EJN GOOD PRACTICES FOR DATA COLLECTION

TABLE OF CONTENTS

INTRODUCTION

Data collection clauses have been introduced to recent civil justice instruments, most notably the Regulation establishing the European Account Preservation Order, the Small Claims Regulation, the Insolvency Directive, the Brussels IIa recast Regulation and the proposed revised Service of Documents and Taking of Evidence Regulations[1].

The European Judicial Network pursues, *inter alia*, the objective of an effective and practical application of European instruments among the Member States[2]. This common objective entails that an evaluation of the application of EU law can be carried out in a structured and harmonised fashion in all Member States. Therefore the European Judicial Network has established in this document Good Practices aimed at a wide target group, consisting in all the actors responsible for the evaluation of EU instruments at all stages, from the legislative to the implementation phase, including those involved in the development of IT systems, in the Member States, or in the European institutions.

Collection of comparable statistical data has potential to provide relevant information to Member States and to improve the evaluation of the efficiency of the EU Regulations. Concrete and accurate data on the EU law-specific cases dealt with by courts and other competent authorities can help Member States in better identifying and addressing issues and needs regarding organisational matters, judicial training, workloads, allocation of resources and transparency of operation in general.

However, even though the collection of statistical data comes with benefits, it also implies a number of significant challenges. The following possible issues in data collection have been identified so far:

- Courts and other authorities in some Member States do not distinguish between purely national cases or international cases and cases with an EU element;
- Periodic and extensive data collection and organisation entail added administrative workload;
- Comprehensive data collection exercises require resources;
- Approaches to data collection are not necessarily consistent from one MS to another.

Against this background, having identified both the benefits and constraints in the collection of data, the EJN in civil and commercial matters proposes the following general good practices, which aim at facilitating the data collection for existing and future instruments, where possible. As a result, Member States are not bound by any recommendation made in this document. General compliance with the good practises is however a prerequisite for the collection of statistics "*consistent internally, over time and*

[1] All references to the revised Service and Taking of Evidence Regulations will be reviewed and finalised once the text is adopted.

[2] Article 3(2)(b) of the Council decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters amended by Decision N° 586/2009 of the European Parliament and of the Council of 18 June 2009

comparable between regions and countries". Only comparable and coherent statistics will serve the use of EU institutions, national governments and the public generally[3].

Those best practices should, inter alia, meet the following objectives:

- Provide practical guidance for the actual exercise of data collection at the national level, especially in the case of instruments that do not provide for explicit data collection or contain only general provisions;

- The Commission and the Council are invited to consider implementing these good practices when drafting mandatory data collection provision in new instruments[4];

- The EJN contact points should also take into consideration these good practices when agreeing on data collection on a voluntary basis, in the context of EJN meetings for instance;

- Having regard to the increasing use of IT technologies in the implementation of EU instruments, Member States are encouraged to take them into account when developing or upgrading IT systems.

Chapters 1 to 4 of the documents are addressing the various findings of the EJN with regard to collection of statistical data, depending on the EU instrument at hand and the nature of the cooperation between Member States.

Chapter 5 contains a list of best practices developed by Member States that could be used as source of inspiration.

Chapter 6 finally draws up a comprehensive list of the principal best practices to be followed.

[3] See *the European Statistical System handbook for quality and metadata reports*, 2020 edition, Eurostat

[4] See point 3 of the 2016 Interinstitutional Agreement between the European Parliament the Council of the European Union and the European Commission on Better Law-Making « *the three Institutions hereby agree that Union legislation should (…) include appropriate reporting, monitoring and evaluation requirements (…).”*Also see point 22 of the same agreement “*to support [evaluation] processes, the three Institutions agree to, as appropriate, establish reporting, monitoring and evaluation requirements in legislation, while avoiding overregulation and administrative burdens, particularly on Member States. When appropriate, such requirements can include measurable indicators as a basis on which to collect evidence of the effects of legislation on the ground*".

1. DATA COLLECTION ON COOPERATION BETWEEN CENTRAL AUTHORITIES

Data collection in relation to the cooperation cases dealt with by Central Authorities is not provided for in any EU instrument in civil and commercial matters. Information related to the activity of Central Authorities is however relevant when assessing quantitatively and qualitatively the cooperation between Member States. Data are currently collected on a voluntary basis through comprehensive questionnaires in the context of the annual EJN meetings, in particular regarding the implementation of the Maintenance Regulation.

Experience has taught that there is a need for prior identification of the data available in all or most Central Authorities and relevant for the evaluation of the implementation of the legislation concerned. This will avoid useless effort trying to retrieve non-existent information, or collecting information which is scattered and difficult to compare.

The actors who are providing the data will need to be consulted and to agree in the EJN the content of any questionnaire.

2. DATA COLLECTION ON EUROPEAN JUDICIAL PROCEEDINGS

As regards Regulations 1896/2006 (EOP), 861/2007 (Small claims) and 665/2014 (EAPO), which have established standalone European procedures, constituting alternatives to the national procedures, the European element can easily be identified from the outset. The mere existence of a case is evidence that one of the European procedure Regulations is being applied.

However, Member States have indicated limitations or practical barriers as regards data collection in relation to the EAPO, EOP and Small Claims Regulations, due to shortcomings in the drafting of the text or national organisational constraints.

3. DATA COLLECTION ON COOPERATION BETWEEN COMPETENT AUTHORITIES

Obtaining comparable data in relation to the requests and forms sent or received by competent authorities poses considerable challenges. This is due to the fact that competent authorities do not systematically report to State authorities (notaries or bailiffs for instance). In that respect, the general use of electronic communication and common IT tools will bring substantial benefits.

Without a specific data collection provision, no common set of data was available in the context of the Service of documents and Taking of Evidence Regulations

Taking advantage of the mandatory digitalisation of transmissions under both instruments, the new Regulations include a provision on data collection. Data should, where available, be programmatically collected by the reference implementation software, which will be developed by the Commission and by the national IT systems if they are equipped to do so. Although automatic collection will allow swift and cost-effective access to data, close attention must be still paid to the importance of getting harmonised data and to the unified implementation of data indicators whenever possible.

4. DATA COLLECTION FOR JUDICIAL PROCEEDINGS WHERE A EUROPEAN ELEMENT MAY APPEAR

The EJN in civil and commercial matters recognises the challenges of data collection regarding European instruments such as Brussels Ia, Brussels IIa, Rome I, II, III, or the Maintenance Regulations. While data in relation to the implementation of jurisdiction or applicable law provisions would be of interest, the collection of information in cases that are initially or eventually purely national cases may be cumbersome, if not impossible. It requires the court staff to identify the European element at several stages, which is a question not only needing a certain legal expertise but also raising complex legal issues.

On the other hand, the proceedings related to cross-border recognition and enforcement of decisions issued under these instruments are easier to identify and relevant information could be gathered, subject to a demonstrated need for data collection, with regard to:

- The issue of certificates accompanying decisions as well as, where available and still necessary, the declarations of enforceability;

- Refusal or suspension of the enforcement of a decision in another State than the Forum State.

5. BEST PRACTICES FROM MEMBER STATES ON THE COLLECTION OF DATA WITH REGARD TO EU LEGISLATION

5.1. ESTONIA

The Estonian Courts Information system registers identifies the following types of court cases, which are registered at the beginning of the court proceedings. Those categories apply to incoming cases:

1) Private international law (in general, no specific instrument)
2) European Payment Order
3) European Small Claims proceedings
4) Cross-border legal assistance in family matters
5) EU service of documents
6) EU taking of evidence
7) Cross-border legal aid
8) Recognition and declaration of enforceability of a foreign decision
9) Other cross-border legal assistance.

The list is reviewed regularly, to check whether there is a need for more specific distinctions.

All types of proceedings, whether domestic or cross-border, allow the extraction of the following data from the system:

- outcome of the decision / judgment (whether the request was granted, not granted, partially granted)
- the date of the beginning and end of the proceedings
- whether a hearing was held

- how the documents have been served on the parties (method of service)
- which court was handling the case
- data on the parties.

5.2. GERMANY

The methodology used to coordinate and manage statistical data is discussed and determined on an annual basis by representatives of the German Federal *Bund* and *Länder* as part of a statistics committee. With regard to the reporting obligations arising from the EU Regulations, the representatives of the *Länder* vote on how the data required is to be collected in order to guarantee uniform statistics. The basis of each statistical compilation is a directive which is binding for the *Länder* in terms of the implementation. If a statistical compilation is to be amended or added to, the first step to be taken is for the directive to be adjusted. This directive serves as a basis for the programming of the court registry automation programmes, and also as a guide for those colleagues who deal with the processes in terms of IT. Furthermore, Court staff are regularly trained on data collection and changes to the directive.

This practice has proved successful for many years in terms of effective coordination of shared statistical compilations and the implementation of statutory statistical and reporting obligations.

5.3. ITALY

In relation to European Payment Order, the court clerk may tick a box to stress that the case falls under the Regulation. An analysis is currently carried out on the possibility to distinguish European proceedings from national ones (decreto ingiuntivo). The statistical logs established by the judicial authorities cannot identify the proceeding involving European Regulations. However a project on the digitalisation of European Payment Orders issued by the courts – co-funded by the European Commission – started in November 2019 and will end in October 2021. The testing phase is currently being conducted in Milan. Once available, the system will be able to identify and collect relevant data. In the meantime, the only option is to manually gather the data and to point out in the notes' section that such data pertain to a certain European Regulation.

5.4. PORTUGAL

Experience from Portugal

(1) Best practice regarding EAPO (European Account Preservation Order – Regulation 655/2014) and

(2) EOP (European Order for Payment – Regulation 1896/2006 last amended by Regulation 2015/2421).

In Portugal data regarding judicial procedures is collected by the Ministry of Justice (DGPJ – Directorate General of Justice Policy).

The data is retrieved from the electronic case management system of Courts dealt with by the Ministry of Justice through its agency IGFEJ IP (Institute of Financial Management and Justice Equipment).

EAPO - information mentioned in Article 53(2) of Regulation 655/2014

The Ministry of Justice can retrieve from the electronic case management system and provide the Commission with the following data:

- The number of applications for EAPO and the number of cases in which the order was issued – Article 53(2)(a).
- The number of applications for a remedy under Articles 33 and 34 and the number of cases in which the remedy was granted – Article 53(2)(b).
- The number of appeals lodged under Article 37 – Article 53(2)(c).

Regarding the non-compulsory information mentioned in Article 53(2)(c) second part, so far (until electronic processing is fully installed in second instance courts), Portugal cannot collect information on the number of cases in which the appeal lodged under Article 37 was successful.

EOP – information mentioned in Article 32

This is an example of a general provision that may lead to communication of inconsistent or incompatible data as mentioned in point (6) above.

The Ministry of Justice can retrieve from the electronic case management system and provide the Commission with the following data:

- Regarding "ease of use" – the number of applications.
- Regarding "efficiency" – the number of payment orders issued.
- Regarding "internal payment order procedures" – the number of payment orders declared enforceable.
- Regarding the "speed of the procedure" – the length of the procedure from the date in which the application is filed to the date of the decision that declares enforceable the payment order.

Regarding the court fees mentioned on such decisions, that information is not yet collected. It is still to be seen if the information on court fees can be retrieved separately from the electronic court management system, to avoid overwork for court officials.

6. GOOD PRACTICES ON DATA COLLECTION IN THE CONTEXT OF EU CIVIL JUSTICE INSTRUMENTS

Against that background, the EJN wishes to highlight the following essential good practices with respect to data collection in the field of cross-border civil and commercial

judicial cooperation. These principles are addressed both to the Member States and the Commission:

(1) **Define the exact objectives of data collection**. Only data fulfilling a particular objective, identified by both the Member States and the Commission should be collected. General objectives can be, for instance, the evaluation of the caseload in order to adjust allocated resources and training offers, the evaluation of promotional needs of an instrument, the evaluation of the practical adequacy and/or actual respect of the imposed deadlines to protect users' rights. Some indicators related to the implementation of the instrument over time, and/or geographically, would help to demonstrate the added-value of a recast of legislation.

(2) **Identify and adjust to the practical constraints upon the actors collecting data.** This will help to avoid three possible shortcomings : (i) requesting data that cannot be collected by Member States and is ultimately useless because it doesn't reflect a sufficient proportion of Member States (ii) making Member States' authorities see EU data collection as an unnecessary hardship (iii) increase the risk of caseworkers or court staff not recording data. Proper recording and analysis of data requires local adequate involvement and implementation. In this respect, data collection should focus on **easily identifiable and readily available data**. This also implies that prior consultations are made before adopting new provisions.

(3) **Collect data in relation to incoming requests**. Courts, competent authorities and central authorities usually handle incoming and outgoing requests when implementing EU law. As a rule, to avoid contradictory, duplicated or incompatible results, only data in relation to incoming requests should be collected (cooperation between central authorities, competent authorities or entities, as well as for instance requests for a transfer of jurisdiction).

(4) **The frequency and the starting point of data collection and transmission to the Commission should be specified**[5]. Such specifications should be primarily provided for in the applicable instrument. When those specifications are missing or incomplete, Member States could be asked to transmit data for instance in preparation of EJN meetings on a voluntary basis. Unless data is automatically collected through an IT system, the frequency of transmission needs to be as low as possible.

(5) **Where possible and appropriate, in particular when the applicable instrument does not contain data collection provision, or when such provision is incomplete, the EJN could develop standard, non-mandatory common templates** (questionnaires)[6]**. Once adopted by the**

[5] The frequency of data collection should be the same for all the Member States. Receiving data of different frequencies would imply the need to aggregate (to have, for instance yearly data). In defining the frequency, it will be important to specify to what it exactly refers, meaning what are the criteria by which a certain event, for instance an administrative action, should be assigned to a specific period.

[6] The data files should contain exactly the same fields (at least data files transmitted to the Commission). It is also essential to reach the following objectives:

EJN, courts and authorities responsible for data collection should be encouraged to use them. Such templates would facilitate the work of the staff responsible for data collection as well as the ultimate compilation of data by Member States or the Commission.

(6) **When drafting new legal instruments or revisions/recasts, the Commission and the Council should avoid general or unclear provisions on data collection.** They lead to communication of inconsistent or incompatible data and will hinder implementation. For instance, when data related to time periods is collected (length of proceedings, duration of cases), the exact event/action triggering the starting point of the time period and the one closing the time period should be specified when possible. Data collection provisions should be prepared early and based on a careful analysis on what is actually needed.

(7) **Take advantage of IT development** by considering the incorporation of data collection consistent with the goals defined (see (1)) during the development phase. If possible, encourage the adoption of a flexible statistical tool allowing evolution on the nature and the content of criteria based on the users' feedback. Consider when feasible the automatic transmission of data to the national authorities as well as the Commission.

(8) **The desired method of sending** should be specified (electronic/paper, automatic/manually, voluntarily/mandatory). Electronic and automatic methods of communication, which allow timely and reliable transmission of data should be, when available and appropriate, encouraged.

(9) **It is useful to determine which actor has the responsibility of retrieving data**, **of compiling them and of producing reports**, especially in the case of data exchanged through a decentralised IT system or a common platform[7]. On one hand, in the case of a decentralised IT system, data could be available only at the level of the competent authorities and not at the Member States level nor at the Commission level. On the other hand, when a common case management or IT system is developed for the implementation of a particular instrument, and when provided for by that instrument, it should incorporate the possibility to transmit data automatically to the Commission. In case of a common EU platform, the Commission should have access to all relevant statistical information, that the Member States have agreed to share. The frequency of the subsequent reporting activity could also be agreed upon.

(10) **Collection and analysis of data must comply with individuals' fundamental rights and freedoms**, in particular their right to the protection

---

- each variable should have exactly the same name
- for each variable name a harmonized label should be developed (meaning a short explanation on what the variable is about).

It is also advisable to develop proper metadata related to the data collection (before the data are published). Please find below the example of Eurostat metadata on statistics related to crime and criminal justice :

https://ec.europa.eu/eurostat/cache/metadata/en/crim_esms.htm

[7] The IT systems should in any case provide harmonized outputs within and across all the MS. This to allow the automated processing of the data with the aim of comparing and aggregating them.

of personal data, in accordance with the applicable European legislation, irrespective of their nationality or place of residence.

(11) The collection of statistics does not exclude the analysis of **complementary qualitative data** – which EJN Contact Points are in a privileged position to collect when assisting national courts – that, together with statistics, may be essential to assess certain dysfunctionalities generated by the legal texts and therefore allow the EU Institutions to legislate better.