openlaws

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Case study 1: European institutions

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Executive Summary

The first case study is a 'state of the art' case study of the sponsor, the European insti-tutions' provision of free access to European Union law, in terms of cases, legislation, regulatory instruments and academic-expert analysis. Note that as it is produced at Month 4 of the project, it is contingent in its first full draft, and will be continually revised. The analysis explains how and whether the environment (institutions, policies and the legal community) is finally developing in which open access models such as openlaws.eu can take root and flourish. The key functionalities of the existing legal publishing system are summarized and described.

This activity involves a review of the existing information systems and legal databases already in use and will produce a specification of the requirements of the system on the basis of the analysis of social, legal and market requirements. The case studies represent the key socio-economic and legal aspects of the services and illustrate the main functionalities, structure and operation of the proposed services. The findings are informed by key informant interviews and form a working assumption. The interviews are supported by the literature review, and the insights of workshops (including the LASPSI workshop on 3 September 2014) following which the version was edited.

In conclusion, it may be argued that European legal data is so open to reuse and access that it is the ‘exception that proves the rule’ – in that the national systems under examination may have less a virtuous circle and more a system hampered by legacies of closed and restrictively licensed underfunded systems. This will be a major research theme in national case studies. We can conclude that though European legal information may not be as widely reused and repurposed as US federal law, it is nevertheless a best of breed example for the Member States to emulate where possible.

Table of Contents

1 Introduction

The first case study is a 'state of the art' case study of the sponsor, the European institutions' provision of free access to European Union law, in terms of cases, legislation, regulatory instruments and academic-expert analysis. Note that as it is produced at Month 4 of the project, it is contingent in its first full draft, and will be continually revised. The analysis explains how and whether the environment (institutions, policies and the legal community) is finally developing in which open access models such as openlaws.eu can take root and flourish. The key functionalities of the existing legal publishing system are summarized and described.

This activity involves a review of the existing information systems and legal databases already in use and will produce a specification of the requirements of the system on the basis of the analysis of social, legal and market requirements. The case studies represent the key socio-economic and legal aspects of the services and illustrate the main functionalities, structure and operation of the proposed services. The findings are informed by key informant interviews and form a working assumption. The interviews are supported by the literature review, and the insights of workshops (including the LASPSI workshop on 3 September 2014).

The breadth of stakeholders interviewed is broad and includes experts from: academia, Non-Departmental Public Bodies (NDPB), trading funds, private entrepreneurs, corporations, standards bodies, non-governmental organizations and government policy officials with both domestic and international responsibilities.

Note that the case studies rely on a Soft Systems Methodology (SSM) framework in order to identify the key components of the problem and provide the key specifications for the system that is to be built, while the third activity will rely on a combination of desk research, in-depth interviews, and focus groups. Rich multimedia flowcharts and other illustrative material will be used in further drafts in order to describe the problem in the context of an SSM approach and to facilitate discussion between the user and the development communities.

Note that the publication of draft case studies and a draft of the final comparative report are accompanied by dissemination and feedback mechanisms both on- (e.g. via posting on open access websites, promotion via social media and comment promotion via referral to the WS1 Wiki) and offline (via workshops and conferences in-country, at EU and international levels) to create a close expert panel which will provide a constructive critique for future iterations of the reports, with a final version published in M24 at the conclusion of the project.

2 CAMPO Framework

First, we provide an explanation of the method which we will use to investigate the field. Previous studies of government data – notably law – have demonstrated the need for an interdisciplinary methodology such as SSM. The graphic below shows the potential layers of resistance to wider use of government data such as law.

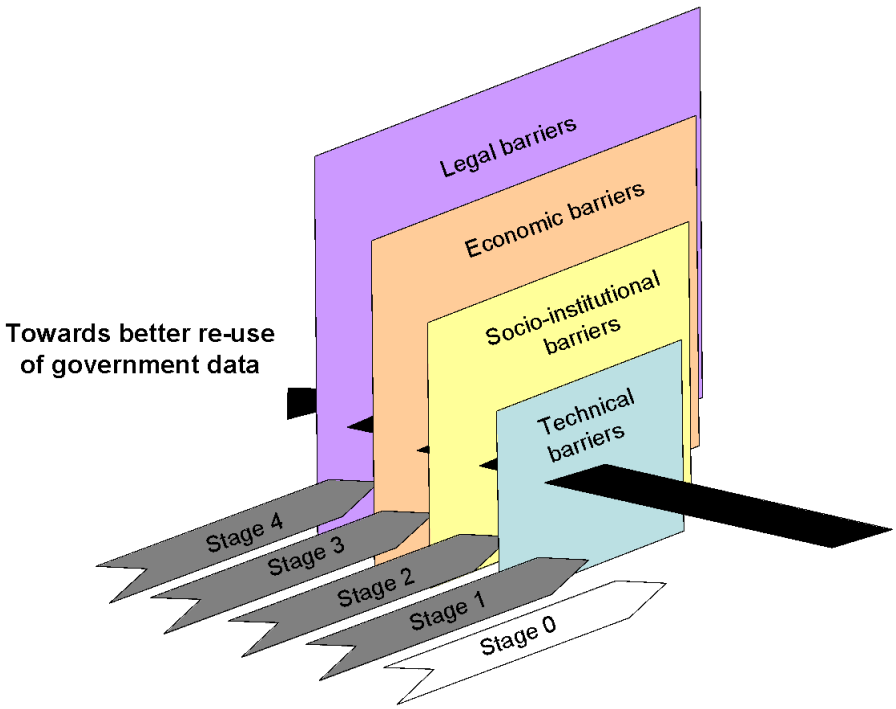

Figure: Conceptual visualisation of barriers and stages towards better re-use of government data (Marsden et al 2006: 15)

This suggests the need for a framework that examines technical, bureaucratic ('socio-institutional'), economic and legal barriers to wider access to law[1]. An approach which focuses only on law, market, technology or bureaucracy would fail to provide a holistic explanation of successes and failures of national approaches

[1] Marsden et al (2006) suggest a series of 'steps' or stages towards solving these problems:

1. Technical barriers. While complex, these barriers are relatively straightforward to address, and many existing initiatives are developing answers in (often forbiddingly) technical terms for non-specialists.

2. Socio-institutional barriers. These hurdles are more difficult, because the stakeholders argue from different premises when they communicate at all. The keys to success here are trust and communication, leading to a willingness to share suitable data, to expend effort in combining them and to clarify risks, ownership, discretion and standing.

3. Economic barriers. Once trust and communication have been established among public-sector stakeholders, it is possible to engage with the market in order to address the economic hurdles and ensure adequate finance, suitable contractual arrangements and engagement with demand. The latter is not simply a matter of marketing, because the innovation surrounding federated data lies as much in how they are used as in how they are put together. The inherent complexity of economic barriers reflects not just the range of stakeholders but, especially for Public Private Partnerships (PPPs), the potential incompatibility of their remit and objectives, which makes 'efficient contracting' difficult.

4. Legal barriers are slow to reform, depending on the solution of other barriers. Contractual issues and Intellectual Property Rights (IPRs) play an important part.

explored in case studies.

The framework used in this case study and proposed for further studies is CAMPO – context, actors, methods, practices, outcomes. Within each category, an interdisciplinary approach is taken. It has been designed and deployed in the European Internet Science project notably Moranda and Pavan[2], and is based on a straightforward descriptive framework appropriate for examination of a discrete environment such as legal information.

Table 1: CAMPO framework

CAMPO	Description	Added value
Context	Initial part of the case study outlines the overall context in which the community emerges/operates - type of legal informatics technology	Systematic catalogue of cases/actors/issues
Actors	What type of community is observed (primary groups, market actors, user groups etc.)	
Methods	Investigation method: Details of procedures to map the case study and the techniques used to perform analysis (research design details + actual methods)	Catalogue of methodological approaches to investigate different communities
Practices	Dynamics of interaction: Illustration of dynamics observed in each case study	Detailed insights on interplay
Outcomes	Summary of integration at EC level	Conclusions, limits of analysis for member states

Table 2: CAMPO framework applied to access to European law

CAMPO	Description
Context	Programme of observation and interaction with legal community and developers.
Actors	Office of Official Publications; EurLEX unit Various regulator websites DG Justice Multinational legal publishers (member state based –analysis in country case studies) No Legal Information Institute for EU, Italian start-up (EuroLII) in process. Commentary provided by Brussels affiliates of international law firms + European law academics based in national universities[3]
Methods	Significant methodology challenges to researching this 'community', if European law can be said to have created a single community, as opposed to enabling several communities at national level with European coordination or at least input. Relatively little academic empirical study of European legal informatics, until recently. Ethical implications similar problems as national legal communities.
Practices	Research conclusions must be provisional and transient.

[2] See Marsden, C., Pavan E. et al (2013) Deliverable 6.1: Overview of user needs analysis, plus draft catalogue of design responses to needs analysis, Internet Science Consortium at http://www.internet-science.eu/biblio/reports

[3] Also note specialist institutes such as European University Institute in Fiesole, College d'Europe Bruges and Academy of European Law in Trier. For a fairly comprehensive list of 850 European oriented universities (not including such luminaries as College d'Europe), see European University Association: http://www.eua.be/eua-membership-and-services/Home/members-directory.aspx?country=127

Outcomes	Further research needed to solve methodology problems for exploring environment.

3 Context

In 1958, the decision in the Official Journal was to publish multinationally and to use permissive 'copyleft' licensing to ensure the widest possible dissemination and knowledge of European law at national level. OOP Unit C1 has about 40 staff directly devoted to this task in the online environment[4]. Note that there are 24 official languages of the European Union, though in practice most law is written in the original in French, English or German and then translated into the remaining 21. The task of disseminating European law across the six original members, then to the 12, 15, 27 and current 28 has been a preoccupation of legal informatics in the European Union.

The European legal information space consists of:

- legislation, case law, commentary.

We can break down the former into:

- Directives, Regulations,
- other instruments,
- 'soft law' such as Commission Impact Assessments.

Most of these are available via Eur-Lex though note from the survey responses that legislation in preparation and during the interaction between institutions has been criticized by users. This also brings into the legislative access environment the European Parliament, Council of Ministers and Economic and Social Committee, as well as Committee of the Regions, Presidency of the Council and European Data Protection Supervisor (EDPS). The various websites of all these organisations need evaluation for ease of access, though all offer free access to materials at point of use. Note also the role of the executive agencies of the European Union, such as the Body of European Regulators of Electronic Communications (BEREC), the Directorates General such as DG Competition with particular executive responsibility, and the European Patent Office (EPO).

The European institutions are subject to Data protection regulation (EC) No 45/2001, which 'implements' the Data Protection Directive (EC/95/46).[5] The dissemination of legal information containing personal data must be done in accordance with data protection standards. This is mostly relevant for court decisions which typically contain personal data (of litigating parties, officials, etc.) Although the 2003 PSI Directive on the Re-Use of Public Sector Information (as revised in 2013) is directed at Member States and not EU institutions, its objectives and norms are mirrored in Commission Decision 2011/833/EU. [6] No equivalent instrument exists for Council

[4] By comparison, the UK Office of Public Sector Information has only 16 staff devoted to the legislation.gov.uk website.

[5] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, *OJ L 8, 12.1.2001, p. 1–22*. Note that specific data protection rules of EU level, e.g. on statistics, immigration, also exist.

[6] Commission Decision of 12 December 2011 on the reuse of Commission documents, *OJ L 330, 14.12.2011, p. 39–42; which replaced a 2006 Decision on same.* The 2003 PSI Directive was based on a

documents and European Parliament documents. The access rules based on the provisions on transparency in Regulation 2001/45 and the Rules of Procedure of the Council and of the European Parliament do not explicitly address re-use.[7]

The range of institutions involved in the creation and development of European law is mirrored at national level, as we will see in the Austrian, Netherlands and United Kingdom (England & Wales)[8] case studies. Note that the national implementation of European law is a significant element of the legislative task of national governments, and we examine that implementation in national case studies, not in this study.

Note also that the case studies are: an original member of the European Community from 1950 with an original language (Netherlands), a 1974 expansion member with drafting language status (United Kingdom), and a further EU member with drafting language status (Austria). There is therefore a spread of languages and entrants to the European Union, though the focus is on very influential language communities and early EU membership, not late entrants[9].

Case law encompasses the Court of Justice and General Court of the European Union. One should also note the decisions of the European Free Trade Area (EFTA) court and European Court of Human Rights (ECHR) have a strong interaction with the main European Courts as guardians of the treaties. EUR-Lex is the main database used.

Commentary on European law is in three parts:

1. commentary on legislation in process,
2. European commentary on legislation, and
3. national commentary on implementations of European legislation.

While there is overlap between the three, for the purposes of this case study we

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2001 Communication, and Proposal of 2002 after public consultation. It was a basic enabling instrument: "strategic legislation not technical legislation." Its problems included: [1] Subsidiarity and proportionality of the instrument in light of its necessary legal basis in the internal market provision of art. 95 TEC (now 114 TFEU); [2] respecting intellectual property rights in public sector information, also in light of international obligations; [3] the dependence on national freedom of information and other public access regimes; [4] state companies / UK Trading Funds which profited from reselling PSI. The three countries which led PSI were Netherlands/Sweden/Finland and the European Parliament. The 2013 revision makes two major policy reforms: the step towards 'free, or marginal cost' as default principle as well as an *obligation* for Member States to allow re-use of public sector information that is public under national access regimes. Under the Berne Convention on the protection of literary and artistic works (BC), official texts such as laws and court decisions may be exempt from copyright; the Directive refers explicitly to the BC. The principle of 'maximum marginal cost' generally makes it difficult to make legislation an exception to being free. Note that the consolidated version has unconsolidated 2003 Recitals so the recitals that argue for the revisions are not included in the consolidated text! A LAPSI conference presentation pointed out that this makes for incompatibility.

[7] Council Decision of 1 December 2009 adopting the Council's Rules of Procedure (2009/937/EU), OJ 2009, L 325/35; Rule 115-116 of the Rules of Procedure of the European Parliament, 8th parliamentary term, July 2014; Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001, L145/43.

[8] There are separate legal systems for Scotland and Northern Ireland whose complexities are outwith the scope of this access study. England and Wales is a unitary legal system in existence for 700 years which accounts for 90% of the population of the United Kingdom.

[9] A study of for instance Spain, Poland or Croatia may be a useful addition following this project.

examine the former pair, while national commentary on European law and its implementation in Netherlands, Austria and UK is considered in each case study.

4 Actors

The legislative access environment includes the European Parliament, Council of Ministers and Economic and Social Committee, as well as Committee of the Regions, Presidency of the Council and European Data Protection Supervisor (EDPS). Note also the role of the executive agencies of the European Union, such as the Body of European Regulators of Electronic Communications (BEREC), the Directorates General such as DG Competition with particular executive responsibility, and the European Patent Office (EPO). The various websites of all these organisations need evaluation for ease of access, though all offer free access to materials at point of use. The volume of this material can be partially estimated through examining services provided by OOP (2013: B.I.8 and Annex III, Table 7): "In total, 4082 proofreading projects (all languages included), coming from more than 30 different institutions, DGs and agencies, comprising 797,174 pages (+57%), were completed by the proofreading service during 2012."

Further actors include commentators – both EU law professors/researchers and commercial law firms providing insights into European law. We exclude national law firms providing insights into implementation and focus on European law firms with major offices in Brussels and/or Luxembourg. Note that this includes US law firms active in Europe, notably those with London and even pan-European networks but with particular focus on EU litigation and/or plobbying. The rise of these firms is covered in more detail in the England & Wales case study but note that there are strong concentrations at European level particularly in tax, regulatory and competition law[10]. These law firms offer a very extensive library of free briefing papers available online. European law journals have burgeoned recently and many offer greenopen access, as well as free online access to many articles. Examples include the pioneering European Journal of International Law: http://www.ejil.org/ Note in particular that almost all specialist European law journals date to the 1980s or 1990s[11], which leaves less (though still significant) institutional legacy of subscription-only access on behalf of editors – even if publishers are largely the same as those at national level.

Note that many commentaries on European law are accessible via the US-based repository Social Science Research Network, with ‚European+law' search term producing 8,863 results[12]. Commercial publishers such as Springer+Verlag and Kluwers also hold a very large library of articles, increasingly a minority are made freely available on limited terms.

[10] See e.g. http://www.brusselslegal.com/article/display/2984/Law_Firms and http://www.chambersandpartners.com/32/362/Editorial/2/1

[11] The venerable Common Market Law Review dates to 1964: http://www.kluwerlawonline.com/toc.php?pubcode=COLA

[12] http://papers.ssrn.com/sol3/results.cfm?RequestTimeout=50000000

5 Methods

Note that the absolute majority of the global legal information market is in the US market alone (Reed-Elsevier 2012 estmates $10billion of a total $18billion global market). The US market has been explored in depth in Shea (2011), contrasted with Berring (1995), Cook (2001). The market is fast developing and recent developments in digital database design and sharing are explored in Sheridan (2014), Read and Griffiths (2013), Vallbé and Casellas (2013), contrasted wirth Widdinson (2002). The European market has been surveyed in Norman (2006), Donelan (2009), Boella et al (2014), international sources in Dingle (2009).

[Insert infographics found in Reed-Elsevier 2012]

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- Regulations,
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Case law encompasses:

- the Court of Justice and General Court of the European Union.
- European Free Trade Area (EFTA) court
- European Court of Human Rights (ECHR).

While all judgments are freely available via EurLEX and CELEX, there remains a need for greater access to both European legal process and implementation at member state level[13]. As a result, the European Commission led the project Case-Lex to widen online access in 2007-9[14], and followed this with EUCases which began in 2013. JURE is a Munich-led attempt to provide a database of European national civil justice laws funded by OOP. As results of these projects emerge, these will be integrated into

[13] Notably in s7 of EurLEX where member states leave OOP woefully undersupplied with updates on implementation (not legally required and leaves MS open to accusations of mis-application).

[14] CaseLex was a somewhat manual version of national case law – essentially a federation of national rapporteurs in a personal network with variable results.

the case study.

Commentary on European law is in three parts:

- commentary on legislation in process,
- European commentary on legislation, and
- national commentary on implementations of European legislation.

While there is overlap between the three, for the purposes of this case study we examine the former pair. The open access market has been extensively surveyed, in for instance Frosio (2014), Browne (2010), Danner (2012), D'Aspremont and Van den Herik (2013), and earlier Bebbington (2003). The open access publishing environment at European level may be hampered by the very limited number of legal academics focussed on the European legislative and litigation process and the dominance of commercial publishers in journal and book production, though country case studies may reveal whether this problem is accentuated at European as opposed to member state level. In the US, federal legal journals are not necessarily subject to different pressures than state – and in any case, the more advanced federal form of US law means that many local law journals in fact largely focus on federal law.

Methodology for open access in the European legal environment is significantly simplified by the widespread use of open access databases, notably EUR-Lex, in the past decade, as explored in the following ‚Practices' section.

6 Practices

The main item used in European information retrieval is is the official information system EurLEX, which merged with the former case law database CELEX in 2001. CELEX was created in the late 1970s as the first database to incorporate legislation and case law in the same database.

CELEX was still a paid service when merged into Eur-Lex, though from 2004 it became available free of charge, associated with implementation of the 2003 PSI Directive. It was critiqued for too much legal analysis by commercial publishers, who wanted to add all value to the raw data. However, private publishers were not interested in minor European language texts and therefore the decision to make EurLEX incuding CELEX freely available was made. It has now been freely available for over a decade. The only restriction is on total daily downloading from the database to prevent overloading of servers should search engines attempt a complete refresh each day.

EUR-Lex is in 2012/15 being transformed (OOP 2013: 36-37):

> „The new EUR-Lex has the ambitious objective of becoming the single EU portal to access legal information. To this end, work is ongoing to guarantee the migration of the collections currently available in EUR-Lex and to integrate new collections, such as: information on the decision-making process (legislative procedures); national and European case-law dealing with legal disputes of a civil or commercial nature in the European Union and in the European Free Trade Association (so-called Lugano and Brussels Conventions) and summaries of legislation."

The elements include

- a new search engine designed „to make access to legal information direct and user-friendly" with the navigation improved.

It also incorporates the European Legislation Identifier (ELI) intended to aid wider sharing of legal knowledge. Self-published EC documents should all have a unique identifier but lots of ‚grey' policy documents do not have this and are consequently not indexed. The OOP is aware of this problem and flags it to relevant policy units.

OOP explains the process:

> "A beta version of the new EUR-Lex portal has been available online since June 2012, with the old system still running in parallel. Loading of all legal information needed for its public opening started in June 2012 and is ongoing. The loading chains for the Official Journal and the legislative procedures have been operational since mid-2012. A new search engine has been implemented. Additional new-generation connectors providing access to national sites are now available via N-Lex."[15]

Discussions are ongoing with Member States in order to ensure that the content of the E-Justice portal will eventually be displayed on open data portal run by OOP. Basic

[15] OOP (2013) Annual Management Report 2012.

principles are openness, reuse and machine-readability.

New Eur-LEX is part of a transformation programme, and a new version of N-Lex will be incorporated. Back-end systems (TED, CORDIS, Eur-LEX) will be integrated – using 'Cellar' which is a semantic database. OOP is second-biggest holder of triples (metadata) in world behind the National Security Agency. There is the potential for a machine-searchable back-end database. Note the authorities list in the Metadata Registry is continually improved[16].

Note that since 1 April 2013, the electronic version of the Official Journal is confereed with legal effect: see Regulation (EU) 216/2013.

Further OOP-provided databases include CORDIS – which covers research projects– and N-Lex which since 2006 has attempted to bridge the information gap between EU and national implementation of law. N-Lex is more considered in the country case studies, and in any case it is notable that the respondents to the Openlaws survey in spring 2014 did not use N-Lex. Note in particular that while the majority of respondents – most of whom are national lawyers or others without specific practice in EU law) used Eur-LEX at least monthly, almost none had ever used N-Lex. This may reflect lack of familiarity, the sample size or more likely their perceived research needs. The extremely high frequency of Google use reflects both a limited access to commercial databases – explored in other deliverables – and the perceived value of a meta-search type of facility, which also may account for far greater use of Eur-Lex than N-Lex. The results for different search portals are as follows.

Figure: Eur-LEX use (total number of respondents)

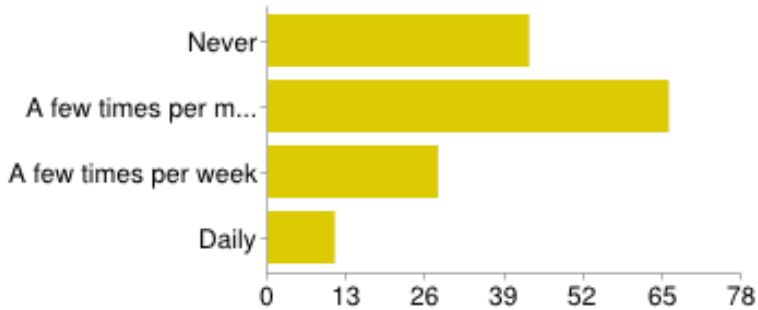


Figure: N-Lex use (total number of respondents)

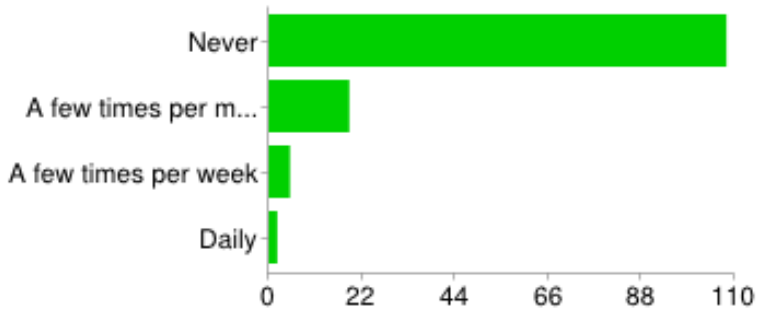
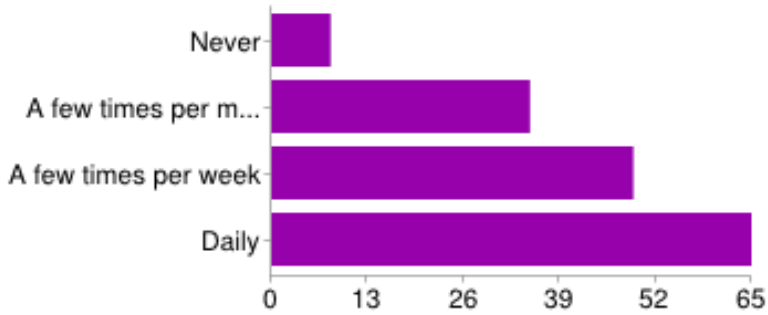


Figure: Google Use (total number of respondents)

[16] http://publications.europa.eu/mdr/authority/



Openlaws conducted a web-based survey in May-June 2014, which produced over 200 responses[17]. Web survey responses to European legal databases provided the following critiques:

- "Understanding search interfaces of different websites and databases
- EUR-Lex: rather difficult and not very intuitive; slown; inconsistency in presentation of information; not a terribly user-friendly format
- There is a problem with finding Member State legislation in English or other more popular languages, and uniform versions of the law (including the EU)
- Westlaw not easy to use in terms of accessing European materials.
- Cases not being categorised. Not highlighting where later decisions (and European decisions) amend status.
- No links to secondary literature and ECJ judgments on EUR-Lex
- Need better tools for finding information on European law and its history, changes through time."

Note that EUR-Lex is rolling out changes intended to improve comprehensiveness, intuitive functionality and legislative progress tracking, which meets many of these concerns.

OOP is also developing the European Open Data Portal (OP portal), which is intended to encourage greater reuse of official data. Regulatory and other agency publications (including many of the 'grey' documents identified above) will not be the first information available through the OP Portal. The idea is to have links from the OP portal to all types of relevant information and vice versa.

To inculcate a ‚hackathon' style active reuse culture into European law will require more than open databases[18], but it is notable that OOP data was always open – which may make it difficult to quantify any greater usage as licensing has never prevented mash-ups and other hacks. Opening up Eurostat data in the mid-2000s led to a huge increase in use demonstrating that European open data can have a signal effect.

An interesting comparison may be drawn between reuse of European law data and that of US federal law – accounting for the difference in the size of the legal research

[17] For raw anonymized analytics, see https://docs.google.com/forms/d/1MVdScU8Unm0sdNBXsTgMM2A36TPvnlduMsjdIWo4DLE/viewanalytics

[18] See Dempsey, Jameson (2014) *Legal Hackers: A global movement to reform the law*, at http://panelpicker.sxsw.com/vote/41760

communities engaged. European projects experimenting with reuse include the Linked Open Data (LOD) project in cooperation with Elsevier Germany, which is organising workflows with re-users (funded by DG CONNECT Unit 'Data Value Chain'). More informally, hackathons led by the Open Knowledge Foundation and others are beginning to create a culture of reuse[19]. An illustration led by the OOP is a hackathon on the TED database in 2014 for data journalists looking for interesting information.

Eur-LEX statistics can be found via WebTrends, and the success of the new portal can in part be measured by this metric.

[19] Clemens to add details of numbers/participants etc if available?

7 Outcomes

European legal data was born open as a result of the 1958 Official Journal policy and the resources devoted to multi-lingual and multi-national publication. This has been helped by the development – and now redevelopment – of EUR-Lex and efforts to integrate with national databases via N-Lex and now EUCases. This has been boosted by the stronger political commitment to open data in Commissioner Kroes' Digital Agenda and the European Council October 2013 conclusions which contain a strong endorsement of open data, linked to the revised Public Sector Information (PSI) Directive. This is shared by other major legal systems and governments' wider commitments to open data, for instance the June '13 G8 Open Data Charter.

We note that the European legal informatics space seems unique in at least seven respects compared to our three country case studies.

1. There was no precedent for a multilingual economic and political area such as this[20], with four original languages (French, German, Dutch, Italian) and a precedent setting 'Supreme Court' that worked in French and translated into the other three official languages. The decision to make access to documentation freely available at production and then no charge was made in the context of no developed market actors to challenge the decision to 'super-nationalise' the state provision of legal information and case law reportage[21].
2. The essential role of European law in creating the 'acquis communitaire' led to a political decision to make law as widely available at far below marginal cost as possible[22]. The benefits in creating an essential knowledge of European law amongst a critical mass of advocates at national levels was considered so important from the 1950s onwards that there was no serious resistance beyond basic budgetary questions. The direct point of comparison might therefore be the bi-lingual European Court of Human Rights and its presentation of case law, rather than national court systems. Note in this regard the linguistic diversity of the EU and the severe budgetary constraints of the ECHR system, though "easy access to the Court's case-law is essential for the effective implementation of the Convention at national level, as it enables to ensure the conformity of national decisions with this case-law and to prevent violations"[23].

[20] At least not with 24 languages, Switzerland has had 4 for many years.

[21] Note that the United Kingdom has two official minority languages – Welsh and Gaelic Scots – while Austria and Netherlands have smaller language minorities without official status.

[22] Arguably more so than Germany after Basic Law-Supreme Court creation in the 1950s, though empirical comparison is unlikely to prove feasible.

[23] Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights (Adopted by the Committee of Ministers on 18 December 2002 at the 822nd meeting of the Ministers' Deputies) https://wcd.coe.int/ViewDoc.jsp?id=331657&Sector=secCM&Language=lanEnglish&Ver=original

Paragraph 11 of Rec(2002)13 explanatory memorandum explains "diversity of traditions and practice in the member states as regards the publication and dissemination of judicial decisions. It notes in particular that some states have a strong tradition whereby civil society caters for this function, just as it does for the national courts (for instance, through specialist private publishing houses, university centres, etc). In other states, this is not the case, for a variety of reasons, and the public authorities have to use their own resources to publish and disseminate the case-law." Thus the mixed market for case law publication is officially recognised.

3. European law was pushing on an open policy door, in that its expansion occurred at the same time as a massive expansion in European institutional competences and budget, compared to domestic budgets. The boom-bust cycle of many national legal reporting environments with far longer and more crisis-ridden history was not an EU feature of resistance to wider access to law.
4. European law expanded rapidly concurrently with the introduction of computer databases for legal informatics. Throughout the 1980s and onwards, the development of both EU law and legal databases has been a largely happy marriage – though with various standards-based and institutional strains (e.g. ELI/ECLI) that would be inevitable in any such system growing at such a rapid rate.
5. European law is pre-eminent over national law, leading to recognition of its power to influence national legislation not only in its legal effect but also in the salutary example of free access to the over-arching law in so many national legal fields. European law is an example to national legislatures,

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National government members should
"ii. ensure that judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent states, are rapidly and widely published, through state or private initiatives, in their entirety or at least in the form of substantial summaries or excerpts (together with appropriate references to the original texts) in the language(s) of the country, in particular in official gazettes, information bulletins from competent ministries, law journals and other media generally used by the legal community, including, where appropriate, the Internet sites;
iii. encourage where necessary the regular production of textbooks and other publications, in the language(s) of the country, in paper and/or electronic form, facilitating knowledge of the Convention system and the main case-law of the Court;
iv. publicise the Internet address of the Court's site (http://www.echr.coe.int), notably by ensuring that links to this site exist in the national sites commonly used for legal research;
v. ensure that the judiciary has copies of relevant case-law in paper and/or electronic form (CD-Rom, DVD, etc.), or the necessary equipment to access case-law through the Internet;
vi. ensure, where necessary, the rapid dissemination to public bodies such as courts, police authorities, prison administrations or social authorities, as well as, where appropriate, to non-state entities such as bar associations, professional associations etc., of those judgments and decisions which may be of specific relevance for their activities, where appropriate together with an explanatory note or a circular;
vii. ensure that the domestic authorities or other bodies directly involved in a specific case are rapidly informed of the Court's judgment or decision, for example by receiving copies thereof;
viii. consider the possibility of co-operating, with a view to publishing compilations, in paper or in electronic form, of Court judgments and decisions that are available in non-official languages of the Council of Europe."

courts and commentators. The use of judgments as precedent setting has parallels with the ECHR system and also national common law systems with Supreme Courts, such as England and the United States.

6. European court decisions and legislative reforms now affect 28 nations, and the importance of effective communication of these changes is evident in the same way (but arguably more powerfully) that United States Supreme Court decisions have 'ripple' effects at state, municipal and regional levels in the United States. Examples in the field of information law include the 'Right to be Forgotten' (sic) case of *Google v. Spain* (2014)[24], and *Digital Rights Ireland* (2014)[25], which were the subjects of enormous immediate commentary at European and national levels.
7. The law firms in Brussels and Luxembourg are enormously well resourced compared to many at national level in all but the largest jurisdictions[26]. Therefore, case commentary is frequently rapidly and comprehensively supplied freely as a 'loss leader' to attract both national and non-European clients to use the services of these highly competent and highly marketed law firms. Similar analysis may prove the same for European law journals (see D1.1.d1), outranking national journals despite the very small turnover of EU legal information markets compared to national markets.

As a result, it may be argued that European legal data is so open to reuse and access that it is the 'exception that proves the rule' – in that the national systems under examination may have less a virtuous circle and more a system hampered by legacies of closed and restrictively licensed underfunded systems. This will be a major research theme in national case studies. We can conclude that though European legal information may not be as widely reused and repurposed as US federal law, it is nevertheless a best of breed example for the Member States to emulate where possible.

[24] Case C-131/12 Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González. Judgment of the Court (Grand Chamber) of 13 May 2014 at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0131. .

[25] Joined cases C-293/12 and C-594/12 *Digital Rights Ireland Ltd (C-293/12) v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung (C-594/12) and Others*. Judgment of the Court (Grand Chamber) of 8 April 2014 at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0293.

[26] See Legal 500 lists for empirical evidence.

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