

## **Austria**

**Date:** 21. October 2005  
**Location:** Leopold-Franzens-University Innsbruck  
**Organised by:** Prof. Andreas Schwartz (Austrian national correspondent) and IPR Verlag

**Number of experts invited:** 79  
**Number of experts present:** 14

### **1. Experts present**

- Univ.-Prof. Dr. Ena-Marlis BAJONS - University of Vienna
- Univ.-Lekt. Dr. Dietmar CZERNICH, LL.M. - attorney, Innsbruck
- Wiss.MA Mag. Ulrike HUBER - University of Innsbruck
- Univ.-Ass. Dr. Dominik KOCHOLL – University of Innsbruck
- O.Univ.-Prof. Dr. Bernhard KÖNIG - University of Innsbruck (*partly*)
- Wiss.MA Mag. Simon LAIMER – University of Innsbruck
- Ao.Univ.-Prof. Dr. Peter G. MAYR – University of Innsbruck
- Univ.-Ass. Dr. Kristin NEMETH, LL.M. – University of Innsbruck
- O.Univ.-Prof. Dr. Willibald POSCH – University of Graz
- Ao.Univ.-Prof. Dr. Bernhard RUDISCH, LL.M. - University of Innsbruck
- Wiss.MA Dr. Judith SCHACHERREITER - University of Vienna
- Prof. Dr. Norbert A. SCHOIBL - University of Salzburg
- Univ.-Prof. Dr. Andreas SCHWARTZE - University of Innsbruck
- Dr. Martin WEBER - judge, Ministry of Justice, Vienna

Present on behalf of the project was: Dr. Thomas SIMONS, project manager.  
Dr. Thomas SIMONS presided the meeting.

### **2. Agenda**

1. *Opening by Prof. Andreas Schwartz*
2. *Speeches Prof. Willibald Posch and Prof. Ena-Marlis Bajons*
2. *Presentation of the project by Dr. Thomas Simons*
4. *Discussion*
5. *Closing*
6. *Dinner – continuation of the discussion*

### **3. Report on the meeting**

Following the opening speech given by Prof. Schwartze concerning the present situation of private international law teaching in Austria and the role of private international law in practice, Prof. Posch gave a short lecture on the influence of “Rome I” and “Rome II” in Austria. Then Prof. Bajons outlined the guidelines of European civil procedure for Austrian legislation. After a short break Dr. Simons presented the project to the participants. Following this presentation, the participants introduced themselves stating their profession, relationship to private international law, membership of relevant societies and their experience in cross-border research and international projects.

In reaction to the presentation of the project the participants in general welcomed the idea of setting up some form of a network and expressed their general interest in the feasibility study.

### **3.1. Objectives of the Network**

The first part of the discussion dealt with the question whether private international law (hereafter PIL) and international civil procedure law could be treated as a uniform area. The participants were of the opinion that the procedural law pursues the legal protection of material rights, even if it contains different principles of interpretation and requires different considerations. Due to this it should be treated from a common perspective.

A further discussion raised the issue that the network could contribute, above all, to improve the information flow from the jurisprudence to the European Commission. Like this, fundamental needs for a new European regulation could be in advance better clarified, taking into account that so far the legislation at European level is rather unbalanced. That is why it would be very important to create regulations on specific topics having a transnational character.

Additionally, it was stated that the European Commission is very much interested in receiving expert opinions. Therefore it needs to be thought over, how the transmission of these opinions shall be organised.

### **3.2. Information exchange**

It was stated that through information exchange, e.g. in form of a database, a contribution can be made in order to improve the quality standard of legal reasoning in all 25 Member States. Such a tool could help the courts in overcoming obstacles. For instance, in Italy the legal justification of the decision prevails whereas in France the decisions are in general not justified. It has as well to be noticed that the standard of literature varies from one country to another. For instance, the literature in Italy does not provide for commentary of high quality, whereas the glosses are good. All these examples are good reasons to improve the current state of the art.

It was underlined that within this network, it should be possible to pass on important information such as, which persons are concerned and deal with private international law and in which country? In which language can they communicate? This would require a change in the way of thinking.

On the other hand, it is understandable that due to the larger quantity of decisions and scientific contributions, which are developed in a big country, a smaller one would have high interest to take inspiration from it. Indeed, for smaller countries, this represents a high-quality literature and can be precious for the development of their own literature.

### **3.3. Electronic newsletter**

The issue of long travel distances also led to the idea that information exchange should possibly be provided through the medium of the internet. The idea of an electronic newsletter was welcomed, which should inform the participants, on a regular basis, of the latest research being conducted in Europe.

### **3.4. Format of the network**

Regarding the possible organisational format of the network several variants were mentioned such as an institute, an association, but also a simple co-operation through internet, for instance according to the "Wikipedia" model.

The general opinion was that a simple co-operation is not sufficient and that an institutionalised organisational structure is crucial.

A further suggestion was the organisation of a "Meeting of European legal profession", in addition to the organisation of an annual meeting, where the continuation of the entire project should be discussed.

### **3.5. Language problems**

A further discussion raised the language issue. Indeed, language is and will be the largest problem since the variety and the different terms could lead to *termini technici* difficulties. One proposed solution could be the agreement on the choice of 2 to 5 different languages which people could always use.

Though, people who know at least two languages and who are familiar with the concerned cultures could have a kind of mediator function. In any case, it was expressed that the option to choose only one language can not function. But one should try to reduce the number of languages, if possible to two; however, people should not automatically be limited to English. In fact, it is already known that problems have been raised with the application of the German

language. For instance, the translation into German of EC directives does not take into account the specificities of the Austrian terminology.

### **3.6. Final remarks**

The participants to the meeting expressed their general interest in participating to a network and asked to be informed on the progress of the further project and the possible development of a network.

Innsbruck, October 2005

Univ.-Prof. Dr. Andreas Schwartze