

Spain

Date: 24th of November 2005

Location: University of research of Barcelona

Organised by: Prof. Alegría BORRÁS, University of Barcelona

Number of experts invited: 81

Number of experts present: 26

1. **Experts present:**

Sra. María Álvarez, Universitat de Barcelona
Dra. Beatriz Añoveros, Universidad Ramón Llull
Sr. Javier Aresté, Universitat de Barcelona
Dra. M^a Asunción Asín Cabrera, Universidad de La Laguna
Sra. Carmen Azcárraga, Universitat de València
Dra. Alegría Borrás, Universitat de Barcelona
Dra. Núria Bouza, Universitat Pompeu Fabra
Dra. María Pilar Canedo, Universidad de Deusto
Dr. Antoni Font, Universitat Autònoma de Barcelona
Dr. Joaquín Forner Delaygua, Universitat de Barcelona
Dr. Luis Garau Juaneda, Universitat de les Illes Balears
Dr. Francisco J. Garcimartín, Universidad Rey Juan Carlos
Dr. Miquel Gardeñes, Universitat Autònoma de Barcelona
Dra. Georgina Garriga, Universitat de Barcelona
Dra. Cristina González Beilfuss, Universitat de Barcelona
Dra. Natividad Goñi Urriza, Universidad Pública de Navarra
Sra. Diana Marín, Universitat Rovira i Virgili
Sr. Juan Núñez, Dexeus Abogados
Sr. Cristian Oró, Universitat Autònoma de Barcelona
Dr. Guillermo Palao Moreno, Universitat de València
Dra. Carmen Parra, Universitat de Barcelona
Dra. Cristina Pellisé de Urquiza, Tribunal de Defensa de la Competencia
Sra. Elena Pérez, Universitat de Barcelona
Sr. Sergio Prats, Universitat de Barcelona
Dr. Thomas Simons, IPR Verlag
Dra. Blanca Vilà, Universitat Autònoma de Barcelona

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

Experts excused

Dra. Paloma Abarca, UNED
Dr. Santiago Álvarez González, Universidade de Santiago de Compostela
Dr. Carlos Esplugues Mota, Universidad de Valencia
Dra. Gloria Esteban de La Rosa, Universidad de Jaén
Dr. Julio D. González Campos, profesor emérito de la Universidad Autónoma de Madrid
Dr. José Luis Iglesias Buhigues, Universidad de Valencia
Sr. Pascual Ortuño Muñoz, magistrado
Dr. Sixto Sánchez Lorenzo, Universidad de Granada
Dr. Miguel Virgós, Universidad Autónoma de Madrid

2. Agenda

- a) Opening by Prof. Alegría BORRÁS
- b) Speech of Prof. Borrás *The perspective for a truly European Private International Law*
- c) Presentation of the project by Dr. Thomas Simons *The European Research Network Project- tasks, challenges, perspectives*
- d) Discussion
- e) Closing

Prof. Borrás welcomed the participants and excused the persons who could not attend this meeting but who had expressed their interest in being regularly informed about the progress of the project. The Minutes of the expert meeting will be sent to all those who expressed their interest in the project. Then, Prof. Borrás warmly welcomed Dr. Simons.

Dr. Simons expressed his gratitude to the University of Barcelona and the Department of International Law and Economy for the organisation of this conference.

3. Report on the meeting

Intervention of the Prof. Borrás: *The perspective for a truly European Private International Law.*

In the first part of the intervention, Prof. Borrás highlighted the different perspectives of the existence of a Private International Law at community level. The speech was split into four parts:

- analyse of the current legal situation,
- development *ad intra* of the Community law character of the PIL,
- dimension *ad extra* of the Community law development,
- final considerations

In the first part of the intervention, it was mentioned that the Community character of the PIL is already affirmed in arts. 61 (c), 65 of the Treaty of the European Community. Indeed, art. 65 of the Treaty raises three questions:

- The scope of the expression “proper functioning of the internal market”, with reference to the jurisprudence of the ECJ case *Owusu*, 1st march 2005.

- The notion “cross-border incidence”, a limit which still continues to exist in the European Constitution.
- The relation between art. 65 of the Treaty with art. 95, especially the fact that art. 65 of the Treaty is considered as a *lex specialis*

The second part of the intervention (development *ad intra* of the Community law character of the PIL), addressed the legal instruments of PIL adopted until now.

Then, reference was made to the legislative texts which are currently in preparation. The Prof. Borrás ended her intervention with three considerations.

- First, emphasising the absence of a real Community system *ad intra* and *ad extra* in the field of PIL, since things proceed very slowly and step by step.
- Second, indicating the lack of the uniformity which has its origin in the own Treaty of the European Community especially with the exceptions of Denmark, United Kingdom and Ireland.
- The third and last consideration refers to the place left for PIL within the national system. That is why it would be worth revising the Spanish system, following the example of Belgium.

Intervention of Dr. Thomas Simons: The European Research Network Project-tasks, challenges, perspectives.

Dr. Simons started his intervention by thanking the University of Barcelona and the good intervention of Prof. Borrás. Then, he exposed the possible objectives and characteristics of the network. He also reminded that the judicial basis of the Community character of PIL finds its origins in arts. 61 (c), 65 of the Treaty of the European Community. Afterwards he presented the missions and objectives of the project itself, emphasising that the main aim is to improve the relations between the researchers within the European Union.

He invited the participants to discuss in particular the form that the Network could adopt and the the possible objectives of the network.

4. Necessity of the Network

The participants considered that in Europe other similar initiatives already exist, which would lead to doubt whether there is a necessity for a project like the Network. Two possible strategies could be considered:

- first, to compete with already existing structures;
- second, a non already explored field must be found.

In any case, if a network is created, it must be of high quality in consideration of the risk which is inherent to any such initiative.

5. Form of the Network

The alternative between the creation of an institute or an association was discussed. The participants raised the advantages and disadvantages of each of the two alternatives.

A most important aspect to be considered when determining whether a competitive network shall be established must be that the participants to the project should be persons of recognised prestige; this should be a very important factor in order to build up a competitive Network. The participation of lawyers of various legal professions (academic, lawyers in profession, judges, notaries, etc), would be convenient.

6. Services of the Network

The services, that the Network should provide, could be classified in three categories:

- providing information to those working in the legal practice and to those dedicated to the scientific debate;
- establishing a forum for the interrelation between professionals;
- being a point of reference for the European Commission i.e. a structure to take into consideration when designing the future regulations, activities...etc.

Barcelona, November 2005,

Dra. Georgina Garriga