



**The DATEX database:
Analysis of EU legal instruments in external policy fields**

**Revised and extended first version including the Common Foreign and Security
Policy and the Common Commercial Policy**

Abstract

The DATEX database is a tool helping us to answer our research questions regarding trends of EU external relations linked to multilateralism. Specifically, its objectives are:

- to provide quantitative data on legal output in EU external policy fields and categorisation of legal acts according to the degree to which they bind parties legally and politically in order to identify trends in EU external relations,
- to define and apply indicators in order to measure the degree of multilateralisation of EU external policy fields.

This document includes a description of the database's revised and extended first version and forms a basis for discussion in view of its further development. A final version is planned for December 2010.

July 2010

<http://www.mercury-fp7.net>

1. Introduction

1.1. General remarks: DATEX rationale and value added

All EU external action derives from provisions enshrined in the treaties, that is the Union's primary law (or "legal framework"). Based on these provisions, the Union enacts secondary legislation to carry out external action ("living framework"). This legal output is analysed using DATEX, starting from the assumption that the actual use of the legal provisions is a key indicator of whether and in how far the institutional set-up enables the Union to live up to its ambition to contribute to "effective" multilateralism.

DATEX provides quantitative data on legal output in EU external policy fields and categorisation of legal acts according to the degree to which they bind parties legally and politically in order to identify trends in EU external relations. The data is analysed using previously defined indicators for the degree of multilateralisation of EU policies.

1.2. The DATEX approach step-by-step

(1) Collection of relevant legal acts

DATEX uses the Eur-Lex database (<http://eur-lex.europa.eu/en/index.htm>) to extract (selected) secondary legislation in a given policy field. The resulting set of legal acts is analysed quantitatively and qualitatively.

(2) Categorisation: "substantial" and "non-substantial" legal acts

This basic body of legal acts is sorted according to two categories: substantial and non-substantial legal acts. The main reason behind this is that a large number of amendments are adopted each year. Amendments introduce minimal changes to a preceding legal act and are often adopted for formal reasons only. Thus, by restricting the analysis to "substantial" acts, a potentially distorting factor is eliminated.

Substantial: all acts...

- without precursor,
- significantly changing an existing act.

Non-substantial: all acts...

- amending an existing act only to a limited extent, for example replacing certain articles without reproducing the initial legal act
- extending a mandate,
- implementing an existing act through a Council decision,
- updating an existing act in a minor way only (e.g. by changing a financial reference amount).

(3) Qualitative analysis of legal acts: indicators for the degree of multilateralism

Two previously developed indicators are applied in order to measure the degree of multilateralisation of EU policies. The first indicator explores if the legal act under consideration makes reference to a multilateral legal instrument such as a United Nations Resolution (Indicator 1: "Multilateral legal basis").

The second indicator explores if the legal act under consideration makes reference to a multilateral implementation, that is that the text specifies either a concrete division of tasks or explicitly allows for

the participation of third states (Indicator 2: “Multilateral implementation”).¹ An example for a pre-defined division of tasks would be the reference to other international organisations such as the Organisation for Security and Co-operation in Europe (OSCE) and their specific tasks in a given peace building process in which the EU is also involved. Thus, peace agreements typically envisage a certain division of labour among several involved international crisis management actors. The respective EU legal instrument referring to such a peace agreement can therefore be characterised as “multilateral” in terms of implementation measures.

¹ Initially, indicator 2 was divided into “Multilateral implementation” and “Multilateral generation of resources”, the latter referring to cases such as “Berlin-Plus” operations where NATO assets were included in the planning for EU military operations from the outset. Participants at the annual MERCURY plenary meeting in March 2010 suggested merging these two dimensions as their meaning is more or less identical when used as a proxy for multilateralisation. Moreover, during the process of coding our sample of CFSP, it indeed became apparent that a differentiation between the two was possible only in a very low number of cases. The value added of keeping them separate therefore would have been negligible.

2. External policy field I: The Common Foreign and Security Policy

2.1. Collection of relevant legal acts

In a first step, the relevant legal acts were retrieved from the Eur-Lex database for each year from 1993 to 2009 (query: classification heading=18 Common Foreign and Security Policy; date of adoption=relevant year).

Table 1 - Common Foreign and Security Policy: Overview legal instruments 1993-2009 (selected)

	CFSP related Regulations of the European Community	European Community Council Decisions	CFSP Decisions on Agreements (secondary law) broken down to underlying (external relation) agreements	CFSP Council Decisions	Political and Security Committee Decisions	Common Strategies	Joint Actions; related implementing Decisions	Common Positions; related implementing Decisions	Total
1993							5	1	6
1994	3						9	8	20
1995	6						9	12	27
1996	3	3		1			18	10	35
1997	2			2			15	13	32
1998	6			1			19	22	48
1999	14			3		2	23	31	73
2000	20	1		6		1	17	24	69
2001	16	3	2	8			17	22	68
2002	25	4	17	3			19	24	92
2003	44	7	16	6	3	2	27	23	128
2004	45	7	11	5	8		28	26	130
2005	50	5	23	10	12		40	29	169
2006	33	4	12	5	10		37	31	132
2007	38	7	8	6	11		46	28	144
2008	33	6	14	7	16		48	34	158
2009	36	2	7	6	16		32	25	124
Total	374	49	110	69	76	5	409	363	1455

Source: Eur-Lex (state of the art: January 2010); secondary legislation (Celex sector 3), classification heading 18 (Common Foreign and Security Policy); counted manually. Legal basis: Maastricht Treaty (1.11.1993-30.4.1999), Amsterdam Treaty (1.5.1999-31.1.2003) and Nice Treaty (1.2.2003-30.11.2009).

The instrument of joint action was chosen for further analysis given its relevance for the field of CFSP. Since the establishment of the European Union by the Maastricht Treaty in 1993, joint actions – which are legally binding – have been frequently used, namely for carrying out operational action (see Table 1). Especially from 2003 onwards, joint actions have been increasingly used given the fact that the European Security and Defence Policy became operational in 2003. For the purpose of the analysis, the figures for joint actions and decisions implementing joint actions have been included in one column (it should be noted that the number of decisions implementing joint actions is low [3-4 per year]).

2.2. Categorisation: “substantial” and “non-substantial” legal acts

The resulting list of joint actions and decisions implementing joint actions was then sorted according to two categories “substantial” and “non-substantial” legal acts (see above 1.2 “The DATEX approach step-by-step, point (2))

2.3. Qualitative analysis of legal acts: indicators for the degree of multilateralism

In a third step, all legal acts (in our example: joint actions and decisions implementing joint actions from 2003 to 2009) classified as “substantial” were analysed more closely. In particular, as outlined initially, two indicators were applied in order to measure the degree of multilateralisation in the Common Foreign and Security Policy.

2.3.1. Indicator 1: “Multilateral legal basis”

Reference is made to a multilateral legal instrument (e.g. a United Nations Resolution or an international convention) on which the legal act under consideration is based. Usually (but not necessarily) such reference will form part of the legal act’s preamble (recitals).

For each legal act, this indicator can assume the values “0” or “1”.

2.3.2. Indicator 2: “Multilateral implementation”

Reference is made to a multilateral implementation of any measure foreseen by the legal act. Necessary condition is that the text specifies either a concrete division of tasks² or explicitly allows for the participation of third states.

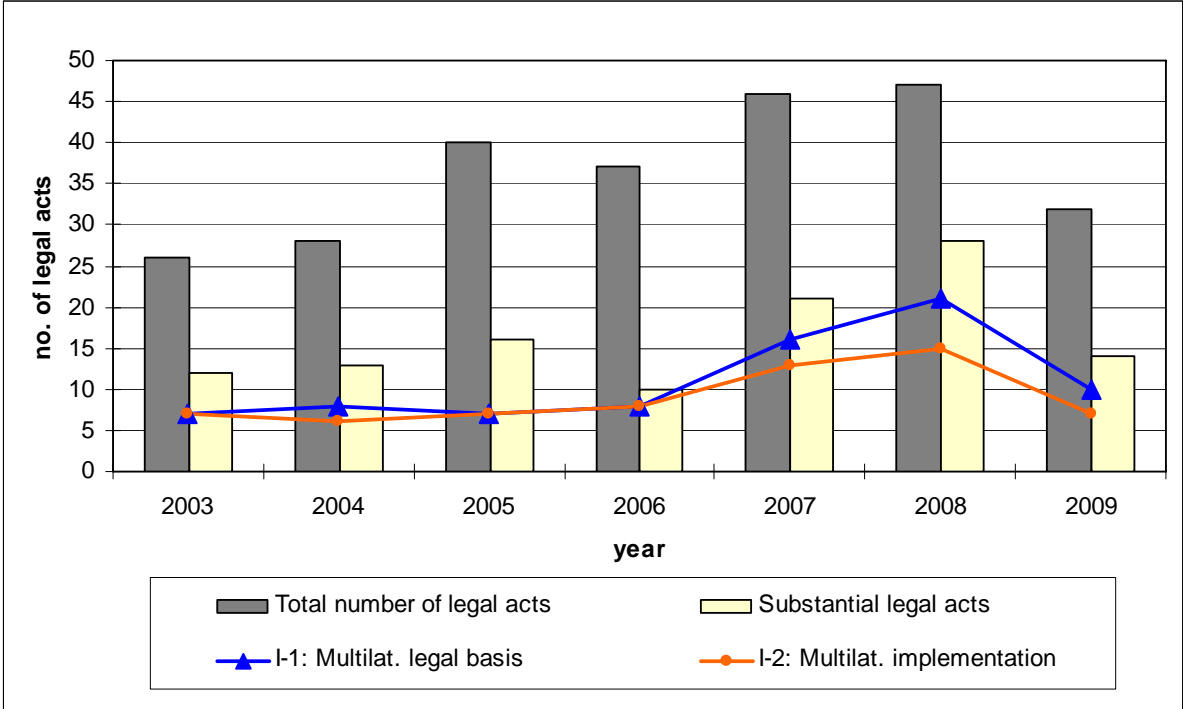
For each legal act, this indicator can assume the values “0” or “1”.

2.4. Results common foreign and security policy

As shown in Chart 1, for the period from 2003 to 2009, more than half of all substantial joint actions for a given year (only exception: 2005) contained references to a multilateral legal basis (Indicator I). Since 2006, even two thirds of all substantial joint actions contained respective references. Moreover, for roughly half of the substantial joint actions, a multilateral implementation (Indicator II) was foreseen.

² *Nota bene:* In the context of the Common Foreign and Security Policy, legal acts often contain general formulations such as “The EU mission [XY] will be carried out in close co-operation with the United Nations.” Given the fact that these vague formulations have hardly any effect at the operational level, they have not been counted for Indicator 2 “Multilateral implementation”.

Chart 1 - The level of multilateralism in the CFSP 2003-2009 (based on the analysis of joint actions)



Source: Own calculation, based on EUR-Lex (March 2010).

Overall, the Union’s foreign and security policy thus has been characterised by a significant multilateral approach. At the same time, the number of substantial joint actions with a multilateral legal basis has always been significantly higher (only exception: 2006) than the number of substantial joint actions for which a multilateral implementation was foreseen. From these findings, the working thesis can be deduced that the EU is relatively stronger in taking into account and thereby strengthening international law than in pooling resources with other international actors.

3. External policy field II: The Common Commercial Policy

3.1. Collection of relevant legal acts

In a first step, the relevant legal acts were retrieved from the Eur-Lex database. External trade is the sector with the highest level of legal output in external relations (on average 130 legal acts per year over the past decade, not counting agreements). Moreover, in contrast to the Common Foreign and Security Policy (CFSP), a restriction to a single, most prominent type of legal act such as Joint Actions for the CFSP was not suitable with regard to trade. Consequentially, all secondary law acts formed part of the analysis (Celex³ sector 3: secondary legislation). As a result, there was a significantly higher number of legal acts to be analysed for each year than, for example, in the CFSP. The years 2000, 2003, 2006 and 2009 were selected for closer analysis. This choice was motivated by the idea to cover the most recent decade in regular intervals while at the same time keeping the workload manageable.

Since EUR-LEX does not include a classification heading “trade”, an alternative method to extract all trade-relevant legal acts from the database was necessary. Following a number of test runs, two classification headings were singled out. Besides the (obvious) classification heading 11.60 „commercial policy“, a few trade-relevant acts were also included under classification heading 11.30 „multilateral relations“. Therefore, two queries were necessary for each year, the results of which were subsequently combined:

- query a: classification heading=11.60 “commercial policy”; date of adoption=relevant year; display results by Celex sector=3. secondary legislation
- query b: classification heading=11.30 “multilateral relations”; date of adoption=relevant year; display results by Celex sector=3. secondary legislation

Table 2 – Trade Policy: Overview legal instruments 2000, 2003, 2006, 2009 (selected)

	Council Regulations	Council Decisions	COM Regulations	COM Decisions	other	Total
2000	65	7	75	36	2	189
2003	56	5	78	20	2	161
2006	44	4	35	19	1	117
2009	42	5	26	16	0	89
Total	207	21	214	91	5	556

Source: Eur-Lex (state of the art: March 2010); secondary legislation (Celex sector 3), classification, headings 11.30 “multilateral relations” and 11.60 „commercial policy“; counted manually. Legal basis: Amsterdam Treaty (1.5.1999-31.1.2003) and Nice Treaty (1.2.2003-30.11.2009).

3.2. Categorisation: “substantial” and “non-substantial” legal acts

This basic body of legal acts then was sorted according to two categories “substantial” and “non-substantial” legal acts (see above 1.2 “The DATEX approach step-by-step, point (2)).

³ The CELEX number is a unique identifier of each document in the EUR-Lex database, regardless of language.

Crucially, when analyzing the Common Commercial Policy, we encountered some specific cases which necessitated a few more specific rules which were decided upon in the course of our research:

- in trade policy, certain formalized procedures occur frequently (e.g. anti-subsidy or anti-dumping proceedings). These procedures are usually terminated by a legal act, e.g. a Commission decision. At first glance, such a “terminating” decision would be non-substantial in the DATEX system because the legal act initiating such a procedure would be analysed. However, sometimes it is the first legal act in the course of such a procedure (i.e., no formal legal act has been adopted in order to initiate the procedure). Whether or not this is the case becomes clear from the text of the “terminating” decision. If there has been no preceding legal act, the legal act terminating the proceedings is counted as substantial. The same requirement to check for preceding acts holds true for legal acts “suspending” proceedings.
- codified versions are counted as substantial.
- for a few remaining borderline cases, the researcher’s judgment is needed to decide whether a legal act introduces significant changes or not. In case of doubt, it is counted as substantial.

3.3. Qualitative analysis of legal acts: indicators for the degree of multilateralism

In a third step, all legal acts (in our example: all binding secondary legislation with trade relevance in 2000, 2003, 2006 and 2009) classified as “substantial” were analysed more closely.

3.3.1. Indicator I: “Multilateral legal basis”

In legal acts classified as having a multilateral legal basis, reference is made to a multilateral institution or instrument (for example GATT, WTO or an international convention). Usually (but not necessarily) such reference will form part of the legal act’s preamble (recitals). This “direct reference” in a given legal act is complemented by a second possible occurrence of the indicator: When a legal act explicitly refers to another “basic” act it is derived from, this underlying legal act might itself contain a multilateral reference. For example, Council Regulation (EC) No 384/96⁴ (containing references to GATT articles) represents a standard reference regulation for many other legal acts. This constitutes an “indirect reference” in our definition of Indicator I “multilateral legal basis”.

For each legal act, the indicator assumed the value “1” if at least one direct and/or indirect reference was present.

3.3.2. Indicator II: “Multilateral implementation”

In the field of external trade policy, implementation measures are not defined on a case-by-case basis in the legal act. Therefore – in contrast to the foreign and security policy –, in the first test run, we didn’t apply our second indicator referring to ‘multilateral implementation’ (Indicator II) in the field of trade.

3.4. Results trade policy

Regarding the overall number of trade-relevant legal acts extracted from the EUR-LEX database for 2000, 2003, 2006 and 2009, two observations can be made. The first concerns the type of legal act used: in the first two years (2000 and 2003), Commission regulations are the most frequently used type of legal act, followed by Council regulations and Commission decisions. In 2006 and 2009, the

⁴ of 22 December 1995 on protection against dumped imports from countries not members of the European Community.

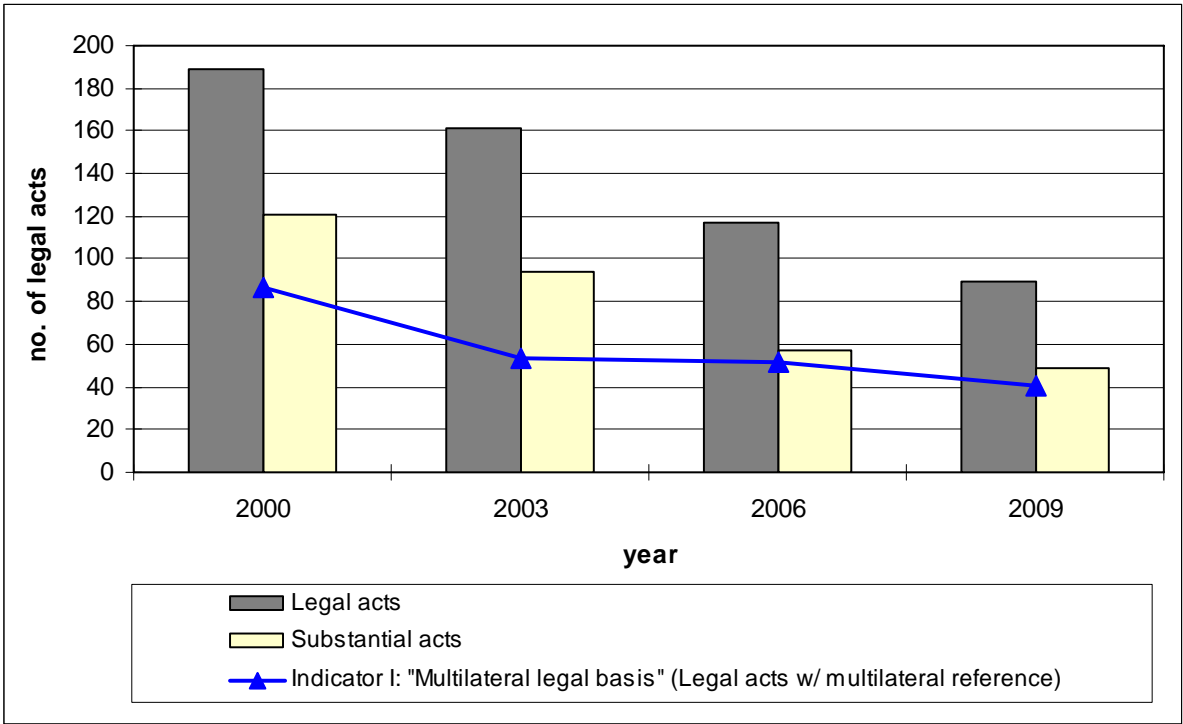
number of Council regulations outweighs Commission regulations. Commission decisions come in third place.

The second observation is a downward trend in the overall number of trade-relevant legal acts. In between 2000 and 2009, the total annual number of legal acts with trade relevance steadily decreases by 53% (from 189 in 2000 to 89 in 2009).

On average 43% of legal acts in each year are excluded from the analysis because they proved to be non-substantial (see above 1.2 “The DATEX approach step-by-step, point (2)). In parallel to the decline in the number of total legal acts, the number of substantial acts decreases by 60% (from 121 in 2000 to 49 in 2009).

The same holds true for the number of legal acts with a direct and/or indirect reference to multilateral institutions. Their number halves in between 2000 and 2009 (from 87 p.a. to 41 p.a.).

Chart 2 - The level of multilateralism in trade policy 2000, 2003, 2006, 2009 (based on the analysis of secondary legislation)



Source: Own calculation, based on EUR-Lex (March 2010).

When looking at the number of legal acts with a direct and/or indirect reference to multilateral institutions (Indicator I), we note a relatively high overall share but with marked differences between single years (see Chart 2). In 2006, nine out of ten substantial acts include a multilateral reference. In 2003, this is the case for only about 6 out of 10, which is the lowest ratio observed in our sample.

Legal acts with *direct* references to multilateral institutions (in the legal act itself) are relatively scarce. They appear in 7% to 21% of all substantial legal acts in the four-year sample (see Table 3). The topics of these legal acts vary considerably and concern many aspects of trade: procedures such as anti-dumping or anti-subsidy measures, but also trade in dangerous chemicals, textiles, agricultural products or fish. A similar variety can be observed regarding which multilateral institution is referred to: World Trade Organisation (WTO) agreements, the General Agreement on Tariffs and Trade (GATT), conventions of the International Labour Organisation (ILO) as well as the International Commission for the Conservation of Atlantic Tuna, to name only a few.

Indirect references (in an underlying legal act) can be found in 50% to 70% of all substantial acts. Indirect references are mainly citations of three underlying legal acts, each describing a certain procedure in the realm of international trade:

- Council Regulation (EC) No 384/96 (anti-dumping) is by far the most common indirect reference and refers to GATT (cited 132 times in the four years under observation).
- In 2000 and 2003, Council Regulation (EEC) No 3030/93 (textile quotas) is the second-most cited underlying act but does not appear in subsequent years. Its text refers to the GATT Textiles Committee and is cited 21 times in 2000 and 2003.
- Council Regulation 2026/1997 (anti-subsidy) is the last underlying act which has been referred to regularly (cited 19 times). Its text refers to the GATT Uruguay round and the framework of the WTO.

Additionally, 14 other underlying legal acts with multilateral references were cited in our sample, but at most once or twice per year.

Table 3 – Indicator I subtypes: direct and indirect references to a multilateral legal basis⁵

Year	Total no. of substantial acts	Direct references	Direct/substantial (%)	Indirect references	Indirect/substantial (%)
2000	121	18	15%	77	64%
2003	94	7	7%	47	50%
2006	57	12	21%	40	70%
2009	49	10	20%	34	69%

Source: Own calculation, based on EUR-Lex (January 2010).

Overall, the Union’s external trade policy represents a policy field where the EU is institutionally well equipped to act multilaterally. The DATEX data shows that its actual legal output (the “living framework”, see above) is characterised by a high level of multilateralism in terms of a multilateral legal basis. Thus, roughly two thirds of substantial EU legal acts in our sample for the Common Commercial Policy can be called “multilateral” (see Chart 2).

However, it is interesting to note that protectionist anti-dumping duties are the most frequently cited instrument with a reference to a multilateral framework, which is the General Agreement on Tariffs and Trade (GATT) in this case. Thus, paradoxically, multilateralism in EU trade policy has been largely reflected in measures contradicting the notion of free trade – the notion which lies at the heart of the GATT framework and also at the heart of the EU’s multilateral ambitions.

⁵ It should be noted that in a few cases, a legal act contained both a direct and an indirect reference. For this reason, the number of direct and indirect references do not always exactly sum up to the number of legal acts with (in)direct reference.

4. Possible shortcomings of the DATEX approach

Our analysis of multilateralisation trends relies in part on the Eur-Lex database. This database is operated by the Publications Office of the EU and offers a relatively easy way to gain access to legal instruments in a given policy fields from the 1960s onwards. Inter alia, Eur-Lex/Celex assigns each legal act one or more ‘classification headings’ according to its content, thus allowing us to limit a selection of legal acts to a specific policy field.

This approach faces also possible shortcomings. In particular, our choice of policy fields has to correspond to the available classification headings. Eur-Lex offers a distinct classification heading for CFSP, but not for trade. In the latter case, results from more than one query must be combined. Moreover, the EUR-Lex search engine does not always work perfectly. For example, when searching for CFSP legal acts adopted in 2003, EUR-Lex also included some hits from 1999, 2001, 2002, 2003 and 2004. Such database errors have to be corrected manually.

Both issues are put into perspective when considering our first results for the field of CFSP 2003-2009: for the qualitative analysis, each joint action (on average: 35 p.a.) was closely studied. False positives, had they occurred, would have been quickly discovered. False negatives (acts that should have been listed but are not) on the other hand are not so easily spotted. However, based on the CFSP-related experience of the researchers involved, no such case was discovered. We can thus assume that use of Eur-Lex/Celex has not distorted our findings.

For the future analysis of other external relations policy fields with a significant higher number of legal acts compared to CFSP – such as the Common Commercial Policy – the definition of smaller samples might be necessary in order to cope with the amount of legal acts which have to be analysed on a qualitative basis.

Overall, though, the DATEX approach seems to generate valuable data on the degree of multilateralism within certain EU policies, allowing also for a comparison between certain policy fields in the future.