

Policy Department C
Citizens' Rights and Constitutional Affairs

**FORUM ON JUDICIAL COOPERATION IN CIVIL MATTERS:
DEBATE WITH NATIONAL PARLIAMENTS**

2 DECEMBER 2008

SESSION II

E-JUSTICE: A TOOL FOR CITIZENS, PRACTITIONERS AND BUSINESS

BACKGROUND NOTES

LEGAL AFFAIRS



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**Directorate-General Internal Policies
Policy Department C
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SESSION II -E-JUSTICE: A TOOL FOR CITIZENS, PRACTITIONERS AND BUSINESS

TABLE OF CONTENTS

1. Use of IT in judicial systems: service of documents and taking of evidence electronically, electronic documentation and communication, video-conferencing, European procedures on line and the European e-justice portal

- Carlos Manuel Gonçalves de Melo Marinho, Judge, Contact Point of the European Judicial Network in Civil and Commercial Matters and of the IberRede, Lisbon

2. Electronic networking of criminal records and the need for ensuring personal data protection

- Philippe Delarbre, Director of the National Criminal Records Bureau, Nantes

3. Need for electronic networking of insolvency, business, land and other registers?

- Marc van Opijnen, Senior Adviser Legal Informatics, Department for Internet Applications of the Dutch Council for the Judiciary, Utrecht

**USE OF IT IN JUDICIAL SYSTEMS:
SERVICE OF DOCUMENTS AND TAKING OF
EVIDENCE ELECTRONICALLY, ELECTRONIC DOCUMENTATION
AND COMMUNICATION,
VIDEO-CONFERENCING, EUROPEAN PROCEDURES
ON LINE AND THE EUROPEAN *E-JUSTICE* PORTAL**

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I. THE USE OF IT IN JUDICIAL SYSTEMS

The ways of the IT

1. The present moment of the *e-Justice* in Europe¹ is marked by the co-existence of many parallel and isolated experiences at the European and national levels and by completely different stages of evolution and results.

In the European Union (EU), *e-Justice* has meant, essentially, providing European information through websites of the European institutions (e.g. *EUR-lex*, *SCADPlus*, *Eurovoc* or *Pre-lex*), informatics' structures to support and implement new criteria and rules of cooperation (e.g. *European Judicial Network in Civil and Commercial Matters*, *European Judicial Network in Criminal Matters*, Civil and Criminal Judicial Atlases, interconnection of European criminal records and the *SOLON* – a multilingual legal glossary of equivalences in criminal matters) and specific projects from the legal professions (e.g. the *European Network of Registers of Wills* or *EULIS*, the *European Land Information Service*).

Out of this, there are some remarkable but still fragile tools like *N-Lex*, an interesting common gateway to the national law databases of 23 Member States under 22 official languages and *IATE* (*Interactive Terminology for Europe*) that contains a general glossary of legal equivalences.

2. This specific context claims for an evolution through coordination, extension of best practices and solutions and centralised decisions oriented to achieve some standardisation and integration levels, making the European dimension and resources work together with the national competences, efforts and experiences.

Such methodology can generate double envelopment and reinforced engagement and it is the best way to assure the promotion and development of tangible projects without the risks and difficulties inherent to the legislative process. At the same time, this solution can generate fertile exchange of best practices, convergence of technical answers, inducement of initiatives at national level, the creation of economies of scale and the rising of important cost savings.

A good field to exemplify this need and the associated possibilities is the videoconference in the *cross-border* taking of evidence. Here, it seems required to add, to the national achievements, common criteria on physical disposal of means and effective and coincident cooperation rules and degrees of involvement.

3. Under the new logic, it appears to be fundamental the insertion of the *e-Justice* tools in the core of the judicial proceedings with *cross-border* connection. This means that *Courts* should cooperate using IT and that the legal professionals and the citizens should contact through it and exercise their rights using the most updated mechanisms of the information society. Service of documents, taking of evidence, electronic documentation and communication and videoconferencing are in the centre of this change of paradigm.

¹ Or *European e-Justice* or, even, *European online justice*, according with the terminology proposed by the *European e-Justice action plan from 3 September 2008, 11330/08, LIMITE JURINFO 52 JAI 357 JUSTCIV 133 COPEN 133*.

4. The European Judicial Network in Civil and Commercial Matters, the European Judicial Network in Criminal Matters, the interconnection of European Criminal Records or the European Network of Registers of Wills are manifestations of a time when the *e-Justice* was constructed by layers and over non integrated initiatives.

The EJNCCM as a precedent

1. The *European Judicial Network in Civil and Commercial Matters* (EJNCCM) is a good illustration of the present phase of isolated but sometimes effective efforts.

We can use its experience and criteria on the drawing of a useful global *e-Justice* system.

2. 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*.

3. 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*»² 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.

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

5. 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.

6. 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.

² Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, in *Official Journal of the European Communities*, L 174/25, 27.6.2001.

7. In almost six 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.
8. 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.

9. 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.

10. 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.

11. 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.

12. The Network is, in a certain manner, an icon of the way to go in the domain of the *e-Justice*.

It shows that the efforts to produce good operative tools must be oriented by the permanent notion of the need to serve the citizens and of the importance of the use of technological instruments that can allow wide interaction with the system.

After all, our work must be unalterably pointed out to the increase of the utilities and benefits at the disposal of the European citizens and businesses.

No *e-Justice* system can be successfully drawn without this specific concept in mind.

13. The spreading of the Network philosophy to other geographic spaces, like the Ibero-American, the African or the area of the border of the Mediterranean, recommends a good consolidation and integration of the existent IT structures and the conception of the final products in terms that can allow a future interface with other external systems.

Structural lines of the e-Justice

1. When preparing the construction of an *e-Justice* structure, it is fundamental to have in mind that this effort must be oriented to produce efficiency and swiftness and to make more accessible the European judicial and legal system.

It is essential to the construction of the European *e-Justice* to make a correct diagnostic of the needs, to have a professional and sure awareness of the Justice system and, especially, on the *Courts* functioning – which points out to the requirement of producing the changes with the support of the Judicial Power. It is fundamental to possess a deep and updated knowledge of the available and suitable informatics solutions. This means that the attainment of rigorous notions and effective answers to the questions to solve must emerge from an analysis standing on experience and profound knowledge of the judicial realities and the obtainable technologies.

2. The change must stand on:

- a. The quality of the diagnostics;
- b. The correct understanding of the mechanisms of the administration of Justice and;
- c. The accurate articulation between the solutions and the facts.

3. It also seems fundamental that the new European legislation in this thematic area always consider the advantages of *e-Justice* and its possibilities, rejecting measures incompatible with its logic.

So, controlling the *e-Justice* legal compatibility seems to be a must in this process.

4. Likewise, it is essential to assure the use of trustworthy mechanisms on digital signature (*e-Signature*), authentication of users (*e-Identity*), time stamp and guarantee of immutability of the acts produced or documents presented and encryption of communications.

5. Perhaps we should stand on solutions integrally organized over the *Internet*, avoiding closing the administration of Justice in mere *intranets* or inside virtual private networks.

6. Another decisive intervention to make sure the viability of the changes needed in this area is situated in the domain of the training.

Systematic and consistent efforts must be carried out in the direction of giving strong preparation to the judges and other legal professionals in the use of technologies of information and *e-Justice* devices, even through virtual teaching techniques.

The dematerialization of the law suits demands very skilled professionals and campaigns showing the advantages of the new systems and of the digital decision.

7. Once dematerialized, the information must be classified and supplied according to different levels of access and only closed to some specific addressees if imposed by national or communitarian legal rules.

If only supplied to some persons or parties, data should be accessed through direct and private authentication.

The mechanisms of straight contact with the judicial proceedings should also be available to the legal representatives of the parties.

Obviously, this must be accompanied by secure infrastructure and authentication of documents.

None of these considerations necessarily impose the creation of different tools. By the contrary, it is recommendable to reduce the informatics' mechanisms and there seems to be no reasons to avoid the centralization of the accesses in, for example, a large portal.

8. The ways of the *e-Justice* in Europe must always include both criminal and civil justice, resisting to the unjustified temptation of giving more attention to the criminal reality.

The projects for both jurisdictions should grow together, with symmetry and standing in common philosophy and equal terminology and tools.

This also means the need to uniform the speed, resources and criteria of creation of the two realities, surpassing the asymmetries that result from the different times of origin and of the fact of having one project in the third pillar and the other in the first.

9. The loss of legal digital documents would be dramatic and could destruct the trust on *e-Justice*. So it's also absolutely necessary to guarantee the security and quality of the solutions since the front-end till the backup and archive levels.

Goals

- a. Make swifter the solution of the legal disputes;
- b. Reduce procedural deadlines;
- c. Increase the confidence in the effectiveness and transparency of the legal and judicial mechanisms and approach the citizens and businesses to the judicial systems;
- d. Rationalise and simplify judicial procedures;
- e. Reduce operating costs;
- f. Facilitate access to justice;
- g. Make easier the tasks of the legal professionals;
- h. Help the judicial cooperation and the free circulation of judicial decisions, improving the mutual trust between judicial authorities, installing confidence through reciprocal knowledge and intensification of digital communication, removing the obstacles that emerge from multilingualism and divergence of legal terminology and providing reliable tools to ensure security and authentication of data;
- i. Allow the interconnection of national and European databases;

- j. Give direct access to the forms needed in judicial cooperation, allowing its filling and sending on line;
- k. Make the structures clearer at the eyes of the citizens through the providing of simple, accessible and updated information about the national legal systems, the European law and the rules of the European and international judicial cooperation.
- l. Centralise the information in a large Internet portal that may contain access to all the digital products, allow interaction under a logic of the *Web 2.0*, concentrate the access to the various services, networks and Atlases and allow the submission of all forms and requests and the emission of documents with legal strength.

Give a firm contribution to the building of a European judicial area.

Trends

1. Placed before the change of the dimension of time and space, used to have quick access to huge amounts of information, the European nationals are more and more demanding. Justice is, obviously, comprehended in their object of high hopes and a domain where technology can produce extraordinary benefits to all.

2. Having in mind these patterns, the present psychological and sociological reality, the pressure of the demands and the new needs produced by the enlargement of the offer of public digital goods, the febrile technological innovation, the amplification of the expectations, the compression or reconstruction of the individual time, the globalisation and the increase of the number and incidence of the *cross-border* juridical relations, we can reach the following trends in the *e-Justice* field:

The legal rules and the physical systems will change slowly in order to allow the replacement of paper by electronic judicial proceedings;

- a. The generality of the relations between the citizens and the State, particularly in the Justice domain, will stand on informatics basis;
- b. Bureaucracy will become lighter due to the swifter character of the communication channels;
- c. Connections among Courts and authorities of the different countries, mainly in the framework of the legal instruments adopted in the European judicial area, will be essentially based on quick and direct technological means and on videoconference with multi-camera and online recording;
- d. The free circulation of judgments will be helped by the generalised public access to law suites and judicial decisions, through any kind of digital devices like personal computers, personal digital assistants, cell phones, and any other handheld devices with wide or broad band;
- e. We will see the generalization, at a global level, of judicial cooperation networks based in high speed communications and light rules of mutual help;
- f. The cooperation requests in Europe will be absolutely dematerialised and the forms annex to the existent and new European regulations will be filled and send directly online;

g. These networks will create easier, informal and permanent channels that will produce a global tissue;

h We will assist to the concentration of the informatics' tools and to its absorption in strong and all-embracing thematic Internet spaces;

i. The States and the European Union will supply trustworthy and clear information about the internal and the common legal rules; this information will be available to the citizens, businesses, legal practitioners and the judicial authorities;

j. At the judicial proceeding's level, we can expect to reach good performances in the fields of creation of paperless Courts, case filing and management, case distribution, payments online and court fee systems, record keeping, archiving, court management and statistical systems;

k. Voice and video over Internet Protocol and quick video links, e-mediation, automatic translation, voice recognition or digital stenography, integral online recording of audiences, digital service of documents and dematerialised communications with and from the Courts, paperless lawsuits and automatic procedures, associated to less, more efficient and inclusive databases, will be widely adopted.

The European Enforcement Order

1. In the domain of the *European Payment Order Regulation*, Germany and Austria launched a project to build up a cross-border system that could be extended to the EU level.

This project is planned to enter into force, in its simple, version from the moment when the *Regulation (EC) n° 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure* will apply, which is 12 December 2008.

It is also programmed the addition of further functionalities at later dates.

This has the support of a specific rule of this Community legal document that is Article 8.

Such article previews that the assessment of the application, through which is made the control of the respect of the requirements set out in Articles 2, 3, 4, 6 and 7 and of whether the claim appears to be founded, can be done using an «automated procedure».

This task is a real defy and an example of the special cautions that we must have when facing the cyclopean task of building a space of *e-Justice*. So, it deserves to be referred here, in this initial analysis.

2. The Regulation appears in a «cross of roads», in the confluence of two different systems.

For one of these – the pure enforcement order procedure system (or «gerichtliches mahnverfahren»), where an official with certain judicial powers («der Rechtspfleger») and not

the judge («der Richter») makes the light examination of the application and issues the enforcement order – it is easier to conceive an automated procedure. Anyway, even here, it is a hard cultural and juridical cut to entrust the analysis of the well founded of the claim to a cybernetic system.

Even considering that *Court* is, for these and for the Regulation³ they have inspired, something different from a judge, it seems that the system can leave the citizens, at least apparently, less protected.

For the mixed or impure enforcement order procedure systems (like the Spanish, the French and the Italian), characterised by the guarantee of the intervention of a judge, we can be facing a denial of the right to a judge, the beginning of the automated decisions and the rejection of the real access to Justice.

3. This is a real test to our capacity.

At least at the light of some European cultural approaches, if the citizens, especially the less prepared to defend themselves and to understand the legal systems, placed in the position of defendants, can conclude that this is a dehumanised system because of the lack of access to a professional, technical and impartial preliminary analysis of his case, maybe the efficacy achievements won't e enough to save the image of *e-Justice*.

So, all care should be putted in this intervention.

E-Justice must always be something from, with and to the man.

II. SERVICE OF DOCUMENTS AND TAKING OF EVIDENCE ELECTRONICALLY, ELECTRONIC DOCUMENTATION AND COMMUNICATION, VIDEO-CONFERENCING

The European judicial procedures with *cross-border* element can be extremely favoured by the *e-Justice* instruments.

Especially, these instruments can be very effective and useful, at the short and medium term, in the areas of service of documents, taking of evidence, *European order for payment*, *European Small Claims Procedure* and legal aid applications.

Service of documents and electronic communication and documentation

1. The dematerialisation of cross-border judicial and extrajudicial proceedings involves electronic communication between a Court and the parties to the proceedings.

This is essential to generate swiftness, considering the distances and the particular difficulties of the international litigation.

³ «'court' means any authority in a Member State with competence regarding European orders for payment or any other» – Article 5, 3).

In this area, the *Regulation (EC) n° 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000*, applicable after 13 November 2008, imposes that «*judicial and extrajudicial documents be transmitted directly and by rapid means*» (n° 8 of the preamble).

This is the perfect legal pretext to introduce the IT technology in this area.

The e-Justice tools are also called to help to attain the objectives of the Regulation through the making of an electronic manual containing the information referred to in Articles 2, 3, 4, 10, 11, 13, 15 and 19.

2. The service of documents and communications in general are responsible for large procedural delays.

The conventional ways of contact always produce, too, huge financial expenditures and vast mobilization of human resources.

3. Here, the informatics' technologies have enormous potentialities. Among these, we must highlight the swiftness of the *email*, the reduction of costs associated to the use of voice over *Internet* Protocol and the efficacy and quickness that emerge from the videoconference over broad, wide or ultra-wideband.

4. To assure the best results on a dematerialized Justice system, it would be very important that each citizen could have an electronic address.

This goal can be achieved with imagination and political wide vision. Even the Post services can reconvert themselves internally in order to assure the contact with all citizens, addressees of electronic documents.

Another solution could be the central creation of an *email* address for each citizen.

Who wouldn't have a computer could have access to this *email* in public spaces specially drawn for the effect.

Complementarily, in each contract, it could be imposed the indication and acceptance of the *email* addresses of the parties, to use in case of litigation about the agreement subscribed.

5. On the matter of the Electronic documentation, please see what has been said in the first chapter of this text.

Videoconference in the judicial cooperation in civil and commercial matters

1. The text that, presently, contains the European rules for the cross-border taking of evidence in civil or commercial matters is the *COUNCIL REGULATION (EC) No 1206/2001 of 28 May 2001*.

Its set of norms are applicable in all the European Union countries, except Denmark, replacing the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* from the Hague Conference on Private International Law, in the relations between the countries that were bound by it.

2. The pointed European Regulation is applicable when:

- a. It's aimed to take evidence in the communitarian space;
- b. Such taking of evidence falls upon civil or commercial matters;
- c. The request is presented before a Court of a member state;
- d. The demanded elements of proof are intended to be used in commenced or contemplated judicial proceedings.

3. The most used type of cross-border taking of evidence made under the Regulation rules is the one that stands on the direct transmission of requests between Courts. It is, also, the most encouraged system of cooperation in the new logics introduced by the *Amsterdam Treaty* and the *Tampere Conclusions*.

In this framework, the Court of a member state that wants do send a request of taking of evidence to the competent Court of another Member State must, in first place, identify and locate it.

For this effect, it can use the *European Judicial Atlas in Civil Matters* afore-mentioned.

There, it can find the adequate forms, the indication of the languages that can be used to fill it, and get the notion of the availability of a videoconference system in the requested Court.

It can also obtain reference to the obtainable cooperation means.

More, it can have access to the texts of the referred Regulation, of the Hague Convention of 1970, and to the communications of the Member States.

After having localised the requested Court, the requesting Court must fill the form A annex to the referred European text.

This and all the other forms can be filled online. After this proceeding, it can be:

- a. Printed and send by postal mail;
- b. Saved on a Personal Computer or;
- c. Send directly by email.

4. The no. 8 of the preamble of the Regulation establishes that the «*efficiency of judicial procedures in civil or commercial matters requires that the transmission and execution of requests for the performance of taking of evidence is to be made directly and by the most rapid means possible between Member States' Courts .*»

This European Community legal text imposes the use of the most advanced technological means and privileges the videoconference.

In this direction, n° 4 of Article 10 determines that the «*requesting Court may ask the requested Court to use communications technology at the performance of the taking of evidence, in particular by using videoconference*».

5. This command is so strong that the same rule imposes that the «*requested Court shall comply with such a requirement unless this is incompatible with the law of the Member State of the requested Court or by reason of major practical difficulties*».

It seems that only physical difficulties can be obstacle to the use of videoconference, since we do not know a legal system of a Member State that can prevent the use of such a technological mean due to the existence of real juridical obstacles.

6. The swiftness attracted by the use of advanced technology is aimed with such intensity that it is foreseen by the Regulation the possibility of mutual agreement between Courts in order to obtain originally inexistent means (No 4 of art 10).

7. Videoconference is installed in the Community in a very irregular and asymmetrical way, in spite of the strong enthusiasm that lied beneath the creation of the Regulation.

At the present state, it is available in the majority of Member States for criminal proceedings, but is less common for civil proceedings.

According to the data sent to include in the *European Judicial Atlas in Civil Matters*, only in Portugal the videoconference is available in all Courts.

Some member states do not use it at all and some other need to be previously contacted in order to assure the displacement and installation of mobile means (as it happens in the Netherlands and in Schleswig-Holstein, in Germany).

8. If it is not possible the use of a specific technological tool, such as videoconference, the requested Court must send the *form E*, annex to the Regulation, declaring the existence of incompatibility with the law of the Member State of the requested Court or the impossible by reason of major practical difficulties.

9. In face of the Regulation, the use of videoconference in order to allow the requesting Court to examine a witness is included in the notion of direct taking of evidence under article 17 that determines the need of intervention of the central body referred in paragraph 3 of article 2.

10. This introduces a particular difficulty and an internal contradiction susceptible of unnecessarily compromising the cooperation process in this domain.

It is so because, here, we face two different architectures that reciprocally annul or, at least, collide.

On one side, we discover innovative structural conceptions that were drawn having in mind the need of producing quickness, simplicity and trust. These new rules stand on the proclamation of

the primacy of the non-intermediated contact between Courts, reducing the role of the central authorities, and on the intensive use of the most recent technological means.

On the other, we face particular precautions in the direct taking of evidence that impose the systematic intervention of an authority of the Member State of the requested Court, do not allow automatism and immediate initiatives and introduce unnecessary limitations to the rules of the production of proof.

For example, according to the described conception, if a Court of one Country asks the Court of another Country to examine a witness, this witness is obliged to appear and to give her contribution under the rules applicable to any internal interrogation, as stated in the article 13 of the Regulation.

Strangely, if the requesting Court asks the direct taking of evidence using the quickest, more direct and more efficient mean, that is, the videoconference, then the difficulties start and the proof only can be obtained under a voluntary basis, with proscription of any coercive measures, as it results from article 17 no 2.

This leads to the complete frustration of the initiative in a substantial part of the cases.

11. When we think in the cross-border performance of taking of evidence using videoconference, we must conclude that we do not face, here, the sovereignty protection needs that appear in the framework of the effective displacement of the members of a Court to another Country. The specialities of article 17 are justified only in this case.

The intermediation of a central authority is just needed when it is necessary to affirm a reserve of sovereignty and to allow solving practical difficulties eventually insusceptible of being resolved through the mere intervention of the Courts involved.

The non-obligatory character of the witness cooperation with the Court of a different State acting out of its territory remembers that, in a specific geographic area, only local authorities can practice acts assisted by coercive measures.

12. Maybe we can extract from this that the European legislator has not noticed the contradiction that he introduced in the system in virtue of having kept the videoconference inside of the regime of article 17.

It seems, at least in the perspective of a revision of the Regulation, that we should reserve this precept to the situations of effective displacement of the members of a Court to another State. Only this way we can give coherence to the declared will of using swifter technological means and stimulate direct contacts between Courts.

13. *De iure condendo*, and by congruence with the finalities aimed and principles shaped in the Regulation under analysis, we sustain that the cross-border taking of evidence through videoconference must be organised by simple direct contact among two European Courts.

14. We also consider that the attainment of the indispensable cooperation of the citizens with the Justice system must be assisted through the coercive measures admitted by the internal law of the requested State.

15. On the present context, we can just recommend that the requesting Court asks the use of videoconference under the regime of article 10, allowing the requested Court to put the necessary questions to the witnesses, simultaneously applying for the possibility of its judges to participate in the act under the rule of article 12 no. 4.

It seems that this is the only way to preserve the architecture of the Regulation and to grant that the use of its new solutions will not become a residual phenomenon.

16. The cultural differences presented by the *Courts* with large tradition of written procedures also introduce specific resistances.

17. To help to solve the existing problems that determine a residual use of videoconference in civil matters, it appears to be very useful the elaboration of a European manual on the use of videoconference, having always present the need of pointing out simple and clear operational rules that can create confidence and demystify this technology.

This is far more important than defining technical protocols and technological standards.

In civil matters, such manual should consider, among other issues, that:

a. It is fundamental to affirm, in order to remove doubts that still exist, that the remote hearing of witnesses by videoconference, under Articles 17 or 10 of the Regulation must comply, as much as possible, with the procedure followed for examining witnesses in the requesting states courtroom, which means that the choice of the place of the videoconference must be made among the existing physical spaces of the requested court and attending to the need of assuring the dignity and the respect due to the act.

b. Where the equipment to be used is supplied by the Court, there should be no costs. Where the equipment to be used is not supplied by it, all costs of the transmission, hiring of equipment and technical personnel to operate it must be met by the party that requested the videoconference.

18. In parallel, it seems important to update the *European Judicial Atlas in Civil Matters* in the area of videoconference, since it seems to exist much more systems installed and in conditions to be used under Regulation 1206/2001 than the indicated.

19. It is decisive to reach agreement, at European level, on standardised and uniform communication formats and protocols.

It seems recommendable, not only because of the costs but also considering the global availability and easiness of use, the adoption of Internet Protocol videoconference instead of dedicated lines and specific set of rules (obviously with heavy encryption, if needed).

High technological demands to introduce a technology that, nowadays, is cheap and easy, can only lead to unnecessary delays and resistances.

20. Videoconference can also be very useful in the domain of the communication with prisons, mainly to avoid risks and expenses involved in the effort made to assure the physical presence of arrested citizens.

III. EUROPEAN PROCEDURES ON LINE AND THE EUROPEAN *E-JUSTICE* PORTAL

1. 2007 was a year of great development of the idea of *e-Justice* in Europe. During that year, it was drawn a prototype for the ***European e-Justice portal***, referred in the speech of Mr. Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe in the Conference “*Work on e-Justice 2007*” hold in Bremen, from 29 - 31 May 2007 as a «*cross-border, interoperable communications infrastructure on e-Justice*», a construction that tends to be a link between different legal systems.

It was reached the conclusion that the European *e-Justice* system couldn't be centralized, so it should stand on national solutions well coordinated in order to assure a common and efficient functioning and to «*manage the system in a coherent manner*»⁴.

2. At its meeting of 19 and 20 June 2008, the European Council welcomed the initiative to "*progressively establish a uniform EU E-Justice portal by the end of 2009*".

3. This portal should concentrate the various online projects, WebPages, sector-based portals, information tools, databases, Networks and atlases, relevant in the area of the European e-Justice, incorporating all the existing digital instruments of cross-border judicial cooperation in Europe.

It must represent a centre of information and services and a space of interaction, functioning as a unique door through which citizens and business can have access to the European Justice. It must also be a useful tool for judges, court officials, central authorities, officials of the national Ministries of Justice and legal practitioners. It can comprehend different access levels and diverse access rights.

4. *The e-Justice* portal could serve as a single access point to national and EU law – following the example of the EJNCCM as it refers to the object – facilitating communication between Courts, public authorities and interested parties and granting general legal advice and assistance on cross-border legal problems.

Mainly, it should provide open, free, abundant and comprehensive information to the public.

It should give precise and useful data through systems designed to assist the citizens to find out how to deal with legal problems, accompanying them in all the phases of its resolution.

5. The portal must also function as a tool that redirects visitors to registers interconnected at European level and provide direct access to the new European procedures (e.g. «*small claims*») and, especially, to the automated ones (e.g. automated procedure of the «*European order for payment*») and to the fully electronic European procedures that could be created.

⁴ Report by the Council Working Party on Legal Data Processing (*e-Justice*) 15892/07 LIMITE, JURINFO 73, JAI 646, JUSTCIV 325, COPEN 170, Brussels, 29 November 2007.

6. The portal needs to be multilingual and to offer information in the 23 languages of the EU making use, when necessary, of specifically designed translation software.

When linking to national WebPages, it ought allow the translation and interpretation, mainly through the use of automated translation systems (like the EUROVOC and the SYSTRAN automated translation system) and pay special attention to the need of legal translation tools (like *SOLON* and *N-Lex*).

It can contain a database of legal translators and interpreters available to the *Courts*, the legal practitioners and the public.

7. The European Portal must grant access to the forms annex to the Regulations, its filling and sending online and also the possibility of directly asking legal aid and presenting online applications (e.g. on compensation to crime victims) and requests of criminal records, property or other contained in registers.

It ought to also allow the use of online alternative dispute resolution (ADR) and access to the national ombudsmen where it exists.

It can permit online payments, like court fees.

8. We can imagine that this Portal can offer, one day, a European citizenship email box for each national of the Member States, susceptible of being used in the contacts from the Courts and other authorities and, even, on the service of documents.

9. It should permit secure communication, give all the elements needed to videoconferencing and be the core of the document exchange flow between *Courts* and among *Courts* and parties using, when necessary, *e-identity*, *e-security* and *time stamp* tools and standing on standardised formats and communication protocols.

10. Tools like CIRCA, (the portal of collaborative workspace for partners of the European Institutions used, for example, for closed communications inside of the EJNCCM) can be replaced by this direct contact centre.

In the Portal, each one should be in conditions to contact his colleagues of projects or interventions through secure authentication and it could be the entrance door of the paperless communication channel between judicial authorities via a secure network.

11. The creation of an e-Justice portal can increase the visibility of the European *e-Justice* and help to produce confidence and better access to justice in Europe.

It can even give a face to the EU in the area of Justice thus approaching the citizens to the Community and its objectives.

**ELECTRONIC NETWORKING OF CRIMINAL RECORDS AND THE
NEED FOR ENSURING PERSONAL DATA PROTECTION**

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THE INTERCONNECTION OF CRIMINAL RECORDS

IN THE EUROPEAN UNION

On 22 January 2003, for the 40th anniversary of the Élysée Treaty, the French President and the German Chancellor made a joint declaration committing themselves to setting up a European criminal record.

From this joint decision by France and Germany, the networking of criminal records within the European Union has developed within the framework of a process of reinforced cooperation on criminal matters.

The objective of the partners in the Interconnection is to give each of the Member States quick and reliable access to convictions handed down within the jurisdiction of other Member States against their own nationals, in order to improve the quality of Justice delivered by Member States (1).

This quick and reliable access should be provided by a network of secure electronic exchanges between the EU Member States. To guarantee the protection of personal data, the Member States in the Interconnection of Criminal Records have agreed in particular to comply with the provisions of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (2).

The provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data also apply.

This reinforced partnership is being used by the European Union as a pilot project for extending interconnection to all Member States under the framework decision on which political agreement was reached in 2007, and the technical details of which are laid down by the ECRIS decision currently being adopted.

1) PRESENTATION OF THE INTERCONNECTION OF CRIMINAL RECORDS

The process of reinforced cooperation on criminal matters between France and Germany has gradually been joined by other countries.

The countries involved in the Interconnection of Criminal Records, the legal framework for exchanges and the way the Interconnection group functions should be explained.

- **Member States in the Interconnection**

The work begun by France and Germany to set up a computerised connection between their criminal records was joined by Spain and Belgium in 2004.

The interconnection between these four countries became operational on 31 March 2006.

The project was then joined by the Czech Republic and Luxembourg, which connected up with some of the four pioneer countries in January 2008. Full connection is currently being completed.

As regards the Czech Republic, a number of technical difficulties have so far made full connection impossible.

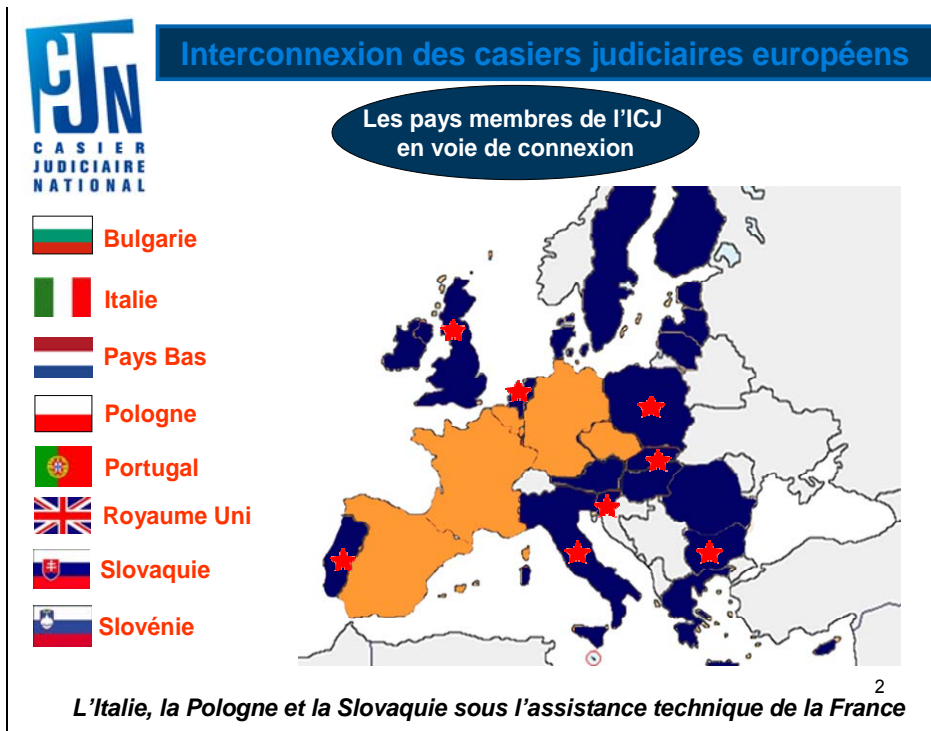
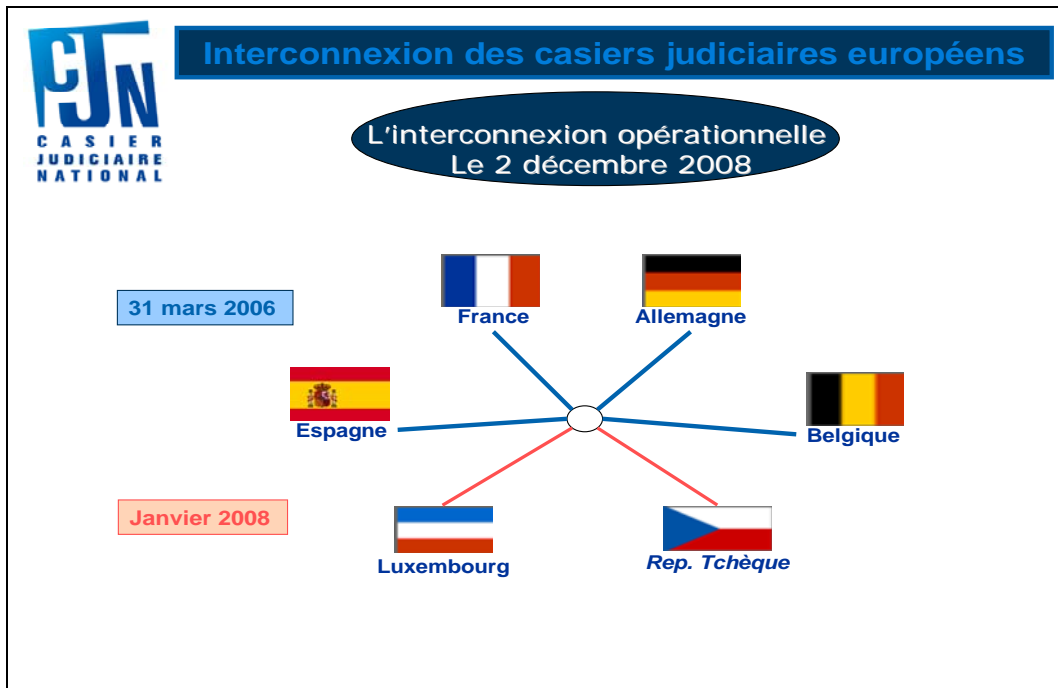
In 2007 and 2008, more countries joined the Interconnection.

In 2007, Slovenia, the United Kingdom, Poland, Italy, Slovakia and Portugal joined the project.

In 2008, Bulgaria and the Netherlands also joined the Interconnection.

Three other countries, Romania, Sweden and Austria, declared themselves observers, which allows them to take part in plenary meetings of the Interconnection until they take the official decision to join the Interconnection.

It should be pointed out that membership of the Interconnection of Criminal Records does not lead to instant connection with the other countries. A period of 18 months to 2 years on average is required to make the necessary legal and technical adjustments for electronic exchanges to be made with criminal records in other Member States.



- The legal framework for exchanges

A. Exchanges between criminal records are on the basis of established law within the framework of the provisions of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.

In particular:

- Article 13 of the Convention stipulates that ‘A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter’.
- Article 22 stipulates that ‘Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records.’

Exchanges in the Interconnection of Criminal Records thus concern criminal proceedings and the judicial authorities.

B. A Council Decision of 21 November 2005 completes the measures, requiring each Member State to designate a central authority and setting the timescales for exchanges between the countries.

Replies to requests for extracts made by the judicial authorities must be made within 10 days or within 20 days where the request comes from a private individual.

C. A Council framework decision of 12 and 13 June 2007 currently being adopted will strengthen the judicial rules for exchanges, in order to:

- specify the content of the information (Article 7),
- speed up the exchanges (Article 8),
- specify the conditions regarding updates of information and their use (Article 7),

→ define the framework for electronic exchanges between Member States (Article 11).

This framework decision should be completed by another decision known as the ECRIS (European Criminal Records Information System) decision currently under discussion, which defines the actual procedures and formats of exchanges.

- Operation of the Interconnection of Criminal Records

To permit swift and full exchanges, the Member States belonging to the Interconnection immediately decided to set up common tables of offences and sanctions, with coding and machine translation.

For this purpose, each Member State participates in a legal working group to prepare the tables of offences and sanctions, taking account of the specific features of national legislation, so they can be integrated into a coherent, coded table. The group is currently chaired by France.

The Member States also take part in a technical working group, which has the task of making the necessary IT adaptations for the coded tables to be used in the electronic exchanges.

This group is chaired by Germany.

The table of offences completed in 2007, which contains 45 categories and 178 sub-categories, has been integrated into the IT system and has actually been in use since January 2008 among the six connected Member States.

It enables the data relating to the offence sub-categories to be coded and machine translated.

At the end of the first half of 2008, the table of sanctions and measures was also adopted by all the countries in the Interconnection of Criminal Records, and is currently undergoing implementation.

It should be pointed out that the ECRIS decision under discussion provides for mandatory use of these coded tables for exchanges between Member States.

In the medium term, all exchanges of information between criminal records will be made using the common tables of offences and sanctions, which will allow rapid

electronic exchanges with machine translation of data in a completely secure environment.

It should be mentioned here that the European Commission has mobilised a substantial budget to enable the Member States to make the technological adaptations necessary for interconnection, particularly the computerisation of their criminal records, an essential preliminary stage in setting up electronic exchanges.

2007 STATISTICS

Statistics from 1 January to 31 December 2007	sent by France to Germany, Spain and Belgium	received by France from Germany, Spain and Belgium
Reports	requests issued for the benefit of French jurisdictions: 5 508	replies returned for the benefit of foreign jurisdictions: 1 868
Notices of information from criminal records	notices sent: 3 621	notices recorded in the French criminal record: 10 541

2008 STATISTICS

Statistics from 1 January to 30 September 2008	sent by France to Germany, Spain, Belgium and Luxembourg	received by France from Germany, Spain, Belgium and Luxembourg
Reports	requests issued for the benefit of French jurisdictions: 4 342	replies returned for the benefit of foreign jurisdictions: 3 877
Notices of information from criminal records	notices sent: 2 381	notices recorded in the French criminal record: 9 599

Comments: the introduction of the Interconnection of Criminal Records means that a reply can be given within just a few days to requests for criminal record extracts made by one Member State to another concerning its nationals.

Analysis of the volume of exchanges of extracts from criminal records and reports before and after the system was introduced shows that the interconnected countries were exchanging significantly more information once the interconnection was in place.

This change is particularly significant for countries that have introduced an IT system allowing decisions to be sent automatically from the original record, and that have systematically offered their judicial authorities the ability to request a report from the home country of the person involved in criminal proceedings.

2) PERSONAL DATA PROTECTION WITHIN THE FRAMEWORK OF ELECTRONIC EXCHANGES ON THE INTERCONNECTION OF CRIMINAL RECORDS

The guarantee of personal data protection within the framework of the Interconnection assumes that specific legal standards are implemented by each of the Member States.

This guarantee also assumes that the technical arrangements for exchanges protect the confidentiality of exchanges and the security of electronic communications.

- **Guarantees related to the legal conditions on exchanges**

- A. **Within the framework of the pilot project**

- At present, within the framework of the pilot project, the Interconnection relies on exchanges on the basis of established law in application of the provisions of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and the Council Decision of 21 November 2005 on the exchange of information extracted from the criminal record.

The reference document adopted by the partners in the pilot project immediately established a binding framework to guarantee data protection.

In addition to the explicit reference to the principles in the Council of Europe Convention of 28 January 1981, the partners established the following principal rules:

- each Member State remains responsible for the rules of operation of its own criminal record and no direct online access to the content of other criminal records is provided for;
- the exchanges concern only final criminal convictions entered in the criminal record of the Member State where the conviction was handed down;
- the exchanges must include updates of information on convictions;
- personal data sent within the framework of the project may be used solely for the purpose for which it was sent. Consequently, the information in an extract may not be used to create a record;
- Member States must make a commitment regarding their national legislation and protection measures for personal data;
- membership by any new Member State is subject to the unanimous agreement of the other Member States, which will ensure that the technical, legal and personal data protection conditions are met.

The partners in the pilot project thus intended to provide genuine protection of personal data within the framework of their exchanges.

B. Within the framework of the European Union project

The draft framework decision of June 2007 on the organisation and content of the exchange of information extracted from criminal records, and the ECRIS project, on which political agreement was secured at the Justice and Home Affairs Council of 24 October 2008, specified and strengthened the conditions with regard to personal data protection.

The new model for exchanges provides in particular that:

- the role of the convicting Member State and the Member State of the person's nationality are precisely defined,
- updates of information on convictions must be transmitted immediately (Article 4 of the 2007 framework decision)
- retransmissions of information by one Member State to another must contain updates received from the convicting Member State (Article 5 of the 2007 framework decision)
- personal data may be used solely for the proceedings for which they were requested (Article 9 of the 2007 framework decision)
- the convicting Member State may restrict the use of the information sent to the Member State of the person's nationality by laying down that certain information may not be retransmitted for purposes other than criminal proceedings (Article 7 of the 2007 framework decision)

All the rules in the 2007 draft framework decision and in the ECRIS decision thus improve the efficiency and security of exchanges between criminal records.

- Guarantees related to the technical system

The system of Interconnection of Criminal Records in the European Union allows each of the interconnected criminal records to retain total autonomy over the organisation of these records, while participating in a swift and secure system of information exchange with other records over the TESTA (Trans-European Services for Telematics between Administrations) network.

From the outset, the countries that pioneered the interconnection developed techniques and exchange protocols that would guarantee the security of electronic communications.

Technical implementation

- Encryption of exchanges

Each Member State has an encryption certificate. Using the certificate with the http (HyperText Transfer Protocol) exchange protocol guarantees the confidentiality and integrity of the data sent and received by servers in the partner countries.

Exchanges between interconnected countries rely from a technical point of view on the s-TESTA (Trans-European Services for Telematics between Administrations) secure communications network that exists between the European institutions and some administrations in the Member States.

- Filtering of exchanges

Each Member State has a list of the IP (Internet Protocol) addresses of its partners' servers. No exchanges are possible if the sender is not on this list.

Functional implementation

- Asynchronous acknowledgement of receipt

The interconnected Member States have set up an 'asynchronous' acknowledgement of receipt for the exchange of notifications. The transmitting Member State that receives the acknowledgement of receipt checks that it was indeed the source of transmission of the notifications.

The draft ECRIS decision mainly uses the secure system adopted by the partners in the pilot project.

It confirms the choice of a decentralised architecture for the exchange system and Member States' autonomy over the organisation of their own criminal record.

It gives a specific role to the European Commission, to provide general support and monitoring services to ensure the proper functioning of ECRIS.

Finally, the draft ECRIS decision precisely defines the framework for exchanges with mandatory use of coded tables of offences and sanctions to facilitate the transmission of information.

CONCLUSION:

The Interconnection of Criminal Records now has six interconnected countries and eight other countries in the process of connection.

The adoption of the framework decision of 12 and 13 June 2007 and the ECRIS decision will enable interconnection to be extended to all EU countries in the near future.

The interconnection system, which is currently limited solely to exchanges between judicial authorities, could then be extended to all requests for reports formulated for administrative purposes or the needs of private individuals.

**NEED FOR ELECTRONIC NETWORKING OF INSOLVENCY,
BUSINESS, LAND AND OTHER REGISTERS?**

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NEED FOR ELECTRONIC NETWORKING OF INSOLVENCY, BUSINESS, LAND AND OTHER REGISTERS?

INTRODUCTION

Information on the legal and financial position of debtors or contracting partners is crucial for a smooth functioning of the economy and the legal system. The emergence of the internet greatly improved the possibilities for obtaining this information at low cost and high speed. At the national level a growing number of registers with land, business and insolvency records supply the need for this information.

With the development of the internal market and a growing number of cross-border transactions, there is a growing need for a cross-border accessibility of these registers.

The national registers though are often very difficult to consult from abroad, due to linguistic, technical, legal or cultural reasons.

This paper discusses the need for cross-border consultation of land, insolvency, business and some other registers, but moreover it discusses initiatives that already have been taken to network these national registers.

Section 2 takes a look at some Community developments regarding the cross-border access of registers. Section 3 discusses the business registers, with special attention for the European Business Register (EBR). Land registers are dealt with in section 4, with a special focus on the European Land Information Service (EULIS).

In section 5 we turn to the networking of insolvency registers. Different from the land and business registers, there is currently no network in operation, although recently a proof of concept was developed by some Member States.

This section not only elaborates aspects of legal, organisational and technical nature that are encountered when improving the cross-border accessibility of insolvency information, it also gives a description of the work to be done at the national level.

Section 6 deals with some other registers that might be necessary to network, such as registers of wills, population registers and registers of interpreters and translators.

Section 7 discusses the various options for the networking of registers, and section 8 reflects on future work.

THE NEED FOR THE NETWORKING OF REGISTERS

In March 2008 the European Commission published the green paper '*Effective Enforcement of Judgments in the European Union: the Transparency of Debtors' Assets*'.⁵

From the outset this document makes clear why there is a need for transparency: "*There is a risk that problems of cross-border debt recovery may be an obstacle to the free circulation of payment orders within the European Union and may impede the proper functioning of the Internal Market. Late payment and non-payment jeopardise the interests of businesses and consumers alike. This is particularly the case when the creditor and the enforcement authorities have no information about the debtor's whereabouts or his assets.*"⁶

⁵ COM(2008) 128 final

⁶ L.c. p. 3.

The green paper then proposes solutions along four different lines⁷, of which the second – “*Increasing the information available in and improving access to registers*” – is of particular relevance here.

Not only in case of debt recovery though access to registers is of the utmost importance, also when entering into a contract or doing research on a business proposal one has to be well informed about the legal or financial position of the contracting partner and his assets.

In June 2007 the JHA Council decided⁸ that “*work should be carried out to develop at European level the use of information and communication technologies in the field of justice.*” It was stated that “*a system to be developed has to be decentralised and the priorities for future work should be:*

- 1) *the setup a European interface (E-Justice portal);*
- 2) *to create the conditions for networking of the following registers:*
 - a) *criminal records*
 - b) *insolvency registers*
 - c) *commercial and business registers and*
 - d) *land registers;*
- 3) *to start the preparations of an electronic method for the European payment order, in full respect of Regulation (EC) No 1896/2006;*
- 4) *to improve the use of video technology for communication in cross-border proceedings.”*

Although – in the civil law area – only insolvency, business and land registers were prioritized, other registers were not explicitly excluded.

In May 2008 the European Commission published the Communication ‘*Towards a European e-Justice Strategy*’.⁹

Although in this document the Commission calls into question whether the networking of the aforementioned registers falls within the scope of e-Justice – “*Some projects pertain not to the legal sector but rather to e-Government. And so, certain activities that sometimes involve legal institutions are themselves rather administrative in nature (e.g. land registers or the European Business Register)*”¹⁰ – the need for networking these registers in itself is left undisputed.

Also in the Working Document on e-Justice¹¹ from the Committee on Legal Affairs of the European Parliament electronic registers are mentioned as an area “*where e-justice could make a valuable contribution at European level*”.

As can be concluded from the aforementioned documents, the general need for the networking of various civil registers is recognized by Council, Commission and European Parliament. In the following sections the most important registers will be discussed separately, both on the need for networking, and on the results that have been achieved already.

⁷ L.c. p. 5.

⁸ 10509/07 JURINFO 23 JAI 301 JUSTCIV 163 COPEN 89

⁹ COM(2008)329 final

¹⁰ L.c. p.4.

¹¹ http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dt/725/725374/725374en.pdf

BUSINESS REGISTERS

Under the First Council Directive on Company Law of 1968¹² Member States are obliged to keep a commercial register. Under the Eleventh Council Directive on Company Law of 1989¹³ an obligation is established to disclose data on branches of companies in one state which are governed by the law of another state.

Although these directives aim to provide transparency on business particulars, they do not harmonize the registers themselves.

To improve the cross-border accessibility of commercial registers the European Business Register (EBR)¹⁴ was founded, a network of currently 21 national organisations. EBR is set up as a European Economic Interest Grouping (EEIG).

EBR's purpose is to provide cross border access to information on companies and company officials. Through the EBR network it is possible to retrieve official company information from the registers of the members of the group, with a multi-language interface and standard reports. EBR is accessible via Internet as a service within the national online services provided by the different business registers, through a common interface in the language that is selected by the user.

Via EBR the following sets of data are available:

- a standard European enterprise profile (EBR standard profile);
- national enterprise profiles (more complete sets of information, extending the standard profile, containing e.g. the statute, activities description, branches);
- list of managers, balance sheets, individual profiles.

As a minimum, EBR Member States make their data available, optionally they can also act as a distributor of the data of the other Member States.

Figure 1 gives an overview of the EBR Member States.

¹² First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, OJ L 65, 14.3.1968, p.8.

¹³ Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State, OJ L 395, 30.12.1989, p. 36.

¹⁴ www.ebr.org

EU Member States not being a member of EBR	EU Member States being also member of EBR	Non EU Member States being a member EBR
Bulgaria	Austria*	Jersey
Cyprus	Belgium*	Norway*
Czech republic	Denmark*	Serbia
Hungary	Estonia*	Ukraine
Lithuania	Finland*	
Malta	France*	
Poland	Germany*	
Romania	Greece (Athens) *	
Slovakia	Ireland	
	Italy*	
	Latvia*	
	Netherlands	
	Republic of Macedonia*	
	Slovenia	
	Spain*	
	Sweden*	
	UK	
	Portugal**	
	Luxemburg**	

* Also a distributor
** Application for membership

Figure 1. EU and EBR Member States


Regarding the technical architecture it is important to note that EBR has implemented a decentralized model. No central database has been built, but data from a register are being sent the very moment a distributor (e.g. another register) requires them. By using a multilingual thesaurus the search interface adapts itself to (the language of) the user. This way e.g. a Swedish user can consult the Italian register in the Swedish language (figure 2).



EBR® EUROPEAN BUSINESS REGISTER



Välj språk Svenska | Information | Priser | Logga ut

Söka företag Söka företrädare Hämta rapporter Administration Mina produkter

Företagslista

Land :  Italien (Infocamere)
 Sökvärden : gianni versace - MI
 Antal träffar : 4 träffar levererade.

 
[Utskriftsvänlig](#) [Lagra](#)

Organisationsnummer	Namn	Företagsform	Statusgrupp	Myndighet	Ort	Rapporter
996793	GIANNI VERSACE S.R.L.	SOCIETA' A RESPONSABILITA' LIMITATA (SRL) 	Upplöst	MI - MILANO	MILANO MI	Företagets företrädare Företagspresentation Söka produkter/dokument
1016817	GIANNI VERSACE SPA	SOCIETA' PER AZIONI (SPA) 		MI - MILANO	MILANO MI	Företagets företrädare Företagspresentation Söka produkter/dokument
1207442	MODIFIN S.P.A.	SOCIETA' PER AZIONI (SPA) 	Upplöst	MI - MILANO	MILANO MI	Företagets företrädare Företagspresentation Söka produkter/dokument
1288266	LINEA GI S.R.L.	SOCIETA' A RESPONSABILITA' LIMITATA (SRL) 	Upplöst	MI - MILANO	MILANO MI	Företagets företrädare Företagspresentation Söka produkter/dokument

EBR Rapport framställd 2004-12-13 11:41:21, distribuerad av Bolagsverket från Italien (Infocamere). (Förbehåll)

Figure 2. EBR: consulting the Italian business register in the Swedish language.

The functioning of the internal market is thus improved: data on e.g. staff, powers of representation and possible insolvency are important for a smooth functioning of international business.

Apart from the importance of EBR within the circle of EBR Member States, one shouldn't underestimate the role of EBR in relations with non European countries: the availability of a French interface simplifies e.g. the inquiries of a businessman from Ivory Coast on a Finnish company.

Apart from the mere interconnection of the business registers that has been realized up to now, EBR also conducts related projects to improve the interchangeability and quality of business particulars, like BRITE – Business Register Interoperability Throughout Europe, aiming to ensure data exchange between the participating registers – and brXML – aiming to create a standard XML-based structure to exchange data between the registers.

LAND REGISTERS

With a growing number of citizens choosing to move to another Member State or to acquire a secondary home abroad, the international accessibility of land register information is essential for the proper functioning of real estate and mortgage markets.

The White Paper on the Integration of EU Mortgage Credit Markets¹⁵, and especially Annex III of the Commission Staff Working Document Accompanying the White Paper¹⁶ stresses the need for, and gives a concise overview of the existing possibilities for cross-border access:

“Before accepting a property as collateral for a loan, a mortgage lender has to be able to access the national land register in order to verify whether any other charges already exist, thereby granting rights to other third parties. National land registers and their accessibility differ in several ways. First, centralised registers do not exist in all Member States. For instance, Belgium, Denmark, Germany, Greece, Spain, France, Italy and Portugal do not have centralised register. Furthermore, not all Member States have electronic registers and, consequently, not all land registers can be accessed on-line. For instance, there is no electronic register in France, while the registers in Germany and Greece are partly electronic depending on who is in charge of the register. The (partly) electronic registers, for instance, in Denmark, Greece and Spain cannot be accessed on-line. Regarding cross-border access to national land registers, in most Member States foreign mortgage lenders have the same access rights as national mortgage lenders. In some Member States, however, cross-border access is not possible or impaired compared to national mortgage lenders accessing the register for various reasons. In Hungary, for instance, the on-line register is not accessible cross-border. In Latvia; it is legally possible for foreign mortgage lenders to access the register on-line but in practice, access is limited because foreign mortgage lenders need a special permission from the State Land Service to get through the firewall. In some Member States, such as Austria, Portugal, the Netherlands and the UK, it is already possible for foreign mortgage lenders to access the register on-line on a cross-border basis.”¹⁷

The European Land Information Service (EULIS), officially launched in 2006 and sponsored by the Commission’s eContent en eTEN programme, was established to fulfil the growing need for cross-border access of land registers.

The EULIS participants are the national institutions responsible for maintaining and supplying information from national land registers, in which data on real property, rights thereto, deeds and encumbrances are registered.

EULIS is in the process of forming a European European Economic Interest Grouping (EEIG). Figure 3 states the Members of EULIS, in comparison with the EU.

¹⁵ COM(2007) 807 final

¹⁶ SEC(2007) 1683 Annex III

¹⁷ SEC(2007) 1683 Annex III, p. 125.

EU Member States not being a member of EULIS	EU Member States being also a member of EULIS	Non EU Member States being a member EULIS
Belgium	Austria	Iceland
Luxemburg	England, Wales, Scotland	Norway
France	Finland	
Spain	Ireland	
Portugal	Lithuania	
Italy	the Netherlands	
Malta	Sweden	
Cyprus		
Romania		
Bulgaria		
Hungary		
Slovenia		
Poland		
Slovakia		
Czech Republic		
Germany		
Denmark		
Estonia		
Latvia		
Greece		

Figure 3. EU and EULIS Member States

The functionality of the EULIS service is illustrated below.

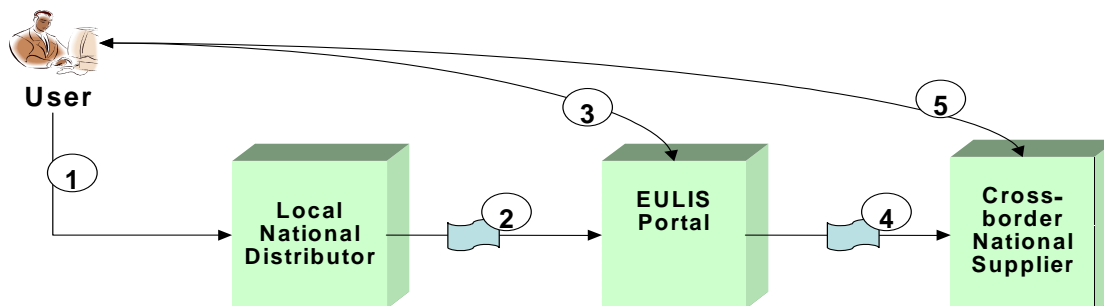
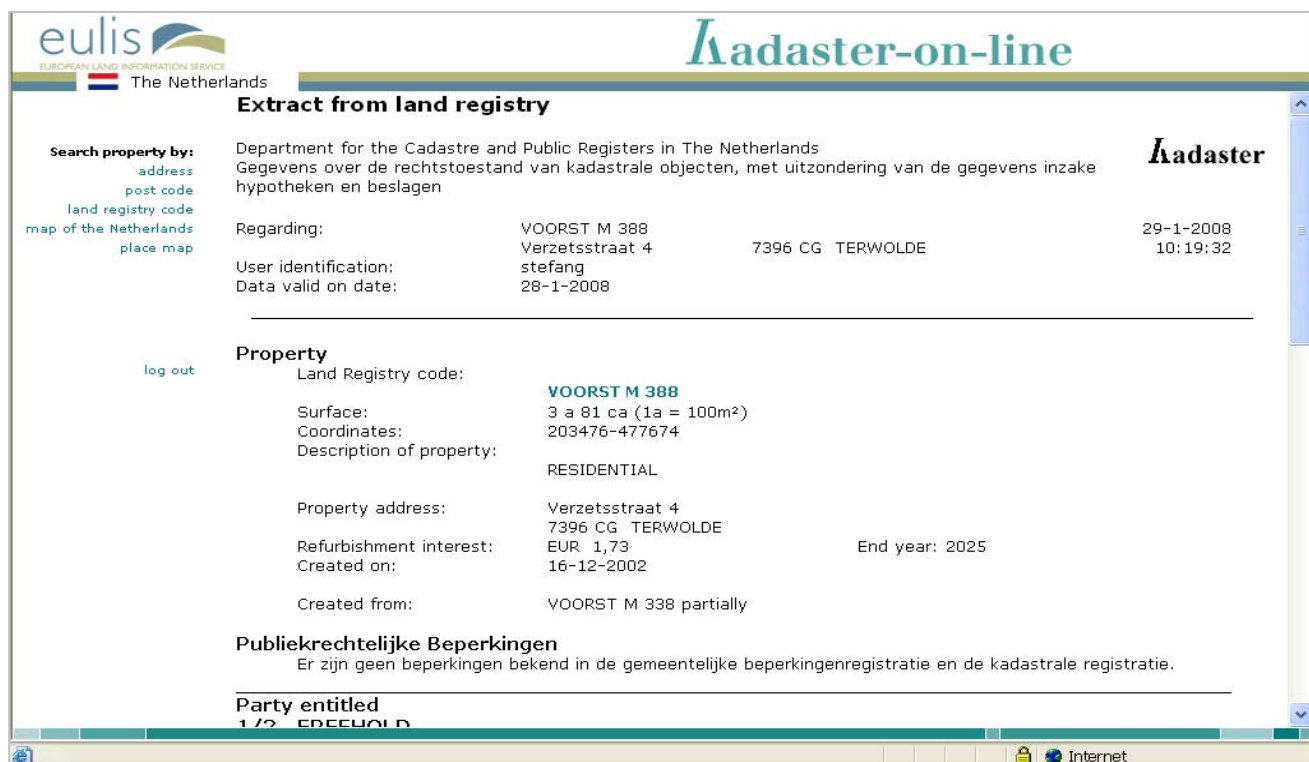


Figure 4. Basic EULIS functionality.

In step 1 the user (from a EULIS-Member State) logs in on the system of his national distributor of land information. Within this system a EULIS-option is shown. The National Distributor makes a connection with the EULIS-portal. Within this portal the user can select the EULIS Member State he wants to retrieve information from – this can be general reference information on that particular country, or access to the land register of the selected country. In the latter case (step 4) the user makes the portal to open a connection to the register of the requested state. The

user can now select whatever land information product he wants. The results are displayed on line.

Figure 5 shows an example from the Dutch land register ('Kadaster-on-line') as retrieved via the EULIS portal.



The screenshot shows the EULIS portal interface for the Dutch land register. The header includes the EULIS logo and the text 'Kadaster-on-line'. The main content area is titled 'Extract from land registry' and contains the following information:

- Search property by:** address, post code, land registry code, map of the Netherlands, place map
- Department for the Cadastre and Public Registers in The Netherlands**
Gegevens over de rechtstoestand van kadastrale objecten, met uitzondering van de gegevens inzake hypotheek en beslagen
- Regarding:** VOORST M 388, 7396 CG TERWOLDE
- User identification:** stefang
- Data valid on date:** 28-1-2008
- Property details:**
 - Land Registry code: **VOORST M 388**
 - Surface: 3 a 81 ca (1a = 100m²)
 - Coordinates: 203476-477674
 - Description of property: RESIDENTIAL
 - Property address: Verzetsstraat 4, 7396 CG TERWOLDE
 - Refurbishment interest: EUR 1,73
 - Created on: 16-12-2002
 - Created from: VOORST M 388 partially
- Publiekrechtelijke Beperkingen:** Er zijn geen beperkingen bekend in de gemeentelijke beperkingenregistratie en de kadastrale registratie.
- Party entitled:** 1/2 ERFBOUW

Figure 5. Extract from Dutch land register through the EULIS portal.

The EULIS service also contains a multilingual glossary on common terms. This facility translates commonly used terms of all EULIS members and explains differences in meaning or legal implications. This translation tool is based on a list of common concepts, each of which is defined in English. The EULIS terms act as a link between any listed term in one jurisdiction and the equivalent term in any other jurisdiction.

In the aforementioned White Paper on the Integration of EU Mortgage Credit Markets a Commission recommendation is announced, which would encourage Member States to adhere to EULIS.¹⁸

¹⁸ L.c. p. 8.

INSOLVENCY REGISTERS

INTRODUCTORY REMARKS

For the proper functioning of the economy information on the financial situation of contracting parties – including insolvencies – has to be available, preferably free of charge and as accessible as possible.

Although this information is since long gathered and made available by credit rating agencies and credit reference agencies, there is a growing belief that this information has to be more freely available. And while international trade is growing, there is a growing need for the accessibility of insolvency information for users abroad.

Notwithstanding the fact that the insolvency of companies is regularly registered in the business register, insolvency registers have an added value: they contain more extended information, e.g. on the state of the procedure, list of liquidating dividends, trustee and administering judge. Moreover, they also contain insolvency information on legal entities which do not have a record in a business register, like natural persons.

There are no European legal instruments on insolvency registers. Hence, insolvency registers vary from country to country:

- There is a great variance in insolvency procedures¹⁹, which has repercussions for the registers;
- Some insolvency registers are kept by governmental entities, some by private organisations, some countries do not have an insolvency register at all;
- Some registers are accessible free of charge, for others a fee is required;
- Due to different data protection rules there are differences in searchability and disclosure of personal data.

To illustrate the legal, technical and organisational challenges which are encountered when networking registers in general, and insolvency registers in particular, in subsection 5.3 we shall examine the issues which were encountered in the proof of concept which was recently developed by some Member States.

INTERMEZZO: THE CENTRAL INSOLVENCY REGISTER IN THE NETHERLANDS

Before national registers can be networked on a European scale, as a prerequisite national registers have to be available.

While the organisational, legal and technical situation differs from country to country, it can be illustrative to look at the efforts that have to be undertaken to build a national register that meets the requirements to be networked at the European level.

We shall take a look at the development of the national insolvency register in the Netherlands – not only because it illustrates the problems arising when building webtechnology solutions on top of legacy applications, but also because the Dutch solution is technologically rather advanced, with e.g. already built-in features for multilingual access.

¹⁹ See for an overview: Annexes A and B of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

In the Netherlands, it was – till quite recently – a time-consuming and difficult task to retrieve facts on insolvencies from the court registers. One could read the insolvency notifications in the Official Gazette each day, or go to the Business register of the Chamber of Commerce to find out about the state of a company, or to the website of the Legal Aid Council to query for a natural person in debt restructuring. But to get the information from the district court – the official holder of the insolvency register – one had to make a call or a visit, and often wait quite some time to get an answer. And when looking for a company with an unknown statutory domicile or a person with no permanent or temporary address, one could have to approach all nineteen district courts, all of them maintaining their own register. And although the registration process at the courts was done correctly, the searchability of those data left much to be desired.

The way in which the insolvency notifications were published and distributed was also quite archaic (figure 6).

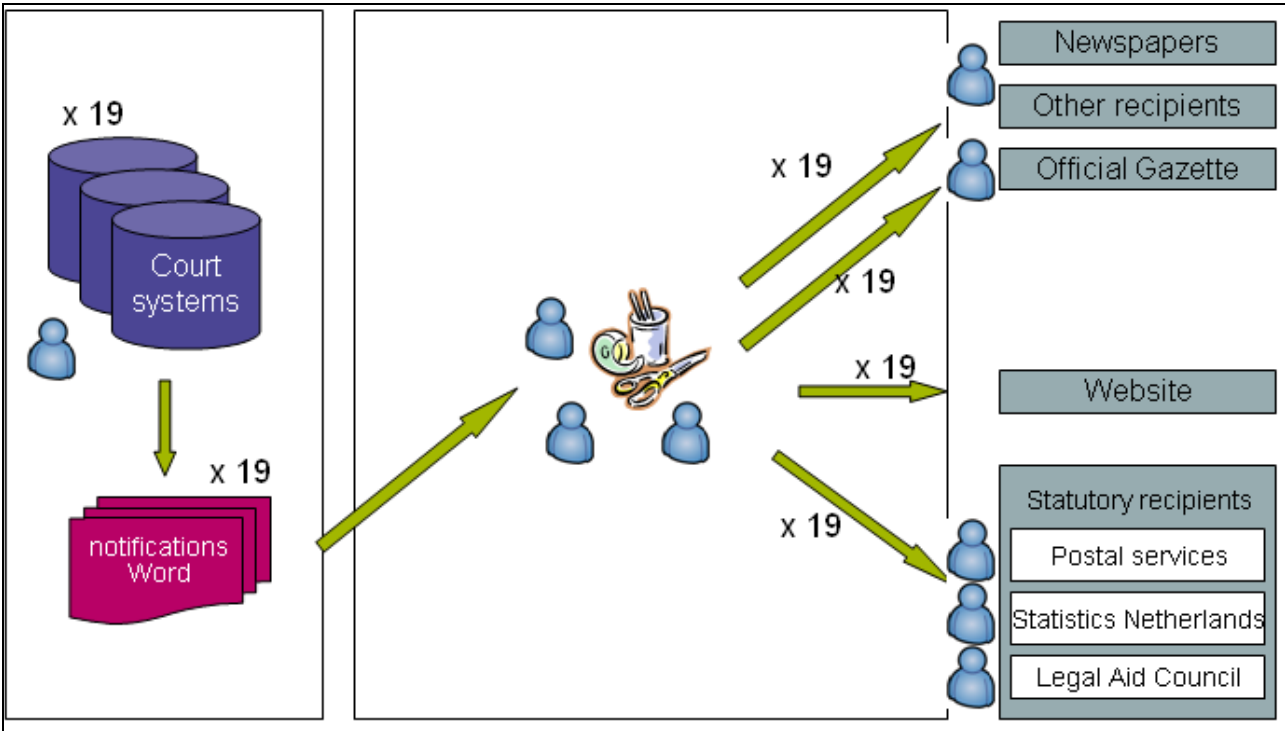


Figure 6. Former insolvency notification process in the Netherlands: no harmonization between courts and a lot of manual labour.

Within the boundaries of the law and the database system – of which each court has its own version – nearly every court had its own policy on publicationworthy facts, the wording of the notifications and the method of distribution.

After finalizing the drafting process, the computer system produced a Word-document with a list of insolvency notifications for that particular day. Some courts faxed or emailed the whole list to the statutory recipients, some used - literally – scissors and glue to compose custom-made lists for statutory or other recipients and some called in an advertising agency to do the job. For organisations like the postal services – responsible for the effectuation of postal blockades – this meant quite an administrative burden.

The Official Gazette, in which the insolvency notifications have to be published to have constitutive effect, received different formats from nearly all courts – and of course, they sent quite substantial bills for all the editing needed to attain a uniform lay-out.

After the founding of the internet portal site for the judiciary in 1999, an increasing number of courts also published their daily list of notifications on the web. Although this was an important step forward, the mere publication of these different lists was far from a transparent and well-searchable register.

So, when the ‘insolvency register project’ started in 2002, the wish list looked like this:

1. The harmonization of the types and wordings of insolvency notifications;
2. Converting the nineteen district insolvency registers into one common register;
3. Make the register available on the internet;
4. The electronic distribution of the notifications to the statutory recipients;
5. Offer professional users the possibility to subscribe to notifications in an electronic format.

The absolute prerequisite for the IT-related steps was to harmonize the insolvency procedures and the types and wordings of the notifications. This was done by insolvency experts from the judiciary, resulting in a list of 103 different notification types and a very concise wording of the texts.

While implementing these unified processes and notifications in the court systems, steps were taken to extract these notifications from the legacy court systems. These files are sent to a central department, which stores them in a database – in such a way that both notifications and cases (which are different legal concepts) can be identified.

Every day, from this database two kinds of XML²⁰ are generated. On the one hand a daily publication list comprising all notifications of one day – to be send to the Official Gazette. By supplying the Official Gazette a well-structured document, a substantial cut down on costs could be realized.

On the other hand ‘case-XML-files’ are generated, each containing the data of every insolvency case in which a notification has taken place.. These latter files are send – via a message broker – to the public insolvency register on the internet.

Based on intelligent business rules the message broker sorts and converts the XML-case files as needed by the statutory recipients, and distributes the notifications according to pre-defined distribution rules.

To give a few examples:

1. While the whole case history has to be published on the internet, only the most recent notifications have to be send to the recipients – so prior notifications are removed from the XML-message.
2. The postal services need only those notifications which are relevant for their task, so they do receive messages on the start or the winding up of insolvencies, but they do not receive messages on verification meetings or the deposition of lists of liquidating dividends.

²⁰ XML = eXtensible Markup Language, a human readable file format widely used for information exchange on the internet.

3. The Legal Aid Council, which is responsible for the implementation of the ‘Debt Restructuring for Natural Persons Act’ only receives notifications on debt restructuring, and not on bankruptcies or moratoria.
4. Also the precise content of the notification can differ among the various recipients: while the address of a person residing in a shelter for abused women has of course to be undisclosed on the internet, it does have to be send to the postal services to implement the postal blockade.

By supplying these recipients with technically and semantically uniform data they could cut down expenses substantially.

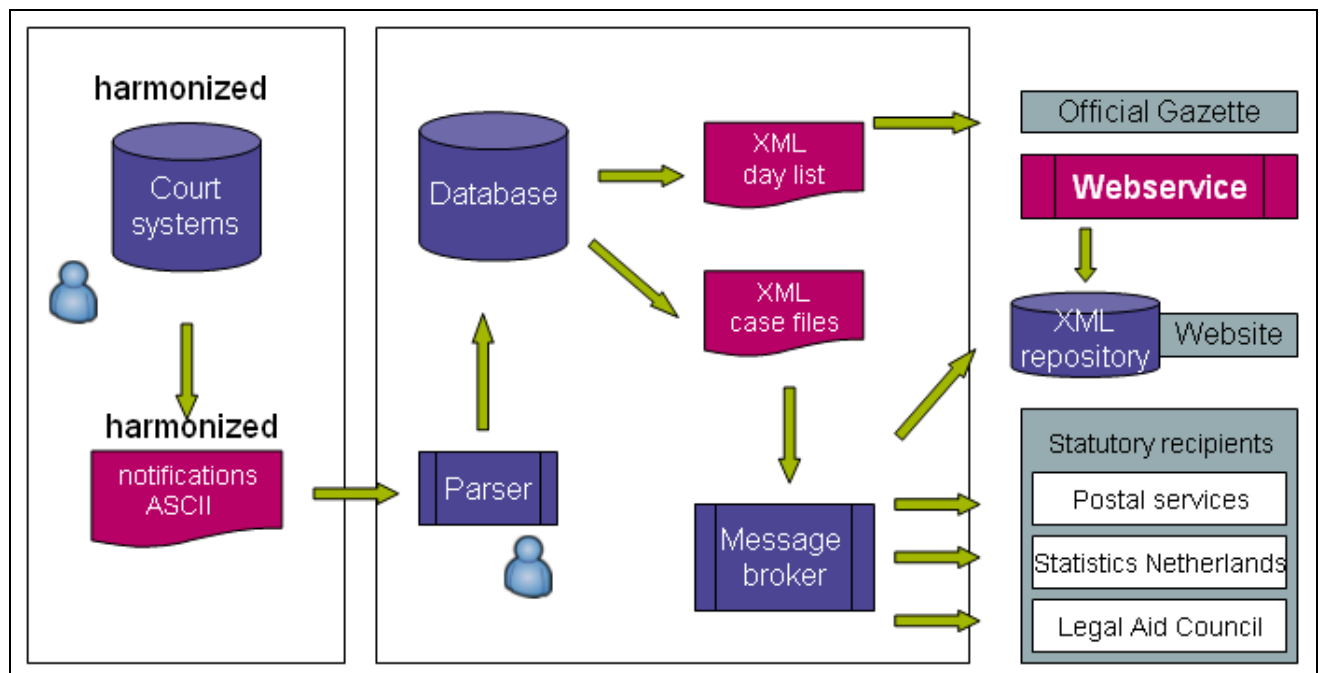


Figure 7. Current insolvency notification process in the Netherlands: harmonized and almost completely automated.

On the public insolvency register searches can be conducted by date in combination with court or type of insolvency, by number of the case or of the notification, by person or by company name. Because the privacy of natural persons has to be protected, it was agreed with the Data Protection Authority that searches can only be conducted on double keys, like name together with date of birth, or name together with postal code. Companies and legal entities can be searched by name; address or business register ID.

On the detail page of the register one finds all information on the case: name and address, name, address and contact details of the trustee or receiver, name of the supervisory judge, identification numbers and all details of the last and prior notifications.

Although this insolvency register was a great improvement, many professional users of the register – like banks, credit rating agencies and mail-order firms – wanted to have electronic access to the data. So, in compliance with the Directive on the Re-use of Public Sector

Information²¹, it was decided to facilitate a webservice, by which these heavy users can access the XML-repository of the website directly and free of charge.

Webservice-users can, from within their own applications, query the register the same way as the website can be queried by a human user. All answers are given in XML and can easily be integrated. Moreover, customers are offered the opportunity to build a complete and synchronized copy of the register on their own network – as long as they comply to data protection rules.

Although the user interface of the register is in Dutch only, an English version of the webservice was built for foreign users. Because of the very strict datamodel, the underlying XML-schema could be made bilingual. As a result, an average software-developer is able to build an English version of the Dutch insolvency register. However, legal interpretation problems are not solved this way. Because insolvency procedures differ substantially from country to country, literal translations into another language might leave room for legal misinterpretation.

To minimize this risk use was made of the English translation of the description of the Dutch insolvency procedures on the website of the European Judicial Network in civil and commercial matters²². By using this terminology foreign users of the webservice are able to contextualize the more than one hundred types of notifications and other terms that occur in the register.

A EUROPEAN PROOF OF CONCEPT

Following the Council Decision of June 2007²³ the Portuguese presidency took the initiative to build a proof of concept on the interconnection of the insolvency registers of six Member States (Germany, Austria, Portugal, Slovenia, Italy and the Netherlands).

As was shown in this prototype, which was later extended with Estonia, Latvia and the Czech Republic, the use of international standards and common webtechnology is sufficient to query the registers of various Member States from within one search interface, without having to build a new central database.

²¹ Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.

²² http://ec.europa.eu/civiljustice/bankruptcy_net_en.htm

²³ Supra, footnote 5.

Insolvency Register - EU Search

Search for

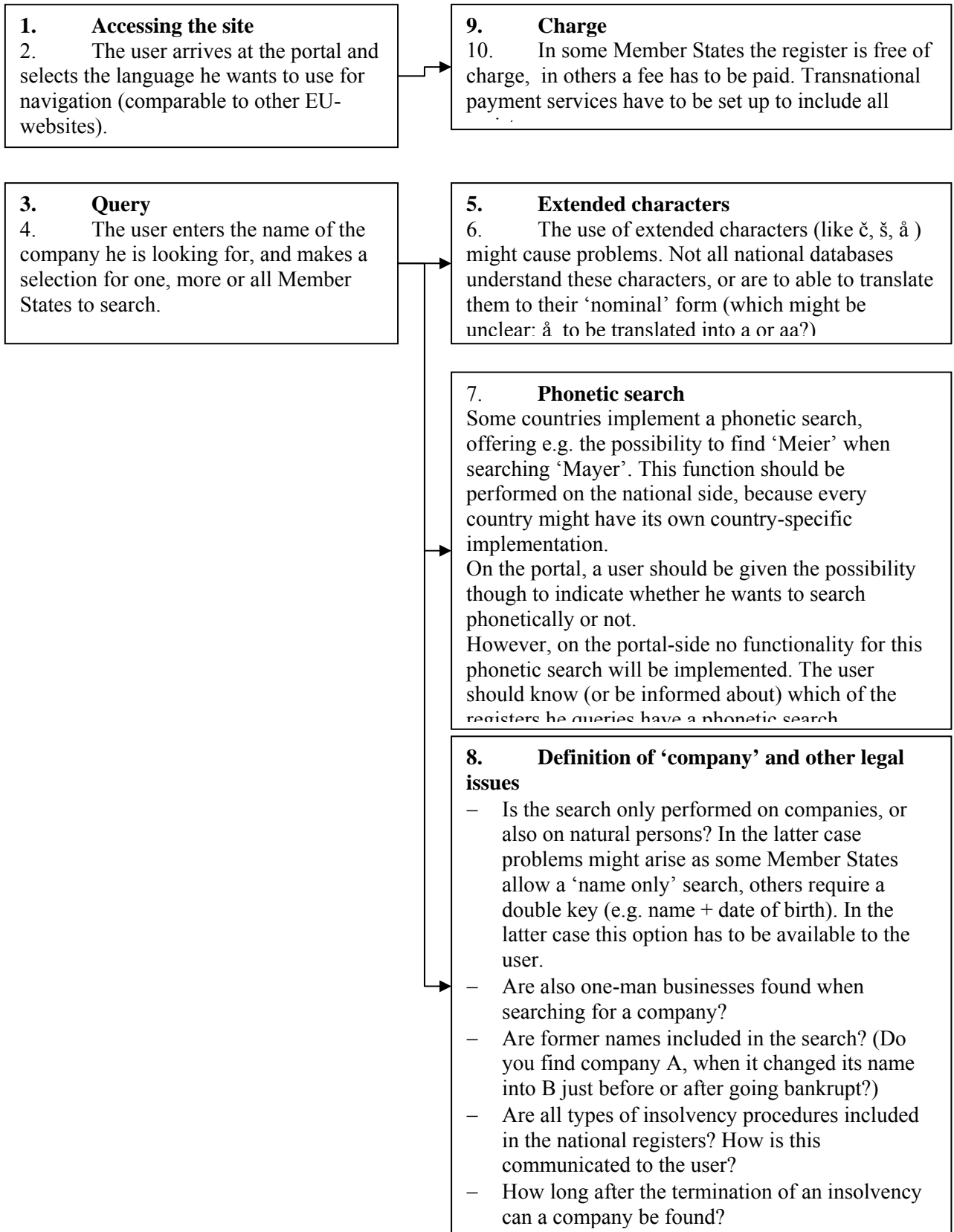
No	State	Debtor	Date
1	IT	N.T.B.K. INDUSTRIES LABORATORIES S.R.L.	
2	AT	EMOS INDUSTRIES LIMITED ausl.Firma,Zweigniederlassung An der Lan Str. 45/11/112 6020 Innsbruck FN 229333f	2006-02-10
3	AT	STEINER INDUSTRIES AKTIENGESELLSCHAFT Steinkogelstraße 32 4802 Ebensee FN 169487 x	2001-05-31
4	DE	AIS Altonaer Industrieservice GmbH, Hamburg, 67a IN 524/04, Registergericht Hamburg, HRB 38690	2008-10-29
5	DE	Arbito Personalleasing & Industrieservice GmbH, Hagen, 12 IN 223/08, Registergericht Tostedt, HRB 201320	2008-10-23
6	DE	ROWIS Industrieservice e.K., 63743 Aschaffenburg, IN 366/06, Registergericht Aschaffenburg, HRA 3535	2008-10-23
7	DE	Team Industries Maschinen-, Handels-und Vertriebsgesellschaft mbH & Co.KG, Leonberg, 2 IN 103/01, Registergericht Stuttgart, HRA 253540	2008-10-22
8	DE	WIS Industrieservice GmbH, Witten, 80 IN 272/07, Registergericht Bochum, HRB 8326	2008-10-21
9	LV	LSEZ "BALTIC TIMBER INDUSTRIES" SIA	2008-05-12
10	NL	ass.98.114.F.1316.1.05	

Figure 8. Result list after a search in the proof of concept, built by a group of Member States. Results from Italy, Austria, Germany, Latvia and Netherlands are integrated in one result list.

Although elaboration of the prototype is currently awaiting a decision on financing, national specialists already took stock of the problems that have to be solved before a European portal with interconnected national insolvency registers can be opened up to the public.

SOME BASICS OF NETWORKING REGISTERS

To illustrate the basic functioning of networked European registers in a decentralised architecture, this section elaborates in greater detail how an answer to a user question is obtained. The main 'technical' route is indicated on the left side of the following scheme. For each step specific legal, technical and organisational questions are indicated on the right.



11. Query-distribution

The portal-software redirects the request to those registers which the user wants to be searched

14. National responses

The national registers return the found results, containing name of company, the ID of the case in the register, date of insolvency.

12. Contents of 'company'-field

There are differences on what is displayed in the 'company'-field. Instructions in the programmers guide and improvements in the national registers have to lead to a more univocal display of the results.

Data protection

Data protection rules vary per Member State on e.g. how long a person/company is to be found in the register after termination of the insolvency.

Date-field

It might not be clear to the user what is displayed in the 'date'-field. It could be start of the insolvency-proceedings, but also the last step in these proceedings. A study should show whether:

- this field is wanted on the result list (maybe displaying it on the detail page could be sufficient)
- if so, what it should indicate
- whether this is feasible on the national registers.

Maximum number of records

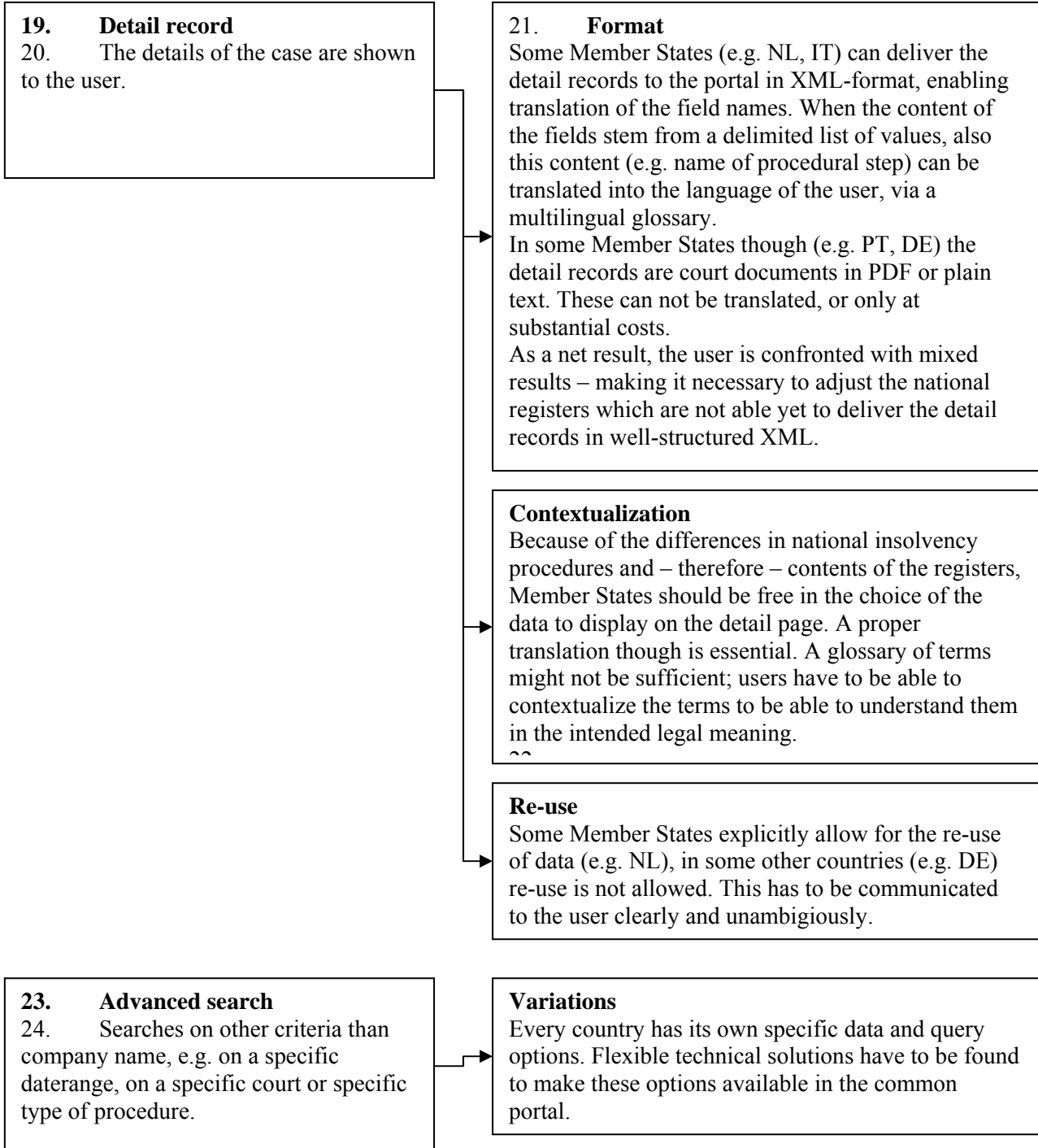
The maximum number of records to be returned has to be clearly defined and communicated to the user – if he misses any results, he has to be made aware of it.

17. Integration

The portal integrates the search results from the various registers into one result list, sortable on company name, Member State and date. Fieldnames are displayed in the language chosen by the user.

18. Requesting details

The user can click on one of the records to retrieve more information.



OTHER REGISTERS

DATABASES ON TRANSLATORS AND INTERPRETERS

For the proper functioning of the common market for translation services, and as a prerequisite for the ambitious other goals of the e-Justice programme (like the improvement of cross-border videoconferencing, mediation and access to judicial procedures abroad), national databases of translators and interpreters have to be accessible from other Member States.

Although not all Member States have a database on translators/interpreters, the interconnection could follow the route of the insolvency registers; in the prototype with the insolvency registers also the German and Austrian translator databases are interconnected.

The particulars of the publicly accessible database could be limited to name, mother tongue, country and place of domicile, language pair(s), qualifications, special domains and contact details; the accessibility of other data could be restricted to judicial authorities.

As long as European quality standards don't exist, national quality standards have to be reflected in the database.

Although in the Commission Communication a central European database of interpreters is proposed, there are no compelling arguments not to use the lighter option of networking existing national databases.

POPULATION REGISTERS

Access to population registers is necessary for i.a. the gathering information on a debtor's address.

As observed by the Commissions' Green Paper on Effective Enforcement of Judgments in the European Union: the Transparency of Debtors' Assets²⁴: *“(T)hese registers are organised in very different ways. In some Member States²⁵ they are maintained by local authorities, so a creditor seeking the address of a debtor would have to search all local records across the country - which is an impossible task. Central registers are often not available to the creditor.²⁶”*

RISER ID Services GmbH, supported since 2003 within the eTEN programme, is a (private) provider of electronic address verification services, momentarily from Germany, Austria, Hungary, Ireland, Estonia, Sweden and Switzerland.

While EULIS and EBR offer their interface via the national registers, RISER ID has its own portal; access via the national registers is not possible.

REGISTER OF WILLS

In the Green Paper 'Succession and wills'²⁷ it is observed that: *“The search for wills, in particular wills made abroad, can be an insurmountable obstacle.”*

To tackle this problem, various solutions are conceivable – which are currently reviewed by an impact assessment study of the Commission. Although building a central European database could be considered, the already initiated interconnection of some national registers by the European Network of Registers of Wills Association (ENRWA) is serious option for further elaboration.

²⁴ Supra, footnote 2.

²⁵ Examples: Germany, Italy.

²⁶ Exception: In Austria the Central Population Register is available online: www.business.telekom.at.

²⁷ COM(2005) 65 final

The European Network of Registers of Wills (ENRW) is a network enabling the interconnection of existing national or local registers of wills. Through ENRW a notary can query a foreign register via his own national register. The foreign register queried then replies to the notary via his national register.

Born in 2001, the project became effective between Belgium and France in 2002. In order to simplify the enlargement of ENRW to other European States, the French, Belgian and Slovenian bodies of notaries created in July 2005 the ENRWA, which now counts eight members (France, Belgium, Slovenia, Netherlands, Portugal, Italy, Latvia and the region of St. Petersburg), four more having expressed their will to join the association (Romania, Bulgaria, Poland and Estonia).

INTERCONNECTION: HOW?

In the preceding sections the need for the cross-border accessibility of land, business, insolvency registers is assessed. Apart from initiatives already undertaken, there are – in general – various options to realize this cross-border accessibility.

In this section these options will be shortly outlined.

1) Building one or more central European databases.

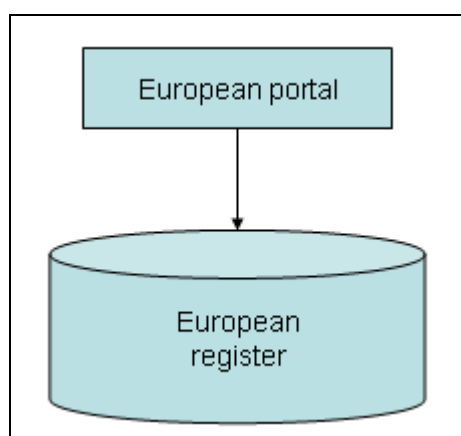


Figure 9. Central European registers.

In general, this tends to be a complicated, inflexible and expensive option. On a Community level the contents of the records have to be defined, possible by means of a legal instrument. Maintenance of the database is costly, i.a. because of data protection and security measures to be taken. Building a central database can be quite complex, because it is harder – compared to mere interconnecting – to take national peculiarities into account.

2) Interconnecting registers via access points at the national registers.

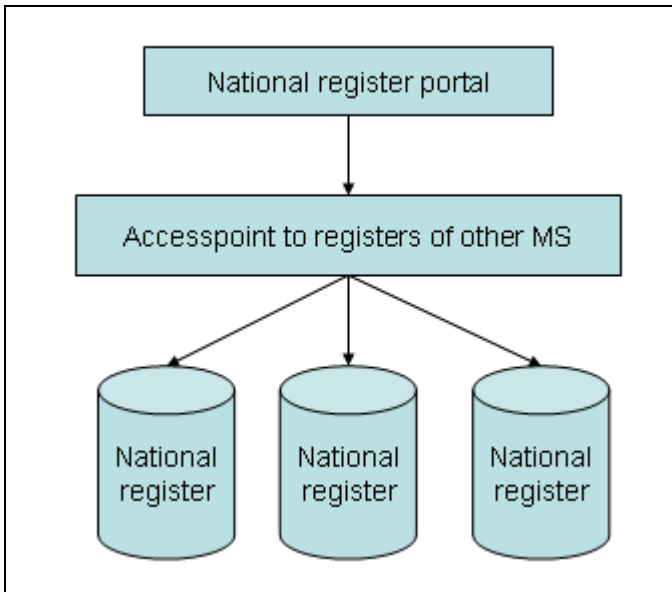


Figure 10. Interconnections with access via national registers.

This is the situation as is realized with EBR and EULIS. Mere interconnecting the registers saves the costs of building and maintaining a central database, and offers flexibility for the participating members. The domain specific solution can be seen as both an advantage (independence from other domains) as a disadvantage (re-inventing the wheel, double costs). By using the national registers as the entrance points, no common portals have to be developed. No integration between the different domains is possible though.

3) Interconnecting registers via a portal for each type of register.

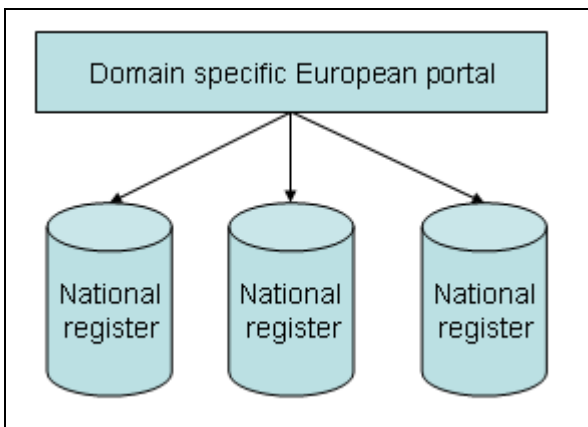


Figure 11. Interconnections with access via domain portals.

RISER ID offers this type of solution for the population registers. Access to registers abroad is not offered via the national register, but via one central portal. This solution offers advantages when the national interfaces are very complex, or hardly accessible.

4) Interconnecting registers via one common e-Justice portal.

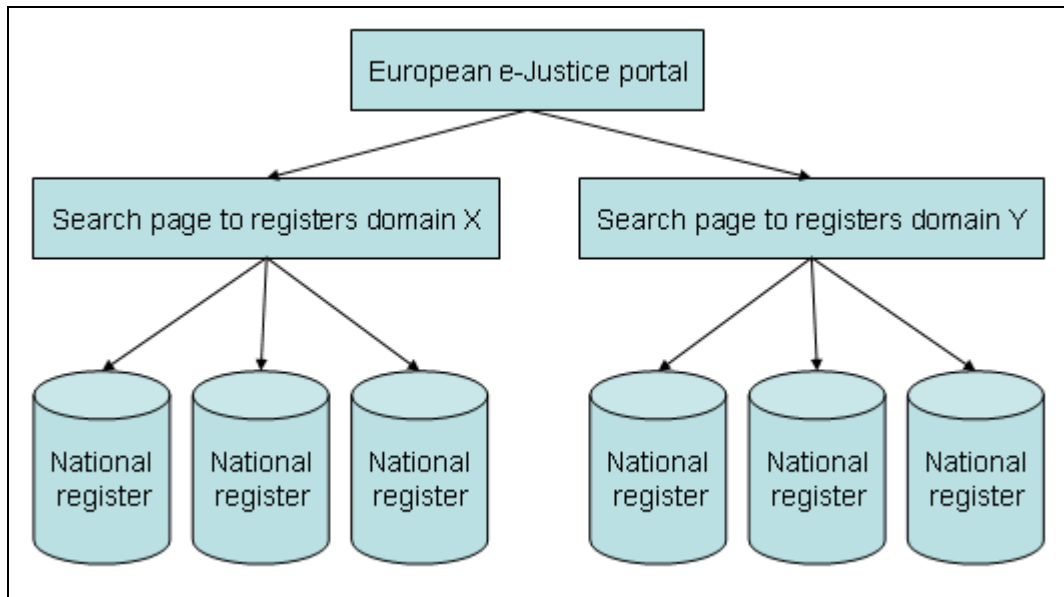


Figure 12. Interconnections with access via a central European e-Justice portal

This is the solution which is envisaged in the e-Justice proposals of Commission and Council. This is a user-friendly option because for many users this one portal would be sufficient, where they can be sure the available data come from authoritative sources, and which offers possibilities for cross-linking between the different domains.

One has to realize though that not all registers are always used in a pure legal setting, so the drawback of a very rigid implementation of this solution might be that domain-specific features are ignored or neglected.

5) Interconnecting registers, based on services and well-defined interfaces.

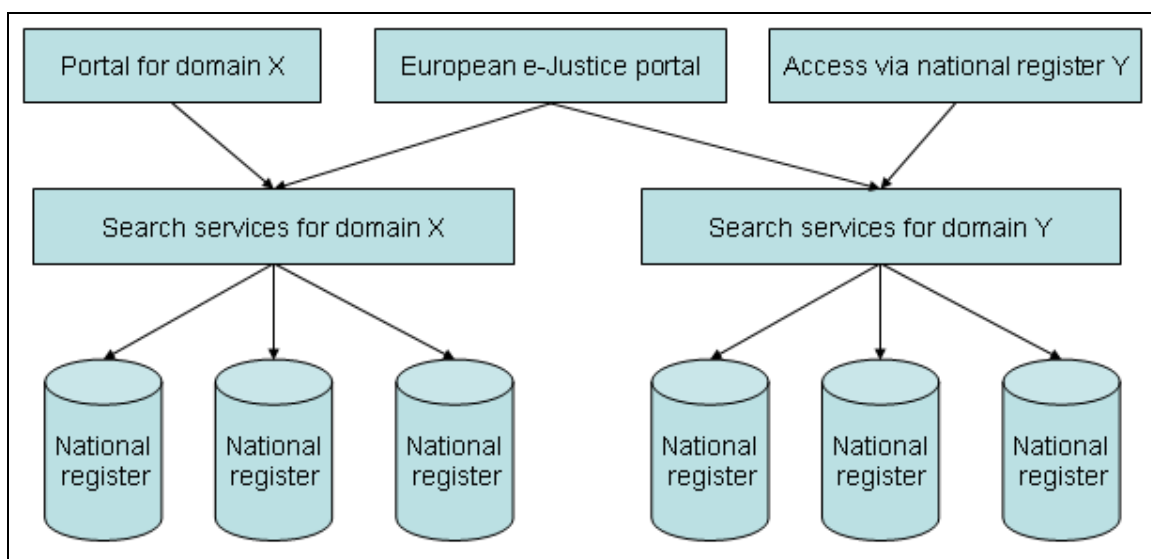


Figure 13. Flexible solution built on services.

This option takes into account the fact that different domains might require different solutions, as well as the fact that e-Justice portal might require a different approach to national registers than a domain specific solution, both regarding functionality and geographical scope – e.g. the EBR-solution includes non EU-Member States, which can be left out in the European e-Justice portal. By designing specific services – software functionalities with well-defined input and output parameters – flexible solutions could be realized.

This option is decentralized in architecture, and compliant with the European Interoperability Framework (EIF).²⁸

Responsibilities can be clearly divided between:

- organisations responsible for the national registers, including quality of data and accessibility via commonly agreed interfaces;
- organisations responsible for the services – this could be organisations like EULIS or EBR, and in some cases EU-institutions like the Commission;
- organisations responsible for the various user-interfaces, which could be national registers, the owner of the European e-Justice portal, or intermediary organisations like RISER ID, or EULIS.

FUTURE WORK

In this paper an overview is presented on the most important aspects of the interconnection of business, land, insolvency and some other registers. The following conclusions might be drawn:

- as established by Commission, Member States, Council and European Parliament, citizens, businesses, legal professionals and judicial authorities need to have an interconnected access to these registers;
- the context though in which data from these registers are searched for, is not always a legal one, therefore it can be considered not to be in the interest of users to limit the access of these registers to the European e-Justice portal in the making.

Ways have to be found to give access to these registers both from within the e-Justice portal as from other portals and interfaces. Because all users have different needs a ‘one size fits all’ solution is neither feasible nor desirable.

By working according to the principles of service orientation – in compliance with the guidelines set out in the European Interoperability Framework, it is possible to make register data available for different users groups and portals, according to the differing needs of their users.

- To realize all this close cooperation is needed between Member States, Commission, national registry organisations, and international organisations already active in the field.

²⁸ <http://ec.europa.eu/idabc/en/document/3473>