

European Law Blog

The act-ification of EU law: The (long-overdue) move towards eponymous EU legislation

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The recent release by the Commission of the draft [Digital Services Act](#) and the [Digital Markets Act](#) may have attracted significant attention from stakeholders for their substance. However, this contribution is not about the content but the titles of these acts. In the author's opinion, these two instruments are the latest addition to an emerging trend among the EU law-makers to release, "acts" or at least "eponymous" pieces of legislation. This trend shall be referred to here as "act-ification" of EU law. This trend is to be welcomed in that it signifies a new confidence and self-assuredness of EU law. After more than half a century since it came into life, EU law now seems to feel confident enough to release "acts" or, at any event, eponymous pieces of legislation, immediately recognizable by Europeans.

1. Identifying a trend

The Commission's draft Digital Services Act and Digital Markets Act (each one also fitted with acronyms to even further ease reference - DSA and DMA) are the latest additions to a [Data Governance Act](#) and a [European Climate Law](#). These followed the [Cybersecurity Act](#) of 2019, which in turn followed the, perhaps EU law's Big Bang moment in terms of public awareness and direct effect on the (EU) ground, [General Data Protection Regulation](#) of 2016. If we were to indeed identify a trend and then try to make a distinction, it could be claimed that, while eponymous EU pieces of legislation were not unheard of in the past (see the case of the ePrivacy Directive below), the significant turning point came during the [Commission's Priorities Programme 2019-2024](#). Almost all of the above instruments fall under it, signifying an underlying consistent and persistent (but not uniform, e.g. [Regulation on serious cross-border threats to health](#) or the [Directive on the resilience of critical entities](#) that follow the old pattern), cross-sectoral approach.

For the purposes of this analysis, "acts" or "eponymous" EU law are considered only those who formally and officially carry a name in their title. For the moment, this is accomplished by means of parentheses that follow the "normal" name of the statute in question. In fact, in these parentheses, the statute's name is included and the text preceding them describes their subject-matter (see below, 2).

Under the above clarification it should be noted that EU legislative acts naming has undoubtedly not been unheard of in the past. For example, the [ePrivacy Directive](#) (or, more accurately, the "*Directive on privacy and electronic communications*") has carried such a title since 2002. However, this by no means constituted either the rule or even a frequent occurrence. In their vast majority, even famous EU pieces of legislation only carried an informal title, given to them even by their law-makers themselves (e.g. the [NIS Directive](#), the [Water Framework Directive](#) or the [Industrial Emissions Directive](#)).

2. Titles of EU legislative acts

Titles are given to EU legislative acts according to the EU [Interinstitutional Style Guide](#). According to its [Section 2.1](#), "*the complete title of an act comprises:*

- *the type of act (regulation, directive, etc.),*
- *the number (that is, the abbreviation(s) that apply ('EU', 'Euratom', 'EU, Euratom', 'CFSP'), the year and the sequential number of the act),*
- *the name of the author of the act,*
- *the date of adoption (the date of signature for acts adopted jointly by the European Parliament and the Council),*
- *the subject matter,*
- *in acts with double numbering, the number assigned by the author (see Section 1.2.2 'Double numbering').*

Furthermore, *“where the title of an act is amended by another act or is the subject of a corrigendum, the amended or corrected title should always be cited thereafter”*.

Additional guidance on the titles of EU legislative acts is provided in the EU [Joint Practical Guide](#) (“JPG”). After clarifying that *“the ‘title’ comprises all the information in the heading of the act which serves to identify it”* (JPG, 7.1), the guide continues to suggest that *“the title of an act shall give as succinct and full an indication as possible of the subject matter which does not mislead the reader as to the content of the enacting terms. Where appropriate, the full title of the act may be followed by a short title”* (JPG, 8).

Consequently, within EU nomenclature it is the “short title” in the JPG that is of concern in this analysis. Nevertheless, the JPG is quite discouraging in this regard. According to section 8.4 JPG *“a short title for an act is less useful in Union law — where acts are identified by a combination of letters and numbers (for example ‘(EU) 2015/35’) — than in systems which do not have such a system of numbering. In certain cases, however, a short title has come to be used in practice (for example, Regulation (EC) No 1234/2007 = ‘Single CMO Regulation’). Despite the fact that it may seem a simple solution, 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”* (JPG, 8.4).

The JPG is even more condemning as regards short titles appearing on the title of an act: *“The creation of a short title when an act is adopted by adding it after the title of the act should be avoided, since it only renders the title more cumbersome, without actually resolving the question of whether or not the short title should be used, either in the act which created it or in subsequent acts. While the risks outlined in point 8.4 must always be borne in mind, it is possible to refer to an act by using a short title in order to make it easier to understand the act in which the reference is made. In this case, the short title chosen will have to appear in brackets in the body of the text of the act in which the reference is made, like any other abbreviation”* (JPG, 8.5).

Notwithstanding the formalistic approach, that puts the cart in front of the horse, the fact is that the JPG’s request to include the short title in the body of the act and not on its title, has not been followed by any one of the abovementioned “famous” EU pieces of law (see 1), including(!) its own example (the “Single CMO Regulation”).

“Eponymous statutes”: A Common, rather than Roman, law practice?

If the JPG got one thing right as regards short titles on acts it is the fact that “*they are less useful in Union law - where acts are identified by a combination of letters and numbers (for example ‘(EU) 2015/35’)* — *than in systems which do not have such a system of numbering*”. Indeed, naming statutes does not seem to be a European legal trait at all. [In many European states legislative acts are invariably numbered, usually in a sequential manner according to their publication in the government gazette, followed by their date of publication](#). While they also carry a title, this tends to be long and descriptive and is never followed by any short title. Consequently, reference to them within the same jurisdiction is usually made by using their number only. Exceptions are, perhaps, the German and Austrian legal systems. Here short titles in the type of an abbreviation are included in the title of acts (see e.g. the German [Federal Data Protection Act, the BDSG](#)), and therefore replace numbers when referring to them. Another exception, of course, is codified legislation. In Roman law systems, codes carry names, as most prominently demonstrable in the civil codes of EU Member States.

However, where short titles, or eponymous acts proliferate, are in Common law systems, most notably in the US. Although US law is indeed numbered and codified law, law-makers use short names for legislative acts extensively. It has been pointed out that “[the Congress] has named its handiwork either in the statute itself or in a later measure. These names may be descriptive [...] or they may memorialize some individual. That individual may be a sponsor of the legislation, a beloved or respected congressional leader (living or dead), or a private citizen to whom the legislation in some way relates” ([Strause R E B et al, p.11](#)). This enthusiasm has ultimately led to the introduction of so-called [Popular Name Tools](#), to translate the short titles of laws to actual codified legislation. How are US law-makers implementing these short titles? - Interestingly, by actually following the (EU’s) JPG recommendation (in 8.5). For example, [Section 1\(a\) of the Sarbanes-Oxley Act](#) specifically sets that “[t]his Act may be cited as the ‘Sarbanes-Oxley Act of 2002’”.

Why name a statute at all?

The most obvious reply to this question would be to better remember it. Alphanumeric reference (e.g. “Regulation 2016/679” instead of the “GDPR”) is basically addressed to experts in the field. However, the law should not solely address a handful of experts. It should instead aim to address the public at large. Everyone needs to be aware of the law in force and have access to it. In other words, every piece of legislation, especially if aimed at directly affecting individuals’ lives, needs to be easily remembered and referred to in everyday life routine.

The EU’s JPG has expressly identified this need in that it finds that “*drafters must [...] consider what information should appear in the title in order to prompt a reader who is directly concerned [...]*” (JPG, 8.1). It is against this background that the EU’s inclination against short titles has to be questioned. Even more so where none of the “famous” EU legal acts mentioned above have followed the JPG’s advice. Although

discouraged by the JPG, short titles have been frequently used and indeed achieved their purposes – as most demonstrably shown by the GDPR.

The use of short titles in EU law may also serve a different purpose - EU law penetration and the creation of a European public space. In the last few years we witnessed an increasingly direct impact of EU law on the everyday lives of Europeans, most famously through the GDPR. While EU law always had an impact on its citizens, the latter was, arguably, far less obvious to the individual. The GDPR however touches a central subject matter in the lives of citizens – data protection. It is therefore no surprise that citizens are well aware of this piece of legislation and refer to it by name. EU law might hence do well to continue the use of simplified titles, in an attempt to illustrate the importance of EU law for the individual, and to enable the citizen to refer to these EU laws that directly concern them in a simple and uniform manner. These citizen-friendly titles are likely to raise awareness and ultimately contribute to the creation of a European public space. An alphanumeric system could not possibly fulfil this mission.

Conclusion: A trend that needs to become the new rule?

Short titles for EU legislative acts are to be welcomed, even if the EU may ultimately need a US-like “Popular Name Tool”. Short titles are indispensable means to raise awareness among intended recipients of EU legislation. They could ultimately create a European public space, within which commonly and readily identifiable EU statutes are employed in their original names by all Europeans. Europeans should not be expected to use an alphanumeric system to refer to legal acts that directly affect their everyday lives. In this context, the EU JPG’s Section 8 should be amended in order to adopt - if not a positive then at least - a more neutral approach towards short titles in EU legislative acts. Even more so, where it has been shown in this contribution, that short titles for EU legislation already seem to be a reality anyways. Ultimately, the trend of “act-ification” of EU law serves a dissemination and awareness purpose, critical in assisting EU law to prove its ability to deliver immediate effect and protection of EU citizens.