



**QUESTIONNAIRE**  
SEMINARE – 27 SEPTEMBER 2017

**ELECTRONIC ACCESS TO THE COURTS**

**1. The implementation of your electronic document system**

- What is it hoped to achieve through the digitisation of proceedings?
- Must court documents be transmitted electronically?
- If that is the case:
  - which players are involved?
  - are certain aspects reserved for these players?
  - what are the consequences if an application is not sent electronically?
- Can litigants consult their files and track their progress online?
- Are the application and the law firms' internal software interoperable? Is it envisaged to make them interoperable?
- What feedback have you had about the use of these methods by the litigants, practitioners and authorities?

**REASONS AND CONSIDERATIONS INTO THE DEBATE:**

In Spain the development of telematic communications has been implemented through the “lexnet IT-system” established by Royal Decree 84/2007 of 26 January on the implementation of a system in the Administration of Justice for the Telematic communication of information under the name of “lexnet” pursuing the presentation of briefs and documents, as well as transfer of copies and the carrying out of procedural communication acts.

This system not only respects and substantiates the principle of equality of opportunity and non-discrimination in access to effective judicial protection, but also strengthens it, since it facilitates the access to courts and effective justice for every actionable individual.

The lexnet IT-system is a secure transmission medium to provide information that, by means of the use of a recognized electronic signature, in the terms established by Law 59/2003, also enjoys the characteristics of authentication, integrity and non-repudiation in accordance to what is established in the art. 230 of the Organic Law 6/1985 of July 1st of the Judiciary.

The purpose of the lexnet IT- system is to open the possibility to present both types of paperwork, processing documents and initiators, as well as all documentation that may accompany them, transfer copies between the parties and the practice of procedural communication.

Consideration should also be given to the provisions of Law 18/2011 of June 5 regulating the use of new technologies in the Administration of Justice and, especially, the provisions of art. 6.6 which establishes that it is the duty of legal professionals to use the

electronic means, applications or systems established by the competent authorities in matters of justice.

The Supreme Court anticipated the forecast codified in Law 42/15 of October 5, on the Reform of Law of Civil Procedure, meant to implement the project of "zero role" in the Administration of Justice, through a Computer program project for telematic presentation of paperwork.

During the last quarter of 2015, we received civil, criminal and social paperwork electronically. As of January 1, 2016, also administrative proceedings in the administrative and military contentious orders have been sent thus originating the sending of letters initiating the proceedings.

At the beginning of 2016, we implemented the "zero-paper" project in the Supreme Court, leading to outstanding organizational and management efforts in the General Registry of the Technical Office of the Supreme Court.

The Supreme Court and its General Registry have faced the challenges of the new integral system for telematic paperwork reception, during all this period, there has been not any delay.

At present, all initiatory and procedural writings are presented in all the Chambers of the Supreme Court.

## **2. Statistics**

- What percentage of applications are filed electronically per annum?
- What percentage of users (law firms, authorities and litigants) are now using this method?
- Have you estimated the total cost of setting up an electronic working system in your court or your type of court?

### CONSIDERATIONS INTO THE DEBATE:

In Spain the use of lexnet, which means, the system providing telematic communication with the jurisdictional organs is compulsive for barristers and attorneys (the latter are the procedural representatives of the disputing parties). Consequently, 100% of these professionals are obliged to use the electronic media to communicate with courts. Only citizens can use paper support, with due regard to the fact that these documents are digitized by the court.

## **3. Observing the adversarial principle**

- How does your system ensure that the parties' statements are exchanged?
- How are the parties and the court registry notified that a document has been filed or consulted by the opposing party?
- Is the authenticity of electronic documents ever challenged before the courts?
- Can third parties also intervene in proceedings electronically?

### CONSIDERATIONS INTO THE DEBATE:

The Spanish civil procedural system determines, as a general rule, that each disputing party must transfer to the other litigant parties copies of all pertinent paperwork submitted in the judicial procedure.

Each party at the time of submitting the writings or documents before the judicial body must prove that, previously, copies of such paperwork have been delivered to the other parties and if such delivery cannot be proved, the judge rejects all paperwork containing documents provided for the case file. However, there are some exceptions to this system, for example when parties intervene directly, that is, without a barrister or a solicitor (procedural representative) in small claims litigation.

The lexnet-IT system is adapted to these obligations to the extent that it guarantees the principle of contradiction of the procedure.

Thus, the party submitting an initiating writing with its corresponding documents through the lexnet platform, is, at the same time, delivering electronically a copy of its writings and documents to the other litigants.

#### **4. The acceleration of proceedings and urgent proceedings**

- Have you found that cases have been processed more quickly due to the introduction of this technology?
- What have been the consequences, on the work of the courts, for the staff of the court registry, for the judges and other members of the court, and for the organisation of the court?
- When a procedural time limit is subject to a limitation period, when does it begin to run (when a document is put online or when it is actually seen by the staff of the court registry or by the judge or other member of the court)?

#### **KEY REMARKS:**

Certainly it can not therefore be said that the deadline for resolving (adjudicating) the procedure has been reduced. The procedure has been streamlined instead. Notwithstanding what is stated in Question 8, the electronic processing of the procedure has generated a favorable atmosphere to progressively reduce the use of paper.

#### **5. The technical aspects of your electronic document system**

- Have you experienced any major technical malfunctions (e.g. non-availability of the application for several days)? How did you tackle the problem?
- What consequences can malfunctions have on the proper running of proceedings?
- Have courts had to deal with disputes relating to the use of the electronic document system? If so, of what type?
- If it is impossible for a party to file a statement or other documents for practical reasons, what does the court do with respect to the time limits within which documents must be submitted?

#### **CONSIDERATIONS ON THE REPORT:**

During the past year alone, there has been a major technical malfunction in the use of electronic judicial communications, as a result of a 24-hour structural failure of the system. This incident has never been repeated.

Disputes concerning the use of these electronic communication systems are not routinary. However, on some occasions, this kind of conduct could be observed in the precise moment a judicial decision has been notified to some of the litigants.

The operativeness of lexnet has an electronic mailbox. The system sends the issuer an electronic receipt that records the presentation of the document or notification of the resolution, informing those recipients of the proceedings data as well as the date and time of the effective communication.

When the recipient accesses his/her virtual mailbox thus unleashing the communication act and the deliverance of attached documents in the virtual mailbox, the system generates an electronic receipt addressed to the sender depicting the date and time of reception. In such cases, the notification must be considered generated in that precise moment in which the recipient has accessed his virtual mailbox.

If, finally, a practical impossibility of presenting documents via lexnet is verified, submittance on paper is exceptionally admissible.

## **6. Keeping information secure**

- How are the security, confidentiality, integrity and traceability of the exchanges ensured? How do you control access to the files and documents that pass through the system? Have you put in place degrees of authorisation or clearance?
- Are judges and other members of the court able to access the electronic files in their own homes? on a dedicated professional computer or on a personal computer? from any location?
- Are judges and other members of the court able to access all the electronic files dealt with by their court?

### CONSIDERATIONS IN THIS REGARD:

As it has already been demonstrated, the system guarantees security, especially integrity, authentication and impossibility of repudiation or rejection.

Once the electronic judicial file is installed, judges will be authorized to access the dossier through their professional applications that will be provided to them.

## **7. Notification of decisions to the parties**

- Are decisions notified through the court's electronic system? If so, when are the parties deemed to have taken cognisance of the decisions?
- Is it possible to bring an action for negligence if the court's electronic document service malfunctions?

### PRIME CONSIDERATIONS:

Please refer to the considerations already provided in questions 1 and 8, as response released then are valid now.

## **8. The influence of electronic document systems on the courts' operating methods**

- Does the use of an electronic document system cause the supreme administrative court or the ministry of justice to require users to comply with technical standards relating to the adoption of administrative measures?
- Has electronic working contributed to a change in the role of the administrative courts? Particularly collegial working?

## KEY CONSIDERATIONS:

As it has become already evident, previously, the lexnet IT-system has generated a favorable atmosphere for the electronic processing of the procedure.

In some chambers of the Supreme Court the so-called electronic judicial file (*expediente judicial electrónico*) f , has already been installed but not in the Contentious-administrative Chamber. Probably at the end of this year, this Chamber will have an electronic judicial file..

Nevertheless, an important reform on the judicial appeal-in-cassation procedure has led to a change of methodology in the daily work of the Chamber, through a greater use of electronic procedures.

The new appeal allows to appeal- in-cassation practically all determining sentences originating in the courts of first instance and administrative courts.

The Supreme Court decides at its discretion what remedies are admissible in a context that has certain similarities with the *certiorari*.

As a brief review, in the context of the new appeal-in-cassation, new working methodologies have been adopted for a predictable and coordinated response to an increased number of appeals, for example, magistrates deliberate the admission of the appeals by viewing the main documents that form the file through a large format screen. In this way all can be analyzed and interpreted simultaneously to the main documents obviously previously digitized. This working methodology strengthens collegiality in the decision on the admissibility of appeals-in-cassation.