

Official Journal of the EU: electronic publication

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PURPOSE: to make provisions for legally valid electronic publication of *the Official Journal of the European Union*.

PROPOSED ACT: Council Regulation.

BACKGROUND: the Official Journal of the European Union (OJ) ensures official publication of the legislation and other acts of the EU. It has been published on paper since 1958 and, since 1998; it has also been available on the Internet. In recent years, an increasing number of people have been consulting the OJ on the Internet because it is convenient and quick, while the number of subscriptions for the printed edition has been declining. However, as the printed edition is currently considered to be the only valid and legally binding publication, for the time being legal rights cannot be claimed and obligations cannot be enforced based on the electronic version of the OJ. This was clearly stated by the Court of Justice of the EU in the Skoma-Lux case (Judgment of 11 December 2007 in Case C-161/06, Skoma-Lux sro v Celní editelství Olomouc). According to the Court, making the legislation available on the Internet does not equate to a valid publication in the Official Journal of the European Union in the absence of any rules in that regard in Community law.

IMPACT ASSESSMENT: an analysis has been conducted by the Commission to assess three options with regard to publication of the OJ.

Option 1: maintaining the status quo, where only the paper version constitutes valid publication and the online version of the Official Journal of the European

Union serves for information purposes only;

Option 2: exclusive online publication of the Official Journal of the European Union;

Option 3: simultaneous publication on paper and online that would have equal legal value and effectiveness.

Providing for the legal value of the electronic edition will have significant benefits, as:

- access to EU legislation is broadened, made easier and immediate;
- access to the electronic edition is free of charge and possible at any time;
- such electronic publication would be in line with the Digital Agenda priorities agreed among the EU institutions and would stimulate an increase in take-up of online services.

LEGAL BASIS: Article 352 Treaty on the Functioning of the European Union.

CONTENT: this proposal provides that electronic publication would equate to valid publication of the Official Journal of the European Union. It also deals with the technical requirements whereby electronic publication equates to valid publication and establishes the competences of the Publications Office in this area.

However, the printed edition would suffice to ensure the legal effects of publication in technically-driven exceptional and temporary cases of unforeseen disruption of electronic publication (e.g. cyber-attacks, unforeseen equipment malfunctions) that last for more than one day. The edition of the OJ printed in such

circumstances is to be published in electronic form as soon as the technical system is restored. The printed edition is to provide the date of publication, but the subsequent electronic edition would prevail in case of differences.

The Commission notes that an electronic publication is consistent with the target set by the Europe 2020 Strategy and the flagship initiative A Digital

Agenda for Europe, according to which broadband access should be ensured for all by 2013.

The proposed system balances the concerns for both accessibility and simplicity:

- the valid electronic publication allows for broader dissemination than the printed edition. During the last few years, there has been a drop in the number of subscriptions for the OJ, while Internet usage in the EU has been expanding - according to Eurostat, 70% of households in 2010 and 94% of enterprises in 2009 had access to Internet. Furthermore, consultation of the electronic edition of the OJ would be free of charge and would compare favourably with the printed publication, for which printing and shipping costs had to be levied from the public. Nonetheless, a safeguard is provided for people with disabilities who can access the OJ in a specific electronic format and for persons who cannot, for any other reason, access the electronic publication, as it will always be possible to obtain a paper version 'on demand' but without legal value (i.e. for information purposes only) either through the Publications Office or as a print-out from the Internet;
- the system is simpler since potentially complex rules on handling discrepancies between equally authentic printed and electronic editions are no longer required.

The proposal aims at broadening access to EU law and enabling everyone (be they professionals in law or members of the general public) to rely on the electronic edition of the OJ as being official and authentic. Should the electronic publication of the OJ be acknowledged as valid publication, all EU citizens could have virtually simultaneous access to EU law, immediately after publication and in a more economical manner since consultation of the electronic publication would be free of charge. Access for people living in geographically less accessible regions in Europe would also be facilitated.

The proposal also aims to enhance legal certainty compared to the current situation where the online publication serves for information purposes only, as rights could be enjoyed and obligations enforced based on their publication in the authentic electronic version of the OJ.

BUDGETARY IMPLICATIONS: providing for legally valid publication of the OJ in electronic form has no budgetary implication.

However, the technical infrastructure supporting electronic publication requires IT-related investments. Under the administrative autonomy, expenditure of EUR 38 000 was incurred in 2009 for setting up and testing the technical system prior to the publication of the OJ in electronic form as authentic. Further development investments and the maintenance and system-running costs are to be borne by all institutions since the obligation to publish legislative texts rests with them. The method for calculation of the repartition key is based on the number of OJ L and C pages produced for each institution in year n-2. The key for 2011 has been set up on the basis of the 2009 figures:

- European Commission: 47.64%;
- Council of the European Union: 21.96%;
- European Parliament: 21.94%;
- Economic and Social Committee: 3.29%;
- Court of Justice of the European Union: 3.17%;
- Court of Auditors: 1.25%;
- Committee of the Regions: 0.75%.

Budgetary provisions will be made in line with this repartition key.