



Third European Notarial Network (ENN) Meeting

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Introduction

Pleased allow me to express my gratitude for the gentle invitation to participate in this important event. It's an honour to be here before you, today.

The change proposed

In the first half of 2005, I had the pleasure to coordinate a **European group** that was charged to think about the relations between the European Judicial Network in civil and commercial matters and the legal professions.

This group presented its **report on 26 May 2005**, after an enriching and interesting debate that showed the kaleidoscope of questions and problems involved.

These conclusions shaped, in some way, the solution contained, in this area, in the **project of DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending the Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters of 27 April 2009**.

On the core of the suggested changes that touch the object of this meeting, we find the proposed amendment to Article 2 of the 2001 Decision, that defines the composition of the Network, of paragraph (e) establishing that «**1. The Network shall be**

composed of: "(e) professional associations representing, at national level in the Member States, legal practitioners directly involved in the application of Community and international instruments concerning judicial cooperation in civil and commercial matters».

The proposal also includes the addition of a paragraph 4a. to the same article, with the following content: *«Member States shall determine the professional associations referred to in point (e) of paragraph 1. To that end, they shall obtain the agreement of the professional associations concerned on their participation in the Network. Where there is more than one association representing a legal profession in a Member State, it shall be the responsibility of that Member State to provide for appropriate representation of that profession on the Network».*

This change was motivated by the **Article 19 of the Decision** creating the Network that imposed that no later than 1 December 2005, the Commission should present to the European Parliament, the Council and the Economic and Social Committee a report considering, among other relevant matters, the question of access to and involvement of the legal professions in its activities.

Methodology of the working group

The works of this group stood on a **questionnaire** that was object of a preliminary asset of answers that were subsequently submitted to all the network members.

The referred questions were the following:

1. What should we do to materialize the demand that comes from the number 2 of article 19 of the Decision, in order to give access to and involvement of the legal professions in the Network's activities?

2. In particular, should legal practitioners have access to the contact points for judicial cooperation? If so, should there be made some distinction between these professions?

3. Are there technical, ethical and structural obstacles to the direct access to the Contact Points from some professions that could use the results of the Contact Point's activity in the context of a private and paid service? Should they have access to the

Network individually or collectively? How could the legal profession contribute to the activities of the Network (Access to justice in particular)?

4. How to shape and improve the relations of the Network with:

Judges;

Public Prosecutors;

Lawyers, barristers and solicitors;

Notaries and registrars?

5. For the relations with the legal professions, is there any rule coming from the Decision that causes difficulties or is there any situation that needs to be amended ?

6. How can we make the legal professions more aware of the existence, competences and tools of the Network? Are there different approaches according with the kind of profession? Can the internal networks have a role in this process?

7. Should we change the information system for the specific purposes of the legal practitioners? Is it recommendable to produce publications specifically directed to each legal profession?

The Working Group received contributions to this discussion from the following Belgium, Cyprus, Czech Republic, Greece, Hungary, Malta, Spain and United Kingdom.

Conclusions of the group

At the end of its works, the group presented a report containing the following **conclusions**:

*«1. It is fundamental, on this process, to **widely spread information, near the legal professions** without exceptions, about the existence, tools and possibilities of intervention of the European Judicial Network in Civil and Commercial Matters. Only their interest for the Network can make viable any effort on the way to give them larger access and involvement.*

We could use the annual ordinary Network's meetings (whenever it would take place out of Brussels) to invite the representatives from the legal professions of the Organizer State to assist to specific open session of the meeting. This could be an important path to publicize the EJNI and an effective way of generating involvement on the goals of this structure.

It's advisable to organize an event (conference, meeting, eventually on annual basis) with the participation of representatives of the legal professions, aiming to transmit actualized data about cooperation device's evolution and the legal tools produced on this area.

One of the most important ways to promote the use of the Network tools and to call the legal professions to its activities is to produce excellence and quickness when dealing with judicial cooperation requests. To achieve this objective, the Contact Points must have the necessary conditions to swiftly accomplish their missions and must be focused on the importance of this goal.

2. The direct access from the legal professionals to the Contact Points

The two main objectives assumed by the Decision that has created the Network are:

a) To facilitate judicial cooperation between the Member States in civil and commercial matters;

b) And to furnish up to date information about this area of cooperation and the internal legal systems.

*Considering this division and the objectives that underlie to the Decision that created the Network, it is fundamental to make a distinction between legal professionals that belong to a so called “**inner group**” and the legal professionals that integrate what we could call an “**outer group**”.*

This means that the professionals involved in judicial cooperation under a public regime and that represent the institutions that make that cooperation should be considered as having an intervention on the context of the first goal of the Network (judges and public prosecutors, for example). These could be considered the “inner group”. The members of this group can place direct questions to the contact points. They are also addressees of the generic information included on the second goal of the Network.

So, it seems adequate that only the institutions involved in judicial cooperation (mainly courts) and the professionals that represent them can have direct access to Contact Points. They are the only parties in this process.

Out of this system of direct use of the Contact Points services would only stay the legal professionals that don't represent any of those institutions and merely have a private intervention in the judicial proceeding (“outer group”, were would be, for example the lawyers and the barristers without public intervention in lawsuits).

These professionals should be addresses of generic but rigorous technical information through the fact sheets showed in the internet web page of the project.

It seems that there are ethical obstacles to the direct use of the Network structures, supported by public resources, to obtain information that will produce private economical profits.

There are also physical difficulties since the small dimension of the Contact Points' services and their scarce human resources can't deal with direct questions from the high number of private legal professionals (namely lawyers and barristers) practicing in a specific Member State.

Technically, it seems that there are also obstacles. In fact, direct access from professionals that could use the results of the Contact Point's activity in the context of a private and paid service doesn't seem to have been foreseen in the spirit of the Amsterdam Treaty, Tampere and the Council Decision of 28 May 2001 (2001/470/EC) and its underlying will.

Each legal profession has a role on the activities of the Network. The private ones can ask the courts to use the Network's tools to facilitate judicial cooperation and to solve a specific problem. The other professionals can make an exhaustive use of the structure, asking intensively its intervention and using it to better apply the European juridical instruments.

*3. The **improvement of the relations** from the Network with each specific legal profession:*

*It should be made a distinction between legal professionals **that have an intervention in the lawsuit** in the context of a **private professional exercise** and the others.*

In face of the private professionals, the Network should give generic but rigorous technical information through Internet and increase the level of diffusion of the knowledge about its existence and competences, in order to allow them to use our structure through the courts.

The other professionals that work inside the system, paid by the public service of justice, like the judges and public prosecutors, need to have direct access to the Contact Points and, through them, to the Network, because they are the actors of the judicial cooperation and the representatives of the courts functions. They should be able to place direct questions and to ask specific interventions in order to facilitate judicial cooperation.

*These professionals need to be very well **informed** about the possibilities of intercession of the Network and the legal tools in this area.*

They should be the addressees of permanent formation and information. In face to them that the Contact Points must show the most demanding exigencies of quality and quickness in their work.

*These legal professionals should be involved in **formation events**, seminars and encounters organised by the Network.*

4. The increase of the use of the Network by the legal professions

On this matter and considering this goal is advisable:

a) The creation of national web pages of the project;

b) Publication of internal articles read by the legal professionals;

c) Permanent exchange of information through emails and letters (especially directed to judges and public prosecutors);

d) Participation of the Contact Points in conferences directed to these professionals and, particularly, to judges in active functions or in formation at the national schools;

e) Accomplishment of the objective of excellence, when satisfying a request of cooperation, in order to make, for example, a judge talk about his good experience with one or more colleagues that, someday, will use the Network as well;

d) Support from the Commission to specific publicity needs of the Contact Points, with the objective of making more effective the spread of information about the project.

*5. The eventual **change of the communication system** in face of the information needs of the legal professions*

The fact sheets and the respective answers must be produced aiming to also have utility to the legal professionals.

Complementary to the intensive use of technological means of communication, it should be maintained the regular employment of ordinary methods, like paper publications.

6. Suggestion

It's considered advisable the involvement of all the legal professions in the European day of civil justice, in order to obtain their adhesion to the objectives of the new judicial cooperation.»

The Guidelines of the Network

The Guidelines on the functioning of the European Judicial Network in civil and commercial matters in the field of judicial cooperation, produced in December 2004, also stated, in the matter of the inclusion of the legal professions, that:

1. «During the 2nd Meeting of the members of the European Judicial Network in civil and commercial matters, the works of the panel on the functioning of the Network revealed the need

for better structuring of the operation of the Network around the contact points and improvement of diffusion of information about the Network and on the achievements of the judicial area in civil matters among practitioners and civil society in general».

2. *«At the functional level, it was said that the Network had to preserve an informal, non bureaucratic and flexible character and concentrate on the cases which raise real problems. It was said that interaction between the contact points and the actors on the ground, for example the judges, must be improved and that information has to circulate better downwards as well as upwards».*

3. *«Moreover, it is desirable that Network contact points facilitate the dissemination of information on civil justice to legal practitioners, which could include speaking during colloquiums or informal meetings and the setting up of a kind of "veille de droit communautaire».*

4. *«Decision 470/2001 also entrusts to the European Judicial Network in civil and commercial matters tasks seeking to encourage access to justice, particularly with the aim of creating, progressively establishing and updating an information system that is accessible to the public, both for the general public and for specialists».*

The EJNCCM

To better understand the dimension and significance of the above referred proposal, we must know the aims and achievements of the pointed Network since it entered into functioning on December 1st 2002.

This Network was built under the impulse of the *Amsterdam Treaty* and the *Presidency Conclusions of the Tampere European Council* of 15 and 16 October 1999.

Some of its founding ideas are original, especially effective and relevant in the domain of the e-Justice.

The EJNCCM directs its activity into three **targets**:

a) To generate the improvement and the simplification of the judiciary cooperation between the European Union States;

b) To conceive, permanently offer and keep up to date an information system «on judicial cooperation in civil and commercial matters in the European Union, relevant Community and international instruments and the domestic law of the Member States» mainly aiming to help the citizens to surpass the special difficulties that emerge in cross-border litigation;

c) To improve the practical application of Community instruments or conventions in force between two or more Member States.

To reach these objectives it was chosen a common solution – the intensive and, if possible, exclusive use of information and communication technologies.

The Network represented a brilliant answer to some new European needs emerging from the imposition of the maintenance of direct contacts between the true actors of the cooperation process – the Courts – in the area of the judicial assistance, leaving in a secondary position the classical central authorities.

It was created to assure that this system could function with efficacy and help the construction of a true European judicial area.

This structure was built over the figure of the National Contact Point, an individual (desirably a judge) that works as a knot of an information share woven, replacing or supporting the formal services in the task of helping the Courts to directly cooperate between each other.

The Contact point, corner stone of the Network, is at the disposal of the the central authorities, the liaison magistrates – Joint Action 96/277/JAI of 22 April 1996 – and any other appropriate judicial or administrative authority with responsibilities for judicial cooperation in civil and commercial matters whose membership of the Network is considered to be useful.

The contact points are also at the disposal of the local judicial authorities in their own Member State for the same purposes.

At the present stage, the contact points are not directly at the disposal of the legal professions.

In almost seven years of functioning, the Network has already reached the following goals:

- a. Supply of simple and clear information on the legal systems of the European Countries (except Denmark);
- b. Production of 250 000 hits / month in the central page of the project, which makes it the most visited Webpage of the Union and demonstrates the importance, to the citizens, of the provided data;
- c. Creation of the *European Judicial Atlas in Civil Matters*;
- d. Supply of some information on European law;
- e. Solution or support to the solution of cooperation problems presented by the Courts or other authorities;
- f. Support to the training of Judges and Public Prosecutors in the area of the judiciary cooperation, even using virtual informatics' mechanisms;
- g. Shortening of the time delays needed to solve the problems that emerge in the judiciary cooperation;
- h. Creation and online publication of some well-constructed and useful practical guides about important Community Regulations;
- i. Creation of WebPages containing information on civil and commercial judicial cooperation.

To do so, this Network makes intensive use of the new technologies and, particularly, of the advantages offered by the Internet.

There is a central page of the project, produced and maintained under the responsibility of the European Commission, in http://europa.eu.int/comm/justice_home/ejn/.

This page contains, among vast information, fact sheets on legal order, organisation of justice, legal professions, legal aid, jurisdiction of the Courts, bringing a case to Court, procedural time limits, applicable law, service of documents, taking of

evidence and mode of proof, interim measures and precautionary measures, enforcement of judgements, simplified and accelerated procedures, divorce, parental responsibility, maintenance claims, bankruptcy, alternative dispute resolutions, compensation to crime victims and, soon, on automatic proceedings.

Here, anyone can also find data about Community law with incidence on this technical field.

These fact sheets supply, to the citizens and the legal professionals, simple and direct information about the juridical systems of 26 European Union.

The legal references there contained are offered under a structure of simple and direct questions followed by clear and explanatory answers.

This technological device represents a decisive mechanism to construct a European judicial area.

It is also a very effective way to use informatics to enrich the quality of the exercise of rights by the citizens, allowing them to feel more comfortable in face of the foreign systems and when building juridical relations with people and businesses from the other States of the EU.

The Network has also created an essential instrument that uses Internet as a channel to supply all the information needed to grant the adequate cooperation between Courts and the correct use of the legal mechanisms and forms contained in the European Regulations.

This appliance is the European Judicial Atlas in Civil Matters, reachable in http://europa.eu.int/comm/justice_home/judicialatlascivil/html/index_en.htm .

Through the referred device, any legal professional or citizen can accede, in one of the Union languages, to the designations, addresses and territorial jurisdiction of all the EU Courts. The users can also find the necessary elements about legal aid, service of documents, taking of evidence, recognition and enforcement of judgments and compensation to crime victims.

In addition, the Courts can use this appliance to fill online forms adopted under the Regulations of the civil and commercial area.

Besides a good rank of useful Internet links, we can find, there, information about all the European Courts that have a videoconference system installed and in conditions to serve the cross-border taking of evidence.

The communication inside the system stands on an Intranet and in the intensive use of email. Written letters are exceptional and just used in very specific circumstances.

Some judicial professions already belong to the EJM as liaison magistrates and central authorities (v.g. the bailiffs).

Also, in the States where judges were appointed as Contact Points, the presence of the judiciary is wide and full.

The Network philosophy is spreading to other geographic spaces, like the Ibero-American, the African or the area of the border of the Mediterranean.

The regime that arises from other Community instruments

Manny European Regulations on civil and commercial judicial cooperation include specific rules about the inclusion of the legal professions and we must be aware of the need of giving the correct collective answer to the impositions that come from European Law on this specific field.

For example:

1. Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims

Article 29

Information on enforcement procedures and authorities

The Member States shall cooperate to provide the general public and professional circles with information on:

(a) the methods and procedures of enforcement in the Member States; and

(b) the competent authorities for enforcement in the Member States, in particular via the European Judicial Network in civil and commercial matters established in accordance with Decision 2001/470/EC.

2. Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes:

Article 18

Information

The competent national authorities shall cooperate to provide the general public and professional circles with information on the various systems of legal aid, in particular via the European Judicial Network, established in accordance with Decision 2001/470/EC.

Regulation (EC) n° 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

Article 28

Information relating to service costs and enforcement

Member States shall cooperate to provide the general public and professional circles with information on:

(a) costs of service of documents;

and

(b) which authorities have competence with respect to enforcement for the purposes of applying Articles 21, 22 and 23, in particular via the European Judicial Network in civil and commercial matters established in accordance with Council Decision 2001/470/EC (2).

Regulation (EC) n° 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure

Article 24

Information

The Member States shall cooperate to provide the general public and professional circles with information on the European Small Claims Procedure, including costs, in particular by way of the European Judicial Network in Civil and Commercial Matters established in accordance with Decision 2001/470/EC.

Conclusions

On this historical context, when the European Network is opening its borders to new actors and widening its means of intervention and hopes, it seems fundamental to give hands, to dream with strong ambitions and to reinvent the judicial cooperation in Europe with the involvement of all the legal professionals.

For sure, the Notaries of Europe will perform a decisive role on this route, each day more effective and solid, to the European Judicial Space, an area marked by the free movement for people residing in the Union's territory, standing on a secure environment and strongly rooted in an effective judicial system, where citizens and businesses don't fear the cross border relations.