Codification in a Civil Law Jurisdiction: A Northern European Perspective

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Abstract

In western civil law jurisdictions, 19th century large-scale codification projects have made way for more specific, technical operations. While several terms for various operations are used – from coordination to consolidation or recasting – they all serve to compile normative texts within one single document for the sake of clarity and legal certainty. A more fundamental distinction can be made between formal and substantial codifications, the one more technical, the other large and fundamental. Substantial law reforms are problematized in this era of multilevel governance and digitalization. Nowadays, substantial codifications are essentially non-exhaustive, inconsistent, and fragmentized. Also, they rely upon formal consolidations, and generate new formal consolidations. While formal consolidations are still treated as logistic projects, more developed ICT tools may enable their transformation into continuous processes.

Keywords: codification, types, civil law, legal certainty, ICT.

Codification, in its most general definition, is a tool for making the law publicly available by recording it in written texts.[1] It follows that codification projects are most meaningful where law derives from unwritten customary law or casuistic case law. In civil law jurisdictions written rules have become the main source of law. Therefore, unlike the practice in common law jurisdictions, codification is rarely about transforming established jurisprudence into general written law. An exception is the codification of private international law: while even in civil law jurisdictions this domain was traditionally governed by case law, it has become the object of codification throughout Europe, e.g. in Switzerland, the Netherlands, Italy and Belgium. With this exception, codification in civil law jurisdictions has become mainly a tool for bringing coherence into sets of written laws, which, throughout time, have been amended or have been supplemented by specific rules in separate acts. Thus, the 19th century large-scale codification projects with political significance have made way for more specific, technical operations. In this article, it is examined whether these operations are still suited for their purpose in contemporary society, characterized by multilevel governance and in an age of digitalization.

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1 *See* the definition by C. Varga, *Codification as a Socio-Historical Phenomenon*, Budapest, Akademiai Kiado, 1991, p. i.

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The article is organized as follows. The first part will expand on the technical forms of codification processes and clarify the terminology. Several terms are used to distinguish processes that, ultimately, differ mainly as a matter of degree. Moreover, similar processes have different terms in different jurisdictions. These processes are reduced to two categories, distinguishing between mere technical operations on the one hand and broader law reform on the other. The next part runs through the purposes of codifications over time and points out the main purpose of codifications in contemporary civil law jurisdictions. Most of the illustrations are picked from the Belgian legal order, because, as a Belgian scholar, these are the examples I know best; the general observations, however, are more widely applicable. The last part questions whether codification remains the most adequate tool for this purpose in contemporary society.

A Types and Terminology

Codification in its traditional meaning refers to the act of bringing together new and existing rules regarding a broad domain of law into one book, based on a set of basic and coherent principles.[2] Most regulations and procedures adopted in several jurisdictions, however, use the term in a more formal and much less ambitious way. In official acts, consolidation is usually used as a term to bring together and structure in a single document the provisions of existing legislative texts with regard to a specific domain, without substantial changes as to content. In many jurisdictions, this is distinguished from comparable procedures for bringing coherence in legislative texts. In this section I will (a) give examples of such categorizations and put into perspective the differences, (b) go deeper into the question as to whether codifications may imply substantial changes as to content and (c) conclude with a more fundamental dichotomy.

I Typology: Codification and Similar Procedures

At the EU level, three techniques for bringing coherence in EU legislative texts are distinguished:

1 codification is the procedure for replacing acts with a single act containing no substantive changes to those acts;
2 recasting is a codification containing some substantive changes and
3 consolidation is the procedure by which the provisions of one basic act and all its subsequent amendments are compiled into one single text.[3]

The same terms may have different meanings in different jurisdictions. For example, in Belgium the term 'consolidation' has the same meaning as at the EU level, but 'codification' only applies to the compilation of legislative texts with regard to

2 This is what J.L. Bergel, 'Principal Features and Methods of Codification', *Louisiana Law Review*, Vol. 48, 1987-1988 calls "substantive codification."

3 Council, *Concept of codification and consolidation at the EU level – Explanatory Note*, 23 June 2014.

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a broader *domain*, whereas the term 'coordination' is used when the legislative texts regard the same *subject*.[4]

The difference between these techniques, however, is only a matter of degree. They all have the purpose of compiling normative texts within one single document for the sake of clarity. 'Coordination' has the narrowest scope as it regards only one basic text, 'codification' has the broadest scope as it may regard several basic texts within a broader field of law. The procedures, however, are similar. For example, in Belgium, coordinations as well as codifications follow the same procedure: either the executive or the Council of State conducts the coordination or codification exercise upon authorization by parliament, and parliament confirms the coordinated or codified text.[5]

In this article, 'codification' is therefore also used to cover techniques of coordination and consolidation.

II Codification and Material Modifications

In France, a ministerial circular specifies that the French procedures focus on reorganizing existing laws as they apply at the moment of codification without substantial modifications. The only material modifications consist in the abrogation of provisions that are no longer valid and in bringing provisions in conformity with the constitution or international obligations.[6] Only exceptionally the codification may imply more fundamental simplifications or improvements; as a rule they should only be inserted as comments and suggestions in the codification report.[7] The reason is that the official codification procedure is an administrative, not a normative, act.[8]

In Belgium, the Council of State's Guidelines define codification as the structuring of the existing provisions of several legislative texts with regard to a specific domain in a single document.[9] The guidelines only mention codifications without modifications as to content. In a separate advice, the Council of State, when distinguishing between codifications that create new rules and those that merely confirm existing law, points out that the codification procedure applicable in Belgium[10] only applies to codifications without modifications.[11] Following this procedure, the executive prepares the codification and parliament simply confirms. However, when new rules are adopted, parliament should vote on every single article, even the ones that simply repeat existing law, and a new term of six months for annulment requests with the Constitutional Court is opened.[12]

4 Council of State, *Guidelines Legislative Drafting*, Brussels 2008, rec. 216-217.
5 Law of 13 June 1961 on the coordination and codification of laws; Council of State, *Guidelines Legislative Drafting*, Brussels 2008, rec. 220.
6 Circulaire du 30 mai 1996 relative à la codification des textes législatifs et réglementaires, JORF n° 129 of 5 June 1996, 2.1.1.
7 *Ibid*.
8 Bergel, 1987-1988, p. 1096.
9 Council of State, *Guidelines Legislative Drafting*, Brussels, 2008, rec. 217.
10 Law of 13 June 1961 on the coordination and codification of laws.
11 CRW 2003-2004, No. 695/1, p. 46.
12 Advice of the Council of Legislation, CRW 2003-2004, No. 695/1, p. 48.

Hence, here as well, the reason why codifications are defined as not bringing substantial modifications to the codified text, lies in the fast-track procedure for adopting the codification. As soon as substantial amendments are proposed, the normal legislative procedure applies for the entire codification.

At the level of the European Union, the 'recasting technique' is introduced so as to allow for a simplified procedure for consolidation with substantial amendments. The term 'codification' is reserved for the procedure for replacing existing acts with a single act 'containing no substantive changes' to the codified acts.[13] 'Recasting' is the term used for codifications with substantive changes, involving a procedure that focuses on those provisions of the proposal that are new.[14]

The idea that consolidations, in principle, should not involve substantial changes, is striking, in two ways. First, it departs from the original significance of codifications. For example, with the 19th century codification projects, a new legal order was installed.[15] This is far removed from the contemporary, administrative meaning of codification. The same goes for the recasting technique, which only aims at limited changes with the purpose to simplify and ameliorate the law rather than at making radical amendment.[16]

Second, it does not respond to practical needs. In practice, codifications and consolidations often also contain new rules. In the case of the Belgian Code Economic Law, several parts were first revised before they were included in the codification operation, but even then new rules were added during the codification process, for example in order to provide some common enforcement tools, or to transpose EU directives.[17]

The prohibition of proposing substantial amendments, then, may lead to missed opportunities and feelings of frustration. When provisions from a broad range of legislative are compiled, one is bound to meet up with inconsistencies and deficiencies. Also, even in civil law jurisdictions statutory law is further interpreted and developed by case law. If codification is intended to bring a clear, accessible and up-to-date view of the law in force, then codifications should not be limited to written texts. Moreover, where case law contains inconsistencies, choices must be made to bring coherency.

Codifications bring about disappointment, where the opportunity to rationalize and update the law is not seized. In Belgium, this was the general feeling with regard to parts of the immense codification project of economic law.[18] But even where more incremental substantial amendments are allowed, as in the EU recasting technique, this may prove insufficient. For example, scholars deplored

13 Council, *Concept of codification and consolidation at the EU level – Explanatory Note*, 23 June 2014.

14 Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts.

15 *See* further, Section B on the purposes of codifications.

16 N. Borrows & M. Robison, 'An Assessment of the Recast of Community Equality Laws', *European Law Journal*, Vol. 13, 2007, pp. 186, 201.

17 D. Bruloot, 'Wetboek van economisch recht krijgt stilaan vorm', *Juristenkrant*, 9 October 2013, p. 4.

18 *See* S. Claeys, 'Boek X Wetboek Economisch Recht lost verwachtingen niet in', *Juristenkrant*, 14 May 2014, p. 14.

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that the limited scope of the recasting of EU equality laws prevented the Union from bringing clarity by way of "principled interpretation of the conflicting provisions relating to maternity pay, equal pay, and equal treatment."[19]

Be that as it may, even consolidations without changes as to substance, bring something new, as they may inspire courts to opt for systemic interpretation methods, which may lead to different outcomes.

III Formal and Substantial Codifications: A Dichotomy

It follows from the above that the differences between coordination, consolidation and codification are only a matter of degree. The terminology gives an indication of the scope of the operation, but has no further relevance. Also, the differences between these procedures depending on whether changes are made as to content or not, is only a matter of degree. Even the EU recasting technique is only used for smaller modifications. Where no specific procedures exist to codify texts, codifications are nevertheless frequently coupled with modifications.

A more fundamental distinction can be made between large and fundamental codification projects that entail law reform on the one hand, and the more technical compilation procedures with no or small modifications on the other. They require different procedures, techniques and actors involved. The distinguishing criterion, then, is whether the codification merely wants to order and structure existing laws, with or without some updates and the solving of inconsistencies, or whether it aims at systemizing rules within a domain of law on the basis of a specific set of fundamental principles or a specific angle. For example, in Belgium, the code Economic Law was an immense project, encompassing 17 books, that from the angle of 'the enterprise', combined the structuring and updating of a variety of specific laws with more innovative interferences.

In scholarly literature such distinctions are made under the dichotomy of 'substantive' and 'formal' codifications,[20] or 'classic or big' and 'pure' codifications.[21] While in civil law jurisdictions the first more and more have given way to the latter, both types still occur. An example of a 'substantive' codification is the German Code Social Law, the adoption of which was spread over more than a decade. Other, more recent examples are the Code Administrative Law in the Netherlands, the Code Economic Law in Belgium (as mentioned) or the Code Conflicts of Law in Switzerland and many other countries. Remarkably, most jurisdictions only establish rules for 'formal' codifications, leaving the options of how to proceed and which experts to involve open for each particular project. 'Formal' codifications, however, are the dominant form. This evolution comes coupled with a shift in the purpose of codifications, as will be explained in the next section.

19 Borrows & Robison, 2007, p. 186.

20 Bergel, 1987-1988, p. 1077.

21 W. Voermans, C. Moll, N. Florijn & P. Van Lochem, 'Codification and Consolidation in the European Union: A Means to Untie Red Tape', *Statute Law Review*, Vol. 29, 2008, p. 78.

B Purposes of Codification

I Overview

Throughout history, codification has served many purposes. Historians agree that in ancient times, codification had an *egalitarian* function. While in archaic Rome, the law originally was different for the various social categories of clergy, nobility and commoners, new codes governed all categories alike.[22] In later centuries as well, codification, by providing equal access to the law, had a democratizing effect.[23] Codification is also used as a *power instrument*. According to an alternative view, codification in ancient Rome served mainly to stabilize the political and economic *status quo* when this was threatened by social unrest.[24] In the 19th century, in a period of nation forming, codification helped to centralize power.[25] Codes contributed to the transfer from the *Ancien Régime* to a new legal order.[26] Throughout history, codifications contributed to more comprehensive and deeper political dominance.[27] This was linked with *political ambitions of key politicians* whose names were linked with these codes, from Justinianus to Napoleon.[28] A last function of codification is the realization of *legal certainty*. In the Age of Enlightenment, this was linked with the idea of rationalization.[29]

Today, in northern Europe, broad codification projects might disguise the personal ambition of political leaders to leave a mark, but the justification mostly used for smaller, formal consolidations to broader, substantive codifications is legal certainty. In literature, codification was mentioned as a tool to bring the law in conformity with general principles of proper law making in general and transparency and equality in particular.[30] Throughout time, however, the meaning of legal certainty has shifted. The question, then, is whether consolidation and codification are still the most suitable tools for realizing legal certainty.

22 J. Maillet, 'The Historical Significance of French Codification', *Tulane Law Review*, Vol. 44, 1969-1970, p. 687.

23 P. Legrand, 'Strange Power of Words: Codification Situated', *Tulan European & Civil Law Forum*, Vol. 9, 1994, p. 10.

24 W. Eder, 'The Political Significance of the Codification of Law in Archaic Societies: An Unconventional Hypothesis', *in* K.A. Raaflaub (Ed.), *Social Struggles in Archaic Rome, New Perspectives on the conflicts of the orders*, Blackwell, 2005, p. 239.

25 *See* P. Legrand, 'Strange Power of Words: Codification Situated', book review of C. Varga, *Codification as a Socio-Historical Phenomenon* (1994), Tulan European & Civil Law Forum, Vol. 9, pp. 7-8.

26 M.L. Murillo, 'The Evolution of Codification in the Civil Law Legal Systems: Towards Decodification and Recodification', *Journal of Transnational Law & Policy*, Vol. 11, 2001, p. 167.

27 C. Varga, *Codification as a Socio-Historical Phenomenon*, Budapest, 1991, pp. 335-336.

28 Legrand, 1994, p. 8.

29 *Ibid*., p. 15.

30 H. Coremans & M. Van Damme, *Beginselen van wetgevingstechniek en behoorlijke regelgeving* (Principles of drafting technique and proper lawmaking), die Keure, Bruges, 2001, pp. 79-85.

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II Legal Certainty

In the 19th century, it was believed that codes could grasp reality in a coherent, simple and complete set of clear legal rules.[31] As a result, the legal order was defined in terms of legal certainty, thereby equating legal system and legal certainty.[32] Reality was pictured as stable and immobile, frozen over even longer terms through its transformation into the legal system. Codification, then, was the ideal way to perform this transformation. It was considered to be accessible and applicable to all, exhaustive and systemized. The idea was that in each domain of law rules could be based upon a simple set of principles underlying the legal system. Such systemic compilation of rules and principles was considered to be exhaustive – able to solve each and every legal problem among citizens[33] – and perpetual, perfect as it was.[34]

In this model, rationality and legal certainty of legal rules were presumed, and what was required of the government and of courts was faithful interpretation and application to make government action and the outcome of legal disputes predictable. So, legal certainty was a conservative device, concerned with stability and the protection of the *status quo*.[35]

Reality, however, turned out to be far more difficult to grasp. Complexity has become the key term to describe contemporary society, associated with ideas of non-linear dynamic systems, unpredictability, self-organization, learning networks, change and adaptability.[36] With a new worldview came a paradigm shift, calling into question the very meaning of legal certainty. Scholars pointed out that *un*certainty, not certainty, was inherent to the legal system,[37] leading to the fall of legal certainty and the rule of law as legal concepts in the modern legal order.[38]

Instead, uncertainty was valued as a source of innovation and creativity.[39] This resulted in new forms of law-making and in particular the emergence of the regulatory state. Regulation in this new environment became lean, flexible and tailor-made, features that stand in stark contrast with the traditional idea of codifications as exhaustive, systemized and permanent bodies of law.

As a result, what we have now, is fragmentation and continuous modifications through incremental engineering. The picture presents what has been called

31 *See* W. Leisner, 'L'état de droit – une contradiction?', *in* M Waline (Ed.), *Recueil d'études en hommage à Charles Eisenmann*, Paris, Cujas, 1977, p. 70.

32 B. Deffains & C. Kessedjian (Eds.), 'Index of Legal Certainty. Report for the Civil Law Initiative', 2015, p. 5, available at: <www.fondation-droitcontinental.org/en/index-legal-certainty/>.

33 Legrand, 1994, p. 16.

34 *Ibid*., p. 19.

35 Leisner, 1977, p. 70. Also available as W. Leisner, 'Rechtsstaat – ein Widerspruch in sich?', *JuristenZeitung*, Vol. 32, 1977, pp. 537-542.

36 *See*, amongst many others, J.B. Ruhl, 'Complexity Theory as Paradigm for the Dynamic Law-and-Society System: A Wake-up Call for Legal Reductionism and the Modern Administrative State', *Duke Law Journal*, Vol. 45, 1996, pp. 875-892.

37 J. Frank, *Law and the Modern Mind*, 6th edn., New York, Coward-McCann, 1949, p. 7; N.-J. Maden, *L'insécurité inhérente au système juridique*, Dijon, Université de Dijon, 1979, 666 p.

38 Leisner, 1977, pp. 65-79.

39 Frank, *Law and the Modern Mind*, pp. 7, 118, 166.

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'a plurality of micro-systems', consisting of separate branches such as consumer law, labour law, intellectual property law, housing law, environmental law, banking law, etc.[40] Also, we are part of a multilayered system, with legal sources at different levels, e.g., in European regulations and directives, or international treaties. Moreover, society has emancipated. While codes of the 19th century reflected the rationality of bourgeois democracy, nowadays laws are the result of compromises between opposing groups and interests.[41]

This has several consequences for the concept of codification as a tool to provide legal certainty. First of all, codifications cannot be exhaustive. We will always have to take into account other sources as well, e.g., at the European or international level, and they may be based upon other principles. For example, international private law was codified in several countries within the European Union, but the codes are not all-embracing. They need to be complemented with treaty provisions regarding, for example, contracts, testaments and traffic accidents. Article 1 of the Dutch Code International Private Law – which is part of the larger Civil Code – explicitly confirms that the Code does not waive international instruments in force.[42] A similar provision is inserted in Article 2 of the Belgian Code International Private Law. Making international rules part of the code through a simple reference, however, does not overcome the problem of incompleteness: people have to turn to different sources and these other sources are at least partly beyond the sovereign will.

Second, matters can be looked at from different perspectives, which makes it difficult to codify law without interferences and inconsistencies. For example, where the Dutch Code on International Private Law is part of the larger civil code, the Belgian code of international private law, following the Swiss model, is a separate code, but it implied the unravelling of parts of both the civil code and the judicial code. Within the field of corporate law, voices argue that the existing Belgian code is far too detailed and encompassing to be accessible and a separate code for corporations quoted on the stock exchange is recommended.[43] This illustrates the partiality of codes, and the difficulty to unify broad domains of law according to one or several common principles. Where they do, they are bound to meet with inconsistencies. For example, a large project to codify Belgian economic law resulted in a code that at some points ran through the Civil Code – e.g., consumer law, evidence, collective debt arrangement, etc. are inserted in the Code Economic Law[44] – but also deviated from the Civil Code.[45] Intellectual property

40 Legrand, 1994, p. 21; Murillo, 2001, p. 173.

41 Legrand, 1994, p. 22.

42 *See also* K. Boele-Woelki & D. van Iterson, 'The Dutch Private International Law Codification: Principles, Objectives and Opportunities', *Electronic Journal of Comparative Law*, Vol. 14, 2010, p. 5.

43 D. Bruloot, 'Tien jaar Wetboek Vennootschappen: een evaluatie', *Juristenkrant*, 9 December 2009, p. 5.

44 *See* I. Verougstraete, 'Wetboek Economisch Recht: Een Aanbouwwetboek', *Rechtskundig Weekblad*, 2014-2015, p. 1607.

45 R. Feltkamp, 'Transacties en geschillenbeslechting in het Wetboek Economisch Recht', *in Het Wetboek van Economisch Recht: een stap vooruit maar nog een weg te gaan*, Antwerp, Intersentia, 2016, p. 258.

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was another branch of law that was inserted in the Code Economic Law instead of the Civil Code, which is consistent with respect to patents, but less so with respect to copyright.[46]

Third, fragmentation means specialization, leading to an era of de-codification.[47] For example, Swiss scholars, when putting the question of whether laws are more accessible if related matters are regulated in one, broader law, or in separate, more specialized laws, noted that the Swiss praxis was pointing rather at de-codification.[48] However, as special laws become more detailed and undergo several amendments until ultimately consolidating is required here as well, formal codification replaces substantive codification. More substantive codifications, then, either concern smaller fields of law, or have to be combined with sets of specialized laws. For example, the Polish codification on patient rights cannot stand on its own, but has to be related to legislation on medical staff and on health care institutions.[49] In Belgium, even the ambitious Code Economic Law, while including some so-called sectoral regulations such as intellectual property law, still has to be combined with separate sets of legislations, such as business establishment regulations for SMEs.[50]

Finally, codes are not made for eternity. Hence, they do not protect people against frequent amendments of legislation. This makes broad and ambitious codification projects a tricky business. For example, the Belgian Code Economic Law was an annex-construction, meaning that different parts were enacted separately over a large period of time. While new books were still being enacted, older parts already underwent revisions.

Consequently, the question arises as to whether the present codification techniques are still the most adequate tool to secure legal certainty. Especially with respect to formal codification, we might find more suitable techniques when making use of technology. I will elaborate on this thought in the next section.

C Codifications in an Age of ICT

Formal codifications aim at bringing order in a multitude of legislative (and regulatory) acts and their amendments, so as to make the law more transparent and accessible for both users and government. ICT could provide for alternatives.[51] For example, instead of producing new acts with compilations of basic acts amendments, which require some cut-and-paste work, amendments are written directly in the old act and presented as such. Search tools can bring laws and rules together according to a specific theme or angle, which solves the problem of codes

46 M.-C. Janssens, H. Vanhees, & V. Vanovermeire, 'De intellectuele eigendomsrechten verankerd in het Wetboek Economisch Recht: een eerste analyse', *Droits Intellectuels*, 2014, p. 456.
47 Murillo, 2001, p. 11.
48 G. Müller & F. Uhlmann, *Elemente einder Rechtssetzungslehre*, Zürich, Schulthess, 2013, p. 127.
49 L. Bosek & J. Pawliczak, 'Codification of Patients' Rights in Poland – The Patients' Rights Act 2008', *European Journal of Health Law*, Vol. 17, 2010, pp. 361-383.
50 Bruloot, 2013, p. 5.
51 J. Moerman, 'Naar een modern codificatiebegrip', *Juristenkrant*, 29 June 2011, p. 12.

that cross-cut each other. Moreover, ICT should make it possible to produce legislative texts as in force at the relevant moment in time.[52] This is important, considering that judicial disputes in courts concern events that happened in the past. Also, through ICT, legislation can be linked to case law, which interprets or specifies the law or adds new rules, and to preparatory documents which, in many civil law jurisdictions, are equally important for understanding and interpreting the legislative text.

This way, codification is not a matter of projects, but a continuous process.[53] Some jurisdictions are already experimenting in this direction. In Slovenia, statutes that amend other acts are promulgated in a consolidated form, which serves as the authentic text of that act.[54] Making full use of ICT for ordering and compiling legislation, however, presupposes digitalization of both the law-making process and the publication of laws. To this day, Belgium is one of the few jurisdictions where electronic promulgation is imposed by law. However, the well-intended but unfortunate interference of the Belgian Constitutional Court[55] resulted in the requirement to also produce printed versions of the Official Gazette.[56] This prevents the lawmaker from making use of all the possibilities ICT has to offer.[57]

According to Voermans et al., commercial interests may explain why most countries in Europe do not require mandatory electronic promulgation.[58] Indeed, at this moment, much work is already done through unofficial codes and databases governed by governments or private actors. The problem there is fourfold. First, these compilations and databases do not guarantee completeness and texts are not authentic, which means that in the case of errors the risk lies with the user. Second, official databases are often limited as to source, for example in federal EU member states, they contain federal law, but not regional law and EU law, or regional law, but not federal law or EU law. Also, they function apart from databases of case law instead of integrating important case law that interprets or completes statutory provisions. Third, publications and databases by private actors are expensive, which brings us to the question as to what extent people have the right to access legislation without (extra) costs.[59] Fourth, even if the responsibility for compiling legislation is passed to the private sector, the government still needs to make available the ground material in an operational manner. A recommendation of the Council of Europe encourages governments to "make available the legislative texts in electronic form to the private sector with the aim

52 As recommended by the Council of Europe, see Recommendation Rec(2001)3 of the Committee of Ministers, 28 February 2001, Appendix – Art. 1.
53 Moerman, 2011, p. 12.
54 Voermans *et al*., 2008, p. 75.
55 Belgian Const. Court No. 106/2004, 16 June 2004 and No. 10/2007, 9 February 2007.
56 Law 20 July 2005, *Official Gazette* 29 July 2005.
57 P. Popelier, 'Toegang tot de wet: een juridisch kader', *in* P. Popelier & J. Van Nieuwenhove (Eds.), *Toegang tot de wet*, Bruges, die Keure, 2008, pp. 18-19.
58 Voermans *et al*., 2008, p. 77.
59 Y. Roznai & N. Mordechay, 'Access to Justice 2.0: Access to Legislation and Beyond', *TPLeg*, Vol. 3, 2015, p. 336.

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of facilitating value added services."[60] This implies the digitalization of basic documents in a structured form. Some jurisdictions are on that track, others – Belgium included – are still far behind.

Smart ICT-driven compilations, however, cannot take over another function of formal codifications, which is the abrogation of obsolete or inconsistent provisions or even, through recasting, the insertion of new provisions to update or modernize the act. Here as well, continuous processes should replace case-by-case projects. For this purpose, permanent monitoring and established processes for evaluations *ex post* should become part of legislative policy programs. At the EU level, this has become part of the Better Regulation program. At the national level, however, and especially in civil law jurisdictions, rational regulatory management is often not particularly well-developed.

Substantive codifications come down to law reform, which needs to be handled through the normal legislative procedure. Because of the magnitude of such projects, experts, administration, practitioners and stakeholders are usually involved in the preparatory process. Most civil law jurisdictions, however, have not yet institutionalized such processes. In any event, substantive codification presupposes formal codification: a clear view on the legislation as in force is a prerequisite for more fundamental reform. Hence, making formal codification a continuous process with the help of ICT, would also facilitate substantive codification.

60 Recommendation Rec(2001)3 of the Committee of Ministers, 28 February 2001, Appendix – Art. 1.