Opinion of the Economic and Social Committee on the 'Proposal for a Council Decision establishing a European Judicial Network in civil and commercial matters'

(2001/C 139/03)

On 6 November 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 February 2001. The rapporteur was Mr Retureau.

At its 379th plenary session on 28 February and 1 March 2001 (meeting of 28 February), the Economic and Social Committee adopted the following opinion by 112 votes to one.

1. The main objectives and means envisaged in establishing a European Judicial Network in civil and commercial matters

1.1. This proposal ties in with the ongoing development of judicial cooperation on civil and commercial matters and the process of bringing that cooperation into the Community sphere. It is intended to mark a new step towards establishing a European judicial area, bringing tangible benefits for the citizens of the European Union.

1.2. One implication of a single market with freedom of movement is that, in the area of civil and commercial matters, people should be able to exercise rights and have them upheld, use evidence, bring actions, settle disputes, obtain court decisions and have decisions taken in any given Member State recognised by another Member State. This is necessary in order to promote legal certainty in financial transactions, contracts, and the movement of people, goods and capital.

1.3. Improved knowledge of the legal systems and procedures that apply in each country is therefore one of a number of ways of facilitating the resolution of cross-border disputes of a civil or commercial nature [1].

1.4. The Commission's idea is to establish a network that will grow and be fleshed out gradually as needs are identified and resources become available. Some resources already exist at national and Community level and in the framework of bilateral agreements. The information and coordination network proposed by the Commission would improve the coordination and synergy of the network's own resources and other resources already in existence, thus generating value added at Community level. The aim is to enable individuals and companies to exercise their rights despite the organisational differences between — or even the incompatibility of — the legal and administrative systems in force in the Member States.

1.5. The instrument proposed in order to meet the dual objective of improving judicial cooperation between States and simplifying access to justice and law for individuals and companies involved in cross-border disputes is a European Judicial Network in civil and commercial matters. This network would be an instrument of judicial cooperation and also an information tool available to governments and the public, with the Internet playing a key role.

1.6. This kind of cooperation is provided for in Article 65 of the EC Treaty, and it was also encouraged by the Tampere European Council. According to the Commission, the legal basis is found in Article 61(c). The choice of the decision format is justified by the need for consistent application by all the Member States, without prejudice to the protocols to the TEU and the TEC concerning Ireland and the United Kingdom on the one hand and Denmark on the other, which could significantly reduce the proposed decision's impact. These countries are, however, party to the Hague Convention, and the proposed decision does not replace existing international agreements in the area of judicial cooperation in civil and commercial matters.

1.7. The achievement of the twin goals of enhancing judicial cooperation mechanisms throughout the Union in a coordinated and uniform way while also providing the public with practical information on cross-border disputes, in order to assist individuals and companies in their affairs, must in no way undermine Member States' own powers or interfere with the implementation of existing international agreements and current ad hoc mechanisms.

[1] ESC Opinion on Judicial and extrajudicial documents in civil or commercial matters (OJ C 368, 20.12.1999, p. 47); ESC Opinion on Recognition of judgements in civil and commercial matters (OJ C 117, 26.4.2000, p. 6); ESC Opinion on Rights of access to children (OJ C 14, 16.1.2001); ESC Opinion on The taking of evidence in civil and commercial matters.

1.8. This would appear to be easier on paper than in practice, as the stated objective of coordination, uniformity and Community cooperation will inevitably affect the mechanisms covering the various specific areas of international judicial cooperation in civil and commercial matters. The idea is to follow a rationale of integration which will be implemented gradually and which, with due respect for existing mechanisms, will aim to develop an integrated approach to the whole field of judicial cooperation in civil and commercial matters, while also allowing the development of cooperation in areas not covered by Community or international instruments. The key element is clear from point 5(e) of the communication: 'the Network can be expected to develop into an important instrument, an essential instrument even, for the establishment of a European justice area in civil and commercial matters. The challenge issued by the Treaties demands instruments to permit the development of an overall integrated approach ...'.

1.9. The network will be based on 'contact points' in the Member States. The number and nature of them will depend on the administrative and legal structures in each country. The network will grow principally by applying modern information and communication technologies to create an internal electronic network, and there will be dedicated web pages on the Commission's website. Existing resources will also be exploited and the central site will build them into its information system, mainly using links.

1.10. The Commission states that the aim is not to take the place of the legal professions, but simply to encourage people to use existing remedies and to overcome the reluctance that results from ignorance of the procedures and their requirements, and the fear of exercising rights in a cross-border context.

1.11. The establishment of a network of this kind demands extremely close cooperation between the Commission and the Member States and appropriate human and material resources.

1.12. Lastly, the network is intended to be a flexible instrument open to evolution. It will develop along with judicial cooperation and could act as a yardstick for it.

1.12.1. The network will consist of:

— national contact points designated by the Member States;

— central authorities, judicial or other relevant authorities with responsibilities for judicial cooperation in civil and commercial matters by virtue of relevant international agreements to which each Member State may be party;

— the liaison magistrates to whom Joint Action 96/277/JAI [1] applies;

— any other judicial or administrative authority whose membership of the network is considered to be useful by a Member State.

1.13. Central national contact points (one per country, designated by the national authorities) will serve as the interface between the national and European levels of the network, coordinated by the Commission. A non-exhaustive list of tasks and initiatives is proposed, highlighting the pragmatic and practical nature of the activities. Countries may, depending on their territorial or judicial structure, choose to set up a limited number of additional contact points. Member States will supply the Commission with all relevant information on the national elements of the network, including their knowledge of languages.

1.13.1. It is proposed that in addition to the national language(s), the contact points should have knowledge of one other official Community language. The practical information sheets prepared by each country for the general public will be translated by the Commission into all the Community's official languages.

1.13.2. The contact points will be available to the relevant central legal authorities or liaison magistrates. They will direct external requests to the relevant national authorities, or provide assistance in the absence of a legal or agreed mechanism in cases not covered by Community texts or international agreements.

1.14. Each country will appoint an equal number of representatives (four) for periodic network meetings, to be called by the Commission at least three times a year. These meetings will deal with issues relating to the running and development of the network, the practical information sheets to be drawn up and measures to be taken. The Commission will also call a broader annual meeting for contact point managers and representatives of administrative and judicial institutions, for the purposes of sharing experiences and ideas and identifying best practice.

1.15. Contacts within the network will be without prejudice to any regular or occasional planned or potential contacts between relevant authorities in the various countries in the context of multilateral or bilateral agreements, in particular cooperation arising from the various Hague or Council of Europe conventions. On the contrary, a synergy should develop between the network contact points and these authorities, and the network will be available to offer them any necessary assistance.

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[1] OJ L 105, 27.4.1996.

2. **General comments**

2.1. By helping to provide individuals, professionals, institutions and governments with information on the law and procedures applicable in the Member States, the proposed network could be a useful and effective tool for resolving cross-border disputes, providing it is established in a spirit of complementarity and designed to cover the areas that escape the mechanisms set up by the various international conventions in the civil and commercial field. In the Committee's view, the network will prove an essential instrument for effective cooperation and legal consistency within the single market. It will provide support for people working in the judicial systems and the legal professions, and provide individuals and businesses with assistance in the event of cross-border disputes in the civil and commercial field. The Committee therefore welcomes the basic thrust of the proposal.

2.2. The flexibility envisaged in the implementation and future adaptation of the network, and the possibility open to it of setting itself new objectives as time goes on and creating new resources for itself, appear to be realistic as they will allow the network to adjust to experience. Practical difficulties could arise because of the network's two objectives (judicial cooperation and information), but this approach could be productive if progress in the two areas enables each to benefit from the experience of the other.

2.3. The Committee thinks that, while securing the overall consistency of judicial cooperation on civil and commercial matters, the network should fill the gaps in sectors not covered by Community or agreed provisions. It will also supply information to the public, the legal professions and associations and groups representing the social partners or consumers, and will promote the pooling of experience and mutual assistance among professionals in the legal sector.

2.4. The Committee feels that, taken as a whole, the proposals and services planned appear complicated and it stresses the need for the services to be easily accessible and comprehensible, in both nature and form, to individuals and SMEs, their prime audience. Furthermore, access for these categories ought to be easy and free of charge. Meanwhile, more technical and more in-depth resources should possibly be made available to professional legal advisors and lawyers and to associations, such as European humanitarian, social or professional bodies, cooperatives or trade unions, that might wish to defend their members or the interests they represent, in the event of specific issues that go beyond the national dimension (the safety of certain products produced in another Member State, disputes over commercial contracts, or individual or collective cross-border labour disputes, compensation for damage to property or personal injury suffered abroad, etc.).

2.4.1. The Committee thinks that the information sheets on the Commission website should include links to relevant Community or national databases, so as to enable individuals, associations and professionals to obtain further information if they so desire.

2.5. The Committee believes that all the members of the Union, current and future, should plan to take part in the project. The Committee therefore strongly hopes that those countries that have a choice under protocol of opting in will do so, as all the legal systems will have to contribute for the network to be genuinely useful and effective.

2.6. In the Committee's view, the draft decision poses a number of problems:

— it does not address the issue of the cost of accessing databases;

— the Committee views the judicial network and the public information service as a fullscale Community public legal service which should be defined as such in the legislation, with all the consequences implicit in that concept (accessibility, basic information free of charge);

— the draft decision does not take a very clear stance on the advisory and defence work of the legal professions. Although the development of the network and the heavy emphasis on promoting alternative means of resolving disputes may lighten the workload of civil and commercial courts, the risk is that it could also result in the weakest parties (individuals, private sector or social economy SMEs) who have no real legal aid and who are up against groups that do have resources (legal departments, advisors, experience) having to accept compromises that provide them with only a minimum level of defence or reparation;

— the draft decision makes no room in explicit terms for business or trade union associations and organisations or other areas of organised civil society, such as humanitarian or consumer organisations, to be involved and take part in the network and its running (e.g. as regards the nature and form of the information to be made available to the public), although these bodies play an important informative, advisory and sometimes active role in the legal field, representing or defending their members. The local offices of these organisations, alongside the Euro Info Centres for businesses and the Euroguichets for consumers, could also act as public information points, and full use should be made of them.

2.6.1. The Committee is convinced that civil society organisations have an important practical role to play in the judicial information process and in certain judicial or extra-judicial procedures, and believes that the project is lacking in this area.

2.7. The Committee notes that the content of the public information system and of the practical information sheets will demand a major effort on the part of the national authorities and the Commission departments. It hopes that it will be possible to achieve this ambitious goal, gradually but within a reasonable timeframe, naturally using all the existing possibilities of information networks already active at Community level, without ignoring the fact that considerable additional resources will be required.

2.7.1. Aside from the public information network, the Committee considers that for information to be circulated as effectively and widely as possible, courses must be provided in schools and elsewhere on the use of technological tools such as the Internet. This is vital if people are to fully exercise their citizens' rights and defend their interests.

3. **Specific comments**

3.1. Attention should be drawn to the problems of financing the network — not only in terms of construction costs but also ongoing operating and maintenance costs — and the sheer volume of material resources it will require. Little mention is made of these issues in the proposal, but such resources will in all likelihood be hard to come by in view of the state of the judicial systems, which are more often than not under-staffed and lack sufficient financial and material resources on a day to day basis.

3.2. The Committee is concerned by the language issue. The contact points will surely require greater foreign language capabilities than those envisaged (one non-national Community language), and, in view of the major differences between legal systems and concepts and judicial practice and structures, it is difficult to picture the project working without a single common language.

3.3. The Committee notes that the Commission cites Article 61(c) of the TEC as the legal basis. Article 61, however, refers to Article 65, which does not provide specifically for the establishment of a judicial network. In any event, until 1 May 2004, decisions in this area will require the unanimity of the Council.

3.4. The Committee stresses the need to standardise the procedures, technical resources and software of the information network, as otherwise the project could turn into a technological tower of Babel which would impede communication. Care must thus be taken to ensure that the technologies and programmes implemented are compatible.

3.5. The prime role given to the Internet in public information should be tempered to take account of the fact that some countries still have relatively low Internet connection rates. The proposal must allow for the fact that individuals and businesses will have to go through intermediary advisory associations or lawyers to obtain information specific to their needs; all the more so since raw legal information in itself is not enough to enable an individual to embark upon and succeed in legal proceedings in another country. Qualified voluntary or paid advisors will be needed to provide advice on strategy and tactics, developments in the case must be monitored, and representation will be needed both in the country of origin and the country where the proceedings are taking place. The public must be given accurate information on this subject, so that people know which associations or professionals to turn to for advice and assistance.

3.6. The Committee would also stress the need to ensure that communications between the contact points and the judicial and administrative authorities are secure, where they involve natural or legal persons. The best possible protection must be secured for personal data and business confidentiality, without prejudice to the secrecy that must govern investigations and judicial dealings between Member States.

3.7. As regards the practical definition of the civil and commercial spheres, the Committee calls for the decision to make specific reference to the Court of Justice definitions. Since civil actions heard in the context of criminal and tax cases do not fall outside the scope of the proposal, and it is also possible that documents which cannot easily be defined in legal terms by the appropriate legal body may be requested, an indent along the following lines should be inserted in order to protect the rights of the parties involved: 'the receiving agency shall define as flexibly as possible those documents whose legal character cannot be clearly assigned to either the civil or the commercial field, but which nevertheless have points in common with them'.

3.8. On the question of the territorial scope of the proposal, the Committee would refer to its previously expressed views on the nature and competence of the national authorities responsible in each Member State for judicial cooperation with the other Member States (in most cases, the national or federal ministry of justice). The national contact point(s) should be expressly designated and legitimated by these authorities. Member States with responsibilities regarding the territories with special characteristics mentioned in Article 299 of the EC Treaty should establish appropriate legal and administrative arrangements.

Brussels, 28 February 2001.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Initiative of the Federal Republic of Germany with a view to adopting a Council Regulation on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters'

(2001/C 139/04)

On 11 October 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned initiative.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 February 2001. The rapporteur was Mr Hernández Bataller.

At its 379th plenary session of 28 February and 1 March 2001 (meeting of 28 February 2001), the Economic and Social Committee adopted the following opinion by 117 votes to one, with one abstention.

1. **Introduction**

1.1. The purpose of international legal assistance is to offset the difficulties which arise in proceedings as a result of the inability to exercise powers of jurisdiction outside national territory in order to execute specific procedural documents.

1.2. In order to complete proceedings involving external legal transactions, a number of procedural steps, such as service of notifications, notice of proceedings or taking of evidence, must be executed in another State.

1.3. The system of evidence and its admissibility is usually subject to procedural factors. Consequently, the lex fori determines:

— the general arrangements for evidence: whether a numerus apertus or clausus applies, and in the latter case, which evidence is admissible,

— under what conditions documents granted by a foreign authority may be used.

1.4. The origin of the problems posed by international evidence largely lies in the differences between national legal systems regarding evidence. The most significant differences arise in relation to three aspects:

a) the greater or lesser role of judges in evidential proceedings: while in some systems these are largely conducted by judges, in others they are carried out by the parties themselves;

b) the 'pre-procedural' or procedural character of giving evidence: while in some systems, the period in which evidence may be submitted is basically concurrent with the proceedings which are already under way, and hence when the claims have been clearly defined, in others it runs mostly prior to the opening of proceedings and before the claims have been exactly defined;