



Brussels, 20 February 2015

5510/15

JURINFO 3  
PARLNAT 10

**NOTE**

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From: Working Party on e-Law (e-Law)  
To: Coreper/Council

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No. prev. doc. : 15184/2/15 REV 2 JURINFO 52

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Subject: Report on access to law

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**I. INTRODUCTION**

*"Ignorantia juris non excusat"*

1. European Union law covers a wide area of action, within the framework established by the Treaties. Not only does it deal with general aspects, such as determining a framework for the EU and how it operates, but it also covers other aspects of the daily life of citizens and businesses in Europe. Rules governing the recognition of divorce and decisions regarding maintenance obligations or inheritance matters are of key concern to citizens living in every Member State. Similarly, corporate law, rules on the functioning of the internal market and insolvency procedures are examples of more specific interest to businesses.

2. Thus, the matter of access to the law is pivotal. It is against this backdrop that technical discussions have been taking place within the Council's e-Law working party. The working party is composed of representatives of the 28 Member States, the Publications Office, the Commission and the General Secretariat of the Council. Representatives of the Court of Justice of the European Union have also been contributing to its work. The working party's specific brief is to address the need for a better dissemination of legal data and coordination of the technical means deployed, so as to ensure that it is as easy as possible to access both European law and the Member State law required for implementing European instruments.
3. This report aims to discuss major strides made in terms of access to European law and national law, as well as the possibility of offering access to the law of third countries, where that is in the interest of the European Union or the Member States.

## **II. ACCESS TO THE LAW**

4. To exercise the powers granted to the European Union by the Treaties, the Institutions adopt regulations, directives, decisions, recommendations and opinions. Regulations have general application. They are binding in their entirety and are directly applicable in all Member States. It is therefore essential to provide immediate access to such legislation, which is incorporated into Member States' legal systems and produces effects without the need for additional acts.
5. Directives are binding, as regards the result to be achieved, upon each Member State to which they are addressed, but leave to the national authorities the choice of form and methods. Directives must be transposed into Member States' law via national measures. It is in this particular way that European Union law and national laws are interlinked.
6. Decisions are binding in their entirety. They are binding only to those to whom they are addressed. Recommendations and opinions have no binding force.

### **III. ACCESS TO THE LAW AT EUROPEAN LEVEL**

#### **1. EUR-Lex**

7. Serving as an invaluable platform for access to the law, the EUR-Lex website is one of the European Union's most important and longest-standing products. Accessible at [eur-lex.europa.eu](http://eur-lex.europa.eu), the website provides detailed information on EU and national law, houses pages from the Official Journal of the European Union and offers a wealth of information on legislative procedures, preparatory acts and EU case law.
8. Always evolving, and with a particular focus on citizens' needs for legal information, EUR-Lex has gradually added new contents, which have subsequently been recognised as essential. Thus, while early versions of the website hosted purely "European" content, the portal N-Lex contains links to national legislation. The website also offers increasingly efficient and detailed search tools, geared to the needs of both citizens and legal professionals.
9. The EUR-Lex website is managed by the Publications Office of the European Union, which in turn has a Management Committee on which the EU's different institutions are represented. The Interinstitutional Lex Working Party (ILWP) also supports the work carried out by the Publications Office.

#### **2. Electronic publication of the Official Journal**

10. On 7 March 2013, the Council adopted Regulation (EU) No 216/2013 on the electronic publication of the Official Journal of the European Union. That Regulation, which entered into force on 1 July 2013, stipulates that the Official Journal must be published electronically in the official languages of the institutions of the European Union. Only the Official Journal published in electronic form is authentic and produces legal effects.

11. In exceptional circumstances, it may not be possible to publish the electronic edition of the Official Journal due to an unforeseen and exceptional disruption of the information system of the Publications Office. In such cases, only the printed edition of the Official Journal is authentic and produces legal effects.
12. The electronic edition of the Official Journal bears an advanced electronic signature and is made available to the public on the EUR-Lex website in a non-obsolete format and for an unlimited period. It can be consulted free of charge.
13. The adoption of that Regulation represented a crucial step in guaranteeing access to EU law and has provided legal certainty to citizens, businesses and the institutions, as well as simple, direct and user-friendly access.

### **3. Translations**

14. Regulation No 1 of the European Economic Community, as published in the Official Journal of 6 October 1958 and amended by successive accessions of new Member States, determines the languages to be used in legislation adopted by the European Union. At present, all legal acts are accessible in 23 of the languages of the EU institutions, as well as in a 24th language in the case of regulations adopted by the Council and the European Parliament under the ordinary legislative procedure. This ensures that legislation adopted at EU level is fully comprehensible and accessible, and is simultaneously communicated in all the languages of the European Union with full respect for Member States' cultures.

#### **4. EU Glossaries – Eurovoc**

15. European Union acts are highly specific and contain a great wealth of concepts, a fact which rapidly gave rise to a need for tools cataloguing those concepts. Indeed, the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question<sup>1</sup>.
16. With this in mind, the European Union developed Eurovoc, a thesaurus of terms used in all areas of EU law. To meet users' needs and take account of the nature of the European Union, the thesaurus is available in all EU languages. Users searching for information on a concept will, thanks to the glossaries, be able to find the corresponding concept in another language.

#### **5. Metadata standardisation**

17. Metadata standardisation automatically helps ensure more efficient distribution of information online. To that end, the European institutions set up an Interinstitutional Metadata Maintenance Committee (IMMC), the role of which is to define shared metadata, exchange rules and protocols, and a minimum metadata set. In the same context, the EU institutions and certain Member States are also working on implementing ELI (see below).
18. By working on metadata standardisation in this way, the EU aims to improve access to information placed online and, in general, ensure better communication of and access to law.

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<sup>1</sup> Padawan, C-467/08, EU:C:2010:620, paragraph 32.

## 6. Consolidation and codification

19. At European Union level, a distinction is made between the concept of consolidation and that of codification. The two terms may also be used with other meanings in Member States' national legal systems.
  - (a) consolidation
20. Consolidation means the procedure by which the provisions of a basic act and all subsequent amendments to it are compiled in a single text. That compilation is carried out only on the enacting terms (the recitals that feature in a consolidated act are those from the basic act). The aim is to present the EU's legal acts to citizens in a legible form. Consolidation thus makes a large contribution to making access to information on EU law easier and less cumbersome.
21. However, consolidation does not involve adopting a new legal act and therefore has no legal effect. Consolidation is carried out by the Publications Office and the consolidated texts are added to the EUR-Lex database.
22. The Publications Office consolidates EU legal acts in all the official languages every day. The consolidated versions of regulations, directives and decisions are systematically updated in their various language versions as soon as any amending act is published in the Official Journal of the European Union. Furthermore, consolidation is the basis for codification and recasting.
23. As of the end of 2014, there are more than 3 650 legal acts in force that have undergone regular consolidation (consolidated families), bringing together around 15 000 individual acts. These families do not represent the entire *acquis*, as some acts have never been amended and acts that are applicable only for a short time are not consolidated.

24. In recent years, annual production has averaged around 1 000 000 pages in PDF format, in all the EU's official languages.
- (b) codification and recast
25. The purpose of the codification procedure is to repeal the acts selected for codification and replace them by a single act, without changing their substance in any way.
26. Codification is therefore carried out by the institutions that adopted the initial act, as laid down by the Treaties. The resulting acts have legal validity and are published in the L series of the Official Journal.
27. Recasting is the adoption of a new legal act which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act. The new legal act replaces and repeals the earlier act.
28. More should be done to allow codified versions or recasting of acts amending an existing instrument to be adopted, as this avoids having numerous isolated amending acts, which can often make legislation harder to understand.
29. Of particular relevance here is the fact that on 28 November 2001, the European Parliament, the Council and the Commission adopted an Interinstitutional Agreement on a more structured use of the recasting technique for legal acts (2002/C 77/01).

30. More recently, the European Parliament, the Council and the Commission agreed for the first time to carry out a recast exercise during the legislative procedure; that agreement took the form of a joint decision of the European Parliament and the Council in agreement with the Commission. The proposal involved was a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings which was changed to a recast.
31. Making greater use of the recast technique, or codifying amending acts upon their adoption, would provide citizens with complete and readable texts that would have legal effect.

#### **IV. NATIONAL LAW**

(a) Legislation

(i) N-Lex

32. Launched in 2006, the N-Lex site aims to provide information on national legislation in all EU Member States.
33. N-Lex includes a single search form in all languages which displays results from Member States' national databases. Used in conjunction with Eurovoc, the system enables citizens to search for concepts that are not familiar to them in their own language or from their own national system.



34. The multilingualism of the European Union, while an asset, poses a substantial challenge in terms of access to law, providing access to national sites containing legislation would be of limited use in the absence of some form of translation. It is worth mentioning here that some Member States offer translations of their national legislation in another EU language to assist readers in understanding those instruments. In addition to this, there also are plans (see below) to provide a link to an automated translation tool from which translations of the search results could be requested; this would allow users to consult extensive, accessible and comprehensible information on Member States' law.

(ii) National implementing measures

35. Optimum access to legal information for citizens means not only access to all European instruments, but also access to the national measures that implement European law. As it stands, the EUR-Lex site provides information on directives adopted at EU level, along with a set of metadata on the implementing measures Member States have adopted in applying those directives.

36. The need to link those two sets of information has been raised, and the Council, the Commission and the Publications Office are, at the level of the Working Party on e-law, examining the possibility of creating a system to do so. The result would offer citizens access not only to directives, but also to the provisions of national measures that put those directives into practice. The Working Party on e-law is currently looking into the technical side of providing effective, reliable and up-to-date access to national implementing measures, with a view to improving transparency while limiting duplication of information. The current reflections on ELI also cover the referencing of national implementing measures.

(iii) Automated translation

37. The use of different languages in the European Union poses a formidable challenge in terms of access to legal information. A catalogued piece of information is only really useful if the user can understand it.
38. Moreover, the very nature of legal information makes the challenge tougher still. The reader must fully grasp the relevance of the terms used if the risk of their being interpreted wrongly is to be avoided.
39. A European Commission automated translation service (MT@EC) is available since July 2013. Users carrying out searches on the N-Lex portal have been provided access to this service through a link. The service should be taken as a source of general information, enabling the user to understand the overall thrust of any search results as a basis for then consulting a specialist as appropriate. It should be noted that the translation of some language combinations is still problematic and should be improved.

(iv) National glossaries: Legivoc

40. Given the complexity of each national system's legal terms, and the disparities between them, the need has been identified for a project to draw up glossaries on Member States' legislation.
41. Producing a glossary on national legislation is an even greater challenge than doing so at European level. This is because, firstly, the relevant knowledge is spread across a number of centres, making the groundwork of collecting legal vocabularies a prerequisite. Secondly, as each system stands in its own right, in a multilingual environment, similar terms from two Member States may have different meanings, or different terms may have a similar, or related, meaning. It is therefore necessary to assemble a tree structure of the relevant connections.

42. A pilot project called Legivoc, initiated by the French delegation, has delivered an initial outline of a glossary compiled from some national glossaries. It will soon make conceptual alignment of national legal terms easier.
- (v) ELI (European Legislation Identifier)
43. The Council adopted conclusions in 2012 inviting the introduction, on a voluntary basis, of a European Legislation Identifier (ELI) (OJ C 325, 26.10.2012, p. 3).
44. The Council considered that it was important to fulfil the objective of providing access to information about the EU and Member States' legal systems and establishing a useful tool for citizens, legal professionals and Member States' authorities.
45. The need to provide access to law is partially met by digitally available legal information and the widespread use of the internet. However, the exchange of legal information is greatly limited by the differences between the various national legal systems and between their technical systems for storing and publishing legislation on their respective websites. This hampers the interoperability between the information systems of national and European institutions, despite the increased availability of documents in electronic format.
46. The introduction of ELI is intended to overcome these problems. The use of unique identifiers and structured metadata and ontology in referencing national legislation in official journals and legal gazettes, would make seeking and exchanging information more effective, more user-friendly and faster, whilst providing efficient search mechanisms for legislators, judges, legal professionals and citizens.

47. Legislation would be identified using a unique identifier which is recognisable, readable and understandable by both humans and computers, and which is compatible with existing technological standards. In addition, ELI offers a set of metadata elements to describe legislation in compliance with a recommended ontology. It should guarantee cost-effective public access to reliable and up-to-date legislation. Benefiting from the emerging architecture of the semantic web, which enables information to be directly processed by computers and humans alike, ELI would allow data to be shared automatically, thereby increasing the speed, efficiency and capacity of information exchange.
48. ELI therefore takes into account not only the complexity and specificity of existing domestic and European legislative systems, but also changes in legal texts (e.g. consolidations, repealed acts, etc.). It is designed to be superimposed on existing systems that use structured data. It can be implemented by the Member States at their own pace.
49. Introduction of the European Legislation Identifier (ELI) is voluntary. The Publications Office and several Member States are currently implementing the ELI.
- (vi) Network for legislative cooperation
50. The Resolution of the Council and the Representatives of the Governments of the Member States meeting within the Council of 20 December 2008 established a network for legislative cooperation between the ministries of justice of the Member States.
51. A secure electronic platform ([www.legicoop.eu](http://www.legicoop.eu)) was created in 2001, and is used by the Ministries of Justice of the European Union. With more than 4 000 requests and answers exchanged since its creation, the platform archives, online, essential information allowing consultations and comparative law studies through a unique and efficient communication tool. The correspondents for each Member State therefore use the network to ensure the crucial exchange of relevant information on the legislation in force, legislative and judicial systems, and reform plans.

(b) Case-law

(i) ECLI (European Case Law Identifier)

52. In 2011 the Council adopted conclusions inviting, on a voluntary basis, the introduction of the European Case Law Identifier and a minimum set of uniform metadata for case-law (OJ C 127, 29.4.2011, p. 1).
53. The need to provide access to law should fulfil the objective of disseminating information about the EU and Member States' legal systems and should serve as a goal to create a useful tool for citizens, legal professionals and Member States' authorities.
54. Knowledge about the substance and application of European Union law cannot be acquired solely from EU legal sources; the case-law of national courts also has to be taken into account, including decisions asking for a preliminary ruling, decisions following a preliminary ruling, and decisions directly enforcing EU law. Moreover, improved cross-border access to the case-law of the Member States and European Courts facilitates comparative law studies and stimulates acquiring knowledge of the various legal cultures.
55. A study<sup>1</sup> carried out by the Council Working Party on e-Law found that, apart from multilingualism issues, problems of access to case-law were mainly due to the lack of uniform identifiers and metadata. At the national level, various identification systems exist, some of them court-designated, others vendor-specific. Databases designed to query case-law from various Member States either invent their own identification system or re-use one or more of the national numbering systems. This makes searching for and citing case-law in a cross-border context extremely difficult because the identifiers issued by one system may not be compatible with other systems.

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<sup>1</sup> 12907/1/09

56. Both to facilitate the further development of case-law databases and to meet the needs of legal professionals and citizens, a common system for the identification, citation and metadata of case-law was considered essential.
57. Judicial decisions should be identified using a standard identifier which is recognisable, readable and understandable by both humans and computers, and compatible with technological standards. At the same time, it should be possible for national case-law identification systems to work in parallel with such a European standard, but also for the European standard to serve as the sole national standard for those countries that so wish.
58. Since the organisation of courts and the IT applications used by courts vary not only between Member States, but also within Member States, it should be made possible to use the identification and metadata system in every court.
59. Member States were invited to introduce, on a voluntary basis at the national level, the European Case Law Identifier and a minimum set of uniform metadata for case-law. At present, a number of Member States have already introduced the ECLI system domestically.

(ii) JURE

60. The JURE database contains relevant decisions taken by the courts of the EU Member States and, where appropriate, Iceland, Norway and Switzerland, and by the Court of Justice of the European Union, pursuant to the following conventions and regulations:
- Brussels Convention (1968)
  - Lugano Convention (1988)
  - Brussels I Regulation (2000)
  - Brussels II Regulation (2000)
  - New Brussels II Regulation (2003)
  - New Lugano Convention (2007)

61. Currently, the decisions are available only in the original language.
62. A summary of each decision is also available in French, English and German (and in the original language if such a summary is provided by the country concerned).
63. The JURE collection is currently available on the EUR-Lex site, under the section "National Law" and subsection "JURE". It also includes the content of the previous JURE database. Member States are actively updating this database, feeding it with recent case-law.
- (iii) Network of the Presidents of the Supreme Judicial Courts
64. The Network of the Presidents of the Supreme Judicial Courts of the European Union, created in 2004, established a platform for communication between the Supreme Courts of the EU. In addition to stimulating debate on matters of common interest, the contacts created between the Presidents of the Supreme Courts led to the creation in 2007 of a shared case-law portal with a search engine capable of querying other search engines.
- (iv) Association of the Councils of States and Supreme Administrative Jurisdictions of the European Union
65. The Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) comprises the Court of Justice of the European Union, together with the Councils of State or supreme administrative jurisdictions of each Member State of the European Union. Courts and institutions with similar powers in states engaged in negotiations with a view to joining the European Union may be admitted as observers.

66. The Association is founded on a philosophy of exchanging ideas and experiences on questions relating to the case-law, organisation and workings of its members in the performance of their duties, be they judicial or advisory, particularly as regards EU law. To this end, the Association encourages contacts and exchanges of information between the Association's members and observers and with EU courts.
67. The Association has set up a database consisting mainly of the judgments, opinions and studies issued by its members. This comprises two databases, the first (Dec.Nat.) containing national decisions and the second (JuriFast) containing preliminary files (questions put to the Court of Justice of the European Union, its replies, and the decisions made at national level in response to those replies) as well as national decisions interpreting EU law.

## **V. OPEN DATA**

68. The goal of the EU Open Data Portal (<http://open-data.europa.eu>) is to collect and disseminate the open data of EU institutions, agencies and other bodies. Another initiative aims to establish a pan-European portal on open data, bringing together and disseminating open data from the local, regional and national portals of the EU's Member States.



69. Both portals are catalogues of metadata and are intended to enable semantic interoperability at metadata level in order to create an effective link between datasets.
- (a) Open data at EU level
70. The EU Open Data Portal (<http://open-data.europa.eu>, ODP) was created by Commission Decision 2011/833/EU to facilitate public access to open data, encourage reuse and foster economic activity. It is the single point of access to open data held by the EU institutions, agencies and other bodies.
71. Its creation is part of a broader strategy promoting the wide and free availability of information produced by or for governments at European level. The need to move towards open data was endorsed by the European Council in October 2013.
72. Further to their obligation under Commission Decision 2011/833/EU, Commission services must feed the ODP with data produced for or by them, while other institutions, agencies and other bodies are invited to join. The portal allows anyone to easily search, download and reuse a growing range of data for commercial or non-commercial purposes, through a catalogue of common metadata. It enhances the visibility and discoverability of data of EU institutions and agencies and makes a strong contribution to their openness and transparency.
73. In late 2014, the number of data providers contributing to the ODP had reached 43 (26 Commission services, the Committee of the Regions, the European Investment Bank and 15 agencies), providing access to about 6 650 datasets.

(b) Open data at Member State level

74. The Multiannual European e-Justice Action Plan 2014-2018 (2014/C 182/02) provides for the creation of an informal group whose findings would be submitted to the Council's Working Party on e-Justice. The objective is to discuss and prepare the method to follow as regards open data in the area of justice.

## **VI. ACCESS TO THIRD COUNTRIES' LAW**

75. Access to information via EUR-Lex, N-Lex and the e-Justice portal is currently limited in practice to legal information on the law and case-law of the European Union and of the Member States. However, it might be desirable to go further and extend the range of legal information available to include access to the law and case-law of third countries.

76. Some thought has already been given to exploring how to improve access to third states' law and case-law. Indeed, such access may be of interest even in relation to the application of instruments adopted at EU level. For example, Article 2 of Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I) stipulates that any law, whether of a Member State or of a third country, can be applicable to a contract covered by the scope of the Regulation. This means that in certain situations a court of a Member State has to apply the law of a third state with which the case has a particular connection. Moreover, other situations in the daily life of citizens or the professional activities of companies or legal practitioners can require or show the usefulness of access to foreign law.

77. Some Member States have rules which allow their courts or other authorities to acquire information about foreign law. Those rules indicate an authority which is competent to ask questions about foreign law. They also allow obtention of opinions of expert witnesses. Almost all Member States are parties to the European Convention on Information on Foreign Law too.
78. It is useful to continue to explore ways of facilitating or broadening access to third states' law. What stage have discussions reached?
- (i) the Lugano states
79. The states signatory to the Lugano Conventions (Switzerland, Norway and Iceland) have a particular relationship with the EU. In this respect, there have been regular contacts with representatives of Switzerland, Norway and Iceland to discuss in particular case-law databases relating to the application of the Conventions. On the basis of this specific cooperation, the Lugano states have also shown a particular interest in the work done by the Council on the semantic web, and they are directly involved in the discussions on the ELI and the ECLI. Over time, the idea is to provide semantic-web solutions so that the legislation and case-law pages of the countries in question also have ELI and ECLI references, thereby encouraging easy, automatic access via the pages of the EU and of its Member States.
- (ii) Hague Conference on Private International Law
80. The Hague Conference on Private International Law comprises a large number of states. The Council on General Affairs and Policy of the Conference has invited the Permanent Bureau to continue to follow developments in the area of accessing the content of foreign law.

81. Given that the semantic-web tools developed at the initiative of the European Union may, in view of their flexibility, also lend themselves to any national system, contacts have been made with a view to exporting these solutions. The European Union presented them at the Council on General Affairs and Policy of the Hague Conference on Private International Law in April 2014. Future developments in this area will continue to be followed closely.

(iii) Member States initiatives

82. Through two Member States, the EU is also in contact with the Ibero-American Judicial Summit, a body comprising South and Central American states. As those states would also like to be able to encourage online access to law, contacts have been made to communicate the semantic-web solutions developed by the European Union.

83. Through one Member State, the Working Party has also been informed of the results of the twinning scheme with Morocco, which included a presentation on ELI.

## VII. CONCLUSIONS

84. The European Union, aware of the importance of the question of access to law, has developed tools and platforms to facilitate and extend access to law for citizens, including legal practitioners, companies and institutions at Member State and EU level. This work has already borne fruit and should be continued.

85. This report was drawn up for dissemination to the public.

86. The Council's Working Party on e-Law will continue to follow this work and proposes that regular reports be drawn up on the progress made, at least every five years.