

Legal basis within inter-institutional procedures and IMMC transmission: Clarification and room for improvement

Introduction

This document aims at clarifying the use and definition of legal basis within inter-institutional procedures in the context of IMMC transmissions.

In the context of IMMC transmission, the term legal basis for the procedure delineates the provisions of the Treaties that confer competences¹ to adopt a certain measure (legal act or not) to the European Union (for example Article 114 TFEU for the internal market). In general, each proposal for the adoption of an act mentions the article on conferral of competences which empowers the European Union to act in a specific policy field.

The choice of the legal basis giving competences determines the procedural rules to be followed to adopt a given act. The article of the treaty describing the various steps of a procedure does not confer by itself any competence to act in a specific policy field (typically article 294 TFEU).

In the context of the IMMC exchange, the legal basis of the work can be either Treaties provisions or secondary legislation or Rules of procedure that give powers to each institutions, bodies, offices and agencies to act in conformity with procedures, conditions and objectives set out in the Treaties .

Proposal for changes

The proposed changes will impact the Core Metadata schema by changing the documentation of the existing element 'basis_legal_procedure' and adding 2 optional elements. The preferred format to send information on the legal basis would be CELEX number.

1/To update the documentation of the existing element "basis_legal_procedure" as follows:

Legal basis of a procedure as initially proposed at the moment of the adoption of the proposal (usually done by the European Commission). The legal basis of the procedure is the provision of the Treaties that confers competences to the European Union to adopt certain measures (usually legal act) in a specific domain. The legal basis of the procedure is not the article describing the procedural rules to be followed to adopt a given act (typically article 294 TFEU); it will not be transmitted.

2/ To create an optional element "basis_legal_procedure_suggested" in the IMMC core metadata schemas at the level of the event.

The element is described as follows: Legal basis of a procedure as it may be subsequently suggested by other institutions, bodies being part of the inter-institutional decision making process.

3/ To create an optional element "basis_legal_work" in the IMMC core metadata schemas, at the work level.

This element will allow institutions to transmit a legal basis that it is specific to the work either when it differs from the one of its associated procedure or when the opinion is sent without a link to an event and a procedure. The legal basis of an opinion of the Committees could be article 304 or article 307 TFEU, whereas the legal basis of the associated procedure is another provision of the Treaty.

¹ Article 5(1) of the Treaty on the European Union (TEU) stipulates that "the limits of Union competences are governed by the principle of conferral".

For example: the Opinion of the European Economic and Social Committee [52015AE2913](#) is linked to the procedure [2015/0093/COD](#). The *legal basis of the work (opinion in this case)* is [12012E304](#) (article 304 TFUE) and the legal basis of the procedure is [12012E114](#) (article 114 TFUE).

Background

This proposal is meant to clarify recurrent questions with regards to the legal basis in the IMMC transmissions.

Encoding of legal basis: State of play

As defined by the IMMC:

1. It is mandatory to transmit the information on the legal basis of the procedure.
2. This mandatory element is "**basis_legal_procedure**" in the IMMC Core Metadata Schema
3. This element is succinctly defined : `<xs:documentation>Legal basis of a procedure.</xs:documentation>`
4. This element is transmitted at the level of "Event"
5. This element is filled in as follows :
 - In the Commission transmissions : the legal basis initially proposed is always encoded
 - In other transmissions, the legal basis is filled in:
 - either by replicating the legal basis initially mentioned in the proposal
 - or by using the value "DAT_PRO": `cm:document_legal>DAT_PRO</cm:document_legal>`
6. The format of this value is:
 - either a code taken from the authority table 'Treaty' when the legal basis is a primary legislation:

```
<ns2:basis_legal_procedure>
  <ns2:document_legal>TFEU_2010</ns2:document_legal>
  <ns2:article>31</ns2:article>
</ns2:basis_legal_procedure>
```
 - Or/and a free text when the legal basis is secondary legislation:

```
<ns2:basis_legal_procedure>
  <ns2:document_legal>DEC/2005/387/null</ns2:document_legal>
</ns2:basis_legal_procedure>
```
 - It is also possible to send this information as a CELEX number.

Remaining and recurrent question

1. How to encode another legal basis if an institution wants to suggest an alternative legal basis² for the procedure that differs from the initial one?
Currently, the existing element "basis_legal_procedure" could be used either to put the 'initial legal basis' of the procedure or any "suggested legal basis" by one of the institutions involved in the decision making process. But such information is of a different nature and cannot share the same IMMC element to be transmitted.
2. How to encode a legal basis for the document when it is different from the legal basis of the procedure? Currently it is not possible to transmit this information.

² For real examples of inter-institutional procedures where institution had suggested a legal basis different from the one initially mentioned in the proposal see **Annex 1**

ANNEX 1

Use cases where institution being part of the legislative procedures has suggested a legal basis different from the one defined at the moment of the transmission of a proposal

First case: COM(2010)0176 - procedure 2010/0097(CNS).

The European Parliament changed the legal basis, see amendments 1 and 2 of the TA(2011)0135 of 6 April 2011 (final TA attached) and presented its position already as a first reading position in a COD procedure. The committee report A7-0057/2011 (attached) is based on the initial COM and as a CNS procedure. After approval of the am. 2 by plenary, Parliament thus approves the change of legal basis.



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Council however did not agree; Council adopted Decision 2011/408/EU.

Second case: COM(2010)0375 - procedure 2010/0208(COD) *(used as example in the xml)*

This is a COD procedure even under the legal basis proposed in the COM proposal (Art. 114 TFEU); however, the European Parliament is of the opinion that the legal basis is not correct, see TA(2011)0314 of 5 July 2011 (TA-PROV attached) and also the opinion of the JURI committee ([link](#)). EP proposes to change legal basis, but it is still a COD procedure.



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Third case: COM(2010)0666 –procedure 2010/0326(COD)

In this case, the Council wanted to change the legal basis (initially COD procedure) to a CNS procedure, and Parliament agreed, see TA(2011)0147 of 7 April 2011.



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