

Contribution by the European Association of Judges to the Communications of the European Commission on the EU Justice Agenda

COMMUNICATION FROM THE COMMISSION: The EU Justice Agenda for 2020 - Strengthening Trust, Mobility and Growth within the Union COM (2014) 144 final

COMMUNICATION FROM THE COMMISSION: A new EU Framework to strengthen the Rule of Law COM (2014) 158 final

The European Association of Judges is part of the International Association of Judges and represents 44 member associations throughout Europe. It has member associations in all jurisdictions of the European Union and EFTA.

The debates and interventions at the Assises de la Justice in November 2013 have shown: “Improving the independence, quality and efficiency of national justice systems” as the European Commission has put it in its communication for the Justice Agenda 2020 must be seen as one of the most important issues to tackle for the incoming European Parliament and European Commission. European Citizens throughout the Union must be able to find access to Courts wherever they live or work or enjoy their rights created by European law. The well-functioning of the justice systems is also important for economic growth. The European Judges Association will assist the European law maker to improve the functioning of the European legal area by focusing on the judiciary.

The EAJ welcomes the shift on the focus from new law – making to consolidation and access to justice. The last decades has brought an enormous body of European legal instruments, which still have to be merged into the national legal systems. Citizens, legal practitioners and judges have to learn how to use these new area of law and, together with national Parliaments, how to find a balance between different national legal traditions and common European law. Although the EAJ can join the European Commission in the last sentence of the communication: “As a result, by 2020, justice and citizens' rights should know no borders in the EU”, it wants to stress that this cannot emphasize the end of the different legal systems within the Union, but the effort to ensure within all legal traditions the access to justice for everybody.

The major aspects named by the European Commission to deepen the European Area of justice are

- Enhancing mutual trust
- Rule of Law
- Consolidation
- Codification

Enhancing mutual trust

Mutual Trust and mutual recognition is the basis of the European Legal Area and necessary to avoid unification of the different legal systems. However, mutual trust can only be established by harmonizing basic aspects of the procedural and material law. Mutual trust is not a question of personal trust for a colleague who has made a decision, but is a legal category based on the application of common standards taken by the Courts within the Union. Mutual trust as the basis of mutual recognition asks for a legal framework to connect the ends of legal traditions which do not fit. Legal safeguards for the accused in criminal cases or for the defendants in private law suits must be safeguarded by the European instruments of mutual trust as well as procedural questions so that the decision by one Court can be handed over smoothly and without any legal disruption to another Court cross-border. To reflect the differences between the national legal systems properly and ensure that mutual trust can work as a link between them will be one of the major tasks for the coming year. Judicial training and better communication between judges and legal practitioners will help.

Rule of Law

“The rule of law is the backbone of any modern constitutional democracy.” There is not much the EAJ can add to this opening statement from the Commission in its communication on strengthening the Rule of Law. The European Association of Judges joins in the diagnosis of the Commission that the lack of respect for the rule of law has grown. Not only are there well-known cases, which led to the intervention of the Commissions, examples of this growing lack. It can be detected all over the Union when governments of member states infringe into the work of Courts for the judiciary, appointing judges for political reason, are cutting down the monetary support for Courts or on salaries of judges or trying to reduce access to court. Therefore, the EAJ welcomes the new framework to address and hopefully resolve situations where there is a threat to the rule of law.

The principle of the Rule of Law as identified by the Commission in its communication show that independent and impartial courts are at the core of the Rule of Law and essential for the functioning of the European Union. The EAJ is prepared to help the Commission to identify threats to the rule of law and to clarify what threats are of such systematic nature that they cannot be dealt within the judicial system of the member state itself.

Consolidation

As said before, it is time to consolidate and complement where necessary the legal instruments passed in the last decades. Most of the instruments have created, as the European arrest warrant for criminal law or the Rome –regulation for international private law, a whole new area of law. For most of the instruments, only in recent time a substantial number of cases have reached higher national courts and a body of ruling decisions is going to be established. The experience from these decisions should be used for thorough analyses and, where needed careful complementation of existing legal instrument.

After the European investigation order has been passed and not taking into account the regulation to establish a European Public Prosecutor, the EAJ does not see an urgent necessity for new major legal instruments for the next few years.

What is missing however is a common legal basis in criminal law by comparison with what has been established in private law for the law of contract through the Principles of European Private Law (CoPECL) or the Common Frame of Reference (DCFR). The work, academics have started 18 years ago with the “Corpus Juris” should be perpetuated into a discussion between academics and judges, prosecutors and defense lawyers about the fundamental ideas of European criminal law and its dogmatic basis and which could end in a “Common Frame of European Criminal law”. The EAJ would support such a process and would participate in the discussions.

Codification

Codifying the existing legal instrument in the area of consumer protection law, international private law, civil law procedure and criminal mutual recognition instruments is welcomed by the EAJ. It would create better access to these legal instruments, especially for judges, practitioners and parties who are not used to work with European law on a daily basis. However, codification should not be used as an excuse to widening the scope of the existing instrument.