

Project commissioned by the European Commission

FEASIBILITY STUDY ON THE CREATION OF A EUROPEAN RESEARCH NETWORK

Conference of 4th November, 2005
At T.M.C. Asser Instituut, The Hague

List of participants:

Prof. Mathias Audit (France),
Dr. Luis Barreto Xavier (Portugal),
Prof. John Burke (Latvia),
Ms. Sibylle Calabresi-Scholz (IPR Verlag Germany),
Mr. Daan de Snoo (CCBE, Netherlands),
Prof. Marc Fallon (Belgium),
Prof. Ales Gali (Slovenia),
Dr. Georgina Garriga Suau (Spain),
Prof. Rainer Hausmann (Germany),
Mr. Jan de Jongh (ASSER Instituut, Netherlands),
Dr. Vezna Lazic (ASSER Instituut, Netherlands),
Ms. Sarah Magniez (IPR Verlag Germany),
Prof. Fabrizio Marrella (Italy),
Prof. Valentinas Mikelenas (Lithuania),
Prof. Tuulikki Mikkola (Finland),
Ms. Maria Mousmouti (Greece and Cyprus),
Mr. Anton J. Nijssen (HEE Consulting group, Netherlands),
Prof. Franciscus A. Nelissen (ASSER Instituut, Netherlands),
Dr. Gábor Palásti (Hungary),
Prof. Monika Pauknerová (Czech Republic),
Prof. Heiki Pisuke (Estonia),
Prof. Willy Posch (Austria),
Prof. Ian Refalo (Malta),
Mr. Michiel de Rooij (ASSER Instituut, Netherlands),
Dr. Guus Schmidt (ASSER Instituut, Netherlands),
Prof. Andreas Schwartz (Austria),
JUDr. Blazena Sedláková (Slovakia),
Dr. Thomas Simons (IPR Verlag Germany, Project Manager),
Prof. Peter Stone (United Kingdom),
Prof. A.V.M Struycken (The Hague Conference, Netherlands),
Dr. Maciej Szpunar (Poland),
Mr. Noel Travers (Ireland),
Ms. Karen Vandekerckhove (European Commission),
Mr. Bart Jan van het Kaar (ASSER Instituut, Netherlands),
Prof. Tibor Varady (CEU, Hungary).

Agenda:

1. 10:00 – 11:00 Introduction Session
2. 10:00 – 10:10 Welcoming address, Director T.M.C. ASSER Instituut
3. 10:10 – 11:00 Introduction to the Conference programme and the Study (objective of the study, first results of the inventory and expert meetings)
4. 11:15 – 13:00 Scenarios for a European Research Network (Mission, vision, objectives and organisation)
 - The need for a European Research Network
 - Mission and objectives of the Network
 - The role of the participants in the Network
 - Possible formats of the Network
5. 14:30 – 15:45 Parallel Brainstorming Sessions
 - A. Modelling the network
 - Alternative Network models
 - European Academy
 - European Association
 - Standing Conference
 - European Research Network
 - Critical Success Factors and Pitfalls
 - Organizing the Network
 - B. Products and services of the network
 - Possible Turnkey projects
 - Information products
 - Publications
 - Exchange programme
 - Joint research programme and Summer School
6. 16:15 – 17:30 Plenary Session (Results of Brainstorming sessions, development of a model network concept)
7. 17:30 – 18:00 Conclusions (The correspondents' further contribution to the study)

Minutes of the Conference:

10:00 – 10:10 Introduction session

Mr. De Jongh from the ASSER Instituut welcomed the participants putting special emphasis on the presence of Ms. Vandekerckhove representing the European Commission, who attended the Conference in the role of an observer. Then, he gave the floor to Prof. Nelissen, director of the ASSER Instituut, who briefly presented the functions and activities of the institute.

10:10 – 11:00 Introductions to the Conference programme and the Study (objective of the study, first results of the inventory and expert meetings)

Dr. Simons, project manager, underlined the necessity to harmonise the means of information diffusion between the Member States. Then, he presented the scope of the study and the different tasks and what should possibly be the mission of the network to be created and its tasks.

The project manager furthermore presented the organisation of the project.

Ms Calabresi-Scholz from IPR Verlag gave an overview on the project results so far achieved:

- 1250 experts have been contacted and around 125 already answered (i.e. around 10%).
- 10 experts meetings have been organised until now.
- 191 networks are already identified and are presently being categorised in a database. The next step is to assess their relevance for the study. Therefore the project team asked the participants for their support by filling in a sheet where they should each make a list of a maximum of 10 networks that they consider of high reputation.
- Collection of the relevant bibliography in the field: Until today around 6000 documents have been collected
- Realisation of the project website (www.european-research-network.org)

11:15 – 13:00 Scenarios for a European Research Network Mission, Vision, objectives and organisation

The project manager exposed the background of the need for a European Research Network (existence of 25 different judicial systems but only one legislator; existence of a European legal public which implies that the circulation of information all over Europe needs to be improved).

Ms Vandekerckhove, representative of the European Commission, underlined the Commission's necessity to receive a clear state of the art of the current situation of the private interna-

tional law in Europe. From this aspect derives this prospective study which's objective is to gather all relevant information capable to proof the necessity of such a network.

It was agreed that while the mission and objectives of the network, the role of the participants in the network as well as the possible format of the network are still to be defined, some general orientations can already be established:

Mr De Jongh presented possible scenarios for a European Research Network and its possible mission, vision, objectives and organisation. Some already existing structures at transnational and cross-border level were referred to (GEDIP, Union Internationale du Notariat Latin, European Judicial Network, Asser College Europe, Acquis-group, Association Jean Monnet). The necessity to develop a mission for the future network was pointed out.

Afterwards, some participants exposed the results of the experts meetings already conducted in their Member States:

- For Hungary, 81 persons were invited and 13 participated. This low number of participants was explained with the fact that most of the legal experts in Hungary are not specialised in private international law. The second obstacle was the language since judges rarely speak English.
- For the Czech Republic, 23 persons were invited and 18 participated. Here the language problem was also underlined. It was mentioned that the network should lead to the exchange of practices and expertises (importance of the reciprocity principle between EU and Member States and between the participants themselves).

A discussion was launched concerning:

- the need for a network
- objectives and functions of such a network
- roles of the participants
- network structure

It was raised that the most important function shall be the informative one, then could come the consultative function.

This second function (consultative function) is needed although quite a lot of consultation on different thematic already exist but unfortunately there is no follow up, no merging of the different existing consensus. One single network might more easily communicate the most important points of view to the European Commission than many single persons would be able to do.

Concerning the informative function of the network, it was suggested to open the already existing national pools of information to the other Member States, which implies to insert in the database the existing literature. It was stated that the literature and information on legal practice have to be integrated to the information to be provided; since such material is the only way to raise awareness of the practitioners. The participants agreed with this proposal. Indeed, the network must use what already exists at national level. It was underlined that it will be difficult to involve the participation of the judges within the network, and therefore it needs to

be determined which added value this network will have for its participants. Language problems need to be taken into consideration.

Moreover, it was stated, that the network should improve the harmonisation of the already existing matters instead of wanting to create a supra-national structure or a European civil code for instance.

Judges should not belong to the network itself in general but be supported by it. Since a judge needs a precise analyse of the existing literature, the network should produce this material in form of meetings, conferences, website, etc.

Related to the format of the network, Ms. Vandekerckhove pointed out that there is no pre-defined format, only that this network shall have a real added-value. In fact, the European Commission considers that there is a lack of direct input coming from the legal practitioners; although a lot of publications exist, many problems of need for improving harmonisation remain to be solved. The aim is for these reasons to identify the problems in order to transmit them to the other Member States and at the end find a way to harmonise and to uniform the rules (e.g. of the difference of interpretation of the Annexe II of the Brussels I regulation between Portugal and Poland). The information must circulate in order to avoid the modification or the revision of the regulation in a wrong way.

Mr. De Snoo, representing the CCBE, pointed out that obtaining information is extremely important for the practitioners since most of them belong to small firms and cannot afford expensive means of specialised information. That is why the network should allow them to find associations, or relevant structures in the field of their specialisation.

14:30 – 15:45 Parallel Brainstorming Sessions

After the lunch break and the visit of the ASSER Instituut library, the participants were split in two working groups in order to discuss the following items:

Group A:

- A.** *Modelling the network lead by Mr. A. Nijssen*
 - Alternative Network models
 - a.** European Academy
 - b.** European Association
 - c.** Standing Conference
 - d.** European Research Network
 - Critical Success Factors and Pitfalls
 - Organising the Network

This working group was moderated by Anton Nijssen (H.E.E.).

It was first discussed if the network should be rather a network of persons (example: GEDIP) or a network of institutions / network of networks and if legal researchers and legal practitioners should equally participate to it. It was stated that these decisions depend on the aims the network shall adopt.

The participants of the working group discussed if such a European network could be created based on a Central Unit and 25 national bodies. It was suggested to organise the work of the national bodies by linking them to existing institutes. However, the problem was raised that for example University institutes might be organised in a too complex way as to participate and that the organisation at national level should rather be based on interested persons.

It was stated by the representative of the European Commission that a network of existing networks might be on the one hand a too restrictive approach, as those experts not linked to the specific networks might be excluded. At the same time this approach is also too extensive from another point of view: Only experts should participate to the network and the membership should be restricted to specialists. For example not all judges who need training shall be included in the network. Instead, the network should provide services to them and to the legal public in general.

It was therefore suggested to build a network of persons to which national institutes should be linked in order to organise the provision of services (national contact points). The “consumers” of the network should not be included in the organisation of the network.

Furthermore, Ms Vandekerckhove underlined that the network does need a stable structure in order to resolve administrative issues.

It was therefore suggested by some participants that while the organisation at national level could be organised individually for each Member State (based on universities, institutes and personal involvement) the structure of the Central Unit of the network should be defined first. The two main functions of the network (consultation and providing information) should be kept in mind. While the first one needs the involvement of true experts (and more than one expert per country) the second one needs a structure of service provision.

The following possible purposes of the network were individualised:

- exchange of ideas
- acknowledgement of experts
- establishment of personal contacts
- selectivity

Ms Vandekerckhove expressed the need from the part of the Commission to be informed on which expert in which Member State is experienced in which sector. This information needs to be constantly updated. The scope of requesting expert advice is to be informed on the existing different opinions. Instead, no formal uniform position of the network is desired. There is also no need for common opinions for each Member State or lobby groups, as the European Commission already receives this information from other sources. The need is instead to receive independent expert advice.

It was agreed that if for example expert input is needed with regard to a special subject field within judicial cooperation in civil matters, a small specialised expert group could be individualised within the experts active in the network. This group of experts should be balanced with regard to Member States and legal professions. Such groups of specialised experts could form the requested inner circle within a broader network.

The general conclusion of the participants to the working group was that no new European institute shall be built up. Such an institute would only be costly, exclusive and would have to cope with a big language problem.

However, the network will need an office of its own in order to organise the administrative part of the work. The network should provide consultation services and possess an information unit. These functions should be combined with the personal interests of the participants.

Group B:

B. *Products and services of the network, possible Turnkey projects lead by Mr. J.S. de Jongh*

- a.** Information products
- b.** Publications
- c.** Exchange programme
- d.** Joint research programme and Summer School

In this session an attempt was made to assess which activities would contribute most to a successful implementation of a network. To identify these activities the following procedure was followed:

Step1: Identification of the Critical Success Factors

Step 2: Identification of possible activities

Step 3: Identification of the activities contributing to one or more Critical Success Factors

The following Critical Success Factors were identified:

1. The commitment to and involvement of the EC with the network
2. Reciprocity: there should be a balance between gain and contribution for the participants in the network
3. The reputation of the network and the quality of expertise accumulated in the network
4. The existence of physical regional contact points and regional interest groups, inter alia, for organizing Round Table sessions with experts on specific issues
5. The involvement of legal practitioners in the network
6. The cooperation with Editorial Boards and publishers of the Scholarly Journals in the field
7. Appropriate timing in the creation of the network

Different possible functions of the network i.e. information function, consultation function, translation function, peer reviewing function were identified. Possible products related to these functions were classified as follows:

- Advice: providing legal advice to other members of the network (3)
- Best practices: identification of – (1)
- Bibliography of publications and doctoral theses (2)
- Case Books (2)
- Case law in the EU Member States, specifically on Brussels I and II (4)
- Commentaries on Brussels I en II (3)

- Current Awareness service of new developments (2)
- Discussion Forum (2)
- E-Journal (1)
- Exchange programmes (1)
- Frequently Asked Questions (FAQ) database (0)
- Annual International Conference (4)
- Links to interesting sources on the Internet (0)
- Moot Court Competitions (0)
- Prize to encourage excellence (0)
- Publications series (2)
- Research: ongoing research / stimulating research projects (2)
- International Scholarships for young professionals (2)
- Seminars/Round Tables (4)
- Summer School (1)
- Training programmes (1)
- Translations of documents into national languages (5)
- Website/Portal (8)
- Who is Who information: directory of experts (4)

The attendants to the session were subsequently asked to indicate the three activities which according to their opinion should have priority. The frequency in which the items have been mentioned are indicated in the list of activities above.

The general conclusion was that a website/portal is regarded almost as a *condition sine qua non* by most of the attendants this session. The network should give the highest priority to providing access to information on case law (Brussels I and II), commentaries and who is who information and providing translations of documents.

The organization of an international conference and of Round Tables at a regional level were identified as another group of activities deserving priority.

Afterwards, Dr. Simons shortly presented IPR Verlag's new project "European commentary". It was agreed that such a project could perfectly match within the framework of the network activities.

16:15 – 17:30 Plenary session (Results of Brainstorming sessions, development of a model network concept)

The achieved results of the different working groups A and B were presented.

With regard to the structure of the network, some participants underlined that sometimes the association format is not the best. For instance in Italy a network of experts co-funded by the European commission was created but after a while the co-funding was stopped and the network became an association. However, since then there are no real experts involved anymore but only universities. That is why this network should avoid such a situation to occur.

Prof. Struycken pointed out that a lot of associations specialised in international law already exist, but that they are mainly national, so why not create a kind of "federal" association out of these, which could work on special topics. Such a structure implies nevertheless the estab-

lishment of a good secretariat and as a consequence the question of financing shall be discussed. An idea could be that each participant pays a yearly fee. He recommended to study carefully the international law associations already existing in some Member States.

Ms. Vandekerckhove, regarding the bibliography, highlighted that the European Commission wants to have a precise list of all the literature currently existing in the Member States but not detailed analyse/evaluation of it. This might happen later upon request of the European Commission. That is why Ms. Vandekerckhove suggested two possible activities for the network.

- activities upon request of the European Commission and
- activities on self-initiative of the network.

The idea behind this study is to obtain different scenarios of networks (turnkey projects) and if a turnkey project is sufficiently justified, the European Commission might implement this proposal immediately, possibly even without seeking for a call for tender.

Munich, the 08 February 2006

The Project manager of the European Research Network

Dr. Thomas Simons,