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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

AUSTRIA

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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

1. Access to courts

a) May legal proceedings be instigated by electronic means?
YES

b) Is there relevant legislation?
YES, THERE IS

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.

THERE ARE SPECIAL PROVIDERS, WHICH HAVE BEEN LIZENSED BY THE MINISTRY OF JUSTICE. IF ONE HAS THE TECHNICAL FACILITIES AND PAY A CERTAIN FEE; YOU CAN USE THIS WAY TO INSTIGATE A PROCEEDING. IT IS MANDATORY FOR LAWYERS TO USE THIS WAY PF INSTIGATING A PROCEEDING.

d) To what extent are legal proceedings instigated by electronic means in practice?
DUE TO THE FACT THAT MOST OF THE PROCEEDINGS ARE INSTIGATED BY LAWYERS OR OTHER PROFESSIONAL CLIENTS THE PERCENTAGE IS VERY HIGH

2. Procedure within courts

a) Once a claim has been issued electronically, does the procedure differ from a traditional procedure?
NO THERE IS No DIFFERENCE, EXEPT OF THE FACT THAT DISTRIBUTION TO OTHER PARTIES OF THE CASE IS EASIER, AND THE PRODUCTION OF PAYMENT ORDER IS AUTOMATICALLY DONE AND NEEDS ONLY TO BE EXAMINED AND SIGNED BY THE JUDGE

b) Does the electronic procedure differ according to the type of case (civil, criminal, administrative, etc.)?
YES IT DIFFERS. PAYMENT ORDERS IN CIVIL CASES AND INITIAL ORDERS IN THE ENFORCEMENT PROCEDURE ARE VERY MUCH SUPPORTED BY ROUTINES OF THE COMPUTER. IN OTHER CASES THE MAIN FOLLOW UP BY USE OF IT IS TO REGISTER THE CASE AND ITS DEVELPOMENT, TO STORE SOME DOCUMENTS BELONGING TO THE CASE AND TO USE A CENTRAL POST-DELIVERY UNIT (USED FOR SUMMONS AND SEVERAL COURT DECISIONS).

c) How does the court communicate with the parties:

<i>With parties who use electronic means themselves:</i>	<i>With other parties:</i>
<input type="checkbox"/> by traditional means?	X <input type="checkbox"/> by traditional means?
X <input 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.
FOR LAWYERS IT IS MANDATORY TO USE ELECTRONIC MEANS (SEE ABOVE 1 c)

e) Do electronic files exist?

NO,

WITH THE EXCEPTION OF FILES FOR THE REGISTER OF COMMERCIAL ENTERPRISES AND AT THE PUBLIC PROSECUTOR'S OFFICES FOR SMALL CLAIMS AGAINST UNIDENTIFIED SUSPECTS BOTH ARE VERY SHORT TIME PROCEDURE THEREFORE ALL THE QUESTIONS RAISED UNDER f) to j) DO NOT APPLY.

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

g) 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?

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

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

j) Do parties have access to the complete court file:

Yes, always

Yes, but only with specific conditions

No

Please indicate, if appropriate, the relevant legislation.

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

YES AFTER REGISTRATION THEY GET A CODE OF ACCESS TO THEIR FILE.

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

IF THE JUDGE IN CHARGE OF THE CASE DOES NOT LIMIT THE ACCESS TO THE FILE EVERYBODY WITHIN THE COURTSYSTEM HAS ACCESS TO EVERY FILE

m) Have judges/court staff access:

<i>Judges</i>	<i>Court staff</i>
X <input type="checkbox"/> to all court files?	X <input type="checkbox"/> to all court files?
<input type="checkbox"/> only to files within their jurisdiction?	<input 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)?
NO
- b) Are the expertise, the draft decision written by the rapporteur and personal notes accessible for judges in computer?
NO, (WITH THE EXCEPTION OF SOME VERY EXTENDED CASES WHERE SPECIAL EQUIPMENT WAS ASKED FOR BY THE JUDGE AND PROVIDED BY THE MINISTRY)
- c) Is the complete file accessible for the parties or their lawyers during the hearing (also in computer)?
NO
- d) Has technical equipment been installed in courts enabling to project documents on screens visible to judges, parties and audience?
IN SOME COURTS
- e) Are oral hearings audio or video recorded?
IN CIVIL AND IN MOST OF THE CRIMINAL CASES (WITH THE EXCEPTION OF THE MOST SERIOUS ONE) IT IS POSSIBLE THAT THE JUDGE SUMMARIZES THE HEARING INCLUDING THE TESTIMONIES BY DICTATING IT ON AN AUDIO-TAPE.
- 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.
THE CIVIL PROCEDURAL CODE AS WELL AS THE CRIMINAL PROCEDURAL CODE PROVIDE THE POSSIBILITY TO USE VIDEO CONFERENCE FACILITIES. IT IS UP TO THE COURT TO DECIDE IF THE PERSON IS EXAMINED AT THE COURT OR BY VIDEO CONFERENCE. IN SOME CASES THE CONSENT OF THE PARTIES IS NEEDED.

- 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 checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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>
<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 checked="" type="checkbox"/> national case-law
<input checked="" type="checkbox"/> international case-law	<input type="checkbox"/> international case-law
<input type="checkbox"/> law review articles	<input checked="" type="checkbox"/> law review articles

Please specify the private institution.

PUBLISHING HOUSES SPEZIALISED ON JUDICIAL MATTERS; SOCIAL SECURITY AGENCY

5. Practical court work

- a) What is the work of the judge:

- in writing the documents?

IT IS UP TO THE JUDGE HOW HE/SHE FILES DOCUMENTS: THE TRADITIONAL WAY IS THAT THE JUDGE DICTATES THE DECISION ON A TAPE; WHICH AFTERWARDS IS TRANSFERRED INTO A WRITTEN DOCUMENT BY THE STAFF: IF THERE IS SOMETHING TO BE CORRECTED IT IS EITHER DONE BY THE JUDGE DIRECTLY OR ON HIS/HER ORDER BY THE STAFF. MORE AND MORE JUDGES WRITE THE WHOLE OR ESSENTIAL PARTS OF THE DECISION BY THEMSELVES: ONE OF THE REASONS IS THAT THERE IS NO STAFF AVAILABLE TO DO THE WORK AS SPEEDY AS NECESSARY

in delivering the documents?

The judges orders which document is delivered to whom. The delivering is done by the staff normally using the post sometimes directly by the staff (executive officers)

- in registering the documents?
- There is no task of the judge in registering the documents but he/she is to a certain degree responsible if the registration is correct.

b) What is the work of the court staff:

- in writing the documents?

IT IS TASK OF THE STAFF TO WRITE THE DOCUMENTS AS IT IS ORDERED (DICTATED) BY THE JUDGE

- in delivering the documents?

THE STAFF ORGANIZES THE DELIVERING OF THE DOCUMENT, WHICH IS NORMALLY DONE BY A CENTRAL POST DELIVERY UNIT, TO WHICH THE DOCUMENTS ARE TRANSFERRED BY IT OR IN CASES OF OUTMOST URGENCY IF ORDERED SO BY THE JUDGE DELIVERED BY EXECUTIVE OFFICERS, WHO BELONG TO THE STAFF

- in registering the documents?

IT IS TASK OF THE STAFF TO REGISTER THE DOCUMENTS

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

THERE SHOULD BE MORE STAFF IN TIMES, WHEN THERE IS MORE WORK THAN USUALLY AND WHEN NOT EVERYBODY IS IN WORK (HOLIDAYS, ILLNESS)

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

SEE LIT a)

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

SOME JUDGES USE VOICE RECOGNITION; THERE ARE SOME FORMS AVAILABLE, WHICH COULD BE USED FOR VERY SIMPLE DECISIONS (e.g. TRANSFERRING A FILE TO ANOTHER COURT, WHICH HAS JURISDICTION ON THE CASE; FIXING THE COSTS OF AN INTERPRETER) BUT NOT FOR JUDGEMENTS. BUT MANY JUDGES CREATE THEIR OWN SET OF TEXTS, WHICH THEY CAN INCORPORATE IN SIMILAR DECISIONS.

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

YES; THERE IS A LIST OF PENDING DECISIONS EVERY MONTH, AND A LIST OF ALL CASES PENDING MORE THAN HALF A YEAR ONCE A YEAR.

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

SUCH DATA COULD BE PRODUCED EASILY BUT IN ORDER TO OMIT UNDUPLICATE INFLUENCE THESE STATISTICS ARE PUBLISHED ON THE LEVEL OF COURTS ONLY NOT ON THE LEVEL OF THE INDIVIDUAL JUDGE.

6. Internet

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

THERE IS INTERNET ACCESS FOR EACH JUDGE; THERE ARE CERTAIN SITES WHERE THE JUDGE HAS TO IDENTIFY THE REASON, WHY HE/SHE USES THIS SITE (e.g. SITES THE CONTENT OF WHICH IS CLASSIFIED AS ENTERTAINMENT; PORNOGRAPHIC; DRUGS; FACEBOOK)

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

NO THERE IS ONLY A WEBSITE RUN BY THE MINISTRY OF JUSTICE AND ANOTHER RUN BY THE SUPREME COURT, THE CONTENT OF WHICH INCLUDES THE PRESENTATION OF THE COURT AND ITS MEMBERS AND SOME PRESSRELEASES CONCERNING RESENT DECISIONS OF OR EVEDNTS AT THE COURT.

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?) THERE IS NO EXPLICIT RULE: SOME PERSONS ARE EQUIPPED WITH LAPTOPS BY THE MINISTRY (e.g. EXECUTIVE OFFICERS, JUDGES OF THE SUPREME COURT, COURT INSPECTORS) THESE ARE PROVIDED WITH DIRECT ACCESS TO THE INTERNAL NETWORK: THEY SHOULD NOT USE THESE COMPUTERS FOR OTHER APPLICATIONS:

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

THERE IS NO RULE

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

- d) Is the situation the same for all court staff?
YES BUT SEE a) and b)

8. Use of data

- e) Is the data contained in the procedure used for another aim than the procedure itself?
SOME OF THIS INFORMATION IS USED FOR STATSTICAL PURPOSES

- f) Is this data used for statistics?
YES

- g) If yes:

- who produces these statistics?

THE STATISTICS ARE PRODUCED BY THE MINISTRY OF JUSTICE. MOST OF THEM ARE AN AUTOMATIC OUTCOME OF DIFFERENT COMPUTER ROUTINES

- how and by whom are these statistics used?

MOST ARE USED INSIDE THE JUSTICE SYSTEM BY THOSE WHO ARE RESPONSIBLE OF THE MANAGEMENT (MINISTRY OF JUSTICE; PRESIDENTS PF COURT; PERSONALSENATE, WHICH IS A BODY RESPONSIBLE FOR THE DISTRIBUTION OF CASES); SOME ARE ALSO USED FOR GENERAL Statistics ON THE JUSTICE SYSTEM WHICH EVERY YEAR IS PART OF THE STATSTICAL HANDBOOK PRODUCED BY THE CENTRAL STATISTICAL OFFICE OF THE REPUBLIC OR BY THE PARLAMENT WHICH REQUESTS A REPORT ON THE IMPACT OF A NEW LAW.

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?

THERE IS A SPECIAL TASK OF THE SUPREME COURT TO DECIDE ON DATA PROTECTION ISSUES IN THE JUSTICE SYSTEM. THERE HAVE BEEN SOME CASES. THERE IS ON DATA PROTECTION COMMISSIONER AT EACH COURT.

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

SEE ABOVE c)

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?

THE DECISOIONS ON THE ELECTRONIC INFRASTRUCTUR ARE VERY MUCH CENTRALIZED. MOST ASPECTS ARE DECIDED BY THE MINISTRY OF JUSTICE, SOME MINOR QUESTIONS ARE DECIDED BY THE PRESIDENTS OF THE FOUR OBERLANDESGERICHTE. THERE IS NO EFFECTIVE INVOLVMENT OF OTHER JUDGES.

11. Conclusion

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