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#### NOTE

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From:	General Secretariat of the Council
To:	Working Party on e-Law (e-Justice)
Subject:	Projects related to Open Data in the e-Justice Action Plan and possible developments

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1. Open Data exists as a means of providing access to information for re-use. This can include any information. It is linked with but distinct from the notions of Big Data and Deep Data. However, all of these notions contribute to the development of other projects, critical for e-Justice, such as Artificial Intelligence.
2. No technical specifications are inherently included in Open Data, except for the implications that Open Data has to be easily accessible, in order to promote its exploitation. This conditions a number of elements in Open Data, such as the necessity of using non-proprietary formats for the files and standardised metadata. It does not, however, mandate that Open Data be free<sup>1</sup>.

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<sup>1</sup> However, data produced by the European Union is to be published under the Creative Commons Attribution (CC-BY), which implies it is free.

3. As indicated, Open Data is essential for the development of other technologies, such as AI, but it can also be used to promote transparency and help in promoting a Digital Single Market, as pointed out by the Commission<sup>2</sup>. A recast of the directive on Open Data and reuse, recently adopted by Parliament and Council<sup>3</sup> extends its scope and application and should be taken into account in the planning of activities in this domain (e.g. regarding High Value Datasets, APIs).
4. Following these developments, delegations are invited to reflect on which data sets publication would provide added value in the field of Justice.
5. Case law appear to be a prime example of such high-value data sets. Some information was already provided in a report stemming from the BO-ECLI project<sup>4</sup>.

## **I. CASE LAW AS SHAREABLE DATA**

6. Each Member State publishes at least part of their case law online. Case law is made available through different means, including portals, databases and websites of the judiciaries. The amount of decisions published differs per Member State, as some publish a selection of decisions<sup>5</sup> whereas others publish most/all decisions<sup>6</sup>(excluding decisions which cannot be published due to special circumstances). The access to decisions is free for most of them<sup>7</sup>, while in some Member States a fee is required when accessing the documents<sup>8</sup>.
7. When it comes to availability of "open data" case law, most Member States have no legal restrictions imposed on the re-use of data<sup>9</sup>. The decisions are available in different formats such as Word, PDF, RDF/XML, JSON and HTML. However, with some exceptions<sup>10</sup>, Member States do not provide any technical facilities to support machine readable access via API or bulk downloading.

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<sup>2</sup> Communication from the Commission on Open Data, COM/2011/0882 final  
<sup>3</sup> Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information, OJ L 172, 26.6.2019, p. 56–83  
<sup>4</sup> <https://bo-ecli.eu/uploads/deliverables/Deliverable%20WS0-D1.pdf>  
<sup>5</sup> DK, GE, ES, CY, MT, PL, RO, SK  
<sup>6</sup> BE, BG, CZ, EE, IE, EL, HR, FR, IT, LV, LT, HU, NL, AT, PT, SL, FI, SE  
<sup>7</sup> GE, IE, CY, HU  
<sup>8</sup> IT  
<sup>9</sup> BE, BG, CZ, EL, LV, LU, HU, MT, NL, PT, RO, SK, SE, IT  
<sup>10</sup> GE, NL

8. However, for the use of case law as Open Data to be possible, some preliminary measures have to be taken, in order to comply with legal requirements, in particular concerning data protection. Anonymisation and pseudonymisation are considered to be the adequate preliminary measures. Member States have launched national projects in order to develop technical solutions to facilitate these measures<sup>11</sup>. The Workshop organised by the Finnish Presidency on 4 and 5 September 2019 focussed on these aspects.
9. In order to advance in this work, however, a better sharing of experience and data is needed. Delegations are therefore invited to express their interest in cooperating with the French Cour de cassation. As indicated during the Workshop, the necessary steps to take are granting access to data and establishing a line of communication with local experts. The provided data will be used to train the Artificial Intelligence used in this project and the exchange of information with local experts will allow to identify the necessary linguistic refinements needed for the algorithm.
10. Meanwhile, the European Case Law Identifier (ECLI) has been developed to facilitate the correct and unequivocal citation of judgments from European and national courts. Some Member States have implemented ECLI<sup>12</sup>, whereas some others are preparing for the implementation of ECLI<sup>13</sup> by finalizing technical decisions such as the format. There are also some cases in which the possibilities of ECLI are being explored<sup>14</sup>. In the remaining cases, the implementation of ECLI is either not possible<sup>15</sup> or not part of the national agenda yet<sup>16</sup>.
11. As ECLI facilitates reuse of data by providing unequivocal identifiers and useable metadata, Member States are invited to consider participating in the ECLI Expert group and adopting ECLI in their national processes. It is to be noted that a new version of the Council Conclusions on ECLI have been adopted on 7 October 2019.

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<sup>11</sup> For example, using AI, as the French Cour de cassation is doing.

<sup>12</sup> CZ, DE, ES, FR, NL, AT, RO, SL, SK, FI

<sup>13</sup> BG, EE, LV

<sup>14</sup> HR, IT, CY, LU

<sup>15</sup> IE, SE

<sup>16</sup> EL, LI, HU, PL

## II. ALREADY EXISTING OPEN DATA AT EU-LEVEL

12. As indicated by the Publications Office of the European Union<sup>17</sup>, more ambitious in Open Data efforts are needed, according to the 2018 Report on Open Data Maturity in Europe<sup>18</sup>.
13. Currently, two Open Data Portals, maintained by the Publications Office exist:
  - a) The European Data Portal (EDP)<sup>19</sup> which collects the data from 81 data catalogues spread around Europe (going beyond EU Member States), and
  - b) The EU Open Data Portal (EU ODP), which collects data provided by EU institutions, agencies and bodies.
14. The Publications Office can therefore provide expertise on building and publishing data on open data portals. The Publications Office is also working on developing and improving open data through Linked Open Data<sup>20</sup>, common standards and vocabularies<sup>21</sup>.
15. The Publications Office is invited to communicate to the Working Party the possible assistance they would welcome from Member States. Conversely, Member States are invited to provide such assistance to the Publications Office, in order to further develop the European portals for Open Data.

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<sup>17</sup> 9378/19, Open Data and reuse of information

<sup>18</sup> [https://www.europeandataportal.eu/sites/default/files/edp\\_landscaping\\_insight\\_report\\_n4\\_2018.pdf](https://www.europeandataportal.eu/sites/default/files/edp_landscaping_insight_report_n4_2018.pdf)

<sup>19</sup> <https://data.europa.eu/europeandataportal>

<sup>20</sup> Action 10 in the 2019-2023 e-Justice Action Plan, OJ C 96, 13.3.2019, p. 9–32, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0313\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0313(02))

<sup>21</sup> Action 26 in the 2019-2023 e-Justice Action Plan

### III. FOLLOW-UP

16. Delegations are invited to reflect on the preconditions and possible avenues for further cooperation in the field of Open Data.
17. Additionally, delegations are invited to indicate if national Justice Open Data policies have been adopted or enacted. In this case, which data has been made available and under which conditions?
18. Furthermore, Member States and the Court of Justice are invited to reflect on the possible developments necessary for further development of Open Data for case law, notably through the use of ECLI. Which further preconditions are deemed necessary by delegations to further this goal?
19. Finally, Member States are invited to indicate which Justice data sets they would consider of value to be included in the two European portals for Open Data. Would a more precise study on available data sets<sup>22</sup> and their use cases be of interest to delegations?

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<sup>22</sup> Carried out by the General Secretariat of the Council in the same spirit as the survey on the use of IT tools in national Courts