

## STEP 2

# Searching and finding of (social) legal information

## Learning Outcomes

After studying this chapter:

- You will know how to name the different forms of information.
- You will be able to describe the different types of legal sources for the purposes of research.
- You will know which search methods to use for your research.
- You will be able to assess whether the information found meets the quality requirements set.
- You will be able to describe the interpretation methods used to interpret legal information.
- You will be able to plan the design and execution of (social) legal research.

## 2.1 Searching for sources

This chapter describes the usefulness and necessity of sources and information. The focus will be on sources, but the sections below could also be used for non-legal information. At the moment, you are still in the first phase, in which the focus is on the orientation and preparation for your topic. You should have brainstormed about a topic. You will have drawn up a mind map with various keywords or components from which concepts can be derived. In order to give your research more content, you will have to look for more information.

Searching for and finding information is the second step. On the basis of the mind map you will determine which sources of information are necessary to be able to provide an answer to the problem or research question outlined (or even formulating it). On the basis of information sources you can broaden your research. Mind you, the search for sources of information is an ever-recurring process, also called a cyclical process. In other words, every time you find new information, this information can lead you to new sources of information or new insights, including also during the study and elaboration of information. In addition, you may also need new information while studying and working out the information, for example in order to eventually be able to answer a sub-question. You will then have to search anew for information.

In legal research, you often start from a study book or a handbook with basic concepts and information, because that is usually what you need and which you have at hand, and it is prescribed as compulsory literature for the study programme. In addition, a study book is usually written at a comprehensible level and partly or in the basics of the subject you want to research. You can use these study books for your first orientation and to read up on the subject. This information also allows you to search further for more in-depth or specialized information, for example by referring to books or articles by other authors for references to literature used, justification or references in the footnotes.

### 2.1.1 Sources of information

Traditionally, sources of law are the source of information for (social) legal research: treaties, legislation, case law and (albeit to a lesser extent) custom. But information can of course be found everywhere. Not only can legal sources be used, but also textbooks, policy rules, reference books, handbooks, internal codes of conduct, previously conducted research, results from interviews with individuals, media, and so on.

In legal practice you will often fall back on researching the sources of law and literature. These are the most frequently used sources for legal research and they also provide you with the most relevant information for your research.

Mind you, the sources of law take a crucial place within legal research. These sources of law, also called the primary sources of legal research, may not be excluded. The literature, usually secondary sources, are used to better understand the sources of law (explanation and clarification). Or views/interpretations of the sources of law by authors (the legal sources by authors (the so-called doctrine) or to use in your argumentation. Incidentally, you use the sources of law and literature not only to conduct legal research, but also to solve a case.

There are various ways of distinguishing between information and information sources. These include the distinction between internal and external information, primary and secondary sources, and legal and empirical information. Below, we will first discuss the difference between internal and external information. Then we will discuss the distinction between primary and secondary sources, after which we will briefly look at legal information on the one hand and empirical information on the other.

#### A. Internal and external information

Internal information concerns information that is available within the organization. Often this is information that is owned by the organization or used by the organization for internal purposes. Internal information includes policy rules, reports, customer and personnel files, process descriptions, minutes, memos, information on the intranet (internal network sites and websites), and information from employees (available knowledge). If you conduct research for or at an organization and use internal information to do so, you should be aware that this information may be sensitive. The information may contain personal data that may not be shared with third parties for privacy reasons. Or think of business-sensitive or personal information for which strict confidentiality is required or where you have to deal with intellectual property rights (for example copyright and database rights). Therefore, when exploring an assignment, make clear agreements about the content of the assignment and the usability of information and what information you may or may not use or share. If you find internal information during the process and would like to use it in your professional product or research report, ask the person responsible first whether you can and may use this internal information or whether you must first (fully or partially) anonymize it.

In addition to internal information, we also have external information. This is all the information that is available and accessible externally from the organization. From legal sources, the large amount of information on the Internet, the traditional paper books and journals, whether scholarly or not, to the collections of classified information in legal and other databases.

### **B. Primary and secondary sources**

A second way of distinguishing between the type of sources and information are the primary and secondary sources. With primary sources you are dealing with the original and direct origin of the information. In other words, this information comes directly from the author or organization concerned. It is therefore original and 'new' information. Examples of primary sources are legal sources such as laws, treaties and case law. However, it can also be literature, in which an author describes a new legal subject or insight into the law. Because in particular the laws, treaties and jurisprudence are the basis and framework for your research, these are the primary sources for legal research and your final report and are therefore essential. In short, a legal research always contains primary sources!

Of course, laws, treaties and jurisprudence are described in the (prevailing) doctrine, i.e. the interpretations of the legal doctrines written by the authoritative jurists in the form of literature or documents. If a document or literature explains a primary source such as laws, treaties or jurisprudence, we speak of a secondary source. Secondary sources are your study books or the legal handbooks in which the law or the subject is explained, and the author gives his or her interpretation. These sources do not describe a new subject but explain an existing source such as the law. Secondary sources are especially useful for collecting and studying all relevant information, because the primary sources are mentioned and explained. Furthermore, because of the explanation, such a source is also useful for studying all the necessary information for the research.

In science, tertiary information is also often mentioned as a type of source. This is information that consists of the so-called overviews, information that is contained in an encyclopedia, dictionary or synonym book, almanac or bibliography (collection of sources used, not to be confused with bibliography).

### **C. Legal and empirical information**

The last distinction that is often made in practice is that between legal and empirical information. Legal information refers to the law itself. Think of the

law, an article of law or a certain verdict or judgment. Empirical information refers to real and observable facts. Here you can think of statistics, research results, but also of the results of interviews and surveys.

#### *European information and public sector information*

- European e-Justice Portal (free of charge – <https://e-justice.europa.eu>)  
General platform for legal topics from, for, by and within the EU. This platform is not yet complete and is currently being expanded, but it already offers a lot of information and is very comprehensive. At present, it offers the (would-be) lawyer a great deal of legal information. Not only will you find information about the EU, regulations and directives, the internal workings of the EU organization, but also about the legal systems in each Member State or case law at both European and national level. This platform is highly recommended for the student doing comparative law or cross-border research in the EU.

#### *Treaties*

- EUR-Lex (free of charge – <http://eur-lex.europa.eu>)  
The official database of the EU containing all up-to-date EU treaties. Think of the founding treaties, the amending treaties, the accession treaties and various protocols.
- Treaty database (free of charge – via [overheid.nl](http://overheid.nl))  
In this database you can search for all treaties to which the Netherlands (or the Kingdom of the Netherlands) is a party.

#### *Laws and regulations*

- N-Lex (free of charge – <http://eur-lex.europa.eu/n-lex/>)  
This database provides access to all databases of national legislation of the EU Member States. Please note that these are only links to the legislative databases ultimately managed by the Member State concerned. The search will therefore be different for each database. In addition, you will have to enter the search term in the official language of the Member State to get the desired result.

### *Case law*

- EUR-Lex (free of charge – <http://eur-lex.europa.eu/>)  
The official database of the EU containing all EU case law in all the official languages of the EU. The database contains laws and regulations and is also the official portal to, among other things, the case law of the Court of Justice.
- European e-Justice Portal (free of charge – <https://e-justice.europa.eu>)  
The official platform of the EU with a large amount of information on case law in the EU and individual Member States. Among other things, it includes various links to EU and national case law, explanations of the legal systems of the Member States and information and guidelines on cross-border proceedings.

### *Literature*

In order to define your subject, or perhaps even to determine it, it is important that you read up. To do this, you can start with study books and handbooks. These discuss the theories, requirements and various concepts relevant to your subject. You can also use these books to find more information and related literature. After all, in study books or handbooks the authors often refer to other professional literature, scientific articles, parliamentary documents, legislation and regulations and/or case law. Obviously, literature is not only used for a practical study, but also for solving a case.

A distinction is made between various forms of literature. For the legal (research) practice we distinguish the following literature:

- Handbook: a reference work that provides an overview of the state of affairs of an important subject or legal doctrine.
- Commentary: an overview with article-by-article commentary. These books are very suitable to consult if you want to know the meaning, purpose (parliamentary explanation) and application (case law) of a certain law or article of law.
- Monograph: a monograph deals with a specific subject or area of law, generally written by a single author.
- Journals: articles in journals discuss current topics and developments, often in brief. Many legal areas have their own legal journal.
- Case law journals: in addition to the legal journals in which various decisions and developments are discussed, there are also specific case law journals. In these journals, judicial decisions are published, whether or not in a specific area of law.



Technical journals and case law magazines can be found and consulted in various ways. First of all, check whether the educational institution where you are studying has a subscription to the journal and whether it is available digitally and/or in hard copy. As a student, it is also possible to subscribe to a specific journal, for instance the one that specifically deals with the area of law that is important for your research. This is often possible at a reduced student rate.



Literature that should not be missed in (social) legal research is explanations of the relevant laws and regulations by authoritative authors. The explanation consists of a commentary on each separate article of law, in which the explanatory memorandum (explanation, background and purpose of the legislator for the law concerned) and any relevant case law are discussed.

### *Other information*

There are many other sources that may be relevant to your research. Think about:

1. Newspaper articles  
Newspapers are an excellent source of information for collecting information on current affairs or social developments. Useful to use as background information or to outline the social issues or reasons for the topic. In the more scientific sections and opinions, you may find clues with information for the content of your research.
2. Research reports  
The essence of science and research is that you build on previously acquired knowledge and insights, possibly rejecting, or adjusting them, or confirming them in whole or in part. Often the study programme asks you to look at previous (legal) research in addition to other sources. For (social) legal research, you can look at previous research conducted by the various research centers affiliated with universities. Please consult the websites of the universities and colleges concerned.
3. Statistics  
Although as a legal researcher you are often averse to figures, for the purposes of your research you will sometimes have to collect, interpret and use figures. An important scientific instrument with which you can substantiate statements, interpretations or information consists of statistical data.

#### 4. Other relevant information and links

- *Max Planck Institute* (<http://www.mpil.de/>): the German internationally renowned research institute in the field of comparative public and international law. Please note that this website is only available in German and English.
- *Social Science Research Network* (<https://www.ssrn.com/index.cfm/en/>): mainly social science research journals and documents.
- *Peace Palace Library Catalogue* (<https://www.peacepalacelibrary.nl/>): the library of the Peace Palace in The Hague with a lot of relevant information in relation to international law.
- *JSTOR* (<https://www.jstor.org/>): a database with academic studies, books, journals and texts.
- *EJIL-Talk!* (<https://www.ejiltalk.org/>): a European Journal of International Law database.
- *Oxford University Research Archive* (<https://www.ox.ac.uk/>): Oxford's database with legal and social texts and journals.
- *OECD Data and Statistics and publications* (<https://www.oecd.org/>): the database of the OECD with statistics and publications.
- *Academia Edu* (<https://www.academia.edu/>): an international database with papers of academics and researchers.
- *LLMC Digital* (<http://www.llmc.com/>): United States-oriented database with legal titles and government documents.
- *Kluwer Arbitration Online* ([https://www.wolterskluwer.com/en/legal\\_paid\\_portal](https://www.wolterskluwer.com/en/legal_paid_portal)): a platform with legal services and information including databases with news, books, articles, etc.

#### 2.1.2 Terms (search terms)

As we have just seen with the methods, when searching for information you will have to use concepts or terms that you will enter into the search fields. Ultimately, the chosen and used search terms lead to the search results and thus to the information obtained on the basis of the search terms entered. It is therefore very important that you use the right terms. After all, this also determines the results of the search results and thus the information you get. If you have come up with a concept or have managed to distil it from your mind map, you can use that concept as a search term in various ways. It is possible that your term will produce fewer results, or not the desired amount of results, because it is perhaps not the term commonly used in science or practice. Therefore, also use plural, singular, synonyms, related terms, translations, antonyms, spelling variants, abbreviations and so on. In this way, you can eventually use the search term that provides the most relevant search results and information.



When thinking of search terms, you can use various tools. Useful (online) tools include dictionaries, a synonym list (thesaurus) and concepts from sources you have already found. Remember that for legal research you always base yourself on or take into account the primary source such as the law or relevant articles of law in one way or another. In addition, the terms mentioned in relevant articles of law are also very good terms to use as search terms. Another source of inspiration for finding the right search terms are key terms or keywords mentioned in the literature. Many textbooks contain a list of keywords at the front or back of the book or after each chapter. These can also be used as search terms when looking for information.

## 2.2 Selecting and assessing information

Searching for information is the first step in obtaining and processing information in the research (report). Ultimately, it is important that you can justify your research to the client or interested parties. In order to conduct a thorough research, you must ensure that the information you use and, finally, the result is of the necessary quality.

We mentioned earlier that the Internet, for example, is a useful tool for finding information. However, the question is whether all the information on the Internet is reliable, relevant and useful for your research. After all, information on the Internet can originate from anyone and it is not always possible to find out who originally provided the information, let alone whether it is still up to date. It is therefore of great importance that you select and assess the information found.



First of all, you need to ensure that the information you select is relevant. Ask yourself if the information fits in with the subject. Note that it is wise not to select too rigorously on relevance in the beginning. As you gather and study more information, you will need to do this in order to define your subject.



Secondly, you should also consider whether the information you use is accessible to the readers of the research. Think in particular of internal information which, for reasons of confidentiality, may not be viewed by third parties. It is preferable to use only information that is actually accessible to everyone, unless you can make this possible with good and clear written agreements. Finally, it should be clear that your research must be comprehensible. The average reader should be able to understand what you write. In order to achieve this, you need to ensure that the texts you use are also comprehensible to you. After all, if you want to be able to tell something, it is very

important that you yourself first understand the content. If you do not understand the information, then look for other more comprehensible publications.

To ensure that the information you use is of the required quality, there are guidelines that you should take into account, also known as the source quality requirements.

These six source quality requirements are (Ijzermans & Van Schaaijk, 2007, pp. 33-34):

1. Author authority

It is important to find out who the author is or which organization the publication may come from. For example, does the author have authority in the field being written about or is he/she often quoted or referred to in other works. The greater the knowledge, authority and possible references, the greater the author's authority and therefore quality. The same rules apply for the publication originating from an organization.

2. Objectivity

The information presented in the publication must be objective. The more objective the representation of the theories, findings and facts is, the greater the degree of objectivity. If several interpretations and opinions are cited and compared, this will be more objective than the publication where one source is cited and presented as the truth.

3. Reliability

The information you read must be reliable. In short, you should be able to check the information and any research methods and results used. Think of an extensive bibliography and justification by means of footnotes and references.

4. Originality

The originality of the information means that the information should be a primary source as much as possible. An author who quotes a view of another author who in turn has given an interpretation of a reading by an earlier author, is of lesser quality with regard to originality.

5. Completeness and accuracy

Never take information at face value and be critical of everything you read. This is what completeness and accuracy are all about. If you want to ensure thorough research of sufficient quality, you will have to use several different authoritative sources for each subject. You should compare these sources in order to check the content for completeness and accuracy.

## 6. Topicality

Last but not least, the source of information must be up to date. You need to check when the source was published and whether it has been superseded by new laws, regulations or other developments. Bear in mind that the law, and certainly information, can change relatively quickly. For digital sources, you can also check when the information was written and last amended. If there are many 'dead links' on a website, you should certainly doubt whether that website is up-to-date. Be critical and accurate when looking for sources and check whether they are (still) up-to-date. Nowadays, almost everyone uses open sources. If not during the orientation, then at some point in the research. Open sources are sources of information that are accessible to everyone. Think of websites or certain information from the government. Closed sources, on the other hand, are not accessible to everyone because they are only accessible internally and therefore cannot be consulted directly or only against payment. Open sources are often seen as an easy and quick way to obtain information. In principle, they are also easy for the reader to check; however, it is often questionable whether this information meets the quality requirements mentioned above. As a rule, you may assume that the open information provided by the government meets the quality requirements, but be critical of that information as well. If you really want to use open sources in the form of information on non-government websites, you should also use the citation search method. That way, you can at least check the author's authority. And check whether the information meets the other quality requirements.

## 2.3 Studying and interpreting found information

Once you have found and selected the information, you can start studying it. The way in which you read the information is of great importance. If you want to effectively use the relevant information in your research, you have to start by reading the information intensively. This means reading the core and relevant issues at a slow and steady pace, repeating them and making connections with your research or parts of it. So try very hard to separate the main points from the side issues. Make notes to help you understand the material and information and, if necessary, put them together in a general overview with important sources of information for your research. Do not take the information you read as the truth. Be critical and, for example, compare the information with the views of other authoritative authors and with other qualitative information. The latter – comparing information – will ensure that you can better justify your research to the reader anyway. What information you should