

JUSTICE FORUM

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Ladies and Gentlemen,

I would like to start by thanking the European Commission for having organised this important and extremely valuable Justice Forum and indeed for having invited the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union to make an address at this initial meeting. I speak to you today in my capacity as Vice-President of the Association and at the request of my colleague, Mr Janusz Trzcinski, President of the Supreme Administrative Court of Poland and current President of the Association. The Association's Deputy Secretary-general and Member of the Belgian Council of State, Ms. Martine Baguet, is also here with us today.

The purpose of the Association, according to Article 3 of its Statutes, is to promote exchanges of views and experience on matters concerning the jurisprudence, organisation and functioning of its Members in the performance of their judicial and/or advisory functions, particularly with regard to Community law. As such, its mission dovetails seamlessly with many of the stated objectives of the Justice Forum.

Before outlining in broad terms the types of legislative cooperation fostered within the Association, I should first like to talk a little about two key challenges currently facing Europe in terms of justice and judicial matters.

I Key challenges facing Europe in terms of justice

1. The first challenge I can discern concerns the application of European law: the application of European law by the courts in the various EU Member States should form the basis for discussion and debate within the Justice Forum.

European law is drafted and implemented via a three-stage process:

- Stage one entails **drafting legislation**: this is done by the EU institutions in cooperation with the Member States.
- Stage two involves **transposing Community law**: “transposition” is the process of harmonising the respective bodies of national law in the Member States with Community law, the latter to have full effect. It is primarily the national parliaments and governments of the EU Member States who are responsible for transposing Community law under the supervision of the European Commission and the European Court of Justice.
- Stage three sees **EU law applied in the respective Member States by the latter’s national courts**. Applying Community legislation is the preserve of the national courts and it is their responsibility to ensure that **Community legislation is applied fully and correctly**. Naturally, the activities of the national courts in this regard are monitored by the European Court of Justice, which has the final say in both interpreting Community law and assessing its validity. However, the national courts and, specifically, the supreme courts in the respective Member States, which, with the full agreement of the European Court of Justice and via the principle of subsidiarity, have become courts of ordinary law within the Community law system, have a duty to apply Community law coherently and in a uniform fashion. Dialogue between all courts and their respective judges is paramount at this stage of the process.

In order for a national court to act properly, it must apply Community law fully and effectively and in an homogenous and predictable manner. Litigants across the European Union, be they citizens or business entities, expect Community law to be applied in a standard fashion in all Member States. Applying Community law differently in different Member States brings about a myriad of problems, including the potential risk of EU citizens not being treated equally, the danger of unreliability and a lack of legal certainty, and the possibility of unfair competition. Such non-uniform application would hinder the free movement of persons, goods and capital within the EU and would undermine citizens’ trust in the effectiveness of the EU’s policies.

Let us take as an example the application of Community rules regarding environmental safety of industrial facilities which may endanger public health and/or natural habitats. This scenario demonstrates clearly that if national courts in the various Member States applied such legislation in different ways (i.e. some more stringently than others), the inevitable result would be differences in the treatment of business entities across Europe, some of which would be favoured and some penalised. The smooth operation of the single market would thereby be severely distorted and confidence in the full and coherent application of EU legislation undermined. Indeed, the credibility of the EU institutions and the very achievement of the goals enshrined in the EU’s founding treaties would be jeopardised.

Clearly, then, we must do everything in our power to avoid these risks. In addition to cooperating on an institutional level via the process of submitting preliminary questions to the European Court of Justice, national courts must also share their experiences and talk to each other about how they operate and the results they achieve, and must perform their role in full knowledge of the difficulties encountered and solutions reached by their counterparts. Naturally, the Justice Forum is no substitute for courts themselves, but it can – and indeed must – serve as a vehicle for discussion and exchange of ideas on how best to apply Community law.

2. This leads me on to what I consider to be the second challenge facing Europe in terms of justice, namely the role – in the Association’s view a crucial one – of the supreme administrative courts in the Member States of the European Union in achieving the Justice Forum’s stated objectives.

The Communication from the Commission on the creation of a Forum for discussing EU justice policies and practice (COM (2008) 38 final) details four aims for said Forum:

- contribution to the *ex ante* evaluation phase;
- reviewing the legal and practical implementation of instruments;
- contribution to the assessment of global impact on national judicial systems and on the functioning of judicial cooperation of EU measures;
- contribution to a dialogue on quality of justice with a view to strengthening mutual confidence.

Bearing in mind these aims, in particular the final two, the supreme administrative courts in the EU, via the Association of which both they and the European Court of Justice are members, should play an active role in the Forum since the majority of administrative fields for which they are responsible are governed largely – or at least influenced heavily – by European law.

Of course, the challenges inherent in applying European law in a coherent and homogenous fashion do not affect the fields of civil and criminal law alone. Although the Commission communication cites only these two fields of law explicitly, it is the national administrative courts which are most frequently called upon to apply Community law since their remit encompasses very broad areas of European legislation. Consider, for example, cases concerning respect for the fundamental rights enshrined in European law or the countless rules and regulations which are, in essence, simply a product of the transposition – full or partial – of European law, such as legislation concerning foreign nationals and refugees, environmental law, legislation governing public procurement contracts and indeed law governing other fields which, in most Member States, fall within the remit of the national administrative courts. It is fair to say, then, that the vast majority of rulings by national administrative courts are handed down in application of European law. This is certainly true of over one third of the rulings handed down by the French Council of State.

It is important to underscore that some issues raised in the Commission Communication on creating a Justice Forum are of relevance to administrative jurisdictions, not least that of assessing the global impact on national judicial systems and on the functioning of judicial cooperation of EU measures; equally important is enhancing the efficiency with which judicial rulings are implemented within the European Union and providing citizens with more effective access to justice. However, other considerations are important too, such as comparing legal systems and ensuring mutual recognition of cross-border administrative rulings (specifically restrictions on working in different countries) and the rulings passed on this issue.

II Association activities

Before outlining various of the Association's proposals, I should first like to give you a brief overview of the Association's activities, the Association itself being a forum for exchanging information and experiences with a view to creating a deeper understanding both of European law in general and of how to apply it coherently in the Member States. The national Councils of State and supreme administrative courts were quick to acknowledge the significance of Community law, the latter having fundamentally transformed Member States' bodies of domestic law, and they therefore decided to come together and engage in dialogue. This partnership – of which the Association's presence here at the Justice Forum today is an extension – is multifaceted and has evolved considerably over the years.

1. For some 40 years, the Association has been organising highly successful colloquia and seminars.

The Association originally came into existence following a decision by the Councils of State of Belgium, the Netherlands, Luxembourg, Italy and France and the Federal Administrative Court of Germany – so essentially the supreme administrative courts of the six founder members of the Common Market – to meet every two years at a large-scale colloquium, the first of which was held in 1968 in Rome. A further 20 colloquia have taken place since then and the 21st is to be held this year in Warsaw from 16-18 June. The themes for the Association's colloquia pertain directly to Community law and are carefully selected:

- “Preliminary reference to the Court of Justice of the European Communities” (Helsinki, 2002);
- “The quality of European legislation and its implementation and application in the national legal order” (The Hague, 2004);
- “National road planning and European environmental legislation – A case study” (Leipzig, 2006);
- “Consequences of incompatibility with EC law for final administrative decisions and final judgments of administrative courts in the Member States” (Warsaw, 2008).

Outside of these colloquia, the Association's members work together proactively and every year organise seminars and workgroups. Some recent and scheduled such activities include:

- the workgroup on reform of the preliminary procedure at the Court of Justice of the European Communities (in partnership with the Court of Justice of the European Communities and the Dutch Council of State);
- the seminar in Brussels on 28 January 2008 (in partnership with the European Commission and the French Council of State) on “National administrative courts and Community environmental law (with specific focus on informing the public and Community law on waste and polluting installations)”;
- the seminar in Santander to be held from 8-10 September 2008 (in partnership with the European Commission and the Supreme Court of Spain) on “The convergence of EU supreme administrative courts in the application of Community law (specifically in relation to regulated business sectors)”;
- the Paris Colloquium to be held from 9-10 October 2008 (in partnership with the European Commission, the French Council of State and various European associations of judges and lawyers on “Administrative courts in Europe and environmental law (with specific emphasis on the Aarhus convention and access to justice, the EU Directive on environmental liability and the Habitats (Natura 2000) Directive), and

focusing on the training required for judges and the need for dialogue between judges themselves and between judges and the European institutions.”

Although all documentation pertaining to the various colloquia and seminars is available to the public via the Association’s website, we are also keen to make other players in the field of justice in Europe aware of our work – a desire which inspired a number of recent events attended by representatives from various EU authorities, including the European Commission, and judges belonging to other associations such as the Network of the Presidents of the Supreme Judicial Courts of the European Union.

2. Studies on how the national legal systems in the Association’s Member States are structured, how justice functions today and, more specifically, on the operation of the various national administrative courts is also a key aspect of the cooperation activities undertaken by the Association. In this vein, the Association conducted a study into the structure of the court systems in place in each of its Member States as well as on 78 topics related to administrative justice. The study’s findings can be consulted in the *Tour of Europe* section of the Association’s website.

3. The Association’s activities also entail disseminating national case law. Indeed, the best way to raise awareness of European law among judges, including of the fundamental rights enshrined therein, is to exchange information concerning the existence and scope of national rulings applying Community law. Raising and maintaining awareness of national case law is a major challenge and it is surprising that despite the European authorities having adopted a range of rules and regulations, those authorities remain unaware of how national courts in the Member States subsequently apply them, only becoming aware of their application either purely by chance or in the context of infringement proceedings or a preliminary question submitted to the European Court of Justice. In most cases, no single and comprehensive overview of case law in all Member States is yet available and this is a shortcoming which needs to be rectified.

As far as its resources allow, the Association has been endeavouring to resolve this problem by setting up an extensive Information Network as outlined below.

Two databases

- The DEC-NAT database: this database contains references to over 20,000 rulings by national courts. The data are supplied to the Association by the European Court of Justice’s Research and Documentation Service; the Association then arranges for them to be translated into English and collates them into a database which can be accessed via a search engine. DEC-NAT is likely to evolve in two directions in the years ahead: firstly, there are plans to make it directly accessible via the EU’s vast EUR-LEX database and secondly a feasibility study is currently under way on the possibility of linking the references contained in the DEC-NAT database with national databases of judicial rulings.
- The JURIFAST rapid information system: whenever a key ruling in relation to Community law is handed down by a member court, the latter enters it directly into the JURIFAST system, thereby ensuring that details of important national rulings are immediately accessible to others.

JURIFAST was recently made available for the first time to supreme courts outside the Association (including the French, Belgian and Italian Courts of Cassation among others).

Both databases are freely accessible to the public via the Association's website.

The Association's internal forum

Use of this electronic facility is restricted to the Association's member courts. The forum enables users to exchange information directly and put questions to their colleagues, for example concerning the implementation of fundamental rights and Community law.

Publications

The Association publishes a regular Newsletter together with general reports on colloquia and scientific studies, such as that on administrative justice in Europe published in French and English by *Presses Universitaires de France* (PUF).

4. One final aspect of cooperation orchestrated by the Association are working visits by judges. Ever since its inception, the Association has supported bilateral working visits by judges of its various member courts and several judges at courts in the new Member States have visited their counterparts in established Member States. From 2008 onwards, these visits will be stepped up a gear, with the Association to take part in the European Union's Exchange Programme for Judicial Authorities run by the European Judicial Training Network (EJTN). Some 30 judges will benefit from working visits to member institutions in 2008 through the Association's partnership with the EJTN.

The visits generally last two weeks and focus on practical work, with judges being invited to become involved in the work of their colleagues, for example by attending court proceedings and deliberating over rulings.

III Association proposals

I should now like to outline one or two of the Association's proposals.

1. The Association believes that one key role for the Justice Forum could be to compile details of all the activities, events and networks in which various judicial players are involved, since doing so would mean that such activities and events could be coordinated more efficiently and, where possible, targeted to reflect the Forum's own objectives. We would like to see the events and resources run and provided by the associations and organisations within the Forum to be opened up to other bodies. The Association itself is certainly more than willing to do this, as set out above.

The same applies to the various seminars and colloquia, which are currently organised in a rather disparate manner by national institutions and European networks and associations, many of which are represented here today. Initially, at least, it would be advisable to collate details of all such seminars and colloquia; in due course they could perhaps be coordinated, a system of mutual cooperation set up or a list of priority topics compiled.

There are also a myriad of websites and databases in existence, for example those of the Network of the Presidents of the Supreme Judicial Courts of the European Union, the European Judicial Network (EJN) in civil and commercial matters, the European Judicial Training Network, the Association of Supreme Courts of Cassation of French-speaking Countries (AHJUCAF), and, of course, the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union among others, all of which have been remarkably successful. It would be useful to compile a comprehensive overview of all such sites and databases and coordinate them in some fashion. Perhaps, for example, they could be structured around a range of priority fields determined by the Forum?

It is also important to remember that the idea to set up a Justice Forum is just one of many initiatives on the part of the European Commission. Indeed, the Commission is currently drafting a specific Communication concerning the role of European courts in the context of environmental law and the Environment DG is hoping to put together a programme to facilitate cooperation with national courts from 2008 onwards. Consequently, training seminars are to be held for judges at national courts as are working meetings between these judges and the European Commission in a bid to raise both parties' awareness of how the other works. The programme is to be based broadly on the objectives pursued by the Justice Forum and is to be launched during the French Presidency of the European Union at the Paris Colloquium to be held from 9-10 October 2008.

Of course, many other initiatives have also been set up and it would perhaps be useful to take the same approach with them, i.e. compile full details and endeavour to coordinate them appropriately.

2. Since the idea is for the Justice Forum to hold several meetings each year, the Association is happy to look into organising – either alone or in partnership with other Forum members – seminars on topics chosen by the latter; seminar conclusions could then be discussed in more detail by the Forum when it meets in plenary session.

In relation to reviewing the legal and practical implementation of instruments, the Commission Communication cites Title IV of the EC Treaty (EU policy on visas, asylum, immigration and other policies related to free movement of persons). A large proportion – and indeed often the majority – of cases submitted to national Councils of State and supreme administrative courts in the Member States involve foreign nationals and refugees. The Association is especially interested in becoming involved in the Justice Forum's work in this field and indeed organised a seminar on judicial procedures in such cases (held from 20-21 June 2005 in Brussels), the conclusions of which served as the basis for major legislative reform in Belgium.

As regards contributing to dialogue on quality of justice with a view to strengthening mutual confidence, the Communication mentions promoting networking among justice practitioners to encourage a better understanding not only of EU measures but also of national systems, and cites the Exchange Programme for Judicial Authorities as an example of such efforts. This approach reflects our own social purpose and is the premise upon which the Forum's regular activities will be based in the future. Forum members will also be encouraged to take part.

In conclusion, then, the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union is ready and willing to serve as an interface via which to unite the Justice Forum with its member courts. We have an excellent tool which we believe will be invaluable in this respect, namely an internal forum well suited not only to keeping

member courts informed of issues being discussed by the Justice Forum but also to reporting back to the latter once the reactions of judges at the various member Councils of State and supreme administrative courts have been collated and processed. Such a structure would certainly promote ongoing interaction between the Forum and its members.

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I would like to end my presentation today by underscoring clearly the Association's keen interest in the work of the Justice Forum as well as our readiness to be of assistance in any way possible. The Forum is a perfect environment within which to foster varied and thought-provoking dialogue during what is a time of great change and indeed a key stage in European construction and Europe's development as an area of law, justice and freedom.