

Gaining Momentum. How ECLI Improves Access to Case Law in Europe

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Abstract. In December 2010 the Council of the European Union adopted the conclusions on the European Case Law Identifier (ECLI). This paper examines the state of play regarding its implementation within the EU Member States and at European Courts. It also takes a closer look at the ECLI Search Engine which is now available on the European e-Justice portal and gives access to more than five million court decisions from twelve jurisdictions. But the ECLI Search Engine offers more than just a huge repository: it facilitates substantial and maybe even radical opportunities to further improve cross-border access to case law. Technology can be of help, but judiciaries have to contribute as well.

Keywords: Case Law Publication, ECLI, Open Data, Legal Identifiers.

1. Introduction

1.1. NATIONAL CASE LAW WITHIN THE EUROPEAN LEGAL ORDER

Since the turn of the century access to court decisions has improved substantially in the European Union: many courts publish all or at least a substantial selection of their decisions on the internet. However, from a user perspective the accessibility of these repositories is often problematic: documents are poorly formatted, lack (common) identifiers and metadata, do not have computer readable citations, go without topical classification and are not rated as to their (legal) relevance.

Accessibility of published case law – a term used here as a synonym for ‘court decisions’ – is already problematic within national jurisdictions, but even more at transnational level. With a legal order becoming increasingly European, national judges cannot play their role if they do not have proper access to the case law of other Member States’ courts. Already in its 1982 Cilfit judgment¹ the Court of Justice formulated an obligation for national judges to consult decisions of other Member States’ courts if certain questions of European law emerge. In its Resolution of 9 July 2008 on the role of the national judge in the European judicial system² the European

¹ [ECLI:EU:C:1982:335](#).

² 2007/2027(INI); [CELEX:52008IP0352](#).

Parliament stressed the importance of such information and called for building and improving suitable databases.

Making use of the boost the internet gave to the electronic publication of decisions from – at least the highest – national jurisdictions, various initiatives emerged to cater for the growing need for integrated and cross-border case law search.³ Apart from the obvious problems arising from the many languages used and the wide variety of jurisdictions within Europe, many of these initiatives were hampered by a complete lack of a common information architecture. To cater for a first though indispensable building block for such an architecture, on 22 December 2010 the Council of the European Union adopted the ‘Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law’ (hereinafter: ‘the ECLI Conclusions’).⁴

1.2. TOPICS DISCUSSED

This paper reviews the current state of play regarding the implementation of ECLI as well as its broader implications and possible future developments. In section 2 the main elements of the ECLI framework are outlined, while section 3 takes stock of the current implementation of ECLI at national and European courts. In section 4 the ECLI Search Engine is introduced; apart from its advantages for cross-border case law search, this search engine also reveals some of the building blocks that are still missing. Those building blocks that entail responsibilities for judiciaries and other data providers are outlined in section 5, while in section 6 attention will be paid to building blocks being addressed in the EU co-funded project ‘Building on the European Case Law Identifier (BO-ECLI)’. Section 7 discusses how the ECLI framework might fundamentally change the way in which court decisions with transnational relevance are collected and disseminated. Section 8 wraps up with some conclusions.⁵

³ The most important ones being: the Common Portal of National Case Law (network-presidents.eu/rpcs/jue/) of the Network of Presidents of the Supreme Judicial Courts of the European Union; the JuriFast database (aca-europe.eu/index.php/en/jurifast-en) of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union; the DecNat database of the same Association (aca-europe.eu/index.php/en/dec-nat-en), which is based on ‘Sector 8’ of EUR-Lex, maintained by the CJEU (eur-lex.europa.eu/collection/n-law/n-case-law.html). See also section 7.1.

⁴ OJ C 127, 29-04-2011, p. 1–7; [CELEX:52011XG0429\(01\)](http://eur-lex.europa.eu/legal-content/EN/LEGISLATION/CONCLUSIONS/2010/12/20101222011XG0429(01).htm).

⁵ A previous version of this article has been presented at the Law via the Internet Conference 2016 in Limassol. It builds on earlier work on the same topic (van Opijnen 2011; van Opijnen and Ivantchev 2015); small substantive overlaps are unintended but inevitable. This text was concluded on 6 May 2017.

2. A Brief Outline of the ECLI Framework

For many decades and in many countries court decisions have been identified and cited by either the combination of court name, judgment date and case number, or by a whole range of other numbering systems developed by commercial publishers, also known as ‘references’ or ‘parallel citations’. Already in the pre-digital era the multiplicity and incompatibility of these numbering systems led to time-consuming and annoying complications for those citing or searching case law. In our information society – with rapidly growing and publicly available databases – the lack of unique and persistent case law identifiers became a major obstacle for the accessibility of court decisions and related legal information, especially in a cross-border context.

The ECLI framework intends to solve these fundamental issues, which are a major hindrance for further improvements of access to case law. The ECLI framework consists of five components: identifier, metadata scheme, governance structure, the ECLI website and the ECLI Search Engine. Most important and most visible is the identifier, which is composed of (always) five elements:

- The letters ‘ECLI’, as a self-identifier;
- The EU country code;⁶
- A code for the court that rendered the decision;
- The year of the decision;
- A string that makes – together with the other elements – an ECLI unique.

More detailed prescriptions on the format of this identifier are included in the technical annex to the ECLI Conclusions (hereinafter: ‘the Annex’).

The second component of the ECLI framework is the metadata set. Most case law repositories do use metadata, but often the elements are self-defined. Even if they are typed according to the Dublin Core standard⁷ fields are populated in many different ways, making the effectivity of this standard of little value. To improve interoperability and to enable aggregated search, the Annex defines a set of nine mandatory and eight optional fields, all based on Dublin Core.

⁶ The EU country code as defined in the EU Interinstitutional Style Guide (<http://publications.europa.eu/code/en/en-5000600.htm>). This coding system differs from ISO 3166-1 alpha-2 by using ‘EL’ for Greece (instead of ‘GR’) and ‘UK’ for the United Kingdom (instead of ‘GB’).

⁷ dublincore.org/specifications.

The third leg of the ECLI system is its decentralized governance structure. Every Member State (or European organisation) implementing ECLI has to appoint a national ECLI coordinator, responsible for:

- Assignment of court codes and some of the metadata controlled vocabularies;
- Deciding on, or at least coordinating, the format of the last part of the identifier;
- Documenting the technicalities of the national implementation on the ECLI website;
- Inclusion of national case law – as far as ECLIs have been assigned – in the ECLI Search Engine;
- Spreading the word and advocating the proper use of ECLI in national practice.

The Council of the EU decides on the standard itself, the European Commission bears responsibility for the technical functioning of the ECLI website and the ECLI Search Engine, which are the fourth and fifth pillars of the ECLI framework. They are implemented within the European e-Justice Portal⁸ and will be described in section 4.

3. Current Implementation of ECLI

Just over six years after the adoption of the ECLI Conclusions, ECLI has been implemented in public databases within twelve Member States⁹ and by the courts of three European organisations: the European Court of Human Rights (ECHR) of the Council of Europe, the Court of Justice of the European Union (CJEU) and the Boards of Appeal of the European Patent Office (EPO).

Moreover, eight Member States are known to be working on the initial introduction of ECLI in their public databases.¹⁰ In the short term this would bring the number of ECLI assigning jurisdictions to twenty-three, as visualised in figure 1.

The three European courts all have one database containing all their decided cases; ECLI has been assigned to all of them. For the Member States the situation differs, both with regard to the number of databases/portals as well as to the width of the ECLI implementation. Some Member States (e.g. Spain, Netherlands and Austria) have one central data-

⁸ e-justice.europa.eu.

⁹ Czech Republic, Germany, Greece, Spain, France, Croatia, Italy, the Netherlands, Austria, Slovenia, Slovakia and Finland.

¹⁰ Belgium, Bulgaria, Cyprus, Denmark, Estonia, Latvia, Portugal and Romania.



Figure 1. Current implementation of ECLI in public repositories throughout Europe.¹¹

base for all courts with ECLI assigned to all decisions therein, while some other Member States (e.g. France, Germany) have a central database

¹¹ Graphic from www.bo-ecli.eu.

integrating disparate court databases of which some assign an ECLI and others do not (yet).

For reasons of technical feasibility, in some jurisdictions ECLI has been introduced with a ‘big bang’: for all published decisions at once. In other Member States it is a gradual process. The ECLI Conclusions deliberately leave room for such freedom in implementation, also with regard to the assignment of ECLI to historical records. Also, as a design principle the assignment of ECLI is not restricted to court decisions that have been published in public repositories: in the Netherlands the national ECLI coordinator assigns ECLIs not only to decisions that are being published on the web portal of the judiciary, but also to historical decisions that have been published by commercial publishers; as a result all Dutch court decisions – published whenever by whomever – can be cited by ECLI. All these ECLIs are indexed in a public register, together with their parallel citations¹² (Guo 2014). In other jurisdictions the case number is a often-used way of citing, encapsulating it in the fifth element of ECLI enables cross-walking between citation methods. See also section 6 and the references cited there on further improvements for aligning ECLI with other (evolving) citation standards.

4. ECLI Functionalities on the European e-Justice Portal

The Multi-Annual European e-Justice Action Plan 2009-2013¹³ laid the foundation for the European e-Justice Portal (‘EEJP’), which is intended to become the one-stop-shop for cross-border legal information and online services within the EU. It went live on 16 July 2010. Two ECLI related functions are attributed to the EEJP: the ECLI website (§ 4 of the Annex) and the ECLI Search Engine (§ 5 of the Annex), hereinafter also referred to as ‘ECLI-SE’. Both functionalities are described here.

4.1. THE ECLI WEBSITE

According to the ECLI Conclusions, the ECLI website should contain general information on ECLI as well as information per Member State or international organization implementing ECLI: name and contact details of the national coordinator, an overview of court codes and the construction of the fifth part of the ECLI.

¹² uitspraken.rechtspraak.nl.

¹³ [CELEX:52009XG0331\(01\)](#), followed by the Multiannual European e-Justice Action Plan 2014-2018 ([CELEX:52014XG0614\(01\)](#)).

Most countries and courts that have implemented ECLI or are about to, have already supplied the information required on this ECLI website.

4.2 THE ECLI SEARCH ENGINE

As was decided in the ECLI Conclusions, the ECLI-SE is built and maintained by the European Commission. It went live on 4 May 2016. In this section functionalities and current contents are discussed.

4.2.1. *Functionalities*

The ECLI-SE is fully integrated within the e-Justice portal, offering all features and functionalities built into the portal as a whole, like responsive web design,¹⁴ level AA conformance to the W3C Web Content Accessibility Guidelines 2.0¹⁵ and a multilingual user experience in all of the official EU languages.¹⁶

The ECLI-SE features both a simple as well as an advanced search function. The simple search provides just one search box, with which all metadata and full-text documents are searched. With an additional wizard Boolean queries can be easily constructed (Figure 2).

Wizard

database repository "privacy enhancing technologies" "data protection" OR anonymisation OR reidentification

All the words: database repository

Exact wording or phrase: privacy enhancing technologies tip

One or more of these words: data protection or anonymisation or reidentification tip

Exclude search results that contain: tip

Save and close Cancel

This can be achieved in standard searches by adding a "-" (minus sign) to the beginning of the word you don't want.

Figure 2. Wizard for building Boolean queries.

The advanced search option allows users to query on all of the metadata fields. For some of the fields ancillary aids are present. An example is shown in Figure 3 where users can select specific courts, which are grouped in four categories ('Courts of first instance', 'Courts of appeal', 'Courts of highest instance' and 'Other courts').

¹⁴ Responsive web design aims to adjust the presentation and navigation of web content to the size and particularities of the device one is viewing with (like PC, tablet or smartphone).

¹⁵ www.w3.org/TR/WCAG20/

¹⁶ Irish being the exception for the time being.

Since one of the main reasons for legal professionals to visit the ECLI-SE is their interest in national case law on the interpretation or implementation of EU legal instruments, special attention has been paid to facilitate user-friendly query construction for such requests.

Figure 3. Wizard for court selection.

Apart from the recent introduction of the European Legislation Identifier¹⁷ on EUR-Lex for a selection of legislative instruments, data repositories often use the CELEX number to uniquely identify these instruments. Asking the user to enter the CELEX number though would pose serious problems since lawyers prefer to use the ‘document number’ instead. As a solution, the ECLI-SE interface has a built-in wizard to generate – invisibly – the CELEX number from human input (Figure 4). It should be noted though that such queries only deliver results if such references are actually present in the metadata of the indexed decisions, and unfortunately most often they are not. This issue will be elaborated in the sections 5 and 6 below.

¹⁷ Council conclusions inviting the introduction of the European Legislation Identifier (ELI) OJ C 325, 26-10-2012, p. 3-11; [CELEX:52012XG1026\(01\)](#).

In the result set users can drill down by using various facets (e.g. name of the issuing court, year of the decision, field of law, etc.) within the results page itself.

The screenshot shows a web interface for querying EU legal instruments. It features a 'Type' dropdown menu with the following options: Any, ECLI, CELEX, Patent Application Number, Regulation (highlighted), Directive, Decision/judgment, Legal acts relating to police and judicial cooperation in criminal matters, Treaty, and Other. To the left of the dropdown is a 'Reference Identifier' field, and to the right is a 'Relation' dropdown menu set to 'Any' and another 'Reference Identifier' field.

Figure 4. User-friendly querying for references to EU legal instruments. On selecting e.g. ‘Regulation’ entry fields for ‘year’ and ‘number’ will become visible. These fields are generally understood by users.

Taking into account that often landmark decisions are published by different data providers, results are grouped by ECLI allowing users to easily switch to and from metadata provided by different information suppliers. This principle is applied both on the results page as well as on the details screen. For the results page this is demonstrated in Figure 5.

Also other functionalities of the result page can be noted here, like subscribing to an RSS feed on a particular query, creating a PDF version of the result page, an overview of the used query/filter parameters, an option to edit the query, and links to the detail page as well as to (different formats) of the document on the website of the data provider. Buttons with language codes show the availability of text and/or substantial metadata in various languages and offer one-click access to that specific version on the detail page.

The screenshot shows the ECLI search engine interface. At the top, there's a header with 'ECLI search engine' and a link to 'General information and terms and conditions'. Below the header, there's a 'Search summary' section with filters for 'Available language of the decision/judgment' (English (1), French (1)), 'Country/institution' (Czech Republic), 'Court' (Czech Republic - Nejvyšší soud ČR (NS)), and 'Date of decision/judgment' (From 13-07-2015 Until 13-07-2015). There's also a 'Field of law' filter set to 'Administrative law'. A 'Top' link is visible. Below the filters, there's a '1 result(s)' section with an 'Edit query' button. The result is for ECLI:CZ:NS:2015:32.CDO.2051.2013.1, with links for CS, EN, and FR. The metadata includes: ECLI provider: ACA-Europe; Issuing country or institution: Czech Republic; Issuing court: Nejvyšší soud ČR; Decision/judgment type: Judgment; Date of decision/judgment: 13/07/2015; Wording of decision/judgment: http://www.aca-europe.eu/index.php/en/jurifast-en?ID=2738 (html) and http://www.aca-europe.eu/VWJURIFAST_WEB/DOCS/CZ02/CZ02000241.pdf (pdf); Field of law: Administrative law; Abstract: Judgement of the Supreme Court dated 4 November 2015, file number 32 Cdo 2051/2013 (invalidity of legal proceedings, conciliation procedure related to payments for medical care) The judgement factual...; Description: Public undertakings. Below this, there's a detailed view of the same ECLI with links for CS and EN. The metadata for this view includes: ECLI provider: Nejvyšší soud České republiky (Supreme Court of the Czech Republic); Issuing country or institution: Czech Republic; Issuing court: Nejvyšší soud ČR; Decision/judgment type: Judicial decision; Date of decision/judgment: 13/07/2015; Date of publication: 13/07/2015; Wording of decision/judgment: This metadata is available in the following language(s) only: CS; Field of law: Civil law; Abstract: This metadata is available in the following language(s) only: CS; Description: This metadata is available in the following language(s) only: CS.

Figure 5. Result list with one decision/ECLI available in two databases.

This detail page is shown in Figure 6. On the upper tab bar the data provider(s) this ECLI is available from are shown, the second tab bar displays the languages in which the selected data provider caters for. On the page itself all metadata are shown; on metadata not available in the selected language alternatives are indicated. If possible references are transformed into a hyperlink (in this example links to article 107 of the Treaty on the Functioning of the European Union (TFEU) as well as to a judgment of the CJEU). Although indexed by the ECLI-SE, the text of the court decision itself is not displayed here, only a hyperlink to the original document(s).

A last functionality to mention is the possibility to create a permanent deep link to every ECLI indexed in the ECLI Search Engine by adding the ECLI to 'https://e justice.europa.eu/ecli/', e.g.: 'https://e justice.europa.eu/ecli/ECLI:ES:TS:2013:2245'.

Making the content of a national database available to the ECLI-SE is realized via a technical interface, designed with a view to maximum flexibility and as little implementation effort as possible. The solution is built on several components of which a common XML scheme, the

Sitemaps protocol¹⁸ and the robots exclusion protocol¹⁹ are essential (van Opijnen and Ivantchev 2015). To enable a successful and low-cost integration a Java tool has been developed; also a developer's guide is available for ECLI data providers.

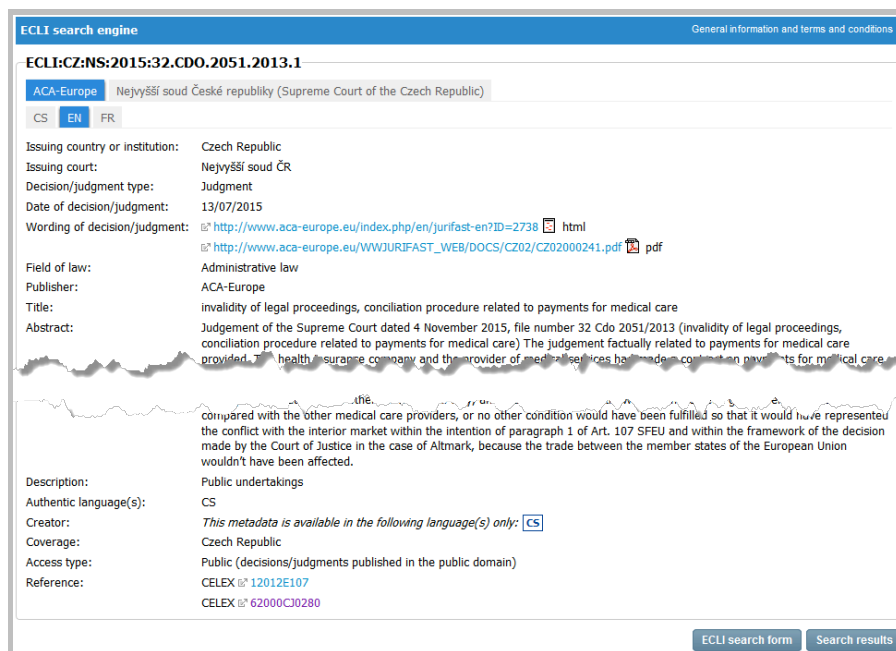


Figure 6. Detail page showing one of three language variants of one ECLI indexed from two different data providers [abstract shortened for display reasons, MvO].

4.2.2. Current Contents

Not all courts / Member States having implemented ECLI have connected their repositories to the ECLI search engine. Of the three European courts and twelve Member States having implemented ECLI (as displayed in Figure 1) currently two European courts (CJEU and EPO) and eight Member States have connected to the ECLI-SE.²⁰

An important added value of the ECLI framework is that also third party databases can easily register their content with the ECLI-SE, as long as the records indexed have an ECLI assigned. The Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union

¹⁸ www.sitemaps.org/protocol.html.

¹⁹ www.robotstxt.org.

²⁰ The Czech Republic, Germany, Greece, Spain, France, Italy, Netherlands and Slovenia. With regard to the Finnish decisions see footnote 22.

(ACA-Europe (van Haersolte 2010)) has already connected its JuriFast database;²¹ as a result users are made aware of the existence of e.g. the French and English summaries in JuriFast without having to query that database itself. The extensive metadata – e.g. on the relationship with EU legal instruments – in this database are an important contribution to the ECLI-SE.

Currently nearly 5,3 million decisions have been indexed, their distribution is visualized in Figure 7; most content is from Spain's impressive database, but also the numbers from the other data providers are adding up to the substantial collection.

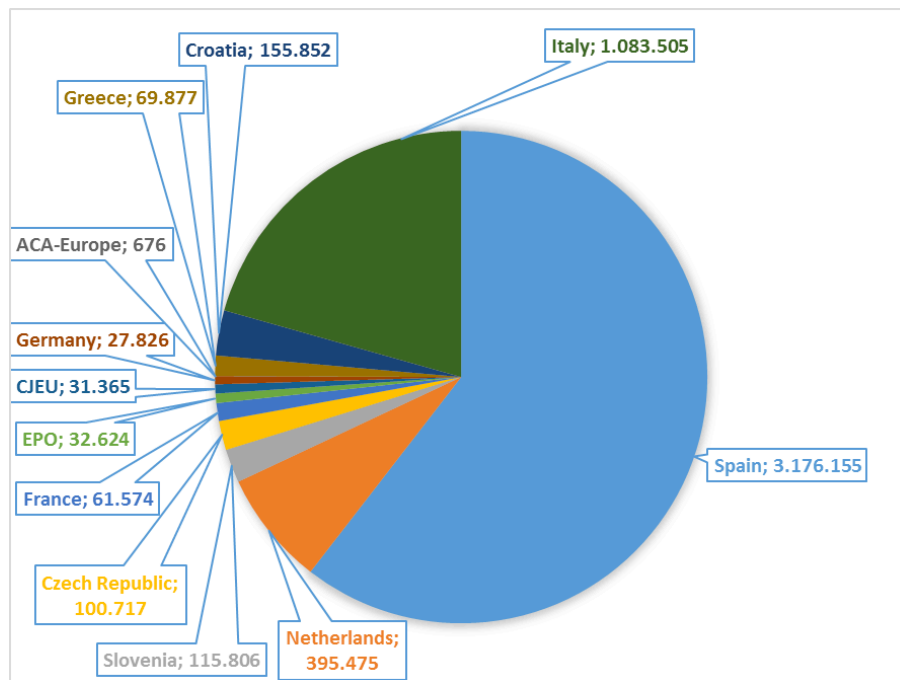


Figure 7. Decisions indexed by the ECLI Search Engine, subdivided by jurisdiction.²²

5. Making Full Use of the ECLI Framework

Notwithstanding the advantages of having one identification code that can be used throughout Europe to cite and search court decisions from – in

²¹ See footnote 3. An example is visible in Figure 6.

²² Currently also Finnish decisions are available, but all of them are only provided by ACA-Europe, hence Finland is not displayed as a data provider of its own.

principle – every court, as well as having a common multilingual search engine that is optimized to index millions of court decisions from any data provider, still a lot of complaining can be heard amongst legal professionals, academics and ordinary citizens searching for relevant case law. It should be borne in mind that, although indispensable, ECLI is just a first building block in a broader undertaking to improve access to court decisions. Now it is up to judiciaries and others within the legal community to take full advantage of the possibilities the ECLI framework has to offer.

5.1. USING ECLI FOR CITATIONS

The actual assignment of ECLI to court cases in public databases is a first step to its perceived contribution to improved (cross-border) accessibility of case law. Using ECLI in citations and references is an important second step. The use of ECLI in legal citations is most prominent within those jurisdictions that have implemented ECLI to its fullest possible extent. In the decisions of the CJEU ECLI is combined with the usual name of the decision and its case number. Also in various Member States ECLI is becoming a preferred way of citing court decisions: in Germany the internal citation guidelines of the High Administrative Court prescribe the use of ECLI if it is available (Bundesverwaltungsgericht 2014); in the Netherlands ECLI is added to the list of IT-standards of the governmental standardization board²³ and also in the unofficial though often used legal citation guide (Bastiaans et al. 2016) it is the prescribed way of citing.

Legal information systems that integrate (open) legal data from various sources now also actively have started using ECLI. Apart from the already mentioned JuriFast database other examples can be found in EU co-funded projects like OpenLaws²⁴ (Lampoltshammer et al. 2016) and EU-Cases²⁵ (Boella et al. 2015) Also academic research projects take profit from ECLI, e.g. for analysing citation networks (Agnoloni and Pagallo 2015).

5.2. TRANSLATIONS

The language barrier is a major obstacle for accessing court decisions from other EU Member States. Even when countries share a language (like Germany and Austria, the Netherlands and Belgium or Greece and Cyprus), legal terms and concepts can differ substantially. Being pivotal languages in the EU, English, French and German decisions can be read by many, languages can be understood in neighbouring countries (like Swedish and

²³ www.forumstandaardisatie.nl/standaard/ecli.

²⁴ openlaws.eu.

²⁵ eucases.eu.

Danish, or Czech, Slovak and Polish) but many languages (e.g. Maltese, Estonian or Hungarian) are only understood by native speakers.

Translations of at least the most important decisions – or at least translated summaries thereof – are therefore indispensable. Although machine translations are improving, the legal domain still requires human translations to express as precisely as possible the intentions of the original text.

Some courts (as in France,²⁶ the Netherlands²⁷ or Germany²⁸) already supply (summarized) translations of decisions that are of relevance for an international audience, some on a regular base, others incidentally. Although the ECLI-SE offers an excellent platform to disseminate such translations, they are often published on different webpages or websites, and hence not always²⁹ indexed by the ECLI-SE. However, to have such translations indexed it is not necessary to make expensive adaptations to national databases to cater for multilingual versions; the architecture of the ECLI-SE allows for easy and cost-effective bypasses.³⁰

²⁶ E.g. [ECLI:FR:CCASS:2015:AP00620](https://www.courdecassation.fr/cour_cassation_1/in_six_2850/english_2851/the_transcription_7252/ruling_no_620_32235.html) is available in English translation on: https://www.courdecassation.fr/cour_cassation_1/in_six_2850/english_2851/the_transcription_7252/ruling_no_620_32235.html. Since this English version is not indexed by ECLI-SE and on the national website do the English document does not have the ECLI added, even a Google search by ECLI won't discover it.

²⁷ E.g. the 'Srebrenica rulings' of the Supreme Court of the Netherlands ([ECLI:NL:HR:2013:BZ9225](https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Supreme-court-of-the-Netherlands/Documents/12%2003324.pdf) and [ECLI:NL:HR:2013:BZ9228](https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Supreme-court-of-the-Netherlands/Documents/12%2003329%20(1).pdf)). Full translations are available on the website of the Supreme Court, respectively on: <http://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Supreme-court-of-the-Netherlands/Documents/12%2003324.pdf> and [www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Supreme-court-of-the-Netherlands/Documents/12%2003329%20\(1\).pdf](http://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Supreme-court-of-the-Netherlands/Documents/12%2003329%20(1).pdf). As with the French example in the previous footnote, only the Dutch versions are indexed in the ECLI-SE, and the English versions on the national website do not have the ECLI added; one can wonder whether somebody from abroad will ever be able to find these English translation is do not have a specific reference.

²⁸ The Federal Administrative Court (*Bundesverwaltungsgericht*) has a collection of nearly 40 decisions on Asylum law in English translation (www.bverwg.de/informationen/english/decisions/asylum_immigration_law.php). They do have the ECLI assigned to it, but they are not indexed by the ECLI-SE. See e.g.: [ECLI:DE:BVerwG:2016:270416U1C24.15.0](https://e-justice.europa.eu/ECLI/ECLI:DE:BVerwG:2016:270416U1C24.15.0). In the English version it is available on the website of the court: www.bverwg.de/entscheidungen/entscheidung.php?lang=en&ent=270416U1C24.15.0, but not on the ECLI-SE: <https://e-justice.europa.eu/ECLI/ECLI:DE:BVerwG:2016:270416U1C24.15.0>. See however the next footnote regarding the Constitutional Court of Germany.

²⁹ Up until now the only court that makes translations available on the ECLI-SE is the Constitutional Court of Germany (*Bundesverfassungsgericht*). See e.g. [ECLI:DE:BVerfG:2012:rs20120912.2bvr139012](https://e-justice.europa.eu/ECLI/ECLI:DE:BVerfG:2012:rs20120912.2bvr139012).

³⁰ Technically speaking, various options would be available: translations could e.g. be added to the XML after it is generated from the main database but before it is being made

Also secondary data providers – like universities, law firms or international organisations – could contribute by making their own translations available to a wider audience. The HUDOC database³¹ of the ECHR could be a source of inspiration: apart from the official versions in English and French, non-official translations in many languages are being disseminated via this database. In section 7.1 some other online databases are discussed that have substantial collections of translated case law. They could make these available within the ECLI-SE in a comparable way as ACA-Europe has done with its JuriFast database.

5.3. METADATA

Notwithstanding the importance of a powerful textual search engine, metadata are indispensable for targeted search and discovering relations between decisions and/or other legal sources. To facilitate such options, the Commission³² has expanded the metadata scheme that was already established by the ECLI Conclusions. As can be witnessed in the search interface, relations between court decisions vis-à-vis other court decisions can be expressed by ECLI, for four different types of relations:

- Followed by;
- Preceded by;
- Cited by;
- Citing.

The first two are meant to express procedural relationships, e.g. between decisions in first instance and appeal. In the context of the EU legal order, especially the relationships between the national reference for a preliminary ruling of the CJEU (art. 267 TFEU), the preliminary ruling of the Court itself and the national follow-up decision are of the utmost importance. Still today, discovering what a national court has actually decided after its preliminary question has been answered, might easily take up to a few hours of search.

The ‘cited by’ and ‘citing’ types cover material relations between decisions, reflecting jurisprudential developments or a doctrinal relationship. Apart from expressing relations between court decisions, the ‘relation’ metadata field can also be used to express relations between court decisions and legislation.

available for indexing by the ECLI-SE, or a secondary data provider could be created, only supplying the translations and/or additional metadata.

³¹ hudoc.echr.coe.int.

³² In consultation with the ‘ECLI subgroup of the European Commission expert group on e-Justice’.

Currently, anyone using these ‘relational’ metadata for building a search query will be disappointed by the result, because the information is – generally – not supplied by the courts. Adding such data would be necessary for improving the accessibility and reliability of the published information. It would already be a major step if only the highest jurisdictions could start with adding such metadata, with EU-related decisions as a priority. Although manual tagging gives the best results, computerized systems offer usable alternatives (see below, section 6). A more extensive schema could be contemplated, but would require even further analysis than currently undertaken for ECLI 2.0 (see below, section 6).

6. Building on ECLI

To support the implementation and further development of ECLI, in October 2015 the project ‘Building on the European Case Law Identifier’ (BO-ECLI) has kicked off, co-funded by the Justice Programme of the European Union. Within BO-ECLI sixteen organizations from ten Member States cooperate for a maximum of two years. The objectives and intermediate results of the project can be summarized as follows.

The first objective is to introduce ECLI within Belgium, Greece, Estonia, Croatia and Italy, as well as to support its further implementation in the Czech Republic, Germany and the Netherlands. As of February 2017 introduction has already been realized in Greece, Croatia and Italy,³³ while also in Germany and the Czech Republic additional courts have started assigning ECLIs to their decisions.

The second objective is to take stock of the current state of play within all EU Member States regarding the publication of court decisions as well as to develop guidelines thereon, specifically addressing the topics of selection, data protection and Open Data. The comparative report has been finalized in February 2017 (van Opijnen et al. 2017b), while the guidelines are currently being discussed at an EU policy level.

The third goal of BO-ECLI is to promote the use of ECLI in legal citations and information systems. This ‘ECLI promotion campaign’ includes a website,³⁴ a video,³⁵ a Facebook-page,³⁶ a Twitter account³⁷ and

³³ Regarding the Constitutional Court. Implementations at the Council of State and the Court of Auditors are still ongoing. Meanwhile, although not as part of the BO-ECLI project, the Supreme Court of Italy has also introduced ECLI and connected its database to the ECLI-SE.

³⁴ www.bo-ecli.eu.

³⁵ <https://youtu.be/nf4JIZJ-n9E>

³⁶ <https://www.facebook.com/Bo-Ecli-Project-1004299342994102/>

explanatory articles for the legal community (Grgić 2016; Kefali 2016; van Opijnen and Veenman 2016). An ECLI conference is scheduled to take place in Athens, Greece, in June 2017.

The fourth objective of the project is to assess the alignment of the ECLI standard with other evolving semantic web standards and to develop a 2.0 version. The analysis report, containing the requirements for ECLI 2.0 was finalized in February 2017 (Palmirani et al. 2017). See also (van Opijnen et al. 2017a).

Last but not least, the fifth goal is to facilitate better access to court decisions by making legal references contained therein computer readable. This objective deserves some further explanation. In section 4.2.1 above the search interface of the ECLI-SE was described, which a.o. supports searches by reference; in section 5.3 it was observed that the actual performance of such searches are far below expectations, due to a lack of relational metadata.

If such metadata are to be created within voluminous repositories, computer assisted detecting of legal references will be inevitable. Out of the box though, natural language processing software performs poorly in recognising and resolving legal references: citations are very precise while at the same time formatting rules are absent, ignored or misinterpreted, many parallel citations exist for the same source, the use of document-specific aliases (like ‘the regulation’, ‘the directive’) is abundant and high-quality reference repositories are often lacking (Boella and Kostantinov 2014). Solutions for single languages and/or jurisdictions have been developed and described (Agnoloni and Bacci 2016; Mowbray et al. 2016; van Opijnen et al. 2015), but within the BO-ECLI project a solution is being developed for a multilingual and multijurisdictional environment: an open source software toolkit that can be adapted to the specific citation habits and reference repositories of individual jurisdictions (Agnoloni et al. 2017).

7. An Alternative Approach to Organising Cross-border Topical Case Law Collections

As is apparent from what has been described above, finding national court decisions about specific legal topics of an international nature is still a challenging adventure. This not only has to do with the lack of sufficient metadata or translations, but is also caused by the archaic way cross-border access to national case law is currently organised within the EU. To describe existing positive intentions for improving such access, in section

³⁷ https://twitter.com/bo_ecli.

7.1 some projects are discussed, while section 7.2 focuses on the shortcomings encountered. Section 7.3 contains a proposal to radically change the way access to national case law with international relevance is organised.

7.1. TOPICAL COLLECTIONS

Due to the increasing complexity and expanding scope of (European) law, there is growing need for cross-border access to court decisions on very specific topics. To cater for this need, legislative or administrative bodies that have a responsibility towards those topics often decide to create case law databases. In general, the intention of such ‘collections’ is to provide an overview of the activities of national courts as well as to improve the uniform interpretation and application of EU or international law. To mention a few examples of such collections:

- **JURE**

The JURisdiction Recognition Enforcement (JURE) collection is based on art 3(1) of the Second Protocol to the 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters and related instruments,³⁸ which obliges Member States to send to the Publications Office of the EU³⁹ all decisions from the highest courts as well as relevant decisions from lower courts which concern the Lugano Convention or related instruments. In turn, the Publication Office publishes those decisions in a public database.⁴⁰

- **Competition law**

Art 15(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty⁴¹ (currently articles 101 and 102 TFEU) reads: “Member States shall forward to the Commission a copy of any written judgment of national courts deciding on the application of Article 81 or Article 82 of the Treaty.” This provision is not accompanied by an obligation for the Commission to publish such decisions, but nevertheless a small

³⁸ OJ L 339, 21.12.2007, p. 3–41. [CELEX:22007A1221\(03\)](#).

³⁹ In the text of the Convention this is the Commission, but the tasks have been taken over by the Publications Office.

⁴⁰ eur-lex.europa.eu/collection/n-law/jure.html.

⁴¹ OJ L 1, 4.1.2003, p. 1–25, [CELEX:32003R0001](#).

database is put online.⁴² A comparable database exists regarding the state aid provisions of the articles 107 and 108 TFEU.⁴³

– **Fundamental Rights**

The database of the EU Agency for Fundamental Rights (FRA) not only contains a compilation of decisions from the CJEU and ECHR with direct references to the Charter of Fundamental Rights of the EU, but also a selection of 330 national court decisions with direct references to the Charter.⁴⁴

– **Asylum law**

The European Database of Asylum Law (EDAL) contains nearly 1.100 national decisions from nineteen European countries, interpreting refugee and asylum law. It was established through EU funding and is currently managed by the European Council on Refugees and Exiles. English summaries and extended metadata are added to the decisions in EDAL.

– **Electronic communications**

Article 4(3) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services⁴⁵ provides⁴⁶ that “Member States shall collect information on the general subject matter of appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures,” and that they shall provide that information to the Commission and the Body of European Regulators for Electronic Communications (BEREC). All court decisions issued against decisions of National Regulatory Authorities pursuant to art 3 of the Directive and related to electronic communications should be collected. This collection does not exist yet, but a report on how it should be organized was recently published (Thomson Reuters Aranzadi 2015).

⁴² ec.europa.eu/competition/elojade/antitrust/nationalcourts/

⁴³ ec.europa.eu/competition/court/state_aid_judgments.html

⁴⁴ fra.europa.eu/en/case-law-database

⁴⁵ OJ L 108, 24.04.2002 p. 33-50, [CELEX:32002L0021](http://eur-lex.europa.eu/CELEX/32002L0021).

⁴⁶ Since its amendment by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services, OJ L 337, 18.12.2009, p. 37–69, [CELEX:32009L0140](http://eur-lex.europa.eu/CELEX/32009L0140).

– **JuriFast**

JuriFast has already been mentioned.⁴⁷ This collection contains national preliminary questions submitted to the CJEU (pursuant to art. 267 TFEU), the Court's answers as well as the national decisions following this answer. Documents for the collection are supplied by the members of ACA-Europe.

7.2. OVERARCHING PROBLEMS

All collections mentioned in the previous section suffer – or if they do not exist yet: probably will suffer – from four overarching problems: a lack of content, not being well-known within the legal community, time-consuming for the end-user as well as high development and maintenance costs.

When we set aside the view of the individual collections and look at the situation from a broader perspective, the current situation can be depicted as in Figure 8. For the sake of the discussion, the ECLI-SE is left out of this description of the current situation.

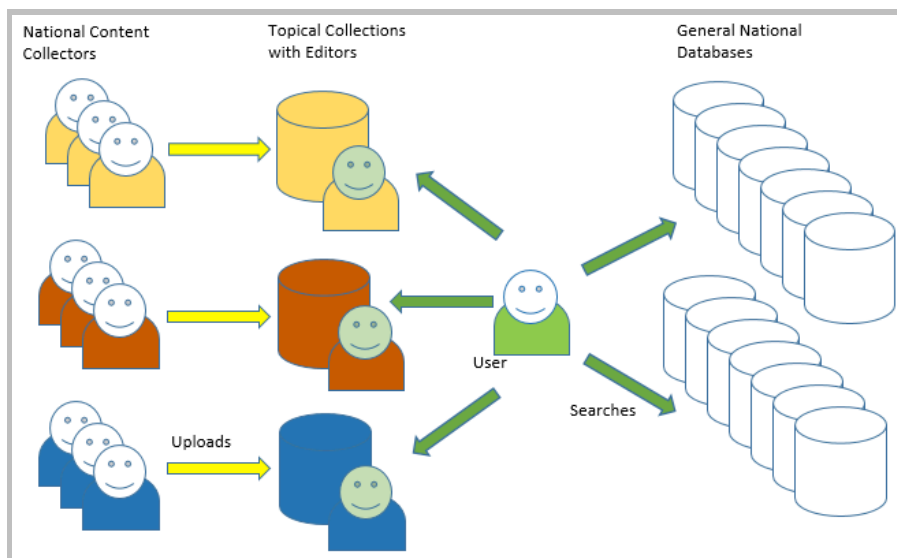


Figure 8. Current content management of, and end-user access to foreign case law within the EU.

Within each Member State, ‘national content collectors’ have to be appointed for each individual collection. This can be organised at the

⁴⁷ Above, footnote 3.

national level or for each court individually, but even if organised centrally each collection probably has its own organisational structure. These national content collectors are responsible for gathering relevant decisions, processing them according to specific instructions and uploading them into a database or sending them to a European contact point. The main problem here is that within complex national judicial organizations, often nobody is aware that this information has to be collected, it does not have priority or is considered irrelevant because the public is deemed to be served sufficiently by their general public database. But even apart from that, gathering decisions on a specific topic, judging them for their relevance, writing summaries or adding metadata, converting them into the right document format and uploading them are tasks which require competences not all judges or clerks are equipped with. In Figure 8 only three collections and three Member States are depicted, but if the six collections mentioned would have only one national content collector in each Member State (a low estimate), there are already 168 national content collectors active.

For each collection central editors can assumed to be active. Although the extent to which additional work is done may vary, the decisions supplied by the national content collectors have to be tagged with metadata, summarized, converted, translated a.s.o. Each and every of these collections has its own content management system and search engine. Since most of the collections are very small, the costs for development and technical maintenance are relatively high.

Because of being relevant only for a very small domain, because of their small size and because they hardly have effective promotion channels, most of the collections are not well-known within the community they are supposed to be serving. Many online resources are competing for the lawyer's attention, and incomplete databases that are only needed for very specific and rare cases do not make it to his bookmark list.

And even if the user is able to find his way to these collections he will probably struggle with the different metadata, identification systems and the variety of search interfaces. And finally, a disappointing number of decisions found might force him to search the many (general) national repositories with court decisions as well.

7.3. AN ALTERNATIVE APPROACH

By making use of the ECLI framework, it could all be organised differently, benefiting national content collectors, collection editors as well as end-users. This alternative organisation of work is depicted in Figure 9.

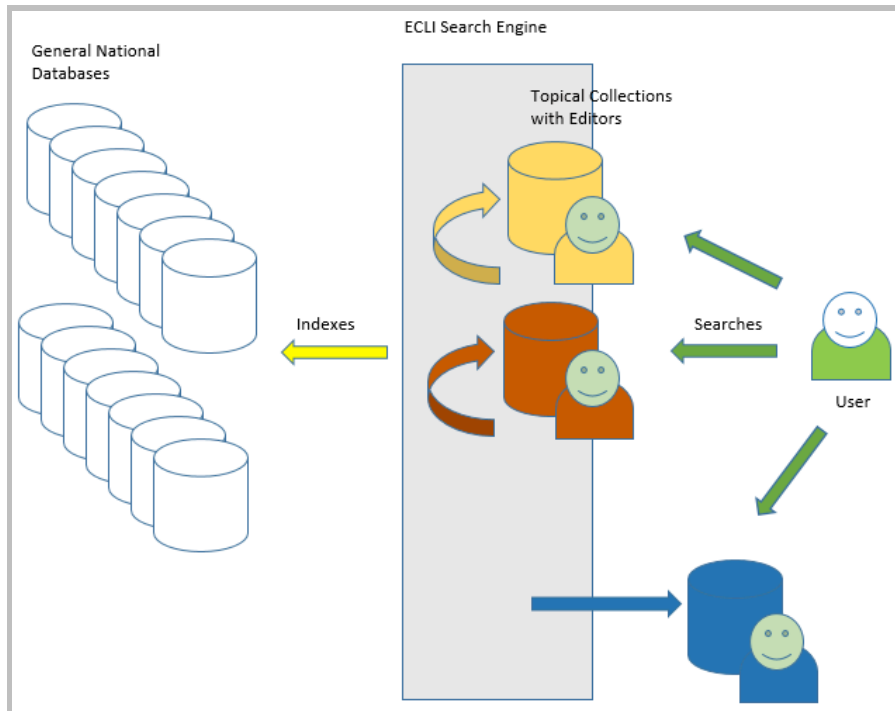


Figure 9. An alternative approach to topical case law collections.

In this situation the ECLI-SE plays a pivotal role. As described in section 4.2, the ECLI-SE can index decisions from all national case law repositories. If it can be correctly assumed that all decisions which are selected by the current national content collectors are also deemed important enough to be published within the general national databases, they will thus also be available within the ECLI-SE.

As a next step, a collection editor could gather those decisions from the ECLI-SE which are of relevance for his collection and label them as such. He could search by keyword, or – probably more effectively – by the legal references which are detected by automated means, e.g. the BO-ECLI parser discussed in section 6 or by the use of document classification software using natural language processing technologies. Additional information – e.g. translations, summaries or keywords – can then be added by the collection editor.

Finally, the end-user can confine his case law search to the ECLI-SE. Like he is currently able to limit his query – within the ECLI-SE – to decisions in the collection by ACA-Europe, he might limit his query to other topical collections as well. And, assumed the ECLI-SE indexes all national databases, he does not have to query those repositories

additionally. Nevertheless, collection managers would still have the opportunity to disseminate their collections outside the ECLI-SE, while still profiting from its ‘content gathering pipeline’. Such a choice might be made if a collection requires very specific interfaces and/or if the collection is of a commercial character.⁴⁸ In Figure 9 such collections are depicted by the blue database/editor. The re-use of data from the ECLI-SE is sanctioned by the Council.⁴⁹

To summarize, such an alternative organisation tackles the four overarching problems listed in the first paragraph of section 7.2. The lack of content can be solved by removing the bottleneck of national content collectors from the system; the collection editors can focus on selecting decisions from the ECLI-SE, adding metadata and/or making translations. The second issue many special collections face – not being well-known within the legal community – can be addressed by uniting forces: it is only the common portal – the ECLI-SE – that has to be promoted. This one portal also solves the main problem of the end-user: having to visit many database for collecting the information needed; in this new architecture visiting the ECLI-SE would suffice in many cases. Finally, with one framework for searching as well as for editing, development and maintenance costs can be reduced substantially. This is not to say that the architecture has to be fully-centralized. It could also be partially-federated or even fully-distributed.

Obviously, whatever the technical architecture, some prerequisites exist for such an organisation of work: preferably all national repositories are indexed by the ECLI-SE, which would require a still broader introduction of ECLI. Secondly, to facilitate the selection work of the collection editors (and also benefiting the end-user), would be a broad use of reference parsers: the software to detect and harmonize legal citations. Next, additional metadata might be needed, as well as facilities to refer to very specific versions of a decision; these requirements are being taken on board in the design of ECLI 2.0.

And last but not least, the public bodies responsible for the special collections would have to acknowledge the benefits of migrating to such a new paradigm.

⁴⁸ Examples of such collections that started out with EU co-funding, but are currently commercial: [Eurocases.eu](http://eurocases.eu) (from the EU co-funded project EU-cases (Boella et al. 2015)) or [Caselex.eu](http://caselex.eu) (Faro and Nannucci 2008).

⁴⁹ By approving the Report of the Expert Group on Open Data of the Working Party on e-Law (e-Justice), 11786/1/15/Rev 1; <http://data.consilium.europa.eu/doc/document/ST-11786-2015-REV-1/en/pdf>.

8. Conclusions

The European Case Law Identifier is a good illustration of the axiom that developing standards is a tedious and lengthy process, but implementing them is even more time-consuming. The word has to be spread, awareness raised, policy-makers convinced, funds allocated, systems adapted and citation habits changed.

Taking all these hurdles into account, the current state of play of ECLI, six years after its adoption, can be called a small success and its chances to boost accessibility of court decisions throughout Europe still look promising. Twelve Member States and three European courts have implemented ECLI in some or all of their databases, and eight other Member States have started implementation. The ECLI-SE indexed already more than five million decisions and can be expected to keep growing.

Nevertheless, more implementations are needed, metadata have to be improved, translations have to be added and for depositories of such dimensions mechanisms for separating the wheat from the chaff have to be developed (van Opijnen 2016). Finally, integrating topical collections into the ECLI-SE might offer added value for the whole legal community.

Technology can be an important aid and facilitator, but data providers – especially judiciaries – have to take responsibility themselves for supplying sufficient, correct and enriched datasets; keeping in mind that ECLI is just a means to an end: improving the accessibility of case law, fostering the transparency of justice of strengthening the Rule of Law.

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