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Chapter: Legislative measures for timeliness in civil proceedings

Czech Republic

Rules enhancing efficiency
**Czech Republic:** In disputed civil cases, the principle of ‘concentration’ of proceedings applies. This means that the parties should present all the evidence before the first hearing of the procedure. When this requirement is not met, the court will not take further arguments or evidence into consideration. The parties are allowed to present new evidence by the end of the first hearing. There are few exceptions to this rule.

Preventing delays in proceedings
**Czech Republic:** In case of delays in proceedings, the parties can submit a written complaint to the president of the court and/or require a higher court to set a deadline for a procedural act.

Settlement Procedures
**Czech Republic:** The court must always attempt to reach an out-of-court settlement, but parties cannot be forced to cooperate. If a settlement has been reached, the parties usually agree on the reimbursement of legal court fees and costs of advocates too. Generally, each party bears its own costs. The court must not approve of a settlement if it is contrary to the law. The court’s decision on a settlement between parties has the effect of a decision on the merits and makes further proceedings on the same subject matter impossible (res iudicata).

Incentives for Settlement
**Czech Republic:** There are specific rules governing costs and fee allocation designed to encourage or to discourage litigation, related to the rules for settlement. In general, legal rules concerning reimbursement of legal costs do not discourage a party with a genuine intention to litigate. If any of the parties or their representatives cause additional costs (by accident or otherwise) that would not have arisen under normal circumstances, this party is obliged to pay them. This rule encourages behavior that makes the civil procedure pass of economically. There are, however, some situations defined by the law (e.g., if the procedure might have been commenced even without a motion, if it was suspended or settled) in which neither party is entitled to reimbursement of the costs. In these cases the parties bear the costs themselves. For example, there are situations in which in a writ of summons is submitted incomplete. If the writ of summons is not completed, despite the request of the court to do so, the claimant is obliged to pay the costs of the other party.
Encouraging Alternative Dispute Resolution

Estonia: Estonian law contains a rather general reference to Alternative Dispute Resolution. During the preliminary proceedings, the court has the obligation to find out whether it would be possible to solve the case by an out-of-court settlement (Art 392 (1) of the Estonian Civil Procedure Code). Until a court decision becomes final, the parties have the right to terminate the proceedings by a settlement. The court will approve a settlement by a court decision in which the conditions of the settlement are laid down (Art 430 (1)). From a practical point of view, a fee policy is used to create an incentive for the participants to reach a settlement. According to Article 150 (2) of the CPC, 50% of court fee is returned to the claimant upon reaching a settlement.

Simplification of Procedures

Estonia: All the claims with a value below 2000 EUR can be dealt with in simplified proceedings. A hearing is not compulsory in simplified proceedings and it is possible to give a final judgement without the descriptive part and the statement of reasons (Art 405 of the Estonian Civil Procedure Code).

Uncontested Claims

Estonia: The possibility for simplification of proceedings is provided in relation to monetary claims within certain limits. As the first alternative claims with a value of up to 6400 euro against another party arising from a private law relationship directed at the payment of a certain sum of money can be adjudicated by the court in an expedited procedure prescribed for payment orders (chapter 49 of the Estonian Civil Procedure Code). The procedure is entirely automated and an enforceable court ruling (payment order) is issued, if the opponent does not object to the proposal for payment within 15 days after confirmed delivery of the proposal. This does not restrict the petitioner's right to file a case at a court with an ordinary claim. The petitioner has the right to choose, whether to file a petition for the payment order (with an approximately 50% lower fee compared to the fee for an ordinary claim) or an ordinary claim with a normal fee and handled in an ordinary proceedings under the supervision of a judge. However, such a claim cannot be filed at the same time the matter of the payment order is being heard in the context of an expedited procedure (Art 481 of the Estonian Civil Procedure Code). As the second alternative for simplified proceedings for small claims, the court can decide to solve a case in written proceedings given that the case is related to a claim which has a monetary value and which does not exceed the amount of 3200 euro (Art 404 of the Estonian Civil Procedure Code).

Appeal Procedures

Estonia: The right of appeal is indirectly limited by Art 637 (2) which states that in cases which have been solved in simplified proceedings an appeal is only allowed if the Court of First Instance has clearly stated such right in its decision or if the Court of First Instance has clearly incorrectly applied the law or incorrectly evaluated the evidence and this may have significantly influenced the decision. As a monetary incentive for limiting appeals
against the judgment of the first instance court, 50% of the fee is returned, when both parties give up the right for appeal before hearing the final verdict (Article 150 (2) of the Estonian Code of Civil Procedure). When it comes to the right of appeal to the Supreme Court (cassation), there is an additional limitation in the form of a specialised board at the Supreme Court which decides whether to accept a case for cassation proceedings or not. Such decision (permission for or refusal from the proceedings) does not have to be justified.

Preventing delays in Proceedings

**Estonia:** If a civil case has been pending for nine months and the court, without good reasons, does not undertake the necessary procedural steps, the parties may ask the court to take appropriate measures to speed up the proceedings (art. 333 Code of Civil Procedure). If the court finds the application based on the 9 months of delay justified, the appropriate measures shall be implemented within 30 days. The court is, however, not bound by the application in the choice of what measures are appropriate.

Incentives for settlement

**Estonia:** 50% of court fee is returned to the claimant upon reaching a settlement and, similarly, when both parties give up the right for appeal before hearing the final verdict.

**Finland**

Professional Cooperation in Mediation

**Finland:** In court mediation of custody disputes, a judge acquainted with family law acts as a mediator. He is assisted by an expert who is specialized in parenting and child development matters (typically a psychologist or a social worker). The judge is responsible for managing the process. The judge confirms the settlement and is in charge of the enforcement. The expert member of the pair aims to ensure that the essential questions regarding the best interest of the child are asked and that the settlement responds to the needs of the child. Working as a pair has enhanced the capabilities of judges to solve social issues. The expert member is typically acquainted with the communication in conflict situations and can therefore teach the judge how to do it. This kind of system of working as a pair provides support to the parents with both legal and psychological problems linked to the divorce situation. It also saves resources of the courts and social security. Successful mediations reduce the number of judicial proceedings of custody disputes and also reduces the investigation work of social security.

**Germany**

Simplification of the Uncontested Claim Procedure

**Germany:** German Law provides for an injunction procedure (§ 689 I clause 2, Zivilprozessordnung), which is
applicable for any kind of claim. The injunction becomes enforceable if the defendant does not challenge it within a certain timeframe. However, the injunction does not become final. Only if the defendant does not challenge the injunction within a second timeframe, it becomes final like a court decision resulting from an ordinary proceeding. The plaintiff is not required to show any evidence to obtain the injunction. Only when the claim is contested, the claimant shall be required to submit evidence.

**Incentives for Settlements**

**Germany:** During a hearing the court often explains to the parties that a full procedure could be very costly and that it could be better to come to an agreement to bring the case to an end. Specific data are not available but it is estimated that about 50% of the cases end without a judicial decision.

**Italy**

**Simplification of the Small Claim Procedure**

**Italy:** Claims with a value up to 5,000 EUR are dealt with in simplified proceedings (art. 7 of the Italian Code of Civil Procedure). The Justice of Peace (Giudice di Pace) is competent in such cases. The proceedings for such claims are much faster and simpler than the ordinary proceedings. Generally speaking, only one hearing takes place and all the activities (hearing, submission of evidence) are concentrated in this hearing.

**Simplification of the Uncontested Claims Procedure**

**Italy:** The Italian Rules of Civil Procedure provide for a specific procedure for uncontested claims (art. 633 and following of the Italian Code of Civil Procedure). In case the defendant does not challenge the injunction within a certain time, the court order becomes final and has the same value of a decision issued at the end of the ordinary proceedings. This procedure is applicable for all kind of matters, regardless of the subject and regardless of the value. The claimant is required to show some evidence (i.e. invoices) when filing the claim.

**Appeal Procedures**

**Italy:** The Italian law does not contain a value limit for appeal to first instance decisions. Normally, the proceedings before the second instance courts should be faster because new evidence is not admitted and the court of appeal merely reviews the decision of the first instance court. The Court of Appeal carries out a preliminary assessment of the appeal to check if the case is well founded. The case is dismissed if it is not. However, this preliminary filter is not applicable to all first instance decisions (art. 348bis of the Italian Code of Civil Procedure). The decisions from second instance courts can be appealed only for matter of law before the Court of Cassation. Italian law provides for a preliminary filter by the court of last resort.
the third instance court finds that the decision issued by the second instance court complies with the case-law of the third instance court (and there are no elements to obtain a review of such opinion), then the appeal will be not admitted (art. 360bis).

Encouraging Alternative Dispute Resolution

**Italy:** Italian law provides for various mechanisms of alternative dispute resolution. For claims whose value is up to 50,000 Euro, parties are required to make a preliminary attempt of settlement (negoziazione assistita - literally assisted negotiation) with the assistance of the respective lawyers (Legislative Decree No. 132/2014). If such attempt fails, or if an agreement is not reached within a specific deadline, then parties can file the case in court. If an agreement is reached, Italian law recognizes fiscal benefits to the parties. For all the other claims above 50,000 Euro, this preliminary attempt is not required but still possible. It will depend on the will of the Parties and, if they settle the case, they still can have fiscal benefits. Unmotivated non-appearance of a party at this procedure can be taken into account by the judge in the possible subsequent judicial proceeding according to art. 116, p.2 (Italian code of civil procedure - CCP). For specific kinds of claims (i.e. insurance law, bank law, medical responsibility etc.), regardless which is their value, the parties are required to make a preliminary attempt for mediation before filing the case at a court. Mediation is a different procedure which entails the presence of a third person, the mediator, who is called upon to bring the parties together. The mediation procedure may also involve fiscal benefits. In case the mediator is not successful, the parties are free to go to court. However, if the mediation fails due to one of the parties, once again the court may take this into consideration in its final decision. According to art. 185-bis CCP, during the proceedings the judge has also the possibility to propose an agreement between the parties, which the parties are free to accept or refuse (see Legislative Decree no. 69/2013 – l. 98/2013). According to art. 91 CCP, if the final judgement is the same as the judge’s proposal, the judge may shift the litigation cost onto the party who has not accepted the proposed agreement without justified reason.

**Netherlands**

Co-operation in Mediation

**Netherlands:** Each court has a coordinator for mediation. Mediators can be listed at the courts. Mediators are only listed with the courts if they have a certificate of the Netherlands’ Federation of Mediators.

**Portugal**

Simplification of the Small Claims Procedure

**Portugal:** Claims with a value up to 15,000 EUR and claims dealing with some specific issues are dealt with a simplified procedure (art. 8 Portuguese Law No. 54/2013). The procedure is fast and simple since the majority of the activities are concentrated in one main hearing.
Simplification of the Uncontested Claims Procedure

**Portugal:** Portuguese Law (art. 3.º of the Legislative Decree No. 62/2013) provides for a small claims procedure for claims up to 15 000 EUR (nonetheless this limit is applicable only to non-commercial cases. For commercial cases there is no value threshold). The injunction of the court becomes final if the defendant does not challenge the claim. The claimant is not required to submit any evidence to obtain injunction, unless the defendant is contest the claim.

Rules enhancing efficiency

**Portugal:** Judges have the power to try to reconcile the parties, but this competence is not the main instrument to reduce the number of cases. In Portugal, the preliminary hearing plays a key role in concentrating all the preliminary issues concerning the case (jurisdiction and territorial competence, for example). The judge does a preliminary study of the case during this hearing (no in-depth study). However, this hearing is very helpful because it is a preparation for the hearing during which the witnesses will be heard by the judge. This improves the quality of the decision and the timeliness of the proceeding.

Appeal Procedures

**Portugal:** Portuguese law establishes several conditions for the appeal of the first instance decisions. Only decisions on claims with a value higher than 30 000 EUR can be appealed (however, there are some exceptions: art. 629 of the Portuguese Code of Civil Procedure). Moreover, decisions of second instance courts can be appealed only if they meet very strict conditions. If the second instance court decision confirms the first instance court decision and no further questions are raised before the third instance court, the appeal is not admitted (art. 671 of the Portuguese Code of Civil Procedure).

Preventing delays in Proceedings

**Portugal:** Portuguese law has very strict deadlines for judges concerning the final decision. Normally, these deadlines are respected. Even if they are not, a small delay does not cause any judicial or disciplinary consequences. In case of grave delays and/ or other important infringements the Supreme Judiciary Council can intervene and sanction the judge. This does not happen very often.

Slovenia

Encouraging Alternative Disputes

**Slovenia:** A fee policy is used to stimulate parties to reach a settlement. Two-thirds of the court fee is returned to the claimant if the case ends with a settlement. Usually 15-20% of cases end with a settlement. A judge can
propose a settlement to parties in any stage of the trial in a writing (Slovenian Civil Procedure Act, Art. 307/4). When both parties sign the judge's settlement proposal, the settlement is final and the case is closed. In practice, this happens when at least some support for settlement comes from parties (i.e. a debtor does not deny the debt, but claims he/she has no money. In these cases a judge could propose a settlement with delayed or installment payment).

**Simplification of the Small Claim Procedure**

**Slovenia:** Claims below a certain value (2000 EUR for the cases of private individuals and 4000 EUR for commercial cases) are considered as small claims. For these cases a hearing is not compulsory and the judgement can be given after the completion of the written proceedings. A hearing is held only if the participants of the proceedings specifically ask for it. There is also a possibility of an authentic document proceedings (Money Claims). In certain cases, there is no dispute regarding the claim and the defendant understands the obligation to pay the required amount without court proceedings. Therefore, there is the electronic processing of undisputed debt recovery: the procedure for issuing a payment order with allowed enforcement on the basis of authentic documents under the condition that the payment order remains uncontested. In such claims, the party can choose whether to proceed with the authentic documents procedure or the ordinary procedure. This completely electronic procedure has reduced execution times since 70% of orders are given in two days and there are lesser objections.

**Rules enhancing efficiency**

**Slovenia:** The parties are required by law to submit all evidence by the first hearing. Evidence submitted at a later stage may be ignored, unless parties prove that it was not possible to submit it at an earlier stage. During a later hearing the parties are allowed to present new facts and new evidence only if at the initial hearing they were prevented from presenting them by reasons beyond their control (Art. 286, CPA). A judge can set time limits to parties to file their statements and evidence even before the first hearing. However, this requires a certain guidance of the judge regarding the needed material and an openness with a view to his opinion on the case (CPA, Art. 286.a.). This means that if the judge wants to see evidence prior to the first hearing, it is necessary for him to produce a (preliminary) judgment on the basis of the existing information. Writing a judgment including the description of the evidence, the assessment of evidence, the verdict and the justification consumes considerable working time. A shorter explanation is used in judgements concerning small claims. In other cases, a thorough explanation (justification) is needed. If there is no appeal, then judicial time could be spent on dealing with other cases instead of writing the justification, which is not actually important to the parties. Therefore, it is allowed that a full version of judgment is written only if the parties want to appeal and pay the fee for the appeal within the prescribed deadline (8 days). About 30% of short versions of judgements are appealed.

**Preventing delays in proceedings**

**Slovenia:** If a party finds that the proceedings take too long, there are the following legal remedies available: supervisory appeal, a motion for a deadline and a claim for compensation. The purpose of the first two remedies
is to expedite the proceedings. The claim for compensation can only be filed if the supervisory appeal was granted or if the motion for a deadline was filed. Monetary compensation is payable for non-pecuniary damage caused by a violation of the right to a trial without undue delay. The amount of monetary compensation for an individual case is limited by law to range between 300 and 5000 EUR. When deciding on the amount of compensation, the criteria that are taken into account are in particular the complexity of the case, actions of the State, actions of the party, and the importance of the case for the party. According to the Courts Act, the president of the court has the right and duty to act if there is an unnecessary delay by the judge. These actions include: order to the judge to present a written report about the case or a personal evaluation of the case management by the president. If mismanagement is found, the president can give a written warning to the judge and include that warning in the personnel file of the judge. He can also order priority status to the case (enabling faster handling), order deadlines to the judge for particular procedural acts (i.e. hearing) and take other necessary measures (Court Act, Art. 71c.)

Spain

Rules enhancing efficiency

**Spain:** Generally speaking, the Spanish civil proceedings are quite fast (12-15 months for a first instance procedure and less than one year for a second instance proceeding). Judges have the power to try to reconcile the parties. However, this power is not the main instrument to reduce the number of cases. Spanish laws provide for a so-called preliminary hearing (Audiencia previa), which is the moment in which all the preliminary issues are discussed (jurisdiction, competence, admissibility of the evidence). Therefore, if for instance a claim should be dismissed on the basis of rules of competence, this happens in the preliminary phase. Moreover, after the main hearing, the court is under an obligation to immediately assess the case and to adopt a final decision. This can enhance the timeliness of the decision-making.

Appeal procedures

**Spain:** Spanish law establishes some important conditions for appealing first instance decisions. Decisions on claims with a value below 3,000 EUR cannot be appealed. Therefore, such decisions are final after the Court of First Instance has issued them. Decisions on claims with a value over 3,000 and below 6,000 EUR can be appealed. However, the appeal case is decided by only one judge, instead of the normal three judges. This reduces the resources needed for second instance cases. Moreover, decisions of Second Instance Courts can only be appealed under very strict conditions. The appeals against decisions of Second Instance Courts are only possible if the claim is over 600,000 EUR or if there is an interest in fixing jurisprudence, either because there is contradiction among Courts of Appeal concerning the interpretation of the law, either because the issue at stake is the interpretation of a new law (less than 5 years from its coming into force).
Preventing delays in Proceedings

Spain: According to the law, there is an obligation for judges to issue a judgement within ten days after the hearing. However, there are no consequences if this time limit is not met. Nevertheless the High Council for Judiciary has established different “productivity primes” according to which judges are paid a little more if they work harder. This standards are also used for the planning of justice administration, in order to determine if in a certain city another judge is needed or not, and also in certain decisions concerning the judges, such as licence for non-judicial activities, which will only be delivered if the applicant judge fulfils the standards. The change of position of a judge will be allowed by the High Council for Judiciary, only if he/ she is up to date in the issuing of the judgements.

Chapter: Judicial Case Management

Austria

Monitoring Expert Witnesses

Austria: There is a list of court experts who have been selected after a very strict procedure. With regard to the experts, workload statistics are produced once a week. These statistics include all the experts on the official expert list who have open cases. These data are very useful when the judge needs to take a decision concerning the selection of an expert. Before appointing an expert from the list, the judge asks the parties if they have any objection to that person. If they have an objection, but the court appoints the expert irrespective of the objection, the appointment can be appealed.

Compensation for Expert Witnesses

Austria: If an expert takes too long to provide his expert opinion (exceeding the deadline set by a judge), the fee of an expert is reduced by 20%. This is a new legal provision to facilitate the timely provision of expert opinions.

Belgium

Assigning Expert Witnesses

Belgium: The expert witness can be appointed by the court or by the parties. This is well coordinated by the administrative office within the court registry that is specifically concerned with expert witnesses. This office keeps track of the terms and the performance of experts. This is a system that won the Crystal scales of justice prize three years ago (district court of Antwerp).
Monitoring Expert Witnesses

Belgium: The experts are chosen by the parties from an unofficial list. There are plans to make an official data base of experts. In different sectors, there are private initiatives to regulate the work of experts. In the construction sector, for example, there is a private initiative that prescribes certain standards and the method of working. The problem is that there is a lack of experts in some fields. The diamond business is an example of this. The experts are often associated to the parties in some way. This means a long search for an expert that is independent.

Mini-inquiry for Experts

Belgium: The expert report in a complicated case can keep the parties waiting for a long time. In Belgium, the court has the possibility to order mini expert inquiries. This means that an expert goes on-site and provides the parties with a preliminary conclusion. The preliminary conclusion gives a strong indication of the possible final report. The parties are allowed to negotiate following the preliminary expert opinion. If they cannot find an agreement, the report is completed and sent to court and the proceedings go on. The idea is that for small construction cases the costs of an expert are relatively high. The parties need to advance these costs and many people are not able to do this. The mini research could avoid the necessity of a full report, which is far more expensive than a mini report.

Czech Republic

Clear Roles for Personnel

Czech Republic: Higher court clerks are authorized to fill out the form for payment orders. They can also adopt a number of procedural decisions in the framework of the judicial procedure, collect court fees, and indicate the time when the payment is to be made and how it may be enforced. The work of the judge focuses on hearings and the decision on the merits. The judges also decide on procedural aspects of the case and the adoption of the respective decisions.

Division of Work – Judges and Court Clerks

Czech Republic: There was a project from April 2012 to December 2015 in selected districts and regional courts called “Improvement of the efficiency of courts by strengthening of the administrative capacities” financed by the European Social Fund. During the project, new administrative personnel was assigned to selected courts. There were thirteen courts involved in this project (eleven District Courts and two Regional Courts) with the highest number of backlogs. By systematically deploying the administrative personnel, the project helped to resolve more cases (increase productivity) and thus helped to prevent an increasing number of backlogs and to reduce the existing backlogs.
Assigning Expert Witnesses
Czech Republic: The expert is primarily deemed to be a consultant of a judge, whereas the testimony of a witness is usually important evidence for a decision. Sometimes, an expert acts as an investigator whose task is to identify and to find out relevant information. The expert witness in a particular case by a court is an independent person or entity. The task of an expert is to answer questions regarding technical, scientific or medical (i.e. factual) issues in a particular case. The expert is required to be completely independent. However, he may require the cooperation of the parties and/or a third person(s) in order to fulfil his task. The expert may refuse to provide his contribution only for serious reasons or if he is not impartial.

Monitoring Expert Witnesses
Czech Republic: There are 9,485 experts as of 18 May 2015 on the official list of experts. This does not mean that the authorities are not allowed to (exceptionally) appoint an expert who is not registered on the list. Timeliness and quality of the expert witnesses is checked by a judge in particular cases. A breach of the duty to perform within a certain time limit and to comply with standards by an expert can be reported to the president of a regional court or the Ministry of Justice. The case load of an expert can be found in the electronic information system of a particular court. In some sectors, the number of experts is insufficient (there is a lack of psychiatrists, for example).

Compensations for expert witnesses
Czech Republic: If an expert files the expert opinion too late, this may result in a reduction of his remuneration, imposition of a disciplinary fine and/or the revocation from the case.

Estonia

Clear roles for personnel
Estonia: In 2013, a pilot project was started in one county court (Harju County Court). This project provided each judge with a personal assistant who had to have a Master's degree in law and whose salary was increased to 50% of the judge's salary. As a result, the judges could delegate more functions to assistants. The quality of the support provided by their assistants increased too. After the first year of the pilot, the average throughput times in civil cases dropped from 201 days to 160 days; after the second year the throughput times dropped to 132 days. At present, the project has been introduced in all 1st and 2nd instance courts.
Assigning expert witness

**Estonia:** The main role of an expert is that of a consultant. Yet, the expert opinion serves as evidence. According to the Civil Procedure Act (CPA) Art 293, an expert is asked for an opinion in order to clarify important circumstances, which require specialized knowledge. In legal matters an expert opinion is asked to clarify the laws applicable outside the territory of Estonia, international law or common law. An expert is appointed by court on the basis of application from a party. Upon the appointment of an expert the court takes into account the opinions of parties but is not bound by them. An expert employed in a state expertise institution or a state-certified expert or any other person who has notified the court about his/ her readiness to carry out the expertise is obliged to do so - CPA Art 295 (1), (2). A person may refuse to carry the investigation on legal grounds, including the provisions which provide a witness with the right to refuse to provide his testimony - CPA Art 296. An expert has the right to turn to the court to familiarize himself with the materials of the case to the necessary extent, to participate at the evidence investigation at the court and ask for comparative information and additional data from the court - CPA Art 302 (2). An expert has the right to turn to the court for clarifications - CPA Art 298 (2). In case an expert finds the expertise task non-compliant with his professional knowledge, he must notify the court immediately thereof - CPA Art 303 (4). An expert must notify the court immediately if the cost of the expertise exceeds the claim amount or the amount of prepayment - CPA Art 302 (5).

Monitoring Expert Witnesses

**Estonia:** First and foremost, the court appoints experts from state expertise institutions or state-certified expert lists (their list is available on the web page of the Estonian Forensic Science Institute: http://www.ekei.ee/et/koostoo/riiklikult-tunnustatud-ekspordid). However, the court is free to appoint any other specialist, primarily if there are no state-certified experts in a particular field - CPA Art 294 (1) and (2). If the parties agree on an expert person, the court appoints that person, given that the person can perform as an expert according to law (CPA Art 294 (4)). The daily work of experts employed in a state expertise institution is monitored by its management. The court evaluates the expert opinion presented to the case and if its quality is problematic, the court may require repeated expertise or additional expertise - CPA Art 304 (1), (3). There are enough experts in some fields, for example real estate valuation experts and forensic psychiatrists. Hand writing expertise is normally carried out by state experts and there are enough of them. The major problems concern finding good experts in construction, accounting and finance. There are sufficient numbers of people acting as experts in these fields but their level is very varied and it is often the case that the expert does not understand what the court expects of him/ her.

Incentives for expert witnesses

**Estonia:** The court has the right to set a deadline for the expert or to give orders in relation to the expert report (CPA Art 297 (2)). In case an expert fails to meet the deadline set by the court, the court may impose a fine on him (CPA Art 305 (1) p 4). The court may also extend the deadline.
Finland

Case time forecast

**Finland:** In the Helsinki Court of Appeal a system was implemented in which the needed procedure (the pre-trial events and the set timeframes) is decided right after the case has been docketed. To each case a responsible judge is assigned. The moment the case arrives, the responsible judge estimates with the clerk how much time, work and resources are needed to handle it. There are set timeframes for different types of cases which have to be taken into account when planning the case’s intermediate phases and their deadlines. The responsible judge gives a statement about the handling procedure and timetable of the case using a preparation and follow-up form. In the form, things such as time-frames, needed pre-trial proceedings, guidelines for the preparation work and for preparing the draft session can be explained. For cases needing a main hearing, the date is scheduled before the preparation is completely done.

Germany

Specialization in Courts

**Germany:** The division of work in the Landgericht North Rhine-Westphalia is highly specialized. To enable the most efficient handling of the case, there are different “senates” (court division/section) within the court that specialize in certain legal fields.

Assigning Expert Witnesses

**Germany:** The court only makes use of experts for evidence matters. The expert witness is called upon for technical or medical questions, for instance. He is not required to negotiate an agreement. The parties need to get a private mediator to make an assessment of the mediation possibilities. The court chooses the experts. When an expert is necessary, he receives a letter defining the deadline for the report and the estimated costs. The judge may ask the parties to agree on the proposed expert witnesses. If the parties agree, the court must abide by their choice. “An expert can be recused if it appears that they are not impartial, that they have ties to the litigants or that they have any other personal interest in the outcome of the case. The mission of the expert is decided by the judges who can direct the nature of the mission and the methodology by which it is undertaken. The judge also has the capacity to decide on the participation of the litigants in the expert investigations.

Monitoring expert witnesses

**Germany:** There are lists of experts available at federal level and for an individual to be included they must demonstrate that there is a need for that particular expertise, that the expert has the necessary knowledge
in that field on which he or she seeks accreditation, that the expert works in the private sector and has no
indication of bias, relationship or subordination to the litigants. Experts are required to be between 30 and
62 years of age at the time of registering. Upon registration the expert will be accredited for five years after
which renewal may be sought. In certain circumstances a judge may select an expert who is not on the
registers if that area of expertise is particularly rare. Experts in Germany are expected to maintain high
standards of ethical and professional behaviour. The high quality of expert witnesses is maintained by a
registration process that requires them to demonstrate an above average level of expertise, be proficient
report writers and have high ethical and professional standards.\(^1\)

**Incentives for Expert Witnesses**

**Germany**: The courts decide on the deadlines for the experts. In extreme cases it is possible to withdraw
the assignment when it takes too long. Sometimes the term is extended with a month, but this is often due
to the nature of the question asked. If it is a complicated question, more time is needed (e.g. to get additional
information or to visit the place related to the proceedings).

**Italy**

**Division of Labour**

**Italy**: To start a case, the plaintiff deposits at the registry the request to place his case on the register ("Ruolo
Generale"). The register is the record of all pending cases in a court. The clerk has to register the case in
the register and to create a file in which all the documents of the case will be included. Once the official file
has been created, the President of the Court appoints the investigating judge before whom the parties must
appear. In courts divided into several sections, the president of the court assigns the case to a specialized
section, whose president assigns the case to a judge.

**Incentives for Settlements**

**Italy**: Italian law provides for various mechanisms of alternative dispute resolution. First of all, for claims
below 50,000 EUR, parties are required to try an out-of-court settlement (negoziazione assistita) with the
assistance of their lawyers (Legislative Decree No. 132/ 2014). If such an attempt fails, the parties are free
to go to court. In case an agreement is reached, Italian law grants certain fiscal benefits to the parties. For
all the other claims, this attempt at a settlement is not required. The success of the out-of-court settlement
will depend on the motivation of the parties. A strong incentive can be found in the fiscal benefits they
receive in case of an agreement. For specific kind of claims (i.e. insurance law, bank law, medical
responsibility etc.), the parties are obliged to mediate (see Legislative Decree no. 69/2013). Mediation is a
different procedure which entails the presence of a third person, a mediator, who is called upon to try to

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\(^1\) Barry Turner "**Expert Evidence in France, Germany, Italy, Spain and the Netherlands**" 2012
find an agreement. If the parties reach an agreement within the mediation procedure, they can receive fiscal benefits. In case mediation fails, the parties are free to go to court. In all the other cases the use of mediation is on voluntary basis. In any case, the law provides for an obligation for the lawyers to inform their clients, before the starting of any judicial proceedings, about the possibility of using mediation and the fiscal benefits connected with it. Mediation can also be requested by the judge (delegated mediation) during the proceedings: in particular, the judge may invite the parties to attempt to solve the dispute through mediation at any stage, but before the last hearing.2

**Expert Witnesses**

**Italy:** For the application of the relevant law (Implementing Provision of the Code of Civil Procedure, Article 13), all courts have their own official list of experts, divided into six main categories: medical-surgical, industrial, commercial, agricultural, banking, and insurance. It is clear that this wide classification does not thoroughly describe the field of competence that can be very specific. The expert is appointed if the judge considers him particularly competent. When you are listed, this is voluntary and it is not a recognition of a profession. The expert has to accept the assignment from the judge when it is on the list.

**Monitoring Expert Witnesses**

**Italy:** Every court has a list of experts whose performance is monitored by the President of the court. The list does not describes the expert’s qualifications in a detailed way. The judge may appoint an expert who is not registered in the list but this choice must be grounded in motivated reasons by the judge. There is no any tool to check the experts’ performance, and therefore no (formal) ranking of the experts is available. Some courts are developing monitoring software. There is a good practice at the Bolzano Court which entails an Excel spread sheet for the scoring of experts’ performances. Therefore, in daily practice, judges choose experts on the basis of their previous experiences and of the public reputations of the candidates. As a consequence, there are experts who are registered in a court but whose services are very rarely asked for. The law sets a limit: the presiding judge of the office has to monitor the allocation of cases: nobody can get more than 10% of the assignments. The number of experts at hand always depends on the issues (e.g. medical expertise). Another reason of delays in cases is the lack of specialized experts (e.g., translators specialized in some small language or graphology experts). There are plenty of experts in some fields (i.e. technicians, translators), while in other ones there is a lack (e.g. jewellery, antique furniture, paintings, etc.).

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2 see Legislative Decree no. 69/2013 – l. 98/2013.
Remuneration for Expert Witnesses

Italy: Experts are paid according to a presidential decree that defines fixed, variable working time rates. The latter concerns not only the time spent in court (measurable), but also the time spent working on the case, which has to be estimated. The rates are much lower than current market bills. A payment on the basis of the time spent working on the case seems not to be compatible with a timely procedure. The experts are stimulated to work slowly. The low hourly rate does not contribute to solving this problem. The written report of the expert witness must be filed within a period specified by the court (according to the Italian Code of Civil Procedure, art. 195, paragraph 3). If the expert does not meet these deadlines, he can be revoked and not be paid for his work. The judge can also extend the deadline for a period of time not exceeding the original one. After the first extension, no further extension may be granted, except in case of serious and justified reasons.

Netherlands

Specialization in Courts

Netherlands: The work in the civil law division is usually organized in teams for trade, bankruptcy, family and moratorium on payment cases. Next to that, a special team is assigned to deal with summary proceedings. Special workflows are usually organized for small claims. The uncontested money claims are also dealt with in a separate track.

Division of Labor

Netherlands: After the case has been filed and the court fee has been paid, the case is assigned to a team of court clerks and one or more judges. The clerk prepares the file, but the judge is responsible for the case. Depending on the complexity of the case judicial involvement in the initial phase may be more or less intensive. The hearing is planned in consultation with the parties. In the procedural rules of the court there are strict terms for filing documents and strict rules for planning of hearings and for delays.

Roles of the Personnel

Netherlands: In simple cases, court clerks do the work under the supervision of a judge. This is especially the case in proceedings that can be dealt with administratively (where a hearing is not necessary, for example, if the court fee has not been paid or with uncontested money claims). Court clerks also help to prepare the judgment. In trade cases, the role of court clerks is usually less important than in family, administrative and criminal law cases. In the latter fields of law, the court clerks virtually write the judgment with the aid of standard text formats. Standard forms also exist in civil cases, but they require more additional information.

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Assigning Expert Witnesses

**Netherlands**: The appointment of the expert is the role of the judge. The judge also determines the mission of the expert. The parties, however, may have a say in the decision on the expert. As it is almost common in all jurisdictions, the expert is there to assist the court on technical matters that would be beyond the knowledge and understanding of the parties, the advocates and the judge. The expert is required to give the parties the opportunity to question matters of evidence, usually by submitting a preliminary report on which the parties may comment. These comments are to be included in the final report. The report can be delivered in written or oral form. However, a requirement of the Code of Civil Procedure is that an oral statement must be formalised before the court by written statement.

Monitoring Expert Witnesses

**Netherlands**: There is a list of experts on the e-portal of the judiciary.

**Portugal**

Roles of the Personnel

**Portugal**: The clerk has the duty to take care of all the administrative issues related to the proceedings. The clerk does not directly intervene in any legal issue, because this is exclusively reserved to the judge. The clerk serves the writ of summons to the defender prior to the proceedings. Then, after the judgment has been issued, the clerk has the duty together with the bailiff to find and seize the assets of the debtor.

**Slovenia**

Pre-handling of Cases

**Slovenia**: There is triage-system for the pre-handling of cases. Immediately after the submission of a claim, a court clerk looks at the case and prepares certain procedural steps, such as the correction of mistakes in the claim, payment of the court fee or granting legal aid. The court clerk also initiates the proceedings by sending the claim to the defendant for a response. The court clerks can sign preliminary procedural documents while the orders are signed by a triage-judge (a special judge who only deals with cases in triage phase and does not deal with the cases at a later stage). After that a judge is appointed to a case who deals with the subsequent procedure. A case is assigned to a judge only when procedural decisions have been issued and the case file has been prepared. The triage-system was invented by courts themselves and is usually suitable for bigger courts. The applicability of the triage-system depends on the type of cases. The cases concerning industrial property and insolvency are exempted from the system because these cases need the judge’s attention from the very start.
Roles for Personnel

Slovenia: Upon the receipt of a claim, every case is assigned to a judge. The judge will allow the court clerks to perform certain procedural acts or he will perform them himself. There is a division of work between different levels of court clerks. Senior judicial advisers (who pass a state law exam) are allowed to carry out almost all tasks. Nevertheless, the final decisions must be signed by a judge. Judicial assistants (with a law degree or other higher education) work at lower levels of proceeding (court fee exemptions, expert costs, other administrative tasks. Registrars (with secondary education) keep case registries and typists (also with secondary education) perform typing and secretarial functions.

Assigning Expert Witnesses

Slovenia: A judicial expert is a person with specialized knowledge, appointed by the court (usually from the list of experts) in a particular case. The expert has a specific task that concerns his expertise (for example, a doctor, who will evaluate the injuries incurred in traffic accident). This kind of expert is essentially a consultant or expert assistant of the court. His role time limits of his investigation are set by a court order. In general, judicial experts are not allowed to investigate beyond the scope of the court order. They should remain neutral and not get involved in legal matters. Experts are appointed by a court ruling, which clearly describes the expert’s tasks.

Monitoring Expert Witnesses

Slovenia: There is an official list of experts kept by the Ministry of Justice (MoJ). Experts have to pass a special exam and meet some other requirements for being eligible for the list. In exceptional cases, a non-listed qualified person can be appointed as an ad-hoc expert. In some areas, there are plenty of experts (i.e. forestry, architecture design, machine building), but in others there is a shortage (i.e. IT forensics). This is a general small-country problem. Experts can be excused for the same reasons as judges (family ties or other relations to parties). Prior to the appointment, a judge may consult the expert about his qualifications, time frames, special considerations about the evidence/material for expert work, etc. There is no official monitoring system of experts. In the cases of poor work or delays the court can inform the MoJ who can remove the expert from the list (barring the ability to work for the courts). Expert's caseload is not officially monitored either but the expert who has many cases may refuse to take additional cases and this is usually accepted by the court.

Compensation for Expert Witnesses

Slovenia: The court also specifies the time period within which the report of the expert must be produced. The deadline can be extended upon request of the expert. The court may impose a fine not exceeding 1.300 EUR on an expert who fails to appear in a court hearing, refuses to make an expert examination or does not present his opinion in time. A new expert may be appointed in these cases. Upon a motion by the party,
the court may order the expert to refund the costs occasioned by his unjustified non-appearance or refusal to give expert evidence (CPA, Art. 248).

Spain

Roles for Personnel

**Spain:** The secretary of the court (letrado) plays a key role in the current Spanish system. The secretary is the manager of all the administrative aspects of the proceedings and adopts some important decisions with a judicial content. The judge's function is focused on the content of the decision. There is one secretary for each judge. The secretary's role is important especially the preliminary phase of the process as she/ he serves the writ of summons to the defendant and prepares the preliminary hearing. The secretary also plays a fundamental role in enforcement proceedings. The Spanish Ministry of Justice has reached an agreement with the Spanish banks allowing courts to seize the bank accounts of Spanish natural and legal persons. The creditor can give indications of what assets should be seized, but the choice of assets to be seized is made by the secretary on the basis of criteria established by law.

Assigning Expert Witnesses

**Spain:** “The expert witness is appointed by the parties to a dispute where they need the technical knowledge possessed by the expert as part of their case. This expert knowledge is used to determine the facts in the case. There are exceptional cases where the expert will be appointed by the court and there is a provision for the appointment of a single joint expert where the parties agree. The determination to use expert witnesses is a decision of the parties or more likely their lawyers and they choose the evidence they consider relevant to support their case. This procedure is similar in part to the appointment of experts in common law adversarial jurisdictions where the choice of expert and deployment of evidence is very much part of the litigants strategy in winning the case.”

The expert cannot go beyond the questions raised by the judge. “The expert’s mission concludes with a final report and preliminary reports are not necessary. The court is not bound by the expert’s findings and has jurisdiction over the ultimate issue in evidence as it is almost universally accepted. Like the other jurisdictions, however, should a judge choose to disregard an expert evidence, then they would be expected to provide a reason for that full or partial rejection of the experts report. Once again as in the other jurisdictions an expert can be recused if there is a doubt as to impartiality, if there is a familial or professional connection between the expert and any of the parties or they have shown a lack in professional integrity.”

4 idem
5 idem
Monitoring Expert Witnesses

**Spain:** The secretary of the court appoints the expert from a list. There are different professional associations, academies, and scientific institutes providing people for this catalogue. Usually experts are appointed randomly. The first appointee of each list is drawn by lot in the presence of the registrar, then the next appointees are drawn. There is a rotation system. However, in some technical fields there are very few experts. “There is no formal qualification required to be an expert but they must attest by oath that they have the expertise to assist the parties and would be liable to civil penalties if their work was substandard. Experts can face civil penalties if they fail to act in accordance with the ethical and professional codes of their own professional regulators.”

Remuneration for Expert Witnesses

**Spain:** The expert normally does not delay in filing his report. However, in case of delays, there are no specific consequences for experts.

Sweden

 Roles for Personnel

**Sweden:** The moment a case is registered, it will be assigned to a judge. All of the personnel (secretaries, court clerks and judges) have legal training and there is a clear division of duties between them. Secretaries do all the administrative, preparative and coordinative work. Court clerks do preparation work and handling of simple cases and judges concentrate mainly on court sessions and writing of judgments.

Chapter: Performance Management

Austria

 Allocation of Judges

**Austria:** 3% of judges are “movable judges” or trainee judges who can be re-allocated if extra judicial resources are needed in some courts (on the basis of benchmarking and justified need).

 Performance Standards

**Austria:** There are no official performance standards that are mandatory for courts/judges. The President of the courts are allowed to set their own performance standards. The performance of judges is monitored for managerial purposes. The benchmarking of judges considers the following elements: open cases at the beginning of the period, cases solved during the period, pending cases at the end of the period, old cases

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6 Barry Turner “*Expert Evidence in France, Germany, Italy, Spain and the Netherlands*” 2012
and the length of open cases in days. Comparisons are made with the court average and the country average. The error case-checklist is an additional monitoring tool used by court clerks to identify entry (registration) errors, old cases or bottlenecks (e.g. no work done on the case for many months or no verdict within 2 or 6 months). Normally, a case should not appear on the checklist more than once. The judges are also required to do some self-reporting. The judges must declare (at least the 1st of October) the cases which take longer to solve than normal. There is an internal procedure/ assessment of court performance every four to seven years. The goals (for example, the compliance with the internal handbook of the case management system or the correct calculation of court fees by the court staff) and undertaken actions are based on a handbook for the internal audit.

Belgium

Evaluation of Judges

Belgium: The judges are evaluated every three years by the President of the court and two other judges. There is a wide range of evaluation criteria, such as writing skills and accuracy. The majority of judges receives an ‘excellent’ qualification in the evaluation, which means that the system is malfunctioning. The marking system is too positive and therefore nobody fails the official evaluation. To solve this problem, there are now more informal performance interviews on a regular basis.

Improvement Process of the Judiciary

Belgium: In March 2015, the Belgian Minister of Justice presented a new plan to reform the judiciary (Justitieplan) by means of a so-called triple jump. The first hop took place with the reorganization of the number of courts and their territorial jurisdiction. The second step is aiming for a more efficient and fairer justice system. The third phase of the reform, the final jump, will imply fundamental reform of legislation. The point of departure of the reform is the equilibrium between affordability and quality. The project involves the participation of all the actors in the judiciary and implies both short term measures and profound reforms that have a favorable impact on workload and efficiency. The general aim is a shorter and more efficient procedures. By means of an emphasis on the first instance proceedings, the project wants to prevent appeal cases. The possession of an enforceable document would furthermore make a court procedure unnecessary. This is supposed to lead to the finalization of a dispute within less than a year.
Czech Republic

Monitoring of Critical Cases

Czech Republic: It could be useful to extend the existing information system with an application that guards of the time limits set for different categories of cases. The app should bring files to the attention of judges that risk to fail the set deadlines. (i.e. judgment that should be written down, or the files in which there has not been done any procedural act for more than i.e. 2 months, or in case where the file is older than two years, so it needs special attention etc.). Those files (cases) should be marked with visible colours when the judge opens the program to work on a case. In this way, every judge would have an overview over his files. The idea of one specific project is to extend the IT-program in the way that it would monitor especially the old files. The IT program will be able to allocate files which have a dead time period longer than one or two months to specific judges (e.g. the judges of the pilot District court of Prague 1), so that they can handle those cases. And then, if this project would show to be useful and brings positive results (lower the number of old cases), the judiciary will try to transfer the project and their experience to other courts.

Monitoring of Old Cases

Czech Republic: There are no central targets or timeframes. The ‘old’ cases are nevertheless carefully monitored and supervised. Delays in proceedings, if proven, may result in disciplinary proceedings against the respective judge. There is a periodical control of the length of proceedings (every 6 months) and the old cases (more than 3 years) by the President of each court. In case of delays, a judge has to provide a justification. The President can take measures and will usually order a judge to work on the case immediately. Non-binding targets regarding backlogs are sometimes discussed and implemented in courts, because of a pro-active approach of the management of the court. Very often, the periods of inactivity in case files are also monitored. There is a comprehensive electronic monitoring system of cases which provides both statistical data regarding each case and an analytical overview and summary. Information from the electronic monitoring system is used for better planning and organization of work as well as for targeting of supervisory activities.

Estonia

Measuring the Workload of Courts and Judges

Estonia: There is a system of measuring the workload of courts and judges by a periodic calculation of workload points. The workload associated with adjudicating a particular case can be calculated based on the category or type of the case and some additional parameters (e.g. the number of accused persons on
trial in criminal cases). Each category of cases carries a certain predefined value of working hours that an average judge working on a similar case would spend. The value that is set for each category of cases (and some additional parameters) depends on the level of their complexity and the related estimated working hours (e.g. property and company law cases are estimated to take much more time than family law and divorce cases). The values of all cases handled by a judge or a court are added up to calculate the total working time per certain period (expressed as workload points). After the calculation, the workload points are compared to the predefined normal working time of an average judge (based on 8 hours per day for all working days except vacation and trainings days) and on this basis the workload level of a particular judge or a court can be established. In case of a workload above normal, the reallocation of judges between courts can be requested by a court president.

**Monitoring of Old Cases**

**Estonia:** All cases which have been pending for more than three years are considered “old”. These cases are monitored in the case management system. In the beginning of each year, all judges get a list of “old” cases and they need to provide explanations about why there is no final judgement yet. In every following quarter the judges have to describe how the listed cases have proceeded since their reporting. Thanks to the system, the number of “old” cases has decreased nearly 10 times – from 1044 to 133 in 2014. In 2015, the definition of an old case was changed – all cases which have been pending for more than two years are now considered “old”.

**Finland**

**Conducting Improvement Projects**

**Finland:** From 2006 onwards several Finnish courts have undertaken systematic caseflow management improvement projects in order to find novel improvement solutions to the court system operations and processes. The judicial process improvement and delay reduction projects, were formed and planned to enhance three important aspects of improvement work: utilizing external expertise in improvement work, taking a systematic approach to project management, as well as highlighting the importance of participation and commitment of court personnel. In the project the court system processes are viewed and analysed with interdisciplinary perspectives by melting knowledge and ideas from operations management and law. Expertise and perspectives from process improvement and operations management is exploited and combined with legal expertise in order to jointly find applicable and systematic methods and procedures to improve process efficiency in courts. Improvement teams with members from different disciplines were formed for each improvement project. The improvement work in the teams was carefully planned as a systematic, logically progressive project, where the external experts utilized many forms of methodologies and interventions in different stages of the project. The main stages of the project were: (i) thorough analysis and evaluation of the process and improvement needs (e.g. numerical analysis, operational statistics, and
interviews), (ii) planning the improvement initiatives (in group work-shops), (iii) implementing the improvement actions (e.g. pilot-testing, training, personal guidance), (iv) evaluation of the improvement actions (e.g. interviews, numerical analysis, needs for changes). The Finnish approach to court caseflow management improvement projects was one of the finalist and achieved a special mention in the Crystal Scale of Justice Competition 2010.

Weighted Caseload System

Finland: The estimation of workload of courts is measured through a weighted caseload system which aims to make different cases comparable. In this system the existing case categories (coercive measures, crime, summary, civil, land court, petitionary and insolvency cases) are divided in different complexity categories based on the approximate time they require. The crime cases, large civil cases and petitionary cases are divided in three categories which are “ordinary”, “average” and “laborious”. Insolvency cases are divided in two categories which are “ordinary” and “average”. Coercive, land court and summary cases have only one complexity category. The court’s time monitoring system “Tarmo” is used to calculate the average handling time of each category. In order to determine the weighted scores for each different category, the average handling times of different categories are compared to that particular courts’ handling time of an ordinary crime case which was decided to have score 1. In addition to the amount of handling time it was decided that in estimating the workload of cases and in giving the weighted scores, the duration of the main hearing and the composition of the decision-making body should also be taken into account. This means that cases in which the decision-making body has to be enlarged, the weighted score rises 0,5 points per each extra judge. For cases in which the main hearing exceeds the normal time, the score rises 1 point for every full day exceeding eight hours. The courts were asked to deliver their opinion of the weighted caseload system. The majority of the statements were supporting for the weighted caseload system, and stated that it is a reasonable base for resource allocation. It was noted that there was a need for an objective and uniform system for measuring the caseload of all court organizations in allocating resources. However, there was also some critique about the lack of details and lack of consideration of the special features of different cases in the measuring system. The weighted scores are: Crime cases “ordinary”: 1; Crime cases “average”: 2; Crime cases “laborious: 6; Civil cases “ordinary”: 2,4; Civil cases “average”: 4,8; Civil cases “laborious”: 9,5; Summary cases: 0,1; Coercive measure cases: 0,5; Land court cases: 5,4; Petitionary cases “ordinary”: 0,6; Petitionary cases “average”: 1,1; Petitionary cases “laborious”: 2,2; Insolvency cases “ordinary”: 1,1 and Insolvency cases “average”: 2,3. A Similar system is also used in Finnish Administrative courts.

In Administrative courts the designing of a weighted caseload system was started by organizing a survey among the court personnel concerning the time needed for different pretrial actions in different types of cases. The procedural actions in the pretrial phase were divided into the ten most important actions, for which time estimations were given. In the survey all pretrial actions were given a time span of which the
respondent was asked to choose an estimation for cases in different case groups (for example less than 15 minutes... over 2 hours etc.). A starting point for creating the weighted case categories was the arithmetic mean of the answers to the survey. Based on this preliminary score, different case groups were set up based on the approximate time consumption. As a result, the different case groups were divided into four categories according to their average time consumption: Category A (least time consuming), Category B (less time consuming than average), Category C (more time consuming than average), and Category D (most time consuming). The principle is that the time consumption of cases in category A and D is significantly different from the time consumption of other categories. First, preliminary scores were given to the different categories. The basis for establishing the preliminary scores was the differences of average time consumption between cases according to the survey outcomes. As an addition to the survey, the categorization and the scores were given to court representatives to be commented on in several different occasions during the planning process. Different courts gave their opinions and comments concerning the categories and the scores for the categories. This way also practical experience could be effectively used during the planning of the preliminary categories and scores. Based on the comments of the court experts, a work group representing the management teams of the pilot courts formed a consensus concerning the scores for the different categories, to be tested and implemented. The scores for the different categories were: Category A: 0,3; Category B: 1; Category C: 2,5; Category D: 5. The overall opinion of the courts is that the system is appropriate and has potential to improve the accuracy of the performance measurement and the comparison between courts. Nevertheless, the categories and scores still needed to be tested in practice in order to get information and experiences about their actual functionality.

**Personal Work Planning and Monitoring**

**Finland:** In several Finnish courts a time-frame alarm system has been established to improve personal work planning, to reduce the number of pending cases and to eliminate long delays. The idea of the system is that those cases which are in danger to lag behind are detected early on when the set time-frame can still be reached. The system helps to pay attention to delays which are happening in the early stages of the handling process so that interventions can still be made before it is too late. The time-frame alarm system is three-phased and each of the three handling phases have set control points and time-frames. Time-frames and alarm-levels are designed in a way that no cases can be pending for over 12 months. The alarm-system has the same idea as a traffic light. There are two alarm-levels: lower level (case starts to get closer to the deadline a phase) and upper level (case has exceeded the deadline). Time-frames and alarm-levels are different for priority cases (total through-put time target 5 months) and other cases (total through-put time target 12 months). The time-frame alarm system has two kinds of symbols for cases which have exceeded the target time-frames in some control point. For the cases which have exceeded the lower alarm level, the symbol is one exclamation mark and for the cases which have exceeded the upper alarm level the symbol is three exclamation marks. If the case has exceeded the set time target in one phase, the alarm system symbol appears for that person who is responsible for the next phase of the handling. The pending case
listings get updated daily. The cases of the lists are presented in the following order: priority cases with three exclamation marks in chronological order are first and then the normal cases with three exclamation marks in chronological order. The controlling of different pending case inventories is easy because the different symbols help personnel to easily spot the exact age of cases, the number of cases which have exceeded the time-frames and the number of complex or priority cases. With the help of the time-frame alarm system individual workers can monitor and control their own case inventory and schedule the work while taking account of old cases. The listings of pending cases are available for the whole court, departments, persons, subject groups, complexity, priorities and decision divisions which helps managers to monitor the overall situation of cases online.

Germany

Statistics in Performance Evaluation
Germany: In North Rhine-Westphalia the JUDICA software programme contains all the statistical data about the court. In the Superior Appealcourt (Oberlandesgericht) the various court chambers receive statistics about their performances every three months. The data are published to enable to the chambers to compare themselves. The amount of cases that need to be finished depends on the amount of cases coming in. This means that there are no specific targets. There are furthermore no repercussions if you are too slow. Nevertheless, the President of the court will approach a judge to talk about it. He could also offer you a training on a voluntary basis.

Italy

Dissemination of Improvement Practices
Italy: “Improving the performance of the judiciary” (MPG) was a project carried out by the Department of Public Administration through the National Operational Program (NOP) “Governance and system Actions 2007-2013. The purpose of the project was “capacity building” to implement measures to improve the quality and quantity of the services provided by the judiciary. The project, which was managed by several different consultant firms, had some encouraging results in a limited number of courts, but in general it was quite disappointing for the large majority of courts involved.

Statistics
Italy: Within the Ministry of Justice there is a Directorate General of Statistics (D GStat). D GS tat is concerned with the acquisition, control, management and release of data on judicial statistics. Recently it has been implemented a powerful nationwide Data warehouse which allows a very good monitoring and assessment of court performance for civil cases.
Time and performance targets

**Italy:** The Ministry of justice is promoting the so called Turin ‘Decalogue’ for civil cases’ to monitor and decrease the length of judicial proceedings: Article 1) All civil cases pending for longer than two and half years before the Court should be marked with a particular tag of different color, according to the fact that they have been pending for: a) longer than six years; b) between six and two and a half years; c) two and an half years. Judges should give priority to all above mentioned cases. Article 2) Judges should ensure to adjudicate cases mentioned in Article 1) according to the following program: for cases of the a) group: no later than (six months); for cases of the b) and c) group: no later than (one year). All other cases should be disposed no later than three years from the day they have started. As far as this point is concerned, rules issued by the Head of the Court should, as it happened in the Turin case, set priorities among different cases, like, e.g., reducing maximum length to no more than three years; giving priority to cases exceeding that deadline or dangerously approaching to it, etc.

The Netherlands

**Allocation of Judges**

**Netherlands:** By law, each judge is a substitute judge in all the other courts at the same level. This means that judges can be deployed temporarily in another court without administrative complications. The Minister of Security and Justice can furthermore transfer cases from one court to another when there is a lack of capacity in one of the courts (art 46a Judicial Organisation Act). This measure is not used very often.

**Change of court scale**

**Netherlands:** Recently (2013), the judicial map was changed by creating large court organisations to enable courts to better handle fluctuations in caseloads. The number of district court went from 19 to 11. On average the courts have between 430 and 800 employees, of which 25% are judges.

**Negotiated influx of criminal cases**

**Netherlands:** In criminal cases, the number of cases filed by the public prosecutor is negotiated every year and adapted every quarter. The capacity of the courts is limited, and this type of negotiated planning with the Prosecutions Service limits fluctuations in criminal caseload.

**Balanced Case Allocation**

**Netherlands:** Within the courts and the courts’ divisions, cases are distributed over teams and judges based on the case allocation regulations of the courts. The management information system makes it possible to

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7 [http://www.giacomooberto.com/study_on_Strasbourg_Programme.htm](http://www.giacomooberto.com/study_on_Strasbourg_Programme.htm) [visited 5 January 2016]
observe how many cases each team does within a certain time span. There are different teams of groups of judges and court clerks, specialised in a specific types of procedures and cases. Thus it is possible to maximize the use of available capacity in terms of time and expertise.

Output financing

**Netherlands:** The financing system of the courts is connected to the output of the courts in terms of time spent on cases. There are 47 categories of cases, and each case category is allocated a number of minutes, based on time writing research. Production of the courts is monitored closely. The budget of a court may fluctuate depending on the amount of cases solved. This is a strong stimulus for the courts to enhance production.

Monitoring of Performance

**Netherlands:** The registries of the Total Quality Management system Rechtspraak deliver monthly reports for the courts’ management. Reports are sent quarterly to the Council for the Judiciary. What does the Council do with this information if it shows problems? Usually, if there are problems concerning timeliness, this may lead to a friendly conversation with the judge or team leader who is responsible for the case.

Time Targets

**Netherlands:** Timeframes are set centrally as a part of the Total Quality Management system Rechtspraak. There is a system to monitor the performance of judges on an organisational level. Different time frames apply to different types of cases. Especially trade cases often do not reach the norm of 95% of the cases solved within 6 months. Family cases do reach that norm. Small claims cases have a better score than trade cases. The annual reports of the Council for the Judiciary show this information.

Slovenia

Allocation of Judges

**Slovenia:** Reassignment of judges within a district is a new initiative to improve the work in smaller courts with less staff or judges. In a location where several courts with different jurisdictions are situated, it is possible to move judges temporarily from one court to another to deal with unexpected changes in workload.
Monitoring of performance

**Slovenia:** There is a tool called ‘the President’s Dashboard’ available to all Presidents of court in Slovenia. The tool shows court performance in real-time. The dashboard statistics are divided into different areas: human resources, backlogs, efficiency, and quality of decisions.

As criteria for timeliness, the disposition time concept is used instead of measuring backlogs, because in the court rules virtually every type of case is defined as a backlog, if it is not resolved in six months from filing.

Information presented on the Dashboard is used to make decisions regarding resource allocation, to monitor average proceeding times, etc.

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8 See more at:
http://www.coe.int/t/dghl/cooperation/cepej/events/EDCJ/Cristal/2012/CSJ_presentation_GST_2210.pdf
Sharing Best Practices

**Slovenia:** A Conference of Good Practices is organized by courts. This is an annual event (there have been five conferences so far) where courts present and explain the measures they have taken to improve their procedures. The major objectives of this conference are the exchange of best practices and the spreading of positive developments in the field of justice.

Time and Performance Targets

**Slovenia:** There are performance standards for judges set by the Judicial Council (e.g. a local court judge is supposed to solve 140 litigious cases annually). There are also other less rigid criteria (quality of work, specialized knowledge, additional work in the court organisation, leadership abilities). The strategic targets in the judicial system are set by the Supreme Court who prioritises on the basis of an analysis of earlier years. Within the defined priorities, every President of a court has to set targets (an action plan) for its court. Until 2015 throughput times were decided by looking at the throughput times of earlier years and the court/country average. At the end of every year, the court president is required by law to set goals for next year. Furthermore, in the beginning of the year an annual report has to be compiled, in which the goals of last year are compared to actual performance. Some of the most important benchmarks are the number of resolved cases, number of resolved cases per judge (and personnel), average time for resolution of cases and efficiency as well as the average cost per case (Art. 71. b, Courts Act). In the course of resolving a motion submitted by a party to expedite the hearing of the case (supervisory appeal), the court president can, among others, check if time standards are met by the judge against whom the motion was submitted. Potential measures to be taken on the basis of performance and time standards are hiring extra staff (judges
or clerks - depending on the actual need) and reallocation of resources (including reallocation of staff). When necessary, identifying the lowest level of competence necessary (instead of a judge).

Sweden

Allocation of Judges

Sweden: There is a pool of reinforcement judges coordinated by the Swedish National Courts Administration to balance resources in situations where courts have temporary capacity problems (such as long sick leave, long retraining programs, international visitations, exceptional complex cases, etc.). Reinforcement judges are sign a contract for two years to work as reinforcement judges. Working as reinforcement judge is done on a voluntary basis, with modest compensation. The pool of reinforcement judges contained at first eight judges, but the number has increased to seventeen. Using the pool of reinforcement judges has improved the efficiency of the total judicial system by increasing capacity flexibility.

Balancing and Analyzing of the Workload

Sweden: In the Swedish court system the balanced pending case inventory refers the number of pending cases which is “normal” and in balance with the resources and still allows a court to meet the throughput time targets and timeframes. Balanced pending case inventory means that there exist an optimum level of pending cases in relation to the number of incoming cases and time-frame targets. If a court has more pending cases than balanced normal, it is expected that the throughput time targets cannot be met. The throughput time targets are set by the Swedish government (75% of cases should be solved within a certain time). For example, all regional courts should solve 75% of certain cases within five months. The term balanced inventory ratio refers to the ratio of balanced pending case inventory and the number of incoming cases per year. The Swedish method is based on the empirical evidence that there is a clear linear relation between the throughput time and the inventory ratio. Those courts which have a lower inventory ratio have shorter throughput times and vice versa. If a throughput time target has been set, a corresponding balanced inventory ratio can be calculated by using a linear regression model. The models have been created for each judicial case group (criminal, civil, administrative) by using statistical data from all relevant Swedish courts. For example, a throughput time target of five months in regional courts will give 0, 36 as the corresponding balanced inventory ratio. Meaning that based on empirical evidence, it can be said that optimum level of inventory is 36 % of incoming cases, when the time-frame target is 5 months. And further on, if a certain regional court has 8 000 incoming criminal cases per year, the balanced pending case inventory should be 0, 36 x 8 000 = 2 880 cases for that court. The balanced pending case inventory method can be used in an individual court to analyze its current workload situation in each case groups. The method is also used by the Swedish National Court Administration for nationwide analyses and comparisons.
Budget Allocation

**Sweden:** In the Swedish court system the budget allocation process includes a tool called a resource allocation model. This model is used as part of the budgeting process in order to allocate the resources between courts in an equitable way. The basis for each court’s budget is the court’s average number of cases filed during the past two years. There are some variations between different courts on how the cases are valued. For example in the District Courts, the County Administrative Courts and the Courts of Appeal there are different case categories. Case categories which require more resources receive a higher budget per case. The two Supreme Courts are not included in the model and neither are the Rent and Tenancy Tribunals and the Legal Aid Authority. The valuation of the different case categories is based on the information from a time recording system. Every employee needs to report the time he worked at least two months a year in the time recording system. The Swedish National Court Administration (SNCA) compiles statistics from every court and calculates the average costs for each case category. Data from the time recording system are used for: 1. giving different type of cases different weights 2. Calculating costs per case and 3. Helping operational planning at the courts. The resource allocation model is used as a basis to allocate resources and in case of special circumstances, some courts may be given more or less than the resource allocation model shows. There are some exceptions to the typical resource allocation model. Criminal cases which include detained persons or minor offenders (priority cases) are given extra funds. The budget for these cases is 1, 25 times higher than for other criminal cases. An addition is also given to criminal cases where the hearing exceeds 18 hours and civil cases where the hearing exceeds 12 hours. The budget amount per case for these type of cases are higher than other criminal and civil cases. The actual resource allocation process includes also budget and operational discussions between the courts and SNCA. In these discussions the main aim is to follow up each court’s work from the previous year and to discuss future activities. The budget process is evaluated after the budget work has been completed by asking opinions from the courts.

Participation of Personnel in Improvement Work

**Sweden:** A method called ‘internal and external dialogue’ aims to overcome the difficulties that arise when improving the quality of court functions. The method is invented in Sweden and currently used in six Swedish courts. The internal and external dialogue method has two phases: internal and external dialogue. Dialogues can be either individual or group interviews. Internal dialogue is used first. In the internal dialogue judges and other staff are interviewed in order to take advantage of their expertise and knowledge. The most important goal of the internal dialogue for staff members is get an idea of the most urgent improvement needs and also to gain some ideas about how to measure the improvement of functions. The suggestions of the staff are followed by a decision of the manager of the court. The measures are then chosen and evaluated later in a dialogue with the staff. Following the ‘internal dialogue’, the discussion is widened to get an external perspective on the functioning of the court. In the external dialogue lawyers, prosecutors and court users are interviewed about the improvement suggestions from the external point of view. These suggestions are reviewed internally by the whole staff. The staff then does further suggestions based on the external ideas. The manager takes a
decision and informs the external partners which measures have been selected. After evaluation of these measures, lawyers, prosecutors and court users are invited to assess the result and to give further suggestions for improvement. By using this internal dialogue, judges feel that their professional know-how is acknowledged and that their opinion matters in advising the management concerning improvement work. Individual and anonymous interviews ensure the honest opinions about the strengths and also weaknesses which is crucial in order to improve the functioning. By starting the change procedures with an internal dialogue, difficulties are avoided by involving the staff. Judges and other employees take more interest in the quality work and at the same time managers get a good perspective about the internal challenges of court functions and concrete ideas for the improvement work. External dialogue gives the external opinion to the functions and many ideas regarding the court users’ point of view.

Target setting

Sweden: In the Swedish court system the government sets the objectives for the courts. The objectives set by the government are: 1) 75% of the criminal cases (excluding priority cases) in the District Courts and the Courts of Appeal should be resolved within five months 2) 75% of the civil cases in the District Courts should be resolved within seven months. Civil cases in the Courts of Appeal have two-phased targets: granting leave to appeal should be resolved within 2 months, approved appeals need to be resolved within ten months (including the time spend on the decisions of granting the leave to appeal). 3) 75% of the cases (excluding priority cases) in the Administrative Courts and the Administrative Courts of Appeal should be decided within six months. For the migration courts and Rent and Tenancy Tribunal there are separate objectives. The government also states that each court shall set yearly objectives of its own based on the format and structure provided by the Swedish National Courts Administration (SNCA). These objectives which are also followed and analyzed are for example the amount and type of filed, decided and pending cases, number of priority cases, overall productivity (filed cases per judge and per administrative personnel), pending cases in relation to filed cases, old cases (older than six months, one and two years) and the average duration of hearings and the number of cases where the hearing time exceeds twelve hours.

Chapter: Use of ICT in court proceedings

Austria

Case Management System

Austria: The Case Management System (VJ) is a nationwide system for all 54 court procedures (civil, family, criminal, insolvency, inheritance, public prosecution cases). It is connected to the E-filing & E-delivery
System (ELC\(^9\)), to the central mailing and printing facility and to the edicts database (a website publishing notices, orders and judgments from court proceedings).\(^{10}\) The users of the system include court clerks, prosecutors and judges. Its functions include case registration, calculation and collection of court fees, mass generation of documents as well as integrated text processing and compilation of statistics. The system was developed in the 1980s and a redesign was made in 2001. It is built as a universal case management system which can handle all case types (i.e. universality was given priority over flexibility). The focus during development was on mass proceedings (money claim or payment order, enforcement) which, in retrospect proved to be the correct decision. Since 2004 the VJ has been providing direct access to the civil and enforcement cases for the parties and their representatives. A new Justice 3.0. project is being developed which creates the complete digital file (all contents of the case would be available in digital form), enable work from any location, support searching, processing and sorting of the electronic contents of the file and thereby provide more useful functionalities to judges and other decision-makers in the judiciary.

**Electronic Legal Communication**

**Austria**\(^{11}\): Electronic legal communication (ELC) or Elektronische Rechtsverkehr (ERV) is the paperless and structured electronic communication tool used for communication between the parties and courts. It is the legal equivalent\(^{12}\) of the paper-based communication and uses address codes and passwords for identification of the user (the authentication is done by the external service providers, of which there are currently seven). The use of this service is mandatory for lawyers. In 2015 there are about 10 000 users of the ELC: mainly lawyers, notaries, banks, social security institutions and police stations. E-delivery which is aimed at citizens started only very recently and is not much used yet. The user of the service has to pay a monthly charge and also pays for each document sent (e.g. 20 EUR per month and 0, 35 EUR per document; there are also other offers without a monthly charge). A court clerk initiates a dispatch through operating the VJ case management system. If the recipient is a user of the ELC, the dispatch is automatically sent through ELC. Otherwise, the message is printed in the central mailing facility and handed over to the postal service. All data regarding dispatch and subsequent delivery are automatically registered in the VJ. An electronic dispatch through ELC from the court is considered completed (delivered) on the next working day after being sent and procedural times start counting on the day after delivery. This means that the user of ELC has to check its electronic post office box daily. It is also possible to make an arrangement with a service provider so that an e-mail or an SMS is sent to the user whenever a document is sent by court or the public prosecution office. If the user sends a submission to the court or public prosecution office he immediately gets a confirmation of its arrival and at this moment the document is deemed to be submitted

\(^9\) [https://www.justiz.gv.at/web2013/html/default/2c9484852308c2a60123708554d203e7.de.html](https://www.justiz.gv.at/web2013/html/default/2c9484852308c2a60123708554d203e7.de.html)

\(^10\) [http://www.ediktdatei.justiz.gv.at/](http://www.ediktdatei.justiz.gv.at/)

\(^11\) [https://www.justiz.gv.at/web2013/html/default/2c9484852308c2a60123708554d203e7.de.html](https://www.justiz.gv.at/web2013/html/default/2c9484852308c2a60123708554d203e7.de.html)

\(^12\) See articles 89a to 89e Gerichtsorganisationsgesetz and Verordnung zum Elektronischen Rechtsverkehr adopted in 2006 (available free of charge at [http://www.ris.bka.gv.at/](http://www.ris.bka.gv.at/))
to the court or public prosecution office. The advantages of the ELC include: sending and retrieving of documents requires no additional entry of data (in addition to the use of the VJ), it is fast and cost-saving, it is available 24/7, it provides an automatic notification of submission receipt, it is secure through an automatically generated log of actions and it is legally binding. Electronic access to case files is theoretically available to anyone, but the practical situation is such that it is available only to lawyers (access requirements are high and there is very little experience). E-files are only for reading, all submissions are done via the ELC. Access to the electronic files is password protected. The lawyer has to be registered as a participant of the case - this is automatically done if the lawyer submits any documents via ELC. Currently the Ministry of Justice has decided to allow electronic access for civil cases (civil cases at district courts, civil cases at regional courts including labour and social security law) and the enforcement cases. These cases represent 55% of all cases that are digitally managed and available to the court clerks.

Belgium

Electronic delivery of documents

Belgium: The Belgian judiciary has had to take a number of hurdles in their digitalisation process. In 2001, the Phoenix project was a first attempt to modernise the Belgian judiciary. The reform had six ambitious objectives: (1) improve the internal and external communication in the judiciary, (2) management and storage of files, (3) the introduction of a national docket system, (4) the creation of a database, (5) the compilation of statistics and (6) assistance in the management and governance of judicial institutions. The targets were not met and thus the Belgian judiciary unilaterally terminated the contract with the software provider in 2007. From this experience, the Ministry of Justice learned that a top-down approach does not work and that a more dispersed method towards ICT had to be adopted in later projects. Recently (May 2015), the Federal Ministry of Justice published the ‘Judiciary plan’ to fully reform the judiciary. Starting with pilot projects in Commercial Courts, this reform will, amongst other things, attempt to modernise the communication systems in the judiciary. There will be an ‘e-box project’ to allow digital communication with lawyers, bailiffs and notaries. The ‘e-depot system’ will enable the digital deposit of instruments of companies and legal entities.

Czech Republic

Case Management System

Czech Republic: Different systems are used for electronic case registration, automatic case allocation, uploading case documents and automatic generation of documents. In these systems one can identify
individual cases and decisions (but access to general public is not provided). Case registration and management systems differs from court to court:

- District Courts use ISAS and CEPR for electronic payment orders.
- Regional Courts use ISVKS for public data bases like business register; CEPR and ISIR for insolvency cases.
- The Supreme Court use ISNS.

The Supreme Administrative Court is a forerunner in the Czech judiciary. It has developed its own software including electronic dossiers containing any documents maintained in the paper file (even documents which were submitted by the parties only on paper). An upgrade of the software is under development, and will enable the regional courts (their administrative sections) to work with the software too. Thereby, in the future, the sharing of the electronic dossier between the regional courts and the Supreme Administrative Court will be possible. The financial information system (IRES) is the same for all courts. Video conferencing is available only in some courts. Recording of hearings is quite rarely used in civil proceedings as the equipment is very expensive. These systems have been used for a long time now and they are improved continuously (e.g. generation of documents), but no major improvements are expected for the coming years.

Electronic Delivery of Documents

**Czech Republic:** The submission of documents by electronic means with attached electronic signatures are specifically regulated by the law (Sec.42 of the Civil Procedure Code, No.99/1963 Coll.) There are two different ways: the first one is the Data Mail Boxes operating as a separate quasi-email service administered by the Ministry of Internal Affairs. Any natural person may ask for the creation of a Data Mail Box. Registered legal persons and natural persons operating a business in certain regulated fields (e.g. attorneys, tax advisors) have a Data Mail Box established on their behalf automatically and are obliged to receive official correspondence from public authorities in this manner. In some instances (e.g. submissions concerning the commercial register) the digital form of evidence materials is explicitly prescribed, together with the appropriate digital format. Documents submitted by way of the Data Mail Boxes must undergo a process of conversion from their hard copy form to a digital equivalent. The conversion is performed by the public administration service offices and may be additionally performed by attorneys in accordance with the Bar Act, No. 85/1996 Coll. The conversion process results in a digital equivalent of the original document, with force identical to that of an officially certified copy of such document. The conversion may also be performed in reverse, resulting in a hard certified copy of an electronic document received through the Data Mail Box. There are several offices competent to provide authorised conversion, such as post offices, municipal authorities, notaries etc. Any correspondence of the court with participants having data boxes is to be performed via these data boxes excluding special deliveries such as administrative files. Hence, on paper, the Supreme Administrative Court communicates only with natural persons which are not complainants. The second way is e-mail. Each court is obliged to establish so called “electronic point
of acceptance”, which is simply a single e-mail address used by the court for official correspondence with parties. The documents sent via e-mail the parties have to use the secured electronic signature issued by certified provider under Directive 1999/93/EC on a Community framework for electronic signatures implemented in the Czech Republic by the law No. 227/2000 Coll., on the electronic signature. However, the secured electronic signature is only required for qualified submissions by the parties such as filling action, withdrawal of an action, filling or withdrawal of cassation complaint which is remedy against decisions of regional courts dealing as administrative courts of the first instance. Other submissions of parties may be sent via e-mail even without secured electronic signature effectively. The Code of Civil Procedure also regulates the possibility of the service of documents of the court to the parties via e-mail. If the party wishes to be served with the documents in this way it has to apply for this at the court and it has to confirm a successful service of each document by an own message signed with secured electronic signature in three days. Such a request of a party occurs quite rarely.

Electronic Submission of Documents

**Czech Republic:** Concerning the technical aspects of electronic communication between the court and the parties are governed by an instruction of the Ministry of Justice (23rd of July No. 2013 133/2012-OD-ST) on a uniform procedure of the courts receiving the electronic documents. According to this instruction, the courts are obliged to accept only documents in following data formats: PDF, PDF/A, DOC, DOCX, XLS, XLSX, ZFO, TXT and RTF. The submission to a court through a Data Mail Box is done within a time limit set by the Code of Administrative Adjudication. A request or a decision of the court, if the submission is delivered in the form of a data message to the Data Mail Box of the court no later than the last day of the time limit (Sec.40/4 of the Administrative Adjudication Code).

**Finland**

Electronic database

**Finland:** There is an on-going AIPA-project which aims to create an electronic system for administration of justice. AIPA is an electronic database which contains all the documents related to a judicial matter dealt by the prosecutors, district courts, courts of appeal and the Supreme Court. AIPA will enable paper-free work, electronic archiving and electronic co-operation between different authorities. It also enables transition to a procedure where the institution of matters, consideration of cases, decisions in cases and archiving are all performed on the basis of electronic material The exchange of information between authorities, parties and interest groups will be timely because it is carried out electronically and automatically. The electronic trial materials will be at the disposal of all involved actors whenever they need them.
Case Management System

**Estonia:** The 2nd generation court information system called KIS2 was gradually implemented in all courts from September 2013 to June 2014. Courts publish judgments on the web using KIS2; in addition data about dates and starting times of court hearings can be published on the web through KIS2. The system is connected to MS Outlook to support unified calendaring and automatic sending and retrieving of the court’s e-mails.

All court cases (including all civil, criminal, administrative, constitutional review cases from all three court instances) are registered in the same system. All information about the case has to be registered in the system - the registration date, the classification of the case, the name of the judge or judges dealing with the case, the status of the case, all documents (as well as data about their dispatch and delivery), the hearings and the participants. Starting from 1.7.2014 KIS2 is also connected to the financial information system used by the Ministry of Finance and the Tax and Customs Board so that the payment of court fees and other court costs as well as payments made to the experts are all managed through KIS2 (which sends the data automatically to the financial information systems). KIS2 is linked to the E-File Web Portal designed for electronic communication with the parties and the information systems of the bailiffs as well as the information systems of the police, prosecutors and the prisons. Thereby, all institutions of the justice sector are connected and data are transferred automatically with no need to enter the same data twice. The court information system enables automatic allocation of cases based on the caseload of judges as well as the workload (taking into account the complexity of cases which has been predefined in the setup of the system based on the agreement between Estonian judges). The main benefits of the system include the provision of an overview of all the cases and of all the data about these cases - extensive search possibilities enable to search for cases, documents, hearings etc. This system makes it possible to identify cases which have not been dealt with within reasonable time and it thereby supports efficient management of cases. In addition, the system enables automatic generation of documents using the data registered in the system about the case (e.g. the names and other personal data of participants are automatically transferred on to document templates). Notwithstanding all these benefits, the system required extensive piloting and a step-by-step approach to implement the system. It was difficult to solve all major technical problems prior to the launch of the system. The implementation of feedback gathered during pilots was also complicated.

Electronic Delivery of Documents

**Estonia:** The Web portal called Public E-File (www.e-toimik.ee) is used for the delivery of documents and making documents viewable or deliverable to the participants of proceedings. The system is mandatory for advocates (alternative possibilities for delivery can be used only with good reason)\(^\text{13}\) and its use is free of

\(^{13}\) Civil procedure Code § 311_1 (6)
charge. Court clerks can grant or remove access to documents through the Court Information System (KIS 2). The Public E-File\textsuperscript{14} can only be accessed with a personal ID-card (by entering a PIN number) or Mobile ID\textsuperscript{15}. After logging on the participant/representative gets access only to the documents which have been made available or deliverable to him in the proceedings. If a person opens a document which has been made deliverable, an automatic notice is sent to the KIS 2 and the document is deemed electronically served. If the participant refuses to open the documents which have been made deliverable to him/her for more than 30 days, then he/she cannot continue to use the web portal for accessing other documents or submitting new documents to the court. 75% of all documents in civil cases are sent or made available through electronic channels – the web-portal or e-mail.

\textbf{Automatic Generation of Documents} \\
\textbf{Estonia:} KIS 2 and automatic generation of documents. All court summonses are automatically generated by the case management information system. The template for court summonses is centralized, but each clerk can add warnings and explanations (which are also standardized) in addition to unstandardized and “free” text to summonses according to relevance (depending on the type of the hearing and the role of the recipient). In addition to summonses each clerk can produce personal or general (can be used by all users of the case management system) templates for automatic generation of other court documents – basic court orders, side-letters or even preambles of substantial court decisions. In order to prepare the template, data-fields for automatic transferal of data are copied and pasted to appropriate places on the template between fixed parts of the text. Depending on the court up to 40% of standardized court orders are automatically generated by the case management information system and the proportion is increasing as the variety of existing templates grows.

\textbf{Recording of Hearings} \\
\textbf{Estonia:} Software provided by the Liberty Court Recorder (http://www.libertyrecording.com/) is used for the recording of hearings. In addition to creating the audio-record, the program enables tagging the record with handwritten references about what was said at a specific time in the course of the hearing and generate a written transcript based on these tags. If the hearing was recorded, Estonian regulation requires that only a summarized version of the events of the hearing has to be written (as opposed to providing the full transcript of the hearing). Therefore recording of hearings enables savings in working-time. In addition, the recording of hearings provides an additional safeguard for keeping order at the hearing and the tempo of the hearing is not determined by the ability of the clerk to write a precise transcript. The recording is uploaded to the case management system and the participants can hear and download the recording by logging on to the web-portal called the Public E-File (www.e-toimik.ee) – as the case management system

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{14} www.e-toimik.ee
\item \textsuperscript{15} www.id.ee
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and Public E-File are interconnected.

**Germany**

**Case Management System**

**Germany**: The judiciary in North Rhine-Westphalia makes use of a combination of two programmes in the court organisation. JUDICA is the software programme for data management that has the following features: (1) Extensive search options concerning cases and persons, (2) customising the court calendar, (3) automatic checks of terms, (4) lists of government agencies, lawyers and experts, (5) and the possibility of data transfers from lower courts. TSJ makes use of the information from the JUDICA programme and provides the judges with pre-fab forms for judgements, divorce decrees and degrees about the costs in a case. Standard documents, such as orders to produce proof, are therefore created quickly and highly automated.

**Electronic Delivery of Documents**

**Germany**: There are many regulations on the federal and state level that provide for the use of electronic justice-related communication. As a result, the German States make use of a variety of communication systems. These systems are not always compatible, making country-wide justice communication impossible. In 2013, the German Federal government adopted a Bill to harmonise the ‘Elektronischer Rechtsverkehr’ and to create a uniform electronic mail box for lawyers. The following measures need to be implemented from 2018 onwards:

- Federal regulation of the rules concerning secured electronic communication
- Electronic mailbox at the Federal Bar association
- Adjustment of the rules of evidence
- Accessibility of documents in legal proceedings

**Electronic templates**

**Germany**: The judiciary in North Rhine-Westphalia makes use of a combination of two programmes to produce pre-fab judgements. JUDICA is the software programme for data management that contains the relevant information about a case. This information is being used by TextSystemJustiz which provides the judges with around 3000 forms such as decisions concerning terms, proof decisions, divorce decrees and degrees about the costs in a case. Standard documents are therefore created quickly and highly automated.
Italy

Case Management System

Italy: The Processo Civile Telematico system ("Trial on-line") allows to access data and files of the civil proceedings, to file, receive, send case related documents and to pay the court fees electronically. Such system is accessible for all the Italian lawyers, but not for other citizens. Lawyers are identified through their Fiscal Code and through their certified electronic mailbox ("Posta Elettronica Certificata") Such system is in use for most of the civil cases, but some of them still need to be filed on paper. Videoconferencing and recording of hearing are not used. Some judges use an application ("Dragon dictate") for voice recording and automatic typesetting, which has been proved quite useful. The automatic generation of documents was adopted by every court: documents with general data are generated automatically by the system (i.e., it is supported by general frameworks) and the judgment is written by hand (access to judgement databases may support this phase). The automatic case management system has both positive and negatives drawbacks:

- Control of the process and the administrative staff working simplification (the path of the procedure is more straight and the work in charge to clerks has been diminished in favour of control of procedures).
- Quick access to document during process management\(^{16}\)

Certified E-mail Address

Italy: The exchange of documents between lawyers and courts is based on a Certified E-mail Address called PEC (posta elettronica certificata). Under Italian law, documents sent by PEC have the same legal value as a letters sent by registered mail. Documents sent by PEC can also be signed electronically or encrypted. The system thus ensures authentication, data integrity and confidentiality. When the owner of a PEC box sends a message to another certified user, the message is picked up by the operator of the certificate domain (access point) that encloses it in an "envelope" and applies an electronic signature in order to guarantee origin and durability. The message is subsequently routed to the recipient PEC manager, who verifies the signature and ensures the delivery to the recipient (delivery point). At this point, the PEC recipient manager sends a delivery receipt to the sender, who is therefore sure that his message has reached its destination. Other receipts are issued during the transmission of a message through the two PECs, but they have the purpose to ensure and verify the correct operation of the system and to always keep the transaction in a consistent state.

Electronic Submission of Documents

**Italy:** It is compulsory to file electronically the majority of pleadings and document, including but not limited to the following cases: order for payment procedures, ordinary proceedings at first and second instance (except the introductory pleadings), insolvency proceedings.

The technical rules for electronic filing of documents are established by a Ministry Decree issued in October 2004 and its following amendments. The technical rules for electronic filing were set by the Ministry of Justice in 2004 and they are revised periodically. Courts are part of a Civil Domain system called SICI (Civil IT System) and they are interconnected through RUPA (Public Administration Unified Network). The legal professionals interact with the SICI necessarily through an Access Point (PDA), where they are registered as users. The Point of Access is not part of the SICI, but it is an external structure, that can be activated by the Bar Councils and public/private entities with particular reliability and financial prerequisites. The access to the system requires a strong authentication procedure using a specific smart card (or another secure cryptographic token), containing an X.509 certificate, protected by a personal identification number (PIN). The advocate must also have been previously certified by the Point of Access to get access to the online services; in this way the system assures that the user is a fully qualified lawyer. The “Central System” connects the external Points of Access to the SICI. In every Local Court there is a web technical structure (so called “Local System”) that provides the interactions to all the application services used by external and internal users. The software instrument used by external users is the “external user’s console”; in particular, through this system, external users, like lawyers, are able to digitally sign and transmit their own legal acts and submit documents to the courts electronically (i.e. “pack” the files, create and digitally sign and encrypt the envelope according to the technical requirements, adding the attachments, transmit the encrypted envelope to the Court); send or receive notifications and official documents at their certified e-mail addresses, get full access to the information and to the documents stored into the courts’ databases regarding their own civil cases - using the Subsystem PolisWeb; pay court fees. The judges perform their own activities using the so-called “Judge console”. This software application allows judges to search and manage all of the assigned proceedings; managing the agenda and planning activities related to their own proceedings; analysing proceedings’ and documents’ data; editing electronic files; creating, digitally signing and transmitting decisions. The office clerks use the proceedings’ work-flow management system to insert and upgrade data regarding the proceedings and to deliver official notifications to external users.
Netherlands

Case management system

**Netherlands.** Civil cases are registered according to the type of proceedings. There are different systems to register the cases. ‘Civiel’ is a case management and registration system that is able to generate management information. ‘NKP’ is used for small claims. These systems have been functional for much longer than a decade and the intention was to replace them with ReIS (rechtspraak informatie systeem), but this programme only functions for the Courts of Appeal. The BOPZIS is working for cases concerning placements in psychiatric hospitals. ReIS and BOPZIS are registration and case management systems, but they are basically electronic registries for paper files, not electronic caseflow management systems for electronic files. The Quality and Innovation project should enable the courts to connect the electronically filed cases with caseflow management systems. This will make the use of paper files unnecessary.

Case-journal System

**Netherlands:** In 2007 there was a local experiment with a case-journal system. The role of local procurators between the local court and advocates was abolished, and now the courts in principle had to be able to communicate with all advocates in the country, as all the practical arrangements for filing a case were uniformed throughout the country. Also within the court the use of standardized forms has increased, so as to make work quicker. 2009 shows the “family journal”, via the digital reception of the courts portal where the registration data of family cases can be viewed by advocates (using their advocate’s chip card (advocatenpas\(^\text{18}\)). Advocates can follow the development of those cases online and therefore do not need to

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18 [https://www.advocatenorde.nl/3837/advocaten/update-advocatenpas](https://www.advocatenorde.nl/3837/advocaten/update-advocatenpas)
be notified of developments any more. The registry for curatorship and guardianship is accessible online, as well as the expert registry. There is also an online registry for insolvencies which is accessible by everyone (http://insolventies.rechtspraak.nl/). The services that are used by citizens make use of DigiD (via a trusted third party) for authentication.

Online Dispute Resolution Platform

**Netherlands:** Rechtwijzer is an online dispute resolution platform structuring and facilitating negotiation between divorcing or separating partners. The platform enables mediation, legal review and adjudication, if needed and offers several support lines (legal information, calculators, practical examples). The platform is available to and accessible by all. The users can enter data about their situation and develop their personal plan for the separation process, including choosing their mediators. The system enables mediators, legal reviewers and adjudicators to do their interventions effectively on the basis of all information they need. The process becomes easier and less adversarial, and provides a better connection between people's problems and court procedures. Similar platforms are being developed for debt recovery and disputes between landlords and tenants. The platform received a special mention at the CEPEJ's Crystal Scales of Justice Awards in 2015 (for more information: http://www.coe.int/t/dghl/cooperation/cepej/source/Crystal_2015/The_Netherlands.ppt).

Electronic Submission of Documents

**Netherlands:** There have been several developments regarding the electronic submission of documents. In 2005, bailiffs were allowed to deliver large amounts of small money claims to courts on CD-ROM (think of telecom providers). From 2006 onwards there has been a gradual development of experiments concerning the delivery of case files online. In 2007, a first portal was developed for lawyers to file their documents online, using standardized files and an authentication by a chip card (advocatenpas). Since 2011 they can file petitions (family, insolvencies and guardianship cases online via https://loket.rechtspraak.nl/. The intention is to make this work for small claims too to enable bailiffs, legal aid insurers and citizens to file their cases. This portal is now called E-Kanton, and is accessible via a web portal. The Courts of East Brabant and Rotterdam are running the E-Kanton project which entails a fully online procedure. The hearing of the parties is the only element that requires an appearance. The e-canton judge is adjudicating on simple disputes between citizens and companies about housing, work or shopping. To get access to the e-canton judge the parties must agree that they wish to submit their dispute to the e-judge and the value of the claims needs to be below €25 000. They receive a judgement of the court eight weeks after the submission of the writ of summons. The e-canton judge serves as a practice environment for the bigger Quality and Innovation (Kwaliteit en Innovatie- QAI) project that aims to innovate and digitalise the entire judiciary. The project has been running successfully for two years and for this reason it will serve as the

19 https://www.advocatenorde.nl/3837/advocaten/update-advocatenpas
basis for the developments to come. The Quality and Innovation (QAI) project in the Netherlands is designed to serve the public more efficiently. The project is set up for people requiring legal assistance and must ensure that a few years from now complex legal proceedings will be replaced by standardised and user-friendly online proceedings for administrative and civil cases. The standardisation of the proceedings will facilitate an easier digitisation than is possible with the currently existing widely varying procedures. The judiciary is working on an online infrastructure which will ensure that parties will only need to travel to District Courts to attend court hearings. Electronic files will be exchanged quicker and eliminate the need for paper files.

Planning of Hearings

Netherlands: Since 2008 software for planning of hearings is installed. There is also a national registry of case hearings, which can be accessed online by lawyers via a website. This registry is connected with the case management systems of the courts and updated daily (roljournaal handelszaken).

Portugal

Electronic Filing of Documents

Portugal: Portugal makes use of a system to file documents electronically. A common electronic platform was set up by the Portuguese Ministry of Justice to receive the claims and related documents and to communicate with the users (who are exclusively advocates). Portugal adopted the electronic transmission of documents more than ten years ago. All the civil courts make use of the system now. All the documents need to be filed electronically with the competent court. Electronic filing is compulsory. E-filing has caused some small technical problems at the beginning but those have been solved. Only in exceptional cases, advocates can ask the court if they are allowed to file a paper version of a document. The electronic filing does not cause many legal problems (for example, about the validity of the electronic signature). The advocates and court clerks try to find a practical solution when a problem arises. There are no internal protocols or best practices to this end. Nevertheless, there have been some technical problems with the system. The collaboration of advocates, court clerks and judges have avoided a collapse of the system. Judges are now familiar with this system and it has improved the quality of their work. They are also used to read electronic documents and to work online.

Audio recording of hearings

Portugal: Portugal adopted a system to record all the hearings many years ago (in both civil and criminal cases). This system allows to record each moment of the hearing and is particularly appreciated by the courts. There is no written transcription of the record necessary. There is only an electronic audio-file of the hearing. The recording is usually saved on a CD. There is a plan to start video recording hearings in the
future. Judges state that an important benefit is that they can carefully exam each part of the hearing and remember all its details.

Slovenia

Case Management System

Slovenia: Civil (and commercial) cases are recorded by the PUND case management system, while civil enforcement proceedings are managed by the program iVpisnik. PUND is used for keeping track of individual cases (in more than 60 different types of proceeding) and it enables the entry of court orders, deadlines and certain events. The system also supports the automatic generation of documents. However, the case file is not digital yet. The iVpisnik program does include an electronic case file. It furthermore enables electronic filing by the parties (e.g. such as filing of enforcement claims on the basis of authentic documents), it supports electronic delivery of documents and provides links to external official registries for acquiring official information pertinent to the case. The main benefits of the systems include the establishment of a centralized system which has led to uniform procedures and easier data collection. A lesson learned from Slovenia’s experiences is that during the implementation of the new e-services, public users should be given time to adapt to the new possibilities (while being stimulated by, for example, lower court fees). The mandatory use of newly implemented services for any group of public users is not always an easily accepted practice and may not go smoothly.

Electronic Delivery

Slovenia: There is a possibility of electronic delivery of mail through secure electronic mailboxes which are provided by external service providers to the end-users. The external contractors receive a fixed fee for each successful delivery from the sender. The use of the mailbox itself is currently free of charge. E-delivery is used in communication between notaries, advocates, judicial officers, public prosecutors and courts. It is obligatory in cases of Land Register, insolvency and enforcement cases. It can also be used by other parties in civil proceedings, but it is not mandatory. In 2014, about 13% of the writs of summons were served through e-delivery. After a successful delivery of a document to the secure mailbox provider, a confirmation is at first sent from the provider to the sender. The delivery to the recipient is confirmed, when the receipt is electronically signed by the recipient. The content of the message is not accessible to the recipient until the receipt is signed. However, if the recipient does not confirm the delivery within 15 days, the document is automatically unlocked and left in the user’s secure mailbox by the provider, and therefore deemed as served (praesumptio iuris). A special system (EVIP) is handling all electronic correspondence of the courts, along with information about the incoming and outgoing electronic communication (documents,

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20 The regulation on electronic correspondence (“PRAVILNIK o elektronskem poslovanju v civilnih sodnih postopkih”) can be found at [http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV10321](http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV10321)
submissions), including the delivery status of correspondence. Delivery of a submission to the court (i.e. filing) is registered in the case management system (CMS) by importing and accepting the relevant metadata from the EVIP by the CMS (e.g. timestamp, type of submission, document information, etc). The status of delivery can be followed either through the EVIP user interface or the CMS. Proof of service (receipt) is transferred to the CMS by EVIP, where it is automatically attached to the relevant (digital) document which was delivered to the recipient. It is mandatory for external service providers to meet the technical requirements for e-delivery published by the Supreme Court. In e-delivery all messages are structured, using XML. The only obstacle to the e-delivery is that the case must have a digital case file in order to use e-delivery. Benefits include speed (delivery in 1 day compared to 7), reliable (zero loss of deliveries) and lower delivery costs (currently approx. 1/3 of the cost of physical delivery). Its use requires a little effort from the user's side, but there is support provided by the secure mailbox providers.

**Electronic filing system**

**Slovenia:** There is an electronic filing system for individual and bulk filing. Individual e-filing is implemented through a web-portal. Most of the procedures require a qualified digital certificate. In bulk filing, the use of the prescribed XML format for submissions of structured data is mandatory (it is publicly available through the web-portal), along with the use of a valid qualified digital certificate for signing the packet of submissions. In 2014, about 57% of submissions were received in electronic form. The e-filing system supports structured data, whereas the structure is only exposed in bulk filing (in form of prescribed XML), in individual cases (where the e-filing is performed by using the steps, provided by the web-portal) the structure of submissions is internal to the system.

**Spain**

**Electronic Delivery**

**Spain:** There is a system of registration and management of the cases called MINERVA. The system was developed various years ago but it is still working. From October 2014 onwards, there is also a system of electronic transmission of legal documents and communication which is managed by the Ministry of Justice. Minerva is not connected to this system. They are two separate programs. Advocates (and courts) send judicial documents and communications through the electronic platform. All the users of this platform must be registered. Advocates can electronically send documents to the court and vice versa. Rules on electronic filing of documents are mainly included in the Spanish Code of Civil Procedure (Ley de Enjuiciamiento Civil No 1/2000). This workflow of data is managed (lawyers side) by the local Spanish Bar

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which receives the messages from the court and forwards them to the advocates. The authenticity of the documents is safeguarded by a preregistration system. A document is considered filed electronically in a specific day if it was electronically sent by the 14.00 of that day. This applies only for claims filed by the claimants. Once the document has been electronically filed, the system generates a receipt which is the legal proof of the filing. The Ministry of Justice has defined some protocols of rules and best practices concerning the application of ICT technologies within the local Courts. These protocols have been helpful. Also a good collaboration between the Courts and the Bar Association has been helpful for the efficient implementation of the ICT tools. Until now, the main problems concerning the ICT tools were caused by technical faults of the system. However, each time there was a problem with the submission of document to the court, the system automatically generates a message informing the lawyer that the transmission was not successful. In this case and in other exceptional cases and with authorization of the court, the parties are allowed to file the documents on paper.

Audio Recording of Hearings

**Spain:** Since 2000, all the hearings (both civil and criminal) of all the cases (first, second or last instance) are video-recorded. Video-recording was preferred as it allows judges to listen and to see what happened in the hearings and therefore it was seen more helpful than audio-recording. Each dossier has a CD on which all the hearings of the proceeding are saved. There are no written transcripts. This is particularly useful for the Court of Appeal which can check, for instance, what has happened during the hearing in the First Instance Court.

**Sweden**

Case Management System

**Sweden**

An electronic case management system called VERA contains all the information of the court’s cases. It can be used to register cases, case management and case allocation. It contains information of important dates, handling times, resources linked to each case, decisions etc. All the documents are in the same place which enables for example searching of certain judgments. Everyone in the court has access to the system. The main benefit of the system is that the whole process of a case in court can be administered in one application. VERA also connects the courts to other authorities to receive and send information in criminal cases.

http://www.government.se/contentassets/0d64212eac554a268396de58c11f9f1f/a-digitally-joined-up-judicial-chain
Secure e-mail
Sweden: Deltagon’s Secure E-mail is used to ensure the privacy of the sent information so that a court message cannot be accessed by anyone but the receiving party. In order to do that the court messages are not sent over the internet as a traditional e-mail but instead the receiving party receives and e-mail notification which contains a secure link to the message. By clicking on the link of the e-mail notification the receiving party is directed to a secure internet site where the court message can be accessed. In some cases accessing the message requires also a PIN code which is separately sent as a text message to receiver’s mobile phone. The secure e-mail service is not connected to the case management system today, so all entries in the system about deliveries have to be made manually.

Joint e-calendars
Sweden: The VERÄ-case management system provides a feature of joint calendars which is used for setting hearings (booking rooms and scheduling judges’ time). The calendars of all personnel and each court room are available for everyone in the system. The system does not allow access to the calendars of barristers. The courts can book two hearings in the same room at the same time, but when making the second booking the user will be warned that there already is a hearing assigned to that room. All the bookings in Vera can be altered, so if there is a wish to switch to another courtroom the clerk will have to use the calendar and find another room. After deciding on the date of the hearing, the summons to the hearing can also be generated in Vera. Subsequently the summons can be sent out by secure e-mail or by traditional mail.

Chapter: EU Cross-Border Disputes

Estonia

Specialization of Courts
Estonia: The Estonian Code of Civil Procedure provides for the exceptional jurisdiction of one particular court - Harju County Court - for international matters. More precisely, if a matter does fall under the jurisdiction of an Estonian court or such jurisdiction cannot be determined and an international agreement or the law does not provide otherwise, the matter shall be adjudicated by Harju County Court if: (i) the case must be adjudicated in the Republic of Estonia pursuant to an international agreement; (ii) the petitioner is a citizen of the Republic of Estonia or has a residence in Estonia, and the petitioner has no possibility to defend his or her rights in a foreign state or the petitioner cannot be expected to do so; (iii) the matter concerns Estonia to a significant extent due to another reason and the petitioner has no possibility to defend
his or her rights in a foreign state or the petitioner cannot be expected to do so. (Art 72 of the Estonian Code of Civil procedure). The aim of the exceptional jurisdiction is to direct all international disputes to one court - Harju County Court, the biggest county court in Estonia. This supports specialization of judges (the number of international disputes is relatively small and without exceptional jurisdiction, the benefits of specialization would not emerge) and secures that international disputes are solved by judges who have received the necessary training.

Italy

European Instrument

Italy: There are not specific data on the current application in Italy of the European instruments on civil proceedings. However, such instruments are not very widespread among the practitioners. For instance, according to a research conducted at the Court of Milan (which is a Court with a large number of international cases), the number of cases per year filed with this specific procedure is not more than 100.

Specialization of Courts

Italy: There is no centralized court dealing with international and/or European issues. Such cases fall under the normal rules on territorial competence. Moreover, there is not any internal system of distribution of the cross border cases within the national Courts. They are managed as national claims and distributed among the judges such as all the other claims. Finally, the national exam to become judge or judiciary functionary does not entail a deep knowledge of all the aspects related to cross border claims.

Digital communication

Italy: A foreign domiciled party must appoint advocates or other professional in loco in order to participate to national proceedings (notwithstanding very few exceptions). There is no digital mechanism or platform which allow a foreign domiciled party to electronically send a document to an Italian Court. The national system of electronic transmission of judicial documents or communications is based on the concept of national (domiciled) user and does not entail no access for a foreign domiciled user.

Spain

European instrument

Spain: The European Order for payment procedure (EPO) is used very often (it can be assumed that – at least in the Palma de Mallorca Court - not more than 40 cases per year are filed with this specific procedure

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and Palma de Mallorca is a jurisdiction with a high level of international cases due to its tourism). However, there are no official statistics on this. This is also due to the fact that each judge has its own administration.