

**“FEASIBILITY STUDY...” EXPERT MEETING**  
**21 October 2005, Hungary**

**Date:** 21 October 2005, 2 p.m. – 5 p.m.

**Venue:** Eötvös Loránd University, Faculty of Law, Faculty Council Room. Budapest, Egyetem tér 1-3., Hungary.

**Organizer:** dr. Gábor Palásti (University of Miskolc, Faculty of Law, Department of European Law and Private International Law)

**Presiding Asser Institut lecturer:** Dr. Vesna Lazic

**Minutes of the meeting taken by:** dr. Andrea Vuncze (University of Miskolc, Faculty of Law, Department of European Law and Private International Law)

**Report prepared upon the minutes by:** dr. Gábor Palásti (University of Miskolc, Faculty of Law, Department of European Law and Private International Law)

**1. Analysis of turnout**

**Invited experts:** 81 (Figure different from number of invitations sent out by Asser Institute. Some female experts using both maiden and married names were considered to be two different persons and received two invitations from Asser Institute.)

**Experts present:** 13. Sectoral turnout per invitation: Higher education: 11/31. Judiciary: 1/34. Government level state administration: 0/3. Law firms (county level bar associations): 0/20. Other: 1/2.

**Comments:** Turnout from academia was high. Except for one institution (CEU – which is by many factors not considered to be a Hungarian institution anyway) every university was represented, albeit some attendants represented more than just one institution. One person showed up who was not personally invited but heard about the project from someone else. Several possible attendants excused themselves prior to the meeting or asked a colleague to excuse them during the meeting.

Turnout from every other type of institution was low. From the judiciary one judge came from the Supreme Court. As for judiciary, one reason is that there is no specialization in PIL cases – cases are assigned to judges upon subject matter where the international element plays little role. Another reason is that – as the Supreme Court judge explained – for some of the activities a networking involves – like supply of case law – an outright decision is needed from the National Council of Justice – who were also invited but did not show up. A third reason may be the low language competence. As for the ministry, lack of turnout may be due to the heavy workload. One prominent invitee from the Ministry of Justice previously excused

herself and explained the many other duties she had for the same time. Low turnout from practising lawyers may have been due to the low language competence of lawyers, incidental interest in PIL cases (dependent on client needs) and the low activity of county bar associations in calling our invitation into the attention of lawyers.

## **2. Attendants**

<b>Name</b>	<b>Institution represented</b>
Prof. Dr. László <b>Burián</b>	Pázmány Péter Catholic University Department of Private International Law (full professor, head of department) Eötvös Lóránd University, Department of Private International Law and European Economic Law (full professor)
Dr. Viktória <b>Harsági</b>	Andrássy Gyula Deutschsprachige Universität (assistant) University of Pécs, Department of Civil Procedure (assistant) Pázmány Péter Catholic University Department of Civil Procedure (adjunct)
Dr. Írisz E. <b>Horváth</b>	Pázmány Péter Catholic University Department of Private International Law (PhD student)
Dr. Miklós <b>Király</b>	Eötvös Lóránd University, Department of Private International Law and European Economic Law (associate professor, head of department)
Dr. Adél <b>Köblös</b>	University of Szeged, Department of Civil Law and Civil Procedure (assistant)
Dr. Adrienn <b>Nagy</b>	University of Miskolc, Department of Civil Procedure (PhD student)
Dr. Katalin <b>Raffai</b>	Pázmány Péter Catholic University Department of Private International Law (adjunct)
Dr. Gábor <b>Palásti</b>	University of Miskolc, Department of European Law and Private International Law (adjunct, deputy head of dpt., Feasibility study country contractor)
Dr. Árpád <b>Somogyi</b>	Károli Gáspár Protestant University, Department of Private International Law (assistant)
Dr. Diána <b>Szabó</b>	Other interested person
Judge Dr. Judit <b>Török</b>	Supreme Court
Dr. Andrea <b>Vincze</b>	University of Miskolc, Department of European Law and Private International Law (assistant)
Dr. Zsuzsa <b>Wopera</b>	University of Miskolc, Department of Civil Procedure (associate professor, head of

### **3. General format of the discussion**

Dr. Lazic from Asser Institute presented a lecture with the use of power point slides and asked questions, in the beginning one by one, later by volunteering, concerning the issues under the slides. Sticking to the issues was not very rigid – she let participants rumble to other topics. Therefore by the second half of the meeting most issues coming up on newer slides had already been touched upon by the attendants. The format of the discussion was much like a loosely regulated brain-storming. Interpretation was provided for by Gábor Palásti upon request of the participants (and on some occasions some attendants did request translation). About half of the participants were active in the discussion while others were rather listening. In the mid-term of the meeting a short break for refreshments was held during which two participants left. The timing of the meeting followed the previous expectations.

### **4. Agenda:**

1. Opening
2. Introductions
  - Who are you?
  - Do you participate in existing European Networks and projects and other forms of cooperation?
  - What is your impression of the objectives of the project?
3. Possible scenarios for a European Network
  - What would be your expectations of a European Network?
  - What would make you participate in such a network?
4. Participants in the Network
  - Who should participate in the network?
  - How can active and enduring participation be secured?
5. Possible formats of the Network
  - What would be your preferred format?
  - Which turnkey projects would be interesting for you?
6. Participants in the feasibility study
  - Can you identify persons and organizations we should involve in the study?
7. Closing

## **5. Detailed report**

Following a short presentation of the project by Dr. Vesna Lazic (see attached \*.pps file) the participants introduced themselves stating their membership of relevant societies, institutional and personal connections and their experience in cross-border research and international projects.

Memberships to existing networks and institutional and personal connections among the participants include: University of Heidelberg; Max Planck Institut; University of Athens; University of Lausanne; Friedrich Schiller University, Jena; Academy of European Law, Trier; Pace University, New York, USA; UNCITRAL; Queen Mary Case Translation Project; European Commercial Judges Forum; University of Turku; several unnamed Italian universities; University of Vienna; University of Ghent; UNIDROIT; Willem C. Vis International Commercial Arbitration Moot; and different projects under the Soros Foundation. Specifically mentioned experience in cross-border research and international cooperation included conference in civil procedure law in old and new Member States with the University of Vienna (Prof. Rechberger); many different international projects under the different projects of the Soros Foundation (East-East Program, Civic Education Project, Higher Education Support Programme).

In an initial reaction all participants expressed their sympathy to the idea of setting-up some form of a network and their general interest in the feasibility study. Most participants expressed that necessity of such an accessible network is strengthened by the fact that currently it is nearly impossible to get access to existing sources, drafts etc. on private international law and people interested only accidentally get to know about them.

The focus in these discussions was transferred from the needs of the EC for a research network to the needs of the participation. The following remarks and suggestions were made:

### *1. Need for a network:*

Although one person expressed his doubts, other participants' opinion was that a network containing all relevant and up-to-date information on private international law would be welcome. Expectations of such a network would include:

- bibliography on private international law
- a website containing all relevant information

- organizing conferences and expert meetings (e.g. regional or with participation of some Member States)
- publications
- developing official or quasi-official connections with other initiatives like the Society of European Lawyers, the Study Group for a European Civil Code etc.
- Focusing on special topics, e.g. an exact research project on the impact of the Rome Convention on private international law of the new Member States (by organizing a conference and then publish a study about the issue) or on extracontractual liability, torts, enforcement etc.
- Focusing on national legislation and national practices of each Member State
- Developing national databases by national courts on private international law (judgements etc.) which might be a cooperation between judges, attorneys and experts thereby connecting EU law and civil & commercial law

Critical success factors mentioned:

- the network should be free of charge and not restricted because fee-paying basis of already existing networks and restricted access makes it almost impossible for most people who are interested to access legal documents
- the network must demonstrate that it exists by active promotion of their works and other means
- possibly to involve professors and professionals from EU candidate countries so that they feel more involved even before accession of their country; in addition to including some data on non-EU countries as well which might be of no risk at all (participants agreed that it is not reasonable to exclude non-EU countries)
- on-demand translation of foreign-language documents might be an option

Pitfalls and risks mentioned:

- how funding of the project would be done and what it would allow
- the network should not be 'over-institutionalized' but rather a smaller group of experts engaged in effective work instead of trying to uphold an institution where activities and responsibilities exude
- some possible functions of the network have been taken over by other organizations. As an example, there have been 80 different replies from governments, professional bodies, PIL research organizations etc. to the Green Paper on the conversion of the

Rome Convention into a secondary community instrument. What would be the sense in having an 81<sup>st</sup> reply from the network?

## *2. Possible members of the network*

It was agreed that membership in the network depends very much on the language of the network. Participants expressed that using too many languages would make the network impossible to use but usage of one language is not enough either, so maybe a bilingual network would be most acceptable.

Selection of members should not be dependent upon too many different academic or other standards because that might exclude some persons whose participation would be very useful. Participants expressed that leaving the membership open is a crucial issue because, even so, there might not be enough members. Therefore, maybe the only conditions of becoming a member should be possession of a law degree and interest in the field. In a country small as Hungary there would not be too many people volunteering to membership, anyway (which was very well exemplified by the low turnout on the meeting).

Participants agreed that inviting professionals is particularly important. Attracting these persons might be done by making them aware of advantages of becoming a member, e.g. they can gain lots of information, it may positively influence their work, the way their clients and colleagues evaluate them. Involvement of professionals might be encouraged by heads of different divisions of the courts or regional bar associations, so these people should be contacted for that purpose.

It was also suggested that instead of inviting certain law firms, it is ethical to invite all and not only international law firms or not just those specializing in private international law. It is not the aim of the network to offer access to useful legal information to some law firms thus increasing their market value for their clientele while not offering the same to other firms.

One participant expressed that although different projects require different members and tasks tend to find the right people for themselves, involving academics for the crucial tasks of the study such as management and organization of certain projects would be better in general because they have a broader sphere activities, unlike other legal professionals whose work usually focuses on a specific and more narrow activity.

Necessity of involving PhD students was expressed for the reason that time-consuming research – grassroot work – is usually done by them, professors and professionals might not have the time for that.

In any case, participants agreed that regular contact and operating links should be developed between members.

### 3. *Possible formats of the network*

There were two distinct ideas about the format of the project. Some people thought of a kind of high society of private international law professors with less specific duties and projects and more of an informal community of organizing joint conferences, guest lectures, and serve as a community of recognition and excellence. On the other end of the line some people thought that the network should be much more practice- and project oriented with grass root work from building international electronic database to surveying professionals on specific questions. It was concluded that the two different approaches do not contradict each other and may be handled on different levels within the same network.

As a general remark participants emphasized that the format should not be over-institutionalized.

It was also suggested that the organization should have two levels, one with a lower number of permanent members (an institute or, more preferably, a secretariat) administering tasks, projects and search for persons to the second level, for each separate project, who should carry out effective work, and evaluation of results shall be done by a group of experts again.

Participants agreed that the format should be an optimal mixture of flexibility and institutionalized manner, involving both academics and professionals of different fields and interests.

It was also emphasized that no rigid hierarchy should be built up but the format should be kept reasonably open for free flow of information exchange.

The possibility of allowing spontaneous development in the first years was also addressed.

### 4. *Funding*

Participants agreed that general funding by the EU is essential but funding may also be done on a national level, going down to the lowest levels because correspondents and members could also arrange for funding if such private interests are concerned as well.

It was expressed that members should be remunerated for their efforts in the network.

### 5. *Turnkey projects*

- all recommended network products are welcome
- combining different means is advisable, awareness on new developments and exchange is especially important
- informal or computerized contact is important
- preparing a handbook was found to be a good idea, possibly in the form of a commentary and case law collection, might be also useful to prepare it on a country-by-country basis (e.g. series) or drafting it in a generally understandable, digested form so that it can be used by lawyers not specializing in private international law as well.
- include listing of international and national events
- Green Papers and other drafts of new legislation might be commented on in the framework of the network, enabling persons who are interested and concerned but otherwise not present in the feedback process
- it was also noted that any commentary or other handbook under the auspices of the network has the danger of not being able to present any opinion of the network itself, because the number of possible authors in the network has the danger of colliding professional opinions. And since it is not possible to have an “official” opinion of the network in any PIL matter by dumbing dissenting opinions, any handbook or commentary would be just one in the row of such books voicing some opinions and criticizing others. There may thus not be a distinct role for the network. An alternate solution could be a series of country-by-country publications on specific legal issues of interest coordinated by the network.
- the network may be a platform for commenting on existing legislation as well
- coordinating cross-border network research is found particularly important

Budapest, 21 October 2005