secondary law instruments and reduce over-regulation.

Conclusions

If the Treaty establishing a Constitution for Europe had succeeded, we would have adopted and applied *European (framework) laws* instead of regulations and directives. This terminology would be commonplace within the past fifteen years. This change would undoubtedly not have prevented any of the crises that the European Union is now facing. Nevertheless, this terminology – in the EU's twenty-four languages, as this supranational community is multilingual – could increase the legitimacy of EU secondary law, as it better reflects its nature. The European Parliament, as a directly elected body, approves them. Regulations and directives apply to individuals and transform national law. Its incidence in a few short titles suggests that the terminology is attractive even without such a reform. While we recognise its sensitivity, we propose to revive it in the context of the emerging discussions on the reform of the founding treaties.

165 Until 30. 6. 2022 and 30. 6. 2023, see Art. 3, as amended by Regulation (EU) 2022/1035 of the European Parliament and of the Council (…) amending Regulation (EU) 2021/954 (…).

166 VOSS, A. Fixing the GDPR: Towards Version 2.0. Position Paper. *axel-voss-europa.de* [online]. 25. 5. 2021. Available at: https://www.axel-voss-europa.de/wp-content/uploads/2021/05/GDPR-2.0-ENG.pdf [cit. 15. 11. 2022].

167 Among others, see WEATHERHILL, S. The Limits of Legislative Harmonization Ten Years after Tobacco Advertising: How the Court's Case Law has become a "Drafting Guide". *German Law Journal*. 2011, Vol. 12, no. 3, pp. 827–864. DOI: https://doi.org/10.1017/S2071832200017120