



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 February 2014

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**FREMP 29
JAI 103
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NOTE

from:	Coreper
to:	Council
Subject:	Draft conclusions of the Council and of the Member States on the civil and commercial justice systems of the Member States

Delegations will find attached a text prepared by the Hellenic Presidency of the Council.

- RECALLING that judiciary is an independent state power and a fundamental constitutional institution of the Member States, which guarantees the protection of human rights and the proper application of law to individual cases;

- RECALLING that independent courts and judges as well as effective access to justice are core values emerging from the constitutional traditions of the Member States;

- RECALLING that, according to Article 2 of the Treaty on European Union, justice prevails in Member States' societies;

- NOTING that one of the key elements for the evaluation of justice systems is the quality of their functioning and therefore any such exercise should not be limited to quantitative criteria;

- NOTING that the ultimate goal of any civil and commercial justice system is the administration of justice and the protection of human rights, without, however, underestimating the impact of the effective functioning of a justice system on the economy;

- NOTING that national justice systems in Member States vary widely and therefore comparing these systems is a difficult and complex exercise;

- NOTING that the intensity and extent of the present economic crisis has affected Member States in varying degrees;

- NOTING the interest of the Member States in ensuring that national justice systems are as efficient and effective as possible; and that within this framework the Member States are continuously and increasingly taking the necessary legislative and other measures to ensure the effective functioning of their justice systems;

- CONSIDERING that mutual understanding and mutual trust are amongst the main objectives of the European Union; and that, among other measures, the sharing of best practice in the field of civil justice can help to improve the effective functioning of national justice systems; whilst noting the high standard of civil justice in the Member States and desiring to maintain such standards;

- RECALLING that the European Parliament Resolution on the Justice Scoreboard calls on the Commission to take this exercise forward in accordance with the Treaties and in consultation with the Member States; stresses that an effective and trustworthy justice system gives businesses incentives to develop and invest at national and cross-border level; and “calls on the Commission and the Member States to encourage mutual understanding and cooperation between national justice systems, including by means of networks of contact judges”¹;

¹ Document P7_TA (2014)0064, paragraphs 1, 2 and 12.

- WISHING to support the work of the Council of Europe by using its products rather than replicating its work; and highlighting the importance of maintaining the wider European impact of such Council of Europe work;
- RECALLING the importance of a well functioning justice system and of respecting the separation of powers and independence of the judiciary; whilst acknowledging the difficulties inherent in measuring certain aspects of justice systems, such as independence or fairness; and also highlighting that comparing justice systems without appropriate contextualisation of that relevant information can lead to false or misleading conclusions;
- STRESSING the importance of respecting the variety of different justice systems in the EU in a way that welcomes this diversity and that dialogue, sharing ideas, understanding and best practice are some of the most constructive and effective methods for improving national justice systems; and noting that a focus on specific topics can lead to finding real, substantive and constructive solutions;
- NOTING that appropriate consideration and time is needed to consider and give effect to any changes seeking improvements to a national justice system that a Member State may wish to make, and noting that attempts to rush through justice system changes can negatively impact on legal certainty and lead to inaccurate measurements or poorly implemented policies; and considering that thematic discussions should allow for this time;
- UNDERLINING that any European Union action in this field should have a sound legal basis in the Treaties;

THE COUNCIL OF THE EUROPEAN UNION AND THE MEMBER STATES MEETING
WITHIN THE COUNCIL:

1. REAFFIRM their commitment to effective, efficient and fair national justice systems in full respect of the separation of powers, which is a fundamental principle of democracy, and the diversity of national justice systems;
2. CONSIDER that mutual understanding and mutual trust are important to relations between Member States; and that the sharing of best practice in the field of civil justice can help to improve the effective functioning of national justice systems;
3. UNDERLINE concerns expressed by many Member States about the methodology and system explored by the European Commission in 2013 with its Communication on a 2013 Justice Scoreboard; and especially highlight concerns about duplication of work and the importance of contextualisation when considering the analysis of any data in this area;
4. ACKNOWLEDGE that some areas of judicial work are very difficult to measure because of the fact that the most important aspect of its functioning is the quality of the judicial decisions which is difficult to quantify;
5. EMPHASISE that any work in this area must be objective and treat all Member States equally, taking into account the specific characteristics of national justice systems; and that the results of any such exercise should in any case be of a non-binding, non-compulsory nature and should not lead to any kind of ranking of the Member States;

6. EMPHASISE the strong interest of the Council and the Member States in avoiding duplication with international organisations, and note that in the field of justice this is especially relevant with the Council of Europe and the useful work of its Commission for the Efficiency of Justice which is already an accomplished expert body in this field and that the data produced by the Council of Europe's Commission for the Efficiency of Justice is produced to a practical timetable, using appropriate methodology by relevant experts and that the data in this useful and high level methodological work is appropriately contextualised;
7. CONSIDER that, amongst other measures, discussion and exchange of ideas are appropriate ways of approaching such areas as the functioning of national civil and commercial justice systems, including for example areas such as independence and fairness; and therefore invite the European Commission to reflect on the most appropriate way to approach civil justice issues in the future;
8. EMPHASISE the constitutional importance of justice systems and especially the fact that each Member State's justice system has evolved in its own historical context, involving a careful balance to achieve efficient and fair justice appropriate for that constitution; and further emphasise that all efforts should be made to respect national constitutions, cultures and judicial traditions;
9. STRESS the importance of respecting the variety of different justice systems in the EU in a way that welcomes this diversity whilst sharing ideas, understanding and best practice;
10. RECOGNISE that an exchange of best practice could be used to a greater extent in the field of civil justice, as is already the case in other Justice and Home Affairs areas;

11. EMPHASISE that appropriate consideration is needed to consider and give effect to any changes seeking improvements to a justice system in order not to adversely impact legal certainty and to avoid inaccurate measurements or poorly implemented policies; and therefore consider that a sufficient period of time is needed to give effect to meaningful changes within justice systems;

 12. INVITE further consideration by Member States, the Council and the European Commission as to better mechanisms, in line with the Treaties and whilst respecting the respective competences of the European Union and the Member States, for taking forward the discussion on the functioning of civil and commercial justice systems of the Member States with the aim of improving their effectiveness, in the light of the present conclusions.
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