



# ASSISES DE LA JUSTICE

## DISCUSSION PAPER 1: EU CIVIL LAW

This discussion paper was produced as input to discussions leading up to and during the Assises de la Justice conference (Brussels, 21-22 November 2013). It will also contribute to the preparation of the Commission's Communication on future initiatives in the field of Justice. The content of this paper does not reflect the official opinions of the European Commission or other institutions of the European Union.

### I. Introduction:

---

Civil law serves the needs of citizens and businesses in their commercial, professional and private dealings. EU Civil Law seeks to create **a reliable legal environment for businesses and citizens** in the Internal Market and remove obstacles to cross-border civil transactions. This contributes to a legal framework on which more than 500 million consumers and more than 20 million SMEs rely.

EU citizens and businesses should be able to take full advantage of their rights and share the benefits of the Internal Market. In a genuine area of European justice they legitimately expect the European Union to ensure that these rights are properly **enforced. Efficient justice systems are key for economic growth<sup>1</sup>. Citizens and businesses further expect** that they have easy and efficient **access to justice** everywhere in the EU and that the remaining legal and judicial obstacles in this respect disappear. They also expect to have confidence in the **fairness of civil proceedings**.

### II. What has been achieved?

---

The EU has achieved considerable progress in the area of EU civil law:

- **Companies can engage more easily in cross-border trade:** cross-border activities are facilitated by European civil law rules in areas such as product liability; late payment; and intellectual property rights (including copyright, patents, trademarks and designs).
- **Consumers can shop across borders,** in those areas benefitting from the protection of harmonised consumer rights. They can rely on EU rules for instance when going on holiday, in receiving pre-contractual information or in case a product is faulty.

<sup>1</sup> See the speech of Vice-President Viviane Reding, EU Justice Commissioner, of 18 January 2013 "Justice for Growth makes headway at today's Justice Council": [http://europa.eu/rapid/press-release\\_SPEECH-13-29\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-13-29_en.htm?locale=en)

- **In a dispute in cross-border trade or when moving across borders**, EU citizens and companies in principle know which court to go to, which law that court will apply and that its judgment will be recognised and enforced in all Member States.
- **In the case of families facing break-up**, EU law provides rules for cross-border custody disputes and if a child is abducted by a parent. Maintenance creditors are able to easily obtain an enforcement order enabling payment of the amounts due across the EU.

### III. The challenges ahead for EU Civil Law

---

Notwithstanding the progress made, areas remain where EU civil law does not yet give legal certainty about which court will deal with a case and which law that court will apply. Likewise, citizens, consumers and businesses are not always assured how their rights and obligations in cross-border transactions are protected or that the legal procedures in other Member States will be efficient and fair. Judgments do not always circulate freely, independently of the Member State from which they emanate. National judicial and administrative authorities are not always able to directly communicate and cooperate with each other to solve cross-border legal problems where needed.

EU civil law must also keep pace with market and technological developments, otherwise economic growth, and the confidence necessary to sustain it, can be held back by uncertainty as to the legal rights and obligations of digital market participants. Issues like the ownership of digital content developed by individuals and companies, liability for loss of data, or consumer rights in relation to complex digital products have to be settled for the European digital market to develop further.

In meeting these challenges, there are different approaches that can be employed in building the European area of justice and in overcoming national divergences which impede the smooth functioning of the internal market in the area of civil justice: mutual recognition, traditional harmonisation (for example EU consumer law) or harmonised optional substantive or procedural law regimes (for example the proposed Common European Sales Law). The next steps in EU civil law should rely on a combination of these different approaches, depending on the type of problems which need to be addressed at EU level.

#### 1) Boosting growth through substantive law integration

Disparities between national *insolvency* laws have already been identified as an issue for the EU. They can create competitive advantages or disadvantages and difficulties for companies operating across borders. These differences need to be addressed to help companies and individuals to overcome their financial difficulties, preserve jobs and ultimately generate growth.

In order to contribute to the growth expected in the *cloud computing* sector, a specific legal framework for cloud computing on the basis of a uniform and balanced set of rules could remove existing uncertainties in contracts. Providers and users would have a clear and better knowledge of their rights and obligations making the use of cloud computing more attractive.

Furthermore, a single *set of insurance contract law rules* based on the optional approach could facilitate the development of pan-European insurance products.

#### 2) Reinforcing mutual trust through procedural law integration

To ensure truly free circulation of court judgments, full mutual trust in the legal procedures of other Member States must be achieved. One crucial element in ensuring mutual trust is the assurance that the parties' procedural rights are protected.

For example, the *service of documents* is a crucial element. EU regulation is currently limited to ensuring efficient cross-border transmission of judicial and extra-judicial documents. However, divergences on important questions such as the nature of the documents to be served cross-border, the circumstances under which documents are to be served, by whom such service should/could take place, on whom documents may be served, and the legal effects of such service, create difficulties and legal uncertainties.

When recognising judgments in parental responsibility matters, judgments would circulate more easily if minimum standards apply as to when and how a child should be heard and how the child may be represented in court.

The step-by-step progress being made in EU civil procedural law may call for a codification of these rules in the interests of legal certainty.

### 3) Ensuring the efficient enforcement of judgments

The efficient enforcement of judgments remains the Achilles' heel of civil judicial cooperation in all matters. The credibility of EU law depends on the end result of the judicial process, for example, the recovery of money due or the speedy return of a child. For this purpose, efficient and swift procedures need to be in place meeting minimum standards set at European level. These standards should ensure that citizens and businesses have effective means at their disposal to protect their rights pending enforcement (e.g. temporary freezing of assets, transparency of debtor's assets) and strong measures to execute as appropriate.

### 4) Ensuring the effectiveness of European civil law

The effectiveness of EU civil law depends on *effective national justice* systems. In addition to the actions under points 1-3 above, improving the quality, independence and efficiency of national justice systems is a priority in the European Semester, the annual cycle of economic policy coordination. To implement this priority, the EU Justice Scoreboard provides objective, reliable and comparable data on the functioning of the justice systems in all Member States. The Justice Scoreboard is an evolving tool to assist the EU and the Member States in cooperation to achieve more effective justice and to contribute to identify potential shortcomings and good examples.

To enhance practical *judicial and administrative communication and cooperation*, the European Judicial Network in civil and commercial matters should be strengthened. Communication between courts should become a reality. In the area of consumer contracts, better cooperation and coordination between national enforcement authorities are needed to strengthen the enforcement of existing consumer protection rules and to help restore consumers' trust, for instance in cross-border purchases of real estate property.

Furthermore *information and communication technology* should be used more to ensure the effectiveness of EU civil law. For example, it could be relevant for the interconnection of registers of wills and insolvency proceedings, the creation of electronic registers of European Certificates of Succession, and electronic publicity measures for property effects of marriages and registered partnerships.

Finally, the actual users of the law are essential to ensuring the correct application of European civil law in day-to-day life. Therefore, the EU should empower those actors by raising their *awareness and familiarising* them with the existing law.

## 5) Progressing in the area of family law

EU action in the area of family law requires the unanimity of Member States. The Council can, however, unanimously decide that certain areas of family law with cross-border implications may be subject to acts adopted by the ordinary legislative procedure (so-called 'passerelle' of Art. 81(3) TFEU). Effective use of the *passerelle* or a more frequent recourse to enhanced cooperation should be explored to make further progress in this area.

## 6) Reinforcing the external dimension

The progress made in building a European area of justice enables the EU to speak with one voice in international fora. The EU can therefore play a key role in setting standards at international level.

Developing the external side of civil law is a necessary corollary to the development of international trade and mobility. There is a need to ensure the basic level of legal certainty sought by European citizens and businesses when acting outside the EU and exporting European legal standards for the benefit of European citizens and companies. This applies for instance, to the recognition and enforcement of judgments from countries outside the EU or the approximation of substantive civil law at international level.

## IV. Questions

---

1. *What further actions can the European Union take to boost the Internal Market and support economic growth in the areas of civil and commercial law?*
2. *In which area of family law is further progress needed at EU level? How should it be achieved?*
3. *What initiatives at EU level are needed for the swift and efficient enforcement of judgments and for the development of minimum standards for civil procedural law?*

Full information on submitting contributions:

[http://ec.europa.eu/justice/events/assises-justice-2013/discussion\\_papers\\_en.htm](http://ec.europa.eu/justice/events/assises-justice-2013/discussion_papers_en.htm)