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MODULE I

SUBJECT 2

INSTRUMENTS FOR IMPROVING JUDICIAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS. Promoting institutions: the European Judicial Civil and Commercial Network, Liaison Magistrates and internal judicial networks

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**DISTANCE LEARNING COURSE
A SYSTEMATIC STUDY OF THE EUROPEAN
JUDICIAL AREA IN CIVIL AND COMMERCIAL
MATTERS: COMPETENCE, RECOGNITION AND
ENFORCEMENT OF JUDICIAL DECISIONS
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I. INTRODUCTION.

New resources as reinforced cooperation instruments

The expression 'judicial co-operation in civil matters' is generally used within the EU to refer to those initiatives, measures and steps which help to give shape to the so-called 'European judicial area' in civil and commercial matters. The term covers initiatives to promote the mutual understanding of Member States' legal systems, measures to secure the mutual recognition of judicial decisions, international instruments designed to harmonize legislation in substantive and procedural matters, the enforcement of and compliance with judicial decisions, and specific steps for issuing and undertaking applications for assistance between judicial bodies responsible for civil and commercial matters.

For the purposes of this paper, the above definition of judicial co-operation will be used, together with the concept of mutual assistance provided by the members of the court system who work in the judicial bodies handling civil and commercial matters in the EU.

Judicial co-operation in the EU is subject to a growing tendency for the judicial bodies which are directly responsible for issuing and receiving applications to play a greater role in the transmission and enforcement of requests for mutual legal assistance. This has come to be known as the 'judicialisation' of international judicial co-operation or assistance. It is a characteristic phenomenon of the so-called third generation cooperation. However, this has been the result of an evolution that started in the nineteenth century with the formal acceptance of the need to enforce the judgments issued in one State in a different one, the appearance and development of the Central Authorities regime, up until the current

situation in the EU, where it is possible to directly apply procedural acts in a different Member country of the Union.¹.

However, these stages of evolution cannot be deemed to be complete and past as, in terms of topics and geographical areas, especially outside the EU, we can still find simultaneous expressions of so-called first, second and third generations.

For the purposes of this paper, we will group the initiatives as per convention, into three types of resources available to juridical or judicial legal operators:

- ✚ **Legal resources:** comprising the full regulatory structure: particularly Community regulations, which support the development of a reinforced assistance regime within the EU².

¹ The first generation on the issue of cooperation is directly linked to the concept of assistance as subordinate to the State's external relations, as international expression of sovereignty (cooperation is undertaken exclusively through Ministries of Foreign Affairs). Later, in the nineteenth century, with the appearance of central authorities, second generation cooperation is "professionalised" through the mediation, control, translation and even execution roles carried out by many Ministries of Justice or Foreign Affairs. Finally, with the impetus of the European Judicial Area, the monopoly of the executive has given way to courts and tribunals responsible for disputes or processes that give rise to cross-border judgments and legal acts. This is undoubtedly one of the most important aspects of judicial cooperation at the present time – the third generation - allowing for significant qualitative and quantitative improvements in the judicial assistance process. This judicialization phenomenon has two main expressions: the generalisation of direct communication between judicial bodies without mediation by ministerial authorities; and the progressive incorporation of the procedural principle of fulfilment of a request according to the legislation of the requesting country (*forum regit actum*).

² To date there has been a large amount of community legislation in civil and commercial fields. Numerous instruments have been approved which would have been unimaginable twenty years ago, principally regulations which have improved in qualitative and quantitative terms the conventional experience provided by the [Hague Conference](#) on International Private Law. As such, a focus on community regulations which directly affect the trans-border civil process, we must point out the following resources in the eventual chronological order of use in a litigation:

1. Instrument for the **determination of international jurisdiction:** Regulation (EC) n° [44/2001](#) of the Council of 22 December 2000, **relating to the jurisdiction**, recognition and execution of judicial resolutions in civil and trade issues. Although this legal resource also includes the recognition and execution, the second chapter attempts to answer a question as important as the determination of jurisdiction in litigation cases of persons resident in different member states. The fundamental principal is that the competent jurisdiction is that of the Member State where the respondent is legally resident, whatever their nationality may be.
2. Instrument for the **summons and other acts of post-communication:** [Regulation \(CE\) n° 1393/2007](#) of the European Parliament and the Council of 13th November 2007, relating to the notification and transferral in member States of judicial and extrajudicial documents in civil and commercial matters (notification and transferral of documents) and by which Regulation (CE) n° 1348/2000 of the Council is derogated (valid until 13th of November 2008).

- ✚ **Institutional Resources:** the fabric of institutional agents set up to provide and mediate effective judicial cooperation (liaison magistrates, expert groups and judicial networks to support judicial cooperation).
- ✚ **Virtual resources:** a group of practical tools that offer on-line assistance and are especially suitable for the development of active international, judicial cooperation (the most well-known example is the [European Judicial Atlas](#)³).

Within the European Union it is important to acknowledge positive development in this area over the past ten years. Today, we enjoy a quality of EU Conventions and Regulations which ten years ago were nothing more than good intentions. Thus, in quite a short time for the civil field, we have transferred and optimised practically the whole *acquis* of the Hague Convention into Community regulations, directly applicable by EU Member States; a Cooperation Network for civil and commercial matters has been put in place; and we have new assistance systems for the filing and honouring of cooperation requests.

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3. Instrument for **obtaining and using evidence** within a process: Regulation (CE) N° [1206/2001](#), of the 28th of May 2001, relating to the cooperation between jurisdictional bodies of member States in the matter of obtaining evidence in civil or commercial matters. As we can see, this Regulation, with respect to the previous situation, improves, simplifies and accelerates cooperation between jurisdictional organisms for obtaining evidence.
 4. instrument for the **recognition and execution of judicial resolutions** already obtained, whether of **general** nature: [Regulation \(CE\) n° 44/2001](#) of the Council of 22nd of December 2000, relating to the competence, recognition and execution of judicial resolutions in civil and commercial matters², known as "[Brussels I](#)". A series of modifications were introduced in this Regulation, which came into effect on the 1st March 2002 and substitutes the Brussels Convention of 1968; or whether of specific nature for the **family context**: [Regulation \(CE\) N° 2201/2003](#) of the Council of 27th November 2003, relating to the competence, recognition and execution of judicial resolutions in **matrimonial and parental responsibility matters**², by which Regulation (CE) N° 1347/2000 is derogated, also known as Regulation [Brussels II](#), which came into effect in March 2001, whose annexes have been modified ([annex I](#) in 2002 and [annexes I-IV](#) in 2004).

To access a complete and up to date list of the legal resources put in place by the EU in matters of judicial cooperation go to the following website: <http://eur-lex.europa.eu/en/index.htm>.

³ The European Judicial Atlas for civil and commercial matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm), is available in all the EU official languages to offer assistance to:

- [Text of the Regulation](#), practical manual and notifications.
- [Forms](#) with automatic and immediate translation of the permanent to the accepted languages of the executing State.
- [Interactive search](#) by councils and judicial districts within all of the EU judicial authorities and bodies to be seized of reception and/or execution.

The role of these institutions and mechanisms is to complement those described in the first group. There are still a great many obstacles to effective judicial co-operation, which the reinforced co-operation mechanisms are intended to address. If we wish to find examples of the practical difficulties obstructing moves towards a genuine space for the free movement of judgments on a Europe-wide basis, we need only consider some of the following issues: a traditional and reciprocal lack of familiarity with other judicial systems which leads, at least, to a loss of confidence in those systems; no single common language of the proceedings; unfamiliarity with the languages of origin of the documents in question; traditionally 'governmentalised' channels through which requests for judicial assistance are made ; reluctance on the part of the executive branch of the Member States - particularly in criminal matters – to surrender full powers to members of the court system (judges, public prosecutors and court clerks) in matters of cross-border mutual assistance; the absence of standardised virtual networks and platforms for the electronic delivery of applications; a general unfamiliarity throughout the judiciary with the international instruments available in this area; a lack of knowledge regarding the specific body to which the application should be addressed, etc. Perhaps there are just too many obstacles, or perhaps these may be regarded as tempting challenges which must be dealt with on the route to a European area of freedom, security and justice. These challenges are issues to be addressed by the European Union, which is eager to create the longed-for European judicial area, where applications for judicial assistance from other countries are treated in each Member State exactly as would be national applications.

Of all of the above advances, we focus here on two particularly practical types of resources: institutional agents and virtual tools or guides.

II THE GENERAL LEGAL FRAMEWORK

Understood in a broad sense, judicial co-operation between the various Member States has advanced considerably in recent years, giving rise to a series of legal instruments which must be put into practice in an appropriate manner.

The most significant instruments deserve to be put into two groups, namely, those flowing from the Maastricht Treaty and those which grew out of the reforms introduced by the Amsterdam Treaty. The process is constantly evolving and is principally driven by the Summit Conferences of Heads of State or Government. The clearest example of this is the summit held in [Tampere](#) in 1999⁴

A) THE MAASTRICHT TREATY

Judicial co-operation in civil and criminal matters gained institutional expression in the European Union under the Maastricht Treaty of 7 February 1992, in which Title VI established an institutional structure and certain specific procedural mechanisms to help achieve such co-operation.

The Title (on judicial co-operation) has been included in what is known in Community parlance as the 'third pillar', i.e. co-operation in justice and home affairs, and was thus linked to the 'first pillar' (the Community dimension) and the 'second pillar' (concerning a common foreign and security policy). The Treaty thereby gave full recognition to a type of co-operation which had already existed in parallel with the Community per se (the clearest example of which is the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Brussels on 27 September 1968), and brought it

⁴ The results of the special meeting of the European Council at the Tampere Summit, exclusively dedicated on 15 and 16 October 1999 to Justice and Home Affairs, may be consulted at http://www.europa.eu.int/council/off/conclu/oct99/oct99_en.htm "Towards a Union of Freedom, Security and Justice: the Tampere Milestones".

closer to this body of law without incorporating it, thus creating the 'third pillar' with its own rules and methods (distinct from pure Community law), such as common positions, joint actions and international conventions. A clear example of a legal measure made by an institution with the aim of improving co-operation in civil matters at this stage is the Joint Action 96/277/JHA of 22 April 1996 concerning liaison magistrates⁵.

B) THE AMSTERDAM TREATY

Given the importance of the Treaty in this particular area, it is worthwhile to examine it separately, depending on whether the context is co-operation in civil or criminal matters.

The Treaty of Amsterdam took co-operation in civil matters into the Community sphere of influence, as the Treaty Establishing a European Community included a new Title IIIa, Article 73.i which provides that: In order to establish progressively an area of freedom, security and justice, the Council shall adopt: (c) measures in the field of judicial cooperation in civil matters as provided for in Article 73.”.

This provision established that any measures regarding judicial cooperation in civil matters with cross-border repercussions that were adopted in accordance with Section 73 (regulating the procedure for adopting decisions initially by unanimity of the Council and after five years by qualified majority with the variants provided for in Section 189 B of the Treaty) and as necessary for the correct functioning of the internal market, should include:

a) improving and simplifying:

- Ⓢ the system for [cross-border service](#) of judicial and extrajudicial documents;
- Ⓢ [cooperation in the taking of evidence](#);

As commented below, it should be borne in mind that Art. 2.1. of the Joint Action states that the EU liaison magistrate was not only created with a view to improving co-operation in criminal matters, but also “...where

© The [recognition and enforcement of decisions in civil and commercial matters](#), including decisions in extrajudicial cases.

(b) promoting compatibility of the rules applicable in Member States concerning conflict of laws and jurisdiction;

(c) eliminating obstacles to the smooth running of civil proceedings, if necessary by promoting the compatibility of civil procedure rules applicable in Member States.

This legal framework (a good example of the incorporation of this area into Community law) provides the background to recent successful legal action by the European Commission, which has brought about crucial changes based on increased flexibility and speed.

Until the Amsterdam Treaty was signed, the principal means of developing judicial co-operation in civil and commercial matters was through international conventions between EU Member States (the aforementioned Brussels Convention of 1986, the Rome Convention of 1980 on the Law Applicable to Contractual Obligations, the 1997 Convention on the service of judicial and extrajudicial documents in civil or commercial matters or the 'Brussels II' Convention of 1998 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters).

This method is particularly inflexible, as a convention may only be amended by means of a further international agreement between the relevant Member States, thus requiring the same degree of consensus achieved for the original convention.

In contrast, the Amsterdam Treaty and the resulting incorporation of these matters completely into Community Law meant that the usual Community legislative mechanisms (Regulations, Directives and Decisions) were fully operative and

appropriate, civil matters”. +

could therefore be amended with greater ease, although a five-year transition period was established during which it would still be necessary to act by unanimity.

Within this context an Action Plan was drawn up by the Council and Commission 'on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice'⁶.

In civil matters, the Plan put forward the following proposals -

- 1) Finalise work on the revision of the Brussels Convention and the parallel Lugano Convention.
- 2) Draw up an instrument to regulate the law applicable to non-contractual obligations.
- 3) Review the Rome Convention of 1980 on the law applicable to contractual obligations.
- 4) Examine the possibility of applying the concept of the European Judicial Network in criminal matters to civil proceedings.
- 5) Work on an instrument to determine the law applicable to divorce.
- 6) Draw up an instrument on non-judicial systems for the resolution of disputes.
- 7) Regulation of international jurisdiction, applicable law, recognition and enforcement of judgments relating to matrimonial property regimes and those relating to succession.
- 8) The approximation of rules on civil procedure.
- 9) International cooperation between courts in the [taking of evidence](#).
- 10) Approximation of certain areas of contractual law, specifically the creation of a uniform Private International Law applicable to the acquisition in good faith of corporate movable property.
- 11) Create a European Enforcement Order.

⁶ Official Journal C 19/01, 23/1/1999.

C) POST-TAMPERE DEVELOPMENTS

Looking back after several years of hard work, focusing on the field of civil law where, unlike in criminal law there is still strong resistance from national governments, a comparative study of the evolution of the results set out in the six-monthly reviews published by the Commission to monitor progress in creating an area of freedom, security and justice in the European Union⁷ it must be admitted that the European Commission has managed to achieve substantial progress in a difficult environment and in the last five years⁸ has decisively contributed to the implementation of the above-mentioned Action Plan. The balance is clearly favourable: in civil matters, all the provisions have been put in practice through secondary regulations (an expression of communitarisation).

Although it is true, as the European Commission acknowledges in its final analysis of 2 June 2004, that 'the legal and institutional constraints of the current Treaties, where unanimity in the Council generally remains the rule...' and that 'the Member States are sometimes reluctant to cooperate within this new European framework when their interests are at stake' which represent obstacles to the desired goal of a shared judicial area, the achievements are nevertheless clear.

And one of those achievements is at the very core of this paper: i.e. the establishment, within the framework of institutions promoting co-operation, of a European Judicial Network '*as exists in criminal matters*', this goal being achieved in Council Decision of 28 May 2001 establishing a [European Judicial Network in](#)

⁷The official web page created by the European Commission at http://ec.europa.eu/justice_home/doc_centre/scoreboard_en.htm enables visitors to track the progress of several measures leading up to the final report. The assessment announced the creation of a public consultation process, to commence imminently, for EU citizens and interested parties, and had regard to other institutions such as the European Parliament. The Communication also includes a final, updated Tampere scoreboard.

⁸.It has not been in vain, according to the results of the *Flash Eurobarometer* 'Nine citizens out of ten advocate judicial co-operation in civil matters, in particular family matters, and the equal rights of defence in all Member States'.

[civil and commercial matters](#)⁹, forming part of a group of institutions intended to exploit the potential of the various existing resources referred to above.

The new [European Constitution](#), particularly the express references to judicial cooperation in civil matters in Article III-170, ensures that cooperation in this area in its broadest sense acquires constitutional status while at the same time providing exciting new spaces for European cooperation in civil matters with a focus on new issues.

III INSTITUTIONAL RESOURCES OR BOOSTING AGENTS FOR CIVIL COOPERATION

An initial look at these institutions or resources may suggest that there is actually a lack of institutional mechanisms to speed up and coordinate cooperation: it is not yet possible to talk about a real European judicial area and the intention is, with these mechanisms, to promote a European culture of assistance in the field of the Administration of Justice.

Structures of online agents or contact points are a logical expression of the nineteenth century knowledge society. In the sphere of civil and commercial judicial cooperation, institutional mechanisms to speed up and coordinate cooperation act as practical intermediaries who aim to make judicial assistance between different bodies of the member states more viable. Currently, these agents do not extend their support to other legal operators (lawyers, solicitors, notaries, etc.) for judicial or legal cooperation in the broadest sense.

If we examine the location and structure of the institutions for the promotion of cooperation, three distinct types can be discerned: *bilateral* institutions (e.g. liaison magistrates), *diffuse* institutions (such as networks) and finally, *concentrated*

⁹ Official Journal L 27/06/01

institutions, of which there are currently no examples at a European level in respect of civil matters, unlike for criminal matters, where [Eurojust](#), a mechanism for criminal co-operation, has been established.

These institutions have until now played their role of reinforced cooperation mechanisms well. Chronologically, according to the publication dates of the EU instruments that legally endorse them, they are: Liaison Magistrates and European Judicial Network in Civil and Commercial matters. Outside the strict EU framework, institutional resources have been used both on a national (internal networks in certain member states such as the Spanish Judicial Network) and international scale, (such as the IberRED [Latin American Network for International Judicial Cooperation](#)).

3.1. Liaison Magistrates

The liaison magistrate, created by the Joint Action of 22 April 1996¹⁰, is one of the first institutions to operate within the first pillar of Maastricht, and was created, as previously commented, at a time when co-operation in civil matters had yet to be incorporated into Community law.

The principal aim was to improve judicial co-operation in criminal matters '**and, where appropriate, civil matters**'. As a result, although virtually all liaison magistrates appointed to date have been public prosecutors, judges or other court staff with a criminal background, the promotion of civil co-operation is not, in principle, excluded from their remit.

Art. 1.3 of the Joint Action provides that the liaison magistrates are intended to 'increase the speed and effectiveness of judicial cooperation and to promote the pooling of information on the legal and judicial systems of the Member States and

¹⁰ Official Journal L 105, 27/04/1996

¹¹ Clause introduced in art. 2.1. of the Common Action.

to improve their operation'. It is important to emphasise, with respect to the following institution, i.e. the Judicial Network in civil matters, that the 1996 Joint Action simply created the framework which enabled Member States to send or exchange judges or court officials with experience in international judicial co-operation. The actual appointment or exchange of personnel therefore took place under *ad hoc* bilateral agreements between the States in question, i.e. the Joint Action is no more than a source of reference on which to base mutual agreements to appoint officials.

When referring to the magistrate's powers and functions, the Joint Action includes 'any activity...' which promotes and accelerates all forms of judicial cooperation in criminal and civil matters. Furthermore, the Action provides that, under the bilateral agreements, any additional activity connected with the exchange of information, statistics and legal data bases of the States concerned may be included to promote mutual understanding of the legal systems.

In reality, however, adoption of the figure of the liaison magistrate, brought into being when the creation of an area of freedom, security and justice was in its infancy, has been uneven within the EU. Taking Spain as an example, the country had no more than two liaison magistrates in 2005, in Paris and Rome, and had three EU magistrates working at the Spanish Ministry of Justice (from France, the UK and Italy). In any event, given that the results of the scheme have been good, and perhaps because of the improved status of *diffuse* co-operation mechanisms such as networks within the EU, it has prompted various countries to export the system beyond EU frontiers and enter into bilateral agreements to appoint liaison magistrates in other countries¹².

¹² Perhaps the most notable case in this respect is France, with liaison magistrates assigned to the USA, Russia, Morocco and the Czech Republic, before it acceded to the EU. In Spain, after many years with only two liaison magistrates designated in two Member States, the Ministry of Justice has broken with this pattern and has designated its first liaison magistrate in a non-EU country, principally with the intention of strengthening the practical application of the judicial co-operation convention signed with Morocco in 1997.

3.2. The European Judicial Network in Civil and Commercial Matters

a. The Creation of the Network

The Network can be traced back to Autumn 1999, when the European Council met in the city of Tampere in Finland and laid the foundations for the *European Judicial Area*. The Heads of State or Government stressed that individuals and businesses should not be prevented or discouraged from exercising their rights nor face insurmountable obstacles caused by the incompatibility or complexity of legal and administrative systems in the Member States. They consequently invited the European Commission to submit proposals in various areas of judicial co-operation in civil matters, including the issue of access to justice.

In view of the success enjoyed by the European Judicial Network in Criminal Matters, it was decided to extend the scheme to the field of international judicial co-operation in civil matters, providing it with formal recognition in the Council Decision of 28 May 2001 as part of the goal of establishing an area of freedom, security and justice which guarantees the free movement of people. As we have seen before, this entails an inclusion in the first pillar which has several consequences on different levels, of which we will focus on the two most visible:

- The legal instrument constituting the Network takes the form of a 'Council Decision', which is strongly associated with the Community.
- It is the European Commission, rather than the Council of the EU, which 'adopts' the Network and acts as its Secretariat.

The reason behind this is the need to reinforce judicial co-operation in civil matters, which is a key element in the creation of a European judicial area and in the overall framework of the "Council and Commission Action Plan on how best to implement the provisions of the Treaty of Amsterdam for the creation of an area of freedom, security and justice", adopted by the Council on 3 December 1998 and

subsequently approved by the Vienna European Council on 11 and 12 December 1998¹³.

b. Aims.

Unlike the EJM in criminal matters, where the centre of gravity resides, in practice, in the public body which has powers in the Member States in respect of international judicial co-operation in criminal matters (whether this be a judge, public prosecutor, the Police or other state body), in the civil EJM, the 'centre of attention' is the citizen seeking access to justice, who is to obtain 'tangible benefits'.

In the words of the Commission, the principal aim is 'to make life easier for people affected by litigation with cross-border implications'¹⁴.

In order to achieve this, a dual role was established:

1. *Operative (for judicial bodies)* With the aim of improving, simplifying and expediting effective judicial cooperation between the Member States in civil and commercial matters, both in those areas covered by valid instruments and in those where no such instruments exist.
2. *Informative* (for citizens). To establish and maintain an information system for use by the general public.

c. Geographical scope.

The Decision applies to all Member States except Denmark. This particular Member State, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty

¹³ The Action Plan states that 'reinforcement of judicial co-operation in civil matters represents a fundamental stage in the creation of a European judicial area which will bring tangible benefits for every Union citizen'.

establishing the European Community, did not participate in the adoption of this Decision, and is therefore not bound by it nor subject to its application.

d. Composition (Art. 2)

The founding Decision establishes four components:

- The Contact Points, which, as in the Network in criminal matters, became the **instrument's key figure**. Unlike the Judicial Network in criminal matters, the Decision tends to restrict the number of contact points per country to one, or a limited number depending on the specific characteristics of each country¹⁵.
- Central bodies and central authorities provided for in Community instruments, instruments of international law or rules of domestic law. This usually refers to the Ministries of Justice in their role as Central Authority.
- The liaison magistrates to whom Joint Action 96/277/JAI applies, who may also have responsibilities, as we have seen, for civil matters.
- Any other appropriate judicial or administrative authority with responsibilities for judicial cooperation in civil matters¹⁶.

The European Commission's desire to give added value to judicial co-operation, complementing the tasks assigned to the central authorities, has been a constant aspect of the Network since its inception. In this aspect as in so many others, those who designed this Community instrument may have taken into account the knowledge gained from the earlier European Judicial Network in criminal matters and strengthened the new institution's ties to the feat of reinforced co-operation, with Art. 2 differentiating the contact points, when establishing the composition of

¹⁴ Leaflet published by the OPOCE: "Civil justice within reach".

¹⁵ As observed below, Spain can be considered an archetypal case as it was the first country, followed by Portugal, to designate contact points in co-operation in civil matters in bodies other than the Ministry of Justice, i.e. in the judiciary's governing body (in Spain this is the *Consejo General del Poder Judicial*).

¹⁶ In France this might be the *hussiers de justice*, and in Spain, the *secretarios judiciales*. See paragraph g) of this section.

the Network, from the central authorities and other components. The Network's Secretariat subsequently went as far as to emphasize, in the *Guide to How the Network Operates in the Field of Co-operation*¹⁷ that even though the Member States might retain their freedom to designate central authorities as contact points, in doing so they should be fully aware that 'contact points and central authorities are intended to carry out quite distinct tasks'.

The Network's great debate at present is whether to open up to professions other than those of judicial operators, to include Lawyer Associations, Notaries and Registrars. This extension to other members is consistent with the open spirit of the civil and commercial Network, which includes the citizen in general amongst its beneficiaries, unlike the criminal network.

e. Contact points (Art. 5)

The role of the network

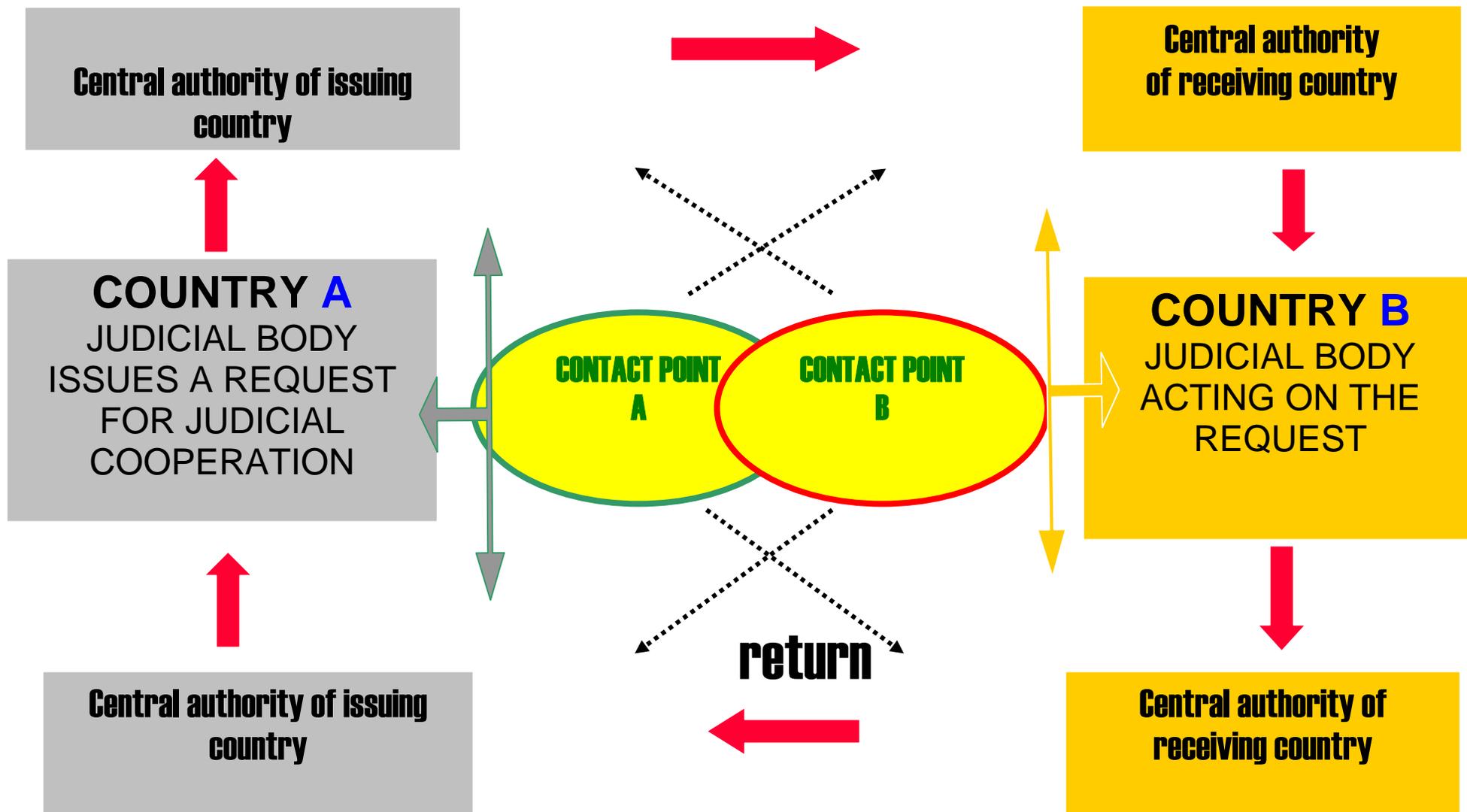
The various components of the Network set out in Art. 2 of the Decision are all considered to be members; they attend periodic meetings and have access to the information systems set up under the Decision. However, as commented above, the genuine and truly operative element, which is designed to offer added value with respect to the traditional intermediaries in co-operation (i.e. the central authorities), is the contact point. The following tasks are allocated to contact points:

1. To act as active intermediaries: to supply the other contact points and the local judicial authorities in their own Member State with the information needed for judicial cooperation between the Member States.

¹⁷ See paragraph g) of this section.

2. To provide advice: To assist the judicial authorities on the occasion of an international request for judicial cooperation and to seek solutions to difficulties arising out of such requests.
3. To co-ordinate: To co-ordinate the processing of requests for judicial cooperation.
4. To take part in the administration of the Network. To participate in the bi-annual meetings with the other contact points.
5. To inform and advise: To assist with the preparation and updating of the information provided to the judicial bodies and the general public, as established in Arts. 14 and 15 of the Decision.

The activity of the contact points in the types of assistance covered in Paragraphs 1, 2 and 3 in respect of the process of cross-border judicial co-operation can be illustrated in the following diagram, which demonstrates how co-operation is reinforced by the contact points on the occasion of an request for judicial co-operation between Member States.



Meetings

The members of the EJM in civil and commercial matters exchange experiences and consider new co-operation strategies in two kinds of meeting: ordinary meetings between contact points and plenary meetings attended by all the Network's members. The contact points periodically hold meetings in Brussels (at least once every six months) on dates set by the Commission. Pursuant to Art. 10 of the Decision, the aim of these meetings is -

- a) *to enable the contact points to get to know each other and exchange experiences, in particular as regards the operation of the Network.*
- b) *to provide a platform for the discussion of practical and legal problems encountered by the Member States in the course of judicial cooperation, with particular reference to the application of measures adopted by the European Community.*
- c) *identify best practices in judicial cooperation in civil and commercial matters and to ensure that relevant information is disseminated within the Network*
- d) *to exchange data and views, in particular on the structure, organisation and content of and access to the available information mentioned in Title III*
- e) *to draw up guidelines for progressively establishing the practical fact sheets provided for by Article 15, in particular as regards the subject matter to be covered and the form of such fact sheets*
- f) *to identify specific initiatives other than those referred to in Title III which pursue comparable objectives*

The Decision also provides for plenary meetings open to all the Network's members, i.e. contact points, central authorities, liaison magistrates, designated

judicial and administrative authorities, with the aim of enabling them to get to know each other and exchange experiences, to provide a platform for discussion of practical and legal problems which have arisen and to deal with any specific questions.

In any event, the Commission takes the role of chairman and provides secretarial services for all meetings, which are normally held in Brussels, drawing up the order of business, taking responsibility for taking down and drawing up the minutes, which are published on the extranet which the Commission puts at the disposal of the Network's members.

Appointment

The Decision does not specify any particular procedure for nominating contact points. It is stated in Art. 2.1(a) that the contact points shall be 'designated by the Member States'. The Decision therefore grants the right to designate contact points to each country's national government in accordance with its own domestic law. Where several appointments are made, although the number must always be 'limited', the Decision does nevertheless strive to ensure that there is sufficient coordination between the contact points thus designated. The European Commission's determination to avoid the excessive increase in national contact points¹⁸, with the resulting negative impact on operational efficiency, has led it to issue statements on several occasions praising the experience of large countries where steps have been taken to achieve the appropriate level of internal coordination. Such is the case in France and Spain, with national networks of contacts who provide support to these countries' contact points, as will be seen below at 3.2.

¹⁸ The Commission may well have taken note of the examples of France and Germany in respect of the European Judicial Network in criminal matters, where the large number of contact points can make access to the Network's intermediary more difficult.

Turning to the actual qualities required of the designated contact points, the Decision has little to say. With a view to enabling the Network to function in practice, Art. 7 nevertheless includes a minimum requirement concerning languages. The Member States are required to ensure the candidates have an adequate knowledge of an official language of the institutions of the European Community other than their own in order that they may communicate with the contact points in other Member States. The Member States are also charged with encouraging specialised language training for contact points.

The Decision provides for the possibility of designating or including specific courts with a somewhat meek declaration to the effect that judicial bodies that frequently deal with cross-border litigation may be associated with the activities of the contact points.

g. Guidelines for members of the EJM in Civil and Commercial Matters (EJMCC)

A decision was taken at the 2004 plenary meeting of EJMCC members (the first to be held outside Brussels) on 14-15 December to adopt the text which became known as the *EJM Organisational Guidelines in the Field of Co-operation*. Taking into account the role of contact points as cornerstones of the network and the informal and non-bureaucratic way that membership functions, the guidelines give norms – for general orientation and reflection - on the way that the network's contact points and members function.

The Guidelines are divided into three sections:

-  The structure of the Network in the Member States.
-  Personnel and resources.
-  Operation of the Network.

The first section concentrates on providing guidelines for structuring and co-ordinating the EJMCC's members in each individual Member State. In this respect,

although it recognises the initial aim of the Decision to limit the number of contact points, it points out that what matters is a guaranteed coordination and operational capacity of the contact points in the member states. In this way, it points to the example of the creation of internal networks to support the “central contact points”. Furthermore, the Guidelines endorse the designation of experts, where advisable, in particularly complex or specialised areas (insolvency law, family law, etc.) to serve as members of the Network.

The Madrid Guidelines make the following recommendations concerning personnel and resources -

- Ⓢ adequate resources must be allocated to the contact points to enable them to fulfil their role.
- Ⓢ members must be selected not only on the basis of their legal knowledge but also on their language abilities.
- Ⓢ while allowing for the Network's original purpose of 'giving a human face to institutional links', the Guidelines stress the advisability of ensuring continuity in the work of the contact points in each Member State.
- Ⓢ it is advisable to ensure that government ministries provide appropriate support to their national contact points.

Turning to operational aspects of the EJNCC, the Guidelines set out various rules to improve the operative response of the contact points to requests they receive for assistance (requests for information, co-ordination, advice, etc.). While not establishing any specific targets, the Guidelines state that contact points should be able to provide a prompt response to any requests for assistance¹⁹. The document focuses its attention in this section on the need to establish, albeit informally, self-assessment procedures.

¹⁹ Although the guidelines do not set any targets, it is standard practice to reply, or to announce an intention to reply, within 48 hours.

3.2. National support networks: The Spanish and French experience.

In view of the European Commission's express endorsement of the domestic networks in Spain and France, it is perhaps worthwhile providing a brief description of the networks and the manner in which they interact with the European Judicial Network in civil and commercial matters.

3.2.1. Spanish Judicial Network, ([REJUE](#)).

As commented above, the main identifying characteristic of Spain's membership of the European Network is the domestic network of judges with expertise in international judicial co-operation who, while continuing their judicial work, fulfil a similar role in each Autonomous Community to that of the contact points at national level. The existence of this structure has enabled Spain to integrate this system into the European Judicial Network in civil and commercial matters, under the aforementioned Art. 2.1(d) of the Decision.

a. Background

The creation of the Spanish Network is closely linked to the launch of the European Judicial Network in criminal matters in 1998. When the Network in criminal matters began to operate, two contact points at the General Council of the Judiciary were designated, to act as 'active intermediaries' in the promotion of international judicial co-operation pursuant to the provisions of the 1998 Joint Action governing the Network in criminal matters. Given the magnitude of the task, however, steps were taken to create a lower level network within the General Council charged with assisting in the work of the contact points already operating within the General Council and staffed by judges in locations throughout the country.

With this aim in mind, a plenary meeting of the General Council of the Judiciary on 14 April 1999 approved the 'Plan to Strengthen the European Judicial Network

Contact Point' establishing a group of judges with specialist experience of international mutual legal assistance located at points throughout the country with the purpose of providing logistical and operational support to the European Judicial Network's contact point in the General Council while also providing the advice which the General Council is obliged to offer by law in matters of international judicial co-operation.

A total of forty judges were initially selected, these being supplemented by a further twenty judges in accordance with the decision issued by the General Council at the plenary meeting held on 25 October 2000. All of these received training on civil and criminal matters.

It was intended that the 60 members of the so-called 'sub-network' (latterly REJUE) would provide coverage for the whole country in such a way that there would be at least one member in each province in order that local judges serving in Provincial courts would have at least one familiar face to turn to, by whatever available means (telephone, fax, e-mail, direct contact, etc.), with their enquiries concerning international judicial co-operation. The REJUE network currently covers approximately 85% of Spanish provinces.

This is the solution adopted in Spain in order to maximise international judicial co-operation, and it was subsequently reproduced by the Secretariat of the Spanish Public Prosecutor's Office when it set up a similar lower-level network of Public Prosecutors.

b. Structure

The structure and organisation of the REJUE network has recently been endorsed through the creation of a framework of rules in the form of a regulation sponsored by the General Council of the Judiciary giving legal backing to the Network. [Regulation 5/2003](#) of the full Council of the Judiciary, amending Regulation

5/1995²⁰ in as far as it concerned international judicial co-operation, has provided a legal basis for the institutional and operative activities of the domestic judicial network.

The Regulation divides the REJUE into two divisions, each made up of local experts in international judicial co-operation. The divisions cover the two main jurisdictional orders: Civil and Criminal. They are known by the abbreviations Civil REJUE and Criminal REJUE.

c. Civil REJUE

The civil division is made up of judges principally from the civil courts, although given the structure of the Spanish legal system, there are also judges from the employment and administrative courts.

As in the European networks, all the judges are required to have at least one EU language in addition to their mother tongue.

As commented above, all members of the domestic network are also part of the European Judicial Network in civil and commercial matters, and twenty of them form what Brussels informally calls the '*petit d*' in reference to the sub-paragraph in Art. 2 of the Community Decision which contemplates the incorporation into the Network of any other appropriate judicial or administrative authority with responsibilities for judicial cooperation in civil and commercial matters whose membership of the Network is considered to be useful by the Member State to which it belongs.

d. Geographical distribution

²⁰ Official Bulletin No. 113 4/06/03.

There must be at least one representative of Civil REJUE in each Autonomous Community. There are some Autonomous Communities such as La Rioja, Cantabria and Asturias where the population and level of cross-border court business justifies solely one local member who has a mixed role, attending to both civil and criminal matters.

e. The role of the network

The governing Regulation referred to above states that the Civil REJUE is intended to provide support at a national level to the contact points for the European and Ibero-American Judicial Networks. The Spanish network's members therefore serve -

- The EJNCC's contact points at the General Council of the Judiciary.
- The EJNCC's contact points at the Ministry of Justice.
- The EJNCC contact points from other EU Member States.
- The contact points for the Ibero-American Judicial Co-operation Network, which is shortly to become operational (it has so far been working as a provisional structure).

As with the contact points for the European networks, the role of the local representatives of Civil REJUE is to work as active intermediaries facilitating international judicial co-operation, in other words to provide information and management or support services to their colleagues, whether of a legal or practical nature, on the occasion of a request for mutual legal assistance. This support is to be given to both Spanish and foreign judicial bodies with jurisdiction in the matter.

At the same time, the network also has other, supplementary duties: training, advice, research, maintaining registers and providing an annual report.

f. The role of REJUE within the European Judicial Network in Civil and Commercial Matters

According to Art. 21 of the Decision, the Network in civil matters was to become operational throughout Europe on 1st December 2002, although the contact points had only been selected the previous semester.

There are two bodies in Spain which engage in international judicial co-operation in civil matters. One of these is the Directorate of International Judicial Co-operation at the Ministry of Justice, which has specific powers in this area. The Ministry is the Central Authority in a great many bilateral and multilateral international conventions, such as the Hague Conventions. In addition, the General Council of the Judiciary, a constitutional body, already had contact points in the European Judicial Network for Criminal Cooperation at the time of publication of the Decision creating the European Judicial Network in Civil and Commercial matters, and, according to its regulations, was in charge of (amongst other things) facilitating the active and passive international judicial assistance provided by Spanish judges and senior judges²¹.

In the case of the Spanish Ministry, in capacity as central authority and according to art. 2.1b) of the 2001 Decision, it is granted the status of member of the European Judicial Network in civil and commercial matters, which is not an obstacle to the appointment of some of its members as contact points.

Within the discretion afforded by the Decision, Spain opted for a different system which is attracting the interest of the other Member States, particularly in the new Member States²².

²¹ See, in this respect, Art. 71 and following Articles of Regulation 5/1995 of June 7th on additional aspects of judicial acts.

²² Based on the Spanish model, Portugal and Hungary have located contact points in their judiciary's governing bodies.

- ❖ The 'personified institutions' approach was adopted for the contact points, thus avoiding the individualism of the Network in criminal matters by opting to designate specific institutions, i.e. the Ministry of Justice and the General Council of the Judiciary, and to appoint named people within these institutions to have responsibility for these matters. There are a total of five such persons in Spain: three in the Ministry of Justice and two in the General Council of the Judiciary. The names and details of these people are provided in the leaflets which the European Commission has distributed amongst the various judicial bodies.

- ❖ Furthermore, Spain is one of the few Member States so far to make use of the ability to nominate judicial authorities established in Art. 2.1(d) of the Decision. Given that there was already a pre-existing domestic network of judges with expertise in international judicial co-operation called REJUE (*Red Judicial Española*), it was decided to incorporate the members of REJUE's civil division into the system of local contacts for the European Judicial Network in civil and commercial matters. This decision could not have had more positive results.

g. Support

All the contact points currently have e-mail accounts and are required to keep a register of all work undertaken in support of mutual legal assistance. At the moment, there is a separate register for each correspondent, although there are plans to provide a centralized register on an extranet.

This makes it possible to identify the geographical areas with the greatest number of queries, which will not necessarily coincide with the areas of greatest cross-border judicial business. All Civil REJUE members are part of the European

Judicial Network and therefore have access to the password-protected area of the EJNCC's web site set up by the European Commission.

The positive balance that stems from implementing this internal network in Spain has been recorded in many anonymous works which support civil cooperation, as well as, more visibly, in the excellent informative files set forth by art. 15 of the 2001 Decision, published on the Commission's website.

Finally, the vigorous nature of the REJUE cannot be totally explained without citing one specific support tool developed by the members in co-operation with the Ministry of Justice and the Public Prosecutor's Office, which is of great assistance in responding to requests for information, such as the so-called [Mutual Legal Assistance Manual](#) which provides answers concerning the process of sending and responding to requests for international judicial co-operation. The Manual is intended to provide a quick reference guide with answers to frequently asked questions in civil and criminal matters for members of the Spanish court system with responsibilities for international co-operation (judges, court clerks and public prosecutors). It also provides the necessary contextual information for co-operation in Spain, both at an institutional and operative level.

3.2.2. The French Network

The [French Ministry of Justice](#) has designated various contact points for the EJNCC. The contact points are to be found in the International Co-operation and European Affairs Directorate (SAEI) and the Central Authority itself.

In 2001 the SAEI set up a domestic network of judges taken from each *Cour d'Appel* to provide specific support to work undertaken by the French contact points in respect of co-operation in civil matters.

The members of this French network of judges with expertise in judicial co-operation in civil and commercial matters receive periodic training by means of continuing development programmes run by the French School for the Judiciary and the European Judicial Training Network. In addition, the SAEI periodically organises meetings to allow participants to exchange information and develop strategies.

The French domestic network is organised geographically based on the Courts of Appeal and it centres on facilitating international co-operation and mutual legal assistance by providing support locally to other judges and also to the EJNCC contact points.

3.2.3. International networks in other Member States

The new Member States, erstwhile candidate States, set several programmes in motion for the various groups involved in the judicial process in order to provide training and preparation for the forthcoming implementation of the Community *acquis*. Many of these activities were the fruit of bilateral projects, and many sprung from the PHARE programme through, amongst other methods, twinning arrangements between institutions, as in the Czech Republic, Hungary, Slovakia and Poland.

Poland is a particularly interesting case study in judicial co-operation, as it was very swift to set up a domestic network of co-operation specialists. On 29th June 2000 a letter was sent by the Under-Secretary of State at the Ministry of Justice to the presidents of the regional courts with a request that they designate judges in their regions who could become specialised in international judicial co-operation and inform and advise their colleagues, once trained, on litigation or other proceedings with cross-border implications. Efforts were made at the same time to

²³At this time Sub Secretary Mr. Janusz Niedziela.

prepare the Polish judiciary for its forthcoming participation in the European judicial networks.

As a result, by the beginning of 2001 Poland had already set up three domestic networks of specialists: a network of experts in EU law; an international judicial co-operation network (divided into a civil section and criminal section) and a group of human rights specialists.

Although the Civil law section of the Polish judicial network is not an integral part of the Ministry of Justice, the Ministry's Department of Judicial Co-operation and European Law provides support to the operation and development of the Network through training activities (specialist seminars and language courses) and the exchange of information. At the end of 2004, the Civil law group had 33 judges specialising in these matters.

The role of the group of specialists in civil matters is similar, to a very great extent, to the functions of the contact points in all the other networks, i.e. to inform and advise other judges in matters involving international judicial co-operation, to facilitate contacts with judges in other countries, to provide assistance to Polish judges in issuing and complying with requests for mutual legal assistance and rogatory commissions, to develop judicial training programmes on mutual legal assistance and to develop operational functions with colleagues from abroad, particularly with EJNCC points of contact.

3.4. Judicial networks outside of the European Union: The Ibero-American Judicial Co-operation Network ([IberRED](#))

The only example of non-European judicial networks working to facilitate reinforced co-operation is to be found under the aegis of the [Ibero-American Judicial Summit](#), which has overseen the creation of an Ibero-American Judicial Co-operation Network called [Iber Red](#), governed by a Regulation that is clearly modelled on the

Community legislation which gave rise to the European Judicial Network in civil and commercial matters.

The Ibero-American network is intended to improve mutual legal assistance in civil and criminal matters between countries forming part of the Ibero-American Community of Nations, and to establish a system for sharing information on their different legal systems.

Although the stated purpose of Iber Red is to facilitate judicial co-operation in civil and criminal matters amongst practitioners, judges, prosecutors and court clerks, etc. in the 22 countries forming part of the Ibero-American Community of Nations, Art. 13 of the founding Regulation does not exclude the possibility of creating links with other judicial networks outside the Community, which might also be operational in nature. Furthermore, in connection with criminal matters, the Regulation expressly refers to Eurojust and the International Criminal Court

The preamble argues that '*...civil co-operation becomes of paramount concern for all the processes of integration currently under way in Central and South American leading to the creation of major unified economic zones, although it is also a key issue in creating certainty in commercial transactions which go beyond the integrated zones, ranging from Mexico to the Southern Cone, or from the Western American Seaboard to the Eastern Atlantic, i.e. Spain and Portugal.* Nor must it be forgotten that it is essential to ensure that the Courts' decisions in family matters, including separation, divorce, alimony, custody and visiting regimes, filiations etc, can be enforced at an international level'.

The designation of members of the Iber Red is grounded in a declaration of complete respect for the domestic law of every member of the Ibero-American Community, particularly for the role of the national governments in this area, which has not yet been affected by the far-reaching process in other countries of increasing the presence of the judiciary in matters of co-operation. As a result,

the Central Authorities play a leading role in mutual legal assistance and the Network therefore includes representatives of the Ministries of Justice and Central Authorities and also of the Judiciary and the Public Prosecutor's Office.

The Iber Red secretariat is run by the General Secretariat to the Ibero-American Conference of Ibero-American Ministries of Justice and the Regulation very closely follows, as commented above, EC Council Decision of 28 May 2001 in respect of the internal operation of the Network, which is basically achieved through contact points.

3.5. Technical Support

This section includes practical instruments and tools which are made available to the contact points or practitioners in general to ensure they can fulfil their role as efficiently as possible.

As with the European Judicial Network in criminal matters, the Civil Network is setting up supplementary support resources with the overall aim of improving access to cross-border justice, including several tools which the Network has made available on the Internet: a web site providing general information, an extranet for members of the Network and a non-password site to provide help in drawing up applications for assistance and to facilitate the recognition of judgments via an automated system for identifying judicial districts and European judicial bodies (the Judicial Atlas).

3.5.1 . [Publicly-accessible information system.](#)

The Tampere European Council recommended the creation of an easily available information system to be maintained and updated by relevant national authorities. The Decision which establishes the Network dedicates the whole of Title III to this information system, which aims to publish two types of information: (Art. 13.

Information disseminated within the Network, with access limited to contact points and other designated authorities; and Arts. 14-18, information available to the general public, i.e. an open-access information system available on the website: http://ec.europa.eu/civiljustice/index_en.htm.

The open information system, aimed at practitioners, users of the Justice system and European citizens in general, offers information of the following nature:

a) Legislation and case-law in the area of judicial cooperation in civil and commercial matters.

- Community instruments which are in force or in preparation and national measures for the domestic implementation of the instruments in force.
- International instruments to which the Member States are parties, and declarations and reservations made in connection with those instruments.
- A selection of Community case-law in these matters.

b) General information provided to facilitate access to cross-border justice: these are the so-called *fact sheets*, which are principally intended to facilitate the process of cross-border litigation by providing practical information in non-technical and easily understandable language. The Decision establishes, on a *numerus apertus* basis, a total of eight fact sheets in art. 15; however currently available on the website, in various stages of development and translation into the EU official languages, are the following fact sheets relating to the legal and judicial systems in each of the Member States:

- [Legal systems](#)
- [Organisation of justice](#)
- [Legal Professions](#)
- [Legal Aid](#)

- [Jurisdiction of the Courts](#)
- [Bringing a case to court](#)
- [Procedural timeframes](#)
- [Applicable law](#)
- [Service of documents](#)
- [Taking of evidence and mode of proof](#)
- [Interim measures and precautionary measures](#)
- [Enforcement of judgments](#)
- [Simplified and accelerated procedures](#)
- [Divorce](#)
- [Parental responsibility](#)
- [Maintenance claims](#)
- [Bankruptcy](#)
- [Alternative dispute resolution](#)
- [Compensation to victims of crime](#)

It is important to emphasize that the information is being supplied and updated by members of the EJNCC in each Member State, with the Network's secretariat, provided by the European Commission, undertaking the task of co-ordinating and publishing the information. The Commission has also published leaflets in all official EU languages explaining the information in clear, non-technical language, although they are in no way intended to supplant the advice of legal professionals²⁴.

²⁴ The leaflet explains the content of the fact sheets as follows:

1. Legal aid

If someone does not have sufficient financial resources to meet the costs of a court case, he may apply for legal aid, both in order to obtain advice before issuing proceedings and to obtain representation before the courts. Nevertheless, the rules for obtaining legal aid, and the type of aid itself, frequently vary between one country and another. If you apply for legal aid in a Member State where you are not a resident, European law gives you certain rights.

2. Divorce

Divorce dissolves the marriage bond and therefore has legal consequences. As a result, a divorce may only be granted after the appropriate procedure has been followed. This section provides information on European and national law on divorce.

3. Parental Responsibility

When parents cohabit, they usually have joint parental responsibility for their children. However, if the parents divorce or separate, it is necessary to establish precisely how they will exercise that responsibility from that moment on, and, firstly, who will have custody of the child.

4. Maintenance claims

In general, the law obliges members of the same family to provide mutual assistance: parents must feed, educate and maintain their children; children must assist their parents in case of need; a divorced spouse may be obliged to pay maintenance to a former spouse; this obligation may be discharged by means of periodic maintenance payments. The following pages contain information on the relevant law in this area.

5. Compensation to crime victims

This section provides information on the possibility of obtaining compensation for injuries and loss caused by a crime.

6. Bankruptcy

This section has information on national, European and international law relating to bankruptcy.

7. Alternative dispute resolution

If you cannot resolve a dispute amicably, you may always turn to the courts, but you could also consider other dispute resolution procedures such as mediation or conciliation. This web site can help you to choose between the various routes available to you in each Member State.

8. Jurisdiction of the courts

If you want to initiate legal proceedings, you will have to identify the court that is competent to deal with your case. This is not always an easy task, and if the litigation has international elements it becomes even more complicated. This section offers a few clues to point you in the right direction.

9. Organisation of justice

All the Member States have a range of courts, each with a well defined jurisdiction. This web site helps you to gain a better understanding of how each Member State's court system is organised. There are also European and international courts.

10. Bringing a case to court

The following pages explain how to bring a case to court. In order to do so, you must follow certain procedural rules, which change according to the case at issue.

11. Legal professions

If you are in dispute with another person and one of you decides to take the case to court, you will meet a variety of members of the legal professions, judges, the public prosecution services, lawyers, court clerks, court officers, etc. Their role and the rules which govern them can vary considerably from one country to another. This section provides information on these professions.

12. Simplified and accelerated procedures

All Member States try to create specific procedures which may help you obtain a judgment easier and faster. This is particularly true for cases involving unpaid debt or minor amounts of money.

13. Service of documents

The parties send each other various judicial or extrajudicial documents. The best approach is to ensure only the appropriate procedure is applied. This web site can help you do this.

14. Taking of evidence and mode of proof

If you initiate legal proceedings, it is usually necessary to present evidence to the court in order to prove your claim. All the Member States have rules on the taking of evidence which are designed to guarantee that the judge is put in a position in which he can establish the facts of a case as precisely as possible. This section sets out those rules.

15. Interim measures and precautionary measures

The claimant wants to be sure that when the defendant is ordered to pay him a sum of money the latter has not become insolvent by the end of the proceedings in order to put his assets out of the reach.

In order to ensure this does not happen, it is advisable to ask the court to grant precautionary measures.

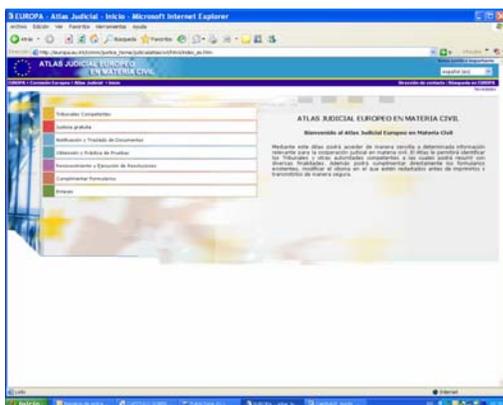
16. Enforcement of judgments

Once one of the parties has won the court case, if the other party refuses to acknowledge the judgment given against him it might be necessary to apply to the relevant authorities to force the other party to comply. *In*

3.5.2. Restricted-access information zone: CIRCA

CIRCA is a restricted information programme within the Network, established by art. 13 of the Decision that created the EJNCC. Access is limited to the contact points and other appointed authorities pursuant to art. 2.1 of the Decision, (such as civil EJNCC members). The system functions through an extranet called [CIRCA](#) a platform which enables those with access rights to obtain the names and contact details of the other contact points and authorities designated by the Member States under Art. 1., as well as other details such as the communications media at their disposal, languages spoken and their specific functions within the Network.

At the same time, the EJNCC's virtual private space also holds information considered relevant by the contact points and the European Commission (minutes of meetings, preparatory work for the fact sheets, documents, etc). Furthermore, CIRCA provides a secure electronic system for the exchange of information between contact points or between contact points and the Commission.



3.5.3. European Judicial Atlas

The [European Judicial Atlas in civil and commercial matters](#) is intended to transfer the experience of an electronic tool for the virtual

other words, you can ask for enforcement, which often consists of the official seizure and sale of the debtor's goods or property. These procedures also vary from one Member State to another.

17. Applicable law

If several different laws are applicable to the same situation because the case has connections with several different countries, there are rules – called 'conflict of laws' – which determine which country's law the court should apply.

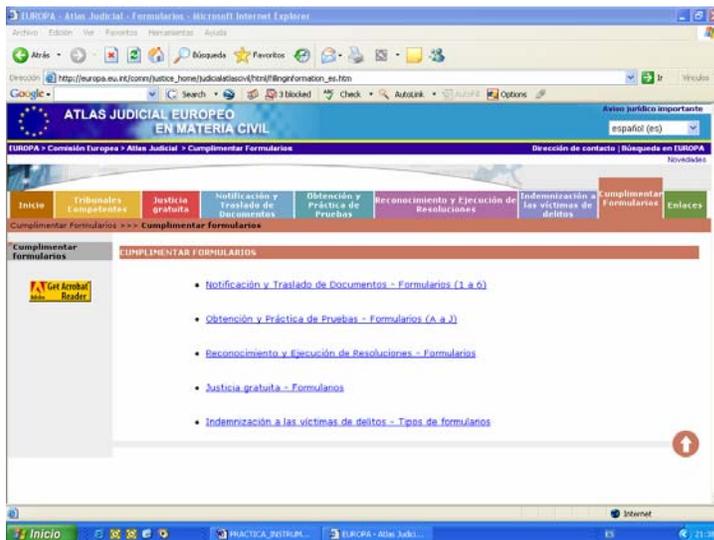
18. Legal order

This section provides information concerning the various 'sources of law', i.e. which legal instruments form the basis of the law, which authorities create the laws and regulations, and whether one law may prevail over another, etc.

²⁵ See http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

identification of locally competent judicial authorities for the receipt of rogatory letters and requests for mutual legal assistance already used by the European Judicial Network in criminal matters, which had such positive results for the operational functioning of the Network in criminal matters, created under the Joint Action of 29 June 1998.

Thus, the EJNCC has transferred this experience of an electronic programme for the virtual identification of the judicial authorities for the receipt of rogatory letters and applications for judicial assistance into the European Judicial Atlas for Civil and Commercial matters²⁷ which operates with no restrictions. The result is a web page which is accessible by the general public and which not only provides the necessary information to identify and obtain the details of the courts which receive requests for mutual legal assistance within Europe in respect of the service of legal documents and gathering evidence, but also includes information on the authorities issuing requests for assistance and, strictly speaking, beyond the field of mutual legal assistance, it provides details of the Courts which are competent to hear cases involving transnational civil litigation.



Another advantage of the European Judicial Atlas is the ability to send and fill in application forms for international judicial assistance online, using standardised formats established by EU regulations regarding the service of documents, taking of evidence

and recognition of judgments.

²⁶ See page <http://www.ejn-crimjust.europa.eu/>

This tool has been developed further in the civil EJNCC than in the criminal network; as are the civil [forms](#) which are fully adapted to the models established by EU Regulation and whose official fields can be automatically translated and authorised (although not the content). On the other hand, the criminal EJM equivalent product, [Compendium](#), is still in development and the application form for criminal judicial assistance is supplied to judicial operators on a voluntary basis.

IV CONCLUSION: THE EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS – A POSITIVE EXPERIENCE

Almost three years after the Network came into being, it has clearly shown itself to be an extraordinarily dynamic institution. Over this period, the Network has fulfilled its duty of facilitating access to justice on a Europe-wide basis, with the following steps, amongst others:

- It has set up a web site which provides a publicly accessible information system. Its main objective forms part of the Network's overall goal of making life easier for those who are affected by litigation of whatever kind with cross-border implications, i.e. which affects more than one Member State. The multilingual database which has been created deserves public recognition.
- A private information network called CIRCA has been made available to the members by means of an extranet.
- A multilingual poster has been published and widely disseminated in the Member States to advertise the web site and the URL.
- Leaflets have been published and distributed, some for legal practitioners and the others for the general public to bring the Network to their attention.

²⁷ See http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

- Numerous publicity campaigns have been promoted and created through programmes providing Community financial support, seminars and meetings, etc.

Turning to the Network's operative functions, the contact points have undertaken their tasks with the required flexible, informal and non-bureaucratic attitude and have provided support and assistance to Central Authorities and judicial bodies alike. The Network has played a facilitating role both in respect to specific instruments or regulations which include judicial cooperation mechanisms, and in those cases where regulations do not contemplate procedures for mutual legal assistance but rather judicial recognition as in the Brussels I Regulation. At the same time, the contact points have also developed their assistance and mediation roles in those cases where neither EU regulations nor traditional international instruments are applicable.

Finally, the Network has taken a significant role, offering its services, knowledge and abilities, in the preparation of new legal instruments by EU institutions. It is in a privileged position to offer the knowledge it has gained to assist in both the adoption of new legislative acts and also the amendment of Community law.