



**COUNCIL OF
THE EUROPEAN UNION**



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Civil and commercial law decisions

The Council today took some important decisions concerning European civil and commercial law. They relate to the European Judicial Network, to establishment of a future common frame of reference for European contract law and to new procedures for the conclusion of bilateral agreements between EU countries and non-member countries in civil law matters.

European Judicial Network

The European Judicial Network in civil and commercial matters has been in operation since the end of 2002. It is designed to promote cooperation between Member States' judicial authorities, improve the dissemination and application of Community law and facilitate access to the judicial system for those involved in cross-border disputes, by means of members – in particular, contact points – in each Member State.

Under a review clause for the Decision establishing the network in 2001, a need emerged to extend and step up the network's role. With that in view, mention should be made of four new developments.

P R E S S

The first is a **greater role for contact points**. It is now stipulated that, where the law of another Member State is applicable, the courts or authorities applied to may approach the relevant contact points within the network in order to obtain information on the content of that law. If, for instance, in a divorce case between a French spouse living in Paris and a German spouse living in Berlin, the German court finds that the dispute before it is governed by French law, it may refer to the French contact point for fuller details of procedures and conditions under French law and of the content of that law more generally.

The second point to note is the **increased human, financial and technological resources** allocated at national level so that contact points may perform their tasks satisfactorily. The aim is that, where a contact point in one Member State sends a request for judicial cooperation to a contact point in another Member State, that request should be dealt with as soon as possible. It is specified here that, save in exceptional cases, any cooperation request should be replied to within fifteen days of its submission.

The third new point is the **opening up of the network to legal practitioners** helping to apply Community law. Associations representing professions such as lawyers, notaries or bailiffs will be members of the network and may, as such, attend meetings organised by the Commission, report their experience and help prepare information notes concerning them. It seemed only natural for such active assistants in the application of Community law to be given a place within the network.

The fourth new development is **improved public access to the judicial system**. Legislative work on civil and commercial law matters is no less important to Europe's citizens for being little known to them. The Decision calls on contact points to encourage the provision of information on Community acts and relevant international instruments, as well as on Member States' domestic law, particularly as regards access to the judicial system. The idea is in practice to make available, full information via the network's website, which contains regularly updated data in all the EU institutions official languages. In this way, a Spanish national thinking of taking legal action in France against, say, a debtor defaulting on payment will be able to consult the network website for details of the court to be applied to, any need for a lawyer, legal aid available in France, procedural time limits, etc.

It should be pointed out that the website will be accessible via the European e-justice portal, once that portal comes into operation; this will raise its profile and thus facilitate the provision of information to the public. For the sake of synergy, the Decision also requires the network to maintain relations with other judicial cooperation networks, in particular the European consumer centres network.

Common frame of reference for European contract law

As contracts are the legal instrument most commonly used in everyday life by both individuals and businesses, a need became apparent for consideration at Community level of ways of reducing the differences observable in contract law from one Member State to another.

In this connection, the Council began discussions in 2007 with a view to establishing a common frame of reference (CFR) for European contract law. Although it is a long-term project, the broad lines of the CFR have already been set out in some Council reports. It is to be a non-binding instrument, i.e. a "tool box" enabling Community legislators to make better law. In other words, the CFR could be used by legislators at Community level when they are preparing new legislation or revising existing legislation. It would make Community legislation more consistent and thus improve its quality by suggesting common references for all future instruments dealing with contract law.

To achieve that objective, the Council felt that there should be guidelines on important questions such as the purpose of the CFR, its scope, content, legal effect and structure. The conclusions adopted on 5 June 2009 are designed to enlarge on and clarify the guidelines previously adopted on four important points: the fundamental principles to be adopted (for example, the principle of freedom of contract), definitions of key concepts of contract law, "model rules" based on the fundamental principles and using the definitions chosen, the relationship which the CFR should have with the proposed Directive on consumer rights and, lastly, the form that it should take.

Agreements with third countries on civil law matters

The Council also discussed two new Regulations establishing procedures designed to authorise Member States to amend existing agreements or to negotiate and conclude new agreements with third countries in certain areas of civil law where the Community has exclusive competence.

The first of those Regulations will enable Member States to conclude agreements on specific matters covering applicable law in contractual and non-contractual obligations, while the second will enable them to conclude agreements covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance obligations.

Before the Community took on exclusive competence for these areas of civil law, it was for the Member States themselves to conclude agreements with third countries with which they had specific ties. As the Community gradually took over exclusive competence, Member States' competence in these matters was eroded, with results that were sometimes less than satisfactory. Take the example of the agreement on divorce or parental responsibility negotiated between a Member State and a third country which remains a dead letter because the Member State in question no longer has the power to conclude it, or the agreement between a Member State and a third country on the law applicable to certain non-contractual obligations following accidents in a tunnel linking the two states, which needs to be updated by re-negotiation. Member States have for some time felt the need to find a way of dealing with this type of situation.

The procedure established by the two Regulations is the solution that has been found. It gives the Commission an important role, as the guardian of the Treaties, and is designed to ensure that the *acquis communautaire* is not undermined by agreements concluded by Member States. Member States are obliged to notify the Commission of their intentions, and the Commission will then, on the basis of certain criteria, assess the planned agreement's compatibility with Community law, before authorising negotiation or conclusion. It will also be the Commission's job to consider, once sufficient experience has been acquired, whether the procedure established in the two Regulations should be extended by new Regulations, or whether it should be repealed three years after the Commission's report, as provided for at present. The two Regulations are therefore limited in duration.

The Regulation covering agreements on specific matters covering applicable law in contractual and non-contractual obligations is subject to the codecision procedure. Following fruitful talks between the European Parliament, the Commission and the Council, it has proved possible to reach agreement at first reading. On 7 May 2009 the European Parliament adopted an opinion in line with the text agreed between the three institutions. That means that there is agreement at first reading, although the Regulation cannot be adopted until a later Council meeting.

The Council has today taken note of the European Parliament's favourable vote and has welcomed this outcome, which will make it possible for a Regulation eagerly awaited by many Member States to enter into force relatively soon.

The Regulation on agreements covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance obligations is subject to the consultation procedure.

The Council has today confirmed its political agreement on that Regulation, following the European Parliament's adoption of an opinion on 7 May 2009. Like the other Regulation, it will be adopted at a later Council meeting and thus likewise enter into force relatively soon, to the great satisfaction of many Member States.
