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From: the Expert group on Open Data
To: Working Party on e-Law (e-Justice)

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Subject: Report on Expert group on Open Data

I. INTRODUCTION

1. In the Annex of the Multiannual European e-Justice Action Plan 2014-2018,¹ headed under ‘A) Access to information in the field of justice; 1) Information through the e-Justice portal’ it is listed ‘Open data on justice’. The objective is to discuss and prepare the method to follow as regards open data in the area of justice.² Responsible for action are both Member States and Commission; action is to be initiated by an expert group.³
2. An introductory document by the Expert Group’s chair⁴ was discussed in the Working Party of 17 March 2015. The Expert Group on Open Data convened on 18 June and 25 September 2015.

¹ OJ C 182/02, 14.6.2014, p. 2.

² Report on access to law (5510/15), paragraph 74.

³ See Annex to 15771/14.

⁴ 6992/15

3. The Expert Group has examined data that are currently available on the European e-Justice Portal (hereinafter ‘the Portal’) or that can be expected to be available there shortly. The findings are described in this document.
4. In the Portal various datasets can be distinguished. A ‘dataset’ (or ‘information category’) can be defined as a collection of documents that share (type of) creator, content domain and publication method. For each of these datasets the current legal and technical status has to be assessed, more specifically regarding the questions:
 - a) What are the current formal legal conditions for the re-use of these datasets and should there be any changes?
 - b) What is the technical status of these datasets, is there need and/or room for improvement and who should be responsible for action?
5. Before examining the datasets (§§ III-X) the legal framework is discussed (§ II). Finally, the relation with the EU Open Data Portal will be discussed (§ XI).

II. LEGAL FRAMEWORK

6. The relevant legal framework is to be found in:
 - a) Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the Re-use of Public Sector Information⁵ as amended by Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013⁶ (hereinafter : the ‘PSI Directive’);⁷
 - b) Commission Decision of 12 December 2011 on the Reuse of Commission Documents (2011/833/EU)⁸ (hereinafter: the ‘Open Data Decision’);

⁵ OJ L 345, 31.12.2003, p. 90.

⁶ OJ L 175, 27.6.2013, p. 1.

⁷ The amended PSI Directive had to be implemented by the Member States by 18 July 2015.

⁸ OJ L 330, 14.12.2011, p. 39.

- c) Commission Decision of 5 June 2014 on the Protection of Personal Data in the European e-Justice Portal (2014/333/EU)⁹ (hereinafter: the ‘Privacy Decision’);
- d) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter: the ‘Data Protection Directive’).¹⁰

Also of relevance are:

- e) Commission Guidelines on recommended standard licences, datasets and charging for the reuse of documents¹¹ (hereinafter: the ‘Licencing Guidelines’);
- f) Opinion 06/2013 ‘on open data and public sector information (‘PSI’) reuse’ of the Article 29 Data Protection Working Party (hereinafter: ‘Opinion 06/2013’).¹²

7. The rules and conditions laid down in these documents which are relevant for this report can be summarized as follows.

8. In both the PSI Directive and the Open Data Decision the focus is on the ‘document’, defined as ‘Any content (...) or any part of such content’.¹³ Both instruments have as their guiding principle that documents from (national and European) public bodies should be freely reusable, unless specific conditions are met.

9. Art. 8 par. 2 PSI Directive requires the use of standard licences. To this end the Licencing Guidelines advise licences like Creative Commons. For public datasets the use of CC0 (‘Public Domain Dedication’) is recommended.¹⁴

⁹ OJ L 167, 6.6.2014, p. 57.

¹⁰ OJ L 281, 23.11.1995, p. 31.

¹¹ OJ C 240, 24.7.2014 p. 1

¹² 1021/00/EN WP207, adopted on 5 June 2013.
http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp207_en.pdf

¹³ Art. 2. par. 3 PSI Directive. It also relates to non-digital documents, but that is not of relevance for this report.

¹⁴ <http://creativecommons.org/publicdomain/zero/1.0/>

10. Apart from the legal contents of any licence, art. 8 par. 2 PSI Directive requires licences to be available in digital format, so they can be processed electronically.
11. The Licencing Guidelines also recommend: “(A) *reference to the conditions under which re-use is allowed should appear prominently at the point of display of, or accompanying, the information,*”¹⁵ instead of putting this information (just) in a (separate) legal notice. The Creative Commons have symbols that are easily recognized.
12. Art. 5 of the PSI directive requires public sector bodies to make their documents available in open and machine-readable format as far as possible, but there is no obligation to create such formats just to comply with this requirement. The Licencing Guidelines describe some good practices regarding this requirement.

III. STATIC CONTENT FROM THE COMMISSION

13. This dataset contains the static content pages of the Portal that are maintained by the Commission.
14. This dataset is governed by the Open Data Decision, of which the general rule in art. 4 states that all documents shall be available for re-use.
15. The legal notice of the Portal¹⁶ states likewise, although it should be noted that the legal reference is to the predecessor¹⁷ of the Open Data decision and not to the one currently in force.
16. The licence is not standardized; CC0 should be recommended. The symbol should be displayed, and the licence should be made machine-readable.
17. The dataset is displayed in XHTML, with standardized metadata. For machine-processability compliancy with RDF/a could be improved.

¹⁵ Licencing Guidelines, § 2.1.

¹⁶ <https://e-justice.europa.eu/contentMaximisation.do?plang=en&legalnotice=1>

¹⁷ Commission Decision of 7 April 2006 (2006/291/EC, Euratom) on the re-use of Commission information.

IV. STATIC CONTENT FROM THE MEMBER STATES

18. This dataset contains the static content of the Member States pages. These documents are maintained by the Member States, and hence the Open Data Decision is not applicable, since art. 2 of this Decision states that it (only) applies to ‘public documents produced by the Commission or by public and private entities on its behalf.’
19. Hence, this dataset is governed by the general principle of art. 3 PSI Directive: *“Subject to paragraph 2 Member States shall ensure that documents to which this Directive applies in accordance with Article 1 shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.”*

Paragraph 2 is not applicable; nor are the exclusions mentioned in Article I. Requiring any specific licence or placing any other conditions on the re-use of this content, which is already made available by the Member States on the Portal for free with the purpose of disseminating the information contained therein as widely as possible to citizens, businesses and legal professionals, can be considered to be contrary to the general aims of both the e-Justice project and the PSI Directive: *“Any licences for the re-use of public sector information should in any event place as few restrictions on re-use as possible, for example limiting them to an indication of source. Open licences available online, which grant wider re-use rights without technological, financial or geographical limitations and relying on open data formats, should play an important role in this respect. Therefore, Member States should encourage the use of open licences that should eventually become common practice across the Union.”*¹⁸

¹⁸ Recital 26 of Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information.

20. The legal notice of the Portal contains 27 different copyright notices from the Member States.¹⁹ Many of these notices refer to national legislation without clarifying the extent to which the documents can be re-used, differ in the conditions (e.g. on whether the source has to be acknowledged) or – by completely prohibiting any re-use – run counter to the European legal framework outlined above.
21. It is therefore suggested to replace the various national copyright notices by one general notice, which should, for the reasons set out in par. 19 above, be standardized, displayed and made machine-readable in the same way as the legal notice of the dataset of the Commission’s static content (above, par. 16).
22. With regard to the computer processability of this dataset the remarks made in par. 17 above apply likewise.

V. INSOLVENCY REGISTERS

23. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (hereinafter: the ‘Insolvency Regulation’) is now in force. Article 25 – on the interconnection of national registers – shall apply from 26 June 2019, but although not all measures and specifications therein have been adopted by means of implementing acts, these measures and specifications have been decided upon and are communicated. Hence, the current interconnection of six national insolvency registers within the Portal can be assumed to have the Insolvency Regulation as its legal base.
24. The protection of personal data within the national registers and their accessibility via the interconnection within the Portal is regulated in Chapter VI of the Insolvency Regulation. The Regulation does not contain specific provisions on the re-use of documents.

¹⁹ Except for Croatia.

25. Since the registers contain personal data, to which the Data Protection Directive is applicable, the PSI Directive could be not applicable on grounds of art. 1, par. 2 sub cc thereof, stating, generally speaking, that the Data Protection Directive takes precedence over the PSI Directive. Art. 1 par. 4 PSI Directive though reads: *“This Directive builds on and is without prejudice to access regimes in the Member States.”* And while Member States have to act in accordance with the Data Protection Directive and art. 8 ECHR, they can allow for re-use of datasets containing personal data. National rules regarding the use and re-use of insolvency data of the (currently participating) Member States differ substantially, as is clear from the general information page regarding this service on the Portal.²⁰ To prevent by technical means any automated harvesting of insolvency information, the Commission implemented a CAPTCHA²¹ in the user interface.
26. Special attention to the delicate relationship between the PSI Directive and the Data Protection Directive is given by Opinion 06/2013. The re-use of personal data that are made public for specific reasons, like insolvency data, is dealt with in Section VII of this Opinion. The general principle is ‘purpose limitation’, that can be summarized as: *“The mere fact that personal data are publicly available for a specific purpose does not mean that such personal data are open for re-use for any other purpose.”*²²
27. For re-users, having data from national insolvency registers available at the European level has substantial advantages over having to collect them from the national sources. Apart from having just one access point instead of many, the EU interconnection offers technical and semantic harmonisation. The legal restrictions and complications though make it nearly impossible to cater for any re-use option at the EU level. Due to these restrictions there is also no obligation to cater for such re-use.

²⁰ https://e-justice.europa.eu/content_interconnected_insolvency_registers_search-246-EU-maximize-en.do?idSubpage=1

²¹ Completely Automated Public Turing test to tell Computers and Humans Apart.

²² Opinion 06/2013, p. 20.

28. Even in a situation in which there would be no data protection objections, it would require more than a ‘simple operation’ (art. 4, par. 2 PSI Directive) to cater for such a service, due to the decentralized architecture that was chosen – and now prescribed by art. 83 Insolvency Regulation – to build this interconnection: the national data are not replicated to the Portal, but are queried during runtime as a distributed search, for each user request separately.
29. It is therefore proposed to leave the current state of play unchanged. The situation could be reassessed if and when all Member States (and not just the current six) have an interconnected national register. According to the Insolvency Regulation this would be 26 June 2019.
30. Still, it would be advisable to see whether a standard licence can be used, and to have it computer-readable.

VI. FIND A LAWYER

31. ‘Find a lawyer’ (hereinafter: ‘FAL’) is a service on the Portal, provided by the Commission and the participating national bar associations, to facilitate access to justice in a cross-border context by allowing citizens and legal practitioners to locate lawyers throughout the EU.
32. Re-use of the data is prohibited in the terms and conditions of FAL:²³ *“You agree to use this service exclusively for its intended purpose – to find a legal professional (lawyer) in order to seek his or her services or for taking professional peer contact. You shall not use the service, or any personal data returned by the service, for any other intent or purpose, and in particular in relation to carrying out commercial, marketing or advertising activities.”*
33. Moreover, harvesting is also prohibited: *“You are not allowed to copy in an automated fashion (harvest), and/or distribute the data received through the “Find a lawyer” service via any means.”*²⁴ To enforce this prohibition also in FAL a CAPTCHA is used.
34. This is an example of purpose limitation (above, par. 25), comparable to the situation with the interconnected insolvency registers. Since FAL operates technically in a comparable way as the insolvency register interconnection, the same technical objections to re-use apply (above, par. 28). Also for FAL a standard licence would be advisable.

²³ https://e-justice.europa.eu/content_find_a_lawyer-334-EU-maximize-en.do?idSubpage=1

²⁴ Ibidem.

VII. FIND A NOTARY

35. 'Find a Notary' (hereinafter: 'FAN') is a service on the Portal to find a notary throughout the EU, comparable to FAL (above, § VI). Terms and conditions are the same as for FAL, as are the remarks to be made.

VIII. COURT DATABASE

36. The Court Database is a reference repository for data about national courts. It is the successor of a comparable database in the Legal Atlas, and will contain, in its first phase, data about national courts and other institutions fulfilling a role in the execution of European legal instruments (e.g. the European order for payment procedure). In a second phase the Court Database will also contain data on other national courts, including historical data. As such it will be made available as an authority table via the Metadata Registry maintained by the Publications Office.²⁵

37. All data in the Metadata Registry are optimized for re-use, regarding licencing as well as to formats and machine readability.

IX. CASE LAW WITHIN THE ECLI SEARCH ENGINE

38. The ECLI Search Engine (hereinafter: 'ECLI-SE') will be part of the Portal in the foreseeable future.²⁶ It will offer search functionalities for national and European judicial decisions that have an ECLI assigned. The architecture is decentralized in the sense that the documents remain in the national repositories, but will be harvested by the ECLI-SE on a regular basis. These (copied) documents are then stored on the Portal side, in a format that is optimized for the ECLI-SE, which is not necessarily the most optimal format for re-use.

²⁵ <http://publications.europa.eu/mdr/>

²⁶ In accordance with § 5 of the Annex to the Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law, OJ 2011/C 127/01.

39. The legal situation with regard to these documents is comparable with the rules governing the static Portal content of the Member States (above, § IV): the documents are not held by the Commission, the PSI Directive applies.
40. The possible presence of personal data in case law documents requires some specific explanation. Since the judicial decisions that are indexed by the ECLI-SE will be the versions that have been rendered anonymous by national authorities – according to their respective national data protection rules – there are no data protection issues; hence art. 1 par. 2 sub cc PSI Directive is not applicable. If it is decided by the national authorities to publish any personal data in these documents, art. 4, par 6 of the Privacy Decision applies, stating that the Commission bears no responsibility for these (personal) data.
41. The general legal notice of the Portal should therefore also cover the ECLI-SE.
42. The policies and technical possibilities of the Member States vary widely with regard to art. 5 par. 1 PSI Directive; case law documents are often not available in formats that are optimized for re-use, and the metadata do not comply with formal open standards. Since the alignment/harmonization of metadata was one of the objectives of the Council conclusions on ECLI,²⁷ it is obvious that also re-users might profit considerably from both the technical and semantic harmonization that was achieved within the ECLI-SE.
43. Catering for re-use of the case law documents has not been a design requirement of the ECLI-SE and would require additional efforts. Although the technicalities have to be assessed, chances are that pursuant to art. 5 par. 2 PSI Directive there is no immediate obligation for the Commission to make such adaptations.²⁸

²⁷ See footnote 26.

²⁸ It should be mentioned though that a SOAP webservice will be available, allowing direct external querying on ECLI-SE.

44. In this regard attention should be drawn to the project ‘Building on ECLI’ (hereinafter ‘BO-ECLI’), that was awarded a grant by the Commission under the Call for proposals for national or transnational e-Justice projects – JUST/2014/JACC/AG/E-JU.²⁹ One of the objectives of BO-ECLI is to develop: “A 2.0 version of the ECLI standard, which is aligned with other semantic web standards as well as backwards compatible with the 1.0 version”; the development of open data API’s (Application Programming Interfaces) is explicitly mentioned in the project proposal.
45. It is therefore suggested to await the outcomes of the BO-ECLI project before taking any action towards improving the computer-readability and accessibility of the documents within the ECLI-SE.

X. BUSINESS REGISTERS

46. Following the adoption of Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers³⁰ (hereinafter: the ‘BRIS Directive’) a system of interconnection of business registers is being set up at EU level, in a joint effort involving the Member States and the Commission. Like with FAL, FAN and the insolvency register interconnection, there will be a - in principle – decentralized architecture, with no permanent³¹ data storage at the European level.
47. The general principle of purpose limitation applies to business registers as well; in Opinion 06/2013 such registers are even mentioned as an example for the application of this principle.³²

²⁹ ec.europa.eu/justice/grants1/calls/just_2014_jacc_ag_e-ju_en.htm

³⁰ OJ L 156, 16.6.2012, p. 1.

³¹ The current technical approach implies replicating all documents delivered by national business registers for temporary storage on the European central platform.

³² L.c. § 7.1.

48. Business registers at the national level contain personal data, to which the restrictions of art. 1 par 2 sub cc PSI Directive may apply. Moreover, recital 22 BRIS Directive makes clear Member States are allowed to charge for any data usage from their national registers. Such access regimes can be considered to be in scope of art. 1 par. 2 sub ca PSI Directive.
49. As a consequence it may be advised that no re-use of business registers information should be catered for at the level of the Portal.

XI. AVAILABILITY ON THE EU OPEN DATA PORTAL

50. Art. 5 of the Open Data Decision obliges the Commission to set up a data portal as a single point of information regarding re-usable data from the EU institutions. This EU Open Data Portal is now available, run by the Publications Office.³³ It should be stressed that – as defined in art. 3 par. 7 of the Open Data Decision – the EU Open Data Portal is single point of access to web sources, not a database; although the full data of the registered sources may be cached, its primary goal is to harvest just the metadata of the datasets, with a view to create a catalogue of sources falling under the open data definition of the PSI Directive and the Open Data Decision.
51. Registering the relevant datasets from the Portal on the EU Open Data Portal should be done by the Commission. The question arises which datasets are ‘relevant’.

³³ <https://open-data.europa.eu/>

52. Art. 1 of the Open Data Decision defines as the subject matter of the Decision: *‘Documents held by the Commission or on its behalf by the Publications Office (...)’*. In Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents³⁴ – which forms the legal basis for the Open Data Decision – the term ‘held’ is specified in art. 2 par. 3: *‘This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.’* According to this definition the datasets discussed in §§ III, IV, VIII and (in the future) IX should be registered.
53. However, art. 2 par. 1 of the Open Data Decision defines the scope: *‘This Decision applies to public documents produced by the Commission or by public and private entities on its behalf (...)’*. The term ‘produced by’ is narrower than the term ‘held by’; therefore one could argue the datasets IV and IX are not covered by the Open Data Decision.
54. On the other hand, the datasets IV and IX are also not excluded from applicability of the Open Data Decision on one of the grounds listed in art. 2 par 2.
55. The alternative for registering these datasets with Member States’ content on the EU Open Data Portal would be to register them on the pan-European data portal.³⁵ From the perspective of data re-users this would be a highly inconvenient solution.

It is therefore proposed to register all datasets III, IV, VIII and IX on the EU Open Data Portal.

³⁴ OJ L 145, 31.5.2001, p. 43

³⁵ publicdata.eu