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| CO | Confidential, only for members of the consortium (including the Commission Services) | |

Summary

The European University Institute would like to promote a more active role of the judiciary in the debate concerning the modes and scope of European legal integration. The two days conference is the first step towards a more structured cooperation with both national judiciaries and the European Court of Justice. The first day was devoted to a discussion of the role of National Supreme Courts and the ECJ in the creation of European private law. The second half day was focussed on the potential for improvements in judicial dialogue between State Supreme Courts, the ECJ and academics. The conference took place on 24 and 25 May, 2008, at the EUI in Florence.

Contents

| | |
|---|----------|
| I. BACKGROUND TO THE WORKSHOP | 3 |
| I.1 THE SCOPE OF THE INITIATIVE AND THE BROADER PROJECT | 3 |
| II.2 MEDIUM TERM GOALS – JUDICIAL COOPERATION IN CIVIL MATTERS AND EUROPEAN LEGAL INTEGRATION..... | 4 |
| <i>II.2.1 The background</i> | <i>4</i> |
| <i>II.2.2 The Supreme Courts judicial network.....</i> | <i>5</i> |
| <i>II.2.3 The potential initiatives of EUI.....</i> | <i>5</i> |
| II. SUMMARY OF THE WORKSHOP | 6 |
| III. WORKSHOP PROGRAMME..... | 7 |
| IV. PARTICIPANTS | 8 |

I. Background to the Workshop

I.1 The scope of the initiative and the broader project

The EUI, in particular professors Cafaggi and Poiares Maduro, together with the Robert Schuman Center would like to promote a more active role of the judiciary in the debate concerning the modes and scope of European legal integration. The conference is the first step towards a more structured cooperation with both national judiciaries and the European Court of Justice.

The debate on European legal integration has focused mainly on constitutional reform, which also plays a relevant role for the harmonisation of European private law. But a more specific focus on European private law is needed given that in 2008 important deliveries are expected. The Common frame of references and the *Acquis* principles, which have already partially come out, will trigger further debate. While the effort made by the Commission to involve stakeholders has certainly improved quality and effectiveness, the impression is that the judiciary, and in particular national judiciaries, have played a relatively minor role compared to their strategic function concerning implementation.

The role of the judiciary is also very relevant in relation to international trade and harmonization of international commerce. The creation of the internal market, especially in the field of private law, can not be decoupled from the processes of growing interdependence at international level. Harmonization of European contract law cannot develop without considering international conventions and the development of *lex mercatoria*. The example of private international law is perhaps the most illustrative of the interaction between the European and the international dimension, but the role of fundamental rights in private law domains also constitute an important aspect of this correlation.

The necessity to couple legislative harmonization (whichever form it will take) with judicial governance to implement private law legislation has become clear.

Furthermore the improvement of coordination among the national judiciaries and the ECJ given the emerging data about persistent divergences should become a priority in the institutional agenda.

Harmonisation of rules without institutional coordination is bound to fail. In this framework judicial governance is certainly not the only institutional response but contributes to play a significant role. In particular the European judicial network and different form of judicial cooperation in civil matters are developing and could contribute to define a new architecture

For this reason we would like to debate with members of the national and EU judiciaries the past, present and future role of judicial governance in the process of legal integration and its impact on europeanisation of private law.

Particular attention should be also devoted to the processes currently taking place in new Member States and the desirability of particular forms of judicial cooperation in those regions.

The medium term goal is to establish a stable dialogue between academics and the judiciary on the strategic issues concerning European legal integration and the relationships with third countries and international organisations.

The initial conference focuses specifically on the broad issue of European private law, in particular addressing the following questions:

- a) Negative integration in European private law and the role of the judiciary both at national and European level
- b) Judicial Governance, positive integration and the different legislative strategies for harmonization of European Private Law
- c) The different ways to structure judicial cooperation in civil matters, including permanent the European judicial network, judicial for a judicial conferences organised around specific areas
- d) The specific issues related to the role of national judiciaries in new Member States after enlargement

II.2 Medium term goals – Judicial cooperation in civil matters and European legal integration

II.2.1 The background

The steps that have led to the current situation date back to 1968, when the original six Member States agreed on common rules on jurisdiction and enforcement of judgments in civil and commercial matters (the Brussels Convention), then in 1993, the Maastricht Treaty identified Judicial co-operation in civil matters as an area of common interest for EU Member States, the Treaty of Amsterdam went even further making Judicial co-operation in civil matters a European Community policy linked to the free circulation of people. Afterwards, at the Tampere European Council in October 1999, EU leaders acknowledged three priorities for action in this field: mutual recognition of judicial decisions, better crime victims compensation and increased convergence in the field of civil law.

The basic principle underlying judicial cooperation is mutual recognition that is applied to decisions in civil and commercial matters, the final objective is that judicial decisions should be recognised and enforced in other Member States without any additional intermediate step.

In the specific field of cooperation between member states the legislative instruments already in force are:

- Regulation relating to the service of documents in cross-border cases¹
- Regulation concerning the taking of evidence in civil and commercial matters²

Moreover the Council adopted a decision³ establishing a European judicial network in civil and commercial matters. This network has the task of setting up an information system that would be differentiated for members of the network and for the public. This would smooth procedures that have cross-border implications; facilitate requests for cooperation between Member States, especially when no Community act or international instrument is applicable, and finally apply Community acts or conventions in force between the Member States. Each member State provides a contact point that provides all the necessary information, facilitates

¹ Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

² Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters.

³ Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters [OJ L 174 of 27.6.2001]

the processing of requests for judicial cooperation, seeks solutions to any difficulties that arise and assist with the preparation and updating of the information system for the public⁴.

II.2.2 The Supreme Courts judicial network

In 2004, the Presidents of the Supreme Judicial Courts of the Member States of the European Union decided to form an Association. This was the basis for the constitution of a network that has two main objectives: to provide a forum through which European Institutions are given an opportunity to request the opinions of Supreme Courts; to bring Supreme Courts closer by encouraging discussion and the exchange of ideas.

Since 2005, *stages* are organized for the Members of the Supreme Courts, as part of the Exchange Programme of European judicial authorities with the support of the European Judicial Training Network. Since 2006, the Network has, with the financial support of the European Commission, developed a Common Portal of jurisprudence which will allow its members to question all the national case law databases.

II.2.3 The potential initiatives of EUI

The EUI can promote the creation of a center, possibly associated to the Florence School of Regulation and with the Robert Schuman Center, that would concentrate on the role of the national judiciaries in the promotion of European legal and institutional integration

Potential areas for intervention

The European University Institute may play an important role in relation to four areas

- a) to contribute to judicial cooperation in civil matters by establishing permanent judicial conferences organised about specific subject matters among State Supreme and Constitutional Courts and ECJ, to interact with the European judicial network and the network of Constitutional Courts
- b) To foster the collaboration between ECJ and national Courts by contributing to the creation of databases and glossaries
- c) To foster dialogue between the judiciary and national regulators. In particular to compare judicial review systems in each Member state concerning European legislation implemented at national level. Given the proliferation of European committees of regulators and their growing importance for regulated sectors, it might be appropriate to generate links between these networks and the judicial networks. EUI can be the ideal place if a Florence school of regulation and a Florence school of judicial governance will develop within the Robert Schuman Center
- d) to promote a training program for judges in MS with specific attention devoted to the judiciary in new Member States. This program should focus on European law and can be potentially associated to initiatives undertaken by the Academy of European Law

These goals can be achieved by cooperating with the European Commission but also with national judiciaries involved in the creation of networks.

⁴ The contact points meet at least once every six months to exchange information and experiences, to identify problems and best practices, and to determine guidelines for establishing the information system. The number of representatives attending these meetings cannot exceed four per Member State.

II. Summary of the Workshop

The Conference was structured over two days. The first day was devoted to a discussion of the role of National Supreme Courts and the ECJ in the creation of European private law. The second half day was focussed on the potential for improvements in judicial dialogue between State Supreme Courts, the ECJ and academics.

On the first day, the sessions were devoted to different issues: the case law of the European Court of Justice on national private law, where the participants focused their attention mainly on the preliminary ruling procedure, debating in particular whether this could be understood as a truly cooperative venture between Union and Member State judiciaries and eventually how the AG could play a useful role in helping the national courts in formulating relevant questions and helping the ECJ in clarifying factual background.

The second session was devoted to judicial governance in European private law, where the main matter of discussion was the need for convergence between European and national legal orders, particularly evaluating the role of comprehensive codification at the European level compared to a judge made law, based on soft law devices to stimulate convergence and on better dialogue among judges.

The third session was focus on Judicial cooperation in civil matters, where the participants carried the discussion to an analysis concerning the differences in legal mentalities, styles of judging, teaching techniques and educating lawyers, proposing a possible solutions for the convergence of laws and minds.

The last session dealt with the allocation of tasks between national courts and the European Court of Justice in a post-enlargement context, where the issue at stake was whether the existing legal and cultural differences not too large to allow courts from the new states to adapt themselves to the legal Union's conventional wisdom, or slowly emerging European 'demos'.

The second half day was devoted to a round table which built up on the issues analysed during the previous day in order to provide generally accepted proposals concerning not only the outcome to be expected by this conference, but also the possible follow-up.

III. Workshop Programme

Friday, 23 May 2008

European Private Law between positive and negative integration: an assessment of the impact of the case law of the European Court of Justice on national private law

9.30 Introduction to the theme and agenda setting: Professor Stephen Weatherill (Oxford University)

9.45 Debate with initial comments by Judge Miguel Pórigues Maduro (ECJ) and Judge Luciano Panzani (Supreme Court of Italy)

10.45 Concluding remarks

11.00 Break

Judicial governance in European Private Law

11.30 Introduction to the theme and agenda setting: Professor Fabrizio Cafaggi (EUI)

11.45 Debate with initial comments by Judge Tadeusz Erecinsky (Supreme Court of Poland) and Judge Encarnacion Roca i Trias (Supreme Court of Spain)

12.45 Concluding remarks

13.15 Lunch

Judicial cooperation in civil matters

14.30 Introduction to the theme and agenda setting by Professor Hans-W. Micklitz (EUI)

14.45 Debate with initial comments by Judge André Potocki (Supreme Court of France) and Lord Jonathan H. Mance (House of Lords UK)

15.45 Conclusions

16.00 Break

The allocation of tasks between national courts and the European Court of Justice in a post-enlargement context

16.30 Introduction to the theme and agenda setting by Professor Norbert Reich (University of Bremen)

16.45 Debate with initial comments by Judge Valentinas Mikelenas (Supreme Court of Lithuania) and Judge Marko Ilešič (ECJ)

17.45 Conclusions

Saturday, 24 May 2008

Introduction: Marco Del Panta (EUI Secretary General) and Stefano Bartolini (RSCAS Director)

9.30 Round table coordinated by Professor Walter Van Gerven (Catholic University of Leuven) and Professor Bruno de Witte (EUI)

12.30 Conclusions

IV. Participants

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| 1. Kaspar Balodis | Constitutional Court of the Republic of Latvia |
| 2. Stefano Bartolini | RSCAS, European University Institute |
| 3. Giacinto Bisogni | Supreme Court of Italy |
| 4. Gustav Bygglin | Supreme Court of Finland |
| 5. Fabrizio Cafaggi | European University Institute |
| 6. Federica Casarosa | European University Institute |
| 7. Bruno de Witte | European University Institute |
| 8. Marco Del Panta Ridolfi | European University Institute |
| 9. Tadeusz Ereciński | Supreme Court of Justice, Poland |
| 10. Arthur Hartkamp | Radboud University Nijmegen, NL |
| 11. Alessandro Ianniello Saliceti | European Commission |
| 12. Marko Ilešič | European Court of Justice |
| 13. Georg Kodek | Supreme Court of Austria |
| 14. Ghislain Londers | Cour de Cassation, Belgium |
| 15. Jonathan H. Mance | House of Lords, UK |
| 16. Hans-W. Micklitz | European University Institute |
| 17. Valentinas Mikelėnas | Supreme Court of Lithuania |
| 18. Dalia Mikelėnienė | Supreme Court of Lithuania |
| 19. Ellen Mo | Supreme Court of Norway |
| 20. Horatia Muir Watt | Université Paris I Panthéon-Sorbonne |
| 21. Luciano Panzani | Supreme Court of Italy |
| 22. Luís Miguel Poiares Maduro | European Court of Justice |
| 23. André Potocki | Cour de cassation, France |
| 24. Norbert Reich | University of Bremen |
| 25. Encarnacion Roca i Trias | Supreme Court of Justice, Spain |
| 26. Marek Safjan | Warsaw University |
| 27. Carla H. Sieburgh | Radboud University Nijmegen, NL |
| 28. Jon Stockholm | Supreme Court of Denmark |
| 29. Tambet Tampuu | Supreme Court of Estonia |
| 30. Christiaan Timmermans | European Court of Justice |
| 31. Judit Török | Supreme Court of Hungary |
| 32. Walter van Gerven | Catholic University Leuven |
| 33. Stephen Weatherill | Oxford University |
| 34. György Wellmann | Supreme Court of Hungary |