

Final Conference  
for the

eje

Project



The EJE project, co-financed by the European Union for two years, brings together the representative professional judicial officer bodies of Germany, Belgium, Scotland, France, Hungary, Italy, Luxembourg, the Netherlands and Poland, and was launched in June 2010 to improve the enforcement of judgments in Europe.

The EJE project partners met in Paris on 18th of June to recap on the steps taken and the progress made over the last two years. The meeting was attended by representatives of the European institutions and the ministries of justice of the partner members, magistrates, judicial officers and representatives of European consumer associations or chambers of commerce and industry.

As a reminder, this project had set as objective to improve the enforcement of legal decisions in Europe. It intended to give European citizens the necessary information to enforce judgments in other Member States, allowing better access to the law. It also aimed to arm European judicial officers with the tools required to improve mutual trust, leading to better cooperation in their work as enforcement agents.

In order to attain these objectives, the EJE project partners implemented different strategies and equipped the project EJE with an essential instrument: the EJE website - [www.europe-eje.eu](http://www.europe-eje.eu). This website gives citizens and legal professionals information on legal tools and applicable procedures for enforcing a judgment in another Member State. It also has a European directory of judicial officers. It contains European news of interest to the judicial officer profession, as well as the positions of the EJE project partners on these matters.

This conference, held on 18 June 2012 in Paris, at the National chamber of judicial officers, was a perfect opportunity to present the actions taken so far and the results obtained over these last two years, both in terms of civil judicial cooperation and e-justice, ultimately aiming to place judicial officers at the heart of building the European area of justice. This project received financial support from the European institutions. This conference was also an opportunity to learn about how the project will continue, once the European financing ends, from a pool of international experts brought together for the occasion; (interpreting was provided in French and in English).



The EJE team



Left to right: Angelo D'Aurora, Karl-Heinz Brunner, William Cameron, Carlos Calvo, Jean-Francois Bauvin, Fernando Paulino Pereira, Ivo Goeyens, Wojciech Opielewicz, Csaszti Ferenc

## Opening of the conference by the Presidents of the project's partner organisations and Fernando Paulino Pereira, Head of the "Judicial Cooperation on Civil Matters" Unit, General Secretariat of the Council of the European Union

Under the Presidentship of Jean-François Bauvin, Vice President of the French national Chamber of Judicial Officers, the opening of the conference was attended by Fernando Paulino Pereira, Head of the "Judicial Cooperation on Civil Matters" unit at the General Secretariat of the Council of the European Union, Ivo Goeyens, President of the *Chambre des huissiers de justice de Belgique*, Carlos Calvo, President of the *Chambre des huissiers de justice du Grand Duché de Luxembourg*, Wojciech Opielewicz, President of the Chamber of Judicial Officers of Wroclaw (Poland), Head of the Polish delegation, William Cameron, President of the Society of Messengers-At-Arms and Sheriff Officers (Scotland), Csaszti Ferenc, Vice President of the Hungarian Chamber of Judicial Officers, Angelo D'Aurora, President of the *Associazione Ufficiali Giudiziari in Europa* (Italy) and Karl-Heinz Brunner, Vice President of the *Deutscher Gerichtsvollzieher Bund* (Germany).

**Jean-François Bauvin** opened the conference by reminding the audience that the EJE project launched two years ago thanks to co-financing of the European Union to improve the enforcement of judgments in Europe, arose because, although the instruments developed by the European Union had provided greater freedom of circulation of judgments in Europe, litigants who had obtained a decision in a Member State were encountering almost insurmountable difficulties to have them enforced in another Member State. Although litigants may have often had the enforceable nature of decisions recognised by another Member State without too much difficulty (thanks to European

regulations), in practice, they did not know how to have this decision enforced, or even whom to approach in order to do so. Judicial officers themselves could find themselves helpless in such situations, not knowing how to contact a European counterpart. Nevertheless, the free circulation of persons and goods within the European Union led to an ever-growing need for judgments to be enforced in other Member States. This was why the EJE project set itself

The screenshot displays the homepage of the EJE project website. At the top left is the logo for 'Execution judiciaire en Europe / European judicial enforcement'. The main header features the title 'Execution judiciaire en Europe / European judicial enforcement' and a navigation menu with links for Home, EJE information Sheets, News, Newsletters, Documentation, and Directory. A large banner image shows a person reaching for a star, with the text 'Improving the enforcement of judgments in Europe'. Below the banner is the 'EJE PROJECT' section, which explains the project's goal: to improve the execution of court judgments in Europe by offering European citizens and judicial officers – the enforcement agents – the information they require for the execution of legal decisions. To the right is a 'DIRECTORY' section with a search form for finding a judicial officer in Europe, including fields for 'France', 'Name of individual or firm', and 'Town or postcode'. Below the main content are two smaller sections: 'DOCUMENTATION' featuring a link to 'Règlement (CE) no 861/2007' and 'NEWS' featuring an announcement for the 'Final Conference of the EJE project - June the 10th, 2012 - Paris'. The footer includes a copyright notice and a list of partners: 'Contact us', 'Plan of website', 'FAQ', and 'Thematic Reports'.

<http://www.europe-eje.eu/en/>

the objective of improving the enforcement of judicial decisions in Europe by bridging the existing information and cooperation gaps.

After giving the floor to each representative of the project partners gathered for the occasion and after enjoying listening to each one presenting the judicial officer profession in their Member State, Jean-François-Bauvin was able to conclude that the EJE partnership reflected the diversity of the profession at the European level, in terms of law families (common law systems/civil law systems), status (freelance/civil servant), the number of judicial officers (thousands/hundreds/tens) and even representation (national/ regional/ association level). Nevertheless, all of these partners shared the same ambition: to truly guarantee the right to enforcement for European citizens, protect parties' rights and resolutely commit in a European perspective.

This is why the EJE project has brought European judicial officers together for the first time to specifically improve access to law by European Union litigants, using new technologies, and to strengthen mutual trust. Judicial officers are the main participants in civil enforcement procedures, making them key players in the European area of justice. The EJE project has also given European judicial officers a space to develop tools and best practices in terms of enforcement, which is of particular importance at a time when the European Commission proposes to work on enforcement in the strict sense of the word by publishing a regulation proposal to create a European bank account preservation order.

European judicial officers are working to build a European area of justice. On this matter, Fernando Paulino Pereira again mentioned the pressing need for European institutions to work on developing a European area of justice, in which European judicial officers, who directly experience the enforcement of European instruments on a daily basis, have a key role to play. Fernando Paulino Pereira briefly touched on the history of civil judicial cooperation, which appeared in the Maastricht Treaty and was then "communitised" by the Amsterdam Treaty. He underlined the importance of the principle of mutual recognition of judicial decisions, which would form the real cornerstone of judicial cooperation within the Union. It was elevated to a principle by the European Council of Tampere in 1999 and has been enshrined in the founding texts since the Lisbon Treaty came into force in 2009. The reinforcement of mutual confidence between participants in the European area of justice has brought about this mutual recognition.

**Fernando Paulino Pereira** also reminded the audience that 2009 faced the adoption, by the European Council, of the Stockholm Programme, which provides a roadmap for the European Union's work in the domain of justice, freedom and security for the period 2010-2014. This roadmap sets out various priorities that directly relate to the Judicial Officer profession. Thus, for civil matters, the process of suppressing intermediate measures (the exequatur) will be pursued during the period covered by the Stockholm programme. This process will be accompanied by a series of guarantees including ones relating to procedural law. It could contain measures on shared rules, or on the serving and notification of deeds, for example.



# EXTENDING EUROPEAN JUDICIAL ENFORCEMENT



Left to right: Karl-Heinz Brunner, Florence Borcy, Carlos Calvo, Dagmara Kornobis-Romanowska, Justyna Piasecka

## The key role of judicial officers

**C**arlos Calvo, President of the Chambre des huissiers de justice (Chamber of judicial officers) in Luxembourg, opened the first round-table session of the day, devoted to the key role of judicial officers in developing European judicial enforcement, stressing that the judicial officer is a key player in enforcing procedural guarantees and the right to a fair trial. On this subject, he reminded participants that the right to enforcement was confirmed by the European Court of Human Rights in the Hornsby ruling (ECHR19 March 1997) as being a constituent part of the right to a fair trial. It was with the aim of greater involvement and control of this role which was assigned to them at the European level, as well as to ensure a better guarantee of the right to enforcement, that the judicial officers initiated the EJE project.

For, as was stressed by **Dagmara Kornobis-Romanowska**, Professor at the University of Wroclaw (Poland), when presenting the European legal framework which is the context for this action by judicial officers – enforcement agents, the European judicial framework provides a platform. This platform is a constituent part of the legal system of the European Union, which seeks autonomy, but is an element which builds bridges between the national legal systems

and is a fundamental aspect of the respect of basic rights and systems and judicial traditions in the Member States. So it is that the European instruments of interest to judicial officers and their daily duties have been able, under the treaties, to take the form of so-called “legislative” legal instruments, and, in particular, of regulations which allow optimum ways of achieving the aims of legal cooperation in civil cases without actually having to affect the national legal systems and the traditions of different Member States in the area of civil law. On this point, Dagmara Kornobis-Romanowska referred to a number of European legal instruments adopted under civil law, either in a general context, such as the regulation relating to legal jurisdiction, recognition and enforcement of decisions in civil and commercial matters (known as Brussels I), or on specific topics. This last category includes, for example the provisions relating to the cross-border serving and notification of legal and paralegal documents or indeed European procedures for payment injunctions and small claims, as well as the European enforcement of unchallenged debts. In some cases, exequatur, as a domestic legal procedure for acceptance and enforcement of a decision, is applied, meaning that adoption of a legal decision, handed down in one Member State into the legal system of the other Member State for its enforcement, requires the involvement of the national jurisdiction of the latter Member State. However, once the decision is adopted within the judicial system of the enforcing Member State, the national rules of that State will apply in the same way as they apply for decisions handed down within the national judicial system. In other cases, the European institutions have gone further by removing the exequatur requirement: no intervention, nor any preliminary procedure is required from the judicial system in the enforcing Member State. It is possible to proceed directly to enforcement of the decision in the territory of the enforcing Member State. This means that construction of European judicial enforcement can be seen as an ongoing and continuous development whose success depends on the willingness of the Member States to surrender their prerogatives, but whose success also means, in practice, that judicial officers are involved in the application of European legal instruments relating to the enforcement of judicial decisions.

This is why the judicial officers needed to become involved in this area, because although real progress has been made on building up European judicial enforcement, permitting simplification of the exequatur procedures, and even the complete and utter suppression of the exequatur requirement, thereby gradually eliminating the barriers to free circulation of enforcement of decisions in Europe, the actual enforcement of these decisions in another country of the European Union still presents major practical problems related to the territorial scope of civil enforcement procedures, which difficulties unfortunately lead to a feeling by the person seeking justice that they have been abandoned and treated unjustly. The differences between national legislations and the lack of harmonisation between member states of national rules for civil enforcement procedures prevent the creation of a truly guaranteed right to enforcement in cross-border situations. It was therefore appropriate for the judicial officers – enforcement agents – to provide their input on the effective implementation of this right to enforcement in order to remedy this feeling of abandonment and legal uncertainty which can result from a lack of information and collaboration.

Seeking these two prime objectives of improved information and improved collaboration, the EJE project created an essential tool: the EJE website. This is how Carlos Calvo presented the EJE website, whose key content is available in 7 languages (French, Italian, English, German, Polish, Hungarian, and Dutch).

Carlos Calvo especially insisted on the need for the **EJE Information Sheets**, which are intended to keep companies, the general public and legal professionals informed about the legal tools at their disposal and the applicable procedures when they want to enforce a legal decision in another Member State. For each Member State involved, the EJE web-

site provides access, in the various languages of the Internet site, to the following information: the prerequisites for enforcement of a legal decision and the existence of protective measures (Information Sheet 1), the parties involved in enforcement in the Member State concerned (Information Sheet 2), the seizure of tangible assets (Information Sheet 3), the seizure of intangible assets (Information Sheet 4) and the seizure of real estate property (Information Sheet 5). This makes it possible to find out about the various enforcement procedures, and the conditions of due form and content which must be met in order to apply them. And it is also possible to find out in more details on how a forced sale at auction of tangible assets takes place in Poland, how a deduction from earnings works in Hungary or how to seize common goods in Italy.

Because this is a highly technical subject, the EJE project has, as far as possible, created documents for two different audiences, providing access to a summary sheet intended for the general public in Europe, as well as more detailed fact sheets intended for legal professionals.

In conclusion to his presentation, Carlos Calvo stressed that, while initially information will only be available for the Member States who have joined the initiative, the EJE project has set out the target of providing the information needed for enforcement of a legal decision across the whole of the European Union.

**Justyna Piasecka**, Member of the Polish delegation, then spoke in order to present the added value of the EJE project for improving cooperation between judicial officers - enforcement officials. She explained to the audience how to benefit from the **EJE documentation**, accessible via the EJE website, which provides better information about European instruments for enforcing legal decisions in Europe and explains how judicial officers in each of the Member States proceed with the implementation of these instruments in normal practice. Having outlined that part 1 of the documentation relates to enforcement of a legal decision in another Member State under the Brussels I regulation, that part 2 covers the European procedure for a payment injunction and part 3 is devoted to the European settlement procedure for small claims, Justyna Piasecka then illustrated this by navigating within part 2 of the documentation, and showed that, with a single click, she was able to access information about how, in what timescales and involving what costs, the European payment injunction process works in the relevant court with jurisdiction in each of the Member States involved in the project.

Justyna Piasecka then presented the **European directory of judicial officers**, which is seen as the “core of the EJE project”, providing access to the contact details of European colleagues. The EJE portal, in fact, provides both European citizens and legal professionals with an electronic directory of judicial officers in Europe. Initially, this will only provide information about judicial officers in the Member States who are participating in the project, but very soon this European directory will be expanded to include the other European States. This directory therefore provides access to the contact details for judicial officers who are authorised to act in the territory where enforcement is required. It is interesting to note that the languages spoken by the bailiff or his office staff are also listed.

Finally, Justyna Piasecka briefly presented two other areas of the EJE website, the “**News**” tab and the “**Newsletters**” tab which, together, offer the benefit of news and updates on any European legislation and case law likely to be of interest to those working professionally as judicial officers.

Even if it is innovative in terms of its subject area, the EJE project drew some of its inspiration from the methodology of the European Judicial Network in civil and commercial matters (EJNCC), created at the initiative of the European institutions in 2001 which is focused on the same two core themes, namely improved information and improved collaboration between national authorities. This is how **Florence Borcy**, representing the Belgian Ministry of Justice and the national contact person for the EJNCC, shared her experience with attendees. After reminding us that the EJNCC was initiated on the basis of the conclusions of the Tampere Council in 1999, which asked for the creation



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The judicial officers in Europe

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## Directory

Pour rechercher un huissier de justice compétent, complétez le formulaire ci-dessous.

Country: France

Name of individual or firm: Name of individual or firm

CPE: CPE

Postcode or town: Town or postcode

rechercher

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and update, via a network of competent national authorities, of an easily accessible information system based on regular contacts, multi-topic meetings and using the latest technology, Florence Borcy highlighted two targets of the EJCNC that aim to improve legal collaboration and simplify access to justice for people involved in cross-border litigation. Having opted for an informal approach, the members of the network meet periodically. These meetings are intended as discussion platforms to stimulate dialogue about the practical and legal problems encountered in applying European legal instruments, sharing experiences, identifying best practices and disseminating useful information (primarily in the form of practical guides). Florence Borcy then covered the opening up of the EJCNC to professionals, following a decision by the European Parliament and the Council of Ministers on 18 June 2008. She recalled that this opening up grew out of the conclusion that it was necessary to involve legal professionals with the EJCNC, particularly notaries and bailiffs, who are directly involved in the application of community laws and international instruments. It was decided to involve these professions through their national organisations. This is why links were created between the contacts for the Member States involved in the network and the professional bodies, in order to share experiences and available information, to help in developing and updating the information sheets, and to ensure the involvement of legal professionals at relevant meetings. The EJCNC is delighted to be able to benefit from the information and tools made available through the EJE website and to continue to share experiences with the national organisations who are members of EJCNC and partners of EJE.

# ON THE WAY TO CREATING A EUROPEAN ACCOUNT PRESERVATION ORDER



## Judicial officers at the heart of the decision-making process

The EJE project was initiated right at the time when the European Commission was restarting its work on European account preservation order, initiated in 2006 by the publication of a Green Paper on improving the enforcement of legal decisions within the European Union - the attachment of bank accounts (COM(2006) 618). During initial meetings, and given that the EJE project was finally providing European Judicial Officers with a forum to promote their tools and best practices, the EJE partners decided to offer their experience for the benefit of the European institutions,

and to define the elements of the procedures for a European attachment of bank funds, based on best practice and taking into account the specific needs of each party. The conclusions of these discussions, which are available on the EJE website, were passed over to the European Commission. On 25th of July 2011, the European Commission published its proposal for a regulation to create a European account preservation order, intended to simplify the recovery of cross-border debts in civil and commercial cases (COM(2011) 445 final).

This conference offered the opportunity to review this draft regulation, to hear the opinions of the various parties involved in the decision-making process, and to present to a wide audience the position of the EJE partners.

The European Commission, represented by **Saskia Kleine-Tebbe**, initiated the review by pointing out that the procedure to attach bank accounts already exists in national legislation in most Member States. It is considered to be a fast and effective procedure to combat the problem of default on payments, a particularly worrying problem during a period of crisis, as a company which cannot collect its debts in good time will experience financial problems which could lead to bankruptcy. The European Commission stressed that in the European Union, nearly one million small companies are having problems in collecting cross-border debts, and that, each year, up to 600 million euros owed is not collected. However, companies generally hesitate about initiating legal action to try and collect the amount they are owed in another Member State, because of the costs or time involved. Conversely, it is easy to move funds from one Member State to another and redistribute funds between multiple bank accounts located in different Member States, whilst freezing funds owed by the debtor in a bank account held by the same in a foreign country is not an easy task, given that there are many differences between different national legislations. This is the reason why the draft regulation put forward by the Commission in July 2011 aims to create a single and optional procedure which would apply in cross-border situations, and which would sit alongside the existing national systems. It is currently under discussion with the Council of Ministers and the European Parliament.

The European Commission presented the main features of the new procedure. The new order would be purely a protective order, which means that it would simply block the debtor's account temporarily, and not provide for the money held there to be paid to the creditor. It would be issued under an uncontested "ex parte" hearing, allowing it to be a surprise to the other party. Common procedural rules, which would apply to the relevant court with jurisdiction and covering the conditions for issue, disclosure of the debtor's assets, the timescales and the means of recourse are also planned.

**Jorge Pegado Liz**, Member of the European Economic and Social Committee (EESC) and rapporteur on the draft regulation to create a European bank account attachment order, also presented the EESC opinion on this proposal, adopted on 26th of April last.

Jorge Pegado Liz told us that the EESC welcomed the proposal being put forward. But it still feels that the proposal should have been accompanied by a parallel regulation, (which, logically, would have come first), on the transparency of the debtor's assets.

The EESC welcomes the fact that the Commission has managed to propose a legal approach which ensures a fair balance between the various interests, and between the rights of the different parties involved. The EESC is pleased

that the Commission has taken on board a considerable part of the recommendations which it had made, and, in particular, the option of issuing a European account preservation order after obtaining a right of enforcement; and also the clear definition of the system for challenging the decision, as well as the means of legal recourse available, in order to guarantee both the legality of the procedure and the rights of the claimant, the defendant and third parties.

The EESC is also pleased to see that there was a clear decision to opt for a system which is an alternative to existing national procedures and optional, for a regulation which is the most appropriate legislative instrument, and for the measure to apply only to cross-border situations.

But the EESC is not completely convinced of the essential nature of this measure, given the opting-out by the United Kingdom and the fact that the relative uncertainty about the total cost of the procedure and identification of the competent foreign jurisdiction will continue to present barriers, especially for small companies. The EESC is also not entirely convinced that the proposal shows full compliance with the principles of subsidiarity and proportionality, given that it is envisaged that exequatur will be done away with as part of the revision of the Brussels I regulation. Jorge PEGADO LIZ also stressed a lack of detail in the impact analysis, in terms of what might be the desired results.



Left to right : Roderick Macpherson, Saskia Kleine-Tebbe, Carlos Calvo, Jorge Pegado Liz



Finally, the EESC feels that the content of some provisions of the proposal need to be reviewed and improved in order to make these provisions clearer, less ambiguous and more appropriate, even down to the need to correct some errors in translation and spelling.

**Carlos Calvo**, for his part, presented the position of the partners in the EJE project. He began by stating that the EJE project partners welcomed the initiative by the European Commission, as well as the recognition of the role of enforcement agents in the implementation of a European measure to attach bank assets, as guarantors of the legal security and speed of the procedure, and to protect the rights of the parties. Attaching bank assets is an effective means for a creditor to collect sums of money which are due to him/her. At a time when, thanks to the free movement of people, companies, services and goods, more and more debtors make use of bank accounts in different Member States, and at a time when technological advances offer options to transfer funds very rapidly from one Member State to another, the current system does not allow for blocking these movements of funds as quickly as all that and at a minimal cost. Given these obstacles, the creation of a European order to attach bank assets, allow for the attachment of accounts in different Member States of the Union, while providing a high level of protection to the debtor, seems to be something needed.

Carlos Calvo reminded us of the need to ensure a high level of protection of the rights of all parties, and especially the protection of the debtor's rights, thanks to the involvement of Judicial Officers - enforcement agents, who need to be the competent bodies for carrying out the implementation of the order at the bank, and to report this attachment immediately, once the order has been applied, to the debtor. This protection is essential, given that the European account preservation order would be issued as the result of a non-adversarial hearing, and only a Judicial Officer can ensure that the debtor is provided with sufficient information.

Carlos Calvo also stressed that the EJE project partners welcomed the fact that the European Commission had taken into account the difficulty enforcement agents have in gaining access, under some circumstances, to information relating to debtors' assets. Enabling access by the enforcement agent to this information guarantees better enforcement. Improving access to information about the debtor's assets also meets one of the aims of the regulation, which is to have a speedy procedure: it is imperative that enforcement agents be allowed to easy access the reliable information in order to ensure a speedy implementation of the procedure, while fully complying with legal requirements.

But Carlos Calvo stressed that the EJE project partners were considering whether, as suggested by the EESC, certain articles of the draft regulation put forward by the European Commission needed clarification. As an example, Carlos Calvo drew attention to the fact that if the draft regulation asks the claimant to indicate the account number on the application form, this should not imply that the order is restricted only to this single bank account, when the intention was simply to "enable the bank to identify the defendant and his/her account(s)." Therefore, there needs to be an explicit statement that the order can be applied to other accounts held by the debtor at the same bank, as the regulation provides for the option to issue a single order relating to multiple accounts. In the same way, Carlos Calvo stressed that the EJE project partners felt that a certain amount of discretion needed to be left to the judge in deciding what level of proof had to be supplied by the claimant, particularly in relation to the events quoted to support the existence of the debt, and those justifying the issue of an order, given the need to ensure a speedy procedure. Finally, as a further example, Carlos Calvo, having once again stressed that the implementation of the order and the notice of the attachment by the debtor through the agency of a Judicial Officer – enforcement agent – provided the best guarantee for protecting debtors' rights, also invited the European institutions to redefine, in the text of the



regulation itself, the time period within which the order has to be served or notified to the bank as well as the time period within which the order must be served or notified to the defendant.

**Roderick Macpherson**, Member of the Scottish delegation to the EJE project, took the floor to pick up on the criticism made by Jorge Pegado Liz about the decision of the United Kingdom not to participate to this instrument, even though, when this instrument was first discussed, one of the reasons for it was the fact that no procedure of this kind exists in the United Kingdom under national legislation and despite the fact that the British government had announced its intention to fully participate in negotiations, in the hope that changes applied during these negotiations would go far enough to allow the United Kingdom to sign up to the instrument.

Roderick Macpherson, indicated his disappointment at this decision, but explained that the decision was the result of a public consultation carried out in the UK in August and September 2011. Of 51 responses received by the British government, including 9 sent in by Scottish organisations, only 37 offered an opinion on the question of whether the United Kingdom should or not participate in this instrument. 24 responding parties were against the United Kingdom being involved in this instrument, 13 were in favour, including 5 under Scottish jurisdiction. Many of the negative responses indicated a reluctance to accept the very principle of an order of this type, that would allow freezing assets held on British territory based on a decision issued in another Member State, by a jurisdiction which did not apply equivalent rules. Roderick Macpherson felt that this position gave a glimpse of the low likelihood of the British government changing its position during the course of the negotiations. The position adopted by the EJE partners had been attached to the response submitted by the Society of Messengers-at-Arms and Sheriffs' Officers to the British government. That being the case, Roderick Macpherson noted the disappointment felt by the Scottish delegation, whose responses had not been taken into account.

The European Commission, for its part, stressed that it had, from the start of the work on the EJE project, taken note with great interest of the comments from the EJE project partners on the issue and about its proposal. The European Commission added that these comments would be especially useful for the discussions which have now started at the Council of Ministers, within the working group on questions of civil law.

In this respect, the European Commission stated that reservations made had already been voiced by Member States in relation to the practical arrangements of the procedure. The Member States had, in particular, demanded that the scope of this new procedure be clearly limited to cross-border disputes, that the interests of debtors and third parties (banks) should be better protected, and even that the practice in certain Member States under which, (despite the fact that this is an "ex parte" procedure), the judge has the freedom to require the presence of the debtor under exceptional circumstances, should be retained. The Member States also feel that the freezing of account assets should automatically stop if no procedure on the substance of the dispute is initiated within the defined deadlines (the draft regulation leaves it to the debtor to request the removal of the attachment if the creditor has not started any procedure within 30 days following the attachment order). As for the mechanisms suggested by the European Commission to provide access to information relating to bank accounts (which allow Member States to choose between an order from the banking tribunal or direct access by enforcement agents to public records), the Member States feel that it is necessary to guarantee that these will not allow "fishing" (those technics named "fishing expeditions" are well known in transborder litigation) for information, and that the creditor, in addition, has no justified reason for knowing in which Member States the debtor holds bank accounts, seeing that the European Union is not competent to impose any of such mechanism on the Member States. Finally, the Member States feel that the time limits for procedures contained in the draft are not long enough and do not reflect the reality of how the legal system works in some Member States.

**Fernando Paulino Pereira** added that, in fact, the Member States had started to work on the draft text; the “civil law” group of the Council had met several times on this topic, but that the negotiations were sure to be long and delicate, even if, as **Patrick Martowicz**, (who represents France within this group, during meetings dealing with matters relating to bank assets), was able to state that a consensus on various points should have already been reached.



Point of view

## Francesco Patrone

Chief of Staff to the Secretary of State for Justice (Italy)

According to me, your important project will be very useful to all European legal operators, because it builds a powerful bridge towards the different legal systems of the European Countries.

# THE EXPANSION OF E-JUSTICE WITHIN THE EUROPEAN UNION



Left to right: Luc Ferrand, Saskia Kleine-Tebbe, Nora Klebercz, Jean-Francois Bauvin, Fernando Paulino Pereira, Ronald Smit, Carsten Schmidt

## The involvement of judicial officers

**F**ernando Paulino Pereira, Head of the “Judicial Cooperation on civil Matters” Unit within the General Secretariat of the Council of the European Union, and **Saskia Kleine-Tebbe**, from the “Criminal law” Unit in the “Legal” Directorate of the European Commission, and responsible for questions of e-justice, were kind enough to present European e-justice to us, its evolution and its likely future.

The most visible part of European e-Justice, and certainly the best executed over the last few years, is the European e-justice portal, which came online in July 2010. This portal will become the single electronic gateway to provide the public with more effective access to justice. Available in twenty-two languages of the European Union, this unique access point aims to bring together all the relevant information, both European and national (presentation of legal systems, of applicable law, etc.), as well as the necessary functionality to execute a procedure online. Any citizen of a Member State should eventually be able to approach the jurisdiction of another Member State virtually, using this portal, and the procedure should follow its course in a virtual way. On this subject, Saskia Kleine-Tebbe presented the first dynamic forms which are already available online for a number of European instruments. This portal is also intended to supply the necessary tools for improved collaboration between both the authorities and legal professionals in the different Member States, and to centralise a number of different registers and databases.

The portal has received more than 800,000 visits since it was launched, of which 450,000 in 2011, and more than 3,400,000 pages have been viewed. It now includes 20,000 pages of content in 22 different languages.

For 2012, the main new features which are expected are the migration of the Internet website of the European Judicial Network in civil and commercial matters (EJNCC) to the e-justice portal, the linking of national bankruptcy registers, as well as the preparatory work for the development of a search engine for national, European and international jurisprudence. 2013 will be the year when a database of competent jurisdictions goes online, of migration of the European judicial Atlas to the e-justice portal and of integration, within the e-justice portal, of the European directory of lawyers and the European directory of notaries, developed respectively by the Council of Bars and Law Societies of Europe (CCBE) and the Council of the Notariats of the European Union (CNUE), with co-funding from the European Union. These two directories will be located in the "Find a lawyer" and "Find a notary" functions. On this point, Fernando Paulino Pereira and Saskia Kleine Tebbe both pointed out the need for cooperation by legal professionals, who are both consumers and providers for the portal, and they stressed the interest of the European directory of judicial officers, created and intended to be expanded as part of the EJE project. They also mentioned the potential need to build the "Find a Bailiff" functionality into the e-justice portal, planned for after 2013, as well as the linking up of company registers, the linking up of real estate property records, the development of alternative forms of settling disputes online, and the integration of various relevant Internet sites, which the European Commission has indicated could be part of the EJE website. Finally, the representatives of the European institutions mentioned the questions raised by the e-justice developments and which any future instruments on e-justice will need to address, namely questions of governance, of its aims, its scope, liability, data protection, data security and also costs.

The screenshot shows the homepage of the European e-Justice Portal. The header includes the logo, a search bar, and links for 'Spread the word', 'RSS', 'Your feedback', 'Legal notice', 'Sitemap', and 'English (en)'. A navigation menu on the left lists various legal topics. The main content area features a central banner about the portal's future, followed by four columns of services: Citizens (Going to court, Family matters, Legal aid, etc.), Businesses (Business registers, Insolvency registers, etc.), Legal practitioners (Law, Case law, Legal professions, etc.), and Judiciary (Law, Tools for courts, etc.). A 'Latest news' section at the bottom left highlights a call for proposals for the Hercules II programme. A call to action at the bottom right encourages spreading the word about the portal.

<https://e-justice.europa.eu/home.do?action=home&plang=en&init=true>



Following these presentations, the representatives of the EJE project again expressed their interest in the development of e-justice, and **Vincze Attila**, member of the Hungarian delegation to the EJE project, came back on the technical details of the EJE electronic directory. In order to better meet the needs of the e-justice portal and the expectations of the European institutions, particularly in terms of updates, liability and data protections, the EJE directory opted for a web-service system, that is a system which uses remote querying of national directories. This means that the EJE directory does not have any files of its own. The management and update of data is provided by each of the partners, at national level. On this subject, **Karl-Heinz Brunner**, member of the German delegation on the EJE project, shared the problem encountered by his delegation in participating in the directory, given that the German judicial officers are civil servants, and the responsibility for creating a national electronic register of judicial officers, which is a necessary precondition for joining the EJE directory project, rests with the Ministry of Justice, which, so far, has not agreed to this. However, the European directory of judicial officers could also be used as the basis for a listing of “judicial officers” as part of the implementation of a European electronic procedure.

In that case, it is down to the e-CODEX project (e-Justice Communication via Online Data Exchange), which is co-funded by the Member States and the European Commission, to find the necessary technical solutions to develop functionality for the “electronic procedures” of the e-justice portal. This conference was therefore an opportunity to bring together representatives of the Ministries of Justice of the different Member States in charge of the e-codex project.

**Carsten Schmidt**, representing the Ministry of Justice of the Rhineland-Westphalia region, which is project leader for the e-codex project, was kind enough to present the e-codex project to us, its origins, its aims, the membership of the consortium as well as the approach it has adopted. His presentation was supplemented by the experience of **Nora Klebercz**, representative of the Hungarian Ministry of Justice for the e-codex project.

The e-codex project set itself the target of making a contribution to the development of the e-justice portal and the electronic implementation of European procedures, procedures which require cooperation between different national legal systems, by means of the development of standards and shared technical solutions, and greater interoperability of national systems. The consortium carrying out the e-codex project includes 14 Member States, Turkey, the CCBE and CNUE for a period of 3 years (December 2010 - December 2013). It has a budget of 14 million euros, half of this funded by the European Commission.

In order to achieve the objectives it was set, and to ensure the interoperability of national systems, technical solutions need to be designed which respect to the principles of subsidiarity and complementarity, in particular with reference to the services and infrastructures that the Member States have already developed to meet the specific needs of their national legal systems. The aim of the e-CODEX project is not to develop a system which would be in addition to the national systems, nor to duplicate a national solution at European level. Its aim is rather to draw on the existing national solutions and to develop a system of pan-European interoperability, of linking existing systems to allow communications and data exchange in a cross-border situation. In addition, e-codex intends to base itself on solutions which have already been developed and have proven themselves in terms of interoperability, such as STORK, PEPPOL and SPOCS.

To achieve this result, the e-codex project has taken a “building block” approach, each of these being created by separate working groups who are tasked with defining the approaches and common technical standards, especially in relation to identity management and electronic signatures, document and data interchange, electronic deposit, electronic payment and also document formats.



**Ronald Smit**, representing the Netherlands' Ministry of Justice and responsible for e-codex, illustrated these comments by presenting in more detail the work of working groups focused on the development of common standards. The solutions developed have to be sufficiently generic to be able to be applied to a wide variety of cases in countries which each have their own national systems. **Luc Ferrand**, Project director in the Ministry of Justice and Freedoms in charge of the e-codex project for France, for his part, presented the working group which he chairs: this one is looking at "pilots", in other words, trials of the solutions developed within the various working groups. To do this, the project selected a number of cross-border procedures in which the building blocks would be deployed and tested in real life. The pilots will not be simulations. They must offer real operational electronic services supporting cross-border judicial procedures. The pilots, selected in the area of civil law, concerned the procedure for settling small claims, and the European payment injunction procedure; procedures which involve a wide range of technologies, including some relating to document formats and standards, information security, security of electronic identities, electronic signatures, electronic delivery and semantic technology, all of these aspects being studied in different working groups.

As it was, judicial officers were not originally involved in the e-Codex project. However, as **Jean-François Bauvin** emphasised, judicial officers, who are very active in the enforcement of justice and freedom, are asked to play an important role in the implementation of European procedures. Taking the example of the European procedure for payment injunctions, Jean-François Bauvin reminded us that it is the bailiff who has to deliver this act to the defendant and who, in a cross-border situation, has to deliver it in compliance with regulation (EC) 1393/2007 of the European Parliament and the Council of Ministers on the serving of notice in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), whenever the debtor is resident in a different Member State.

In addition, Jean-François Bauvin reminded us that, in parallel, the organisations which represent the profession of judicial officer in Belgium, Luxembourg, the Netherlands, Hungary and Estonia, in conjunction with the French national body (Chambre nationale des Huissiers de justice française) have initiated, with the help of co-funding from the European Commission, and with the support of the French Ministry of Justice, the EJS project (e-justice serving). The project planned the creation of a platform for virtual and secure exchange of documents between judicial officers designated as originating entities and required by the Member states under regulation EC 1393/2007. To implement this project, it was also planned to work on the architecture of the platform, its link to existing national platforms, the conditions for access to the platform – especially authentication, the format of exchange of documents and also the arrangements for electronic signature of documents transmitted by judicial officers to their opposite numbers in another Member State.

Having seen the missing link in the e-Codex project, and helping with the launch of the EJS project resulting from the initiative of the national chamber, and because the two projects, e-codex and EJS are both co-funded by the European Union and share a common objective, namely the improvement of interoperability between national systems of electronic communication in order to develop e-justice in Europe, the European Commission had invited the e-Codex and EJS consortia to start discussions with a view to merging. This is how a partnership was initiated over the last few months between the E-codex and EJS consortia.

This conference was therefore an opportunity to bring together for the first time the European Commission, the representatives of the e-codex consortium and the partners in the EJS project and to hear the congratulations and encouragement from the European Commission, hoping for the good functioning of this partnership and the great success of the EJS project.

# CLÔTURE



Left to right: Jean-Daniel Lachkar, Anne Houtman, Ivo Goeyens

Closing speeches by Jean-Daniel Lachkar, President of the French national chamber of judicial officers, Ivo Goeyens, President of the European chamber of judicial officers and Anne Houtman, Head of Representation of the European Commission in France.

The closing of the work done on this busy day was an occasion to meet, alongside **Anne Houtman**, Head of Representation of the European Commission in France, **Jean-Daniel Lachkar**, President of the French National chamber of judicial officers, leader of the EJE project, and **Ivo Goeyens**, President of the Belgium National chamber of judicial officers, who was recently elected President of the European chamber of judicial officers.

**Jean-Daniel Lachkar** expressed his pleasure of having attracted such a large audience from diverse backgrounds to the national chamber of judicial officers. He thanked the EJE project partners for their enthusiasm and commitment to the European partners, as well as the European institutions for supporting this project and their presence at this final conference. Without this, the EJE project would not have been possible.

Jean-Daniel Lachkar then emphasised how the EJE project had been essential to the profession in Europe. “The EJE project is and will be of definite interest in the daily life of European citizens and in the practice of us professionals, but it cannot be summed up in just the tangible achievements that have been presented today - its scope goes far beyond: it gave us a deep feeling of belonging to a profession, even a European profession, and this feeling must now be replicated at the European level. To make life easier for citizens and companies, and to end the mutual misunderstanding caused by the diverse nature of legislation, the EJE project has, for the first time ever, brought together European judicial officers, who are key participants in civil enforcement procedures and therefore major players in the European area of justice .”

Jean-Daniel Lachkar also pointed out that although the EJE project has improved the enforcement of judicial decisions in Europe, this is mainly because it has finally provided a space in which judicial officers can get to know each other and understand each other better, enhance their most efficient tools and identify best enforcement practice.

From this shared journey, Jean-Daniel Lachkar made some fundamental points: “European judicial officers must play a leading role in ensuring legal security, improving access to the law and to justice and boosting the efficiency of enforcement orders, which are a key part of the right to a fair trial. Therefore, they must be aware of their role in the European area of justice. European judicial officers have acknowledged the need to become fully involved in the judicial use of information and communication technology, and they must therefore be full participants in the development of European e-justice. European judicial officers, whose daily practice is constantly changing in line with the development of the European judicial area, must now contribute to developing a shared European legal culture. The links between judicial officers in Europe must be strengthened and even more structured, and the bridges between judicial officers and the institutions of the European Union must be consolidated. It is essential, as we have seen from the perspective of creating a European attachment of bank assets, and in the area of e-justice, that European judicial officers are responding robustly and sustainably to the legislative initiatives of the European Union institutions, in matters relating to their activities. European judicial officers, who have unrivalled experience and expertise in these matters, must be able to contribute, via specific actions and proposals, to building a European judicial space which guarantees the rights of litigants.”

Jean-Daniel Lachkar then gave the floor to **Ivo Goeyens**, President of the European Chamber of Judicial Officers, which was established in April on the initiative of the French National Chamber of Judicial Officers, the Luxembourg National Chamber of Judicial Officers, the Italian Judicial Officers’ Association and the Belgium National Chamber of Judicial Officers. Thanks to the experimental work of the EJE project, these professional bodies have been able to develop the ideas they initially had several years ago, but which until now had never materialised: to establish a European structure, bringing together judicial officers in sharing, promoting and defending their shared interests to benefit European litigants.

Ivo Goeyens presented this new structure by first of all pointing out that judicial officers had the duty to succeed and, to do so, to become involved in the European dynamic. To achieve this, the new structure could not be met with distrust, as had too often been the case in response to the unknown. The European Chamber of Judicial Officers is

intended as a shared structure to represent the role of judicial officers in the European context, in line with the expectations of the European institutions, like other professional bodies, such as the Council of Bars and Law Societies of Europe (CCBE) for lawyers and the Council of the Notariats of the European Union (CNUE) for notaries. This structure can formalise the cooperation of member institutions at national levels which, in the European context, will finally have an opportunity to speak as one voice.

Ivo Goeyens specified that this structure was based in Brussels, at the premises of the Belgian Chamber of Judicial Officers, and was thus in immediate proximity to the European institutions, contacts of the first order.

Ivo Goeyens stated that the main objectives of the European Chamber of Judicial Officers were to promote the activities of judicial officers and their development, implement the joint decisions of its Members with the European authorities, identify and circulate best practices in the enforcement of European instruments by judicial officers, implement training strategies for judicial officers in European instruments, develop the technical and IT tools necessary in a Europe of e-justice and, last but not least, circulate useful information to European citizens.

Ivo Goeyens completed his proposal by adding that, to attain these objectives, the European Chamber of Judicial Officers could welcome the national representative bodies of judicial officers from other countries that are currently part of the European Union, and that national bodies representing the profession of judicial officers from states who are candidates for accession to the European Union could also be welcomed as observers. This was because, as Ivo Goeyens underlined, it would only be possible to meet these objectives with an attitude of openness and respect for the expertise of the European institutions, the national professional bodies and the International Union of judicial officers.

**Anne Houtman**, Head of Representation of the European Commission in France, congratulated the EJE project partners, underlining that the EJE project had received financial support from the European Commission because it fully met with the objectives of the European Union by bringing together nine countries and by completing the European area of justice with its ability to improve the enforcement of judgments between Member States. It was an innovative project which used new technologies to facilitate citizen access to justice and strengthen cooperation between enforcement agents and that, in fine, it was a "project that is compatible with the Commission's strategy to restart European growth".

In this respect, Anne Houtman recalled that "Europe 2020" was the growth strategy that the Union intended to pursue for the next eight years, an essential part of which is the increased participation of individuals and companies in the great internal market. Today, a quarter of European SMEs, i.e. 5 million businesses - trade with other Member States. 12 million people study, work and live in a Member State other than the one of which they are nationals. *"However, our companies and citizens are still facing obstacles too often when they want to assert their rights abroad: 1 million companies encounter difficulties recovering their debts in another Member State, and only 7% of consumers make purchases on the internet abroad, as they do not have sufficient confidence in the justice systems of other countries to be able to resolve their disputes. In this context, the Europe of justice is a necessity."*

Anne Houtman then reminded the audience that to strengthen the European judicial area, the European Commission's action plan to implement the Stockholm programme (2010-2014) has listed measures for enforcing the principle of mutual recognition and scheduled actions to facilitate access to justice and sustain economic activity. It is now possible to outline a first very positive legislative outcome for the first two years of implementation of the Stockholm

programme. The “European gain” in civil justice matters (11 regulations and 3 directives) has two new regulations on divorce law (“Rome III”) and on successions, while the regulations on maintenance claims and the directive on mediation have come into force. The European Commission also presented four new legislative proposals on the review of the “Brussels I” Regulation, to property regimes, contract law and a protective European bank account preservation order, as well as two proposals on alternative resolution mechanisms for consumer disputes. The Commission has also begun public consultations on other subjects, such as class action and the circulation of public documents and acts of civil registry. It has initiated studies on the enforcement of foreign law, and minimum procedural rules. Finally, it is preparing reports on the enforcement of existing instruments (legal aid directive, small claims procedure and insolvency regulation) in order to improve their functioning. Anne Houtman also came back to the opening of the European Judicial Network on civil and commercial matters and the creation of the European e-justice portal, which brought European justice into the digital age.

Concerning these different subjects, Anne Houtman stated that it fell to the juridical professions to act as an intermediary between European law and users, enabling them to fully enjoy and assert their rights. Anne Houtman added that the European Commission also had its role to play in improving understanding of European law by those who use it.

2013 will be the European year of citizens. Anne Houtman invited the judicial professions to mobilise. *“All legal professionals, including judicial officers, must be familiar with the European context of their daily practice in order to give individuals and companies a coherent, stable European area of justice, and above all, to be able to provide reliable, useful advice to citizens.”*

This is also the reason why the European Commission is convinced of the need to accelerate European judicial training, which needs to be fully integrated into initial or continuous training and offered to legal professionals at the local, national or European level. Practical training needs to be implemented, so that experiences can be exchanged between peers, having a real impact on the daily practice of justice professionals. Anne Houtman reminded the audience that the European Commission, in a guideline document of September 2011, had set itself the objective of training 700,000 professionals from the juridical sector (judges, barristers, judicial officers etc.) in EU law by 2020. The Commission considers the European e-Justice portal to be an important tool for supporting European judicial training. The portal will be completed to give information on training bodies and activities.

Anne Houtman concluded by saying that, by using all of these measures, *“we can, all together - the European Commission, the ministries of justice of the Member States and the judicial professions - effectively help citizens to assert their rights in the great internal market. It is an indispensable effort in order to achieve justice that reflects the growth of the Union!”* She added: *“The Commission is happy to be able to rely on judicial officers in this task.”*





The partners of the EJE project have decided on 19 of June 2012, at the end of co-financing of the European Union, to grant the European Chamber of judicial officers with the monitoring and future developments of the EJE project.

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