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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 16 December 2008 with a view to the adoption of Decision No .../2009/EC of the European Parliament and of the Council amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters (EP-PE_TC1-COD(2008)0122)

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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 16 December 2008

with a view to the adoption of Decision No .../2009/EC of the European Parliament and of the Council amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and (d) and 66 and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

¹ Opinion delivered on 3 December 2008 (not yet published in the Official Journal).

² Position of the European Parliament of 16 December 2008.

Whereas:

- (1) The European Judicial Network in civil and commercial matters between the Member States ("the Network") was established by Council Decision 2001/470/EC¹ because it was considered that the establishment of an area of freedom, security and justice entailed the need to improve, simplify and expedite effective judicial cooperation between Member States, as well as effective access to justice, for persons engaging in cross-border litigation. The date of application of that Decision was 1 December 2002.
- (2) The Hague Programme on strengthening freedom, security and justice in the European Union, adopted by the European Council on 4 and 5 November 2004², calls for further efforts to be made to facilitate access to justice and judicial cooperation in civil matters. In particular, it focuses on the effective implementation of instruments on civil justice adopted by the European Parliament and the Council and the promotion of cooperation between members of the legal professions with a view to establishing best practice.
- (3) In accordance with Article 19 of Decision 2001/470/EC, the Commission presented on 16 May 2006 a report on the operation of the Network. The report concluded that, although the Network had generally met the objectives set in 2001, it was still a long way from having developed its full potential.

¹ OJ L 174, 27.6.2001, p. 25.

² OJ C 53, 3.3.2005, p. 1.

- (4) In order to achieve the objectives of the Hague Programme as regards improving judicial cooperation and access to justice and to take on the expected increase in the Network's tasks in the years ahead, the Network should have a legal framework better suited to increasing its means of action.
- (5) It is essential to achieve better operating conditions for the Network in the Member States through national contact points and thus to reinforce the role of the contact points both within the Network and in relation to judges and to the legal professions.
- (6) To this end, the Member States should assess the resources which they need to make available to the contact points so that they can fully carry out their duties. The internal distribution of competences in the Member States concerning the financing of the activities of the national members of the Network should not be affected by this Decision.
- (7) To the same end, there needs to be a contact point or points in each Member State capable of performing the functions assigned to them. If there is more than one contact point, the Member State should ensure effective coordination between them.
- (8) In future, where the law of another Member State is designated under a Community or an international instrument, the Network's contact points should take part in informing the judicial and extra-judicial authorities in the Member States of the content of that foreign law.

- (9) Contact points should process requests for judicial cooperation fast enough to be compatible with the Decision's general objectives.
- (10) For the purposes of calculating time limits as provided for in this Decision, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits¹ should apply.
- (11) The purpose of the electronic register is to provide information with a view to assessing the performance of the Network and the practical application of Community instruments. Therefore it should not include all the information exchanged between contact points.
- (12) Professional associations representing legal practitioners, in particular lawyers, solicitors, barristers, notaries and bailiffs directly involved in the application of Community and international instruments concerning civil justice may become members of the Network through their national organisations in order to contribute, with the contact points, to some of the Network's specific tasks and activities.

¹ OJ L 124, 8.6.1971, p. 1.

- (13) To further develop the Network's functions regarding access to justice, the contact points in the Member States should contribute towards providing the public with general information, using the most appropriate technological facilities and at least by providing, on the website of the Member States' ministries of justice, a link to the website of the Network and to the authorities responsible for the actual application of those instruments. This Decision should not be interpreted as imposing on the Member States an obligation to allow the public direct access to the contact points.
- (14) When implementing this Decision, account should be taken of the gradual introduction of the European e-justice system which is intended, in particular, to facilitate judicial cooperation and access to justice.
- (15) In order to improve mutual confidence between judges in the European Union and synergies between the European networks involved, the Network should maintain ongoing relations with the other European networks which share its objectives, in particular the networks of judicial institutions and judges.
- (16) To contribute to the promotion of international judicial cooperation, the Network should develop contacts with the other judicial cooperation networks in the world and with the international organisations which promote international judicial cooperation.

- (17) To allow regular monitoring of progress in achieving the objectives of Council Decision 2001/470/EC as amended by this Decision, the Commission should present reports to the European Parliament, the Council and the European Economic and Social Committee on the Network's activities.
- (18) Council Decision 2001/470/EC should be amended accordingly.
- (19) Since the objective of this Decision cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Decision, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve that objective.
- (20) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Decision.
- (21) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAVE ADOPTED THIS DECISION:

Article 1

Decision 2001/470/EC is hereby amended as follows:

- 1) Article 2 shall be amended as follows:
 - (a) paragraph 1 shall be amended as follows:
 - (i) point (c) shall be replaced by the following:

"(c) the liaison magistrates to whom Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union* applies, where they have responsibilities in judicial cooperation in civil and commercial matters;

* OJ L 105, 27.4.1996, p. 1.";

(ii) the following point shall be added:

"(e) professional associations representing, at national level in the Member States, legal practitioners directly involved in the application of Community and international instruments concerning judicial cooperation in civil and commercial matters.";

(b) in paragraph 2 the following subparagraph shall be added:

"If the contact point designated under this paragraph is not a judge, the Member State concerned shall provide for effective liaison with the national judiciary. To facilitate this, a Member State may designate a judge to support this function. This judge shall be a member of the Network.";

(c) the following paragraph shall be inserted:

"2a. Member States shall ensure that the contact points have sufficient and appropriate facilities in terms of staff, resources and modern means of communication to adequately fulfil their tasks as contact points.";

(d) the following paragraph shall be inserted:

"4a. Member States shall determine the professional associations referred to in point (e) of paragraph 1. To that end, they shall obtain the agreement of the professional associations concerned on their participation in the Network.

Where there is more than one association representing a legal profession in a Member State, it shall be the responsibility of that Member State to provide for appropriate representation of that profession on the Network.";

(e) paragraph 5 shall be amended as follows:

(i) the introductory part shall be replaced by the following:

"5. The Member States shall notify the Commission, in accordance with Article 20, of the names and full addresses of the authorities referred to in paragraphs 1 and 2 of this Article, specifying:";

(ii) point (c) shall be replaced by the following:

"(c) where appropriate, their specific functions in the Network, including, where there is more than one contact point, their specific responsibilities.";

2) Article 3 shall be amended as follows:

(a) in paragraph 1, point (b) shall be replaced by the following:

"(b) facilitating effective access to justice, through measures providing information on the working of Community and international instruments concerning judicial cooperation in civil and commercial matters.";

(b) in paragraph 2, points (b) and (c) shall be replaced by the following:

"(b) the effective and practical application of Community instruments or conventions in force between two or more Member States.

In particular where the law of another Member State is applicable, the courts or authorities responsible for the matter may apply to the Network for information on the content of that law;

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

The main source of information shall be the Network's website containing up-to-date information in all the official languages of the institutions of the Union.";

3) Article 5, paragraph 2 shall be replaced by the following:

"2. In particular, the contact points shall:

- (a) ensure that the local judicial authorities receive general information concerning the Community and international instruments relating to judicial cooperation in civil and commercial matters. In particular, they shall ensure that the Network, including the website of the Network, is better known to the local judicial authorities;
- (b) 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;
- (c) supply any information to facilitate the application of the law of another Member State that is applicable under a Community or international instrument. To this end, the contact point to which such a request is addressed may draw on the support of any of the other authorities in its Member State referred to in Article 2 in order to supply the information requested. The information contained in the reply shall not be binding on the contact point, the authorities consulted or the authority which made the request;
- (d) 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;
- (e) 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;

- (f) contribute to generally informing the public, through the Network's website, on judicial cooperation in civil and commercial matters in the European Union, on relevant Community and international instruments and on the domestic law of the Member States, with particular reference to access to justice;
- (g) collaborate in the organisation of, and participate in, the meetings referred to in Article 9;
- (h) assist with the preparation and updating of the information referred to in Title III, and in particular with the information system for the public, in accordance with the rules laid down in that Title;
- (i) ensure coordination between members of the Network at national level;
- (j) draw up a two-yearly report on their activities, including, where appropriate, best practice in the Network, submit it at a meeting of the members of the Network, and draw specific attention to possible improvements in the Network.";

4) the following Article shall be inserted:

"Article 5a

Professional associations

1. In order to contribute to the accomplishment of the tasks provided for by Article 3, the contact points shall have appropriate contacts with the professional associations mentioned in Article 2(1)(e), in accordance with rules to be determined by each Member State.
2. In particular, the contacts referred to in paragraph 1 may include the following activities:

- (a) exchange of experience and information as regards the effective and practical application of Community and international instruments;
- (b) collaboration in the preparation and updating of the information sheets referred to in Article 15;
- (c) participation of the professional associations in relevant meetings.

3. Professional associations shall not request information relating to individual cases from contact points.";

5) in Article 6, paragraph 2, the following subparagraph shall be added:

"To this end, each Member State shall ensure, in accordance with the procedures to be determined by it, that the contact point(s) and competent authorities have the means to meet on a regular basis.";

6) Article 7, paragraph 1, shall be replaced by the following:

"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 institutions of the Union other than their own, given that they need to be able to communicate with the contact points in other Member States.";

7) Article 8 shall be replaced by the following:

"Article 8

Processing of requests for judicial cooperation

1. The contact points shall respond to all requests submitted to them without delay and at the latest within fifteen days of receipt thereof. If a contact point cannot reply to a request within that time limit, it shall inform the maker of the request briefly of this fact, indicating how much time it considers that it will need to reply, but this period shall not, as a rule, exceed thirty days.
2. In order to respond as efficiently and rapidly as possible to the requests referred to in paragraph 1, the contact points shall use the most appropriate technological facilities made available to them by the Member States.
3. The Commission shall keep a secure, limited-access electronic register of the requests for judicial cooperation and replies referred to in Article 5(2)(b), (c), (d) and (e). The contact points shall ensure that the information necessary for the establishment and operation of this register is supplied regularly to the Commission.
4. The Commission shall supply the contact points with information on the statistics relating to the judicial cooperation requests and replies referred to in paragraph 3 at least once every six months.";

8) Article 9 shall be replaced by the following:

"Article 9

Meetings of the contact points

1. The contact points of the Network shall meet at least once every six months, in accordance with Article 12.
2. Each Member State shall be represented at those meetings by one or more contact points, who may be accompanied by other members of the Network, but there shall be no more than six representatives per Member State.";

9) the following Article shall be inserted:

"Article 11a

Participation of observers in Network meetings

1. Without prejudice to Article 1(2), Denmark may be represented at the meetings referred to in Articles 9 and 11.
2. Accession countries and candidate countries may be invited to attend these meetings as observers. Third countries that are party to international agreements on judicial cooperation in civil and commercial matters concluded by the Community may also be invited to attend certain Network meetings as observers.

3. Each observer State may be represented at the meetings by one or more persons, but under no circumstances may there be more than three representatives per State.";

10) the following Article shall be inserted at the end of Title II:

"Article 12a

Relations with other networks and international organisations

1. The Network shall maintain relations and share experience and best practice with the other European networks that share its objectives, such as the European Judicial Network in criminal matters. The Network shall also maintain relations with the European Judicial Training Network with a view to promoting, where appropriate and without prejudice to national practices, training sessions on judicial cooperation in civil and commercial matters for the benefit of the local judicial authorities of the Member States.
2. The Network shall maintain relations with the European Consumer Centres Network (ECC-Net). In particular, in order to supply any general information on the working of Community and international instruments to facilitate consumer access to justice, the contact points of the Network shall be at the disposal of the members of ECC-Net.

3. In order to meet its responsibilities under Article 3 concerning international instruments on judicial cooperation in civil and commercial matters, the Network shall maintain contact and exchanges of experience with the other judicial cooperation networks established between third countries and with international organisations that promote international judicial cooperation.
 4. The Commission, in close cooperation with the Presidency of the Council and the Member States, shall be responsible for implementing the provisions of this Article.";
- 11) the heading of Title III shall be replaced by the following:
- "TITLE III
INFORMATION AVAILABLE WITHIN THE NETWORK AND
INFORMATION PROVIDED TO THE PUBLIC";
- 12) in Article 13, paragraph 1, the following point shall be added:
- "(c) the information referred to in Article 8.";

13) the following Article shall be inserted:

"Article 13a

Provision of general information to the public

The Network shall contribute towards providing the public with general information, using the most appropriate technological facilities to inform it about the content and working of Community or international instruments on judicial cooperation in civil and commercial matters.

To that end, and without prejudice to the provisions of Article 18, the contact points shall promote to the public the information system referred to in Article 14.";

14) in Article 17(4), point (b) shall be replaced by the following:

"(b) arrange for the translations into the official languages of the institutions of the Union of information on the relevant aspects of Community law and procedures, including Community case-law, and of the information system's general pages and the information sheets referred to in Article 15, and install them on the Network's dedicated website.";

15) in Article 18, point 4, the word "progressively" shall be deleted;

16) Article 19 shall be replaced by the following:

"Article 19

Reporting

No later than ...^{*}, and every three years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the activities of the Network. This report shall be accompanied, if appropriate, by proposals aimed at adapting this Decision and shall include information on the Network's activities aimed at making progress with the design, development and implementation of European e-justice, particularly from the point of view of facilitating access to justice.";

17) Article 20 shall be replaced by the following:

"Article 20

Notification

No later than ...^{**}, the Member States shall notify the Commission of the information referred to in Article 2(5)."

* Three years after the date of application of this Decision.

** Six months before the date of application of this Decision.

Article 2

Entry into force

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

It shall apply from ...*, except for points (1)(e) and (17) of Article 1, which shall apply from the date of notification of this Decision to the Member States to which it is addressed.

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at,

For the European Parliament

The President

For the Council

The President

* Eighteen months after the date of entry into force of this Decision.