



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ WORKING GROUP

e-Justice Report 2008-2009

GROUPE DE TRAVAIL RECJ

e-Justice Rapport 2008-2009



With the support of the European Union
Avec le soutien de l'Union européenne

PROPOSED OBJECTIVES AND ACTION PLAN FOR THE WORKING PARTY ON E-JUSTICE

Background

The European Network of Councils for the Judiciary (ENCJ) was officially set up in 2004 and comprises national institutions from the member states of the European Union that are independent from the executive and legislative branch of government and whose function is to support the members of the Judiciary in their independent work on justice administration.

In the member states in which the abovementioned institutions do not exist, the status of observer can be awarded to the Ministry of Justice. It is also possible to award the status of observer to the institutions of countries that have applied to form part of the European Union.

To date, national organisations of the Judiciary belonging to 24 (candidate) member states of the EU have joined the ENCJ and applications have been received from many other member-state organisations wanting to become members or be awarded the status of observer.

The ENCJ proposes acting as a mediator between the institutions of the Union and the national members of the judiciary and it has drawn up a number of objectives within the framework of the creation of a European area of freedom, security and justice.

The working parties created as part of the ENCJ include the e-justice party, in which 15 countries have showed interest and whose coordination has been assumed by the General Council of the Judiciary of Spain. In the last quarter of 2007, the respective representatives of the national organisations of the judiciaries of the various member states of the EU interested in taking part in the said working party were appointed.

As a preliminary step towards the first meeting, the General Council of the Judiciary of Spain, as coordinator of the party, prepared a questionnaire based on preliminary studies performed by various EU organisations. The questionnaire was sent to the members of the party with a view to discovering the status of the implantation of information and communication technologies in the various judicial organisations.

After the answers had been received, the working party's first meeting was called to analyse the information that had been collected and to lay down its strategy and objectives. The said meeting took place on 15 January 2008 at the Council's office in Madrid and was attended by 19 individuals from 11 countries. The conclusions drawn at the meeting can be consulted on the ENCJ's official website (<http://www.encj.net/encj>). The attendees unanimously understood that, given the difference in competencies of the general councils of the judiciary in the different countries and considering work by other similar working parties created as part of other EU institutions, this party needed to focus on the problems associated with e-justice from a judicial point of view.

A second meeting took place on 9 May 2008 at the offices of the council's judicial documentation centre in San Sebastián, attended by 16 individuals from 9 countries, together with the coordinator of the Working Party on Legal Data Processing of the Council of the European Union (Paulino Pereira). The conclusions drawn at this meeting (which can also be consulted on the ENCJ's website) can be summarised as follows:

1. To approve a work area for collaboration, accessible from the ENCJ portal, enabling the exchange of experiences and proposals and containing a directory with an updated list of the contact persons for the various councils of the judiciary (https://shp.cgpj.es/_layouts/login.aspx?ReturnUrl=%2fe-justicia).
2. Representatives of the ENCJ should take part in the Working Party on Legal Data Processing of the Council of the EU, subdivided for operational intents and purposes into e-law and e-justice sub parties¹.
3. An application/database of relevant judicial decisions issued in the various member states should be created regarding the interpretation and application of European and national legislation in reference to what is commonly known as e-justice. Similarly, consideration was given to the possibility of extending the said application to judicial decisions that refer to the legal system or system of government of judges. For its implementation, the following actions were considered:

¹ In its meeting of 7 July 2008, the management committee of the European network of Councils adopted the decision for the General Council of the Judiciary of Spain to represent the network of councils in the working party on e-law and the Councils of Hungary and Denmark to represent the network in the e-justice network.

- a. A preliminary survey on the availability of this type of decision by country, as well as the convenience for national judges and their consultation requirements.
- b. Definition of the possible technical alternatives for building the application for its appropriate consideration.
- c. Search for financial support.

On 17 March 2009, a third meeting was held and reported on the activities of the EU's e-law and e-justice working parties in fulfilment of one of the objectives set in the second meeting. The most relevant information that arose from these meetings is as follows:

- o Access to legal information is a key factor for processes and services in the area of e-justice.
- o Plans have been laid down to improve access to this information and to the information provided by the documents from the higher courts of justice, including progress on the thesaurus, semantic WEB projects, the processing of metadata and unique identifiers for integrated content management. All taking into account the multilingual aspect.
- o The European Commission has assumed responsibility for developing the EU's Justice Portal and, in conjunction with the Council, it is to implement the tools required to support access to information on jurisprudence and legislation, as well as many other inter-frontier judicial activities.

Information was also reported on the e-justice FORUM that took place in Brussels and on the e-justice meeting organised by the Czech presidency. The following can be drawn from both meetings:

- o The portal is the basic tool for accessing the tools designed to support the services, where great importance was placed on the users' point of view and, therefore, on the translation, access to the information in place in various countries, access not only to jurisprudence and legislation but also to issues related to computer legislation and the creation of standards for intercommunication, etc.
- o Great importance was also given to the protection of the fundamental rights of individuals.

- There were many references to the experiences of the different countries for the launch of the concept of justice at the service of citizens. Comments were also made on the need for publishing good practices and great importance was also given to the security measures for accessing the European e-Justice portal.

In addition, an analysis of the replies to the survey sent to the different countries as indicated in one of the conclusions to the second meeting and the result of the meetings held by the EU-Justice working parties suggest that our aim should not be to develop tools but rather to convey the requirements that should be met by the applications being developed by the working parties of the Commission and the Council. Fundamentally and initially, the European Justice Portal.

The final conclusions drawn from the meeting include the preparation of documents to describe the party's objectives:

- Coordination with European institutions for the following:
 1. Influencing the relevant features of the portal for the Network of Councils.
 2. Collaborating on the definition of metadata and the thesaurus for accessing jurisprudence and legislation.
 3. Defining and sharing information.
- Training judges.
- Proposals for improving citizen access to justice.

Proposed objectives and action plan

Strategic principle:

The e-justice working party of the ENCJ should focus its activities on channeling the needs of European judges towards the initiatives taken in the European Union in the area of e-justice.

Action Plan:

In order to achieve this strategic principle, the e-justice working party of the ENCJ, has studied a number of different actions and instruments.

1. Work area for collaboration

The party has set up a working area for collaboration which should be promoted as a tool for collaboration among the members of the party, as a place for exchanging information and experiences and as a discussion forum for the various initiatives and projects that are set up.

It is also proposed that information on the various activities carried out by the two legal computer subgroups of the EU, as indicated by the representatives of the ENCJ in attendance, should be distributed by means of this collaboration tool.

In recognition of the fact that the EU Commission will be responsible for setting up communication mechanisms between European judges, it is considered appropriate to furnish them with a collaboration tool that can be used as a point of contact with the various working parties, as well as for sharing opinions on needs in the area of justice, receiving information on new issues that can be used on the European Justice Portal and for debate among the judges themselves.

It is understood that the use of the tool will depend on the usefulness of the information that it contains. By way of example, it is proposed that those Councils for the Judiciary that are able to do so should include collections of documents on the various subjects related to electronic law that affect cross-border affairs.

If such a decision is taken by the General Assembly, the e-justice party will be able to extend the use of its collaboration tool for use by judges. Needless to say, this would involve the tool remaining within the Network of Councils Portal, which is linked to the European Justice Portal.

2. Coordination of the ENCJ with any groups of the Commission with an interest in the area of e-justice and, in particular, with the legal computing group of the EU Council.

The concern for the administration of justice in society and, therefore, in its institutions can be seen in the national and international groups created to find solutions or provide assistance to improve its operation. Added to the fact that information and communication technologies are bringing about significant changes to social habits and behaviour and are also appearing at a faster and faster rate, it is easy to understand the appearance of working parties whose objectives are related to e-justice.

However, if there is no coordination between the various parties, duplication of effort may well occur or there will be gaps that have not been covered by anyone. This is

why it is considered very important for coordination with the other EU groups working in the area of e-justice, as mentioned above, to be carried out.

Therefore, it is essential for this working party to coordinate its own actions and initiatives, which should be presented to the other parties and supported by our representatives. Similarly, it is necessary to find out about the work of the other groups so that their work can be analyzed and discussed from the judicial point of view on which the work of this party is based, as emphasized in its first meeting.

Accordingly, the working party should participate directly with the other EU working parties, becoming the representative for requirements of e-justice affecting the judges of the member states of the EU. The Network of Councils Department is required to coordinate a communication protocol with the EU Council and the Commission to facilitate the corresponding relationships.

One example of these requirements, which has been confirmed by our party, is access to the Member States' jurisprudence and legislation. This requirement is also seen as an essential complement from the point of view of judges' continuous training and keeping their knowledge up-to-date.

Accordingly, the European Union's e-Justice action plan will focus on this matter as one of the features of the European Justice Portal, which will provide access to the various member states' jurisprudence and legislation.

A component part of the information on national legislation and jurisprudence is an area of interest related to the judicial decisions that apply in the area of Community law and the so-called electronic law.

The e-justice working party will set up procedures for the compilation of judges' concerns and areas of interest in specific subjects.

By way of giving just a few examples from a large number, we can mention the following legal topics or matters:

- Protection of data and fundamental rights.
- DNA profiles and databases.
- Legal articles, studies or decisions on crimes committed with information and communication technologies (cybercrime).
- Criminal investigation and new technologies.
- Judicial rulings on the implementation of Directives that affect or refer to e-justice.
- Audiovisual piracy. Protection of intellectual and industrial property rights.

- International court jurisdiction in cases of civil liability on the internet.
- Legislative framework for the international activity of information society service providers.
- Decisions concerning conflicts in the online environment.
- The electronic judicial document.
- Procedural consideration of the so-called electronic evidence.

One result arising from the need to have simple, powerful and effective access to jurisprudence, legislation and legal computing matters is the importance of defining the metadata and thesaurus for judges to access the different information databases regardless of their country of residence.

This task is not an easy one. Many national and international databases already exist, but access to them is neither shared, simple nor intuitive. Consequently, we must highlight the fact that direct awareness of judges' requirements and experience in search systems for the different databases maintained by some members of the ENCJ points to a proposal for the Network's direct participation in the European working parties responsible for these projects.

Furthermore, in view of the problems relating to the different languages of the countries in which the databases are maintained, the ENCJ considers that the translation projects run by the European Commission and Council are of great importance and has a wish to participate in the said projects to seek solutions in a multi-phased approach consisting of: translating the access methods into every Member State's language, translating summaries of the corresponding information and the complete translation of the documents.

Within the framework of the European Action Plan in the area of e-justice 2009-2013, priority is given to the e-justice working party's collaboration with the project for building the European E-Justice Portal. Accordingly, the party should collaborate on the activities carried out within the framework of the said plan, especially in the following areas:

- 1) Definition of metadata to enable access to the Member States' jurisprudence.
- 2) Thesaurus.
- 3) Translation.

In order to define the metadata, thesaurus and translation requirements, expert groups of specialists need to be created. In order to set up these groups, consideration will be given to the various professional profiles of the members of the e-justice working party to ensure that their tasks are carried out as effectively as possible.

The requirements that have been discovered so far will change and grow in the future in accordance with the increased training given to judges, the evolution of information technologies and the increasing robustness of the systems that are created. And all these requirements must be carefully discussed by this working party before they are passed on to the working parties of the EU that will provide the corresponding technology support.

3. Training and specialization of judges on the implications of information and communication technologies law

In recent years, we have witnessed a technological revolution brought about by innovations in digital communications over the internet and a rapid development of e-commerce. We are seeing the birth of a new social, economic and cultural order which inevitably leads to the appearance of new law.

Law has an incredible capacity for adaptation and the capability to deal with new challenges as they arise. Accordingly, as a result of the wave of technology, the driving force behind the new order, Law is now beginning to see a new and exciting world around what is today referred to as information and communication technologies. The increasingly widespread use of technologies involves the transformation of existing legal relations. The so-called information society needs a new institutional and legislative framework for dealing with the new challenges. Legal relations increasingly appear and are developed on the internet and appear and are developed electronically. The conflicts that appear on or via the internet, which are expressed in electronic language and which have technology implications, etc., need a new form of legal processing in terms of both substantive and procedural law.

It has been said that the cyberspace environment also needs cyber justice. Traditional justice does not adapt well to this new social order, since it approaches the resolution of conflicts on an independent basis, not taking into account the benefits provided by the use of computers. There is no doubt whatsoever that when applied appropriately, technology can make a significant contribution to improving the accessibility and efficiency of judicial systems. It is clear that this will require important changes in procedural law and in the way in which legislation is written and conceived.

To achieve these objectives, we need appropriate training and specialization in this new technology law for legal players and, in particular, for the judges required to interpret and apply this new legal system. This necessary training arises in view of what has been called "electronic evidence". Its appearance on the legal stage has led to added difficulties for anyone seeking to use it in court proceedings: our judges' low-level general knowledge of

the concept and, in particular, on how its integrity can be proved so that it can be decided, for example, whether or not the technical considerations of the witnesses and experts put forward by the litigants are sound.

This knowledge gap in the area of electronic evidence affects not only judges, but also public prosecutors, lawyers and, in general, anyone having to deal with this new concept, as highlighted in the reports that have been drawn up on the subject.

Accordingly, the e-justice working party needs to coordinate with the European Judicial Training Network (EJTN) to prepare a document for the members of the Network of Councils for the Judiciary, containing the requirements and recommendations for successful accomplishment of the training task.

In this respect, the project entitled "European Certification on Cybercrime and Electronic Evidence" (ECCE), created and co-financed by the European Commission through the Directorate-General for Justice, Freedom and Security, should be specially supported and recognised since its main objective is to provide the technical training required by judges, public prosecutors and lawyers in Europe and South America on cybercrime and electronic evidence, without overlooking the legal framework in which it stands. The corresponding training seminars began in February 2009 and are due to continue until November 2010. They will be given in 14 countries in Europe and America by various institutions associated with the project. The certification will give these professionals the knowledge they need on cybercrime and electronic evidence so that this type of evidence can be presented and accepted as usual practice in every court in the world in future.

4. Technology as a means of improving the citizen's access to justice

The use of information and communication technologies to improve citizens' access to justice is today beyond doubt. Therefore, one of the working party's possible objectives could involve channeling European judges' requirements, experiences and concerns in this area.

As part of this objective, consideration should be given to the appropriateness of highlighting the role played by the Councils for the Judiciary to provide public awareness of their organization and modus operandi with a view to promoting transparency.

From this viewpoint, the information provided on the national websites should be appropriately integrated in the European sources of information and in the content of the ENCJ website itself.