

**EUROPEAN PARLIAMENT RESOLUTION 18 DECEMBER 2008 WITH  
RECOMMENDATIONS TO THE COMMISSION ON E-JUSTICE  
(2008/2125(INI))<sup>1</sup>**

The European Parliament ,

- having regard to Article 192, second paragraph, of the EC Treaty,
- having regard to Rules 39 and 45 of its Rules of Procedure,
- having regard to the work of the Council's Working Party on Legal Data Processing (e-Justice),
- having regard to the Commission's communication of 30 May 2008 entitled "Towards a European e-Justice Strategy" (COM(2008)0329),
- having regard to the ongoing work carried out in this field by the European Commission for the Efficiency of Justice (CEPEJ) at the Council of Europe,
- having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0467/2008),

A. whereas the Council decided in 2007 to start work on the development at European level of the use of information and communication technologies (ICT) in the justice field, particularly by creating a European portal,

B. whereas, with some 10 million people estimated to be involved in cross-border litigation in Europe, greater recourse to information technology (IT) is essential in order to ensure better access to justice for citizens and with a view to rationalising and simplifying judicial proceedings and reducing procedural deadlines and operating costs in cross-border litigation,

C. whereas e-Justice has a broad definition including, in general, the use of electronic technologies in the field of justice, and whereas this definition covers a number of issues which are not necessarily linked to the concept of e-Justice as interpreted by the Commission in its above-mentioned communication of 30 May 2008 and by the Council's Working Party on e-Justice,

D. whereas, if it is applied properly, IT can make a significant contribution to improving the accessibility and efficiency of Europe's judicial and legal systems; whereas, with an increasingly integrated internal market and growing mobility within Europe, the challenges inherently faced by a cross-border judicial system, such as language, distance and unfamiliar legal systems, are likely to become more common; whereas these problems can, however, be eased to some extent through the appropriate application of ICT, thus not only improving access to justice for Europe's citizens but also contributing to the efficiency of the single market,

---

<sup>1</sup> Document found at <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0637+0+DOC+XML+V0//EN&language=EN>> (27 February 2009)

E. whereas, as stressed in the CEPEJ report on the use of ICT in European judicial systems, the application of electronic technologies to justice does not always have a positive effect and, in order to obtain good results, the action must be carried out in an institutional and strategic way,

F. whereas, in the longer term, the use of IT in dispute resolution and settlement will necessitate fundamental changes in procedural law and in the way legislation is conceived and drafted, and efficient access to the law and justice will require the linking of registers (commercial and companies registers, land registers, registers of wills, etc.); whereas Parliament has already been concerned to make access to justice more compatible with the use of IT in its treatment of legislation on small claims, the European enforcement order and mediation; whereas the use of IT is to be encouraged in all areas, including the submission, distribution and service of documents, the giving of evidence and the treatment of legal aid applications, and hence reflected in all future legislative proposals; whereas action in the areas of electronic acts, transparency of debtors' assets and evidence could already be contemplated,

G. whereas the idea of creating an e-Justice portal/network is welcome, but care must be taken to ensure that the needs of both EU citizens and EU legal practitioners are addressed and to facilitate access to justice by offering transparent and easy means of accessing information; whereas the relationship between EU citizens and national public authorities should thereby be facilitated, and victims of crimes, suspects and "justice users" in general should be able to benefit from EU-justice tools in their daily lives; whereas, at the same time, in order to be really effective, the portal/network should be inserted as a pilot project within the framework of the trans-European networks adumbrated in Article 154 of the EC Treaty and developed by interoperability solutions for European public administrations (ISA) as referred to in the Commission's communication of 29 September 2008 (COM(2008)0583),

H. whereas, since only 50% of European citizens have access to the Internet, the development and implementation of e-Justice services should go hand in hand with absolute observance of the principles of transparency, equality before the law and public scrutiny and should, at least during the transitional period, be supplementary and optional in nature in relation to the practices pursued hitherto in the Member States,

I. whereas existing portals are primitive, cluttered and not user-friendly, and whereas the best minds in IT should be deployed to improve access to information, electronic systems and registers; whereas a single European justice portal, with differential access for the judiciary and civil servants, legal and other professionals and citizens should provide an identity management system to separate the citizens' area from the professionals' area; whereas although it is essential to build on and improve the European Judicial Network, the main emphasis, as never before, should be on access to justice by citizens and businesses,

J. whereas attainment of the objective of creating a European area of justice is to a certain extent slowed down by the small number of judicial authorities who can access EU judicial training, and whereas electronic tools could contribute significantly to the widespread dissemination of a European judicial culture which is the basis of the future European area of justice,

K. whereas regard should be had to the significant disparities in national judges' knowledge of Community law across the Member States, as highlighted by Parliament in its resolution of 9 July 2008 on the role of the national judge in the European judicial system,<sup>2</sup>

L. whereas a start must be made immediately in tackling key issues in the field of e-Justice, including that of language,

M. whereas the Ministers of Justice have endorsed a decentralised approach to developing e-Justice at European level, with some central coordination, enabling information to be shared at European level, whilst allowing the independent operation of national systems and avoiding the burdens inherent in the creation of a new, centralised EU e-Justice system, and whereas certain Member States are engaged in bilateral cooperation; whereas the Council Working Party has concluded that e-Justice initiatives should be non-compulsory for Member States, rather than obliging them to introduce new national systems or fundamentally changing existing ones,

N. whereas information technology has proved to be an effective tool in tackling transnational crime, as highlighted by the results achieved for instance by the Schengen Information System and its further developments; whereas the use of high technology in preventing and fighting transnational crime should be fully exploited and projects such as the European Criminal Records Information System should receive the widest support, including in financial terms,

O. whereas the current system of gathering criminal evidence in other Member States is still based on slow and ineffective instruments offered by mutual assistance in criminal matters, and whereas, where appropriate and only where it would not be detrimental to the legal position of the person giving testimony, the use of technological tools such as video conferencing would be a great step forward in the taking of evidence at a distance,

P. whereas the creation of a European area of justice also entails enhancing the fundamental rights and procedural safeguards of EU citizens, and whereas the strategy should be implemented in full compliance with the highest standards of data protection,

Q. whereas legislative measures aimed at increasing knowledge of the criminal justice systems of the other Member States should go hand in hand with making such knowledge available online,

1. Endorses the Commission's plans, in particular the proposal to promote a European Interoperability Framework (EIF) within the IDABC programme and ongoing work on e-Signature and e-Identity;

2. Invites the Commission to complement the European area of justice, freedom and security with an area of e-Justice by:

a) taking concrete action with a view to the implementation of the European area of e-Justice;

b) clearly identifying matters covered by EU action by, for instance, using a different definition or prefixing the term "e-Justice" with "EU" so as to refer to "EU e-Justice" or "EU-Justice";

---

<sup>2</sup> Texts adopted, P6\_TA(2008)0352.

c) implementing the e-Justice portal/network while addressing the needs of both EU citizens and EU legal practitioners and ensuring that transparent and easy means to access information are available by taking advantage of the trans-European networks adumbrated in Article 154 of the EC Treaty and developed by ISA;

d) making wide use of electronic tools in the development of a European judicial culture;

e) fully exploiting the potential of new technologies for preventing and fighting transnational crime;

f) enhancing and providing, without delay, tools such as video-conferencing for improving the taking of evidence in other Member States;

g) enhancing fundamental rights, procedural safeguards in criminal proceedings and data protection as an integral part of the drafting and implementation of the Action Plan on EU-justice;

3. Considers that the work of the Institutions should be more strongly citizen-focused;

4. Whilst welcoming the enthusiasm of Member States for the setting-up of bilateral projects which could later be expanded to include all Member States and therefore hopefully provide the optimum outcome for the EU as a whole, warns against the possible fragmentary effect of such an approach and trusts that this will be guarded against;

5. Calls on the Commission to give the necessary attention to developing e-learning tools for the judiciary in the context of e-Justice;

6. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;

7. Considers that the proposal requested does not have any financial implications;

8. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council and to the governments and parliaments of the Member States.

## **ANNEX**

### **DETAILED RECOMMENDATIONS ON THE CONTENT OF THE PROPOSAL REQUESTED**

Recommendation 1 (as to the form and scope of the instrument to be adopted)

In the absence of a resolution voted by the Council on an action plan involving the Commission in its realisation, the Commission is asked to prepare an Action Plan on e-Justice at European level. It should consist of a series of individual actions as detailed below, some of which might result in legislative proposals, for example for administrative cooperation under Article 66 of the EC Treaty, others in recommendations and others in administrative acts and decisions.

(Concrete action for the implementation of the European area of justice) The first step in this direction would of course be providing every judicial authority in the EU with a computer, an email address and an internet connection. This might appear obvious but unfortunately it is not: in many cases judicial authorities are not provided with this indispensable tool or, even if they are, they cannot or do not want to use it. This situation must be overcome.

(Clearly identifying the scope of e-Justice) In order to avoid misunderstandings, it would be appropriate to clearly identify matters covered by EU action by, for instance, using a different definition or prefixing the term "e-Justice" with "EU", so as to refer to "EU e-Justice" or "EU-Justice".

Recommendation 2 (as to the minimum content of the instrument to be adopted)

The Action Plan should be made up of at least the following actions:

1. EU-justice Action Plan.

In order to avoid fragmentation and to enhance coordination and consistency, the Commission, together with Parliament, should draft an Action Plan on EU-justice geared to the needs of citizens and practitioners, proposing a strategy for the optimum implementation of the European area of justice. From this perspective, EU institutions and Member States should loyally cooperate (in accordance with Article 10 of the EC Treaty) by committing themselves to notifying each other of any relevant information including newly adopted legislation, as already happens, *mutatis mutandis*, in the internal market with the exchange of information on national technical regulations. At the same time, whilst any measure aimed at improving mutual understanding of the information is welcome, attention must be paid to clearly defining and circumscribing the use of automatic translation systems, inasmuch as these sometimes produce "translations" which prove to be misleading.

2. Action to "future-proof" legislation

The Commission should set up suitable machinery to ensure that all future legislation in the field of civil law is designed in such a way that it can be used in on-line applications. For example, steps could be taken to ensure that the proposed European Private Company can be set up using online applications and that proposals on the recognition of instruments such as those dealing with the legal protection of adults and other authentic acts are adapted for online use. Accordingly, where proposals are made involving forms intended to be filled out by citizens, the forms should be designed and formatted *ab initio* for electronic use and made available in all official languages of the Member States. Action should be taken to reduce to a minimum the need to input free text and to ensure that, where necessary, on-line help is provided in all official languages and on-line electronic translation services are available. By the same token, where there is a need to provide for service of documents, provision should be made to ensure that documents can be served and communications effected by electronic mail and signatures provided electronically and, where there is a need for oral testimony, the use of video-conferencing should be encouraged.

All future proposals should include a reasoned statement by the Commission that an audit of e-Justice-friendliness has been carried out.

The Commission should carry out an audit of all existing legislation in the field of civil justice and propose amendments where necessary in order to make existing legislation compatible with the requirements of e-Justice. More specifically, the Commission is asked in this context to examine as a priority the European small-claims procedure, the European enforcement order and alternative dispute resolution (ADR) so as to permit citizens and businesses to have direct access to them on-line. Similarly, the Service of Documents Regulation<sup>3</sup> and the Civil Evidence Regulation<sup>4</sup> should be revisited. The aim should be to provide a panoply of effective, simple instruments which are useful to and useable by ordinary citizens and small businesses, not a system which only favours commercial litigants processing bulk claims.

### 3. Action on civil procedure

The Commission and the Council should report to the European Parliament on the reform and harmonisation of procedural law and the law of evidence in cross-border cases and cases before the Court of Justice, having regard to developments in the field of information technology. The aim should be simpler, cheaper and faster civil proceedings in cross-border cases.

### 4. Action on the law of contract and consumer law

Here the emphasis should be on preventive law by providing for greater clarity and simplicity and avoiding the pitfalls, problems and expense posed in particular by private international law.

In this context, the Commission is asked to get to work on standard terms and conditions for electronic commerce. Ultimately, this would allow electronic traders to offer a "blue button" whereby consumers (or indeed other traders) could accept the application of standard European contract law to their transactions. This could be coupled with an on-line complaints system and access to approved on-line ADR.

### 5. Action on languages, multilingualism and interoperability

A programme should be launched to examine how best to provide on-line translation facilities for the European e-Justice portals. In parallel, a working group should be set up on simplification and standardisation of terminology. Each Member State should provide a database of legal translators and interpreters.

### 6. Action on European e-Justice portals

All the above actions should feed into a coordinating and management unit, responsible also for coordinating the contributions of the various Member States and ensuring that they are interoperable.

The coordinating and management unit should also bear responsibility for the design and operation of the European e-Justice portal, which should provide areas for citizens, legal

---

<sup>3</sup> Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ L 160, 30.6.2000, p. 37).

<sup>4</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

professionals and the judiciary and civil servants, and report to the Commissioner for Justice, Freedom and Security, the European Parliament and the Council. Feasibility studies of the use of electronic signatures in a legal setting, remote accessing of national registers (insolvency registers, land registers, commercial registers, etc) and the creation of a secure network should be started as soon as possible (not later than 2009-2010), taking into account the results already achieved by the Council (interconnection of insolvency registers, possible cooperation with EULIS and EBR). The feasibility study for a virtual exchange platform should begin in 2011. The feasibility studies should conform to the rules on publicity and access to information laid down in each Member State in order to ensure data protection and legal certainty in respect of information.

In carrying out these studies, account should be taken of the work already carried out by the notarial profession in this field (recognition of signatures, e-Notary, register of wills, etc).

The aim is to secure user-friendly tools for citizens, businesses, practitioners, the judiciary and officials responsible for the administration of justice.

(a) The European e-Justice Portal for Citizens

This multilingual portal should be designed to afford every assistance to citizens and businesses seeking legal assistance and initial legal advice about cross-border legal problems.

Apart from access to legal databases and electronic remedies (small claims, order for payment) on-line ADR schemes (including SOLVIT) and ombudsmen, it should incorporate intelligent systems designed to help citizens to find out how to deal with legal problems. Such systems should guide people on how (a) to find a lawyer in another Member State who speaks their language (advocate, notary, solicitor, etc), explaining their respective functions, (b) to ascertain what legal aid, if any, is available and (c) to determine what steps to take in order to carry out certain formalities in the different Member States (e.g. how to set up a company, file accounts, draw up a will, buy/sell a house, etc). They should also be able to give a guide as to what the type of problem is, what procedural steps have to be taken and so on.

Where possible, initial free legal advice by e-mail should be provided through, and under the supervision of, national professional bodies. At the very least, directories of lawyers, notaries, bailiffs and process-servers, auditors, nationally licensed experts and legal translators and interpreters in each Member State should be available, together with links to the competent professional body. Plain guides to the legal system of each Member State should also be to hand.

Rapid access to emergency legal assistance and the police should also be possible.

In addition, the portal should also afford access to various registers and allow the publication of national Official Notices.

(b) The secure European e-Justice Portal

This portal should be designed for use as a tool by judges, court officials, officials of the national Ministries of Justice and practising lawyers with security ensured by the provision of different access rights.

Apart from providing access to legal and legislative databases and the fullest possible range of national registers, it should also permit secure communication, video-conferencing and document exchange between courts and between courts and parties to proceedings (dematerialisation of proceedings). To this end, it should also enable verification of electronic signatures and make provision for appropriate verification systems.

The portal should also afford a means of exchanging information about, for instance, persons who are debarred from working with children or acting as company directors.

The contact points of the European Judicial Network in Civil and Commercial Matters in the Member States should be encouraged to play an active role in the development of European e-Justice by contributing to the conception and design of the future portals, including the citizens' e-Justice portal, as part of the Community's e-Justice policy, designed in particular to afford direct access to justice for citizens. As an initial step, the Internet sites of the national Ministries of Justice should include a link to the site of the European Judicial Network.

The portal should give EU citizens information on the criminal justice system of the Member States, in particular regarding their rights, and should include practical information on what authority to address and how, on how obtain forms and on legal aid, as well as lists of lawyers able to deal with foreign clients. The portal should also provide legal practitioners with EU legislation and with relevant legislation of the Member States. The websites of European Judicial Training (EJT), the European Judicial Network in civil and commercial matters (EJN), the European Judicial Training Network (EJTN) and other bodies already offer much useful information. Nevertheless, this information is fragmentary and not easy to find. Relevant judicial decisions should be made available. All this information should be available on-line and off-line, and particular attention must be paid to synchronisation mechanisms offering updated information (RSS-feed).

## 7. Judicial training

In order to spread the European judicial culture and with a view to reaching as many members of the judiciary as possible from the very first moment they join the judiciary, a sort of "survivor" kit in the form of a CD or USB key containing the EU Treaty and the EC Treaty, as well as the basic texts on judicial cooperation and information on the other Member States' judicial systems, should be given to any newly appointed member of the judiciary. Consideration should also be given to EU publications addressed to citizens who provide practical information on EU judicial cooperation and the criminal justice systems of other Member States. In addition, electronic training tools offered by the EJTN, which represents judicial training schools all over the EU, should be given adequate attention and support by the Commission and the Council.

## 8. Preventing and fighting transnational crime

So far, the most important application of e-Justice in the context of criminal justice is the creation of the European Criminal Records Information System. To be effective, this system needs to be supported by an electronic structure able to interconnect all national criminal registers<sup>5</sup> which should be put in place without delay. Another IT application of relevance to

---

<sup>5</sup> Parliament supports this project and hopes that it will be put in place, taking into account its legislative resolution of 9 October 2008 on the establishment of the European Criminal Records Information System (ECRIS) (Texts adopted, P6\_TA(2008)0465).

the area of justice, freedom and security is the Schengen Information System (SIS), a large-scale database enabling the relevant authorities in the Member States to exchange information and cooperate in many ways, including by transmitting, in a secure and extremely fast way, European arrest warrants. As reflected in Parliament's resolution of 2 September 2008<sup>6</sup>, Eurojust is a key player in the fight against transnational crime at EU level. Its coordination action is fundamental to tackling serious crime phenomena which increasingly use technological means. Thanks also to its innovative data-processing system (the E-POC system), the number of cases managed by Eurojust in 2008 reached the threshold of 1 000. These examples must be multiplied and funded with EU financial resources.

## 9. Video-conferencing

The use of video-conferences in the context of criminal proceedings in certain Member States is quite common. It allows evidence to be gathered by taking the statements of accused persons, witnesses or experts in their physical absence whilst at the same time providing adequate protection to those needing protection. The 2000 European Convention on Mutual Assistance in Criminal Matters lays down rules on the hearing of witnesses, accused persons and experts by video-conference. It has now been ratified by 24 Member States. The European Parliament calls on Member States to complete the ratification process as soon as possible. No statistics are yet available on the practical application of video-conferences. It appears that video-conferencing is still not being fully exploited, one of the reasons being the lack of the requisite electronic support. Support and financial assistance by the EU must be delivered as soon as possible.

## 10. Enhancing fundamental rights and procedural safeguards

Any technological progress is welcome in so far as it does not jeopardise fundamental rights. Bearing this in mind, in drafting and implementing the strategy and the Action Plan, attention must be devoted to respect for fundamental rights and notably procedural safeguards and data protection, giving EU citizens the right to access the information stored and shared by the relevant authorities and informing them of the available remedies. A real e-justice strategy cannot function without harmonisation of procedural safeguards and adequate data-protection safeguards applying to cooperation in criminal justice matters.

(1) Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ L 160, 30.6.2000, p. 37).

(2) Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

(3) Parliament supports this project and hopes that it will be put in place, taking into account its legislative resolution of 9 October 2008 on the establishment of the European Criminal Records Information System (ECRIS) (Texts adopted, P6\_TA(2008)0465).

---

<sup>6</sup> European Parliament legislative resolution of 2 September 2008 on the initiative of the Kingdom of Belgium, the Czech Republic, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden with a view to adopting a Council Decision on the strengthening of Eurojust and amending Decision 2002/187/JHA (Texts adopted, P6\_TA(2008)0384)

(4) European Parliament legislative resolution of 2 September 2008 on the initiative of the Kingdom of Belgium, the Czech Republic, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden with a view to adopting a Council Decision on the strengthening of Eurojust and amending Decision 2002/187/JHA (Texts adopted, P6\_TA(2008)0384).