

## Legal Analysis

The checklist above is intended to be used as a tool for the Public Administration that releases Open Data and for verifying the connected legal aspects.

The *responsible of the service* has to evaluate, for each dataset, those following topics:

1. privacy issues,
2. IPR policies,
3. licences,
4. limitations on public access,
5. economical conditions,
6. temporal aspects.

As cited on the Jail|OD|Break website, the standards taken into account were the ones defined by the **Open Data Goldbook for Data Managers and Data Holders** and specifically the four main directives of the Open Data release:

- Privacy: GDPR Regulation (EU) 2016/679, Regulation (EU) 2018/1807, Directive 2002/58/EC;
- PSI: Directive (EU) 2019/1024
- CDSM: Directive (EU) 2019/790
- INSPIRE: Directive 2007/2/EC that defines particular limitation on public access for the spatial and geo data.

### Legend:

- D1 - Prisoners by Citizenship, Sex, Measurement, Country and Year
- D2 - Prisoners by Age and Sex - number and rate for the relevant sex and age groups
- D3 - Prison Capacity and Number of Persons Held
- D4 - Persons held by Status
- D5 - Mortality in Prison
- D6 - Responsibilities of Ministry of Health or public health authorities

# Legal Analysis

## Privacy Issue

To check	D1	D2	D3	D4	D5	D6
<i>1.1 Is the dataset free of any personal data as defined in the Regulation (EU) 2016/679?</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>1.2 Is the dataset free of any indirect personal data that could be used for identifying the natural person? If so, is there a law that authorize the PA to release them? Or any other legal basis? Identify the legal basis.</i>	Yes	Yes	Yes	Yes	Yes	Yes

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<i>1.3 Is the dataset free of any particular personal data (art. 9 GDPR)? If so is there a law that authorize the PA to release them?</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>1.4 Is the dataset free of any information that combined with common data available in the web, could identify the person?</i>  <i>If so, is there a law that authorizes the PA to release them?</i>	Yes	Yes	Yes	Yes	Yes	Yes

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
1.5 Is the dataset free of any information related to human rights (e.g. refugees, witness protection, etc.)?	Yes	Yes	Yes	Yes	Yes	Yes
1.6 Do you use a tool for calculating the range of the risk of de-anonymization? Do you anonymize the dataset? With which technique? Did you check the three mandatory parameters: singling out, linking out, inference out?	Not stated	Absence of specific information	Absence of specific information	Absence of specific information	Not stated	Absence of specific information

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<i>1.7 Are you using geolocation capabilities? Do you check that the geolocation process can't identify single individuals in some circumstances?</i>	Yes, but individuals can't be identified	Yes, but individuals can't be identified	No	No	No	No
<i>1.8 Did you check that the open data platform respect all the privacy regulations (registration of the end-user, profiling, cookies, analytics, etc.)?</i>	Absence of clear information	Yes	Yes	Yes	No specific information within the UNODC data resource  A Privacy Notice is given on the United Nation's web resource.	Yes

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<p><i>1.9 Do you know who are in your open data platform the Controller and Processor of the privacy data of the system?</i></p>	No	Data Protection Officer is mentioned and ensures that the European Commission apply the Law protecting individual's personal data correctly	Data Protection Officer is mentioned and ensures that the European Commission apply the Law protecting individual's personal data correctly	Data Protection Officer is mentioned and ensures that the European Commission apply the Law protecting individual's personal data correctly	<p>No specific information within the UNODC data resource</p> <p>A Privacy Notice is given on the United Nation's web resource.</p>	Yes, WHO
<p><i>1.10 Where the datasets are physically stored (country and jurisdiction)? Do you have a cloud computing platform? Do you have checked the privacy regulation of the country where the dataset are physically stored? (territoriality)</i></p>	Online	Online	Online	Online	Online	Online

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<i>1.11 Do you have non-personal data? Are you sure that are not "mixed data"?</i>	Yes	No	No	No	Yes	Yes

## IPR of the Dataset

To check	D1	D2	D3	D4	D5	D6
<i>2.1 Do you have created and generated the dataset?</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>2.2 Are you the owner of the dataset? How is the owner?</i>	Yes	Yes	Yes	Yes	Yes	Yes

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<i>2.3 Are you sure to not use third party data without the proper authorization and license? Are the dataset free from third party licenses or patents?</i>	Third party data are used, from member states authorities that provided data.	Third party data are used, from member states authorities that provided data.	Third party data are used, from member states authorities that provided data.	Third party data are used, from member states authorities that provided data.	Third party data are used, from member states authorities that provided data.	Third party data are used, from member states authorities that provided data.
<i>2.4 Do you have checked if there are some limitations in your national legal system for releasing some kind of datasets with open license?</i>	Yes	Yes	Yes	Yes	Yes	Yes



## Legal Analysis

### Licences

To check	D1	D2	D3	D4	D5	D6
<p><i>3.1 Do you release the dataset with an open data license? In case of the use of CC0 do you check that you have all the right necessary for this particular kind of license (e.g., jurisdiction)?</i></p>	<p>No license mentioned but the following is stated:</p> <p>“Users are free to copy, reproduce and redistribute the data for both commercial and non-commercial purposes providing UNECE as the source of date”</p>	Yes	Yes	Yes	<p>In the Terms of Use section, the following is stated:</p> <p>“All data and metadata provided on dataUNODC website are available free of charge and may be copied freely, duplicated, and further distributed provided that UNODC is cited as the reference.”</p>	Yes
<p><i>3.2 Do you include the clause: "In any case the dataset can't be used for re-identifying the person"?</i></p>	No	No	No	No	No	Yes

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<i>3.3 Do you release the API (in case you have) with an open source license?</i>	No API mentioned	No API mentioned.	No API mentioned.	No API mentioned.	No API mentioned.	No API mentioned
<i>3.4 Do you check that the open data/API platform license regime is compliance with your IPR policy? Do you have all the licences related to the open data platform/API software?</i>	Yes. No license mentioned	Yes. Compliant with IPR policy. API: no licence mentioned	Yes. Compliant with IPR policy. API: no licence mentioned	Yes. Compliant with IPR policy. API: no licence mentioned	Yes	Yes

## Legal Analysis

### Limitations on Public Access

To check	D1	D2	D3	D4	D5	D6
<i>4.1 Do you check that the dataset concerns your institutional competences, scope and finality? Do you check if the dataset concerns other public administration competences?</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>4.2 Do you check the limitations for the publication stated by your national legislation or by the EU directives?</i>	Yes	Yes	Yes	Yes	Yes	Yes

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<i>4.3 Do you check if there are some limitations connected to the international relations, public security or national defence?</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>4.4 Do you check if there are some limitations concerning the public interest?</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>4.5 Do you check the international law limitations?</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>4.6 Do you check the INSPIRE law limitations for the spatial data?</i>	Not stated	Not stated	Not stated	Not stated	Not stated	Not stated

# Legal Analysis

## Economical Conditions

To check	D1	D2	D3	D4	D5	D6
<i>5.1 Do you check that the dataset could be released for free?</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>5.2 Do you check if there are some agreements with some other partners in order to release the dataset with a reasonable price?</i>	Not stated	Yes	Yes	Yes	Yes	Yes

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<p><i>5.3 Do you check if the open data platform terms of service include a clause of “non liability agreement” regarding the dataset and API provided?</i></p>	<p>Yes. There is no information about this point</p>	<p><u>REGULATION (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</u></p>	<p><u>REGULATION (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</u></p>	<p><u>REGULATION (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</u></p>	<p>Not specifically stated, but notes on liability and its limitations for the institution are present.</p>	<p>Yes</p>

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<p><i>5.4 In case you decide to release the dataset to a reasonable price do you check if the limitation imposed by the new directive 2019/1024/EU are respected ? Are you able to calculate the “marginal cost”? Are you able to justify the “reasonable return on investment” limited to cover the costs of collection, production, reproduction, dissemination, preservation and rights clearance? There is a national law that justify your public administration to</i></p>	Not stated	Not stated	Not stated	Not stated	Not stated	Not European Dataset

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<i>5.5 In case you decide to release the dataset to a reasonable price do you check the e-Commerce directive1 and regulation?</i>	Not stated	Not stated	Not stated	Not stated	Not stated	Not stated

## Temporary Aspects

To check	D1	D2	D3	D4	D5	D6
<i>6.1 Do you have a temporary policy for updating the dataset?</i>	No	Annual	Annual	Annual	The United Nations periodically adds, changes, improves or updates the Materials without notice.	Yes



## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
6.2 Do you have some mechanism for informing the end-user that the dataset is updated at a given time to avoid mis-usage and so potential risk of damage?	Latest update	Dataset information, last update (date/time)	Dataset information, last update (date/time)	Dataset information, last update (date/time)	No	Latest update
6.3 Did you check if the dataset for some reason can't be indexed by the research engines (e.g. Google, Yahoo, etc.)?	indexed	indexed	indexed	indexed	indexed	indexed

## Legal Analysis

To check	D1	D2	D3	D4	D5	D6
<p><i>6.4 In case of personal data, do you have a reasonable technical mechanism for collecting request of deletion (e.g. right to be forgotten)?</i></p>	<p>No explicit mention of a mechanism to collect request of deletion</p>	<p>Form available to require the deletion of personal data (Chapter III Art. 14-25 of Regulation (EU) 2018/1725 - right as “data subject”. You can submit your request to the Europa Web Communication unit in DG Communication</p>	<p>Form available to require the deletion of personal data (Chapter III Art. 14-25 of Regulation (EU) 2018/1725 - right as “data subject”. You can submit your request to the Europa Web Communication unit in DG Communication</p>	<p>Form available to require the deletion of personal data (Chapter III Art. 14-25 of Regulation (EU) 2018/1725 - right as “data subject”. You can submit your request to the Europa Web Communication unit in DG Communication</p>	<p>No explicit mention of a mechanism to collect request of deletion</p>	<p>No explicit mention of a mechanism to collect request of deletion</p>