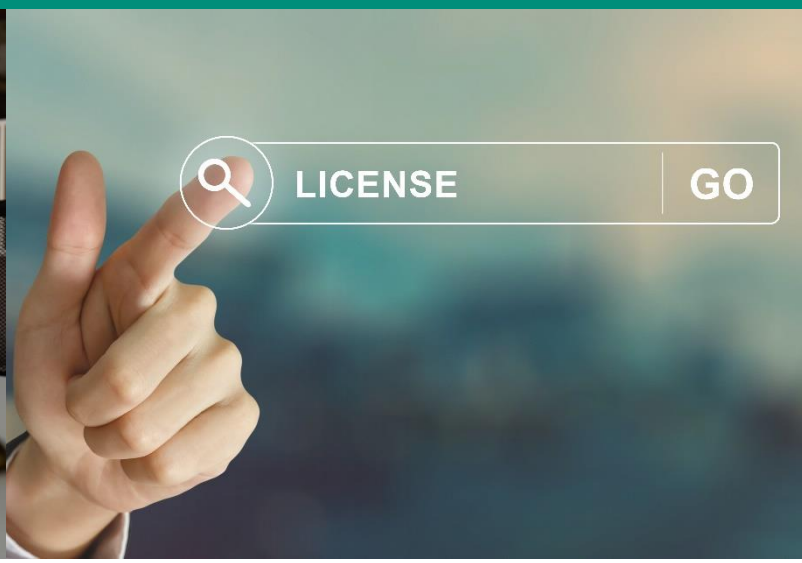
Licensing of Reuse of Judgments: Analysis of Selected European Jurisdictions

Fostering transparency of judicial decisions and enhancing the national implementation of the European Convention on Human Rights



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Licensing of Reuse of Judgments: Analysis of Selected European Jurisdictions

Fostering transparency of judicial decisions and enhancing the national implementation of the European Convention on Human Rights

Øystein Flø Baste, University of Oslo
Samson Y. Esayas, BI Norwegian Business School
Malcolm Langford, University of Oslo

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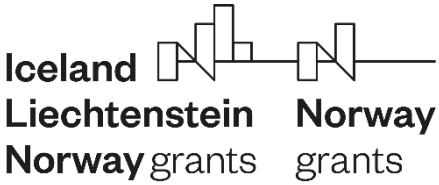

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SUMMARY

The online publication of judgments by states can strengthen the rule of law and democracy, by enhancing transparency and accountability, ensuring legal consistency, and improving access to legal services through new data-driven technologies. However, it raises also significant concerns. The reuse of judgments poses risks for respect for privacy, the fair public administration of justice, and intellectual property rights – which may be complicated by the increasing use of AI. Licenses can play a crucial role in mitigating and managing these risks when judgments are made available online.

This report examines how licenses are employed in selected European countries to govern the reuse of judgments published online. After charting how licences are increasing used to regulate open government data and providing and overview of relevant European legislation, the report analyses the framework and practice in five countries: UK, France, Estonia, Finland and Norway.

Drawing on desk research and interviews with key actors, we analyse each country along four main vectors: (1) requirement of a licence; (2) approval process; (3) terms and conditions for reuse; and (4) technical conditions for reuse. We also analyse the broader governance of open judgment data, including the existence of monitoring and enforcement mechanisms, and the background context in each country. The latter includes the current volume of published judgments and whether there are felt needs to encourage or restrain the emergent legal technology sector.

The report finds that there are significant differences in licensing approaches among the countries, even if they share some common features. In some jurisdictions, there is almost no regulation of reuse while in others there specific licensing requirements concerning privacy and responsible AI use, while approval processes or technical restrictions govern bulk use for computational use.

Based on the findings, the report presents three recommendations to advance the development of licensing practices in Europe. These are to: (1) develop national policies for licensing arrangements in line with national goals, but also legal duties and restrictions; (2) create European models for licensing of online judgments that correspond with different national interests; and (3) establish a European Working Group to share national experiences and develop model licences.

INTRODUCTION

The online publication of judgments can strengthen the rule of law and democracy. Access to all judgments in a country (including from lower courts and tribunals) enables the general public, civil society organisations, and researchers to scrutinise judicial action and evaluate the justice system's fairness and impartiality. The European Court of Human Rights (ECtHR, Court) has stated that: "publicity contributes to the achievement of […] a fair trial, the guarantee of which is one of the fundamental principles of any democratic society".[1] Moreover, the rise of new legal technologies carries the potential to improve the fairness and effectiveness of legal practice services.[2] With 'open judgment data', new tools for practice and research can be developed through data science methods.[3] There is the possibility to research jurisprudential trends and litigation patterns, help improve the way courts works and provide low-cost legal advice.[4] Already in 1995, the Council of Europe issued recommendations that encouraged the Member States to take appropriate steps to ensure access to legal information retrieval information systems that are open to the public;[5] while the European Union (EU) has clear policies seeking to optimise the potential value of government data and reducing or eliminate "any constraints that impede open use of such data".[6]

However, such online publication of court decisions raises also significant concerns, especially how to ensure respect for privacy and the public administration of justice. Once published online, court decisions can be easily reused and republished by third parties, making personal data in decisions more accessible to the general public, private organisations, and government departments. For example, screening agencies may use data to develop profiles on individuals

[1] *Fazliyski v. Bulgaria*, no. 40908/05, 16 April 2013, para. 64.
[2] Richard E. Susskind. *Tomorrow's lawyers: An introduction to your future*. Oxford University Press, 2023; Václav Janeček (2023), 'Judgments as Bulk Data', *Big Data & Society* 10, nr. 1.
[3] Katz, D. M. (2012). Quantitative legal prediction-or-how I learned to stop worrying and start preparing for the data-driven future of the legal services industry. *Emory LJ*, 62, 909; Lie, R. H., & Langford, M. (2024). The Computational Turn in International Law. *Nordic Journal of International Law*, 93(1), 38-67.
[4] Jennifer Gisborne et. al., 'Justice Data Matters: Building a Public Mandate for Court Data Use', (Justice Lab, July 2022) https://justicelab.org.uk/resource/justice-data-matters-building-a-public-mandate-for-court-data-use/. All links are last accessed 26 April 2024 if not stated otherwise.
[5] Recommendation No. R (95) 11 Concerning the Selection, Processing, Presentation and Archiving of Court Decisions in Legal Information Retrieval Systems, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804f120c.
[6] Hans Graux, *Licence Compatibility in Europe: A winding road to Creative Commons – A short exploration of legal issues, current trends and the practical reality for data providers and reusers in Europe*, (Directorate-General for Communications Networks, Content and Technology, European Commission, 2023).

for employers, landlords, and credit agencies.[7] Moreover, there are often concerns that the use of new technologies, especially with AI tools, can interfere with court administration – for example, if relied upon for prediction of outcomes or the targeting of particular judges.[8] Governments may thus have important interests in maintaining and exercising control over the reuse of judgments.

These concerns are and can be addressed in three different ways when judgments are made public digitally. First, European Union (EU) regulation in the fields such as data protection and open government data place certain restrictions or minimum requirements on the reuse of data at the national level. Furthermore, depending on the legal tradition, the judgments may even be subject to intellectual copyrights or database rights. Second, some aspects of these concerns can be addressed in how and if judgments are made available. For example, anonymisation or de-identification of certain types of cases that goes beyond GDPR[9] requirements may provide additional protection of data privacy. Third, states can impose conditions in the licenses, whether explicitly or implicitly, on how judgments can be reused. Indeed, many scholars and theorists argue that, in such situations, 'a well-designed licensing regime is not only necessary, it is critical to the success of open data initiatives.'[10] Moreover, in some states, intellectual property (IP) regulation may also require a license or a legal notice to allow the reuse of judgments.

This report focuses on the latter intervention, the use of licenses to regulate the reuse of judgment texts that are made publicly available. The report was commissioned by the TJENI project[11] at the Council of Europe and the mandate required us to:

- Conduct comparative analysis of selected national practices of licensing of the reuse of judgments;
- Identify limitations and challenges with national licensing models; and
- Develop recommendations, including those based on 'best practices'.

The licensee group to be covered was broad in nature. We address regulation of the reuse by all potential stakeholders, including citizens, researchers, non-profit organisations, legal information providers, legal tech developers and corporate entities. However, we do not address secondary licensing, e.g. regulation by private actors – such as legal information providers – of further reuse by their customers or other users. The scope of our research is limited to the licensing arrangements established by public authorities. In addition, we do not

[7] Jennifer Gisborne et. al., 'Justice Data Matters: Building a Public Mandate for Court Data Use', (Justice Lab, July 2022) https://justicelab.org.uk/resource/justice-data-matters-building-a-public-mandate-for-court-data-use/.

[8] Langford, M., & Madsen, M. R. (2019). France criminalises research on judges. *Verfassungsblog*.

[9] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC OJ L119/1.

[10] Khayyat, M., & Bannister, F. (2015). Open data licensing: more than meets the eye. *Information Polity*, 20(4), 231-252.

[11] Foster **T**ransparency of **J**udicial D**e**cisions and Enhancing the **N**ational **I**mplementation of the ECHR (TJENI). See more information on: https://www.coe.int/en/web/national-implementation/tjeni.

consider two other important practical issues in publishing judgments online – whether it is user-centric or user-friendly in design or which publishing formats are most optimal from an administrative and technical cost perspective. Our focus is on the advantages and disadvantages of different licensing models.

The methods used for the study include desk research and interviews with key actors in most of the countries we survey. During an initial screening we explored countries with different governance approaches to licensing reuse of judgments[12] to identify a relatively representative sample of different approaches to licensing. Based on this screening, we selected the following five states for close investigation: Estonia, Finland, France, Norway, and the UK (England and Wales) – and conducted seven semi-structured interviews with government officials from these states. The interviewees remain anonymous, but we refer to the relevant national institutions. Moreover, the report incorporates insights from desk research and conversations with contacts in Austria and Romania. In addition, we use legal methods to analyse the requirements of key instruments, especially the European Convention on Human Rights (ECHR, Convention),[13] and EU Charter for Fundamental Rights (CFR, Charter),[14] Open Data Directive (ODD)[15] and the GDPR and we have benefited from conversations with participants at various TJENI conferences.

The structure of the report is as follows. In section 2 we examine what is meant by open data licenses and introduce our framework for classifying license regimes. Section 3 discusses the overarching legal framework for licensing, with a focus on the key EU directives. In section 4, we discuss our empirical findings on the different European jurisdictions in light of our framework, and in section 5 discuss the overall findings. In section 6, we provide three key recommendations for advancing the quality of open judgment licensing in Europe.

[12] This was partly based on the forthcoming article: Baste, Ø., Esayas, S., Langford, M., Weitzenboeck, E., Cyndecka, M., and Lison, P. 'Open Justice or Closed Practice? The (Slow) Turn to Publishing Judgments Online in Europe'. It was also based on a study carried out by the French Ministry of Justice indicated that Estonia requires signing an agreement for reuse of judgements See page 4, Le ministère de la Justice, *Tableau comparatif sur l'encadrement de l'accès en données ouvertes aux décisions de justice*, .https://www.justice.gouv.fr/sites/default/files/2023-04/rapport_pfue_sem_cmjn%20%281%29.pdf.

[13] Convention for the Protection of Human Rights and Fundamental Freedoms [1950].

[14] Charter of Fundamental Rights of the European Union OJ C 364/01 [2000].

[15] Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on Open Data and the Reuse of Public Sector Information (Recast), 172 OJ L § (2019).

Section **1**

Licensing for public data: Concepts and Methodology

1. Concepts

In regulating the use of public data, licenses have emerged as the key instrument. As Khayyat and Bannister note:

> A common assumption, at least in the public sphere, is that a large fraction of the data collected by governments can and should be released free of any constraints or restrictions for all to access and do with as they will. However, even for data that do not fall within the ambit of the security of the state it is far from obvious that this must be so; different forms of formal licensing may be appropriate and necessary in many cases. A libertarian approach to OGD is just one of a number of licensing options.[16]

A data license allows the holder to maintain and exercise control over information and data, after one has agreed to share the information with another party by attaching conditions and rules to the data.[17] An 'open data licence usually implies that the licence is made available for any lawful use with minimal restrictions.[18] Thus, an open data license could be considered a tool for governments to achieve the dual purpose of allowing for the reuse of judgements and simultaneously mitigating the risks involved with the reuse. Typical constraints include in open data government licenses attribution, no misrepresentation, and no misuse. However, while practices of licensing agreements in general have been a popular topic in policy[19] and

[16] Khayyat, M., & Bannister, F. (2015). Open data licensing: more than meets the eye. *Information Polity*, 20(4), 231.

[17] Henry Pearce (2020), 'The (UK) Freedom of Information Act's disclosure process is broken: where do we go from here?' *Information & Communications Technology Law*, 29:3, 354-390, DOI: 10.1080/13600834.2020.1785663 See also Grabus, S., & Greenberg, J. (2019). The landscape of rights and licensing initiatives for data sharing. *Data Science Journal*, *18*, 29-29.

[18] Khayyat, M., & Bannister, F. (2015). Open data licensing: more than meets the eye. Information Polity, 20(4), 231.

[19] See, e.g., Hans Graux, *Licence Compatibility in Europe: A winding road to Creative Commons – A short exploration of legal issues, current trends and the practical reality for data providers and reusers in Europe*, (Directorate-General for Communications Networks, Content and Technology, European Commission, 2023).

academic literature,[20] there is limited examination of the practices of licensing agreements for the reuse of published court decisions.[21]

In Europe, there has been a steady expansion of open data licenses. In 2023, there were over 1,5 million, but Graux notes their remarkable diversity.[22] Table 1 shows the ten most used open data licenses, but they account for only 21 per cent of the total. However, there is a clear trend towards usage of the Creative Commons Attribution 4.0 International (CC-BY 4.0) license.[23] This CC-BY license was developed by the American non-profit organisation and international network, Creative Commons; and in 2019, the European Commission 'designated two CC licences as the default for Commission documents, with the explicit objective of facilitating the reuse of Commission documents.'[24] The CC-BY 4.0 license is relatively permissive, and only requires attribution (data provider, license name, no warranties) and changes must be notified.

Table 1. Ten most used open data licences in Europe

Licence Type	Usage count
1. Creative Commons Attribution 4.0 International	79330
2. Data licence Germany – attribution – Version 2.0	60201
3. Data error – no structured usage conditions.	42084
4. Creative Commons Attribution 4.0 International (in German)	35785
5. French Permissive Licence	27053
6. UK Open Government Licence	25340
7. Creative Commons Attribution 4.0 International (in Italian)	18545
8. Licence of the Spanish Statistical Office	15976
9. Inspire Licence – No conditions	14075
10. Creative Commons CC0 1.0 Universal	9176
Total	**327565**

[20] See overview in Mockus, M., Palmirani, M. (2015). Open Government Data Licensing Framework. In: Kő, A., Francesconi, E. (eds) Electronic Government and the Information Systems Perspective. EGOVIS 2015. Lecture Notes in Computer Science, vol 9265. Springer, Cham. See also: Giannopoulou, A. (2018). Understanding Open Data Regulation: An Analysis of the Licensing Landscape. *Open Data Exposed*, 101-125; and Martynas Mockus, 'Open Government Data Licensing Framework: An Informal Ontology for Supporting Mashup' Doctoral Dissertation Submitted to Erasmus Mundus Joint International Doctoral Degree in Law, Science and Technology, (University of Bologna 2017).
[21] Exceptions include Václav Janeček (2023), 'Judgments as Bulk Data', *Big Data & Society* 10, nr. 1.
[22] Hans Graux, *Licence Compatibility in Europe: A winding road to Creative Commons – A short exploration of legal issues, current trends and the practical reality for data providers and reusers in Europe*, (Directorate-General for Communications Networks, Content and Technology, European Commission, 2023).
[23] 'CC BY 4.0 Legal Code | Attribution 4.0 International | Creative Commons', https://creativecommons.org/licenses/by/4.0/legalcode.en.
[24] Ibid.

21% of the 1552 471 datasets in the portal at time of measurement	

2. Classifying open data licenses for reuse of judgments

In our analysis of licensing agreements for the reuse of judgments in national jurisdictions, we have identified key elements that make up these arrangements. These elements include the material legal components of licensing arrangements, as well as additional governance and technical mechanisms that play a central role in governing the reuse of judgments. By categorising these elements, we can identify similarities and differences in licensing approaches and understand how the various aspects of licensing arrangements complement each other. Additionally, this allows us to provide an overview of the status of licensing arrangements in each jurisdiction, which we present graphically with four symbols.

Table 2. Framework for License Classification

Elements		**Explanation**
Existence of License		Here we list whether a license is imposed or required by the state and to whom it applies. Note though that we use *license* as an analytical category. This means that we can classify an arrangement as a licensing agreement, even if it may not be considered a license within the specific jurisdiction.
Approval process		The approval process is characterised by the need to obtain approval before being granted actual access to judgments in a data base, or where approval is required for certain types of uses to be lawful. As a consequence, the approval process plays a vital governance role in the jurisdiction where it is applied, but this may vary considerably from one country to another.
General Terms and conditions		This category refers to the specific details outlined within the licensing arrangements. It encompasses the content of the agreements and may also include legislative obligations that are reiterated in the licensing arrangements.
Technical conditions and limitations		There may be technical conditions that have a significant impact on the reuse of judgments. This can encompass limitations on the technical interfaces provided on platforms where judgments are made available, as well as other technical requirements that users must comply with to access or reuse judgments.

It is important to note that in some jurisdictions, there are significant internal differences in the scope of the licensing arrangements. For instance, the requirement to obtain approval for re-using judgments may only apply to specific judgments or for certain types of uses or users. To account for these internal differences, we present a dual set of graphics for England and Wales, Estonia, and Norway.

Understanding different licensing approaches also necessitates considering publication practices and de-identification processes. We aim to provide relevant background information on how judgments are made available in a jurisdiction and the practices involved in de-identifying them.

Section 2
Relevant Regulations for Licensing

Licensing requirements for the reuse of court judgments presuppose their publicity, enabling third parties to access judgments through requests or online publication. This study focuses on licensing conditions for judgments published online, as such, we start by examining whether there are overarching requirements under EU law that mandate the publication of judgments online.[25] This is followed by a discussion of the relevant rules that regulate the reuse of these published judgments.

1. Requirements on publicity of judgments

► ECHR & CFR

Both the ECHR and the CFR include provisions that are pertinent to the online dissemination of court rulings. For example, according to Article 6 of the ECHR judgments that involve the determination of an individual's 'civil rights and obligations' or 'any criminal charge' against them should be 'pronounced publicly' (Article 6 (1)). The aim of this provision is to prevent decisions to be delivered in secret, and to secure a fair trial and maintaining confidence in the courts.[26]

The ECtHR has acknowledged implementation of the provision can take into account diverse legislative systems and judicial practices among member states, namely what is meant by "publicly pronounced".[27] The Court has stated that the form of publicity given to the judgment

[25] Parts of this research draws from an ongoing work on publicity. See Baste, Ø., Esayas, S., Langford, M., Weitzenboeck, E., Cyndecka, M., and Lison, P. 'Open Justice or Closed Practice? The (Slow) Turn to Publishing Judgments Online in Europe'.
[26] See for example *Straume v. Latvia*, no. 59402/14, 2 June 2022, para. 124.
[27] *Pretto and others v. Italy*, no. 7984/77, 8 December 1983, para. 22.

under domestic law "must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1".[28] A literal interpretation of the expression 'pronounced publicly' might imply that the decision must be read out aloud, but the ECtHR has not adopted such an interpretation and has held that other means of rendering the decision public may be in conformity with the Convention.[29] Moreover, if a decision cannot be pronounced publicly, one must ascertain whether publicity has been ensured by other means.[30] For example, the ECtHR has held that a publication limited to the "operative parts" of a decision, which included information about the applicants, the charges against them, the classification, the answer to the question of guilt, the sentence, and the costs of the proceedings, does not contravene Article 6(1).[31] On the contrary, the Court has found that the combination of the closed hearing without sufficient justification of a case and the limited availability of the judgment, failed to meet the requirement of "pronounced publicly".[32]

While the ECtHR has made it clear that publication of court decisions online will satisfy the requirement of public pronouncement,[33] the Court has as of yet not interpreted Article 6(1) as imposing a positive obligation on the states to publish court decisions *online*. The Court has emphasised that the essential consideration is the extent to which judgments are made accessible to the public, irrespective of the form of publicity.[34] Thus, the lack of online publication would not of itself violate Article 6 (1), but in the absence of alternative mechanisms for public access, it would contribute to the violation.[35]

Another ECHR provision that can be relevant for publicity is the right to freedom of expression under Article 10, which stipulates that everyone has the "the freedom to hold opinions and to receive and impart information and ideas without interference by public authority". While this provision is interpreted as granting individuals a right to access information in the possession of governments under specific conditions,[36] it does not impose a general duty to publish judgments online.

With respect to the CFR, Article 47(2) is the provision equivalent to Article 6(1) of the ECHR. The former stipulates that "Everyone is entitled to a fair and public hearing (…)". The provision in the Charter articulates the primary principle of a fair trial, but does not explicitly prescribe a more detailed obligation to deliver judgments publicly. However, pursuant to Article 52(3) of the CFR, when the Charter contains a right which corresponds to a provision in the ECHR, the

[28] *Pretto and others v. Italy*, no. 7984/77, 8 December 1983, para. 26.
[29] *Sutter v. Switzerland*, no. 8209/78, 22 February 1984 (plenary), para. 33.
[30] *Straume v. Latvia*, no. 59402/14, 2 June 2022, para. 131.
[31] *Welke and Białek v. Poland*, no. 15924/05, 1 March 2011, para. 84.
[32] *Straume v. Latvia*, no. 59402/14, 2 June 2022, para. 132.
[33] *Grassl v. Austria, no. 62778/00*, 24 October 2002.
[34] *Fazliyski v. Bulgaria*, no. 40908/05, 16 April 2013, para. 65.
[35] See similar conclusion: Marc van Opijnen (2016), 'Court Decisions on the Internet: Development of a Legal Framework in Europe', *Journal of Law, Information and Science*, Vol. 24, No. 2, [26]-48, https://search.informit.org/doi/abs/10.3316/ielapa.556732992449354.
[36] *Magyar Helsinki Bizottság v. Hungary*, no. 18030/11, 8 November 2016 (grand chamber), para 156.

meaning and scope of the rights shall be the same as those laid down by the ECHR.[37] Simultaneously, the requirements for consistency do not restrict Union laws from providing more extensive protections than those contained under the ECHR. The explanatory notes to Article 47 of the CFR further confirm its correspondence to Article 6(1) in the ECHR.[38] Importantly, the explanatory notes underline that the scope of Article 47(2) goes further than that of Article 6(1).[39]

One manifestation of this is that unlike the case with Article 6(1), where publicity is limited to judgments involving the determination of civil rights and obligations or criminal charges, the publicity requirement under Article 47 of the CFR is broader and encompasses other cases, including administrative ones. Thus, it follows that the scope of the obligation to render judgments available is broader under Article 47 (2) of the Charter compared to Article 6(1) in the ECHR. Nevertheless, the content of the obligation seems to be similar in nature, granting the member state some discretion on ways of fulfilling the duty, such as through online publication, access at the court registry or other mechanisms providing sufficient publicity. In other words, the provision does not impose a general duty to publish. Similarly, Article 11 of the Charter on freedom of expression and the freedom to access information, should, in the light of the above discussions on consistency, be understood to have the same meaning and scope as Article 10 of the ECHR.[40]

Thus, neither the ECHR, nor CFR impose explicit requirement to publish judgments online. However, it should be recognised that online publication of judgments ensures the public pronouncement of judgments in accordance with ECHR Article 6(1) and CFR Article 47(2) and satisfies the individual's right to access information, provided that the conditions set out in ECHR Article 10 or CFR Article 11 are met.

► National developments

Accordingly, many jurisdictions have laws or policy that requires the publication of judgments online. France, Poland, Czech Republic (Supreme and Constitutional Courts), and Italy (Constitutional Court) are few examples that have a general duty to publish encoded in legislation.

- In France, the principle of publicity of court judgments is enshrined in Article L10 of the Code of Administrative Justice which states that "[j]udgments are public." Pursuant to the same article, subject to special provisions governing their accessibility (e.g. de-identification requirements), judgments are to be available electronically via the Internet, free of charge.[41] The Code of Administrative Justice is applicable to the Conseil

[37] See for example C-682/20 P, *Les Mousquetaires and ITM Entreprises v Commission*, 9 March 2023, ECLI:EU:C:2023:170, para. 52.
[38] Explanations relating to the Charter of Fundamental Rights OJ C 303, 14.12.2007, p. 17–35 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007X1214%2801%29.
[39] Ibid.
[40] Ibid. See also C-280/21, *P.I. v Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos*, 12 January 2023, ECLI:EU:C:2023:13 para. 29.
[41] Code of Administrative Justice, Article L10 second paragraph.

d'Etat, the administrative courts of appeal and the administrative tribunals.[42] A somewhat similar provision is found in Article L111-13 of the Code of Judicial Organisation with regards to the ordinary courts (civil and criminal litigation).[43]

- In Poland, the Law on Access to Public Information requires the Constitutional Tribunal (except for decisions on costs), the Supreme Court and the Supreme Administrative Court to publish their decisions. As regards the Supreme Court and the Constitutional Tribunal, the obligation extends to publication online.
- In the Czech Republic, the Supreme Court's procedure requires the online publication of decisions of all chambers, including the opinions on decision-making activity in specific types of cases.[44]
- In Italy, there are rules mandating the publication of judgments of the Constitutional Court in the official gazette.[45] The official gazette is available online.[46]

Even jurisdictions that do not have a general duty to publish impose such obligations depending on the type of cases, for example bribery in the Czech Republic,[47] or the significance of the judgments, as seen in Germany and Sweden.[48] Whereas jurisdictions such as England and Wales and Malta publish substantial amount of judgment online, especially from appellate courts, as a matter of policy.

These developments highlight the increasing importance of licenses for reusing published court judgments. This is because in many cases, the laws or policies mandating publication online also impose conditions on publication and reuse. These considerations include the need to ensure the right to privacy and data protection of individuals, protect the intellectual property (IP) rights as well as measures to ensure the proper administration of justice.

2. Directive on Open Data and Reuse of Public Sector Information

The ODD is directly, though modestly, relevant for the licensing of court documents. This Directive lays down "a set of minimum rules governing the reuse and the practical arrangements for facilitating reuse of existing documents held by public sector bodies of the member states, including executive, legislative and judicial bodies".[49] Recent revisions have extended the scope of the Directive to include data held by public undertakings and data

[42] See Article L1, Code of Administrative Justice.
[43] Pursuant to the first paragraph of Article L111-13, "Subject to the specific provisions governing access to and publication of court decisions, court decisions are made available to the public free of charge in electronic form.".
[44] Rules of Procedure of the Supreme Court Article 44.
[45] See Article 3 fifth paragraph of the Law no. 839 of 11 December 1984, Article 21(1) of Presidential Decree no. 1092 of 28 December 1985 and Article 12(1) of Presidential Decree no. 217 of 14 March 1986.
[46] See https://www.gazzettaufficiale.it.
[47] Act on Courts and Judges sec. 118 a.
[48] For example, in Sweden, there is a requirement to publish "guiding decision" by the legal information provider. See Article 6 in the Legal Information Act.
[49] Open Data Directive, Recital 10.

resulting from publicly funded research.[50] The primary objective of the Directive is to foster innovation in products and services by facilitating access to data held by the public sector.[51] Making data held by public agencies available for reuse is also deemed crucial in promoting the transparency and accountability of public entities.

According to Article 1(3), the Directive "builds on, and is without prejudice to, Union and national access regimes." This implies that, except for certain stipulations regarding high-value datasets and publicly funded research data, the decision to make data available for reuse is left to the laws of member states. Essentially, the Directive's requirements kick-in once public agencies make data available for reuse either in compliance with national or Union law or upon their initiative.

Article 3 establishes the core principle that data should be made available for reuse freely, for both commercial and non-commercial purposes. Moreover, the Directive sets specific requirements regarding the processing of reuse requests, formats for reuse, applicable fees, and licensing conditions. For instance, Article 4(1) mandates that public bodies implement suitable measures, preferably electronic, to enable access seekers to apply for reuse and to process these requests promptly, ideally within 20 working days from receipt. In cases where licenses are necessary, the issuance should also be completed within the same timeframe.[52] If requests for reuse or licenses are denied, the requesting party should be provided with the reasons for refusal, and the decision should include information on how to seek redress.[53]

Importantly, Article 8(1) of ODD prohibits public sector bodies from imposing any licensing conditions for reuse, "unless such conditions are objective, proportionate, non-discriminatory and justified on grounds of a public interest objective." Recital 44 clarifies what might be covered as public interest justifications, encompassing "issues such as liability, the protection of personal data, the proper use of documents, guaranteeing non-alteration and the acknowledgement of source." Even under justified circumstances, the Directive encourages member states to use 'standard license', "a set of predefined reuse conditions in a digital format", publicly accessible online.[54] The preference for standardised licenses stems from the advantage of clearly defining the conditions of reuse in advance and making them accessible online. This approach aims to mitigate legal uncertainties for users and is deemed essential in facilitating the development of an EU-wide information market.[55] The provision of predefined conditions and their online accessibility is also crucial for ensuring that these conditions are objective and non-discriminatory.[56] The overarching goal of the Directive is to transition towards "open licenses," which are standardised public licenses available online. These licenses

[50] Open Data Directive, Article 1(1).
[51] Open Data Directive, Article 1(1).
[52] Open Data Directive, Article 4(2).
[53] Open Data Directive, Article 4(3-4).
[54] Open Data Directive, Articles 8(2) cum 2(5).
[55] Open Data Directive, Recital 41.
[56] Open Data Directive, Recital 44.

permit "data and content to be freely accessed, used, modified, and shared by anyone for any purpose, and which rely on open data formats".[57]

Related to standard licensing and the prohibition of discriminatory practices is the restriction on exclusivity arrangements. Article 12(1) stipulates that public sector bodies must not grant exclusive rights of reuse to specific entities, "even if one or more market actors already exploit added-value products based on those documents." In instances where exclusive rights are deemed justifiable for public interest reasons, they should be subject to regular evaluation and shall be reviewed at least every three years. According to Recital 48, exclusivity arrangements might be warranted if necessary to provide a service of general economic interest. This might be the case, for example, "if no commercial publisher would publish the information without such an exclusive right".[58]

Clearly, these requirements are important in shaping the licensing conditions of judgments although the practices of the different jurisdictions vary significantly. While the practices in some jurisdictions, such as France, are moving toward "open licenses" in line with the aspirations of the Directive, other jurisdictions such as Norway still operate a more closed system – with questions over whether the current system complies with the ODD.

3. GDPR

This report shows that privacy and data protection feature prominently in the licensing arrangement of many countries. This highlights the significant role that the GDPR plays in shaping the licensing conditions for reuse of judgments. The GDPR sets out two core objectives. The first objective is the protection of the "fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data". The manner in which personal data are processed affects the fundamental rights of individuals, and one such fundamental right is the protection of personal data as enshrined in Article 8 of the Charter.[59] Privacy is another fundamental right that data protection rules aim to safeguard. In fact, the right to data protection can be traced back (in part) to the right to privacy as recognised under Article 8 of the ECHR, which recognises the right to respect for one's private and family life, home and correspondence.[60] The ECtHR has interpreted this right to include the protection of personal data.[61] Thus, the rules on data protection reinforce the right to privacy. The second objective of EU data privacy rules is to promote the free flow of data between member states.[62] To this end, Article 1(3) of the GDPR prohibits restrictions on the "free movement of data within the Union … for reasons connected with the protection of natural persons with regard to the processing of personal data".

To this end, the GDPR establishes a wide range of obligations for those processing personal data and grants specific rights to whose personal data is processed. However, these

[57] Open Data Directive, Recital 44.
[58] Open Data Directive, Recital 48.
[59] Charter of Fundamental Rights of the European Union OJ C 364/01 [2000].
[60] Convention for the Protection of Human Rights and Fundamental Freedoms [1950].
[61] *Gaskin v. UK,* no. 10454/83, 13 November 1989, para. 37.
[62] GDPR, Article 1(1).

requirements apply only if the activities fall within the GDPR's material and geographical scope. The geographical scope, as outlined in Article 3, *inter alia* extends to all data controllers and data processors established in the EU and the EEA, regardless of where their processing activities take place. As to the material scope, the GDPR applies to any "processing of personal data wholly or partly by automated means". It is evident from this provision that at least two preconditions must be fulfilled for the application of the rules—data must be processed and must be personal.

The Regulation defines personal data as "any information relating to an identified or identifiable natural person ('data subject')".[63] Information is related to an "identified person" where the identity of the person is already distinguished or manifestly clear from the information being processed, such as the person's full name.[64] However, for the Regulation to apply, it is sufficient for the person concerned to be identifiable. "Identifiability" implies the possibility of distinguishing someone from others by combining the information being processed with other information. The assessment of identifiability must be conducted considering "all the means reasonably likely to be used … either by the controller or by another person" to identify the person.[65] The term "reasonably likely" introduces two criteria for identifiability—the term "likely" referring to the "probability" of identification and the term "reasonably" referring to the "difficulty" of identification.[66] In *Breyer*, the Court of Justice of the European Union (CJEU) further added that identification would not be reasonably likely if it were "prohibited by law".[67] Furthermore, the CJEU held that the additional information needed to identify the individual does not have to "be in the hands of one person".[68] Thus, the presence of personal data or any other information in court judgments that could be linked to a specific individual triggers the application of the GDPR.

Like the term "personal data", the term "processing" is very broad and includes operations such as the "use, disclosure by transmission, dissemination or otherwise making available", c.f. Article 4(2). Such operations take place when court judgments are published online. The CJEU's case law confirms that the GDPR applies when courts are processing personal data, a point also emphasised in Recital 20.[69] The GDPR is in this sense "institution blind".[70] Thus, unless

[63] GDPR, Article 4(1). The data subject is the natural person endowed with the right to protection of personal data.

[64] See Case C-28/08 *Commission v. Bavarian Lager* [2010] ECLI:EU:C:2010:378, para 68 (indicating that surnames and forenames may be regarded as personal data).

[65] GDPR, Recital 26.

[66] See Case C-582/14 *Breyer* [2016] ECLI:EU:C:2016:779, para 51 (noting that identification is not reasonably likely if it is 'practically impossible' due to 'a disproportionate effort in terms of time, cost and man-power').

[67] *Breyer*, para 46. See discussion in Weitzenboeck, E. M., Lison, P., Cyndecka, M., & Langford, M. (2022). The GDPR and unstructured data: is anonymization possible?. *International Data Privacy Law*, *12*(3), 184-206.

[68] *Breyer*, para 43.

[69] Case C-245/20, *X and Z v. Autoriteit Persoonsgegevens,* ECLI:EU:C:2022:216 (para. 25-26); Case C-268/21, *Norra Stockholm Bygg AB v Per Nycander AB*, ECLI:EU:C:2023:145 (para. 26). See Recital 20, which states that "While this Regulation applies, inter alia, to the activities of courts and other judicial authorities (…)".

[70] Opinion of Advocate General Bobek on C-245/20, *X and Z v. Autoriteit Persoonsgegevens,* para.3).

anonymised,[71] the online publication of court judgments containing personal data by national courts or European legal information providers is subject to the GDPR. However, there is an peculiar exception to the scope of the GDPR for processing by the judiciary in the EEA members states Norway and Iceland.[72] When the GDPR applies, the processing must comply with certain principles, such as the principles of lawfulness, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality and accountability.[73] Moreover, data subjects are given certain rights, such as the rights to access, rectify and port their data.[74]

4. Other legal instruments

Similarly, whether national law extends copyright protection to government documents seems crucial in determining whether and what type of licensing arrangement the jurisdiction adopts. In England and Wales for example, public documents including court judgments are subject to copyright and this has led to the creation of one the most advanced licensing scheme for the reuse of court judgments in Europe.

A related legal instrument which is somehow relevant for the licensing of published judgments is the EU Database Directive.[75] The Directive aims to protect investments which are required for establishing a database and prevent the unauthorised extraction and re-utilisation of the content of the database.[76] The Database Directive provides protection for the databased created by a natural persons or groups of natural persons.[77] The Directive provides a *sui generis* right for the maker of the database to required that there has been "qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents".[78] Furthermore, the member states may by legislation permit a legal person to have the authorship of the database.[79]

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[71] For more detailed discussion on the different roles of anonymization and pseudonymization, see Esayas, S. (2015) 'The Role of Anonymisation and Pseudonymisation under the EU Data Privacy Rules: Beyond the 'All or Nothing' Approach' *European Journal of Information Technology and Law* 6(2).

[72] The Joint Committee Decision (JCD) incorporating the GDPR into the EEA Agreement states that the references to "union law" in the regulation should be understood as "EEA Agreement". Thus, Norway and Iceland have amended exceptions for the scope of the GDPR arguing that certain processing of personal data by the courts falls out of the scope of the EEA Agreement. See the JCD Article 1 (c): https://www.efta.int/sites/default/files/documents/legal-texts/eea/other-legal-documents/adopted-joint-committee-decisions/2018%20-%20English/154-2018.pdf. The national provisions: Norwegian Personal Data Act section 2, second paragraph (b), https://lovdata.no/dokument/NL/lov/2018-06-15-38/KAPITTEL_2#KAPITTEL_2, and the Icelandic Law on Privacy and Processing of Personal Data article 4 third paragraph, https://www.althingi.is/lagas/nuna/2018090.html.

[73] GDPR, Article 5.

[74] GDPR, Articles 15, 16 and 20.

[75] Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, *OJ L 77*.

[76] See Database Directive recitals 7, 8 and 39-42.

[77] Database Directive Article 4(1).

[78] Database Directive Article 7(1).

[79] Database Directive Article 4(1).

From its provisions, the Directive does not rule out that databases created by public entities can fall within the scope of the directive. However, in light of the subsequent Open Data Directive, public sector bodies shall not exercise the rights in the Database Directive to prevent or restrict reuse of public sector information beyond the limits set out in the ODD. However, the rights under the Database Directive can be relevant for member states that have arrangements with legal information providers to publish judgements. In such cases, the rights can be used to limit the re-utilisation and extraction of judgments from the databases.

Further, our study shows that the need to ensure the proper administration of justice is a key driver behind licensing schemes in many jurisdictions. This is often manifested through the use of licensing agreements to impose requirements on data integrity and source attribution. Some countries have more specific laws that impose restrictions on reuse of judgments to ensure the proper administration of justice. The ban on the profiling of judges in France is one such example.[80] In this context, licensing becomes a crucial tool to ensure that the reuse of judgments by third parties adheres to these conditions. The approval system for computational license in England and Wales has a similar objective, although a more nuanced and procedural approach.

Indeed, the effectiveness of licensing as a tool to ensure privacy and data protection, IP rights, and the proper administration of justice will depend on a number of other considerations. These include national contract laws, civil procedural rules, as well as the existence of an effective monitoring and enforcement mechanism. This study sheds light into some of these aspects in the different jurisdictions.

Section **3**

Practices for Licensing Agreements for Reuse of Judgments

1. England & Wales

► Background and publication practices

The system of publishing judgments in England and Wales has undergone significant developments over the past few years. In April 2022, the National Archives began publishing

[80] See the discussion of this ban in Langford, M., & Madsen, M. R. (2019). France criminalises research on judges. *Verfassungsblog*.

judgments from 2001 and onwards on its site Find Case Law.[81] It will not replace the existing legal information providers such as non-profit organisations and commercial companies, but it will be the main hub for the actors to accessing judgments from the courts.[82]

Find Case Law publishes decisions from senior courts and tribunals in England and Wales. The scope of publications includes the higher instances and a limited number of judgements from first instance courts.[83] The lower court tribunals and courts have a system of reported and unreported decisions, where only the reported decisions are published by the National Archive.

With regards to the timeline, it differs from what year the judgements started to be available on Find Case Law. Judgements from some courts are published starting from 2001, however, for other courts, judgments are published from 2019 and onward. After the first year of publishing at the Find Case Law service, it was reported that almost 80% of the decisions from the respective courts were being published.[84] The judgments are published in an API format.

Additionally, there are several legal publishers sourcing their judgments from Find Case Law. According to representatives at the National Archives, an important function of Find Case Law is to support the existing legal publishers. The British and Irish Legal Information Institute (BAILII) was founded in 2000 has been one of the prominent actors among the publishers. Currently, BAILII supports Find Case Law in developing its interface, while BAILII continues to publish decisions from Irish, Scottish and Northern Irish courts.[85]

There is no legislative duty in England and Wales mandating the online publication of court decisions. However, the UK Supreme Court held that non-parties to the litigation shall access to the documents of the case based on the constitutional principle of open justice.[86] The Public Records Act (1958) provides the National Archive a legal basis to store and publish public records. The aforementioned Supreme Court's decision confirmed that judgments constitute public records, thus allowing the National Archive to publish court decisions.

Regarding the de-identification practice, the judgments are not de-identified on publication except in limited cases specifically provided for by law, or where the court is recognised as having discretion.[87] Both the Civil and Criminal Procedure rules give the courts the discretion

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[81] 'About This Service - Find Case Law - The National Archives', https://caselaw.nationalarchives.gov.uk/about-this-service#section-about.
[82] Paul Magrath and Greg Beresford, 'Publication of listed judgments: towards a new benchmark of digital open justice' (Final Report, 2023) https://www.iclr.co.uk/wp-content/uploads/media//2023/09/Publication-of-listed-judgments-ICLR-FINAL.pdf.
[83] See an overview of the courts included: 'About This Service - Find Case Law - The National Archives', https://caselaw.nationalarchives.gov.uk/about-this-service#section-about.
[84] Paul Magrath and Greg Beresford, 'Publication of listed judgments: towards a new benchmark of digital open justice' (Final Report, 2023) https://www.iclr.co.uk/wp-content/uploads/media//2023/09/Publication-of-listed-judgments-ICLR-FINAL.pdf.
[85] 'BAILII - Reproduction and Copyright', https://www.bailii.org/bailii/copyright.html.
[86] See, *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC38.
[87] CURIA Directorate-General for Library, Research and Documentation, 'Research Note: Anonymity of the parties on the publication of court decisions', March 2017, https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-02/ndr_2017-002_neutralisee-en.pdf.

to grant anonymity under certain conditions. For example, Part 6 of the Criminal Procedure Rules outlines circumstances where courts can order, as prescribed by law or on application by a party or on its own initiative, the identity of the parties to be withheld from the public or impose restrictions on reporting.[88] There are currently several laws that impose either automatic anonymity of persons involved in court proceedings or give the courts discretion to grant such anonymity. An overview of the rules that impose anonymity requirements and the extent of their application can be found on the website of the Crown Prosecution Service.[89] Some examples include cases involving minors and children, sexual offences, witnesses in certain proceedings and parties to asylum and immigration cases.

Although the National Archive does not play any role in deciding what personal information that shall be concealed, it carries out a due diligence by legal editors before each judgment is published.[90] The function of this check is to mitigate the risk of publishing judgments which are sent by error of the court. If the legal editor is uncertain of whether the decision shall be published in the transferred format, the decision will be returned to the judge for clarifications. Moreover, in certain high-risk judgments, the editors check of the judgements concentrates on whether the de-identification is consistent with the requirements in these types of cases, and checking whether the text complies with any notice regarding de-identification and redaction. There has recently been an example of one of the courts entering into a discussion with the National Archives on whether a specific judgment is subject to de-identification.[91] After having received a judgment, the editor at the National Archive emailed the national court to confirm that there was no reporting restriction on the relevant judgment due to a reference to modern slavery and a decision that declared the defendant of as someone who has been trafficked. The national court asked the parties for submissions before the court assessed and concluded that de-identification was not required in this case.

Importantly, the National Archive will not withdraw any publications from the website, unless it is instructed by a judge or a national court to do so. The takedown requests from the public are forwarded to the relevant domestic courts if the National Archives believes that such requests are well-founded.

► Licensing arrangements

In the UK, the Crown holds both copyrights and database rights in the court decisions and tribunal judgments. The crown copyrights apply to all material produced by government official including judgements.[92]

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[88] See Criminal Procedure Rule 6.1 and 6.4.

[89] 'Contempt of Court, Reporting Restrictions and Restrictions on Public Access to Hearings | The Crown Prosecution Service', https://www.cps.gov.uk/legal-guidance/contempt-court-reporting-restrictions-and-restrictions-public-access-hearings.

[90] See para. 33-45 in 'Draft Publishing Policy for Court Judgments and Tribunal Decisions', https://cdn.nationalarchives.gov.uk/documents/cas-87291-guidance-for-case-law.pdf

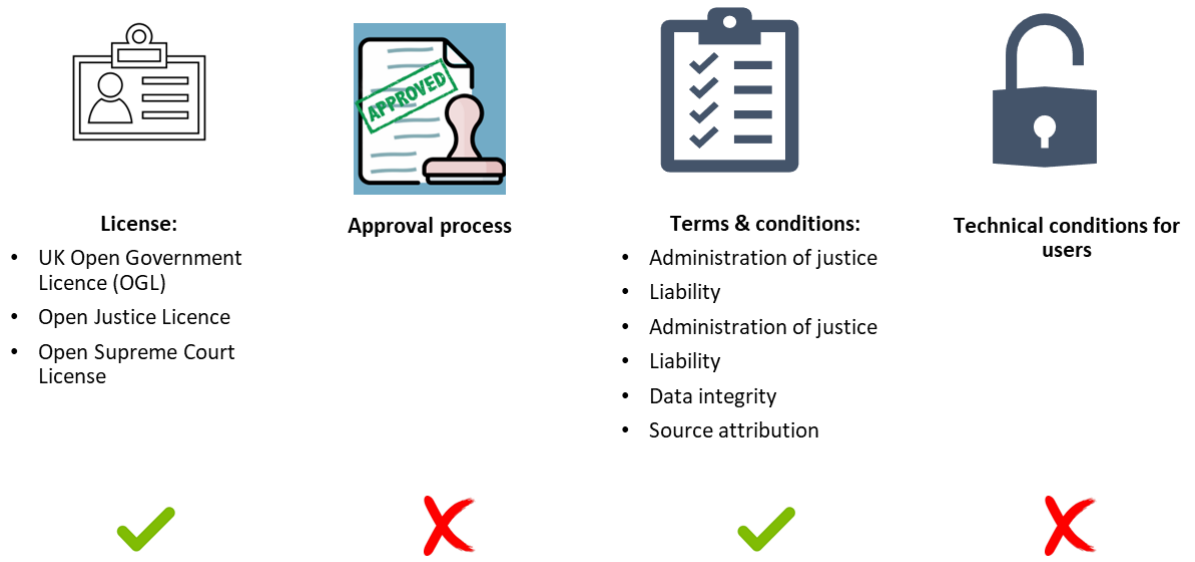
[91] *R v Tunc Ahmet & Anor* (The Court of Appeal Criminal Division 25 January 2024), available at https://assets.caselaw.nationalarchives.gov.uk/ewca/crim/2024/102/ewca_crim_2024_102.pdf see para 33-44.

[92] Copyright, Designs and Patents Act 1988 sec. 163

The default position for the licensing for use and reuse of public sector information is the *UK Open Government Licence* (OGL). However, the use and reuse of judgments are subject to more specified licensing arrangements. Under the obligations set forth in Reuse of Public Sector Information Regulations 2015 (SI 2015/1415), the National Archive is licensing the information. The National Archives in collaboration with the Ministry of Justice, has developed a two-tier licensing regime for the material published on Find Case Law.[93] The main difference between these two licenses is their scope and whether it includes an approval process. Firstly, the Open Justice Licence, can be used without any approval. However, this does not apply for the computational reuse of judgments. There is a specific license for the for reuse of judgements involving computational analysis which requires an approval. As both licenses only apply to published judgments, a license falls away if a national court decides to take down a judgment or if the court updates the version of the judgment. Such an update can occur if the court decides that more information in the decision must be de-identified. Importantly, the licensing agreements do not serve as data sharing or data processing agreement, meaning that reuser must establish a separate legal basis for the processing of personal data.

In addition, there is the *Open Supreme Court Licence* which has been developed by the National Archives in collaboration with the Supreme Court with the purpose to enable the reuse of the latter's judgements.[94] This license contains the same conditions as the Open Justice Licence, however, the Open Supreme Court Licence does also cover the reuse involving computational analysis. The authors' impression is that the scope of the Open Supreme Court Licence is intended to be harmonised with the Open Justice Licence.

General use:



[93] The National Archives, 'The National Archives - Other Licences', Re-using PSI (The National Archives), https://www.nationalarchives.gov.uk/uk-government-licensing-framework/open-government-licence/other-licences/.

[94] 'Open Supreme Court Licence', https://www.nationalarchives.gov.uk/doc/open-supreme-court-licence/version/1/open-supreme-court-licence-version-1.0.pdf.

► Open Justice Licence for all users[95]

Scope: The user is free to copy, publish, distribute, transmit and adapt the information in the judgment. Furthermore, one can exploit the information commercially, for example, by combining it with other information or including it in one's own application or product.

Conditions: One has to comply with any judicial decision which restricts the use of personal data. If the National Archive (the keeper of the record) does no longer publish the information or when the text has been replaced by a revised version from the courts or tribunals, one shall remove from publication any documents used under the license. Another set of conditions require one to not mislead others or misrepresent the information or its source, presenting the information in a way that does not have regard to the dignity of the court and its function as a working body, nor use the information in a way that jeopardises the proper administration of justice.

No warranty: There information is licensed "as is" which the licensor excludes all liabilities, warranties, obligations and representations to the judgments to the maximum extent permitted by law. Furthermore, the licensor is not liable for errors or omissions in the information, nor for any loss, injury or damage that is caused by the use of the published judgments.

Exclusions (what the license does not cover):

- computational analysis of the judgment (including indexing by search engines);
- information that has neither been published nor disclosed under information access legislation (including the Freedom of Information Acts for the UK and Scotland) by or with the consent of the Licensor;
- emblems and insignia of the courts and tribunals;
- third party rights the Licensor is not authorised to license; and
- information subject to other intellectual property rights, including patents, trademarks, and design rights.

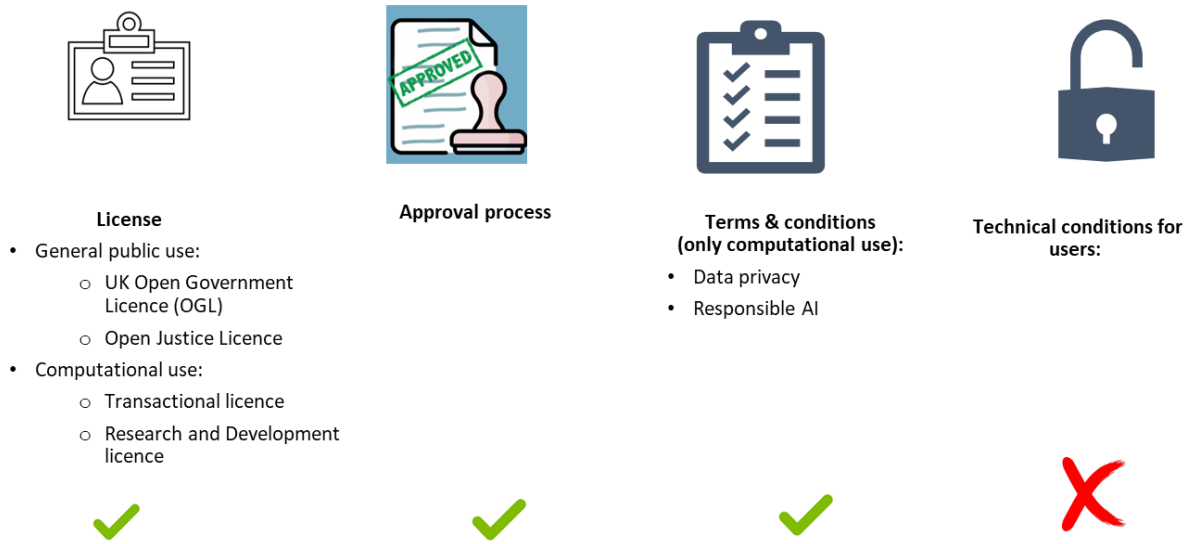
► License for computational analysis

The reuse of judgements for computational purposes is governed by a transactional license which is a granted following a successful application to the National Archive.[96] The aim is to support and encourage research and innovation while having appropriate safeguards for the personal and sensitive data in the judgements.[97] The license lacks a clear definition of what

[95] See more information on: 'Open Justice Licence - Find Case Law - The National Archives', https://caselaw.nationalarchives.gov.uk/open-justice-licence.
[96] 'Apply to Do Computational Analysis - Find Case Law - The National Archives', https://caselaw.nationalarchives.gov.uk/computational-licence-form.
[97]UK Ministry of Justice, "Open Justice: the way forward Call for Evidence", https://assets.publishing.service.gov.uk/media/645ba3532226ee00130ae5fb/open-justice-cfe.pdf on page 19.

shall be considered "computational analysis". A strict interpretation suggests that utilising a language model to summarise would be considered within its scope.

There are two types of licenses which allow for computational analysis. The first one aims to facilitate computational reuse for research and development purposes. The second focuses on computational reuse of judgments for business purposes. There is a difference in the temporality of the licenses being granted. Typically, for established computational analysis, the license is granted for five years. However, the use of computational analysis for research and more experimental projects are more often granted a shorter license.



The application form for the computational analysis is thorough, lengthy and requires the applicant to provide detailed information about the planned use of judgments. According to the representatives of the National Archives, the team is continuously improving this service. The National Archive recognises that licensing framework is new to the parties, and the use of novel technologies may pose additional challenges identifying and describing the risks involved. Currently, the application process and the support pages are being re-designed, and changes are expected to be deployed in the next couple of months.

As of April 2024, the application requires the applicant to provide the following information:[98]

- contact information
- information on the organisation
- the purpose and activities
- a public statement on anticipated outcomes, individuals or communities served and the methodologies or activities involved
- the risks identified regarding the dignity of the courts and the how the applicant will protect their ability to function

[98] The application form is available online: 'Apply to Do Computational Analysis - Find Case Law - The National Archives', https://caselaw.nationalarchives.gov.uk/computational-licence-form.

- the risks identified regarding the independence of the court and how the applicant will protect the independence of the justice system
- how the applicant will prevent anonymised people from being re-identified
- how anti-discriminatory harm will be monitored and addressed
- how bias will be regularly monitored
- a description of the data protection regimes the applicant is complying with
- a description of what the applicant will do to prevent third party crawling and scraping the judgments or the information extracted from the judgments
- as much detail as possible about the transparency of the applicant in its use of algorithms to people using its project or product
- a description of how the applicant will notify people that the records may not be representative
- a description of how the applicant will make sure the records are the most up to date list of published records

In reviewing the applications, the National Archive will "consider whether the purpose of your reuse is likely to jeopardise the proper administration of justice".[99] There is a designated licensing team at the National Archive who reviews the applications, and they may ask for more information.

The applications are assessed based on the following nine principles developed by the Ministry of Justice:[100]

1. Dignity of the court
2. Independence of the court
3. Appropriate scrutiny
4. Anti-discriminatory harm
5. Anti Bias
6. Personal Privacy
7. Discoverability
8. Algorithmic transparency
9. Accurate data representation

In addition to the abovementioned criteria, the Ministry of Justice has developed guidelines helping the National Archives in reviewing the applications. Regarding the received applications, there have been limited examples of rejected applications, according to the representatives at the National Archives. Oftentimes, the applicants are being told by the National Archives to change the application and or alter their plans of reusing the judgments. The monthly numbers of applicants are steady and are currently around five applications a month.

► Monitoring and enforcement

[99] Ibid.

[100] 'About This Service - Find Case Law - The National Archives', accessed 26 April 2024, https://caselaw.nationalarchives.gov.uk/about-this-service#section-about.

According to the representatives at the National Archives they do not actively monitor whether the licensees comply with the conditions in the licenses. The main issue relates to actors publishing judgments which have been taken down from Find Case Law, or that the information in judgements have been redacted and the old versions are published elsewhere. Although, the National Archives does not actively monitor license compliance there are other mechanisms being relied upon. For instance, the National Archives receives notifications from time to time that there are still judgements published online on other sites which the courts have already decided to take down. As mentioned previously, a takedown upon court's decisions terminates the license. When receiving a notification that a third party have not complied with the takedown, the National Archives will email or message the party informing them that a takedown has happened, and a deletion is therefore required. In general, the impression from the National Archive is that the actors have been willing to comply with such messages from the National Archives. There have a been one example where the National Archive has sent a formal cease and exist letter to an actor publishing judgments in a foreign jurisdiction.

Furthermore, the National Archives does not consider for the time being that there is a strong case for establishing a more thorough system for monitoring and enforcing the compliance with the licenses.

► Highlights

In recent years, significant developments have occurred in the licensing arrangements for the reuse of judgments in England and Wales. Initiated by the National Archives in collaboration with the Ministry of Justice, these developments have been driven by the need to comply with crown copyrights and serve various purposes related to the fair administration of justice and liability issues. The introduction of a two-speed licensing approach allows for more precise governance of the different uses of judgments.

Importantly, the approval process for computational analysis is a remedy for addressing and mitigating the risks involved with the use of novel technologies. The expectations to the reusers are conveyed through the application form and the support material. In addition, the National Archives provides concrete feedback for the rejected applicants, which also demonstrates the strong user-centred focus on facilitating the reuse of judgements for computational analysis.

As one of the means to mitigate the risk of non-compliance with licenses, a designated editorial team reviews judgments before publication, particularly in high-risk cases that may be more likely to receive takedown requests due to the sensitivity of the information. This proactive approach aims to reduce the number of judgments being taken down or altered by the courts, thereby easing the burden of enforcement and communication with reusers in the event of a judgment being removed from the database.

The Ministry of Justice's recent call for evidence on the Transactional license also highlights the ongoing efforts to solicit feedback and improve the licensing process.[101] Representatives from the National Archives have acknowledged the challenge of anticipating future issues related to the (computational) reuse of judgments but have emphasised the flexibility of the application process to address these challenges as they arise. Measures such as adjusting the application form, assessment criteria, and the temporality of the license can further be activated to adapt to future challenges.

2. France

► Background and publication practices

In line with the aim of the Open Data Directive to transition from no or standardised licenses to open data, France has embraced the open data approach for publishing court judgments. The 2016 law for a Digital Republic laid the groundwork by mandating the free dissemination of court decisions. Subsequently, both the Code of Judicial Organization (CJO) and the Code of Administrative Justice (CJA) authorize the Court de Cassation and Conseil d'État to publish judgments from the judiciary and administrative justice systems, respectively.[102] Furthermore, court decisions must be made available, subject to certain conditions, to the public free of charge in electronic form (Article R. 111-10 of the COJ and Article R. 741-13 of the CJA). The objectives of open data encompass several key areas: economic (focused on fostering the growth of the data market), democratic (targeting increased transparency in judicial decision-making processes), and modernize the judiciary (dedicated to the modernization of working methods).

As a result, decisions form French courts are published online and are freely accessible through two separate databases, one for each branch of justice: the judiciary and administrative justice. Each branch is represented by its respective Supreme Court—the Cour de cassation for the judiciary and the Conseil d'État for administrative justice.[103] Accordingly,

- the Court de Cassation is in charge of publishing decisions from judicial courts and these decisions are available through the Judilibre database.[104]
- the Conseil d'Etat publishes decisions from administrative courts through the Opendata.justice website.[105]

As of 15 December 2023, the Court of Cassation has made available in open data the decisions on civil, social, and commercial cases from nine major judicial courts. These courts include those in Bobigny, Bordeaux, Lille, Lyon, Marseille, Paris, Rennes, Saint-Denis-de-La-Réunion, and

[101] UK Ministry of Justice, "Open Justice: the way forward Call for Evidence", https://assets.publishing.service.gov.uk/media/645ba3532226ee00130ae5fb/open-justice-cfe.pdf. See in particular para 35-36.
[102] 'Open data of court decisions | Ministère de la justice', https://www.justice.gouv.fr/documentation/open-data-court-decisions.
[103] Ibid.
[104] 'Open data et API', Cour de cassation, https://www.courdecassation.fr/acces-rapide-judilibre/open-data-et-api.
[105] 'Open Data | Conseil d'État', https://opendata.justice-administrative.fr/.

Versailles. To date, the Judilibre website hosts over 800.000 decisions in open data format. This collection comprises more than 518.000 decisions from the Court of Cassation itself, over 296.000 from various courts of appeal, and more than 620 from judicial tribunals.[106]

The Opendata.justice website publishes decisions from Conseil d'Etat (since 30 September 2021), administrative courts of appeal (since 31 March 2022) and administrative tribunals (since 30 June 2022).[107] The Opendata.justice site of the administrative jurisdiction does not include an API.

In addition, decisions from Conseil d'Etat with special jurisprudential interest are published on a daily basis at Ariane website, which has advanced consultation features.[108] This website contains search function for nearly 300.000 decisions, case law analysis and conclusions from public rapporteurs.

Following a decision and order of the Conseil d'Etat, the French government has set out a detailed plan for publication of judgments including from first instance courts running up to 2025.

► Mandatory concealment of identifying information before publication

Court judgments must be pseudonymised before publication. There are two steps of de-identification. First, the names of the parties are automatically concealed. This flows from the CJO and CJA, which stipulate that "the surnames and first names of the natural persons mentioned in the judgment, where they are parties or third parties, shall be concealed prior to their being available to the public."[109] Second, additional information of anyone mentioned in the case, including judges, and lawyers, can be concealed at the request of the magistrate to avoid possible identification, if "disclosure is likely to undermine the security or respect for the private life of these persons or their entourage".[110]

The Court of Cassation has issued a set of non-compulsory recommendations for judges in respect of all kinds of cases (e.g. divorce, adoption, contract, social security, labour, etc.).[111] The recommendations categorise court cases into four different "blocks" according to their sensitivity, with some blocks requiring stricter de-identification than others.

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[106] 'Open Data Des Décisions Des Tribunaux Judiciaires : Une Nouvelle Étape Novatrice | Interview | Dalloz Actualité', Open data des décisions des tribunaux judiciaires : une nouvelle étape novatrice | Interview | Dalloz Actualité (dalloz-actualite.fr).

[107] 'Open Data | Conseil d'État', https://opendata.justice-administrative.fr/.

[108] Le Conseil d'État, 'Rechercher une décision (ArianeWeb)', https://www.conseil-etat.fr/decisions-de-justice/jurisprudence/rechercher-une-decision-arianeweb.

[109] See the third paragraph of Article L10 of the Code of Administrative Justice as well as the second paragraph of Article L111-13 of the Code of Judicial Organisation.

[110] See the third paragraph of Article L10 of the Code of Administrative Justice as well as the second paragraph of Article L111-13 of the Code of Judicial Organisation.

[111] The recommendations are available in French: https://acteurspublics.fr/upload/media/default/0001/36/b475626a8def7cb88fb2cd36274685a3761e64c4.pdf.

► Licensing arrangements

France adopts an open data approach that allows for the reuse of published judgments for both commercial and non-commercial purposes subject to the conditions set out in the Open License 2.0. In addition, both the Judilibre and Opendata.justice databases have their own general terms and conditions (T&Cs) of reuse, which set out requirements on age, privacy and data protection, liability and the prohibition on profiling. According to the representatives from the Cour de Cassation, these general T&Cs primarily reiterate statutory provisions, referencing the Code of Relations between the Public and the Administration, the CJO, the CJA, and the GDPR, which outline the legal framework for open data of court decisions in France, including a prohibition on judge profiling.

A key distinction between the Judilibre and Opendata.justice databases is that Judilibre offers an API, whereas Opendata.justice does not. As of February 2024, the API includes the decisions from the Cour de Cassation. By the end of 2024 the API will according to the court's timeline include decisions from the first instance relating to minor offences and tort ("matière contraventionnelle et délictuelle"). Furthermore, by the end of 2025 the API will also include decisions from the appeal court and the decisions in criminal cases.[112] Additionally, the API includes summary of the judgments, cross-references, the voting, references to citated texts and reference to the decision which was appealed to the Cour de Cassation. The use of Judilibre API is subject to additional conditions, specified both in the Judilibre general T&Cs as well as to the PISTE T&Cs for API use. Below, we highlight key aspects of these conditions as specified in Open License 2.0, the general T&Cs for both the Judilibre and Opendata.justice databases, as well as PISTE conditions for API use.

► Open license 2.0

[112] 'Open Data Des Décisions Des Tribunaux Judiciaires: Une Nouvelle Étape Novatrice | Interview | Dalloz Actualité', Open data des décisions des tribunaux judiciaires : une nouvelle étape novatrice | Interview | Dalloz Actualité (dalloz-actualite.fr).

Scope: This license grants the licensee a non-exclusive right to freely reuse the information for commercial or non-commercial purposes worldwide and for an unlimited duration subject to the condition in this license. This covers the right to reproduce, copy; to adapt, modify, extract, and transform to create 'derived information', products, or services; to communicate, distribute, redistribute, publish, and transmit; to exploit commercially, for example, by combining it with other information or including it in their own product or application.

Source attribution: The licensee undertakes to attribute the information to its source, at least mentioning the name of the licensor and the date of the last update of the information. The licensee may fulfil this condition by providing a hyperlink to the source of the information in the following format: *Name of licensor* (e.g. Ministry of xxx), *Source* (e.g. Original data downloaded from http://www.data.gouv.fr/fr/datasets/xxx/), *Last date of updated* (e.g. February 14, 2017).

Protection of personal data: Where the information available for reuse contains personal data, the licensee undertakes to inform the licensor of such presence. The licensee must also ensure that any reuse of such information containing personal data is done in compliance with the applicable legal framework for data protection.

Intellectual property rights: This license is without prejudice to IP rights held by third parties, or the licensor in the information. When the licensor holds transferable IP rights on the information, they are transferred to the licensee in a non-exclusive manner, free of charge for the entire world for the duration of the IP rights and the licensee may use of the information in accordance with the conditions of this license.

Responsibility: The licensor does not guarantee the continuous availability of the information nor that the information is free of errors or defects and thus cannot be held responsible for any loss, damage, or harm of any kind caused to third parties because of the reuse. The licensee is solely responsible for the reuse and must not mislead third parties about the content of the information, its source, and its date of last update.

Applicable law: This license is governed by French law.

Compatibility with other licenses: This license has been designed to be compatible with any free license that requires at least the mention of source and in particular with the previous version of this license as well as with the "Open Government Licence" (OGL) from the United Kingdom, "Creative Commons Attribution" (CC-BY) from Creative Commons, and "Open Data Commons Attribution" (ODC-BY) from the Open Knowledge Foundation.

► General conditions for reuse of data disseminated by the Court of Cassation

In addition to the requirement set forth in the Open License 2.0, the user of the Judilibre database is subject to the following conditions developed by the Cour de Cassation.[113]

Terms of acceptance: The conditions are accepted by the use or by downloading the data in the database. To accept the terms and conditions the user must be of legal age, or if the user is a child, she / he must seek permission from a parent or a guardian with parental authority to accept these terms and conditions. The Cour de Cassation has the authority to modify the terms and conditions, and they are accessible to all users on the website.

General obligations: There are a few obligations set forth in the terms and service. First, the reuser must use the information "for purposes other than those of the public service mission for the needs of which the documents were produced or received." Second, the reuser agrees not to alter or distort the data, which includes an obligation to not detach information such as the name of the jurisdiction, the panel and date of the judgment from the decision itself. Third, the user is obliged to mention that the data comes from the Cour de Cassation database regardless of the use of medium. Fourth, the user has obligation to mention the date of the last data update. It is recommended that reusers do not allow more than 72 (seventy-two) hours to elapse between updates of their database, to ensure they maintain continuity with Judilibre's services.

Profiling: The terms and service refer to the ban on profiling of judges and court staff in the COJ. This law prohibits use of the identify data of judges and court staff aimed at evaluating, analysing, comparing or predicting their actual or presumed professional practices.[114] Violation of the ban on profiling is punishable under the Penal Code.[115] The unlawful collecting of personal data, such as profiling of judges, is punishable by five years' imprisonment and a fine of 300.000 euros.[116] For legal persons, the fine could be up to 1.500.000 euros, five times the fine for natural persons.[117] Additionally, the legal person can be further punished, for instance by prohibiting the actor from engaging in professional and social activities, put the legal person under legal supervision or exclude it from public contracts.[118]

Privacy and data security: The terms and conditions recall the legislation applicable and reiterate that the reuser must comply with the regulation protecting personal data. However,

[113] 'Conditions générales d'utilisation pour la réutilisation des données issues des décisions de justice de l'ordre judiciaire diffusées en open data par la Cour de cassation', Cour de cassation, https://www.courdecassation.fr/conditions-generales-dutilisation-pour-la-reutilisation-des-donnees-issues-des-decisions-de-justice.
[114]See articles, L'article L. 111-13 du code de l'organisation judiciaire (COJ), https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038311162/.
[115] Ibid. cf. Penal code articles 226-18, 226-24 and 226-31, https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006149831/#LEGISCTA000006149831.
[116] Penal Code Article 226-18.
[117] Penal Code Article 226-24 cf. Article 131-38, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006417334.
[118] See Penal Code Article 226-24 cf. 131-39 n. 2-5 and 7-9.

certain rights in the GDPR, such as the right of access and rectification under Articles 15 and 16, may be exercised by contacting the Cour de Cassation, and not the reuser of data.

Furthermore, the Cour de Cassation has exclusionary right to deal with the applications seeking to redact additional elements or to lift redactions of certain elements of the decision. The sole instance where the reuser has the competence to add or remove redactions pertains to the situation where the decision has been redacted in a way which contravenes Article R. 111-13 of the COJ. If the reuser receives a claim that the decision is not redacted in accordance with the regulation or that additional elements should be redacted or lifted, the request shall be transmitted to the Cour de Cassation without delay. The obligation to redact or notify the Court, aimed at safeguarding the rights of the individuals mentioned in the decisions and arising from a legal duty, does not confer on the reuser acting in the role of a data controller.

Liability/responsibility: Every reuser is obligated to distribute data that is complete, accurate and up to date, and bears full responsibility for doing so. The Cour de Cassation cannot be held liable for any use of the data from the Judilibre database that poses a risk to the security or privacy of individuals mentioned in the processed data. Furthermore, it cannot be held responsible for the outcomes of using data that has been compromised, manipulated, or not updated by the reuser. The Cour de Cassation retains the authority to check or ensure compliance with these general terms of use and the open license for the reuse of public information version 2.0. Should there be any non-compliance, it reserves the right to undertake enforcement actions and/or seek compensation for any resulting damage.

Special clauses relating to API use: The Cour de Cassation's API is aims to facilitate the easier retrieval and reuse of decisions from the Judilibre database. Access to this API is free and open to all. This service is operated by Agence pour l'informatique financière de l'État (AIFE) and provided under the conditions of the PISTE T&Cs.

- Beta version: The Judilibre API is currently in its beta version. Consequently, the reliability of the data provided in this context, including the accuracy of content (data and metadata), completeness, and currency (freshness), cannot be guaranteed.
- Usage quotas: To safeguard the proper functioning of the Judilibre API, the Court of Cassation has established usage quotas. These quotas are designed to limit, per second/minute/day, either the number of requests made or the bandwidth utilized. These restrictions may apply to the entire consuming application or to specific methods within the Judilibre API. The key restriction is that the reuser cannot download the entire dataset at once. They have to be able to use filters and precise queries to divide the content, such as based on specific courts, like a court of appeal, the law, and by time frame. Currently, the reuser can only download ten thousand at a time, although it is not clear if there are further restrictions on the duration.

► PISTE terms and conditions for API use

In addition to the requirements of Open License 2.0 and the aforementioned general T&Cs, access to the Judilibre API via PISTE application interface is subject to the following conditions.

Registration: To use PISTE Portal, user registration is required. During this process, the user must provide a valid email address and password, along with their first and last name. It is the user's responsibility to secure their login credentials used to access their personal account and the password should be strong enough to prevent third-party guessing. The user is also expected to keep it confidential and to promptly notify AIFE of any unauthorised use of their account information.

Copyright and data: Any reproduction, representation, broadcasting, or redistribution of the content of PISTE Portal, either wholly or partially, without AIFE's express authorisation is strictly prohibited and is considered a violation subject to penalties outlined in the French Intellectual Property Code. This prohibition does not extend to the data obtained via the APIs.

Registration of API Application: API usage is exclusively for users registered on the Portal and requires the user to register in Application. This registration process will generate API Keys for the User, enabling the Application to access the API. These issued API Keys are designated for use with the specified Application only. Users commit to utilise the APIs in line with their documentation and to accommodating any changes in the APIs to the best of their ability.

Suspension of user account: AIFE retains the authority to block, without prior notice or financial compensation, any account found to be used illicitly, fraudulently, or in violation of the terms of use, or that could compromise the functionality of the Portal.

Responsibilities: The user must refrain from any deliberate actions that could impede or disrupt proper functioning of the Portal or its technical accessibility. The user agrees to access the PISTE Portal with equipment free of viruses, and agrees not to share their API Keys beyond the organisation. AIFE cannot be held responsible for any modifications to the APIs' access conditions, nor for the accuracy or the content of the data provided. Additionally, AIFE is not liable for any unauthorised use of authentication details of the user, nor for interruptions in service attributable to telecommunications networks and/or the user's connection devices.

Limitations: AIFE sets and applies restrictions on API usage, such as limiting the number of API requests per user or the number of users that can be accommodated at a time, at the Provider's discretion. The user agrees to these limitations and must not seek to circumvent them.

Hypertext Links: Except for websites that disseminate information and/or content violating laws or moral standards, or those of a political or religious nature, the user is permitted to create a hypertext link from a website to the Portal. If a link to the portal is included on a website, users are encouraged to refer to the general T&Cs of use of the Portal. Under this permission, AIFE reserves the right to withdraw consent and denies any liability for the content on these websites that may be connected to its website through a hypertext link or other methods. Conversely, hypertext links on the Portal may direct users to other websites by any means.

► General Conditions for reuse of Conseil d'Etat database

In addition to the Open License 2.0 conditions, the reuse of judgments published on the Opendata.justice website is subject to additional general T&Cs of reuse. These T&Cs closely resemble those of the Judilibre database in scope, content, and structure. The primary

distinction lies in the granting entity for reuse rights: it is the Conseil d'État, rather than the Court de Cassation, and it is also the entity to be contacted regarding rights of access and issues of anonymisation of identifying information in the judgments. Therefore, reusers must consult the specific general terms to identify the appropriate contact point in such situations. Another difference is that while the legal basis for the publication and reuse of the Judilibre database is governed by the CJO, the publication and reuse of the Opendata.justice database are governed by the CJA. Lastly, and perhaps importantly, unlike the Judilibre, the Opendata.justice database does not have an API and the PISTE conditions are not applicable.

► Monitoring and enforcement

France lacks a formal system for monitoring and enforcing the conditions outlined in Open License 2.0, as well as the general T&Cs. During our interview with individuals at the Cour de Cassation, it was mentioned that enforcement primarily falls to the relevant regulatory bodies, such as the data protection authority, often triggered by complaints from affected individuals. However, it is important to highlight that the team working on publications at the Cour de Cassation regularly engages with the relevant stakeholders, including legal information providers, to remind them of their responsibilities and identify areas for improvement. They also reach out to stakeholders on an ad-hoc basis when, for example, modifications are not updated by the reuser.

In our interview with the team at Cour de Cassation, a key area identified for improvement relates to communication about changes to databases, such as when a judgment is removed or modifications are made to judgments in such databases. Currently, there is no mechanism to inform reusers about these changes. Users are responsible for updating their databases in sync with changes in the databases. However, according to representatives of the Cour de Cassation, it is exploring more efficient method of notification systems about database amendments, including the potential implementation of update lists and flags for modified or removed decisions.

► Highlights

The French system for the reuse of court judgments features several distinctive characteristics. Firstly, France is one of the few countries that applies the same type of license for both computational (using API) and non-computational uses. Computational uses are subject to very minimal technical restrictions. One such restriction involves the quota system for API use. However, the restrictions are designed primarily to ensure the technical functionality of the system and maintain the smooth operation of the portals, rather than to restrict reuse (as is the case with Estonia).

Secondly, courts and entities publishing the judgments bear a significant share of the responsibility in terms of data protection and privacy. This is evident in the practice of pseudonymising the names of parties and third parties in published judgments. This pseudonymisation is automated. In this context, the role of the reuser concerning privacy and data protection appears secondary compared to other jurisdictions (such as Norway and to some extend England and Wales). The primary responsibility involves notifying the responsible

entities about the presence of directly identifiable information and directing affected individuals to the courts or other responsible bodies.

Thirdly, a feature possibly unique to the French system is the prohibition of profiling individuals based on judgments. This prohibition has been put under scrutiny from a free speech perspective.[119] However, according to representatives of the Cour de cassation, it is indicated that this restriction is aimed more at restricting the development of commercial products, such as Lex Machina owned by LexisNexis, which is used to profile and compare judges and lawyers in specific fields.

3. Estonia

► Background and publication practices

According to the Public Information Act, there is an obligation to make available judgments which have entered into force.[120] The Estonian State Gazette (*Riigi Teataja)* serves as the primary platform for the publication of judgments organised under the Ministry of Justice.[121] The State Gazette publishes decisions from all instances. Additionally, an alternative to the publication in the State Gazette is an API access, which can be obtained upon approval by the Ministry of Justice and is subject to certain conditions.

Regarding de-identification of judgements, civil case decisions concerning natural persons are largely de-identified, while ongoing debate concerns potential changes to de-identification practices. In criminal cases, information about the convicted is generally published without de-identification, but detailed rules outline requirements for deleting punishment-related information.[122]

Courts are responsible for determining the de-identification of judgments, and requests for de-identification must be sent to the relevant court. Thus, the State Gazette cannot alter the level of de-identification of the published judgments.

► Regular access

The decisions published in the State Gazette do not require compliance with any particular reuse obligations beyond general ones set in the legislation. The primary restriction for accessing these decisions is the implementation of CAPTCHA,[123] which serves to prevent mass downloading by verifying the user's identity as human or a machine. While CAPTCHA may not be required each time when a decision is accessed, its intermittent use ensures system functionality without delays and mitigates privacy risks associated with bulk access to

[119] Langford, M., & Madsen, M. R. (2019). France criminalises research on judges. *Verfassungsblog.*
[120] See § 28 (29), 'Public Information Act–Riigi Teataja', https://www.riigiteataja.ee/en/eli/514112013001/consolide.
[121] 'From the Online Edition of Riigi Teataja –Riigi Teataja', https://www.riigiteataja.ee/abiLeht.html?id=1.
[122] See Chapter 4 in Criminal Records Database Act, https://www.riigiteataja.ee/en/eli/ee/501042019021/consolide.
[123] Short for Completely Automated Public Turing test to tell Computers and Humans Apart (CAPCHA).

judgments. This is particularly important as it helps to address the significant risk of mass downloading, especially concerning the disclosure of defendants' names in criminal cases.

License

Approval process

Terms & conditions

Technical conditions for users

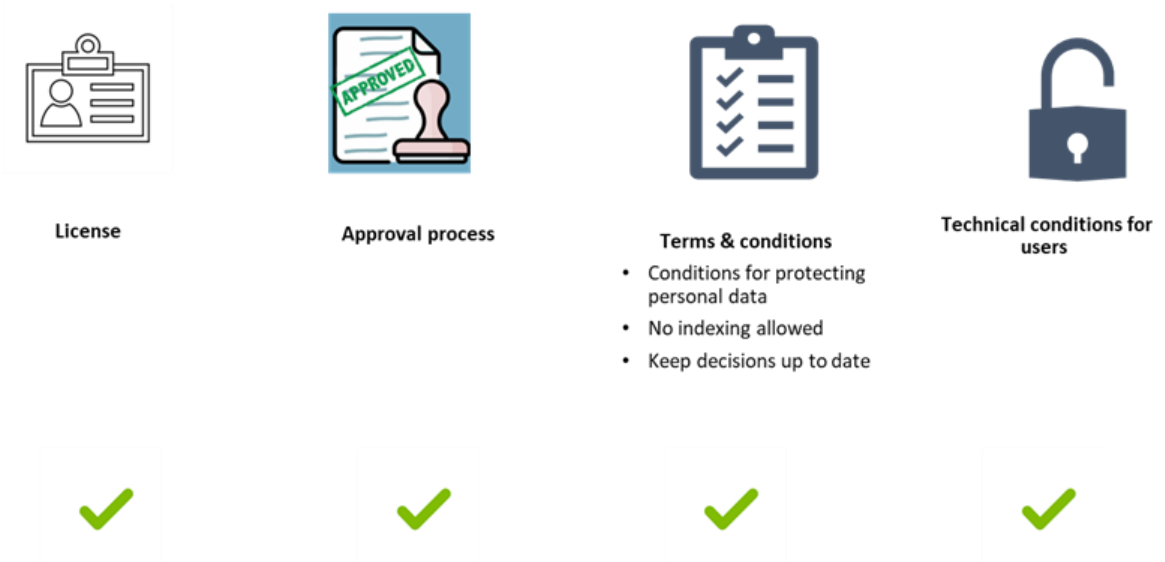
- CAPTCHA for public access

► API access

In 2021 the Estonian State Gazette released an API for accessing court decisions, although the government does not currently promote the opportunity to apply for API access. Interested parties must request API access from the Ministry of Justice, and approval is only granted upon agreement to the conditions and adhering to the technical requirements.[124]

The conditions for accessing the API primarily aim to protect the privacy of individuals involved in court proceedings. Users must comply with both general regulations and data protection regulations. Additionally, they are responsible for keeping the decisions up to date. The conditions prohibit the separate storage and retention of personal data from decisions, which may hinder the reuse of judgments that rely on separate storage. Users are also prohibited from processing or making the information available after it has been removed from the decision. This indicates that compliant reuse of the API is dependent on integrating it into the systems or applications of the reuser.

[124] We have not been able to obtain the technical requirements.



The Ministry of Justice retains the authority to unilaterally change the conditions, and access to court decisions through the API can be terminated if the conditions are violated. However, there are currently no mechanisms in place to monitor and enforce compliance with the API conditions, and according to Estonian government representatives, there have been no known violations thus far.

Currently, API access have been granted to six actors: Äripäev (Estonian financial newspaper), LHV (Estonian bank), Texta (AI software for text processing), Estlex (legal technology), d-Systems (IT-services) and Lendfusion (loan management).

► Highlights

stonia's governance of the publication and reuse of judgments is characterised by a relatively liberal approach, allowing public access and reuse with limited restrictions. For the general access to the decisions, the CAPTCHA serves as a key element mitigating the privacy risks involved with the publication.

However, while API access is provided for court decisions, the fact that the opportunity to obtain API access is currently not publicly advertised constitutes a de facto restriction. Additionally, the conditions limiting the separate processing of judgments accessed through the API restricts (a ways in which reuse can be carried out) pose practical constraints for potential users of the API. Nevertheless, this government control also serves to reduce the risks involved with the unique practice of publishing the names of the convicted in criminal cases.

4. Finland

► Background and the publication practices

There are three public portals playing a prominent role in the publication of judgements in Finland. The Finnish government has a longstanding collaboration with academia and

technical research communities aimed at improving the publication of judgments. This includes developing tools for de-identification,[125] and for accessing and navigating court decisions.[126]

Open data has been vital for the development of the legal information systems in Finland. Since 1997, the Ministry of Justice has provided free online access to judgments through the Finlex database.[127] Initially, the database mainly included decisions of the Supreme Court, the Supreme Administrative Court, Courts of Appeal, Administrative Courts, Market Court, Labour Court and Insurance Court. In 2016, the first version of Semantic Finlex was launched,[128] providing a "next generation of more intelligent and useful public and commercial legal systems can be built in a more cost efficient way".[129] The published judgements are available as a REST API.[130] However, the publication of a court decision depends on whether the case has been filed in the system and in the websites of the courts at www.oikeus.fi. As a response to limited publications from lower courts and administrative courts, the case management system has been developed to enable the publication of more decisions.

The third prominent public website, LawSampo, a joint product of the Finnish Ministry of Justice and Aalto University, offers various tools to analyse legal data, including algorithms for comparing judgments and news texts on lakisampo.fi. Currently, efforts are underway to reform the portal for publishing all court decisions in the Finlex service, with a target completion date of the end of 2024. Additionally, there are two commercial publishers that also publish legal databases (Edilex and Alma Talent).

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[125] See for example: Arttu Oksanen et al., 'An Anonymization Tool for Open Data Publication of Legal Documents', in *CEUR Workshop Proceedings*, vol. 3257 (3rd International Workshop on Artificial Intelligence Technologies for Legal Documents and the 1st International Workshop on Knowledge Graph Summarization, RWTH Aachen University, 2022), 12–21, https://research.aalto.fi/en/publications/an-anonymization-tool-for-open-data-publication-of-legal-document.

[126] Arttu Oksanen et al., 'Semantic Finlex: Transforming, Publishing, and Using Finnish Legislation and Case Law As Linked Open Data on the Web', in *Knowledge of the Law in the Big Data Age* (IOS Press, 2019), 212–28, https://doi.org/10.3233/FAIA190023.

[127] https://www.ifla.org/wp-content/uploads/2019/05/assets/law-libraries/presentations/ifla-2012-e-law-and-free-access_to-legislation-in-finland-and-in-europe-hietanen.pdf

[128] For a description of the system see sec. 5 in: Arttu Oksanen et al., 'Semantic Finlex: Transforming, Publishing, and Using Finnish Legislation and Case Law As Linked Open Data on the Web', in *Knowledge of the Law in the Big Data Age* (IOS Press, 2019), 212–28, https://doi.org/10.3233/FAIA190023.

[129] Matias Frosterus et al., 'Facilitating Reuse of Legal Data in Applications—Finnish Law as a Linked Open Data Service', in *Legal Knowledge and Information Systems* (IOS Press, 2014), 115–24, https://doi.org/10.3233/978-1-61499-468-8-115.

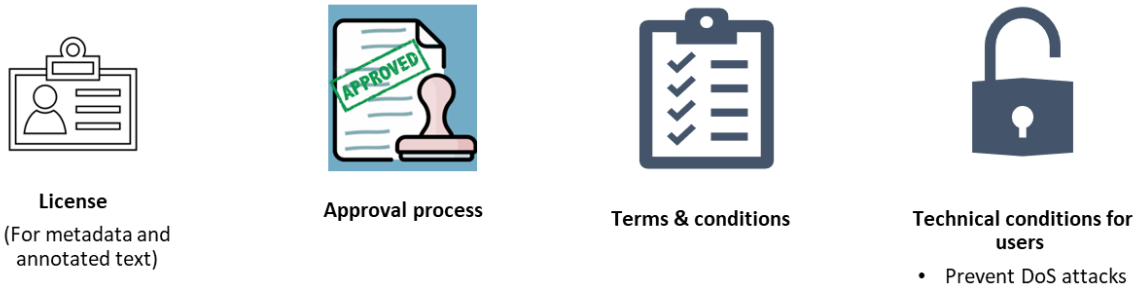
[130] 'Semanttinen Finlex', https://data.finlex.fi/fi/rest-api.

De-identification practices in Finland involve using various digital tools to remove directly identifying information. The research community has been involved in developing these tools, and the legal basis for the de-identification practice is the GDPR.[131]

► Limited restrictions on reuse

There are generally no specific limitations on the reuse of published judgements from the public databases such as Finlex and LawSampo, except for those imposed by legislation. In Finland, judgements are not typically subject to copyrights.[132] However, there is a provision that grants exclusive rights to the producer of a catalogue and database, allowing them to make copies and publicly distribute them.[133] This provision is applicable to the private legal information providers publishing consolidated versions of the laws,[134] and is of limited relevance for the reuse of judgments from the public databases.

Although currently no licenses apply for the reuse of judgments, metadata and annotations are licensed under CC BY 4.0.[135] From December 2024 onwards, a new license CC Zero will be applied in all judgments in Finlex and all judgments are made available as open data.



According to a representative from the Ministry of Justice, there have been no major identified risks to treating judgements as open data without obligations for reuse. However, the representative acknowledged the possibility of actors creating copies of judgments, making alterations, and potentially using them to deceive others. Privacy risks have been thoroughly

[131] Arttu Oksanen et al., 'An Anonymization Tool for Open Data Publication of Legal Documents', in *CEUR Workshop Proceedings*, vol. 3257 (3rd International Workshop on Artificial Intelligence Technologies for Legal Documents and the 1st International Workshop on Knowledge Graph Summarization, RWTH Aachen University, 2022), 12–21, https://research.aalto.fi/en/publications/an-anonymization-tool-for-open-data-publication-of-legal-document.
[132] Section 9 in Copyright Act (404/1961, amendments up to 608/2015), https://www.finlex.fi/fi/laki/kaannokset/1961/en19610404.pdf.
[133] Ibid. section 49.
[134] With the new reform, the provision will no longer be applicable for the published legal sources.
[135] 'LawSampo', https://www.ldf.fi/dataset/lawsampo.

assessed, and measures have been taken to de-identify the published decisions, although this does not completely eliminate the risk of identifying individuals in the judgments.

In terms of technical measures, Finlex website has implemented a solution to protect against Denial-of-Service (DoS) attacks. This measure primarily aims to secure the technical functionality of the site. Although no licenses apply for the reuse of judgements, metadata and annotations are licensed under CC BY 4.0.[136]

► Highlights

The Finnish governance of published judgments embraces an open data approach that encourages reuse. This unrestrictive reuse policy of published judgements aims to facilitate the utilisation of the judgments to develop new solutions and services. Despite prioritising the open data approach, efforts are made to address concerns such as privacy mainly through the practice of de-identification. Collaboration with the research community has been instrumental in enhancing the availability of judgments and addressing de-identification challenges.

5. Norway

► Background and publication practices

The Norwegian practice of publication of judgements can be divided into two categories. Firstly, the Norwegian Supreme Court publishes all its decisions on its own website, making them freely available to the public. There are no limitations on the reuse of these decisions. To comply with relevant legislation, the Court ensures that all directly identifiable information in criminal cases is de-identified.[137] Additionally, in civil cases containing sensitive information, de-identification is also required.[138] The decisions are not subject to any licenses and there are no terms and conditions imposed for the reuse of judgments. The absence of an approval process and technical conditions further supports the non-restrictive approach to the reuse. Overall, the Norwegian Supreme court is a prime example of having no specific restrictions of reuse.

[136] LawSampo, https://www.ldf.fi/dataset/lawsampo.
[137] See Regulation on the Public Access to Judicial Proceedings § 11, https://lovdata.no/dokument/SF/forskrift/2001-07-06-757/KAPITTEL_4#%C2%A711.
[138] For a more detailed outline of the de-identification practice, see: 'Behandling Og Avidentifisering Av Personopplysninger Ved Publisering Av Avgjørelser', https://www.domstol.no/no/hoyesterett/VERKTOY/avidentifisering/.

License

Approval process

Terms & conditions

Technical conditions for users

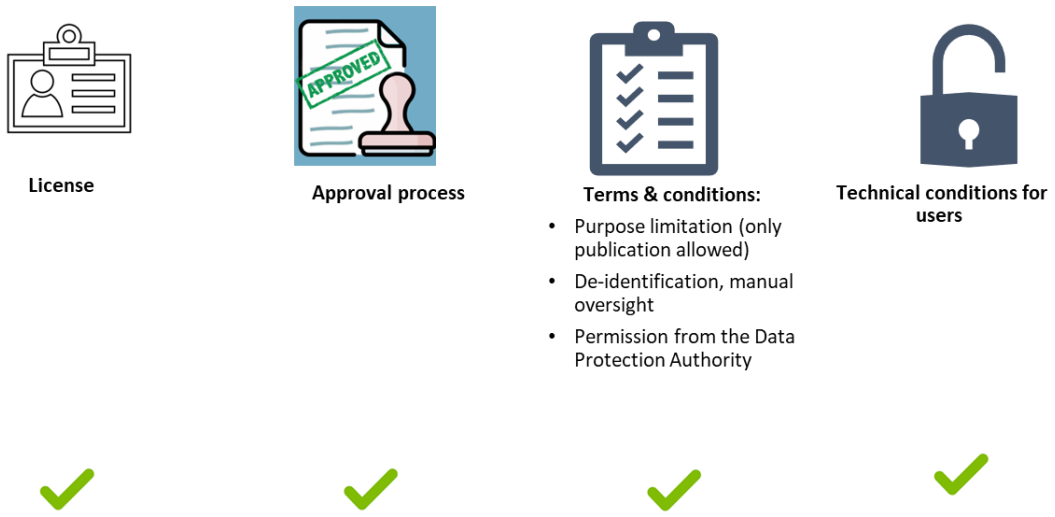
Secondly, the Norwegian Court Administration has granted access to a database containing most judgements to three private legal information providers.[139] These providers have entered into an agreement with the Court Administration only allowing them to publish the decisions. Currently, as of April 2024, these three actors are the only ones permitted to access the database. The inclusion of a court decision in this database depends on the court registering the decision in the case management system.

The legal information providers publish the judgments on their own respective websites to a varying extent, with access to certain judgements requiring a subscription. For instance, in 2020, approximately 3 % of all judgements were published by the legal information provider Lovdata.[140] The Court Administration transfers the cases to the legal information providers without any de-identification. The published cases are being de-identified by the legal information providers in accordance with the criteria set out in the agreement with the Court Administration, as well as the more detailed guidelines established by the legal information providers.

► The Court Administration's transfer of judgments to legal information providers

[139] Note that the inclusion of a court decision in this database depends on the court registering the decision in the case management system. All Supreme Court decisions are included, however not all decisions from the lowest courts are included.

[140] See Lovdata, 'Årsmelding 2020' [Annual Report 2020], lovdata_aarsmelding2020_1.0.pdf and Domstolsadministrasjonen, 'Allmenn offentliggjøring av rettsavgjørelser', 2020 [The Court Administration, 'Public dissemination of court decisions'] https://www.digi.no/filer/Allmenn_offentliggj%C3%B8ring_av_rettsavgj%C3%B8relser.pdf.



It is worth noting that the Court Administration's transfer of decisions to the three legal information providers at first glance exhibits the similar traits as the other licensing agreement, however, it differs from licensing arrangements observed in other jurisdictions as it is limited to a selected few actors.

The transfer and reuse of decisions is governed by an agreement between the Norwegian Court Administration and the legal information providers from 2008. The agreement outlines a combination of formal, technical, and privacy-related obligations for the recipient of the decisions (criteria).

The receiver must be an entity registered in the national business and organisational registry, and have obtained a concession from the national data protection authority.[141] The purpose of receiving the decisions must be to publish them publicly, either with or without a fee.

The technical infrastructure for receiving court decisions includes a dedicated FTP server for file transfer, a secure file area for data processing, encryption of court decisions with decryption keys provided by the Court Administration, and storage of decisions in RTF format with metadata in XML format.

The legal information provider must have the capability to receive all decisions in bulk. The recipient is responsible for de-identification of personal data as required by law and regulations before publishing decisions. The legal information providers must have processes for manual review of the texts of the decisions selected for publication. This includes de-identification of all decisions in criminal cases. Decisions which are not selected for publication must be immediately deleted. Moreover, the legal information provider must ensure that access to non-deidentified decisions is limited to the lowest number of data processors withing the organisation as practically possible.

[141] The concession refers to a national mechanism which was established under the former Data Protection Directive 95/46/EC, which is now replaced by the GDPR.

The Court Administration has the right to request documentation from the legal information provider at any time regarding the processing of the decisions received by the latter. Furthermore, it reserves the right to stop the transfer of decisions immediately if the recipient does not comply with the criteria for the delivery of decisions and rulings, including failure to comply with documentation requirements as stated in the criteria. In addition, the Court Administration has an option to demand compensation for the delivery of decisions and rulings, although this option is not used.

The criteria also includes liability. However, the liability of the Court Administration is limited to the change or termination of the transfer of decisions, and changes in the structure or disclosure of decisions to legal information providers. There are no general disclaimers regarding the liability regarding the reuse of decisions transferred from Court Administration to the legal information providers.

Finally, the criteria include provisions in case the businesses face bankruptcy or cease operations for any reason. In such cases, the Court Administration may terminate the transfer of court decisions and require the deletion of all decisions which are not published yet.

► Highlights

The licensing practices for the reuse of judgments in Norway can be seen as an approach filled with contrasts. It stands out as an anomaly compared to the other selected jurisdictions. While the publication by the Supreme Court imposes no restrictions on the reuse, the exclusive access provided to three private actors by the Court Administration can be seen as extremely restrictive licensing measure as its limits the public availability and thus reuse of judgments. The criteria in the agreement between the Court Administration and the three legal information providers primarily focus on privacy concerns as well as technical issues. The parties to the agreement are not permitted to use the decisions for any other purposes than publishing, but there are no further restrictions on how the decisions are being reused when published by the private legal information providers.

As the private legal information are the only semi-public provider of (some) decisions from lower courts, the condition for re-using these decisions relies heavily on subscription fees, terms and services determined by the private actors.

Section 4

Analysing Licensing Practices for Reuse of Judgments

1. Is there a license and what is it for?

If one interprets the term license as an analytical category, as used in this study, to mean the imposition of certain conditions on reuse, then most countries have some form of it. However, only a few jurisdictions explicitly use the term license, with England and Wales, France and Austria being notable examples. England and Wales has the OGL, Open Justice License, and Open Supreme Court License, as well as a specific license for computational use. Conversely, France uses the Open License 2.0 for all types of uses. Austria refers to the Creative Commons Attribution 4.0 as a framework for reuse.[142] Other countries, such as Norway and Estonia, impose licensing-like conditions (similar to those in England and Wales and France) without actually using the term license.

Adding to the confusion, some countries distinguish between general terms and conditions of use versus a license. France is a prime example in this respect; for each database available for reuse, there are separate terms and conditions of use that supplement the Open License 2.0. In some instances, a particular reuse of judgments may be subject to several agreements. For example, using the API with regard to the Judilibre database requires agreeing to three sets of agreements: the general terms and conditions of Judilibre, the PISTE terms, and the Open License 2.0, which are located in different places. This creates a complex arrangement and potential confusion for users. Apart from accessibility concerns, having to agree to three sets of agreements, often with repeated contents, could create confusion in terms of their legal and practical significance. Indeed, this complexity is acknowledged by officials working at the Cour de Cassation, and there is a recognised need to align and simplify these arrangements.

In terms of purpose, a central element of licensing arrangements, especially those based on open data, is to facilitate reuse and promote innovation in the data market. However, this need must be balanced with other interests, particularly privacy and data protection rights, IP, and the proper administration of justice, as well as reducing other forms of harm to individuals and managing technical risks. Licenses, understood broadly, are used to address these interests. However, there are differences in how various jurisdictions try to achieve these objectives. For example, while France employs hard law, such as the prohibition on profiling from judgments as a means to reduce harm and ensure proper administration of justice, England and Wales uses an approval system to achieve similar ends.

[142] 'RIS Daten Version 2.6 - data.gv.at', https://www.data.gv.at/katalog/dataset/0fb9ae1a-92cb-4ab8-a589-470c16d4fe21#additional-info.

2. What are the terms and conditions?

Regarding the content of the terms and conditions, there are notable differences. As illustrated in Table 1, the coverage of the terms and conditions vary.

Some jurisdictions do not impose any conditions on the reuse of judgments, such as Finland. Similarly, the reuse of decisions from the Estonian State Gazette and decisions published by the Norwegian Supreme Court are not subject to any conditions. However, the coverage of the conditions both in France and in England and Wales are broader, including topics such as data privacy, administration of justice and data integrity. Moreover, the French terms primarily reiterate the statutory provisions, referencing the Code of Relations between the Public and the Administration, the CJO, the CJA, and the GDPR, which outline the legal framework for open data of court decisions in France, including a prohibition on judge profiling.

Another difference is whether the scope of the conditions is limited to the primary reuse and secondary reuse. An example of the former is the Norwegian Court Administration imposing conditions of the reuse of the judgements transferred to the legal information providers, however, these conditions do extend towards the secondary reuse such the use of information by parties obtaining information on the website of a legal information provider. On the other hand, the licenses in England and Wales are linked to the reuse of the judgments irrespective of whether such use would be considered primary or secondary use.

No warranty provisions are included as conditions in certain jurisdictions, effectively limiting the responsibility for any harms potentially caused by wrongful information published. Although a no warranty clause is included in the agreement between the Norwegian Court Administration and the three selected legal information providers, it covers only the changes or termination of the transfer of judgments.

Apart from the differences regarding the terms and conditions, there are also considerable disparities among the jurisdiction on whether these conditions are accessible to the public. For instance, the terms and conditions for reuse in England and Wales are promoted actively and they are accessible online for the public. Moreover, this also reflects the key focus in this jurisdiction on making it clear for the potential users what the conditions in the license are and what is needed for a successful application. In contrast, the conditions for the API access in Estonia are not publicly available. Similarly, in Norway, the three actors having obtained access to court decisions are subject to criteria which are not made publicly available. If the conditions for obtaining access are not made publicly available, it makes the process of obtaining court decisions opaque. There may be valid reasons to limit the access of decisions with little degree of de-identification, which is the case for API access in Estonia. However, the concealment of the criteria of obtaining access may not necessarily be the most effective option as it comes with the risk of hindering the access of actors which one would consider beneficial such legal information providers and researchers. Such practices also run counter to the requirements under the ODD, which advocate for pre-defined conditions of reuse that are accessible online.

Table 3. Observed conditions in licenses or requirements for approval

	Data Privacy	Responsible AI	Administration of Justice	Data Integrity	Restrictions for Commercial Reuse	No Warranty	No profiling of judges
England & Wales: Open Justice Licence	✓		✓	✓		✓	
England & Wales: Computational Analysis	✓	✓	✓	✓		✓	
France	✓		✓	✓		✓	✓
Estonia Public access							
Estonia: API Access	✓			✓			
Finland							
Austria (CC BY 4.0)			✓*			✓	
Norway Supreme Court							
Norway (access for 3 legal information providers)	✓					✓	✓**

* The CC BY 4.0 prohibits the use of the material to imply that one is endorsed or granted the official status by the Licensor, thus, the license would indirectly cover administration of justice.

** The condition does not explicitly mention profiling, however, the only permitted purpose for reuse is the publication of the judgments, thus hindering profiling. Note that the conditions do not restrict any secondary use of the judgments, include use after they are published.

3. Is there an approval process?

The approval process allows the government to exercise control over the ways in which the judgments are being reused. However, this study has shown that the design and facilitation of the process can vary across jurisdictions.

One point to consider is whether the approval constitutes a prerequisite for re-using judgments. Some of the jurisdictions do not require an approval at all, such as France, Finland and Austria (see Table 3 below). In contrast, England and Wales require an approval based on the type of the reuse. For instance, activities posing a higher risk such as computational analysis will is subject to an approval. Estonia takes it a step further, by requiring an approval to obtain API access to the decisions.

Another point to consider is the basis for granting approval. In England and Wales, the Ministry of Justice has been developing guidelines for reviewing the applications. On the other hand, Norway and Estonia do not actively advertise the possibility of obtaining approval for accessing the judgments. Nevertheless, in Estonia, actors requesting access beyond what is already published in the database will generally be granted API access if they meet the requirements. In Norway, the approval process is seemingly more opaque, with instances of actors failing to meet the requirements or being unwilling to invest in meeting the technical conditions. Another factor in this regard is the existence of established support mechanisms to assist the ones seeking approval to understand the process and meeting the requirements. While Norway and Estonia are giving limited attention to this matter, this is a key focus for the National Archives in the UK. Providing support to the applicants and adjusting the application form based on the user feedback, increases the understanding of both the conditions and its underlining reasoning. In turn, this increased understanding may as well contribute to the advanced compliance after approval is being granted.

Table 4. Overview of approval processes

	Licensing	No Licensing
Approval	England & Wales (Computational analysis) Estonia (API access) Norway (Court Administration access)	
No Approval	France (all) England & Wales (regular use) Austria (all)	Finland (all) Estonia (regular access) Norway Supreme Court

4. Technical conditions for users

In general, the approaches to the technical conditions for reuse vary considerably among the selected jurisdictions. Technical conditions may provide an effective measure restricting certain types of reuses such as bulk downloading. One can divide the jurisdictions' approaches to technical conditions into categories.

The first category includes technical measures that are put in place when general access to decisions is provided and this aims at restricting the scraping of decisions. For example, Estonia has implemented CAPTCHA for all decisions published in the public database. This measure hinders scraping, as it intermittently requires human verification before accessing the judgments. Similarly, the French Judilibre database has implemented a quota on requests, which hinders bulk downloading by limiting the number of requests that can be made when utilising the API.

The second category includes technical conditions that need to be complied with in order to be granted access to the judgments. These conditions may include agreeing to certain terms and conditions. For example, in Norway, legal information service providers are granted access by the Court Administration on meeting certain technical conditions, including a dedicated FTP server for file transfer, a secure file area for data processing, encryption of court decisions with decryption keys provided by the Court Administration, and storage of decisions in RTF format with metadata in XML format.

The third category consists of technical conditions that are primarily implemented to serve the functionality of the website. For example, Finland has implemented a tool for the Finlex database preventing Denial-of-Service (DoS) attacks, ensuring that the website remains functional and accessible to the users.

Thus, the practices of the studied jurisdictions vary depending on how the technical conditions are used, for example as a mechanism governing the reuse of judgments (Norway and Estonia) or for ensuring the technical functionality of the databases (Finland).

5. Enforcement challenges

There are no mechanisms designated for monitoring and enforcing the potential violations of terms and conditions in the surveyed national licensing arrangements. There are only limited examples of exercising enforcement activities, one being the cease-and-desist letter, which was sent from the government in England and Wales to an actor which was granted a license.

Indeed, the players in market of the reuse of judgements have often been easily identifiable, such as private legal information providers publishing decisions on their own pages. However, recent technical developments have also increased the interest for new actors entering the market, applying judgments for developments of new products or service. While the increase in the number of market actors is in line with the objective of behind the publication of the judgements in many jurisdictions, it can create challenges regarding the monitoring and enforcing of licensing arrangements.

Although the lack of existing monitoring and enforcement mechanisms may reduce the bite of the licensing arrangements, it does not imply a complete lack of compliance. This is in part due to many actors have incentives to comply with the licensing conditions to secure continuous access. In addition, many of the operators of the databases have informal mechanisms to engage with and communicate with the reusers. Nonetheless, there is arguably a need to carefully assess the need for the development of monitoring and enforcements mechanisms in the future. A point to consider is the lack of mechanisms to repair potential violations. An illustrative example in this regard is a situation occurring in one European country where the government initially decided to publish a large quantity of judgments online without any de-identification. However, shortly after the publication, it was observed that various private financial actors were downloading these decisions, apparently using them for purposes deemed inappropriate from a governmental perspective. This led to a policy reversal, leading to the removal of all published decisions. However, the government faced the ongoing challenge that once published, these judgments continued to circulate online. Thus, the limited ability to mitigate the harms associated with potential violations remains a significant challenge.

Section 5
Recommendations

1. Develop national policies for licensing arrangements
2. Develop European models for licensing arrangements
3. Establish a European Working Group to share experiences and develop model licenses

1. Develop national policies for licensing arrangements

This report shows that there are not only differences in the national legal systems and their publication practices, but also diverging approaches and goals for the licensing of court decisions. Thus, there is limited evidence to suggest that a one-size-fits-all-solution exists for licensing the reuse of judgments. However, we identify a set of four policy factors that may aid jurisdictions in developing practices, which are best suited to their unique national context. A good national and participatory and transparent process should address the following:

- First, in developing licensing arrangements in a jurisdiction, it is crucial to determine the **national goals** for reuse. The national priorities may vary significantly regarding the balancing the need for open judgment data against other principles, such as privacy and proper administration of justice.
- Second, in determining the national goals for reuse, jurisdictions would benefit from having an informed process to determine the **effective means** for governance. This report has identified the means included in licensing arrangements in the selected jurisdiction (see sections 2.2 and 5).
- Third, in tackling unknown future issues with the reuse of judgments, there is a need to develop **flexible governance structures**. These can permit the introduction of new conditions in the licensing arrangements, or even the introduction of new elements such as enforcement mechanisms.
- Finally, it can benefit the jurisdictions if licensing arrangements are **approached holistically**. It is imperative that issues related to reuse — whether legal (licensing

conditions), organisational (approval processes), or technical (e.g. the format of judgments) — are not addressed in isolation from the national context in ensuring the proper organisation of licensing arrangements.

2. Develop European models for licensing arrangements

We recommend the development of European models (e.g., 2-4) for licensing the reuse of judgments. The main aim of this model is to provide the European jurisdiction with a set of tools to (further) develop and implement licensing arrangements for the reuse of judgments. The models could address the varying national needs (see Recommendation 1) and provide appropriate and corresponding for new or amended licensing arrangement. To be sure, a jurisdiction may adopt parts of the model in its national licensing arrangement. Moreover, the models should comply with relevant regulations. For example, the ODD Article 8(1) prohibits the implementation of licensing conditions "unless such conditions are objective, proportionate, non-discriminatory and justified on grounds of a public interest objective."

The development of these models should be initiated through a European-level process (see Recommendation 6.3). The models could be all developed on a standard CC-BY 4.0 Int but then modified across a spectrum, ranging from openness on the one end to protection on the other end. Thus, models based on the open end of the spectrum might simply have the base license, and then allow API access, institute no approval process, and have few technical measures in place such as scraping restrictions. At the other end of the spectrum, greater restrictiveness may be valued. Thus, there might be extra conditions concerning data privacy or responsible AI, requirements of approval for API access, prevention of scraping and quotas on API requests, and payment of publishing costs for commercial use. In between, there might be a midway model.

3. Establish a European Working Group to share experiences and develop model licenses

It has become evident throughout this work that licensing issues have received limited attention in many jurisdictions, and there is a lack of knowledge sharing platforms on this topic across Europe. Existing cross-border collaborations seem to be sporadic and ad hoc. Therefore, we recommend establishing a European Working Group to share experiences across jurisdictions and develop models for the licensing the reuse of judgments.

While the details concerning this group's tasks and organisation must be agreed upon by the states and the relevant stakeholders, we outline a few potential tasks for the Working Group and ways of organising the group's activities.

- Facilitate the exchange of experiences and serve as a collaboration forum for developing licensing arrangements for reuse of judgments.
- Document approaches to licensing of judgment data in states other than those covered in this report.
- Help develop, administer, review and update European models for licensing arrangements of open judgment data.

- Function as an arena to address issues adjacent to licensing arrangements for the reuse of judgments, e.g. serve as platform for sharing experiences on de-identification practices for published court decisions.

One way of establishing the European Working Group would be to organize it within existing structures of European collaboration, whether the Council of Europe or the EU (e.g. the portal data.europe.eu). It could be beneficial to situate the Working Group within an organisation having experience in facilitating cross-border collaboration. The Working Group should consist of representatives with knowledge of how the reuse of judgments is being governed in each jurisdiction. This allows for the exchange of experiences across the countries. The forum can potentially be served by a small secretariat facilitating the work, including outlining the goals, set agenda for meetings and so forth.