

DIGITALISATION OF LEGAL INFORMATION – A STEP FORWARD TOWARDS A TRULY COMMON EUROPEAN LEGAL SPACE

Rudolf Strohmeier / Enrico Francesconi / Gordana Materljan

Rudolf Strohmeier is the Director General of the Publications Office of the European Union
rudolf.strohmeier@publications.europa.eu

Enrico Francesconi is a Policy Officer at the Publications Office of the European Union and President of the
International Association for AI and Law
enrico.francesconi@publications.europa.eu

Gordana Materljan is a Legal Officer at the Publications Office of the European Union
Gordana.Materljan@publications.europa.eu

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Abstract: *Europe is characterized by a multitude of complex, overlapping, hierarchical, and non-hierarchical legal systems or legal orders. All these systems of multi-level decision-making and governance are interlocked, mutually interdependent, and deeply embedded in a larger setting that can be identified as the European Legal Space.*

In the last few years the Publications Office of the European Union has played a prominent role in creating a digital and multilingual European Legal Space, as one of the main pillars for strengthening the European cohesion. This paper is a brief introduction to the challenges the European Legal Space is facing in terms of citizens' right to access legal information, and to the possible solutions enabling digital access to that information in terms of accessibility and understanding of its content with the help of future innovative technologies.

1. The European Legal Space – current situation and challenges

Each Member State of the European Union has its own legal system, comprising both laws adopted at a national level and laws that are only applicable on regional or local level. In addition, within the Member States' territories, European Union law operates as a system of laws constituting a new autonomous legal order.¹

There are also a number of other legal orders operating in Europe – such as the EFTA/EEA, the Council of Europe system protecting the rights enshrined in the European Convention on Human Rights, to name just a few of them, each of them adding a new layer of complexity. All these systems of multi-level decision-making and governance are interlocked, parallel, complementary, mutually interdependent, and deeply embedded in a larger setting that can be identified as the European Legal Space.² This European Legal Space implies a great-

¹ CJEU, judgment of 5 February 1963, van Gend & Loos, 26/62, EU:C:1963:1. See LENAERTS K., The Autonomy of European Union Law, I Post di Aisdue, I Sezione «Convegni annuali e interinali Aisdue» n. 1/2018; TIZZANO A., KOKOTT J., PRECHAL S. (eds), 50th Anniversary of the Judgment in van Gend en Loos, EU Publications Office, Luxembourg 2013.

² See HUOMO-KETTUNEN M., Heterarchical constitutional structures in the European Legal Space, European Journal of Legal Studies, Volume 6, Issue 1/2013, p. 47–65; POIARES MADURO M., Europe and the Constitution: What if this is as good as it gets?, in: Weiler J.H.H., Wind M. (eds), European Constitutionalism Beyond the State, Cambridge University Press, 2003, p. 98; VON BOGDANDY A., European Law Beyond «Ever Closer Union» Repositioning the Concept, its Thrust and the ECJ's Comparative Methodology, European Law Journal, Volume 22, Issue 4/2016, p. 519–538; VON BOGDANDY A., The Transformation of European Law: The Reformed Concept and its Quest for Comparison, Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2016-14.; VON BOGDANDY A., The Idea of European Public Law Today, in: von Bogdandy A., Huber P. M., Cassese S. (eds), The Administrative State, Volume 1, Oxford University Press, Oxford 2017, p. 1–29; VON BOGDANDY A., IOANNIDIS M., Systemic deficiency in the rule of law: What it is, what has been done, what can be done, Common Market Law Review, Volume 51,

er relevance of national law at EU level as source of inspiration for enacting new EU laws using a comparative law method. This method is also crucial for the interpretation of EU laws at EU level, as well as at national level. At the same time, EU law becomes more and more relevant at national level, due to the obligation of its transposition into national law, its direct effect³ and the obligation of consistent interpretation⁴. Accessibility and understandability of the law are therefore necessary in order to strengthen the accountability of the Union and its Member States to the citizens. This presupposes easy access not only to EU primary and secondary law but also to national law of the EU Member States.⁵

From the perspective of an individual, having access to law and court decisions interpreting the law⁶ is a matter of transparency and legal certainty. Maximising access to law promotes justice and the rule of law.⁷ Member States' obligation to ensure that the law is brought to the knowledge of the citizens is fulfilled by its publication in their official gazettes, covering the territory or administrative parts of each respective Member State. The question that arises is whether there should be an equivalent obligation to make these national laws accessible to all Union citizens immediately in a simple and comprehensive manner, regardless of their citizenship or language barrier. Moreover, the different ways in which national law and court decisions are published are not yet harmonised or coordinated at the EU level. As a consequence, basic legal information, as national legislation and case law, could be found in a variety of digital and paper formats depending on the Member States legal framework governing its publication, and in its absence, respective national practice. This unsatisfactory situation could be remedied by adopting a legal framework for access to basic legal information at EU level.⁸

Access to national case-law is also of fundamental importance for the rule of law. It facilitates the scrutiny of justice, contributes to the transparency of the judiciary and informs the public about the continuous development of the law and its application by national courts.⁹ Easy access to the relevant case-law from other Member States is essential for understanding how laws are applied to a given factual situation and how they are interpreted by the judiciary in a particular Member State. This contributes to an improved understanding of the similarities and differences between the legal and judicial cultures of the EU Member States. Case-law can

n. 1/2014, p. 59–96; VON BOGDANDY A., KOTTMANN M., ANTPÖHLER C., DICKSCHEN J., HENTREI S., SMRKOLJ M., Reverse Solange – Protecting the essence of fundamental rights against EU Member States, *Common Market Law Review* Volume 49, Issue 2/2012, p. 489–519.

³ See for example LENAERTS K., *The Rule of Law and the Coherence of the Judicial System of the European Union*, *Common Market Law Review*, Volume 44, Issue 6/2007, p. 1625–1659; CJEU, judgment of 24 October 2018, XC and Others, C-234/17, EU:C:2018:853, para. 37.

⁴ LENAERTS K., GUTIÉRREZ-FONS J. G., *The constitutional allocation of powers and general principles of EU law*, *Common Market Law Review*, Volume 47, Issue 6/2010, p. 1636–1638.

⁵ The need for gathering structured information on foreign law has long been recognised by private entrepreneurs. Even before the Internet, they developed legal marketplaces targeting law practitioners and scholars (such as LexisNexis and Westlaw). These marketplaces offer to its subscribers accurate and timely commercial databases containing not only regulations in force and the relevant case-law but also its interpretation and commentary. See DANNER R. A., WINTERTON J., *The IALL International Handbook of Legal Information Management*, Routledge, London, 2016, p. 270.

⁶ A research showed that more than 75% of professional working in the territory of EU Member States need access to foreign law, mainly in areas related to free movement of goods and persons (e.g. family law, successions, commercial and contract law). European Commission and Hague Conference on Private International Law, Meeting Report, *Access to Foreign Law in Civil and Commercial Matters*, 15 to 17 February 2012, p. 5, available at: <https://assets.hcch.net/docs/33f3ac6c-5c6d-4440-9df4-bf195ecf383d.pdf>.

⁷ GREENLEAF G., PERUGINELLI G., *A Comprehensive Free Access Legal Information System for Europe*, in: Faro S., Biasiotti M. (eds), *From Information to Knowledge: On Line Access to Legal Information*, Istituto di Teoria e Tecniche dell'Informazione Giuridica, del Consiglio Nazionale delle Ricerche, Firenze, 2011; BINGHAM L., *The Rule of Law*, *Cambridge Law Journal*, Volume 66, Issue 1/2007, p. 67–85.

⁸ In a similar sense see advocacy for a New UN Convention on the Right of Public Access to Legal information in Mitee L. E., *The Right of Public Access to Legal Information: A Proposal for Its Universal Recognition as a Human Right*, *German Law Journal*, Volume 18, Issue 6/2017, p. 1429–1496., available at: https://pure.uvt.nl/ws/portalfiles/portal/23443199/The_Right_of_Public_Access_to_Legal_Information.pdf.

⁹ *Building on ECLI, Better Access to Case Law, ECLI Background*, available at: <https://bo-ecli.eu/ecli/background>.

be considered accessible only when it can be confidently accessed from a publicly available, reliable source.¹⁰ Official texts of court decisions should therefore be available to the public in a readily accessible electronic form, provided that privacy and data protection legislation are complied with.

The European Union has established an area of freedom, security and justice, complementing its internal market, where citizens and businesses exercise the four freedoms guaranteed by the Treaties¹¹ outside of their country of origin. For those citizens and businesses, who are increasingly taking advantage of their rights provided for in the Treaties, knowledge of the law of other Member States is equally important as knowledge of European Union law. Furthermore, that knowledge is essential for mutual recognition of court decisions, for the enhancement of mutual understanding and trust between Member States' administrations and could serve as a basis for monitoring the rule of law. It could also be useful for national courts and tribunals when applying rules of private international law pointing at national rules of other Member States as the applicable law in cross border situations¹² and could become a source of inspiration for national legislators when implementing EU law as well as legislating in areas not covered by EU law.

Citizens are often faced with obstacles when acquainting themselves with national laws and case-law of other Member States. The language barrier is often the first obstacle they encounter when translations are not provided. The second obstacle is the understanding of different legal concepts. Furthermore, the various sources of law are published in different official gazettes using different standards, rarely provided in authentic electronic form having legal effects and readily available to the public. Moreover, there are different sources of law utilised in different legal contexts. In some Member States, the most important sources of law are statutes/acts of parliaments, while in others different decrees adopted by the executive are equally an important source of law.¹³ In order to understand other Member States' law, one must understand how the other legal system functions.

This mutual understanding, often fostered through judicial review at the level of the Court of Justice of the European Union, can be achieved through digital publication of national laws and case-law. The authentic publishing of national laws in a readily accessible digital format and free of charge is a positive obligation of Member States to make all existing sources of law of the Member States accessible to the public. This positive obligation comprises also the consolidation of national sources of law – where provisions of an original act and all subsequent amendments thereto are compiled in a single text, and the technical standardisation of their

¹⁰ On a gradual development of a legal framework in Europe regarding the publication and accessibility of court decisions on the internet see VAN OPIJNEN M., *Court Decisions on the Internet: Development of a Legal Framework in Europe*, *Journal of Law, Information & Science*, Volume 24, Issue 2/2016.

¹¹ The free movement of goods (Title II TFEU), persons, services and capital (Title IV TFEU). Those citizens also exercise the rights deriving from their status of citizens of the Union (Articles 20–21 TFEU).

¹² As for example in case of Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations («Rome II») (OJ L 199, 31.7.2007, p. 40–49), Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations («Rome I») (OJ L 177, 4.7.2008, p. 6–16), Council Regulation (EU) No. 1259/2010 of 20 December 2010 implementing enhanced co-operation in the area of the law applicable to divorce and legal separation («Rome III») (OJ L 343, 29.12.2010, p. 10–16), Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1–79), as other instruments adopted recently in matters of succession and property regimes of married couples and couples living in a registered partnership.

¹³ For example in Italy, there are two main exceptions to the normal legislative procedure: legislative decrees and law decrees. Italian Parliament has the power to delegate the exercise of the legislative function to the government for a limited period. Subject to strict compliance with the principles and guidance outlined by Parliament, the government may issue decrees that have the force of ordinary laws, called legislative decrees. Also, in extraordinary cases of necessity and urgency, the government can adopt, on its own initiative, provisional measures having the force of law, called law decrees. Law decrees lose their force unless they are converted into law by Parliament within 60 days. See GUBITOSI M., COLOMBERA S., and SCHIAFFINO C. (eds), *Legal systems in Italy: overview*, Thomson Reuters – Practical Law, available at: [https://uk.practicallaw.thomsonreuters.com/w-007-7826?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-007-7826?transitionType=Default&contextData=(sc.Default)&firstPage=true).

publication.¹⁴ It is argued that the effort should not be limited to only legislation itself, but case-law in digital format (prioritising decisions related to EU law) should also be targeted.

It should be noted that the creation of a single digital database or of a system assisting users to find legal information that originates from more than one source, containing all rules applicable in the European legal space and the case-law of all jurisdictions operating in that space is not sufficient. Its content should be available for free, well structured, easily accessible and searchable (by keywords, text and legal concepts) and contain added value features (interlinking related documents, providing summaries, consolidated versions in a specific point of time relevant for the user, reference to notes of doctrine etc.).

Multilingualism is one of the key cultural cornerstones of the European Union and presents one of the greatest assets of cultural diversity in Europe. However, the use of different languages in the European Union poses a great challenge in terms of access to legal information. Moreover, the very nature of the legal language makes the challenge even tougher. However, in a truly common European Legal Space, all laws, both at EU and national or regional levels should be accessible and comprehensible by citizens, regardless of their citizenship or the language they speak. Multilingual publication of national legislation would also enable Member State's administrations and judiciary to communicate better between each other, enhance their mutual understanding and trust, and to be more open, accountable and participatory. It would also represent a powerful vehicle in fostering trust in the legal systems of the Member States of the Union and facilitating informed decision-making. The language problem can be surmounted also by using modern technologies such as neural machine translation¹⁵ and other Artificial Intelligence solutions. The translation can be achieved through already available platforms and systems, bringing about lots of added value for the lives of individuals living in this European Legal Space.

2. The Publications Office roadmap for a digital European Legal Space

In the last few years the Publications Office of the European Union (OP) has played a prominent role in creating a digital and multilingual European Legal Space, as one of the main pillars for strengthening the European cohesion. It can mainly be achieved through the interoperability of legal information systems, with a harmonized access to EU and national laws: this can actually have a relevant impact on the economy and the social equities, by guaranteeing transparency, accountability of the EU and national public administrations, as well as the effectiveness and enforceability of rights in the European context.

The OP roadmap for approaching a digital European Legal Space has been developed in the last year building on a specific work programme which is based on the following three pillars.

The first pillar is represented by the process of overcoming a *paper-centric view* of publications, in favour of a *digital format approach*. A first example is the availability, effective as from 1 July 2013, of the authentic and legally binding electronic edition of the Official Journal (e-OJ).¹⁶

However, this was just the first and pre-conditional phase to approach an integrated digital European Legal Space, aimed at improving transparency and accessibility of the sources of law at EU level.

¹⁴ For example by using of common interoperable frameworks, such as common systems for the identification of legislation and case-law at regional, national and European level, as it is currently the case with ELI and ECLI (Council conclusions inviting the introduction of the European Legislation Identifier (ELI) (2012/C 325/02) (OJ C 325, 26.10.2012, p. 3) and Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law (2011/C 127/01) (OJ C 127, 29.4.2011, p. 1).

¹⁵ See 2019–2023 Action Plan European e-Justice (OJ C 96, 13.3.2019, p. 9.)

¹⁶ Council Regulation (EU) No 216/2013 on the electronic publication of the Official Journal of the European Union (OJ L 69, 13.3.2013, p. 1); see also REICHERTS M., The authentic e-Official Journal of the European Union – one year on (2014) IFLA paper, available on <http://library.ifla.org/924/>.

The second pillar is represented by a mid-term process, currently on-going, aiming to overcome a *document-centric view* of the Law in favour of a more flexible *data-centric view*. The main driver of such a process is represented by the dramatic evolution of the Semantic Web technologies in the last few years, aiming at embedding in the World Wide Web information not only understandable by humans but also understandable and processable by machines. In this respect, the legal domain is privileged for achieving an effective implementation of the Semantic Web concept. This is due to the technical nature of legal information, as well as to the peculiarities of the user's legal information needs. In fact, on the one side, legal documents have a well-defined structure and semantics and, on the other side, the legislative process is characterized by a well-structured and defined workflow. Moreover, legal information systems are not only meant to provide advanced search and retrieval information services, but also to upkeep the legal order, to monitor the impact of new norms and to handle document timeline and versioning. Finally, users are mainly interested in accessing applicable provisions rather than simply documents, they are interested to know the relations between those provisions, having support for legal reasoning.

For these reasons, recently the OP has been intensively working on the development of knowledge models able to qualify legal information with metadata, so to improve its accessibility and reusability for advanced legal information services. Moreover, the OP plays a central role in promoting standards for improving interoperability of legal information systems at EU and Member States levels, as for example promoting the ELI¹⁷ and ECLI¹⁸ standards for identification of legislation and case-law, respectively, as well as a Linked Open Data approach for data sharing and reuse in the legal Semantic Web. For an effective implementation of the Semantic Web concept for EU legal information, the OP has defined a strategy up to 2025, focused on providing structured, qualified, interoperable, digital, legally binding legal information services.¹⁹

Mid-term strategic objectives, to be achieved by 2020, can be summed up as follows:

1. Exchange all legal data with institutions in a secure and automated way based on common standards (metadata and content in a structured format);
2. Facilitate the rationalization of the publication contracts of the EU institutions and provide interoperable formats and collaborative production workflows for multichannel production of highly structured content;
3. Focus linguistic quality-control processes on consistency, content analysis, data structuring and new media, including social media;
4. Link the information available on the portals managed by the Office (ex: EUR-Lex, Publications Office portal, TED (tenders documentation), CORDIS (research and development information services), EU Open Data Portal) with other EU information available online, increase interoperability and provide federated search and access services (seamless navigation experience).

Long-term strategic objectives, to be achieved by 2025, are identified as follows:

5. Implement act-by-act production of the Official Journal in order to achieve a more flexible, faster and simplified way of publishing;
6. Be the reference production centre for the EU institutions for publication material (all content fully accessible from any device and fully accessible for disabled users);
7. Implement a new distribution concept to achieve a zero-stock objective;
8. Manage a single point of access (one-stop shop) for all services related to the management and publication of public procurement data, including procurement by EU institutions;

¹⁷ Council conclusions inviting the introduction of the European Legislation Identifier (ELI) (2012/C 325/02) (OJ C 325, 26.10.2012, p. 3).

¹⁸ Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law (2011/C 127/01) (OJ C 127, 29.4.2011, p. 1).

¹⁹ *Strategic objectives 2017–2025: Delivering services to European Union institutions, citizens and businesses*, ISBN 978-92-78-41469-6, DOI 10.2830/116662.

9. Manage a fully operational legal deposit scheme for all publications of the EU institutions (preservation and access in digital format);
10. Be the central point of access to and reuse of public sector information from EU institutions, thus contributing to the creation of innovative products and services by businesses.

Such objectives are highly influenced by the semantic evolution of the Web, and seem to be mainly driven by the dynamic nature of digital publications seen as a set of objects endowed with specific identity and meaning, as well as consumed on different media (considering the paper as just one and not principal medium), subject to specific modality of preservation and accessibility.

On the other hand, OP strategic objectives foresee an evolution of the accessibility of legal information which is mainly influenced by the Linked Open Data approach to the Semantic Web, which considers information objects as a set of building-blocks for the development of added-value services, which derive from datasets mash-up and can leverage crowdsourcing in the social Web.

The results of this work pave the way to the development of a third and foremost pillar that is meant to characterize an advanced and visionary realization of the digital and multilingual European Legal Space. Such third pillar, in fact, is represented by the process of exploiting the legal Semantic Web as the effective infrastructure for the implementation of Artificial Intelligence services in a pan-European legal environment. As a matter of fact, the availability of semantically qualified legal data will foster the development of advanced services where the legal information is at the cornerstone, such as reasoning on implicit norms, automatic norm compliance checking, on-line dispute resolution systems, support to legal decisions, as well as e-Government and e-Participation systems for decision-makers and citizens.