

## “ACTS” AND “LAWS” OF THE EUROPEAN UNION: A STEP TOWARDS THE FEDERALISATION OF THE EU?

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**Abstract:** *Several years ago, the European Union started using short titles of regulations and directives more frequently and including the terms “Act” or “Law” in the short titles. The author of the article focuses on two issues. First, she seeks to answer the question what the motive is for the EU to call certain pieces of secondary legislation “Act” and “Law”. Whether the European Union tends to “federalise” without revision of the Treaties. Second, it has been almost 20 years since the Constitutional Treaty was refused. Thus, it might be the right time for amending the founding Treaties, and generally introducing “Acts” or “Laws” instead of “regulations” and “directives”.*

**Keywords:** *European Union, terminology, European laws, European framework laws, statute*

### I. INTRODUCTION

Several years ago, the European Union started using short titles of regulations more frequently and including the word “Act” or “Law” in the short titles. Recently, the EU has referred to a directive as “Law” as well (see Soil Monitoring Law).<sup>1</sup> This trend should draw our attention because there is no legal basis in the EU Treaties<sup>2</sup> to use these terms. However, scholars have paid very limited attention to this phenomenon so far. Since the foundation of the European Communities, binding secondary acts have been “regulation”, “directive”, “decision”. Yet, one must recall the Treaty establishing a Constitution for Europe (the Constitutional Treaty) which, as F. Křepelka<sup>3</sup> remarks, turned regulations into “European laws” and directives into “European framework laws”. The Constitutional Treaty had been signed on 29 October 2004; however, it was not ratified due to rejection in national referenda in France and the Netherlands. The main reason for refusing it was criticism that the Constitutional Treaty was too “federalising”. Among others, using terms “Constitution” and “laws” irritated certain politicians and nationals of the Member States.

“Act” and “Law” are terms used in national legislation for statutes. Although it is sensitive to use them in the context of EU law, they are more apt than “regulation” or “directive”. Thus, this paper focuses on two issues. First, the author seeks to answer the question what the motive is for the EU to call certain pieces of secondary legislation “Act” and “Law”. Does the European Union tend to “federalise” without revision of the Treaties? Second, it has been almost 20 years since the Constitutional Treaty was refused. Is now the time for amending the founding Treaties, and generally introducing “Acts” or “Laws” instead of “regulations” and “directives”?

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<sup>1</sup> Proposal for a directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law), COM (2023) 416 final.

<sup>2</sup> Treaty on European Union (TEU), Treaty on the Functioning of the European Union (TFEU).

<sup>3</sup> See KŘEPELKA, F. Several Acts and One Law as an Impulse for Reviving European (Framework) Laws. *Časopis pro právní vědu a praxi*. 2022, Vol. 30, No. 4, p. 829.

## II. ACTS AND LAWS IN EU LEGAL SYSTEM

The European Union has referred to certain regulations and (one) directive as “Act” or “Law” in short titles since 2016. Nevertheless, already in 1976, the Act concerning the election of the representatives of the Assembly by direct universal suffrage was adopted. The Act was annexed to the decision of the representatives of the Member States meeting in the Council of 20 September 1976 (76/787/ECSC, EEC, Euratom). It is officially called “Electoral Act”.<sup>4</sup> The Electoral Act is a specific legal act which was subject to ratification in the Member States and thus, it forms a part of primary law, not secondary law of the EU. In the author’s opinion, the term “Act” is not supposed to have a meaning analogous to national statutes. It is a neutral term referring to electoral rules because primary law does not contain any specific term for it. Article 138(3) of the EEC Treaty<sup>5</sup> stipulates that the “Council shall, acting unanimously, lay down the appropriate provisions (...)”.<sup>6</sup> Other language wordings correspond to English wording: German “Akt”, French “l’Acte”, Italian “l’Atto” etc. On the other hand, Electoral Act contains “constitutional” rules and, from a material point of view, is near to national constitutional or electoral laws.

We can find other examples in EU primary law using the word “Act”. For instance, Single European Act revising the Treaties (“Einheitliche Europäische Akte” in German, “Acte Unique Européen” in French, “Atto Unico Europeo” in Italian) can be mentioned. When the Czech Republic was entering the European Union in 2004, it signed and ratified an accession treaty which included “Act concerning the conditions of accession”<sup>7</sup> (“Akt o podmínkách přistoupení”<sup>8</sup> in Czech). These instruments refer to international law because they are binding international treaties. The term “Act” is used in international law outside the EU as well, e.g., Final Act of the Conference on Security and Cooperation in Europe of 1 October 1975 (although it is not legally binding).

Moreover, various innominate “Acts” have been adopted by Union bodies. For example, Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>9</sup> or Act of the Joint Supervisory Body of Eurojust of 23 June 2009 laying down its rules of procedure.<sup>10</sup> The word “Act” is used in the full title,

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<sup>4</sup> See preamble of Council Decision (EU, Euratom) 2018/994 of 13 July 2018 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976.

<sup>5</sup> Treaty establishing the European Economic Community.

<sup>6</sup> Full wording of Art. 138(3): “The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States. The Council shall, acting unanimously, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.”

<sup>7</sup> Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.

<sup>8</sup> Akt o podmínkách přistoupení České republiky, Estonské republiky, Kyperské republiky, Lotyšské republiky, Litevské republiky, Maďarské republiky, Republiky Malta, Polské republiky, Republiky Slovinsko a Slovenské republiky a o úpravách smluv, na nichž je založena Evropská unie.

<sup>9</sup> OJ C 197, 12. 7. 2000, pp. 1–2.

<sup>10</sup> OJ C 182, 7. 7. 2010, pp. 3–10.

probably as a neutral term for legal act of a Union body, it does not refer to terms used in national legislation for statutes.

In 2016, new trend has started in the EU. The words “Act” or “Law” has appeared in short titles of selected regulations and, recently, also a directive. So far, the EU has adopted or proposed following Acts:

- Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (**Cybersecurity Act**)
- Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (**Data Governance Act**)
- Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (**Digital Markets Act**)
- Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (**Digital Services Act**)
- Regulation (EU) 2023/1781 of the European Parliament and of the Council of 13 September 2023 establishing a framework of measures for strengthening Europe’s semiconductor ecosystem and amending Regulation (EU) 2021/694 (**Chips Act**)
- Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on Artificial Intelligence (**Artificial Intelligence Act**) and amending certain Union Legislative Acts, COM(2021) 206 final
- 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
- Proposal for a regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (**European Media Freedom Act**) and amending Directive 2010/13/EU, COM(2022) 457 final
- Proposal for a regulation of the European Parliament and of the Council laying down measures for a high level of public sector interoperability across the Union (**Interoperable Europe Act**), COM(2022) 720 final
- Proposal for a regulation of the European Parliament and of the Council on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU (**Gigabit Infrastructure Act**), COM(2023) 94 final
- Proposal for a regulation of the European Parliament and of the Council on establishing a framework of measures for strengthening Europe’s net-zero technology products manufacturing ecosystem (**Net Zero Industry Act**), COM(2023) 161 final.

So far, the EU has adopted or proposed following Laws:

- Regulation (EU) 2016/429 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**)
- Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (**European Climate Law**)

- Proposal for a directive of the European Parliament and of the Council on Soil Monitoring and Resilience (**Soil Monitoring Law**), COM(2023) 416 final

Furthermore, the Regulation (EU) 2016/2031 on protective measures against pests of plants<sup>11</sup> is called “**Plant Health Law**” although this is not an official short title of the regulation. The expression “Plant Health Law” is used by the Commission or WTO.<sup>12</sup> Likewise, the Proposal for a Regulation on nature restoration<sup>13</sup> is unofficially called “**Nature Restoration Law**”.<sup>14</sup>

Moreover, F. Křepelka points that historically,

[t]here is already a tradition of using the word *codes* in short and full titles for important regulations: the Schengen Borders Code, the Visa Code and the (Community/ Union) Customs Code. Surprisingly, directives have also introduced ‘codes’ for human and veterinary pharmaceuticals. (...) 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.<sup>15</sup>

The term “code” designates “a more or less systematic and comprehensive written statement of laws”,<sup>16</sup> see for instance The Civil Code of the State of California.<sup>17</sup>

### III. SCRUTINY OF EU ACTS AND LAWS

It follows from the foregoing that Animal Health Law adopted in 2016 was the first regulation using the word “Law” in the short title. It is worth noting that the Commission’s proposal issued in 2013 did not include the term “Animal Health Law”.<sup>18</sup> However, it appeared in Commission staff working document impact assessment accompanying the proposal.<sup>19</sup> Later, in 2019, the Cybersecurity Act and other Acts and Laws have been adopted or pro-

<sup>11</sup> Regulation (EU) 2016/2031 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC.

<sup>12</sup> In: *European Commission* [online]. [2024-01-09]. Available at: <[https://food.ec.europa.eu/plants/plant-health-and-biosecurity/legislation/plant-health-rules\\_en](https://food.ec.europa.eu/plants/plant-health-and-biosecurity/legislation/plant-health-rules_en)>, and *World Trade Organization* [online]. [2024-01-09]. Available at: <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=t:/G/SPS/GEN1639.docx&Open=True>>.

<sup>13</sup> Proposal for a Regulation of the European Parliament and of the Council on nature restoration, COM (2022) 304 final.

<sup>14</sup> In: *European Commission* [online]. 22. 6. 2022 [2024-01-09]. Available at: <[https://environment.ec.europa.eu/publications/nature-restoration-law\\_en](https://environment.ec.europa.eu/publications/nature-restoration-law_en)>.

<sup>15</sup> KŘEPELKA, F. *Several Acts and One Law as an Impulse for Reviving European (Framework) Laws*. pp. 831–832.

<sup>16</sup> In: *Britannica* [online]. 22. 6. 2022 [2024-01-09]. Available at: <<https://www.britannica.com/topic/law-code>>.

<sup>17</sup> In: *California Legislative Information* [online]. [2024-01-09]. Available at: at: <[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CIV&heading2=TITLE%20OF%20THE%20ACT](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&heading2=TITLE%20OF%20THE%20ACT)>.

<sup>18</sup> Proposal for a regulation of the European Parliament and of the Council on Animal Health, COM(2013) 260 final.

<sup>19</sup> Commission staff working document impact assessment Accompanying the document Proposal for a regulation of the European Parliament and of the Council on Animal Health, SWD/2013/0161 final.

posed. It is obvious that Laws are less frequent than Acts. So far, there have been only three pieces of secondary legislation including “Law” in short titles.

Until the Commission proposed “Soil Monitoring Law”, the Acts and Laws were designating only regulations. The Soil Monitoring Law is the first directive bearing the term “Law”. While referring to regulations as Acts or Laws is generally understandable because regulations are, from material point of view, “European laws”, referring to directives as Laws is misleading. Regulations usually lay down rights and duties of natural and legal persons and they are directly applicable. By contrast, directives are not directly applicable, they are always addressed to the Member States and must be transposed to their national legislation. Besides, Soil Monitoring Law does not give rise to rights and duties for individuals at first glance. Certainly, directives are addressed to the Member States and not to individuals. However, there are plenty of directives containing visible rights and duties of natural and legal persons. A good example is directive 2011/83 on consumer rights<sup>20</sup> which contains clear and precise provisions laying down rights and duties of consumers and traders. Yet, as mentioned earlier, the term “code” was introduced for EU directives concerning human and veterinary pharmaceuticals even though one would expect they would be reserved only for regulations.

On the other hand, not all regulations include rights and duties of individuals, see, for instance, regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. Similarly, the European Climate Law lays down obligations for Union bodies and the Member States. It sets out a binding objective of climate neutrality in the EU by 2050 (Article 1) and formulates rules in a way which is typical for directives (e.g., Article 5). Accordingly, it seems there is no “legal” reason for using the term “Law” because from legislative point of view, some secondary acts are not true “European laws”.

Anyway, it is inappropriate to use the same terms for regulations as well as directives because the actual type of secondary law is disguised. It is not visible whether the legal act is a regulation or a directive. The Interinstitutional Style Guide<sup>21</sup> requires the complete title of an act to comprise among others “the type of act (regulation, directive, etc.)”<sup>22</sup> According to the Joint Practical Guide,<sup>23</sup> the full title of the act may be followed by a short title, where appropriate.<sup>24</sup> However, “referring to acts by a short title creates risks for the accuracy and coherence of legal acts of the Union. This method should therefore only be used in specific cases where it significantly aids the reader’s understanding.”<sup>25</sup> Unfor-

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<sup>20</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

<sup>21</sup> Publications Office of the European Union, *Interinstitutional style guide*, Publications Office of the European Union, 2022. In: *publications.europa.eu* [online]. [2024-01-09]. Available at: <<https://publications.europa.eu/code/en/en-000100.htm>>.

<sup>22</sup> Section 2.1. Title.

<sup>23</sup> European Commission, Legal service, *Joint practical guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation*, Publications Office, 2015. In: *European Union* [online]. [2024-01-09]. Available at: <<https://op.europa.eu/en/publication-detail/-/publication/3879747d-7a3c-411b-a3a0-55c14e2ba732>>.

<sup>24</sup> Section 8.

tunately, since the word “law” is used in short titles of regulations as well as directives, this approach is inaccurate and confusing and it does not fulfil requirements of the Joint Practical Guide.

Areas covered by EU Acts and Laws are varied. Nevertheless, all Laws concern protection of animals, plants, climate, soil, i.e., environment. Hence, the term “Law” seems to be, for the time being, reserved to environmental protection legislation. Acts concern various topical issues, primarily digital market, digital technologies, data protection but, on the other hand, also media freedom which does not fit in these areas. However, the Net Zero Industry Act also does not fit in, it concerns climate protection and should rather be designated “Law”, not “Act”.

Scrutiny of adopted or proposed Acts and Laws also shows that plenty of these acts have cross-border impacts outside the EU and they are binding on companies located in third countries. For instance, the Digital Services Act stipulates in Article 2:

“This Regulation shall apply to intermediary services offered to recipients of the service that have their place of establishment or are located in the Union, **irrespective of where the providers of those intermediary services have their place of establishment** [highlighted by the author].”

Likewise, in accordance with its Article 1(2), Digital Markets Act shall apply to core platform services provided or offered by gatekeepers to business users established in the Union or end users established or located in the Union, **irrespective of the place of establishment or residence of the gatekeepers** [highlighted by the author] and irrespective of the law otherwise applicable to the provision of service.

On The other hand, there are also Acts concerning only relations and activities within the EU. the proposal for the Interoperable Europe Act reads that the regulation lays down measures to promote cross-border interoperability of networks and information systems which are used to provide or manage public services in the Union.<sup>26</sup> It is addressed to the Member States and Union bodies. In line with Article 2(1)

“‘cross-border interoperability’ means the ability of network and information systems to be used by **public sector bodies in different Member States and institutions, bodies, and agencies of the Union** [highlighted by the author] in order to interact with each other by sharing data by means of electronic communication”.

V. Papakonstantinou points that many of these Acts and Laws – albeit not all of them – fall under the Commission’s Priorities Programme 2019–2024.<sup>27</sup> Indeed, when it comes to Laws, European Climate Law is a landmark legal act of “The European Green Deal”. The

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<sup>25</sup> Section 8.4. For broader analysis see PAPA KONSTANTINO U, V. The “act-ification” of EU law: the (long-overdue) move towards “eponymous” EU Legislation. [online]. *European Law Blog*. 2021. [2024-01-09]. Available at: <<https://europeanlawblog.eu/2021/01/26/the-act-ification-of-eu-law-the-long-overdue-move-towards-eponymous-eu-legislation/>>.

<sup>26</sup> Article 1.

<sup>27</sup> See PAPA KONSTANTINO U, V. *The “act-ification” of EU law: the (long-overdue) move towards “eponymous” EU Legislation*.

Soil Monitoring Law is included in “The European Green Deal” as well which explains why a directive is referred to as the “Law”. By contrast, the Animal Health Law was adopted already in 2016, i.e., before the current Commission was formed. Moreover, some proposals or adopted secondary acts which fall within the scope of “The European Green Deal” are not “Laws”. Regulation (EU) 2023/2405 of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport (ReFuelEU Aviation) can be mentioned.

As to the Acts, most of them are involved in the Commission’s priority “A Europe fit for the digital age”. Nevertheless, the Cybersecurity Act was adopted on 17 April 2019, i.e., before the current Commission was set up (the current Commission has been in place since December 2019). Furthermore, several pieces of secondary legislation which are involved in “A Europe fit for the digital age” are not “Acts”, e.g., proposal for a directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive), COM(2022) 496 final or proposal for a regulation of the European Parliament and of the Council on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020, COM(2022) 454 final. Although the latter is called the “Cyber Resilience Act”,<sup>28</sup> it is not a short title officially added to the full title of the proposal.

Dichotomy of the terms “Act” and “Law” is not easy to understand. Why does the EU use two different words? Laws have been so far reserved for environmental secondary legislation, however, as mentioned earlier, one regulation concerning environmental protection is designated “Act” (Net Zero Industry Act), not “Law”. Both Acts and Laws have ambiguous meanings in English. It follows from the foregoing, that the term “Act” is used in a variety of contexts in EU legal system and has different meanings. It was pointed out that it may designate an international treaty, an innominate act of a Union body, or a regulation. Nevertheless, the author agrees with V. Papakonstantinou<sup>29</sup> that short titles of regulations including the word “Act” are inspired by short titles of statutes used in countries with Common law system, e.g., The Immigration and Nationality Act (INA) enacted in the United States in 1952.<sup>30</sup>

The term “law” has three different meanings according to the U. S. Legal Dictionary.<sup>31</sup> First, it means “any system of regulations to govern the conduct of the people of a community, society or nation, in response to the need for regularity, consistency and justice based upon collective human experience.” Second meaning is “a statute, ordinance or regulation enacted by the legislative branch of a government and signed into law, or in some nations created by decree without any democratic process.” Third meaning is “a generic term for any body of regulations for conduct, including specialized rules (military

<sup>28</sup> In: *Legislative Observatory - European Parliament* [online]. [2024-01-09]. Available at: <[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0272\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0272(COD)&l=en)>.

<sup>29</sup> See PAPA KONSTANTINOŪ, V. *The “act-ification” of EU law: the (long-overdue) move towards “eponymous” EU Legislation*.

<sup>30</sup> In: *U.S. Citizenship and Immigration Services* [online]. [2024-01-09]. Available at: <<https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>>.

<sup>31</sup> In: *U.S. Legal Dictionary* [online]. [2024-01-09]. Available at: <<https://dictionary.law.com/Default.aspx?selected=1111>>.

law), moral conduct under various religions and for organizations, usually called ‘bylaws.’ F. Křepelka points out that “law” prevails in English translations of national statutes of non-English countries.<sup>32</sup> In the author’s view, in the context of EU law the term “Law” refers to national statutes as well because it designates regulations and a directive as legislative acts of the European Parliament and the Council (i.e., “EU statutes”).

Other languages make things even more complicated because they do not entirely reflect terms used in English language. To demonstrate that, the author analyses French, German, Czech, and Slovak short titles. French short titles mostly use the term “règlement”<sup>33</sup> (“regulation” in English) and “directive”<sup>34</sup> (“directive” in English), i.e., terms used in the Treaties. For the Artificial Intelligence Act and European Media Freedom Act, the word “législation” is used: *législation sur l’intelligence artificielle, législation européenne sur la liberté des médias*. For the European Climate Law (but only for it), the word “loi” (i.e., “statute” in English) is used: *loi européenne sur le climat*.

Even German approach is not consistent. Initially, German short titles used the term “Rechtsakt”<sup>35</sup> (“legal act” in English) as equivalent for “Act”. Later, the short titles included “Gesetz”<sup>36</sup>, i.e., “statute” in English. It is worth noting that in German wording of the TFEU, legislative procedure is referred to as “Gesetzgebungsverfahren” and legislative acts are “Gesetzgebungsakte”. It follows that Germans are “not afraid” of using the national term “Gesetz” in connection with European integration. However, recent proposals of Acts do not include “Gesetz” anymore, the German equivalent for regulation – “Verordnung” – is used.<sup>37</sup> “Gesetz” is used in short titles of certain “Laws” as well.<sup>38</sup> However, the first Law – Animal Health Law – is “Tiergesundheitsrecht” in German. The term “Recht” means “law” in English, but not in the sense of a statute, but in the sense of a system of regulations according to the third definition in the U. S. legal dictionary (see *supra*).

It is also worth comparing Czech and Slovak wordings of the short titles since both are Slavic languages, and they are very similar to each other. In Czech and Slovak short titles the term “akt” frequently appears<sup>39</sup> which means “act” in English in the sense of a neutral term, not in the sense of a statute. “Statute” is “zákon” in both languages and it is not used in the short titles of EU Acts and Laws at all. The Digital Markets Act and Digital Services Act are designated “nařízení”<sup>40</sup> (“regulation” in English) in Czech. For Laws “právní rámec”

<sup>32</sup> See KŘEPELKA, F. *Several Acts and One Law as an Impulse for Reviving European (Framework) Laws*. p. 840.

<sup>33</sup> Règlement sur la cybersécurité, règlement sur la gouvernance des données, règlement sur les marchés numériques, règlement sur les services numériques, règlement sur les puces, règlement sur les données, règlement pour une Europe interopérable, règlement sur les infrastructures gigabit, règlement pour une industrie «zéro net».

<sup>34</sup> Directive sur la surveillance des sols.

<sup>35</sup> Rechtsakt zur Cybersicherheit, Daten-Governance-Rechtsakt.

<sup>36</sup> Gesetz über digitale Märkte, Gesetz über digitale Dienste, Chip-Gesetz, Gesetz über künstliche Intelligenz, Datengesetz, Europäisches Medienfreiheitsgesetz, Gesetz für ein interoperables Europa.

<sup>37</sup> Gigabit-Infrastrukturverordnung, Netto-Null-Industrie-Verordnung.

<sup>38</sup> Europäisches Klimagesetz, Bodenüberwachungsgesetz.

<sup>39</sup> In Czech language: akt o kybernetické bezpečnosti, akt o správě dat, akt o čipech, akt o umělé inteligenci, akt o datech, Evropský akt o svobodě sdělovacích prostředků, akt o Interoperabilní Evropě, akt o gigabitové infrastruktuře, akt o průmyslu pro nulové čisté emise.

In Slovak language: akt o kybernetickej bezpečnosti, akt o správe údajov, akt o digitálnych trhoch, akt o digitálnych službách, akt o čipoch, akt o umelej inteligencii, akt o údajoch, Európsky akt o slobode médií, akt o interoperabilnej Európe, akt o gigabitovej infraštruktúre, akt o emisne neutrálnom priemysle.



in Czech is used, i.e., “legal framework” in English, even for the Soil Monitoring Law as a directive.<sup>41</sup> In Slovak, in comparison, different terms for “Law” are used: “právna úprava”,<sup>42</sup> “právny predpis”<sup>43</sup> (both mean “legal regulation” in English), “smernice”<sup>44</sup> (“directive” in English). To sum up, Czech and Slovak terminology differ and completely avoid the term “zákon”.

To conclude, terminology in other languages does not fully reflect English terminology. It is heterogeneous and unsystematic. The way in which the terms are chosen is not at all intelligible. One may say it is “the confusion of tongues”.

#### IV. DOES THE EU TEND TO “FEDERALISE”?

Since 2000, the process of replacing directives by regulations can be observed in the European Union.<sup>45</sup> One of the main reasons for the change in the form of secondary legislation is the problem of incorrect or delayed transposition of directives. Regulations, on the other hand, are directly applicable. The form of regulation is advantageous for entities engaged in international trade or working in other Member States, as it contains unified rules applicable across the EU. However, the more widespread adoption of regulations leads to a strengthening of the European Union in law-making at the expense of national parliaments and contributes to the federalisation of the EU.

In fact, most of the Acts and Laws in question are brand new pieces of legislation which do not replace existing directives and thus, do not fit in the described trend. Only the Gigabit Infrastructure Act repeals a directive,<sup>46</sup> the Animal Health Law repeals a long list of directives,<sup>47</sup> the Plant Health Law repeals several directives.<sup>48</sup> On the other hand, since almost all Acts and Laws in question are regulations, one may wonder whether the use of these terms is related to the replacing directives by regulations and whether it also contributes to the federalisation of the EU.

Nevertheless, when it comes to the use of Acts and Laws in short titles, leading idea of the EU, in the author’s opinion, is not to federalise but to set global standards. Although the Cybersecurity Act and Animal Health Law were adopted before the current Commission was established, the Commission of Ursula von der Leyen appears to have continued the legislative practice of the former Commission of Jean-Claude Juncker

<sup>40</sup> Nařízení o digitálních trzích, nařízení o digitálních službách.

<sup>41</sup> Právní rámec pro zdraví zvířat, evropský právní rámec pro klima, právní rámec pro monitorování půdy.

<sup>42</sup> Právna úprava v oblasti zdravia zvierat.

<sup>43</sup> Európsky právny predpis v oblasti klímy.

<sup>44</sup> Smernica o monitorovaní pôdy.

<sup>45</sup> For more details see KŘEPELKA, F. Transformations of Directives into Regulations: Towards a More Uniform Administrative Law? *European Public Law*. 2021, Vol. 27, No. 4, pp. 781–806, WUNDERLICH, N., PICKARTZ, T. Hat die Richtlinie ausgedient? Zur Wahl der Handlungsform nach Art. 296 Abs. 1(6) AEUV. *Europarecht*. 2014, Vol. 49, No. 6, pp. 659–670, VAN DEN BRINK, T. 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, Vol. 19, pp. 211–235, SVOBODOVÁ, M. Několik poznámek k nahrazování směrnic nařízeními v Evropské unii. *Správní právo – Legislativní příloha*. 2020, Vol. 54, No. 3, pp. 34–57.

<sup>46</sup> Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks.

<sup>47</sup> See Article 270.

<sup>48</sup> See Article 109.

and developed it. As mentioned earlier, many Acts and Laws have been proposed by the Commission within its priority framework “A Europe fit for the digital age” and “The European Green Deal”. Plenty of these Acts and Laws have an impact on individuals in third countries and touch upon hot issues such as climate change or artificial intelligence. Ursula von der Leyen, as a candidate for the European Commission President, declared in her political guidelines in 2019:<sup>49</sup> “Europe must lead the transition to a healthy planet and a new digital world.” It seems that the EU tries to make its legislation serve as a model for other states and to “export” its ideas and values. Contribution to federalisation is rather a side effect of these activities. After all, the Treaty on European Union stipulates in Article 3(5) that “[i]n its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, (...)”

## V. REFLECTIONS ON REPLACING THE TERMS “REGULATION” AND “DIRECTIVE”

The advantage of the short titles including Acts and Laws is the fact that they are practical, easy to remember, intelligible for Union citizens and companies as well as for the third countries and individuals living therein.

By contrast, one may criticize that the use of these terms has no basis in the Treaties. The Union’s approach to the use of this terminology is not systematic and uniform, it is not a clear concept. It is difficult to ascertain by what key legislative acts receive short titles including Acts and Laws. Moreover, these terms are not fully reflected in other languages of the Union. Terminology in other language wordings is inconsistent within one language version as well as in comparison with others. Furthermore, Acts and Laws disguise the actual form of the legislative act. This has become even more problematic recently since a directive was referred to as “Law” too.

Nevertheless, the EU practice has many benefits and its conversion into the Treaties would be, in the author’s view, desirable and useful. It is not a brand-new idea to change the secondary law terminology. The Constitutional Treaty which was signed almost twenty years ago aimed to rename both regulations and directives. A regulation was supposed to be replaced by “European Law” (“la loi européenne” in French, “das Europäische Gesetz” in German) and a directive by “European framework law” (“la loi-cadre européenne” in French, “das Europäische Rahmengesetz” in German).<sup>50</sup> In the author’s opinion, they aptly express the nature of these legal acts and, accordingly, their (re)introduction should be discussed. Although the Constitutional Treaty was rejected<sup>51</sup> due to, among others, introduction of the new terms which were found to be too revolutionary, twenty years have passed, and the idea should be reconsidered now.

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<sup>49</sup> In: *commission.europa.eu* [online]. [2024-01-10]. Available at: <[https://commission.europa.eu/system/files/2020-04/political-guidelines-next-commission\\_en\\_0.pdf](https://commission.europa.eu/system/files/2020-04/political-guidelines-next-commission_en_0.pdf)>.

<sup>50</sup> Article I-33(1).

<sup>51</sup> For more details see LENAERTS, K., VAN NUFFEL, P. *EU Constitutional Law*. Oxford: Oxford University Press, 2021, p. 39.

Opponents should realize that nowadays, many people believe that the EU adopts “laws”. Journalists often use this term in their articles and reports. For example, The Guardian published the article with the title “EU agrees radical reforms on migration and asylum laws” on 9 June 2023.<sup>52</sup> Another example is the article in *Le Monde* called “Biodiversité: l’Union européenne va se doter d’une loi sur la restauration de la nature” published on 10 November 2023.<sup>53</sup> On 22 September 2010, Deutsche Welle broadcasted the report “Das EU-Parlament verabschiedet ein Gesetz, das mehr Kontrolle über Europas Finanzwelt gewährt”.<sup>54</sup> Czech public service media also use the term “law” (“zákon” in Czech): “Unijní parlament těsně podpořil zákon o obnově přírody”<sup>55</sup> or “Evropský parlament schválil klimatický zákon”.<sup>56</sup> People understand this term easily because everybody knows what law is.

By contrast, Union “regulations” may associate acts of executive bodies, not statutes. “Verordnung” in Germany and Austria, “règlement” in France, and “nařízení” in the Czech Republic are predominantly implementing acts adopted by virtue of a law. In the U. S., regulations have very specific character. They are issued by governmental agencies and have the force of law, although they are not laws. They are not generally included in volumes containing state statutes or federal laws.<sup>57</sup> Moreover, EU law comprises similar term “regulatory act” (“Rechtsakte mit Verwaltungscharakter” in German, “les actes réglementaires” in French) referred to in Article 263 TFEU. This provision allows natural or legal person to institute proceedings against regulatory acts which are of direct concern to them and do not entail implementing measures. In *C-583/11 P Inuit*,<sup>58</sup> the Court of Justice came to the conclusion that “the concept of ‘regulatory act’ does not encompass legislative acts” (par. 112). In EU legal system, “regulations” may have character of both legislative act and non-legislative act. It follows that “regulation” and “regulatory act” sound similar but have different meanings. The term “European law” would be more suitable for regulations as legislative acts because, among others, it would clearly distinguish them from “regulatory acts” and national regulations.

In the author’s view, the terminology and taxonomy of secondary legislation drafted in the Constitutional Treaty could, in principle, be taken over in the future if there will be political will to amend the Treaties. According to the Constitutional Treaty, all binding secondary acts bear the adjective “European”. Since there is no other European organisation adopting its own binding rules, there is no threat that EU acts could be confused with others.

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<sup>52</sup> In: *The Guardian* [online]. [2024-01-10]. Available at: <<https://www.theguardian.com/world/2023/jun/08/eu-agrees-radical-reforms-migration-asylum-laws>>.

<sup>53</sup> In: *Le Monde* [online]. [2024-01-10]. Available at: <[https://www.lemonde.fr/international/article/2023/11/10/biodiversite-l-union-europeenne-va-se-doter-d-une-loi-sur-la-restauration-de-la-nature\\_6199242\\_3210.html](https://www.lemonde.fr/international/article/2023/11/10/biodiversite-l-union-europeenne-va-se-doter-d-une-loi-sur-la-restauration-de-la-nature_6199242_3210.html)>.

<sup>54</sup> In: *Deutsche Welle* [online]. [2024-01-10]. Available at: <<https://www.dw.com/en/das-eu-parlament-verabschiedet-ein-gesetz-das-mehr-kontrolle-%C3%BCber-europas-finanzwelt-gew%C3%A4hrt/video-6033826>>.

<sup>55</sup> In: *Česká televize – ČT24* [online]. 12. 7. 2023 [2024-01-10]. Available at: <<https://ct24.ceskatelevize.cz/svet/3599896-unijni-parlament-tesne-podporil-zakon-o-obnove-prirody>>.

<sup>56</sup> In: *Český rozhlas – iRozhlas* [online]. 24. 6. 2021 [2024-01-10]. Available at: <[https://www.irozhlas.cz/zpravy-svet/evropsky-parlament-klimaticky-zakon\\_2106242236\\_piv](https://www.irozhlas.cz/zpravy-svet/evropsky-parlament-klimaticky-zakon_2106242236_piv)>.

<sup>57</sup> In: *U. S. Legal Dictionary* [online]. [2024-01-10]. Available at: <<https://dictionary.law.com/Default.aspx?selecte&d=1771>>.

<sup>58</sup> *C-583/11 P Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, ECLI:EU:C:2013:625.

Under the Constitutional Treaty, all non-legislative acts were supposed to be renamed “European regulations”, i.e., “delegated European regulations” (Article I-36) and “European implementing regulations” (Article I-37). The author agrees that the term “regulation” is appropriate for acts adopted by the Commission as an executive body of the Union. The word “European” would distinguish them from former EU regulations. R. Král points out that such European regulations would have dual character. They would designate not only acts being currently referred to as regulations but also directives.<sup>59</sup> It is true that it might lead to some confusion and this terminology may be subject to further discussion. Nevertheless, the author believes that such terminology is acceptable in case that it is always unequivocally stipulated whether the European regulation is binding in its entirety and is directly applicable in all Member States, or is 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.

On the other hand, “European decisions” should be reserved for individual legal acts. To adopt normative acts, European laws and European framework laws are proper legal instruments. The new system of secondary law could entail improvement of the current concept of legislative acts. This concept is, in the author’s opinion, flawed. Legislative acts are only those regulations, directives, and decisions which are adopted in legislative procedure (Article 289 TFEU). However, regulations, directives, and decisions which are adopted in decision-making procedure *de facto* identical with legislative procedure but which it is not formally designated “legislative procedure” are not legislative acts.<sup>60</sup> All European laws and European framework laws should be legislative acts if adopted by the European Parliament and the Council.

Actually, EU primary law already encompasses the term “law”. The Charter of Fundamental Rights of the EU (the Charter) stipulates in Article 52(1): “Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law [“par la loi” in French, “gesetzlich” in German – added by the author] and respect the essence of those rights and freedoms.” It is a typical clause used in human rights documents concerning limitation of rights and freedoms by states (it was inspired by the European Convention).<sup>61</sup> In the EU context, the term “law” looks unusual and obscure at first glance. The term “legislative act” seems to be nearest to “law”. However, the Court of Justice did not accept this interpretation because some important legal bases in the Treaties would not be operative. For example, measures restricting individual rights within foreign policy (smart sanctions) cannot have the form of a legislative act. Accordingly, the Court of Justice has interpreted “provided for by law” in broader way which is also in line with a broad view of the European Court of Human Rights interpreting the “prescribed by law” clause in the European Convention.<sup>62</sup>

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<sup>59</sup> See KRÁL, R. *Nářzení ES z pohledu jejich vnitrostátní aplikace a implementace*. Praha: C. H. Beck, 2006, pp. 24 et seq.

<sup>60</sup> See, for instance, Article 103(1) TFEU. The Court of Justice has taken a formal approach to legislative acts in joined cases C-643/15 and C-647/15 *Slovak Republic and Hungary v Council of the European Union*, ECLI:EU:C:2017:631. For more details see SVOBODOVÁ, M. On the Concept of Legislative Acts in the European Union Law. *The Lawyer Quarterly*. 2016, Vol. 6, No. 4, pp. 256–267.

<sup>61</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms.

On the other hand, we can see that EU primary law does not avoid the term "law" entirely. It is understandable because EU law is nearer to the legal system of a state rather than to international law. Of course, it has autonomous character, its foundations lie in international law. In many respects, however, it resembles legal order of a state (principle of direct effect, power of EU institutions to adopt legal acts, participation of the - directly elected - European Parliament in the decision-making process, etc.). At the end of the day, from this perspective, the term "law" used in the Charter is natural and perhaps, it anticipates future development.

## VI. CONCLUSION

The EU has started to adopt "Acts" and "Laws" several years ago, even though there is no basis in the Treaties to do so. In the author's view, the EU's primary intention is not to contribute to federalisation, but to spread its ideas, values, and standards across the border and inspire the rest of the world. At the same time, the EU's approach has many shortcomings. However, it leads us to the question whether regulations and directives should indeed be transformed into European laws and European framework laws. Although the revision of primary law is politically sensitive issue, such modifications would bring many benefits and the change of terminology would lead to "calling a spade a spade".

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<sup>62</sup> See PEERS, S., HERVEY, T., KENNER, J., WARD, A. (eds.). *The EU Charter of Fundamental Rights. A Commentary. 2<sup>nd</sup> edition*. Oxford: Hart Publishing, 2021, p. 1626.