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Subject:	Conclusions of the Council and the representatives of the Governments of the Member States meeting within the Council on Best Practices regarding the On-line Publication of Court Decisions - Conclusions of the Council and the Representatives of the Member States meeting within the Council (8 March 2018)

Delegations will find in the annex the Conclusions of the Council and the representatives of the Governments of the Member States meeting within the Council on Best Practices regarding the On-line Publication of Court Decisions, adopted by the Council at its 3603rd meeting held on 8 March 2018.

Conclusions of the Council and the representatives of the Governments of the Member States
meeting within the Council
on Best Practices regarding the On-line Publication of Court Decisions

1. In modern democracies the Rule of Law requires that the application of the law by the judiciary is transparent and that citizens have adequate access to the sources of law. The publication of court decisions provides insight in how the law is applied by the judge. Knowledge about landmark cases is of the utmost importance for legal professionals, public bodies and citizens to be informed about the evolution of the law.
2. The internet has revolutionised the way information can be disseminated; many courts and judicial authorities use modern technologies to make court decisions available to all.
3. For the EU legal order to function properly, mutual knowledge of the legal systems of other Member States is indispensable, especially, but not only, regarding the application of EU law.
4. The on-line publication of court decisions requires balancing a variety of interests, within the boundaries set by legal and policy frameworks. Sharing national best practices can serve as an inspiration for how these interests can be balanced.
5. This document describes a set of such best practices. It should be stressed that these best practices lack a mandatory character, do not strive for any kind of harmonization and should merely be viewed upon as an invitation for reflection. The extent to, and the way in which court decisions are published on the internet, is up to every individual Member State and/or court to decide.
6. In this document, the term ‘court decisions’ covers all types of intermediary and final judicial decisions, under whatever name, rendered by tribunals or courts as defined by national law.

7. These best practices only pertain to the active publication of court decisions on the internet; they do not cover the access to court records/decisions as governed by national regimes on access to public documents, as far as such regimes are based on providing access by individual requests in specific cases.

I. On selection

8. If only a selection of court decisions is published on the internet, written selection criteria can facilitate the work processes of the institutions responsible for the publication of court decisions, while at the same time creating transparency towards the public. For reasons of transparency, publishing the selection criteria may be considered, whether they are formulated in legislation, judicial decisions or policy guidelines

II. On data protection

9. With regard to the protection of personal data in court decisions (and their metadata) published on the internet, Member States are called upon to consider the implications of the Data Protection Directive, and, as from 25 May 2018, the General Data Protection Regulation (GDPR) and related instruments
10. On choosing a method (if any) for obscuring personal data in published court decisions, preserving the readability and comprehensibility of the text deserves special attention.
11. National courts and other authorities are encouraged to take note of Article 95 of the Rules of Procedure of the Court of Justice, indicating the circumstances in which persons or entities concerned by the dispute in the main proceedings may be rendered anonymous within the preliminary ruling proceedings, and paragraphs 21 and 22 of the ‘Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings’, containing additional information as to the procedure under Article 95 aforementioned.

III. On reuse

12. It can be considered a good practice to make published court decisions, to the extent possible given technical or budgetary constraints and given the features of the drafting process, available for re-use in computer-readable formats.
13. It can be considered a good practice, to make at least formal metadata available for reuse as well, in a well-structured format.
14. To cater for the needs of reusers, adequate options for download might be considered.

IV. On improving usability

15. Given the vast numbers in which court decisions are published online, not only the bare availability but also the usability of those repositories should be taken into consideration. Various facilities to strengthen the usability of databases and options to improve the accessibility of the information contained therein might be considered, depending on the volumes and particularities of the published decisions, actual needs from citizens and the legal community as well as national traditions. Some examples that might be taken into consideration are search engines and metadata,. For metadata the mandatory and optional fields mentioned in the ECLI Conclusions could serve as inspiration.
16. Comprehensive publication of court decisions contributes to the transparency of the judiciary, but on the other hand creates voluminous repositories in which it might be hard to find decisions of particular legal importance or societal impact. If technically and organisationally achievable, it would be advisable to supply for some kind of importance qualification, indicating which, and to which extent decisions are of relevance for others than the parties to the case.

As a best practice with regard to univocal identification and citation of court decisions, the implementation of the European Case Law Identifier should be considered. To reap the full benefits of the ECLI framework, it can be advised that decisions that have an ECLI assigned are made available via the ECLI Search Engine.
