



ANNUAL REPORT 2014

**PORTUGUESE CONTACT POINT
OF THE EUROPEAN JUDICIAL NETWORK IN CIVIL AND
COMMERCIAL MATTERS**

Conselho Superior da Magistratura

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The core mission of the Contact Point is to be at the disposal of the judiciary and of other authorities in the Member States in order to assist them in preparing operable requests for judicial cooperation and in establishing the most appropriate direct contacts

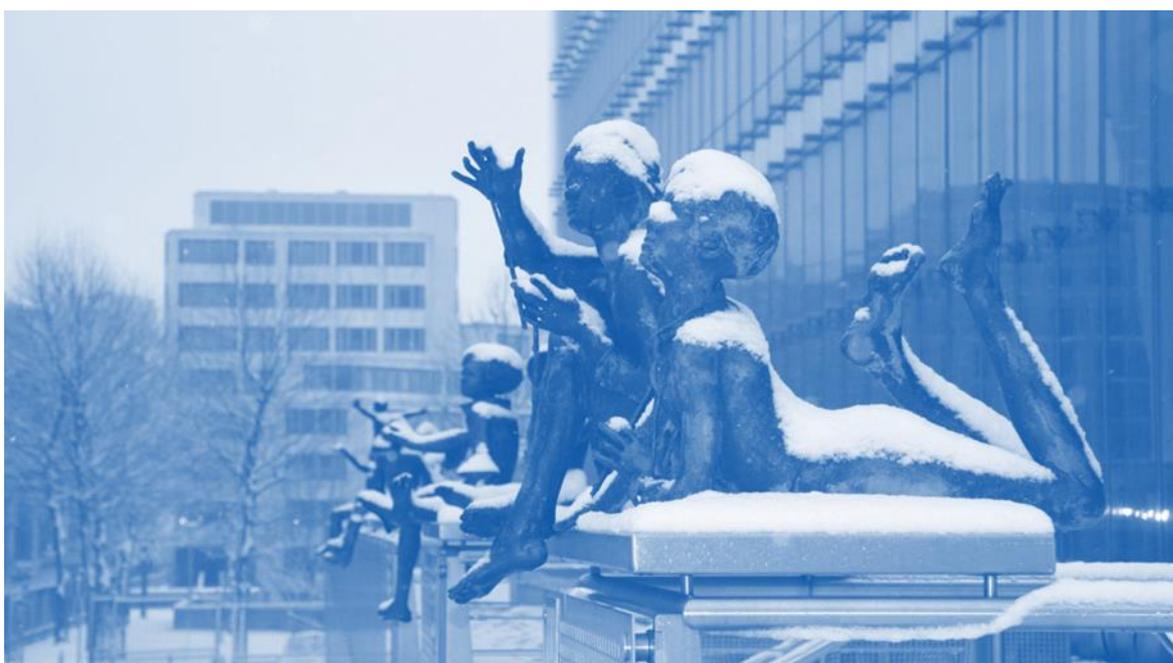


TABLE OF CONTENTS

➤	Acronyms and abbreviations	3
➤	EJN CC Decision	4
➤	Foreword	4
➤	2014 at a glance	6
1.	Structure of the Network	9
2.	Personnel and Resources	15
3.	Operation of the Network	18
4.	Requests for information or for judicial cooperation	19
5.	Concrete success stories	21
6.	Implementing the <i>acquis communautaire</i>	23
7.	Dissemination of information on civil justice to the general public	24
8.	Contacts established with other networks acting in related fields	26
9.	Contacts and exchanges with legal practitioners at Member State level	27
10.	Future perspectives	29

ACRONYMS AND ABBREVIATIONS

Central Authority - CA

Contact Points – CP

European Commission – The Commission

European Court of Justice - ECJ

European Judicial Network in Civil and Commercial Matters – EJN CC

European Union – EU

Member States – MS

THE EJN CC DECISION

Council Decision N° 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters amended by Decision N° 568/2009/EC of the European Parliament and of the Council, of 18 June 2009, will be referred to in this report as EJN CC Decision. A consolidated version of EJN CC Decision is available on the website of the Portuguese Contac Point <http://redecivil.mj.pt/>. It is available in all official languages in EUR LEX website <http://eur-lex.europa.eu>.



FOREWORD

I am pleased to present the Annual Report on the activities of the Portuguese Contact Point in 2014.

In 2014 I prioritized the coordination of the national network. With the agreement of all members of the national network, we are now having coordination meetings every three months. These regular meetings chaired by the Contact Point, allow government agencies, central authorities and professional associations in the network, to exchange information, overcome bottlenecks and achieve a consistent national approach on the application of

the EU legal instruments. In these meetings, national members could discuss and arrive to a general agreement on the content of the information that will be updated with the European Commission as a result of the recent reform of the Portuguese judiciary.

Additionally, I have been organizing frequent bilateral meetings with national members when it appears adequate to enforce at national level a specific EU legal instrument. This tool proved to be particularly adequate to foster cooperation between the Portuguese CA for the Brussels IIa Regulation and the

national Social Security Institute. Both national members agreed on gathering in some forms the national rules for the procedure of previous consent referred to in Article 56 of the Brussels IIa Regulation, to facilitate consultation and cooperation between CA's.

I have been using the same tool to achieve more effectiveness on the implementation of the Regulation on the service of documents at national level by reconciling the existing system of public and private bailiffs. Hopefully, private bailiffs together with public ones will be receiving agencies for the purposes of the Regulation (EC) N° 1393/2007 of 13/11/2007.

To ensure that national Judges receive and read information concerning judicial cooperation on civil and commercial matters, I launched *The Newsletter of the Portuguese Contact Point*. It is a monthly publication of one page, sent on electronic format to every national Judge. In a flash, national Judges are aware of EJM CC main activities, new international legal instruments on judicial cooperation or relevant ECJ jurisprudence.

The new website of the Portuguese Contact Point is currently online. It was built from scratch in the last trimester of the year thanks to the commitment of the Contact Point's staff. It provides information on the legal framework, policy context, EJM CC role, MS's factsheets and ECJ case law on specific thematic areas.

To celebrate the European Day of Justice, several hundreds of guides and compendiums of international legal instruments on judicial cooperation in civil and commercial matters were distributed by all national courts of first instance.

The preparation of the interconnection of central, commercial and companies' registers set forth in the Directive 2012/17/EU of 13 June 2012 will be a challenge for the national members of the network, requiring coordination of their activities. The role of the Contact Point will be to foster synergies with them.

Finally, the Portuguese Contact Point and its staff welcome the Commission initiative on making EJM CC visible on Member States and look forward to a successful and productive 2015.

Paula Pott
Judge – Portuguese Contact Point of EJM
on civil and commercial matters



2014 AT A GLANCE

APRIL

JUDGE FLORBELA MOREIRA LANÇA ENDS OFFICE AS PORTUGUESE CONTACT POINT AND WE THANK HER FOR AN EXCELLENT AND VALUABLE WORK



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JUNE

**JUDGE PAULA POTT
IS DESIGNATED AS THE
NEW PORTUGUESE CONTACT POINT OF EJM CC**

JULY

A SUCCESS STORY

**IN BRUSSELS THE PORTUGUESE
CENTRAL AUTHORITY PRESENTS THE
NON-MANDATORY FORM ON
MAINTENANCE ARREARS**



EUROPEAN DAY OF JUSTICE

THE CONTACT POINT ATTENDS THE INTERNATIONAL CONFERENCE ORGANIZED BY THE PORTUGUESE CHAMBER OF SOLICITORS TO CELEBRATE THE EUROPEAN DAY OF JUSTICE



THE PORTUGUESE CHAMBER OF SOLICITORS HOSTED IN PORTUGAL THE COUNCIL OF EUROPE AWARD OF THE CRYSTAL SCALES OF JUSTICE



THE CONTACT POINT ATTENDS A CONFERENCE ON THE 34TH ANNIVERSARY OF THE HAGUE CONVENTION OF 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION ORGANIZED BY THE PORTUGUESE DIRECTORATE GENERAL FOR JUSTICE POLICY



NEWSLETTER do Ponto de Contacto de Portugal da Rede Judiciária Europeia em Matéria Civil e Comercial - RJCEC Nº 1 Novembro 2014

NESTE NÚMERO

- 0 Editorial
- 0 Actividades
- 0 Cláusulas contratuais injustas — Directiva 93/13/CEE
- 0 Residência habitual da criança — artigo 8 do Regulamento Bruxelas II

EDITORIAL

O objectivo desta newsletter é divulgar alguns aspectos operacionais do legislação europeia em matéria civil e comercial, tal como vão sendo interpretados pela jurisprudence dos Tribunais internacionais. Os acordos aqui mencionados são escolhidos em função da sua utilidade como instrumento de trabalho para os juizes portugueses. Os resumos dos acordos são informativos mas não constituem uma interpretação cristalizada ou autêntica dos mesmos. Também são enviados o Ponto de Contacto, o RJCEC ou os Tribunais, na sua apreciação livre e evolutiva. Os resumos que se seguem têm apenas por finalidade abrir um espaço de reflexão e debate.

Ponto de Contacto — **Juz Ponto de Contacto do RJCEC**

ACTIVIDADES

A próxima reunião dos Pontos de Contacto do RJCEC terá lugar nos dias 27 e 28 de Novembro de 2014 em Roma. Em seguida está a convocação do Regulamento Bruxelas II. No dia 26/11/14 estão previstos reuniões bilaterais dos pontos de contacto para o Regulamento, a fim de tratarem de casos pendentes.

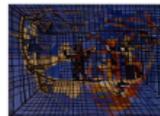
Cláusulas contratuais injustas — Directiva 93/13/CEE
 Acórdão do Tribunal de Justiça da União Europeia de 9 de Novembro de 2010 — C-337/08 (curia.europa.eu)

O Tribunal nacional tem o dever de: (i) determinar se uma cláusula contratual inserida num contrato em litígio celebrado entre o fornecedor ou vendedor de bens ou serviços, e o consumidor, foi ou não negociada individualmente; (ii) se concluir que não foi, a cláusula cai no âmbito da Directiva 93/13/CEE de 5/4/1993 e o Tribunal deve então apreciar se tal cláusula é injusta; (iii) os factores a levar em conta para saber se uma cláusula contratual não negociada individualmente é injusta são a natureza dos bens e serviços objecto do contrato e as demais circunstâncias atendíveis à data da conclusão do contrato; (iv) o artigo 6 (1) da Directiva acima mencionada é obrigatório e daí resulta que o Tribunal nacional tem o dever de investigar oficialmente os fundamentos de facto e de direito para apreciação do carácter injusto de uma cláusula contratual que caia no âmbito da Directiva acima referida; (v) o dever de apreciação oficial existe ainda que, segundo a legislação interna do respectivo Estado Membro, os fundamentos em questão devessem ser invocados pela parte interessada e o não tenham sido.

Residência habitual da criança — artigo 8 do Regulamento Bruxelas II
 Acórdão do Tribunal de Justiça da União Europeia de 2 de Abril de 2009 — C-523/07 (curia.europa.eu)

O conceito de residência habitual da criança não é definido pelo artigo 8 (1) do Regulamento (CE) Nº 2201/2003 do Conselho de 27/11/2003 (Regulamento Bruxelas III). O Tribunal de Justiça da União Europeia interpretou o conceito de residência habitual do menor na acepção do artigo 8 (1)

do Regulamento Bruxelas II como "o local que revelar uma determinada integração do menor num ambiente social e familiar". Para esse fim, devem ser ponderados os seguintes factores: (i) a duração da permanência do menor no território de um Estado Membro; (ii) a regularidade dessa permanência; (iii) as condições nas quais o menor aí permanece; (iv) as razões dessa permanência; (v) as razões da mudança da família para esse Estado Membro; (vi) a nacionalidade do menor; (vii) o local e condições de escolaridade do menor; (viii) os conhecimentos linguísticos do menor; (ix) os laços familiares e sociais do menor nesse Estado Membro. Incumbe ao Tribunal nacional determinar a residência habitual do menor tendo em conta o conjunto dos factores acima enunciados. Na prática, o Juiz nacional pode usar o mesmo critério para determinar a residência habitual do menor à luz da Convenção de Haia de 1980 sobre os Aspectos Cíveis do Rapto Internacional de Crianças. Na verdade, ambos os instrumentos de cooperação assentam no princípio de que é do superior interesse da criança que a decisão de mérito sobre a guarda e responsabilidades parentais seja proferida pelo Tribunal do Estado da sua residência habitual.



María Helena Vieira de Silva
 Le Héron ou Le Héraut, 1939



**Acquis
 COMMUNAUTAIRE**

**THE NEWSLETTER OF THE
 PORTUGUESE CONTACT
 POINT IS LAUNCHED**



COORDINATION OF THE NATIONAL NETWORK

TRIMESTRAL MEETING WITH THE NATIONAL MEMBERS OF THE NETWORK CHAIRED BY THE CONTACT POINT

1. STRUCTURE OF THE NETWORK

Number of Contact Points: 1

Portugal designated one Contact Point for the EJM CC (the Contact Point). The Contact Point is a Judge appointed by the Portuguese High Council of Judiciary following a selection procedure.

The national network

The national network is composed by: central bodies and central authorities provided for in the EU legal instruments, instruments of international law to which Portugal is party or rules of domestic law in the area of judicial cooperation in civil and commercial matters; administrative authorities with responsibilities for judicial cooperation in civil and commercial matters; and professional associations representing, at national level, legal practitioners directly involved in the application of EU and international instruments concerning judicial cooperation in civil and commercial matters.

The national network has neither *liason* magistrates nor it benefits from the assistance of experts.

National members of the network: 11

The national structure of the network includes, besides the Contact Point, eleven national members:

- Directorate General for Justice Policy - Ministry of Justice
- Directorate General for Justice Administration - Ministry of Justice
- Directorate General for Rehabilitation and Prison Services – Ministry of Justice
- Institute for Register and Notary Offices - Ministry of Justice
- Institute for Financial Management and Equipment of Justice - Ministry of Justice
- Monitoring Council for Justice of Peace – Ministry of Justice
- Social Security Institute - Ministry of Solidarity and Social Security
- Commission for the Protection of Crime Victims – Ministry of Justice
- Portuguese Bar Association
- Portuguese Chamber of Solicitors
- Portuguese Notary Association

The central authorities

Among the national members mentioned above the central authorities are:

Directorate General for Justice Administration - Ministry of Justice

- ✓ Regulation (EC) N° 4/2009 of 18/12/ 2008
- ✓ Regulation (EC) N° 1393/2007 of 13/11/2000
- ✓ Regulation (EC) N° 1206/2001 of 28/5/2001
- ✓ Hague Convention of 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters
- ✓ Hague Convention of 1970 on the taking of evidence abroad in civil or commercial matters
- ✓ Hague Convention of 2007 on the international recovery of child support and other forms of family maintenance
- ✓ New York Convention of 1956 on the recovery abroad of maintenance

Directorate General for Rehabilitation and Prison Services – Ministry of Justice

- ✓ Regulation (EC) N° 2201/2003 of 27/11/2003
- ✓ Hague Convention of 1980 on the civil aspects of international child abduction
- ✓ Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children

Institute for Register and Notary Offices - Ministry of Justice

- ✓ Regulation (EU) N° 650/2012 of 4/7/2012

Social Security Institute - Ministry of Solidarity and Social Security

- ✓ Directive 2003/8/EC of 27/1/2003

Commission for the Protection of Crime Victims – Ministry of Justice

- ✓ Directive 2004/80/EC of 29/4/2004

Coordination of the national network in a decentralized structure



The Portuguese national network has a decentralized structure. All national members are regularly called by the Contact Point to collaborate in specific domains of their competences and responsibilities for judicial cooperation in civil and commercial matters. There are no experts designated as members of the network. Whenever a request requires a specialized opinion, the Portuguese Contact Point asks the collaboration of a national authority on a voluntary basis.

In the same way, coordination ensured by the Contact Point relies on the voluntary collaboration of national members. National members are called to participate regularly in trimestral meetings chaired by the Contact Point. Whenever there is need to clarify a particular subject, meetings are scheduled only with the national members concerned. Trimestral meetings and bilateral meetings have proved to be useful tools for coordination. The Contact Point's initiative to use these tools has fostered synergies with national members. Their collaboration has been intelligent, active and indispensable. Additionally, some national members and the Contact Point participate actively in different Working Groups of the EJM CC.

COORDINATION
COMPLEMENTARITY OF
COMPETENCIES
EXCHANGE OF
INFORMATION
The Contact Point together
with the National Members
strive for the best
operational results

Some examples where coordination of national members made possible to:

- ✓ Gather in a few forms the national procedure for consent referred to in Article 56 of Regulation (EC) N° 2201/2003 of 27/11/2003 thus smoothing the procedure and providing clear information to Central Authorities of other MS's
- ✓ Facilitate the internal procedure for legal aid provided by Article 46 of Regulation (EC) N° 4/2009 of 18/12/ 2008 by creating a specific mailbox to receive and deal with these cases in the competent authority
- ✓ Allow private bailiffs to serve documents together with public bailiffs in a near future, under Regulation (EC) N° 1393/2007 of 13/11/2000, thus ensuring more efficiency in the system and equal treatment of EU citizens
- ✓ Agree in a working method for the ongoing legal and technical transposition of Directive 2012/17/UE on the interconnection of registers
- ✓ Update the information sent to the European Commission, as provided for in the relevant EU legal instruments, following the recent national reform on judiciary.

Baixa
Lisboa



Ways of supplying information

- Regarding the information supplied **to other CP's, CA's, administrative authorities, Judges, Prosecutors and court staff** within the Union, the most commonly used transmission media are e-mail or phone. Whenever it is needed, fax or postal mail can be alternative ways of transmitting and receiving information.
- A monthly newsletter with thematic information on EJM CC activities and ECJ case law is sent to all **Portuguese Judges** to disseminate the *acquis communautaire*.
- Concerning the information to **both the public and practitioners**, the Portuguese Contact Point's website supplies up-to-date information on EJM CC activities, Contact Points meetings, national member's recent developments and projects on judicial cooperation. It contains the founding texts of EJM CC, the factsheets, a link to the e-justice portal, other useful links, the relevant EU and international legal instruments in civil and commercial matters, ECJ case law grouped by theme and EU publications.
- **Facebook and twitter** were used to announce the European Day of Justice, meetings, events and publications on EU citizens rights

Avenida da Liberdade - Lisboa



- **15 factsheets addressed to the general public and to practitioners** were drafted or revised by the Contact Point in 2014. They are available in the e-justice portal and in the Portuguese Contact Point website.



- **To celebrate the European Day of Justice and enhance the visibility of the network the Contact Point distributed the publications mentioned below by all national Judges and court staff in paper version. Some of them – on EU citizens' rights and small claims – were made available to the public by the recipient courts**
 - ✓ 400 copies of the brochure *Your Europe, your rights*
 - ✓ 750 copies of the brochure *Did you know? 10 EU rights at a glance*
 - ✓ 180 copies of the *Practice Guide for the Application of the European Small Claims Procedure*
 - ✓ 1200 copies of the *Practical Guide to Using videoconferencing to obtain evidence in civil and commercial matters under Council Regulation (EC) No 1206/2001 of 28 May 2001*
 - ✓ 100 copies of the *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.*
 - ✓ 300 copies of the *Practice Guide for the Application of the Regulation on the European Enforcement Order*
 - ✓ A copy of the *Compendium of European Union Legislation on Judicial Cooperation in Civil and Commercial Matters* was sent to all District Courts
- Additionally, the links where these publications are available for downloading as well as the e-justice portal link were provided in the cover letters addressed to the national Judges.

2. Personnel and resources

The Protocol on the functioning of the Portuguese Contact Point of EJN CC

On 24 January 2003 the Ministry of Justice of Portugal and the Portuguese High Council of Judiciary concluded a Protocol according to which: the Contact Point of EJN CC shall be designated by and have its office in the premises of, the High Council of Judiciary; the Contact Point shall have a legal advisory service and an administrative service with sufficient staff and means to carry out his duties; to that end, the Ministry of Justice shall transfer the necessary funds. The Portuguese version of this Protocol is available on the Contact Point website <http://redecivil.mj.pt/protocolo/>.

Staff

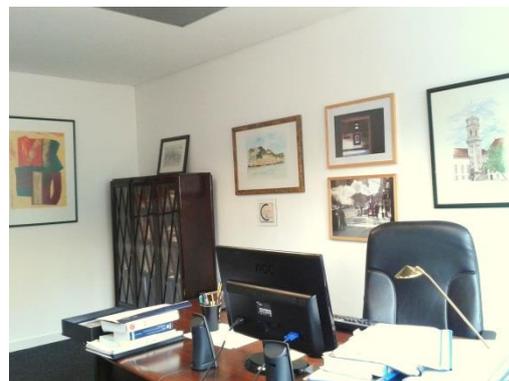
The staff working at the Contact Point's office (the office) consists of three persons: the Contact Point (Judge Paula Pott), a legal officer (César Melo) and an administrative assistant (Marisa Martins).

Premises

The office is housed in the building of the Portuguese High Council of Judiciary, at *Rua Mouzinho da Silveira n° 10*, in Lisbon. The High Council of Judiciary has made available two rooms exclusively for the Contact Point's personnel: the Contact Point's cabinet and a reception desk shared by the legal officer and the administrative assistant.



The Contact Point's personnel use all the facilities in the building whenever it needs (meeting rooms, library, print room and coffee room).



Improvements to make regarding personnel and resources

Regarding personnel and resources some issues could be improved to implement the provision of Article 2(2-a) of the EJN CC Decision that reads: *“Member States shall ensure that the contact points have sufficient and appropriate facilities in terms of staff, resources and modern means of communication to adequately fulfill their tasks as contact points.”*

Firstly, the freezing of career promotion of both the legal officer and administrative assistant of the Contact Point risks leaving the service devoid of adequate human resources to the accomplishment of the Contact Point’s mission for lack of attractiveness. Such a result would be contrary to the above mentioned provision, given the experience, commitment and linguistic knowledge needed.

Secondly, the lack of modern means of payment made it difficult to buy a new template for the Contact Point’s website. The cost was only 47, 63 € but it had to be paid by credit card no other means of payment being accepted. As the financial unit does not have an institutional credit card, one of the members of the Contact Point’s staff had to advance the payment with its own private credit card otherwise the Contact Point would be deprived of website.

A similar situation arose when the Contact Point was invited by the Portuguese Chamber of Solicitors (a national member of the network) to the award of the Cristal Scales of Justice hosted in Portugal. Difficulties were caused by the inadequacy of the minimum standards of the accommodation funded. In most cases a

three star’s hotel is not cheaper than a four star’s one and risks to have unacceptable health conditions or to be located in an inconvenient or unsafe place which may be discouraging. Fortunately, these difficulties were overcome with the help of the national member organizing the event and the collaboration of the High Council of Judiciary, allowing the Contact Point to be present in the celebration of the European Day of Justice as it was generally intended by EJN CC.

A better awareness of the resources and means needed to fulfill the tasks of the Contact Point would be fair, not least because the values at issue are small and proportionate to the results aimed. Increasing the certainty of the budget allocation aimed at the Contact Point would also be more efficient. The support of both the High Council of Judiciary and Ministry of Justice is essential, thus allowing the Contact Point to develop even further the tasks set forth in the EJN CC Decision.

Finally, a moderate increase in available funds would be necessary to improve the visibility of the network among national Judges. In this respect the Contact Point is in the process of identifying the practical difficulties that national Judges encounter when enforcing certain key EU legal instruments. The next step would be to organize thematic meetings in the Courts to overcome these difficulties and discuss with national Judges the relevant ECJ case law. The travel expenses and occasional accommodation costs that such an initiative would imply should be a moderate amount. The goal would be to make national Judges see EJN CC as their network and use its tools more frequently.

3. Operation of the Network

- ✓ In 2014 the Portuguese Contact Point dealt with **176** requests for judicial cooperation and information. This was slightly less than the 226 requests dealt with in 2013. The temporary decrease in the number of requests was due to the implementing reform on the Portuguese judiciary that affected national Courts functioning in the last months of 2014, thus reducing the number of domestic requests.
- ✓ However, in January 2015 the number of requests increased: in one month the Portuguese Contact Point received 50 requests, approximately a quarter of the annual number of requests. This recovery was fostered by an increase in the visibility of the national Contact Point through the monthly Newsletter addressed to national Judges since November 2014.
- ✓ In the table below the requests are divided in ten subjects: (i) Taking of evidence; (ii) Recognition and execution; (iii) Service of documents; (iv) Divorce; (v) Parental Responsibility; (vi) Maintenance; (vii) Order for Payment; (viii) Insolvency; (ix) Enforcement Order; (x) Information on foreign law. Within each subject requests are divided by cooperation requests and information requests.
- ✓ The highest number registered concerns information requests from Portuguese Courts regarding the **taking of evidence abroad**, followed by cooperation requests from other MS's regarding the taking of evidence in Portugal and by cooperation requests from Portugal, regarding the taking of evidence in other MS's.
- ✓ **Service of documents** and **recognition and enforcement**, were the second in the ranking, generating several information requests and only one cooperation request (for service of documents).
- ✓ There were some cooperation requests from other MS's regarding **parental responsibility**.
- ✓ With regard to other EU legal instruments the requests were fewer or inexistent.
- ✓ The flow of requests registered operates mostly between **Portugal** and the following MS's: **Luxemburg, France, Spain, UK and Germany**.
- ✓ **Important practical difficulties** still arise from the incompatibility of the video conferencing equipment existent in the different MS's.
- ✓ A **general duty of care** leading court officials to ask for complementary information directly to the Court of origin whenever some detail is missing instead of returning the request would save time and probably public money in some cases.

4. Requests for information or for judicial cooperation

 Contact Point of PORTUGAL European Judicial Network in civil and commercial matters		REQUESTS RECEIVED - 2014																											
		MEMBER STATES																											
		BE	BL	CK	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	RO	SI	SK	FI	SE	UK	EU
1. TAKING OF EVIDENCE																													
1.1 by the requested court (art. 4)																													
1.1.1 Cooperation Requests																													
from Portuguese authorities to MS					1			1	1	3	2						2											1	11
from MS authorities					1																							1	2
1.1.2 Information Requests																													
from Portuguese authorities to MS					1					1	1												1					4	8
from MS authorities																													0
1.2 Direct taking of evidence (art. 17)																													
1.2.1 Cooperation Requests																													
from Portuguese authorities to MS					1						5		5																11
from MS authorities											1						14												15
1.2.2 Information Requests																													
from Portuguese authorities to MS		3				11		3		12	12		9			1		2			1					1	12	66	
from MS authorities										1																			1
2. RECOGNITION AND EXECUTION																													
2.1 Cooperation Requests																													
from Portuguese authorities to MS																													0
from MS authorities																													0
2.2 Information Requests																													
from Portuguese authorities to MS					1					6	2												1				1	1	12
from MS authorities																													0
3. SERVICE OF DOCUMENTS																													
3.1 Cooperation Requests																													
from Portuguese authorities to MS																												1	1
from MS authorities																													0
3.2 Information Requests																													
from Portuguese authorities to MS		1				1		2		6	3																	8	21
from MS authorities																													0
4. DIVORCE																													
4.1 Cooperation Requests																													
from Portuguese authorities to MS																												1	1
from MS authorities																													0
4.2 Information Requests																													
from Portuguese authorities to MS											1																		1
from MS authorities																													0
5. PARENTAL RESPONSABILITY																													
5.1 Cooperation Requests																													
from Portuguese authorities to MS																													0
from MS authorities																												4	4
5.2 Information Requests																													
from Portuguese authorities to MS											1												1	1				1	4
from MS authorities																													0

	MEMBER STATES																														
	BE	BL	CK	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	RO	SI	SK	FI	SE	UK	EU			
6. MAINTENANCE																															
6.1 Cooperation Requests																															
from Portuguese authorities to MS																														1	
from MS authorities																														0	
6.2 Information Requests																															
from Portuguese authorities to MS																														1	
from MS authorities																														0	
7. ORDER FOR PAYMENT																															
7.1 Cooperation Requests																															
from Portuguese authorities to MS																														0	
from MS authorities																														0	
7.2 Information Requests																															
from Portuguese authorities to MS																														0	
from MS authorities																														1	
from Portuguese authorities to PT																														6	
8. INSOLVENCY																															
8.1 Cooperation Requests																															
from Portuguese authorities to MS																														0	
from MS authorities																														0	
8.2 Information Requests																															
from Portuguese authorities to MS																														0	
from MS authorities																														1	1
9. ENFORCEMENT ORDER																															
9.1 Cooperation Requests																															
from Portuguese authorities to MS																														0	
from MS authorities																														0	
9.2 Information Requests																															
from Portuguese authorities to MS																														0	
from MS authorities																														0	
from Portuguese authorities to PT																														6	
10. INFORMATION ON FOREIGN LAW																															
10.1 Cooperation Requests																															
from Portuguese authorities to MS																														0	
from MS authorities																														0	
10.2 Information Requests																															
from Portuguese authorities to MS																														2	
from MS authorities																														0	
TOTAL	4	1	0	0	17	0	6	1	29	31	0	14	0	0	0	17	0	0	2	0	1	4	0	0	0	0	3	32	2	176	

5. Concrete Success Stories

There are two examples of concrete success stories that are worth to mention.

They regard **Brussels IIa Regulation** – Regulation (EC) N° 2201/2003 of 27/11/2003 – namely three of its Articles that raise higher difficulties in practice:

- Article 11 (return of the child)
- Article 15 (transfer of proceedings)
- Article 56 (placement of the child in another MS).



Mimi and her cat, 1890, Paul Gauguin - Private Collection (WilkiArt – work in the public domain)

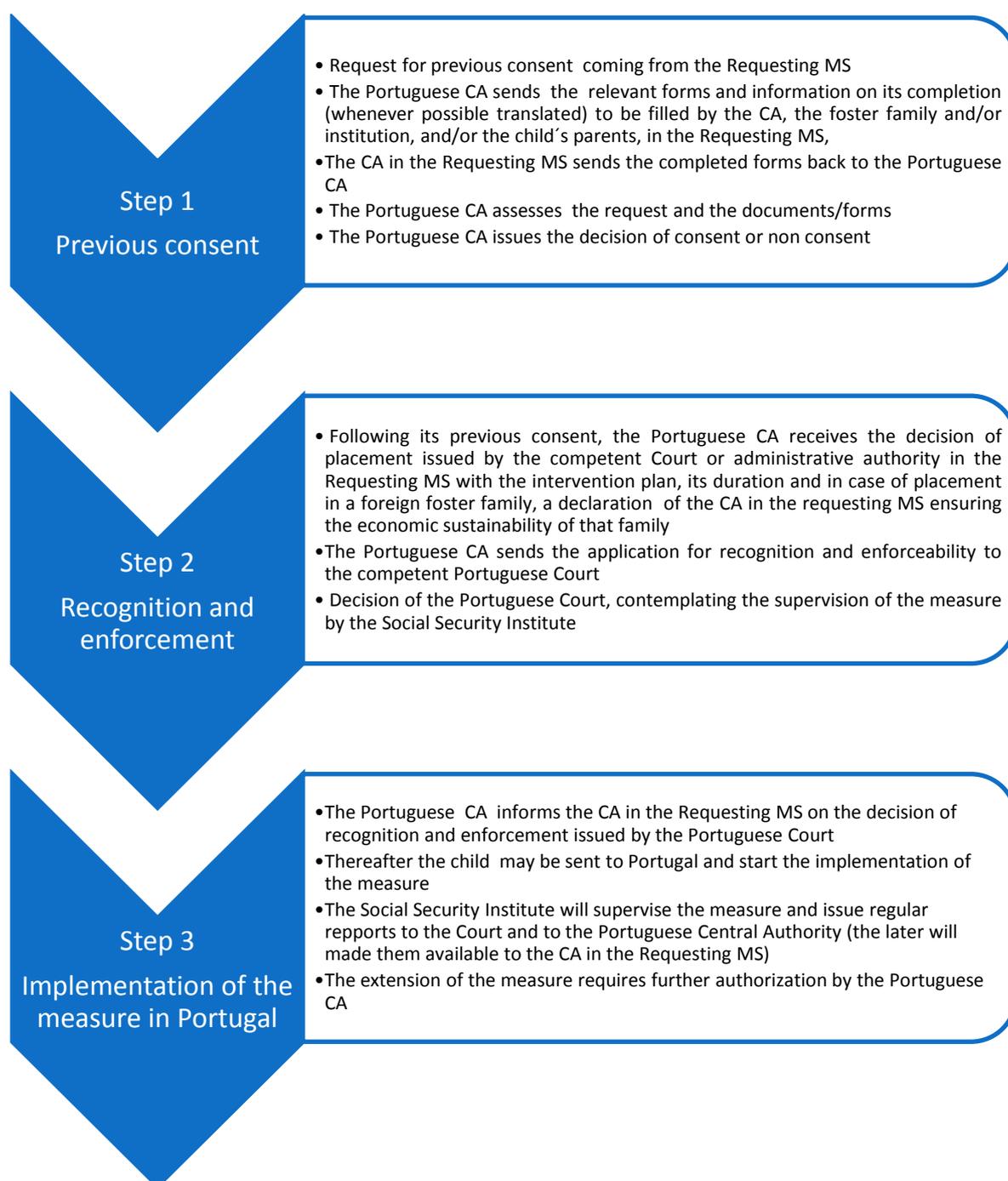
Example I: Return of the child – Cooperation between Courts – Articles 11(3) and 15(6) of Brussels IIa

Regulation The Judge of MS X contemplates the possibility of transfer of proceedings regarding parental responsibility of five children, to the Portuguese Courts. He requested the Portuguese CP cooperation to provide him with the national legal framework. The mother and the children are in MS X. The children are subject to protective provisional measures in MS X where they were placed in an institution. They have the same mother but different fathers. The fathers reside in Portugal. The Portuguese CP informs the Judge of MS X that there is already a decision issued by a Portuguese Court, on the custody of one of the children, placing that child in a foster family in Portugal. The child had been removed to MS X less than one year before. As a consequence, the return of that child was immediately ordered by the Judge of MS X. As for the other four children, the proceedings followed in MS X. The Portuguese CP provided the Judge of MS X with the necessary information on the national legal framework concerning material and territorial competency as well as on the possibility for Portuguese Courts to join the proceedings regarding these children in case of transfer.

EXAMPLE II: PLACEMENT OF THE CHILD IN ANOTHER MEMBER STATE

Flowchart regarding procedures for consultation and consent to the placement of a child under Article 56^o of Brussels IIa Regulation

This flowchart corresponds essentially to the information gathered by the Portuguese CA – which is competent to give the consent – and the Social Security Institute – which is competent to supervise the implementation of protective measures regarding parental responsibility. The meetings between these two authorities were organized by the Portuguese Contact Point. The flowchart and all the forms mentioned thereof were elaborated by the two authorities according to the ECJ ruling in case C-92/12 PPU. Additionally the national and international requirements for suitability were adapted to accommodate the different measures contemplated by other legal systems within the Union. Hopefully the result will be a smoother cooperation between CA's to improve the application of this Regulation while enhancing the child's best interest.



6. Implementing the *acquis communautaire*

THE NEWSLETTER of the Portuguese Contact Point

The first number of the Newsletter was launched in November 2014

- ✓ It is a free monthly publication
- ✓ Sent by *e-mail* only to national Judges
- ✓ One page to keep Judges on the loop of both the EJC agenda and ECJ case law without making them lose much time given their own busy diary
- ✓ The aim is to sum up the operational elements of the ECJ rulings that may be useful for the daily work of national Judges
- ✓ Thus contributing to a consistent approach of national and international Courts which are part of a broad multilevel decision making process

Bellow, the Newsletter Nº 3, in Portuguese, mentions on the left column, the 50th anniversary of *Van Gend & Loos* ruling (1963-2013). On the other columns, it announces the new website of the Portuguese Contact Point and the start date of application of Regulation Brussels I *Recast*. The main article in the center summarizes the operational elements of the ECJ ruling in case C-295/13 on Insolvency Regulation.

NEWSLETTER DO PONTO DE CONTACTO de Portugal da Rede Judiciária Europeia em Matéria Civil e Comercial - RJECC - Nº 3 - Janeiro 2015

Neste número ■ **Editorial** ■ **A nova página internet do Ponto de Contacto** ■ **Competência internacional para as acções de responsabilidade civil contra o administrador de uma sociedade residente num Estado diferente daquele em que foi instaurada a insolvência — Regulamento nº 1346/2000** ■ **Início da aplicação do Regulamento Bruxelas I recast**

EDITORIAL - No início do novo ano relembro um acontecimento prestigioso para a jurisprudência — em 2013 o TJUE comemorou o 50º aniversário do Acórdão *Van Gend & Loos* (1963). O acórdão julgou que o tratado CEE não foi uma mera convenção internacional entre Estados mas criou uma nova ordem jurídica internacional, independente da legislação dos Estados-Membros. Assim, da mesma forma que o tratado criou obrigações para os Estados, para as instituições comunitárias, e para os particulares, também criou direitos na esfera jurídica destes últimos. De tal forma que, os particulares podem invocar perante o juiz nacional os direitos que lhes são conferidos pelo tratado e as obrigações que dele resultam para os Estados-Membros. Esta jurisprudência abriu o caminho para a cidadania europeia e reafirmou a aplicação directa do direito originário da UE pelo juiz nacional. Mas foi sobretudo significativa pela circunstância do TJUE ter chamado a si o poder de determinar os efeitos do tratado na ordem jurídica nacional dos Estados-Membros. Com esta nota sobre a jurisprudência europeia desejo a todos um **BOM ANO de 2015** esperando que o mesmo seja produtivo para a jurisprudência nacional.

Paula Pott
Juiz Ponto de Contacto da RJECC

Jurisprudence - Edvard Munch - National Gallery - Oslo



A NOVA PÁGINA INTERNET DO PONTO DE CONTACTO - No decurso do mês de Janeiro de 2015 a nova página internet do Ponto de Contacto deverá estar acessível ao público no site www.redecivil.mj.pt. Nesta página podem ser consultadas as fichas informativas destinadas ao público, por temas (sucessões, jurisdição, alimentos etc.), a jurisprudência do Tribunal de Justiça da União Europeia agrupada por instrumento legal a que diz respeito, e o conjunto das Convenções, Regulamentos, Directivas e Decisões aplicáveis à cooperação judiciária europeia em matéria civil e comercial.

COMPETÊNCIA INTERNACIONAL PARA AS ACÇÕES DE RESPONSABILIDADE CIVIL CONTRA O ADMINISTRADOR DE UMA SOCIEDADE RESIDENTE NUM ESTADO DIFERENTE DAQUELE EM QUE FOI INSTAURADA A INSOLVÊNCIA — Regulamento nº 1346/2000

Acórdão do Tribunal de Justiça da União Europeia de 4 de Dezembro de 2014 — C—295/13 (curia.europa.eu)
Esclarece que sempre que uma acção cai no âmbito do artigo 3 do Regulamento nº 1346/2000 não cai no âmbito do Regulamento Bruxelas I nem no âmbito da Convenção de Lugano II

■ Os Tribunais do Estado-Membro onde foi aberto o processo de insolvência de uma sociedade — competentes para esse processo, nos termos do Artigo 3 (1) do Regulamento nº 1346/2000 (Regulamento (CE) nº 1346/2000 do Conselho, de 29/5/2000, relativo aos processos de insolvência) — são também competentes para as acções de responsabilidade intentadas pelo síndico contra o administrador da sociedade com base em actos de administração ou disposição de bens da massa insolvente praticados por este último após a declaração de insolvência.

■ Tais acções de responsabilidade, propostas pelo síndico contra o administrador da sociedade, têm uma relação de conexão com a acção de insolvência e são intentadas no contexto de um processo de insolvência instaurado. Por isso, enquadram-se na previsão do artigo 3 (1) do Regulamento nº 1346/2000. Isto é assim ainda que que essas acções de responsabilidade relevem da legislação civil e comercial e não do regime derogatório aplicável à insolvência.

■ A competência internacional do Estado-Membro onde foi instaurado o processo de insolvência para a acção conexa de

responsabilidade civil intentada pelo síndico contra o administrador da sociedade, mantém-se ainda que o administrador da sociedade tenha domicílio, não noutro Estado-Membro da União Europeia mas num terceiro Estado que seja parte da Convenção de Lugano II (Convenção sobre a competência judiciária, reconhecimento e execução de julgamentos em matéria civil e comercial de 30/10/2007, aprovada em nome da Comunidade Europeia pela Decisão do Conselho 2009/430/CE de 27/11/2008).

■ O artigo 1 (2) (b) da Convenção de Lugano II está redigido em termos idênticos aos do artigo 1 (2) (b) do Regulamento Bruxelas I (Regulamento nº 44/2001 do Conselho de 22/12/2000, relativo à competência judiciária, ao reconhecimento e à execução de decisões em matéria civil e comercial). De acordo com estes preceitos, quer a Convenção de Lugano II, quer o Regulamento Bruxelas I, não se aplicam aos processos de insolvência. A exclusão daí resultante aliada à *ratio legis* do Regulamento nº 1346/2000 devem ser interpretadas no sentido de evitar a sobreposição entre as normas daqueles dois instrumentos legais e as do Regulamento nº 1346/2000.

■ Em consequência, sempre que uma acção cai no âmbito do artigo 3 (1) do Regulamento nº 1346/2000 não cai no âmbito do Regulamento Bruxelas I nem no âmbito da Convenção de Lugano II.

■ Assim, o artigo 3 (1) do Regulamento nº 1346/2000 tem de ser interpretado no sentido de que os Tribunais do Estado-Membro em cujo território foi instaurado o processo de insolvência têm competência internacional para as acções que derivem directamente do processo de insolvência e que tenham estreita conexão com ele ainda que a residência do réu não se situe nesse Estado-Membro.

■ Esta jurisprudência aplica-se igualmente ao Regulamento Bruxelas I *recast*, mencionado a seguir.

INÍCIO DA APLICAÇÃO DO REGULAMENTO BRUXELAS I RECAST - EM 10 DE JANEIRO DE 2015 TEM INÍCIO A APLICAÇÃO DO Regulamento Bruxelas I *recast* — Regulamento (UE) nº 1215/2012 do Parlamento Europeu e do Conselho, de 12/12/2012, relativo à competência judiciária, ao reconhecimento e à execução de decisões em matéria civil e comercial, que reformula o Regulamento nº 44/2001.



7. Dissemination of information on civil justice to the general public

The new website of the Portuguese Contact Point <http://redecivil.mj.pt/> has been remade and refreshed since October 2014 to be online on January 2015. It was created from scratch on a new template. It is hosted in a different server offering greater security. Easy explanations, namely to clarify the Contact Point's different tasks towards the public, the Courts and other authorities, pictures of meetings, events, artwork or landscape, turn the website friendly and attractive. The division into subpages aims to make it easy to consult by the general public.



The website has currently the subpages that ensued:

- ✓ A home page.
- ✓ A page dedicated to the Contact Point team, the National Members of the network, their main tasks and the links to their respective websites, the contact details of the information desk. The mission of the Contact Point and its tasks are summarized. The consolidated version of the founding Decision on EJC CC as well as the Portuguese Protocol on the functioning of the Contact Point, are inserted there.
- ✓ A page including all relevant EU legislation in civil and commercial matters and the state of play of draft legislation.
- ✓ A page containing the ECJ case law, the rulings being grouped according to the EU legal instruments they interpret and/or enforce, to facilitate the research.
- ✓ A page including all relevant international conventions in civil and commercial matters as well as links to the Hague Conference on Private International Law, to the United Nations Organization and to the Council of Europe.
- ✓ A factsheets' page where all the MS's answers (available) may be consulted.
- ✓ A page on news, events, meetings and newsletters.



Additionally, the website has links to the e-justice portal, to the European Judicial Atlas and to the websites of the EU Presidency, the Portuguese High Council of Judiciary, the Portuguese Government and the EU Publications. It is written in Portuguese, the target public being national citizens, business, students, national members of the network, Judges, Prosecutors, Court staff, lawyers and other practitioners.

[Início](#)
[Apresentação](#)
[Legislação](#)
[Jurisprudência](#)
[Convencções](#)
[Fichas](#)
[Notícias](#)

Publicação em destaque

COOPERAÇÃO JUDICIÁRIA EM MATÉRIA CIVIL NA UNIÃO EUROPEIA

Guia para os profissionais da justiça

O direito internacional privado europeu possui uma relevância prática para os profissionais da justiça – juizes, advogados, notários e outros profissionais do Direito – que têm de tomar decisões relativas a matérias de direito civil ou comercial ou de prestar aconselhamento ou representar clientes nestes domínios.

Os princípios de livre circulação de mercadorias, serviços, capitais e pessoas promovem a mobilidade dos cidadãos europeus e o desenvolvimento de actividades comerciais em toda a União Europeia. Por esse motivo, os profissionais de justiça deparam-se cada vez mais, com situações que têm implicações transfronteiras e com problemas e questões jurídicas, reguladas pelo direito da EU, e não se podem dar ao luxo de não estar a par das mais recentes desenvolvimentos nesta área cada vez mais complexa e significativa da actividade da União Europeia.

[CONSULTAR PUBLICAÇÕES](#)

Newsletter – Fevereiro de 2015

[CONSULTAR NEWSLETTERS](#)



In a near future

- The annual reports of the Contact Point will also be available in the website
- An intranet only for members of the national network will be launched, allowing for restricted access to certain documents (eg. working documents, the detailed agenda of EJM CC meetings or of National Members’ meetings, their respective conclusions)

Twitter and Facebook

The Portuguese Contact Point is taking the first steps on **Twitter** and **Facebook** where it already announces some events, meetings and EU publications aimed at general public.

<https://twitter.com/redecivil>

<https://www.facebook.com/pages/Ponto-de-Contacto-de-Portugal>

8. Contacts established with other networks acting in related fields

The Portuguese Contact Point for EJN CC accumulates functions, at State level, as Contact Point on civil and commercial matters of two other networks: IberRede – the Iberoamerican judicial network; and CPLP network – the judicial network of Portuguese-speaking countries.

Terreiro do Paço
Ribeira das Naus
Lisboa



IberRede has twenty three Member States, two from the EU (Portugal and Spain) and the remaining from Latin America. IberRede has its secretariat in Madrid, Spain. It operates in two main working groups: the civil group and the criminal group. Some countries of IberRede are already parties in international conventions commonly applicable in Europe, namely in the EU, like the Hague Convention of 1980 on the Civil Aspects of International Child Abduction, the Hague Convention of 1996 in Respect of Parental Responsibility and Measures for the Protection of Children. Recently, an increasing number of Latin American MS's are contemplating to join other Hague Conventions, namely the Hague Convention of 2007 on Maintenance. In the last

meeting of Contact Points and Central Authorities of IberRede in Panama City the civil group focused on the practical difficulties raised by the enforcement of the Hague Convention of 1980. This is a subject of common interest to EJN CC and IberRede.

The CPLP network has eight Member States. This network is divided in a civil unit and a criminal unit. Among its Member States, one is from the EU (Portugal), another from Latin America (Brazil) and the remaining from Africa. The later contemplate to join the most relevant Hague Conventions in civil and commercial matters. The first meeting of Contact Points was held in 2014, in the city of Luanda, Angola.

9. Contacts and exchanges with legal practitioners at Member State level

The Contact Point attended several events and conferences – mentioned below – organized by different groups of professionals thus nurturing excellent working relations with them.

- ✓ **8 October 2014** – Swearing of the judicial auditors (future Judges and Public Prosecutors) followed by a master class in the Portuguese Center of Judicial Studies
- ✓ **16 and 17 October 2014** – International Conference organized by the Portuguese Chamber of Solicitors to Celebrate de European Day of Justice



Celebrating the EUROPEAN DAY OF JUSTICE in PORTUGAL – The Council of Europe Cristal Scales of Justice Award was hosted by the Portuguese Chamber of Solicitors (a national member of the network), in Aveiro, Portugal, on 16 October 2014. Among the laureates were: Dutch Judges from the Appeal Court for having launched a newsletter to disseminate the *acquis communautaire*; German Judges from a Family and Juvenile Court for having implemented family mediation in the Court; and the Spanish Bar Association for having developed a case management system for legal aid requests. The Cristal Scales of Justice were awarded to the Spanish Bar Association by a representative of the Council of Europe.

- ✓ **27 October 2014** – International Conference organized by the Directorate General for Justice Policy – a national member of the network – to celebrate the 34th anniversary of the Hague Convention of 1980 on the Civil Aspects of International Child Abduction, and the European Day of Justice
- ✓ **18 November 2014** – International Conference on an Independent Electoral Administration, organized by the Portuguese National Commission for Elections to celebrate its 40th anniversary
- ✓ **9 December 2014** – Meeting with the Secretary of State for Justice on the subject of strengthening the coordination of the national network

Rua Augusta
Lisboa



10. Future perspectives

In 2015 the Portuguese Contact Point will **share good practices with cross border family mediators**. In this context, *Missing Children Europe* invited the Portuguese Contact Point as a speaker in a training course on cross border family mediation that will be held in Sesimbra, Portugal, in the last week of June 2015. The target public will be family mediators from all over the world.

Additionally, the Contact Point plans to meet **with ECC Net – Portugal and with the Portuguese Directorate General for Consumers**, namely on the subject of collective redress.



Arco da Rua Augusta - Lisboa

In 2015 the **coordination of national members** continues to be a priority with a view to ensuring complementarity of competencies, enabling the best operational solutions to enforce the EU legal instruments.

Ultimately, the Contact Point with the support of EJM CC, hopes to contribute **to improve the visibility of the network** at national level, particularly amongst Judges and court staff. In this context, providing the Contact Point with a greater number of banners, posters, and

most of all, paper versions of the EU relevant publications, in Portuguese, would be of great help given the positive reception of the publications that have already been distributed to celebrate the European Day of Justice. It would allow the Contact Point to distribute them not only among national Courts, including the appeal Courts and the Supreme Court of Justice, but also among the general public, Universities and Secondary Schools.

Portuguese Contact Point of EJM CC - 2015

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Thank you to the Contact Point staff and to the financial unit of the Portuguese High Council of Judiciary for their contribution.

Thank you to the Portuguese Chamber of Solicitors, to the Portuguese Bar Association, to the Directorate General for Justice Policy and to Judge Florbela Lança, for the photos they kindly provided for this report.

Photos of Lisbon: Sebastião Sousa.