



CONSEJO GENERAL DEL PODER JUDICIAL
ESCUELA JUDICIAL



Red Europea de Formación Judicial (REFJ)
European Judicial Training Network (EJTN)
Réseau Européen de Formation Judiciaire (REFJ)

MODULE III

UNIT XII

Judicial cooperation in the EU.

The institutions behind it:

European Judicial Network in Civil and Commercial Matters. Liaison Magistrates. Internal judicial networks: REJUE, REDUE, Network of Court Clerks, Network of Prosecutors. European Network of Councils for the Judiciary.

Catalogue of online instruments:

European Judicial Atlas, Vademecum, other resources.

ONLINE COURSE
The judge in the European Judicial Area: Civil and Commercial matters
2011 EDITION

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Con el apoyo de la Unión Europea
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SUMMARY

The EU was founded following the Second World War with a clear aim of promoting [economic cooperation](#). What started out as a purely economic union has evolved into an organisation that is active on all fronts, from [development and cooperation](#) to [environmental policy](#), not forgetting security and defence and without abandoning the primary objective of completing the creation of a single market with the “four freedoms” of movement: goods, services, persons and capital.

After the Treaties of Maastricht of 1993 and Amsterdam in 1999, which amend the Treaty Establishing the European Community, the essential programmatic principle of the European Union has been the maintenance and development of an area of freedom, security and justice in which the free movement of persons is guaranteed. With a view to progressively establishing said area, the Community is adopting the necessary measures in the field of judicial cooperation in civil matters to ensure the proper operation of the internal market.

These measures, resources or tools in the field of judicial cooperation in civil matters are not limited to the traditional regulatory instruments, essential to regulate the different spheres of such cooperation yet insufficient, but are extended to design, execute and place at the disposal of EU citizens in general, and in particular of legal professionals, a series of mechanisms that facilitate the use of the regulatory instruments throughout the Community and which are designed to remove the obstacles to direct judicial cooperation between judicial authorities and those others that hinder and above all delay civil and commercial proceedings when there is an extra-territorial element.

It is these resources, different to the regulatory instruments, to which the content of this unit is devoted.

NOTE: Some of the links in this topic are restricted access and/or are only available in Spanish.



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EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS

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

Where does it originate?

The European Judicial Network in Civil and Commercial Matters (EJN-civil) was created by virtue of a Decision of 28 May 2001, subsequently amended by Decision 568/2009 of the European Parliament and of the Council, and began operating on 1 December 2002.

Denmark did not participate in the adoption of Council Decision 2001/470/EC.

It is a body with a flexible, non-bureaucratic structure, which operates in an informal fashion and is designed to simplify judicial cooperation between Member States. It provides official support to the central authorities in accordance with its instruments, facilitates relations between the different courts in matters of judicial cooperation, promotes cooperation between legal professionals and carries out a truly relevant labour of public information.

What are its aims and tasks?

The creation of the European Judicial Network is a product of the idea that the gradual establishment of a true area of justice in Europe implies the need to enhance, simplify and speed-up judicial cooperation between Member States in civil and commercial matters. The Network represents an original, practical response to the stated aims and also to those others of facilitating access to justice and enhancing judicial cooperation established in the Tampere Council in Finland in 1999.



The Network's activities have been designed with a view to promoting collaboration procedures where jurisdictional matters cross state borders and to facilitate requests for judicial cooperation between Member States, in particular when Community rules or international instruments apply.

Who are the members of the European Judicial Network?

The Network is comprised of contact points designated by the Member States, as well as:

Liaison Magistrates.

The central bodies and authorities set out in Community legislation, in the international instruments to which the Member States are also party or in the internal law of said states.

Members of other judicial or administrative authorities responsible for judicial cooperation in civil and commercial matters where deemed appropriate by the Member State.

Professional associations that represent the legal professionals who contribute directly to the application of Community acts and international instruments on judicial cooperation in civil and commercial matters on a national level in the Member States.

On 30 September 2009, the network was comprised of approximately 418 members distributed across the four categories mentioned above. At present, 83 contact points have been proposed by the Member States.

What is the practical use of the EJTJN?

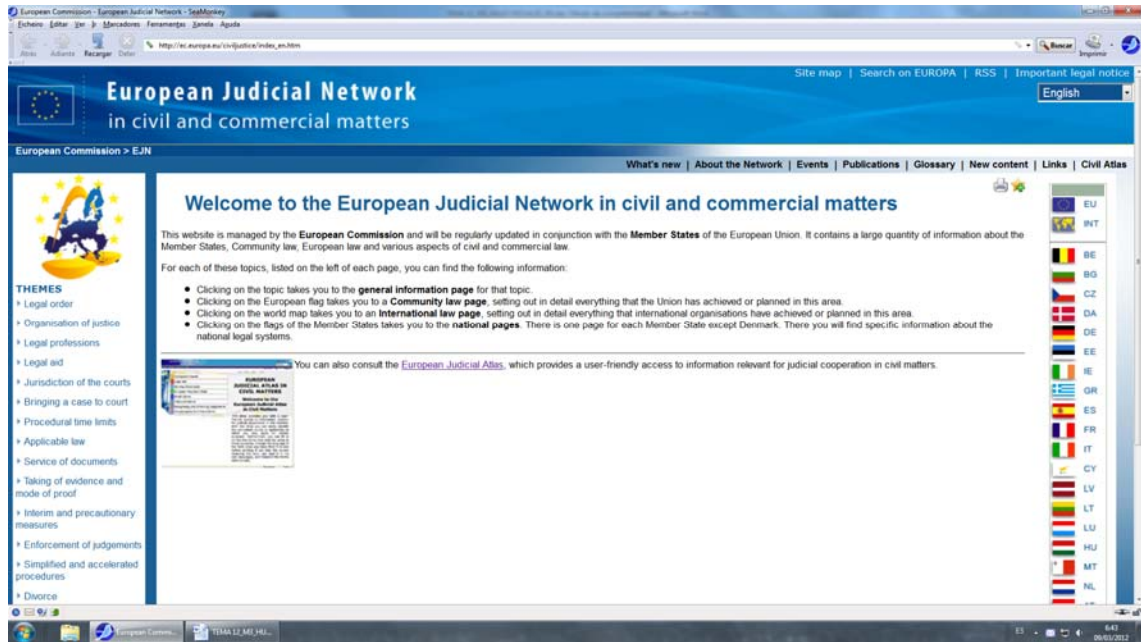
This practical use has a dual dimension:

On the one hand the work of providing public information which is available on the Network's website:

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

This page offers (in the left-hand column) a series of areas on which information has been gathered and the right-hand column allows the user to select the country in relation to which he/she is looking for specific information or the European Union or the international sphere.





This page also provides direct access to the European Judicial Atlas in civil matters, an instrument we will be dealing with separately due to its practical importance.

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

In a second dimension, the EJN offers the possibility to have direct, personal access to the contact points designed by each of the Member States in order to avail of their direct intervention to obtain the necessary collaboration or coordination for speeding-up international judicial cooperation.

The data that allows access to the different contact points, in the case of Spain, can be found on the website of the Vademecum (<http://www.prontuario.org/>) and more specifically, in the tab at the top entitled "Directorio" and then, via the left-hand column, in the section on the European Judicial Network in Civil and Commercial Matters.

LIAISON MAGISTRATES *

Origins:

The role of liaison magistrate was created by a Joint Action of 22 April 1996 designed "to improve judicial cooperation, in both criminal and civil matters", according to the Whereas of said provision.



Aims and tasks:

The main aim is to encourage and accelerate all forms of judicial cooperation in criminal “and, where appropriate, civil matters” (Article 2.1). This regulatory provision means that, in practice, all liaison magistrates appointed to date are prosecutors, senior judges or other officials with a background in criminal matters. However this does not prevent them from facilitating cooperation in civil matters.

According to article 1.3 of the Joint Action, the role of the liaison magistrates is designed 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 to improve their operation”. It is important to highlight that the 1996 Joint Action only created the framework that made it possible to send or exchange senior judges or officials with experience in international judicial cooperation between Member States. That is, the actual appointment or exchange is performed on the basis of *ad hoc* bilateral agreements between the interested states.

Practical use:

The reality is that the role of liaison magistrates, which belong to an initial stage in the construction of a space of freedom, security and justice, has been implemented to differing degrees around the European Union. Looking at the case of Spain, in 2011 Spain has only appointed liaison magistrates in Paris and Rome, while there are three European magistrates working in the Spanish Ministry of Justice, (from France, the United Kingdom and Italy).

The legal operator can directly contact the liaison magistrate appointed by the Spanish state, or one appointed by another state to perform his/her duties in Spain, in order to obtain their assistance and collaboration in matters of jurisdictional cooperation.

The contact details of liaison magistrates in Spain or appointed by Spain can be found on the website of the Vademecum mentioned earlier (<http://www.prontuario.org/>), tab at the top entitled “Directorio” and left-hand column for liaison magistrates.

INTERNAL JUDICIAL NETWORKS:

REJUE, REDUE, RESEJ, Network of Prosecutors. European Network of Councils for the Judiciary.



REJUE (Spanish Judicial Network).

Origins.

Although the Spanish Judicial Network for International Judicial Cooperation came into existence on foot of the regulatory resolution 5/2003 of the Plenary Session of the General Council of the Judiciary, amending Regulation 5/1995, the fact is that its start-up can be dated as far back as 1999, when an idea affecting criminal matters set in motion on a European level was extrapolated to Spain.

The initial provision, which continues to inspire the current format of the REJUE, was to create a group of experts in international cooperation, spread all over the country (a network structure) with the basic role, after being trained, of providing support to the courts on all practical questions and problems arising from international judicial cooperation.

Since 2005 this body has received regulatory support pursuant to Articles 81 to 85 of the Regulation on Ancillary Aspects of Judicial Procedure, which regulate the composition and aims of the Network, the status of the members and their functions, which are summarised as the active intermediary work provided at the request of any court, central authority or Prosecutor's Office and which includes the functions of informing, advising, coordinating, if applicable, and carrying out any other activities aimed at speeding-up judicial assistance in international matters, with full respect for the jurisdictional power of the judicial bodies in question (Art. 84.1).

Practical use:

On the one hand, a personal consultation system has been introduced by means of direct access to the territorial contact point of the Network, for which legal operators are supplied with all the contact details of the territorial correspondents. In this regard, it is sufficient to visit the website of the General Council of the Spanish Judiciary (<http://www.poderjudicial.es>) and click on the "Actividades Internacionales" tab. Another alternative is the website of the Vademecum (<http://www.prontuario.org/>), the tab at the top entitled "Directorio" and left-hand column for "REJUE civil".

Meanwhile, no explanation of the role of the REJUE is complete without referring to an instrument of support and consultation, developed by its members in collaboration with the Ministry of Justice and State Prosecutor's Office, of particular relevance when it comes to processing replies to requests for information: this is the *Prontuario* or Vademecum of International Judicial Assistance which contains genuinely useful information due to its essentially



practical nature, on matters of jurisdictional cooperation, providing not just the applicable legislation, but also easily accessible schematic explanations, links for obtaining further information, etc.

REDUE (Network of Experts on EU law).



Origins

Formally speaking, the origins of the Redue can be found in a resolution of the Plenary Session of the General Council of the Judiciary of 17/5/2006, containing five articles comprising the by-laws and background of the members as well as their functions.

From a causal perspective, the reason for the creation of this body is its function to provide support or assistance to the courts in applying the Community legislation and, in particular, for the proper referral of preliminary questions to the European Court of Justice.

It is indeed up to the courts of each of the Member States to apply Community law, as there are numerous rules with direct effect, which convert the national judges into the main guarantors of respect for the law of the European Union, together with the European Court of Justice itself.

Moreover, national judges can and often must address the Court of Justice in order to refer a question on the interpretation or validity of Community law, so as to be able to check whether national law is in line with it.

With a view to facilitating the task of applying EU law and referring preliminary questions, the decision was made to create a Network of Experts on EU law.

Practical use,

The members of the Judiciary can contact the members of the REDUE directly in order to raise their questions, doubts or practical difficulties in relation to the application of Community legislation as they arise.

In order to do so, there is a consultation form on the website of the CGPJ (<http://www.poderjudicial.es/eversuite/GetRecords?Template=Extranets/Jueces/principal.htm>) under the tab entitled “actividades internacionales” and then in the section corresponding to the Network of Experts on EU law.

This Network has also prepared a practical guide for referring preliminary questions on procedural and substantive matters, material matters



(mechanisms of referral) and different suggestions on good practice in the referral of preliminary questions.

(<http://www.poderjudicial.es/eversuite/GetDoc?DBName=dPortal&UniqueKeyValue=70988&Download=false&ShowPath=false>)

Network of Court Clerks (RESEJ)

Created by Instruction 6/2010 of the Secretariat General of the Justice Department.

The creation of this Network is a direct, logical consequence of the current status of court clerks as technical-procedural managers of the Courts Service and material enforcers of judicial decisions, which entails the need to be fully and actively incorporated into the sphere of International Judicial Cooperation.

Its functions consist basically of replying to specific consultations from court clerks and contributing to the creation of instruments designed to facilitate, improve and promote International Judicial Cooperation.

The directory of members of the Network can be found on the website of the Ministry of Justice and specifically by following this link: http://www.mjusticia.gob.es/cs/Satellite/es/1215198008946/Tematica_C/121532900622/Detalle.html)

Network of Prosecutors for International Judicial Cooperation.

The Network of Prosecutors for International Cooperation was created in 2002 with a view to providing a specialist service in international judicial cooperation in each of the territorial prosecutor's offices. Instruction 2/2003 from the State Prosecutor established a Special International Cooperation Service in every Prosecutor's Office at the Provincial Courts of Appeal.

This special service is responsible, among other things, for the enforcement or at least the coordination and monitoring of all incoming letters rogatory to be executed by the Prosecutor's Office or assisting the rest of the Prosecutors in drafting outgoing letters rogatory.

The website of the State Prosecutor's Office (<http://www.fiscal.es>) provides additional information on this body.

The European Network of Councils for the Judiciary

At a meeting of the Plenary session held on 20 and 21 May in Rome, the Statutes of the European Network of Councils for the Judiciary was adopted. The founding members include the General Council of the Spanish Judiciary, which was also appointed member of the Steering Committee, together with the Councils of the Netherlands, Belgium, Ireland, Italy, France and Poland.



Its aims are, among other things, to further cooperation between its members and in particular to promote the exchange of experiences in relation to the organisation and functioning of the Judiciary and matters related to the independence of the Judiciary and other matters of common interest.

MEMBERSHIP IS OPEN TO ALL NATIONAL INSTITUTIONS OF MEMBER STATES OF THE EUROPEAN UNION WHICH ARE INDEPENDENT OF THE EXECUTIVE AND LEGISLATURE, OR WHICH ARE AUTONOMOUS, AND WHICH ENSURE THE FINAL RESPONSIBILITY FOR THE SUPPORT OF THE JUDICIARY IN THE INDEPENDENT DELIVERY OF JUSTICE.

The results of the working groups and meetings of the members of the body are available to the public on the website of the European Network of Councils for the Judiciary: www.encj.eu

OTHER USEFUL INSTRUMENTS IN THE FIELD OF INTERNATIONAL JUDICIAL COOPERATION

ATLAS JUDICIAL. (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm)

The Judicial Atlas has proven to be a genuinely valuable tool in the field of international judicial cooperation in the European Union, to the extent that it has become the main resource for overcoming the practical obstacles that arise in direct cooperation between judicial authorities.

First of all, this website supplies us with information on the Courts with jurisdiction in each and every corner of the European judicial space, which is essential for ascertaining to whom we should send a request for judicial cooperation.

We know that the aim of achieving an area of freedom, security and justice, as a programmatic principle of the European Union, has involved, among many other measures, the removal of obstacles to the proper operation of civil and commercial trials. As a result and with a view to speeding-up and simplifying these proceedings, a mechanism of direct communication between judicial authorities has been introduced, which makes it necessary first of all to know which court has jurisdiction in order to establish communication with it.

To put it another way: we can ascertain all the identification and communication data for the competent authority that should receive our request for cooperation.

Secondly, the website of the Judicial Atlas provides us with links to the applicable regulatory instruments, both those of the EU itself and, in some fields, of the Hague Conference.



Finally, we have information on practical aspects of judicial cooperation in each Member State of the European Union and in particular, the language(s) in which the requests for cooperation should be sent, transmission instruments, admissible resources, etc. This information is all the more necessary if we take into account that these aspects of judicial cooperation vary from one regulatory instrument to the next. For example, Spain accepts the service of documents in French, English, Portuguese and Spanish (Regulation 1393/2007) however it only accepts Portuguese and Spanish in relation to the taking of evidence (Regulation 1206/2001). In order to avail of this, we should select one of the areas set out on the website in the column on the left and click on “Communications of the Member States”.

VADEMECUM (<http://www.prontuario.org/>)

This is probably the product that is most representative of the work performed over the years (one that is constantly updated) by the REJUE in civil and criminal matters.

This IT instrument is highly intuitive and has the benefit of enlarging on the information supplied by the Judicial Atlas, extending it to all regulatory instruments applicable to Spain, be they multilateral or bilateral rules, issued by the European Union, the Hague Conference, the Organisation of American States or other international bodies.

With a view to facilitating the work of the legal operator visiting this web in search of information, an outline of the information has been provided, using a factsheet format and continuously offering the chance to access the text of the rule directly, as well as forms, many of which have been prepared as an aid by the REJUE itself, and links that lead us directly to the websites containing more in-depth content on what is summarised in the Vademecum.

Apart from this, and as set out in the foregoing sections of this Unit, the Vademecum allows us to access the different judicial networks for international cooperation, national or international bodies, official journals (The Spanish Official Journal *BOE* and the *OJEU*), databases, etc.

WEBSITE OF THE HAGUE CONFERENCE

http://www.hcch.net/index_en.php

It is now possible to consult this website in several languages, including Spanish, and among other things its content covers all the conventions sponsored by this international body which encompass aspects as relevant as international cooperation and the service and transfer of documents (Convention of 15/11/1965), the taking of evidence abroad (Convention 18/3/1970) or civil aspects of international child abduction (Convention 25/10/1980).



In addition to having access to the full text of each regulatory instrument, we can ascertain the current status of the Convention, states parties to the same, competent authorities, reservations made by each state, bibliography, practical operation documents, as well as the legislation of each of the countries included under the “Country profiles” tab.

e-Justice

<https://e-justice.europa.eu/home.do?plang=en&action=home>

The European e-Justice portal is managed by the Directorate General for Justice of the European Commission, although the Commission and the different Member States share responsibility for its content.

The aim of the European Commission is to use this website to promote public access to information on its initiatives and European Union policies in general and in the field of justice in particular.

The European e-Justice portal is designed as a “one-stop (electronic) shop” providing information on European justice and access to European judicial proceedings. The portal is aimed at citizens, companies, legal professionals and members of the judiciary. Because EU citizens are entitled to have the same access to justice in other Member States as they would in their own country, the European e-Justice Portal represents a practical contribution to removing obstacles, offering information in 22 languages with numerous links to relevant documents and websites.

This information role has undoubtedly converted this website into a useful tool in the field of international judicial cooperation.

* (A large part of the text prepared by J.L. Parra García for an earlier edition of this course has been used in this section)



LINKS

European Judicial Network in civil and commercial matters

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

Vademecum

<http://www.prontuario.org/>

General Council of the Spanish Judiciary

<http://www.poderjudicial.es>

Network of Experts on EU Law

Query form

<http://www.poderjudicial.es/eversuite/GetRecords?Template=Extranets/Jueces/principal.htm>

Practical Guide for raising preliminary questions

<http://www.poderjudicial.es/eversuite/GetDoc?DBName=dPortal&UniqueKeyValue=70988&Download=false&ShowPath=false>

Spanish Network of Court Clerks (RESEJ)

http://www.mjusticia.gob.es/cs/Satellite/es/1215198008946/Tematica_C/1215329006622/Detalle.html

Network of Prosecutors for International Judicial Cooperation.

Website of the State Prosecutor's Office (<http://www.fiscal.es>)

European Network of Councils for the Judiciary

www.encj.eu

Judicial Atlas

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

Hague Conference

http://www.hcch.net/index_en.php

e-Justice

<https://e-justice.europa.eu/home.do?plang=en&action=home>



APPLICABLE LEGISLATION

CONSOLIDATED VERSIONS OF THE TREATY ON EUROPEAN UNION AND THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML>

Decision No 568/2009/EC of the European Parliament and of the Council of 18 June 2009 amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0035:01:EN:HTML>

Joint Action of 22 April 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996F0277:EN:HTML>

Spanish Regulations on Ancillary Aspects of Judicial Process
<http://www.boe.es/boe/dias/2005/09/27/pdfs/A31859-31886.pdf>

Instruction 6/2010 creating the Spanish Network of Court Clerks
<http://www.mjusticia.gob.es/cs/Satellite>

