

## I

(Resolutions, recommendations and opinions)

## RESOLUTIONS

## COUNCIL

**Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the establishment of a Network for legislative cooperation between the Ministries of Justice of the European Union**

(2008/C 326/01)

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

Whereas:

1. Knowledge of the legislation of other Member States or even of certain third countries is an essential tool for the Ministries of Justice of the Member States of the European Union, in particular for drafting legislation and for transposing law of the European Union falling generally within their sphere of competence, including notably civil and criminal law, it being understood that the Ministries of Justice of the Member States have differing competences.
2. Obtaining information may prove unpredictable and complicated.
3. The Ministries of Justice have very precise information about their national legislation, related case law and the major reforms under way.
4. A network for legislative cooperation should be set up to give Ministries of Justice effective access to the national legislation of other Member States.
5. Moreover, the European Union has set itself the objective of providing its citizens with an area of freedom, security and justice. Creation of this area would be facilitated by better mutual knowledge of the Member States' judicial and legal systems and their legislation, as well as by exchanging information about law reform projects.
6. The creation of a 'Network for legislative cooperation between the Ministries of Justice of the Member States of the European Union' would contribute to achieving that objective and to promoting better understanding of the laws of the other Member States, which in its turn is one of the ways to enhance mutual trust and favour the application of the principle of mutual recognition. It would also enable comparative law studies on topical legislative or legal matters to be carried out jointly by the Ministries of Justice,

HEREBY ADOPT THIS RESOLUTION:

- (1) Member States should gradually set up a 'Network for legislative cooperation between the Ministries of Justice of the European Union', hereinafter called 'the Network'. Participation in the Network would be on a voluntary basis.
- (2) 1. The task of the Network should be to increase access to information held by the Ministries of Justice of the Member States of the European Union on legislation in force, on judicial and legal systems, and on major legal reform projects. In particular, it should make it possible:
  - (a) to provide members of the Network on request with coherent and up-to-date information on legislation and with case-law on selected subjects;
  - (b) to make accessible the results of comparative law research carried out by or for the Ministries of Justice of each State in fields of law generally falling within the sphere of competence of those Ministries, including in the context of reforms carried out by the Member States or of transposition of law of the European Union;
  - (c) to be aware of major legal reform projects, while complying with the obligation of confidentiality by which States' bodies are bound.
2. There should be no obligation to provide a translation of the supplied documentation.
- (3) The Network should be supported by an administrator who is in charge of the administrative and technical operation of the Network. Pending the designation of such an administrator, a Member State would initially take charge of the administrative and technical operation of the Network.

(4) Each Member State should designate a correspondent, preferably within the Ministry of Justice. Each Member State could, however, designate a limited number of other correspondents if this were considered necessary because of the existence of separate legal systems or the domestic distribution of competences.

(5) Each Member State should inform the Network's administrator of:

- (a) the surname, first name and position of the correspondent(s);
- (b) the language knowledge of each correspondent; and
- (c) the communication facilities available to the correspondent(s), with the exact (telephone) numbers, (dedicated e-mail) addresses, etc.

Each Member State should inform the Network's administrator of any change concerning the data of its correspondent(s) as provided pursuant to this paragraph.

(6) A correspondent should send a request, preferably by electronic means, to the appropriate correspondent(s) of another Member State or of other Member States. The correspondent should also send a copy of the request to the Network's administrator.

(7) The correspondent should ensure that the request transmitted:

- falls within the sphere of competence of its Ministry of Justice, or concerns matters which generally fall within the competence of Ministries of Justice, such as civil and criminal law,
- is precisely formulated,
- does not impose an unreasonable burden of work on the other correspondents/and or departments of the Ministries of Justice forming the Network.

(8) Correspondents to whom such a request has been submitted should do their utmost to reply to that request within a reasonable period, without obligation to provide a translation of the supplied documentation, such as legislative texts, (draft) legislation, reports and studies.

If the correspondent to whom a request has been sent is not in a position to reply, he or she should pass the request on to the competent authority who would be able to do so, and inform the requesting correspondent thereof.

Where it is not possible for a correspondent to reply to a request or to readily identify the competent authority, he or she should inform the requesting correspondent.

(9) Replies given by a correspondent would be made accessible to the entire Network, subject to the agreement of the correspondent to whom the request was addressed.

(10) To facilitate the practical operation of the Network, each Member State should ensure that its correspondent(s) has/have an adequate knowledge of a language of the European Union other than its own national language, bearing in mind the need to be able to communicate with the correspondents in the other Member States.

(11) Meetings of correspondents should be organised when expedient. Such meetings could be opened to a larger audience for the purpose of analysing selected topics from a comparative law perspective, in order to consolidate the Network and foster the exchange of ideas and experience among members.

(12) To facilitate exchanges, the Network and its correspondents should use the most appropriate opportunities offered by modern communication and information technologies, in particular in line with the recent development of European E-Justice.

(13) If necessary, the Network should be given an appropriate legal form.

(14) The Network should develop internal guidelines on practical arrangements for its operation, including on linguistic matters.

(15) The European Commission could be invited to participate in the Network.

(16) The Council shall review the application of this resolution at the latest three years after its adoption. Such revision should *inter alia* address the following issues:

- (a) the process of development, the rules of administration, the achievements and the practical functioning of the Network;
- (b) the financial situation of the Network;
- (c) the possibility to give third States and ESDP missions access to information which is already available within the Network.

In view of the results of this revision, appropriate measures should be taken in order to further improve the situation if and where necessary.