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European Case Law Identifier: Indispensable Asset for Legal Information Retrieval

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In December 2010 the EU Council of Ministers decided on the 'Conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law'² (hereafter: 'ECLI-conclusions'). In this paper we will discuss the coming about and the contents of these conclusions, in the broader perspective of access to case law.

§ 1 starts off with a short introduction on public access to case law in general. The need for a European system for the identification of judicial decisions, and the preparatory work being done will be discussed in § 2. The rationale behind the basic components of the chosen solution is outlined in § 3. Finally, in § 4 the national implementation of ECLI is discussed.

1 Access to Case Law

1.1 Characteristics

Due to the internet legal information can be made available to the public more easily nowadays. Up until recently though, the dissemination of legal sources via the internet focussed mainly on legislative materials, like legal gazettes and consolidated legislation. With access to legislation fundamentally in place, attention is shifting towards access to case law. The publication of judicial decisions though encounters some specific problems. Firstly, it is not fully clear on what grounds, by whom, and which decisions should be made public. While legislation has always been meant to be made public, case law was not, especially not within continental law systems. Judgments are primarily addressed to the parties involved and only in rare cases judgments were considered to be of interest for a wider audience. This jurisprudence – judgments considered to be relevant for the interpretation and implementation of the law – was traditionally disseminated by private publishers. With the needs of the legal professionals thus covered, it was – and is – not always clear whether it should be the judiciary, the administration or others – like universities – that have a role to play on the stage that is offered by the internet.

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² OJ C 127, 29-04-2011, p. 1–7

Secondly, the corpus is really huge, with often millions of decisions rendered each year. Unlike legislation, judgments often are still meant for print only, not for electronic dissemination, and especially not to a wider audience than the parties involved. This is of particular relevance with regard to data protection,³ demanding judgments to be rendered anonymous before being published.

Because this never has been part of the business processes within the courts, meeting the demand for a larger number of judgments published encounters quite some challenges. The anonymization process is quite complex; software can be helpful, but still cannot do without human interference.

1.2 Selection

Except for some specialized and/or international courts – like the Court of Justice of the European Union and the European Court of Human Rights – only a selection of decisions is published. Although article 6 of the European Convention on Human Rights has been much debated as urging for the publication of all case law on the internet,⁴ the fact that the Convention would have been formulated more explicitly if the drafters were aware of the potential and the pitfalls of the internet, makes the legal substantiality of these claims disputable – the more because the decisions of the European Court which are used to back up the arguments are merely on the question of public pronouncement, which has to be distinguished from the – everlasting and unrestricted – public access to judicial decisions. The only international guideline on the selection of case law is Recommendation (95)11 of the Committee of Ministers of the Council of Europe.⁵ It formulates selection criteria to ensure, on the one hand, access to a representative and relevant collection of decisions and to avoid, on the other hand, the accumulation of information without any added value. The Recommendation makes a very useful distinction between negative criteria and positive criteria. The negative criteria can be used to exclude decisions from publication – e.g. *“If the grounds on which they are based are stated according to a standard formula or formula clause”* – while positive criteria might be helpful in choosing decisions which should be published – e.g. *“Decisions in which the explanation of a concept or legal term is given, that is a rule of law is formulated or amended.”* The Recommendation advises that if selection criteria are used, the negative selection method should be applied to decisions of the highest courts.

1.3 Legal Framework and Organisation at the National Level

Every country has its own specific legal framework for the publication of case law, but general trends can be discovered.

Some European countries (e.g. Austria and Sweden) have formal legislation to provide access to case law, but without material selection criteria – leaving the selection to the discretion of the judge. Other countries (with Hungary as an outstanding example) have added elaborate selection criteria to these legal provisions. In the Netherlands there are only policy guidelines, and in Romania and Lithuania the selection and publication is regulated by the Councils for the Judiciary. Finally, in some countries – e.g. Germany and Italy – there is no explicit legal or policy framework in place. Although having explicit legal obligations might be stimulating

³ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, European Treaty series No 108.

⁴ E.g. W. Davids and W. Thomassen, "Publication of Judgments on the Internet," in *Human Rights, Democracy and the Rule of Law, Liber Amicorum Luzius Wildhaber*, ed. S. Breitenmoser, B. Ehrenzeller, and M. Sassoli (Nomos Verlagsgesellschaft, 2007).

⁵ Council of Europe - Committee of Ministers, "Recommendation No. R (95)11 Concerning the Selection, Processing, Presentation and Archiving of Court Decision in Legal Information Retrieval Systems," (1995).

in giving access to case law, it doesn't turn out to be an absolute prerequisite: the absence of strict legal provisions in e.g. Spain and the Netherlands is no hindrance for the judiciary to follow a very active publication policy.⁶

Also the organisational framework varies from country to country. Responsibilities for access to case law are formally attributed to, or taken by, the Ministry of Justice (e.g. Austria, Portugal), the Council for the Judiciary (Spain, the Netherlands), an independent not-for-profit organization ('Lovdata' in Norway), an academic institution (the British and Irish Legal Information Institute), or all courts for themselves (Germany, Greece).

Partly as a result of these institutional choices, there are also huge differences in the practical accessibility of case law. In some countries all case law is accessible via one portal, hosted by ministry or a judiciary organisation (Spain, Netherlands, Sweden, Austria), while in some other states most courts have their own website (Germany, Poland, Greece). In some countries a central portal is added to the disparate websites (France, Belgium). Also the number of published materials differs substantially; in Spain more than one million judgements can be accessed on line, while Denmark is still in its start-up phase. In Germany some highest courts ('Bundessozialgericht' and 'Bundesarbeitsgericht') remove the decisions from their websites after four years; older judgments can only be accessed via a commercial provider. In Italy judges have free access to case law via 'Italiure', but citizens have to pay a substantial subscription fee.

2 Identifying the Need for ECLI

2.1 Cross-Border Access to National Case Law

So far we discussed national initiatives for access to national case law. With the broadening and the deepening of the European Union, the requirements on access to legal information have increased substantially. The role of the national judge as gatekeeper of the European legal order is becoming ever more important, and to reinforce this role the judge should not only be facilitated with access to the case law of the Court of Justice, but also to case law of courts in other member states. The importance of having access to these materials was underlined by the resolution of the European Parliament of 9 July 2008 on the role of the national judge in the European judicial system.⁷ Comparable reasons demand access to these materials by lawyers, legal scholars, policymakers and the general public.

The ECLI-conclusions refer to this need in recital 6, which states: "*Knowledge on the substance and application of European Union law cannot be solely acquired from EU legal sources, but also the case law of national courts has to be taken into account, both decisions asking for a preliminary ruling, as well as decisions following a preliminary ruling and those applying EU law on its own.*"

To facilitate this need for foreign case law, various initiatives emerged, some of which are also mentioned in recital 7 of the ECLI-conclusions.⁸

The Association of Councils of State and Supreme Administrative Jurisdictions in the EU ('ACA')⁹ made two databases available on line. The Dec.Nat database contains ca. 21.250

⁶ For a more extensive study (in Dutch): M. van Opijnen, "Selectie en Publicatie van Rechterlijke Uitspraken in Rechtsvergelijkend Perspectief," *Trema*, 2011/5, p. 176-183.

⁷ 2007/2027(INI)

⁸ See also: M. van Opijnen, "Identifiers, Metadata and Document Structures: Essential Ingredients for Inter-European Case Law Search" in: *European Legal Access Conference, Paris 10-12 december* (2008).

national decisions regarding Community law, references and legal analyses have been supplied by the Research and Documentation Service of the Court of Justice of the EU. The second database, Jurifast, contains preliminary questions submitted to the European Court of Justice, the Court's answers, and the subsequent national decision(s).

Caselex – although being developed with EU-funding – is a subscription-based database, offering a selection of national and European case law, mostly in the civil area.

Initiatives to provide access to EU-related national case law were also launched by European institutions: the EU Agency for Fundamental Rights started a case law database,¹⁰ and the European Commission initiated 'JURE' (JURisdiction Recognition Enforcement)¹¹ and a case law database on competition law.¹² The latter – not mentioned in the ECLI-conclusions – is based on '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 Treaty',¹³ which states in Article 15(2): "*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. Such copy shall be forwarded without delay after the full written judgment is notified to the parties.*"

In their need to gain access to the relevant decisions of their colleagues abroad the Network of the Presidents of the Supreme Judicial Courts of the EU chose another solution: the Common Portal of National Case Law¹⁴ is not a database but a metasearch engine that crawls all the individual supreme court databases.

2.2 Problems of Identification

Searching for, and citing case law are two of the most annoying day-to-day problems for the legal practitioner. The problems are interlinked, and come down to the question of – as recital 9 of the ECLI-conclusions puts it – "*(T)he lack of uniform identifiers for case law.*"

The problem originates from the time when courts weren't responsible for the publication of their own case law. For courts not decisions, but the cases to be decided were – and are – their main business products. Therefore, primarily cases are identified (by 'case number' or 'docket number'), and the resulting decisions are identified by a derivative 'triple': the name of the rendering court, the case number and the date. Because the decision marked the end of the case and was only sent to the parties involved, no separate identifier for the judgment was needed. Decisions with jurisprudential value were collected by law reviews, which assigned their own identifiers, mostly consisting of the abbreviated title of the periodical and a serial or page number, e.g. 'NJ 1993/214'.

With every law review adding its own identifier, a widely published case could easily end up with a dozen different identifiers.¹⁵ Using these vendor specific identifiers is advantageous for the publishers, but very laborious and costly for legal practitioners: if a lawyer comes across a citation, referring to law review X, on which he has no subscription, it is nearly impossible to know whether the case is also published in a law review he does have a subscription to –

⁹ See on the role of the ACA in general: J.C. van Haersolte, "A Wheel within a Wheel: The Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union" in: *Review of European Administrative Law*, 2010/3.

¹⁰ <<http://infoportal.fra.europa.eu/InfoPortal/caselawFrontEndAccess.do?homePage=yes>>

¹¹ <http://ec.europa.eu/civiljustice/jure/login_en.cfm>

¹² <<http://ec.europa.eu/competition/elojade/antitrust/nationalcourts>>

¹³ Currently articles 101 and 102 of the Treaty of the Functioning of the European Union.

¹⁴ <<http://www.reseau-presidents.eu/rpcsje>>

¹⁵ M. van Opijnen, "A Public Index of Case Law References – the End of Multiple and Complex Citations" in: *Legal Knowledge and Information Systems - JURIX 2006: The Nineteenth Annual Conference*, ed. T.M. van Engers (Amsterdam: IOS Press, 2006).

especially if citation rules¹⁶ prescribe that the only overarching clue (the case number) should be left out of the citation in case the decision is published in a law review.

And when a lawyer wants to collect all legal doctrine and case law referring to a specific decision, he has to search – probably full text – for all these different identifiers in all databases – because this decision is cited in so many different ways. The fact that most identifiers use punctuation marks that are interpreted by search engines as specific query instructions adds up to the frustrations of legal research.¹⁷

Due to the possibility of dissemination via the internet, the judiciary was faced with the need to decide on how to identify the published decisions. Some countries (e.g. Germany and Austria) decided – implicitly – to use the traditional ‘triple’. Although this is well-known to lawyers, it has the disadvantages of the notation lacking a formal format and the case number often not being unique over all courts.

In other countries – e.g. in the UK, Norway and the Netherlands – the opportunity was seized to introduce a ‘medium- and vendor neutral identifier’, also defined as a ‘court designated identifier’.¹⁸

Despite the development of these identifiers, the advantages were not always well perceived: new databases – like the aforementioned Caselex and JURE – invented again their own identifiers, often without offering the option to search for the court-designated identifiers. It follows that with the growing number of law reviews and online databases, citing a judgment properly is becoming more and more complex. The more identifiers are invented, the more of them are needed to cite – to enable the reader to find the case in the repository of his choice.

And of course in a cross-border context the problem is multiplied. As a result of the already improved access to foreign decisions, the number of cross-border citations has risen indeed,¹⁹ but which citation rules should be followed then: those of the citing, or those of the cited country? And the more complex, verbose and differentiated the citations are, the more difficult it becomes to develop computertools to assist the lawyers in searching and citing.

2.3 Metadata

The broadened availability of case law should be acclaimed, but improved access does not by definition lead to improved accessibility. Metadata (data describing data) are useful to improve the searchability of case law, but as recital 10 of the ECLI-conclusions indicates, the lack of (the uniform application of) standards hinders effective case law search.

Every database uses its own descriptive fields, develops its own thesaurus (if any), and has its own specific interface the user has to get acquainted with. Most databases are developed with a limited group of users and specific legal issues in mind, and not from the perspective of the average lawyer, consulting a wide variety of sources.

If several databases are searched at the same time, the problem gets even tougher. This is well illustrated by the aforementioned Common Portal of National Case Law. In its first release one could only search with a text field, and it took quite some development efforts to implement just a date filter – which seems to be just one of the more trivial metadata. More

¹⁶ E.g. in the Netherlands: M.H. Bastiaans, *Leidraad Voor Juridische Auteurs 2010* (Deventer: Kluwer, 2010).

¹⁷ See on comparable problems with citing EU legislation: M. van Opijnen, "Searching for References to Secondary EU Legislation" in: *Fourth International Workshop on Juris-informatics (JURISIN 2010)*, ed. Satoshi Tojo (Tokio: 2010).

¹⁸ A. Mowbray, G. Greenleaf and P. Chung, "A Uniform Approach for Vendor and Media Neutral Citation - the Australian Experience" in: *BILETA Citations Workshop: strategies for accessing law and legal information* (Edinburgh: 2000).

¹⁹ M. Gelter and M. Siems, "Networks, Dialogue or One-Way Traffic? An Empirical Analysis of Cross-Citations between Ten European Supreme Courts." Maastricht European Private Law Institute Working Paper No. 2011/03.

substantial refinements like limiting searches to only those decisions applying a specific European regulation, are for the moment completely out of scope, due to the absence of any metadata harmonisation.²⁰

2.4 Short History

Recital 7 reveals the history of the ECLI-conclusions. The EU Council Working Party on e-Justice and e-Law (formerly known as the Working Party on Legal Data Processing) is involved with the accessibility of legal sources on the European and national level. The group functions as a sounding board for the Publications Office on the development of EUR-Lex, initiated the N-Lex portal, and functions as a platform for exchanging experiences in electronic legislative drafting and legal information retrieval.

While the Working Party welcomed all the initiatives that were undertaken to improve cross-border access to national (case) law, it was both the vast range of these initiatives and the lack of coordination that made the Working Party reflect on the necessity for initiatives to prevent the citizen and legal professional from getting lost in this rapidly expanding information jungle.

A task group was formed, which delivered its final report in 2009.²¹ One of the main findings of the task group was that a solid architectural base for the unique and persistent identification and description of judicial decisions was an absolute prerequisite for any more advanced information retrieval tooling. Based on the report of the Task Group, which was adopted by the Working Party, the Council of the EU agreed in December 2009: “*(T)hat a common identification system based on the standardised European Case-Law Identifier (ECLI) should be examined further and that a Dublin core implementation for caselaw should be defined.*”²² Based on this decision on the principles, the Task Group elaborated the details – under supervision of the Working Party and – as mentioned in recital 16 of the ECLI-conclusions – in close co-operation with the Court of Justice, the standardization initiative URN:LEX and the European judiciary networks – the two already mentioned and also the European Network of Councils for the Judiciary. The drafting took one year; the final conclusions were decided upon by the Council of Ministers on 22 December 2010.

3 Solution

3.1 Architectural Basics

As explained above and explicitly stated in recital 11 of the ECLI-conclusions, a centralized European case law database is not envisaged as the solution to the needs of citizens and legal professionals. Instead, in line with the principle of making decentralized and independent systems interoperable, a common, standardized system for identifiers and metadata is needed to facilitate an information architecture capable of improving the searchability, citation and interchange of case law documents.

²⁰ See for comparable problems in legal databases of the EU: Michael Düro, *Crosswalking Eur-Lex : A Proposal for a Metadata Mapping to Improve Access to EU Documents*, Reproduction (Luxembourg: Office for Official Publications of the European Communities, 2009).

²¹ EU Task group on access to case law, *Final Report*2009. 12907/1/09.

²² Council of the European Union, "Conclusions of the Council on European Case-Law Identifier (ECLI)," (2009). 17377/09

3.2 Ontological Levels

The technical annex to the ECLI-conclusions describes the way the ECLI is constructed, but not the specific bibliographic character of it. To fully understand the basic concepts of ECLI and how it should be used, the underlying theoretical concepts are discussed here.²³

When one says: “*Hamlet is the most impressive play that Shakespeare wrote*” obviously some other semantic level is addressed as when one says: “*Last year I borrowed you my Hamlet, can I please have it back?*”

A useful typology to avoid any confusion on what is actually meant by ‘Hamlet’ can be obtained from the Functional Requirements for Bibliographic Records (FRBR).²⁴ This standard makes a distinction between four basic ontological levels to describe bibliographic objects.

1) **Work**

Definition: a distinct intellectual or artistic creation.

This ‘work’ is an abstract level, it describes only the creation as such. ‘Hamlet’ in our first example phrase is at the work level. For a judgment it is the judicial decision resolving the specific legal dispute brought before the court, based on a specific set of arguments. This work level is addressed when one says: “*According to the decision of the European Court of Justice in case C-299/02 (...).*”

2) **Expression**

Definition: the intellectual or artistic realization of a work.

Note that an expression is also an intellectual or artistic product, but that it is derived from the work. Like the work, the expression is also an abstract level: it cannot be touched. An example for Hamlet could be the translation into the Lithuanian language by a specific translator. For a judgment this could be the original wording by judge or clerck, or the summarized and annotated version by a legal publisher. At the Court of Justice of the EU all language versions of a judgment are distinct expressions.

3) **Manifestation**

Definition: the physical embodiment of an expression of a work.

Although the manifestation is a physical embodiment, it is only a specific type of embodiment. A Hamlet example could be the paperback edition from a specific publisher of the aforementioned Lithuanian translation, a case law example could be the PDF-version of the Italian expression of a specific ECJ-judgment.

4) **Item**

Definition: the single exemplar of a manifestation.

This could be the Hamlet book I borrowed, or the PDF case law document that resides in a specific directory on my computer.

To avoid misunderstandings, two additional definitions are needed:²⁵

5) **Identifier**

Definition: a unique number given to a bibliographic object of one of the abovementioned levels.

²³ See on this and the following paragraphs also: M. van Opijnen, "Finding Case Law on a European Scale - Current Practice and Future Work" in: *Legal Knowledge and Information Systems - JURIX 2008: The Twenty-First Annual Conference*, ed. E. Francesconi, G. Sartor, and D. Tiscornia (Amsterdam: IOS Press, 2008).

²⁴ International Federation of Library Associations and Institutions, "Functional Requirements for Bibliographic Records" in: *UBCIM Publications – New Series Vol 19* (1998).

²⁵ Compare: CEN, "CEN Workshop Agreement Metalex (Open XML Interchange Format for Legal and Legislative Resources)," (Brussels: CEN, 2010). CWA 15710:2010 E

6) Citation

The representation of an identifier, with the intention of referring to the bibliographic object.

Traditional identifiers for case law (name of a law review + serial or page number) are expression identifiers. This wouldn't be problematic if a work identifier would be encapsulated within that expression identifier, but this is not the case. The triple court-date-case-number could be defined as a work identifier, but as already discussed, case numbers often don't have an unambiguous syntax, and are not unique.

An example of a true work identifier is the *Bach Werke Verzeichnis* (BWV). Whether used to announce a live performance, to describe the CD on my shelf or to discuss the merits of the masterpiece in general, BWV 244 always refers to the work of the St Matthew Passion. And just as the CD number will not suffice to identify the work played at a live performance, the identification number used for a judicial decision in Caselex or JURE won't let you find the same judgment in Jurifast or a national database.

So, just as the BWV can be used to identify a work of J.S. Bach – whether it's the score, a CD, a video or a live performance – a judgment identifier at the work level could be used to identify the authentic document, a summary, a translated version, and it could also be used in a citation.

3.3 Requirements

The described bibliographic concepts have to be taken into account when designing a sound case law identifier. Also requirements from legal practice and knowledge engineering have to be considered.

1. Work level

Following the bibliographic theory, a case law identifier has to be a work identifier. Whether this work identifier is encapsulated in identifiers on the other levels, or the relation is expressed another way, is not of fundamental relevance.

2. Medium-neutrality

The (type of) medium where a judicial decision is published shouldn't influence the identifier itself. It has to be usable in a paper, web or any other (future) environment. Therefore, it should not contain page numbers, URLs or other medium-specific characteristics.

3. Vendor-neutrality

Everybody should be allowed to use the identifier, so it must be an open standard. Because the judiciary is the source of all judgments, the case law identifier preferably has to be court-designated. Assignment of the identifiers by the courts is the safest way to ensure completeness and uniqueness.

4. Recognizability for humans

Case law identifiers are used in everyday legal writings. Therefore, a legal practitioner has to be able to recognize – and understand – the identifier as such.

5. Recognizability for computers

The use of distinctive formats for the human readable and computer readable representation of an identifier (or the citation thereof) is not recommended.

The use of wordprocessing tools to create sound citations is advisable, but in absence of such aids, handwritten citations have to be understandable by computers, taking into account the fact that lawyers are very sloppy in writing flawless citations.²⁶

²⁶ Research on case law in the Netherlands showed that only 25% of references to secondary EU legislation was compliant with the prescriptions in the styleguides: M. van Opijnen, note 17.

6. **Meaningfulness**

On reading a citation, lawyers want to assess immediately the most important aspects of its relevance: court and time period are the most important. So, preferably these elements should be part of the identifier.

7. **Error-proof**

Given the fact that spelling mistakes are inevitable and lawyers are inclined to shorthand notations, error-proneness should – by design – be reduced to a minimum. Therefore:

- a. Codes for courts are preferable to full names;
- b. The use of characters which are not common to lawyers should be avoided, and preferably the number of different non-alphanumeric characters should be minimized;
- c. The shorter the better.

8. **Compliance with international standards or EU-practice**

For European country codes the Interinstitutional StyleGuide should be used.²⁷ As a minimum, the identifier should also be usable within existing technical standards like HTTP²⁸ and URN.²⁹

9. **Extensibility**

For those who wish, the identifier must be extendable, e.g. to specify a specific paragraph of a decision.

10. **Suited for encapsulating national identification systems**

For acceptance of the identifier it shouldn't be necessary to replace already existing national identifiers (at the work level); instead, it should be possible for national identification systems to be encapsulated in the new identifier. At the same time, as noted in recital 13 of the ECLI-conclusions, participating states should be free to use ECLI as their only identification system.

3.4 Best Practices

When looking at pre-existing national case law identification systems, comparable requirements seem to have been used. Many countries having a court designated identifier, use an abbreviation for the name of the court, the year of the decision and a simple ordinal number. Examples from Finland are KKO:2011:58 for a supreme court decision and KHO:2011:71 for a decision of the supreme administrative court. In Norway a comparable notation is used, Supreme Court decisions have a suffix for the type of decision (e.g. 'HR-2011-1503-U').

Such an indicator is used in Spain too, where it is added to the court code. In 'STS 5231/2011' the first 'S' is for 'Sentencia', 'TS' for 'Tribunal Supremo'. Systems that cover more countries – like the Southern African Legal Information Institute – added a country code to the court code: e.g. 'NALC' in '[2011] NALC 6' means 'Namibia Labour Court'.

The Netherlands has a national case law identifier ('LJN') which is, unlike the other examples, completely opaque (e.g. 'LJN BC4803'). A remarkable feature is the existence of a public database which stores practically all known vendor specific (expression level) identifiers together with this work identifier.³⁰

²⁷ <<http://publications.europa.eu/code/pdf/370000en.htm>>

²⁸ <http://en.wikipedia.org/wiki/Hypertext_Transfer_Protocol>

²⁹ <http://en.wikipedia.org/wiki/Uniform_Resource_Name>

³⁰ See note 15.

3.5 ECLI Syntax

Based on the described requirements and best practices, ECLI is designed as described in the technical annex to the ECLI-conclusions.

ECLI has five constituting components, all of them mandatory, and all separated by colons:

- ‘ECLI’ as the self-descriptor;
- EU country code;
- A national court code;
- The year the decision was rendered;
- An ordinal number, with a maximum of 25 alphanumeric characters or dots.

A valid ECLI could be: ECLI:NL:HR:2011:4563, which would a decision of the Supreme Court in the Netherlands.

Both by lawyers and computers an ECLI can be recognized and interpreted quite easily. ECLIs can exist alongside other (national or commercial) identifiers or even encapsulate them. The ECLI syntax might look quite long, but because all essential information is comprised within the ECLI, the total number of characters used to cite a case will be drastically reduced.

By some it is felt as a restriction that special characters, especially hyphens (‘-’), slashes (‘/’) and whitespace are not allowed in the last part of ECLI, thus reducing the possibilities to insert the case number without conversions. But deciding otherwise not only would have increased the risk of spelling mistakes, it would seriously hinder the use of ECLI within any URN-based-system, where these characters have a specific meaning.

3.6 Metadata

In addition to the identifier, also a set of metadata is described in the ECLI-conclusions. In accordance with the preliminary Council decision from 2009, these metadata are defined within the Dublin Core metadata standard.³¹ Although this standard is already used within some case law databases, interoperability problems arise from the fact that Dublin Core leaves room for different solutions for storing (legal) metadata. Therefore the ECLI-conclusions provide guidance on how to use a subset of Dublin Core for case law documents. The metadata should be added to the physical document (the manifestation and item levels of § 3.2), although some of them are attributes at the work or expression level.

If the document has to be retrievable via the ECLI search interface (to be discussed in § 3.7), nine of these fields are mandatory:

- the identifier of the physical document itself (§ 2.2.a of the annex), e.g. a URL. This identifier can contain the ECLI, but not necessarily;
- the ECLI of the judgment the document contains (§ 2.2.b);
- the name of the court (§ 2.2.c);
- the country in which the court is seated, eventually supplemented with the state or region (§ 2.2.d);
- the date of the decision (§ 2.2.e);
- the language of the document – which is not necessarily the authentic language of the decision (§ 2.2.f);
- the publisher (§ 2.2.g);
- the access rights: public or private (§ 2.2.h);
- the type of decision rendered. It defaults to ‘judicial decision’ (§ 2.2.i).

³¹ <<http://www.dublincore.org>>

The use of eight other – optional – Dublin Core elements is also defined (§ 2.3 of the annex): title, subject, abstract, description, contributor, date issued, references to other legal documents and a replacing ECLI in case of administrative errors.

The title field can be used for the names of the parties to the case, for this is common practice in some (especially common law) countries. It should be noted though that participants to the ECLI-system are in no way obliged to disclose the names of judges or parties to the case if do not wish to.

3.7 ECLI Website

To be a fully functioning system at the European level, recital 20(e) of the ECLI-conclusions and § 4 of the annex call for an ECLI-website, which should be part of the European e-Justice portal.³² This portal was called for by the European e-Justice Action Plan,³³ to provide multilingual access to national and European legal information and procedures, for citizens, businesses, legal professionals and governmental and judicial agencies.

According to recital 20(f) and § 5 of the annex: *“There should be a common search interface for searching national case law by ECLI and (some of) the metadata.”* This interface will be part of the ECLI-website; the European Commission will be responsible for the technical implementation. Following the guidelines of the European Interoperability Framework³⁴ and the European e-Justice Action Plan this ECLI search interface should be virtual in nature; no central database is to be developed. The ECLI search interface is meant to find any case law document having an ECLI and the essential metadata. The search should not be limited to databases of national courts; in the years to come also European databases, commercial websites and academic repositories have to be indexed.

4 National Implementation

Not only EU Member States but also candidate countries and Lugano States are encouraged to introduce ECLI (recital 20(h)). From § 1.1.b.iv of the annex it can be even learnt that also international organizations are invited to join to system – the Boards of Appeal of the European Patent Office will probably be the first. Also the Court of Justice of the EU will assign ECLIs to their case law.

§ 3.1.1 of the annex states: *“Each Member State using the ECLI must appoint a governmental or judicial organization as the national ECLI-coordinator.”*

This ECLI-coordinator is responsible for the choices made for the way ECLI will be implemented at the national level. Issues to be decided are the list of courts and tribunals (and their abbreviations) allowed to assign ECLIs, and the scheme of document types. But it is to be expected that the national coordinator also decides on the way the ordinal part of the ECLI is formatted (§ 1.1.e).

The encapsulation of existing national identification systems within ECLI is recommended in § 3.1.3, and can therefore also be regarded as a responsibility of the national ECLI-coordinator. The same goes for the provisions in § 3.2: § 3.2.2 leaves it to the Member State to define different timelines for different courts to join the ECLI-system. In § 3.2.3 it is recommended – without any obligation – to use ECLI within documents themselves – to facilitate easy referral. And § 3.2.4 recommends using ECLI for all decisions rendered, and

³² <<https://e-justice.europa.eu>>

³³ Council of the European Union, "Multi-Annual European E-Justice Action Plan 2009-2013," in *OJ C 75, 31-03-2009, p. 1-12*.

³⁴ European Commission, "Towards Interoperability for European Public Services, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Annex 2: European Interoperability Framework (Eif) for European Public Services," in *COM(2010) 744 final*.

not only for those which are published by the courts themselves – to avoid the situation that cases which are published by others do not have an ECLI. For comparable reasons § 3.2.5 suggests the use of ECLI for historical records, although this might be quite difficult in many Member States. Finally, the national ECLI-coordinator is also responsible for maintaining the information on national implementation on – at least – the ECLI website.

Because the ECLI-conclusions do not have any legislative force – like a directive or regulation – the implementation depends fully on the willingness of Member States to introduce the system.

On 30 September 2011 the Association of Councils of State organized, together with the Council of the EU and the Polish Presidency of the EU a seminar solely devoted to ECLI.³⁵

On preparing the seminar a questionnaire was sent out; the replies thereon give a first impression on the actual state of play regarding the implementation of ECLI.³⁶

Spain, Slovenia, the Netherlands, Denmark, France and the European Patent Office are already seriously working on the implementation, while some other countries (at least Germany, Hungary, Czech Republic, Portugal, Lithuania, Sweden and Estonia) are considering the introduction.

Furthermore, the ECLI website can be expected to go live shortly, and studies on the technical implementation of the search interface have started.

Given the fact that implementation requires time and technical adaptations, the work already in progress is encouraging. The coming years will demonstrate the viability and usefulness of the ECLI framework.

³⁵ This paper was concluded on 31 August 2011, therefore the conclusions of the seminar could not be included.

³⁶ The replies to the questionnaire are available on
<http://www.aca-europe.eu/en/colloquiums/sem_2011_Warsaw.html>