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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

Questionnaire with a view of the preparation of Opinion No. 14 on the non-materialisation of the judicial process and the use of IT by judges and court staff

QUESTIONNAIRE

GERMANY

Questionnaire with a view of the preparation of Opinion No. 14 on the non-materialisation of the judicial process and the use of IT by judges/court staff

Preliminary remark: Apart from the federal courts of cassation, under the federal system in Germany the courts of all branches are the responsibility of the Länder. Rules and standards of information technology in the courts therefore vary slightly from Land to Land. In addition, introduction of information technology is, of course, a process subject to continuing changes and improvements. In the answers, it is attempted to give the broad picture of the present status in Germany as it appears on average from the data available for the Länder.

1. Access to courts

a) May legal proceedings be instigated by electronic means?

In principle, electronic access to initiate legal proceedings is admitted by federal law. In practice, admission depends on whether the Federal Government (for the courts of the federation) and the Länder have introduced electronic access by statutory instrument.

So far, such instruments have been passed at the federal level for the Bundesgerichtshof, Bundesverwaltungsgericht, Bundespatentgericht, Bundesfinanzhof – Federal Supreme Court, Federal Administrative Court, Federal Patent Court, Federal Tax Court.

Regulations in the Länder differ.

Most important is the small claims proceedings (gerichtliches Mahnverfahren) which have been introduced in slightly different forms in the Länder (often in co-operation of some of the Länder) and which are completely automated. Here creditors with a large number of small claims debtors apply electronically, although, in theory, applications on paper are still admissible. Lawyers are obliged to apply electronically.

Contentious proceedings can be initiated electronically in some of the Länder in tax courts, in administrative courts and on a pilot basis in a family court.

In non-contentious proceedings, applications to the company and merchants' register have to be brought electronically. In the register of associations and in the land registry, applications may be put in electronically. These proceedings are conducted by the courts electronically. The land registry, company register and register of associations are kept in electronic databases.

An overview may be found under

http://www.justiz.de/elektronischer_rechtsverkehr/index.php

b) Is there relevant legislation?

Federal Law:

§ 41a Strafprozessordnung (code of criminal procedure),

§ 130a Zivilprozessordnung (code of civil procedure),

§ 14 subs. 2 Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG, code of procedure in family and non-contentious cases),

§ 46c Arbeitsgerichtsgesetz (code of procedure in labour courts),

§ 55a Verwaltungsgerichtsordnung (code of procedure in administrative courts),
§ 52a Finanzgerichtsordnung (code of procedure in tax cases),
§ 8a Handelsgesetzbuch (commercial code)
§ 135 Grundbuchordnung (land registry act).

§ 690 Subs. 3 Zivilprozessordnung (small claims proceedings)

Exmples on the Land level:

Statutory instruments in Northrhine-Westphalia:

- [Verordnung \(VO\) dated 01.12.2010](#) (court of appeal in administrative cases, administrative court in Minden, tax courts)
- [VO dated 19.12.2006](#) (company register)
- [VO dated 13.04.2010](#) (proceedings according to § 101 Subs. 9 Urheberrechtsgesetz .- copyright law – before the regional court in Cologne).
- [VO dated 31.08.2005](#) (elektronic divorce cases, pilot project at the local court in Olpe)

c) What are the main requirements for instigating legal proceedings by electronic means? (multiple choice possible)

- The parties must submit the claim with a qualified electronic signature – **This is the rule**
- The parties must provide a detailed description of the claim - **as is the case in non-electronic applications**
- The parties must fill in a downloadable form to be submitted electronically - **in some proceedings**
- Other, please specify.

d) To what extent are legal proceedings instigated by electronic means in practice?

Apart from the small claims cases and from proceedings where, like in the company register, electronic applications are mandatory, where 90 to 100 percent of the applications are brought electronically, initiation by electronic means is rarely used. Initiation is most common perhaps in tax cases, where both tax lawyers and tax advisers representing the clients and the offices of the inland revenue are in a position to communicate electronically. Once proceedings brought in the traditional way are pending, an exchange of electronic data is not uncommon.

2. Procedure within courts

a) Once a claim has been issued electronically, does the procedure differ from a traditional procedure?

No, but communication is electronic as far as possible. In small claims cases, once the defendant has objected, the electronic file will be printed and the proceedings will be transferred into a traditional civil case.

b) Does the electronic procedure differ according to the type of case (civil, criminal, administrative, etc.)?

Generally not. Within the court, work may differ because electronic files may be available for the judges. Courts with electronic proceedings usually keep electronic files using document management systems.

c) How does the court communicate with the parties:

<i>With parties who use electronic means themselves:</i>	<i>With other parties:</i>
<input checked="" type="checkbox"/> by traditional means?	<input checked="" type="checkbox"/> by traditional means?
<input checked="" type="checkbox"/> by using electronic communication?	<input type="checkbox"/> by using electronic communication?
<input type="checkbox"/> both?	<input type="checkbox"/> both?

d) Do specific electronic means exist for the communication between lawyers and courts? Please specify.

Communication between courts and lawyers may happen via electronic court post box (EGVP). This software allows transfer of documents between lawyers, lawyers and courts, and government offices in a legally binding form. (cf.§ 174 Subs. 3 Zivilprozessordnung). See also www.egvp.de.

e) Do electronic files exist?
 - If an electronic file exist, is there a paper file as well?
 - If both exist, which is the "authentic" file?

Electronic files exist only as a complimentary file to the official file, the paper file being the authentic file. Small claims cases run on electronic files until they pass into traditional proceedings. Company register is solely electronic. In certain proceedings (e.g. big criminal cases), so-called secondary electronic files are being used. The advantage is that documents can be provided for all those concerned on CD and reference is quick and easy.

f) If yes, is there relevant legislation?

Cf. 1 a) and b)

g) What are the main requirements with respect to electronic files?

No special requirements. They have to be complete, readily available, authentic (no alterations possible).

h) Are there special regulations and safeguards with respect to electronic files containing particularly sensitive information (e.g. health information, information concerning secret services)?

None. Special regulations applying to paper files (e.g. concerning confidential information, in camera proceedings) would have to apply to an electronic file.

- i) What happens when the authenticity of an electronic document is doubtful/controversial among the parties?

Such a disput has not arisen so far. One would assume that printouts would be available to reconstruct the correct file, likewise if an electronic file is lost.

- j) If parties wish to submit documents which are **not** in an electronic form (e.g. documents on paper), what procedure will the parties and the courts follow?

They would be put into the (leading) paper file). In solely electronic proceedings documents would be scanned or may even be rejected.

- k) Must paper documents be kept? If yes, how long?

Yes, because, as a rule, the paper file is the relevant file. (Exception: Small claims cases, company register)

- l) What is the procedure when a judge's or court clerk's hand signature is prescribed? Does digital signature exist?

Digital signatures are possible but as yet rarely used.

- m) Do parties have access to the complete court file:

- Yes, always, **subject to cases where access to a paper file might be restricted (confidential information etcetera)**
 Yes, but only with specific conditions
 No

Please indicate, if appropriate, the relevant legislation.

Special regulations concerning the parties' access to electronic court files do not yet exist. In principle, access has to be guaranteed, if necessary by printout.

- n) Do the parties or their lawyers have the possibility to follow the state of the proceedings via internet (secured)?

As a rule, the parties cannot get the state of proceedings be remote electronic access. In some courts, pilot projects are under way, e.g. to allow information via internet concerning the time of the trial, the outcome of a case etcetera.

- o) Is the access to electronic files within the court regulated? Please specify.

There are no special regulations.

- p) Have judges/court staff access:

<i>Judges</i>		<i>Court staff</i>	
<input type="checkbox"/>	to all court files?	<input type="checkbox"/>	to all court files?
<input checked="" type="checkbox"/>	only to files within their jurisdiction?	<input checked="" type="checkbox"/>	only to files within their jurisdiction?

3. Oral hearing

- a) Are there oral hearings based on electronic means (e.g. judges act based on electronic files accessible in computer)?

Cf. 2 e) – secondary electronic files.

- b) Are the expertise, the draft decision written by the rapporteur and personal notes accessible for judges in computer?

In the court, always, provided the documents are stored in a document management system.

- c) Is the complete file accessible for the parties or their lawyers during the hearing (also in computer)?

Generally not, cf. a)

- d) Has technical equipment been installed in courts enabling to project documents on screens visible to judges, parties and audience?

Yes, in many courts, especially criminal courts.

- e) Are oral hearings audio or video recorded?

As a rule not. Exceptions apply e.g. where a witness is heard by videoconference.

- f) Is video conference in public hearing used:

- for the hearing of witnesses?
- for the hearing of experts?
- for the hearing of parties?
- other? Please specify.

Please indicate the relevant legislation as well as the restrictions, if appropriate.

This is possible under exceptional circumstances for witnesses, experts, parties and other participants in criminal proceedings, in civil proceedings if the parties agree. For relevant legislation cf. sections 58a, 247 a, 251 code of criminal procedure and s. 128 a code of civil procedure.

S. 58a code of criminal procedure allows recording of witness statements in pre-trial proceedings and in the trial e.g., if there is a risk that the witness may not be present at the trial, if the witness is under 18 years of age, he or she is the victim of the crime and if it is in his or her interest not to be present at the trial. S. 247a provides that the witness may be heard outside the trial court room if there is an imminent risk that he may suffer severely by having to give testimony in the presence of the other participants of the trial; in this case, the testimony has to be transmitted simultaneously into the court room.

- g) If possible, please detail how many courts have been equipped with an adequate and sufficient electronic equipment to assist judges, court clerks and parties during oral hearings?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic files access	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Electronic data base of jurisprudence	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Screen projectors	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Internet access	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Video conferencing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Audio conferencing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Video recording	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Audio recording	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4. Information services for judges

Are there central databases accessible for judges containing:

<i>Database run by State</i>	<i>Database run by a private institution</i>
X national legislation	X national legislation
X European legislation	X European legislation
X national case-law	X national case-law
X international case-law	X international case-law
X law review articles	X law review articles

Please specify the private institution.

Juris (state-run private company), Beck-online, Lexis and others. The Länder provide access to different databases, Juris however is common for all.

5. Practical court work

- a) What is the work of the judge:
- in writing the documents?
 - in delivering the documents?
 - in registering the documents?

It is the task and the duty of judges to take all necessary measures for the judicial determination of a given case. This includes studying the court file, analysing the facts, determining the issues, researching the applicable law and court decisions, setting down the case for trial, drafting pre-trial orders, sitting in the trial and writing the final decision.

An increasing number of judges (especially younger judges) do write their decisions themselves on their computer. Computers are invariably provided in the office. Many judges also use their privately owned computers and write their draft decisions at home.

Other judges dictate their draft judgments which are then typed by the service personnel. In most courts digital dictating systems are available.

Very few (mostly older) judges provide a hand-written draft decision.

Judges are free to use whatever medium they prefer. Only in the full electronic company register work on the computer is obligatory; the Federal Judicial Service Court (Dienstgerichtshof) has held recently, that a judge is not entitled to rely on his judicial independence to demand printouts of all electronic documents but instead has to use the computer because the law provides that in the company register all documents have to be produced electronically.

Judges are not expected to register documents. In case of digitally recorded documents, judges would have to transfer the digital recording into the computer system.

- b) What is the work of the court staff:
- in writing the documents?
 - in delivering the documents?
 - in registering the documents?

Court staff has to write documents if they are not written by the judges. They have to register and deliver the documents, invariably using special computer programmes supplied by the court administration.

- c) Is there enough staff to do this work? Please specify.

Court staff varies among the Länder. Under the staff work-load system introduced throughout the judiciary in Germany, many courts are short-staffed by up to 20 percent. This applies especially to the larger Länder in former West Germany and to Berlin, whereas (due to a reduction in the caseload) Länder in former East Germany are sufficiently staffed.

- d) Do judges write their decisions themselves on their computer?

Cf. a)

- e) Do judges use specific technics (e.g. voice recognition, structure or model of decision available in a database)? Please specify.

Voice recognition is increasingly available, if judges wish to make use of it.

Nearly in all courts and proceedings, specially designed programmes are introduced which provide all relevant data of the case (parties, lawyers, addresses, legal aid calculators etcetera) and which also offer model standard decisions as an option for the judge to use as a basis for his or her decision.

In addition all judges have access to legal databases containing decisions of federal courts and courts of appeal. Some databases also offer commentaries of basic codes (civil code, criminal code, procedural codes) and other publications.

- f) Is modern technology used to monitor the length of proceedings and for case flow management within the court (eg. alert system)?

Data of cases are collected for statistical purposes (e.g. file-number, the amount in dispute, the duration of the proceedings or the way of termination of

proceedings etcetera). These data are accumulated and analysed on a court-by-court basis. No data as to the quality of work of the individual judge are being collected.

- g) Are data concerning the work of each judge contained in a database which can be used for statistics, evaluations, etc. ? Please specify

Cf. f). Documents created by judges are kept and stored in the court computer system under the relevant case file. No data as to the quality of work of the individual judge are being collected.

6. Internet

- a) Is internet accessible for each judge in his/her office? Is this access limited ? Please specify.

Yes, in all courts.

- b) Do all courts have their own website? Please specify which court and the content of the website.

Nearly all courts have their own websites. It is the aim of judicial administrations that all courts have their own websites. This should be achieved in the near future.

Generally, court websites follow a common corporate design introduced by the relevant ministry of justice. Within this design, courts are usually free and also obliged to create the contents of their websites. For this purpose, a special tool (content management system) is provided.

Court websites usually contain information concerning

- **physical access to courts (road maps, opening hours, public transport, parking),**
- **contact data,**
- **the rules concerning the distribution of cases among panels and judges (Geschäftsverteilungsplan)**
- **press releases,**
- **links to a database of published decisions**
- **links to various application forms**

7. Use of private personal computers/laptops by judges and court staff

- a) May a judge use his private PC/laptop for professional purposes (e.g. at home or on the way home and back?)

Rules and regulations vary slightly among the Länder. As a rule, it is accepted that judges use their private personal computers and/or notebooks for judicial work, especially if they write their draft decisions themselves. In this case, judges are invariably expected to take all necessary precautions to avoid that unauthorized persons can have access to confidential data (which always includes the text of a draft decision). In some Länder, judges are explicitly bound to encrypt the data and to delete and remove data from their computers once the

case is closed and to keep model decisions only in an anonymous form. In case of violation, the judge may be held responsible.

Access of the private computer to the court network is generally not admitted. In rare cases, e.g. under family-friendly work plans, notebooks are provided by the courts and access to the court network (with encryption programmes and through a tunnelled access programme) is allowed.

- b) May e-mails be send from the court to a judge's private e-mail address and vice versa containing professional information ?

With a few exceptions in some of the Länder, e-mail between the judge's office e-mail account and his private e-mail account is generally possible. The transfer of confidential data in an "open" e-mail is not permitted. It is the responsibility of the judge to provide for data protection by either using other means of transfer or by using encryption programmes. Some courts offer external access to the office account on the basis of a secure entrance (e.g. outlook web access)

- c) Does this require special technical safeguards (e.g. excluding access by third persons, family members, etc.)? Please specify.

Cf. b)

In some of the Länder, office computers are not open to USB or CD data transfer or access is only admitted on specific grounds. In most cases, however, USB data transfer is possible, again with the judge being responsible for data protection. USB sticks are generally password protected and data are supposed to be encrypted before being transferred on the USB stick.

Data protection is the responsibility of the judge. He is expected to use available protective tools like external hard disks, password protection, encryption programmes, separation of the computer from a network, network safeguards and firewalls etcetera.

- d) Is the situation the same for all court staff?

This applies to judges (and prosecutors), in most courts also to greffiers (Rechtspfleger) but generally not to the support staff. Service personnel (typists, secretaries, court officers) usually have an office e-mail account but in most courts only restricted access to the internet.

8. Use of data

- e) Is the data contained in the procedure used for another aim than the procedure itself?

This depends on the computer programme supporting the relevant proceedings. In some programmes, e.g., data of lawyers may be kept in a supporting database in order to select them (name, address, fax-numbers etcetera) when these lawyers appear in another case.

- f) Is this data used for statistics?

Data of cases are collected for statistical purposes (e.g. file-number, the amount in dispute, the duration of the proceedings or the way of termination of proceedings etcetera). These data are accumulated and analysed on a court-by-court basis.

- g) If yes:
- who produces these statistics?
- how and by whom are these statistics used?

Statistics are first of all produced by the courts themselves and then accumulated on the levels of the higher courts and the ministry of justice. They are used for numerous purposes, e.g. fair distribution of judicial and non-judicial staff among the court districts and courts, fair distribution of caseload within the courts, reporting on the performance of the judiciary on the regional, national and European level etcetera.

9. Data security

- a) Does legislation exist to protect personal data processed through the electronic infrastructure of a court?

Yes
 No

- b) If yes, are there requirements applicable to processing data in courts?

rules on access to data by the person concerned or other persons/institutions
 correction and deletion requirements
 other. Please specify.

- c) If there is a general Data Protection Commissioner, has he or she already dealt with IT at the judiciary?

Occasionally. Problems that have arisen are not specific for judicial work but typical for information technology (e.g. data not having been sufficiently erased from a hard disk before the computer was sold)

- d) Is there a special Data Protection Commissioner in each court (e.g. a judge with this additional task)?

Yes.

10. Participation of judges

Who decides about the electronic infrastructure of a court? Are judges implicated in the relevant decisions concerning the implementation of IT in courts?

Final decisions come on the level of the ministry of justice or even the Land government. Before new programmes are being introduced, however, extensive consultations with experts at all levels of the judiciary take place. In addition, staff councils and councils of the judiciary at court, court of appeal or at the Land level have to be consulted under the relevant staff council law. New forms

of IT can, as a rule, only be implemented with the consent of the staff council or, in the absence of such consent, by a decision of the Land cabinet.

11. Conclusion

Please give your opinion on the advantages and disadvantages of the development of IT in courts?

For internal work in the courts, IT is now absolutely necessary. Quality of work, timely disposal of the caseload as well as efficient organisation of work and staff assignment would be impossible without IT support. Work by hand would in no way guarantee a similar level and quality of the work in courts.

Exchange of information and research would equally be impossible at the present level without some kind of IT support.

In standard proceedings like undisputed small claims cases, proceedings in the land registry, company and merchants' register, nearly all steps of a case can be done electronically.

In contentious cases (civil, criminal, family), document management systems, registering the cases and managing trials is unthinkable without IT support. Relevant computer programmes are, however, very complicated, because they have to mirror all the possible steps and varieties of proceedings and they have to offer a combination of structured data and individual texts.

Programming, testing and updating these programmes according to ever-changing substantive and procedural law is an enormous task which requires substantial financial resources. Even if outside support by contractors can be secured, court staff is to a large extent bound to specify demands and to test the programmes.

The more the production of texts is individual the smaller is the benefit of IT in handling a case. Experiments with total IT use in civil cases have shown that it is very difficult to imagine an ergonomic electronic workplace which allows file-reading, research and writing. Split-screens do not serve this demand. It may therefore be doubted that judges may in the near future be prepared to work at a desk with two or three wide screens. Secondary electronic files are an important tool in large cases with a great amount of documents.

As regards access to courts, there appears to be still a limited demand for initiating a case by electronic communication.

Consequently, emphasis should be put on development of internal IT and electronic communication as well as on easy communication between the courts, offices, lawyers and parties, whereas developing methods to initiate proceedings by electronic communication should not have a high priority.