

## **Conference on Access to Foreign Law in Civil and Commercial Matters**

**(Centre A. Borschette, 15 - 17 February 2012)**

### **Opening speech of Ms Michou, Director Civil Justice, DG Justice**

- It is a great pleasure for me to welcome you to this Conference on Access to Foreign Law in Civil and Commercial Matters. We, at the European Commission, are particularly delighted to be once again collaborating closely with the Hague Conference on Private International Law in the organisation of this conference and look forward to engaging in the fruitful dialogue, which we hope it will facilitate.
- I am very glad that our joint conference is becoming an established meeting in the calendars of experts in this evolving field. After our last joint conference, which was held in 2009 and dedicated to "the direct judicial communications in the field of family law and the development of judicial networks", we decided to devote our next conference to an increasing pressing matter in which the European Commission has demonstrated long standing interest: Access to Foreign Law in Civil and Commercial Matters.
- It is worth recalling that the Commission's commitment to these issues was already in evidence in 2007 when we asked the Permanent Bureau of the Hague Conference to analyse the opportunities for the Hague Conference to work on the subject of cooperation in the area of information on foreign applicable law. We are very grateful for the high quality work and in depth scientific documents that the Bureau has released on the issue in the past few

years and hope to benefit from their expertise in months and years going forward.

- Today this conference represents a unique opportunity to meet experts from all over the world who deal with the practical challenges associated with accessing foreign law in civil and commercial matters, in order to exchange ideas and assess possible ways forward in the field of access to foreign law. We hope that a lively exchange of views in this forum will help to better identify the practical problems which claimants, practitioners, and judicial authorities face in the courtroom and the Conference taking place over the next days will also help to construct creative solutions.
- We live in a globalised society where more and more people live, work and do business abroad. We need to address the key challenges that a globalised world presents to people and business, such as an increase in international cases, and the corresponding need to have access to foreign law. In this context, courts across the world have to come to terms with the need to look beyond domestic law and to keep pace with changes in the world of business and society more broadly.
- Effective access to justice constitutes a core value of the European Union, which is also enshrined in the Charter of Fundamental Rights, in particular by its Article 47. The objective of further developing Europe as an area of law and justice aims above all at making it easier for people to exercise their rights and freedoms. Promoting the establishment of a genuine European area of justice means ensuring that competent judicial authorities co-operate effectively, and that citizens have better access to justice in Europe and are neither prevented nor discouraged from exercising their rights.

- Access to justice is placed under threat in a judicial system where the role of the judges in the establishment of the applicable foreign law is extremely limited, shifting the burden of proof for the invocation of foreign law on the parties themselves. In this scenario the obstacles encountered by the parties in obtaining access to foreign law can easily translate into obstacles in obtaining access to justice.
- On the other hand, in judicial systems where the judges have the duty to establish the content of foreign law *ex officio*, the difficulty that judges experience in access to foreign law can clearly affect the efficiency of justice and legal certainty. It is of paramount importance that judicial authorities are fully informed of their duties in this respect and are given the tools to make use of foreign law, where appropriate.
- Guaranteeing the efficiency of justice in the EU as well as ensuring legal certainty and a level playing field for citizens, consumers and businesses (especially small and medium-sized businesses) in enforcing their rights within and across national borders is part of our mission. We aim at a "Justice for growth" which means fostering growth through cutting red tape and giving businesses the legal certainty they need, making it easier for them to trade cross-border. This theme has recently been evoked in the Conclusions of the European Council and it is our task to bring such farsighted political aspirations to practical, concrete fruition. Businesses must feel confident that EU law provides a strong framework to encourage cross-border trade, to enable the internal market to work well and to punish commercial malpractice effectively. This is truly central to the Commission's overall political agenda – and that of the EU as a whole in order to exit the economic crisis and create sustainable growth and jobs.

- High costs and language barriers discourage legal practitioners from using foreign law. As such, the study on Foreign Law and its perspectives for the future at the European level, that the European Commission contracted pursuant to Article 30 of the Rome II Regulation on applicable law on non-contractual obligations, shows that even though 40% of respondents, including lawyers, judges and notaries, perceive an increase in frequency of the cases that require consultation of foreign law in their daily work within the last five years, slightly more than 35% of them indicated that they avoid the application of foreign law, where possible.
- This attitude undermines the preventive mechanism set up by some European legal instruments, such as the Rome I Regulation on applicable law on contractual obligations and the Rome III Regulation on applicable law on divorce, that allow people to choose respectively the law applicable to their contracts and to their divorce and legal separation. In order to render this mechanism fully efficient it is of outmost importance that legal practitioners have easy access to foreign law, in order to assess all the possible scenarios stemming from the application of one law or another and advice their clients accordingly. Bridging the apparent knowledge gap in the legal community is a key objective of the European Commission, the achievement of which will ensure that claimants in cross-border situations are appropriately advised.
- I think that the global need for accessing the content of foreign law is undeniable, now it is time to focus our attention and energy on how to achieve this objective and I am sure that this forum will come up with extremely interesting suggestions on the matter upon which, I am certain, we all look forward to reflecting.

- We have decided to structure the conference like an "impact assessment". You may know that the Commission, when considering a new policy initiative, has taken the commitment to assess carefully the impacts of such initiative, in order to find best possible solutions and to be aware how they would affect. Using this methodology as guidance brings added value also for our considerations on how the access to Foreign Law in Civil and Commercial Matters is best arranged in Europe and globally. It will allow us to go through first an overall picture of the problem, then of the current status of the existing mechanisms to tackle it in order to elaborate, finally, possible solutions on this basis.
- We will dedicate the first part of the conference to the definition of the problem, namely the global need to have access to foreign law, adopting a manifold perspective. We will first have a horizontal overview offered by international organizations' representatives. Then we will examine this issue from a national perspective of common law and civil law systems thanks to experts coming from all over the world.
- Once established the need to improve access to foreign law, we will then assess the mechanisms that have been already set up to facilitate the access to Foreign law, such as the London Convention, the Montevideo Convention, the Networks of judges and notaries as well as the relevant electronic tools.
- On the basis of this extensive overview of the current *status quo* of the access to foreign law, I believe that on our final day we will be able to draw possible ways forward elaborating creative and effective options to tackle this issue.

- Before finishing, I would like to thank you for having accepted our invitation. I would like to take this opportunity to thank the Secretary General of the Hague Conference on Private International Law, Mr Van Loon, and his collaborators and in particular Mr Philippe Lortie and Ms Maja Groff for their excellent work and cooperation in the organization of this event, which would not have been possible without their valued support. It has been a great pleasure to work with you. I hope that this conference will continue to be an established tradition also in future years.
- I hope you will enjoy this conference and make use of the opportunities which it presents for better understanding the legal and business challenges which access to foreign law can throw up. We look very much forward to learning from the collective expertise of all participants!