

Opinion of the Section for the Single Market, Production and Consumption on the 'Proposal for a Decision of the European Parliament and of the Council Amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters'

COM(2008) 380 final — 2008/0122 (COD)
(2009/C 175/15)

On 12 November 2008 the Council decided to consult the European Economic and Social Committee, under Articles 61(c) and 67.5 of the Treaty establishing the European Community, on the

Proposal for a Decision of the European Parliament and of the Council amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters

COM(2008) 380 final — 2008/0122 (COD).

On 8 July 2008 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee decided to appoint Ms SÁNCHEZ MIGUEL as rapporteur-general at its 449th plenary session, held on 3 and 4 December (meeting of 3 December), and adopted the following opinion by 124 votes to two with one abstention.

1. Conclusions

1.1 The EESC welcomes the proposal to amend Decision 2001/470/EC that established the European Judicial Network in civil and commercial matters, not only because it meets the review requirement stipulated by the provision itself, but also because it does so on the basis of information gathered in the intervening period regarding its operation, and seeks to do better in its objective of informing European citizens.

1.2 The improved coordination established between the authorities making up the European Network and the national contact points, crucial to the creation and operation of the network, merits attention, as does the simplification of information by using appropriate technologies. This will help to provide easier access to the legal professions and to private citizens who want to be aware of opportunities to resolve cross-border civil and commercial disputes.

1.3 The participation not only of the judicial authorities, but also of the legal professions, will point to the appropriate legal instruments to uphold the rights and obligations of European citizens in their various civil and commercial activities. In this way, the aim of harmonisation in an area of freedom, security and justice within the EU will be more effectively furthered. The EU advocates the greatest possible openness and access to the Network for all stakeholders, as a way of boosting transparency and the European integration process.

2. Introduction

2.1 In the wake of the Tampere European Council of 15 and 16 October 1999, the European Commission launched a process of harmonising and creating legal instruments that would enable an area of freedom, security and justice to be established, and ensure the free movement of persons within EU borders. One of the most important of these instruments is the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾, introducing, among other measures, simplified enforcement procedures, changes to the protective measures to ensure enforcement of judgments, and the recognition of protective measures enforceable across Europe.

2.2 As part of the same approach, the Commission presented Decision 2001/470/EC ⁽²⁾, which set up the European Judicial Network in civil and commercial matters, the main aim of which was to create a European legal cooperation instrument to inform the legal professions, institutions, administrations and the general public on rights applicable in the various EU Member States, and on procedures to settle cross-border legal disputes.

⁽¹⁾ Council Regulation (EC) No 44/2001 of 22 December 2000 — OJ L 12 of 16.1.2001.

EESC opinion — OJ C 117 of 26.4.2000, p. 6.

⁽²⁾ EESC opinion — OJ C 139 of 11.5.2001, p. 6.

2.3 The network was also intended to facilitate citizens' access to justice especially, as already indicated, in cross-border disputes, where neither content nor procedure always match. This is why special attention focuses on contact points that are readily accessible to all stakeholders, professional or private. The Commission reports on the situation at the beginning of 2008, indicating that there were 102 contact points, 140 central authorities, 12 liaison magistrates and 181 judicial authorities active in judicial cooperation.

2.4 It should be added that in Directive 2008/52/EC⁽³⁾ on certain aspects of mediation in civil and commercial matters, reference was already made in the judicial procedure to Internet as a necessary instrument for mediating in cross-border legal disputes.

3. General comments

3.1 As laid down in Article 19 of the Decision 2001/470/EC, the Commission must present a report every five years on the results of the Network during the preceding period, based on information supplied by the Member State contact points. Depending on this information, adaptations may be proposed. This is the purpose of the amended Decision, so that the objectives sought are attained, on the legal basis of Article 61(c) of the Treaty, and in keeping with the principles of subsidiarity and proportionality.

3.2 The Network has so far succeeded in strengthening cooperation and information between judges and legal professionals within the EU. The EESC considers that the contact points should serve as fully-fledged information offices on national laws and procedures that are applicable to cross-border disputes. Access to the Network's information by citizens would be desirable.

3.3 The proposed reform as a whole seeks to fine-tune the Network, a mechanism that will enhance the planned objectives, especially with regard to the equipment and human resources allocated to it.

3.4 The EESC welcomes the proposed reform, on account not only of the measures to enhance the Network's operation, but also of the terminological clarifications, that will enable it to be used with greater legal precision.

3.4.1 The amendment to Article 2 of the Decision, for example, refers to the aim of the Network as 'judicial cooperation in civil and commercial matters' instead of the previously general wording 'cooperation in civil and commercial matters'.

3.4.2 It also provides for coordination between contact points, where there is more than one in a Member State, requiring a main contact point to be designated.

3.4.3 The main contact point is to be assisted by a judge who is not only a member of the Network, but is to liaise between the local judicial authorities.

3.5 In accordance with the main objective of the reform, Article 5 is amended to extend cooperation regarding information within the Network and the judicial authorities in order to facilitate the application of law to each individual case, even if such law is of another Member State or is an international legal instrument. The EESC considers that the Network would provide added value if it served to inform the public on existing judicial cooperation and the different judicial systems. The aim of such an expansion would be to approximate and guarantee the rights that citizens have acquired in their civil and commercial links within the EU.

3.6 It is important to highlight the amendment made to the information procedure — the new wording of Article 8 — which recognises the electronic register to be kept by the European Commission. The EESC only wishes to make one comment on this: it must be equipped with the necessary technical and economic means to act effectively as soon as possible.

4. Specific comments

4.1 The EESC agrees with the content of the proposed reform, together with the method used to carry it out. Moreover, the Network for cooperation between the legal authorities and professions in the Member States may be seen as a major achievement.

4.2 Although its positive character is recognised, it needs to be pointed out that Denmark's position, as a Network observer on the Network, leaves part of the common European area without judicial coordination, although they are covered by the same Community legislation. In spite of this, the new Article 11a provides for observers to participate in the Network, together with new members and third countries belonging to the new Lugano Convention⁽⁴⁾, who will be able to attend certain Network meetings.

⁽³⁾ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008; OJ L 136 of 24.5.2008.
EESC opinion — JO C 286 du 17.11.2005, p. 1.

⁽⁴⁾ Adopted on 30.10.2007.

4.3 One point on which we believe there should be greater flexibility is the short deadline for responding to requests for judicial cooperation: although we acknowledge the present efficiency, it must be realised that with improved information and with more countries involved, compliance will become impossible. A range of situations covering organisational and technical aspects needs

to be considered for each country, and even down to regional level. We will have to wait and see the results of the new reform, particularly with regard to the technical means provided for the contact points and the Network, and especially how the register works.

Brussels, 3 December 2008.

The President of the European Economic and Social Committee

Mario SEPI

The Secretary-General of the European Economic and Social Committee

Martin WESTLAKE
