Project no. CIT1-CT-2004-506392

NEWGOV
New Modes of Governance

Integrated Project
Priority 7 – Citizens and Governance in the Knowledge-based Society

Database on Governing Modes CODE
(Cologne Database on the European Union) – Final version
reference number: 1/D68

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Start date of project: 1 September 2004   Duration: 48 months

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Summary

The CODE database provides an opportunity for undertaking empirical research on governing modes in the European Union. Version 1 has made available online data on the secondary legal output and on different categories of legal acts, allowing for a systematic investigation on the legal profile and the use of certain instruments in a number of EU policy areas. The pilot version of CODE was launched on 8 March, 2006 (project month 19) and continuously updated. During year 3 of NewGov, the project team developed a second section of the database, focusing on primary law. Using Eur-Lex, a survey of the legal basis of secondary law instruments was conducted. The goal is establish a means for mapping all primary (and, to a lesser extent, secondary) law instruments used as legal basis for secondary legislation in EU policy fields.

We expect the database, on the one hand, to further our understanding of Governing Modes by providing empirical support (or counter-arguments) regarding our theoretical hypotheses developed within the NewGov Project. On the other hand, the goal is to create a tool on EU governance for the research community. In both regards, CODE assists in revealing quantitative patterns of secondary law in a given policy area. Similarily – on a primary law level – it allows for easy identification of both general modes of governance and specific legal provisions that form the legislative basis for each sector.

Login Data:

Server address is www.code.uni-koeln.de.

User: GUEST

Password: !newgov

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1   General

1.1   Introduction

The NEWGOV database is intended to provide the means to retrieve quantitative data on

1. EU Primary law

2. EU secondary legislation output

in an efficient and convenient way. Thus, it shall assist NEWGOV researchers in their task to empirically examine the concept of new modes of governance as part of the 'legal' and the 'living' constitution. Since March 2006, the database section on EU secondary legislation output is operational, making available online the numbers of different types of EU legal acts adopted each year from 1958 to 2004 in different policy fields (CODE version 1).

Because of the high numbers of policy instruments adopted each year in the different policy fields subject to EU activity, quantitative analysis – even of a single field – relies heavily on databases, such as Eur-lex/Celex. This database is operated by the Publications Office of the EU and offers a relatively easy way to gain a quantitative overview of binding and non-binding legal instruments in various policy fields from the 1960s onwards. *Eur-Lex/Celex* assigns each legal act one or more 'classification headings' according to their content, in theory making it possible to limit a list of legal acts to a specific policy field.

CODE is fully based on *Eur-Lex/Celex* data.

1.2   Technical aspects

The database is exclusively designed at Cologne for the purposes described above. It consists of a MySQL database and three php-scripts.

The first two scripts (input) provide a html-based graphic user-interface which collects the user's query, checks for its integrity and retrieves the data from the SQL-database, respectively for each section of CODE. The third script (output) uses the software phplot to display the selected dataset as graph or a table. The user is not required to install any programs on his terminal asides from a browser.

Raw data (which usually will be excel files) can be imported to the database in a relatively easy way by transforming tables into comma separated values (.csv) and using the administration software phpMyAdmin. This ensures that database maintenance can be carried out without any specialised software know-how. It may be, however, a useful future option to implement a more user-friendly interface for uploading data, for example safeguarding against inadvertent deletion of data and so on.

The database is located at the webdyn1.rrz.uni-koeln project server of the University of Cologne. A webpage (www.code.uni-koeln.de) offers easy access to the database's different sections, and also provides practical information on the database and useful links.

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2   Description of CODE

The CODE database is split into two sections: "Primary law" (i.e. Treaties) and "Secondary law". While the first section allows to quickly identify the legal bases in a given policy field according to the frequency of their occurrence, the second section provides figures on the use of a number of different categories of secondary legal acts, i.e. regulations, directives, decisions, and other acts.

Figure 1 – CODE Database: screenshot of main page
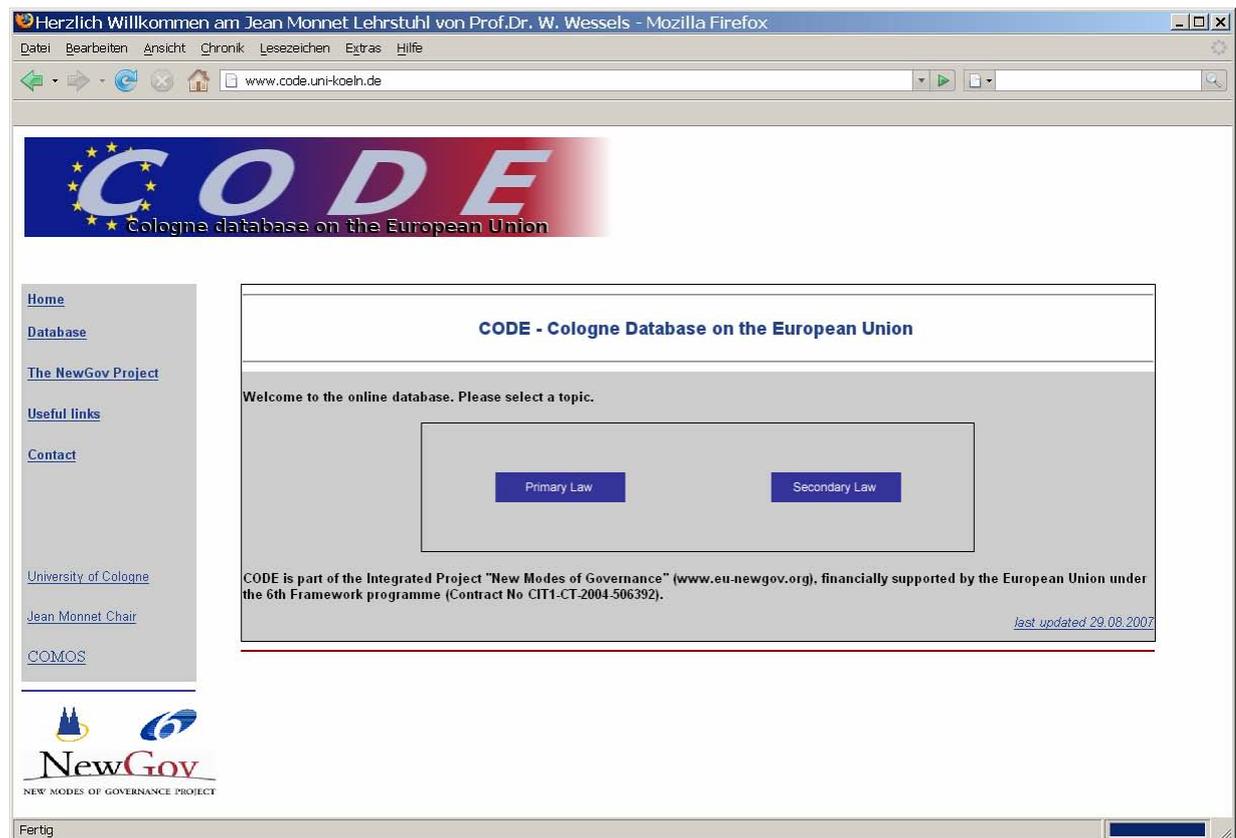
Source: www.code.uni-koeln.de

2.1   CODE section: Primary Law

The 'Primary Law' section of CODE falls back on data on the legal bases of secondary legislation that was collected using Eur-Lex. For a comprehensive number of policy fields, the final version allows to identify:

a)   which legal bases were used as basis for secondary legislation;

b)   the absolute and relative frequency of use for any of these primary (and, to a lesser extent, secondary) law provisions.

It covers the years 2000-2006.

The database's user is able to choose from a list of EU policy fields. Furthermore, s/he can specify a year or a period of several years. The database then displays a list of all legal bases used as basis for secondary legislation in this policy field. The list is sorted by primary, secondary and other legal bases and the absolute frequency for each of these legal instruments.

This is done according to the first Each entry is furnished with an (external) hyperlink to the respective text (provided by Eur-Lex).

Figure 2 - CODE Primary law section: screenshot of result page

Source: www.code.uni-koeln.de

Data for this CODE section was collected as follows. In a first step, all secondary law instruments in a policy field under investigation were retrieved for a specified period of time (usually one year) using the Eur-Lex database (advanced search service). Then, the legal bases – provided for each legal act by the database – were identified and gathered for later processing and analysis. Using Excel spreadsheets, these lists of primary and (to a lesser extent) secondary law provisions and protocols etc. used as legal bases for secondary legislation were sorted for each policy area and year according to the absolute frequency of their occurrence. Results were finally exported as .csv data for later processing by the CODE search engine.

Policy fields for the Primary Law section of CODE include (referring to the *Eur-Lex/Celex* directory code):

Table 1 - CODE Primary law section: available policy fields

Eur-Lex/Celex directory code	Policy field
01	General, financial and institutional matters
02	Customs Union and free movement of goods
03	Agriculture
04	Fisheries
05	Freedom of movemement for workers & social policy
06	Right of establishment and freedom to provide services
07	Transport policy
08	Competition policy
09	Taxation
10	Economic and monetary policy and free movement of capital
11	External relations
12	Energy
13	Industrial policy & internal market
14	Regional policy & coordination of structural instruments
15	Environment, consumers & health protection
16	Science, information, education & culture
16.30	Education and training
17	Law relating to undertakings
19	Area of freedom, security and justice

2.2   CODE section: Secondary Law

Building on *Eur-Lex/Celex* data as well, the 'Secondary Law' section of CODE allows (comparative) quantitative analysis of EU secondary legislative output in different policy fields. In particular, it allows to identify

a) the number of secondary law acts adopted per year in total;

b) the number of secondary law acts according to the type in different combinations.

It is possible to retrieve data for any period of time between 1958 and 2006.

The database's user is able to choose one or several policy fields. For each field, s/he can furthermore define one or several categories of legal acts, i.e. regulations, directives, decisions, other acts, or the sum of all categories. By holding the <Ctrl> button, it is possible to select different combinations. In a next step, the desired period of time and display mode are specified.

Figure 3 – CODE Secondary Law section: defining a query

Source: www.code.uni-koeln.de

There are two possibilities to display the results: either as a line chart or as a table. Figures 3 and 4 give an example of both database's output modes.

Figure 4 – CODE Secondary Law Section: screenshot of sample chart
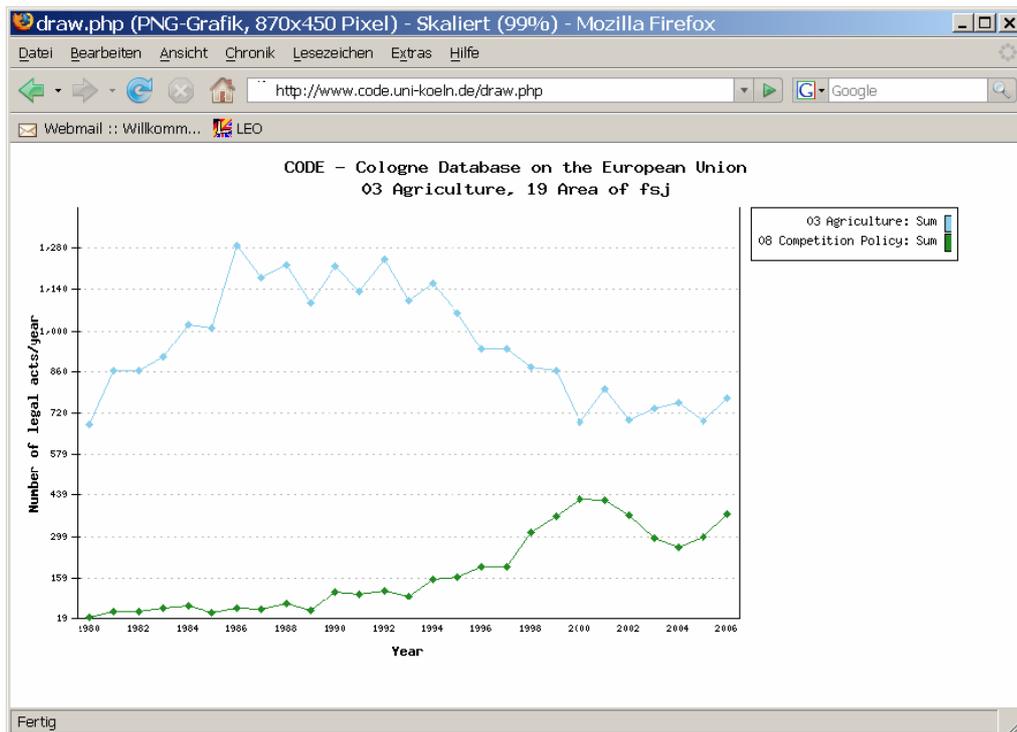
Source: www.code.uni-koeln.de

Figure 5 – CODE Secondary Law Section: screenshot of sample table
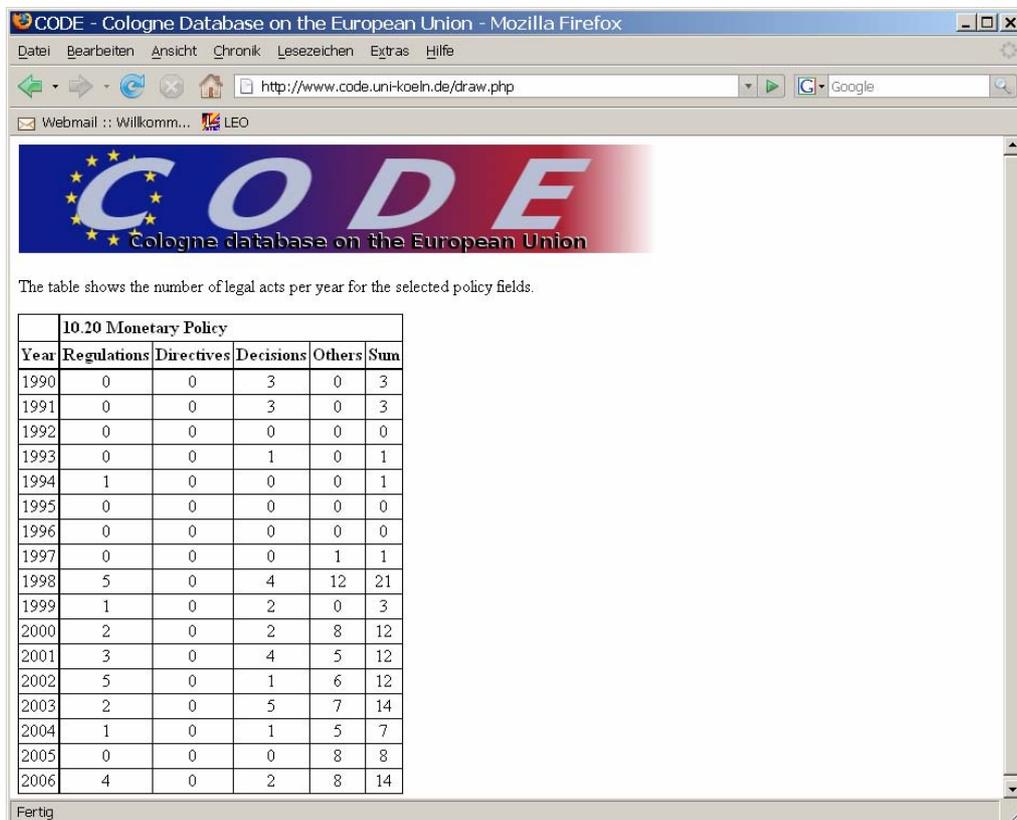
The table shows the number of legal acts per year for the selected policy fields.

	10.20 Monetary Policy				
Year	Regulations	Directives	Decisions	Others	Sum
1990	0	0	3	0	3
1991	0	0	3	0	3
1992	0	0	0	0	0
1993	0	0	1	0	1
1994	1	0	0	0	1
1995	0	0	0	0	0
1996	0	0	0	0	0
1997	0	0	0	1	1
1998	5	0	4	12	21
1999	1	0	2	0	3
2000	2	0	2	8	12
2001	3	0	4	5	12
2002	5	0	1	6	12
2003	2	0	5	7	14
2004	1	0	1	5	7
2005	0	0	0	8	8
2006	4	0	2	8	14

Source: www.code.uni-koeln.de

Data for this CODE section was collected as follows. In a first step, all secondary law instruments in a policy field under investigation were retrieved for a specified period of time (usually one year) using the Eur-Lex database. The resulting lists of legal acts were then evaluated quantitatively, taking into account and correcting for a number of known Eur-Lex-related inconsistencies (see below). Results were registered in Excel spreadsheets and exported as .csv data for later processing by CODE's search engine.

Policy fields for the Secondary Law section of CODE include (referring to the *Eur-Lex/Celex* directory code):

Table 2 - - CODE Secondary law section: available policy fields

Eur-Lex/Celex directory code	Policy field
03	Agriculture
04	Fisheries
05	Freedom of movement for workers & social policy
06	Right of establishment and freedom to provide services
07	Transport policy
08	Competition policy
09	Taxation
10	Economic and monetary policy and free movement of capital
10.20	Monetary Policy
11	External Relations
12	Energy
15.10	Environmental Policy
16.10	Science
16.30	Education & Training
19	Area of freedom, security and justice

Furthermore, legal acts are classified according to four categories. The first three of these categories comprise binding, the fourth category non-binding legal acts (for a more detailed discussion of this differentiation, see part 3).

Table 3 - CODE Secondary law section: available types of legal acts

Types of legal acts
Regulation
Directive
Decision
Other (Opinion, Recommendation, Resolution, ...)

3   What is secondary law?

EU secondary legislation (or secondary law) consists on the one hand of the legal acts listed in Article 249 EC Treaty, Article 161 of the Euratom Treaty and Article 14 of the ECSC Treaty. These instruments are partly of binding nature, and partly non-binding.

On the other hand, secondary legislation also encompasses other (non-binding) legal instruments which are not so easily categorized, for example acts regulating the internal aspects of work between the institutions.

The above treaty articles name the European Parliament, the Council and the Commission as adopting institutions. In addition, other EU bodies are empowered to adopt certain measures (for example, art. 110 TEC stipulates that the ECB can 'make regulations (…), take decisions (…), make recommendations and opinions').

3.1   Binding instruments

Regulations, Directives and Decisions constitute the binding part of secondary law of the European Communities and are published in the Official Journal L (OJ L) series.

A regulation has general application. It is binding in its entirety and directly applicable in all Member States.

A directive is binding as to the result to be achieved, upon each Member State to which it is addressed. It allows the Member States to choose the form and methods of its implementation.

A decision is binding in its entirety upon those to whom it is addressed.

3.2   Non-binding instruments

Opinions and EC / Euratom Recommendations are the last instruments explicitly provided for in the Treaties (Art. 249 EC Treaty).

In contrast to an opinion, a recommendation names the party to whom it is adressed.

Other non-binding instruments are Resolutions, Declarations, Actions Programmes, etc.

In the *Eur-Lex/Celex* system, these two groups of binding and non-binding instruments constitute the sector 3: secondary legislation.

3.3   Not included: Agreements and Legal Acts of the Member States meeting in Council

As separate categories, there finally are International Agreements, grouped as sector 2: external relations by Eur-Lex/Celex, and Complementary legislation created by Agreements be-

tween Member States and legal acts of the Member States meeting in Council, grouped as sector 4: supplementary legal acts. Whether to include these acts or not is a question best answered in the context of each policy field – for CODE data, they are not of relevance.

4 Eur-Lex/Celex-related problems

While the approach of using Eur-Lex figures has its merits in terms of efficiency and comparability, it naturally faces several shortcomings as well.

Firstly, some policy fields we are interested in have no corresponding classification heading, e.g. Fiscal Policy. This means that legal acts in Fiscal Policy cannot be automatically isolated with *Eur-Lex/Celex*. In this case, different search methods have to be employed, e.g. by selecting a superior classification heading and extracting relevant legal acts manually. However, due to the fact that Fiscal Policy is relatively new in the realm of the EU, the numbers of legal acts are low enough here to ensure reliability and comparability of such an alternative approach.

Secondly, the accuracy of *Eur-Lex/Celex* cannot always be taken for granted. In addition to small errors in the datasets, it is necessary to keep in mind that Eur-Lex includes every legal act regardless of its (un)importance. This means, for example, that Eur-Lex and therefore CODE comprise amendments. On the other hand, most misinterpretations can be avoided if one is just aware of the peculiarities of the database.

However, in terms of comparability of policy fields, the approach of using *Eur-Lex/Celex* data seems to be the only feasible solution for the time being.

In the following, three specific *Eur-Lex/Celex*-related problems are addressed:

4.1 Incorrect result figures in earlier years/periods

For searches over a long time span, the figure Eur-Lex displays as result does not correspond to the actual number of legal acts displayed (and therefore in existence). This error can be traced back to a small number of less recent years (seventies and earlier) in many policy fields (example: Legal acts adopted by the Commission in the field of Competition Policy, 1967, 1968 ...).

In order to examine the number of legal acts comprising earlier years, one therefore has to count in the display list and cannot rely on the figure displayed as search result.

If this problem is not taken into consideration, the possible margin of error amounts to about 1 to 3 per cent when considering the sum of legal acts during the whole 1952-2004 period.

The CODE figures are corrected regarding this issue.

4.2 Search by Eur-Lex File Category for secondary legislation (sector 3) includes supplementary legal acts (sector 4):

EurLex searches for type of document > secondary legislation include so-called supplementary legal acts (sector 4). When, on the other hand, the option 'sort results by Celex Sector' is used, these are in contrast excluded from the secondary law sector 3 (this exclusion is also active when the advanced search service of Eur-Lex/Celex is used).

While for most policy fields (classification headings) the effect is negligible, the findings of classification headings 1, 5, 7, 16, 17 and 19 include 6% to 25% supplementary legal acts.

Sector 4: Supplementary Legislation

This sector comprises 'Complementary legislation created by agreements between Member States' and 'Decisions of the Member States meeting in Council'. In the Eur-Lex/Celex search, these decisions are not listed as result when one is looking for 'decisions', instead they are listed among 'other acts'.

4.3   Inconsistent filing of legal acts (opinions) in sector 3 'secondary legislation' and sector 5 'preparatory acts'

Fiscal Policy: Council opinions on the stability and convergence programmes were partly filed as 'preparatory acts' in Eur-Lex, partly as 'secondary law' (for example, 32001A0309(07) and 52001XG0410(02)).

Monetary Policy: ECB Opinions at the request of EU Institutions are filed under sector 3 'secondary legislation' from 1998 till 2000. From 2001 onwards, they are partly filed under sector 3 'secondary legislation' and partly under sector 5 'preparatory acts'.