

Questionnaire by ACA on ECLI for Conference in Warsaw, September 2011

Member State: Germany

Court: Federal Administrative Court, Leipzig

Last Name: Butz

First Name: Cornelia

Title: Dr.

E-mail address: Cornelia.Butz@bverwg.bund.de

1. Are you aware of the ECLI system? If yes, how did you hear about it?

Yes, our court is aware of the ECLI since May 2010. The Federal Justice Ministry sent the "Council Conclusions" to all Supreme Federal Courts in Germany. The Ministry itself was represented in the e-Law working group which participated in enacting the Council Conclusions.

Also in May 2010, The Federal Justice Ministry sent a questionnaire to all Supreme Federal Courts asking for opinions on possible positive and negative effects in case of the introduction of the ECLI system in Germany.

2. After reading the text of the Council conclusions, are there items you do not understand or on which you would like further information? If so, please specify.

I would like further information concerning

-- § 2 Metadata, even though this data is not a compulsory part of the ECLI system.
§2 Metadata 3) b) "Subject": "... a scheme containing values for ... administrative law."

- Did the task group have a particular scheme on the European level in mind or can this scheme be national or even local (for instance used by one particular court)?
- If it can be local, who will be eventually responsible for the correct translation into all relevant EU-languages?
- Will metadata for ECLI be available in all relevant EU-languages or only in the national language of the country of origin?
- If the decision/judgment is provided in more than one language, who is responsible for the translation? (for instance the e-justice-portal, the national ECLI-agency or the court whose judgment is being published?)

§2 Metadata 3)d) "Description": "... be it in the form of keywords or headnotes."

- Did the task group have a particular system in mind, like KWIC (keywords in context), KWOC (keywords out of context) or EuroVoc?

- I would like further information concerning the relationship between IV. Conclusions 20 a) and IV. Conclusions 20 b):
- Do the Conclusions suggest that in future every decision/judgment of a court of a member state which has decided to introduce ECLI must have the five components listed in §1 a)-e), no matter whether this decision/judgment is published or not?
- Do the Conclusions suggest that in future every decision/judgment of a court of a member state which has decided to introduce ECLI and wants to publish these decisions on a public website and furthermore wants to make these documents searchable by the interface must use not only the five components listed in §1 a)-e), but additionally must provide the metadata listed in §2 2) a)-i)?

3. Are there any barriers to the implementation of such a system in your court (or the courts of your Member State)? Technical? Other? Please specify.

Technical barriers:

By introducing ECLI the courts will not be provided with more staff to do the extra work. Therefore, the aim must be to generate as much metadata as possible automatically. The IT-system in place however, cannot at present record the different types of metadata making up the ECLI system.

IT-system-changes are necessary before ECLI can work. This holds also true for the software which is being used to publish the decisions/judgments on the court's website, because templates need to be adjusted to the ECLI system.

Changes are necessary as far as the internal work-flow is concerned:

At present, only about 1/3 of all decisions/judgments of the Federal Administrative Court is processed by the documentation unit for entry into the national database and therefore provided with metadata. In future, all decisions/judgments need to be provided with ECLI.

The above mentioned necessary changes definitely require additional financial means for the courts. More staff might also be needed to administer the ECLI system within the courts.

Other barriers:

In Germany, there is no free national legal database offering decisions/ judgments to the public. At present, different court websites need to be linked with the e-justice-portal in order to offer decisions/judgments from various courts. What might be even more confusing for the general public is the fact that almost each court has its own publishing policy concerning the availability of decisions/judgments through its website. Especially long-term-availability of decisions/judgments is not guaranteed.

4. What adaptations are needed in your court (or the courts of your Member State) to implement the ECLI system requirements?

In our court as well as in other German courts technical and work-flow adaptations are needed before the introduction of the ECLI system, see answers to question 3.

Comment:: There is agreement amongst the superior courts in Germany that the original document (decision/judgment sent to the parties of the law suit) should be an ECLI-free document.

5. What meta-data a) required or b) optional for ECLI are already in place in your court (or the courts of your Member State)?

All decisions/judgments of the supreme courts and lower courts which are documented for the national commercial database juris comprise the following meta-data:

a) required:

- abbreviation for the court (for instance BVerwG), including the name of the chamber/division (for instance 4. Senat)
- the year/date of the of the decision (for instance 2010-11-23)
- type of decision rendered (for instance "Beschluss")

b) optional:

- subject (the Federal Administrative Court indicates a subject for each published decision/judgment on its website)
- abstract (decisions/judgments of BVerwG, BFH, BSG which are uploaded to the database Jurifast are provided with an abstract)
- contributor (names of judges are mentioned on all decisions/judgments published on the website of the BVerwG)
- description (all decisions/judgments of the supreme courts and lower courts which are documented for the national commercial database juris comprise keywords)

6. Are there any obstacles for your court (or the courts of your Member State) to extend the available metadata?

The main obstacle will be the financial one to make the IT-systems within the courts ECLI-compatible. Staff to supervise the ECLI-process might also be a problem, because for most courts ECLI is just another set of meta-data on top of the meta-data that is already being used.

7. Is there a national coordinating authority in your Member State? If yes, please provide coordinating entity's name and contact details. If not, which organisation do you think should play this role?

At present, the national coordinating authority for ECLI in Germany is a department at the Ministry of Justice (BMJ, Referat ZB2). The head of this department is Dr. Jutta Figge (e-mail: Figge-Ju@bmj.bund.de).

8. Do judicial institutions in your Member State cooperate on implementation of ECLI standard meta-data? Please specify, especially if you have examples of good practice.

For the time being there is no cooperation on implementation of ECLI in Germany, since implementation is not yet underway. However, it is very likely that the five federal supreme courts and the constitutional court will be cooperating in introducing ECLI as soon as implementation is about to start. Presently, examples of good practice are still lacking.

9. Are there interoperability problems between ECLI and standard meta-data on the one hand and European or national semantic web initiatives on the other hand?

For the time being there are no interoperability problems, because implementation of ECLI has not started in Germany yet.

10. In your Member State, are there already plans to implement ECLI? Please tick the relevant box.

Implementation already underway

Implementation to start in the short-term (within 1 year)

Implementation to start in the medium-term (2-5 years) **X**

Implementation to start in the long-term (> 5 years)

No specific plan

Additional comments: According to the Ministry of Justice representatives, Germany has opted for the medium-term solution. This is due to the fact that there are plans to found a competence center for legal documentation and information (this is not the correct actual name) which will eventually take over from the Ministry and will act as the national coordinating authority for ECLI in the future.

11. Are you planning to apply ECLI to all case law, retroactive /legacy, or will you limit its use to the new case law?

This problem has not been discussed yet, but most likely ECLI will only be used in connection with the new case law.

12. In case your court (or the courts of your Member State) is already implementing ECLI, to share information on best practice, please provide additional information.

This question does not apply, for so far there is no implementation of ECLI in Germany.