

Policy Department C
Citizens' Rights and Constitutional Affairs



**TOWARDS A EUROPEAN
STRATEGY ON E-JUSTICE**

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS



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**Directorate General Internal Policies
Policy Department C
Citizens' Rights and Constitutional Affairs**

TOWARDS A EUROPEAN STRATEGY ON E-JUSTICE

STUDY

Abstract:

The use of modern electronic technology in the field of justice is in constant development: from the mere access to information on laws via the internet to the possibility of electronic communication between persons involved in court proceedings, there is a wide range of possibilities for using information technologies, not only at the European Union level but also at the international level. This not only facilitates networking at the justice level, but also helps citizens, economic operators and practitioners of law with their access to justice.

The purpose of this study is to present the developments which have occurred in recent years whereby initiatives promoted by Member States or groups of Member States and isolated initiatives at EU level evolved into a coordinated approach at EU level, leading to a strategy for European e-Justice being presented.

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SUMMARY

- In recent years, several instruments have been adopted in both the civil and criminal areas in order to create a genuine European area of justice. It did not take the Community legislator long to realise that modern electronic technologies could be useful and helpful with the efficiency of some of these instruments dealing with cross-border situations.
- One of the manifestations of the promotion of the use of electronic technologies with such instruments is the possibility of using videoconferencing in order, among other things, to speed up procedures and reduce costs. This facility has also been promoted at the political level with the Council confirming in June 2007 that one of the priorities for future work in the field of e-Justice should be to improve the use of videoconferencing technology.
- Multilingualism can be an obstacle to judicial cooperation and to access to information. The use of electronic translation tools can be an important aid to overcome those obstacles and some helpful translation tools have already been created at the European level.
- The approach to e-Justice on the part of the Member States differs considerably. Some Member States are more developed in this area and have initiated innovative procedures (for example, France, Germany, Austria and Portugal) that go from case tracking programmes to completely paperless proceedings. Some of these experiences could be used or could be taken as an example for the initiatives at European Union level.
- At the European Union level some isolated initiatives have been developed, one of the most important ones being the interconnection of criminal records.
- Several Presidencies of the Council in recent years (Austria, Germany, Portugal, Slovenia, France and the Czech Republic) have also assigned special importance to e-Justice, not only by organising seminars and conferences on the topic, but also by considering it to be a priority in their work programmes. In the last few months attention has been given to the creation of the European e-Justice Portal and the European feature of e-Justice (European e-Justice) has been emphasised.
- Given the initiatives in the field of e-Justice initiated at both national and European levels, coordinated action at EU level has become necessary, not only to promote synergies, but also to avoid the risk of diverging technical solutions. In the path from e-Justice to European e-Justice, a European e-Justice strategy with concrete objectives, an action plan and a timetable have become indispensable.
- The objective of the Commission's Communication "Towards a European e-Justice Strategy" is exactly to promote national and European synergies by strengthening the exchange of best practices at national level and by strengthening European coordination and marshalling e-Justice to help construct the European judicial area.
- According to the Communication, the priority for action at EU level will be the **European e-Justice Portal** and the **reinforcement of judicial cooperation**; the European e-Justice Portal's objective being to provide, in a consolidated system, a single entry point for all justice questions and online procedures.

- Since the Justice and Home Affairs Council of June 2007, several JHA Council meetings have had e-Justice as one of the topics of the agenda. The **Justice and Home Affairs Council of 27-28 November 2008** adopted the **European e-Justice Action Plan** that aims to lend structure to work in the area and to set priorities for its implementation. As for the **scope** of the Action Plan, an important statement is made: the European dimension of e-Justice should be highlighted and for that reason e-Justice should be renamed **European e-Justice**.
- The European Parliament also adopted a Resolution with Recommendations to the Commission on e-Justice. The European Parliament's concerns as to fundamental rights, procedural safeguards, observance of the principles of transparency, equality before the law and public scrutiny demonstrate a more citizen-focused approach that should be taken into consideration in future work.
- As mentioned both in the Commission Communication and in the Council Action Plan, the existing financial programmes – both for civil and criminal justice – can be used to finance European e-Justice. In addition, a single horizontal programme covering both civil and criminal law matters could be proposed

TABLE OF CONTENTS

Item	Page
SUMMARY	3
1. INTRODUCTION	6
2. BACKGROUND	7
2.1 The creation of a genuine European area of justice and the use of electronic technologies	7
2.1.1 Promotion of videoconferences in judicial procedures	11
2.1.2 Innovative translation tools	13
3. THE MEMBER STATES' INITIATIVES ON E-JUSTICE	14
3.1. Trends in the computerisation of national systems	15
4. THE APPROACH TO E-JUSTICE AT THE EUROPEAN UNION LEVEL – FROM E-JUSTICE TO EUROPEAN E-JUSTICE	16
4.1 Cross-border projects in the field of e-Justice	16
4.1.1 EU sites and databases	16
4.2 Initiatives of the Presidencies	20
4.3 Initiatives of the European Commission	23
4.3.1 Commission Communication “Towards a European e-Justice Strategy”.	24
4.3.1.1 The European e-Justice Portal	25
4.3.2 The Justice Forum	26
4.4 Initiatives of the Council	27
4.4.1 The European e-Justice Action Plan	29
4.5 European Parliament Resolution with Recommendations to the Commission on e-Justice	31
5. COMMUNITY FINANCIAL PROGRAMMES ON E-JUSTICE	33
5.1 The Specific Programme “Criminal Justice” 2007-2013	34
5.2 The Specific Programme “Civil Justice” 2007-2013	34
6. CONCLUSION	35

STUDY

TOWARDS A EUROPEAN STRATEGY ON E-JUSTICE

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1. INTRODUCTION

E-Justice can generally be defined as the use of electronic technologies in the field of justice. It is a specific field under the general umbrella of e-Government: e-Government being the application of information and communication technologies (ICT) to all administrative procedures.

The purpose of using ICT in the area of justice by the national systems can be twofold: to facilitate interaction between lawyers, citizens and courts (where access to justice and information is included); and to facilitate judicial cooperation, access to justice and information in cross-border proceedings.

With all the technological development, several Member States have in recent years, and in one way or another, started to use ICT in the area of justice. Initially the projects aimed only at allowing the citizen or a practitioner to obtain relevant information via a website. Today the development of technology allows, for example, totally dematerialised proceedings to take place. Some Member States have also started to develop (alone or with other Member States) tools intended to facilitate judicial cooperation and access to justice in cross-border proceedings.

At the European Union level, instruments allowing the use of electronic technologies have been adopted and their use promoted. In fact, situations where the parties and the courts may be physically separated by long distances, where citizens may have to address a foreign court, or a court has to apply foreign law, are all situations where electronic technologies can be most useful. In other words, e-Justice can play a fundamental role in the creation of a European area of Justice.

Until very recently, the multiple national initiatives on the use of electronic technology in cross-border proceedings and the European initiatives co-existed without any coordination and without making use of the synergies between them and, more problematically, without assuring the necessary interoperability.

During last year, both the European Commission and the Council of the European Union decided that it was time to have a coordinated approach, to structure the work and set priorities and to move from e-Justice to European e-Justice with a strategy as well as an action plan. The European Parliament also adopted a Resolution with Recommendations to the Commission on e-Justice.

The object of this study is to give an overview of the work carried out up until last year by the Member States, the Presidencies, the Commission and the Council, and to analyse last year's developments whereby a genuine strategy on European e-Justice was established. Throughout the paper, observations and proposals will be made.

2. BACKGROUND

2.1 The creation of a genuine European area of justice and the use of electronic technologies

Since the Treaty of Amsterdam and the Tampere European Council of 1999 the creation of an area of freedom, security and justice has become a reality. One of the consequences of free movement is that, more and more, European citizens enter into civil and commercial relationships with a cross-border element: contracts are concluded in a Member State other than the Member State in which one of the parties is habitually resident, "international" marriages and divorces take place, and people die in a Member State other than the one where they have their possessions. Consequently, this has important repercussions at the level of court proceedings: sometimes judges have to apply a law other than the *lex fori*, there is the need to serve documents on parties or witnesses living in another Member State, there is the need to take evidence in another Member State, or there is the need to enforce a decision delivered by a judge of one Member State in another Member State¹.

The enjoyment of freedom, which includes the right to move freely throughout the Union, therefore necessitates a **genuine European area of justice**. One of the elements of this area of justice should be that citizens should not be prevented from moving from one Member State to another for fear that their access to justice is jeopardised; guaranteeing access to justice for European citizens should then be a priority. Another element should be that judgments and decisions should be respected and enforced throughout the Union. This should operate through the mutual recognition of judicial decisions².

¹ According to the Special Eurobarometer 292 – Civil justice, published in April 2008, 2% of Europeans have personally been involved in civil justice procedures in another European Union Member State. In concrete terms, this means almost 10 million citizens, the equivalent of the entire population of Portugal.

² Tampere European Council, 15 and 16 October Presidency Conclusions.

In recent years, several instruments have been adopted in both the civil and criminal areas implementing this principle of mutual recognition of decisions or instruments ancillary to it, in order to create this genuine European area of justice.

Regulation 805/2004 creating a **European Enforcement Order**³, Regulation 1896/2006 creating a **European order for payment procedure**⁴ and Regulation 861/2007 establishing the European **Small Claims procedure**⁵, Council Regulation 1348/2000 on the **service in the Member States of judicial and extrajudicial documents**⁶, later repealed by Regulation 1393/2007 of the European Parliament and of the Council of 13 November 2007⁷, Council Regulation 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**⁸ and Council Decision of 28 May 2001 establishing a **European Judicial Network in civil and commercial matters**⁹, are just some examples of existing Community instruments that deal with judicial cooperation in civil matters.

The free movement of persons and the abolishment of internal borders also created propitious conditions for criminals to move more easily from one Member State to another and cross-border crime also increased.

In order to guarantee that free movement of persons does not mean free movement of crime and criminals, many instruments have also been adopted in the field of judicial cooperation in criminal matters: Council Framework Decision **2002/584/JHA** of 13 June 2002 on the European **arrest warrant and the surrender procedures** between Member States; Council Framework Decision **2003/577/JHA** of 22 July 2003 on the execution in the EU of orders **freezing property or evidence**; Council Framework Decision **2005/214/JHA** of 24 February 2005 on the application of the principle of mutual recognition to **financial penalties**; and Council Framework Decision **2006/783/JHA** of 6 October 2006 on the application of the principle of mutual recognition to **confiscation orders**, just to mention a few.

It did not take the Community legislator long to realise that modern electronic technologies could be useful and helpful with the efficiency of some of the above-mentioned instruments that deal with cross-border situations.

For instance, article 4 of Council Regulation 1348/2000 on the **service in the Member States of judicial and extrajudicial documents**, later repealed by Regulation 1393/2007 of the European Parliament and of the Council of 13 November 2007, allows the

³ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143, 30.4.2004.

⁴ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006.

⁵ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007.

⁶ OJ L 160, 30.6.2000.

⁷ OJ L 324, 10.12.2007.

⁸ OJ L 174, 27.6.2001.

⁹ OJ L 174, 27.6.2001.

transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies **to be carried out by any appropriate means**, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible. Denmark, Finland and Germany declared to accept an email as means of receipt¹⁰.

Regulation 1206/2001 on the **taking of evidence** in civil or commercial matters was also a very important step forward for the incentive to use electronic communication technology in the area of justice. Not only does **article 6** allow the transmission of requests and communications **by any appropriate means**, provided that the document received accurately reflects the content of the document forwarded and that all information in it is legible¹¹, but article 10 also provides explicitly 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 and teleconference**. Article 17 also establishes that **the central body or the competent authority shall encourage the use of communications technology, such as videoconferences and teleconferences**.

Council Directive 2002/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to **legal aid**¹² establishes in article 14 that each Member State shall provide the Commission with information about the means by which they are available to receive applications without establishing any limits to those means. For example, Portugal, Finland (under certain conditions) and the Netherlands have declared that they accept e-mail¹³.

Council Directive 2004/80/EC relating to **compensation to crime victims**¹⁴ also establishes in its article 9 which deals with the hearing of the applicant, that if the deciding authority decides to hear the applicant or any other person such as a witness or an expert, it may contact the assisting authority for the purpose of arranging for the person to be heard directly by the deciding authority, in accordance with the law of its Member State, through the use in particular of **telephone- or videoconferencing**.

A very significant step in the use of electronic technology in cross-border cases was the creation of the **European order for payment procedure**¹⁵. The procedure was designed in such a way as to enable the use of automatic data processing. This was made clear not

¹⁰ The communications of the Member States can be found in the European Judicial Atlas in Civil Matters http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm.

¹¹ For example, Portugal, France and Finland declared to accept email as means of receipt of documents.

This information can be found in the European Judicial Atlas in Civil Matters http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm.

¹² OJ L 26, 31.1.2003.

¹³ This information can be found in the European Judicial Atlas in Civil Matters http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm.

¹⁴ OJ L 261, 6.8.2004.

¹⁵ Regulation 1896/2006, OJ L 399, 30.12.2006.

only in the recitals of the regulation¹⁶, but also in specific sections such as article 7, paragraph 5 and article 16, paragraph 4, which establish that the application and the statement of opposition shall be submitted in paper form or by any other means of communication, **including electronic**, accepted by the Member State of origin and available to the court of origin¹⁷. Article 8 also very clearly establishes that the examination of the application may take the form of an **automated procedure**. Furthermore, the standard forms were designed by the legislator in such a way as to enable them to be processed by electronic means (the use of codes for all information provided, for example).

Finally, Regulation 861/2007 establishing a **European Small Claims Procedure**¹⁸ also contains important references to the use of electronic means of communication. In recital 20 it is stressed that *in the context of oral hearings and the taking of evidence, the Member States should encourage the use of modern communication technology subject to the national law of the Member State where the court or tribunal is situated*. Also article 4 establishes that *The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced*¹⁹ and article 8 states that *The court or tribunal may hold an oral hearing through video conference or other communication technology if the technical means are available*. Furthermore, article 9 when mentioning the taking of evidence by the court or tribunal is clear in saying that it *may also admit the taking of evidence through video conference or other communication technology if the technical means are available*.

In the criminal area, in all four Framework Decisions mentioned above, all forms of transmission of a **European arrest warrant**²⁰, **freezing orders**²¹, **confiscation orders**²² or **decisions requiring a financial penalty**²³ are accepted providing they are capable of producing a written record under conditions allowing the executing State to establish authenticity.

¹⁶ *The procedure should be based, to the largest extent possible, on the use of standard forms in any communication between the court and the parties in order to facilitate its administration and enable the use of automatic data processing* (recital 11).

¹⁷ Up until now, the Czech Republic, Slovenia and France have declared to accept electronic means of communication. This information can be found in the European Judicial Atlas in Civil Matters http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm.

¹⁸ OJ L 199, 31.7.2007

¹⁹ Up until now only Portugal has declared to accept electronic data transmission.

²⁰ Article 10, paragraph 4, Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

²¹ Article 4, paragraph 1, Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence.

²² Article 4, paragraph 2, Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

²³ Article 4, paragraph 3, Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

The use of modern electronic technologies in the creation of a genuine European area of justice is not new. The possibilities conferred by the already existing instruments should however be developed, improved and, what is more important, used by the Member States.

2.1.1 Promotion of videoconferences in judicial procedures

The Council confirmed in June 2007 that one of the priorities for future work in the field of e-Justice should be to “improve the use of video-conferencing technology for communication in cross-border proceedings, in particular concerning the taking of evidence, and interpretation”²⁴.

The Council conclusions in December 2007 noted that during the first half of 2008 work would continue in order to implement the priorities defined by the Council. In particular, work would also focus on “creating conditions for cross-border videoconferencing”²⁵.

As referred to in the previous chapter, several community instruments already promote the use of videoconferencing.

As mentioned above, **Regulation 1206/2001** on the **taking of evidence** in civil or commercial matters provides explicitly in article 10 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 and teleconference**. Article 17 also establishes that **the central body or the competent authority shall encourage the use of communications technology, such as videoconferences and teleconferences**.

In the first case (taking of evidence by the requested court), the use of videoconference can only be refused if it is incompatible with the law of the Member State of the requested court or by reason of practical difficulties (article 10, paragraph 3 and 4). Videoconference can also be used as a way for the parties or the representatives of the requesting court to be present/or to participate in the taking of evidence (article 11, paragraph 3, and article 12, paragraph 4).

In the second situation (direct taking of evidence by the requesting court), the taking of evidence, with or without videoconference, needs the agreement of the person to be heard (article 17, paragraph 2), and the requested Member State may refuse if this is contrary to fundamental principles of its law (or if the request is incomplete or falls out of the scope of the Regulation) - article 17, paragraph 5.

Regulation 861/2007 establishing a **European Small Claims Procedure** also contains important references to the use of videoconferencing. In recital 20 it is stressed that *in the context of oral hearings and the taking of evidence, the Member States should encourage the use of modern communication technology subject to the national law of the Member*

²⁴ 10509/07, JURINFO 23 JAI 301 JUSTCIV 163 COPEN 89.

²⁵ 15966/07 (Presse 275).

State where the court or tribunal is situated. Article 8 states that: *The court or tribunal may hold an oral hearing through video conference or other communication technology if the technical means are available.* Furthermore, article 9 when mentioning the taking of evidence by the court or tribunal is clear in saying that it *may also admit the taking of evidence through video conference or other communication technology if the technical means are available.*

Council Directive 2004/80/EC relating to **compensation to crime victims**²⁶ also establishes in its article 9, which deals with the hearing of the applicant, that if the deciding authorities decides to hear the applicant or any other person such as a witness or an expert, it may contact the assisting authority for the purpose of arranging for the person to be heard directly by the deciding authority, in accordance with the law of its Member State, through the use in particular of **telephone- or videoconferencing.**

In criminal matters, it is important to mention the **Convention of 29 May 2000 on Mutual Assistance in Criminal Matters**²⁷, which in its **article 10** provides for the possibility of a witness or an expert to be heard by videoconference. The requested Member State has to comply with the reasoned request unless the use of videoconference is contrary to fundamental principles of its law.

The Framework Decision on the **standing of victims in criminal proceedings** (2001/220/JHA)²⁸ also has an important provision as far as the promotion of videoconferences is concerned. Article 8, paragraph 4, establishes that each Member State shall ensure that, where there is a need to protect victims - particularly those most vulnerable - from the effects of giving evidence in open court, **victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.** Such means may, of course, include videoconference.

Currently there is not a lot of information available on the details of the use of videoconferencing in cross-border proceedings. There is not even a comprehensive list of courts in the European Union which have videoconference facilities²⁹ although it is possible to check in the European Judicial Atlas in Civil Matters³⁰ which courts have that facility available.

A study commissioned by the German Presidency and carried out by the European IT Academy of Law shows that only 15 Member States had experience in cross-border use of videoconferencing in the judicial system^{31 32}. The conclusion that can be taken is that the possibilities opened by the community legislation are not always well explored. In

²⁶ OJ L 261, 6.8.2004.

²⁷ OJ C 197, 12.7.2000

²⁸ OJ L 82, 22.3.2001

²⁹ 9567/07, JURINFO 16.

³⁰ http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm.

³¹ 9573/07, JURINFO 17 JAI 243.

³² Belgium, Germany, Estonia, Finland, France, Greece, United Kingdom, Ireland, Netherlands, Austria, Poland, Portugal, Romanian, Sweden and Slovenia.

order to find out the reasons for this, in November 2007 the Council sent a questionnaire to the Member States³³. In the summary of the replies received³⁴, we notice that several Member States have detailed legislation on the use of videoconferencing in both civil and criminal proceedings and most Member States (24 out of the 27) have some experience in cross-border videoconferencing. According to the Impact Assessment done by the European Commission annexed to the draft Commission Communication “Towards a European e-Justice Strategy”³⁵, the answers reveal technical difficulties at the cross-border level (compatibility between the systems) and some indicate that it is difficult to use videoconferencing with other countries where it is not available in all areas. The Impact Assessment also mentions that the cross-border use of teleconferencing, although permitted by most national legislations, is rare at the European level.

A final point to mention is that one of the main priorities of the Czech Presidency is to promote and facilitate the use of cross-border videoconferencing through the following steps:

- creating a list of contacts for videoconferencing equipment used by the judicial bodies in the Member States;
- preparing a booking application for cross-border videoconferences, which would also facilitate the contacts between the individual judicial bodies;
- support of practical use of videoconferencing between selected Member States;
- finalisation of currently elaborated materials on videoconferencing³⁶.

The informal Justice and Home Affairs Council meeting of the Czech Presidency of 15-16 January 2009 in Prague also had in its Agenda the topic of E-Justice: Promoting and facilitating the use of cross-border videoconferencing. The Ministers were invited to examine cross-border videoconferencing and to focus its discussions on the specific topics **Videoconferencing – what does it have to offer to us** and **Videoconferencing in the European e-Justice portal**, and were invited to suggest the best possible way of including the videoconferencing functionality into the European e-Justice portal by the end of 2009³⁷.

Although existing Community legislation allows for the use of videoconferencing in cross-border proceedings, apparently that possibility is not being used very often by the Member States. In order to speed up proceedings and reduce the costs involved, better use should be made of the existing possibilities.

2.1.2 Innovative translation tools

According to the Special Eurobarometer “Europeans and their languages”³⁸, 44% of the respondents admit not knowing any other language than their mother tongue.

³³ 14602/07, JURINFO 60.

³⁴ 6355/08, JURINFO 11.

³⁵ SEC (2008) 1947.

³⁶ Programme of the Czech Presidency in the Council of the European Union in the Area of Justice and Home Affairs, 1 January-30 June 2009

³⁷ www.justice2009.cz

³⁸ Special Eurobarometer 243, February 2006.

The answers to the survey sent to national judges by the Rapporteur of the Report on the role of the national judge in the European judicial system for the European Parliament's Committee on Legal Affairs³⁹ also show that 39% of the respondents consider that foreign languages constitute a barrier to adequate information on Community law.

Some helpful translation tools have already been created at European level.

IATE (Inter Active Terminology for Europe).

In 1999, the EU institutions decided to develop a brand new database merging the content of all their terminology databases in order to enhance interinstitutional cooperation, taking advantage of new technologies. In 2004, IATE was launched for internal use in the European institutions and in June 2007 was opened to the public. It combines the terminological data of all European institutions and bodies, amounting to over 8.4 million terms and 540,000 abbreviations and 130,000 phrases. Its data cover all official languages of the EU, as well as Latin. New terms are added every day and contents are constantly updated⁴⁰

SOLON is a Multilingual Legal Glossary of Equivalences of criminal law terms considered equivalent with regard to law in the Member States of the European Union and Turkey.

The European Judicial Atlas in Civil Matters⁴¹, online since 2004, also developed a very important translation tool which allows for all forms created by Community instruments dealing with judicial cooperation in civil matters to be automatically translated into the language that addressed Member States have declared to accept for the purposes of that instrument.

Translation issues are indeed an obstacle to judicial cooperation and to access to information. The use of electronic translation tools can be a tremendous aid to overcome those obstacles.

3. THE MEMBER STATES' INITIATIVES ON E-JUSTICE

The study carried out by the European IT Academy of Law in the beginning of 2007⁴² shows that information and communication technology is now extensively used in the judicial systems of the European Union Member States. However, the use of these electronic systems varies considerably depending on the application and the Member State. Except for a few Member States, almost all workplaces in the judicial system (judges, public prosecutors and other employees) are equipped with computers; nearly all these PCs have internet connection, e-mail communication is usual and apart from four

³⁹ 2007/2027 (INI)

⁴⁰ <http://iate.europa.eu>

⁴¹ http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

⁴² Study on the situation regarding the use of information and communications technology (ICT) in Member States' judicial systems with particular attention to eJustice, 9083/07, JURINFO 13.

exceptions, the laws of the Member States provide in principle for the possibility of electronic documentation.

3.1 Trends in the computerisation of national systems

Some Member States are however more developed than others in the area and have initiated innovative procedures in the area of e-Justice. This is confirmed by the recent European Commission for the Efficiency of Justice (CEPEJ) report on the use of information and communication technologies (ICT) in European judicial systems⁴³. Here are some examples of computerisation of national systems of some Member States:

Money Claim Online (MCOL) in England and Wales

This is a simple and secure process for making or responding to a money claim on the internet (up to 100,000 pounds).

SAGACE in France

This is a case-tracking programme designed for lawyers and litigants (administrative courts).

The TéléRecours programme in France

This is a system enabling lawyers to file cases electronically with the courts and get notice of case activity (administrative courts).

Electronic Legal Communication (ERV) in Austria

This is a paperless, structured electronic communication system between parties and courts and vice versa. It substitutes communication on paper and is legally equivalent. Almost 98% of lawyers are using this communication system.

Automated order for payment in Germany⁴⁴

This makes it possible to enter an application for a simplified order for payment to certain specialised courts in electronic form, mandatory for all lawyers since 2008.

CITIUS in Portugal⁴⁵

Since January 2009, all proceedings in Portugal are completely paperless in all courts except criminal courts. Magistrates no longer have paper files and all acts of the procedure are carried out electronically (applications of the parties, decisions of the magistrates, service of documents...); the security of the system is ensured by an e-signature.

Several Member States have developed innovative electronic systems. The tendency is increasingly for completely paperless proceedings. Some of these experiences could be used or could be taken as an example for the initiatives at European Union level.

⁴³ Council of Europe (CEPEJ(2007))22Prov).

⁴⁴ Elektronisches Mahnverfahren.

⁴⁵ [Http://citius.tribunaisnet.mj.pt](http://citius.tribunaisnet.mj.pt)

4. THE APPROACH TO E-JUSTICE AT THE EUROPEAN UNION LEVEL - FROM E-JUSTICE TO EUROPEAN E-JUSTICE

4.1 Cross-border projects in the field of e-Justice

At the EU level there are already a large number of cross-border projects in the field of e-Justice, some for the mere dissemination of information, others intending to facilitate judicial cooperation. Some of these projects are mentioned in the Impact Assessment done by the European Commission annexed to the draft Commission Communication “Towards a European e-Justice Strategy”⁴⁶. The Council Working Party on Legal Data Processing (e-Justice) also prepared a document listing the existing projects in the field of e-Justice⁴⁷. Here are some of the projects mentioned:

4.1.1 EU sites and databases

Internet portal: EUR-Lex⁴⁸

EUR-Lex (formerly Celex) offers direct free access to European Union legal texts, including the Official Journal, relevant treaties, legislation, legislative proposals and case law.

Internet portal: N-Lex⁴⁹

N-Lex is a common access portal for sources of national law. It allows users to search national sites using a single uniform search template. The portal was developed by the Office for Official Publications of the European Communities together with the EU Member States.

Internet portal: PreLex⁵⁰

The PreLex Internet portal is the database on inter-institutional procedures between the Commission and other institutions. In particular, PreLex provides information on the current state of play in the legislative procedure and monitors the work of the various institutions involved.

European Parliament, Council of the European Union and European Commission document registers

The European Parliament, the Council of the European Union and the European Commission have established freely accessible internet registers enabling all EU citizens to search for those institutions' documents.

Internet portal: European Judicial Network in civil matters⁵¹

⁴⁶ SEC (2008) 1947.

⁴⁷ 6358/1/08, REV1, LIMITE, JURINFO 14.

⁴⁸ <http://eur-lex.europa.eu/>

⁴⁹ <http://eur-lex.europa.eu/n-lex/>

⁵⁰ <http://ec.europa.eu/prelex/apcnet.cfm>

⁵¹ http://ec.europa.eu/civiljustice/index_en.htm

The website contains information about the Member States' legal systems, Community law and international law on various aspects of civil and commercial law.

Internet portal: European Judicial Atlas in civil matters⁵²

The Atlas provides users with access to information relevant for judicial cooperation in civil matters. The Atlas enables users to identify the competent courts or authorities, to fill in online forms, to change the language of the form once it has been filled in, and to transmit the forms electronically.

Internet portal: European Judicial Network in criminal matters⁵³

The European Judicial Network in criminal matters is designed, as a network of national contact points, to promote cross-border judicial cooperation in criminal matters.

The European Judicial Network in criminal matters includes:

(1) Atlas⁵⁴: enables users to identify the locally competent authority to receive the request for mutual legal assistance and provides a fast and efficient channel for the direct transmission of requests.

(2) Fiches Belges⁵⁵: contains the essential points of the national legislation of the Member States as regards eight different investigative measures. The "fiches belges" provide practical information on what is possible in the framework of mutual legal assistance. The information in the "fiches" is intended for contact points and local judicial authorities to enable them to draw up requests for judicial cooperation.

(3) Solon⁵⁶: glossary containing terms relevant for judicial cooperation in criminal matters.

Eurojust, the European Union's Judicial Cooperation Unit⁵⁷

Eurojust has developed certain ICT tools to empower judicial cooperation and coordination through Eurojust. These include:

- the EPOC software (that is used as the Eurojust Case Management System) and a project to connect it to selected national authorities and enable the exchange of structured information; and

- the secure connection projects aimed at enabling secure communication between Eurojust, the Member States and privileged partners (e.g. Europol).

In addition Eurojust is participating in R4eGov and criminal records projects.

Internet portal: ADR Database⁵⁸

The ADR (Alternative Dispute Resolution) Database website is an online database containing names and contact details of arbitration bodies responsible for out-of-court settlement of consumer disputes in the EU.

⁵² http://ec.europa.eu/justice_home/judicialatlascivil/

⁵³ <http://www.ejn-crimjust.europa.eu/>

⁵⁴ http://www.ejn-crimjust.europa.eu/atlas_advanced.aspx.

⁵⁵ http://www.ejn-crimjust.europa.eu/fiches_belges.aspx.

⁵⁶ <http://solon.ejn-crimjust.europa.eu/>

⁵⁷ <http://www.eurojust.europa.eu/>

⁵⁸ http://ec.europa.eu/consumers/redress/out_of_court/adrd_en.htm

Electronic network: International networking of criminal records⁵⁹

Since the spring of 2003, a number of Member States⁶⁰ have been working together on a project for the international networking of criminal records, aimed at providing secure electronic communication between EU Member States' national criminal records. The idea behind the project was to provide swift, efficient exchange of information between national criminal records in Europe. The legal basis was articles 13 and 22 of the European Convention on Mutual Assistance in Criminal Matters of 1959. This reinforced partnership is presently being used by the European Union as a pilot project for extending interconnection between all Member States under the **Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States⁶¹**. This Framework Decision will strengthen judicial rules on exchanges of information in order to specify the content of the information, speed up the exchanges, specify the conditions regarding updated information and its use and define the framework for electronic exchanges between Member States. This Framework Decision is supplemented by **Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS)⁶²**, which defines the actual procedures and formats for exchanges of information. Member States will use the format specified in the ECRIS Decision and will comply with the means of organising and facilitating exchanges of information laid down in the Decision.

Electronic communication: Epoline⁶³

Epoline is a project designed to allow electronic communication with the European Patent Office. Using a number of online products and services provided by the European Patent Office (EPO), applicants, patent agents and other users from the European Community can communicate with the EPO electronically. In particular, Epoline makes online filing of patent applications possible, as well as searching in the Register of European Patents.

Electronic database: Eurovoc⁶⁴

Eurovoc is an online multilingual thesaurus covering all areas of European Community work and is used to index documents and enquiries in the European institutions' documentation systems. Eurovoc is currently used by the European Parliament, the Office for Official Publications of the European Communities, national and regional parliaments in Europe, national administrative authorities and a variety of European organisations.

⁵⁹ <http://bmj.bund.de>

⁶⁰ First France and Germany in Spring 2003, joined in November 2003 by Spain and in November 2004 by Belgium, the Czech Republic in March 2006 and Luxembourg in October 2006, Slovakia, the United Kingdom, Poland, Slovenia and Italy in June 2007, Portugal in December 2007, Netherlands and Bulgaria, May 2008, and Sweden, Austria and Rumania as observers in May 2008. In December 2008 Poland and Bulgaria become partly interconnected.

⁶¹ OJ L 93, 7.4.2009.

⁶² OJ L 93, 7.4.2009.

⁶³ <http://www.epoline.org>

⁶⁴ <http://europa.eu/eurovoc/>

Electronic procedure: European order-for-payment procedure

Regulation (EC) No 1896/2006 creates a European order-for-payment procedure. This procedure is largely based on multilingual standard forms. Currently a pilot project for the electronic procedure is being prepared between the EU Member States.

Electronic network: SOLVIT⁶⁵

SOLVIT is an online, free of charge, alternative dispute resolution mechanism in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every European Union Member State (as well as in Norway, Iceland and Liechtenstein). SOLVIT Centres can help with handling complaints from both citizens and businesses.

There are also websites and **databases maintained by professional organisations and other associations**, such as the European Business Register (**EBR**)⁶⁶, the purpose of which is to link the data and information on companies officially collected in the members' home countries in one standard information system, the **Brite**⁶⁷ (Business Register Interoperability Throughout Europe) which is a project to establish a European business register, and the **EULIS**⁶⁸ (European Land Information Service), the aim of which is to establish a cross-border European land register portal providing worldwide access to European land and property information. The EULIS Network is made up of Land Information Systems of different countries, all connected to each other via the internet and the EULIS Portal.

The Council of the Notariats of the European Union (**CNUE**)⁶⁹ has also developed the following ICT-based projects to facilitate its activities.

- European Network of Registers of Wills Association (**ENRW**) which 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 register⁷⁰.
- Platform for the verification of electronic signatures issued by civil law notaries that is designed to allow all European civil law notaries to identify notarial electronic signatures from other countries as such⁷¹. The system allows a civil law notary to verify over the internet whether:

⁶⁵ <http://ec.europa.eu/solvit/>

⁶⁶ <http://www.ebr.org>

⁶⁷ <http://www.briteproject.net>

⁶⁸ <http://www.eulis.org>

⁶⁹ The Council of the Notariats of the European Union (CNUE) is an association representing the notarial profession at the European level. The CNUE includes civil law notaries of the following Member States: Austria, Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain. Croatia has observing member status.

⁷⁰ ENRW 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).

⁷¹ For the moment four countries (Spain, Germany, Italy and France) are taking part in the project.

- the signature is formally consistent;
 - the certificate has been revoked;
 - the certificate has expired;
 - the signature comes from a notary
- and thus to verify the source and integrity of the document.

And finally, the **E-apostille** must also be mentioned. The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague Apostille Convention) facilitates the circulation of public documents executed in one State party to the Convention and to be produced in another State party to the Convention. It does so by replacing the cumbersome and often costly formalities of a full legalisation process with the mere issuance of an Apostille (also called Apostille Certificate or Certificate). In April 2006 the Hague Conference⁷² together with the National Notary Association (NNA) launched the electronic Apostille Pilot Program (e-APP) to develop operational and secure software models for the issuance and use of electronic apostilles (e-apostilles) and the operation of electronic registers of apostilles (e-Registers).

There are already a large number of initiatives on the application of electronic technologies in the area of justice in relation to situations with cross-border implications, initiatives developed not only by the Member States but also by the EU institutions. A single online entry (for example on the European e-Justice Portal) could not only facilitate access to these tools, but could also ensure the essential coordination and interoperability of the systems.

4.2 Initiatives of the Presidencies

One of the first initiatives took place during the **Austrian Presidency of the Council in the first half of 2006**. The Austrian Federal Ministry of Justice organised the seminar “e-Justice & e-Law: New IT-Solutions for Courts, Administration of Justice and Legal Information Systems” in cooperation with the Federal Chancellery, the Council of Europe and the EU with the support of the Austrian Federal Computing Centre. More than 400 experts in the field of legal information from 30 countries attended the congress. The lectures covered topics such as: solutions for payment order systems; solutions for court automation, land and business register, court publications - court decisions; and solutions for electronic communication between courts, parties, organisations and institutions.

In the 18-month Programme of the **German, Portuguese and Slovenian Presidencies**⁷³ a reference to e-Justice was made under the heading of strengthening the justice system and practical cooperation: “Promoting electronic communication on legal matters (“e-Justice”) is of crucial significance here”, and in its Presidency Programme⁷⁵ **Germany** stated very clearly that it would “drive forward the E-Justice Project in order to improve

⁷² <http://www.hcch.net>

⁷³ From 1 January 2007 to 30 June 2008.

⁷⁴ 17079/06, POLGEN 125.

⁷⁵ “Europe – succeeding together” Presidency Programme, 1 January to 30 June 2007.

application of this information technology in cross-border judicial proceedings in Europe and to structure the work on European standards". Following this objective, in May 2007 the Federal Ministry of Justice together with the Justice Ministries of the Länder organised in Bremen the Conference "work on E-Justice". The conference focused on "efforts to introduce a common European e-justice strategy in order to take advantage of the opportunities provided by information technology in a manner which transcends borders and maximises advantages"⁷⁶. Topics included the justice portal as a link between different legal systems, cross-border communication between parties to judicial proceedings, exchange of information between national judicial registers and procedural models for standardisation at the European level and associated legal issues⁷⁷. Germany also dedicated part of the Informal Justice and Home Affairs Council meeting of 14-16 January 2007 in Dresden to the topic "e-Justice in Europe: The Cross-border Use of Information Technology in the Justice Sector".

The **Portuguese** Presidency's document on its priorities in the area of Justice (July-December 2007) also mentions the focus on information technologies to aid access to justice⁷⁸. On 2-4 September 2007, the Portuguese Presidency organised in Lisbon a conference dedicated to e-Justice. Best practices were shared and the first prototype of an EU e-Justice portal developed by Austria, Germany and Portugal was presented. The first application of the Portal was the interconnection of insolvency registers of six Member States. The Portuguese Presidency also dedicated part of the Informal Justice and Home Affairs Council meeting of 1-2 October 2007 in Lisbon to the topic "E-Justice: justice to European citizens and companies at a click distance".

E-Justice was also considered a priority for the **Slovenian** Presidency (1 January 2008-30 June 2008)⁷⁹. On 1-3 June 2008, the Slovenian Ministry of Justice organised in Portoroz the International Conference e-Justice & e-Law. The conference focused on: exchanging opinions concerning the increased efficiency of judicial systems; exchanging experiences in relation to the latest trends in the world; interconnecting services and systems of e-Justice at the EU level; presenting the latest legal services supported by ICT; and sharing experiences in the management of legal information (e-Law). The European e-Justice portal construction project that will constitute a single online access point and will enable existing e-Justice services to be joined up was presented and it was announced that it would open to the public in the beginning of 2010. The European Commission also had the opportunity to present its ideas and plans for further work in the area of e-Justice and a manual on the use of videoconferences was presented⁸⁰. The informal Justice and Home Affairs Council meeting of the Slovenian Presidency of 24-26 January 2008 in Brdo also covered further strengthening of e-Justice development.

The 18-month programme of the Council of the **French, Czech and Swedish** Presidencies⁸¹ makes specific reference to e-Justice when mentioning the future work on

⁷⁶ www.e-justice2007.de

⁷⁷ *idem*

⁷⁸ Priorities of the Portuguese Presidency of the Council of the European Union in the area of Justice.

⁷⁹ Slovenian Presidency Programme

⁸⁰ www.eu2008.si

⁸¹ 11249/08, POLGEN 76.

practical cooperation in judicial matters: *“In the framework of the E-Justice concept, the Presidencies will continue to work on particular projects relating to the progressive completion of the European Justice Portal, in order to provide a simple access of all citizens, when possible, to justice-related registers of Member States, to special proceedings and more generally to useful legal information throughout the EU. They will also seek to advance the E-Justice concept in a coordinated and structured way”*.

In the **French** Presidency work programme⁸², it is mentioned that the Presidency would work to develop e-Justice, particularly in preparing for the opening of the European Portal to the public in 2010. Following the initiatives in the area of the previous Presidencies, on 2 October 2008, the French Ministry of Justice as part of the French Presidency of the Council, organised in Dijon the conference entitled “From eJustice to European eJustice”. Its aim was to identify the best method for developing cross-border electronic exchanges in judicial matters with a view to ultimately opening a European Portal in January 2010 that should provide information on each Member State’s legal systems and useful contacts, the possibility to complete formalities online and the possibility for professionals to consult registers managed by Ministries of Justice⁸³. The French Presidency also announced in the document **“e-Justice”, progress and future prospects**⁸⁴ that during its Presidency of the EU Council of Ministers, France hoped that work on e-Justice would cover the following points:

- developing concrete services available to the public such as the option of filling in forms online
- prioritising projects that will in time be supported by a majority of Member States, e.g. electronic applications providing legal assistance or mediation in consumer affairs
- setting up a management structure that is coordinated at European level.

To achieve this, it was France’s aim to see a multi-year plan adopted by the end of 2008 that would provide a project management structure⁸⁵.

Finally, the **Czech Republic** in its Presidency Programme⁸⁶ considers the development of the European e-Justice Portal as a single access point to law for the European citizen to be particularly valuable and declares that emphasis will be put on further elaborating of the Portal prototype, especially by consolidating the current pilot projects: *“A more extensive integration of these pilot projects (as for example the insolvency registers) or the introducing of further applications for future integration into the structure of the*

⁸² French Presidency of the Council Work Programme, 1 July-31 December 2008, Europe Taking Action to Meet Today’s Challenges.

⁸³ From eJustice to European eJustice, Dijon, 2 October 2008, Summary of Discussions.

⁸⁴ http://eu2008.fr/webdav/site/PFUE/shared/import/1002_e_justice/Ejustice_progress_and_future_prospects_EN.pdf

⁸⁵ This multi-year plan was in fact adopted by the Council and will be covered in the next chapter of this study.

⁸⁶ Programme of the Czech Presidency in the Council of the European Union in the Area of Justice and Home Affairs, 1 January – 30 June 2009.

European e-Justice Portal (such as database of translators and interpreters) should be evaluated". The Czech Presidency will also focus on promoting and facilitating the use of cross-border videoconferencing by possibly creating a booking application for such videoconferences⁸⁷.

Following these priorities, on 8-9 January 2009 the Czech Republic Ministry of Justice hosted a meeting of a "Portal team" which prepares the creation of a European e-Justice Portal. One of the main topics of the meeting, which was attended by representatives of some Member States (e.g. Austria, Germany, Slovenia, Netherlands), from the Czech Republic and the Commission, was the enlargement of the Portal to other members and also the authentication and security of data which will be available at the Portal⁸⁸.

On 17-18 February 2009 the European e-Justice Conference "e-Justice without barriers" took place in Prague. The European e-Justice Portal was discussed, pilot projects between the Member States were presented, the support and facilitation of efficient use of videoconferencing in cross-border legal proceedings was addressed and experiences in the use of data protection were exchanged⁸⁹.

The informal Justice and Home Affairs Council meeting of the Czech Presidency of 15-16 January 2009 in Prague also had in its agenda the topic E-Justice: Promoting and facilitating the use of cross-border videoconferencing.

In the past few years, all Presidencies of the Council have given special importance to e-Justice and have taken up initiatives in the area. In recent months focus has been given to the creation of the European e-Justice Portal, and the European feature of e-Justice (European e-Justice) has been stressed.

4.3 Initiatives of the Commission

As mentioned earlier in this study⁹⁰ in recent years the Commission has introduced the use of modern electronic technologies in some of the proposals for legislation in the area of judicial cooperation in civil matters. The Commission also dedicates around 2 million euros per year to the European Judicial Network in Civil and Commercial Matters and to the European Judicial Atlas in civil matters⁹¹. Taking into account all existing projects in the area and all the work developed until now, on 30 May 2008 the Commission published a Communication to the Council, the European Parliament and the European Economic and Social Committee entitled "**Towards a European e-Justice Strategy**"⁹².

⁸⁷ See 2.1.1 of this study.

⁸⁸ www.justice2009.cz.

⁸⁹ Idem.

⁹⁰ See 2.1.1

⁹¹ Document de travail des services de la Commission, Annex au projet de Communication présentant une stratégie européenne en matière d'E-Justice, Analyse d'impact, COM (2008)329 final, SEC(2008) 1944.

⁹² Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee "**Towards a European e-Justice Strategy**", COM (2008)329 final.

4.3.1 Commission Communication “Towards a European e-Justice Strategy”

The objective of the Communication is to *propose an overall strategy that creates synergies between efforts at European and national levels and offers the added value of economies of scale*⁹³.

Bearing in mind all the existing initiatives, the Commission is of the opinion that national and European synergies should be promoted by strengthening the exchange of best practices at national level and by strengthening European coordination and marshalling e-Justice to help construct the European judicial area.

In the executive summary of the impact assessment⁹⁴, the **existing problems** of international justice are summarised (language barriers, insufficient implementation of existing EU instruments, problems related to the security and authentication of documents, difficulty in the exchange of information between judicial authorities of different Member States...) and the **objectives of the initiative** are enumerated:

- To promote an easier access to information, by making information accessible online and by keeping it up-to-date.
- To speed up the procedures, in particular by streamlining recourse to videoconference and by supporting the coordinated development of e-Justice.
- To improve the mutual trust between judicial authorities, in particular by removing obstacles linked to multilingualism and by providing reliable tools to ensure security and authentication of data.
- To reinforce the mechanisms of cross-border judicial cooperation, in particular by devising practical tools and by facilitating the application of existing EU instruments.
- To coordinate existing projects and to ensure their consistency.

After analysing several possibilities in order to achieve the desired objectives and overcome the existing problems⁹⁵, the Commission came to the conclusion that **the best solution is to launch a European e-Justice strategy, the reason being that:**

- It fosters the development of concrete projects improving judicial cooperation (translations, videoconference, etc.)
- It encourages e-Justice initiative at national level, in conformity to the principle of subsidiarity, while ensuring consistency at European level through the exchange of best practices.
- It avoids risks of divergent technical solutions, while stopping short of imposing single standards.

⁹³ Idem.

⁹⁴ Commission staff working document, Accompanying document to the Communication to the Council, the European Parliament and the European Economic and Social Committee “Towards a European Strategy on e-Justice”, Executive summary of the impact assessment, COM (2008)329 final, SEC(2008) 1947.

⁹⁵ Idem.

- It permits economies of scale and cost savings for national administrations and citizens, without creating an excessive financial burden for the EU and for MS.
- It provides the basis for a pivotal role of EU institutions, while avoiding the (legal and political) pitfalls of legislative action.

According to the Communication the priority of action at EU level will be the **European e-Justice Portal** and the **reinforcement of judicial cooperation**.

4.3.1.1 The European e-Justice Portal

One element central to the Commission's Communication, the Council's Action Plan⁹⁶ and the Parliament's Resolution⁹⁷ is the creation of a European e-Justice Portal, of which the first release should be launched by the end of 2009.

It is conceived as a one-stop electronic shop for information on European justice and as an access to European judicial procedures available in the 23 official languages of the EU. The objective is to provide, in a consolidated system, a single entry point for all justice questions and online procedures. It is targeted at citizens, lawyers, judges, national authorities and businesses⁹⁸.

It will have at least three functions.

a) Access to information

The portal will have to provide European citizens, in their language, with data on judicial systems and procedures. In particular, the portal will contain:

- European and national information on victims' rights in criminal cases and their rights to compensation;
- the fundamental rights enjoyed by citizens in each Member State (rights of persons charged in criminal proceedings);
- fundamental principles relating to citizens' ability to initiate proceedings before a court in another Member State, or to their defence when summoned to appear before such a court.

The portal will also provide practical information, in particular regarding the competent authorities and how to contact them, the use (obligatory or optional) of lawyers and the procedures for obtaining legal aid.

b) Referral

The portal must refer visitors to existing sites (Eur-lex, Pre-lex, SCADPlus, Eurovoc and IATE), to European legal institutions and to the various existing legal networks and their tools.

⁹⁶ See 4.4.1.

⁹⁷ See 4.5.

⁹⁸ "Description of services/Technical annex", Document distributed during the Justice Forum meeting on e-Justice on 5 March 2009.

Moreover, the portal will direct visitors to certain registers interconnected at European level via links to the bodies that manage these projects.

c) Direct access to certain European procedures

In the long term, fully electronic European procedures could be created.

As for **the reinforcement of judicial cooperation**, work will be done to continue the interconnection of criminal records, the creation of a network of secure exchanges for sharing information among judicial authorities, facilitating the use of videoconferencing and aid for translation (development of automated translation tools, database of legal translators and interpreters and online forms for automated translations).

A draft action plan and timetable is annexed to the Communication. The Commission will assume the general role of coordination by encouraging the exchange of best practices and will design and set up the e-Justice portal, which it will manage in close cooperation with the Member States.

Given the initiatives in the field of e-Justice initiated at the national and European levels, coordinated action at EU level is necessary for the future, not only for the promotion of synergies but also to avoid risks of diverging technical solutions. A European e-Justice strategy, with concrete objectives, an action plan and a timetable, is therefore indispensable.

4.3.2 The Justice Forum

The Justice Forum was established by the Commission's Communication on the creation of a Forum for discussing EU justice policies and practice of 4 February 2008⁹⁹. The Forum was officially launched on 30 May 2008 and was created following the European Council's adoption of the Hague Programme for the establishment of a system providing for objective and impartial evaluation of the implementation of the EU policies in the field of justice.

It is composed of Member States, judicial bodies, practitioners, specialist non-governmental organisations, academics and users of justice systems. The Commission will invite a representative of the Council of Europe and both Eurojust and the European Judicial Networks (in criminal and in civil and commercial matters) are to be represented as well as relevant professional European networks active in the justice field at EU level. The Commission also intends to involve academic networks (European Criminal Law Academic Network ECLAN, International Association of Penal Law AIDP, Eurodefensor) in order to promote a scientific, objective approach and to enable a robust exchange of views by including experts whose views differ. The Commission also

⁹⁹ COM/2008/0038 final.

intends to include the ECJ and the Fundamental Rights Agency of the European Union in the most appropriate way¹⁰⁰.

The objective of the Forum is to provide a permanent mechanism for consulting stakeholders, which meets regularly, reviews and provides feedback on EU justice policies and practice in a transparent and objective manner. By bringing professionals together, the purpose is that the Forum will furthermore promote mutual trust between EU justice systems.

The third sub-group meeting of the Justice Forum took place on 5 March 2009 in Brussels and the topic discussed was precisely “European e-Justice”. The objectives of the meeting were threefold: to allow the member-organisations of the Justice Forum to be familiar with European e-Justice policy and the current state of play; to allow the EU Institutions to better understand the needs and expectations of the stakeholders, in particular, to allow the Commission and the Council to work better towards designing and launching the European e-Justice Portal; to agree on the methods to of stakeholders’ involvement in the development of the European e-Justice portal and the European e-Justice policy as a whole¹⁰¹.

4.4 Initiatives of the Council

On 3 October 2006 the Council Working Party on Legal Data Processing presented to Coreper the working document “*E-Justice*” – *Examination of the requirements and of the possibility of starting work in this area*¹⁰² mentioning that at the last meeting of the working group Austria had taken stock of the “feeling shared by many that work should start at European level” on e-Justice¹⁰³. The purpose of the document was to define the context, to examine any conceivable objectives and to propose a working method with a view to examining the requirements and the possibilities for starting work in the area of e-Justice at European level. The working method suggested was that in the initial phase the Working Party on Legal Data Processing could examine the situation, as well as define the needs of the Member States and the possibilities for action in the area of e-Justice. A report would be forwarded to Coreper in the spring of 2007.

On 20 December 2006 Coreper decided to issue provisional instructions for the Working Party on Legal Data Processing to carry out preparatory work on e-Justice. On 5 June 2007 the Working Party presented a report¹⁰⁴ to Coreper/Council on the results of the examination of their requirements for and the possibility of developing work in the area of e-Justice at the level of the EU. The report contains sections on the following topics: an overview of the situation regarding the use of IT in judicial systems; general principles

¹⁰⁰ Communication from the Commission on the creation of a Forum for discussion EU justice policies and practice of 4.2.2008.

¹⁰¹ Background Document, Justice Forum Meeting on European e-Justice, 5 March 2009.

¹⁰² 13521/06, JURINFO 23.

¹⁰³ *Idem*.

¹⁰⁴ 10393/07, JURINFO 21, JAI 293, JUSTCIV 159, COPEN 86.

(such as the non-legislative nature of the work to be carried out and the non-compulsory nature of e-Justice); the architecture of the system; scope of e-Justice; technical aspects; and languages.

Taking into account the report and the Conference on e-Justice that took place in Bremen from 29-31 May 2007, the **Justice and Home Affairs Council of 12-13 June 2007** drew vital **conclusions** for the subsequent work on e-Justice¹⁰⁵:

- work should be continued in the area of e-Justice with a view to creating at the European level a technical platform giving access, in the sphere of justice, to existing or future electronic systems at national, Community and, where appropriate, international level in specific areas;

- the system will be decentralised. It will however be necessary to consider whether and to what extent coordination will be required in order to ensure consistency in the functioning of an e-Justice system at the European level.

- action by the Community/Union with respect to an e-Justice system should be limited to cross-border issues in civil and commercial matters and in criminal matters and should cover:

- a) the set up of a European interface (e-Justice portal);

- b) the possible use of IT for the communications between the judicial authorities and interested parties (applicant, defendant and other participants involved in the proceedings);

- c) the possible use of IT in the context of specific procedures;

- d) access to judicial registers in electronic form, in full respect of the legal orders of the Member States.

- the priorities for future work should be:

- a) set up a European interface (e-Justice portal);

- b) create the conditions for networking of the criminal records, insolvency registers, commercial and business registers and land registers;

- c) start the preparations for the use of IT for the European payment order procedure, in full respect of Regulation (EC) No 1896/2006;

- d) improve the use of videoconferencing technology for communication in cross-border proceedings, in particular concerning the taking of evidence, and interpretation.

- technical work should be carried out with a view to:

- a) ensure interoperability and standardise, where necessary, the means of communications in the context of e-Justice;

- b) make use of coordinated or mutually accepted authentication mechanisms;

- c) ensure that the e-Justice system will be fully secured.

The Justice and Home Affairs Council of 6-7 December 2007, noted that during the first half of 2008, work would continue in order to implement the priorities defined by the Council and that in particular, work should focus on making the e-Justice portal operational as a pilot project between the representatives of the Member States, continuing the discussions on the content of the portal, creating conditions for cross-

¹⁰⁵ Draft conclusions of the Council on E-Justice 10509/07, JURINFO 23, JAI 301, JUSTCIV 163, COPEN 89.

border videoconferencing and continuing technical work in accordance with the Council conclusions of June 2007¹⁰⁶.

The **European Council of 14 December 2007** also reaffirmed the need to enhance access to justice in the European Union via simplified and more efficient and accessible procedures, as well as welcoming the achievements in the area of e-Justice and calling for the continuation of work¹⁰⁷.

At its meeting of **5-6 June 2008, the Justice and Home Affairs Council** invited the Working Party on Legal Data Processing (e-Justice), in light of the Commission's Communication, to examine aspects relating to the creation of a coordination and management structure capable of developing multiple projects on a large scale and within a reasonable timeframe in the field of e-Justice, and to launch discussions on the establishment of a multi-annual work programme¹⁰⁸.

On **19-20 June 2008 the European Council** welcomed the initiative to "progressively establish a uniform EU e-Justice portal by the end of 2009"¹⁰⁹.

Finally, the **Justice and Home Affairs Council of 27-28 November 2008** adopted the European e-Justice Action Plan.

4.4.1 The European e-Justice Action Plan

The Council Multi-Annual European e-Justice Action Plan 2009-2013¹¹⁰ aims to lend structure to work in the area and to set priorities for its implementation. It stresses that e-Justice matters are not confined to certain legal fields and therefore it has horizontal relevance in the context of European cross-border proceedings.

As for the **scope** of the Action Plan, an important statement is made: the European dimension of e-Justice should be highlighted and for that reason it should be renamed **European e-Justice**. The European dimension results from European e-Justice being *a step on the way to the creation of a European judicial area, using information and communication technologies*. Therefore, the projects developed under European e-Justice must therefore *have the potential to involve all the Member States of the European Union*.

It is also stressed that the projects must be of use in implementing the legislative instruments already adopted by the European Community and the European Union in the field of justice and it should be developed so as to be of direct service to European citizens.

The document considers that **European e-Justice has three basic functions**:

¹⁰⁶ 15966/07 (Presse 275).

¹⁰⁷ Presidency Conclusions, 16616/1/07, REV 1, CONCL 3.

¹⁰⁸ 9956/08 (Presse 146).

¹⁰⁹ 11018/1/08, REV 1, CONCL 2.

¹¹⁰ OJ C 75, 31.3.2009.

(a) **Access to information** in the field of justice (in particular European legislation and case law, and legislation and case law of the Member States) and access via interconnections to the information managed by the Member States in the framework of the public administration of justice (for instance, the interconnection of the databases of Member States' criminal records).

(b) **Dematerialisation of proceedings** (for example e-mediation) in particular in order to implement European instruments adopted by the Council such as the Regulation creating the European Order for Payment Procedure¹¹¹.

(c) **Communication between judicial authorities.** This should simplify and encourage communication between the judicial authorities and the Member States, more specifically in the framework of instruments adopted in the European judicial area (e.g. videoconferencing or secure electronic networks).

The document also makes it clear that the work on the **European e-Justice Portal** should follow on from work to date on the pilot project that has been carried out by a group of Member States. The objective of the Portal is to:

- provide **access to the whole European e-Justice system**, i.e. to European and national information websites and/or services, but it cannot be a mere collection of links.
- permit by means of a uniform authentication procedure to **open up for members of the legal professions the various functionalities** reserved for them, to which they will have differentiated access rights.
- provide **access to national functionalities** by means of a user-friendly multilingual interface, making them understandable to the European citizens.

As for **technical aspects**:

- a decentralised technical system should be adopted;
- an agreement on standardised communication formats and protocols in line with relevant European or international standards, allowing for interoperable, effective, secure and rapid exchanges at the lowest possible cost should be reached;
- uniform standards or interfaces for the use of authentication technologies and the components of electronic signatures is an essential condition;
- data will have to be exchanged in secure environment;
- compliance with European legislation should be ensured as far as data of a personal nature is concerned.

Linguistic aspects are also considered in the Action Plan:

- measures focusing on translation and interpretation in judicial matters will have to be considered;
- automated translation systems, particularly for the content of forms used in European instruments, could be used and national translation resources could be placed online.

¹¹¹ Regulation (EC) No 1896/2006.

- a working method needs to be devised to ensure faithful translation, in the European Community's 23 official languages, of the legal concepts which exist within Member States' legal systems, taking into consideration questions relating to semantics.

As for **financing aspects**, the document states that there could be recourse to the civil and criminal justice financial programmes for up to €45 million in 2008-2009. This amount would have to be increased significantly over the coming years. In addition, a single horizontal programme covering both civil and criminal law matters is proposed.

As regards the **working structure**, the Action Plan makes a clear distinction between management function and implementing function. The **managing function** will be the responsibility of the **Council**, which will take all decisions necessary to achieve the objectives set in the action plan. The **implementation** will be for the **Commission**, which should make available an implementation structure responsible for ensuring the technical conditions for the European e-Justice system and for developing a first version of the European e-Justice portal by the end of 2009. As for the Member States, they may propose and launch new Europe e-Justice projects, in accordance with the technical specifications defined by the Council in close consultation with the Commission, specifically for compliance with technical standards and the development of multilingual interfaces.

Annexed to the Action Plan is a multi-annual programme where the specific projects are listed along with the stage reached, action to be taken, responsibility for action and timetable. The following specific projects are mentioned: European e-Justice portal; interconnection of criminal records; European order for payment procedure; legal aid; European small claims procedure, translation, better use of videoconferencing technology; mediation; electronic signature; service of judicial and extrajudicial documents (by electronic means); online payment of procedural costs; interconnection of insolvency registers; interconnection of land registers (integration of EULIS); interconnection of commercial registers (integration of EBR); interconnection of registers of wills; and training of legal practitioners.

The Council's concern to stress the European dimension of e-Justice is an important clarification that will be helpful to the planned strengthening of European coordination expressed in the Commission's Communication.

4.5 European Parliament Resolution with Recommendations to the Commission on e-Justice

On 18 December 2008, the European Parliament adopted a Resolution with Recommendations to the Commission on e-Justice¹¹².

¹¹²<http://www.europarl.europa.eu/oeil/resume.jsp?id=5637102&eventId=1061816&backToCaller=NO&language=en>

This Resolution welcomes the creation of an e-Justice portal/network, but stresses some very important points, among them:

- **action must be carried out in an institutional and strategic way;**
- **fundamental changes in procedural law and in the way legislation is conceived and drafted** will be needed;
- 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;**
- a start must be made immediately to tackle key issues in the field of e-Justice, including that of **language;**
- e-Justice initiatives should be **non-compulsory for Member States,**
- the strategy should be implemented in full compliance with the highest standards of **data protection;**
- the work of the institutions should be more strongly **citizen-focused;**
- The fact that Member States are setting up 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 is welcome; however, there is a possible **fragmentary effect** of such an approach.

As for the **concrete Recommendations**, the European Parliament recommends that the Action Plan that the Commission is asked to prepare should comprise at least the following actions:

- **EU-justice Action Plan** should be geared to the needs of citizens and practitioners, proposing a strategy for the optimum implementation of the European area of justice.
- **Action to “future-proof” legislation:** the Commission should ensure that all future legislation in the field of civil law is designed in such a way that it can be used in online applications. 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. 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.
- **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.
- **Action on the law of contract and consumer law:** the Commission is asked to make a start on determining standard terms and conditions for electronic commerce.

- **Action on languages, multilingualism and interoperability:** a programme should be launched to examine how best to provide online translation facilities for the European e-Justice portals.
- **Action on European e-Justice Portals:** Parliament proposes to set up two portals: a) 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; b) 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.
- **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, all newly appointed members should receive 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.
- **Preventing and fighting transnational crime:** to be effective, the European Criminal Records Information System needs to be supported by an electronic structure able to interconnect all national criminal registers which should be put in place without delay.
- **Videoconferencing:** support and financial assistance by the EU must be delivered as soon as possible.
- **Enhancing fundamental rights and procedural safeguards:** a real e-Justice strategy cannot function without harmonisation of procedural safeguards and adequate data-protection safeguards applying to cooperation in criminal justice matters.

The concern of the European Parliament in relation to fundamental rights, procedural safeguards, the observance of the principles of transparency, equality before the law and public scrutiny demonstrates a more citizen-focused approach that should be taken into consideration in future work.

5. COMMUNITY FINANCIAL PROGRAMMES ON E-JUSTICE

The framework programmes were established to provide coherent support to the area of freedom, security and justice under the financial perspectives 2007-2013. Each of the three objectives – freedom, security and justice – is supported by a framework programme supporting and linking each policy area.

As regards Justice, the General Programme “Fundamental Rights and Justice” consists of five Specific Programmes¹¹³:

¹¹³ The financial package for the whole framework programme is €542.90 million for 2007-2013.

- . Fight against violence (Daphne III)
- . Drugs prevention and information
- . Civil justice
- . Criminal justice
- . Fundamental rights and citizenship

5.1 The Specific Programme “Criminal Justice” 2007-2013

This programme was established by Council Decision 2007/126/JHA of 12 February 2007¹¹⁴ and it has a budget amounting to €196.2 million for the whole 2007-2013 period. It provides financial support for activities aimed at promoting judicial cooperation in criminal matters with the aim of contributing to the creation of a genuine European area of justice based on mutual recognition and mutual confidence.

Among other specific objectives, the Programme will aim in particular at *improving the exchange of information through the use of computerised systems, in particular information extracted from national criminal records* (article 3 (a) (v)) and to *develop and implement a computerised system of exchange of information on criminal records and to support studies to develop other types of exchange of information* (article 3 (g)).

For 2009, the Commission has proposed a budget of €30.4 million¹¹⁵ in its work programme to implement the specific “Criminal Justice” programme. One of the priorities for action grants identified by the Commission for 2009 is, exactly, **e-Justice**.

5.2 The Specific Programme “Civil Justice” – 2007-2013

This Programme was established by Decision 1149/2007/EC of the European Parliament and of the Council of 25 September 2007 establishing for the period 2007-2013 the Specific Programme “Civil Justice” as part of the General Programme “Fundamental Rights and Justice”¹¹⁶ with a budget amounting to €100.85 million for the entire 2007-2013 period. It provides financial support for activities aimed at promoting judicial cooperation with the aim of contributing to the creation of a genuine European area of justice in civil matters based on mutual recognition and mutual confidence.

In its draft Decision on the 2009 annual work programme for the specific programme “Civil Justice”¹¹⁷, the Commission is clear in defining the area of e-Justice as the general priority for 2009¹¹⁸.

As mentioned both in the Commission Communication and in the Council Action Plan,

¹¹⁴ Council Decision of 12 February 2007 establishing for the period 2007 to 2013, as part of the General Programme on Fundamental Rights and Justice, the Specific Programme “Criminal Justice”, OJ L 58, 24.2.2007.

¹¹⁵ Available on http://ec.europa.eu/justice_home/funding/jpen/doc/awp_jpen_2009_en.pdf

¹¹⁶ OJ L 257, 3.10.2007.

¹¹⁷ Available on http://ec.europa.eu/justice_home/funding/civil/doc/awp_2009_en.pdf

¹¹⁸ Idem.

the existing financial programmes both for civil and criminal justice could be used to finance European e-Justice. In addition, a single horizontal programme covering both civil and criminal law matters could be proposed.

6. CONCLUSION

From e-Justice initiatives promoted by Member States or groups of Member States and isolated initiatives at EU level, the situation evolved into a European e-Justice with a coordinated approach at EU level, which is at the moment taking its first steps. The necessary coordination has now been defined and the indispensable strategy with concrete objectives, an action plan and a timetable are in motion. Yet several points should be carefully handled and others should be stressed:

- Interoperability between the systems must be assured. The European Interoperability Framework (EIF) within the IDABC Programme¹¹⁹ that the Commission intends to promote is a very important step.
- The authentication of acts and the exchange of information in a secure way are essential to improve confidence building of the operators in the system.
- The legal framework of data protection should be taken into consideration. This includes not only Directive 95/46/EC but also the very recent Framework Decision of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters¹²⁰. In this respect, the Opinion of the European Data Protection Supervisor on the Communication from the Commission¹²¹ is very interesting and should be taken into due account.
- In its impact assessment¹²² accompanying the Communication, the Commission stresses the non-legislative nature of the future work. The strategy adopted should, in principle, be carried out using existing legislation. In any case, even if legislative action were needed, there is no specific legal basis in the treaties for e-Justice. However, the existing legal bases for legislative initiatives in the areas of judicial cooperation in civil and criminal matters could be used if needed on a case by case basis.
- Finally, any future work should in any event take into consideration one fundamental aspect: the importance of e-Justice lies in how it can improve and facilitate citizens' lives. As Albert Einstein once said: *It is not enough that you should understand about applied science in order that your work may*

¹¹⁹ Interoperable Delivery of European eGovernment Services to public Administrations, Businesses and Citizens

¹²⁰ OJ L 350, 30/12/2008

¹²¹ www.edps.europa.eu

¹²² Commission staff working document, Accompanying document to the Communication to the Council, the European Parliament and the European Economic and Social Committee "Towards a European Strategy on e-Justice", Executive summary of the impact assessment, COM (2008)329 final, SEC(2008) 1944.

*increase man's blessings. Concern for man himself and his fate must always form the chief interest of all technical endeavors, concern for the great unsolved problems of organization of labor and the distribution of goods -- in order that the creations of our mind shall be a blessing and not a curse to mankind. Never forget this in the midst of your diagrams and equations.*¹²³

¹²³ ALBERT EINSTEIN, in an address at Cal Tech, 1931. (Harper)