

Amended proposal for a Council Decision establishing a European Judicial Network in civil and commercial matters ⁽¹⁾

(2001/C 240 E/15)

COM(2001) 234 final — 2000/0240(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 24 April 2001)

⁽¹⁾ OJ C 29 E, 30.1.2001, p. 281.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

Having regard to the Treaty establishing the European Community, and in Article 61(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas:

(1) The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured.

(1) The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice, in which citizens have the possibility of bringing actions before the courts or authorities of other Member States as easily as before those of their State of origin.

(2) The gradual establishment of this area and the sound operation of the internal market entails the need to improve, simplify and expedite effective judicial cooperation between the Member States in civil and commercial matters.

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(3) The Action Plan adopted by the Council and the Commission on 3 December 1998 and approved by the European Council on 11 and 12 December 1998 on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice ⁽¹⁾ acknowledges that reinforcement of judicial cooperation in civil matters represents a fundamental stage in the creation of a European judicial area which will bring tangible benefits for every Union citizen.

(4) One of the measures planned by paragraph 40(d) of the Action Plan within two years is to examine the possibility of extending the concept of the European Judicial Network in criminal matters to embrace civil and commercial proceedings.

⁽¹⁾ OJ C 19, 23.1.1999, p. 1.

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- (5) The conclusions of the special European Council held at Tampere on 15 and 16 October 1999 recommend the establishment of an easily accessible information system, to be maintained and up-dated by a Network of competent national authorities.
- (6) In order to improve, simplify and expedite effective judicial cooperation between the Member States in civil and commercial matters, it is necessary to establish at Community level a network cooperation structure — the European Judicial Network in civil and commercial matters.
- (7) This is a subject now falling within the ambit of Article 65 of the Treaty, and the measures are to be adopted in accordance with Article 67.
- (8) To ensure the attainment of the objectives of the European Judicial Network in civil and commercial matters, the rules governing its establishment must be laid down in a mandatory instrument of Community law.
- (9) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, of this Decision to improve effective judicial cooperation between the Member States and effective access to justice for persons engaging in cross-border litigation. — cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. cannot be sufficiently achieved by the Member States, by the Community. This Decision confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (10) The European Judicial Network in civil and commercial matters established by this Decision seeks to facilitate judicial cooperation between the Member States in civil and commercial matters both in areas to which existing instruments apply and in those where no instrument is currently applicable.

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- (9) The objective of this Decision is to improve effective judicial cooperation between the Member States and thereby ensure effective access to justice and rapid, reliable dispute-settlement for persons engaging in cross-border litigation. In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, since that objective cannot be sufficiently achieved by the Member States, it must be pursued by the Community. This Decision confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

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- (10a) The European Judicial Network in civil and commercial matters is to facilitate and contribute to the implementation of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾ and Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children ⁽²⁾. The Network is to be an auxiliary instrument for all future decisions regarding the mutual recognition of judgments.

⁽¹⁾ OJ L 12, 16.1.2001, p. 1.

⁽²⁾ OJ L 160, 30.6.2000, p. 19.

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(11) In certain specific areas, Community or international instruments relating to judicial cooperation in civil and commercial matters already provide for cooperation mechanisms. The European Judicial Network in civil and commercial matters does not set out to replace these mechanisms, and it must operate in full respect for them. This decision will consequently be without prejudice to Community or international instruments relating to judicial cooperation in civil or commercial matters.

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(12) The European Judicial Network in civil and commercial matters must be established in stages on the basis of the closest cooperation between the Commission and the Member States. It must be able to take advantage of modern communication and information technologies.

(13) To attain its objectives, the Network needs to be supported by contact points designated by the Member States and to be sure of the participation of their authorities with specific responsibilities for judicial cooperation in civil and commercial matters; contacts between them and periodic meetings are essential to the operation of the Network.

(14) It is essential that efforts to establish an area of freedom, security and justice produce tangible benefits for persons engaging in cross-border litigation. It is accordingly necessary for the European Judicial Network in civil and commercial matters to promote access to justice. To this end, using the information supplied and updated by the contact points, the Network should gradually establish an information system that is accessible to the general public.

(15) This Decision does not preclude the provision of information other than that which is provided for therein within the Network and to the general public; the enumeration in Title III is accordingly not to be regarded as exhaustive.

(15) This Decision does not preclude the provision of information other than that which is provided for therein within the Network and to the general public; the enumeration in Title III is accordingly not to be regarded as exhaustive. The Network, as a means of attaining its objectives, will be able to cooperate on the development of specific projects in its area of interest, such as databases to facilitate access to justice in cross-border litigation.

(16) To ensure that the Network remains an effective instrument, incorporates the best practice in judicial cooperation and internal operation and meets the general public's expectations, provision must be made for periodic evaluations and for proposals for such changes as may be found necessary.

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- (17) In accordance with Article 1 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland are not participating in the adoption by the Council of the measures provided for by this Decision.
- (18) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Decision; this Decision is accordingly not binding on Denmark, nor is it applicable in its regard,

HAS ADOPTED THIS DECISION:

TITLE I

**PRINCIPLES OF THE EUROPEAN JUDICIAL NETWORK IN
CIVIL AND COMMERCIAL MATTERS**

*Article 1***Establishment**

A European Judicial Network in civil and commercial matters ('the Network') is hereby established among the Member States.

*Article 2***Composition**

1. The Network shall be composed of:
 - (a) central contact points designated by the Member States and, if appropriate, additional contact points designated in accordance with paragraph 2 of this Article;
 - (b) central authorities, judicial authorities or other relevant authorities of the Member States with specific responsibilities for judicial cooperation in civil and commercial matters under Community instruments, instruments of international law to which the Member States are parties or rules of domestic law;
 - (c) the liaison magistrates to whom Joint Action 96/277/JAI applies ⁽¹⁾, where they have responsibilities in cooperation in civil and commercial matters;
 - (d) any other appropriate judicial or administrative authority whose membership of the Network is considered to be useful by the Member State to which they belong in view of the relevance of their involvement for the attainment of the objectives of the Network.

⁽¹⁾ OJ L 105, 27.4.1996, p. 1.

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2. Each Member State shall designate a central contact point. Member States may designate a limited number of additional contact points if they consider this necessary on the basis of the existence of separate legal systems, the domestic distribution of jurisdiction, the tasks to be entrusted to them or in order to directly associate judicial bodies that frequently deal with cross-border litigation with the activities of the contact points.

Where a Member State designates additional contact points, it shall ensure that appropriate coordination mechanisms apply between them.

3. The Member States shall identify the authorities mentioned at points (b) and (c) of paragraph 1.

4. The Member States shall designate the authorities mentioned at point (d) of paragraph 1.

5. The Member States shall notify the Commission of the names and full addresses of the authorities referred to in paragraph 1, specifying the communication facilities available to them and their knowledge of languages in accordance with Article 18. This information shall be regularly updated in accordance with Article 16.

*Article 3***Tasks and activities of the Network**

1. The Network shall be responsible for:

- (a) facilitating judicial cooperation between the Member States in civil and commercial matters,
- (b) devising, gradually establishing and updating an information system that is accessible to the general public.

2. Without prejudice to other Community or international instruments relating to judicial cooperation in civil or commercial matters, the Network shall develop activities for the following purposes in particular:

- removing practical barriers to the smooth operation of procedures having a cross-border impact and to effective judicial cooperation between the Member States, in particular where no Community or international instrument is applicable;
- the effective implementation of Community instruments or conventions in force between two or more Member States;
- the facilitation of requests for judicial cooperation addressed by one Member State to another;

- removing practical barriers to the smooth operation of procedures having a cross-border impact and to effective judicial cooperation between the Member States;

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- the establishment and maintenance of an information system for the general public on judicial cooperation in civil and commercial matters in the European Union, relevant Community and international instruments and the domestic law of the Member States, with particular reference to access to justice.

3. The Network's activities shall be without prejudice to initiatives taken by the Community or the Member States to promote alternative dispute-settlement schemes.

*Article 4***Modus operandi of the Network**

The Network shall accomplish its tasks in particular by the following means:

- (a) it shall facilitate appropriate contacts between the authorities of the Member States mentioned in Article 2(1) for the accomplishment of the tasks provided for by Article 3;
- (b) it shall organise periodic meetings of the contact points and of the members of the Network in accordance with the rules laid down in Title II;
- (c) it shall elaborate and permanently update certain categories of information on judicial cooperation in civil and commercial matters and the legal systems of the Member States in accordance with the rules laid down in Title III.

*Article 5***Contact points**

1. The contact points shall be at the disposal of the authorities referred to in Article 2(1)(b) to (d) for the accomplishment of the tasks provided for by Article 3.

The contact points shall also be at the disposal of the local judicial authorities in their own Member State for the same purposes, in accordance with rules to be determined by each Member State.

2. In particular, the contact points shall:

- (a) supply the other contact points, the authorities mentioned in Article 2(1)(b) to (d) and the local judicial authorities in their own Member State with all the information needed for sound judicial cooperation between the Member States in accordance with Article 3, in order to assist them in preparing operable requests for judicial cooperation and in establishing the most appropriate direct contacts;
- (b) seek solutions to difficulties arising on the occasion of a request for judicial cooperation, without prejudice to paragraph 4 of this Article and to Article 6;

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- (c) facilitate coordination of the processing of requests for judicial cooperation in the relevant Member State, in particular where several requests from the judicial authorities in that Member State fall to be executed in another Member State;
- (d) assist with the preparation and updating of the information referred to in Title III, and in particular with the information system for the general public, in accordance with the rules laid down in that Title.

3. Where a contact point receives a request for information to which it is unable to respond, it shall forward it to the contact point or the member of the Network which is best able to respond to it. The contact point shall remain available for any such assistance as may be useful for subsequent contacts.

4. Where a contact point receives requests for information relating to areas in which Community or international instruments governing judicial cooperation already provide for the designation of authorities responsible for facilitating judicial cooperation, it shall identify those authorities and inform the requestor accordingly so that the requestor may address the request to the appropriate cooperation mechanism.

*Article 6***Relevant authorities for the purposes of Community or international instruments relating to judicial cooperation in civil and commercial matters**

1. The involvement of relevant authorities provided for by Community or international instruments relating to judicial cooperation in civil and commercial matters in the Network shall be without prejudice to the powers conferred on them by the instrument providing for their designation.

Contacts within the Network shall be without prejudice to regular or occasional contacts between these authorities.

2. In each Member State the authorities provided for by Community or international instruments relating to judicial cooperation in civil and commercial matters and the contact points of the Network shall engage in regular exchanges of views and contacts to ensure that their respective experience is disseminated as widely as possible.

3. The contact points of the Network shall be at the disposal of the authorities provided for by Community or international instruments relating to judicial cooperation in civil and commercial matters and shall assist them in all practicable ways.

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*Article 7***Language knowledge of the contact points**

To facilitate the practical operation of the Network, each Member State shall ensure that the contact points have adequate knowledge of an official language of the European Union other than their own, given that they need to be able to communicate with the contact points in other Member States.

1. To facilitate the practical operation of the Network, each Member State shall ensure that the contact points have adequate knowledge of an official language of the European Union other than their own, given that they need to be able to communicate with the contact points in other Member States.

2. Member States shall facilitate and encourage specialised language training for the staff of contact points and shall promote exchanges of staff between contact points in different Member States.

*Article 8***Communication facilities**

1. The contact points shall use the most appropriate technological facilities in order to reply as efficiently and as swiftly as possible to requests made to them.

2. The Commission shall establish a secure limited-access electronic information exchange system in consultation with the contact points.

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3. Where possible the network shall make use of services developed in the performance of Community measures relating to trans-European networks for data interchange between administrations (IDA).

TITLE II

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IMPLEMENTATION AND OPERATION OF THE NETWORK*Article 9***Meetings of the contact points**

1. The contact points of the Network shall meet from time to time, and no less than three times each year, in accordance with Article 12.

2. Each Member State shall be represented at these meetings by one or more contact points, who may be accompanied by other members of the Network, but there shall be no more than four representatives per Member State.

3. The first meeting of the contact points shall be held no later than three months following the entry into operation of this Decision, without prejudice to the possibility of prior preparatory meetings.

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*Article 10***Purpose of periodic meetings of contact points**

1. The purpose of the periodic meetings of contact points shall be to:
 - (a) enable the contact points to get to know each other and exchange experience, in particular as regards the operation of the Network;
 - (b) provide a platform for discussion of practical and legal problems met by the Member States in the course of judicial cooperation, with particular reference to measures adopted by the European Community;
 - (c) identify best practices in judicial cooperation in civil and commercial matters and ensure that relevant information is disseminated within the Network;
 - (d) exchange data and views, in particular on the structure, organisation and content of and access to the available information mentioned in Title III;
 - (e) define the methodology and establish guidance for gradually establishing the practical information sheets provided for by Article 15, in particular as regards the subject-matters to be covered and the results to be attained by each of them;
 - (f) identify specific initiatives other than those referred to in Title III which pursue comparable objectives.
2. The Member States shall ensure that experience in the operation of specific cooperation mechanisms provided for by Community or international instruments is shared at meetings of the contact points.

*Article 11***Meetings of members of the Network**

1. Meetings open to all members of the Network shall be held to enable them to get to know each other and exchange experience, to provide a platform for discussion of practical and legal problems met and to deal with specific questions.
2. The first meeting of members of the Network shall be held within the first year following the entry into operation of this Decision.
3. Subsequent meetings shall be convened on an ad hoc basis in accordance with Article 12.
4. Each Member State shall be represented at these meetings by no more than twelve authorities.

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*Article 12***Organisation and proceedings of meetings of the Network**

1. The Commission, in close cooperation with the Member States and the Presidency of the Union, shall convene the meetings provided for by Articles 9 and 11. It shall chair them and provide secretarial services.
2. Before each meeting the Commission shall prepare the draft agenda in close consultation with the Presidency of the Union and the Member States via their respective contact points.
3. The contact points shall be notified of the agenda prior to the meeting. They may ask for changes to be made or for additional items to be entered.
4. After each meeting the Commission shall prepare a record, which shall be notified to the contact points so that they may comment on it. The record shall be formally adopted at the next following meeting of the contact points. Without prejudice to prior transmission of the draft version not yet adopted, it shall then be notified by the contact points to the other members of the Network in their own Member State.

Article 12a

Countries applying for accession may be invited to meetings of contact points and members of the Network.

TITLE III

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**INFORMATION AVAILABLE WITHIN THE NETWORK, AND
INFORMATION SYSTEM FOR THE GENERAL PUBLIC***Article 13***Content of information disseminated within the Network**

1. The members of the Network must have permanent access to the information referred to in Article 2(5).

This information shall be available in particular in the electronic information exchange system provided for by Article 8(2).

2. The contact points shall endeavour to provide the contact points of the other Member States, in particular via the electronic information exchange system, with all the information they need for the proper performance of their functions.

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*Article 14***Information system for the general public**

1. The Network shall establish an information system for the general public in its area of activity; responsibility for managing the system shall lie with the Commission.

2. The system, and in particular the practical information sheets composing it, shall be established gradually, in close cooperation between the Commission and the Member States, in accordance with the second paragraph of Article 17.

3. The Commission shall make the following information available to the general public, in particular on a web site dedicated to the Network on the Commission's site:

- (a) Community instruments in force or in preparation relating to judicial cooperation in civil and commercial matters;
- (b) national measures for the domestic implementation of the instruments referred to in point (a);
- (c) international instruments in force relating to judicial cooperation in civil and commercial matters to which the Member States are parties, and declarations and reservations made in connection with such instruments;
- (d) significant decisions of the Community courts and the courts of the Member States;
- (e) precise, succinct information concerning the legal and judicial systems of the Member States in the form of practical information sheets provided for by Article 15.

4. For the purposes of access to the information mentioned in paragraph 2(a) to (e), the Network's dedicated site may create links to sites where the original information is to be found.

5. The site shall likewise facilitate access to comparable general-public information initiatives that exist or are in preparation in related matters and to sites containing information relating to the legal systems of the Member States.

*Article 15***Practical information sheets**

1. The contact points in each Member State shall gradually create practical information sheets relating to their respective Member States.

1. The contact points in each Member State shall gradually create practical information sheets relating to their respective Member States. These documents shall be drafted in language that is easy to understand and shall primarily contain practical information for the use of the citizen.

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2. The sheets shall be devoted by way of priority to questions relating to access to justice in the Member States and shall include information on the procedures for bringing cases in the courts and for obtaining legal aid, without prejudice to other Community initiatives, to which the Network shall have the fullest regard.

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3. Sheets shall gradually be created on at least the following subjects:

- (a) legal and judicial systems in the Member States;
- (b) procedures for bringing cases to court, with particular reference to small claims;
- (c) conditions and procedures for obtaining legal aid, including descriptions of the tasks of non-governmental organisations active in this field, account being taken of work already done in the Dialogue with Citizens;
- (d) national rules governing the service of documents;
- (e) appeal possibilities;
- (f) rules for the enforcement of judgments given in other Member States;
- (g) possibilities for obtaining interim relief measures, with particular reference to seizures of assets for the purposes of enforcement;
- (h) alternative dispute-settlement possibilities, with an indication of the national information and advice centres of the Network for the settlement of consumer disputes;
- (i) organisation and operation of the legal professions.

4. The Commission shall provide information on relevant aspects of Community law and procedures.

5. The practical information sheets created under the foregoing paragraphs shall be sent to:

- (a) the Commission, which shall install them on the Network's dedicated general-public site and arrange translation into the other official languages of the Community;

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(b) the contact points, which shall arrange the broadest possible dissemination in their Member State.

6. The practical information sheets shall be updated regularly in accordance with Article 16.

*Article 16***Preparation and updating of available information**

1. All information distributed within the Network and to the general public under Articles 13 to 15 shall be updated permanently.

2. To this end, the contact points shall supply the information needed to create and operate the system, verify the accuracy of the information already in the system and notify the Commission forthwith of any updates as soon as an item of information requires changing.

3. Where appropriate the contact points shall associate relevant social and occupational categories with the drafting and public dissemination of the information sheets provided for by Article 15.

TITLE IV

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FINAL PROVISIONS*Article 17***Review**

No later than five years after the date of the entry into force of this Decision, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Decision on the basis of information supplied by the contact points. The report shall be accompanied if need be by proposals for adaptations.

No later than three years after the date of the entry into operation of this Decision, and every three years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Decision on the basis of information supplied by the contact points. The report shall be accompanied if need be by proposals for adaptations.

The report shall consider, among other relevant matters, the question of possible direct public access to the contact points of the Network, access to and involvement of the legal professions in its activities, and synergy with the European Extra-judicial Network for the Settlement of Consumer Disputes.

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*Article 18***Establishment of the basic components of the Network and the information system**

1. No later than six months before this Decision is put into effect, the Member States shall notify the Commission of the information required by Article 2(5).
2. Before this Decision is put into effect, the Commission in consultation with the contact points, shall construct a site for installation of the information system for the general public.

*Article 19***Entry into force and application**

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

It shall have effect nine months following the date of its publication in the *Official Journal of the European Communities*.

This Decision is addressed to the Member States.
