



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 November 2008

15993/08

**CODIF 162
JUR 526**

NOTE

Subject : Codification of Legislation
- A Practical guide

**CODIFICATION
OF LEGISLATION**

A PRACTICAL GUIDE

General Secretariat of the Council

5 February 2008

TABLE OF CONTENTS

1. BACKGROUND	p. 3
2. DEFINITION	p. 3
3. THE LEGISLATIVE PROCEDURE - OVERVIEW	p. 4
4. WORKING METHOD OF THE COUNCIL'S PREPARATORY BODIES	p. 6
5. HOW TO READ A CODIFICATION PROPOSAL	p. 7
6. GUIDELINES FOR DELEGATIONS' COMMENTS	p. 10
Annex I: MODEL FOR DELEGATION'S COMMENTS	p. 12
Annex II: ANSWERS TO FAQ's	p. 13

This guide has been drawn up by the 'Codification team' of the Council's Legal Service. It is intended as a practical guide for delegates in the Working Party on Codification of Legislation and experts dealing with official codification of legislation. It builds on and develops previous documents, in particular document 9610/1/98 (Guide to official codification) and document 5406/2/03 (Procedure for the Working Party on Codification of Legislation to consider proposals for codification of the Community acquis - working method).

For further questions, please contact one of the following persons :

- Mr. Martin BAUER, Tel +322.281 83 41 (martin.bauer@consilium.europa.eu)
(current chairman of the Working Party on Codification of Legislation)
- Ms. Sara GOMEZ-REINO, Tel +322.281 83 31 (sara.gomez-reino@consilium.europa.eu)
- Ms. Kirsti REINARTZ, Tel +322.281 75 93 (kirsti.reinartz@consilium.europa.eu)

1. BACKGROUND

Codification is an instrument aiming at simplifying and updating existing Community legislation and reducing its volume¹. By providing readers with a single legislative act instead of one or more basic acts and their amendments, codification helps to make Community legislation more readable.

Based on the conclusions of the Edinburgh European Council of 1992, the European Parliament, the Council and the Commission concluded on 20 December 1994 an Interinstitutional Agreement on an accelerated working method for official codification of legislative texts² (hereafter 'IIA'). In November 2001, the Commission launched a major programme for codification of all Community secondary legislation³. Ever since, codification figures among the measures foreseen by the political programmes for **simplification of legislation** and **better regulation**⁴. It forms part of the 'simplification rolling programme' set out for the first time in November 2005⁵, which is regularly updated.

2. DEFINITION

'Official codification' is the process whereby the provisions of one or more acts and their respective amendments are brought together in a new legally binding act which repeals the acts which it replaces, without changing the substance of those provisions.

Codification can be achieved in different ways depending on the nature of the act to be codified.

- Acts of the European Parliament and of the Council and acts of the Council which are adopted on the basis of a Commission proposal are codified in conformity with the working method for official codification provided for by the IIA, which is the focus of this guide.
- Acts of the Commission are codified in conformity with the Commission's procedures for the adoption of its acts.

¹ See point 35 second subparagraph of the Interinstitutional Agreement of 16 December 2003 on better law-making (OJ C 321 of 31.12.2003, p. 1) : *'Legislation will be updated and condensed inter alia through the repeal of acts which are no longer applied and through the codification or recasting of other acts.'*

² OJ C 102 of 4.4.1996, p. 2.

³ Communication from the Commission to the European Parliament and the Council on the codification of the acquis communautaire (COM(2001) 645 final of 21.11.2001 - doc.14360/01).

⁴ See in particular the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions : Updating and simplifying the Community acquis (COM(2003) 71 final of 11 February 2003 - doc. 6591/03), the Interinstitutional Agreement of 16 December 2003 on better law-making (see footnote 1 above) and the Communication from the Commission to the Council and the European Parliament: Better Regulation for Growth and Jobs in the European Union (COM(2005) 97 final of 16 March 2005 - doc. 7797/05).

⁵ Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled 'Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment' (COM(2005) 535 final of 25.10.2005 - doc. 13976/05).

- Acts of the Council based on Titles V and VI of the EU Treaty are codified in conformity with the procedures foreseen in those Titles.

Official codification can be either

- vertical, when one basic acts and its amendments are incorporated in a single new act, or
- horizontal, when two or more basic acts covering related subjects and their respective amendments are incorporated in a single new act.

Most of the codification proposals submitted by the Commission are vertical; horizontal codifications remain an exception.

Official codification is to be distinguished from

- **consolidation**, which consists in an editorial assembling of the basic act and its amendments, carried out by private editors or by the Office for Official Publications of the European Communities; it has no legal effect and leaves the acts concerned in force; the consolidated version includes only the enacting terms of the basic act and its amendments and the original the recitals of the basic act ; the recitals of amending acts are left out.
- **recast**, which consists in the adoption of a new legal act incorporating in a single text both the substantive amendments which it makes to an earlier act and the codification of the unchanged provisions of the earlier act; the new legal act replaces and repeals the earlier act (see Interinstitutional Agreement of 28 November 2001¹).

3. THE LEGISLATIVE PROCEDURE - OVERVIEW

In the **preparatory phase**, codification proposals are drafted by the Commission Legal Service in consultation with the Directorate Generals responsible for the subject matter concerned, on the basis of a consolidated version of the act(s) to be codified. The reference version which constitutes the basis for the other language versions, called the 'Master copy', may be either in EN or in FR.

¹ Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts (OJ C 77, 28.3.2002, p. 1).

When all required language versions are ready, the proposal is formally adopted by the Commission, and the **legislative procedure** begins with the transmission of the proposal to the legislative authority. Pursuant to the IIA, the Commission *'undertakes not to introduce any substantive changes to the acts to be codified'*, and *'the purpose of the Commission proposal, namely the straightforward codification of existing texts, constitutes a legal limit prohibiting any substantive change by the European Parliament or Council.'*

The IIA sets up a **Consultative Working Party**, consisting of the respective legal services of the European Parliament, the Council and the Commission, which examines all codification proposals upon adoption by the Commission and confirms that they are indeed confined to straightforward codification without substantive changes ¹. In its opinion, the Consultative Working Party may also suggest technical adaptations in order to make sure that it indeed constitutes a correct codification. The Consultative Working Party endeavours to give its opinion in time for it to be made available to the institutions before they begin their respective examinations of the proposal concerned².

Since official codification consists in the adoption of a new legislative act replacing the acts to be codified, the IIA confirms that the normal legislative procedure is to be complied with in full. However, it foresees an **accelerated procedure** for examining proposals for official codification :

- In the Council, all codification proposals, whatever their subject matter, are examined by the Working Party on Codification of Legislation³ and are adopted as 'I/A items' by Coreper and Council.
- In the European Parliament, all codification proposals are examined by the Committee responsible for Legal affairs and are approved by a simplified procedure (single vote without amendments or debate).

¹ See point 4 of the IIA.

² Joint declaration (1) on paragraph 4 of the IIA.

³ The Council Working Party on Codification of Legislation is chaired by a member of the Legal Service. This Working Party is one of the few not to be chaired by the Presidency of the Council.

4. WORKING METHOD OF THE COUNCIL'S PREPARATORY BODIES

Upon receipt of a codification proposal, the General Secretariat of the Council circulates it by e-mail to the members of the Council Working Party on Codification of Legislation (hereafter 'Council Working Party'). The cover note indicates the deadline for delegations' comments (usually four weeks from the date of sending the document)¹. Delegations should send their written comments by e-mail to the General Secretariat of the Council (secretariat.jl-codification@consilium.europa.eu) and to the Commission (sj-codification@ec.europa.eu)². They may find it useful to structure their comments along the lines set out below (point 6). To this effect, a model is given in Annex I.

- * If no horizontal comments (i.e. comments affecting more than one language version) have been received, the item will be put on the agenda of the next meeting of the Council Working Party for information.
- * If horizontal comments have been received, the chair sends by e-mail a working document or room document summarising delegations' comments and, where available, the Commission's replies to them. The item is then discussed at the next meeting of the Council Working Party.

The results of the meeting are recorded in an outcome which is sent to delegations.

As soon as there is the majority required for adopting the act in question, the text is submitted to the lawyer-linguists of the Council for legal-linguistic finalisation. Delegations should submit any linguistic comments before the lawyer-linguists experts' meeting.

- * A member of the Legal Service's Directorate for the Quality of Legislation will prepare the first draft of the act to be finalised, which includes the original Commission proposal with any technical adaptations suggested by the Consultative Working Party (insofar as they have been accepted by the Council Working Party) and any additional adaptations agreed by the Council Working Party or suggested by the lawyer-linguists of the Council and, in the case of co-decided acts, the lawyer-linguists of the European Parliament.
- * The 'Master Copy' version of the draft will then be finalised at a meeting of legal-linguistic experts of the Council, which is chaired by a member of the Directorate for the Quality of Legislation. Participants are :

¹ See the Procedure for the Working Party on Codification of Legislation to consider proposals for codification of the Community acquis - working method (document 5406/2/03 REV 2)

² As for the content of delegations' comments, see below point 6.

- one lawyer-linguist of the Directorate for the Quality of Legislation for each official language,
- experts from the Member States,
- a representative of the codification team of the Commission, accompanied by an expert for the act in question where necessary,
- in case of co-decided acts, a 'tabling officer' of the European Parliament.

* After the meeting, the Council lawyer linguists will align their respective language versions with the Master Copy version, in close cooperation with their colleagues at the European Parliament.

As soon as the text is finalised in all required language versions, it is submitted as a 'I/A item' to Coreper and Council for final adoption.

5. HOW TO READ A CODIFICATION PROPOSAL

A. Markers and arrows

Codification proposals contain a number of markers and arrows indicating where the different parts of the text come from as well as some of the changes carried out in the text.

<u>Marker</u>	<u>Description</u>	<u>Use</u>
↓ → ←	black arrows	indicate where the different parts of the consolidated text come from, i.e. the basic act and the amending act(s);
⊠ ⊠	arrows with a cross inside ('codification arrows')	indicate adaptations to the consolidated text
[]	square brackets	indicate that the marked text (usually a reference to a legal act) is due to change during the codification procedure, e.g. because the act in question is being amended or codified

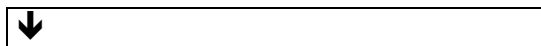
Minor technical changes are not shown in any way in the codification proposal. Deletions carried out in the process of codification, like the removal of obsolete provisions, will be reflected in the reference box with the word '(adapted)' or '(adapté)'.

B. Reference boxes

Reference boxes appear above each recital, article or annex of the codification proposal.

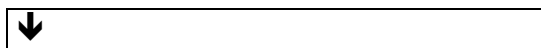
- (a) A reference box containing a **black arrow pointing down without any reference to an act** introduces a standard codification recital or article.

Example of standard Recital :



(1) Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising³ has been substantially amended several times⁴. In the interests of clarity and rationality the said Directive should be codified.

Example of standard Article :



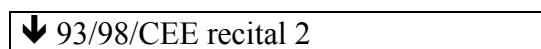
Article 10

Directive 84/450/EEC, as amended by the Directives listed in Annex I, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B.

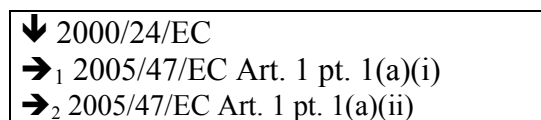
References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex II.

- (b) A reference box containing **black arrows pointing down or horizontally followed by a reference to an act** indicates where the marked parts of the text beneath comes from.

Text comes from one act (the basic act or one of the amending acts) :



Text comes from several acts (basic act + amending act(s) or amending act + amending act(s)):



Article 1

1. ➔₁ The Community shall grant the European Investment Bank (EIB) a global guarantee in respect of all payments not received by it but due in respect of credits opened, in accordance with its usual criteria, and in support of the Community's relevant external policy objectives, for investment projects carried out in the South-eastern Neighbours, the Mediterranean countries, Latin America and Asia and the Republic of South Africa. ⬅

This guarantee shall be restricted to 65% of the aggregate amount of the credits opened, plus all related sums. ➔₂ The overall ceiling of the credits opened shall be equivalent to EUR 19 460 million, broken down as follows: ⬅

Attention: If an amending act has deleted a piece of text, this piece of text will not appear in the proposal.

Attention: A reference to the basic act in the reference box usually does not contain a mention of the relevant article of the basic act, unless the numbering of the codification proposal changes compared to that of the basic act. For amending acts, the reference includes the article where the instruction to amend can be found.

(c) A reference box including the word '**(adapted)**' or '**(adapté)**' means

- the text below contains 'codification arrows' ☒ ☒ indicating non-substantive changes necessary to ensure correct and straightforward codification.

Example :

↓ 97/55/EC Art. 1 pt. 6(a) (adapted)

(a) to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, misleading advertising or ☒ unlawful ☒ comparative advertising; ...

or

- the removal of parts of text as a purely technical exercise related to codification, which cannot be seen in the proposal (e.g. obsolete provisions).

- (d) A reference box containing a **black arrow pointing up** introduces the two standard codification annexes.



ANNEX ...

Part A

Repealed... with its successive amendments
(referred to in Article...)

Part B (*only for directives*)

List of time-limits for transposition into national law and application
(referred to in Article ...)

and

ANNEX ...

CORRELATION TABLE

6. GUIDELINES FOR DELEGATIONS' COMMENTS

The purpose of these guidelines and the answers to the Frequently Asked Questions (FAQ) in Annex II is to ensure that codification proposals can be dealt with swiftly and efficiently and to avoid unnecessary work for delegations, the General Secretariat and the Commission. They are based on practice which has developed over the years and reflect standard solutions to problems arising regularly in the course of codification. However, delegations remain of course free to come back on this standard practice if they disagree with it and/or to make any other comment they deem appropriate.

(a) Horizontal comments (i.e. comments affecting more than one language version)

At the stage of the examination of a codification proposal by the Council Working Party, delegations may submit comments affecting more than one language version. In this respect, delegations are invited, to the extent possible, not to repeat in their comments any points which are already addressed in the opinion of the Consultative Working Party, unless they disagree with a suggestion made by that Working Party.

Comments should cover primarily codification errors, like for instance

- * forgetting to include in the codification proposal a text published in the Official Journal or the erroneous inclusion of such a text,
- * lack of codification markers where necessary,
- * questioning of changes introduced by codification markers,
- * lack of update or wrong update of references, dates, or definitions,
- * leaving in obsolete provisions,
- * inconsistency of terminology.

Comments should be made in the form of a list, be numbered, indicate the precise reference and page number concerned, as well as motivated (see model in Annex I). Horizontal comments in the form of track-changes in the original proposal should be avoided.

Delegations may also signal any material errors in the text of the existing act published in the Official Journal. Such errors can however not be corrected in the context of codification, but only through a separate corrigendum procedure or by an amending act.

Since codification cannot and must not change the existing law in its substance, suggestions for substantive changes to the acts to be codified are not appropriate in the context of a codification exercise. Such suggestions should rather be addressed to the Commission services responsible for the act in question.

(b) Linguistic points specific to one language version

Linguistic points are not discussed by the Council Working Party, but only when the text is being finalised by the lawyer-linguists. They must therefore be raised at the latest at this stage.

However, delegations are strongly encouraged to submit linguistic comments relating to their respective language version together with their horizontal comments. In this case, the linguistic comments should be clearly identified as such and be separated from any horizontal comments. Linguistic comments will be forwarded to the competent lawyer-linguist.

ANNEX I
COMMENTS
FROM THE [.....] DELEGATION

Subject: Proposal for a [Directive/Regulation]
.....(codified version)

I. CODIFICATION ERRORS AFFECTING MORE THAN ONE LANGUAGE VERSION

Page ..., [recital n° ...] [Article ...] :

instead of :

"[extract from the passage concerned, the part to be corrected being underlined]",

read as follows :

"[extract from the passage concerned, the text of the suggested correction being printed in bold] ..."

reasons :

[give a brief motivation for the suggested change unless it is self-evident]

II. MATERIAL ERRORS IN THE EXISTING ACT TO BE ADRESSED BY A CORRIGENDUM

Page ..., [recital n° ...] [Article ...] :

instead of :

"[extract from the passage concerned, the part to be corrected being underlined]",

read as follows :

"[extract from the passage concerned, the text of the suggested correction being printed in bold] ..."

reasons :

[give a brief motivation for the suggested change unless it is self-evident]

III. LINGUISTIC REMARKS AFFECTING ONLY THE [.....] LANGUAGE VERSION

For comments relating only to one language version, the model for points I and II above should be followed..

ANNEX II

Answers to Frequently Asked Questions (FAQ)

(1) Why has the title of the codified act changed in comparison to the earlier act?

If the title of the earlier act contained elements which have become obsolete, those elements are removed in the process of codification. Furthermore, if the original act text was adopted by the Council alone, whereas the codified act, due to a modification of its legal base, is to be adopted in accordance with the co-decision procedure, this is also reflected in the title.

Example:

'Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights'

now reads:

'Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version)'

(2) What are the standard provisions in codification proposals ?

The following are standard provisions which appear in each codified act, regardless of its nature or content :

- (a) The first recital, which indicates that the new legal act constitutes a codification of an earlier act. The first sentence gives a reference to the title of the act to be codified, which is either the original title or the title as modified by an amending act. The second sentence gives the motivation for the codification of the act.

Example:

'(1) Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising³ has been substantially amended several times⁴. In the interests of clarity and rationality the said Directive should be codified.'

- (b) The "repeal article", whose purpose is to repeal the act to be codified and to introduce the correlation table.

Example (Directive) :

Article ...

'Directive/..../..., as amended by the acts listed in Annex ..., Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex ..., Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex ...'

Example (Regulation) :

Article ...

'Regulation (EC) No/.... is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex ...'

Example (Decision):

Article ...

'Decision (EC) No/.... is repealed.

References to the repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table set out in Annex ...'

The following are standard provisions which appear only in directives.

- (a) The recital on time-limits for transposition and application :

'(...) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex ..., Part B.'

- (b) The 'communication article', which imposes a continuing obligation on Member States to communicate texts which have not already been communicated and which concern the transposition of the original act and/or its amendments :

'Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.'

Since the codified act in no way alters the substance of the provisions contained in the earlier acts, this article does not impose the transposition into national law of the codified act. Therefore, the codified act contains no deadline for national transposition. The deadlines for transposition of the original act and its amendments, which are listed in an Annex to the codified act, remain unchanged.

However, if a Member State takes advantage of the codification to rearrange or codify its national legislation, the new provisions adopted constitute 'provisions adopted in the field governed by this Directive' and must therefore be communicated to the Commission. This is particularly relevant for those Member States whose practise it is to transpose directives by taking over their text as it stands in their national legislation.

The following is a standard recital specific to directives laying down technical prescriptions for vehicles :

'(2) Directive/...(E)EC is one of the separate Directives of the EC type-approval system provided for in Council Directive 74/150/EEC, as replaced by Directive 2003/37/EC of the European Parliament and of the Council of 26 May 2003 on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units and repealing Directive 74/150/EEC⁵ and lays down technical prescriptions concerning (subject matter of directive). Those technical prescriptions concern the approximation of the laws of the Member States to enable the EC type-approval procedure provided for in Directive 2003/37/EC to be applied in respect of each type of tractor. Consequently the provisions laid down in Directive 2003/37/EC relating to agricultural and forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units apply to this Directive.'

Depending on its content, a codified act may contain other recitals with standardised wording, relating e.g. to comitology, to subsidiarity and proportionality, etc.

(3) Why are some provisions of the original act restructured or renumbered in its codified version?

Certain provisions of the codified text are restructured or renumbered to comply with modern legal drafting rules.

- If a point or paragraph is deleted, merged or split, the following text is renumbered accordingly.
- Sometimes a sentence or a paragraph are restructured in order to remove a 'sandwich-structure', as in the following example (Directive 90/61/EC of 24 September 1996 concerning integrated pollution prevention and control) :

Original article

1. *Acting on a proposal from the Commission, the Council will set emission limit values, in accordance with the procedures laid down in the Treaty, for :*
 - *the categories of installations listed in Annex I except for the landfills covered by categories 5.1 and 5.4 of that Annex, and*
 - *the polluting substances referred to in Annex III,**for which the need for Community action has been identified, on the basis, in particular, of the exchange of information provided for in Article 16.'*

Codified version

1. *Where the need for Community action has been identified, on the basis, in particular, of the exchange of information provided for in Article 17 the European Parliament and the Council, acting on a proposal from the Commission, shall set emission limit values, in accordance with the procedures laid down in the Treaty, for:*
 - (a) *the categories of installations listed in Annex I except for the landfills covered by points 5.1 and 5.4 of that Annex, and*
 - (b) *the polluting substances referred to in Annex III.'*

(4) Why are sometimes parts of the original act text missing in the codification proposal?

Firstly, these omissions may be the result of minor technical deletions carried out in the process of codification because the parts of the text concerned have become obsolete or have been replaced by a new text. These deletions are not visible in the proposal, but will be reflected in the reference box with the word '(adapted)' or '(adapté)'.

Secondly, these omissions may be the result of the instructions in amending acts, as in the following example.

The original act reads:

'Article 3

- 1. Member States shall check compliance with the maximum permitted levels laid down in Article 2(2) in respect of the products referred to in Article 1, taking into account contamination levels in the country of origin.*

Checking may also include the presentation of export certificates.

The amending act reads :

- '1. the second subparagraph of paragraph 1 of Article 3 is deleted.'*

Thus, the codification proposal will read:

'Article 3

- 1. Member States shall check compliance with the maximum permitted levels laid down in Article 2(2) in respect of the products referred to in Article 1, taking into account contamination levels in the country of origin.'*
