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Current state of publication of legislation in the EU Member States

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Introduction

The submitted document is based on the answers of the Member States to the 'Questionnaire on the organisation and operation of official gazettes in the European Union' (April 2004), on the answers to additional questions (e-mail of April 2005) and on supplementary information given by particular Member States. The 'Working Group Project 6 (Directory and Guide of Official Gazettes)' of the European Forum of Official Gazettes has discussed the structure of the Directory and the Guide and has decided to present this document 'Current state of publication of legislation in the EU Member States' among others to the 2005 Copenhagen meeting of the forum. The wording of the text and the analysis given in the tables is in my own responsibility.

Werner Robert Svoboda

I. A comparative view

1. Authorities responsible for the publication of the official gazettes

In the EU Member States, the responsibility concerning the official gazettes lies, in 10 countries, with the Prime Minister and, in nine countries, with the Minister for Justice. It would be interesting to explore the historical reasons for some countries to choose the Prime Minister solution and for others to choose the Ministry of Justice solution. The Minister for Finance plays a role as representative of the shareholder if the organisation publishing the official gazette is in the form of a private company. In this case, it is usual for another ministry to have responsibility for the content of the official gazette.

In the EU, practical responsibility for the production of the official gazette (legal gazette) is still by far within the public sector, either public organisations themselves or private law companies owned by the public sector — the latter of which is a rather recent development.

The printing of the official gazette was traditionally also carried out within the public sector; this activity is now predominantly carried out by the private sector (sometimes in form of privatised public organisations owned by the private sector).

2. Form and nature of the organisations publishing the official gazette

The organisations publishing the official gazette (legal gazette) are in 10 Member States part of a ministry, in seven Member States a governmental agency and in eight Member States a private company owned (partially) by the government. The majority of shares in the company are held within the private sector in only one case (Germany). There is at the moment no case where such a private company is owned completely by the private sector, but this could be possible in the near future, for example in Germany.

The future trend seems to be to create, for this purpose, private companies owned by the public sector (in reality to ‘privatise’ former public sector organisations) and slowly to place a minority of the shares in the hands of the private sector.

3. Content of the official gazette

In some European countries (e.g. the EU, Belgium, Greece, Italy, Portugal and Slovenia) the official publications are rather concentrated in one official gazette, usually with many series or parts. In other European countries (e.g. the Czech Republic, Denmark, Germany, Austria and Poland), there is a legal gazette that concentrates on legislation only and other gazettes that contain the remaining information which has to be published officially by law. It would be an interesting task to have a closer look at the different historical developments of such phenomena in Europe and to get an idea of the reasons for these developments.

One particular case is the Official Journal of the EU itself. To a (central) European lawyer, many things concerning the official publication area of the EU seem to be strange. The first fact to be mentioned is that the determination by law of what is published in the Official Journal of the European Union is very weak. Other facts are the rule that directives not addressed to all Member States must not be published mandatory in the L (legislation) series of the Official Journal, and that primary legislation of the EU is not published in the L series but in the C (communications) series of the Official Journal, etc.

4. Price of the annual subscription to the official gazette

In 19 Member States (including the EU itself), legislation in the form of online databases is free of charge and, in five Member States, this information is free of charge with some restrictions. Only in Lithuania is a fee asked for the use of legal online databases. (Poland has up to now no such database.) Although information on legislation in the form of databases is now practically free of charge in Europe, the soundness of this practice might be questioned; information on legislation in the form of unconsolidated legislative acts is specialist information for use by professionals and is not really suited to use by the general public.

In the case of an official gazette containing not only legislation but also other types of information to be published officially by law (mainly company data) or advertisements (e.g. in Luxembourg, Hungary, Portugal, Slovenia), the revenue derived from publishing the other types of information usually subsidises the publication of the legislation sold below costs.

However, if legislation is provided free of charge in online databases, it makes sense to provide it in paper form or in CD-ROM/DVD form at least to recover costs, rather than to subsidise these media too. Exceptions might be reasonable, where — as in Switzerland — the CD-ROM containing the legislation is distributed free of charge because, taking into account the given market size, the administration of selling the CD would be more expensive than the revenue when asking a reasonable and not a discriminating price for it.

5. Workflow and exchange of information between the executive/legislative authority and the official gazette

A seamless electronic workflow between the public administrative or legislative authority and the government gazette publisher (or database producer) is indicated by seven Member States, i.e. the minority. When taking into account that probably in most of these cases the seamless workflow does not really cover all legislation (i.e. at least 95 %), this kind of organising input is still largely the exception in Europe.

It seems that, in reality, there are two main problems preventing true solutions for a country. In public administration, numerous bodies generate draft legislation proposals and all these bodies must be coordinated. In addition to these problems, there is also the pressure of time, this being particularly acute in the parliamentary handling of legislative proposals (policy-making calls for amendments at very short notice), so the obvious thing to do is to bypass long and drawn-out formal procedures.

The vast majority of European countries have drawn the relevant conclusions and, in addition to the electronic medium, allow or tolerate a hard-copy interface. Nevertheless, much headway can be expected in the near future in this area.

6. The use of techniques based on XML/SGML

Perhaps one of the most important technical developments, both generally and in terms of legal information, is the Extensible Markup Language (XML), which allows the form and content of text and text components to be marked up. Just how important and necessary this development was for the legal sector can be gauged from the fact that, as long ago as the early 1970s, comprehensive 'category schemes' had been developed for legal-type documents and 'predecessors' of XML for legal texts developed (particularly in the early 1970s in Austria and in the mid-1980s in Norway).

XML is used in 15 Member States (including the EU itself), but its use in many cases does not cover the whole field of legislative documents, and the potential of XML is by far unexploited. If the full potential of XML is to be used, definitions of XML schemes are needed, and in Europe this is the exception (EU, Denmark, France, Austria and Slovenia) rather than the rule in the legal sector.

One of the most important tasks at present is to develop XML schemes for legal document types that are as uniform as possible across Europe. The ball was recently set in motion (e.g. the 'Working Group XML' of the European Forum of Official Gazettes) and hopefully the efforts will result 'at least' in a uniform metalanguage.

7. Official media and consolidated legislation

The publication of legislation in online databases with official character is a very recent development, though in many other areas of law (e.g. land registration, company registration, bankruptcy, etc.) official electronic publication has long been a reality.

Nevertheless, in six Member States (Belgium, Estonia, France, Cyprus, Austria and the United Kingdom), the electronic version of the official gazette has official character. Nearly all other Member States are discussing the possibility of having official online versions of the official gazette. In some countries, these plans are well in progress (e.g. Slovenia).

From a practical point of view, the question as to which is the legally binding or at least ‘official’ text of a law is of (nearly) no importance. For many, many years, the legal profession has used legislation in the form of (mainly privately published) books and for some years also in the form of offline and online databases. Of course, this is only true in a legal culture, where democratic principles are not heavily violated, but — at least I think so — this is the case in the EU Member States.

In this framework, a point worthy of discussion is whether publication with legal effect or official character should be restricted to just the one medium (online databases) or to both (online and paper). From a formal point of view, the official character should be granted to one medium only, as the danger with two media with equal status is that discrepancies will arise between the two. In all probability, this is primarily a technical question of workflow. Theoretically, one could prevent discrepancies in content between the two media, but there will always be exceptions to the rule. What would happen if, exceptionally, discrepancies were to arise? All European countries have a court that makes definitive rulings on such matters, settling them in the tradition of legal argumentation. This being the case, the question as to whether the official character should be restricted to a single medium is primarily one of acceptance by society.

From a practical point of view, it is much more important to provide the legal profession with consolidated legislation — at least in countries where many amendments to the laws are made — as the amendments themselves are very often not understandable as published in the official gazette. Consolidated legislation exists in the form of online databases in 10 Member States. In four countries, this consolidated legislation exists but is not official; in two countries it is ‘semi-official’; and in four countries it has official character.

The electronic publication of legislation and its impact and consequences is examined by a working group of the European Forum of Official Gazettes and it is envisaged that a report on the state of the art and open questions is presented at the Copenhagen meeting of the forum in 2005.

8. The copyright status of legislation and of the layout of the official gazette

There is no copyright protection for legislation in 22 Member States; only Ireland and the United Kingdom have such protection, and in the United Kingdom the reuse of legislation is subject to waiver. Practically, this difference is of no importance, because in the United Kingdom the waiver is handled very liberally.

Concerning the copyright protection of the layout of the official gazette, there seem to be very different views and respectively some uncertainty in the Member States. If there is no explicit regulation concerning the copyright protection of the layout, it is principally uncertain if the layout of the official gazette reaches the level of 'originality' usually asked by the national copyright legislation. Eleven Member States say that they have no copyright protection for the layout of the official gazette. Copyright protection for the layout of the official gazette exists in eight Member States and an additional three Member States have a copyright protection with a compulsory licence. Three Member States have different solutions (see footnotes 1, 3 and 5 in Table 8).

II. Tables

Table 1: Authorities responsible for the publication of the official gazette

Name of the publishing organisation		Responsible ministry		
		Ministry of Justice	Prime Minister ⁽¹⁾	other
EU	Office for Official Publications of the European Communities			Management committee ⁽²⁾
BE	Belgisch Staatsblad/Moniteur belge/ Belgisches Staatsblatt	yes		
CZ	Ministerstvo vnitra České republiky Odbor komunitárního práva			Ministry of the Interior
DK	Civilstyrelsen	yes		
DE	Bundesanzeiger Verlagsgesellschaft mbH	yes		
EE	Riigi Teataja Kirjastus		yes	
EL	Ethniko Typografio			Ministry of the Interior
ES	Boletín Oficial del Estado	yes		
FR	Direction des Journaux officiels		yes	
IE	Office of Public Works Government Supplies Agency			Ministry of Public Works
IT	Ministero della Giustizia — Direzione della Gazzetta Ufficiale della Repubblica Italiana	yes		
CY	Government Printing Office			Ministry of Finance
LV	Latvijas Vēstnesis, BO VSIA	yes		
LT	Valstybės įmonė Seimo leidykla „Valstybės žinios“			Parliament
LU	Ministère d'État — Service central de législation, éditeur du Mémorial		yes	
HU	Magyar Hivatalos Közlönykiadó		yes	
MT	Dipartiment ta' l-Informazzjoni		yes	
NL	SDU Uitgevers BV			Ministry of the Interior ⁽³⁾
AT	Bundeskanzleramt, Verfassungsdienst Wiener Zeitung GmbH		yes	
PL	Rządowe Centrum Legislacji — „Monitor Polski”		yes	
PT	Imprensa Nacional — Casa da Moeda, SA		yes ⁽⁴⁾	
SI	Javno podjetje Uradni list Republike Slovenije d. o. o.		yes	
SK	Ministerstvo spravodlivosti Slovenskej republiky	yes		
FI	Edita Publishing Oy	yes ⁽⁵⁾		
SE	Granskningsenheten, Justitiedepartementet	yes		
UK	Her Majesty's Stationery Office ⁽⁶⁾		yes	

⁽¹⁾ Ministries and services such as the State and Federal Chancellery, the Secretary-General of the Government, the Ministry of State and the Ministry of Presidency have been put under the larger umbrella of 'Prime Minister'.

⁽²⁾ The Interinstitutional Management Committee consists of the Secretaries-General of the EU institutions.

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- (³) The Ministry of Finance represents the shareholders.
- (⁴) There isn't a responsible minister; however, the Minister for Finance nominates a representative to exercise the government rights as a shareholder. The activities of the official gazette are supervised by the Prime Minister.
- (⁵) The Department of Central Administration in the Ministry of Justice is responsible for publishing the official gazette, the Ministry of Finance represents the shareholder.
- (⁶) HMSO is part of the Department of Her Majesty's Office of Public Sector Information within the Cabinet Office.

Table 2: Form and nature of the organisations publishing the official gazette

	Part of a ministry	Governmental agency	Private company owned by the government	Private company partly owned by the government	Other
EU					yes ⁽¹⁾
BE	yes				
CZ	yes				
DK	yes				
DE				yes (35,1 %) ⁽²⁾	
EE		yes			
EL		yes			
ES		yes			
FR		yes			
IE		yes			
IT	yes				
CY	yes				
LV			yes		
LT			yes		
LU		yes			
HU			yes		
MT	yes				
NL			yes		
AT	yes				
PL		yes			
PT			yes		
SI				yes (58,13 %) ⁽³⁾	
SK	yes				
FI			yes		
SE	yes				
UK	yes				

⁽¹⁾ The Office for Official Publications of the European Communities is the publishing house of the institutions and other bodies of the EU. The Publications Office, whose current organisation and operation are laid down by an interinstitutional agreement (OJEU L 183, 22.7.2000, p. 12), is governed by a management committee on which the Secretary-General of each institution is represented.

⁽²⁾ The remaining shares are held by German publishing houses.

⁽³⁾ The remaining shares are mainly held by small partners and funds.

Table 3: Content of the official gazette

	Laws and regulations	Treaties	Parliamentary documents	Court decisions	Company data	Calls for tender	Other documents
EU	yes	yes	yes	yes		yes	yes
BE	yes	yes		(yes) ⁽¹⁾	yes	yes	yes
CZ	yes	yes		(yes) ⁽¹⁾			
DK	yes	yes					
DE	yes	yes					
EE	yes	yes		yes			yes
EL	yes	yes		yes	yes	yes	yes
ES	yes	yes				yes	yes
FR	yes	yes		yes			yes
IE	yes	yes			yes		
IT	yes	yes		yes	yes	yes	yes
CY	yes	yes		yes	yes		yes
LV	yes	yes	yes	yes	yes		yes
LT	yes	yes		yes			yes
LU	yes	yes		yes	yes		yes
HU	yes	yes		(yes) ⁽¹⁾	yes		yes
MT	yes	yes			yes	yes	yes
NL	yes	yes			yes	(yes) ⁽¹⁾	yes
AT	yes	yes		(yes) ⁽¹⁾			yes
PL	yes	yes		(yes) ⁽¹⁾			yes
PT	yes	yes		yes	yes	yes	yes
SI	yes	yes		yes	yes	yes	yes
SK	yes	yes					
FI	yes	yes					yes
SE	yes	yes					
UK ⁽²⁾	–	–	–	–	–	–	–

⁽¹⁾ In brackets (yes) if only a few (selected) documents are published; for example the decisions of the ‘Constitutional Court’ concerning the validity of legislation.

⁽²⁾ The texts of the primary and secondary legislation are not published in an official gazette, but separately as individual acts, statutory instruments, etc.

Table 4: Price of the annual subscription to the official gazette ⁽¹⁾⁽²⁾⁽³⁾

	On paper		On CD/DVD ⁽⁴⁾		Online	
	Legislation	The whole official gazette	Legislation	The whole official gazette	Legislation	The whole official gazette
EU ⁽⁵⁾	1 000	1 000	450 ⁽⁶⁾	750	free	free
BE					free	
CZ	400	400			free ⁽⁷⁾	free
DK	201	406	no	no	free	
DE	84	168	43		partly free ⁽⁸⁾	
EE	103	433	no	no	free ⁽⁹⁾	
EL	545	3 808	450	1 175	partly free ⁽⁸⁾	
ES	216 ⁽¹⁰⁾		216		free	
FR			144 ⁽⁶⁾		free	
IE					free	
IT					partly free	
CY					free	
LV					partly free ⁽¹¹⁾	
LT	103	186	115 ⁽⁶⁾		83	162
LU					free	
HU	363				free	
MT					free	
NL					free	
AT	474 ⁽¹²⁾	474	no	no	free ⁽⁹⁾	free
PL					no ⁽¹³⁾	
PT					partly free ⁽⁸⁾	
SI	110	110	59	59	free	122
SK	301	301			free	free
FI					free	
SE	120	120	no	no	free	free
UK	⁽¹⁴⁾	⁽¹⁴⁾			free	

⁽¹⁾ Indicated is the price of the official gazette containing the legislation ('legal gazette' with laws, regulations, treaties) and the price of the whole official gazette (all parts/series).

⁽²⁾ The price is given for one subscription in 2004. Any kind of discount (for the public sector, for more than one subscription of an organisation, etc.) is not taken into account.

⁽³⁾ All prices are given in euro excluding VAT.

⁽⁴⁾ If the CD/DVD is issued only once a year for the whole year, it is not taken into account.

⁽⁵⁾ The S series (public calls for tender) is no longer published on paper but only on CD (twice weekly) and online. From 2006 onwards, the EU legislation (L series) can be subscribed to separately and will cost EUR 700; subscription to the separate C series will cost EUR 400; subscription to the S series will cost EUR 360; and the L + C series on CD will cost EUR 500.

⁽⁶⁾ Monthly issues.

⁽⁷⁾ The official gazette for the seven most recent days is available free of charge.

⁽⁸⁾ Read-only version, no printing is possible, free of charge.

⁽⁹⁾ The online official gazette, as well as the online consolidated legislation, is free of charge.

⁽¹⁰⁾ One DVD is delivered with the paper version, containing the official gazette for the whole year.

⁽¹¹⁾ Consolidated version of the legislation.

⁽¹²⁾ Up to 4 000 pages; when exceeding the page limit of 4 000 pages the additional pages are invoiced accordingly (the average amount of pages per year is usually higher than 4 000).

⁽¹³⁾ There is no legislative online database in Poland.

⁽¹⁴⁾ The texts of primary and secondary legislation are not published in an official gazette, but separately as individual acts, statutory instruments, etc. The subscription to the paper version of primary and secondary legislation is possible by type of document (e.g. acts of parliament) or by subject. The price of an item of for example 100 pages is about EUR 20.

Table 5: Workflow and exchange of information between the executive/legislative authority and the official gazette

	Seamless workflow	Exchange of information between					
		executive/official gazette			legislative/official gazette		
		paper	electronic	both	paper	electronic	both
EU	partially ⁽¹⁾			yes			yes
BE	no			yes			
CZ	no			yes			yes
DK	yes					yes	
DE	no ⁽²⁾	yes			yes		
EE	yes			yes			yes
EL	yes			yes			yes
ES	no			yes			
FR	no			yes			yes
IE	no			yes			
IT	no	yes			yes		
CY	no			yes			yes
LV	no			yes			yes
LT	yes			yes			yes
LU	no			yes			yes
HU	yes			yes			yes
MT	no		yes				yes
NL	no ⁽³⁾			yes			yes
AT	yes					yes	
PL	no	yes			yes		
PT	no			yes			yes
SI	no			yes			yes
SK	no			yes			yes
FI	no		yes			yes	
SE	no		yes			yes	
UK	yes ⁽⁴⁾			yes			yes

⁽¹⁾ Projects are under way aiming to establish such integrated and seamless workflows.

⁽²⁾ There are several projects to install electronic workflows.

⁽³⁾ For some parts of the official gazette, an integrated workflow exists.

⁽⁴⁾ Drafting systems are used for the production of bills before parliament, which once they have been passed gain royal assent and are then transmitted electronically for printing, publication and loading onto the Internet. In terms of statutory instruments, a single electronic template is used for drafting, ministerial approval, registration and subsequent printing.

Table 6: The use of techniques based on XML/SGML

	Use of XML/SGML	DTDs	XML schema	Control of correct structure
EU	yes		yes	
BE	no			
CZ	no			
DK	yes ⁽¹⁾		yes	
DE	yes ⁽²⁾	yes		
EE	yes	yes		
EL	no			
ES	yes			yes
FR	yes		yes	
IE	no			
IT	yes	yes		
CY	no			
LV	no			
LT	yes			
LU	yes			yes
HU	yes			yes
MT	no			
NL	yes	yes		
AT	yes		yes	
PL	no			
PT	no			
SI	yes		yes	
SK	no ⁽³⁾			
FI	yes	yes		
SE	no			
UK	yes ⁽⁴⁾	yes		

⁽¹⁾ The Danish Parliament and the Secretariat for Legal Information are working on a joint project concerning the use of XML in the production and dissemination of Danish legislation.

⁽²⁾ The *Bundesgesetzblatt* is partly XML based.

⁽³⁾ The private company providing printing services uses XML.

⁽⁴⁾ SGML is currently the format for the delivery of the end product from the various drafting systems in use. A single XML schema is being prepared which will be the format to be used in all future legislative drafting systems.

Table 7: Official media and consolidated legislation

	Is the electronic official gazette official?	Consolidated legislation		
		paper/status	online/status	CD/status
EU	no			
BE	yes ⁽¹⁾			
CZ	no	yes/official	yes/not official	no
DK	no	no	yes/not official	no
DE	no	no	yes/not official	yes/not official
EE	yes ⁽¹⁾		yes/official	
EL	no	yes/semi-official		
ES	no	yes/official	yes/official	yes/official
FR	yes ⁽¹⁾	yes/semi-official	yes/semi-official	no
IE	no			
IT	no			
CY	yes ⁽¹⁾			
LV	no			
LT	no	yes/official	yes/official	yes/official
LU	no			
HU	no	yes/official	yes/official	yes/official
MT	no			
NL	no			
AT	yes ⁽²⁾	no ⁽³⁾	yes/semi-official	no
PL	no			
PT	no			
SI	no ⁽³⁾ ⁽⁴⁾	no ⁽³⁾	no	no
SK	no			
FI	no			
SE	no	no	yes/not official	no
UK	yes ⁽¹⁾	no	no ⁽⁵⁾	no

⁽¹⁾ The electronic version and the paper version of the official gazette are official.

⁽²⁾ Only the electronic version of the official gazette is official, not the paper version.

⁽³⁾ There is a semi-official register of the law in force.

⁽⁴⁾ There are concrete plans to make the electronic version of the official gazette legally binding.

⁽⁵⁾ A UK statute law database containing the revised and updated texts of all primary legislation from 1235 to date is expected to be made available during 2006.

Table 8: The copyright status of legislation and of the layout of the official gazette

	Copyright for legislation				Copyright for the layout			
	no ©	© + licence	©	other	no ©	© + licence	©	other
EU				x ⁽¹⁾				x ⁽¹⁾
BE	x				x			
CZ	x						x	
DK	x				x			
DE	x					x		
EE	x				x			
EL	x						x	
ES	x						x	
FR	x				x ⁽²⁾			
IE			x		x			
IT	x						x	
CY	x				x			
LV	x						x	
LT								
LU	x				x			
HU	x						x	
MT	x				x			
NL	x							x ⁽³⁾
AT	x				x			
PL	x						x ⁽⁴⁾	
PT	x					x		
SI	x				x			
SK	x					x		
FI	x				x			
SE	x							x ⁽⁵⁾
UK			x ⁽⁶⁾				x ⁽⁷⁾	

⁽¹⁾ EU legislation is copyright protected under the legislation of the country of first publication (i.e. Luxembourg). However, legislative material is treated as being in the public domain for end users.

⁽²⁾ The form of the consolidated texts and of the CD manufactured by the Journal officiel are protected by copyright.

⁽³⁾ The total concept is protected by copyright.

⁽⁴⁾ The names and the first pages of the official gazette are protected.

⁽⁵⁾ The name and the abbreviation of the official gazette are protected; the layout of the official gazette could be protected, but the Swedish government has not claimed that protection.

⁽⁶⁾ Whilst Crown copyright is asserted in all legislation its reuse is subject to waiver.

⁽⁷⁾ The Crown asserts ownership of the copyright in the layout and format of the official gazette.