

Current challenges and perspectives in development of the European Union law in civil matters

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In an Europe without borders, will be many times when citizens have to going to court of other member states, increasing cross-border disputes. The UE international judicial cooperation Instruments try to make easier these situations, as much for citizens as the national courts.

Currently, particular areas liable of be regulated by EU rules and specifically by regulations of Judicial Cooperation, are still governed by national rules.

The 1997 Amsterdam Treaty introduced the competence regarding 'judicial co-operation in civil matters', and the three core issues of international judicial cooperation:

- international jurisdiction,
- the applicable law, and
- the recognition and enforcement of foreign judgments

are now included in Article 81(2)(a) and (c) Treaty on the Functioning of the European Union TFEU.

It should be noted that in principle, the adoption of family law measures requires unanimity (Article 81[3] TFEU).

To date, thirteen regulations and two directives on judicial cooperation in civil matters are in force, while several proposals are pending. Certain sector-specific directives contain incidental private international law rules. Together, these instruments cover a wide range of topics.

However, they still leave gaps. Further, the co-existence of these instruments sometimes leads to a recurrence of rules, increasing the volume of EU law and potentially diminishing accessibility.

International Judicial Cooperation instruments are important to support the proper functioning of the internal market and free movement within the EU, and for strengthening a genuine area of justice.

They are of great significance to European citizens in situations involving a cross-border element.

These include:

- consumers that buy goods or obtain services from companies in other Member States;
- companies that transact cross-border business;
- infringements of personality rights or other types of tortious conduct resulting in damage (e.g. traffic accidents) involving cross-border elements;
- marriage and divorce between nationals or residents from different Member States; and
- related questions on parental responsibility, maintenance, and matrimonial property.

In such cases, international judicial cooperations instruments:

- distribute jurisdiction among the Member States,
- provide certainty on the applicable law, and
- facilitate the recognition and enforcement of foreign judgments and of authentic documents.

Not only EU citizens but also legal practitioners and courts benefit from a coherent and accessible International Judicial Cooperation instruments.

Gaps in the existing framework are a result of:

(1) the willed territorial limitation of EU legislation (e.g. of the Brussels I Regulation);

(2) the deliberate exclusion of certain topics for various reasons (e.g. personality rights in Rome II); and

(3) the absence of legislation on specific topics.

The true gaps in the framework according with the Police Department Citizens' Right and Constitutional Affairs European Parliament Note 2012 are the systematic ones, the subject matter that is currently not regulated by the framework at all.

In the area of the law of obligations, the most important gaps concern:

- Property;
- Trusts;
- Agency;
- Corporations.

In the area of family law, these gaps concern:

- Marriage;
- Registered partnerships and similar institutions;
- Names of natural persons;
- Adoption;
- Parentage;
- Protection of adults;
- Status and capacity of natural persons in general.

These gaps relate primarily to the applicable law, though in some areas rules on international jurisdiction and on recognition and enforcement are also lacking. Insofar as areas are already covered by conventions of the Hague Conference on Private International Law (*e.g.* adoption) for several or most of the Member States, a close collaboration with the Hague Conference is desirable.

For the short and the mid term, it is recommended to continue on the path of gradual rather than simultaneous adoption. This means filling the gaps by using separate instruments, while preserving coherence between the individual instruments. Though the idea of a European private international law code is attractive for various reasons, the political reality is that it may be difficult to obtain sufficient support in the near future. The diverging views on general concepts of private international law (*e.g.* the role of overriding mandatory law and the application of

foreign law) and the differences in the substantive law (e.g. in the area of registered partnerships, same-sex marriages, and names) are likely to raise obstacles. In this regard, it should be pointed out that the special position held by the UK, Ireland, and Denmark has already resulted in territorial fragmentation, and it can be expected that proposals for a code will not improve this status.

For feasibility reasons, in the completion of the framework, the non-family issues can be prioritised, followed by the family law area. In view of the special legislative procedure for family law measures, in the absence of unanimity, the procedure of enhanced cooperation is an option. The Rome III Regulation on the law applicable to divorce, (in which fifteen Member States currently participate), is the first piece of legislation using this procedure. An advantage is that policy goals to establish an instrument can be achieved. An evident disadvantage is that it results in a 'two-speed Europe' that accentuates the different views in the Member States.

In the long term, once the gaps have been filled, and the general concepts of private international law are developed further in a European context, a more comprehensive private international law framework or 'code' can be considered.

Now I would like to mention four issues:

1. Justice Programme 2014-2020
2. European e-Justice
3. Transparency of debtor's assets
4. Access to justice

1. Justice Programme 2014-2020

Objectives of the Programme

This programme shall contribute to the further development of a European area of justice based on mutual recognition and mutual trust. It promotes:

- judicial cooperation in civil matters, including civil and commercial matters, insolvencies, family matters and successions, etc.
- judicial cooperation in criminal matters
- judicial training, including language training on legal terminology, with a view to fostering a common legal and judicial culture
- effective access to justice in Europe, including rights of victims of crime and procedural rights in criminal proceedings
- initiatives in the field of drugs policy (judicial cooperation and crime prevention aspects)

Types of actions funded

- Training activities (staff exchanges, workshops, development of training modules,...)
- Mutual learning, cooperation activities, exchange of good practices, peer reviews, development of ICT tools...
- Awareness-raising activities, dissemination, conferences,...
- Support for main actors (key European NGOs and networks, Member States' authorities implementing Union law,...)
- Analytical activities (studies, data collection, development of common methodologies, indicators, surveys, preparation of guides...)

EU added value

All actions to be funded by the programme must produce results whose benefits go beyond one single Member State. The following elements should in particular be looked at: Does the project contribute to the effective, comprehensive and consistent implementation of Union law instruments and policies? Will it improve public awareness and knowledge about the rights, values and principles deriving from Union law? Will it improve the understanding of potential issues affecting these rights? Is it likely to develop mutual trust among Member States and to improve cross-border cooperation? What is its transnational impact? Does it contribute to the elaboration and dissemination of best practices? Will it create practical tools and solutions that address cross-border or Union-wide challenges?

Budget 2014-2020

EUR 378 million

Participating countries

All Member States except for UK and DK.

Previous Programmes 2007-2013

The Justice Programme replaced three funding programmes which expired in 2013:


- Civil Justice Programme
- Criminal Justice Programme
- Drug Prevention and Information Programme

See Programmes 2007-2013 for more details of pre-2014 programmes in these fields.

2. European e-Justice

European e-Justice is the use of information and communication technologies in the area of justice at EU level. It serves to improve citizens' access to justice, to facilitate procedures within the EU and to make the resolution of disputes or the punishment of criminal behaviour more effective.

This initiative is integrated into all areas of civil, criminal and administrative law in order to ensure better access to justice and to strengthen cooperation between administrative and judicial authorities.

The most visible part of European e-Justice is the [European e-Justice Portal](#) . In line with the Council Action Plan 2014-2018, the information and functionalities available on the Portal will be expanded between now and 2018.

e-CODEX (e-Justice Communication via Online Data Exchange), an EU-funded large-scale project launched in the framework of its ICT policy support programme, will find solutions to challenges such as e-ID and e-Signature which could then be integrated into the Portal. It is run by a consortium of EU countries.

Another element is the European Criminal Records Information System (ECRIS) . It allows for the exchange of information between EU countries through the electronic interconnection of criminal records databases.

3. Transparency of debtor's assets

The late or non-payment of debts is damaging to businesses and customers alike, particularly when no information is available on the debtor's assets or whereabouts. As a cross-border issue, this may affect the smooth running of the European single market.

Debtor's assets: how to access to information

The search for the address of a debtor and information on his/her financial situation is often the starting point for enforcement proceedings. At national level, **most EU countries mainly use two different systems for obtaining information:**

- systems for declaring the debtor's entire assets or at least a part of them, with a view to settling a claim;
- search systems with specific information (registers).

Access to information: accelerating the process

In the [Green Paper 'Effective enforcement of judgments in the European Union: the transparency of debtors' assets'](#) the Commission recommends four kinds of measures to help the creditor obtain reliable information on the debtor's assets within a reasonable period of time.

Possible measures include:

- **drawing up a manual of national enforcement laws and practices** containing all the sources of information, accessible in all EU countries, about a person's assets as well as the contact information of people who can obtain that information if access is limited, the costs of access and other relevant details;
- **increasing the information available and improving access to registers**, including commercial registers, population registers, social security and tax registers. The specific rules of each EU country in the field of data protection as well as social and fiscal privacy should still however be considered;
- **enhancing exchange of information between enforcement authorities** so that national enforcement bodies are able to directly access the (non-public) registers of other EU countries. Implementation of international instruments dealing with the exchange of information between national enforcement bodies may be an additional solution;
- **harmonising measures relating to the debtor's declaration**, for example, through the introduction of a European Assets declaration, obliging the debtors to disclose all assets in the European area of justice. In this way, the

transparency of the debtor's assets would not be limited by the territoriality of the enforcement proceedings.

4. Access to justice

The EU recognises the need for better access to justice for individuals and companies.

Access to justice for all

In a Europe of open borders, there are many occasions that may lead to citizens finding themselves engaged in litigation **before a court of another EU country**.

These disputes can be costly, especially where large claims are at stake.

Most often, disputes within the EU require legal representation in the EU country where the case is heard, as well as, in many cases, legal advice from a lawyer, and possibly **translations and travel**. All these elements generate additional costs

Helping you defend your rights

Different mechanisms exist to help citizens and companies to enforce their rights in the EU:

- mediation: if you are unable to settle the dispute by yourself, you can consider alternative dispute resolution (ADR) techniques such as mediation;
- legal aid: the right to legal aid allows those who do not have sufficient financial resources to meet the costs of a court case or legal representation.

The specific case of 'Collective redress'

It may be that illegal acts or omission in breach of EU law affects a multitude of persons or organisations. They may claim individually either cessation of such illegal behaviour or damages, however bundling of their claims in a single collective redress procedure, or allowing such a claim to be brought by a representative entity or body acting in the public interest, could simplify the process and reduce costs.

Collective redress has been discussed within the EU for years. It is viewed as an:

- **effective means for making multiple claims less cumbersome;**
but also
- **a possible vehicle for abusive disputes,** creating obstacles for businesses operating on a common market.

Its **potential role in effective enforcement of EU laws and individual rights** based on these laws is another factor to be taken into account.

Work carried out in the area of consumer and competition policies revealed the need to **ensure coherence in the European approach to collective redress**.

A common European framework

The Commission decided to explore the possibility of a common European framework for collective redress. This framework would contain a set of principles that any potential future EU initiatives on collective redress in any sector should respect.

A public consultation was carried out in order to determine which forms of collective redress could fit into the EU legal system and into the legal orders of the EU countries and help to figure out in which fields different forms of collective redress could have an **added value for improving the enforcement** of EU legislation or for **better protecting the rights of victims**.

The Commission will continue further works on an EU framework on collective redress, following up the full range of previous Commission work on collective redress.