



Council of the  
European Union

096637/EU XXV. GP  
Eingelangt am 11/03/16

Brussels, 11 March 2016  
(OR. en)

7039/16

JUSTCIV 37

## COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	10 March 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 129 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the activities of the European Judicial Network in civil and commercial matters

Delegations will find attached document COM(2016) 129 final.

---

Encl.: COM(2016) 129 final



Brussels, 10.3.2016  
COM(2016) 129 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

**on the activities of the European Judicial Network in civil and commercial matters**

## 1. INTRODUCTION: BUILDING BRIDGES BETWEEN JUDICIAL SYSTEMS

The European Commission has set the establishment of an area of justice and fundamental rights based on mutual trust as one of its ten key policy priorities. To reach that objective, the Commission is determined to strengthen common tools which contribute to building bridges between the different justice systems of the Member States and thereby creating mutual trust<sup>1</sup>. The European Judicial Network in civil and commercial matters ("the Network") is through both its purpose and design precisely such a tool.

The Network started operations on 1 December 2002. It was set up by Council Decision No 2001/470/EC ("the Decision") of 28 May 2001 establishing a European Judicial Network in civil and commercial matters<sup>2</sup> to improve, simplify and expedite effective judicial cooperation between the Member States in civil and commercial matters. In 2009, Decision No 568/2009/EC modernised the Network's legal framework and expanded its tasks, activities and membership structure on the basis of a first report of 2006<sup>3</sup>. Now, after several years of further operation and in the light of its additional responsibilities arising from recent Union legislative instruments in civil and commercial matters, is an appropriate moment to report on the Network's operation, as provided for by Article 19 of the Decision.

The Network's main tasks are<sup>4</sup>:

- direct contacts and case-handling between national Network contact points;
- facilitating cross-border access to justice through information given to the public and to practitioners through factsheets and other publications available at the European e-Justice Portal in all Union languages;
- evaluating and sharing of experience on the operation of specific Union law instruments in civil and commercial matters.

Building on its achievements so far, the Commission aims at further improving the role and functioning of the Network<sup>5</sup>. As referred to in the Communication from the Commission of 11 March 2014 on the EU Justice Agenda for 2020<sup>6</sup>, existing mechanisms such as the Network *"should be strengthened and their potential fully exploited, including online."* This objective was taken forward by the strategic guidelines of the European Council of 26/27 June 2014 for legislative and operational planning for the coming years within the area of freedom, security and justice, which refer to *"the overall priority now [...] to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place."*<sup>7</sup>

This report is based on the findings of a study commissioned by the Commission in 2014 on the activities of the Network ("the study") which can be consulted online<sup>8</sup> and which contains data on its operation. In that context, an extensive consultation of the members of the Network has taken place, including an online consultation via the European e-Justice Portal.

---

<sup>1</sup> A new start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission, Jean-Claude Juncker, Strasbourg, 15.7.2014., chapter 7

<sup>2</sup> OJ L 174, 27.6.2001, p. 25

<sup>3</sup> COM(2006) 203 final, 16.5.2006

<sup>4</sup> Article 3 of the Decision

<sup>5</sup> Titles I, II and III of the Decision

<sup>6</sup> COM(2014) 144 final, 11.3.2014, point 4.1(v)

<sup>7</sup> Conclusions of the European Council (26/27.6.2014), point 3

<sup>8</sup> <http://bookshop.europa.eu/en/evaluation-of-the-activities-of-the-european-judicial-network-in-civil-and-commercial-matters-pbDS0114824/?CatalogCategoryID=luYKABst3IwAAAEjxJEY4e5L>

## **2. STRUCTURE AND OPERATION OF THE NETWORK**

### **2.1 The Network's members: towards a stronger interaction**

The Network's membership structure has evolved during the last years, mainly due to the integration of associations of legal professionals and the adoption of new Union law. The Network is made up of 505 members<sup>9</sup> according to the following categories:

- contact points designated by the Member States (139 members);
- central authorities, designated pursuant to specific Union instruments<sup>10</sup> and international agreements (124 members);
- liaison magistrates (6 members);
- other judicial or administrative authorities with responsibilities for judicial cooperation in civil and commercial matters (166 members);
- professional associations representing legal practitioners directly involved in the application of instruments in civil and commercial matters (70 members).

The study has shown that the interaction between all Network members could be further improved as it is important for the efficient functioning of the Network to ensure full operational judicial cooperation, notwithstanding steps taken through existing initiatives<sup>11</sup>. National Network coordination activities such as meetings of national Network members can also contribute to reach that objective. This good practice, which already exists in a number of Member States, should be expanded to all Member States taking part in the Network. This will have a multiplier effect in raising awareness of Network activities and increase the Network's visibility in the Member States<sup>12</sup>. Such initiatives improve not only the cooperation between all Network members but also between the Union and Member State authorities to efficiently implement Union instruments on judicial cooperation in civil and commercial matters.

#### **2.1.1 Contact points and their resources**

The contact points have a central role in the functioning of the Network. They ensure the day-to-day operation of the Network between Member States' authorities but also coordinate inside with other Network members. On average, Member States notified five contact points while most Member States notified two or three.

Member States are required by Article 2a of the Decision to ensure that the contact points have sufficient and appropriate facilities in terms of staff, resources and modern means of

---

<sup>9</sup> Denmark does not participate in the Network but may take part as observer in its Network meetings.

<sup>10</sup> The following Union instruments provide for central authorities: Regulation (EC) No 2201/2003 ("Brussels IIa Regulation"), Regulation (EC) No 1393/2007 on Service of Documents and Regulation (EC) No 4/2009 on Maintenance Obligations. Regulation (EC) No 1206/2001 on the Taking of Evidence in civil and commercial matters provides for central bodies.

<sup>11</sup> The study, p. 35

<sup>12</sup> The study, p. 39

communication. Consultations of the Network members by the Commission in 2014 showed that some Member States have dedicated multiple staff members to their contact points, along with appropriate resources in terms of communication and internet presence. These resources are of particular importance, since tasks are increasingly assigned to the Network to ensure the practical operation of Union instruments in civil and commercial matters. The organisational resources should correspond to the importance of enabling contact points to efficiently undertake the assigned tasks and operations.

The Commission has observed through Network consultations that, on occasion, difficulties have arisen in the field of reporting on the implementation of Union instruments, including data collection and making information on national law publicly available. Therefore, in carrying out these tasks, contact points should be able to rely on other authorities for support and sharing of knowledge.

### **2.1.2 The integration of the legal professions: an increased involvement**

A key element of the modernised legal framework of the Network introduced by Decision No 568/2009/EC was to open the Network to associations of the legal professions directly involved in judicial cooperation in civil and commercial matters. By this inclusion, the Network has made a significant step in ensuring that judicial cooperation and proper application of EU law are adhered to by all practitioners involved in its implementation. Based on notifications made by the Member States, as of April 2015, 70 professional associations, in particular those representing lawyers, notaries and bailiffs are members of the Network. The study indicates, however, that the associations of the legal professions sometimes feel insufficiently involved<sup>13</sup>. Whereas most Member States have notified associations of legal professions as members of the Network and systematically invite them to take part in Network activities, three Member States have not yet made such a notification. Therefore, it is important to follow the good practice of most Member States of including associations of legal professions in the Network's functioning.

The amended Decision also makes membership available to legal professionals when they exercise judicial functions under specific Union instruments. This has become particularly relevant in the context of Regulation (EU) No 650/2012 on Successions<sup>14</sup>. Legal professionals which participate in the Network in this capacity can make use of all the functionalities of the Network.

The Network maintains a working relationship with Union level professional associations and networks. The Decision does not provide for their Network membership. However, these associations are regularly invited as observers at the meetings, offer insight into their work and may contribute to substantial discussions when considered appropriate.

---

<sup>13</sup> The study, p. 33

<sup>14</sup> The term "court" under Article 3(2) of Regulation (EU) No 650/2012 covers not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who exercise judicial functions.

## 2.2. Modus operandi of the Network

### a) Meetings of the Contact Points, including meetings of Central Authorities

According to its founding Decision, meetings have proved to be essential for the Network to exchange good practices and experience, identify possible shortcomings and develop a common understanding on the application of Union instruments<sup>15</sup>. They are also a key factor to enable the Network to solve pending requests or problems between authorities and take commonly agreed decisions in the Network<sup>16</sup>. The meetings are particularly useful to monitor and evaluate the effective implementation of Union instruments on judicial cooperation in civil and commercial matters. They also have an important function in building trust between the different actors involved and contribute to the proper application of Union law. The Decision sets out a minimum of one meeting of the contact points to be held at least once every six months. During the period 2009 – 2015, the Commission organised 38 meetings. The contact point meetings are dedicated to a particular Union instrument, in order to facilitate focused participation from Member States' specialists.

Besides the regular meetings between contact points, an annual meeting is held including all Network members in which a broad variety of topics relevant to the Network's members is discussed. Specific meetings are organised at least once per year for Central Authorities established under Regulation (EC) No 2201/2003 (the "Brussels IIa Regulation") and under Regulation (EC) No 4/2009 on Maintenance Obligations.

### b) Bilateral meetings

Alongside these regular meetings, bilateral meetings are organised between case-handlers and authorities involved under the cooperation mechanisms provided for in both the Brussels IIa Regulation and the Regulation on Maintenance Obligations. The objective of these meetings is to facilitate case-handling of pending individual cross-border cases for which solutions need to be found via contacts between Member States' authorities. These cases frequently involve sensitive issues such as child abduction matters or claims on maintenance obligations. The Commission facilitates these meetings in a confidential setting to enable efficient solutions to individual cases pending between Member States' authorities. These direct contacts are a useful and practical means of cooperation and of strengthening trust<sup>17</sup>. During the period 2010 to 2014, 204 individual meetings were organised under the Brussels IIa Regulation and during the period 2013 to 2015, 107 such meetings were organised under the Regulation on Maintenance Obligations.

### c) Working groups

The Network has set up working groups on specific subject matters which have an essential supportive function. Such working groups are regularly created ad hoc upon request of the Member States in cooperation with the Commission. Participation in the working groups is open to all Network members in coordination with their national contact points. The working groups propose, prepare or implement concrete action under the Network. The chair of a working group is usually ensured by a national contact point or another Network member.

---

<sup>15</sup> Title II of the Decision

<sup>16</sup> The study, p. 45, 46

<sup>17</sup> The study, p. 47

In the period 2009 – 2015, eleven working groups have been established on:

• Brussels IIa statistical data	• Maintenance arrears forms	• Guidance on Annexes VI and VII to the Regulation on Maintenance Obligations
• Family mediation	• Small claims practice guide	• European Payment Order practice guide
• Brussels I recast – note pursuant to Article 26(2)	• Practice guide on jurisdiction and applicable law in international disputes between the employee and the employer	• Visibility of the Network
• Citizens' guide on the Regulation on Successions	• Information exchange on access to foreign law under the Regulation on Successions	

d) Case handling and processing of requests by the contact points

One of the fundamental tasks of the Network is to facilitate direct contacts between authorities in charge of judicial cooperation in civil matters. This is particularly relevant for case handling and allows a case-by-case approach in implementing the relevant Union instruments. Data gathered through consultations of the Network has shown a mixed, albeit incomplete, picture that indicates great variation in the use of the Network for this purpose. This provides an indication that better use should be made of this aspect of the Network's cooperation mechanisms.

e) Electronic tools and communication methods within the Network

The Network currently uses the CIRCA intranet provided by the Commission for posting of documents, in particular the list of Network members and meeting documents. However, no electronic system exists for dealing with requests among Member States.

The Decision envisages the use of a secure, limited-access electronic register based on information supplied by the contact points<sup>18</sup>. An earlier system which was put in place for this purpose was considered to be too burdensome in its day-to-day application and was abandoned. Therefore, the need for an efficient registration of case handling between contact points remains. In that context, an electronic communications tool which allows for automatic registration of requests would provide benefits by eliminating bureaucratic burdens and facilitating the collection of statistical data, as well as by improving the use of the Network's cooperation mechanisms as referred to in point d.

In this respect, the Commission intends to assess the financial and technical implications of putting in place a tool or adapting an existing tool to serve the purposes mentioned above which could be accessed from the Network's section at the European e-Justice Portal. Inspiration could be drawn from the Single Market in which such cooperation is facilitated by the Internal Market Information System (IMI) since 2008<sup>19</sup>.

<sup>18</sup> Article 8(3) of the Decision

<sup>19</sup> The Internal Market Information System is a multilingual web-based electronic communication system put in place by Regulation (EU) No 1024/2012.

### 3. EVALUATING EXISTING INSTRUMENTS - DATA COLLECTION

One of the Network's core functions is to monitor the application and evaluation of Union instruments in place. In that context, the gathering of statistical data is not yet at a satisfactory level. The collection of statistical data and evidence is indispensable for the proper evaluation of the functioning of Union instruments in civil and commercial matters already in place, as an important element to ensure the application of better regulation principles according to the Communication from the Commission of 19 May 2015 *Better regulation for better results - An EU agenda*<sup>20</sup>. In accordance with the Better Regulation Guidelines<sup>21</sup>, it needs to be determined which evidence could be gathered and from whom and at which moment such evidence should be collected.

A common effort needs to be devoted by the Member States and the Commission to identify what is to be considered as essential data for each Union instrument in civil and commercial matters. On that basis, a framework of statistical data gathering should be put in place by Member States, which would include collecting essential data for each Union instrument. Consultations with Eurostat may optimise the methods, standards and definitions for the collection of statistics under the Network, in full cooperation with the contact points and central authorities acting in the Network. In parallel, Member States should adapt their data collection systems at courts and other judicial and administrative authorities.

### 4. FACILITATING ACCESS TO JUSTICE

#### 4.1 Development and Implementation of European e-Justice

Since the very beginning of its operations, it has been a core function of the Network<sup>22</sup> to set up an online information system for the public on Union instruments, national measures for their implementation, national law, international instruments and on relevant case-law by the Court of Justice. On that basis, the Network today strongly contributes to the further development of e-Justice. This was acknowledged in the Multiannual European e-Justice Action Plan 2014-2018 of the Council<sup>23</sup>.

The migration of the Network's website to the European e-Justice Portal should be finalised in 2016. To improve the Network's visibility at the European e-Justice Portal and to make the content provided by the Network better accessible, a specific section for the Network is being developed in the European e-Justice Portal. The pages of this section should be clearly branded with the Network's logo. These functionalities need to be fully interlinked with other tools relevant for practitioners such as the Judicial Atlas in Civil Matters, the future court database or the dynamic forms linked to the EU legislative instruments available at the European e-Justice Portal.

The information provided by the Network includes factsheets dealing with questions on access to justice in Member States. These factsheets provide information on national law and procedures. Particular attention is given to issues relating to access to justice and access to foreign law.

---

<sup>20</sup> COM(2015) 215 final

<sup>21</sup> SWD(2015) 111 final, p.43

<sup>22</sup> Articles 14 to 18 of the Decision

<sup>23</sup> OJ C 182, 14.6.2014, p. 2



Currently, the Network has posted 10 695 pages of information factsheets on national law, which for the year 2014 generated a total of 359 184 page views (an average rate of 29 932 views per month). This increased significantly in 2015 with a total of 2 994 122 page views (an average rate of 249 510 per month) after having made available factsheets on succession, family mediation, applicable law and maintenance claims and probably due to the specific communication campaign by the Commission following the entry into application of Regulation (EU) No 650/2012 on Successions as of 17 August 2015.

The content of these pages on national laws and procedures is drawn-up at national level, verified and regularly updated by the national Network's e-Justice content managers.

Currently factsheets are available for the following subject matters:

• Jurisdiction	• Bringing a case to court	• Order for payment procedures
• Small claims	• Divorce	• Procedures for enforcing a judgment
• Taking of evidence	• Interim and precautionary measures	• Procedural time limits
• Use of information technologies in judicial proceedings	• Lawful removal of the child	• Maintenance claims
• Parental responsibility	• Insolvency	• Successions
• Family mediation	• Service of documents	• Applicable law

Work is ongoing to prepare factsheets on three additional subject matters, namely statutory interest, taking of evidence and national structures of the Network. As to existing factsheets, their regular update, reliability and linguistic accuracy has to be guaranteed to be ensured by monitoring tools which have been put in place under the European e-Justice Portal's content management system.

An additional area where the Network may provide useful support to national authorities is the coordination and organisation of cross border videoconferencing between courts.

#### 4.2. Guides on Union law instruments

In order to strengthen the efficient application of Union instruments, the Network has produced citizens' and practitioners' guides, aimed at promoting the uniform application of Union law in civil and commercial matters by courts and other legal practitioners. These guides are targeted either to citizens or to courts and legal practitioners.

In the period 2009-2014, the following guides have been produced:

<b>Citizens Guides</b>	<b>Practitioners Guides</b>
• Cross-border civil litigation in the European Union	• Judicial cooperation in civil matters in the European Union
• European Small Claims Procedure	• Application of the Brussels Ila Regulation
	• Application of the European Small Claims Procedure
	• Application of the Regulation on the European Order for Payment
	• Application of the Regulation on the European Enforcement Order

The publications are available online in 23 languages at the European e-Justice Portal<sup>24</sup> and at the European Commission's website of DG Justice and Consumers or at the EU Bookshop. According to the results of the study, respondents rated the Network's publications positively. Almost 70% indicated that the practitioners' guides correspond to their needs. 60% perceived their needs are met with the factsheets<sup>25</sup>.

Nevertheless, a better promotion of these guides would be worthwhile, for example, at practitioner events, such as training events. At the European e-Justice Portal, their accessibility needs to be facilitated, and all websites of the institutions to which members of the Network belong should provide for links to the guides.

### 4.3. Other practice tools

The Network engages in producing additional practical tools. These are developed at the initiative of contact points in response to specific needs identified following experience in applying Union instruments in civil and commercial matters.

In the period 2009-2014, the following such initiatives have been pursued:

Tool	Functions
Collection of statistics under the Brussels IIa Regulation	Evaluation of mechanisms under the Brussels IIa Regulation;
Non-compulsory calculation form on maintenance arrears	Facilitates the calculation of maintenance arrears;
Guide on maintenance forms	Facilitates the completion of the forms under the Regulation on Maintenance Obligations;
Non-mandatory note on Article 26(2) of the Brussels I Regulation (recast)	Optional standard text for courts to inform the citizens of their rights to contest the jurisdiction of the court;

## 5. VISIBILITY OF THE NETWORK

### 5.1. Visibility among legal practitioners and citizens

The Network can only be successful in fulfilling its potential if the legal practitioners are aware of its existence and the tools it offers. Therefore, steps need to be taken at national and Union level to increase the visibility of the Network in general.

The level of visibility of the Network depends mainly on the national structures in every Member State. It can be observed that in those Member States in which a formal national network exists, the information flow among all the stakeholders seems to work better which has effects on higher visibility of the Network.

At its Network's annual meeting in February 2015, the Network agreed to give priority to increasing the visibility of the Network not only among legal practitioners but also among citizens. Actions should relate to improving the Network's visibility at the European e-Justice Portal, increasing its presence at national websites, social media and at courts or the legal professions via printed and online material. In February 2015, a Twitter hashtag #EJNcivil

<sup>24</sup> The publications of the Network are available at the European e-Justice Portal: [https://e-justice.europa.eu/content\\_ejn\\_s\\_publications-287-en.do?clang=en](https://e-justice.europa.eu/content_ejn_s_publications-287-en.do?clang=en)

<sup>25</sup> The study, p. 51

was put in place by the Commission which has been used to disseminate results achieved by the Network. Furthermore, the Network has always played a central role in promoting the European Day of Justice and Member States should use it as a forum for initiating cross-border events.

In this context, the transparent functioning of the Network is also important. Making information available to the public concerning meeting agendas and summaries of meeting results would be beneficial for the Network and those who wish to make use of it. It should be noted, that the Network functions under the framework of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, making its documents available under these provisions.

## **5.2. Contacts with other networks**

Synergies with other networks and intergovernmental organisations that share its objectives help the Network to fulfil its main functions and tasks under the Decision and are foreseen in Article 12a (1) of the Decision.

In this regard, the Network cooperates with the European Judicial Network (in criminal matters)<sup>26</sup>, the European Judicial Training Network (EJTN)<sup>27</sup> and the European Consumer Centres Network (ECC-Net)<sup>28</sup>. Notably, the Network closely cooperates with the EJTN in its initiatives concerning judicial training on EU instruments in the field of civil and commercial law. This cooperation serves to share expertise and to identify via the Network specific issues on which judicial training could be offered by the EJTN.

Finally, contacts with other networks, such as Your Europe Advice<sup>29</sup> and Solvit should be further developed. These other networks should be invited when subjects are discussed at meetings on which they can contribute.

## **6. CONCLUSIONS AND RECOMMENDATIONS**

The Network has provided substantial support for efficient judicial cooperation between Member States in civil and commercial matters and the full participation of its members is an integral part of the day to day implementation of the Union acquis in civil justice matters. Moreover, the amendments to the Decision introduced in 2009 have contributed to the Network's positive development. The Network has proved to work effectively although improvements in its operations can be made within the existing legal framework. Therefore, the Commission draws the conclusion that there is no need to amend the Decision.

However, building on initiatives already ongoing, there are still areas in which the Network should further develop its capacities further so as to meet its responsibility in ensuring the smooth application of Union instruments of judicial cooperation in civil and commercial matters. The Commission has identified seven key points for further action to improve the Network's functioning:

---

<sup>26</sup> <http://www.ejn-crimjust.europa.eu/ejn/>

<sup>27</sup> <http://www.ejtn.eu>

<sup>28</sup> [http://ec.europa.eu/consumers/solving\\_consumer\\_disputes/non-judicial\\_redress/ecc-net/index\\_en.htm](http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/index_en.htm)

<sup>29</sup> <http://europa.eu/youreurope/advice>

- (1) In line with the Decision and following best practices in some Member States, all contact points should be given the necessary resources and support at national level, in order to be able to effectively cope with their increasing tasks;
- (2) Building on best practices in a number of Member States, networks should be established at national level in all Member States, bringing together national Network members, ensuring interaction at a national level as well as knowledge sharing and gathering of information;
- (3) A stronger integration of judges and other judicial authorities as well as legal professionals in all of the Network's activities should be ensured;
- (4) Synergies with other European networks pursuing similar aims should be extended;
- (5) An even greater visibility of the Network should be achieved, in particular on the basis of the ongoing work to enhance its presence and through a dedicated section in the European e-Justice Portal as well as to enhance the Network's presence on the national websites of the institutions to which Network members belong to and by disseminating information via social media and other communication channels;
- (6) The Network's role in the full ex post evaluation of existing instruments should be further developed through the identification and collection of key statistical data based on national data collection mechanisms;
- (7) The Commission intends to assess the financial and technical implications of putting in place a tool or adapting an existing electronic information exchange tool for secure communication and registration to be used by the contact points.

In line with the Communication from the Commission on the EU Justice Agenda for 2020, and the strategic guidelines of the European Council of 26/27 June 2014, and in accordance with Article 19 of the Decision, the next report will build on the existing findings and will provide a full evaluation of the impact of the activities of the Network.