



**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

**ANSWERS FOR
ITALY**

1. Access to courts

a) May legal proceedings be instigated by electronic means?

Yes, in Italy proceedings before civil and criminal courts, administrative tribunals and courts of accounts may - under legislation in force - be initiated electronically. However, due to the lack, in practice, of implementation measures, at present the main procedural steps that may be taken electronically are:

- *in 130 court offices, consultation from remote points access (e.g. at accredited law firms) of information, contained in court records, concerning civil proceedings through an electronic platform (Polisweb);*
- *in 24 courts, electronic filing of party submissions and documents, through a secure crypted connection network, apt to form a dematerialised proceeding dossier, automatically inputting court records through XML data; the documents are in PDF format; in all 24 courts this function is legally valid only for the civil summary proceeding of payment order issuing (injunction de payer); in the court of Milan only, parties may also file "written submissions" during ordinary civil proceedings;*
- *in 11 courts, electronic filing also concerns enforcement of civil decisions on immovable property; in the court of Bologna, it also concerns bankruptcy proceedings.*

As one can note, activity is therefore partial, and only concerning some civil proceedings in pilot courts. Also, dematerialisation is not complete, since paper documents are still kept, either in parallel with electronic filing, or are nonetheless filed afterwards.

Please see enclosures for details.

One should add that, other than the above mentioned national project of the Ministry of Justice, many other initiatives concerning IT exist in single districts and courts.

b) Is there relevant legislation?

The relevant legislation may be consulted on.

<http://www.processotelematico.giustizia.it/pdapublic/index.jsp?sid=1&id=4&pid=4>

The main pieces of legislation are:

- *decree of the President of the Republic n. 123 of 13 February 2001;*
- *art. 51 of the decree-law n. 122 of 28 June, 2008, converted into L. n. 133 of 6 August 2008, as amended by art. 4.1 of decree-law 29 December 2009, n. 193, converted into Law n. 24 of 22 February 2010.*

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

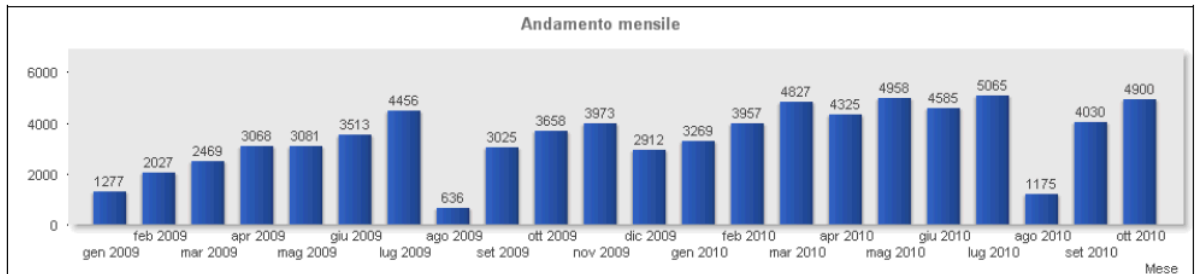
- The parties must submit the claim with a qualified electronic signature
- The parties must fill in a downloadable form to be submitted electronically
- Other, please specify.

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

As mentioned before, actual “instigation” may only concern requests for payment orders in some courts; after the order has been issued, the paper documents have to be filed in order to obtain the title.

For the rest, the success of the experiments underway may be measured by way of number of “acts” that were filed electronically.

In the period from January 2009 to September 2010 75.186 documents were filed electronically, with the following monthly movement:



2. Procedure within courts

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

No.

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

Although dematerialisation should concern all procedures, at the moment only some civil activities are being (partially) dematerialised.

- c) How does the court communicate with the parties:

With parties who use electronic means themselves:	With other parties:
<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.

Lawyers are under an obligation to declare, in each proceeding, the electronic address to which they accept to receive communication. Due to the lack of generalised certified post address requirement, the system is little used, also due to the need that new legislation of 2010 is expected to be implemented.

- e) Do electronic files exist?

- If an electronic file exist, is there a paper file as well? Yes
 - If both exist, which is the “authentic” file? They are parallel.

- f) If yes, is there relevant legislation?

See above.

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

Characteristics and security requirements are provided for by general legislation on digital documentation, and by specific decrees of the Minister of Justice.

Details concerning architecture and management of data flows are provided in a synthetic form in

http://www.processotelematico.giustizia.it/pdapublic/resources/Dettaglio_architettura_flussi.pdf

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

Yes. Such special rules are also provided by the general legislation on privacy protection.

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

Article 20 of the Code of digital administration recognises as a written document an electronic document signed by way of a digital or qualified signature, to guarantee identifying the author, integrity and non modifiability of the document. Being equivalent to a written document, the general rules concerning refusal to recognise one's signature apply, so that the other party may apply for judicial verification of authenticity (usually, by way of an expertise).

- 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?

Not applicable at the moment, since a paper submission is always possible.

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

Not applicable.

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

Yes

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

x

Yes, always

Yes, but only with specific conditions

No

Please indicate, if appropriate, the relevant legislation.

See above.

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

Yes. See what mentioned above concerning "Polisweb".

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

Yes. Each civil judge working on electronic file may view general information, may consult files that are assigned to him/her, and may decide to share and "make visible" some of his "model" measures to other judges. A system is being experimented, in order to have "chambre de conseils" (deliberating meetings) of panels in an electronic way.

p) Have judges/court staff access:

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

No.

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

Only on an experimental basis.

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

Only on an experimental basis.

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

No.

e) Are oral hearings audio or video recorded?

Yes, only in some criminal trials.

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.

Under some specific Mafia-trial regulations, witnesses in criminal hearings may be heard from remote, protected sites. Also, the accused may participate in the trial by videoconference.

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 type="checkbox"/>
Electronic data base of jurisprudence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Screen projectors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet access	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Video conferencing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Audio conferencing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Video recording	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Audio recording	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

See data above.

4. Information services for judges

Are there central databases accessible for judges containing:

Database run by State	Database run by a private institution
<input checked="" type="checkbox"/> national legislation	<input type="checkbox"/> national legislation
<input checked="" type="checkbox"/> European legislation	<input type="checkbox"/> European legislation
<input checked="" type="checkbox"/> national case-law	<input type="checkbox"/> national case-law
<input type="checkbox"/> international case-law	<input type="checkbox"/> international case-law
<input type="checkbox"/> law review articles	<input type="checkbox"/> law review articles

Please specify the private institution.

5. Practical court work

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

Judges in Italy – due to lack of sufficient staff – mostly write and deliver themselves most documents. In criminal trials, court staff assists only in drafting the minutes of the trial, often with shorthand personnel.

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

The court staff registers documents and forwards them to the parties, as well as receives documents filed by them.

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

No. It is a long-standing expectation of judges to have their own secretaries and assistants.

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

Yes.

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

Judges have their own models, but general models are not provided. Some judges do use voice recognition.

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

On a yearly basis, a check is done on duration of procedures. Specific rules apply when a case lasts too long (adjournments are no longer granted, etc.). A "commission of flux" of procedures is established in each court of appeals.

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

Yes. *The electronic registers provide this information.*

6. Internet

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

The access is limited according to general policies of the Ministry of Justice. Not all offices, especially, have internet.

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

Most courts have their website, with general information on contacts, hearing days, etc. Some websites also provide information relevant for access to justice (explanations on proceedings, their duration, costs, etc.).

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?)

Yes

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

Yes. Of course, this is general information (i.e. on training, circular letters coming from the Ministry, etc.).

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

When accessing webmail from outside the court, the judge has to certify his access through a password. No intranet access is possible from outside the court. In the future, "distance work" will be possible through a certified POA.

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

No: court staff may not access from outside.

8. Use of data

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

No

- f) Is this data used for statistics?

Yes.

- g) If yes:
- who produces these statistics?

The Ministry of Justice.

- how and by whom are these statistics used?

They are used for: case management; judge and court evaluation; general criminal policy; mobility of judges and staff.

9. Data security

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

x Yes
 No

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

x rules on access to data by the person concerned or other persons/institutions
 x 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?

Yes. The Commissioner has issued some Resolutions concerning justice.

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

The court chair prepares every year a planning document about minimum standard data security in each court. There are judges entrusted with general supervision of data processing and use of IT. At the High Council for Justice, a specific Technical Structure is also operating, in order to make use of data for organisational purposes.

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?

General programmes are within the competence of the Ministry of Justice. Also the High Council for Justice has some competences (see above). In each court of appeals, some judges appointed by the High Council are the contact persons for IT; they have "reference" judges for IT in each court.

11. Conclusion

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

While IT is certainly a challenge for the traditional way of managing the judicial activity, it is also a tool to improve efficiency, flexibility and comfort of all the interested parties (judges, staff, citizens appearing as justice seekers, accused, witnesses, etc.).

IT makes also procedures transparent and apt to be measured and controlled; in this, technology makes justice speedier and closer to users.

IT is also an important court management tool, as it helps in measuring resources available and needed.